

Drugs in the Community

A Scourge Beyond the System



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

FOREWORD

This is the Final Report of the Boston Bar Association Task Force on Drugs and the Courts. Our interim report, *Drugs and Justice—A System Abandoned*, was issued in May of 1989, and since then we have continued to consider various alternatives to resolve the present crisis in the court system arising from the ten-fold increase in serious drug cases over the past decade. Also, we have sought, particularly during the last few months, to measure both the impact which this problem has had on the basic fabric of life in Boston and the extent to which it has undermined public confidence in the criminal justice system. Some small progress has been made in terms of community resolve, legislation and law enforcement cooperation. However, on the whole, there is no major good news to report. This foreword will attempt to address some general concerns that we all share. Specific proposals will follow.

Since the formation of this Task Force in October 1988, the problems caused by drug abuse in the Metropolitan Boston area have expanded dramatically. While the police have made great efforts to reduce street violence, the arrest rate for drug trafficking and drug-related murder and assault is increasing steadily. Innocent children and adults trying to improve the safety of their local neighborhoods are targets of indiscriminate attack, even murder. Schools must compete with the allure of the drug trade for their students. In far too many cases, the drug trade wins.

The criminal justice system continues to send the wrong message to the public about punishment. When arrests are made for drug-related offenses, we still see inordinate delays at both the District and Superior Court levels. Because our jails are so overcrowded, dangerous people are permitted to remain on the streets while awaiting trial. Even after conviction, serious offenders are released because of overcrowding in the state prison system. This problem is destined to get worse. Neither the jails holding people pre-trial, nor the state prison system where they are sent if convicted, have room for the large numbers who will be arrested and sentenced within the next few years. Thus, we are faced with the anomalous situation of not being able to make the court system more efficient, without causing the collapse of the prison system. The recent suggestion that funds budgeted for the corrections system be reduced exemplifies the alarming tendency to ignore a basic tenet of democratic freedom—government *must* provide public safety for its citizens.

Public confidence in the criminal justice system is at the lowest point in this century. Neither the Boston police strike in 1919, nor the Boston strangler murders and the organized crime wars of the 1960's, so severely damaged the respect that ordinary citizens had for the criminal justice system. We find no prior instance where such large numbers of the general public have lost faith in the ability of the public safety and legal systems to guarantee safe streets for

themselves and their children. As a measure of this deplorable situation, consider the following:

- Hundreds of children between ages 9 and 17 are selling drugs.
- Whole neighborhood blocks are under the control of drug dealers.
- Random shootings of innocent children and adults by drug-crazed terrorists are increasing.
- There is an historic rise in the rate of violent juvenile offender cases.
- Countless numbers of young women are selling their bodies for drugs, becoming pregnant and delivering drug-dependent babies at birth.
- Drugs and guns are in the hands of school children.
- Over sixty percent of the population is afraid to walk the streets for fear of being a crime victim.

The continued escalation of violent crime has in recent months elicited an aggressive response from the Boston Police Department. There is no question that such response is both needed and typical of the strategy of other urban police departments who have faced this same problem. However, we must express our concern that the manner in which this aggressive policy is executed might, in and of itself, create a community crisis. We are not in a position to pass judgment on this matter, except to observe that this issue threatens to undermine the little progress that has been made to date. If the community cannot work closely with its police department on a daily basis and develop a bond of respect and trust, then the effort against illegal drugs will simply fail.

This report is filed when the criminal justice system is in the midst of its greatest crisis. It is a crisis founded not only on the apparent callous disregard for the rights of our citizens, whether victims or defendants, to receive fair justice or media attention, but also from an overwhelming sense of hopelessness and despair about the basic fabric of our human existence. After eighteen months of deliberation, we have concluded that the issues of drug use and control of that use cannot and will not be separated from the far broader issues of individual rights and responsibilities. Major segments of the public still believe that police and prosecutors can solve the drug-related crime problem. This belief is unrealistic. Even with an infinite number of police officers, all the prosecutors, all the judges and courtrooms and all the prison space required, the problem would not be solved. Until society realizes that the problem transcends the criminal justice system, there will be no long-term solution. We hope that the discussion in this Final Report will foster a reexamination of some of the basic principles which govern our society.

Much of the detail of our report is legalistic. This is, simply, the area of our expertise and the original mission of this Task Force. It is, however, important to emphasize that we believe that Federal, State and local governments have the

responsibility to develop a broad range of programs which will address the core problems in this explosive situation.

There are two matters of overriding concern for which we do not propose any strategy. The first is that of community values. We use that term to relate to the general community attitudes about violent crime. To the extent that the public believes that the criminal justice system is the answer to this issue, they are simply mistaken—some may say tragically mistaken. To focus solely on rehabilitating this system while ignoring basic issues pressing the needy of our community—family, poverty, housing, education, employment and health issues—will guarantee failure. If we fail to carefully and completely deal with these issues in the next decade, we will pay a price far greater than any of us can predict today.

The second matter for which we propose no strategy is money. We do not possess sufficient resources on this Task Force to address in detail that key issue surrounding all our recommendations. To upgrade the deplorable court facilities and to increase salaries of police, prosecutors, public defense lawyers and other personnel will be very costly. To provide treatment on demand to drug-dependent persons will be costly. To give drug traffickers speedy trials and a state prison cell when convicted will be costly. To totally restructure our education system to reduce drug use will be costly. To provide young pregnant women with residential treatment to prevent the birth of babies addicted to or scarred by their mothers' abuse of drugs will be very costly. But, simply put, there are *no* alternatives to these types of expenditures and many more like them. In the next ten years we will need hundreds of millions of dollars to solve these problems—we cannot accept ten percent reductions. We need whatever it takes to get the job done. If that requires special taxes, then so be it. Our survival as a thriving, caring and safe community is at stake.

