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ABA

MEMORANDUM

TO: JOHN C. SHEPHERD, PRESIDENT
AMERICAN BAR ASSOCIATION

FROM: DAVID G. EVANS, CHAIRPERSON
COMMITTEE ON ALCOHOLISM & DRUG LAW REFORM
ABA SECTION OF INDIVIDUAL RIGHTS AND RESPONSIBILITIES

STEVEN G. RAIKIN, STAFF DIRECTOR
ABA SECTION OF INDIVIDUAL RIGHTS AND RESPONSIBILITIES
AND ASSISTANT STAFF DIRECTOR, ABA PUBLIC SERVICES
DIVISION

RE: I.R.&R. SECTION ADVISORY COMMISSION ON YOUTH
ALCOHOL AND DRUG PROBLEMS

DATE: AUGUST 14, 1984

Our section's leadership applauds your inaugural pledge on August 8th to launch a major effort on the entire range of juvenile justice and child advocacy concerns. We congratulate you for promising "to put the needs of the children of America, which have long been overlooked, high on the agenda of the American Bar Association". By creating at your welcome request the Advisory Commission on Youth Alcohol and Drug Problems, our section has in turn pledged to follow your bold leadership in this critically important area of concern. We are determined to work in close partnership with you and other interested ABA entities to insure that in the coming twelve months, the work of our Advisory Commission will be one of the major hallmarks and accomplishments of your Presidency.

We would like to express our deep appreciation for your public endorsement in your inaugural address of I.R & R. Section Chairman J. David Ellwanger's appointment of Abigail J. Healy of the White House staff as the chair of our section's new Advisory Commission on Youth Alcohol and Drug Problems. As you noted in your address, our section has responded enthusiastically to your suggestion that our section launch a major project to take an aggressive look at this critical issue. As you agreed at the Annual Meeting last week, our Advisory Commission will do its work under the auspices of our section's Committee on Alcoholism and Drug Law Reform.

To launch the work of the Advisory Commission, we have arranged a special meeting for you at the White House with

Abigail J. Healy, who is the White House Liaison for Alcohol Issues in President Reagan's Drug Abuse Policy Office. As you know from your discussion with White House Counsel Fred Fielding, Ms. Healy has agreed to chair our Advisory Commission. The meeting will take place this Thursday, August 16th at 4:30 p.m. in Room 248 in the Old Executive Office Building in Washington, D.C. . Several of our section's officers and council members and members of the ABA staff have been invited to participate in the meeting. Although David Evans has been and will be out of the country on Thursday and until Labor Day, he knows Abigail Healy well, has spoken to her previously about this project, and has expressed a willingness to conduct a followup meeting with her on September 4th or 5th to begin implementing the preliminary decisions reached at this week's White House meeting.

At the outset, we want you to know that we intend to closely coordinate the work of our Advisory Commission with the several other ABA entities which have been working in the past in areas related to this issue. In addition to the work over the past several years of our section's Committee on Alcoholism and Drug Law Reform (as well as the work of our section's Subcommittee on the Rights of Children, which has functioned under our Committee on the Rights of the Underrepresented and which has most recently prepared a report and recommendation concerning corporal punishment of children in schools), we recognize the efforts of such entities as the Young Lawyers Division's Child Advocacy and Protection Project, the Family Law Section, the Criminal Justice Section, and the Public Education Division.

One of the primary goals of our Advisory Commission will be to help you coordinate the related efforts of these and other entities in this field. Our goal is to help you maximize the visibility and political impact of these ongoing efforts. We want to work closely with them and with you to help you shape federal, state and local public policy by focusing relevant aspects of these various efforts on the priorities you enunciated in your inaugural address and specifically on the issue of youth alcohol and drug problems.

In this latter regard, we are delighted and most grateful that Harriet Ellis, Director of the Office of the President and Malcolm F. Baldwin, Director of the Public Services Division, have arranged a teleconference tomorrow to begin to brief you on the tentative agenda of our Advisory Commission, on the main issues attendant to youth alcohol and drug problems, and on the related work of other ABA entities in this area.

In anticipation of the teleconference and of our meeting on Thursday at the White House, we would like to submit for your consideration our initial and very general, preliminary thoughts about our tentative strategy for insuring that our Advisory Commission achieves some concrete accomplishments

during your Presidency, and about some of the issues we hope the Advisory Commission will address:

I. Proposed Goals and Timetable

It is our hope that by March, 1985, the Advisory Commission will submit a comprehensive set of recommendations to our section's council (and to the councils of other ABA entities with an interest in this subject) addressing a full range of legal issues in the area of youth alcohol and drug problems, with an eye toward consideration of these recommendations by the ABA House of Delegates at the Annual Meeting in Washington in July, 1985. To this end, we propose that, working closely with Abigail Healy, we submit to you and section chairperson J. David Ellwanger by September 7, 1984 our recommendations for appointees to the Commission and its Task Forces. In keeping with our intention to coordinate our efforts closely with the other ABA entities interested in this subject, we anticipate recommending representatives of those entities for inclusion on the Advisory Commission.

We would then hope to have prepared for submission to the ABA Board of Governors at its meeting in Chicago on September 20-22 a request for permission to provide funding from the ABA general fund, and/or to seek outside funding to support the work of the Advisory Commission. Since you have stated that the work of our Advisory Commission will be a central focal point of your priorities as ABA President, we hope you will strongly support our request to the Board that ABA general funding be provided at the September Board meeting, so that we can quickly begin to implement your agenda in this field. In order to maintain our momentum, we have already called upon the volunteer efforts of David Evans and other I.R.&R. Section members to begin the Commission's work immediately, even before ABA and/or outside funding is secured.

For your consideration, and that of Abigail Healy and others, we propose this initial tentative draft "game plan:"

- 8/16/84 - Meeting at White House with John Shepherd, Abigail Healy, I.R. & R. Section council members, officers and ABA staff.
- 9/5/84 - Followup meeting between David Evans and Abigail Healy
- 9/7/84 - Submission of proposed appointees to the Commission and Commission agenda to John Shepherd and J. David Ellwanger and submission to the Board of Governors of request for ABA funding and/or permission to seek outside funding

- 9/20/84 - Board of Governors consideration of request for permission to seek outside funding
- 9/22/84 - Secure ABA funding
- 10/15/84 - Hire Advisory Commission staff and begin Phase I of commission's work (drafting of recommendation and report)
- 11/14/84 - First meeting of Advisory Commission to set agenda and work assignments
- 1/21/85 - Circulation of first draft of recommendation and report to Advisory Commission
- 2/1/85 - Second meeting of Advisory Commission
- 2/20/85 - Circulation of second draft of recommendation and report
- 3/15/85 - Third meeting of Advisory Commission to consider final draft of report and recommendation
- 3/20/85 - Final report and recommendation submitted to councils of I.R.&R. Section and other interested ABA entities
- 7/85 - ABA House of Delegates consideration of Advisory Commission report and recommendation
- 9/85 - Phase II of Advisory Commission's work commences to implement recommendations

II. . PROPOSED ADVISORY COMMISSION TASK FORCES AND ISSUES TO BE ADDRESSED

A. TASK FORCE #1: LEGAL RESPONSIBILITIES TO PROVIDE ALCOHOLISM AND DRUG ABUSE TREATMENT FOR CHILDREN

Individual Rights and Responsibilities Issues: Eg., What should be the legal responsibilities of our federal, state and local governments to provide alcohol and drug abuse treatment for children. Also, how should we balance a child's right to obtain medical or other treatment with the parental responsibility to determine what form that treatment should take, or whether the child should receive any treatment at all?

Commentary: Years ago, parents could commit a child with

an alcohol or drug problem to a mental institution without a due process hearing in some states. In recent years, several states have decided that children should be entitled to a due process hearing in such situations. In some states, it is possible for parents to prevent their children from receiving any treatment for drug or alcohol problems. To what extent should the law prevent parents from prohibiting their children from receiving treatment or counseling? To what extent are due process hearings desirable?

There are myriad law reform issues in this area. For example, is there a conflict between a juvenile's need for treatment and parental rights to forbid administration of treatment? 35 states and the District of Columbia afford children some rights to alcohol and drug treatment without parental consent. This is a key issue because there exists much confusion about childrens' rights to alcohol and drug treatment.

Another question is the extent of parental involvement with their childrens' treatment. For example, where there is an alcoholic parent who has a child suffering from alcoholism, state laws need clarification, because most laws dealing with treatment of children for alcoholism without parental consent were written in the context of drug abuse treatment only. Some states currently give juveniles adult rights to seek treatment starting from the age of 15 or 16. Because the laws are often unclear (eg., they don't apply to alcohol treatment), proposals for law reform may be desirable.

A related issue is the so-called "tough love" situation, ie., what rights do parents have to take action to force a child into treatment? For example, can a child be forced to leave the family home when that child has an alcohol or drug problem but he or she refuses to submit to treatment?

B. TASK FORCE #2: RESPONSIBILITIES REGARDING CONFIDENTIALITY OF MEDICAL RECORDS

Individual Rights and Responsibilities Issues: Eg., What are the responsibilities society has to protect the privacy and confidentiality of children being treated for diseases with such a serious stigma as alcoholism and drug abuse? What are the rights of children in this regard?

Commentary: Is there a conflict between childrens' rights and parents' responsibilities in this area? For example, when can a parent prevent a child from enrolling in an alcoholism treatment program like Alanon or Alateen? If a professional counselor recommends treatment or a program like Alanon or Alateen, must the parents always be notified? Do parents always have to be notified when a child enrolls in such a program, even when the threat of such notification would in some cases deter the child from presenting him or herself for

treatment?

C. TASK FORCE #3: RESPONSIBILITIES TO CHILDREN OF ALCOHOLICS AND DRUG ABUSERS

Individual Rights and Responsibilities Issues: Eg., Many children today are the tragic victims of exposure to alcohol or drug-addicted parents. Many of these situations do not involve problems rising to the level of criminal child abuse or neglect. Nevertheless, what should be the legal responsibilities and rights with regard to the interests of children of alcoholic or drug addicted parents to enlist society's aid in legally compelling a parent to seek treatment?

