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CRACK AND THE NEW YORK COURTS:

A STUDY OF

JUDICIAL RESPONSES AND ATTITUDES

EXECUTIVE SUMMARY

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EXECUTIVE SUMMARY

BACKGROUND AND DESCRIPTION OF THE PROJECT

The recent and unprecedented surge in the number of drug arrests and in the percentage of drug-involved offenders has caused enormous management and policy problems for the court system. The focus on control of street drug dealing and emphasis on enforcement and punishment instead of treatment and rehabilitation have been fueled in part by a recent evolution in American society's attitudes toward illicit drug use. With the widespread sentiment that drug use is a cause or symptom of many of society's ills has come a readiness to blame much of America's crime and violence problem on the use and sale of illicit drugs (see e. g., The White House, 1990), unprecedented media coverage of the issue, and increased clamoring for more effective measures to control drug offenders (Reinarman and Levine, 1989). In the midst of this latest wave of public concern about drug use, now focusing on cocaine and crack, the courts have struggled to react to these pressures while simultaneously confronted by severe courtroom congestion and jail/prison overcrowding.

In 1985, "crack," a highly potent form of cocaine, began appearing on the streets of New York City (earlier reports about the drug came from Los Angeles, where it was known as "rock" cocaine). Crack is a smokable form of cocaine which produces a brief but intense high, a rapid onset of depression, and a compelling drive for repeated use (Siegel, 1982; Frank et al., 1987). Dependence appears to occur much more quickly than with powdered cocaine (Frank et al., 1987). Although cocaine users were already familiar with the intensified high obtainable by smoking "freebase"[1] cocaine (Siegel, 1982), the appearance of crack, which was easy to produce and market, meant that smokable cocaine was now available in small quantities at relatively low prices. It spread

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[1] A smokable form of purified cocaine chemically processed from relatively large quantities of cocaine.

fairly rapidly throughout the country, especially to urban areas (Klein et al., 1988; Hunt, 1987; Inciardi, 1987; Johnson et al., 1990). Its popularity has spawned a large, unregulated market whose high profits have attracted a new generation of sellers (individual entrepreneurs as well as organizations; Johnson et al., 1987). Drug-related violence was reported to have increased sharply with the growth of the new crack market (Fagan and Chin, 1989; Goldstein, 1989; Williams, 1989; Hamid, 1990).

Further, the tremendous media attention towards crack and other drugs and the increasing clamor of Federal and local politicians to "get tough" on drugs, together with a more general hardening of public attitudes toward illicit drug use, may have placed substantial pressure on the judiciary to view crack cases from a different perspective, give them closer scrutiny, and perhaps process these cases more harshly. The response of New York City's criminal justice policy makers is a case in point. Within a few months of the emergence of the drug, the City's police commissioner was warning that 1986 would be "the year of crack" (Press, 1988). Newspaper accounts describing irrational violent crimes committed by persons high on crack began appearing regularly. During July 1986, for example, there were 74 evening news segments concerning drugs (half of them about crack) on the three television networks. Each of the major national news magazines, Time and Newsweek, proffered five cover stories on the crack crisis during 1986 (Reinarman and Levine, 1989). The hyperbole about crack was tossed around by the media and politicians like grass seed: ABC News termed crack "a plague [that was] eating away at the fabric of America."

For the Mayor's criminal justice advisers, crack moved to the forefront of their policy concerns. In April 1986, the police commissioner ordered the formation of a Special Anti-Crack Unit (SACU), consisting of 100 narcotics officers. They were more successful than anyone could have imagined. Soon after the anti-crack enforcement began in Spring 1986, arrests for crack possession or sale were exceeding 1,400 per month. By 1989, crack arrests were averaging 3,600 per month, an increase of 157%. This enforce-

ment strategy, using elite teams of undercover officers to make "buy and bust" arrests, led to a huge increase in drug arrests generally (up 41% from 1986 to 1989 to almost 95,000 arrests per year), and perhaps to higher quality arrests. Felony drug arrests increased by 69% during this period, to nearly 50,000 in 1989. The percentage of defendants arrested for drug charges increased from 11% of the arrestee population in 1980 to 31% in 1989 (New York City Police Department, 1990).

During 1989, there were 25,048 felony arrests for crack possession or sale, representing about half of all drug arrests, and 15% of all felony arrests (the largest single offense category besides robbery). An additional 18,194 misdemeanor crack arrests were also made during 1989 (41% of all drug misdemeanors, and 13% of all misdemeanors).

More generally, the past decade has seen a considerable change in the composition of the defendant population. Nationally, both the number of drug arrests and the percentage of all arrestees that are charged with drug offenses have increased substantially since 1980 (Belenko, 1990). A recent national study of the impact of drug cases on urban trial courts in 26 cities found an average increase in the felony drug caseload of 56% between 1983 and 1987, with drug cases comprising an average of 26% of the felony dispositions in 1987 (Goerdt and Martin, 1989).

Under the New York State Penal Law, felonies are classified into five categories (A, B, C, D, E in descending order of severity). The vast majority of felony crack sale arrests are for a B-felony, charged where there is an alleged sale of any amount of a preparation containing a "narcotic" drug (the Penal Law definition of narcotic drug includes cocaine and its derivatives). Typically, this involves a $10 - $20 transaction.[2] Relatively small proportions of felony crack possession arrests are for a C-felony (possession of one-eighth ounce or more aggregate weight), or D-felony (500 milligrams of cocaine -- equivalent to about 6 vials of crack). It is thus clear that crack arrests are classified relatively severely within the stream of cases -- the most common crack charge, B-felony sale, car-

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[2] B-felony possession is charged for the possession of any amount of a "narcotic" drug with intent to sell, or one-half ounce or more (aggregate weight) of a substance containing "narcotics."

ries the same penal law severity as armed robbery, first degree rape, and first degree manslaughter.

Mandatory plea bargaining and sentencing restrictions for felonies also limit the available processing options in New York. For example, a crack defendant indicted on a B-felony cannot be convicted of an offense lower than a D-felony; a B-felony drug conviction carries a mandatory indeterminate prison sentence for a first offender ranging from a 1 - 3 year term up to an 8 1/3 - 25 year term. For second felony offenders, the mandatory indeterminate prison sentence upon conviction of a B-felony is at least 4 1/2 - 9 years. A second felony conviction, no matter what the severity, requires a mandatory indeterminate prison sentence ranging from 1 1/2 - 3 for an E- felony to 3 - 6 for a D felony.

The nature of the law enforcement effort against street-level crack sale and use, usually involving undercover "buy-and-bust" operations, also means that most of these arrests are prosecuted through as felonies. There is relatively little reduction or likelihood of dismissal of the charges following the prosecutor's initial review.

This combination of strong arrests and serious charges, in the context of the legal constraints mentioned above, results in a courtroom environment that both restricts the non-punitive case processing options available to a judge for crack cases, and places considerable leverage with the prosecutor to pressure the defendant to accept a plea offer that includes a felony conviction or an incarcerative sentence.

The result has been an enormous new burden on an already strained criminal justice system, including overcrowding of the City's detention facilities, increased prosecutor and public defender caseloads, lengthy court calendars and attendant delays, increased demand for more judges and courtroom space to process the high volume of crack cases, and competition for scarce treatment resources and prison space.

The proliferation of crack use and arrests for crack sales and possession and the concern over the perceived dangers of use and sale of this drug, have dominated the criminal justice policy debate in New York City in the last four years and triggered a high

level of attention by judges and court administrators. For example, the Seventh Annual Criminal Justice Retreat of the Association of the Bar of the City of New York in December 1987 was devoted entirely to a discussion about the system's response to the crack crisis. This conference ended with calls for better interagency coordination, more effective management and planning, expanded court resources, and more efficient and proactive use of data to anticipate and monitor system crises (see Anderson, 1988; Press, 1988). Few, if any, of these recommendations have been formally implemented.

The recent changes in public attitudes about drugs in general and crack in particular, exemplified by growing intolerance toward illicit drug use and the perception that crack use and violent behavior are inexorably linked, have increased the urgency for the Courts to respond more effectively to crack. These exogenous forces may place an added burden on the courts to treat these cases more seriously and show that they too are "tough" on drug use and sale. At the same time, legislators have passed laws increasing the penalties for crack possession and sale.[3] The confluence of these factors, along with a lower threshold for felony charges, creates substantial pressure on judges to impose harsher treatment on crack cases.

How the judiciary has responded to these quantitative and qualitative pressures in New York City (the jurisdiction where crack first became the target of intense criminal justice scrutiny), and how the influx of large numbers of crack arrests has affected their courtroom decisions, are the subjects of this study. With little or no input into the policy decisions that affected the size and nature of their calendar caseloads, considerable external pressure to be "tough" on drugs, and a common public misunderstanding of the role of the courts in criminal case processing and crime control, judges were being placed in the position of having to respond, with limited resources, to a crisis in which it was difficult for them to be viewed in a positive light. If judges moved cases along faster and reduced case delay by accepting lower plea bargains there could be a loud public outcry

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[3] For example, in mid-1988 the State Legislature passed a law that lowered the threshold for felony possession of crack from approximately 20-30 vials to approximately six (the actual statutes are cast in terms of weight). The rationale behind this legislation appears to have been that possession of six or more vials more likely indicated intent to sell rather to use the drug oneself.

