

**ADDRESSING ADDICTIONS IN COURT:  
Rethinking Recovery and Relapse**

*Once addiction is understood, lives can and will be saved.*

--Judge K. Michael Mayes

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## **ADDRESSING ADDICTIONS IN COURT: Rethinking Recovery and Relapse**

Before the mid to late Twentieth Century, “alcoholism” and “drug addiction”<sup>1</sup> were words whispered about fallen friends and relatives. Since that time, the recovery community has made significant strides in explaining to non-addicts what it means to be an addict, and how recovery and relapse co-exist in the addict’s world. But fully explaining these concepts in terms that make sense to non-addicts can be an insurmountable task and the resultant lack of understanding by those who are not touched directly or indirectly by addiction has created an atmosphere of distrust between addicts and non-addicts. This, in turn, has resulted in little empathy from various professionals and industries that have the capacity to create positive change for addicts. We see this in sparse funding for research and treatment, rejection of coverage by the insurance industry for necessary mental health care, and denial by those in the judicial field that addictions should be viewed differently than crimes.

The recovery community fights preconceived biases that have existed for years. For example, many well intentioned non-addicts find it easier to blame the abuse of alcohol drugs on a lack of courage or an unwillingness to just say “no” than to thoughtfully consider the painful and costly alternative that addiction is a mental health condition that in fact exists and cannot be cured. Moreover, since our society values accomplishment through hard work, it is difficult for many to accept the notion that simple effort and a willingness to quit alcohol or drugs is not the answer to addiction. These people find it easier and, quite frankly, more satisfying, to simply assign culpability to a failure in the addict’s morality, thereby satisfying their human desire to assign fault.

While we have known for some time that addiction affects the addict’s psyche in ways that promote the disease process itself, <sup>2</sup> only in recent years have the medical and technology communities weighed in with their expertise, explaining and showing in vivid detail the direct effects addiction has upon the brain of an addict. Advanced CAT scans, MRI’s and other radiological devices now confirm with remarkable specificity how addiction, as a mental disorder or disease, operates in the brain of an addict, and how substance abuse alters and damages the brain. Medicine has proven what addiction and substance abuse experts have

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<sup>1</sup> I will use the word “addiction” to include “alcoholism.”

<sup>2</sup> The most damaging symptom of an addiction disorder is the addict’s “denial” of the existence of the disease. To understand this, imagine a person having been diagnosed with cancer, kidney failure, diabetes or even flu symptoms but who denied they had such a condition and refused treatment.

suspected for years: (1) an addict's brain is different than other brains and (2) drugs and alcohol damage the addict's brain in specific locations and in demonstrable ways. Being able to see verifiable changes in an addict's brain has brought undisputable proof to even the most skeptical of minds.

Medical studies support the conclusion that heredity and genetics play a large role in the susceptibility of certain persons to become addicted; that is, the propensity to addiction is predetermined and not based on some conscious decision-making by the addict. These modern advances also confirm the mechanism of how the abuse of substances affects the frontal region of the brain where judgment, decision making and regulation of impulse behaviors are governed.<sup>3</sup> These brain alterations result in an inability to recognize or acknowledge that one is even sick and convince the addict that they do not have a problem or need any help. The resulting denial cannot be assigned to laziness, a lack of will power or an unwillingness to accept the truth.

The continued refusal by some judges to recognize addiction as a mental disorder is not only refuted by this current medical knowledge, but serves to detract from the desperate need for solutions. This reluctance to acknowledge the medical truths about addiction fuels an unwarranted loss of hope for those who are addicts or who suffer as a result of the addiction of another. Combining current medical knowledge with the reality that addiction is a disease generates an entirely new impetus to implement treatment whenever and however possible, including in the judicial setting.

For judges, especially, it is imprudent to approach addiction with an attitude that ignores the realities of the diagnosis. It is even less judicious to ignore our ability to implement an intervention or require treatment for this disorder simply because we feel uninformed or uneducated about the disease. This does not mean that we allow defendants to escape consequences for their actions, but it does mean that we join the recovery and treatment communities with a protocol that addresses the problem head on. A judge has the unique ability to oversee and manage the devastating consequences of addiction. How to use this ability in a positive, healthy and therapeutic way can be better understood once addiction is defined in terms that are appreciated. Once addiction is understood, lives can and will be saved.

