Substance Abuse within the Legal Profession: A Symptom of a Greater Malaise

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SUBSTANCE ABUSE WITHIN THE LEGAL PROFESSION: A SYMPTOM OF A GREATER MALAISE

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I. INTRODUCTION

With the current increase in the number of applicants to this nation's law schools, the already enormous number of persons practicing law in this country is going to continue climbing. What may be encountered more frequently by those within law firms and those soon to be entering a law practice, is a greater amount of pressure from firm management to draw more business and bill more hours without an increase in compensation. This response to the economic recession which arrived with the dawn of the 1990's places heavier burdens upon professionals who complained of high job stress even during the boom of the past decade when firms were flourishing. When occupational demands rise and job security wanes, especially for those accustomed to receiving extraordinary paychecks and living an affluent lifestyle, the danger of the professional becoming dependent on chemical substances becomes a more immediate threat.

The National Council on Alcoholism and Drug Dependence estimates that as many as 10.5 million Americans show signs of alcoholism or alcohol dependence, and another 7.2 million show persistent heavy drinking patterns associated with impaired health and/or social functioning.1 It is not surprising

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* B.A. 1990, University of Southern California; J.D. 1993, Notre Dame Law School; Thos. J. White Scholar 1991-93. This article is dedicated to my parents, Martin and Doris Pregenzer. Many thanks to Professor John Robinson for his advice and guidance.

1. NATIONAL COUNCIL ON ALCOHOLISM AND DRUG DEPENDENCE, NCADD FACT SHEET: ALCOHOLISM AND ALCOHOL-RELATED PROBLEMS (1990). Alcoholism is defined as:

   a primary, chronic disease with genetic, psychosocial and environmental factors influencing its development and
that in a profession known for its excessive hours and high intensity, studies find that as many as eighteen percent of lawyers are dependent upon alcohol.\textsuperscript{2} A Johns Hopkins University survey found that attorneys were 3.6 times more likely to suffer from symptoms of depression than adults among the general population.\textsuperscript{3} This is significant because alcoholism is a disorder closely related to depression: those who are depressed often become alcoholics and those who are alcoholics are often depressed.\textsuperscript{4} Research conducted in 1986 at the University of Arizona revealed that law students and lawyers suffered from depression at a rate two to four times higher than the average of the general population.\textsuperscript{5} That the law profession contains high rates of both depression and alcoholism is also evidenced in the rising number of disciplinary actions involving lawyer misconduct related to chemical abuse. The American Bar Association (ABA) estimates that fifty to sixty percent of all disciplinary actions are motivated by some type of substance abuse problem,\textsuperscript{6} especially in the case of misappropriation of client funds.\textsuperscript{7} The Washington State Bar claims that sixty-five manifestations. The disease is often progressive and fatal. It is characterized by continuous or periodic: impaired control over drinking, preoccupation with the drug alcohol, use of alcohol despite adverse consequences and distortions in thinking, most notably denial. Robert M. Morse, M.D. et al., Joint Comm. of the Nat'l Council on Alcoholism and Drug Dependence and the Am. Soc'y of Addiction Medicine to Study the Definition and Criteria for the Diagnosis of Alcoholism, \textit{The Definition of Alcoholism}, 268 J.A.M.A. 1012 (1992) [hereinafter \textit{The Definition of Alcoholism}].


6. This article will focus primarily on alcohol abuse due to the fact that statistics on drug abuse among lawyers are minimal and inevitably an inaccurate estimation of the true figures of usage. There is a significant deterrent to a lawyer admitting to a drug problem as opposed to an alcohol addiction in that possession of drugs is a crime.

7. SPILIS, supra note 2, at 1.
percent of all malpractice suits are attributed to underlying lawyer impairment.\textsuperscript{8}

The conclusion one must draw from information available in this area is that a surprising number of this nation's lawyers and judges are suffering from alcoholism or drug abuse or both. In mega-firms, sole practitioners' offices, and judges' chambers, members of the bar are affected with a problem which could easily cut short their careers, damage their clients, and wreak havoc in their personal lives.\textsuperscript{9} Insofar as a disease is at work in a lawyer's alcohol/substance abuse, and current medical evidence supports such a hypothesis,\textsuperscript{10} a treatment path must be investigated.\textsuperscript{11} Alcoholism is relatively simple to diagnose and highly treatable. Ignorance and denial are two obstacles to recovery most difficult to overcome. This is a situation where one's friends, loved ones, or associates possess the power to help, yet too often dismiss symptoms as isolated episodes. It is probable that a high number of those practicing law today have at one time or another crossed paths with a lawyer impaired by alcohol or drug abuse. It is time for action to assist those members of the profession who are at risk. Every practicing attorney has an ethical responsibility as a member of the bar to be aware of the signs of chemical abuse and seek immediate assistance personally or for a colleague.\textsuperscript{12}

This essay identifies a larger problem that exists within the legal profession today, only hinted at by the fact that many lawyers are addicted to alcohol or drugs. A lawyer's abuse of chemical substances may be caused by a sequence of events including deficiencies in the legal education system and a legal profession which is insensitive to the personal needs of its members, thus creating a pressurized environment and undue

\textsuperscript{8} Lawyers Assistance Program, Washington State Bar Ass'n, Report for LAP's 1987-88 Year 2 (1988) [hereinafter Report for LAP's 1987-88]. An "impaired" lawyer is one which is functioning, or having a difficulty functioning, under the influence of drugs and/or alcohol in his or her practice.


\textsuperscript{10} See Morse et al., supra note 1, at 1.

\textsuperscript{11} On the other hand, even if weakness of character is behind the problem of substance abuse, the necessity for identification and assistance is equally pressing.

