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Introduction

Stephen J. Werber
Cleveland State University

Kate E. Ryan

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INTRODUCTION

Volume 10 of the Journal of Law and Health celebrates the culmination of our first ten years of publication simultaneous with commencement of the centennial year of the Cleveland-Marshall College of Law. Since its inception through the merger of the independent Cleveland Law School and John-Marshall Law School, the tradition of our College of Law has been one of access and of service to our community. The Journal of Law and Health, consistent with this tradition of access, has a liberal policy under which students may become associate members and provides both students and others with a forum to publish articles relating to health law which are informative, current, sometimes controversial, and which might not find another forum.

Since publication of its inaugural issue in 1985/86, the Journal has sought to carry on the tradition initiated by those who envisioned it and brought it to life.¹ The Editors and Staff remain indebted to The David S. Stein Foundation and The Treu-Mart Fund, supporting organizations of The Jewish Community Federation of Cleveland and the Cleveland Foundation as well as to the Harry K. Fox and Emma R. Fox Charitable Foundation for their initial financial support. We also remain indebted to the students, faculty, and staff of the Cleveland-Marshall College of Law who dreamed the dreams and then had the dedication to make those dreams a reality. For the past eight years the Journal has benefitted from the outstanding support of Dean Steven R. Smith, a true scholar in the field of health law. Dean Smith assisted us in attracting major writers and in maintaining a standard of excellence and professionalism of which we are proud. He was instrumental in our ability to publish the lead article in this Issue of the Journal - an article which the Editors believe to be one of utmost importance to all members of the legal profession.

This article, *Lawyer Distress: Alcohol-Related Problems and Other Psychological Concerns Among a Sample of Practicing Lawyers*, reflects the continued research efforts and analysis of a team of nationally recognized researchers: Connie J.A. Beck, Bruce D. Sales, and G. Andrew H. Benjamin. This piece, written from the perspective of sociology, psychology, and statistics rather than traditional law review scholarship, demands notice. Just as similar studies have been published by the American Bar Association as a means to reach the legal community, the Journal is honored to have been chosen as the forum for publication of this major work. Once through the data, and to understanding, this article presents a clear call for action.

Although psychological effects have long been recognized as important and adversely affecting many lawyers, it is now apparent that stress begins sooner than we believed in the process of legal education and that its ramifications are greater both qualitatively and quantitatively than we had previously

¹See Robert L. Bogomolny, *Forward*, 1 J.L. & Heath i (1985-86).

recognized. The data and analysis in this article reveal a pattern of behavior which, if left unchecked, will ultimately destroy much of what our profession should represent. Although further study is needed, it is likely that it will only serve to reinforce what is now obvious. What is truly needed is response at every level from legal education through all stages of practice. The commentators, Dean James Alfini and Mr. Joseph Van Vooren of Northern Illinois University College of Law, Dean Peter Glenn of The Dickinson School of Law, Professor Geoffrey Hazard, Director of the American Law Institute and Trustee Professor at the University of Pennsylvania Law School, and Ms. Susan Locke of KeyCorp, reviewed this article and made clear that steps need to be taken though how they are to be effectuated remains to be determined.

Perhaps most revealing is the absence of attention to how law school pedagogy affects the students it is intended to benefit. Not only do many law faculty appear unaware of the negative affects of abusive teaching styles on the learning process,² they are too often unaware of the broader effects of their power over students. This power has the capacity to injure. Law faculty must recognize a duty to prevent such injury. Just as the physician, law faculty must now recognize a new and important obligation—do no harm. Certainly, the study of law must be rigorous and demanding. Certainly, faculty need the ability to impose a degree of stress upon students and to force students to achieve to their full capacity. A little fear, as a little rebellion, can be of benefit. The difficulty is in determining when the line between beneficial stress into dangerous stress has been crossed.

Law faculty, as a group, also lack any training or expertise in substance abuse. We often fail to see that our students are engaged in alcohol or drug abuse situations and we are, therefore, unable to intercede, give counsel, or arrange for others to do so. Unless and until law faculty recognize these factors it is likely that too many law students will continue to start down the path of stress and substance abuse early in their legal education. The students, not the faculty members, are responsible for their own behaviors - both good and bad. Nevertheless, faculty must recognize that they can and do influence these behaviors and, at the very least, should be aware of the danger signs. To the extent that faculty members contribute to the problem we are responsible for assisting in resolving it. "If not now, when?"³

The Journal also proudly presents, Professor Steven I. Friedland's article, *The Health Care Proxy and the Narrative of Death*. Professor Friedland offers a provocative look into the conflicts surrounding the subject of death or the narrative of death.

Currently the Western legal, medical, and individual arguments concerning the point at which death occurs conflict greatly. As you will read in Professor

²The Socratic method, and its many variations, can be highly effective teaching methodologies. However, when used as a bludgeoning device or a tool to embarrass students while revealing the intellect of the professor, its benefits are negated and it becomes a tool of abuse.

³Hillel.

Friedland's article, one person's idea of life is another person's pronouncement of death. Thus, many individuals obtain advanced directives in hopes that they may independently choose and reject specific medical treatment, in effect, directing their own death. However, advanced directives such as the health care proxy become burdened by individual opinions concerning death within our legal and medical communities. Members of society continue to struggle to understand advanced directives, when they are appropriate, and how to implement them. Thus, although many Westerners have come to accept advance directives such as the health care proxy, Professor Friedland believes that our anxiety with death has caused us to abandon their use.

Professor Friedland suggests that the Western narrative of death, predominated with avoidance and denial, contributes to the resulting disuse of the health care proxy. Also, the narrative of death often becomes heated with personal, religious, political, and cultural influences that affect every aspect of the debate. Professor Friedland attempts to reach beyond the influences that may affect the debate toward legal doctrines that will aid doctors, individuals, and families in defining death and determining when to allow death.

The article proposes that society develops a new narrative of death which in turn will promote the health care proxy. Professor Friedland encourages individuals to consider death a "season of life" and utilize the health care proxy. A new narrative of death, he believes, will promote less human life inevitably and indeterminately sustained on life-prolonging machines and/or by life-prolonging medical treatment absent an individual's consent.

Stephen J. Werber, Faculty Advisor

Kate E. Ryan, Editor-in-Chief

