

High On Justice

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The third-floor corridor of downtown L.A.'s Superior Court is filled as usual with black faces and LAPD blues; the cops are there to testify, the faces to be processed through the system. With only 10 minutes before the courts go into session on this Thursday morning, the place feels like the legal equivalent of a triage area in an emergency room.

Many defendants amble about cluelessly, looking for their assigned courtroom; others stare when told they're three days late or a week too early for their court date. Overworked public defenders in red ties and shiny blue suits hold whispered, three-minute impromptu interviews with their clients. Cops shoot the shit and have a few laughs.

This chaotic swirl is ground zero for California's Proposition 36 -- a much-needed reform, now in its third year, that sends people convicted of nonviolent drug crimes, such as possession of drugs for personal use, to treatment programs instead of jail. They are given at least two tries before a judge can re-sentence them under the state's otherwise unforgiving drug statutes.

An undeniably noble idea in the abstract, in real life the road to an effective drug court is proving bumpy and uneven, especially in Los Angeles County. It is true that, for the first time in decades, incarceration rates statewide for simple drug possession are falling by as much as 20 percent. And hundreds, if not thousands, of individuals are getting a second chance to reclaim their lives.

But spend a morning or two in this packed downtown courtroom, and it's not hard to see how difficult it is to actually change our usual ways of exacting criminal justice.

Before Proposition 36, California's special drug courts -- which are based on the belief that drug addicts should be treated as people with a disease, not as criminals -- had been reaching a mere 5 percent of those eligible. In California, about 37,000 people a year were doing time for simple drug possession -- more than in any nation in the world. People were receiving 25-to-life third-strike sentences for inconsequential drug crimes: Willie Turner for attempting to buy a macadamia nut disguised as a \$5 rock of cocaine from an undercover cop; Bernice Cubie for possession of 46 milligrams of cocaine; Shane Reams -- with no drugs in his possession or in his system -- for being the alleged lookout during a \$20 crack sale.

"Have a seat over there," says Nancy Chand, an L.A. County public defender for 16 years, pointing me toward some dark wooden benches as she escorts me into Superior Court 42 -- one of the two downtown courts that handle drug-court cases. In any 60-day period, about 800 drug cases are processed through No. 42; an adjacent court, No. 40, deals with about 3,600, the highest caseload in the state.

Sitting down, I gaze at a common scene -- a couple of women and a couple of Latinos, and 15 or 20 black men, many of whom will soon be replaced in courts like this with yet another generation of their sons, nephews, younger brothers and cousins.

"I always wanted to be a public defender way back when I was in college," Chand tells me. "We help people. A lot of our clients need help -- there are plenty willing to prosecute, but not many willing to help."

A few minutes later, Superior Court Judge Marcelita Haynes enters the courtroom. In her eyes is a touch of the wrath of God, in her demeanor the message that she has not arrived to play or be jollied by the defendants who are about to trek before her.

A meticulously coifed African-American, Haynes is adorned today in gold -- gold earrings and eyeglasses, and a thin, barely detectable gold face mike winding past her cheek to the side of her mouth.

Haynes gets right to it.

"Raul Sanchez . . . failure to appear, bench warrant issued.

"Cleon Harrison, back on track, I see you're going to class regularly," she says to a shaved-headed, broad-shouldered, ample-bellied black man. "Return at 8:30 in the morning of January 13, you understand?" All this is said with the stern, no-nonsense tone of your elementary school principal after your third-grade teacher had sent you to the office for playing pocket pool.

"Jaime Sanchez, also a no-show, probation revoked, bench warrant issued . . ."

A heavy-set Latino with a crewcut is up next:

"You missed all of your 12-step meetings, all your clinical groups . . . refused to take drug tests . . ."

"He's promised to quit his job and devote all his time to his problem, your honor," a public defender tells her.

"If you don't want to be treated, that's fine with me, but you'll have to make up your mind what you want to do . . . you will take your drug tests . . . if you fail . . . I will send you to jail . . ."

