

The Criminal Justice System : A Catalyst to Addiction Treatment

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The Canadian Criminal Justice system becomes a complex and at times contradictory maze for an individual arrested and found guilty. Consequences can range from community service, to probation with or without programs or plans of care, to prison. Philosophically, the system struggles to respond to the conflicting goals of retribution versus restorative justice. Within the debate there is further lack of clarity as to whether the purpose of incarceration is to safeguard society by removing those who transgress its rules : to punish, or to rehabilitate. Ironically, under the present circumstances, none of these goals are fully realized to the satisfaction of their proponents. In the case of drug addicts, there are more drugs in prison than on the streets.

We can categorically state that no one believes any longer that the prison system is rehabilitative. Recidivism rates make a mockery of any assertion to the contrary. Prisons are revolving doors with inmates funneling through the front door and being released through a back door and in most cases these individuals continue to involve themselves in criminal activities. Clearly imprisonment is not a satisfactory answer if we wish the system to be instrumental in making the world safer by reducing crime.

There are, however, many at this conference who can enter this broad debate with far more knowledge and experience than I. Therefore I would like to focus my presentation on the issues surrounding drug-addicted clients of the system. I believe that we will be able to generalize considerably from our experience with this clientele.

I would like to take the next few minutes to look at the challenge that the addicted offender poses for the criminal justice system, and what is it that we are trying to achieve. The drug use forecasting study of the National Institute of Justice¹ in the United States found that up to 75% of those arrested in 20 major American cities were on cocaine. When asked, a great preponderance of these individuals also reported having been dependent on heroin at some point in their lives. Pamela Fralick,² Deputy Director of the Canadian Centre on Substance Abuse in Ottawa, cites three studies in Ontario which

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1. Senator H.A. Williams, Jr., "Therapeutic Communities and Corrections : A Necessary Alliance" in *Drugs and Society to the Year 2000* (National Institute of Justice, 1991) at 562-564.
2. P. Fralick, "Bill C-41 and Treatment Resources — Myth and Reality" in *Symposium on Drugs, Rehabilitation & Criminal Justice : A Creative Partnership for Recovery* (Montreal : Portage Foundation, 1996) at 60.

conservatively estimate that 64% of those who become involved with the criminal justice system have substance abuse problems. The percentage becomes even more alarming when we examine those incarcerated. The number then runs as high as 80%.

The eminent Canadian philosopher and ethicist, Dr. David Roy³ postulated four fundamental goals that a drug control policy in Canada should possess. These were to :

1. Curtail and eliminate the huge incomes produced by drug traffickers and associated criminal organizations;
2. Eliminate the criminal organizations that import, market and distribute drugs;
3. Reduce the impact of the illegal drug trade on society; and
4. Emancipate, through treatment, the addict whose cravings are the underpinning of that most lucrative criminal commerce, drugs.

Before we conclude that there is so much drug use in our society that emancipation is a hopeless task, I wish to point out that, in the case of cocaine, 76% of all cocaine imported into the country is consumed by the addicted or heavy habitual users who make up only 14% of the cocaine-abusing population. From this, we can surmise that our ability to reduce the market for cocaine will be a function of how well we deal with this 14%. Our experience of the past several decades indicates this is a challenging task. Addicts continue to abuse cocaine in spite of threats of criminal punishment, the knowledge that cocaine will ruin their careers, destroy their relationships, homes, or even their lives. Using the criminal justice system as a blunt instrument to try to effect reduction in demand is a misguided endeavour. However, I will want to return to an appropriate use of the justice system further on in the presentation.

For our purposes, drug addiction can be described as a chronic, relapsing condition consisting of a social malaise, driven by broad social pathology. Individuals who live in an environment of social distress and hopelessness are at greater risk to initiate drug use in order to find solace from the distressing features of their environment. The use of drugs alters their psyches to the point that even the most disturbing problems of their social context become acceptable. Thus, as their distress and hopelessness appear to abate through the use of drugs, they find cause to take more drugs to stimulate the pleasure centres and avoid what was most unpalatable about their social context.

Some individuals who have, or who are prone to problem behaviours, use substance abuse as a convenient excuse for those behaviours. Peer pressure can also be considered as a powerful factor, especially in the above context. In summary, helplessness, hopelessness, feeling powerless to change disturbing aspects of one's social environment, all predispose an individual to substance abuse. Severe substance abuse brings with it not

3. Dr. D.J. Roy, "Drug Research : Impact on Public Policy" in *Drugs and Society to the Year 2000* (1991) at 415-418.

only severe health problems but also problems like child abuse, spousal abuse, homicide, suicide, traffic injuries and fatalities, cardio-vascular disease, etc.

