

# **Drugs and Justice**

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## **A System Abandoned**



**Report and Recommendations  
of the Boston Bar Association  
Task Force on Drugs and the Courts**



## PREFACE

With a current membership of about 7,000, the Boston Bar Association is one of the oldest and most prestigious bar associations in the United States. Historically the Association's activities were concentrated in two areas—its section and committee work dealing with substantive law matters and its pro bono efforts dealing with the delivery of legal services to the poor. At its October, 1988 Retreat, after a long and vigorous debate, the Council (governing body) of the Association decided to add a third focus—active involvement in civic and community affairs. At a Boston City Hall press conference later that month, the Association announced the first specific project undertaken in furtherance of this new goal—the formation of a special Task Force to examine how the criminal justice system is coping with the virtual flood of drug cases entering the system. This report contains the preliminary findings and recommendations of that Task Force.

The observations and findings of the Task Force are disturbing. Essentially the Task Force concludes that we are currently losing the War on Drugs. This is a message many will not want to hear. I would suggest, however, that we ignore it at our peril. The group conveying the message has collectively well over a hundred years of experience in dealing with our criminal justice system and no vested interest to protect or further. Their concern is only the well being of our metropolitan community. Hopefully those who share this concern will heed their warning and give prompt and careful consideration to their recommendations.

All of us who are concerned with the health of our community owe a deep debt of gratitude to the Task Force members who have contributed so much of their time to this important effort. This is particularly true with respect to the chair of the Task Force—Allan van Gestel, one of the most able and respected litigators in the city. Our thanks must also go to Allan's firm, Goodwin, Procter & Hoar, and its Chairman Bob Fraser for their unstinting support of the project, both moral and logistical, and to Pandick Press which has printed the report without charge as a public service to the bar and to the community.

Edward F. Hines, Jr.  
*President*

## **DRUGS AND JUSTICE: A SYSTEM ABANDONED**

### **INTRODUCTION**

Over the past six months, the Boston Bar Association Task Force on Drugs and the Courts has conducted a study of the effect of the efforts of public safety forces to enforce the narcotics laws through the criminal justice system in the Boston metropolitan area. Some initial observations and recommendations are reflected in this interim report. We intend to file several detailed "action plans" by September 30, 1989. The focus of those plans will be discussed below.

The members of this Task Force unanimously agree that we are losing the War Against Drugs. On every battlefield the forces of law and order, whether police, prosecutors, judges, probation officers, sheriffs or correction officials, are being overrun. In many cases, major elements of our criminal justice systems are in total retreat and chaos.

Of far greater concern to this Task Force is the overwhelming evidence that there is no real strategy to win any major battles, let alone the War itself. We seem determined to arrest more drug offenders without any consideration for the fact that they will not receive punishment for one to two years. We seem determined to increase mandatory sentencing provisions of our drug laws with no consideration of the substantial evidence that those laws, however well intentioned, have greatly contributed to the collapse of the criminal justice system. The infrastructure itself is literally falling apart. There are too few judges, in too few courtrooms, to send too many inmates to too few jail cells.

In all our work we have discovered one point of consensus. It is the simple truth that "justice delayed is justice denied." We speak not only of the justice for the criminal offender but also for the victims of this drug plague. We have

substantial evidence that entire sections of our cities are under the increasing control of drug-based gangs. If we cannot develop a winning strategy in the very near future, then we are destined for total defeat.

The members of this Task Force can assure the Bench, the Bar and the public that recourse to traditional solutions will not have any significant impact in the years ahead. What this crisis demands is a new and invigorated will to set aside agency rivalries, turf battles and personality conflicts. The public wants this problem solved. It is up to our elected and appointed leaders, as well as all members of the legal profession, to demand a strategy based on reason, not emotion or political advantage.

This interim report will focus on much of the evidence we have received describing the magnitude of the problem. It does not, in most instances, offer any detailed program to solve these problems. That is not our purpose here. We seek merely to alert the reader that this problem requires a reaffirmation of our public will to survive as a civilized society as well as our public commitment to share in the solution.

## **A. OUR LOCAL CRIMINAL JUSTICE SYSTEM**

The picture does not improve when we focus on our local criminal justice system.

Here there really is no system at all. Our criminal justice program aptly can be seen as the orphan of government, the wastebasket of society, for what it receives and the manner in which it is treated by almost everyone who comes in contact with it. At every level, and in all departments, we find too few people, with too little financial support, grossly inadequate facilities, shackled by inconsistent and wholly uncoordinated rulings and legislation, for the most part neglected by the executive and legislative branches of government, and ignored by a society which, through its own actions, has revealed a stunning ambivalence to the drug problem. To suggest any modification of the legislated penalties against narcotic use or sale or to suggest decriminalization in any form evokes instant reactions of extreme rejection. These reactions, however, come from the same people who won't hire, train, supervise or pay more police, won't site or build more penal or treatment facilities, won't appropriate more funding for more judges, won't fund more court and probation department support personnel, in short, won't pay for or permit in their neighborhood, any of the several extensive and expensive tools that are needed to enable our criminal justice system to effectively attack the drug problem.

