

**Diversion To Treatment: A Study of Drug-related Cases In
The Dublin Metropolitan District Court**

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DECLARATION

The contents of this thesis are entirely my own work and have not been submitted for any purpose to any other University.

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Abstract

This Study examines the practice and policy of the District Court when dealing with drug related offenders in light of the claim that there already exists the nucleus of a Drug Court in Dublin. The constituent elements of the criminal justice system which impact upon drug issues were explored to contextualize the research question. The literature reviewed examined the emergence of Drug Treatment Courts in the United States with particular emphasis on crime causation and drug related behaviour. Drug Treatment Court interventions and Drug Treatment Court evaluations.

The Study focused on the process of diverting drug related offenders to treatment. A qualitative research approach was used employing a Focus Group of Judges and a Case Study. Additionally, a number of cases where diversion to treatment by the court was indicated, were examined. The methods used enabled analysis of cognitions and expectations of the Focus Group participants.

The findings reveal that the key actors, the Judiciary, the Probation and Welfare Service and Treatment Agencies do not subscribe to common aims and objectives. The exigencies of competing paradigms of control and care create difficulties and inhibit the emergence of shared objectives and modalities. Current practice reflects traditional sentencing values and procedures. The establishment of a Drug Treatment Court in Ireland requires radical structural and attitudinal changes involving realignment of procedures and perspectives of the sectoral actors.

INTRODUCTION

In this Study I attempt to explore the practice and policy of the District Court in Dublin when dealing with drug related offenders in light of the claim that there already exists the nucleus of a Drug Court (Courts Commission - Drug Courts Fifth Report 1998). The proposal to establish formal Drug Courts in Ireland is very new and presents a major shift in emphasis for the Criminal Justice System and particularly for the Judiciary. A Drug Court has been defined as “a treatment-oriented Court where the Judge dispenses justice with the help of an integrated team of professionals who provide treatment to the defendant (Courts Commission - Drug Courts P. 12). Central to the enquiry is an examination of the Judge’s role in deciding to divert a drug-using offender to treatment and the processes used in such cases. Additionally, the research seeks to explore the outcomes of such diversions in light of the Judge’s expectations and knowledge of drug issues generally.

The proponents of Drug Treatment Courts believe its main strength lies in its ability to engage and retain the drug dependant person in treatment through coercion using alternative punitive sanctions in the event of non-compliance with treatment. The traditional view that the drug dependent person cannot be successfully engaged and retained in treatment by coercion of the Court is challenged by recent research (Anglin and Hser 1990, Inciardi *et al* 1996) thereby focusing attention on the supervisory role of the Court as an active instrument in the rehabilitation process. Although polydrug use is quite common among heroin users in Dublin, (O’Brien and Moran 1997) the proposed Drug Courts would seek to target heroin users in particular. Heroin addiction has been described as a chronic and relapsing condition often requiring multiple interventions before the addict becomes stabilised within a particular treatment modality (Anglin and Hser 1990).

The extent to which the current practice in the Dublin Metropolitan District Court reflects this approach forms the focus of this Study by examining the views of Judges who preside in these Courts and an analysis of a number cases where drug misuse was regarded as a significant factor in the offender’s behaviour.

It is argued the diversion to treatment of offenders, whose substance misuse is problematical, has always been a practice of the Courts, tracing its origins to the practice of diverting alcohol problem users to treatment agencies and in particular to psychiatric services in the past. This general practice of diversion predated the onset of opiate dependency and perceived related criminal offending as a phenomenon in Dublin in the late 1970's.

Although the Working Group on a Courts Commission stated that Drug Courts are not a panacea to all drug problems, they are quite strong in their assertion that Drug Courts work, citing studies in support of this. The Literature Review in Chapter 2 suggests however that evaluations of Drug Courts do not point universally to this conclusion. A significant structural feature of Drug Courts is represented by the closer working relationship between the criminal justice sector (the court) and the health sector (treatment services). The health sector approach to drug issues which has latterly adopted a harm reduction approach through the introduction of the methadone maintenance protocol, contrasts sharply with the criminal justice perspective which is primarily rooted in a paradigm of prohibition, deterrence and control. The proposed introduction of formal Drug Courts in Dublin is seen as an attempt to address the problem of drug dependency and criminal offending by using a multi-disciplinary approach from the criminal justice and health sectors. Although the Fifth Report speaks almost exclusively from a criminal justice and control perspective, the contemplated role for the health sector might be regarded as subordinate to the criminal justice perspective. This may well suggest that the welfare and care function of the Health Board and the Probation and Welfare Service when dealing with drug users does not stand separate and alone as a function in its own right (Hayes 1998)

It is argued the simultaneous maintenance of two paradigmatic approaches to drug issues in Ireland may signify an ambivalence of values on such issues oscillating alternately between a social control paradigm on the one hand and a care paradigm on the other but never quite bridging both- This remains a challenge for any Drug Court or variation thereof, which may exist in Ireland at present. The idea of "ownership" of the problem and process may be instructive when considering the possibility of joining the two paradigmatic approaches.

The question of how to maintain the integrity of a deterrent approach which characterises the criminal justice perspective while promoting Public Health and a harm reduction approach from a health perspective presents a major challenge for the sectoral players. All rehabilitative approaches degenerate into punitive approaches when applied in a criminal justice context (Alien 1981).

It is hypothesised that the key actors in both the criminal justice and health sectors proceed to deal with offenders/clients without sufficient knowledge or recognition of the role and function of the key actors in the other sector or alternatively there is a recognition of the difference in role and function of the key actors in the other sector but the underlying sectoral paradigm militates against the convergence of individual processes and the attainment of shared aims and objectives. The research proceeds to deal with the above hypothesis but embraces also an inductive approach to allow for the emergence of such insights as may be available in the data explored. Before considering the suitability of transferring the American idea of Drug Treatment Courts to Ireland, it is necessary to examine drug issues in the Irish criminal justice system and to place these in context. Chapter 1 is designed to introduce the reader to the criminal justice elements which touch upon drug issues.

The Literature Review in Chapter 2 discloses recent and in some cases conflicting studies of Drug Treatment Court outcomes. The criminal justice system has been identified as a suitable nexus for drug issues because it is claimed Drug Courts have been identified as an intervention which can engage and retain the addict in treatment. Moreover, concern with health related drug problems such as the spread of HIV/AIDS and the relentless rise in prison populations, made up mostly of drug-using offenders, give rise to the need to revisit the idea of rehabilitation as a realistic objective of sentencing. (Inciardi *et al* 1996)

The methodology used in the research (Chapter 3) consists of a Focus Group of Judges of the District Court where the constituent questions relating to ownership of drug issues, the process of diversion used and the expectation of outcomes are discussed, analysed and reported. This methodology is complemented by a partial statistical analysis of a number of files in the Probation and Welfare Service relating to the diversion to treatment of drug-using offenders. Additionally a Case Study of

one offender from this series of offenders is presented as an illustration of the progress of an offender from first arrest to final outcome on diversion to treatment giving an overview of the criminal justice process and treatment processes and their interconnection.

It is not intended to conduct an evaluation of current court practices by comparing a cohort of offenders who are diverted to treatment with a cohort of offenders who received traditional penalties. The research proceeds as a piece of quasi-action research by a Judge of the District Court in the manner of a participatory enquiry. The research focuses on the process of diversion from custody of drug and drug related offenders within the District Court, with an examination of the key elements of that process and the dynamics influencing that process. While the goal of action research may be to study a specific change in an organisation such as the District Court, this may be facilitated in light of the research findings.

Chapter 1

Drug and Crime Issues in an Irish Criminal Justice Context

In this chapter the issue of crime in general and drug related crime in particular in Ireland will be discussed. The critical position of the District Court within the criminal justice system where drug and drug-related crimes are determined, will be examined by reference to the Working Group Fifth Report (1998) and relevant statistical data available and the general literature.

The Incidence of Crime

Using Garda statistics for reported crime between 1980 and 1998 offences against the person declined although the level of violence used has increased. Offences against property rose almost twofold. Larcenies increased, peaking in 1995 and fell back somewhat in 1998. The rate for rape and sexual assault increased almost twofold, perhaps because there was a higher reporting of these crimes especially for sexual abuse cases reaching back over the past thirty years.¹ The National Household Survey On Crime And Victimisation (Central Statistics Office September/November 1998) attempts to locate the incidence of crime in a victim's perspective. The Survey reports a number of significant crimes which are not reported to the Gardai.² These non-reported crimes are clearly not investigated or prosecuted. These form the dark area or hidden crime which O'Mahony (1995) highlights. Various reasons are offered for not reporting crime to the Gardai by the respondents ranging from the necessity of insurance claim compliance for car theft; lack of confidence in successful detection; a view that the crime was not sufficiently serious to report; and dealing with the incident privately especially in relation to assaults.

¹ Offences Against The Person 1980 (2353) 1997 (1785), Offences Against Property 1980 (24878) 1997 (40252), Larcenies 1980 (45298) 1997 (48380) Other offences including rape and sexual assault 1980 (253) 1997 (448)

² Percentages of crimes reported to Gardai - Burglaries 78.6%, Theft of vehicle 94.9%, Theft from vehicle 58.9%, Vandalism 39.6%, Theft of bicycle 57.7%, Violent theft 61.5%, Non-violent theft 48.5%, Assault 62.7%.

Various explanations have been offered for this change in the incidence of crime. Rottman dealing with an earlier period 1950-1975 explains the rise in larceny type offences as economic opportunism associated with economic and social dislocation (Rottman 1980). Fundamental to the Irish criminal justice system is the notion that an offender understands the consequences of his acts, that he has the intent or *mens rea* to commit the crime. This neat encapsulation of a particular human activity described as criminal finds its champion in the “rational choice” tradition influence by Bentham (Bentham 1838-43) While choice either to commit crime or engage in drug taking are central factors in such activities it is erroneous to assume the offender or drug mis-user engages in an exhaustive review of options prior to acting and selects the optimal solution when he does so act (Walters 1994). It could be argued that Drug Treatment Courts (D.T.C.’s) blur the distinction between the traditional blaming function of the criminal justice system (Boldt 1998) and a pathological view of drug use where such usage is said to require treatment rather than punishment. The disease model of addiction is now challenged by theories relating to learned behaviour. While such theories of addiction may seem to change over time the criminal justice system presumes an offender intends the consequences of his or her acts.

Drug Policy Cycles and Sub-Cycles

Drug misuse in Ireland has been blamed for the high incidence of crime, especially violent crime, in the media (O’Connell and Whelan 1996) although Keogh (1997) attributes violent crime mainly to non-drug users. Notwithstanding this “Chicago during prohibition” image given in certain media on the relationship between drugs and crime, views on how to approach drug issues oscillate between strong deterrent views and mild rehabilitative approaches in policy. This cyclical approach to reform is also identified by Bernard when writing on juvenile justice policy when he indicates:

“a cycle of reform in which harsh punishments are blamed for high juvenile crime rates and are replaced by lenient treatments, and then lenient treatments are blamed for high juvenile crime rates and are replaced by harsh punishments.”

O'Malley (2000) sees this as an alteration between justice and welfare perspectives. The passage of the 1975 Misuse of Drugs Bill and the 1984 Misuse of Drugs (Amendment) Bill in the Oireachtas provide an insight into the social thinking and policy ambivalence between deterrents and welfare paradigms. The 1975 Bill, conceived before the Heroin onslaught in Dublin in the early 1980's had a two-pronged approach using a humane/public health paradigm and a social control paradigm. The Bill provided for control of scheduled drugs by penalty of fine and imprisonment. Significantly the 1975 Bill and the 1984 Bill were Department of Health initiatives. The 1984 Bill was an example of a policy subcycle review in light of radically changed social circumstances. Mr Barry Desmond, the Minister for Health, introducing the 1984 Amending Bill, referred to an increase in public awareness of the growing drugs problem. "This greater awareness has been paralleled by increasing demands for higher penalties for those guilty of offences". (Col. 1108 Second Stage MDA 19th June 1984 Dail Debates). The Government's proposal to introduce Drug Treatment Courts in 1998 signifies the adoption of a public health/welfare paradigm in drug policy in place of a deterrence/public order paradigm implicit in the 1984 Misuse of Drugs (Amendment) Act, where higher penalties were seen as the appropriate response at that time. Ironically, in Miami where Drug Treatment Courts were first established in the mid 1990's, these courts are under strong media attack especially by the Miami Herald for releasing "dangerous criminals" into the community under the guise of treatment.

The Classification of Offences

For official purposes crimes are divided into two categories of indictable offences and summary offences. Indictable crimes are, subject to certain procedural rules, tried before a judge and a jury, whereas all summary matters are tried by a judge sitting alone. Indictable crime tends to be serious crime or the more serious form of crime and summary matters tend to be less serious offences. There is also a tendency in recent criminal legislation to create a hybrid category of offence which straddles both categories whereby the Director of Public Prosecutions who is responsible for the prosecution of offences, can decide which court to proceed in, that is, either in a summary manner before a judge sitting alone or before a judge and a jury on

indictment. The prosecution for possession only of proscribed drugs (Section 3 MDA 1977) and possession for sale of proscribed drugs (Section 15 MDA 1977) fall into this hybrid category whereby at the election of the DPP a drug charge can be assigned to a higher or lower court depending upon the seriousness of the charge.³

The Criminal Courts

The criminal courts in Ireland are organised as follows: -

- (1) The Central Criminal Court is the criminal division of the High Court and deals almost exclusively with murder and rape matters. These are indictable crimes and are tried before a judge and jury.
- (2) The Special Criminal Court, where terrorist offences and latterly organized crime which is drug related are processed. These offences are invariably indictable offences but the matters of fact are decided by three judges sitting without a jury. In *Re: Paul Ward* 1999.⁴
- (3) The Circuit Criminal Court comprises of a judge sitting with a jury. This court deals with all indictable offences ranging from road-manslaughter, sexual assault, fraud, larceny and serious offences against the person and drug offences. The criminal jurisdiction or sentencing level of the Circuit Criminal Court is set by statute which in some cases can amount to life imprisonment.
- (4) The District Court, which does not sit with a jury, deals with all summary matters such as road traffic offences, public order matters, common assaults, drug cases which are triable summarily and all indictable crimes where the court accepts jurisdiction to deal with the

³ The Statistical Abstract 1998-1999 P. 254 shows 276 M.D.A. offences classified as indictable. This may give a misleading view of the total number of M.D.A. offences which are disposed of in the courts generally as it does not reflect the M.D.A. offences tried summarily.

