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Albert B. Logan

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ALCOHOLISM – A LEGAL PROBLEM?

BY ALBERT B. LOGAN

Historically, the lawyer has had the responsibility of public leadership assigned to him by his fellow-citizens; and, historically, he has discharged that responsibility in such a creditable manner that society has learned to depend upon him, especially in matters of law and government. But the lawyer has scrupulously confined his activities to problems of a legal nature. Hence, it would not be strange if he felt some reticence about having his bar association venture into such a different new field as alcoholism.

The lawyer's first reaction is to suggest that alcoholism is a social problem—or a medical problem—surely anything but a legal problem! True, all lawyers have unavoidably had some contact with the alcoholic. He was a defendant in a divorce case, a drunk driver, a short check artist, the beneficiary of a spendthrift trust, etc. Generally, he presented unpleasant problems, and was seldom a good paying client. By and large, the medical profession has also preferred to regard the alcoholic as an undesirable patient, both from the standpoint of prognosis and payment.

But, whether he liked it or not, the lawyer has recently found the problem of alcoholism dropped into his lap as the result of these developments:

1. Alcoholism was recognized by the medical profession as a treatable disease. (The Colorado Medical Society in 1958 formally recognized the alcoholic as a sick person and announced that the illness can be arrested by treatment. Prior to this, the American Medical Association and the American Hospital Association had done the same.)

2. Colorado, with 40,000 alcoholic citizens, is faced with a mammoth public health problem, and a tremendous public responsibility. But neither the state nor its legal subdivisions provides a single clinic, treatment center or other facility devoted to modern-day treatment of alcoholism—nor do we have the legal machinery to permit the treatment.

3. The courts have begun to realize that they are confronted with a major problem of administering for these sick people, involving diagnosis, medication, confinement and treatment—with only the patently inadequate tools of the night stick and the jail. The courts knew from bitter experience that incarceration is no deterrent to drunkenness.

4. The Colorado Bar Association was requested and urged to step into the breach and provide the legal guidance to permit the people of this state to attack a major health and social problem that was threatening disaster and protracted misery to a substantial segment of our citizenry.

Consequently, in April of 1958 a Committee on Alcoholism was named by President William W. Gaunt of the Colorado Bar Association. The new Committee worked with its counterpart in the Colorado Medical Society and set out on an intensive study of the problem and its legal aspects. Many questions required answers, and some startling conclusions were reached.

What is alcoholism? It is defined as the illness which causes a person to persist in drinking alcoholic beverages in spite of the fact that such drinking seriously impairs the social, economic or physical welfare of himself or others. There is no actual relationship between the amount of intoxicants consumed and the existence of alcoholism. Drunkenness does not necessarily indicate alcoholism. Less than 10% of the known alcoholic population (some studies show 1½%) is found on skid row.

The economic impact of alcoholism in this country is estimated to cost over a billion dollars each year. Industry's share through worker inefficiency, reduction of productivity and carelessness accounts for about half of this. More than 20 million dollars is spent by public agencies for the families of problem drinkers, and private agencies to spend a like amount for the same purpose. Accidents due to the excessive use of alcohol probably cost 125 million dollars each year. The annual cost of care for alcoholics in mental hospitals is 30 million dollars with our penal institutions spending another 25 million dollars for the care of the alcoholic prisoners. An even

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greater loss, too staggering even to be guessed at, lies in broken homes, frustrated children, unhappy parents, wives and husbands.

The City and County of Denver spends \$1,300,000 annually for the arrest, trial and incarceration of such people—with no record of any rehabilitation or arrest of the disease—and endless “revolving door” perpetuating the misery and useless lives of a great number of homeless men and women.

When the doctors and hospitals finally decided to undertake treatment of this very sick segment of our community, they found that to a very substantial degree they were stymied by an archaic legal system. In Colorado the law treats this type of invalid as a criminal or a lunatic, or as a gutter bum to be removed as speedily as possible from public view. Doctors found that this attitude prevents motivation of the sick alcoholic to seek help, and made their attempts at treatment or rehabilitation utterly ineffective.

Therefore, the first order of business was to modernize the legal machinery to permit modern medical and psychiatric techniques to function. The Committee on Alcoholism was continued under the administration of President Douglas McHendrie.¹ An intensive study program was undertaken both as to the nature of the baffling program and as to its legal ramifications. Statutes of other states and nations were studied, clinical surveys and reports of the Yale Center of Alcohol Studies were analyzed, and the opinions of medical, social and governmental authorities were reviewed.

