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Issues and Practices

Justice and Treatment Innovation: The Drug Court Movement

**A Working Paper of the
First National Drug Court Conference
December 1993**

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National Institute of Justice



State Justice Institute

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**Justice and Treatment
Innovation: The Drug Court Movement
A Working Paper of the
First National Drug Court Conference,
December 1993**

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NCJRS

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**A Final Summary Report Presented to the National Institute of Justice
October 1994**

U.S. Department of Justice
Office of Justice Programs

National Institute of Justice

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Justice and Treatment Innovation: The Drug Court Movement

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Executive Summary

The First National Drug Court Conference

A national meeting of judges, prosecutors, defense lawyers, bar association representatives, court administrators, substance abuse treatment providers, and representatives of other service agencies who were engaged in a specialized treatment approach to processing drug-involved offenders was convened in Miami, Florida, during the first week of December 1993. To facilitate the exchange of information about developments in localities and to share the lessons—both good and bad—already learned by jurisdictions implementing treatment drug courts, the National Institute of Justice, the State Justice Institute, the Center for Substance Abuse Treatment, the American Bar Association, and the Dade County Office of Substance Abuse Control contributed in a variety of important ways to make the Conference a reality. What had been planned as a small symposium to discuss issues in the operation of treatment drug courts grew to a meeting of more than 400 persons. The response to the Conference mirrored developments in the field as the treatment drug court concept grew from the original Miami innovation and was adapted to the specific needs of other jurisdictions, ranging from Multnomah County (Portland), Oregon; Berrien County, Michigan; and Broward County (Fort Lauderdale), Florida; to Clark County (Las Vegas), Nevada; Louisville, Kentucky; and Austin, Texas, to point out only a few. The Conference proceedings revealed that many more courts had recently put treatment drug courts into operation or were in various stages of planning. In her address to the Conference, U.S. Attorney General Janet Reno noted the surprising growth of the treatment drug court since 1989 when, as Dade County's State Attorney, she had worked with the Miami courts to set the first such drug court in motion. In his Conference comments, Dr. Lee Brown, Director of the Office of National Drug Control Policy, strongly supported treatment efforts represented by the drug court movement.

The Origin of Treatment Drug Courts

Although the origin of the concept had many contributing factors, the impetus for the development of the treatment drug court in Miami in 1989 and its subsequent spread to other jurisdictions in part grew out of a sense of frustration that law enforcement and imprisonment policies alone were not having the impact on drug supply or demand that the proponents of the "War Against Drugs" of the 1980's had hoped for. The challenge for court systems posed by the "explosion" in criminal caseloads driven by drug cases came on top of what in some jurisdictions already amounted to crises of caseload backlogs and delay. Courts responded in several ways to the burgeoning drug caseload, including developing strategies that focused on improved caseflow management, establishing specialized courts for expedited drug case processing, or, in some instances, struggling with the drug-related caseloads as best they could, sometimes being forced to draw resources away from civil and other court divisions.

In 1989 the judicial leadership, then State Attorney Reno and the public defender in Dade County, Florida, joined with community leaders and the county drug treatment agency to design

and implement a diversionary treatment drug court. The Miami felony drug court departed from the traditional court approach to treatment in which the court acted mainly as a referral point, sending selected offenders to treatment as a condition of probation, for example. Instead, the Miami planners designed a diversionary strategy targeting felony defendants shortly after arrest and implemented a judge-directed alternative processing approach. The approach was based on a team approach between the defender and prosecutor in the courtroom to encourage treatment progress. It recognized treatment specialists as important partners in the "experiment." That court differed from traditional courts in that the judge, prosecutor, defender, and other agency staff were trained in addicted behaviors and, by policy, exercised some tolerance for the periodic setbacks and lapses that defendants were likely to face in the treatment process—as long as their misbehavior was not of a serious criminal type. The treatment regimen relied on community-based outpatient treatment methods comprised of several phases of progression toward graduation, which included acupuncture as a treatment adjunct.

Unorthodox though it may have been, the approach adopted in Miami influenced officials in more than 20 other jurisdictions across the country to implement versions of treatment drug courts between 1991 and 1993, including Oakland, California; Portland, Oregon; Las Vegas, Nevada; Berrien County, Michigan; Broward, Escambia, Okaloosa, and Bartow Counties, Florida; Maricopa County (Phoenix), Arizona; Louisville, Kentucky; Mobile, Alabama; Kansas City, Missouri; Austin, Texas; and Washington, D.C. A prosecutor-based approach channeling second-time felons to residential treatment has been operating from the District Attorney's Office in Brooklyn since 1990. Other courts, such as those in Charlotte, North Carolina, and Baltimore, Maryland, are in the advanced planning stages. The State of North Carolina has proposed legislation to authorize the State court system to implement drug courts, and the Arkansas State court system will formally open its integrated treatment approach in the late spring of 1994. Allegheny County (Pittsburgh), Pennsylvania, has just begun operation of its treatment drug court and Los Angeles, California, and Seattle, Washington, are planning to have similar courts underway in the spring of 1994. Serious consideration is being given to the treatment drug court idea in many other jurisdictions, ranging from Salem County, New Jersey, and Ventura, County, California, to Rochester, New York, and Richmond, Virginia. At this time, however, a comprehensive list of all treatment drug courts in operation or about to begin still does not exist.

The Core Elements of Treatment Drug Courts

One of the principal aims of the First National Drug Court Conference was to identify the key elements of treatment drug courts, as they have been established in a variety of locations across the United States. Discussion at the Conference pointed to the following elements which are discussed in more depth in the Working Paper:

- Judicial leadership and the central judicial role is a defining characteristic of treatment drug courts.
- Collaboration beyond the norm among criminal justice agencies, courts, treatment agencies and community organizations is fundamental in establishing drug court and its treatment approach and is essential in ensuring its effective operation.

- Effective education and training programs must be devised to help judges, prosecutors, defenders, and other criminal justice practitioners learn about substance abuse, addictive behaviors, and treatment approaches and to help treatment providers and public health officials understand the criminal justice process.
- A custom-designed treatment program that responds appropriately to the treatment needs of the court's targeted population of defendants or offenders is the backbone of the treatment drug court approach.
- The treatment drug court addresses a specifically defined target population as a matter of policy.
- The ability to supervise defendants and offenders effectively and to monitor progress in treatment depends on an integrated management information capacity that links the court with criminal justice and treatment agencies and produces timely, accurate information needed for case decisionmaking.
- Funding sources to begin and sustain a drug court must be identified.
- An overall detailed implementation plan should be produced to describe how the drug court will typically operate, including scheduling milestones and orientation/training for all of the participants for their expected roles and participation.
- Finally, an evaluation strategy should be designed at the outset of planning for a drug court to define outcome measures of interest, identify the types of information required to measure those outcomes, and suggest a timetable for analysis and reporting on the outcomes.

Implementation Issues

The design and implementation of a treatment drug court approach—assembling the key elements just described—requires resolving a number of critical issues. Some of the principal issues discussed at the Conference are outlined below.

The Treatment Drug Court versus Traditional Case Processing and Referral to Treatment

In many jurisdictions, the drug court approach represents a new way of doing things. The judge has much more involvement in supervising drug court offenders than just placing an individual in a probationary or diversionary program for drug treatment. The treatment drug court involves much more of a "hands-on" attitude toward treatment and individual performance. The resulting treatment experience has the authority of the judge at its center and is anchored squarely in the context of the criminal process. In addition, the treatment drug court holds the defendant or offender publicly accountable for his or her treatment progress; as a result of the courtroom appearances required of the participant as progress reports are given, defendants (or offenders, in later judicial stages) can see not only that the judge responds directly to treatment

events in his or her case, but also that the experience involves a coalition of defense, prosecution, and treatment staff.

Establishing a Framework of Collaboration and Cooperation Within and Between Criminal Justice and Treatment Agencies and the Community

The experience of jurisdictions to date has already demonstrated that the treatment drug court cannot be established without a working arrangement among all major players concerning new rules of operation and common goals. Representatives from jurisdictions that had successfully begun drug courts shared their experiences at the Conference, showing how to build the coalition that will be required to operate an effective treatment drug court. The simple reality is that criminal court judges feel they are constrained by legal and public safety concerns to deal with certain categories of defendants or convicted offenders over whom they have authority for a given period of time. Treatment agencies sometimes react by arguing that many of these persons would not be "amenable" to treatment according to usual eligibility criteria or that a different (usually longer) period of time for treatment would be required to accomplish meaningful changes in the lives of the clients. Communication that enables criminal justice and treatment officials to gain an understanding of each other's needs and their varying perspective begins the groundwork for the development of a treatment drug court approach. Community input and support is obviously essential in a program of drug treatment that will be largely community-based, as reliance upon residential care and incarceration is reduced. The nature of the relationship between the court and community representatives, organizations, and institutions may vary widely depending on the objectives and circumstances of the drug court.

The Judicial Role

The judicial role clearly distinguishes the drug court treatment approach from other treatment experiences offenders may have had. Offenders typically are called before the drug court judge to account publicly for their behavior or progress. Typically, a dialogue ensues between the court and the client about various addiction issues. The judge's role requires integrating information about treatment progress (and other conditions of the program, diversion, or sentence that may be relevant) with information about the defendant's/offender's legal status, pending cases, or outstanding charges. In addition, the judge serves as the overall facilitator of treatment by resolving other criminal justice issues, helping to overcome problems impeding treatment progress, and resolving difficulties ranging from housing to employment and other social services.

The Role of Counsel: Defense and Prosecution

The treatment drug court approach, particularly at the diversion stage, poses dilemmas for both the prosecution and the defense. Defense counsel, for example, may raise the following kinds of concerns:

- Although his or her client may require drug treatment, the defense counsel may be unwilling to waive the defendant's rights or agree to operate on the presumption of guilt.

- "Voluntary" participation in treatment at diversion may not be truly voluntary.
- The treatment program represents a more onerous outcome than could have been earned through normal adjudication of the charges.
- The treatment offered is of the wrong type (that residential treatment is needed, for example) and focused on the wrong target population.
- The conditions of program participation (e.g., frequent attendance, reporting in-person to the judge, urine testing) may serve as disincentives to participation.
- The prosecutor may be "dumping" cases into the program that should instead be dropped.
- Participation in the treatment court may, if unsuccessful, later prejudice the defendant's adjudication of the charges, by providing documentation that the defendant was indeed drug-involved.

Prosecution staff may have concerns about the treatment drug court including:

- Whether the treatment drug court program should focus on "appropriate" defendants, the definition of which may be linked to justice concerns and public safety risk.
- Whether defendants who are not drug-involved will use the drug court as an "easy" way out of normal adjudication or whether treatment will represent a more "lenient" response than offenders deserve.
- How to reserve the discretion to prosecute cases of defendants or offenders who do not take advantage of the program and *nolle prosequere* or otherwise withdraw charges in cases in which the program was completed successfully.
- The definition of "successful completion."
- Assurances that defendants and offenders will comply with the requirements of the treatment program and that compliance will be enforced.
- The nature of the treatment-related role prosecution staff will play in the courtroom.

Targeting Specific Criminal Justice Populations

Defining the target population to be served by treatment drug court—identifying and agreeing upon acceptable eligibility criteria—amounts to a critical policy decision that will have important implications for the operation and effectiveness of the drug court. Conference participants identified two basic threshold questions for identifying categories of potential drug court candidates:

- The extent of the potential participant's drug involvement.

- The relative risk the potential participant would pose to public safety.

Jurisdictions varied in selection of target populations on a number of broad criteria, including:

- Criminal process stage for intervention.
- Type of defendants or offenders selected (e.g., involving drug cases, other cases, domestic violence, juvenile delinquency, with or without prior convictions).
- Types of procedures required for participation (e.g., voluntary diversion, condition of probation, stipulation to the facts, prediversion plea).
- Types of treatment resources available (which determines the types of drug involvement that can be treated).

Making use of available data to estimate the impact of the selected target population on the system is likely to provide some evidence that the target population will involve "real" cases of drug-involved offenders, rather than selecting categories of persons who are ordinarily dropped early in the criminal process or who are not seriously drug involved and who may not be in need of treatment. As a court program gains experience, it should review and perhaps reassess its targeting policy on a periodic basis.

Screening (Reaching) Drug Involved Defendants/Offenders

Programs reveal that there is a potential gap between defining a target population and having the ability to secure the participation of eligible individuals in the treatment process. To hope to have the desired impact, the treatment drug court needs to implement a screening mechanism that identifies and "enrolls" candidates promptly and effectively, often at the earliest stages of processing, even though information on defendants is not yet fully developed or available. Many inadvertent "exits" may be available to candidate arrestees that may greatly reduce the numbers making it into the treatment program.

Designing a Treatment Approach To Serve the Drug Court

A great deal of the discussion at the First National Drug Court Conference focused on the components of treatment programs that are at the core of the drug court model. Questions concerned the following kinds of issues:

- How to resolve the conflict between criminal justice goals and treatment methods in a court-driven model.
- How to identify appropriate program content.
- How to sequence and locate the treatment facility.

- How to determine the desired length of the program.
- How to define the role of the court in the treatment process.
- How to estimate the relative costs of types of treatment.
- How to design a mechanism for reporting treatment progress in a timely fashion to the court.
- How to determine the criteria and procedures for termination from and reentry into the treatment program.

Treatment drug court regimens represented at the Conference employed a variety of treatment services, ranging from assessment and detoxification to counseling, outpatient treatment, residential treatment, and supplemental social services relating to health, employment, and education. Participants stressed the need for clear rules about the performance expected by the treatment program of its participants and the consequences for missed treatment, positive urine tests, and missed court dates. For a variety of reasons, some attendees argued that treatment programs might have greater impact and be more cost-effective if they differentiated among defendants and offenders entering treatment on the basis of their particular problems and treatment needs so that appropriate forms of treatment could be provided.

■ **The Role of Acupuncture**

Initial publicity relating to treatment drug courts at times focused sensationally on the fact that some courts—including those in Miami, Portland, Las Vegas, and Ft. Lauderdale—were making use of acupuncture as a tool in their overall treatment programs to enable individuals to focus more on treatment and less on finding and using drugs. An issue that may need to be addressed by jurisdictions assembling a treatment approach for a drug court concerns the desirability and feasibility of offering acupuncture or other treatment adjuncts.

