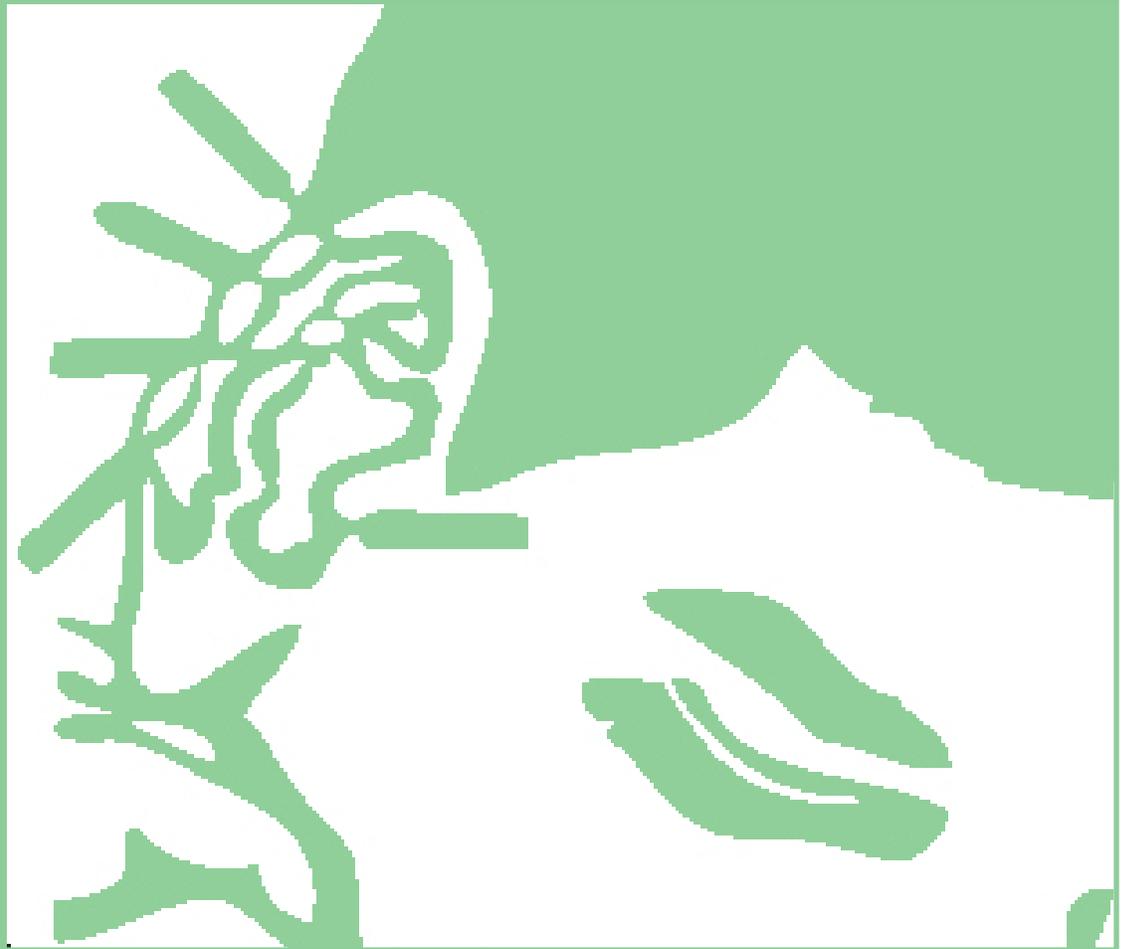


Criminal Justice and Drug Courts



How AcuDetox Aids Justice Outcomes



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*Some Principles of
Therapeutic Jurisprudence*



Michael O. Smith

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Lincoln Recovery, Bronx (1999)

Drug court involves referral to treatment with a close monitoring and validation of that process. Drug court becomes the center of the defendant's recovery. Therapeutic jurisprudence defines the pivotal role of the court in this process.

In the drug court setting, the defendant's relationship with the judge is the most important element. The judge represents society and commonly held social values. However, in this setting, his or her personal presence is most critical. A drug court is, then, a familial or community context. The atmosphere and strategies of a drug court depend on the judge's personality and the goals of the particular jurisdiction. There is no single approach to drug court.

The relationship with the judge is the most important source of growth and discipline for the defendant. Nevertheless, constructive communication of any kind is difficult for a drug-abusing defendant. Usually these defendants have had a long history of dysfunctional relationships, low self esteem, shame, manipulative habits, and chemically related chaos. Expecting such a defendant to speak honestly in court from the beginning is unrealistic. Honesty and mutual respect are valuable goals, but they must be earned through repeated court visits and the defendant's developing sobriety. One should not be misled by bravado and hustling behavior; virtually all of these defendants will seek sobriety and respectful relationships given the right circumstances. The high rate of graduation from drug court programs as opposed to conventional management is a strong indication of this potential.

Drug court involves teaching discipline. This lesson is presented on two levels. First of all, the court represents the conventional rules of the criminal justice system. However, drug court is a necessary innovation precisely because this first conventional level of discipline has not been effective. The second level of discipline relates to the improved process of teaching discipline that characterized drug court. Within the prescribed limits that each local justice system has set for its drug court, there is an area of relative flexibility. Consistent attendance is required, but lapses are tolerated during the defendant's struggle to attain consistent compliance. Sobriety is required, but slips often occur during even the most successful recovery process. This area of flexibility also extends to matters of attitude and communication in the court room and the treatment program. It is important for the judge to take advantage of these areas of flexibility. The court helps the defendant gain discipline and sobriety

by applying a constructive focus during the day-to-day struggle for survival and sobriety.