("soft judges," "giving away the courthouse"). On the other hand, if the rates of jail and prison sentences increased, judges might be blamed for exacerbating the local and State prison overcrowding crisis, or for imprisoning drug users who were in need of treatment, rather than incarceration.

There were two principal parts to this study. The first phase of the research used court processing data to yield estimates of the effects of the crack crisis on court caseloads and delays in case processing, and case outcomes. We analyzed case variables and outcomes for crack cases compared to powdered cocaine and non-drug cases both in the period preceding the emergence of crack, and contemporaneous with the crack samples. Whether judges assigned a higher priority or greater weight to crack cases was determined by examining bail setting and pretrial release, disposition, and sentencing patterns, (controlling for relevant case and defendant factors). The overall impact of crack cases on the courts may be viewed in terms of whether these cases were absorbed into a larger system with decisions indistinguishable from other types of crimes, or were afforded special treatment. The extent to which detention facility overcrowding affected judicial decisions was also addressed. Reciprocal effects of crack cases on non-drug defendants were measured by analyzing trends in the processing of non-drug cases before and during the crack epidemic.

Second, we examined the court's response from an organizational or system perspective. Through interviews and case studies, we assessed the extent to which judges and prosecutors responded to the surge of crack cases by assigning them a "special" status, and whether a consensus developed about how these cases should be treated.

The court's response in allocating its resources and instituting management innovations is also a focus of this study. The creation of special "Part N" drug courtrooms[4]

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[4] Special felony waiver courtrooms ("parts") were set aside exclusively for drug felony cases. The goal was to ease the pressure on the regular calendar and trial parts by diverting felony drug cases from the regular grand jury and indictment process into special courtrooms, where defendants could waive their right to a grand jury hearing and enter a plea to a Superior Court Information (SCI), theoretically on reduced charges and get a more favorable plea offer than would be available through regular processing. This plea offer is communicated to the defense attorney early in the Criminal Court process.

were emergency responses that had rarely been invoked. The effects of this action on the operation of the court system were assessed by analyzing court processing and case data for arrests assigned to these special parts, and comparing these characteristics with similar cases processed through regular court parts. The effects on other case types of shifting court resources are unknown, but are an important dimension of the hidden costs of crack.

As part of this analysis, we examined the problems and solutions in interagency management of the crack caseloads as well as methods of policy development and coordination. Specifically, we reviewed the extent to which judges and court administrators tried and deemed it important to coordinate crack policy with law enforcement, prosecutors, defense counsel, pretrial services agencies, and detention and probation staff. This was accomplished primarily through semi-structured interviews with judges, court administrators, and other key actors.

PROJECT DESIGN

A. JUDICIAL SURVEYS

The qualitative component of this study used in-person and mail surveys with judges and other key criminal justice actors in New York City[5] (prosecutors, defense attorneys, police, corrections and probation officials, and mayoral representatives) to assess the effects of crack caseloads on judicial decisions, the level and sources of knowledge about crack and drug treatment, attitudes about the relative severity and importance of crack cases, and the effects of media and political pressures.

Two related surveys were conducted: First, face-to-face interviews were conducted with 26 judges and 28 other officials during May and June 1989 by senior project staff. Because the primary purpose of the interview component was to generate background information and a broad range of opinions and experience, we did not attempt to

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[5] Staten Island was excluded because of its low drug case volume.

obtain a random sample of respondents. Rather, we focused on interviewing administrative judges, judges who presided over the special "narcotics court parts", and lower ("Criminal") and upper ("Supreme") court sitting judges identified through chain referrals as being knowledgeable about crack cases. Although the original plan was to interview 70 individuals, including 37 judges, we were able to complete only 54 face-to-face interviews, including 26 judge interviews.

The second survey was designed to gather similar data from as many sitting New York City judges as possible, to help assess whether the responses we obtained in the personal interviews were representative of all judges. The same survey instrument (modified to allow self-administration) was mailed to all 300 sitting New York City judges in September 1989. Unfortunately, despite a letter of support from the City's chief administrative judge, a follow-up reminder letter, and the guarantee of anonymity, the response rate was disappointing (24%). Thus, the survey responses described in this report should be considered illustrative and an aid toward interpreting the quantitative case processing data, and not necessarily representative of the opinions of New York City judges in general. Because of the relatively small number of respondents from the in-person survey, but the general consistency in the results from the two surveys, the responses were combined for the data analyses (total N = 97 judges, 127 respondents in all).

To supplement the qualitative information about the processing of crack cases gathered from the judicial interviews, case studies of representative crack and other cases were also conducted by reviewing court records and interviewing key decision makers. The purpose of the case studies was to (1) identify key decision points in the processing of crack cases, (2) assess the relative importance of qualitative case factors such as strength of evidence and the "worth" of a case, (3) determine whether the ways in which various components of the Court system interact with the judiciary differ in any way for crack cases, and (4) improve our understanding about how decision making for crack cases evolved as the crack caseload crisis unfolded in New York City.

There were two stages to this effort. First, a sample of 36 representative crack

and nondrug cases was selected, and the court records reviewed. Second, personal interviews were conducted with four prosecutors and defense attorneys in three boroughs. These included two Narcotics Division Chiefs, a public defender, and a member of the assigned defense counsel panel.

B. CASE PROCESSING ANALYSES

The case processing component of the study was designed to examine how the influx of crack arrests affected the court outcomes for these cases in New York City,[6] compared with other drug and non-drug cases, using both a cross-sectional and multi-period design. Eight arrest samples (two crack samples and six comparison samples) were drawn covering three time periods, using stratified random selection from among all arrests of each case type:

> (1) two samples -- one each for powdered cocaine cases and non-drug cases -- from the period 1983 - 1985, just before crack emerged in New York City as a major media and law enforcement issue;
>
> (2) three samples -- one each for crack cases, powdered cocaine cases, and non-drug cases -- in the second half of 1986, when intensive anti-crack enforcement began, and media and political attention began to intensify; and
>
> (3) three similar samples -- one each for crack, powdered cocaine, and non-drug cases -- from early 1988 to permit the analysis of longer-term effects of the influx of crack cases on the courts.

Data were drawn from a number of sources, including the Police Department's On-line Booking System database (OLBS) and computerized police arrest reports; the New York City Criminal Justice Agency's (CJA) and the New York State Office of Court Administration's (OCA) offender databases; and the New York State Division of Criminal Justice Service's (DCJS) fingerprint-based criminal history database.

The two "pre-crack" samples consisted of 3,424 powdered cocaine arrests from 1983-84 and 3,772 non-drug arrests from the first half of 1985. The powdered cocaine sample was matched to a sample of crack arrests from the second half of 1986 (see below)

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[6] As with the interviews, Staten Island was excluded because of the low number of drug cases.

by charge severity and prior criminal record. The non-drug arrests were sampled from what are generally considered more serious crimes, including misdemeanor and felony assault, felony burglary, petit and grand larceny, and (felony) robbery; moreover, cases transferred to Supreme Court were oversampled. These two samples provided a baseline for treatment of cases in the "pre-crack" period.

Vigorous law enforcement efforts were directed at crack cases beginning in Spring 1986. To permit practices to have become firmly established, but to capture the effects on courts of this early stage in enforcement, we drew three samples from the second half of 1986. One sample of 3,403 cases consisted of all verified crack arrests for the period August 1 to October 31, 1986. A second sample consisted of 1,751 cases of powdered cocaine arrests matched by charge severity and prior record to the 1986 crack sample. This sample was based on a flag in the police data files indicating a cocaine-related arrest but excluding cases which had indications that it was a crack case (the words "vial" and/or "crack" appear in the arrest narrative). A third sample consisted of 3,960 non-drug arrests for the offenses listed above.

By 1988, crack cases had become an established part of the criminal justice scene and measures to expedite the processing of drug cases, especially the use of special N-Parts, had been undertaken. Much attention was still directed to crack, but it was no longer a new phenomenon. We drew matched samples for 1988 to parallel the samples for 1986: 1,993 crack cases, 1,855 powdered cocaine cases, and 3,573 serious non-drug cases. Comparisons of arrest and defendant characteristics between our sample cases and all 1987 cocaine and crack arrests in New York City revealed no differences which might bias our findings, and we are confident that case outcome results described below represent those in the general crack and cocaine arrest populations in New York City.

C. EXPERT PANEL

To help guide the development of policy recommendations, the Project researchers empaneled a group of senior New York judges, criminal justice officials, and expert analysts, to guide us in drafting broader policy recommendations and in developing guidelines for more effective judicial crisis management in response to caseload crises. The panel was asked to review preliminary results from our analyses of crack case outcomes and interviews with judges and other officials, and to discuss the implications of these findings for future judicial responses and the lessons that can be learned about improving judicial management and interagency coordination. The Expert Panel meeting resulted in a set of recommendations that have been incorporated into our Policy Recommendations and helped guide some of the analyses of case processing outcomes.

