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Gender, Leadership, and Addiction in the Legal Profession
by
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I. Introduction

Women are not progressing in the ranks of the legal profession at near the rate at which they saturate the legal market. The numbers of women in leadership positions (or on track to obtain leadership positions) within the legal profession are abysmal, and, even worse, are stagnant.

As of 2012, 96% of managing partners in the nation's largest law firms are men.¹ Only 15% of equity partners and 26% of non-equity partners are women.² Further, women constitute "only 20% of the typical firm's highest governing committee."³ Even in law schools, only 20.6% of law school deans are women,⁴ and women are less than 30% of tenured law professors.⁵ These numbers have not significantly progressed in the past 10 years, but instead have reached a plateau.

Many types of research have been performed to explore what kinds of factors may contribute to women's struggles with attaining and keeping leadership positions.⁶ However, one aspect that has not been thoroughly explored in this

¹NATIONAL ASSOCIATION OF WOMEN LAWYERS, REPORT OF THE SEVENTH ANNUAL NAWL NATIONAL SURVEY ON RETENTION AND PROMOTION OF WOMEN IN LAW FIRMS, THE NATIONAL ASSOCIATION OF WOMEN LAWYERS AND THE NAWL FOUNDATION 3 (2012).

² *Id.*

³ *Id.* at 14.

⁴ AM BAR ASS'N-COMMISSION ON WOMEN IN THE PROFESSION, A CURRENT GLANCE AT WOMEN IN THE LAW, 4 (2012), available at http://www.americanbar.org/content/dam/aba/marketing/women/current_glance_statistics_2012.authcheckdam.pdf.

⁵ AMERICAN BAR FOUNDATION, AFTER TENURE: POST-TENURE LAW PROFESSORS IN THE UNITED STATES, 14 (2011), available at http://www.americanbarfoundation.org/uploads/cms/documents/after_tenure_report-final-abf_4.1.pdf.

⁶*See*, KARIN KLENKE, WOMEN AND LEADERSHIP: A CONTEXTUAL PERSPECTIVE, 162 (1996); DEBORAH RHODE & AMANDA PACKEL, LEADERSHIP: LAW POLICY AND MANAGEMENT (2011); THE WHITE HOUSE PROJECT REPORT: BENCHMARKING WOMEN'S LEADERSHIP (2009).

context is a similarly serious problem in the legal profession: addiction.⁷ The prevalence of addiction in the legal profession yields statistics that are equally abysmal. Addiction is disproportionately high when practicing law, both as compared to both the general public as well as to other professions, and only recently has it been realized that women's struggles with addiction are different than men's⁸. Importantly, these are statistics that are not widely recognized, either by the public or by the legal community. In fact, only recently has the legal profession taken steps to recognize the significant influence of addiction on this profession.⁹

While approximately 10% of the adult population struggles with addiction,¹⁰ according to the Legal Profession Assistance Conference (LPAC), roughly 1 in 5 lawyers is addicted to alcohol, a rate of alcoholism that is significantly higher than

⁷ In discussing addiction, the research has been varied in terms of type of addiction (which type of substance) and stage of addiction (susceptibility to a substance, substance use experiences, and recovery and relapse). Therefore, I use the term "addiction" to encompass all types of substances, but spend a good deal of time discussing alcoholism as it's the most prevalent in the legal profession, and is often accompanied by a dual addiction. In terms of "stage" of addiction, I discuss gendered factors relating to susceptibility, substance use experiences, as well as recovery and relapse separately, although they often overlap.

⁸ Whitten, Lori, *Women and Sex/Gender Differences Research Program*, NATIONAL INSTITUTE ON DRUG ABUSE (April 19, 2012), <http://www.drugabuse.gov/news-events/nida-notes/2012/04/women-sexgender-differences-research-program>. Only in 1995 did National Institute on Drug Abuse formally establish the Women and Sex/Gender Differences Research Program "with the objective of achieving a comprehensive understanding of addiction and optimally effective prevention and treatment interventions for both men and women," and to integrate the "study of male-female differences in drug and treatment responses to all areas of NIDA-sponsored research." *Id.*

⁹ "While the American Medical Association began a program from impaired physicians in 1972, it was not until 1988 that the American Bar Association set up its Commission on Impaired Attorneys." DRUG AND ALCOHOL ABUSE AND ADDICTION IN THE LEGAL PROFESSION, LEGAL PROFESSION ASSISTANCE CONFERENCE. 3, available at http://www.benchmarkinstitute.org/t_by_t/mcle/sa.pdf. [hereinafter LPAC REPORT].

¹⁰ *Id.* at 3. See also Curley, Bob, *First Addiction Medicine Specialists Named, Join Together*, FIRST ADDICTION, (May 15, 2009), <http://www.jointogether.org/news/features/2009/first-addiction-medicine.html> ("Today, an estimated ten percent of Americans struggle with addictive drugs").

the adult population.¹¹ Even though there are often dual or cross addictions, it is estimated that 95% of addiction in judges and lawyers involves alcohol.¹² What is even more interesting is that this spike from the numbers of the general population starts in law school. “When students enter law school, their drinking rate is comparable to the average of the general population. . . but by the time they complete school, 19% are addicted.”¹³

As addiction and underrepresentation in leadership are two of the most pressing problems for women in the legal profession, I choose to examine them together here. If there are common influential factors, or, if addiction is one of the unrecognized factors that influences women in leadership, this is information that could be used to target changes within the legal profession to benefit women and make changes to the inert statistics on advancement.

In this paper, I examine the research done on the factors contributing to obstacles women face in becoming leaders in the legal profession, and compare them to factors contributing to obstacles women face with addiction in the same context. I begin with a focus on the specific struggles of professional women with addiction, and narrow in on the subset of women addicts in the legal profession. Then, I explore the theories attempting to explain the high prevalence of addiction in the legal profession, and attempt to draw parallels to the theories about the exclusion of women as leaders in the legal profession. To this end, I attempt to

¹¹ LPAC REPORT at 1. *See also* Cliff Collins, *Addiction and the Law How Dependency Issues Continue to Affect the Legal Profession*, OR. ST. B. BULL., 9, 12 (2006).

¹² *Id.* at 1.

¹³ Collins, *supra*, note 11 at 14.

extrapolate and make connections about how the unique structure and pressures of the legal profession may influence these women's experiences in a myriad of ways.

The research done on addiction and that done on women and leadership do not readily overlap, and thus, have not been assessed as parts of the same problem until now. My research attempts a novel approach, explicitly examining addiction in the context of how it interacts with or restrains women from attaining leadership in the legal profession. After compiling and assessing the information that is available in both of these very different areas of research, I found that the historical and societal factors that make the legal profession so reluctant to accept women in positions of power are some of the same factors that lead women in the legal profession to addiction. For example, societal expectations of motherhood and childcare, societal practices of medicating women, and gendered leadership styles all place women in double-bind, no-win situations. Since addiction research has shown that women are more likely to turn to substance abuse to address mood changes or stressors, they may be responding to this double-bind with addiction.

Only once it's fully understood how the barriers to women's advancement relate to the barriers leading women toward addiction can effective solutions to help women be implemented in the legal profession. The legal profession has taken some steps to acknowledge addiction as a problem, but, as discussed in the final section of my paper, they have largely failed. I argue this is because the gendered stressors and barriers placed on women relating to leadership have similarly not been considered in the context of addiction. On the flip side, in order to better understand the

struggles women face in reaching leadership positions, and to make changes promoting women in leadership, I believe changing the conversation to acknowledge that addiction even plays a role is an important first step.

II. Women and Leadership: A Stop-Up in the Pipeline to Power

a. Theories

Researchers have attempted to explain why women in leadership have reached such stagnation at such low numbers. The “unique pressures placed on female leaders derive in part from the relation between stereotypes about leaders and stereotypes about women and men.”¹⁴ Despite the “clear evidence that male and female leaders are similar in many personality traits and job-related behaviors,” gender stereotypes continue to persist, and women do not hold significant leadership positions.¹⁵ Some theories suggest that women encounter societal “double binds” that express themselves in the workplace and make it too difficult for women to attain and keep leadership positions.¹⁶ Double-binds are often called

¹⁴ Linda Carli & Alice Eagly, *Overcoming Resistance to Women Leaders: The Importance of Leadership style*, in *WOMEN & LEADERSHIP: THE STATE OF PLAY AND STRATEGIES FOR CHANGE* 127 (Deborah L. Rhode and Barbara Kellerman eds., 2007).

