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DRUG OFFENDERS AND THE COURTS

Summary of a National Assessment

by

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ABSTRACT

This national survey of felony court prosecutors and judges was designed to examine how drug offenders are identified and sentenced at the State and local level. In addition, questions addressing felony court system performance and trends in drug-related crime were included in the survey questionnaire. The response rate was high, with 88 percent of jurisdictions contacted returning answers.

The survey has revealed that even though resources to combat drug-related crime have increased substantially since 1989, felony court systems are still having great difficulty coping with criminal cases involving drugs. Indeed, Lazar concluded that, despite the major Federal anti-drug initiative which began to be implemented in 1989, felony courts have not been able to manage successfully the huge influx of cases resulting from law enforcement efforts to detect and prosecute drug-associated crime. Clearly, policy makers in the criminal justice system must focus on balancing its various components, for without better distribution of resources, many police efforts at the front end of the process are likely to represent wasted time.

With regard to sentencing practices, the survey revealed that the location of a felony court system strongly influenced sentencing practices. In this regard, two geographic aspects were strongly correlated with sentence severity. One was population density. Felony court systems serving rural areas tended to produce more severe sentences. Also, convicted defendants in the South tended to receive harsher penalties than in other regions of the country.

Lazar noted a compelling need to improve the supervision and monitoring of persons charged with drug-related crimes but not in jail or prison. This held true in both pre- and post-trial settings. In addition, felony courts' handling of drug-related cases would benefit from more effective treatment services for defendants. Such innovative processes as "drug courts" and improved pretrial and post-conviction risk assessment efforts stood out as program tools with the potential to help address these needs.

Lazar also sees merit in education programs that would allow felony court judges to become more familiar with the nature of substance abuse addiction and treatment, and in research projects such as developing better methods to estimate the costs of court system improvements in the context of the environment in which they operate. The study results also suggested that research should be undertaken on the usefulness and effectiveness of sentencing guidelines and mandatory minimum sentences.

In summary, it is recommended that, in light of the significant level of resources devoted to drug enforcement by all levels of government, prudent steps such as those mentioned above be taken to increase the ratio of effectiveness to cost in our felony court system. Unless a better resource balance is achieved between the courts and other criminal justice system components, the overall effectiveness of the national war on drugs will fall short of its potential.

BACKGROUND AND PROBLEM STATEMENT

For the past two decades, drug abuse has been a widespread, though poorly understood, phenomenon in this country, taking many forms and affecting many different types of individuals. Indeed, studies suggest that approximately one of every 10 Americans uses some illicit drug each month. The crime and other problems associated with drug abuse have resulted in steadily increasing attention to this issue at the national as well as State and local levels.

One outgrowth of this greater attention to drug abuse has been an overwhelming number of court cases involving drug offenders. As a result, sentencing practices employed in dealing with these offenders must be recognized as an integral component of U.S. drug policy. Despite the significant implications of such practices for the nation's success in addressing its drug abuse problems, very little information is available about this subject.

It is common knowledge that because jails and prisons are overcrowded, court systems have been forced to seek new approaches to handle the large numbers of cases, including imposing sentences that take advantage of alternatives to traditional incarceration, such as electronic monitoring, frequent drug testing and shock incarceration. It is also known that a few jurisdictions, in an effort to improve effectiveness and lower costs, have established special "drug courts" that divert many substance abusers into treatment.

Recognizing that these innovations exist, however, does not provide insights on, for example, how they have affected sentencing practices, whether they are widespread, and whether they have increased local court systems' ability to handle the influx of drug-related cases. Those working in this field have also been unaware of whether there are wide disparities in the punishments given to persons guilty of the same drug offense. Such disparities, which do not exist for most criminal offenses, may be more common for drug-related crimes because of differences in local attitudes about drug abuse and strategies for controlling it.

To increase the state of knowledge about sentencing practices and other facets of the judiciary's handling of drug cases and thereby identify possible improvements, Lazar conducted a national survey of felony court judges and prosecutors with the following aims.

- To learn how States and other jurisdictions currently identify and sentence drug offenders.
- To analyze court system performance and the types of resources courts feel are needed to help improve the system's ability to deal with drug offenders.

