

New ideas in the field

With all the politicians outbidding each other as the 'toughest on drugs', it comes as something of a surprise to find that there are still a few new ideas doing the rounds in Westminster. Here we present two of the most topical: drug courts, which are being actively touted in one form or another by all the parties; and citizens' juries, which could finally provide the solution to gauging public opinion more effectively than ever before.

But first, Philip Bean takes a long hard look at a field ripe for change

A SEA CHANGE IS NOW underway in the thinking behind the treatment of drug users, and drug-using offenders in particular. The ideology of treatment agencies which has held sway for years and dominated the treatment landscape is currently under siege, being barraged with criticisms from the criminal justice system and politicians of all shades.

Fundamental to this attack on the status quo are the twin issues of treatment and coercion. Treatment, the line went, was only appropriate if it was undertaken voluntarily. Those who were coerced into treatment were, it was said, bound to fail.

Unsurprisingly, while this view has held sway, few drug-using offenders have received treatment as a condition of their sentence. Nowhere is this better illustrated than in the Criminal Justice Act 1991, in which the courts could specify drug treatment as part of a probation or combination order. In the first 18 months of the operation of this Act (implemented in the autumn of 1993) only 1400 such treatment orders were made. Was this because the courts were reluctant to use their powers? Was the probation service failing to alert courts that such powers were available? Or was something else afoot? More likely, the combination order fell at the hurdle of the treatment agency and its reluctance to accept such orders.

Conditions of treatment have been resisted by the treatment establishment for decades. And even when they are accepted, things rarely go well, for often there is poor (and sometimes deliberately so) communication between the agencies and the probation service.

Continental drift

All this is changing. Not, I would add, as a result of any radical rethink on the part of treatment agencies. For, in spite of

their overt and apparent radicalism, they remain one of the most conservative groups in and surrounding the criminal justice system. The changes are occurring because it is at last being realised that there is no empirical evidence to support the treatment agencies' beliefs.

The research evidence is clear. Treatment outcomes are not dependent on the reasons for entering treatment, but on the *length of time* spent in a programme. In other words, it matters less about the reason for going into treatment, and more about the time the offender remains there – 90 days is seen as being appropriate.

When one thinks about this changing attitude, it is fairly commonsensical. After all, until users are exposed to an environment where interventions can occur, and are retained for a sufficient period to produce and maintain positive outcomes, no change can be expected. Nor should one accept the rather simple view that drug users ever make independent choices to accept or reject treatment. Coercion and pressure to give up a drug habit exist *at all* levels, whether from family and friends or from court and probation.

Undoubtedly, this realisation will annoy many treatment agencies even if they are unlikely to stand up against the onslaught – and one could include here the mental health specialists who have also resisted taking conditions of treatment on probation orders. Treatment agencies will fight to preserve their orthodoxy and in all likelihood will interpret proposals for change as another example of creeping authoritarianism and

insensitivity to civil liberties. Quite forgetting, of course, that treatment as a condition of probation will for many offenders, be an alternative to prison.

New Labour, new order

The Labour Party's proposal for a Testing and Treatment Order is part and parcel of this rethink. It is based on the view that compulsory treatment is better than no treatment at all, and it supports the belief that treatment resources should be targetted at those programmes which are best able to retain clients more than three months – and if that means by coercion then so be it. At least the 'short, sharp shock' is well and truly out of the picture.

Never mind that there are all sorts of problems with these proposals – not the least being that someone needs to do the tests, be paid for them and inform the court of a client's progress. Never mind too that the reliance on the probation service to police the Order could have serious implications for probation officers' relationships with other clients.

Above all, never mind that the proposal is a typical British compromise, an attempt to undertake on the cheap the more sophisticated operations conducted under the American drug courts programme. What is important is the recognition that we can no longer muddle through as before.

Nor can we continue to pour resources into treatment programmes, and allow those who run those programmes to dictate who they will and who they will not treat; and decide, too, the types of conditions under which they are prepared to operate. If treatment agencies continue to resist the changes, perhaps a redistribution of funding – a metaphorical cold turkey – will help them see the dangers of an expensive and ruinous habit. ○

by

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additional material provided by the editor

DRUG COURTS ARE perhaps the oldest of the 'new' developments. Certainly, we featured them in *Druglink* two years ago.¹ But the Labour Party's endorsement of the principles behind drug courts – most notably, the link between sentencing and treatment – has (at last) given them a British currency.

Drug courts as we know them were born in Miami, Florida in 1989, partly as a response to the legal log-jam which the War on Drugs had created across America. In the eighties, drug arrests rose four times as quickly as all arrests, to the point where, according to Stanley Goldstein, Miami's one and only drug court judge, "our criminal courts were totally overwhelmed with possession of cocaine cases, and murder cases and armed robbery cases had to sit on the back burner".²

But it would be wrong to see the drug court as merely a mechanism to process cases more speedily – flexibility was the key, and its innovators would refute any suggestion that they were being 'soft touches'. The courts may have been criticised for bringing the 'majesty of justice' into disrepute and for turning the judge into a social worker, but paradoxically, they are perhaps even more controlling than other methods of sentencing. Their 'transparency', with mandatory drug testing and regular treatment reports, mean that people are no longer able to 'play the system'.