¹⁵ KLENKE, *supra*, note 6 at 162. One explanation for the discrepancy between research on gendered leadership traits and leadership in practice when women get to leadership positions may be that the research itself is flawed. Where practicing leaders often indicate that there are no differences between male and female leadership styles, students hold the opposite to be true. Studies suggest that young adulthood appears to be the age when differences between the sexes are maximized. However, undergraduate students are the choice as subject to study gender differences in leadership, which may result in an inadvertent overrepresentation of the differences between women. *Id.* at 150.

¹⁶ JAMIESON, KATHLEEN HALL, *BEYOND THE DOUBLE BIND: WOMEN AND LEADERSHIP* 120 (1995).

catch-22s or no-win situations, and refer to situations where women face societal pressure and hardship for choosing either of the two paths before them.¹⁷

Some double binds that have impacted women's attempts to practice law are the societal assumptions (often incorporated into women's own thinking) that: women can exercise their wombs or their brains, but not both; women who speak out are immodest and will be shamed, while women who are silent will be ignored or dismissed; women are subordinate whether they claim to be different to men or the same; and, women who are considered feminine will be judged incompetent, and women who are competent, unfeminine.¹⁸ One example that has been flagged by the American Bar Association's Commission on Women is that "women walk a fine line between being regarded as too feminine (and thus not tough, lawyer-like, or smart) or too tough (and thus unfeminine and not the kind of women male colleagues feel comfortable relating too)."¹⁹ Further, women who do reach higher leadership levels are scrutinized under a difference lens than that which is applied to successful men, and for a longer time.²⁰ For example, unlike male leaders, every

¹⁷ There are specific constructs underlying the double-binds, including "the no-choice-choice; the self-fulfilling prophecy; the no-win situation; the unrealizable expectation; and the double standard. Each circumscribes choice." *Id.* at 18. A no-choice-choice "casts the world as either/or, with one option set as desirable, the other loathsome." A self-fulfilling prophecy is "a *false* definition of the situation evoking new behavior which makes the originally false conception come *true*." *Id.* (emphasis in original). A no-win situation is where by winning, you lose—for example, women are judged by a masculine standard and by that standard they lose whether they claim difference or similarity. *Id.* Unrealizable expectations are a corollary of the no-win situation. Finally, the double standard is where women's actions are treated differently and judged differently for a longer period of time. *Id.*

¹⁸ *Id.* at 16.

¹⁹ *Id.* at 121.

²⁰ *Id.* at 16.

decision a female leader makes is analyzed in the context of her gender, and her successes are often attributed to luck or written off as a fluke.²¹

Another theory argues that traditional leadership models in the professional world value historically “male” attributes over historically “female” attributes.²² These promote masculine items like being aggressive, ambitious and analytical, or possessing traits like self-sufficiency and dominance, instead of feminine items like being affectionate, cheerful, and childlike, or possessing traits like kindness, helpfulness, and gentleness.²³ The danger with these stereotypes is that they are not only descriptive, but are proscriptive, meaning that people not only expect women to be kind and gentle, but prefer women to behave in such ways.²⁴ This also means that “women themselves reported that they were less likely to see themselves as leaders or seek leadership roles.”²⁵

Further, dividing human characteristics along gender lines is “likely to increase the attention we pay to particular behaviors displayed by men and women, as well

²¹ Rosalind Chait Barnett, *Women, Leadership, and the Natural Order*, 149, 155, in *WOMEN & LEADERSHIP: THE STATE OF PLAY AND STRATEGIES FOR CHANGE* 127, 157 (Deborah L. Rhode and Barbara Kellerman eds., 2007). “When women succeed, they are viewed as having some special stroke of good fortune—a wonderful mentor, a luck break, being at the right place at the right time. Their success is treated as happenstance, an outcome over which they had no particular control. Not surprisingly, research shows that when women succeed, they rarely get credit for their success.” *Id. citing* Heilman, Madeline, Haynes, Michelle, *No Credit Where Credit is Due: Attributional Rationalization of Women’s Success in Male-Female Teams*, 90(5) *JOURNAL OF APPLIED PSYCHOLOGY* 905 (2005).

²² JAMIESON, *supra* note 16 at 124. The widely credited study recognizing these gendered characteristics and their contribution to leadership ideals appears to be Rosenkrantz, Vogel, et al., *Sex-Role Stereotypes and Self-concepts in College Students*. 32(3) *JOURNAL OF CONSULTING AND CLINICAL PSYCHOLOGY*, 287-295. (1968). For a discussion on modern comparative associations between gender and leaders, *see*, Sczesny, Sabine, et al., *Gender Stereotypes and the Attribution of Leadership Traits: A Cross-Cultural Comparison*, 51 *SEX ROLES*, 631 (2004).

²³ Carli, *supra* note 14 at 127; JAMIESON, *supra* note 16 at 124.

²⁴ Carli, *supra* note 14 at 128.

²⁵ KLENKE *supra* note 6 at 166.

as the possibility of exaggerated selective judgments.”²⁶ So, even when an attribute was present in men, if it was dichotomized along gender lines, observers were more likely to look for and note those behaviors in one gender.²⁷ The dichotomization of leadership styles is similarly split down expected gender lines.²⁸ This is recognized as another double bind—where women are expected to exhibit the attributes that are social and service-oriented (communal) to be a successful woman, but are expected to exhibit the attributes that are achievement-oriented (agentic) to be a successful leader.²⁹ If women aren’t bringing in business or racking up billable hours in the legal profession, they are seen as lacking the skills required to be leaders. However, if women attempt to achieve these goals using the same methods as their male colleagues, they are similarly disdained and face professional disapproval.³⁰

²⁶ *Id.* at 144.

²⁷ *Id.*

²⁸ Some studies have even defined leadership styles as “acting like a man versus acting like a woman.” *Id.* at 146.

²⁹ Heilman, Madeline, *Description and Prescription: How Gender Stereotypes Prevent Women’s Ascent Up the Organizational Ladder*, 57(4) JOURNAL OF SOCIAL ISSUES 657, 658 (2001); Carli *supra* note 14 at 128, (citing Schein, Virginia, *A Global Look at Psychological Barriers to Women’s Progress in Management*, 57(4) JOURNAL OF SOCIAL ISSUES 675 (2001)). “Looking at the international managerial stereotype items illustrates rather dramatically the unfavorable way in which women are viewed, especially among males. Male management students in five different countries and male corporate managers in the United States view women as much less likely to have leadership ability, be competitive, ambitious, or skilled in business matters, have analytical ability, or desire responsibility.” *Id.* at 683.

³⁰ A Supreme Court case involving discrimination on this exact topic involved Price Waterhouse, a law firm, and Ann Hopkins, who was denied a partnership. She had more billable hours than any other colleague proposed for partnership, and yet she was denied partnership because the firm claimed, “she had problems with interpersonal skills” and was “macho and overcompensating for being a woman.” KLENKE, *supra* note 6 at 167. *See Price Waterhouse v. Hopkins*, 490 U.S. 228, 109 S. Ct. 1775, 104 L. Ed. 2d 268 (1989). This case was later superseded by statute, but is indicative of how the professional world reacts to women attempting to fit a male stereotype of leadership.

Another theory that explains the scarcity of women in upper levels of leadership is that there exists gender bias in evaluations.³¹ “Indeed, research has repeatedly demonstrated sex bias in employee selection processes, with male applicants generally recommended for hire and seen as more likely to succeed than female applicants with the identical credentials when jobs are male in sex-type.”³² But, negative performance expectations based on women’s perceived “lack of fit” into masculine leadership positions yields a predisposition toward negativity, thus preventing the recognition of women’s competence.³³ In the legal profession, factors like men viewing women as ill-equipped to generate business means they “discourage women’s access to traditional business development networks, which center on the informal networks men have with one another.”³⁴

Further, expectations about gender roles regarding women and parenting are pervasive in legal institutions. Women are often perceived as lacking aspirations to reach leadership levels compared to men, and this is often cited as the reason women “opt-out” of promotions, or leave work when they get pregnant.³⁵ In fact, data from representative samples show that women are not opting out based on a

³¹ Heilman, Madeline, *supra* note 29 at 657. “Because of gender bias and the way in which it influences evaluation in work settings, being competent provides no assurance that a woman will advance to the same organizational levels as an equivalently performing man.” The author argues that this theory contrasts with other explanations of why there are so few women at the top organizational levels, such as “pipeline” theories that lay the blame on time and supply, and “deficit” theories that presume women to be deficient in the characteristics necessary to fulfill traditionally male roles. *Id.* at 658.