Commentary: There are a disproportionate number of children of alcoholics and drug addicts who act out in ways which involve them in the criminal juvenile justice system. Our child abuse and neglect laws are often not adequate to deal with this situation, because in many instances the alcoholic or drug-abusing parents do not abuse their children to the extent that the abuse would constitute a criminal offense. Because of parents' alcohol or drug abuse, many children grow up emotionally deprived. In some states such as New Jersey and Delaware, alcohol and drug-addicted parents can in certain situations be forced to go into treatment programs.

Thus, issues arise as to the civil legal rights and responsibilities of parents and children in these situations, eg., where a child has drug-addicted or alcoholic parents and as a result begins acting out in school and engaging in disruptive behavior. Where the parent is not physically abusing the child, but the child is nevertheless experiencing emotional difficulties because of his or her exposure to the addicted parent, at what point should the state intervene? At what point should a school or child protection agency take some legal action to do something about the potential addiction problem?

D. TASK FORCE #4: FAMILY RESPONSIBILITIES AND RIGHTS

Individual Rights and Responsibilities Issues: Eg., Do the family courts need better procedures and training to deal with addiction problems in families that come before the matrimonial courts? What responsibilities should there be toward the children of alcoholics and drug abusers? Are such children being damaged by courts making poorly-informed decisions regarding custody and visitation privileges of parents, for example?

Commentary: Many observers have raised the issue of the relative ignorance of many family and matrimonial courts concerning the problems of alcoholism and drug abuse. Horror

stories abound concerning flawed court decisions in regard to child custody and visitation that result in serious harm to the children involved because of resultant exposure to addicted parents. For example, what standards should guide the court where there is an alcoholic father who wants to have visitation privileges, where the mother fears that the father will possibly expose the child to a drunken-driving accident, and where the mother then goes to court to try to get an order specifying that only a supervised visitation should occur?

What often happens is that the court will not have the father evaluated properly, eg., the evaluation will be conducted by a psychiatrist who is untrained at diagnosing addiction problems. In such situations, the father is often able to make a clean-shaven and neat appearance, successfully masking his alcoholism or drug addiction and thereby winning visitation or custody privileges which are not in the best interests of the child. Do family courts in general need increased education concerning addiction problems? Should new procedural methods be devised to aid the family courts in making better decisions regarding drug and alcohol-related problems in families coming before them?

In the criminal justice system, the federal government for many years has supported court liaison offices which assist the courts in evaluating, referring, and monitoring alcohol and drug abusing offenders. These programs are known as "TASC," Treatment Alternatives to Street Crime. The federal government, through LEAA, invested much money in such programs in the 1970's. Many states including New Jersey have adopted the TASC model for their court systems. Up to 28 states at one point had adopted the TASC model. How effective are these programs? Should they be expanded? Should similar offices be attached to state family courts?

E. TASK FORCE #5: RESPONSIBILITIES REGARDING DOMESTIC VIOLENCE

Individual Rights and Responsibilities Issues: Eg., What legal rights should abused children have in violent family situations resulting from alcohol and drug abuse?

Commentary: The majority of homicides in the U.S. result from family problems in which drug or alcohol abuse has been a factor. Very often, in a domestic violence situation, the courts are only concerned with issuing protective orders. The courts often do not look at the role of alcohol and drug addiction underlying the violence. For example, a drug or alcohol-addicted wife might divorce her husband, but custody is awarded to the wife. Should the criminal and civil courts make better evaluations of domestic violence cases where there are drug or alcohol abuse problems in the family?

There has been a new trend in several states in the form of new domestic violence laws providing both criminal and civil procedures for dealing with domestic violence. However, do the states not put enough emphasis upon dealing with parental alcohol and drug problems attendant to domestic violence? Many abusers have addiction problems. Research by the Center for Women Policy Studies in Washington, D.C. has shown that a large percentage (20% - 30%) of victims of domestic violence also have alcohol problems, and some have drug problems. Should the civil and criminal courts dealing with domestic violence do more about getting abusers into treatment programs?

F. TASK FORCE #6: RESPONSIBILITIES REGARDING SCHOOL DISCIPLINE

Individual Rights and Responsibilities Issues: Eg., How can we maintain discipline in the schools and at the same time protect the rights of alcohol and drug-abusing students to receive treatment? How can the responsibilities of schools to discipline errant children incorporate procedures to help get addicted students into treatment?

Commentary: Eg., In Summit, New Jersey, a Municipal Court judge recently issued a search warrant to obtain all of the student records in Summit High School. The authorities were trying to discover which students had admitted to school counselors or teachers to having a drug problem. The authorities were going to use that information to conduct law enforcement investigations of drug sales. Do such procedures constitute a violation of students' rights to privacy? In Summit, it turned out that only a few students had ever admitted to having a drug problem. The result was that the confidentiality of all student records at the school was compromised.

The basic issue is how to balance the responsibilities of the school officials to maintain school discipline with their parallel responsibilities to encourage children with drug or alcohol problems to ask school counselors for treatment and counseling. Do we want to encourage schools to use their authority and influence over children to either 1) induce students voluntarily to enter treatment or 2) use the authority of our schools to mandate that students with addiction problems or resultant school performance problems be sent to treatment involuntarily? Should students have access to alcohol or drug treatment programs in the same way that a student with any other illness could get treatment without being discriminated against or having their education interfered with simply because they sought treatment?

G. TASK FORCE #7: RESPONSIBILITIES REGARDING JUVENILE CRIMINAL JUSTICE

Individual Rights and Responsibilities Issues: Eg., What areas of law reform are needed to improve the juvenile justice system's response to alcohol and drug abuse problems of children? How can the needs of juvenile offenders for treatment be balanced with society's interests in the deterrence and punishment of juvenile crime?

Commentary: Recent studies from the Drenk Memorial Guidance Center have shown that 43% of the juvenile crime in this country is related to the fact that the juvenile offenders come from homes where there are parental alcoholism or drug abuse problems. In addition, a New Jersey State Prison System Study shows that 25% of the juveniles coming into a major New Jersey state prison reported that they had one or two alcohol or drug-addicted parents.

Most research in the area of alcoholism and drug addiction shows that these problems are passed from parents to children through the workings of genetics or the environment. In addition, much juvenile crime takes place when juveniles abuse alcohol or drugs. The juvenile criminal justice system lags behind the adult criminal justice system in taking effective action to diagnose, refer, and monitor alcohol and drug-abusing juvenile offenders or juveniles whose problems are connected to a parental substance abuse problem.

H. TASK FORCE #8: RESPONSIBILITIES REGARDING INTOXICATED DRIVING

Individual Rights and Responsibilities Issues: Eg., Does our legal system have a responsibility to take special measures to deal with alcohol and drug intoxicated driving beyond the imposition of criminal penalties?

Commentary: Many youthful drivers drive while intoxicated by alcohol or drugs. Our current system emphasizes punishment first and rehabilitation second, with primary emphasis on dealing with alcohol-induced intoxication. Do we need to take special measures with young people who are not responding to the current system or who have a primary drug problem and are not getting the help they need by going through an alcohol-oriented enforcement program.

I. TASK FORCE #9: RESPONSIBILITIES REGARDING ILLEGAL ALCOHOL AND DRUG SALES TO MINORS

Individual Rights and Responsibilities Issues: Does the legal system need to examine the current criminal and civil penalties for adults who illegally sell alcohol or drugs to minors? Should these penalties be increased and/or should new types of penalties such as an increase in civil liability for illegal alcohol sales be expanded.

Commentary: Some states, for example, in the area of gun control, enforce mandatory additional sentences on anyone who commits a crime while armed with a gun. Should similar penalties exist for persons who sell illegal drugs to minors? In the civil area, should parents or other adults be liable for any damage that results from providing or selling alcohol or drugs to minors illegally?

J. TASK FORCE #10: RESPONSIBILITIES REGARDING ALCOHOLIC BEVERAGE ADVERTISING

Individual Rights and Responsibilities Issues: Eg., What responsibilities do the federal and state governments have to enforce strict legal prohibitions against the advertising of alcoholic beverages when such advertising is aimed at a youthful audience?

Commentary: Although the alcoholic beverage industry has in some ways demonstrated responsibility in advertising, many advertisements are purposely aimed at youthful drinkers. Federal and state laws on this issue need to be examined and improved.

II. POTENTIAL FUNDING SOURCES

It is our hope that the ABA Board of Governors, with your support, will provide the major or at least the initial source of funding for the Advisory Commission from ABA general funds. In addition, we have begun to identify potential supplemental outside funding sources:

A. J.M. Foundation, New York. The head of the foundation, Jerimiah Millbank, has already reviewed David Evan's soon to be published book in this field. A Mr. Dolan is another key official here. Sue Snyder is familiar with this foundation.

B. Hazelden Corporation, Center City, Minnesota. They have one of the best known treatment programs in the U.S. and they publish much material on alcohol and drug abuse problems among juveniles. Dan Anderson is key contact. Hazelden does not provide funding itself, but it might help us to obtain funding from other sources.

C. National Insititute on Alcohol Abuse and Alcoholism, Rockville, Maryland . Director is Dr. Robert Niven, who has an extensive background in treatment programs (he worked in a youth alcohol and drug treatment program). He is also reviewing Dave Evans' book and so will be familiar with the legal issues involved.

D. National Institute of Justice. Has a National Task Force on Domestic Violence. Their report is forthcoming. James Chips Stewart (former Oakland police officer and friend of Attorney General William French Smith). Also Merise Duff, who heads the Domestic Violence Task Force.

E. National Institute of Drug Abuse.

cc: Joseph M. Nolan, Chair, Finance Committee,
Board of Governors
Marion Edwyn Harrison, Chair, Program Committee,
Board of Governors
Thomas H. Gonser, Executive Director
Harriet Ellis, Director, Office of the ABA President
David J.A. Hayes, Jr., Assistant Executive Director
Katherine McG. Sullivan, Assistant Executive Director
Malcolm F. Baldwin, Director, Public Services Division
Howard A. Davidson, Resource Center for Child Advocacy
and Protection
Bob Horowitz
Robert D. Evans
Gail Alexander
Norman Gross
Laurie Robinson
Thomas Smith
Paul T. Smith, Chair, Criminal Justice Section
Michael S. J. Albano, Chair, Family Law Section
J. David Ellwanger, Chair, I.R.&R. Section
Gregory A. Long, Chair, Young Lawyers Division
All officers and council members of I.R.&R. Section

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ABA

To: Carlton E. Turner PhD
From: Loran D. Archer *LDA*

May 22, 1985

Subject: American Bar Association Commission Recommendations and Requested Appearance of Mrs. Reagan at ABA House of Delegates Meeting July 9, 1985

Attached is copy of the draft recommendations passed by the American Bar Association Advisory Commission on Youth and Drug Problems in March 1985.

