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THE OTHER BAR*

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Substance abuse in the legal profession

BAD AND GETTING WORSE

The legal profession has a reputation for many things. Perhaps because of the role lawyers and the legal system play in the frequently unpleasant business of resolving disputes and regulating behavior in society, the public's perception of the profession is wrought with uncomplimentary stereotypes. Is there another profession that has its own genre of jokes? The local bookstore is likely to have a small section devoted to books containing lawyer-centric "humor," virtually all of which evinces a negative and derogatory view of lawyers and the law. One of these stereotypes is that of the drunken trial lawyer, whose origins can be traced at least as far back as Shakespearian times.

Unfortunately, this stereotype has a real and worsening basis in fact. Substance abuse in the legal profession, a long-recognized problem, has recently been well-documented as a phenomenon that is getting progressively more widespread, with serious consequences for practitioners and the public. Lawyers who are impaired by drugs or alcohol, almost by definition, cannot be relied upon to provide competent legal services to their clients. Accordingly, this issue needs to be prioritized and addressed.

It is no coincidence that the California State Bar's continuing-legal-education requirements have long included a mandatory unit on this subject. Additionally, the State Bar administers a legislatively established Lawyer Assistance Program, ("LAP"), largely to address this problem. Unfortunately, it is glaringly apparent that much more must be done. A clarion call for action went out in 2016 with the publication of an article entitled *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys.* (Addiction Medicine, Volume 10, Number 1, January/February 2016.) This research, conducted By Patrick R. Krill, JD, LLM, et. al., was co-sponsored by the Hazelden Betty Ford Foundation and the American Bar Association and made several findings that shocked the profession.

This article is based both upon the sources cited and the empirical observations and insights gained by Mr. Mann over the course of his 16 years of full-time experience working with California lawyers, judges and law students suffering from substance-use disorders.

The study utilized a sample of 12,825 licensed, employed attorneys across 19 states. They comprised all walks of the profession and reflected a high level of diversity regarding demographic categories such as race, gender, and age. Each attorney completed a survey, the results of which were subjected to pre-existing and well-established evaluation protocols. The overall conclusion was that "attorneys experience problem drinking that is hazardous, harmful, or otherwise consistent with alcohol use disorders at a higher rate than other professional populations." Some specifics:

1. 20.6 % of participants screened positive for potentially alcohol-dependent drinking.
2. Surprisingly, respondents 30 years of age and younger were more likely to have a higher score than their older peers.
3. Levels of depression, anxiety, and stress were significant, with 28%, 19%, and 23% of attorneys, respectively, experiencing symptoms.

What is going on?

Who are these attorneys, and why do they suffer these symptoms? It seems counterintuitive that attorneys should be so afflicted. Well-educated, usually well-compensated, and generally (if grudgingly) respected, they are not the type of people commonly perceived as alcoholics or addicts. So, what is going on?

It turns out that an examination of the nature of addiction, especially how it first gains its grip on its victims, alongside a look at some central and unique traits of the legal profession, sheds some light on this question. Addiction, which includes alcoholism, is widely regard as a chronic, progressive and fatal brain disease characterized by craving for the substance involved, escalating and eventual compulsive use despite negative consequences, and ultimately an inability to control or stop using.

It is not a choice, or a malady inflicted from outside the sufferer, but rather the result of a process, which begins when an individual first uses a chemical to change the way they feel. Drugs and alcohol are chemical shortcuts, ways to artificially and quickly achieve a desired result. These can be generally characterized as "up"; more energy and focus (stimulants from coffee to Adderall to methamphetamine), "down"; relaxation and stress relief (depressants from alcohol to tranquilizers to opiates), "around"; temporary escape (perception changers such as marijuana and psychedelics), and "off"; (sleep medications). Often, initial use is quite effective and is correctly perceived as providing a benefit. Usually, there are no immediate negative consequences. This encourages repetition of the behavior.