This paper summarizes the methodology Lazar developed to conduct the national survey as well as its findings and conclusions. It is comprised of three more sections: the next, which summarizes the survey design; and subsequent sections, which present the survey's results as well as Lazar's findings, conclusions and policy-related recommendations.

SURVEY DESIGN

Structure of Questionnaire

The survey targeted two respondents (chief judges and lead prosecutors) in each jurisdiction because of their differing perspectives and focus. The questionnaires focused on a variety of issues, including:

- Definition of Drug-Related Crime and Severity of Local Court Problems: the nature of applicable drug laws and the classification of violations (possession, sale or use of drugs or drug paraphernalia, etc.). Also, issues such as whether drug-related court cases are on the rise, and whether the court is overburdened to the point that some arrests do not result in charges.
- Role of Drug Testing: whether drug testing is employed and when, and the percentage of arrestees given drug tests.
- Resources and Programs Available: the types of programs (TASC and other diversion, shock incarceration, jail-based drug treatment, etc.) available within the jurisdiction; jail and prison capacity; and overcrowding problems. Also, the desirability and priority of obtaining particular resources not currently available.
- Additional Resource Needs and Programs: whether the responding jurisdictions need additional resources and programs (e.g., drug courts, drug treatment centers) and, if so, the priority for each need.
- Court System Operations and Performance: whether sentencing guidelines and/or mandatory minimum sentences exist, and sentencing practices for various drug offense categories. Also, overall court system performance three years ago versus today, as well as the status of particular variables related to the courts (e.g., time from arrest to disposition, pending case loads). In addition, the nature of the local data base and its degree of automation, and trends in the rate of criminal recidivism of those who have been sentenced.

- Charge and Sentence Practices: the approach to handling drug cases was analyzed by presenting three "fact patterns" describing particular cases (e.g., 22-year-old male arrested in possession of three \$20 rocks of crack cocaine . . . defendant has history of three prior arrests for drug possession . . .) and inquiring about the indicted charge(s), the expected charge(s) offered as plea bargain, the expected sentence associated with plea bargain charge, and expected sentence if found guilty of original charge (i.e., if plea bargain rejected).

A number of types of responses were solicited in the survey instruments, including true versus false and point scales (e.g, 0 to 10 performance ratings).

Sampling Plan and Implementation Procedures

A stratified random sample of 300 jurisdictions was selected for the court system survey, although some smoothing and replacement techniques were employed to assure that all State systems were represented and that the numbers of urban, metropolitan and rural systems were appropriate. Eighty-eight percent of the jurisdictions contacted had at least one respondent. Implementation of the survey took place during the spring of 1992 and involved three mail contacts and one telephone follow-up to nonrespondents.

SURVEY RESULTS

Overview

The key finding that has emerged from Lazar's national survey is that, despite substantially increased resources, felony court systems are still having great difficulty in dealing with drug-related crime. To place the significance of this finding in context, it should be noted that the resources available to wage the drug war increased substantially during the 1988-1989 "crisis" period as a result of passage of the Anti-Drug Abuse Act of 1988 (P.L. 100-690), which was signed into law on November 18 of that year. This legislation designated a Federal "drug czar" and increased funds available for drug enforcement, treatment and education.

The results of this survey of felony court systems suggest that the expanded resources have increased the number of individuals charged with drug-related crimes, but failed to strengthen felony court systems commensurately. As reflected by the findings represented below, by many measures, there has been little or no improvement in felony court systems' ability to handle the caseload associated with drug-related crime. In fact, by some measures, their capability has deteriorated.

The following key findings emerged from the survey.