THE FINAL REPORT

On May 23, 1989, the Task Force submitted its interim report. At that time we stated our intention to file several detailed "action plans" with this Final Report. Events having a catastrophic impact on the Massachusetts criminal justice system—indeed, on our State government as a whole—have intervened to delay this Final Report in its filing and to make it substantially different from that contemplated last Spring.

In the ongoing effort to cope with the immense societal problem caused by drug and substance abuse, and the offshoots it spawns, much needs to be done to improve the Massachusetts criminal justice system—and further recommendations in several key areas are included in this Final Report. Of vastly greater importance to the people of Massachusetts, however, is a dual message: unless a considerably more responsible approach is taken to supporting and financing the Judicial branch of State government, our once great and cherished court system will fail in the challenge of the drug scourge and may collapse entirely; and, of equal significance, the public must understand that the drug problem cannot be solved by the criminal justice system alone.

THE SYSTEM HAS BEEN ABANDONED

We must expose at the beginning the abandonment by the Executive and Legislative branches of the critical needs of the courts, and the failure of the people to demand more responsible treatment of the only true bulwark to constitutional freedom and a civilized society.

At the time of filing our interim report in May of 1989, Massachusetts was in the early stages of recognizing and beginning the debate on an unraveling fiscal crisis. Regrettably, the response was not a careful and rational analysis, led by thoughtful and caring governmental leaders. Rather, there prevailed a cut-and-slash mentality, fed by a public rejection of all things governmental, and a selfish and mean-spirited attack on anything that cost money. This anti-government frenzy has affected the Judicial branch in a way that threatens its very existence.

In a Commonwealth with an overall budget that exceeds \$12 billion, the Massachusetts Trial Court submitted a funding request for the current fiscal year of only \$322 million. A Legislative recommendation cut that amount to \$266 million and the Governor stripped another \$14.9 million by Executive veto. Thus, in a system already operating at a 1979 employee level, there was a net reduction from the initial budget request of over \$70 million. This is the same system on which the people, through their elected Representatives and Senators, have imposed the near impossible burden of processing an immensely increased load of criminal and civil business. The volume of new drug cases alone has brought some urban courts to the point of near collapse.

As if the foregoing were not bad enough, in the final days of December a House/Senate Conference Committee cut an additional \$5.5 million from the Trial Court's budget. This most recent act of abandonment, if allowed to stand, will bring the Massachusetts Judicial system to the brink of extinction. Not only will it be unable to handle the flood of drug cases, all of the rest of the criminal and civil business will suffer as well. Serious crimes may go unprosecuted, and certainly vital civil business (the claims of the injured, the resolution of economic disputes, the review of governmental action and the preservation of civil and constitutional rights) will suffer from the lack of Judicial resources.

The Office of the Chief Administrative Justice of the Trial Court has provided an analysis of the implications of the proposed appropriations' reductions. That analysis reveals that at the present time all authorized support positions in the Trial Court total 6,310. However, because of previous efforts by the court system to generate savings, 677 positions will be vacant by the end of this fiscal year—a 10.7% vacancy rate. On top of this vacancy rate, the proposed further cuts in the budget could result in as many as an additional 1,500 vacancies. This would leave the system with 6,310 authorized support staff positions, but funding to pay only approximately 4,100.

One of the most significant observations in the Task Force's interim report was the sorry condition of the Judicial branch, its buildings and its people, and the vital need for the Legislature and the Governor to fully fund and fully support the Judicial Needs Bill of 1988, c. 206 of the Acts of 1988. The Legislature and the Governor not only have failed to support the 1988 Judicial Needs Bill, they each have hurt significantly the Trial Court by their continuing cuts in its budget. It should not pass unnoticed that the people themselves, perhaps out of ignorance of the plight of the court system or because of an utter lack of leadership, or as a result of their own lack of will, have failed to demand of their government that it find the ways and means to support the fight against drugs by fully funding all aspects of the justice system. If Massachusetts is to spend \$12 billion this fiscal year, we surely must find \$322 million in that massive fund to run our courts. And if the funds are not there, they must be raised. As the great Massachusetts Justice Oliver Wendell Holmes once noted: "Taxes are what we pay for civilized society." *Compania de Tabacos v. Collector*, 275 U.S. 87, 100 (1927). Public safety and a civilized community cannot be abandoned.

THE DRUG PROBLEM CANNOT BE SOLVED BY THE CRIMINAL JUSTICE SYSTEM ALONE

A common, and all too frequent, reaction to societal problems is to pass a law and expect the Judicial system to effect the cure alone. And if the problem has criminal overtones, the laws are pushed more rapidly and the penalties are made tougher and tougher. Despite the need for an efficient judicial system to process drug cases, this approach assumes that our criminal justice system is in

some way up to the task of curing *all* of the ills of society. It, of course, is not; the vast majority of crimes never even get into the system.

Consider this startling statistic taken from the November, 1988 report, "Criminal Justice In Crisis", prepared by the Special Committee on Criminal Justice in a Free Society of the American Bar Association. The Committee compiled the available data published by the Justice Department through the middle of 1986. This compilation revealed that:

"of the approximately 34 million serious crimes committed against persons or property in the United States in 1986, approximately 31 million never were exposed to arrest, because either they were not reported to the police or if reported, they were not solved by arrests."

Thus, if these statistics are accurate, only 9% of all major crimes, including drug offenses, ever get into the system—and yet the courts are bogged down and the jails are overcrowded handling even that small percentage.

If drug abuse were simply a criminal problem, the system is woefully inadequate to solve it; in actuality it is much more complicated and pervasive. Drug abuse probably has a greater impact on the health care system than on the courts. Treatment of addicts is a long, expensive and frustrating project and the patients, for the most part, are uninsured.

