Drug Court: A Therapeutic Alternative to Incarceration

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Drug Court: A Therapeutic Alternative to Incarceration

Abstract
In lieu of an abstract, below is the essay's first paragraph.

In the United States, there is a significant drug problem affecting millions directly and countless others indirectly. Drug use and drug-related crime have been on the rise for decades. The government has attempted numerous programs and policies, even declaring a "war on drugs." None of these programs have been effective, as evident in the fact that drug use has continued to rise. Drug use and drug-related crime have caused a number of problems for the United States. The most detrimental are the loss of life and deterioration of the very fundamentals that make up our society. This deterioration includes rising crime rates, the breakup of neighborhoods, and dysfunction in families. Other problems include the overcrowding of prisons, rising health costs, and ineffective government policies such as wasting money on unsuccessful programs.
Drug Court: A Therapeutic Alternative to Incarceration
by Brian Langenfeld

"Every ten minutes, the United States government spends $365,000 in the war on drugs." (Morrell,1)

In the United States, there is a significant drug problem affecting millions directly and countless others indirectly. Drug use and drug-related crime have been on the rise for decades. The government has attempted numerous programs and policies, even declaring a "war on drugs." None of these programs have been effective, as evident in the fact that drug use has continued to rise. Drug use and drug-related crime have caused a number of problems for the United States. The most detrimental are the loss of life and deterioration of the very fundamentals that make up our society. This deterioration includes rising crime rates, the breakup of neighborhoods, and dysfunction in families. Other problems include the overcrowding of prisons, rising health costs, and ineffective government policies such as wasting money on unsuccessful programs.

Until recently, the government's response to the drug problem has been to increase the sentences of individuals convicted of a drug-related crime. One such example is the Rockefeller Drug Laws in New York State. Other examples include mandatory minimums and extended maximum sentences. According to the statistics, harsher sentences have not been effective in deterring drug-related crime. One of the most significant measurements to determine the success of reducing crime is recidivism, or the rate at which an individual commits a crime after prior conviction. By examining the recidivism rate, it is possible to infer whether a particular sentence or program is effective in deterring crime.

Over the past two decades, while sentences have been getting more rigid, there has been a movement taking an alternative approach to incarceration and harsher sentences. Known as therapeutic jurisprudence, this theory focuses on solving the root of the problem: the offender's addiction. By curing the underlying problem, the individual will be punished for their crime, be cured of his or her addiction, and reintegrate and become a contributing member of society. The most successful of these therapeutic jurisprudence alternatives is drug treatment court. Drug court is a program in which offenders charged with a non-violent, drug-related crime must meet certain requirements such as staying drug-free for a year, receiving a high school diploma or GED, and being employed. By meeting these requirements, the offender avoids jail time. The purpose of drug courts is to attempt to cure the offender's addiction, thereby avoiding higher incarceration rates and preventing future crime.

This study will focus on therapeutic jurisprudence as a framework and drug court as the most successful alternative program within it. The study will include a discussion of the drug problem, its history, and the alternatives to solving the problem. To illustrate the benefits and success, a case study of the Rochester Drug Court will be undertaken to show the success of the drug court movement.
Part I: Literature Review and Theoretical Considerations

The issue of drugs in the criminal justice system and alternatives to incarceration have been found in the criminal justice literature since the early 1980's. The literature focuses on a number of topics, among them the increase in drug use and arrest, the ineffectiveness of harsher sentences, and alternatives to incarceration. One of the primary arguments in the literature is the success and viability of alternatives to incarceration, which will be discussed later on.

The drug problem in the United States is well documented and has been plaguing this nation for years. According to one survey, 10.8% of Americans have used an illegal drug in the past year, and 72 million Americans over the age of twelve have used illegal drugs at some point in their lives (Simmons 2). A 1997 survey of state and federal inmates reports that 51% (over 570,000 inmates) reported using drugs or alcohol while committing their offense. Additionally, 75% of all prisoners abused drugs or alcohol prior to their conviction (Grangetto 4). Between 1980 and 1998, the number of arrests nationally increased from 10,441,000 to 14,528,300, a jump of over 40% (Belenko 2). During this time, the number of arrests for drug-related crimes (sale, distribution, and possession) increased by 168% from 580,900 to 1,559,100 in 2000 (Belenko 2). From 1980 to 1996, the number of incarcerated drug offenders increased by 1,500% (Grangetto 4). According to the FBI’s Uniform Crime Reports, there were 1,532,200 state and local arrests in 1999 for drug abuse violations (unlawful possession, sale, use, growing, manufacturing, and making narcotic drugs, and dangerous non-narcotic drugs) in the United States in 1999.

More than four-fifths of these violations are for possession. (U.S. DOJ Enforcement 2001, 1). This arrest total does not include the number of individuals arrested for other crimes while under the influence of drugs or committing crimes to sustain their habit (See Figure 1, Figure 2, and Table 1).

Imagine That:

The Gender of War Rhetoric and Conceptual Complications an illegal drug in the past year, and 72 million Americans over the age of twelve have used illegal drugs at some point in their lives (Simmons 2). A 1997 survey of state and federal inmates reports that 51% (over 570,000 inmates) reported using drugs or alcohol while committing their offense. Additionally, 75% of all prisoners abused drugs or alcohol prior to their conviction (Grangetto 4). Between 1980 and 1998, the number of arrests nationally increased from 10,441,000 to 14,528,300, a jump of over 40% (Belenko 2). During this time, the number of arrests for drug-related crimes (sale, distribution, and possession) increased by 168% from 580,900 to 1,559,100 in 2000 (Belenko 2). From 1980 to 1996, the number of incarcerated drug offenders increased by 1,500% (Grangetto 4). According to the FBI’s Uniform Crime Reports, there were 1,532,200 state and local arrests in 1999 for drug abuse violations (unlawful possession, sale, use, growing, manufacturing, and making narcotic drugs, and dangerous non-narcotic drugs) in the United States in 1999.

