Answers: Attorneys and Alcoholism

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- “Lawyers and Substance Abuse” TRIAL (Journal of the Association of the Trial Lawyers of America), June 2000

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Acknowledgments
I. Why doesn’t everyone who drinks alcohol become alcoholic?

A. The interaction of any or all of the following factors contribute to whether or not an individual develops the disease of alcoholism:
1. An inherited vulnerability to develop the illness of alcoholism,
2. The effect of an individual’s upbringing on the development of the mind,
3. Lifestyle choices, and

B. Most of us are predisposed to developing some type of illness; i.e., an illness that runs in our families. Some of us are predisposed to develop the illness of alcoholism (or other addictions). Alcohol and other mood altering drugs interact with the brains of these individuals differently. They experience neural-chemical reactions in the areas of the brain that involve learning and memory, logical thinking and judgment, emotions, behavioral control, and survival drives (i.e., thirst, hunger, sex). Within these individuals there is a gradual development of a neural dysregulation that results in an overwhelming need to drink alcohol or use mood altering drugs, preoccupation with obtaining and using alcohol and other drugs, compulsive and impulsive behavior with regard to drinking and drug use, and impaired control over their use of alcohol and other mood altering drugs. The inappropriate and harmful behavior of the alcoholic or addict continues despite negative consequences (e.g., health problems, divorce, financial problems, lawsuits, disciplinary actions, arrests, etc.). Although the alcoholic or addict took his first drink or drug voluntarily, as his or her disease progresses, in their minds, the use of alcohol and other drugs becomes a matter of necessity for survival. It is no longer voluntary; the ability to just say “no” is impaired; being able to choose not to drink is gone, sometimes forever.

C. Although genetics plays a major role in the development of addiction, an individual's upbringing is also involved. The brain is not static. Its billions of neurons are continuously building new neural pathways and strengthening existing pathways. This is called neural plasticity. These pathways enable the various areas of the brain to communicate with each other. Genetics may set the stage but our life’s experiences write the script on how our minds develop. Research indicates that children raised in a safe and nurturing environment generally develop better communication and coping skills coupled and have a stronger sense of well-being and self-esteem. These individuals may be more resilient and resistant to the euphoric effect of alcohol and other mood altering drugs on the brain even if alcoholism runs in the family.

Contrast this to children who are raised in unstable and dysfunctional families. Too often they do not learn how to cope with disappointment, frustration, hurt, and negative emotions. Communication skills may be non-existent as it is safer for them to say nothing and stay out of sight from their parents (or others) who may be active alcoholics or mentally ill. Life is a constant struggle. They worry as to what the future
holds. They lack hope and rarely experience happiness or peace of mind. They feel they are not in control of their lives. They are at grave risk of developing substance use and mental health disorders early in life.

Then there are the children who are subject to mental, emotional, physical or sexual abuse. These children have been traumatized. They develop a heightened sense of alertness and often perceive situations as threatening when, in fact, they are not. This chronic state of fearfulness coupled with a lack of communication and coping skills sets the foundation for overreacting with inappropriate, angry outbursts that makes matters worse. They, too, feel insecure and powerless. They are very afraid.

Consider these two groups of troubled children and assume they carry the genetic predisposition to develop alcoholism. Their experimental use of alcohol or other mood altering drugs may result in an abnormal surge of dopamine (a “feel good” neurotransmitter). They experience a sense of relief and freedom which they have never known before. For the first time they feel they have control over their lives and over those who dominate them. The speed and intensity of the dopamine based feelings of euphoria and power is imprinted into their memory through an equally over reaction in the glutamate pathways (by which the cortex communicates to the midbrain). The “feel good” lesson is strengthened through the repeated use of alcohol and drugs and, over time, becomes nearly impossible to dislodge.

D. Certain lifestyle choices also contribute to the development of alcoholism and other forms of addiction. Long hours at work, working through weekends and holidays, and skipped vacations may encourage turning to alcohol or other drugs for instant relief from the stress and demands of being an attorney. Some may seek out stimulants (e.g., amphetamines, cocaine, etc.) to overcome fatigue and help meet pressing deadlines or get through a trial. Others turn to their primary care physician for tranquilizers to address their anxiety or insomnia, or painkillers to get relief from chronic pain. In all of these situations, the attorney places him or herself at greater risk for developing a substance use problem especially if they are genetically predisposed.