PROJECT FINDINGS

A. JUDICIAL INTERVIEWS

In this section we summarize the results of the interviews with judges and other criminal justice officials. The survey included questions related to the implementation of special narcotics courtrooms, the impact of the Police Department's intensive anti-drug enforcement strategies, issues in crack abuse and drug treatment, external influences on the judiciary, legal and case processing issues, and interagency coordination. These are the highlights of the findings:

1. Crack and Drug Treatment

The responses of the judges to questions regarding crack's effects on users and issues related to drug treatment reflect their viewpoint that crack is a relatively serious drug for which effective drug treatment is not available. In addition, it is clear that judges have received little formal training about crack or drug treatment, which may sometimes constrain their ability to make a comprehensive assessment of the appropriate dispositions for crack-involved defendants. Nearly all the respondents (95%) believed that crack

is more addictive than powdered cocaine, and three-fourths agreed that crack is more closely associated with violent crime than are other drugs. These views are probably consistent with those of most criminal justice professionals. Relative to heroin, powdered cocaine, or PCP, crack sale and possession were each given the highest average severity ranking. Crack was also compared to six of the most common non-drug offenses (felony assault, robbery, burglary, rape, auto theft, and petit larceny). Rape, robbery, assault, and burglary (in that order) were seen as being more serious than possession of crack, with auto theft and petit larceny ranked as less serious. Compared to sale of crack, rape, robbery, and felony assault were again ranked as the most serious crimes. However, the average rank for sale of crack (3.7) was similar to burglary (3.8). Thus, while not viewed as seriously as crimes of violence, crack use and sale was considered by judges to be more serious crimes than theft, while crack sale was seen as comparable to burglary.

These attitudes, while perhaps consistent with generally held views, did not appear to be grounded in empirical knowledge -- only 30% of the judges had received any formal training about crack, and for most, their knowledge about crack came from newspapers (75%), magazines (60%) or other judges (54%). There was a similar dearth of training about drug treatment (30%). This is not to say that useful and accurate information is impossible to obtain from the popular media, but that New York City judges do not appear to have general access to the empirical and policy research literature on drug abuse and treatment.[7] Sixty percent were aware of at least one treatment program to which a crack defendant could be referred, whether or not it was perceived to be effective -- indeed, only 18% believed that effective treatment exists for crack addicts. Further, if effective treatment did exist, most of the judges (82%) agreed that diversion of crack defendants would be an appropriate option, but they recognized that there was a severe shortage of treatment slots relative to demand.

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[7] There may be a similar lack of training about other important social and health issues that are associated with the criminal defendant population such as child and spouse abuse, learning disabilities, psychological disorders, etc.

2. Case Processing Issues

The survey questions related to the processing of crack defendants generally yielded consistent responses that, despite the view that crack is a relatively serious drug, the type of drug was generally not a factor that affected case processing decisions. For example, only 11% of the judges believed, given similar charges, defendants, and fact patterns, that a defendant charged with crack sale should be dealt with more severely than a defendant charged with the sale of another drug. A similar percentage (13%) believed that bail was set (as opposed to release on recognizance) more frequently for crack cases than for other drugs. Asked to rank the importance of various factors in making a bail or sentencing decision, the respondents considered the type of drug to be a relatively unimportant element of the decision process.

The influx of crack arrests in recent years and the attendant effects on courtroom and jail crowding may, however, have had some impact on the behavior of judges. Almost two-thirds (64%) felt that caseload pressures had influenced their decisions for crack cases, and 44% agreed that overcrowding in detention or jail facilities had also affected decisions. Some examples that were cited of the ways in which decisions had been affected are an increased likelihood of sentence to probation, more use of release on recognizance or lower bail, or more lenient plea offers by the prosecution to induce quicker pleas. The case processing trend data presented below are consistent with these attitudes: release decisions, dispositions, and sentences did become more lenient in 1988 compared to 1986, when the case volume was substantially lower (felony arrests increased by 17% in New York City during this period, primarily reflecting the large increases in drug arrests, with no concomitant increase in the numbers of judges or courtrooms). Of course, other factors such as growing familiarity with crack cases, an easing of the public and media hysteria over crack, or changes in the quality of cases over time may also have driven more lenient case decisions.

3. External Pressures

The influx of large numbers of crack and crack-related arrests into the criminal justice system can affect the system's response to these cases in a number of ways. What makes the crack phenomenon unique is that this increase in case volume came at a time when the combination of severe strains on system resources, statutory restrictions, and a more punitive ethos may have made traditional methods of absorbing case volume more difficult to implement. That is, these external factors may have made it more difficult for prosecutors and judges to dismiss weaker crack cases, reduce charges, or establish quick plea bargaining agreements by offering lower plea charges with nonincarcerative sentences. Coupled with the lack of community supervision or treatment options for crack offenders, the case surge has seriously clogged many urban courts.

Although the impact of public pressure on the Courts is difficult to quantify, it is reasonable to assume that judges and prosecutors respond at least in part to media and political influences. Further, legislators are influenced by real or perceived public attitudes in fashioning anti-crime legislation, so that the Penal and Criminal Procedure Laws under which the courts operate reflect these non-judicial attitudes at least in part. In addition, a more conservative electorate means the appointment and election of more conservative judges and prosecutors.

The survey results for the present study suggest that judges in New York City do view the public as wanting crack offenders to be dealt with punitively, and that public attitudes should have some influence on judicial decisions, since judges, as public officials, have some responsibility to reflect community standards in carrying out their statutory requirements. Nearly half the judges viewed the public as wanting harsh treatment by the courts of crack sellers (46%) and crack users (40%), although a third of respondents expressed the view that the public does not understand the relatively narrow function of the court in controlling crime. In addition, 38% felt that judicial decisions in crack cases were influenced by public attitudes, more so for high-publicity cases where there would be pressure to appear "tough." On the other hand, few judges responded that their decisions should be affected by the attitudes or policies of government officials. In a similar

vein, judges seemed unconcerned about the high level of attention given to the crack problem by the media or politicians.

4. Implementation of Special Narcotics Court Parts

In April 1987, in response to the growing concern over the impact of the flood of crack cases on the court's caseload, the Administrative Judge of the Manhattan Supreme Court, with the cooperation of the District Attorney, established a special narcotics ("N") part (courtroom) in Manhattan. Modelled after the "felony waiver" court parts that had been in operation in other boroughs for several years, the N Part was established to receive all felony drug cases following the initial arraignment in Criminal Court (usually within six days of arrest).[8] Within a year, N Parts had been established in each of the other boroughs (except Staten Island); as of July 1990, all were still in operation, although at somewhat reduced levels. The implementation of the N Parts remains the primary management initiative taken by the New York City courts in response to the crack crisis. For that reason the interviews included a series of questions about the nature of the planning process that led to their development, and the impact of these court parts on case processing.

We were interested in assessing judges' views of the efficacy of the N Parts as both a crisis management initiative and a tool for improving the administration of large caseloads. Our first level of inquiry focused on whether or not the respondents perceived that the N Parts were in fact capable of expeditiously resolving a large volume of drug cases; the second level of inquiry considered whether the cases channeled through the N Parts were processed in a fair and reasonable manner. Given the pressure to expeditiously dispose crack cases, the extent to which that pressure might result in less than ideal resolution of the case (either from the viewpoint of the defendant or the prosecution) was an important policy concern.

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[8]See footnote 4 for further explanation of the operation of these Parts.

Most judges (70%) did believe that the N Parts were effective in handling the volume of crack cases in New York City. Defense attorneys were less optimistic about the effectiveness of the N Parts -- only 58% of them felt that the Parts were an effective way to address the case volume. Their concerns centered around the fears that defendants were being pressured into agreeing to plea bargains that were too severe or inappropriate.

The N Parts must also be evaluated in terms of more qualitative factors. Only 14% of the judges indicated that the increase in efficiency achieved by the N Parts was offset by due process and/or other constitutional problems. Almost half the judges (45%) perceived that case outcomes in the N Parts were different than in regular court parts. District Attorneys and defense attorneys were less likely to perceive N Part outcomes as being different (about one-third each). The case processing analyses summarized below show that while N Part outcomes were diffrent from outcomes in other Parts in 1988, they were similar to outcomes for drug cases with like characteristics adjudicated before N Parts were implemented.

B. CASE STUDIES

Our review of the court records of sample crack sale and possession arrests and interviews with several prosecutors and defense attorneys clearly illustrated the many statutory and procedural constraints which serve to limit both prosecutorial and judicial discretion in decision-making in crack and other drug cases. In this section we highlight these findings.

Both the examination of court papers and the practitioner interviews yielded several consistent themes surrounding the handling of crack cases. First, it is clear that several factual characteristics about defendants and their crimes consistently drive decisions in crack cases. These characteristics include (in rough order of importance) (1) the quantity of drugs recovered, (2) the nature of the drug transaction and the circumstance that led to the arrest, and (3) the defendant's prior conviction record (in particular the presence of prior felony convictions).

Other drug case factors can affect pretrial release, plea bargaining, and sentencing decisions. For example, the recovery of "buy money" from the defendant strengthens the People's case and would result in more restrictive plea offers or increase the likelihood that bail will be requested. A crack sale which occurs near a school or in a sensitive community area will likewise be handled more strictly.

