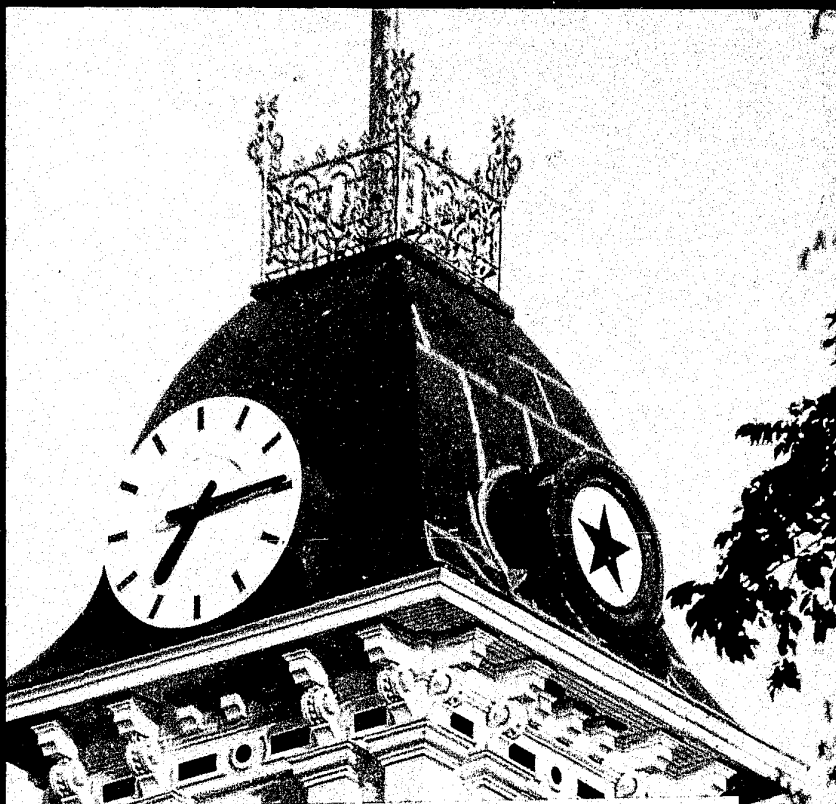


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The Impact of Drug Cases on Case Processing in Urban Trial Courts

John A. Goerdt and John A. Martin

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tor of BJA's Discretionary Grants Division.

John Goerdt, a senior staff attorney for the National Center for State Courts (NCSC), directs the NCSC's Large Trial Court Capacity Increase Project's pace of litigation study, which is also funded by BJA (Grant No. 87-DD-CX-002). Goerdt developed and maintains the 26-court database used in the quantitative analysis presented here.

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Remarkably little research has focused on the effects that the increased use of drugs, stricter drug laws, and increased drug law enforcement have had on the day-to-day management of America's courts.



One consequence of the widespread use of drugs by Americans and the intensification of the war on drugs has been an unprecedented influx of drug cases in many urban trial courts throughout the United States. Because of the social and economic problems caused by drug use and the drug trade, drug cases, especially drug sale cases, have special political significance. For example, district attorneys, state attorneys general, and other local, state, and federal officials are frequently selected on the basis of their stance on drugs. State statutes often provide long sentences for drug dealers. The war on drugs is often a crucial component in justifying funding for new prisons. Moreover, the allocation of public resources of all types is frequently based on how the programs or projects might assist or hinder resolution of the drug problem. In many ways, then, drug cases have attained a political significance that traditionally has accompanied the processing of serious violent crimes.

Nonetheless, remarkably little research has focused on the effects that the increased use of drugs, stricter drug laws, and increased drug law enforcement have had on the day-to-day management of America's courts. Despite the amount of resources being allocated to the war on drugs and the critical role that is (either implicitly or explicitly) assigned to America's courts in drug crime prevention strategies, only now is the court's role beginning to receive some public policy attention. The lack of research may be especially surprising given the reality that

state courts process over 97 percent of all American drug arrests.¹

Still, attention directed at the courts is limited because of scant knowledge about the impact of drug cases on court management. Some believe that the increasing number of drug-related cases now confronting many urban trial courts is exacerbating the already serious problems caused by case-processing delay. For instance, in a recent study of court delay, administrators from both fast and slow courts rated an increase in drug-related cases as the most serious problem affecting court delay.² Anecdotes tell of increasing numbers of drug cases forcing prosecutors, public defenders, and private attorneys to alter traditional plea policies dramatically. Some people speculate that drug cases disproportionately contribute to serious jail overcrowding.

Court practitioners, then, suspect that drug cases are not only clogging our already burdened court systems, but also may be pushing at least a few trial courts toward collapse.³ If state trial courts are to respond adequately to the drug case challenge, these speculations and anecdotes need to be examined through empirical research.

This article catalogs some of what is known about the intricate relationship between increasing drug caseloads and management of America's urban trial courts by analyzing four questions: (1) What is the extent of the drug-related caseload in urban trial courts?; (2) How much has the drug-related caseload increased in recent years?; (3) Are drugs

cases somehow different from other cases?; and (4) How do drug cases affect court delay generally?

