

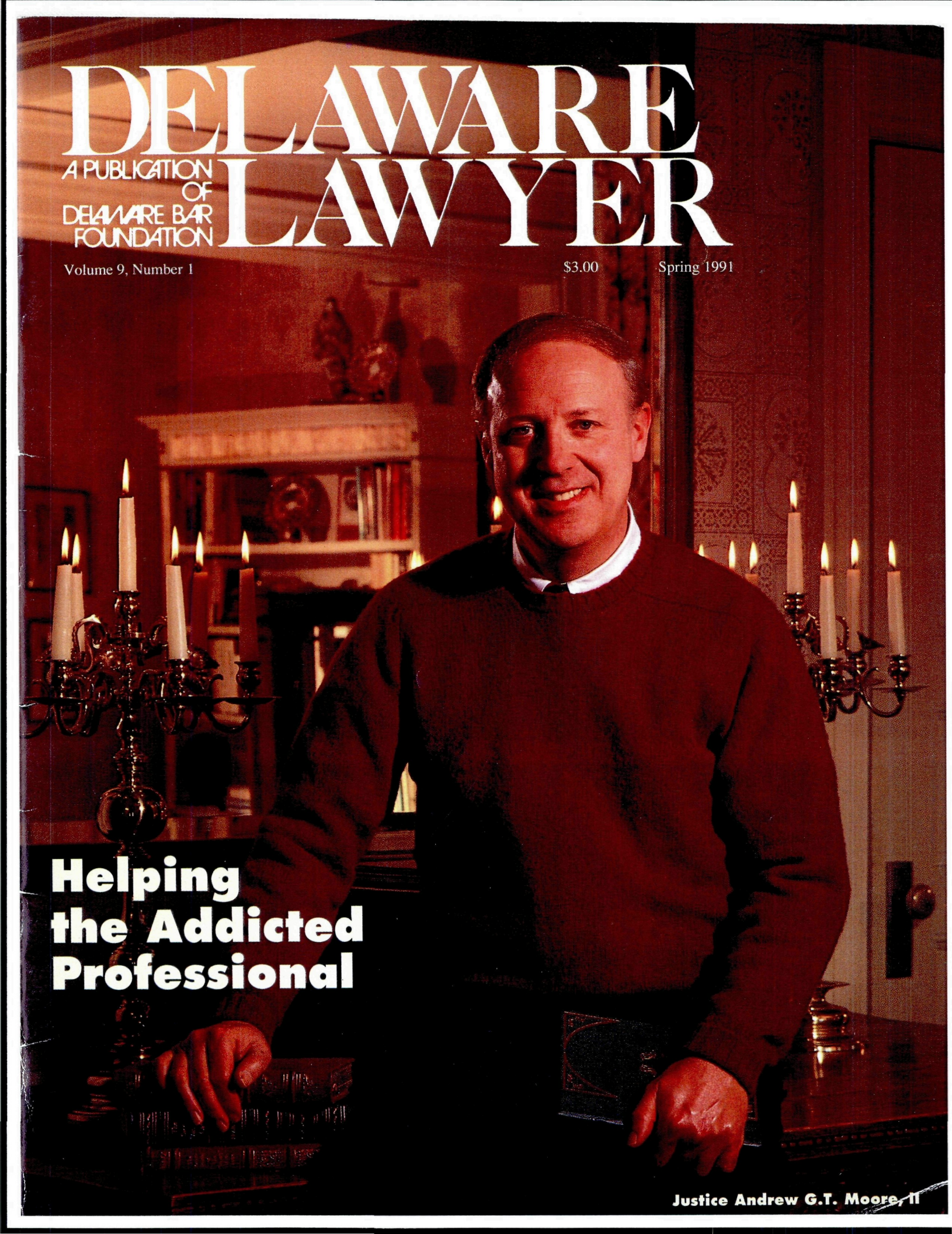
# DELAWARE LAWYER

A PUBLICATION OF  
DELAWARE BAR  
FOUNDATION

Volume 9, Number 1

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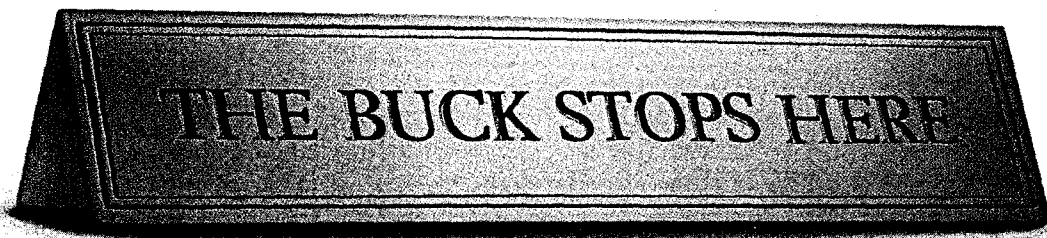
Spring 1991

A man with short brown hair, smiling, stands in a dimly lit room. He is wearing a dark, textured sweater over a white collared shirt. He is positioned in front of a large bookshelf filled with books. To his left and right are ornate candelabras with several lit candles, casting a warm glow. His hands are resting on a dark surface in the foreground, possibly a desk or table. The overall atmosphere is professional yet intimate.

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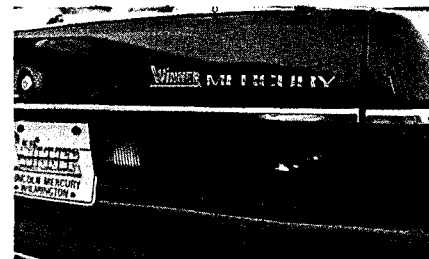
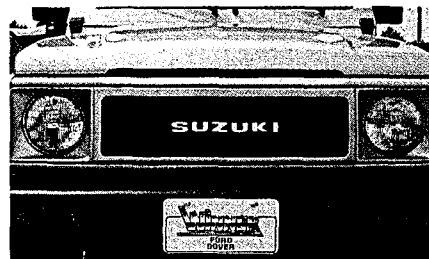
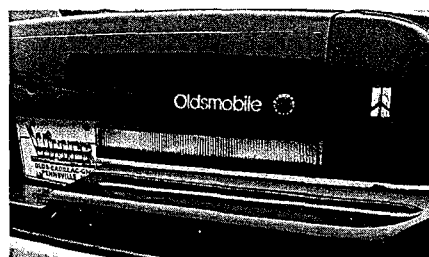
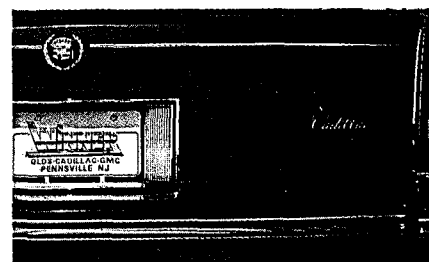
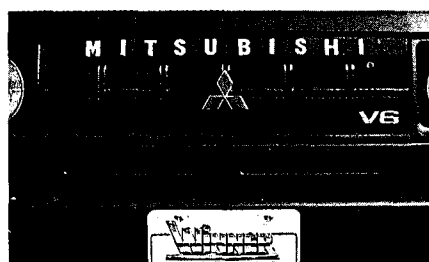
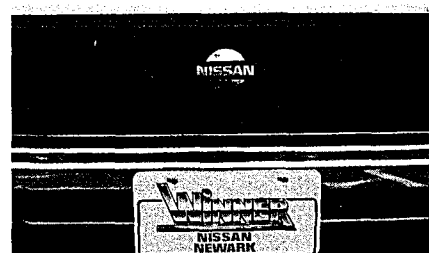
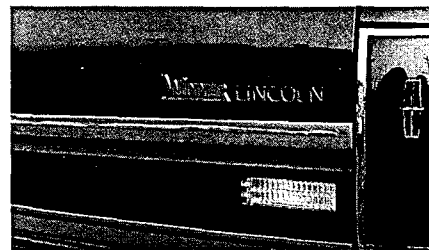


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OF  
DELAWARE BAR  
FOUNDATION

VOLUME 9 NUMBER 1

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Cover Photograph by Jim Graham

**Cover:** The Honorable Andrew G. T. Moore, II, Associate Justice of the Supreme Court of the State of Delaware, whose article begins at page 6 of this issue, has been instrumental in establishing and furthering the wise and humane program he describes, whereby the organized Bar seeks to restore impaired lawyers to health and professional competence. His description of the recent evolution in attitudes and responses to addiction points the way to dealing more effectively with the seemingly intractable problem of substance abuse.

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## FROM THE EDITOR

*Everyone knows the problem of substance abuse is not of recent origin. It is also a common perception that we have no really certain answers to the insidious, often deadly, effects of abuse. Clearly the trite cliché, "Just say no", is an utterly inadequate response.*

*It is beyond the resources and the scope of this publication to attempt to present all the facets of this convoluted topic. Probably, for some this issue of DELAWARE LAWYER will be disappointing. We have ignored controversial issues of policy. We take no position on vexed questions of legalization, interdiction of supplies, funding of anti-abuse programs, penology, economics or publicity. In spite of so many negatives we nonetheless believe we have a contribution to make.*

*As a professional journal we look first to the special problems of the committed professionals who are directly involved with those who are the victims - and who may themselves be victims. For professionals do have unique temptations. They have opportunities of access to drugs of all kinds, opportunities available to few others. They are subject to pressures of work, beguilement of possible secret payoffs, identification with the troubles of their clients or patients, and more.*

*No one should believe that members of the various professions are impervious to pressures. All of us are vulnerable. How, then, do we temper our essential attention to the upholding of professional standards with an understanding of the difficulties of some of our colleagues? What too, are the special considerations entering into the thoughts of those dealing in any capacity with the unfortunates whose addictions have gotten them into trouble? Are there special insights to be derived from the experiences of those who have suffered addiction and then recovered? Is there a difference in approach as between the medical and legal professions?*

*These are some of the problems we address in this issue. We promise no definitive answers; we do believe we offer more than "just say no." We hope you will agree.*

*Carroll Poole*

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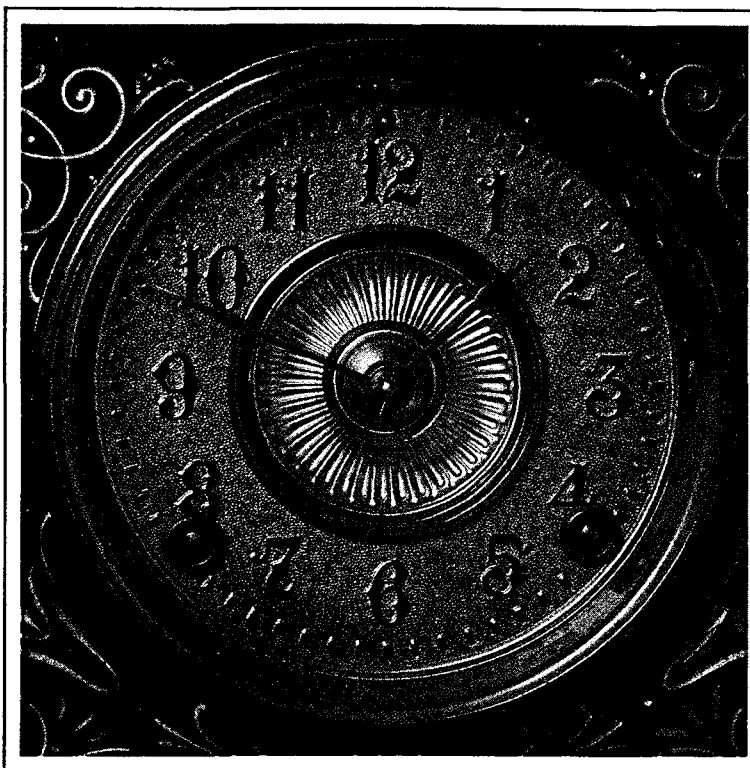
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## ENDING THE CODE OF SILENCE

### *The Honorable Andrew G. T. Moore, II*



On the morning of April 12, 1985, the Bar awoke to local and national news reports that a Delaware lawyer had killed his 33 year old wife and two young sons with shot gun blasts to their heads. He then turned the weapon on himself, shattering his skull to oblivion. It was the eve of his thirty-seventh birthday.

The crime scene was one of unrelieved horror. Before she was shot, the wife was severely beaten about the head, face, back, arms and legs with a baseball bat. The chil-

dren, ages 6 and 2, died sleeping in their beds. At the time of his death the young lawyer's blood alcohol content was over three times the level at which the law considers a person intoxicated. While tragedy was no stranger to our Bar, this was terribly different. What could have caused such a convulsive destruction of an entire family?

I did not know the lawyer personally. All I knew was that he had held a series of jobs, none successfully. The newspapers described him as "a wonderful husband and

father...close to his children". They also reported that he was "very desperate" and had "suffered bouts of severe depression that left him unable to work and resulted in financial problems". That was bad enough. What I later learned affected me deeply.

As a judge, I try to avoid the isolation that can easily envelop a member of the bench. Thus, I have met many people who knew a lot about this young man. All were anxious to talk about him.

He had been in serious financial trouble for a long time and faced imminent bankruptcy. There was recklessness in the management of his affairs. With little or no personal means, he and his wife traveled in a wealthy social set. They sold their recently renovated house in a fashionable section of Wilmington and moved to a rented house in an exclusive suburb. Their children continued to attend prestigious private schools. The family maintained their membership in an elite private club, where they attended an Easter egg hunt less than a week before their deaths. The young lawyer made a great show of taping the event on his expensive video camera. Club members who saw this, and knew of the family's critical financial condition, watched in dismay.

He also had applied for a bank loan to buy a costly antique. The loan was refused. A truly concerned banker urged him to be more realistic about his affairs. However, constrained by the confidential nature of the matter, the banker believed that he could do no more.

The story became even bleaker to me. The lawyer was an alcoholic. He had been in and out of treatment centers, and only sporadically attended meetings of Alcoholics Anonymous. Nothing in his life really worked.

I also learned that he was cross-addicted to pain killing prescription drugs. One of the drugs was a central nervous system depressant. Its known side effects include mental depression or suicidal tendencies. Moreover, it has a synergistic action with alcohol. From 1979 to April 1985, this

lawyer got prescriptions from over 30 Wilmington doctors. About 20 doctors wrote prescriptions for him in the two years before his death. Reports indicated that he also was importuning doctors from neighboring states.

Some pharmacists became suspicious of him. In one case a pharmacist saw the lawyer taking several doses of a prescription at the drug store. The lawyer then drank from a bottle, which he got from the trunk of his car in the pharmacy parking lot. The pharmacist notified the doctor, who alone accounted for over 20 of the prescriptions, that the store would not sell any more drugs to this patient. Another pharmacist became suspicious when the lawyer only came in on weekends to have prescriptions filled. His method was to use "on call" doctors, requesting narcotics for pain relief to see him through the weekend. At another store, the pharmacist concluded that the time span between prescription refills was too short. She tried to call the doctor, but was dissuaded when the lawyer agreed to wait for a longer period between refills. He did not want the doctor called. Notations were made in some pharmacy records that the patient was abusing drugs. However, nothing happened.

One must ask: how could a member of our Bar be in such desperate straits, drifting from one crisis to the next, when so many people knew so much about his problems? In some cases the general attitude was: "We knew all about this. It was a terrible tragedy, but something was bound to snap". That outlook had a smugness to it that was difficult to accept.

Where was that helping hand; the collegiality and concern for others that are hallmarks of the Delaware Bar? True, some people tried to help and failed. At one point a group of wealthy friends created a fund to help the family through a financial crisis. Eventually, some of these people retreated in frustration and silence. Perhaps the young lawyer was bent on self-destruction, but what had silence accomplished? The most relentless question of all was whether a concerted intervention might have saved the lives of his innocent family.

