



Winter/Spring 2009
Volume 17, Issue 1

The WISCONSIN DEFENDER

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A Journal of Research and Education
Published by the Office of the Wisconsin State Public Defender

The *Wisconsin Defender* is published by the Office of the Wisconsin State Public Defender and is available in electronic format at no cost to all public defenders in Wisconsin, all private bar attorneys accepting Wisconsin public defender cases, all Wisconsin judges and, upon request, other interested readers. Hard copy subscriptions are available to prison inmates at an annual cost of \$5.00. For subscription information, contact Gina Pruski at the address below.

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The *Wisconsin Defender* welcomes all comments and suggestions for articles. Please submit your comments and article suggestions to Gina Pruski at the address below.

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Agency Mission

To promote justice throughout Wisconsin by providing high-quality and compassionate legal services, protecting individual rights, and advocating as a criminal justice partner for effective defender services and a fair and rational criminal justice system.

Work - Life Balance: Why It Is Important For You

By: Attorney Gary L. Bakke*

What is it?

Work-Life Balance: Meaningful, daily achievement and enjoyment in each of the four life quadrants: work, family, friends and self.¹

What's the Problem?

Everyone seems to recognize that when your work life and your personal life are out of balance, bad things happen. The significance of the issue may be indicated by the fact that Wikipedia, the free on-line encyclopedia, has a full article on work-life balance and the detrimental effects for those of us that don't get it right.² Even the Mayo Clinic has an article on its website that offers suggestions for getting the work-life balance right.³ Interestingly, the Mayo Clinic also has a webpage "Learn How to Say No"⁴ and "Time Management: Tips to reduce stress and improve productivity"⁵

So, why all the concern? If we choose to work hard at the expense of our personal life, so what? All the experts link an unbalanced work-life emphasis to increased stress. And increased stress is directly linked to poor health and general unhappiness.

Work-life balance is most often described in the negative, i.e. the absence of a healthy balance. The Wikipedia article states that the term was first used in 1986 to help explain the unhealthy life choices that many people were making. The article explains that more and more people were choosing work related chores and goals and neglecting other important area of their lives such as family, friends, and hobbies.

It quotes a book by, Madeleine Bunting, *Willing Slaves – How the Overwork Culture is Ruling our*

Lives, in support of the fact that in the 20 years from 1977 to 1997 American workers increased their average working hours from 43.6 hours to 47.1 hours per week, not including commuting time. Americans are experiencing burnout due to overwork and increased stress in nearly all occupations from blue collar workers to upper management. The statistics that we will get to in a minute show that lawyers are not immune. In fact, we are suffering most.

What about Lawyers?

My personal theory is that this is a particularly difficult malady to treat because for the vast majority of lawyers, those that started practice in the mid 80s and after, this is their norm, the way it has always been. Younger lawyers don't have a different model to look back to. They have not competing frame of reference.

Most lawyers are subjected to significant stress in their day-to-day practice. Some of us thrive on it. Some of us hate it and some of us are injured by it. Too much stress causes depression. In this paper I will discuss the statistics regarding the toll that stress is taking on lawyers (Get the Facts) and I will review some of the sources of that stress (Get a Clue). Then I will review some suggestions for handling stress, both our personal reaction to stress (Get a Grip) and some lifestyle ideas that may help (Get a Life). The last section shows that there is help available for those who have not been successful on their own (Get Help).

Hopefully we can all learn to constructively handle stress and can turn to the appropriate resources in times of need.

Get the Facts.

Stress is taking a devastating toll on lawyers.

Consider the statistics:

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If you Google “lawyer stress” you will get 755,000 hits.

A 1990 study at Johns Hopkins University found that of 104 occupations studied, lawyers were the most likely to suffer depression.⁶ Lawyers suffered from depression at a rate 3.6 times higher than non lawyers who shared the same socio-demographic traits.

A research study of 801 lawyers in the State of Washington found that 19% suffered from depression.

Left untreated, depression can be fatal. According to the National Institute of Mental Health, 15% of people with clinical depression commit suicide.

A quality-of-life survey by the North Carolina Bar Association in 1991 revealed that almost 26% of respondents exhibited symptoms of clinical depression, and almost 12% said they contemplated suicide at least once a month.

Washington and Arizona showed that most lawyers suffering from depression also have suicidal thoughts.

One study found that lawyers have a much greater risk of acting on their suicidal thoughts and succeeding in doing so. Suicide ranks among the leading causes of premature death among lawyers.

The 1992 Annual Report of the National Institute of Occupational Safety and Health reported that male lawyers are twice as likely as the general population to commit suicide.

Caution: Although these statistics are from reliable sources, they obviously use different definitions or different population bases and comparison of the statistics can produce inaccurate numbers.

If 19% of all lawyers are depressed and if 15% of depressed people commit suicide, that calculates to a suicide rate of 3 per 100. That would result in over 500 suicides for Wisconsin’s 20,000+ lawyers over

their lifetime. We don’t have lifetime statistics but intuitively, that seems much too high. It probably exaggerates the problem. But, the fact remains that regardless of the precise numbers; depression and suicide are major issues for the legal profession.

An article in the Autumn 1999 issue of Notre Dame Magazine, *Those Unhappy, Unhealthy Lawyers*,⁷ makes the following points:

Lawyers are among the most unhealthy and unhappy of all professionals.

Lawyers suffer from depression, anxiety, hostility, paranoia, social alienation and isolation, obsessive-compulsiveness, and interpersonal sensitivity at alarming rates.

Lawyers also suffer from alcoholism and use illegal drugs at rates far higher than non lawyers. One group of researchers found that the rate of alcoholism among lawyers is double the rate of alcoholism among adults generally, while another group of researchers estimated that 26 percent of lawyers had used cocaine at least once, twice the rate of the general population.

One out of three lawyers suffers from alcoholism, drug abuse or clinical depression. Not surprisingly, a preliminary study indicates that lawyers commit suicide and think about committing suicide more often than non lawyers.

The divorce rate among lawyers appears to be higher than the divorce rate among other professionals and that difference is particularly pronounced among women.

People who are this unhealthy, people who suffer from depression, anxiety, alcoholism, drug abuse, divorce, and suicide to this extent are almost by definition unhappy. It should not be surprising, then, that lawyers, as a group, are indeed unhappier than other professionals, nor should it be surprising that

the source of their unhappiness seems to be the one thing that they have in common: their work as lawyers.

Get a Clue.⁸

The first step to effectively managing stress is to understand its source.

Why are lawyers so unhealthy and unhappy? To state the obvious, the one thing we have in common is the legal profession. Why do so many lawyers hate what the practice of law has become? Lawyers give many reasons.⁹

The commercialization of the legal profession. Practicing law has become less of a profession and more of a business.

The increased pressure to attract and retain clients in a ferociously competitive marketplace.

Having to work in an adversarial environment.

Not having control over their lives and being at the mercy of judges and clients.

A lack of civility among lawyers.

A lack of collegiality and loyalty among their partners.

Our poor public image.

The hours. Almost all lawyers complain about the long hours they have to work. Thirty years ago, most partners billed between 1,200 and 1,400 hours per year and most associates between 1,400 and 1,600 hours. Today, over half of the associates and almost a quarter of the partners in private practice bill at least 2,000 hours per year. In the biggest and most prestigious law firms, almost everyone bills close to 2,000 hours, and many bill 2,500 hours or more. Given these numbers, there better be something deeply fulfilling about the work to counteract the stress. And, research demonstrates

that increasing the level of financial compensation does not increase the degree of happiness.¹⁰

Another view is offered by Psychologist Lynn Johnson¹¹ who asks, “Why are lawyers more prone than anyone else to this dangerous disease?” He points to two personality traits many lawyers have: perfectionism and pessimism. He says that it’s no secret that the legal profession attracts perfectionists and rewards perfectionism. Perfectionism drives us to excel in college, in law school, and on the job. But perfectionism has a dark side; it can produce “a chronic feeling that nothing is good enough.” Perfectionists are driven by an intense need to avoid failure. According to Johnson, perfectionism raises levels of the stress hormone, cortisol, and chronically high levels of cortisol lead to various health problems, including depression. And when we make the inevitable mistake, perfectionism magnifies the failure.¹² Perfectionists are more vulnerable to depression and anxiety, harder to treat with either therapy or drugs, and much more likely to commit suicide when things go very wrong.

Johnson goes on to say that the prevalence of pessimism among lawyers is less intuitive than the prevalence of perfectionism but is nevertheless a significant factor. The same Johns Hopkins study referenced earlier shows that in all graduate-school programs in all professional fields except one, optimists outperform pessimists. The one exception: law school.¹³ Pessimism helps us excel: it makes us skeptical of what our clients, our witnesses, opposing counsel, and judges tell us. It helps us anticipate the worst, and thus prepare for it. But pessimism is bad for our health: it leads to stress and disillusionment, which make us vulnerable to depression.

Get a Grip.

You can’t always control the circumstances at work, but you can get a grip on your reaction.

Jay Foonberg¹⁴ lists twenty “cures” and avoidance techniques to help you with your life and practice (with two extra as a bonus).

1. Recognize that drugs and alcohol are not a

solution, but will make the problem worse.