Even more devastating, both socially and economically, is treating and caring for the ever-increasing numbers of babies born to unwed drug-addicted mothers.

"Where child welfare policy once had to focus on the single-parent family, it now must deal increasingly with the no-parent child. The reason appears to be crack, which is far more popular with women than heroin ever was. As a result, drug abuse now affects far more small children than ever before." *The New York Times*, December 31, 1989, p. E10.

These tragic "crack babies" enter the world, themselves already afflicted, with their tiny brains permanently scarred from the beginning. The costs to keep them alive are staggering. Babies born to crack addicts tend to suffer low birth weight, brain damage and malformation. A recent report in *The New York Times* described such a child: "a mere patch of flesh with a tangerine-sized head and limbs like splinters." Intensive hospital care for each crack baby costs about \$90,000. The burdens on society of raising and caring for them as they grow to some kind of maturity, however mentally deformed and without stable family support, will surely become one of the great hidden costs of the drug scourge.

Last year marked the second consecutive year that Massachusetts witnessed a sharp increase in reported cases of child abuse. The trend appears largely due to cocaine and alcohol abuse by parents. Thousands of cases of drug-related abuse arise in families where children are deprived of food, milk or diapers by one or both parents ignoring vital needs while tending to their drug habits.

The final week of 1989 saw the Boston Police Department arrest a 9 year-old drug dealer. His source is thought to be a teenager. In our own City children are dealing in death. No mandatory sentence or death penalty will be a deterrence here.

Broken families and lost productivity in the business community are regularly caused by substance abuse.

The spread of AIDS from the use of dirty hypodermic needles or promiscuous sexual encounters to raise money to support crack habits is another devastating societal implication of the failure to control misuse of narcotics.

No thinking person can assume or expect any criminal justice system, however well supported—and ours, of course, is not—to come close to solving the kinds of human problems this awful scourge presents. We must stop passing off the entire problem on an abandoned court system. It cannot do the job.

OBSERVATIONS SINCE MAY, 1989

The Task Force's interim report, and the good faith efforts of some key government officials and many dedicated citizens, have produced important changes for the better in the effort to beat back the devastation of drugs. We catalogue some of the most notable public efforts.

1. *Federal/State/City Cooperation.* The interim report lamented the dramatic failure of the three important governments, and the agencies they direct, to work together in any coordinated fashion. Since then there have begun a series of Criminal Justice Summit Meetings, led principally by Boston Mayor Raymond Flynn, wherein coordination and common solutions to problems generated by drug abuse have been aired and common efforts have been launched. In addition to the Mayor, our two United States Senators, the Governor, the Attorney General, the United States Attorney, the Director of the Boston Office of the Federal Drug Enforcement Administration, the Suffolk County District Attorney, and a list too long to recount of other interested and dedicated City, State and Federal officials, have earnestly set about to find answers to many of the problems that drug abuse has caused. The Task Force applauds these efforts. They are truly responsive to the problem and reflect government and leadership at its best. This kind of cooperative effort should continue.

2. *Law Enforcement Coordination.* One of the most glaring deficiencies revealed in the interim report was the lack of coordinated effort between and among the local, State and Federal police agencies. Almost immediately following the filing of the interim report, the Boston Police Department, the M.D.C. Police, the Brookline Police, the Federal Drug Enforcement Administration, the United States Attorney's Office and the Suffolk County District Attorney's Office announced a coordinated Federal, State and local police/prosecution effort to combat drugs in the Metropolitan Boston area. It appears that that

coordinated effort is now underway and is already reporting positive results. This type of police/prosecution coordination has helped in other cities and should work well in Boston. We congratulate all who worked hard to bring this effort about.

It is our opinion that these efforts present the only real answer to the problem of large-scale drug trafficking. We urge the heads of all involved agencies to gradually increase their manpower and resources dedicated to this effort. Many knowledgeable people have recommended that this joint force be tripled in size over the next few years. Every effort should be made to provide support for this work.

3. *President Bush Speech/Bennett Report.* Although not prompted by any local activity, the Task Force was encouraged to note that President Bush has placed the weight of his high office behind a national effort to combat drugs. The "National Drug Control Strategy", released in September by William Bennett, Director of the Office of National Drug Control Policy, contains many suggestions useful in the attempt to control the problem. While the Bennett Report dwells too heavily on interdiction and enforcement, it nevertheless deserves careful consideration.

4. *Governor's Alliance Against Drugs.* The Governor's Alliance Against Drugs is another coordinated effort that warrants high praise. The Alliance is making notable strides in its goal to generate a counterforce to the constant peer pressure to abuse alcohol and other drugs as though it were some sort of "rite of passage." The work of the Alliance is to be encouraged and supported throughout the school systems across the state.

5. *Governor's Statewide Anti-Crime Council.* The Governor's Statewide Anti-Crime Council has the broad base and high leadership to insure a statewide approach to the drug problem. It can, and should, do much to foster coordinated efforts by all facets of the criminal justice system. This Council is an ideal forum to coordinate efforts to obtain federal funds for state and local efforts to combat drug abuse. Without meaning to be in any way negative about the Council's good works, the Task Force suggests that it could be much more aggressive in seeking legislative support for the needs of the criminal justice system.

6. *Community Self-Help Activities.* In addition to the more prominent efforts noted, the Task Force would be seriously remiss if we failed to mention the numerous neighborhood and city-wide efforts which have continued, and received psychological support from the interim report. The Boston Against Drugs program is an outstanding example; and there are many more. It is unfortunate that the efforts of so many fine, hard-working people go unnoticed and unencouraged by the media. Our study of the drug problem has enabled us to meet many, and know about many more, who are working hard in their own communities and neighborhoods to handle the problems born of drugs. We

praise them all and encourage more to join with them. It is these kinds of efforts which hold out the best long-term hope for success.