### **WHAT IS ADDICTION?**

Addiction has been defined in various ways by various professionals. Gorski and Miller state that “[a]ddiction is a condition in which a person develops bio-

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<sup>3</sup> TIME, The Science of Addiction (July 16, 2007).

psycho-social dependence on any mood-altering substance.”<sup>4</sup> Abraham Twerski, M.D. opined decades ago that alcoholism was a disease, stating that “[i]n some alcoholics there is a physiologic abnormality in the way the body handles alcohol. Perhaps this is an inherited metabolic abnormality or something which develops after long periods of drinking or even a combination of these two factors.... Personality changes [and] [l]oss of control [and] [t]he compulsive drive for alcohol does not occur in the nonalcoholic.”<sup>5</sup> The DSM-IV (TR 2002) couches its definitions of substance abuse, substance dependence and addiction in terms of symptoms demonstrated by the patient.<sup>6</sup> Some researchers now distinguish between substance addictions and process addictions (e.g., gambling and eating). All of these definitions and others have merit, of course, but I have discovered that on the bench it is best to think of addiction in terms of “recovery” and “relapse.” Understanding these two terms helps guide me in overseeing and handling drug and alcohol cases as I find it easier to address these realities of addiction than worry about a specific definition of the disorder.

A word of what addiction is not. Addiction is not a thought that can be forgotten, a habit that can be undone, a memory that fades with time or a craving that goes away after a long period of abstinence. It does not exist only where it is wanted, it cannot be willed away and it does not present itself the same way in every addicted person. Where it exists it always exists, when it surfaces it stays until death, when it is at work it never stops working and when it appears to be defeated it is simply playing possum. It does not exist in every living person but when it does exist it can be lethal if ignored.

For those who have never experienced the power or consequences of addiction, or who profess that addiction is merely a weakness in will power, the notion of “powerlessness” (Step 1 in 12 Step work) over addiction is confounding and insulting. They scoff at the notion that an individual could have the inability to ignore the urges and triggers that incite substance abuse, and they believe that addiction is not a mental disorder but rather a conscious decision by the addict to use. Successful non-addicts thrive on the idea that people achieve by controlling their environment, getting things done through hard work and overcoming hardship thorough sweat and exertion. Addicts and non-addicts live in the same world, they argue, and as a result they cannot accept that an addict is powerless and without control over their addiction. To them, overcoming addiction should require nothing more than taking control of it, shaking it, throwing it down on the ground and

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4 Gorski and Miller, Staying Sober, A Guide For Relapse Prevention, at page 39 (1986).

5 Twerski, Self Discovery in Recovery, at page 63 (1984).

6 The Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (TR 2002).

stomping it out so that it never returns.

Unfortunately, while non addicts live and flourish in a world of rational decisions and logical consequences, addicts do not. This does not mean that the psycho-social-biological makeup of an addict's brain is untreatable or that the damage caused by substance abuse is irreversible, but it does mean that the addict cannot simply rely upon a "self will" approach to get and stay clean.

## **WHAT ARE RECOVERY AND RELAPSE**

Truth #1: "Recovery" means more than just not using drugs or alcohol, and "relapse" means more than just using drugs. This statement reflects the very nature of addiction and it must be understood and accepted before an addict can learn how to successfully recover from their addiction. More important, we as judges cannot effectively evaluate or govern over substance abuse cases if we do not accept and understand this truth about addiction because we are refusing to redefine our assumptions about addiction, and as a result we are refusing to treat substance abusers at the level of their disorder.

To an addict, recovery and relapse do not exist independent of each other. Neither is a black and white phenomenon that occurs instantaneously, and neither exists free of the other. Recovery and relapse ebb and flow in the daily life of an addict and are conversely interdependent. They are realities which exist as reverse mirror images of each other. Think of recovery as a continuum that exists on an upward angle.<sup>7</sup> Think of relapse as the reverse mirror image of recovery, existing on a downward angle. As recovery increases in strength, relapse weakens. As relapse increases in strength, recovery weakens.

Since recovery and relapse have many stages or levels, limited only by the individual's addiction, there is no one way to define them. In our juvenile Power Recovery Court<sup>8</sup> we have a formula: Powerful Recovery= sobriety + control of addictive thinking + no secrets. Another good definition is this: Totally Successful Recovery means (1) the non-use of unprescribed drugs, (2) the non-abuse of prescribed medications and (3) the non-existence of addictive thinking.<sup>9</sup> It is important to note in these definitions that the "non use" of substances is only part of the equation. This is imperative to appreciate because an addict can be in relapse mode without ever having used a drug or alcohol. Indeed, this is typical of relapse, a strong recovery turning downward through a relapse in "addictive thinking."

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<sup>7</sup> The recovery continuum I refer to is never a smooth incline with uninterrupted seamless growth, but rather is a jagged slope containing periodic bumps and interruptions.

<sup>8</sup> <http://www.co.montgomery.tx.us/410dc/mcpowercourt.shtml>

<sup>9</sup> Compare Gorski and Miller, Staying Sober, A Guide For Relapse Prevention. (1986).