The Commissions recommendations were reviewed and voted upon by the ABA Individual Rights and Responsibilities Council on May 4, 1985. Twenty of the twenty-one recommendations were approved. The Council revised the wording in several of the recommendations prior to approval. The revised recommendations as approved are also attached. The underlined sections indicate Council approved new wording. The brackets indicated wording that was deleted by the Council.

The only Commission recommendation which was not approved by the Individual Rights and Responsibilities Council was the recommendation that non-alcoholic beverages, as well as alcoholic beverages, be provided at all ABA functions. This was disapproved not because of the requirement to provide alternative beverages but because of a long standing issue of cash bar vs ABA funded beverages. Non-alcoholic beverages are presently available if requested and the Council felt that the issue of cash bar vs ABA provided would distract the Delegates from the major issues in the remaining recommendations.

The twenty recommendations as revised and approved by the Council will be submitted to the House of Delegates of the American Bar Association at the annual meeting in July. At the annual meeting there will be a series of showcases by ABA Councils to provide the delegates with background and information on recommendation being submitted for House of Delegate's vote.

While I would recommend that the Drug Policy Office support the recommendations I would strongly recommend against Mrs. Reagan's appearance at the showcasing of the Commission's recommendations prior to ABA House of Delegates approval or rejection of the recommendations. Her appearance would be interpreted as support for the recommendations. Rejection of any of the recommendations by the House of Delegates would interpreted by the media as ABA rejection of recommendations favored by the Administration and the First Lady. Many of the recommendations, such as the alcohol excise tax, the youth drug paraphernalia law, the use of drug forfeiture revenues for alcohol and other drug programs and mandated health insurance of alcohol and other drug treatment by Medicare and Medicaid, would require federal legislation and Administration support of such legislation has not yet been determined.

AS APPROVED MAY 4, 1985

AMERICAN BAR ASSOCIATION

SECTION OF INDIVIDUAL RIGHTS AND RESPONSIBILITIES

RECOMMENDATION

BE IT RESOLVED that the American Bar Association recommends that policies regarding youth alcohol and drug problems include: prevention, education, treatment; criminal law reforms; and strategies for raising the necessary fiscal resources attendant to such policies. Accordingly, the American Bar Association recommends that:

1. Illegal Sales to Minors

Criminal penalties for persons convicted of selling alcohol or other drugs to youth should be increased over current penalties for violations involving such sales to adults.

2. Juvenile Offender Treatment

When a juvenile offender is answerable within the juvenile justice system and has been evaluated and found to have alcohol and/or other drug abuse problems, any disposition of the case should include treatment. Any such juvenile must be given access to appropriate alcohol and/or drug treatment if detained pending trial.

3. Revocation of Driver's License

All states enact legislation authorizing [providing] a judge to completely or partially suspend or revoke [for the complete or partial revocation of] the driver's license of persons under the age of 21 upon conviction of an alcohol or drug related offense or upon refusal to submit to substance testing under existing state implied consent laws.

A. Youth
Paraphernalia Law

Federal legislation be enacted to make it unlawful to 1) transport or ship drug paraphernalia to minors by mail through the United States Postal Service or 2) transport or ship to minors in interstate commerce drug paraphernalia as defined in the Model Drug Paraphernalia Act.

~~43.~~ Age 21 Drinking Laws

- 5
- (a) All states, territories and the Department of Defense should adopt 21 years as the minimum legal age for the purchase and public possession of all alcoholic beverages.
 - (b) Federal legislation be supported to provide significant fiscal incentives for each state to enact and/or maintain a law establishing 21 years as the minimum legal age of purchase.

62. Forfeiture

- (a) State and federal [civil and] criminal forfeiture provisions should be increased as avenues for curtailing drug trafficking.
- (b) A significant portion of the revenues produced by civil and criminal forfeiture provisions should be specifically allocated to supplement alcohol and other drug abuse enforcement, prevention, intervention, treatment and research programs, especially for youth.

72. Surcharge

States should enact legislation providing for surcharge fines on all persons convicted of violations of the controlled substances and alcohol codes, to be used to supplement funding for prevention, intervention, treatment, and research on alcohol and other drug problems, especially for youth.

84. Dram Shop and Host Liability

States should enact statutes to establish civil liability of persons who negligently sell or serve alcoholic beverages to a customer (guest) or guest (customer) whom the server knows or should know to be under the legal age [where that person], when, that customer or guest, as the result thereof, becomes intoxicated and injures himself, a third person, or such third person's property.

98. Alcohol Excise Taxes

Federal and state excise tax rates on alcohol be increased and that the tax on alcohol be uniform according to alcohol content. A significant portion of such increased tax revenues should be allocated to supplement existing funds for the prevention, intervention, treatment, and research on alcohol and other drug problems, especially for youth.

~~11.~~ Discrimination in Schools

- 13
- (a) School systems and other public providers of services to youth should not discriminate against a youth because he/she seeks treatment for alcohol or other drug problems.
 - (b) States should enact legislation as necessary to prevent such discrimination.

~~12.~~ Qualified [Privilege] Immunity

- 14
- (a) State and federal legislation should grant to teachers and other educational personnel, immunity [qualified privilege] in respect of civil liability [for libel, slander and malicious abuse of process], where they, in good faith and for reasonable cause, report in confidence to the proper school personnel [authority] the suspected abuse, possession or sale of drugs or alcohol by a student on school property.

~~13.~~ Mandated Insurance

- 15
- (a) All laws that provide and regulate private and public health insurance should mandate adequate and reasonable coverage for treatment of alcohol and other drug problems, in freestanding and hospital-based, in-patient and out-patient, public and private programs, especially for youth.

16. Media Ads

[The ABA opposes media programming or advertising which glamorizes or promotes the use of alcohol or other drugs by youth or media programming which fails to portray accurately to youth the effects of alcohol and other drugs. Accordingly, appropriate entities should take and continue to take actions and further research aimed at limiting the effects which alcohol advertising, or media programming has upon the acceptance and use of alcohol and other drugs by youth.]

Concern be expressed over media programming which glamorizes or promotes the use of alcohol or drugs by youth, and opposes advertising of alcohol which is directed at youth.

Appropriate entities are encouraged to continue research and other efforts to limit the effect which media programming or advertising has upon the use of alcohol or other drugs by youth.

17. Marketing on College Campuses

Alcohol [advertising and] marketing strategies for college campuses be opposed that promote or tend to promote [either the heavy use of alcohol or] the use of alcohol by [underage] youth and encourages government action, if necessary, to permit cooperative activity toward ending these practices.

REVISE JUDICIAL TRAINING

18. Coalitions, Community and School Involvement

- (a) The ABA, the local bar associations, and the legal profession should:
- 1). Provide through continuing legal education programs and other appropriate vehicles extensive curricula on alcohol and drug abuse education. Additional training should be given in order to properly identify, evaluate, counsel and refer young clients with alcohol and drug problems.
 - 2) Appropriate justice system personnel, including lawyers, should be trained and educated in order for juvenile justice programs to be effective in understanding the role alcohol and other drug abuse by the offender and/or his family have in either delinquent conduct or status offenses.
 - 3) Develop for judges and lawyers handling juvenile and domestic relations cases resources to increase awareness and intensify training and technical assistance efforts on alcohol and substance abuse issues. Resources should be developed to replicate these programs which are operating successfully within the nation's juvenile and family courts and communities.

19. Legal Community Peer Group Support Programs

State courts and bar authorities should establish and support peer support programs for attorneys suffering or recovering from alcohol or other drug abuse.

20. Attorney Discipline

- (a) The legal profession, recognizing that lawyers often play leadership roles in the community and therefore serve as role models for youth, should provide leadership in dealing with substance abuse by caring for its members who suffer from alcohol and other drug problems, by use of appropriate disciplinary procedures and by providing examples of life styles without abuse of alcohol and other drugs.
- (b) The state court and bar disciplinary authorities should place a high priority on the adoption of appropriate model disciplinary rules regarding attorney abuse of alcohol and other drugs.



[American Bar Association Alternative Beverages]

- (a) [At all ABA programs, conferences and meetings where alcoholic beverages are served, non-alcoholic beverages should also be provided for the participants.]

1226j

THE WHITE HOUSE

WASHINGTON

May 17, 1985

MEMORANDUM FOR KENNETH BARUN

DIRECTOR OF PROJECTS

FROM:

RICHARD A. HAUSER *RAH*
DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT:

American Bar Association Invitation for the
First Lady to Address a Special Program at Its
1985 Annual Meeting

Attached for your review is an advance copy of the proposed recommendations of the Youth Alcohol and Drug Abuse Commission. It is my understanding that editorial changes and deletions are possible. I will have to defer to you and Carlton Turner on whether the recommendations are consistent with Administration policy.

As I mentioned in our telephone conversation, the ABA has also suggested the possibility of the First Lady addressing the House of Delegates on Tuesday, July 9, 1985, prior to any debate on the recommendations. This would be an unprecedented appearance for a First Lady and would certainly attract extensive media coverage.

✓ cc: Carlton E. Turner

Attachment

American Bar Association
Governmental Affairs Group
1800 M Street, N.W.
Washington, D.C. 20036-5886
Phone: (202) 331-2213

CRAIG H. BAAB
Staff Director
for Governmental Liaison

May 16

Sick -

I attach the 20 proposed recommendations of the Youth Alcohol and Drug Abuse Commission. A lot of editing, rearranging and possible deleting is likely. The bulk of these, I understand, are in accord with W.H. Sobier.

I have not attached the background report, because it is being substantially revised. Note recommendations 16 & 17.