In a sense these questions implicate all of us. I do not say this critically, but to identify some hard facts. Foremost is the code of silence. It takes many forms. There is the natural inclination to mind one's own business; to keep out of the affairs of oth-

ers. Yet, despite all of the "red flags" and warning signals, those closest to the problem thought that saying nothing was the right thing to do. In retrospect such reasoning was not without some justification. Two years before this tragedy the Delaware Supreme Court rejected a rule of confidentiality designed to protect the work and proceedings of the Delaware State Bar Association Professional Guidance Committee. This special group of

## How could a member of our Bar be in such desperate straits, drifting from one crisis to the next, when so many people knew so much about his problems?

dedicated lawyers was formed to help troubled members of the Bar. Absent confidentiality, the code of silence prevailed.

Above all, this code was fostered at the highest official levels. The common view was that public discussion of substance abuse at the Bar was unmentionable. Any dialogue on the subject, or establishing formal aid programs, would be public admissions that a problem existed. They would sully the honor of the Bar. In short, they were taboo.

Thus, the code of silence prevailed because it met all of those concerns. While well intentioned, the results were deadly. It was in the face of this attitude that tragedy struck, and it was in the face of this tragedy that a dominant new philosophy emerged.

Almost immediately, the problem of drug abuse was addressed from several perspectives. Under the able leadership of its president, O. Francis Biondi, the Bar Association retained an experienced drug abuse counsellor, Frank Lawlor, to work with the Professional Guidance Committee. That decision, alone, pays tremendous professional dividends. Later, the Delaware Supreme Court reversed

itself on the subject of confidentiality and adopted Rule 8.3(d) of the Rules of Professional Conduct, which provides:

(d) Notwithstanding anything in this or other of the rules to the contrary, the relationship between members of the Professional Guidance Committee of the Delaware State Bar Association and counsellors retained by the Bar Association and a lawyer or judge shall be the same as that of attorney and client.

Armed with that rule, the Professional Guidance Committee now functions effectively. With it, there is no justification for the code of silence. There is no stigma. Help is available, and it works.

As a member of the Supreme Court, I am proud that we now recognize alcoholism and drug addiction as forms of illness or disease. In *Matter of Clyne*, Del. Supr., 581 A.2d 1118, 1119 (1990). Our goal is to save lives and careers before tragedy strikes.

There are other developments which reflect well on Delaware. At the suggestion of the Supreme Court the Delaware Bar Foundation contributes to the cost of counselling. Again, at the request of the Supreme Court the Bar Foundation created a revolving fund to provide treatment to troubled lawyers and immediate members of their families in straitened financial circumstances. This help is not limited to substance abuse. The legal profession operates in an atmosphere of stress. In some cases, stress overwhelms a lawyer. When that occurs, irrespective of the cause, help is readily available through the Professional Guidance Committee. Again, there is no stigma. All one has to do is ask for assistance.

Today, we share a common resolve that the tragedy of April 1985 shall not happen again. As a result, there have been many dramatic successes. It is not an overstatement to say that lives and careers, which the code of silence would have doomed, are being saved. Thus, it is appropriate to mention some of the real heroes of this effort. On an official level, Attorney General Charles M. Oberly, III and State Prosecutor Eugene M. Hall have been most helpful. Disciplinary Counsel Charles Slanina has approached his duties with balance and understanding. It is a difficult job. Many of the troubled lawyers he sees are

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victims of the code of silence. In some cases they are at the end of their professional careers because of it. Yet, Chip's devotion to his responsibilities, tempered with concern for fellow members of the Bar, has helped many rehabilitation efforts.

There are lawyers who worked with no thought of recognition or compensation. In leadership roles were two former Bar presidents, O. Francis Biondi and Joseph M. Kwiatkowski. Members of the Professional Guidance Committee, under the direction of Sidney Balick and Donald E. Pease, devote countless hours personally helping troubled lawyers. Among others who have responded to crisis calls are Susan D. Ament, Victor F. Battaglia, H. Clay Davis, III, Samuel R. Russell, Dennis L. Schrader, Donald C. Taylor and William E. Wright. Their services were in the highest traditions of the Delaware Bar. None received any compensation, and in some cases they spent their own money to help troubled lawyers.

Michael F. Tucker deserves special mention. His work on behalf of troubled

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lawyers is quiet and selfless. The breadth of Mike's services, all without pay, and sometimes at considerable personal sacrifice, are a tribute to him and the legal profession. I am certain there are others who also deserve praise. To all, I express the Court's deepest gratitude.

Finally, there are the professionals.

Frank Lawlor, the Bar Association's drug counselor, shows skill, compassion and perseverance under many difficult circumstances. Literally, he has saved lives at the brink of disaster. William E. Wiggin, Executive Director of the Bar Association, quietly devotes substantial time to making the program work. Their dedicated efforts are major factors in the successes achieved. We owe them a special debt of appreciation.

Naturally, there have been failures. Vestiges of the old code of silence remain. I hope that it is only because some people are unaware of developments since 1985. Thus, I commend the editors of *DELAWARE LAWYER* for their efforts to discuss these serious issues. It is a vital service to the Bar. We cannot meet the onslaught of substance abuse without candidly discussing the matter in an open forum. It is our duty to the Bar and public to recognize the problem and extend our collective hand to help those needing it. Without such concerns the code of silence will continue to achieve its deadly end.

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# SUBSTANCE ABUSE IN DELAWARE - HOW GOES THE WAR?

David Facciolo

Although alcohol, a legally available substance, is the greatest drug abuse problem in this country<sup>1</sup>, an equally persistent but far more complex issue lies with the abuse of illegal substances - particularly cocaine and "crack".

The national "War on Drugs" has concentrated almost exclusively on the use of illegal drugs. As the emphasis has shifted from the rhetoric surrounding the Anti-Drug Abuse Act of 1988 to practical efforts in education, rehabilitative treatment, community action, and law enforcement, a tremendous responsibility of state government has arisen in its use of federal funds and in developing executive and legislative agenda aimed at balancing the resources necessary to address drug abuse effectively.

U.S. Attorney General Dick Thornburgh declared before the Delaware State Bar Association at the Bench and Bar Conference in 1989 that the "War on Drugs" would not be won on the battlefield of law enforcement or in the court system, but in the "hearts and minds of the American people".<sup>2</sup>

An Action Strategy to Reduce Substance Abuse in Delaware emphasizes this very point: "the current wisdom of the drug and alcohol field indicates that a heavy policy emphasis on eliminating drug supply through strong enforcement measures to the exclusion of efforts to eradicate its demand - that is, community wide and targeted preventions programs as well as service resources for those ready for treatment - will prove unsuccessful at best".<sup>3</sup>

Despite vastly increased resources devoted to tackling the drug problem the use of drugs in America remains epidemic. About twenty-three million Americans (or one in ten) use an illegal drug at least once a month, six million of them cocaine. Even more disturbing is that drug use is highly prevalent among young adults.<sup>4</sup>

Although federal studies show a slight decline in drug use, cheap and plentiful cocaine has saturated the nation's poor neighborhoods, including those of Wilmington.<sup>5</sup> The "War on Drugs" has

brought extra money for local police enforcement in Delaware, targeting neighborhoods where drug activity is visible. The result has been numerous arrests for possession and fewer investigations of higher-ups.<sup>6</sup> Delaware, like the rest of the country, is spending a sizeable chunk of its federal money for law enforcement rather than treatment or education. Nearly 75% of what the federal government spends on the war on drugs has gone for local law enforcement such as that in Delaware.<sup>7</sup>

To examine Delaware strategies against drugs and their relative success, it is important to address two primary issues, the effectiveness of the law enforcement response and the drug strategy of the legislative and executive branches. A close examination of the Delaware response reveals a heavy emphasis on law enforcement, where there is some measure of success, and a much less effective drug strategy emphasizing "the balance of prevention, education, treatment, and criminal justice goals".<sup>8</sup>

A study by the National Research Council Panel on Criminal Careers has found that "criminals and drug abusers commit crimes at least twice as often as other offenders and may commit as many as six times more crimes during periods of heavy drug use".<sup>9</sup>

Recent studies of juvenile crime and drug abuse reveal startlingly the presence of drug abuse in 60% or more of all cases in juvenile courts nationally.<sup>10</sup> Although researchers are divided over issues such as "the Enslavement theory", and "which comes first; drugs and crime, or crime and drugs", according to recent survey data, researchers contend that people do not commit crimes solely to support drug habits, but that many who use drugs "tend to be criminals to begin with".<sup>11</sup>

Indeed, such factors as juvenile records and drug use are highly indicative of whether an individual will become part of the small percentage of offenders likely to commit numerous crimes.<sup>12</sup>

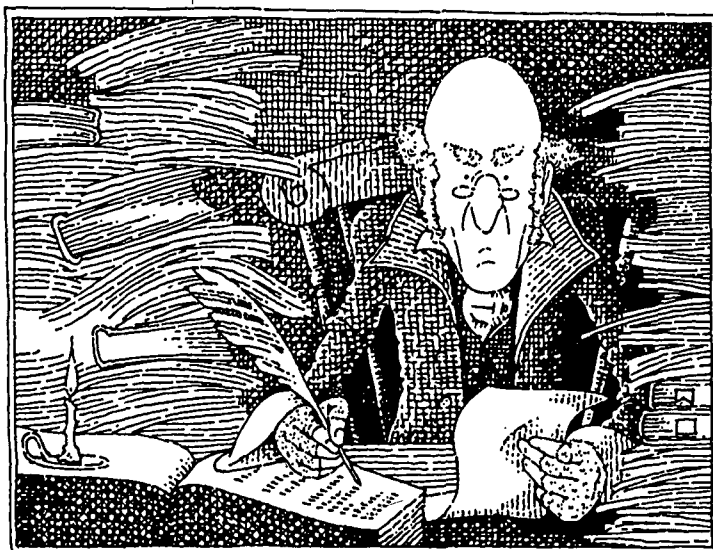
Delaware is exposed to a tremendous amount of drug traffic because of its loca-

tion on the east coast, central to important drug trafficking routes between Boston and Miami.<sup>13</sup> The recognition of this problem has led to increased action on the part of criminal justice agencies. Since 1986, cooperative police agencies have established drug intelligence networks to gather information on drug activity in various jurisdictions experiencing drug problems, and periodic sweeps of neighborhoods where drug activity is apparent have been occurring since the summer of 1988. The overall result has been a near doubling of drug arrests between 1984 and 1990.<sup>14</sup> An additional result has been the establishment of the Attorney General and the Public Defender Drug Units to handle the substantially increased caseload.

Criminal law enforcement is only one part of a comprehensive strategy for fighting substance abuse. There has been marked success in Delaware attributable to the combined efforts of many agencies. A system-wide improvement approach developed by the Drug Planning Committee of the Criminal Justice Council has set several important priorities including prevention/education, early intervention, speedy processing of offenders from arrest through disposition, neighborhood approaches, and comprehensive efforts to reduce demand.<sup>15</sup> This approach includes innovative local community and law enforcement efforts such as the walking drug patrol in the East Side Projects of Wilmington, Dover's community policing project, and the New Castle County Police Department's community oriented problem solving program. These efforts are expected to produce substantial changes in drug use, law enforcement, and rehabilitation.<sup>16</sup>

The progress already made in law enforcement is further illustrated by the dramatic increase in arrests for illicit drug use in Delaware since 1988. That increase has resulted in a 44% increase in adult arrests and an 82% increase in juvenile arrests during 1989.<sup>17</sup>

One successful innovation in Delaware has been the development of a specialized



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Public Defender Drug Unit to handle serious offenders. During the 1980's there was a model federal program whereby offenders could be referred to drug abuse treatment. This program, TASC (Treatment Alternatives to Street Crime) was designed to refer those who were eligible to treatment, to monitor client progress, and to return violators to the criminal justice system.<sup>18</sup> Although TASC was seen primarily as a diversion from the criminal justice system, the findings of the TASC coordinators showed that criminal justice clients do as well or better than other clients in drug abuse treatment.<sup>19</sup> These findings, contrary to the popular wisdom of the seventies, support efforts to continue and expand criminal justice programs such as those in Delaware. The Public Defender program was designed with three goals: to establish a coordinated case processing program promoting speedy trial, to reduce court processing time, and to intervene early with rehabilitation tailored to specific client needs, including referrals, psycho-forensic evaluation, and use of available treatment resources.<sup>20</sup> That program employs psycho-forensic staff with various backgrounds such as psychology or social work to help develop placements for those who come into the criminal justice system. The theory is that the confidence between lawyer and client and those who work with the lawyer in preparing a case can promote a heightened realization of the necessity for individual rehabilitation.

Alternatives to jail were used in approximately 85% of all Public Defender Drug Unit cases in 1989 and 1990. Nevertheless mandatory sentencing, and lack of adequate treatment resources, account for a substantial proportion of those who were incarcerated.<sup>21</sup> In fact, even where there has been success in treating and handling the criminal processing of drug addicted defendants, a critical need for treatment resources remains, since the only underlying solution to the drug problem is education, treatment, and motivation on the part of the addicted.<sup>22</sup>

The discovery in 1989 that treatment on demand was available for only 15%(!) of the most serious drug abusers has made greater access to treatment one of the highest priorities of Delaware public policy.<sup>23</sup> In fact, the treatment strategy developed by the Governor's Drug Abuse Coordinating Council emphasizes the need to provide

more residential treatment. That strategy includes the expansion of the Key Program therapeutic community at Gander Hill, the development of a halfway house to release Key Program graduates to society, expansion of the Greentree program, an increase of treatment beds for SENTAC clients up to 150 by 1993, the provision for 12 beds in Kent or Sussex County and 17 adolescent beds throughout the state by 1992.<sup>24</sup> The Council requested that the State Insurance Commissioner develop guidelines by June 1990 encouraging health insurance companies to offer plans to provide flexible policy benefits for substance abuse treatment for family maintenance and health seeking behaviors.<sup>25</sup>

The fiscal impact of increased treatment on demand for drug offenders in the court system, will be impressive. Education clinic programs can cost as little as \$84.00 a placement for up to three hours of drug and alcohol education.<sup>26</sup> Outpatient treatment for three to four nights a week for five to six weeks can cost as little as \$1,100.00 a placement.<sup>27</sup> Primary inpatient 24 day residential treatment can cost as little as \$5,300.00.<sup>28</sup> This compares favorably both in human results and fiscal conservatism. The average rate of incarceration on drug charges in Delaware costs approximately \$17,661.00 for 1.8 years.<sup>29</sup>

Although Delaware's treatment on demand structure is still wholly inadequate, the emphasis suggested by the Governor's Drug Abuse Coordinating Council, and the 29 subgrants from the Drug Planning Committee of the Criminal Justice Council should result in much improved treatment availability during the next three years.

Even though there may be improvements, there is no guarantee of treatment availability in the majority of serious substance abuse cases. Furthermore, new problems now attracting national attention are appearing in Delaware too. Consequently, effective strategies to deal with the increased use of crack and the treatment needs of cocaine addicted babies are only now slowly being addressed for the first time. Recent studies dealing with incidence of substance abuse during pregnancy conducted at over thirty six hospitals throughout the country suggest that the women using drugs during pregnancy may vary between 11.3% and 27% nationally.<sup>30</sup> At Christiana Hospital in Delaware, evidence of drug abuse was found in 24% of the

pregnant women whose urine was tested at the first prenatal visit.<sup>31</sup>

The effects on newborns of drug use during pregnancy include tremors related to drug withdrawal, low birth weight, rigid limbs, and inability to cope with multiple stimuli. Additionally, infants are at high risk for sudden infant death syndrome and are measurably slower in catching up to normal development standards.<sup>32</sup>

Drs. Esterly and Colemorgen of Christiana Hospital and the Wilmington Clinic respectively, have expressed concern to numerous public and private officials regarding the identification and treatment of babies who are born with cocaine in their systems.