Truth #2: Recovery is not a singular point in time when the addict stops abusing drugs. When an addict starts a “recovery,” he begins a long, uphill walk of daily work addressing the triggers and struggles that lead him to abuse substances. This walk is called recovery, not recovered, because it is a journey whose work reflects the strength of the addict’s thinking and ultimately his sobriety. This journey is pursued on a road that has a beginning but has no end. Recovery is a lifelong venture composed of, as the 12 Step programs put it, “one day at a time.” A recovery will be strong if the addict can be taught (1) to focus on their thinking patterns,<sup>10</sup> (2) to be committed to their counseling, 12 Step or other group work, and (3) to be honest with themselves about their sobriety. In addition, a strong spirituality is the cornerstone of a successful recovery.<sup>11</sup> In recovery, spirituality is not necessarily a religious thing, though for some it may be.<sup>12</sup> On the other hand, a recovery will falter where there is an inattentive pattern of addictive thinking and behavior exemplified by a lack of genuine recovery work. If an addict labors in a positive way in their recovery, their sobriety strengthens much like we gain muscle from exercise and knowledge from study. It doesn’t mean they defeat and snuff out the addiction. It means that while their triggers and struggles still exist, the addict’s ability to handle those increases. As a result, the addict becomes more successful at fending off the daily demons that haunt them and which lead to a return to drugs or alcohol.

### **RELAPSE OCCURS BEFORE THE ADDICT USES**

Truth #3: The mere non use of drugs and alcohol does not mean the addict is in a successful recovery. Drug or alcohol abuse does not just occur out of thin air or at some singular point in time when the addict says, “Well, I guess I will use some cocaine right now.” The abuse is always preceded by defective or distorted thinking that spiraled the addict downward. As a consequence, a solid recovery is dependent on a recovering addict staying a “healthy thinking” course in an upward and positive way even when things are going well and in fact especially when things are

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<sup>10</sup> In our Recovery Court Programs and jail substance abuse classes the counselors and staff use cognitive behavioral therapy and similar approaches to teach better thinking patterns.

<sup>11</sup> “After half a century in psychiatric practice, I know without a doubt that the source of addiction is spiritual deficiency. Irrespective of whether we are religious or atheist, all human beings are spiritual by nature, and spirituality is the cornerstone of our recovery.” Abraham Twerski, M.D.

<sup>12</sup> As I have stated before, our Recovery Programs do not preach or mandate any religious belief whatsoever, but we do encourage the addict to seek a properly understood spirituality that will bolster their recovery. See Mayes, Recovery Courts and Character Changes (July 2006), <http://co.montgomery.tx.us/410dc/recoverycourtsandcharacterchanges.pdf>; Compare Twerski, Addictive Thinking, Understanding Self Deception.“ (Chapter 20)(1997); Twerski, The Spiritual Self (2000).

going well. To let one's guard down is deadly. Most addicts never reach a totally successful recovery because of a failure to control their "addictive thinking." This is not a bad thing, it is reality. This does not mean they are bad people, it is their disease. This does not mean they are failures, only that they must continue to learn and grow in their recovery, onward and upward.<sup>13</sup> Virtually every addict lives with addictive thinking every day and as a result their success at recovery must be viewed on a continuum that measures where they are at any given moment in their recovery. As a result, if we only measure an addict's success at recovery by whether they have "used" or not we are missing the point. An addict may be totally clean of all chemicals but be obsessed with addictive thoughts that are only a day away from causing the addict to use.

You will meet Tracy below. He graduated from one of our Recovery Court Programs, proving that he could sustain a recovery where he was sober, clean, working, happy and healthy. Following his graduation, he had for some time avoided several opportunities to relapse when confronted with the triggers of old friends. Enter his brother, an addict not in recovery, who Tracy had not seen in years. Despite Tracy's knowledge of addiction, his desire to stay clean and his proven ability to stave off temptation, he relapsed. Tracy's relapse started in his thinking when his brother returned to the scene. Tracy had been clean and sober over a year and he even remained so for the first few days of his brother's return. During those few days, however, Tracy's thinking deteriorated such that he ultimately was unable to fend off the desire to abuse. During those first few days, his recovery began to slide down a relapse slope until he ultimately abused cocaine. If I had tested Tracy on the third day after his brother returned, he would have tested negative for drugs or alcohol, but his relapse mode was in full throttle downward.

Dysfunction in the form of addictive thinking can occur due to changes in the addict's life, such as (1) a reduction in eating, quiet time, sleep, spirituality, trust, spending time with others or exercise, or (2) an increase in stress, sensitivity, anger, paranoia, edginess or blaming others.<sup>14</sup> Interestingly, the propensity for addictive thinking to occur is probably most prevalent during the first few months of an addict's new found sobriety since he will be feeling emotions and stressors that he previously handled by numbing himself with drugs or alcohol.<sup>15</sup> When dysfunction does occur, the addict is in a relapse mode. At this point, not after the abuse of some drug or alcohol, she must be able to stop the tendency toward further relapse before

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<sup>13</sup> Recovery is a process, not a destination, or as the 12 Step groups put it, "Recovery is progress, not perfection."

<sup>14</sup> Compare Gorski and Miller, Staying Sober, A Guide For Relapse Prevention (1986).