2. Take care of your body. Exercise at least three times per week. You can't help anyone if you are dead and you are a liability if you are sick.
3. Fire the stress causing clients. You can probably lose 90% of your aggravation and only lose 2% of your income. They typically are poor-payers, which adds to the stress.
4. Insist on cash up-front to avoid the anxiety and stress over getting paid.
5. Fire incompetent staff.
6. Make time for family and work on your relationships with family members. Clients come and clients go, but family is forever.
7. Work on relationships with the people in your office. You need them to earn your income and to reduce your stress.
8. Don't obsess over technology.
9. Schedule nothing for Friday if you have an option. Leave open the possibility of a three day weekend and surprise your spouse or others.
10. Let macho, scorched-earth lawyers play their stupid game. They are committing suicide. Let them.
11. Don't let arrogant judges stress you. Respond only to the words they use, not to their tone of voice. Don't let their delays in rendering decisions stress you.
12. Organize your use of time so you can leave the office at 5:00 or 5:30 if you wish. Be a compulsive list maker. List making is the critical tool for being in control of how you spend your time.
13. Carve out 2 hour blocks of time three times per week to do "heavy" tasks or to think about matters which require deep thought. Allow no interruptions

for any reasons during these time blocks.

14. Learn how to "turn off" before you get home.
15. Learn what to neglect. Don't feel guilty when you neglect things you can't do.
16. Learn to say "no." You can't be all things to all people. Unkept promises are a constant source of stress.
17. Have an exit plan. Some day you will either want to stop what you are doing or you will have to stop what you are doing.
18. Get a pet. Even a goldfish in a bowl on your desk can relieve stress.
19. Turn off your instant e-mail notifier. Check your e-mails only at specific times.
20. When clients demand instant answers to their questions, protect yourself and the client by saying something like, "I have two answers, the instant answer and the right answer. They may or may not be the same. I am 90% certain that the instant answer is probably correct."
21. Explain to clients that you are always available to them for bonafide emergencies but that you value your time with your family on weekends and evenings.
22. Bitter pills are best swallowed as quickly as possible. Do what you have to do and move on without stressing over things that can't be changed or avoided.

While not all stress can be avoided, we as lawyers can be better people, live longer, and maintain a satisfying practice by avoiding unnecessary stress. Good luck and best wishes for a saner, less stressful life and practice in 2008!

Get a Life.

Finding a passion outside of your job can be the greatest antidote to stress.

Researchers have found two attributes of life that make people happy: 1) the nature of the work they do, and 2) the quality of their lives outside of work.

Note that happiness is related to the nature of the work we do, not the amount of time we work.¹⁵ The nature of the work that we find rewarding will be individual for each of us. Hopefully the nature of our work will help us feel valuable, necessary, ethical, and successful. We all would like to leave the world a little better than we found it. The important point here is to distinguish the nature of our work from the amount of work we choose to do. Certainly long hours are less destructive if we love what we do, but even if we are fortunate enough to be working our passion, a personal life is still important.

Long hours at the office don't translate into more satisfaction with the nature of the work. Every hour that we spend at our desks is an hour that we do not spend doing many of the things that provide joy and meaning for our lives. An hour at the office is one less hour with our spouses, playing with our children, relaxing with our friends, visiting our parents, going to movies, reading books, volunteering, or playing softball, collecting stamps, traveling the world, getting involved in a political campaign, going to church or working out at a health club.

Even when we do go home, we take work with us. And, how many of us work either at home or at the office on Saturday or Sunday, not just occasionally but routinely. Long hours do produce more revenue. Is it worth it? We work too much.

In my professional life I have been a partner with lawyers at the two opposite ends of the work spectrum. Both lawyers were highly successful and widely admired in the community and among other lawyers. One was at the office EVERY Saturday and Sunday. His saving grace was that he walked about two miles each way to get there and home again. But his life was his work. He had a beautiful house on the golf course and rarely took time to play golf. The other partner was an avid outdoorsman. He never missed an opportunity to hunt or to go

fishing. Over the last 30 years he has basically been out of the office for the months of October and November to hunt. His tenacious insistence on preserving a personal life did not ruin his professional life and it may have even enhanced it.

The most important point of this entire exercise is to focus on some ideas to enhance the quality of our lives outside of work. The number of interesting and rewarding activities is endless. When we try to come up with a list we run afoul of our canon of construction, *inclusio unius, exclusio alterius*. That does not apply here.

The list does not imply the exclusion of items not listed. Consider these activities.

Parenting. Being a parent certainly refocuses our self-important self image. Humbling, exciting, rewarding, important and almost every other positive adjective one can think of, and some negative too. Take time out to be a real, active parent. Your kids will be around long after your clients and associates have faded into the distance.

Outdoors. Hunting, fishing, hiking, camping, and all those activities that take us outside tend to bring life back to a more basic, more real level. There is nothing like cold wet feet or hot coffee by a campfire to push office worries to the back burner.

Aerobic exercise. Running, cross country skiing, show shoeing, biking and swimming all promote both physical and emotional health and do wonders to relieve the stress of a hard week at the office.

Church. Lay leadership, youth mentoring, Sunday School teaching, group outings, Bible study and all of the other activities that promote a spiritual connection to the world can promote inner peace and contentment. Even the overtly non-religious can benefit from quiet meditation.

Coaching, teaching and mentoring. Sharing our skills and experience with others is extremely rewarding. There are lawyers coaching youth hockey, basketball, baseball, softball, soccer, skiing, tennis...

the list is long. The satisfaction is enormous.

Relaxing. Have you seen a hammock lately? Where did they all go? Take a nap. Read a book. Listen to the birds, crickets and frogs. Chill out.

Self Study/self improvement. Learning is fun. Even more so if it is not for CLE credit. Take a course. Learn something new. Did you miss the classics? Wish you knew calculus? Curious about the new developments in physics? Art history sound like fun? There is no reason to limit yourself to photography or basket weaving. The experts say that if we challenge and stretch our minds we will stay alert much farther into old age. The opportunities for real learning are expanding rapidly and many of them are free or nearly so.

Gardening. Gardeners seem to have a special perspective on the world. It must be the nurturing oneness with nature, or is it the unending battle with weeds, that promotes peace and understanding.

Cooking. Throughout school and our early professional careers we put a premium on speed, including fast food. All too often great food was something we made reservations for. The rhythm and routine of cooking can bring a real time perspective to the day. Part chemistry, part art and part magic, a great meal is distinct pleasure, even if there is only one or two to enjoy it. A meal lovingly cooked begs to be enjoyed at a leisurely pace. You pick the wine and music.

The Arts. Painting, singing, piano playing, sculpting, pottery making, photography and any activity that engages the creative side of the mind will add meaning and pleasure to life. Not an artist? Then learn to appreciate the work of others. Go to the gallery, the concert, the exhibit.

Politics. The future of our state and nation depend on good people making the effort to put our ideals into practice. Get involved. Make a difference.

Travel. The best way to see our country is to look at it from abroad. The people are welcoming, the

transportation is wonderful, the food is interesting and, most of all, the different perspective on America is mind changing.

Some of the most interesting life stories I know are about lawyers living a real life. Years ago, a lawyer in Spooner, Paul Waggoner, quit the practice and took his young family on a ten month sailing trip from Superior, through the Great Lakes and the St. Lawrence Seaway, down the east coast to Florida and on to the Bahamas. After that sabbatical adventure he settled on Pine Island in western Florida where he still practices.

My partner, Tim Scott, gives more than 50 lectures every year on the Holocaust, most of them to junior high school students. He also leads a Boy Scout trip to Germany every two years and is active with youth in many other ways. Jim Drill, the super outdoorsman and hunter mentioned above, has attended every Super Bowl, 42 in a row. Clyde Wynia, a Marshfield lawyer spent many hours in his shop with his welder making whimsical metal sculptures out of scrap metal. Another partner, Bob Walter, now retired, competed in the qualifying rounds of the Senior Professional Golf Tour for two years. Several northern Wisconsin lawyers have long personal streaks of Birkebeiner races, 37 miles on cross county skis. Gerry McAdow has ridden his bicycle across the US. My partner, Tim O'Brien, is working on his stand-up comic routine. Keith Rodli teaches Buddhism to Minnesota prisoners.

These are just a few examples of unique interests of exceptional lawyers. I'm sure there are thousands of others, many in your own community. Maybe the WisLAP (lawyers assistance) committee should keep a list of unique life activities that keep lawyers sane and happy. It would be an amazing list.

Get Help.

If stress has overwhelmed you, there is help, but you have to accept it.

Uncontrolled, unrelenting stress will eventually result in depression for some of us. How can you distinguish depression from ordinary sadness? Here are the classic symptoms:

1. Diminished interest or pleasure in most activities.
2. Significant weight loss or weight gain without effort, or loss of appetite.
3. Difficulty sleeping, or sleeping too much.
4. Psychomotor agitation or retardation.
5. Fatigue.
6. Feelings of worthlessness or excessive or inappropriate guilt.
7. Diminished ability to think or concentrate, or indecisiveness.
8. Recurrent thoughts of death or suicide, or a suicide plan or attempt.

For some, seeking or accepting help may be difficult. There is a potential stigma to any disease that involves the brain. My own personal effort to overcome that stigma resulted in the article I wrote about my own experience in the December 2000 issue of the Wisconsin Lawyer, *Brainstorm: My Experience with Depression*.¹⁶ If you are suffering, please know that you are not alone.

There is a website that lists about 450 famous people that have suffered from depression.¹⁷ Here is a small selection. Perhaps you will recognize some of them:

Edwin “Buzz” Aldrin, astronaut, Ludwig von Beethoven, composer, Napoleon Bonaparte, emperor, Jim Carrey, actor and comedian, Dick Cavett, broadcaster, John Cleese, actor, Rosemary Clooney, singer, Calvin Coolidge, U.S. president, Charles Darwin, explorer and scientist, Thomas Edison, inventor, Betty Ford, former First Lady, John Kenneth Galbraith, economist, Dwight Gooden, baseball player, Alexander Hamilton, politician, Stephen Hawking, physicist, Ernest Hemingway, writer, Andrew Jackson, U.S. President, Thomas Jefferson, U.S. President, John Lennon, musician, Abraham Lincoln, U.S. President, Ralph Nader, U.S. consumer rights advocate, Donny Osmond, musician, Edgar Allen Poe, writer, Cole Porter, composer, Charlie Pride, country singer, Norman Rockwell, artist, Theodore Roosevelt, U.S.

