

Comments From the Editor...

Our good friend and Kansas LAP director, Don Zemites, passed away tragically last month. Don was my neighboring LAP director. We spent a considerable amount of time on the phone with one another brainstorming the issues that all of the LAP programs deal with. I like to think that I was of service to Don and I know that he was of service to me. Sometimes we would gripe and sometimes we would laugh. We liked to exchange stories of success and commiserate about the folks who didn't accept the offer of help. We shared ideas of how better to market our services to lawyers in need and how to raise the funds to keep our programs going.

My point is that the spirit of giving and mutual cooperation amongst CoLAP members is without parallel. In 12-step programs there is a concept that whenever someone reaches out a hand for help it is our duty to reach back. I find that to be true in CoLAP. We can't and don't do this work alone. While I miss Don, as I'm sure all of us will, I also know he will be replaced by someone who will also be willing to reach out his or her hand to lawyers in need.

—Hugh Grady

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Highlights

of the American Bar Association
Commission on Lawyer Assistance Programs

Time to Disconnect? Technology Overload Damages Relationships, But is it an Addiction?

by John O'Neill

We live in an amazing time when we can reach out and virtually touch someone, obtain information in seconds, and communicate without limits. Over the past ten to fifteen years we can see the rise in the use of the Internet, cell phones, BlackBerry devices, digital music players, text messaging, wireless devices, mobile entertainment, online gaming, camera phones, online social networking, and numerous other ways of communicating, being entertained, and staying "connected."

Sadly, it may be in the "connection" that we run the greatest risk of losing our ability to have healthy attached relationships. We can become overloaded by technology and suffer consequences in our relationships. In doing so it must be noted that there is an enormous benefit from technology and our ability to use it in a healthy manner. The key is developing healthy ways to manage that technology.

But is it an Addiction?

Can we become addicted to technology? That's debatable. Clearly, there is a need for more research to safely label technology as an addiction. It may be more accurate to view problems with technology as an "overload" causing potential consequences. However, if we consider the overuse of cell phones, the Internet or other forms of technology, we can find some parallels to dependency on substances such as alcohol or drugs.

In treating professionals at The Menninger Clinic, my colleagues and I have witnessed the effects of technology overload on patients in the Professionals in Crisis Program. Before coming to Menninger, career-driven women and men may have spent hours each day on their computers, cell phones, or BlackBerry devices, at the expense of their family or friends and own healthy choices such as relaxation, exercise, and sleep. Patients entering treatment commonly hide their phones or attempt to bring in laptops. Our patients also demonstrate problems with Internet gambling, Internet sexual behaviors, and a reliance on various communication devices. An informal survey of patients found that 85 percent of them believe they could not professionally or emotionally function well without their tools of the trade (cell phones, BlackBerry, laptop, and so on).

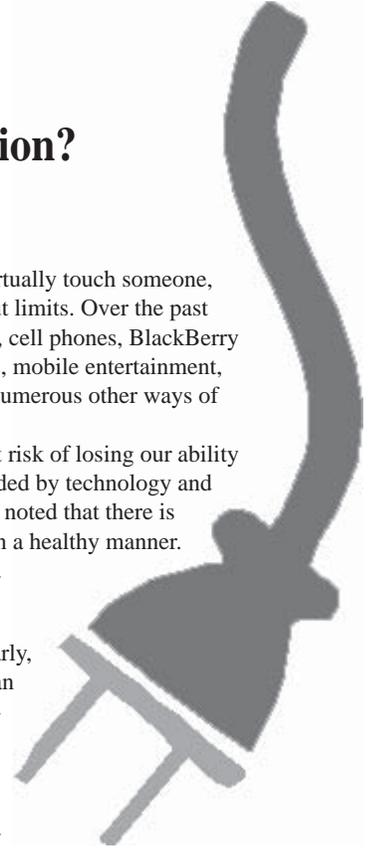
This feeling of uneasiness when denied access to technology is not unique to patients in a psychiatric setting. Take for example the BlackBerry system outage in April 2007. When the network went down, thousands of concerned users called the company expressing frustration over missing messages. Users described extreme anxiety, fear of missing messages, phantom vibrations, and anger that they couldn't communicate.

We have become so accustomed to the luxuries of technology that we may be forgetting how to play, have personal connections, and use coping skills in face-to-face interactions. We can see demonstrations of this disconnect from relationships on a daily basis. Through these disconnections we are perhaps running the greatest risk of harming our attachments to relationships and other people.

How Much Technology is Too Much?

The following warning signs may indicate that you need to reevaluate your use of technology:

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Too Much?

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- **You need your connection . . . now!** You panic or become irritable when you can't get cell phone service, your Internet connection is down, or your cable or satellite feed is not working. You find that when you cannot access the Internet, use your cell phone, or access other technologies you experience distress.
- **You lose track of time or have technology blackouts.** You consistently lose yourself in the Internet world, intending to spend an hour, and looking up to discover it has been four hours. Or you use your BlackBerry so much, the term crackberry has meaning for you.
- **Your relationships suffer.** You spend less time participating in personal activities or limit your time with friends and family to attend to your e-mail or return phone calls. You frequently miss appointments or are late because you got caught up on the Internet, checking e-mail, or talking on your cell phone. You use text messages, e-mails, and voice mails when a face-to-face interaction would be more appropriate.
- **You can't leave home without it.** You can't take a vacation without bringing four different charging devices for all your gadgets and gizmos. Your car needs extra batteries to power all of your devices. When your cell phone ear piece becomes a permanent part of your wardrobe, that's a problem.
- **Your family or friends ask you to stop, but you can't.** You find you spend more time communicating on the phone or via e-mail than you do in person, for example, sending e-mail to your spouse while in the same house. The Internet becomes a more powerful draw than spending time with family or friends or other favorite activities. You become irritated when others complain about your use of technology.
- **You take risks using technology.** You text message while driving, talk on the phone extensively while driving, and use the Internet in situations that could have consequences. You spend excessive time using the Internet at work, for reasons other than work purposes.
- **Even after experiencing consequences you continue your behavior.** Getting in an accident while on the cell phone or family members complaining about the lack of attention does not change your behavior.