The answers to these questions are based on an analysis of data obtained from 26 urban trial courts participating in the Large Trial Court Capacity Increase Program of the National Center for State Courts (NCSC) and the Bureau of Justice Assistance (BJA)⁴ and on information about drug cases and management practices obtained from nine large urban trial courts as part of NCSC's Caseflow Management Technical Assistance Project, which is also funded by BJA.

Extent and growth of drug caseloads

DRUG CASELOAD IN 1987

Figure 1 indicates that drug-related cases (drug possession, drug sale, and intent-to-sell cases) made up approximately 26 percent of all felony cases disposed in the 26 courts studied in 1987. This figure actually underestimates the percentage of drug-related cases because a case was coded according to the most serious charge in the indictment or information. When drug possession or sale was a lesser charge (i.e., when murder, rape, or robbery was the most serious charge) the case was not coded as drug related. Recent discussions with judges and administrators in several of these courts indicate that the influx of drug cases has been substantially greater in 1989 than in 1987. Thus, the current drug caseload in many urban

Figure 1
Court Caseload Characteristics, 1987

Court	Median Indictment to Disposition ^a	Total Felony Filings	Full-time Equivalent Felony Judges ^b	Filings per Full-time Equivalent Felony Judge	Felony Backlog Index ^c	Percent Over 180 Days Old ^d	Percent of Most Serious Case Types ^e	Percent of Drug Sale Cases	Percent of Drug Possession Cases	Total Drug Cases
Salinas, Calif.	22	13,423	3.5	383	.03	8	12	16	17	33
Fairfax, Va.	29	2,832	4.4	644	.19	14	14	20	6	26
Detroit (Mich.) Recorder's Court	38	16,312	34.0	480	.17	15	14	13	6	19
New Orleans, La.	42	6,243	10.5	595	.1	15	6	3	29	32
Dayton, Ohio	42	2,220	4.0	555	.17	8	12	6	6	12
San Diego, Calif.	50	9,258	19.0	487	.09	31	19	19	9	28
Atlanta, Ga.	50	8,387	7.7	1,088	.18	24	6	18	10	28
Washington, D.C.	62	11,130	16.49	675	.22	29	6 ^f	11 ^f	22 ^f	33 ^f
Oakland, Calif.	65	5,070	7.04	720	.09	39	21	26	11	37
Norfolk, Va.	69	4,530	4.5	1,007	.47	29	16	11 ^g	*	11
St. Paul, Minn.	70	2,475	5.0	495	.25	18	10	7	11	18
Colorado Springs, Colo.	76	3,401	4.0	850	.74	22	15	6	6	12
Cleveland, Ohio	82	9,472	16.5	574	.22	28	16	11	6	17
Minneapolis, Minn.	84	3,620	7.8	464	.28	29	16	6	4	10
Phoenix, Ariz.	85	12,410	13.54	917	.48	22	10	14	10	24
Portland, Oreg.	94	6,338	7.0	905	.45	*	9	7	11	18
Pittsburgh, Pa.	97	5,904	7.0	843	*	23	10	13 ^g	*	13 ^g
Tucson, Ariz.	103	3,222	7.6	424	.71	*	10	7	7	14
Denver, Colo.	109	2,910	6.75	431	*	44	18	2	17	19
Providence, R.I.	111	3,020	5.4	559	.64	52	11	13	17	30
Miami, Fla.	112	23,884	24.0	995	*	34	8	10	23	33
Bronx, N.Y.	114	8,799	37.0	238	.33	45	20	41	5	46
Newark, N.J.	125	7,217	18.52	390	.65	81	12	29	13	42
Wichita, Kans.	133	1,694	5.6	302	.31	28	17	11	6	17
Jersey City, N.J.	150	2,385	6.63	360	.39	56	14	38	7	45
Boston, Mass.	233	1,646	8.0	206	.88	*	31	43	1	44
Average	86	6,373	11.21	599	.35	30	14	16	10	26

* Missing or noncomparable data

a Measured in days from filing of indictment or information to entry of judgment or dismissal.

b Total number of judges who handled felony case proceedings in 1987 multiplied by the average proportion of judge time spent on felony cases (based on estimates from court administrators).

c Number of felony case pending on January 1, 1987, divided by the number of felony dispositions in 1987.

d Measured from arrest to disposition.

e Murder, rape, and robbery cases.

f Determined by the most serious charge at disposition, not indictment/information. Not included in calculating the average.

g Drug possession and sale/intent to sell included (could not distinguish). Not included in calculating the average.

Source: J. Goerd, C. Lomvardias, G. Gallas, and B. Mahoney, *Examining Court Delay: The Pace of Litigation in 26 Urban Trial Courts*, Williamsburg, Va.: National Center for State Courts (1989).

courts clearly is greater than indicated in the 1987 data.

The magnitude of the drug caseload varied considerably among the individual courts during 1987. Figure 1 indicates that the percentage of all drug-related cases ranged from highs of 46 percent in Bronx, 45 percent in Jersey City, and 44 percent in Boston to lows of 10 percent in Minneapolis, 11 percent in Norfolk, and

12 percent in Dayton and Colorado Springs.