■ **Mechanisms for Retaining Defendants/Offenders in Treatment**

The backbone of an effective drug court treatment program should involve some mechanism that provides sufficient assurance to the court and to the community that defendants and/or offenders will participate in the treatment process seriously. The mechanism that encourages retention in treatment is critical for two main reasons: (1) to provide the best possible chance that treatment will be effective and (2) to assure community safety. In deciding on establishing measures to encourage compliance, a jurisdiction may confront what amounts to two schools of thought that were reflected in discussions at the Conference. One approach—deriving mainly from criminal justice concerns—has been to allow the participant a fixed number of failures (absences, positive drug tests, etc.) but then to invoke graduated sanctions after subsequent misconduct. For example, some jurisdictions have proposed a day in jail for the first positive test and successively more jail days as a result of subsequent positives, or something similar. A

second approach—deriving mainly from the experience of the first generation of treatment drug courts—starts with the premise that the drug-involved offender is a person from whom, by definition, irresponsible and problem behavior can be expected, particularly at first. Proponents of this view recognize the need for clear behavioral (and public safety) boundaries across which the participant should not venture and still expect to be in the program. However, this view builds in the expectation that numerous initial failures will occur and that constructive steps should be planned to address those missteps in the treatment process.

■ **Access to Treatment**

Questions of access to treatment have implications for the fairness of the drug court's treatment approach as well as the ultimate effectiveness of the treatment program. An essential element of an effective treatment approach is the ability to provide treatment immediately or as soon as possible. Target population policy (who will and who will not be eligible for drug court) as well as physical and geographical location of treatment program facilities in a jurisdiction may lead inadvertently to the exclusion of some participants, including, for example, those for whom the location of the program is too remote from where they live or poses transportation challenges too difficult to overcome (e.g., public transportation does not serve that area). The capacity of the treatment approach to handle all drug-involved individuals identified through the targeting policy also raises access questions: some eligible persons may not be able to receive treatment. The lack of child care services may prevent some female defendants or offenders from attending treatment—effectively denying them access to treatment. The selection of one target population and the exclusion of another in defining eligibility for treatment may also raise questions of equal access.

■ **Avoiding Net-Widening**

Some Conference attendees expressed concern that one possible unanticipated side-effect of the treatment drug court approach could be net-widening. The lessons from diversion and crowding reduction programs of the 1960's and 1970's apply as well to drug courts: there is a danger of "missing" the desired target and spending resources on cases that ordinarily would be rejected by the system.

■ **Attendance in Drug Court and Treatment: The Failure-To-Appear Problem**

Studies and experience have now shown that, whatever the important advantages of requiring defendants or offenders to report in-person and frequently to the drug court judge (and this is one of the special themes of the drug court model), a predictable side-effect may be increased failures-to-appear (FTA's) in court, if the practicalities involved in such frequent appearances are not considered in advance. By its mission, the treatment drug court has decided to deal with a disproportionately undependable defendant or offender population. As a result, a side-effect may be that rates of FTA's in court may be worse than for other populations. Some have argued to the contrary, however, that planned corrective methods, supervisory techniques, or other forms of restraint associated with

participation in the treatment court may in fact serve to strengthen supervision and offender accountability and end up reducing missed appearances in court and at treatment.

■ **Resource Implications**

Conference participants discussed a variety of questions related to the resource implications associated with establishing a treatment drug court. Among the many considered were the following:

- **Staffing.** For judges, courtroom support staff, defense counsel, prosecutor, treatment staff, probation, and pretrial services (some argued that additional court staff were not required).
- **Program space.** The costs of treatment program space, adjacent space for participating agencies, and a link with jail.
- **Drug testing.** The costs of drug testing to monitor compliance.
- **Treatment services.** The relative costs associated with different approaches and the various means for billing for services.
- **Changes in procedures.** The resource implications of changes in processing, filing, use of court reporters, and other operational changes.
- **Administration.** To what extent does a treatment drug court add administrative costs, if any?
- **Management information.** The costs of developing an effective capacity to assemble and provide timely and accurate information to the court regarding treatment progress and other data.
- **Evaluation.** The comparative costs of various approaches to evaluation research.
- **Savings.** The possible savings to the system when defendants and offenders are placed in the court treatment program in lieu of normal processing or jailing and potential future savings to the community from reduced crime, reduced drug use, and improved health.

At the time of the First National Drug Court Conference, few operating drug courts had obtained Federal assistance. Some jurisdictions obtained local funding from city, county or court budgets; a few devised particularly creative strategies for generating new revenue. Others found funds under existing State funding schemes and some attempted to reallocate treatment and other social services to serve area residents who were being processed through the criminal justice system.

■ **Tailoring an Information Management Capacity for Drug Courts**

It seems self-evident that the drug court courtroom cannot operate without up-to-the-minute information of several types. Within the criminal justice system, several independent sources of information are required, including prior history, currently processed criminal cases, and/or jail and probation information. Several kinds of drug treatment information also will be important to the judge and other system actors, including initial intake/assessment information, treatment progress (e.g., treatment plan, attendance, type of activity, "graduation" or completion of particular milestones), drug testing results, other background information, treatment counselor summaries, reports to the court for required hearings, and final treatment status when a case is closed. Particularly innovative approaches to developing such an information management capacity have been implemented in the District of Columbia in Superior Court and in New York's Midtown Community Court.

■ **The Implications of Drug Courts for Managing Criminal Courts**

The drug court movement represents, among other issues, a movement toward court specialization. One of the hypothesized impacts of the treatment drug court model is that caseload pressure should be relieved from other court functions and resources should be saved as a result of an efficient and effective treatment approach. The establishment and operation of a specialized drug court has implications for the parent court system that need to be considered, studied, and addressed so that a constructive and positive impact can be demonstrated and any administrative, caseload, or resource problems posed for the larger court system can be identified.

■ **Statewide Approaches**

Several sessions of the Conference highlighted both the potential advantages of and the possible constraints associated with statewide approaches to establishing treatment drug courts—particularly at the diversion stage. Depending on the substance of the statewide approach and on the concerns of the local jurisdictions, there could be important advantages to a unified State court approach, as long as sufficient flexibility was retained by local jurisdictions to select target populations, devise treatment approaches, and work out local cooperative arrangements between criminal justice actors and treatment providers. The Working Paper points out State-level approaches in North Carolina, where treatment drug court legislation has recently been drafted, and in Florida, where State law and a State court approach have assisted the development of treatment drug courts in the last 2 years. In Arkansas, the court system was expected to begin operation of a statewide approach in the late spring of 1994.

■ **Assistance in Planning and Implementation**

A final but recurring theme in sessions at the First National Drug Court Conference was the need for assistance to court systems that are addressing planning and implementation issues. One of the most frequent recommendations was for the creation of a resource center or clearinghouse to build a network among sites, communicate recent

developments and research relating to critical issues associated with drug courts, and help provide education, training, and technical assistance to facilitate program development.

Research and Evaluation

■ **Research Approaches and Costs**

Many of the Conference participants argued that the treatment drug court movement represents a dramatic new way of doing things. Precisely because of this promise and the possible implications of these approaches, rigorous, dispassionate evaluation research was considered an important priority and was a principal theme in discussions at the Conference. To date, one formal evaluation focusing on the Miami felony drug court has been completed. Drug courts in the District of Columbia; Arkansas; Maricopa County (Phoenix), Arizona; and Dade County (in its Domestic Violence Court for drug abusing offenders) are at various stages of experimental evaluation. Researchers in sessions dealing with evaluation emphasized the desirability of experimental approaches. When experiments are not feasible, second-best approaches can be used to obtain the needed feedback on the impact of the drug court—precisely because they can actually be carried out in the real world. The cost of funding research evaluations depends on the scope of the questions asked, the availability of information, the ability of the jurisdiction to perform key tasks itself, and a variety of other site-specific questions. Evaluation research should attempt to address cost and savings implications of the treatment drug court approach. Ideally, evaluation efforts should be timely and collaborative, and the initial use of outside researchers should position the court to be in a better position to collect and analyze data in the future.

The Next Generation of Treatment Drug Courts

■ **Jurisdictions Preparing To Establish Drug Courts**

As the First National Drug Court Conference was being held in Miami in December of 1993, the next generation of treatment courts was already preparing for implementation, including courts in Los Angeles, California; King County (Seattle), Washington; Ventura County, California; Charlotte, North Carolina; Baltimore, Maryland; and Allegheny County (Pittsburgh), Pennsylvania. In addition, a number of Florida counties are now at various phases of planning and implementation as of April 1994. The Arkansas court system is implementing a statewide approach. Treatment drug court legislation has been submitted for funding a State-level approach in North Carolina. The movement to develop treatment courts seems still to be growing.

■ **Beyond "Just" Drugs: Courts Expanding the Concept**

First-generation treatment drug courts overcame traditional barriers and developed collaborative approaches to address drug-involved defendants and offenders in various ways. One of the dramatic discoveries of the First National Drug Court Conference was that in a number of locations the innovative and collaborative methods characterizing the

first generation of treatment drug courts had been adapted to deal with other justice populations ranging from female offenders in Kalamzoo, Michigan, to misdemeanants in Manhattan's Midtown Community Court and domestic violence substance abusers in Dade County's County Court. Participants argued that the treatment drug court approach also would be effective in dealing with populations of drug-involved juveniles.

■ **Federal Funds To Implement Programs**

At the time of the First National Drug Court Conference, only a handful of jurisdictions had received Federal assistance for the development or evaluation of drug courts. Proposals to fund treatment drug courts have been submitted in the context of the passage of a Crime Bill, as versions of legislation reach the conference stage from the Senate and House of Representatives. The Office of National Drug Control Policy and the U.S. Department of Justice have supported measures to assist the development of treatment drug courts.

Justice Treatment and Innovation: Next Steps

Since the December 1993 Conference, the drug court movement has moved to center stage in debates about drugs and crime at the national level. Testimony before Congress by Conference participants, the drafting of Federal legislation to support drug courts, steps toward formation of a coalition of treatment drug courts and associations at State levels (e.g., in California and Florida) and nationally, and efforts of a wide range of jurisdictions have played a role in making drug courts and related approaches one of the priorities to be addressed in a final Crime and Drug Bill during the 1994 sessions of Congress and by the U.S. Department of Justice.

■ **Documenting the Extent of the Drug Court Movement**

One of the rationales for convening the First National Drug Court Conference was to try to determine the scope and character of the drug court movement. Beyond some of the initial drug court jurisdictions, knowledge of the full extent of efforts nationally was spotty, based largely on word of mouth, as one jurisdiction visited another or jurisdictions consulted original drug court sites. But as interest has grown—and partly as fruits of the free exchange of knowledge and ideas that occurred at the Conference—we are once again left without a clear picture of the full extent of the drug court movement. Thus, identifying and updating information about current drug court jurisdictions, jurisdictions planning to implement drug courts, and jurisdictions in the early stages of discussion of the concept remains an important priority.

■ **Establishing Parameters and Basic Standards**

One of the striking findings of the Conference was the diversity of approaches displayed as jurisdictions developed and adapted the treatment drug court models to meet their own needs. The character of innovation between justice and treatment systems was revealed to be broader and deeper than perhaps the simple outline of the original drug court model

would have suggested. The diversity and variation in approaches also underscored the critical need for defining the boundaries of what a drug court is and what a drug court is not—in other words, for defining some parameters and basic standards for drug courts.

■ **Establishing a Resource Center and Clearinghouse To Facilitate Justice and Treatment Innovation in Collaborative Court Approaches**

A principal recommendation arising from the First National Drug Court Conference was to develop a resource center or clearinghouse that could maintain and further develop the network established informally among jurisdictions, assemble up-to-date information about the development of drug courts and related areas of justice and treatment innovation, and assist jurisdictions with information and guidance as they address issues in the development, operation, or evaluation of drug courts. The Conference demonstrated the importance of prosecutors talking to prosecutors, defenders to defenders, treatment providers to treatment providers, chief judges to chief judges—and all to one another—in devising solutions to problems presented and addressing the challenges of this evolving approach to justice and treatment innovation aimed at making a real difference in drug-related crime at the local and State levels.

I. The First National Drug Court Conference

The Need for a First National Meeting of Drug Courts

A national meeting of judges, prosecutors, defense lawyers, bar association representatives, court administrators, substance abuse treatment providers, and representatives of other service providing agencies who were engaged in or about to become engaged in a specialized approach to processing drug-involved offenders was convened during the first week of December 1993, in Miami, Florida. Miami emerged as an appropriate site because the Dade County court system has been credited with pioneering the treatment drug court model that served as a catalyst for many efforts underway in a wide variety of jurisdictions across the United States. As the innovation grew and spread and was adapted to the specific needs of other jurisdictions, court officials in other locations such as Multnomah County (Portland), Oregon; Oakland, California; and Broward County (Fort Lauderdale), Florida; among others, were soon also receiving visitors and phone calls and otherwise responding to requests for information. The visits, phone calls, and media coverage all pointed to the fact that a rare phenomenon of innovation and renewal was occurring in criminal justice and it was operating on the local and State levels without Federal direction. The principal reason for the Conference, "Drug Courts: Next Steps," was to provide a forum for the wide variety of participants to discuss issues in the operation of drug courts at a time when the trend toward local development of treatment drug courts appeared to be gaining momentum and energy.¹

The proliferation of treatment drug court efforts has been spontaneous and represents a type of approach with great potential, even as it challenges traditional approaches of courts and treatment agencies. The rapid growth of the treatment drug court movement also raises questions about many of its assumptions, procedures, and emerging practices. As the Conference was convened, it became clear that the "movement" was growing faster than knowledge about its substance and impact. Indeed, while the diverse approaches now in evidence across the Nation share common goals and methods, no singular definition of what a treatment drug court actually is has emerged.

To facilitate the exchange of information about developments in localities and to share the lessons—both good and bad—already learned by jurisdictions implementing treatment drug courts, the National Institute of Justice, the State Justice Institute, the Center for Substance Abuse Treatment (CSAT), the American Bar Association, and the Dade County Office of Substance Abuse Control contributed in a variety of important ways to make the Conference a reality. Presentations by the Honorable Janet Reno, Attorney General of the United States, and the Honorable Lee Brown, Director of the Office of National Drug Control Policy, at the Conference demonstrated the interest in these issues by the Administration. In her address to the Conference, U.S. Attorney General Reno noted the surprising growth of the treatment drug court since 1989 when, as Dade County's State Attorney, she had worked with the Miami courts to

¹ The State Justice Institute is funding a second, related conference, a National Symposium on the Implementation and Operation of Drug Courts, to be held in early 1995.

set the first such drug court in motion. In his Conference comments, Dr. Lee Brown strongly supported treatment efforts represented by the drug court movement.

At the time of the First National Drug Court Conference, the drug court mini-movement appeared remarkable in many ways relating to both substance and form. Although questions about funding and resources were certainly critical to these innovations, few of the jurisdictions that had operating drug courts had received Federal assistance to implement their programs. Instead, funding approaches for the existing drug courts were generally crafted on the local level, usually in settings where resources for new programs were hard to find. In part, these efforts were driven by a shared dilemma, which was to cope with a huge influx in criminal cases with dwindling resources. But, in addition, many conferees suggested that they were motivated by a need to try "something new," guided by a different philosophy concerning intervention and treatment in cases more typically handled via strictly punitive means. In what at the Conference were revealed to be diverse efforts underway in all parts of the United States, central themes and common messages were identified, together reflecting a compelling need to draw substance abuse treatment and other community resources into new working relationships with courts to confront the drug problem, its role in crime, and its impact on the community and the criminal justice system.