<sup>15</sup> Id.; Gorski and Miller describe in detail these withdrawal symptoms and their acute and post-acute phases.

she descends to the bottom of the incline and starts using again. If the addict fails in reversing this “stink’n thinking”<sup>16</sup> and returns to using, her relapse is complete.

Asking an addict to be totally free of addictive thoughts is like asking a love struck teenager to stop thinking of her boyfriend. This is simply not going to happen in most cases. Consider the teenager who is obsessed with the young man of her dreams and who continuously communicates with him through myspace.com.<sup>17</sup> Even if her grades have suffered and she has been grounded, it is likely that her thoughts will trigger her to use the computer even knowing that punishment is sure to follow when she is caught. She is not having evil thoughts, she does not want to hurt anyone, she simply wants to use myspace to feed her obsession.

Addictive thoughts trigger the addict’s relapse back into an “immediate gratification” kind of thinking that, left unchecked, leads inevitably to the abuse of drugs or alcohol. We are misleading ourselves if we conclude an individual is thinking clearly and without obsession just because the teenager has not yet turned on her computer or the addict has not yet tested dirty. Truth #4: The real truth about the addict whose recovery is weakening is that he is moving down the recovery continuum, toward the bottom of the recovery incline, in a “relapse mode” that is overtaking him. Something must stop him or he will crash. The question is whether he is in a position to stop the relapse before drugs or alcohol overtake him, or must some other intervention take place to help prevent the fall.<sup>18</sup> If he previously has been educated about addictive thinking his chances of avoiding a complete relapse are extremely high. If he never has been taught healthy thinking skills that can guide his recovery effort, nor internalized the rehabilitation tools that can defend against his insidious disease, then the likelihood of total relapse is very high.

### **RECOVERY IS A NEVER ENDING JOURNEY THAT CANNOT BE TRAVELLED ALONE**

While a few addicts successfully fight this battle alone, the vast majority fail without strong intervention and non-enabling support. Many an addict have tried to sober up alone and have failed. Truth #5: To successfully recover, an addict must

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<sup>16</sup> A phrase coined by the 12 Step programs.

<sup>17</sup> myspace.com, facebook.com, and twitter.com accounts are fertile locations to gain information about defendants on probation. Virtually every defendant under the age of 30 will have an online page or blog and our staffs have gained invaluable information on these pages about what the defendant is really thinking and doing (e.g., gang and drug involvement).

<sup>18</sup> For example, jail can be a vital and positive intervention in recovery. See Mayes, Recovery Courts and Character Changes (July 2006), <http://co.montgomery.tx.us/410dc/recoverycourtsandcharacterchanges.pdf>

have a willingness to rely on another person, group, power, someone or something outside himself to succeed. 19 There simply is a need for another source of strength that arises from the very nature of the disorder. Since addiction causes denial in its victims, there is an inability by the addict to realize she is sick or how sick she is, and once she engages a recovery process her denial mechanism will always be in the background whispering that her recovery is not needed. Where denial exists, recovery cannot. As a result, an addict must always be in touch with someone or something outside herself to remind her and convince her of the existence and severity of her mental disorder and her need to address her addictive thinking. She also needs this outer source of support to encourage and support her daily recovery work. Group meetings, individual counseling sessions, personal support of a loved one-- anyone or anything that maintains an objective distance from the addict but which shores up the addict's tendencies to falter-- can fulfill this necessary component of a recovery.

Imagine an individual who has been diagnosed with cancer. He is told that a daily regimen of treatment for an extended period of time is needed to arrest the condition and then periodic treatments thereafter will be needed to avoid any recurrence. The person knows he has cancer and knows treatment is necessary to stabilize and maintain the condition, but he also is in denial as to its severity and so refuses to regularly seek the treatment that is needed. "I will get to it someday," he thinks. "I feel strong today." This man is in denial and is avoiding the very treatment he needs to survive. It is obvious he needs a strong loved one or some outside power that can and will remind him of the true facts of his condition and keep him on task, in a way that encourages him to accept his continued need for treatment.

We have all heard the common statements of addicts. "I can quit anytime I want." "I will stop drinking some day." "I will quit snorting coke when things get better at home." "I will quit pot when my back stops hurting." "I don't need help whipping this." These are not lies; the addict truly believes them. That is why the maintenance of a successful recovery from addiction necessitates a strong outer source, another resource of reason as it were, that will keep the addict on task with their treatment. Needing this additional support does not reflect on the addict's character any more than the need for such help by the cancer patient discussed above. It is not an issue of weakness or lack of courage. It is an issue of the disease.

Truth #6: Experts now agree and recent studies have shown that forced recovery programs are as effective as voluntary ones.20 In this regard, we must

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19 12 Step programs call this a Higher Power or God as we understand Him.