Justice Holmes taught us that the law is not what judges or others say it is, but what actually happens to people who transgress the apparent behavioral code. Thus, the first and largest question to be asked is whether we really are

involved in a War Against Drugs, whether society really wants or expects its criminal justice system to solve the narcotics problem. The response to date, at almost all levels, does little to suggest that it does.

The failure to address the problem of drugs in a coordinated and effective way, has overwhelmed the local criminal justice system at all levels. Followers, as well as leaders, have let the system down. There is a crisis of will. Until adequate funding for each of the inter-connected parts of the criminal justice system is provided, and until major changes are introduced, the war will continue as a lost cause.

Drug arrests have increased dramatically in recent years. There are, however, few additional judges, and no additional courtrooms, to try existing or new cases, and grossly inadequate jail space to hold those awaiting trial and after sentence. Because there is no space in the jails, many drug dealers who are awaiting trial are released back into the neighborhoods legitimizing the charge of "revolving door justice". Even if a dealer is not immediately released, mandatory sentences have created an intolerable trial backlog in Suffolk County, making speedy justice all but impossible. It can take up to two years to try a drug trafficking case in Suffolk Superior Court. This is exactly the wrong message to send as a deterrence to illegal drug dealers.

Speedy dispositions of drug cases are not possible under existing circumstances. This leads the residents of communities most impacted to identify the criminal justice system with the problem rather than the solution. Until swift and certain justice is possible, public confidence in the courts will continue to erode.

Today's drug problem is not only different in degree, it is different in kind. Crack, a relatively new drug, can easily be manufactured in the home, creating a growing cottage industry. Barriers to entry into the crack business are virtually nonexistent. Violence on our streets has escalated to an unprecedented level. Sophisticated weaponry, particularly automatic weapons, have proliferated to protect and expand drug networks. Innocent victims have been caught in the deadly crossfire of a private war between competing drug gangs. Drug dealers will become more bold as the perception grows that society is impotent to stop them.

Tragically, drug traffickers have become role models emulated by the young. It is difficult to say "no" to drugs when profits are so large and meaningful punishment only an abstraction.

The criminal justice system can be saved, but only if public indifference to the problem can be moved out of the way.

## **B. TASK FORCE RESOURCES**

Our study included conversations with a wide and diverse number of individuals experienced, involved and interested in all facets of the problem. In each instance, everyone we spoke with was extremely cooperative and supportive of the effort. Included were representatives of Boston Mayor Raymond Flynn; representatives of the Boston Police Department; judges at all levels of the court system, including the Supreme Judicial Court, the Chief Administrative Justice, and the Superior and District Court Departments of the Trial Court; key personnel in the Suffolk County District Attorney's Office; the Sheriff of Suffolk County; the Attorney General and members of his staff; the Governor's Legal Counsel; representatives of the Corrections Department; public and private defense counsel; and private citizen representatives from affected neighborhoods. Visits were made to District Courts in the metropolitan area, the Boston Municipal Court, the Suffolk Superior Court and the Special N Part Narcotics Prosecution Court Project in New York City. Numerous publications from federal and state legislative groups, criminal justice agencies, academics, editorial writers, the local and national press, and others have been gathered and studied. Statutes, court decisions and rules of practice have been reviewed.

## **C. SIGNIFICANT OBSERVATIONS**

In the process, we observed the following:

1. The illegal narcotics problem itself is overwhelming. There are too many narcotics users, too many narcotics dealers, too many narcotics traffickers and too many offshoot narcotics related crimes. The inability to keep illegal narcotics out of our maximum security prisons demonstrates the utter futility of attempting to seal off the borders of Massachusetts or the United States. There are simply too many ways and too many willing participants to ever hope to mount a successful interdiction program which will eliminate the supply of narcotics. In fact, the evidence suggests that as we have stepped up interdiction, the supply of drugs has grown steadily more plentiful, of better quality and of lower prices.

There are misunderstandings at all levels about drugs and the problems they cause. Simplistic solutions overlook the fact that different responses are required to different drugs, different uses of the same drug, and different users. Heroin, for example, with its reliance on needles and tie-in with AIDS, is quite different from cocaine. Snorting cocaine is quite different than smoking crack.

2. Law enforcement agencies appear to be losing an uphill battle and are themselves becoming buried and battered in the process. The largest police department in the metropolitan area, the Boston Police Department, reports making arrests on narcotics charges at a current rate in excess of 7,000 per year.

There is no way that 7,000 people can be tried each year in the courts of Suffolk County, or jailed or treated, should it turn out that they warrant or need one or the other.

The Boston Police Department is incapacitated by a Drug Control Unit that is too small, having only approximately 60 officers assigned to it. The DCU is overburdened by court appearances, its officers often being called to testify in multiple courts at the same time on the same day.

