ABA

Child Law Practice

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SPECIAL FOCUS
Substance Abuse

The Truth About Addiction

by Michael D. Clark

Myths and misperceptions about substance abuse are legion. Lawyers, judges, and child protective services workers often lack a true understanding of addiction.[1] Yet they must grapple with addiction since 80% of child protection cases involve parental substance abuse.[2]

This article challenges you to see how you feel about addiction. Do you think it's a disease or a moral choice? It's easy to see the problems that addiction causes. It's hard not to blame the addict for those problems. Yet society's best hope for the children involved is to work with the parents. Understanding addiction is the first step.

Addiction: The Nature of Compulsive Behavior

It is difficult for lawyers, judges, and agency workers to comprehend the compulsive urges of addiction, as most have never personally suffered this malady. A crass, but passable analogy could be made to diarrhea. Consider a scenario where a lawyer admonishes an addicted client to "stop using illicit drugs and alcohol" and "control it." Compare this to someone experiencing severe abdominal cramping and bouts of diarrhea that are aggressing every 15 to 20 minutes. Despite this affliction, this person is then told to begin a 200 mile car journey! In each instance, it would be assumed that the person has the control to carry out instructions. However, each person would be equally reluctant to follow these directions.

In either situation, one could attempt to "hunker down" and resist the compelling urge for a short time. However admirable the effort, nature will ultimately take its course and win out. So too with the addict. Without a transforming event, the addict knows intimately the next incident of use is "coming" and resigns to this eventuality.

Lawyers, judges, and agency workers need to understand this lack of control that addicted defendants experience. The increase in legal and social sanctions applied to substance abusing parents is based on a questionable assumption that addicted parents *choose* to be addicted.

Lack of Control: Moral Failure or Disease?

Although the American Medical Association determined addiction to be a disease in 1966, an addict's control over substance use is hotly debated in our culture. "Moralists" blame the lack of control on a deficient character and call for more responsibility and effort by the addict. Many claim addicts don't deserve treatment for this problem, believing they are unwilling to lead moral lives and control their behavior and gratification. Those who believe in the disease model understand the lack of control as a blameless condition arising from genetic and environmental influences. Disease proponents believe control (remission) can be found through treatment and intervention and wish our country would approach this as a public health issue.

Ending Compulsive Use: The Critical "Why" and "How"

Moralists and disease proponents argue about "why" the addict cannot

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ABA *Child Law* PRACTICE

Child Law Practice (CLP) provides lawyers, judges and other professionals current information to enhance their knowledge and skills, and improve the decisions they make on behalf of children and families. Topics include: abuse and neglect, adoption, foster care, termination of parental rights, juvenile justice, and tort actions involving children and families.

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Director: Howard Davidson
Associate Director: Robert Horowitz

CLP Staff:

Editor:
Claire Sandt
202/662-1724
clairesandt@staff.abanet.org

Publications/Marketing Director:
Sally Small Inada
202/662-1739
sinada@staff.abanet.org

Publications Coordinator:
Lisa M. Waxler
202/662-1743
waxlerl@staff.abanet.org

Editorial Contributor:
Debra Baker

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Send check or money order, made payable to the: American Bar Association, 740 15th Street, NW Washington, DC 20005-1022

Subscription Inquiries & Address Changes:

Contact Lisa Waxler: 202/662-1743; e-mail: waxlerl@ staff.abanet.org

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stop using a drug. Yet their true differences lie in the idea of "how" the addict finds the ability to stop. Consider the arguments forwarded by each side. Moralists argue dependency should not be designated a disease because they believe it can be stopped or "cured" by a personal resolve and decision. They contend a drug user can resolve to "make a responsible decision" and end substance abuse.

Upon first review, moralists seemingly make a strong argument. They question the disease designation by comparing it to a "true" disease such as arthritis. No one suffering arthritis can "make a responsible decision" and rid him or herself of this painful disease. Moralists then argue that substance dependency can never be categorized this way because an addict can "dig deep" and make a decision, a profound *choice*, that will end the florid symptoms and ultimately the personal and familial suffering.

Potential vs. Ability

Disease proponents bristle at this lack of understanding. Their position is that all addicts have the potential (and responsibility!) to become sober but that it is not the same as saying they have the ready *ability*. They believe the ability comes from the problems and pain an addictive lifestyle piles on the user. Consider that it is only through the external problems and subsequent internal pressures that are created (anxiety, fear, and remorse) that will bring one to abstinence. Simply put, if there were no consequence to someone's using, there would be no abstinence.