E. Another contributing factor is the existence of a co-occurring illness such as depression, anxiety, manic depression (bipolar disorder), eating disorders, etc. The individual who is unaware that he or she is suffering from one of these illnesses may gravitate toward the use of alcohol or drugs (prescription or illicit) as a form of self-medication. The depressive may seek out alcohol or amphetamines or cocaine to lift him or herself up and out of the depression. The anxious attorney may seek out alcohol or marijuana or tranquilizers to relax. The manic may use alcohol or tranquilizers to come down and try to sleep. The overweight may seek out amphetamines to lose weight. Again, the risk of developing an addiction increases especially if they are already genetically predisposed. (Note: alcohol starts off as a stimulant but ends up as a depressant.)
F. All of the above contributing factors, interacting in varying combinations and degrees, explain why one may become an alcoholic while others who drink do not.

II. Why doesn't the alcoholic control his/her drinking?

A. Scientists are discovering how alcohol affects brain functions in the alcoholic. In some individuals alcohol and other mood altering drugs trigger an abnormal surge of neurochemicals in the areas of the brain that involve memory and learning, the reward and survival mechanisms, moods and the sense of well-being, judgment and behavioral control. With the continued use of alcohol and other drugs, the brain adapts to the higher levels of neurochemicals. These neurological adaptations result in altered brain functions or neural dysregulation. This is the scientific basis for why some people cannot drink safely while others misuse alcohol but eventually self-correct, and still others are mere social drinkers.

B. Two major areas where neural dysregulation takes place are in the midbrain (site of certain subconscious functions) and the cortex (site of our conscious mind). The midbrain is home to our emotions, our sense of well-being, and our survival drives (i.e., thirst, hunger and sex). The cortex involves our ability to think logically, set goals, make sound decisions, and exert conscious control over our behavior.

Within our brains there are dopamine and glutamate neurotransmitter pathways which are involved with memory, learning and our reward / survival system. In other words, our brains are designed to identify, remember and (subconsciously and automatically) repeat certain behaviors that we experience as feeling pleasurable. The subconscious feeling of pleasure is triggered by the release of dopamine in the midbrain which travels to the cortex where we become consciously aware of the pleasurable feelings – this is known as the pleasure pathway. This dopamine based reaction triggers a response in the glutamate pathways projecting from the cortex to the midbrain which reinforces our learning that the preceding activity was pleasurable. The speed and intensity of these neural processes is way above normal in the alcoholic. Ultimately, addiction “hijacks” the dopamine – glutamate pathways.

When the budding alcoholic or addict experiences the first extraordinary surge of dopamine into the midbrain as a result of the use of alcohol or other mood altering drugs, it triggers an equally extraordinary response in the glutamate pathways coming down from the cortex. These initial abnormal reactions start the development of a neural dysregulation that eventually leads to unsuspecting and extremely dangerous consequences. How can anything that allows me to feel whole, self-confident, and this good about myself be a problem? But the truth is that these feelings of intense euphoria are the flowering of an addiction. The ability of the conscious mind to exert emotional self-control is diminished. The alcoholic falls prey
to the emotion-based behaviors of the midbrain which seeks immediate, short-term gratification over delayed, long-term rewards. The alcoholic’s ability to perceive that their decision-making is impaired and that the harmful consequences of their conduct far exceeds the short-term feelings of pleasure is woefully lacking when it comes to controlling the use of alcohol or other drugs.

The extraordinary, rapid development of overcharged dopamine based rewards and glutamate based memories in those who are vulnerable to developing the disease overrides the prefrontal cortex’s ability to think logically and act prudently when it comes to using alcohol or other drugs. Over time, sometimes quickly sometimes slowly, the progression of the neural dysregulation places the use of alcohol or other drugs at the top of the reward system hierarchy. In other words, the alcoholic will choose alcohol over food, water or sex; marriage and family; financial security; reputation and career; the threat of incarceration; and life itself.

