

THE HARDER THEY FALL A HAND UP FOR IMPAIRED JUDGES

An edited transcript of a portion of the American Judicature Society annual meeting program on August 6, 2005.*



Participants

Richard A. Soden, Goodwin Procter LLP, Boston

Richard P. Carlton, Deputy Director, State Bar of California Lawyer Assistance Program

William J. Kane, Director, New Jersey Lawyers Assistance Program

John W. Stiemke, Director of Clinical Services, Rush Behavioral Health, Chicago

Seana Willing, Executive Director, Texas State Commission on Judicial Conduct

Honorable Warren D. Wolfson, State of Illinois Appellate Court

Editor's note: The program began with a role play. See page 18.

Richard Soden: I'm chairman of the American Bar Association Commission on Lawyers' Assistance Programs. Over the years, the Commission has been interested in working with lawyers around the nation who are dealing with problems in their lives, and we've always tried to address the concerns of judges as well.

Assistance programs

Soden: I'm going to ask Judge Wolfson to talk about the Illinois Lawyers' Assistance Program.

Warren Wolfson: At the risk of preaching to the choir, let me just remind you that we are talking about a chronic, progressive, incurable disease. That's why it's worth taking our time today to talk about it, to see if we can recognize it when we see it, and if we can understand it.

I've been part of the Illinois Lawyers' Assistance Program for the past 25 years, since the day it was formed. A group of interested and caring lawyers and judges got together and decided it was time to do something. The Chicago Bar and the Illinois State Bar put us together in a formal setting and for many, many years we operated on a purely voluntary basis. Finally, it got to the point where we couldn't do that any more. We went to the Illinois Supreme Court, and about two and one-half years ago the court, with the legislature, formally organized us, named our board, and decided to assess every lawyer in the state \$7 to fund us.

We go around talking to people about how this really is a problem in the legal profession. The experts say that 10 to 15 percent of all adults have some kind of alcohol control

problem. The black robe of the judge and the law license of the lawyer offer no immunity. And I know that lawyers and judges are somewhere within that 10 to 15 percent, probably the upper regions of it because of the profession and because lawyers and judges have more money and the opportunity to use and buy.

If you look at the judicial discipline cases—the abusive language, the bizarre sexual behavior, the sexual and racial discrimination, using the office improperly to gain some favor for themselves or others—much of the time chemical abuse is there when those things happen. One of our goals at LAP is to keep lawyers and judges out of the grasp of the disciplinary agencies, and needless to say, out of jail.

The Illinois Lawyers' Assistance Program is basically an intervention program. We don't wait until all the destruction of life and property and health takes place. We reach people two ways. One is direct contact where the people who have the problems call us and ask for help. That's pretty easy because denial has been overcome when they call, and it's easy to get somebody to a place where help is waiting or to the kind of peer assistance that they need. Second is when somebody else calls and we have to put together an intervention that will break the denial of the subject. That is the harder way to do things.

We decided early on that judges would play an important role in the intervention process. We do not have a separate program for judges, but

* An unedited version of the transcript is available upon request.

Editor's note:

Judicature asked several judges and former judges who are recovering from addiction to share their experiences and insights. Below and on the pages that follow three of them offer their personal stories.

PERSONAL STORY #1

The tragic consequences of addiction to alcohol and drugs are publicized almost daily and are well known to everyone. The miraculous recoveries from these conditions are not as well known. The good news is that recovery from these seemingly hopeless conditions is everywhere. Permit me to share my story.

At 47, I was an outwardly successful trial lawyer and community leader. To the public, I lived the "American dream." Only those closest to me knew that I was also a chronic alcoholic, living in a hopeless hell. I could not control or stop the downward spiral of alcoholism that could only end in the gutter or the grave. Since I could not kill myself, I knew that the shame of life in the gutter would be my fate. On December 13, 1979, because of my incoherent conduct, a courageous judge declared a mistrial during a jury trial; he had me hospitalized. From there, I went to a drug and alcohol treatment center. I was introduced to a way of life without alcohol or mind-altering drugs that enabled me to handle the pressures of my profession, life in general, and also have a good time doing it. With the help of family, colleagues, and friends both in and out of the profession, I became a better lawyer, husband, father, and citizen.

In early 1984, at the urging of colleagues, I became a candidate to replace a retiring justice on the Texas Thirteenth Court of Appeals. Because of my candor in acknowledging my problem as well

as the facts of my recovery, my former alcoholism was not a problem, either in my original appointment or my subsequent election and re-election to the court. I retired from the court at the end of 2000, serving the last seven years as chief justice.

During my judicial service, as well as since, I have been active in the legal and judicial communities and in an alcohol recovery program. The lifestyle of the judiciary seems to make judges with tendencies toward addiction particularly vulnerable. It is easy to confuse respect and honor for the office with feelings of personal infallibility. The protection and isolation afforded by our colleagues and staff make it easier to hide our addictions from ourselves and others. Driven by fears of discovery and self-loathing, we often avoid facing our humanity until total disaster strikes. This can be avoided if we have the courage to seek the help that is always available. The principles used in recovery made me a better judge. In fact, I believe at times these principles gave me an advantage over many of my colleagues.