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Table 1
Estimated totals of top 7 arrest offenses, United States, 1999

<table>
<thead>
<tr>
<th>Type of Arrest</th>
<th>Number of Arrests</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Arrests</td>
<td>14,031,100</td>
</tr>
<tr>
<td>Drug Abuse Violations</td>
<td>1,532,200</td>
</tr>
<tr>
<td>Driving Under the Influence</td>
<td>1,511,300</td>
</tr>
<tr>
<td>Simple Assaults</td>
<td>1,294,400</td>
</tr>
<tr>
<td>Larceny/theft</td>
<td>1,189,400</td>
</tr>
<tr>
<td>Drunkenness</td>
<td>656,100</td>
</tr>
<tr>
<td>Disorderly Conduct</td>
<td>633,100</td>
</tr>
<tr>
<td>Liquor laws</td>
<td>657,900</td>
</tr>
</tbody>
</table>

Source: FBI, Uniform Crime Reports, Crime in the United States Annually

Often the person arrested is under the influence of drugs upon apprehension, resulting in an additional problem. The National Institute of Justice reports that the percentage of men testing positive for drugs at the time of their arrest range from 57% to 82%, while the percentage of women ranged from 35% to 83% (“Development in Law” 2). The statistics indicate the depth of the problem.

Many drug arrests involve crimes that are non-violent. Many non-violent offenders become a long term recurring problem, as there is little intervention in terms of treatment for these offenders (Robinson 2). These non-violent crimes such as possession rarely involve anyone except the offender. The question becomes, do we incarcerate an individual for possessing a small amount of marijuana with criminals who have a history of violence? By not offering treatment for the offender, many drug offenders are likely to resume criminal behavior once released. Many times the level and severity of the crime increases. One example is an individual who cannot find employment upon release and maintains their drug dependency. To afford this habit, he or she begins to burglarize homes to pay for the drug addiction.

The Cost of Drug Use
The cost of drug abuse to society is staggering. It is estimated that the economic cost of drug abuse is over $110 billion each year (Simmons 1). Part of this expense is seen in increased health care costs, unsafe neighborhoods, and an overburdened criminal justice system (Simmons 1). Additionally, drug abuse has a dramatic effect on the ultimate cost, human life. There are over 9,300 deaths each year among individuals who use drugs (Simmons 1). The cost can also be seen specifically within the criminal justice system. According to one scholar, “The drug problem places a tremendous burden on the system including the overcrowding of correctional facilities, resources the police and prosecutors have to dedicate, and the struggle of the courts to meet their caseload” (Feinblatt 1). The amount the federal government spends on drug control has increased from $1.5 billion in 1981 to $18 billion in 2000 (Curtin 2). It is also estimated that drug users spend more than $150 billion a year purchasing drugs (Curtin 2). Table two below illustrates the Federal drug control budget.

Table 2
Fiscal Year 2000 and 2001
Federal drug control budget by function

<table>
<thead>
<tr>
<th></th>
<th>2000 (in millions)</th>
<th>2001 (in millions)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>$17,940.3</td>
<td>$18,053.1</td>
</tr>
<tr>
<td>Criminal Justice</td>
<td>$8,429.0</td>
<td>$9,357.7</td>
</tr>
<tr>
<td>Drug Treatment</td>
<td>2,915.2</td>
<td>3,168.3</td>
</tr>
<tr>
<td>Drug Prevention</td>
<td>2,338.6</td>
<td>2,515.7</td>
</tr>
<tr>
<td>Interdiction</td>
<td>1,965.9</td>
<td>1,950.4</td>
</tr>
<tr>
<td>International</td>
<td>1,892.9</td>
<td>609.7</td>
</tr>
<tr>
<td>Intelligence</td>
<td>309.1</td>
<td>345.2</td>
</tr>
<tr>
<td>Research</td>
<td>89.6</td>
<td>106.1</td>
</tr>
</tbody>
</table>

Source: ONDCP, FY 2002 National Drug Control Budget, April 2001
Due to the increase of drug-related arrests and convictions, prison overcrowding has become a significant problem. With the increase in violent crime, prisons have become overcrowded, leading to a demand for new prison construction and adding to the economic cost to society. In addition to prison overcrowding, another issue is the lack of treatment an individual receives while incarcerated. Drug abuse is a serious problem that usually requires treatment, not simply incarceration, to solve the problem. If the imprisoned individual does not receive treatment, his or her rate of recidivism will be much higher upon release, since the first inclination of many recently paroled and released inmates would be to find drugs. In 1997, it was estimated that 83% of state prison inmates were substance abusers (Belenko 2). However, in a survey by the National Center on Addiction and Substance Abuse at Columbia University (CASA), only 25% of inmates with a drug problem received treatment in prison, while a General Accounting Office (GAO) survey put the number closer to 20% (Belenko 1). Without some intervention, in this case, it is difficult for these individuals to rid themselves of their addiction and, when the time comes, reintegrate into society.

Additionally, after being incarcerated, individuals are stigmatized for life due to their arrest and prosecution (Belenko 1). This situation will increase the difficulty of the released offender to obtain a job and be accepted as a full-fledged member of society. If the offender does not reintegrate into society, there is an increased risk of recidivism. As the criminal justice system is designed in part to protect society from criminals, releasing untreated drug offenders endangers society.

There is an argument that minorities are unfairly targeted by the criminal justice system. According to the United States Department of Justice, 46% of those charged with a drug offense were Hispanic, 28% Black, and 2% other ethnic groups, for a total of 76% (US DOJ, Federal Drug Offenders 1999, 2001, 5). Also, 9.4% of black men between twenty-five and twenty-nine are in state or federal prison for a drug-related offense, ten times that of white men of the same age, despite studies indicating the levels of black and white drug use are at the same rate (Curtin 2). In New York State, 94% of those incarcerated on drug convictions are black or Hispanic (Wenner 90).

**Background to Drug Politics**

The war on drugs first began in the late 1960’s and early 1970’s. President Richard Nixon first launched the “war on drugs.” Nixon attempted to attack the supply of drugs coming into the country through increasing customs personnel and working with foreign governments (Simmons 6). Nixon also dealt with the problem of soldiers in Vietnam being withdrawn from the war due to their drug addiction. The government implemented Operation Golden Flow, a mandatory drug test program for returning soldiers. If any soldier tested positive they would not be court-martialed, but instead enrolled in a seven week mandatory detoxification program (Simmons 6). One unique aspect of Nixon’s drug policy was his choice to combat drug abuse by focusing on treatment facilities, the only president to date who has done so (Simmons 6).