Relationships Suffer from Technology Overload

There has not been enough research on how technology impacts our relationships, but the overuse of technology can harm our relationships and affect our families and friends.

Research and various studies have demonstrated the importance of attachment to other people on how well we cope with life, feel safe in relationships, and manage stress. Furthermore, we know that children who suffer from attachment disorders struggle with trust, superficial relationships, poor peer relationships, lying, fear of intimacy, shame, and feeling alone.

Take the example of a father and son at a baseball game. A homerun ball heads toward the stands and the father, talking on the cell phone, makes a half-hearted attempt at catching the ball. He does not catch the ball and the son appears dejected. The father never stops his phone call. What could have been a significant bonding moment was derailed by the father's inability to disconnect from technology. Observing people on a daily basis, it is easy to recognize how lost we have become in our own worlds. Talking on the phone, returning messages, playing games, listening to music on headphones that block out the world, and other examples illustrate how easy it is to escape.

Let me reemphasize that technology has enormous benefits that assist us on a daily basis. Cell phones help us keep up with family, friends, and business and assist us in an emergency. The Internet is a wonderful resource filled with knowledge and endless learning opportunities. Evidence shows that videogames can improve various motor skills and problem-solving skills. The hope is that

we can apply technology with a healthy balance and set limits.

Set Technology Limits

The challenge for each of us is to assess how much control technology has over our lives. Is there a clear line between work and home? Can you turn off the phone, BlackBerry, or stop checking e-mail? After you assess your use, which may require feedback from others, set some limits. What is a reasonable amount of time to surf the Internet? What are your rules for returning e-mail? What will happen if you do not respond immediately? In setting limits and rules you may develop ways to better attend to your family and friends. For the father talking on the cell phone at the baseball game, a rule could be in place that he can return calls at the end of innings instead of throughout the game. Ultimately, being present in relationships with family and friends should include both body and mind.

Rules and limits do not have to go to extremes and can be developed in a reasonable manner. Setting limits with what we communicate via text messages or e-mail is also helpful in developing healthier relationships. It is not healthy to end relationships, fire people, or express anger via text message or e-mail. Furthermore, it is an important aspect of building healthy relationship coping skills when you communicate your feelings in person. We can learn to healthily use increasing technological advances if we set limits, develop rules, and attend to our relationships.

John O'Neill is the director of addiction services at The Menninger Clinic in Houston, Texas.

Case Law Corner

Nebraska State Bar Association v. Kinney, 740 N.W.2d 607 (2007)

Conditional reinstatement to the practice of law granted.

Kinney was disbarred in 1987 after he embezzled about \$23,000 from his employer's law firm. He applied for reinstatement and a referee recommended that he be reinstated contingent upon his taking a course in legal ethics and successfully passing the Nebraska bar examination.

The Supreme Court found that Kinney had proven by clear and convincing evidence that he currently possessed good moral character that would warrant reinstatement. He had completed an alcohol and drug treatment program and was found to have effectively addressed his drug and alcohol problems. Kinney had paid restitution to his employer and the record of his work history reflected that he was a responsible and trusted employee.

The referee found Kinney's testimony to be "honest, forthright, and compelling." The record reflected that he took full responsibility for his past mistakes.

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Women and the Law—An Opportunity

by Don Carroll

Of the many lawyers that have come through my office over the years with issues of stress, depression, or addiction, many trace the origin of their problem back to a bad life- balance decision. There's a lot of talk about life-balance issues these days, particularly as to how these issues affect women lawyers. These issues are important for two reasons. First, we know that lawyers who have healthier, more balanced lifestyles are less apt to have stress related illnesses or problems with depression or alcohol and other drugs. Secondly, we know that lawyers who have balanced healthy lifestyles are more apt to be engaged in bar activities, church activities, and community organizations. In other words, the lawyers who have healthy lifestyles are usually the lawyers who create a positive legacy of professionalism in our community.

Recently, the MIT Workplace Center produced a report on women lawyers and obstacles to leadership. The report (MIT Report) is based on two surveys. One survey is on the rates of attrition in Massachusetts law firms (Attrition Survey) and the other on career decisions in the practice of law (Career Decision Survey). The two surveys were conducted in 2005 and 2006 and sought to find specific reasons for the persistently low numbers of women partners in Massachusetts law firms. The MIT Report is premised on the idea that women in professional leadership in the bar are going to be those women who have become partners in their firms. Thus the focus of the data discussed here is on women lawyers practicing in large firms.

The starting point for the analysis was that for the past fifteen years the number of women and men graduating from law schools and entering law firms has been virtually

equal. However, according to the Attrition Survey, women make up only 17 percent of firm partners. That number increases to only 21 percent if the period before women entered law in large numbers is excluded.

The Career Decision Survey tries to provide an answer to what the Attrition Survey shows. It gathers reasons for moves, descriptions of firm practices that affect staying and leaving, and other demographic information that gives a social context for individual career decisions. The data produced by the survey is not surprising as much as it is stark. Women leave the partnership track mainly due to the difficulty of combining law firm work and caring for children in a system that requires long hours under high pressure with little or inconsistent support for flexible work arrangements.

On the whole, law firm policies, which have become open to the entry of women into the practice of law, are not matched by policies that allow women to take care of children and succeed as partners. Many women with children are able to negotiate part-time schedules for family care (about 40 percent in 2005). Those who do are more likely to stay in their firm, but they are still less likely to be promoted to partner than women who stay in firms and do not use a part-time work option.

Men on the partnership track have, on the average, more children than their female colleagues and many adjust their daily work hours to support children's activities, but almost none use a part-time schedule for family reasons.

Men overall are more likely than women to be married or living with partners, to have children, and to have more than one child. Women, on the other hand, are more likely

to have fewer children and still be faced with the dilemma of helping to raise a young family without flexible options that lead to partnership.

The Attrition Survey compares the career trajectories of women and men between the point of entry into law firms as associates and the point of potential election to partnership. Interestingly, about half of both male and female associates leave their firm at some point. Of the leavers, about 30 percent of the men and 25 percent of the women move to other firms, but nearly a third of the women leave practice entirely at this point compared to less than 20 percent of the men. This trend continues as associates move to a more senior level. As junior and non-equity partners, a third of the women leave practice compared to only 15 percent of men. Finally, the disparity is even greater between women and men who become partners with 15 percent of the women leaving and 1 percent of the men.

