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Spiritual Outputs Approach to Rehabilitation

Alternative Sentencing Theory

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INTRODUCTION

A. American Criminal Theory in Perspective

Although the primary reason[1] for, and purpose of, the American criminal system is generally deterrence and retribution,[2] other theories - and their accompanying methodologies - stress due process and crime control as the principle rationale.[3] Unfortunately, these goals historically have met with questionable success.[4] For example, although mandatory minimums[5] are theoretically sound regarding attempts to equalize sentencing, a case-by-case analysis often provides a more respectable result based upon culpability.[6] Since prison is not, nor has it ever been, an optimum solution,[7] nor has it been successful in reducing crime rates or minimizing the desire or "need/compulsion" to commit crimes, the rationale and purpose of incarceration should be re-examined for drug-related[8] crime.

In order to prevent a particular crime, society must directly address the underlying problem. In certain instances, incarceration properly may be viewed as an avoidance mechanism. The "problem" that must be addressed is the cause of the crime, nothing more. When we, as society, analyze crime and how to prevent it, we need to look no further than the *cause* of the crime itself. Drug addicts are generally controlled[9] by their criminal activity, by their perceived need for it, or often by the drug use itself driving their behavior to illogical levels. Frequent users of cocaine perhaps best exemplify this proposition.[10] According to the 1992 United States Department of Justice's national report on Drugs, Crime, and the Justice System, "compulsive use and psychological dependence" characterize recurring users of cocaine. Studies show that such use, in turn, may cause "physical, psychological, and social harm to the user."[11]

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1. *See generally* Wilkinson, J. Harvie III, *The Role of Reason in the Rule of Law*, 56 U. CHI. L. REV. 779 (1989).
2. *See* Peter Arenella, *Rethinking the Functions of Criminal Procedure: The Warren and Burger Courts' Competing Ideologies*, 72 GEO. L.J. 185, 198 (1983).
3. *See* John Griffiths, *Ideology in Criminal Procedure or A Third "Model" of the Criminal Process*, 79 YALE L.J. 359 (1970); *see generally* Arenella, *supra* note 2.
4. *See generally* Margaret Spencer, *Sentencing Drug Offenders: The Incarceration Addiction*, 40 VILL. L. REV. 335 (1995).
5. Mandatory minimums are the minimum lengths of incarceration to which convicted criminals may be sentenced. *See* BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, DRUGS, CRIME AND THE JUSTICE SYSTEM 181 (1992).
6. *See* Spencer, *supra* note 4, at 336 (illustrating this point with real life examples of injustices in sentencing for drug-related offenses).
7. *See generally* Note, *Winning the War on Drugs: A "Second Chance" for Nonviolent Drug Offenders*, 113 HARV. L. REV. 1485 (2000).
8. Drug-related offenses are defined as those "in which a drug's pharmacologic effects contribute; offenses motivated by the user's need for money to support continued use; and offenses connected with drug distribution itself." *See* BUREAU OF JUSTICE STATISTICS, *supra* note 5, at 2.
9. *See* BUREAU OF JUSTICE STATISTICS, *supra* note 5, at 2.
10. *See id.* at 21.
11. *Id.*

B. Rehabilitative Roadmap

This article concentrates on the legal issues of drug treatment in America. Part I will lay a foundational overview of the philosophy and background of incarceration theory and address the importance, legitimacy, and efficacy of the American incarceration cycle and the need for change. Part II outlines and examines the legal aspects and implications of the therapeutic jurisprudential[12] methods relating to Teen Challenge, a relatively unknown sentencing alternative, and the Drug Treatment Court (hereinafter "DTC") phenomenon. It will focus on the Teen Challenge[13] program, a Christian-based recovery program, as it relates to the legal paradigm. Part III examines the constitutional aspects of Teen Challenge sentencing within our legal framework, as compared to the current secular programs. Finally, a method of constitutional review, the spiritual outputs approach to rehabilitation (hereinafter "SOAR") test, is proposed and analyzed within the context of concluding remarks concerning the ongoing debate.

I. INCARCERATION PHILOSOPHY & BACKGROUND

> *At present . . . if we want to know why a rule of law has taken its particular shape, and more or less if we want to know why it exists at all, we go to tradition . . . [t]he rational study of law is still to a large extent the study of history.* [14]
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> -Oliver Wendell Holmes

A. Introduction

The primary theories for the American prison system and its accompanying incarceration impact are retribution and reformation. Retribution is a theory whereby every crime demands payment in the form of punishment.[15] Punishment is incarceration. Retribution is rationalized through the notion that society benefits by seeking retribution on behalf of the victim.[16] The problem, however, is that such a vengeance-oriented approach may lead to continued variations of what constitutes the proper amount of retribution.[17] Conversely, reformation encompasses the notion that

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12. Therapeutic Jurisprudence is a term used to describe a movement towards dealing with legal problems in a more restorative and healing fashion.

13. Society, especially academia, always seems to want to complicate the obvious. The Teen Challenge approach relies on the power of Jesus Christ to transform lives and eradicate drug addiction. No more, no less. Perhaps this is why the American legal community has not as readily embraced it as DTCs.

14. *See* Oliver W. Holmes, *The Path of Law*, 10 HARV. L. REV. 457, 469 (1897). Holmes thinks it is important to know the history of the law to form a basis of what the original justification was when originally adopted. If one does not know that, Holmes contends, one cannot decide if it still makes sense.

15. *See* BLACK'S LAW DICTIONARY 1317 (6th ed. 1990).

16. *See* NORVAL MORRIS, *Preface to* THE OXFORD HISTORY OF THE PRISON: THE PRACTICE OF PUNISHMENT IN WESTERN SOCIETY, ix (Norval Morris & David Rothman eds., Oxford University Press 1998).

17. *See id.* at x.

incarceration should offer the opportunity for the criminal to learn how to be productive within the law-abiding community. Reformation is more forward- looking and progressive than other theories.[18] It is this approach that lays the foundation of the SOAR test.

Perhaps a large majority of Americans have neither taken the time, nor had the inclination, to rationalize the *how's* and *why's* of any prison system. Most merely take for granted its existence, its current implementation structure, and its consistently expansive position in present-day America as a means whose ends is not necessarily justified; it just *is* what it is – part of our legal culture.

Although it is rare for prison administrators to define their purpose,[19] having a purpose is fundamental to achieving *any* desired outcome. Such an outcome may be, if nothing more, to reduce the real rate[20] of crime, as opposed to the nominal crime rate. This is especially pertinent in light of several conclusive findings – that the public has generally been an avid supporter of whatever means of punishment their respective society placed upon offenders, and that "research into the use of imprisonment over time and in different countries has failed to demonstrate any positive correlation between increasing the rate of imprisonment and reducing the rate of crime."[21]

B. Economic Costs

Despite the billions of dollars spent on curtailing drug use in the American drug war,[22] illegal drug use has not been reduced. The economic costs to American society are staggering – over $14.5 billion per year for federal drug expenditures and over $4.3 billion on drug treatment and drug prevention.[23] The inflation-adjusted costs of health care for illegal drugs exceed $3.6 billion.[24] According to the National Drug Control Strategy's 2001 Annual Report, total U.S. expenditures on illicit drugs in 1988 exceeded $115 billion dollars.[25] Although the projected expenditure rate for the year 2000 was almost cut in half, to $62.4 billion dollars, this figure remains monumental.[26] The "lost potential productivity due to drug abuse" is estimated at over $77 million dollars in 1995 as the residual consequences of such drug use.[27]

18. *See* BLACK'S LAW DICTIONARY 1248 (7th ed. 1999).
19. *See* Morris, *supra* note 16, at xi.
20. The "real rate" of crime is that which is in proportion to the population.
21. MORRIS, *supra* note 16, at xii.
22. *See* BUREAU OF JUSTICE STATISTICS, *supra* note 5, at 126.
23. *See id.* These numbers are adjusted for inflation at 3% per year to 2001 projections from their quoted 1991 values.
24. *Id.*
25. *See* OFFICE OF NATIONAL DRUG CONTROL POLICY, NATIONAL DRUG CONTROL STRATEGY, 2001 ANNUAL REPORT 1, 140 (2001).
26. *See id.*
27. *Id.* at 162.

