Drugs, Crime, and Urban Trial Court Management: The Unintended Consequences of the War on Drugs

John A. Martin†

The cultivation, distribution, sale, and consumption of illicit drugs have profoundly affected all aspects of American life. During the past few years, a proliferation of popular books, magazine articles, and scholarly publications have focused on America's "drug problem."1 Moreover, public opinion surveys conducted throughout the 1980s consistently show that Americans consider drug abuse to be among the most important problems confronting their local communities and their nation.2 The public perception is well-founded, since detailed general population studies have revealed that considerable illegal drug use is occurring among all segments of American society.3 In 1986, for example, the United States imported approximately 11,000 tons of marijuana, 165 tons of hashish, 138 tons of cocaine and its derivatives, and seven tons of heroin and other opium derivatives.4 Thousands of tons of domestic marijuana and tens of millions of illicit doses of synthetic narcotics such as PCP, methadone, Demerol, Darvon, and Talwin were also consumed each year.5 Cocaine, consumed at least occasionally by seven

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to thirteen million Americans, is by itself a $20 billion component of the $50 billion drug industry.\(^6\)

Enlistment of law enforcement agencies in an aggressive "war on drugs" has been one visible response to widespread drug use in many American cities. During the past decade, the number of law enforcement personnel has increased by nearly 25%, while the tax dollars dedicated to crime control have nearly doubled.\(^7\) A less-publicized consequence of widespread American drug use and the intensification of the war on drugs has been an unprecedented increase of drug cases in urban trial courts throughout the United States. Drug arrests per year nationwide increased nearly 43%, from about 569,000 in 1977 to over 811,000 in 1987.\(^8\) Between the end of 1987 and the end of 1988, drug related arrests nationwide resulted in an additional 43% increase in arrests, a total of 1,155,000 in 1988.\(^9\) As a result, drug caseloads have more than doubled in some urban courts in the last few years alone, and the recent promulgation of tough drug laws in many states promises even greater increases in many trial courts in the future.\(^10\)

The influx of drug cases has not simply resulted in more "routine" work for already-burdened courts and the justice system as a whole. It also has created an unprecedented amount of highly policy-sensitive work. Today, drug cases are not considered garden-variety felonies; drug cases, especially drug sale cases, have acquired special status. District attorneys, state attorneys general, and other local, state, and federal officials have been directed to focus their efforts away from other areas onto the "crisis" created by drug sales.

\(^6\) Gorriti, supra note 1, at 71.
\(^10\) For example, data collected by the National Center for State Courts [NCSC] about drug cases in large urban jurisdictions reveals the following changes in drug caseloads between 1983 and 1987:
War on Drugs

and use.11 State statutes regularly single out drug offenders for extraordinary treatment, and the war on drugs is almost always a crucial component in justifying funding for new jails and prisons.12 Allocations of public resources of all types are often prioritized on the basis of how the program or project might assist or hinder resolution of the drug problem.13 In many ways the intensity accompanying drug case processing is similar to the intensity traditionally accorded violent crimes such as murder and kidnapping. Unlike murder and kidnapping, however, the potential number of drug cases within urban trial jurisdictions appears to be virtually unlimited.

Many urban justice systems are struggling to respond adequately to the national war on drugs, but there are increasing doubts among justice system practitioners that the current war on drugs can be won. In addition, justice system practitioners are increasingly concerned that the costs of that war might be far too great. Practitioners, for example, fear that the war on drugs is dramatically altering

<table>
<thead>
<tr>
<th>Court</th>
<th>1983</th>
<th>1987</th>
<th>% Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Boston</td>
<td>16</td>
<td>44</td>
<td>+175</td>
</tr>
<tr>
<td>Jersey City</td>
<td>21</td>
<td>45</td>
<td>+114</td>
</tr>
<tr>
<td>Bronx</td>
<td>22</td>
<td>46</td>
<td>+109</td>
</tr>
<tr>
<td>Oakland</td>
<td>19</td>
<td>37</td>
<td>+ 95</td>
</tr>
<tr>
<td>Pittsburgh</td>
<td>7</td>
<td>13</td>
<td>+ 86</td>
</tr>
<tr>
<td>Portland</td>
<td>10</td>
<td>18</td>
<td>+ 80</td>
</tr>
<tr>
<td>Miami</td>
<td>19</td>
<td>33</td>
<td>+ 74</td>
</tr>
<tr>
<td>New Orleans</td>
<td>20</td>
<td>32</td>
<td>+ 60</td>
</tr>
<tr>
<td>San Diego</td>
<td>18</td>
<td>28</td>
<td>+ 56</td>
</tr>
<tr>
<td>Providence</td>
<td>20</td>
<td>30</td>
<td>+ 50</td>
</tr>
<tr>
<td>Wichita</td>
<td>12</td>
<td>17</td>
<td>+ 42</td>
</tr>
<tr>
<td>Cleveland</td>
<td>12</td>
<td>17</td>
<td>+ 42</td>
</tr>
<tr>
<td>Minneapolis</td>
<td>9</td>
<td>10</td>
<td>+ 11</td>
</tr>
<tr>
<td>Dayton</td>
<td>11</td>
<td>12</td>
<td>+ 9</td>
</tr>
<tr>
<td>Newark</td>
<td>40</td>
<td>42</td>
<td>+ 5</td>
</tr>
<tr>
<td>Phoenix</td>
<td>23</td>
<td>24</td>
<td>+ 4</td>
</tr>
<tr>
<td>Detroit</td>
<td>20</td>
<td>20</td>
<td>0</td>
</tr>
<tr>
<td>Average</td>
<td>17.6%</td>
<td>27.5%</td>
<td>56.2%</td>
</tr>
</tbody>
</table>

The 1983 data was obtained through research conducted by the National Center for State Courts in a study funded by the National Institute of Justice.

The 1987 data was obtained by the NCSC in a study funded by the Bureau of Justice Assistance and was reported in J. Goerdt, Examining Court Delay: The Pace of Litigation in Twenty-Six Urban Trial Courts, 1987, at 59-66 (1989).