The alcoholic, at times, finds it impossible to say “no” to picking up the first drink. The all-powerful belief (or delusion) that a drink will make him or her feel better, often coupled with the belief that he/she can control his/her drinking, triggers another cycle of drinking even when the prospect of serious negative consequences and harm are looming on the immediate horizon.

Alcoholism is not an “I drink too much disease.” Rather, it is an “I can’t stop, or stay stopped, disease.” This is what distinguishes it from substance abuse or misuse. The substance abuser still has the ability to control or quit drinking/drugging altogether when the adverse consequences outweigh the benefits. A warning from the managing partner, an angry spouse, a physician, or the police is sufficient to trigger a change for the better. The only cautionary note is that if the individual is actually in the early stages of alcoholism (i.e., the neural dysregulation has not yet triggered involuntary drinking) he or she remains at risk if they continue or later resume drinking. The disease of alcoholism is chronic as well as progressive. There is no known cure at this time. The safest course of action for anyone experiencing a problem with alcohol or other mood altering drugs is abstinence.

III. Should the organized Bench and Bar try to assist the alcoholic attorney?

A. Yes.
   1. It is the humane course of action.
   2. We have a professional responsibility to act.
   3. It is cost effective and beneficial to the profession and society.

B. When presented with an opportunity to assist an attorney who is struggling with alcoholism, an illness that is treatable and has a good prognosis for recovery, to do nothing condemns the individual to divorce and family breakups, a damaged or
destroyed career, financial hardship, and possible disbarment. Alcoholism and other forms of addiction are chronic and progressive diseases that ultimately destroy the individual’s health and lead to imprisonment, institutionalization or a premature death. A single call to your state or local lawyer assistance program can change the future for the alcoholic from a life of despair to one of hope, happiness and usefulness. Your call to a lawyer assistance program can save a career and a life.

C. Approximately 5.9% of U.S. adults aged 26 and over have an alcohol problem. Attorneys are not immune; hence, there could be as many as 67,500 attorneys in the United States who are alcoholics or alcohol abusers. Some of them may also have a problem with prescription or illicit drugs. As their illness progresses the likelihood of professional impairment increases. Most disciplinary authorities will attest to the fact that substance abuse and addiction (along with depression and other mental health disorders) are major contributors to ethics violations and disciplinary actions. As a self-regulating profession we are obligated to protect the public from impaired lawyers. We can do this by contacting our local or state lawyer assistance program and discussing how best to assist the lawyer with an alcohol or drug problem.

D. Alcoholism, other forms of addiction and substance abuse are treatable. The earlier a person addresses his or her alcohol problem, the better likelihood of a successful recovery early on. Treating late stage alcoholism is more difficult because of the added complications of additional physical and mental health problems but even late stage alcoholics can be restored to good health and functionality. Treatment costs vary but overall they are a bargain when one considers the cost of retraining a replacement lawyer, losing clients, harm to the law firm’s reputation if the matter is not properly addressed, and likelihood of professional misconduct and malpractice suits if action is not taken. Furthermore, a recovered lawyer often exceeds his or her previous skill as a lawyer and becomes a valued contributor to the firm, the profession and society. As an aside, for every dollar our society invests in alcohol and drug treatment there is a $7 return (primarily in criminal justice costs) which increases to $11 if reduced health care costs are factored in.

IV. What can the Bench and Bar do to assist alcoholic attorneys?

A. Provide a safe environment which encourages seeking an evaluation and treatment.
   1. Support continuing legal education for lawyers, judges and law students;
   2. Support your local or state lawyer assistance program; and
   3. Establish law firm policies that support treatment and recovery.

Collaborate with your local or state lawyer assistance program to develop programs on how to recognize a colleague in distress and assist him or her before serious harm occurs. Include continuing legal education on the topics of substance abuse and mental health in your local and state bars’ educational curriculum for bench-bar
and other conferences. Do the same with conferences sponsored by other law related organizations. Most states recognize the link between these illnesses and programs on ethics and professional responsibility. Education creates awareness, dispels myths and misunderstandings, and raises the level of understanding with regard to these illnesses. This erodes the stigma of being alcoholic which, in turn, encourages individuals to seek help for themselves and others.

