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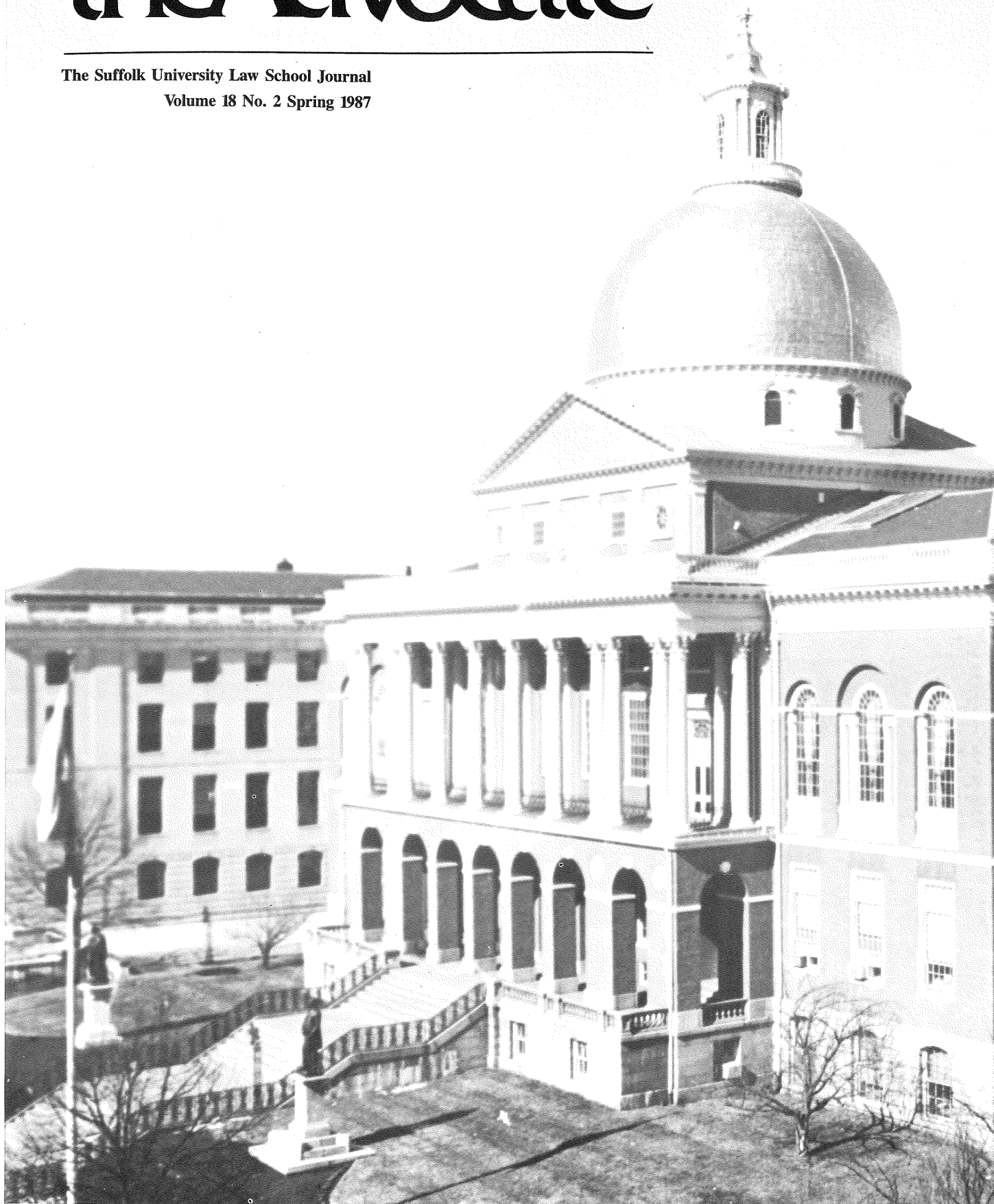
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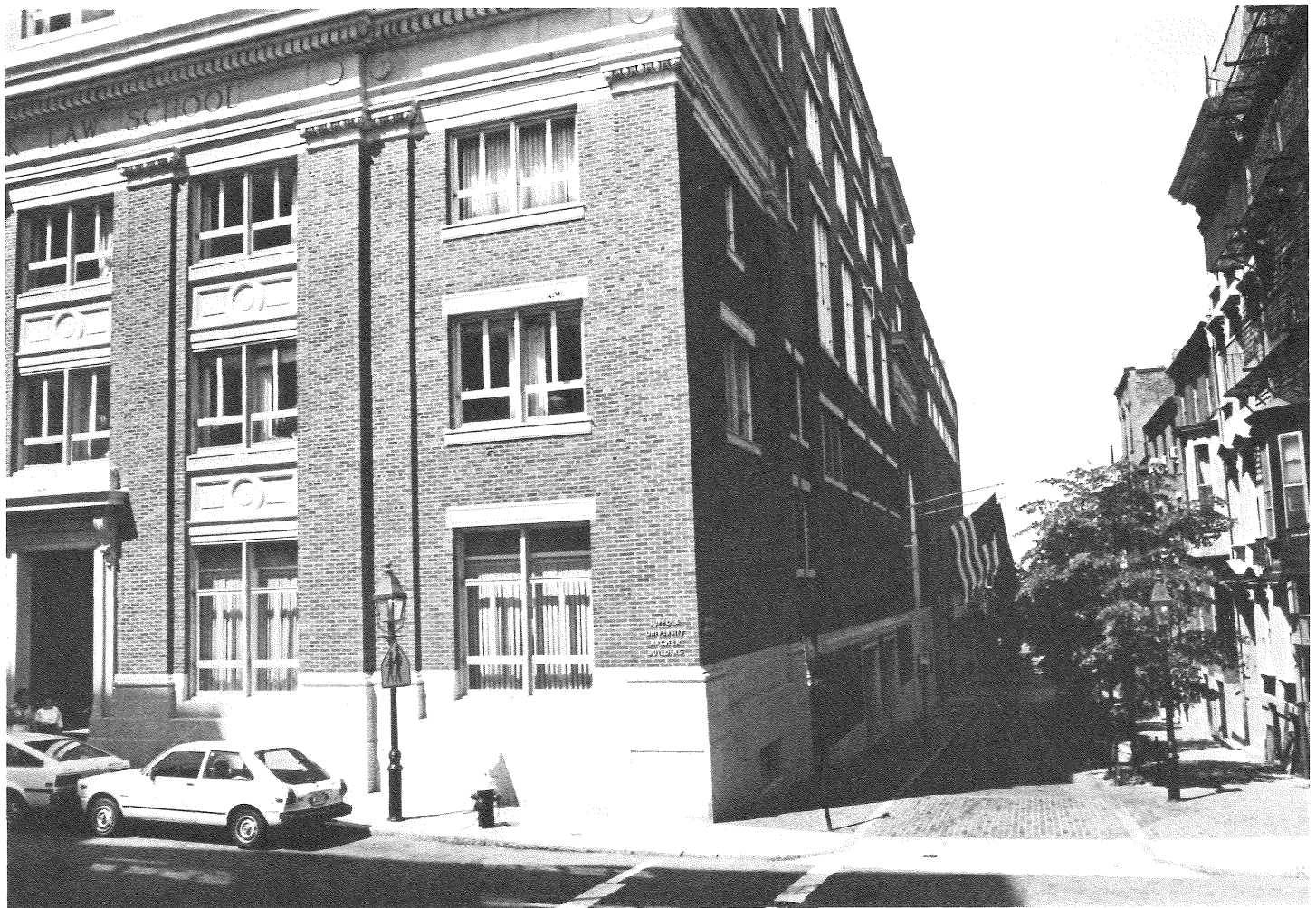
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theAdvocate

The Suffolk University Law School Journal
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The ADVOCATE is a publication of Suffolk University Law School. Our current circulation is 12,000 throughout the United States. The ADVOCATE is published three times a year: orientation, fall and spring issues. The orientation issue is distributed to law students only. The objectives of the ADVOCATE are to publicize the activities and outstanding achievements of the Law

School and to present articles by students, faculty and guest writers on timely subjects pertaining to the law.

All articles and editorials reflect the personal views of the authors and are not necessarily the views of the administration or faculty of Suffolk University Law School.

Guest editorials by students and faculty

are welcomed by The ADVOCATE, which recognizes its obligation to publish opposing points of view. Persons desiring to submit manuscripts, to be put on the mailing list or to communicate with the staff please address all letters to The ADVOCATE, Box 122, Suffolk University Law School, 41 Temple Street, Boston, MA 02114.

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theAdvocate

Spring 1987

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The Suffolk University Law School Journal

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Left to right: Mark Machera, Edward McCarthy, Joan Feeney, Nanette Avril, Allison Bowlan, Charles Kindregan, Jay White, Robin Houston and Tony Stankiewicz.