13. See, e.g., id. at 111-24; S. Wisotsky, supra note 1, at 4-5.
traditional plea policies and enforcement, treatment, and jail priorities; they also fear that the war is undermining efforts to improve the efficiency and effectiveness of judicial administration. Nonetheless, remarkably little research has focused on the effects that increased use of drugs, stricter drug laws, and increased drug law enforcement have had on both the day-to-day management and the broader administrative policies of America's courts. The lack of research is especially surprising in the state court context, since state courts are expected to process over 97% of all American drug arrests.14

This Article describes what is known about the intricate relationship between increasing drug caseloads and the management of America's urban trial courts, based on a review and analysis of four types of information: (1) the drug-impact and caseflow-management literature; (2) data obtained from a national examination of case processing delay in twenty-six urban trial courts;15 (3) information about drug cases and management practices collected in nine large urban state trial courts through a project sponsored by the United States Department of Justice;16 and (4) the proceedings of a drug case management seminar involving court administrators, judges, district attorneys, public defenders, and researchers held in the summer of 1989.17

The Article begins with a description of the broad context in which drug cases now confront urban trial courts. It shows that the context in which drug cases are processed is affected by the unclear and often contradictory goals of the current war on drugs, by unrealistic expectations of what the judicial system can achieve, and by apparently contradictory long-term crime and crime prevention trends. The next section describes the negative effects this context

15. See generally J. GOERDT, supra note 10.
16. The jurisdictions included in the project are Detroit Recorder's Court (criminal), Wayne County Michigan (civil), Suffolk County Superior Court (Boston civil), Maricopa County Superior Court Civil Division (Phoenix), Maricopa County Superior Court Criminal Division, Montgomery County Court of Common Pleas General Division (Dayton, Ohio civil and criminal), the Essex County Criminal Court (Newark, New Jersey), Denver District Court (criminal), and the Hudson County Criminal Court (Jersey City, New Jersey). The project is being conducted by the National Center For State Courts under the sponsorship of the Bureau of Justice Assistance and the State Justice Institute of the U.S. Department of Justice.
17. The Seminar on Managing Drug Related Cases in Urban Trial Courts was conducted by the Institute of Court Management of the National Center For State Courts and was sponsored by the Bureau of Justice Assistance of the U.S. Department of Justice. It was held on July 17-18, 1989 in Denver, Colorado. Urban jurisdictions that sent representatives to the seminar were San Diego, San Jose, Detroit, Miami, Phoenix, Denver, Oakland, Washington D.C., Fairfax, Virginia, and Jersey City. (Summary of proceedings of seminar on file with author).
War on Drugs

has had on justice system operations and especially on justice system morale. The following two sections suggest several ways in which courts can more adequately process drug caseloads, while emphasizing that the courts alone cannot adequately overcome the inadequacies accompanying the war on drugs without further guidance, support and commitment from policymakers. The Article concludes by suggesting that policymakers should proceed extremely cautiously in any expansion in the war on drugs and should carefully consider the effects of any future drug policy on urban trial courts.

I. The Context in Which Courts Process Drug Cases

A. Perceptions and Trends Defining Drug Case Processing

The complexities of America's drug problem and the confused public policy responses to it have contributed to unprecedented administrative problems in urban trial courts. Efficient case management has been retarded by inconsistent goals and responses to the drug crisis, unrealistic expectations of what the courts can achieve, contradictory long-term crime and crime prevention trends, and an increasingly wide gap between assessments made by justice system practitioners and those made by elected and appointed policymakers of appropriate responses to America's drug problem. This section describes the long-term crime and crime prevention trends, political and policy priorities, and conventional management strategies that currently characterize and affect drug case processing in urban trial courts. These features largely determine both the role courts have been asked to play and long-term effectiveness of that role in the war on drugs. Eight trends in particular must be considered in discussions of drugs and the courts. These eight trends encompass subjective public perceptions and beliefs as well as objective "facts"; public perceptions are important whether they are accurate or not, because they affect the judicial process.

1. Crime as measured by victimization rates is declining, but drug arrests are increasing. Media reports about drugs, crime, and crime prevention suggest that the United States is being victimized by a crime epidemic of unparalleled proportions. Gang violence, crackhouse busts, assaults against the elderly, and seemingly random "drive-by" murders are familiar news stories.\(^{18}\) Coverage of

drug-related crime by the media may be misleading, however, since crime in America, as reflected in victimization rates, has in fact declined considerably over the past decade. The context of drug case processing may therefore be defined as much by the rhetoric and fear of crime as it is defined by the reality of crime.

Victimization rates for crimes against households and crimes against persons have been declining steadily since the mid-1970s. Every classification of crime examined in the annual National Crime Survey, including all forms of violent crime, has declined by between eleven and thirty-three percent during the past dozen years covered by complete data. Because violent-crime victimization did not decline as rapidly as non-violent crime victimization, however, by the mid-1980s violent crime victimization accounted for a greater share of all victimization than it had in the mid-1970s—16.2% rather than 14.2% of all crime. Nonetheless, the approximately 21,000 homicides that were committed by Americans during 1989 were less than the 24,278 committed in 1980 and comparable to the more than 21,000 committed each year during the mid-to-late 1970s. "Crimes of passion" still account for over one-third of all homicides; over 35% of American homicide victims each year are murdered by a spouse, friend, or acquaintance as a result of a domestic dispute or an uncontrolled argument.

The vast bulk of all

<table>
<thead>
<tr>
<th>Victimization Rates Against the Elderly</th>
</tr>
</thead>
<tbody>
<tr>
<td>1975</td>
</tr>
<tr>
<td>------</td>
</tr>
<tr>
<td>Offense:</td>
</tr>
<tr>
<td>Violent</td>
</tr>
<tr>
<td>(% all Crime)</td>
</tr>
<tr>
<td>Theft</td>
</tr>
<tr>
<td>(% all Crime)</td>
</tr>
<tr>
<td>Household</td>
</tr>
<tr>
<td>(% all Crime)</td>
</tr>
<tr>
<td>Total Against Elderly</td>
</tr>
<tr>
<td>(% of all Crime)</td>
</tr>
</tbody>
</table>


20. 1989 Census, supra note 7, at 168 (table 282).
21. Id. at table 281.
War on Drugs

the crime committed in the United States, about 85%, continues to be theft of one form or another against individuals and households.\textsuperscript{22} (See Table 1).

The changing demographic composition of the nation promises a similar, and perhaps greater, decline in victimization rates over the next few decades.\textsuperscript{23} As America continues to age, victimization should continue to decline. Historically, rates of arrest for property crime have peaked at about age 16, dropped in half by age 22, and dropped in half again by age 30.\textsuperscript{24} Violent-crime arrest rates peak at about age 18 and drop in half by age 30.\textsuperscript{25} Between now and the end of the 20th century, the number of persons in what are by far the most crime-prone years—ages 16-25—will decline each year. Not until the middle of the next century, if ever again, will the number of Americans in the crime-prone years even begin to approach the number of young "baby-boomers" alive during the 1970s when crime peaked.\textsuperscript{26}

Declining victimization rates, however, do not mean that there has been a decline in law enforcement activity and the number of arrests in American communities. Law enforcement officials stress that the decline in victimization rates has given them an opportunity to "catch up" by arresting a larger percentage of criminals than they were previously able to handle. Between 1977 and 1987 the total number of arrests in the nation as a whole increased by about 20%,\textsuperscript{27} but the catching up that has occurred has not been uniform across all types of crime. For example, the number of persons arrested for burglary declined by about 17% over the ten-year period, while arrests for drunkenness declined by about 42%. The number of arrests for robbery were constant throughout the period. In contrast, arrests for assault (+37%), larceny/theft (+24%), driving while intoxicated (+28%), and disorderly conduct (+4%) all increased.