For people like me whose will power and intelligence were of no avail in halting the devastating effects of addiction, the intervention of spiritual help from others with similar problems was and is essential to recovery and the ability to live a happy and productive life. The real tragedy is not the disease, but that the good news of the joys of recovery are not as well known as the devastating effects caused by the disease. It is hoped that my story will help in spreading the good news.

ROBERT J. SEERDEN, a retired justice of the Texas Court of Appeals, practices law and acts as a mediator and arbitrator in Corpus Christi.

we do bring judges into our program and train them. When we're dealing with a judge as the subject, only other judges will take part in the intervention.

All of our intervenors are trained by health professionals, whether they're judges or lawyers. All of the people taking part in the intervention will have the information about the person. They will come in and tell the judge what they have seen and how they feel, what it's doing to them, and what it's doing to him or her. We hope to cover all parts of the

judge's life—office, chambers, personal life, and family life.

One of the messages we send is that if you don't say anything, you're helping that person die. You have to take part and take the risk and maybe somebody will get mad at you.

Our supreme court has given us a rule that guarantees to anybody who comes to a trained intervenor the same kind of a relationship a client would have when he comes to a lawyer. We have a statute that grants immunity to anybody who takes part in an intervention in good faith. The

statute also provides that people are protected from testifying in any proceeding should they take part in the intervention.

Some of our trained intervenors are recovering, others are not. The only requirement that we have is that the intervenor care about his fellow lawyer, law student, or judge, and that he or she is willing to do something about it and devote the time to it.

The LAP in Illinois is trying to expand beyond simple substance abuse into psychological problems

such as clinical depression, bipolar conditions, and personality disorders. We've brought in consultants to get their advice before we stumble into a terrible mistake dealing with people with mental disorders.

The judges play an important role in our program. We know that any good program will offer help and not punishment. It will be understanding and not accusatory, and it will offer hope and not desperation. We know we can do that, we know how to do that. All it takes is the will and the desire to do it. And that's what we're going to do.

William J. Kane: I congratulate AJS for addressing this issue. I think that this is very important, and I know we are way overdue in addressing the problem of offering help to judges.

Lawyers are advice-givers, not advice-takers. That's the barrier with lawyers getting help. Judges are order-givers, and they're neither advice-takers nor order-takers. That's a barrier with judges getting help. We want to think the best of our bench. We want to know that judges are the mortar holding society together, one of the last areas of respect that we have in our society. If we want to hold them on pedestals and on the bench, we have to acknowledge that they are human beings who can sometimes use help, and that offering that help can keep them on the bench and keep them on the pedestal.

When the New Jersey Supreme Court gave the Lawyers' Assistance Program responsibility for the Judges' Assistance Program, we were ready. We had an 800 number all ready just for the judges. We had a first-class brochure ready to be printed, and we hit the ground running with outreach that saturated and inundated every judge in the state several times in their mailboxes and personally. We went to all assignment judges, and we also deputized judges who are in recovery or who were sympathetic as indirect helpers and indirect promulgators for outreach. We have to keep doing this. You can have the best program in the world and it will just be window

Role Play

Richard Soden: We're going to role play a small scene between a judge and a director of a lawyers' assistance program (LAP).

Warren Wolfson: Mr. Kane, thanks for giving me a few of your minutes. I don't know if I'm wasting your time or not, but I'm just a little bit concerned about a friend of mine, Judge Bill Smith. Do you have a couple minutes?

William J. Kane: Sure, Judge.

Wolfson: The reason I asked to see you was because Bill and I were at a bar association dinner the other night and he was drinking pretty heavily—he got drunk, actually. I insisted on driving him home and he got very angry, but he finally agreed. I know that doesn't make him an alcoholic, and I'm not accusing him of anything. But there have been some other things that I've heard about him and seen about him, and I just thought I had to talk to somebody about it. You're not going to call him and tell him that I called you, are you?

Kane: This is a confidential consultation, Judge. Let's talk a little bit more about it. You mentioned that, of course, one episode of intoxication, or even one drunk driving doesn't make an alcoholic, but combined with the rumors it seems to be something that you ought to look at more closely.

Wolfson: I talked to the public defender the other day, and she told me it's gotten to the point where she won't let her lawyers have sentencing conferences in the afternoon anymore before this judge.

Kane: Now we're coming from one episode to a frequency or a pattern of behavior.

Wolfson: There are a few other things too. I've noticed in the afternoon he's kind of irritable; he never used to be. He used to be pleasant all the time. There have been some times where we've had lunch together, and I've been a little concerned because he had a couple mar-

tinis. I remember one time I even covered his call for him because I didn't think he should have been on the bench. The chief judge asked me about it, and I just said he had the flu and had to go home, because he's a good friend and I didn't want to get him in trouble.

Kane: Folks in their friendship and collegiality and their reluctance to even think about or talk about someone having an alcohol problem, can end up as enablers because what you're doing is failing to address something that is sensitive and may need some attention.