So far I'm wondering if Haynes has any teeth, what with her never yet cracking a smile.

Another failure to appear: "No bail, he already owes \$35,000 in another case . . ."

"Probation revoked and reinstated," she tells another man. "You willfully took yourself out of your program . . . Your attitude is extremely poor this morning . . . I'm not here to be your friend. You quit. Do some jail time . . ."

Then comes a string of failures to appear -- in all, six out of 16 defendants will fail to show up this morning, numbers that reflect both downtown L.A.'s transient population and lack of funding.

Money for Prop. 36 treatment is running short in L.A. County -- particularly with state and county cutbacks decimating already underfunded social programs. The simple fact is that the criminal-justice system in Los Angeles is so massive that it's a gargantuan task to make any reform, especially one so deep-reaching.

Los Angeles County has nine court branches, 20 subbranches, 633 deputy public defenders and more than 700 assistant D.A.'s. It's been difficult getting everyone working on the same page, just logistically.

At first, treatment providers were limited to those who already had contracts with the county, so there simply were not enough treatment slots available for those eligible, causing a huge backlog. Without immediate intervention, many of the addicts started using again as soon as they hit the street. It took a long time for the county to go through the assessment process and grant additional contracts.

Up until last October, parolees could not be enrolled in Prop. 36 programs without the approval of the state Board of Prison Terms -- a long delay that sometimes meant defendants were sent back to state prison because it took too long to get an approval. The procedure has now been changed so that the parole agent of record can approve their placement into the programs.

In downtown L.A., there's been an additional problem. Many of those eligible for treatment live on Skid Row -- the homeless, crackheads, winos, junkies, people with AIDS. Getting them into and maintaining them in treatment has been a frustrating and strangely unanticipated problem.

L.A. officials had been expecting a large number of recreational users to enroll in programs, according to Lael Rubin, the special counsel in charge of Prop. 36 for the D.A.'s office. Instead, most have turned out to be the heavily addicted, the very people who require the longest, most expensive treatment: months in a residential facility instead of an outpatient 12-step program. The result, says Rubin, is that programs for serious addicts are getting watered down, the waiting lists are growing longer, and fewer people are receiving effective treatment.

The system set up by Prop. 36 for the Pershing Square area seems at times to have been designed on Mars. Clients sifting through dumpsters for food were expected to navigate through a series of complex tasks. After getting assigned to an assessment center, they'd have to call, make an appointment, figure out how to get to the center, find it and be on time. Recently the downtown court has tried to address the problem by having an assessment counselor at the courthouse three days a week so that a client can immediately be assigned to treatment.

Despite the program's flaws, L.A. County's Department of Health Services Alcohol and Drug Program Administration has declared Prop. 36 "a success." In 2001-2002, 8,300 defendants were "sentenced to Prop. 36 treatment services," and nearly 6,400 were placed in treatment.

Statewide there are similar promising results. The number of state prisoners serving time for drug possession dropped during Prop. 36's first year, from about 19,700 at the end of 2000 to 15,800 by December 31, 2001 -- a drop of almost 4,000. (This number excludes parolees re-arrested for testing dirty. Prop. 36 does not apply to them.)

I asked Public Defender Mark Lessem, Nancy Chand's supervisor, to evaluate Prop. 36. "Look," he said, "I don't know how to gauge success. We see people changing their lives all the time in our treatment programs. But you're dealing with addiction here. People are going to fail. But there's no question that treatment works, and when those people do well, we're saving money -- it costs about \$25,000 a year to incarcerate someone, four to ten thousand for treatment. They're not out there any longer committing burglaries or hooking on the streets, and are not likely to be incarcerated again. Is that success?"

One of the key players behind the drug-reform movement has been a tall, lanky Santa

Monica--based political consultant and longtime progressive political activist named Bill Zimmerman, who views America's drug crusade as "just another war, this one directed at America's poor and unemployed."