President, Charles Schulz, cartoonist (Peanuts), George Stephanopoulos, political advisor, Mark Twain, author, Mike Wallace, broadcaster, Boris Yeltsin, former President, Russia.

Maybe it is possible to have a productive, good life even if stress or genetics have produced depression. Help is available.

WisLAP is the Wisconsin version of the Lawyers Assistance Program that most states have. If you don’t know where to turn for yourself or for a friend, call WisLAP. All calls are confidential. (800)543-2625.

Endnotes

- ¹ <http://www.worklifebalance.com/worklifebalancedefined.html>
- ² http://en.wikipedia.org/wiki/Work-life_balance
- ³ <http://www.mayoclinic.com/health/work-life-balance/WL00056>
- ⁴ <http://www.mayoclinic.com/health/stress-relief/SR00039>
- ⁵ <http://www.mayoclinic.com/health/time-management/WL00048>
- ⁶ Eaton, Mandel, and Garrison, “Occupations and the Prevalence of Major Depressive Disorder,” 32 *J. Occupational Med.* 1083-1132 (1990).
- ⁷ *Those Unhappy, Unhealthy Lawyers*, Notre Dame Magazine, Autumn
- ⁸ With apologies to Sean Carter, from whom I have stolen three of these titles: *Get a Clue*; *Get a Grip*; *Get a Life*. <http://www.lawhumorist.com/stressmessstaff.htm>
- ⁹ Notre Dame Magazine. Op. cit.
- ¹⁰ Diener, E. Lucas, R., Scollon, C.N. (2006). *Beyond the Hedonic Treadmill: Revising that Adaptation Theory of Will-Being*. *American Psychologist*, 61, 305-314.
- ¹¹ Lynn Johnson, *Stress Management*, Utah State Bar J., Jan./Feb.2003.http://utahbar.org/barjournal2000/html/january_february_2003_0.html
- ¹² Blatt, Sidney J., Ph.D. “The Destructiveness of Perfectionism: Implications for the Treatment of Depression,” *American Psychologist*, Vol. 49, No. 12, pp.1003-1020 (1997)

¹³ Richard G. Uday, *That Frayed Rope*, Utah State Bar J., Aug./Sept. 2003.

¹⁴ Jay Foonberg is the only person to have given CLE presentations in every U.S. state and on every continent. He is also the only person to have been honored with awards for lifetime law achievements from 4 ABA groups: Harrison Tweed Award for Continuing Legal Education, Sam Smith Medal from the Law Practice Management Section, Don Rikli Award from General Practice, Solo & Small Firms Section, and Lifetime achievement and 2 platinum keys from Law Students Division. His 4 decades of teaching CLE include teaching the first Law Practice Management Classes at UNLV Boyd School of Law. His books have earned \$2,000,000 for the ABA and include the all time best seller (every year since 1977) *How To Start & Build A Law Practice*, 5th edition and *How to Get and Keep Good Clients*, 3rd edition." For more information, visit <http://www.foonberglaw.com/>

¹⁵ Lyubomirsky, S. *The How of Happiness: A scientific approach to getting the life you want*. The Penguin Press, New York, 2008.

¹⁶ Bakke, Gary L., *Brainstorm: My Experience With Depression*. *Wisconsin Lawyer*, vol. 73, No. 12, December 2000.

¹⁷ http://www.geocities.com/coverbridge2k/artsci/famous_people_depression.html ■

Wisconsin Lawyers Assistance Program: An Overview

In 2006, the Substance Abuse and Mental Health Services Administration (SAMHSA) estimated that 7.6% of Americans age 12 and older suffered from alcohol abuse or dependence. In 2006, the Wisconsin Department of Health and Family Services stated among adults, Wisconsin had the highest prevalence of binge drinking, current alcohol use, and chronic heavy drinking in the country.

The American Bar Association estimates that 15-20% of attorneys and judges suffer from addiction or mental illness. When these estimates are applied to Wisconsin lawyers it means nearly 4,000 of our states legal professionals may be impaired by these

problems.

According to SAMHSA and the American Bar Association data, addiction rates among lawyers are nearly twice that of the general population. Substance abuse includes other drugs and ranges from abuse of prescription drugs to dependence on illegal drugs, including heroin and cocaine. Some studies indicate lawyers use cocaine at twice the rate of non-lawyers.

While alcoholism continues to be the major issue among lawyers and judges, mental health problems impact the legal community at alarmingly high rates. A Johns Hopkins study of 103 professions indicated lawyers top the list when it comes to depression. Benjamin Sells, in his book *The Soul of the Law*, writes that lawyers are four times more likely to be depressed than the general population. Lawyers now have the highest suicide rate of any profession, surpassing (in the late 1990s) the high rate among dentists. The *Georgetown Journal of Legal Ethics*, summer of 2001 issue, cites depression as a significant factor in lawyer discipline cases.

Compulsive gambling problems are not frequent, but when they occur they are extremely serious and often involve financial, mental health, and legal consequences. Other compulsive behaviors are less frequently reported, but many cause serious problems that impact work and family relationships.

Lawyers and judges work more hours than most professionals and experience stress that is immediate, ongoing, and not confined to office hours. Lawyers and judges may strive to be perfect with unrealistic expectations for performance and output. Competition, long office hours, considerable responsibility, and the need for financial productivity are inherent in the practice of law. While these factors do not cause addiction or mental health problems, they can certainly trigger or intensify the overuse of substances, mental illness or stress related troubles.

In the mid 1970's and early 1980's, the first lawyers' assistance programs began developing

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throughout the country to help legal professionals impaired by substance abuse. Lawyers, particularly those who had struggled with their own addiction and found recovery, saw the impact of alcoholism on the legal community and wanted to help their colleagues. Thus began a powerful movement that has led to an important resource for those in the profession of law. Lawyer assistance programs have currently expanded to address mental health concerns as well as any troubles a lawyer may experience which decreases their well being and ability to practice law.

History of WisLAP

The Wisconsin Lawyers Assistance Program (WisLAP) was formed in 1995 when the Committee on Assistance for Lawyers (COAL), which was designed to help lawyers with mental health concerns, merged with Lawyers Concerned for Lawyers (LCL), which supported lawyers recovering from substance abuse or dependence. In 2008 WisLAP expanded and established a judicial assistance program. WisLAP currently has a staff of one full-time and one part-time employee, with approximately 100 lawyer volunteers and 25 judge volunteers. About two dozen volunteers also serve on the WisLAP Committee, which steers the program. WisLAP is part of the ABA's Commission on Lawyer Assistance Programs (CoLAP); a network of Lawyer Assistant Programs serving nearly all the states in the U.S.

Mission of WisLAP

WisLAP is a member service of the State Bar of Wisconsin which provides confidential assistance to lawyers, judges, law students and their families in coping with any substance abuse or dependence, mental health challenges, or other stressors which negatively impact the quality of life and the practice of law. The program is designed to help members and their families build on their strengths and to provide support through offering services that promote physical, mental and emotional health.

WisLAP is Exempt from Reporting Misconduct

WisLAP is exempt from reporting professional misconduct to the Office of Lawyer Regulation (OLR) or to the Judicial Commission, doesn't require callers to disclose their identity and does not keep case records.

Goals and Guiding Principles of WisLAP

WisLAP's program goals are:

- To confidentially assist in the recognition of lawyers judges or law students who may benefit from assistance;
- To confidentially assist clients in their personal recovery from physical or mental health conditions that affect competent practice of their profession and/or their quality of life;
- To educate the legal community on identification, assessment, referral, treatment and community based resources available to meet the needs of affected judges, lawyers and their families;
- To provide a network of trained volunteers who are available to respond to the needs of WisLAP clients through a peer assistance model;
- To monitor and assist clients while they work to rehabilitate and return to the practice of law, to the bench or to a better quality of life; and
- To establish and maintain a cooperative relationship with the Office of Lawyer Regulation, the Board of Bar Examiners and the Judicial Commission along with the legal community at large.

WisLAP's guiding principles are:

- The program is motivated by a humanitarian concern for the legal community and the public;
- Addiction, mental health concerns and physical disabilities should not be ignored and are treatable conditions;
- Impaired judges and lawyers are obligated to seek assistance and to participate in services necessary to

renew their full effectiveness as a lawyer, judge or family member; and All licensed lawyers and judges have the ethical responsibility to recognize the signs and symptoms of a colleague who may be impaired and to assist the colleague in accessing appropriate services.

WisLAP Volunteers

Volunteers are the foundation of the Wisconsin Lawyers' Assistance Program. Although staff members are there to receive calls, meet with individuals who need assistance, and make referrals to professionals, it is the volunteers who provide direct peer assistance and carry out the mission of the program. There are many motivations for becoming a Peer Assistant, and WisLAP Peer Assistants comprise a diverse group of lawyers and judges. Some Wisconsin lawyers and judges still incorrectly believe that the WisLAP program, including the volunteers, is limited to those who are recovering from an addiction. In fact, many Peer Assistants have volunteered because they want to assist other lawyers, judges, law students and their families in addressing their troubles regardless of what they are.

