

# B.E. Witkin Judicial College

## Alcohol and Other Drugs and the Courts

Hon. Peggy Fulton Hora  
Alameda County Superior Court

June 9, 2005

# FALSE

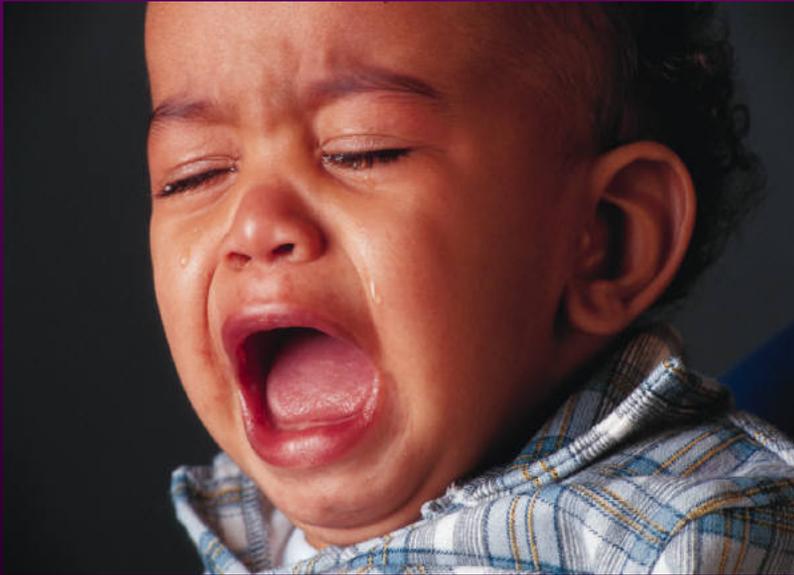
- Children in alcohol-abusing families are no more likely to be victims of maltreatment than children in homes free of alcohol abuse.

# Impact on Children

- One of four children is exposed to alcoholism or alcohol abuse
- Over 4 million children have at least one parent in need of drug abuse treatment



# CPS Issues for Using Parents



- 80% of child abuse/neglect cases are caused or exacerbated by substance abuse in California
- Children in alcohol-abusing families are almost 4 times more likely to be victims of maltreatment

# Foster Care

- In 2002 there were > 90,000 children in foster care in California
- DSS estimated that AOD is a significant factor in 80% of foster care cases

# TRUE

- 40% of people with alcohol disorders also fulfill criteria for psychiatric disorders

# What is “Co-Occurring”?

- Co-occurring mental and substance abuse disorders include addiction or dependence plus another major mental health condition. It may be a major mental illness like schizophrenia or a less severe mental illness like clinical depression.

# In California

- 75% of our 360,000 homeless have substance abuse problems
- 50% of the mentally ill suffer from substance abuse
- 77% public SA clients are unemployed
- 39% no high school diploma

# Cocaine/Alcohol abusers with comorbid psychiatric disorder

## ■ MEN

Anxiety	48%
Depression	36%
Bipolar	6%
Panic disorder	10%
Social phobia	14%
PTSD	24%

## ■ WOMEN

Anxiety	70%
Depression	40%
Bipolar	4%
Panic disorder	18%
Social phobia	10%
PTSD	46%

People with Co-occurring disorders are the “frequent flyers” in the justice system



# Youth Prevalence

- 80-85% of youth treated for substance abuse also have a mental health disorder
- Youth with behavioral and emotional problems are more likely to report alcohol or illicit drug dependence

## Youth prevalence, cont.

- Childhood maltreatment and trauma are significant risk factors for later psychiatric problems including AOD abuse
- In CYA, 85% of the 5,700 wards have a SA problem

# Relationship between AOD and Psych Symptoms

AOD use can:

- Cause psychiatric symptoms
- Mimic psychiatric disorders
- Cause symptoms associated with almost any psychiatric disorder

# Relationship cont.

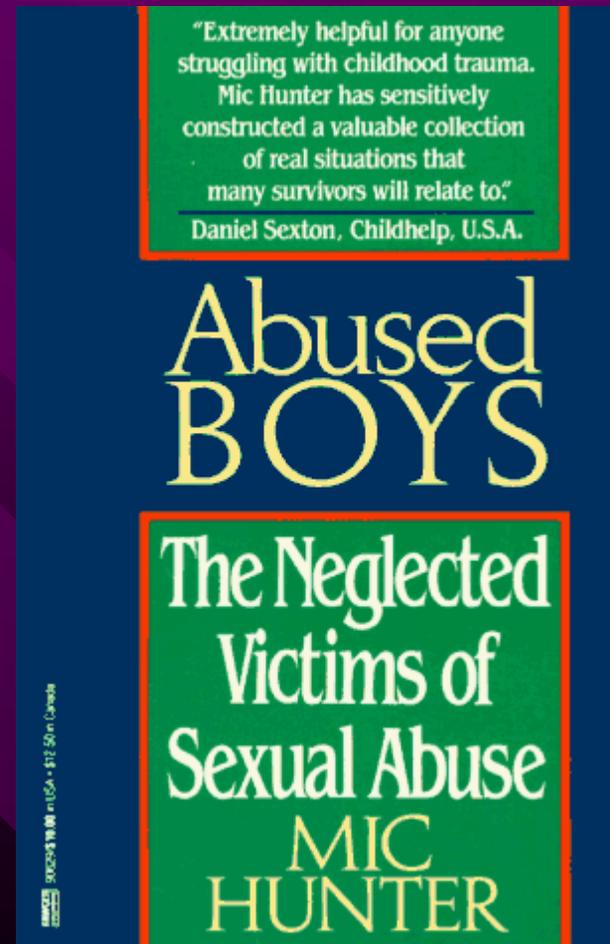
- Prompt development, provoke reemergence or worsen severity of psychiatric disorders
- Mask psychiatric symptoms and disorders

# FALSE

- The number one risk factor for alcoholism is childhood sexual abuse

# Childhood Sexual Abuse

- It is the second most prevalent risk factor
- Applies to both boys and girls
- 70-90% of women in tx were sexually abused before age 16



# Seducer gets jail, probation

**By Danielle Cass**

STAFF WRITER

OAKLAND — A 31-year-old Hayward woman who had a sexual relationship with a 14-year-old boy was sentenced to eight months in the county jail Tuesday in Superior Court.

Meanwhile, the boy's family has been devastated by the incident, his father said. "My entire family has been totally destroyed," the Hayward father said. "I'm going through a divorce. "(The boy) is still in

stitutionalized. It's made my daughter start acting out. ... This is what it's really like to be a victim."

The father said he was "not really happy" with Valerie Walker's sentence. Alameda County Superior Court Judge Larry Goodman gave her five years probation, eight months in county jail and ordered her not to contact the boy. Walker was allowed to complete the jail time through work furlough.

Walker pleaded guilty to one felony count of lewd act with a child under 14. The day after her stepdaughter broke up with the boy last year, Walker seduced him. Five sexual encounters occurred between Walker and the boy, at her and his home, while other teens were in the house, records show.