While some courageous judges were quietly but tenaciously working on the inside to change drug policy, Zimmerman and his colleagues in the drug-reform movement began working from the outside.

In 1996, Zimmerman's group, the Campaign for New Drug Policies (CNDP), sponsored America's first successful marijuana initiative, California's Proposition 215, which allowed physicians to prescribe the drug to the seriously ill. From 1996 to last November's election, CNDP and its New York--based sister organization, the Lindesmith Drug Policy Center, won 12 of the 13 ballot initiatives they had sponsored. Most of them were funded by the billionaire financier and social reformer George Soros, his fellow billionaire Peter Lewis, and John Sperling, the founder of Phoenix University.

Zimmerman and his colleagues (who usually require at least a 60 percent positive rating in their polls before going ahead) thus had plenty of experience when they authored Prop. 36. "You have to draft something that people are willing to support," Zimmerman told me. "With Proposition 36, for example, giving people more than two chances at treatment was a breaking point for the voters we polled. If we had written the law with more than two chances, we would have lost significant support. There's no point in spending millions of dollars on an initiative that's going to lose."

The savvy that went into writing Prop. 36 was reflected in its funding mechanism, which called for spending \$120 million a year for five years. When the state's budget deficit ballooned this year, Governor Gray Davis could not slash Prop. 36's funding, as he did for most other state drug programs.

Opposition to Prop. 36 in 2000 was wide. Davis, Attorney General Bill Lockyer and Senator Dianne Feinstein all condemned it, as did nine out of 10 of the state's largest newspapers, including the Los Angeles Times, and 57 of California's 58 county sheriffs and district attorneys (San Francisco was the lone exception). The state's largest political donor, the prison guards' union known as California Correctional Peace Officers Association -- wanting to keep the maximum number of prisoners flowing in -- gave \$200,000 to the campaign against the law.

Dr. David Deitch -- a drug-treatment pioneer and professor of psychology at the University of California, San Diego -- says that conservatives feared Prop. 36 because it challenged a serious, long-denied, re-examination of America's drug policies, a discussion," he says, "that's never really been had. If we were fighting a true war, we'd gather up all available information, strategically fund what works and set out to win. Instead, we continue to feed the DEA and our local police money, while starving mental-health and drug-prevention and treatment programs."

"Re-nannnal-do! Graduating? I don't believe it! Let me look you up," says Santa Clara County Superior Court Judge Stephen V. Manley, shuffling some papers on his bench.

I'm sitting in a small, packed downtown San Jose courtroom, listening to Manley -- a tall, charismatic, 61-year-old man with thinning blond hair and a ruddy face dramatically set off by a black eye patch he wears over a long-ago-injured left eye. He's speaking not only to Renaldo, but to a captive audience of drug-court defendants, whom he refers to as his clients.

I'd come to San Jose because this particular drug court has been around for almost a decade and is widely considered as the best model for Prop. 36. Manley's court runs the way L.A. courts might if they were given enough money and support -- and if local judges had enough courage and compassion.

"You don't have a single violation of probation," an avuncular, booming-voiced Manley tells Renaldo, as the thin, shy man, wrapped in a hooded yellow windbreaker, takes a seat behind a long wooden desk. "You've done everything I've asked . . . just look at these reports!

Off to Renaldo's left are 16 shackled prisoners dressed in orange jump suits and seated in a sectioned-off area against the wall. To his rear sit the more than 50 clients already on probation, who, following Renaldo, will appear before Manley.

From Monday through Wednesday, the clientele is drawn from a wide spectrum of users, and tends to be whiter, more upscale and better educated -- recreational users, accountants, college students, nurses and lawyers -- many of whom, before their arrests, had been leading functional lives while quietly struggling with their habits, or had simply been caught short in the wrong place at the wrong time.