Wolfson: I don't want to be ratting him out, getting him in trouble.

Kane: Well, if he had some other illness, like diabetes or a heart condition, and he wasn't taking care of himself, we would put an arm around his shoulder and draw his attention to that, wouldn't we?

Wolfson: We had a judges' meeting a couple weeks ago, and the chief did bring up some of the things that he's been hearing. Bill really got angry. He almost stormed out, so we stopped talking about it because we didn't want to upset him.

Kane: That certainly isn't going to help things if he's reacting in a negative way, but there are ways to communicate with him and address the problem. These can be done in a caring and gentle and private way.

Wolfson: I tried to talk to him about things in the afternoon, but I found the next day he didn't remember talking about it.

Kane: You're very kind and understanding of your colleague, and I really admire that.

Wolfson: Well, he's a good judge. He's a family man, religious guy. He's been around a long time, and I don't want to do anything to hurt him.

Kane: Alcohol problems are equal opportunity issues. It doesn't matter whether somebody is a good, upstanding person or whether they have other problems in their lives. So I do understand that.

Wolfson: In fact, the other day the chief judge asked me what's going

on with him. And I said, "Well, you know, he's had a lot of stress, he's had some family problems." Was that the right thing to do? I don't know.

Kane: Well, of course, if he has stress and family problems, they also could be a result of an alcohol problem. Have you thought about a private chat with him, taking some time and sharing your concerns?

Wolfson: I just didn't want him to think I was getting personal with him. I didn't want it to ruin our friendship.

Kane: These things get worse rather than better all by themselves, and this may be one of the noblest and most friendly, caring things you can do. You might consider having a chat with him, and if you're not comfortable doing it all by yourself, I could join you and just sit in the wings or on the side, either way, as you prefer. We have done these in the past and there's a partial checklist of things you could look at in considering what to do next. You should make little notes of the dates and times and places so you have concrete, documented evidence rather than the vague feeling and the rumors.

Wolfson: It sounds like you're turning me into an informer.

Kane: No, I think you're being turned into a helper who is helping in a profound way rather than in a vague way.

Wolfson: Now, are you going to report this to the judicial conduct commission?

Kane: Not at all. The Judges' Assistance Program is not only covered with confidentiality by court rule, but there's also federal regulations that forbid us from even disclosing that someone has asked for help. I consider these preliminary discussions as part of that.

Wolfson: Where do you see this playing out? I don't want to hurt his reputation or get him disciplined or anything.

Kane: If we start addressing the problem, you're probably saving his reputation. Imagine if you weren't there to drive him home from the

bar association dinner the other night. You'd have it splashed all over the media about another judge who has a DWI, or worse.

Wolfson: If you could just set out what I'm supposed to do and what I'm supposed to look for.

Kane: I would find a resource, a judges' assistance program or a lawyers' assistance program or employee assistance professional. The first thing you might do, Judge, is choose the site. Talking to him in his office isn't as powerful as talking to him in your chambers or in a neutral site. Another thing is time of day. You might chat with him earlier in the morning rather than in the afternoon because it's much more likely that he would be fresh and receptive, because if he has the kind of a problem where he's taking a drink in the morning, you're not going to get through to him in the afternoon to the same extent you will in the morning.

The first thing you need to tell him is how much you care about him and how much you value him as a friend and a colleague. That is really a nondebatably message, the first prong. He'll be pleased to hear that. You can tell him that you admire his being a respected judge, and especially when he's working within his capabilities.

The second thing you have to deliver is the list of the specific elements that give rise to concern, things that are concrete and documented. Then, Judge, I would share with him how that made you feel. You can tell him, "I came to this very reluctantly. It's the last thing in the world I want to do. I didn't want to believe it myself".

Wolfson: He's going to be mad.

Kane: If you give enough of a caring statement, that might soothe his feathers in advance. You tell him that this is a private chat between the two of you. You can tell him about your concerns and that you feel compelled to address this because he might be headed for the judges' discipline system if you two don't have a chat.

Wolfson: Do you think I have any

obligation to report this to the system?

Kane: Not yet. I think that you might give him a bite at the helping hand apple and you might tell him that you feel so concerned about his performance and the documented problems about his opinions and his lateness and the deterioration in his performance. You can say, "you know, if I don't follow through on this, it may be a matter for discipline, and I'm trying to avoid that."

Wolfson: I have a feeling I'm going to lose a friend.

Kane: You may be gaining a friend, Judge. This is a risk you're going to have to take, because the harm that could result in your remaining quiet wouldn't be a help. It would be a harmful thing to do. Remember, you're not diagnosing him. All you're asking him to do is present himself for an evaluation and then to follow through with the recommendations of that evaluation. You can assure him it's in total confidence. That now is the time to address the problem.

Of course, you and I know that this is the best kept nonsecret in the courthouse. There are people mumbling and muttering behind his back, there are people making allowances for his performance.

