

INTRODUCTION: FIFTEEN YEARS LATER; A CRIMINAL JUSTICE POLICY REVIEW

PREFACE

In 1992-93, I prepared a five part series of policy papers for the incoming Clinton Administration addressing drug and criminal justice issues. Unfortunately the discussion and recommendations put forth so long ago, still appear as relevant today as they did fifteen years ago. By that I mean, most of the papers could have been written for the next administration and suffer little. On the other hand, many of the recommendations have been adopted to some extent, and some even had an extraordinary impact on the Criminal Justice System. At the same time, it would appear that that impact remains for the most part on the margins of the System, reflecting a general acknowledgment of their importance (and impact on Criminal Justice culture), but a reluctance to adopt them in a way that would have a major impact on the entire Criminal justice System.

The series of Policy Papers presented in the fall/winter of 1992-3 were as follows:

- I A National Strategy for the Coordination of Local Criminal justice Systems
- II A National Strategy for the Cost-Effective Incarceration of the Drug-Using Offender:
The successful Imposition of Smart Punishment
- III The Principles of Court-Ordered Drug Rehabilitation: A Reality –Based Approach to
the Drug-Using Offender
- IV A National Drug Court Strategy: Redefining the Role of the Court in the Drug Age
- V The Importance of Structural Accountability: The Creation of Structure that
Promotes Program Effectiveness.

USING THE CURRENT POLICY PAPERS:

This would appear to be an extraordinary opportunity to reflect on changing circumstances, policies, and the challenges facing real reform in the Criminal Justice System. The following papers are somewhat unusual as they do not stand entirely on their own, but reflect the progress made in the Policy areas addressed fifteen years ago (see original policy papers as appendixes attached to current policy papers), providing a progress report if you will; an update on the state of the criminal justice system, including new analyses and recommendations reflecting what we have learned, yet failed to apply over the past fifteen years.

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The author, though Founding President and President Emeritus of the National Association of Drug Court Professionals, is neither presenting these documents on behalf of or with the assistance of that or any other organization.

**FIVE POLICY STATEMENTS ON
NATIONAL CRIMINAL JUSTICE DRUG CONTROL ISSUES**

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This administration has the opportunity to begin an educational process that could change the way Americans think about drug control issues and open up local communities to effective and innovative approaches to the drug-using offender.

The following policy papers are offered as a contribution to that process:

- A National Strategy for the Coordination of Local Criminal Justice Systems
- A National Strategy for the Cost-Effective Incarceration of the Drug-Using Offender: The successful Imposition of Smart Punishment
- The Principles of Court-Ordered Drug Rehabilitation: A Reality-Based Approach to the Drug-Using Offender
- A National Drug Court Strategy: Redefining the Role of the Court in the Drug Age
- The Importance of Structural Accountability: The Creation of Structures that Promote Program Effectiveness

February 1, 1993

A NATIONAL STRATEGY FOR THE COORDINATION OF LOCAL CRIMINAL JUSTICE SYSTEMS*

Introduction:

Drug usage is the single greatest engine for crime in the United States. Yet the response of local criminal justice systems to the drug offender has been largely fragmented and unfocused.

There is a great deal of talk of coordination of efforts, but willingness to work together, to share information and resources, and to develop a coordinated, comprehensive plan is lacking in most jurisdictions.

Part of the responsibility rests with the Federal Government's failure to coordinate its own response to the drug control issue. *What is missing is not necessarily additional funding, but the intelligent use of the funding that is available to promote local coordination efforts.*

The Failure of National Coordination Efforts:

Federal funding for drug control and treatment efforts come from different agencies, with different missions and goals, who make little attempt to coordinate their own efforts or require coordination at the local levels.

For example, drug treatment is largely funded through the U.S. Department of Health and Human Services' Center for Substance Abuse Treatment (CSAT), while criminal justice control efforts are funded mainly by the Department of Justice's Bureau of Justice Assistance (BJA). This leaves large gaps in essential services which do not come within either agency's orbit. More importantly, neither agency requires local recipient agencies to plan or coordinate their efforts within their respective fields, let alone coordinate across the spectrum of agencies; from criminal justice to health to education to social services.