Regrettably, however, almost all of the rest of the recommendations in our interim report remain without serious attention. Indeed, some of the problems described have been exacerbated by the governmental collapse that surrounds us today. Examples follow:

1. Except for the single coordinated police effort noted above, very little appears to have happened to work around the Balkanized local governmental structure that hampers so much, and so wastefully, a Metropolitan approach to the many aspects of the drug problem.

2. The situation with jails, prisons and sentencing reform are little better than they were in May. Irresponsibly, the House of Representatives, as recently as December, 1989, refused to fund the proposed new jail facility in New Braintree. If there is a revolving-door aspect to the drug problem, much of the blame can, and should, be laid at the feet of those who will not face up to the huge need for additional funding, siting and support for jails and treatment centers, who cut the budget for our courts, and who fail to address the problems caused by mandatory sentencing in the drug laws.

3. The interim report elaborated on the needs of the courts, District and Superior. We noted at the start of this Final Report that the entire Judicial branch has been further abandoned since May, 1989. No governmental leader, Legislative or Executive, can truly be said to have helped in the fight against drugs if he or she has failed to support the relatively modest economic requirements of the Trial Court.

It is extremely difficult for this Task Force to understand why this has happened. The protection of our citizens from murder, assaults and other violent crime is the paramount obligation of all branches of government. This obligation must be shared by all lawyers who practice in this Commonwealth. We must continually pressure the Executive and Legislative branches to be more responsive to this crime problem.

4. Compensation for those lawyers on the front lines of the battle against drugs was another focus of the interim report. We observed the low pay for prosecutors, as well as for defense counsel engaged in cases under the auspices of the Committee for Public Counsel Services. Nothing has happened to improve that situation, and the current cutting frenzy on Beacon Hill has only made the matter worse.

5. We cited the confusion in the laws regulating drugs, pointing to the need for a complete review and rewriting. Mandatory sentencing was particularly held up for criticism because of its tremendously negative effect on the ability to move cases swiftly and surely in an underfunded criminal

justice system. Despite this clear problem, legislators still clamor for more mandatory sentencing, and some are even promoting a death penalty for Massachusetts. In the utter absence of enough jails, enough courts, enough prosecutors and enough defense counsel, any legislator or governmental leader, in office or seeking it, who advocates more mandatory sentencing or a death penalty without conditioning the legislation on a clearly defined funding package is ignoring recent history. Because we have failed in the past to fully evaluate the impact of certain legislation, the problem has increased exponentially. To continue to do so will only contribute to this crisis.

6. A seemingly minor problem noted in the interim report was the inability of the Public Health Drug Analysis Laboratory at Jamaica Plain to promptly complete its analysis of drugs necessary for swift prosecution in court. In February, 1989, the average time to analyze a sample was a wholly unacceptable six weeks. For a short while thereafter, there was a slight improvement. By the Fall, however, the situation was worse than ever, with a backlog nearing eight weeks. Budgetary problems are blamed.

7. Treatment for addicts was another area of great importance which needed far more support. Does anyone reading this report know about a significant new treatment program that has been instituted since last May?

8. The massive educational program called for in the interim report is nowhere to be seen. Sporadic local efforts exist, and they are to be greatly commended. But where is the big program supported and funded by the Bar, the medical and health care community, business interests, churches, social clubs and the schools? And what of the media in this effort? The community needs more than sensational stories about devastating crimes. It needs to know what is being done to help, and by whom. Drug education in our schools should be mandatory. Children and adults alike should be taught about the physical and psychological dangers of drugs—and the AIDS, pregnancy complications, violence and economic problems that go along with it. They need education on the devastating long-term problems posed by those poor “crack babies” which make up a growing population of local maternity wards. They need to know and understand the criminal laws and the constitutional rights that are necessary in a civilized community. And what of exposing the emptiness of strong-sounding legislation without funding to enable it to work?

9. The Task Force suggested a prison-inmate impact statement with every new law which would further affect our grossly overcrowded penal facilities. Similar impact statements should be considered for laws which further burden the courts. Nothing has come of those suggestions whatsoever.

FURTHER RECOMMENDATIONS

In addition to reemphasizing the unmet recommendations set forth in the interim report, we list here some more detailed proposals for consideration by those elected or appointed to manage our government in all of its branches.

1. *Omnibus Legislation.* We are convinced that solutions to the drug use problem cannot be molded on a piecemeal basis. There can never be a coordinated attack against this problem when various components of both state and local government are fighting to survive a budget crisis. In the absence of any overall strategy to combat this problem, continued reliance on conflicting agency priorities will only delay the development of a successful strategy. For these reasons, we recommend that the Legislature form a working group made up of its own members and a few persons knowledgeable in this area. This group should work towards the development of a comprehensive piece of legislation directed at the problem of crime in society as a whole. There should be no limit on the matters to be reviewed. The group should study poverty, housing, education, police, prosecution, defense, courts, probation and prison programs. It should also include input from mental and public health professionals. It is our view that only a system-wide analysis of the crime problem will reveal the correct strategy. It may take several years to develop this legislation and more years to enact it. This delay will be well worth it if by the middle of this decade we have restructured our approach to these issues.

2. *Centralized Criminal Court.* Any examination of the way in which drug cases, as well as other criminal cases, are processed in Suffolk County will quickly reveal an antiquated, outdated and inefficient system which is wholly inadequate to the task. Persons arrested who cannot make, or are not granted, bail must be detained in the Charles Street Jail (soon the more modern Nashua Street Jail). Because the Charles Street Jail is not large enough for the crush of business, and the Nashua Street Jail may suffer the same problem, it is necessary for the Sheriff of Suffolk County to transport prisoners all around the State to be held elsewhere pending trial. This, of course, is dangerous, time consuming, expensive and interferes with the prisoners' rights to confer with counsel in preparation for trial. The prisoners themselves must then be picked up at distant points and transported back to some City courthouse for a trial-related proceeding. Even those held at Charles Street must be delivered all over the County for court proceedings. Criminal cases can involve several such proceedings and several trips to court.