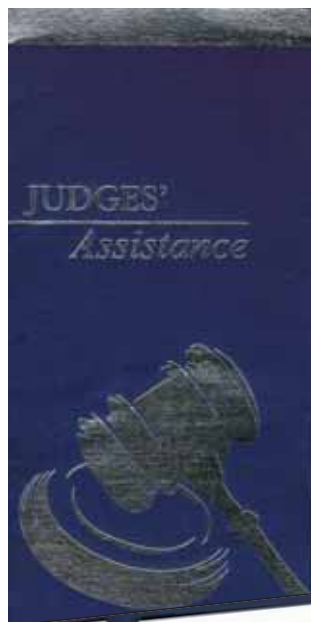
Wolfson: I guess it would have been easier for me just to say nothing.

Kane: It might seem easier and more comfortable to you, Judge. But if you look down the pike and see what happens in the future, you might be saying to yourself, "if only I had said something. If only I had offered a helping hand." I know how sensitive it is. People don't like to talk about alcohol problems; there's an unfortunate stigma that's associated with them that isn't associated with other diseases.

In many cases we see that when an alcohol problem affects somebody's professional performance, it's not an early stage case. It's very likely that the judge's family has been living with this for some time, maybe years, before it begins to surface on the job.

Wolfson: I guess I'll give it a try. Thank you very much for your time.

dressing unless you keep reminding people of it all the time. In fact, we may be spending 51 percent of our time in promulgation and 49 percent of our time in helping judges.



The Texas experience

Seana Willing: I've been with the Texas Commission on Judicial Conduct for six years, the last two as its executive director. About four years ago the Commission started seeing a lot of high profile media coverage of judges involved in DWIs, public intoxication cases, reports of judges at bar association functions urinating in trash cans, and those types of

JUDGES IN LAWYERS' ASSISTANCE PROGRAMS

All states have lawyers' assistance programs, and most if not all are available to provide assistance for judges (at least lawyer-trained judges). Some even make that clear by including "judges" in their name, for example, the Hawaii Attorney and Judges Assistance Program, the Indiana Judges and Attorneys Assistance Program, the Michigan Lawyers & Judges Assistance Program, and the Mississippi Lawyers and Judges Assistance Program.

Other programs expressly include judges in their mission statement. For example, the Alabama Lawyer Assistance program explains that it "provides programs and services to assist lawyers, judges, and law students in Alabama who may be impaired." The Arizona Member Assistance Program states that "for those who participate voluntarily, MAP offers confidential assistance to any Arizona attorney, judge or law student whose professional performance may be impaired because of physical or mental illness, emotional distress, substance abuse, compulsive gambling or other addictive behaviors." The Wisconsin Lawyers Assistance Program "provides confidential, meaningful assistance to lawyers, judges, law students and their families in coping with alcoholism and other addictions, depression, acute and chronic anxiety and other problems related to the stress of practicing law."

The New Jersey Lawyers Assistance Program recently began a Judges Assistance Program to offer "a helping hand for judges," including a special brochure, separate toll-free HelpLine, off-site counseling, outreach to every judge, and meetings with all assignment judges. Although there is no separate program in Illinois for judges, judges have always played a critical role in the Illinois Lawyers' Assistance Program. Three trained judges participate on any team that intervenes when a judge is the subject of concern. Illinois has a new brochure designed to describe to judges the confidential assistance the LAP can provide for them, a judicial colleague, or an impaired lawyer who has appeared before the judge.

stories. All cast public discredit on the judiciary. Those cases were filed with our Commission as disciplinary complaints.

The state bar had a Lawyers' Assistance Program, but its Judges' Assistance Program was virtually unknown and very inactive. In addition, probably half of the 3,600 judges under our jurisdiction are non-lawyer judges. Those judges could not obtain any benefit from the state bar's program.

So we saw a need for a program. We thought it would be appropriate, since no one else had stepped up to the plate, for the Commission to start

a program to assist our judges with alcohol and drug impairments. Our program is called *Amicus Curiae*, or friend of the court. There are three people on our board, one of whom is a retired appellate judge who's a recovering alcoholic; another is a doctor of psychology; and the third is a district judge who started a drug impact court in Houston and is very involved in recovery programs for criminal defendants.

We started looking at the complaints that came in and tried to figure out a way of diverting those judges, who appear to have engaged in misconduct as a result of an impairment, to resources in

In February 2006, the Illinois LAP held a special half-day volunteer training just for judges, “specifically tailored to the role of the judge in the intervention process and in providing peer support to other judges.” Thirty judges attended, and an additional 12 joined 48 other attorneys for a subsequent day-long volunteer training program that included a special session for the judges.

Many of the LAP websites have a great deal of helpful information for lawyers, judges, family members, staff, and others who have questions about alcoholism, other addictions, and mental conditions such as depression. The District of Columbia Lawyer Counseling Program has a list of warning signs, for example, and the Idaho LAP has a *Survival Guide for Lawyers* that contains a basic introduction to the dynamics of alcoholism and chemical dependency, depression, and stress, and guidelines for getting help. Florida Lawyers Assistance has a list of signs and symptoms for chemical dependency and self tests for depression, mania, and alcohol and gambling abuse. The New Jersey LAP has “A Self-test About Your Drinking,” personal stories, and sections on understanding addiction, assessing the risk for addiction to pain medication, linking stress and substance abuse, demystifying 12-step programs, understanding depression, understanding compulsive gambling, and women and addictions.