Increasingly the Special Criminal Court has been used to try offences where the likelihood of interference with witnesses and jurors is indicated. These cases usually involve serious charges of murder and drug trafficking.

matter. The court will accept Jurisdiction in an indictable matter where, having heard a summary of the evidence, the judge forms the view that the matter constitutes a minor offence within the range of sentences which could be attributed to the offence. In essence the judge must decide if the maximum penalty of the District Court jurisdiction would be sufficient if the defendant were found guilty. The maximum sentencing level for the District Court is twelve months imprisonment for a single offence or twenty-four months for two or more offences where the latter twelve months is consecutive. By way of example, if a person is charged with two simple larcenies on different dates potentially the offender could on conviction receive twenty-four months imprisonment.

The workload of the District Court and the Circuit Court in the disposal of criminal business is usefully set out in the Statistical Abstract 1998-1999 (September 1999)⁵ There are twenty-eight Circuit Court judges and fifty-one District Court judges. In addition to criminal business, judges in both courts deal with civil, family and a variety of other miscellaneous cases.

The data relating to workload of the two courts shows the most significant volume of criminal business is processed in the District Court and the greater number of offenders, including repeat offenders are located in the District Court setting. It is this writer's experience that the entire number of offences for possession of illegal drugs and most offences for possession for sale of illegal drugs are tried in the District Court.

⁵ **District Court - Number of cases**

Summary Cases 410, 014

Indictable Cases 48,711

Total 458,725

Circuit Court - Number of cases

Trials 1,458

District Court Appeals 11,131

Total 12,589

Critique of Sentencing Practice

Ireland has a common law tradition of sentencing (O'Malley 1996, O'Malley 2000) (Bacik 1999) where the judiciary have very wide sentencing discretion subject to a maximum set by statute. The criminal courts do not have a formal sentencing framework but general principles have been set out by the Court of Criminal Appeal and the Supreme Court. For drug offences the judges have very wide discretion unlike in the United States where, in a few states, repeat offenders are on hazard of incarceration due to the 'two strikes and you're out' policy which is part of the war on drugs (Inciardi *et al* 1996). Following the influential Judge Marvin Frankel article in 1972 (Frankel 1972) entitled "Lawlessness in Sentencing" a certain sea change came about in American sentencing policy, the net effect of which was to move the whole exercise of sentencing on to a structured basis culminating in the Minnesota matrix system. This is not however used in every state. This effort to import rigour into sentencing was in large measure a response to the decline of the rehabilitative ideal in American jurisprudence as rehabilitation came to be regarded as a debasement in itself. (Francis Allen 1981). In Ireland for the first time the Criminal Justice Act, 1999 provides for a minimum penalty of ten years imprisonment for trafficking in drugs with a street value in excess of ten thousand pounds (Criminal Justice Act 1999). The Supreme Court have held that an essential ingredient for consideration in sentencing is the prospect of rehabilitating the offender so that he may re-enter society whenever this is reasonably possible while at the same time sentences should be proportionate to the circumstances of the case and the convicted person. (*People (DPP) -v- M.* 1994 - 2ILRM P. 541) 1994 3 IR 306. This follows the *People (Attorney General) -v- O'Driscoll* 1992 (Frewen) where the Court of Criminal Appeal stated 'one of the objects of sentencing was to induce the criminal to turn to an honest life', Walsh J. Diverting an offender to treatment could be considered under the general sentencing principle of "one, last chance" (O'Malley 2000) where Parker L.C.J. said in *Hodges* (1967) 51CR. APP.R. 361

“the court always looks with some anxiety in order to see if the moment may not have arrived when it is opportune to put a man on probation in order to give him a chance, perhaps a last chance, to reform rather than spend the rest of his life in prison.”.

Current Irish sentencing practice may be informed more by this traditional world view than by adjusting to new structures and judicial roles as required for a drug treatment court.

The introduction of methadone maintenance as the primary treatment modality for heroin misuse in Dublin signals the adoption of a harm reduction approach to drug issues. Heroin, cannabis, amphetamine including ecstasy and cocaine continue to be prohibited by law and their continued availability and use are matters for the criminal justice system, including the courts, where persons are charged with possession of or dealing in such drugs or where in the course of a trial or plea in mitigation the offenders lifestyle is seen to be inextricably bound up in such usage. Traditional sanctions of incarceration for repeat offenders caught up in such lifestyles with a view to deterring offenders have clearly failed. (O’Mahony 1997) In the Dublin Metropolitan District Court deterrent and rehabilitative sentencing modalities are used but this has been criticised as proceeding on an ‘intrinsic synthesis’ of the offence, the characteristics of the offender and the past experience of the sentencing judge (Bacik 1999), When laying this criticism of sentencing practice Bacik does not advert to the lack of rehabilitative infrastructure such as timely and effective treatment services and monitoring procedures. In the context of Community Service Orders it is not possible to place most drug and drug related offenders on this intermediate sanction as the Probation Service can not obtain occupational insurance for such community service schemes and are fearful of litigation. Notwithstanding this, a significant number of convicted offenders identified as male, single, living at home with parents and with a history of early school leaving do receive custodial sentences in the Dublin Metropolitan District Court (Bacik *et al* 1998). Moreover these same offenders live in clearly identifiable neighbourhoods in Dublin where poverty and drug use are endemic (O’Mahony 1996, McCullough 1996).

Irish Prison Profile

Ireland's prison population grew from 509 inmates in 1940 to circa 2,500 in 1997. The average age of prisoners in 1996 was twenty-six years, representing the lowest in Europe. The average length of imprisonment for inmates in Ireland is 2.5 months, again reportedly, the lowest in Europe. (Probation and Welfare Service Expert Group 1999) The percentage of male prisoners is 98% and female prisoners 2-3%. Mountjoy Prison, Dublin, is the remand and committal prison for the Dublin Metropolitan District Court for adult offenders.

O'Mahony (1997) when profiling Mountjoy prisoners identified 66% or two out of every three prisoners had used heroin. Sixty prisoners out of a total sample of one hundred and eight used heroin intravenously and had been using heroin in excess of seven years. Accounting for those with heroin as the main drug of choice polydrug use was the norm and alcohol dependency was high in the non-drug using residue of the sample. Heroin use in prison was measured at 42% of the total sample or 63% of those who had ever used heroin. Six of the one hundred and eight sampled said they initiated heroin use while in prison.

Sharing syringes in prison is common (77%) giving rise to drug related (HIV and Hepatitis) and other health problems. When measured by length of time to heroin use after previous release about thirty-seven out of fifty-nine heroin using prisoners relapsed on the first day of release.

Methadone maintenance has yet to be established in Mountjoy. This break in treatment for some offenders supports a return to heroin use while in prison. Just under one-third of the total number of prisoners sampled were on medication most commonly sleeping pills (20) and tranquillisers (16). Admission to psychiatric hospitals prior to incarceration was measured at twenty-two prisoners or roughly one in four of the sample.

While O'Mahony measured seven offenders imprisoned for misuse of drugs offences in Mountjoy in a sample of one hundred and two in 1996, the offences ranged from

simple possession of cannabis to trafficking in heroin. The average sentence he noted fell from forty months in 1986 to twenty-three months in 1996 for such offences. Unfortunately, offences which were drug-related e.g. larceny to feed a drug habit, were not measured but the high number of heroin users in the sample (sixty out of one hundred and eight) would point to this underlying trend.

Probation Services and Intervention

At present when a drug or drug-related offender is diverted to treatment under Section 3 (User) or Section 15 (Dealer) of the MDA 1977 by either the District Court or the Circuit Court, one of three procedures is used. Either the defendant is placed on a Probation Bond with conditions as to treatment or the offender has his or her case deferred for supervision with a review by the court (Deferred Supervision) or else a specific Bond under Section 28 of the Misuse of Drugs Act 1977. Rarely is the latter system used. The Probation and Welfare Service Report of 1996 (PWS 1999) shows that the combined total of orders made by Circuit and District Court using Probation Bonds, Deferred Supervision and Section 28 Orders amount to six for heroin offences under Section 3 of the MDA 1977 for the entire State. By sex, one male and five females were placed under such orders. The six orders in respect of heroin users is in contrast with one hundred and forty-six such orders for possession of cannabis. In the same report thirty-eight diversion orders were made in the same year in the disposition of offenders for possession for sale of heroin (Section 15 MDA 1977) in contrast to forty-seven orders for possession and sale of cannabis. The latter information reveals a bias in favour of diversionary orders for cannabis using and dealing over heroin using and dealing offenders. The report does not disclose which treatment modalities, if any, were applied nor does it reveal outcome data. More significantly the report does not identify diversionary orders for drug-using offenders, where the offender is not charged specifically with drug offences. These lacunae in the data inhibit any clear understanding of current practice and outcomes.

Analysis of Drug/Crime issues by Working Group

The Working Group Report on Drug Courts (1998) considered there is already the nucleus of a drug court in Ireland on the basis of a report of the Probation and Welfare Service and its services to the Circuit Criminal Court. The latter Report covers the services of all referrals, not only for drug cases, and explains how the offenders were dealt with by the Probation and Welfare Service while under the Service's supervision, including the incidence of breaches of Probation Orders. It reports sixty-eight percent completed supervision, without any evidence of re-offending. For drug cases seventy-eight percent were compliant and twenty-two percent were non-compliant. The Report is silent as to what level of supervision was imposed, including whether urine analysis was used nor is there mention of the treatment, if any, used or outcomes reported. Oral submissions may have been given to the Expert Group to substantiate these figures but the Expert Group Report on Drug Courts and the Probation Service Report itself does not give the information. The reported compliance of drug offenders in the Circuit Criminal Court, if accurate, may give rise to a number of interesting conclusions. Treatment services, which are virtually non-existent or so delayed as to be insignificant for the District Court, are being targeted at more serious offenders with significantly good results in the Circuit Court perhaps? Treatment services are not different for Circuit Court cases and the deterrent effect of a long prison sentence is proving quite effective without any reference to "drug court" type interventions? One could equally argue if compliance with Probation orders in drug cases in the Circuit Court is as stated there is no need to move any further in the development of a drug court as evaluations of drug courts in the U.S. yield no better results. Equal consideration might be given to replicating the Circuit Criminal Court process and expanding it into the District Court where most drug and drug-related offenders are processed. Without the requisite information any critique of this important finding by the Expert Group must remain speculative.

The exclusion of drug dealer/users in the U.S. Drug Treatment Courts may have the effect of excluding a large cohort of drug users who need to deal to feed their own drug use. The Working Group appear equivocal in targeting user/dealers (Working

Group 1998 Par. 7.13) indicating non-violent, drug users are suitable for intervention where drug use is a factor in the offending.

Most psychoactive substances except for alcohol, tobacco and caffeine are proscribed in Ireland and the rationale for this proscription is found in various sources (Misuse of Drugs Act, 1977/1984, Dail Debates column 1108 19 June 1984, Dail Debates Column 922 20 February 1975). The Working Group which recommended the introduction of Drug Courts described drug use as “a cancer in our society” (Working Group - Drug Courts 1998). While acknowledging personal and familial harm resulting from drug misuse the report swiftly moves to establish a drugs/crime connection and generally imports crime reduction as the major benefit of a Drug Court intervention. The report places much reliance on the Keogh Report (Keogh 1997) which estimated drug users offend at a rate of three times that of non-drug using offenders. The report based on surveys and modelling of indictable crime in the Dublin Metropolitan Area estimated forty two percent of crime was committed by drug users, the majority of these offences being larcenies. This tendency for property related offending, as opposed to violent offending, is borne out elsewhere (Power 1986).

Conclusion

It is important to recognise when discussing the idea of a drug court, that drug courts are specific interventions designed to engage and retain the offender in treatment and require structural changes in the court process itself. Most modern criminal justice systems deal with drug offenders in different ways to ordinary criminal offenders. (Working Group Report 1998 Chapter 3) However, it is erroneous to conclude just because drug cases are dealt with differently, that specific process is a drug court as that distinct term and name imply. Drug courts present a radical departure from conventional criminal processing of drug cases. The Probation Service may be completely removed from the process. Bean (1998) quoting a Miami Drug Court judge says “There is nothing the Probation Service can do that I can’t do, and I can do a lot more than the Probation Service can do”!. (P. 103)

The contention that there already exists the nucleus of a D.T.C. in Ireland is challenged in this thesis. Non specific use of such terms as drug court, drug use, intervention and rehabilitation probably confuse the discourse on D.T.C.'s. A D.T.C. even if informally operated requires the presence of certain basic structures and adherence to agreed aims and objectives by all the sectoral actors.

Chapter 2

Literature Review

Introduction

In the previous chapter the structure and elements of the criminal justice system including the role of the District Court were discussed. The Report of the Expert Group on the establishment of a Drug Court was critiqued in the context of sentencing practice and policy. The intention was to give a wide focus (Rudestam and Newton 1992) on drug issues and the criminal justice nexus in Ireland.

In this chapter the literature relevant to the study will be examined to give focus to and analysis of the idea of drug courts as they evolved in the United States of America and their applicability in an Irish criminal justice context. As no drug treatment court has been formally established yet, let alone evaluated on process and outcome, the literature available in Ireland on both drug and drug-related criminal justice issues are more contextual in nature. This has been referred to in the previous chapter.