These doctors have provided both anecdotal information about symptomology of children born with cocaine in their systems and definitive statistics regarding cocaine use by pregnant mothers in Delaware. From July 1, 1988 through June 30, 1989, 1,092 patients delivered babies through the Wilmington Clinic. Of these, 21.4% of the mothers tested positive for drug abuse. 95% of the total were purely cocaine related.<sup>33</sup>

Notwithstanding the significant degree of measured substance abuse, the Children's Department has only conducted active investigations of 18 referred cases between March 1, 1988 and September 1, 1989.<sup>34</sup> Furthermore, the Children's Department is not aware of the breadth of its jurisdiction and discretion to conduct child abuse investigations of parents whose children test positive for cocaine.<sup>35</sup>

Nonetheless, it is clear from already available data that an interagency approach is needed to address the problem, emphasizing use of the Public Health Nurses, Child Protective Services staff, counselors, doctors, and others from various professional disciplines. It is also clear that residential drug rehabilitation is especially important in providing treatment services to both mother and child.<sup>36</sup> Immediate attention and resources must be allocated if the total drug strategy in Delaware is to be successful.

Having examined the criminal justice system's response to the drug war, as well as the goals and objectives of treatment and rehabilitation that still need to be met in Delaware today, it is important now to consider the legislative response to substance abuse in Delaware. It has been haphazard at best, misdirected at worst.

In 1989, lawmakers in Delaware pro-

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posed 46 anti-drug bills, including one that called for drug dealers to be flogged.<sup>37</sup> The bill that aroused the most controversy was a law that imposed a mandatory three year term of incarceration for anyone possessing five grams of cocaine. This bill, which passed without public hearings or notice, has been criticized as fiscally unsound because of its impact on prisons, the courts, prosecution, and public defense.<sup>38</sup> Additionally, the bill, by reducing the amount of cocaine that constitutes the felony crime of Trafficking from 15 to 5 grams, consistent with federal drug standards, may be an indirect cause of the increased "crack" addiction in Delaware: a given volume of "crack", the highly purified and extremely dangerous form of cocaine, weighs much less than a corresponding volume of powder cocaine.<sup>39</sup>

In his remarks at the Lieutenant Governor Wolf's Substance Abuse Symposium on September 29, 1989, Attorney General Charles M. Oberly stated that more than 85% of the possessory drug crimes in the prior year involved more than five and less than 15 grams of cocaine.<sup>40</sup> Additionally, experts have indicated that five grams of cocaine could be consumed by heavy cocaine users during a single day. Even the Statistical Analysis Center Report acknowledges that most of the Trafficking cases would have been possessory cases under the prior law. The statistical center report also points out that when the full impact of this law is felt in 1995, more than 716 additional beds will be needed in the prison system.<sup>41</sup> This law, which has generated great controversy, was proposed by Representative Steven H. Amick, Chairman of the Substance Abuse Committee of the Delaware House of Representatives, without public hearings or input from experts who could have given impact assessments of the cost, the social ramifications, and the potential for greater substance abuse (i.e. the use of "crack" instead of powder cocaine). As Representative Amick put it, "We wanted to send out a message that no drug behavior will be put up with."<sup>42</sup> Although it is clear that there need to be penalties for those who engaged in substance abuse, the 1989 legislation went far beyond the recommendation of other public bodies, which had solicited opinions from hundreds of interested individuals, groups, and experts.<sup>43</sup> Legislation created in a vacuum of informed discus-

sion has thwarted the development of a comprehensive drug strategy for Delaware.

During the last three years, the United States Congress has considered some demand related actions designed to punish substance abusers. These include partial revocation of drivers' licenses, withholding federal contracts from employers who fail to make good faith efforts towards a drug free work place, and mandating drug testing for operators of common carriers. Denial of student loans or other federal benefits to

## Legislation created in a vacuum of informed discussion has thwarted the development of a comprehensive drug strategy for Delaware.

convicted drug felons are already in place under federal law.<sup>44</sup> It is in this context that recent legislation has been enacted mandating greater requirements for those who seek the "first offenders privilege", a special privilege that eliminates a record of conviction for some first time drug offenders. The laudable goal of emphasizing an offender's commitment to remain drug free and to meet certain requirements in order to obtain the privilege of removal of a conviction from one's record has been lost in legislation that creates too many procedural burdens for state supervisory agencies, as well as for defendants.

On October 11, 1990, Senate Bill 446 went into effect, striking in its entirety 16 Del. C. Section 4764, the old "First Offenders privilege" and replacing it with a revised "First Offenders Controlled Substance Diversion Program". The old law provided that the court "without entering a judgment of guilt and with the consent of the accused may defer further proceedings and place them on probation upon terms and conditions". Under the old law, the SENTAC guidelines suggested that a conditionally discharged first offender, should

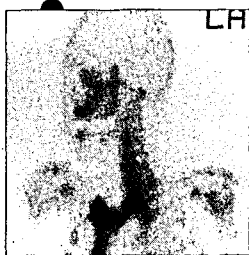
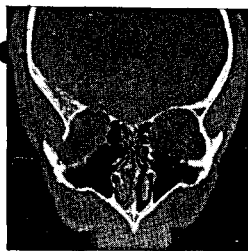
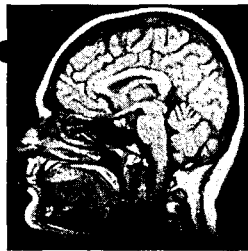
be placed at minimal probation, level 1, for one year.

The new law attempts to integrate some of the demand related actions designed to punish substance abusers suggested by the United States Congress. This includes a partial revocation of driver's license privileges, a requirement of community service, and mandatory attendance in a 16 hour drug education program. The new law also requires that the election of the first offender privilege occur at arraignment, that stage in the proceedings where most people plead not guilty so that they may have the benefit of further case preparation.<sup>45</sup>

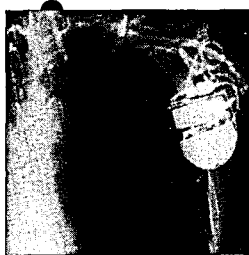
The new law creates serious obstacles not only for the individual but for the criminal justice system. It requires a three year probation whether circumstances warrant it.<sup>46</sup> Furthermore, it requires the probation officer to correspond with the Department of Motor Vehicles to designate whether limited driving privileges should be permitted during the year of license revocation.<sup>48</sup> In effect, the bill creates more problems for the already overburdened probation staff than it does even for the defendant making the election. It is important to note that this bill passed with little or no public notice and without a financial impact statement by the Department of Statistical Analysis. The merits of the bill (recognition that driving privileges will be at least partially revoked, the requirement that the probation be supervised, and the requirement that there be minimum drug education for each offender who goes through the first offenders program), are outweighed by the inflexibility of the law, the tremendous burden it places on probation and parole, and the procedural hurdles it creates by requiring a guilty plea at a stage when a defendant may not even have hired counsel.

In effect, this law attempts to draft some of the ideas contained by proposed congressional legislation in a strict fashion without any consideration of its impact on the criminal justice system, virtually sabotaging its own effectiveness.

The primary problem in the so-called legislative response to the "War on Drugs" in Delaware, is the failure of the legislature to solicit outside information from citizens or relevant experts. A balanced approach to the development of a comprehensive drug strategy has been proposed by the Governor's Drug Abuse Coordinating Coun-



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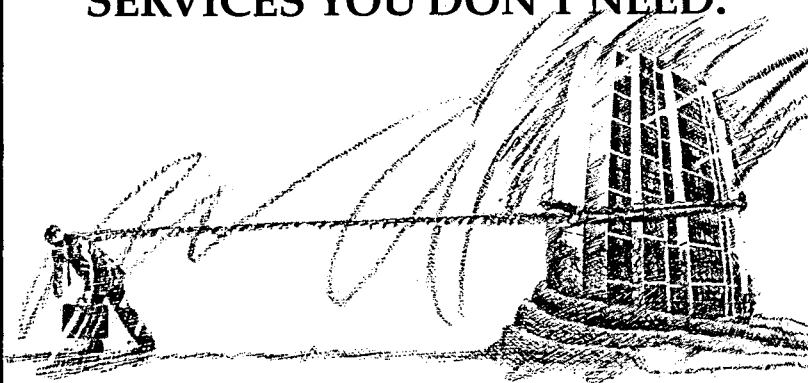
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cil.<sup>49</sup> That strategy emphasizes the need to use the criminal justice system effectively and in interdisciplinary fashion. The strategy envisions the participation of the criminal justice system before the enactment of any legislation enlarging penalties. The strategy recognizes the need for demand reduction, but emphasizes the need for state action to encourage rehabilitation and treatment. Although Delaware has made progress in fighting the "War on Drugs", much of that progress has come directly from the executive branch or from outside agencies. The legislative response has clearly suffered from the failure of the legislature to obtain outside community input as well as the professional assessment of those expert in the various aspects of drug abuse. There is no easy solution to the problems of illegal substance abuse in Delaware. Better coordination of information and strategies between the legislative and executive branches of government is imperative for any long term success in achieving a drug free society.

Constraints of space make it impossible to include the author's extensive footnotes, but the numbers to them appear in the text. The full footnotes will be made available upon request to the offices of this magazine.



*David Facciolo, a member of both the Delaware and Pennsylvania bars, is head of the Public Defender Family Court Office, New Castle County. His work over the last decade has made him truly expert in matters germane to substance abuse. His article provides a highly informed overview of the complicated battlefield on which the war against abuse is being fought.*

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# DRUG ADDICTION AND LAWYER SANCTIONS

Charles Slanina

According to an estimate of the National Institute on Alcohol and Drug Abuse, ten percent of the United States population is alcoholic or are otherwise chemically dependent. Addiction, whether to alcohol or drugs, plagues the legal profession as much if not to a greater degree than the general population. Impaired attorneys affect not only themselves, but also their families, friends, colleagues, and it also seems, inevitably their clients. The ABA Commission on Impaired Attorneys reports that 80 percent of Georgia client security fund related disciplinary cases involve attorney substance abuse. The Commission finds that 15 to 20 percent of all grievance complaints in Texas involve substance abusing attorneys. A 1987 random survey conducted by the Washington State Bar revealed that 18 percent of its members suffer from alcoholism. According to Andrew Benjamin, Director of Washington's Lawyer Assistance Program, 40 to 75 percent of all complaints stem from lawyer impairment.

Regardless of the numbers, impaired attorneys who have neither sought nor accepted treatment find their way into the disciplinary system. Once an attorney is found to have committed professional misconduct, the question of the appropriate sanction for that misconduct arises. Rule 8(c) of the Rules of the Board on Professional Responsibility requires the hearing board to "fully set forth in the opinion disposing of the matter" any mitigating or aggravating circumstances affecting the nature or degree of discipline. The legal profession, as microcosm of our society in general, suffers the ill effects of addiction. The issue of whether addiction should be considered a mitigating or even an aggravating factor in imposing sanctions results. How these questions might be answered inevitably begins with an analogy to alcoholism.

Alcoholism has long been widely recognized as a mitigating factor in the imposition of sanctions for attorney misconduct. The reasons for doing so are well articulated

in *In Re Kersey*, D.C. App., 520 A.2d 321, 325 (1987).

To fail to consider alcoholism as a mitigating factor would be to defy both scientific information and common sense. Excessive alcohol use affects the parts of the brain involving memory, emotion and higher level functioning (cites omitted). Alcohol also interferes with the brain's electrical system and neurotransmitter

The legal profession,  
as microcosm of  
our society in general,  
suffers the ill effects  
of addiction.

which convey thoughts, feelings and learning throughout the body. (cite omitted) .... Chronic alcoholism may lead to Korsakoff's syndrome, characterized by severe memory loss, impaired learning, and brain injury. (cite omitted) Alcoholic dementia, which is similar to Alzheimer's disease, results in a decline in abstracting abilities, problem solving, and verbal expression. Alcohol also acts as a depressant. Alcoholics suffer from feelings of futility, and they exhibit signs of reality distortion, such as paranoia, aggressiveness, extreme lack of confidence and an inability to accept criticism, or to see how their behavior is affecting others. (cite omitted) .... The judgment and attention span of alcoholics are similarly impaired. (cite omitted)

The American Bar Association Stan-

dards for Imposing Lawyer Sanctions also recommend that personal or emotional problems and physical and mental impairment be considered in mitigation. Standards 9.32(c) and (h).

Respondents in Delaware have tended to raise their emotional and mental states (although not specifically alcoholism) as a defense under Rule 20(g)(1) of the Rules of the Board on Professional Responsibility, which states:

Mental incompetency is a complete defense to conduct of a lawyer which would otherwise warrant disciplinary action: (a) if such conduct was the result or consequence of mental incompetency, and (b) if the mental incompetency which was responsible for such conduct has been cured so completely that there is no reasonable basis to believe that there will be a recurrence of the condition. The burden of proof of this defense, in all its aspects, is upon the respondent.

To date, the incapacity defense as it has been raised and as it might be applied to alcoholism or addiction, has not fared well. The respondent's mental condition was rejected as a mitigating factor and as a defense in *In Re Sullivan*, Del. Supr., 530 A.2d 1115 (1987). The Court found that while the respondent's mental condition made it "more difficult" for him to choose right from wrong, the incapacity defense was only applicable if it made it impossible to do so. The Court emphasized that the purpose of attorney discipline is to protect the public and not to rehabilitate the attorney.

Similarly, emotional problems were rejected as defenses in *In Re Carmine*, Del. Supr., 559 A.2d 248 (1989) and *In Re Mary Jo Lewis-Ryan*, Del. Supr., 498 A.2d 515 (1985) and *In Re Rich*, Del. Supr., 559 A.2d 1251 (1989). The Court did however recognize the emotional problems as a mitigating factor in each of these cases.

Even the psychiatric or mental condi-

tion of homosexual pedophilia resulting in misconduct involving moral turpitude has not been found to provide a defense under Board Rule 20(g). Clearly, the misconduct must result from the mental or physical condition of the respondent negating to some degree the aspect of free will in choosing to commit the misconduct. The leading example of this type of incapacity is In Re McBride, Del. Supr., Order No. 22, 1989 (May 5, 1989), where the respondent's actions were medically shown to a high degree of certainty to have resulted from a brain tumor.

Alcoholism was specifically raised as a mitigating factor in In Re Clyne, Del. Supr., Order No. 185, 1989 (October 15, 1990). There the Court recognized that no prior Delaware case addresses the issue while citing with approval the opinions of numerous jurisdictions accepting alcoholism as a mitigating factor. The Court went on however to find that Clyne's lack of rehabilitation, lack of candor toward the Court and the numerous instances of serious misconduct precluded the application of alcoholism as a mitigating factor.

The applicability of drug addiction as a mitigating circumstance in attorney disciplinary proceedings is even less well-trodden ground. There are no reported Delaware cases. Other jurisdictions are split.

At issue is whether drug addiction should be viewed as indistinguishable from alcoholism despite the underlying illegality of the use and even possession of controlled substances. The arguments against recognition of drug addiction are ones of public policy.

It is argued that the societal problems associated with the sale and use of illegal drugs are so monumental that any display of tolerance may undermine the continuing effort to eliminate them. In addition, the respondent's claim of addiction necessarily contains an admissions of repeated violations of the criminal laws. While leniency in the form of an emphasis on rehabilitation and treatment rather than punishment may be appropriate for an addicted factory worker, lawyers hold a different and special place in society. Lawyers are sworn to uphold the law and a policy of leniency may send an intellectually and morally contradictory message to the public.

On the other hand, the weight of the scientific and medical evidence is that drug addiction is otherwise indistinguishable

from alcoholism. To fail to recognize it as a mitigating factor is to either ignore a problem or to pretend that somehow attorneys are exempt.