Language problems, Hispanic, Oriental, and others, and complications presented by justifiable constitutional limitations, make it nearly impossible for the Boston Police Department to conduct an effective wiretap investigation of a narcotics ring. Seemingly simple things like the safe storage of drugs, money, equipment, and even automobiles, seized by the Boston Police Department present immense problems. The officers assigned to the Drug Control Unit are subjected, on a daily basis, to ever-increasing and deadly personal risks as the greater use of weapons and violence pervades and infects the illegal drug trade. Temptations abound and the potential for corruption within police departments is frightening.

And, as the Boston Police Department gets more sophisticated and more effective, the Balkanized local governmental structure in the greater Boston metropolitan area invites those conducting illegal drug activities to avoid that sophistication by moving their operations a few miles or a few subway stops over the city line to Quincy, or Cambridge, or Chelsea, or Revere, or any of the other nearby, but wholly-separate governmental entities in the metropolitan community.

Perhaps most significant of our observations about the law enforcement side was the near total lack of trust, cooperation and coordination among and between the agencies involved. In Boston for example, drug arrests are made by the Boston Police, the Metropolitan District Commission Police, the State Police, the MBTA Police, Housing Authority Police and Federal Drug Enforcement Agency officers, to name only the most active of the group. Those various police agencies seem in constant turf wars and appear wholly distrustful of each other. Certainly they do little to work in any coordinated manner. Not only is this wasteful and duplicative of resources, it is also extremely dangerous for those who are performing undercover operations. On more than one occasion, officers from one force have come close to arresting or shooting at officers from another force that they did not realize were involved in undercover activities. We observe the anomalous situation where the head of the Federal Drug Enforcement Agency in Boston and the newly designated United States Attorney want to join in combat with the Boston Police and the request is rejected.

3. The situation with regard to jails, houses of correction and prison facilities is complicated, expensive and wholly inadequate for the task. The jail



problem is probably the biggest current impediment to an effective drug program. Setting aside for the moment the serious societal question of who should be imprisoned, for what, and whether we imprison too many people, it is absolutely clear that police departments, district attorneys' offices and courts are being asked to arrest, prosecute and incarcerate vastly more people than the existing jail facilities can ever hope to accommodate.

The situation is as bad for post-trial incarceration as it is for pre-trial detainees. Almost every local jail has, or is about to have, imposed upon it, by some federal or state court order, a cap or limitation on the number of people it can accept and house. These orders, valid in every instance, come from a variety of different courts and different judges, are not coordinated in any way, and seem oblivious to the realities and burdens placed on the sheriffs and courts which have to deal with the situation.

The example at the Charles Street Jail in Boston is revealing. There a Federal judge has furthered an earlier order of that court regulating conditions at the jail which has resulted in an effective upper limit of 342 inmates. A justice of the Supreme Judicial Court, has issued orders with regard to the steps which can or must be taken by the Suffolk County Sheriff and the Superior Court in attempting to deal with problems when the cap is reached. Those orders require that certain kinds of pre-trial detainees must remain in jail, while others can be considered for release to halfway facilities, or even the street, at the times when the cap is to be exceeded. Until recently, those included among the group who could *not* be released were people awaiting trial on charges of operating a motor vehicle while under the influence of alcohol, a legalized drug. The result was bizarre. People charged with trafficking in cocaine, an illegal drug, were eligible for release to halfway houses, and in some instances to the street, because there wasn't enough room at the Charles Street Jail, while people charged with operating under the influence of a legal drug were kept locked up.

Even more peculiar is the result that, in order to protect the constitutional rights of prisoners to a single cell at the Charles Street Jail, the Sheriff has had to move prisoners, at enormous expense and personnel dislocation, to other jails throughout the Commonwealth. When moved, however, the detainees often end up in facilities in other counties not subjected to the Federal court order and, therefore, in cell situations with multiple prisoners, under conditions far worse than if they were simply double-bunked at the Charles Street Jail.

The ability of the state and local governments to construct prisons is immensely hampered by the rigid laws which were enacted during the tenure of the Ward Commission, particularly Chapter 579 of the Acts of 1980. Worse is the reluctance of the General Court to fund the construction, and the unwillingness of the people themselves, often acting with the assistance of their local state legislators, to allow the facilities to be built in their communities. The construction of jails is a very expensive, time-consuming operation and, it seems, as soon

as a new jail is built, it is immediately filled. The numbers being arrested will probably increase rather than decrease, thus still further exaggerating and aggravating the jail problems. No one, however, seems to be considering alternative sentencing for drug offenders.

As bad as the situation may be with the siting, funding and construction of prisons, the problem of treatment facilities is much worse. There is almost no attention or funds, being made available for treatment.

4. The District Courts are the courts closest to the people in our system. The inner-city District Courts, particularly those in Dorchester, Roxbury, West Roxbury and Chelsea, are being swamped with proceedings related to narcotics arrests. Similar problems exist in other urban District Courts, particularly in Springfield, New Bedford, Lawrence, Worcester and Lowell. Of the 69 District Courts in the system, the nine listed here account for nearly 50% of all drug cases.