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THE PROBLEM OF THE ALCOHOL- IMPAIRED LAWYER

Allison H. Bowlan
and
Charles P. Kindregan

Introduction

Alcohol is the major substance of abuse in the United States. 68% of Americans drink, 12% are heavy drinkers (men, 2:1) and 10 million have alcohol abuse problems.¹ One expert projects that 95,000 lawyers are alcoholics.²

In general, it is estimated that 35 to 64% of fatal traffic accidents involve drivers who have been drinking cause more than 25,000 violent deaths each year. Half of all falling, drowning, and fire-related deaths are estimated to have drinking as a contributing factor. The risk of alcoholics committing suicide is 30 times higher than that of the general population.³

Added to the problem of alcoholism in recent years is the problem of drug abuse, whether it be an illegal drug off the street or an abuse of a prescription. A few items from the news may illustrate the dimensions of the problem:

—The National Institute on Drug Abuse found in 1982 that one-third of Americans over the age of 12 have used marijuana, hallucinogens, cocaine, heroin or psychotherapeutic drugs for nonmedical purposes at some time; two decades ago less than 4% of the population had ever used an illegal drug.⁴

—*Time Magazine*, in a cover story, calculated that there are 4 million to 5 million regular users of cocaine; a prominent prosecutor says the drug is so

pervasive among the middle class that there is little public support for enforcing the laws against its use.⁵

—New York City Police have discovered that heroin is no longer a drug confined to the urban poor; some sections of Manhattan have become interstate super-markets for heroin — with cars from the suburbs and surrounding states double-parked outside buildings where buys are being made.⁶

—Following the lead of investment banking firms Kidder, Peabody and Smith, Barney, Harris, Upham, Inc., a large number of Manhattan law firms are planning to start drug testing in an effort to curb cocaine abuse.⁷

From a scientific standpoint, abuse of alcohol and abuse of other substances have much in common. One medical authority on drug abuse has stated that: "Valium is essentially whiskey in a pill."⁸ Moreover, the American Psychiatric Association has created an omnibus diagnostic category entitled "Substance Use Disorders," which are defined as behavioral changes caused by alcohol, barbiturates and similar sedatives and hypnotics, opioids, amphetamines or cannabis. Characterizing the disorders may be any or all of the following symptoms:

"impairment in social or occupational functioning. . . ., inability to control use of or to stop taking the substance, and

the development of serious withdrawal symptoms after cessation or reduction in substance use."⁹

History

Beverages with the intoxicant ethyl alcohol are of very ancient origin. Wine, for example, is said to have been discovered by Noah, whom the Old Testament credits with having planted the first vineyard after the Flood. Clay tablets discovered by archeologists reveal that beer was a common beverage in Egypt as long ago as 5000 B.C. In fact, the Egyptians believed that the knowledge of how to brew beer was a divine gift from Isis, their goddess of nature.¹⁰

Drunkenness seems to have been alcohol's companion throughout the ages. It was condemned in the I. Ching, written in China 3000 years ago; and the ancient Aztecs punished it by death. To this very day, observant Moslems still obey Mohammed's ban, promulgated in the seventh century A.D., on drinking intoxicating beverages.¹¹

Drinking was a major activity during colonial times in the United States. New Amsterdam (later to become New York City) had more taverns than any other type of business; and in New England, where Sunday church services lasted most of the day, taverns were often built alongside churches, so that worshipers could "go next door to warm themselves with hot toddies, during breaks in the sermon."¹²

During the first half of the nineteenth century, alcoholic intoxicant continued to be widely used in the United States, particularly on the western frontier, where "even the most make-shift boomtown had its saloons."¹³ Opiates and their derivatives were also widely available, usually provided over-the-counter without a prescription in apothecaries and on shelves in local grocery stores.¹⁴

Public intoxication, however, was punishable by dunking or display in the pillory.¹⁵ Excessive drinking habits began to emerge gradually from 1725 to 1825. Consumption shifted from 90% beer to 90% hard spirits. Whiskey was used as currency in 1780 when the Continental economy collapsed. In 1791 a rebellion arose in western Pennsylvania as the result of excise taxes levied on whiskey production.¹⁶ Thomas Jefferson observed that "one third of the people of the United States are killing themselves with whiskey."¹⁷

Gradually in the late 1800's and the early 1900's drinking began to fall into disrepute in the United States. The change of attitude seems to have been related to the appearance of a middle class that viewed seriousness of purpose, hard work — and especially, sobriety — as prerequisites for achieving success in the emerging capitalistic economic system.¹⁸ One result of this movement was the Harrison Narcotic Control Act. Introduced in 1914, this Act was the first legal control of narcotics in the United States. In 1917, the temperance movement achieved its primary goal: Congress passed the Eighteenth Amendment to the Constitution, forbidding "the manufacture, sale, or transportation of intoxicating liquors" within the United States. Together with the Volstead Act of 1919, the Eighteenth Amendment ushered in Prohibition on January 16, 1920.

Prohibition proved to be a legal and social disaster. In fact, it is highly probable that drinking increased during this time period.

Alcohol remained available during Prohibition. People still got drunk, and still suffered delirium tremens. Drunken drivers remained a frequent menace on the highways. Drunks continued to commit suicide, to kill others and to be killed by others. They continued to beat their own children, sometimes fatally. The courts, jails, hospitals and mental hospitals were still filled with drunks.¹⁹

One of many by-products of Prohibition was the popularization of marijuana, which

had been rarely used in the United States previously.²⁰ It soon became obvious that Prohibition was not working and demands for its repeal were initiated. In 1933, thirteen years later, Congress passed the Twenty-First Amendment, repealing the law, although individual states were allowed to remain "dry" if they wished.

Dr. Benjamin Rush in the late 18th century wrote of the "disease of alcoholism" in his medical diary; but due to widespread illiteracy and poor communication systems, the disease concept did not receive further recognition for 150 years.²¹ A growing feeling that excessive use of alcohol was not always a matter of choice finally emerged during the last days of the Prohibition.²² In response, the Shadel Hospital, in Seattle, began treating alcoholism as a pathological condition in itself rather than as a symptom. Alcoholics Anonymous, aided by some professional men who viewed alcoholism as a physical defect, began in 1935. The American Medical Association formally declared alcoholism as a treatable disease in 1956.

Causes of substance abuse

It is anyone's guess as to what causes alcoholism. All social strata are affected, fewer than 5% are "skid row" types.²³ There is not a "typical alcoholic personality" yet many alcoholics are immature and overdependent, have a low tolerance for frustration, and experience chronic anxiety.²⁴ However, recent research shows that there may be a genetic factor in alcoholism susceptibility.

A useful, but unscientific model to simplify a very complicated and as yet undetermined relationship might be:

$$\begin{aligned} \text{Drinking} + \text{stress} &= \text{increased} \\ &\text{incidence} \rightarrow \\ \text{Drinking problems danger} + \\ &\text{genetic factor} = \text{alcoholism}.^{25} \end{aligned}$$

The physical effects of alcohol and drugs are varied. Such substances affect muscular coordination and control, producing clumsy movements, slurred speech and stumbling. Reaction time is considerably slowed down, which often leads to driving hazards.²⁶

Within the first drink or two, an illusion may be created of clarity of thought and mind. Eventually consciousness becomes blurred, thinking is slowed down, originality is reduced and ideas become stereotyped.²⁷

Of significant importance are the

psychological effects of alcohol. Drinking relaxes inhibition and restraint. It makes it easier to take personal and social liberties. In general, the disinhibiting effect of alcohol enables the drinker to do things he wanted to do while sober but could not do because of conscience, shame, guilt, fear, prudence, or common sense.²⁸

Are lawyers and law students conducive to substance abuse?

Psychoanalytic investigations have produced significant information about the unconscious motivation of drinkers. The essence of what has been learned is that drinking is frequently an unconscious attempt at self-cure by persons who are beset by emotional problems and/or stress.²⁹ It is easy to understand how a law student could turn to use some type of drug during school:

1. Time limitations: College was easy. After the freshman year there was plenty of time for friends. Law school is a different ballgame; students are called on to respond in class, there is a whole new vocabulary to learn and there is moot court. Often friends and family do not understand the new devotion to school;
2. "The Right Answer" syndrome: You have just finished a tough exam, but feel you spotted and answered the problems presented. As you walk out the door, your friends are discussing the "right" answer, which was not the same conclusion you had deduced in your essay; or, they talk about an issue you missed or failed to mention in your answer;
3. Exams: You must wait until the end of the year to take the one exam offered. If your grade is bad, there is generally not a way to improve it. Even if your grade is acceptable, rarely is it as high as your achievements in college;
4. Finding a job: Not exclusive to the law student, but stressful just the same. If you are not on Law Review there is a false assumption that you will never find a job. If you are on Law Review there is competition to get the best job at the most prestigious firm.

Few professions are as demanding and stressful as in the legal practice. The hours, the deadlines, the responsibility of holding the key to freedom or incarceration, justice or injustice, all add up to a tremendous amount of pressure. Disciplinary experts agree that attorneys often

"back into" unethical behavior because of their inability to respond to and control stress. They say that lawyers:

1. Take on too many cases to try to ensure a given level of income;
2. Cannot say "no" to a client who comes for help. Sometimes lawyers get themselves into situations where they want to help clients and take on more work than they can handle;
3. Do not have enough support staff and office systems to handle the workload in an efficient and organized manner;
4. Take on cases in which they have no expertise;
5. Feel burdened and unable to cope with the recurring emotional outpourings of clients who are distraught with problems, and who are convinced that their case is the most important one on the lawyer's desk.³⁰

Signs of drug abuse

"Manifestations of alcohol or personal problems are not readily observable in the early stages. There is generally no limp, no wound, no crutch, no pain-ridden face to reveal the slowly progressing pathology. The secret drink, the surreptitious pill, the private thought of suicide, the incipient tremor, can sometimes be masked over a long period, sometimes with the witting or unwitting collusion of family and colleagues."³¹

Because of the structure of the practice of law, it is hard to identify an attorney with an alcohol or drug impairment problem. As opposed to most work environments, where there are usually large numbers of people and several layers of supervision at one site, most attorneys work in solo practices, or small partnerships or firms, which lack systems of progressive discipline for poor work performance. In addition, much of an attorney's work is mental, and hence not often subject to scrutiny and evaluation by peers.³² Some questions to consider when evaluating colleagues or employees whom you suspect have substance abuse problems are:

- Are they often late to work or absent following weekends, holidays or paydays?
- Is their productivity level erratic?
- Are they defensive or quick with excuses when questioned about their absenteeism or productivity?

- Do they talk about drinking while on the job?
- Do they appear irritable or unable to concentrate some mornings?
- Have they been known to drink either on the job or during lunch?
- Is their physical appearance occasionally substandard, i.e. unpressed clothes, unshaven face, bloodshot eyes, etc.?
- Have they been involved in a traffic accident or been arrested for driving while intoxicated.³³

Any two affirmative answers suggest possible substance abuse. Three or more affirmative answers suggest advanced abuse.³⁴

The Disciplinary System and Underlying Personal Problems of the Lawyer.

A review of the reported disciplinary caselaw suggests that problems of personal disablement is a common source of lawyer misconduct. Among such factors are psychological problems,³⁵ senility,³⁶ physical disability,³⁷ or severe marital problems.³⁸

These types of personal problems will not excuse misconduct, but are generally considered as mitigating circumstances "that may reduce the degree of discipline to be imposed."³⁹ In most cases these personal problems have become professionally relevant only because of a disciplinary complaint (or as is often the case a series

of complaints) filed against the lawyer which triggers an investigation.