Using an intermediate focus (Rudestam and Newton 1992) the vexed question of the relationship between drugs and crime is canvassed in the literature and the response in the United States of managing these cases in the criminal justice system is discussed. Results of this Differentiated Case Management (DCM) are examined as are the emergence of Drug Treatment Courts (DTC) where treatment is identified as an essential component of case management.

The chapter will then move to a narrow focus to analyse Drug Treatment Courts as established and evaluated in the literature with particular reference paid to outcome measures of continued drug use, recidivism in-treatment and post-treatment, and 'general change in the offenders' behaviour and lifestyle. This predominantly American literature will be examined with a critical perspective to Irish practice and theoretical approaches.

Drug Use, Criminal Offending and the Courts

A fundamental issue raised in the literature relates to the political decisions and social policy to prohibit certain of these psychoactive substances. Illegal drug markets create an environment for criminalization of behaviours regarded by a sizeable number of citizens as normal (Parker *et al* 1998). The price of drugs is maintained artificially high driving up the crime rate (Levine and Reinannan 1991) and the highlighting of drug problems might be seen as ‘scapegoating’ for more fundamental issues such as endemic poverty, the legacy of child abuse and lack of social mobility (McCullagh 1996, Murphy 1996, Bacik and O’Connell 1998). In the context of specialised Drug Courts “the appropriateness of jurisdiction’s anti-drug laws should continue to be debated in the criminal justice community and the legislature” (Belenko *et al* 1994 P.78).

As in Ireland, the prison population in the United States has grown enormously over the past twenty years. While there may not be a direct correspondence between Ireland and the United States in the rate of incarceration of drug offenders (O’Mahony 1997) the burgeoning United States prison population is said in large part to be a direct result of the war on drugs dating from the Nixon administration through to the Bush administration. Increasingly harsher sentencing regimes were introduced and yet the arrestee populations of the major metropolitan areas are said to be saturated with cocaine (Inciardi *et al* 1996), leading to the conclusion that despite the war on drugs in the criminal justice system it has not had the intended deterrent effect. The Working Group accept a causal linkage between drug taking and criminal offending and to some extent this is established in the literature. Drugs and crime are most closely related when the use of or possession of drugs is defined by law as a crime (Glaser 1974). Drug taking became non-complainant-generated crime after the passing of the Harrison Act 1914 in the U.S.. Complainant generated crime committed upon addicts in the course of any drug taking activities, such as theft of money or drugs, largely goes unreported and forms part of the hidden area of crime not identified in Garda statistics (O’Mahoney 1995).

Having examined the various combinations of causality between drug use and crime Inciardi *et al* conclude that the two tend to evolve contemporaneously. Quoting his

own research Inciardi (1974) in a New York survey found some of the highest correlation coefficients ever encountered in social science research.¹ He concludes drug use and other social problems tend to coexist in a significantly correlated manner but he resists the conclusion that these amount to causation between drug use and social problems. Inciardi *et al* (1996) state

‘these studies of the criminal careers of heroin and other drug users have convincingly documented that whereas drug use tends to intensify and perpetuate criminal behaviour, it usually is not the initiating factor in a criminal career. Criminal careers were well established prior to onset of either narcotics or cocaine use. These same studies suggest that drugs drive crime in that careers in drugs tend to intensify and perpetuate, criminal careers’. (P. 14)

John Kaplan reinforces this view in his early work by concentrating on the chaos associated with the heroin user when ‘on a run’, that is, where heroin is used chaotically and problematically. (Kaplan 1983)

The Irish research relied upon by the Working Group on Drug Courts is limited to a crime perspective only and for this reason is not fully informative when it comes to taking a holistic view of drug crime issues.

Taking a lifestyle perspective Glenn Walters says, “persons situated in the overlapping zone between drug and criminal lifestyles are said to be simultaneously committed to the drug and criminal lifestyle ideal.” (Walters 1994 P. 99). He raises the issue of choice as playing a vital role in both drug and criminal lifestyles. This lifestyle view of drug issues contrasts with the predominant and populist view of drug

¹ Where r value is 1.00 showing a perfect correlation he found

Opiate use - poverty $r = 0.92$

Opiate use - unemployment $r=0.88$

Opiate use - illegitimacy $r=0.81$

Opiate use - financial assistance (Welfare) $r=0.78$

Opiate use - delinquency $r=0.75$

use as necessarily involving addiction (Zinberg 1984). Another perspective on this issue might be considered within an economic paradigm. Attractive alternative income is available to persons who may never have been employed or had regular income other than social welfare. The presence and structure of the illicit drug supply system might provide the best evidence for the link between drugs and crime (Bean and Wilkinson 1988). This market would include even those whose status is said to be in-treatment involving them in a continuum of drugs and crime activities.

A similarity of findings is apparent in Irish (Keogh 1997) and American (Chaiken and Chaiken 1990) research where crimes of violence are investigated. These crimes are not predominantly drug related, Chaiken concludes, although polydrug use is indicative of an increase in predatory crime. Heroin addiction once established gives rise to substantial escalation of criminal behaviour. They suggest specific targeting of these predatory high rate offenders for an intervention by the criminal Justice system.

In addition to penal and criminogenic considerations the spread of HIV and AIDS among intravenous drug users was identified as a cause of concern not only for the health of drug users themselves but for the health of the wider community. Treatment intervention from the public health perspective rather than deterrents from the criminal justice perspective gained acceptance.

Drug Treatment Courts

Drug Courts in the United States evolved as one response to practical concerns of ever growing court lists, many of which comprised drug and drug related offenders. An early approach of creating separate courts to deal with drug cases was developed and has been evaluated. The Differentiated Case Management (DCM) approach essentially processed drug offenders through the criminal court more efficiently and measured on that basis alone could be deemed a success (Belenko, Fagan and Dumanovsky 1994). However, when measured for recidivism, clearly an important criterion for any drug court, few significant differences were found in recidivism, reconviction or reincarceration rates. Although time to disposition was greatly reduced from 151.5 days to 13.6 days, this was in part induced by offering pleas to

more lenient sentences, for example, probation instead of prison. Belenko *et al* used a retrospective matched comparative group design for the New York Narcotic Part Court and the Non-Narcotic Criminal Court. They would have preferred a randomly assigned experimental design but this was not practical or politically possible. On a two-year follow up there were no systematic differences in recidivism rates. When time to re-arrest or lag time is measured for most offences and sanctions, lag times did not differ by court type. An intervention which delays a new re-arrest still has benefit even though it may have no effect on prevalence of arrest. The authors agree there may be problems in the use of arrest records as a reliable database for these types of surveys. In Ireland the number of unreported crimes are adverted to but not accounted for in official Garda statistics (O'Mahony 1995) but are featured in the 1998 Crime and Victimization National Household Survey and arrest records are not available for research purposes. The rapid processing to disposition did not alter the likelihood or time pattern of recidivism but obvious concerns were raised as to the quality of justice administered in these courts. Weak cases may be pleaded to without adequate case preparation or prior discovery. Non-custodial sentences offered for pleas of guilty promote this assembly line approach. Concern for this "conspiracy against the defendant" is extensively analysed by Boldt (Boldt 1998) where the role of the defence lawyer is seen as compromised from the traditional standard of zealous advocacy. In a drug treatment setting the defence lawyer, when he presents in a case at all, must see himself as part of the drug treatment team which must sometimes act coercively using shock incarceration on the client. Many of the academic writers see this as presenting difficulties for the defence advocate and the American Bar Association are equally concerned.

Drug Treatment Courts emerged from the milieu of Differentiated Case Management and Treatment Alternatives to Street Crime (TASC), a U.S. government programme of diversion of non-violent drug users to treatment without recourse to the courts.

Drug Treatment Courts present as a radical departure from Differentiated Case Management which were essentially an integral court mechanism for more rapid processing of drug offenders (Inciardi 1996). Differentiated Case Management is still used today and it is said 'the court system would collapse without it.' (Davis, Smith

and Lurigio 1994). However, the approach taken in Differentiated Case Management was one of process rather than problem solving.

Drug Treatment Courts developed in the United States from the early 1990's and the Drug Court at Dade County, Florida, is regarded as the model Drug Treatment Court although different courts and jurisdictions have evolved their own modalities over the years. For the purpose of this thesis the Drug Treatment Court model which could most likely match the Dublin Metropolitan District Court would be a post adjudication model, Predominantly, the Drug Treatment Courts are preconviction and diversionary courts.

John Goldkamp (1999) explains the emergence of the Miami Drug Court as an attempt to reduce crime and criminal case load by getting offenders involved in treatment rather than processing greater volumes of offenders which did not achieve much. These courts are a 'bottom up' response by the Judiciary to both case management and drug misuse problems (Hora Schma and Rosenmal 1999) where the court identifies a therapeutic response as the most appropriate to substance misuse. These courts did not evolve from any particular theoretical design or general theory. However the idea of addiction as a pathological condition appears to be well established and accepted in the drug court movement. Abstinence monitored by urine analysis is a key objective of the intervention (National Association of Drug Court Professionals - Defining Drug Courts 1997). The criminal justice system is essentially a blaming institution (Boldt 1998, Alien 1981). Drug Treatment Courts, which were first established in Miami, Florida in the 1990's, are said to be a radical departure from the traditional approach replacing the conviction and blaming of offenders with treatment of addiction; quite often without making any record of conviction (Hora *et al* 1999). Drug Treatment Courts evolved from different approaches in case management of large case loads and the requirement to reduce those case loads. They did not emerge from a theoretical perspective or design. In fact the theoretical rehabilitative elements of the Drug Treatment Court were in decline in U.S. criminal jurisprudence for twenty years when the Drug Treatment Courts emerged. The tendency to pathologise drug taking, characterising such behaviour as disease based, raises many difficult legal questions when such behaviour manifests itself as criminal (Fingarette 1970). Problems relating to volition and *mens*

rea (guilty intent) essential ingredients in the definition of a crime are largely ignored until after conviction. Notwithstanding this, difficult issues which can only be mentioned in this short thesis remain unresolved such as the dichotomy between criminal guilt and the presumed pathological nature of addiction. The question might be asked of much of the literature on Drug Treatment Courts - Is it an attempt to put theoretical clothing on what is essentially a body of pragmatic practice?

Intervention and Treatment

The identification of length of stay in treatment as a key variable for success in treatment provided a focus for those who sought to use the coercive powers of the criminal justice system on drug issues (Inciardi *et al* 1996). Specifically the research of Douglas Anglin and Yih-ing Hser (1990) which examined the wide range of commonly used treatment modalities concluded that all major treatment modalities show positive results and mixed modalities show better promise. On legal coercion they say:

“Clients entering treatment under legal coercion do as well as those without such pressures and have been reported to remain in programmes for longer periods of time than clients entering without legal compulsion.” (P. 396)

Reflecting the complex and multifaceted nature of drug misuse problems, modern evaluations should measure more outcomes than the traditional measure of how many patients became drug-free during/after treatment. This one dimensional approach, although perhaps easiest to measure and usually conducted for promotional and funding reasons, does not explain other important characteristics and variables of interest to policy makers, for example - a convicted user/dealer may now be drug-free but may continue to deal in drugs. Such an outcome may be seen as a success in the treatment programme but a failure in the criminal justice intervention.

Anglin and User identified some beneficial matching characteristics in their meta analysis of the different treatment modalities for example younger persons from deprived backgrounds did better in therapeutic communities although retention was low. The culture and 'personality' of a treatment modality may have an effect on retention rates. They conclude 'the period of intervention must be lengthy since drug dependence (especially in regard to heroin) is typically a chronic relapsing condition'. (P. 442) The wheel of change theory (Prochaska, Norcross and Di Clemente 1994) has particular application to this conclusion as Anglin and User state that 'several rounds of treatment, aftercare and relapse may be expected and it is not unreasonable that years of structured intervention will be necessary to control, reduce or eliminate drug dependency in any given individual' (Anglin and Hser 1990 P. 442). As resources for drug misuse treatment are scarce there is the distinct possibility of the treatment services becoming overwhelmed by criminal justice interventions and priority referrals (Hayes 1998). Such structural forces may distort public health policy objectives in accessing problematical drug users who do not end up in court for diversion to treatment.

Methadone maintenance is now the primary treatment modality for heroin misuse in the Dublin Metropolitan District. In the 1970's a 'natural experiment' presented in California when the Methadone Maintenance Programme was terminated in Bakersfield. The results of this 'natural experiment' were studied by taking a comparison group for Tulare, a town seventy miles away where the programmes was continued. (McGlothlin and Anglin 1981) The results showed significant increases in both drug use and re-arrest rates for the Bakersfield cohort. Retention in this study was terminated as a direct result of policy rather than for individual client characteristics or features of the treatment programme.

Interim results of a large prospective longitudinal study being conducted in the UK at present, suggest a significant reduction in criminal activity at year one following treatment (Gossop, Marsden and Stewart 1998). This study is of particular interest as it deals mainly with long term opiate dependency in a cultural, social and legal setting not too dissimilar from the Dublin Metropolitan area. American studies may not yield such a good fit for purposes of comparison.

Drug Treatment Court Evaluations.

As Drug Treatment Courts are phenomena of such recent vintage critical evaluations for multiple outcomes are only now beginning to emerge in the literature. Drug Treatment Courts differ from site to site on such criteria as - time of diversion i.e. pre or post adjudication, treatment modalities for example methadone maintenance or prior detoxification and total abstinence, use of Probation Services as a link to treatment services or direct input from the treatment services without Probation Services. Moreover the local legal culture between the prosecutors and defenders and charismatic leadership of the drug treatment team by the Judge are deemed important but immeasurable features (Inciardi *et al* 1996).