When Walker's stepdaughter caught them having sex, Walker did not stop, Deputy District Attorney Jill Hiatt wrote.

"There's all this talk and special interest groups focusing on women's rights and women being raped, but we kind of kiss it off when it goes the other way," the father said.

# A recent survey showed:

- 1:5 girls have been sexually or physically abused
- The abuse occurred at home (53%)
- It happened more than once (65%)
- The abuser was a family member (57%)
- Or a family friend (13%)
- 29% told no one
- Have increased likelihood of SA or eating disorders

# TRUE

- Children born to alcoholic parents but adopted during infancy and raised by “teetotalers” are still at greater risk for alcoholism than adopted children who were born to non-alcoholics.

# Genetic Inheritance



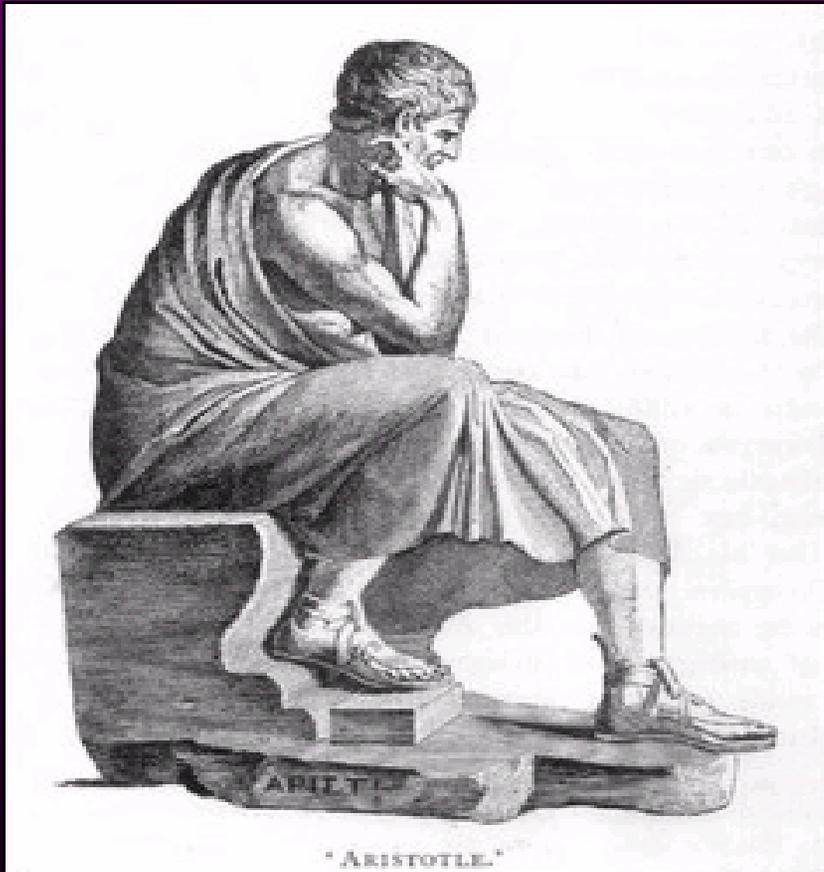
- Alcoholic family twin raised by non-alcoholic parents
- 74% concordance for identical twins
- 32% concordance for fraternal twins

# Genetic Inheritance, cont.

- Non-alcoholic family twin raised by alcoholics

**NO INCREASED RISK**

# Aristotle said,



- “...women who drink wine excessively give birth to children who drink excessively of wine.” 350 B.C.

# Age of onset of drinking is a risk factor

- Every year before 21 increases likelihood of problem drinking by 12%
- Early drinkers need more alcohol to get high

# TRUE

- The top 5% of drinkers consume half of all alcoholic beverages sold.

# Who's drinking alcohol ?

- 42% don't drink
- 12% seldom drink
- 8% drink 2/3 sold
- 5% consume 50%
- In California, 50% of all addiction problems are as a result of alcohol



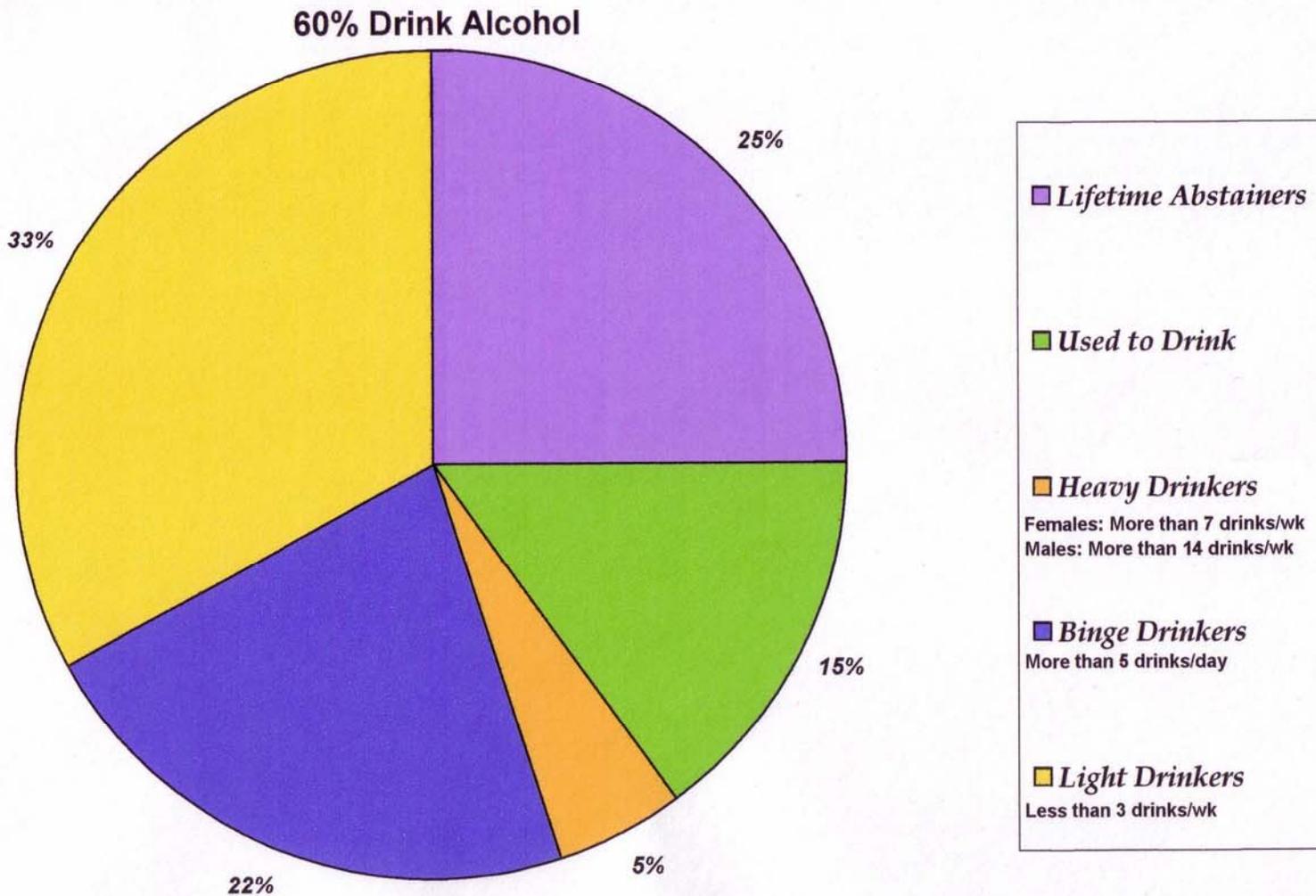
# Underage Drinking

- According to JAMA nearly 20% of all beer, wine and hard liquor is consumed by children and teenagers