INCREASE IN DRUG CASELOADS

There was great variation in the extent to which the percentage of drug-related cases increased among the courts during the past few years. Figure 2 indicates that between 1983 and 1987 the drug caseload increased by 56 percent across 17 courts

for which relevant data were available. It increased by 175 percent in Boston, 114 percent in Jersey City, 109 percent in Bronx, and 95 percent in Oakland. Five courts, however, experienced an increase of 11 percent or less.

A significant pattern emerges from a close examination of Figures 1 and 2. Courts with the largest increase in drug-related cases and those with the largest

total percentage of drug-related cases tended to be the slowest courts in 1987. For example, Boston, Jersey City, Bronx, and Newark were among the slowest courts in 1987 on median time from indictment to disposition (see Figure 1). They also had the highest percentages of drug sale cases in their caseloads in 1987. In fact, a higher percentage of drug-sale cases in the caseload were correlated with longer case-processing times overall among all the courts.⁵

Does case-processing time for drug cases differ from other cases?

The finding that a higher percentage of drug cases in the caseload were related to longer case-processing time leads to the question of whether drug-related cases, especially drug sale cases, are somehow different or more difficult to process than other case types. Figure 3 shows the median case-processing times for various felony case types across all the courts in the study. As one would expect, the most serious cases (murder, rape, and robbery) required the most time from arrest to disposition (148 days) and from indictment to disposition (113 days). Drug sale and drug possession cases were similar from arrest to disposition (118 and 120 days). However, drug sale cases tended to take longer in the upper court (89 days) than drug possession or other felonies (both 74 days). This information suggests that drug sale cases are not as complex, in general, as the most serious case types but may be somewhat more complex than other case types.

Examination of aggregate data alone obscures differences among the individual courts. Figure 4 shows the average case-processing time from indictment to disposition (entry of judgment) in each court for the various case types. The case-processing times that are significantly different than the average disposition time for drug sale cases are indicated. In nine courts, the average disposition time for most serious cases was significantly different than the average disposition times for drug sale cases. In seven of these courts, the average disposition time for the most serious cases was longer than for drug sale cases. This pattern is consistent with the finding and expectation that the most serious case types (murder, rape, and robbery) take longer than other case types.

Court	1983	1987	Percent Change
Boston, Mass.	16	44	+175
Jersey City, N.J.	21	45	+114
Bronx, N.Y.	22	46	+109
Oakland, Calif.	19	37	+95
Pittsburgh, Pa.	7	13	+86
Portland, Oreg.	10	18	+80
Miami, Fla.	19	33	+74
New Orleans, La.	20	32	+60
San Diego, Calif.	18	28	+56
Providence, R.I.	20	30	+50
Wichita, Kans.	12	17	+42
Cleveland, Ohio	12	17	+42
Minneapolis, Minn.	9	10	+11
Dayton, Ohio	11	12	+9
Newark, N.J.	40	42	+5
Phoenix, Ariz.	23	24	+4
Detroit, Mich.	20	20	0
Average	17.6%	27.5%	56.2%

a Case types determined by the most serious charge in the indictment or information. Does not count cases in which drug-related charges were included but were not the most serious charge (murder, rape, robbery, kidnapping).

Source: 1987 data were obtained by the National Center for State Courts in a study funded by the Bureau of Justice Assistance and reported in J. Goerdts, C. Lomvardias, G. Gallas, and B. Mahoney, *Examining Court Delay: The Pace of Litigation In 26 Large Urban Trial Courts, 1987*, Williamsburg, Va.: National Center For State Courts (1989). 1983 data were obtained through research conducted by the National Center for State Courts in a study funded by the National Institute of Justice.

However, in Washington, D.C., and Norfolk, Va., drug sale cases took significantly longer than the most serious cases.⁶ Discussions with court staff in both courts indicate that the use of direct indictments (indictment before arrest) in a relatively high percentage of drug cases might contribute to the delay in upper-court-case processing times in these cases.

