



DRUG ISSUES AFFECTING STATE JUDICIAL SYSTEMS

- BRIEFING PAPERS -

JULY 1991

**Conference of Chief Justices and Conference of State Court Administrators
Advisory Committee on Drug Issues Affecting State Judicial Systems**

**NATIONAL CENTER FOR STATE COURTS
BUREAU OF JUSTICE ASSISTANCE,
UNITED STATES DEPARTMENT OF JUSTICE**

This volume was prepared as part of the Drug Issues Affecting State Judicial Systems Project. Support was provided by a grant (No. 87-DD-CX-0002) to the National Center for State Courts from the Bureau of Justice Assistance, United States Department of Justice. Points of view presented in this volume do not represent the official position or policy of the Bureau of Justice Assistance, the National Center for State Courts, the Conference of Chief Justices or the Conference of State Court Administrators.

**Conference of Chief Justices and Conference of State Court Administrators
Advisory Committee on Drug Issues Affecting State Judicial Systems**

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Rec'd 11/11/91

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July 1991

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TABLE OF CONTENTS

Acknowledgements	iii
Executive Summary	1-1
The Bureau of Justice Assistance Block Grant Program:	
A Fair Share For the Courts	2-1
Defining the Judicial Responsibility	2-2
A Perspective on the Drug Problem	2-6
Obtaining Funds	2-10
Alabama	2-12
Arizona	2-17
Connecticut	2-22
New Jersey	2-29
Conclusion	2-38
Managing Drug Cases During the Pretrial Phase	3-1
Introduction	3-1
Pretrial Decisionmaking	3-2
The Release Decision	3-2
Pretrial Services Agencies	3-3
The District of Columbia Experience	3-4
Drug Testing: Challenges, Issues, and Implications	3-6
Treatment Alternatives to Special Clients (TASC)	3-8
Pre-Trial Processing of Drug Cases	3-9
Comprehensive Adjudication of Drug Arrestees (CADA)	3-10
Resources, Projects and Studies	3-12
Improved Management of Drug Caseflow Without	
Additional Resources	4-1
Defining the Need: The First Step	4-1
Coordinating Committees	4-5
Specialization and Team Management	4-6
Differentiated Case Management and Automated Case Processing	4-8
Conclusion	4-14
System Balance: Indigent Defense and the War on Drugs	5-1
Drug Cases and Indigent Defense	5-3
Federal Resources for Indigent Defense	5-8
Availability of State Resources	5-19
Conclusion	5-24
Addendum	5-26
Appendices:	
A: Subtitle C--State and Local Narcotics Control and Justice Assistance Improvements	5-29
B: BJA Director's Letter	5-33
C: BJA Drug Control and System Improvement Formula Grant Program	5-36

Intermediate Punishment Options	6-1
Introduction	6-1
Boot Camps	6-3
Day Reporting Centers in Massachusetts	6-7
Intensive Supervision Programs (New Jersey and Tennessee)	6-13
Acupuncture in New York and Miami	6-23
Community Corrections with Treatment in Minnesota	6-28
Literacy in Arizona	6-31
Connecticut's System-Wide Management of Drug Offenders	6-37
Implementation and Getting Started: A Summary	6-44
 Working Paper on Alternatives to Traditional Corrections:	
Issues, Answers and Ambiguities	7-1
Major Forms of Alternatives to Traditional Corrections	7-2
Types of Drug Offenders	7-6
Principles in the Uses of Correctional Alternatives	7-9
Four Strategies for Effective Use of Alternatives with Drug Offenders	7-15
 A Blueprint for Court/Community/Public Involvement	
in Coping with the Drug Crisis	8-1
Introduction	8-1
The Public's Perception of Courts	8-1
What Can/Should Courts Do to Communicate With the Public	
Concerning Judicial Responses to the Drug Problem	8-3
How Can/Should Courts Reach Out to Improve the Understanding	
of Judges, Administrators and Staff to "Drugs" as a Business,	
Addiction and Treatment	8-14
How Can/Should Courts Involve the Public in Helping the	
Judiciary Respond to the Drug Crisis	8-16
Conclusion	8-18

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DRUG ISSUES AFFECTING STATE JUDICIAL SYSTEMS PROJECT*

JOAN T. WHITE, PROJECT DIRECTOR

**THE BUREAU OF JUSTICE ASSISTANCE BLOCK GRANT
PROGRAM: A FAIR SHARE FOR THE COURTS**

Samuel D. Conti and Regina Page

MANAGING DRUG CASES DURING THE PRETRIAL PHASE

Regina Page

**IMPROVED MANAGEMENT OF DRUG CASES WITHOUT
ADDITIONAL RESOURCES**

Samuel D. Conti

**SYSTEM BALANCE: INDIGENT DEFENSE AND THE WAR
ON DRUGS**

Timothy Murphy

INTERMEDIATE PUNISHMENT OPTIONS

Joan T. White

**WORKING PAPER ON ALTERNATIVES TO TRADITIONAL
CORRECTIONS**

Professor Todd Clear

**A BLUEPRINT FOR COURT/COMMUNITY/PUBLIC INVOLVEMENT
IN COPING WITH THE DRUG CRISIS**

Thomas S. Hodson

Samuel D. Conti, General Editor

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July 1991

EXECUTIVE SUMMARY

DRUG ISSUES AFFECTING STATE JUDICIAL SYSTEMS BRIEFING PAPERS

EXECUTIVE SUMMARY

DRUG ISSUES AFFECTING STATE JUDICIAL SYSTEMS BRIEFING PAPERS*

In April, 1989, judicial branch leaders of the nation's nine most populous states¹ met to discuss the increased numbers of drug cases and to plan an effective state court response to the drug crisis. The gathering, or Philadelphia I as it has come to be called, resulted in the formulation of a court administration agenda designed to bring more effective management to bear on drug and drug related cases.

The reporter for the symposium summarized judicial expressions on the desired adjudicatory process this way: "State court officials want a court process that metes out effective sentences and that helps deter."²

As a direct outgrowth of the symposium, the Conference of Chief Justices (CCJ) and Conference of State Court Administrators (COSCA) at their 1989 Annual Meetings adopted resolutions to meet the drug challenge and the conferences formed a joint committee, the CCJ/COSCA Advisory Committee on Drug Issues Affecting State Judicial Systems.

The CCJ/COSCA Advisory Committee provided guidelines for the briefing papers which follow. The papers respond to the first long term goal established by the committee: "To identify and disseminate information on existing state judicial system programs that have been found, based on research and evaluation, to be effective in the comprehensive adjudication of drug cases."³

¹ States in attendance were: California, Florida, Illinois, Michigan, New Jersey, New York, Ohio, Pennsylvania, Texas.

² Robert D. Lipscher, "The Judicial Response to the Drug Crisis: A Report of an Executive Symposium Involving Judicial Leaders of the Nation's Nine Most Populous States," State Court Journal, Volume 13, Number 4 (Fall 1989).

³ CCJ/COSCA Advisory Committee on Drug Issues Affecting State Judicial Systems, Goals and Objectives, long term goal #1, adopted January 28, 1990.

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In keeping with the committee's objectives of providing state judiciaries with information on successful programs and of encouraging the replication of such programs within states, the briefing papers examine programs in use by courts. The briefing papers span the criminal justice system process from pre-trial to public/community involvement.

Specific subjects include: (1) The Bureau of Justice Assistance (BJA) Block Grant Program: How Courts Can Get their Fair Share; (2) Managing Drug Cases During the Pretrial Phase; (3) Improved Caseflow Management without Additional Resources; (4) System Balance: Indigent Defense and the War on Drugs; (5) Intermediate Punishment Options for Drug Arrestees; and a Working Paper on Alternatives to Traditional Corrections; and (6) Public/Community Involvement.

The briefing paper on federal formula block grant funding ("The Bureau of Justice Assistance (BJA) Block Grant Program: A Fair Share for the Courts"), provides an overview of participation by state courts in the Federal Anti-Drug Abuse Act. The paper underlines the leadership role courts must assert to ensure a judicial component in future state block grant plans. Also included in the briefing paper is an outline that can be used by courts seeking to integrate its program components into a state plan involving representatives of other state agencies and branches, both elected and appointed. The successful experiences of Alabama, Arizona, Connecticut and New Jersey in formulating plans and working cooperatively with others to secure substantive federal funding are reported.

"Managing Drug Cases During the Pre-Trial Phase" builds around the Washington, D.C. pre-trial drug testing process utilized for defendant screening. For jurisdictions interested in beginning a drug-screening pre-trial program or wishing to evaluate an existing system, the Washington, D.C. process provides both orientation and a standard for comparison.

The briefing paper on indigent defense, "System Balance: Indigent Defense and the War on Drugs," highlights the tremendous growth in the drug caseload in trial courts throughout the country and the burden that unprecedented growth is placing on indigent defender systems in major urban areas. The paper examines the availability of federal and state funds for indigent defense services and urges the balancing of resources to all elements of the criminal justice system so that constitutional guarantees are met and the system operates smoothly. The briefing paper offers recommendations to the federal, state and local policy and practice.

Recognizing that sound management fully utilizes existing resources, the briefing paper on "Improved Management of Drug Cases Without Additional Resources" provides an overview of methodologies being implemented in Providence, Rhode Island; Santa Clara County, California; New Orleans, Louisiana; Middlesex County, New Jersey and the Recorder's Court in Detroit, Michigan. Issues discussed include coordinating committees, specialization, team assignments, differentiated case management, and automated case tracking. In those courts facing overwhelming drug caseloads, improved caseload management efficiency must be supplemented by increased capacity--more judges, prosecutors, defenders, probation officers, and court support personnel.

The fifth briefing paper, "Intermediate Punishment Options for Drug Arrestees," examines promising programs from all parts of the country. In part in response to over-crowded jails and prisons--intermediate punishment options, more than probation, less than prison time--are today's corrections. More important, the growing use of intermediate punishments result from evidence of recidivism rates surely no worse than prison and a cost structure surely less expensive. Specific options and sites covered are: Boot Camps in New York and Connecticut; Day Reporting Centers in Massachusetts; Intensive Supervision Programs in New Jersey and Tennessee;

Acupuncture in New York and Miami; Community Corrections in Minnesota; Literacy in Arizona and Comprehensive Statutory Enactment in Connecticut. An attached "Working Paper on Alternatives to Traditional Corrections: Issues, Answers and Ambiguities" by Professor Todd Clear describes offenders suitable for particular programmatic alternatives, and offers strategies and considerations when new alternatives are to be evaluated and matched to differing types of drug offenders.

The briefing paper, "A Blueprint for Court/Community/Public Involvement in Coping with the Drug Crisis," addresses the public perception of courts and what courts can do to better communicate their plans and responses to the drug problem. The briefing paper discusses the understanding of judges, administrators and staff have about drugs and how the public can help the judiciary understand the drug crisis. Strategies for trial courts interested in working with the community are provided.

From pre-trial through public involvement, the courts must cooperate with other branches and levels of government. Without judicial initiative and cooperation, the system will surely fail to produce either fair, or effective drug case dispositions. And, it is clear that judicial systems that seek and receive input from others are consistently the jurisdictions that most effectively manage cases and enter effective sentences.

**THE BUREAU OF JUSTICE ASSISTANCE
BLOCK GRANT PROGRAM: A FAIR SHARE
FOR THE COURTS**

**THE BUREAU OF JUSTICE ASSISTANCE
BLOCK GRANT PROGRAM:
A FAIR SHARE FOR THE COURTS***

The notion of a fair share for courts in the Bureau of Justice Assistance (BJA) Block Grant Program is a two-edged sword. Much of the emphasis, at least from the judicial perspective, has been the necessity of more federal monies. But of equal salience is the need for the judiciary to shoulder a fair share in planning for the good health, indeed the rejuvenation, of a criminal justice system faced with a flood of drug cases. At a time when court dockets are clogged, jails overcrowded, judges, police, prosecutors, defenders and probation officers overworked and disillusioned, treatment facilities and prisons bursting, streets unsafe, and the public frightened, new plans and assertive action are needed.

While the President's National Drug Control Strategy is incomplete and sufficient recognition of the needs of the state courts has not been given, the strategy is in place. The courts have a duty to argue firmly and persuasively for adjustments in the strategy to provide for full participation by the state courts in the war on drugs.

Although courts must help fight the war, they have generally participated as non-combatants. Judges, as impartial arbiters in the individual cases, are neutral in specific legal conflicts between those accused of crime and the State. However, both judges and courts are part of the criminal justice system even though, while exercising their adjudicatory responsibilities, in individual cases, they are apart from the fray. Accorded great respect by others in the process and having administrative and supervisory responsibility over Judicial Branch employees, e.g., clerks, probation and

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pretrial release officers, judges play a key part in the smooth operation of the criminal system. Courts, judges and others exempt themselves from planning for system improvement only at grave risk to the effective operation of the whole. Courts have a responsibility not only to seek sufficient monies for the efficient and effective operation of judicial branch services, but also to participate vigorously in planning for system-wide initiatives and progress in the war on drugs.

Defining the Judicial Responsibility

In April 1989, representatives of the nine most populous states of the Union convened in Philadelphia to examine the judicial response to the drug crisis. Among other recommendations were calls for involvement of the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA), coordination with federal government agencies, collection of data for strategic planning, drug case management, and multi-state collaboration. The need for planning was clearly recognized in these sessions and in subsequent considerations of the drug crisis by judicial branch leaders.¹

Involvement and planning by the judicial branches has not been uniform around the nation. Although planning implies for many a quest for federal monies, this paper proceeds in a broader context. Planning is directed not only to securing federal funds but also state and local appropriations. More important still, planning is essential for the best use of personnel, facilities, and other resources already available to the courts.

Without adequate involvement and planning, the judiciary is likely to suffer from insufficient funding, the inability to deploy existing personnel and resources efficiently, and incapacity to work effectively with other justice administration agencies

¹ See generally, Robert D. Lipscher, "The Judicial Response to the Drug Crisis: A Report of an Executive Symposium Involving Judicial Leaders of the Nation's Nine Most Populous States." State Court Journal, Vol. 13, Number 4 (Fall 1989).

in achieving common goals. Five conditions explain the general inadequacy of judicial branch planning and its consequences.

- * Lack of internal judicial branch planning process: even though judiciaries now generally have available trained professional administrative staff, there is a general reluctance on the part of courts to seek ideas from court personnel about directions and needs for the future. Many courts seem to prefer the top down formulation of plans even though the problems plans can foresee, and thus avoid, are often encountered at ground level. Some courts are unwilling to seek help from either the private sector or academia.
- * Lack of judicial involvement in a larger planning process: the separation and independence of the judiciary, essential in deciding individual cases and in preserving judicial independence, need not be strictly observed where systemic cooperation is appropriate and needed. Plans prepared by executive and legislative bodies, by state and local agencies, by the bar, and by others in the criminal justice system would be improved by judicial branch participation.
- * Lack of definite needs: critics assert that the courts use broad and vague "planning" statements which do not clearly convey needs for programs, money or cooperation.
- * Lack of accurate data on drug case impact on court caseloads: not only are statistical data deficient, in terms of accuracy and timeliness, but the very definition of what constitutes a drug or drug-related case has not yet been formulated in most jurisdictions.
- * Inability of courts to make sweeping programmatic and procedural changes: unlike other branches and agencies of government, courts are unable, for sound constitutional reasons, to alter drastically procedures and processes and to make innovative changes quickly.

Several initiatives may help fortify the judiciary's internal planning processes and integrate the judicial plan within the state criminal justice plan, and ultimately, within the national drug control strategy. Planning with parallel and larger systems can improve understanding, increase funding, better cooperation, improve use of scarce resources, and help the war on drugs.

The Bureau of Justice Assistance, and increasingly, state legislatures, emphasize the importance of an integrated, comprehensive effort. Some states have set up task

forces and committees under the direction of the governor and with representation from the judiciary to develop state plans. For example, New Jersey has established a task force to address pretrial, adjudication and post-adjudication issues. The Connecticut legislature has involved the administrative office of the courts in a legislative scheme to comprehensively direct resources in the handling of drug cases. Similar levels of cooperation by the judiciary have yielded systemic benefits in Alabama and Arizona.²

Problems do, however, exist. Several states report that attempts by the judiciary to participate in the state criminal justice plan have been frustrated by a lack of understanding of judicial branch needs and prerogatives by executive branch officials. Even when understandings have been reached, some judiciaries have rejected funding if special conditions attached to grants are inimical to judicial branch policies.

The Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA) Advisory Committee on Drug Issues Affecting State Judicial Systems was formed to develop needed strategies for managing drug and drug related cases. In addition, some states have convened conferences to address drug issues. For example, Virginia held a summit on drugs. In Illinois a conference, "Trends and Issues Forum" devoted substantial attention to drugs. Although some conferences have chiefly addressed law enforcement concerns, they suggest what the judiciary can do to focus the entire system's attention to needed strategies and resources.

Although federal funding will continue to be important to states as they combat drugs, funding from state and local appropriations bodies must also be expanded. Leadership will be required from the executive, judicial, and legislative branches: governors need to oversee the allocation of resources and the effective work of

² Later, this Briefing Paper reports on progress made by Alabama, Arizona, Connecticut and New Jersey and how they achieved it.

executive branch agencies; legislators need to assess the impact of stiffer sentences and law enforcement initiatives on courts and prisons, and must provide commensurate funding; the judiciary, while maintaining independence, must cooperate by providing information and coordinating activities with other branches and agencies.

The CCJ/COSCA Advisory Committee adopted,³ inter alia, the following goal and objective:

Goal 5: To return to a state of effective proactive management as distinguished from "crisis management" and to eliminate the perception that the state judicial system is crippled to the point of inability to function.

Objective 1: To promote at the state trial court level the implementation and utilization of successful state judicial programs for addressing drug abuse, related crimes, and burgeoning caseloads.

To achieve the goal, judges and court administrators will have to provide direction and leadership for the judicial branch to be more actively engaged in processes that determine the allocation of federal resources in the states. Generally, the judiciary, chary of compromising its independence, has not assertively sought funding through executive branch agencies. In a negotiated process in which state agencies are competing for funds, judicial separation is risky. Protocols can be established and ground rules set to ensure that the judiciary has meaningful representation in planning and fund awarding councils. Absent an effectively participating judiciary, judicial participation is marginal and the drug war ventures of other parts of the criminal justice system are doomed. Courts are the pivotal segment of the system, and as such their position and needs must be given a fair hearing. The system will only be as strong as its weakest part.

³ Adopted by the Advisory Committee on Drug Issues Affecting State Judicial Systems and supported by the passage of a resolution of the Conference of Chief Justices, San Juan, Puerto Rico, January, 1990.

A Perspective on the Drug Problem

During 1988, there were 44,535 criminal cases commenced in the United States District Courts; state courts of general jurisdiction experienced 3,413,633 criminal filings. In addition, more than 8,548,000 criminal case filings in state courts of limited jurisdiction.⁴

During 1988, drug cases constituted 23.6% of the criminal caseload of the U.S. District Courts. While comparable figures are not available for all state courts, the federal percentage is lower than the percentage of drug cases in the 39 large urban trial courts from which data have been collected. The absence of reliable state court data on drug cases point up one of the needs of the state courts. Statistics on drug-related cases including those manifest in spouse and child abuse, wardships, and other family matters, for example, are also lacking. Drug sale and possession cases alone accounted almost 30% of all felony cases in the BJA funded NCSC research on urban courts.

Between 1984 and 1988, the number of drug cases increased by 64% in the U.S. District Courts. Nationwide figures for the state courts are not available, but during the same period drug cases in the general jurisdiction courts of Colorado increased by 112%, Florida by 90%, Idaho by 73%, Massachusetts by 82%, Tennessee by 97%, and Texas by 127%.

The volume of drug cases in many state courts has already reached crisis proportions. With speedy trial statutes and rules giving priority to criminal cases other business of the state courts is being adversely affected. For example, recently in

⁴ Statistical information in this section was gathered from a variety of published sources by Thomas Hafemeister, Staff Associate, National Center for State Courts, the COSCA sponsored NCSC Court Statistics Project and the BJA funded study of caseflow and caseload under the NCSC Large Capacity Increase Program. Additional information was provided in an interview of Jay Marshall, Chief Courts Branch, Discretionary Grant Programs Director, Bureau of Justice Assistance by Regina Page.

Alameda County (Oakland), California, all judges were assigned to criminal matters with none available for the other business of the court.

According to a May, 1989 Newsweek article, courts suffer from "political shortsightedness." The article cited New York's allocation of \$110 million in 1988 for Tactical Narcotics Teams to sweep crack-infested neighborhoods, while allocating only \$9.5 million for legal-aid lawyers and prosecutors. The city was faced with 110,000 drug cases in 1989 and only 75 judges assigned to criminal matters. New York Chief Judge Sol Wachtler said, "The public and politicians always talk in terms of more police and more jails. The middle part (the courts) is the invisible part. The mouth of the funnel is being made wider, but the neck is just as narrow."⁵

In the face of these statistics the federal government through the Anti-Drug Abuse Act of 1988 established a drug control and system improvement block and discretionary grant program to be administered by the Bureau of Justice Assistance in the Department of Justice. The Act specifically provides that grants to the states "shall provide additional personnel, equipment, training, technical assistance and information systems for the more widespread apprehension, prosecution, adjudication, and detention and rehabilitation of persons who violate these laws...(including) improving the operational effectiveness of the court process through programs such as court delay reduction programs and enhancement programs."⁶

In comments before the 1990 CCJ and COSCA Annual Conference, Judge Reggie Walton, Associate Director, State and Local Affairs, Office National Drug Abuse Policy, noted that "with the resources that the court has available to it, it's very difficult for the court to respond adequately to the problem...it is going to take

⁵ "Why Justice Can't Be Done," Newsweek, May 29, 1989.

⁶ See, infra. Timothy Murphy, System Balance: Indigent Defense and the War on Drugs, Appendix A.

programs, it's going to take money." But Judge Walton quickly added that "we can't overturn our fiscal applecart...(we) will destroy our ability to deal with it in the future...there are fiscal constraints."⁷

The Anti-Drug Abuse Act of 1988 authorized \$275 million for FY 1989; \$395 million for FY 1990, and \$400 million for FY 1991. For FY 1990, \$450 million was appropriated and the authorization was increased accordingly. Twenty percent or \$50 million of each year's appropriation, whichever is less, may be used by the Bureau of Justice Assistance for discretionary grants.⁸

Less than 3% of the funds available under the Act were allocated to court-related programs in FY 1989 and 1990. Courts need far more federal financial assistance to manage their drug-related caseloads. How can courts increase their share of federal Anti-Drug Abuse Act funding? What can be done to get courts involved in the development of statewide drug control strategies to gain more federal and state money?

In identifying judicial requirements for inclusion in a plan for federal, state legislative or other monies, judicial branch leaders can work from the outline to follow which defines the needs of the courts. The judiciary must assert its equality in efforts to cope with drug and drug-related offenses.

A. Inventory and Assessment

1. Overview. Judicial branch leaders should develop an overview of administration issues facing the courts as they process and adjudicate criminal, civil, juvenile and family cases. Special attention should be given to determining the impact

⁷ Extracted by Samuel D. Conti from comments at the 1990 Annual Meeting, Conference of Chief Justices and Conference of State Court Administrators, Bolton's Landing, New York, August 1990.

⁸ See, supra. n.4.

of drug cases on indigent defense, pretrial and probation services, and on juvenile, child support enforcement, family abuse, and workers' compensation.

2. Current efforts. Documentation, preferably statistical rather than anecdotal, of the influx of drug cases and the effects of those cases on the court, should be prepared.

3. Planning and managing. Written plans should be drafted showing the rising caseloads and the caseflow, treatment, custodial and resource allocation problem facing the courts. By stating goals and objectives, the courts will be better able to devise management techniques, measure attainment of plan elements, and deploy needed resources.

B. Outreach to Other Branches and Agencies of Government

1. Internal consistency. Judicial branch leaders should generate state policy to be followed by the entire judiciary in state and local drug initiatives. Furthermore, direction should be given on achieving stated goals and objectives for the courts in relation to the other branches. In seeking consistency, Judicial branch leaders should be wary of imposing rigid controls which may inhibit trial court innovation.

2. Coordination of planning, development and implementation. Courts and their ancillary agencies are part of the justice system, albeit a neutral and decisive part. Courts should coordinate their activities with other elements of the system and join in efforts designed to achieve overall system goals. The contribution of the courts to goal attainment must be tempered by the courts' constitutional responsibilities.

3. Interaction with key agencies at the federal, state and local levels. Courts must be prepared to work closely with criminal juvenile justice and treatment agencies to assure that cases proceed smoothly and that the decisions of the court are

properly effectuated. In doing this, "top level administrators who can communicate with (agencies and funding bodies) give the judiciary a credible liaison capacity without fear of compromising the independence of the judiciary, exposing judges to unseemly turf battles, or eroding judges' time through lengthy interbranch meetings and discussions."⁹

C. Court Programs That Require Additional Resources

Companion briefing papers are devoted to the following subjects:

1. Pre-trial services
2. Efficient Management of Cases
3. Indigent Defense
4. Intermediate Punishment Options
5. Court/Community/Public Involvement

Obtaining Funds

The emphasis in this section is on seeking federal block grant money although the steps suggested also apply to planning for funds from state and local appropriations. Success in getting money for court drug programs is grounded on sound planning. But planning is not an end in itself. Implementation is the goal, planning the roadmap.

Funds allocated to states under the Anti-Drug Abuse Act are based on a formula that includes a base amount of \$500,000 and additional amounts allocated on the basis of the state's relative proportion of the total U.S. population. Federal program guidelines require the chief executive of each state to designate an office to

⁹ Samuel D. Conti and Robert D. Lipscher, "Changing Roles and Relationship of Judicial Branch Leaders: (Judges and Administrator/Managers) in Court System Administration and Ways to Develop Productive Working Relationships Between Those Leaders." (A Paper for the Second National Conference on Court Management, September 9-14, 1990.) Draft dated July, 1990, p.2

prepare an application to obtain funds, to administer funds for program areas authorized by BJA, and to coordinate distribution of the federal funds provided.

The legislation authorizing funding of drug projects was designed to allow for state flexibility in developing and implementing plans. For example, although BJA recommends that coordinating councils be formed, they are not required. State court experience with these mechanisms has been varied.

The degree of cooperation and the benefits to the judicial branch depend on the participation of the judiciary in shaping the plan and on special conditions required by the executive branch agency. In some states the courts do not have a strong voice with the planning agencies. Even where courts play a part, funding may be subject to conditions not acceptable from a policy perspective by the courts. A full assessment of existing relationships and the implications for a fair share of funding for the judicial branches has yet to be made. Several states, notably Alabama, Arizona, Connecticut and New Jersey, have had significant success in relations with their executive branch planning agencies; their experience will be examined here for lessons for other states.¹⁰

¹⁰After completion of this Briefing Paper, the NCSC received documentation of a similarly successful effort in North Carolina. Information concerning North Carolina's successful program to expand resources and conduct research regarding drugs can be obtained by writing or calling Mr. Franklin E. Freeman, Jr., Administrative Director of the Courts, or Ms. Tricia Hahn at the North Carolina Administrative Office of the Courts, Justice Building, P.O. Box 2448, Raleigh, NC 27602, 919/733-7106.

Alabama

The willingness of the Alabama judiciary to address the substance abuse problem in that State extends to alcohol as well as controlled dangerous substances.¹¹ Selected for discussion here is the Alabama Court Referral Program designed to treat that problem as it is seen before the courts and in society. The program exemplifies all of the features of a well conceived project--planning, research, pilot testing, organizational development, implementation, education and training, coordination with other states, evaluation, cooperation with local, State and Federal agencies, and identification of funding. Program designers, managers, and operators have shaped a project that can meet goals thereby serving the courts and the public.

The project traces its roots to the award, in 1972, of federal grants through the Office of Highway and Traffic Safety to the Administrative Office of the Courts (formerly the Department of Court Management). Those grants for a statewide driving under the influence (DUI) program provided for the purchase of equipment and supplies for localities to conduct classes for first time DUI offenders. From the outset Alabama court officials showed a willingness to examine the experience elsewhere. Their initial program was patterned on the highly regarded Phoenix, Arizona Alcohol Safety Action Project (ASAP).

By legislation in 1983, attendance at DUI classes sanctioned by the Administrative Office of the Courts was made mandatory for all first time DUI offenders. This legislative mandate, combined with the cooperation of agencies conducting DUI programs, changed the composition of the programs and allowed identification of the full range of substance abusing drivers. Project researchers

¹¹ Information contained in this section was derived from extensive written materials provided by the Administrative Office of the Courts and telephone conversations between Administrative Director Allen Tapley, Ms. Callie Longshore, Coordinator, Court Referral Officer Program, and Samuel D. Conti on September 27, 1990.

examining data on offenders were able to more clearly define the kinds of offenders before the courts and to recommend changes in the type of "schooling" and the evaluation of the programs.

Sound research and careful attention to statistical information disclosed that large amounts of judge time were being devoted to substance abuse cases and those cases in which substance abuse may have been a contributing factor. Judges with strong legal skills usually had little expertise in addiction and substance abuse. For these reasons, in 1985, a subcommittee to the Judicial Study Commission was created to examine the subject in depth and to formulate plans for the future.

Among the issues explored by the subcommittee were: 1) determination of sources of treatment for substance abusers; 2) assurance about the adequacy of treatment modalities beyond the "DUI schools"; and 3) monitoring of compliance with court orders for participation in programs. In an incisive report the subcommittee documented the scope of the DUI problem, summarized practices in the Alabama courts, rendered a general description of a Court Referral Program, described a model program, called for judge commitment to a successful program, suggested pilot sites, proposed legislation, and estimated program costs before advancing a series of recommendations by which the courts could "intervene to make the greatest impact on reducing this problem." The seven months of research and study by the subcommittee paid off with the statewide adoption of a comprehensive program that has become a model for other jurisdictions.

As occasionally happens with innovative programs, there are unexpected benefits and outcomes. Alabama's original court referral program, designed to refer, place, evaluate, and monitor alcohol offenders was positioned to provide like services for drunk offenders as the drug crisis hit. Furthermore, the cadre of court referral officers became, with the enactment of 90-390, an arm of the court in pretrial diversion and

alternative sentencing options programs. This coincidence of court innovation and legislative and executive branch support was not accidental. It reflects a close understanding of the needs of the courts and the people being served, and a willingness of the three branches of state government to identify and cooperate on a worthy program.

The program as currently operated has four components, three of which are levels of treatment for alcohol and drug abusing offenders. These programs are self-sustaining, funded by defendant-paid fees, insurance companies and local monies.

Level I schools provide didactic information to first time offenders who are deemed not to have severe problems with drug or alcohol abuse. The 10 hour course provides information on the psychological, physiological, sociological and legal aspects of substance abuse and on community treatment resources.

Level II programs for more seriously abusing offenders include a 24 hour didactic course and group exercises. Embracing information from the Level I program, this program goes on to discuss factors such as denial, guilt, poor self esteem and anger as contributing to substance abuse problems. Instructors also discuss self-help groups, family dynamics and alternatives to drinking and drug abuse. A continuing care component operates with monthly meetings for a year to provide support and progress monitoring for the courts.

In Level III direct referrals are made to 28 day in-patient treatment facilities and to out-patient counseling. Offenders at this level are placed on probation and required to report to the court referral officer (CRO) at least monthly. Terms of probation are monitored by the CRO.

By 1989 about 152,400 students had completed the court referral program. Although a formal evaluation of the program has not yet been done informal

evaluations and documentation on defendants indicates that recidivism is lower for those completing the program.

The fourth component of the court referral network is the Court Referral Officer program which began in 1985 as a pilot project to help judges in four counties identify and place DUI offenders. The growth of this program is marked by a mixture of state and federal funds to build a service which, in 1989, was responsible for the evaluation, referral and placement of 17,232 offenders charged and convicted of alcohol or drug-related offenses.

As noted earlier, the CRO program offers the courts, in addition to the initial services of referral, evaluation and monitoring of substance abusing offenders, a staff capable of overseeing a cost-effective sentencing alternatives program. It has been estimated that to keep up with incarceration and overcrowding rates a new prison would have to be built each year at a cost of \$20 million. The cost for the CRO program is projected to be \$3 million annually. Although the legislature did not appropriate funds with the Mandatory Treatment Act of 1990 (90-390), the courts are vigorously pursuing both legislative funds and conditional funding from the Governor. In the meantime, local officials impressed with the program are providing funds for court referral officers to begin implementation of the Act. The Administrative Office of the Courts is also applying for federal grants to support the program.

An evaluation of the CRO program by the Auburn University College of Engineering and Computer Science concluded that:

- o referrals to the DUI School and treatment program had increased;
- o the number of defendants complying with court orders and completing the recommended program has increased;
- o short term (two year) recidivism has decreased;
- o judges are using the program for screening any defendant suspected of having a substance abuse

problem rather than limiting its use to DUI cases only;

- o the average time court and law enforcement officials spent with each defendant has been reduced; and
- o incarceration following non-compliance with court orders has been reduced.

These benefits along with the increasing use of court referral officers under the terms of the Mandatory Treatment Act show the power of innovative programming to surface alternative ways to conduct the work of the courts. If the cooperative understandings and study that have created these programs and the recent legislation can be harnessed again to secure needed federal and state monies, Alabama will be able to press forward with another successful program.

Arizona

The success of the Arizona court system,¹² indeed of the entire criminal justice system of the State, in shaping a drug enforcement strategy is rooted in the creation, in 1982, of the Arizona Criminal Justice Commission. The Commission was initially charged with improving "the effectiveness and efficiency of criminal justice system responses to the problem of crime" but 1987 legislation reconstituting the body expanded the mission to include "coordinating existing efforts, preparing policy analyses on problems and programs, and recommending specific policy responses." To carry out these responsibilities, the Commission "supervises and coordinates...State and federal funds devoted to justice system improvement and distributes monies pursuant to program goals." A hallmark of the Commission is the active involvement of the Judicial Branch through the membership of the Administrative Director of the Courts on the 19 member body.

The 1987 legislation also created a Drug Enforcement Task Force "required to monitor the nature and scope of drug offenses in the State and recommend to the [Criminal Justice] Commission specific programs and purposes for monies to be spent to enhance the deterrence, investigation, prosecution, adjudication, and punishment of drug offenders." The high level Task Force, chaired by the Governor (or designee), has eight members including the Administrative Director of the Courts.