Regards,
Cing

AMERICAN BAR ASSOCIATION

SECTION OF INDIVIDUAL RIGHTS AND RESPONSIBILITIES

RECOMMENDATION

BE IT RESOLVED, that the American Bar Association recommends that policies regarding youth alcohol and drug problems include: prevention, education, treatment, law reforms; and strategies for raising the necessary fiscal resources attendant to such policies. Accordingly, the American Bar Association recommends that:

1. Illegal Sales to Minors

Criminal penalties for persons convicted of selling alcohol or other drugs to youth should be increased over current penalties for violations involving such sales to adults.

2. Juvenile Offender Treatment

When a juvenile offender is answerable within the juvenile justice system and has been evaluated and found to have alcohol and/or other drug abuse problems, any disposition of the case should include treatment. Any such juvenile must be given access to appropriate alcohol and/or drug treatment if detained pending trial.

3. Revocation of Driver's License

States should enact legislation authorizing a judge to completely or partially suspend or revoke the driver's license of persons under the age of 21 upon conviction of an alcohol or drug related offense or upon refusal to submit to substance testing under existing state implied consent laws.

4. Youth Paraphernalia Law

Federal legislation should be enacted to make it unlawful to 1) transport or ship drug paraphernalia to minors by mail through the United States Postal Service or 2) transport or ship to minors in interstate commerce drug paraphernalia as defined in the Model Drug Paraphernalia Act.

5. Age 21 Drinking Laws

- (a) All states, territories and the Department of Defense should adopt 21 years as the minimum legal age for the purchase and public possession of all alcoholic beverages.
- (b) Federal legislation should be supported to provide significant fiscal incentives for each state to enact and/or maintain a law establishing 21 years as the minimum legal age of purchase.

6. Forfeiture

- (a) State and federal criminal forfeiture penalty provisions should be increased as avenues for curtailing drug trafficking.
- (b) A significant portion of the revenues produced by civil and criminal forfeiture provisions should be specifically allocated to supplement alcohol and other drug abuse enforcement, prevention, intervention, treatment and research programs, especially for youth.

7. Surcharge

States should enact legislation providing for surcharge fines on all persons convicted of violations of the controlled substances and alcohol codes, to be used to supplement funding for prevention, intervention, treatment, and research on alcohol and other drug problems, especially for youth.

8. Dram Shop and Host Liability

States should enact statutes to establish civil liability of persons who negligently sell or serve alcoholic beverages to a customer or guest whom the server knows or should know to be under the legal age when that customer or guest, as the result thereof, becomes intoxicated and injures himself, a third person, or such third person's property.

9. Alcohol Excise Taxes

Federal and state excise tax rates on alcohol should be increased and the tax on alcohol should be uniform according to alcohol content. A significant portion of such increased tax revenues should be allocated to supplement existing funds for the prevention, intervention, treatment, and research concerning alcohol and other drug problems, especially for youth.

10. Child Custody and Visitation

Whenever decisions affecting custody and visitation rights are made, judges handling domestic relations cases should exercise authority to require, in order to promote the best interest of the child, the evaluation of a parent by appropriate alcohol or other drug treatment professionals, whenever the judge has credible evidence to suspect that the parent has alcohol and other drug abuse problems.

11. Child Abuse & Neglect

- (a) The courts should recognize that parental or guardian alcohol and drug abuse is a frequent contributing factor in child abuse and neglect incidents, and existing neglect and other child protection laws should be utilized to assist families in dealing with alcohol and other drug abuse.
- (b) Where existing child abuse and neglect laws do not enable the courts to deal with incidents in which alcohol and drug abuse are factors, these laws should be amended to provide such authority.

12. Consent to Treatment

In order to facilitate treatment of youth with alcohol and other drug problems and to remove any barriers to such treatment:

- (a) States should enact statutes authorizing a minor to consent to any non-custodial, non-invasive treatment.
- (b) States should enact statutes permitting a minor to obtain voluntarily custodial or invasive treatment at a state licensed facility, even if the parents after being notified fail to, or do not consent to such treatment programs, provided that in the absence of such consent, within 48 hours: qualified counsel is appointed for the juvenile; parents have the right to participate; an appropriate alcohol or other drug treatment professional promptly evaluates the juvenile and the proposed plan of treatment; and an appropriate judicial body reviews the treatment plan for the juvenile.

13. Discrimination in Schools

- (a) School systems and other public providers of services to youth should not discriminate against a youth because he or she seeks treatment for alcohol or other drug problems.
- (b) States should enact legislation as necessary to prevent such discrimination.

14. Qualified Immunity

State and federal legislation should grant to teachers and other educational personnel immunity in respect to civil liability, where they, in good faith and for reasonable cause, report in confidence to the proper school personnel the suspected abuse, possession or sale of drugs or alcohol by a student on school property.

15. Mandated Insurance

All laws that provide and regulate private and public health insurance should mandate adequate and reasonable coverage for treatment of alcohol and other drug problems, in freestanding and hospital-based, in-patient and out-patient, public and private programs, especially for youth.

16. Media Ads

It express concern over media programming which glamorizes or promotes the use of alcohol or drugs by youth, and oppose advertising of alcohol which is directed at youth.

Appropriate entities are encouraged to continue research and other efforts to limit the effect which media programming or advertising has upon the use of alcohol or other drugs by youth.

17. Marketing on College Campuses

It oppose alcohol marketing strategies for college campuses that promote or tend to promote the use of alcohol by youth and encourages government action, if necessary, to permit cooperative activity toward ending these practices.

18. Legal Training on Alcohol and Other Drug Problems

The ABA, local bar associations, and the legal profession should:

- (a) Provide through continuing legal education programs and other appropriate vehicles extensive curricula on alcohol and drug abuse education. Additional training should be given in order to properly identify, evaluate, counsel and refer young clients with alcohol and drug problems.
- (b) Appropriate justice system personnel, including lawyers, should be trained and educated in order for juvenile justice programs to be effective in understanding the role alcohol and other drug abuse by the offender and/or his family have in either delinquent conduct or status offenses.
- (c) Develop for judges and lawyers handling juvenile and domestic relations cases resources to increase awareness and intensify training and technical assistance efforts on alcohol and substance abuse issues. Resources should be developed to replicate these programs which are operating successfully within the nation's juvenile and family courts and communities.

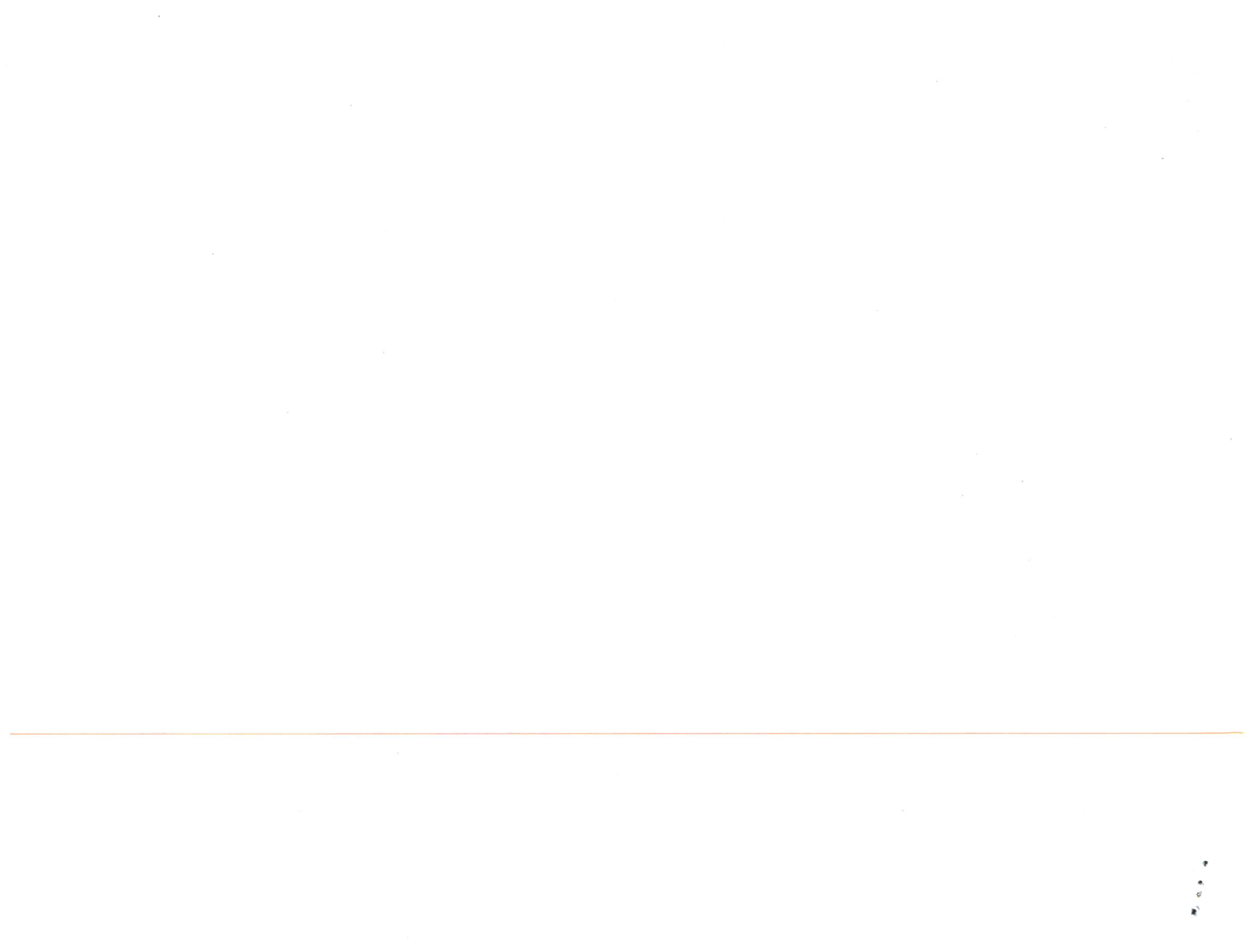
19. Legal Community Peer Group Support Programs

State courts and bar authorities should establish and support peer support programs for attorneys suffering or recovering from alcohol or other drug abuse.