First of all, the judge must accept the defendant as a person of real and potential value. By setting up frequent, encouraging court visits, the judge demonstrates his or her concern and commitment. Defendants typically have low self esteem. It will take time for them to realize that the judge's concern is real. The increasing acceptance of personal value by the defendant is a theme that will continue throughout the drug court process. Because of the defendant's limited capability, the judge must focus on short-term goals and avoid temptations to focus on long-term challenges. Building a safe and secure future may be the best "reason" to enter treatment. However, the necessity of prolonged achievement is often quite intimidating for the defendant and hence may actually be a source of failure. The judge should ask the defendant about their daily issues and try to set the judicial challenge in the defendant's own terms.

The judge and the court staff should not be overly concerned by day-to-day slips and frustrations. They are part of the process of recovery. Court staff will often disagree about the relative value of a defendant's actions. These staff splits are also quite typical of the therapeutic situation. Ambivalence on all levels occurs as part of any profound change. Consequently, it is important to focus on small specific units of behavior as measured by attendance and toxicology results. The court should always strive for simplicity and clarity, but it should be prepared to share some of the ambivalence and chaos that typify a defendant's life.

In terms of behavior modification, positive reinforcement is considerably more effective than negative reinforcement. Whenever possible the judge should use the strategy of encouraging constructive behavior rather than blaming negative activity. Sanctions will be more productive if they are short and specifically tied to a particular adverse behavior. Within the drug court setting, use of sanctions has the fundamental role of communication and teaching. These sanctions should not be confused with the conventional sentencing process.

The judge and the court staff must be able to perceive the depressions and frustrations that accompany a defendant's struggle for sobriety. There will be ups and downs in every conversation with the defendant. It is a mistake to encourage the defendant to express a false level of enthusiasm. Let each court appearance reflect the energy and feelings of that moment. The sincerity and respect shown by the judge will be a major support for the

defendant even though the defendant may not be able to express it at that time.

Drug court sessions function effectively as an educational social drama. Defendants are usually quite attentive to the judge's conversations with other defendants. They are encouraged by examples of concern, bonding, tolerance, and progress. The defendants look for evidence of general fairness and concern; they are not likely to make precise comparisons between statements and sanctions made to one defendant versus those made to another defendant. The drug court setting provides an excellent opportunity to encourage defendants at each level of success. It also provides the best way to express the community's concern and support during periods of struggle and conflict. Even though the judge and the defendants are the primary speakers in the drama, it is very helpful to have other court staff personnel and other defendants make comments as well. These secondary comments can highlight additional aspects of the case or express the judge's viewpoints in other terms. Due to the defendants' low self esteem, this collective process of communication can be more effective than a conventional one-to-one conversation. The spirit of the struggle for sobriety is very suited to a group setting.

Drug courts play an increasingly important role in setting the priorities for local drug treatment policy. Drug courts require prolonged outpatient sobriety prior to graduation; therefore outpatient treatment has to be the cornerstone of drug court based treatment. Depending on individual assessment process, a number of defendants may spend time in a residential setting. Nevertheless, the responsibility of drug courts is to graduate only those defendants who have been consistently drug-free while

living in the community. The drug court judge must look for outpatient treatment programs which treat the appropriate types of drug dependencies. It is also helpful to have programs which can accept patients on short notice so that the onset of treatment can begin soon after arrest and the first court visit. It is often helpful to invite treatment policymakers to visit a drug court setting so they can observe the greater degree of cooperation and motivation that is present.

Ironically, fear of success is a common problem among drug court attendees. A person may not recognize their own strength and fear that failure is almost inevitable. In this viewpoint, every compliment creates an immediate fear of disappointing that person and of eventual rejection. Using the strategies of "one day at a time" and "keep it simple" minimizes these problems. Recovery from addiction is indeed a lifelong challenge. A careful, humble, and diligent approach is useful. The defendant needs to continue to attend meetings and support functions based on their own commitment, not just as a consequence of the court's rules. Graduation from drug court is indeed "a commencement," that is, a beginning of a lifelong effort. Defendants who successfully complete drug court will often feel a "loss" in their lives when they are no longer able to participate in the court sessions. The court should recognize this loss and invite graduates to return to court occasionally and to participate in alumni activities.

*Use of Acupuncture
Detoxification in the
Criminal Justice System*



Michael O. Smith

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**Testimony presented to the New York
City Council (March 21, 1988)**

Good afternoon, my name is Michael O. Smith. I have been the medical director of the Substance Abuse Division of the Department of Psychiatry of Lincoln Hospital for the past 14 years. Previously I was chief psychiatrist at the Bronx House of Detention and have been a frequent consultant in criminal justice settings, so that it is a culmination of many years' work for me to have the honor to report to this sub-committee of the City Council about the effectiveness and potential of our substance abuse program, as applied to the criminal justice system.

In January 1987 our clinic population was suddenly transformed by the avalanche of cocaine-based "crack" that continues to threaten our lives. We have all read about the bizarre, intractable nature of crack addiction. In professional meetings we have been told that there is no known treatment for the craving and fearful cycles of crack. From the beginning our experience at Lincoln has been strikingly different than these reports.

3,000 crack patients have been treated at Lincoln--many more patients than have been seen at any other program. Crack abusers seek treatment earlier in the course of their illness than other addicts. They usually have a longer history of prior drug-free status than other abusers.