The General Accounting Office in the U.S. in 1997 published its report on one hundred and thirty four courts of the one hundred and forty operating in 1996.² A follow up study of the GAO Report, which updated and expanded upon the GAO Study was published by Belenko in 1998. (Belenko 1998).³ The evaluations focused upon process, cost savings analysis and client impact. Belenko concludes that drug courts engage and retain clients in treatment. While participating in a drug court programme drug use is substantially reduced, as is criminal behaviour. Using more limited data recidivism is reduced to a still significant extent on leaving the programme.

Engaging certain desired target populations or “hitting the target” (Goldcamp 1998) was generally achieved. This is challenging for the Dublin District Court where early prison release militates against retaining offenders in treatment, especially female offenders. The Maricopa Study is pre-eminent in the literature as one of the few

² They concluded there was insufficient data and research to definitively determine whether drug courts were effective in reducing recidivism and drug relapse. Absence of comparison groups were identified as a significant defect as well as follow up data (GAO 1997).

³ A certain dynamic may be identified in the research, for example of the six comparison studies reviewed by the GAO Report, four showed lower post programme rates of recidivism. Maricopa County, Arizona, showed no difference and Broward County, Florida, showed no significant difference. In the intervening period Maricopa County showed significantly lower recidivism for drug court clients when compared to the probation only control group and Broward County showed lower re-arrest rates than for the control group after one year follow up. Belenko’s meta analysis was designed to give extra weight to better designed studies which had adequate data collection methods.

studies with a classic experimental design assigning clients on a random basis to the study treatment group and control probation group. (Deschenes and Petersen 1999). Moreover the Maricopa Drug Treatment Court corresponds with the contemplated the Irish Drug Treatment Court and the current practice of diversion after conviction. A treatment programme described as Biopsychosocial is used 'to treat the whole person and not to simply focus on the drug use'. Twelve Step facilitation⁴ appears to be the primary modality. There is no indication in the literature if methadone maintenance is used as a treatment modality for heroin users and the study may not be helpful for that reason. The title to the programme is 'FTDO' or First Time Drug Offenders'. The client base is therefore taken from first time felony offenders where drug addiction is indicated. It could be argued that after twenty years of widespread heroin misuse in Dublin it might be difficult to find first time drug offenders who would fit in to this category. Initial results of the Maricopa Study showed the programme did not reduce overall substance use except for marijuana where an increase was detected among the treatment group. Initial results also show no impact on the treatment group having better outcomes when measured by new convictions.

Certain changes were introduced to the programme and the effect of these changes may have had an influence upon differing results. For example treatment was brought in-house and no longer contracted out. Cognitive Behavioural Therapy⁵ and socially based skills were introduced. Urine analysis was increased using a randomized colour-coded system making manipulation by clients more difficult. The programme was evaluated twice. The first evaluation after twelve months showed no significant difference in relation to drug use or recidivism (Deschenes and Greenwood 1996). Results of a three-year follow-up of five hundred and six of the original six hundred and forty samples are said to be more encouraging. Deschenes and Petersen conclude, in the long run, a drug court has significantly reduced recidivism. The extent to which the change has occurred during the three-year follow-up may in part

⁴ Twelve Step facilitation is a generic term which indicates a treatment modality based upon the principles of AA. and Narcotics Anonymous. The professionalised version is based on the Minnesota or Hazelden model of treatment. It proceeds on the assumption that drug addiction is a disease which can be arrested and not cured and total abstinence can be maintained on a daily basis through a maintenance programme or step-programme.

⁵ Cognitive Behavioural Therapy which is less used in the U.S. than in Continental Europe and the UK uses behavioural techniques to teach coping skills and relapse prevention by identifying cues which are significant in the drug-users behaviour and are associated with drug taking and relapse.

be attributable to the original design in the programme and changes implemented during the period. While length of stay in treatment may be a key factor in the success of treatment, the client can not remain indefinitely engaged in the treatment process or in the criminal justice system. Ironically an initial reason for separate courts for drug users was to dispose of cases more quickly. Unless the client is retained in a therapeutic community or continues with a twelve-step aftercare programme or methadone maintenance the treatment must be considered concluded and complete. Environmental factors identified as characteristic of typical heroin-using offenders in the Dublin Metropolitan Area (Bacik *et al* 1998) will largely remain in place no matter what intervention is applied. The Drug Treatment Court represents a new departure by traditional institutions to drug problems. A multi-agency partnership approach is used combining the criminal justice and treatment services. The results appear reasonably positive. However other factors outside of the criminal justice and treatment services domains remain as major factors in influencing continued drug use and criminality.

Conclusion

This review of the literature has examined a number of facets of drug issues which relate to the criminal justice system. These can be separated into two general categories of enquiry.

Firstly, the perceived connection between drug misuse and crime was examined critically to ascertain issues of causation of crime by drug using offenders. Established heroin addiction and polydrug users were identified as specific targets for intervention as these were most likely to be involved in escalated criminal offending. Drug use and other social problems were identified as closely correlated behaviours.

Secondly, the traditional criminal justice response to drug related offending in the U.S. has been to impose deterrent or retributive penalties. This has led to increased prison populations with no apparent benefit to society in the reduction of drug use or drug related harm. A clear cycle of drug misuse, offending and imprisonment, once established, continued unless the offender matured out (Winick 1962) or entered into treatment. The criminal courts in the U.S. have been overwhelmed with drug related

cases many of which involve repeat offenders. A bottom-up experiment in U.S. criminal procedure gave rise to one particular response to this issue by coercing offenders into treatment provided by the court using the stark choice of incarceration as an alternative.

Length of stay in treatment was identified as a key factor in success in treatment. This knowledge was grafted onto the procedures of the D.T.C., to engage and retain the drug user in treatment. Thus the court became a *nexus* between the drug misuser and the treatment services giving rise to an empirically based approach to drug issues. These D.T.C.'s have been evaluated in the U.S. and in some instances show significant differences when compared with previous dispositions of drug related offenders by the courts. However D.T.C.'s are characterised by a closely worked interagency approach to the drug offender where common aims and objectives are established and agreed. The D.T.C. including the judge, court staff. Probation Service, if used, and treatment agencies agree on procedures which allow for early engagement and coercive retention in treatment of the drug using offender.

Chapter 3

Methodology

INTRODUCTION The methodologies employed in this research were to an extent dictated by the enquiry itself which was primarily to explore the idea of Drug Courts as a response to drug issues in Ireland in light of the statement ‘That there already exists the nucleus of a Drug Court in Dublin (Drug Courts - Expert Group 1990). As every study requires selectivity and boundaries, a qualitative approach using a Focus Group and Case Study was chosen with a complimentary quantitative approach. This triangulation of methodologies and data it is submitted would most comprehensively meet the research question.

The researcher, being a Judge himself, regarded the enquiry as a type of action research (Bell 1993) where the practice of dealing with drug-related offenders in Court could be examined with a view to better understanding the process, it’s constituent parts and the dynamics of that process. Although some outcomes are reported in the Findings the primary focus is on the process itself.

Epistemological considerations must always form a backdrop to qualitative social science research, depending as it does on interpretation of interpretations and analysis of language. The researcher therefore needs to be alert to the impossible grail-like search for objective Truth as opposed to the probable achievement of meaning and qualified understanding. Quantitative analysis, on the other hand, may yield an abundance of hard data to “what” like questions but is deficient in yielding meaning to the important “why” question. The triangulation of methodologies facilitates the emergence of multiple “results” or understandings which can be usefully analysed for internal consistencies and divergences.

The Quantitative Method

To determine what happens to offenders who are diverted for assessment for drug problems, the month of January 1998 was chosen as the time-frame and the Courts

selected were Courts 44, 45 and 46 in the Dublin Metropolitan District Court. These three Courts deal with the vast majority of drug related criminal cases in the Dublin Metropolitan region. Only those cases which were sent for a Social Enquiry Report on drug related issues were examined. Cases which were disposed of by any other method, such as imprisonment were not considered, although some may have been drug related. In practice, when a case reaches sentencing stage the defence solicitor will indicate to the Court the client's drug problem and plead this in mitigation. The Court having considered the circumstances may ask for a Probation Officer's Report on the possibility of treatment for the offender.

The total number of all referrals to the Probation and Welfare Service for January 1998 was 217 for these three Courts. Access to the data was given at the Probation and Welfare Service Headquarters in Smithfield, Dublin, where the Central Registry is maintained. Since January 1998 the Probation and Welfare Service has decentralised and individual files have been sent out to suburban offices and prisons where offenders are located. The total number of files closed and therefore remaining in Central Registry was 44. These files were read by the researcher to determine reference to drug and drug related offending. 19 were identified for this category of enquiry. The residual 25 files related to alcohol problem users (11) and general probation issues (14) such as Community Service and Refugee issues.

Originally, it was intended to access circa 40 files as a random sample from preliminary enquires made. However, access to such a sample became problematical as the files for such a larger sample were located in different places and depending on the sampling method used would probably have open or "in-use" status. Accordingly, the sample used comprises all of the files designated drug related for the closed files for January 1998 in the Central Registry of the Probation Service. These limitations on sample size which are outside the researcher's control and the delimitations imposed by the Study (Rudestam and Newton 1992) cautioned the researcher against the safety of generalisability but it is submitted this "convenience" sample remains illustrative of such cases.

In particular, files were examined for offender characteristics such as age, sex, residence and previous convictions. For interaction with the criminal justice process,

offender files were examined for initial compliance for assessment for treatment and subsequent compliance with Supervision Orders and Court Reviews of supervision where applicable. The dynamics of the relationship between the Court and the Probation and Welfare Service were studied for such features as client compliance with treatment directives and engagement with such agencies as well as general supervision of clients and the manner of termination of supervision by either the Court or by breach procedure.

The Case Study

One case in the Probation and Welfare Service files identified as drug related was taken for a Case Study. The data for the Case Study was gleaned from the Probation and Welfare Service file of reports and notes and the original Court documents which contained records and Judges' notes. These were accessed to track the case through the criminal justice process. The objective of the Case Study was to gain data on the process, which was available for the most part in the two sets of documents consulted.

Bassey (1981) quoted in Bell (1993 P.9) says

The reliability of a Case Study is more important than its generalisability.

In the particular Case chosen this point is borne out significantly as it is one of the few cases in the sample where the outcome could be considered a "success" but the treatment modality was one of the least used and regular Court Reviews were used which was not the case when dealing with the other subjects in the sample. Notwithstanding this danger of distortion in the Case Study, the process under review was potentially available for all of the cases studied and is therefore reliable on that basis.

The Focus Group

In the spectrum of naturalistic enquiry Focus Groups find a place between participant observation and individual interviews (Morgan 1988). He points out

Substantively, the strength of Focus Groups comes from the opportunity to collect data from group interaction. The point is not, of course, to tape record just any interaction, but interaction that concentrates on topics of interest to the researcher. When all goes -well, focusing the group discussion on a single topic brings forth material which -would not come out in either the participants own casual conversations or in response to the researcher's preconceived questions.

The simplest test of the appropriateness of using a Focus Group in preference to other qualitative methods

Is to ask how actively and easily participants would discuss the topic of interest
(P. 23)

Another way of looking at this is to ask: Would the use of a different technique such as a structured interview yield better data when addressing questions on diversion of drug offenders to treatment? It is submitted a respondent might be more guarded and inclined to give the researcher an answer which he, the respondent, believes the researcher is seeking. Clearly, this is not useful data. On the other hand, a researcher might sit in a Court and observe the proceedings and report this as data. However, the latter approach will not gain access to the rationale behind certain decisions to divert an offender to treatment or to select a more punitive approach unless the Court articulates its reasons in great detail in each case, which rarely happens. The key to accessing appropriate data on 'how' and 'why' Courts deal with drug related offenders is to select a technique which is best suited to topics of attitudes and cognitions (Morgan 1988).

As the Focus Group can be moderated at different levels by the researcher, higher moderation may lead to bias, one needs to be open to the possibility that the views expressed by the participants may lack "fit" with the practice in Court. The naturalness of the interaction may be measured by ascertaining the spontaneity of the participants and the level of engagement and interaction. Moreover when the topic under discussion is a sensitive one, the level of passion which some or all of the participants bring to bear on the discussion is significant. Notwithstanding this,

however, the Focus Group, as convened in this case, generated data which required to be mediated through language and interpretation thereby placing it at least one-remove from the natural event.

The participants were selected by the researcher for a Focus Group held on the fringes of a Judges' Conference in November 1999. The task of getting eight/nine Judges into one room at the same time for a Focus Group was a difficult one, as the Judges were drawn from categories of Judges of the District Court from which are selected the Judges who sit in Courts 44, 45 and 46. Although the Courts are situated in Dublin the Judges of the moveable panel of Judges, who frequently sit in Courts 44,45 and 46 live in different counties around the country. There were 52 District Judges in Ireland in 1998, comprising 24 provincial Judges, 16 Dublin Metropolitan Judges and 12 moveable Judges (unassigned). The Focus Group comprised of 4 Judges from the Dublin Metropolitan District, 3 moveable Judges and 1 provincial Judge (who had sat in Dublin) in 1998. Initially, 12 Judges of the 28 from the Dublin Metropolitan and moveable panels were canvassed for participation in the Focus Group. The researcher correctly anticipated attrition on this list, targeting 8 participants for the Focus Group, which was achieved.

The one Focus Group was audiotaped and lasted one hour and twenty minutes. The tapes were transcribed (not by the researcher) for analysis and interpretation and were check-proofed against the recordings for accuracy by the researcher.

The participants comprised an elite group for research purposes whose views required appropriate undertakings as to anonymity by the researcher, including undertakings as to the destruction of the recordings and transcripts on the completion of the research. Moreover the particular composition of the Focus Group indicated significant empowerment on their part in contrast to much other research where the powerless are the subjects of enquiry. This point becomes important in the analysis stage where deconstruction of responses by the Judges may disclose perceived threats to the hegemony of their powers.