20. Attorney Discipline

- (a) The legal profession, recognizing that lawyers often play leadership roles in the community and therefore serve as role models for youth, should provide leadership in dealing with substance abuse by caring for its members who suffer from alcohol and other drug problems, by use of appropriate disciplinary procedures and by providing examples of life styles without abuse of alcohol and other drugs.
- (b) The state court and bar disciplinary authorities should place a high priority on the adoption of appropriate model disciplinary rules regarding attorney abuse of alcohol and other drugs.

1233j



American Bar Association

M E M O R A N D U M

TO: Members of Advisory Commission on Youth Alcohol and Drug Problems

FROM: Karen A. Hinks, Assistant to the Project Consultant
Advisory Commission on Youth Alcohol and Drug Problems

Subject: ABA Advisory Commission on Youth Alcohol and Drug Problems draft recommendations: Need for your feedback by Wednesday, May 14th.

Date: May 3, 1985

The I.R. & R. Council members are meeting this weekend in Boston to vote on the draft recommendations passed by the Advisory Commission in March.

Please review the enclosed and return to us, as soon as possible, with any additions to the report language and/or editing changes. Be especially responsible for changes on those issues covered in your committee during the March meeting. I have enclosed an issues chart listing each member and their issue assignments.

The final copy will be placed in an agenda book for the ABA Annual Meeting in July to be presented to the House of Delegates. The deadline for your response is Wednesday, May 14th. If you have any questions, please call me at (202) 331-2273.

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1984-1985 SECTION OF
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 - 7. Child Custody and Visitation
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 - 21. Legal Community Peer Group Support Programs

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Introduction

With these 21 initial recommendations, the American Bar Association Advisory Commission on Youth Alcohol and Drug Problems continues its work pursuant to its mandate:

In my inaugural address to the American Bar Association, I noted that many of America's children have become the customers of merchants of drugs and alcohol. I also acknowledged the especially important role that the organized bar and members of the legal profession have in lending their support and expertise to help combat this growing problem. With the help of state and local bar associations, such as yours, the Advisory Commission can define this role and make an important contribution to the eradication of this serious national problem. (Letter dated December 26, 1984 from John C. Shepherd, President American Bar Association, to State Bar Executive Directors)

From its beginnings in October, 1984 to the present, the Commission has organized and directed its efforts toward defining the problems in the field of substance abuse by the young as well as reviewing some of the areas where the Commission and the bar's expertise and impact could best contribute to solutions. In a series of field hearings in Atlanta, Princeton, and Los Angeles,¹ involving over one hundred witnesses and hundreds of pages of testimony and exhibits, the Commission has gathered information and researched many of the questions raised in its charter from President Shepherd.

Numerous witnesses before the Commission testified to the enormity of youth alcohol and other drug problems. Some witnesses termed the present state of these drug problems an epidemic; one called it a pandemic.² The nationally known Gallup Poll reported that 1 of 3 teenagers admitted that their friends drink and 2 in 10 report marijuana use.³ Six out of

¹The Atlanta field hearing of the Advisory Commission (hereinafter "Atlanta") was held on January 22 and 23, 1985; the Princeton field hearing (hereinafter "Princeton") was held on February 7-8, 1985; and the Los Angeles field hearing (hereinafter "Los Angeles") was held on February 21 and 22, 1985.

²See testimony of William Coletti, Robert Margolis, Ph.D., Atlanta; testimony of Ray Chavira, Los Angeles.

³Testimony of George Gallup, Jr., Princeton.

ten teenagers polled have drunk, and 15 percent say that their alcohol use has already caused problems for them or others.³ A recent study by the U.S. Department of Justice also estimates that the five leading drugs among high school seniors are: alcohol - 70%; cigarettes - 30%; marijuana - 29%; stimulants - 11%; and cocaine - 5%.⁴

On the state level, it was noted that 36,000 youth in New Jersey between ages 13 and 18 were experiencing alcohol problems, and that 25 to 40 percent of adolescents admitted to New Jersey correctional facilities were either drug or alcohol addicted or experiencing alcohol or other drug problems.⁵ In California, a Juvenile Court judge testified that 85 to 90 percent of the juveniles coming before his court have alcohol or other drug problems.⁶ At the Atlanta field hearing one witness testified that, there are approximately 40,000 juvenile drug addicts in Georgia.⁷ According to one survey, there are 45,000 teenagers with alcohol problems in Georgia, and over 3.3 million in the United States.⁸ Based on the same data, 9 out of 10 tenth graders report they have already been drunk, and one-third of high school seniors have been drunk at least six times in a year.⁹ This and other sources of data indicate that 94 percent of high school seniors use alcohol, 90 percent of them have tried marijuana, while 54 percent report regular use and one of 13 is a daily user.^{9A} Another witness noted a 50 percent increase in teenage drinking over the past 2 years.¹⁰

⁴The magnitude of substance abuse in America, Special Report of the Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice at 6 (Oct. 1984).

⁵Testimony of Thomas Blatner, Princeton.

⁶Testimony of Judge H. Randolph Moore, Jr., Los Angeles.

⁷Testimony of Charlotte Czekala, Atlanta.

⁸Testimony of Dr. Martha Morrison, Atlanta.

⁹Id.

^{9A}Id. and testimony of William Coletti, Atlanta.

¹⁰Testimony of Gary Magniofico, Los Angeles.

In addition, reported a leading treatment expert noted a dramatic rise in cocaine use by youth, from 6 percent to 20 percent in 1982 due to lower prices and increased supplies.¹¹ In the past 5 years the consequences of this rise in cocaine use has resulted in a 200% increase in cocaine - related deaths, and a 500% increase in cocaine - related treatment admissions.^{11A}

Notwithstanding these statistics, witness after witness before the Commission noted the lack of: juvenile treatment facilities; funding for such treatment; and overall public awareness in this area.¹² Numerous witnesses commented on the effects of alcohol beverage advertising directed on youth and the marketing practices conducted by some distributors on college campuses.^{12A}

Witnesses repeatedly noted the demonstrated links between youth alcohol and other drug abuse and juvenile crime; serious health problems; poor school performance; automobile accidents; fatalities and other life-threatening injuries, as well as teenage suicide.¹³ As numerous statistical studies reveal, alcohol-related auto accidents continue to be the leading cause of death in the 16 and 24 year old age group.¹⁴ With an estimated societal cost of \$116.7 billion from alcohol use,¹⁵ the prognosis for the future is not promising based on these statistics.

Left unchecked, these statistics fortell continued validity for current estimates of: 5 percent of the population suffering from alcoholism and 10 percent as problem drinkers; over 19,000 annual deaths due to medically-related alcohol

¹¹Testimony of Dr. Arnold Washton, Princeton.

^{11A}See n.4, supra at 6.

¹²Testimony Richard J. Russo, Princeton; Charlotte Czekala, Atlanta (one state juvenile treatment facility for all of Georgia).

^{12A}Testimony of Dr. Alan Stoudemire, Dr. Al Mooney Atlanta; George Hacker, Princeton; Timothy McFlynn, Esq., and Judge Leon Emmerson, Los Angeles.

¹³Testimony of George Hacker, Thomas Blatner, Princeton; Judge H. Randolph Moore, Los Angeles.

¹⁴Testimony of Minuaird McGuire, Atlanta.

¹⁵Testimony of Dr. Alan Studemire, Atlanta.

illnesses; over 24,000 alcohol-related automobile fatalities; 30,000 other alcohol-related deaths from falls, fires and suicides; and over 300,000 disabling injuries.¹⁶ Alcohol and other drug abuse has become the modern plague of our youth and society.

It would be presumptuous to conclude that these initial recommendations could be anything more than a beginning. A research and drafting process of only eight months could never attempt to solve the myriad of problems in this field. We have learned from the regional field hearings that there are no easy solutions to many of these problems. These initial recommendations are, however, targeted to some of the more troubling areas highlighted by the Commission's proceedings, as well as some of the more manageable issues that were capable of some resolution in the near term.

The Commission initial recommendations have been clustered around the following four central sets of issues that were raised before the Commission:

- I. Prevention/Education/Treatment;
- II. Criminal Law Reform;
- III. Fiscal Resources; and
- IV. Attorney Role Models.

Each of these clusters has been set out and further explained in their relevant sections of the report.

It is to be hoped that these Recommendations will be considered, debated and improved upon by our own members and by others concerned about these problems. The Commission's activities in reaching out to the legal community and beyond can proceed with these initial recommendations as a basis for dialogue, further investigation and reflection. The recommendations are thus part of the larger continuing process of study and action in which the Commission and the state and local bars are already participants with others seeking solutions to these problems.

¹⁶Id.

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AMERICAN BAR ASSOCIATION

SECTION OF INDIVIDUAL RIGHTS AND RESPONSIBILITIES

RECOMMENDATION

BE IT RESOLVED that the American Bar Association recommends that policies regarding youth alcohol and drug problems include: prevention, education, treatment; criminal law reforms; and strategies for raising the necessary fiscal resources attendant to such policies. These policies should be based on the following proposals:

1. Discrimination

- (a) School systems and other public providers of services to youth should not discriminate against a youth because he/she seeks treatment for alcohol or other drug problems.
- (b) States should enact legislation as necessary to prevent such discrimination.

2. Qualified Privilege

- (a) State and federal legislation should grant to teachers and other educational personnel, qualified privilege in respect of civil liability for libel, slander and malicious abuse of prosecution, where they, in good faith and for reasonable cause, report to the proper school authority the suspected abuse, possession or sale of drugs or alcohol by a student on school property.

3. Consent

- (a) In order to facilitate treatment of youth with alcohol and other drug problems and to remove any barriers to such treatment:
 - 1) States should enact statutes authorizing a minor to consent to any non-custodial, non-invasive treatment.

- 2) States should enact statutes permitting a minor to obtain voluntarily custodial or invasive treatment at a state licensed facility, even if the parents after being notified fail to, or do not consent to such treatment programs, provided that in the absence of such consent, within 48 hours, that qualified counsel is appointed for the juvenile, that parents have the right to participate, and that an appropriate alcohol or other drug treatment professional promptly evaluates the juvenile and the proposed plan of treatment and that an appropriate judicial body reviews the treatment plan for the juvenile.