At Lincoln Hospital we have found that crack abusers are frequently responsive to acupuncture detoxification as a foundation for long term conventional drug-free treatment. Most of the 200 patients seen daily at Lincoln are crack abusers. They receive acupuncture treatment in a large community room where most patients seem to be relaxing or meditating. Counseling, daily urine testing and Narcotics Anonymous are also part of the Lincoln Hospital program.

We have developed a protocol that is specifically intended to serve criminal justice clients rather than merely grafting probation and parole referred clients onto a treatment structure designed for voluntary walk-in clients. I believe our program has had the highest success ever recorded in the treatment of an unscreened court mandated population seen on an outpatient drug free basis. More than 50% of these clients have provided negative urine toxicologies for more than 2 months. We have received no adverse reports on these individuals. Certainly, the Lincoln Hospital acupuncture program has the best record in the city for the treatment of court mandated crack abusers.

In October 1986 Lincoln announced a new approach to the treatment of referrals from the criminal justice system. Until that time Lincoln has experienced

individual success with violence prone abusers but had not been able to have a significant number of criminal justice referrals. Our staff gave talks and demonstration treatments at local probation and parole offices. A computerized tracking system was set up with the assistance of Dr. Stan Altman of Stony Brook (SUNY) so that any client's urine testing record could be located at a moment's notice. Lincoln tests urines for cocaine and heroin on a daily basis with an EMIT system located on the premises. Therefore a probation officer, for instance, can receive a substantial, precise, and up-to-date report on any client with one phone call. This system is much more appropriate than written correspondence for the hectic and often chaotic work pattern in criminal justice service agencies. Staff members from probation, parole, and family court frequently call for status reports. They also visit the Lincoln Clinic and may have a joint session with the client and Lincoln counselor on such an occasion. We have asked to submit a computer print-out of the toxicology results of our probation clients to Commissioner Kevin Smyley. Let me share these results with you today. The print-out we are using lists only the first name of each client for reasons of confidentiality.

55 clients referred by the NYC Probation Department are listed in our 1987-8 records. Most of these clients have received probation with a requirement for drug abuse treatment. Some of our most successful clients have been referred to Lincoln during the pre-sentencing probation investigation. The statistical data can be summarized in the following manner. 11 of the 55 clients (20%) attended Lincoln only once. 30 of the remaining 44 clients (68%) have responded quite well to treatment and have provided consistently negative urine toxicologies. This group of 30 successful clients has attended Lincoln for an average of 9 consecutive weeks over a total span of more than 4 months. Many have earned such favorable reports that probation has been discontinued. The pre-sentencing clients were assigned to probation instead of receiving prison time. The judges involved were clearly impressed by our clients' long record of clean urines on an out-patient basis. The successful clients have been frequently able to find employment. Supportive family relationships have been re-established. After completing the Lincoln Hospital program, clients often continue long term drug-free recovery programs, including AA and MA.

These figures are a preliminary measure of encouraging treatment results. The best evidence of practical long term

success would be based on information from the criminal justice agencies themselves regarding judicial outcome and subsequent recidivism. It would be relatively easy to match an acupuncture treatment group of parolees, for example, with comparable non-acupuncture treatment group so that controlled data would be obtained in statistically significant numbers. The Police Foundation and other agencies have been helpful in developing these suggestions.

SUGGESTED REASONS FOR THE SUCCESS OF THIS PROGRAM

1. Acupuncture is a popular and effective treatment. Patients learn to have confidence in daily acupuncture visits and the relief that consistently occurs. Acupuncture is a treatment for craving and fear as well as withdrawal symptoms. This modality facilitates constructive, non-antagonistic counseling and breaks down the barriers that usually inhibit group process. The consistently calm atmosphere in the treatment area is a marked contrast to the tense mood of streets and of even the best conventional drug program. Acupuncture acts physiologically by enhancing the patient's own balancing mechanisms. There is a renewed development of vitality and integrity from within before external challenges need to be taken up. In this clinical setting passive-aggressive dependency and adolescent acting-out are greatly reduced. Staff and patients alike can focus on stability and growth without the interpersonal static that usually limits communication.
2. We have applied many of the basic principles of chemical dependency which are often neglected in criminal justice related situations. The struggle for sobriety is "one day at a time." By testing urines on a daily basis, providing daily acupuncture, and encouraging brief daily counseling sessions — we are functioning in the same rhythm as the patient's struggle for recovery. Testing urines every two weeks, in contrast, functions as an external judgmental process that clashes with the potential rhythm of recovery. A common principle of AA is "keep it simple."
3. Our clinical staff makes a primary alliance with the criminal justice referral agency as well as with the client. This process of dual alliance with the client and the disciplinary agency is the basis for successful work in Employees Assistance Programs. The process is not at all contradictory as long as the primary focus is on sobriety and increasing the

client's integrity which is the common goal of all parties. Unfortunately many treatment agencies see themselves as adversaries to the courts and end up by disguising the results of sobriety testing and making excuses for continued abuse. This pattern is called "enabling" in our field. The Lincoln clients are very accepting of this "dual alliance" strategy. There is a lack of contradictory messages, a lack of excuses, and an abundance of interest in their daily struggle to be drug-free.