A National Drug Control Policy is needed that uses funding incentives to encourage state and local agencies to coordinate their activities, and plan within their criminal justice systems as well as within their local communities.

The Office of National Drug Control Policy (ONDCP):

ONDCP was created to provide leadership and focus for coordinated drug control efforts. Its creators understood the need for a central coordinating agency in the executive office. For without a strong coordinating body, agencies and departments follow their own narrow interests, supported by (and promoting) their individual constituencies. Those, constituencies in turn, compete for, rather than cooperate in the use of limited resources.

*This is the first in a series of policy papers on Criminal Justice Drug Control Issues by Judge Jeffrey S. Tauber.

Unfortunately, in the past, ONDCP has provided neither the leadership nor the policies that would effectively promote local coordination efforts. That, however, does not negate the importance of its mission.

It is time to reinvest the Office of National Drug Control Policy with the mission and authority to bring coordination to drug control efforts on the national and local levels.

Inter-Agency Coordination at the Local Level:

There is great reluctance on the part of local government agencies to coordinate their activities. Often there is a sense of suspicion and mistrust between agencies.

Some agencies see little advantage in coordination. For those who believe their funding is secure, coordination may be seen as threatening. For example, in many states, BJA funding for criminal justice drug control purposes is so locked up by law enforcement agencies, that the courts and other criminal justice agencies are not even invited to the table to discuss the possibility of funding non-law enforcement projects.

Outside the criminal justice system, agencies are often suspicious and resentful of the power and resources of law enforcement and are reluctant to coordinate their activities with them, lest they be dominated in the process. The results, when coordination is attempted at all, are often half-hearted and limited in scope.

Law enforcement, as well as other government agencies, must be forced to the planning table through the use of funding incentives and other persuasive strategies. Federal funding for criminal justice purposes should be disseminated through criminal justice coordinating committees. Finally, priority should be given to communities that engage in meaningful planning and coordination across agency boundaries.

The Importance of Local Anti-Drug Coalitions:

In "The Making of a Drug Free America," (Random House, 1992), Mathea Falco describes the extraordinary success of coordinated community-wide drug control efforts.

"The deep concern many Americans feel about substance abuse is a powerful catalyst for community action. Coalitions are channeling that concern into programs that require active participation, connecting people to each other in entirely new ways. These efforts generate enormous human energy, as coalition members discover that they can make a difference, even against seemingly intractable problems like substance abuse. The sense of improvement is critically important in overcoming the hopelessness and apathy that often prevent communities from taking action." (at pg. 162)

With a few notable exceptions, local criminal justice systems have not taken advantage of the resources that community-wide drug control coalitions can bring to anti-drug efforts. By coordinating criminal justice efforts with community-wide drug control coalitions, we can enormously increase the effectiveness of those efforts.

Conclusion:

This administration has the opportunity to redefine the way the federal government works with local criminal justice systems. By refocusing its own energies and using persuasive strategies to encourage local criminal justice systems to coordinate their drug control efforts with those of other agencies as well as with their communities, the federal government can help bring competing local interests together for the benefit of their entire communities.

Recommendations:

1. ONDCP should be reinvested with the mission of providing national leadership for drug control coordination efforts.
2. Federal funding for all drug control purposes should be coordinated at the national level to insure that all essential parts of a comprehensive drug control program are adequately and fairly funded.
3. Funding priority for criminal justice purposes should be given to localities that have Criminal Justice Drug Control Coordination Committees responsible for the development of a Criminal Justice Drug Control Plan. All components of the local criminal justice community would be represented on such committees.
4. Funding requests and grants must be consistent with the local Criminal Justice Drug Control Plan and must be approved by the local Criminal Justice Drug Control Coordination Committee.
5. Federal funding for criminal justice drug control purposes must be consistent with existing community-wide drug abuse plans.
6. Federal policy must encourage local criminal justice systems to participate in anti-drug coalitions and coordinate their activities with community-wide drug control efforts.