20 HBO Documentary Films, Addiction, 14 Part Series (2007),

understand that an addict will never recognize his need for help if he has neither hit rock bottom nor been forced to accept reality.<sup>21</sup> Once addictive thinking resurfaces, the depth of the relapse depends on both the addict's ability to recover and/or the intervention of some outside force that causes them to reengage their recovery with new vigor. It is imperative that an addict's recovery be rejuvenated as soon as possible and that it be grounded in effort which rebuilds a framework upon which the addict can stand to face future temptations and triggers to relapse.

Consequently, ongoing support and/or compulsory recovery programs can provoke a keen awareness of what triggered the addict's relapse in thinking and how to address its seductive lure. As a result, as discussed more below, a judge's ability to mandate the beginning of a recovery should be used not ignored.

The good news is that there is, along the recovery journey, whether voluntarily undertaken or not, a confidence that grows in consistent recovery work. Of course this confidence must be earned by the addict. It cannot be bought nor can others give it to him as a gift nor can they do the work for him. In the end this is why the hard work of recovery is so good, because from the sweat of the recovery work arises an inner strength that guides the addict's thinking and ultimately his sobriety.

### **A STRONG RECOVERY DOES NOT FORECLOSE THE POSSIBILITY OF A RELAPSE IN THINKING**

At its best, recovery leads the addict to a sobriety full of character changes that become habitual and which the addict relies upon to prevent a back slide.<sup>22</sup> These character changes include positive growth in trusting, accepting criticism, finding healthy solutions to stress, not blaming others, and finding a spirituality that comforts. Truth #7: At any stage of recovery, however, an addict can return to a relapse in thinking that, left unchecked, can ultimately lead to the abusing of drugs or alcohol.<sup>23</sup>

Imagine that you started a new workout program with the intention of losing weight and gaining physical strength. You started with the best intentions. The first few months were a roaring success and your new self had been the talk of the gym. Sometime in the fifth month you looked at yourself in the mirror and you felt quite

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[http://www.hbo.com/addiction/treatment/37\\_getting\\_someone\\_into\\_treatment.html](http://www.hbo.com/addiction/treatment/37_getting_someone_into_treatment.html)

<sup>21</sup> Mayes, Recovery Courts and Character Changes (How Jail Plays a Role in Recovery) (July 2006); Compare Twelve Steps and Twelve Traditions, at pp. 21-24 (2002).

<sup>22</sup> Mayes, Recovery Courts and Character Changes (July 2006), <http://co.montgomery.tx.us/410dc/recoverycourtsandcharacterchanges.pdf>

<sup>23</sup> See Berger, 12 Stupid Things That Mess Up Recovery (2008)

satisfied with the results and prospective success. One day you find that you are spending more time at the computer or watching TV. A few weeks into the sixth month you discover that you are back to your starting weight and pants size. Instead of acting immediately to stop the obvious decline in your program you tell yourself:

I look healthy otherwise. A small improvement is better than none and I'm not so bad looking anyway. I can always pick up the pace later on if I really need to.

A few more weeks go by and when you next check your weight and waistline, you are worse off than when you started. Your overall program looks as if it is going to fail without some extra effort and time. You probably can salvage things if you commit yourself to working extra hard the next month or so, but the necessary effort does not seem quite worth any expected success, especially since the end result of total failure seems so certain. Consequently, you give up.

If you had asked a good friend to ride herd as a workout partner, not do it for you but stay involved enough to talk sense to you when you overlooked your necessary daily maintenance, your workout program would have been a success. This would not have meant you were incompetent or weak, but simply that you knew your weakness for TV and the computer and that you needed support to stay the course without letting these obsessions, and impatience or lack of commitment, derail your program. It would not have made your work easier, but it would have helped you maintain a workout program that led to a successful year of exercise and health. As it turned out, your stubborn denial of any need for help, your avoidance of the daily maintenance that was so crucial, your narcissistic reliance the short term success you enjoyed, and your fear that failure was a certainty at the first sign of trouble all combined for a lost effort.

The analogy to recovery is obvious. If an addict learns to address any negative turn of events as they arise they will have fewer problems in their recovery. But because this is so difficult alone, as successfully recovering addicts know very well, recovery from addiction requires another person or power to help the addict stay the course. This does not mean the addict is weak or incompetent, but just that he is an addict and a positive outside agency is necessary to help him restart or maintain his recovery when his thinking moves southward. For those that appear in court, this other person or power may well be the judge. That being the case, the importance of immediate judicial intervention cannot be overstated.

The workout analogy is apt with one exception. Depending on the severity of an addict's disorder and relapse, there may not be another chance to restart the

program. There may only be an obituary.

**TRUTH #8:**  
**A JUDGE MAY BE THE LAST RELIABLE SOURCE**  
**OF POSITIVE INTERVENTION**

If we are going to succeed at presiding over addicts at the level of their disorder, we must be willing to evaluate them and “consequence” them at that level. So let’s discuss addiction, recovery and relapse at the street level.