# Adult Alcohol Consumption

1999 - 2001





*“That is not one of the seven habits  
of highly effective people.”*

# Alcohol abuse cost California

■ \$15,000,000,000

# AOD use CA vs. USA

■ Any illicit drug	7.8%	■	6.4%
■ Marijuana	6.0	■	4.9
■ Other drugs	3.2	■	2.8
■ Alcohol	47.4	■	46.4

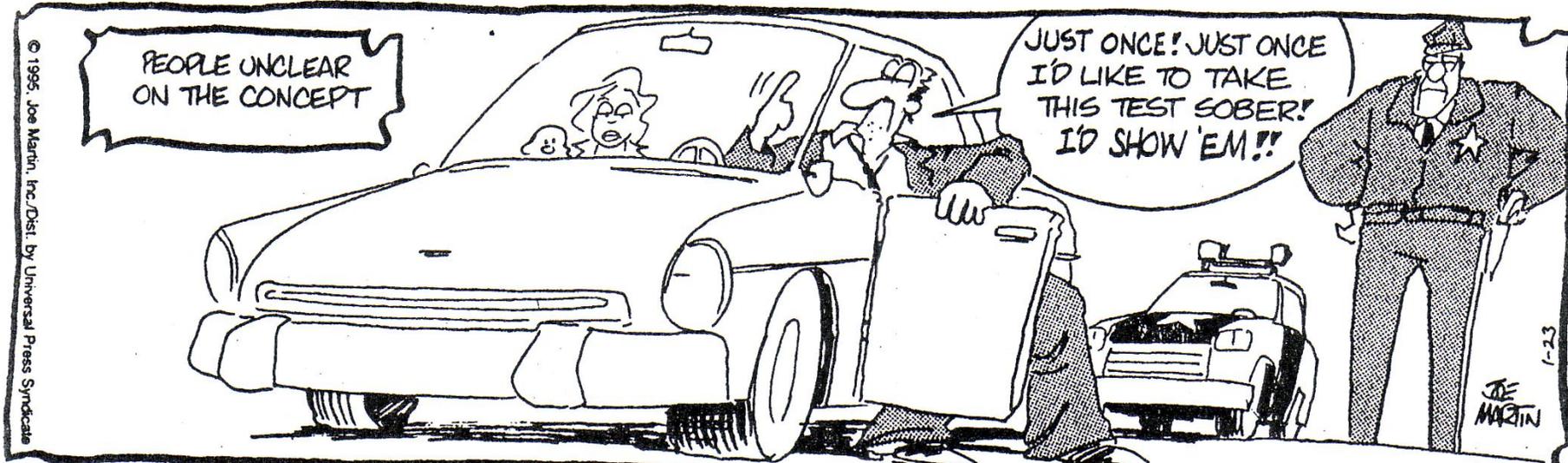
# TRUE

- The average DUI offender has a BAC of .16 (twice the “legal limit”).

# DUI Facts

- A “first time” DUI defendant has driven 400 times under the influence before being caught.

**MISTER BOFFO** *Joe Martin*



# DUI Facts

- “First time” driver has driven impaired 400 times
- More men than women (4 vs. 1%)
- 4.4% white males, 3.1% “Hispanic” males and 2.8% African American males report driving while impaired
- 1.5 million DUI arrests in US each year (almost 10% of arrests, the largest category over the past decade)

# Drinking after a DUI

- Anecdotal evidence from New Mexico indicated that 100% of DUI offenders got drunk with 48 hours after being released from jail
- Sasnett-Stauffer, Gail, "A Drug by any Other Name is still a Drug: Why the Florida Judiciary Should Start Treating DUI as any Other Drug Offense," 13 U.Fla. J. L. Pub. Policy 299 (2002)

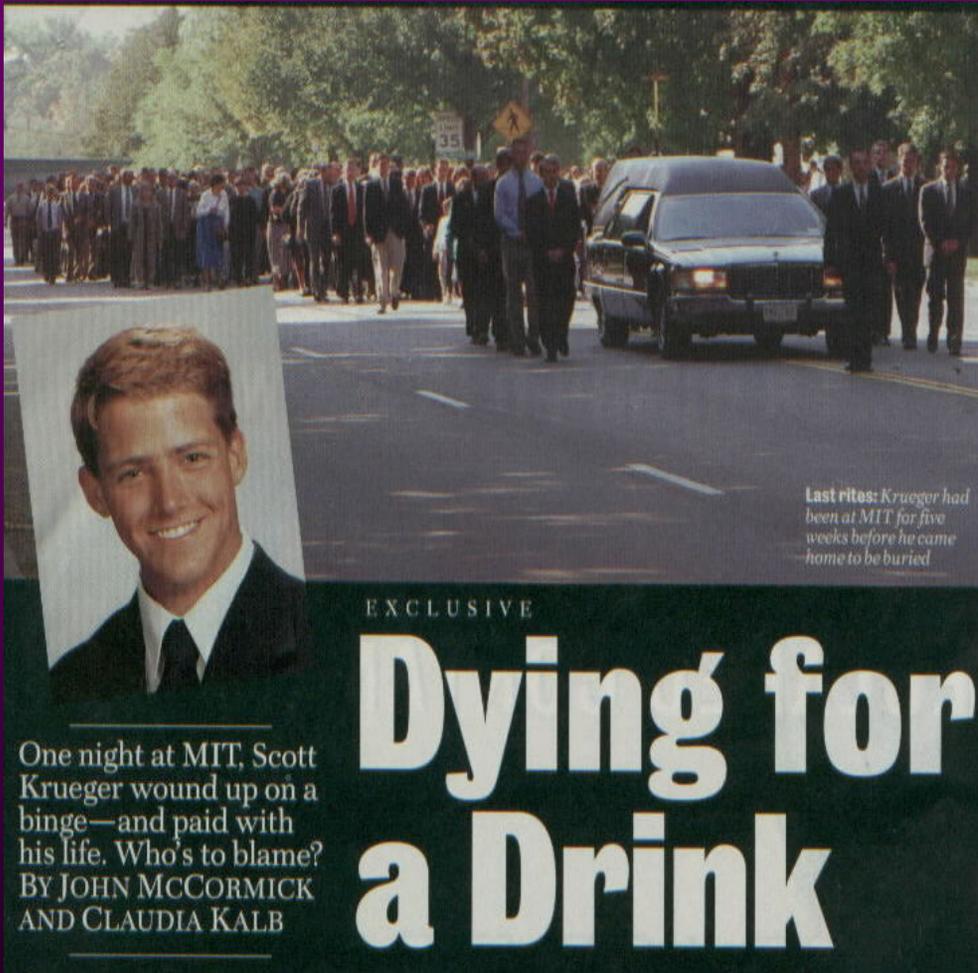


“I’m from Alabama, and they have a different alphabet.”