October 5, 1992

**A NATIONAL STRATEGY FOR THE COST-EFFECTIVE INCARCERATION
OF THE DRUG-USING OFFENDER:
THE SUCCESSFUL IMPOSITION OF SMART PUNISHMENT***

Summary:

The costs of rapidly expanding prison and jail systems are threatening the financial stability of many state and local governments. That burden is overwhelmingly the result of the arrest and incarceration of drug-using offenders. This crisis presents us with the opportunity to focus the public dialogue on the cost-effectiveness of extended incarceration as a sentencing tool.

While extended incarceration may be an appropriate response to criminality in general (and drug trafficking in particular), it is not an effective tool for reducing the drug usage or criminality of the drug-using offender. *Smart Punishment, the immediate and measured application of short-term incarceration and/or other limited sanctions to a drug-using offender, is a far more effective deterrent to criminality as well as an excellent motivator toward successful drug rehabilitation. More importantly, Smart Punishment reduces our dependence on expensive and ineffective extended terms of incarceration as a response to an offender's drug usage.*

The Ineffectiveness of Extended Incarceration:

Offenders who are sentenced for using illegal drugs or possessing illegal drugs for personal use are serving substantial terms of incarceration, reducing the available cell space for other offenders (whether drug users or not), convicted of more serious crimes.

*Incredibly, the average jail term in the U.S. for drug usage or possession for personal use (5.1 months) is just 15 fewer days than for those sentenced for drug trafficking (5.5 months). The average user/possessor spends more time in jail than those sentenced for larceny (4.2 mos.), receiving stolen property (3.9 mos.), or weapons offenses (4.8 mos.). Similarly, the average prison term for a user/possessor (11 months) is only four months fewer than that for drug trafficking (15 months).***

While incarceration does keep drug-using offenders from committing crimes in their communities (although many continue to use drugs and commit crimes in custodial environments), it does not seem to affect drug usage or criminality when the drug offender leaves custody. In fact, without treatment, nine out of ten drug-using offenders will return to crime and drugs after leaving prison, and the majority will be re-arrested within three years.***

*This is the second in a series of policy papers on Criminal Justice Drug Control Issues by Judge Jeffrey S. Tauber.

**Sources: U.S. Dept. of Justice, Bureau of Justice Statistics: Profile of Jail Inmates, 1989, p.7, Table 12; National Corrections Reporting Program, 1988, p.28.

***Mathea Falco, "The Making of a Drug-Free America". (Random House 1992), p.133.

Incarceration Works:

The problem is not in the use of incarceration, but in our overdependence upon it. Incarceration works for drug-using offenders. It works by providing the offender with the opportunity to detox from drugs. It works as a deterrent, by presenting the offender with the stressful, anxiety producing experience of incarceration. It works by coercing drug-using offenders to enter and complete rehabilitation programs.

The use of extended periods of incarceration, however, does not appear to increase the value of incarceration and may in fact be counter-productive to sentencing goals. Because two aspirins relieve your headache, it does not follow that 10 aspirins will do a better job.

Extended incarceration may disrupt whatever stability exists in a drug-user's life (needed for successful drug rehabilitation), initiate him or her into a criminal lifestyle, and reduce the deterrent effect of incarceration, limiting the effectiveness of court-ordered rehabilitation.

Smart Punishment:

While it is possible to apply the principles of *Smart Punishment* on an individual or ad hoc basis, they are best utilized as part of an immediate, comprehensive and intensive court-ordered drug rehabilitation program, supervised by a Drug Court. (A discussion of Drug courts and court-ordered drug rehabilitation programs will be the subject of policy papers Nos 3 and 4.)

Smart Punishment is punishment that is used to achieve the twin sentencing goals of reduced criminality and drug usage. It relies on the use of Progressive Sanctions, the measured application of a spectrum of sanctions, whose severity increases incrementally with the number and seriousness of program failures. Like a surgeon using a scalpel (or a missile targeted for a military installation) progressive sanctions are used surgically to achieve sentencing goals.