The focus of the criminal justice system in response to the drug problem was to impose stiffer sentences. The prevalent thought at the time (1970’s and 1980’s) was to establish harsh sentences to deter potential drug users. The foremost example is Governor Nelson Rockefeller and his implementation of harsher sentences in New York State. The Rockefeller drug laws, as they came to be called, established
mandatory sentences, no plea-bargaining, and mandatory life sentences without parole for selling high quantities of drugs. This approach attempted to solve the problem by prosecuting and incarcerating more drug users (Simmons 6).

One of the most significant changes occurred during the mid-1980's. During this time, the use of crack cocaine exploded. The drug was cheap and plentiful, especially in the inner cities. This epidemic caused the government to establish new mandatory minimum sentences as well as earmark $97 million for new federal prison construction (Simmons 7). Since the influx of crack cocaine occurred, the number of drug-related arrests skyrocketed. Between 1980 and 1989, national drug arrests increased 134%, whereas the total number of arrests for all crimes rose only 37% (Hora 10).

Among the legislation passed during the 1980's was the Comprehensive Crime Control Act of 1984. This act established a minimum sentence of five years for defendants using a firearm in a drug offense, and one year for offenders selling drugs near schools or playgrounds (US DOJ, Federal Drug Offenders 1999, 2001, 4). The 1986 Anti-Drug Abuse Act established mandatory minimum sentences, increased the length of incarceration, and increased monetary penalties. These sentencing guidelines include five, ten, and twenty-year minimum sentences for drug trafficking offenses, as well as one-year minimum sentences for those convicted of selling drugs to individuals under twenty-one, as well as pregnant women (US DOJ, Federal Drug Offenders 1999, 2001, 4). In 1988, Congress lengthened mandatory minimum sentences, as well as increased maximum sentences in the Anti-Drug Abuse Act (Grangetto 4). The Act also focused on crack cocaine including establishing minimum sentences for possession of amounts of more than five grams (US DOJ, Federal Drug Offenders 1999, 2001, 4). In 1994, Congress enacted the Violent Crime Control and Law Enforcement Act. This Act increased penalties and expanded the mandatory minimums (Grangetto 4), but at the same time eased some penalties for first time offenders and non-violent offenders (US DOJ, Federal Drug Offenders 1999, 2001, 4). The increasing harshness of sentences can be seen in the various Department of Justice statistics concerning the matter:

1. 87% of drug defendants adjudicated in 1999 were convicted, compared to 76% in 1981
2. The percentage of defendants sentenced to prison increased from 54% in 1988 to 72% in 1999
3. The percentage of drug offenders sentenced to prison increased from 79% in 1988 to 92% in 1999
4. Prison sentences for drug offenders increased from 71.3 months to 75.4 months
5. Mandatory minimum sentences applied to 61% of drug offenders during 1999 (US DOJ, Pre-Trial, prosecution, and adjudication, 2001, 5).

Many now see the drug war as a failure, as society realizes that imprisoning every drug offender will not solve the problem. In 2001, a survey indicated that 74% of Americans believe the drug war is failing (Wenner 82). Over his eight years in office, President Clinton spent $120 billion on the drug war, and President George W. Bush has already requested more than $18 billion for 2002 (Wenner 87). Despite this money, the rate of drug use has not decreased, the drug supply is steady, and drug prices have fallen. This failure is especially apparent in the high recidivism rate among offenders. The national recidivism rate for drug-related
crime is 70%. This means that over two out of every three individuals imprisoned for a drug-related crime will commit another crime once released from prison. This number is staggering, as prison and harsh sentences are designed in part to act as a deterrent to commit crime. The statistics indicate that prison does not cure the root of the problem: drug addiction. Because jails and prisons are unsuccessful in doing so, the recidivism rate is extremely high.

**Approaches to Solving the Problem**

Throughout the recent history of the drug problem the response has mainly focused on incarceration. Incarceration is simply sentencing the defendant to jail or prison. This traditional approach of punishment has resulted in an increase in the number of individuals imprisoned in the past twenty years. The increase in incarceration has lead to many of the overcrowding and monetary concerns previously discussed.

The Rockefeller Drug Laws are one of the most controversial of the drug incarceration laws in the country. The laws were created in May of 1973 with the purpose of deterring citizens from using or selling drugs and to punish and isolate from society those who were not deterred (Wilson 1). When the laws were created, it cost $76 million, excluding the cost of forty-nine additional judges (Wilson 1). One of the Rockefeller laws includes a sentence of fifteen years to life for possession of more than four ounces of cocaine or heroin. This sentence is greater than those for rape, manslaughter, or assaulting a police officer with a weapon (Wishnia 1). Of the approximately 600 prisoners serving this sentence, there are no major drug dealers, but rather couriers, mules, and other indirectly involved individuals (Wishnia 1).

Statistically, these laws have been proven ineffective in deterring crime and reducing recidivism. Indications show that simply imprisoning an individual with an addiction only exacerbates the situation. Therefore incarceration as the prime punishment for drug-related crimes should be reconsidered.

Sentencing a drug-addicted offender to probation is one alternative. There are over 3.2 million offenders on probation, serving terms of two years (Biden 1). The difficulty with probation is that in many instances, for up to 300,000 probationers, there is little contact with the probation officer (Biden 1). As the offender received little if any treatment while in jail or prison, the lack of an authoritative figure lends itself toward repeat offenses. Probation saves the system money when compared to incarceration. There are various levels of probation, and individuals who are sentenced for drug-related crimes are generally subject to stricter guidelines and treatment. One such type of probation is Intensive Supervisory Probation (ISP). A probationer in ISP has requirements much more strict than those of a normal probationer. Drug tests are more frequent, and additional programs may be required.

There are a number of approaches, besides incarceration, on how to solve the drug problem in America. Each approach is somewhat unique, yet all are responses to the failure of harsher sentences and mandatory incarceration. Each alternative attempts to solve the drug problem through a variety of approaches focused on solving the drug problem.