4. The counseling process at Lincoln emphasizes a non-judgmental, non-invasive, supportive approach. The firm challenge of sobriety is established, but the treatment relationship is quite flexible and open ended. On some days patients may want to ventilate their feelings each day; at other times they may want to just say "hello" and take the acupuncture treatment. Patients often experience fear and resentment toward intrusive questions and advice. This phenomenon is particularly true with court-mandated clients. These fears often prevent frequent attendance at otherwise helpful programs. The therapy program cannot "hold a grudge" and put increasing pressure on the patient for previous failures to respond to treatment. Pressure and concern must be appropriate to the quality of today's struggle and not reflect the residue of the past. The use of acupuncture makes this non-judgmental process much easier.
5. Frequent urine testing provides an objective non-personalized measure of success that can be accepted equally by all parties. In this system the counselor is the "good cop" and the urine machine is the "bad cop." The counseling process can be totally separated from the process of judgment and evaluation. According to this approach clients will not feel a need to be friendly to their counselor in order to gain a positive evaluation. The computer print-out showing a series of drug-free urines is the only documentation they will need to gain a favorable report for the court.
6. Clinical supervisors at Lincoln have developed an approach that encourages self-sufficiency in their colleagues. A counselor who perceives that his or her autonomy is respected will be much more able to develop autonomy in individual clients. The treatment field frequently neglects the principle that autonomy is a major component of health and sobriety. So much effort is focused on referrals to 24 hour facilities that this basic and practical reality often fades out of view. No matter how effective 24

hour rehabilitation is, the patient will spend 99% of the time in an independent state. The pressing reality of criminal justice is comparable. To help people, we need to help them function well independently of our agencies.

7. The fear and shame associated with impending incarceration or removal of a child is certainly an important factor in any success. In the chemical dependency field, it is considered beneficial for a prospective patient to face a fearful concrete reality. The myth of the well motivated walk-in patient is just that: a myth. Similarly court-related referrals should always be made with definite requirements. Referrals of the type “why don’t you see if this treatment can help you” lead to an unusually low rate of success. According to recent trends of budget deficit and court congestion, the threat of incarceration is often more symbolic than real. The response of probation and SSC clients indicates that a temporary, more-or-less symbolic threat may often be quite effective in persuading a client to begin treatment and these clients continue in treatment long after the circumstances suggesting the threat of punishment abated. This type of situation is actually quite typical of interventions and contracting in chemical dependency treatment.
8. “There is no such thing as a hopeless case” is another basic principle. The Lincoln program does not screen out prospective patients as “poorly motivated” or “unsuitable” as is frequently done in regard to criminal justice referrals. All referrals are accepted: A fact that makes these statistics all the more promising.

SUGGESTIONS FOR THE FUTURE

In cooperation with the primary referral sources, Lincoln is developing a selection of treatment contracts that can be mandated for criminal justice clients. For example, a parole client might be required (1) to attend acupuncture 5 days a week for a minimum of 3 weeks, (2) provide drug-free urines on at least 10 of the first 20 days of treatment, (3) drug-free urine once a week for a subsequent 6 months, (4) attendance at Narcotics Anonymous or equivalent program for 6 months. Note that these requirements allow some leeway in the early period of treatment and continue to require sobriety during the early recovery period. Another client might be mandated to give 6 weeks of daily urines and up to a 2 year follow-up period. Such contracts could easily

become the basis of revenue saving court diversion and early release programs. Unsuccessful clients would face incarceration, but a sizeable number would be spared by their commitment to a drug-free life.

At a recent NYC Bar Association retreat, I suggested that drug abusers who are identified by the police sometimes be given summons instead of being arrested. The summons might require that the abuser provide a number of negative urine toxicologies during a specified period of time in order to avoid actual arrest. The availability of effective and inexpensive acupuncture treatment for crack abuse makes this type of non-institutional management a legitimate possibility to cope with the huge dimensions of our drug abuse epidemic.

NATIONWIDE IMPLEMENTATION

The National Acupuncture Detoxification Association or NADA has encouraged the development of more than 50 acupuncture detoxification clinics on a worldwide basis. As chairperson of NADA, I have provided consultation for the Los Angeles Sheriff’s Department, Miami-Dade Criminal Justice Agency, Westchester County, and the National Association of Criminal Justice Planners.

In April 1987 I was invited to Portland, Oregon by Judge Nely Johnson and a criminal justice advisor to the mayor. A pilot program was established in the public detox unit. In June the county voted to allot \$90,000 of their federal Bureau of Justice Administration funds to create several acupuncture components. Presently 6 new programs have been established by the Hooper Foundation, the county’s contract agency for drug and alcohol treatment. The detoxification program now reports that 85% of its patients complete their program. Before acupuncture was used, only 34% completed the program. The 6 month recidivism rate has dropped from 25% to 6%. The Oregon State Department of Correction has helped establish a Criminal Bed Reduction Program using acupuncture to treat men charged with drug and alcohol-related offenses up to the level of Class C felony. A clinic for runaway youth and a community-based program have also been started. All these programs use counseling, sobriety contracts, 12 step fellowships, and other conventional means of treatment in addition to daily acupuncture treatment. The director of acupuncture detoxification in Portland is NADA board member David Eisen. Mr. Eisen was a social worker in the probation department when he came to Lincoln Hospital for acupuncture training.

DESPERATE SHORTAGE OF CRACK TREATMENT IN NEW YORK

New York City desperately needs programs to treat crack abusers who might become involved with the criminal justice system. The terror focused on Southeast Queens endangers Brooklyn, Harlem and the Bronx as well. Large numbers of HIV+ individuals who became infected by injecting heroin have stopped using needles. They are now primarily crack abusers. Preventing the spread of AIDS depends substantially on the existence of crack treatment programs which can encourage drug-free responsible behavior.