WisLAP Peer Assistance

- ? Peer assistance is support given to a colleague from someone who may have experienced a similar problem and managed it successfully. Peer assistance is appropriate when a person recognizes that he/she has a problem and asks for help.
- ? Peer assistants are not therapists or professional counselors. They are attorneys and judges who may share their personal recovery experience from addiction, mental health treatment or other struggles and provide support for their peers to get help. Peer Assistants are also attorneys and judges who simply want to help their colleagues in whatever way they can in order to make a positive contribution to humankind and their profession.
- ? WisLAP Volunteers assist with a wide variety of problems including but not limited

to: depression, anxiety, stress due to work or family issues, addictions or other challenges in life.

Benefits of Volunteering

- ? Attorneys, judges and others may volunteer with WisLAP because they feel peer assistance is valuable and beneficial for the profession.
- ? It is personally rewarding to help others. Sharing hope and giving assistance may enhance one's own recovery experience from an addiction, mental illness or some other struggle.
- ? Serving others can be a way of increasing the meaning of one's own life.

Peer Assistance Volunteers: WisLAP Peer Assistants provide confidential peer support to clients who identify a problem and request to meet with a colleague who has successfully managed a similar problem or can offer support and guidance. WisLAP attempts to match clients with trained volunteers who share similar demographic or other characteristics.

Educators: WisLAP Staff and Volunteers provide education to the legal profession on issues of addiction, mental health, work/life balance and a variety of other topics. The program does presentations for CLE credit or no credit to County Bar Associations, University of Wisconsin and Marquette Law Schools, legal organizations, conferences and many other venues.

Committee Members: The WisLAP committee consists of State Bar members who are both knowledgeable and interested in the goals and objectives of this committee and the WisLAP program. Within the scope provided by the Board of Governors of the State Bar, the committee sets policy for the program and develops and oversees its administration. Committee members discuss and work on many aspects of the program,

including: developing a state-wide network of trained WisLAP Volunteers and professionals who provide support to attorneys in need of assistance; develop programs which work cooperatively with other legal entities such as OLR or BBE; address operational and marketing aspects of all WisLAP programs, and develop educational CLE presentations. This committee meets approximately every eight weeks.

If you would like more information about the WisLAP program, would like assistance for yourself or for a colleague or family member or would like to volunteer please call the 24/7 WisLAP confidential hotline at 800-543-2625; or contact Linda Albert, WisLAP Coordinator at 800-444-9404 ext 6172; lalbert@wisbar.org ■

The Lawyer as Counselor: Representing the Impaired Client

By: Attorney Timothy David Edwards*

This article first appeared in the October/November 2004 issue of GPSolo, a publication of the American Bar Association. It has been reprinted here with the permission of the ABA and the author, Timothy Edwards.

Drug addiction is a powerful disorder with serious consequences for our clients, their families, and the environment that surrounds them. When a client is addicted to drugs, including alcohol, the lawyer is faced with a number of challenges. The client may be unable to realistically participate in communication necessary for a productive attorney-client relationship. This is sadly ironic, for in many cases it is the client's addiction that led to the very legal issues we have been attained to address. The addiction also may be masking an undiagnosed psychiatric disorder, such as depression.

When this happens, the underlying impairment may further affect the course of the representation.

Clients facing criminal charges often suffer from untreated addiction issues. Experienced family law attorneys regularly report that untreated addiction is the underlying cause of a broken family. For such clients, the attorney must carefully consider the legal consequences that can follow if the addiction remains untreated. In criminal cases, participation in treatment may enhance an offender's position during plea negotiations, or even serve as a mitigating factor at sentencing. Drug treatment may be required as a condition of supervised probation, often in lieu of incarceration. When the client is unable to successfully navigate treatment in this context, the consequences can be significant. Without question, drug addiction and drug treatment are firmly entrenched in the landscape of factors that must be evaluated by the general practitioner.

Despite the prevalence of addiction among clients, many practitioners are understandably confused about addiction and the range of treatment options that are available to their clients. Confusion reigns as to the definition of addiction, its causes, and its proper treatment – even among mental health professionals who study and treat addicted populations. These dynamics become more confusing when a client is required to participate in treatment under the watchful eye of the judicial system.

Many lawyers believe that their only obligation is to defend clients' *legal* interests. After all, we are not social workers, and it is not our job to provide therapy for our clients. This is a job for mental health professionals, not lawyers. In the prevailing ethical rules, however, the lawyer is defined as *counselor*. What is the counseling role of the attorney when the client is impaired?

In my view, this role is significant. A lawyer who represents clients with addiction problems must have a general understanding of addiction, its causes, and its proper treatment, just as a tax attorney must understand accounting principles or a medical

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malpractice attorney must have a working knowledge of basic surgical terms. It's an issue of competence. To idly stand by and assume that this is not our role is to miss an important opportunity to assist the client and improve the dynamics of the representation.

So what should we do? Understanding addiction is not an easy task. To compound the problem, there is a great deal of rhetoric and confusion surrounding this topic. While many treatment professionals proclaim that addiction is a "disease", there are many who strongly disagree with this assertion, and for good reason. America's treatment industry is heavily influenced by a philosophy that is based, almost exclusively, on the Twelve Steps of Alcoholics Anonymous. For many clients, this translates into a heavy-handed and paternalistic approach to addiction in which the client must admit "powerlessness" and surrender to a "higher power" to find lasting recovery. Many people are offended to this approach, and there are volumes of research demonstrating that this treatment philosophy is ineffective for a significant number of clients. When a client is required to participate in such a program under the supervision of a judge or probation officer, the result of noncompliance can be disastrous, even when the client truly wants to recover.

In the final analysis, an honest treatment provider will tell you that addiction is a very personal experience and that recovery from addiction is just as personal. Many people respond favorably to Alcoholics Anonymous – a tight-knit fellowship that relies heavily on spiritual teachings. Just as many people find recovery through other methods, including psychotherapy, church involvement, and, yes, willpower. In short, there is not a simple, easy answer to addiction for every client. The proper treatment will necessarily result from a clear understanding of the client, her background, and values. Assuming this is true, there are some basic guidelines that can assist the attorney dealing with an impaired client.

Knowing Your Client

Obviously, each client presents a different set of

challenges. Gender and cultural distinctions are vital. Understanding what is important to the client is critical to understanding the options that are available to him. There is a vast difference between a teenager who is smoking marijuana and a widow abusing alcohol to overcome grief about the death of her husband. If the lawyer knows that the client is angry and unlikely to respond favorably to authority figures, participation in a structured treatment program might be a mistake. If the client has a history of depression or bipolar illness, a qualified psychiatrist should be involved. Ultimately, it is critical to abandon the one-size-fits-all approach to treatment and to understand that treatment, however defined, must be tailored to the individual.

Understanding Addiction

There are many excellent resources on this topic, and a full discussion is beyond the scope of this article. However, a few points are in order. First, it is often easy to identify addiction by examining its objective consequences. Many checklists for assessing addiction will present questions that identify these consequences in some detail. Lost jobs, trouble with the law, broken marriages, and even more minor consequences, such as loss of interest in other activities, all are telltale signs of addiction. Even if these factors are present, many addicted clients will *deny* that they have a problem with drugs or alcohol in the face of overwhelming evidence to the contrary. Others will *blame* their problems on outside factors, such as their marriage or job.

There is a reason for this. In my view, the identification of the objective manifestations of addiction is merely a starting point. There is much more to the picture. In the simplest terms, addiction is a *relationship* that the person has with a chemical at the exclusion of other important priorities. Often, this relationship is defended at all costs through a cognitive defense system that seems impossible to penetrate. Many addicted clients will employ this defense system to protect their relationship with chemicals because it is producing a tangible payoff that is important to them. Some people use drugs or alcohol to medicate an underlying psychiatric

disorder, such as depression. Others may resort to drugs or alcohol to blunt childhood trauma. During the course of treatment, it is crucial for the therapist to understand the client's subjective payoff from this relationship. The client is always using drugs for a reason that is *important to him*.

Providing the Critical Mirror

Many attorneys do not or will not confront clients regarding addiction. In my practice, I will inquire. If the client gives me permission, I will speak to family members and gather more information. You would be amazed at the difference in perspective that is provided through family members.

Obviously, treatment professionals should be the ones to provide treatment. The difficulty is getting the client to admit that he or she has a problem. At times, I have felt obligated to tell a client that I see their addiction as a true problem that requires treatment. In cases where I cannot tie this to a direct legal benefit, I will make this point when my ability to communicate with the client is being undermined by the impairment. In situations where the problem is obvious, I will not hesitate to involve a trained mental health professional and the family in an *intervention*. A defensive client will often respond to the truth when it is coming from people who love him.

With understanding and tact, it is possible to have a frank discussion with your client about addiction without alienating the client or jeopardizing the representation. In my view, the mere possibility that I can make a difference justifies this conversation.

Knowing When to Refer

Knowing what you know means knowing what you don't know. It is true that we are not social workers or treatment professionals. Once a problem is identified, it is imperative to refer the client to a competent mental health professional who is willing to take the time to understand the client, consider all available options, and provide treatment on an individualized basis. In my practice, I refer the client to a psychiatrist first so that an underlying psychiatric disorder can be addressed or ruled out. If

participation in a formal program seems necessary, I will contact the facility and learn about its treatment philosophy and the alternatives that it provides. A blind referral to a treatment program that boasts statistical success is most certainly a mistake. An honest treatment provider will admit that it is difficult, if not impossible, to reliably track the success of clients who complete the program.