Drug education programs are a widely used prevention method (Simmons 1). Programs such as the Drug Abuse Resistance Education (DARE) and the School Program to Educate and Control Drug Abuse (SPECDA) provide education to at-risk children, potentially minimizing the instance of drug use. Because children
are taught the dangers of drug use, they theoretically would be less inclined to use drugs. Criticism for the educational approach concerns the limited scope of children educated in this manner. The program also does not reach children who drop out of school and older children who may have already started using (Simmons 2). Studies have also found that DARE participants are no less likely than their peers to use drugs. Despite these statistics, the government plans to spend $2 billion on its anti-drug media campaign including billboards, radio, and television (Wenner 84).

Another approach is militarily based, and focuses on cutting the supply of drugs entering the country. This is generally used to support United States military intervention in the countries that supply the drug. The argument is that by destroying the supply of drugs before they enter the United States and putting drug organizations out of business, the amount of drugs entering the country would be severely limited. The international drug trade is a large and extremely profitable business. The United Nations estimates that illegal drugs generate $400 billion a year in revenue and make up almost 8% of global trade (Wenner 87). This is the reason many individuals in the United States have proposed intervention. Those who support this approach believe that drug trafficking is a threat to national security and thus intervention is necessary (Simmons 4). This approach has been put into practice by the United States in the past, but has not been successful. One such as example was Operation Blast Furnace conducted in 1986, an attempt to destroy Bolivia’s drug organizations. Success was limited, as a number of drug labs were found, but no arrests were made, no cocaine seized, and trafficking resumed once the United States left (Simmons 4). In 1988, Operation Snowcap, a military effort in Bolivia and Peru, failed due to opposition by farmers and guerilla fighters (Simmons 5).

Legalization also has been advocated by some as a way to solve the drug war, although to date, by only a small percentage of individuals. The former Seattle Chief of Police, Norm Stamper is one such individual, and said:

I’d use regulation and taxation of these drugs, much as we do with alcohol and tobacco, to finance prevention, education, and treatment programs. I can’t think of a stronger indictment of our current system than that there are addicts who don’t want to be addicts queuing up for treatment and can’t get it cause we’re spending too much money on enforcement and interdiction. (Wenner 89)

The argument behind legalization is that keeping drugs illegal exacerbates the problem. These problems include several thousand deaths a year, drug-related crime, AIDS, poisoned drugs, and the attractiveness of being a drug dealer (Simmons 5). By legalizing drugs, the government would have control over potency and purity (Simmons 5). The government would also be able to tax drug sales, such as it currently does with alcohol. In addition, it is argued that legalization can impact the level of violent crime. Proponents of legalization point out that the highest homicide rates in the history of the United States came during alcohol prohibition and the war on drugs (Wenner 95).

A final approach to combating the drug problem is alternatives to incarceration. There are a number of potential alternatives to incarceration which include diversion from prosecution, boot camps, and drug courts. The theory of treatment as opposed
to incarceration has been around for a number of years. It dates back to 1929, with the Porter Narcotic Farm Act. These farms acted as specialized treatment institutions which would unclog prisons, and operated until the 1970's ("Development in Law" 3).

Diversion from prosecution is the first alternative to incarceration. The prime example of diversion from prosecution is Treatment Alternatives to Street Crime (TASC). TASC was created by the Nixon Administration in response to the 1962 Robinson vs. California Supreme Court decision, which held that punishing individuals for status offenses was cruel and unusual punishment ("Development in Law" 3). TASC programs sent drug abusers to rehab as opposed to simply incarcerating them.

Boot camp is a second alternative to incarceration. Boot camps are also known as shock incarceration programs, and were established in 1983 ("Development in Law" 5). According to surveys, there are between 40 and 70 boot camps in operation today ("Development in Law" 5). Boot camps are a form of incarceration, but differ in a few significant ways. Prisoners are subject to military style discipline in order to shape their life and reintroduce them into society. There is a set regiment each "inmate" must follow, therefore leading to a much more structured attempt at rehabilitation. The question then becomes, do boot camps work to reintroduce offenders into society? In a 1991 New York survey, the recidivism rate was reduced in the first year, but the difference was gone by the end of two years ("Development in Law" 6).

**Therapeutic Justice**

Most approaches to combating the drug problem which have been discussed do not address the actual substance abuse problem of the offender. One alternative perspective that focuses on "therapeutic justice," however, does. Therapeutic justice addresses the extent to which substantive rules, legal procedures, and the roles of lawyers and judges produce therapeutic or anti-therapeutic consequences for individuals involved in the legal process. Professor Christopher Slobogin further refines the definition as "The use of social science to study the extent to which a legal rule or practice promotes the psychological and physical well-being of the people it affects" (Hora 3). As the definition suggests, the concept refers to how the law and courts are used as a therapeutic or healing agent to defendants in the criminal process. The theory supports social considerations being applied to the law and its interpretation. Another way of explaining therapeutic justice is that it looks at the defendant through "a different lens," a therapeutic, medicinal perspective, where substance abuse is not a moral failure, but a medical condition requiring treatment (Hora 11). Thus, therapeutic jurisprudence echoes the often-cited quote by former Supreme Court Justice Oliver Wendell Holmes:

> The life of law has not been logic: it has been experience. The felt necessities of the time, the prevalent moral and political theories, institutions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow-men, have had a good deal more to do than the syllogism in determining the rules by which men should be governed (Hora 5).

Therapeutic jurisprudence has derived from a number of sources. Its origins pertain to mentally disabled defendants and how the criminal justice system deals with them. At one point, the courts and politicians were not seen as supporters of healing or treating a mentally disabled defendant. The therapeutic jurisprudence
addresses legal and antiduals' social issues the drug court. The reason therapeutic jurisprudence has come to be applied to drug court is because it is necessary for drug offenders rather than incarceration. Social issues surrounding the offender and the addiction must be thoroughly examined and considered. Because therapeutic justice focuses on humane treatment, achieving justice, and returning offenders to society—all goals of drug court—it appears that this may be the future of drug prosecution (Simmons 12).