The attraction is that the substances usually work better than any natural way of achieving the desired state. The problem is that the substances are addictive, which means that users become habituated and then dependent on them, and they eventually stop working, causing the use of higher doses, with the attendant escalation of negative side effects. Every drug has its desired effects, and its unwanted side effects. With addictive drugs, the side effects include impaired thinking and memory, personality changes, behavioral deterioration, and eventual dysfunction, negatively impacting every facet of life.

Why are lawyers so often afflicted?

The legal profession is fertile ground for sowing the seeds of substance use for a multitude of reasons too numerous to cover in a short article. They include the following:

The "lawyer personality"

There is general agreement among those who have studied the psyche of lawyers that many share a common profile

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of personality traits. (See, e.g., *Lawyer Know Thyself: A Psychological Analysis of Personality Strengths and Weaknesses.* Susan Daicoff, 2004.) A partial list includes controlling, ego-driven, competitive, judgmental, pessimistic, argumentative, anxious, self-centered, grandiose, and compulsive.) Some of these seem to be inhered in those who select law as a career; however, it is well-documented that the traditional law school educational style and socialization process greatly reward and exacerbate these traits. It turns out that this profile is uncanny in the degree to which it overlaps with the consensus "addict personality" profile. This would indicate that many lawyers are predisposed by personality to be susceptible to addiction.

High compensation and hourly billing

Most people who are compensated as well as attorneys simply do their jobs and receive their paychecks. But lawyers bill by the hour, in increments of six minutes. They are under tremendous pressure to bill hours, and the time is expensive and must be justified. This creates for many lawyers a strange perception and a chronic shortage of time, which spills over into their personal life. When there is never enough time, chemical shortcuts become attractive. A stimulant can substitute for a nap, a drink for meditation or other natural means to relax, a joint for a vacation, or an Ambien for proper sleep habits.

The adversarial system

Many advanced professions involve congenial cooperation towards common goals. (think medicine, architecture, engineering), but lawyers often do battle with each other in a public forum, with great consequence. The pressure to win is enormous. Who else does this? Professional athletes do. In both cases, whether it is the Super Bowl or a million-dollar verdict, the temptation to gain an advantage with performance-enhancing drugs is enormous, and both athletes and lawyers succumb at problematic rates. However, athletes get tested, get caught, and are compelled to quit, or forfeit their careers. Lawyers are not tested, with the result that the problem usually goes on for longer and becomes much worse before it is addressed.

Advocacy for others

Attorneys represent the interests of their clients, which they are duty-bound to pursue, whether they agree or disagree with the result sought or the effects caused. The results may affect only the client, but can often have a broader impact, also affecting, for example, other people, the economy, or the environment. Lawyers are told to divorce themselves from moral responsibility for the outcome, so long as they follow the law and adhere to the code of ethics. This is not always an easy task.

People generally want to feel good, and people of substance want to feel good by feeling that they are good people who do good things for good reasons. Playing an instrumental role in achieving an outcome that is inconsistent with one's personal values can cause cognitive dissonance; a discomfort with conflicting values or with reconciling behavior that is not consistent with held values.

If one has a fundamental-value conflict with a result worked for and achieved, it is often of little consolation that the effort was "for the client" and the law and rules of ethics were followed. The law and the rules of ethics are minimum standards, not morality. They are not aspirational. Rather, they represent the level below which we cannot go without getting into trouble. This conundrum makes attorneys particularly susceptible to quieting the dissonance in their brain with alcohol.

The result of the pressure exerted by the legal profession is, per the *Krill* report discussed above, a lot of lawyers in trouble with drugs and alcohol. The problem is aggravated by the barriers to getting the needed assistance. First, lawyers are problem solvers. They are not in the habit of asking for help or showing weakness. They solve other people's problems; they do not have problems! They are called counselors; they do not need counseling!

Next, the stigma of addiction is pervasive. Although a disease according to no less an authority than the AMA, addiction is still widely considered a moral failure, and lawyers often justifiably perceive their reputation to be their most valuable asset, which they are terrified of sullying with the stigma of addiction. Further, many attorney personality traits (*see above*) cause major challenges to embracing new ways of thinking associated with successful recovery. Finally, the pressures of work and the inflexibility of schedules often raise significant strategic obstacles to allocating the time off necessary to go to treatment.