Most significant, the need for a first national gathering of drug court jurisdictions was powerfully demonstrated by what was occurring in the field—in courts and communities. In localities—and some States—officials have been struggling to devise effective responses to the large numbers of drug-involved cases and persons who routinely enter criminal court systems across the United States. The Conference revealed a pent-up demand for knowledge about sound strategies based on local experience. In fact, what had been planned as a small conference of approximately 200 participants grew to a meeting of more than 400 persons by the time the doors closed.

The Purpose of the Working Paper

The National Drug Court Conference provided the first opportunity to observe the nature and extent of the drug court movement in the United States and the kinds of issues it was addressing. This Conference Working Paper attempts to describe what was observed, to provide an overview of some of the key issues, and discuss the "Next Steps" (as the Conference title itself suggested) of the treatment drug court movement.² The title "Working Paper" is meant to convey the notion of a work in progress, the work of carefully thinking about and understanding the development of drug courts and the challenges they face now and in the near future. Its aim is to serve as a first step in defining the drug court movement and its implications to serve as the foundation for the next conference and next conference working paper.

² Please note that the National Institute of Justice will publish a summary of the proceedings of the Conference during 1994. The purpose of that volume will be to highlight the discussions in each of the Conference sessions.

II. The Origin of Treatment Drug Courts

The Explosion of Drug-related Court Caseloads in the 1980's

Although the origin of the concept may be more complex, the impetus for the development of the first treatment drug court in Miami in 1989 and subsequent extension to other jurisdictions stemmed from a sense of frustration that law enforcement-oriented and imprisonment policies alone were not having the impact on drug supply or demand that the proponents of the "War Against Drugs" of the 1980's had hoped for. With the emergence of cocaine use in the early 1980's and crack cocaine and PCP use in the mid- and late 1980's, national policy began to respond to growing concerns about the relationship between drugs and crime; the growth of criminal enterprises aimed at production, trafficking, and distribution of drugs, and drug use among youth and the general population. Law enforcement approaches focused on drug-related crimes—most commonly possession of illegal drugs in an amount that met statutory thresholds for charging possession with intent to sell or distribute—and soon those cases contributed to unprecedented growth in the criminal caseloads of State and Federal trial courts as the primary policy response focused on supply reduction, interdiction, and prosecution. The challenge posed by the explosion in criminal caseloads came on top of what in some jurisdictions already amounted to crises of caseload backlogs and delay.

Courts Specializing in Expediting the Processing of Drug Cases

Courts responded in several ways to address the challenges presented by the burgeoning drug caseload. Some courts developed strategies that focused on overall caseflow management improvement and sought to integrate more efficient processing of drug cases into the overall context of improved processing of all criminal cases. Other jurisdictions instituted specialized courts whose sole purpose was to expedite the processing of drug cases and become expert in addressing evidentiary motions and related issues that greatly impeded timely adjudication of drug cases. Other courts, some of which had already been struggling with mounting problems of delay and growing backlogs, were nearly overwhelmed and attempted to cope with their drug-related caseloads as best they could, sometimes being forced to draw on resources from civil and other court divisions.

The Miami Treatment Drug Court Model

In 1989, at the peak of the "War Against Drugs," the judicial leadership, the then State Attorney Reno and the public defender in Dade County, Florida, joined with community leaders and the county drug treatment agency to design and implement a diversionary treatment drug court, credited as being the first of its kind. The Dade strategy was based on a conscious decision to attack the cause of the growing numbers of drug-related cases rather than the numbers themselves. (In fact, Miami had informally developed a highly efficient fast track for drug cases by accepting pleas to credit for time served.) The rationale was that, given the relentless and growing felony caseload in Dade County, it would be worthwhile to attempt to give defendants an opportunity to change by offering a demanding program of drug treatment.

II. The Origin of Treatment Drug Courts

The resulting program targeted felony drug defendants at the post-arrest stage and devised a nontraditional courtroom approach combining both "carrot" and "stick." The "carrot" was the opportunity for self-improvement and drug treatment, with the possibility of having charges *nolle prossed* and then sealed upon successful graduation from the Drug Court program. The "stick" consisted of the risk of confinement that would be invoked if individuals violated clear public safety "boundaries" that defined eligibility in the program. Defendants failing the program, even after repeated tries or after being rearrested for new offenses more serious than their original drug charges, risked time in jail and return to normal adjudication of their charges (and the penalties associated with them). This approach was premised on the notion of elevating treatment to a more equal partnership with prosecution.

The Miami Drug Court departed from the traditional approach in which the court was simply the point of referral to treatment. Instead, it established the court itself as an integral part of the treatment process. It was constructed around a new, somewhat unorthodox role of the judge and the courtroom, and was based on a team approach between criminal justice adversaries (defender and prosecutor) who worked with the judge in the courtroom setting to encourage treatment progress, in an approach resembling what one defender characterized as more of a "theater in the square" than a traditional courtroom. It also recognized the need to understand and credit treatment specialists as important partners in the drug court experiment and emphasize outpatient treatment modalities. This diversionary approach differed from tradition in that, while it was grounded on the cooperation and approval of the prosecutor, it was the judge who presided over the alternative processing approach.

The Miami Drug Court program initially sought the voluntary participation of third-degree felony defendants to enter a four-phase treatment program that began on the day of what normally would have been the felony bond hearing (the day of or after arrest, with intake and detoxification), ending after approximately 1 year of treatment and culminating with educational and vocational assessment and job placement. That Court differed from traditional courts in that the judge, prosecutor, defender, and other agency staff were trained in addicted behaviors and, by policy, exercised some tolerance for the periodic setbacks and lapses that defendants were likely to face in the treatment process—as long as their misbehavior was not of a serious criminal type.

Other First-Generation Treatment Drug Courts

Unorthodox though it may have been, the approach adopted in Miami influenced officials in a number of other jurisdictions to implement versions of treatment drug courts that were, in some cases, roughly similar to the Miami approach, and, in other instances, quite different. In January 1991, Alameda County (Oakland), California, established a diversionary treatment program (the F.I.R.S.T program) in Oakland Municipal Court to intervene with misdemeanor defendants charged with drug violations who would be diverted to probation for a three-phase program using "contingency contracts" and frequent in-court reviews of progress. In Multnomah County (Portland), Oregon, during the fall of 1991, the circuit court, public defender, district attorney, and community corrections formed a team approach to establish a similar kind of drug court which targeted defendants entering at the initial stages of processing. Portland's (S.T.O.P.) program aimed at persons charged with possession of controlled substances and was flexible about defendants' prior criminal histories. Broward County (Fort Lauderdale), Florida, instituted a diversionary treatment drug court program in 1991 which focused on first-time felony

offenders. A treatment court approach was established in Berrien County (St. Joseph), Michigan, in fall 1991 in the Second Judicial Circuit that focused on diversion and probation populations. Clark County's (Las Vegas), Nevada, program opened in October 1992 as a diversionary court.

Development and operation of a treatment court has been underway in Mobile, Alabama, since 1991. Louisville, Kentucky, opened a court in 1992. Beginning in April 1992, Maricopa County (Phoenix), Arizona, Superior Court adapted the drug court approach to persons convicted of felony possession offenses and borrowed the "contract" approach from the Oakland court and employed a deferred 60-day jail sentence. The structure of the Phoenix probation program was tailored to accommodate an experimental evaluation designed to contrast the treatment drug court approach with other forms of handling drug offenders on probation such as randomly allocating probationers to the drug court, urine testing alone, or a combination of drug court and urine testing.³ Although the first generation of treatment drug courts relied principally on community-based or "outpatient" forms of drug treatment programming in 1990, a prosecutor-based approach (DTAP) developed by the District Attorney's Office in Kings County (Brooklyn), New York, began diverting second-time felony offenders to residential drug treatment who would otherwise have faced mandatory prison sentences.⁴

A wide variety of jurisdictions have established or have begun to establish drug courts in the past year. Other drug courts in Florida followed the Dade court during 1993, including Escambia County, (June), Bartow, (October) and Okaloosa County (October)—with a court in Gainesville on the point of operation. Rockville, Maryland, opened a court in September 1993, and Jackson County (Kansas City), Missouri, began its court in October 1993. The courts in Austin, Texas, established a drug court in 1993. With funding from CSAT, late in 1993 the Washington, D.C. Superior Court expanded its expedited drug case processing approach involving felony sales to institute a demonstration program based on a three-track approach to drug-involved cases (incorporating an experimental design). The tracks include graduated sanctions and detoxification, intensive treatment, or surveillance and referral to existing treatment programs outside of the court. The Court of Common Pleas in Allegheny County, Pennsylvania, began a treatment drug court in March 1994.

At the time of the conference, other courts were in advanced planning stages. Los Angeles planned to begin operation of a drug court division in Municipal Court by late spring 1994. Seattle and Baltimore were planning to begin their courts in the spring or summer of 1994. Charlotte, North Carolina, who in an advanced stage of planning for its drug court and the legislature in North Carolina, was considering legislation that has been proposed to authorize the State court system to implement drug courts on a statewide basis.⁵ With funding from CSAT and other sources, the Arkansas State court system was to formally open its integrated treatment

³ The evaluation of the Maricopa County drug court in Superior Court, funded by the National Institute of Justice, is being conducted by Deschenes and Greenwood of the RAND Corporation.

⁴ See the testimony of Susan A. Powers, District Attorney from Kings County, New York, before the House Judiciary Committee Subcommittee on Crime and Criminal Justice on February 22, 1994.

⁵ See General Assembly of North Carolina, Extra Session 1994, House Bill 36, "North Carolina Drug Treatment Court Program Act," and its related Senate Bill 150 (March 1994).

approach in the spring of 1994. According to Conference questionnaires and subsequent updates, serious consideration is being given to the treatment drug court idea in Salem County, New Jersey; Ventura County, California; Sarasota, Florida; Richmond, Virginia; and Rochester, New York. In short, while the Conference revealed the breadth and diversity of drug court undertakings in jurisdictions across the United States, it did not provide a total picture of all treatment drug courts in operation or about to begin operation.

III. The Core Elements of Treatment Drug Courts

One of the principal aims of the First National Drug Court Conference was to identify the key elements of treatment drug courts as they have been established in a variety of locations across the United States. One of the most striking characteristics of treatment drug courts has been their diversity. However, they have shared a common frustration that demand reduction initiatives (like the treatment drug court strategy) have been relatively poorly funded. They have employed different structures, offered different treatment program components, and focused on different target populations. Treatment courts have operated at one or more stages of criminal processing, including diversion, sentencing, and jail-release. The diversity of existing treatment drug courts notwithstanding, a number of core elements were identified on the basis of discussions at Conference workshops.

Judicial Leadership and the Judicial Role in Treatment Drug Courts

Perhaps the defining characteristic of treatment drug court approaches is the most obvious: the central role and leadership of the judiciary. The drug court is led by a drug court judge who presides over a variety of hearings, treatment progress reports, bench warrants, terminations, and adjudication of criminal charges. At the center of courtroom activity, the judge not only oversees the case processing aspects of criminal cases but is actively involved in reviewing the status of defendants (in diversionary courts) or offenders (in probation courts) in the treatment program. The fact that a drug *court* has been established and that a judge has been assigned to preside in drug court also implies that the judicial administration has made the necessary arrangements and adjustments to support the drug court. In other words, the local court provides the leadership, authority, and management capacity to enable the drug court to operate. The court does not so much refer defendants or offenders to treatment (and then later receive periodic progress reports), as has been traditionally the practice; rather, it leads them through the treatment process. Thus, the criminal court not only provides the arena but also serves as the convener of drug court treatment operations. By the structure it provides—by establishing a separate, specialized court—and through the role of the drug court judge, judicial leadership is the foundation on which the overall treatment drug court approach is most often built.

Collaboration Among Criminal Justice, Courts, Treatment Agencies, and Community Organizations

Collaboration among criminal justice agencies

The judiciary alone, of course, could not successfully implement and operate a treatment drug court. The drug court is really the result of a special collaborative effort, a team approach: first, among criminal justice actors, and, second, between criminal justice actors and treatment providers as well as other social services and community organizations. The origins of the approach may differ considerably from location to location. These courts rely on strong collaboration among judges, prosecutors, defense lawyers, and related supporting agencies (e.g., corrections, pretrial services, probation, etc.), on the one hand, and a partnership with treatment agencies (or providers) and other community organizations and representatives on the other. Such collaboration not only is fundamental in establishing such courts, but also is essential to ensuring their effectiveness. Without clear agreements on these matters, and fairly substantial adjustments in the traditional in-courtroom modes of operation by opposing counsel, the drug court cannot work.

Collaboration between criminal justice actors and drug treatment providers

Just as important is the working relationship developed between substance abuse treatment providers—whether government or private—and the drug court (which really means each of the criminal justice actors separately and collectively). In fact, the attempt to marry drug treatment methods to the goals of criminal court processing may be the most challenging aspect of developing a drug court. The criminal case processing concerns of the judiciary and the public safety- and punishment-oriented goals of the prosecution are not naturally compatible with drug treatment perspectives. Thus, a large part of the challenge of designing a treatment drug court strategy is to construct a working relationship between the court and the treatment providers—i.e., to design a tailor-made treatment program that serves the purposes of criminal processing while facilitating successful treatment for drug-involved defendants or offenders. This is no easy assignment for either of the parties. Treatment providers will no longer serve exclusively as the gatekeepers to treatment, as they have been accustomed to doing. Courts will decide who will be sent to treatment and when treatment can be terminated for poor performance. The differences in perspectives are illustrated in figure 1.