\textsuperscript{12} For example, Model Rules of Professional Conduct Rule 8.3 (1992) [hereinafter Model Rules] requires lawyers to report other lawyers' professional misconduct to the state bar.
stress on an attorney, who resorts to substance abuse as a means of escape. Addicted attorneys are therefore a signal of a greater malaise: professional dissatisfaction. This essay will first examine the efforts currently underway in the ABA, state bar associations, and non-profit corporations to address this very real situation and will propose additional individual and structural remedies. In the past ten years, lawyer and judge substance abuse assistance programs have become much more prevalent. This attack on the present problem must be enlarged. Second, this essay will seek to identify the roots of personal and professional dissatisfaction found within legal education and law practice and will relate this dissatisfaction to chemical abuse. Many legal ethicists and commentators have criticized the law school and the law firm alike for their lack of awareness of the psychological needs and deprivations of their members. The third part of this essay will suggest corresponding methods to be developed in legal education to address the problems associated with anxiety both in law school and in legal practice to raise awareness of and combat substance abuse. Further measures must be taken to assist those presently impaired and to prevent future harm. This essay argues that law schools, law firms, and bar associations should take an active role to block the growth of this disease of chemical abuse and realize that this epidemic is indicative of fundamental shortcomings within the legal profession.

II. EFFORTS ON THE NATIONAL LEVEL TO ADDRESS SUBSTANCE ABUSE WITHIN THE BAR

In 1985, the ABA House of Delegates passed two resolutions addressing lawyer alcoholism and drug abuse. The first stated that state courts and bar authorities should establish and reinforce peer-support programs for attorneys suffering or recovering from alcohol or other drug abuse. The second noted that since lawyers often play a leadership role in their communities, and therefore serve as role models for youth, the bar should exercise leadership in dealing with substance abuse. In 1988, the Commission on Impaired Attorneys was established under the umbrella of the ABA's Division of Bar

13. In 1980, only 26 state bars had lawyer assistance programs (LAP). Today, all states have some type of program. SPILLS, supra note 2, at 1. For more information, contact the ABA Commission on Impaired Attorneys at (312) 988-5359. A directory of state and local LAP's can be obtained from ABA Order Fulfillment, 750 N. Lake Shore Drive, Chicago, IL 60611.
15. Id.
Services to develop and implement a comprehensive association program to address attorney impairment. The primary work of the Commission is to encourage awareness of and response to impaired lawyer issues. This is accomplished by the Commission serving as a clearinghouse on information on impaired lawyers and lawyer assistance programs, presenting an annual conference, providing a speakers' bureau, and encouraging continuing legal education providers to incorporate the topic into their programs.

A. State Bar Associations Motivate Program Formation

The state bar associations have voluntarily taken on the responsibility of forming some network whereby lawyers can receive help. Some type of lawyer assistance program exists in every state, and at least twenty employ staff directors. The primary functions of these programs include coordinating networks of statewide volunteers, setting up interventions, getting attorneys into treatment, and educating the profession. Confidentiality of information and of the identity of those participating in a program is essential to success. At least thirty-one states now provide confidentiality or exoneration from liability for lawyer-counselors of the lawyer assistance program by rule, ethics opinion, contract or other legislative source.

In August of 1991, the ABA amended Model Rule of Professional Conduct 8.3, "Reporting Professional Misconduct," to excuse lawyers from reporting "information gained by a lawyer or judge while serving as a member of an approved lawyer-assistance program to the extent that such information would be confidential if it were communicated subject to the attorney-client privilege." At least seventeen state jurisdictions have adopted similar rules, which balance the lawyer's need for confidentiality against the public's need for protection. It is important for attorneys to note that this amendment to Model Rule 8.3 only applies to information gained by lawyers participating in programs which have been approved by

17. Id.
18. Spilis, supra note 2, at 1.
19. Id.
20. MODEL RULES, supra note 12, Rule 8.3 requires lawyers to report other lawyers' professional misconduct to the state bar or other appropriate organization.
their jurisdictions. These alterations to professional responsibility codes have provided much of the impetus for the growth and success of lawyer assistance programs.

B. The Necessary Elements of a Lawyer Assistance Program

Although every state has some type of assistance program for lawyers who are substance abusers, the effectiveness and recognition of these programs greatly varies. Due to its formidable task and relative success, the Lawyers' Assistance Program (LAP) of the Washington State Bar Association (WSBA) may be considered a model for other state bars which are attempting to organize such a program. In 1976, the WSBA was one of the nation's first bar associations to develop a Committee on Alcoholism. Eleven years later, LAP was formed under the direction of G. Andrew H. Benjamin, a lawyer and doctor affiliated with the Department of Psychiatry and Behavioral Science at the University of Washington School of Medicine. Dr. Benjamin has carried out many studies in the area of professional substance abuse and formed one of the most complete lawyer assistance programs in the country.

22. There is a fundamental question whether most lawyers feel compelled to report other lawyers' misconduct even in light of Rule 8.3 and thus whether an amendment to the Rule will make a difference. A 1978 survey conducted of the members of the Arizona Bar revealed that 59 percent of the lawyers who responded believed that attorneys should not be subjected to discipline for failure to disclose knowledge of their peers' misconduct and more than 25 percent stated that lawyers simply did not report other lawyers' misconduct. David R. Ramage-White, The Lawyer's Duty to Report Professional Misconduct, 20 ARIZ. L. REV. 507, 524-25 (1978).


24. See generally Benjamin, The Prevalence of Depression, supra note 4; Benjamin, The Role of Legal Education, supra note 5.

25. The principles of the LAP of the WSBA are as follows:

1) Almost all human problems can be treated successfully provided they are recognized early enough and appropriate resources are used. Even late stage problems can be helped.

2) The lawyer has the responsibility to seek and to accept the services of the Program before the problem and its consequences lead to disciplinary action.

3) Because some lawyers will deny that they are impaired by behavioral or medical problems, other members of the Bar should contact the Program if the lawyer does not appear to be recovering independently.