The same is usually true of lawyers with alcohol or drug abuse problems. In some instances the lawyer may seek help privately for his or her problem, often with the encouragement of family or colleagues. But in many instances it is the filing of a complaint with the disciplinary authorities which first triggers the uncovering of the alcohol or drug problem beyond the lawyers' immediate circle of friends and family. Lawyers who have done defense or prosecution work in the disciplinary field rapidly became aware of the extent of the role of alcohol or drug abuse as a factor in professional malfunction. (This is as true of professional misconduct in the medical, dental, nursing and other fields as it is in law.)

It would thus seem that the disciplinary system should play a major role in dealing with the underlying substance abuse problem while it also deals with the sanctioning of the misconduct which was often brought on by the alcohol or drug misuse. However, since the primary purpose of discipline is to protect the public⁴⁰ the process of healing the offending lawyer's underlying problem often takes second place. In the whole scheme of lawyer discipline, rehabilitation of the offending attorney is often mentioned by the courts, but the more grave the offense the less emphasis is likely to be given to the goal of rehabilitation. This is particularly important in disciplinary cases, because severe



Hon. Edward M. Ginsburg of the Middlesex Probate and Family Court and Attorney Leonard L. Lewin, J.D., '72, discuss trial techniques in divorce cases during a March, 1987 continuing legal education program.

alcohol or drug abuse over a long period of time is so likely to impair judgments that the individual is likely to become involved in a series of significant acts of misconduct. Since alcohol or drugs often impair a person's sense of responsibility, neglect or even abandonment of the client becomes more likely.

Since alcohol or drug abuse are treatable, the authors believe that the disciplinary system should make a greater effort to rehabilitate the offending individual if these problems are the major factor in explaining the misconduct. We do not believe that the alcoholic or drug abusing lawyer should be excused from discipline for his or her misconduct, but if rehabilitation is a reasonable prospect it should be given every effort to succeed. The professional education and experience of the lawyer is an asset for society which should not be wasted unless there is no reasonable hope for rehabilitation and the lawyer does not demonstrate a sincere intent to change his or her lifestyle.

What can the courts do to give the lawyer a fair chance at rehabilitation? Certainly they must make clear to the offending lawyer that the chance at rehabilitation is his or hers to use, but that he or she will be disciplined if the lawyer is unwilling or unable to make use of the challenge.⁴¹

A number of courts have demonstrated some ingenuity in extending the challenge of self-rehabilitation to the lawyer. In one case, the Supreme Court of Minnesota suspended, rather than disbarred, a lawyer accused of multiple misconduct, conditioning his reinstatement on his submission to medical examinations, undergoing alcohol rehabilitation treatment, restitution to his clients, and total abstinence from alcohol for a period of at least one year.⁴²

The Supreme Court of California rejected a bar request that a lawyer be suspended, and instead placed him on probation conditioned on the lawyer participating in alcoholic counselling, refraining from the use of intoxicants during probation, making regular reports on his clients fund accounts, and associating with another lawyer active in the state bar association's alcohol abuse program.⁴³

In a well-reasoned opinion, the Supreme Court of Illinois recognized that an extremely heavy disciplinary sanction may have the opposite effect of rehabilitation because the lawyer may see no reasonable prospect of ever recovering his or her license and lose all motivation. In a case involving misuse of client's funds, which

would ordinarily result in disbarment in most states, the court recognized that the lawyer's misconduct was due to alcohol abuse which undermined his will and judgment. Noting that the lawyer had not had a drink for two and one-half years, but that the gross misconduct called for some punishment, the court ordered a six-month suspension and ordered the lawyer to file progress reports on his rehabilitation program.⁴⁴

The Need for Disability Standards

When a lawyer has been disabled and rendered professionally incompetent because of alcohol or substance abuse, it is hoped that the state could deal with this problem by some method other than discipline, especially when no serious acts of misconduct have taken place.

One method of handling such cases is by the creation of a monitoring system. Professional associates of an alcoholic attorney, whether partners, attorneys who deal with the attorney on a regular basis, or judges, are frequently among the first to observe the lawyer's problems. Often this observation occurs at an early stage, before serious ethical misconduct begins to become a pattern. Lawyers and law students owe it to the profession to bring the problem to the individual's attention in a serious, forceful, but compassionate manner. While urging the problem lawyer to get counselling may be helpful, the problem must be recognized as having professional as well as personal consequences. Every state supreme court and the various federal courts should create a voluntary monitoring system to which a willing lawyer can be referred for assistance in keeping his or her professional life in order while at the same time working on the underlying substance abuse problem. It may be expensive, but there should be in place a court-supported system for providing lawyer-monitors who can assist the lawyer in keeping his or her practice going while fighting their personal fight against alcohol or drugs. We urge that a bar-funded core of full-time lawyer-monitors should be employed for this sensitive work. It must also be made clear to the bar that participation in the monitor program carries with it no stigma and that it will be kept confidential. This is particularly important for solo and small firm practitioners who usually do not have the professional support for their practices available to the large firm, corporate, or government lawyers. We also recommend

that each state bar association develop a program for alcoholic and drug abusive lawyers which can structure and develop helpful programs.

Where alcohol or drug abuse have effectively disabled a lawyer from continued practice, the court disciplinary agency or bar should move promptly to deal with the problem. Such a lawyer presents a serious threat to the public and the administration of justice. The American Bar Association has recommended Standards for Lawyer Discipline and Disability Proceedings.⁴⁵

These standards provide for removal of a lawyer to disability inactive status when his or her incapacity has been demonstrated in a disciplinary hearing, a court declaration of incompetence or commitment. However, disability proceedings should be confidential. Every state should give serious consideration, after public discussion and debate, to formulating standards and procedures for handling such cases. And as we suggest above, in reference to disciplinary proceedings, the disposition of disability proceedings should be premised on the goal of rehabilitation.

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27. Schoenfeld, *supra* note 10, at 69.
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31. Wolf, *Alcoholism and the Legal Profession*, 62 Mich. B.J. 873, 874 (1983).
32. *Id.*
33. Orrick, *supra* note 3, at 22.
34. Orrick, *supra* note 3, at 22.
35. See, for example, Louisiana State Bar Ass'n v. Larre, 457 So.2d 649 (La. 1984) [severe depression, but lawyer reinstated after six months suspension on showing of rehabilitation]; Kentucky Bar Ass'n v. Johnson, 687 S.W.2d 134 (Ky. 1985) [severe mani depression not considered in mitigation for theft of client's funds]; Matter of Stewart, 721 P.2d 405 (N.M. 1986) [lawyer guilty of serious misconduct disbarred when there was no showing of a favorable prognosis for cure of lawyer's psychological problems]. See also, In re Weyrick, 339 N.W.2d 274 (Minn. 1983). However, the mental problems of the lawyer may be so severe that he cannot be disciplined because he is not mentally competent to defend himself against the charge; see In re Meade, 693 P.2d 713 (Wash. 1985) [disciplinary findings vacated because lawyer who defended himself pro se was so paranoid that he was not competent to respond to the charges—in such a case suspension on grounds of disability would be preferable to discipline].
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40. In re Ruffalo, 390 U.S. 544, 550 (1968), rehearing denied 391 U.S. (1968). Other reasons for maintaining a disciplinary system commonly given are deterrence, protecting the integrity of the legal system and even punishment. See, Matter of McGrath, 655 P.2d 232, 239-241 (Wash. 1982) in which Justice Williams said that "punishment is what we should call it."
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The Suffolk University Law School Tax Team. From left to right: John McDonald; Brenda Salhanick; Professor Tom Thompson (Advisor); Terri Scully and William Merrigan. The team won the award for the best brief of the Stetson National Tax Moot Court Competition in January.



BOOK REVIEW

SEARCHING THE LAW

by Edward J. Bander, Frank Bae and Francis R. Doyle,
Transnational Publishers, Inc., Dobbs Ferry, New York
(1987)

[Library of Congress No. 86-27240]

**Reviewed by Prof. Charles
Kindregan**

This new resource for the use of the legal literature should be welcomed by lawyers, professors and law students. While there are other similar books, including such resources as the Jacobstein and Mersky materials, this is probably the best organized and indexed legal bibliographical study to date. It also appears to be the most up to date legal resource available, although such a study can never be entirely current.

Professor Edward J. Bander, one of the authors, is well known to most Suffolk Law graduates and students since he has served as Suffolk's Law Librarian for the last decade and has assisted thousands of students and alumni to make better use of law library resources. In this book he has joined with two other law school librarians to pool their experience and knowledge to produce a practical and helpful volume.