The Career Decision Survey tries to answer the question: Where do the women go when they leave firm practice? Significantly, a large number continue some kind of employment as lawyers. Over 50 percent of the women who leave law firm practice end up working as in-house counsel in corporations or in non-profit organizations or government. Twenty-four percent pursue non-lawyer jobs. Still, a large percentage (22 percent) who have left practice are no longer employed. Interestingly, a higher percentage of men who leave their firm (28 percent) pursue non-lawyer jobs, but only 3 percent of men cease working.

The Career Decision Survey then looked at what happens to women's career paths if they stay in firm practice. Are women more

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likely than men to move into non-partnership track positions such as “staff attorney” or “of counsel”? The survey data suggests the answer is yes. Of those moving into non-partnership track positions, 15 percent were women as compared to 9 percent men.

The MIT Report quotes one female attorney as follows:

The expectation that an attorney (litigation) needs to be available practically 24/7 is a huge impediment to a balanced work/family life. The focus on billable hours has probably driven down productivity and driven up stress related health issues. While I miss some of the camaraderie I had and the courtroom experiences (what few there were), I don't think I'd ever return to a law firm as they are currently structured.

This quote suggests why so many women who do not leave the work force do actually leave firm practice. The Career Decision Survey found that the reason most cited by women for leaving firm practice as either associates, junior partners, or partners was “the difficulty integrating work and family/personal life.” For men, family reasons for leaving came in third.

The MIT Report then tried to look at the institutional factors affecting those women who did stay in firms and became partners. Women who stayed in their firm were twice as likely as those that switched firms to agree that the culture of their firm supported work/family balance without negative consequences for promotion. In other words, the good news is that there is a significant minority of law firms that allow the use of flexible time for women attorneys for child rearing without negative consequences for promotion to partner. This group of firms seems to be responsible in large part for the segment of women lawyers who do have families and make partner.

Kristi Walters with Parker Poe Adams & Bernstein in Charlotte offers these thoughts:

More and more firms seem to be taking a serious look at their alternative work schedules policy and making sure that these are not alternative work schedules in name only. There needs to be an open line of communication between the attorney on an alternative work schedule and the firm to make sure that the arrangement is really working.

In addition to making sure that alternative work schedule arrangements are really working, firms need to

consider creating better on and off ramps for female attorneys, who may want to take some time away from practicing or reduce their hours when their children are younger, but who may want to rejoin the practice full-time once their children are older.

The Career Decision Survey found that, with few exceptions, only women use part-time work arrangements. Approximately 65 percent of women with children practicing in a firm in 2005 reported having used some kind of flexible work arrangement either part-time or some full-time flexible option. Of these two flexible work choices, part-time was the choice of most women pre-partners who have children, full-time flexibility was the choice of most women partners. The use of part-time or flexible hours was almost exclusively to provide child care. Women pre-partners who used flex options were approximately 20 percent more likely to stay in their firm than those who did not. Women who did use a flex option were somewhat less likely to be promoted to partner than those who did not.

An additional nuance on the MIT Report can be found by looking at data from a 2007 Oregon survey. The Oregon survey was directed towards determining the level of attorney satisfaction with the practice of law. Mike Long, attorney counselor of the Oregon Attorney Assistance Program, kindly provided data from the Oregon survey that was filtered to match as closely as possible the MIT data. In other words, the data slice he provided, compared male to female lawyers in large firms who were 39 years of age or younger. This eliminated those lawyers, male and female, who had found work in non-profits, government, and corporate law offices where the Massachusetts data indicated more flexible time opportunities generally seem to reside.

Looking then at this fairly recent group of lawyers who graduated from law school in the past 15 years, when roughly the number of men and women graduating has been equal, the Oregon survey confirms the trends found in the MIT survey. Almost none of the males worked less than full-time compared with 14 percent of the females who worked part-time. The most striking data, as in the MIT study, was the difference in the rate of progression in the firm of men and women. Of the males, 12 percent had become equity partners while only 7 percent of the females had become equity partners. Twenty-four percent of the males had become non-equity partners and only 7 percent of the females had become non-equity partners. Sixty-six percent of the men were junior and senior associates compared to 83 percent of the females who

were junior and senior associates.

In addition to their more rapid rate of advancement, male lawyers reported being more satisfied practicing law. Sixty-four percent were satisfied or very satisfied with the practice of law as compared to 55 percent of female lawyers. When it came to identifying the aspects of law practice most dissatisfying, 63 percent of the men recorded time pressure and work loads while 89 percent of the women identified this as the most dissatisfying aspect of practicing law. Interestingly, men more readily found the adversarial nature of practice and performance and billable hour expectations more dissatisfying than their female counterparts.

The Oregon survey also looked at the amount of education debt owed and female lawyers had a substantially greater debt burden both at the time of their graduation from law school and at the time of the survey. At the time of graduation, 16 percent of the male lawyers had no debt and 10 percent of the females had no debt. Thirty-eight percent of the female lawyers had debt between \$50,000 and \$75,000 at the time of graduation while only 16 percent of the men had debt at this level. The next greatest debt level was between \$75,000 and \$100,000, which 26 percent of the male lawyers had and 21 percent of the female lawyers had. Indirectly this raises a question of whether or not even more female lawyers might leave big firm practice but for their greater debt.

In response to a question about what helps you best manage the stress of law practice, 93 percent of the female lawyers said their relationships with and support by family and friends, while only 68 percent of the men indicated that this was a source of stress management for them. This is echoed in the comment of Kristi Waters. When asked what had been most important to her in how to coordinate her legal career responsibilities and home life responsibilities, she stated:

You need to be extremely organized.
You need to rely on friends and family.
At times you have to have the courage to say “no” and realize that you can't do it all.

Maria Minsker with Alston & Bird in Charlotte states that for her it has been important, “to set certain family events as ‘required’ with no apologies to anyone (including herself).” Female lawyers in the Oregon survey found that vacation and time away from the practice was of great importance in stress management (72 percent) as compared to 53 percent of men.