A respondent's drug addiction usually becomes an issue in disciplinary proceedings in one of two contexts: the addiction is raised in mitigation of the attorney's practice-related misconduct such as neglect or misappropriation or the underlying misconduct is a criminal conviction involving drugs. Although the number of states

## The American Bar Association Standards for Imposing Lawyer Sanctions also recommend that personal or emotional problems and physical and mental impairment be considered in mitigation.

addressing this issue is small but growing, the following discussion of cases is meant to be illustrative rather than exhaustive.

Maryland has accepted drug addiction as a mitigating factor. Our cases indicate that impaired mental condition or addiction to alcohol or drugs may be a mitigating factor in imposing a disciplinary sanction, even where an attorney's conduct would otherwise warrant disbarment as a matter of course. (Cites omitted.) However, we have imposed sanctions short of disbarment ONLY when the mental impairment or addiction is 'to a substantial degree' responsible for the attorney's improper conduct.

Attorney Grievance Commission v. Winters, Md. Supr., 526 A.2d 55, 57 (1987).

California recognizes drug addiction as a mitigating factor but imposes concomitant strict standards for discipline and rehabilitation.

When a lawyer's misconduct

is the product of a physical or mental disorder, or substance abuse, the lawyer bears a heavy burden in demonstrating by clear and convincing evidence that the precipitating condition has been corrected or its effect overcome insofar as they are related to his fitness to practice. He must prove that the risk of continued substance abuse causing future acts of misconduct is virtually nonexistent. If he fails to do so, the court must assume that disbarment is necessary to protect the public. (Emphasis added.)

Baker v. State Bar of California, Calif. Supr., No. S008517, November 26, 1989, ABA/BNA Lawyer's Manual on Professional Conduct, Vol. 5, No. 26, p. 446.

And finally, among those states recognizing addiction to illegal drugs as a mitigating factor is Colorado. In People v. Geller, Colo. Supr., 753 P.2d 235 (1988), Mr. Geller was charged with conduct adversely reflecting on his fitness to practice law as a result of his nolo contendere plea to possession of cocaine. In addition, he failed to appear on behalf of his client at a trial, and a client's settlement check, which the attorney had deposited into his personal account, had been captured by the bank and offset against the attorney's default on a student loan. The court found that the misconduct was "related" to his cocaine addiction. Balanced against the misconduct and one earlier letter of admonition, the court found specific grounds for mitigation. Respondent was found to be a "very caring person who brought his best to representation of his clients". He was found to suffer from depression. And he was found to have sought treatment for both his depression and addiction and to have been substantially reformed by the time of the hearing. Mr. Geller was suspended for three years from the date of the order.

The Board on Professional Responsibility of the District of Columbia recently declined to join the ranks of these states. In the Matter of Samuel Cooper, III, D.C. App., BPR Bar Docket No. 207-87 (1989), Mr. Cooper sought to escape disciplinary action by arguing that his judgment, involving misappropriation of client funds, was impaired by cocaine. The Board concluded, as a matter of fact, that Cooper's

acknowledged cocaine addiction could not be "causally linked" to his ethical lapses and that therefore his addiction could not be considered as a defense. Specifically, the Board found that he had not attributed his misappropriation to his addiction in any "compelling or understandable way". It should be noted that the District of Columbia did not take this opportunity to accept drug addiction as a mitigating circumstance even though it recognizes alcoholism as a mitigating circumstance.

Rehabilitation may be appropriate for an addicted factory worker. For lawyers, sworn to uphold the law, leniency may send a contradictory message to the public.

In contrast, a member of the Florida Bar was convicted by guilty plea of possession of cocaine. That conviction was used as a basis for disciplinary action, which resulted in findings that he had engaged in conduct that adversely reflected on his fitness to practice, and he had committed an act contrary to honesty, justice, or good morals. No misconduct related to the representation of a client is reported in the decision. The attorney was suspended for eighteen months with the referee's recommendation of automatic reinstatement at the conclusion of the suspension. The disciplinary counsel appealed. The Florida Supreme Court approved the recommendation of an eighteen-month suspension but concurred with the disciplinary counsel that no automatic reinstatement should occur. Even though the attorney was found to have been cooperative, had readily admitted his wrongdoing, had completed drug treatment, and was continuing in counselling, the Court found that the respondent could only be reinstated after presenting proof of rehabilitation. Florida Bar v. Leo B. West, Fla. Supr., 550 So.2d 462, 463 (1989).

# EUREKA!

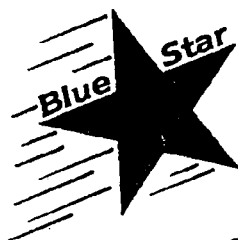
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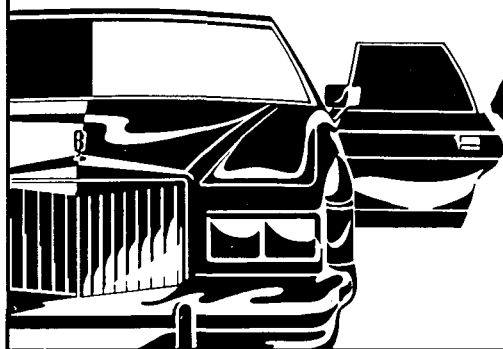
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A New Jersey attorney with no prior disciplinary history was suspended from private practice for one year for a conviction of distribution of a controlled substance, even though his misconduct was not related to the practice of law. The disciplinary court found that the respondent was primarily a drug user, that the circumstances leading to his conviction were unlikely to recur and that the respondent never profited from the single act of distribution. However, the court held that the

While Delaware's  
acceptance of  
addiction as mitigation  
is unsettled, the  
Court's leadership  
in assisting  
the impaired attorney  
is unquestioned.

respondent's conviction established that he engaged in illegal conduct that adversely reflects on his fitness to practice law. Matter of Kimmear, N.J. Supr., 552 A.2d 414, 416-417 (1987). *See also*, Annotation, "Narcotics Conviction as Crime of Moral turpitude Justifying Disbarment or Other Action Against Attorney", 99 A.L.R. 3d 288 (1990).

While Delaware's acceptance of addiction as mitigation is unsettled, the Court's commitment and leadership in assisting the impaired attorney prior to disciplinary problems is unquestioned. Rule 8.3 of the DLRPC provides that any lawyer having knowledge that another lawyer has committed a violation that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer is required to inform the appropriate professional authority. The Supreme Court amended this requirement in 1986 to add the following language:

Notwithstanding anything in this or other of the rules to the contrary, the relationship between members of the Professional

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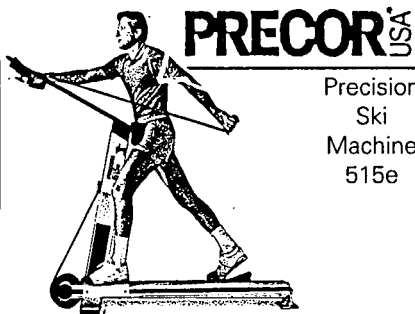
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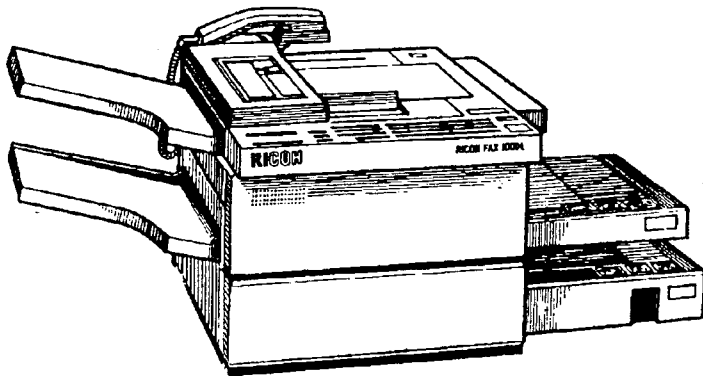
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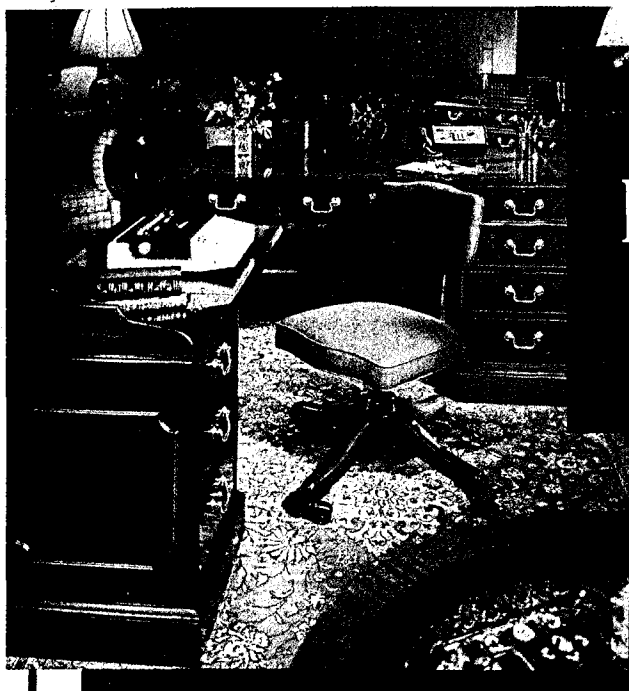
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Guidance Committee of the Delaware State Bar Association and counselors retained by the Bar Association and a lawyer or a judge shall be the same as that of attorney and client. (Which is exempted from reporting by DLRPC 1.6)

Through the Professional Guidance Committee, the Bar employs a full-time and highly qualified counselor, Mr. Frank X. Lawlor. The Bar expends a great deal of time and money to advertise the availability of this assistance before, during, and after disciplinary proceedings.

In addition, the Supreme Court, through the efforts of Justice Andrew G. T. Moore, II has arranged for a revolving loan fund to provide residential drug and/or alcohol treatment and other assistance to those attorneys seeking such help who lack health insurance to pay the cost of admittance.

The confidentiality afforded to the attorney seeking help, the financial assistance available, and the likelihood that personal and professional disaster will result from untreated addiction argue eloquently for the need for professional intervention. The impaired attorneys, their friends, colleagues and families are well advised to seek the services of the Lawyer Assistance program. It is far preferable to testing the as yet uncharted course of relying on drug addiction as a mitigating factor in attorney disciplinary proceedings.

*Charles Slanina is the Disciplinary Counsel of the Delaware Supreme Court Board on Professional Responsibility. After graduating from Catholic University Law School he served first as Family Court Law Clerk and then entered the Office of the Attorney General in 1981. He remained in that office until November, 1989, when he assumed his present position. During his service with the Attorney General he acquired wide experience in both civil and criminal matters. In 1981-82 he headed the Bureau of Child Support unit throughout the State of Delaware. During his tenure in the criminal division from 1982 until 1989 he conducted trials in Family Court, Common Pleas, and Superior Court. He has served as Director of the Medicaid Fraud Control Unit and as head of the Family Court Trial Unit for New Castle County.*

# IMPAIRED ATTORNEYS: A SPECIALIZED PROGRAM

Frank X. Lawlor

O. Francis Biondi, Esquire, President of the Delaware State Bar Association in 1984-1985, had become alarmed by the incidence and consequences of substance abuse within the profession. There was a self protective tendency of lawyers to deny or minimize the gravity of a problem that knows no barriers of class, profession, education, or income. Under Frank Biondi's leadership a Professional Guidance Program was established and Mr. Lawlor was retained as the Association's first Alcohol and Drug Counselor. The following article gives you some idea of how the program works and how members of the profession and the courts have sustained it with emphatic and heartening support. W.E.W.

"The demon of intemperance ever seems delighted in sucking the blood of genius and generosity." Abraham Lincoln

Over the past few decades society has imposed extraordinary stress on many professionals. In many instances they have sought refuge and escape by overindulgence in alcoholic beverages, prescribed medication, and recently, illegal drugs.

In 1985 the Delaware State Bar Association established a specialized program to assist impaired attorneys. This program, originally designed for alcohol and drugs, has expanded to include mental health issues. It also assists professionals' spouses, children, and parents who may themselves be impaired or who may need help in dealing with impaired loved ones.

Shortly after we began the program we announced in the Bar Association newsletter a 24 hour telephone hotline for troubled professionals. On the very day the announcement appeared we received a request for help from a long-time member of the Association. The call reached me after regular business hours. The client was reluctant to give his name and began the conversation with hypothetical questions, using his skill as an attorney to gain control of the conversation. As he began to realize that he would be treated with respect, he gained self-confidence. He agreed to meet with me at my home rather than the office.

Upon arriving at my home he stated he only had a few minutes to spare. (He didn't even remove his hat and coat, and he left the engine of his car running.) He asked if we could go on a first name basis and I assured him that would be fine. I told him we did not keep records and our conversation would be confidential. This is the heart of our program.

I poured him a cup of coffee, and he began to relax and open up. He told me that he had always maintained the highest professional standards in representing his clients but that he was no longer able to function as well as he had in the past. He had been postponing clients' cases because of his alcohol problem. His drinking habits until recently had been under control. He only drank on weekends, but the weekends were running into hangovers on Monday mornings. He told me how ashamed he felt and of his fear of losing control over his professional life. He believed that his standard of excellence was compromised, he felt insecure, and he needed professional help.

Having opened up to this extent, he excused himself, went to his car, and shut off the motor. This would not be the short visit he had originally contemplated. As our meeting went on and his trust in me grew, the full reasons for his seeking help were revealed. He had serious family problems. His law partner, aware of this, had told him many times over if he had such problems he, too, would drink. The partner was the perfect enabler!<sup>1</sup>

We explored the domestic situation at some length. He told me that his wife was seeking a divorce. In fact, her attorney was ready to have the papers served on him as soon as possible. I asked his permission to call his wife. He consented, but he felt it would be of little use. "The die is cast", he remarked glumly.

When his wife answered the phone she, too, was initially distrustful. I explained that our program included family members, and she agreed to join us. When she arrived I noticed her red eyes and nervous

demeanor. After she got control of her feelings she asked me if her husband was in trouble with the disciplinary authorities. I assured her that was not the reason for his being there, and she began to sob, perhaps in relief, and tears long held back began to roll down her cheeks.

She said that her husband was a good man when he was sober but... "I'm tired of lying to the children, of accepting his flimsy excuses, and of trying to protect them from his drinking. They also know I'm lying and they now blame me for his drinking. I've tried everything. I've shouted, screamed, and sometimes acted like a maniac. Nothing has helped - just more confusion and resentment."

After listening for a while, I told her about our program and what we could do to assist the family.

To treat the alcoholic without helping the family leaves him in an environment that may well impair his progress. Elements of family life are important in the recovery process. Furthermore, the recovering alcoholic benefits not only himself, but his family, his clients, and the integrity of the judicial system.

## How Our System Works

The lawyers who enter our program may seek in-patient medical treatment to help them through their withdrawal from alcohol and give them time for an adjustment before entering the follow-up program.<sup>2</sup>

Access to the program comes in several ways. We have the telephone hotline, which provides the troubled professional with 24 hour access to help, seven days a week and on holidays (frequently our busiest times).

We also receive referrals from judges or lawyers concerned about their fellow professionals. Experienced members of the Bar Association's Committee on Professional Guidance can conduct interventions preliminary to getting troubled professionals into competent medical and psychiatric help.

Since alcoholics constantly send out

signals for help, loyal and concerned colleagues are important sources of referral and enable many who would not get into help seek timely and effective assistance.

As I said before the essential element of the program is confidentiality. No records are kept on any client. This reassures those who come to us that they are protected. Furthermore the adoption by the Supreme Court of Delaware of Rule 8.3(d) of the Rules of Professional Conduct creates a protective privilege "the same as that of attorney and client", designed to encourage troubled professionals to get into help earlier rather than later.