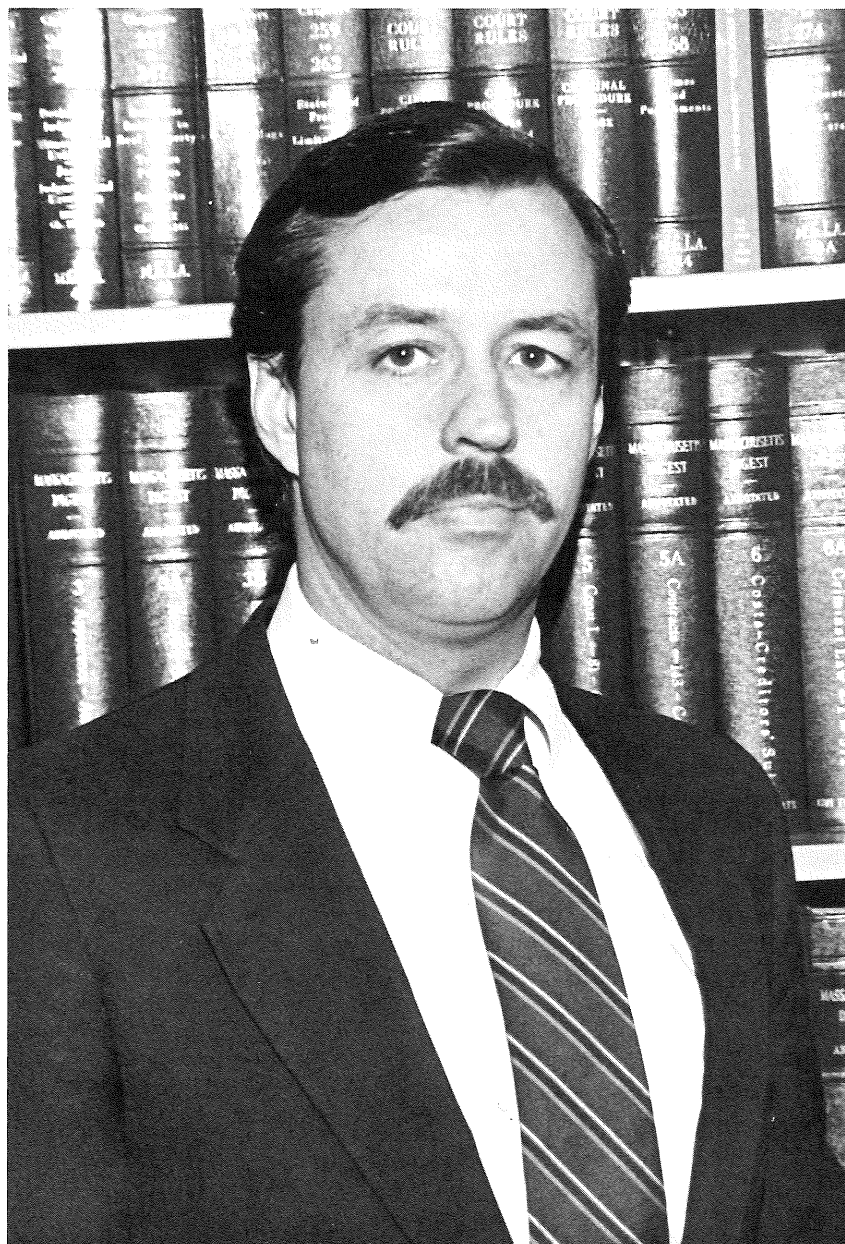
Several helpful features of this book are, I suspect, the result of the authors hands-on practical experience as law librarians. Thus under each subject title the authors list not merely periodicals and bibliographies, but also include a checklist of topics which is helpful to lawyers and researchers using the book. In addition the authors include law school course descriptions. These descriptions are helpful not merely to law school professors and students, but to lawyer-researchers who can use them as guidelines to determine if he

or she is thinking about the correct areas in which to find resources.

The authors have also included some commentary which is concise and helpful to the user of the book. For example, an "editorial" comment under "Reports" discusses ways that one computerized legal research system could be improved, and the comment, in addition to being critical, assists the reader in understanding some of the limits on the current use of the service.

The one aspect of the organization of the book which puzzles this reviewer is the inclusion of a sub-category of New York materials. New York may be a major state in terms of its impact on American law, but the inclusion of local legal resources from one state detracts from what otherwise is a book which will be of use throughout the United States. Lawyers in California, Massachusetts or any other state will find this a practical and useful book, but may (properly) wonder why local New York resources are included to the exclusion of materials from their jurisdiction.

On balance this book is a substantial contribution to legal research and writing. It provides the user with the most substantial and current listing of library resources, carefully broken down into logical and comprehensive categories. It should be available in every large firm, law school and practice library.



About the Author: David C. Hoover is a graduate of the University of New Hampshire and Suffolk University Law School; he is the General Counsel of the Massachusetts Department of Fisheries, Wildlife and Environmental Law Enforcement, a Special Assistant Attorney General and a visiting lecturer at Franklin Pierce Law Center where he has taught ocean and coastal law. Mr. Hoover is a member of the Massachusetts Bar Association's Committee on Chemical Dependency. This article represents only the opinions of the author, the Massachusetts Bar Association and the Committee on Chemical Dependency.

ALCOHOLISM: RESPONSE OF THE MASSACHUSETTS BAR ASSOCIATION

David C. Hoover

This article is dedicated to the memory of Judge Joseph F. Bacigalupo whose efforts in combating drug abuse were well known and respected.

"We would like to see respondent restored to an active practice and a position of esteem in his profession. We must also protect the integrity and reputation of that profession, and protect the public. Pending further experience with alcoholic attorneys we are trying our best to manage both."

423 N.E.2d 875

INTRODUCTION

This monograph will present the response of the Massachusetts Bar Association that as a profession we are beginning to counter the impact of alcoholism¹ on our clients, ourselves and the Bench and Bar. This monograph considers the disease of alcoholism, the needs of the alcoholic client and alcoholic lawyer and the responsibilities of the Bench and Bar in addressing the effects of alcoholism.

I. STATEMENT OF THE PROBLEM

My condition was a topic for gossip among my fellow lawyers. I knew that and had ducked appearing at the last two bar association dinners. But I'd make this one. Bolstered by booze and tranquilizers, I put in an appearance . . . to leave the banquet hall after soup and

salad. Attempting to drive myself home, I set fire to the front seat of the car when I dropped my cigarette between my legs. The fire extinguished, I continued on. I side-swiped a taxi and awakened hours later in the emergency room of a hospital. The police had notified my wife that I was dead.

Florida Bar Journal, January 1983 p. 11.

There is no longer any doubt that alcoholism is a disease.² Its destructive effects on society are staggering.³ The alcohol addiction is a cancer not only of the body, but of the mind and spirit as well.⁴

Alcoholism is a chronic, progressive, self-destructive disease characterized by a physical inability to control the intake of alcohol.⁵ As the disease progresses the alcoholic becomes completely dependent on an increased intake of alcohol, at the expense of family, friends, job and society. The alcoholic's physical systems become so immersed in the alcohol that a chemical perception of reality is alcohol-induced involving a denial of the disease itself and of the individual's addiction to alcohol. Thus, the alcohol-induced delusions defy and prevent self-treatment alone. The disease must be arrested, the drinking cycle broken and the denial penetrated by someone other than the alcoholic. One technique to accomplish this, known as intervention, was

developed in the late 1960's. It is an aggressive technique which confronts the alcoholic with the facts of his or her alcoholic behavior and has proven extremely successful, with recovery rates as high as ninety to ninety-five percent.⁶

In intervention, those persons closest to the alcoholic including family, friends, co-workers and clergy, with the assistance and guidance of a trained professional, confront the alcoholic during a time of sobriety with the facts of his or her behavior related to the use and abuse of alcohol. Intervention is most successful immediately after a particularly bad drinking experience of the alcoholic. The purpose of the intervention is not to chastise, argue with or accuse the alcoholic of having the disease. It expresses love, concern and objectively presents the alcoholic with specific instances of damaging or destructive behavior occasioned by the use and abuse of alcohol. The goal in confronting the alcoholic with the reality of his or her behavior is removal from a drinking environment and forcing the alcoholic into treatment. It is no longer a generally accepted principle that the alcoholic cannot be helped without his or her desire for help. Intervention has proven the opposite to be true.

Obviously it is necessary to identify and motivate the appropriate third party to institute the intervention. The reader might quickly conclude that such a role appro-

propriately and properly falls upon a family member, other close relative or close friend. However, the insidious characteristics of alcoholism, as a function of the disease, affect not only the alcoholic but his or her spouse, family and friends as well. Those closest to the alcoholic become enablers in the sense that their conduct adapts to the drinking behavior. For example, the typical enabler denies the existence of the disease like the alcoholic; blames himself for the excessive drinking; picks-up for the alcoholic after destructive drinking bouts; and threatens, argues and coerces the alcoholic to stop drinking. Such behavior is not only counter-productive, but enables the alcoholic to justify the continued use and abuse of alcohol. Truly successful treatment of the alcoholic should include treatment of the immediate family and has even extended to a circle of relatives larger than the immediate family. Those closest to the alcoholic, because of their affliction, are most unable to institute proper intervention on their own.

II. THE CLIENTS' NEEDS

Hesitant to speak in open court, the defendant's wife of more than 30 years whispered her fear of continued physical abuse from her husband. It had gotten worse recently, ever since he lost his barbershop business.

Asked what the problem was with her husband, after a furtive glance to the defendant's box, she wiggled her hand back and forth indicating that he was mentally unbalanced.

The defendant's record contained previous drunk driving charges, and before that, a series of arrests for drunkenness - before drunkenness was criminalized in Massachusetts in the mid-1970's.

Judges Journal, Fall 1983 p.6.

The attorney is often the first professional to come into close contact with the alcoholic client. In fact, with the possible exception of health care professionals, lawyers come into contact with more alcoholics than any other profession. Most often it is the product of the client's drinking. The relationship is not adversarial, but rather one of help, support and assistance. The attorney is uniquely able to confront the alcoholic client with an objective assessment of his or her actions which are a direct result of the use and abuse of

alcohol, and point out the need for treatment.

The attorney does a disservice to his or her client and the general public when he or she attempts to avoid the specific mechanism designed to confront the disease and lay the groundwork for proper treatment and recovery. I do not, of course, imply that the attorney who has been trained to provide the client with the best and most vigorous defense should do anything less.⁷ More can and should be done. An attorney's strict compliance with the conventional attorney-client relationship does not always assist or take into account the true needs of the alcoholic client.⁸ Indeed, the conventional approach to a client's needs may not serve the legitimate concerns and demands of society when alcohol is involved. This dilemma is of particular concern where the problem that brings the client to the attorney is related to the disease of alcoholism. There, the attorney is the first contact the alcoholic client has with an individual whose profession is to provide help.

Although the attorney may owe no duty to society, he or she may be doing a grave disservice to the client by circumventing the established mechanisms to address the alcoholism. A modern view warrants the conclusion that the attorney assert his or her objectivity and unique ability to help the client seek treatment when appropriate. It is statistically safe to conclude that, failing treatment, the client will more than likely come to this or another attorney in the future.