There are links to LAP websites on the site of the American Bar Association Commission on Lawyers Assistance Programs (www.abanet.org/legalservices/colap/lapdirectory.html). CoLAP was established in 1998 by the ABA Board of Governors to develop a national network of lawyer assistance programs, act as a national clearinghouse on the case law about addiction, depression, and mental health problems, and collect state rules and opinions on confidentiality and immunity. In 2006, CoLAP began a “Judicial Assistance Initiative” to develop a comprehensive national program that will effectively enable judges who need help to reach out and obtain assistance.

— Cynthia Gray

agree wholeheartedly with Mr. Kane that at least 50 percent, if not more, of the success of the program is just getting the word out and educating the judiciary, the legal community, families, and others about the existence of the program.

Another challenge that we’ve had is a lack of trust about approaching the Commission to seek assistance for an impairment because the judge isn’t going to believe that we’ll maintain confidentiality; they’re going to believe that we will report them to the Commission. We’ve set out in our materials clearly the separation between the Commission and this Amicus program, but it’s been very difficult to get people to buy into it.

The lack of funding of the program has contributed to this because we don’t have the funds for a separate 800 number. We don’t have the funds to put together a very polished, professional-looking brochure. We’re working towards getting the funding so that we can address those issues. We need to convince legislators that they need to fund the agency and fund this particular aspect of the agency.

What we are finding with the judges that have been participating in the program, whether it’s been voluntary or whether they’ve been ordered to do so by the Commission, is that the initial evaluation to determine whether or not the judge’s problem is alcohol, drugs, or more of a mental condition is very costly. We don’t have the funds to pay for all these judges to be evaluated. The judges themselves very often don’t have the funds to do it. They’re reluctant to report it to their insurer.

It’s a very frustrating process because we know that it can work. We’re not 100 percent convinced that we’re the ones who should be doing it, but so far no one else has stepped up.

California and federal courts

Richard Carlton: I want to thank AJS for including me in this program. I think it’s really a groundbreaking effort this morning. I am the deputy

their community in a confidential setting where they can take advantage of a local A.A. group or get counseling.

The biggest obstacle was our Commission. Our members were not really open to the idea of assisting these judges. Their focus was on addressing the misconduct and protecting the public. Our Commission wants to have an answer in six months. They don’t want the case to linger for too long. That’s a major obstacle because recovery is not going to start and end in six months; it’s going to be years. That’s an issue we’re still contending with, how do you keep a case pending in a discipli-

nary action for sometimes four or five years?

We started a self-reporting or a self-referral component because we realized that not all impairments are going to result in misconduct. The fact that a judge has a drinking problem is not in itself misconduct. But it would be nice if judges, especially non-lawyer judges, knew there was someplace where they can contact our program manager and get in touch with professionals.

We wanted to educate the judiciary about this program, and at the end of every program where we speak about the Commission, we talk about our Amicus Curiae Program. I

director of the Lawyer Assistance Program in California. I'm also the consultant to the Ninth Circuit federal courts on these issues. Like some of my colleagues, I've been working in lawyer assistance for 20 years, and I begin to get the feeling as I'm listening to what's being said here that the field of judicial assistance is where the field of lawyer assistance was 10-15 years ago. To me there's something exciting about that because I see something has started here that hopefully will go forward.

In 1993, I was invited by the California Judges' Association to join them in putting together a program that was really ahead of its time. The Association is a voluntary membership association, and the leadership felt that their members, particularly those judges who were experiencing personal problems that had already resulted in some kind of conduct inquiry or were likely to result in some kind of conduct inquiry, needed to have some confidential, reliable, trusted source that they could consult with about what to do when they got that first phone call or a letter from the Commission on Judicial Performance. So they created the Judicial Support Network, and they recruited judges from around the state to volunteer to be trained to become peer advisors and peer consultants. The notion was that a judge was probably not likely to approach a peer in his own courthouse or in his or her own county, but if they had someone who could put them in touch with a trained, confidential, trusted advisor peer from another county, there was a possibility that they would reach out to this assistance.

It was a great concept. Unfortunately, the program pretty much petered out over time. I think the reason was that there was a lack of broad institutional or cultural support. It didn't have any top down endorsement or support. The judicial council never bought in, and as the leadership in the California Judges' Association changed over time, the impetus and the strength to keep the program out there didn't continue. It's not part of judges' ini-

tial training when they come on to the bench. If they're lucky, they happen to see the brochure come across their desk at some point from the California Judges' Association. It's inadequately promoted and very, very rarely utilized.

I'd like to turn to my experiences with the federal courts. It began in about 1999, with the creation of what was originally called the Disability Committee. Later the name was changed to the Wellness Committee to broaden the concept and the support and better identify what it was we were trying to accomplish. The effort is broken down into three phases.