A patient and consistent, yet flexible, approach to program failure, moves the participant steadily toward sobriety. Less serious violations, such as inadequate participation in a court-ordered program, call for sanctions that start with the intensification of supervision, treatment, and/or a single day's incarceration. Those sanctions increase incrementally (i.e., 1 day, 2 days, 4 days, etc.) with continued program failure.

At the other end of the spectrum, program failure, (represented by an offender permanently absenting him or herself from court or treatment program) calls for at least one week's incarceration to detox the offender, as well as deter the offender from future drug usage.

Progressive Sanctions follow all violations and are applied as close to the time of failure as possible. This calls for the scheduling of frequent court hearings to monitor the offender and mete out sanctions.

Progressive Sanctions are most effectively applied through the utilization of a Contingency Contract. A Contingency Contract spells out the positive, as well as the negative,

consequences of the offender's actions. Through a Contingency Contract, the offender gains control of his or her rehabilitation and is held directly accountable for his or her conduct.

Smart Punishment Around the County:

Aspects of *Smart Punishment* (although not necessarily referred to in those terms) are being used in numerous jurisdictions around the country.

In Miami, Florida, failure to participate in that city's highly successful drug diversion program, calls for a two-week sentence to a special jail detox unit. In Washington D.C., drug-using offenders released on their own recognizance are monitored for drug usage. Program failure is met by sanctions starting with increased drug testing and supervision, progressing to a single day in custody and increasing incrementally. In Oakland, California, all of the above features of Smart Punishment are part of the FIRST Drug Diversion Program.

Cost Effectiveness of Smart Punishment:

New cells, as a part of ambitious prison and jail building programs, cost between 80 to 100 thousand dollars each. Maintaining drug-using offenders in custody costs twenty-five to fifty thousand dollars a year. Prison and jail space have more than doubled over the past ten years, and yet in 1991, forty states were under court orders to relieve overcrowding.

Against this background, it should be noted that the Oakland and Miami comprehensive court-ordered drug treatment programs cost their communities approximately 500 and 700 dollars respectively, per year, per participant. In fact, the 1200 participants in Oakland's FIRST Drug Diversion Program spent approximately 27,000 fewer days in custody on all their criminal cases during 1991 (including new arrests), than the previous program's participants did. That is a savings of approximately 1.5 million dollars to the county, and reflects a reduction in felony recidivism of approximately 50%.

Conclusion and Recommendations:

For too long, this nation has been overly dependent upon incarceration in the sentencing of the drug-using offender. That reliance is based, at least in part, upon the mistaken beliefs that nothing works and that no one knows what else to do. While the Federal government cannot dictate sentencing policy to state and local governments, this administration has the opportunity to lead the nation in a re-examination of the cost-effective alternatives to extended incarceration.

Through the education and training of judges and other criminal justice personnel, the development and evaluation of Smart Punishment models and the use of funding incentives to encourage the establishment of Smart Punishment projects, this administration can redirect the nation's financial resources away from the costly and ineffective use of incarceration for drug-using offenders.

November 12, 1992

**THE PRINCIPLES OF COURT-ORDERED
DRUG REHABILITATION:
A REALITY BASED APPROACH TO THE DRUG-USING OFFENDER***

Introduction:

Court ordered drug rehabilitation programs suffer from the generally held belief that "nothing works" in the treatment of drug using offenders. Unfortunately, that perception (although untrue) becomes a self-fulfilling prophecy when financially strapped communities inadequately fund court-ordered treatment programs and skeptical judges half-heartedly support those same programs (often terminating an offender's participation upon the first sign of drug relapse.)

The whole story is that it takes more than increased funding and full judicial support (although extremely important), to create an effective program. Successful court-ordered drug rehabilitation programs are based on an understanding of the physiological and psychological realities of drug addiction and are designed and implemented with those realities in mind.