Drug Treatment Courts as an example of Therapeutic Jurisprudence

The alternative to incarceration, which is compatible with the theory of therapeutic justice, is "drug treatment court." John Goldkamp argues that drug courts are a response to three failures of how the court system normally deals with drug offenders (4). The three reasons are hands-off courts, the non-relevance of probation, and the near-irrelevance of drug treatment. Goldkamp defines the hands-off courts as "a failure of the normal adjudication process to change much about the drug problem" (4). The non-relevance of probation is "the failure of probation to play a meaningful role in identifying risks and needs of offenders," and the near-irrelevance of drug treatment is "the failure of the drug treatment provider system to deal meaningfully with treatment needs" (Goldkamp 4). Drug court approaches the problem from a therapeutic angle as opposed to applying justice and the consequence of the law angle because of the problems with the traditional system (Simmons 10). Drug court takes into account certain social issues which affect the defendant. These influences are likely the primary cause of the defendant's addiction and therefore crime. In what is a departure from the norm, drug courts view the defendant's case based on their recovery, as opposed to strictly applying the law. Therapeutic jurisprudence recognizes that drug addiction cannot be conquered by sanctions such as incarceration or probation, but by rehabilitation (Simmons 10). Drug courts also recognize the principle that relapse is a normal part of recovery, and by giving the defendant a second chance therapeutic principles are being applied (Hora 14).

The first drug court opened in 1989 in Dade County, Florida. The idea for drug court came from then State Attorney General Janet Reno (Schmitt 5). Reno has later been quoted as saying (while U.S. Attorney General) that the drug court concept is "Absolutely essential in helping this nation end the culture of violence that has plagued it for too long" (Schmitt 4). Chief Judge Gerald Weatherington of Florida's eleventh judicial circuit issued an administrative order, which then Associate Judge Herbert Klein coordinated and directed the design and creation of the Miami Drug Court (Hora 8). Klein's reasoning for the creation of drug court was that "Putting more and more offenders on probation only perpetuates the problem. The same people are picked up again and again until they end up in the state penitentiary and take up space that should be used for violent offenders. Drug Court tackles the problem head-on" (Hora 9). Klein also concluded, "The answer lay not in finding better ways of handling more and more offenders in the criminal justice system, but in determining how to solve the problem of larger numbers of people on drugs" (Hora 19). The program was funded through an increased traffic school cost of ten dollars and a nominal fee to enter the drug court program (Schmitt 5).

The Miami drug court proved to be extremely successful. Between 1989 and
1993, Miami’s drug court had 4,500 defendants in their program. By 1993, 66% had remained in treatment (1,270), or graduated (1,700). Additionally, the one-year re-arrest rate was less than 3% compared to 30% for non-drug court defendants (Hora 9). In its first ten years, the Miami Drug Court enrolled 15,000 defendants and graduated 12,000 of them (Schmitt 5). For the graduates who have been out a minimum of five years, the recidivism rate is 24% (Schmitt, 5).

The success of the Miami experiment spurred other states and communities to establish drug courts. Between 1989 and 1994, there were forty-two drugs courts established throughout the United States. By 1997, there were 161 drug courts (“Development in Law” 9). Presently, there are over 600 drug courts in operation and a number more in planning. Among these 600 plus drug courts, twenty-five are either operating or coming soon in New York State (“Low re-arrest Rate” 1). In addition to the fifty states, drug courts are operated by forty-four Native American Tribal Courts, the District of Columbia, Guam, and Puerto Rico. (Hora 9); (Belenko 8) Additionally, it is estimated that since the first few hundred drug offenders in Miami, there have been over 140,000 drug offenders who entered drug court as of the year 2000 (Belenko 8).

According to Steven Belenko, there are four primary goals of Drug Treatment Court. These goals are intended to reduce drug use and drug-related crime by engaging and retaining defendants in the program, concentrate drug addiction and adjudication expertise into a single court, address defendant needs through assessment and case management, and to free the resources of the judiciary as well as prosecution and public defense for non-drug-related crimes (Belenko 7). In achieving these goals there is no standard operating procedure. However, three key components are evident in almost all drug courts. The components are intensive drug treatment for at least a year, frequent drug screens, and repetitive monitoring of the defendant’s progress (Simmons 10). Other practices of drug court include immediate intervention, a non-adversarial adjudication process, a hands-on approach by the judge, treatment with clearly defined rules and goals, and team involvement including the judge, prosecutor, defense counsel, treatment providers, and corrections personnel (Simmons 10), as well as community based treatment, timely identification of defendants, and dismissal of charge when the program is completed (Belenko 8).

When the most current data is examined, drug courts seem to be an immense success. The nation-wide recidivism rate for drug court defendants is between 2% and 20%, a steady decrease in comparison with incarcerated defendants (Simmons 10). One study conducted in 1997 found that out of the 28,000 graduates of drug court, only 1,200 were rearrested, a recidivism rate of 4%. Out of an equal number of regular offenders who were imprisoned, the recidivism would be over 13,000 or close to 50% (Bush 2). Additionally, the percentage of drug use for offenders who did not complete the program declined significantly, with 93% of individuals testing negative (“Development in Law” 9).

Drug courts are also far more likely to break the cycle of addiction for the defendant than voluntary treatment due to the aspect of coercion. The one-year retention rate of drug court defendants is 60%, whereas for voluntary treatment the rate is only 10% to 30% (Feinblatt 5). One significant factor is that drug courts graduate between 70% and 90% of its participants, a large number considering the most successful residential treatment programs have graduation rates below 30% (Bush 2).
One measure of success for drug courts is that it comes much cheaper than the failure of incarceration. To imprison a drug offender, it costs $25,000 a year, whereas outpatient treatment costs under $5,000 a year, and residential treatment between $5,000 and $15,000 a year (Simmons 1). The average cost of treatment in drug court is $900 to $2,200 per defendant, per year (“Development in Law” 9).

The savings of drug court can also be seen in reductions of police overtime, witness costs, and grand jury costs. One study found that for every dollar spent on drug treatment, seven dollars are saved through a reduction in criminal activity and medical costs (Hora 30). Other benefits include the employment of graduates when they complete the program, and 450 drug free babies born to graduates by 1997 (“Development in Law” 10). To care for these children if they were born addicted would have cost $2,500 to $5,000 a day (Hora 30).

Drug courts are funded in a variety of ways. Many drug courts are eligible for federal grants ranging from $300,000 to $500,000 from the Drug Court Program Office (DCPO) (“Many Drug Courts Facing Critical Time” 1). Many drug courts rely on community groups to provide start up funding. The Rochester Drug Court has been successful in maintaining economic viability through its use of Medicaid to pay for treatment. The courts, being part of Medicaid, require all court-ordered treatment be paid for by Medicaid (“Many Drug Courts Facing Critical Time” 1). Federally, President Bush has favored maintaining the DCPO’s budget of $50 million which allows for substantial federal funding.