C. The Link: Prisons & Drugs

Although the general prison population has increased over the last two decades, the number of drug offenders in this prison population has increased at a greater rate.[28] There was a 262% increase in the number of federal inmates incarcerated on drug-related charges from 1980 to 1989.[29] In 1999, the percentage of adult male and female "booked arrestees" who were drug users was 77% in Atlanta; in New York City, these percentages were 75% and 81% for males and females respectively.[30] These percentages were similarly high in every other major city in the study.[31]

Highly respected studies have confirmed this strong correlation between crime and substance abuse.[32] The Bureau of Justice Statistics (hereinafter "BJS") conducted a study in which it was discovered that over 75% of jail inmates admitted using drugs prior to incarceration.[33] Essentially, this study established that substance abuse was a catalyst for criminal activity. In fact, over 40% used drugs within one month of their offense and 27% were high or under the influence of drugs to some capacity while committing the offense.[34]

Acknowledging that criminal activity largely originates within the confines of a drug-addicted mind is an important starting point for rehabilitative theory. If follows that only with the proper rehabilitative theory from which to base the foundational framework of rehabilitation can successful and practical results be achieved from such a program. Similarly, this knowledge is crucial if one hopes to avoid accepting the conclusions of theories and studies premised upon falty logic or otherwise illogical or faulty premises.[35]

II. THERAPEUTIC JURISPRUDENCE AND ITS PROGENY

Like it or not, there are emotional and psychological consequences to everything one does; the law may either enhance or erode one's psychological health. Therapeutic jurisprudence (hereinafter "TJ") deals with people in this manner – on a more personal, individualized basis. Although traditionally associated within the civil law context,[36] TJ is considered "equally applicable to criminal law practice."[37] Within the criminal law framework, TJ more specifically concentrates on

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28. *See* BUREAU OF JUSTICE STATISTICS, *supra* note 5, at 190 (stating that from 1988 to 1989 alone, there was a 12.1% increase in the number of federal and state prison inmates). Additionally, the Department of Justice maintains that drug offenses accounted for 49% of the federal inmates over the last 10 years. *See id.*

29. *See id.* The raw numbers for these incarcerated federal drug offenders are 3,675 and 13,306 for 1980 and 1989 respectively. *See id.*

30. *See* NATIONAL DRUG CONTROL STRATEGY, *supra* note 25, at 153.

31. *See id.*

32. *See* BUREAU OF JUSTICE STATISTICS, *supra* note 5, at 3.

33. *See id.*

34. *See id.*

35. *See infra* text accompany note 89 (The American Medical Association considers drug addiction an illness, as "it is a pathological state with characteristic signs and symptoms and a predictable course and outcome if untreated.").

36. *See generally* Dennis P. Stolle et al., *Integrating Preventive Law and Therapeutic Jurisprudence: A Law and Psychology Based Approach to Lawyering*, 34 CAL. W. L. REV. 15 (1997).

drug offenders in the legal system. TJ is premised upon the realization that the traditional crime fighting mechanisms of incarceration and probation are ineffective.[38] TJ involves more humanistic underpinnings, minimizes the legal costs, and generally pleases both the suspect and society by both saving money and mitigating the probability of recidivism. In practice, TJ involves the use of DTCs and pretrial intervention (hereinafter "PTI").

TJ looks towards creative problem solving, procedural justice (i.e. whether people think they got fair treatment procedurally), and the socioeconomic aspects of the law. Since people make decisions based not only on money but also emotional factors, it is in this regard that the TJ advantages become clear.[39] It is important to note, however, that TJ neither advocates that therapeutic concerns trump legal issues, nor does is purport to take away the client's autonomy. It is an interdisciplinary approach premised upon the notion that "law is a social force that has inevitable (if unintended) consequences for the mental health and psychological functioning of those it affects,"[40] TJ is also concerned with reforming law "to minimize anti-therapeutic consequences and to facilitate achievement of therapeutic ones."[41]

A. Applicability

By examining the sociopsychological aspects of law, TJ shows "how laws and legal processes may in fact support or undermine the public policy reasons for instituting those laws and legal processes."[42] Whether we accept it or not, TJ is involved in the legal process – its principles are ingrained within the legal framework, and the laws "function therapeutically or anti-therapeutically irrespective of whether the laws and legal actors take these consequences into account."[43] Although DTC was not explicitly founded upon a TJ agenda, the DTC movement and Teen Challenge represent significant steps "in the evolution of TJ – the evolutionary step from theory to application."[44]

The American criminal justice system is steadily moving towards enhanced realizations that incarceration, by itself, does little to breach the persistent epidemic of drug-related criminal

37. DENNIS P. STOLLE, ET AL., PRACTICING THERAPEUTIC JURISPRUDENCE: LAW AS A HELPING PROFESSION 237 (2000). *See also* Peggy Fulton Hora et al., *Therapeutic Jurisprudence and the Drug Treatment Court Movement: Revolutionizing the Criminal Justice System's Response to Drug Abuse and Crime in America*, 74 NOTRE DAME L. REV. 439 (1999) [hereafter Hora, TJ and DTC]; Thomas J. Scheff, *Community Conferences: Shame and Anger in Therapeutic Jurisprudence*, 67 REV. JUR. U.P.R. 97 (1998); Thomas J. Mescall II, *Legally Induced Participation and Waiver of Juvenile Courts: A Therapeutic Jurisprudence Analysis*, 68 REV. JUR. U.P.R. 707 (1999).

38. *See* Pamela L. Simmons, *Solving the Nation's Drug Problem: Drug Courts Signal a Move Toward Therapeutic Jurisprudence*, 35 GONZ. L. REV. 237 (1999-2000).

39. There are emotional transaction costs of litigation!

40. STOLLE ET AL., *supra* note 37, at 7.

41. *Id.*

42. Hora, TJ and DTC, *supra* note 37, at 444.

43. *Id.* at 445.

44. *Id.* at 448.

activity.[45] The fact that drug courts exist, and seem to be entrenching themselves as permanent criminal justice fixtures in the American "war on drugs" repertoire, evidences growing recognition that traditional methods of punishment have neither prevented nor mitigated, in any meaningful way, the drug- use epidemic in America.[46]

B. Drug Treatment Courts

Generally, the basic formats of DTCs closely follow the Dade County, Florida court, which originated the system. This basic DTC structure incorporates the following fundamental components: one-year court supervised detoxification, counseling, education, vocational courses, group meetings, drug testing, and weekly court appearances.[47] Most structures also incorporate basic conceptual concerns like immediate intervention, non-adversarial adjudication, a hands-on approach by the judge, specific and pre-defined drug treatment programs, and a team approach to helping the defendant.[48] Defendants may find themselves in a DTC within days of their release from jail,[49] and treatment can even begin on that same day.[50] This initial timing aspect is philosophically crucial to the DTC approach.[51] On a psychological theory basis, such DTC policies are also crucial, since a substance abuser is more likely to achieve rehabilitative success while in crisis.