4) Confidences divulged by the lawyer to the program director or his agents are privileged to the same extent as are confidential communications between attorney and client . . . .
An administrative coordinator, clinician, and director oversee the execution of Washington's LAP. The director reports to a steering committee of five lawyers who, in turn, report to the president of the State Bar. A volunteer peer counseling panel performs the actual evaluation of the impaired lawyer and lends assistance to the lawyer when necessary. The panel is composed of interested lawyers, as well as recovering members who are encouraged to become peer counselors to deepen their recovery and serve as valuable investigatory and treatment resources across the state. Referrals may come from a phone call to the LAP or through the Legal Department of the WSBA. The chairperson of the disciplinary board, upon being alerted by a member of the lawyer's firm or family, may also institute an inquiry and attempt to establish a meeting with the subject.

When professional responsibility violations are a factor, the assessment includes a psychological examination, a review of the lawyer's caseload and commitments, and an auditor's review of financial records. Treatment is based on the assessment results and the participation of the lawyer. If the lawyer is amenable to treatment, a program will be developed to meet concerns raised by pending complaints, and if possible, will allow deferral of action on those complaints until treatment is completed. When the referral is made by a third party, LAP attempts to verify the information from one other independent source. If the information is found to be correct, two peer counselors will meet with the lawyer to seek the lawyer's admission of the problem and interest in help from LAP. If the lawyer denies the abuse, the referral source will be apprised of the result and LAP continues to monitor any discipline complaints against the lawyer. If and when the lawyer agrees to treatment, he or she will be given a psychological review, a treatment plan, and aftercare. All information revealed by the lawyer is confidential.

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26. This does not take away a client's right to sue for malpractice if the lawyer continues to ignore his or her obligations. The determinations of the LAP are not judicial decisions of fitness to practice but only professional counseling.

27. Appropriate authorities will be notified only if the lawyer requires involuntary commitment because of mental illness and is a danger to self or others or if the lawyer is involved in the abuse or neglect of another. Policy Statement, supra note 25, at 4.
During its first year of operation (1987-88), the LAP of Washington assisted 144 lawyers and judges, or one percent of the state's attorneys. Over half of the clients were self-referred and eighty-one percent of the total cases ended in treatment. Half of the clients abused alcohol or used drugs. In 1988-89, the LAP's caseload increased forty-one percent with an additional 1.3 percent of the bar membership served. The number of alcohol or drug related cases jumped to seventy-one percent. In 1990, LAP reported a steady rate of assistance and self-referrals were up to seventy percent of the cases. The progress of the program was attributed to the confidentiality rules approved by the state supreme court and to the outstanding volunteer force. These figures are significant because no other bar association's assistance program has matched these results in any year of its operation. This demonstrates the extensive ground left to cover for the rest of the nation's lawyer help programs. Certainly, Washington's state bar is not alone in its high number of impaired lawyers.

Other state bars have made substantial efforts to implement an effective substance dependence program. Judge Warren Wolfson of the Cook County Circuit Court in Chicago is a past president of the Illinois LAP and currently serves on the board. He characterized the situation by saying, "You can't even talk about a competent, professional, principled bar unless you have a sober bar," and alleged that alcohol and drugs have a profound effect on the public perception of the profession and its competency. The core of the Illinois program is the "intervention" process. A call from a concerned party results in an investigation which may be referred to a three-member panel, one of whom must be a judge. Next, a non-adversarial and non-accusatory session is conducted with the lawyer. The information to be presented to the attorney or judge is thoroughly rehearsed by the panel before the session.

28. REPORT FOR LAP's 1987-88, supra note 8, at 4.
29. The other half of the cases were diagnosed as caused by mental or marital problems. Id.
32. Id.
33. Interview with Judge Warren Wolfson, Cook County Circuit Court, in Chicago, Ill. (Nov. 5, 1991) [hereinafter Wolfson].
34. The Illinois LAP uses the following Guidelines for Intervention Participants:
Michael Howlett, Jr., a prominent Chicago lawyer and officer, director, and intervenor for LAP, described the way allegedly impaired lawyers come to the attention of the organization saying, "LAP uses the duck school of diagnosis. If it walks like a duck, talks like a duck, and hangs around with ducks, it probably is a duck."35 The Illinois LAP attempts to increase lawyer awareness of the availability of help by conducting seminars, advertising in legal publications, and speaking to law school ethics classes. On the topic of legal education's lack of attention to the problem, Judge Wolfson remarked, "Law schools are insensitive to the problem. They are doing nothing."36

Pennsylvania runs a program similar to Illinois', called Lawyers Concerned for Lawyers (LCL). Kenneth Hargreen is Executive Director of LCL which functions in conjunction with the Pennsylvania State Bar's Alcohol and Drug Addiction Committee.37 As in most states, a toll-free number connects concerned individuals or lawyers in need of counseling with a treatment center which conducts a preliminary screening of the situation. Hargreen noted that one difficulty encountered with new lawyer assistance programs is the lack of knowledge of the programs' existence. Advertisement is crucial to getting underway. One mode of attack is to ensure that county bar associations publicize lawyer assistance organizations and that they encourage law firms to institute a policy on the issue.

1. Tell — of your deep care and concern — that you are here because of it.
2. List in writing specific incidents connected with alcohol/drug use where —'s behavior caused you concern; describe current behavior and conditions that continue to cause concern.
3. Present these facts in a matter-of-fact way. Let the tone come from the facts.
4. Tell how you felt as a result of —'s behavior.
5. Connect problems and drinking/using. (The subject will probably try to talk about times when alcohol/drugs were not a problem, or blame others for drinking/using.)
6. Avoid opinions and generalizations. You are not in a position to make a diagnosis or identify causes. Stick to the facts.
7. Describe consequences/limits and plans for alternative behavior that are realistic and healthy for you and that you are ready, willing and able to follow through.


36. Wolfson, supra note 33.
37. Telephone interview with Kenneth Hargreen, Executive Director, Lawyers Concerned for Lawyers (Nov. 6, 1991).
Lawyer assistance programs are often supported financially by state and local bar associations and not unlike many public assistance programs their well-being is contingent upon continued funding. To address the budget problems of bar associations, some states, such as Massachusetts, have recently increased registration fees paid by the state's licensed attorneys in order to keep their Lawyers Concerned for Lawyers program functioning smoothly. The establishment and maintenance of these state programs is an essential first step to address this very serious situation.