Reality Based Drug Rehabilitation Programs:

Several jurisdictions across the country have developed successful court-ordered drug rehabilitation programs that recognize and work with (rather than against) the realities of drug usage. Although these programs often have substantially different program characteristics reflecting their individual circumstances (i.e. Miami has replaced a Probation Department presence with direct court/treatment program linkages, while Oakland uses a court/probation partnership model), what is crucial is that they share the same underlying "reality based" design principles. In fact, communities are generally better served when they develop programs that reflect local financial and political circumstances, while paying attention to "reality-based" design principles, rather than attempting to replicate another jurisdiction's program.

Reality #1: A drug addict is most vulnerable to successful intervention when he or she is in crisis (i.e., immediately after initial arrest and incarceration.)

Principle #1: Intervention should be immediate and front-loaded.

Even the best designed court-ordered drug rehabilitation program will be less than effective when intervention is delayed. Recognizing this, the Miami program delivers the defendant by van directly from court to the treatment program to begin treatment. In Oakland, where the offenders are typically placed in the program within two days of their release from custody, data shows that those so placed have twice the reduction in recidivism rates (new arrests) than those who are not. (See "The Importance of Immediate Intervention in a Comprehensive Court-ordered Drug Rehabilitation Program, Jeffrey Tauber, 1992, pp. 12-15.)

*This is the third in a series of policy papers on Criminal Justice Drug Control Issues by Judge Jeffrey S. Tauber.

For the same reason, supervision and treatment should be front-loaded; to engage the participant early and often, giving the program and treatment the opportunity to take root. In Miami, offender contact with the program is required five times a week for the first three weeks, while in Oakland, an average of two program contacts per week is required over the first ten weeks.

Reality #2: If there are gaps in program supervision, the drug using offender will find and exploit them.

Principle #2: Supervision must be comprehensive and well coordinated to insure offender accountability.

Few offenders enter the court's programs with rehabilitation on their minds. They are in denial, and are there mostly to beat the system and avoid incarceration. The challenge is to keep them in the program until sobriety, and attitudinal changes can occur. This may be difficult to accomplish, since the drug-using offender is often an expert at avoiding responsibility, making excuses for his or her failures, and evading the court and its programs.

The drug offender must be held accountable for his or her conduct, if rehabilitation is to be successful. Such offender accountability depends on strong connections between participating agencies, vigilant court monitoring procedures, and a coordinated hands-on approach to supervision and treatment. A court-ordered program must build a chain-link fence around the drug-using offender whose links consist of frequent supervision contacts and drug testing, direct access to full information on the drug offender's progress, immediate responses to program failures, and frequent progress report hearings before a single Drug Court judge and permanent staff. (Oakland allows a maximum of ninety days, Miami no more than sixty days between progress report hearings).

Reality #3: A drug addict is not created overnight, and therefore cannot be cured overnight.

Principle #3: The drug-using offender needs intensive long term treatment and aftercare.

Drug addiction is a serious, debilitating disease that demands intensive long term treatment (participants in both Miami and Oakland programs average approximately one year to graduation.)

An initial treatment assessment is the first step in determining the nature and intensity of an appropriate treatment program (that assessment may take place at the time the offender enters the program or over a period of time after placement).

Treatment preferably begins in a medically supervised jail drug detoxification unit. For most however, a community-based non-residential treatment program is the initial treatment experience. More costly residential treatment spaces are generally reserved for those who have not responded well to non-residential treatment.

Participating treatment programs should be selected and periodically evaluated for effectiveness. Depending on the availability and effectiveness of existing treatment programs (and financial feasibility), treatment programs can also be modified or created to specifically work with the drug-using offender. In Miami, a treatment program that was specially designed to provide acupuncture treatment (as well as more traditional treatment modalities) has shown excellent results when used in conjunction with a well-designed court-ordered rehabilitation program.

Without adequate aftercare, an offender's sobriety may be short lived when he or she is faced with the same problems that contributed to their drug usage in the first place. Aftercare should include ongoing drug treatment and counseling, as well as educational opportunities, job training and placement, and health and housing assistance.