The researcher played an active moderating role in the Focus Group, putting forward three themes for discussion within the time allowed. These themes were identified in

advance by reference to the Literature Review and are constituent of the aims of the research project. A high level of moderatorship may introduce bias in the data of the Focus Group (Morgan 1988). However, the strident disagreement of many of the participants with some of the suggestions of the moderator give reassurance in the analysis on this point.

The task of analysing the Focus Group data consisted of making multiple copies of the text, marked with different coloured markers to place quotations within certain categories on the themes of discussion. Additionally, big issues (Krueger 1998) which cut across the categories were identified and reported.

The rich and abundant data from the Focus Group, the statistical data and the Case Study allowed for both exploratory research of matters to which the researcher had not adverted and the testing of a hypothesis as to the existence of the nucleus of a Drug Court in Dublin as stated in the Expert Group Report. This required both an inductive and deductive approach to the data.

Feldman (1988) advises the deconstruction of dichotomies in Focus Group analysis, stating that Western thought is constructed on the idea of dichotomies. Applying this technique of deconstruction, dichotomies between the Court and the treatment services, the Court and the Probation Service was deployed to gain insight into the structural issues and dynamics of the process under investigation.

Triangulation of the data from the Case Study, statistical analysis and Focus Group proved a difficult task and some inconsistencies were noted, analysed and reported. Consistencies of findings, on analysis, showed patterns and were explicable by reference to the Focus Group discussions.

Chapter 4

Findings

INTRODUCTION: The source material for this thesis is taken from three sources using three complimentary methods. Statistical data is taken from the files of the Probation and Welfare Service. A Focus Group of Judges was formed and analysed and a Case Study of a defendant who was diverted to treatment was conducted. The question of how the District Court deals with opiate-using offenders was the focus of all three methodologies used.

Statistical Data

Nineteen files were examined in detail in the Probation and Welfare Service. These were examined for criteria such as age, sex, residential location. Court, offence type, level of co-operation prior to court report, recommendation of the Probation Officer, court order made, compliance during treatment/supervision, retention in treatment, modality of treatment, previous convictions and recidivism during supervision. An early pilot examination of the Probation and Welfare files showed roughly -fifty percent of the files were either drug or drug-related. The ratio in the sample taken is 19:44 for drug and drug-related offending to overall number of reports. If alcohol-related problems are included in drug and drug-related offending, the ratio is 29:44 for all substance misuse to overall probation reports for the same group. Information was generally available on the files for most of the pertinent data sought. Some files were not capable of yielding all the required information.

Statistical Data Overview (refer to flowchart)

Of the nineteen offenders identified for diversion to treatment all but three failed either initially to be engaged or eventually to be retained in treatment. All offenders shared common Dublin inner city addresses. Most offenders were charged with

property offences, few were charged with drug offences and offences against the person. Client co-operation on assessment for treatment was significantly better for males in a ratio of 8:1 than for females in a ratio of 5:5. Each offender who cooperated on assessment was given an opportunity to engage in treatment rather than have another penalty applied. No offender who co-operated was incarcerated. No offender was breached and had his or her case re-entered before the court for non-compliance with treatment conditions despite clear indications of such breach in a number of cases.

Compliance

No breach proceedings were taken by the Probation Officers in respect of the 13 cases assigned to them in January 1998. These 13 cases form the core of the supervision work given to the Probation Service by the Court in this sample. When factors such as persistent failure to keep appointments, moving residence without informing the Probation Officer, providing frequent positive urine analysis for opiates other than methadone are used to measure non-compliance, as single factors or in combination, 10 clients were non-compliant and 3 were compliant. Of the remaining 6 client/defendants, six were never placed under probation/supervision whether by way of adjourned supervision or a Probation Bond. From the sample of 19 cases, 2 client/defendants died. (Note 6) One died during assessment and one died during supervision. Both deaths were drug-related.

Termination of Supervision

The files relating to clients placed on formal Probation Bonds (nine) for different periods of time were closed on the expiration of those periods of time. In some of those cases the suspicion and in some cases the fact that clients continued to use heroin while on methadone maintenance did not trigger a referral back to the Court for possible breach of the recognisance and further directions. In other cases where the client had broken all contact with the Service and Treatment Centre, files were closed solely by reference to the period of time of the Bond expiring. These latter cases it is submitted could not be regarded as successful completion of the Probation

Bond Orders and present a challenge to the relationship between the Probation and Welfare Service and the Courts in the disposition of drug and drug-related cases.

The Focus Group

Three interconnected themes were identified by the researcher in advance of the Focus Group and were generated from the Literature Review and the researcher's own knowledge of the issues and processes.

Firstly, the question of "ownership" of drug issues in a criminal justice context was addressed. The focus on the Court's role as an active problem solver was explored in contrast with the Court's traditional and passive role where due process and precedent are paramount.

The second theme addressed the manner in which the Court might identify a case suitable for diversion to treatment and how the Court might set about making such a diversion.

The third theme identified related to the Judge's expectations of outcomes of cases sent for assessment and diversion to treatment. Fortunately, the Focus Group developed its own dynamic, early in the discussion, which yielded an abundance of data for analysis. Analysis of the Focus Group involved separating out the three themes and additionally required the identification of certain cross-themes in the text which were generated by the Focus Group and not anticipated by the researcher (Krueger1998).

Are drug issues the business of the Court?

In the celebrated T.V. series "Yes Minister", the Whitehall Mandarin, Sir Humphrey Appleby was wont to advise his Minister when faced with a difficult problem - "O.P.P Minister". When the hapless Minister asked for an explanation Sir Humphrey used to advise "Other Peoples' Problems, Minister!".

When drug issues are located in a criminal justice context, for example, when a drug addict is charged with possession of heroin, the ownership of the issue may pass from a public health setting to a social control setting. It is submitted the concept of “ownership” of drug issues presents as a mercurial matter in Irish drug policy, with responsibility constantly shifting between perspectives of public health, social control and personal responsibility and freedom. When presented with the immediate question at the Focus Group the Judges without exception agreed it was the Court’s business to get involved in drug issues.

J1 put it thus

I would say, yes it is the business of the Court because you can’t just impose a sentence in vacuo, alright the sentence is society’s retribution to the crime but it also has to take into account the possible rehabilitation of the criminal and then that lands you right in the centre of his drug addiction and therefore, I think the answer to that has to be yes.

Other explanations of this engagement by the Court in drug issues centred around the court process itself J2 said

There’s a possible selfish element that there’s a chance it will be successful thereby lightening the load in terms of offences.

This view reflects the differentiated case management rationale of the early drug courts in the U.S.

J4 put the ownership matter as follows

We cannot avoid dealing with drug addiction in this sense, number one there are statutory provisions which bring addicts into us in various ways the second area where we cannot escape (is) with the drug addict who is involved in drug dealing.

But the problem is not perceived to be exclusively owned by the Court itself. Reliance on the Probation Service for court liaison with treatment services signified co-ownership of the problem in some instances. In this procedure responsibility or ownership may pass from the Court to the Probation and Welfare Service and treatment agency and back to the Court again in a continuum. J4 stated

You are depending a lot on outside forces..... they (Treatment Services) tell me that it's vital that the person who is an addict knows that a report will be written on that person..... if you leave the addict go out the door and give a Probation Bond and don't bring it back or don't have some machinery for bringing it back you're likely to lose.

How does the Court engage the drug offender?

The second area of enquiry for the Focus Group concerned the identification of suitable cases and the method of diversion to treatment. Suitable cases for diversion are identified by a Social Enquiry Report of the Probation and Welfare Service. When the Court receives and considers the Social Enquiry Report, some form of supervision of the offender is usually made, provided the case is not regarded so serious as to warrant a custodial sentence. Moreover as J2 stated

There has to be an engagement or a willingness to engage first day.

The Court may adjourn a case for further reports to see how the offender is behaving or may place the offender on a Probation Bond with conditions as to treatment. Additionally, the Court can review the progress of an offender placed on a Probation Bond by adjourning the case for review, as if it was an adjourned case. The Focus Group made no mention of drug treatment orders under Section 28 of the Misuse of Drugs Act, 1977. The Judges' preference was to adjourn a case and bring the offender back to Court for progress reports on treatment compliance and general behaviour.

Drug cases may present in Court differently. J6 put it as follows

Drug cases present a -wide range of categories. Some accused appear in court 'as high as a kite' and others presented and you 're not quite sure if he has a drug problem you try to get a report to get that much out, and other cases are not that serious and these can be disposed of by Community Service or whatever. There are a hundred and one varieties of drug addict that have to be approached may be in different ways.

Ultimately, J6 says you have to rely on outside agencies to deal with the problem.

While one Judge tended to support the idea that supervision should be handed over to the Probation and Welfare Service and the treatment agencies for primary monitoring, the predominant view was that the function should be specifically retained by the Court to ensure more effective results. Dependency on outside agencies for effective supervision and treatment was not positively regarded by the participants. Continued supervision of the offender when his case is adjourned or he is placed on a Probation Bond is regarded as the best practice.

The practice of placing an offender on a Probation Bond without further Court reviews was not advised as J6 stated

Nobody gets breached on a Probation Bond in Dublin, very rarely.

J1 stated

I always prefer to have an adjourned date when he comes back into Court, it's the immediacy of that that's so effective you are dependant on the efficiency of the Probation Service in identifying whether he has broken the Bond or not, and I can't feel sufficient faith in the system to be certain that he'll be brought back into Court if he's in breach of the Bond.

A structural element in the Court's organisation was identified as a clear factor which militates against effective supervision by the Court when a case is reviewed.

As will be seen in the Case Study a number of different Judges and in particular the original Judge who made the Diversion Order never got to see the case or the defendant again. J1 described it thus

Inevitably, even -with that system in operation, an element of discontinuity has to creep in and it does.

Interestingly, this reluctance on the part of the Court to hand over the supervisory role of offenders in treatment to the Probation and Welfare Service does not seem to be borne out in the statistical analysis of the files in the Probation and Welfare Service where out of 12 cases the Court retained specific supervision in all but 2 case in the sample.

The Focus Group participants were unanimously agreed that lack of adequate treatment resources was a significant factor militating against effective and timely intervention which could reflect in the imposition of alternative penalties and sanctions by the Court. It was described thus by one Judge, J8

The tragedy of a lot of this is for instance is that we are totally dependant on outside agencies, somebody standing in the dock - they need treatment immediately he has to wait in a queue and I think everybody would agree on this, that's no good to the fellow standing in the dock.

The inadequacy of treatment services presented such a dilemma that as J5 put it

To a degree -we're probably using it (prison) to punish them for not being able to get on a treatment course, because there isn't treatment available.

What happens to offenders who are diverted to treatment?

When addressing the third theme of Judge's expectations of cases diverted to treatment, the discussion indicated a cautious relationship between the Court and the treatment services marked in some cases with open distrust. Two of the participants

drew on their experience to illustrate their points of view. Speaking about the inadequate monitoring procedures of a particular agency J8 said

This man had appeared in the dock, and literally, stoned out of his mind, he was a danger so I had to keep him in custody and the/allowing week the wife comes down with a letter from this clinic "He has been a patient here for five and a half years and he is doing well". I have it framed.

Diversion to treatment of female offenders was viewed as a special category by the Judges as the alternative penal sanction was regarded as ineffective, not only in its rehabilitative component but the sanction was negated by the early release system due to the lack of prison places. J7

Indeed, as in the case in Dublin with ladies, it is almost pointless sentencing ladies in Dublin, because they are going to be out in two to three days you're much better spending the time getting a Probation Report on them

When the special category of female offender is analysed in the sample of the Probation and Welfare files the level of attrition in the assessment sample for treatment/supervision is noted to be extremely high. In total 13 co-operated in the assessment and 6 did not. Of the latter 6, 5 were females and 1 was male. Moreover, when the same special category of female offender is analysed for compliance with a Supervision Order with conditions as to treatment 1 of the total of 4 females was compliant compared with 2 out of a total of 6 males being compliant. If the template of a classic Drug Treatment Court is imposed on these findings it is speculated that the coercive effect of incarceration is a singularly absent component when dealing with female drug offenders in Dublin.

The Focus Group expressed mixed views on their experiences when dealing with offenders using different treatment modalities. These ranged from acceptance of methadone maintenance treatment on the one hand to a preference for total abstinence on the other. Indicating a preference for total abstinence J3 stated

The problem with methadone is that the guy actually isn't clean and that he is still hooked on something which means that he in fact isn't rehabilitated even though he is on methadone.

Concerns with leakage of methadone onto the black market, its reputed addictive qualities and simultaneous use of methadone and heroin by offenders in treatment were identified. When viewed in the context of the criminal justice process the Judges regarded these latter elements as matters outside their control which were inadequately addressed by the treatment agencies. A positive feature of methadone maintenance was identified by J6

But at least if he's getting it free he's not going to steal to get it.

Some Judges disagreed fundamentally with their colleagues on the negative perception of methadone maintenance treatment. J5

I personally think that's a matter for the treatment providers. As a Court •we have to face primarily our situations, we are a Court, we are Judges. We succeed, in my view. if we stop people committing crime and if a drug addict stops committing crime because he is maintained on methadone I think as a Court -we have been successful insofar as our duty to society is concerned, it's up to the treatment providers to assess each individual case and if we are told the best way to approach this man and stabilize him and stop him committing crime is by methadone maintenance I don't think we have either the expertise or the right to say that's wrong and he has to go clean, he has to go "cold turkey". I don't think it's part of any of our job to decide which set of treatment providers is correct.

J7 agreed stating

We can't do the treatment provider's job as well, if they say it's methadone or whatever, that can't be the Judge's job, to rethink the doctors.