The court buildings are, for the most part, in deplorable physical condition, understaffed by judges and greatly lacking in sufficient support personnel. The allocation of judicial resources is complicated by the fact that judicial vacancies remain too long unfilled. New judges under last year's Judicial Needs Bill, Chapter 206 of the Acts of 1988, are only now starting to be appointed by the Governor. Their compensation, however, has not been fully funded yet. Additional court support personnel are also in great need. Under an economy measure in the FY '89 budget, vacancies in court support personnel that occur by attrition may not be filled. This has caused a 10% diminution in the number of court employees in a system which needs more, not fewer, people in support positions. An equally serious complication is that although judges can be moved around from court to court under certain circumstances, the same movement of clerk personnel cannot be accomplished under present laws.

It is the belief of some in the District Court Department that a different approach is taken to the inner-city courts from those in the more affluent suburban cities and towns. Conditions that would not be tolerated in the less urban community courts are the routine in places like Dorchester, Roxbury, West Roxbury and Chelsea. These courts have no particular supportive constituency and the neighborhoods themselves seem unable to generate concern on the part of those controlling the situation.

5. The Superior Court in Suffolk County suffers from similar limitations in resources, facilities and support personnel to those which plague the District Courts. There are not enough Superior Court judges, nor are there enough clerks, stenographers and support personnel to assist them. Like the District Court system, the provisions for the Superior Court in the Judicial Needs Bill have been abandoned in the current fiscal crisis. Judicial positions created almost a year ago are just now being filled, and those judicial offices remain significantly unfunded in the proposed budget.

Demands for creating specialized narcotics courts or night courts can hardly be taken seriously when present vacancies and deficiencies in the courts remain unattended to.

Another complicating factor in the Superior Court is the implementation of the Supreme Judicial Court's Time Standards Order. This plan, designed to reduce the huge backlog in civil cases, is already straining the system to the core. Any shift of resources to the criminal side will surely cause that laudable and necessary program to fail.

6. There is concern that the criminal defense bar, both public and private, is, for the most part, too small, too inexperienced and too underfunded to be able to effectively handle the crush of business which could come about if corrections were made in the other parts of the system. Compensation for private counsel, engaged in cases through the auspices of the Committee for Public Counsel Services, remains at \$25.00 per hour for out-of-court time and \$35.00 per hour for in-court time. These amounts have not been adjusted since 1981. Compensation for entry level prosecutors is equally poor. The Suffolk County District attorney's office starts its lawyers at as low as \$21,780 per year.

There is very little to attract lawyers to criminal defense or prosecution work of the nature needed in the District Courts, and even the Superior Court. Compensation is low, the conditions are as poor as most clients, and, for the defense bar at least, community opprobrium is all too frequent. There is even less to hold them in those kinds of positions when their colleagues can practice civil trial work, or non-trial law, in elegant downtown office buildings and command 2, 3 and 4 times as much in compensation for such "clean" legal work.

7. The laws, decisions and court rules that deal with narcotics cases are a hodgepodge of inconsistency, adopted with the best intentions, but resulting in as much aggravation to the problem as the unwillingness of the other two branches of government to provide the necessary funding and support for the courts. Mandatory sentencing is perhaps the most pernicious of the problems. Intended to show a toughness and intolerance for the evils of narcotic violations, the effect is to clog the courts and make them even less able to handle the crush of business because the opportunity to resolve cases by plea bargaining is all but eliminated. Criminal defense lawyers are forced to "play for the fumble" by raising every conceivable defense and insisting on a full and complete trial in the hopes that the government somewhere along the line will stumble in a way that will provide relief for the accused.

Laws relating to the allocation of jurisdiction, even despite the recent *Cedeno* decision by the Supreme Judicial Court, remain uncertain. Bail presents similar problems. If it is set too high, it can't be met and the people involved must be held in jail awaiting trial. The jails, however, are subjected to caps and are already crowded beyond the overflowing stage and, therefore, there is no real

room. Thus, courts must consciously keep bail at a lower level so that people can post it and return to the street while awaiting trial. As noted earlier, this creates the “revolving door justice” phenomenon, a legitimate concern in the neighborhoods where drug trafficking is rampant, and a source of demoralization and anger for police and other public officials.

8. Given the problems in arresting, prosecuting, trying and punishing those involved with illegal drugs, thoughts turn to the other side, which involves treatment. Here, like everything else, there is far too little available. There is almost no treatment that is realistically up to the task of attempting to cure those who have become seriously addicted. Certainly, there is essentially no treatment in our prisons. Treatment facilities, however, like everything else are expensive and their siting, because people don’t like those people who go there for treatment, is as difficult as siting a prison.

