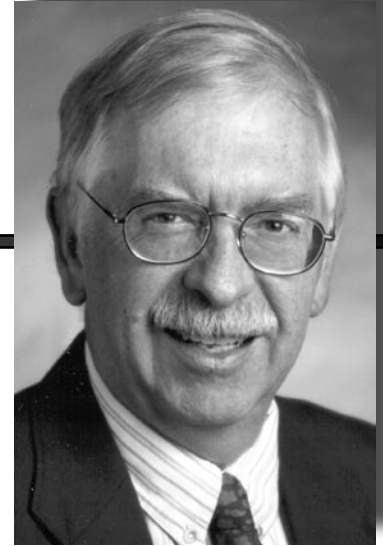


PRESIDENT'S COLUMN

DRUGS, ALCOHOL, MENTAL HEALTH, AND THE VERMONT LAWYER



"Studies done by various state Lawyer Assistance Plans have conclusively demonstrated that early intervention results in lower disciplinary and malpractice numbers, protecting the public, and saving lawyers' lives and careers."¹

Statistics relating to alcohol and drug abuse among lawyers are scary. Depending on which age groups are included in the survey, between 7.5 percent and 9.5 percent of adult Americans are alcohol dependent or otherwise involved in alcohol abuse.² In 2004, the United States Department of Health reported that 8 percent of the population over 18 had one major depressive episode during the year.³ By comparison, the *Journal of Law & Psychiatry* reported that a survey of 801 lawyers in the State of Washington found 19 percent suffered from depression and 18 percent were problem drinkers.⁴ According to an article in *Ohio Lawyer*, "[s]ome figures indicate that the rate of alcoholism among lawyers is nearly twice that of the whole population."⁵ A Johns Hopkins University study found that lawyers, when compared to twenty-seven other occupations, were the most likely to suffer from depression.⁶

Given the increasing pressures from contemporary legal practices, this is understandable. At the same time that increasingly sophisticated clients are demanding more and faster services, they are probably imposing downward pressure on billing rates and charges. Zealous efforts to achieve client goals often involve confrontation with opposing parties and counsel. Matters involved, whether defense of a criminal accused, representation in civil litigation, resolution of a family dispute, negotiation of a business contract, or legal work on any number of other issues often involve high stakes to the client and tends to "go home" with the lawyer at day's end. Malpractice cases against lawyers are more frequent and the cost of liability insurance adds to the lawyer's ever-increasing overhead. So-called multidisciplinary

practices compound already increased competition from other lawyers. Tension is ever-present among the need for revenue, requirements for CLE, obligation for pro bono, demands of family, and the hoped-for possibility of a few moments for oneself.

Fortunately, most are able to cope with these pressures; indeed, many thrive on them, at least for a time. Others may find themselves leaning towards drugs and alcohol or dealing with mental health issues, all of which take a toll on their practices, family, and personal lives. I will leave it to others to comment on the personal and family tragedies such developments present—there are certainly many sad stories to tell. I will focus on the damage such behavior brings to our colleagues, clients and profession. According to a report from the ABA Young Lawyers Division Commission on Impaired Attorneys, "[a]lcoholism and other chemical dependencies amongst our colleagues are much more than a personal problem for the individual lawyer. Addicted attorneys and judges put stress on our profession as a whole by shifting the work load to others attorneys and judges in their practice or court, and they do a disservice to their clients due to their impaired capacity to provide competent advice and counsel."⁷

It should come as no surprise to learn there is a demonstrable relationship between such problems and incidents of attorney discipline and malpractice. The Oregon Attorney Assistance Program, an offshoot of the Oregon State Bar Association, recently completed a ten-year study of fifty-five recovering attorneys, who had practiced at least five years before and after "their sobriety dates." In the five-year period before sobriety, the fifty-five lawyers suffered eighty-three malpractice claims. The incidence of malpractice claims dropped to twenty-one during the five years following sobriety. These statistics represented a 30 percent annual claim rate before sobriety and an 8 percent rate after. Interestingly,

this 8 percent post-sobriety rate was dramatically lower than the average malpractice rate of all Oregon lawyers, 13.5 percent. At an average cost of \$16,500 per malpractice case, the study concluded the bar saved \$200,000 a year from the recovery program for this group.⁸

There was also a corresponding improvement in disciplinary statistics. For the five-year period before sobriety, this group of lawyers had seventy-six disciplinary complaints (28 percent per year) filed against them. During the five-year post-sobriety period, the complaints dropped to twenty (7 percent per year). This 7 percent post-sobriety rate compared favorably to the over-all bar average of 9 percent.⁹

According to the earlier-cited article in *Ohio Lawyer*, the state bars of California, Minnesota, and New Jersey estimate that two-thirds of disciplinary complaints in those states result from substance abuse.¹⁰ A report prepared by the ABA Young Lawyers Division Commission on Impaired Attorneys says "[s]tudies from the Washington State Bar Association found that 21% of lawyers in that state are addicted to alcohol or other drugs as compared to 10% of the general population, based on figures from the National Institute on Alcohol and Drug Abuse. Findings from California and Georgia estimate that 60% to 80% of lawyer discipline cases are the result of addiction."¹¹

Since September 1, 2002, Maine has had an assistance program imposed by rule of the Maine Supreme Judicial Court. The Maine Bar Association, a mandatory bar, has five thousand members. In its 2005 report, the Maine Assistance Program reported handling

a total of eighty referrals, consisting of thirty for alcohol, twelve for alcohol and depression, ten for alcohol and stress, fourteen for depression and stress, one for a diagnosis of bi-polar disorder, three for complaints attributable to stress and physical health, two for drugs, three for family tragedies, two related to retirement issues, and one for post-traumatic stress disorder.¹² Given the similarity of our membership and practices to those in Maine, this may be a good predictor of the types of issues facing Vermont lawyers.