Baltimore Orioles pitcher **Eric DuBose**, during an early Monday morning traffic stop, after being asked by Sarasota, Fla., police to recite the alphabet. He was arrested and charged with driving under the influence.

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APRIL 4, 2005 NEWSWEEK 21



- More than half of the annual U.S. alcohol consumption is beer
- 75% of all excessive alcohol consumption is beer

# One 40 oz. Malt liquor =

- 5.9 beers
- 5.3 glasses of wine
- 5.3 mixed drinks



# Smoking & Alcohol



Small quantities of alcohol seems to significantly boost the pleasurable effects of nicotine

- 80-90% of alcoholics smoke
- Alcoholism is 10xs more prevalent among smokers as non-smokers

*Time* magazine, 12-6-04 at 96

# TRUE

- Compliance with alcohol and other drug (AOD) treatment is about the same as with any other chronic condition.

# Addiction/Chronic Illness

<b>Addiction/Chronic Illness</b>	<b>Compliance Rate (%)</b>	<b>Relapse Rate (%)</b>
Alcohol	30-50	50
Opioid	30-50	40
Cocaine	30-50	45
Nicotine	30-50	70
<b>Insulin Dependent Diabetes</b>		
Medication	<50	30-50
Diet and Foot Care	<50	30-50
<b>Hypertension</b>		
Medication	<30	50-60
Diet	<30	50-60
<b>Asthma</b>		
Medication	<30	60-80

# HYPERTENSION

- Adherence to medication regime: <60%
- Adherence to diet and exercise: <30%
  
- Retreated in 12 months: 50-60%

# DIABETES (Adult onset)

- Adherence to medication regime: <50%
- Adherence to diet and exercise: <30%
  
- Retreated in 12 months: 30-50%

# ASTHMA

- Adherence to medication: <30%
- Retreated in 12 months: 60-80%

McLellan, A. Thomas, "Substance Abuse Treatment Research: Are There Practical Findings For General Use?," Treatment Research Institute, University of Pennsylvania, 2002

# FALSE

- Medical supervision during withdrawal is only necessary if the user is addicted to heroin

# TRUE

- Environmental cues such as seeing a “crack pipe,” running into a former using partner or seeing drugs can cause a physiological reaction in the recovering addict for up to ten years.