A third element of the Arizona approach to combating drugs was the creation in 1987 of the Alliance for a Drug Free Arizona Interagency Committee. The eleven members of the Committee are "to foster cooperation among all State and local governmental entities, community organizations, and private groups to ensure optimal

¹² Information contained in this section was derived from extensive written material provided by the Administrative Office of the Courts and in a telephone conversation between William McDonald, Administrative Director of the Courts and Samuel D. Conti on September 19, 1990.

delivery of educational, treatment, and prevention programs that will reduce substance abuse by children, youth, and families." The Committee is expected to "communicate regularly with the Criminal Justice Commission so that [drug] programs...are coordinated with enforcement and related efforts undertaken by the Commission."

The strategy emphasizes drug control and drug related crimes. The State has joined funds available through the Drug Control and System Improvement Grant Program of the Federal Anti-Drug Abuse Act of 1988 with comprehensive State legislation in a coherent effort. Existing state laws on drugs were reorganized, new offenses were recognized, and penalties were increased. In combination, a formidable array of tools was provided for a new "legal, organizational and financial framework for responding to drug abuse." State legislative mandates along with the Criminal Justice Commission, the Drug Enforcement Task Force, the Alliance for a Drug Free Arizona Committee, and gubernatorial substance abuse committees, have provided the basis for an integrated strategy that is compatible with the National Drug Control Strategy. The coordinated Arizona approach "seeks to blend the tactical activities in the demand and supply reduction categories into an effective whole" thereby bringing about "significant reductions in drug abuse" in the State.

The 1990 strategy document builds upon research, preparation and coordination begun in 1987 and 1988. The initiatives, which are criminal justice system-wide, build upon existing programs, strengthen weaknesses and improve coordination. The emphasis of the strategy, as would be expected from a broadly representative coordinating commission, is on a "balanced approach that enhances the apprehension, prosecution, detention, forensic analysis, and adjudication programs in the State."

Although the strategy shaped in Arizona stresses diverse initiatives which have been achieved through "relative harmony" and by "complementary" effort there is a realistic assessment that not all components of the criminal justice system have yet

received needed resources. The State is stimulating several interagency and interdisciplinary task forces with funding from federal formula block grants and State Drug Enforcement Account monies.

Even in Arizona with an enviable record of coordination, cooperation, and planning to meet the drug challenge, resources are a problem. Not only must financial resources be adequate, they must be sustained and continuous. Federal money, whether formula block grant or discretionary, has provided incentive and opportunity for new initiatives, but State level funding is essential. Legislation in 1987 created a State Drug Enforcement Account to be funded by fines from drug offenses for which substantial penalties were imposed. The projection for funds deposited in the account have not been consistent nor have legislative appropriations been sufficient to meet the needs of enhanced programs.

Surveys by the Criminal Justice Commission in 1988 and 1989 cited the need for funding multi-agency task forces, as well as monies for prosecution, drug education programs, and detention facilities. Also identified has been the need for additional law enforcement personnel both statewide and in the urban centers of Maricopa (Phoenix) and Pima (Tucson) counties to bring the ratios of officers to population closer to the national average. Similar needs in prosecutor's offices have also been cited. In the courts, caseload statistics show that, were the State constitutional mandate of one judge per 30,000 population formula to be met, the complement of judges in Maricopa County would be increased from 53 Superior Court Divisions to 66 Divisions. Resource shortfalls of these dimensions cannot be overcome simply by better planning and utilization of existing resources.

From its beginnings in 1987, the Arizona Statewide Drug Enforcement Strategy has combined Federal funding programs with monies from the State Drug Enforcement Account to create a package upon which State and local officials can rely. At its

inception the Commission solicited the views of criminal justice agencies, as well as, the public in hearings held throughout the State. Questionnaires distributed to criminal justice agencies were tabulated as a basis for the development of strategy. Furthermore, quantitative data and opinions were obtained in three areas: (1) drug control problems, (2) resources currently devoted, and (3) resources needed. Data obtained in this way were compared with information contained in earlier federal, state and local drug control enforcement reports. After review by the U. S. Attorney's Law Enforcement Coordinating Committee and a recommendation from the Arizona Drug Enforcement Task Force, the draft document was adopted by the Criminal Justice Commission. Interaction between these Federal and State groups has proven to be a key feature of the Arizona strategic planning effort.

Distribution of Federal and State grant monies in defined program areas has followed a procedural pattern established in 1987. A successful application for funds must be in a category of the strategy. After receipt of an application for funding, commission staff members prepare an extensive analysis of the merits of the request. Following a review and a recommendation by the Drug Enforcement Task Force, the Commission votes on the application at a public meeting.

Up to date and accurate knowledge about the drug problem statewide is an essential element of strategic planning. Commission staff members maintain liaison with federal, state, county and local criminal justice system authorities and monitor grant funded projects through review of written reports and on-site visits. Supplementing these steps, in 1989, an extensive survey instrument was sent to federal, state, and local officials working within the drug strategy. These processes--liaison, program review and surveys--enable staff members to keep Commissioners and Task Force members apprised of current developments in attaining drug enforcement goals.

The 1990 strategy is a continuation and refinement of the document prepared in 1987. The current document derives, according to a program summary, "from the monitoring, analysis and evaluation of funded projects, a more comprehensive knowledge of the nature and extent of the problem, continuous and current input from federal, state, and local criminal justice system entities statewide, and the unfortunate reality that State funding enhancements are quite limited." This statement of the status of the strategy is accurate but incomplete. To it one can fairly add that the strategic planning efforts in Arizona have succeeded because all elements of the criminal justice system, including the Judiciary, have worked cooperatively in the interests of the whole.

Connecticut

The Connecticut Judicial Department has succeeded to an exemplary degree in planning for and obtaining funds to face the drug problem largely based on the trust and confidence the Department has gained.¹⁸ Innovative leaders and talented implementation personnel have combined to make the Connecticut Judicial Department a leader in securing and effectively using federal funds for court programs. Because of its close working relationships with executive and legislative branch leaders, the Judicial Department has been able to cultivate understanding of the needs and priorities of the judiciary in a wide range of programs, including drug abuse reduction.

By cooperating with the other branches of State government, the Judicial Department has been able to assume a leadership role in several drug programs that has qualified it to receive a substantial portion of Federal funding to the State. "In the 1990 federal fiscal year, approximately 60% of the federal funds made available to Connecticut under the Federal Anti Drug Abuse Act of 1988 were for the benefit of court diversion programs, including 25-30% which was directly provided to the Judicial Department for new initiatives."

A review of selected legislative programs demonstrates the close cooperation that has developed between the branches for the resolution of drug and drug-related problems. The courts of Connecticut plan administrative solutions across the criminal and juvenile justice systems instead of reacting to programs or acting without consultation. The Judicial Department "acts as a catalyst for the development of relevant policy initiatives." The willingness of the Judicial Department to cooperate,

¹⁸ Information contained in this section was derived from extensive written material provided by the Office of the Chief Court Administrator and in meetings and telephone conversations with Chief Court Administrator Aaron Ment and Ms. Faith A. Mandell, Director, External Affairs and Samuel D. Conti on several occasions between September 10 and September 19, 1990.

make recommendations and participate in the resolution of drug problems across-the-board is at the heart of its success in securing federal funds.

Legislation, PA 89-383, is designed to increase available jail space by permitting electronically monitored home detention for individuals accused of less serious offenses and unable to make bail pending trial. The program excludes those who are charged with one of 14 specified crimes, who have committed a class B felony while in the home release program, or have not served a mandatory minimum sentence.

The act also authorizes courts to permit defendants convicted of certain felonies and misdemeanors to participate in an alternative incarceration program (AIP) rather than be placed in prison. In Connecticut, AIP programs include intensive probation and community service or residential or nonresidential programs approved by the Chief Court Administrator. The act also allows the Director of Probation, with the approval of the Chief Court Administrator to establish a community service program, within the Judicial Department's Office of Adult Probation. Through this program persons sentenced to perform community service as a condition of probation or conditional discharge are assigned, supervised and monitored. Again subject to the approval of the Chief Court Administrator, the Director of Probation may contract with service providers and develop standards for the program.

The central role assigned to the chief court administrator signals the confidence given that office in the State. Review of the series of enactments concerning drug initiatives demonstrates the breadth of the responsibilities conferred on the Judicial Department.

Public Act 89-390 is a comprehensive enactment to deal with the prevention and treatment of substance abuse and the enforcement of drug laws. Among the programs for which a \$16.5 million appropriation was provided are (1) a boot-camp-style incarceration program for 16-21 year old male felons who have not previously been in

an adult prison; (2) a drug treatment facility for female offenders; (3) grants to towns and to the Statewide Narcotics Task Force for enforcement, education and training programs; (4) funds for drug abuse treatment and prevention programs administered through the Connecticut Alcohol and Drug Abuse Commission; and (5) three new Superior Court judges. The Act contains provisions for drug testing and treatment options available to the courts, prosecution, and the Department of Adult Probation throughout the criminal process.

Based on need demonstrated by the Judicial Department this legislation later provided for three additional Superior Court judges. The act also established a task force to study the role of the juvenile justice system. It is noteworthy that the two Superior Court judges to serve on the Task Force were to be appointed by the Chief Court Administrator and that the Judicial Department staff was designated to assist the task force. Again, in view of the breadth of the legislation, the prominence of the Judicial Department is significant.

An Office of Alternative Sanctions within the Judicial Department was created by PA 90-213. The office is charged with the responsibility to plan for and establish alternative sanctions; oversee and coordinate their implementation; evaluate their effectiveness, prison and jail overcrowding, court backlogs, and community safety; and enter agreements to obtain federal and other funds for the operation of the programs. The office is to be guided by a nine member advisory committee to be appointed by the chief court administrator.

The act also provides for a community service labor program within the Office of Adult Probation, subject to the approval of the chief court administrator. The program, which can be used by the courts as a pretrial diversion or as part of a sentence of conditional discharge or as a condition of probation, is available for those charged with possessing illegal drugs. Those previously convicted of possession or sale

offenses are ineligible to participate in the program which may range from two to 30 days.

A new high level of probation supervision in which 84 officers have caseloads of no more than 35 probationers each is also authorized by the act. Other provisions include bail release criteria and changes in responsibility for child support enforcement within the Judicial Department.

By PA 90-261 a drug enforcement grant program is established to make awards to municipalities and several state agencies for enforcing state and federal controlled substance laws, carrying out drug abuse prevention education, and providing training on enforcement and education programs. The grant program is to be administered by the Office of Policy and Management (OPM). The act also provides that the Judicial Department conduct a study of drug testing of individuals arrested and submit findings and specific recommendations to the Substance Abuse Committee and the Appropriations Committee. The statute deleted requirements for intensive probation, leaving their establishment to the Judicial Department without explicit legislative direction. The act also phases out the supervised home release (SHR) program operated by the Department of Corrections with a view to creating other release mechanisms in the future.

In their entirety, these acts demonstrate the high level of confidence the legislative and executive branches place in the Judicial Department as a partner in broader efforts to control illegal drug use in Connecticut. The means by which the Judicial Department has gained this recognition merits attention.

The Judicial Department in its relations with the legislative branch has carefully charted its course to separate cooperative administrative functions from the independent adjudicative responsibilities of the courts. Administratively, the department regularly renders technical assistance to the executive and legislative

branches. Typically the legislative branch will say what it wishes to accomplish as a matter of public policy and will ask whether the Judicial Department can implement the proposed legislation. The courts are known to be neutral but nonetheless able to contribute to the formulation of solutions of common problems. Judicial Department relations with the other branches has been characterized as grounded on openness, honesty and cooperation. The Judicial Branch may occasionally decline to support a legislative proposal if sufficient resources are not available.

Contact with the legislative branch is maintained by the Director, External Affairs, who often testifies on the technical implications of proposed legislation, rather than on policy value or legality. In order to implement effectively the enforcement of drug laws provisions of PA 89-390 the Judicial Department determined, and demonstrated through statistical information that three additional Superior Court judgeships were needed, which were then approved by the legislature.

Working with the Legislative Office of Fiscal Analysis, the Judicial Department provides financial and statistical information that the Legislature finds highly reliable. The Chief Court Administrator, on its own initiative, provides fact sheets and reports to the Legislature on implementation progress, changes in caseloads, and caseload trends. This information serves to alert the Legislature about forces affecting the courts.

In a spirit of cooperation and partnership, the Judicial Department will support initiatives of other elements of the criminal justice system of the State. Court support for needs of public defenders, states' attorneys, probation, and corrections is rendered through fact sheets and testimony on pending legislation. Furthermore, the Chief Justice establishes multi-constituent task forces that may include legislators and members of the general public to explore and advise on matters concerning the courts.

Members of the Judicial Branch also serve on executive and legislative task forces and commissions. Participation on these bodies allows the judicial branch to establish early and continuous involvement as problems are surfaced and solutions explored.

In making approaches to the Legislature, the Judicial Department begins its "strategy" by establishing a court system goal. Thereafter support is garnered from interest groups including the bar, the law enforcement community, and academic experts. Along with preparing press releases and op-ed pieces, and conducting public meetings, the Judicial Branch provides the Legislature with data, supporting documentation and reasons for positions taken by the Department on legislation.

The Chief Justice is involved in legislative relations by delivering a biennial state of the judiciary address, by reviewing and approving the legislative package prepared by the external affairs director and sanctioned by the Chief Court Administrator, and by discussing the budget with the Appropriations Committee. Mechanisms are in place within the judicial branch for chief administrative judges, staff of the Office of Court Administration, judges and court employees to raise matters for legislative consideration. In relations with the executive and legislative branches, the Department has taken the view that "judicial independence does not require judicial isolation from the myriad of public policy concerns that impact the capacity of the Judicial Department to perform its own mission."

The building of a cooperative and trusting relationship is manifest not only in the drug control legislation discussed here but in decisions about the distribution of federal funds. The Connecticut Narcotics Enforcement and Crime Control Committee on which the Chief Court Administrator sits is an executive branch body under the Office of Policy and Management (OPM). The committee examines the National Drug

Control Strategy and Connecticut statutes and policies and determines how to spend available federal funds which are channeled through the OPM.

Judicial Department program requests for a share of Federal Anti-Drug Abuse Act funds are submitted to OPM which works closely with the Office of the Chief Court Administrator and other parts of the criminal justice system to select projects helpful to the entire state. The legislature is regularly appraised of efforts to obtain federal monies, including funds from the State Justice Institute.

Relations between the Judicial Department and the OPM are good, in part, because of personal relationships but also because the courts are a ready and reliable source of expertise and statistical information. The reasoned approach of the courts and of other grant applicants has resulted in a fair distribution of federal funds. While many agencies and departments apply for money, there has been a successful balance of demands. Courts seeking judges recognize that counterpart public defenders, prosecutors, police, probation officers, treatment providers, and corrections officials will be needed. The participants in the Connecticut criminal justice grant request process see themselves and their responsibilities in the context of the state-wide system. Cooperation and avoidance of imbalance explains Connecticut's success in securing and using federal monies in the war on drugs.

New Jersey

The experience of the New Jersey court system in the current plague of drug cases is marked by thorough planning, innovation, and diligence.¹⁴ It is also marked by skyrocketing demand for court services and dwindling financial resources--state and federal. The clash between strong effort and pressing demand makes the New Jersey experience worthy of examination.

New Jersey's willingness to confront caseload and caseflow demands was notable and nationally recognized throughout the 1980's. Jurisdictions around the country, indeed around the world, looked to the state for models of innovative practice in most areas of court administration.

In the early 1980's, the Chief Justice Robert Wilentz and Administrative Director Robert Lipscher spearheaded a commitment to a statewide speedy trial effort and criminal justice coordinating committees at both the state and the vicinage level. Charged with overseeing dramatic efforts to reduce pretrial delay, establishing innovative programs, and evaluating programs for replication, the statewide body and the local counterparts became leaders in caseflow management theory and practice.

The 1980 Judicial Conference on Speedy Trial was designed to develop a positive approach among judges and court personnel faced with high case volumes and the need to expedite the movement of cases. The Conference sought to overcome deep pessimism about the ability of the judiciary to extricate itself from deep backlogs and delays. The Conference established an action agenda and long term strategies under affirmative judicial leadership. Key is a management focus and openness to local ideas. By involving all elements of the criminal justice system in local planning

¹⁴ Information contained in this report was derived from meetings and telephone conversations with Robert D. Lipscher, Director, Administrative Office of the Courts and John McCarthy, Assistant Director, Criminal Division, Administrative Office of the Courts and Samuel D. Conti between September 17 and 26, 1990.

groups and by coordinating those efforts at the statewide level under the personal leadership of the Chief Justice, the Conference established a new management culture in the state.

Hard work and planning paid off. The time from arrest to disposition of indictment statewide dropped, 60% on average, from 12 months to 5 months. The success would have been even more marked had the statistics included disposition time from arrest for all indictable offenses because in New Jersey indictments were returned within two months and prosecutors, acting under streamlined court rules, were disposing of 50% of indictable offenses by pretrial intervention, remand, or dismissal. Today in contrast, the two month period to indictment has grown to slightly more than three months statewide, while Essex County (Newark) now requires about 11 months for bail cases and between four and five months for jail cases to reach indictment.

Follow through was exemplified in the mid-1980's by continuous technical assistance, consultation and visitation. These efforts were conducted on a group basis by a visitation team which included a judge, an Administrative Office of the Courts staff member, and a representative of the Attorney General's Division of Criminal Justice. This team traveled throughout the state for months discussing and imparting information on speedy trial techniques. The visits were intended to learn about local progress, to get people involved, to show state level interest, and to develop a consultative relationship by engaging prosecutors, public defenders and probation officers in the court administrative emphasis on management.

The annual New Jersey Judicial Conference in 1986 was again devoted to speedy trial. It emphasized recommitment to the goals established in 1980 and quality performance. Whereas the early efforts encouraged local innovation under general

planning guidelines established and reviewed by state level leaders, the mid-80's Conference sought to gain acceptance of the best programs for state-wide adoption.

By this time pilot projects had demonstrated that judicial productivity and quality could be increased by the use of teams of court personnel to support judges. Trained case coordinators and case managers working with case management staff members in prosecutor's and public defender's offices sped the movement of cases, tracked their location, resolved scheduling conflicts, and moved cases toward disposition. Reliance on teams had several consequences in addition to better control of case movement--improved quality, greater participation by court support staff members raised the level of job satisfaction and yielded higher productivity, programs were suggested and developed by staff members who had an investment in outcomes, and cooperative endeavors pointed up the value of working closely with others involved in the criminal justice process. The state-wide spread of innovations was one of the goals of the 1986 Conference and the use of teams provide a foundation of improved case processing in the upcoming decade.

The speedy trial monies began to be augmented in 1984 by Federal Justice Assistance Act funds, with match, totaling \$1,300,000. The federal source provided \$2,500,000 annually until the program was curtailed in 1987. The dry-up of this source coincided with the effective date, in mid-1987, of the New Jersey Comprehensive Drug Reform Act and the first stirring of the current drug problem.

By mid-decade the Speedy Trial Committee, chaired by the Chief Justice and including the Attorney General, Public Defender, assignment judges, county prosecutors, and leaders from the State Police and other leaders of the criminal justice system could survey a system moving quickly to meet speedy trial guidelines. As early as 1983, the Legislature, aware of the progress that had been made without additional funding, gave an added boost to the effort by creating a speedy trial fund

with a \$500,000 appropriation. Counties were encouraged to fashion new approaches to case management including central judicial processing and employment of case management professionals. By 1985 and until 1990 this legislatively provided fund was set at \$1,250,000.

The speedy trial monies were augmented in 1984 by Federal Justice Assistance Act funds, with match, totaling \$1,400,000. The federal and state sources provided \$2,500,000 a year basically for criminal justice operational purposes at the county level until the program was curtailed in 1987. The dry-up of this source coincided with the effective date, in mid-1987, of the New Jersey Comprehensive Drug Reform Act and the first stirring of expanded law enforcement efforts to deal with the drug problem.

Prior to 1987 drug cases did not represent an unusual burden in New Jersey and were handled within the existing speedy trial program. Even the perennial problem of an insufficient number of assistant public defenders had been addressed with the addition of 39 to their ranks in 1987. Changes began to be felt with the implementation of the Comprehensive Drug Reform Act. New Jersey's prosecutorial blueprint (including demand reduction, zero tolerance, drug-free school zones, mandatory sentencing, and use of forfeiture funds for law enforcement) was a precursor of programs later adopted throughout the nation. Concerted efforts through the mid-80's had allowed 17 of the State's 21 counties to meet speedy trial goals.

Planning for the use of federal drug monies was placed in the hands of the Attorney General who created, under his control, a new granting agency to dispense approximately \$4 million in 1987. The funding gates opened to county narcotics task forces, prosecutor's offices and police departments. The judiciary received no funds from this new federal source. Arrests mounted as did prosecutions. Improvements in the process occasioned by better management accompanying speedy trial allowed the courts to keep pace.

When a second fund of \$4 million became available for the criminal justice system in 1988, the monies still flowed to organizations other than the courts. The courts turned to management approaches first seen in the civil courts--the adaption of differentiated case management (DCM) as an early case management tool to improve effectiveness and productivity. Although \$630,000 was granted to the judicial branch, the amount awarded to law enforcement continued at much higher levels. With case processing time from arrest to disposition averaging 5-6 months statewide, the courts appeared to be weathering the storm.

In early 1988 the first wave of drug arrest cases entered the system. The Chief Justice acted to meet the surge. Whereas the first phase of Anti-Drug Abuse Act monies had increased the law enforcement response, the second phase would bolster the courts. In planning for the use of about \$4 million in 1989 federal drug monies, 40% would be allocated to case processing. At a December 1988 meeting of the Speedy Trial Coordinating Committee, the Chief Justice set forth a stop gap plan to meet the emergency. Thereafter, 20 judges were assigned from civil to criminal for three months. Costs, other than for judges, of the temporary program were to be paid from federal funds. Using 1988 federal drug funds 40 public defender attorneys were hired in May 1989 as part of the stop-gap measure to appear before the 20 reassigned judges to dispose of cases. In a further cost saving measure, the Public Defender began hiring additional full time assistants rather than using contractual counsel in conflict situations. The stop-gap assignment plan was used again in the Fall, 1989 with federal drug funds and speedy trial monies. However, the stop-gap creation of drug courts, which although a visible response to caseload pressure, left judges assigned to those courts facing a surge of new cases rather than the ordinary mix of cases and left the system calling for new resources.

By this time the state's economy began to fail and appropriations to the judiciary declined. The judiciary turned to federal grant funds to keep in pace with mounting volume and lengthening delays. By the time the federal fiscal year 1990 funds became available the judiciary was able to gain consensus on the pressing need of the courts. One-half of the \$14 million federal fund to the State would be for the permanent program of court case processing, with a commitment from executive branch officials that monies for continuation needs would be available during 1991. Although not suitable for the long term, the 1989 stop-gap response eased the crisis.

In view of the financial strains in New Jersey government, the Chief Justice named a blue ribbon group--the Special Committee to Assess Criminal Division Needs--to recommend, among other things, where an additional \$7 million could be found to enable the courts to operate without needing stop-gap deployments of civil resources to the criminal caseload. After surveying earlier reports, conducting public hearings, and examining the problems caused by increased drug cases the special committee made its report. Included among its findings and recommendations were:

- 1) An imbalance of resources exists. Over the two preceding years there had been a 30% increase in the number of indictments returned; a 30% increase in assistant prosecutors; a 15% increase in the number of judges; but no increase in the number of assistant public defenders. As a result, productivity fell. An infusion of public defenders to meet the current complement of judges could be achieved by applying \$2 million from the \$7 million federal drug fund. There should be no more judges added until the public defenders were appointed. This "backfill program" added 22 assistant public defenders and a like number of public defender support staff members.

- 2) Provide additional judges. The committee estimated that by adding 17 new judges the calendar could be cleared and the backlog reduced in two years. This

estimate was based on a productivity formula in which each judge would be expected to dispose of 450 indictments per year. This estimate may be low since it was calculated by dividing the number of indictments disposed each year by the number of full time equivalent judges, without adjusting for losses in productivity caused by lack of productivity or failures to adopt the most efficient procedures statewide.

The suggested increase of 17 new judges was projected using an increase in average overall productivity from 450 to 500 cases per year.

3) Increase productivity by the "backfill program" requiring additional public defender resources and adopt proven efficiency techniques, e.g., central judicial processing, developed over the past decade.

Plans developed from this report in the late spring 1990 looked to federal funds for public defenders, prosecutors, and court support staff to work with nine of 17 judges to be transferred from civil to criminal on October 1, 1990. Financial difficulties in the state prompt the Governor to decline identifying funds for support staff for the additional eight judges from civil assignments. Although the need to process drug cases is pressing, the Court determines that assigning judges without necessary support personnel will create further problems. Since no federal or state funds are available the transfer of eight judges will be deferred until July 1, 1991 so that state and local governments have time to plan for necessary budget adjustments.

Budget cutbacks and case volume increases have caused adjustments in short term court plans. A Supreme Court Drug Task Force, created early in 1990, reported in 1991 with a comprehensive drug strategy. This report and the 1990 Judicial Conference capstoned the 1980's thrust for management and new initiatives. In the new decade, probation will increasingly play a key part in case processing. To make sanctions in the war on drugs effective there is a need for assessment centers and treatment programs that will enable the courts to direct offenders to treatment as

early as possible and to impose stiff penalties if a trust is broken. Probation officers serving as case managers are vital team members for achieving these goals and new approaches to calendar management.

The lessons of the 1980's made it clear that the internal management improvements in the judicial branch and the new cohesiveness within the court family must, in the '90's, be matched by coordinating mechanisms among the three branches at the state and local level. Greater intergovernmental cooperation is needed for successful implementation.

The 1980's witnessed a cultural change with the judiciary taking on a leadership role in case management and local planning efforts. The information and data now available for statewide research and planning should permit movement toward a uniform but adaptable model which will be needed for processing the unprecedented volume of drug cases expected in the 1990's. Part of this planning will include making the judicial branch more effective in gaining federal and state funds and in establishing and maintaining relationships with other branches and local officials so that courts participate fully in new initiatives.

The common thread running through these case delay reduction and drug control activities in New Jersey has been diligent, long term cooperation of the Judiciary with the Executive and Legislative Branches. Over ten years, three major state-wide conferences have been involving hundreds of people under judicial branch leadership. Planning and coordination over many years have shaped a common direction and established consensus even in a state with strong home rule traditions.

The plans which have been developed and refined demonstrate the long term staying power of major commitments of the judiciary. Adjustments in direction and emphasis have occurred over the decade. For example, early in the 1980's prosecutors

generally took the position that pre-indictment involvement in case processing of cases without court participation is unheard of in the state.

The former fragmentation of the criminal justice system has largely been abandoned; dialogues have been entered and established relationships have lasted through changes in state and local leadership. Money to combat drug cases has been received because the criminal justice community has planned jointly and cooperatively. Although some difficulties remain there have been major and sustained effort and follow through over time.

The demands of the future will not be insignificant. Courts are being flooded by street arrests and more money is needed for drug assessment and treatment centers. Although public defenders and local law enforcement and probation and corrections agencies are getting more funding, imbalances still exist within the system. The careful planning and cooperation that have been present over the past decade must continue if the system is to maintain its health and balance.

Conclusion

This overview of planning and experiences in four states demonstrates the relationships which must be established both to gain federal and state funds and to foster cooperation within the justice system. Adequate resources enable the courts to accomplish their mission through effective relations with funding authorities and other governmental partners. Alabama, Arizona, Connecticut, and New Jersey share three characteristics:

- 1) planning and interaction with other branches and levels of government;
- 2) recognition of the needs of other parts of the system and balance in the system--financially and programmatically; and
- 3) success in obtaining federal and state and local funds.

Courts can assess their performance in each of these areas, and, by making needed planning and operating adjustments, receive more funding while maintaining judicial independence.

MANAGING DRUG CASES DURING THE PRETRIAL PHASE*

***Acknowledgement:** Staff drew upon the work and suggestions of three individuals who are nationally recognized for their work in this area: Jay Carver, Director, District of Columbia Pretrial Services Agency; D. Alan Henry, Director, Pretrial Services Resource Center; John Goldkamp, Professor of Criminal Justice, Temple University and President, Crime and Justice Research Institute.

MANAGING DRUG CASES DURING THE PRETRIAL PHASE*

Introduction

This paper highlights projects and initiatives being undertaken by judicial systems and pre-trial agencies in response to drug cases in the pre-trial phases and the broader war on drugs. The distinguishing feature of the innovative projects and initiatives in this section is that they operate during or as a result of decisions made during the pretrial phase.

The Washington, D.C. pretrial services drug testing program serves three purposes: (1) to identify those defendants who are engaged in substance abuse because such information is relevant to a decision on pre-trial release; (2) to direct a drug abusing defendant for early treatment during the pre-trial period; and (3) to assist the courts in monitoring criminal defendants to ensure that they comply with conditions of release including appearing as required, and refraining from further criminal activity. The second highlighted program, Treatment Alternatives to Special Clients (formerly Treatment Alternatives to Street Crimes) (TASC), uses pretrial intervention to motivate treatment cooperation by the substance abuser.

Last, because key case management decisions are made during the pretrial phase, the Comprehensive Adjudication of Drug Arrestees (CADA) project is detailed to emphasize needed coordination between the court, pretrial services, crime laboratories, prosecuting attorneys, public defenders, probation and jails.

In looking at pretrial service agencies (PSAs), we have relied primarily on the experience of the District of Columbia PSA (DCPSA). The DCPSA has served as a model for other jurisdictions seeking to establish their own PSA and programs to be

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used in the pre-trial period. Seven PSAs, including the D.C. agency, and subsequent evaluations of them, have been funded by the Bureau of Justice Assistance (BJA) and the National Institute of Justice (NIJ). Because cost is often a significant factor in establishing pretrial services drug testing and monitoring programs, the reader is referred to a BJA monograph, Estimating the Costs for Drug Testing for a Pretrial Services Program.¹

This briefing paper is not the result of a definitive study of all issues pertaining to the pretrial response to the presence or influence of substance abuse. It is, however, a review of recent and ongoing efforts to institute pretrial programs and practices that contribute to the effective management and control of pending drug and drug-related cases.

Pretrial Decisionmaking

One of the most important decisions to be made during the pretrial phase is whether the defendant will be released or held in custody. During the pretrial period caseload managers also determine the track cases will be placed on. Decisions made will affect often overcrowded jails, interview and investigation routines of defense counsel, and court dockets that have become clogged as a result of the influx of drug-related cases. Among the issues raised are: What impact does drug involvement have on the pre-trial release decision? What alternatives are available for processing drug and drug-related cases?

The Release Decision

The Washington, D.C. Pretrial Services Agency helps the court in determining appropriate release conditions for defendants. By presenting background information

¹ Bureau of Justice Assistance, Estimating the Costs for Drug Testing for a Pretrial Services Program, June, 1989.

and, ideally, applying a risk assessment to each case, the agency assists the court in reaching an informed decision. Since drug use is known to be associated with higher levels of non-appearance at court proceedings and rearrests for new offenses, it is an appropriate piece of information to be considered in a recommendation (by the pretrial services agency) and in the setting of release conditions by the court. Drug testing and monitoring during supervised release times thus become important tools during the pretrial period.

Drug testing and treatment programs provide additional options which judges can use for defendants in the period from release until disposition of the case. When implemented properly, drug monitoring has the potential to increase release rates, thereby reducing jail overcrowding, to enable defendants to assist in readying their defense, and to decrease instances of pretrial misconduct, as defined by failures to appear or rearrests. The release option should be fashioned to match the degree of risk that a breach of conditions of release may occur. The release decision is usually made with limited information collected within a short time after arrest.² Judges at this point are primarily concerned with whether defendants will appear for court proceedings and, additionally, whether they pose a threat to public safety.

Pretrial Services Agencies

As a result of bail reform efforts in the 1960s and 1970s, pretrial release programs emerged as an alternative to the commercial bail system³ The DCPSA began in 1963 as an experimental project and became a permanent, publicly funded agency in 1967. The DCPSA: (1) interviews all arrestees to determine their eligibility

² See, "Identifying Drug Users and Monitoring Them During Conditional Release," NIJ, 1988.

³ For an historical review of the bail reform movement, see "Pretrial Release Program Options," National Institute of Justice, June, 1984.

for pretrial release; (2) makes recommendations to the court on appropriate terms for pretrial release in all criminal cases; and (3) monitors compliance with pretrial release conditions for all defendants, except those released on surety bond.

Urine testing technology was first routinely used by DCPSA in 1984 under a federally sponsored pilot project. In 1987, the agency extended its drug testing to juvenile cases. The DCPSA performs drug tests under three conditions: initial lockup, under conditional release, and by special court order. In 1989, the DCPSA did 34,830 prisoner interviews, sent out 47,572 court appointment letters, completed 18,388 initial lockup drug tests, and 21,361 continuous monitoring drug tests. The agency operates in the Federal and Superior courts, has a staff of 90, and a budget of \$3.5 million. It is an independent agency that reports to a board composed of judges from four courts and individuals appointed by the mayor of the District of Columbia. The agency processes an average of 90 cases daily, interviewing everyone who is charged with a criminal violation.

In 1987, the Bureau of Justice Assistance contracted with the Pretrial Services Resource Center (PSRC) to identify other pretrial services programs that might serve as demonstration projects to be modeled after the DCPSA. Six jurisdictions received funding to implement pretrial drug testing: Pima County, Arizona; Multnomah County, Oregon; New Castle County, Delaware; Prince George's County, Maryland; Milwaukee County, Wisconsin; and Maricopa County, Arizona. After two years of operation, two jurisdictions, Pima County and Multnomah County, amended their drug testing policy. Choosing to focus on monitoring persons released pending trial, these two counties discontinued their pre-appearance testing programs.

The District of Columbia Experience

The DCPSA provides District of Columbia judges with a written report which includes the results of a urine drug test administered following arrest and an

interview of the defendant. The agency tests for five drugs (PCP, opiates [heroin], cocaine, methadone, and amphetamines). This information is used only for determining release options. Although defendants have the right to refuse to take the test they usually agree to do so because they realize that the test results are required for nonfinancial release. In making the release decision, drug use is considered along with the defendant's residence status, family, employment, ties to the community, prior criminal history, and current status of pending charges, probation, and parole. The agency has compiled a list of 25 factors to assess the likelihood of appearance and 23 intended to measure the degree of danger to the community. This information is provided to the judicial officer who decides whether conditional release is appropriate, and the terms of release.

In the District of Columbia, judges routinely require continued drug testing and monitoring as a condition of release. By appearing weekly for the drug test, the defendant also keeps in contact with the criminal justice system through the DCPSA. In addition to administering the test, the DCPSA reminds the defendant of scheduled appointments and court dates. DCPSA monitoring of drug-involved defendants through the testing program provides a valuable non-financial condition of release. The DCPSA does not recommend a money bond for drug-involved defendants because of the lack of a supervision mechanism to monitor for continued drug use.