³² *Id.* at 660.

³³ *Id.*

³⁴ CHARTING OUR PROGRESS: THE STATUS OF WOMEN IN THE LEGAL PROFESSION TODAY, AMERICAN BAR ASSOCIATION, COMMISSION ON WOMEN IN THE PROFESSION 6 (2006), available at <http://www.americanbar.org/content/dam/aba/migrated/women/ChartingOurProgress.authcheckdam.pdf>. [hereinafter CHARTING OUR PROGRESS]. This problem is even worse for women of color. “An African-American lawyer noted that women of color who are the first women in their families to become college graduates or professionals often lack the social and professional contacts needed to develop a client base.” *Id.* at 6.

³⁵ Barnett, *supra* note 21 at 157.

desire to be at home, and in fact “intend to work and have families” and that “their career ambitions mirror those of their male counterparts.”³⁶ In reality, the reason that women left work upon becoming a mother is that they were being “pushed out” of work.³⁷ So, it is not necessarily women’s natural inclinations or a pull to the home that takes them out of the running for leadership, it is stereotypes of the “natural order” that pervade the occupation and dictate who leads and who follows.³⁸

Along these same lines, even if a law firm does have a “family friendly” policy permitting part-time schedules, lawyers are reluctant to take advantage because of fear of professional repercussions.³⁹ These “multiple and often competing demands from major life roles almost invariably create conflict and stress,” and career-family conflict is a common occurrence for women.⁴⁰ Compounding this fact is that, if a woman does decide to stay in the work force, she essentially has a second job at home. The reality is that, despite evidence of men participating more in household tasks, “sex-role distinctions still persist when it comes to the division of labor at home, with women continuing to handle the lion’s share of domestic and childrearing obligations.”⁴¹ So, if women stay in the work force, they face conflict between societal and career demands from them. In the workplace, women lawyers are judged as insufficiently aggressive, too emotional, and not as serious about their

³⁶ *Id.* at 156.

³⁷ *Id.* at 155.

³⁸ Barnett argues that the underlying reason why leadership is so gendered is that there is “an unspoken but firmly held belief that there is natural order in which males are innately and uniquely endowed to take charge, whereas females are innately and unique endowed to take care.” In this scenario, men are naturally equipped to lead, while women are naturally equipped to follow. She argues that the belief in the natural order “permeates our thinking, our expectations, our perceptions of the world, and our pedagogy” *Id.* at 151, 153.

³⁹ CHARTING OUR PROGRESS, *supra* note 34 at 5.

⁴⁰ KLENKE, *supra* note 6 at 179

⁴¹ *Id.*

careers as men, and when they *do* choose (or are pushed) to “opt for family leave or report sexual harassment, these stereotypes are reinforced.”⁴² On top of these pressures, of the women who do reach leadership positions, their successes are rarely given credit in the news, while their failures are immediately credited to an inability to balance “work and family,” an allegation that is not similarly thrown at men for their similar failures.⁴³

Finally, what are called “situational factors” may influence leadership effectiveness.⁴⁴ Within the legal profession, certain types of law are seen as more acceptable based on gender. For example, women have historically been more societally accepted in family law, as it is seen as a natural extension of their societal role as a woman and mother.⁴⁵ Other situational factors that play a role in how leadership is perceived or accepted is the “sex composition of the group, the private or public domains in which men and women function as leaders, and other situations in which gender may obstruct and act as a filter for evaluating women’s

⁴² CHARTING OUR PROGRESS, *supra* note 34 at 5.

⁴³ Barnett, *supra* note 21 at 156. “When Brenda Barnes resigned from a high-level position at PepsiCo, a media feeding frenzy ensued, full of stories saying that she, and by extension other women, couldn’t handle work and family.” Sara Lee Corporation subsequently hired Barnes as president, and she now heads a corporation that has operations in 58 countries and employees 137,000 people worldwide, but the media did not report her work in this position. *Id.*

⁴⁴ KLENKE, *supra* note 6 at 179.

⁴⁵ The history of women in law supports that women were pushed into family law.

“As women began to practice law, many were steered into areas where the practice fit the image of a woman lawyer. One of the areas where women were seen as a good fit by the legal gatekeepers was family law, with almost half of all women lawyers practicing some family law in 1967. Male attorneys viewed family law as a less than ideal practice area because so much of the practice involves interpersonal issues rather than strictly legal issues. Family law is also considered a lesser field because it is associated with a smaller income.”

Sheila Simon, *Jazz and Family Law: Structures, Freedoms, and Sound Changes*, 42 IND. L. REV. 567, 579 (2009), citing PHYLLIS HORN EPSTEIN, *WOMEN-AT LAW* 75 (2004). *See also*, CYNTHIA FUCHS EPSTEIN, *WOMEN IN LAW* 102-03 (1983) (citing James J. White, *Women in the Law*, 65 MICH. L. REV. 1051, 1062-63 (1966-67)). Unfortunately, the author notes that “[s]teering women into family law continues. In a 2004 American Bar Association publication on women in law, in a section on career choices it states “[F]ields involving representation of women and children, like family law, have been considered naturally suited to women lawyers.” *Id.*

and men's leadership."⁴⁶ Since many types of law may be gendered, like family law, women may face different experiences and feedback as a leader depending on the group of men or women they supervise.

Different types of law also engender different work cultures, which in turn influences addiction behaviors for men and women, exhibiting how power structures begins to overlap with addiction.⁴⁷ Research shows that "women whose practices were entirely or mostly criminal reported higher consumption during social occasions related to work."⁴⁸ This may be linked to the fact that they "find criminal work more upsetting than do male attorneys," perhaps because they "may not have the freedom to turn down criminal cases" and "such lack of freedom may add powerlessness to other potential stressors."⁴⁹ While it's difficult to pinpoint exactly how each theory may interact with women and addiction, each of these theories shares one thing: they each attempt to assess the causal factors influencing women's underrepresentation in leadership in the legal profession. They all call for an awareness of these types of factors in the context of leadership in order to effectively analyze and promote changes to women's leadership experiences. And, the changing tide of research acknowledging how addiction is gendered can only help shed light on these factors and how they interact.

⁴⁶ KLENKE, *supra* note 6 at 155.

⁴⁷ "With sufficient female participants, one can examine the interaction of gender and context. Women may, for example, find themselves excluded from business drinking [in a male dominated type of law for example], but welcome to join other women for relaxation after work." Elsie Shore, *Relationships Between Drinking and Type of Practice Among US Female and Male Attorneys*, 141(5) THE JOURNAL OF SOCIAL PSYCHOLOGY 650, 652 (2001).

⁴⁸ *Id.* at 658.

⁴⁹ *Id.*

III. Women and Addiction: Gendered Struggles with Susceptibility, Use, Recovery, and Relapse

a. *Women Addicts, Professional Women Addicts, and Women Addicts in the Legal Profession*

It has only been recently that research has been done to study the unique experiences of women and addiction.⁵⁰ In 2008, The US National Survey on Drug Use and Health found that 11.4% of males ages 12 and older had a substance abuse or dependence problem, compared to only 6.4% of women.⁵¹ However, while women may be less likely to become addicted than men, they face tougher challenges with susceptibility, recovery, and relapse. So, understanding addiction as experienced by women is important. In speaking on drug addiction, Dr. Cora Lee Wetherington said: “Without information on sex and gender effects, researchers may draw incorrect conclusions about the underlying causes of addiction and best ways to prevent and treat addiction in both men and women.”⁵²

There is no specific research done for the subset of women addicts within the legal profession, but there is much that can be extrapolated from the research done on women addicts, women professional addicts, and women in the legal profession. Professional women generally “have said they felt the need to hold their own on many fronts, including macho drinking behaviors when out with colleagues.”⁵³ Further, a study found that “women who work outside the home are 67% more

⁵⁰ See Whitten, *supra* note 8.