Staying Involved

At times, a client will be referred to a treatment program as a condition of probation or as a prerequisite to a future legal benefit. The representation should not stop there. Here, it is useful to obtain a release that authorizes contact with the counselor who is treating the client. I will send that person a letter asking him or her to contact me before they terminate treatment, as termination may give rise to legal consequences for the client. If possible, I will meet with the client and intervene or, if necessary, advocate for a different treatment approach that is more consistent with the client's background. If done correctly, this can save the client from a counterproductive treatment relationship and avoid unnecessary consequences that can follow when the client is perceived as noncompliant.

As lawyers, we are in a position to help people who trust us and seek us out for advice. If we come to understand our client, the nature of addiction, and the appropriate sources of treatment, we are in a better position to provide useful guidance that the client is more likely to accept. By staying involved and providing a compassionate, critical mirror, we can truly make a difference. This is a daunting responsibility, but it can provide lasting benefits to the impaired client.■

For Women Staff of the State Public Defender's Office: Making a Living, Making a (Healthy) Life

By: Lorraine McNamara-McGraw*

In 1978, excited by my first pregnancy, I told my then-boss that I was pregnant. His response: “So, you won’t be coming back to work then after the birth.” What? Fired for being pregnant? And it was legal. I did the only thing I could imagine at the time: I went to law school. Motivated by issues of fairness and family, I’ve spent a lot of time thinking about how to have a healthy work-life balance especially in the context of being a woman practicing the Law. It’s been more than 30 years since my first (of three) daughters was born so I’m familiar with the child rearing process many of you have experienced. I started as an ASPD and, these years later welcome the opportunity to share some of the activities I have pursued throughout my legal career.

I am a volunteer lawyer with WisLAP (Wisconsin Lawyers Assistance Program) and I agreed to write on the subject, generally, of Women and the Law: how can we live in health and succeed at our professional obligations at the same time? What I would like to offer you are some of the activities I have pursued that have helped me “stay on track” with the above, for the most part.

First, I suggest ten physical activities for staying healthy in these momentous times.

1. Walk in your neighborhood. We live in Wisconsin, so we have great places to walk. My home is in Milwaukee, on the Milwaukee River. Even in winter, I have a favorite walk that goes from my back yard, up to Capitol Avenue or down to North Avenue, and on around the river. It is a lovely route in any weather, and all it takes is an hour and a half. When I am alone, nature is my muse. Sometimes my friend Julia comes along and we catch up on girl talk. With or without a friend (or a

child), walking is one of the best ways I know to feel at one with all that is.

2. If you have young children, enroll them in swimming lessons. My three daughters were living or born while I was an Assistant State Public Defender in Milwaukee. They went to the downtown YMCA daycare and that included the opportunity to take swimming lessons. There were other SPD kids there, one of whom was your own Nora Trinidad-Scholle, and she and my daughter Maud became friends and remain so today. One of the best things about being a mom (or dad) at swimming lessons was the chance to connect with other working parents. Even today I run into parents from back then-20+ years ago-who remember that we hung out at the window looking down on our kids learning how to swim.

3. Swim. Swimming isn’t just for kids, though. I have been swimming all of my adult life, and I have been in the water with plenty of lawyers, including ASPDs. I am particularly grateful for the encouragement I got from a lifeguard at the Jewish Community Center (“the J”) when it was on Prospect Avenue, in the 70s, before law school was a germinating idea. What was germinating was that this former “non-athlete” (my girls’ high school had two sports: basketball and debating. I was too short for b-ball) had an athletic self seeking to be found. Swimming is the sport that found her. Need I add, number 2, above, might not have happened but for this?

4. Practice Yoga. In the eighties my friend Jan, a defense lawyer at a private law firm invited me to take a class in Hatha Yoga at Marquette University High School. I was in awe of our teacher. I remember

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vaguely that we did these strange movements that I parroted and performed “on faith.” I can absolutely assure you that I did not have a clue what Yoga was supposed to do for me, and, after perhaps 9 months of going with Jan once a week, I dropped out. Today, Yoga is an essential part of my life. I totally *get* it, not just for the physical exercise, but for the overall healthful balance it provides me.

5. Ride your bike. The best thing about having a bike is that it is always there for you and doesn't demand much attention except to keep its gears and chains oiled and operating. In my adult life I have owned three bikes: a Gitane, a Raleigh and, today, a LeMond. The remarkable fact is that the LeMond is the first bike that actually fits me. It is the first bike I've owned actually made to fit a woman's size. I have always enjoyed riding and, having a great fitting bike has added pleasure I never thought existed. I expect to ride my bike right up to the time I pass on. Doing this with a child? Wonderful!

6. Run or jog. This is an activity not just for the young at heart, which I am, but also for the actually young, as it is a “high impact” activity. After I had decided to go to law school, I instituted a training regime that included running in my East Side neighborhood several times a week. Even in the late 70's, and even having grown up lacking sports-and Title IX- I understood that I needed to be physically fit as well as mentally fit to succeed at law school and law. I completed my first mini-triathlon last summer, the Chicagoland Danskin event for women. Participants were encouraged to run or walk the 3.2-mile run part of the course and I did a combination of both. I plan to participate again this summer. Feel free to join me!

7. ZUMBA! This is a recent phenomenon, a form of salsa dancing-cum-aerobic exercise that I have started taking at the J. I recognize at least one ASPD who takes it with me, Kathy, and she is really great at it. The thing I like about Zumba is that you *can* teach an old dog new tricks. This is especially important to me, since I do not do crossword puzzles and I do not want to get Alzheimer's. It takes mental acuity to learn the different beats and to learn them kinesthetically. It's also sexy—if not on me, on many of the *aficionadas*

that I have the pleasure of dancing with.

8. Spin. Spinning is an exercise, like Zumba and Yoga that is best done by joining a class. Like all the class exercises I talk about, I do this at the J, and have done so for at least 8 years. I see plenty of lawyers coming in and out of spinning class. One of my long time friends from my 7:15 AM Wednesday class is Attorney Jim Collis. Jim is the reason I am on the WisLAP committee. One day about 5 or 6 years ago he told me that he was president of the committee and that he wanted to appoint me to it. Thanks to spinning, I am able to give something back to the State Bar by way of this volunteer work.

9. T'ai Chi. I first experienced T'ai Chi in the mid 70s when I was sitting in Lake Park on a lunch break with a late, great lawyer friend. It was one of those moments when you couldn't define it but you knew it when you saw it. T'ai chi seemed phantasmagorical. I started taking a class at the Riverwest Tai Chi center in about 1977. I recall seeing a great master, Al Huang, there. Like Yoga, I didn't “get” it until I went back to class several years ago taught by Robert Thoreau at Cardinal Stritch University. I finally learned the entire long form—and then, other things intervened, and I stopped. Returning to “playing” at T'ai Chi is on my “to do” list.

10. Core workouts. Core work has been a focus at the J for a few years now and they provide many opportunities for members to work at their core strength. Sometimes I do The BEAST (Basic Exercise and Strength Training); sometimes, when I am feeling courageous, I do a “boot camp” workout with Myron or Neila. It doesn't matter your age; it is never too late to build core strength. And, for women, this is a proven hedge against osteoporosis. I haven't (yet) tried Pilates, but I understand that it is great for core strengthening. Whatever the core workout, there is something for each one of us.

In order to stay healthy in life and in law, we need to pay attention to more than the physical. Mental and spiritual health are equally, if not more, important. Below are ten suggestions for exercising your mind and your spirit:

1. Recognize this truth: there is nothing wrong with you. That's right. In this "self help" world of "something's wrong with me and this (book, program) can help me fix it," know that there is nothing at all wrong with you and nothing to fix. I learned this several years ago, and I realize this truth now every day, all around me. I learned it from my first Zen teacher, Cheri Huber, whose marvelous works and books I discovered in several years ago. Wondrously, it follows that if there's nothing wrong with me, there's nothing wrong with you, either!

2. Distinguish working mind from thinking mind. One of my favorite authors is architect Sarah Susanka, whose latest book, *The Not So Big Life: Making Room for What Really Matters* has given me a practical blueprint for my own life. She describes this as follows: "...as soon as you find yourself planning how to cope with a situation or with an eventuality that might come about as a consequence of a projected sequence of events you are in 'thinking mind'—the mind that believes it is up to you to orchestrate reality. With working mind everything is much, much simpler because there's no planning, no projecting, and no imagining. It deals with only what is right in front of it to do. It's a whole lot easier and a whole lot less stressful (than thinking mind)..." p. 186.

3. Learn to say NO (because no, it doesn't all depend on you). As a young lawyer, married with kids, I assumed that of course, "I could do it all." Not only that, I believed I *had* to do it all. That meant burning the candle at both ends, and having this idea that I had to be "perfect." The crash didn't happen overnight, but it did over time. Giving this process a totally positive spin, I can say that I have learned a lot, and especially that "I," the ego that could do it all, is expendable and that saying no is a good thing to do. It frees me up for all the "yeses" that grace my life.

4. Practice being present. Wow! What does that mean? When I think back to my seven years spent daily in court as an ASPD, I can't believe how few details I actually can recall about individual clients and cases, or judges or juries, or colleagues or opposing counsel. I remember many events vaguely, but not so much in detail. I ruefully admit that this means I will

never be a great lawyer-writer like Barack Obama, Scott Turow, or Bernhard Schlink. How have these great observers and writers done it? I believe they have the gift of being present in what they do. This is what my practice is now, and, one which I aim to do on a moment-to-moment basis for the rest of my life.