By the time an addict hits court they probably have used for awhile, and they probably have tried to stop using on their own more than once. Every now and then, deep down where it still matters and there is still a conscience, the addict knows that using is harmful and they realize their world is spinning out of control. They have tried to quit but couldn’t and they slowly but surely returned to alcohol or their drug of choice. Their family decided to show tough love by giving him “no slack,” often ragging him with repetitive “should have’s” and “don’ts.” When the addict is unable to stop using, he shames himself. As a result, he builds up a tremendous amount of unresolved guilt that cycles him back and forth between abusing and stopping, an addictive thinking merry go round. Add to that the cravings and subconscious triggers that relentlessly bombard the addict’s mind and you have the formula for a never ending addiction cycle that ultimately destroys all involved.

The uneducated addict is, in essence, an unarmed warrior. The soldiers opposing his recovery are preexisting personality traits and organic brain changes that incite or exacerbate the effects of his abuse of alcohol and drugs. Addicts have little knowledge to recognize, much less any ability to fight, the addictive hazards that will fruition into the addict’s return to alcohol or drugs. To be certain, the addict must learn what his thinking errors are and how to address them with support from non-enabling professionals, friends and loved ones. This involves acquiring new thinking skills that come from a studious approach to recognizing his personal triggers and learning how to confront them in a healthy way. Stressors like worry, boredom, being overly sensitive, fear, and others, that non addicts handle daily, are the downfall for an addict. They can only be coped with if the addict is taught to recognize them as precursors to their using and the addict is taught new ways to proficiently address them. This is not an easy task, but a successful recovery depends on it.

Many times, judges are the last reliable source of positive intervention that can encourage or require treatment and ultimately save an addict’s life. Since addiction creates a sense of denial that prevents the addict from acknowledging his

disorder, an arrest and/or hearing with a judge may be the only chance such a defendant will ever seek help or be required to obtain treatment. When a defendant refuses treatment or is equivocal about recovery, judges have the ability to persuade or order him to start his recovery journey (1) through jail time that includes treatment and groups in the jail, (2) through inpatient placement or (3) through some other mandated treatment or recovery program.<sup>24</sup> However the addict's journey begins, it must include a specific recovery program or it is no journey at all. That is a significant reason why time in jail with nothing more than time to "think about it" may help clear a docket, but it does very little to help the defendant start a successful recovery. Since the changes in an addict's thinking and the stability of an addict's sobriety is entirely dependent on the addict's work in his recovery, simply sleeping off a drunken spree or a drug binge creates little foundation for a sustained recovery that can prevent a future relapse.

A judge has many options when intervening with a defendant who has a substance abuse disorder or an addictive lifestyle. In the 410<sup>th</sup> District Court, we intervene regularly with substance abusing defendants that are in our three Recovery Court Programs, as well as defendants that are not, by encouraging or ordering them to read and/or write on selective books that discuss addiction and addictive thinking patterns, through substance abuse classes that we started in our jail, by utilizing various outside private and public entities that provide long and short term inpatient treatment and aftercare treatment, and by utilizing professionals who provide outpatient treatment, individual counseling, group counseling, family counseling, anger management, stress management, etc.<sup>25</sup> These outside placements and clinicians supplement in a significant way the counseling and support services supplied by our probation department and its overworked and underpaid staff.<sup>26</sup> We even encourage the defendant's family members to read books and attend classes and counseling on such subjects as codependency<sup>27</sup> and unhealthy enabling. All of these interventions provide a framework for the eventual recovery process that we hope a defendant engages.

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<sup>24</sup> Mayes, Recovery Courts and Character Changes (July 2006), <http://co.montgomery.tx.us/410dc/recoverycourtsandcharacterchanges.pdf>

<sup>25</sup> I preside over two Adult and one Juvenile Recovery Court Programs (we do not call them "Drug Courts"). Only one of the Recovery Court Programs is funded by federal or state money so our regular probation staffs handle the other two caseloads with me. We generally employ these treatment modalities during a defendant's probation, but they also have been considered while a defendant is on conditions of bond.

<sup>26</sup> We have located many providers over the years simply by putting out the word that we needed help. Many of these outside programs and professionals provide services free to the defendant, or at reduced cost, as they are sustained through their own public or private funding. Some of the inpatient programs even allow a mother to bring her child with her.

<sup>27</sup> E.g., Beattie, Codependent No More: How to Stop Controlling Others and Start Caring for Yourself, (1992).