⁵¹ ADDICTION IN WOMEN: HARVARD HEALTH NEWSLETTER, (2010) available at http://www.health.harvard.edu/newsletters/Harvard_Mental_Health_Letter/2010/January/addiction-in-women.

⁵² Whitten, *supra* note 8.

⁵³ McAplin, Cindy, *Out of the Shadows: Women and Addiction*, GPSolo Magazine. (2006), available at http://www.americanbar.org/newsletter/publications/gp_solo_magazine_home/gp_solo_magazine_index/shadows.html

likely to drink heavily than homemakers,” while another survey puts it at an even more staggering 89%.⁵⁴It has been posited that “women in male dominated positions drink more than women in traditionally female professions,”⁵⁵ and that “women who are in less visible positions than men and are less likely to “act out” when intoxicated and who are expected to be responsible for child care may use this excuse to stay home for what, in actuality, are alcohol related reasons.”⁵⁶ All of these factors can be taken into consideration when and compared or contrasted to research done on women addicts and their unique experiences with susceptibility, substance use, and recovery and relapse. Only when combining all this research can common societal or biological factors help inform the legal community about how their lawyers are impacted by addiction and how this problem can be addressed.

b. Susceptibility

Women may be susceptible to substance use and addiction in different ways than men. First, women may have different incentives for first-time substance use, which in turn, may mean they experience different types of addictions than men. This is relevant because motivations for substance use should be taken into consideration to tailor effective treatment and recovery plans for women. Women face different motivations for substance use partly based on societal factors. Historically, common societal practice encouraged women to seek treatment for any behavioral or physical symptom they had, and further encouraged them to self-

⁵⁴ Waldhauser, Carol P., *Chilling out vs. Chilling Reality: Women and Alcohol*, 19 GPSOLO MAGAZINE 48 (2002).

⁵⁵ *Id.*

⁵⁶ McAplin, *supra*, note 50.

medicate for these emotional and physical symptoms. This was most prevalently exhibited in the diagnoses and treatments for “hysteria,” a “disease” that could require treatment for any behavior that fell outside societal norms.⁵⁷

In reality, these medical diagnoses were an (perhaps unwitting) attempt to maintain traditional roles and the status quo in terms of gender and society. The types of symptoms that were characteristic of nineteenth century women’s nervous and mental illnesses best exhibit this. While the symptoms were numerous and varied, it is clear that “the common characteristic of the symptoms was the unfeminine nature of the behavior or feeling⁵⁸.” Insane and nervous women “were described as antimaternal, selfish, willful, violent, erotic—all of these inappropriate in terms of nineteenth-century definitions of womanhood⁵⁹.” While science and medicine has greatly progressed as of 2013, often deep-rooted norms, like medicating women more readily than men, remain. While it may not be overt, this historical influence may still affect women lawyers today. Today, “[w]omen are 48% more likely than men to be prescribed a narcotic, antianxiety or other potentially abusable drug.”⁶⁰ It should be noted that the other side of the coin is that society grants less acceptance for men to seek medical help, especially for a mental illness, which in turn creates gendered issues for men. Those who work in addiction recovery for lawyers have noted that women are more prone than men to

⁵⁷ “‘Female Illnesses’ were the outward signs of an unsubmitive soul ‘[T]he most significant cause of a woman’s menopausal disease, virtually every [nineteenth century] doctor believed, lay in her violation of the physiological and social laws dictated by her ovarian system.’ JAMIESON, *supra*, note 16 at 15.

⁵⁸*Id.* at 17

⁵⁹ *Id.*

⁶⁰ STEPHANIE S. COVINGTON. WOMEN AND ADDICTION: A GENDER-RESPONSIVE APPROACH (CLINICIAN’S MANUAL) 14, (2007)

prescription drug dependency and opiate-related pain medications, and women have begun experimenting with meth in growing numbers based on an assumption that it will “help them lose or control weight and get more done.”⁶¹ And, it has been suggested that women’s motivations for using may be more to do with mood regulation than risk-taking, as is often suggested as a motivator for men.⁶² These are all gendered experiences with motivations for substance use, shaped by societal acceptance and practices, which set women’s addiction experiences apart from men and that have not yet been fully recognized in terms of their impact on women.

c. Substance Use

In terms of their biological experiences with substance use, women tend to progress more quickly from using an addictive substance to dependence (a phenomenon known as telescoping). There are obvious difference in biological makeup between men and women, and biological factors like women tending to weigh less than men, and containing less water and more fatty tissue, contribute to how they process a substance like alcohol. Further, the presence specific enzymes in women result in women absorbing more alcohol into the bloodstream than men. Recent studies done have even supported that women’s responses to drugs change as the female sex hormones estrogen and progesterone wax and wane over the

⁶¹ Collins, *supra*, note 11 at 13.

⁶² Walton, Alice G., *Whitney Houston’s Death: Why Addiction is Harder on Women*, FORBES, (Feb., 26, 2012), available at <http://www.forbes.com/sites/alicegwalton/2012/02/16/whitney-houstons-death-why-addiction-is-harder-on-women/>. According to Marc Potenza, MD, PhD, and addiction researcher at Yale, “For women, there tends to be a closer link to negative mood states and stress responsivity than for men.” *Id.* See also *infra* note 33.

course of the month, meaning women tend to have a more difficult time quitting substance use depending on the phase of the menstrual cycle.

In terms of their societally-influenced experiences with substance use, women are impacted by the context of their use. For example, professional women have different experiences with substance use than do non-professional women. Again, this arguably stems from historical influences based on gender roles and norms. Historically, there have been influential stereotypes associating substance use with gender. Alcohol has been seen as an affirmation of masculinity, and if a man develops a problem with alcohol, “he has, in a sense, only become a victim of too much of a good thing.”⁶³ On the other hand, the stereotypes about women have typically associated them with temperance, due to their “inherent” nature. For example, the “assumption of female virtue” was explicitly invoked to get the vote for prohibition.⁶⁴ Further “although standards for women's behavior are gradually loosening, the 'good' woman is still expected to be sexually monogamous, devoted primarily to husband and children, and to serve as a kind of unofficial moral guardian to her family and community.”⁶⁵ So, “just as the use of alcohol enhances and celebrates the male role, it poses a potentially serious threat to the female role.”⁶⁶ The result of these societal pressures are that women within the legal

⁶³ Wahto, Jo-Ellen, and Springer, Susan, *Women, Abuse and Chemical Dependency: Are You Part of the Problem?* 42 WASH. ST. B. NEWS 9 (1988), (citing, SANMAIER, MARIAN THE INVISIBLE ALCOHOLIC (1980)). “To the extent that men affirm their masculinity through drinking, alcohol is used as a tool, a rite and a symbol for that purpose. Through the ages it has served—and still serves—as a test of physical stamina, a reward for heroism, proof of independence from authority, an escape hatch from the world of women.” This has been ingrained into the legal profession, as the societal view of this male-dominated profession includes client meetings and the stereotype of the functional alcoholic at martini lunches.

⁶⁴ JAMIESON, *supra*, note 16 at 10.

⁶⁵ Wahto, *supra*, note 60 at 10.

⁶⁶ *Id.*

profession may become locked in a cycle of shame, perhaps because there is no female counterpart to the historically “acceptable” male functioning alcoholic.⁶⁷

d. Recovery and Relapse

Again, women are influenced by biological and societal factors when it comes to recovery and relapse. They develop medical or social consequences of addiction faster than men, and may find it harder to quit or more likely to relapse. In terms of biological research on recovery, one very important fact is that treatment programs have been developed based solely on research in men.⁶⁸ However, with the above-mentioned differences between men and women in terms of motivations for substance use, a recent study shows that “men and women with [substance] dependence might benefit more from different treatment options.”⁶⁹

On the biological side of the research, in a study on differences in gendered brain behavior for cravings for cocaine, “the findings suggest that women with cocaine dependence might benefit from stress-reduction therapies that specifically target these cravings. Men, on the other hand, might derive more benefit from

⁶⁷ Collins, *supra*, note 11 at 13.