Driven by the large volume of cases, the rather unitary nature of the crack transaction and arrest process, caseload pressures, and statutory constraints, prosecutorial policies toward crack cases have become fairly routinized in recent years. While in the early days of the epidemic, crack may have been afforded a special status in the eyes of district attorneys and judges, that is apparently no longer the case (although drug cases generally are still treated relatively harshly). While in occasional crack cases a prosecutor or judge may try to channel a defendant toward treatment or allow leniency under extenuating circumstances, the overriding picture from our case studies portrays the development of "going rates" for crack (and other drug) cases over the past few years that are formulated almost exclusively from the presenting charge type and severity and the defendant's prior conviction record. Within this structure, the opportunity for judicial discretion or creativity in terms of case disposition or sentencing is quite limited. Coupled with the lack of alternative processing options such as diversion to drug treatment, judges in crack cases, as in other case types, often become "rubber stampers" of standardized plea bargaining agreements between prosecution and defense.

C. COURT OUTCOMES

The case outcomes analyses were designed to assess the effects of the crack case influx on case decisions, and to analyze trends in judicial decision making since the crack crisis emerged. The analyses were based on weighted case samples so that the samples would be statistically equivalent with respect to affidavit charge severity and prior criminal conviction record. The characteristics of the defendants in the various samples were generally similar along other dimensions as well. One difference was that the average age of crack defendants was about two years younger than powdered cocaine

defendants, although they were similar in age to non-drug defendants. In spite of the age differential, crack and powdered cocaine defendants appeared to have similar prior criminal career patterns (Belenko, Chin, and Fagan, 1989). The crack samples had a higher percentage of Blacks than the powdered cocaine samples, while the percentage of Hispanics was greater in the latter samples. Moreover, this race/ethnicity distinction appears to have increased since the pre-crack period. Non-drug case defendants were more similar on race/ethnicity characteristics to crack than to powdered cocaine defendants. Lastly, all samples were generally equivalent on measures of social and community stability: Similar proportions resided in New York City, reported having lived in their residences for more than 18 months, or were employed (although only a minority reported employment at the time of arrest).

1. Criminal Court Processing: Case Outcomes. The response of the prosecutors and the Courts to the onset of the crack case flood in mid-1986 was a clear hardening of case outcome decisions for both crack and powdered cocaine cases, compared to the pre-crack era. This reaction was observable in charge reduction rates, arraignment release decisions, indictments, and imposition of incarceration sentences. Changes in case outcomes between the 1983-84 and 1986 cocaine samples generally confirm this shift. There was some evidence that crack cases were being treated even more severely than equivalent cocaine cases, but the differences were neither large nor systematic. By 1988 there was a softening of the response to crack cases and fewer differences between crack and powdered cocaine defendants. However, the severity of case decisions for these drug defendants generally remained above that of the pre-crack era and when compared with non-drug cases during the five-year study period. Our sampling methods and sample case weighting reduce the likelihood that these differences were simply an artifact of the sampling procedures (e.g., later arrestees might have more prior convictions). The analysis of case outcomes for non-drug offenders produced some evidence that the increased harshness toward drug cases was accompanied by somewhat more lenient treatment of non-drug cases, especially misdemeanors, suggesting some reciprocal effects as the court was

flooded with large numbers of "serious" drug cases.

Table E - 1 summarizes the key indicators of court outcome trends. The highlights of the findings include:

-- At the initial Criminal Court arraignment, felony charges were much less likely to have been reduced for drug (about 15%) compared to non-drug cases (about 35%) beginning in 1986. In part this reflects the nature of the anti-crack enforcement effort which relied on undercover buy-and-bust arrests, tending to yield stronger arrests.

-- Release-on-recognizance (ROR) rates dropped substantially in 1986 for felony drug offenders from pre-crack levels (44% down to 23%), and then increased somewhat to 32% in 1988. In contrast, felony non-drug cases with similar affidavit charge severities and prior criminal records were much more likely to be ROR'd; their rate increased from 39% in 1986 to 47% in 1988. Multivariate analyses indicated that the probability of ROR was reduced for crack offenders, those with prior convictions, and higher severity charges.

-- For felony crack defendants the rate of case transfer to Supreme Court (75%) was slightly higher than for felony powdered cocaine defendants in 1986 (70%) and the same in 1988 (67%). For both drug types, however, transfer rates were much higher than in the pre-crack period (51% for cocaine), and when compared with felony non-drug defendants (under 40%). These differences may reflect the relative strength of felony drug sale arrests made after 1986, both relative to non-drug cases and to pre-crack drug arrests. Based on multivariate models, the best independent predictors of Supreme Court transfer were being a crack or cocaine defendant and the severity of the affidavit charge. Also, lower court dismissal rates for felony non-drug defendants (about 27%) were more than four times higher than for felony crack defendants in both 1986 and 1988.

-- The conviction rates for misdemeanor crack (77%) or powdered cocaine defendants (about 80%) were substantially higher and the dismissal/acquittal rate lower than for misdemeanor non-drug defendants, and did not change in 1986 from pre-crack levels.

-- The Criminal Court sentencing data revealed that felony crack defendants were somewhat more likely to be sentenced to jail if convicted of a misdemeanor, and they received somewhat longer jail sentences in 1986 and shorter terms in 1988 than powdered cocaine defendants. In contrast to most of the other court outcome data, non-drug defendants convicted of misdemeanors were treated more severely: "Time-served" jail sentences were imposed substantially less frequently and mean sentence lengths were longer for non-drug than for either crack or powdered cocaine defendants.

2. Criminal Court Processing: Time to Disposition. With respect to delays in Criminal Court processing, the evidence suggests that despite the substantial increase in crack cases, the Court's performance improved between 1986 and 1988. While the mean number of adjournments remained the same in 1986 relative to the pre-crack period,

there was a decrease in 1988 for all types of cases. Mean Criminal Court case processing time decreased between 1986 and 1988 for cocaine cases (from 49 to 38 days) and remained stable for non-drug cases (almost 70 days).[9] In part the reduction for cocaine cases reflects the creation of the special N Parts in 1987, which greatly reduced disposition time (see below). On average, both felony and misdemeanor drug cases were disposed faster in Criminal Court than non-drug cases.

3. Supreme Court Case Processing: Case Outcomes. Our findings regarding the impact of crack on case outcomes in Supreme Court were less consistent. First, these analyses were based on data which had to be drawn from several sources and were sometimes inconsistent or incomplete. Second, conviction rates tend to be so high generally in New York City's Supreme Courts that it was difficult to detect significant changes in these rates; the primary case screening occurs prior to presentation of a felony case to the grand jury, and prosecutors tend to present only the strongest cases for indictment. Third, the restrictive nature of New York's anti-drug laws and the type of law enforcement efforts that characterized the response to crack greatly increased the likelihood that crack cases would be adjudicated as and convicted of felonies.

Highlights of the Supreme Court case outcome findings include:

-- In 1988, crack and cocaine defendants had similar rates of release on recognizance at Supreme Court arraignment (about 36%); in contrast to the lower court findings, non-drug defendants had a lower proportion released (20%).

-- A similar percentage of 1988 crack defendants had charges reduced between Criminal Court arraignment and Supreme Court disposition as cocaine cases (about 75%). This represented a change from 1986, when a greater percentage of defendants in crack (84%) than in either powdered cocaine (69%) or non-drug cases (61%) had their charges eventually reduced. Charge reduction occurs at various stages of the processing in both the lower and upper courts.

-- As mentioned above, Supreme Court dispositions consist almost entirely of convictions, almost all by plea. Drug cases generally had a higher conviction rate than non-drug cases, perhaps reflecting the way drug cases are

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[9]Processing time data were not available for the 1986 crack sample. Mean processing time for crack cases in 1988 was 42 days, slightly longer than cocaine cases.

made (i. e., undercover buy and bust or direct police observation of a drug sale). The dismissal/acquittal rate for non-drug cases doubled in 1988 to 13%.

-- Among defendants convicted of felonies in Supreme Court who had no prior felony convictions,[10] 48 percent of crack defendants received prison sentences in 1988 (down from 59 percent in 1986), about the same rate as powdered cocaine defendants and a lower rate than non-drug defendants. On the other hand, crack (and powdered cocaine) defendants more frequently received split prison and probation sentences than did non-drug defendants, at a much higher rate than before crack appeared; there was a shift from straight probation to split sentences in 1986 for cocaine cases. The proportions of prison sentences decreased and probation sentences increased in 1988 for all offense types relative to the earlier time periods. Multivariate analyses of the factors affecting the sentencing decision indicated that prior conviction record and charge severity were the most important determinants of a sentence to incarceration.

-- Prison sentences were longest for crack and non-drug defendants with prior felony convictions in 1988 (36 and 37 months compared with 30 months for powdered cocaine defendants). On the other hand crack defendants without prior felony convictions were treated more leniently than other defendants in 1988; average sentences were 20 months for these crack defendants compared with 30 months for powdered cocaine defendants and 27 for non-drug defendants. Sentence length did not change from the pre-crack period.