DCPSA also refers defendants to treatment programs, if they asked for help. In 1989, the DCPSA referred 3,119 defendants to treatment programs. This alternative is usually reserved for the heavily dependent due to the shortage of quality treatment options. Most defendants prefer to appear for periodic drug testing. However, failure to pass the periodic tests can result in referral to a treatment center. Other alternatives include third party custody arrangements.

The DCPSA maintains automated records of the defendant's drug test history and reports to the court those defendants who fail to appear for testing. Sanctions are imposed which may include a more frequent testing schedule or, after a hearing before the releasing judge, revocation of release, and incarceration.

In this early contact with the criminal justice system, the drug-involved defendant receives a powerful incentive to curtail drug use. "Pretrial Services studies show that while 43 percent of the tests ordered for those on pretrial release in 1988 came up positive for at least one of the five drugs, more than 700 people who were drug users when first arrested went through the entire series of court-ordered post-arrest tests without another positive drug finding."⁴ The DCPSA has had an excellent performance record: 97 percent of the defendants participating in the drug testing and monitoring program show up for scheduled dates.

Judges comment favorably about the work of the agency. One of the judges stated, "The goal is to imbue in [defendants] the sense that they are responsible for their own behavior so I've been one of its biggest boosters." Another has said, "For a lot of [defendants], it is the first time anyone has required them to stay drug-free." A former director of the agency, now a judge, stated, "It makes sense to make an intelligent decision as early as possible and on the best information possible, to reduce the cost in human and fiscal terms. And that's what [the agency] makes possible."⁵

Drug Testing: Challenges, Issues, and Implications

In "To Jail Or Not To Jail," the author notes that of the strategies to relieve jail overcrowding the most successful innovation at intake has been the use of pretrial

⁴ "D.C. Pretrial Agency is a Small but Vital Cog in Wheels of Justice," The Washington Post, May 28, 1989.

⁵ Id.

release services to collect pertinent information concerning the arrestees and to evaluate their eligibility for conditional release.⁶

The Governor's Select Committee on the Impact of Drugs on Crime, Education, and Social Welfare in Minnesota recommended that drug testing should be a condition of probation and pretrial release for all offenders with a history of drug abuse. Probation officers say that testing will provide them with a powerful means of monitoring the behavior of probationers. The Minnesota plan urges that, whenever possible, all drug testing should be paid for by the probationers or by the persons free on bail. Refusal to submit to a test should constitute a violation of the conditions of bail or probation. The plan recommends that the Department of Corrections develop a protocol to assure accurate and uniform testing⁷.

John S. Goldkamp, President of the Crime and Justice Research Institute, points to two areas that are in need of strategies with respect to pretrial decisionmaking: (1) the availability and use of a full range of release alternatives for defendants awaiting trial to minimize the likelihood of flight or new offenses, and (2) agreement on the criteria (by defendant or by case attributes) that should guide selection of the most effective release options considering the relevant goals⁸. Most courts have failed to develop either a satisfactory array of release options to handle the different kinds of risk posed by defendants or explicit criteria to guide the pretrial release decisions of the judges.

Goldkamp points to the need for resolution of several issues relating to drug testing and its implications: Should we attempt to reduce drug use among the

⁶ Barbara Flicker, American Bar Association Journal, February, 1990.

⁷ The Governor's Select Committee on the Impact of Drugs on Crime, Education and Social Welfare, A Plan of Action for Minnesota, October, 1989.

⁸ Correspondence from John S. Goldkamp to the National Center for State Courts.

defendant population by establishing massive treatment programs? Should we implement programs designed to deter or restrain drug use (through use of drug testing, supervised release, "user" fees, punitive sanctions, detention of users/addicts, etc.)? Should all defendants who test positively be restrained or placed in programs for drug treatment or urine monitoring? Is it appropriate for courts to take on the burdens of the larger society to eliminate drug use among defendants whether or not it plays a role in the likelihood of new offenses or flight during pretrial release? More fully developed release choices are a high priority and research showing the success of particular categories of defendants is also a pressing need.

In addressing legal issues, Jay Carver, Director of the DCPSA, states that most of the legal issues in pre-trial drug testing programs fall into three categories:

- . The constitutionality of collecting urine samples;
- . Challenges to the reliability of the technology;
- . Challenges based on the chain of custody.

The agency has been successful in avoiding challenges in the first category. In compliance with statutory guidelines, drug test information is used only for determining appropriate conditions of release and is not admissible on the issue of guilt. A response to challenges of the reliability of the testing procedure or relating to chain of custody has been required of the DCPSA. The program has withstood every legal challenge on reliability grounds and its information has never been invalidated on the grounds of inadequate chain of custody procedures.

Treatment Alternatives to Special Clients (TASC)

Treatment Alternative to Special Clients (formerly Treatment Alternatives to Street Crime) (TASC) was initiated over 15 years ago by the federal government to examine the problems of drug abuse and criminal behavior. TASC identifies, assesses, and refers appropriate drug-dependent offenders accused or convicted of nonviolent

crimes to community-based substance abuse treatment programs as alternatives or supplements to justice system sanctions. The local community determines those in greatest need of TASC services and establishes eligibility and success-failure criteria for the program. The offender's drug abstinence, employment and social-personal functioning are monitored. TASC reports treatment results back to the referring agency. Clients who violate conditions of their agreement with TASC are returned for traditional processing. TASC combines legal sanctions with justice system dispositions, including deferred prosecution, community-based sentencing, diversion, pretrial intervention, probation, and parole supervision. More than 125 TASC sites operate in 25 states. Numerous evaluations have reported TASC's effectiveness in reducing recidivism, improving treatment participation, and providing a cost-effective alternative to incarceration⁹.

Pre-Trial Processing of Drug Cases

National Center for State Courts research strongly suggests that courts having difficulty managing their non-drug caseloads also have difficulty handling increases in drug-related cases. Courts applying mandatory sentences in drug and drug-related cases, especially possession of relatively small amounts of controlled dangerous substances, generally experience fewer pleas and consequently more demands for trial.¹⁰

One important tool for expediting case processing and remedial treatment of first offenders is diversion at the pretrial stage. Diversion is used to move those defendants out of the formal adjudicatory system who do not pose a serious risk to the public and who could benefit from more lenient and less stigmatizing treatment by the

⁹ For more information, see "Treatment Alternative to Street Crime (TASC)," BJA, October, 1989.

¹⁰ See, John A. Goerdt and John A. Martin, "The Impact of Drug Cases on Case Processing in Urban Trial Courts," State Court Journal, National Center for State Courts, Vol. 13, Number 4, Fall 1989 pp.4-12.

criminal justice system. An example of diversion as applied to drug cases can be found in Dade County, Florida, where all defendants arrested on felony drug possession charges (charges that could and often do result in state prison sentences) are processed by a "drug court" and given a chance to participate in an extensive program of drug treatment. This drug court is focused on treatment rather than the speedy adjudication of drug cases. Defendants with felony possession (and a maximum of three misdemeanor convictions) may agree to participate in a several phase treatment program that begins with simple goals (detoxification and attendance at counseling, etc.) and ends with a literacy, educational and vocational needs assessment, and placement into part-time jobs. Defendants are brought back to the drug court periodically (at two week, one month, two month intervals) depending on the progress reported to the judge by the treatment staff. Defendants may complete the program in a year or more, or in a month or two in extraordinary cases, depending on their progress. The option to go to trial is retained by the state and by the participant.

The Dade County program is new and has not been evaluated, but initial results are promising. From the case management perspective, a sizeable number of cases are kept out of formal processing, at least temporarily. The Miami diversion program includes a great deal of supervision so public safety concerns are kept to a minimum. Goldkamp suggests that a redesigned approach to diversion of drug-related cases may be an area offering untapped promise.¹¹

Comprehensive Adjudication of Drug Arrestees (CADA)

Four sites are participating in the Comprehensive Adjudication of Drug Arrestees program funded by BJA: the State of Rhode Island; Santa Clara County, California; New Orleans, Louisiana; and Flint, Michigan . A major element of all of

¹¹ See, infra. note 8.

these projects is pre-trial coordination of the court, pretrial services, crime laboratory, prosecuting attorney, public defender, probation and jails. Objectives of two of the sites that originate in the pretrial phase include:

***Flint, Michigan**

- . Improve the turnaround time of the crime lab;
- . "Fast track" drug arrestees;
- . Provide intensive monitoring of arrestees prior to post-trial through additional pretrial services, probation and jail resources;
- . Complete a substance abuse assessment by an interviewer within 48 hours of arrest;
- . Use sophisticated, electronic and phone monitoring to increase the number of arrestees released from jail;
- . Pursue treatment innovations for drug offenders, including programs in the new jail, that will reduce recidivism and drug use by offenders.

***Rhode Island**

- . Reduce delay between the bail hearing and screening, and delay from screening to arraignment;
- . Reduce the number of defendants in jail by increasing the capacity of the system to review these cases and divert appropriate defendants to treatment;
- . Develop more efficient screening and charging procedures;
- . Increase the capacity of the crime laboratory to process drug evidence;
- . Reduce the delay between arraignment and disposition;
- . Establish case tracking systems in various agencies to process and monitor cases more effectively.¹²

¹² See, Bureau of Justice Assistance, FY 1988 Report on Drug Control, (U.S. Department of Justice, Office of Justice Programs) p.78.

A detailed report on the several CADA programs is available from the National Center for State Courts.¹³

Resources, Projects and Studies

In addition to the providing funding for the establishment of drug testing in pretrial services agencies, BJA has set aside funding to evaluate demonstration sites; those evaluations were completed by mid-summer 1990. Three different groups are performing the evaluations, with a coordinating role assigned to the Criminal Justice Research Institute. These evaluations will complement earlier work done by Toborg and Associates in evaluating the District of Columbia Pretrial Drug Testing Program.

The Pretrial Services Resource Center published a six-part series in the Pretrial Reporter discussing experiences of jurisdictions in the planning of their drug testing programs. The reports, published between October 1988 and August 1989, covered implementation problems, measures of the impact of drug testing, and legal issues.

Other PSRC studies and reports that became available in mid-1990 include:

- . Program Brief for Pretrial Drug Testing. Outline of specific projects that have been implemented in a limited fashion and that might be picked up by a large number of jurisdictions.
- . An Implementation Guide for Pretrial Drug Testing. Based on the experiencing of existing pretrial drug testing programs, a "How To" manual for jurisdictions that have decided to start a pretrial drug testing program.
- . National Standards for Pretrial Drug Testing. The PSRC issued a sub-contract to the National Association of Pretrial Services Agencies to develop national standards for testing that might complement existing standards on pretrial release practices. (BJA has supported the development of parallel standards for post-conviction drug testing to be developed by the American Probation and Parole Association.)

¹³ See, Thomas A. Henderson, et al., "A Creative Approach to Comprehensive Adjudication of Drug Arrestees (CADA)." Final Report: A Report to the Pretrial Services Resource Center, National Center for State Courts, July 31, 1990.

Under the Enhanced Pretrial Services Project funded by BJA, the PSRC identifies "enhanced" pretrial programs across the country and the National Association of Pretrial Service Agencies' standards. BJA also set aside funding to allow for "hosted" visits from less developed pretrial services jurisdictions to the enhanced sites.

The DCPSA has accumulated a noteworthy database on pre-trial release. It has extensive drug use information that has been used by city government planning officials in plotting and predicting trends and the implications for treatment and prevention resources. The DCPSA database contains demographic information on drug users and has the potential to expand into other areas of drug-related research.

Finally, work by the Washington Project Office of the National Center for State Courts provides courts around the nation with specific information on planning, operation and evaluation of drug courts during the pre-trial process. NCSC staff members are available to guide court policy-makers to more extensive research sources for the development or improvement of their pre-trial programs. State and local courts did not reinvent the wheel. Research results and assistance are at hand for any court looking for innovative and proven methods for moving drug cases during the pre-trial phase of the criminal case process.

**IMPROVED MANAGEMENT OF DRUG CASES
WITHOUT ADDITIONAL RESOURCES**

IMPROVED MANAGEMENT OF DRUG CASES WITHOUT ADDITIONAL RESOURCES*

Fair, effective, and efficient movement of drug and drug related cases are not unlike those for moving any category of cases and streamlining processes can be adopted without significant additional resources.¹ However, if the most recent data on the surge of drug cases prove to be reliable, more efficient procedures designed to meet caseload demands will not alone suffice. More resources are needed to meet caseload demands.

Some features of drug cases, notably the extraordinarily high volume, the routine need for cooperation with testing laboratories and the desire to secure treatment for alleged offenders as soon as possible, introduce factors not typically encountered in other criminal cases, but these do not call for radical departure from established procedures and standards. The effects of resources available, in all but the most seriously impacted courts, can be increased by sound administrative techniques² including coordinating committees, specialization, team assignments, differentiated case management, and automated case tracking.

Defining the Need: The First Step

Before examining each of these case management opportunities, the distinguishing features of the drug crisis should be discussed. The very dimensions of

¹ See, John A. Goerdt and John Martin, "The Impact of Drug Cases on Case Processing in Urban Trial Courts," State Court Journal, (National Center for State Courts, Volume 13, Number 4, Fall 1989). p. 4.

² See, "Report of the [Ohio] Supreme Court Committee to Study the Impact of Substance Abuse on the Courts," Justice Craig Wright, Chairman, (Columbus, Ohio, 1990).

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the crisis facing our nation are unclear. In most jurisdictions statistical routines are not yet in place, or are too new to give reliable information on the volume of drug and drug related matters.³ Working with law enforcement agencies, court managers should examine police arrest data and projections to make predictions of the likely volume of cases which may come before the courts. Statistical data from prosecutors should also be reviewed to determine what percentage of cases the state's attorney, as gatekeeper of the court's criminal caseload, will typically screen out before court involvement. Concurrent steps should be taken to determine statistically the impact of drugs on other cases (e.g., family matters) before the courts.

In discussing the consequences of the establishment in 1988 of Tactical Narcotics Teams (TNT's) by then, New York Police Commissioner Benjamin Ward, Judge Robert Keating has noted that 7000 felony indictments in New York City had risen to 27,000 in 1989. He stated that New York State estimates that there are 250,000 serious narcotics cases in the state and continued that the drug caseload is manageable by the courts only because the city has not been able to replace police officers who have been lost from the ranks. Compounding the problems associated with volume, according to Judge Keating the courts are "perceived to be ineffective ... separate from the community with which they are involved. The family [of offenders] and community representatives are not coming to courts [to see the outcome of

³ Dr. Carl G. Leukefeld, Deputy Director, Clinical Research, National Institute of Drug Abuse (NIDA), has reported, citing Drug Use Forecast (DUF) data, that in 22 cities about 60% of the persons who contact the criminal justice system have been found to have been using a drug other than alcohol at the time of arrest. According to Dr. Leukefeld, this information, which is validated by urinalysis, is not significantly different than a 50% rate shown in research done in 1971. Current information also discloses that 43% of state prison inmates reported daily drug use within a month of committing their offense; 35% said they were under the influence of drugs at the time of the offense. Extracted from "Session 18 - The Drug Problem and the Courts: Future Demands, Scarce Resources, Innovative Approaches" (May 20, 1990), at the "Future and the Courts Conference," San Antonio, Texas, May 18-22, 1990. Hereafter, "The Future and the Courts Conference."

proceedings because] the average citizen perceives our system as monolithic ... not terribly responsive They don't trust it and we are not terribly involved."⁴

Not only are numerical indicators lacking, but clear definitions of what constitutes a drug case have not been agreed upon. This, it seems, should be a first order of business. Are drug cases simply those where individuals are exposed to criminal sanctions for the possession, sale, manufacture, and use of controlled dangerous substances? Given the potency of today's drugs, is it useful any longer to speak of users as distinct from addicts, or is it more helpful to speak of drug abusing and dependent individuals? Do drug cases not include those criminal activities engaged in to secure money for purchase of drugs, for the laundering of drug money, for the corruption of public officials? Are the abused or destitute spouses, children and parents of drug abusers appearing in our nation's courts not drug cases? Can the sudden rise of wardships of unfortunate infants born of drug-crippled parents not be counted as drug cases? These, in total, without counting the drug related costs in workers' compensation contests or in the drain of the judges from already crushing domestic relations and civil case dockets, are sufficient for court leaders to declare that drug cases have reached crisis proportions.⁵

Most metropolitan courts, and many mid-sized, suburban, and rural courts are already hard-pressed to cope with cases now on their dockets. With more aggressive and better funded law enforcement, and without commensurate action in courts, defense, and corrections, this avalanche will bury us. Courts can neither run nor hide. Judicial branch leaders must rely on their reasoning and imaginative skills to confront the situations for they will not be abated without assertive action now. This paper

⁴ Extracted from recorded comments as a panelist at "The Future and the Courts Conference."

⁵ See companion briefing papers, "The Bureau of Justice Assistance Block Grant Program: A Fair Share for Courts," and "System Balance: Indigent Defense and the War on Drugs," for additional data on drug caseload increases.

strongly encourages action by judicial branch leaders particularly those in urban trial courts.

Aside from the size of the drug caseload, however that is defined, the nature of the cases is forcing courts to interact more consistently than in the past with agencies involved in the testing and treatment of drugs. Forensic laboratories, often operated by state police departments, are flooded with test requests. Deciding on the proper charge and preparing for Grand Jury proceedings are often the points in the process where the delays associated with drug testing are first met. Judicial branch support for more, and better equipped and staffed laboratories, is a first step. Access to regional laboratories and procedures for deposed testimony of forensic scientists in appropriate cases would speed the process. For Grand Jury proceedings consideration could be given to closed circuit video testimony from the laboratories. Assignment of a case management staff member to coordinate scheduling of forensic evidence testimony and evidence tracking would be helpful throughout the process. Participation of laboratory representatives on coordinating committees would be useful.

Treatment agencies are appearing at a rate insufficient to meet the demands of court placement. The medical and treatment communities have not yet found satisfactory means to disabuse drug addicts of their habits. "Drug abuse is a chronic, relapsing disorder and is not a quick fix."⁶ Until some pharmacological⁷ or medical treatment is found or until the craving to fill the hollowness in some people's lives is

⁶ Dr. Carl G. Leukefeld, extracted by the author from recorded comments as a panelist at "The Future and the Courts Conference."

⁷ Dr. Leukefeld has reported that courts make few (3-5%) referrals to methadone treatment. The National Institute of Drug Abuse Initiative in this area has been referred to by Time magazine, according to Dr. Leukefeld, as the Manhattan Project seeking a new pharmacological adjunct for treatment. Although courts do not generally accept methadone programs, direct referral to therapeutic communities is accepted. What are needed in Dr. Leukefeld's view are a bridge between the judicial system and treatment, a process for assessment, diagnosis and referral to treatment, and court enforcement of compliance by offenders with the treatment regimen. "The Future and the Courts Conference."

satisfied, society and the courts as the primary instrument for assigning offenders to treatment or separation by imprisonment, must find effective treatment sources. Elsewhere in these briefing papers are reports of the success achieved by acupuncture and the work of Treatment Alternatives for Special Clients (TASC).⁸ These and other innovative programs offer promise, but we have a long way to go to meet the existing and still rising need for programs. One way for the courts to identify effective programs is to invite program administrators to serve on advisory coordinating committees. Probation staff and other social service agencies directly available to the court system can be required to maintain liaison with drug treatment programs and to report to the court about operations and success rates.

Coordinating Committees

Drug case processing coordinating committees can be established in each court. These bodies, convened regularly by the court manager with the active support and participation of the presiding judge, would air problems and discuss the implication of new procedures. In the furthest extension of the use of this technique, Associate Chief Judge Herbert M. Klein, Circuit Court, Dade County (Miami, Florida) has been designated by Chief Judge Gerald Wetherington to serve, in effect as the "drug czar" for the county.⁹ Judge Klein has gained the respect and cooperation of all relevant participants in the drug war. Not only has he designed innovative programs, but he has identified useful programs elsewhere, notably the New York Lincoln Hospital Clinic acupuncture project, and established a like program in Miami.

⁸ See, the companion briefing paper, "Intermediate Punishment Options."

⁹ See, Herbert M. Klein, "Strategies for Action: Combating Drug and Alcohol Abuse in Dade County," contained in Conference Materials, 1989 Midwestern Regional Conference, National Center for State Courts, Overland Park, Kansas, October 26-27, 1989.

Coordinating committees have proved useful over many years in inaugurating programs, especially in automation efforts, where a high degree of cooperation and understanding is necessary. Involving the presiding judge as other than the convener and chair of the sessions is a tested means of spurring group interaction and relieving the judge of direct coordination responsibilities. Not only should these sessions improve the movement of drug cases, but they will provide a forum for the resolution of other pressing criminal justice problems.

Specialization and Team Management

In multi-judge courts with criminal divisions the designation of specialized "drug courts" has proven effective.¹⁰ The experience of Judge Michael Getty of the Circuit Court of Cook County (Chicago, Illinois) offers a clear example of the willingness of judicial leaders to assign judges and support staff to the expeditious movement of drug cases.¹¹ Although the body of law governing the adjudication of these cases is straightforward, the benefit of specialization is realized in the knowledge gained by the court of both treatment modalities and of the capacities of the personnel and agencies relied on in the disposition process. An additional benefit of specialization is seen in the substantial knowledge gained by the judge who can then educate other judges about drug cases as Judge Getty frequently does at the National Judicial College.

¹⁰ It could be argued that if 60-80% of criminal cases involve drugs, most courts hearing criminal matters are "drug courts." The designation remains useful, however, if only specified categories of drug offenders, i.e., addicts, occasional peddlers or predators, are brought before the court for specialized tracking, adjudication and dispositions.

¹¹ See, Jovonne Kidd, et al., Preliminary Program Description: Fast Track Case Processing of Adult Drug Offenders (Cook County, Illinois). (Springfield, Illinois, Administrative Office of the Illinois Courts, Series SR, Vol. 2, Number 31) August 1989. See also, Michael B. Getty, "Alternative Sentencing for the Alcohol/Drug Defendant." 14 Southern Illinois Law Journal 1 (Fall 1989), repeated in 2 Criminal Practice Law Review 3, (Spring 1990), p. 417.

Closely associated with specialization of judges for drug cases is the creation of specialized support staffs working as a team with the judge in tracking, monitoring and smoothing case progress. Configured as a team, support personnel are responsible for the total case.¹² Team pride and mutual support among team members combine to lessen instances where cases "fall between the desks." Furthermore, team members get to know about individual cases, and perhaps more important, they get to know officials from other agencies charged with responsibilities for their cases. Bureaucratic impediments can be overcome by personal relationships. Coordinated networks among teams from different agencies may be formed to parallel the overall coordinating committee. Lawyers, whether prosecutors, public defenders, or private defense counsel, benefit when they know that a designated staff is handling "their case" and that should problems arise a named team is there to resolve it. Assignment of staff to teams benefits not only counsel, the court and the movement of cases, but is more rewarding to the team members as individuals. They became part of a larger whole and perform more challenging, less routinized, tasks. Courts as employers expecting higher levels of employee performance must also position themselves to confer more demanding and rewarding duties on staff. The formation of teams allows courts to do so.

The proper size of the complement of judges and support staff remains a thorny issue, the resolution of which depends, in part, on data which may not be available. Adding judges and staff is an expensive, longterm solution to overcrowded and slow dockets and should be undertaken only where administrative and management

¹² See, Samuel D. Conti and Robert D. Lipscher, "Changing Roles and Relationships of Judicial Branch Leaders: (Judges and Administrators/Managers) in Court System Administration and Ways to Develop Productive Working Relationships Between those Leaders," (A Paper for the Second National Conference on Court Management, September, 1990. Draft dated July, 1990) p. 73.

mechanisms are insufficient.¹³ In many courts increased productivity of court personnel can no longer keep pace. Once this has been documented the court must turn to increasing capacity by adding personnel. The temporary solution achieved by moving judges from civil and family divisions is not acceptable over time, but until the needed resources are at hand this approach is necessary.¹⁴

Differentiated Case Management and Automated Case Processing

In managing the whole, courts also must give attention to the pressures faced in prosecution, indigent defense and probation offices; the work of each is vital to the criminal process.¹⁵ Each of these offices is, like the court, over burdened by drug cases. Although engaged in the adversary system, counsel for the state and the defendant must be reminded of their responsibilities in the administration of justice. Cooperation, by timely appearance, willingness to negotiate, thorough preparation of cases, can be realized without diminishing the responsibilities of advocacy. Probation officers, too, faced with a welter of drug cases, must be prepared to work closely with counsel in preparing pre-sentence investigation reports and in recommending treatment and punishment options to be considered by the court. Successful drug case management programs in courts actively involve defenders, prosecutors, and probation officers in the early screening and evaluation of cases for selection of the appropriate path to disposition.

Differentiated case management (DCM) allows courts to redefine the elements of caseload management, to array staff and other resources in new ways to manage cases,

¹³ See, W. John Moore, "Country Disaster," National Journal, (March 3, 1990) p. 502 et seq.

¹⁴ See, Goals and Objectives, CCJ/COSCA Advisory Committee on Drug Issues Affecting State Judicial Systems, Goal 4. (Adopted January 28, 1990).

¹⁵ See, the companion briefing paper, "System Balance: Indigent Defense and the War on Drugs."

and to establish new procedures for case movement. By recognizing that not all drug cases (or other types of cases) are alike, courts can fashion different processing steps as required. Large, complex drug cases involving multiple parties with many attorneys and with sophisticated evidentiary issues are not treated the same as routine drug arrests.

DCM should be used not only to expedite caseload, but to meet policy and treatment ends of the court in dealing with drug cases. A DCM track for different categories of drug offenses would be especially useful for early diagnosis, and if an individual is convicted, for court ordered treatment. The dependency created by today's drugs and the unwillingness of addicts to seek treatment must be overcome by strict court enforcement of conditions of release and sentence. Early treatment requires evaluation and an assessment of treatment needs; post-adjudication treatment requires a strong probation service capable of close monitoring and swift return to court if a violation is found.

The DCM model used in the Middlesex County, (New Brunswick) New Jersey, pilot site has established two tracks, depending on the seriousness of the alleged offense, for drug cases.¹⁶ Early assignment to track screening by experienced prosecutors, and negotiations with seasoned defenders are keys to the success of this program. As in other successful expedited drug case management programs, Middlesex County officials screen and evaluate cases at the time of filing to place the case on the proper track. Once a decision has been made to proceed with the case, early assessments about custodial status, supervised bail, risk of life, dangerousness to the community, and treatment options can also be made. Pleas agreed to early in the process are subject to confirmation of the controlled substance by the state laboratory,

¹⁶ For a more complete discussion of the DCM model sites noted here, See, Robert W. Tobin, Janice Munsterman, Thomas Henderson, DCM Assessment. (National Center for State Courts, July 31, 1990).

assignment of the defendant to a diversion program, and acceptance by the court. The underlying goal of the process is rapid adjudication and early opportunities for treatment of offenders.

According to Robert D. Lipscher, Administrative Director of the New Jersey Courts, the Middlesex County project contains the following elements to cope with the drug problem:

1. Creation of case management teams assigned on a community basis. The courts are tied to the community through the case management teams. [Research in New Jersey has shown that adding support staff can increase judge productivity.]
2. Application of the differentiated case management tracking system to drug cases. It is the case (whether involving an addict, seller or predator) that is important, not the kind of calendar.
3. Addition of new court events to meet the needs of drug case processing. At intake the court takes charge of the case as soon as the complaint is filed. An assessment of the nature, extent and possible treatment of offenders is made within 10 days of arrest. Screening by the principal participants determines whether, and by what name, a case will proceed through the system.
4. Mobilization of the community to support the court. Advisory committees and business, university and church volunteers work with the court to help guide the system and monitor offenders.
5. Restructure probation to focus on drug cases. By refining the classification system and the hierarchy of supervision to be provided, probation departments will be better able to use these scarce resources, render appropriate services, and put teeth in enforcement of supervision.
6. Use of resources from offenders to help support the treatment and supervision system. Fines and forfeitures received from offenders can help keep up the system.¹⁷

¹⁷ Extracted by the author from recorded comments by Robert D. Lipscher as a panelist at "The Future and the Courts Conference."

The Recorder's Court in Detroit, Michigan employs five tracks, only one of which will be discussed here, in its DCM project. Relying on a sophisticated automated system, administrators have established criteria to identify defendants who would likely be placed on probation. These cases are placed on a track with a special calendar for hearing by the court within 24 hours of filing. To accomplish this the court enlists the cooperation of prosecutors, defense counsel and probation personnel. Within a few hours of filing, the cases have been measured against the "probable probation profile". A presentence investigation and interview serve as the basis for the negotiations of pleas and the judicial decision to accept or reject the plea offered.

Preliminary studies by court administration officials at the Recorder's Court indicate a recidivism rate of 5% for individuals on the "within 24 hour probation calendar." This rate, which is still under study, is significantly below the 35-40% rate found in the regular stream of cases. Among the explanations given for this very low recidivism rate are the stringency of standards for admission to the track, the shock of the process itself, and the status of defendants as first time offenders who generally come from stable environments and have a support network.

Regardless of the complexity of the case in the differentiated case management model the court may wish to establish early case screening procedures as are being successfully used in a Comprehensive Adjudication of Drug Arrestees¹⁸ (CADA) project in Providence, Rhode Island. Felony cases are mandatorily assigned to a pre-arraignment conference (PACC) within one week after entering the system. One key to the success of the program is the early involvement at the conference of counsel for the prosecution and defense, probation, the bail unit, and the alternative sentencing unit. The conference, conducted by a limited jurisdiction court judge, serves as the

¹⁸ See, Thomas A. Henderson, et al, "Alternative Approaches to Comprehensive Adjudication of Drug Arrestees (CADA)." Final Report: A Report to the Pretrial Services Resource Center, National Center for State Courts, July 31, 1990.

initial case screening point. The Providence court has learned, as has been the experience in the Hudson County, New Jersey, Central Judicial Processing Court (CJP), that early assignment to the proceeding of a seasoned prosecutor who will not be tempted to overcharge and will not be bluffed by defense counsel, will result in a substantial number of pleas entered at this stage.¹⁹ Defendants electing to proceed to Superior Court processing in Providence, learn that the upper court will not allow entry of a "better bargain." If plea is not entered, the matter is scheduled within a week for trial. The rapidity of the process, the involvement of key participants, the steadfastness of reasonable plea offers, and the certainty of an early trial setting combine to make the Providence program an exemplary model.

Another CADA project is operating in Santa Clara County, (San Jose) California. Unlike the mandatory pre-arraignment conference in Providence, the Santa Clara conference is a voluntary procedure. Prosecutors and defenders meet to discuss the prosecutor's level of charge and the penalty which the defendant may be willing to accept. A senior probation officer assigned to the process is the key participant who places a "value" on the case and makes a recommendation to the court, if counsel have not reached an agreement. The negotiated plea is then presented to the court; it is reported that 50% of the cases are resolved at the pre-arraignment conference. The Santa Clara program emphasizes motions management by having a Narcotics Case Review (NCR) Department. Judges hear all motions and take pleas in drug cases. Those cases not disposed by plea are placed on a mandatory readiness calendar called one week before the scheduled trial date to stimulate early resolution and disposition without trial.

The CADA Special Court in San Jose has the following goals:

¹⁹ See, National Center for State Courts, Hudson County (New Jersey) CJP [Central Judicial Processing] Evaluation. (North Andover, MA, Northeastern Regional Office, September 7, 1985).

- (1) the reduction of jail overcrowding:
- (2) the reduction of court congestion; and
- (3) the improvement and expedition of processing drug felony cases through the criminal justice system.²⁰

To accomplish these goals the court identified five interventions with specific objectives designed to increase coordination among criminal justice agencies:

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|-----------------|--|
| Intervention 1: | Crime lab - provides justice agencies with timely, reliable determinations of the nature and net weight of substances submitted for analysis. |
| Intervention 2: | Early Drug Diversion - have all persons eligible for diversion designated at arraignment. |
| Intervention 3: | Specialized Court Constellation - reduction of narcotics case backlog. Reduction in time and number of appearances to disposition. |
| Intervention 4: | Resource Development - make a larger number and range of treatment services available to target population upon conviction or entry of guilty pleas. |
| Intervention 5: | Rational Justice Planning - establish and carry out a rational planning process to guide policy program and operational planning concerned with future processing of narcotics cases. Establish an analytic process which will provide feedback to the justice steering committee, the project management committee, and sponsors of the national committee. ²¹ |

The CADA project in New Orleans, Louisiana operates in the Orleans Parish Criminal Court. Two new sections were created in the court to hear all parts of drug cases. The courts are provided with full staff, comparable to all other criminal courts,

²⁰ See, "Comprehensive Adjudication of Drug Arrestees: Demonstration of Model Program in Santa Clara County - A Proposal Submitted to the BJA," (January 30, 1988) pp. 48-52.

²¹ Id at 54-59.

and, like the Providence and San Jose courts, rely on senior attorneys for the defense and prosecution to facilitate plea negotiations.

With the advent of powerful new personal computers and the networks by which they can easily be connected, courts around the country have fully embraced automation. Gone are the reservations about reliability and difficulty; computers run as needed and are increasingly user friendly. Much more will be accomplished by automation as judges and court employees experiment with devices that a few years ago were forbidding black boxes. Sophisticated data processing routines are enabling ambitious court personnel to array data in new and untried ways yielding information that brings new insights into the dynamics of caseflow and caseload. Enlisted in the war against drugs, computer networks will allow clerks to chart and predict paths to disposition that will largely be unimpeded by scheduling conflicts. Soon electronic networks will routinely allow docketing and scheduling personnel to communicate directly with law officers, laboratories, jails, probation and treatment services to exchange case information and to alert system participants to developments in individual cases. Derived from all this data will be more sophisticated statistical reports that will be used in predictive modeling, justification of requests for additional resources and strategic planning. Computers, in conjunction with other technological advances, including video recordation, serum analysis, and chromatographic analysis of evidence, will all be in the court arsenal in the war against drugs. These technologies are affordable to urban courts today.

Conclusion

With some exceptions, the caseflow programs outlined in this briefing paper can be established without additional resources. What will be needed, in some instances, is a willingness to take the risks associated with redeployment of existing court and court support personnel. Since many of the personnel needed to accomplish the goals

set out here are not directly under court control a first step must be to secure the confidence and cooperation of other agencies and organizations. This can be achieved, in part, because judges and the judicial branch usually command the respect of others involved in the criminal justice process and the drug treatment community. Full court involvement in coordinating committees and in fashioning and trying innovative, and often unusual, programs like Comprehensive Adjudication of Drug Arrestees, Differentiated Case Management and acupuncture will place the courts in a position unfamiliar to them--a position where the court or its agencies might be criticized for working too closely with partisans in the litigation process, or with being social service system advocates, or with demanding funds for automation or personnel, or with unsettling the lives of court personnel by reassigning them to unfamiliar teams. The stakes in the drug war are simply too high for the courts not to take the risks that may come with these actions. Judicial branch leaders must work to balance the need to maintain separation of powers, judicial independence in deciding individual cases, and cooperation among all agencies engaged in the drug war.