⁶⁸ *Id.* Further, there are obvious difference in biological makeup between men and women, where factors like women tending to weigh less than men and containing less water and more fatty tissue, and the presence specific enzymes in women result in women absorbing more alcohol into the bloodstream than men. Recent studies done have even supported that women’s responses to drugs change as the female sex hormones estrogen and progesterone wax and wane over the course of the month, meaning women tend to have a more difficult time quitting depending on the phase of the menstrual cycle.
<http://www.forbes.com/sites/alicegwaltton/2012/02/16/whitney-houstons-death-why-addiction-is-harder-on-women/>. See, Carpenter MJ, Upadhyaya HP, et al., 8(5) TOB RES. 627 (2006).

⁶⁹ *Addicts’ Cravings Have Different Roots in Men and Women*, YALE SCHOOL OF MEDICINE: PSYCHIATRY, (Jan. 30, 2012) available at <http://psychiatry.yale.edu/newsandevents/archive/article.aspx?id=1035>.

elements of cognitive behavioral therapy or 12-step programs based on the principles of Alcoholics Anonymous.⁷⁰ Further, women's addiction is more likely to be accompanied by mood and anxiety disorders than men's, a factor that must be taken into consideration when treating her addiction.⁷¹ Research shows that taking gender into account when crafting a recovery plan is a distinct benefit to recovery.⁷² Without an effective recovery plan, the likelihood of relapse is significant. If the theory above is applied to all types of addiction that have different motivators for men and women, whether biological or societal, it would indicate that an effective treatment plan *must* take these gendered factors into consideration. This also means that within the legal profession, recognizing motivations or signs of addiction should take on a gendered view in order to target it effectively and help the addict-lawyers, both men and women.

On the social side of the research, an influential factor unique to women is the societal expectation that women have sole responsibility for childcare. This contributes to women's experiences with addiction; making it less likely they will seek treatment. Where 40% of all alcoholics are women, women account for only

⁷⁰*Id.* See also Potenza, M., Hong, K1, et al., *Neural correlates of stress-induced and cue-induced drug craving: influences of sex and cocaine dependence*, 169(4) AM J PSYCHIATRY 406 (2012). "In cocaine dependence, corticostriatal-limbic hyperactivity appears to be linked to stress cues in women, drug cues in men, and neutral-relaxing conditions in both. These findings suggest that sex should be taken into account in the selection of therapies in the treatment of addiction, particularly those targeting stress reduction."

⁷¹ "Studies by Christine E. Grella, PhD, research psychologist at the University of California, Los Angeles also show that women tend to enter treatment sooner after becoming dependent on substances than men, but they usually have more psychological distress, particularly with mood and anxiety disorders." *Gender Differences Play a Role in Addiction*, ELEMENTS OF BEHAVIORAL HEALTH (2009) available at <http://www.elementsbehavioralhealth.com/addiction/gender-addiction/>.

⁷² Anne McDonald, *Women, Addiction, and Recovery*, J. KAN. B. ASS'N, March 2009, at 14. Though women in recovery ought not isolate themselves, it was a distinct benefit to attend a women's group, or at least talk with other women about these issues.

25% of all who receive treatment for addictions.⁷³ Factors that have been cited by women for not seeking treatment include shame, lack of childcare, fear of losing children, and monetary concerns—all of which are to some extent “gendered” concerns influenced by societal expectation.⁷⁴

Specific challenges for women in the legal profession reflect the pervasive societal view of the profession itself. When addicted, “[w]omen differ from the stereotypical “functional” alcoholic male -- in his mid-50s, still holding down a job despite multiple-martini lunches --, partially because many women alcoholics don't live to that age, or don't reach that plateau stage in the same way that men do.”⁷⁵ Women lawyers may be more likely to internalize, viewing themselves as “bad or defective” instead of viewing addiction as a chronic disease.⁷⁶ “Women for Sobriety and AA suggest that negative feelings generated from stigma, shame, and guilt deter women from seeking treatment and make it harder for women to recover, once in treatment.”⁷⁷ This is particularly dangerous in the legal profession, where women lawyers may be adept at hiding their addiction and where third-party clients are at risk, a factor that is not at play for most women addicts.

⁷³ McAplin, *supra* note 50.

⁷⁴“ SANDERS, JOLENE, WOMEN IN ALCOHOLICS ANONYMOUS: RECOVERY AND EMPOWERMENT 3, (2009) “Beyond the stigma that OAAP posits is associated with seeking treatment for women, women may be afraid or unwilling to leave children from 30, 60, or 90 days of inpatient treatment.” Collins, *supra*, note 11 at 12.

⁷⁵ Collins, *supra*, note 11 at 12.

⁷⁶ *Id.*

⁷⁷ SANDERS, *supra*, note 24.

IV. The Legal Profession: Targeting Causes and Identifying Solutions

a. Theories on Addiction and the Legal Profession

There are multiple theories put forth as to why addiction is so prevalent in the legal profession, and these may explain why the legal profession has such a hard time (or such reluctance) with addressing the issue. One common explanation is that the legal profession comes, generally, with high pressure and stress, long hours, and often separation from a support group like family and friends.⁷⁸ Another hypothesis is that the genetics, stress, and the personality characteristics of people who enter the legal profession, which is one that involves pressure or risk, is a combination that tends toward addiction.⁷⁹ A flaw to these types of theories is that it assumes that there is one kind of “typical lawyer” whereas there have been studies that show that different types of lawyers experience addiction differently or more prevalently than other types of lawyers. For example, type of law and gender may play a role in addiction, as discussed above, women whose practices were criminal reported higher consumption, showing “work-place characteristics may affect whether . . . the person drinks.”⁸⁰

A rebuttal to this argument is found in certain other studies examining statistics of chemically dependant lawyers entering treatment found that a large number of attorneys entering treatment met the definitions for personality

⁷⁸ Collins, *supra*, note 11 at 12.

⁷⁹ Timothy J. Sweeney, *Statistical Demographics and Outcome Study of Chemically Dependant Attorneys*, 65 ALA. LAW. 424, 427 (2004).

⁸⁰ Shore, *supra* note 47 at 657-8.

disorders. This finding may lead one to anticipate that these personality disorders would hinder that successful practice of law, but this was not the case. The individuals compensated for their personality proclivities by acting in a fashion contrary to their nature, which resulted in an inner conflict, which was then medicated with drugs or alcohol. In some cases, this balancing act continued “successfully” for years until the lawyer sought (or was compelled) to seek treatment.⁸¹

Another theory is that the nature of the profession is one that fosters skills that allow lawyers to control how they are perceived, which in turn allows them to hide typical signs of addiction. The legal profession is one that requires communication, persuasion, creativity, and consistency—requirements that allow lawyers and judges to “exhibit a professional demeanor and to hide our own alarm, fear, disgust, abhorrence, boredom, as we conduct our professional lives.”⁸² This atmosphere develops a tough exterior, and teaches individuals to hide weaknesses and not expect support from colleagues.⁸³ This allows addicts within the legal profession to continue the “steady progression of their addiction without interruption or intervention by their peers because there is a strong agreement not to interfere with freedom among colleagues.”⁸⁴ Or, professionals may be “inner-

⁸¹ Sweeney, *supra* note 74 at 427. This study was conducted using 75 clinical case files of chemically dependant attorneys, judges, and law school graduates treated at HealthCare Connection of Tampa, Inc., and collected demographical information including median age, gender, marital status, practice type, drug of choice as well as the incidence of psychiatric dual diagnosis and personality disorders/configurations. *Id* at 424.

⁸² LPAC REPORT, *supra*, note 9 at 2.

⁸³ *Id.*

⁸⁴ *Id.*

directed and perfectionists” with a reluctance to help or be helped.⁸⁵ A final theory is that historically, the legal profession has provided a great deal of tolerance for substance use (and alcoholism especially), a fact which makes it more difficult to classify modern levels of substance use as a problem, and thus, makes it more difficult to intervene when necessary.