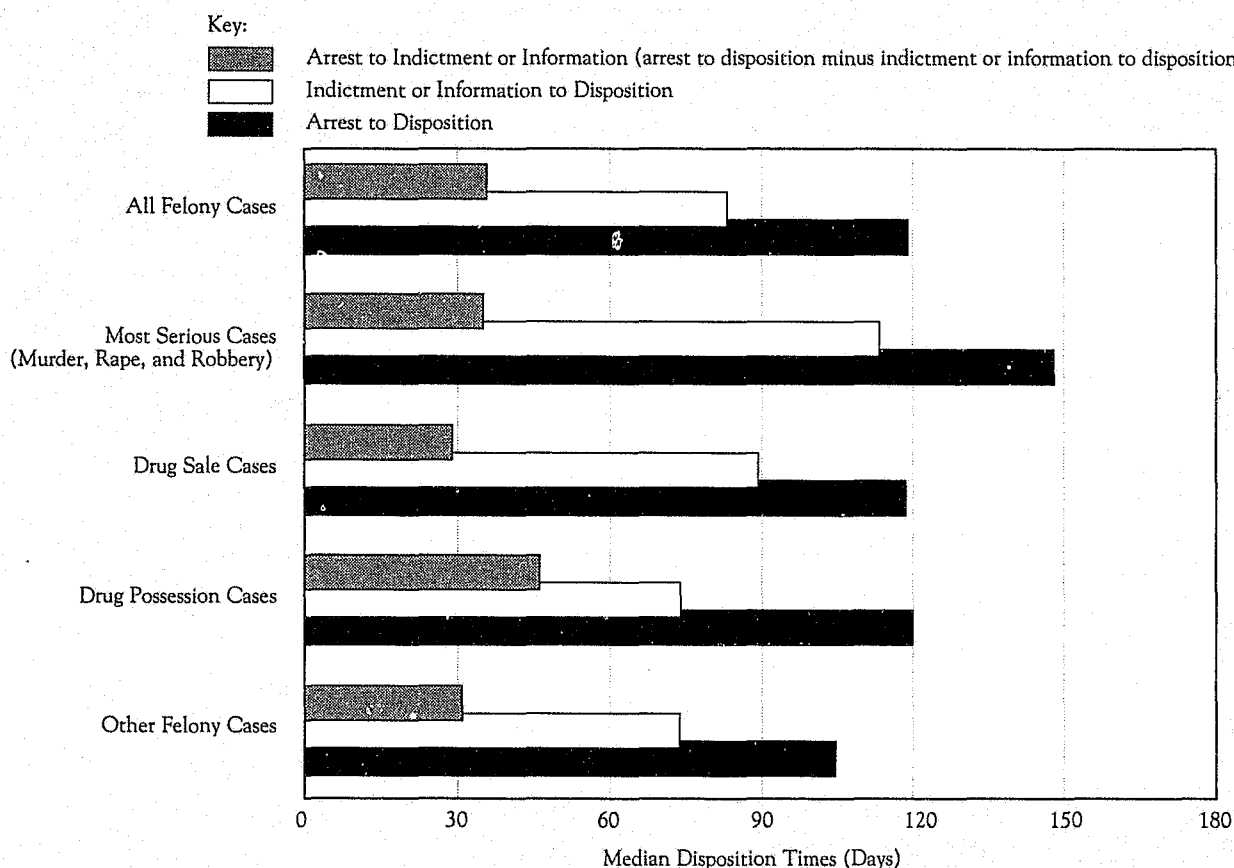
Eight courts displayed average disposition times that were significantly different for other felony cases than they were for drug-sale cases. In four of these courts (Bronx, Miami, Jersey City, and Newark), other felony cases (e.g., larceny and burglary) took significantly longer than drug sale cases. Bronx and Jersey City had a more than 100 percent increase in drug cases between 1983 and 1987 and had among the largest percentages of drug cases in their caseload (see Figure 5). Newark also had one of the largest drug caseloads (42 percent) in 1987. It appears that to expedite the processing of their large drug caseloads, these courts postponed the disposition of other felonies. In

fact, in Jersey City, Newark, and Miami, other felonies took several weeks longer on the average than the most serious cases. Thus, the increase in and the magnitude of drug caseloads appear likely to contribute to delay in processing other felony cases in those courts particularly burdened by drug cases. The result tends to be further court delay in nondrug cases.

Also noteworthy is that case-processing times for drug possession cases were significantly different than drug sale cases in only three courts (San Diego, Washington, D.C., and Phoenix). In each court, drug sale cases took significantly longer in the upper court. Because drug possession cases were significantly different from drug sale cases in only three courts, it appears that drug sale cases are generally more similar to drug possession cases (in terms of average disposition time) than they are to the most serious or other felony cases.

Case-processing times are also affected by other interorganizational factors. In the New Jersey courts, for example, where

Figure 3
Median Felony Case-processing Times for
Large Urban Trial Courts, 1987^a



a Medians from among the median case-processing times for 18-26 courts, depending on case type and whether total or upper-court time.

Source: J. Goerd, C. Lomvardias, G. Gallas, and B. Mahoney, *Examining Court Delay: The Pace of Litigation In 26 Large Urban Trial Courts, 1987*, Williamsburg, Va.: National Center For State Courts (1989).

drug sale cases are faster than other case types, case processing is complicated by laws that impose mandatory, two-year prison terms for people convicted of possessing relatively small amounts of cocaine if it is possessed with intent to sell. Guilty pleas have allegedly dropped substantially in these cases. Because of serious jail crowding in both Jersey City and Newark, also due in part to the drug problem, less serious offenders remain out on bail while the court concentrates on processing cases with defendants in custody. All these factors appear to contribute to greater delay in disposing of less serious felonies.

Do drug cases take longer to process than other felony cases? The answer is yes in some courts but no in others. In most

courts where the disposition time of drug sale cases is significantly different than other case types, the differences are usually consistent with the general patterns identified in Figure 3. Moreover, conversations with judges, prosecutors, and defense attorneys from several jurisdictions indicate little difference in the way drug cases are handled compared to other case types. All this evidence leads to the conclusion that where case-processing times for drug cases are significantly faster than for other case types, the differences are probably due to the policy significance given to drug cases in local jurisdictions. Where drug cases take substantially longer than other case types, drug cases might be delayed by problems such as the processing of lab tests and the manage-

ment and resolution of litigated motions. Otherwise, in most jurisdictions, drug cases are not by nature more difficult to process than other cases.