The Judges are aware to some extent of the different treatment approaches but are involved in a handing over of this function to the Probation and Welfare Service when it comes to selecting the particular modality of treatment. The function of matching a particular client with a particular treatment modality has always been problematical. The Probation Service, providing a linkage service for the Courts with the treatment agencies, proceed with addiction assessments which may not always be optimal in matching a client with a particular treatment modality. This can lead to misplacement in the initial treatment programme with negative results, leading to “programme jumping” by some client/offenders. Occasionally, this can be used to avoid engagement in any particular treatment programme and to facilitate avoidance of other sanctions by constant adjournments.

The incidence and spread of HIV/AIDS among drug-using offenders and the wider community was not a matter which the Judges considered when determining penalty or even when deciding to divert an offender to treatment. It was described as “peripheral” by J2 and J5, although J8 identified the introduction of methadone maintenance treatment in the Eastern Health Board area as a health sector response to the spread of HIV/AIDS among intravenous drug users.

A view by one Judge, J5

The AIDS aspect of drug taking now I think is well under control. It's very few who are injecting heroin now. They're nearly all smoking it.

went unchallenged in the Focus Group, possibly signifying inadequate information on the part of the Judges on matters concerning public health aspects of drug issues.

Overall the Judges' expectations of diversion to treatment of offenders did not crystallise into any identifiable coherent policy or practice. The views differed on such matters as the nature of addiction, the appropriateness of certain treatments and difficulties with Service linkages. No clear theoretical approach could be extrapolated from the practices outlined by the participants except for a broad consensus that the cycle of re-offending and drug use should be tackled by rehabilitation which process was constantly frustrated by structural and resource

difficulties. The idea that an offender may relapse and require a number of interventions (Anglin and Hser 1990) did not emerge in the Focus Group with any degree of clarity leaving the researcher with a doubt that the Judges' view the intervention process as a "single act" of intervention (Ovretreit 1990) where the offender/drug user is put through a process (treatment procedure) and is either cured or has failed in treatment.

When analysing and reporting on the Focus Group the writer was alerted to the probability of cross-themes emerging in the Focus Group (Krueger 1998) as an internal dynamic of the research. Certain themes emerged which the writer believes are important to report in the Findings. These themes have been analysed as a) the Judges' perception of the function of sentencing and b) the role of imprisonment for drug-related offending.

When prompted, by the researcher, to respond to the Law Reform Commission (1996) recommendation that the Just Deserts theory was the preferred objective in sentencing, the Focus Group disagreed in varying degrees, most radically by J5

I would suggest that it's that same society that has created the criminals and the drug addict, insofar as they come from very deprived backgrounds from areas where they have no social services, no facilities and society effectively has abandoned them so while in a way society is entitled to retribution, a lot of these people are entitled to something from society so I believe society owes a lot of these people a lot more than they owe society for some of the crimes they have committed.

Indicating agreement with this latter view, J4 stated

Really what I'm doing is echoing society's responsibility in the rehabilitative aspect of the addict.

Sentencing, according to these two participants, requires the Court to perform an act of re-balancing the economic and social disadvantage in society which might

manifest itself in drug-related offending. This might involve the imposition of a sentence which would assist in the rehabilitation of the offender rather than extracting society's retribution. J5 went on to state even after successful treatment the social and economic disadvantages remain a major challenge to the offender/drug user which have not been addressed by society. This view was echoed by another Judge but the silence of the other participants on this topic should not necessarily be seen as agreement or disagreement with this analysis.

The function of imprisonment in the disposition of drug-related offending emerged in the discussion under three separate headings. Firstly, the shortage of treatment facilities promotes the use of alternative sanctions, such as imprisonment, as already discussed. Secondly, imprisonment was considered an essential coercive element in the diversion process. J5

Prison is the ultimate reason why most of them go on treatment because if there isn't a sanction that's going to be there at the back of it, if they don't succeed then none of them will be motivated to go on the courses anyway.

Without the threat of imprisonment coerced treatment would fail.

Thirdly, some cases are considered so serious that a term of imprisonment is the only realistic penalty and treatment in a community setting is not an option. J5.

You've the mixture of all three. The ones that simply refuse, they don't want treatment. They prefer to go to prison, sometimes because they think they're going to get out fairly fast..... You've the ones then who will accept treatment but are only accepting it half-heartedly to try and avoid prison and who don't really succeed on the treatment services. And then you have the ones who where the crime is so serious they've got to go to prison anyway.

The latter explanation was given in response to the question - Why do we have such a high percentage of drug-using offenders in Mountjoy Prison? In other cases, it

was reported, treatment is rejected for tactical reasons, for example, the client may want to immediately process an appeal or spend a short period in prison and be free of the Court and Probation Services.

The large percentage of drug-using offenders in Mountjoy Prison (O'Mahony 1997) and St Patrick's Detention Centre (for male offenders under 21 years) were sentenced by the Central Criminal, Circuit Criminal and District Courts. The explanations offered for incarcerating drug-using offenders by the District Court Judges in the Focus Group appear to indicate a last resort approach to the use of imprisonment for drug-using offenders. However, certain cases were said to warrant a term of imprisonment notwithstanding the fact that the offence was a drug offence only or a drug-related offence not necessarily involving violence. Unfortunately, no measure of seriousness was developed in the Focus Group to facilitate a conceptualisation of these types of offences and behaviours.

Diversion to Treatment - A Case Study

INTRODUCTION - The purpose of this briefcase study is to illustrate the process of a case in action. The efficacy of one treatment modality over another is not the focus of the study. The data for the case study is taken from one of the nineteen files examined in the Probation and Welfare Service relating to a specific defendant who shall be referred to as Defendant A. The information in the Probation and Welfare file is further cross-checked with court papers relating to the specific charges which papers are located in Chancery Street for Courts 44, 45 and 46. The criminal justice system and treatment processes are not joined in a seamless way, indeed the objectives of each perspective may at particular times be diametrically opposed one to the other. Considerations of deterrence and public safety may, in a particular case, outweigh rehabilitative considerations. The point may be further differentiated whereby rehabilitation is deferred to see if the defendant is motivated and capable of supervision and treatment, having served an initial period in prison (The People (DPP) -v- MS. - Denham J. 1st February 2000 Court of Criminal Appeal, Unapproved Judgement). Recommendations of the Probation Officer may not necessarily be followed and treatment modalities used are not selected by the Court. The particular modality of treatment used tends to be a function of a number of factors including; resources and availability of places in a particular agency; client self-selection and the Probation Officer's professional and networking contacts.

The Case Study

The defendant A was arrested on the 23rd July, 1997 for handling stolen property, contrary to the Larceny Act 1916, to the value of £190. He was remanded on police bail to appear before Court 44, Chancery Street on 23rd July 1997. While out on police bail for offences committed on the 22nd July, 1997 he engaged in and was arrested for three separate sets of similar criminal offences on the 23rd July, 1997 (The day he appeared in court in respect of the earlier

offence) and twice on the 4th August, 1997. For the offences committed on the 22nd July, 1997 he appeared in court and was remanded on continuing bail to the 18th November, 1997 for the hearing of these charges. He failed to appear on police bail for the three separate sets of offences committed on the 23rd July and the 4th August and bench warrants were issued for his arrest. The bench warrants were not executed, but ultimately these separate offences were dealt with on the 18th November, 1997 when the first set of offences came on for hearing. A time lag of four months occurred from the time of the arrest on the 22nd July, 1997 to the date of trial.

The defendant faced four charges of larceny, two of criminal damage and two charges for interfering with the mechanism of a motor vehicle. The defendant elected for summary trial without a jury for the larceny offences and the District Court having heard a summary of the facts accepted jurisdiction. The Director of Public Prosecutions consented to summary trial for the indictable offences of malicious damage. The defendant pleaded to four sets of offences using a similar modus operandi whereby he would break into parked vehicles usually belonging to foreign visitors and steal items of value. The likelihood of a foreign visitor being available to give evidence four months after a vacation is always remote.

The judge having recorded convictions against the defendant was asked by the defence solicitor to adjourn the case to allow a Social Enquiry Report to be obtained from the Probation and Welfare Service focusing on the defendant's drug problem. The court acceded to this application and remanded on continuing bail to the 13th January, 1998 with a condition of bail that the defendant would continue to reside within a therapeutic community until the next date. The court had been informed that the defendant was resident in the therapeutic community (T.C.) since the 14th August, 1997 by letter handed into court from the T.C.. This letter informed the court that Defendant A was under assessment for entry to the T.C. for the

period during which he committed the four separate sets of offences between the 22nd July and 4th August 1997. The three bench warrants were issued for his arrest prior to his entry into the T.C. and during the period he was deemed suitable for entry to the T.C.. His residence in the T.C. may explain why the bench warrants were not executed as he was in continuous residence in the T.C. up to the 18th November, 1997 when the first trial date was fixed for hearing and when he pleaded to all outstanding charges.

On the 13th January, 1998 the substantive Social Enquiry Report was presented to the court. The Report disclosed that Defendant A had been a heroin user since 1980 when aged sixteen. He had started on cannabis at age thirteen. From 1980 to 1991 he had procured twelve previous convictions mostly for larceny which he claimed were closely associated with his need to fund a dependency on drugs. From 1991 to 1994 he attended drug treatment at the same T.C. and successfully graduated. In 1994 he separated from his wife who was also a heroin user and who had reverted to use following treatment at the same T.C.. He had remained drug-free for two years and in January 1997 was sentenced to six months imprisonment for a further offence and released in March 1997. The Report indicated he had commenced treatment in the T.C. and a letter from the T.C. was enclosed in support of this. The Report recommended a six-month review on the basis of the defendant continuing to reside at the T.C.. This recommendation was followed by the court.

The matter came before the court again on the 6th June, 1998 for review when continuing treatment in the T.C. was reported and supported by a short report from the T.C.. The Probation Officer recommended a Probation Bond for a period of twelve months at this sitting. This recommendation was not followed and the court kept the matter under review and remanded the defendant for a further six months.

On the 12th January, 1999 satisfactory progress was reported by the Probation Officer who recommended a Probation Bond for six months. The court placed the defendant on a Probation Bond with a condition the defendant complete his treatment in the T.C.. Defendant A was to graduate from the T.C. five months later, which he did.

The Record of Supervision or Follower Sheet (in Probation file) discloses he graduated from the T.C. and continues to work as a staff member in a Day Centre of the T.C. in April, 1999 on which date the file was closed.

The case was before the DMD Court 44 on six separate occasions and six different judges dealt with the defendant. The defendant was released on bail on the 22nd July, 1997 and committed three separate sets of offences before he voluntarily went into the T.C. on the 14th August, 1997, where he remained up to the time of his trial, three and a half months later. One Probation Officer dealt with his supervision throughout and no occasion for breach of supervision arose. Accordingly it was not necessary to seek re-entry of the case in court between review dates.

The defendant was “kept in sight” by the court from the 18th November, 1997 to the 1st January, 1999 by frequent reviews when his presence in the T.C. was made a condition of bail and when the case was finally disposed of with a condition he complete treatment. The defendant was “out of sight” of the court initially when he got bail on the 22nd July, 1997 and committed further offences while on bail. This period during which he continued using heroin and committing offences was facilitated by the time-lag to trial, four separate police bail recognisances and relatively late diversion to treatment.

It is submitted this feature of late diversion in current court practice is even more prevalent in cases where a therapeutic community is not the preferred modality of

treatment, e.g. where methadone is used. In the other eighteen cases reviewed by the writer there is a clear pattern for defendant/clients not to keep appointments and where methadone is the treatment modality, positive urine analysis of other opiates is indicated. The cases which may have presented cause for a breach by the Probation Service were not re-entered before the court and Supervision Bonds terminated by the passage of time rather than by order of the court on an application for breach. Cases with review dates by the court showed better compliance by clients for appointment- keeping and rehabilitation retention.

The use of third party reports in the case study proved useful in corroborating the Probation Officers' reports. The defendants' self-reporting was verified against independent criteria.

Synthesis of Findings

Defendant A in the Case Study attended a Therapeutic Community and was retained in treatment as were two other client/offenders who were placed on Probation Orders with conditions as to treatment. The extent to which compliance and retention by these three client/offenders can be attributed to the proactive and coercive features of the court process can not be clearly identified in this analysis. This doubt is based upon the apparent failure of the criminal justice system and the drug treatment services to engage and retain in treatment the residual ten client/offenders who are deemed non-compliant.

Defendant A had gone through the Therapeutic Community process previously and had graduated from the T.C. having spent a considerable time in residence there. His age was 33 on completion of a court supervision which was co-terminous with his graduation for the second time from the Therapeutic Community where he had again spent a considerable period of time in residence. The other compliant male client aged 20 was in full-time employment and had an active lifestyle involving sports. The only female client/offender deemed compliant was 32 on completion of her treatment and probation. The relative maturity of defendant A and the only compliant female client/offender may suggest these two clients were more receptive

to intervention. Additionally, specific court oversight of defendant A may have had a coercive effect upon his compliancy. The Focus Group of Judges certainly favoured such an approach in discussion although generally did not appear to adhere to this view in practice.

The statistical analysis tracks client/offenders through the criminal justice and diversionary processes by gender. This allows for comparative analysis of client/offenders and of consistencies and inconsistencies between the two groups. The Focus Group of Judges clearly placed female client/offenders in a special category primarily because early prison release was seen as a dilutant to the Court's coercive powers to divert a female offender to treatment.

It has been hypothesised in this thesis that there is not the nucleus of a Drug Treatment Court in the Dublin Metropolitan District Courts. Some elements of the Drug Treatment Court are present such as court reviews of treatment compliance but this is more the exception rather than the general practice in the Dublin Metropolitan District Court. Reliance on the Probation and Welfare Service to monitor and breach for non-compliance with treatment is the norm when diverting drug related offenders to treatment, despite clearly expressed dissatisfaction with such a procedure.