The first phase was a very comprehensive report on the full range of personal issues and challenges that judges are subjected to, and examined programming that was in place around the country, as well as in Canada, for both lawyers and judges at the time. The report recommended some comprehensive programming that the circuit should consider. I think what was most significant about that particular report is that it was the first time there was an open acknowledgement, in writing, that federal judges don't become somehow less human as a result of being appointed to the bench.

Phase two came directly out of the report and was a series of programs, including educational presentations on a variety of wellness topics, that continue to be offered at the annual Ninth Circuit conference and some other educational programs that are targeted to various populations and judges who serve the Ninth Circuit. There is also something that we call PALS, the Private Assistance Line Service, which is a consultation and referral resource that I operate for the Ninth Circuit.

The third phase that we in the Ninth Circuit are looking very seriously at right now is something that my colleague, Isaiah Zimmerman, referred to recently as an attempt at massive cultural change in the federal courts so that health issues associated with aging can be talked about in an open, honest, and frank man-

ner. This is something that, as you can imagine, is very scary for any of us to think about and look at. It's particularly scary for individuals who thought that they were set in their role for the rest of their lives.

This particular issue is so poignant and so important to the federal courts because the average age of the federal bench is now very close to 70. Twenty percent of all people over the age of 65 have a measurable reduction in mental acuity. Fifty percent of people over the age of 80 have a significant reduction in mental acuity. I'm just going to let that sit there for a second and sink in.

As a consequence, it's not surprising that over half of the calls that I have received from chief judges or from secretaries or court staff are expressing concern about senior judges who are every bit as much in denial about the fact that their mental skills just aren't quite up to the task any more than if they had an alcohol or a drug problem. We need to make it much more culturally acceptable for senior judges to plan for and think about and actually seriously consider either partial, or in some cases full, retirement.

Editor's note: For more on the Ninth Circuit Wellness program, see "Addressing disability and promoting wellness in the federal courts," page 26.

The medical perspective

John Stiemke: Rush Behavioral Health provides services for treatment of substance abuse as well as psychiatric issues. I've been working in the field of addiction medicine now for 23 years. I've been working with the Illinois Lawyers' Assistance Program for the past 11 years, answering their hotline, providing training, and doing assessments on impaired attorneys and judges.

The term impairment is difficult because it can mean lots of different things. Is it a disease? Is it a lack of will power? Is it a moral problem? What are we talking about? When we get into other areas, such as psychiatric illness where we're talking about mood disorders, depression, anxiety, bipolar disorder, personality disorder,

PERSONAL STORY #2

I was born and reared in Colorado. Mother was successful in real estate investment; Dad was a respected and beloved attorney. My four brothers and myself hiked, ice-skated, rode horses, and developed a sixth sense. We could discern in a short time whether or not each day would be a good day or a day of tension for our Mother when Dad stopped with clients after work to “have a few dippers.”

It was a no brainer for me, growing up, to decide not to drink alcohol. It was trouble. Throughout high school and college, I chose not to drink. Once I got married, my husband and I began to drink on our honeymoon and drank daily for the next 18 years.

Alcoholism is a disease of deception. I was deceived into thinking that to be a trial lawyer, drinking was necessary; that I was more entertaining when I drank; that alcohol was my friend; and that only with it could I sleep at night. This was reinforced by my colleagues who, except for one, drank like I did.

June 7, 1978, was my last drink (my husband, two years later). Since that time my life has improved in every way. Best of all, the cycle of alcoholism has been interrupted in our family. Our children and grandchildren are proud of us. Our son chooses not to drink.

As a lawyer and judge, again I have a sixth sense and have often been able to help other lawyers and judges by telling them my story. Without alcohol and by practicing the 12 steps, my fears and resentments are evicted; before they were prominent in my daily life and thinking. Without fear, I can be genuine and

authentic to others. As a judge I often used the word “we.” “We” are powerless over alcohol, and to have the best life, alcohol can no longer be a partner.

I learned this from a courageous judge, Bill O’Connell. Every day, on and off the bench, he would reach out to others. Following his example, I work closely with the Illinois Lawyers’ Assistance Program helping law students, lawyers, and judges recover. Of the trio, judges are the toughest; because of their position they fear attending recovery meetings. However, when they are arrested and exposed in the media, attending recovery meetings becomes a welcome option to losing their job, license, reputation, and the respect of their family.

Living a program of abstinence and working the 12 steps opens new doors. We are called to be our best selves—12-step meetings, exercise, meditation, and service to others keeps us centered on recovery.

It is a wonderful life, not perfect. When I stopped drinking alcohol (distilled sugar), my new “friend” became sugar. Donuts, ice cream, cookies, potato chips, etc. lead not to cirrhosis, but to diabetes. Now, one day at a time, I do not allow sugar to deceive me – my life is better without it—and I have joined a second 12-step program to restore my sanity and fullness of life. Each day without alcohol and sugar is a gift to myself – a gift that keeps me alive to help and serve others.