4. Dram Shop and Host Liability

- (a) States should enact statutes to establish civil liability of persons who negligently sell or serve alcoholic beverages to a guest or customer whom the server knows or should know to be under the legal age where that person, when, as the result thereof, becomes intoxicated and injures himself, a third person, or such third person's property.

5. Media/Ads

- (a) The ABA opposes media programming or advertising which glamorizes or promotes the use of alcohol or other drugs by youth or media programming which fails to portray accurately to youth the effects of alcohol and other drugs. Accordingly, appropriate entities should take and continue to take actions and further research aimed at limiting the effects which alcohol advertising, or media programming has upon the acceptance and use of alcohol and other drugs by youth.

6. Marketing on College Campuses

- (a) The ABA opposes alcohol advertising and marketing strategies for college campuses that promote or tend to promote either the heavy use of alcohol or the use of alcohol by underage youth and encourages government action, if necessary, to permit cooperative activity toward ending these practices.

7. Child Custody and Visitation

- (a) Judges handling domestic relations cases should require, in order to promote the best interest of the child, the evaluation by appropriate alcohol or other drug treatment professionals, parents reasonably suspected of alcohol and other drug abuse problems, before decisions affecting custody and visitation rights are made.

8. Juvenile Offender Treatment

- (a) When a juvenile offender is answerable within the juvenile justice system and has been evaluated and found to have alcohol and/or other drug abuse problems, any disposition of the case should include treatment. Any such juvenile must be given access to appropriate alcohol and/or drug treatment if detained pending trial.

9. Paraphernalia Law

- (a) The ABA recommends federal legislation be enacted to make it unlawful to 1) transport or ship drug paraphernalia to minors by mail through the United States Postal Service or 2) transport or ship to minors in interstate commerce drug paraphernalia as defined in the Model Drug Paraphernalia Act.

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- (a) Criminal penalties for persons convicted of selling alcohol or other drugs to youth should be increased over penalties for violations involving such sales to adults.

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- (a) All states, territories and the Department of Defense should adopt 21 years as the minimum legal age for the purchase and public possession of all alcoholic beverages.
- (b) The American Bar Association supports federal legislation to provide significant fiscal incentives for each state to enact and/or maintain a law establishing 21 years as the minimum legal age of purchase.

12. Child Abuse & Neglect

- (a) The ABA recommends that the state legislatures and courts should recognize that parental or guardian alcohol and drug abuse is a frequent contributing factor in child abuse and neglect incidents, and existing neglect and other child protection laws should be utilized or amended to assist families in dealing with alcohol and other drug abuse.

13. Revocation of Driver's License

- (a) The ABA recommends that all states enact legislation providing for the complete or partial revocation of the driver's license of persons under the age of 21 upon conviction of an alcohol or drug related offense or upon refusal to submit to substance testing under existing state implied consent laws.

14. Mandated Insurance

- (a) The ABA recommends that all laws that provide and regulate private and public health insurance should mandate adequate and reasonable coverage for treatment of alcohol and other drug problems, in freestanding and hospital-based, in-patient and out-patient, public and private programs, especially for youth.

15. Forfeiture

- (a) The ABA supports the increased use of state and federal civil and criminal forfeiture provisions as avenues for curtailing drug trafficking.
- (b) A significant portion of the revenues produced by civil and criminal forfeiture provisions should be specifically allocated to supplement alcohol and other drug abuse enforcement, prevention, intervention, treatment and research programs, especially for youth.

16. Surcharge

- (a) The states should enact legislation providing for surcharge fines on all persons convicted of violations of the controlled substances and alcohol codes, to be used to supplement funding for prevention, intervention, treatment, and research on alcohol and other drug problems, especially for youth.

17. Alcohol Excise Taxes

- (a) The ABA recommends that federal and state excise tax rates on alcohol be increased and that the tax on alcohol be uniform according to alcohol content. A significant portion of such increased tax revenues should be allocated to supplement existing funds for the prevention, intervention, treatment, and research on alcohol and other drug problems, especially for youth.

18. Coalitions, Community and School Involvement

- (a) The ABA, the local bar associations, and the legal profession should:
- 1). Provide through continuing legal education programs and other appropriate vehicles extensive curricula on alcohol and drug abuse education. Additional training should be given in order to properly identify, evaluate, counsel and refer young clients with alcohol and drug problems.
 - 2) Appropriate justice system personnel, including lawyers, should be trained and educated in order for juvenile justice programs to be effective in understanding the role alcohol and other drug abuse by the offender and/or his family have in either delinquent conduct or status offenses.
 - 3) Develop for judges and lawyers handling juvenile and domestic relations cases resources to increase awareness and intensify training and technical assistance efforts on alcohol and substance abuse issues. Resources should be developed to replicate these programs which are operating successfully within the nation's juvenile and family courts and communities.

19. Legal Community Peer Group Support Programs

- (a) State courts and bar authorities should establish and support peer support programs for attorneys suffering or recovering from alcohol or other drug abuse.

20. American Bar Association Alternative Beverages

- (a) At all ABA programs, conferences and meetings where alcoholic beverages are served, non-alcoholic beverages should also be provided for the participants.

21. Attorney Discipline

- (a) The ABA, recognizing that lawyers often play leadership roles in the community and therefore serve as role models for youth, recommends that the legal profession provide leadership in dealing with substance abuse by caring for its members who suffer from alcohol and other drug problems, by use of appropriate disciplinary procedures and by providing examples of life styles without abuse of alcohol and other drugs.
- (b) The state court and bar disciplinary authorities should place a high priority on the adoption of appropriate model disciplinary rules regarding attorney abuse of alcohol and other drugs.

I. Preface to Prevention/Education/Treatment

Several witnesses before the Commission testified to the lack of an overall "systems" approach when attempting to solve the problems of youth alcohol and drug abuse and dependency.¹ Such an approach is implicit in the three faceted design of the recommendations: prevention of youth drug/alcohol problems; education of those involved in the legal system; and, treatment of youth who, despite all prevention and education efforts, nonetheless, become substance abusers. For the purpose of clarity, the prevention issues are focused on civil law reform,² including recommendations opposing discrimination against youth with alcohol or other drug problems; favoring a qualified privilege for those responsible for their care; and encouraging expansion of civil liability for negligent hosts and other servers. The recommendation opposing advertising which glamorizes or promotes alcohol use by those under the legal drinking age implicates both prevention and education issues because of the possibilities for prohibition, counter-advertising or public service announcements.

Finally, the child custody and visitation and juvenile offender treatment recommendations incorporate both prevention and treatment issues. Facilitating youth treatment is also the goal involved in the reform of consent laws, and the anti-discrimination recommendation.

As mandated by any systems approach, the recommendations on these issues, and the others which follow, must be viewed as interdependent and mutually re-enforcing. It is only through this comprehensive analysis and action, that the ABA and others involved can significantly impact the multitude of problems associated with youth alcohol and drug abuse.

¹See e.g., Testimony of Drs. Jokichi Takamine and Max Schnieder, Los Angeles.

²The criminal law reform recommendation follows separately.

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1. Discrimination

AMERICAN BAR ASSOCIATION

SECTION OF INDIVIDUAL RIGHTS AND RESPONSIBILITIES

RECOMMENDATION

BE IT RESOLVED that the American Bar Association recommends that school systems and other public providers of services to youth should not discriminate against a youth because he/she seeks treatment for alcohol or other drug problems.

BE IT FURTHER RESOLVED, that the American Bar Association recommends that, states should enact legislation as necessary to prevent such discrimination.

REPORT

Throughout its field hearings, the Commission learned that there are some barriers to treatment even for the youth voluntarily seeking such treatment for alcohol or other drug problems.¹ One such barrier is the reluctance of some school systems to permit a student to attend treatment programs during the school year and to provide related services necessary to assist that student in treatment.^{1A} One situation described to the Commission involved a student seeking treatment and subsequently being denied permission to leave school and to have the necessary tutoring needed to make up the work that would be missed during his treatment. Because of the significant health risks involved in denying or even delaying youth treatment, the Commission believes that schools and other public service providers should act to remove such barriers. Students requiring care for other illnesses are readily being assisted by schools under the non-discrimination law and regulations.

It has been established under federal law that public schools ordinarily fall within the scope of Sections 503 and 504 of the Rehabilitation Act of 1973 as federal contractors or recipients of federal funds.¹ It is also clear that, under federal law as interpreted by the Attorney General and under regulations, persons recovering from alcoholism and drug addiction are covered under these sections.² In addition to Section 503 and 504 youth suffering from alcohol and drug problems may also be protected under Public Law 91-230, 20 U.S.C. 1401 et. seq. Under that Act, the Supreme Court has upheld the providing of educationally "related services" such as clean intermittent catheterization to a young student suffering from spina bifida.^{2A} A fortiuri, substance

¹See e.g., Testimony of Thomas C. Blatner, Princeton.

^{1A}See Statement of David G. Evans, Princeton.

^{1B}29 U.S.C.A. 793, 794. Section 503 and 504 are the civil rights laws involving equal employment and public service to the handicapped. See e.g., Irving Indep. School Dist. v. Tatro, 468 U.S. ___, (1984) and, generally, Smith v. Robinson, 468 U.S. ___, (1984) (relief under 504 denied on other grounds).

²See 43 Opinions of the Attorney General, (April 12, 1977).

^{2A}See Irving Indep. School Dist. v. Tatro, 104 S. Ct. 3371 (1984). See also School Committee of Town of Burlington v. Dept. of Education of Mass., No. 84-433 (Slip op. April 29, 1985). (affirming reimbursement to parents for educational placement of their handicapped child in a private school).

abuse counselling, tutoring and other needed services would appear to be "related services" for youth with alcohol and other drug problems while attending schools. Some states have also enacted similar statutory and regulatory provisions protecting disabled persons, specifically extending such provisions to cover persons recovering from substance addictions.³ In some instances, the states' laws are broader in scope as to the services covered than the federal provisions.⁴

Recently, however, several questions have surfaced regarding the obligations of the states and their political subdivisions obligations under the Federal nondiscrimination laws. These questions relate to the 11th Amendment state immunity from lawsuits in the federal courts without a waiver or consent by the states. In two suits, Pennhurst State School and Hosp. v. Haldeman⁵ and Scanlon v. Atascadero State Hospital⁶ this immunity issue has been recently raised before the U.S. Supreme Court in different ways. In Pennhurst, one of the issues was the 11th Amendment immunity of counties receiving state funds. In its Pennhurst opinion, the Supreme Court held that since the county's involvement in the case was a function of state laws and funds - as here in the education field, there could also be no suit against them in that case.