The sense of a greater responsibility has been suggested by other state bar associations.⁹ Archibald Cox, former United States Solicitor General and Special Prosecutor, has suggested in a somewhat different context that practicing attorneys have a professional obligation to serve the public interest beyond their client's self-interest.¹⁰ Professor Cox also suggests that trial judges can exercise stronger control in the formulation of greater public expectations.¹¹ The attorney and the trial judge should and are taking a much more active role, responsive not only to the reasonable demands of society in protection from the drunken driver, but also to the needs of the underlying causes of the client's legal predicament.¹²

Recently Governor Michael Dukakis urged Massachusetts lawyers to participate in a campaign to address the underlying needs of drunk driving defendants. The Governor noted that attorneys are part of a service profession and urged attorneys to

provide the drunk driver with not only a vigorous defense, but treatment for the alcoholism as well.¹³

Not long ago a Massachusetts attorney, while awaiting trial for vehicular homicide involving alcohol, appeared again before a district court on a third driving under charge. The final disposition of the vehicular homicide charge was a conviction and a ten year prison sentence. Apparently, the lawyer who represented this attorney on the first charge failed (if he tried) to direct his client into treatment. Certainly the lawyer who represented this attorney the second time failed, despite the red flag of alcoholism, to reach this attorney to avoid a third charge and the horrendous tragedy that followed.

The third charge of operating under the influence of alcohol in less than a year and a double vehicular homicide is an American, Massachusetts and avoidable tragedy. There are no provisions of the American Bar Association's Model Code of Professional Responsibility (Model Code) that prevent an attorney from providing a client with both a vigorous defense and assistance in getting treatment for the alcohol addiction.¹⁴ The question presented then, is does the Model Code authorize or encourage the attorney to take a more activist and independent role when representing an alcoholic client?

III. MODEL CODE AND MODEL RULES

"... if the Model Rules are viewed as part of a process of intensive re-examination of basic issues affecting both the legal profession and society rather than as the "black letter" embodiment of the answers to our problems they will have proved to be valuable whether or not they are adopted. For what we need is not only dialogue between us and our clients but also dialogue between ourselves as lawyers."

American Bar Foundation Research Journal, 1980 p. 1003 Rule 1.14(a) of the Model Rules acknowledges that when representing a client an attorney may discover that the client's "ability to make adequately considered decisions in connection with the representation is impaired..." Ethical Consideration 7-12 states: "Any mental or physical condition of a client that renders him incapable of making a considered judgement on his own behalf casts additional responsibilities upon his

lawyer." EC 7-12 equates this to a client disability.

The ABA has recognized that a disability and a disabled client may be the result of alcohol or drug addiction.¹⁵ There are also judicial pronouncements on the disabling effect of alcohol and judicial conclusions that alcoholism is both a disability and a physical and mental impairment. For example, in reviewing the denial of social security disability benefits to an individual suffering from alcoholism the District Court for the Eastern District of New York concluded that the agency "must consider and decide whether or not the plaintiff is totally disabled because he has through his addiction to alcohol so far lost self-control that he is impotent to seek and use means of rehabilitation. . .".¹⁶ In making this determination the Eighth Circuit has advised the Secretary that the testimony of a chronic alcoholic stating that "the quitting drinking, there is no great problem there. Well, I enjoy it, and I don't - I don't think the beer hurts me particularly. . ." are otherwise statements which represent "the rationalizations of a sick individual who does not realize the extent of his illness."¹⁷ The court concluded that such testimony cannot form the sole basis for a finding of no disability.¹⁸

In *Griffis v. Weinberger* the Ninth Circuit Court of Appeals found that the "proposition that chronic acute alcoholism is itself a disease, a medically determinable physical or mental impairment is hardly debatable today."¹⁹ And in *Ferguson v. Schweiker* the Fifth Circuit Court of Appeals noted that it "is well-settled that alcoholism alone or combined with other causes, can constitute a disability if it prevents a claimant from engaging in substantial gainful activity." The court concluded that "a finding that an individual is not disabled by alcoholism cannot rest solely upon the testimony of the individual himself, since such testimony may be filled with the rationalizations of a sick individual who does not realize the extent of his illness."²⁰

Clearly the courts have recognized that alcoholism is a disability which results in a physical and mental impairment and the judicial statements in support thereof would appear to fall within the language of Rule 1.14(a) and EC 7-12. Given that the lawyer-client relationship is somewhat different when the client is alcoholic how then may a lawyer, or more pointedly should a lawyer, represent such a client? The answer to this question may be found in the lawyer's role as advisor and in ethical

opinions from the various states.

Rule 2.1 of the Model Rules provides in relevant part:

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

Note that the lawyer must exercise this independent judgement according to the Rule when advising the client. It is also stressed that the lawyer should be candid no matter how unpleasant the advice may be.²¹ Although in most cases the decisions of the alcoholic client would be binding on the lawyer this does not and should not relieve the lawyer from exercising his or her independent decision making by strongly urging treatment. Surely, such urgings to the client charged with driving under the influence of alcohol is based on valid and legitimate social considerations that must be stressed to the client.

In one ethical opinion a lawyer who is representing a client pleading guilty to driving while intoxicated may recommend to the client that he request sentence for an in-patient alcohol treatment program if the lawyer determines that it is in the best interests of the client.²² If the client insists on choosing a course of action which the lawyer deems imprudent, the lawyer may withdraw.²³ In another ethical opinion a

lawyer who holds \$37,000 in escrow for a 19 year old client who is cross addicted to alcohol and drugs must turn the funds over to the client even though the lawyer knows they will be squandered.²⁴ However, the lawyer may advise the client to seek proper treatment for the cross dependency.²⁵

Finally the ethical opinions seem to distinguish between representing an alcoholic client and representing a non-alcoholic client when the client disappears. In the former instance it is recommended that the lawyer initiate proceedings appropriate for determining how to continue with the cause of action.²⁶ The opinion goes on to recommend that the attorney could apply for a conservatorship, guardian ad litem or a similar measure to invoke the court's jurisdiction. The court could then authorize the conservator or guardian to decide the course of the law suit.²⁷ On the other hand, where a non-alcoholic client disappears prior to filing a cause of action, the attorney need only exercise due diligence in locating the client and despite the statute of limitations expiring there is no obligation for the attorney to file the law suit.²⁸

The Model Code and the Model Rules make specific provision for the representation of a client suffering from a disability. Such provision is generally an additional responsibility on the lawyer as advisor to make decisions in the best interest of the client that the client may otherwise be incapable of making due to the disability. In making these independent decisions the attorney as advisor may consider other fac-



Lawyers participating in a conference on Litigating the Best Interests of the Child, sponsored by the Boston Bar Association and the Center for Continuing Professional Development of the Law School.

tors such as societal needs. The ABA and the courts recognize that alcoholism is a disability. The ethical opinions further suggest that the lawyer as advisor has a great deal of discretionary independence and thus additional responsibilities when representing the alcoholic client. These additional responsibilities neither apply to the lawyer in his or her other roles, nor do they apply to the lawyer representing a client not afflicted with the disease of alcoholism.²⁹

IV. DETERMINING THE NEEDS OF THE CLIENT

Anthony B's drinking first led him to court in 1944. Drunk he was arrested cavorting naked in his yard. In the 50's, he was arrested for public drunkenness repeatedly. He was convicted of drunk driving for the first time in February 1973, then again in April 1974, December 1977, April 1979, October 1979, and August 1982.

Appearing before the court in December for "operating after revocation," Anthony vehemently denied having a drinking problem . . .

The physician reported back to the court that the defendant's health was good with no evidence of alcoholism. Dismissing the doctor's dubious diagnosis the judge got to the heart of the matter. Alcohol had obviously impaired the defendant's social and occupational functioning . . .

Anthony B was sent to jail for "operating after revocation." Upon ad-

mission to the House of Correction, the guards confiscated three nip bottles in his socks. Following his short sentence, he was placed on a lengthier suspended sentence with the provision he attend five A.A. meetings per week.

Judges Journal, Fall 1983 p.7.

An attorney need not be an expert in the field of alcoholism to determine whether or not the client is in need of treatment, education or information to evaluate their drinking. Certainly, the example of the attorney brought before the court for the third time in one year for driving under the influence would justify a conclusion that evaluation for alcoholism is warranted. At the other end of the spectrum is the social drinker who, due to genetic make-up, proper biochemical balance and environment, is capable of controlling the use of alcohol, relegating its consumption to appropriate times and quantities. Somewhere beyond this person lies the alcohol abuser. Interestingly, those with the greatest capacity for alcohol apparently are those who tend to progress into alcoholism. For purposes of this monograph it makes no difference how the individual who suffers from the disease is labeled. It is the abuse of alcohol that has landed the client in your office.

In representing clients suspected of suffering from alcoholism one legal commentator, himself a recovered alcoholic, provides specific advice to the practitioner.³⁰ Recognizing that alcoholism is a disease of denial the client and his or her family will generally lie to cover up the drinking.

Thus the first answers given to the lawyer's questions should be disregarded and a more probing search of the drinking behavior should be undertaken. To begin with the lawyer should explore the client's drinking history; how much, how often, when and where does the client drink, employment and marital history. The obvious basis of these questions is to delve into the client as a human being rather than delving only into the particular facts of the client's case. The lawyer is advised to discover whether alcohol has seriously interfered with the client's life. If the signals of alcoholism are there the lawyer points the way to assessment and/or treatment. For example, when defending a client charged with driving under the influence of alcohol if this lawyer suspects alcohol addiction he will suggest to the client that he can best defend him if he will go to an alcohol rehabilitation center. In another example, if a women comes to this lawyer seeking a divorce and the lawyer suspects that the husband is alcoholic he will recommend such self-help groups as Al-Anon, Alateen and Adult Children of Alcoholics. A lawyer might also provide such a client with proper literature on the technique of intervention.

Another lawyer provides the following recommendations when representing the alcoholic client: (1) learn and accept the disease precept; (2) understand our special role; (3) study and support intervention; (4) focus on the successes in order to mobilize resolve; and (5) love enough to risk action.³¹

Some alcoholics are easy to spot: their life has become unmanageable due to their physical addiction. If the addiction is not arrested, the drinking invariably gets worse, often to the point of death or insanity and, more to the point, injury or death to an innocent public. Treatment includes in-patient hospitalization, out-patient therapy, group therapy and Alcoholics Anonymous.³² An integral part of the legal service provided to a client should be an assessment of the client's drinking patterns. If alcohol was involved, the attorney should insist that the client be assessed first as described below.