Reports of the dimensions of the drug problem facing our courts are daunting. Complete data on the size and probable duration of the crisis are not yet available. What is becoming clear, however, even without refined information, is that many courts are stuck in the quagmire of drug cases. In the most seriously impacted jurisdictions the gains from improved efficiency urged in this paper will not be enough. Caseloads may be simply too high to be contained by the slim, though real, gains offered by improving caseload management efficiency. In these courts, capacity must be increased by adding judges, prosecutors, defenders, clerks, case managers and probation officers, among others.

**SYSTEM BALANCE:
INDIGENT DEFENSE AND THE
WAR ON DRUGS**

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The ravages of the drug epidemic are visible daily in the state criminal trial courts throughout the country. When New York State Chief Judge Sol Wachtler speaks of "what was once a rising tide of drug cases, and then a drug epidemic, is now a crisis nearly out of control,"¹ he is describing a criminal justice system struggling to cope with a flood of drug cases. The drug crisis in trial courts spans the continent. California Chief Justice Malcom Lucas asserted in his State of the Judiciary address that "drug-related cases are swamping the courts. The system has begun to take on so much water we are close to foundering. Too often, civil cases get drowned."²

As the courts are being overwhelmed, so too are the providers of indigent defense services. In surveying the condition of indigent defender services in the major urban areas nationwide, the National Center for State Courts (NCSC) confirmed that the vast majority of defendants charged with drug and drug-related offenses--70-90% are found indigent and require appointed counsel.³ What also becomes apparent is the

¹ Sol Wachtler, New York State of the Judiciary, December 4, 1989, reprinted in State Court Journal, Vol. 14, No. 2, (Spring 1990), p. 27.

² Malcolm M. Lucas, remarks of February 12, 1990, quoted in W. John Moore, "Courting Disaster," National Journal, (March 3, 1990), p. 503.

³ Statistics provided by National Legal Aid and Defender Association (NLADA), telephone conversation with Ms. Mary Broderick, Director, Defender Division, NLADA, August, 1990.

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need for some semblance of balance between police, prosecution, and indigent defense resources. However, this paper's inquiry details a distressing national phenomena--the erosion of that balance. Whatever relative balance that may have existed in police, prosecutor, and indigent defense resources is now being jeopardized, across the country, by the war on drugs. The constitutional mandate⁴ that requires competent representation for those unable to hire defense counsel, also means that adequate funding must be provided for indigent defense representation. Indigent defense is an essential component and cost of our criminal justice system. However, growing imbalances in resources allocated for police, prosecution and indigent defense are increasingly apparent. These imbalances are improper as a matter of policy or practice.

Regrettably, providing for indigent defense needs to meet increased demands is neither politically popular nor an evidently beneficial expenditure in a "war on drugs." Funding for indigent defense is generally inadequate from all sources--county, state, and federal. The few exceptions to be reported here reflect the understanding in some states that providing balanced indigent defense funding is a necessary criminal justice cost and contributes to more expeditious case processing. Conversely, current federal policy with regard to aid for indigent defense to the states is symptomatic of the general reluctance nationwide to fund adequately this critical component of the criminal justice system. *And, it remains to be seen whether federal policy will change as a result of the 1990 legislative change to Anti-Drug Abuse Act of 1988. (See Addendum and italicized sections of the main text, below.)*

⁴ U.S. Constitution Amend. VI; Gideon v. Wainwright, 372 U.S. 335, 342 (1963) (sixth amendment right to counsel in felony proceedings applies to states through fourteenth amendment); Argersinger v. Hamlin, 407 U.S. 25, 37 (1972) (defendant may not be imprisoned unless afforded right to counsel); Kirby v. Illinois, 406 U.S. 682, 688-689, (1972) (right to counsel attaches at or after initiation of adversary judicial criminal proceedings whether by way of formal charge, preliminary hearing, indictment, information, or arraignment).

The burdens which the inequitable allocation of resources place on judicial systems should be of concern to all judges, especially those in the many jurisdictions where the courts have oversight responsibilities for indigent defense services.

We begin by illustrating the magnitude of the increases in drug related criminal caseloads in a sampling of urban state trial courts. This is followed by an examination of federal policy with regard to providing assistance to state indigent defender programs. The final section deals with material on the availability of state funding for indigent defender programs including the techniques used by New Mexico and New York, and attempted in Arizona, to promote system balance by channeling new funds to indigent defender programs.

I. Drug Cases and Indigent Defense

The specificity of the statistical data in which drug cases can be isolated varies from city to city. But what data are available clearly show the dramatic increase in drug cases in recent years and the increasingly heavy burdens those cases place on indigent defender offices.

New York City. For the period January through September 1989, there was a 20% increase in felony drug arrests over the previous year. Felony drug arrests accounted for 65% of the total increase in felony arrests for the first three quarters of 1989, over the same period in 1988.⁵ This increase was attributable to the police department's tactical narcotic teams' (TNT) focusing on drug arrests. These arrests resulted in a 25% increase in the Legal Aid Society's criminal division caseload. This increase in caseload was matched by only a 7% increase in the Legal Aid staff. While

⁵ Governor's Anti-Crime Action Agenda, New York City Monitoring Report, Vol. 3, (March 1990), p. 15.

three years ago, 25-30% of the Legal Aid caseload in New York was for drug offenses, today 54% of the caseload is strictly for drug offenses.⁶

Los Angeles. In Los Angeles, 75% of all criminal prosecutions are either for the sale or possession of drugs or drug related crimes by pushers and addicts. From 1981 to 1988, drug cases heard in the downtown courts of Los Angeles more than doubled from 7,684 to 16,965. Total criminal case filings grew 114% between 1978 and 1986,⁷ approximately 20% a year over each of the last five years of that period. The ability of the public defender's office to handle the growing caseload has not kept pace. Since March of this year, the Los Angeles County Public Defender's Office has been refusing approximately 1,000 cases a month because the office cannot provide proper representation due to the volume, primarily, of drug cases.⁸ Representation for these defendants must be provided, at public expense, through the more costly means of retaining private counsel on contract.

Chicago. The number of defendants charged with felony drug-related crimes grew 159% in Chicago between 1984 to 1988. In 1984, 9,600 defendants were charged with drug-related offenses; in 1985, 12,000; 1986, 12,600; 1987, 16,000; and in 1988, 24,970.⁹ The increase between 1987 and 1988 was 56%. Similarly, drug offenses constituted an increasing percentage of all the offenses charged in Cook County. In 1984, approximately one third of all the felony charges were drug related. That percentage increased to 56% in 1988.

⁶ Statistics provided in telephone conversation with Mr. Robert M. Baum, Attorney-in Charge, Criminal Defense Division, New York Legal Aid Society, May, 1990.

⁷ Alan I. Rothenberg, "Assembly Line Justice Threatens the Whole System," Los Angeles Times, March 13, 1990, p. 7, col. 1.

⁸ Information provided in telephone conversation with Mr. David Meyer, Assistant Public Defender, Los Angeles County, CA., May, 1990.

⁹ Gerald S. Solovy (Chairman), Crime and Criminal Justice in Cook County: A Report of the Criminal Justice Project, (November 1989), p. 89.

Michigan. Statewide, felony convictions have increased 9% while drug convictions have increased 30%. Currently, 25% of all felony convictions are for drug offenses.¹⁰ No data is available on drug related offenses. In many jurisdictions throughout Michigan, public defenders are refusing assignments because of unmanageable caseloads related to drug offenses. In addition, public defenders are going before grievance boards complaining of excessive caseloads.

Phoenix. The public defender's office handled twice as many drug counts in 1989 as it did in 1987.¹¹

San Francisco. According to the public defender in San Francisco, monthly arrests for drug offenses have gone from an average of about 578 in 1986 to more than a thousand a month in 1988. Prosecutions for felony drug offenses have risen from an average of 312 a month in 1986, to an average of 419 a month in 1988. The most recent figures indicate increases in both arrests and prosecutions handled by the public defender office.¹²

Memphis. The public defender's office estimates that there has been a 30-40% increase in the number of drug offense cases handled by that office in the last year. Approximately 60% of the court's docket is drug cases. Felony cases, many of which are rooted in drug abuse, have doubled in the last two years in Memphis.¹³

Washington, D.C. While precise drug figures are not maintained, the office is operating under the strain of a tremendous influx of drug cases. Symptomatic of the

¹⁰ Information provided in telephone conversation with Mr. David Neuhard, Michigan State Appellate Defender, May 1990.

¹¹ Information provided in telephone conversation with Mr. Donald Vert, Public Defender's Office, Phoenix, AZ, May 1990.

¹² Information provided in telephone conversation with Mr. Jeff Brown, Public Defender, San Francisco, CA, May, 1990.

¹³ Information provided in telephone conversation with Ms. Gwen Rooks, Assistant Public Defender, Memphis, TN, May, 1990.

burden of drug cases is the fact that in many instances residential drug treatment programs are unavailable to indigent defendants. The Public Defender Service has made arrangements to have clients referred to out-of-state treatment programs in Texas and New York due to both the lack of local treatment programs and the large numbers of drug offenders in need of treatment.¹⁴

King County (Seattle), Washington. Criminal case filings have grown from 4,000 in 1983, 5,000 in 1985, 6,000 in 1987, to approximately 8,500 in 1989. The increase is primarily attributable to drug and drug-related offenses of which more than 60% are handled by the public defender's office.¹⁵

Under the current circumstances, the prospects for indigent representation throughout the country are not bright. The public defender offices in the above catalog of cities are being asked to carry greatly increased drug caseloads without corresponding increases in resources. And the listing of cities--urban, suburban, and rural--with increased caseloads and diminishing resources could be continued for pages. Clearly, jurisdictions large and small, rural and urban, are being asked to defend increased numbers of drug offenders who are unable to retain private counsel. Many public defender offices are reaching, or have reached, the point at which to accept additional cases would, in effect, prevent them from affording their existing clients adequate assistance of counsel. The problem of indigent defense representation is a crisis of enormous proportions with significant constitutional and practical implications.

An indication of the degree to which public defender offices are becoming overwhelmed by their caseloads is illustrated by a case involving the public defender

¹⁴ Information provided in telephone conversation with Ms. Kim Taylor, Director, Public Defender Service for the District of Columbia, Washington, D.C., May, 1990.

¹⁵ Judicial Clippings, (Office of the Administrator for the Courts, April 20, 1990), p. 5.

for the Tenth Judicial Circuit in Florida.¹⁶ This case involved the backlog of public defender cases pending appeal--an outgrowth of the dramatic increase of drug cases pending trial. Confronted with a backlog of 1,005 cases on appeal awaiting briefing in March, 1989 (up from 408 in 1986, and estimated to be 1,700 at the time the case was briefed)), the Florida Supreme Court pronounced that if funds were not appropriated within 120 days to hire private counsel to handle the backlog of more than 1,700 delinquent appeals, the courts of the state would entertain motions for writs of habeas corpus from indigent appellants. Those appellants whose briefs are more than 60 days delinquent at that point will be ordered to be released pending appeal.

The Florida Supreme Court noted that "woefully inadequate funding of the public defenders' offices" affected both the trial and appellate caseload. The Court quoted a study by the Florida Judicial Council which concluded that:

(T)he problem of the criminal workload with the judicial system of the State of Florida is a problem of volume that cannot be regulated, but must be dealt with as it occurs. Not only does the problem exist now in crisis proportions, but it appears that the workload in regard to all parts of the criminal justice system is likely to increase.¹⁷

Florida's experience is not unique. The bulk of the increasing volume of state criminal cases is drug-related. And the vast majority of these defendants require public defender representation.

It is only a matter of time before state supreme courts and the federal courts begin to intervene to mandate adequate funding and staffing of indigent defender offices throughout the nation to ensure that defendants are accorded effective assistance of counsel. The alternative is to mandate the release of these defendants

¹⁶ In re Order on Prosecution of Criminal Appeals by the Tenth Judicial Circuit Public Defender, 561 So. 2d 1130 (Fla. 1990).

¹⁷ Id. at 1132.

for failure to comply with speedy trial rules or for a failure to provide for the effective assistance of counsel. Drug war, or no drug war.

While states are able to look to the federal government for grants and assistance for police, prosecutors, and some treatment programs, aid from the federal government for indigent representation has been, for all intents and purposes, unavailable.

In view of the heavy demands being placed on indigent representation resources, what is the response of the federal government?

II. Federal Resources for Indigent Defense

With regard to the need for indigent defense, current federal policy as articulated in the "national drug control strategy" is grounded on the premise that indigent defense is solely the responsibility of state and local government. The September 1989 blueprint for the "war on drugs" makes no mention whatsoever of indigent defense. While at least 70% of defendants arrested for drug or drug-related offenses qualify for and are appointed defense counsel because of indigency,¹⁸ there is no acknowledgment of the need for more resources for indigent defense services in the entire National Drug Control Strategy promulgated by the White House in September, 1989. While there is language calling for a "sufficient number of jails, prosecutors, judges, courtrooms, prisons, and administrative staff,"¹⁹ curiously, there is no recognition of a need for sufficient public defenders, investigators, or enhanced indigent defense resources to deal with the drug crisis.

The second volume of the National Drug Control Strategy, published in January 1990, suffers from the same myopia. It notes that "the swift, efficient, and fair

¹⁸ See, supra, note 3.

¹⁹ National Drug Control Strategy. (The White House, September 1989), p. 24.

prosecution of drug related cases" requires "sufficient resources for pretrial services, probation and parole, judges and other court personnel, and jails and prisons."²⁰

Indigent defense is mentioned only twice in a document described as a "comprehensive criminal justice strategy."²¹ Neither reference includes any mention of the need for federal financial assistance to state indigent defender programs. States are exhorted to "expand their court systems by providing the necessary judges, prosecutors, defense services for indigents, and staff to respond to the flood of drug cases that can be found in virtually every jurisdiction."²² And in an Appendix, "legal services for indigent defendants in the Federal judicial system" (emphasis added) are listed as a criminal justice system priority for fiscal years 1991-1993.²³ Thus, while federal funds are going to the states in significant amounts to assist law enforcement, build jails, and improve prosecution resources, federal funding for state indigent defense needs is apparently not contemplated by the National Drug Control Strategy.

The third volume of the National Drug Control Strategy, dated February 1991, again makes fleeting reference to indigent defense needs in an environment where large numbers of drug offenders are being arrested: "Enhanced enforcement may mean more arrests, which will require more prosecutors, more pretrial service and holding facilities, more defense services for indigent defendants, more judges, more probation and parole resources, and more jail and prison space."²⁴ This acknowledgement of the needs of indigent defense services is not reflected, however, in the subsequent discussion of the

²⁰ National Drug Control Strategy. (The White House, January 1990), p. 21.

²¹ Id.

²² Id. at 22.

²³ Id. at 101.

²⁴ National Drug Control Strategy (The White House, February 1991), p. 25.

components of the criminal justice system. The Courts, Prosecutions, and Punishment section refers to the "enormous number of criminal drug prosecutions" and the fact that "the vast majority of these cases will continue to be prosecuted in state and local courts." The conclusion of The National Drug Strategy is that the flood of drug cases "will create additional need for States to expand their court systems by providing the necessary personnel to respond to increased drug cases." The burdens are placed on the states for drug prosecutions. But there is no specific acknowledgement that there is any federal role in assisting state indigent defender programs.

While the above documents reflect a philosophy which relegates indigent defense to strictly an individual state responsibility, recent correspondence and grant guidance are more explicit in terms of the federal attitude.

(The following discussion of the Bureau of Justice Assistance (BJA) interpretation and attitudes stemming from its reading of the Anti-Drug Abuse Act of 1988, was written during the summer of 1990, prior to the revisions to the Act. As a result of these revisions, the stance of BJA may change. The following material is provided to give insight into the recent thinking of the Bureau, and to provide a context for monitoring changes in departmental policy concerning the eligibility of state indigent defender programs for Formula Grant assistance.)

What has been, up to now, a reluctance to provide federal funding to aid indigent defense through Bureau of Justice Assistance state formula grant funds (block grants), evidently stems from an interpretation of the Anti-Drug Abuse Act of 1988 which outlines 21 program areas for funding through block grants. This interpretation is inferred from the language in the act (See Appendix A.) that state and local resources should be directed solely toward apprehension and prosecution of drug offenders. Because the Act contained no specific mention of indigent defense services, BJA inferred that Congress intended to prohibit state block grant funds from assisting

indigent defender programs. As a result, the BJA, on the basis of this statutory interpretation and a review of state drug strategies, concluded that criminal defense services were not a priority area for BJA funding.²⁵

This interpretation of the statute overlooked the language in the statute which stated that the grant program was designed "to assist States and units of local government in carrying out specific programs which offer a high probability of improving the functioning of the criminal justice system..."²⁶ (See portions of the statute provided as Appendix A.)

Similarly, Section 501(b) authorizes the Director of BJA to make grants "to improve the functioning of the criminal justice system with emphasis on violent crime and serious offenders."²⁷ Although indigent defense services are not mentioned as such by the statute, those services are inextricably interconnected with the prosecution and adjudication of criminal cases. Those services are essential for the efficient functioning of the criminal justice system. As such, there was clearly an alternative interpretation which would have justified funding indigent defense under the broad language of the authorizing statute, *even absent the late 1990 legislative change*. And, in fact, on a very limited basis, such funding was provided by the BJA to a small number of states as indicated below.

BJA thinking concerning funding for indigent defense evolved, however, from "not a priority" in March, 1989, to, essentially, an exclusion in November, 1989. The Drug Control and System Improvement Formula Grant Program: FY 1990 Program

²⁵ The BJA rationale supporting its conclusion that "criminal defense services" are not a priority area is summarized in the March, 1990 letter, attached as Appendix B, from the Director of the Bureau of Justice Assistance, Charles P. Smith, to the Legislative Director of the National Association of Criminal Defense Lawyers, H. Scott Wallace.

²⁶ Anti-Drug Abuse Act of 1988, 42 U.S.C. §3751.

²⁷ Id.

Guidance and Application Kit document provides guidance to the states for block grant applications for programs which "address the most pressing drug control and criminal justice system improvement problems" and "which offer a high probability of improving the function of the criminal justice system."²⁸ (See Appendix C, p. 9.) This is the primary federal program through which the "war on drugs" is being fought.

Significantly, however, in the section titled "Programs to be Funded," the guidance document states: "Since the Act identifies specific areas for funding, BJA deems some criminal justice system improvement programs as not appropriate for Federal funding (e.g., services for criminal defense and furlough programs for offenders who pose dangers to the community)."²⁹ (Emphasis added.) (See Appendix C.)

Clearly, the constitutionally guaranteed right to a criminal defense should not be equated with furlough programs for dangerous offenders. To ignore indigent defense services is to ignore a critical component of the criminal justice system, a component no less essential than prosecutors and judges, and a component without which the criminal justice system simply cannot function. Clearly, neither the language of the statute nor the true intent of the Act precludes indigent defense from receiving federal funds.

(The Bureau of Justice Assistance position with regard to the eligibility of indigent defender programs for funding under the Drug Control and System Improvement Grant Program was addressed by the House of Representatives Judiciary Committee in its report on the Comprehensive Crime Control Act of 1990. Referring to Section 109 of the 1990 amendments, the Committee Report states:

Section 109 amends 42 U.S.C. 3751(b), which sets forth 21 purposes for which grants to States and units of local government may be

²⁸ Drug Control and System Improvement Formula Grant Program: FY 1990 Program Guidance and Application, FY 1990 Program Guidance and Application Kit. (Bureau of Justice Assistance, November, 1989), p. 3.

²⁹ Id. at 9.

made by the Bureau of Justice Assistance under the Drug Control and System Improvement Grant Program. The amendment clarifies that the goal of improving the operational effectiveness of the court process, as set forth in §3571(b)(10), contemplates a balance of support for all components of the court process, including prosecutorial, defender and judicial resources.

The Bureau of Justice Assistance has issued guidelines under the Drug Control and System Improvement Formula Grant Program providing that services for criminal defense are not deemed appropriate for Federal funding, due to Congress's omission of any specific mention thereof in the purpose areas specified under 42 U.S.C. §3751(b). The Committee notes that this interpretation is incorrect, since §3751(b) provides that the Drug Control and System Improvement Grant Program is specifically designed "to improve the functioning of the criminal justice system," and the term "criminal justice" is defined in §3781(a)(1) to include "defense services." It is the Committee's view that this amendment is nevertheless needed to ensure that funding for indigent defense programs is recognized as of no less significance than the other purpose areas specifically enumerated in §3751(b).

A recent study³⁰ has found that at least nine states have relied upon Federal assistance to provide needed indigent defense services, including hiring new assistant public defenders and support personnel to deal with increased drug caseloads, and providing funding assistance for alternative sentencing programs, delay reduction programs, early disposition and expedited drug case management. The BJA guidelines have significantly reduced public defender access to Drug Control and System Improvement grant funds: the study cited above found that, although at least 12 public defender programs in those nine states have received funding, programs in four other states have had their applications denied, and another 15 have been discouraged from submitting grant requests because of the guidelines.

The Committee shares the concern of the Office of National Drug Control Policy that it is important for the states to "expand their court systems by providing the necessary judges, prosecutors, defense services for indigents, and staff to respond to the flood of drug cases that can be found in virtually every jurisdiction," in order to advance the overriding purpose of "overcom[ing] congestion in the courts, the most dominant problem within the criminal justice system."³¹ Similarly, the Federal Courts Study Commission has recommended that Federal drug enforcement funding "should be used to provide assistance for drug

³⁰ "Federal funds for State and Local Public Defenders Under the Drug Control and System Improvement Formula Grant Program," Preliminary Report, the Spangenberg Group/American Bar Association, November 12, 1990.

³¹ National Drug Control Strategy, (The White House), January 1990, at 22.

*enforcement at the critical state and local level, including resources for state courts, public defenders and assigned counsel."*³²

The Committee notes that the amendment made by this section applies both to formula grants and to discretionary grants, which are available for demonstration programs by public agencies and private nonprofit organizations for the purposes specified for formula grants (sic) under §3751(b).

It is important to note that to deny indigent defense funding, from federal, state, or local sources, is to deny courts with one of the essential prerequisites for expeditious criminal case processing--qualified, experienced, well prepared public defenders. The alternative, as a result of insufficient funding, is inexperienced, overburdened, unprepared public defenders with massive caseloads who render assistance bordering on ineffective counsel. Public defender offices offering low pay with a resultant high turnover in staff due to the unremitting demands of the positions, serve neither clients nor courts adequately. And these understaffed and overburdened public defender offices contribute to increased delay in the courts and further burden the already significantly overburdened criminal court system.

The FY 1990 Discretionary Grant Program, which dispenses 20% of the funds appropriated under the 1988 Anti Drug-Abuse Act of 1988, grants funds to "promote innovative demonstration programs," provide enhanced training, and technical assistance. The programs which are available for funding include drug testing, street level enforcement, alternative sentencing, enhanced prosecution, information systems, demand reduction, and victim related programs. The enhanced prosecution area includes programs for statewide drug prosecution and training, local drug prosecution technical assistance, and comprehensive adjudication of drug arrestees.

However, in the entire discretionary program guide, (the announcement for which runs in excess of 75 pages), there was not one mention of indigent defense or of

³² Report of the Federal Courts Study Committee, April 2, 1990, at 37-38.

any program designed to enhance the effectiveness of indigent defense services. This is notwithstanding the fact that effective, capable, prepared public defenders would make a significant contribution to the rapid disposition of pending drug cases³³ and thereby, in the words of the Anti-Drug Abuse Act of 1988, "improve the functioning of the criminal justice system."³⁴

Concern for balanced funding has been voiced by the former Chief Justice of the Washington Supreme Court. In 1990, Chief Justice Keith M. Callow noted:

The criminal justice system is composed of interlocking divisions. Law enforcement (police and sheriffs), prosecution (prosecutors and public defenders), courts (judges, staff, and facilities), and corrections (punishment, treatment and rehabilitation). You cannot fund one link in the chain and neglect another. To do so is to create either a bottleneck or a part of the chain, coping by doing its best, but cutting corners. The court system will always try to handle the load it faces every day, but unless properly funded, may only be able to do so at the price of justice.³⁵

Clearly, essential to an ability to "handle the load" is an adequately funded and sufficiently staffed indigent defender system.

Concern about the disproportionate infusion of resources is appropriate. For example, adding to police without a corresponding increase in prosecutor, court, and public defender resources, will create inevitable bottlenecks. This was demonstrated in San Diego where the staff of the Municipal Court and the field operations division of the police department conducted a study to determine what effect the addition of 85 new police officers would have on the criminal justice system. The study found that the new police officers would produce 1,700 additional felony arrests which would be winnowed down to 876 felony filings in Municipal Court. The additional police officers

³³ Ernest C. Friesen, "Cures for Court Congestion," 23 Judges Journal, (Winter, 1984), p. 52.

³⁴ Anti-Drug Act of 1989, 42 U.S.C. §3571.

³⁵ Keith M. Callow remarks at the Seattle Rotary Club meeting of April 18, 1990, as reprinted in Judicial Clippings, (Office of the Administrator for the Courts, April 20, 1990), p. 1.

would also generate 9,400 misdemeanor arrests, of which 7,416 would be presented to prosecutors for screening, and 7,700 would be filed in Municipal Court (this figure includes some of the felony arrests which would be charged as misdemeanors).³⁶

The San Diego example illustrates the enormous impact additional police officers can have on a court system. If police department personnel are augmented or begin a concerted effort in one particular area (drugs), the impact on the courts, prosecutors, public defenders, and corrections can be dramatic. The infusion of substantial federal funds into some of the component parts of the criminal justice system, while neglecting others, including indigent defense, will create an imbalance in the system. The system can function only as productively as its least well funded entity.

Moreover, indigent defender systems will function as designed only to the point at which they can no longer provide effective legal assistance to their clients. When that point is reached, they must decline to accept additional cases. At that point, the system will come to an abrupt halt--unless the jurisdiction is willing to hire private counsel to represent indigent defendants which is a more costly alternative.

When the system comes to a grinding halt, the money and resources poured into additional police and prosecution efforts will cease to be effective.

Notwithstanding past federal aversion toward funding of state indigent defense programs, there are promising developments and notable exceptions to the narrow interpretation of Anti-Drug Abuse Act of 1988, concerning the funding of indigent defense. The anti-crime bill currently pending in the Congress contains a provision which would amend section 501(b) item (10) (of the twenty programs eligible for funding outlined in the existing statute) of the Anti-Drug Abuse Act to read as follows: "improving the operational effectiveness of the court process, by expanding

³⁶ Letter from William D. Holman, County of San Diego, Deputy District Attorney, to Charles G. Cole, Chair of the ABA Ad Hoc Committee on the Drug Crisis (May 16, 1990) (discussing San Diego Municipal Court and Field Operation Division study project).

prosecutorial, defender and judicial resources, and implementing court delay reduction programs.^{37*} This language was present in both the House and Senate versions of the proposed legislation. *Once enacted and signed into law, this language explicitly authorized federal assistance to state defender services and removed obstacles to indigent defense funding. This amendment provides the prospect of federal assistance for indigent defender offices.* However, many believe that unless a separate, independent, reliable funding mechanism is developed at the state and local levels, indigent defender offices will simply not survive the war on drugs.

It is worth noting that while the federal block grant guidance document (Appendix C) has indicated for the last two years that indigent defense is not an appropriate area for federal assistance to the states, that prohibition has not been ironclad. In fiscal year 1987, three states received funding under the 1986 Anti-Drug Abuse Act. Out of a total of \$178 million, New York received \$500,000, Louisiana \$65,000, and Vermont \$32,000 for indigent defense. In 1989, Louisiana received \$89,000 for the Orleans Parish Indigent Defender Program. For FY 1990, Louisiana, Connecticut, and Vermont will likely receive \$65,000, \$300,000, and \$40,000, respectively, for indigent defender programs.³⁸ The Louisiana grant will continue to go to indigent defender staff, including attorneys, in Orleans Parish to handle drug prosecutions. This, apparently, is an ongoing program which resulted from a special exemption. The Connecticut funding is to be used to hire social workers in connection

³⁷ *Amendment No. 2099 to S. Bill 1870, 1990 Crime Bill by Senator Biden. (*The promising developments alluded to above and below resulted in now passed legislation that made explicit the eligibility of state indigent defender programs for federal funding under the Formula Grant Program. The legislation is described in italicized briefing paper text and the attached Addendum.*)

³⁸ Information provided by Jay Marshall, Chief, Courts Branch, Bureau of Justice Assistance, United States Department of Justice, January 1990.

with an alternative sentencing program. The Vermont funding paid for a single Office of Defender General attorney position.

On the other hand, the Public Defender for Philadelphia reported that funding for an accelerated drug case management and early disposition program to be operated by the Probation Office of the Philadelphia Court of Common Pleas was held up initially because it called for the funding of a single public defender. Word was received from BJA at the last minute that the \$190,000 program could not be funded because of the inclusion of the funding for the single public defender at \$28,000 a year. The position taken by BJA was that, as a matter of policy, no funds could be provided for an attorney position in the public defender's office. Once funding for that position was deleted, the overall program was funded.³⁹

Thus, while federal block grant funding has not been entirely consistent, the policy and philosophy of BJA has been that indigent defender programs are not appropriate for federal funding, and to discourage states from including indigent defense programs in their funding applications.

It would certainly be unfair to ascribe the funding difficulties of public defender offices to federal policy. Indigent defender offices have always been a state or local responsibility. And those responsibilities have been unevenly met for years. The city of Kansas City, Missouri, for example, recently passed a City Charter amendment imposing an additional one-quarter cent sales tax, the proceeds from which are to be used to combat drugs. Although this tax is expected to generate more than \$14 million annually, and half of the proceeds are designated exclusively for the Jackson County prosecutor, to date no monies have been allocated for the state funded public

³⁹ Information provided in phone conversation with Mr. Ben Lerner, Defender, Defender Association of Philadelphia, PA., May, 1990.

defender office. Myopia in terms of indigent defense funding is most assuredly not confined to the federal government.

Indigent defender offices struggle and will continue to struggle because their role is unpopular and their constituency is limited. Federal policy has been highlighted here because if federal funds are to go to police and prosecutors, some portion of that increased funding should be shared by indigent defense lest the system become hopelessly out of balance. But the federal government is not alone in perpetrating perceived inequities. State indigent defender offices struggle constantly to maintain and supplement their budgets in an increasingly austere budgetary environment.

In an effort to deal with the crushing caseloads and the fallout from the drug epidemic, there have been some limited successes and some recent innovations undertaken by some states in an effort to maintain adequate resources in public defender offices in order to assure competent representation of all indigent clients. These are reported below.

III. Availability of State Resources

With very few exceptions, state and local public defender offices throughout the country contend that they are dangerously underfunded, understaffed, and, in many instances, at the brink of announcing that they have reached the point where to accept additional cases would mean that they could no longer render effective assistance of counsel. Individual state success stories are difficult to locate and identify. According to Robert L. Spangenberg, an acknowledged authority on indigent defense funding and expenditures, those states whose legislatures have been relatively generous in funding public defender programs in the past, have continued to respond to the increasing

fiscal needs resulting from growing caseloads.⁴⁰ In other words, the rich have gotten richer while the poorer, less well funded states and counties, have become even more severely underfunded. As a result, there are wide disparities in per capita spending for indigent defense among the states, and defenders in every state maintain that they are underfunded whatever their relative national ranking. Spangenberg further notes that locally funded public defender offices have not fared as well in terms of overall funding as compared to state funded indigent defender systems.

Nevertheless, there do appear to be some techniques which public defender systems can employ which may improve their chances for increased funding. In conversations with public defenders in select jurisdictions, it was repeatedly pointed out that developing good relations with the legislative body controlling funding for indigent defense is absolutely essential. Those indigent defender offices which have had success in garnering funding support emphasize the need to be politically astute. They suggest that public defender offices must be politically savvy in establishing and maintaining rapport with the funding body. This means cultivating representatives, lobbying the legislatures, cajoling influential committee members, marshaling support from the leadership of the courts as well as state and local bar associations, and attempting to convey a positive message about indigent defense in terms of the constitutional mandate, justice, fundamental fairness, and expeditious case processing.

In 1989, the New Mexico Public Defender Office received a 39% increase in its statewide budget. With this budget increase, the Public Defender Office was able to hire 20 additional attorneys and 28 additional staff personnel. This budget increase came at a time when the public defender offices throughout the state were to the point

⁴⁰ Information provided in phone conversation with Mr. Robert L. Spangenberg, President, The Spangenberg Group, September, 1990.

where they could no longer accept new cases. The presentation made to the legislature involved: 1) an illustration of the tremendous increase in overall caseload over a five year period; and 2) an assurance by the Director of the Public Defender Office that she would establish a clear standard of indigency by which her office would make client eligibility for representation determinations. (Previous policy had been on an ad hoc, case by case judicial determination which had produced wide variations in indigency standards.) In addition, the office made a concerted effort to contact legislators when the legislature was not in session to inform them of their plight and of the proposed innovations concerning indigency standards. New Mexico is one of the few success stories as far as indigent defense funding is concerned.

A significant breakthrough was achieved in New York in May of 1990, with the enactment of a statute designed to support the state's "enforcement, prosecution, adjudication and rehabilitation efforts in combating substance abuse."⁴¹ The new statute commits the state to particularized allocations of funds provided by the federal government pursuant to the federal drug control and system improvement grant program. The statute provides, inter alia, that funds appropriated for prosecution and adjudication services for New York city are to be distributed on a 60:40 ratio basis.⁴² Adjudication services are specifically defined as "defense services for indigent persons" charged under the penal law and who qualify for appointed counsel.⁴³ The statute thus stipulates that if the New York District Attorneys are going to receive \$600 from federal anti-drug funds, the Legal Aid Society of New York must receive \$400; of every dollar spent on prosecution and adjudication, sixty cents will go to the prosecution and

⁴¹ Federal Drug Control and System Improvement Grant Program-Allocations Pursuant To, Chapter 192, 1990 Regular Session, §1, approved and effective May 30, 1990.

⁴² Id. at Section §2(f).

⁴³ Id.

forty cents will go to Legal Aid. The statute provides varying ratios of prosecution/adjudication services funding allocations according to the size of the county.

The New York statute clearly recognizes the integral role that indigent defense services plays in a criminal justice system beset by increased drug related case loads. The statute institutionalizes and formalizes funding support for indigent defense at least in terms of federal grant funds. And the New York legislature took action notwithstanding then current Bureau of Justice Assistance guidance with regard to federal funds disbursed under the Drug Control and System Improvement Grant Program.