5. Practice gratitude. Eschew pessimism! Even if you cannot get to optimism every day (heaven knows, there is much not to be optimistic about), stop verbalizing pessimistic thoughts, and say instead, to yourself, "I am grateful for all that is." We are all facing tough times in this country for one reason or another. This is a global phenomenon that doesn't appear to be ending anytime soon. I recall, as an ASPD, my own feelings of pessimism about our criminal justice system, and how frustrated I felt at not being able to DO all that I wished to for my clients. Well, pessimism never helped anything and figuring this out for yourself can be the start of something really positive in your life. You may not stop *thinking* pessimistic thoughts but deciding not to *verbalize* them can lead to a more positive daily journey.

6. "I am not that thought." Following on number 5, above, have you noticed that all of the trouble we create for ourselves starts in our own heads? If you haven't noticed this, start noticing it whenever you find yourself getting attached to a particular notion and then associating other thoughts with it. Sarah Susanka says that the challenge is to "metabolize experience." P.201. As you become attached to a thought stream, take a moment to observe what happens. How do you feel as you attach to it? What's the point of attaching to it? Have you done this before with the same kind of thought? Where did the practice of attaching to this thought begin? Where does it go? The practice of noticing the "stuff" that makes up the thoughts we all have can open up a lot of space for us. Descartes was wrong! In this respect, at least, "I *think* " is not, "therefore, I *am*."

7. Do one thing at a time. This is another great observation from Sarah Susanka. She says: "Multitasking and over-committing are excellent indicators that we are sleepwalking through (our)

waking dream.” P. 223. (“Waking dream” is the way she describes the way most of us live.) Have you ever noticed just how much multitasking you do? Sitting waiting for your case to be called you can be: texting; thinking about dinner; thinking of the brief you need to write, thinking about your next five cases coming up, thinking about love, sex or rock ‘n roll. Now, in court, even during boring downtimes, I practice just *being* in court.

8. Embrace positive change. Is your mortgage under water? Is your credit card debt too large to ever pay back? Is your retirement account sinking fast? Is your child’s education in jeopardy? Is your health insurance at risk? We might feel very alone in all of this, but really, we are all in this together. This is the time for all of us to see these events for what they are: an opportunity to live beyond our small selves and to become a part of the great human experience that is this time of our lives. Our positive energy will be called on to help solve these serious issues. We cannot afford to waste time on sleepless nights and ulcer producing worry. We are all called on to get with change and to help make it good. We can’t be part of this if we stay locked in the illusion that we are all separate beings with unique problems.

9. Experience the self that is larger than you. Check out the *Tao te Ching*, the 2500-year-old masterpiece of Lao-tzu: “Look, and it can’t be seen. Listen, and it can’t be heard. Reach, and it can’t be grasped... Approach it and there is no beginning; follow it and there is no end. You can’t know it but you can be it, at ease in your own life. Just realize where you come from: that is the essence of wisdom.” (From Stephen Mitchell’s translation, Harper pocket edition, 1988.) So, the great realization is achingly simple, and yet may take a lifetime to realize: we are NOT our egos. This is true for each one of us. From here, the sky gets clearer, the air fresher, our breath, in and out, one breath at a time.

10. “Meditation is not a means to an end. It is both the means and the end,” the great Indian author and philosopher Jiddu Khrishnamurti has said. I gave a brief introduction at a WisLAP training in 2007 to the practice of “meditation.” And, make no mistake, for

every lawyer in this state that may understand my message, there are at least a thousand who’ll say, “Whoa! She’s way out there!” I’m used to that. My own practice comes from the Japanese Soto Zen tradition, and it’s called *shikantaza*, or “just sitting.” It is not technically meditation and it’s not “easy,” the way most of you find, say, arguing a case in front of a jury, easy. I often say, jokingly, that I plan on practicing law until I get it right. Well, for sitting practice, I just practice sitting; there is no “right” to get. The point is that all of us have this part of us that our busy lives keep us away from. I advocate taking the chance of finding that place. The way to find it is to just sit. You can go online and find many resources that can help explain this process.

Ladies (and gentlemen) of the Wisconsin State Public Defender’s Office, I offer these thoughts in the spirit of wishing you a healthy and prosperous 2009. If you have any questions or comments, feel free to reach me at: Lmacmaac@mac.com ■

Prescription Medication: Abuse, Addiction and Complicating Factors for Attorneys

By: Linda Albert, LCSW, CSAC*

Cindy is a 37 year old attorney, mother of two, married and working full time for a large law firm. Cindy has struggled to maintain her assumptions that she can make the billable hours towards the partnership track, meet the needs of her children in a way that her stay at home mother met hers, keep physically fit and be a supportive partner to her husband. She started taking Vicodin, prescribed by her physician, following surgery for a knee injury. Cindy noticed that she began needing more Vicodin to manage her pain than her physician was willing to prescribe. She started borrowing Vicodin from friends and family members in order to feel better because when she didn’t take enough medication she began to feel physically ill. She

reported the Vicodin gave her more energy and allowed her to be more productive at work, and assisted her in keeping up with the kids and her home responsibilities. She resorted to buying her Vicodin off the internet in order to have enough of the medication to feel functional. Over time, the quality of her work was slipping, the pressure and tension in her life was rising and the relationship with Vicodin as the solution was deepening. Eventually, Cindy found herself in a colleague's office crying and explaining that trying to obtain enough Vicodin had taken over her life. This task consumed her thoughts and behaviors each day and the pills no longer gave her the relief she sought. Her colleague arranged for Cindy to meet confidentially with the State Bar's Wisconsin Lawyers Assistance Program (WisLAP) Coordinator. Cindy had developed an addiction to the medication her physician had prescribed for her.

Most people take their prescription medications as prescribed. However, according to the National Center on Addiction and Substance Abuse at Columbia University, over 14 million Americans admit to abusing prescription drugs. Reportedly that number doubled between 1992 and 2003 and has tripled among teenagers. In 2006, a Madison, Wisconsin task force reported that prescription medications are making their way into the streets of Madison and surrounding communities.¹ The abuse of prescription medications, as well as dependence on these medications, is on the rise. One of the challenges for attorneys is recognizing that abuse of prescription medications can lead to addiction. Most people assume that prescribed medications are safe and cannot result in physical or psychological addiction. But if the directions are not followed or if the use is long term, there can be problems. Statistics cited by the American Bar

Association illustrate that attorneys have twice the rate of substance dependence compared to the general population; attorneys may be more vulnerable to dependence upon prescription medications.

The National Institute on Drug Abuse states that the most commonly abused prescription medications fall into three categories; the Opioids, which are prescribed for pain, such as Vicodin, Oxycodone, Hydrocodone and OxyContin; the Central Nervous System (CNS) depressants often prescribed for anxiety or sleep problems, such as Clonazepam, Valium, Xanax and Lorazepam; and the Central Nervous System stimulants frequently prescribed for attention deficit, such as Ritalin, Adderall and Dexedrine.

Living with chronic pain or any chronic medical or mental health condition, coupled with the stress of life may motivate drug seeking behavior in a misguided attempt to improve quality of life. However, for Cindy and an increasing number of others, this often results in a reduced quality of life, as addiction to the medication can leave the person with yet another illness to treat.

Defining Addiction

Addiction is simply defined as compulsive use of a substance despite the negative consequences resulting from the use. However, in reality addiction is a complex illness that can be difficult to identify and to treat effectively. Similar to other substances of abuse, prescription medications such as the Opioids, and the CNS depressants and stimulants, activate the reward system circuitry of the brain. When this reward circuit is activated the brain notes that something important is happening. The pleasurable effect of the medication is perceived as a reward and this tells the brain to look for that feeling

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again. With repeated use, resulting in repeated rewards, the system looks for increased amounts of pleasure from the medication and eventually dulls the effects of naturally rewarding behaviors such as exercising, eating or sex. Thus the person takes more of the medication seeking to maintain or increase the reward, but eventually the attainment of pleasure eludes them yet the craving for pleasure continues due to the reward system within the brain. The body can become physiologically dependent upon the medication demonstrating the development of tolerance where more of the substance is needed to gain the same desired effect. When the person tries to reduce or arrest their use, they experience withdrawal and quickly learn that by returning to use or increasing their amount they can feel better simply by warding off the physiological withdrawal. This response is both physiologically and psychologically reinforcing. Psychologically the person believes that the use of the substance is helping them; this belief contributes to compulsive use. With alcohol or drug dependence the person is typically using to seek a state of “normalcy” only to find a vicious cycle of using, withdrawing and or craving, seeking, using and so forth. Hence, Cindy ended up in the circular cycle of an addiction. She was seeking relief from her troubles when in truth the proposed source of the relief was prohibiting relief from the pain while her brain reward circuitry produced intense cravings for the medication. This resulted in drug seeking behaviors and an overall decrease in her functioning. Substance dependence is defined in the scientific literature as a medical illness because the brain chemistry and functioning has been altered leaving certain functions of the brain dysregulated. Recent research postulates this dysregulation remains permanent and requires abstinence from use for stabilization.²

Summarizing from the Diagnostic Manual of Mental Disorders, the DSM-IV-TR:
 Substance Dependence is defined as: A maladaptive pattern of substance use, leading to clinically significant impairment or distress, as manifested by three (or more) of the following, occurring at any time in the same 12-month period:

- Tolerance- needing more of the substance to get the same desired effect over time or a diminished effect with continued use of the same amount;
- Withdrawal- manifested by the presence of physical and/or psychological symptoms upon cessation of use or a reduction in use;
- The person often takes a larger amount of the substance than they intended to;
- Unsuccessful attempts to reduce or arrest the use of the substance;
- A great deal of time is spent in activities to obtain the substance;
- Important social, occupation or recreational activities are given up or reduced due to the use of the substance; and
- The person continues to use the substance despite knowledge that it is likely to cause or exacerbate physical or psychological problems.³

Co-Occurring Disorders

Prescription drug dependence, along with other substance dependence, frequently contributes to other conditions such as depression, bringing with it fatigue, problems with concentration, sleep and appetite disturbance, feelings of hopelessness and helplessness and thoughts of death or dying. When this happens it is not uncommon for the person, most often women, to seek treatment for the depression without divulging the drug seeking and using behaviors in yet another attempt to solve the problem. However, treatment for depression is most successful when the brain receptors are available to engage the medication being prescribed and when cognitively the person is not under the influence of a mood altering substance. When another substance is being abused, the brain may not be able to benefit from the antidepressant or do the process therapy (i.e., talk therapy) necessary for improved mood. Without disclosure, the treatment provider is often on a fishing expedition trying to offer relief without knowing all contributions to the disturbance. Likewise, people who suffer from clinical depression or other mental illness may self medicate with substances, such as alcohol, in order to numb the severity of the symptoms. Research demonstrates the compulsive use of an addictive

substance can result in substance dependence.

