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### I. Introductino to "Drug Abuse and the Law: A Seminar"

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## I. INTRODUCTION TO "DRUG ABUSE AND THE LAW: A SEMINAR"

WILLIAM R. JONES\*

Drug abuse is a very serious problem in our society today. One need only turn to the pages of the daily newspaper in most any community on most any day to find proof of this fact. But recognizing that there is a problem tells us little about the nature, extent and causes of the problem. Certainly it does not lead us to any easy solutions. Indeed, the whole spectrum of drug abuse is so complex, involving as it does physical, psychological, social and legal aspects, that it is almost impossible to even identify a cause-effect relationship with any degree of certainty. Do drugs cause the psychological and social problems or do the psychological problems precede drug use and actually cause the abuse? Perhaps society's response to drug abuse, in itself, has caused much of the real problem as it exists today. Dr. Alfred R. Lindesmith, in his article which is a part of this seminar,<sup>1</sup> suggests this when he proposes "that twentieth century American attempts to control or suppress bad personal habits by punishing those who have them, have been wrong in principle and counter-productive in practice,"<sup>2</sup> and by his further statement that "[t]he indirect social harm sometimes produced by illicit drugs is often the consequence of their very illegality."<sup>3</sup> Regardless of the view one may embrace, one must attempt to separate myth from reality, to use reason instead of emotion and attempt to identify the proper cause and effect relationships in order to rationally seek solutions.

Since communication is essential, and communication is difficult if not impossible when people are not talking the same language, any discussion of drug abuse should begin by attempting to define the term itself. What is a drug? Scientists have stated that, basically, a drug is any substance that by its chemical nature affects the structure or function of the living organism.<sup>4</sup> One writer has

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1. See Lindesmith, *The Narcotic Lobby and the Drug Problem*, 8 VAL. L. REV. \_\_\_\_ (1974).

2. *Id.* at \_\_\_\_.

3. *Id.* at \_\_\_\_.

4. Modell, *Mass Drug Catastrophes and the Roles of Science and Technology*, SCIENCE

observed that "a moment's thought will suggest that such a definition covers a tremendous spectrum of substances: prescription drugs, over-the-counter drugs, illegal drugs, substances normally called beverages, cigarettes, food additives, industrial and agricultural chemicals, pollutants, even foods."<sup>5</sup> But, as the writer points out, this definition "does not provide answers to the questions that are typically asked when drug use and abuse are being considered, . . . [indeed] it seems to raise more questions than it answers."<sup>6</sup>

Consulting a modern American language dictionary one will find "drug" defined as: "1. A substance used as medicine in the treatment of disease. 2. A narcotic, especially one that is addictive."<sup>7</sup> Definition 1. is at the same time too broad and too narrow. Coupled with "abuse" one should classify any misuse of medicine, including the use of a medicine to attempt to cure an illness for which it is not indicated, as drug abuse. In this sense the definition is too broad. On the other hand, the definition, as given, fails to include many substances normally included as drugs when we speak of drug abuse. For example, one criteria required to place a substance in Schedule I of the United States Comprehensive Drug Abuse Prevention and Control Act of 1970<sup>8</sup> is that "[t]he drug or other substance has no currently accepted medical use in treatment in the United States."<sup>9</sup> Heroin, LSD and marihuana are all listed in Schedule I of this Act. It is in this respect, the fact that obvious problem drugs are not included, that the definition is too narrow.

Taking the second dictionary definition, we are perhaps getting closer to what most people mean when they use the term "drug abuse." But now additional problems of definition are experienced. When one uses the word "narcotic," is he referring to a legal classification, a medical definition or the vernacular?

There is no internationally recognized definition of the term "narcotic;" international legislators have never attempted any such definition. Instead, they have chosen the method of enumerating the substances to which the various conventions apply and have

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1967, at 346 (1967).

5. H. NOWLIS, *I CONTEMPORARY DRUG PROBLEMS*, at 4-5 (1972).

6. *Id.* at 6.

7. *AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE* 400 (1st ed. 1969).

8. 21 U.S.C. §§ 801-966 (1970).

9. 21 U.S.C. § 812 (1970).

provided a method for including, under the scope of the conventions, other substances with the same or similar effect as those originally covered.<sup>10</sup> Nor does the Comprehensive Drug Abuse Prevention and Control Act of 1970<sup>11</sup> attempt a definition; rather, like the international conventions, schedules of substances are utilized. Medically, "narcotic" has been defined as "[a] drug which, used in moderate doses, produces stupor, insensibility, or sound sleep."<sup>12</sup> This adds little to the attempt to define drug abuse and has the disadvantage of taking us back to one of the words in the term we are attempting to define, *i.e.*, "drug." Society in general, in using the word "narcotic," most usually means *any* substance that may be addictive or which is used *for* purposes or *in* amounts of which society does not approve.

Within our second dictionary definition we also find difficulties with the word "addictive." What do we mean by "addict" and "addiction?" One knowledgeable writer has referred to the original meaning of addiction as "given over to a master, enslaved."<sup>13</sup> He also points out that "physical dependence and addiction are the subject of considerable semantic confusion."<sup>14</sup>

It is possible to describe all known patterns of drug use and abuse without employing the terms *addict* or *addiction*. In many respects this would be advantageous, for the term *addiction* has been used in so many ways that it can no longer be employed without further qualification or elaboration. However, since it is not likely that the term will be dropped from the language, it is appropriate to make an effort to delimit its meaning. The definition used here is somewhat arbitrary, and it is not necessarily identical with other definitions of addiction or drug dependence. . . . [Here], the term *addiction* will be used to mean *a behavioral pattern of compulsive drug use, characterized by overwhelming involvement with the use of a drug, the securing of its supply, and a high tendency to relapse after withdrawal*. Addiction is thus viewed as an extreme on a

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10. See Waddell, *International Narcotics Control*, 64 AM. J. INT'L L. 310 (1970).