SHEILA M. MURPHY is a retired Cook County, Illinois, circuit court judge currently practicing in the law firm of Rothschild, Barry, and Myers.

ders, and a variety of different things like that, there’s even less understanding. In providing assessments for attorneys and judges, we can do anywhere from a one- or two-hour interview up to a three-day comprehensive, multi-disciplinary evaluation where we’re doing psychiatric, psychological, medical, and substance use evaluations, as well as collecting a lot of collateral information.

It’s not always clear what the problem is. One attorney was referred by a local judge who was concerned about the attorney’s outbursts in the courtroom and wondered if there wasn’t an underlying substance use problem. We did a very comprehen-

sive evaluation, and ultimately determined that he had a large meningioma growing in his brain. Fortunately it was operable, and he was able to return to full functionality. We’ve also seen individuals who have been referred to us because they’re falling asleep on the bench and had undiagnosed diabetes.

It’s vitally important that you get good understanding of what recovery means. Recovery isn’t just to stop drinking. There’s all kinds of behavioral changes and attitudinal changes and beliefs that need to change over time in the recovery process. Recovery is a process, it’s not an event. Just to stop drinking or

to stop substance abuse doesn’t mean that the person has recovered. It may take anywhere from 18 to 24 months to get into a solid, stable recovery program that involves significant lifestyle changes. And then there are issues around maintaining that recovery on an ongoing basis.

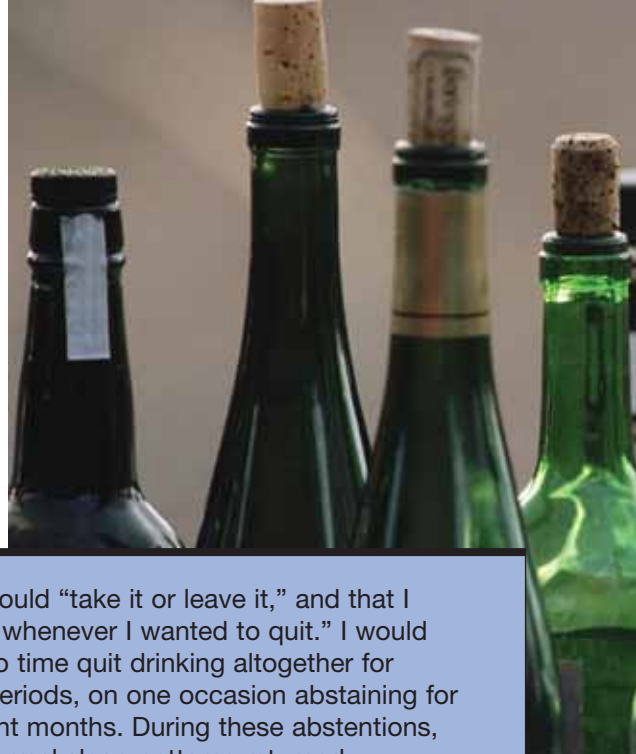
It takes a specialized program in dealing with professionals because when a professional gets into just the neighborhood drug treatment program, the clinical staff is not used to dealing with the narcissism that often is there. They’re not used to dealing with the arrogance, the pride, all of the things we often see with professionals. And helping them in a peer

group setting where they're with other individuals that come from the same background, providing the feedback, the confrontation, makes a big difference in their willingness to accept that they are, indeed, powerless over alcohol and drugs, that their life has become unmanageable, and if they continue to keep using it, it will stay unmanageable. They see the

need for surrender, that they can't run the show their way anymore.

Audience member: In a perfect world, should a program for judges be separate from the lawyers' assistance program?

Kane: Our Judges' Assistance



PERSONAL STORY #3

My name is Bill Cain and I am an alcoholic. By the grace of God and the brotherhood of Alcoholics Anonymous I am sober today. I have been for the past 24 hours and certainly hope to be for the next 24 hours.

I was not born an alcoholic, and I do not consider beverage alcohol to be some kind of a curse on mankind. Thousands of people use alcohol in moderation without significant problems. I am simply not one of them.

I was a 21-year-old honorably discharged veteran of the Korean War and in my freshman year in college when I had my first drink. In those early years, alcohol provided an effective means by which I was able to overcome, at least in part, the social inhibitions that had plagued me since boyhood. For a decade or more alcohol was my friend and my crutch, though, slowly but surely, my rate of consumption of alcohol steadily increased. I cannot say with any degree of accuracy when alcohol evolved from being pliant servant to brutal task master. It was some time in my mid-30s. I will not extend this narrative by a painful discussion of all the horrors of addiction to alcohol. Two of the worst of such were sleep deprivation and blackouts.

Shakespeare described the glory of peaceful sleep when Macbeth in his agony cried out, "Sleep that knits up the ravell'd sleeve of care. The death of each day's life, sore labour's bath, Balm of hurt minds, great nature's second course, Chief nourisher of life's feast." Day after day and night after night, with no more than a catnap leaves the human body exhausted and the mind driven almost to distraction. Looking back on it, it is easy to recognize what I could not then accept: my crutch was the culprit.