By tying indigent defense funding to prosecutor funding, New York state has clearly adopted a position which acknowledges the need for proportional funding and some general equivalency of resources among the components of the criminal justice system. It establishes a precedent such that when there are increases in police or prosecutor resources, there necessarily ought to be corresponding increases in public defender resources. This philosophy and policy merit emulation by other public defender systems and defender funding agencies throughout the country.

Purportedly automatic funding mechanisms, however, are no panacea for indigent defense funding. Arizona established a drug enforcement account consisting of funds appropriated by the legislature for the purpose of "enhancing efforts to deter, investigate, prosecute, adjudicate, and punish drug offenders."⁴⁴ The monies are distributed through a criminal justice commission. Up to 30% of the available funds may be disbursed for the purpose "of enhancing the ability of the courts to process drug offenses and related criminal cases..., enhancing defense and probation services, including treatment, and funding the drug testing program."⁴⁵ This mechanism depends

⁴⁴ 1987 Arizona Session Laws §41-2402(A).

⁴⁵ Id. at §41-2492(B)(4).

on the extent to which funds are appropriated to the drug enforcement account and depends, further, on the willingness of the Arizona Criminal Justice Commission to allocate funds to public defender offices. In Maricopa County (Phoenix), the public defender's office received this past year \$150,000 from the drug enforcement account. The Maricopa County Public Defender's Office has an annual budget of 15.5 million dollars. The drug enforcement account monies constitute a very small proportion of this budget. Arizona public defender offices are county funded and, thus, rely on the willingness of local, county jurisdictions for the bulk of their funding. The statewide funding of the drug enforcement account is of some assistance to the various county offices, but the funding through that account is not sufficient to compensate for the increase in drug cases throughout the state of Arizona.

In conclusion, there are some innovative techniques and new mechanisms being established in an effort to channel funding to state indigent defender programs. However, it appears that the only realistic means of obtaining reliable state funding is through an ongoing effort of persuasion and lobbying of the state legislature or local funding bodies. As indicated above, indigent defense has neither the constituency nor the popular appeal which, on their own, can be persuasive to funding bodies. State and local legislatures must be continually reminded of the need for adequately funded indigent defense programs. It must be constantly reiterated that well funded, competent public defender offices contribute significantly to moving cases and reducing case backlogs. In addition, defenders help reduce jail crowding by arranging treatment programs and sentencing alternatives which relieve overloaded jails and prisons. These are attractive and persuasive arguments in favor of indigent defender programs. Unfortunately, indigent defenders sometimes are portrayed as the defenders of drug usage and distribution. State and local authorities must be made aware of how indigent defender systems help expedite case processing and reduce jail overcrowding.

IV. Conclusion

What emerges from even the most cursory examination of indigent defense offices throughout the country is that they are operating under crushing caseloads. This is at a time when police and prosecutors are eligible for and receiving increased federal, state, and local funding. But little funding is trickling down to local indigent defender offices.

However unpopular and distasteful to some, indigent defense is a necessary and essential component of the criminal justice system. If it is neglected for too long, the indigent defense system will collapse under the weight of the current onslaught of drug cases. And if the indigent defense system disintegrates, the criminal justice system simply will not function.

As a result, the National Center for State Courts makes the following recommendations to the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA):

Recommendation 1. That CCJ and COSCA encourage that each state's drug strategy and formula grant application include provisions for funding indigent defense services.

Recommendation 2. That CCJ and COSCA convey to the Bureau of Justice Assistance and to the Office of National Drug Control Policy the view that federal funding for indigent defense services under the Anti-Drug Abuse Act of 1988 is vitally necessary and, *as a result of the 1990 revisions to the formula grant legislation, legally appropriate for "improving the operational effectiveness of the court process."*

Recommendation 3. That chief justices and state court administrators work to improve the funding situation for indigent defense representation at the state, county, and local levels regardless of the levels of federal assistance.

In summary, since 70% to 90% of defendants arrested for drug offenses cannot afford retained private counsel, indigent defender caseloads have increased dramatically. The burgeoning caseloads have resulted in an overload, not only in defender and assigned counsel programs, but in crowded dockets and overcrowded jails. Persons who might otherwise qualify for bail, recognizance release, or early disposition

of their cases, unnecessarily clog dockets and jails. Contrary to popular belief, a well-funded indigent defender office staffed by qualified, experienced attorneys will contribute to more expeditious and efficient disposition of cases.⁴⁶ Although not politically popular, adequately funded indigent defender offices will contribute to a more successful and just "war on drugs."

⁴⁶ See, supra note 38.

ADDENDUM

This addendum updates the briefing paper on system balance and indigent defense. Important legislation was passed in September, 1990, which specifically addresses some of the concerns raised in this paper. (The briefing paper was based on information current as of August, 1990.) The legislation, contained in the Comprehensive Crime Control Act of 1990, holds the prospect of increased federal assistance to state indigent defender programs. However, while the intent of the Congress has been made explicit by the legislation, the response of the Department of Justice and the Bureau of Justice Assistance, in terms of assisting state indigent defender programs, remains problematic.

In September of 1990, Congress passed legislation amending the Drug Control and System Improvement Grant Program. Section 501 of the existing statute outlined the role of the Bureau of Justice Assistance in making grants "for the purpose of enforcing State and local laws that establish offenses similar to offenses established in the Controlled Substance Act...and to improve the functioning of the criminal justice system with emphasis on violent crime and serious offenders."⁴⁷ (See Appendix A.) The pre-existing statute outlined twenty specific program areas for funding under the Formula Grant Program. Indigent defense was not mentioned specifically as a program eligible for funding.

Under the new statute enacted by the Congress, item ten of the twenty specified eligible program areas was amended to include: "improving the operational

⁴⁷ Anti-Drug Abuse Act of 1988, 42 U.S.C. §3751.

effectiveness of the court process by expanding prosecutorial, defender and judicial resources, and implementing court delay reduction programs."⁴⁸ (Emphasis added.)

This may portend meaningful increases in federal funding for public defender programs. Or the new legislation may not change indigent defense as a low funding priority. The funding policies and procedures of the Department of Justice remain to be seen. Recent announcements with regard to discretionary programs indicate that indigent defense has not achieved major visibility within the Department of Justice. In the Office of Justice Programs Notice of *Discretionary Programs for Fiscal Year 1991*, dated January 16, 1991, indigent defense programs are not included in the listing of discretionary programs eligible for funding applications. Evidently, none of the resources or expertise of the five Office of Justice Programs Bureaus being brought to bear "to maximize and broaden the impact of the program funding on the "War on Drugs" as well as "complex criminal justice issues confronting the country," deem indigent defense a worthwhile area to study or attempt to make more efficient or responsive.

Congressional intent with regard to indigent defense is clear. The Report of House of Representatives Committee on the Judiciary concerning, *inter alia*, the amendment to the Formula Grant Program states that "(t)he amendment contemplates a balance of support for all components of the court process including prosecutorial, defender and judicial resources."⁴⁹ The Report goes on to say that given the view at the Bureau of Justice Assistance that providing criminal defense services "are not deemed appropriate for Federal funding...It is the Committee's view that this amendment is nevertheless needed to ensure that funding for indigent defense

⁴⁸ 42 U.S.C. §3751(b)(10) as amended by the Comprehensive Crime Control Act of 1990.

⁴⁹ House of Representatives, Committee on the Judiciary, Report 101-681, Part 1, *Comprehensive Crime Control Act of 1990*, September 5, 1990, p. 84.

programs is recognized as of no less significance than the other purpose areas specifically enumerated in §3751(b).⁵⁰ The Committee's comments on the amendment conclude with the notation "that the amendment made by this section applies to both formula grants and to discretionary grants which are available for demonstration programs...for the purposes specified for formula grants (sic) under §3751(b)."⁵¹

(Author's Note: A valuable source of information on recent developments concerning federal funding of state indigent defender programs is a study prepared by The Spangenberg Group for the American Bar Association, dated November 20, 1990, and titled, *Federal Funds for State and Local Public Defenders Under the Drug Control and System Improvement Formula Grant Program, FY 1991*. This monograph has particularly valuable information with regard to defender agency interaction with the state criminal justice planning agencies and guidance with regard to participation in the formula grant program.)

⁵⁰ Id.

⁵¹ Id. at 85.

**Subtitle C—State and Local Narcotics Control
and Justice Assistance Improvements**

**PART 1—STATE AND LOCAL NARCOTICS CON-
TROL AND JUSTICE ASSISTANCE IMPROVE-
MENTS**

**SEC. 6091. BUREAU OF JUSTICE ASSISTANCE AND UNIFIED GRANT
PROGRAMS.**

(a) IN GENERAL.—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by striking parts D and E (42 U.S.C. 3741-3766) and inserting the following:

"PART D—ESTABLISHMENT OF BUREAU OF JUSTICE ASSISTANCE

"ESTABLISHMENT OF BUREAU OF JUSTICE ASSISTANCE

42 USC 3741.

"SEC. 401. (a) There is established within the Department of Justice, under the general authority of the Attorney General, a Bureau of Justice Assistance (hereafter in this part referred to as the 'Bureau').

President of U.S.

"(b) The Bureau shall be headed by a Director (hereafter in this part referred to as the 'Director') who shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall report to the Attorney General through the Assistant Attorney General. The Director shall have final authority for all grants, cooperative agreements, and contracts awarded by the Bureau. The Director shall not engage in any employment other than that of serving as the Director, nor shall the Director hold any office in, or act in any capacity for, any organization, agency, or institution with which the Bureau makes any contract or other arrangement under this title.

Grants.
Contracts.

"DUTIES AND FUNCTIONS OF THE DIRECTOR

42 USC 3742.

"SEC. 402. The Director shall have the following duties:

"(1) Providing funds to eligible States, units of local government, and nonprofit organizations pursuant to part E.

"(2) Establishing programs in accordance with subpart 2 of part E and, following public announcement of such programs, awarding and allocating funds and technical assistance in accordance with the criteria of subpart 2, and on terms and conditions determined by the Director to be consistent with subpart 2.

"(3) Cooperating with and providing technical assistance to States, units of local government, and other public and private organizations or international agencies involved in criminal justice activities.

"(4) Providing for the development of technical assistance and training programs for State and local criminal justice agencies and fostering local participation in such activities.

"(5) Encouraging the targeting of State and local resources on efforts to reduce the incidence of drug abuse and crime and on programs relating to the apprehension and prosecution of drug offenders.

"(6) Establishing and carrying on a specific and continuing program of cooperation with the States and units of local government designed to encourage and promote consultation and coordination concerning decisions made by the Bureau affecting State and local drug control and criminal justice priorities.

"(7) Preparing recommendations on the State and local drug enforcement component of the National Drug Control Strategy which shall be submitted to the Associate Director of the Office on National Drug Control Policy. In making such recommendations, the Director shall review the statewide strategies submitted by such States under part E, and shall obtain input from State and local drug enforcement officials. The recommendations made under this paragraph shall be provided at such time and in such form as the Director of National Drug Control Policy shall require.

"(8) Exercising such other powers and functions as may be vested in the Director pursuant to this title or by delegation of the Attorney General or Assistant Attorney General.

"PART E—BUREAU OF JUSTICE ASSISTANCE GRANT PROGRAMS

"NAME OF PROGRAMS

"SEC. 500. The grant programs established under this part shall be known as the 'Edward Byrne Memorial State and Local Law Enforcement Assistance Programs'. 42 USC 3750.

"Subpart 1—Drug Control and System Improvement Grant Program

"DESCRIPTION OF THE DRUG CONTROL AND SYSTEM IMPROVEMENT GRANT PROGRAM

"SEC. 501. (a) It is the purpose of this subpart to assist States and units of local government in carrying out specific programs which offer a high probability of improving the functioning of the criminal justice system, with special emphasis on a nationwide and multilevel drug control strategy by developing programs and projects to assist multijurisdictional and multi-State organizations in the drug control problem and to support national drug control priorities. 42 USC 3751.

"(b) The Director of the Bureau of Justice Assistance (hereafter in this part referred to as the 'Director') is authorized to make grants to States, for the use by States and units of local government in the States, for the purpose of enforcing State and local laws that establish offenses similar to offenses established in the Controlled Substances Act (21 U.S.C. 801 et seq.) and to improve the functioning of the criminal justice system with emphasis on violent crime and serious offenders. Such grants shall provide additional personnel, equipment, training, technical assistance, and information systems for the more widespread apprehension, prosecution, adjudication, and detention and rehabilitation of persons who violate these laws, and to assist the victims of such crimes (other than compensation), including—

"(1) demand reduction education programs in which law enforcement officers participate;

"(2) multijurisdictional task force programs that integrate Federal, State, and local drug law enforcement agencies and prosecutors for the purpose of enhancing interagency coordination, intelligence, and facilitating multijurisdictional investigations;

"(3) programs designed to target the domestic sources of controlled and illegal substances, such as precursor chemicals, diverted pharmaceuticals, clandestine laboratories, and cannabis cultivations;

"(4) providing community and neighborhood programs that assist citizens in preventing and controlling crime, including special programs that address the problems of crimes committed against the elderly and special programs for rural jurisdictions;

"(5) disrupting illicit commerce in stolen goods and property;

"(6) improving the investigation and prosecution of white-collar crime, organized crime, public corruption crimes, and fraud against the government with priority attention to cases involving drug-related official corruption;

"(7)(A) improving the operational effectiveness of law enforcement through the use of crime analysis techniques, street sales enforcement, schoolyard violator programs, gang-related and low-income housing drug control programs;

"(B) developing and implementing antiterrorism plans for deep draft ports, international airports, and other important facilities;

"(8) career criminal prosecution programs including the development of proposed model drug control legislation;

"(9) financial investigative programs that target the identification of money laundering operations and assets obtained through illegal drug trafficking, including the development of proposed model legislation, financial investigative training, and financial information sharing systems;

"(10) improving the operational effectiveness of the court process through programs such as court delay reduction programs and enhancement programs;

"(11) programs designed to provide additional public correctional resources and improve the corrections system, including treatment in prisons and jails, intensive supervision programs, and long-range corrections and sentencing strategies;

"(12) providing prison industry projects designed to place inmates in a realistic working and training environment which will enable them to acquire marketable skills and to make financial payments for restitution to their victims, for support of their own families, and for support of themselves in the institution;

"(13) providing programs which identify and meet the treatment needs of adult and juvenile drug-dependent and alcohol-dependent offenders;

"(14) developing and implementing programs which provide assistance to jurors and witnesses, and assistance (other than compensation) to victims of crimes;

"(15)(A) developing programs to improve drug control technology, such as pretrial drug testing programs, programs which provide for the identification, assessment, referral to treatment, case management and monitoring of drug dependent offenders, enhancement of State and local forensic laboratories, and

Courts, U.S.

"(B) criminal and justice information systems to assist law enforcement, prosecution, courts, and corrections organization (including automated fingerprint identification systems);

"(16) innovative programs that demonstrate new and different approaches to enforcement, prosecution, and adjudication of drug offenses and other serious crimes;

"(17) improving the criminal and juvenile justice system's response to domestic and family violence, including spouse abuse, child abuse, and abuse of the elderly;

Aged persons.

"(18) drug control evaluation programs which the State and local units of government may utilize to evaluate programs and projects directed at State drug control activities;

"(19) providing alternatives to prevent detention, jail, and prison for persons who pose no danger to the community; and

"(20) programs of which the primary goal is to strengthen urban enforcement and prosecution efforts targeted at street drug sales.

"(c) Each program funded under this section shall contain an evaluation component, developed pursuant to guidelines established by the National Institute of Justice, in consultation with the Bureau of Justice Assistance. The Director of the Bureau of Justice Assistance may waive this requirement when in the opinion of the Director—

"(1) the program is not of sufficient size to justify a full evaluation report; or

"(2) the program is designed primarily to provide material resources and supplies, such as laboratory equipment, that would not justify a full evaluation report.

"ELIGIBILITY

"Sec. 502. The Bureau is authorized to make financial assistance under this subpart available to a State to enable it to carry out all or a substantial part of a program or project submitted and approved in accordance with the provisions of this subpart.

42 USC 3752.

"STATE APPLICATIONS

"Sec. 503. (a) To request a grant under this subpart, the chief executive officer of a State shall submit an application within 60 days after the Bureau has promulgated regulations under this section, and for each subsequent year, within 60 days after the date that appropriations for this part are enacted, in such form as the Director may require. Such application shall include the following:

42 USC 3753.

"(1) A statewide strategy for drug and violent crime control programs which improve the functioning of the criminal justice system, with an emphasis on drug trafficking, violent crime, and serious offenders. The strategy shall be prepared after consultation with State and local officials with emphasis on those whose duty it is to enforce drug and criminal laws and direct the administration of justice and shall contain—

"(A) a definition and analysis of the drug and violent crime problem in the State, and an analysis of the problems in each of the counties and municipalities with major drug and violent crime problems;

MAR 24 9

Office of the Director

Washington, D.C. 20531

MAR 24 1989

Mr. H. Scott Wallace
Legislative Director
National Association of
Criminal Defense Lawyers
Suite 1150
1110 Vermont Avenue, N.W.
Washington, D.C. 20005

Dear Mr. Wallace:

In response to your correspondence of February 10, 1989, regarding the Bureau of Justice Assistance (BJA) guidance document for the implementation of the Formula Grant Program authorized by the Drug Control and System Improvement Act of 1988 (Act), the following information is provided. As we understand your letter, your concerns relate to the following three topics: (a) funding of criminal defense services; (b) funding of furlough programs for offenders who pose dangers to the community; and (c) the recommended coordination of activities aimed at drug and violent crimes through a state policy board.

Criminal Defense Services

As outlined below, our guidance as provided does not constitute a prohibition. It is in accord with statutory requirements, and it reflects past funding practices and present program needs.

- o Statutory Requirements. Section 403(a) of the Justice Assistance Act of 1984 (JAA) stated that the purpose of the JAA was to assist states and local units of government "[to] improve the functioning of the criminal justice system" and identified 18 purpose areas for which funds could be utilized. Section 1302 of the Anti-Drug Abuse Act of 1986 (ADAA) authorizes BJA "to make grants to States...for the purpose of enforcing state and local laws that establish offenses similar to offenses established in the Controlled Substances Act" and provides seven broad purpose areas -- apprehension, prosecution, adjudication, detention and rehabilitation, eradication, treatment and major drug offenders -- for which funds may be expended. Section 501(b) of the Anti-Drug Abuse Act of 1988 (hereafter Act) authorizes BJA to make grants to states for "the more widespread apprehension, prosecution, adjudication and detention and rehabilitation" of offenders who violate state

or local drug laws and lists 20 program areas for funding consideration. An additional purpose area is added by amendment in Section 5104. Of the enumerated purposes, criminal defense services are not identified as a priority. What our guidance document states is that defense services are not deemed as priorities under this Act by Congress, BJA or the states.

Furthermore, Section 405(5) of the Act specifically includes as a duty of the Director of BJA: "Encouraging the targeting of State and local resources on efforts to reduce the incidence of drug abuse and crime and on programs relating to the apprehension and prosecution of drug offenders" (emphasis added). This is a clearly stated directive to focus program activities on these two areas of the criminal justice system. This is also consistent with the focus of formula funds under the ADAA whereby the states allocated approximately 78 percent of available FY 1987 formula funds for apprehension and prosecution efforts.

- o Past Experience. According to our best available information, no funding was provided specifically for defense services under the JAA. In FY 1987, our records indicate that only three states opted to provide ADAA funds for criminal defense services --Vermont (\$32,000); Louisiana (\$65,000); and New York (\$514,591) -- for a combined total of \$611,591 out of a total of \$178 million.
- o Present Needs. BJA's review of past and present state drug strategies has not identified separate criminal defense services as a priority area.

Furlough Programs for Dangerous Offenders

The guidance document recommends against funding furlough programs "for offenders who pose dangers to the community." The quoted language is taken from Section 501(b)(20) related to the funding of prison alternatives. BJA presents it as a reminder to the states.

Proposed Drug and Violent Crime Policy Boards

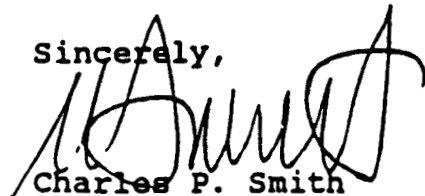
In encouraging the states to establish Drug and Violent Crime Policy Boards, BJA referred to the components and activities of the criminal justice system specified in Section 501(b) of the Act and does not preclude criminal defense representation. Final decisions as to Board membership or representation are rightfully the responsibility of the states.

Conclusion

In summary, it is the position of BJA that our guidance document is consistent with the Act, agency experience and program needs.

Thank you for informing me of your views on these issues. If additional information is needed, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. P. Smith', written over the word 'Sincerely,'.

Charles P. Smith

Director

Bureau of Justice Assistance



Drug Control and System Improvement Formula Grant Program

Bureau of
Justice
Assistance

**FY 1990 PROGRAM GUIDANCE
AND APPLICATION KIT**

workers with drug problems provide an effective means of reducing drug use in the American workforce. All grantees of Federal funds, other than

an individual, must provide a drug-free workplace in accordance with Title V, Sec. 5153 of the Anti-Drug Abuse Act of 1988 as defined by 28 CFR Part 67, Subpart F.

Purpose of Formula Grant Funds

The purpose of the Drug Control and System Improvement Grant Program is to assist states and units of local government in carrying out specific programs which offer a high probability of improving the functioning of the criminal justice system. Special emphasis is placed on a nationwide and multi-level drug control strategy. Programs and projects are to be developed to assist multi-jurisdictional and multi-state organizations in the drug control problem and to support national drug control priorities. Sec. 501 (a) of the Act.

In accordance with Sec. 501 (b) of the Act, the states may award formula grant funds to state agencies and units of local government for the purpose of enforcing

state and local laws which establish offenses similar to offenses established in the Controlled Substances Act (21 U.S.C. 801 et seq.) and to improve the functioning of the criminal justice system, with emphasis on violent crime and serious offenders. Grants may provide personnel, equipment, training, technical assistance and information systems for the more widespread apprehension, prosecution, adjudication and detention and rehabilitation of persons who violate such laws, and to assist the victims of such crimes (other than compensation). The authorized programs are described in Appendix A. Formula funds should be devoted to programs that directly relate to drug control.

Allocation of Funds to the States

Eligible Applicants

State Government

All states are eligible to apply for and receive formula grants. Sec. 502 of the Act. State, as defined in the statute, means any state of the United States and includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands and American Samoa. Sec. 901 (a) (2) of the Act.

Units of Local Government

Units of local government are eligible to receive subgrants from a participating state. Units of local government means any city, county, town, township, borough, parish, village or other general purpose political subdivision of a state and includes Indian tribes which perform law enforcement functions as determined by the Secretary of the Interior. Sec. 901 (a) (3) of the Act.

Allocation

Sec. 506 (a) of the Act provides that at least 80 percent of the total amount appropriated for this part shall be allocated for formula grants. The formula grant allocation is the balance of the appropriation remaining after a set aside for discretionary programs of 20 percent of the total appropriation or \$50,000,000, whichever is less. Each participating state shall receive a base amount of 0.25 percent of the total formula grant allocation or \$500,000, whichever is greater. The remaining funds are allocated to each state on the basis of the state's relative share of total U. S. population. The FY 1990 allocations by state are found in Appendix B.

For the purposes of this Section, American Samoa and the Northern Mariana Islands shall be considered as one state, and 67 percent of the amount allocated shall be given to American Samoa and 33 percent to the Northern Mariana Islands. Sec. 901 (a) (2) of the Act.

assisting in the development of the statewide strategy.

- o Identification of resource needs.
- o The establishment of statewide priorities for crime and drug control activities and programs.
- o An analysis of the relationship of the proposed state efforts to the National Drug Control Strategy, which should include a description of the state and local drug testing programs that include arrestees, prisoners, parolees, those out on bail, and others in the criminal justice system. The description should include an explanation of how drug test results are used in bail, sentencing, early release, probation, and parole decisions. If the state has not adopted comprehensive drug testing programs, information on timetables to do so should be provided.
- o A plan for coordinating the programs to be funded under this program with other Federally funded programs, including state and local drug abuse education, treatment and prevention programs.

Programs to be Funded

Applications must set forth programs and projects which meet the purposes and criteria outlined in the Act. Sec. 506 (c) of the Act. Recommended program elements are highlighted on page 1. Since the Act identifies specific areas for funding, BJA deems some criminal justice system improvement programs as not appropriate for Federal funding (e.g., services for criminal defense and furlough programs for offenders who pose dangers to the community).

The application must designate which statutory purpose each program or project is intended to address and provide the name of the subgrantee, if known, and the estimated funding level for the program or project, including the amount and source of cash matching funds. The application must also include a description of the program and how it contributes to the statewide drug strategy's implementation.

The application must contain a Program List which includes:

- o The legislatively authorized purpose area
- o The title of the program or project
- o The implementation Agency
- o The Federal amount allocated to the program or project

- o The amount of the match
- o The source of the match (state, local, or other)

The Program List must be followed by specific information on each program to be funded including: a description of the program, the statutory purpose it addresses, its objectives, the critical elements in the program design, the indicators which will be used to assess performance and how it contributes to the implementation of the statewide strategy.

BJA develops program briefs that describe programs which have been found, based on evaluation and research, to be effective in drug and violent crime control.

If a program/project identified for funding includes activities which partially fall outside of the purposes set forth in Sec. 501 of the Act, the applicant must describe the program/project and clearly delineate the percentage of the funded activity which will be involved with Sec. 501 purposes. The description, which should also follow the Program List, must indicate the prorated amount of costs being covered by the formula grant funds and contain an adequate justification.

Federal, State and Local Participation in Strategy Development

Section 503 (a)(1) of the Act requires that "the strategy shall be prepared after consultation with State and local officials with emphasis on those whose duty it is to enforce drug and criminal laws and direct the administration of justice. Section 503 (a)(1)(A) requires that the strategy contain "a definition and analysis of the drug and violent crime problem in the state, and an analysis of the problems in each of the counties and municipalities with major drug and violent crime problems." Section 506 (b)(2) requires that "in distributing funds received under this part among urban, rural and suburban units of local government and combinations thereof, the State shall give priority to those jurisdictions with the greatest need."

It is essential that Federal, state and local law enforcement, prosecutors, and other criminal justice personnel participate closely in developing the statewide drug strategy. State planning agencies should not draft the strategy and then submit the document for review, thereby depriving operational agencies from making substantive contributions at the beginning of the strategy development process.

INTERMEDIATE PUNISHMENT OPTIONS

INTERMEDIATE PUNISHMENT OPTIONS*

Introduction

As used throughout the nation, Intermediate Punishment Options include a broad spectrum of sanctions and programs. In an attached paper, Dr. Todd Clear, Associate Professor of Criminal Justice, Rutgers, University, argues that higher success--decreased recidivism--is more likely where offender and sentence are well matched. Four offender types are defined together with various treatment and punishment options.

Neither the general public nor all persons convicted of drug and drug-related offenses benefit from having all such convicted offenders serve time in prison. Required jail space projections show escalating space requirements absent viable punishment options. Funds for prison construction must be drawn from a common funding pool that has many competing interests. Locations within urban areas are difficult to secure. In short, the nation can no longer afford a "lock 'em up" mentality.

Increasingly, intermediate punishment options--supervision greater than probation and less than prison--are being used in lieu of incarceration. More stringent than probation, less stringent than hard time, costing less per convicted offender, intermediate sanctions--once the wave of the future--are today's corrections. Crucial to the success of any intermediate sanction program is its credibility with the courts and corrections. The alternative programs described here have that creditability because they are believed to provide appropriate supervision levels and recidivism rates that are no higher than prison. An intermediate program client is an offender who would otherwise be "prison bound." Seven such alternative approaches are described:

**This volume was prepared as part of the Drug Issues Affecting State Judicial Systems Project. Support was provided by a grant (No. 87-DD-CX-0002) to the National Center for State Courts from the Bureau of Justice Assistance, United States Department of Justice. Points of view presented in this volume do not represent the official position or policy of the Bureau of Justice Assistance, the National Center for State Courts, the Conference of Chief Justice or the Conference of State Courts Administrators.*

Boot Camps. Shock incarceration or "boot camp," with a usual sentence of six months, is one step removed from prison. Operating from a site of confinement, the camps involve intense physical labor regimens and re-entry training skills. After boot camp, intermediate punishment alternatives are stepped down from structured group incarceration to various types of community based programs. Connecticut and New York programs are described.

Day Reporting Centers. The objectives, client profile and supervision methods of day reporting centers are a second type of intermediate sanction. These centers operate from centralized locations and coordinate the activities of non-residential clients. The Boston Day Reporting Center allows felons to fit non-intrusively in the community and to utilize existing community agencies. Other cited programs operate in Springfield, Mass., New York City, Connecticut, Chicago and Santa Clara and San Francisco, California.

Intensive Supervision Programs (ISP). Intensive supervision methods, including electronic monitoring and house arrest, require consistent contact with probation officers. The isolation of home arrest confinement causes some offenders to choose prison rather than an ISP. Program examples from New Jersey and Tennessee are provided.

Acupuncture. Acupuncture is accepted to a surprising degree as a drug abuse strategy. First tried in the Bronx, New York, acupuncture is a component of the comprehensive program of the drug court in Miami, Florida. The briefing paper describes the benefits the Bronx acupuncture clinic director attributes to acupuncture and the low cost of the program as compared to other intermediate alternatives.

Community Corrections in Minnesota. Of the many community corrections programs in Minnesota, the briefing paper describes two residential and one non-residential program. Information on the client population and per diem costs of the

three programs are provided. The need for highly specialized services in some instances and the government's providing of the services through use of contracts with the private sector is a cornerstone of the Minnesota program.

Literacy in Arizona. The Arizona Supreme Court's Literacy Program began as one computer lab financed through a juvenile crime reduction fund. The program has grown to include labs in each of the state's fifteen counties. Included in the briefing paper is a description of the literacy program, its goals, target population, required community coordination, site selection criteria and costs.

Connecticut's Comprehensive Statutory Enactment. Recent Connecticut legislation comprehensively addresses variable defendants and impacts of drug abuse. The legislation provides for pre-trial release, a special alternative incarceration program ("boot camp"), community service programs within probation, treatment for drug dependent offenders, a community based treatment facility for women offenders, and a juvenile drug use program. The paper summarizes the provisions of the Act including implementation and coordination responsibilities.

A. Boot Camps

1. Statutorily created in Connecticut. In early March, 1990, boot-camps were operational in 14 states: Alabama, Arizona, Florida, Georgia, Idaho, Louisiana, Michigan, Mississippi, New York, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas. Virginia legislation provided for a camp to begin operations also in 1990. The Connecticut program outlined here will soon be in operation.

In a public law,¹ adopted in 1989, effective January 1, 1990, the Connecticut Legislature appropriated \$16.5 million for a variety of new and existing drug enforcement and treatment programs. Among programs newly created by the 1989

¹ Connecticut Public Act 89-390, see also pp. 6-37 - 6-44.

legislation, some of which were amended in 1990, was boot-camp for 16 to 21 year old males who have never been in an adult prison and have not been convicted of a capital felony, Class A felony or 16 other enumerated offenses. The alternative incarceration program for non-class A felons is patterned after military basic training.

Courts are authorized by the 1989 Act to sentence defendants to boot-camp as a condition of probation or conditional discharge. The judge must enter on the record that the defendant does not have any physical or mental limitations that would prevent strenuous physical activity. The Act mandates facility supervision by a specially trained staff and requires a major part of the program to be constructive, community-based work. The participants receive job skills training, instruction in communications and job application skills.

2. Administration By Corrections in New York. New York was among the states to pioneer the concept of "shock incarceration."² The State has five shock incarceration facilities including a newly-opened 750 bed facility, the largest boot camp style prison in the nation. As distinguished from the Connecticut statute that establishes boot camp incarceration as a sentencing alternative for the sentencing judge, in New York the Department of Corrections selects inmates to participate in the shock incarceration program.³

At New York Senate Subcommittee hearings held in March, 1990, Thomas A. Coughlin III, Commissioner of the New York State Department of Corrections described the New York experience to date:

Our early experience with shock has shown us two things that suggest that we might be on the right track:

- * Inmates who complete shock return at a rate of 20% compared to 25% among all inmates.

² Criminal Justice Digest, Vol 9, No. 3 (March 1990). p.7.

³ Shock Incarceration Act of 1981, N.Y. Corrections L.Sections 865-867.

That is significant because each 100 successful shocks ... saves taxpayers 1.6 million dollars.

- Inmates who complete shock return at the same 18-20% as do inmates who are eligible for it but choose not to participate. That means the return rate for inmates who are in shock for only six months is the same as for those who spend an average of an additional 8 months in prison.

The purpose of prison has traditionally been the secure confinement, rehabilitation and segregation of felons. That thinking has changed in New York State, we do not believe in rehabilitation. Because one definition of rehabilitation is to "restore and improve its original state". Why would you want to use prison to turn out a better class of drug users and dealers?....Most people in prison were never socialized in the first place....Our goal becomes one of habilitation. Now we are attempting to showcase that philosophy. The six month shock regimen includes more than just the 500 hours of physical training plus drill and ceremony that has led to the media dubbing it a "boot camp". It also includes 546 hours of therapeutic approach to treating addiction, based on the Network program and in Alcoholics Anonymous 12 steps to recovery. It also includes at least 260 mandatory hours of academic education, and 650 hours of hard labor, working on facility projects, community service work and projects in conjunction with the Department of Environmental Conservation.⁴

Of nine shock-type programs surveyed by New York, it was concluded that New York State is the only one where:

- * Staff is required to undergo one month of shock-type training before inmates arrive, so that all staff, superintendents and clerks alike, are aware of both the content and goals of the program;
- The program includes an intensive therapeutic community approach to rehabilitation; and
- * Inmate graduates undergo a full year of intensified parole follow-up.⁵

⁴ Criminal Justice Digest, Vol.9 No.3 (March, 1990) p.7.

⁵ *Id.* at 8

Commissioner Coughlin continued:

We believe successful completion of the six month regimen results in inmates becoming better people and they get out of prison as much as two and a half years early. Failure means serving a full sentence in prison.

But the choice is their's. As attractive as that may sound to some, 56% have found the regimen too demanding, even with the carrot of early release. Many have already chosen to leave and to complete their sentence in a traditional prison.⁶

The Commissioner's remarks expressed a theme that runs through many alternatives to incarceration programs: components of education, professional and peer counseling, drug and alcohol therapy, and a strict physical regimen to teach discipline and respect for authority. Some sessions are designed to teach decision-making in socially acceptable ways, problem solving, confrontation and conflict resolution, individual counseling, and programs designed to help inmates make the transition from prison to parole.

