Voters Must Keep the Camel’s Nose Out of the Tent

Drugs: The California ‘treatment initiative’ would clog the justice system and probation services and not improve the well-being of addicts.

By ALEXANDER COCKBURN

In the chronology of the war on drugs, we're somewhere in the World War I trenches of 1916, with casualties mounting and no apparent end in sight. Many people are sick of it. They don't believe the war is working, and they don't see a light at the end of the tunnel. So if they're given a chance to vote against the war on drugs as it's currently being waged, they'll jump at the chance. This fall, California voters will be offered such an opportunity in the form of an initiative on the November ballot called the Drug Treatment Diversion Initiative, formerly known as the Substance Abuse and Crime Prevention Act.

The question here concerns intention and effect. Is this initiative really aimed at effective treatment and rehab for addicts who have committed crimes to feed their habit, or is it an artful way of getting the camel's nose under the tent—the camel in this case being decriminalization of drug use?

If approved by the voters, would the initiative sponsor effective treatment, or would it produce an unholy mess—clogging the justice system while in no significant way improving public health and the well-being of addicts?

Harlan Grossman, a Superior Court judge in Contra Costa County, thinks the initiative is the camel’s nose of decriminalization, with its language couched in artfully misleading terms. He thinks it would destroy promising strides the California justice system has made in recent years in treating drug addiction as a public health issue.

Grossman, a former prosecutor, runs what is acknowledged by many to be a particularly successful drug court, one of 101 in California. The drug court movement began in Miami in 1989 and has been spreading across the country ever since. A person enters Grossman's drug court after pleading guilty to a misdemeanor or felony and then jumps through significant drug court hoops for at least a year. Typically, weekly drug testing, personal appearances biweekly and personal supervision and treatment at least three times a week. Backsliders can get four days in jail to straighten out. Successful completion of the program—meaning the minimum of a year's participation and clean drug tests for the final six months before graduation—gets the prison time dropped.

This is a collaborative, non-adversarial effort involving the judge, probation officer, Narcotics Anonymous and other support services. On one recent day in his court, Grossman could be heard inquiring in a concerned fashion, on first-name basis, about a recovering addict's dog, ailing mother, job situation and kindred personal details. More than 70% of the drug court participants passing before Grossman are drug-free and remain so.

Grossman is no wuss. He began his career in the FBI and admits that as a prosecutor for more than a decade he had little regard for addicts or their prospects for recovery. Now he sees things differently. He agrees with Jeffrey Tauber, director of the National Drug Court Institute based in Virginia, that “passage of this dangerous and misguided ballot initiative could mean the death knell for drug courts.”

Promoters of the initiative offer as their prime selling point the notion of treatment rather than incarceration for certain offenders. This is where Grossman says the disingenuousness is apparent. “It does not provide for effective treatment, which requires frequent drug testing, accountability, graduated sanctions and rewards. It doesn’t define how or by whom treatment providers must be licensed, doesn’t establish minimum treatment requirements. It limits treatment to 12 months, a period that usually is regarded as the minimum length of treatment for criminal justice offenders.”

Under the terms of the initiative, a drug offender could shuffle in and out of treatments. If the offender backslides, there are no less than three adversarial court proceedings required for revocation of probation, which would, in Grossman’s view, place a huge burden on prosecutors, defense attorneys, the courts and probation officers. Under the terms of the initiative, a person completing two rounds of treatment would face only a 30-day maximum jail sentence for a third or any subsequent possession offense. There are no sanctions like the four-day jail terms that Grossman can impose. But precisely because the initiative is a palatable option for offenders, it will drain away potential court clients. Why? Because any defendant’s attorney will urge that easy-out option.

The initiative is a recipe for failure on all counts. Of course, those who believe that drug possession should carry no criminal penalties would raise a cheer. But what is going to happen to those drug users when the Drug Treatment Diversion Initiative puts them out on the street again? They'll go back to drugs, reverting to business as usual, sustaining their drug habit. Everybody loses.

Alexander Cockburn writes for the Nation and other publications.