Last month I told you that an October 1987 Health Department ruling about the extent of acupuncture practice has jeopardized the development of anti-crack acupuncture programs by many city agencies. Health & Hospitals Corporation, Department of Correction, Housing Preservation Department and the Probation Department have all articulated specific plans to establish more anti-crack treatment capacity using acupuncture. None of these plans will be developed unless the state education law is changed so that the Health Department ruling no longer applies. I have worked with attorneys with the Division of Substance Abuse Services, Division

of Alcoholism and Alcohol Abuse, the Senate Education Committee, as well as the office of the legislative representative of New York City and my own counsel in order to draft a bill which will meet our needs. I will inform the City Council of the precise language and numbering of this bill after it is introduced in the legislature this month.

It is my pleasure to introduce Carlos Alvarez, who has been my valued colleague for the past 16 years and who has been the primary counselor for most of our criminal justice referred clients. As coordinator of this program, Mr. Alvarez has played a very important role in developing the theory and reality of this program.

Several of our patients have come here today to provide testimony about their recovery using acupuncture and other aspects of our program. This is a unique opportunity to speak with crack abusers who are recovering successfully, rather than merely focusing on a seemingly unending series of horror stories. We need to use the example of these recovering persons to guide us away from the avalanche of cocaine and crack.

*The Advantages of the Drug
Court Treatment System*



Michael O. Smith

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**Presentation at Drug Court
Conference, Miami (Dec. 3, 1993)**

It is tremendously encouraging for me to see such an excellent turnout. More than that, it is especially encouraging to hear so many judges talk about treatment, recovery and the process of recovery in such a sophisticated and professional manner. When the Miami Drug Court program began, Judge Herbert Klein and Judge Gerry Weatherington came up to Lincoln Hospital in the Bronx to see our treatment facility. Our clinical coordinator, Carlos Alvarez, and I visited Miami later that month. Finally, Mae Bryant and Raymond White led a group of observers from Dade County to study our procedures at Lincoln. Remarkably, only 5 months elapsed between Judge Klein's first visit and the opening of the Metro-Dade outpatient unit in Liberty City in July 1989. The development of the judicial component using the day-to-day expertise of Judge Stanley Goldstein, public defender Hugh Rodham, and coordinator Tim Murray was just as rapid and effective. The Miami treatment component is modeled after Lincoln where we have easy access to treatment, acupuncture, frequent toxicology, counseling, Narcotics Anonymous, and so on. However, we developed our program under a set of circumstances that are considerably different than the operative reality in Miami. Consequently those of us at Lincoln have learned a great deal about the potential of our own work by observing the excellent creative developments in Miami.

There is an issue implied in the title of this session, an issue of debate or conflict. And conflict, yes, sometimes it's good, it's good for lawyers, but we're learning in this case it may not even be good for lawyers. And I think in our session here, we need to focus on addition and contribution rather than competition. Drug court obtains good results, in many cases, much better results than orthodox treatment. It obtains good results because there are particular advantages to the drug court model. The drug court model really adds to what treatment can do. The drug court model adds to the treatment system in a unique manner. That's what makes a partnership; a partner adds something to you that you couldn't possibly add to yourself; and it makes a whole new enterprise.

We have a fairly brief session so what I want to focus on certain aspects of the drug court clinical model rather than the basic system, which will be described by Dr. Carolina Montoya of Miami.

First of all, the drug court model sets the stage, sets the context, for treatment in a way that the treatment process ordinarily cannot accomplish. For instance,

if I come up to the podium, it makes a big difference if someone introduces me; it makes a big difference if my name is on the program. Drug court sets the stage and context for treatment in many important ways. You are all familiar with "shock incarceration." We've been funding shock incarceration for a long time: it is known as arrest. Look at the face of someone who has just been handcuffed for the first time. That's shock incarceration. But what we do is fritter away the money spent on each arrest by systemic ambivalence and procedural delay. If you are able to use this shock incarceration and tie it to treatment right after the arrest, you gain a tremendous advantage. No treatment program acting by itself can gain that advantage. Treatment programs often make an effort to confront new clients about denial and resistance; however the fact that someone was arrested the night before is a much more effective means of confrontation. In addition, treatment program bonding is not tarnished by the need to confront any resultant hostility. In the Miami system 95% of arrestees will choose treatment. Usually programs say that only 30% of drug users are motivated for treatment. Those are very different numbers, extremely different numbers.

The second advantage is that we are conveniently empowering the person entering treatment. The drug court and our whole legal system considers that everyone is an independent person. In the drug court model the patient communicates directly to the judge not only in the court room, but also through the toxicology data. In conventional situations, a counselor, a supervisor, social workers, and defense attorney are intermediaries in the indirect communication process. When working with people who have trouble communicating, trouble reacting, trouble responding, a direct clear contact with authority can be very important.

We are also preparing for aftercare from the first day. Aftercare signifies a stage of increasing independence at the end of treatment. Well, if I have you in a residential program and you've not been quite an independent person for a long time, now you will have difficulty resurrecting your independence. In the drug court model, that independence is always present: Do you take responsibility for your actions? This is a difficult issue in conventional treatment; it is not a difficult issue in Drug Court, it is "straight up." Making the patient dependent and somewhat childlike occurs frequently within a conventional treatment process. Drug court reduces this risk because the judge is in essence the supervisor of the treatment process, and that means there is a legitimate

authority and an adult process at all times. People are surprised, you know that drug court clients are honest; they are surprised that they are compliant; they are surprised that they are relaxed.