What can the bar do to help? Since 1986-87, the Vermont Bar Association has sponsored a Lawyers Assistance Program, largely through the initiative and hard work of former VBA President John Webber of Rutland. Through cooperation of the Boston office of Lawyers Concerned for Lawyers (which provides a toll-free number for lawyers needing help) and with the efforts of John Webber and a few dedicated volunteers, the Vermont Lawyers Assistance Program has provided referrals to professional counselors as well as ongoing help and encouragement towards recovery. Since the late 1980s, ABA's CoLAP has been working with state bars to assist development and improve effectiveness of lawyer assistance programs (LAPs) sponsored by state bars. The common functions of LAPs are to (1) assist lawyers, law students, and judges pursue recovery from chemical dependency or mental health problems, (2) educate the bench and bar, and (3) act as monitors of recovery programs imposed by disciplinary authorities.

For the first twenty years of its history, the VBA LAP has operated on a shoestring and has been limited in what it could do. The recent series of high-profile attorney defalcations has focused our attention on damage that can be done to clients and to the reputation of our profession by attorney misconduct. The ever-increasing cost of malpractice insurance draws our attention as well. Whether the notorious cases of the last few years could have been prevented with a more active LAP program we will never know. However, the statistics quoted in the first few paragraphs demonstrate a measurable economic justification for an expansion of our LAP, similar to that carried out in our sister-states. As pointed out by the CoLAP report on Vermont, "[g]iven the statistics developed by lawyer assistance programs around the country that

between 50% and 75% of all disciplinary complaints (including those in which no probable cause is found) have some relationship to an impairment issue, the fact that of the 242 new cases filed with the Professional Responsible Board in fiscal 2002, none were referred to VTLAP almost certainly means that some Vermont lawyers are not receiving the treatment and rehabilitation they need, and which might prevent a future and more serious complaint from being filed."¹³

As this article is prepared, the VBA Board of Bar Managers and our Executive Director, in consultation LAP Chair John Webber, are exploring what it would cost to add resources to the program and how those costs could be carried. Issues abound. If the VBA organizes the program, should it be limited to VBA members¹⁴ and, if not, what is a fair way to share the cost with non-members? If we contemplate more service than can be provided by volunteers, do we do this with in-house staff or do we contract with a professional organization such as an existing employee assistance program? What services should we provide? Clearly, we need to be able to steer people to appropriate alcohol and drug counselors as well as to mental health practitioners. Do we try to provide resources for office and time management issues? Surely the ability to organize one's practice to comply with Rules 1.15, 1.15A, and 1.15B (trust accounts) is essential to a well-run practice. If our LAP will serve as a monitor for people subject to discipline, how will recovery programs be developed, approved, and followed up? Recognizing the need for confidentiality in our program, how do we collect adequate data to measure our results? How do we secure adequate input from our members, the Supreme Court, the Professional Responsibility Board, and staff? Recognizing whatever we do will undoubtedly need fine-tuning over the years, what arrangements do we make to review and evaluate the program?

As our planning progresses, we will keep the bar advised. Comments and suggestions are encouraged. We hope to have our plan in place by year-end and look forward to the improved level of service the VBA Lawyers Assistance Plan will provide to the bar, to our community, and to the measurable benefit it will provide to the Vermont bar.

¹ ABA COMM'N ON LAWYER ASSISTANCE

PROGRAMS, VERMONT LAWYERS ASSISTANCE PROGRAM REVIEW (June 2003).

² National Survey on Drug Use and Health (2004), available at <http://oas.samhsa.gov/NSDUH.htm#NSDUHinfo>.

³ <http://www.medicalnewstoday.com/medicalnews.php?newsid=34173>.

⁴ G.A.H. Benjamin, E.J. Darling, & B.D. Sales, *The Prevalence of Depression, Alcohol Abuse, And Cocaine Abuse Among United States Lawyers*, 13 J.L. & PSYCHIATRY 233 (1990).

⁵ James Cushman, *Substance Abuse in the Profession: Facing the Facts*, OHIO LAWYER, Fall 1998, at 8.

⁶ W.W. Eaton, et al., *Occupations and the Prevalence of Major Depressive Disorder*, 32 J. OCCUPATIONAL MED. 1079 (1980).

⁷ ABA YOUNG LAWYERS DIVISION COMMISSION ON IMPAIRED ATTORNEYS, REPORT TO THE HOUSE OF DELEGATES, Feb. 1995, available at <http://www.abanet.org/legalservices/downloads/colap/clesubstanceabusepolicy.pdf>.

⁸ Ira Zarov & Barbara S. Fishleder, *New Study Shows Recovery Saves Dollars*, ABA COMM'N ON LAWYERS ASSISTANCE PROGRAMS, HIGHLIGHTS, Spring 2002.

⁹ *Id.*

¹⁰ Cushman, *supra* note 5.

¹¹ ABA YOUNG LAWYERS DIVISION COMMISSION REPORT, *supra* note 7.

¹² REPORT OF THE MAINE ASSISTANCE PROGRAM FOR LAWYERS AND JUDGES (2004-2005).

¹³ ABA COMMISSION, *supra* note 1.

¹⁴ There are currently 3,003 licensed lawyers in Vermont, including active, inactive and "exempt" judges. Of those lawyers, 627 are out-of-state and 2,170, including 1,924 in-state lawyers and 246 out-of-state, are VBA members. Of the in-state lawyers, 81 percent are VBA members. Of all lawyers licensed in Vermont, 72 percent are members.