In response to the question of knowing today what they do about law practice, would
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they still become a lawyer, 83 percent of the women said they would and 68 percent of the men agreed.

Because the slice of the data the Oregon study provided was relatively small it is probably of questionable statistical validity. However, what it does suggest is that women lawyers may be even more committed to the practice of law (take on more debt to become lawyers, more at home in the adversarial system, would more readily than men again commit to a law career even though experiencing less satisfaction with their law career) but find themselves advancing in their law firms at a disproportionately reduced level. There are also other possible interpretations.

One other explanation of the data that women cite is time pressure as a difficulty of practice while men cite the adversarial system as dissatisfying. This may be because men often have wives at home dealing with child rearing and other time demands and men with more time flexibility may have the "luxury" of being able to complain about the adversarial system. Similarly the greater debt and more commitment to law practice by women than men could be simply evidence of greater determination by women in the face of an uneven playing field.

There are several conclusions that can be drawn from the MIT Report and the Oregon survey. If the profession wishes to allow women lawyers equal participation in the profession, it must allow flexible work options to its women lawyers. Flexible options are available and they work. If the profession would put a greater value on family needs, the profession would help assure a greater quality of life for both men and women lawyers. The survey supports the development of two different strategies of flexible scheduling. One, a parallel work/family strategy and

two, an episodic life cycle strategy. The work family strategy would provide flexible working arrangements for women while they are satisfying the needs of raising their children. The episodic life cycle strategy is an alternative for those women who leave the profession for some time, but then would like to resume their careers once their family responsibilities are lessened.

For both strategies, the challenge for the profession is to develop the leadership and social infrastructure to make them work. That is, flexible time options to raise a family should be a norm, not an alternative that each female associate or partner must negotiate in some precarious and uncharted fashion. The episodic life cycle strategy requires infrastructure to make the return to work an open opportunity for the women who adopt this strategy. The MIT Report refers to the episodic work/family strategy as developing off and on ramps into the profession. One woman lawyer with two children states in the report:

Law firms need to realize that work/family balance ebbs and flows over the course of a career. Most women (and some men) focus primarily on their career for the first five years after law school, focus shifts to children during the next 5–7 years, back to career when the kids go off to school, and fully back to career when the kids become adults. Firms need to take a long range approach. Their lack of flexibility when lawyers need to focus on family makes them lose out on these talented attorneys when their focus shifts back to career.

Again, Maria Minsker of Charlotte:

When I first started to practice law, lawyers with flexible or reduced schedules were looked down upon almost universally. Today, the attitudes are evolving so that, for the most part, these attorneys are viewed as equal to their full time counterparts. In addition, my firm has benefits that may seem

small but make a difference, such as subsidized concierge services, child care, and college planning professional assistance. Because of time-saving benefits such as these, Alston & Bird has earned a place on Fortune's 100 Best Places to Work for eight consecutive years. For a large law firm to achieve that ranking is absolutely astounding to me.

The conclusion of the survey report is that the loss of women leaders in law flows directly from the profession's failure to respond creatively to the dual needs of time for work and time for families. If our profession responds creatively to this challenge it will inure to the quality of life of all lawyers men and women.

The North Carolina Lawyer Assistance Program is a confidential program of assistance for all North Carolina lawyers that helps lawyers address problems of stress, depression, addiction, or other problems that may lead to impairing a lawyer's ability to practice. If you are a North Carolina lawyer, judge, or law student and would like more information go to www.nclap.org or call toll free: Don Carroll (for Charlotte and areas West) at 800/720-7257, Towanda Garner (in the Piedmont area) at 877/570-0991, or Ed Ward (for Raleigh and down East) at 877/627-3743. The author is indebted to Mike Long of the Oregon Attorney Assistance Program for his assistance in providing information for this article. Don Carroll is also the author of the book, A Lawyer's Guide to Healing.

Staff News

Donna Spilis, staff director of CoLAP, celebrated 33 years at the American Bar Association on Sunday, January 13, 2008. Hurray!

Around the LAPs

Thank you to the LAPs that send information for inclusion in this section of *Highlights*. If you would like your LAP news included in our next issue, please send to Hugh Grady at hughgrady@mac.com.

MICHIGAN: The State Bar of Michigan LJAP has undergone some changes in the recent

past: Martha Burkett assumed the permanent role of program administrator effective October 1, 2007, and she is very happy to be kicking off the new year with two new clinicians. Linda Harms and Carrie Pearce assumed their respective roles as case monitors effective December 10, 2007. Full-time administrative assistant, Janie Lee continues to make significant contributions toward keeping things running smoothly. Program participation is higher than ever, and those attorneys and law

students who comprise the LJAP volunteer network have increased in number by leaps and bounds. 2008 is a year of great promise for the SBOM LJAP! —*Martha Burkett*

MINNESOTA: Minnesota had the opportunity to present intervention and related training to judges during our state judges' conference. We are moving forward in efforts to obtain increased funding for our lawyer assistance program and
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In Memory

Donald Zemites



Donald Zemites, 74, Shawnee Mission, Kansas, passed away at Shawnee Mission Medical Center on December 29, 2007, and went to rest with the Lord. Don was a beloved husband, father, grandfather, and patriarch to many. He was preceded in death by his parents, Edythe A. and William J. Zemites; brother, Bill; and son, Christopher. Don was born and raised in Kansas City, Kansas, on July 13, 1933.

He graduated from Pittsburgh State University in 1959 and obtained his law degree from UMKC in 1968. He proudly served his country in the Army. Don practiced law for many years in Kansas City before becoming the executive director of the Kansas Lawyers Assistance Program. Don was active in numerous organizations, including the Abdallah Shriners, the American Legion, Kansas Trial Lawyers Association, Wyandotte and Johnson County Bar Associations, Academy of Family Mediators, Society of Professionals in Dispute Resolution, and several others. He also

received his Level Three Certification as an Addiction Counselor and helped countless people in that capacity. Don was also extremely proud of his Lithuanian heritage and dedicated many of his days to preserving and enriching that heritage in the community. In 2007, he received the Ethnic History Award for those efforts from the Wyandotte County Historical Society and Museum. He also received a similar award for his dedication from the Lithuanian American Community in 2006.