The following tabulation will give you some idea of what the program has meant for professionals and their families.

Lawyers

Seen through program 47

Law Students

Seen through program 4

Lawyers' Spouses

Seen through program 4

Lawyers' Children

Seen through program 8

Lawyers' Parents

Seen through program 3

(1 lawyer reinstated in the Bar)

Clients Hospitalized

Lawyers 15 (3 disbarred) (1 fatality)

(1 attempted suicide)

Law Students 0

Spouses 0

Children 4\*

Parents 0

Clients Seen as Out-Patients

Lawyers 41

Law Students 3

Spouses 0

Children 7\*

Parents 2

\*Majority are teen-agers

DSBA Cases

Alcoholic - 36 (4 in disciplinary program)

Substance Abuse - 6 (5 dually addicted)

Mental Health - 4

Physically Impaired - 1

Are We Doing Enough?

The preceding shows that the Association and its Committee are dedicated and busy, but it is our ambition to enlarge the program. There are good reasons for this.

There are many lawyers who do not have control over their lives because of alcohol and we have not yet reached many of them. The Texas Bar Association has

estimated that about 5,200 Texas attorneys may be affected by substance abuse. That's 10% of the Texas Bar. Data compiled by the ABA suggest that 20% is a more realistic figure. Obviously there are those whom we are not reaching, but that does not mean that we won't reach them eventually. Recognition of the problem and self-confrontation do not come easily. This leads to a consideration of the disease we confront.

Alcoholism is a progressive disease which, if untreated will eventually destroy those who suffer from it and severely impair the lives of their families. At first an alcoholic's addiction gives him a temporary release from his problems but his family gets no relief. Instead, the alcoholic's spouse gets rejection and abuse, and his children's personalities suffer. Sometimes they innocently blame the sober parent for not helping the sick parent.

In most cases of alcoholism, there are warning signs and symptoms as with most diseases. Many cases are marked by other sufferer's deviation from acceptable professional conduct and the silence of well intentioned colleagues who fail (or don't know how) to respond to drinking problems. (This actually furthers the progression of the disease.) Cover up is not the way to approach any problem, especially alcoholism. Most people do not know what to use as acceptable reasons to move in on the problem.

13.8% of the cases we have seen present dual addiction and are consequently harder to treat. By dual addiction I refer to continued dependences upon alcohol and one or more other controlled substances, typically cocaine. An effective treatment program must offer the dual addict a way of life calculated to generate permanent abstinence from not one, but at least two highly addictive substances. This may require longer in-patient treatment and a more closely supervised follow-up program.

Addicts will pick up right where they left off if they return to the drug of their choice and in most cases they will be worse off than they were before. Loss of control over drugs is permanent. Many try to stop on their own without treatment, but this merely delays the repetition of substance abuse. Addiction is an illness and it will continue if untreated.

#### Changing Attitudes

The future of the Bar program and other

initiatives to combat substance abuse will depend to a considerable degree on education, understanding, and recognition of addiction as sickness. As long ago as 1956 the American Medical Association declared alcoholism a disease.

The stigma once attached, and to some degree still attaching, to substance abuse encourages denial of the disorder by the sufferer, his family, and colleagues. This well-meant but lethal compassion allows addiction to grow. The enlightened views of professionals (medical and legal) and the Courts will eventually remove abuse from the regions of morality to those of disease, and our program - and our clientele - will prosper accordingly.

1. "Enabler" one of the regular villains or villanesses of the substance abuse drama, and frequently a very well meaning villain. An enabler is generally a spouse, a close relative, or a colleague, whose rationalizations or connivance at substance abuse may delay the sufferer's confrontation of his malady.

2. The withdrawal from alcohol carries with it radical changes in body chemistry, frequently requiring medical attention. Many professionals who have reached the point where medical help is essential are virtually impoverished and frequently have no medical insurance. A revolving fund created by the Delaware Bar Foundation has been made available to provide treatment for impoverished or uninsured professionals.



*For the last half decade Frank Lawlor has devoted his expert knowledge of substance abuse to benefiting members of the legal profession in Delaware.*

# "WHERE I WENT TO ARRIVE WHERE I AM"

Michael F. Tucker

I can vividly recall the astonished reaction of the doctor who was giving me a physical examination at the treatment center.

"How much do you drink each day?" he asked.

"Two pints of Scotch."

"How can you practice law on two pints of Scotch a day?"

"Not very well, Doc. That's why I'm here."

How had I allowed alcohol to take such a hold on my life? Couldn't see how it was interfering with my family life; my friendships; my profession? It is very easy to see that today, now that I have been free of alcohol for a considerable period of time. For a number of years, however, I believed that I was drinking because my relationships, personal and professional, were deteriorating. Only after a long period of abstinence from alcohol, and treatment in a twelve step recovery program, did I begin to realize that alcohol was the cause not the cure. Booze was making things worse not better.

Intellectually that should have been easy enough to see. The difficulty was that my intellect was impaired by drink. I wasn't seeing myself as others did. Subconsciously I looked for ways to continue drinking, not to identify alcohol as a problem.

But I should begin at the onset rather than the end of my drinking. I was the middle of three children; I have an older sister and a younger brother. My father and mother did an excellent job caring for us, and tried to instill in us what I consider to be proper moral and spiritual values.

I attended parochial schools in Wilmington, and did fairly well until my sophomore year in high school. At that point of time in my life I became something of a "Rebel Without a Cause." I didn't become a heavy drinker at that time, but I discovered the magic of alcohol. One drink brought feelings of exhilaration, and changed me from a shy person to somewhat of a show off. I felt as if I could do

anything or be anyone when I drank.

I should point out that my parents were very supportive of any success I achieved in my youth, and were always willing to help me when I got into trouble. They were not extremely strict, nor were they overly permissive. But they certainly never condoned drinking. In short, I think my parental upbringing was normal.

As for my brother and sister, I can see nothing but what I have heard described as normal sibling rivalry. My sister set what I regarded as impossibly high standards for me to follow, academically and otherwise, but I was proud of her achievements. I loved and respected my sister; I did not resent her.

Although I believe I made things somewhat easier for my brother by lowering academic and behavioral standards during my teen years, I feel he did very well despite such a mediocre role model. I always loved my brother, and was proud of his achievements.

I bring up the family background because I want to dispel any notion that my problems with alcohol arose from some deficiency in my rearing: I do not believe that my family's social behavior contributed to my inability to drink normally.

I consider myself an alcoholic. I believe that my disease is of genetic origin, and that I would have displayed the symptoms of alcoholism no matter how I had been raised. I can identify what I think was alcoholism in my ancestry, even though for many years the disease was in an arrested state because of the abstinence of the alcoholic.

The lesson of total abstinence has become an especially valuable tool for me, today. It was shown me early on, but took me a very long time to accept. It's a simple principle: if one does not drink one cannot get drunk. But it was too difficult for me to accept. Instead, I tried for a number of years to control my drinking instead of eliminating it.

My earliest recollections of experience with alcohol are a taste of my father's beer,

a glass of wine at Thanksgiving or Christmas, or a "hot toddy" (a home remedy containing a small amount of whiskey) for a winter cold. My first drinking outside the home occurred when I was 15 years old. I went with 2 friends to a park where we drank two bottles of wine. I got very drunk, very sick, and very much in trouble. I was asked to leave a dance, and my parents were quite upset by my condition when I arrived home.

The times that I drank through my high school years were not that numerous, but there were occasions when alcohol created problems for me.

After high school I spent 4 years in the U.S. Air Force, and I did drink quite frequently, and often excessively, during my time in the service. There were also a number of times during those years when my drinking created problems for me, but I chalked them up to bad luck and accepted them as necessary evils because I considered alcoholic beverages as part of my life style.

During college and law school I did not drink as frequently as I had during my years with the military. There were, however, a number of times during those years when my alcohol consumption was excessive and trouble resulted. For example, I lost my license for driving under the influence while I was at college. Without a license for a year, I was not able to bear my share of the driving in the car pool for commuting to school. My friends were good enough to pick up that burden, and allow me to go along without contributing to the driving.

On one occasion while I was in college I got very drunk at a football game and a subsequent party. In a fury over something that totally escapes me now I punched a wall. The wall turned out to be concrete, and I broke a knuckle. It seemed quite appropriate to punch the wall when I did it, but I haven't the foggiest notion why today.

You see, my behavior changed when I drank. I didn't just become more of a social animal after a few drinks. Some-

times I did things I would not have done if I hadn't been drinking. Not just putting on lamp shades at parties, but arguing or even fighting with people. The next day, if I could recall the incident at all, I could not explain rationally why it happened.

Speaking about inability to recall brings me to another phenomenon that alcohol brought to my life "brown outs" or "black outs". There were times when I was unable to remember portions of events that took place when I had been drinking. In discussions with friends or associates following a night of drinking people sometimes mentioned things (occasionally outrageous) which I had done or said. Try as I might, I could not remember them. At times there were entire parts of a night I couldn't recall, even though I was told that I had appeared normal if somewhat tipsy.

I now know that these experiences are peculiar to those of us who are alcoholic. Non-alcoholics cannot tolerate sufficient quantities of alcohol necessary to produce these "brown outs" or "black outs" repeatedly.

After I graduated from law school and was admitted to the bar my drinking increased in frequency and often in quantity. Eventually I became a daily drinker. I considered drinking not just a reward or pastime, but a part of my life.

I could not imagine a life without drinking, yet I had no idea how dependent upon alcohol I had become. the problem had become so great I lost the ability to evaluate my situation objectively.

If things did not go as well as I wanted, I changed the location of my office or the kinds of cases I was handling. I now consider these changes to have been attempts at a "geographical cure." The problem was I had to take me along wherever I went, and as I had not decided to quit drinking, there was no "cure", just a brief hiatus in problems.

Family and friends began to drop subtle hints, at times forthright suggestions that my drinking was a problem. Well meaning admonitions to control my drinking were worthless. I had been trying to control it for years without success. Although there were times when I would seem to have been drinking only a normal amount, I had no way to guarantee that result. Once I took the first drink I could not predict with any degree of certainty how much I would drink or what my behavior might be.

A part of me, however, saw drinking as a problem in my life. Certainly I was becoming increasingly bothered by the changeovers and problems that drinking brought. I was ripe for the suggestion when a friend recommended that I could go to a place where they would remove alcohol from my system. I agreed to go, and, after ten days I felt like a new person.

I remained free of alcohol for a few months, but I changed nothing else in my life style. I went to the same places, but

**"How can you practice law on two pints of Scotch a day?" "Not very well, Doc. That's why I'm here."**

just didn't drink.

Finally the opportunity to drink again came to me and I picked it up. A short time after that I found myself right back where I had been before I quit. Only this time it was worse. I had resumed drinking and had reached a point beyond that where I had been previously. And there were feelings of guilt and remorse because I had failed. I had attempted to stop drinking and couldn't.

Eventually I became very depressed about my situation. I made some feeble attempts to control my drinking or to stop again, but they were fruitless. When I felt I could take no more of the mental and physical anguish I decided to go away again to get the alcohol out of my system.

After my return this time I had the good fortune to have a friend call me and introduce me to a way of life I had never dreamed existed. He showed me a program of recovery which has simplified things for me, and made living a joyful experience. It took me some time to convert to this new lifestyle, but after a short period of exposure I began to hope that I could adapt to this quite different way of life.

I have now fully accepted the fact that I am an alcoholic. I have a progressive disease which, left untreated, is fatal. Although there is no cure, the disease can be arrested. Furthermore, the twelve step program which I use for treatment has allowed

me to resume a normal life. This is something I was incapable of doing when I drank.

I have learned to abstain from alcohol one day at a time, and to try to live my life one day at a time. Yesterday and tomorrow are not nearly as important to me now as they were when I drank. The thought of a drink is infrequent now, and I have learned not to dwell on it when it does occur.

My approach to the practice of law today is far different from what it was when alcohol was a part of my life. The everyday problems that come up do not seem nearly as large or insurmountable as they did when I was drinking. Some of this is undoubtedly due to experience, but most of it I attribute to the new approach to life I have come to learn in this program of recovery.

My wish is that all of those who have experienced problems with alcohol could give this treatment program a try. I'm sure they would come to believe as so many of us have that this is a far better way to live one's life than the constant struggle to control the intake of alcoholic beverages.

There were a number of years in my life when I spent drinking and occasionally wondering if alcohol was a problem for me. I now know that denial is part of my disease, and it was very difficult for me to answer that question truthfully. I also know that I subconsciously tried to hide some of my drinking so that the problem would not be quite so apparent to those who might point it out to me. I also tried very hard to control my speech and behavior at times after I had consumed large amounts. Although I sometimes failed utterly, there were other times when I fooled people.

Although I have previously bemoaned the fact that I wasted so much of my life drinking, I don't regret the past today. I consider myself fortunate to be alive today when I think of some of the things which I did during my drinking years. I have come to believe that I probably had to go where I went to arrive where I am.

Alcoholism is inherently fatal - a primary disease, but there are also a number of incidental ways in which it could have killed me: chug-a-lugging, a practice I engaged in on more than one occasion, could have resulted in an overdose of alcohol; accidental death through driving under the influence or other drunken behavior. Then, of course, there is cirrhosis of the

liver and the myriad cardiac and other secondary organic diseases brought on by protracted use of alcohol. It was through no deliberate act on my part that I escaped death by any of these causes.

But my intent is that this should be a message of hope, not despair. My goal was to discuss some of the symptoms of alcoholism, not the results.

My story, although not unique in any sense, is only one of many. There are as many different stories of alcoholism as there are people who suffer from the disease.

In order to assess dependence upon alcohol or other drugs use the following questionnaire. If you find you have any of the symptoms described, help is available! Call the Bar Association hot line 655-5771, or call me (at 656-8341) or another recovering person you might know.

#### STAGES/SYMPTOMS

##### A. Early Stage

Are you able to drink more without feeling the effects?

Have you ever had "black outs" i.e., when there are hours or days you cannot remember?

Do you desire to continue use when others stop?

Are you uncomfortable in situations where substance is not present?

Is there an urgency to use after a period without?

Do you avoid references about use of related problems/irritation when use is discussed?

Do you have feelings of guilt about use/morning after regrets?

Do others express concern about your use of substance?

##### B. Middle Stage

Do you lie about use?

Do you hide your use?

Is there an increase in memory black-outs?

Do you take substance in larger amounts, or over longer time period, than intended?

Is there an increasing dependence on substance?

Do you exhibit grandiose, extravagant, aggressive, or violent behavior?

Do you suffer from persistent remorse or regret?

Have there been unsuccessful efforts to control use or abstain from use?

Have you changed the substance you

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use, or manner of use in an attempt to control?

Do you have frequent intoxication or hangover symptoms that interfere with expected performance in major role obligations?

Do you have excuses about use?

Do you have work/school problems related to use?

Do you have problems with family/significant others which are related to use?

Do you have financial problems related to use?

Do you have physical problems related to use (includes accidents/injuries)?

Do you continue to use despite knowledge of problems caused, or exacerbated, by use?

Have you lost or changed friends?

Have you attempted a geographical cure?

Do you protect your supply of substance?

Do you give up or reduce important social, occupational, or recreational activities because of use?

Have your promises and resolutions failed?

Have you become completely dishonest?

#### C. Late Stage

Have you had an overdose experience?

Do you now experience lengthy periods of use/or binge patterns of use?

Have your ethics deteriorated?

Do you have tremors and use to relieve withdrawal symptoms?

Have your job, family, finances, or legal status been more severely effected recently?

Do you neglect food, hygiene, health care?

Do you have indefinable fears, paranoia?

Has your tolerance for drugs/alcohol decreased with little or no change in level of use?