Partnership with the community

Drug involvement is not an isolated community problem related only to crime. Rather, drug involvement typically occurs in the context of other difficulties, such as those related to housing, education, public health, and neighborhood viability. The structured treatment program developed by the Miami court conceived of treatment progress as involving more than “just” drug treatment. For example, educational assessment and improvement, vocational training, and job placement were important Drug Court elements. Other jurisdictions have also assembled a “continuum of care” to respond to the problems experienced by persons going through the court treatment programs. Potentially, therefore, a range of social services could be involved in the program of treatment and intervention. As the Midtown Community Court in Manhattan has demonstrated recently, for these related treatment goals to be realized, cooperation and support

Figure 1 Drug Treatment and Criminal Justice Goals

<u>Perspective</u>	<u>Goals</u>	<u>Methods/Options</u>	<u>I.D.</u> <u>Target Population</u>	<u>Expectations of</u> <u>Performance</u>	<u>Measures of</u> <u>Effectiveness</u> <u>(Outcomes)</u>
Drug Treatment	<ul style="list-style-type: none"> • Reducing drug abuse and associated behavior 	<ul style="list-style-type: none"> • Identification/diagnosis • Detoxification • Maintenance • Acupuncture • Various treatments (counseling) • Outpatient/Inpatient • Educational/vocational training 	<ul style="list-style-type: none"> • Occasional/regular/daily user • Type of drug • Beginning/advanced (addict) • Younger/older 	<ul style="list-style-type: none"> • Counselors/treaters • Access to community based on treatment needs • Expect failure and slow progress • Flexibility and adjustment 	<ul style="list-style-type: none"> • Reduced abuse • Abstinence • Increased performance • Improved skills
Criminal Justice	<ul style="list-style-type: none"> • Reduced impact of drug caseload (divert flow, reduce future caseload return) • Reduced crowding • Curb drug crime among participants • Improve public safety • Credible/effective disposition of cases 	<ul style="list-style-type: none"> • Diversion/referral • Sanctions to enforce release conditions • Informal versus formal processing • Monitoring/supervision • Incarceration 	<ul style="list-style-type: none"> • Charge/priors • Less serious/lower risk to public safety • Serious enough not to "widen the net" (not misdemeanors) • Self-report/drug test • "Jail-bound" or not 	<ul style="list-style-type: none"> • Formal roles (judges, probation, prosecution, defense, etc.) • Probation-like supervision or monitoring • Enforcement of conditions of provisional liberty • Sanctions for failure including revocation, incarceration 	<ul style="list-style-type: none"> • Reduced current future/caseload • Abstinence • Reduced crime

from community resources and organizations may be essential. The Midtown Court's approach to misdemeanors in New York is based on the premise that many institutions and organizations outside of criminal justice have important reasons for participating in a community-based effort to address the drug problem. The same is true of the Domestic Violence Court approach to substance abuse in Dade County in which a network of community and social service organizations undergird efforts to address drug-related domestic violence. Similar claims can be made for Kalamazoo's special court for female offenders. Many of the courts represented at the Conference illustrated this fundamental theme that participation and support of such organizations will not only assist in having the drug court programs accepted in the community but also may offer resources and insights that can strengthen the effectiveness of the program.

Target Populations

One threshold issue in designing a drug court involves selection of an appropriate target population. Designation of a target population depends partly on analysis of the criminal caseload in a given jurisdiction and estimates of the impact that selection of various categories of defendants or offenders would have on system and treatment resources. An aim in selecting the target population is to find an appropriate population without either unduly "widening the net" of court intervention and diluting the potential impact of the treatment program, or creating undue risk to public safety or to the integrity of the court process. Once such a population is defined, it should be described in an explicit statement of policy and reviewed at later stages of program development.

Treatment Program and Operational Procedures

The treatment drug court approach is premised on the capacity to provide substance abuse treatment—and a variety of related services—to the defendants or offenders entering the program. An important part of planning is to craft a treatment approach that comports with an up-to-date knowledge of drug treatment methods and requirements and is customized to meet the criminal court's expectations in addressing the identified target population. The components, substance, modalities, sequence, procedures, and overall operation of the treatment program should be outlined in clear detail. Social services located in the community or participation of community organizations or representatives should be taken into consideration appropriately in the design of the drug court's treatment approach.

Compliance and Enforcement of Program Conditions

Participants of the First National Drug Conference argued that any drug treatment regimen serving a drug court should be based on realistic expectations about the problematic behaviors of drug-involved individuals. Conference attendees contrasted the treatment court approach with traditional punitive approaches, arguing that such approaches alone had made few inroads into the problems of the drug-involved criminal caseload. Nevertheless, it was also argued that an important element of every drug court approach is specification of the limits of unacceptable behavior by program participants. Policy should deal explicitly with:

- Attendance requirements.
- Other treatment requirements.

- Program and legal consequences for failing to attend required court reviews before the judge.
- Procedures to be applied when participants are arrested for new offenses.

Officials from a number of drug court jurisdictions stressed that graded responses or sanctions should be applied *based on a realistic understanding of drug-involved behavior* as well as on concerns for legal orders of the court and for public safety. Enforcement of program conditions according to schemes such as automatically escalating sanctions ignore the realities of drug-involved behavior and may undermine the ability of the court treatment program to engage defendants or offenders seriously in treatment. It may also result in an adverse impact on the court and correctional systems, as behavior by defendants or offenders hitherto undetected now can be viewed as a violation of requirements for participation in the drug court. Thus, more supervision may produce more violations and generate more work for the system than had been the case without the drug court approach. The enforcement approaches should also reflect the potentially different legal statuses of participants, including, for example, defendants on diversion, offenders on probation, and offenders released early from sentences to confinement or on parole—all of whom could be participants in treatment drug court approaches depending on the emphasis of the particular court.

Anticipating the Impact of Drug Court and Its Resource Implications

A number of attendees, who were involved with operating drug courts, strongly recommended that prior to finalizing an implementation plan, estimates of the probable impact of the drug court program should be produced. These estimates are particularly important in trying to anticipate resources that would be needed in treatment capacity, jail space, criminal courts, and personnel for all participating agencies to implement the program.

An Integrated Information Management Capacity

A fundamental requirement of the drug court concept is the development of a capacity to marshal necessary information on short notice and on a continuing basis. A core element of a drug court program includes operational procedures to collect, prepare, communicate, and analyze information relating to criminal case processing, prior criminal history, substance abuse and background information, treatment program progress, drug testing results, unfavorable program outcomes, and rearrest. All actors, including the judge, defense, prosecution, pretrial services, probation, and treatment staff have needs to keep up-to-date about defendant outcomes. Such an information capacity is also critical for assessing the impact of the program on an ongoing basis, for monitoring the program by administrators, and for contributing to periodic evaluations.

Funding

To date, few of the first generation treatment drug courts have been implemented with the assistance of Federal funds. Instead, drug courts have devised funding plans from existing local and, in some cases, State resources. In nearly all instances, drug courts were supported in jurisdictions facing serious resource constraints and were, as a result, sometimes forced to devise innovative funding approaches. Whatever the sources, implementation cannot proceed without

a clear funding plan that addresses all of the resource needs of the proposed program. A clear estimate of costs is essential in devising an affordable treatment program that responds to the needs of the targeted drug court population. Part of this assessment of costs should include careful and comparative analysis of treatment costs. One of the hopes of many proponents of the treatment drug court model was that, through careful selection of its target population and design of its treatment approach, the costs associated with the treatment of defendants or offenders could be cheaper than normal processing. In a number of jurisdictions, in fact, treatment has been implemented at costs considerably lower than simple jail incarceration would have entailed. However, reliance on residential care and some forms of private treatment care can result in costs rivaling or exceeding those associated with incarceration. One of the attractive concepts of the treatment drug court approach is that part of the costs are already borne by the system and are merely reallocated to the new processing arrangements. Cases are not being added to the system; rather, treatment and related services are being added to the existing system.

Implementation Plan

Once all of the components of the drug court approach are designed, the procedures spelled out, and funding sources identified, an overall implementation plan would be helpful. Its primary aim would be to describe in a reasonably detailed, step-by-step fashion just how the programmatic pieces will be put into place and how the drug court will typically operate.

Training and Orientation of Drug Court Actors

One of the essential steps in an implementation plan includes education, orientation, and/or training of all of the participants as to their expected roles and participation. Conference participants stressed the fact that working in the drug court will require different roles and perspectives than found in typical courtrooms. Such preparation for work in the drug court might include training in addicted behaviors, training in the collection and use of an integrated management information capability, and training in the use of various forms and procedures that may be new with the establishment of the drug court. Training can also be used to prepare the various actors for the change in the roles they will be playing as they create the drug court courtroom and for changes in expectations regarding the treatment process.

Evaluation Strategy and Periodic Review of Impact

Conference sessions emphasized the advantages of designing an evaluation strategy at the outset of planning for a drug court because of its importance in the implementation and operation of the court. Ideally, evaluation tasks would be integrated into the implementation of the treatment program and related procedures. Because the leadership of the drug court in the jurisdiction will periodically want to review a number of productivity and performance measures relating to the impact of the program, it is useful to plan for evaluation at the first stages of program development and implementation. The evaluation strategy should define outcome measures of interest, identify the types of information required to measure those outcomes, and suggest a timetable for analysis and reporting on outcomes. In short, an evaluation allows the leadership to link key outcomes to the original goals of the drug court program.

IV. Implementation Issues

Treatment Drug Courts Versus Traditional Case Processing and Referral to Treatment

One question that arises early in discussing the desirability of establishing a treatment drug court is "Why do we need a special drug court when we already refer defendants (in diversion) or offenders (on probation, in jail or on parole) to drug treatment programs? What problem are drug courts intended to solve?" Attendees had a variety of answers, most stemming from the growth in the drug-related caseload of the 1980's and 1990's. From an administrative point of view, the treatment drug court may be seen as a cousin of the expedited case processing drug court—or as another way to "move" drug cases that threaten to overburden the system. From other perspectives, the treatment drug court idea steps in where traditional processing and referral approaches leave off. Traditional approaches have in many instances not been effective in reducing the drug-involvement of persons processed through the criminal courts.

Thus, in many jurisdictions, the drug court approach is really intended to represent a new way of doing things. For example, the judge has much more involvement in supervising drug court than in just placing a defendant on probation with a requirement to attend treatment. The drug court approach represents much more of a judicial "hands-on" attitude toward treatment. It is an attempt to bring drug treatment to the criminal justice population entering court systems in a substantial and systematic way by integrating treatment into criminal processing while respecting the goals and concerns of the criminal process. Rather than referring certain offenders "out" to treatment, the drug court brings treatment to center stage in the criminal process and, in fact, into the criminal courtroom. The court process actually becomes part of the treatment. This is done partly in response to the challenges posed by the drug-involved caseload and partly to involve defendants/offenders in a treatment program tailored to the needs of the criminal justice population. The resulting treatment experience has the authority of the judge at its center and is anchored squarely in the context of the criminal process. In addition, the treatment drug court holds the defendant or offender publicly accountable for his or her treatment progress. Conference attendees with experience in drug court operations felt strongly that the public airing of the individual's progress before the judge can have a particularly forceful effect in retaining him or her in treatment.

For example, as a result of the courtroom appearances required of the participant as progress reports are given, defendants (or offenders, in later stages) can see not only that the judge is interested in his or her case but also that the experience involves a coalition of defense, prosecution, and treatment staff. The court might learn that a defendant is doing poorly in the outpatient program and arrange a residential placement until sufficient progress is shown, all with the support and active cooperation of the prosecutor and defender. In addition to being designed to respond to a sizeable and challenging drug-related caseload, the rationale for designing a treatment drug court is to deliver a more forceful and integrated version of drug treatment that serves the needs of the criminal court directly.

Establishing a Framework of Collaboration and Cooperation

Cooperation within criminal justice

Often, achieving agreement and support of all criminal justice actors to effect a major change in program or process is difficult. The experience of jurisdictions to date has already demonstrated that the treatment drug court cannot be established without a working arrangement among all major players concerning new rules of operation and common goals. If finding the necessary common ground within criminal justice has been difficult to achieve, establishing a healthy working relationship between criminal courts and drug treatment agencies (or private providers) has been even more challenging. Such collaborative relationships—within criminal justice and between criminal justice and drug treatment—are the most important building blocks in the establishment of a treatment drug court. So central is that concept that, for example, North Carolina's proposed legislation mandates the creation of a multidisciplinary "management committee" to oversee the statewide approach to treatment drug courts.

Participants at the Conference demonstrated that the driving forces behind the momentum to develop the drug court varied from place to place. It was not uncommon to hear that in some jurisdictions it was the defender who was initially interested but found that the prosecutor would not listen; or it was the prosecutor who was interested but the court would not go along; or it was a treatment agency that tried to become more involved with the courts but did not have any success. Questions among representatives of such jurisdictions were directed at learning how one can begin to build the coalition that will be required to operate an effective treatment drug court. Representatives from jurisdictions that had successfully begun drug courts shared their experiences. This usually involved a process of problem identification, negotiation among involved parties, and development of a working compromise that addressed mutual concerns.

Coeducation of treatment providers and criminal courts

Some courts reported problems when they had believed they had an agreement about the treatment program that would be provided, only to discover that the program was very difficult for the treatment provider to put into practice as originally conceived. Out of eagerness to find a source of clients and to develop a relationship with the courts, some treatment programs had a great deal of difficulty following through with the agreed-upon approach. Not infrequently, existing treatment agencies have reacted by stating that the courts' ideas about treatment are inappropriate or at least highly incompatible with what is viewed as "best practice" in the substance abuse treatment field. In other instances, the treatment community has attempted to engage the court system in a meaningful approach to substance abuse treatment and has had to work for a long period to educate court system participants about the nature of drug involvement and the core elements of a reasonable treatment approach. A process of mutual coeducation of court officials and treatment providers then often has ensued until common ground could be reached. Judging from discussions at the Conference, the pat answers of some treatment organizations have plainly not been acceptable to criminal courts and have reflected an inability to be flexible in devising a suitable program. The simple reality is that criminal court judges believe they are constrained by legal and public safety concerns to deal with certain categories of defendants or convicted offenders over whom they have authority for a given period of time. Treatment agencies sometimes react by arguing that many of these individuals would not be

“amenable” to treatment according to usual treatment eligibility criteria or that a different (usually longer) period of time for treatment would be required to accomplish meaningful changes in the prospective clients’ lives. As a result, courts may feel that normal or preexisting treatment approaches cannot serve their target populations.

Communication that enables criminal justice and treatment officials gain an understanding of each other’s needs and perspectives lays the groundwork for development of a treatment drug court approach. Their ultimate success rests with the leadership and authority of the courts and related agencies to develop common ground between the specific needs of the criminal court and the usual regimes offered by treatment providers.

Community input and support

Community input and support are obviously essential in a program of drug treatment that will be largely community-based. As treatment involves a variety of services and possible interventions, community organizations can be instrumental in delivering components of the drug court treatment program or in otherwise providing support. For example, in Dade County, the final phase of treatment occurs at the community college where educational and vocational assessment and training are provided. In the Midtown Community Court in Manhattan, which handles misdemeanors in the Times Square area, community organizations play an advisory as well as supervisory role in providing opportunities for offenders to community service. The Midtown misdemeanor court may be the court that integrates community needs, representatives, and functions most centrally into its operations. The nature of the relationship between the court and community representatives, organizations, and institutions may vary widely depending on the objectives and circumstances of the drug court. However, one of the special features of the treatment drug court is that it attempts to establish ties and working relationships with the community outside of the criminal court authority.