## **ADDRESSING ADDICTIONS MUST MAKE SENSE IN THE WORLD OF THE ADDICT**

Because our entire approach to addiction must make sense in the world of the addict, treating “addictive thinking” defendants the same as we treat “criminal thinking” defendants is, quite frankly, wrong. In drug and alcohol cases, application of penal laws must be adapted to exact punishment and enforce treatment in ways that coincide with the addict’s disease. If we do this, we will experience a reduction in the recidivism rates that currently defeat our objectives, waste our money and perpetuate societal problems.<sup>28</sup>

In this vein, we Judges must distinguish between the “use of drugs” (which is the penal offense) and the “addictive thinking” that leads to the use of drugs (which is the disease or mental disorder). They are not the same. If they were, then an overnight or weekend jail stay (without therapeutic intervention) might be the answer whenever a defendant drinks or uses. In that case, a punitive incarceration can be justified for the breach of the applicable law. But when there is an addictive use of substances that is preceded by a relapse in thinking (or what I have called a “relapse mode”), incarceration alone does little to satisfy the societal expectations of either punishing or rehabilitating the addicted criminal. In such a case, a jail stay without any intervention takes the defendant off the streets but it offers little else in resolving the addiction cycle.

Addictive use of alcohol or drugs is different than a typical case of, for example, burglary, shoplifting, criminal mischief or assault. In a typical burglary or assault (that is not drug induced) the criminal thinker did not succumb to addictive triggers that subconsciously pushed his actions. He may have been driven by motives like greed and selfishness but he did not experience true addictive triggers like low self-esteem, denial, narcissism, manipulative thinking, stress, perfectionism, guilt, shame and ultra sensitivity that unwittingly drive the substance abuser’s behavior. Moreover, the criminal thinker generally injures others, while the addict generally only harms himself.<sup>29</sup>

Notice I did not say “addressing addiction must make sense to the addict,” but rather “addressing addiction must make sense in the world of the addict.” There is a significant difference in the two statements. Addicts think addictively, of

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<sup>28</sup> In our adult SAP Recovery Court Program (not funded by state or federal money), our recidivism rate for graduates is 1.5%. <http://www.co.montgomery.tx.us/410dc/drugcourtarticle2.pdf>

<sup>29</sup> We know this is not always true, as when a drunk driver injures another in a wreck. Those cases deserve their own consequences in sentencing, but for purposes of understanding “addictive thinking” this dichotomy is very true.

course, and trying to convince them of the merits of any sentencing or treatment regimen during a time of their actively using is a waste of time. Similarly, asking a defendant who has been arrested or jailed why he took the drug or why he drank is a useless exercise. They don't know. Such questions often don't make sense to them when they are in fact clean but obsessed with their addictive thinking. The complexities of addiction, recovery and relapse require much more than a casual question-answer with the inmate after he has used, when he has been jailed for using, or when he is making decisions that are indicative of a relapse in addictive thinking.

A proper judicial approach to these defendants must make sense in the world to which they have succumbed by addressing in a positive and therapeutic way the underlying thinking that incites and exacerbates their ultimate abuse of alcohol and drugs. If we do not attack the defendant's relapse at its origination, in the thinking that has deteriorated, then we miss the best opportunity to halt the relapse from escalating into the repeated abuse of substances. By way of example, when I have a defendant before me at the bench, I never ask them "why did you use drugs/alcohol or why did you do it?" But I have asked them to walk me through their thinking relapse mode, minute by minute, step by step, pausing the discussion frequently to discuss or point out the multiple triggers that prompted the addictive thinking errors which gave birth to specific choices that produced and sustained the defendant's relapse. This is time consuming, yes, but it is vital for the defendant to fully understand these matters so he can comprehend how he ended up where he now is. The defendant probably will never before have engaged in this type of in depth self examination and critical analysis of his addiction.

Simply punishing the abuser every time he relapses or ignoring our ability to intervene in a positive way is a waste of judicial effort since it does not address, much less treat, the addictive thought process that preceded the actual abuse. It offers the addict nothing more than what they had when they attempted to quit on their own: remorse, shame, guilt and the never ending merry go round of unremitting relapse and failed recoveries. If we simply reinforce that process, we are part of the problem and not part of the solution.

### **RECOVERY IS DIFFICULT WORK THAT ASKS ONE QUESTION**

Truth #9: An addict's recovery and ultimate sobriety is never truly free of relapse potential because, as we have said, relapse is nothing more than the mirror reflection of a recovery going bad. It should be painfully obvious how difficult the work of recovery is for an addict. The same life events and stressors that the addict

successfully coped with yesterday may trigger the addict's inability to handle life in a healthy way tomorrow. This may happen because their recovery has lost its passion or has become impaired. Consistently making choices and decisions that result in a lifestyle of sober thinking is a difficult daily challenge for the addict.