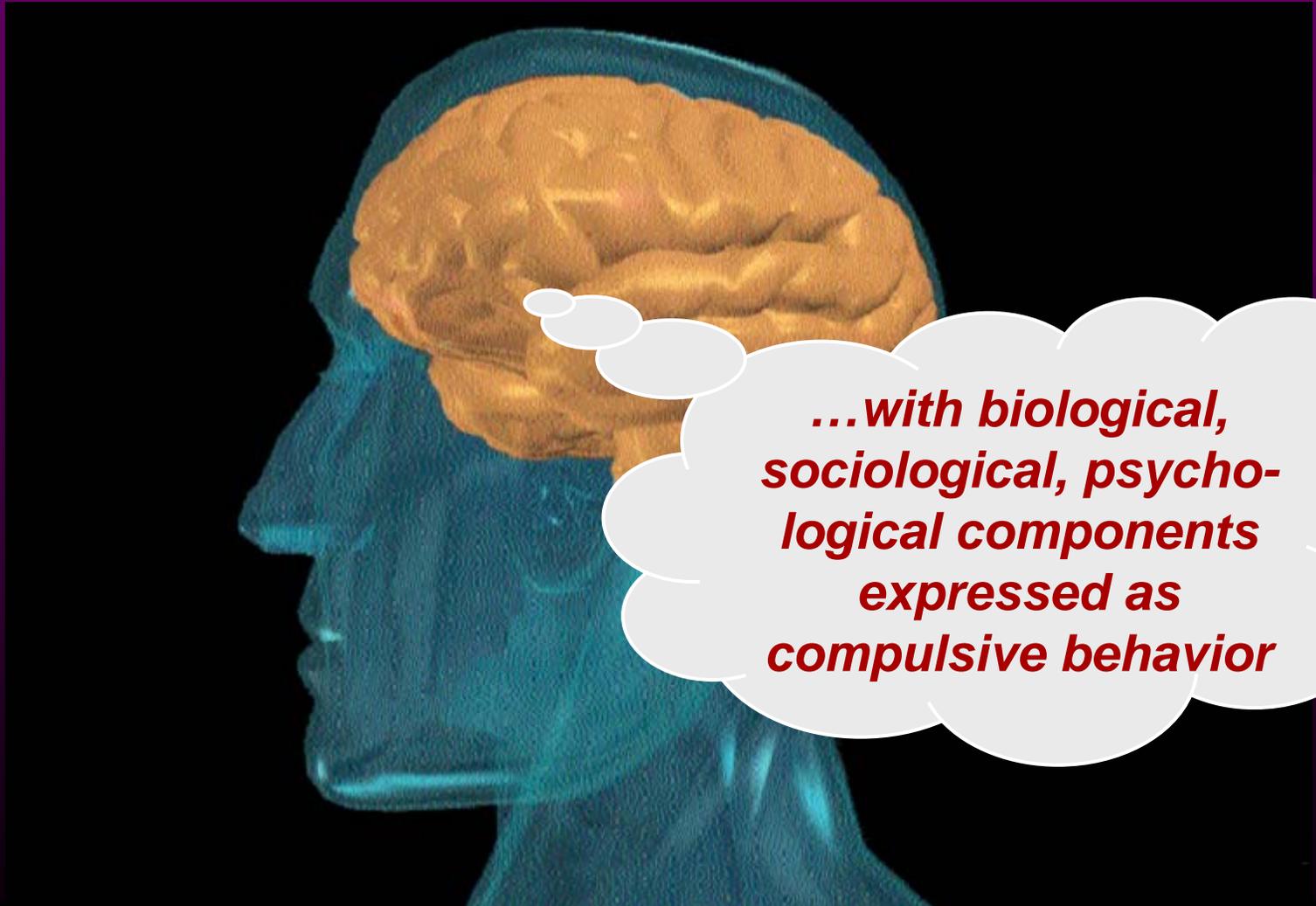
# IV drug use



# Smoking meth



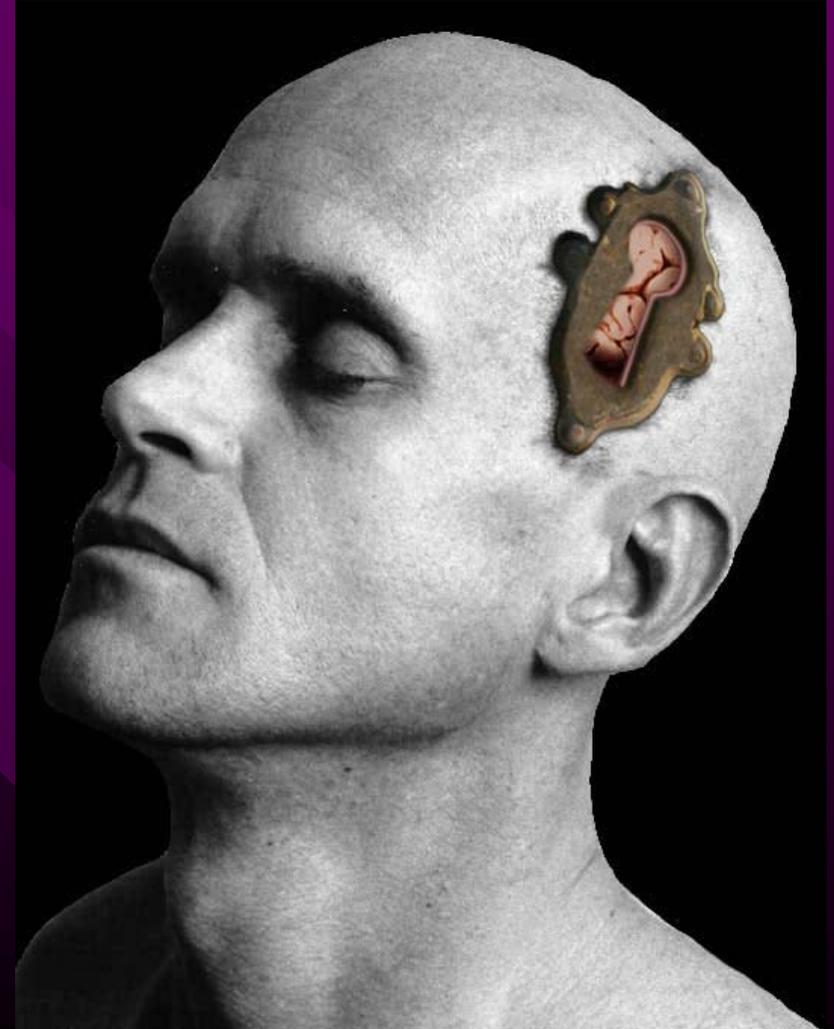
# Addiction is a Brain Disease



***...with biological,  
sociological, psycho-  
logical components  
expressed as  
compulsive behavior***

# Definition

- “Drug dependence is less a failure of will than a miscarriage of brain chemistry.”



# Addiction is NOT

- ...a poor moral choice
- It is preventable and treatable
- Tx saves lives and money



# Addiction by drug

- 9% marijuana users
- 15% alcohol users
- 20% heroin users
- 32% tobacco smokers become addicted according to NIM (1999)



# GOOD NEWS!



- Addiction is a treatable disease on which the judiciary can have a profound impact.

“Judges should coerce treatment until sobriety becomes tolerable”

John Chappel, M.D., Prof. of Med., UNR

# ADAM Statistics 2000

- Sacramento 73%  
Report using alcohol 61%
- San Diego 64%  
Alcohol 67%
- San Jose 53%  
Alcohol 72%
- New York 80%

# CA Treatment Need

- 2.3 million Californians needed treatment for alcohol or other drug abuse according to a 2001 UCLA study. In Dec. 2001, there were 11,000 people on waiting lists



# SACPA of 2000

- As of June 30, 2002, >30,000 offenders were in tx
- For > half, this was their first tx try
- 72% SACPA participants male
- @50% White, 31% Hispanic, 14% African American
- 86% placed in outpatient programs

# CA Tx Funding \$682 million

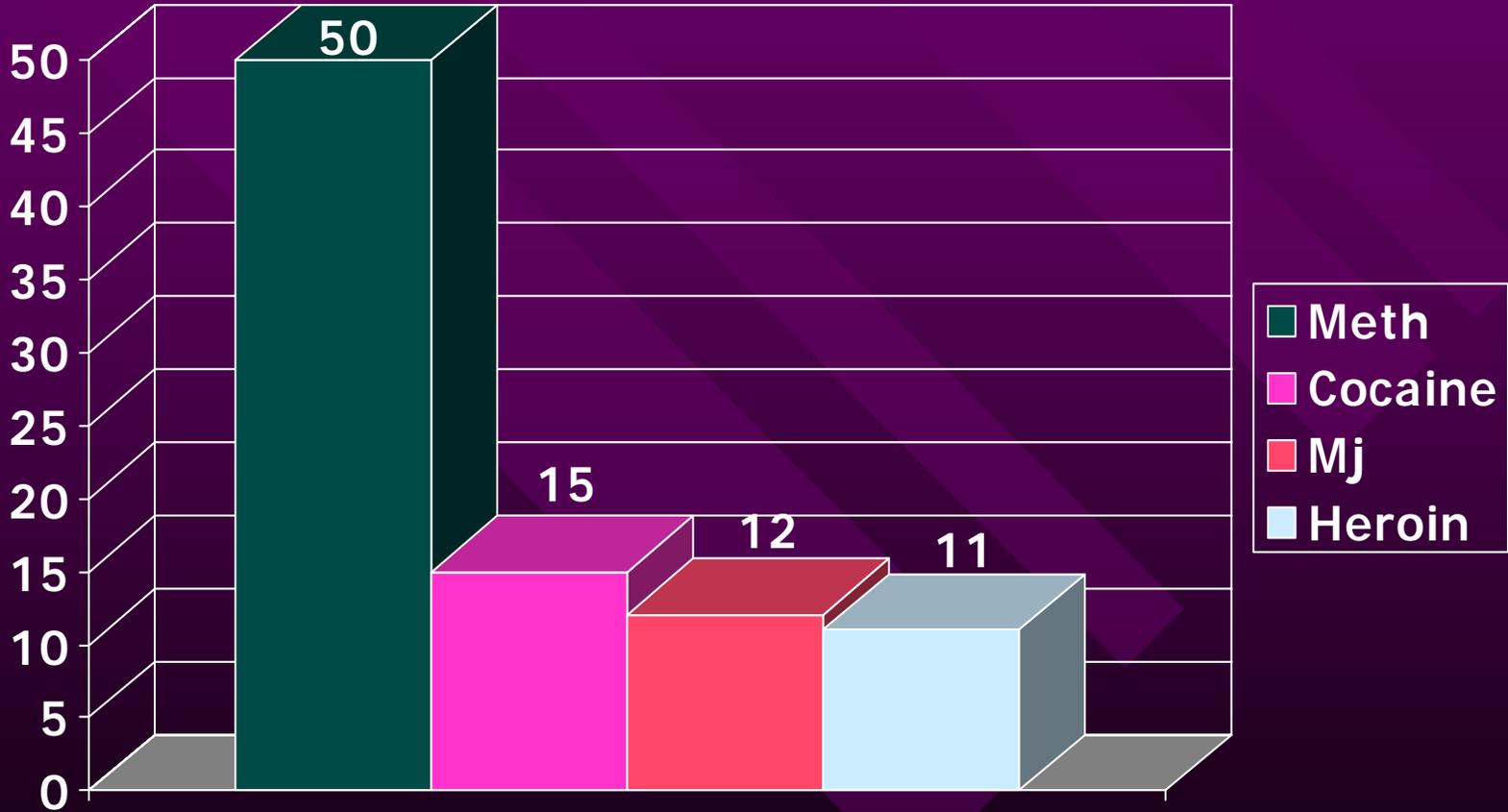
- Drug courts 2%
- Prop. 36 19% (+ 6% > for testing)
- Criminal justice “clients” 62%
- Medicaid, perinatal, CalWORKs, Indian Health Clinics 32%
- Unrestricted 6%