9. Even in relatively small and technical areas, problems abound. The Public Health Drug Analysis Laboratory at Jamaica Plain analyzes most of the materials seized in Boston from drug dealers. The laboratory is too slow. The average response time as of this writing is about six weeks. Judges’ suggest even longer delays, predicated upon statements by prosecutors that seek trial continuances because the lab reports are not back. It is unclear, however, whether the problem isn’t perhaps a bit more complicated. There certainly seems to be room for improvement at the laboratory, a situation that should not be terribly expensive. Simply adjusting the lines of communication between the laboratory, the police and the District Attorney’s office would be an easy start.

At the same time, it appears that on some occasions, those responsible for picking up and delivering the drug results, the police department generally, may have been using the laboratory as an excuse for their own purposes. Similarly, there may be occasions in which a prosecutor who is not really ready for trial for another reason uses the laboratory as a convenient scapegoat. Improvements at the laboratory and tightening up on supervision at both the police departments and in the District Attorney’s office would seem a simple cure.

10. There is a significant lack of coordination between and among federal, state and local agencies; federal legislative and state legislative bodies; the federal executive branch and the state executive branch; and federal courts and state courts, in their dealings with drug issues. Given the magnitude of the problem and the immense amounts of money that is being spent in connection with it, it is unfortunate that a vastly greater degree of inter-agency, inter-department and inter-government cooperation cannot be fostered. Many metropolitan areas run coordinated drug task forces where resources of people, information and statutory power are pooled. This not only prevents confusion and waste, but makes available to local authorities the federal resources and forfeiture laws that work.

11. Interdiction, the prevention of the importation of drugs into this country, is a failed effort. The United States’ borders are far too large and far

too vulnerable to be able to be policed effectively. The American public is far too willing to pay for drugs that are brought in. The business community cites drug use by employees as one of its greatest problems. Foreign countries where drugs are produced are too small, too weak, too corrupt, or too antagonistic towards the United States to mount any effective programs within their own boundaries to control the drug lords who start the entire chain. And even if any of that were effective, it seems certain that the ingenuity of the criminal mind, given the immense temptation of the huge amounts of money involved, would enable those criminals to produce the product within the boundaries of the United States if the borders ever could be sealed.

12. The present approach, criminalizing everything, has not succeeded. It has made many criminals extremely rich, has increased the number of offshoot crimes and violence, and has placed many of the most needy neighborhoods in total jeopardy, held hostage to drug trafficking and the misery that follows in its wake. This Committee concludes that locally, at least, the problem cannot be solved. Like the medical profession's battle with cancer, the most that can happen is that it can be better controlled and managed. Even the latter, however, will only be a realistic possibility if society demonstrates that it really cares enough to support the effort and demands action from its leaders. We have serious doubts that the Massachusetts Legislature or the Executive, in the absence of strong public demand, will appropriate the funds and revise the legislation necessary to attempt to effectively control the problem. Nevertheless, we reach the following conclusions and make the following recommendations. With regard to each major recommendation, we intend to prepare or commission, and publish, a detailed plan for its implementation. We submit our recommendations now because we believe them important and believe that they will help to provide public understanding and a basis for free and open discussion.

#### **D. CONCLUSIONS**

It is clear from what we have observed, that the present strategy is not succeeding; that we need a new set of tools and approaches. To develop those tools, to select policies which have a chance of success, we need to know much more than we do today. The Committee, therefore, publicizes the findings of Mark A. R. Kleiman and Kerry D. Smith of the Program in Criminal Justice Policy and Management at the Kennedy School of Government at Harvard University. In a January 31, 1989, paper in progress, entitled "State and Local Drug Enforcement: In Search of a Strategy" Messrs. Kleiman and Smith said:

"In principle, the right way to choose a drug policy for a city would be to describe the problem, invent some alternative approaches to addressing that problem, predict the costs and the likely result of each approach, and choose the least painful. Then, after a while, one could measure the results and compare them with the predictions. Unexpected results or new situations would call for changes in policy.

"In practice, no city has anything resembling a quantitatively accurate description of its own drug problem. Nor is there a well-worked-out body of theory or experience to allow predictions of the likely results of alternative approaches.

"Theory and experience agree that neither high-level enforcement nor unfocused retail-level enforcement is likely to contribute much to solving the problem under current big-city conditions. Yet local drug enforcement consists primarily of a mix of those two strategies. A growing share of local law enforcement budgets is thus being committed to programs that are both unproven and implausible.

"Law enforcement agencies, like boxers, need to learn to fight their weight. In a city that has a small crack market, for instance, investing early and heavily may succeed in keeping the market small or driving it out. Where a large crack market already exists, consideration should be given to whether even maximal efforts are likely to have much effect. There will come a point of diminishing returns, when throwing more police resources into the pot will no longer produce significant social benefits. Refining the techniques for making those calculations poses a substantial intellectual and practical challenge.

"Crackdowns focused on particular neighborhoods have some theoretical advantages, and a little experience to suggest they can work. But the extent to which they simply push the problem around is undetermined. For neighborhood crackdowns to be a viable citywide strategy, it must be possible after a time to move enforcement resources to a new area and repeat the process. That, in turn, requires both the development in the crackdown area of indigenous capacity to resist the return of drug dealing and a willingness on the part of residents to see the focus of police attention shift once the problem has subsided. How local governments can create that capacity and that willingness remains an open problem.