- The ability of court systems to handle drug-related crime has improved slightly in recent years, but is still inadequate, particularly in urban and metropolitan areas. Indeed, the improvement reported is so slight as to be statistically insignificant.
- Arrests for drug-related crime and the number of drug-related court cases have increased significantly since 1989.
- Court system personnel, particularly in large jurisdictions, are not satisfied with the tools available to them for handling drug-related cases.
- Pretrial release programs do not provide adequate supervision and monitoring of drug-abusing defendants.
- Although some improvement has occurred in recent years, a significant percentage of judges are still deficient with respect to knowledge about substance abuse and treatment options.
- Drug testing is a common practice and used almost universally for post-conviction monitoring. Use of drug testing for pretrial supervision is least common in rural areas.
- Drug treatment following conviction is also common practice and, when it occurs, is usually employed as an alternative to incarceration.
- Differences among jurisdictions in the percentage of crimes classified as drug-related are not attributable to different definitions of what constitutes a drug-related crime. There is considerable uniformity in the jurisdictions' definitions.
- Jails and prisons have become increasingly crowded.
- Court systems are lagging with respect to the computerization of records.
- Mandatory minimum sentences exist in most jurisdictions and often result in inappropriate sentences.
- Sentences for drug-related crime are significantly harsher in rural areas and in the South.

Court Resources

The question of which tools a felony court system has at its disposal is quite important and reflects to some extent the level of sophistication with which the system

has attacked its drug problem. A contemporary urban or metropolitan court typically must deal with a large number of drug-related cases and would be expected to have numerous pretrial and post-trial programs to assist with its burden of defendant risk assessment, processing and sentencing. However, as can be seen in Figure 1, many tools are not available on a widespread basis, yet are desired by local judges and prosecutors. As can be seen, the drug court, which assures expedited handling of drug offenders, is a resource not widely available (only 14 percent of responding jurisdictions have one), but desired by a large number (41 percent) of those to whom it is unavailable.

Court System Performance

Both judges and prosecutors were asked to provide an assessment of their felony court's overall effectiveness in dealing with drug offenders and an evaluation of the status of particular aspects of court operations. On a scale from 0 to 10, jurisdictions' ratings of the overall performance of their felony court systems have risen from an average rating of 5.6 three years ago to an average rating at present of 6.3, representing an increase of 13 percent.

Seventeen individual indicators of court performance were analyzed, and as can be seen in Figure 2, the survey revealed that there has been little or no improvement during the period 1989 to 1992 in any of the variables studied. The knowledge of judges about the nature of substance abuse and treatment options and the general ability of court systems to assess the nature of defendants' substance abuse problems have improved only very slightly but these improvements have tended to occur in urban areas, the South and jurisdictions with higher rates of drug-related crime. Also, the availability of drug treatment as an option has increased nationally, but greater availability decreases as one moves from East to West.

Most of the administrative and organizational measures of court performance have improved insignificantly or not at all in three years. Average time from arrest to disposition and between conviction and sentencing, the scheduling of court events, and the number of appearances required to dispose of cases are variables that follow this pattern.

Recidivism, overburdened court dockets, overworked felony court teams, and crowded jails and prisons all are reported as significant problems by the responding jurisdictions. The number of defendants charged with drug-related crimes who are fugitives and the rates of arrest for other crimes within one year of convicted drug offenders have increased almost everywhere in the last three years, possibly related in part to increased police resources during this period. Ninety-one percent report the rates of subsequent arrest within

one year of felons convicted of a drug-related crime to be the same or higher than three years ago.

The burgeoning number of drug cases has, accordingly, led to greater strain on the court system as indicated by a worsening (increased) number of cases handled per year by a felony court team (judge, prosecutor, defense) and the percent of the pending case load that is drug-related. Seventy-seven percent reported that the number of cases handled by the felony court team is the same as or more than it was three years ago. Eighty-seven percent reported the percentage of their pending caseload that is drug-related to be the same or larger than it was three years ago.

Sentencing of Drug Offenders

Guidelines and Mandatory Minimums

Many State legislatures have enacted tough and comprehensive drug laws that provide stern punishment guidelines for all drug offenders. The punishments required by the laws may include mandatory terms of imprisonment and periods of parole ineligibility for the more serious offenders.

Sentencing guidelines exist in 47 percent of responding jurisdictions, but court representatives overwhelmingly report that they take steps to avoid imposing an inappropriate sentence under guidelines. Mandatory minimum sentences are more prevalent than guidelines, with 84 percent of responding jurisdictions reporting their existence. While solid majorities of 74 percent of urban respondents and 67 percent of metropolitan respondents report that they take steps to avoid inappropriate sentencing when mandatory minimums exist, only 45 percent of rural jurisdictions report such practices.