The Committee recognizes that the final solution of the devastating cancer of alcoholism in our social anatomy cannot come until public attitudes change from degrading the alcoholic as a social villain to understanding him as a sick person in need of treatment. (Remember the stigma associated with tuberculosis fifty years ago and with venereal disease twenty years ago?) It is not the function of the Bar Association to provide this public education. But some progress will come when lawyers, judges and legislators acquire the knowledge and understanding necessary to fulfill their responsibility of leadership.

However, the Committee's studies have led to the inescapable conclusion that, from the standpoint of modern legal and treatment approaches, Colorado is one of the most backward states in the nation. Colorado law provides for a Commission on Alcoholism. But the Legislature has hamstrung it by voting only token funds. It is estimated that Colorado now expends \$9.5 millions of public funds annually attributable to alcoholism—but very little is done at the public level toward rehabilitation or treatment.

¹ The Committee is now composed of Albert B. Logan, chairman, Judge Mitchel Johns, Judge Joseph E. Cook, Judge Jean J. Jacobuci, Judge William H. Burnett, Eugene A. Frantz, Leonard V. Carlin, J. Corder Smith, C. Fred Barnard, R. Franklin McKelvey, Richard H. Beresford, Bently M. McMullin, Whitford Myers, Sol Cohen and Baxter Ireland.

Subject to continuing study, the Committee has reached the following conclusions:

1. Alcoholism is an incurable illness, but it can be arrested in some individuals by modern methods of treatment and rehabilitation, permitting physical recovery, psychological and emotional therapy and spiritual development.

2. Alcoholism is a major public health problem, and, hence, a public responsibility.

3. Colorado's present methods of arrest, trial and incarceration are archaic and ineffective, tending to aggravate the problem, rather than to alleviate it.

4. Colorado's present court handling of alcoholics results in an almost complete loss of vast sums of public money, without making a dent in the alcoholic problem. If modern methods of treatment and rehabilitation were adopted, the public cost might be considerably less.

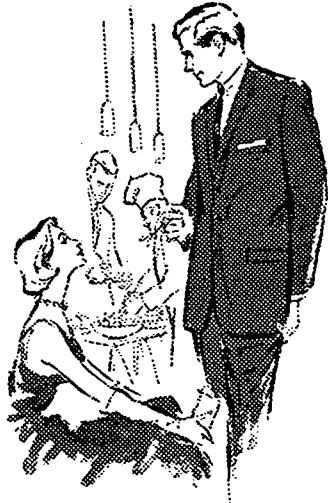
5. Deprivation of freedom has no lasting deterrent effect on alcoholics.

6. Changes in Colorado commitment procedures are urgently needed and would prove beneficial.

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7. Progress by medical and social agencies is now wholly dependent upon changes in the legal machinery related to this problem. Our clients, the people of Colorado, are looking to their lawyers, acting through the Colorado Bar Association, for guidance and leadership in a grave public crisis. It is a challenge that we cannot leave unanswered.

With the assistance of the Colorado Medical Society and other qualified agencies, and after a careful study of statutes of other states, the Committee prepared a bill for Voluntary and Involuntary Hospitalization of Alcoholics—the first big step in Colorado toward removal of archaic legal barriers. The Board of Governors approved. The Senate passed it, but it was sidetracked in the House Rules Committee late in the last session. The Governor has indicated it will be in his call for the next session. Failure of the General Assembly to adopt this bill, which would have permitted the alcoholic to retain his rights of citizenship and obtain treatment on a voluntary basis, has retarded progress for another year.

The Committee attacked the facet of alcoholism most apparent in the public mind—processing the alcoholic defendant at the municipal court level. The Rocky Mountain Conference of Municipal Judges—the first such meeting ever held in the United States to concentrate on this question—was scheduled in Colorado Springs for October 13 and 14, 1959. Financed by a Technical Assistance Project tract from the U. S. Public Health Services, it brought speakers of national prominence to discuss the problems in a workshop with judges from Colorado, Wyoming, New Mexico, Utah, Nebraska, Kansas, Missouri, Illinois, Iowa and California. The conference was co-sponsored by Colorado College, Colorado Bar Association, Colorado Medical Society, Colorado Commission on Alcoholism, Colorado Department of Public Health and National Institute of Mental Health. The findings and conclusions of that conference are said to have a national impact. They may be the basis for an all-out drive on the part of the American Bar Association.

Correlated with that conference was the session at the annual convention of the Colorado Bar Association—its first seminar on alcoholism. Speakers included Hon. John M. Murtagh, Presiding Judge, Magistrates Courts, City of New York; Marvin A. Block, M.D., Buffalo, New York, chairman of the Committee on Alcoholism, American Medical Association; Hon. Joseph D. Lohman, Chicago, Ill., former sheriff of Cook County and now Illinois State Treasurer; and Hon. Ray Harrison, Judge of the Municipal Court, Des Moines, Iowa.