In Scanlon, one of the issues is whether the states themselves are immune from all lawsuits under Section 504 of the Rehabilitation Act. If Scanlon is decided in favor of the states, applying Pennhurst may result in the counties' and thereby schools being immune as well from such suits. Scanlon was argued before the U.S. Supreme Court on March 28, 1985. The Court focused on the 11th Amendment issue and the Pennhurst II opinion. A decision by the Court can be expected by the end of the term in June, 1985. Since the full Court of nine justices participated in the argument, a tie vote is impossible and reargument unlikely in contrast to several other cases already heard this term.^{6A}

³See e.g., 10 N.J. Stat. Ann. S. 5-1 et seq. (date). Minn. Stat. S. 363.01 et seq. (Minn. Human Rights Act) and 120.03 (date). Wis. Stat. S. 111.31-.395 (1981-82) See also Nold, Hidden Handicaps: Protection of Alcoholics, Drug Addicts and the Mentally Ill Against Employment Discrimination Under the Rehabilitation Act of 1973 and the Wisconsin Fair Employment Act, Wis. L. Rev. 725 (1983)

⁴Id.

⁵104 S.Ct. 900 (1984)

⁶735 F. 2nd 359 (9 Cir 1984), cert. granted 53 U.S.W.L.W. (November 26, 1984). (No. 84-351).

^{6A}See e.g. City of Cleburne v. Cleburne Living Center, No. 84-468 (Reargument scheduled for April 23, 1985). See generally, Kornen, Court Accepts Church-State Case, Washington Post, April 2, 1985, at A3 (7 tie cases and 4 rearguments).

As with the mandated health insurance recommendation and Metropolitan Ins. Co. v. Massachusetts,⁷ a decision by the Supreme Court in Scanlon can be expected by the end of the 1984 term in June, 1985.⁸ As with the Metropolitan case, there are reasons for optimism as to the outcome in Scanlon. The decision below was favorable to handicapped persons and there are strong policy and historical arguments for upholding the application of 504 to the states themselves. Several of the leading advocacy groups and even a group of nine Congresspersons have filed amici briefs supporting the position that Section 504 applies and was always intended to apply to the states.⁹

In any event, even if Scanlon were to be decided in favor the states' immunity from 504 suits on behalf of the handicapped,¹⁰ the states' own laws against such discrimination should continue to be extended and enforced to protect persons recovering from alcoholism and drug addiction particularly youth.

⁷No. 84-325, argued February 26, 1985. (consolidated with No. 84-356)

⁸See the recommendation and report on mandated insurance coverage.

⁹See e.g. Brief Amici Curiae of the ACLU Foundation and ACLU of Southern California; Brief Amici Curiae of Senators Cranston, Pell, Stafford, Wiecker and Representatives Biaggi, Edwards, Frod, Jeffers and Miller.

¹⁰In addition, to the immunity issue, the state in Scanlon is also arguing that under Quern v. Jordan, 440 U.S. 332 (1979), it is also immune from any retrospective suits against its treasury. Thus, even if Scanlon is reversed as to this issue alone, only prospective, injunctive suits against states may be permissible. Such a holding would also severely undercut effectiveness of 504 litigation. See Senators and Representatives Brief Amici Curiae, n. 9, supra.

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DRAFT

Nothing herein contained shall be construed as the action of the American Bar Association unless the same shall have been first approved by the House of Delegates or the Board of Governors

2. Qualified Privilege

AMERICAN BAR ASSOCIATION

SECTION OF INDIVIDUAL RIGHTS AND RESPONSIBILITIES

RECOMMENDATION

BE IT RESOLVED that the American Bar Association recommends that state and federal legislation should grant to teachers and other educational personnel, qualified privilege in respect of civil liability for libel, slander and malicious abuse of prosecution, where they, in good faith and for reasonable cause, report to the proper school authority the suspected abuse, possession or sale of drugs or alcohol by a student on school property.

REPORT

Several witnesses appearing before the Advisory Commission raised the issue of teacher or other school personnel involvement in identifying and referring youth with alcohol or other drug problems for treatment.¹ The Commission has separately recommended that school personnel be adequately trained regarding the many aspects of youth alcohol and other drug problems.^{1A} Because of current legal developments, however, there is a legitimate concern regarding the civil or criminal liability of teachers for identifying, reporting or confronting students with alcohol or other drug problems.

A number of states currently provide immunity from civil liability to school personnel who report suspected student drug-related activity to appropriate school officials.^{1B} The separate states allow exemptions from liability for a variety of different teacher actions. For example, Delaware provides civil and criminal immunity for school personnel who have probable cause to believe a person possesses controlled drugs and provides information leading to the arrest of that person.^{1C}

Florida limits the immunity to school personnel who report "in good faith to the proper school authority suspected unlawful uses, possession, or sale of drugs by students."² The Florida immunity statute, then, restricts the use of the reported information to notification of the parent or legal guardian of the student's alleged conduct. The report to the parent or guardian may only be made by the school principal or his designee.³

¹String cite of current laws.

^{1A}See e.g. Testimony of William Colletti and Robert Halford, Atlanta.

^{1B}See the recommendation and report regarding coalitions, school and community involvement.

^{1C}See e.g. Del. Code Ann. tit. 14, S. 4112(d)(1984); Fla. Stat. Ann. S. 232.27 (1984); Ga. Code Ann. S. 51-1-30.2 (1984); 18A N.J.Stat. Ann. S. 40-4.2 (West 1984); N.Y. Educ. Law S. 30 28-1 (Consol. 1984).

²Fla. Stat. Ann. S. 232.27 (1984).

³Id.

Georgia, on the other hand, provides civil immunity for teachers and other school personnel who communicate" information in good faith concerning drug abuse by any child to that child's parents, law enforcement officials, or health care providers."⁴ The Georgia statute, though similar to Florida's, provides greater latitude to teachers in reporting suspected student drug-related activity. The law grants to the teacher the discretion either to consult the student's parents immediately, or to go directly to the police, or health care provider. In addition, Georgia places the discretion with the teacher to expose the suspected abuse to those outside the school community. In Florida, the responsibility is limited to notifying the student's parents or guardians and is vested solely with the school principal.

New York's education statute provides for civil immunity for any school personnel who, have reasonable cause to suspect that a student is a substance abuser, and subsequently reports such information to school officials or parents depending on that particular school's established drug policy.^{4A}

Of the statutes researched to date, New Jersey's teacher immunity statute is the most complex.⁵ New Jersey not only grants to school officials an immunity from civil liability for reporting suspected student drug abuse, but also places an affirmative duty on educational personnel to make

⁴Ga. Code Ann. S. 51-1-30.2

^{4A}N.Y. Educ. Law S. 3028-1(a)(Consol. 1984). The establishment of such a school "drug policy" could provide an additional protection for teachers and students in the drug reporting situation involving possible civil liability. Such a drug policy can also conceivably include procedures for treatment referral and providing educationally related services. See the recommendation and report on discrimination.

⁵N.J.Stat. Ann. S. 18A:40-4.1-4.2 (West 1984).

such a report.⁶ Upon a good faith suspicion of student drug abuse, educational personnel may notify the student's parents, and then compel a medical investigation to prove or dispute the allegations. If each of these actions: the report by the teacher; the medical investigation; and the suspension of the student is taken in good faith, the school representative is free from potential civil liability. The statute provides New Jersey education personnel with a step-by-step procedure to follow once student drug activity is suspected. Also included in the statute is the grant of authority to school officials to require an immediate medical examination to substantiate the charges. Although this aspect of the law has yet to be judicially tested, a recent U.S. Supreme Court decision, New Jersey v. T.L.O.,⁷ suggests

⁶Id., N.J. Stat. Ann. S. 18A:40-4.1

Whenever it shall appear to any teaching staff member, school nurse or other educational personnel ... that a pupil may be under the influence of a controlled dangerous substance ... such teaching staff ... shall report the matter as soon as possible to the school nurse ... The principal or his designee, shall immediately notify the parent or guardian and the superintendent of schools, ... and arrange for an immediate examination of the pupil by a doctor selected by the parent or guardian. ... If such doctor ... is not immediately available, the pupil shall be taken to the emergency room of the nearest hospital accompanied by a member of the school staff ... and a parent or guardian, ... for the purpose of diagnosing whether or not the pupil is under such influence. ... If such diagnosis is positive, the pupil shall be returned to his home ... and appropriate data shall be furnished to the Department of Health ... The pupil shall not resume attendance at school until he submits to the principal a written report certifying that he is physically and mentally able to return.

⁷New Jersey v. T.L.O., 53 U.S. L.W. 4083, (January 15, 1985).

that the other sections of the New Jersey law are permissible under the Fourth Amendment.⁸ In T.L.O. the Court held that though the Fourth Amendment prohibition against unreasonable searches and seizures applies to searches conducted by public school officials,⁹ such searches need not be supported by a warrant, nor by probable cause.¹⁰ Rather, in the school setting, the Fourth Amendment requires only that a student search be "reasonable" in light of the circumstances. The Court concluded:

Such a search will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction.¹²

The Court in T.L.O. attempted to balance the legitimate end of preserving order in the schools with the recognized interest of student privacy. The Court resolved the balance by applying a reasonableness standard: Was the initiation and extent of the search reasonable given the setting, the nature of the offense and the grounds for the suspicion that no offense occurred. Any future student searches, including those mandated by the New Jersey teacher immunity statute, will be judged by the T.L.O. standard. Also, based on T.L.O.'s "reasonable" standard, there may soon be attempts to amend existing state statutes to reflect the "probable cause" standard.