Plea Bargaining and Sentencing Practices

In order to gain an understanding of plea bargaining and sentencing practices in each jurisdiction, three hypothetical cases were formulated. One of these cases is presented and analyzed below.

- **Case Description:** Twenty-four year-old male arrested in possession of 25 rocks of crack cocaine (or its equivalent) and a concealed weapon without a permit. Defendant has a history of seven prior arrests for crimes including drug possession (small amounts), carrying a concealed weapon without a permit, and armed robbery. Defendant served 16 months in prison related to armed robbery and is currently on parole. He also has a prior history of outpatient substance abuse treatment for a cocaine problem and has been placed on probation on two previous occasions, once for six months and once for 12 months.

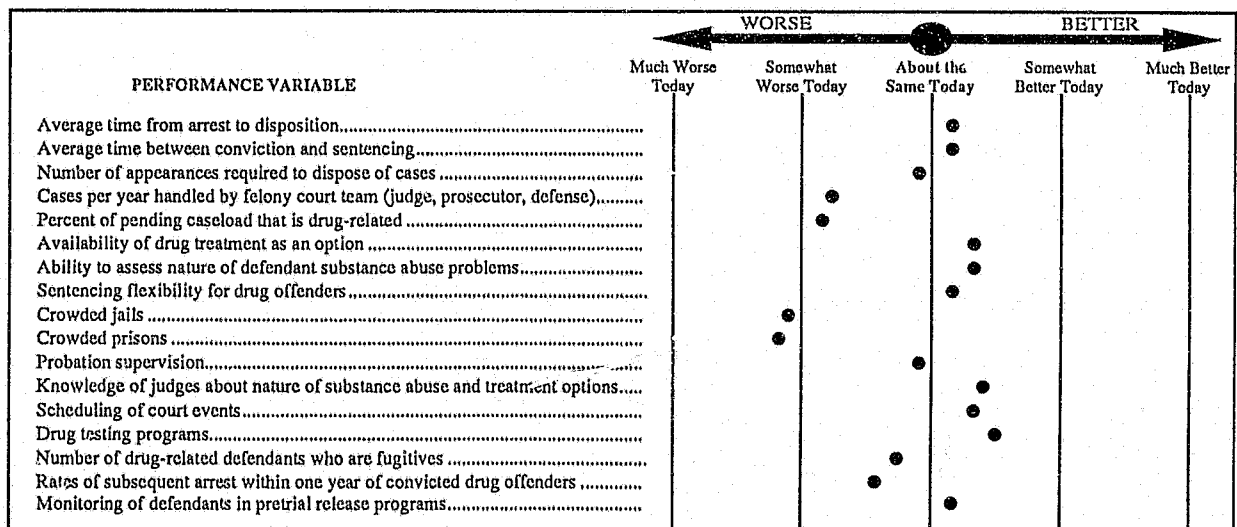
**FIGURE 1
COURT RESOURCES**

- Available and Desired -

RESOURCE	AVAILABLE (Percentage reporting available in their jurisdiction)	DESIRED (Percentage reporting resource should be added if not available)	AVAILABLE OR DESIRED
Community service	94	3	97
Postconviction intensive supervised probation	88	8	96
Postconviction residential drug treatment	85	9	94
Postconviction outpatient drug treatment	88	6	94
Suspended sentence	89	3	92
Split sentences (including boot camps, weekend sentences)	82	9	91
Postconviction house arrest (with electronic monitoring)	69	21	89
Other monetary penalties	86	2	88
Postconviction halfway houses	66	18	84
Pretrial defendant risk assessment	54	28	82
Postconviction defendant risk assessment	65	16	81
Centralized intake and defendant screening	52	28	80
Pretrial residential drug treatment	52	28	80
Pretrial house arrest (with electronic monitoring)	43	34	77
Pretrial outpatient drug treatment	57	18	76
Shock incarceration	56	25	75
Pretrial intensive supervised probation	37	34	71
Treatment Alternatives to Street Crime (TASC) or equivalent program	40	29	69
Postconviction day reporting centers	27	36	63
Multiple case processing tracks	38	22	60
Pretrial day reporting centers	16	41	57
Pretrial halfway houses	18	38	56
Postconviction house arrest (without electronic monitoring)	18	38	56
Postconviction special programs for HIV-positive defendants	8	48	56
Drug court	14	41	55
Day fines	35	19	54
Pretrial house arrest (without electronic monitoring)	29	24	53
Pretrial special programs for HIV-positive defendants	2	50	52