As compared to Connecticut where the age of offender participants is from 16 to 21, the cut off for participation in New York is age 29. For inmates who are less than 26 years, eligibility criteria are: (1) physically and mentally qualified; (2) first time commitments to state prison; (3) within three years of parole eligibility; and (4) not serving a sentence for a violent offense, such as murder, manslaughter or rape.

For inmates over age 26 but under 30, there are the following added restrictions:

- (1) the inmate cannot ever have been convicted of a crime that would keep him out of shock incarceration;
- (2) the inmate must serve at least one year of prison time, including the six months in shock incarceration; and

⁶ *Id.*

- (3) the sentencing judge must not oppose the inmates' participation in the boot camp program.⁷

New York costs are \$9,000 per year for an inmate in boot camp versus \$20,000 annually for prison.⁸ Commissioner Coughlin noted that while after-care is required, less time spent incarcerated by the offender means a cost savings to taxpayers and frees money for other uses.

Boot camps are expected to serve two purposes. In addition to reducing jail overcrowding and costs, the camps are expected to break the drug dependent cycle, including drug sales as a dependency for economic stability. Boot camp introduces structure into inmates lives at a level of intensity, which when joined to after-care, develops self-discipline, respect for self and others and marketable job skills that provide a way out of the drug dependency culture.⁹

B. Day Reporting Centers in Massachusetts

Day reporting centers are nonresidential coordination sites for offender supervision, sanctions, and services. First established in England in 1974, day reporting centers have been used since 1986 in the United States¹⁰ where they were initially envisioned to be used for the early release of inmates already sentenced to prison. An attempt has been made in some cities to expand the use of day reporting centers for pre-trial releasees but, as will be discussed, these have not been as successful as those centers working with sentenced offenders.

Sponsored by the Crime and Justice Foundation, the Metropolitan Day Reporting Center in Boston, Massachusetts, has two primary objectives:

⁷ *Id.* at 9.

⁸ *Id.* at 11.

⁹ *Id.* at 8.

¹⁰ Elizabeth L. Curtin, "Day Reporting Centers: A Promising Alternative," IARCA Journal (March, 1990)p.8.

1. To provide a safe means of reintegrating inmates to the community; and
2. To reduce the population of correctional facilities.¹¹

The Metropolitan Day Reporting Center is a regional program designed to serve both men and women offenders of two counties from five prison facilities. The Center opened in late 1987 in a downtown Boston office building that was available without prior site approval and easily accessible to users. The ability to locate and begin operations without the site approval requirements of a group incarceration structure is a clear advantage. The Center defines itself as a highly structured program of supervision, reporting, employment, restitution and community activities for non-violent offenders. It is staffed 14 hours a day, 7 days a week. Overnight coverage is provided by an answering service and on-call staff.

The Center's furnishings, facilities and underlying philosophy are basic.

Supervision and services include:

- * a daily itinerary;
- * frequent checks on participant compliance with the itineraries through telephone calls to the client made randomly from the Center;
- * daily in-person reporting to the Center;
- * frequent and random drug testing; and
- * periodic community checks.

The profile of clients admitted to the Metropolitan Day Reporting Center according to the 1989 Crime and Justice Foundation Annual Report is as follows:

- *98% males, 2% females;
- *49% Caucasian, 32% Black, 18% Hispanic and 1% Asian;

¹¹ Metropolitan Day Reporting Center Program Design, 1990.

- *16% under 20 years of age, 52% between 21 and 30, and 32% over 31;
- *44% with drug/alcohol related offenses;
- *28% with property offenses;
- * 8% with probation or parole violations;
- *16% with other offenses;
- * 5% were pretrial detainees; and
- *47% had prior incarcerations.¹²

The mission statement includes three purposes: individual deterrence, punishment, and rehabilitation. Through intensive, highly structured supervision, day centers seek to deter further criminal activity. Punishment is achieved by limiting personal liberty through curfews, and community work service requirements. Community work service provides the offenders with the experience of returning something to the community and of participating in their community in a positive manner. The work also helps the Centers' acceptance by the community. Reintegration and rehabilitation are sought by providing offenders with substance abuse treatment, mental health counseling, education, vocational training and job placement assistance.

The Center stresses accountability and restitution through curfew and monitoring of court ordered payments. Day centers use other community resources rather than try to deliver all services directly. In making referrals in a "purchase of services" model to existing agencies, the Center avoids unnecessary duplication and expands the offender's connections with resources that will be available after the court imposed restrictions have ended.

¹² Metropolitan Day Reporting Center 1989 Annual Report.

As reported by the Director of Community Corrections for the Crime and Justice Foundation, who oversees the Metropolitan Day Reporting Center in Boston, program failures are runaways and the commission of new offenses by program participants.¹³

The original day reporting center in the United States located in Springfield, (Hamden County), Massachusetts reports an 82% success rate against these criteria.¹⁴ The Boston Center reports a lower success rate of 72%.¹⁵ Factors contributing to the 10% difference are speculative: the Boston Center accepts pre-trial detainees as well as convicted offenders; Boston is a larger urban area with more inner-city issues and its clientele are more "street-wise."¹⁶

With pre-trial offenders in the day center programs, success rate drops off sharply. The Springfield, Massachusetts Center has maintained a 35-40% completion rate, and in New York City a similar program has been closed due to poor results and a low number of clients.¹⁷ When compared to the 82% success rate of Hamden County parole revocation population, the 35-40% completion rate in Springfield for pre-trial detainees, without additional crimes, runaways or positive drug testing, is low. Day reporting center personnel believe it essential to control intake decisions. Potential candidates must meet the following criteria:

¹³ Interview on March 26, 1990, in Boston, Massachusetts, with Elizabeth L. Curtin, Director of Community Corrections for the Crime and Justice Foundation, by Joan T. White.

¹⁴ For an indepth report on the Hamden County Day Reporting Center emphasizing community reintegration, see the March, 1990 issue of the International Association of Residential and Community Alternatives Journal.

¹⁵ Year End Report of Metropolitan Day Reporting Center covering fiscal year 1990 (7/89-6/90).

¹⁶ Response of Elizabeth L. Curtin after review of draft of briefing paper and inquiry as to probable causes of lower success rate.

¹⁷ Day Reporting Centers, Crime and Justice Foundation, 1990.

1. Be charged with or convicted of property offenses, drug or alcohol related offenses, minor offenses against persons or other non-violent offenses.
2. Be free of cases pending or major warrants.
3. Be within 90 days of release (sentenced), or have been held for at least 48 hours (pre-trial).
4. Have an approved residence and means of support.
5. Agree to abide by the conditions of the contract with the day reporting center.¹⁸

The Metropolitan Center is designed for a minimum of 15 days and a maximum of 90 days participation. The "means of support" requirement can be met by the inmates' own resources, support from a family member or friend, or by temporary financial assistance. The Center can provide a "money loan" for necessities and requires repayment when the offender obtains employment. Work release staff members of correctional facilities, with the assistance of Metropolitan Center personnel, provide job development services for the offenders. Job development is also provided by a community based agency, the Criminal Offender Employment Resource System, in cooperation with Center personnel.

As clients progress within the program, there are three phases of supervision. Successful completion of each phase depends on participation and motivation. Minor violations of the program rules may result in return to a stricter phase of supervision and reporting. Movement within phases is regularly reviewed with the client. After an orientation and a meeting with program staff members to make final contracts, participants enter phase one which has the most stringent reporting requirements and curfew hours. When clients move into phase two, they report daily but curfew hours can be extended and participants can become involved in family and community

¹⁸ *Supra* note 12.

functions. Although some form of daily contact remains a phase three requirement, more participation in family and community activities are allowed.

The Crime and Justice Foundation reports three unintended consequences of day reporting centers, two of which are positive. Noting that the daily itineraries were designed to be a supervision aid, allowing the centers to know where an offender is at all times, the itineraries also help the client plan daily activities and avoid troublesome people and places. Reviewers report that the second unintended consequence relates to the community work service requirement. While intended as restitution, the community work service requirement has also been found to be a treatment benefit.

A third, unintended consequence reported by the Crime and Justice Foundation, and one that is clearly negative, is that in replicating the center, "Often a jurisdiction takes the approach that more is better. More specifically, activities or controls are added to the center without consideration as to their need or how they relate to other components of the program. In at least one case, this has led to the closing of the program for lack of clients." ¹⁹

The Crime and Justice Foundations estimates an average cost of \$4,000-\$6,000 per year per client as against \$ 20,000 for prison.²⁰

Day reporting centers exist in Massachusetts; Connecticut; Cook County, Illinois; and San Francisco and Santa Clara counties in California. Day centers themselves report that "Existing programs have received an unanticipated amount of national and international attention".²¹ The Centers however point out: "While the attention is welcomed as a positive indicator of the program's applicability to the problems and

¹⁹ *Supra* note 17.

²⁰ *Supra*, note 13. c.f. Criminal Justice Newsletter, Vol. 20 No. 16 (August 1989) p.5.

²¹ *Supra* note 14.

issues confronting criminal justice, proponents fear that some will look upon any one center as the model that need only be replicated for success at home. ... Experience and research suggest otherwise."²²

C. Intensive Supervision Programs

Often thought of as electronic monitoring or house arrest, intensive supervision programs actually involve much more. As set out in Home Confinement: An Evolving Sanction in The Federal Criminal Justice System,²³ electronic monitoring and house arrests vary with the intensity of the supervision desired. For the later phases of supervision in day reporting centers, and for misdemeanors and lesser crimes, curfews may be later in the evening and restrictions on movements in the community less. House arrest generally does not permit any ventures from the house.

Occasionally, convicted offenders choose to remain in prison or go back to prison rather than to experience confinement at home. House arrest is an intense psychological punishment for many persons.

1. New Jersey. *Home Confinement: An Evolving Sanction in the Federal Criminal Justice System*²⁴ contains information on programs around the country and the criteria for establishing a home confinement program. The publication features New Jersey's intensive supervision program, noting that it was initially coordinated by the Administrative Office of the Courts and that it is restricted to offenders already sentenced to imprisonment.

In its January 1990 Progress Report, the Administrative Office unit responsible for the New Jersey Intensive Supervision program (ISP) states that it is:

²² *Supra* note 17.

²³ P. Hofer and B. Meienhoefer. Home Confinement: An Evolving Sanction In The Federal Criminal Justice System (Federal Judicial Center 1987).

²⁴ *Id.*

... an intermediate form of punishment which permits carefully selected state-prison sentenced offenders to serve the remainder of their sentences in the community rather than in prison. ISP is a "prison without walls."

... a highly structured and rigorous form of community supervision which involves extensive client contact, surveillance, a restrictive curfew and urine monitoring (2 to 3 times per week) for alcohol and drugs including marijuana.

... a supervision program which mandates full-time employment, onerous community service, maintenance of a budget and diary, payment of all court ordered financial obligations, and payment toward child support and the cost of the program.

... an applicant screening process which selects only those inmates who have the potential to succeed on ISP and will not jeopardize community safety.

... an applicant assessment process which seeks input from the sentencing judges, prosecutors, police, victims, presentence report writers, and probation/parole officers.

NOT

... an overturning of the original judge's sentence, the ISP Resentencing Panel merely changes the place of confinement.

... a statement that the original sentence was inappropriate. The Resentencing Panel consistently reaffirms on the record that the original sentence was appropriate.

... the so called "slap on the wrist." ISP is a demanding program which requires the participants to "buy into" rigorous requirements. Many applicants withdraw from the consideration process because they would rather serve their sentences in prison than submit to ISP supervision for 16 to 22 months. Only 18% of all applicants are accepted into the program.²⁵

The goals of the New Jersey Intensive Supervision Program are:

- (1) The reduction of the number of offenders serving prison sentences by permitting a re-

²⁵ New Jersey Intensive Supervision Program, January 1990 Progress Report, p.1.

sentencing to an intermediate form of punishment.

- (2) Improved utilization of correctional resources by making additional bed space available for violent criminals; and
- (3) The testing of whether supervising selected offenders in the community is less costly and more effective than incarceration.²⁶

The New Jersey Intensive Supervision Program has met its goals and has become relied upon as a valued part of New Jersey criminal justice.

Curfew, fines and payments, employment, community service, substance abuse monitoring, treatment for the addicted substance abuser and sanctions are each part of New Jersey's ISP. The participants in the program observe curfews which range from 6 P.M. to 10 P.M.; no one can leave their residences before 6 A.M. daily. As participants progress through the program, they can earn modified curfews which allow for greater liberty. The January 1990 report advises that most programmatic violations in the New Jersey ISP are the result of a positive drug test or curfew violation. There is some sanction imposed for every program violation. Sanctions most commonly applied are increased curfew restrictions, additional community service hours, increased treatment requirements, home detention, and short term incarceration.

The 1990 report states that 95.46% of participants successfully complete the program if they succeed beyond 1,020 days in the community without a new recidivism, and that 98.21% remained in the community without being convicted of an indictable offense.²⁷ The New Jersey program is reporting an exceptionally low rate of recidivism when compared to other intermediate punishment programs around the country.

²⁶ *Id.* at 2.

²⁷ *Id.* at 8.

The Intensive Supervision Program of New Jersey is a cost effective alternative to incarceration with an average cost per participant of \$5722 in fiscal year 1988 and the plus for the system of the additional prison space. In addition to paying financial obligations ordered by the ISP re-sentencing panel, participants are required to maintain employment and perform community service. The ISP research unit has estimated that each participant contributes approximately \$3,315 to the economy of New Jersey, which means reducing the net cost of ISP to about \$2,400 per year for each participant.²⁸

Furthermore, in the New Jersey program, the community benefits from internships the program provides for college students. The internships allow the students to earn credits toward their degrees while obtaining on the job experience. Having had the opportunity of employment in the area, the students who have completed internships have an advantage in obtaining positions with criminal justice agencies upon graduation.

2. Tennessee: Southeast Tennessee Community Corrections Program. The Southeast Tennessee Community Corrections Program serves the 10th Judicial District of Tennessee which is located in the southeast corner of the state. Bordering on Georgia and North Carolina, the district is composed of four counties: Bradley, Polk, McMinn and Monroe. The region encompasses approximately 1,860 square miles, with a population of almost 163,000.²⁹ The largest county within the district is Bradley with a population of approximately 74,000. Monroe has a population of approximately 31,000, and Polk a population of approximately 14,000. The largest city within this district is Cleveland, the county seat of Bradley, with a population of about 27,000

²⁸ *Id.* at 9, C.f. ISP Fact Sheet, Intensive Supervision Program (Administrative Office of the Courts. Trenton, New Jersey, 1990).

²⁹ The current jail population is about 280. The 10th Judicial District had a total of 92 non-felony commitments during 1989.

persons.³⁰ In an April 1990 report the Southeast Tennessee Program established, among others, the following program objectives:

1. 100% of all eligible offenders in the program would be required to perform a maximum of 460 hours of community service, and
2. 100% of all eligible offenders would be required to make full restitution as ordered by the court.³¹

Similar to other intermediate programs, the Southeast Tennessee program requires community service of its offenders and victim restitution as ordered by the court. House arrest is an option of the sentencing judge. There are instances in which the District Attorney recommends, and in the court's discretion, shock incarceration is used with the community corrections program. In this Tennessee program, shock incarceration is a sentence to a local jail for a maximum of 60 days and precedes participation in other activities of the community correction program.

Among its services and treatments, the Tennessee program provides an emergency services fund much like the Boston Metropolitan Day Reporting Center except that the offender is on a voucher system with no cash being provided and the amounts are not loans. The fund was created to assist program participants having emergency needs including housing, food, shelter, transportation and medical care. Offenders who are found to be alcohol or drug dependant and who require detoxification are treated on an inpatient basis under the care of a physician or trained counselor through a residential treatment center referred to in the Tennessee report as a half-way house.³² For offenders who can be treated on an out-patient

³⁰ Southeast Tennessee Community Corrections Program Plan, p.2.

³¹ *Id* at 12.

³² *Id* at 15.

basis, the program provides a 10 week regimen that includes individual counseling and group interaction. Random drug screening can be expected by the Tennessee participants not unlike participants in intensive supervision programs elsewhere in the country.

A job training partnership office provides employment and training services for the participants in the Tennessee Community Corrections Program. The program includes basic academic skills, general education testing, job skill training and on the job training. Program staff members monitor curfew compliance, conduct face to face meetings, do electronic monitoring in addition to the random drug screens, have frequent contact with treatment providers, review offender progress toward completion of the behavioral contract and adjust levels of offender supervision accordingly.

Curfew in the Southeast Tennessee Community Corrections Program is 7 P.M. for the duration of the program unless the case officer gives permission to the offender to observe an alternate curfew time.³³ The report does not indicate that there are any gradations or phases of the curfew during the time the person is in the community corrections program.

Because of its size, the Tennessee program enjoys the advantage of a more personal connection with the courts, the District Attorney, the Public Defender's office and private defense counsel. The program is able to provide customized services for the offenders, and to emphasize the services most needed, for example, the voucher system for emergencies. The facet of the Tennessee program that allows the sentencing judge to sentence the offender to a brief shock incarceration before the participation in the community corrections program shows the advantages in a small program where sentences can be tailored to fit the offender.

³³ The average length of stay for an offender placed in the Southeast Community Corrections Program is 12 months, with the remainder of the sentence served on active probation.

3. Positive Mental Attitude Association, Inc. Project Habilitation is the name used by the Shelby County (Memphis, Tennessee) Community Corrections Grantee, Positive Mental Attitude Association, Inc.. Of the programs spotlighted in this briefing paper, Positive Mental Attitude Association, Inc., (PMAA) is unique in that it was founded in 1979 by two inmates at the Memphis Correctional Center. PMAA through Project Habilitation administers alternatives to incarceration for the sentencing court. Concentrating on mental attitudes, PMAA holds group meetings twice weekly on a six week cycle with approximately 25 prison inmates who volunteer to take a Positive Mental Attitude course.

PMAA has been the primary contractor in Shelby County for the corrections program since July 1, 1987. Prior to that date, the grantee was the primary sub-contractor for the program. In fiscal year 1990 Project Habilitation was funded for 64 new clients. In January 1990, 107 clients had been sentenced to the project for a total caseload within Project Habilitation of 196 active clients. According to its report, as it gains momentum, the project is getting more support from the criminal court judges in Shelby County, the district attorney's office, the Shelby County court administration staff, public and private defense attorneys, community service providers, and the public generally.³⁴ Project Habilitation serves the most populous county in Tennessee and is projected to grow in strength of services and increased clientele should the county experience the growth curve seen around the country in the number of drug abuse offenders.

From 1987 through 1989, court costs paid through the program by clients increased from \$2727.25 to \$10,933.50. The community service hours completed and dollar value (assessed at the rate of \$3.35 per hour) had grown from 1,170.5 hours (\$3,921.18) to 20,631.5 hours (\$69,115.53). Clients paid restitution of \$1,605 in 1987,

³⁴ Positive Mental Attitude Association, Inc., Report to the Tennessee Sentencing Commission, (January, 1990).

\$2,289.05 in 1988 and \$8,142 in 1989. Since becoming the primary grantee of Shelby County, Project Habilitation reports a 17% recidivism rate which is slightly better than that experienced by the New York boot camp and the most successful of the Day Reporting Centers in Massachusetts.

The following are offenses committed by persons participating in PMAA-Project Habilitation as listed in the project's report³⁵ of January 1990:

Aiding and Abetting...	...	...	1
Aggravated Assault ...	...	...	1
Attempt to Commit a Felony...	...	...	14
Carrying a Pistol ...	...	...	1
Drug Offenses (Possession and/or Sale)			160
Embezzlement ...	...	...	3
False Personation ...	...	...	1
Fraudulent Use of a Credit Card ...			8
Forged Prescriptions...	...	...	1
Grand Larceny ...	...	...	8
Larceny from a Person ...	...	...	6
LR/CSP ...	...	...	30
Petit Larceny...	...	...	7
Shoplifting ...	...	...	14
Sexual Assault ...	...	...	3
Second Degree Burglary ...	...	...	7
Third Degree Burglary ...	...	...	26
Uttering Forged Papers ...	...	...	12
VMS ...	...	...	3

³⁵ *Supra* note 34 at p.4.

In 1989, the average Project Habilitation client was an unmarried Black male of an average age of 24 with an educational level between the 9th and 11th grades. The average program participant had a range of three to five prior convictions. Of 196 active clients there have been 14 absconders.³⁶

The following are the performance indicators and evaluation standards used by Project Habilitation:

1. Client has had no positive substance abuse screening (at an average rate of two per week during the noted period) during treatment period.
2. Client has kept 95% of all scheduled appointments with the therapist or had documented and valid reasons for absences.
3. Client is able to verbally describe three of five symptoms of his/her disease.
4. Client able to verbally provide three of the five indicators of the following: co-dependency, enabling relationships, areas of personal stress.
5. Client has demonstrated achievement of five or more of the ten approved self-improvement personal goals developed during treatment.
6. Client has successfully demonstrated and verified utilization of a minimum of two acceptable methods for relieving and/or preventing stress-related (co-dependency and enabling) relationships and activities.
7. Client has had no further convictions.
8. Client has established a verified positive personal support system.
9. Client is attending and providing to the therapist verification of attendance in a Twelve Step program on weekly basis and has maintained attendance for a minimum of six weeks.

³⁶ *Id.* at 5.

10. Client has demonstrated constant employment, education and residency status (with no more than two changes in jobs and one place of residency) since two weeks after the inception of treatment.³⁷

Project Habilitation reports its average cost per client per year to be \$3,938. If operational costs for a prison facility were \$60 per day for 365 days, the average yearly cost per inmate would be \$21,900.³⁸ Assuming 208 clients, the Shelby County Community Corrections program therefore "saved" the state over \$3.7 million.³⁹ The difference between the \$21,900 per year for prison and the \$3,938 per year for project habilitation yields a savings per inmate of \$17,962.

Like the Southeast Community Corrections Program, the Shelby County program is numerically small. However, it is the size that allows the tailoring of individual sentences.

Project Habilitation advertises and markets itself as an alternative to prison. In its brochure it emphasizes that: it is 100% funded by the Tennessee Department of Corrections to relieve prison and jail over-crowding. To be eligible to work in the community punishment programs, offenders may display no pattern of violent behavior, but require more supervision than regular probation. Persons admitted to the program are reported to be generally prison bound.

Project Habilitation can be contacted by defense counsel with the request that the project fashion a proposed sentence for consideration by the sentencing court. In some instances, Project Habilitation will suggest to the court that an offender be placed on strict house arrest for a period of time.

³⁷ *Supra* note 34 at p.6.

³⁸ *Supra* note 34 at pp 4-5.

³⁹ *Id.*, but see, Clear, 7-11 - 7-15, this volume.

The intensive supervision programs vary in size from the extensive program in New Jersey to smaller programs in Tennessee. The common thread which runs through each and allows for the success rate enjoyed by each is the expectation of success. Whether one probation officer supervises 20 persons in New Jersey or less in Tennessee, there is also an expectation that clients know what to expect and receive personal supervision.

D. Acupuncture in New York and Miami

... Acupuncture has been practiced for 2000 to 5000 years. It is no more experimental as a mode of medical treatment than is the Chinese language as a mode of communication. What is experimental is not acupuncture, but Westerner's understanding of it and their ability to utilize it properly. Andrews vs Ballard, 1987 Supp. (SD Texas 1980)

For more than 25 centuries Acupuncture has flourished in China as a primary health modality.⁴⁰

As of May 1990, 20 states and the District of Columbia register and license acupuncture practitioners. Of those 20 states 11, California, Florida, Hawaii, Montana, Nevada, New Mexico, New York, New Jersey, Oregon, Washington, and Rhode Island, license acupuncturists for independent practice.⁴¹

1. New York Acupuncture Program. The first clinic in the United States to treat drug abuse by acupuncture is located in the Bronx, New York. Evolving from a methadone clinic, the acupuncture clinic began in 1974 as a treatment facility of the substance abuse division within the Department of Psychiatry of Lincoln Hospital. The clinic adopted acupuncture when a counselor at the methadone clinic read about acupuncture in the New York Times and convinced the medical director of the methadone clinic to try it. The medical director of the clinic testified at the Select

⁴⁰ "Overview of Acupuncture in America, 1971-1986: An Historical Perspective." National Accreditation Commission for Schools and Colleges of Acupuncture and Oriental Medicine. p.1.

⁴¹ *Id.* at 4.

Committee on Narcotics of the U.S. House of Representatives that 92% of the probation clients at Lincoln Hospital had clean urine.⁴² Clients at the acupuncture clinic in the Bronx are required to report and give urine samples each day.⁴³ The urine toxicology reports of the court-referred clients are crucial to the courts' continuing decisions to allow the clients to remain in an intermediate sanctions program.⁴⁴

As of July 1989, when Dr. Michael Smith, as director of the Lincoln Hospital clinic, presented his remarks to the House Committee On Narcotics, 250 patients were receiving acupuncture treatments daily at the clinic. Acupuncture treatment is provided in a large room with the patients seated comfortably on the perimeter, where they sit and appear either to be in deep thought or in meditation. For the size of the room and the number of persons present with thin needles protruding from their ears, one would expect more noise and bustle. The clinic has had many inquiring visitors and the staff is prepared for questions. Visitors are permitted to speak with the patients who talk freely about acupuncture and their drug habits.

The Lincoln Hospital Acupuncture Clinic devotes a portion of its treatment to drug addicted mothers. In his testimony to the House committee, the director of the clinic testified that each day 45 to 50 women bring infants and small children with them to the clinic and sit with children on laps while receiving acupuncture.⁴⁵ The

⁴² Interview on April 11, 1990 in New York, New York with Michael D. Smith, M.D., Medical Director of the Substance Abuse Division, Department of Psychiatry of Lincoln Hospital by Joan T. White.

⁴³ *Id.*

⁴⁴ Telephone interview on August 23, 1990, with Michael D. Smith, M.D., Medical Director of the Substance Abuse Division, Department of Psychiatry of Lincoln Hospital by Joan T. White.

⁴⁵ Testimony of Michael D. Smith, M.D., presented to Select Committee on Narcotics of the United States House of Representatives. (July 25, 1989)

success the clinic has enjoyed with these substance abusers should not be understated. By stabilizing drug addicted mothers, mothers and children are reunited. Once stabilization occurs, child welfare department officials agree that the children can be placed with their mothers rather than as "boarder babies" or in foster care. When considering the cost of foster care and boarder babies, (i.e., children who were born to drug addicted mothers and have no family members or relatives in whose homes they can be placed and must be kept in institutions), the savings from each bonding is considerable. There is no way of projecting the lifetime potential financial cost of a boarder baby to a state, including the cost of a child in foster care who is a greater risk to commit crime and become, in some form, a ward of the state.

As of July 1989, the Lincoln Hospital clinic had received within 30 months almost 3,000 referrals of drug abusing mothers. The clinic has recognized special challenges in treating child rearing female clients for drug abuse. In 1987, the acupuncture program appears to have saved the city three million dollars by reducing the costs of boarder babies born of crack abusing mothers. Nearly all maternal patients in Lincoln Hospital who are crack abusers are referred to the acupuncture program by the Special Services for Children unit of the hospital. Dr. Smith estimates cost per year to treat the average acupuncture patient to be \$750 versus \$20,000 for prison.

Dr. Smith emphasizes that acupuncture provides the foundation for psycho-social rehabilitation which facilitates counseling, drug free contracts, educational and employment referrals, and Narcotics Anonymous - all of which he maintains are essential parts of the program. Acupuncture is reputed to have a balancing effect on the autonomic and neurotransmitter systems of the body as well as an apparently rejuvenating effect. In some way, it not only controls withdrawal symptoms and

cravings but also reduces fears and hostilities that often disturb drug abuse treatment settings.

The popularity of the acupuncture program is ascribed, in part, to the non-judgmental method of treatment in which well trained staff members allow the patient to either talk or remain silent. Patients readily come to the treatment center, sit quietly and have the acupuncture needles placed in their ears.

There are several additional advantages of acupuncture. It is not an addictive substitute for an addictive drug and is very inexpensive. According to Dr. Smith, acupuncture works equally well for all drugs that are abused and therefore it is a crossover drug treatment.⁴⁶ When services are rendered, in a manner that makes them easily accessible to offenders, as they are at the Lincoln Hospital Clinic, the treatment becomes popular because it is "user-friendly." Patients may simply walk into Lincoln Hospital Clinic without a referral although many are made by probation departments. If they say they do not want to talk about their addiction they are not required to do so. Operating on the philosophy that the effectiveness of the treatment is undermined if the wait for treatment is too long and there is a lot of discussion about it, the staff at Lincoln Hospital treats first if the patient requests it and asks questions later, if at all. One can understand why the Lincoln Hospital acupuncture clinic has treated over 8000 patients and why it is the standard against which others establishing acupuncture clinics measure their beginning efforts.

2. Dade County, (Miami, Florida) Acupuncture Program. Dade County, (Miami) Florida drug offenders can participate in the acupuncture program as an alternative to jail. Miami began its program with the guidance of the staff at the New York Lincoln Hospital clinic. Judge Stanley Goldstein of the Miami court, stated that in July 1990

⁴⁶ *Supra* note 42.

there were 2000 offenders in the Dade County acupuncture program.⁴⁷ Each was a first offender cocaine user. Under the Dade County court guidelines, if offenders possess more crack cocaine than would be needed for personal use that person cannot enter in the program. Of the 2000 persons in the program, Judge Goldstein said that 1600 were receiving outpatient treatment, warrants had been issued for 300, charges had been dropped for 75, and the remainder were in custody for new offenses. Of the 1600 in treatment only eight were re-arrested in 1990. Persons who leave the court and never get to the treatment center and those who drop out will be arrested on an average in about three and one-half weeks. If the re-arrest is on a new cocaine charge but one for which the offender would have originally been eligible for the drug treatment program, the re-arrested go back into the program. If the re-arrest is on felony charges, the person is transferred out of the diversion program.⁴⁸

Believing it to be a foundation upon which drug offenders can be completely rehabilitated, the Dade County drug court is as strong a proponent of the acupuncture treatment as is Dr. Smith in New York. The Miami program includes literacy study and a high school diploma program sponsored by the Miami Dade County Junior College and has the support of the presidents of all unions in Miami.

Of the intermediate sanction drug programs reviewed, acupuncture is the least expensive. Agencies in the United States now review the curriculum of schools of acupuncture and issue accreditation. What is evident from the statistics, conversations with patients, and observations of mothers being reunited with children is that acupuncture can decrease drug craving and bring stability in persons addicted

⁴⁷ Telephone interview on May 8, 1990 and subsequent dates with Judge Stanley M. Goldstein, County Court Judge in Miami, Dade County, Florida, who presides over Miami's specialized drug court, by Joan T. White. Written response on August 21, 1990 of Judge Goldberg to briefing paper draft.

⁴⁸ August 21, 1990 written response of Judge Stanley M. Goldstein to draft of briefing paper.

to drugs. This allows for other parts of drug treatment programs to "take hold" and helps redirect the addict into a drug-free path.⁴⁹

E. Community Corrections with Treatment in Minnesota

Since July, 1974, Ramsey County, (St. Paul) Minnesota, has had a community corrections program having been an early participant under a 1973 Minnesota Community Corrections Act.⁵⁰ With a state subsidy available to the counties, the legislation encourages diversion of offenders from state correctional institutions and promotion of community-level and community-operated correctional programs.

Ramsey County is a metropolitan county located in the east central portion of the state. The county, the largest city of which is St. Paul, is the smallest and most densely populated county in Minnesota. There are many social service, chemical dependency, and treatment programs located in the metropolitan area of St. Paul and nearby Minneapolis (Hennepin County). The treatment programs in Minnesota have a nationwide reputation for excellence and have attracted out-of-state paying clients. Many of the providers of the program are private non-profit agencies. Operating from the philosophy that the county cannot be an expert in every service needed, Ramsey County contracts out some of the services required for an effective community corrections program. When the services are contracted out, the county can benefit from highly specialized services with the advantage of obtaining them at a lesser cost.⁵¹

⁴⁹ The January 1990 progress report of the New Jersey intensive supervision program reports that acupuncture is under consideration in New Jersey as a treatment of drug abuse.

⁵⁰ Community Corrections Act of 1973, Ch.401, Minn. Stat. Telephone interview on May 24, 1990 with Joan Minczeski, Supervisor with the Ramsey County Corrections Department by Joan T. White.

⁵¹ Telephone interview on August 28, 1990 with Joan C. Fabian, Director of Ramsey County Community Corrections Department, with Joan T. White.

Of the many community corrections programs in Ramsey County, Minnesota, a residential program for men, a non-residential program for women and a residential program for men and women are described here.

1. Residential (Male): Portland House. Serving both felons and misdemeanants, Portland House is a residential program in Minneapolis with goals of personal responsibility and social integration for its residents. Living in a community setting, the clients of Portland House consider major life changes that can be practiced and adopted. In addition to confronting practical concerns such as employment, school, money management, independent living and recreation, the clients of Portland House also face emotional and spiritual issues.

Tutoring is offered to those clients who have not received needed education. To facilitate securing gainful employment, Portland House residents are trained in job and employment-seeking skills. A system of accountability is provided for the residents regarding their activities and movement in the community. Residents are also given help in money management and fiscal responsibility. The program is multi-faceted including counseling of both individuals and groups, special interest groups on concerns such as significant relationships, and, when needed on an individual basis, counseling about physical and sexual abuse victimization.

The residents of Portland House are adult males who have been convicted of felonies or misdemeanors and are not eligible for probation but are believed to be suited for community-based treatment. In addition to having criminal histories, many clients of Portland House are chemically dependant or victims of physical or sexual abuse. The licensed capacity of the facility is 25 beds. Each year approximately 50 new clients enter the program. The daily cost in 1989 for Portland House was

\$42.72. The average length of stay for a successful completion of the program is five months.⁵²

2. Non-Residential: (Female) Genesis II. Providing highly structured day treatment for women and their children since 1976, Genesis II is a non-residential social service agency. As a criminal justice project, the agency serves two specific client populations. There is a medium risk female offender population referred from metro area court services and there are women referred to the agency by child protection and welfare departments for dependency, neglect or abuse of their children. For the medium-risk offender, the purpose of Genesis II is to provide services that blend education and therapy, and help women in establishing a self-sufficient, law-abiding lifestyle. For the women referred by child-welfare, the purpose of the project is to provide services that ensure the care and safety of their children.