One must ask how so many lawyers have fallen into this torrent of substance abuse and what prevention methods might be utilized to shut the floodgates. Getting to the bottom of this crisis and creating awareness of the dangers of substance abuse is necessary not only for the general well-being of the lawyers but also to avoid the financial costs of cleaning up after impaired lawyers who have drained clients' security funds or been sued for malpractice. If a therapeutic system for lawyer assistance is not supported and utilized by lawyers, the courts will remain clogged with cases of abusers who have victimized clients and state bars' funds for protection of clients will

39. Id. According to the Massachusetts Board of Bar Overseer, 40-60 percent of all disciplinary proceedings against lawyers stem from alcohol or drug abuse and defalcations by addicted lawyers account for a high percentage of disbursements by the Clients' Security Board to wronged clients. James Bennett, Thieving Lawyers Draining Client Security Funds, N.Y. Times, Dec. 27, 1991, at B16. BBO Chairman James DeGiacomo commented that, "If by assisting attorneys before they get into trouble, LCL is able to prevent but a single sizeable defalcation in a given year, the money it saves the clients' security fund alone will far outstrip the modest cost of funding LCL's operations." Id. Likewise, Fredrick Miller, who runs New York's Lawyers' Fund for Client Protection and is chairman of the ABA's Advisory Commission on Client Protection Funds, notes that with assets of $2 million, New York's fund faces losses in excess of $35 million. "This is generally the story all over the country," says Miller, citing alcohol and drug abuse as part of the problem. Id.
40. A study conducted by the Oregon State Bar Professional Liability Fund showed that 60 percent of a random sample of lawyers entering its lawyer assistance program had malpractice suits filed against them while suffering from substance abuse. ADDRESSING LAWYER ADDICTION, supra note 16. Eighty percent of Georgia client security fund related disciplinary cases involve attorney substance abuse. Id. Fifteen to twenty percent of Texas grievance complaints involve substance abusing lawyers. Id. Half of California's 5,000 legal misconduct cases investigated yearly are linked to substance abuse. David Haldane, Legal Remedies, L.A. Times, June 7, 1990, at E1. For examples of disciplinary actions involving impaired lawyers who have neglected their clients, see Janet Elliot, Bar Stuck with Grievance Ruling, TX.
become obsolete. The causes of such a widespread problem must be examined in order to get to the root of this crisis.

III. DISSATISFACTION AND INSECURITY AMONG LAWYERS

In order to address the alcohol and drug abuse problem within the legal profession, it is necessary to seek out preventive measures in order to contain and to diminish the percentage of impaired lawyers. This problem is one of many indications of the underlying unhappiness among many of those practicing law today. A survey conducted for the Maryland State Bar Association in 1988 found that one-third of the 1000 lawyers polled consider leaving the profession. Fully ninety-four percent said the law is becoming too business oriented and eighty percent felt that an increasingly negative public view of the legal profession is a primary cause of disillusionment. The average respondent worked sixty-hours per week for a $50,000-60,000 annual salary. The lawyers cited case overloads, pressure to specialize rather than practice in a variety of areas, excessive starting salaries, and lack of client appreciation as explanations of their dissatisfaction. Leaders of the Maryland State Bar said lawyers have only themselves to blame for many of the problems mentioned and contend that the situation is "no doubt national in scope rather than restricted to the local bar."

Working under the hypothesis that the general dissatisfaction among lawyers is the underlying concern here, one could argue that the training which lawyers currently receive might be inadequate to prepare them for the pressures of legal work and, in turn, that this is one reason many lawyers turn to chemical substances to escape this professional gridlock. If lawyers are indeed ill-prepared for the system which they enter upon graduation, perhaps the stress which they encounter in their occupation is actually first faced in law school as a part of "becoming a lawyer." An examination of legal education may reveal some clues as to the overall problem.


42. Id. at 8A.
A. Law School Stress: Is It Necessary?

University of Arizona Law School research alluded to earlier may shed some light on the stress within the legal profession. In this study, 320 law students and alumni were tested over a four year period, during 1981-84, to determine the psychological well-being before, during and after a formal legal education. Five different behavioral tests were employed in the study to obtain the most reliable results. With a seventy-seven percent total response rate, the project reported many interesting findings. Individuals were tested before the start of their first year and again after the first exam results were released in the spring. The results showed a three to four fold increase in symptoms such as obsessive-compulsive behavior, interpersonal sensitivity, and paranoid ideation. "Apparently, entering law students developed most of their symptoms within a few months after law school began . . . . The intensity . . . did not change during the next four months," said the study. Repeated measurements of the participants between the first and third year found significant increases in the symptoms of depression, hostility, and anxiety. This carried into the alumni category of subjects where the results showed only a slight decrease in any of the symptom areas just noted. The project determined that:

[T]he longitudinal analysis of symptom development . . . strongly demonstrates the consistency of the research findings. The pattern of results suggests that certain aspects of legal education produce uncommonly elevated psychological distress levels among significant numbers of law students and recently graduated alumni.

Because pre-law subjects did not differ from the general population estimates of depression of three to nine percent, the dramatic leap to seventeen to forty percent among law students and new alumni reveals that law school can cause great psychological and physical distress and an imbalance in one’s personal

43. Benjamin, The Role of Legal Education, supra note 5.
44. The study defined "obsessive-compulsive" as thoughts and actions that recur in an unavoidable or ritualistic manner. "Interpersonal sensitivity" reflects feelings of inadequacy and inferiority that arise as the subject does not adequately respond to interpersonal relationships. "Paranoid ideation" comprises a mode of thinking typified by such concepts as hostility, suspiciousness, and fear of loss of autonomy. Id. at 229.
45. Id. at 240.
46. Id. at 241.
47. Id. at 247.
well-being. Certainly, many who have experienced the law school educational process would support this conclusion.