4. Supreme Court Processing: Time to Disposition. The data for time from initial arraignment to Supreme Court disposition indicated, as did the Criminal Court processing times, significant reductions for all types of cases between 1986 and 1988. The largest reductions in time from Criminal Court arraignment to Supreme Court disposition (around 40 percent) were for powdered cocaine cases (from 271 to 162 days) and crack cases (from 265 to 169 days); in large measure this is attributable to the effects of the N Parts (see below). Despite the overall caseload increases, processing time for non-drug cases also decreased, from 236 to 190 days, a reduction of 19 percent.

5. Impact of the N Parts. The establishment of N Parts in 1987, in response to the large influx of crack and other drug arrests into the courts, was an attempt to speed the processing of drug cases and relieve some of the pressures on court calendars. In that sense they appear to have been successful, enabling felony drug cases to be adjudicated

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[10] Since a prison term is mandatory for convicted repeat felony offenders, Supreme Court sentencing patterns were examined only for defendants without prior felony convictions.

considerably faster than through regular court parts, with no apparent overall diminution in conviction rates compared with 1986. Compared with similar severity non-N cases in early 1988, N Part defendants initially charged with B felonies had a relatively high rate of felony conviction and a low dismissal rate. In addition, these defendants were convicted on higher severity charges than similar defendants in 1986. There were two indications, however, that defendants were getting a "better deal" in the N Parts: (1) A slightly lower probability of receiving a prison sentence following felony conviction, among defendants without prior felony convictions, and (2) a slightly lower conviction rate among prior felons than in 1986. While the average prison sentence lengths were similar in the N Parts and other Parts (and longer than in 1986), both the likelihood of jail sentence and the jail sentence length were greater for defendants convicted of misdemeanors in the N Parts than in other parts. There were no systematic differences in the characteristics of defendants adjudicated through the N Parts, although they actually had somewhat higher affidavit charge levels than the other Parts. Differences in criminal history were equivocal -- there was a slightly higher proportion of first arrestees in the N Parts, but N Part defendants were also more likely to have prior felony convictions. Thus it does not appear that defendant or case differences accounted for the differences in dispositions and sentences between N and other Parts.

N Part cases were processed significantly faster than other cases in 1988. Overall, crack cases channeled through the N Parts and reaching final disposition in Criminal Court completed lower court processing in a mean of 30 days (median 10 days); cases receiving Supreme Court dispositions were completed in a mean of 162 days. Cases adjudicated in other court parts took considerably longer: 149 days in Criminal Court (median 107) and 236 days in Supreme Court. Similar differences were observed for cocaine cases. We can thus impute that, other things equal, each crack-case adjudicated in an N Part in 1988 saved an average of 119 days if completed in Criminal Court and 74 days in Supreme Court.

Comparing these processing times with the available data for similar 1986 drug cases demonstrates the relative speed of N Part processing. In 1986, the mean time from arraignment to Supreme Court disposition for B-felony crack cases was 249 days (median 160), almost 100 days longer than 1988 N Part cases). The results for cocaine cases were similar. In 1986, B-felony cocaine cases adjudicated in Criminal Court took an average of 102 days (median 62) to reach final disposition, 72 days longer than 1988 N Part cases.[11]

Since processing time data are not an absolute measure of the expenditure of court resources and can be distorted by the time that a defendant might be out on a warrant, we also examined the number of court adjournments (excluding the initial arraignment) for N Part cases as a direct measure of the impact on courtroom resources.[12] The findings are consistent with processing time: N Part cases were completed in fewer lower court adjournments than non-N cases and when compared with 1986 cases. Thus, 1988 crack cases were completed in Criminal Court in an average of 3 adjournments for N Part, and 5.6 for non-N part cases (the data for cocaine cases were almost identical). In contrast, crack cases took an average of 4.7 adjournments to reach Criminal Court disposition in 1986, and cocaine cases an average of 4.3 adjournments. Thus, relative to baseline averages prior to the inception of the N Parts, these parts saved about 1.7 adjournments per crack case among those B felonies disposed in the lower court.

Use of the N Parts, however, had declined citywide by 1989. The peak use in terms of absolute caseload was in 1988, when 20,701 N Part dispositions occurred, representing 60% of all drug felony complaints. This rate declined substantially, to 48%, in 1989. In relation to the number of cases sent to the grand jury for indictment, however, use of the N Parts actually was greatest in 1987, the first year of their implementation. In that year, 70% of all drug felony complaints were adjudicated in these Parts. The change in 1989 primarily reflected a decline in their use in Manhattan and Brooklyn

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[11] Criminal Court processing time data were not available for the 1986 crack sample.

[12] Data on the number of Supreme Court appearances were not available from our data sources.

after the first year of N Part operation. For example, during 1987 73% of Manhattan drug felonies were disposed in the N Part; by 1989 this rate was down to 51%. For Brooklyn the comparable figures were 70% and 37%.

These findings raise the question about why use of the N Parts has been declining. A court management innovation which greatly speeds up the processing of felonies without compromising (at least from a prosecutor's perspective) the quality of disposition or sentence would appear to be a court administrator's and prosecutor's dream. Yet in the two highest volume boroughs use of these Parts had declined in 1989 to about 44% of drug felony dispositions from over 70% in 1987. This change reflects prosecutorial policy in New York City and not necessarily the preference of the judiciary, since the former control the flow of cases into N Parts. It may be that some District Attorneys were concerned that N Part dispositions were too lenient, and assumed that drug felonies processed via indictment would be disposed with more severe sanctions. Our data indicate, however, that case outcomes did not change dramatically as a result of the N Parts compared to similar cases processed prior to the establishment of N Parts. The judicial survey also indicated broad support for these Parts as a caseload management tool. It would appear to be the Court's (and the City's) interest to expand rather than contract the use of these special drug courtrooms, assuming appropriate controls to ensure that defendants are allowed sufficient time to consider the plea offers and assess the nature of the People's evidence. Defense attorneys interviewed for this study did express concern that the pressure on their clients to quickly accept a plea might compromise due process, although N Part judges appeared to be sensitive to those concerns and stated that they would not accept a defendant's guilty plea if there was any sense of coercion or if the defendant did not fully understand the implications of the plea.

POLICY RECOMMENDATIONS

One of the important goals of this study was to concatenate the findings from quantitative and qualitative analyses and develop a series of recommendations to assist urban court systems in managing surges in uniform case types and minimizing their adverse impact on the functioning of the courts. We were interested in recommendations both for changes in the behavior of individual judges, prosecutors, defense attorneys and other key participants in the court process, and for targeting systemic or organizational changes that bear on the efficient functioning of the Courts. The history of most urban courts of the past five years is the saga of a system strained by large increases in case volume, primarily due to drug arrests. It is hoped that these policy recommendations would help to ameliorate the current impact of these cases and to reduce the effects of future caseload crises through strategic, proactive planning.

The crack caseload crisis in New York City epitomizes a system buffeted by inadequate interagency coordination and strategic planning, and the inability of the legislative and executive branches of government to sufficiently augment resources to all segments of the criminal justice and health systems affected by the emergence and spread of crack. The case processing and interview data analyzed in this study demonstrate the burden placed on the New York City court and jail systems by the surge in crack arrests, its effects on decision making, and the constraints under which judges and court administrators have had to operate in trying to respond to this crisis. To some extent the pressures experienced by the City's courts reflect its relatively slow case processing time and low per-judge caseloads (Goerdt et al., 1989). While our analyses show that the New York City courts were on one level able to effectively absorb these cases (i.e., processing time decreased between 1986 and 1988), the crack crisis created an atmosphere of severe strain and interagency conflict, and jail and prison populations have swelled to numbers that would have been unimaginable ten years ago.

In considering the lessons learned by the City's response to crack, several guidelines emerged for more effective management of similar caseload crises in the fu-

ture. In this section, we present a framework for model judicial strategies for dealing with caseload surges, both from the perspective of individual judges as well as supervising judges and court administrators. However, in a real sense, "response" is a misnomer: The chances of successfully absorbing large caseload increases while simultaneously imparting fair and effective case dispositions are greatly enhanced by proactive policy development and strategic planning, and by the active participation of all lead agencies. In the absence of organizational structures that make this possible, the result is often crisis management and temporary, "band-aid" solutions.

PLANNING AND LINKAGE: THE CRITICAL ELEMENTS:

It is clear that one of the lessons of the crack crisis is that the courts suffer when they operate in isolation from other components of the criminal justice system, the executive branch, and legislative bodies. Having virtually no control over the type or volume of cases entering their courtrooms, judges can easily become traffic cops and ratifiers of agreements reached by others, rather than jurists or decision makers. This is especially likely where discretion is limited by resource constraints, statutory regulations, and inflexible procedural rules. **Hence, establishing ongoing, mutually supportive linkages with other component agencies is important for maximizing judicial control over their caseloads, and is an important feature of a model judicial strategy.** At the same time, a proper distance between the judiciary and the legislative and executive branches should be maintained with regard to political, statutory, and program initiatives in order to preserve judicial independence. Further, for judges to more effectively exercise control over their caseloads, the system should provide better training on caseload management and drug abuse issues.