**FIGURE 2
COURT PERFORMANCE INDICATORS**

- 1989 Versus 1992 -



• Case Analysis:

- Indicted charge: The most frequent (modal) charge is "Possession with Intent to Distribute" and "Illegal Possession of a Firearm," a charge employed by 39 percent of all respondents (and by 49 percent of urban respondents). However, "Possession with Intent to Distribute" alone would be the charge used by 27 percent of jurisdictions. Others employ simple possession plus a gun charge or illegal use of a firearm.

- Plea bargain: The most frequently offered plea bargain involves dropping gun charges but keeping the charge "Possession with Intent to Distribute" with 42 percent of respondents reporting that this would be their approach, although 29 percent of respondents would keep their gun charge intact.

- Charge if Plea Bargain Offer is Rejected: In the great majority of jurisdictions, the original indicted charge stands if the plea bargain offer is rejected.

- Sentencing: The average sentence is 10.2 years if the plea bargain is accepted and increases by 25 percent to 12.8 years, if the plea bargain is rejected.

Significance Testing (Tests of Statistical Hypotheses)

In order to explore possible relationships between selected demographic characteristics and responses to the national court survey, a series of statistical significance tests were performed. In this regard, a two sample z-test with Type I error set at .05 was utilized and revealed the following.

- Urban felony court systems are more likely (than metropolitan or rural systems) to report that
 - they use drug testing as a post-trial supervision/monitoring tool; and
 - the quality of probation supervision is worse today than three years ago.
- Metropolitan felony court systems are more likely (than urban or rural systems) to report that a greater number of cases are handled by their felony court team (judge, prosecutor, defense) today than in 1989.
- Rural felony court systems are less likely (than urban or metropolitan systems) to report that:

- they make some accommodations to mandatory minimums;

- the average time between arrest and disposition is longer today than three years ago;

- the percentage of their pending caseload that is drug-related is higher today than three years ago;

- jails are more crowded today than three years ago;

- drug testing programs are worse today than three years ago;

- the number of drug-related defendants who are fugitives has increased in the last three years; and

- they have comprehensive data bases.

Lazar's hypothesis testing revealed that the problem of dealing with drug offenders is reported as being much more manageable by the courts in rural areas than in urban (center city) and metropolitan jurisdictions.

Significance testing was also undertaken to analyze indictment and sentencing patterns across the nation. This analysis revealed that:

- Sentences for drug-related crime are significantly longer in the South than in other regions.
- Sentences for drug-related crime are significantly longer in rural areas than in urban and metropolitan jurisdictions.

CONCLUSIONS AND RECOMMENDATIONS

Lazar's national survey has revealed that even though resources to combat drug-related crime have increased substantially since 1989, felony court systems are still having great difficulty coping with the drug crisis. Even if the assumption is made that the increase in funding for the war on drugs has allowed police to operate more effectively and substantially increase arrests, it must be concluded that policy makers have not learned how to create a proper "balance" among criminal justice system components. Like any human service system which operates in serial fashion, the police-courts-corrections complex is only as strong as its weakest link. If police resources are increased but courts and corrections not proportionately strengthened, arrestees will "pile up" and the arraignment, plea bargain and trial process will be forced to "leak" inappropriately. In essence, the police effort will have been wasted.

Lazar's survey shows that felony courts are not capable of coping with their present workload and that, in general, the courts are functioning at approximately the same level of effectiveness today as in 1989, when a major new national anti-drug initiative was implemented. Clearly, the criminal justice system must focus more on balancing its various components, for without better distribution of resources, police, who are at the front end of the process, are likely to waste time and effort.