The DTC's courtroom is designed with the defendant's interest and rehabilitation in mind.[52] A defendant's initial DTC appearance may be arranged last whereby giving the defendant the opportunity to view other DTC participants. This procedure illustrates what the defendant will undergo if he or she continues with the program.[53] The participant effectively becomes a preliminary participant – and quickly understands, through first-hand knowledge, that her predicament is serious and this program, while not insistent upon perfection, will not tolerate complacency.[54]

In its recognition of relapse as an inevitable aspect of rehabilitation and recovery, DTCs incorporates "smart punishment" into its abstinence goal for each participant.[55] Smart punishment provides incentives to participants by utilizing a minimalist approach in punishment to reduce

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45. *See* STEVEN BELENKO & TAMARA DUMANOVSKY, BUREAU OF JUSTICE ASSISTANCE, U.S. DEP'T OF JUSTICE, PUB. NO. NJC-144531 PROGRAM BRIEF: SPECIAL DRUG COURTS 1 (1993).
46. *See* Hora, TJ and DTC, *supra* note 37, at 448, 449.
47. *See* Hon. William P. Keesley, *Drug Courts*, S.C. LAW, July/Aug. 1998, at 35.
48. *See* Hora, TJ and DTC, *supra* note 37, at 453.
49. *See id.* at 473.
50. *See id.*
51. *See id.* at 513-4.
52. *See id.* at 475.
53. Judge Jack Lehman, *The Movement Towards Therapeutic Jurisprudence: An Inside Look at the Origin and Operation of America's First Drug Courts*, NJC ALUMNI, 13,18 (Spring 1995).
54. *See* Hora, TJ and DTC, *supra* note 37, at 475.
55. *Id.* at 469. In other words, DTCs realize that a recovering addict is likely to relapse at some point in his or her recovery. *See id.* Therefore, DTCs incorporate "smart punishment" into their program to counter and/or minimize relapse when and if it occurs. *See id.* at 469-70.

both crime and drug use.[56] Good behavior is rewarded while bad behavior is punished. Punishment may involve withdrawal of privileges whereas rewards may expand them.

The intrinsic consent regarding second chances is an inadvertent incorporation of TJ within the DTC paradigm; DTC uses TJ principles without realizing it.[57] DTC participants will not be automatically sent back to prison for positive urinalysis tests, nor will their probation be automatically revoked; smart punishment will be implemented for the particular participant to incentivize his continued progress.[58] This is a rather brilliant approach – the statistical probability of a lifelong drug addict maintaining perfection in recovery is not significantly greater than zero. To expect otherwise is both illogical and counterproductive; and any monies expended and efforts made to achieve such unrealistic ends are largely unwarranted and fruitless. In this regard, such *punishment* facilitates continued progress through incentivized policies by using minimal punishment to accomplish its dual objectives – minimized substance abuse and crime associated therewith.[59]

DTCs tend to incorporate only substance abusers into their TJ system. The nationally recognized Dade County System deals with first-time non-violent drug offenders.[60] The sentencing judge monitors progress over a one-year treatment period and participants must appear before the judge every thirty to sixty days.[61] Participants are required to take urinalysis tests, appear before the judge for progress assessment, participate in substance abuse treatment, and appear at periodic status hearings.[62] Upon successful completion, participants may be able to avoid incarceration. If unsuccessful, participants may incur more increasingly stringent requirements based upon the "smart punishment" philosophy leading towards increased court supervision, urinalysis testing, and intensified drug treatment.[63]

However, DTC is not available for everyone. There are fairly severe restrictions put upon those who can qualify for DTC participation.[64] Most DTCs limit themselves to participants charged with only minor, non-violent crimes and simple drug possession.[65] Accordingly, its impact and effectiveness is limited via its restrictions.

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56. *See id.* at 470.
57. *See id.* at 469.
58. *See id.*
59. *See id.* at 470.
60. *See* Spencer, *supra* note 4, at 377.
61. *See id.*
62. *See* Richard C. Boldt, *Rehabilitative Punishment and the Drug Treatment Court Movement*, 76 WASH. U. L. Q. 1205, 1306 n.16 (1998); *see generally* Hora, TJ and DTC, *supra* note 37.
63. *See* Boldt, *supra* note 62, at 1306 n.16.
64. *See* Martin I. Reisig, *Rediscovering Rehabilitation: Drug Courts, Community Corrections and Restorative Justice*, 77 MICH. BUS. L.J. 172 (1998).
65. *See id.*

C. Teen Challenge Approach

If the ultimate goal of the American criminal justice system is merely to enhance employment opportunities for law enforcement personnel and payrolls of prison construction companies, then our goals have long since been attained. Yet, if our goal is to actually solve the underlying problem, by curing the disease rather than treating the present symptoms and addressing the reasons *why* certain individuals are compelled to commit crime, then we must think outside the current legal "box" within which all our prospective disciplinary solutions have thus far been confined.

The problem has not yet been effectively addressed due to the inherent conflict of interest within our own checks-and-balances system. Not until the last several months has this result been realizable on a nationwide basis. Although this TJ movement has been effective thus far, it has been confined, not by its own inadequacies, but by the very system within which it operates. Even with judges, prosecutors, and defense counsel working together as one unit, the puzzle is not yet complete, as the framework of this legal picture is still missing its frame. Though the TJ infrastructure can be said to include the makings of a firm foundation with the aforementioned players in place, they are only part of, and functioning in conjunction with, one branch of government. President George W. Bush's Faith- based initiatives will create the framework necessary to fill the present void.[66] Faith- based initiatives, their rationale, and likely results may be realized through the eyes of Teen Challenge.[67]

i. Know Thy Purpose: Philosophy & Purpose

The Teen Challenge approach is a unique philosophical and consequential jurisprudential alternative.[68] Drug abuse and alcoholism stem from problems associated with and directly related to rejection by parents, peers, and other inter- social groups. Why they are rejected is unique, but how to treat rejection and what rejection leads to psychologically and psychosocially are quite universal across any given citizenry.

a. Sources of the Teen Challenge Rehabilitation Theory

Rejection leads to isolation, desperation, and depreciation of one's self- confidence, anger, and frustration. This concept is a good starting point at which one may begin to understand how Teen Challenge deals with the underlying drug problem(s) of each individual. It is only by deal-

66. According to James A. Davids, there is only a working definition of "faith-based initiatives," which is generally extrapolated from relevant case law. James A. Davids is Counsel to the Deputy Attorney General for the U.S. Dept. of Justice division of the Faith-Based and Community Initiatives in Washington D.C., which is one of the five major cabinet agencies established to promote the Bush administration's faith-based and community agenda.

67. *See generally* Jim VandeHei, *Some Texas Prisoners Get Religion – 16 Hours a Day, 7 Days a Week*, WALL ST. J., Jan. 26, 2001, at A1.