When, and more important how, an addict is finally able to begin abstinence is tremendously complicated. It is an intensely spiritual moment (for some) or a longer process (for others) that defies a "one size fits all" explanation. Disease proponents contend moralists are wrong to believe that all that must occur for an addict to "wake up" is already available. It is not. It must be constructed through many intersections of problems: legal, social, familial, relationship/marital, employment, and financial. Court appearances help increase these "problems" which can speed the end of addiction's grip.

Listed in a recent report to Congress on substance abuse and child protection,[3] interviews were cited with women who successfully completed a substance abuse treatment program in New York City. These mothers often said "Although they initially experienced their CPS referral as intrusive and unfair...the ever present threat that their children would be placed in foster care provided the external pressure to continue in drug treatment." A Rhode Island program similarly found most of its clients entered treatment primarily because of child welfare mandates and that most clients would not have stayed in treatment without them.

Confrontation, Lying and Deception

Many believe addicts are deceptive and dishonest. These perceptions appear more rooted in fable than fact. William Miller, Ph.D., a respected addictions researcher and clinician reports, "From the research evidence available, the denial hypotheses–that alcoholics or 'chemically dependent people' *as a class* evidence particular personality abnormalities or unusually high levels of certain defenses–is a

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A Tale of 10 Beers

If the daily consumption pattern of all distilled spirits for the adult population in our country were described as 10 beers served to 10 people, the breakdown would be:

3 people would drink none

5 people would share 2

1 person would drink 2

and

1 person would drink 6!

About this series

Think about your caseload. . .

How many cases involve substance abuse? If research bears true, more than half. Four out of five families in the child welfare system are affected by substance abuse. It is a core problem creating challenges at each stage of a child protection case. The Adoption and Safe Families Act of 1997, with its emphasis on swift permanency for foster children, makes these complex cases even harder.

It may be tempting to give up on these families: "The parents will never finish treatment in time." "They'll just use again anyway." "They made a choice and now they just have to live with the consequences."

Giving up will be appropriate in certain cases. But giving up without trying stacks the system against those it's there to help. Giving up perpetuates the problem. This series is about trying.

Four articles are planned:

This issue	The first explains **what addiction is.** Having a clear understanding of addiction will help you enter these cases with an open mind and a belief that a parent can change.
January 2001	The second looks at **new approaches to helping drug-abusing mothers.** Research reveals drug-abusing mothers have unique needs. Understanding them helps you know what treatment to seek to give the mother the best chance to address her addiction.
February 2001	The third helps you **work with drug treatment providers**. Different philosophies and professional mandates between legal/child welfare professionals and treatment professionals blocks progress in these cases. Overcoming differences will help you better serve children and families.
March 2001	The fourth looks at **relapse and aftercare issues.** Providing aftercare services and other safeguards once a child returns home helps protect against disruption and ensure the reunification is a smooth one.

Funding for this series was provided in part by the David and Lucile Packard Foundation.

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myth."[4] Many treatment professionals share this belief.[5]

The main point is that certain kinds of approaches, generally used by court personnel and "in your face" substance abuse programs—those that are highly confrontational and directive—are likely to *evoke* reactions in people. When we hurl undesirable labels at clients ("you're an alcoholic," "you're a bad parent") and clients are then told what they must do, cannot do, or should do, people will react in a predictable fashion. They respond by denying or arguing the accuracy of the description ("no I'm not") and asserting whatever personal freedom they can ("I don't have to"). Brehm and Brehm identify this as "psychological reactance" and report it to be a consistent, natural reaction—certainly not something unique to the addictive behaviors.[6]

Note that drug use, albeit harmful, is not always construed as harmful by the user as it also extends "positive" experiences of euphoria, excitement, and release from boredom and pain. Miller believes the real culprit behind addiction to be *ambivalence*.[7] This involves the vacillation between loving and hating the vice or problem behavior—the indecisive wrestling between believing one cannot live without a drug of choice and yet knowing one can no longer live with it. Ironically, Miller reports it is this type of ambivalence (good/bad) that will be strongly defended if attacked and is also known to be the toughest type of ambivalence to resolve.

These researchers do not contend that chemically dependant parents will not lie or deceive, only that they do not *abnormally* do so as a class of defendant. Lewis and Saarni, editors of the book *Lying and Deception in Everyday Life,* note all persons need to keep intact two important tenets of the human psyche.[8] First, that one is a "good" person, and second, that one is "in control" of himself or herself. Behavioral violations of either of these tenets will be defended, generally by self-deception. Court officers are advised not to take an addict's deception personally. Addicts will often lie to deceive themselves, not others.