It is important that the Courts be routinely involved in strategic planning and resolution of case management issues as they emerge. That is, the Court's ability to deal with a caseload crisis will be enhanced by an organizational structure that quickly enables it to detect emerging trends and to plan for possible impacts. It is critical to evaluate and plan for case processing trends in the courts and for the likely effects of in-

itiatives of other criminal justice institutions. This requires accurate, timely, computerized case processing data as well as management structures (not necessarily judicial) which can develop and enforce changes. For example, changes in Police Department enforcement strategies, District Attorney case review procedures, or the Probation Department's handling of violation hearings can have enormous impacts on the way in which the Courts conduct their daily business.

Such an organizational structure would involve the active cooperation of all key criminal justice related agencies, since decisions of other institutions, executive agencies, and the legislature can have significant impact on the courts. It should focus on issues related to effective case management and maximizing dispositional alternatives. When arrests of drug offenders began dramatically increasing in New York City in the mid-1980's, the court system found itself overwhelmed by cases without a cohesive plan to absorb them and with very few alternative processing or diversion options.

What is required to accomplish this is an organizational structure that focuses on court management issues with adequate analytic and planning capabilities, and regular, substantive meetings. This might exist within the framework of the office of the Mayor's criminal justice advisor, a task force on calendar management problems, the local or state criminal justice planning agency, a problem-solving round table, or the local bar association. Such interorganizational communication would help reduce the chance that changes in arrest or case charging patterns would be unanticipated by the Courts, and result in the development of strategic solutions to help judges cope with these changes. Under a task force structure, innovative or pilot programs to improve the processing of certain case types can be planned, established, and evaluated with the cooperation of all relevant agencies, thus maximizing the chances for success.

The interagency meetings, while focusing on case processing and case management issues, should not neglect broader themes of social policy, drug treatment, and prevention. For drug offenders, for example, an interagency discussion of processing options would be greatly enhanced by consideration of drug treatment diversion programs. It is important, however, that these meetings be well-run and substantive -- a

number of respondents in our survey expressed frustration and skepticism about the worth of regular interagency meetings, which can become pro forma exercises in minutiae and turf battles if not carefully planned and strongly managed. In addition, care must be taken to not compromise the integrity of an independent judiciary.

One must also not ignore the context under which judicial decisions are made in many jurisdictions. First, in an adversarial system, a judge's interest in fact-finding and calendar management may sometimes conflict with the interests of prosecuting or defense attorneys. Within local procedural and statutory rules, attorneys may try to negate efforts by judges to move cases along or impose certain case decisions; the plea bargaining process itself is often outside the purview of the judge, who is merely asked to ratify an agreement reached by opposing lawyers. The adversarial system is not an inherently efficient one, although it clearly is a key attribute of our system of justice.

Second, there is a danger in attending too much to case processing efficiency and calendar management; this focus can be at the expense of due process, fact-finding hearings, motions, or trials. For drug cases, a reasoned review of the case and consideration of appropriate pretrial or dispositional decisions, and possible diversion or sentencing alternatives, might require more time than with cases where treatment or other alternatives are not relevant. Thus, efforts to process cases more quickly should not compromise the quality of justice. This has been raised as a potential problem with the N Parts in New York City by both the defense bar and the alternatives-to-incarceration community.

Finally, judges often operate under constraints imposed by exogenous forces such as the legislature, prosecutors, or the executive branch. To the extent that judges would like to have more discretion in decision making (some judges might not agree that it is within their role to actively identify and pursue dispositional alternatives), their ability to exercise such discretion or develop case processing options may be limited by such constraints. With the inputs into the court system largely driven, and key case decisions controlled, by the police and prosecutors, the opportunities for such judicial discretion are even more limited. However, through other aspects of the court process such as calendar

management judges can have a salutary effect on the operations of their courtrooms.

OTHER KEY ELEMENTS OF A SYSTEM STRATEGY:

1. Caseload Management: **Skilled and creative case management, while ideally part of any jurisdiction's operating philosophy, becomes especially important when caseload crises overwhelm the courts. As strong case managers, judges can take control of their caseloads by enforcing lawyers' attendance, by setting firm trial dates, and by insisting upon accountability for prosecution- or defense-initiated adjournments.** Again, judges must be willing to risk conflict with prosecutors and defense attorneys, hopefully helped by the support of court administrators and chief judges. Differentiated case management (DCM), in which cases are tracked according to their complexity or some special feature, can also be used to lessen the deleterious impact of a flood of new types of cases (for example, simple "buy and bust" drug cases could be placed on a faster track, and receive laboratory report priority). There is no guarantee, of course, that DCM in and of itself speeds case processing. Or, creation of a full or limited "individual assignment system," with proper case management training for the judges, can give judges more control of their calendars or perhaps allow more efficient judges to be assigned the high-volume case types. Such a system was instituted throughout the New York State Supreme Court in 1987, but is not clear that this specific change helped reduce the negative impact of the crack case surge, nor does the research literature suggest that individual calendar systems are necessarily more efficient (Goerdt et al., 1989). The court management literature contains examples of jurisdictions that have successfully coped with caseload changes without substantial increases in resources and without compromising the quality of justice or due process (see, for example, Goerdt et al., 1989; Neubauer et al., 1981; Mahoney and McCoy, 1990).

Research on case management also has demonstrated that it is not sufficient for court administrators to merely respond that they need more judges when faced with caseload increases. The literature is clear that processing time is not simply a function of caseloads or number of judges, and that a number of other management and political

characteristics are important determinants of case processing time and caseload management efficiency (Goerdt et al., 1989; Hillsman et al., 1986; Goerdt and Martin, 1989; Neubauer et al., 1981; Church et al., 1978). This is not to minimize the potential need for increasing judicial resources when caseloads increase, but to argue for the consideration of management and administrative options such as those mentioned above as a way of making more efficient use of existing resources. In times of economic constraints, this may be the only option.

In addition, policy makers and legislators need to recognize that increases in law enforcement budgets have effects on the rest of the criminal justice system. Further, if judges are to have more case processing options at their disposal, resources must expand for treatment programs, Probation, alternative-to-incarceration programs, and social service agencies. Enhancement of these types of programs might also allow judges to make more use of nonincarcerative alternatives such as conditional pretrial release or conditional discharges, thus relieving pressures on the jails and prisons.

2. <u>Judicial Leadership:</u> **The model jurisdiction features strong leadership by the court administrator, administrative judge, and the executive branch. Strong judicial leadership enhances the flexibility of a court system and its ability to manage cases (Goerdt et al., 1989), and helps to create a climate in which judges can gain the necessary support of the executive and legislative branches of government.** For example, a mayoral office which oversees the criminal justice system can be most effective given sufficient resources, and the political and budgetary control over nonjudicial agencies to initiate and enforce real changes in the system. While that centralized control over component agencies has been quite difficult to achieve in New York City, other jurisdictions may have the political and legislative structures to create such oversight.

While our research indicates that the special N Parts were used to reduce case delay, without gross changes in dispositional or sentencing patterns, use of these parts declined in 1989 even as the drug caseloads were dramatically increasing. Where prudent criminal justice policy might suggest that these Parts, staffed by judges with strong case

management skills, should have been expanded, the City allowed its prosecutor-driven system to determine the flow of drug cases. If the courts had been able to effect expanded use of N Parts by prosecutors, the cost savings could have been substantial. For example, detained felony cases were disposed in an average of 65 fewer days in the N Parts than in regular parts in 1988. With a majority of the 20,000 annual drug indictments in pretrial detention, sizable jail-bed savings through expanded use of these Parts would accrue to the City and help alleviate jail overcrowding. As discussed earlier, however, establishment of such expedited processing initiatives should include due process protections and careful monitoring to assure that defendants are not being unduly pressured into pleading guilty at an early stage of adjudication, and that sufficient time is allowed for defense attorneys or court-related agencies to identify possible disposition or sentencing alternatives. In addition, these special Parts might not yield such large reductions in case processing time in other jurisdictions.

3. Mobilizing Resources: **Court administrators should be willing to mobilize resources to address effects of caseload pressures.** This might involve temporarily shifting judicial or support staff resources, the deployment of processing options such as special courtrooms to take quick pleas, case diversion options, or some of the other policy recommendations discussed herein. Our research has shown that special courtrooms to handle drug cases substantially speed processing, but setting these up may require transferring judges and support staff, creation of new courtroom space, etc. Within a zero-sum context, it must be recognized that such resource shifts may have negative consequences on some other component of the system. Thus with the involvement and backing of the executive and legislative branches, additional resources and important political support can be provided to the judiciary in times of crisis.

When necessary, judicial policy makers should seek the advice and guidance of social service, drug treatment, and alternatives-to-incarceration agencies in crafting case processing options. The political will to create change in the status quo, with a broader recognition of crime as a social problem as well as law enforcement issue, is important.

Individual judges, District Attorneys, and defense lawyers also have to be willing to change their usual behaviors, if only temporarily, to be more flexible in charging and sentencing, and to occasionally risk some political fallout. Recent research on incentives as public policy tools to help change individual and organizational behavior suggests that such incentives (whether monetary or not), while not always easy to implement, can induce procedural innovations by overcoming institutional resistance to change (Hillsman et al., 1986; Heumann and Church, 1990).