There are eight District Courts, the Boston Municipal Court, the Boston Juvenile Court and the Suffolk Superior Court, all located in various buildings sprinkled around the county, all dealing with various aspects of criminal prosecution. Prosecutors must, therefore, be sent all over the County to manage cases. The small criminal defense bar faces the same burden of dispersal of resources.

The Boston Police Department, which makes the great bulk of arrests, complains constantly of having its officers, who are necessary witnesses in almost every case, regularly summonsed to appear on the same day at the same time in several different courthouses.

The Chief Justice of the District Court Department is frustrated in his ability to assign judges to hear cases because the facilities are spread around in several different buildings. More significantly, even when judges can be moved, the Chief Justice has no power to move court clerks or probation personnel. And if he could ever move all of the people, he still could not move the equipment needed to run the facilities.

It seems too obvious to be considered creative to suggest that the time has come for Suffolk County to consider a single, centralized criminal court building located convenient to the jail for pre-trial detainees. Such a courthouse is clearly required. It should have the full array of courts, Superior, District and Juvenile, all in one building, along with a modern facility for court clerks and probation personnel to be able to work in the coordinated and supportive manner necessary for the criminal business being conducted in the building. A correctly constructed building could even include its own drug testing laboratory so that all involved in that function would be right in the same place. The present District Court buildings could then be converted to judicial and administrative facilities designed to address civil, juvenile, family and other neighborhood and socially related legal problems, with the great mass of criminal cases handled in the central court.

While not pretending to understand the many problems that might be faced in locating such a courthouse, the Task Force suggests two possible sites for serious consideration. The Registry of Motor Vehicles building on Nashua Street has the advantage of being next to the new jail and just blocks away from the existing Suffolk County Courthouse complex. It could be converted to a courthouse, with direct access to the jail. The Registry could be moved to a new building, perhaps on Parcel 18 near Ruggles Station, which would benefit that area at the same time. The other possible site may be more easily adaptable for a courthouse and a drug laboratory. It is the recently vacated English High School building on Avenue Louis Pasteur in the Fenway area. The building is relatively new, has classrooms that could readily be converted to courtrooms, has kitchen facilities, has laboratory facilities and otherwise is designed as a building for public use.

The Task Force strongly urges the immediate formation of an appropriate group from the courts, the Bar, the City and the State to study these and other ideas for a central criminal court in Boston and the conversion of the existing District Court facilities. We know there will be opposition; there always is. But before giving in to that opposition, the effort and the will must be demonstrated

by leaders of government to weigh the options against the deficiencies of the present system and do what is needed.

3. *Mandatory Sentences and Expedited Trials.* Mandatory minimum sentences have clogged the criminal justice system, fail to distinguish between first offenders and repeat offenders, and give no credit for cooperation with law enforcement. In Suffolk County alone, there are 200 pending drug trafficking cases awaiting trial. Even if all of the judges ordinarily assigned to try criminal cases in Suffolk County Superior Court were diverted to these cases, it would take an entire year to dispose of this backlog. It currently takes up to two years before a trafficking case is reached for trial in Suffolk County, unless the defendant is in custody. The defendants who make bail are back on the street pending trial. Because it takes so long between the time of arrest and the time of trial, mandatory sentences do not provide a meaningful deterrent.

The Task Force believes that the current backlog is the result of the following factors:

- a. Mandatory minimum sentences that are generally too high;
- b. The elimination of judicial discretion for first offenders or for those cooperating with the Commonwealth; and
- c. Failure to provide adequate judicial resources to dispose of the additional trial backlog.

a. *Current Mandatory Minimum Sentences Are Too High.* In 1988, the Legislature significantly raised the existing mandatory minimum sentences for drug trafficking offenses and added a new category of 14 to 28 grams for the sale and distribution of a Class B controlled substance (crack/cocaine). The present mandatory minimum sentences for trafficking in crack or cocaine are:

14 to 28 grams—minimum of 3 years and maximum of 15 years in State's prison.

28 to 100 grams—minimum of 5 years and maximum of 20 years in State's prison.

100 to 200 grams—minimum of 10 years and maximum of 20 years in State's prison.

200 grams or more—minimum of 15 years and maximum of 20 years in State's prison.

Prior to the 1988 amendment, trafficking offenses for crack/cocaine carried the following mandatory minimum sentences:

28 to 100 grams—minimum of 3 years and maximum of 15 years State's prison.

100 to 200 grams—minimum of 5 years and maximum of 15 years State's prison.

200 grams or more—minimum of 10 years and maximum of 15 years State's prison.

By way of perspective, the Federal drug trafficking laws impose the following mandatory minimum sentences for cocaine:

500 grams to 5,000 grams—5 years.

5,000 grams or above—10 years.

By comparison to the Federal trafficking laws, the mandatory minimum sentences for drug trafficking in the Commonwealth were already at the high end, even prior to the 1988 amendment. In addition to the high mandatory minimum sentence, a defendant is not eligible for parole until the entire minimum sentence has been served, less good time.

The high mandatory minimum sentences do not reflect sentencing reality. Many judges are not imposing sentences higher than the mandatory minimums after a trial. The combination of the high mandatory minimums, and the fact that the courts are routinely not imposing more than the minimums after trial, have created a disincentive for the defendant or his counsel to dispose of the case without a trial. By insisting on a trial, a defendant, if he is on bail, knows that he likely will not be reached for up to 2 years and his sentence after trial will be no longer than the minimum he would have received if he pleaded guilty.