An intrinsic assumption in some of these theories is that part of the problem lies within the very structure of the legal profession, how it shapes lawyers to be able to hide addiction; how it discourages lawyers from seeking help or interfering with colleagues who may need help; and specifically how it manages addiction. Addiction can be addressed either through the courts, if malpractice action is brought by a dissatisfied client, or within the legal profession, through a disciplinary hearing under the Rules of Professional Conduct enacted and enforced by the highest court in each state. While addiction is a prevalent factor in both of these realms,⁸⁶ here I choose to focus on the disciplinary system, as the legal profession wholly controls it. This means that it is both the most appropriate and effective place to target to enact changes that would actually be able to help addicted attorneys. The disciplinary system impacts the entire structure of the legal profession, and could enact change both in enacting new rules and in changing how old rules are implemented and interpreted. Inherent in this discussion is an exploration of what problems exist within the current disciplinary system structure and what solutions could improve it.

⁸⁵ *Id.*

⁸⁶ Around 60% of malpractice claims also involve alcohol abuse. *Id.* at 1.

b. *The Structure and Enforcement of the Model Rules of Professional Conduct*

In the US and Canada, “studies have shown that approximately 60% of discipline prosecutions of lawyers and judges involve alcohol.”⁸⁷ However, there are inherent problems with the structure of regulation and discipline within the legal profession when it comes to addiction. First, this is a system governed by professional conduct rules, which are created and enforced by the legal profession: there is no outside supervisory force to ensure compliance.⁸⁸ Despite addiction’s longstanding influence on the legal profession, it has only recently recognized addiction as a problem.⁸⁹ Also, addiction is not particularly conducive to being recognized by a system of self-regulation that relies on reporting by colleagues or self-reporting. Addiction is often hard to identify, and most lawyers and judges have no training to recognize symptoms, especially as lawyers and judges are skilled in hiding the problem.⁹⁰ Finally, the system in place does not incentivize either self-reporting or reporting on a colleague.⁹¹

⁸⁷ *Id.*

⁸⁸ “No government agency monitors lawyers’ behavior, leaving the job of regulating conduct and punishing offenders to various state boards of professional conduct and to attorneys themselves.” Oldham, Lindsay; Whitledge, Christine, *The Catch-22 of Model Rule 8.3*, 15 GEO. J. LEGAL ETHICS 881 (2002).

⁸⁹ Historically, there has been a denial within the legal community in terms of recognizing the hugely detrimental impact that addiction has had on the profession. “While alcoholism has been a major cause of negligence claims and disciplinary complaints in our profession for hundreds of years, it is only in recent years that bar associations have assumed any responsibility to deal with it.” *Id.* at 3.

⁹⁰ LPAC REPORT, *supra*, note 9 at 3. Women may be “more secretive about their drinking — and about their recovery.” It is speculated that “in the legal profession, women still think they have to excel and cannot show any chink in their armor, so to speak” McDonald, Anne, *Women, Addiction, and Recovery*, 78-MAR J. KAN. B.A. 14 (2009).

⁹¹ Self-reporting is in fact-disincentivized beginning in law school. Despite the fact that addiction often begins in law school, many students may be reluctant to seek help at that pivotal stage, as they may be forced to report it when applying to the bar, as some states require disclosure if the applicant has sought

The legal profession has taken some steps attempting to acknowledge and impart the idea that addiction is a significant problem. “While there is no model rule that directly addresses “substance abuse,” the ABA Standing Committee on Ethics and Professional Responsibility has issued opinions that provide some guidance on this issue.”⁹² In Opinion 03-429,⁹³ the committee noted that Rule 1.16 prohibits a lawyer from representing a client if she has an impairment that materially impairs their ability to represent the client.⁹⁴ This isn’t entirely helpful, as addicted lawyers often either do not realize or will not admit that they are addicted, and thus, impaired. The committee acknowledges this fact and notes that Model Rule 5.1 imposes a duty on supervisors.⁹⁵ “When the impaired lawyer is unable or unwilling

professional help. For example, under the General Fitness portion of the Character and Fitness Application, the state of Michigan requires the applicant to answer: “Have you ever used, or been addicted to or dependent upon intoxicating liquor or narcotic or other drug substances, whether prescribed by a physician or not, the use of, addiction to, or dependency upon which permanently, presently, or chronically impairs or distorts your judgment, behavior, capacity to recognize reality of ability to cope with the ordinary demands of life?” PART XIII, #52, GENERAL FITNESS, APPLICATION TO SIT FOR THE MICHIGAN BAR EXAMINATION, (2012).

⁹² Rachel Packer, *A Young Lawyer’s Guide to Ethically Confronting Substance Abuse*, AMERICAN BAR ASSOCIATION, (June 7, 2012) available at <http://apps.americanbar.org/litigation/committees/youngadvocate/email/spring2012/spring2012-0612-young-lawyers-guide-ethically-confronting-substance-abuse.html>.

⁹³ OPINION 03-429, OBLIGATIONS WITH RESPECT TO MENTALLY IMPAIRED LAWYER IN THE FIRM, ABA STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY, (June 11, 2003) available at http://www.americanbar.org/content/dam/aba/migrated/cpr/clientpro/03_429_authcheckdam.pdf.

⁹⁴ Packer, *supra* note 87.

Rule 1.16 Declining Or Terminating Representation

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

- (1) the representation will result in violation of the rules of professional conduct or other law;
- (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client;

Model Rules of Professional Conduct, Rule 1.16 Declining Or Terminating Representation

ABA CENTER FOR PROFESSIONAL RESPONSIBILITY, (last visited May 8, 2013) available at

http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_16_declining_or_terminating_representation.html.

⁹⁵“(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.” *Model Rules of Professional Conduct, Rule 5.1 Responsibilities Of Partners, Managers, And Supervisory Lawyer,s*

to deal with the consequences of his impairment, the firm's partners and the impaired lawyer's supervisors have an obligation to take steps to assure the impaired lawyer's compliance with the Model Rules."⁹⁶ However, as discussed above, since lawyers are often very adept at hiding addiction, their work may not be impaired, and supervisors may not recognize their addiction.⁹⁷

The opinion did not specifically discuss the obligations of non-supervisory colleagues to report an addict-lawyer, but one indirect way the courts have attempted to validate the seriousness of addiction is punishing failure to report misconduct. Under the model rules, lawyers have a duty to report misconduct of colleagues, but only when the lawyer knows that another has committed a violation of the rules, not simply for rumors of behavior that is consistent with addiction.⁹⁸

ABA Model Rule 8.3 provides:

(a) A lawyer who *knows* that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.

ABA CENTER FOR PROFESSIONAL RESPONSIBILITY, (last visited May 8, 2013) available at http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_5_1_responsibilities_of_a_partner_or_supervisory_lawyer.html.

⁹⁶ *Id.*

⁹⁷ Burkett, Martha, *The Burden of Stigma: Barrier to Treatment, Bane of Recovery*, 34 MICHIGAN BAR JOURNAL (2008). "Even intelligent, educated people who are closely involved with an addicted person will sometimes develop their own protective thought distortion (denial), which manifests itself in behaviors and attitudes that enable the addicted person to continue on his or her path of destruction" *Id.* at 36 These include accepting excuses /alibis for mistakes, taking over responsibilities of the impaired person, and making excuses or covering for the impaired person. *Id.*

⁹⁸ "Soon after Opinion 03-249, the committee issued Opinion 03-431 on August 8, 2003, regarding the duty to report rule violations of lawyers not within the same firm. If a violation raises a "substantial question" regarding an impaired lawyer's fitness to practice law, Rule 8.3(a) requires a lawyer with knowledge of this conduct to report the violation to the "appropriate professional authority." The impaired lawyer's lack of fitness could be assessed through either a pattern of conduct or even a single significant act. However, rumors or conflicting information about a lawyer and heavy drinking or impairment in social settings do not trigger a duty to report under Rule 8.3. According to the committee, "[a] lawyer must know that the condition is materially impairing the affected lawyer's representation of clients." Packer, *supra* note 87.

(b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.⁹⁹

Along with the fact that only knowledge triggers the reporting requirement, this rule was also largely unenforced until recently, when the legal profession took the position that a violation of the duty to report will result in serious punishment.¹⁰⁰ The landmark case in this realm is *In re Himmel*,¹⁰¹ where the Illinois Supreme Court held that an attorney's failure to report misconduct of another attorney, (a violation of the Illinois Rules of Professional Conduct) warranted a one-year suspension, not just a private reprimand. *In re Himmel* did not directly deal with addiction, but represented a turning of the tide toward stringently enforcing the attorney's duty to report on a colleague.