\textsuperscript{22} \textit{Id. at} 173.
\textsuperscript{23} See generally L. Jones, \textit{Great Expectations: America and the Baby Boom Generation} 166-75 (1980); G. Bennett, \textit{supra} note 19.
\textsuperscript{25} See sources cited \textit{supra} note 24.
\textsuperscript{26} See generally K. Dychtwald & J. Flower, \textit{Age Wave} (1989); P. Light, \textit{Baby Boomers} (1988).
\textsuperscript{27} 1978 \textit{Census}, \textit{supra} note 8, at 187 (table 307); 1989 \textit{Census}, \textit{supra} note 7, at 173 (table 293).
Table 1: U.S. Crime Victimization Trends 1975-86

<table>
<thead>
<tr>
<th>Offense:</th>
<th>1975 Victimization Rate Per 1000</th>
<th>1986 Victimization Rate Per 1000</th>
<th>% Change in Victimization Rate 1975-86</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. Personal Victimization</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>A. Violent Crime</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rape</td>
<td>.9 (0.3%)</td>
<td>.7 (0.4%)</td>
<td>-27.5</td>
</tr>
<tr>
<td>Robbery</td>
<td>6.8 (2.9%)</td>
<td>5.1 (2.9%)</td>
<td>-24.0</td>
</tr>
<tr>
<td>Assault</td>
<td>25.2 (10.9%)</td>
<td>22.3 (12.8%)</td>
<td>-11.4</td>
</tr>
<tr>
<td>Total Violent</td>
<td>32.8 (14.2%)</td>
<td>28.1 (16.2%)</td>
<td>-14.4</td>
</tr>
<tr>
<td>B. Personal Theft</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Larceny with contact</td>
<td>3.1 (1.3%)</td>
<td>2.7 (1.6%)</td>
<td>-11.7</td>
</tr>
<tr>
<td>Larceny without contact</td>
<td>92.9 (40.2%)</td>
<td>64.7 (37.2%)</td>
<td>-30.3</td>
</tr>
<tr>
<td>Total Theft</td>
<td>96.0 (41.5%)</td>
<td>67.5 (38.8%)</td>
<td>-29.7</td>
</tr>
<tr>
<td>II. Household Victimization</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Burglary</td>
<td>91.7 (17.2%)</td>
<td>61.5 (16.3%)</td>
<td>-33.0</td>
</tr>
<tr>
<td>Larceny</td>
<td>125.4 (23.5%)</td>
<td>93.5 (24.8%)</td>
<td>-25.4</td>
</tr>
<tr>
<td>Motor Vehicle Theft</td>
<td>19.5 (3.6%)</td>
<td>15.0 (4.0%)</td>
<td>-23.0</td>
</tr>
<tr>
<td>Total Household</td>
<td>236.5 (44.3%)</td>
<td>170.0 (45%)</td>
<td>-28.2</td>
</tr>
</tbody>
</table>

War on Drugs

The most striking increase is in the number of drug arrests. As noted previously, from 1977 to 1987 drug arrests increased by about 43%, the largest rate of increase among all frequently committed offenses in the United States. Drug arrests increased another 43% between the end of 1987 and the end of 1988. Despite declining victimization rates, the perception of drugs as a major problem and the fear of a tremendous drug-related violent crime wave against the general population has spurred this dramatic increase.

If changes in arrest trends are an indicator of the priorities of law enforcement policy, drug crimes have become a primary priority, perhaps the chief current law enforcement priority. As a result of stricter drug laws, widespread opportunities to make arrests because of widespread drug use within American society, a perceived political commitment to the drug problem, and the decline in other types of crime, law enforcement agencies have increased their contribution to the war on drugs by arresting more drug offenders. It is therefore not surprising that in many jurisdictions drug caseloads have rapidly expanded at the same time that traditional bread-and-butter felony caseloads such as burglary, robbery, and theft have been declining.

2. Casual drug use among the general U.S. population is declining but habitual use of cocaine is increasing. A National Institute of Drug Abuse survey indicates that the number of Americans using at least one illegal drug during 1988 had declined by 25% since 1985 — from 37 million people to 28 million. The same survey revealed that general drug consumption among younger Americans (including consumption of the most commonly used illegal drug, marijuana) had also declined considerably. In 1988, 21 million Americans used marijuana, down from 29 million in 1985. Moreover, the rate of marijuana use among adults aged 18 to 25 has declined to the lowest rates recorded since 1972. In response to these findings, Drug Czar William Bennett and United States Secretary of Health and Human Services Louis W. Sullivan recently announced that the decline in casual drug use represents “a triumph of changed attitudes.” Bennett noted, however, that although the first and more manageable battle against casual use is being won, the second battle against more serious and habitual drug use is not. Citing survey results showing that the number of people using some

28. See supra text accompanying note 8.
31. Id.
form of cocaine at least once a week had increased from 647,000 in 1985 to 862,000 by 1988, Bennett stressed that “[t]he other, much more difficult war is against chronic and addictive cocaine use. And on this second front, we are not winning.”

It is against chronic and addictive cocaine use that drug-fighting resources are deployed. One consequence of this development is that the courts still see increasing numbers of drug cases. Even if it is assumed that there is some relationship between arrest trends and drug use, the courts cannot take credit for the decline in casual use and have not benefited directly from its decline. Since judicial resources have been and continue to be directed towards the apprehension and processing of habitual users and sellers, the “victories” won so far in the war on drugs have had few if any positive effects on the courts.

3. The increased availability of drugs on the streets means that drug prices have stabilized or declined. The prices of most illegal drugs have stabilized or declined during the 1980s. The price of cocaine in particular has declined dramatically, despite tremendous increases in its “street” purity. Cocaine, which cost $50,000 per kilogram in 1979, is now less than $10,000 per kilogram, primarily because of tremendous production increases in the exporting nations. In addition, crack, a cocaine derivative, has provided a steady stream of drugs to urban markets for as little as $25 a rock.

Although the economics and demographics of drug marketing have not been sufficiently documented, declining drug prices appear to be making drugs more accessible to elements of society who were previously excluded. The increased availability of drugs, coupled with increased enforcement, translates into larger court caseloads. It is also likely that the courts will be confronted by larger percentage of juveniles, many of whom will be first-time offenders with distinct treatment and confinement needs.