These researchers report three reasons humans will lie: (1) to save face (which actually means to protect the two tenets of the psyche, I am "good" and I am "in control"); (2) to avoid punishment—if there is an expected loss of freedom or resources; and (3) to save the feelings—to save the face—of someone we love or care about. Certainly, one or all of these conditions might be present as parents face court action. Court personnel should consider that addicts will often deceive to protect *themselves* (self-esteem) from injury—not necessarily to make fools of the court or because others are thought to be naive or an "easy mark."

Stigma, Fear and Disclosure

Drug addicts suffer tremendous stigma. Descriptive labels of "dirty," "manipulator," "hostile," and "liar" are common pejorative characterizations. Add to this the addict's fear of

losing a drug of choice—a situation most addicts consider unbearable and one which provokes intense fears. These adverse conditions, coupled with the panic and humiliation that stems from knowing their children may be removed from their care (or not returned), leads to lying and deception as a general scheme of self-preservation and family unity.

This does not mean from a moral point of view that lying should be endorsed or found acceptable. Instead, understand that when faced with the potential consequences of a child welfare hearing and dispositions that the addict may consider draconian, lying could be considered a "natural action"—a reasonable strategy to adapt and survive.

Addiction is a Brain Disease—and it Matters

"Not only does acute drug use modify brain function in critical ways, but prolonged drug use causes pervasive changes in brain function that persist long after the individual stops taking the drug . . . . The addicted brain is distinctly different from the nonaddicted brain, as manifested by changes in brain metabolic activity, receptor availability, gene expression and responsiveness to environmental cues. . . that addiction is so clearly tied to changes in the brain structure and function is what makes it, fundamentally, a brain disease."

Science (October 3, 1997)
Alan Leshner, Ph.D., Director for the National Institute on Drug Abuse (NIDA)

Tips for Child Law Practice

In parental addiction cases, raising the confidence level of the court that a child is safe is intertwined with helping the parent(s) achieve sobriety. Understanding the nature of compulsion and the forces at work that engender a parent's reluctance to "come clean" and openly discuss substance use are important first steps to reach these objectives.

Lawyers, judges, and agency workers must find the balance between coercive paternalism and cooperative partnership. Parents believe that once identified as "abusive parents" during the initial stages of contact with the child welfare agency, it is difficult, if not impossible, to get staff to see them as capable parents later. The adage, "seeing is believing" is more accurately rephrased "believing is seeing." Lawyers, judges, and agency workers must avoid extreme judgments regarding the addict. One extreme demonizes them and characterizes them as subhuman, evoking contempt and ridicule. Dale et al., call the other extreme "professional dangerousness" to describe the naive practice of accepting (too readily) the parent's explanations, even implausible explanations of alleged or substantiated child mistreatment—so as to not damage the relationship with the family.[9]

Turnell and Edwards in their recent publication, *Signs of Safety: A Solution and Safety Oriented Approach to Child Protection Casework* state, "Very few people will listen to or allow themselves to be influenced by someone who seems unresponsive to them and is simply forcing them to conform."[10] However, most court staff worry that to be responsive or to approach parents cooperatively signals an acceptance (approval) of the child maltreatment. It does not. These authors believe court and agency staff can still believe these parents are people "worth doing business with" and advise court and agency staff to adopt the maxim "*cooperate with the person* not the drug use or child abuse." The hope and belief that working together can make things better and safer for the child is different from automatically believing parents in a family where a child has been maltreated. These authors advise we must keep a balance.

We are more effective when we can separate out the mistreatment and consider these parents viable partners in increasing the safety of the children. The goal and strongest focus must remain on the parents to demonstrate "signs of safety" for the children and bring them into a more equitable partnership to accomplish that. If we attend to only the failure and flaws of the family, we undermine the capacities and capabilities the family may possess. We cannot afford to waste resources in these cases. Our cultural perceptions of the addict as unworthy and unreachable lead to the unfortunate belief they have nothing to offer. Keeping a more equitable balance will avoid this self-fulfilling prophecy.

Did You Know?

"In the alcoholic population itself only 5% are on skid row. At least 95% are employed or are employable; they are estimated to comprise 10% of the nation's work force. Most of them are living with their families. The vast majority live in respectable neighborhoods, and are housewives, bankers, physicians, sales people, farmers, teachers, and clergy. They try to raise decent children, go to football games, shop for their groceries, go to work, and rake the leaves."