# We're Number Two

- California second in nation with 10,656 women behind bars\*
- Number of women in prison has grown 48% since 1995 while the male prison population grew 29%
- 10% of African American men age 25-29 are in prison

\*Texas has 13,487 as of 12-31-03

# SACPA drugs of abuse



# Substance Abuse...



# Effective Tx Saves Money

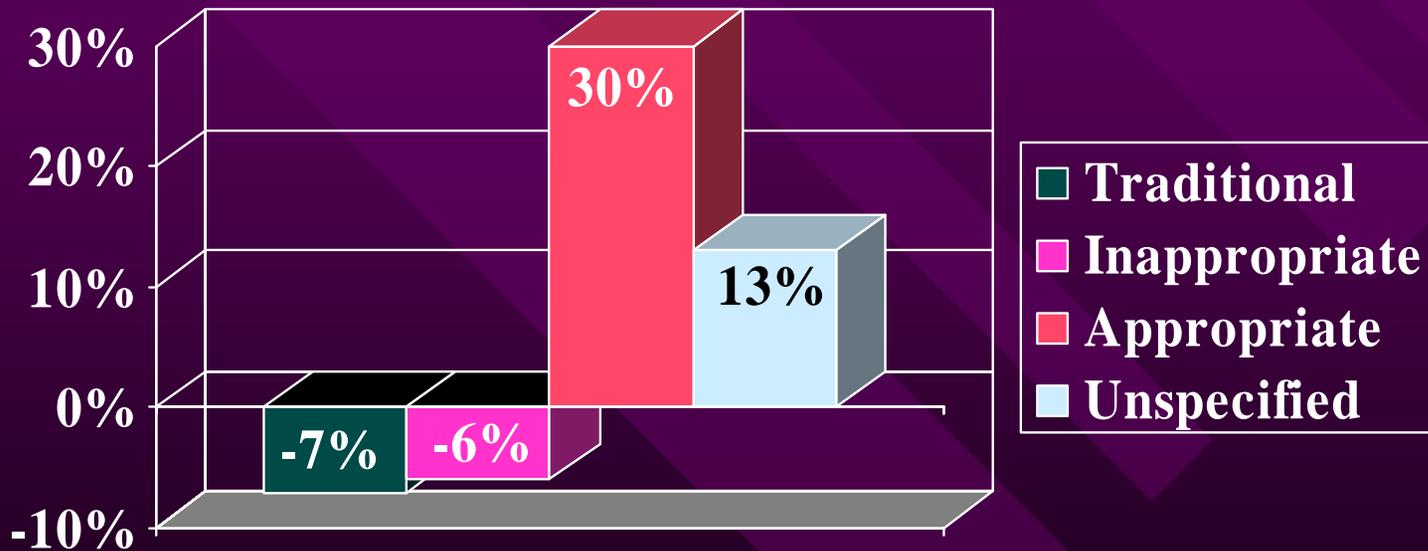
- Every \$1 in tx saves \$7 in other costs
- Tx is a good investment
- Tx reduces health care costs

# Tx cont.

- Tx cuts costs of crime, violence and law enforcement
- Tx reduces health care costs
- Tx restores families
- Effective tx is affordable

# TREATMENT EFFECTIVENESS

## Percentage Reduction in Recidivism in 154 Controlled Studies



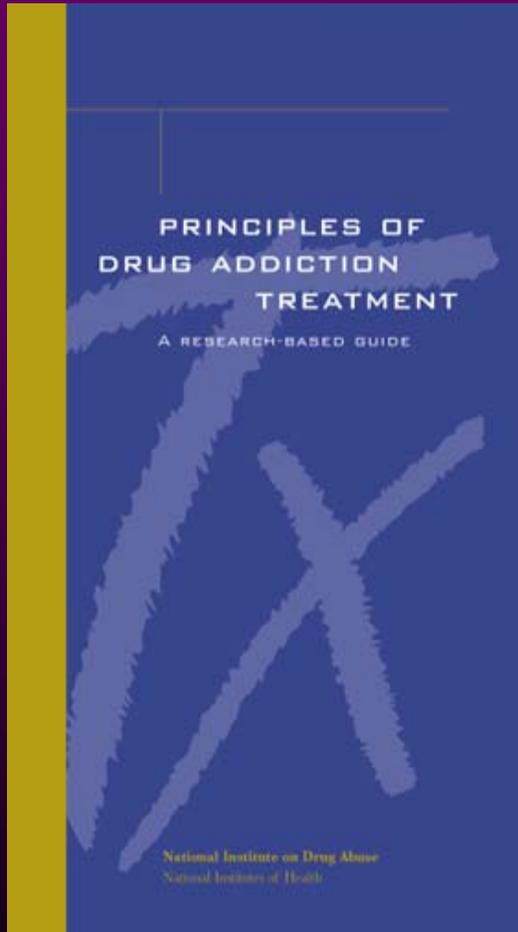
## Coerced Tx, AKA, “Judicial Leverage”

- If the proximate cause of criminal activity is need to feed habit;
- If criminal activity is done UI;
- If drug use can lead to violence;

## Judicial Leverage, cont.

- Then criminal justice must hold people accountable AND enable change in behaviors
- Leading to reduced recidivism, safer communities, healthier/more productive citizens

# NIDA: Principles



<http://www.nida.nih.gov/PODAT/PODATindex.html>

# NIDA



## Principles of Treatment

1. Treatment Matching
2. Availability
3. Domains of Care
4. Individualization
5. Retention
6. Psycho-Social Treatment
7. Medications
8. Dual-Diagnosis Treatment
9. Medical Detoxification
10. Coercion
11. Monitoring
12. High-Risk Behaviors
13. Recidivism