An important facet not researched in this short study is the relationship between the Probation and Welfare Service and the Drug Treatment Services. While it is contended both operate within a care as opposed to control perspective the impression from reading the Probation files is that they are not as closely integrated in that perspective as one might expect. Typically, reports of urine analysis and general treatment compliance were not presented and structured in such a way as to maximise retention in treatment. This, the writer argues, indicates an ambivalent approach on the part of the Court, the Probation and Welfare Services and the Treatment Services. The identification of this ambivalence (Room 1976) supports the hypothesis that the different sectoral players in the criminal justice, caring and health sectors do not share common aims and objectives when dealing with drug related offender/clients and proceed with insufficient knowledge of the procedures and world view of actors in the other sector. It could be argued that the world views

are so incompatible as to constantly frustrate any interdisciplinary approach without the subordination of one perspective or camp to the other. Ownership of drug issues in this context (Gusfield 1981) is never a commonly shared ownership between the different sectors. Rather it signifies occasions when ownership is claimed exclusively for a time by one sector over another. This period or occasion of ownership is then replaced by a period of disownership when client/offenders move from one sector to another and occasionally back again.

Chapter 5

Discussion/Conclusion

Perspectives and Linkages

This Study has attempted to give meaning to and understanding of the District Court practices when dealing with drug related offenders. The claim that there already exists the nucleus of a Drug Court in Ireland has been used as a yardstick throughout the Study and is hypothesised as part of the research aims and objectives. The use of complimentary research methods has facilitated the enquiry by allowing for investigations at different locations and stages of the process. The Literature Review examined the pertinent literature relating to the linkages between the criminal justice system and drug treatment services relying heavily on material from the United States where the emergence of Drug Treatment Courts over the last decade has been studied and evaluated. This emergence has been simultaneous with three other factors which Inciardi *et al* (1996) believe gives sharper focus to the emergence of Drug Treatment Courts. In particular, the dramatic growth in the prison population was perceived as directly related to the war on drugs and added significantly to criminal justice financial commitments. Secondly, the spread of HIV/AIDS presents a challenge for the criminal justice and health sectors where intravenous drug use is identified as a significant epidemiological factor. Recent research (Anglin and Hser 1990) has convincingly documented the success of compulsory and coerced treatment for drug involved offenders, that success is most related to length of stay in treatment and those coerced into treatment remain longer than those voluntarily committed (Inciardi *et al* 1990 P. IX)

The findings of this Study suggest the practices of the Dublin Metropolitan District Court when dealing with drug related offenders is certainly different from the practice when dealing with non-drug related offenders in as much as the Courts are concerned that treatment of some sort is made available to an offender if problematical drug use is indicated. The general orientation of the Court is in keeping with the Drug Treatment Court processing of drug related offenders but significant structural and

attitudinal factors differentiate the Dublin Metropolitan District Court practice from the classical Drug Treatment Court and Model described in the literature.

Drug Treatment Courts, for all their apparent informality, are grounded on procedures which are structured to engage and retain the client/offender in treatment. This implies linkages between the criminal justice system and the drug treatment services which work smoothly and where all of the actors are *ad idem* on aims, objectives, procedures and generally share a common ethos. This perspective is generally informed by a risk management or social control paradigm where default by a client/offender is promptly dealt with by either warnings by the Court, restarting the client/offender at an earlier stage of the treatment process or terminating the drug treatment process entirely and deploying other, usually custodial, sanctions.

This study demonstrates, it is argued, that the Courts, the Probation and Welfare Service and the drug treatment services do not share the same objectives when dealing with clients/offenders. The Judges declare they are not comfortable with the level of monitoring by the Probation and Welfare Service, of offenders placed on Probation Bonds, where treatment is specifically made a condition of the Bond. They were generally agreed that Adjourned Supervision by the Court itself provided the best form of monitoring and suggested this was the preferred practice. However the limited survey of probation files indicated an inconsistency with this view and preference where most drug offenders placed on supervision were supervised only by the Probation Officer without court reviews. This finding is difficult to interpret and understand. It may be explained by reference to at least two Judges in the Focus Group, indicating they have used the Probation and Welfare Services supervision and expected any non-compliance of the drug offender to be brought to the Court's attention by the use of Breach procedures. Alternatively, the distinction between preferred practice and actual practice may not have been made sufficiently explicit and this reflects an ambivalence in sentencing practice when dealing with drug related offenders. Consistent with the Judges' views, however, was the finding that no one was breached for non-compliance by the Probation Officers where the writer identified a number of such cases for re-entry for further direction of the Court. Informing this view of non-compliance the researcher used the UK Home Office -National Standards (2000) as a baseline. The UK Home Office National Standards

indicate a breach is warranted where early non co-operation is manifest. This might include failing to keep appointments, presenting with positive urine analysis for non prescribed substances and failure to attend at a treatment agency as directed.

The mediating role of the Probation and Welfare Service between the Courts and the treatment services is central in current practice when a diversion to treatment is either contemplated or acted upon. Accordingly, if the Probation and Welfare Service are to be retained within the diversionary process, and some would argue this is not absolutely necessary (Bean 1998) it is essential to understand the role and function of the Probation and Welfare Service in this relationship between the Courts and the drug treatment services. The social control perspective informs the criminal justice response to sentencing even when, it is submitted, rehabilitation of the drug offender is chosen as the sentencing objective. The findings disclose that alternative sanctions such as incarceration remain as options if the drug offender is non-compliant in treatment and supervision. Generally, this is consistent with the Drug Treatment Court approach where termination on a drug treatment programme is usually the last option exercised. The drug treatment services might be regarded as completely within the care perspective, where public health concerns such as the reduction of drug related harm, is given priority.

The Probation and Welfare Service on the other hand are historically informed by a caring perspective towards clients where “advising, assisting and befriending” of clients is perceived as central to their role and function (Jarvis 1972). This specific role is set out in the 1907 Probation of Offenders Act which legislation is common both to the UK and the Republic of Ireland. Additional functions are specified in the same legislation obliging the Probation Officer to report to the Court on behaviour of clients and to ensure the client observes the conditions of his/her recognisance or Bond. Thus the legislation under which the Probation and Welfare Service was established mandated the service to adopt both a care and control perspective when dealing with offenders. It is submitted this dichotomy has never been satisfactorily resolved. In practice the Probation and Welfare Service has operated more under the care and rehabilitative perspective than the social control perspective, notwithstanding they are officers of the court. Recent changes in UK probation practice are perceived to influence Irish probation practice where the Probation Officers view the change to a

risk management or control perspective as challenging their ethos and relationships with their clients. Considerations of confidentiality, self-determination, individualisation and care which are central to the social worker's training and ethos present professional challenges to the Probation and Welfare Officer when strict criteria for breach of Probation are contemplated (Halton 1992).

The marked reluctance of the Probation and Welfare Officers to re-enter those cases identified as non-compliant in this Study might be explained by viewing the Probation and Welfare Officer's role solely as befriender and as sister of the client/offender. Any policy and practice which leans towards a control function for Probation Officers is regarded as anathema to their fundamental role and training which was characterised by Haxby (1978) as transforming Probation and Welfare Officers into "screws on wheels". The maintenance of a productive personal relationship with a client may be seen as preferable to placing such relationship in jeopardy by invoking breach procedures (Hough 1995). While this tension presents a dilemma for the Probation and Welfare Service it also presents a structural problem for the criminal justice system in the monitoring of drug offenders who are referred to the Probation Service.

The Probation and Welfare Service is not a direct provider of drug treatment services, rather its function is essentially one of liaison between the Court and treatment services, which function could be characterised as case management of offenders rather than direct social work. If the probation function, when dealing with drug offenders, is accurately interpreted and described as case management, it is submitted, their function has noticeably shifted from a purely care perspective to a risk management or control perspective. However, certain features of the control perspective such as re-entry of cases by breach procedure seem to be markedly absent in their practice. If the Probation Service was to engage directly in drug treatment services rather than referring clients on to specialist medicalised services, the role of the Probation and Welfare Officer might be recast specifically within a care perspective (Butler 1996). A review therefore of current practice of the Probation and Welfare Service leads one to the conclusion that the service could not be said to be part of an integrated treatment team as characterised in the Drug Treatment Court model. Ironically, the Judges in the Focus Group referred to the "beneficial" use of

coercion by the Court. This view was conveyed to them by some of the drug treatment services who identified coercion as a useful instrument in ensuring compliance by clients. It has been argued (Robinson 1999 Garland 1997) that rehabilitation and risk management need not be presented in mutually exclusive categories but that rehabilitation, a concept in relative decline, may be selectively repositioned within a risk management perspective. This is made possible by focusing on empirically based rehabilitation projects which are seen to “work” within a risk management approach. Certain intensive probation projects in Dublin (Bridge Project) and Cork are reported as successful interventions when dealing with persistent and serious offenders. The writer is not aware of any similar approach when dealing with drug related offenders where treatment is retained by the Probation and Welfare Service rather than referred out to a specialised agency, which may not always be necessary (Butler 1996).

Another way of viewing the competing perspectives of control and care of drug related offenders is to apply the doctrine of the Separation of Powers which formulates the separation of the different arms of Government; Judicial, Executive and Legislative as a brake on the untrammelled power of any one sector of Government over another. Although rehabilitation is a pronounced objective of sentencing in Irish criminal jurisprudence, it is submitted, this view of rehabilitation is firmly subordinate to the traditional control perspective of the criminal justice process. The executive sector comprising Cabinet Government, Government Departments and subordinate agencies such as the Health Boards and the Probation and Welfare Service are concerned more with the delivery of services and needs requirements, such as treatment services. The reduction of drug related harm such as HIV/AIDS and individual client needs bring forward a care perspective in this analysis. The application of the doctrine of the Separation of Powers in Ireland has been described as courtcentric (Gwynn Morgan 1997) where the Superior Courts are zealous to guard against encroachment by an expanding executive power into the judicial domain. In practical terms and as an example, the tendency by the Health Boards to retain overall ownership of childcare orders has been declared contrary to the Constitution and a usurpation to the Judicial function (Eastern Health Board -v-District Judge James Paul McDonnell 1999). It might be argued that where sectoral conflict is in issue these tend to be resolved in favour of the Courts retaining control.

It is within the Courts' powers, at present, to retain oversight of drug offenders in treatment or to hand over such oversight without further review to the Probation and Welfare Service. This Study discloses that the judges claim they retain the oversight function and this is their preferred practice while the empirical data from the probation files clearly contradicts this view. Additionally, cases handed over to the Probation and Welfare Service for monitoring were not re-entered where the Study revealed a Breach was warranted. These findings and conclusions indicate that the sectors do not sufficiently achieve even a basic working relationship or understanding of each other's role and functions. These structural and attitudinal difficulties are counter productive and militate against the emergence of a Drug Treatment Court as that concept is applied in the United States and in the literature.

Engagement and retention in treatment

A key objective of Drug Treatment Courts is to engage and retain the drug-using offender in treatment. Except for two of the nineteen offender cases studied, one of whom is the subject of the Case Study, the procedures used by the Court, Probation Service and treatment agencies either individually or collectively failed to engage a significant number of them initially in treatment or to retain the drug users in treatment. Structural elements of a Drug Treatment Court such as frequent court reviews and breach proceedings were noticeably absent in the data, indicating an *ad hoc* approach on both the part of the Court and the Probation and Welfare Service. It is difficult to draw a similar conclusion on the part of the treatment services without direct evidence, but the high incidence of clients presenting with positive urine analysis for other opiates and other drugs, including legally prescribed Benzodiazepines, while on Methadone Maintenance Treatment, must give rise to serious concerns on the efficacy of the treatment services themselves. This view was informed by reading communications between the treatment agencies and the Probation Officer in the Probation and Welfare Service files. Arguably, these latter cases should not be regarded as successful retention in treatment at all even when measured solely by criteria of a care perspective, although recent UK research (Home Office RDS 106,1999) indicates substantial reductions in levels of drug use, where urine analysis of offenders on drug treatment orders show concomitant use of opiates

in fifty-two percent of cases. Retention in this context becomes an elastic concept •where some benefits may be identified but when measured against the somewhat rigid criteria of a control perspective, retention in treatment seems to be absent in the analysis.

An intervention which brings about complete drug-free status in the client/offender may be the desired and planned-for outcome of many US Drug Treatment Courts. This simplistic view of treatment as a “cure” for addiction regarded by many as a pathological condition is influenced by the medical model of addiction and latterly by the Minnesota Treatment Model and the philosophy of the Therapeutic Communities. The possibility that a drug user can be socially maintained on a substitute opiate such as methadone appears not to find favour in the US Drug Court Movement especially among the judiciary. This attitude is similarly reflected in the Focus Group of Judges in Ireland where the goal of total abstinence is preferred by some to a treatment modality which maintains a drug user on methadone. The goal of total abstinence however was not the unanimous view of the Judges, where some favoured a drug maintenance approach if that was advised by the drug treatment services. It is not easy to analyse what informs the Judges on these diverging view points but at a surface level it does seem to indicate an overall ambivalence towards different types of treatment services ranging from that of total abstinence approaches used by Narcotics Anonymous and the therapeutic communities such as Coolmine, to the salient harm deduction approach of Methadone Maintenance treatment used predominantly by the Eastern Health Board at the other end of this controversial spectrum.

It is argued, this ambivalence on drug issues on the part of judges emerges from the development of viewpoints and procedures on sentencing which might be described as organic in nature. As already discussed, judges have very wide discretion when dealing with drug related offending and carry forward into sentencing commonly-held views on the nature of addiction and how addiction might be addressed including medicalised and non-medicalised interventions.