4. Drugs and crime go hand in hand. The most recent detailed and methodologically sophisticated study of the drug-crime connection suggests that “drugs drive crime” and that “careers in drugs intensify already existing criminal careers.” The same study also found that the average habitual narcotic drug user tends to commit

32. Id.
34. Gorriti, supra note 1. See also It Doesn’t Have to Be Like This, THE ECONOMIST, Sept. 2, 1989, at 21.
35. J. INCIARDI, supra note 5, at 82.
36. Id. at 140 (emphasis omitted).
hundreds of largely nonviolent crimes per year. For example, data collected in Miami revealed that drug sales accounted for 38.3% of the total number of crimes committed by habitual drug users, while prostitution (12.1%), and shoplifting (11.6%) also accounted for sizeable percentages. Violent crimes, such as robbery (2.5%) and assault (0.3%), accounted for smaller percentages of crime committed by the habitual narcotics users studied.37

Studies focusing on convicted criminals reinforce the drug-crime connection. A detailed study of offenders appearing in the Dade County (Miami) criminal justice system reported that approximately 80% of the felony offender population tested positive for some type of illegal substance shortly after arrest.38 Similarly, studies of the state prison population reveal that approximately 62% of the offenders have used some type of drug on a regular basis at some time during their lives.39 In these prison studies, 17.2% of the offender population reported that they were under the influence of drugs at the time of the offense for which they were imprisoned, while 18.5% indicated that they were under the influence of alcohol. Another 18.1% reported that they were under the influence of both drugs and alcohol when they committed the offense for which they were incarcerated.40

Although there is no clear-cut pattern in the drug-crime, crime-drug mosaic, the available evidence indicates that criminal offenders are often also drug and alcohol users. This evidence also suggests that the elimination of crime from an offender's life will not necessarily end that individual's involvement with drugs. The reverse is also true.41 For many offenders, drug and alcohol abuse and crime

40. Id.
41. In addition, while evidence from studies of the crime-drug connection indicate that if there were less drug abuse there would likely be at least somewhat less crime, the same studies reveal that drug use does not necessarily lead to other crime and that crime would continue to be an important problem in the U.S. even if there was far less drug use. Victimization rates within American society, for example, have been both considerably higher and lower than they currently are regardless of the drug-crime connection. See J. Inciardi, supra note 5, at 130-43; Sourcebook of Criminal Justice Statistics, 1987, supra note 3, at 241.
have become part of their lifestyles. At the very least, these findings suggest that at least one half of the offenders confronted by the courts and the criminal justice system have a substance abuse problem in addition to a crime problem.

5. **There are very different types of drug offenders.** The lifestyles, treatment needs, criminal behavior and responses to potential deterrents vary greatly among different types of drug offenders. Four general types of drug offenders that have been identified in the research literature\(^\text{42}\) have been summarized in a typology developed by Professor Todd Clear of Rutgers University.\(^\text{43}\) (1) "Users" or "recreational users" are offenders who have little commitment to either drugs or crime. They use drugs periodically because they like the high, but their lives are relatively normal and crime-free. Since this group of offenders commits few other crimes, stricter punishments will not help to reduce crime. In contrast, (2) "addicts" or "dysfunctional users" are committed to drugs but not necessarily to crime. Addicts have become so dependent upon drugs that their lifestyles are built around the acquisition and consumption of drugs. Often they are small-time drug sellers who commit petty crimes to support their lifestyles. Still, crime for them is not an end in itself, but rather a means for obtaining more drugs. Addicts need to break the addiction and learn substance-free lifestyles; they require correctional approaches that force or enable them to confront the circumstances of their drug abuse. Intensive supervision, education, and medical treatment are likely the most appropriate responses to the addict offender.

Posing greater challenges for the criminal justice system are the two other types of drug offenders identified in the research literature. (3) "Sellers" are committed to crime but not to drugs. They are business people who are associated with drugs because drug sales can be extremely profitable. They are willing to take the considerable risks associated with drug trafficking because the potential financial rewards are so great. Their involvement in crime for the most part is focused on the maintenance of their business. Putting these offenders in prison might not be the most appropriate criminal justice response. The costs to the system of incarceration are

\(^{42}\) These four types of drug users are in addition to experimenters who use a particular drug once or twice and then discontinue using a drug or drugs. *See, e.g.*, J. INCIARDI, *supra* note 5, at 83.

difficult to justify because the profits involved in drug trafficking ensure that others will quickly emerge to take the places of those confined. Moreover, there are less costly alternatives for keeping those who are caught selling drugs from continuing to sell drugs. One alternative may be to monitor their activities very closely through a variety of intensive supervision programs. Finally, (4) “predators” are committed to both crime and drugs. They enjoy the risk and excitement of a criminal lifestyle that includes the use of drugs. Patterns of criminality among this group include serious, violent crimes such as rape, armed robbery, and assault. Drugs are often used as a means to increase excitement and generate the “courage” to commit offenses. For predators, crime and drugs are integrated means and ends. Severe correctional treatment such as imprisonment is likely to be most appropriate for this group, so long as the correctional system recognizes that drugs are not predators’ primary problem but rather are part of a more comprehensive criminal lifestyle. Handling these drug offenders therefore requires addressing the mood changing aspects of drugs in light of predators’ broader orientation to the thrill of crime, especially violent crime.

One major implication of the presence of several different types of drug offenders is the need for courts to sentence flexibly and selectively. Courts must be able to determine how a particular type of sentence—probation, treatment, prison, etc.—will best serve both the accused and society. However, the trend towards mandatory prison sentences for drug crimes and increased investment in prisons rather than other forms of correction has greatly limited the justice system’s ability to deal with drug offenders through alternative sentencing and treatment.

6. Drug crime can pay well. It is worth stressing that the time-worn maxim “crime does not pay” is even less true for drug crime than it is for other forms of crime. There is enormous money to be made as a small, temporary part of a multi-billion dollar, nontaxed, largely unregulated industry. The staggering profits enjoyed by some drug traffickers are even greater than the profits offered in the most lucrative industries, and drug profits are far more attainable to some members of American society than the lesser rewards offered by legitimate business. Even the comparatively modest profits available to some small-time drug sellers may far exceed what they could

be earning in traditional jobs, if such jobs were available. In addition, the potential return on a drug sale—despite the risk of apprehension and punishment—greatly exceeds the return to be made on other forms of crime, especially those forms of crime available to young people in urban areas.\textsuperscript{45}

Moreover, the drug dealer/entrepreneur is romanticized in both the entertainment and news media, which enhance the allure of the drug trade. The drug culture is sometimes glamorized in the movies and television, although most entertainment now portrays drug-related figures and lifestyles in an ultimately negative light.\textsuperscript{46} The news media's treatment of the drug culture focuses attention on the profitability of the drug trade. Television news devotes considerable attention each night to the day's drug-related news,\textsuperscript{47} and the print media devotes extensive coverage to the drug trade and the war on drugs.\textsuperscript{48} Exposure of the possibility of drug wealth has become part of today's mass culture.

Although most Americans probably recognize that there is a great deal of mythology surrounding the bit of truth embodied in the image of the drug dealer/entrepreneur, for some Americans the mythology is reinforced by the reality of their day-to-day experience. As one judge from a west coast community said at a recent seminar on drug case processing:

Every day I see kids before me who want the success promised by the American dream. It is a dream they see on TV and at the movies. They want the fast cars, the fine clothes, the girls, and the fancy apartment. Unfortunately the people they see who have these things in our community are the drug dealers. Kids don't know that what they think is happening isn't really that way. It's as real as anything else to them. The TV, their friends, and what they think they see on the street, tell them it's real.\textsuperscript{49}


\textsuperscript{46} For example, in his role as a south Florida drug lord, Al Pacino died under gruesome circumstances at the end of the motion picture \textit{Scarface}, but his death followed an exciting life characterized by opulence and power unattainable to all but a few of America's most successful corporate chiefs. \textit{Scarface} (Fetch Productions 1983). The drug dealers often lost at the end of each episode of the television series \textit{Miami Vice}, but usually only after they flaunted their considerable wealth and power throughout the previous 55 minutes. \textit{Miami Vice} (NBC 1984-1989).