Another mechanism requiring a duty to report is ABA Model Rule 8.4(b), which also encompasses crimes that once were branded acts of "moral turpitude."¹⁰² Acts, behavior, or conduct of this sort includes drug offenses, and other crimes

⁹⁹ *Model Rules of Professional Conduct, Rule 8.3: Reporting Professional Misconduct*, ABA CENTER FOR PROFESSIONAL RESPONSIBILITY, (last visited May 6, 2013) available at http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_8_3_reporting_professional_misconduct.html (emphasis added).

¹⁰⁰ Going even further than the model rule: "Many jurisdictions use the ABA Model Rule standard that requires reporting when the conduct "raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects. . . ." This is a much broader requirement than that imposed by some state rules." Thomas P. Sukowicz, *The Ethics of Reporting on Your Colleague—or Yourself* GPSOLO MAGAZINE, AMERICAN BAR ASSOCIATION (2009) available at www.americanbar.org/newsletter/publications/gp_solo_magazine_home/gp_solo_magazine_index/sukowicz.html.

¹⁰¹ *In re Himmel*, 125 Ill. 2d 531, 533 N.E.2d 790 (1988). Here, Himmel discovered that another lawyer, Casey, had misappropriated settlement funds of his client, but did not initiate any criminal, civil, or attorney disciplinary action against Casey. Instead, Himmel drafted an agreement that granted the client \$75,000 settlement of any claim she might have against Casey for the misappropriated funds. Despite the settlement benefiting the client, and the fact that the client instructed Himmel not to report Casey, Himmel was found to have violated the disciplinary rule and was suspended from practice of law for a year.

¹⁰² Douglas R. Richmond, *The Duty to Report Professional Misconduct: A Practical Analysis of Lawyer Self-Regulation*, 12 GEO. J. LEGAL ETHICS 175, 190-91 (1999)

related to substance abuse.¹⁰³ The language of the rule states that it is professional misconduct for a lawyer to “(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.”¹⁰⁴

However, no version of Rule 8.3 or 8.4 requires that a lawyer report another lawyer or a judge solely because the lawyer has a psychological condition or an addiction, there must either be an substantial question to the lawyer’s trustworthiness or a crime related to substance use to trigger the reporting conditions.¹⁰⁵

Compounding the problem of self-reporting is that “[o]ften the addicted lawyer will not commit any serious wrongdoing that would trigger the disciplinary process that would lead to treatment option. Disciplinary committees or the Court can only become involved when charges of professional misconduct are brought against a lawyer.”¹⁰⁶ As discussed above, one theory on why addiction is so prevalent in the legal profession is that lawyers are trained and adept at hiding it and discouraged from seeking help. Further, “[t]he Commission does not inquire

¹⁰³ *Id.* at 191 n.171 (“See, e.g., *In re Gooding*, 917 P.2d 414, 415 (Kan. 1996) (possessing cocaine); *State ex rel. Nebraska State Bar Ass'n v. Brown*, 560 N.W.2d 123, 126 (Neb. 1997) (possessing with intent to distribute and conspiring to distribute cocaine); *In re Musto*, 704 A.2d 6, 7 (N.J. 1997) (conspiring to distribute cocaine) and fn 172 citing *Kentucky Bar Ass'n v. Dunn*, 965 S.W.2d 158, 159-60 (Ky. 1998) (suspending lawyer for driving under the influence of intoxicants and related vehicular crimes); *In re Disciplinary Proceedings Against Cahill*, 579 N.W.2d 231, 232 (Wis. 1998) (suspending lawyer for several misdemeanor convictions linked to alcohol abuse”).

¹⁰⁴ *Model Rules of Professional Conduct, Rule 8.4: Misconduct*, ABA CENTER FOR PROFESSIONAL RESPONSIBILITY, (last visited May 6, 2013), available at http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_8_4_misconduct.html.

¹⁰⁵ Sukowicz, *supra* note 94. There is some interpretation in terms of when the duty is triggered, but case law clarifies that the “duty is triggered by a level of knowledge that is more than a mere suspicion, but need not amount to absolute certainty.” 21 DCBABR 16, 22 citing Skolnick, 730 N.E.2d at 15. Further, while this is a step in the right direction, there are still many roadblocks hindering effectiveness in practice. For example, “[a]ttorneys face numerous pressures arising out of the requirements that they report other firm members, friends, and colleagues, as well as opposing or other unconnected counsel for ethics violations.”

¹⁰⁵ In fact, many have argued that despite the step in the right direction of *Himmel*, “[f]or a myriad of reasons, current scholarship agrees that Model Rule 8.3 is underenforced and does not act as a deterrent to attorney misconduct.”¹⁰⁵

¹⁰⁶ LPAC REPORT, *supra*, note 9 at 7.

about possible substance abuse during investigation, even when the attorney fits the ‘classic pattern’ of no complaints filed in the past and then has a sudden influx of complaints.”¹⁰⁷ Therefore, the system in place does not have an effective mechanism by which to flag and incentivize reporting of addiction. Thus, addiction is largely unregulated until it is addressed by the disciplinary committee.

c. Response by the Disciplinary Committee: A Need for Tailored Responses

In getting beyond the first (substantial) hurdle of if the addiction is even discovered or reported, “[s]tudies suggest that although lawyers, judges and law students have different issues in treatment, they also benefit from lawyer-specific programs and structured monitoring.”¹⁰⁸ In recovery, there are unique problems associated with being the legal profession as opposed to in the general public or another profession, one of which involves illegal drug use. Those who use drugs realize “they are engaging in illegal conduct by using drugs,” then, “[t]hey carry that load; it weighs on them. It becomes an issue in recovery: They have to deal with (the fact) that their conduct has been breaking the law.”¹⁰⁹ Further, more recent addiction research that has taken gender into consideration supports the notion

¹⁰⁷ Marcia Femrite, *Addicted Attorneys in Disciplinary Proceedings*, MICH. B.J., 152 (February 1991). “Research shows that combining addiction treatment medications with behavioral therapy is the best way to ensure success for most patients. Treatment approaches that are tailored to each patient’s drug abuse patterns and any co-occurring medical, psychiatric, and social problems can lead to sustained recovery and a life without drug abuse.” DRUGFACTS: UNDERSTANDING DRUG ABUSE AND ADDICTION. NATIONAL INSTITUTE OF HEALTH, NATIONAL INSTITUTE ON DRUG ABUSE. (November 2011) available at <http://www.drugabuse.gov/publications/drugfacts/understanding-drug-abuse-addiction>.

¹⁰⁸ Sweeney, *supra*, note 74 at 424.

¹⁰⁹ Collins, *supra*, note 11 at 12.

that a gender-specific recovery program would also greatly benefit recovery.¹¹⁰ One example of this is the work of the Clinical Trials Network, which performed studies on gender and sex-related differences in response to treatment. “CTN studies, which are conducted in community-based treatment facilities, have shown that gender-specific programs to teach substance-abusing men and women safe-sex skills outperform standard care in reducing risky behaviors.”¹¹¹ The success of this gender-tailored clinical trial centered in the drug-abusing population may suggest that gender-tailored recovery programs would be more effective in all realms of addiction.

Moreover, a study by the OAAP [Oregon Attorney Assistance Program] found that a lawyer who suffers from alcoholism (and who is not in recovery) is four times more likely, compared to the state's average, to have a malpractice or discipline complaint filed against him or her. Conversely -- and remarkably -- lawyers in recovery from addiction experience malpractice and discipline rates that are significantly lower than the state's average for all OSB members, the study found.¹¹²

¹¹⁰ There was great success after the implementation of a gender-specific program as an attempt to curb HIV in the “drug abusing population.” The effects of this gender-based program structure saw reductions in the number of unprotected sexual intercourse occasions for both men and women, because it took gendered notions and expectations about sex into account. See Bonetta, Lauren, *Gender-specific programs designed to teach safe-sex behaviors that prevent spread of HIV prove effective among drug abuse treatment patients*, NATIONAL INSTITUTE ON DRUG ABUSE, (July 01, 2011), Available at <http://www.drugabuse.gov/news-events/nida-notes/2011/07/intensive-interventions-reduce-risky-sexual-behaviors>. See also Donald Calsyn., et al. *Reducing Sex under the Influence of Drugs or Alcohol for Patients in Substance Abuse Treatment*. ADDICTION, 2010 January, 105(1) 100-108; Tross, S. *Effectiveness of HIV/STD sexual risk reduction groups for women in substance abuse treatment programs: Results of a NIDA Clinical Trials Network trial*. 48(5) JOURNAL OF ACQUIRED IMMUNE DEFICIENCY SYNDROME 581 (2008).