If you go into an acupuncture drug treatment setting, you will see people who are relaxed and not in denial. Anybody who has ever been in one of those settings knows this. Drug court is cheerful and positive. We have an issue of authority, but we don't have all the parental transference, all the negativity, we have something positive. Drug abuse treatment involves instilling and empowering people with discipline, so this constructive climate is a tremendous advantage. Now the treatment program can use this authority in our treatment system. In addition, we do a very remarkable thing; we are able to reward good behavior. It is easy to tell our clients that they are bad. They have done a thousand crimes for every one we have listed. Enough already. But by using daily urines, by using a structured system, the judge can be lenient. The judge can respond to these urines and create leniency in the program. You are giving someone good feelings, you are rewarding what they are doing at the present moment. You cannot accomplish this goal very well in conventional treatment systems - our clients do not respond to merely verbal rewards. Usually, the courts are only able to show ambivalence. Society shows ambivalence toward almost all aspects of drug abuse. In the drug court room clients listen carefully to what the judge says to everyone on the calendar. They clearly sympathize with the court's efforts to urge greater sobriety on fellow arrestees. You see the clients bonding with the judge, bonding with the provider representatives in court as they are going to bond with the treatment process, as well.

This treatment system is a very good fit for the 12 step programs such as A.A. and N.A., because individual responsibility, independence, calmness and support are right there in the beginning. Clients are able to attend fellowship meetings much earlier in treatment. In an acupuncture based system these meetings are often more open and more supportive. The guarded, guilt ridden qualities often typical of A.A. are reduced by acupuncture. Remember that A.A. and N.A. are well known effective and cost-free components of treatment.

We also have a system where there are outcome measures. That is – were you in the Court? How were your urines? The outcome is there. The program's reality is clearly available for the judge. Therefore we can improve our programs, because we have immediate

outcome measures. And, the client can improve their own performance. If all the patients are incarcerated, you will not know what the outcomes are until the patients are released.

Drug abuse is an illness of time. You buy cocaine, it means you are addicted to the present time, forgetting the past and forgetting the future. "One day at a time." Addicts need support in a timely manner. Acupuncture, daily urines, court appointed counseling are all effective kinds of present-time therapeutic activity. If we can satisfy the present-time needs, then assessment and treatment planning are more tolerable because we have not ignored the patient's present anguish. We frighten clients when we ignore the present, when they need help with such perceived urgency.

All of these situations then provide a solid foundation for the beginning of what we ordinarily call treatment. Actually we have done a lot of useful therapeutic actions in setting up this compliant sober foundation. We have all these supportive elements in place, so that our treatment contacts, and issues of motivation and compliance can reach a much higher quality than in most programs. We are not screening people out for lack of motivation and yet we are able to have a higher degree of compliance. It would never occur to other providers to wish for the level of compliance that drug court provides on a regular basis.

You talk about assessment. Well assessment is helped if the client is compliant. A legitimate treatment contact is strengthened if issues of authority are clearer. Assessment is greatly improved if you can add a daily assessment process. When we evaluate friends or employees, we do not just use our initial reaction; we continue to gain more insight on a daily process. If there is a cooperative process with regular toxicology data and you have people coming in a relatively relaxed state, there will be a tremendously different quality of assessment material and you will be able to individualize treatment much more appropriately.

For instance, patient referral is tremendously easier if the patient, who has recently given 7 dirty urines, comes into court with a little suit case in hand. Such a patient respects the court enough to provide dirty urine instead of avoiding treatment. In this context it is much easier for the patient to ask for help on a more genuine basis.

So, we are able to have a considerable difference in quality of assessment and treatment contract. This applies to the dual diagnosed MICA population as well. We are not as interested in their past as in their present status. Past

treatment and diagnosis depends often on the availability of services as much as actual functioning. I want to know the present mental status, coping ability, and whether or not a particular referral will be useful. We want to establish a steady outpatient continuum if at all possible. An acupuncture based system makes this goal much more attainable. In this way we have established the (partly) supportive reality of the outpatient continuum so that the patient will feel more secure after discharge from the inpatient setting. You are able to assess severity more effectively in these programs. The data from Ana's program, El Rio, as well as other programs suggests that many people who are very severely addicted or severely damaged do better in an outpatient setting than in an inpatient setting. The patient may be "severe" in some abstract sense, but still be able to cope in an outpatient setting. This is important. You have to be able to improve in an outpatient setting, if you are going to any significant success.

And so, the inpatient referrals have an entirely different quality in the Drug Court model, there is much more flexibility than in any other kind of model.

There is an issue of partnership and co-therapy between the criminal justice system and drug treatment providers. One of the most important characteristics of successful co-therapy is the use of clear language. Everyone must be able to evaluate status and progress in the same language, using daily urines provides a suitably clear language, not only between the courts and the treatment program, but also between the courts and the clients and the treatment program. When there is such a clear communication one can make more sophisticated statements, more insightful statements. You can avoid jumping back and forth between different authority systems.

The drug court model allows a very healthy system of authority. Drug users like authority, they respect it, they even like bad authority, so they are certainly going to like this authority. The drug court authority is based directly on the patient's own performance, their attendance, their urine tests, and their statements. It is clear and objective. The judge has an opportunity to use his or her personality in a much more extensive and creative manner because their relationship with the patient is not contaminated by an often pressured and awkward determination of the facts of current abuse. It is a very clean system. In a clean system people can learn more and grow to a higher standard. This kind of clean system cannot

be established outside of drug court model in an independent conventional setting.

We visited a domestic violence program in Miami which had a substantial group of therapists. I said one of the most important things in therapy is that you have to like your patients. Lisa Sheckel told me the other day, that "a lot of our patients are difficult, it is not easy to like them." We have to get beyond the surface. Using acupuncture treatment, it's very easily possible to get beyond the surface to a more likable, more sensitive, more gentle, and less stressed-out person. This process happens quite readily. In conventional settings there is a clinical atmosphere that is passive-aggressive and often hostile and paranoid. The tone in most treatment settings is unfortunately quite stressful. Even the providers often do not want to be there. We want to provide a higher level of quality for staff and patients alike.