As mentioned above, one of the key sources of funding is through federal grants. There is no set structure for drug courts, as each city uses its own unique version to best serve its needs. There are, however, certain criteria set forth by the Department of Justice that is required of all drug courts in order to be eligible for federal grants. These requirements include:

- Exclude violent offenders from program participation
- Include a long-term strategy and detailed implementation plan
- Identify related governmental or community initiatives which complement the drug court
- Consult with all affected agencies to ensure appropriate coordination
- Certify that defendants receive continual judicial supervision
- Describe the methodology which will be used to evaluate the program. (Robinson 3)

The drug court program’s success has led the federal government to lend its support, both through federal grants and the creation of federal agencies, to oversee the drug courts. In 1994, drug courts were officially recognized under the Department of Justice’s Office of Justice Programs. At the same time, individuals within the drug courts created the National Association of Drug Court Professionals (NADCP) (Dorf 7). A board of drug court professionals including Judge Jeffrey Tauber, Judge Pat Morris, and Claire McCaskill founded the NADCP (Freeman-Wilson 2001, 1). The NADCP was created because of the need for drug court professionals to join together for education and advocacy purposes to alter the “way business was done in the criminal justice system” (Freeman-Wilson 2001, 1). Their mission statement is, “The NADCP seeks to reduce substance abuse, crime, and recidivism by promoting and advocating for the establishment and funding of drug courts and providing for the collection and
dissemination of information, technical assistance, and support to association members” (Hora 30). Additionally, the NADCP holds four conferences annually to discuss drug court issues. In 1995, the Department of Justice created the Drug Court Clearinghouse and Technical Assistance Project (DCCTAP) to assist local and state drug court officials in the planning, implementing, managing, and evaluating of drug courts (Dorf 7). In 1997, the National Drug Court Institute (NDCI) was created by a collaboration of the NADCP and Office of the National Drug Control Policy (ONDCP). The purpose of the NDCI is to provide drug courts with resources to sustain and enhance their courts (Weinstein 1). These newly created institutions serve three purposes: diffuse drug court fundamentals, refine these fundamentals to what works best, and evaluate the outcomes of drug court (Dorf 8).

Due to the expansion and institutionalization of drug courts, the movement has gained immense support from the government and other organizations. These supporters include President George W. Bush, Attorney General John Ashcroft, National Drug Czar John Walters, as well as the Community Anti-Drug Coalition of America, National Treatment Alternatives to Street Crimes, National Institute for Drug Abuse, Center Substance Abuse Treatment, Center for Substance Abuse Prevention, Native American Alliance Foundation, National District Attorneys Association, National Association of State Alcohol and Drug Abuse Directors, American Society Addictive Medicine, Justice Management Institute, National Center for State Courts, National Council of Juvenile and Family Court Judges, Join Together, and American University of Drug Courts (Freeman-Wilson, 2001, 1). The variety and influence of drug court supporters demonstrates the success of the program and its future viability.

The overall success of drug courts can be traced in part to the active engagement of its participants. This aspect of drug court is significantly different from traditional court in regards to the roles of the major figures involved in the trial including the judge, prosecutor, and defense attorney. This system of active engagement was laid out in the First National Drug Court Conference.

A drug court will require different roles and perspectives than found in typical courtrooms. Drug court programs see the court, and specifically the judge, as filling a role that goes beyond that of adjudication. Drug courts require their participants to see the process as therapeutic and treatment-oriented instead of punitive in nature (Hora 13).

In traditional court, the prosecutor is responsible for seeing justice done, whether through a conviction or plea bargain. In drug court, the prosecutor works to aid the defendant’s recovery. One of the major roles of the prosecutor in drug court is to screen drug-related cases to determine whether drug court is appropriate and the best option for the defendant, a departure from determining whether each case is winnable (Hora 18). During this screening, the prosecutor can determine whether or not the defendant has a record of violence and would pose a risk to public safety (Hora 18).

The role of the defense attorney is also unique in drug court. The role of the defense attorney is generally to protect the rights of the defendant. In drug court, the defendant normally waives these rights (Simmons 11). Among these rights are presumption of innocence and the right to a speedy trial (“Development in Law” 10). Before the defendant enters drug court, the defense attorney ensures that the defendant understands their legal rights, the requirements of the program, and
consequences of failure (Hora 18). The defense attorney, therefore, is charged with helping to ensure the defendant completes the program.

One important non-traditional actor in drug court is the treatment provider. These are the counselors and rehabilitation directors who work with the defendant in their recovery. The treatment providers are in court daily sharing information with the judge, and shaping important treatment and punishment decisions. “Treatment providers keep the court informed of each participant’s progress so that rewards and sanctions can be provided” (Hora 19).

The most important actor in drug court is the judge. As the ultimate authority in the treatment process, the judge plays the central role in all court proceedings. In traditional court, the judge is a neutral fact finder who presides over the case. In drug court, the judge plays a central role, “actively directing the proceedings, tracking the progress of the defendants, and administering a system of rewards and sanctions” (Simmons 11). The judge is the “leader of the drug court team,” serving as a link between treatment and the judicial process (Hora 17). In order for drug court to be successful, the judge must expand his or her knowledge and expertise on substance abuse issues, as it is critical for “early and frequent judicial intervention” to properly intervene and make punishment and treatment decisions (Hora 17).

From a sociological viewpoint, the judge becomes the primary authority figure in the defendant’s life. In a survey by Dr. Sally Satel, 80% of participants said they would not have remained in drug court if it were not for the judge. Another survey found that there was a decline of over 50% in the dropout and recidivism rates when the Stillwater, Oklahoma Drug Court went from District Attorney controlled to that of judicially directed (Danziger 3). In this sense the judge carries out the role of a “father figure.” This role is accomplished through the judge’s influence in the defendant’s life as both supportive and authoritative (Schmitt 4). The judge, due to his or her position of influence, is able to guide the defendant through the process, whereas other authority figures are unable to.