In summary, the percentage of drug cases in the 17 urban trial courts noted in Figure 2 has increased dramatically—56 percent from 1983 to 1987 alone. Conversations with many judges and administrators suggest even greater increases in some courts between 1987 and 1989. Although there were considerable variations among the courts, drug sale cases generally had somewhat shorter disposition times than most serious cases, but took somewhat longer in the upper court than did other case types. Disposition times in drug sale cases were significantly different than disposition times for at least

Figure 4
Average Felony Case-processing Times in Days, 1987
Indictment or Information to Disposition

Court	Drug Sale Cases	Most Serious Cases	Drug Possession Cases	Other Felony Cases
Salinas, Calif.	34	55 ^a	25	31
Fairfax, Va.	44	41	38	34
Detroit, Mich.	65	101 ^a	47	63
Dayton, Ohio	67	52	72	53
St. Paul, Minn.	89	89	111	109
San Diego, Calif.	91	84	49 ^a	58 ^a
Atlanta, Ga.	95	347	94	186 ^a
Oakland, Calif.	96	143 ^a	89	85
Minneapolis, Minn.	111	121	152	111
Bronx, N.Y.	118	268 ^a	134	193 ^a
Pittsburgh, Pa. ^b	126	200	n/a	153
Miami, Fla.	127	251 ^a	169	374 ^a
Portland, Oreg.	132	180	182	177
Washington, D.C.	152	99 ^a	109 ^a	106 ^a
Cleveland, Ohio	153	137	145	124
Wichita, Kans.	161	164	150	144
Colorado Springs, Colo.	193	217	99	111
Jersey City, N.J.	203	274 ^a	246	359 ^a
Phoenix, Ariz.	203	198	82 ^a	127
Norfolk, Va. ^b	232	120 ^a	n/a	106 ^a
Newark, N.J.	262	310	203	367 ^a
Providence, R.I.	280	346	192	354
Boston, Mass.	322	493 ^a	n/a	394
Denver, Colo.	n/a	238	154	247
New Orleans, La.	n/a	115	59	54

a T-test shows a statistically significant difference between this mean and the mean for drug sale cases.

b Drug sale cases include all drug-related cases.

one other case type in 13 courts. In 11 courts, there were no significant differences between drug sale cases and other felony case types.

Impact of drug cases on delay

The role of drug cases in court delay cannot be studied as an isolated phenomenon. Many diverse factors contribute to the pace of litigation. A recent study analyzed the relationships among 22 indicators of court size, caseload per judge, case mix (including the percentage of drug cases), and court management as well as their impact on felony case-processing times in 26 courts.⁷

The most important factor related to felony case-processing time was firm trial dates (indicated by a higher percentage of jury trial case that start on the first scheduled trial date). Firm trial dates set at a

reasonably early date are likely to lead to earlier guilty pleas or dismissals because the parties realize that the court generally does not grant postponements.

Data also indicate that early resolution of pretrial motions was strongly associated with firm trial dates. Early pretrial motions and firm trial dates are indicators of early lawyer preparation and active judicial involvement in caseload management. Because decisions on pretrial motions often determine the probable outcome of a jury trial, earlier decisions on pretrial motions lead to earlier guilty pleas and, possibly, fewer cases to set for trial. Thus, courts that established control early in their cases generally had firm trial dates.

While firm trial dates were related to faster case-processing times, a higher percentage of bench warrant cases was related to longer processing times. This finding is understandable: if a bench war-

rant is issued, a case could be several years old before the defendant is rearrested. More bench warrant cases will lead to more old cases.

However, courts with more bench warrant cases also tended to have more cases without a bench warrant that were older than the American Bar Association's disposition time standards. Thus, courts with more delay in cases without a bench warrant also had more problems in screening and monitoring defendants released before trial (indicated by the higher percentage of bench warrant cases). To some extent, then, the bench warrant factor is an indirect indicator of the effectiveness of management policies within the jurisdictions.

Besides firm trial dates and the bench warrant rate, case mix played a prominent role in case-processing times. A higher percentage of the most serious cases in the caseload was most clearly related to longer median case-processing times in the upper court for all felonies. The percentage of drug sale cases in the caseload also showed a significant relationship to median total case-processing time for all felony cases after the influence of other factors was controlled.

A larger percentage of drug sale cases, however, probably is not a cause of court delay. Courts that were relatively fast on other case types tended to be fast on drug cases; slow courts tended to be slow on all case types. It is also clear in Figure 5 that the courts that experienced the largest increase in drug cases in recent years (Boston, Bronx, and Jersey City) were already among the slower courts in 1983.⁸ The drug caseload in these courts in 1983 was approximately the same as the drug caseload in some of the faster courts (Detroit, New Orleans, and San Diego). In fact, there was no association between the percentage of all drug-related cases in the caseload and upper-court case-processing time in 1983. Thus, neither the influx nor the magnitude of drug cases appear to have caused court delay in these courts. Rather, courts that were already relatively slow experienced the greatest increase in drug cases and, therefore, had the largest drug caseloads in 1987. This may underlie the correlation between the percentage of drug sale cases and case-processing times in 1987.

The study also supports the argument that drug sale cases are essentially similar to other felony case types. The best predictors of disposition times in drug sale cases were generally the same as for all

felony cases: firm trial dates and the bench warrant rate. Firm trial dates led to faster processing of drug sale cases, while a higher bench warrant rate was related to longer disposition times.