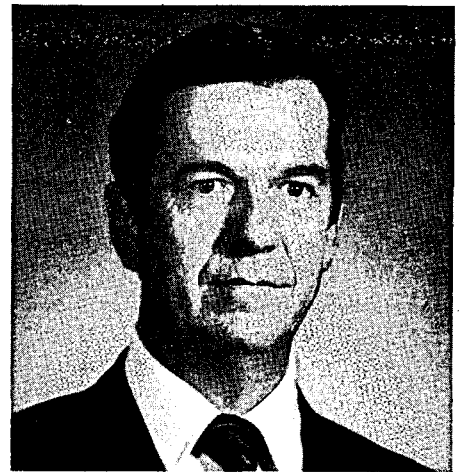
Have you physically deteriorated?

Are you unable to initiate action?

Are you obsessed with use?

Are you alibis exhausted?

Are you ready to admit defeat?



*Michael F. Tucker is a graduate of the University of Delaware and of the George Washington University School of Law. He served as an Assistant Public Defender and is presently engaged in private practice. He is a member of the Professional Guidance Committee and has been very active as a member of a special committee which attempts to assist attorneys or members of their families who have problems with alcohol or drugs.*

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# NO ROOM AT THE INN

William Prickett

The title of this little account would seem to suggest a retelling of the first Christmas when Mary and Joseph went for the weekend to Bethlehem to be counted and taxed. They found, as so many other couples have, that Joseph, the husband (or his secretary) had failed to make a reservation at the inn. However, for me the title conjures up a remembrance of Brueghel's famous painting of a Flemish village inn with a Spanish tax-gatherer surrounded by a crowd of Flemish peasants waiting to be numbered and pay their taxes to Charles V's representative. In the center, the Holy Family is seen humbly making their way with Mary on the donkey to the inn, only to be rebuffed.

However, that is not exactly what this account is all about, though it does touch on Bethlehem. Rather, this is another badly written piece made up of all sorts of odds and ends with no beginning or ending or central theme. It would never do in an English lit course: it would get a deserved "F". Still, it is what it is and there is an end to it. As Shakespeare said, "if no one reads it, no harm done, and equally so if some one does."

Let us start. I recently had to go to Houston, Texas. Mrs. Zehr, my secretary, had carefully provided me with a guaranteed late arrival reservation at a large Texas hotel with a very English name. On the only previous occasion I had stayed at this pretentious hotel, the huge lobby and atrium were deserted. The hotel was funereal-ly quiet. There was literally nobody at all in the inn. I flew out of Philadelphia on a rainy evening to Houston with a guaranteed reservation in my pocket. I finally arrived at this hotel sure that there was a comfortable room waiting for me. I shook the Spring rains off and presented my credit card and reservation to a pretty Texas lady at the desk, implausibly dressed in an English morning coat with a wing collar and tie. You could have knocked me over with a feather when she drawled with all the charm that a Texas lady playing an English innkeeper could muster that she

was terribly, terribly sorry, but they simply did not have my room. I asked her to say it again, because I simply could not believe my tired ears. She shrugged her shoulders and said that I was forcing her to say once again that the hotel was "all full up". Yes, she knew that I had a guaranteed late arrival reservation. She quickly added that the hotel had itself arranged a room for me at a nearby hotel. They were sure that I would be comfortable at this other hotel (though, obviously, not as comfortable as I would be at their hotel). I was tempted to put on my best Mt. Vesuvius act but I was tired and I knew that it wouldn't fly. I therefore simply accepted the inevitable and stalked out in high dudgeon (whatever that means). The hotel van drove me over to a substitute hotel. I presented my credit card to the night clerk. He loftily waved it away, saying that all the charges were being taken care of by the first hotel. This indeed put a different light on the whole situation. As I rode up in the elevator, I couldn't help in spite of myself being somewhat mollified.

As I tipped the bellboy, I languidly and irreverently wondered if Mary and Joseph had had their bill in the stable taken care of by the Inn. Then I remembered that Joseph had not made a guaranteed reservation so that he probably did not get this sort of treatment. Of course, Joseph probably didn't have a VISA card but, even if he had, it would not have done him any good since all of Judea was on the move that particular weekend because of Christmas and because Caesar Augustus wanted to conduct a census and tax everyone. (How typical of a bureaucrat to do things like that on a Christmas weekend!) Even the Three Wise Men had not made reservations: they were sort of wandering about, following a star. In fact, they had had to pull over in Jerusalem and ask a local called Herod for directions. The Shepherds were doing an early Woodstock number — that is, they camped out in the field on a night that was so deep and listening to heavenly choirs. As I lay in bed thinking such thoughts

while waiting to go to sleep, I said to myself that I really couldn't tell the difference between this room and the room that had been promised and then so cruelly taken away from me except that I wasn't paying for this room. Indeed, I cannot tell the difference between various hotel and motel rooms — you've seen and smelled one and you've seen and smelled them all.

I then thought about Bethlehem, Pennsylvania. It was in Bethlehem, Pennsylvania, that there had been no room in the inn for my father. However, unlike Joseph, my father had raised an ungodly row since he, like me, had a guaranteed reservation. This is what happened to Father.

For years, he and certain friends had gone to the annual Bach Festival in Bethlehem. (My mother, a Belgian, could not abide Bach.) They had always stayed at the Hotel Bethlehem. On this particular fateful May day, my father drove his 1934 Buick up old Route 100 through Pottstown and duly arrived at Bethlehem. He presented himself to the desk clerk on duty at the Hotel Bethlehem, requesting his usual corner room with a view. The room clerk blandly said that the hotel was full: they had no room whatsoever for my father. My father reached in his pocket and presented a signed letter from the hotel confirming his reservation for a room for that very night. The room clerk, who evidently had not dealt with my father (or others of his ilk before), said in a somewhat snooty manner that that was all very well (meaning the letter) but the hotel simply didn't have the room. Therefore, my father would have to hie himself elsewhere for the night. My father banged his fist down on the counter and demanded to know what the Hotel Bethlehem was going to do about a room for him for the night. The room clerk said that it wasn't going to do anything whatsoever. That was a mistake on the part of the room clerk. (If I had been there, I would have counseled the room clerk that he should not have said that at all, or at least not said it quite that way, or in quite that tone of voice. People who did that sort

of thing to my father usually came to regret it.) My father scratched in back of his ear. He always did that when he was very, very angry. He then opened his briefcase,, took out a piece of legal stationery, pulled out his gold pen and asked the room clerk to summon the hotel manager. When this worthy showed up, my father asked him for his full name. The manager not unnaturally, demanded why he wanted his name. My father told him pretty plainly that he was going to sue the Hotel Bethlehem for damages for breach of contract. He wanted to be sure that he spelled the manager's German name fully and correctly. He also wanted and got the name of the unfortunate room clerk and the embarrassed cashier. He asked the bellman for his name too as a witness. All of them rather reluctantly gave their names to this obviously very angry client. My father had told the bellman to take his bags out and put them in the rumble seat of the Buick (no tip for the bellman). He finally found a small, not uncomfortable, room in a lodging house that reeked of the pork and cabbage that was cooking downstairs. His ethereal musical weekend was ruined.

But, my father was nothing if not a man of his word. Thus, he duly retained a somewhat surprised legal colleague in Bethlehem to bring suit against the Hotel Bethlehem for breach of contract. The Pennsylvania colleague whom my father dragged into bringing suit was reluctant to do so. After all, the Hotel Bethlehem was a venerable institution and part of the Bethlehem establishment. In those days one simply did not sue the Lehigh University, the Bach Choir, Bethlehem Steel Company, the Saucon Valley Country Club or indeed the Hotel Bethlehem. Not so father. In due course, the case would wind its laborious way through the intricacies and niceties so dear to the legal fraternity. When it came on for trial, my father, in the dead of Winter, drove up through a blinding snowstorm to the Constable's Court where the case was heard and tried. The Pennsylvania Judge grudgingly entered judgment for the feisty lawyer from Delaware against the Hotel Bethlehem. My father then returned to Delaware to see whether the Hotel Bethlehem would have the folly to appeal. The Hotel did not appeal. When the time for appeal expired, he wrote to his Pennsylvania colleague and directed that the entire judgment (\$13.50 and costs) be paid over

to the Bach Choir. He paid the Pennsylvania attorney his full attorney's fees (\$137.50). Principle had been satisfied. My father never again stayed at the Hotel Bethlehem in all the years that he went to the Bach Festival.

From time to time I do stay at the Hotel Bethlehem. It is still a fine old hotel. The old controversy has either been forgotten or the management has the grace and tact not to raise the matter with me; perhaps they fear a "chip off the old block". But I

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recently went through a situation somewhat analogous to that of my father at the Hotel Bethlehem.

It started with a wedding. I went to a wedding in Montclair, New Jersey of my godchild, Jamie. Happily, I noticed that on the day following the wedding — that is, Sunday — I had to attend the start of a Judicial Conference in Princeton, New Jersey. Thus, I decided rather than come all the way back Saturday night to Wilmington and then go all the way back to Princeton on Sunday, I would go on Saturday night directly to Princeton and spend the day before the beginning of the conference, enjoying the pleasures and beauties of Princeton University and its grounds. These pleasures and beauties had been carelessly wasted on me and by me when I was a feckless undergraduate. I looked forward to the time when I could enjoy them briefly and in retrospect. I would have, in addition, part of the day to take my 10-speed bicycle to ride up and down the Delaware and Raritan Canal. Of course, I took a couple of briefcases full of work. (Even if I had had a month in Princeton, I could not have gotten all the things done that I had in mind for that Sunday before the Judicial Conference got underway.)

I stayed far too long at the wedding. I drank too many toasts to the happy young bride and groom. Thus, it was fully 9:30

before the garter and bridal wreath were tossed and rose petals were scattered over the couple dashing for their limousine parked in front of the clubhouse. I then set out to drive to Princeton. It was a dark and stormy night. I did not take the precaution of looking at a map, thinking that it was just a hop, skip and a jump down from Montclair to Princeton. I surmised that any road leading Southward would get me to Princeton: wrong! I ended up wandering about the back country roads of middle New Jersey for hours. Eventually, I pulled into Princeton and found my way to the familiar Nassau Tavern.

When I was an undergraduate, the Nassau Tavern was owned by the University. It was rumored that the University made more in the taproom selling beer to underage undergraduates than it did by tuition. However, since that time, there have been changes at Princeton. The University had also gotten out of the beer business and into the lady business and had in fact sold the Nassau Tavern to a chain, which had enlarged the few rooms on the main floor into quite a sumptuous hotel with an annex, etc. I had a guaranteed reservation for that night. Thus I pulled up to the entrance. I unloaded my 10-speed bike, my valpak, two briefcases, and a small bag of bike clothes and dirty laundry. I brought all this paraphernalia in through the rainstorm and stood there red-eyed at the desk and produced the reservation slip which Mrs. Zehr had armed me with. The young lady who was manning the desk looked at the slip, then turned it slowly over and looked at the back. She walked over to her computer. I could tell by the way she did all this that there was something very, very wrong. She tapped away at the computer for quite some time. It answered. Then she came slowly back and said that there was no evidence of my reservation. I pointed to the confirmation slip. She said that she recognized that it was a confirmation slip but the computer unfortunately showed no record of it. I said to her that I didn't give a fig about the computer, I had a reservation slip, and I was prepared to stand on my rights, thinking that I would do to the Nassau Tavern what my late sainted father had done to the Hotel Bethlehem (only I would keep the proceeds and add punitive damages). I had mentally mapped out the whole litigation with speed faster than a computer. I was

already jingling the hundreds of thousands of dollars that I would surely be awarded by a sympathetic jury for this high outrage.

However, my hopes of illicit gain were instantly dashed. The lady said that it did not make any difference that the computer didn't show my reservation. She had plenty of rooms and she would be glad to give me one. With some exasperation, I asked her why she had led us through the "song and dance" of the computer if she had rooms anyway and was prepared to give me one. She thought about that for a while. Then she said evenly that she had to work through the computer at least at first. With this sorted out, she went through the manual process of registering me. Then she went to her key board, hesitated for quite a while and then pulled out a key for a room on the seventh floor. I picked up my briefcases, bags of laundry and wheeled my 10-speed bike. I struggled down the hall to the elevator. She wished me "Good Day" (though it was only 1:30 a.m.).

I got to the seventh floor and found Room 731. I stuck the key in the door. I started to push the door open and the bike on in when I noticed that the television was on. Indeed, seated in front of the television in his underwear was a very old fat man. In the bed, also glued to the television, was a thin old woman in her nightgown with her hair in rollers. The old man looked slowly around at me with my bicycle and wet clothes — he was surprised. The old lady pulled the bed clothes up around her. Clearly this room was taken. I backed on out, mumbling apologies.

I wheeled the bike down the hall and, leaving the bags and the bike there, I went on down to the front desk. I plunked the key down in front of the young lady and told her that Room 731 was very definitely occupied. She sucked on her pencil for a while and then said, "My goodness gracious. That's right. I did give that room to that nice old couple from Roanoke, Virginia." I asked her somewhat acidly why the computer had not shown that this room had been given to a couple from the Commonwealth of the Presidents. She replied evenly that she had not shared that information with the computer. Rather than prolong this fine point, since it was now getting on towards 2:00 a.m., I asked her wearily for a key to an unoccupied room. She took this remark unkindly and said somewhat testily that anybody could make

a mistake. She now produced the key to Room 528. I went up to seven, retrieved my bicycle and my bags and briefcases and came down to 528. The door was on a door chain and it stopped with a jerk. A little scream of apprehension came from the bedroom as a girlish voice cried out, "My God, James, it's my husband!" A big gruff voice said, "Never mind, Honey, I will beat the tar out of that fellow if he takes a step into this room. Nobody's going to hurt my darling Beulah." I could see that I now

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about the computer, I  
had a reservation slip,  
and I was prepared to  
stand on my rights.**

had stepped into some sort of a delicate and fragile menage a trois. My bike was whimpering. I put my frightened bicycle into reverse and backed it out, pulled back the briefcases, and pulled the door firmly to as this great hulking doberman of a lover came bounding towards the door.

I beat a hasty retreat to the elevator and took bike and briefcases all safely down the elevator in case the lover should come out and wreak his vengeance on my innocent and now trembling bicycle.

Again, I approached the front desk where the young lady said, "Oh, no, you again! What's it this time? Not enough towels? I told her that Room 528 was occupied. She went over to the computer and punched in 528 and then came back and said that the couple involved had come in two days earlier, were supposed to be there for one night only, but had stayed for a whole three days and nights. I asked her why she hadn't told me this, rather than sending me to sure death and destruction by intruding on the sacred precincts of this couple. She replied that the daytime clerk was supposed to record the delay of their exit, but had not done so.

By this time, it was past 2:00 a.m., and my plans for a productive, creative and sporting day on Sunday were rapidly vanishing. I asked once again for a key to a room — any room — as long as it was

unoccupied. The young lady said that she knew of one room that she was sure was not occupied and that it would be very comfortable. She gave me a key to Room 100. I left the briefcases downstairs (not trusting her and not wanting to hassle them all the way up the elevator and down the hall). I went up and opened the door. There was the biggest damn corporate board room I ever saw. I had a table surely 30 feet long and 12 feet across. There were enough chairs for all of NATO and a few of the Banana and African countries as well. I came back down again to the front desk and the young lady looked at me and said, "Oh, no, you again! What now?" I told her that she had given me a conference room. She replied that I had not gone far enough. If I would go to the far end of the conference room and go through that door I would find what I needed. I was very skeptical but went back upstairs again and entered the huge funereal conference room and went to the back door. There, sure enough, was just what I needed — a huge bedroom with two king-sized beds in it and a bathroom big enough to wash a Mercedes in. I wheeled the thoroughly fatigued bike in, stabled it in the conference room, and fell wearily into bed.