The Judicial Role

A central question raised by the treatment drug court approach is “What is the role of the judge?” The approaches taken in courts around the country demonstrate that there is more than one answer. Although varied, the judicial role does appear to have several important aspects. One unique feature of the judicial role in the treatment drug court is that it provides the authority backing the drug court approach. More frequently than is usual in normal adjudication or probation proceedings, offenders are called before the drug court judge to account publicly for their behavior or progress. The judge is an authority figure probably rarely encountered by most of them—at least on an in-person basis. The judicial role clearly distinguishes the drug court treatment approach from other treatment experiences offenders may have had. The graduation ceremonies employed by various courts also underscore the importance placed by the judge—and other public figures—on the treatment progress of the participants. In Portland, Oregon, for example, the police chief, governor, and district attorney have participated in graduations. In Broward County, graduation ceremonies feature special speakers and prizes, including key chains, tee-shirts, and bumper stickers reading, “I’m Too Good for Drugs!”

This authority-figure aspect of the judicial role is closely related to the hands-on or centrally involved character of the judge’s work in the drug court. One drug court judge at the

Conference described this aspect of the judge's role as serving as "the perfect honest broker" because the judge has nothing to gain from drug court arrangements. In many of the courts, defendants and offenders are required to appear at fairly frequent intervals, sometimes as often as once or twice a week, with the need for in-court appearances depending on progress in treatment. The judge hears progress reports and reacts to good or bad reports according to available options. Thus, in many respects, the judge takes on the role of the ultimate manager or supervisor of the treatment process, encouraging it where possible and drawing the line when program requirements have ultimately not been met.

The judge's role requires integrating information about treatment progress (and other conditions of the program, diversion, or sentence that may be relevant) to information about the defendant's or offender's legal status, pending cases, or outstanding charges. Some drug courts have given the drug court judge the responsibility for consolidating all criminal cases associated with each drug court participant. Thus, the judge's actions can take into consideration the defendant's or offender's overall situation and related cases. In addition, the judge serves as the overall facilitator of treatment by resolving other criminal justice issues and in helping to overcome problems standing in the way of treatment progress by resolving difficulties ranging from housing to employment, child care, and other social services.

The Defense Role

Discussions at the Conference illustrated well that the establishment of a treatment drug court raises many questions for defense counsel. A critical question for defense lawyers has to do with the priority of safeguarding a defendant's (or, at later stages, a convicted person's) legal rights versus doing what is in the best interest of the client. The treatment approach, particularly at the diversion stage, poses a particular dilemma for defense counsel—who may firmly believe that his or her client requires drug treatment. However, if the defendant is placed in treatment for drug-involvement, the fact of treatment may risk prejudicing outcomes at subsequent processing stages when this fact could be used to document that the defendant was indeed drug involved. At the Conference, defense concerns included the following:

- *Presumption of guilt/waiver of rights:* Being asked to agree to a presumption of guilt or a waiver of the right to speedy trial might be required in some courts upon entry into the proposed program.
- *Drug court as a more onerous disposition:* Involvement in the drug court treatment program could be more onerous in terms of length of time subject to court control and degree of restriction of liberty than whatever else the defendant might receive as a disposition, including a short term of incarceration or probation.
- *Program disincentives:* Defendants would not see any incentives for volunteering for the drug court approach because the program had too many conditions and obstacles that would be self-defeating when viewed from the defendant's perspective.
- *"Dumping" cases in drug court:* The prosecutor would use the program to "dump" bad cases that would otherwise have been difficult to sustain on the basis of admissible evidence.

- *Other, better target populations:* First-time offenders did not represent the best target population, because third- or fourth-time offenders would benefit more.
- *Belief that most defendants need residential treatment:* Residential treatment would be the most appropriate treatment modality because of the belief that outpatient or community-based treatment would not have much impact.
- *Being unfairly penalized for trying drug court:* Failure in the drug court would prejudice a defendant's chances once the case was returned to the normal adjudicatory routing.

These objections are fairly typical of the kinds of concerns shared by defense counsel in a large number of jurisdictions. These concerns must be addressed in building the collaborative approach required to operate a treatment drug court. Conference discussions demonstrated that, in many jurisdictions, these questions had satisfactory answers. In fact, in some locations, defenders were the chief advocates for the treatment drug court approach. Resolution of these types of questions are important because once these issues have been resolved, if they can be, the defender will play a more team-oriented, encouraging, and pro-treatment role in the drug court than would normally be the case. Although the defender will still identify cases in which charges should be dropped for lack of probable cause, his or her role in the drug court becomes much more treatment-oriented, designed primarily to assist the defendant (or offender) through various difficulties that might be experienced along the way. This will include representing the defendant who has failed the program as the original charges go to trial.

The Prosecution Role

As discussion at the Conference demonstrated, some of the biggest challenges associated with implementing treatment drug courts face the prosecutor. They include the following kinds of concerns:

- *Agreeing on eligibility for drug court:* A major concern for prosecution staff is that the treatment drug court program focuses on "appropriate" defendants and offenders and be carefully attentive to public safety concerns. This perspective plays an important part in determining the eligibility criteria for the program—a process that could not realistically take place without the substantial cooperation of the prosecutor—and, subsequently, in prosecutorial screening of cases entering the criminal process at stages where the treatment drug court option is relevant.
- *Believing the program is an "easy way out":* Prosecutors may be concerned that some non-drug-involved individuals may try to take advantage of the treatment program to avoid normal adjudication of their charges.
- *Targeting the seriously drug-involved:* In the process of deciding upon the target population, this concern often convinces the prosecutor to argue for restricting the eligibility to nonserious defendants or offenders, those at the misdemeanor level, and/or those who have no or few prior convictions and no charges involving crimes against the person. In Portland, the prosecutor began by taking the position that gang members and persons having prior records for serious offenses should be excluded from drug court. This position eventually

evolved into a much more flexible approach when it became apparent that drug-involved gang members were probably precisely among the types of offenders that should be addressed by an effective drug court program.

- *Retaining the discretion to prosecute:* A related concern of the prosecutor is how to reserve the discretion to prosecute cases of individuals who have failed to perform satisfactorily in the treatment program. Thus, agreements relating to special procedures for drug court cases need to be made explicit in advance, e.g., procedures that will govern the diversion process and the even the eventual dismissal or *nolle prosequing* of charges in successful cases.
- *Defining acceptable procedures:* Prosecutorial procedures may be linked to State law, for example, as in the case of the recent Florida diversion law and proposed legislation in North Carolina. Procedures may also be linked to powers held mainly by prosecutors to file, defer, or drop charges. A variety of such procedures were described at the Drug Court Conference. In Portland, again, defendants must first stipulate to the facts of the case and waive the right to a speedy trial to enter the year-long treatment program. In Miami, there is no such stipulation. Prosecution on felony charges is simply deferred pending progress in the treatment process. Cases are then diverted and later *nolle prosequed* if all requirements of the drug court program are met.
- *Formally prosecuting some cases:* For some types of defendants or offenders, the prosecutor may feel that there is no appropriate substitute for formal processing and that participation in the drug court would not be acceptable. This same concern would lead to an argument that defendants should plead guilty in advance (and waive the later right to trial) and/or serve a sentence to confinement prior to entering the treatment program. Such procedural agreements play an important role for the prosecutor in determining when normal adjudication can be reinstated, or probation or early release revoked, depending on the situation and program type.
- *Achieving accountability but not disincentives:* Adherence to conditions that are too restrictive may serve as a disincentive to precisely those individuals who may have the greatest need to be encouraged to participate in substance abuse treatment.
- *Defining the therapeutic role:* The prosecutor—like the judge and the defender—is asked to play a new role in the courtroom. One prosecutor from Miami described the prosecutor's role in the drug court as "bad cop" to the judge's "good cop" role. The prosecutor from Kansas City stressed the need to totally retrain prosecution staff to reorient them to the treatment approach in the drug court. While the traditional prosecution role is never far beneath the surface, it may be the prosecutor who provides the encouragement to the participant in drug court and who holds out the ultimate rewards, such as dropped charges and sealed cases.

Ultimately, the prosecutor, like the other actors, must decide that providing the opportunity for treatment is an important and appropriate part of the responsibility to provide justice, just as full prosecution and firm punishment are in other appropriate instances.

Targeting Specific Criminal Justice Populations

One of the fundamental elements of the treatment drug court approach is an explicit policy that clearly defines the population of offenders that will be targeted by the drug court strategy. Defining the target population—identifying and agreeing upon acceptable eligibility criteria—is a critical policy issue that will have important implications for the operation and effectiveness of the drug court. Discussions at the Conference also illustrated that a wide variety of perspectives on targeting are possible. For example, one approach to defining eligibility might involve a broad policy that employs few exclusion factors and assumes that a comprehensive treatment drug court approach will find "the right thing to do with them." This type of approach is essentially client driven not program driven and assumes that a treatment drug court should call upon a continuum of care, which might range from urine monitoring and community service on one end of the continuum to secure residential treatment on the other with a variety of social services and community supports at points between. Such an approach differs from a one-size-fits-all conceptualization of drug court and represents an ideal situation in which the required resources are available and the local criminal justice leadership supports such an approach. This open-door approach also assumes that the drug court has an effective means for diverting individuals from treatment who are discovered simply not to need it.

While perhaps no jurisdiction at the Conference fully epitomized that ideal, a number were hoping to evolve toward that state of affairs. The Arkansas statewide approach, for example, was addressing many of these concerns in its planning stages. Jurisdictions varied on a number of broad criteria that would influence the type of individuals who could enter the treatment drug court, including:

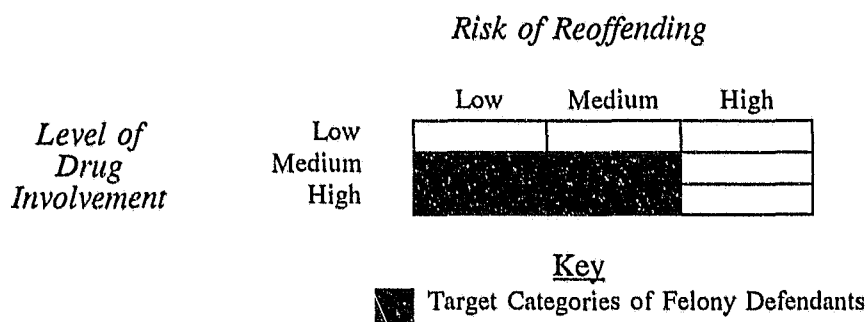
- *Stage of intervention:* Diversion after arrest, at sentencing, release from jail sentence, singly or in combination.
- *Types of defendants or convicted offenders:* Drug cases, with or without prior convictions of various kinds; other types of felony offenders; juvenile delinquency; domestic violence; misdemeanors; or female offenders.
- *Types of procedures required:* Voluntary participation, whether the defendants had to enter a prediversion plea or stipulate to the facts in the charges.
- *Type of treatment resources:* Outpatient, interim jail treatment, acupuncture, residential placement, etc., and the limits these resources might place on the type of offender that could be treated.

Targeting based on drug involvement and public safety risk

Participants at the Conference demonstrated that a variety of criteria may ultimately determine the types of individuals that will be eligible for the treatment drug court. The diverse targeting approaches described answered two fundamental threshold questions, one about the extent of a potential participant's drug-involvement and one about the relative risk that a potential participant would pose to public safety (see figure 2). For example, from the perspective of drug involvement, a given proposed drug court could aim at persons with

moderate or serious drug abuse problems, reasoning that persons less seriously involved may either desist on their own or might benefit from less intensive kinds of responses to discourage further drug abuse. (In addition, this approach would conserve treatment resources for the more challenging and difficult clients.) At the same time, officials might wish to exclude defendants or offenders with higher risks of reoffending as inappropriate candidates for a community-based outpatient approach. Instead, the proposed program might wish to target persons ranked as posing a lower or medium risk of reoffending, depending on the treatment resources available. The Brooklyn District Attorney's DTAP program, for example, aims at second-time offenders and focuses on longer-term residential treatment.

Figure 2 Conceptual Framework for Targeting Defendants for Drug Court



Such an analysis might suggest a targeting approach focusing on four of the nine possible conceptual categories consisting of medium-to-high drug involvement and low-to-medium risk of reoffending. An irony of applying this hypothetical approach to normal criminal caseloads in most American courts is that comparatively few defendants or offenders would fall into the categories of moderate-to-serious drug abusers who pose a low risk of reoffending. Involvement in drugs may by its nature serve to classify a defendant as at least a medium risk of reoffending. A number of officials from very different jurisdictions argued that the rationale for the drug court approach leads to the conclusion that the most challenging categories of offenders should be targeted.

The practicalities of measuring drug involvement and public safety risk

Translating these concerns into a practical application raises a number of operational issues. First, how does one know how to classify a person's level of drug involvement? How does one estimate a person's relative risk of reoffending and the threat that he or she may pose to the community? The methods that address these questions range from approaches making use of sound social science tools of classification to approaches employing rough, common-sense indicators of the two dimensions. More specifically, assuming availability of information, there are really only four ways to determine a person's level of drug-involvement:

- Test them for drugs.

- Interview them (self-report).
- Infer from current drug charges or from a pattern of prior drug offenses that they are probably drug involved.
- Make use of collateral sources with information relating to drug abuse problems or treatment history (e.g., family, treatment agencies, or other criminal justice agencies with whom the individual has previously had contact).

Potentially, a fifth way exists based on development of empirical tools predicting the likelihood that a person is a drug abuser.

Perhaps the best means of estimating the level of risk defendants or offenders pose is to employ an empirically derived risk instrument predictive of future offending. (Programs that do not start out with these empirically assisted approaches may at least later benefit from their development.) Until such tools can be developed, as a practical point of departure a drug court could employ an intuitively derived approach to estimating risk of reoffending based, for example, on past performance, prior involvement in criminal justice processing, and prior criminal histories. Thus, the Portland drug court began with a focus on first-time offenders, but later the eligibility criteria were expanded to include all offenders, regardless of prior criminal histories.

The amount and reliability of information (usually) improves as decisionmaking moves to later processing stages

Conference participants pointed to other considerations that affect the selection of the target population. For example, the stage of criminal processing can have an important influence on targeting decisions. A common-sense approach might work well at the post-arrest stages where a full-scale assessment of treatment needs cannot take place in time for entry into the drug court process. Under this type of approach, mistakes in processing have to be caught subsequently in court or at the intake stage of treatment where staff can more fully assess the extent of substance abuse problems. A benefit of early intervention is that the court can respond immediately to the defendant at a critical point from the point of view of "amenability" to treatment. However, at post-conviction stages it would be reasonable for a judge to expect that more indepth study or assessment could have taken place. At post-conviction stages when more time is available prior to judicial decisionmaking, a much better system for appraising the extent of substance abuse involvement can be in place and better estimates of public safety risk can also be completed and presented to the court. As a result, a jurisdiction may not need to focus on drug charges but rather on categories of sentences—such as 1 year's confinement in jail—that may include persons who pose an acceptable public safety risk. Thus, burglars, thieves, auto thieves, and other nonviolent offenders facing a year's sentence to jail might be equally eligible for drug courts.