The Committee on Chemical Dependency of the Massachusetts Bar Association, Lawyers Concerned for Lawyers, Inc., local bar associations, and many agencies will provide attorneys with information and assistance ranging from client questionnaires, clerical services, evaluation programs, a catalog of services available to the attorney and in-patient programs. For



example, a list of questions³³ which will appear from time to time in the *Massachusetts Lawyers Weekly* have been used to determine the existence or potential existence of alcohol addiction. A yes answer to two or more questions is indicative of present or future trouble. It must always be remembered that the disease is a progressive one and that there can be and often are many years of responsible drinking before trouble arises. One self-administered test which has been suggested is to establish a reasonable maximum number of drinks for any day. If this limit is relatively easy to observe for an extended period of time—perhaps six months—regardless of the vicissitudes of life such as cocktail or other parties, weddings, deaths or other highly emotional occurrences, then it is safe to conclude that the disease is not present.

An alcohol assessment policy has been adopted by the Quincy District Court under the guidance of Judge Albert L. Kramer which administers an active assessment program.³⁴ The purpose of the assessment program is to identify and determine the needs of the client while applying proper protections for the public welfare and safety.

Briefly, the judge orders an assessment in those criminal cases involving alcohol. The initial assessment requires a two-day (overnight) alcohol evaluation consisting of personal interviews, psycho/social histories, personality and chemical dependency tests for alcoholism, blood and urine analysis, family interviews and observations during group discussions. Based on these evaluations the offender is identified as either a social drinker, an early to mid-stage alcoholic or a middle-to-late stage alcoholic. The offender is then placed in a treatment program which corresponds to the needs of each categorized group.

The assessment program or any number of other abbreviated programs are available to any attorney to assist a client whose alcoholism is the underlying reason that brought the client to the attorney. Even though the client may have come to the attorney for such legal needs as a divorce, bankruptcy, contract dispute or negligence, the underlying cause may very well be alcohol. In the case of a criminal complaint the underlying cause of the client's unlawful behavior normally involves the use and abuse of alcohol.

Today's courts hear more civil suits and criminal matters that involve alcohol than do not involve alcohol.³⁵ Drunk driving, disorderly conduct, assault, domestic

violence, rape and robbery are most often a direct result of the use and abuse of alcohol.

V. ASSISTING OTHER ATTORNEYS

"He and I attended law school together, we were friends, we were very close. There was nothing that I could do. I offered to place him in Rockland State in their program for alcoholics when he was living in a car which wasn't his. I asked him if he would come with me to Rockland State and I said I would take him there and I would come to see him every day. I would take care of every problem that he had if he would just come. He told me that he was an attorney and he was a former judge and that attorneys and former judges did not go to State Mental Institutions. He died in the street."

N.Y. State Bar Journal,
January 1984 p. 11.

Addressing the needs of the alcoholic client applies, *a fortiori*, to the needs of other practicing attorneys; the Model Code of Professional Responsibility may very well require it.³⁶

Some state bar associations, having determined that the practice of law due to its adversary nature and stresses frequently manifests in the attorney an addiction to the use and abuse of alcohol, have instituted alcohol assistance programs for their attorneys.³⁷ In the Commonwealth, a number of Massachusetts lawyers who are recovered alcoholics have organized a group known as Lawyers Concerned for Lawyers, Inc. (LCL). Readers of the *Massachusetts Lawyers Weekly* have seen the LCL hotline number (617-444-7244) advertised as a place to call for help with alcohol related problems. The LCL is incorporated, has been in existence and operational for approximately 5 years, is fully staffed and has received grants to fund some of their programs. In January of 1984, the Massachusetts Bar Association established a Committee on Chemical Dependency.³⁸ The goals and objectives of this Committee's work are to assist the alcoholic lawyer, provide information and education to the Massachusetts Bar and better serve the public interest. Numerous articles and editorials have appeared in the *Massachusetts Lawyers Weekly*. Most recently, Chief Justice Hennessey in his State of the Judiciary message recognized and endorsed efforts of the LCL, the

Massachusetts Bar Association, the Board of Bar Overseers and local bar associations to assist lawyers and judges afflicted with alcoholism. The Board of Bar Overseers and the Office of the Bar Counsel are increasingly using SJC Rule 13(3)³⁹ which authorizes a probationary period for attorney misconduct occasioned by the use and abuse of alcohol. The probationary period is generally conditioned to total abstinence from alcohol, regular attendance at Alcoholics Anonymous, and supervision by another attorney, oftentimes a recovered alcoholic from LCL.

Alcoholism as a progressive disease affects the alcoholic and his or her family. A lawyer, impaired by the use and abuse of alcohol, affects the interests of the client, of a judge, and the interests of justice. The disease concept has been recognized, in at least one state court opinion, as possibly providing a complete excuse to attorney misconduct.⁴⁰ Courts now recognize that one element of the disease physically and mentally impairs the integrity of otherwise honorable men and women.⁴¹ There is no longer any basis for the archaic and unfounded social attitudes that alcoholism is a function of moral weakness.⁴² The Massachusetts Bar should react to these efforts to combat the alcoholism of its members which is both a detriment to their health and the health of the profession.

The Committee on Chemical Dependency and the LCL are available to provide information, education and assistance to those attorneys ready and willing to help and to act. The Committee will provide the attorney with access to services and intervention assistance for the alcoholic client, the alcoholic attorney, and his or her family or partners.

The future may include: (1) a full time consultant to the Massachusetts Bar Association and the LCL to provide professional expertise in arresting and treating the disease; (2) greater use by the Supreme Judicial Court of Rule 13(3) for impaired attorneys;⁴³ and (3) greater use by the Board of Bar Overseers and the Office of the Bar Counsel of intervention and other resources to return the alcoholic attorney involved in misconduct back to sobriety, thus protecting his or her profession and the Bar in general.

VI. WHAT TO EXPECT

"The record clearly demonstrates that the respondent's professional misconduct is directly connected with his disease of alcoholism which in turn has lead to

financial, marital, and professional problems. Prior to the development of his dependency upon alcohol, respondent's personal and professional conduct were ethical, competent and responsible. If and when the respondent brings his dependency upon alcohol under his complete control, he should be seriously considered for reinstatement to the practice of law in Florida."

325 So.2d 401

Identifying lawyers afflicted with alcoholism is the first step in help. The disease can be manifested with a certain degree of predictability by one or more of the following individual indications: drunk or having the smell of alcohol at the office; continually arriving to work late or leaving early without explanation; long lunch breaks and returning drunk or with the smell of alcohol; repeated failure to appear in court, at a deposition or to return clients' phone calls; absence following weekends and holidays; productivity level erratic; overly defensive or quick with excuses when questioned about productivity or absenteeism; irritability or inability to concentrate in the morning; drunk driving or public drunkenness. Symptoms of the disease are not always obvious and are often very subtle. Because of its progressive nature the disease may not be fully established for ten to fifteen years. The earlier the disease is arrested, the greater the likelihood of full recovery.

A person with the disease of alcoholism normally suffers three characteristic traits — denial of the disease, alcoholinduced self-delusion and a strong defiance to any suggestion of a problem. The existence of any alcoholism is vehemently denied by the alcoholic in spite of a factual basis for the conclusion. Alcoholics frequently delude themselves into believing that while they may drink to excess they can either handle it, stop whenever they please or use it as an inherent and necessary part of their lives which they enjoy. As a result of the delusion and denial, any confrontation of the alcoholic will result in defiance and anger.

It is these three alcoholic disorders, in particular the denial, which must be dissolved in order to arrest the disease. Without a proper breakdown of these disorders, treatment is not successful. There are occasions when these disorders are naturally broken down during a brief interval of reality; usually immediately after the alcoholic bottoms out, or in the

recovery world of Alcoholics Anonymous, through the Grace of God.

Because these alcoholic disorders are so difficult to penetrate, it is advisable to do so with the assistance of a trained professional. Intervention confronts the alcoholic with the negative aspects of his or her behavior such as poor performance, the impact on his or her professional standing and damage to family, firm or partnership. When the alcoholic's defenses are broken down and the drinking cycle arrested, treatment may then take place. Although the overall recovery rate is depressing, recovery rates subsequent to an intervention are extremely high. The alcoholic attorney can expect to return to a successful and happy life. An increase in motivation and productivity of the recovering alcoholic attorney directly benefits the partnership, firm, Bench, Bar and the public.

CONCLUSION

As the disease concept of alcoholism has gained acceptance over the past 25 years, so too has the idea that alcoholics can be guided toward treatment by friends, employers or family members. The old theory that alcoholics cannot benefit from treatment until they have "bottomed out," or lost control to the point where their alcoholism can no longer be denied, has lost considerable ground to the idea of compassionate intervention.

Florida Bar Journal, January 1983 p. 17.

The disease of alcoholism does not discriminate against those it inflicts. While it can never be cured, like diabetes, it can be treated with recovery rates as high as ninety-five per cent. Left untreated, the alcoholic will suffer loss of family, loss of job, loss of self-respect, loss of health and ultimately loss of life. Alcoholic clients find themselves back in court, attorneys provide less than a complete service, the Bench and Bar is unnecessarily tarnished, attorneys are disbarred and the public interest is not fully served.

There is no reason for this disease to rage unchecked among Massachusetts lawyers and judges. If not a professional responsibility, there is most certainly a moral responsibility to take it upon ourselves to bring treatment to bear on our clients and fellow lawyers and judges. Failure to do so incriminates otherwise enlightened and compassionate lawyers and

judges in the guilt, grief, injury and death which follow inaction and ambivalence. The Massachusetts Bar Association, LCL, the Board of Bar Overseers and the Office of the Bar Counsel are ready and poised to counter the impacts of alcoholism on our clients, ourselves and the Bench and Bar. To be truly successful, the Massachusetts Bar must respond with help and action.