Bring these programs into your law firm in conjunction with a law firm policy that encourages treatment for alcohol and drug problems (while not condoning illegal or inappropriate behavior).

Contact your state’s law schools and ask them to include information about your lawyer assistance program in their first year law student orientation programs. Encourage their professional responsibility professors to discuss the impact of substance abuse within the profession by bringing your lawyer assistance programs’ staff into their classrooms.

Engage your Bar’s disciplinary agency in a frank discussion to educate their investigators, prosecutors, hearing panels and adjudicators about alcoholism, other addictions, and mental health disorders. Help them to understand that (1) these are brain-based illnesses which eventually degrade the individual’s ability to choose not to drink, drug or gamble, or to be depressed, manic or compulsive; (2) these illnesses are treatable; and (3) recovery is possible with a lawyer having the potential to become an even better lawyer than before.

Support the use of probationary sobriety monitor programs in those cases where alcohol was a contributing factor to attorney misconduct, the attorney has accepted the responsibility and consequences of the misconduct, and is actively engaged in appropriate treatment and recovery programs.

In these types of cases the lawyer admits the misconduct and seeks mitigation regarding the sanction to be applied. This is done by presenting evidence establishing that their illness was a contributing factor to the misconduct, that their commitment to treatment and recovery is sincere, that they accept being held accountable for any harm done, and they are presently fit to practice law. A “good” attorney with a “bad” illness gets a second chance while still being held accountable for the misconduct. Sobriety contracts and sobriety monitors hold the attorney responsible for his or her recovery. The sobriety monitor immediately reports any non-compliance to the disciplinary authorities for additional action. This provides a level of assurance that the public is being protected in the event of a potential or actual relapse. (This type of program is also used in cases involving mental health disorders.)
V. What can you do about a colleague in distress?

A. Educate yourself about the warning signs of a lawyer in distress. Do not try to diagnose the illness – leave that to the experts (e.g., your local or state lawyer assistance program). The lawyer may be suffering from one or more of the following: alcohol abuse or alcoholism, chronic or acute stress, anxiety, depression, manic-depression, gambling problems, drug abuse or addiction, eating disorders or other illnesses. Look for adverse changes in appearance, dress, hygiene, attitudes and moods, certain character traits such as punctuality and reliability, job performance, interactions with staff and colleagues, fatigue, weight gain or loss, etc. These are all indicators that something is wrong although we may not know the underlying cause or causes. In fact, they may not be suffering from an addiction. Perhaps they are showing the signs of stress and burnout from having to take care of an ill or disabled spouse, child, or parent. Hence, the caution to not diagnose. Merely recognize that the lawyer appears to be in distress and then seek guidance from an appropriate source such as your lawyer assistance program.

B. Do not approach the lawyer without first obtaining advice from a professional interventionist and/or your lawyer assistance program. It’s very easy to unknowingly say or do the wrong thing which triggers resistance, resentment or anger in the person we are trying to help. This can make it difficult for anyone to engage him or her in a future conversation. Experienced professionals can help you think out and plan an approach that both sidesteps these pitfalls and clears a path for ongoing, open and constructive communication. The goals are to “motivate” the individual to (1) see a qualified healthcare provider for the purpose of finding out what is causing his or her distress and (2) to become willing to accept the professional’s recommendations for treatment, if indicated.

C. Keep in mind that getting a lawyer to agree to be evaluated is only the first step. You will need to make plans on how to assist the lawyer to participate in a treatment program while balancing the needs of the law firm and clients. Certain duties may need to be temporarily reassigned and the attorney’s workload reduced, discreet oversight of the attorney’s work product may be appropriate, and allowances should be made so that the attorney can complete the recommended course of treatment. Ideally, the attorney will accept responsibility for his or her treatment and ongoing recovery while recognizing the needs of the law firm regarding workload, billable hours, and clients’ needs. The interventionist and treatment provider can assist you with finding the right balance between accommodation and responsibility.

Note: It is in everyone's best interests for the attorney to authorize his/her treatment provider to disclose to the law firm their compliance with treatment. Verification of treatment compliance should not include disclosing any personal information revealed by the attorney while undergoing treatment. The attorney’s privacy must be respected and protected from becoming the topic of office gossip.
VI. What are interventions?