The signs of distress are prevalent in the corridors of any law school. Law students may get sick more frequently than other students, have more problems in their relationships with friends or family than others, suffer from continuous agitation, gain or lose weight easily, increase their chemical crutches (i.e., caffeine, nicotine, alcohol or drugs), and often exhibit rebellious behavior or bitter attitudes towards other students or professors.  

Stress may be defined as a state of disharmony, or threatened equilibrium. The outcome of stress is termed "strain," which may be a psychological outcome, a physical outcome or both. "Coping" is the process by which one attempts to reduce strain. A person's individual makeup has much to do with how potentially stressful situations will affect him or her. Prolonged exposure to strain can cause what is known as "burnout," or extended debilitation.

As early as 1908, researchers Yerkes and Dodson formulated the theory that moderate levels of stress increase personal...
formance but low or high levels impair performance.\textsuperscript{54} Other side effects of stress include anxiety, reduction in the intake of information and participation in general, and decreased performance in academics on the whole. The side effect of law school stress that is of most concern here is abuse of alcohol or drugs, a frequent method used to cope with one's personal problems, however unsuccessful the abuse may be as a coping device. Not only do students first encounter professional stress in law school, many also turn to addictive substances in order to escape the pressures felt in the law school environment.\textsuperscript{55} Unfortunately, this unhealthy behavior may follow one into professional practice and lead to one becoming an unfit lawyer.

Do law school administrators believe that a pressurized environment is necessary for students to prepare for their future careers? This question has been asked by many different writers and researchers concerned about the effect of the "law school syndrome," and its ineffectiveness in training students for lawyering in the real world.\textsuperscript{56} Emerging from a legal education with an idealized view of the law or an inability to deal with stress may be the quickest route to dissatisfaction and depression early in one's legal career. Some argue that the growing competitiveness and specialization within the legal world is not mirrored in the current theoretical approaches to legal education offered at most institutions.\textsuperscript{57} The profession of law is

\textsuperscript{54} See Robert M. Yerkes & John Dodson, The Relation to the Strength of Stimulus to the Rapidity of Habit Formation, 18 J. Com. Neurology & Psychol. 459 (1908); see also Glesner, supra note 48, at 635.

\textsuperscript{55} A 1991 study by the Association of American Law Schools polled 13,000 law students at 19 law schools, 3,400 of which responded, to determine the prevalence of substance abuse among students and faculty members. Eighty-one percent said they had used alcohol in the previous month, eight percent said they had used marijuana and 1.3 percent said they had used cocaine. Of those students who used one or more of these substances, 62 percent said they did so to relax or relieve tension, 12 percent said they did it to get away from problems, and eight percent said they acted to relieve anger or frustration. Most students said they were not aware of their law school's substance abuse programs, and most said they would not seek help unless they were assured they would not get reported. Ken Myers, AALS Surveys Find Cause for Concern, Nat'L L.J., Mar. 22, 1993, at 30.


\textsuperscript{57} Alex Johnson, Professor of Law at the University of Virginia, looks to the history of legal education as to why law schools are so out of touch with the realities of legal practice. Once accused of providing training only, and
quickly evolving into the business of law.\textsuperscript{58} The growth of firms and emphasis on profitability has changed the way firms operate and the relationship of lawyers within a firm.\textsuperscript{59} Yet law schools seem less concerned with the legal profession than ever before.\textsuperscript{60} Legal education encourages students to explore the relationship between law and other academic disciplines without exploring the challenges students will face in the legal profession such as the structure of megafirms\textsuperscript{61} or dealing with actual clients.\textsuperscript{62} Without exposure to the reality of law practice today, law students are ill-prepared to meet their future.

Legal educators and administrators should examine alternative courses and modes of teaching which might alleviate some of the inconsistencies between the accomplishment of a law degree and the skills necessary to practice law. Law schools may not be able to change the economics of law practice; they thus unworthy of a place within the modern university, law school professors began to identify themselves as academicians first and foremost. Professor Johnson observes:

Consequently, legal educators have come full circle. . . . Law schools, at least elite law schools, now attempt (poorly, I believe) to educate their students in economics, political philosophy, hermeneutics, and epistemology. Perhaps we are doing a splendid job of preparing our best and brightest students to become law professors, molded in our own image. However, for the remaining students something is missing, and I contend that the something may be the study of legal doctrines and legal rules beyond the first year of law school and the study of the legal profession \textit{qua} legal profession.


59. \textit{Id}.

60. \textit{See} Johnson, \textit{supra} note 56, at 1243.

61. \textit{Id} at 1257-58. Professor Johnson envisions a course to study the legal profession as a regulated industry and what that entails for the practice of law. For example the relationship between the size of the law firm and the services the firm provides, the form and function of a partnership, and the social significance of a large firm practice.

62. \textit{See} John E. Sexton, \textit{Preconditions of Professionalism: Legal Education for the Twenty-First Century}, 52 MONT. L. REV. 331, 336-40 (1991). Professor Sexton makes a very persuasive argument for the alteration of legal education to include the "situation method," or clinical instruction to put the student in actual situations where lawyering skills may be practiced. NYU School of Law currently requires all first-years to enroll in "Lawyering," a course developed by Professor Anthony Amsterdam which is based on a series of exercises based on fact patterns that simulate traditional lawyer's work: conferring with clients, negotiating with adversaries, preparing informal advocacy, and examining a witness at trial. \textit{Id} at 338.
can, however, help students shape realistic expectations about lawyering, and they can improve the academic environment. A lawyer must play many different roles: counselor, investigator, negotiator, advocate, and even moral authority. These abilities should be fostered in law school to avoid producing new lawyers who learned in law school only to be insensitive and competitive and to expect a large salary upon graduation. Law professors have great influence in shaping students' values and priorities, introducing ethical responsibilities, setting standards of professional courtesy, and providing a positive vision of the attorney's role in our society. By providing students with greater information and more feedback in their legal studies, putting them in realistic lawyering situations, addressing the psychological aspects of lawyering in the curriculum and making personal and institutional support systems more available to them, the professors and administrators of law schools could reform what is often an unnecessarily intimidating and mysterious experience into a healthy and fruitful pursuit.