FOOTNOTES

1. Use of the term alcoholism or alcohol dependency throughout this article includes drug addiction or any other chemical dependency. Use of the term alcoholic generally means that the individual is afflicted with an active addiction to alcohol or drugs as opposed to an arrested addiction for a recovered alcoholic.
2. The American Medical Association, the American Hospital Association, the World Health Organization and the American Bar Association all recognize alcoholism as a disease. See E.M. Jellinek, *The Disease Concept of Alcoholism*, College and University Press (1960); T. Szasz, *The Ethics of Addiction*, Harpers Magazine, April 1972 p.74.
3. Alcohol abuse costs this country approximately \$160 billion annually; it is the second ranking disease in the United States; 20% to 40% of all admissions to hospitals are alcohol related; 55% of all auto accidents and fatalities are caused by alcohol abuse; 50% of all fire fatalities are caused by alcohol abuse; 40% of all industrial accidents and fatalities are caused by alcohol abuse; 20% of all suicides are related to alcohol abuse; cirrhosis of the liver is the 6th leading cause of death in the United States with 95% being alcohol related; fetal alcohol syndrome is the 3rd leading cause of birth defects; heavy drinking increases the risk of heart disease, cancer, digestive disorders, pancreatitis and metabolic disorders. M. Townsend, *Chemical Dependency in Kentucky*, Kentucky Bench & Bar, January 1984 p.19. See also FOURTH SPECIAL REPORT TO CONGRESS ON ALCOHOL AND HEALTH FROM THE SECRETARY OF HEALTH AND HUMAN SERVICES, January 1981, compiled by the Alcohol, Drug Abuse and Mental Health Administration, H.H.S. Public Health Service, and the National Institute on Alcohol Abuse and Alcoholism, NIAAA Director John R. DeLuca, editor.
4. The disease is characterized by a constant progression whereby the condition of the sufferer slowly gets worse until, if left untreated, leads to death or insanity from a destruction of brain cells. D. Olms, *The Disease Concept of Alcoholism*, Kentucky Bench and Bar, January 1984.

5. Researchers have discovered a substance closely related to heroin and more addictive known as Tetrahydroisoquinoline (THIQ). The systems of non-alcoholics convert alcohol into acetaldehyde which is then converted into carbon dioxide and water and eliminated through the kidneys and lungs producing no THIQ. THIQ is produced in the brain of the alcoholic and is not purged. *Id.* at pp.63-64.
6. Intervention which results in treatment of the alcoholic and his or her family has a higher recovery rate than treatment of the alcoholic alone. Interview with Robert Montgomery, Bay Colony Mediplex, Woburn, Massachusetts, May 17, 1984.
7. Model Code of Professional Responsibility, Canon 7; EC 7-7; DR 7-101.
8. Model Code of Professional Responsibility, Canon 6; EC 6-1 through 6-6.
9. The California Bar Association organized the first impaired lawyers assistance program in 1973. The bar associations of Minnesota, New Jersey, Colorado and Michigan followed. In 1980 there were 26 bars and 37 local bars with assistance programs for the chemically dependent lawyer. B. Alexander, *The Disease of Addiction From the Pillory to Medicare*, Florida Bar Journal, January 1983 p.24.
10. A. Cox, *Standing Out As a Lawyer*, *Bar-rister*, Fall 1983 p.6.
11. *Id.* at 54.
12. Andrew R. Klein, chief probation officer for the Quincy District Court, concludes:

For the majority of alcohol-abusing offenders in trouble with the law, the court, must be the substitute "employer, family, friend, doctor, counselor, or inner sufferer" that causes these people to seek treatment. Unlike other alcohol abusers, offenders often have no one else other than the court to take them and their problem seriously and to demand the actions necessary to put them on the straight and narrow path to sobriety.

By breaking the bond between alcohol abuse and crime, judges have begun to discover that their sentencing practices can make a positive difference in the lives of the majority of offenders before them.

A. Klein, *The Bond Between Alcohol and Crime*, *Judges Journal*, Fall 1983 p.57.

13. News Release From the Office of Governor Michael S. Dukakis, May 5, 1984. In February 1985 the Governor's/MBA Committee on the alcoholic client was established. A draft report of the Committee has already been prepared.
14. Canons 5, 6 and 7.
15. American Bar Association, Bureau of National Affairs, Inc., *Lawyers Manual on Professional Conduct*, 1984 (hereinafter cited as "Lawyers' Manual") 31:601.

16. *Badicheck v. Secretary of Health, Education and Welfare*, 374 F.Supp. 940, 942 (E.D.N.Y.1974).
17. *Adams v. Weinberger*, 548 F.2d 239, 245 (1977).
18. *Id.*
19. 509 F.2d 837, 838 (1975).
20. 641 F.2d 243, 248 (1981).
21. *Lawyers' Manual*, 31:601.
22. MD 84-18 (1983), *Lawyers' Manual*, 801:4336.
23. *Id.* citing Canon 7, EC 7-8.
24. MD 84-56 (1983), *Lawyers' Manual*, 801:4339.
25. *Id.* citing EC 7-8, 7-11: DR 9-102(B)(4).
26. Iowa 81-15 (1981), *Lawyers' Manual*, 801:3606.
27. *Id.*
28. Inf. Op. 1467 (1981), *Lawyers' Manual*, 801:314.
29. One commentator argues:

If the client expresses ends which, due to imprudence or excessive moralism, seem self-destructive, it is the lawyer's job to voice the conservative and restrained point of view. It is the lawyer's job to question the client's competence where it may need questioning.

D. Luban, *Paternalism and the Legal Profession*, 1981 Wis.L.R. 454, 493.

Another commentator recognizing the degree of decision making control that the attorney exercises over the client writes:

Little discussed until recently has been the fact that, despite this ideology, lawyers in many cases significantly control their clients' decisions and exert broad discretion over the means necessary to implement decisions.

M. Spiegel, *The New Model Rules of Professional Conduct: Lawyer-Client Decision Making and the Role of Rules in Structuring the Lawyer-Client Dialogue*, 1980 A.B.F. Research J. 1003. For further discussions on the extent of permissible control exercised by the attorney over the client Spiegel cites: D. Rosenthal, *Lawyer and Client: Who's in Charge?* (New York, Russell Sage Foundation, 1974); J. Katz, *On Professional Responsibility*, 80 Com.L.J. 380 (1975); W. Lehman, *The Pursuit of a Client's Interest*, 77 Mich.L.R. 1978 (1979); M. Spiegel, *Lawyering and Client Decision Making, Informed Consent and the Legal Profession*, 128 U.Pa.L.R. 41 (1979).

30. Anonymous, *Handling the Alcoholic Client*, 73 Ill. Bar J. 36 (1984).
31. T.H. Claunch, Jr., *Am I My Brother's Keeper*, 45 Ala. Lawyer 106, 110 (1984).
32. Alcoholics Anonymous bases recovery on the following steps:
 1. We admitted we were powerless over alcohol—that our lives had

become unmanageable.

2. Came to believe that a Power greater than ourselves could restore us to sanity.
3. Made a decision to turn our will and our lives over to the Care of God as we understood Him.
4. Made a searching and fearless moral inventory of ourselves.
5. Admitted to God, to ourselves, and to another human being the exact nature of our wrongs.
6. Were entirely ready to have God remove all these defects of character.
7. Humbly asked Him to remove our shortcomings.
8. Made a list of all persons we had harmed, and became willing to make amends to them all.
9. Made direct amends to such people wherever possible, except when to do so would injure them or others.
10. Continued to take personal inventory and when we were wrong promptly admitted it.
11. Sought through prayer and meditation to improve our conscious contact with God as we understood Him, praying only for knowledge of His will for us and the power to carry that out.
12. Having had a spiritual awakening as the result of these steps, we tried to carry this message to alcoholics, and to practice these principles in all our affairs.
33. The suggested questions include:
 1. Do you lose time from work due to drinking?
 2. Is drinking making your home life unhappy?
 3. Do you drink because you are shy with other people?
 4. Is drinking affecting your reputation?
 5. Have you ever felt remorse after drinking?
 6. Have you gotten into financial difficulties as a result of drinking?
 7. Do you turn to lower companions and an inferior environment when drinking?
 8. Does drinking make you careless of your family's welfare?
 9. Has your ambition decreased since drinking?
 10. Do you crave a drink at a definite time daily?
 11. Do you want a drink the next morning?
 12. Does drinking cause you to have difficulty in sleeping?
 13. Has your efficiency decreased since drinking?
 14. Is drinking jeopardizing your job or business?

15. Do you drink to escape from worries or troubles?
 16. Do you drink alone?
 17. Have you ever had a complete loss of memory as a result of drinking?
 18. Has your physician ever treated you for drinking?
 19. Do you drink to build up your self-confidence?
 20. Have you ever been to a hospital or institution on account of drinking?
34. A.L. Kramer, *The Drunk Driver: Where is He Heading?*, Judges Journal, Fall 1983 p.8.
 35. J. Califano, 1982 REPORT ON DRUG ABUSE AND ALCOHOLISM, reported in CHEMICAL ADDITIVES IN BOOZE,, Lipske, C.S.P.I. Books, Washington, D.C. 1982. Whitford, *The Skid Row Merry-Go-Round*, Corrections Magazine, May 1983. See also A. Klein, *The Bond Between Alcohol and Crime*, Judges Journal, Fall 1983.
 36. See note at 16, *supra*.
 37. C.M. Muller, *A New Approach to an Old Problem*, Florida Bar Journal, January 1983 p.34. For a discussion of the confidentiality of a lawyer reporting to a rehabilitative committee see N.Y. State Bar Journal, January 1984 p.20.
 38. The Committee on Chemical Dependency is chaired by Richard C. Howland and its membership includes David C. Hoover, Dr. Robert Montgomery, Patrick M. Butler, George M. Crane, Robert J. Marchand, Patricia A. Bobba, James F. Gregory, James M. Smith, Virginia A. Hoeffling, Barbara B. Lanigan, Donald Sleeper, James A. Shannon, Edwin C. Hamada, Thomas Marigan, Paul Weinberg, Jud Carhart, Bonnie Griffin and James Connors.
39. (3) Whenever the Board shall have cause to believe that an attorney is partially disabled by reason of mental infirmity, or because of alcoholism or addiction to drugs, the Board shall apprise the attorney of the information which it has and may request the attorney to agree to probation on such terms as the Board deems appropriate.

Supreme Judicial Court Rules, Section 13(3).
 40. *In Re Driscoll*, 423 N.E.2d 873 (1981). In its dictum the court stated:

Perhaps in rare cases alcoholism might so change the character of the misconduct or so distort the attorney's state of mind as to provide a complete excuse. *Id.* at 874.