11. 21 U.S.C. §§ 801-966 (1970).

12. STEDMAN'S MEDICAL DICTIONARY 827 (3d ed. 1972).

13. See ALI-ABA *Course of Study on Defense of Drug Cases*, at 69 (1971).

14. *Id.*

continuum of involvement with drug use and refers in a *quantitative* rather than a *qualitative* sense to the degree to which drug use pervades the total life activity of the user. In most instances it will not be possible to state with precision at what point compulsive use should be considered addiction. *Addiction in this frame of reference cannot be used interchangeably with physical dependence. It is possible to be physically dependent on drugs without being addicted and to be addicted without being physically dependent.* . . .<sup>15</sup>

The term "abuse" should also be defined. Are the crucial factors the amount and frequency of use that interfere with the functioning of the individual in society, or is "abuse" to be defined as a violation of society's controls on drugs? Under this second view, even possession of the slightest identifiable quantity of marihuana is defined as drug abuse.

Any society has a right to define abuse that way, but it's going to get into bad trouble if it defines it in that way and then applies all of the characteristics of the other definition of abuse. We just can't be in the ridiculous position of requiring that anyone who has experimented with marihuana is sick and needs three years of treatment. This is one of the things that has promoted our lack of credibility with young people.<sup>16</sup>

It becomes increasingly apparent that the problem is one of semantics. The words do not mean the same things to different people, nor do they mean the same thing to the same people in all contexts. In addition, myths, emotions, assumptions, beliefs and attitudes have invaded the realm of drug abuse. Futile argument replaces meaningful discussion because the participants are neither speaking the same language nor proceeding from the same assumptions. There will be no easy solutions.

From the standpoint of the legal practitioner, the above discussion may not be pragmatically relevant. Certainly he is interested in solutions to this grave social problem, perhaps even more so than

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15. Jaffe, *Drug Addiction and Drug Abuse*, in *THE PHARMOCOLOGICAL BASIS OF THERAPEUTICS* 276 (Goodman & Gilman eds. 1970) (emphasis added).

16. *Supra* note 13, at 13.

the average citizen; in that regard, he may attempt to convince the legislators to reform the drug laws. But whether he is prosecutor or defense counsel, he must base his professional activity upon the reality of the law as it exists—not upon what he thinks it should be. For this reason, with the exception of Dr. Lindesmith's article, this seminar is directed at supplying useful information, and perhaps ideas, to the legal practitioner who must deal with the problem of drug abuse.

Each of the contributors to this seminar is well qualified in his field. Alfred R. Lindesmith, a student of the narcotics problem since 1935, is University Professor of Sociology at Indiana University, Bloomington. He is the author of several books<sup>17</sup> and has also written the introduction to *Drug Addiction: Crime or Disease? The Interim and Final Reports of the Joint Committee of the American Bar Association and the American Medical Association on Narcotic Drugs*, published in 1961. In this seminar, Dr. Lindesmith explores the development of our official posture toward the drug problem and gives his views as to why they are harmfully counter-productive. Philip R. Melangton, Jr., is a practicing attorney who has an extensive background in criminal practice. He has served as First Assistant United States Attorney, Deputy Marion County Prosecutor and Marion County Public Defender. Presently engaged in private practice, he has successfully handled the defense of many persons accused of drug law violations. Mr. Melangton reviews the relevant state and federal statutes and discusses the approach to many areas essential to a successful defense in a narcotics case. Carl R. Phillips earned a Ph.D. from Indiana University and is a forensic chemist with the Indianapolis Police Department. His article explains drug testing procedures and points out how attorneys, both prosecution and defense, can ask more relevant questions in establishing or attacking the reliability of the identification of an allegedly illegal substance. William F. Griglak, Assistant Director of the Drug Abuse Division of the Indiana Department of Mental Health, examines the provisions for evaluation and treatment under Indiana's Public Law 222 as amended by the 1973 General Assembly.<sup>18</sup> It is Mr. Griglak's hope that publication of this information will result in more at-

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17. E.g., *OPIATE ADDICTION* (1968); *THE ADDICT AND THE LAW* (1965).

18. Pub. L. No. 157, 98th Gen. Ass., 1st Sess. at 817 (1973), *amending* IND. CODE § 16-13-7.5 (1971).

tempts by prosecutors, defense counsel and judges to handle criminal cases related to drug abuse through treatment alternatives outlined by this statute.

Many people think the solution to the drug abuse problem can never be found within the framework of the criminal justice system. Others, while wishing to retain criminal sanctions, although perhaps with reduced penalties, lean in the direction of expanded use of alternatives to incarceration. And, of course, there are those individuals, whom Alfred Lindesmith would label the "narcotic lobby," who believe that only severe criminal penalties for both user and seller can keep the problem from escalating. But regardless of the individual theory followed, it is "a medical problem, a legal problem, a social problem, a community problem, your problem, my problem."<sup>19</sup>

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19. Griglak, *Drug Abuse: Indiana's Response*, 8 VAL. L. REV. —, — (1974).