¹¹¹ Whitten, *supra* note 8.

¹¹² Collins, *supra*, note 11 at 14.

The success of treatment in these studies shows that exploring effectively tailored treatment options is something the legal profession should be particularly motivated to do, considering its high incidence of addiction and the large part that addiction plays in discipline and malpractice issues. Effective recovery plans will help lessen the incidence of relapse, and thus, help siphon off one of the avenues through which addiction currently enters the legal profession. This, in turn, would protect the integrity of the legal profession from the increasing threat addiction poses.

Part of tailoring appropriate treatment options requires recognizing the root of the unique problems lawyers face with addiction as opposed to the general population. One of these problems is that along with addiction, studies have found higher levels of depression in the legal profession as compared to the general population.¹¹³ Depression rates track alcoholism rates in the legal profession, hovering around double the rates for the general population.¹¹⁴ Further, more than 25% of lawyers suffer from either alcoholism or depression or both.¹¹⁵ Recognizing this factor would help the legal profession craft better plans or target addiction before it begins. Further, recognizing the specific *gendered* problems inherent in the legal profession would further aid in targeting addiction before it becomes a problem.

¹¹³Collins, *supra*, note 11 at 9, 10.

¹¹⁴In 1997 a survey of 801 Washington state lawyers found 19 percent suffering from depression and 18 percent considered problem drinkers. “The researchers concluded that similar rates of depression and problem drinking would be found in most jurisdictions in the United States.” *Id.*

¹¹⁵Robinson, Mary, *Discipline and Disability: When Is Disease a Defense?* GPSOLO MAGAZINE: AMERICAN BAR ASSOCIATION (2009) available at http://www.americanbar.org/content/newsletter/publications/gp_solo_magazine_home/gp_solo_magazine_index/2009_octnov_robinson.html, citing *Lawyer Depression Comes out of the Closet*, ABA JOURNAL, LAW NEWS NOW, (December 13, 2007), available at www.abajournal.com/weekly/lawyer_depression_comes_out_of_the_closet;

V. Conclusion

The consensus in all the research that has been done on women's advancement in the legal profession is that gender balance will not be reached at the current rate and with current practices any time soon, and in fact will likely take "until the turn of the twenty-second century."¹¹⁶ Certain solutions have been suggested to target issue that hold women back from attaining leadership in the legal profession. These range from quota systems requiring a certain number of women in leadership positions to guarantee parity, to simply educating the legal profession on the existence of the stereotypes and expectations that hold women back.¹¹⁷ Some have suggested that organizations "create rigorous systems to counteract the effects of existing stereotyping," including implementing objective performance evaluations and showcasing the successes of women leaders.¹¹⁸ These have been discussed exhaustively in other research, so I will not reiterate every strategy here. However, a essential question in crafting response mechanisms to promote women's advancement is a question: "Why are women underrepresented and men overrepresented?"¹¹⁹ This question is *integral* to creating a solution, as it asks what the causes of underrepresentation are, and then seeks to craft a solution tailored to attack those causes.

¹¹⁶Dahlerup, Drude, *Will Gender Balance in Politics Come by Itself?* in WOMEN & LEADERSHIP: THE STATE OF PLAY AND STRATEGIES FOR CHANGE 227 (Deborah L. Rhode and Barbara Kellerman eds., 2007). (citing PIPPA NORRIS, ELECTORAL ENGINEERING 180 (2004)).

¹¹⁷ *Id.* at 229; Giscombe, Katherine, *Women in Corporate Leadership: Status and Prospects* in WOMEN & LEADERSHIP: THE STATE OF PLAY AND STRATEGIES FOR CHANGE 305 (Deborah L. Rhode and Barbara Kellerman eds., 2007).

¹¹⁸ *Id.* at 395.

¹¹⁹ Dahlerup *supra* note 110 at 231.

Many of the factors that contribute to the stop-up in the pipeline to power are also those that contribute to women lawyers' unique struggles with addiction. These include, first, the stereotype and expectation of women's sole responsibility for childcare, which stops women from seeking treatment just as it stops women from seeking leadership positions. Whether women internalize the expectation that they are responsible for childcare or whether the legal institution they work for imposes it on them, it is a significant factor to women not progressing in leadership and to women not getting the treatment they need. While the research shows women clearly have the same aspirations as men to reach leadership levels, they are frustrated in this purpose by barriers inherent in the legal profession. Because women have different susceptibility and motivations for substance use, this frustration may lead to a desire by women to regulate their mood by turning to substance use, a susceptibility factor that is not present in men's substance use.¹²⁰ Or, frustrations with the strict scrutiny on their ability to balance work and family may lead to women seeking professional help and being prescribed addictive prescription drugs, another unique avenue by which women become addicted.

Second, women seeking positions of power are judged more harshly than men, and face a double bind in terms of which leadership style they choose. "Women who attempt to fit themselves into a managerial role by acting like men . . . Are forced to behave in a sexually dissonant way. They risk being characterized as 'too aggressive' . . . yet women who act like ladies, speaking indirectly and showing

¹²⁰ See discussion *supra* note 80, "work-place characteristics may affect whether . . . the person drinks." Shore, *supra* note 47 at 657-8.

concern in for others risk being seen as ‘ineffective.’”¹²¹ This pressure is one that influences women’s actual substance use, as women in male-dominated professions have even admitted to feeling pressured to “hold their own on many fronts, including macho drinking behaviors when out with colleagues.”¹²² Because masculinity is a favored leadership trait, women who seek leadership are incentivized to match these masculine substance use behaviors in order to find professional success. However, since women experience addiction differently than men biologically, attempting to match men’s drinking behaviors impacts them much differently than it would another man.

Finally, women in the legal profession face an unrecognized societal double bind when it comes to addiction, and to alcohol specifically. Clearly it is a historically-recognized part of the legal profession, exhibited by the picture of the “functional male alcoholic” which not only has no female counterpart, but which history has told women that it contrary to their very nature. This leads to a great deal of shame when women become addicted to alcohol, further preventing women from getting the type of recognition and treatment for their addiction that would best serve them. It also serves as a very large barrier stopping women from even recognizing that they have a problem that needs help.

These are just a few of the crushing barriers that doubly subjugate women in the legal profession. Because women and men experience addiction differently, (from motivations, to rate or type of addiction, to treatment), their struggles are

¹²¹ JAMIESON, *supra*, note 16 at 5.

¹²² McAplin, *supra*, note 50 at 1.

inherently distinctive. However, compounding these experiences are the struggles women have to face in attempting to move upward in the legal profession--frustrations and experiences that may even lead them down the road to addiction—which set even another barrier to advancement. The unique subset of women lawyer addicts needs more research. From the research I have compiled, I believe the intersection between women's struggles for advancement and their struggles with addiction is an area of overlap that is as of yet largely unexplored, and that could shed a great deal of light on the struggles women have in advancing within the legal profession generally.

At the center of each of the solutions listed above is recognition of the stereotypes and factors that impact women's advancement and, only when they are recognized, an attempt to address the factors with the solution. However, without taking into consideration how addiction fits into the picture--whether it is similarly a causal factor to lack of advancement or it is actually caused by the same gender stereotyping--without this knowledge women's progress can't be effectively plotted and solutions can't be implemented. While the legal profession doesn't seem ready to admit it, addiction is a significant problem, and necessarily the legal profession must make changes to its structure to reflect that problem before tackling women's advancement effectively. Only once the factors that influence both these areas where women face hardship are truly understood can effective plans to promote leadership by women in the legal profession be adopted.