Today is Friday, a court day reserved mainly for those who've been diagnosed as both mentally ill and seriously addicted. Many come from families with histories of abuse, addiction and degradation, and are living lives of bad choices and perennial poverty -- and look it: black women with dreadlocks and strained faces; battered Mexican men in their 50s with the resigned slump and blank eyes of those who know their lives are already over; pasty, bloated white women with mangled hair, rotting teeth and thigh-wide arms; a man who says he's dying of hepatitis C, and wants to read a poem; and, over in the prisoners' section, an anomaly on this day -- an angelic-looking Vietnamese-American in long fairy-tale braids that make her appear 13, her eyes wide with the wonderment of a child, her wan smile so heartbreaking I can't bear to look.

Renaldo, who is continuing to be effusively praised by Manley because he's just completed his treatment program, is now allowing a slight grin to spread across his face as the judge continues . . .

". . . All your reports are glowing . . . what a wonderful way to start the day . . ."

For almost a decade now, Manley, the supervising judge of all felony drug cases in San Jose as well as the judge in charge of enacting Prop. 36, has been a leader of California's "Collaborative Justice [drug] Courts" -- which began in Alameda County in the early 1990s. They slowly spread as thoughtful judges saw that the old system of catch, punish and release was a failing revolving door. In response, they turned to the rehabilitative approach of drug courts, which now number 146 in California and about 700 nationwide.

The assumption underlying drug courts is that deputy D.A.'s, public defenders, probation officers and drug-treatment professionals --working in unison and led by judges like Manley --an provide the resources, care and follow-up needed to help addicts kick their habits and fix their lives. Since 1989, according to the National Association of Drug Court Professionals, "Over 100,000 offenders [nationwide] have participated in the drug court system, and 71 percent of those have either completed their program or are actively participating in one" -- an extraordinarily high percentage for a treatment in which false starts and relapsing are, for many addicts, part of the process.

Prop. 36 was intended to make this approach universal instead of occasional.

Manley is encouraging, and his approach is simply unlike anything I'd ever seen in a courtroom. The weight of the state is always there in Manley's courtroom, of course, ensuring that his clients will comply. "Coerced treatment, "in fact, is a crucial element of the drug-court system, as it is of Prop. 36. "We do coerce and hold people accountable," Manley had told me earlier. "But it's not adversarial. Judges are personally involved with each client [as part of a team], trying to get them clean and sober and to improve their lives in many other ways.

"Critics believe that coerced treatment is inappropriate, that people should get treatment when they're ready and want it. But," continued Manley, "I'm tired of waiting for people to get ready. There's nothing that disturbs me more than taking a child from her mother right in the courtroom, and placing the mother -- whose life is totally out of control -- into [county jail] like I did recently. But that woman had seven felony convictions. But I'm not giving up on her, and we're going to start over together . . .

". . . And by the way, Re-nalll-do," Manley concludes as he's about to dismiss him, "don't forget that we're inviting you to come to our graduation on July 18, so we can celebrate together. Okay?"

Then Stephen Manley, not exactly teddy-bear material, walks down and around his bench, signals for Renaldo to stand up, meets him halfway, shakes his hand and gives him a hug.

Back in the courtroom of L.A. County Judge Haynes, this is John Washington's make-or-break-it day. The big-bellied, broad-shouldered, 46-year-old ex-Marine is looking good today -- especially compared to the guy who preceded him, who'd missed 20 of his 24 12-step scheduled appointments and severely riled the judge.

Standing there with Public Defender Nancy Chand at his side, Washington has what Judge Haynes describes as "a very good report," and "at the discretion of your program," she tells Washington, "you are transferred from level three to level one. Keep up the good work." In other words, he isn't going to jail.

Clean and sober now for the past seven months, Washington is a happy and grateful man, he says, when I talk to him after the hearing.

In 1987, after eight years in the Marine Corps, Washington was downsized out of the service. "I was going to make the Marines my career, but they told me I was 'expendable.' I can't say it made me do the things that I did, but it took its toll."