SALLY

A hypothetical

## PERCENTAGE OF INFANTS BORN EXPOSED TO DRUGS

Substance	Asian & Paci- fic Islander	African American	Hispanic	White	Other	All
Alcohol	5.07	11.58	6.87	6.05	4.03	6.72%
Tobacco	1.73	20.12	3.29	14.82	4.81	8.82%
Prescription drugs	1.49	2.38	1.26	1.96	1.31	1.71%
All illicit drugs	0.39	11.90	1.51	4.92	1.57	3.49%
Marijuana	0.21	4.59	0.61	3.25	1.21	1.88%
Cocaine	0.06	7.79	0.55	0.60	0.20	1.11%
Opioids	0.34	2.54	1.06	1.59	1.11	1.47%
Amphetamines (illicit & legal)	0.06	0.19	0.35	1.32	0.24	0.66%
<b>Total Positives (excluding tobacco)</b>	<b>14.22%</b>	<b>24.02%</b>	<b>9.37%</b>	<b>12.28%</b>	<b>6.76%</b>	<b>11.35%</b>

*Source: California Perinatal Substance Exposure Study, 1993 (Noble, Vega, Kolody, Porter, Hwang, Merk, & Bole, 1997)*

# FALSE

- Babies born of mothers who use drugs during pregnancy are born “addicted.”
- Addiction required a fully developed nervous system. Not all babies are susceptible. There is no hard evidence that such babies seek drugs or lose control over drugs.

# Cocaine-Exposed Children



- Trained research assistants, unaware of a child's history, cannot tell the difference between a 4-year-old who was exposed to cocaine before birth and one who was not.

# Bias in scientific literature

- There are both observational and analytical errors in reports about maternal cocaine use. There is a bias in the medical literature on cocaine
  - Fromberg, E., “Cocaine and Pregnancy, Hype or Science?,” Netherlands Instituut voor Alcohol en Drugs, (2001)

# 2002 research

- A recent NIDA study which corrected for factors like poverty, poor nutrition, lack of prenatal care showed significant mental deficits in toddlers exposed to cocaine before birth. However, the study did not correct for other drugs including alcohol, tobacco and marijuana

Singer, L.T., et al., "Cognitive and motor outcomes of cocaine-exposed infants,"  
*JAMA* 287(15):1952-1960, 2002

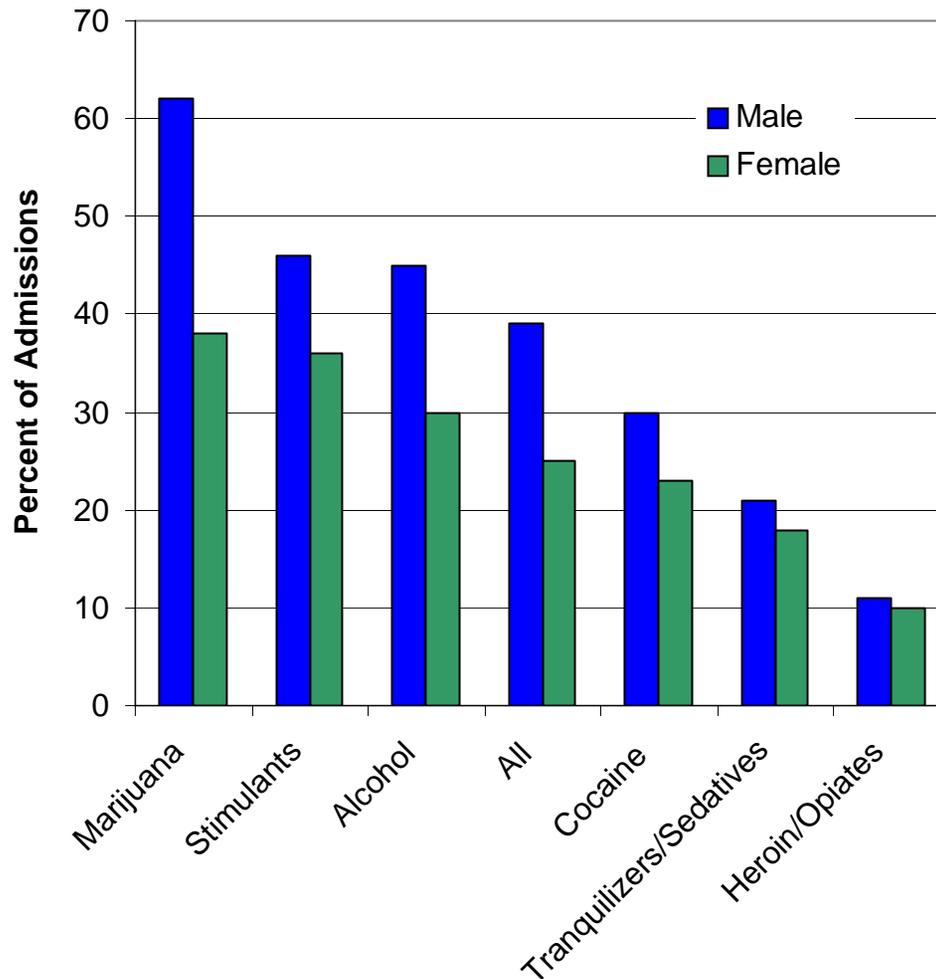
# Latest research

- Prenatal cocaine exposure NOT associated with verbal or performance IQ scores
- Increased risk for specific cognitive impairment and lower likelihood of IQ above the norm at 4 years

# How to correct for exposure?

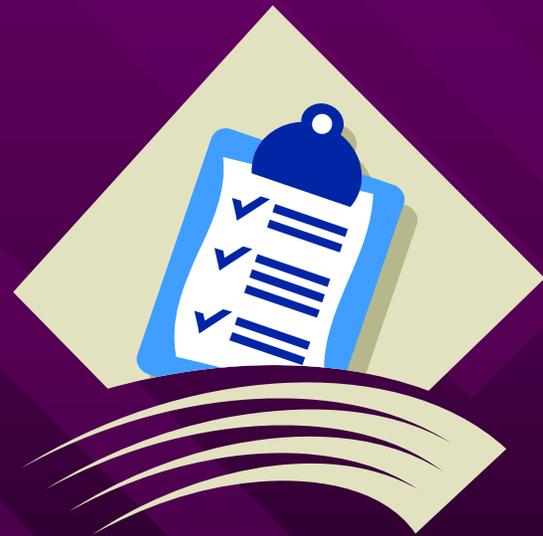
- The quality of the care giving environment was the strongest independent predictor of outcomes
- Cocaine-exposed children placed in homes with a stimulating environment and with caregivers with good vocabulary scores attained full-scale and performance IQ scores