In addition, consideration should be given for using nonjudicial entities, such as mediation services, administrative tribunals, or civil hearing officers, to divert and process certain types of cases and therefore relieve some of the more minor cases from the calendars. While used in a limited way in many jurisdictions, an expansion of these programs could greatly relieve pressures on the criminal courts. In many jurisdictions, including New York City, a kind of informal "triage" system is in effect, where relatively minor cases are flushed out of the system at an early stage, whether through nolle prosequi, dismissals, or quick pleas to lesser or noncriminal charges without any incarcerative sanctions. Alternative nonjudicial processing can ensure that all cases are given some level of review, that treatment or prevention measures are considered in drug cases, that defendants face some type of accountability, and that disputes are resolved to the satisfaction of all parties. There are many examples of ways to relieve court calendar congestion; see Belenko (1990) for a discussion of alternative processing options for drug offenders.

4. Information Exchange: **The sharing of case information among agencies, preferably through automated databases, would have a number of benefits.** In jurisdictions where each entity develops and maintains its own independent data systems a sense of "ownership" of information may develop and preclude a willingness to share data to assist in identifying systemic problems. Each agency may be tempted to use its own data to "prove" that they are not the cause of case delay problems. Where information is routinely shared (subject to confidentiality protection) such finger-pointing is less likely,

and an atmosphere of mutual problem-solving can evolve. Further, there would be opportunities for agencies to obtain data, not routinely available from their own databases, that can assist them in planning, monitoring, and policy development.

Thus, the Police Department would benefit from receiving case disposition data to assist in assessing the effectiveness of enforcement efforts, the judiciary could receive a broader range of arrest and defendant information to assist in case decisions, and judges would benefit from regular feedback on the effects of their decisions, such as rearrest data or defendant behavior under pretrial release or probation supervision. Further, minimizing duplicate computer entry of the same data into competing databases would reduce staffing and computer costs for all agencies, free up resources, and improve data reliability.

Finally, the timely dissemination of all Police Department arrest information, including laboratory reports, to the prosecutors, defense attorneys, and judges can help reduce case delay. In general, the more information about a case and the defendant that is available at the initial court hearing, the greater the likelihood of a quicker resolution of the case, and the more reasoned the case assessment and review of possible processing alternatives. A system of open discovery, in which the defense attorney receives copies of all relevant case material from the prosecutor early in the adjudicatory process, exists in many jurisdictions but not in New York City. Such a system reduces the need for hearings on discovery motions and therefore can reduce case delay.

5. <u>Public Education:</u> **The judiciary should seek public support through public education and media campaigns, so that their role in the court system and the limitations of the court's ability to combat crime are better understood.** We recognize that many judges and court administrators do not believe that public lobbying is a proper role for the judiciary. However, as community leaders, judges can play an important role in raising the level of discussion about crime, social problems and their potential solutions, and helping to explain the role of the courts. But they need to express sensitivity to and concern for the impact of crime and social problems such as drug abuse on com-

munities.[13] Many judges in our survey expressed frustration at the lack of public understanding of the role of the courts. Expanded public and media support can prevent judges from becoming scapegoats of the inability of the criminal justice system to reduce crime and the public's frustrations with what it views (with the help of the media, and often erroneously) as "revolving door" justice. In addition, the public and its elected officials need to be given a more realistic view of the goals and failure expectations of treatment, probation, or incarceration alternatives. While the public rightly wants a safer, lower-risk environment, the fairly limited role of the courts in combating the root causes of crime needs to be communicated more effectively.

6. Conserving Resources: **One way to diffuse negative public opinion in the face of a crisis is for the courts to implement structural or procedural changes, temporary perhaps, that demonstrate to the public that the judiciary is willing to make sacrifices in advancement of the public good and to conserve scarce resources.** Examples of these changes might be to expand court hours, to limit the length of lunch breaks, to reschedule vacations, and so forth.

7. Mitigating External Pressures: **The model jurisdiction also is characterized by structures that limit the impact on judges of political and media hysteria: it is important to insulate judges from these pressures so that courtroom decisions can be made on the basis of law, due process, and the merits of the particular case.** We recognize that it may be appropriate in some instances for judges to consider public opinion and to be sensitive to political currents in making courtroom decisions. In addition, judges might feel more willing to speak out on public policy issues if they were better insulated from media backlash. While it would appear difficult to avoid public scrutiny in high-profile cases, the publicly expressed support of administrative judges, court administrators, and

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[13]The extent to which the judiciary can become more involved in the development of and public debate on social policy and anti-crime issues, yet maintain judicial independence, is difficult to resolve and has been the subject of much discussion in recent years.

fellow judges can help ameliorate the potential effects of unwanted and inappropriate political or journalistic attention, especially from tabloid newspapers. Periodic meetings between judicial officials and newspaper editorial boards or journalist organizations, and the regular sharing of research and policy reports with reporters, can also build trust and educate the press as to the role of the courts and the constraints under which judges must often operate.

8. Legislative Initiatives: **Legislative changes (perhaps "emergency" or limited-term revisions) are necessary to provide more discretion and enhance the decision making power of the courts.** For example, laws which loosen plea bargaining restrictions or allow exceptions to mandatory prison sentences, especially for the low-level, non-violent drug offenders that are clogging the nation's jails and prisons, could ease pressures on judges and prosecutors. Judges need more pretrial release and sentencing options, with an escalating series of available sanctions, to help them cope with caseload increases. The growing acceptance of alternatives to incarceration (or alternative punishments such as shock incarceration or house arrest) may make it easier to package reforms to legislators without generating fears that they will be viewed as "soft on crime" (Morris and Tonry, 1990). Whether the judiciary, prosecutors, defense attorney organizations, or executive agencies should lobby for such legislative changes is arguable (getting all these interests to agree on what changes are necessary could be quite difficult). However, judicial testimony or written comments to the legislature on pending bills can help educate lawmakers on the potential impact of statutory changes on the functioning and quality of the court system, and ensure that the Court's views are considered.

9. Alternatives for Drug Offenders: The drug-involved offender; no matter what the actual arrest charge, presents a special set of issues for the courts. Because some of these defendants are addicted to drugs, their presence in the criminal justice system may reflect a health or social as well as a crime problem, and a reduction in recidivism may be more easily achieved through treatment intervention than through punishment. Further,

the nature of the controlled substance laws in many jurisdictions is such that persons involved in relatively minor drug sale or possession transactions may face rather serious charges in court. Hence, in jurisdictions which are experiencing surges in drug caseloads, changes other than pure calendar management improvements are both possible and desirable.

One of the overriding themes that carried through our judicial interviews and Expert Panel meeting was the need for expanded drug treatment services available to the court, to provide diversion, pretrial release, or sentencing options for the judge. The links between treatment programs and the criminal justice system, so common in the 1970's, have decreased in recent years (Belenko, 1990). Reestablishing those linkages, with treatment representatives in court or readily available, and treatment slots reserved for criminal justice clients, would be an important feature of a balanced and effective approach to managing drug offender caseloads. While there exists some disagreement over whether judges alone should make treatment diversion or referral decisions, we feel that any final determination of pretrial release, diversion, disposition, or sentencing options should rest with the judge, as it should for most other key case decisions like bail or sentencing. However, the assistance of outside experts (such as a TASC program) is important to help the judge assess a defendant's need for treatment and to gather information about available programs. The expansion of treatment programs for criminal justice clients should not, however, occur at the expense of a more general growth of community-based treatment to serve the needs of drug abusers <u>before</u> they come under the control of the criminal justice system.

It was clear to our survey respondents, and we concur, that the courts are only part of the solution to the drug problem; a more "holistic" approach involving treatment, education, and prevention holds the best long-term hope for reducing drug-related crime and initiation into illicit drug use. The research literature on drug treatment effectiveness suggests that court-ordered and monitored treatment intervention enhances treatment retention compared with voluntary participation (Hubbard et al., 1989; Leukefeld and Tims, 1988). With court oversight, and clearly articulated consequences

to the defendant for failing to participate in treatment, this option becomes more viable, and politically more palatable.

While diversion into treatment or required treatment as a sentencing option is most commonly seen as more appropriate for lower level, "newer" offenders, it is not empirically clear that these defendants are the best candidates for drug treatment, since they may be at the earlier stages of their drug involvement and less motivated to participate in treatment (Hubbard et al., 1989). Further, less serious offenders, commonly offered nonincarcerative sentences, may have little to gain and much to lose by agreeing to enroll in drug treatment, since failure in treatment may result in additional sanctions and treatment participation may put them under the control of the court for a longer period of time. So, we do not believe that treatment alternatives should necessarily be limited to minor offenders; more serious drug offenders are more likely to be jail- or prison-bound, so a successful treatment intervention might result in greater cost savings for the system.

Prison and jail treatment programs also offer promising models for reducing post-release recidivism and hence helping to prevent increases in court caseloads (Wexler et al., 1988); coupled with continuing aftercare in the community following release, these programs should be a part of a jurisdiction's overall policy toward drug offenders.