The notion of “judges as social workers” does have its critics. There are concerns that drug court cannot be effective due to judges not being social scientists and therefore unable to adopt behavioral-modification techniques (Haines 2). The reason Haines makes this argument is that the decisions drug court judges make involve predicting future behavior, something they are not trained to do. Haines further argues that criminal courts are needed for two reasons: to protect the rights of individuals charged with crimes and to enforce the law, not solve social problems (Haines 4).

One question which has been raised, is what happens to drug court participants who fail to meet the requirements of the program? Are they to be considered failures and simply sent to serve a maximum jail sentence? The 1987 Supreme Court decision of State v. Vasquez (129 N.J. 189) could be interpreted to guarantee that drug court failures get the mandatory minimum sentence (O’Brien 2). Decisions and laws such as this do exist in other states and have the potential to be applied leading to individuals who need treatment to be sent to prison where they will not receive it. The idea that failing will result in a mandatory minimum sentence does have the potential to act as a strong incentive for the defendant to complete the program. However, a new problem occurs: fear of failure and the risk of receiving a mandatory sentence. This may cause many defendants to choose not to participate in drug court.
While drug courts have developed at an incredible rate and have already been proven to reduce recidivism, there are a number of issues which need to be addressed in order to correct the current problems and further improve drug courts. One of the most significant concerns is what happens to the defendant once they graduate from the program. Currently there is little, if any, monitoring of graduates in the majority of drug courts. The solution would be for drug courts to mandate after-care treatment once the defendant has graduated (Schmitt 6).

One problem with drug courts to date is their accessibility and availability. Drug court has not reached as many addicted individuals as necessary to solve the drug problem. According to California Congresswomen Loretta Sanchez, “For every person we’re putting into a drug court who gets diverted into drug treatment, there’s got to be thirty who go straight to prison...It would be much better if we did more of these drug courts, where you get a second chance” (Wenner 87).

An additional concern of drug court professionals is the lack of treatment in certain areas. According to Reginald Hester, an intake coordinator at Atlanta’s New Start Drug Program, drug treatment is not enough, as many of the individuals need therapy for sexual abuse and dysfunctional families (Schmitt 6). One study found that individuals with mental illness are 2.7 times more likely to have substance abuse problems than individuals without a mental illness. Additionally, individuals with substance abuse problems are five times more likely to have a mental illness than non-substance abusers (Hora 12).

Part II: Case Study

One conclusion that most students of drug courts make is the need to continue gathering data and assessing the performance of existing drug courts. In recognition of that need, the remainder of this study focuses on a case study of the Rochester Drug Treatment Court [RDTC]. The focus of the case study is to assess whether the RDTC successfully meets the requirements outlined in therapeutic jurisprudence, and whether it has been an effective alternative to incarceration for drug-related offenses.

The RDTC provides an excellent example for the case study due to its many unique features. Also, Rochester was one of the earliest drug courts, as well as being the first in New York State. The RDTC is also the largest drug court in the state. In addition to the features of the drug court, Rochester is a prime city for the study. The drug problem is well documented, and the city had the highest level of murders in the state, twice that of New York City. It is estimated that 40% or more of these killings are drug-related(Craig 1). Each year, there are approximately 4,800 people arrested in Monroe County on drug-related charges (Morrell 1).

The problems that drugs cause for Monroe County are staggering. In addition to incarcerations, Rochester is hurt both economically and in regard to the quality of neighborhoods for people living in these communities. “Illegal drugs are at the crux of every criminal and societal problem in this community, from homicides to burglaries, to prostitution to car break-ins, to shootings,” according to Rochester Police Chief Robert Duffy (Morrell 1). Robert Squires, the Monroe County Jail superintendent, estimates that 85% of the 1,325 inmates at the jail are there for crimes related to drugs (Morrell 1).

Each year, between 50% and 70% of the children in foster care come from homes with drug-addicted parents. The typical cost of services for a foster child is $17,000, but for children with drug-addicted parents it can cost up to $70,000 a year due to
additional costs such as treatment (Morrell 1).

Rochester Drug Treatment Court
The Rochester Drug Treatment Court was first discussed in 1993 in a gathering of community leaders intent on solving the drug problem within the community. This gathering of community officials and individuals within the legal profession met often to discuss the problem. Among the problems being discussed were the overcrowding of jails, the heavy burden on the docket, and the social and economic problems in the Rochester community due to drug use and abuse. The result of these meetings was to ask the community for grant money to begin a drug treatment court.

When the RDTC was being planned, there was a great amount of political debate. The underlying issue was whether or not the local government would be considered soft on crime. The "incarcerate all drug offenders and the problem will go away" mindset has been prevalent for decades. The meetings mentioned above helped to alleviate some of the concerns, but the project was still considered risky and could have jeopardized the political careers of a number of individuals involved.

Among the point of contention from the RDTC's opponents were that drug courts would be soft on crime ("Low re-arrest rate" 2). This argument is based on the premise that the individuals who committed the drug-related crime would not be held accountable for their actions. This troubled a number of individuals who feared they would be perceived weak on the drug and crime issue. What they ignored was that statistics show that drug court is "tougher on crime" in the sense that is has a higher success rate in solving the problem. Also, if the defendant fails at any point in the treatment, they can be sentenced to prison in accordance with their original crime.

The goal of the RDTC, in the words of one of its founders, Judge John Schwartz, is to "rehabilitate substance abuse offenders and to protect the community by reducing recidivism." This is accomplished partially through "focusing on immediate drug treatment instead of lengthy prosecutions" (Schwartz 275). Current Drug Treatment Court Judge Joseph Valentino told the Democrat and Chronicle in 2000: "The program is not just aimed at people being clean all the time. It's also important that they have an education and have a job" ("Low re-arrest rate" 2). Information provided by RDTC Special Projects Coordinator Sherry Lintz suggests that there are nine components essential to the RDTC. These nine components are as follows:

1. Drug courts integrate treatment with the justice system
2. A non-adversarial approach is used to promote public safety and protect the defendant's due process rights
3. Early identification and placement of eligible defendants
4. Access to treatment and rehabilitation services
5. Monitored abstinence through testing
6. A coordinated strategy to ensure compliance
7. Judicial interaction with each defendant
8. Continuing education to ensure effective planning, implementation, and operation of drug court
9. Promoting partnerships between drug court, public agencies, and community based organizations.