Estimating the impact of the proposed target population

Before finalizing the targeting approach, it is useful to estimate the impact that selecting particular categories of offenders might have on the program, case processing, the jail

population, and other aspects of system functioning. This will assist in planning resources as well as determining whether selecting the particular population would have the desired effects. Setting the target too low may have the impact of overwhelming the drug court and its treatment program with more cases than can be reasonably handled. In addition, lower targeting may risk widening the net by increasing intervention in cases beyond what is usual or reasonable, given the offenses and possible penalties. Making use of available recent data to estimate the impact of the selected target population also provides an opportunity to provide some evidence that the target will involve real cases of drug-involved offenders, rather than categories that ordinarily are dropped early in the criminal process or that do not contain serious drug abusers who may be in need of treatment.

Reassessing the targeting approach

Finally, targeting is an ongoing policy exercise. As a program gains experience, it can reassess its targeting policy on a periodic basis. Conceivably, such reviews could lead to narrowing the target population or to expanding it to include new categories of defendants or offenders based on hard evidence about the impact of the treatment approach on the original target population. For example, changes in the original target populations have occurred in Portland and Miami.

Screening (Reaching) Drug-Involved Defendants/Offenders

Having explicitly defined a targeting policy—which could involve different categories of defendants or offenders at various stages of processing—a related but separate issue is its implementation. It is not an uncommon finding in evaluations of related programs to learn that only a small portion of the target population was actually screened or “enrolled” into newly implemented programs. Thus, while the small portion actually reaching treatment may have fared quite well according to program objectives, the jurisdiction may have failed to implement a screening mechanism that identified program candidates promptly and effectively and brought them to the point of entering the program without losing them.

It is another common finding from evaluation studies in criminal justice that a large part of program “drop-out” occurs prior to the first stage of the treatment or supervision program. That is, some defendants who are initially identified never make it down the hall or across the street to report to their first appointment. Several courts discussed this phenomenon as they addressed it in their early implementation stages. Clearly, a program will be much more effective if it anticipates these problems and constructs an effective screening mechanism. Although screening represents a serious issue for drug court programs at all stages, it is perhaps most challenging for those courts attempting to identify candidates at the earliest stages of processing when information is not yet fully developed and many inadvertent “exits” may be available to target population arrestees.

Designing a Treatment Approach for the Drug Court

A great deal of the discussion at the First National Drug Court Conference focused on the substance of treatment programs that are at the core of the drug court model designed to

serve designated target populations. A variety of issues that must be addressed in designing the treatment component were emphasized in discussions among participants, including:

- The conflict between criminal justice and treatment in a court-driven model.
- Program content and sequencing.
- Location of treatment and length of the program.
- Role of the court.
- Program costs.
- Program reporting.
- Termination from and reentry to the treatment program.

What kinds of services should be included in the treatment program? Possible services discussed range from assessment and detoxification to supplemental social services regarding health, employment, and education. For example, assessment of the treatment needs of the drug-involved population certainly must be planned for so that treatment services and modalities can be efficiently and effectively deployed. Assessment in programs focusing on the arrest stage or the first stage of judicial processing will be different from assessment associated with programs beginning at post-conviction stages, due to the time constraints involved. Particularly among programs focused on the early stages of processing, a suitable detoxification approach should be designed. Where relevant, the treatment plan should make provision for individuals who may be coming from confinement settings, either as pretrial detainees gaining release to the drug court program or as persons serving sentences of some sort. A smooth relationship between the drug court treatment program and confinement-based or prerelease programs should be established.

Decisions need to be made about the optimal length of the treatment program and the sequencing of particular components. Some compromise will be needed between the view of treatment providers that the longer in treatment the better the result and the reality that courts will have the target population under their control for a fixed period, probably considerably shorter than the ideal. The treatment plan should indicate the services, other opportunities, and treatment modalities that will be employed for particular types of defendants or offenders. Clear rules about the expected participants' performance and consequences of missed treatment, positive urine tests, missed court dates, and other setbacks should be drafted and made explicit. Similarly, the consequences of good and poor performance should be made clear.

An important factor in designing a treatment approach is the cost associated with various services and the jurisdiction's funding plan. Although the kinds of treatment services provided should depend on the makeup of the target population and their treatment needs, it is sensible and cost-effective first to consider community-based or outpatient treatment approaches. Residential placement could be held in reserve for especially problematic cases, based on the treatment literature and the need to make resources go as far as they can in providing treatment. How the court actors are integrated into the treatment process is also a question to be addressed in designing the treatment approach.

Differential Treatment of Drug Court Participants

The need for different treatment content for different types of participants

From the perspective of simplicity and efficient management of resources, it may seem reasonable to establish a program that would offer precisely the same regimen of treatment for all drug court participants. Moreover, in the practical world, this may be the only kind of program that has hope of implementation in some jurisdictions. From the perspective of substance abuse treatment, a "one size fits all" approach does not represent optimal practice, any more than it would for men's socks. For a variety of reasons jurisdictions should consider whether the treatment program might not have greater impact and be more cost-effective by differentiating among participants in a relevant way and providing different versions of the program depending on agreed upon classification criteria. Thus, for example, while a jurisdiction may depend primarily on outpatient treatment methods, provision may be needed for residential placement for individuals who will not be able to function adequately in an outpatient program. Or, for example, some defendants or offenders who enter the court may be occasional or recreational users. While they may have violated the same laws as other participants, it may not make sense to make them attend a full year of treatment, for example, just to "graduate" successfully. In short, rather than a unidimensional treatment approach, a selection of appropriate options from a continuum of care may best address treatment needs.

Classifying drug court participants for different programming

As drug court programs mature, they may wish to develop a classification scheme to identify candidates at the earliest stages and to place them into an appropriate treatment program path. Early assessment can help identify appropriate placement candidates, depending on the type of program and the stage of criminal processing involved. Ongoing assessment of participant progress in treatment can supplement, confirm, or modify the original classification of an individual's treatment needs. This makes sense because it allows resources to be deployed most intensively in the most challenging categories of drug-involved offenders and allows less costly involvement and supervision to be deployed for less drug-involved offenders in the target population. One of the products of a good evaluation, in fact, can be the development of an empirically derived classification that groups individuals entering the program into treatment relevant categories.

Differential programming and equal treatment

Ideally, the treatment regimen for drug court participants should be client- and not program-driven; participants with different drug abuse and crime-related problems may require different solutions. Moreover, differential programming makes strong sense from the point of view of treatment effectiveness and program costs. A number of conferees pointed out, however, that from the perspective of criminal processing goals and criminal justice values, differential treatment programming raises issues of unequal treatment. Should defendants charged with similar crimes and with similar prior records (i.e., meeting the eligibility criteria of the drug court) end up having to participate in treatment programs of different length? Put more bluntly, is it fair that defendants with more severe drug problems experience longer periods in treatment?

This dilemma can be resolved in at least two ways. First, persons can be required to participate in drug court for similar fixed periods, even though they may be assigned to different levels of treatment programming and supervision. Second, equity can be enhanced by creating roughly comparable experiences—from the perspective of restrictiveness and onerousness—for the different categories of program participants. So, for example, one defendant with a serious and difficult drug abuse problem might need intensive programming for the entire period of court supervision. Another defendant, similar in all respects except that he or she has a relatively minor drug problem, can be assigned to an abbreviated program designed to be completed in 2 to 3 months. If successful, such a defendant might then be required to perform some amount of community service or be provided other opportunities to improve educational or vocational skills, while still under the authority of the drug court. Officials from Miami explained that, in revising their initial approach, they adopted a policy that modified conditions of program participation for felony defendants who produced 12 consecutive negative urine tests while in treatment. These individuals could earn the possibility of completing the program in 6 months (rather than the presumptive 12) on the condition that they perform community service and submit to periodic and random drug testing. In short, differential programming can be devised to address serious drug involvement most effectively and to provide equitable alternative programming for the less drug involved, without inadvertently overpunishing drug-involved individuals based on assessment of their needs for services.

The Role of Acupuncture

Initial publicity relating to drug courts at times focused sensationally on the fact that some courts—including those in Miami, Portland, Las Vegas, and Ft. Lauderdale—were making use of acupuncture in their overall treatment regimen. There was an extremely high level of interest in the role of acupuncture at the Conference, even to the extent that many attendees volunteered to try acupuncture treatment on the spot to learn more about its effect. Many questions were asked by Conference participants about the role of acupuncture in drug treatment, including questions about its propriety, advisability, effectiveness and, so it seemed at times, even about its “political correctness.” Treatment officials did not appear to embrace the use of acupuncture warmly, at least at first, and clearly did not regard acupuncture as an approved treatment modality. Some representatives of criminal justice funding agencies seemed to consider the use of acupuncture unorthodox (if not outright bizarre), in one case even questioning the appropriateness of its place on the Conference agenda of seminar topics.

None of the professionals involved with the delivery of acupuncture services in the sessions at the Conference claimed that acupuncture was a treatment modality in itself. Rather, they argued that its utility appeared to lie in facilitating the treatment process, having a calming effect that enabled some individuals to focus more on treatment and less on finding and using drugs. In fact, anecdotes from sites employing acupuncture seemed to suggest that program participants looked forward to acupuncture sessions and that participation increased their retention in treatment. Discussants noted that no studies had yet focused on examining the impact of acupuncture in treatment, as distinguished from other treatment services; however, it appeared to be in use in a number of treatment settings. Thus, jurisdictions assembling a treatment approach for a drug court may need to address the desirability and feasibility of offering acupuncture.

Mechanisms for Keeping Defendants/Offenders in Treatment

The backbone of an effective drug court treatment program should involve some mechanism that provides sufficient assurance to the court and to the community that defendants and/or offenders will participate in the treatment process seriously. The mechanism that encourages retention in treatment is critical for two main reasons:

- To provide the best possible chance that treatment will be effective.
- To ensure community safety.

The first aim is perhaps the most challenging for the drug court approach, while the second is shared in common with all programs and options placing defendants or offenders in the community. If the drug court has targeted seriously drug-involved individuals for its program, by definition these will be individuals who are, because of their addiction, likely to be resistant to the treatment process.

In deciding on measures to encourage compliance, a jurisdiction may confront what amounts to two schools of thought that were reflected in discussions at the Conference. One approach—deriving mainly from criminal justice concerns—has been to allow the participant a fixed number of failures (absences, positive drug tests, etc.), but then to invoke termination or graduated sanctions after subsequent misconduct. For example, some jurisdictions have proposed 1 day in jail for the first positive urinalysis test and successively more jail days as a result of subsequent positives. This approach appears to be based partly on a belief either that stern measures will teach defendants or offenders responsible behavior or will serve as deterrents for drug use and, by extension, further involvement in crime. This school of thought is also based on the suggestion in some drug treatment literature that coercive treatment can have a productive impact on drug abusers. At this point, there is no research that supports the intuitive notion that application of such measures will have the intended effect on drug use or compliance with program conditions. One inadvertent result may be that incarceration is increased among this population beyond normal levels.

Another approach—deriving mainly from the experience of treatment drug courts—starts with the premise that the drug-involved offender is a person from whom, by definition, irresponsible and problem behavior is to be expected, particularly at first. Proponents of this view recognize the need for clear behavioral (and public safety) boundaries across which the participant should not venture and still expect to be in the program. However, this view would build in the expectation that numerous initial failures would occur and that constructive steps should be planned to address those missteps in the treatment process. This might include the necessity to start the process over as many times as it takes, selective use of residential treatment, and/or selective use of jailing as a last resort to prevent more serious missteps.

The Miami program, which referred to its relatively infrequent recourse to jailing as “motivational” jailing, made use of a special treatment wing of Drug Court and a limited number of beds for defendants who were not able to perform in the outpatient setting initially. In addition, Miami’s Drug Court has reserved access to a limited number of residential treatment beds for persons having difficulties in the outpatient setting. In Superior Court in the District of Columbia, one drug court judge reported using the following approach: a first program failure

results in 1 day sitting in court; a second results in 6 days in a drug detoxification program in jail; a third failure results in 12 days in a special part of the jail reserved for drug-involved defendants; and a fourth failure results in 1 month's confinement for additional detoxification. In short, one perspective would rely more on the promise of improvement offered by the treatment opportunity as part of the mechanism designed to encourage compliance while the other would rely more on the graduated sanctions or deterrence approach described above.

The common themes in these approaches are that a clear need for a mechanism designed to foster compliance with program conditions is recognized and that treatment and public safety concerns are kept in mind. These approaches share the themes of encouraging compliance with the treatment program requirements and minimizing public safety risk. Although they also share the assumption that reduced drug use should lead to reduced involvement in crime, they differ in the emphasis on treatment and tolerance for noncompliant behavior. Whichever of the two perspectives is adopted, an explicit policy is essential that clearly identifies the rules of operation outlining the kinds of behaviors—missed treatment, missed drug tests, positive test results, failures-to-appear in court, rearrests for new offenses—that will result in application of the enforcement mechanism. Once adopted as policy, it should be consistently applied and periodically reviewed.

Access to Treatment

Questions of access to treatment have implications for the fairness of the drug court's treatment approach as well as the ultimate effectiveness of the treatment program. Once eligibility criteria are determined, an aim of the drug court treatment program should be to offer the treatment opportunity to all defendants or offenders meeting them. From this perspective, access to treatment questions are versions of access to justice questions. The capacity of a drug court program to provide treatment for the entire target population may raise an access to treatment issue when insufficient resources have been provided to operate the program. Thus, some eligible defendants are denied the opportunity to enter treatment. Physical and geographical placement of treatment program quarters in a jurisdiction may lead inadvertently to the exclusion of certain types of participants: those for whom the location of the program is too remote from where they live or poses transportation challenges too difficult to overcome (e.g., public transportation does not serve that area). Thus, from a fairness point of view, the treatment program serving the drug court will need to take into consideration the logistics of how defendants or offenders will actually get themselves to the treatment program facility. An Alabama treatment program has addressed these types of problems by making use of a van to provide mobile treatment to individuals located in out-of-the-way places.

Physical access and the timing of initial program contact are important ingredients in determining the overall effectiveness of the program as well. Conference participants stressed the importance of providing immediate services to increase the chances that treatment will have its desired impact. Many programs have learned, for example, that access from the initial court appearance should be direct and easy with minimal opportunity for participants to lose their way or their motivation. A large portion of a program's dropouts can occur between the court stage (entry into the drug court program) and the first appointment with treatment program staff. To the extent that participants drop out of the program before starting due to the logistics of program location and transportation, the drug court will fail to reach its target population and

will show poor compliance rates. In addition, female offenders who have small children may be denied access to treatment because they cannot make arrangements for child care during the times they need to be attending treatment.