An additional finding related to drug cases suggests one very notable difference in case-disposition patterns between drug cases and all other case types: drug cases that were eventually dismissed tended to be dismissed much later in the judicial process than were all other types of cases. Interviews with court personnel in some of the courts with a high volume of drug cases revealed that complicated package deals involving multiple drug cases and multiple defendants are often put together. As part of these deals, additional pending drug cases may be dropped relatively late in the justice process. Problems in getting the results of lab tests and in resolving pretrial motions related to searches and seizures also led to later dismissals in drug cases. These factors could contribute to the appearance that drug sale cases take longer to dispose than other case types in some jurisdictions.

In summary, the findings suggest that courts can reduce their pace of felony case litigation, including litigation for drug cases, by focusing on early court intervention in case processing and a firm trial date policy. In general, these factors indicate early and active judicial control over the caseload and a commitment to having events take place when scheduled. The data also suggest that, all other factors being equal, having higher percentages of the most serious and bench warrant cases will probably result in longer overall case-processing times. The bench warrant rate, however, could be reduced through more effective screening and monitoring of defendants awaiting disposition. In addition, a higher percentage of drug sale cases in the caseload appear to be related to court delay. This finding, however, probably occurred because courts that were already relatively slow in earlier years tended to be the ones experiencing the greatest increase in drug cases in recent years.

Policy agenda

A policy agenda identifies problems but, more importantly, also assigns priorities to problems and offers responses to those problems. Findings from the analysis presented above, combined with the general findings of previous studies described in the caseload management literature,

Figure 5
Percentage of Drug-related Cases and Case-processing Times, 1983-87^a

Court	Upper-court Median Case-processing Time			Percentage of Drug-related Cases		
	1983	1987	Percent Change	1983	1987	Percent Change
San Diego, Calif.	36 ^b	50	39	18	28	56
Detroit, Mich.	43	38	-12	20	20	0
Phoenix, Ariz.	44	85	93	23	24	4
New Orleans, La.	49	42	-14	20	32	60
Portland, Oreg.	52	94	81	10	18	80
Dayton, Ohio	64	42	-34	11	12	9
Oakland, Calif.	*	65	*	19	37	95
Minneapolis, Minn.	84	84	0	9	10	11
Cleveland, Ohio	88	82	-7	12	17	42
Pittsburgh, Pa.	90	97	8	7	13	86
Miami, Fla.	92	112	22	19	33	74
Wichita, Kans.	108	133	23	12	17	42
Providence, R.I.	*	111	*	20	30	50
Jersey City, N.J.	121	150	24	21	45	114
Newark, N.J.	146	125	-14	40	42	5
Bronx, N.Y.	161 ^b		114	-29	22	46 109
Boston, Mass.	307	233	-24	16	44	175
Average	99	97	-2.0	17.6	27.5	56.2

a Case types were determined by the most serious charge in the indictment or information. The table does not include cases in which drug-related charges were involved but were not the most serious charge (murder, rape, robbery, kidnapping).

b Median case-processing time is based on estimates. Mahoney's report (cited below) did not include guilty pleas to felony charges entered in the lower court, upon waiver of indictment, in calculating time from indictment or information to disposition. Lower-court guilty pleas were included in felony case-processing times in the 1987 study. In 1987, median felony case-processing times excluding lower-court guilty pleas were 30 percent longer in Bronx and 17 percent longer in San Diego than median case-processing times including lower-court guilty pleas. These proportions were used to estimate median case-processing times for 1983.

Source: 1987 data were obtained by the National Center for State Courts in a study funded by the Bureau of Justice Assistance and reported in J. Goerdt, C. Lomvardias, G. Gallas, and B. Mahoney, *Examining Court Delay: The Pace of Litigation In 26 Large Urban Trial Courts, 1987*, Williamsburg, Va.: National Center For State Courts (1989).

Case-processing times in 1983 are reported in B. Mahoney, et al., *Implementing Delay Reduction and Delay Prevention Programs in Urban Trial Courts*, Williamsburg, Va.: National Center for State Courts, (1985). Data on drug caseloads for 1983 were obtained through research conducted by the National Center for State Courts in a study funded by the National Institute of Justice (Grant No. 84-IJ-CX-0007).

reveal six components that should be incorporated into a drug case processing policy agenda.

First, courts should design comprehensive caseload management programs. As indicated in Figure 4, relatively slower courts tend to be slower in processing all case types; faster courts tend to move all their cases relatively faster. The differences between drug sale and other cases, for example, tend to be smaller within both slower and faster courts than are the case-processing time differences across courts. Research also suggests that courts that manage their civil caseload expeditiously

and effectively also tend to manage their felony caseload effectively.⁹ Courts that effectively manage their entire caseload are, therefore, likely to process their drug cases expeditiously.