68. It is this perspective that Teen Challenge adopts in its foundational Christian approach to treat the person in order to deal with the crime! This is quintessentially a TJ approach – and it has been in practice since 1958 in Teen Challenge centers around the world.

ing directly with such rudimentary, underlying problems that one may hope to overcome them. Teen Challenge realizes that it is desperation and isolation which are breeding grounds for substance abuse; and that although drug addicts and alcoholics often victimize society, sometimes violently, they also appreciate such behavior as victimizing the addict herself.[69]

Teen Challenge is free from the vestiges, historical boundaries, and strongholds of any other school of thought, similar though it may be in its fundamental outcome-oriented, end game purposes. Though this philosophical approach may be compared to its predecessors, it should not be considered a sub- category of any of them. This approach strives to go beyond previous theoretical notions of legal pragmatism and evolve within its own framework – yet neither shall it be hindered or modified either by any future progeny idealistically hoping to gain acceptance through association. This is a new breed of jurisprudential animal – it is essentially of holistic conception in both purpose and practice. The purpose delves beyond the traditional individual parameters of criminal justice. The true *purpose* of rehabilitation, according to Teen Challenge, must encompass the "criminal" from a societal vantage point, and make respective reformations accordingly.[70] The term *societal vantage point* meaning in totality with regard to how society is affected, both short-term and long-term, on both economic and functionality grounds. The term *respective reformations* meaning the respective changes that must occur for the proper perspective and approach to be successfully implemented. These criteria must be within our mindset if we hope to understand what Teen Challenge does, how and why it does it, why it works, and why it must be adopted on a more widespread basis.

The Teen Challenge philosophy is essentially to rehabilitate people with life controlling problems using a multi-dimensional framework.[71] Life controlling problems usually include drug or alcohol abuse, but may also include anger or pornography obsessions or addictions. Teen Challenge's framework incorporates strong Christian teachings coupled with traditional rehabilitation during a one-year in-house program. Interestingly, this corresponds positively to the data indicating probability of success to be proportional to time spent in treatment.[72]

b. Structure

Established in 1959 by Pastor David Wilkerson,[73] Teen Challenge originally addressed the needs of teenagers, as the name implies. However, Pastor Wilkerson soon realized adults had similar needs.

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69. *See* BUREAU OF JUSTICE STATISTICS, *supra* note 5, at 9; s*ee also* NATIONAL DRUG CONTROL STRATEGY, *supra* note 25, at 5.

70. *See* DOUG WEAVER, THE TEEN CHALLENGE THERAPEUTIC MODEL (1992).

71. It is interesting to note that the "smart punishment" aspect of DTCs is a built-in concept under the Teen Challenge framework. The in-house, one-year programs create a sense of community, responsibility, inter-dependence, and incentives. Poor behavior and performance translate into fewer or no privileges (like being able to leave campus for the weekends) and strong performance and good behavior equate to leadership positions that further one's sense of commitment and self-confidence.

72. *See* MICHAEL MASSING, THE FIX, UNDER THE NIXON ADMINISTRATION, AMERICA HAD AN EFFECTIVE DRUG POLICY, WE SHOULD RESTORE IT 235 (1998).

Consequently, the program today accepts students of all ages. It is important to note that not every program is alike. Different programs accept people of differing ages, and not every program is alike in curriculum or style. For example, some programs *specialize* in certain addictions or life controlling problems, and students are able to have their curriculum custom- designed to fit their particular needs. This developed through the years as varying needs arose within each community. Not everyone's addictions are the same; as such, they cannot all be treated the same. Teen Challenge realizes these multi- dimensional variations and meets the need head-on.

Unlike DTCs, Teen Challenge does not limit participants to being minor, first time, non-violent offenders. Rather, Teen Challenge accepts people regardless of the criminal past; from those with multiple, even violent felony convictions to heroin and crack addictions stretching more than a decade. Teen Challenge accepts everyone willing to go through the program, whether they are convicted felons with violent histories or functional alcoholics tired of living life from drink to drink.

ii. Teen Challenge Funding

Teen Challenge is not funded by any government dollars. Billions of taxpayers' dollars are not given to offset tuition costs for Teen Challenge students – as they are with so many other federal programs of questionable and varying success. Since its inception in 1959, this program has provided for itself and created avenues for its students to fund the program.

Although adult centers are free to allow their students to work outside jobs to support the tuition costs, fundraising is also an integral aspect of their economic independence. Fundraising is accomplished by handing out Teen Challenge literature to people in public areas, like supermarkets, and asking for donations. Additionally, students may be allowed to work at local businesses. The money earned by students earning their individual tuition prior to the end of the semester goes into a pool and is split evenly among less productive fundraisers. This teamwork approach helps to build character and self-esteem among students – as they all reach towards a goal together, helping others along the way.

Due to the legal work restrictions on minors, centers housing teenagers rely more heavily on family contributions and outside donations than the adult centers. Teenagers generally have their parents pay nominal tuition fees to offset costs of housing, food, teachers, staff, and educational materials.

[73] David Wilkerson is founder and president of World Challenge, Inc. and author of over thirty inspirational books. He is perhaps best known for his earlier ministry to "young drug addicts and gang members in Manhattan, the Bronx, and Brooklyn" - as told in THE CROSS AND THE SWITCHBLADE, a book he co-authored. The story has been told to over 50 million people in some thirty languages and 150 countries since 1963; and in 1969, a motion picture of the same title was released." *See* http://www.davidwilkerson.org/about.html (last visited Nov. 7, 2001).

iii. The Aaron Bicknese Study

Dr. Aaron Bicknese's study, published in 1999, is the most statistically comprehensive analysis to date.[74] This study was intended to uncover the comparative success of Teen Challenge, funded primarily by nonprofit contributions, to federally funded programs.[75] This survey concentrated on analysis of factors including, but not limited to, freedom from addictive substances, employment rates, and productive social relationships.[76] This is in stark contrast to studies of other alternatives measuring relative success on factors like completion of the program, being able to stay out of jail for one-year after completion of the program, or simply by participation rates.

The most accurate method of quantifying Teen Challenge success[77] is to measure not only its internal success, as against itself, but also against its federally funded counterparts. The National Institute of Drug Abuse (hereafter "NIDA") conducted the most notable, statistically significant study.[78] The study was conducted largely due to the concern about low cure rates in federally funded programs.[79] The study begins by introducing discrepancies that make it difficult to accurately assess the effectiveness of federally funded programs. The study's specific aim was to determine whether such minimal results were the best one could hope for - irrespective of whether they were supported by federal monies.[80] The results showed conclusively that, "Teen Challenge is in many ways far more effective."[81] The Teen Challenge student, compared to those in secular programs, retains productive employment at dramatically higher rates and retains significantly lower probabilities of returning for additional treatment than their secular, federally funded counterparts.[82] This is even more impressive when considering that the average Teen Challenge student uses a more varied assortment of drugs more *frequently* than secular program participants,[83] are far less capable of handling daily life-issues, and have few or no productive social relations.[84]

Bicknese's study raises important issues in the ethical and political arenas. It shows comprehensive and conclusive data indicating that expectations *should* be considerably higher than previously held by secular programs. Dr. Bicknese discovered that Teen Challenge, based upon a

74. *See generally* Andrew Kenney, *Teen Challenge's Proven Answer to the Drug Problem* (2001), http://www.teenchallenge.com/tcreview.html. (last visited Nov. 7, 2001). Andrew Kenney is a professor at Vanguard University who was commissioned to review the 330-page doctoral dissertation by Dr. Aaron T. Bicknese. *See id. See also* Hora, TJ and DTC, *supra* note 37, at 502, 530.