I was not an everyday drinker. I proved to myself repeatedly that I did not have a problem with alco-

hol, that I could "take it or leave it," and that I could "quit whenever I wanted to quit." I would from time to time quit drinking altogether for extended periods, on one occasion abstaining for nearing eight months. During these abstentions, relatively normal sleep patterns returned.

Blackouts are nightmarish experiences in which entire episodes of life are simply blocked out of memory. They fit no particular pattern that can be anticipated but simply come and go. Sometimes they are there, and sometimes they are not. It is frightening to snap out of a blackout sitting in your own living room when the last recollection that you have is sitting in a motel room more than 100 miles away. One is not "passed out" in a blackout. I conducted client and witness interviews during a blackout that I simply cannot recall. My wits must have been about me for I usually made notes or dictated a contemporaneous memorandum that were in the file and that I reviewed at a later time but with no independent recollection. I came out of a week-long blackout one Monday morning and asked my secretary to bring me the file in a relatively complicated appeal only to have her bring instead the appellate brief that I had dictated, she had typed, and I had filed the previous week. It was obviously my work, but to this day I cannot remember preparing it.

All of this leads to the pathetic condition of being sick, tired, nervous, apprehensive, frightened, and ashamed over something that one cannot or, more likely, will not acknowledge. For me, it all came to its climax in a rather traumatic experience that brought me to my first meeting in Alcoholics Anonymous. A local businessman and old friend, Gene S., with whom I had shared many a drunken spree, found his way into recovery, and when I finally stumbled and fell, it was Gene S. who held out his hand. With love, patience, compassion, and understanding, he guided my footsteps back to the



Program is our Lawyers' Assistance Program. It's under the same umbrella. But we have a different brochure, a different 800 number, and we do different promulgation. And only the director and the assistant director help the judges. But I think that for economy of scale, a quick start, not reinventing the wheel, that it's okay to have them both under

the same umbrella. They can coexist.

Wolfson: I would be very reluctant to have a separate program. I might want to bureaucratically just call it something separate as long as you're in the same place. But I would be concerned about an elitist kind of setup. We've used judges very effectively to help lawyers, and we would hate to take them out of that system. ☪☪

path of sanity and sobriety. As one day at a time the dark clouds lifted for me, and the sun in all its pristine brightness shone forth again, so one day at a time Gene was there – a tower of strength, a pillar of hope. He was my sponsor in the great brotherhood, and I found to my surprise in Alcoholics Anonymous that I was not alone and that many others had lived the same nightmares. A blackout was not unique to me.

In those first few months of AA meetings, I followed Gene's admonition to be quiet and listen. I learned first of all that the battle against alcoholism is a one-day-at-a-time struggle in which those in recovery lean on each other. In the meetings, the doctor and the lawyer sat at the same table as the man who dug the ditch, the stay-at-home housewife trying to raise her family, and the unemployed laborer all trying to recover from a common problem. Some author whose name I cannot remember expressed it best in his admonition that alcohol was no respecter of persons: "The drunk lying in the two-inch carpet and the drunk lying in the two-inch gutter are equally close to the ground."

From the beginning and through the years of recovery, the first two steps of the AA program have been for me, as for so many others, the day-to-day guide to life. "(1) We admitted that we were powerless over alcohol and that our lives have become unmanageable and (2) came to believe that a power greater than ourselves could restore us to sanity." I try to make my last conscious thought each night to be to thank my higher power for giving me another 24 hours of sobriety and my first conscious thought in the morning to ask for just one more day.

Once in recovery, I discovered again to my surprise that I was not anonymous to anyone other than myself. My panic stricken efforts to hide my addiction from my clients and from the public had not been effective. Almost everyone knew I had a

problem and all were enthusiastically supportive of me in my recovery. My family stood by me in the bad years and have shared with me the glories of recovery. When I determined to try to fulfill a lifetime ambition to become a member of the judiciary, I found that my recovery from alcoholism presented the least of my problems.

Today, recovery from addiction, whether it be alcohol or some other substance, is the focus of national attention, and the resources, public and private, committed to the cause of continuing recovery is heartening and encouraging. In Tennessee less than a decade ago, the Tennessee Lawyers Assistance Program was established and, under inspired leadership, is now functioning and remarkably effective. We have come so far since the day more than 70 years ago when Bill W. and Dr. Bob sat down in a small kitchen in Akron, Ohio, and founded what was to become the worldwide brotherhood of Alcoholics Anonymous. Some years after a small group of men and women in Columbia, Tennessee, banded together to form the Columbia group of Alcoholics Anonymous and purchased a small home on South High Street. A few years afterward, Gene S. brought a bewildered and broken 42-year-old lawyer to his first meeting. The rest is my story.

The cynic, or perhaps the realist, will ask if I do not know that I can never have another drink. Deep inside I know this, but I have never allowed myself the luxury—or danger—of thinking in such terms. Living my life as the great brotherhood has taught me to live it, for 10,415 consecutive 24-hour periods I have been sober, and, God willing, tomorrow is another day.

WILLIAM B. CAIN is a judge on the Tennessee Court of Appeals, Middle Section, in Nashville.