Don was a man of immense faith in the Lord. He also had tremendous passion for music, laughter, and the outdoors. His sense of humor and his harmonica will be missed by many. He is survived by his wife Lori; daughters, Amy and Sally; stepchildren, Linda, Scott, and Mark; eight grandchildren; and three great-grandchildren.

Around the LAPs

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have developed new CLE programs that discuss working with impaired clients as a vehicle to reach lawyers who might not otherwise attend our programs. —*Joan Bibelhausen*

NEW YORK: The 18th Annual New York LAP Spring Retreat will be held May 16–18 in Lake George, New York. Retreat theme and workshops have not been decided to date. If you are interested in receiving information about the retreat when it comes out, please contact Pat Spataro at pspataro@nysba.org.

Nearly 50 people attended the First Annual LAP Statewide Volunteer Recognition Dinner in November 2007. Ray Lopez, former LAP director, received an award named in his honor by the Capital District Lawyers Helping Lawyers Committee.

Alan Lampert was recently hired as LAP Coordinator in the second department. Al will assist with outreach and educational efforts as well referrals in the downstate region.

The New York LAP and local Lawyers Helping Lawyers Committee have initiated a Lawyers' Depression Support Group for attorneys with depression. The meetings have been well received.

In addition to its quarterly meetings and monthly conference calls, the statewide Lawyer Assistance Program distributes a monthly update to its members to enhance

communications.

The Bar Association of Erie County recently received an award for their efforts to establish a highly successful Committee to Assist Lawyers with Depression. This award is given to programs that make significant contributions to the profession as well as the community.

Barbara Smith, New York Lawyer Assistance Trust executive director, was recently honored with the 2008 Award for Excellence for her service to statewide lawyer assistance efforts.

OHIO: Ohio LAP made 82 CLE presentations in 2007, including speaking at all eight Ohio law schools, reaching live audiences of over 10,000, and probably that number again watched video replays. In 2007 we did 36 interventions, 136 assessments, and made 97 referrals elsewhere for assistance. We have over 750 enrolled in our support system. Scott R. Mote, executive director, is serving on the Capital University Law School's Curriculum Reform Project, hoping to have a positive impact on the faculty's approach to imparting knowledge.

PENNSYLVANIA: Lawyers Concerned for Lawyers of Pennsylvania, Inc. (LCL) celebrated its 20th birthday on January 14, 2008. Formed by a handful of recovered alcoholics who envisioned helping addicted lawyers throughout the Commonwealth, LCL has evolved into a well-funded, non-

profit corporation helping lawyers, judges, and law students suffering from all forms of stigmatized but highly treatable illnesses. LCL's success stems from the patient and persistent efforts of its founding directors, volunteers, and staff coupled with the support of the Pennsylvania Supreme Court and its various agencies (including the Lawyers' Fund for Client Security, the Disciplinary Board, and the Board of Law Examiners); the Pennsylvania Bar Association; the Pennsylvania Bar Institute; the 67 county bar associations; the eight law schools; and last but not least, the ABA Commission on Lawyer Assistance Programs, Donna Spilis, and all the LAPs who so freely give of their time and knowledge. —*Ken Hagreen*

TENNESSEE: The Tennessee Lawyers Assistance Program (TLAP) is pleased to announce the addition of a new employee and position: Catherine Wheaton, associate director of Outreach Services.

Catherine is an honors graduate of Case Western Reserve Law School where she was an executive notes editor for *Health Matrix: Journal of Law and Medicine*. She served as a law clerk for Judge Robert Wedemeyer on the Tennessee Court of Criminal Appeals and as a public defender in Knox County, Tennessee. She is a member of the Criminal Justice Section of the American Bar Association, the Nature Conservancy, and the Buckeye Institute. She enjoys art museums, shopping, (continued on page 8)

**Page 7 of this edition of
Highlights has been purposely
omitted from this online version**

People in the News

Please Welcome to CoLAP Massachusetts, our new executive director, **Gina Walcott-Torres**. For the last eight years, Gina Walcott-Torres has been an assistant United States attorney for the District of Massachusetts. Gina worked in the Civil Division of the U.S. Attorney's Office, where she handled both affirmative and defensive civil litigation on behalf of the United States, federal agencies, and federal employees sued in their official capacity. While there, Gina was also active with the office's diversity committee, Stay in School initiative, and legal internship program.

Gina has also been recognized for her many professional, civic, and personal contributions to the profession and her community. She was named one of the Ten Outstanding Young Leaders by the Boston Junior Chamber of Commerce in its 50th year celebration, an award that has been given in the past to such distinguished individuals

as John F. Kennedy, Robert Kennedy, Janet Langhart, Leonard Zakim, Alice Richmond, and Thomas P. O'Neil. Additionally, Gina was invited to become a member of the Massachusetts Bar Foundation's Society of Fellows—an honor extended to only .5 percent of the Commonwealth's practicing bar. Gina also has been featured in the *Boston Business Journal*.

Prior to joining the U.S. Attorney's Office, Gina spent nearly six years at the state Attorney General's Office, both as a civil litigator and as a prosecutor. When she left the office in 1999, Gina had moved up the ranks to acting chief of the Unemployment Fraud Division. Gina received her BA from Wellesley College (1988), and her JD from Boston University School of Law (1993). She lives with her husband (Alain) and six-year old son (Anthony) in Randolph.

Around the LAPs

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hiking, and walking her dog, Mac.

Catherine's position involves outreach specifically to law schools, criminal defense attorneys, public defenders, and district attorneys. TLAP was fortunate to receive the Byrne/JAG grant from the Office of Criminal Justice Programs to assist in this endeavor.

If you are interested in learning more, please call 877/424-TLAP.

TLAP will be hosting the 3rd Annual CAMP TLAP, March 7-9, 2008, at Natchez Trace State Park in Wildersville, Tennessee. Saturday night's speaker is "Ernie the Attorney" from Maryland. Contact Emily McClendon at emily.mcclendon@tscmail.state.tn.us or 877/424-TLAP for a CAMP TLAP registration form, which includes three CLE hours, dessert social, banquet, and bonfire. Room reservations are to be made by calling the park at 800/250-8616 or 731/968-8176.