Reality #4: Relapse and Intermittent Progress are part of most successful drug rehabilitation.

Principle #4: The Court must apply a patient, flexible approach to monitoring compliance.

In most cases, progress toward rehabilitation will be slow starting, and fitful, with sobriety only taking hold over a period of months. This requires patience and a consistent, yet flexible, hands-on approach to the monitoring of the offender's progress toward sobriety.

Progressive sanctions are appropriately applied in response to program failure (and in particular, failure to participate), and should be applied incrementally to move the participant steadily toward sobriety. (See Policy Statement #2, "A National Strategy for the Cost-Effective Incarceration of the Drug-using Offender: The Successful Imposition of Smart Punishment.")

Conclusion:

Not all court-ordered drug rehabilitation programs are created equal, yet in the past we have painted all treatment programs with the same brush. The Federal government can help dispel the "nothing works myth" by identifying and supporting successful court-ordered drug rehabilitation programs. Finally, by encouraging local criminal justice systems to develop programs that reflect the needs of their own jurisdictions, while adhering to "reality based" principles, the government can maximize local "ownership" and commitment to successful court-ordered drug rehabilitation programs.

Recommendations:

1. Provide Judges and other criminal justice personnel with education on the physiological and psychological realities of drug usage, and the training to effectively deal with them
2. Use funding incentives to encourage the development of court ordered drug rehabilitation programs that follow the principles of "reality based" rehabilitation programs.

December 21, 1993

A NATIONAL DRUG COURT STRATEGY: REDEFINING THE ROLE OF THE COURT IN THE DRUG AGE*

The Drug Court Mission:

Our criminal justice system is overwhelmed by drug cases that clog our court calendars, strain our treasuries and flood our jails and prisons. The number of persons arrested for drug offenses has tripled over the past ten years while those sentenced to prison for drug offenses has doubled in just the past seven years.

Ironically, until recently the most significant federal response to this court crisis has been the promotion of special drug courts (exemplified by the "Expedited Drug Case Management" approaches of Philadelphia and Indianapolis) whose goal is to speed up the processing of drug cases, moving drug-using offenders as quickly as possible between arrest and imprisonment. Although not without benefit (they use existing resources more efficiently and expeditiously process serious drug trafficking cases) this approach does little more for the drug offender than speed up the revolving door from our courts to our jails and prisons, and then back again.

The Federal Government must promote the development of a different kind of drug court with a new mission: the creation of coordinated court procedures and programs that slow down the revolving door, reducing the drug usage and criminality of the drug-using offender.

The New Judicial Role:

Judges are in a unique position to exert effective leadership in the promotion of coordinated drug control efforts, both within the criminal justice system and their local communities.

Judges have the political influence, the ties to government agencies, the moral authority, the perceived fairness and impartiality, and the expertise and focus necessary to bring leadership to coordinated anti-drug efforts.

Traditionally, judges have played the passive role of objective, impartial referee, only reluctantly stepping beyond the boundaries of their courtroom. However, where the fair and effective administration of justice is threatened (as in this case by an exploding drug problem), the court has the responsibility to come forward and become a leader and active participant in the organization, design, and implementation of coordinated criminal justice and community-wide drug control efforts.

*This is the fourth in a series of policy papers on Criminal Justice Drug Control Issues by Judge Jeffrey S. Tauber.

An Effective Drug Court:

The most direct and effective way that judges can provide leadership is, of course, through the development of drug courts. Run by a single judge and dedicated staff, the drug court acts as a focus for, and a direct link to Probation Departments, Sheriff's Departments, treatment providers, educational institutions and other participating agencies. The drug court is committed to the implementation of the court-ordered rehabilitation program, educated about the realities of drug addiction, and willing to patiently and consistently follow court and program procedures that reflect those realities. (See Policy Statement #3, "The Principles of Successful Court-Ordered Drug Rehabilitation: A Reality Based Approach to the Drug-Using Offender.")