A. Sometimes an attorney is unaware they have a problem; other times the attorney is aware but minimizes the extent and severity of their problem. In either situation, an intervention is appropriate. Also, there may be those who know fully well they are alcoholic but have given up hope that they can recover. They, too, can benefit from an intervention.

Intervention refers to the process of making the attorney aware of his or her personal or professional dysfunction and motivating them to seek appropriate assistance. Interventions may involve close friends, colleagues, family members, and managing partners. They should be carefully thought out, planned and executed under the guidance of an experienced healthcare professional. Interventions should be fact-based, delivered in a concerned and not confrontational manner, and anticipate denial and/or resistance by the impaired attorney. There are many different intervention techniques but they generally fall within two categories: (1) motivational or (2) ultimatums. An experienced interventionist can guide you on how best to approach your colleague.

B. Motivational interventions are conversational (not confrontational) and are intended to awaken self-awareness and an intrinsic desire to make changes regarding inappropriate behavior. First hand, personal observations and concerns regarding the attorney’s behavior and functionality are the basis for the discussion. The goal is to generate trust (no accusations) in hopes the attorney will reveal what is troubling him or her. A sincere desire to see the attorney feeling good and functioning is expressed; offers to help are extended; and no threats are made.

One type of approach utilizes one-on-one meetings with the attorney as this minimizes any sense of embarrassment and an indignant response. If these private meetings fail to bring about positive changes in the attorney, additional parties may join future meetings. Their presence adds further emphasis to both the seriousness and the general awareness of others regarding the attorney’s conduct.

Another type of approach involves inviting the attorney to attend a session between the concerned parties and a healthcare provider to discuss their concerns and how best to cope with their feelings (worries). Some attorneys may attend this session out of curiosity or to defend themselves only to come away with a realization that his friends and family are sincerely concerned about his or her well-being. This can awaken the attorney’s realization that something is wrong, changes need to be made, and it is okay to accept their offers of support.

C. Leverage based interventions may be used as a last resort when previous efforts to assist the attorney have failed and there is a present risk of harm to the individual, clients or the law firm. A group of concerned parties work with a professional
VII. What is treatment?

A. Three key components of treatment include: (1) the level of care required, (2) the type of therapy and (3) the use of medications. The development of an effective treatment plan begins with an evaluation by a qualified healthcare provider. (By “qualified”, I mean someone who is experienced and knowledgeable in both addictions and mental health disorders.) Most alcoholics and drug addict suffer from short-term depression caused by the long-term use of alcohol and drugs. Others suffer from depression as an illness independent of their addiction. And there are still others who may suffer from other illnesses such as eating disorders, gambling, compulsive behaviors and/or posttraumatic stress. Without an accurate diagnosis that discovers which illnesses are present, treating the addiction may be sabotaged by the failure to address these other illnesses. This can lead to disastrous consequences for all who interact with the attorney.

B. The evaluation will determine the appropriate level of care:
   1. Hospitalization to address serious health complications (as needed)
   2. Detoxification (a few days)
   3. Residential (in-patient) treatment (7 to 90 days)
   4. Intensive out-patient treatment (1 to 3 months)
   5. Out-patient treatment (1 to 6 months)

C. Medication may be appropriate and helpful during detoxification and treatment to reduce the physical and/or psychological cravings for alcohol or other mood altering drugs. This will allow the patient to resist falling prey to relapse triggers and allow them to remain abstinent and focus on their treatment. Except for use in detox under the supervision of a skilled profession, alcoholics and drug addicts should avoid medications that are known as drugs of abuse (e.g., benzodiazepines). The use of these drugs places them at high risk of relapse. The safest course of action is to consult with a physician who is knowledgeable about addictions (e.g., American Society of Addiction Medicine) before taking any medication. Regrettably, many physicians do not fully understand the science of addiction and the risk of relapse that is present when these drugs are prescribed to a recovering alcoholic.
D. Nearly all alcoholics have, at times, stopped drinking or using drugs. What they were unable to do was to “stay stopped” or remain abstinent. The challenge they face is to rebuild a life without the presence of alcohol or drugs especially during times of extreme stress, hardship or success. This is the role of therapy. Sometimes the therapy is personal - just the person and his or her therapist. Other times it involves a group of people who openly and frankly discuss their problems and experiences with others under the guidance of a professional facilitator.