75. *See* Kenney, *supra* note 74.

76. *See id.*

77. *See generally* Kenney, *supra* note 74.

78. *See id.*

79. NIDA's analysis of 1968 Pennsylvania Teen Challenge graduates found that, *seven years* after completing the program, 87.5% and 95% of former abusers were abstaining from marijuana use and heroin use respectively. *See id.*

80. *See id.*

81. *Id.*

82. *See id.*

83. Secular programs are considered to be DTC, Alcoholics Anonymous, various other federally funded programs and Short-Term Inpatient (STI) drug treatment programs.

84. *See* Hora, TJ and DTC, *supra* note 37, at 507. Teen Challenge accepts people with prior felony convictions and histories of violent behavior.

moral and biblical foundation, retains a distinct two-fold advantage over the "disease model" approach of secular programs. First, the Teen Challenge student is empowered through his or her faith in Jesus Christ to take control of her own previously addictive and life-controlling behaviors.[85] Second, by accepting responsibility for their previous sins (not viewed as *diseases* or *issues*), and knowing that Jesus Christ, in dying for the sins, has the power over all sin, the Teen Challenge student knows he is not bound by torment and addiction for the rest of his life. This is in contrast to most secular programs, Alcoholics Anonymous in particular, which repeats as its wisdom, "Once an Alcoholic, Always an Alcoholic."[86] Therefore, the Teen Challenge philosophy is for students to live without being tied to the puppet strings of treatment programs, supplemental rehabilitation, and prescription drugs to maintain sobriety.

D. Weaknesses of DTC Compared to Teen Challenge

The DTC system can be applauded for its initial and continued triumph in changing the traditional adjudication process from an arbitrary mandatory minimum sentence paradigm to a more rehabilitation-based philosophy revolving around a TJ framework. Yet, it still falls short in some crucial areas, and approaches other areas in an illogical, counterproductive, and counterintuitive context. Whereas DTCs attempt "to ascertain and attack the real foundation of the drug offender's problem – drug addiction,"[87] programs like Teen Challenge go one-step further; or rather, they start one step beyond where DTCs leave off.

Teen Challenge addresses drug addiction by assuming as a *given* what DTCs take time to figure out. While DTCs attempt to determine why this drug addiction persists and how it began, Teen Challenge knows its origins. Rather than considering drug addiction as a disease, which is clothed in an assortment of *issues*, Teen Challenge adopts God's fundamental basis of such behavior as sin.[88]

This approach is diametrically opposed to the traditional, secular modalities of treatment, both in its conventions and its foundational belief systems. The American Medical Association[89]

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85. *See* Kenney, *supra* note 74.

86. *See, e.g.,* Steven S. Nemerson, *Alcoholisms, Intoxication, and the Criminal Law*, 10 CARDOZO L. REV. 393, 473 n.27 (1988) ("It seems likely that an individual is an alcoholic before he takes his first drink . . . . It is certain that those poorly defined qualities which make one alcoholic are unchanging, and the adage 'Once an alcoholic, always an alcoholic' is valid.").

87. Hora, TJ and DTC, *supra* note 37, at 452.

88. "Everyone who sins breaks the law; in fact, sin is lawlessness." 1 *John* 3:4. See also 1 *Peter* 4:1-3 which says, "[t]herefore, since Christ suffered in his body, arm yourselves also with the same attitude, because he who has suffered in his body is done with sin. As a result, he does not live the rest of his earthly life for evil human desires, but rather for the will of God. For you have spent enough time in the past doing what pagans choose to do – living in debauchery, lust, drunkenness, orgies, carousing and detestable idolatry."

89. Founded in 1847, the AMA boasts of about 271,000 members. 1 ENCYCLOPEDIA OF ASSOCIATIONS 12875 (Deborah M. Burek ed., 1992). The association "disseminates scientific information to members and the public, informs members on significant medical and health legislation on state and national levels, represents the profession before Congress and governmental agencies, and cooperates in setting standards for medical schools, hospitals, residency programs, and continuing medical education courses." *See id.*

(hereinafter "AMA") deems drug addiction an illness, as "it is a pathological state with characteristic signs and symptoms and a predictable course and outcome if untreated."[90] It is argued by such a perspective, that chemical dependence is a biopsychosocial[91]disease. Compulsive behavior[92] is characterized as irresistible and impulsive tendencies to carry out a particular activity.[93]

By continuing to maintain that alcoholism is a disease, this philosophy goes, one essentially refuses to acknowledge that alcoholism is one's own fault. Therefore, this diversion of blame can only extend the sobriety and abstinence process. Following the conventional secular philosophy - that relapse is acceptable and inevitable - it is understandable, given that a drug addict or alcoholic is allowed to divert the blame he should take upon himself to something else,[94] that one should think his drug addiction is a disease, and that he may waiver[95] without negative repercussions. In stark contrast to societal conventions, Teen Challenge does not consider alcoholism a *disease*. Accordingly, like other drug addictions, alcoholism is a sin.

Furthermore, the methodologies DTCs use to measure their success are questionable. There is, of course, no predetermined and universally agreed upon definition of success for rehabilitation of drug addicts or alcoholics. However, traditional programs[96] tend to measure their *success* based upon unimpressive criteria.[97] Measuring success by whether a participant merely completes the program or by re-arrest rates within one year of completion is indicative of the minimal expectations of the programs adopting those criteria, and subsequently instructive as to their true long-term success. Success should ultimately be measured from the highest of expectations – that of not only of abstaining from drug or alcohol use on a *long-term* basis, like five or more years, but also being a productive, tax-paying citizen, evidenced by holding a steady job or employment status, rather than merely managing to stay away from jail for a year or so.

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90. THOMAS MILHORN JR., CHEMICAL DEPENDENCE: DIAGNOSIS, TREATMENT AND PREVENTION 10 (1990).

91. *See id. Biopsychosocial* refers to the interwoven relationship between biological, psychological, and social factors. *See id.*

92. *See* Stephen D. Webb, *Deterrence Theory: A Reconceptualization,* 22 CAN. J. CRIMINOLOGY & CORRECTIONS 23, 29 (1980).

93. *See* THE READER'S DIGEST GREAT ENCYCLOPEDIC DICTIONARY 278 (10th ed. 1975); *see also* J.P. CHAPLIN, DICTIONARY OF PSYCHOLOGY 105 (1975).

94. This is done through the psychological approach condoned by the American Society of Addiction Medicine ("ASAM") in considering this addiction as a disease. As of October 14, 1983, ASAM adopted the following position: "Based on many years of clinical experience, reinforced by recent and continuing research into the genetic, biochemical and physiological aspects of the effects of alcohol on living systems and of alcoholics and their families, the American Society of Addiction Medicine finds that alcoholism is a complex primary physiological disease, and neither a primary behavior disorder nor a symptomatic manifestation of any other disease process." *See* http://www.asam.org/ppol/Alcoholism%20as%20a%20 Primary%20Disease.htm. (last visited Nov. 7, 2001). In labeling this condition a disease, the drug addict or alcoholic is allowed to consider himself free of blame with regard to the reason for his or her problem. Since it is a disease, addicts are allowed to think they did not have any power to control or avoid the problem – the disease was inevitable; they were predisposed to it, so they could not help getting this disease, nor can they help their inevitable relapse. The author suggests, however, that this is dangerous psychology.