RECOMMENDATION

RESOLVED, That the American Bar Association adopts the Model Rule on Conditional Admission to Practice Law including the commentary, dated February 2008.

PROPOSED MODEL RULE ON CONDITIONAL ADMISSION TO PRACTICE LAW

1. Conditional Admission. An applicant who currently satisfies all essential eligibility requirements for admission to practice law, including fitness requirements, and who possesses the requisite good moral character required for admission, may be conditionally admitted to the practice of law if the applicant demonstrates recent rehabilitation from chemical dependency or successful treatment for mental or other illness, or from any other condition this Court deems appropriate, that has resulted in conduct or behavior that would otherwise have rendered the applicant currently unfit to practice law, and the conduct or behavior, if it should recur, would impair the applicant's current ability to practice law or pose a threat to the public. The [Admissions Authority] shall recommend relevant conditions that the applicant to the bar must comply with during the period of conditional admission.

Commentary

Conditional admission is not intended to apply to all applicants who have rehabilitated

themselves from prior conduct or other matters of concern to bar admissions authorities, but only to those whose rehabilitation or treatment is sufficiently recent that protection of the public requires monitoring of the applicant for a specified period. The availability of conditional admission does not preclude unconditional admission in cases where rehabilitation or treatment has been successful for a sustained time period; nor does it preclude denial or deferral of admission in cases where rehabilitation or treatment has been of shorter duration.

Conditional admission is also not intended to apply where an applicant has engaged in conduct that is not subject to rehabilitation.

The Rule focuses on rehabilitation from conduct or behavior or effective treatment of a condition which was associated with a previous lack of fitness. In this context, unfitness means that an applicant does not meet functional requirements necessary to practice law. The existence of a condition of chemical dependency, mental or other illness does not indicate an applicant's lack of character or fitness solely for that reason. Such a rule is consistent with ABA Resolution 110 (1994), which directs that fitness determinations be made on the basis of specific, targeted questions about an applicant's behavior, conduct, or any current impairment of the applicant's ability to practice law and recommends admissions processes be tailored to protect privacy of bar

applicants and avoid discouraging individuals from seeking mental health treatment. 18 MPDLR 5, 598 (Sept/Oct 1994). In addition to discouraging treatment and full disclosure, bar admission determinations made on the basis of diagnosis or treatment of chemical dependency, mental illness, or other medical conditions that do not impair functional ability may also run afoul of the Americans with Disabilities Act, which has been interpreted to prevent licensing authorities from placing additional burdens on qualified persons with a disability. See "Bar Application Mental Health Inquiries: Unwise and Unlawful. The Position of the American Bar Association," 24 Human Rights 1 (Winter 1997) www.abanet.org/irr/hr/welobob2.html; *Clark v. Virginia Board of Bar Examiners*, 880 F.Supp. 431 (E.D. Va. 1995)(striking down question requiring disclosure of treatment or counseling for any mental, emotional, or nervous disorders within the past five years as impermissible under Title II); *Medical Society of New Jersey v. Jacobs*, 62 USLW 2238, 1993 WL 413016 (D.N.J. 1993)(prohibiting extra burdens on qualified individuals with disabilities seeking medical licensure when those burdens are unnecessary). But see, *Applicants v. Texas State Board of Law Examiners*, 1994 WL 93404 (W.D. Tex. 1994)(permitting narrowly drawn questions about treatment for particular disorders). The focus on current conduct and fitness may also avoid disclosure of more

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Chair's Column

by Honorable Robert L. "Butch" Childers

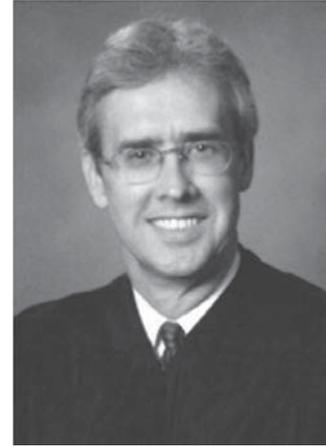
By the time you receive this issue of *Highlights*, I will be at the 2008 Midyear Meeting of the American Bar Association, which will be held in Los Angeles. There the House of Delegates will be voting on whether to adopt the Model Rule on Conditional Admission to Practice Law. The Model Rule is the final phase of the Law School Assistance Committee's three-year project. The three-year project has actually continued for five years as new issues have developed and information has been provided by others that has enhanced and strengthened the original proposal. The Model Rule is now cosponsored by the Commission on Lawyer Assistance Programs (CoLAP), the Section of Legal Education and Admissions to the Bar, the National Conference of Bar Examiners (the original three drafting entities), Sections on State and Local Government Law, Criminal Justice, Real Property Trust and Estate Law, the Commission on Mental and Physical Disability Law, and the Tennessee and Memphis Bar Associations. Our supporters include the Standing Committee on Delivery of Legal Services, the Forum Committee on Air and Space Law, the Association of Professional Responsibility Lawyers, and numerous Delegates from ABA, state bar associations, and other law-related associations. Several past ABA presidents are also supporting adoption of the Model Rule.

The procedures for submission of a report to the House have been a real learning experience for me, and has provided me an opportunity to meet representatives from other groups, and has educated me on the value of the ABA Sections, forums, divisions and affiliates working together to better the profession. It has helped to raise CoLAP's

visibility within the ABA and the work that it does to provide assistance to attorneys with substance-related disorders and mental health-related disorders. By addressing these health concerns, we not only help legal professionals, but we help to protect the public as well.

I am very hopeful that the House of Delegates will adopt the Model Rule that can be used to encourage states to enact a Conditional Admission rule that will encourage law students to seek early treatment for substance abuse and mental health-related disorders. A Conditional Admission rule will give bar examiners an additional tool with which to make difficult decisions about admission to practice law and will protect the public by requiring bar applicants to meet certain conditions for a period of time in appropriate cases to ensure that the applicant will be able to practice law without impairment.