The court and staff (district attorney, public defender, probation officer, court clerk and marshal) work together in a nonadversarial fashion to create a courtroom atmosphere that promotes rehabilitation (often using the courtroom audience to reinforce the message). The judge takes a hands-on approach to the offender's rehabilitation and assumes, as appropriate, the role of confessor, task master, cheerleader and mentor. In turn, the judge exhorts, threatens, encourages, and congratulates the offender for his or her progress (or lack, thereof).

The Development of Drug Courts Nationwide:

Across the nation, a number of such innovative drug courts (the Oakland and Miami programs used here as examples, are not unique), designed and implemented through the leadership of judges, have achieved remarkable success in reducing the level of drug abuse and criminal recidivism among drug offenders.

In Miami, Assistant Presiding Judge Herbert Klein, led participating agencies and a community-wide anti-drug coalition in a coordinated review of current court and community-based programs. That review resulted in the development of an innovative drug court with direct computer linkages between treatment providers and the court.

In Oakland, a similar review process led to the development of a unique drug court based on a court/probation partnership model, that features the sharing of design and implementation responsibilities and the use of contingency contracts.

Unfortunately, these model programs, although extremely cost-effective, have not been widely followed by other jurisdictions. Federal support for drug treatment providers through the Center for Substance Abuse Treatment (CSAT) and law enforcement agencies, through the Bureau of Justice Assistance (BJA) leaves drug courts, court-ordered supervision of drug offenders (probation, parole, etc) and treatment programs linked directly to courts, largely ignored by Federal funding agencies.

Clearly not every judge is an appropriate candidate to (nor wishes to) preside over a drug court. A drug court judge should be a strong leader, with enthusiasm for the court's mission, an ability to motivate others, and a willingness to be a hands-on participant in the process.

Nor does every jurisdiction necessarily need a drug court. Depending on the number, nature and seriousness of the drug cases handled in a jurisdiction, a drug court may or may not be appropriate. However, the underlying principles of successful court-ordered drug rehabilitation can be universally applied, no matter what the court's circumstances.

Conclusion:

A new kind of drug court is being developed around the country. Turning away from a traditionally passive judicial role, judges are becoming leaders in the formation of community-wide anti-drug coalitions, in the coordination of the criminal justice system's drug control efforts, in the re-examination, restructuring and reshaping of traditional agency roles and structures, and in becoming hands-on participants in the development and implementation of drug courts and court-ordered drug rehabilitation programs.

Recommendations:

1. Provide training for judges and other criminal justice personnel in the organization, planning and implementation of drug courts and comprehensive court-ordered drug rehabilitation programs.
2. Establish a mechanism for funding drug courts, as well as, drug supervision agencies and treatment programs linked to drug courts.
3. Encourage judges to take leadership roles in anti-drug coalitions and coordinated community-wide drug control efforts.

January 15, 1993

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**THE IMPORTANCE OF STRUCTURAL ACCOUNTABILITY:
THE CREATION OF STRUCTURES
THAT PROMOTE PROGRAM EFFECTIVENESS***

Introduction:

Government agencies tend to see their interests narrowly, be distrustful of other agencies, resentful of outside pressures, and jealous of their perogatives. For a court-ordered drug rehabilitation program to be effective, participating agencies must be able to look beyond those narrow interests, i.e., distributing information freely, collaborating in decision-making, sharing resources, and coordinating their efforts.

While strong leadership and individual commitment may initially create a climate condusive to coordination, over time programs unravel and agencies tend to revert to accustomed ways (when personnel changes or energies flag).

Structural Accountability: Where Structure is Accountable for Program Effectiveness

It is axiomatic that offender accountability (holding the individual offender accountable for his or her actions) is the cornerstone of successful drug treatment. It is equally true that structural accountability is the key to a successful court-ordered drug treatment program.

The goal of structural accountability is to reshape programs and redefine relationships in such a way that program structure itself will promote accountability and help maintain effectiveness over the life of the program.