By alleviating the unnecessary stress which law students currently endure and providing more exposure to the reality of law practice, law schools could assist new lawyers to make an easier adjustment into their occupation and thus relieve some of the pressure under which lawyers function. Consequently, this would reduce the chances of one becoming addicted to chemical substances during law school, and likewise, the chances that a new lawyer enters the profession with an addiction or develops a substance abuse problem later in practice. Law schools should be more aware of the personal well-being of their students, not only to ensure a positive educational experience, but to produce competent and able future lawyers who are prepared for the challenges of their chosen career.

B. Stress in the Legal Profession Leads to Lawyers' Addictions

Complaints of long hours and high competition are frequent among new attorneys and unfortunately many develop addictions to chemical substances as a coping mechanism to job-related stress. Dr. Brian Gould, a forensic psychiatric consultant in San Francisco, has heard these same gripes quite often from attorneys and has noticed in many of his clients a disturbing sense of emotional numbness, fatigue, loss of motivation, depression and marked irritability, popularly referred

63. *Id.* Professor Sexton notes, "[I]n real life, a lawyer constantly finds herself in circumstances where she must serve as society's conscience.

64. See Glesner, *supra* note 48, at 642.
to as "burnout." Dr. Gould identifies four key elements of being a lawyer that predispose an individual to "burnout:" law school, an impaired sense of autonomy, role ambiguity and personal depletion.66

As a profession, lawyers are no more subject to substance abuse than any other profession with high stress. The legal environment, however, can worsen any tendency one might have to alcoholism or other forms of substance abuse.67 For example, lawyers are at the mercy of economics, their clients, court calendars, and judges' whims. This impedes their ability to control their work flow. Associate advancement is controlled by firm partners. Legal work can often contain moral ambiguity and elicit much emotion. The constant pressure which a lawyer faces, combined with typical twelve- to fourteen-hour days at work, is the perfect scenario for the development of an addiction to alcohol or drugs. The Washington State study alluded to earlier found eighteen percent of lawyers practicing two to twenty years were problem drinkers and twenty-five percent of those who had practiced twenty years or more were dependent on alcohol.68 Though cocaine addiction was found to be less than the national average at one percent, the figure for use of the drug at some point was twice the national average at twenty-six percent.69

The law firm environment is not a place where substance abuse would be difficult to hide, nor are lawyers particularly inclined to question other lawyers' private affairs. For example, contributing to the problem of lawyer addiction is that lawyers are suited to be "unconscious enablers," blocking the alcoholic's or drug abuser's perception of his or her illness by

65. Brian Gould, Burnout: Law and Disorder, Nat'l. L.J., Apr. 30, 1984, at 13. Dr. Gould notes that medicine and the other clinical "helping professions" found the concept of burnout useful for explaining the prevalence of suicide, alcoholism, drug addiction and vocational demoralization in some "high-risk" areas. He says that only recently has the legal profession begun to develop scientific interest in its own cases of emotional burnout.

66. Id. Dr. Gould believes that the incongruity between an attorney's level of responsibility and his or her power to control a situation, lack of fairness in measurements of performance or the difficulty of setting reasonable personal expectations, and imbalanced levels of devotion to one's work and rewards gained in return lead to the perfect scenario for occupational burnout.

67. See Haldane, supra note 40, at E1.

68. Benjamin, The Prevalence of Depression, supra note 4, at 241. Again, it is nearly impossible to expect accurate percentages of drug abuse in the legal profession.

69. Id.
solving scheduling problems, facilitating arrangements for, or simply ignoring a colleague who is having "personal problems." But a lawyer's substance abuse should not be viewed as a private matter, particularly when a member of one's law firm is involved, because if a lawyer is impaired by chemical substances, clients are inevitably being affected. Beyond realizing the urgency of the epidemic of substance abuse among lawyers and judges, one must consider how addicted lawyers affect their clients and the profession.

Competence and professionalism are two terms which are often tossed around as characterizations for what is lacking in the legal profession, terms which summarize what an impaired lawyer is missing. "Competence" is defined by Model Rule 1.1 as the legal knowledge, skill, thoroughness, preparation and efficiency necessary for representation of a client. Lawyers who are impaired by the effect of alcohol or drugs cannot competently handle their clients' matters. Thus, substance abuse among lawyers threatens both the reality and the public's perception of the legal profession, and this discernable percentage of lawyer incompetence at large is unacceptable. Competence traditionally underpins the legal profession's claim to monopoly and self-regulation, as well as protecting the prestige of the profession and respect for the legal system. Thus, competence is a fundamental requirement of a lawyer and is crucial to a qualified bar membership.

Similarly, professionalism is at the core of the debate over the decline of lawyering, particularly applicable to the case of impaired attorneys. The movement to recall lawyers to professionalism involves a moral argument, in that being a professional has to do with being a good person. However, the