The next day I came on down to reception and explained to the manager on duty that I had made a simple reservation for a single room with bath for two days and had ended up in the biggest conference room suite that I had ever seen. He replied that he had heard of my adventures of the night before from Maryann, his night clerk. He said that I could have the conference room and the luxurious suite that came with it all for the price of a single room with bath for whatever time I needed it, and that he was sorry for the "wild goose chase" I had been on the night before.

Thus, these things have a way of working out.

*William Prickett hardly needs an introduction to readers of this magazine. He is the senior partner of the law firm of Prickett, Jones, Elliott, Kristol & Schnee. A former president of the Delaware State Bar Association, he has also been a frequent contributor to DELAWARE LAWYER. From time to time we urge Bill to put into book form his accounts of his remarkable father - not to mention his remarkable self, but so far to no avail. We shall be patient.*

# SUBSTANCE ABUSE: A PHYSICIAN'S VIEW

Joseph E. DeLaurentis, M.D.

The term "substance", as I shall use it here refers either to drugs or to alcohol. While alcohol continues to be the preferred substance of abuse, drugs, especially in combination with alcohol, increasingly threaten its favored status. The combination abuser also brings an added burden to treatment, which is hard enough when confronting only one substance.

Alcohol got to be the substance of choice, because it was readily available, socially acceptable, and capable of being used in moderation. Drinking in moderation is not a problem for most people, but for someone inclined to alcoholism it becomes a major obstacle. At some point the future alcoholic decides to drink, not knowing the consequences. This volitional act is not perceived as important at the time. Later, in treatment, this underlies denial, making it difficult for the alcoholic to admit that the first drink really was the beginning of alcoholism. The insidious onset tends to obscure this fact. Admitting that one is an alcoholic defines not only the problem but the solution.

Drugs add a whole new set of problems to substance abuse. In addition to their similarity to alcohol, drugs (except where prescribed), are illegal. They create a more tyrannical dependency, and in combination with alcohol produce far greater problems than result from a simple addiction to drugs alone. The illegality and the consequent profit motive in distributing them have brought the problem to epidemic magnitude, not only in the United States but throughout the world.

There is a critical and most important difference between drugs and alcohol: drugs cannot be used in moderation. Every time a drug is taken the user expects the full intoxicating effect on body and mind. Not so with alcohol. Small amounts of alcohol can be taken without achieving intoxication. To a drug user there is no point in not getting "drunk" or reacting to the drug. I am convinced that the most devastating effect of substance abuse is its production of a state in which the user no

longer has complete control of himself. Users are no longer in charge of their bodies - the worst possible thing that could happen to anyone. And yet, this apparently is one of the reasons that people continue to use and abuse.

The drug abuser, like the alcoholic, starts with a willful decision to use. When abusing takes hold this element of volition is lost. Because abuse begins with a willful decision abusers deny their problem. (No one wants to admit that he created his own

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hell.) The addicted always claim it's someone else's fault.

I mentioned the epidemic nature of substance abuse. A disorder is regarded as an epidemic when it afflicts many people in a region at the same time. It is also characterized by the rapidity of its spread. Substance abuse fits this mold. Unlike epidemics due to viruses or bacteria where only one cause is responsible, substance abuse has many and varied causes. Everything from heredity to societal ills has been blamed. This complexity of cause makes ending the epidemic very difficult. Responsibility for the epidemic has been spread around to include everyone. First and foremost the abuser has to share a major responsibility. For whatever creates a fertile milieu for abuse, a willful decision has to be made in the initial use. No amount of rationalization will change that. In fact this is the basis for the "just say no" campaigns. Almost everyone at some time is put into a tempting situation where the only answer has to be a resounding NO. It is these

tempting situations that impose responsibilities on others.

Family first, then the community, have the task of creating an atmosphere of love and caring. Parents, of course, have the primary responsibility in the way children are reared - no easy task. There is no set formula that can be used for every newborn. Guidelines on raising children are plentiful and some are even useful, but intuition and instinct largely determine how parents handle their children. If there is one bit of advice that fits most child rearing it is this: be consistent. If children know what to expect from their parents they are more likely to grow up in a healthy environment. It is this kind of family that will "vaccinate" their children and protect them when they get into tempting situations. If the "vaccination" takes there is no fear that substance abuse will be a problem.

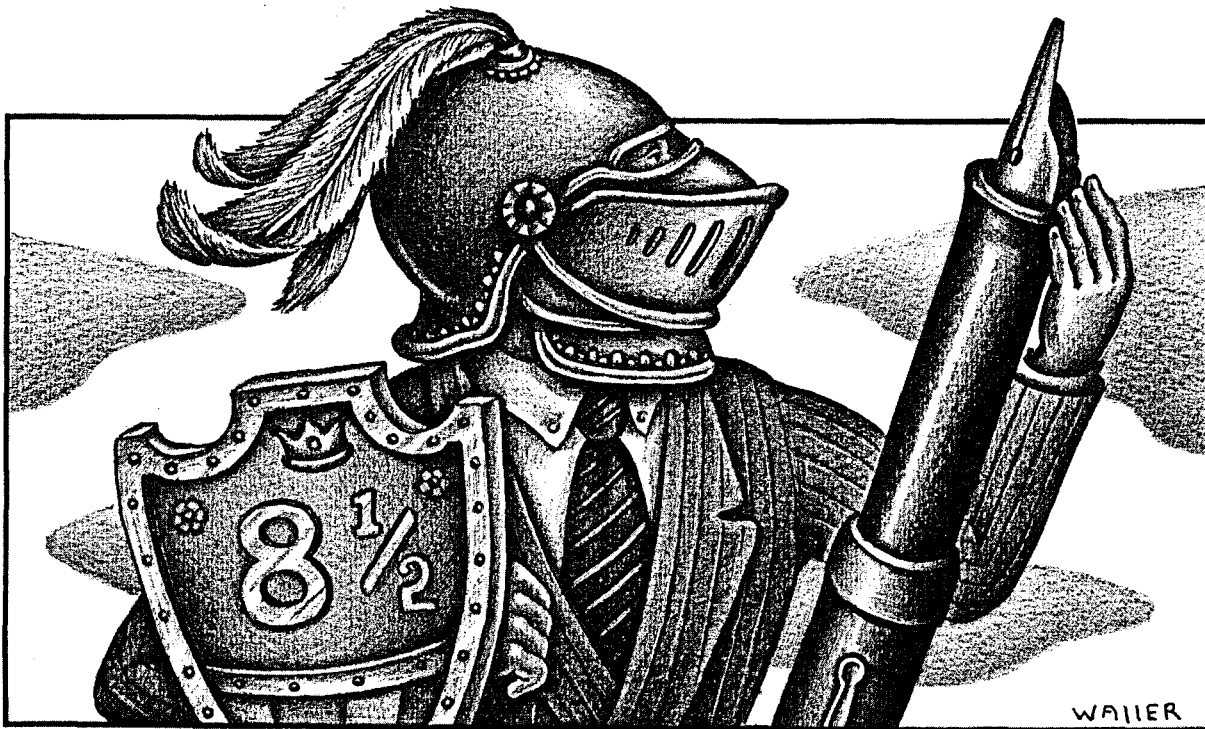
After children have been properly "vaccinated" by their parents they begin to be part of a community. The community then has the responsibility of supplying a healthy environment to bolster the healthy family. This takes many forms and a lot of work by neighbors, schools, and government. Ideally the community will provide a "booster" to the basic vaccination received at home. The community becomes an ally in the child rearing process.

If all goes well the medical and legal professions have no responsibility to worry about, other than those of family and community. However, as it happens with vaccinations, some don't take and eventually substance abusers end up in lawyers' and doctors' offices. Responsibility to the abuser at this stage is that of assuring treatment and rehabilitation, which the Courts often mandate and the medical profession carries out.

Treatment programs are all geared to producing abstinence, giving the abuser's mind and body a chance to heal so he can eventually return to the mainstream of society. The goal of complete abstinence has been challenged in a way I consider perilous. There have been some studies

*continued on page 36*

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# FITNESS FOR THE LIBRARY-BOUND

Christine M. Waisanen

We all know that we're supposed to develop and maintain a regular exercise program. However, most lawyers approach exercise in random spurts which only hint at any previous athletic glory. It's probably the flesh that's weak, not necessarily the desire. We are office-bound, mentally drained and physically unfit by the end of the workday. Moreover, we hate being lectured about what we should or should not do. It's too easy for us to argue around such facts.

So how can we maintain our physical fitness within our limited time frame, knowing that a healthy body makes a healthy mind (who said that anyway?). At least, how do we best minimize our damages, or explain away any failures?

We all know the excuses. How can we justify spending an hour a day pumping iron or running around a track, knowing that we could be saving someone's life or life savings instead? How can we justify taking such time off at this vulnerable junction in our carefully orchestrated career? Wouldn't our spare time be better spent enjoying hobbies to rest our minds and nerves, instead of our muscles? Even better, shouldn't we spend it with our families, or on practical domestic or charitable work?

The time comes when we run out of excuses, or simply tire of reciting them. Then, rationalization begins. We tell ourselves that seething while one's opponent attempts all sorts of nefarious dealings and accusations about us in open forum must surely burn up calories and exercise the abdomen. Running for the train or to file a last-minute motion is equivalent to sprinting. Lifting heavy briefcases, files and law books surely must equal a few curls with a 15 pounder. Seems like each day one covers several miles just walking around the office, dashing here and there.

These too have limits. The next step for many of us is a "toe dip," which is akin to prolonged discovery in that it involves extensive research, interviewing and prepa-

ration to find the "perfect" program, equipment or health club. At this stage, attorneys usually shop for exercise equipment, preferably of the "high tech" variety which, according to the salespeople, will take much of the sting out of beginning our customized program. Often, however, that perfect exercycle ends up as a tie or scarf rack, or the club membership (or softball team) ends up becoming more of a social than an athletic competition. When the inevitable bills arrive, they seem to mock lost intentions.

Have you passed through these stages and still not found your exercise niche? Are you still office-bound, beginning to envy those who zoom through the corridors without puffing or carrying a spare tire? If so, you need exercises for the library-bound. While they are not the best they are better than nothing. Choose your favorites, and begin.

**1. Creative fitness with law books.** An average law book weights about four pounds. One or two therefore make a good set of weights. Take the thick rubber band that comes with your newspaper, and put it around the books. Do arm curls with these for at least 15 times each arm while you talk on the telephone. Next time the phone rings, lift the books over your head, 15 times each arm. When pacing as you ponder strategy, balance the books on your head; it's great for your posture. Finally, when reading one of the books, walk around the conference table until you have finished reading the case. Not only will this exercise your entire body, but you will become a faster reader in the process.

**2. Creative fitness with shelving.** Have you ever considered that the portable steps in many law libraries are similar to, if not better than, the portable steps in a spa? Each time you finish writing a key point, remove your jacket, and rapidly step up and down the steps for five minutes, working up to ten.

Speaking of stairs, take the stairs each day to the office. If you have a penthouse,

you'll get in shape fast. If you're on the mezzanine, however, you'll have to hurry up and down a few times to get the best effects. This will no doubt confuse the receptionist, but you'll become fit and strong.

If your office building or library has unsuitable stairs, at least look for bookcases that will require you to stretch to get the books, then slowly lift them down, as if they offer resistance to leaving their niche. Try to pick lawsuits that require lifting heavier books, such as the ALR's. Leave the Shephardizing to a paralegal.

Once proficient at stair-climbing or stretching, consider climbing the shelves themselves. Think of the healthy physiques you've seen on mountain climbers as you remove your shoes. Don't worry about getting caught; your reputation for gung-ho research will actually grow.

**3. Creative fitness with a briefcase.** Surely you have a colleague or friend who is as interested in fitness as you are. Remember when you and your best friend would spend some of your best times tossing a ball (or frisbee, birdie, shuttlecock, jacks, whatever) back and forth? Well, now you can do the same with your briefcase. Play "briefcase toss" while waiting for the elevator (by now you doubtless only take the elevator down), waiting for copies, or standing at a "Don't Walk" sign. Don't do this on days that you pack a fitness lunch, however.

If you have fragile contents in your briefcase, try a careful military press instead. This looks especially nifty if you're carrying an attache, since it seems more martial. If you don't have an attache, sing "Ballad of the Green Berets" under your breath to set the proper mood. People might assume that you're a tough ex-marine having a war-time flashback and legends will grow.

**4. Creative office aerobics.** We've already discussed walking around the conference table and stair-climbing. If those don't meet your fancy, consider walking to

work, or at least parking six or more blocks away. Not only will you save center-city parking fees, but you will appear for depositions with a confident, yet agitated glow which will no doubt serve to intimidate your opposition. Consider wearing the deodorant that advertises that your audience will never see you sweat. If it doesn't work, sue them.

Even if such aerobics are not possible on a given day (and, as we all know, you must do aerobics at least three times per week for best effect), there is still an exercise of at last resort which you can do in the library - no equipment necessary. Simply pick up a law book, pretend to peruse it while you take your pulse, and, when reading, rapidly jump up and down for five minutes like a cheerleader. If anyone catches you, simply yell "A case on all fours! I found it! I found it!" Two words of caution here; One, don't do this too often, or you will find yourself with a crushing research load. Second, if you can't yell the words, stop again and take your pulse. You don't want this last resort to be your last effort in life, nor your obituary to be "Sweaty Stiff Misfiled in Stacks."

If all this seems like too much work, or too many more stress points and complications in your already complicated life, perhaps it is. An alternative is to set up a formal exercise program with a buddy on Mondays, Wednesdays and Fridays (Saturdays only if you need a catch-up day). Pick a place and hour convenient to you both. You can discuss the law while you work out, if you wish, but you probably won't. In fact, you'll feel your mind becoming clearer as your muscles get stronger. You'll probably even wonder why you didn't begin sooner.

One final word of caution: the author makes no warranties, either express or implied, as to the efficacy or safety of these exercises and has not tried them herself. Please consult your physician, cabinet-maker, librarian, custodian, office manager and insurance policies before undertaking any of the above programs.

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*Chris Waisanen, our periodic satirist, is a member of the District of Columbia Bar. A Delaware resident since 1979, she is also known as Mrs. Robert Katzenstein.*

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*continued from page 32*

that seem to show that some alcoholics can return to drinking in moderation. I think such experimentation should be avoided at all costs. It makes no sense to tempt an alcoholic with a repetition of his illness.