How to identify an alcoholic or addict lawyer?

This questionnaire, adapted for lawyers from a longstanding and widely used treatment assessment tool, is designed to identify a level of alcohol or other substance use which is adversely affecting professional competence, and likely to require treatment.

1. Are my associates, clients, or support personnel alleging that my alcohol/drug use is interfering with my work?
2. Do I plan my office routine around my alcohol/drug use?
3. Am I fooling myself into believing that drinking at business lunches is necessary?
4. Do I ever feel I need alcohol/drugs to face certain situations?
5. Do I frequently use alcohol/drugs alone?
6. Because of my alcohol/drug use, have I ever had a loss of memory when I was apparently conscious and functioning?
7. Has my ambition or efficiency decreased since I began to drink or use drugs?
8. Do I ever use alcohol/drugs before meetings or court appearances to calm my nerves, gain courage, or improve performance?
9. Do I want, or take, alcohol/drugs first thing in the morning?
10. Have I missed or adjourned closings, court appearances or other appointments because of my alcohol/drug use?
11. Due to my use of alcohol/drugs, have I ever felt any of the following: fear, remorse, guilt, real loneliness, depression,

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severe anxiety, terror, or a feeling of impending doom?
12. Is alcohol/drug use making me careless of my family's welfare or of other personal responsibilities?
13. Does my alcohol/drug use lead me to questionable environments or acquaintances?
14. Have I neglected food, hygiene, health care?
15. Have I ever neglected my office administration or misused funds because of my alcohol/drug use?
16. Am I becoming increasingly reluctant to face my clients or colleagues for fear of exposing my alcohol/drug use?
17. Have I ever had shakes, sweats, or hallucinations as the result of my alcohol/ drug use?
18. Do I lie to hide the amount I am drinking or using drugs?
19. Could disturbed or fitful sleeping be the result of my alcohol/ drug use?
20. Have I avoided important social, occupational or recreational activities to accommodate my alcohol/drug use?

If you have answered YES to more than one of the above questions, it may be time to seek help.

Recommendations for positive change

Fortunately, the *Krill* study was instrumental in starting a significant movement within the profession to acknowledge the magnitude of the problem and put in place some systemic solutions. Most notably, The ABA's National Task Force on Lawyer Well Being, published, in 2017, a comprehensive report entitled: *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change*. This groundbreaking and excellent report is required reading for anyone who professes concern about the state of the legal profession. Among other astonishing observations, the report notes a decrease in civility contributing to the toxicity of practicing law and finds that the current situation is "incompatible with a sustainable legal profession." It demands that every sector of the legal community acknowledge the problem, take responsibility, and implement concrete measures to make positive change, and provides detailed recommendations for all the stakeholders. It is a truly impressive, meticulous and inspiring piece of work, and provides some long overdue reason for optimism regarding the possibility of a future populated by healthy, happy, and well-adjusted lawyers.

* ***The Other Bar*** is a California 501(C) non-profit whose mission is to provide confidential, free assistance to attorneys suffering from substance abuse issues. For assistance, call 1.800.222.0767 or go to otherbar.org.

David Mann is a graduate of Ohio State University and Stanford Law School. He served as a Deputy Public Defender in San Francisco before becoming a solo criminal defense practitioner. After 13 years of practice, substance abuse-related issues caused him to resign from the bar with disciplinary charges pending. Following a relentless battle with addiction, which included numerous hospitalizations and periods of homelessness, he succeeded in getting clean and sober in 1998 and began a new career as a drug and alcohol rehabilitation counselor. After completing the State Bar's five-year LAP (Lawyer Assistance Program) he was employed for a year as a peer counselor for that program. Since 2008, he has served as the Northern California Consultant to The Other Bar, *a statewide organization of recovering attorneys, judges, and law students. In this capacity, he spends his time providing outreach and education to the legal community (presenting over 50 CLE's on this topic annually) and assisting attorneys as they struggle with substance abuse and related challenges that threaten their ability and/or eligibility to practice law.*