"Drug markets dominated by warring youth gangs will leave more corpses behind them than drug markets not so dominated. Routine drug enforcement may have little to contribute to gang control; police need to learn how to make life particularly miserable for gang-related drug dealers (and gang members committing other crimes).

"There is some evidence—not yet much—that putting police in the classroom as "drug education" teachers can reduce the rate at which adolescents are initiated into illicit drug use. Whether such programs are an efficient use of police work-years depends in part on the value of alternative uses of the same work-years. If current drug activities are already overloading the capacity of prosecutors, courts, and jails, the arrests sacrificed by putting some police in classrooms may not matter much.

"Considering how much of the public concern about drugs centers on the link between drugs and crime, it is surprising how ill-designed current policies are to discourage the long drug/crime careers characteristic of heroin

users (and almost certainly of some crack users). Mandatory drug abstinence for drug-involved offenders, verified by testing and backed with the threat of reincarceration, ought to be a centerpiece of any serious "career criminal" or "dangerous offender" program.

"Research, which has contributed relatively little to the current decision-making process, seems ill-positioned to contribute much more. The most obvious need is for a set of plausible, computable models of local drug sales activity as a function of local enforcement activity. This would likely involve some combination of microeconomics and operations research.

"But better models will be of limited practical use unless someone collects the data to feed them with. Numbers of users, numbers of sellers, numbers of transactions, total revenue; all of these data are needed, and needed down to the neighborhood level. This requires some very expensive data collection: surveys, street ethnography, and the development of user, ex-user, and potential-user panels. No police chief will ever know as much about the cocaine market in his or her city as the local manager for R.J. Reynolds knows about the cigarette market, but we can be, and need to be, much closer to that position that we now are.

"One way to start would be to collect more information about drug enforcement. Local, state and national data collection systems often fail to make essential distinctions or to be kept in comparable categories; the Uniform Crime Reports, for example, lump heroin and cocaine together. Questions of the form, "How many crack sellers were arrested in Chicago last year, and how many aggregate years of confinement were they sentenced to?" need to be routinely answerable before any serious study can be made of the results of alternative strategies.

"Beginning to collect at least the minimal level of information would suggest a new level of seriousness about developing responses to the drug problem that produce publicly valuable results. Until then, state and local drug enforcement will remain a collection of activities in search of a strategy."

## **E. SHORT-TERM RECOMMENDATIONS**

1. We conclude that it is far more important that justice be swift, than that sentences be long. Adjustments must be made and programs instituted in the District and Suffolk Superior Court Departments of the Trial Court to provide swift, efficient and certain justice. This should include consideration of a fast-track drug offender's program in the Superior Court and a modification of the New York N Part approach for the District Courts. This system is based on a speedy initial hearing program. In New York, laboratory results are produced within 6 days of arrest. At that time a defendant is given an opportunity to plead to an offense for which he will face a less severe penalty or be directly

indicted on the most serious charge. District Courts should adopt a similar system supported by speedy test results, swift indictments and the opportunity to plead to a less serious offense in the District Court prior to an indictment.

Early intervention and more careful screening of cases should be instituted in the District Courts by experienced Superior Court Assistant District Attorneys in an effort to dispose of more cases at that level and to determine if the more serious trafficking cases can, or should, be the subject of direct indictments in the Superior Court. The continued use of probable cause hearings in the District Courts is recommended, but they must be tied to better case screening and a better allocation of judicial resources to conduct those hearings, particularly in Roxbury, Dorchester and Chelsea. At the same time, particularly if there is to be a fast-track drug offenders program and more direct indictments, there ought to be assigned 3-4 judge teams to Suffolk Superior Court, each team to sit for 3-6 months, with one judge hearing pleas, deciding motions and assigning trial dates, and the others presiding on trials. Both the District Court N Part type program and the Superior Court drug offenders plan will also require the infusion of money and resources at the laboratory, in order to produce fast and accurate test results.

Attention must be given by the Governor and the Legislature to the implementation of last year's Judicial Needs Bill, such that it gets fully funded and the judges authorized thereunder are promptly appointed. There will be a need for an immediate addition of new court clerk and probation office personnel in those courts most seriously affected (Roxbury, Dorchester, West Roxbury, Chelsea, Suffolk Superior, etc.).

2. Means should be devised for coordination among the critical federal, state and city agencies and among all affected parties. In particular, there should be a major coordination among police departments in the Metropolitan Boston area somewhat like the Allied governments got together and cooperated against a common enemy in World War II. Every opportunity to develop a joint task force should be considered, even if it means hiring more Boston patrolmen or promoting them to detective rank. There also should be coordination among the judges in the various courts including the Supreme Judicial Court, the Appeals Court, the Superior Court, the District Courts, the Boston Municipal Court, the Housing Court and the Federal Court. Similar kinds of cooperation and coordination should be worked out with the offices of the Suffolk, Middlesex, Norfolk and Essex County District Attorneys' offices, the U.S. Attorney's office and the State Attorney General's office. There should be established a permanent coordinating group with representatives of courts, prosecutors, police departments, the organized Bar and neighborhood spokesmen which meets on a regular basis to discuss problems of common interest and avoids inconsistent and counter-productive efforts. A similar multi-interest group should be created to review and assist in the drafting and passage of related legislation.