The T.L.O. decision spares "teachers and school administrators the necessity of schooling themselves in the niceties of probable cause and permit them to regulate their conduct according to the dictates of reason and common sense."¹³ The Supreme Court has sanctioned those student searches reasonably undertaken. There is reason to believe that this sanction might even be extended to include student breathalyzers, urine tests or other medical examinations where the circumstances reasonably imply student drug abuse.¹⁴

⁸See Const. amend. IV.

⁹T.L.O. above, 53 U.S. L.W. 4083.

¹⁰Ibid., at 4087.

¹¹Ibid., at 4087.

¹²Ibid., at 4088.

¹³Ibid., at 4088.

¹⁴See the recommendation and report regarding revocable youth license.

Accordingly, because of the deterring effort possible tort liability has on teachers and other school personnel good faith reports of suspected student drug and alcohol use and abuse, the Commission recommends extending a qualified privilege for such attempts to help students. With such a privilege teachers and other school personnel can act conscientiously without fear of possible recrimination if their reasonable bases for reporting is challenged later in court.

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3. Consent

AMERICAN BAR ASSOCIATION

SECTION OF INDIVIDUAL RIGHTS AND RESPONSIBILITIES

RECOMMENDATION

BE IT RESOLVED that the American Bar Association recommends that school systems and other public providers of services to youth should not discriminate against a youth because he/she seeks treatment for alcohol or other drug problems.

BE IT FURTHER RESOLVED that the American Bar Association recommends that states should enact statutes permitting a minor to obtain voluntarily custodial or invasive treatment at a state licensed facility, even if the parents after being notified fail to, or do not consent to such treatment programs, provided that in the absence of such consent, within 48 hours, that qualified counsel is appointed for the juvenile, that parents have the right to participate, and that an appropriate alcohol or other drug treatment professional promptly evaluates the juvenile and the proposed plan of treatment and that an appropriate judicial body reviews the treatment plan for the juvenile.

REPORT

The Commission heard testimony at all of its three field hearings regarding some of the barriers to treatment for youth with alcohol and other drug problems, in particular, issues of parental consent to such treatment.¹ As explained by several witnesses, parental consent may be required for those youth voluntarily seeking treatment, and this consent may not be given in cases where the parents themselves have alcohol or drug problems, or refuse on other grounds.^{1A} In some cases, programs cannot provide treatment without consent because of legal or financial requirements. In addition, there is also the issue of confidentiality of youth records when parental consent is required.^{1B}

As a means of encouraging more juveniles to voluntarily enroll in alcohol and other drug treatment programs, the American Bar Association recommends that parental consent not be required for the purposes of any non-custodial, non-invasive^{1C} treatment of juveniles.² When a juvenile does seek custodial, invasive treatment, the ABA recommends that the parent be notified. If the parent fails to consent, procedural safeguards will prevent the defeat of the juveniles treatment goals and will determine that the juvenile in fact needs treatment. This statement is not intended to interfere with any already established legal rights of parents to place children in treatment in accordance with appropriate due process safeguards.

The question of parental consent for juvenile alcohol and other drug abuse treatment is a matter of state law. At present, thirty-five states do not require parental consent for treatment.³ Of those states, approximately ten have clauses which require parental consent unless the treatment program staff comes to the conclusion that parental involvement would not be in the best interest of the child. Typical situations triggering this clause may be those where the parent refuses to consent, but the physician or qualified treatment team believes the child should receive

¹See e.g., Paul Samuels, Princeton.

^{1A}Id.

^{1B}Id. See n. 8, infra.

^{1C}Non-custodial, non-invasive treatment is any treatment where the juvenile is not detained overnight or in any way against his/her will and which consists only of counseling. This counseling can include help for personal problems and for coping with parental alcohol and drug problems.

²For purposes of this recommendation, state law governs the age of maturity.

³A thorough analysis of state law regarding a minor's right to consent to treatment is compiled in a book written by James M. Morrissey, Esq., and is awaiting publication.

treatment, or where the parent may in fact object and prevent the child from receiving treatment.⁴ While those state laws with no consent requirement for treatment vary in degree, "treatment" is generally defined as any alcohol or other drug treatment, be it custodial or non-custodial, invasive or non-invasive.⁵

It is necessary to strike a balance between parental involvement and support in a juvenile's treatment⁶ and situations where little would be accomplished by involving a parent.⁷ The ABA Advisory Commission is concerned as to whether requiring parental consent to treatment is always in the child's best interest.

The goal of this recommendation is to encourage juveniles to obtain alcohol and drug abuse treatment. This goal would be more easily accomplished if there were no barriers to the juvenile's ability to seek treatment.⁸ Juvenile alcohol and drug abuse is a "family disease" because it affects the entire family.⁹ In addition, many juveniles become abusers because their parents are abusers.¹⁰ Because denial is a factor within the addiction

⁴See remarks by Paul Samuels, Princeton.

⁵See Morrissey, note 3, supra.

⁶Id.

⁷See remarks by Robert D. Margolis, Ph.D., Atlanta.

⁸An additional impediment to juveniles seeking treatment is the fear that their parents will learn of the juveniles drug/alcohol problem. Thus, the confidentiality of drug and alcohol abuse treatment records may be a critical aspect of the effective treatment of abusers. The issue of confidentiality of treatment records is currently under study by the Attorney General (See Attorney General's Task Force on Family Violence, Final Report, September 1984); the National Center on Child Abuse and Neglect (NCCAN) and the Alcohol Drug Abuse and Mental Health Administration (ADAMHA), which are both components of the Department of Health and Human Services. (See Joint Policy Statement on Confidentiality of Alcohol and Drug Abuse Patient Records and Child Abuse and Neglect Reporting, Appendix to Atty. Gen. Op. Supplementing 76-52, May 3, 1979). The Advisory Commission is also studying this issue further before setting forth a recommendation.

⁹See Remarks by Paul Samuels, note 4, supra.

¹⁰Recent statistics on children of alcoholics reveal that: approximately 28 million Americans have at least one alcoholic parent; 7 million children under age 20 are children of alcoholics; some 500,000 children in New York State live in alcoholic families; more than 50% of all alcoholics have an alcoholic parent; and sons of alcoholic fathers are 4 times more likely to become alcoholics than sons without alcoholic fathers. THE MAGNITUDE OF SUBSTANCE ABUSE IN AMERICA, Special Report of the Off. of Juvenile Justice and Delinquency Prevention, U.S. Dept. of Justice at 11 (October 1984).

diseases, many abusing parents, in an effort to refuse to recognize their own addictions, may find it personally threatening to permit their children to obtain treatment or to get appropriate help in coping with their parents' addiction.¹¹ Moreover, many juveniles who are substance abusers come from broken homes -- or have no parent or guardian who could consent to treatment on their behalf.

For those juveniles who do have loving parents who are not themselves substance abusers, the necessity of obtaining parental consent for treatment may not always be in the best interests of the child. Many juveniles will not seek treatment for substance abuse if parental consent is required simply because of the tension that would be created if the parents were to discover the juvenile's alcohol or drug problem. A good treatment program recognizes the importance of parental involvement and will usually involve the family in the juvenile's treatment at the earliest possible stage. Since alcoholism and drug addiction have an impact on the entire family, treating only one family member is not as effective as treating all members of the suffering family.¹² This familiar intervention also serves to cushion the threatening nature of the juvenile's situation and also reinforces the traditional supportive structure of the family unit.

There are constitutional questions as well regarding the denial of treatment to a juvenile if he or she refuses to obtain parent consent, or when the parent is contacted but refuses to permit treatment. The U.S. Supreme Court has affirmed a Washington court decision allowing a blood transfusion to a minor over the objections of the minor's parents who were practicing Jehovah's Witnesses.^{12A}

¹¹Id. Mr. Samuels has found this is especially true when the child is not necessarily abusing alcohol or drugs but is seeking counseling to help cope with the addicted parent.

¹²But see Youngberg v. Romeo, 102 S. Ct. ____ (1985).

^{12A}Jehovah's Witness v. Kings County Hosp., 278 F. Supp. 488 (W.D. Wa. 1967), aff'd. per curiam, 390 U.S. 598 (1968) (without opinion, affirming in reliance on Prince v. Massachusetts, 321 U.S. 158 (1944)). See also Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52 (date).

While the Advisory Commission has not drafted a model statute as such for a consent statute for non-custodial, non-invasive treatment for juvenile alcohol and other drug treatment, several states have enacted statutes that carry out the intent of the Advisory Commission's recommendations.

[We will cite -- perhaps -- two or three state statutes]

A much thornier problem is whether parental consent should be required when a juvenile seeks custodial or invasive treatment for alcohol or other drug abuse. Again, the goal of this recommendation is to eliminate as many barriers as possible so that the juvenile will seek treatment. The recommendation also recognizes the right of the parent to be informed of the child's problem and treatment, yet protects the child's interest in treatment should the parent refuse to consent.

This recommendation is a rejection of 3 concepts: 1) that parental consent must always be obtained prior to a minor's treatment; 2) that a minor at whatever age is always competent to decide whether in-patient, invasive treatment is appropriate; and 3) that a treatment facility staff is always an adequate substitute for parental guidance in treatment matters.

The recommendation's procedural framework is best discussed by way of example. A juvenile recognizes that s/he has a substance abuse problem. Perhaps the juvenile has attempted counseling or other non-custodial, non-invasive treatment without success. For a variety of reasons, the juvenile is reluctant to seek help from a parent or guardian. In many cases, the parent or guardian may be unaware of the problem. For reasons discussed supra the involvement of the parent or guardian may not be in the best interests of the child. When the juvenile contacts a state licensed facility for treatment, the staff will inform him/her that the parents must be notified and their consent obtained before the juvenile can be committed. The parents are contacted and they refuse to give their consent for treatment. This right of the parent to be informed and to give or withhold consent has been upheld by the U.S. Supreme Court.

Our jurisprudence historically has reflected Western civilization concepts of the family as a unit with broad parental authority over minor children. Our cases have consistently followed that course; our constitutional system long ago rejected any notion that a child is "the mere creature of the State" and, on the contrary, asserted that parents generally "have the right, coupled with the high duty, to recognize and prepare [their children] for