\textsuperscript{47} See, e.g., G. Bennett, supra note 19, at xvii-xix.

\textsuperscript{48} See, e.g., Time, Sept. 11, 1989 and Newsweek, Sept. 11, 1989 (cover stories and subsidiary articles devoted to the drug trade, the effect of drugs on urban life, and the war on drugs).

\textsuperscript{49} Interview with Oakland, California judge who wishes to remain anonymous, in Denver, Colorado (July 17, 1989).
War on Drugs

The glamorization of the drug dealer/entrepreneur and the reality that drug crime can pay well contribute to feelings of futility among judges, administrators, prosecutors, and other justice system personnel. For each drug dealer processed, workers in the justice system are confident that another will soon emerge to take his place. Proceedings from justice system seminars indicate that practitioners within the justice system do not believe that penalties imposed by courts will deter people from dealing drugs, given the potential for money and status offered by the drug trade, the “evidence” from the media and the street that drugs pay very well, and the lack of opportunity to make comparable money in a legitimate job.  

7. There is increasing violence within the drug trade. Violence within the drug trade appears to have become increasingly organized and more systematically brutal. In major drug trafficking centers, competition within the drug trade has increased as new groups have attempted to capture the market shares of more established groups. Jamaican “posses,” Colombian “cocaine cowboys,” and Chinese and other Asian crime networks, along with more traditional American organized crime forces, all compete for a share of the drug trade, using violence, including murder, as a tool in that competition. Although violent crime, including murder, has generally declined in the United States, it has not declined uniformly throughout the nation and has not declined among some groups of people who are more likely to be victims. Drug related murder has become so common in a few of the nation’s larger urban drug trafficking centers that it now approaches domestic disputes as the primary cause of murder. For example, drug dealers killing other drug dealers accounted for most of the near doubling in the number of murders that occurred in Dade County, Florida over a five year period during the early 1980s. Similarly, about one-third of all the murders committed in New York City in recent years have been attributable to disputes over drugs. 

Given this alarming and visible violence, it is not surprising that the fear of crime among Americans is not declining, even though crime within the general population has been declining for many years.
years. Drug-related violence contributes to community outrage and demands for greater crime control, resulting in drug cases receiving higher priority in the courts. Regardless of the circumstances of a particular case, the specter of drug-related violence makes every drug case a "serious" case.

8. There are extensive domestic and international policy consequences to widespread drug production and consumption and to the war on drugs. Partly because of the violence of the drug economy, the issue of drug crime is more visibly tied to broad policy and political agendas than other types of crime. In addition, the increasing presence of drugs in America has had a well-documented effect on such diverse aspects of public policy as education, public safety, and foreign affairs. In the area of international relations, for example, drug production and trafficking issues have significantly complicated diplomatic, military, and trade relations between the United States and allies such as Thailand, Turkey, Pakistan, Mexico, Bolivia, Peru, and Colombia for over a decade. These issues have also significantly complicated relations between the United States and adversaries such as Panama, Iran, Cuba, Nicaragua, and Laos. The American appetite for drugs, coupled with other nations' willing or unwilling acceptance of drug production as an economic mainstay, contributes to political instability, corruption, indigenous drug problems, and, in many instances, unprecedented levels of violence within the drug exporting nations.

In the United States, the effects of drugs on policy are diverse and far-reaching. For example, employee drug testing now routinely occurs in both public and private organizations, and William Bennett

55. See supra text accompanying notes 18-22.
57. See, e.g., Drugs and American Society, supra note 1.

As this article is being written in Fall 1989, the world is witnessing a war between the central government of Colombia and the powerful drug cartels that have functioned as a shadow government within that nation for at least the past decade. The media daily report the latest bombings of Colombian public and private facilities by backers of the drug trade, as well as threats against reporters, judges, and other public officials who might dare to challenge the drug cartels. The U.S. government is supplying intelligence, money, and equipment to help the Colombian government fight its drug war, although to date offers of U.S. military personnel have been declined.
recently called for increased testing.\textsuperscript{60} Productivity losses attributable to drug abuse cost American industry tens of billions of dollars per year.\textsuperscript{61} The armed forces have experienced increasing difficulties finding qualified drug-free recruits.\textsuperscript{62} Civil libertarians increasingly express reservations about the potential erosion of constitutional rights accompanying efforts to curb drug abuse.\textsuperscript{63} Expanded resources are directed to the war on drugs, draining other local and national priorities. According to the Government Accounting Office, the allocation for federal drug interdiction programs increased from $394 million in 1981 to over $1.369 billion in 1987, an increase of 247%.\textsuperscript{64} In contrast, the average monthly payment for families receiving AFDC only increased by about 24\% between 1980 and 1986.\textsuperscript{65} Moreover, the laundering and investing of massive amounts of illegally obtained drug profits has helped to create a new generation of sophisticated white-collar criminals; this activity has also contributed to price inflation, especially of property in some American cities, and has undermined the currency of longtime U.S. trading partners.\textsuperscript{66}

For the justice system, the bottom line is that drug crime is no longer considered to be routine crime; it is now seen as a symbol of a larger social evil. Courts are under pressure to solve complex social and political problems by being "tough" with drug offenders. Both the real and imagined effects of drug use and drug crime on society intensify the already considerable pressure on courts to respond effectively to the drug problem.

B. The Effects on the Courts: A Summary

Together, the eight trends examined in this section confront courts with an exceedingly complex, contradictory, and confusing drug case processing context. On the one hand, the declining victimization rates and the stable or declining arrest rates for most crimes over the past decade suggest that the typical American is less likely to be a crime victim today than in the mid-1970s. In addition, declining drug consumption rates among casual users in recent

\begin{itemize}
  \item \textsuperscript{60} National Drug Control Strategy, \emph{supra} note 12, at 57-58.
  \item \textsuperscript{61} Bureau of Justice Statistics, U.S. Department of Justice, \emph{Report to the Nation on Crime and Justice} 114 (2d ed. 1988).
  \item \textsuperscript{62} A. Trebach, \emph{supra} note 11, at 240-48.
  \item \textsuperscript{63} Id. at 179-213.
  \item \textsuperscript{64} Drug Smuggling, \emph{supra} note 4, at 19.
  \item \textsuperscript{65} 1989 Census, \emph{supra} note 7, at 366.
  \item \textsuperscript{66} See, e.g., Lentioux, \emph{The Miami Connection}, in \emph{Drugs and American Society} 24, \emph{supra} note 1; Robbins, \emph{In Colombia, Dirty Money Passes Through Some Very Clean Hands}, \emph{Bus. Week}, Mar. 18, 1985, at 74; Am. Banker, Feb. 28, 1985, at 4.
\end{itemize}
years suggest that the drug epidemic has peaked among the general population. On the other hand, the wanton brutality and violence accompanying drug trafficking, media exposure of the link between crime and drugs, the dramatically increasing numbers of drug arrests, and the political emphasis on the war on drugs suggest that drug use and drug crime in America are uncontrollable.