The Task Force recommends that the 1988 amendment be repealed and that mandatory minimum sentences for drug trafficking be returned to their pre-1988 level, which were sufficiently severe in the first place. Study should be given to a further reduction of the mandatory minimums below the pre-1988 levels.

b. *Judicial Guidelines for Sentencing First Offenders and Those Cooperating with Drug Investigations.* Mandatory sentences are the polar opposite of the normal judicial authority in sentencing, where the punishment is tailored to the seriousness of the crime and the circumstances of the individual. Usually, first offenders, except for the most heinous of crimes, are treated differently from those who have already demonstrated their inability to conform their conduct to the dictates of law. Because of our mandatory sentences, judges have no ability in any circumstance with regard to the imposition of the mandatory minimum. For example, in the case of a 14 gram ($\frac{1}{2}$ an ounce) crack case, the first-time offender must be sentenced to 3 years regardless of his role in the offense or other mitigating circumstances. Experience tells us that after 3 years in a penal institution, the likelihood of recidivism for that individual will be quite high. We agree with the National Drug Control Strategy, the Bennett Report, of September, 1989, which recommends that criminal sentences distinguish between serious and non-serious offenses, and that lengthy prison stays in already overcrowded facilities should be reserved for the most serious offenders.

Mandatory sentences have increased greatly the inmate population in Massachusetts. The time has come to deal with drug sentencing in a more rational manner.

The Bennett Report also recommends the expansion of alternative sentences for first-time, non-violent offenders. In addition, the Federal Sentencing Guidelines, which took effect November, 1987, recognize that a complete departure from the Guidelines is warranted where cooperation has been certified by the government at the time of sentencing. Our state judges should be given the same powers as federal judges in that regard.

We recommend that judges be given guidelines under which to depart from mandatory sentences in (1) all cases involving cooperation in which the prosecutor certifies that the defendant made a significant contribution to a drug prosecution and (2) for first-time, non-violent narcotic offenders, except for trafficking in amounts in excess of 200 grams. In this limited class of cases, the judge should have the opportunity, with appropriate guidelines, to impose a term of incarceration less than the mandatory minimum or a non-jail sentence.

c. *Expanded Use of District Courts to Handle Drug Cases.* The Task Force believes that the jurisdiction of the District Courts should be expanded to grant them concurrent jurisdiction with the Superior Court over all drug offenses where the maximum sentence does not exceed 15 years, and that the District Courts should be allowed to impose a state's prison sentence in those cases. Currently, because of the higher mandatory sentences for trafficking offenses, these cases are beyond the jurisdiction of the District Courts. Also, although the District Courts have concurrent jurisdiction over all felonies punishable by a sentence of incarceration at state prison for not more than 5 years, a sentence to state prison is not authorized. The District Courts may impose a sentence of incarceration to a jail, a house of correction, MCI Concord, and MCI Framingham, but the period of incarceration may not exceed two and one-half years for each offense over which they have jurisdiction.

If the District Courts were given jurisdiction over drug offenses where the maximum sentence did not exceed 15 years in state prison, the District Courts could dispose of offenses involving crack or cocaine up to 200 grams. This assumes that mandatory sentences would be reduced to pre-1988 levels. The District Courts could still not take jurisdiction when the drug offense was combined with a non-drug offense over which the District Court does not have jurisdiction. Further, a District Court could continue to decline jurisdiction in those instances in which it felt that the case was more appropriately in the Superior Court. Also, the prosecutor could still directly indict. If the 200 grams or less cases could be disposed in the District Courts, this would significantly reduce the current backlog in the Superior Court. This, in turn, would allow the Superior Court to concentrate on the more significant trafficking cases.

The District Courts have traditionally handled the highest volume of criminal cases in the Commonwealth. Drug cases are frequent fare in the District Courts. Simply because a case involves a larger quantity, or the Legislature has increased the maximum sentence, should not disqualify the District Court from taking jurisdiction of these cases.

4. *Expanded Use of Probation for Narcotic Offenses.* The Task Force believes that the role of probation can and should be expanded in the monitoring and treatment of drug offenders. Mandatory urinalysis, literacy programs, job training, community service, treatment and counseling are some of the areas in which probation could be used more effectively.

a. *Mandatory Urinalysis.* Most criminal defendants are placed on probation, and many, if not most, crimes are drug related. An expanded use of mandatory urinalysis for probationers must be implemented towards a goal of a drug-free society. Screening for drug abuse should be done for all probationers, not just those convicted of drug offenses.

The overwhelming majority of drug users will not stay drug free simply by use of the honor system. Mandatory urinalysis compels a probationer to stay off drugs or to face the consequences of serving time for violation of his probation conditions. Just as an alcoholic cannot begin to help himself until he is sober, a drug addict or drug user cannot be expected to hold a job or receive meaningful treatment unless he is off drugs.

Mandatory urinalysis is inexpensive. The costs are approximately \$3 per test per drug. We would recommend on-site drug testing in the District Courts to be administered by the probation department or someone under contract to the probation department. Failure to appear for a periodic urinalysis or a positive test could be monitored directly by the court through the probation department and an appropriate sanction imposed.

The Chief Justice of the District Court Department and the Commissioner of Probation should issue protocols regarding the imposition of a mandatory urinalysis program in each of the District Courts of the Commonwealth. The modest costs can be charged to the defendant.

We also recommend the use of longer periods of probation, with mandatory urinalysis, as an alternative to incarceration.

b. *Literacy Programs.* Attendance at literacy programs should be expanded as a condition of probation. It is axiomatic in our increasingly complex society that one cannot be expected to hold a job unless he or she can read or write.

c. *Community Service and Job Training Programs.* Probation departments can and should identify all of the non-profit agencies within their communities where probationers could do community service or receive

job training and include such information as part of their report to the court.

d. *Counseling and Treatment.* The probation department should continue and expand its useful work in counseling and treating those individuals with drug problems.