Other activities of the Colorado Bar Committee include:

1. Publication of a Committee Manual for use of local bar associations and American Bar Association.

2. Study and recommendation of legal improvements in treatment and rehabilitation procedures in state institutions.

3. Study of legal means to reduce the staggering cost of alcoholism to the state and municipalities.

4. Study of legal requirements to step-up education about alcoholism, particularly at the teacher level.

That there is an urgent need for constructive legal planning to cope with this baffling and growing problem of social devastation, is dramatically illustrated in the urgent plea of Denver Municipal Judge Gerald E. McAuliffe, who states:

"It is a sickening and frustrating, and even frightening, experience for a sincere and conscientious judge to sit day after day in judgment of these human derelicts without having available tools and techniques to meet the responsibilities . . . In short, I feel that there must be a realistic approach and modern study carried out impartially and on a systematic basis to uncover all the myriad facets of information and data involved which may have any bearing whatever, no matter how slight, on this major problem and which will contribute to its ultimate solution. If that is done, then I reiterate . . . that such an accumulation of data and information from the foregoing sources will shock the public consciousness!"

Studies of the bar committee to date bear out this prediction. And the committee received other sound counsel from no less an authority in this field than Hon. John M. Murtagh, Chief City Magistrate, New York City, who states:

"There is no moral basis for using a penal approach to deal with human degradation. Any attempt to solve the problems of skid row by police roundups is doomed to failure. . . . Private morality is no concern of the state. Intoxication or degradation that does not disturb others does not warrant commitment by process either criminal or civil in nature. The penal approach to the problem of skid row is an attempt by legislation to enforce private morality. Such efforts have never been successful and frequently do much

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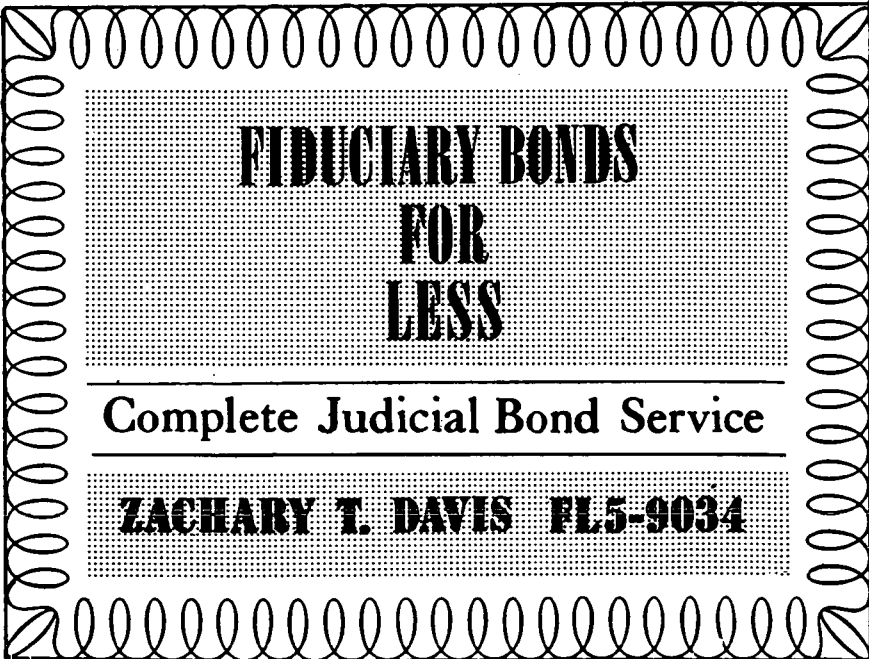
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positive harm. . . . The penal approach to the problem of skid row is a national disgrace.”

Lawyers in other states are beginning to recognize some responsibility in the field of alcoholism. However, apathy and reticence is encountered in places other than Colorado. This was expressed by Hon. Frank S. Ketcham of Washington, D. C., chairman of the Subcommittee on Alcoholic Problems of the American Bar Association, as follows:

“Lawyers, curiously, for the most part have shied away from coming to grips with the most important medical-social problem of our civilization. Alcoholism is a community problem and one might think that lawyers, who are community leaders, would want to assume a role. Alcoholism, too, is a ‘controversial’ subject, and perhaps, although the thought appalls me, attorneys are tending to stay away from matters of controversy.”

To the everlasting credit of the bar of Colorado, it may now be said, that although we were slow to recognize the need for our services, we are making a sincere, genuine effort to bring our state up to date, if not into the forefront, in its approach to a vexing public problem from the standpoint of its legal aspects. Lawyers and judges are now offering their services to this committee, which welcomes the suggestions and counsel of all who are interested in meeting this new challenge to the ingenuity of the Colorado Bar.



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