95. *See* Hora, TJ and DTC, *supra* note 37, at 528, 537 n.49 (referring to the way traditional rehabilitation views relapse as a part of recovery – as a normal, acceptable component to successful recovery).

96. Traditional programs include Drug Treatment Courts ("DTC"), Expedited Drug Case Management Court ("EDCM"), or federal programs during incarceration.

97. Often, success rates are measured by a participant merely completing the program, or by not being rearrested within one year. *See* Hora, TJ and DTC, *supra* note 37, at 456.

Rather than considering substance use and abuse as immoral or "a willful choice made by an offender,"[98] DTCs consider it "a condition requiring therapeutic remedies"[99] and a biopsychosocial disease. This premise, however, is fundamentally erroneous. By maintaining this premise as its TJ foundation, its subsequent remedies fall short of their desired result – successful rehabilitation of substance users and abusers in order to eradicate the crime associated with drug use.[100]

III. CONSTITUTIONAL IMPLICATIONS

No doubt many people are weary of the constitutional underpinnings and implications of incorporating a Teen Challenge program into the parameters of a judge's sentencing arsenal. The author's contentions and conclusions, however, neither implicate nor breach any constitutional barriers. The proposition is that the Teen Challenge alternative to sentencing would not be mandatory - only voluntary.[101] The judge would exercise her discretion as to who would be good candidates; the prosecutor's input would certainly be welcomed. No concrete exclusionary rules or restrictions, like the DTC systems implement, would be utilized. Accordingly, many persons that are not eligible for the DTC program would qualify for Teen Challenge.

Presently, in minor cases, many judges condition probation for substance abusers on participation in treatment programs.[102] Incorporating Teen Challenge would be similarly applied into the current criminal justice system's structure. It is a completely voluntary program. If the defendant does not wish to accept their second chance plea bargain and *serve* a year in Teen Challenge rather than jail, they are free to make that choice. This distinction illustrates how freedom *from* religion differs from freedom *of* religion; the constitution guarantees the latter, not the former.

The issue of constitutionality regarding the courts' ability to remand willing defendants to Teen Challenge, rather than incarceration, or other secular programs, would be remiss without considerations of the benchmark establishment clause case of *Lemon v. Kurtzman*.[103] The three-part *Lemon* test to evaluate establishment clause violations, demanded that (1) there be a secular legis-

98. *Id.* at 464.

99. *Id.* at 463.

100. *See id.* at 537.

101. Just as everyone must decide for himself to accept Jesus Christ as his Lord and Savior, so too must these drug addicts and alcoholics make their own decision to accept responsibility for their own predicament, and accept the challenge to become moral and responsible. Of course, they are always free to decide to take their chances with a public defender in a traditional court of law – and invariably spend time in jail. But they need to ask themselves one question – how successful have they been at managing their lives on their own to this point – a point at which they are arrested, and addicted to drugs? But I say again, foolish indeed is one who does things the same way expecting different results!

102. *See* JOHN S. GOLDKAMP, JUSTICE AND TREATMENT INNOVATION: THE DRUG COURT MOVEMENT 4 (1994) (Nat'l Inst. of Justice's First Nat'l Drug Court Conference Working Paper, Dec., 1993).

103. 403 U.S. 602 (1971). In *Lemon*, the Supreme Court addressed two state statutes giving aid to parochial schools. *See id.* The court held that the statutes, one supplementing teachers' salaries in nonpublic schools, the other reimbursing school districts for teachers' salaries and instructional materials, were both unconstitutional because they excessively entangled church and state. *See id.* at 614.

lative purpose, (2) the principle or primary effect must neither advance nor inhibit religion, and (3) it must not result in excessive government entanglement with religion.[104] In our case, remanding defendants to Teen Challenge in lieu of incarceration would not invade any of the three prongs of the Lemon test so as to render it constitutionally defective. First, there is not only a secular legislative purpose, but there are only secular legislative purposes. Teen Challenge, as an alternative to incarceration, or other drug treatment programs, would function to further society's rehabilitative goals while also saving the taxpayer's considerable funds. Assuming the defendant would have been sent to any incarceration alternative, the taxpayer's would be funding such diversions. Since Teen Challenge is not funded by tax dollars, the government would be saving exactly as much as they are currently spending on such programs, both in and outside of incarceration facilities. In the rare instance where Teen Challenge is not successful, the government is not spending any additional monies. Second, neither the principle nor the primary effect advances or inhibits religion. Remanding defendants to Teen Challenge in lieu of incarceration is not primarily for the advancement of religion. The primary purpose of Teen Challenge itself is not even to advance religion. Rather, Teen Challenge's purpose is to help people overcome their life addicting behaviors. Overcoming drug addictions, usually alcohol and illegal street drugs, is the primary concern of Teen Challenge. Third, there is no cognizable government *entanglement*, much less *excessive* government entanglement, with religion, as the *Lemon* test requires. Teen Challenge operates as an entity separate and distinct from the Government. The judiciary, by implementing this concept, is simply allowing defendants to decide if they would like to take the usual course of action and get what they would have received anyway, or take an alternative course of action that allows them a second chance.

In modifying *Lemon*, Justice Thomas, in *Mitchell v. Helms*,[105] outlines a principle of neutrality that many view as the new benchmark against which all Establishment Clause analysis will now be measured, although Justice O'Connor's concurring opinion continues to be the present law. In *Mitchell*, the plurality relied heavily upon its analysis in *Agostini*.[106] *Agostini's* analysis determined three primary criteria in determining statutory effect, wherein government aid advances religion if it (1) results in governmental indoctrination, (2) defines its recipients by reference to religion, or (3) creates an excessive entanglement.[107]

Ultimately, the answer to the first prong revolves around whether "any religious indoctrination that occurs . . . could reasonably be attributed to governmental action."[108] To determine whether indoctrination may be attributable to the State, the Court recites its historical reliance upon the principle of neutrality, which is primarily determined by the existence of "genuinely in-

104. *See id.*
105. 530 U.S. 793 (2000).
106. *See* Agostini v. Felton, 521 U.S. 203 (1997).
107. *See Mitchell*, 530 U.S. at 793 (citing *Agostini*, 521 U.S. at 233-4).
108. *Mitchell*, 530 U.S. at 809.

dependent and private choices of individuals."[109] This principle is exactly what the author's proposal revolves around – independent, individual choice as to one's own participation in programs like Teen Challenge or, in the alternative, their respective period of incarceration. Furthermore, if the respective law or proposition is neutral in its determination of eligibility, ". . . without regard to their religious affiliations or lack thereof" then it cannot be guilty of governmental indoctrination of religion.[110] Teen Challenge does not exclude anybody based upon race, sex, religious affiliation or non-affiliation, sexual orientation, national origin or the like. The only prerequisite or criteria Teen Challenge maintains, which the Courts would adopt in remanding people to such a program, is that the prospective student have an honest desire to fully commit themselves to overcoming their life-controlling problem (usually either drugs or alcohol). Such broad neutrality easily passes the first prong.