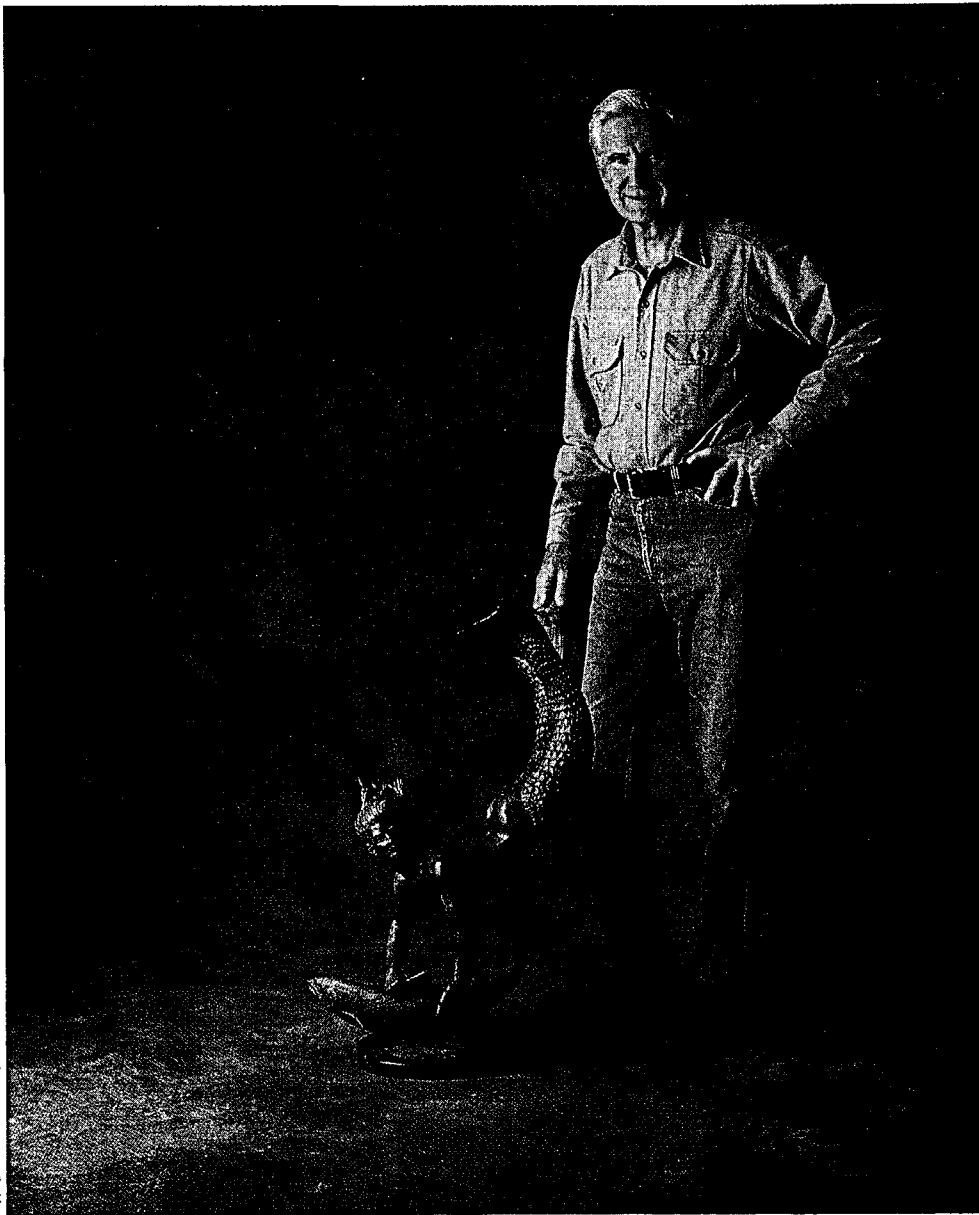
There are two principles I consider most important in substance abuse: 1) alcohol can be taken in moderation. Drugs cannot. 2) denial is the key symptom of all abusers. In waging war against the substance abuse epidemic these elements must be kept in

**It makes no sense  
to tempt an alcoholic  
with a repetition  
of his illness.**

mind. Winning this war isn't going to be easy. Let's hope it doesn't turn out to be another Vietnam. Certainly the best way to avoid an epidemic is to not have one in the first place and vaccination with the proper vaccine is one way to do that. Unfortunately a complete satisfactory "vaccine" for avoiding substance abuse has yet to be found. There have been many suggestions as to how the war against substance abuse can be won, including getting rid of the source of drugs and the markets for them. In the final analysis it's up to the individual to vaccinate himself with education and involvement in keeping the community healthy and above all be both the cause and effect of a happy, healthy family.

*Dr. DeLaurentis received his medical degree from the SouthWestern Medical Center, Dallas, Texas in 1949. He joined the duPont Company and came to Wilmington in 1953. His specialty is occupational medicine. In 1982 he retired, but has remained active on a consulting basis. In addition, he has been deeply involved with the committees of the Delaware Academy of Medicine concerning themselves with physician health and alcohol and drug abuse. He is married and has four children and, he advises with pride, eight grandchildren.*

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# DELAWARE TODAY

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# A FORTUNE AT THE LAW OR THE CRYSTAL BALL WAS CLOUDY

Carroll F. Poole

1954 was a red letter - or was it a bold black type - year for the State of Delaware. For the first time since its independence in 1776 it had a well organized, up to date compilation of its statutes. the Delaware Code of 1935 was at last superseded. The members of the Bar finally could avail themselves of a usable index. A senior member of the Bar once advised a much confused young law student that when all other search techniques had failed the place in the Delaware Code of 1935 which would probably contain the sought for reference, no matter what the subject, would be the chapter entitled "Fish, Oysters and Game".

The revisors applied themselves assiduously to their tasks. Not only did they reorganize the 1935 Code into logical titles, they also removed many sections which they deemed obsolete. The Delaware General Assembly then completed the clean sweep by enacting the entire new Code as positive law, not as mere evidence of the law.

This tale would never have been written save for one of those obsolete provisions so properly deleted from the 1935 Code. It provided in substance that anyone who "pretended" to practice witchcraft, magic, necromancy, or fortune telling was guilty of a misdemeanor, punishable by a short jail term, or minor fine, or both.

In nearby Maryland it happened by chance, or was it the long arm of coincidence, that there was a fortune teller who was earning a modest, but comfortable living from that vocation. It also happened that there was in Delaware a member of the Bar of only three years' seniority. Fate decreed, perhaps again coincidence, that the husband of the fortune teller consulted the young attorney.

The question he asked was simple. Did the omission of the section dealing with fortune telling mean that it had become an activity which was permitted in Delaware? Following the meeting, diligent research convinced our hero, the young professional, that the new Code really did mean what

it said when it decreed that it was to supersede all prior chapters and sections of the 1935 Code. It therefore followed that fortune telling had in fact been removed from the frowns of the distinguished Attorney General of the State of Delaware.

My client (naturally, I was that green and untried attorney) returned about a week later to learn the results of my research. To my immense surprise, my opinion was not received with the slightest enthusiasm, quite the contrary. Mr. Husband

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of Mrs. Fortune Teller then explained. He and his wife were not in the least interested in telling fortunes in Delaware. they simply did not want others to be able to do so. Their emporium for forecasting future fates was far too near the boundary of the State of Delaware. Therefore, would I please apply my vast influence with the Delaware General Assembly to procure the reinstatement of the prohibition, and never mind whether there might be any questions under the anti-trust laws.

Somewhat later, I related this story to a respected acquaintance, a leader of the bar, as the phrase was in those far off days. He listened gravely. He stroked his chin and asked a few questions.

"Your client wanted to know whether fortune telling is legal in the State of Dela-

ware?"

"Yes, sir." said I.

"Was it not then the case that he wanted to know whether he, his wife, or someone else might be fined or sent to jail for telling fortunes in Delaware?"

"It would certainly appear so." I responded.

"On those facts," said Mr. David F. Anderson, my interlocutor, "your client's wife should be arrested, tried and convicted for taking money under false pretenses, because the terms of her husband's inquiry were certainly evidence of her admission that she could not even foretell her own future."

It hardly seemed worthwhile to report this exchange to my client.

Mr. Anderson has kindly agreed to permit the disclosure of his participation in this luncheon conversation.



*Carroll Poole, is a member of the Delaware Bar and an Editor of this publication. His interests include history (he is a member of the Historical Society of Delaware) with a particular emphasis upon maritime and naval history. He has been active in the conservation movement. He was among the organizers of Delmarva Ornithological Society and Delaware Nature Society. He is also an accomplished writer. As he puts it with becoming modesty his interests extend "from bird watching to word botching".*

# MISS GRAMMAR

## You Say You Don't Get Tense?

Karen Larsen, Ph.D.

Sooner or later, almost every attorney will pause in the middle of dictating or drafting, buffaloes momentarily by verb tense: past or present? The case being cited is definitely past, but the determinations made at that time still hold true today. What to do? Let's consider these examples:

A. "A similar distinction was recognized by the court in Owen v. Jones, 46 Or App at 105. The defendant tenant in that case sought abatement of its landlord's forcible entry and detainer action seeking possession of the rented premises. The plaintiff landlord had earlier instituted an action to recover damages against the tenant for failure to pay rent. The court held that because the primary relief in the forceable entry and detainer action is a judgment for restitution of the premises, it is significantly different from an action seeking a money judgment for an unpaid rent."

B. "Rennie supports our position because the court in Rennie recognized that where one of the claims fell within the exclusive jurisdiction of a tribunal that is incompetent to adjudicate the other claims, abatement is not available."

Now, are you absolutely positive of the tense, past or present, of the verbs in those examples? Probably not. How can we know?

The problem is not a basic knowledge of tense, which most of us possess — the concern is that tenses be kept in the proper sequence.

The tense of the initial verb tells us when the main action takes place, and all the other verb tenses in the paragraph express time in relation to that main verb. If the action in a subordinate clause takes place at the same time as the main action, then the verb must be in the same tense as the main verb (present with present, past with past, and so on).

If, however, the subordinate action took place before the main action, the subordinate verb must be in a past tense. Even though the two verbs are in different tens-

es, there is unity of tense. The tenses correctly express the sequence of happenings.

### Past/Past

When the judge returned to the bench, the defendant made a rude noise.

### Present/Present

As attorneys spend time with their clients, billable hours increase markedly.

### Present/Past

Herb understands that the partnership has promised him a place.

### Past/Prior Past

Herb learned that the partners had made promises to Jones a week earlier.

In English there is also a general rule of sequence that when a past indicative precedes (fear not, little flock; it will be made clear by example), a past tense form must usually follow: "The firm wants to be ready when the new partner arrives," but: The firm wanted to be ready before the new partner arrived."

"The Oregonian said he was a young black scholar." [Even though he still is young, black and scholarly.]

This sequence is not observed if something is represented as habitual, customary, characteristic, or universally true: "He asked the clerk what time the office usually opens." [or opened].

"He didn't seem to know that attorneys work late."

"The judge reminded them that honesty has always been the best policy."

The present tense is often used to represent a state or activity as still continuing: "My partner told me this morning that the committee is still at work on his proposal."

The present or future may slip in after a past indicative when the reference is to a time still vividly felt as future at the time of speaking: "She told me this morning that she is going [or will go] with us tomorrow."

Finally, we may disregard the old sequence with the subjunctive, where the idea of present or future time is prominent: "He lowered his voice lest the jurors hear."

Sometimes, incidentally, the literary present finds its way into legal documents: "Judge Solomon reminds us in his treatise to avoid cliches like the plague." Things in print seem to have a kind of immortality, a persistent present — we quite comfortably say, "As A Tale of Two Cities opens, Sidney Carton waits in the wings \*\*\*."

And now what about the opening examples?

In A and B, above, these changes should be made:

A. "detainer action was a judgment \* \* \* it was significantly different."

B. "that was incompetent \* \* \* abatement was not available."

OR

"where one of the claims falls within [and the other verbs remain in the present]."

Not easy and not simple, this business of unity of tense, as Miss G. is sure you'll readily agree. But into each life some optative subjunctives and predicate appositives must fall, as grammarians like to put it.

*A native of the Portland area, Karen was educated in California; she did her undergraduate work at San Diego State University and received her Ph.D. in literature from the University of California at Santa Cruz in 1971. Karen spent 13 years as an English professor at Hartnell College in Salinas, California, and George Fox College in Newberg, Oregon; she taught literature as well as business writing and composition. Since 1981, Karen has been associated with Miller, Nash, Wiener, Hager & Carlsen, first as legal editor and now as writing consultant. In addition, Karen teaches seminars for the firm, serves as adviser for local businesses, and writes a monthly column, entitled "Miss Grammar," which appears in the Oregon State Bar Bulletin and other publications. She is a popular speaker before such groups as the Public Utility Commission, the Clark County Bar Association, and the Oregon Appellate Court Judges Association.*

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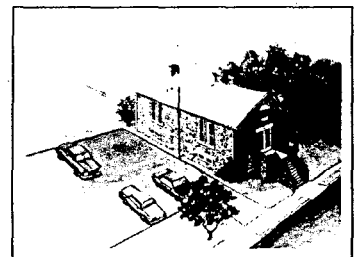
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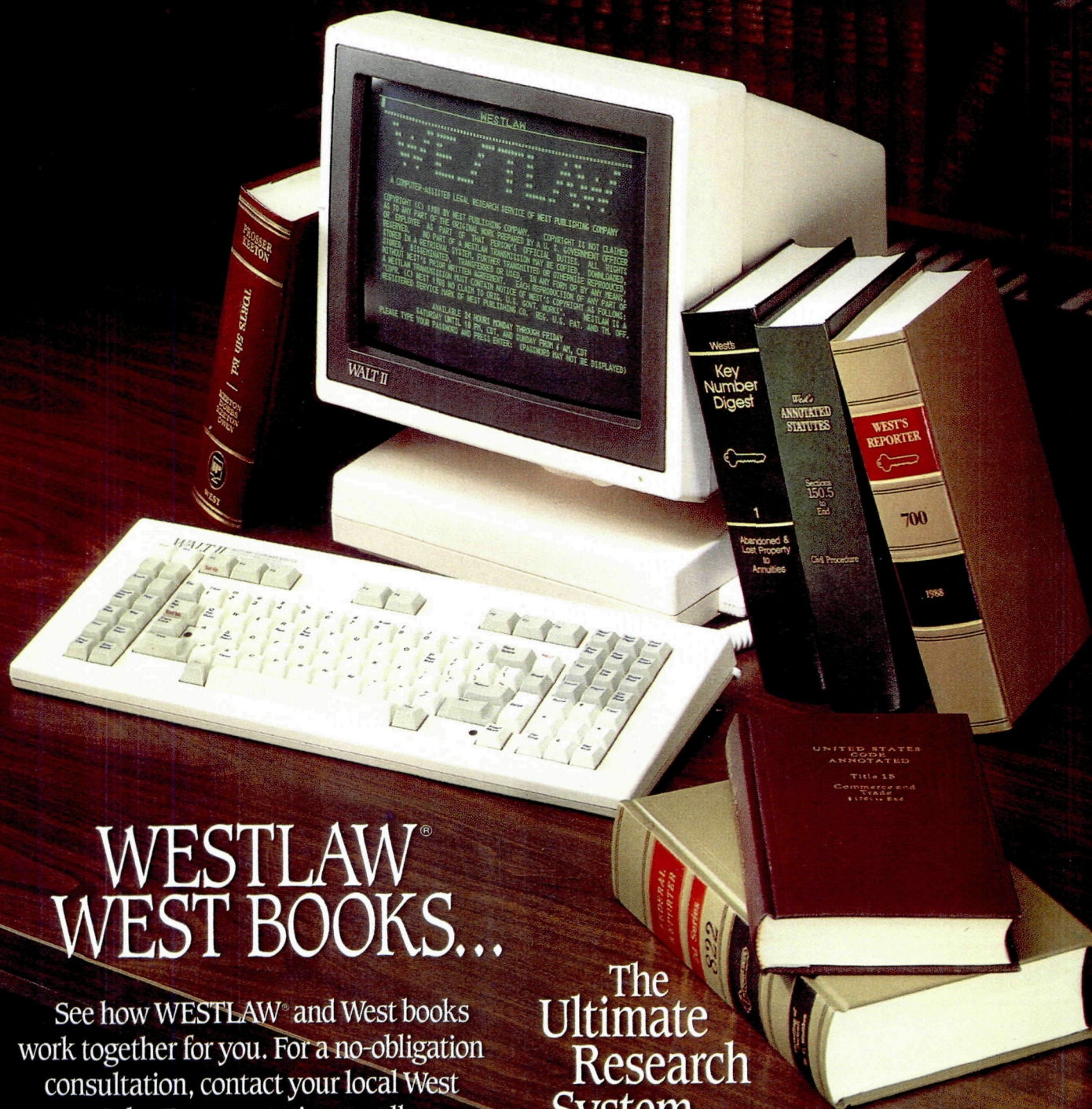
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