Three general types of therapy widely used in the treatment of addictions include: (1) behavioral therapy which concentrates on current behaviors, (2) cognitive therapy which focuses on thoughts and beliefs, and (3) interpersonal therapy which involves current relationships. Cognitive and behavioral therapy helps the person to recognize and change negative styles of thinking and behavior that may contribute to relapse. They teach coping skills to help the person change their thoughts, feelings and reactions to stressful situations. This reduces the likelihood of seeking a drink or drug to feel better (which is how they used to cope with being upset or angry). Interpersonal therapy looks at how one can work and live with other people more effectively. It seeks to change those “toxic” relationships that can lead to anger, resentment and relapse.

VIII. What is recovery?

A. The definition of recovery depends upon the individual’s goal and may include one or more of the following:
   1. Either abstinence or controlled drinking
   2. Lifestyle change
   3. Change in outlook on life
   4. Spiritual awakening

B. Not everyone accepts that alcoholism is a brain-based disease. Some believe that the excessive use of alcohol is indicative of a lack of willpower or seriousness regarding their drinking. These individuals see recovery as a life that allows them to continue to drink socially or in moderation. Some of them discover that they cannot control their drinking and must change their definition of recovery to one of permanent abstinence.

C. In terms of a lifestyle change, the recovering alcoholic may seek to take better care of his or her health by eating better, exercising and establishing a healthy sleep routine. The recovering alcoholic will most likely avoid people, places and activities that may tempt (or psychological prime them) to pick up a drink. Over time, it may become safe to engage in certain activities which were previously associated with drinking; however, the recovered alcoholic must remain vigilant for the return of any thoughts of drinking. Although neural plasticity “rewires” the alcoholic’s brain in
direct correlation with their recovery program, the old addiction pathways are merely dormant – they are not totally erased. Exposure to psychological cues coupled with complacency about their recovery can set the stage for relapse. Alcoholism/ addiction can be placed in remission but there is no cure.

D. Related to a lifestyle change is an overall change in the outlook on life. The individual realizing that for many years his drinking came before family and friends now makes a concerted effort to rebuild damaged and broken relationships. The recovered alcoholic may also strive to become a productive member of society. He or she makes and keeps commitments and becomes a person who is seen as trustworthy and reliable. Feelings of low self-esteem, anxiety, self-pity and shame are replaced with optimism, self-confidence and pride.

E. There are others, mostly found in the 12 Step programs, whose recovery is based upon a total change in how they think, feel, and act with regard to themselves, others, and the God of their understanding. The 12 Steps are designed to create self-awareness of how they affected others; accept responsibility for their conduct (including making amends to those they have harmed); continuously strive to become a better, more considerate person; and becoming willing to help others to recover from alcoholism, etc.

These men and women work on developing a personal relationship with a “Higher Power” who guides them in their lifelong program of recovery. They incorporate lifestyle changes based upon being responsible, reliable, agreeable and helpful. This revolutionary change in personality and outlook on life is referred to as a spiritual awakening and experience. The desire to drink has left them; however, this is a daily reprieve based upon their spiritual condition for that day. This is why most 12 Steppers stay involved for a lifetime – their continued recovery is ultimately based upon trying to help others one day at a time.

F. It bears repeating – there is no permanent cure for alcoholism. Picking up a drink or mood altering drug will, sooner or later, reactivate the disease process.

IX. American Bar Association’s Commission on Lawyer Assistance Programs

A. Your resource to locate your state or local lawyer assistance program.

http://www.americanbar.org/groups/lawyer_assistance/resources/lap_programs_by_state.html

Lawyer assistance programs can be found throughout the United States and Canada. The above website link will take you to a directory of these programs. There is also the International Lawyers of Alcoholics Anonymous – they meet once a year to share the joy and fellowship of recovery. For more information: http://www.ilaa.org/home/.
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