Avoiding Net Widening

Some Conference attendees expressed concern that one of the possible unanticipated side-effects of the treatment drug court approach could be net widening. Net widening is a term originally associated with discussion of diversion programs in the 1960's and 1970's and more recently with jail crowding reduction measures. In both of those areas the aim was to detour defendants or offenders who were destined to be processed fully into the criminal justice system and to place them instead in other appropriate dispositions. It was difficult to design such approaches and to demonstrate that the persons so processed actually would have been fully adjudicated, sentenced, and/or confined. A recognizable danger was that the system could instead be intervening more intrusively into the cases of persons who, without such programs, probably would not ever have survived in processing to later stages or have been confined as a result. The lessons from diversion and crowding reduction programs relating to net-widening apply as well to drug courts: there is a danger of missing the target population and spending resources on cases that ordinarily would be rejected by the system.

Many of the drug courts have as ancillary aims the diversion of defendants from more formal processing and punishment. The same concern for inadvertently involving cases that would not have continued forward into the criminal process is relevant. But the concern for net widening is also relevant from a different perspective. Is the drug court bringing drug treatment to bear on a population for whom such intervention might not be appropriate or for whom the most appropriate disposition would be provided by the processing in criminal court? The scarcity of treatment resources heightens the importance of this question. Would it seem appropriate to involve low-level misdemeanor defendants in a lengthy drug treatment program, when such defendants might ordinarily risk relatively short sentences, fines, or community service? In other words, when are the goals of therapeutic intervention outweighed by other justice concerns, and when are they not? Adding a need for services for a subpopulation appropriately not ordinarily receiving much attention by the justice system to the resource demands already placed on criminal processing might be a luxury that many jurisdictions cannot afford. Moreover, drug-involved or not, it simply may be widening the net of criminal justice intervention too much, for example, to require outpatient treatment for a misdemeanant convicted of petty theft who ordinarily would receive the equivalent of a small fine and a couple of days of community service, or residential treatment for an offender who could appropriately be placed in an outpatient setting. Moreover, the imbalance of such approaches could inadvertently reinforce the resistance of some seriously drug-involved offenders to treatment.

Attendance in Drug Court and Treatment: The Failure-to-Appear Problem

Studies and experience have now shown that, whatever the important advantages of requiring defendants or offenders to report in-person and frequently to the drug court judge (and this is one of the special themes of the drug court model), a predictable side-effect is likely to be increased failures-to-appear (FTA's) in court if the practicalities involved in such frequent appearances are not considered in advance. This is predictable in a couple of ways. First, even

assuming that the ratio of absences to scheduled court appearances stays the same, a drug court requiring biweekly or monthly appearances by participants will be generating two to four times the number of FTA's and resulting warrants (bench warrants or alias capiases) than would normally be the case. In addition, if the drug court has selected a challenging, heavily drug involved target population for its treatment program, the likelihood is that the ratio of absences to scheduled appearances may not remain constant, but worsen. The reason is that the drug court has decided to deal with a disproportionately undependable defendant or offender population, one that is likely to display the behavioral attributes and irresponsibility of the drug-involved. In other words, there is a special side-effect of instituting a drug court that can be anticipated in advance: the FTA rates may be worse, maybe considerably worse. However, because this phenomenon can be anticipated, jurisdictions can plan in advance to implement corrective methods, supervisory techniques, or other forms of restraint that can avoid this problem. In fact, one judge from the District of Columbia reported that more frequent appearances can serve to strengthen supervision and offender accountability and reduce missed appearances in court and at treatment. Conference participants stressed the importance of an accurate and timely information link between treatment staff in addressing the occurrences of inadvertent as well as purposeful absences.

Resource Implications

Conference participants discussed a variety of questions related to the resource implications associated with establishing a treatment drug court. Among the many concerns considered were the following:

- *Staffing*: The implications for judges, courtroom support staff, defense counsel, prosecutors, treatment providers, probation, or pretrial services. (A number of participants argued that few additional court-based resources were required.) There may also be staffing implications for security, police, jail, and transportation staff.
- *Program space*: The costs of space to support the drug court in its courtroom and adjacent settings, for the agencies participating, and for treatment facilities. Programs with a link to the jail may also have to consider jail space implications.
- *Drug testing*: Cost implications, depending on the scope of use, the kinds of "screens" employed, the technologies, and the screening and confirming procedures used.
- *Treatment services*: Costs charged in a variety of ways. They may include outpatient, inpatient, acupuncture, and other types of services.
- *Changes in procedures*: Possible drug court changes in processing of files, use of court reporters, or other operational changes.
- *Administration*: Extent that the drug court requires a new expenditure of administrative costs.
- *Management information*: Desired improvements in the collection, analysis, and sharing of treatment and criminal justice information, which could involve sizeable costs initially.

IV. Implementation Issues

- *Evaluation*: Costs associated with evaluation of program performance and client tracking for periodic services of the program.
- *Savings*: Possible savings in these categories resulting from reallocation of resources, reduced use of confinement resources, etc., and potential future savings to the community from reduced crime, reduced drug use, and improved health.

Funding Issues for Drug Courts

If a major element of an implementation plan for a drug court is a funding approach, how to secure funding is a major issue. This question—particularly as it pertained to outside sources of funding—was one of the most frequently raised by Conference participants. At the time of the First National Drug Court Conference, few operating drug courts had obtained Federal assistance. This has meant that individual jurisdictions had been forced to devise local funding strategies (although some of the local strategies included ways of making use of State moneys). No single approach seemed to characterize the “success” stories thus far. Some jurisdictions obtained local funding from city, county, or court budgets. Some devised clever strategies for generating new revenue. The Jackson County, Missouri, approach, for example, received support from a small portion of the State sales tax. Las Vegas’ drug court is funded partly on the basis of fees generated by the county’s traffic school that re-educates drivers who have been arrested for driving violations. In addition, a Nevada law provides a tax on drug dealers and the money is made available for prosecution of drug cases as well as for drug court. Others found that State grants for substance abuse treatment to local government providers meant that treatment resources could be found under existing funding schemes. Some jurisdictions attempted to relocate treatment and other social services to be closer to the drug court so that already existing agencies could provide services to citizens who happened to be going through criminal processing (citizens they were already mandated to serve).

Tailoring an Information Management Capacity for Drug Courts

Many of the Conference sessions directly or indirectly touched upon the importance of information and a management information capacity in operating a drug court. It seems self-evident that the drug court courtroom, for example, cannot operate without an ability to be up to the minute on several types of information related to a particular individual’s case. The judge needs to be at the center of the information that is managed for his or her purposes. However, treatment providers, defense, prosecution, court administration, pretrial services, probation, and possibly others also need to be kept abreast of, tied in to, and able to contribute criminal case, criminal justice, treatment, and other types of information so that appropriate decisions can be made and actions taken. As many of the treatment drug courts can attest, saying this capacity is an essential core element is one matter, creating it is often quite another.

Several challenges face the drug court wishing to construct a comprehensive information capacity. First, each of the separate systems, criminal justice, and drug treatment, have their own sources of information, records systems, and, hopefully, automated capacities. Within the criminal justice system, there may be several independent sources of information that are required, including prior history, criminal case, and/or jail and probation information. In theory, in someplaces these sources will all be included in a criminal justice information management

system (CJIS) that really works. Unfortunately, experience has shown that in most places, they will not. In addition, there are several kinds of drug treatment information that will be important to the judge and other system actors, including initial intake/assessment information, treatment progress (e.g., treatment plan, attendance, type of activity, "graduation," or completion of particular milestones), drug testing results, other background information, treatment counselor summaries, reports to the court for required hearings, aftercare plans, and final treatment status when a case is closed. The treatment agencies or providers may have some or all of this information computerized in an easily retrievable fashion; most will not.

In addition, the collection and sharing of treatment-related information raises sensitive questions of confidentiality that should be explicitly addressed. Perhaps the larger challenge is to be able to bring together all the relevant information from each of the domains in an easily, timely, and appropriately accessible fashion. Adventures in developing CJIS systems notwithstanding, this really amounts to a new initiative in most American jurisdictions. The Midtown Community Court in Manhattan has developed a versatile computer system for managing its approach to misdemeanor cases entering its jurisdiction, which incorporates a real variety of information sources and puts them in the hands of the judge (who accesses them from several computer screens using a mouse) as she presides from the bench in the courtroom. Through funding from CSAT, the Superior Court in the District of Columbia has been developing a means for bringing drug test results to the presiding judge at the pretrial stage.

Accountability and Review

A recurring theme at the Conference was that evaluation should ideally be considered a core element of a drug court implementation plan. The principal rationale for this recommendation is that most courts will want to know as soon as possible and on an ongoing basis how the new drug court is doing. The advanced planning of a research component positions the court for an in-depth look at the impact of the approach based on previously specified outcome measures. This strategy anticipates the essential need for periodic review of the program, in terms of impact (i.e., effectiveness in achieving program goals) as measured by evaluation research. The strategy also utilizes evaluation to help address questions such as court and treatment costs, staff resources, and other considerations relating to efficient management. From the management perspective, clear goals should be defined and set so that the productivity, efficiency, and effectiveness of the program can be assessed and reassessed. The larger court and/or the larger funding system needs to have a means for holding the drug court accountable and standards of performance the drug court should be expected to meet (at a given level of funding, for example). These standards should be laid out in advance for the drug court as a whole, and also for its constituent parts. For example, the programs providing drug treatment or other services for the court's caseload should be required to meet certain conditions of performance, reporting, and cost. Refunding or continued use should be contingent on successfully meeting such accountability requirements.

The Implications of Drug Courts for Managing Criminal Courts

The treatment drug court concept emerged in response to the challenges of the huge increases in the criminal caseloads of urban trial courts driven by drug-related cases during the 1980's. The drug court movement represents, among other issues, a movement toward court

specialization. In most of the concerns enumerated in this working paper thus far, the focus has been on the special drug court itself, cooperation among actors in criminal justice, and collaboration extending across criminal justice boundaries to treatment agencies and providers, other social services, and community organizations. These emphases might lead people to believe that the drug court somehow exists in isolation from the larger court system. This is far from the truth.

The drug court must draw support in many ways from the larger court system, must draw its cases from that system, and, when appropriate, must return its cases to that system. The drug court can draw resources away from other areas of court function where serious problems of caseload management and delay need to be addressed, or where judicial personnel are sorely needed. On the other hand, the theory of the drug court is that caseload pressure should be relieved from other court functions, and resources should be saved as a result of an efficient and effective treatment approach. In short, the establishment and operation of such a court has implications for the parent court system that need to be considered, studied, and addressed so that a constructive and positive impact can be demonstrated and problems raised by both entities can be addressed.

Statewide Approaches

Several sessions of the Conference highlighted the potential impact of State-level approaches as well as some of their constraints to establishing treatment drug courts—particularly at the diversion stage. Drug court programs operate within a larger context of State law, whatever their focus or stage of intervention. A majority of States have laws authorizing diversion of defendants in some fashion, but vary in the kinds of cases that are eligible for diversion, the stages of processing, and the role of the prosecutor and judge, among other factors. In some instances, jurisdictions have devised diversionary approaches that are limited by the law (some States are limited to probationary rather than pretrial diversionary approaches because of State law) or that go beyond the limitations of State law based on cooperation between prosecutors and the judiciary (through the prosecutor's discretion to dismiss charges or delay charging). Clearly, what jurisdictions can and could do are based on taking into account relevant State laws.⁶ In a few instances, diversionary drug court approaches have been enabled by the passage of State laws (e.g., New York and Florida), in at least one instance allowing a court to overcome the lack of cooperation by a recalcitrant prosecutor on the local level.

While the provisions of the statewide legal framework clearly set the stage and define limits facing jurisdictions planning to establish treatment drug courts, it is a different issue to consider how and whether a State court system may choose to facilitate implementation of treatment drug courts in a number of locations simultaneously. The experience of the Florida court system may be unique in this regard, with its recent diversion law and development efforts provided by the State court system. North Carolina's proposed "Drug Treatment Court Program Act"⁷ is a pioneering example of legislation constructing a statewide approach to treatment drug

⁶ See discussions by Mimura and Peters in the Conference proceedings, National Institute of Justice, U.S. Department of Justice (forthcoming).

⁷ General Assembly of North Carolina, Extra Session 1994, House Bill 36, "North Carolina Drug Treatment Court Program Act" and its related Senate Bill 150 (March 1994).

courts, while encouraging balanced participation by the leadership of a variety of agencies and branches of government and providing support for the State court system. (Not incidentally, the North Carolina approach benefited a great deal from the interest and leadership of the State Attorney General.) In Arkansas, the State courts have been working with Federal funding agencies (CSAT, CDC) to plan and implement a comprehensive statewide court approach to drug-involved defendants and offenders. The feasibility of a statewide approach and its particular issues and challenges, are topics of growing interest now unfolding. A statewide approach raises the interesting possibility of implementing change on a local court level under the direction and with the support of the State court system. Depending on the substance of the statewide approach and on the concerns of the local jurisdictions, there could be important advantages to a unified statewide approach, as long as sufficient flexibility is retained by local jurisdictions to select target populations, devise treatment approaches, and develop local cooperative arrangements between criminal justice actors and treatment providers.

Assistance in Planning and Implementation

A recurring theme in sessions at the First National Drug Court Conference was the need for assistance in addressing planning and implementation issues. Officials from jurisdictions who were interested in developing drug courts asked to whom they could be referred to receive assistance in basic planning tasks. Others requested assistance for designing the treatment or evaluation component. One answer was that courts could learn from each other in important ways—building on the strengths and learning from the weaknesses of the experiences of other systems. Yet, in reality, several jurisdictions have been fairly overwhelmed by visits from officials wanting to learn about the treatment drug court model, its implementation, and operation. This need emerged as a major priority in session discussions at the Conference and was a central theme in Conference questionnaires. One of the most frequent recommendations was for the creation of a resource center or clearinghouse that would help build a network among sites and communicate recent developments and research relating to critical issues associated with drug courts. The resource center not only would be up to date on the most recent developments but also would serve as a repository for data and completed research and would help channel technical assistance to sites at different stages of development.

V. Research and Evaluation

The Need for Research Examining Treatment Drug Courts

As exhibited by the diverse participants attending the Miami Conference, the drug court movement represents in some substantial way a *new way of doing things*. The elements outlined above include dramatic new roles for judges and other criminal justice actors and cooperation between criminal justice, treatment, social service agencies, and community representatives. One judge from the District of Columbia argued forcefully in his written comments that "to talk only about a 'focus on treatment' is a disservice. We are really talking about a new approach to administering real justice." Certainly, a great deal of energy and enthusiasm came across at the many working sessions; many achievements were reported; and, it seemed to the impartial

observer, remarkable claims were made. The treatment drug court innovation has some very special dynamics, challenging goals, ingenious methods, and fairly lofty expectations.

Precisely because of this promise and the possible implications of these approaches, Conference participants argued that rigorous, dispassionate evaluation research was an important priority. Even without Federal funding, jurisdictions have made major commitments in resources, credibility, and prestige in establishing these programs. Certainly, many interested officials want to know "Does it work?" And they would like to know this in advance of undertaking the demanding developmental process that is certainly required. One of the purposes of evaluation is to help answer that question by examining the impact of drug courts on a variety of important outcomes.