Truth #10: This is the challenge of recovery: the addict is never, ever fully recovered. If they ever think that they are, then they are already in relapse mode. As a result of the conundrum of recovery and relapse, the only real question for any addict is this: which way am I traveling on my journey today, up the recovery road or down the relapse slope? The answer is one or the other because an addict cannot stand still on their recovery journey. Standing still in recovery is like walking up a down escalator; the addict either keeps walking upward or they are moving downward. We Judges usually see defendants following their total relapse into abusing drugs or alcohol. Most are willing to dig in and try again, especially if the Judge tells them, "I will not give up on you unless you give up on yourself."<sup>30</sup> Amazingly, a few do not desire to continue the arduous work of recovery but most do.<sup>31</sup> Consider Steven, a 45 year old who was in jail and continued to deny his abuse of alcohol even after testing positive in a urinalysis:

He seems to have lost all interest. He claimed that the alcohol was not placed on the food while cooking it but was added on the BBQ sauce while serving it. He recognized that it was still wrong and he should have left the area. He is not angry but now feels that perhaps doing his time is best for him. He is a bit down but knows he has punishment coming. He explained that he has over six months of time built up and perhaps he will not have to serve all that long even if you max him out. He filed for bankruptcy, has no job and does not want to start the program all over again. (notes from pre sentence investigation)

Steven had relapsed and drank alcohol. His story had been all over the map as to how his urine had tested positive. I knew he had drunk, he knew he had drunk, and the probation officer and counselor knew he had drunk. He had relapsed before,

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<sup>30</sup> I often use this comment in discussions with defendants facing revocation for relapsing on drugs or alcohol. I even tell defendants: "You make the call: prison or more treatment." If they are willing to keep working I invariably continue working with them. If they have had enough because "it is too hard being on probation," and they ask me to sentence them to prison (yes, this happens) I will, though not always, give them their wish. When defendants request prison over the hard work of recovery, a Judge must decide which ones are simply in denial and need to be forced into treatment and which should be incarcerated.

<sup>31</sup> We also know some will lie to us just to be released from jail, or simply to be left alone so they can continue their abuse. This is the most difficult challenge facing a Judge, deciding when a defendant really is ready to start a recovery and when he is simply manipulating.

had admitted the truth and had restarted his recovery. But admitting his relapse this time was something he wouldn't do because he had decided that he was through with treatment. Steve had a wife and family; they wanted him to continue working the program and said so in open court. He declined and was sentenced to prison. It is very unlikely that Steven will ever succeed at a recovery or will ever sustain a sober lifestyle. He was sliding rapidly down a steep relapse slope because he gave up on himself.

Compare Tracy (a previous graduate from one of our Recovery Courts) who was in jail following a very dangerous relapse with cocaine:

He looked awful (he is depressed probably brought upon by the drug abuse) but expressed great relief to be in jail and "being safe". Things spiraled down badly when he met up with his brother. I gave him a good chewing, gave him two books to read and some additional writing assignments. Then I allowed him some time to talk and cry and he did! He needs an extended period of time in jail.... He needs to detoxify and return to his senses. I will see him in a couple of weeks and will be sending you and the PO his writing assignments. This was a close call! (notes of counselor)

Tracy wanted help again. Once jailed, Tracy recognized his need to restart his recovery and grow from his relapse.<sup>32</sup> We gave him that new opportunity with a reentry into our Recovery Court Program. Although he had relapsed, Tracy succeeded in returning to a recovery and sobriety, if for no other reason than he believed in the process of recovery and that he was worth it. He returned to his climb up the recovery road, slowly for sure, but consistently building strength that fed upon itself in a positive way.

## CONCLUSION

Truth #11: Understanding addiction, recovery and relapse gives judges the ability to save lives, but it also places on us a responsibility that is greater than many of us expected or desire. This knowledge and responsibility challenge us to answer several questions. Why would we as judges ever ignore an opportunity to intervene in a defendant's life at a time when he or she is prone to seek and accept positive help? Why would we as judges ever refuse to order or support the teaching

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<sup>32</sup> It is important that an addict not believe his relapse means he must start over at the beginning. Relapse should be viewed as a misstep that allows the addict to pick himself up, dust off, and continue forward with all the knowledge and skills he has learned throughout his recovery. Compare Twerski, Addictive Thinking, Chapter 21.

of healthy thinking skills? Why would we as judges ever refuse to order or support the teaching of strong recovery tools?<sup>33</sup>

Yes, our profession is underpaid and overworked. We are attacked by media and others as too liberal, too conservative, too much of whatever the complaint of the day seems to be. Except for adoptions, marriages and swearing in of new attorneys, our daily dockets are filled with never ending disputes, arguments and battles. Despite this, and in fact because of this, we have opportunities to change lives and save lives. Is there any reason why we should not do so whenever we can and as soon as we can?

Addicts do not deserve to avoid consequences for their actions, but they do need help. They need our help. Yes, there are some defendants that have worn out their welcome and thrown our generosity back at us, and others would rather die than face their addiction honestly. And while some may choose prison over the hard work of recovery, I propose that we intervene when we are able to provide them an opportunity for recovery. Truth #12: If we encourage, or yes even force, defendants to face their addiction head on at a time when they otherwise would not do so, we have done something very good for them, our profession and our society as a whole.

Judge K. Michael Mayes

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<sup>33</sup> As I have mentioned, we have substance abuse classes in our jail that are taught by counselors. I always provide a relapsed Defendant the opportunity to take these classes to begin or restart a recovery while in jail.