5. *Modification of the Grand Jury System.* In our opinion the time has come to modify our present grand jury system. By judicial interpretation of our state constitution, it is a requirement that every felony case proceed in the Superior Court by means of a grand jury indictment.

This procedure should not be required for the usual felony case. It has resulted in a tremendous amount of duplication and waste of valuable resources. In most serious cases there has been a full-blown probable cause hearing in a District Court. In cases which do not commence in that court, the prosecutor should be able to initiate a criminal charge by an information or complaint supported by affidavits. A judge could then rule on the probable cause standard. In those cases, a defendant can request a preliminary hearing to contest the adequacy of any probable cause finding. Nothing in this proposal should affect the investigative grand jury process. This modification will require a constitutional amendment and statutory change. It is long overdue. Over two-thirds of the states in this nation have abolished this requirement.

6. *Alternatives to Jail for First Offenders and Those Who Cooperate with Law Enforcement.* The Task Force restates its recommendation that alternatives be found to jail sentencing for certain offenders.

The program in place at the Dedham House of Correction provides a model. It costs \$55 per day to house an inmate at the Dedham House of Correction and approximately \$50,000 to build a new jail cell in Massachusetts.

In the first year (March 1988-March 1989), the Norfolk County Electronic Incarceration Program (EIP) (a community-based corrections alternative which allows selected offenders to remain at home under close supervision) saved the Dedham jail 2,249 days of bed space at a cost per offender of \$7-\$10 per day. Under the program, a tamper-resistant transmitter is attached to the offender's ankle, a receiver is located in the offender's home, and the main computer is located at the Dedham jail. The main computer, capable of monitoring up to 200 inmates at one time, communicates with the receiver and maintains a record of its responses.

Under the EIP program, offenders are permitted to leave their home and work during the day. The Sheriff's Department verifies employment, requires regular drug urinalysis tests, and closely supervises home offenders.

Other sentencing techniques should also be explored. In some drug cases, a "taste" of confinement, short of traditional jail, makes sense. Underused military bases, with excess facilities, such as Fort Devens or Otis Air Base could

be converted to anti-drug boot camps where offenders would spend six months. This will, of course, require some additional money, as well as government-to-government coordination on correctional department staffing and other issues. Nevertheless, we believe that first offenders should be given a program of drug therapy, education, physical exercise and discipline modeled on the regimen Army recruits undergo at boot camp.

7. *Electronic Surveillance.* This Task Force urges the Attorney General and county prosecutors to review the present state of the law governing electronic surveillance. We have received information that current statutory requirements are unworkable and do not meet the challenge of present sophisticated criminal activity.

8. *Witness Immunity.* There is no question that the state immunity statute needs refinement. The requirement that the immunity process at trial is limited only to those witnesses who received it at the grand jury stage is nonsensical.

9. *Search and Seizure Issues.* No issue has contributed more to the decline in respect for the criminal justice system than that of alleged illegal searches and seizures, as well as "investigative stops" and interrogation. Recently the City has been exposed to allegations of improper conduct in the application for search warrants. This Task Force cannot overemphasize the importance of this public issue. For the criminal justice system to survive, it needs the respect of the law-abiding population. To the extent that this population questions the fairness and legality of police action, the confidence in our police and courts will continue to decline. If that happens, we are on the road to anarchy.

The Task Force commends the Attorney General for agreeing to look into these issues. However, the long-term solution is that all police officers be trained on this subject and closely supervised in their work. Hopefully, the newly created committee, to be headed by former Chief Justice Edward F. Hennessey, will develop a program to address this serious problem.

10. *Treatment on Demand.* We agree with William J. Bennett that our drug treatment system must be expanded. This is a particularly acute problem in the case of young pregnant women who are addicted. These programs can work. There must be a major effort to provide treatment on demand. We are absolutely convinced that the cost of such programs will be far less than the cost of using the criminal justice system to solve the failure to provide treatment. Consider statistics gathered by the Federal House Select Committee on Children, Youth and Families that 375,000 babies born last year alone may be harmed by drug exposure. Costs for treatment programs will be far less than costs for supporting, treating and educating those poor children.

11. *Legislative Proposals.* Much needs to be accomplished on the Legislative front, including much that will not cost more money and in many instances will ultimately save money. Recent passage of the asset forfeiture legislation,

advocated by the Attorney General, is welcomed. Creative ways to make that legislation work must be found. It should not be allowed to founder on limitations imposed by the budget crisis.

We recommend immediate consideration of the following:

a. Modification of the requirements of Chapter 579 of the Acts of 1980 to facilitate more rapid construction of prison and treatment facilities;

b. Support for legislation similar to that recommended by Suffolk County Sheriff Robert C. Rufo, to provide for a feasibility study for the establishment of regional lockup facilities;

c. Legislation which mandates a criminal justice impact statement and the appropriation of funding to accomplish that purpose with respect to any new law that would effect the criminal justice system, including laws that would effect prison space, court use and related facilities;

d. Full funding for Chapter 206 of the Acts of 1988, the Judicial Needs Bill and the FY 1990 Trial Court budget as originally requested; and

e. Enactment of legislation increasing the compensation for assistant district attorneys and the rates paid to defense counsel serving under the auspices of the Committee for Public Counsel Services.

12. *Demand Side Control through Civil Proceedings and License and Permit Suspension.* Because it is our belief that much more effort must be applied to the demand side of the drug problem, the Task Force encourages all programs in that area. In particular, we are concerned about societal ambivalence to the abuse of narcotics. There must be a substantial curtailment of the use of drugs at all levels, including particularly societal leaders and role models. Massachusetts' doctors, lawyers, accountants, athletes, media and entertainment personnel, bankers, brokers, and other professionals and business leaders must take a lead in signaling that drug and alcohol abuse is unacceptable behavior for everyone, not just the urban poor.