Second, courts should implement mechanisms for working more closely with nonjudicial agencies.¹⁰ Drug cases illustrate the tremendous interdependence among the numerous agencies that form an interorganizational justice network. Many actors are involved and so are the types and sources of information needed (both case specific and systemwide) to move a case along the numer-

ous steps in the judicial process. Numerous, too, are the decision makers, both official and unofficial, involved in a case. For example, law enforcement officials and the police on the beat determine who will and will not be arrested based on organizational policy and individual judgment. Pretrial release and probation officials, judges, and even private bondsmen often determine who will be released from confinement. Sheriffs and corrections officials, in their assessments of who should receive priority in crowded jails, often are involved (either implicitly or explicitly) in determining who will be released from confinement. Often, district attorneys have considerable discretion when determining the formal charges to be brought against the accused, while the public defenders determine what is an acceptable deal.¹¹

Third, courts should lead the justice system in developing mechanisms for early case processing intervention and control. For example, to dispose drug cases, information is needed about the incident, the accused, the realistic availability of a variety of sentencing alternatives (space for incarceration, resources for treatment, probation supervision, etc.), the chances for conviction, and the case's broader legal merits. Evidence obtained through the Bureau of Justice Assistance's Comprehensive Adjudication of Drug Arrestees Project and Differentiated Case Management Project revealed that by instituting changes in police, probation, prosecutor, defender, and court procedures, the information needed to dispose drug cases could be obtained sooner in the justice process.¹²

For example, on-site drug analysis tests could be used to establish probable cause so that lab testing does not delay the processing of drug cases. Defense counsel assignment practices, especially for public defenders, can be developed that will ensure early contact with the defendant. Prosecutors can assign staff who have the skill and authority to put together realistic plea offers early in the process. Through rule changes, courts can establish events such as prearrestment, scheduling, and pretrial conferences, which facilitate early and regular contact between defense attorneys and their clients. Courts should also develop mechanisms for encouraging early resolution of pretrial motions, which force earlier preparation by attorneys and lead to earlier resolutions of issues.¹³

Early control results in earlier guilty pleas and firmer trial dates. Again, the

mechanisms that encourage early resolution of drug cases are similar to the many successful mechanisms for early case resolution that have been frequently documented in the case management literature.¹⁴

Fourth, additional resources should be added to the justice system only after the needs of all justice system agencies have been assessed. There is some evidence that delays in drug case processing caused by too few judges are less likely than delays caused by too few support personnel. In

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particular, having too few support personnel responsible for gathering crucial information and having too few staff to prepare adequate sentencing reports are problems in many jurisdictions.¹⁵ Also, for many systems, having too few drug-testing laboratories, pretrial release and probation staff, and interpreters—rather than too few judges, prosecutors, or defenders—is the cause of drug case processing bottlenecks. Similarly, evidence from the National Center for State Courts/Bureau of Justice Assistance Caseflow Management Technical Assistance Project has revealed that in some jurisdictions, being

unable to move large numbers of defendants quickly and safely (to attorney interviews or between overcrowded jails and courtrooms, for example) is a more likely source of case-processing delay than the lack of sufficient judges. In any event, other potential sources of delay need to be examined systematically. Simply adding judges should not necessarily be the first policy response to increasing drug caseloads.

Fifth, courts should recognize that they need to be more proactive in anticipating and preparing for changes in justice system policies, especially drug enforcement policies. By being reactive, bottlenecks and inefficiencies will inevitably occur in court when police, prosecutors, or legislators decide to crack down on drug offenders. Courts need to participate in promoting more proactive, comprehensive planning efforts that anticipate changes in drug statutes and enforcement policies. For example, courts need to develop and express their assessments of how changes in drug policies might affect them, preferably when those changes are still before the legislature. A comprehensive justice system impact statement covering courts, law enforcement agencies, and prisons should accompany drug enforcement legislation. Professional standards and perhaps even separation-of-powers provisions might inhibit courts from being too proactive. Still, their voices can be heard through state administrative offices of the courts and professional organizations, including court administration organizations.

Finally, courts and other criminal justice agencies should become more active in local education and community outreach programs that inform the community and young people especially about the social and individual harm caused by drug use. Education may ultimately be the most lasting and effective tactic in the war on drugs.

In general, court policies regarding drug cases should be guided by the sound management principles identified in the policy agenda outlined above, clarity about the objectives of the states' and nation's drug policies, and concern for fairness and the court's institutional integrity.

Research agenda

For most practical management purposes, even though drug cases pose a potentially serious challenge for many urban trial

courts, the court management profession now provides appropriate tools for meeting the challenge. However, more should be known about the impact of the war on drugs on the criminal justice system if timely, effective, and cost-efficient drug case processing strategies are to be developed. Four components in particular should be included in a research agenda.

First, more should be known about the relationships among resources (additional judges or other staff support), new procedures, court leadership, and court delay. In addition, there remains a great need for basic research on many essential court management concepts, for example, better measures of workload and resources. Workloads and resources of district attorneys, public defenders, pretrial services, and probation departments should be examined for their impact on case processing. Perhaps, most importantly, better indicators of the quality of justice and court performance are needed.¹⁶

Second, research should systematically examine experimental programs in differentiated case management, in which cases are assigned to tracks with different time standards based on the complexity of the case. Such programs are currently being developed in several states under grants from the BJA. Experiments with drug courts should be monitored and compared to traditional case management methods.¹⁷

Third, examination of the effects of drug cases on justice systems should be expanded to include more than just effects on case-processing time. Management's response to drug cases may cause other types of cases to not receive the attention they merit. For example, do "get-tough-on-drug-offender" policies lead to probation for other types of offenders who normally would not be considered good probation candidates? Do civil caseloads suffer as judges and other court resources are shifted in response to a drug caseload increase? To what extent is jail overcrowding in a jurisdiction attributable to changes in drug laws and enforcement policies? What has been the impact of drug use on the juvenile and domestic court caseloads? Has the quality of justice or the rights of defendants been affected by the war on drugs?