Courting success

"The success of the program with first-time offenders has been absolutely phenomenal", says Judge Goldstein. "About 90 per cent of them have successfully overcome their drug addiction and have not been rearrested. Hard core addicts are successful about 70 per cent of the time." Only one per cent of those who go through the Miami drug court return to jail after one year, a rate which should be set alongside the 46 per cent of

HOW DOES IT WORK?

There are many different models for drug courts (the Labour Party bases its policy on one in Oakland, California) but they all share a number of characteristics.

Firstly, in general, drug courts are used for arrestees charged with possession of a so-called 'hard' drug. Secondly, they take the offender out of the loop of the American judicial system, which is currently founded on the 'three strikes and you're out' principle. Finally, the court 'buys in' treatment and employs the providers to treat people. Such a level of court control distinguishes the American models from any British proposals.

Phase 1 tends to cover the first 21 days, from the time of arrest to the filing of formal charges. The defendant is taken from the courtroom directly to the treatment centre. A personal counsellor is appointed and the defendant is given their initial treatment before being released (unless they are receiving residential treatment). Every day for the next three weeks, they must invariably report to the treatment centre, be urine tested, meet their counsellor and undergo treatment. After they have been clean for a certain number of consecutive days, they then move on to . . .

Phase 2, where they attend treatment as required (typically three times a week). They continue to provide urine samples at each visit. At the beginning of this phase, they are sometimes formally charged, to which first-time offenders are encouraged to plead not guilty, request a trial by jury and waive a speedy trial (in other words, delay sentencing). This phase is not time-limited, but when it is successfully completed, the defendant moves on to . . .

Phase 3, which involves counselling and group sessions. They are also encouraged to undertake vocational training and get a High School Diploma if they haven't already got one.

The whole programme usually takes 12 to 18 months and is closely controlled throughout by the court with the defendant making regular scheduled court appearances. On successful completion of all three phases, charges are usually dropped and the record expunged soon after.

If, however, progress is deemed unsatisfactory, they may be returned (while still under drug court supervision) to custody for up to 90 days. The final sanction open to the court is to eject the defendant from the programme, who then returns to a 'normal' court and the 'three strikes' system.

first-time offenders on probation who are re-arrested and sent to prison.

And this success seems to come cheap. It costs just \$800 each year to sentence an offender through the Miami drug court, while it costs \$25,000 to keep someone in a Florida prison.³ Furthermore, it has also been estimated that for every \$1 spent in drug courts, there is a saving of \$7 elsewhere in the criminal justice system.⁴

Given this performance, it is little wonder that British politicians have begun eyeing Miami's success with envy. But is there a chance that in the act of importing an American initiative piecemeal, we could inadvertently end up killing the goose that lays the golden eggs?

Lame ducks

Britain's foremost commentator on drug courts certainly thinks so. Two years ago in *Druglink*, Philip Bean wrote:

"My fear is that they will be introduced in Britain as a cheap alternative without planning and without care for the complexities involved. Properly undertaken, drug courts are not cheap to run. Too often in Britain we find the easy way out: in this case, grafting drug courts on to the probation system or something like that."⁵

Under the proposals outlined in *Breaking the Vicious Circle*, Labour would do precisely this – treatment is given as a condition of probation.⁶ This is an approach clearly rejected in Miami: "Probation cannot do anything I cannot do," Judge Goldstein has said. "And I can do a lot more than probation can." Ironically, however, a probation-based initiative may actually prove to be the saving grace of any British system.

This is because the mechanisms which underpin the American drug courts are unlikely to succeed in the British context. Firstly, as Labour Party sources privately recognise, the American drug court system relies heavily on a few super-charismatic judges, people who may be more difficult to find in Britain.

More importantly though, the offender is explicitly under the supervision of the court throughout their treatment and the court retains a high level of control over the entire process. Such a level of control could be anathema to the British courts, something acknowledged by Detective Inspector Hopwood, drug liaison officer for the Association of Chief Police Officers: "The British court system distances itself from individuals after sentencing and delegates its supervisory role." Perhaps a drug court 'at one remove' (via the probation service) is the only answer. ○

1. Bean P. "Drug courts USA." *Druglink*: 1995, 10(3), p.13-14.
 2. Goldstein S. Speech to Association of Chief Officers of Police National Drugs Conference 1996, UK.
 3. Bean P. "America's drug courts: a new development in criminal justice." *Criminal Law Review*: 1996, p.718-721.
 4. Finn P and Newlyn A. *Miami's drug court – a different approach*. US Department of Justice, 1993.
 5. Bean P. "Drug courts USA." *Druglink*: 1995, 10(3), p.13-14.
 6. *Breaking the vicious circle – Labour's proposals to tackle drug related crime*. Labour Party, October 1996.