To that end, the Task Force recommends the study of legislation which calls for civil administrative proceedings leading to license and permit suspension or loss for any person convicted of illegally using or selling drugs or alcohol. For example, if a lawyer is convicted of illegally using drugs, the Board of Bar Overseers would immediately conduct a hearing and suspend that lawyer's license to practice pending appeal of the charges after proof of conviction, measured by civil standards. If convicted without appeal, or if the conviction is affirmed after appeal, the loss of license for an extended period would be automatic. These suspensions could reach into vast areas of regulated professions, businesses and trades. The Commonwealth should not have to license or grant permits to those who are aggravating such an enormous societal problem.

Each member of society must accept responsibility for his or her own actions. It is our opinion that individuals who purchase drugs must be held

accountable for their actions. With that goal in mind, we recommend that legislation be enacted to create civil monetary penalties for drug use; that substantial fines, perhaps \$10,000, be available for the first offender with gradual increases to \$50,000 for repeat offenders.

These civil fine proceedings should be handled by city law department personnel or local attorneys who are hired as special counsel to the city or town in question. The burden of proof in these cases should be that governing most civil cases—a preponderance of the evidence. There should be a provision relating to illegal searches and seizures. There need be no incarceration arising out of these proceedings except in contempt of a judgment where there is clear and convincing proof that an individual has secreted funds in order to avoid payment. The legislation should permit the judgment to be collected over twenty years; permit the use of liens or attachments; and, permit the use of substantial wage garnishment. In the case of first offenders, there should be a community service option—the fair market value of those services to be considered as a reduction of the total judgment amount.

Until we send a message to drug consumers in the more affluent segments of our society that this activity is illegal and subject to sanction, it will be very difficult to convince our young people that we mean business. We would recommend that the funds received from this program remain in the local jurisdiction for treatment and education programs.

13. *Increased Probation Resources.* This Task Force recommends that the Commissioner of Probation and the Chief Justices of the Superior and District Courts consider whether the probation function could be expanded by the use of volunteers. It may be helpful to establish a core group of men and women who, with appropriate supervision, could supervise young people in trouble. Such a program would undoubtedly help young defendants and at the same time alleviate the burdens which probation officers presently endure. This program would also develop a constituency of well-meaning persons who will garner a greater appreciation of the complex nature of the criminal justice system.

14. *Upgrade and Fund the Drug Laboratories.* Once again, we urge immediate and serious attention to the problems at the drug analysis laboratories. There can be no excuse for failing to fund and efficiently run these necessary cogs in the wheels of drug enforcement.

15. *Drug Czars.* Our experience with the drug problem at both the City and State level makes clear that it is large and still largely uncoordinated. Mayor Flynn and Governor Dukakis are giving the problem much needed attention. Each of them, however, have huge jobs running a City and a State each beset with many other major problems. The drug crisis is so large and so pervasive as to require at both the City and State level the appointment by the Mayor and the Governor of high-level persons to run and coordinate the efforts both within and without the City and State governments. Leadership by the

Mayor and the Governor must remain. But the day-to-day and government-to-government coordination must be put in the hands of aggressive, fully supported, full-time people.

16. *Jobs Program.* Attention must be given in a major way to the crushing need for jobs and incentives in our crumbling inner-city communities. It is the depression and frustration in those areas, as well as the greed, that foments so many of the drug problems. The Task Force recommends the creation of some kind of realistic jobs program keyed to the "Big Dig" Central Artery/Third Harbor Tunnel projects. These projects provide Boston with a unique opportunity to capitalize on two huge public works efforts as a means of assisting in the upgrading of not only the highway system, but the lives of residents of the more needy neighborhoods as well. We call for a coalition of government, business and organized labor to insure that these massive projects provide jobs and opportunity for those local residents who need them most. Tax incentives for businesses that support the effort and special assistance to labor unions that provide training should be considered. Depression era WPA-type programs might be considered. Alternative sentencing, with picks and shovels on the "Big Dig", should be included.

CONCLUSION

The interim report described a criminal justice system which, wholly apart from the strains imposed upon it by the drug problem, was in desperate condition. We characterized the system as "abandoned". Resources, both personal and physical, and of all kinds, were desperately needed at all levels. We called for a massive effort by all responsible parties and institutions to develop and build support for the Judicial branch. In September, 1989, William Bennett in the much heralded "National Drug Control Strategy" began by saying that:

"no strategy designed to combat illegal drug use can succeed if it fails to recognize the crucial role of criminal justice. Americans count on an effective criminal justice system to police our streets, deter crime, prosecute offenders, and punish the guilty."

Mr. Bennett is correct. But, sadly, in Massachusetts, since our interim report in May and the Bennett Report in September, the governmental leadership in the State, the private leadership in the community and the people themselves have utterly failed to demand and support a justice system necessary for the task. Until we do so, the message is all too clear—this State, its leaders and its citizens don't really care about the drug problem.

Of equal significance is a point made in the Task Force's interim report and again emphasized in the Bennett Report. "Whatever gains are made by law enforcement in diminishing local drug problems, a permanent solution requires the persistent involvement of an entire community." The problem is societal,

with roots and causes of wide dimension. It must be attacked at its bases, not just by police, prosecutors, judges and jailors. In our poorer and more segregated communities we need plans and programs to curb depression and hopelessness; ways and means to create a future for our young that lead them away from the siren call of the drug dealer. In all neighborhoods, we must get out the message that drug and substance abuse is destructive in its effect on the person and, worse yet, in the example it sets for those who look for guidance to them who appear to have succeeded. There will never be a solution if the effort is focused almost entirely on supply and punishment. This devastating problem will be overcome only if enough attention and massive education are given to curbing the demand for drugs and by attacking the root causes of that demand.

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