3. A massive public educational program about the function, role and workings of the criminal justice system and all of its branches, including explanations of the roles of prosecutors, defense counsel, District Courts, Superior Courts, Sheriffs, jails, Probation Departments and explanations of legal principles, such as those relating to bail, jurisdiction, sentencing, constitutional rights, etc., etc., should be undertaken. *The Boston Globe*, *The Boston Herald* and the major local television and radio stations should be asked to set aside their rivalries and join in this effort. A Special Education Committee or the Criminal Justice Section of the Boston Bar Association could be asked to attend to this task and to coordinate its activities with the Boston Against Drugs program already in place.

4. In order to bring the most affected communities into the process and to provide them with support, the formation of Community Advisory groups should be encouraged in order to coordinate and meet on a regular basis with representatives of the Courts, of the District Attorney's office, of the Police Department, and of such other agencies as may deal with the problem at any given time. The Mayor should consider the appointment of a Deputy Mayor specifically charged to lead this effort.

5. The Police Department needs more, and better trained, officers in its Drug Control Unit. More senior officers need to pay greater attention to the day-to-day activities of the Drug Control officers. The City should provide its Police Department with the facilities necessary for the Drug Control Unit to operate efficiently. These facilities should include ample and secure room for the safekeeping of drugs, money, and other things recovered, and the disposal thereof. There must be far greater coordination between the District Attorney's office and the Police Department so that the officers are given better guidance on the important legal and constitutional principles that apply to their daily activities.

But most of all there needs to be a leadership effort by the Police Commissioner to redirect the police approach to the drug problem. This redirection should be along the lines which proved so successful a decade and more ago when the current Commissioner led the Community Disorders Unit in the battle against racial violence. At one time, as fire bombing and violence engulfed several neighborhoods, that battle too seemed beyond the power of the police alone to win; prejudice and racial hatred was too ingrained in Boston's ethnic neighborhoods, went the prevailing wisdom, for the police and the criminal justice system to turn matters around. But turn them around they did. Through a process of open information exchange between citizens and police, through building a sense of public trust, through never wavering decisions of Superior Court judges in their support of what was lawful and right, the police and the justice system finally made the difference.

It can be done again, but it will require application of the same principles, building the same trust and opening up and keeping open the same informational exchange between citizens and police. It will require true community policing, police that become a part of the neighborhood to which they are assigned. It will require citizens willing to help and assist and inform those police. It will require close coordination with the Drug Control Unit. It will require from the police and courts assurance that punishment for offenders will be swift and certain. It will require the development of ways to mobilize the resources of the local community to work closely with the Police Department. Combined with the other reforms to the criminal justice system suggested by this report, all of these requirements should be capable of being met successfully.

6. The prison system is perhaps the largest single impediment to the effectiveness of the present program. Its solution is complex and expensive. Nevertheless, early attention must be given to commandeering sites to hold pre-trial detainees; much more speedy construction of modular prison units must be accomplished; and, as the Governor has recently urged, changes in the Ward Commission law, Chapter 579 of the Acts of 1980, must be made to permit faster attention to the construction of new facilities. The Legislature should consider requiring a prison inmate impact statement before any new law becomes effective which would result in increasing the prison population. The Governor and the Mayor must each be convinced to proceed much more aggressively with the siting of facilities and must not permit localized opposition to stand in the way. The Mayor's Office should undertake an immediate program to inventory and identify all unused or underutilized city property to locate sites which can readily be converted to emergency pre-trial holding facilities. A similar project is needed to develop locations for sentenced Suffolk County inmates. The Governor should conduct the same kind of inventory for the same reasons, at the state level. The Federal court should be asked to re-examine its orders regarding the Suffolk County Jail upon completion of the new facility.

In addition, and clearly much more important, there should be careful attention given to alternative sentencing and punishment techniques. Programs should be devised to control and regulate offenders outside of prisons, using the latter only as a last resort.

7. The laws that relate to drug violations should be subjected to an immediate study with the object of clarifying them, coordinating them, and putting them together in a cohesive whole. In that regard, serious attention should be given to eliminating, or modifying radically, mandatory sentencing to better facilitate plea bargaining and the processing of cases in court. The laws should be amended to permit judges the discretion to override mandatory sentencing for first time offenders and those who cooperate with the prosecution. Defining the crimes themselves in a way that realistically attends to the situation as it exists is equally important. A more clear allocation of jurisdiction between

and among the courts is needed. A forfeiture bill, such as that sought by the Attorney General, is highly recommended. At the same time we consider the proposed change in drug sentencing to include a  $\frac{2}{3}$  parole requirement, rather than the more usual  $\frac{1}{3}$  provision, to be counter-productive.