For courts and the justice system generally, the net result of these trends is unrelenting pressure to somehow solve the nation's highly visible, politically sensitive, and multifaceted drug problem. Courts have not enjoyed the potential relief that might have been predicted as a result of declining non-drug crime; for them the drug problem has essentially negated the gains in crime control obtained during the past decade. Moreover, courts and justice systems have experienced both large and unprecedented rapid increases in the size of their workloads, especially their politically significant workloads. One result of changing political priorities and public perceptions is that routine, run-of-the-mill crimes handled by the justice system in the past are being replaced by more "serious" drug cases.

In addition, not only has the war on drugs denied courts and the justice system the relief that should have accompanied the development of a safer and cleaner America, but the particular role they have been assigned appears to be one of the least successful aspects of the war on drugs. That portion of the drug war where most court resources are being deployed—the processing and conviction of habitual drug users and sellers—is being lost. Despite rapidly increasing caseloads and convictions, the number of serious drug users is not declining; moreover, in today's retail street market, drugs are more plentiful, of higher quality, and cheaper than they have been in past years. The number of recreational drug users in the nation apparently has declined greatly in the past few years. However, casual users are not the type of drug offenders that have been targeted by the justice system in the war on drugs, and thus gains in this area likely cannot be attributed to justice system efforts. Consequently, as William Bennett has noted, the nation appears to be losing those parts of the war on drugs where the vast bulk of resources have been deployed. Seemingly ever-increasing workloads, coupled with a lack of success in winning the war against drug sellers and habitual users, has resulted in demoralization within many of the nation's urban justice systems.
II. The Mood Within the Justice System

"America's urban trial courts could soon become the first casualty in the war on drugs," commented one court administrator during a recent seminar on drug case processing. The administrator's remark captures the increasingly pessimistic mood among justice system practitioners accompanying the rapid increases in drug caseloads in many American urban trial courts. Judges, administrators, public defenders, and prosecutors fear the potential long-term effects the war on drugs might have on the judicial system. They worry about their declining control over the types of responses they can exercise in that war, and they are skeptical that any result of lasting positive significance will emerge from their efforts to control the problem. Many of them believe that gains in more expeditious and effective case processing in recent years will be lost as a result of the war on drugs.

More specifically, the possibility that rapidly expanding drug caseloads will contribute to increased case processing delay is only one of the potential negative effects on the justice system that court practitioners fear. Other possible negative impacts on the justice system include: (1) the movement of resources to drug cases and away from other court priorities such as the processing of more serious felony, civil, and domestic cases; (2) a dramatic alteration of traditional plea bargaining policies; (3) increased prosecutorial power; (4) escalation of already serious jail overcrowding; and (5) diminished credibility of the justice system among Americans.

The movement of resources to drug cases from other court priorities, for example, is both a direct and a subtle process. Judges and other court staff have been assigned away from civil divisions to criminal divisions, and probation staffs spend greater and greater amounts of time attempting to monitor the cleanliness of drug offenders rather than monitoring the offenders convicted of less politically significant crimes. Since prosecutors armed with mandatory sentences effectively determine an offender's punishment when they decide on a specific case charge, altering traditional plea bargaining policies in response to the drug case influx has led to fears that too much power to control both the pace and the outcome of litigation in urban trial courts is being placed in the hands of prosecutors.

67. Comment of an anonymous court administrator attending Seminar on Drug Case Processing in Urban Trial Courts in Denver, Colorado (July 17-18, 1989).
68. See generally Lipscher, supra note 50.
Judicial system actors have also noted that the war on drugs contributes to serious jail overcrowding not only because it brings so many new people into the justice system, but also because offenders are being sentenced to longer prison terms under new criminal statutes.\textsuperscript{69}

Judges are particularly concerned that the war on drugs is being used as the rationale for limiting their sentencing discretion at a time when exercising discretion may be even more appropriate than it has been in the past.\textsuperscript{70} As noted in the previous section, there are several types of drug offenders who respond to inducements and impediments to drug abuse in a variety of ways. Some judges feel that appropriately responding to the needs of a diverse group of offenders requires a wide range of justice and social service options, including treatment and supervision programs of varying intensities as well as jail terms and prison sentences. Uniform treatment of all offenders may not only be ineffective in reducing long-term habitual drug use among some types of offenders; it also may have little impact on drug use within a community while contributing to other community social problems. Local resources used for constructing facilities to confine drug offenders cannot be used for other community programs, and sending large numbers of an area's young offenders to prison may contribute to other problems later on when the offenders return to their communities.\textsuperscript{71}

Discretionary sentencing policy traditionally has been one way for local justice officials to balance offender and community needs;\textsuperscript{72} nonetheless, mandatory prison sentences based on the quantity of drugs involved—and in some cases, based on the location of the offense, such as within 1000 feet of a school—are becoming increasingly popular weapons in the war on drugs.\textsuperscript{73} The distribution of resources within a justice system also effectively limits sentencing; even in instances where sentencing standards allow local justice officials the discretion to tailor responses to particular offender and community needs, the lack of supervisory mechanisms, treatment programs, and jail and prison facilities can render such options meaningless.

\textsuperscript{69} Id.
\textsuperscript{70} Id.
\textsuperscript{72} See, e.g., D. NEUBAUER, \textit{CRIMINAL JUSTICE IN MIDDLE AMERICA} 6-17 (1974).
\textsuperscript{73} Lipscher, \textit{supra} note 50, at 14.
Moreover, the disparity between theoretical sentencing of drug offenders as prescribed by state statutes and actual sentencing possibilities, given resource limitations and the politics of the war on drugs, places additional burdens on the integrity of local justice systems. Professionals in the justice system are becoming increasingly distressed at the amount of deception in which they feel they must engage in order to dispose of drug cases while maintaining the appearance of doing their part in the war on drugs.\textsuperscript{74}

Apprehension among state judicial practitioners about their role in the war on drugs was an important theme during both a seminar on drug case processing in urban trial courts held in Denver in July 1989 and a similar conference held in Philadelphia in April 1989.\textsuperscript{75} Judges indicated that each day they sentence offenders to jail and prison sentences that they know will not be served and to treatment programs that they know do not really exist, continually wondering whether their sentences would do any good even if they were carried out adequately. Prosecutors admitted that they routinely “talk tough” in public forums about their communities’ crackdown on drugs while knowing that their promises cannot be kept; and public defenders stressed that they often participate in elaborate guessing games when they try to determine what is a good plea offer in light of both case merits and the availability of resources for sentencing convicted defendants.