Yet, framing the question in a simplistic "Does it work?" fashion—as many journalists have—is often unrealistic and does a disservice to the drug court idea as it is tested in its formative stages. An innovation is not limited to only two possible outcomes after a trial run: "It works" or "It fails." Success is more usefully measured as a relative concept, and relevant evaluation research most usefully assesses comparatively favorable or unfavorable outcomes. A more reasonable goal of evaluation research is to examine the operation, impact, and critical outcomes in question in a way that sheds light on the relative strengths and weaknesses of the various drug court approaches in their current versions. The aim of evaluation research should be to test the aims and expectations of the new approach in a wide variety of areas so that the jurisdiction can make use of the findings to take stock of the approach's strengths and weaknesses and to make mid-course corrections. Evaluation research should point to the need for improvement in some areas, single out other areas that are particularly successful, and discuss the implications of both weaknesses and strengths for program development in the near future.

Research Approaches and Their Implications

In their presentations, researchers argued that structured experiments offer the most informative method for evaluating the impact of innovations such as those associated with the drug court movement. Such an approach requires that potential program candidates be randomly assigned to a control group (persons who would be sent to the program but are processed in the normal fashion instead) and an experimental group (persons who are eligible and who are in fact sent into the new program). Random assignment and contemporaneous processing serve to control for the effects of factors other than the treatment drug court experience that could influence defendant or offender outcomes. Random allocation ensures that the two groups are similar in composition and that the apparent differences may be attributed to the effect the new program has on the outcomes of interest.

With funding from CSAT, the District of Columbia's emerging, multitrack drug court approach will be evaluated using an experimental design in which different approaches to drug cases are contrasted for impact. At the time of the conference CSAT was also funding an experimental evaluation of Arkansas' statewide approach, which was to begin in spring 1994. The probation-based program in Maricopa County's Superior Court was reaching the final stages of its evaluation also based on an experimental design. Dade County's domestic violence court's

approach to substance abusing domestic violence offenders was beginning an experimental evaluation of its approach.

The requirements of random allocation, however, have implications for the operation of a drug court program that need to be taken into account when considering the feasibility of evaluation designs. In effect, one-half of the candidates that would have been expected to enter the program will not for some specified period of time. That period of time is dictated by the need to accumulate a sufficient number of cases in each of the groups for a meaningful study and comparison to be conducted. Once that number is reached, the random allocation can be stopped and all eligible persons can be permitted to enter the drug court program. The researchers then follow both groups of cases through their respective processing and programs so that at the end of an observation period (perhaps 6 months or 1 year) comparisons of outcomes of interest can be made.

There are times, however, when an experimental approach simply is not feasible and may prove too disruptive to the program being examined. If this is so, second-best approaches may be devised and statistical controls can be exercised to approximate the conditions of an experiment. Second-best approaches are second best only in a theoretical sense. If the preferred approach—the experimental ideal—cannot realistically be undertaken because it would interfere too much with the implementation process, then the second-best approach is the best means for obtaining the needed feedback on the impact of the drug court because it can actually be carried out in the real world.

Research Funding for Evaluation

Conference participants frequently asked two questions relating to the funding of research evaluations: (1) How much do they cost? and (2) Who can help pay for them? The answer to the first question is, of course, that it depends. It depends on the scope of the questions asked, the availability of information, the form of the information to be used (computerized or manual), the ability of the jurisdiction to carry out key tasks itself, and a variety of other site-specific questions. The answer to the second question is that some Federal sources exist to help with evaluation, but major sources of funding for evaluation in this new area do not yet exist. If Federal assistance cannot be found, jurisdictions may have to narrow the scope of their evaluations, rely a great deal on agencies in the jurisdiction to conduct much of the data collection and analysis, and find local sources of funding.

Developing an Ongoing, Inhouse Evaluation Capacity

A goal of evaluation efforts, particularly those larger in scope, should be to leave the court system itself with a better ability to gather information on the important questions. That is, the evaluation should be collaborative to the extent that the outside researchers position the drug court to be better able to collect and analyze data using its own resources in the future. In that way, evaluations are not inevitably marathons of data collection conducted by out-of-town researchers who have little feel for the functioning of the local justice system. Program managers should know what the evaluators know—before the evaluator—using the same basic information.

Assessing the Cost Implications of Treatment Drug Courts

Discussions in several Conference sessions raised questions about the relative costs associated with treatment drug courts. Costs are one of the most difficult aspects of programs to assess rigorously. For example, they involve estimating how treatment court costs compare with costs already incurred in processing the same cases without the program. Is treatment cheaper than jail? It sounds right, but how do you collect cost information in a thorough way? How do you place dollar values on all the areas of system functioning affected by the drug court innovation? These questions are critically important to a court system's ability to manage a drug court and to know whether it is an affordable undertaking, given the competing aims of the larger justice system. Difficult though they are to address, one aim of an evaluation should be to take steps in the direction of shedding light on cost questions so that knowledge is increased, even if incrementally.

Timely Reporting of Research Results

The leadership operating the drug court, of course, will need the research results *now*. Thus, an issue for the evaluation approach is how to design research so that timely findings are produced. Unfortunately, large, full-scale evaluations take time to be completed. Most of the time is taken in the data collection and data preparation stages. Depending on the number and kinds of questions asked and the state of the information required to answer them, data collection can require a significant period of time. That acknowledged, evaluations can be planned in stages so that preliminary findings can be produced at intervals so that system officials have early feedback to help them in thinking about the program's impact. Evaluations should be planned in the early stages of implementation to build into the enterprise an ability to generate data in a timely and reliable fashion. This serves to reduce the time needed for data collection for the evaluation.

VI. The Next Generation of Treatment Drug Courts

Jurisdictions Preparing To Establish Drug Courts

As many jurisdictions were meeting to discuss treatment drug courts in December 1993, at the First National Drug Court Conference, the next generation of courts was already preparing for implementation. Plans for a drug court to be operated within Los Angeles' Municipal Court were being finalized with an implementation set for late spring, 1994. Officials in Seattle were refining their proposal for a treatment drug court, with hopes also of moving into operation in spring, 1994. Planning was progressing in Ventura County, California, and discussions and a great deal of interest in designing a treatment drug court were taking place in Charlotte, North Carolina, and on the State level through the Office of the Attorney General. Courts were then also in the planning stages in Baltimore and Pittsburgh. Since then, implementation efforts have continued to move forward. The District Attorney's Office in Pittsburgh, Pennsylvania, reported that a treatment drug court went into operation there in March 1994. One of the results of initiatives in North Carolina was the drafting of legislation for a statewide approach referred to above. This legislation includes provisions about the development, leadership, operation, and funding of drug courts that reflect many of the themes highlighted at the First National Drug Court Conference.

Drug courts are going into operation in additional Florida counties. In short, in these and many other areas a great deal of interest, discussion, and preparation at various stages of development were underway in the United States.

At the time of the First National Drug Court Conference, only a handful of jurisdictions had received Federal assistance for the development or evaluation of drug courts. Outside funding of the treatment approaches was certainly the exception, not the rule. Since the time of the Conference, serious discussion about funding drug courts has been taking place in the context of the passage of a Federal Crime Bill, as versions of legislation reached the conference stage. In fact, the Presidential Administration submitted a separate drug court bill that was being reviewed in the context of the Crime Bill as this report was written.

Beyond "Just" Drugs: Courts Expanding the Concept

As the name suggests, first-generation treatment drug courts overcame traditional barriers and developed collaborative approaches to address drug-involved defendants and offenders in various ways. In these courts, an array of services was linked with judicial processing and involvement in ways not previously seen in State trial courts, and the clear target was drug involvement. One of the dramatic discoveries of the First National Drug Court Conference was that in a number of locations the innovative and collaborative methods characterizing the first generation of treatment drug courts were being adapted to other justice system populations. Again, the stories were of remarkable local innovation.

In Kalamazoo, Michigan, one judge developed a special court for the treatment of female offenders.⁸ In Dade County, the original diversionary drug court was expanding to incorporate a focus on offenders sentenced to jail who would be released to the drug court. In addition, in Dade County Court, the methods of drug court were applied to a domestic violence court with a special focus on drug and alcohol involvement. One of the most striking examples of innovation drawing, in part, upon drug court methods was the design and implementation of the Midtown Community Court in Manhattan. The Midtown court set up a jurisdiction overlapping with two Midtown New York police precincts to process misdemeanor arrests in the Midtown area. When arrestees are processed into the Midtown court they encounter a highly computerized (almost paperless) courthouse in which a variety of social services ranging from drug treatment readiness, public health, educational services, and others are located in the same building and are integrated physically as well as conceptually into the judicial process. Community service is arranged and supervised from the court location. Second-generation courts illustrate the extent to which the first-generation efforts stimulated innovation more broadly in areas where courts are trying to respond to special community crime problems.

VII. Justice and Treatment Innovation: Next Steps

Since the time of the Drug Court Conference in Miami, interest in drug courts has continued to grow. First, jurisdictions are continuing to move forward in the discussion, development, and operation of treatment drug courts. Second, the drug court movement, which

⁸ See the discussion of the Hon. William Schma in the Conference proceedings (forthcoming).

began at the level of local innovation, has continued to move to center stage in debates about drugs and crime at the national level. Testimony before Congress,⁹ the drafting of Federal legislation to support drug courts, steps toward formation of a coalition of drug courts and associations at State levels (e.g., in California and Florida), and efforts of a wide range of jurisdictions and the U.S. Department of Justice have played a role in making drug courts and related approaches likely to be addressed and supported in a final Crime Bill. These developments are remarkable in themselves and demonstrate just how rapidly the treatment drug court concept has grown and expanded.

These accomplishments notwithstanding, the Miami conferees identified important concerns that will need to be addressed in the immediate future if the treatment drug court and related approaches are to continue to deliver on their initial promise. The possibility of substantial funding support for drug courts presents an opportunity and a risk. The opportunity will be an improved capacity to address the issues identified by jurisdictions to date and to strengthen the approaches that have been initiated or are being planned. The risk is that the chance that substantial funding may, at least, temporarily distract jurisdictions from answering the hard questions that drug courts were designed to ask—and answer.

Documenting the Extent of the Drug Court Movement

One of the rationales for convening the First National Drug Court Conference was to try to determine the scope and character of the drug court movement. Beyond some of the initial drug court jurisdictions, knowledge of the full extent of efforts nationally was spotty, based largely on word of mouth as one jurisdiction visited another or jurisdictions consulted original drug court sites. The Conference certainly made great strides in demonstrating the level of interest and activity in treatment drug courts in the United States. Certainly, there were more jurisdictions operating drug courts, developing drug courts, or considering drug courts than had been anticipated by Conference organizers. But as interest has grown—and partly as fruits of the free exchange of knowledge and ideas that occurred at the Conference—we are once again left without a firm accounting of the drug court movement. Thus, identifying current drug court jurisdictions, jurisdictions planning to implement drug courts, and jurisdictions in the early stages of discussion of the concept remains an important priority.

Establishing Parameters and Basic Standards

One of the striking findings of the Conference was the diversity of approaches displayed as jurisdictions developed and adapted the treatment drug court models to meet their own needs. There were variations on common themes and solutions to problems that worked for one jurisdiction, but that were perhaps not relevant in another. The character of innovation and collaboration between justice and treatment systems was revealed to be broader and deeper than perhaps the simple outline of the original drug court model would have suggested. The diversity and variation in approaches also underscored the critical need for defining the boundaries of

⁹ See the testimonies of Timothy Murray and John Goldkamp before the House Judiciary Committee Subcommittee on Crime and Criminal Justice on February 22, 1994.

what a drug court is and what a drug court is not—in other words, for defining some parameters and basic standards for drug courts.

This need is all the greater when anticipating the possibility of a substantial amount of assistance; what forms of drug courts should be encouraged and further explored? What forms are not within the boundaries of what should be meant by "drug court"? The drug court movement is in a position to begin to shape answers to these questions. It is particularly important that the process of definition and of basic standards-setting be carried out among the same actors who developed the approach, as diverse and varied as it may now be. One danger in the prospect of substantial Federal funding is that the basic elements of the innovative approaches developed in the first generation of treatment drug courts will be obscured in the rush to seek funding for anything that can remotely be called a drug court.

Establishing a Resource Center and Clearinghouse To Facilitate Justice and Treatment Innovation in Collaborative Court Approaches

One of the major recommendations arising from the Conference was to develop a resource center or clearinghouse that could maintain and further develop the network established informally among jurisdictions, to assemble up-to-date information about the development of drug courts and related areas of justice and treatment innovation, and to be able to assist jurisdictions with information and guidance as they address issues in the development, operation, or evaluation of drug courts. This recommendation was conveyed to the Attorney General of the United States after the Conference. In the testimony before the House Judiciary Committee Subcommittee on Crime and Justice, Acting Deputy Attorney General Jo Ann Harris announced that the Justice Department would be supporting approaches to assist drug courts in the near future.¹⁰ The Office of Justice Programs of the U.S. Department of Justice has announced its intention to support development of a resource center in its recent program plan for the Bureau of Justice Assistance. The State Justice Institute is planning to fund a conference in the next year, a National Symposium on the Implementation and Operation of Drug Courts, to offer a forum to build on the kinds of exchanges started at the First National Drug Court Conference in Miami.

Providing Guidance, Technical Assistance, and Research Support to Jurisdictions

The substance of the discussions at the Conference as well as the questionnaires completed by attendees clearly demonstrated that jurisdictions needed to learn from one another and to share lessons learned. More specifically, many jurisdictions asked how they could get assistance to address issues in the planning stages, issues in the later operational stages, and issues relating to establishing research evaluations. Although a great deal of information was shared at the Miami meetings, it was clear that jurisdictions were in different stages of development. The drug court movement, it appeared, had created its own need to gain knowledge about the development and operation of drug courts in many areas.

¹⁰ See the statement of Jo Ann Harris, Deputy Attorney General of the United States, before the subcommittee on Crime and Criminal Justice, Committee on the Judiciary, U.S. House of Representatives, relating to the "Crime Preventive and Criminal Justice Reform Act" (H.12.3315), February 22, 1994, at 11.

Maintaining the Growing Network of Drug Courts and Related Agencies and Organizations

With or without a resource center or clearinghouse dedicated to the dissemination of knowledge and assistance relating to drug courts, a major theme of the First National Drug Court Conference was that jurisdictions, criminal justice actors, treatment agencies and providers, community organizations, and other social services all need a means for staying in communication and asking and answering specific questions. The Conference demonstrated the importance of prosecutors talking to prosecutors, defenders to defenders, treatment providers to treatment providers, chief judges to chief judges—and all to one another—in devising solutions to problems presented and addressing the challenges of this evolving approach to justice and treatment innovation aimed at making a real difference in drug-related crime at the local and State levels.

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