8. The Suffolk County District Attorney's office has a unique opportunity to play a leadership role in the fight against drugs. The assistants involved in drug cases need better training and supervision and must be encouraged to work much more closely with the Police Department and neighborhood groups. Far greater flexibility in charging on drug cases should be encouraged. Compensation adjustments are needed to attract more people to longer terms of service as prosecutors.

Similarly, the criminal defense bar needs augmentation and support. Among other things, the budget of the Committee for Public Counsel Services ought to be expanded so that the payment for private counsel can be brought up to more realistic levels above the \$25.00/\$35.00 per hour rate currently in effect.

9. The Boston Bar Association ought to give consideration to the creation of a Drug Corps or a Criminal Justice Corps whereby the private civil bar would be encouraged to support, with people, a program that makes bright, young lawyers available: to assist the District Attorney's office as prosecutorial aides; to advise the Police Department as law enforcement counsellors on search warrants, wire taps, etc.; to help the Committee for Public Counsel Services with legal research and case preparation; and to aid the Courts, as research and case management assistants. This would serve the purpose of getting some of the rest of Bar involved directly with the criminal justice system and, hopefully, would have a spill-over effect that would cause an upgrading and greater support for that system.

## F. LONG-TERM RECOMMENDATIONS

1. The drug problem is overwhelming and devastating in its effect, not only on Metropolitan Boston, but on Massachusetts and the country as a whole. It is contributing significantly to the breakdown in the criminal justice system. It is in danger of seriously corrupting law enforcement entities. It is causing the expenditure of immense amounts of tax dollars in a losing fight. It is making criminals immensely wealthy and destroying our most vulnerable and needy neighborhoods. Under all of the circumstances, it would be an abdication of responsibility for this Committee not to recommend that a very serious, long-term and detailed study based upon information derived from our conclusion about the need for hard data, should be made of the basic strategic approach we are following in dealing with narcotic drugs.

It may be that expecting the problem to be cured by the criminal justice system is wholly unrealistic and that, in fact, the problem is destroying the

criminal justice system and at great expense. It may also be that the problem lies at the other end of the scale and that, in fact, an approach aimed at arresting and jailing all users would be a more effective way to break the drug culture than concentrating only on dealers and suppliers. Society's ambivalence about the use of drugs and its utter unwillingness to date to pay the high cost of having the criminal justice system effectively address the problem, makes the study of basic strategies logical and proper for this Committee to advocate.

2. Our study has revealed a criminal justice system which, wholly separate from the strains imposed upon it by the drug problem, is in desperate condition. It truly has become the orphan of government. Resources, both personal and physical, and of all kinds, are needed at all levels. There are not enough judges, and they are not compensated well enough. There are not enough clerks and probation personnel, and they are not compensated well enough. Laws have been passed which inhibit the efficient utilization and mobilization of personnel resources to affected courts and communities. Court buildings are crumbling and falling down around the people who attempt to work in them. The whole system has been grossly neglected. The courts lack an advocate and a constituency. As a result, the system is archaic, medieval, bizarre in its details—wholly inadequate to its high mission of administering and delivering justice to our society.

A massive effort must be made by responsible parties and institutions to develop and build a constituency of support for our state justice system. The courts are not just another agency, they are a co-equal branch of government which, much more than the legislative and executive branches, exist to protect the rights of the people. The Boston Bar Association ought to devise a long-term program, perhaps in conjunction with the Massachusetts Bar Association, whereby ongoing and substantial support for the justice system is made a regular and expected duty of every lawyer who practices in the state. Ways must be found to educate and build a constituency to rebuild this vital branch of our state government.

3. American society imprisons offenders at a far greater rate than any other non-communist society except South Africa and yet, at the same time, we seem to have a crime rate that generally outstrips our civilized neighbors. It is not unusual leniency that distinguishes ourselves from less violent nations. It has been asserted that the United States differs from other industrial societies in several dimensions of social and economic life that are crucial in accounting for our high levels of criminal violence. These include a wider spread of inequality, greater extremes of poverty and insecurity, the relative absence of effective policies to deal with unemployment and subemployment, greater disruption of community and family ties through job destruction and migration, and fewer supports for families and individuals in the face of economic and technological change and material deprivation. Social mobility contributes greatly to the breakdown in societal mores and sociological control.

It is certainly true that the growth and threat of drug-related criminal activities is at its greatest in those communities that suffer most from our extremes of inequality and the wide disparities between the rich and the poor. If, as seems likely, the causes behind the vulnerability of our poorest, most segregated neighborhoods to drugs lie in the social deprivation from which these communities suffer, the lack of decent, affordable housing, good jobs, and an adequate public education system, then the solution must lie in improvements to these areas as well. Simply building more prisons and writing more laws will not be a sensible or productive means of addressing the problem in the long run if major efforts are not begun to improve the conditions of inequality and deprivation under which too many Americans presently live.

Respectfully submitted,

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