Clients served by Genesis II must be willing to enter into an eight-month commitment. Genesis II's typical client is female, 22 years of age, unmarried, with low educational achievement, no marketable skills, and having a history of abusive relationships. The daily cost for each client of Genesis II is reported by Ramsey County to be \$49.35. The average length of stay is four months.⁵³

3. Residential: (Male/Female) Re-Entry Services. Operating three community corrections facilities, Re-entry Services provides transitional planning, work-release and surveillance services for residents referred by correctional institutions, the courts and court support agencies. That there is not a "most appropriate" referral to the program is shown by the wide range of individuals participating in the program.

One of the three facilities has a male resident population of offenders released from major state corrections institutions on either parole or work-release status. The

⁵² Summary data on Portland House: Ramsey County Corrections Department, 1990.

⁵³ Summary Data on Genesis II: Ramsey County Corrections Department, 1990.

residents range in age from 18 through 40 and have been convicted of a wide variety of crimes. Of the two remaining facilities, one houses male residents and the other females who are probationers and releasees from the courts. The residents of these latter facilities are typically younger, have no employment and are experiencing problems with mood altering substances.

In all facilities, each client must develop an individual service plan and is then held responsible for attaining the plan objectives in which they are assisted by Re-entry Services through staff and heavy reliance on community resources. Re-Entry Services reported a per diem cost in 1989 of \$40 for men and \$41.60 for women.⁵⁴

The individualized programs of Ramsey County, Minnesota are considered among the finest in the nation. The network of programs sponsored by the county includes every aspect of treatment found among intermediate punishment options.

F. Literacy in Arizona

In reviewing existing and planned intermediate punishment programs throughout the country, it is clear that each program aims to enhance job market skills. Increased literacy is therefore an important intervention. The literacy program in Arizona began as a small pilot project. Its growth is discussed in the pages that follow. The information included below was submitted to the NCSC by Arizona.

Arizona Supreme Court
Administrative Office of the Courts
Literacy, Education and Reading Network (LEARN)

Overview

The interest in and early success of the Arizona Supreme Court's literacy efforts have resulted in expanded educational program offerings. The scope of the program was broadened to include Adult Basic Education (ABE), General Education

⁵⁴ Summary Data on Re-Entry Services: Ramsey County Corrections Department, 1990.

Development (GED), and LifeSkills. To encompass the overall effort and growing network of learning centers, the name of the project was changed from PALS to LEARN this past spring. The IBM computer labs and the Principle of the Alphabet Literacy System (PALS) continue to serve as basic building blocks of the program, but the learning centers now include an array of educational software to assist probationers and others to obtain specific skills needed for obtaining and retaining a job, functioning in daily life and personal decision-making.

The problem of illiteracy in the state of Arizona is staggering. According to the Governor's Joint Task Force on Illiteracy, there are an estimated 400,000 functionally illiterate people in this state. Of those incarcerated in Arizona, 85% did not graduate from high school. The High School dropout rate is increasing yearly and many of these juveniles become involved with the court system.

The interest of the Arizona Supreme Court is to reduce the number of adolescents and adults who become involved with the court system. Unless these people are capable of reading at a level that enables them to hold a job, read a newspaper, observe safety signs, or understand a prescription, their chances of being productive members of society are limited.

In May of 1987, a team comprised of juvenile and adult chief probation officers, program managers, educators, etc., visited an IBM computerized literacy lab using the Principal of Adult Literacy System (PALS) program in Southern California. The responses from the students, teachers and administrators participating in the PALS program was positive and exciting.

In September, 1987, the first IBM computer lab using the PALS program was installed at Catalina High School in Tucson, Arizona. The lab was funded through a Juvenile Crime Reduction Fund and the Tuscon Unified School District. An additional five labs were installed by May, 1988.

The success of these first labs encouraged the expansion of the Arizona Supreme Court's literacy project and it became the goal of the Chief Justice to fund at least one literacy lab in each of the state's 15 counties. Through the statutory fund directed at reducing juvenile delinquency and through funds aimed at reducing adult criminal activity, the Court now has 24 IBM computerized literacy labs which use the Principle of the Alphabet Literacy System (PALS) reading and writing program. The labs are located in various communities throughout the state of Arizona. At present, the labs address the reading and writing skills of those functioning below the sixth grade level.

Plans are now in progress to enhance the Court's literacy centers by adding educational software which will address the learning needs of adolescents and adults in the curriculum areas of Basic Skills, Lifeskills/Adult Basic Education, and preparation for the General Education Diploma (GED) test.

PALS Literacy Program:

Overview

The Principle of the Alphabet Literacy System (PALS) is a computerized literacy instruction program for adults and juveniles. PALS is designed to develop reading and writing skills of learners reading at or below the fifth grade level. The PALS system was developed by IBM and the John Henry Martin Corporation.

The Literacy Problem

27 million adult Americans are functionally illiterate

40% of adults with yearly incomes under

\$5,000 are functionally illiterate

17 to 21 million adults cannot read and comprehend

communications similar to those sent by public agencies

60% of prison inmates are illiterate

The PALS program will help reduce the amount of crime and delinquency committed by program participants by improving their literacy skills and then channeling these probationers, juvenile court referrals, and other high risk individuals into other educational opportunities.

The Arizona Supreme Court PALS Literacy Program

The Arizona Supreme Court, Administrative Office of the Courts (AOC), will supply a limited number of PALS labs to selected locations statewide.

The Adult and Juvenile Probation Departments in each county will serve as the focal point for the coordination and planning of this effort. Adults and juveniles placed on probation and juveniles referred to the juvenile court must receive first priority in access to the PALS labs. In addition, other qualified juveniles and adults may utilize the labs.

Local probation departments/communities are being asked to put together a coordinated program plan for using the PALS lab. In addition to the PALS literacy program, other curriculums are available for the computer system. Heavy emphasis will be placed on the program's plans for providing continuing learning opportunities (i.e., PALS, adult basic education, community literacy groups, etc).

Goals of the Supreme Court PALS Program

Primary Goals:

- 1) To improve literacy skills in order to reduce the crime committed by adult and juvenile PALS program participants.
- 2) To improve an offender's probability of successfully completing their term of court probation by providing structure, discipline and responsibility.
- 3) To reduce the school dropout rate of juveniles by providing literacy training to high-risk youths.
- 4) To increase job skills for court probationers and juvenile court referrals.

Secondary Goal:

- 1) To provide literacy training for juveniles and adults who are not court probationers or juvenile court referrals.

Target Population

- 1) Juveniles currently on court probation or referred to the juvenile court for an incorrigible or delinquent offense.
- 2) Adults on court probation.
- 3) Youths not yet referred to the juvenile court, but who are having serious reading problems and are identified as being high risk for dropping out of school, drug use, or teen pregnancy.
- 4) Other juveniles and adults who are functionally illiterate.

Program participants must meet the recommended PALS criteria of having an I.Q. of 75 or over and a reading ability at or below the fifth grade level.

Community Coordination

Cooperation among the involved community groups is essential for the success of the PALS program. Where possible and appropriate, all programs must coordinate their planning with the following groups:

- 1) Adult and Juvenile Probation Departments (Lead Agency)
- 2) Adult Basic Education
- 3) JTPA
- 4) Literacy Organizations
- 5) State and Local Bar Associations
- 6) Secondary and Post-Secondary Educational Institutions
- 7) Other Public and Private Community Groups Interested in Supporting Literacy Programs.

Site Selection Criteria

Sites will be selected based on the following criteria:

- 1) Degree of program coordination between multi-jurisdictional agencies (i.e., probation departments, adult basic education, JTPA, community colleges, literacy volunteers, etc).
- 2) Number of persons meeting the criteria to be served.
- 3) Creativeness and thoroughness of program planning, including addressing the issue of student transportation and additional educational opportunities.
- 4) Availability and appropriateness of the site(s).
- 5) Availability and quality of staffing.
- 6) Willingness to commit high program standards.
- 7) Demonstrated record of community cooperation.

Distribution of Program Costs

The Arizona Supreme Court will supply each site with the following:

PALS Computer Hardware

(Includes both IBM and non-IBM)

PALS Computer Software

Initial Classroom Materials

Initial Training

User Group Support

Coordination of Installation, Delivery and Set-Up

(Approximate Value: \$65,000 for 16 Student Lab)

(8 Student Labs are also available)

Local program sites will be responsible for providing the following:

Instructor(s)/Staff

Lab Facility

Lab Furnishings

(Lab Site and Furnishings must meet PALS quality standards)

Local program sites, except in cases of extreme financial hardship, will be responsible for providing the following:

Service/Maintenance Contract

(Approximately \$1,000 first year, \$3,600 annually thereafter)

Additional Classroom Materials/Equipment

G. Connecticut's System-Wide Management of Drug Offenders

A Connecticut Criminal Sanctions Task Force created by the Chief Justice in 1987 observed that "Connecticut presently has a patchwork of criminal sanctions, but the quilt is unfinished and does not cover the entire state," and recommended comprehensive intermediate sanctions in the state. The Task Force continued: "Between imprisonment at one extreme and probation at the other, lie a host of intermediate sanctions, but they are not organized systematically, and judges make infrequent use of them in sentencing offenders."⁵⁵ The Task Force made two fundamental recommendations:

1. Resources should be expanded and made available to provide a full menu of sanctions in each jurisdiction throughout the state for the punishment purposes of deterrence, incapacitation, rehabilitation and retribution.
2. Judges should be able to sentence convicted offenders directly to all intermediate sanction programs.⁵⁶

In order to implement its recommendations the task force determined that the following steps, among others, would be necessary:

1. A statute should be enacted to allow direct sentencing to intermediate sanction programs.

⁵⁵ Report of the Connecticut Criminal Sanctions Task Force (December 1987) p.4.

⁵⁶ *Id.* at p.8.

2. The judicial department should establish either a separate office or a unit within the office of adult probation to:
 - develop new and expanded intermediate sanctions;
 - initiate resources for sentence planning;
 - monitor and enforce sentences made directly to intermediate sanction programs;
 - conduct educational programs about intermediate sanctions.
3. The judicial department should initiate a contract with a criminal justice research and demonstration agency to:
 - Survey court operations, sentencing patterns and data on community resources across the state;
 - design, operate and evaluate new intermediate sanction programs such as community service work and intensive supervision; and
 - evaluate current treatment options and develop a plan for expansion as needed.
4. Alternative sentence planning and advocacy services should be expanded and made available for use by defense and prosecuting attorneys.
5. Courts should continue to order offender presentence reports and victim impact statements before imposing sentences.⁵⁷

In response to the Task Force report, two significant bills were enacted in 1989: Public Act 89-383 and Public Act 89-390. Public Act 89-383 increases the number of jail and prison spaces available for serious offenders and restricts who can be placed in some diversion and early release programs. It allows the Commissioner of Correction to establish an electronically monitored home release program for persons

⁵⁷ *Id.*

accused of less serious offenses who can not make bail or meet conditions of release. It further limits the types of defendants eligible for the supervised home release program. The commissioner is prohibited from placing inmates in the supervised home release program who:

1. Committed one of fourteen crimes specified by the legislature,
2. Committed a Class B felony while participating in the supervised home release program, or
3. Had not served his mandatory minimum sentence.⁵⁸

(The Commissioner was already prohibited from releasing defendants under the supervised home release program if they were convicted of a capital or class A felony.)

In 1990, the legislature further limited eligibility to the supervised home release program by prohibiting the commissioner of corrections from releasing any prisoner convicted and incarcerated for more than one year for illegally manufacturing, distributing, selling, prescribing or dispensing controlled substances who had previously been convicted of certain enumerated drug offenses.⁵⁹ The 1990 legislation also established a time table for eliminating the supervised home release program by mid-1993. New sentence options and construction of new prison cells will be utilized when phasing out the supervised home release program.

In 1989, the legislature also authorized the court to sentence directly to an alternative incarceration program. After a defendant has been found guilty and a prison term is part of a stated plea agreement or the statutory penalty provides for a term of imprisonment, the court is authorized to:

1. Order the Office of Adult Probation to determine the feasibility of placing the defendant in an alternate incarceration program;

⁵⁸ Connecticut Public Act. No. 89-383 Sec.1(f).

⁵⁹ Connecticut Public Act No. 90-261.

2. Determine whether the defendant should be ordered to participate;
3. Suspend the defendant's prison sentence and make participation in the alternate incarceration program a condition of probation.⁶⁰

If the Office of Adult Probation recommends placement in an alternate incarceration program, it must submit an alternative incarceration plan to the court. A defendant's participation in an alternate incarceration program of intensive probation or residential, non-residential or community service involvement is limited to a maximum of two years. The program may provide care, supervision, and support services such as employment, psychiatric and psychological evaluation and counseling, and drug and alcohol dependency treatment. Defendants convicted of a capital or a class A felony, crimes that have mandatory minimum sentences that may not be suspended or reduced, criminally negligent homicides and certain other felonies, are prohibited from participating in the program.

Public Act 89-383 also authorizes the Director of Probation, with the approval of the Chief Court Administrator, to establish a community service program within the Office of Adult Probation. The program assigns, supervises, and reports compliance of persons sentenced to perform community service as a condition of probation or conditional discharge. The Act also authorizes the Director of Probations, subject to the approval of the Chief Court Administrator, to contract with service providers and develop standards to implement the community service program.

Public Act 89-390 appropriated \$16.5 million for a variety of existing and new substance abuse enforcement and treatment programs. The Act established a special

⁶⁰ *Supra*, note 58 at Sec. 3(a).

alternative incarceration program patterned after military basic training commonly called "boot camp incarceration"⁶¹

It also required the Commissioner of Children and Youth Services in Connecticut to establish substance abuse treatment programs for low income pregnant women and women with children. The Commissioner must contract with an existing treatment agency to develop a housing program, which must include substance abuse treatment and preschool age child care services, supportive and therapeutic services for children, family therapy, and after care. The Act further requires the Department of Correction and the Connecticut Alcohol and Drug Abuse Commission to establish a 15 bed community-based alcohol and drug facility targeted solely for female offenders.

Public Act 89-390 also addressed pre-trial release by expressly authorizing the court, when it has reason to believe that the person is drug dependant, and where the court deems it necessary, reasonable, and appropriate, to order a person to submit to a urinalysis drug test in addition to or in conjunction with any condition of release on bail, and to participate in a program of treatment. The Act specifically provides that the drug test results generated by the pre-trial release provision of the statute are not admissible in any criminal proceeding against the defendant.

The legislation also makes significant changes in handling the treatment of alcohol or drug dependent people who are accused or convicted of a crime. The court may, on its own motion, or on motion of the state's attorney or person charged with a crime or convicted but not yet sentenced, order an examination to determine if a person is alcohol or drug dependant and eligible for treatment. If the court denies the motion, the states attorney may proceed with prosecution. The court may order suspension of prosecution and may order treatment of an eligible person if it finds: (1) that the accused person was alcohol or drug dependant at the time of the offense; (2)

⁶¹ Connecticut Public Act No. 89-390 Sec. 17.

needs and likely will benefit from treatment, and (3) suspension of prosecution would advance the interest of justice. A suspension of prosecution may be for a period not exceeding two years, during which time the accused person is placed in the custody of the office of Adult Probation. At any time before the end of the suspension of prosecution period, the Office of Adult Probation may recommend to the court that the charge be dismissed if the person has completed the treatment program, complied with the conditions set by the court or the Office of Adult Probation and abstained for one year from alcohol or drugs. If the court finds that the person is responding well to treatment or has completed treatment and has complied with the other conditions of suspension, it may dismiss the charges.

The Act makes provisions for a required court hearing to determine whether conditions of suspension should be modified or terminated if the Office of Adult Probation learns that certain violations of the suspension and probation have occurred. The specified violations include the commission of violent acts, repeated violation of program rules, continued refusal to participate or the inability to participate because of a medical psycho-social condition not appropriately treated by the program.

The judiciary is extensively involved in determining the eligibility for drug treatment, suspension of prosecution, and ultimate dismissal of the charges upon satisfactory completion of drug treatment or pursuit of prosecution should treatment fail under the terms of the statute. Persons charged with driving under the influence, assault in the second degree with a motor vehicle, a class A, B or C felony are not eligible for treatment under these provisions unless eligibility is waived by the court.

The Act also provides for treatment of persons convicted of certain offenses. The court may impose a sentence and order treatment for alcohol or drug abuse if it finds the convicted person was alcohol or drug dependent at the time of the crime, the person is likely to benefit from treatments and meets the criteria for probation. Such

person is to be placed under the custody of the Office of Adult Probation. As with suspension of prosecution cases, procedures are established for terminating or modifying probation and for releasing such persons.

Public Act 89-390 recognizes the juvenile drug problem and establishes a Task Force to study the role of the juvenile justice system in addressing and combating the drug problem. In establishing the Task Force, the Act names as members the chair and ranking members of the Judiciary Committee, two superior court judges appointed by the Chief Court Administrator, and six members, one each appointed by the Senate President Pro tempore, the Senate majority and minority leaders, the House Speaker and House majority and minority leaders. The Judicial Department staff must assist the Task Force in its statutorily delineated mission.

The General Assembly enacted two additional significant acts during the 1990 legislative session: Public Act 90-213 and Public Act 90-261. In Public Act 90-213, an Office of Alternative Sanctions is established within the Judicial Department, and a nine-member advisory committee is created to advise said office. It also establishes a community service labor program for persons charged with illegal possession of a narcotic substance who have not previously been convicted of certain specified drug offenses and makes participation in such program a condition of probation or conditional discharge. The Director of Probation is also required to establish a program wherein 84 probation officers are to have a caseload of not more than 35 probationers per officer.

Public Act 90-261, which phases out the supervised home release program, as previously discussed, also requires the Judicial Department to conduct a study concerning the drug testing of arrested persons, establishes a drug enforcement grant program within the executive branch, and requires the court to impose a \$50 cost upon any person convicted of various drug offenses if an analysis of a controlled substance

in relation to the conviction was performed by or at the direction of the chief toxicologist of the Department of Health Services. Any costs so imposed are dedicated to the chief toxicologist.

The various legislative enactments have recognized the role of the judiciary to help control the drug abuse problem. The Connecticut legislation recognizes that there are many agencies within the criminal justice system that play an integral role and that each is inter-dependant on the others for realization of an increasingly drug-free Connecticut. The legislation attempts to channel appropriations into all areas to combat drugs including enforcement, pre-trial, prosecution, defense, courts and probation, and finally reposes coordination in the Administrative Office of the Courts.

Implementation and Getting Started: A Summary

When the persons responsible for the varying intermediate punishment initiatives described here were asked how they came to implement their program, a frequent answer was an on-site visit to a like program elsewhere. National organizations can be good sources of information about where a similar program may be located, but there is no substitute for an on-site visit and direct staff to staff contact.

Program implementers also emphasized the need for careful planning and the participation of executive, legislative and judicial leaders. Participation produces understanding. When all the stakeholders get involved, commitment is increased, and implementation is more orderly, meaningful and purposeful.

**WORKING PAPER ON ALTERNATIVES TO TRADITIONAL CORRECTIONS:
ISSUES, ANSWERS AND AMBIGUITIES**

WORKING PAPER ON ALTERNATIVES TO TRADITIONAL CORRECTIONS: ISSUES, ANSWERS AND AMBIGUITIES*

The U.S. anti-drug movement is running on a collision course with the problem of overcrowded prisons and jails. Regardless of the sincerity with which political leadership seeks to reduce certain types of drug use, the realities of the justice system are seriously strained resources at all levels: law enforcement, prosecution, defense, adjudication, and correctional supervision and treatment. If there is hope for the so-called war on drugs, it must be based on a realistic assessment of affordable costs.

In corrections, this means that extensive use of alternatives to traditional corrections must occur. Stated bluntly, most corrections systems in the United States are so seriously overburdened in their traditional resources of jails, prisons and probation, that small increases in demand will constitute major management problems.

Because of strained resources, many corrections systems have experimented with new types of alternatives to the traditional forms of corrections. Most of these "new" programs are revised versions of approaches tried years before, and so while there is only a small literature on the newest innovations, there is a fairly dependable literature on generic alternatives.

The purpose of this paper is to explore how the "new generation" of alternatives to traditional corrections are relevant for the drug offender. The paper begins with a description of the major types of correctional alternatives currently being used around the country, followed by a description of types of drug offenders and their suitability for different forms of alternatives. Drawing from research on alternatives, a set of principles in their application to offenders is then developed. The paper concludes with suggested strategies for using alternative correctional forms for drug offenders.

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Major Forms of Alternatives to Traditional Corrections

Nearly every jurisdiction has experimented with one form or another of corrections alternative in recent years. This has resulted in a rich variety of programs for offenders falling between the prison and traditional probation. A description of prototypical programs is provided below, but the reader should be aware that many versions of each of these prototypes exist, and each extant program has unique characteristics that help it fit its jurisdiction.

Shock incarceration. One of the newest forms of alternative sentence involves a sentence to a "boot camp" type experience. Normally, the term is short (30 to 90 days), but the experience is intentionally harsh. Offenders are put through a regimen of long days of intense physical effort under strict discipline. In some respects, the new shock programs are a throwback to early forms of imprisonment which extolled the virtues of hard work and daily discipline. The idea of these programs is to "shock" offenders in two ways: first, by removing them from the community; and second, by subjecting them to harsh, unrelenting conditions of work.

Most "shock" programs target first offenders-- many require no prior felony convictions--and all exclude violent or previously incarcerated offenders. In addition, most programs are limited to persons under a certain age, no older than early twenties, in order to have young, impressionable inmates in the program.

Residential centers. Because prisons are so expensive to build, many urban areas have renovated existing buildings, turning them into part-time or full-time residential facilities. In many ways, these programs resemble the traditional work-release center or half-way house. Part-time programs are the most common, and they allow the offender to be away during the work hours and for some social time, returning to sleep at night. Full-time programs usually restrict the offender's ability to be away from the facility to only special occasions.

Residential centers normally incorporate a treatment regime into their programs. Commonly, they use group-based approaches such as "guided group interaction" to help offenders confront their lifestyles. They also commonly restrict their populations to specific target groups: probation failures, substance abusers, persons owing restitution, and so forth. This enables the treatment programs to concentrate on a more homogenous population.

Intensive supervision programs. One of the most popular new approaches is to intensify the level of probation (or parole) supervision given to offenders. Instead of the common practice of one or two face-to-face contacts each month, these ISPs require a minimum of two or three per week, including unannounced evening visits to the home. They also typically employ "back-up" controls of electronic monitoring and/or urine testing (described below) to augment the level of surveillance.

ISPs differ in their offender eligibility criteria and program philosophy. Many are designed to divert offenders from incarceration, and these typically will not consider offenders convicted of violent offenses. Other ISPs target the most difficult offenders already on probation or parole caseloads, and these ISPs normally do not use exclusionary criteria. Unlike their predecessors in the 1960s, most modern ISPs are unabashedly "tough" in their stance with offenders, although a handful advertise a treatment orientation.

Electronic monitoring. The "hottest" of the new alternatives is not a program per se, but is instead a technique applied within a program. Made possible by recent technical advances in computers and telephones, electronic monitors are devices which emit a coded signal to a receiver. When these devices are attached to the body (usually the wrist or ankle) the signal can be used to indicate the offender's whereabouts--and especially to certify that the offender is home in accord with a curfew or court order.

The use of monitors is in its technical and experiential infancy, and while the early results of these programs are intriguing, there is as yet no basis to say whether they "work". Early experiments reported considerable technical problems, although some problems appear to have been eradicated in revised units. Costs, however, run as much as \$300 per month (although most units are considerably cheaper). Most programs therefore restrict themselves to offenders able to pay for the equipment, those who have telephones, and those whose offenses are non-violent.

Urine testing. Like electronic monitoring, urine testing is not a program but a surveillance tool that can be used in conjunction with any program, even incarceration. These tests not only indicate whether a person has been using a substance, but they also indicate which substances. When urine testing is done with any population, a high proportion of "hits" (indicators of substance use) is found--but this is especially true for offender groups.

Questions have been raised about the accuracy of urine tests, but research shows consistently that when recommended procedures are followed, the test results are highly reliable. For this reason, the high level of drug use in arrested offenders (ranging across the country for 50% to over 80%) is remarkable evidence about the extent of drug use in this population.

Antidote drugs. A variety of drug-use suppressants exist which either reduce the desire for drugs or counteract their effects. The oldest versions are Methadone, a drug that replaces the heroin urge and Antabuse, which causes unpleasant side effects when mixed with alcohol. Both drugs have been available for decades. More recently, new drugs have been used experimentally to combat the effects of cocaine and other sources of the "high".

Drug-use suppression is controversial. All tests of the technique find that there are limits to the success experienced in eradicating substance use--often, offenders

under one drug suppression regimen simply change drugs of preference. There is also a conceptual problem with using drugs to fight drugs. Nonetheless, this approach is a frequently used tool in the arsenal of drug treatment agencies, once offenders have shown a motivation to quit.

Treatment. Although technically, all forms of intervention with drug offenders are "treatment", the term usually denotes mental health approaches with the aim to change the offender's lifestyle. Treatment programs for drug offenders focus on the rationalizations, dependencies and delusional thinking that feed the addictive lifestyle. They attempt, through therapeutic interaction with others, to convince the offender of the value of the wholesale lifestyle change needed to overcome drug abuse.

Treatment Alternatives to Street Crime (TASC) is a nation-wide program that specializes in working with drug-abusing offenders. The program is eclectic, using numerous techniques, from direct, random urine testing to job training, counseling and referral. Programs vary their approaches to fit local environments, but all serve as adjuncts to probation and parole operations using specially trained staff to work with drug users.

Narcotics Anonymous (NA) and Alcoholics Anonymous (AA) are well established self-help programs that rely on reformed users (called "recovering") to provide support for others interested in ending their drug use. Because the program uses the desire of the clients to change, it is entirely voluntary (although courts will often violate this aspect by ordering attendance). Members are aware of the games drug users play, see through their manipulations, and challenge their co-users to sustain recovery.

In-patient drug treatment programs have become more common in recent years. These programs usually have highly structured environments in which the patient proceeds through a series of stages of treatment requiring 30 to 90 days to complete. Most programs accept non-offenders, and all are expensive. Experts believe that

follow-up treatment and support is critical to the success of these programs, if offenders are to stay clean after release.

Types of Drug Offenders

The phrase "drug offender", when used to refer to all people who both use drugs and commit crimes, can be a misleading oversimplification. The high proportion of arrestees who have used drugs prior to their crimes is evidence that not all crime-drug relationships are the same. The optimal use of correctional alternatives requires an understanding of the nature of drug offenders and their suitability for different types of programs.

For purposes of this discussion, a model of drug use and criminality is used. This model assumes that drug use and criminal behavior are two different forms of deviance, and it contrasts the degree of commitment to drug use and to criminal activity.

Figure 1 shows the model. Four types of drug offenders are identified. "Users" are those who have little commitment to either drugs or crime. "Addicts" are committed to drugs, but not crime. "Sellers" are committed to crime, but not drugs. "Predators" are committed to both crime and drugs. A description of the four types follows.

FIGURE 1
A MODEL FOR IDENTIFYING CORRECTIONAL PROGRAMS FOR DRUG OFFENDERS

		COMMITMENT TO CRIME	
		High	Low
COMMITMENT TO DRUGS	High	PREDATOR	ADDICT
	Low	SELLER	USER

It should be remembered that all four types are, in actuality, stereotypes--they fit more or less to different offenders. All offenders vary, and most offenders will have some resemblance to more than one type. However, the use of stereotypes helps identify which correctional approaches fit which offenders better, and may assist in matching actual offenders to actual programs.

Addicts. The "Addict" is the offender who has become so attached to drug use that his or her lifestyle is built around the acquisition and consumption of drugs. Because Addicts are physically and/or psychologically dependent on the drug, their problem is to break the addiction and learn a substance-free lifestyle.

Because many drugs are expensive, some addicts must engage in criminal activity to provide money to support their drug use. Common forms of such criminality are burglary, small item theft and drug sales, although middle class addicts will choose other types of crime and alcoholics commit crimes by driving. For all addicts, however, the criminal activity is not an end, but a means.

Addicts need correctional approaches that force them (or enable them) to confront the circumstances of their abuse of drugs. Many treatment programs are based on this model. They use various techniques to demonstrate to the offender the consequences of drug use, including direct education, confrontive counseling and statements from friends and family. When treatment is successful with this person, the results are significant: a drug user is reformed and criminal activity is prevented.

Sellers. The essential cog in the illicit drug machine is the seller of drugs. Among sellers, there is a hierarchy of course, with the street sales persons occupying the lowest rung and representing the most commonly arrested type. Those engaged in street sales are often, in truth, "Addicts" who sell drugs in order to be able to afford drugs, and would fit best in the above category.

"Sellers" included in this category are involved with drugs solely (or primarily) as a way to make large amounts of money. While the risk is high--especially in terms of the violence inherent to the drugs business--the potential reward is considerable. A street Seller can make hundreds of dollars in a day; a higher level person even more.

Because the Seller has no personal commitment to drugs, but has accepted the risks of crime, little drug treatment is needed. Moreover, punishment is not likely to do much good. A person who is willing to risk death is probably willing to risk prison--and while he is incarcerated, someone else will sell in his place.

Users. Unlike Addicts, "Users" have little commitment to drugs, and unlike Sellers, they are basically non-criminal in lifestyle. These offenders use drugs periodically because they like the "high". Their lives are otherwise more-or-less normal, but they come to the attention of the criminal justice system as a result of an instance of their occasional drug use.

For Users, their main problem is that they are now identified offenders. Treatment may help forestall movement toward greater drug abuse, and it may provide the offender with information, but it can do little to prevent crime, since there is little crime to prevent. For most Users, the issue is to avoid creating problems through correctional programming.

Predators. Some drug using offenders are committed to a criminal lifestyle, a lifestyle of "risk" and "excitement", and a part of that lifestyle is extensive use of drugs. Patterns of criminality will include serious, violent crimes such as rape, armed robbery, assault and burglary--drugs are often used to generate the "courage" to commit the offense.

For the "Predator", crime and drugs are linked (as they are for the Addict), but crime is not just a means, it is also an end. These criminals enjoy the thrill of criminal acts as well as the thrill of drug use.

Correctional treatment can be useful for these Predators, but it must be undertaken with the recognition that drugs are not the central problem, rather it is their criminal orientation. Treatment will need to address both the mood changing aspects of drugs and the criminal thought patterns and desires of the offender.

Principles in the Use of Correctional Alternatives

Before concluding with a discussion of the strategies for using alternatives with drug offenders, it is important to summarize prior experiences with these alternatives with the larger body of offenders. These experiences form a framework for developing drug offender strategies.

1. Alternatives Are Susceptible to Net-Widening

The most pernicious aspect of alternatives to traditional corrections is that they frequently end up costing more tax dollars and interfering more with offenders than the programs they were designed to replace. Called "net-widening", this means the ultimate result of these programs is greater social control rather than reduced state involvement in cases. This is especially unfortunate, because these programs are normally based on the premise that they are less intrusive than traditional prison and more effective than traditional probation. Often sold as cost-effective alternatives to crowded prison systems, when these programs prove to be more expensive than the traditional system, serious questions are raised about their overall value.

There are two ways that programs widen the net. First, they may advertise that they are alternatives to prison, but instead they serve as alternatives to probation. In the typical case, judges are given authority to sentence directly to the program. Net widening occurs when judges place borderline cases into the new program, when most of the borderline cases otherwise would have gone to probation. The consequence is that the program is used to augment probation supervision, not to

reduce reliance on incarceration. Since "new generation" programs are always more expensive than traditional probation, this means the programs fail to save tax dollars.

This problem happens in new programs when eligibility criteria are too conservative. For example, to restrict a program to non-violent non-recidivists is to invite net widening, because these offenders seldom go to prison or jail anyway. In order to attain a diversion population, programs must be willing to accept offenders whose profiles and prior record make them likely prison candidates.

The second way that these programs can widen the net is by increasing the prison rate of failures. Often, people who fail under a "new" program are charged an added "premium" for their failure. They receive a prison sentence of several years in order to make a point about the toughness of the alternative, even though their original sentence would have been much less, had they not been given the alternative.

These two problems are particularly acute for drug offenders. Users seldom receive incarcerative terms. Admitting them to the alternatives is almost always going to widen the net. Addicts, on the other hand, go to prison or jail when their accompanying crimes are serious. They make good candidates for diversion, but their prognosis in these programs is problematic, though somewhat better than their prognosis in prison. Admitting them to these programs can accomplish goals of diversion and crime control, but it will guarantee a client group experiencing high levels of difficulty--dirty urine, unemployment and so forth. Sellers and Predators are normally excluded from alternatives programs by virtue of their criminal history. In short, trying to reduce prison populations through diverting drug offenders requires a series of difficult choices.

In addition, the experience of the "alternative" can actually be more intrusive than prison. Intensive supervision for 18 months, with surprise home visits, urine monitoring, a 7:00 PM curfew, 120 hours of community service--many offenders might

consider this worse than 6 months in a jail. And, there is the very real question that such close control might draw a User into further difficulty with the system, even though adjustment is otherwise adequate.

The main point is that correctional alternatives are not a fail-safe way to reduce the pressure on prisons. If they are to work as true alternatives, they must be carefully designed with eligibility criteria that are tightly drawn to guarantee true diversion from incarceration.

2. It is Easier to Contain Costs Than to Reduce Them

Much is made of the fact that alternatives are cheaper than traditional prison,. When offenders assigned to alternatives are truly diverted from prison, they generally receive a less costly sentence. But this may not necessarily translate into cost savings.

For one thing, the very best alternatives can approach the cost of prison. In-resident treatment and shock incarceration can be more expensive per day than traditional prison--they cost less only when the terms are shorter. ISPs, when truly intensive, can involve costs nearly half that of prison, and may be imposed for twice as long.

A more difficult problems is that the total cost of running a prison is about the same when the prison is 80% full as when it is at capacity. The housing costs of a given prison contribute insignificantly to the daily prison budget (food and clothing), but security needs, mostly in the form of personnel requirements, stay relatively stable within a range of capacity. (Conditions of extreme crowding will aggravate security costs, while the closing of unused units can eliminate some personnel needs.) No matter how extensively systems use their new alternatives, almost no states find they have vacant cells as a result.

Rather than reducing total systems costs, it is better to think in terms of cost containment, whereby expenditures on new facilities are avoided (or delayed) through the extensive use of less expensive alternatives.

This strategy seems especially applicable to those drug offenders, in particular Addicts, who experience the system serially over their lifetimes. Costs of managing these offenders can be contained through careful use of layered alternatives, in which short treatment experiences are augmented by community control approaches (such as ISP). The long term goal is desistance, which may require several years to achieve, and may be accomplished through repeated use of alternatives that seem to fail in the short run. In this approach, program failure is accompanied by short-term consequences, including even short jail stays, followed by renewed attempts at treatment/control. If this seems an unappealing strategy, it is more desirable than longer prison stays, which cost much more and have little impact on desistance.