Harm Reduction and District Court Practice

The US Drug Treatment Court Movement has been described as a response by the judiciary to drug related offending using an interdisciplinary approach. The literature discloses an awareness of issues wider than criminal justice concerns on the part of the Drug Treatment Courts in the United States. While social control and the reduction of crime might be the primary focus of the presiding Judges, the reduction of social harm such as the spread of HIV/AIDS also inform their views. Familial disruption, brought about by problem drug use, was identified as an issue of concern by the Focus Group of Judges and interventions which might be targeted towards reduction of this disruption were considered appropriate instruments to use when determining sentence. However, the reduction of health and social harm directly related to the incidence of HIV/AIDS were considered peripheral by the Judges when determining sentence, preferring instead the immediate goal of crime reduction and social harm constructed from that perspective. This latter observation, it might be argued, discloses a clear disconnection between the criminal justice system and the drug treatment services. This study shows that health concerns are considered peripheral and subordinate to concerns of social order and control. (Van De Wijngaart 1990). Indeed Boldt (1998) expresses doubt about the ability of the Drug Treatment Courts in America to resist the tendency to degenerate from care and treatment to punishment and control.

This limited Study tends to support the view that current practice and policy of the Dublin Metropolitan District Court, when dealing with drug related offenders in a rehabilitative paradigm, is characterised more by features of disconnections between the Court, the Probation and Welfare Service and the treatment services than by features of mutual dependency and understandings which are considered essential for any integrated interdisciplinary approach.

Policy implications and recommendations

At the time of writing this thesis the Report of the Standing Committee, established by the Government to set up a pilot Drug Treatment Court in Dublin, is awaited. One

can only speculate about their possible recommendations but if the Report follows the pattern of its predecessor, namely the Fifth Report of the Courts Commission - (Drug Courts 1998), the focus of the pilot Drug Treatment Court may be too narrowly defined by way of aims and objectives. This Study suggests it may be imprudent to establish a Drug Treatment Court in Ireland in line with past experiences of diversionary interventions however well disposed and intended the individual actors in each sector may be. Nor, it is argued, is the perennial matter of scarcity of resources the only issue which needs to be addressed in planning and operationalising a Drug Treatment Court here. The ownership of drug issues which are multifaceted and which draw different and sometimes opposing responses from the different sectors, such as the criminal justice sector and health sectors, requires to be addressed openly before any realistic attempt can be made to settle commonly defined objectives and aims of a Drug Treatment Court. The converse is equally worthy of mention where open debate of disownership of drug issues is necessary to facilitate the recognition of the perspectives and functions of the sectoral actors and the connectedness or disconnectedness of each approach when supposedly operating in an integrated multi-sectoral manner. Otherwise the actors in each sector will continue to subscribe to a unified approach while viewing the world of drug issues through different lenses (Van De Wijngaart 1990). Using a phenomenological approach, the actors in each sector do not appear to be self-consciously aware of the need for common aims and objectives, if indeed such can ever be achieved, but are more preoccupied with day-to-day concerns where the processing of drug using offenders/clients is the immediate goal.

The role of coercion in the Drug Treatment Courts is regarded as essential in the literature and is highlighted in the Findings of this Study. The practice of non-breach by the Probation and Welfare Service and of early release by the prison authorities of drug using offenders, especially with regard to female offenders, it is argued, undermines the coercive effect of the Courts' role, thereby removing an essential element of a Drug Treatment Court. Drug rehabilitation is presented in the Drug Treatment Court as an alternative to incarceration. The US authorities adopt a severe approach to drug offending which has been identified as a major contributory factor in the growth of prison populations there (Inciardi *et al* 1996). The choice of drug rehabilitation or definite incarceration is presented in a coercive manner to the

offender in a Drug Treatment Court. It is argued, a similarity of options for the drug offender does not apply in current Irish criminal justice practice. Rehabilitation in Ireland is probably more a function of voluntary attributes of the offender which are particular to that offender and may have more to do with the natural “maturing out” (Winick 1962) of the drug user than the apparent coercive role of the Court itself. This interpretation of the Courts’ role suggests a marginal intervention in encouraging the particular drug user to deal with his problem drug use.

Engagement and prolonged retention in treatment, already identified as key factors in measuring the success of drug treatment outcomes, may be a desired objective of current criminal justice practice but these have not been made explicit in policy terms or practice. The extent to which the criminal justice system subscribes to different treatment modalities could be regarded as a strength of the system’s ability to allow for different types of treatment for different clients. Alternatively, it may disclose an insufficient knowledge by the Courts of the utility of certain treatment modalities, where traditional total abstinence based treatments find favour over socially controlled drug use such as methadone maintenance.

Conclusion

This study was designed to explore the practice and policy of the District Court in Dublin when dealing with drug related offenders in light of the claim that there already exists the nucleus of a drug treatment court in Dublin. Complimentary methods of enquiry were used to examine the process of diversion to treatment of drug using offenders. This data was examined in light of the views of the judges in the Focus Group and the Case Study.

The Literature Review brought forward a model of diversion to treatment of drug related offenders in the U.S. which is characterised by clearly defined aims, objectives and agreed procedures. Certain elements of the drug treatment court can be identified in the Dublin Metropolitan District Court practice, such as the desire to see drug related offenders rehabilitated. However the structural problems identified in this study in diverting an offender to treatment, combined with the absence of clear

objectives among the sectoral actors suggest an ambivalent approach when dealing with drug offenders in the criminal justice system.

It would be counter productive to proceed with the establishment of a drug treatment court in Dublin using current procedures unless the sectoral actors such as the judges, the lawyers, the Probation Service and the treatment agencies agree on common objectives and procedures. Arguably, the attainment of such common objectives may never be achieved among the drug court participants in Ireland because drug treatment courts require subscription to a risk management and control paradigm by all the drug court team including the Probation and Welfare Service, treatment agencies and solicitors.

On the one hand the Government decision to establish a pilot drug treatment court in Dublin signifies a new approach to tackling drug issues in Ireland. The sectoral players in the criminal justice and health sectors have not demonstrated this single-minded approach in jointly tackling drug issues to-date.

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Note 1

For statistical data, files in the Probation and Welfare Service Headquarters in Smithfield, Dublin, were made available to this researcher and the total number of new referrals from the three DMD Courts in January 1998 was 217. The Probation Service has been decentralised recently and files have been sent to various office localities and prisons. The total number of files remaining in Central Registry was 44. All of these latter files were read for mention of drug and drug-relating offending on the part of the client. Nineteen were clearly drug and drug-related cases and these were set aside. Of the remaining twenty-five files, eleven were alcohol-related and fourteen either dealt with Community Service Orders or refugee offenders without reference to substance misuse. In depth study of the nineteen core files was conducted to ascertain what happened to clients at the Probation and Welfare end of the spectrum when diverting clients to treatment. Further matters of enquiry concern the relationship between the Court and the Probation Service in this process. The enquiry further sought to examine what elements of the classic Drug Treatment Court were present or absent in the process.

Note 2

Previous Convictions

When measured by previous convictions eight clients had previous convictions, two had no previous convictions, one client had died (N/A) and the previous convictions status of the remaining eight was

Note 3

Offending categories

- | | | |
|----|--|----|
| a) | Drug offences only. (M.D.A.) - Misuse of Drugs Acts 1977/1984 | 4 |
| b) | Offence using violence (including resisting arrest/search)/Offences Against the Person | 2 |
| c) | Property offences comprised Larcenies, Criminal Damage and Unlawful Taking of Motor Vehicles | 18 |
| d) | P.O.A./Public Order Offences including Nuisance and Breach of the Peace | 2 |

(Note: some clients were charged with more than one offence hence the greater number within the categories.) .

Note 4

Engagement with treatment is usually preceded by assessment. This is a critical measure for a Drug treatment Court. I have used persistent failure to keep appointments with the Probation Officer and/or the assessment centre, giving false addresses and refusal to present for urine analysis as criteria to measure non-co-operation on the client/defender's part at the engagement stage. When measured for co-operation with the Probation and Welfare Service in the preparation of the Court Report thirteen cooperated and six did not co-operate. Of the six who did not co-operate by gender, five were female and one was male.

Note 5

Recommendation of Probation Officer

On report to the court: -

The Probation Officers could not or did not make recommendations in ten of the nineteen cases. Of the remaining nine cases

- Adjourn Supervision (AS) was recommended in one case (The Case Study Case)
- Immediate Probation Bonds ranging from six months to two years with conditions as to treatment were recommended in seven cases and
- Community Service was recommended in one case on satisfactory stabilisation on drug treatment

Note 6

In one particular case proceedings were struck out as the defendant had died while awaiting assessment.

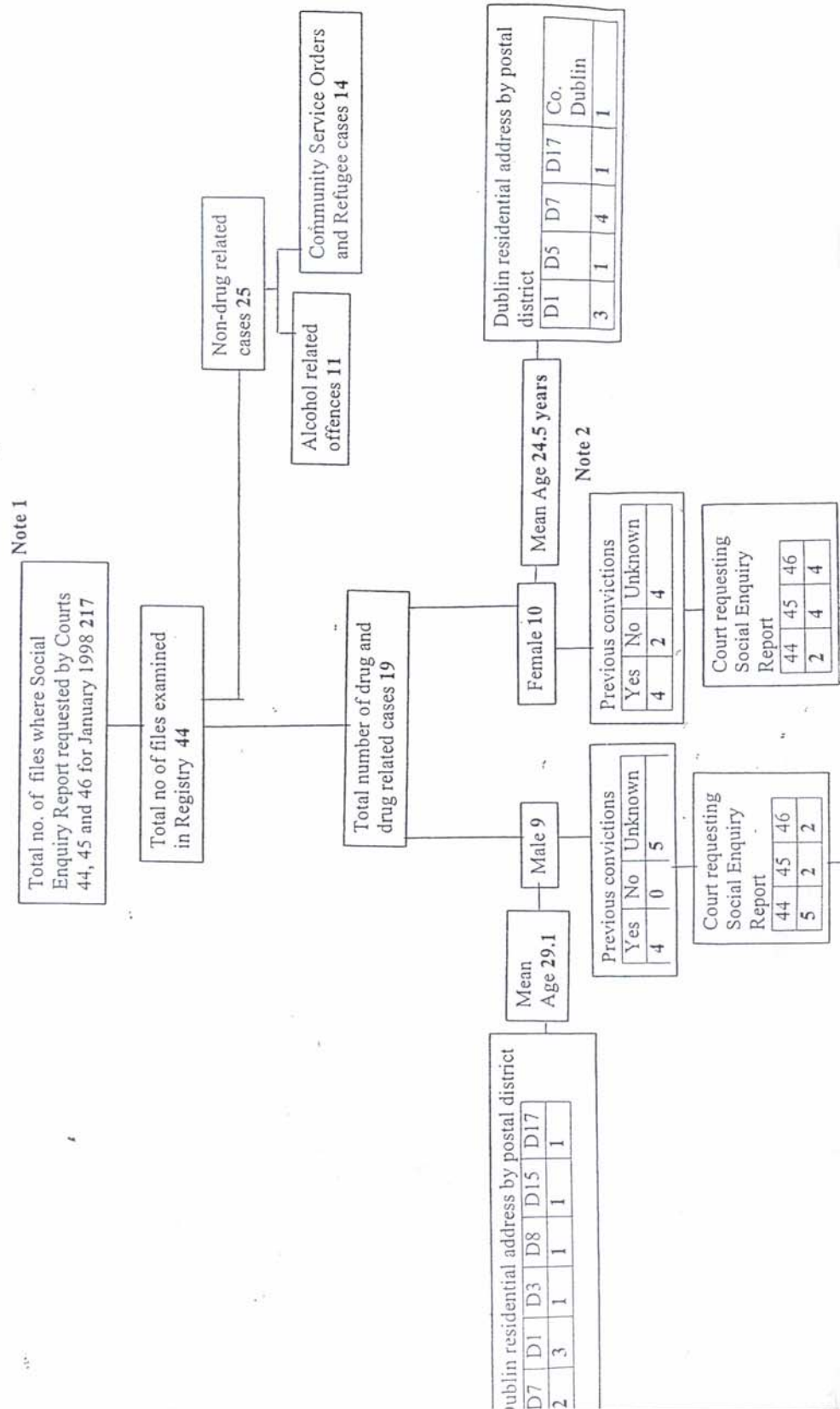
Notwithstanding nine recommendations for some sort of supervision by the Probation Officer the court made 13 such orders.

Note 7

Total no. placed under supervision = 13

Male – Compliant	2
- Non-compliant	6
Female – Compliant	1
- Non-compliant	4
Not applicable	6

Analysis and schematic display by gender of data taken from files in the Probation and Welfare Office Registry



Note 3

Offences			
MDA	OAP	Against Property	POA
2	1	8	1

Offender/client co-operation with Probation Officer in preparation of Social Enquiry Report and assessment for treatment

Yes	No
8	1

Offences			
MDA	OAP	Against Property	POA
2	1	10	1

Note 4

Offender/client co-operation with Probation Officer in preparation of Social Enquiry Report and assessment for treatment

Yes	No
5	5

Note 5

Recommendation made by Probation Officer to Court

Adj. Supervision	Probation Bond	No Recommendation
1	3	5

Recommendation made by Probation Officer to Court

Adj. Supervision	Probation Bond	No Recommendation
0	5	5

Court decision for male offender/clients no co-operated in assessment

Adj. Supervision with reviews	Peace Bond to treatment
5	1

Court decision for male offender/clients who were not co-operative in assessment

No order
1 *

Court decision for female offender/clients who co-operated in assessment

Adj. Supervision	Probation Bond	Community Service Order
1	2	1

Court decision for female offender/clients who were not co-operative in assessment

Imprisonment	Probation Bond	No order	Bench Warrant
2	1	1 **	1

Note 6

Breach Proceedings for non compliance

0

Breach Proceedings for non compliance

0

Breach Proceedings for non compliance

0

Offender/client compliance with court order of supervision and treatment as a measure of retention in treatment by reference to instrument used

Adj. Supervision	Probation Bond
1	1

Offender/client compliance with court order of supervision and treatment as a measure of retention in treatment by reference to instrument used

Probation Bond
1

Note 7

Offender/client compliance with court order of supervision and treatment as a measure of retention in treatment by reference to instrument used

Probation Bond
0