WHILE DRUG COURTS try to introduce civil methods of dealing with the issue of drugs into a court environment, citizens' juries are an attempt to do the reverse – bringing legal rigour to the community's discussion of drugs. As such, they have become closely identified with the nineties political buzzwords of 'empowerment' and 'communitarianism'.

All the major British political parties are toying with versions of the citizens' jury as a way of involving local communities in the decision-making process and of gauging informed public opinion more closely. As such, they mirror the focus groups which political parties use themselves to get a clearer idea of 'voter feeling' than an opinion poll ever can. In an age of quangos, juries are also a clever way of making unelected bodies accountable to the community through public consultation.

Citizens ken

Unlike drug courts, citizens' juries are not exclusively an American invention, as they were also pioneered in Germany as a model of government-sponsored public consultation on issues as diverse as planning, the environment, transport and other social issues such as drugs.

By mimicking a court of law, the quasi-judicial citizens' jury is designed to seek out community opinion without being hijacked by special interest groups. The idea is that – given enough time and information – ordinary people can make valid decisions on complex issues. The sponsoring organisation (a health authority or local council for instance) can then act on the jury's recommendations.

Typically, 16 'jurors' are recruited to consider an issue of local importance, and as such, they will have been chosen to reflect the demographic profile of the

local community. Over four days they hear evidence and are allowed to cross-examine expert witnesses, and they can also request additional information or call extra witnesses. By the end of the process (and helped by independent mediators) the jury draws up recommendations which the sponsoring body must take into account when formulating policy.

Home-grown jury

In Britain, a number of citizens' juries have already taken place, but the key citizens' jury as far as drugs go was the one formed by Lewisham Council in April 1996.¹ It was the first large scale jury run by a British local authority, and was part of the *Lewisham Listens* 'democracy initiative'. By choosing to discuss such a 'controversial' issue, the Council was effectively testing the concept of the citizens' jury to destruction – such an emotive subject would prove

Juries show that public opinion is not immutable

whether the jury is an effective decision-making forum or just a fashionable talking shop.

As Judith Armit, the initiative's director, points out, 'drugs' is an issue "which politicians are often reluctant to debate openly because of the assumptions which are made about public opinion."

Crucial to the success of the Lewisham jury was the provision of information – at the start of the process, only four of the 16 jurors felt well-informed about the issue; by the end, 15 did. Only five jurors remained fixed in all their ideas.

This demonstrates that public opinion is not immutable, and that when exposed to the substance of an issue, the actual concerns and views of 'ordinary people' can perhaps emerge more clearly. At the end of the process, one juror said, "I came in with many preconceived ideas. My views have almost somersaulted over".

Such a Damascan conversion was not, however, appreciated by all involved: "I'm a little mystified, because I did have a clear line of really how I think it should be done and how it should be tackled, but the more evidence I hear, the more I do U-turns and am second guessing myself".

1. *Lewisham Citizens Jury. April 1996. Opinion Leader Research, 1996.*

LEWISHAM DECIDES:

Jury recommendations:

- policy should reflect the link between drugs and crime;
- soft drugs should be considered for decriminalisation;
- educate the whole community about drugs;
- education should carry a harm reduction message;
- create an education-focused Drug Reference Group;
- eliminate hypocrisy over legal/illegal drugs by giving information on all drugs;
- target suppliers rather than users;
- extend arrest referral schemes;
- widen treatment options;
- pilot prescription of drug of choice;
- provide more treatment options for non-opiate users.

Council actions:

- establish a community drugs awareness programme with local schools as the focal points;
- set up a specialist education team to run the programme;
- ensure the programme uses different methods for different groups, including peer education;
- endorse the Met's policy of targeting dealers;
- advocate the use of arrest referral schemes;
- advocate a thorough reassessment of current treatment options;
- lobby for trials of prescribing options;
- push for more resources for the treatment of non-opiate users.

Community cares?

The jury considered the issue of "drugs and community safety", a phrase which says volumes about the uses to which citizens' juries can be put and the way in which their terms of reference can be directed at a single aspect of a larger problem. The concept of community safety, of course, being one which has been picked up by the major political parties.

The primary question considered also gives a clear indication of the direction in which the jury was expected to travel, with an explicit commitment to harm reduction:

What can be done to reduce harm to the community and individuals from drugs?

Such a focus may of course influence the jury to favour one particular interpretation over another. For instance, after four days of hearing evidence and cross-examining witnesses, 15 of the 16 jurors agreed with both the following statements: "young people will try drugs; the best thing we can do is teach them about the real dangers"; and "drugs are here to stay – teach young people how to take them safely".

Obviously, not everyone will welcome such messages. ○