I would like to conclude by saying that I have a medical license in New York, I work in a city clinic, and I work in a public setting. Drug courts, courts in general, have to see every person. They cannot screen and select clients. They see everybody. At Lincoln Hospital, we see everybody. It may not be easy to see everybody, but that is why we have taxes, that is why we have a government, that is why we have society. Somebody or another has to see even the most difficult clients. Or those difficult people will see you on the street at another time and place.

We cannot afford to have any kind of a system which discriminates against publicly diagnosed clients. We spend tremendous amount of time and effort to determine whether a person is a drug user or a danger to society. Many times we cannot diagnose or describe a person accurately. For instance, we do not know how to manage the "dual diagnosed" MICA clients. Many of the most troubled people are essentially ignored by medical and judicial systems. It can be tempting to ignore people that you don't know how to help. Well, these programs may provide a path to begin to seek change on a practical outpatient basis. When a person comes into Lincoln with pages of the Bible pasted on their chest, and a great big knife in their pocket, they ASK for acupuncture. And when they finish the session, they still have the Bible pasted on their chest but now they are able to say "I must have not explained myself very well, I need to explain myself better." That is, even such a patient is able to be self-critical and relatively compliant. We would like to share this opportunity for improved service and human growth with our colleagues in the public sector.

We are going to have another talk on acupuncture, by my colleague, Ana Oliveira, this afternoon. We are going to conduct a demonstration clinic at that time. I really appreciate your energy and your ability to show people a new path. Thank you.

QUESTION AND ANSWER

If the Drug Court Model enhances the efficacy of the prior Criminal Court System, does the prior Criminal Court System do the opposite and make traditional treatment less effective?

In many ways it does. The Criminal Court model enhances ambivalent feelings towards society. I cannot imagine that this would be helpful to encourage anyone to stop using drugs. I was trained to do that...I was trained in treatment that you did not disclose to the Court because the Court was an adversary and you tried to say only favorable things, such as “they visited their mother regularly,” “there was a urine test two weeks ago that was clean.”

The truth of it was, we were adversaries. I am embarrassed to say how many times I played such an enabling role.

The drug abusing person respects the prosecuting attorney more than their own defense lawyer. They respect authority; they respect even nasty, sadistic authority. Anyone who is depressed, paranoid, or who has a low opinion of themselves, does not tolerate kindness. They do not tolerate compliments. They do not tolerate favors. If you tell such a person optimistic comments, they will think you are a chump. They may play with you, but will not respect that process. This is *the* major dilemma in drug treatment: it is impossible to tell the client good and supportive things, because the person will be alienated by such statements. So the whole purpose of legal defense is flawed for such persons.

If a person is suicidal, the fact that they have civil rights is not really a very big issue. You have to be here to have civil rights. And an addict is really interested in not being here, they want to be somewhere else, where there are no civil rights... so just altering the adversary system, I think, is tremendously important.

In an ordinary court room, the judge has very few options: an empty severity, ineffective leniency, and the most common choice, postponement. I think that it is no accident that you have a series of “hard-nosed prosecutors” who have now become strong and effective drug court supporters. Given flexibility, given permission to have a different language and different options, these public servants find it easy to work with a new series of options.

We have new circumstances. Does that require the treatment providers to have new skills and orientations?

If we sit here and I tell you that many long term addicts can change, then the other institutions in society, including drug treatment, can change. Of course, it is easy to have faith in humanity in general, but when faced with your resistant cousins, one can be unduly concerned. Change then takes work! It means first of all that you need to admit you need help; you need to ask for help. You need to feel that there is some open area, that there is some direction that you can go toward. Many parts of the treatment system have not really noticed these public health, addiction issues. It is not easy for any of us to ask for help. That is a stage that we all go through again and again.

*Acupuncture: An Important
Tool for Treating Drug
Dependent Offenders*



Jody Forman

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Perspectives, p. 32-33 (Spring 1993)

Although the Chinese have been using acupuncture since antiquity to treat a wide range of disorders and diseases, the practice of acupuncture in the West and particularly its application as a treatment for alcoholism and drug dependence, is relatively new.

According to David Eisen, OMD, L.Ac., MSW, and Director of the Portland (Oregon) Addictions Acupuncture Center, the use of acupuncture to treat drug addicts began about 25 years ago with Dr. Wen of Hong Kong. It seems that Dr. Wen, an acupuncturist and thoracic surgeon, used acupuncture post-operatively to hasten recovery. Dr. Wen noticed that certain points, especially those in the ear, helped ease the drug withdrawal symptoms of his post-operative patients who were also addicted to drugs.

The general use of this technique for alcoholics and drug addicts filtered to North America, according to Eisen, and began to attract the interest of drug treatment professionals who were discouraged with methadone maintenance and other more accepted methods of drug treatment. At the invitation of several such individuals in Montreal, a group of Chinese doctors conducted a formal training (dates unknown) on the specific application of acupuncture for drug withdrawal.

Acupuncture programs for drug addicts began in the U.S. in the Bronx, New York at Lincoln Hospital. According to Eisen, community activists from the black and Puerto Rican community in the South Bronx were also disillusioned with the accepted methods of alcohol and drug treatment. Their efforts led to the establishment of an acupuncture addictions program at the hospital in 1974. The program was operated then, and still is, by Dr. Michael Smith, MD, D.Ac.