There also exists a high correlation between substance abuse and mental health disorders. Dr. Beny Primm,⁴ former head of the Office for Treatment Improvement of the National Institute of Mental Health in Washington reports that "[...] based on data from the epidemiological catchment area, a study of the lifetime prevalence of drug abuse found that 71% of all drug abusers also have a mental disorder". He goes on to say that "about half of all people with a lifetime diagnosis of schizophrenia or related diseases have had some type of substance abuse. In addition, nearly 26% of those afflicted with depression or manic depression or bipolar disorder were habitual drug users. Finally, some 18% of substance abusers also present with antisocial personality disorder".

One common causal factor for the onset of habitual drug abuse that appears in all instances, is the effect of stress in its various forms on the individual.

To recapitulate, environmental and social factors in conjunction with the mental health status of the individual combine to predispose individuals to addictive disorders. Eighteen percent of addicts can also be considered as asocial personalities.

From these statistics, we can conclude that prisons are perhaps not the most appropriate or cost-effective places for the treatment of addictions.

As we have seen, when we talk of the addict we are not speaking of otherwise normal people who just happen to use drugs.

Drug abuse impacts in pathological ways on the abuser, radically altering their personalities and behaviours. This dramatically increases the risks to society not only through the addicts criminality but also through a constellation of irresponsible behaviours. Apart from chemical dependency, drug abusers also suffer from a radical alteration of attitudes and values, lowered self-esteem, and an erosion of their character. This, in turn, often produces behaviours that are antisocial, often criminal. The addict manifests an almost absolute indifference to the welfare of others.

The data on treatment research is encouraging. Appropriate treatment under the right conditions is able to impact on the erosion of character and assumption of negative values. Drug abuse and its concomitant behaviours can be overcome. Addiction is a disorder that can be addressed by proven successful treatment regimens. Organizations like Portage are successful in rehabilitating this difficult clientele because they are of the community, exist to serve the community and embody the values of their community. Their goals are typically simple : to return addicted, alienated individuals to society as productive members possessing the courage to lead a normal life.

The impact of appropriate treatment on the addict is well illustrated in the massive multi-year research study conducted in the United States and commonly referred

4. Dr. B. Primm, "Addiction : Social Pathology or Individual Program" in *Drugs and Society to the Year 2000* (1991) at 266-272.

to as DATOS or the Drug Abuse Treatment Study. Sells and Simpson⁵ have found that of those addicts treated in long-term residential programs, 40% remained drug-free and crime-free in the year post-treatment. Hubbard et al. (1989)⁶ further elaborated on this with their finding that with this population, there was a 50% reduction in predatory crime 3 to 5 years post-treatment. These findings are even more remarkable in light of the fact that at least half the clients in residential addiction treatment programs meet the criteria to be diagnosed as suffering from antisocial personality disorder (Tims (1995)⁷). Further, it was found that most of the cost-benefit ratio was explained by reductions in criminal behaviour.⁸

All right, you might say, you made your point, treatment is desirable but could it not occur in the course of incarceration?

The study by Lockwood et al. (1996)⁹ on drug dependent felons in the Delaware State prison system found that within 18 months of release, the re-arrest statistics were a whopping 50% better for those treated in community-based programs compared to prison-based treatment.

That is all well and good, you might think, but what about the costs associated with treatment? Dr. Frank Tims¹⁰ reported that community-based residential treatment costs over a 6 month period represent 41% of incarceration costs from the same period and only 38% of the societal costs that are incurred if the addict remains untreated during the same period.

Add to this the findings of Gerstein et al. (1994)¹¹ from the CALDATA studies which show a cost-benefit of \$7 returned for every dollar invested in treatment, and we can conclude that treatment is the most effective and least costly response to the problem of drug addiction.

Now that we can conclude that treatment is the best way to respond to addiction and its accompanying delinquent behaviours, we still have a few hurdles to overcome.

One major challenge is that in order for treatment to be successful, it requires motivated and prolonged involvement from clients who typically recognize very little need

5. Dr. F. Tims, "Bill C-41 and Treatment Resources — Myth and Reality" in *Symposium on Drugs, Rehabilitation & Criminal Justice : A Creative Partnership for Recovery* (Montreal : Portage Foundation, 1996) at 64-71.