I also want to report briefly on the work of the Judicial Assistance Committee. The committee is charged with developing a guide for setting up a Judicial Assistance Program to assist judges across the nation who are affected by stress-related issues. One of the four subcommittees, the Education Working Group, has collected materials for a Tool Kit, in which they hope to include: (1) a list of the signs and symptoms of both alcohol/drug-related behaviors and depression-related behaviors; (2) a brief set of statistics, which relate the prevalence of incidence in the legal profession of alcohol, drug addiction or abuse, depression, suicide, and so on; (3) an article on the brain disease; (4) stories by judges in recovery; (5) at least one article relating vicarious trauma to the role of the judiciary;



Honorable Robert L. Childers

and much more. In the next issue, I will report on the progress of the great volunteers from the three other Working Groups and the other active committees of CoLAP.

I would like offer my best wishes and prayers to former CoLAP Chair Edwin L. Blewer Jr. who was a strong leader of CoLAP. Ed has been diagnosed with cancer and will be undergoing treatment. Be strong and get well soon Ed. The entire CoLAP family will keep you and Julia in our thoughts and prayers.

We recently lost another strong leader in the field of lawyer assistance, Don Zemites, who passed away suddenly with an aneurysm. In the words of one of the many lawyers Don has helped, "there is no one to 'replace' him. I'm just one of hundreds who Don 'plucked from the wreckage.'" What a God-given gift he had for teaching us how widespread the disease of addiction is, how powerfully he instilled new hope!

The illness and passing away of dear friends whom I've met through the work of CoLAP remind me that life is fragile. We must live each moment like it might be our last and do everything we can to leave this world a better place than we found it.



You Can Start Thinking About Next Year . . .

**ABA CoLAP 21st National Conference for Lawyer Assistance Programs, October 21–24, 2008, and ILAA Annual Meeting, October 24–26, 2007, Peabody Hotel, Little Rock, Arkansas
But Book Your Hotel Now (800) 732-2639 !**

Model Rules

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health treatment information than is necessary concerns and avoiding potentially unlawful burdens on qualified disabled persons.

Conditional admission is intended to act as a “safety net” to increase the likelihood of the conditional lawyer’s continuing fitness—not as a method of achieving fitness. The conditional admissions process is particularly useful when dealing with recent recovery from or treatment for chemical abuse, dependency, or mental illness since it recognizes the importance of rehabilitation from dependency or treatment of a condition that resulted in previous conduct or behavior that, if unaddressed, would have rendered an applicant unfit, avoids denial of admission because rehabilitation or treatment is recent, encourages applicants not to delay getting help they need, and provides continuing assurances of fitness. A jurisdiction may also provide for conditional admission in cases involving rehabilitation from other misconduct or unfitness that concerns admissions authorities that does not result from chemical abuse, addiction or mental or other illness, such as neglect of financial responsibilities.

The terms “Admissions Authority”, “Monitoring Authority” and “Disciplinary Authority” are used to describe the nature of the functions being performed rather than the particular agency performing them. This permits each jurisdiction to determine which entity in its jurisdiction is best suited to perform these functions.

2. Conditions. The [Admissions Authority] may recommend that an applicant’s admission be conditioned on the applicant’s complying with conditions that are designed to detect behavior that could render the applicant unfit to practice law and to protect the clients and the public, such as submitting to alcohol, drug, or mental health treatment; medical, psychological, or psychiatric care; participation in group therapy or support; random chemical screening; office practice or debt management counseling; and monitoring, supervision; mentoring or other conditions deemed appropriate by the Admissions Authority. The conditions shall be tailored to detect recurrence of the conduct or behavior which could render an applicant unfit to practice law or pose a risk to clients or the public and to encourage continued abstinence, treatment, or other support. The conditions should be established on the basis of clinical or other appropriate evaluations, take into consideration the recommendations of qualified professionals, when appropriate,

and protect the privacy interests of the conditionally admitted lawyer to professional treatment records to the extent possible. The terms shall be set forth in a confidential order (the “Conditional Admission Order”). The Conditional Admission Order shall be made a part of the conditionally admitted lawyer’s application file and shall remain confidential, except as provided in this and any other applicable rules of the [Admissions Authority] and the [Disciplinary Authority].

Commentary

Consent agreements are used in some states as an alternative to an order. In such case, reference to a “Conditional Admissions Agreement” may replace “Conditional Admissions Order.”

3. Notification to the [Disciplinary Authority]. Immediately upon issuance of a Conditional Admission Order, the [Admissions Authority] shall transmit a copy of the order to the [Disciplinary Authority]. If the [Disciplinary Authority] or any other jurisdiction’s disciplinary authority receives a complaint alleging unprofessional conduct by the conditionally admitted lawyer, or if the [Monitoring Authority] designated pursuant to Section 5 files a complaint against the lawyer based on violation of the Conditional Admission Order, the [Disciplinary Authority] shall request a copy of relevant portions of the lawyer’s bar application file, and the [Admissions Authority] shall promptly provide the requested materials to the [Disciplinary Authority].

Commentary

This ensures that the [Disciplinary Authority] is aware of the conditional admission and can act promptly to revoke or extend the term of the conditional admission in addition to other disciplinary options it may have. The [Disciplinary Authority] may also act on a complaint of professional misconduct.

4. Length of Conditional Admission. The conditional admission period shall be set in the Conditional Admission Order, but shall not exceed sixty (60) months, unless a complaint for violation of the Conditional Admission Order has been filed by the [Monitoring Authority] with the [Disciplinary Authority] or a complaint of unprofessional conduct has been made against the conditionally admitted lawyer with any lawyer disciplinary authority.

Commentary

The Rule provides for a maximum conditional admission term of sixty months. Of the states that currently have a conditional admission rule that provides for a maximum term, a majority provide for a maximum

term of twenty-four months. The conditional admission period may vary according to the nature of the dependency or illness requiring conditional admission, the applicant’s history of pre-admission treatment or recovery, and any professional opinions about probability of relapse. The facts of a particular case may require a longer or shorter term than twenty-four months, but in no event should the conditional admission exceed sixty months. This Rule provides limited discretion to extend or modify the terms if the Conditional Admission Order is violated (i.e., there is a relapse or recurrence of the conduct) and provides for the conditional admission to be continued until the [Disciplinary Authority] acts upon any complaint to modify, suspend or revoke the lawyer’s admission.