Ten years later, Washington was a homeless Skid Row crackhead "living in a big ol' dumpster -- not exactly what you call clean. But, yeah, I went that low." Washington always had a hustle 00 stealing wooden pallets and then selling them back to local truck yards, buying and dealing -- anything to make a buck, until he was caught by the LAPD.

Without Prop. 36, as he tells it, he would have done at least one year in county jail for being in possession of those "birds" -- those bundles filled with little rocks of crack cocaine that he tossed up in the air when that LAPD black-and-white spun around the corner and nailed him dead to rights.

Washington doesn't know how lucky he really is. A year doing county time, in fact, would

have been improbable. Probation was not even on the table. Not with a record that included burglary, grand theft, vandalism, assault and shoplifting.

"The Salvation Army program I'm in -- over there at the Harbor Light shelter -- is strict but good," he says. "A lot of people don't like it at first, they're in denial and don't like that discipline, don't like authority figures.

"In the program you detox first, then you go to classes within a therapeutic community -- as many classes as the court deems fit. I'm a vet, and Harbor Light helped me get my benefits from the Veterans Administration -- which is helping me with my job preparation. They gave me a voucher to buy a suit, tie and shirt for job interviews and showed me how to use a computer. But they do all that at Harbor Light even if you're not a vet.

"They're training me to be a truck driver now," he tells me, "right there in Skid Row, with winos and crackheads lyin' out in front of the door. It reminds me that I can't go back to that no more."

Do stories like that of Washington prove that Proposition 36 is working? The answer for the moment is a qualified yes.

Drug courts all around the country have already proved their effectiveness, and Prop. 36, when properly administered, is nothing more than a vastly expanded, statewide drug-court system, although one dealing with many clients not as ready for treatment as those who have traditionally been assigned to drug courts.

Many studies over the past 20 years have shown that between 35 percent and 50 percent of people entering drug-treatment programs will graduate, a success rate comparable to that of programs for people with hypertension and diabetes.

Second, statewide cooperation between the criminal-justice system and health-care professionals has been "phenomenal," according to Whitney Taylor, the director of Prop. 36's Implementation for the Drug Policy Alliance. In the two counties I looked at -- L.A. and Santa Clara -- the D.A.'s have been fully cooperative, a situation, according to Taylor, that's generally been the case throughout California.

Meanwhile, the state coordinator of Prop. 36 and director of California's Department of Alcohol and Drug Programs, Kathryn P. Jett, has been working hard to ensure the law's success, and has done so without the sabotaging or open rebellion of politically influential law-enforcement groups like the Narcotics Officers Association and the state's prison guards -- and under a governor who appointed her and opposed the law.

None of which means a positive view of Prop. 36 is guaranteed in the near future. Not if people who are willfully ignorant of the now overwhelmingly conclusive scientific evidence concerning the chemical, psychological and physical nature of substance abuse are permitted to define its success. People such as Judge Michael A. Tynan, for example, who is calling for strict adherence to clients' completing their programs on the first or second try or facing jail time -- as if substance abuse were some kind of moral failing, and kicking a soul-wrenching habit a simple application of willpower. As Tynan, who supervises all Los Angeles County drug-court programs, told the Los Angeles Times, "Proposition 36 was sold to voters as a way to keep true first- and second-time offenders out of prison. I think we're wasting an awful lot of money on people who can't benefit from such a lightweight program."

What the data also show is that drug treatment is not magic. People have both to be ready

for treatment and receive treatment that matches their need. That means addicts are going to relapse, in some cases multiple times. This is particularly true given that Prop. 36 is, for the most part, serving not recreational or mildly addicted users, but hardcore addicts who, for the 20 years prior to Prop. 36's passage, had been unable to get treatment.

But drug treatment can work as an effective alternative to prison or jail. As John Washington told me, "I agreed to enter the Prop. 36 program because I needed to save my life. And Prop. 36 has helped me to do that. I was a crackhead with no place to go, and a jail or prison term hanging over my head. By being forced to do Prop. 36, the court did for me what I couldn't do for myself."