71. See MODEL RULES, supra note 12, Rule 1.1.
75. See Thomas L. Shaffer, Inaugural Howard Lichtenstein Lecture in Legal Ethics: Lawyer Professionalism As a Moral Argument, 26 GONZ. L. REV. 393 (1990-91). Professor Shaffer argues that there are two aspects to professionalism as a moral value. One aspect says to "be professional," that is, to lead a virtuous life as a lawyer. The other aspect calls to a person to "be in the
reach of this movement is, inherently limited by the current state of the legal profession and its frequent emphasis on financial gain. As the law becomes more specialized and the "megafirms" grow, more and more lawyers will become business technicians with no particular desire to preserve a special civic role for lawyers. One might argue that the business of lawyering today actually impedes one's ability to lead a truly ethical career. A suggestion for professional reform is the "personal responsibility model," which actually deprofessionalizes the lawyer by requiring him to justify his behavior morally and socially without relying on a code applicable only to lawyers. Inspiring literature critical of the state of legal education, the professional responsibility model is well suited to dealing with the problems of the addicted lawyer because it recognizes the lawyer's potential to exploit clients and requires that lawyers act as autonomous and responsible human beings. From another perspective, Professor John Sexton argues that we must include in the preconditions of legal professionalism a sense that each lawyer belongs to a professional community which bears a special responsibility to act as society's conscience. An impaired lawyer is not fit to make such decisions, nor is a lawyer who ignores a colleague who is suffering from addiction. Both theories suggest that a lawyer should not "snitch" on a colleague who abuses drugs or alcohol strictly because the rules say so, but should seek medical and psychological assistance for that lawyer out of personal decency and respect for that other person. An ethics system made up of rules and codes does not assist lawyers caught up within an addiction, nor does it seem to instill in lawyers a sense of mutual concern. It is the obligation of the individual practitioner to act.

76. See Sexton, supra note 61, at 335.
77. See John Leubsdorf, Three Models of Professional Reform, 67 CORNELL L. REV. 1021, 1045 (1982). This model "calls on lawyers to stop hiding behind rules, roles, and institutions and start taking responsibility for their actions."
78. Id. at 1046-47.
79. Sexton, supra note 61, at 336.
80. As Professor Thomas Shaffer contends, "[T]he useful in legal ethics to focus on the good person, on people rather than acts and on good and bad rather than right and wrong. Focus on the good person will imply a prominence for relationships in ethics." Thomas L. Shaffer, Legal Ethics After Babel, 19 CAP. U. L. REV. 989, 1001 (1990).
Perhaps recognition of the lawyer's responsibility and underlying connection to his or her colleagues would be a starting point at which to reform lawyering today. At its foundation, the large law firm is still an organization of men and women with the purpose of carrying out a professional craft. Relationships within a firm are based upon personal authority and personal privilege is based on professional success.\(^8\) With this in mind, the approach might be to focus on the legal profession as a linkage of individuals with similar pressures, difficulties and interests and perhaps of law firms as "professional friendships," as most of them begin.\(^8\) As Professor Thomas Shaffer suggests, an important benefit of being in the legal profession is the payoff which is interpersonal, a colleagueship with reference to tasks, work and service for pay, but more importantly, "internal good."\(^8\) This internal good is a good specific to the practice of law and can only be identified by the experience of participating in the practice and contributing to the common good, an achievement for the whole community of lawyers, such as the pursuit of the virtues of "truthfulness, justice and courage."\(^8\) It is this internal good which must be sought in order to improve legal professional relations.

Seeking the internal good to be gained from the practice of law requires lawyers to concern themselves with the common good of the community of legal professionals and the society in which they practice. Impaired lawyers and lawyers who do not assist impaired lawyers impede the legal profession's progress toward increased competence and professionalism among its members. One need only read the disciplinary decision reports to realize that the reputation of the legal profession is sagging under the weight of addicted lawyers.\(^8\) Overall professional satisfaction among legal practitioners cannot be achieved while a significant percentage of lawyers are addicted to chemical substances. The crisis of impaired lawyers affects all lawyers.

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82. Shaffer, *supra* note 74, at 407.
83. *Id.* at 408 (citing ALASDAIR MACINTYRE, *AFTER VIRTUE: A STUDY IN MORAL THEORY* 190-91 (2d ed. 1984)). Internal good is sought here as opposed to external goods such as money and recognition.
84. *Id.* at 408-09.
85. For example, see the list of disciplined attorneys in the "Discipline" section of *California Lawyer*, published monthly by the State Bar of California.
IV. Recommendations for Addressing Substance Abuse

For those within the legal profession who have already fallen prey to alcoholism or drug abuse, firms and bar associations must mobilize to provide assistance. There are numerous methods of identification, counseling and prevention which may be implemented beginning at the law school level and extending into firm practice.

First, law faculty should make serious strides to improve the educational environment. By modifying or doing away with the ineffective and intimidating "Socratic" method, professors can address positive instructional methods, useful grading procedures and closer evaluation of students' progress.86 Courses geared toward the practical aspects of lawyering should become part of every law student's curriculum. Communication between faculty and students should be opened up by regular consultations with students. Options for structuring individual programs of study should be offered to allow personal interests to be explored.87 Second, support systems such as informal social events with faculty, orientation programs which include spouses and children, student mentors, and formalized connections to university counseling centers, are crucial to a student's adjustment to law school life and the realization that the three years need not be traumatic. Law school administrators should encourage non-alcoholic student social functions. Through professional responsibility presentations, mock trials for professional responsibility violations, drug and alcohol resource areas, and the availability of addiction counseling, law students will at least be familiarized with the signs and effects of substance abuse and will be better able to direct help if the problem should arise.88 Law schools should play a fundamental part in the effort to improve both the state of the profession and awareness of chemical abuse early on in the lawyer's career.89

86. See Johnson, supra note 56, at 650.
87. Id. at 657.
88. Another recent study by the American Association of Law Schools reviewed 103 law schools' drug policies. Professor Edward J. Imwinkelreid of the University of California at Davis School of Law found that the policies are usually general documents on substance abuse, rarely discussing medical risks and inadequately outlining counseling and treatment programs. Ken Myers, Dilemma of Drugs on Campus, NAT' L.J., Mar. 22, 1993, at 31.
89. There is also the issue of confidentiality of students' substance abuse problems with regard to the character and fitness forms which every state's supreme court or board of bar examiners submits to law school deans. Most law schools currently have no policy on this matter and many bar
Additionally, all large and mid-size law firms should implement individual substance abuse policies. Many state bars have composed model law firm drug and alcohol policies which firms can institute as a first step in dealing with impaired lawyers. Firm management should take an active role in monitoring attorney job performance levels, looking for impairment signs, publicizing the existence of that state’s lawyer assistance program, promoting the confidentiality provisions, and developing a uniform policy to deal with the problem when the need arises. Some firms have hired outside professionals to conduct interviews with lawyers to assess the nature and scope of any problems, provide counseling and help form an effective firm policy. Lawyers should be encouraged to seek out the bar’s confidential counseling programs without fear of punishment. It is likely that a lawyer will not admit to chemical dependency if he or she believes disbarment or job loss may occur. Many state bar LAP’s will visit firms to present programs on lawyer substance abuse, particularly for mandatory continuing legal education credit. Law firms have a responsibility to assist their members, particularly to protect their clients, but also to form a healthy work environment and contribute to the overall improvement of the legal profession.