In 1985, the National Acupuncture Detoxification Association (NADA) was established to promote the adoption of acupuncture as an alcohol and drug treatment technique and to bring it into the mainstream of the alcohol and drug treatment field. Both Smith and Eisen serve on the Board of that organization.

I became aware of acupuncture through my work in the Federal Government. I spent many years as a program manager in the Departments of Justice and Health and Human Services focusing on drug abuse, drug treatment and the criminal justice system. In that capacity, I traveled across the country exploring many approaches and methods for treating drug addicts.

Acupuncture was, by far, the most impressive. The best known city criminal justice systems employing it to treat intractably addicted offenders who keep cycling

through their systems are New York City; Miami, FL; and Portland, OR. Several other state and local criminal justice authorities also use acupuncture — Philadelphia, PA; Minneapolis, MN; Dayton, OH and Baltimore, MD — or are planning to establish programs, Washington, D.C., among others. Others are making serious inquiries about employing acupuncture for this particularly problematic population.

Reports from existing programs are promising. At worst, acupuncture appears to be at least as successful as any conventional treatment methodology. At best, it gets a hearty endorsement from many as a detoxification technique and method for improving treatment retention. Sadly, there are few options to help alcohol and drug abusers. There are even fewer large programs, those that can treat up to fifty people a day, other than acupuncture addiction programs for people dependent on the smorgasbord of drugs available on the streets.

The current acupuncture addiction protocol is simple. Extremely thin needles (the width of two human hairs) are inserted into specific points just under the skin of the ear cartilage ridges and the concha of the ear. Occasionally, other points on the limbs are also used. The needles are left in for approximately 30-45 minutes. Typically, the treatment is rendered in one large room filled with others who are also sitting quietly with needles in their ears. At first, addicts come for treatment every day for several weeks or months.

An essential and equally important component of the treatment protocol is frequent — sometimes daily — urinalysis. Urine tests for the presence of drugs in the body serves as an external monitor of the person's ability to remain drug free while undergoing treatment. The information from these tests keeps the criminal justice system informed of the individual's progress and gives the person an external yardstick that they can't "con." Urinalysis also helps to keep the relationship between the acupuncturist and drug abuser free from judgments and the vagaries of the therapeutic relationship.

Alcohol and drug abusers receiving acupuncture report a reduction in drug craving, a sense of relaxation and a general feeling of well-being after treatments. According to Dr. Smith, "Acupuncture seems to act through a composite field effect rather than through any single physiological system. That is, it has a general capability to coordinate and enhance physiological networks." Acupuncture seems to be able to improve and restore physical and mental balance.

Treatment providers report that these clients tend to show up again for more treatments. The importance of this cannot be overemphasized, as it is now axiomatic that the longer a person spends in treatment, the more likely that person is to complete treatment and remain largely drug-free. Although limited evaluative data are available describing the relationship of acupuncture to improved treatment retention, there is ample anecdotal evidence for this correlation.

Assuming that a positive relationship between acupuncture and treatment retention exists, the ability of acupuncture to improve treatment retention has a far-reaching benefit. As drug craving is reduced and drug use decreases, the person may eventually achieve a more balanced mental and physical state. In a more balanced state, the person is better able to form a productive therapeutic relationship with a trained drug treatment counselor that will contribute to lasting behavioral change. Thus, acupuncture can serve to improve the readiness of an individual to accept the rigors and difficulties of conventional drug treatment. Conventional drug treatment includes assessment, evaluation, individual and group counseling, self-help groups, family support groups, education, job and life-skill training, etc.

So, why would the criminal justice system care? Because the courts and corrections systems are inundated with drug cases. Because most drug offenders are also drug users. Because most drug offenders are not incarcerated. And, if they are it's not for very long. We simply do not have the space in our jails and prisons. Besides, the notion that incarceration improves future behavior is simply incorrect.

Most drug offenders are put on probation. Then, it is the responsibility of the probation officer to find treatment and other social services, provide counseling and supervision and generally monitor the progress of usually more individuals than is reasonable. With probation caseloads so high, with the potential danger to the probation officer significant, with conventional treatment resources extremely limited, the benefits of acupuncture to detoxify, induce a more relaxed and balanced mental and physical state and to enable addicts to remain in treatment is attractive to criminal justice authorities.

Indeed, it is the criminal justice system that seems to be leading the way in acupuncture treatment. All of the city programs noted earlier are either supported through criminal justice agencies or have strong links to local criminal justice systems.

Acupuncture is attractive to criminal justice because it doesn't screen-out particularly hard cases or eliminate people who are dependent on many drugs. The cost of treatment delivery is low, since many addicts may be treated at one time by relatively few acupuncturists. The equipment is inexpensive and the physical plant is simple — one large room with many chairs.

Costs are also checked by the fact that acupuncture can be performed on large numbers of people on an outpatient basis. Outpatient acupuncture treatment allows for relatively inexpensive long-term follow-up and monitoring for supervision and control purposes. A regimen of daily acupuncture and urinalysis at 3 to 5 times a week keeps people in treatment, provides monitoring data on the progress of each individual and monitors the effectiveness of the program by identifying who attends and how successful each person is in staying off of drugs.

It is not my belief that acupuncture alone is sufficient for treating this particular group of people. I believe that acupuncture's role in the treatment of alcohol and drug dependence is detoxification, treatment readiness, treatment retention and as a supportive adjunct to conventional treatment. Unquestionably, much cognitive and emotional work must take place for an individual to make significant and lasting changes in thinking patterns and in behavior. Conventional drug treatment is essential and there's not enough of it.

Acupuncture is another tool, an enhancement, an additional technique to meet a situation desperately in need of all the help it can get.

ABOUT THE AUTHOR

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