Structural accountability, exists when participating agencies share program responsibilities and are accountable to each other for program effectiveness. It is a circular system, with each part of that system (probation officer, public defender, district attorney, treatment provider, court staff and judge) directly linked to, dependent upon, and responsible to the others.

Characteristics of a Structurally Accountable Program:

1. Shared Funding:
Joint responsibility as to funding decisions (and planning) for the program promotes an integration of function and sense of responsibility for the total program.

2. Program Guidelines:
The setting of clear guidelines describing program requirements and consequences informs all participants (including offenders) as to what is expected of them.

*This is the fifth and last in a series of policy statements on Criminal Justice Drug Control Issues by Judge Jeffrey S. Tauber.

3. Setting a Mission and Goals:
It is important for participants to develop and agree on program goals that they can work towards and measure their progress against.
4. Participant Ownership:
Full interagency and personnel participation in the design and implementation of the program promotes agency and personnel commitment to the program.
5. Periodic Review:
Interagency review of the program permits continuous monitoring of program and agency effectiveness, troubleshooting for problems, long-range planning and training, and the maintenance of inter-agency relationships.
6. Hands-on or Vertical Participation:
The offender is seen by the same agency personnel throughout the process promoting personal responsibility and commitment to the offender's progress.
7. Developing Partnerships:
Participating agencies look beyond traditional relationships, redefining their roles, and sharing in decision-making formerly reserved to a single agency.
8. Data Collection:
The collection of pertinent data is essential in determining whether the goals of the program are being met, and in planning for new ones.
9. Judicial Monitoring:
The court, as the focus of the program, should be involved in the continuous monitoring of program effectiveness.
10. Full Access to Program Information:
Complete access to information on the work of participating agencies allows them to better understand each other's importance, work together more effectively, and monitor each other's work product.
11. Direct Linkages between Participants:
Developing mechanisms for the face-to-face meeting of participants and the direct exchange of information promotes the monitoring of the offender's progress and the work product of staff, as well as encouraging personal relationships between participants. (i.e., in Oakland, the offender's probation officer typically meets with the judge before court, is in court with the offender at his or her progress report hearing, and is seen by the offender immediately after court).
12. Personnel Incentives:
Provide incentives for the effective performance of work done and rewards for the special contributions of individuals.

Contingency Contracting: An example of Structural Accountability:

A contingency contract is developed cooperatively by the drug court judge, the probation department staff, and other participating agencies. It sets out the consequences for offender conduct during the program. Both positive and negative behaviors are rewarded or penalized according to the number of rehabilitative tasks completed.

In Oakland, the number of points achieved under the contract, reflect the number of rehabilitative tasks completed. Over the life of the program, that point total translates into rewards (where the offender's term of diversion may be reduced from 24 months to as little as 6 months, and the diversion fee reduced from \$220 to as little a \$20) or sanctions (where the court increases the intensity of supervision, treatment and/or orders a limited term of incarceration).

Both the judge and the probation department are responsible for the creation of the contingency contract, and accountable to each other for its effective operation. In designing a contingency contract, both the court and the probation department share the responsibility of establishing treatment and supervision requirements (traditionally the province of the probation department). Similarly, by creating a contingency contract that sets out the consequences of the offender's conduct, both the court and the probation department share in the making of sentencing decisions as to the offender (formerly the court's sole responsibility).

Perhaps most importantly, the court, probation department and participating agencies, have committed themselves to the terms of the contingency contract, making them accountable to the offender for the contract's promised consequences (both positive and negative), while also making the offender accountable and giving the offender control of his or her rehabilitation.

Conclusion:

Court-ordered drug rehabilitation programs, like all government programs, require the effective operation of government agencies. But because the task involved, the rehabilitation of drug-using offenders, is an extraordinarily difficult one, a higher degree of competence, coordination, and accountability is required of program participants. Building Structural Accountability into the operation of a court-ordered drug rehabilitation program will insure that programs successfully started will continue to be effective.

Recommendations:

Encourage the development of structurally accountable court-ordered drug rehabilitation programs through education, training, and technical assistance provided to local jurisdictions.

January 29, 1993