For a discussion of this decision see S.E. Morehouse, *In Re Driscoll: Illinois' New Approach in the Discipline of Alcoholic Attorney Misconduct*, 31 DePaul L.R., Winter 1982 433. See also J.S. Carroll and V. Feldman, *Supreme Court Rule 772 - Sup-*
- port for the Impaired Lawyer*, 73 Ill. Bar J. 14 (1984).
41. The professional misconduct of an otherwise ethical, competent and responsible lawyer was, according to the court, directly related to the disease of alcoholism. *Florida Bar v. Blalock*, 325 So.2d 401 (1976).
 42. For a discussion of the history of social attitudes towards alcoholism and the alcoholic see B. Alexander, *The Disease of Addiction From the Pillory to Medicare*, Florida Bar Journal, January 1983 p.21.
 43. See C.R. Muller, *Impaired Attorney Proceedings - A New Approach to an Old Problem*, Florida Bar Journal, January 1983 p.33 Pennsylvania has an incompetency rule whereby an attorney is placed on an inactive list after a judicial declaration of incompetency, and any pending grievance procedures are held in abeyance. Rule 301 of the Rules Governing Attorneys of Pennsylvania, Subchapter C, p.301. The State of New Jersey has a so-called emergency protection committee which operates by voluntary agreement of the troubled lawyer to have another lawyer assist him or her. Statement of Guidelines and Principles, Emergency Professional Assistance Committee, New Jersey State Bar Association. See also R.C. Bates, *The Alcoholic Attorney: What To Do*, New York State Bar Journal, January 1984 p. 22; J.H. Orrick, *A Conspiracy of Silence*, Florida Bar Journal, January 1983 p. 13.

ALUMNI NOTES INFORMATION

Please submit
Alumni Notes to:

Executive Editor
the ADVOCATE—The Suffolk University Law School Journal
Donahue Building, Room 207
41 Temple Street
Boston, MA 02114

Name: _____ Year of Graduation: _____

Address: _____ Current Employment: _____

NOTE: _____



In Memoriam

Joseph W. Murphy, J.D. 1940, died on December 17, 1986 at the age of 74. Mr. Murphy practiced law on Cape Cod until his retirement. He served in World War II and the Korean War as a Lt. Commander in the U.S.N.R. Mr. Murphy was a member of the Supreme Court of the United States of America.

Charles I. Tucker, a Suffolk Law graduate, died February 25, 1987. After World War II service as an army officer, Mr. Tucker practiced law in Fall River, Massachusetts. He served as a Superior Court conciliator and master, and as President of the Fall River Bar Association. Mr. Tucker was senior warden at Christ Church in Swansea, where he is now buried.

Joseph P. Geary passed away on October 21, 1986. Born in Lowell, Joseph was a member of Suffolk University Law School class of 1987.

Thomas J. Drinan, J.D. Suffolk Law, cum laude 1973, died suddenly on December 30, 1986 at the age of 38. Mr. Drinan worked as assistant U.S. attorney in Boston for the past six years amassing numerous convictions for federal income tax evasion. Before coming to the U.S. attorney's office Mr. Drinan worked for five years as a trial lawyer for the Massachusetts Defenders Committee. Outside of the courtroom he assisted students at Boston College and Harvard law schools in the staging of mock trials for a number of years. Mr. Drinan was president of the board of the Newton, Needham Weston Multi-Service Center, and a board member of the Newton Community Development Foundation.

Alumni Notes

Steve Guttell ('69) has recently been named a Partner in the law firm of Gust, Rosenfeld, Divelbess & Henderson in Phoenix, Arizona. Mr. Guttell is in the firm's Litigation Department concentrating on labor and employment matters.

Robert B. Crowe was elected by the Law School alumni, and confirmed by the Board of Trustees, for a three-year term of office, succeeding Thomas Wynn, Esq., who served with distinction.

Mr. Crowe is an alumnus of Suffolk University with two degrees, B.A. '70 and J.D. '73. He is a founding partner in the Boston law firm of Crowe and Chappell, is chairman of the board of the Shattuck Shelter for the Homeless and also serves on the Board of Directors of the Charles River Association for Retarded Citizens. He is a member of the Tax Section of the American Bar Association. Mr. Crowe is a member of the Suffolk University Law School Alumni Association Board of Directors, the Suffolk University Law School Leadership Gifts Committee, and is a SUMMA member.

Ellen S. Shapiro has recently joined the firm of Mahoney, Hawkes & Goldings as an associate.

Gerard F. Mackin, Jr. ('71) is currently working in South Weymouth, MA as a general practitioner.

Bradford N. Louison ('81) has joined the law firm of Alexio, Miles, Murray and Rounds, P.C. of Taunton, MA handling civil litigation.

John Farina ('85) has recently completed a clerkship with the Fourth District Court of Appeals and has joined the Wall Street firm of Winthrop, Stimson, Putnam & Roberts in their Palm Beach, FL office. Mr. Farina is primarily practicing in probate and commercial litigation.

Lawrence W. Brennan ('59) was appointed Managing Associate of the law firm of Brennan & Barry of Chestnut Hill, MA. Mr. Brennan was also re-elected for the third term as the Secretary of the Middlesex County Bar Association.

Paul C. Menton ('53), a long-time State Representative, was sworn in as a district court judge on July 24, 1986. Menton has also served as a member of the Watertown School Committee and the policy committee of the Ford Foundation that oversees Equal Opportunity grants for legal services to the poor.

R. Bernard Biron ('52) has retired after thirty-two years as a teacher of American history and business law. Biron plans to continue his law practice in Blackstone, Ma.

The Law School Alumni Programs Office helped sponsor **Dr. James M. Buchanan**, 1986 winner of the Nobel Prize in Economic Sciences, who delivered a lecture at Suffolk's C. Walsh Theatre on March 31, 1987. Mr. Buchanan lectured on the topic "Democracy and Constitutional Order" before a capacity audience at C. Walsh Theatre.

The 1987 Suffolk University Law School Alumni Directory is tentatively scheduled for release in June. The book lists all alumni with known addresses alphabetically, by class year, geographically and by firm or business. All graduates of the school are listed within the class listing.

The directory is being produced by Suffolk University Law School and Bernard C. Harris Publishing Company, Inc. of New York. If you have not ordered a copy of the directory and would like to do so, please contact the Customer Service Representative, Bernard C. Harris Publishing Company, Inc., 3 Barker Avenue, White Plains, NY 10601. The alumni directory is published by the law school as a service to its graduates.

Kenneth McHugh ('69) has been nominated to a vacancy on the New Hampshire Superior Court.

Mary McCauley-Manzi ('74) has been appointed the first woman judge in the Probate and Family court for Essex County, Ma.

Mimi Bowler ('76) has been selected to head the Civil Litigation Course at the Attorney General's Advocacy Institute at the U.S. Department of Justice in Washington, D.C. All new assistant U.S. attorneys from around the United States attend the two-week course which focuses on civil trial practice. She will head the program for one year while on leave from the U.S. Attorney's office in Boston.

John A. Canavan, III ('85) has been assigned to the Roxbury District Court after his recent appointment as an assistant district attorney in the Suffolk County District Attorney's Office.

John W. McKean ('76) has returned to private practice in Boston, MA, with his brother Tom after two years as a member of the Massachusetts Parole Board.

Raymond J. Acciardo, Sr. ('78) has sworn in as an attorney for membership in the New York Bar. Mr. Acciardo is presently an assistant professor at Russell Sage College, Albany, NY in its MBA program.

Attorney Karen M. Thursby ('82), former Associate Editor of the *Advocate*, has been a member of the firm of Herlihy and O'Brien, Boston, MA since her graduation from Suffolk University Law School.

Attorney Manual V. McKenney ('42) was honored by the Suffolk University Law School Black Students Association. The award, announced by BLSA President Patricia Mackey, was presented by former Massachusetts Supreme Court Justice Francis T. Quirico to Mr. McKenney. Mr. McKenney is a former assistant district attorney and clerk-magistrate of the Dorchester District Court. He is now in private practice of law and is a Director of the Massachusetts Trial Lawyer Association. Mr. McKenney told the students about his experience as a poor black student at Suffolk during the depression, and how this "great law school" gave him a chance to become a lawyer.

Professor Robert V. Ward ('78) of New England School of Law was honored as one of Suffolk's distinguished black alumni at the Suffolk BLSA dinner on February 27, 1987. Professor Ward was praised for his interest in and help to students of all races in an award presented by Attorney E. Macey Russell ('83) of the firm of Rimer and Braunstein.

Attorney Shari Langenthal ('82) is a member of the firm of Cohen and Gaffin in Framingham, MA.

Attorney Carol Witt ('77), **Attorney Paul Perocchi** ('75), and **Attorney Leonard L. Lewin** ('72), who is also an adjunct faculty member at Suffolk, recently developed a program on trying divorce cases for Suffolk's Center for Continuing Professional Development and wrote a practice manual (edited by Professor Charles Kindregan) for family law practitioners.

Janet MacNab ('83), a graduate of the law school, recently had an article on indemnification published in the *Massachusetts Law Review*. Attorney MacNab practices in the firm of Murphy and Mitchell in Boston, MA.

Faculty Notes

John Deliso, assistant dean of the law school has been elected a trustee of the Law School Admissions Council. The Council prepares and administers the LSAT, LSDAS and Law School Financial Aid materials for all American and Canadian Law Schools.

Professor Bernard V. Keenan spoke at the mid-winter meeting of the American Bar Association's urban, state and local government section. His presentation was entitled "The Taking Issue and the U.S. Supreme Court (1986-87 term)."

Law Prof. Cliff Elias was a member of incoming Attorney General Jim Shannon's transition team, which also included special Watergate prosecutor Archibald Cox and former U.S. Senator Paul Tsongas.

Prof. Nancy E. Dowd was awarded a Rockefeller grant to conduct research on "The Work-Family Conflict: Restructuring the Workplace." The study is one of a small number funded out of hundreds of applications, and should make a substantial contribution to the literature on changing gender roles in the United States.



Diane C. Tillatson, J.D., '78 (center) of the Law Firm of Hemenway and Barnes, was awarded the Outstanding Alumni Service Award. She has made many contributions to alumni and student activities at the Law School. She is shown with (l. to r.) President Perlman, Attorney General Bellotti, Steven E. Kramer, J.D., '79, and Dean Sargent.

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