Perhaps a criminal court judge from a metropolitan New Jersey jurisdiction best summarized the mood within the justice system when he stated:

This morning I had a defendant before me on a bail hearing who had three outstanding charges while he was free on bail. Now, the man says to me, ‘I’ve been a junky for 12 years. There is nothing I can do about it. I want help. I’ll go any place for as long as you send me there. Just get me the help.’

Do you know what I do? I have two choices. And, frankly, I can justify either choice.

The Legislature has passed all kinds of laws narrowing sentencing discretion. My sentencing discretion is guided, and I’m very happy with those laws. But I have enough discretion left to do lots of different things. I can send him to state prison for, let’s say the maximum which is five years for the offense involved.

Let’s further assume that I articulate in writing and orally that this guy has a serious drug problem, and that when parole consideration

\textsuperscript{74} Id.
\textsuperscript{75} Id.
comes up no one should think about giving him parole unless they arrange for a long-term, in-patient drug rehab program.

The other alternative is to put the defendant on probation, with or without sending him to the county jail for any period of time. Let's assume that's the relevant choice. Let's assume I give him probation for five years and that I give him the maximum sentence in the county jail of 364 days.

In four months he becomes eligible for parole. Let's say he then gets released on parole from the county jail. He is also, simultaneously, on probation. Let's also say that as part of my sentence the probation department—as a condition for probation—will arrange for a long-term, in-patient drug rehabilitation program after he gets out of the county jail.

I sign the order, and I say it's accomplished, and I clap my hands together, and I tell myself that I've done a terrific job—and it is as phony as a three-dollar bill. The reason is that neither the parole board nor the probation department is ever going to be able to arrange a long-term, in-patient drug rehab program for this guy. Not in this state.

Before six months are out, he will be violating both probation and parole. The parole board, and I'm not blaming the board, will be pushing him out of the state prison faster than we can put him in, because they don't have the room. And the last thing they want to hear is that we're not going to let that guy out of state prison until somebody can arrange a drug rehab program, because they can't arrange a program.

Number one, there's no space in any program. Number two, there are so few programs that it's pitiful. Number three, nobody's giving them any money to pay for it, and number four, 90-to-95 percent of all these people are indigent to begin with. They can't afford it. They don't have any insurance.

So the result of it is, I'm sitting there, knowing that I'm beaten, knowing that everything I have said is absolutely meaningless... and feeling utterly powerless to do anything about it.76

III. Court Management Strategies for Addressing Drug Case Processing

Widespread drug use and the war on drugs have resulted in unprecedented administrative problems for the nation's trial courts. Nonetheless, there are several structural and administrative practices that courts can implement to better accommodate the drug case challenge.

War on Drugs

Even though improving court administration has not been a high priority in the war on drugs, the drug crisis nonetheless has served as a catalyst for developing more effective management of urban justice systems. Rapidly expanding drug caseloads have created administrative crises in many jurisdictions, and to avoid judicial gridlock many urban trial courts have been forced to adopt more effective and expeditious case processing procedures. Although it only recently became a major priority of the court management profession, research indicates that effectively managing drug cases requires the same types of organization and administrative activity needed to effectively manage non-drug cases. Specifically, recent research about drug case processing reveals five general guidelines that should help courts better manage their drug caseloads.

First, courts can design comprehensive caseflow-management programs which encourage attorneys to meet with their clients soon after arrest, provide prosecutors the information and authority needed to fashion reasonable plea offers quickly, enable courts to monitor case progress and limit "courtesy" continuances, and provide accurate and timely sentencing reports. Extensive empirical research has shown that management efforts directed at reducing case processing time throughout justice systems generally are sound investments. Comprehensive caseflow-management programs should contribute to reduced drug case processing times. Courts that manage their overall caseloads expeditiously tend to manage their entire caseloads, both drug sale and non-drug sale cases, effectively. Relatively slower courts do not process drug and non-drug cases at appreciably different rates. Drug cases may take longer to process in many courts, but the magnitude of the differences between drug and non-drug cases within both slower and faster courts tend to be far smaller than do the case processing time differences across courts.

Second, courts can identify and implement mechanisms for working more closely with non-judicial agencies. Drug cases illustrate the tremendous interdependence among the numerous agencies

77. See generally J. GOERDT, supra note 10.
78. See, e.g., B. MAHONEY, CHANGING TIMES IN TRIAL COURTS 191-213 (1988); Church, Examining Local Legal Culture, 3 AM. B. FOUND. RES. J. 449 (1985); Church, The Old and New Conventional Wisdom of Court Delay, 7 JUST. Sys. J. 395, 405 (1982) [hereinafter Court Delay].
79. J. GOERDT, supra note 10, at 64.
which form an interorganizational justice network. Many steps are required to process even the most routine drug case, and a tremendous amount of case-related information is needed to move a case through the necessary steps. The actors involved in a case are as numerous as the types and sources of information needed. In addition to the people or agencies dealing with information, there are also numerous case decisionmakers. For example, law enforcement officials and the cop on the beat determine who will and will not be arrested based on organizational policy and individual judgment. Pretrial release officials and probation officials, private bondsmen, and judges often determine who will and will not be released from confinement. Sheriffs and corrections officials, through their assessments of who should receive space in crowded jails, often are either implicitly or explicitly involved in determining who will be released from confinement. District attorneys often have considerable discretion when determining the formal charges to be brought against the accused, while public defenders determine what is an acceptable deal.

A variety of actors in the justice system, in addition to judges and court administrators, thus determine both the type and magnitude of a court's general and drug caseloads and the rate at which cases will be processed. If there is to be expeditious case processing, the court must help insure that expeditious case processing is included among the primary goals of each agency within the justice network. Because of the policy significance, high political profile, and potentially unlimited numbers of drug cases in the system, courts must become involved in formulating the drug case policies and procedures followed by agencies throughout the justice system. Court-led interagency working groups composed of judges, private attorneys, court managers, public defenders, and prosecutors which focus on administrative procedures have proven to be one effective tool for increasing justice system efficiency. The active cooperation of nonjudicial agencies such as police departments, corrections departments, prosecutors, and public defenders is crucial if courts are going to be successful in developing more efficient case processing systems.