The second prong "looks to the same facts as the neutrality inquiry."[111] In this analysis, the question of whether apportionment standards for aid create a "financial incentive" for a particular activity must be answered.[112] In *Mitchell*, the plurality opinion notes that if the aid "is allocated on the basis of neutral, secular criteria that neither favor nor disfavor religion, and is made available to both religious and secular beneficiaries on a nondiscriminatory basis" then it is not violative of this second prong.[113] Therefore, the plurality emphasizes the means rather than the ends – the methodology of application rather than the manifestation of use.

On the micro level, Teen Challenge does not accept people of only one particular religious belief. Similarly, it does not restrict enrollment to those who maintain a religious belief system, whatever that belief system may be. It adopts no denominational prerequisites. On the macro level, the author's proposition of allowing judges to remand defendants to programs like Teen Challenge does not mitigate their ability to remand defendants to other programs geared towards the same secular purposes. Here, the "neutral, secular criteria that neither favor nor disfavor religion"[114] is based upon voluntary acceptance of the proposal; being incarcerated versus participating in Teen Challenge is a choice, rather than a mandate, from the judge. As such, the voluntariness of such an approach affords constitutional protection. Moreover, Teen Challenge is a program that has been financially independent for nearly 50 years. It would not likely cease to exist without governmental assistance, nor is it likely to only continue with governmental assistance.

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109. *Id.* at 810.

110. *Id.* at 793 (citing *Agostini*, 521 U.S. at 225-6).

111. *Id.* at 793.

112. *Id.* at 812.

113. *Id.* at 813. It is important to note that the author's primary focus is to advocate for the constitutionality of remanding defendants charged with drug-related crime to Christian-based programs like Teen Challenge rather than to the traditional avenue of incarceration. The author is cognizant of the fact that further scholarly debate must occur with regard to the possibility and methodology of direct versus indirect funding of such programs. As this distinction is beyond the scope of this article, the author defers such debate to future commentary.

114. *See generally* Columbia Union Coll. v. Oliver, 254 F.3d 496, 503 (4th Cir. 2001) (stating that the neutrality of a state aid program is major factor in determining whether it passes Establishment Clause scrutiny).

Therefore, neither the government nor Teen Challenge has any financial incentive to maintain the proposed relationship; it is sufficiently allocated on the basis of neutral and secular criteria as it is made available to those regardless of religious affiliation. Thus, it survives constitutional review under the second prong.

The third obstacle, the "excessive government entanglement" test, may be viewed in light of the third prong of the *Lemon* analysis – as it the same test – and similarly survives constitutional scrutiny.

A. A New Proposal for Constitutional Review

When viewed in an uninhibited context, programs like the one the author has envisioned and advocated should be viewed in a multi-dimensional capacity. The author refers to this new approach as the Spiritual Outputs Approach to Rehabilitation (hereinafter "SOAR"). This approach should provide a more diverse and representative analysis in its essential and fundamental reliance on empirical, psychological, therapeutic, and sociological considerations. The SOAR continuum incorporates a more well-rounded and constitutionally grounded approach than either *Lemon* or the incorporated neutrality principles of *Agostini* or the *Mitchell* plurality. The proposed structural framework of the SOAR approach is as follows:

1. **Sociological**
    a. Involves the neutrality principles of *Agostini-Mitchell* test plus the following additional considerations.
        i. Does the program allow government to promote one religion to the exclusion of all others? If yes, it is unconstitutional, and further analysis is unnecessary. If not, continue considerations regarding:
            1) Impact on society
            2) Potential danger and associated Probability
            3) Potential benefit and associated Probability
2. **Suspect-oriented**
    a. Willingness to participate (If not willing, then no program involvement allowed)
    b. Probability of Rehabilitation
    c. Reason for Offence
        i. "Random act of violence" versus "Robbery to get Drugs"
3. **Economic**
    a. Societal implications of utilizing SOAR
        i. Present (Success & Failure)
        ii. Future (Success & Failure)

b. Societal implications of not utilizing SOAR (i.e., incarceration or other DTC)
   i. Present (Success & Failure)
   ii. Future (Success & Failure)
c. Probability of Success of all viable alternatives

It should be noted that Alcoholics Anonymous (hereinafter "AA") has been, and continues to be used by judges across the country in sentencing. They often condition probation upon successful completion, or participation, of AA for a certain time period. However, by today's definitional construction, AA is as much a *religion* as is Christianity.[115] According to AA's own website, they claim to not be a *religion* per se, yet:

> *The A.A. program of recovery from alcoholism is undeniably based on acceptance of certain spiritual values.* The individual member is free to interpret those values as he or she thinks best, or not to think about them at all. . . . *A.A. suggests* that to achieve and maintain sobriety, *alcoholics need to accept and depend upon another Power recognized as greater than themselves*. . . . Some alcoholics choose to consider the A.A. group itself as the power greater than themselves; for many others, *this Power is God — as they, individually, understand Him;* still others rely upon entirely different concepts of a Higher Power.[116]

However, by their very own words, "[t]he A.A. program of recovery from alcoholism is undeniably based on acceptance of certain spiritual values . . . alcoholics need to accept and depend upon another Power recognized as greater than themselves. Some alcoholics choose to consider . . . this Power is God."[117] Accordingly, the definitions of *religion* support the contention that AA is, by all interpretations through the years, a *religion* in the strictest sense of the word.

The creed of Alcoholics Anonymous, its devotion to the 12-steps, its necessary acknowledgment that there is a higher power, irrespective of what participants decide to consider him or her, all comport with all of the above- mentioned definitions of what *religion* constitutes. The AA program adheres strictly to their Twelve Steps[118] and Twelve Traditions.[119] Among other notions, the Twelve Steps include admitting that they "came to believe that a Power greater than

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[115] According to The Century Dictionary and Cyclopedia, the 1911 definition of *religion* was: 1). *Recognition of and allegiance in manner of life to a superhuman power* or superhuman powers, to whom allegiance and service are regarded as justly due. (Emphasis added). 2). Any system of faith in and worship of a divine Being or beings: as, the Christian *religion*. *See* THE CENTURY DICTIONARY AND CYCLOPEDIA 5063 (Vol. VIII, 1911). According to Random House Webster's Unabridged Dictionary, the 1998 definition of *religion* was: 1). A set of beliefs concerning the cause, nature, and purpose of the universe . . . 2). A specific fundamental set of beliefs and practices generally agreed upon by a number of persons or sects. *See* RANSOM HOUSE WEBSTER'S UNABRIDGED DICTIONARY 1628 (2nd ed. 1998).

[116] Alcoholics-Anonymous, *44 Questions: Questions and Answers About Alcoholics Anonymous, at* http://www.alcoholics-anonymous.org/english/E_Pamphlets/P-2_d1.htm (last visited Nov. 7, 2001). (Emphasis added).

[117] *Id.*

[118] *See id.*

[119] Alcoholics Anonymous also has *traditions* that all members are encouraged to follow. The "Twelve Traditions" of A.A. are suggested principles to insure the survival and growth of each participant. *See id.*

ourselves could restore us to sanity . . . made a decision to turn our will and our lives over to the care of God as we understood Him . . . were entirely ready to have God remove all these defects of character . . . Sought through prayer and meditation to improve our conscious contact with God . . . ."[120]

According to Judge Hora, "[i]n all DTCs, clients are introduced to the twelve-step recovery process of AA and NA and encouraged to attend regular meetings."[121] Although AA is not a *religion* in the traditional sense – as participants neither actively worship this higher power during meetings nor do they sings songs praising this higher power, AA is indeed a *religion* from a definitional standpoint.[122] Indeed, AA's own literature maintains that, "[t]he only requirement for membership is a desire to stop drinking."[123] However, successful *participation*[124] of the program dictates adherence to these values, goals, and *systems of belief* in this *higher power* to even begin to delve into their program of recovery.