Kinney & Leaton. *Loosening the Grip: A Handbook of Alcohol Information*, 1991.

Michael D. Clark, M.S.W., C.A.C., is a certified addictions counselor and a contractual trainer to the Child Welfare Institute for the State of Michigan's Office of Professional Development / Family Independence Agency. Mr. Clark also serves as a

12 Practice Principles That Build Partnerships

1. Respect defendants as people worth doing business with.
2. Cooperate with the person, not the abuse.
3. Recognize that cooperation is possible even when coercion is required.
4. Recognize all families have signs of safety (e.g., adequately supervising toddlers, checking on younger children playing next door, or setting reasonable curfew hours for teens).
5. Focus on safety.
6. Learn what the defendant wants.
7. Always search for detail, avoid generalizations. Detailed information—the who, what, where, and when of *both* negative and positive family functioning—provides for realistic assessments and case plans.
8. Focus on creating small change. Big goals, set way into the future, can frustrate. Try to focus on specific and small "first steps."
9. Don't confuse case details with judgments. Time pressures, high caseloads, and poor client/staff relationships can lead to overly harsh judgments that may not fit the information and events. Try to separate "events and information" and "meaning and judgments."
10. Offer choices . . . avoid unnecessary coercion.
11. Treat the interview as a forum for change.
12. Treat the practice principles as aspirations, not assumptions . . . we don't always get it right all the time in child law practice.

Turnell & Edwards. *Signs of Safety: A Solution and Safety Oriented Approach to Child Protection Casework,* 1999.

national faculty member for the Juvenile Drug Courts through the U.S. Department of Justice, Drug Courts Program Office. Ph: 517/244-0654. E-mail: MClark936@aol.com

Endnotes

1. Hall, Matthew, N. et al. "Social Workers Employed in Substance Abuse Treatment Agencies: A Training Needs Assessment." *Social Work* 45, March 2000, 141-155.

2. Join Together Online, December 18, 1999, *Substance Abuse Fact Finder* [Internet, listserv] <http://www.jointogether.org>

3. U.S. Department of Health and Human Services. *Blending Perspectives and Building Common Ground: A Report to Congress on Substance Abuse and Child Protection.* Washington, D.C.: U.S. Government Printing Office, 1999.

4. Miller, William. M. & Stephen Rollnick. *Motivational Interviewing: Preparing People To Change Addictive Behavior.* New York: Guilford Press, 1991.

5. Berg, Insoo K. & Scott Miller. *Working with the Problem Drinker.* New York: Norton, 1992; Berg, Insoo K. & Norman H. Ruess. *Solutions Step By Step: A Substance Abuse Treatment Manual.* New York: W.W. Norton, 1998; Prochaska, James. O., Carlos C. DiClemente, & James C. Norcross. *Changing For Good: A Revolutionary Six-Stage Program For Overcoming Bad Habits And Moving Your Life Positively Forward.* New York: Avon Books, 1994.

6. Brehm, S. S. & J.W. Brehm. *Psychological Reactance: A Theory of Freedom and Control.* New York: Academic Press, 1981.

7. Miller & Rollnick,1991.

8. Lewis, Michael & Carolyn Saarni, eds. *Lying and Deception in Everyday Life.* New York: The Guilford Press, 1993.

9. Dale, P., Davies, T. Morrison, & J. Waters. *Dangerous Families: Assessment and Treatment of Child Abuse,* 1986.

10. Turnell, Andrew & Steve Edwards. *Signs of Safety: A Solution and Safety Oriented Approach to Child Protection Casework.* New York: W.W. Norton, 1999.

FROM THE BENCH

Judge J. Robert Lowenbach is a seasoned Colorado juvenile dependency court judge. In this ongoing column, Judge Lowenbach offers tips on handling various child welfare issues.

Notifying Caregivers

Foster parents, preadoptive parents or relatives who are caring for the child provide a rich resource for the court in determining what the child needs. The court should notify the child's caregiver of any hearing involving the child. Judicial officers should recognize caregivers who attend hearings, thank them for attending and ask if they have anything they would like to say. While some fear that having such persons attend will only delay the child's case, in practice this has not proven to be true. If the foster parent chooses to be heard, the issue is often one that is important to the daily life of the child that the judge or magistrate would not have otherwise been aware.

You may decide that the required notice should be given by the child welfare agency. It would be very difficult for the court to provide such notice because the notice may not include the caregiver's last name, address, or other identifying information. If the court were to give notice, a separate and secure file would have to be maintained with the name and address of each child's caregiver.

—Judge Lowenbach