6. *Ibid.*

7. *Ibid.*

8. *Ibid.*

9. *Ibid.*

10. *Ibid.*

11. *Ibid.*

for treatment. Rosenthal (1991)¹² stated that "drug abusers rarely seek treatment unless compelled to do so or confronted by far less desirable alternatives". The necessary motivation, which is an essential pre-condition if treatment is to succeed, very seldom accompanies the addict into treatment.

There appears to be a direct correlation between accepting treatment and the degree of pressure exerted by significant others, employers and the criminal justice system. The courts play a critical role when providing an addict offender a treatment option in place of prison; this is an opportunity that many addicts would never have sought for themselves. The issue of compulsion is a mute point since both the data, and our experience, show that very few addicts would enter treatment in any other way.

Pressure by the courts also appears to be efficient. The research indicates (Hubbard et al. (1989)¹³ and Rosenthal (1991)¹⁴) that legal supervision increases the time a client will remain in treatment and that legally-referred clients do as well overall as those who enter treatment voluntarily.

It is clear that the personal commitment and discipline which are required for long-term treatment are absent in the majority of severely addicted cases but that some form of compulsion can be an effective substitute for their lack of willpower.

The new era in sentencing possibilities ushered in by the passing of *Bill C-41* legitimizes a process of conditional sentences to drug addicts long practiced by some progressive members of our judiciary. It also brings Canada in line with the practices of several Western European states. De Ruyver¹⁵ reported that while members of the European Union take a straight criminal approach to *in casu* dealing, they have a wide range of possible actions available at all levels of the criminal procedures, when dealing with offences committed by addicts to supply their addictive needs. These options are designed to induce addicts to seek treatment. The predominant attitude De Ruyver concludes "is that drug-related crime is a symptom of the underlying addiction problem and will go away only if properly treated".

The French "Code de Santé Publique" has provisions that have as their objectives both the voluntary and compulsory treatment of addicts. Similar arrangements exist in Portugal, Italy, Luxembourg and Germany. All these countries endeavor to keep drug users and addicts out of the criminal justice system. In cases where the criminal proceedings progress to the sentencing stage, the courts will only impose a prison sentence when the addict declines to enter and complete treatment.

12. M.S. Rosenthal, "Treatment and Corrections : A Necessary Alliance" in *Drugs and Society to the Year 2000* at 544-548.

13. F. Tims, "Bill C-41 and Treatment Resources — Myths and Reality", *supra* note 5.

14. *Supra* note 12.

15. Prof. B. De Ruyver, "The Existence of a Medical Model Besides the Traditional Retributive Model" in *Symposium on Drugs, Rehabilitation & Criminal Justice : A Creative Partnership for Recovery* (Montreal : Portage Foundation, 1996) at 79.

For the past 25 years, the Portage Program for Drug Dependencies has enjoyed a very privileged relationship with the judiciary in the Province of Québec. Hundreds of remarkable cases of the recovery of seemingly hopelessly addicted offenders had their beginnings in Québec courtrooms presided over by enlightened judges. The willingness to use the imposing weight of the judicial office to effect recovery rather than to exact retribution are the hallmark of all these cases.

For many addicts, standing in front of the bench represents the end of a hopeless, downward spiral. Some criminal lawyers believe that with many addicted offenders they are the last and only friend that their client has.¹⁶

So standing in front of the bench, alienated, hopeless and frustrated, the addict confronts the values and norms of his society in the most concrete and personal way. This is truly an existential moment. Will the judge reaffirm the addict's opinion of himself as incorrigible and worthless "toxic waste" and impose a sentence befitting such a person, or will the judge recognize that behind the façade of drug addiction, lives a frightened and sick human being. The affirmation that the addict receives from the judge if a treatment option is selected combined with the motivation provided by the demands of the conditional sentence can help keep the addict in treatment when his fragile willpower is ready to shatter.

In many cases the courts have the power to provide the addict with the opportunity through treatment to rebuild their confused lives and the means through conditional sentences to reinforce the desire to do so.

It makes good sense from a humanitarian point of view, from an economic point of view, from society's point of view. The partnership between the judiciary and the treatment community providers can be a powerfully positive one. It is one of the only ways to ensure that treatment will work.

16. The Honourable J. Charest, "Creative Justice — The Jeanson Story" in *Symposium on Drugs, Rehabilitation & Criminal Justice : A Creative Partnership for Recovery* (Montreal : Portage Foundation, 1996) at 21.