Constitutionally, SOAR's approach is one of proportionality; designed to inform the courts to the maximum extent possible of the relative objective factors involved in any properly informed decision. Within the initial sociological prong of the SOAR test, both *Agostini* & *Mitchell* are incorporated, but then expanded upon, in a more diverse and socioeconomic environment. This affords both the prospective participant and society the maximum advantage possible in examining whom to include in such a program under a constitutional umbrella of protection.

IV. CONCLUSION

By continuing to ignore the true, underlying problems our society faces, we may only hope to catalyze those forces, against which we ultimately hope to defeat, into an increasingly formidable and intimidating foe.

> Far more fundamental questions still await a better answer than that we do as our fathers have done. What have we better than a blind guess to show that the criminal law in its present form does more good than harm? . . . Does punishment deter? Do we deal with criminals on proper principles? A modern school of Continental criminalists plumes itself on the formula, first suggested, it is said, by Gall, that we must consider the criminal rather than the crime.[125]

Philosophies of this nature, echoed by Oliver Wendell Holmes over 100 years ago, still resonate with validity today. This quotation eloquently encompasses the crux of this article. Many

120. *Id.*
121. Hora, TJ and DTC, *supra* note 37, at 511.
122. *See* Alcoholic-Anonymous, *supra* note 116; *see also* text accompanying note 116.
123. *Id.*

plaudits have been elucidated in regarding the extent to which libraries and high school equivalency classes are taught in prisons. Such programs adopt the notion that education, in and of itself, is an enhancement of one's propensity to abstain from criminal activity. However, such results are neither forthcoming nor logically related to the end game.

The philosophies of criminal jurisprudential theory and incarceration to which one subscribes depend largely upon one's predisposition towards rehabilitation and its respective likelihood of success, however that may be measured. Largely because people subscribe to their beliefs about "what is best" for different reasons; from politicians, professionals and the working class to alcoholics and drug addicts, one's place in society and personal predisposition for substance abuse dictate one's own perspective on what is best.

With that said, it is in society's best interest to not only become unified in deciding to have a goal and purpose regarding incarceration, but also to become unified in that approach. Overcoming such obstacles are of paramount importance if our society is to even begin to alleviate the drug problem, the crime problem resulting from that drug problem, and the ever-increasing economic burden placed upon society.

Just as Martin Luther King Jr. theorizes, in his famous "Letter from Birmingham Jail,"[126] that the immorality of the racist statutes forfeit their legal status as laws of the United States, it follows that statutes enacted to punish for punishment's sake, void of concrete reason or rationality, without justification or correlation to any logical preventive or corrective criteria or result, are just as immoral as their racist counterparts. To continue to blindly follow the path of least resistance, the mandatory minimums[127] and incarceration-without-a-cause circular *reasoning*, we continue to oppress both the victims and perpetrators, whomever your conceptions lead you to believe these people are. For example, mandatory minimum sentencing guidelines, enacted by Congress largely to counteract indeterminate sentencing policies caused by what was perceived as too much judicial discretion, also fall victim to the same "lack of uniformity" criticisms.[128] Society must begin to look towards meaningful solutions, ones that will be beneficial in the *long*-term, from the purely therapeutic jurisprudential context faith-based initiatives provide. These programs alone have proven to be successful.

In referencing the comprehensive RAND study she addressed in her article, Judge Hora relents that even the promising DTCs have fallen short of reasonable expectations of success.[129] In

[124.] I emphasize "participation" since one never completes AA – the AA literature maintains that, "Once an alcoholic, always an alcoholic" and so alcoholics must continue meetings throughout the remainder of their lives. *See* Nemerson, *supra* note 86.

[125.] Holmes, *supra* note 14, at 470.

[126.] Letter from Reverend Martin Luther King, Jr. to fellow clergymen *reprinted in* S. Jonathan Bass, BLESSED ARE THE PEACEMAKERS, Louisiana State Univ. Press, 2001.

[127.] *See* People v. Perez, 599 N.Y.S.2d 269, 270-71 (1993) (Carro, J., concurring) (discussing the trend towards lowered adjustment to sentencing in the interest of justice).

distinguishing between DTC and other federally funded programs, she observes that, "the difference in treatment participation levels does not appear to have translated into meaningful reductions on drug use or recidivism, but, with the exception of marijuana use, these outcomes have not worsened either. Thus, the drug court, which may not cost more than standard probation, may yield outcomes at least as favorable in most cases." [130] In other words, one of DTC's biggest and most academically respected advocates, Judge Hora, effectively concludes that DTC does not do much good in the fight against substance abuse and recidivism.

In dealing with the issue of jurisprudence, Roscoe Pound comments on the power of judicial lawmaking in rather broad terms.[131] "Ultimately the test of judge- made law, as with any law, is its effect on social welfare . . . [t]he judge, therefore, must focus openly on policy considerations as he seeks to keep the law in tune with changing societal values."[132] He contends that law's "only measure is its effect on society . . . [t]hus the path seems clear for unabashed and open policy determinations by the courts: functional and result-oriented if the impression conveyed is of a new jurisprudence . . . ."[133]

Society must harmonize the interplay between law and psychology to its fullest therapeutic extent. Just because the current system has historically been, and continues to be, averse to alternative dispositions within a rehabilitative context, does not mean the evolution of criminal procedure and sentencing must cease. Arguably, Teen Challenge would be even more successfully utilized as an alternative to incarceration than DTCs.

For these reasons, Teen Challenge should be given serious consideration and equal opportunity in the realm of alternative sentencing regarding drug-related crimes. In more ways than one, society can no longer afford to ignore the true problem – drug addiction. Looking the other way has not eradicated drug-related crime in the past – and it will not do so in the future.

Though this plan, based upon the SOAR approach and its rehabilitative counterparts through the likes of programs like Teen Challenge, may not please everyone, it goes a long way to achieving meaningful and quantifiable results to these ends. Deciding whether one is worthy of rehabilitation is an unenviable task indeed. As the final arbiter through whom many must pass in the crossroads of their lives, a judge, faced with increasingly lengthy sentences and mandatory minimums, must essentially decide the salvage value of those standing before him. The price society must bear for a wrong decision is growing exponentially by the day. Perhaps the debate as to the superior method of dealing with drug-addicted persons will never be complete, but as the

128. Gary T. Lowenthal, *Mandatory Sentencing Laws: Undermining the Effectiveness of Determinate Sentencing Reform*, 81 CAL. L. REV. 61, 63 (1993) (stating that sentencing philosophy in America today resembles proclivity towards retributive justice). In reflecting upon the most troubling aspect of this mandatory minimum disparity, Lowenthal interjects that "The most troubling aspect of this disparity is that sentences are based partially on whether defendants exercise their constitutional right to trial." *Id.* at 108.

130. *Id.*

131. *See generally* R. Pound, I JURISPRUDENCE (1959).

132. *Id.* at 11.

133. *Id.*

method of blanket incarceration for all has not proven itself worthy of retention, society should refuse to endure such inadequacies. Nevertheless, using the SOAR test to implement alternative sentencing, pre-trial intervention programs like Teen Challenge benefits society *because* it benefits the individual.