### Criminal Justice Referrals, by Sex and Primary Substance: 1998

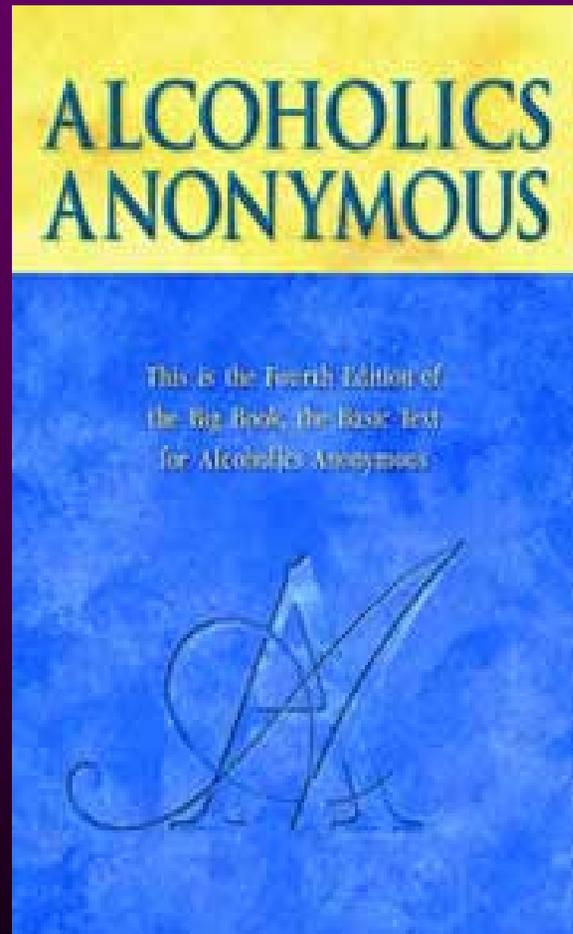


# Conditions should be ...

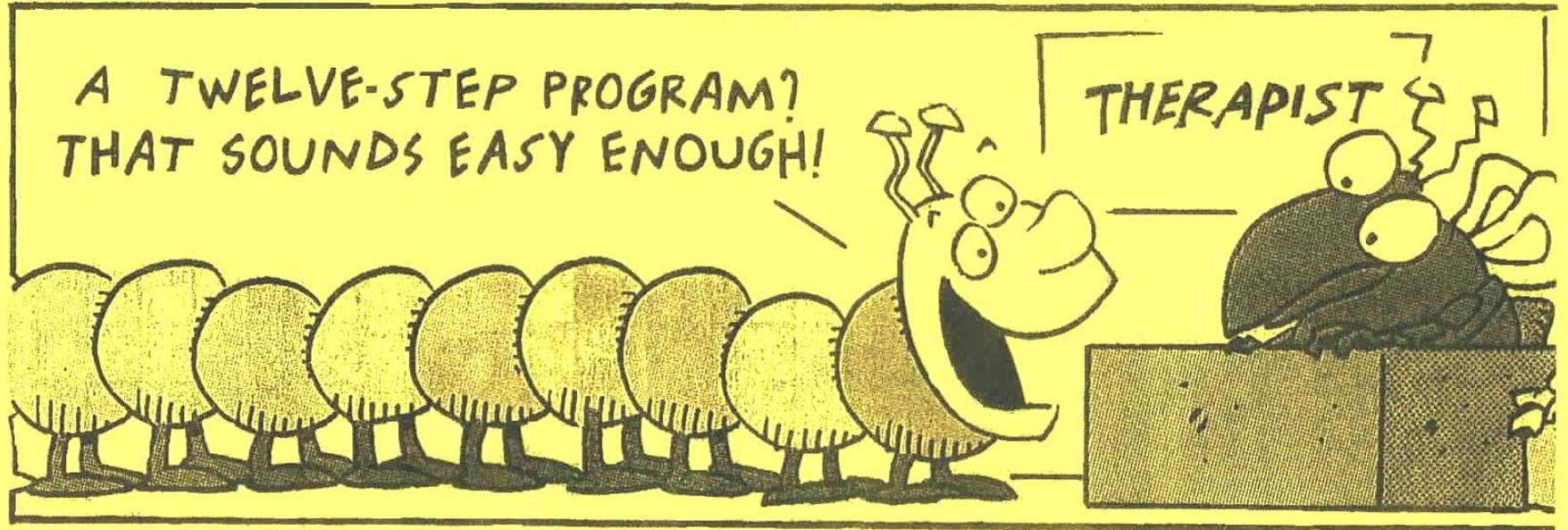
- Realistic
- Relevant
- Research-supported



# 12 Steps and the Courts



Frank and Ernest/Bob Thaves



# AA and the First Amendment “Establishment of Religion”

- *Griffin v. Coughlin* 649 NY2d 903, *cert. den.* \_\_\_ US \_\_\_, 136 LE2d 607 (1997)
- *Warner v. Orange Co. Dept. of Probation* 115 F.3d 1068 (2d Cir., 1997), *cert. den.*

# AA & 1<sup>st</sup> Amendment

- *O'Conner v. Calif.* 855 F.Supp. 303 (C.D. Ca 1994)

No 1<sup>st</sup> Am. Where probationer given choice between AA and “secular” program

- See also: Honeyman, Michael G., Jr., “Alcoholics Anonymous as a Condition of Drunk Driving Probation: When Does It Amount to Establishment of Religion?,” 97 *Columbia Law Review* 437 (1997)

# “Working the Steps”

- People in recovery who were sponsoring others or working the steps were more successful at not taking the first drink during the first year after treatment
- People who were helping were significantly more likely to stay sober independent of the number of meetings attended.

# Appropriate Responses

- **Identifying behaviors to reinforce**

- sobriety
- mental health
- appropriate parenting
- non-violence

# Appropriate behavior

- Identifying behaviors to sanction
  - non-compliance with probation order
  - non-compliance with treatment plan
  - substance abuse / relapse

# Judicial Supervision

- Ongoing judicial supervision increases the likelihood that the participant will remain in treatment
- Regular status hearings are used to monitor participant performance

# Judicial Supervision

- Time between hearings may be increased or decreased, based on compliance
- Grouping the participants for single court sessions educates them on the consequences



# CCJ/COSCA



- 50:0 Chief Justices voted to support “Problem-Solving Courts”
- Will develop Best Practices
- Recognizes collaboration and interdisciplinary training

Resolution 22, adopted 8-3-2000

# COSCA

- “The human and political success of therapeutic justice programs is too great to ignore.
- “Courts [must be] responsive to changing times and changing expectations but not at the cost of their fundamental roles and responsibilities.”

# “Weighing” the Court Performance Standards



# Trial Court Performance Standards

- **Standard 3.5 Responsibility for Enforcement:**  
The Trial Court takes appropriate responsibility for the enforcement of its orders.

# TCPS

- **Standard 4.5 Response to Change:** The Trial Court anticipates new conditions and emergent events and adjusts its operations as necessary.

## 4.5 Commentary

- *Effective trial courts are responsive to emergent public issues such as drug abuse, child and spousal abuse, AIDS, drunken driving, child support enforcement, crime and public safety, consumer rights, gender bias, and the more efficient use of fewer resources.*

- *A trial court that moves deliberately in response to emergent issues is a stabilizing force in society and acts consistently with its role of maintaining the rule of law.*

# TCP Standard 5.2

**Expeditious, Fair and Reliable  
Court Functions**

## 5.2 Commentary

- ***The public has trust and confidence that basic trial court functions are conducted expeditiously and fairly and that court decisions have integrity***