Basic standards for LAP’s should be developed by the ABA while allowing states to vary their programs as they see fit. States’ continuing legal education programs should include an effective course dealing with substance abuse, particularly to reach solo practitioners. All jurisdictions should adopt the

applicants have no idea that this can reflect on their assessment by the state bar. See id. at 1, 30-31.

90. See Pennsylvania Bar Ass’n, Recommendation, Model Law Firm Drug and Alcohol Policy, adopted May 15, 1990, by the House of Delegates, infra at Appendix A.

91. A common mistake firms make is to require that lawyers and staff report substance abuse problems to the managing partner or management committee. This is an unrealistic expectation due to fears of repercussions that will follow. Vernon Barclay, Substance Abuse Problems Need to be Handled Kindly, Mich. L. Wkly., Apr. 13, 1992, at 21.

92. Sandra Goldsmith, The Lawyer Blues, Student Law., Feb. 1992, at 4 (consulting firms like New York’s Harris, Rothenburg International provide counseling and referrals for employees and dependents for the almost 20 major firms that contract with them).


94. California’s Lawyer Personal Assistance Program routinely visits California law firms to discuss the signs and effects of substance abuse in the legal profession as part of that state’s MCLE program.

extension of confidentiality for lawyer-counselors in lawyer assistance programs. There is much to be done and each state’s bar should ensure that it is effectively addressing its impaired lawyers’ needs in order to serve this nation’s lawyer population.

On a narrow focus, law schools and bar associations should make a concerted effort to educate and caution their participants to the signs and dangers of substance abuse. By rehabilitating those who are suffering from alcoholism or drug abuse, and pursuing prevention methods the legal profession will start in the right direction in addressing a problem which cannot be ignored. Considering the big picture, the numbers of impaired lawyers should also send out a message to legal educators and professionals that there is a prominent element of dissatisfaction among lawyers today. This discontent could have a disastrous effect on the status of the profession as more and more clients are harmed by impaired lawyers.

V. CONCLUSION

All lawyers have an ethical duty to be aware of the problem of impaired lawyers. The effect that substance abuse has had on disciplinary actions, particularly client security fund theft, is a reflection on the legal profession in general, requiring all lawyers to be cognizant of the situation. Many practitioners are presently in contact with at least one lawyer who suffers from chemical addiction. Legal professionals should be held to a higher standard of regard for one another’s well-being than in other occupations because of the ethical responsibilities which all lawyers have. But beyond legal ethics, awareness is at the least a matter of compassion and concern for one’s professional colleagues and friends. The public’s image of the profession will be aided by lawyers playing a greater role in assisting one another and attempting to work out the changes necessary to alter the stress and pressure in the workplace.

The legal profession cannot afford to deny the existence of substance abuse among its practitioners. The recognition of

Currently, only California, Ohio and New Hampshire have instituted such chemical dependency programs. Contra Marvin Frankel, Curing Lawyer’s Incompetence: Primum Non Nocere, 10 CREIGHTON L. REV. 613, 627-32 (1977) (arguing that mandatory continuing legal education is ineffective, trivial and unnecessary for the majority of lawyers). Unfortunately, lawyers frequently complain about the lack of useful or new information presented in MCLE programs. State bars should develop substance abuse programs which emphasize the seriousness of this problem in the legal community, as well as practical intervention and prevention methods which apply to all lawyers.
chemical addiction among lawyers requires the examination of deeper systematic faults within the profession. In order to avoid further decline in lawyer attitudes and attrition from the legal profession, law schools should begin to inform students about the realities of the practice of law so that students can make informed choices about their future careers and law firms should begin to accommodate the psychological needs of associates and partners. The survival of lawyering as a respected profession requires no less.
APPENDIX A
MODEL LAW FIRM DRUG AND ALCOHOL POLICY
PENNSYLVANIA BAR ASSOCIATION HOUSE OF DELEGATES (1990)

The firm regards alcoholism and drug addiction as an illness and desires to assist employees suffering from such illness to obtain effective treatment.

The firm regards the unauthorized possession and distribution of controlled substances as a crime and will discipline any employee proved to be involved in such a crime whether or not such employee is addicted to drugs. Discipline will depend upon the circumstances of each case.

The impairment of any employee’s performance due to drug or alcohol addiction is deemed to be the firm’s business, not a reserved aspect of one’s private life. It is the firm’s policy to encourage and offer qualified medical assistance to any employee who appears to the firm management to suffer from such illness.

No employee will be disciplined for impairment due to any illness so long as the employee cooperates with a qualified treatment program agreed to by the firm and the employee. The employee’s choice of treatment will be accepted only if approved by a specialist retained by the firm after consultation with the employee’s personal physician. Any treatment undertaken in accordance with this policy shall be entirely confidential and no disclosure by an employee to any treatment personnel will be reported to the firm nor will any such disclosure be available to any legal authority whatever except in accordance with the requirements of applicable law.

The firm will name a supervisory employee as administrator of this policy and as the firm’s representative in all matters pertaining to its execution. No other person within the firm shall be informed of any consultation or referral under this policy without the consent of the affected employee except as is necessary to complete the ongoing work of the affected employee.