10. <u>Judicial Education and Training:</u> **Enhanced judicial education and training in effective case management is a final component of a model response to caseload crises, and indeed may prevent such a crisis.** With respect to drug caseload increases, it was quite clear in our survey that judges sorely lack and would benefit from formal training about drug abuse and drug treatment in order to be able to make more informed and creative case decisions. Such training should not only be part of the core curriculum of the initial training and orientation upon appointment or election to the bench, but periodic training materials (written materials, seminars, or lectures) should be provided by experts to keep judges abreast of new developments in drug-crime research, treatment effectiveness, the psychopharmacological and behavioral effects of illicit drugs, and other important emerging social and health issues.

CONCLUSIONS

The level of concern over the substantial increases in drug cases on urban court systems has risen dramatically over the past few years. While there appears to be fairly broad public support for anti-drug law enforcement efforts which generate large numbers of arrests and help to reduce the prevalence of open-air street drug markets, the precise effects of these efforts on the functioning of the rest of the criminal justice system is still not well understood. It is clear that judicial, prosecutorial, and defense attorney caseloads, as well as jail and prison populations, have surged as a direct result of increased drug arrests (Belenko, 1990; Goerdt & Martin, 1989; Goerdt et al., 1989). What is less clear is how the system has responded to such a dramatic change in the caseload mix, and to the heightened attention given to the drug problem by politicians and the media. With the illicit drug problem commanding front-page coverage, having become perhaps the primary social issue of our day, it is important to understand how the courts respond to these pressures, and what innovations are needed to help them cope with the burgeoning drug caseloads.

The data presented in this paper and in previous research (see Belenko, Fagan, and Chin, 1991 in press) suggest that there was a clear and strong response by the courts in 1986 to the initial wave of anti-crack and anti-drug hysteria. Fueled by the emergence of crack and anecdotes about its effects on behavior and violence the summer of 1986 also saw increased local and federal anti-drug attention, including a conference of urban mayors in New York City to discuss responses to drug problems, the passage of a Congressional anti-drug abuse act, and an election campaign in which anti-drug posturing became a major theme of many political races. In the context of these sociopolitical pressures, the courts treated drug cases, especially crack, much more harshly than in the "pre-crack" era. The interview data suggest that judges are sensitive to public concerns (Glick and Pruet, 1985), and that courtroom behavior may have at least been subliminally affected.

The relatively severe treatment of drug cases declined somewhat in 1988 as crack cases became more common -- there was little difference in case outcomes between cocaine and crack in 1988. This finding may reflect that several years into a vigorous anti-drug law enforcement campaign, the courts reached a "steady-state" processing of drug cases, focusing on efforts to process them efficiently and keep caseloads manageable. In the midst of a continuing crisis, judges could not continue to pay special attention to crack cases. Further, it is clear from our interview data that the initial panic about crack has diminished to a more realistic view that crack users and dealers are perhaps not that different from other drug users. Judges now view drug type as a relatively unimportant aspect of a case, although they still consider crack to be a particularly dangerous drug. Thus the strong reaction against crack and fears about the drug's effects in the early days of the epidemic call to mind previous official responses to the emergence or spread of other drugs including PCP, LSD, powdered cocaine, and heroin (Musto, 1987).

These findings are similar to those of Myers (1989), who examined the effects on sentencing behavior of legislative initiatives and public attention against drug trafficking in Georgia -- the initial effects of the anti-drug publicity and legislation were largely transitory. In the New York case, however, the treatment of crack and cocaine cases remained somewhat harsher than in the pre-crack era.

During this same period, the criminal justice system was faced with a surge in the jail and prison populations, primarily as result of anti-drug enforcement and legislation (Belenko, 1990). Whether judicial decisions in drug cases were directly effected by the contextual background of severe overcrowding is difficult to determine. While fewer than half the judges in our survey said that jail overcrowding affected their decisions in crack cases (as well as in other case types), our case outcome analyses suggest increasing reliance on probation or split prison/probation sentences for the less serious segment of the drug offender population.

There was some evidence in the present study of a reciprocal effect on judicial behavior toward non-drug cases, but this appeared to be largely limited to misdemeanors. Beginning in 1986, there was some increased leniency toward these cases, characterized

by lower bail - held and jail sentence rates, and a higher dismissal rate (although dismissal rates for felony non-drug cases also increased in 1988). Thus these changes were concentrated in the "lower" end of the caseload. This is not surprising given the relatively severe nature of the non-drug felonies in these samples. Despite the focus in recent years on drugs and drug-related crime, there has been no apparent diminution of concern about other serious crime such as robbery and burglary.

Our interviews with judges revealed a substantial gap in formal training about crack and drug treatment which might affect their ability to adjudicate crack cases more creatively. With most of their information culled from newspapers and magazines, there is a clear need for more extensive, formal education and training programs for judges about the pharmacology and psychology of psychoactive drug use, drug treatment effectiveness, and alternative sentencing programs. There was also considerable judicial support for more processing options for drug offenders, and frustration about the lack of available diversion and treatment programs (see also Lipscher, 1989; Metropolitan Court Judges Committee, 1988). However, the respondents also expressed skepticism about the efficacy of current treatment for crack addiction and the utility of community-based diversion or sentencing options that do not give judges control over the supervision, and the power to monitor compliance and implement sanctions following the violation of release or sentencing conditions.

The potential importance of caseload management techniques such as N Parts to help reduce case processing delay, the willingness to risk negative public attention toward courtroom decisions on drug offenders, and the coordination of goals and increased cooperation of criminal justice and social service/health/treatment agencies are all necessary components of an improved approach toward the waves of drug offenders entering the court system. Given that anti-drug enforcement efforts are likely to continue at a substantial level into the foreseeable future, the need for new approaches becomes even more compelling.

Table E-1

Summary Court Outcomes by Sample
(All Figures are Percents unless Otherwise Indicated)

		1983-5	1986	1988
FELONY AFFIDAVIT CHARGES				
Proportion with Charges	Crack		16.3	18.5
Reduced -- Arrest to	Cocaine	22.4	14.2	16.4
Arraignment	Nondrug	35.6	34.9	33.5
Proportion with Charges	Crack		83.9	74.6
Reduced -- C.C. Arraignment	Cocaine	67.9	69.2	76.9
to S.C. Disposition	Nondrug	54.2	61.4	70.8
Proportion ROR'd at	Crack		24.6	31.5
Criminal Court Arraignment	Cocaine	43.5	21.6	32.2
	Nondrug	40.4	39.0	46.8
Sentenced to Incarceration	Crack		48.2	40.0
in Criminal Court	Cocaine	27.7	46.6	41.1
(% of Those Sentenced)	Nondrug	36.3	38.7	37.6
Average Jail Sentence	Crack		86.4	74.3
(days)	Cocaine	114.4	74.6	88.7
	Nondrug	119.5	113.6	113.5
Average Time to Disposition	Crack		na	40.9
Criminal Court (days)	Cocaine	na	47.2	36.1
	Nondrug	na	72.0	70.3
Transferred to Supreme	Crack		74.8	67.1
Court	Cocaine	51.2	70.3	67.0
	Nondrug	34.7	39.5	37.1
Convicted in Supreme Court	Crack		98.3	95.4
	Cocaine	98.5	95.5	95.9
	Nondrug	94.0	94.4	87.1
Sentenced to Incarceration	Crack		65.8	56.1
in Supreme Court	Cocaine	61.2	62.1	58.8
(% of those sentenced)	Nondrug	85.5	77.4	65.9
Average Prison Sentence	Crack		24.4	26.1
(months)	Cocaine	30.3	30.9	29.8
	Nondrug	36.1	30.9	31.7
Average Time to Disposition	Crack		264.8	169.0
Supreme Court (days)	Cocaine	274.4	270.6	161.9
	Nondrug	na	236.1	190.7

Table E-1
(cont'd)

		1983-5	1986	1988
MISDEMEANOR AFFIDAVIT CHARGES				
Proportion with Charges	Crack		33.4	32.7
Reduced -- Arrest Charge	Cocaine	35.8	25.0	20.0
to Affidavit Charge	Nondrug	66.2	45.1	38.0
Proportion ROR'd	Crack		52.4	61.5
at Criminal Court	Cocaine	58.7	59.1	63.8
Arraignment	Nondrug	53.7	59.1	62.8
Convicted in Criminal Court	Crack		76.8	77.1
	Cocaine	80.9	80.4	78.3
	Nondrug	68.7	55.2	56.0
Dismissed or Acquitted in	Crack		6.6	11.0
Criminal Court	Cocaine	9.1	5.1	10.6
	Nondrug	25.7	33.1	38.4
Sentenced to Incarceration	Crack		58.7	57.8
in Criminal Court	Cocaine	42.6	49.5	49.5
(% of those sentenced)	Nondrug	58.1	57.2	58.0
Average Jail Sentence	Crack		34.4	24.4
(Days)	Cocaine	43.1	27.4	28.6
	Nondrug	60.4	75.0	54.7
Average Time to Disposition	Crack		na	46.0
Criminal Court	Cocaine	na	52.3	43.5
(Days)	Nondrug	na	69.5	63.7

Note: na -- not available

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