Third, courts can lead the justice system in developing mechanisms for assembling vital case information early in the process. To

81. Id. at 23-24.
War on Drugs

dispose of drug cases, information is needed at the outset about the incident, the accused, and the realistic availability of a variety of sentencing alternatives—space for incarceration, resources for treatment, probation supervision—as well as about the chances for conviction and the case’s broader legal merits. Case studies have revealed that through reorganization of the procedures followed by police officers, probation officers, prosecutors, and public defenders, the information needed to dispose of drug cases can be obtained sooner rather than later in the justice process.\(^{82}\) Police, probation, and pretrial release agency procedures can be modified to insure more rapid assemblage of information packets containing crucial information, including reports from drug testing laboratories. Procedures for assigning defense counsel that insure early defendant/defense contact can be developed. Prosecutors can assign staff with the skill and authority needed to put together realistic plea offers early in the process. Through rule changes, courts can encourage more prearraignment conferences, scheduling conferences, pretrial conferences, and motion hearings that facilitate earlier attorney/client meetings, quicker case preparation, and expedited pleas and sentencing. These mechanisms that encourage early resolution of drug cases are similar to the many successful mechanisms for early case resolution that have been frequently documented in the general case management literature.\(^{83}\)

Fourth, courts can set firm trial dates. The expectation that a trial will occur when scheduled is consistently revealed to be one of the strongest correlates of more expeditious case processing.\(^{84}\) Requiring that all requests for continuances be written with stated reasons for the continuance is one policy that encourages firm trial dates. Perhaps more importantly, backup assignment systems that use other judges within the court, part-time or pro-tem judges, or even judges from lower courts can help insure the availability of firm trial dates.

Fifth, when additional resources are needed, courts should encourage the justice system to add resources selectively. Available evidence suggests that, contrary to conventional wisdom, drug case processing delays are not primarily attributable to the presence of


\(^{83}\) See generally sources cited supra note 78.

\(^{84}\) See J. Goerd, supra note 10, at 81.
too few judges within a justice system. Instead of a shortage of judges, a shortage of support personnel responsible for gathering the crucial information needed to develop and accept realistic plea offers, and a shortage of capable staff to prepare sentencing reports adequately, are problems in many jurisdictions. In many systems, drug case processing is delayed by having too few drug testing laboratories, pretrial release and probation staff, and interpreters, rather than too few judges, prosecutors, or defenders. In some jurisdictions, personnel shortages or poorly conceived procedures create an inability to move large numbers of defendants quickly and safely to attorneys for interviews or between overcrowded jail facilities and courtrooms, likely causing more case processing delay than the presence of too few judges. In any event, simply adding judges should not be the automatic response to increasing drug caseloads; other potential justice system sources of delay need to be examined systematically.

IV. Developing A Workable National Drug Policy as the Catalyst to Effective Drug Case Processing

Considerably more research about the implications of the war on drugs on court systems is needed before more effective drug case processing approaches can be developed. Moreover, policymakers need to take into account this research, and the needs and suggestions of court practitioners and local communities, when formulating new policies in response to the drug crisis.

Ultimately, the greatest impediments to effective drug case processing in American urban trial courts are the lack of realistic direction, the confused goals, the misinformation, and the fragmentation which accompany the national war on drugs. The general guidelines presented in the previous section do not provide a cure-all that will enable the judicial system to somehow overcome all of the potentially detrimental effects accompanying the war on drugs. It may be both unreasonable and unrealistic to expect courts to alter the course of poorly conceived and poorly implemented—and perhaps ultimately unworkable—public policy, simply by altering their administrative practices. It is not clear that courts will be able to react fully and adequately to changes in justice system policy, especially drug enforcement policy, simply by adjusting their internal

85. See Court Delay, supra note 78, at 396-401.
86. Based on author’s observation of court operations in Hudson and Essex Counties, New Jersey in 1989.
policies and practices, or even by working more closely with other justice system participants. Courts and judicial practitioners therefore need to go beyond administrative reform and take a more active role in promoting more comprehensive planning efforts that anticipate changes in drug statutes and enforcement policies. For example, courts need to develop and express their assessments of the effects which changes in drug policies might have on their organization. These assessments should be expressed directly to policymakers, preferably when plans for implementation of legislation are being formulated. Just as environmental impact statements accompany relevant legislation, justice-system impact statements that adequately disclose the potential impact on courts, law enforcement departments, and prisons should accompany drug enforcement legislation. Although professional standards and separation of powers concerns might inhibit courts from being too proactive, their voices can be heard through state court administrator’s offices and professional organizations, including court administration and law enforcement organizations.87

Useful and informed discussion about the impact of drug cases on courts will also require considerably more information about effective methods of drug case processing and the broader effects that the war on drugs is having on American communities and their justice systems. Much more needs to be known about the relationships among drugs, crime, the courts, and drug case processing if the courts are to develop drug case processing strategies that are timely, effective, and cost-efficient. Examinations of the effects of drug cases on justice systems should include far more than data on case processing time. Developing effective drug prevention strategies requires knowledge about whether judicial responses to drug cases result in the neglect of other types of cases, whether stricter drug offender policies create prison overcrowding that leads to probation for other types of offenders who are not good probation candidates, whether civil caseloads suffer as judges and other court resources are shifted in response to drug caseload increases, and finally how much of the jail overcrowding in given jurisdictions is attributable to changes in drug laws and enforcement policies.

The examination of the effects of the increase in drug cases should also include the effects on local communities. It is not

known what happens when local resources are directed to the justice system from other priorities or whether there are decreases in drug use within a community as a result of intensified justice system activity. Nor do we know who the victims of violent drug crime are, and whether or not arresting massive numbers of drug users deters others from using drugs. Most importantly, policymakers need to know whether or not increases in justice system activity directed at the drug problem improve the quality of life within a community.

The sketchy evidence that now exists suggests that policymakers should think hard before expanding the war on drugs. Expanding case backlogs, increasing case processing times, excessive demands on court, probation, and correction resources, declining morale, and limited success in diminishing serious non-recreational drug use have all accompanied the latest war on drugs. Until there are better answers to some of these basic questions about the positive and negative effects that the war on drugs has on American justice systems and communities, and until there is a better sense of what we hope to accomplish in that war, there will continue to be a great deal of reluctance among judges, court administrators, prosecutors, and others on the front line of the drug war to sacrifice much more than they have already sacrificed.

V. Conclusion

As a result of the war on drugs, American urban trial courts are now confronted by the exceedingly complex and confusing task of processing an unprecedented number of drug cases. State courts and their justice system colleagues are under enormous political pressure to solve America's drug problem by apprehending, convicting, and incarcerating drug law offenders. Many, and perhaps most, justice systems have been unable to meet these demands adequately, and thus frustration and low morale accompany the war on drugs in numerous urban jurisdictions.

Courts can and should help themselves to address this administrative crisis. There are a number of steps that courts can take to improve their ability to process drug cases more efficiently and effectively. However, courts and the justice system alone cannot ultimately win the war on drugs by increasing their administrative performance; they also need realistic direction, goals, and better information about the effects of the war on drugs both on justice systems and the communities they serve. In order to facilitate the
War on Drugs

formulation of workable, realistic policies, the courts need to participate in proactive planning efforts that anticipate changes in drug statutes and enforcement policies, rather than merely react to the political pressures imposed on courts by the war on drugs. Expanding drug caseloads are having a wide range of effects on the courts and local communities, many of which are not clearly understood. Policymakers should therefore proceed extremely cautiously with any expansion in the war on drugs and must consider the effects that the war on drugs is having on American institutions, especially on the integrity, viability, and performance of urban trial courts.