Fourth, research should focus on the effects of the justice system's drug policies on local communities. For example, what happens to other public agencies when local and state resources are directed away

from other priorities to the justice system? Does drug use increase within a community as a result of intensified justice system activity? How do increases in justice system activity directed toward the drug problem improve the quality of life within a community?

In short, research has contributed to the development of a broad base of

knowledge needed to describe the management practices that help courts, in general, process cases more expeditiously. However, research that provides a greater understanding of the conditions and context of successful court management should continue to be among the court management profession's highest priorities. scj

Notes

1. Bureau of Justice Statistics, *BJA Data Report*, 1988, Washington, D.C.: Government Printing Office (1989), p. 24. Bureau of Census, *Statistical Abstract of the United States: 1988*, Washington, D.C.: Government Printing Office (1989), pp. 165, 173.

2. J. Goerd, C. Lomvardias, G. Gallas, and B. Mahoney, *Examining Court Delay: The Pace of Litigation In 26 Large Urban Trial Courts*, 1987. Williamsburg, Va.: National Center For State Courts (1989).

3. R. Lipscher, "The Judicial Response to the Drug Crisis, Final report of the Conference on the Judiciary Response to the Drug Crisis in the Most Populous States," April 1989, published in this issue of the *State Court Journal*. H. Jaffe, "Special Report on Drugs and Criminal Justice," *New Jersey Star-Ledger*, Newark, N.J., June 11-16, 1989.

4. The courts from which data were collected for this article include courts in Boston, Mass.; Bronx, N.Y.; Jersey City and Newark, N.J.; Pittsburgh, Pa.; Providence, R.I.; Atlanta, Ga.; Washington, D.C.; Fairfax and Norfolk, Va.; Miami, Fla.; New Orleans, La.; Cleveland and Dayton, Ohio; Detroit, Mich.; Minneapolis and St. Paul, Minn.; Wichita, Kans.; Denver and Colorado Springs, Colo.; Oakland, Salinas, and San Diego, Calif.; Phoenix and Tucson, Ariz.; and Portland, Oreg.

5. Goerd, et al., 1989

6. Drug sale and drug possession cases were both coded as drug sale cases in Norfolk, Va.

7. Goerd, et al., 1989.

8. See Barry Mahoney, et al., *Implementing Delay Reduction and Delay Prevention Programs in Urban Trial Courts*, Williamsburg, Va.: National Center for State Courts (1985).

9. Goerd et al., 1989.

10. B. Mahoney and D. A. Sipes, "Toward Better Management of Criminal Litigations," 72 *Judicature* 29 (1988). B. Mahoney, W. Hewitt, M. Solomon, M. Thornton, and L. Ridge, *Courts That Succeed*. Williamsburg, Va.: National Center for State Courts (1989) (forthcoming).

11. A. Alschuler, "The Prosecutor's Role in Plea Bargaining," *University of Chicago Law Review* 36 (1968): 50. A. Alschuler, "The Defense Attorney's Role in Plea Bargaining," *Yale Law Journal* 84 (1975): 1179. A. Alschuler, "The Trial Judge's Role in Plea Bargaining," *Columbia Law Review* 76 (1976): 1059. A. Alschuler, "Plea Bargaining and Its History," *Law and Society Review* 13 (1979): 211. G. Gallas, "The Conventional Wisdom of State Court Administration: A Critical Assessment and an Alternative Approach," 2 *Justice System Journal* (1976): 35. F. Feeney, "Interdependence as a Working Concept," in D. Moxon, ed., *Managing Criminal Justice: A Collection of Papers*, London: Home Office Research and Planning (1985). H. Jacob, "Courts as Organizations," in K. Boyum and L. Mather, eds., *Empirical Theories About Courts*. New York: Longman Inc. (1983). D. Saari, *American Court Management: Theories and Practices*, Westport, Conn.: Quorum Books (1982).

12. T. Henderson, "Judicial Management Strategies for Addressing Drug Caseload," paper prepared for the Conference on the Judicial Response to the Drug Crisis (unpublished manuscript), April 1989.

13. See Goerd, et al., 1989: 80

14. Mahoney and Sipes, 1988; Mahoney et al., 1988; M. Solomon and D. Somerlot, *Caseload Management in the Trial Court: Now and for the Future*. Chicago: American Bar Association (1987); E. Friesen, "Cures for Court Congestion," 23 *Judges Journal* 4 (1984).

15. Henderson, 1989

16. The BJA's and NCSC's Trial Court Performance Standards Project is developing and testing performance standards and measures that address the following areas: equality and fairness, access to justice, institutional integrity, public trust and confidence, and expedition and timeliness; see Commission on Trial Court Performance Standards, *Tentative Trial Court Performance Standards with Commentary*. Williamsburg, Va.: National Center for State Courts (1989).

17. See Henderson, 1989.