According to a 2004 report from the Substance Abuse and Mental Health Services Administration (SAMHSA) adults with a substance use disorder were almost three times as likely to have a serious mental illness (20.4%) as those who did not have a substance use disorder (7.0%).⁴ In most instances both disorders must be addressed as primary illnesses and treated as such for optimal results and stabilization.

Substance dependence and mental illness among attorneys is also correlated with disciplinary complaints and troubles. A 2001 Oregon study demonstrated that malpractice and discipline complaint rates for lawyers, before recovery, are nearly four times greater than those in recovery.⁵ An ABA study indicated that more than 50 percent of all disciplinary cases involve impaired lawyers.⁶ It isn't hard to believe that the incidence of malpractice insurance claims is significantly higher among impaired attorneys. This data lends itself to place attention on prevention of addiction or mental illness among legal professionals. One might start by assessing "how" we reduce tension in our lives. If we engage in using an addictive substance to reduce tension or solve a problem we augment the chances of imbalance and decreased well-being both personally as well as professionally.

Denial

Recognition of the core problem(s) is difficult for others to identify and understand but it typically is even more of a challenge for the attorney who is impaired. Lawyers suffering from substance dependence or mental illness often deny they have a problem. Denial is considered a significant component in the illness of addiction. Considering the involvement of the brain's reward circuitry and the psychological belief that the substance is what is promoting the ability to cope and function, denial of substance use as the primary problem seems inevitable. If the problem is acknowledged then the person may have to face physiological withdrawal and intense fear of exposure which they often believe threatens their job, reputation and

competence in their role as a mother, father, lawyer, community leader and so forth. In addition, shame is a powerful emotion that feeds denial as a self-protective mechanism. Attorneys are particularly noted for their intellectual ability to win an argument with all of their skills to deny, defend, articulate reason and justify cause. When they apply those same skills to justifying the use of a substance as necessary for survival their sophisticated denial system quickly deflects typical intervention strategies. Couple this with the culture of practicing law, a profession which doesn't readily lend itself to the identification of an impaired attorney and problems multiply. Lawyers are in the helping profession, they are to be in the position of providing expertise and fixing other people's problems. There is little room within their role for identification of themselves or others as impaired professionals. Ironically, there is little room for identification of themselves as human beings who require balance in order to function optimally. A close look at the curriculum and grading practices of the law schools should amply demonstrate this point. Striving for perfection, achievement and winning is inherent in the law school culture and documented as part of the typical attorney personality.^{7,8,9} This culture and way of doing life can continue into their professional career and may contribute to imbalance and dysfunction.

Contributions to imbalance

Some attorneys may push themselves beyond their capabilities; some question whether this drive contributes to the higher rate of substance dependence and mental illness among attorneys. Attorneys are human beings first. Self-determination theory (SDT) proposes that human beings have three primary psychological needs: the need for competence, autonomy and relatedness.¹⁰ For attorneys this might translate to: what I do I do well, I have control over what I do and I don't work or live in a vacuum as I have quality interpersonal relationships. According to SDT when these needs are met in a balanced way the result is increased motivation for doing life along with enhanced mental health and well-being. In reverse, when these needs are diminished the person becomes less motivated,

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SDT postulates that social-contextual conditions surrounding a person, such as dynamics within the culture or environment, can be a major factor contributing to motivation and to effectively getting psychological needs met for competence, autonomy and relatedness. In the life of an attorney this could play out like this: if the attorney works and lives within an environment that fosters autonomy with

support, self initiative is acknowledged and encouraged, there is an understanding of extrinsic motivators and the environment fosters interconnectedness between others there is a greater likelihood of psychological well-being. Does that sound like the environment within a law firm or that of a solo practitioner? According to SDT environments that depreciate motivation are those that are controlling and demanding (required billable hours) denies self-initiative (take whatever cases come your way), decreases the sense of competence (will I ever make partner or be financially stable) and fosters isolation (competition with peers or not enough time with loved ones).

One might be astute to state that the culture of practicing law, coupled with the typical personality traits of an attorney, attenuates attorney well-being; possibly contributing to mental illness or substance dependence. This could be mitigated if the attorney is calculative about working towards balance on a daily basis to provide for engagement in activities and relationships that will foster competence, autonomy and relatedness; along with tempering their drive for perfection, achievement and meeting the bottom line.

Change

Attorneys need to go towards the parts of this challenge that they can impact as there is so much in life which is beyond our control. As Albert Einstein put it "insanity is doing the same thing over and over again and expecting different results". Whether you have developed an addiction or your life is out of balance in some other quadrant you may need to engage in change. A change in life style, work patterns, assumptions and expectations may be required. Change can be hard; possibly because change requires us to take a risk and realign our thoughts and behaviors and this feels unfamiliar. Unfamiliar can feel wrong and often we quickly acclimate back to the same thoughts and behaviors that feel familiar which prevents improvement and stabilization. Within this framework change requires tolerating an uncomfortable feeling without reverting back to our typical cognitive, emotional and behavioral routines. Change requires suffering and

suffering is hard, therefore the task becomes how to “do hard” in a functional way and long enough so change becomes possible and long term rewards materialize.

The etiology of addiction is currently under research and has been for many years. It is well documented that the development of an addiction can have a multitude of origins. Genetics, brain chemistry, stressors, life styles and using patterns can all contribute. We can all acknowledge that our jobs, families, personalities and life events can result in stress. Chronic stress results in tension in our lives. The way we reduce tension can contribute to balance or imbalance. If we use substances to reduce tension, or not as prescribed, this behavior may contribute to the development of an addiction and or mental illness. The risk increases if we are predisposed to these conditions by our family histories and genetic markers.

Conclusion

Cindy did not ask for this addiction, nor did she believe she developed it by engaging in immoral, illogical or otherwise irrational behavior. She was trying to fix a complex problem in her life, the problem of pain, the need to be functional and effective in spite of it, the fear of her life being out of control and a decreasing sense of competence. However, the way she attempted to solve the problem, by surreptitiously taking more medication than prescribed, seeking that medication outside of her prescribing physician and eventually obtaining it illegally through the internet, resulted in hurting her more than helping her. This is not an uncommon road to addiction. Alcohol and other drugs, including prescription medications are sometimes sought as a way to reduce tension resulting from the problems and events in our lives. Anyone who has experienced an addiction or mental illness will likely share with you the illness did not increase their sense of competence, their sense of control or improve their interpersonal relationships. So often addiction and mental illness, when left untreated, results in ruination of a life and of the lives of those attached to the one with the illness.

Who is at risk? Attorneys and others can ask themselves the following questions to screen for a potential problem:

- Do you ever use more of your medication than prescribed? Do you ever use more of any substance than you intend to?
- When you stop taking your medication, or stop using a substance, do you experience any aches or pains, nausea, vomiting, tremors, fatigue, anxiety or insomnia?
- Have you had unsuccessful attempts to reduce or arrest your substance use?
- Do you ever borrow prescribed medication from a friend or family member?
- Have you ever bought prescription medication on the internet?
- Does your use of medication, or the use of any substance, ever negatively affect your ability to work, care for your family or your social life?
- Is anyone in your life concerned about your prescription medication use, or your use of any substance? Are you concerned about it?
- Do you continue to use substances even though you know they are not good for your other medical or psychological conditions?

If the answer is ‘yes’ to any of these questions, then seek consultation from a qualified health care professional or make a confidential call to the WisLAP Program.

Lawyer assistance programs

The first lawyer assistance programs were established in the mid 1970’s and early 1980’s. These programs initially focused on lawyers who were impaired due to substance abuse and dependence. Groups of lawyers, some of whom were in recovery from alcohol or drug dependence volunteered to assist their colleagues find recovery and stabilization. The dedication of these lawyers led to an invaluable resource for those in the profession of law. Lawyer assistance programs have currently expanded to address mental health concerns as well as multiple troubles a judge, lawyer or law student may experience which decreases their well being and ability to practice law.

Cindy did meet with the WisLAP Coordinator, was evaluated confidentially and then referred to an appropriate treatment program. She worked with her medical provider on pain management. A trained WisLAP attorney volunteer continued to meet with Cindy to provide support and guidance as she struggled to make needed changes in her life. Cindy also chose to attend a local support group which proved to be invaluable to her recovery.