With regard to sentencing practices, Lazar's survey revealed that locational characteristics of a felony court systems did serve as good predictors of their policies. In this regard, two geographic aspects were strongly correlated with sentence severity. One was population density--felony court systems serving rural areas tend to have more severe sentencing practices. Also, convicted defendants in the South tended to receive harsher penalties than in other regions of the country. Research to determine if these harsher sentences lead to a reduced rate of recidivism among drug offenders would be relatively simple and inexpensive to perform. Such research should be helpful to jurisdictions in assessing the value of relatively costly long-term incarceration.

Some deficiencies of State and local felony courts stood out: a need to improve supervision and monitoring, and rehabilitation of defendants while they are not residing in jail or prison. This problem exists particularly during the pretrial phase and suggests that technical assistance that helps court systems implement improved pretrial release risk assessment systems as well as new program tools such as drug courts would be desirable. In particular, development of case studies which document the operations of exemplary drug courts and risk assessment models would be useful. These studies should, of course, address the different operational needs in urban, suburban and rural jurisdictions.

Another study that would be extremely beneficial relates both to pretrial supervision and monitoring problems reported in this study and its finding that jails and prisons are increasingly crowded. Currently, little is known about the relative value of various intermediate sanctions applied individually or in combination. Consequently, judges' confidence in such remedies would be increased if their costs versus benefits were adequately determined. In this regard, implementing a controlled study which explores the outcomes associated with comprehensive drug treatment combined with other selected approaches such as graduated sanctions would be of great value, especially if such a program could be initiated through a drug court.

A number of other research and demonstration initiatives are sorely needed to address weaknesses highlighted in Lazar's survey. For example:

- Knowledge about how to balance police, courts and corrections resources could be improved greatly through the design and implementation of simulation models that allow alternative resource allocation strategies to be tested.
- Education programs that allow felony court judges to become more familiar with the addiction process as well as fundamental concepts of substance abuse prevention and treatment should be developed. The programs should include video and written materials, as well as accompanying short courses which are offered in all States on at least an annual basis.
- A follow-up study which examines the long-term impact of innovative court system approaches (e.g., drug courts) should be initiated so the costs versus benefits of such programs can be accurately determined.
- In this era of shrinking public sector resources, more attention should be paid to unglamorous research topics such as developing better approaches for estimating the costs of various criminal justice program improvements in the context of the environments in which they operate. Too often, the initial investment and ongoing operations costs of programs are not well understood by local policy makers and, as a result, critical investments in areas such as staff training or computer support are not made at appropriate levels.
- Policy-related research which focuses on the usefulness and effectiveness of sentencing guidelines and mandatory minimums should be undertaken. In particular, the national assessment study approach employed by NIJ could be applied to this topic.

In summary, it is recommended that, in light of the significant level of resources devoted to drug enforcement by all levels of government, prudent steps such as those mentioned above be taken to increase the cost effectiveness of our felony court system. As mentioned previously, unless a better resource balance is achieved among the courts and other criminal justice system components such as police, the overall effectiveness of the national war on drugs will fall short of its potential.

ABOUT THE PRINCIPAL INVESTIGATORS

Raymond H. Milkman is Director of The Lazar Institute, a non-profit public policy research organization. As illustrated by this paper, one of his primary interests is drug abuse program evaluation, a field to which he has made contributions over the last two decades. Prior to joining Lazar in 1973, he served as Director of Evaluation at the White House Special Action Office for Drug Abuse Prevention and as Assistant Director for Program Analysis at the Economic Development Administration, U.S. Department of Commerce.

Bruce D. Beaudin, J.D., has served as Associate Judge, Superior Court of the District of Columbia since 1984. Prior to his appointment to the Superior Court, Judge Beaudin served as Director of the Pretrial Services Agency in Washington, D.C. Widely regarded as one of the nation's leading authorities on pretrial release and the handling of drug offenders within the criminal justice system, Judge Beaudin is a past President of the National Association of Pretrial Release Agencies (NAPSA) and is Chairman of the Board of Trustees of the Pretrial Services Resource Center.

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For more information, please contact The Lazar Institute, 6726 Lucy Lane, McLean, VA 22101, or telephone (703) 821-0900/FAX (703) 356-3755. A 71-page report describing the methodology and results of this survey is also available for \$12.50.