For Predators and Users, the concept of cost containment may not be so relevant. With Predators, their pro-criminal lifestyle is precisely the type on which correctional costs should be concentrated. For Users, the benefits of any system expenditures should be questioned. Sellers, on the other hand pose a dilemma. In today's atmosphere of "toughness" with "pushers", it is not easy to argue for cost containment. Yet research shows first, that these offenders are quickly replaced by other Sellers upon their incarceration; and second, that they have low failure rates upon release. In other words, few crimes are prevented by their incarceration.

3. The Costs of Tough Enforcement Can be Considerable

All research on the new alternatives finds that they enforce program requirements stringently and thus have high program failure rates. This result should not surprise anyone. Offenders are not a compliant group to begin with. When they are made accountable for a large number of strict rules and then are closely monitored

for compliance, they often fail. On the face of it this seems both obvious and desirable. Closer analysis raises questions about the wisdom of a strategy of unrelenting enforcement.

The process of tough enforcement in these programs involves the imposition of costly consequences for behavior that is either non-criminal (failure to comply with curfew or failure to complete community service work) or of minor seriousness (marijuana in the urine). Imposition of an original prison term for such behavior may satisfy program directors that their requirements "have teeth", but it seems to miss the point that the program's ultimate responsibility is to prevent crime, not simply to run a tight ship. When program requirements are so strict that offenders are returned to prison for rule violations despite the absence of evidence of new criminality or impending criminal conduct, both the offender and the system lose.

This can happen with drug offenders. Addicts will fail, and they will fail frequently. Any program built on a foundation of "zero tolerance" for failure will find the fully successful Addict to be in a small minority. By the same token, professionals who work with Addicts know that misbehavior must be met with consequences. The strategy is normally to impose sanctions of slowly ascending seriousness in the face of "slips" for persons thought otherwise to be non-criminal. Addicts can move up and down through phases of increased urines, curfews, loss of privileges (such as driving) and even short jail stays several times before they finally establish a period of sobriety that can form the foundation for recovery.

When prison is thought of as a last resort, programs take the approach of "working with" Addicts who exhibit motivation to stay clean, even in the face of occasional "slips". The idea is to decrease the incidence and frequency of the slips, and reward the offender in the process. But when reincarceration is thought of as the

only consequence for misbehavior, none of this sequencing is possible, and Addicts fail at very high rates.

This problem is all the more difficult for Users, whose involvement in the criminal justice system is essentially a result of drug laws. To enforce packages of requirements on them in a non-negotiable fashion is to invite failure where there would otherwise be success. For Predators and Sellers, the story is quite different. Misbehavior on the part of these offenders is predictive of a resumption of criminal activity. In these cases, rapid and serious consequences for non-compliance with program rules may prevent crime.

4. All Alternatives Impose Opportunity Costs

The popularity of alternatives to traditional corrections should not obscure the fact that the decision to invest in these programs ties up public dollars. It is the same for the prison--the decision to construct a prison means that dollars dedicated to that task cannot be spent on public health, schools, transportation or other worthy public causes. The decision to develop alternatives may contain costs of traditional corrections, but that still means the devotion of tax dollars to that alternative.

At a broad perspective, the decision to expand alternatives for drug offenders may mean, for example, that other non-correctional treatment approaches and offenders receive less support. This certainly appears to have been the case since 1980, at least at the Federal level of government. The appropriate public policy question is whether dollars put into correctional forms of treatment, traditional or non-traditional, pay off to the public more than dollars in non-custodial treatment or prevention. Insufficient information exists to answer this question, but it is certainly a question worth asking: if investing in prisons and special correctional programs means the decimation of mental health alternatives, is that a wise trade-off?

More narrowly, the problem of opportunity costs applies to the assignment of "spaces" to persons in alternatives programs. An ISP caseload, for example, has a capacity of 20-25 cases. Is it better to place a burglar under such close scrutiny, or a drug offender? The question is not merely rhetorical, for as the system begins to devote more attention to the problem of drugs, other types of offenders take a back seat in its priorities.

The question of the wisdom of focussing alternatives on drug offenders instead of other offenders is probably dependent on the type of offender being considered. It would appear unwise, for example, to use up the scarce resources of an ISP program on mere Users when the traditional probation caseload contains burglars, assaulters and others representing a much more significant risk to the general public. Regardless of the public relations value of "zero tolerance", there may be serious detriment to focusing such resources on relatively minor problems (and problem makers). By contrast, when Predators are released from prison, it would seem wise to give them the closest control available (ISP with electronic and urine monitoring, for example) instead of traditional parole. Yet many of the alternatives programs specifically exclude the latter and seek the former, advertising themselves as "fighting drugs". When this occurs, there are substantial opportunity costs in the misapplication of risk-management resources in correction.

Four Strategies for Effective Use of Alternatives With Drug Offenders

A clearer understanding of the types of alternative programs available and the types of offenders to be assigned to them helps put the usefulness of alternatives in perspective. The following discussion should not be taken as a recommendation for prison in cases where no other program seems to make sense. With the exception of some Predators, no consistent evidence can be found that prison is a preferable program placement to lesser alternatives for any drug offenders. Failure rates of drug

offenders in most programs are high, but failure rates after prison are just as high and may be higher. Instead, alternatives should be placed in a perspective that reflects available experience and resists unrealistic expectations.

1. Drug Offenders Should be Assigned to Programs that Fit Their Drug-Crime Behavior

Alternatives are not equally suitable for all drug offenders. Drug offenders vary in their manageability, their risk to the community and their compunction to commit crimes. Using the typology described earlier, program recommendations can be made reflecting the fit between the program's ordinary capacity and the drug offender's needs. A summary of such suitability is presented in Figure 2.

Predatory offenders appear well suited for several of these programs, especially intensive supervision and the close control inherent in residential programs and urine monitoring. For the most part, however, predatory offenders are not suitable subjects for diversion into these programs, for they are strong candidates for incarceration in the first place. After incarceration, Predators benefit (and the community can be protected) by the close supervision in these alternatives programs.

Addicts also fit alternatives well, especially when control-oriented approaches are closely coupled with treatment interventions. Only shock approaches appear inadvisable, because the Addict's drug use is not easily susceptible to deterrence through threats. Users, by contrast, might benefit from treatment approaches, but the heavy control approaches are liable to be counterproductive by forcing the User deeper in the criminal justice system, should there be non-compliance with program rules.

Sellers can be managed in the context of intensive supervision, but are not likely to do well in other strategies. Residential programs provide an audience of potential consumers; shock approaches are unlikely to deter, given the financial incentives of the drug business.

FIGURE 2
FITTING DRUG OFFENDERS TO APPROPRIATE CORRECTIONAL ALTERNATIVES

<u>Type of Correctional Alternative</u>	<u>Seller</u>	<u>Type of Offender</u>		<u>User</u>
		<u>Addict</u>	<u>Predator</u>	
Shock Incarceration	-	-	-	0
Residential Programs	0	+	+	0
Intensive Supervision	+	+	+	-
Electronic Monitoring	0	0	+	-
Urine Testing	-	+	+	0
Drug Suppression	-	+	0	-
Treatment Programs	-	+	+	+

 + = Suggested as appropriate by research and theory
 0 = No research or theory to support this option
 - = Research or theory suggest this option is inappropriate

2. Expect High Rates of Failure; Prepare Programming Options

With the exception of Users, drug offenders fail at high rates in any program placement, including prison. Working with these offenders requires a large number of options and schedules of reinforcement, with the ability to intensify or reduce controls in small increments as justified by the offender's behavior.

One implication of this caution is that if these programs are working well, they will have lots of action in relation to offender's conduct. Programs with low failure rates are probably either lax in enforcement or are drawing too heavily from User populations that would produce high success rates.

Because alternatives programs have high levels of enforcement action, they require a special type of staff and unusually consistent support from the courts. Staff need to be professionally trained and well experienced with drug user's special problems. Their expectations should be realistic, and their patience (grounded in firmness) give them credibility with the offenders they see. Courts need to encourage latitude in working with offenders, supporting approaches that maintain consistent programs of consequences. There is always a temptation to "do treatment" from the

bench, but courts should resist the desire to innovate, because this usually undercuts the logic of a program.

The larger the number of alternatives, the better. It makes good public relations to present programs as "tough last stops before prison", but if this is the way the programs operate, they will be irrelevant to many drug users. Prison is a necessary option in the enforcement spectrum, especially for criminally active Addicts, Sellers and Predators, but its benefits are often overstated. Eventually, offenders are released, and drug programs have to begin with the progress made earlier on the street.

One way to view this system of approaches is to see traditional probation and prison as the "bookends" of a spectrum of available interventions. Strict enforcement requires that misbehaving drug users be moved off traditional probation relatively easily into non-traditional approaches, but should encounter prison only as a last resort. Offenders moving out of the courts (at sentencing) and out of prison (onto parole) should be placed initially in the approach that best fits their circumstances, not the one that has available space or is currently popular.

3. There Are No "Pure" Types and No "Perfect" Programs

It goes without saying that complexity underlies any system of dealing with drug offenders, and so no perfect solution exists. In fact, many Sellers are involved in other predatory crime; many Users stand on the brink of addiction and sell drugs to a small circle of friends. The drug offender types provide an heuristic device to analyze the problem, the program prototypes display general programs, but there is much overlap among them in practice.

In the real world, the best program fit for an offender will not always be obvious, and all programs will have idiosyncratic strengths and weaknesses, often due to management and unique staff configurations. Predators will sometimes do quite

well in response to a electronic monitoring program; Users will occasionally fail miserably on traditional probation.

The term used to describe this situation is "technical uncertainty"--it means that the technologies for working with drug offenders are unpredictable in their outcomes. Because technical uncertainty produces frustrations for staff and system decision-makers, there is a constant temptation to perceive alternatives to traditional corrections as ineffectual. This usual choice in the face of frustration is incarceration. Imprisonment has the advantage for decision-makers of disengaging the decision from the feedback about its effectiveness. When drug offenders recidivate after imprisonment, it is unusual for the judge or the prosecutor to admit it was the wrong choice, even though they will be quick to do so after a similar failure under an alternative program.

If there is a secret in dealing with drug offenders, it is creative persistence with individually scripted strategies. Imprisonment has a role, but it will ultimately prove frustratingly ineffectual unless it is used appropriately in response to the right offenders and in the right situation.

4. Focus on the Goal of Reducing the Pain of Drugs

In recent years, the American public has become increasingly sensitized to the harmful effects of drugs. There are many: criminal networks, criminal acts, physical side effects, unsafe streets and lost lives are among them. These problems have fueled the "war" on drugs.

There are also harmful effects just of the war itself. Sending people to prison seldom improves their life chances, and is almost never intended to do so. When youngsters enter the criminal justice system, they face long odds of overcoming the negative impact of a record and the affiliations produced in processing their case. Removing men and women from their families can be permanently damaging to

children and to their family units. Whole neighborhoods become dominated by definitions of deviance, law-breaking and avoiding "the man"-- this changes the meaning of "growing up". In the pressure to respond to the problem of drugs, families are uprooted from public housing, draconian penalties are handed out and irretrievable resources are committed to the problem. Almost no proposal is seen as too excessive. It is hard, sometimes, to know if the cure is more painful than the disease.

It is time to admit that a 'drug free society' is not now and never was a realistic aim. Whether or not it was good rhetoric, the desire has fed a zealously that overwhelms the realities of modern, urban America. A much more realistic and realizable goal must replace this unrealistic vision. The purpose of correctional intervention is to prevent crimes where possible, reduce harm to families and communities where feasible, and take reasonable steps to encourage and assist offenders to forego drug use and related criminal activity. The aim is to reduce, in small measures, the pain experienced by all citizens, offenders and others alike, resulting from drugs in America.

**A BLUEPRINT FOR COURT/COMMUNITY/PUBLIC INVOLVEMENT
IN COPING WITH THE DRUG CRISIS**

A BLUEPRINT FOR COURT/COMMUNITY/PUBLIC INVOLVEMENT IN COPING WITH THE DRUG CRISIS*

I. Introduction

This briefing paper gives readers a blueprint for how to design court/community/public involvement programs concerning the judiciary's role in coping with the national and international drug crisis. This document is not a review of programs already in existence, nor is it an empirical work. Instead, it is intended to be a practical "how-to" guide and an "imagination generating" document.

Current public perceptions of courts and the roles of courts in society is dealt with first. Second, the paper will explore some mechanisms that courts can or should use to communicate with the public concerning judicial responses to the drug problem. This will have several subsections focusing on various media available to courts. Third, the briefing paper will examine mechanisms by which courts can improve the understanding of judges, administrators and staff about drugs as a business, as an addiction, and various treatment alternatives.

Finally, the paper will examine how courts can involve the public in helping the judiciary respond to the drug crisis.

II. The Public's Perceptions of Courts

A. Ignorance About Court Functions

For the past twelve years, survey after survey have indicated that the public generally is ignorant of the role of courts and court functions. Simply stated, the public does not know what courts are empowered to do and people know little to nothing about the functioning of courts, especially state courts. This general public

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ignorance about courts was proven as early as 1978 with the Yanklovich survey which was sanctioned by the National Center for State Courts. It was confirmed in 1983 by a national survey conducted by the Hearst Corporation and it has been documented by several other national and state surveys.

In short, the public does not understand the role of the courts in the criminal process, who has the burden of proof in criminal cases, the role of sentencing and actual sentencing practices.

Too often, the public perceives the courts as extensions of police and of prosecutors. Thereby, when crime rates rise, especially violent ones, the courts bear the largest share of the public's blame and scorn. Police can easily point their public fingers to the courts saying that judges let people free.

Prosecutors, who may run for political office also sometimes blame the courts to gloss over prosecutorial inadequacies. As a result, the public perceives courts as being responsible for violent crime and responsible for many societal ills. It is a logical extension of this mentality that the public perceives the courts as having responsibility for the drug crisis. Understanding that this is the public perception, how does the public receive its information and what can courts do to change erroneous public perceptions?

B. Means By Which The Public Gets Information About Courts

It is clear from the national surveys done over the last twelve years that people receive information about the courts from external forces and not by personal first hand contact with the judiciary. Undoubtedly, the most significant sources of information about courts and court processes are the news media. The Hearst survey in 1983 indicated that people receive information from local TV news, newspapers, radio, and TV dramas in a much higher percentage than direct, or even indirect, contact with courts. Therefore, any programming designed by courts to inform the

public of what courts are doing with the drug crisis must rely on the news media. Courts should think about how to present their message visually, auditorily and graphically. Words no longer suffice.

This reliance upon the news media does not mean, however, that there should be total reliance on working through reporters to get the courts' message to the public. There are many ways of using the public media and the news media to address public concerns without utilizing reporters. These will be discussed later and should not be ignored by courts in planning a community/public relations program. The second most significant way that the public receives information about courts is through the schools and educational institutions. This includes elementary schools, secondary schools, colleges and universities, community colleges, and adult education. The courts, therefore, also should design programs not only for the news media, but informational programs that can be delivered through the schools. Schools, in the past, have been receptive to information and proposed curricula about courts. Finally, a third way to impart information to the public about the mission and work of the courts is by judges, lawyers, and court employees participating as speakers before public groups. Speaking engagements at which video presentations and explanatory brochures can be presented give the public opportunities not only to hear about courts, but to have their questions answered.

III. What Can/Should Courts Do to Communicate With the Public Concerning Judicial Responses to the Drug Problem?

A. Needs Assessment

Before any court leaps into a massive communication program regarding its involvement in the drug crisis, the court needs to determine how to deliver its message to a particular locale, to a particular neighborhood or to a particular group of individuals. The court needs to assess what information is important to deliver to

foster public understanding and support for judicial initiatives and programming. A needs assessment makes planning and the planning process itself an educational outreach tool for courts. In developing the communications plan, the court should bring together various elements of the community. To be effective in helping the court formulate a plan of action, five basic questions need to be answered by this planning group:

1. What should be communicated? The court must first assess what precise message it wishes to communicate about its role in battling drugs. Does it wish to announce a certain program? Does it wish to give statistical data on sentencing? Does it wish to outline an intervention program? Does it wish to get a message across to the public that a judge or particular group of judges are extremely tough on drug violators and drug purchasers? It is important to decide exactly what message or messages should be presented so that a court does not give mixed signals to the public.

2. What audiences need to be addressed? The failure of many public communication programs lie in the fact that many of them are too multi-directional. A court may take a "shotgun approach" and try to reach too many groups with diverse messages. Most often, it is better to tailor one message to a certain audience or, at most, selected messages to selected audiences.

For example, the court should assess, in its planning process, whether it is intending to get a message to opinion leaders in the community, educators, average citizens, labor groups, politicians, school children, or religious organizations. By pinpointing audiences, the court will be more effective in its communication and will be more efficient in its delivery mechanisms.

3. What is the best way to reach each audience? The court, once it has decided its message and the intended recipients of the message, must then assess,

given the particular community, the best way to reach that audience. The best method will vary from audience to audience and from community to community. In some areas, newspapers are best. In other areas, it may be direct mail. In some instances, television is the preferred medium. The planning group should help the court assess what is the best way to reach each audience within a particular geographic area. This obviously gives a court, with limited resources, the opportunity to pinpoint its message to a specific audience by the use of a particular medium.

4. Who should convey the message? The planning group should designate certain people to speak for the court. Again, selection is individualized given a particular court's needs within a particular community. A court may wish to have a judge or group of judges convey the message. A court may, instead, wish to have a court manager or probation officer give the message. In other situations, it may be more effective to have a teacher or a local opinion leader or a counsellor deliver the court's message. Again, this is something that should not be left to chance. The planning parties need to agree and decide upon the most effective person or people to deliver the court's message.

5. How should it be communicated? Once the court has decided its message, the audiences, the best way to reach the audiences, and the person or people to deliver the message, the court then should assess how the message should be specifically communicated. Should it be in the form of an ad campaign, or perhaps personal testimonials of people who have been helped by a court program? The court may wish to have the judge visually or orally lead people through a drug case so that they could understand the ramifications of drug usage or drug sales in the judicial process. For example, the court may wish to do a mock sentencing or tape a real sentencing in a drug case and use it to communicate to the public the costs of crime. Again, these are individualized choices, but the choices should not be left to chance.

Planning is the key to effective communications. Most courts have limited resources for community outreach and community information programs and, therefore, dollars spent should be spent wisely and efficiently. Planning will help in that endeavor.

B. Developing a Positive Media Relations Program

Regardless of whether a court wishes to develop a positive community outreach program in drug education, the court needs to develop a media relations plan. Planning should not only consider how the court may react to questions about the court's performance in drug matters, but it should be proactive. Courts should concentrate on developing positive programs. This means that the court should consider the creation and packaging of information for the news media, thereby making it easier for the news media to cover the court's activities. The court also should consider preparing media events that can "promote" court's programs or administration. The court should also consider and prepare its staff and judges to be interviewed by representatives of the news media. Certainly, the court can go beyond these three areas, but, again, the key is planning. To convey a more positive message to the public, the court needs to go to the public. Although planning is essential, care must be taken to assure spontaneity and to avoid any appearance of manipulation. The media is protective of its independence, as is the judiciary, and blatantly contrived stories leaving no room for media interpretation are counterproductive.

1. Creating and packaging material for the news media. Many courts are developing programs for coping with the drug crisis, whether they are administrative techniques in coping with the volume, or alternative sentencing techniques, or many other ways in which the courts address the daily crunch of drug cases. To inspire public confidence, courts need to consider how these procedures or changes can be packaged to create a positive image for a court through the news media. A court may

wish to invite the media to observe sentencing procedures, to experience its alternative sentencing programs, or to interview victims who have been assisted to produce a feature story. To invite media attention, a court can create information packets and packages about programs and distribute them. Then the press can be invited to observe the programs. To promote public understanding, those speaking for courts must consider television and try to suggest to local stations visual components of a drug crisis story. This may be used in local news footage.

Courts should release statistical data about the court's effectiveness in its war on drugs. With appropriate hardware and software, staff can produce graphs and charts that can make the court's story come alive, both on television and in print. Even if the media does not print or broadcast these graphics, they help educate reporters.

If a court has a certain drug program or programs that it wishes to highlight, or if a court is developing some innovative drug programming, then the media should certainly be invited to examine the program and its effectiveness. Even if a court is not totally effective in a drug program, it is at least trying to do something. Generally, the public is more concerned about the court if there is no effort being made than if an effort is only moderately successful.

The creation and the packaging of news should not only be in the form of press releases and news packets, but also in direct contacts and invitations by judges and court officials for the media to visit and observe certain aspects of the court's war on drugs. Requests for and suggestions of stories should be made, whether it is verbally to a news director or an editor, or in writing in the form of press releases or press notice.

No one form of communication with the news media is effective by itself. In some areas, one form of court/media communication may be more effective than

another. It is suggested, however, that a mix is needed: print newspaper releases, audio releases from a judge or spokesperson, and television opportunities.

2. Creating and packaging media events. A media event may be as simple as a press conference or it may be a speech about drugs. It also may be a drug related seminar or a public gathering or discussion group. The opportunities for a court to create media events are almost unlimited. However, the events should be staged with purpose, direction, and candor.

Media events not only should be developed with an eye on coverage, but for the purpose of either highlighting a court's role in the entire drug situation, or highlighting a court's program that has already been developed. Courts may wish to take notes from political campaigns concerning the ability to create news events. Politicians do it almost daily, but the judiciary, in the past, has been reluctant to do so. However, since the public is perceiving the judiciary as an integral part of the war on drugs, courts need to highlight exactly what the judicial system is doing. If courts fail to do so, the public will perceive that courts are doing nothing or worse, making things worse.

3. The art of being interviewed. During a media event or in packaging certain news stories for the news media, court spokespeople will be interviewed by the press. Some basic training should be given to court officials about how to positively handle a media interview. Training should entail procedures to enhance a print interview and how to be most effective in a television or radio interview.

There are many mechanisms whereby one can develop a positive media interview, even if the court manager or judge is reacting to a situation. Judges should become adept at the art of bridging from negative questions to positive responses. Court officials should learn to keep interviews short and how to use analogies to make points that are understandable to the general public.

Mock interviews can be conducted so judges and court officials can be much more proficient at delivering a 10 second "sound-bite" or a 30 second television response.

This training is inexpensive and productive. It would not only serve the courts well to train concerning the drug crisis, but it would also serve courts well in preparing for the more routine and daily interviews with the news media. Many people in the communications field are trained in helping people with the interview process. Sample check sheets and brief rules are helpful.

Good court programming can suffer from court officials giving bad interviews. Therefore, interview training should be an integral part of the court's planning.

C. Utilizing the News Media Without Reporters

Too often, people consider the news media as being two dimensional, meaning that we may only communicate through reporters and paid advertising. There is, however, an opportunity for courts to reach the public utilizing the news media without going through the filter of reporters and without paying for advertising.

1. Newspapers. Many newspapers, from major city dailies to small town weeklies, are open to columns by judges or court officials. These columns can either be on an ongoing basis, or they may be limited to a series of columns, such as how courts in a particular locale are attacking the drug crisis. Articles can either be authored by a judge, a group of judges, or others designated in the court. Columns which appear on the opinion pages of our papers, sometimes called "op-ed pages," are generally under-utilized by courts as a means to communicate about national legal difficulties or local solutions.

2. Radio. Public radio and commercial radio provide outlets and resources for courts to convey information about drugs and the court's involvement in the drug crisis. Radio stations not only play public service announcements, but judges are often

invited to participate in radio talk shows and may be invited to appear on radio interview shows. A court's ability to utilize this medium is enhanced if the radio stations know that the court has people available for discussion on the topic of drugs. Therefore, a court should notify the station if the court has someone available to publicly discuss these matters.

Courts also can develop a series of short one minute "filler- programs," especially for public radio, about the drug crisis or the court's involvement in the drug crisis. About 150 words is enough for a one minute radio spot. The court could use this free opportunity to explain a procedure, to explain a term, and as a general public information outlet concerning drugs and the courts. Additionally, courts may use this medium to go beyond its responsibility in the drug crisis and talk about other terms or procedures about which people may need a greater understanding.

3. Television. In recent years, there has been a dramatic rise in local cable stations and community access channels throughout the country. There are many law related shows throughout the country and more are being produced. These stations crave programming, and courts, for minimal expense, can develop videos for public consumption about the battle with drugs and the court's role in that battle. There also are many opportunities for judges to appear on television interview programs and special law related educational programs. Again, a court may wish to explore cooperative agreements with a local cable channel whereby the court could develop programming for public consumption. If the cable channel or community access channel helps the court produce such an instructional tape, then, in exchange, the cable channel may be able to air the tape. This area of mutual cooperation is ripe for exploration and is only limited by a court's imagination.

D. Utilizing the Educational System

As mentioned earlier, the educational system in this country is the second most effective way of communicating information about the courts to the general public. If a court wished to convey information about the drug problem or the court's drug programs, it should not overrule the educational systems, from elementary schools through adult education.

Elementary schools are prime candidates for special drug education programs conducted by courts or court officials, either through a series of guest appearances by judges into the schools, or through specialized videos to educate students in greater numbers.

There has been a track record of successful education by using video tapes and mock trials using nursery rhymes and fairy tales to convey information about the courts to elementary students. A variation on this theme could certainly be used in coping with the drug crisis.

Courts could also develop computerized software and computerized game programs and interactive computer programs for elementary school students on the topic of courts and drugs. In high schools, students can become directly involved with courts in student anti-drug programs sponsored by courts. The character of any such program should be individualized to a particular court or a particular geographical area.

A court should not fear to use students in its educational endeavors. This would apply not only to juvenile courts, but to adult courts. Courts could cooperate with schools in promoting special events, such as anti-drug rallies, anti-drug video tapes, and anti-drug mock trials.

Mock trials have proven quite effective in high schools, both as an educational device and as a basis for competition between students and schools. A court may wish

to develop a drug case hypothetical and to allow students within a certain geographic area to compete in a mock trial using the drug case as a format. This would involve not only the schools, but the local bar association and the courts.

Some attention also should be given to developing special curricula for high schools regarding the courts and drugs. Again, this can be a cooperative effort with school officials, teachers organizations, and court officials.

Colleges and universities should not be left out of a court's education assault. University students can be utilized as interns with courts to work with drug related programs. This has been successfully done by Students Against Drunken Driving. Some courts have already had a dramatic effect by cooperating with such groups and developing programming with them. Many of these cooperative student/court programs are also reported and featured by the news media. Not only does the court have a positive impact with the students, but the court receives positive media spin-off as well. With training, some students may even be to speak for court drug programs or the court's role in the war on drugs.

Additionally, college students are often assigned projects. Film and broadcast students are often looking for news projects and can help courts in developing audio or video tapes. The student can receive credit through the college or university and the court can receive a finished product.

Adult education should not be overlooked. Most areas have a community college or adult education program. A special curriculum sponsored by the court can be easily developed about drugs and the legal system. The court could bring in guest speakers, including judges, counsellors, psychologists, police officers, prosecutors, and defense attorneys, and probation officers on a rotating basis to provide drug related information to the public. Similar programs already have been conducted with great

success. It would appear that a similar spin-off could be developed for courts about drugs.

E. Other Events

In communicating with the public, a court can offer special events and invite coverage by the news media. This could involve a series of special seminars which would be an expanded version of the adult curriculum mentioned above. There could be court sponsored debates about constitutional rights and drugs, and drugs in the workplace and schools. Courts can and have participated in anti-drug concerts and other anti-drug events that are sponsored locally by various other organizations.

It may also be wise for a court to receive community input about what the court's role should be in the war on drugs. The court may wish to take a group of judges, court managers and others out to various neighborhoods within the court's jurisdiction and hold a neighborhood meeting about how the court can improve its function in the war on drugs. The court could invite certain opinion leaders to the meeting, invite the press and open it to the public.

F. Court Publications

Almost all courts have publications to convey information to the general public. This format could be expanded to include information about drugs and the war against drugs. A court may wish to join with other social service agencies in either obtaining grant money or outside donations to publish a social service guide which would include listings and addresses of all types of drug related programming within a particular geographic area. This could include both traditional alcohol programs as well as drug programs. A court could also provide social service guides for families of people involved in drugs.

The fact that the court would help publish such a document or sponsor such a document would add a positive dimension to the court's role in the fight against drugs.

The court may also wish to publish treatment guides which would outline for anyone the possible treatment alternatives for drug or alcohol addiction. Again, this could be done either with the court's own budget or by receipt of grant money with the various treatment centers. Any court should be sensitive to the local language in its particular jurisdiction and these publications should be done, perhaps, in languages used by ethnic groups in a particular court's jurisdiction.

The court may also wish to establish "punishment brochures." These would be guides to what sentences could or must be given for certain drug and alcohol violations. This would be important information which, too often, the public does not understand.

The programs mentioned above should be used in conjunction with one another. Any one program by itself may not be sufficient, but in a court's planning process it can outline several programs that it may wish to follow. A court should also prioritize the programs in which it wishes to pursue so scarce resources (funding or time) are applied wisely.

IV. How Can/Should Courts Reach Out to Improve the Understanding of Judges, Administrators and Staff to "Drugs" as a Business, Addiction and Treatment

A. Judicial Education

To be effective in the war on drugs, judges must be knowledgeable. This knowledge must consist not only of the law, but of all aspects of drugs and drug abuse. Judges should be encouraged to attend national, regional and state seminars concerning drugs, their abuse and the law. Such programming already exists, and is readily available. Judges should be encouraged to attend--both as students and faculty.

There need to be, as well, educational opportunities on a regional or local basis. These could include seminars of a "brown bag lunch" variety or longer duration

including people from disciplines other than the law to discuss the various ramifications of drugs in our society. It would be beneficial for the judges to understand the non-legal side of drugs and drug abuse.

There are also opportunities outside of the classroom for drug education. Judges can, perhaps, volunteer in drug clinics or visit clinics to get a street view of the crisis. Judges need to see victims of drug abuse, whether it be the person addicted to the substance or their families, friends, and associates.

Judicial education in this area must be ongoing and must feature progressive adult education techniques. Courts should view this judicial education as an integral part of its community education programming. This judicial education can also be made known to the news media so that the public knows its judges are being kept informed.

B. Managers

Not only is there a need for programming and education of judges, but there is a need to educate managers, even those who do not have daily contact with the criminal courts or the criminal process. There is a need to take managers beyond the mere numbers of drug cases and their ramifications for the court's docket. There is a need to make our court managers street-wise in the sense that they know the true face of the drug crisis and not just the statistical dilemma faced by the courts. This can be done, again, by integrating various interdisciplinary classroom seminars for managers, but also by providing managers some interdepartmental programming such as work with victims assistance programs, or drug intervention programs, or counselling programs, or probation programs.

Courts should seriously consider professional leaves for managers to get educational programming in the humanistic side of the drug war and the drug problem. Professional leaves are far too under-utilized in our judicial system and would certainly add an important dimension to the education of the court staff.

C. Staff

Not only should there be training for judges and managers, but there should be training for line staff as well. Line staff needs to know about addicted co-workers and how to cope with addiction in the workplace. Staff needs to know the elements of addiction and some of the danger signs of addiction, not so that they can spy on fellow workers, but so that they can help them. Courts are not immune from drug and substance abuse problems. Therefore, all staff should be educated on the danger signs of addiction.

Line staff must also be educated on some of the survival tips that they can use in dealing with an addicted client, the person who may come off the street and have contact with the court. The staff person must be educated so that he/she will know the signs of addiction and know how to communicate with such an addicted person in the most appropriate way.

Additionally, the court must turn the mirror on itself and find how the court can aide in treatment of both co-workers and clients. How can treatment be better supplied and how can it be more appropriately monitored?

V. How Can/Should Courts Involve the Public in Helping the Judiciary Respond to the Drug Crisis

The courts are in a quandary. The traditional "try-em, convict-em, and lock-em up approach" cannot treat a problem the magnitude of the drug crisis. A court should recognize that new systems or new approaches might be necessary and a court may wish to adopt some of these. In so doing, a court must look to the public for ideas and actual programming. The courts may wish to consider the public in three ways: one, as a sounding board; two, as a human resource; and three, as a monitor.

A. The Public as Sounding Board

The court may wish to not only have community and neighborhood seminars, as was discussed earlier as a means of community outreach, but may also wish to bring people from various backgrounds together to discuss how a court can improve the way it handles the drug crisis. One means of doing this is "focus groups." Representative groups of various ethnic, gender and economic demographics can be brought together with a facilitator to give the court suggestions on programming, processing and sentencing approaches. These sessions may be conducted outside of the presence of a judge or court manager and video-taped. People may be freer with their comments if a judge is not participating. The court can then take the messages from these focus groups and use them as a basis for self evaluation or for program development.

Although these focus groups could be used sporadically, a court may also wish to develop an interdisciplinary advisory group to help advise the court on how it should address particular drug problems. This interdisciplinary advisory group should consist of drug treatment professionals, psychologists, police, attorneys, teachers, religious leaders, social service leaders, and other community leaders. The group could act as an ongoing sounding board, not on individual cases, but on general programming, and this group could assist the judge by advising on different developments in other disciplines that have an impact on the drug crisis. This advisory group could serve on a volunteer basis. If such a group is developed, the media certainly should be contacted regarding its creation. This would provide another opportunity for positive press news about the court's approach to the drug crisis.

B. The Public as a Resource

Even in the smaller court and community, volunteers should not be ignored. Volunteers can be garnered from the community for various court sponsored programs. In the past, they have been used in victim witness programs, in alternative sentencing

programs, and community service programs. The court should use volunteers in drug programming. Not only does this provide the court with additional human resources, but it broadens the base of support for court programs. The public may also be able, on a volunteer basis, to act as information gatherers for the court. Often courts work without proper statistics or follow-up. Members of the public, on a volunteer basis, can serve as resource people and research people.

Finally, the public can be utilized, once it is educated about the court's role, as an advocate for the court. If a court is involved in extensive community education and is actively involved in community programming, then the public can advocate for the court with funding sources and legislative bodies. The judiciary should not be shy about asking the public for its support following good faith efforts to involve the public in its operations.

C. The Public as Monitor

Representative groups can monitor not only courts, but people who have been involved with drugs and court procedures. A court should encourage court watching groups to meet with judges and court managers to learn whether the court is responding appropriately to public concerns about drugs and drug offenders. If the court invites court watchers, it should not be defensive about their reports.

Conclusion

The role of the courts in the drug crisis may, in fact, be a limited one. However, this is not the public's perception. Therefore, courts must take an active role in educating the public. By educating the public, courts must evaluate all available options. Courts must also know that educating the public means educating the news media. This briefing paper has outlined several considerations that a court should consider in developing public/community education programs and involvement. It is not intended to be all inclusive. It has been intended, instead, to prompt the

reader into creative thinking about the alliance between the public, the news media, and the courts in a common effort to combat drugs.