WisLAP is a member service of the State Bar of Wisconsin which provides confidential assistance to lawyers, judges, law students and their families in coping with alcoholism or other addictions, mental illness, or other problems related to or affecting the practice of law. WisLAP has trained attorneys and judges who serve as peer assistants. WisLAP staff and volunteers are exempt from reporting misconduct under SCR 20: 8.3. and SCR 60.04(3). The program is based upon lawyers helping lawyers and judges helping judges. WisLAP is designed to help legal professionals build on their strengths and provide support through the enhancement of physical, mental and emotional health. Confidential support and guidance is available 24/7 by calling 800-543-2625, or by contacting Linda Albert, the WisLAP Coordinator, at lalbert@wisbar.org or 800-444-9404 ext 6172.

References

Daicoff, S.S. (2004). Lawyer Know Thyself: A Psychological Analysis of Personality Strengths and Weaknesses; American Psychological Association, Washington D.C.

Diagnostic and Statistical Manual of Mental Disorders. DSM-IV-TR. (2000). American Psychiatric Association.

Dubin, Larry. (2004). The Legal Profession's Hidden Secret: Substance Abuse; *Michigan Bar Journal*, Vol 83; No 9, 44-45.

Kreiger, L.S. (2002). Psychological Insights: Why Our Students and Graduates Suffer, And What We Might Do About It. Florida State University College

of Law.

Koob, G. & Kreck, M.J. (August 2007). Stress Dysregulation of Drug Reward Pathways, and the Transition to Drug Dependence. *American Journal of Psychiatry* 164:1149-1159.

Meuller, T., Pagano, B., Rodriguez, F., Bruce, S., Stout, R. & Keller, M. (August 2005). Long-Term Use of Benzodiazepines in Participants with Comorbid Anxiety and Alcohol Use Disorders. *Alcoholism Clinical and Experimental Research*. Vol 29, No. 8.

NIDA InfoFacts: Prescription Pain and Other Medications. *National Institute on Drug Abuse*. Retrieved on October 1, 2008 from <http://www.nida.nih.gov/Infofacts/Painmed.html>.

Prescription Medications: Misuse, Abuse, Dependence and Addiction. *Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Treatment*. Retrieved on October 1, 2008 from http://www.kap.samhsa.gov/products/manuals/advisory/text/0605_rxdugs.html.

Quello et al. Mood Disorders and Substance Use Disorders: A Complex Comorbidity. *National Institute on Drug Abuse*. Research Review. Retrieved on September 2, 2008 from www.nida.nih.gov/PDF/Perspectives/vol3no1/MoodDis.pdf.

Ryan, Richard M. & Deci, Edward L. (2000). Self-determination Theory and the Facilitation of Intrinsic Motivation, Social Development, and Well-being. *American Psychologist*. Vol 55(1) 68-78.

Sheldon, K. M. & Kreiger, L. S. (2004). Does Legal Education have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values and Well-Being. *Behavioral Sciences and the Law*, 22: 261-286,

Volkow, Nora D. M.D. Prescription Drugs Abuse and Addiction. *National Institute on Drug Abuse*.

Research Report. Retrieved on September 15, 2008 from <http://www.nida.nih.gov/ResearchReports/Prescription/prescription.html>.

WISC-TV. February 14, 2006. OxyContin: The Good, The Bad, The Deadly. *Channel 3000*. Broadcast transcript. Madison, WI: WISC-TV. Retrieved on December 5, 2008 from <http://www.channel3000.com/health/7013912/detail.html>.

Endnotes

¹ WISC-TV. OxyContin: The Good, The Bad, The Deadly. Broadcast transcript. Madison, WI: WISC-TV. February 14, 2006.

www.channel3000.com/health/7013912/detail.html

² Koob, G. and Kreck, Mary Jeanne. Stress Dysregulation of Drug Reward Pathways, and the Transition to Drug Dependence. *Am J Psychiatry* 164:1149-1159, August 2007

³ Diagnostic and Statistical Manual of Mental Disorders. DSM-IV-TR. American Psychiatric Association.2000.

⁴ See report at: <http://www.oas.samhsa.gov/2k4/coOccurring/coOccurring.cfm>

⁵ Oregon Attorney Assistance Program. (2002) Lawyers In Recovery Have Low Claim Rates. In *Insight*, No. 46. Retrieved on September 15, 2008 from <http://www.oaap.org/data/documents/insight/Lawyers.pdf>.

⁶ American Bar Association publication. (2004) The Impaired Lawyer From the Law Firm's Point of View.

^{7,8,9} Daicoff, S.S. Lawyer Know Thyself: A Psychological Analysis of Personality Strengths and Weaknesses. Washington D.C., American Psychological Association. 2004. Sheldon, K. M. and Kreiger, L. S. Does Legal Education have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values and Well-Being. *Behavioral Sciences and the Law* 22: 261-286, 2004. available online at www.interscience.wiley.com. Kreiger, L.S. Psychological Insights: Why Our Students and Graduates Suffer, And What We Might Do About It. Florida State University College of Law. 2002.

¹⁰ Ryan, Richard M.; Deci, Edward L. Self-determination Theory and the Facilitation of Intrinsic

Motivation, Social Development, and Well-being. *American Psychologist*. 2000 Jan Vol 55(1) 68-78 ■



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CRIMINAL LAW AND PROCEDURE

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Pritikin, Martin H. Is prison increasing crime? 2008 Wis. L. Rev. 1049-1108.

Schneider, Elizabeth M. Domestic violence law reform in the twenty-first century: looking back and looking forward. 42 Fam. L.Q. 353-363 (2008).

Smith, Christopher E., Michael A. McCall and Madhavi M. McCall. The Roberts Court and criminal justice at the dawn of the 2008 term. 3 Charleston L. Rev. 265-287 (2009).

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Quarterman, 127 S. Ct. 2842, 2007.) 39 Seton Hall L. Rev. 163-190 (2009).

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DOMESTIC RELATIONS

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California Court of Appeal throws a curveball: the use of juvenile adjudications as strikes in California post- ... (*People v. Nguyen*, 62 Cal. Rptr. 3d 255, 2007, review granted, 169 P.3d 882, 2007.) 12 Chapman L. Rev. 107-126 (2008).

EVIDENCE

Epstein, Jules. Avoiding trial by rumor: identifying the due process threshold for hearsay evidence after the demise of the Ohio v. Roberts "reliability" standard. 77 UMKC L. Rev. 119-159 (2008).

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Hebl, Andrew. Spoliation of electronically stored information, good faith, and Rule 37(e). 29 N. Ill. U. L. Rev. 79-116 (2008).

Weber, Kendra. Comment. Life, liberty, or your children: California parents' Fifth Amendment quandary between self-incrimination and family preservation. 12 Chapman L. Rev. 155-173 (2008).

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LAW AND SOCIETY

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JUDGES

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Miller, Stephen W. Note. Rethinking prisoner litigation: shifting from qualified immunity to good faith defense in section 1983 prisoner lawsuits. 84 *Notre Dame L. Rev.* 929-955 (2009).

Zavez, Maryann. Use of the Adoption and Safe Families Act at 15/22 months for incarcerated parents. 33 *Vt. L. Rev.* 187-199 (2008).

LEGAL ANALYSIS AND WRITING

Gionfriddo, Jane Kent, Daniel L. Barnett and E. Joan Blum. A methodology for mentoring writing in law practice: using textual clues to provide effective and efficient feedback. 27 *QLR* 171-226 (2009).

Long, Lance N. and William F. Christensen. Clearly, using intensifiers is very bad—or is it? 45 *Idaho L. Rev.* 171-189 (2008).

LEGAL PROFESSION

Daicoff, Susan. Lawyer, be thyself: an empirical investigation of the relationship between the ethic of care, the feeling decisionmaking preference, and lawyer wellbeing. 16 *Va. J. Soc. Pol'y & L.* 87-140 (2008).

McMillian, Lance. Tortured souls: unhappy lawyers viewed through the medium of film. 19 *Seton Hall J. Sports & Ent. L.* 31-103 (2009).

MOTOR VEHICLES

Bodnar, Christopher J. A matter of life and death: statutory authority enabling sobriety checkpoints to effectively fulfill their public safety role. 13 *Tex. Rev. L. & Pol.* 139-162 (2008).

PSYCHOLOGY AND PSYCHIATRY

Barrett, Jeffrey M. Comment. A state of disorder: an

analysis of mental- health parity in Wisconsin and a suggestion for future legislation. 2008 *Wis. L. Rev.* 1159-1199.

Busching, Desiree and Simon Kapochunas. Note. Timothy's Law: introducing New York to mental health parity. 25 *Hofstra Lab. & Emp. L.J.* 601-638 (2008).

Kimber, Kirk. Comment. Mental health courts—Idaho's best kept secret. 45 *Idaho L. Rev.* 249-281 (2008).

Rich, William J. The path of mentally ill offenders. 36 *Fordham Urb. L.J.* 89-119 (2009).

Willis, Heather R. Note. Creeping by moonlight: a look at civil commitment laws for sexually violent predators through the lens of *The Yellow Wallpaper*. 15 *Wm. & Mary J. Women & L.* 161-191 (2008).

SEXUALITY AND THE LAW

Nisbett, John. Comment. Checkmate: how sexual predators in (your) space have strategically employed existing cyber-laws to outflank their prey. 28 *Miss. C.L. Rev.* 181-202 (2008-2009).

Wool, Jason. Note. Maintaining the presumption of innocence in date rape trials through the use of language orders: *State v. Safi* and the banning of the word "rape". 15 *Wm. & Mary J. Women & L.* 193-226 (2008).■

REVIEW GRANTED IN THE WISCONSIN SUPREME COURT

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