5. Compliance with Conditional Admission Order. During the conditional admission period, the [Monitoring Authority] shall take such action as is necessary to monitor compliance with the terms of the Conditional Admission Order, including, but not limited to, referral for monitoring by a Lawyer Assistance Program or other monitoring authority, requiring the conditionally admitted lawyer to submit written verification of compliance with conditions, requiring an appearance before the [Monitoring Authority], and requiring responses to requests for information by the [Monitoring Authority].

Commentary

Although monitoring may be performed by a Lawyer Assistance Program or by an Admissions Authority, a Disciplinary Authority may be a proper monitor as an extension of its existing authority in probation and reinstatement matters.

6. Costs of Conditional Admission. The applicant shall be responsible for any direct costs of investigation, testing and monitoring. Other costs shall be borne in accord with the Rules of the Admissions and Disciplinary Authorities.

7. Failure to Fulfill the Terms of Conditional Admission. Failure of a conditionally admitted lawyer to fulfill the terms of a Conditional Admission Order may result in a modification of the Order that may include extension of the period of conditional admission, suspension or revocation of the admission, or such other action as may be appropriate under the Rules of the [Disciplinary Authority]. The filing of a complaint with the [Disciplinary Authority] shall automatically extend the conditional admission until disposition of the complaint by the [Disciplinary Authority] and any resulting appeals. (Once a complaint

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is filed with the [Disciplinary Authority], the [Admissions Authority] shall have no further authority over the conditionally admitted lawyer.

Commentary

The purpose of this provision is to allow the period of conditional admission to be extended to prevent the conditional admission from expiring before the Disciplinary Authority can act on the alleged violation of the Conditional Admission Order. It is not intended to affect in any way a Disciplinary Authority's ability to seek to discipline a conditionally admitted lawyer.

8. Violation of Conditional Admission

Order. If the [Monitoring Authority] determines that the terms of the Conditional Admission Order have been violated, the [Monitoring Authority] shall notify the [Disciplinary Authority] to initiate proceedings to determine whether the conditional admission should be revoked, extended or modified. Consideration and disposition of any such notice to the [Disciplinary Authority] by the [Monitoring Authority] shall be governed by the rules of the [Disciplinary Authority].

Commentary

Violation of a Conditional Admission Order will not necessarily result in revocation. The Monitoring Authority should act on any violation by determining whether it merits notice to the Disciplinary Authority.

9. Expiration of Conditional Admission

Order. Unless the conditional admission

is revoked or extended as provided herein, upon completion of the period of conditional admission, the conditions imposed by the Conditional Admission Order shall expire. The [Monitoring Authority] shall notify the [Disciplinary Authority] of such expiration.

10. Confidentiality. Except as otherwise provided herein, and unless this Court orders otherwise, the fact that an individual is conditionally admitted and the terms of the Conditional Admission Order shall be confidential provided that applicant shall disclose the entry of any Conditional Admission Order to the admissions authority in any jurisdiction where the applicant applies for admission to practice law.

In addition to ensuring that the relevant records of the [Admissions, Monitoring, and Disciplinary Authority] are confidential, the [Admissions Authority] shall structure the terms, conditions, and monitoring of conditional admission to ensure that the conditional admission does not pose a significant risk to confidentiality. These provisions for confidentiality shall not prohibit or restrict the ability of the applicant to disclose to third parties that the applicant has been conditionally admitted under this Rule, nor prohibit requiring third-party verification of compliance with terms by admission authorities in jurisdictions to which the conditionally admitted lawyer may subsequently apply.

Commentary

Confidentiality is the key to accomplishing the purposes of conditional admission. Public disclosure and the stigma that would accompany it in cases of chemical abuse or dependency, mental illness, or other medical condition would discourage the treatment,

diagnosis, and disclosure this Rule promotes.

In recommending confidentiality, the Commission was aware of and discussed the inherent tension between the benefits of confidentiality discussed above and the public's (including potential clients) interest in access to all material information about the applicant's fitness to practice. It is assumed that, in the absence of a conditional admission rule and under current admission practices, many applicants who would qualify for conditional admission under this rule would be admitted in most jurisdictions unconditionally. Thus, observing confidentiality should result in no less information being provided to the public than is currently the case, but on the other hand confidentiality will promote early disclosure and treatment of impairments.

11. Education. The [Admissions Authority] shall make information about its conditional admission process publicly available. The applicable Lawyer Assistance Program (LAP), or other bar or legal organization that provides support to lawyers, should have the primary responsibility for educating law students, law school administrators and applicants for bar admission regarding the nature and extent of chemical abuse, dependency, and mental health concerns that affect law students and lawyers; aiding them to recognize chemical abuse, dependency, and mental illness; identifying resources available to address such issues; and encouraging them to seek assistance. The Admissions Authority should reasonably cooperate with such organization in making accurate information about the conditional admission process available to interested persons.

Commentary

Informing bar applicants that chemical dependency and mental illness are not necessarily indicative of a lack of character and fitness which preclude admission to practice law encouraging rehabilitation from misconduct or behavior or treatment for a condition that would otherwise render an applicant unfit, and utilizing a confidential conditional admission process in cases of recent rehabilitation or treatment, results in candor in the process and other benefits to the bar examiners and the public. The law schools and lawyer assistance programs can assist by addressing chemical abuse, dependency, and mental health concerns, but the message of how an Admissions Authority addresses these concerns and the availability of a conditional admission option may be most appropriately and effectively communicated by the Admissions Authority.

Calendar of Events

May 14-18, 2008: CoLAP Spring Business and Committee Meetings
The Peabody Hotel, Memphis, Tennessee

May 16-18, 2008: NYS Lawyers Assistance Trust Annual Retreat
Lake George, New York

July 26-27, 2008: FLA 22nd Annual Workshop—Naples Beach Hotel,
Naples Beach, Florida

August 7-10, 2008: ABA CoLAP Business and Committee Meetings
during the ABA Annual Meeting, New York, New York

October 21-24, 2008: ABA CoLAP 21st National Conference for Lawyer Assistance
Programs, The Peabody Hotel, Little Rock, Arkansas

October 24-26, 2008: ILAA Annual Meeting, The Peabody Hotel, Little Rock, Arkansas,
ILAA Contacts: Jim Smith or Brandi Collins, www.ilaa.org



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*New Advisory Commission Member

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