Operation and Procedure of RDTC
A defendant must meet certain requirements in order to be eligible for drug court. The crime the defendant committed must be drug-related or addiction driven. This includes drug offenses, such as
possession, as well as crimes committed due to an addiction, such as robbery. The crimes can be either a misdemeanor or a felony. In both cases the defendant may be eligible for drug court. Individuals committing violent crimes, however, are not eligible. These crimes include sexual crimes, weapon possession, and violence such as murder. Additionally, any individual charged with selling drugs of any quantity is not eligible. Defendants on probation or parole at the time of their crime also are ineligible (Schwartz 258).

To successfully complete RDTC, the defendant must participate in an intensive two-year drug treatment program. To be successfully discharged, one of the components of the completed program is to remain drug-free for at least one year. One aspect of the treatment program is the educational and vocational training required of the defendant.

When an individual commits a crime, the court determines whether or not the individual is addicted to drugs or alcohol after their arraignment. The assistant district attorney and defense attorney then review the case (Schwartz 258). If defendants are found to be eligible and agree to be transferred, then the court in which they were arraigned refers the individual to the drug court. Once in drug court, defendants begin a minimum of a one-year program to cure them of addiction and reintegrate them into society.

When referred to drug court, the defendant spends the morning (or afternoon, depending on which session) observing the process of drug court from the jury box. When the docket for that morning is complete, the drug court judge calls each defendant forward and has a short conversation with each individual. During this conversation, the judge explains the program required to complete drug court. These requirements are no drugs or alcohol for one-year, a high school diploma or GED, and to have a job or begin looking for a job after seven months. Defendants are also told that they can stay in drug court or return to the referring court to face their charges. The judge also explains that drug court is harder than returning to face the original charges and simply being sent to jail. If defendants choose to stay in the drug court program, they are required to undergo testing and an interview to determine the appropriate level of treatment. Options include being released, sent to a day reporting center, inpatient treatment, or, if there are no beds in a treatment facility, they are sent back to jail to await an opening. Once these initial stages are determined, the process of rehabilitation begins.

The RDTC process is multi-faceted. The defendant undergoes intensive treatment for their drug addiction with counselors from one of the treatment providers, including Bridge, Main Quest, and Huether Doyle. The treatment varies for each individual, but the goal is the same for each: ending the addiction and reintegration into society. In addition to the treatment component, the defendant is also required to make regular court appearances. During the early stages of treatment, the defendant is required to appear regularly, sometimes daily. As the treatment progresses, and the defendant demonstrates they can be trusted, appearances then become weekly, then bi-weekly, and eventually monthly. These court sessions are used to closely monitor the progress of each defendant. Each defendant is called before the judge and appears with their treatment manager. The judge asks if they are completing their program and how they are progressing. This provides an opportunity for the judge to work one on one with each defendant. This personal approach is one of the keys for success.
Some defendants are required to undergo urine screens when the court session begins. The judge calls their names in the morning and asks if they are clean or not. If defendants are honest with the judge and say they are not clean, they are required to sit in the “box,” a group of chairs in front of the jury box. Since the defendant was honest he or she is not sent to jail. It is understood that many defendants will relapse during their treatment. Therefore, if a relapse does occur and the defendant is honest, they receive another chance. If defendants tell the judge they are clean, and their urine screen shows they are not, the defendant is sent to jail. Their imprisonment is not for relapsing, but for lying to the judge.

One reason for this action relates to a principal goal of drug court which is reintegration into society. Reintegration requires personal responsibility. Lying is not accepting responsibility, and for lying, defendants can be sentenced for up to fourteen days in prison (Schwartz 258), after which the defendants are released and re-enter treatment. One graduate, Beth Coombs said “On the streets many people don’t even want to go to drug court because it’s harder. You’re talking responsibility... You’re talking about growing up” (“Low re-arrest rate” 2). Defendants are penalized if they fail to show for a court appearance (unless in a treatment session), or if they are late. The punishment is either jail time or they must report daily and sit in the “penalty box.” There are no excuses accepted in drug court. There have even been instances where a parent was sent to jail while they have a young child with them and no one to take care of the child.

There are also rewards for those defendants who have succeeded in their treatment. If their progress is extremely successful, they receive a round of applause from the courtroom, lead by the judge. When a defendant successfully completes the treatment program, the pending criminal charges against them are dropped and they do not receive any prison time, even if they were facing twenty years or more.

The RDTC is known throughout the country as one of the most innovative courts of its kind. Many cities across the country use a number of the same components that the RDTC has devised and implemented. The RDTC uses community-based case managers and chemical dependency counselors. A comprehensive training policy, including a case management handbook, has been created (Cohen 2). This ensures a high level of consistency and excellence in the training of each case manager.

One of the most intriguing and innovative aspects of the RDTC is the alumni group. The Alumni group, known as “The Clean Slate;” was one of the first drug court alumni groups in the nation. According to the alumni handbook, the alumni group was developed for “people who are winning their battles against addiction, and have successfully completed the requirements of drug court. Participation is not mandatory, but is an opportunity to gain and give support as you continue recovery” (The Clean Slate Alumni Handbook). Not only is the alumni group designed to continue the recovery of the graduates, but also to help individuals currently in drug court. Members of the alumni group work with defendants in a number of capacities. Alumni are peer counselors and mentors, serve on relapse panels, are involved with public speaking on drug court, and make suggestions for program improvements at monthly meetings (Clean Slate, 1). Alumni serve as counselors and mentors to defendants, as they are able to relate their experiences and setbacks. Relapse panels are monthly meetings in which defendants who relapsed are ordered to attend. Alumni serve on the...
indicates that the people of New York State support the shift towards treatment. The first question was, “If your state legislator were to vote in favor of a bill to reduce some sentences, and give judges greater discretion to decide appropriate penalties, would this make you much more likely, somewhat more likely, somewhat less likely, or much less likely to vote for him or her?” The results indicate that 50.3% would be more likely to vote whereas only 25.1% would be less likely (21.5% said it would make no difference) (“Results for Zogby International Poll” 1). Another question on the survey indicates the support of treatment as opposed to incarceration. When asked whether individuals caught in possession of drugs should be incarcerated or receive treatment, 73.8% said treatment would be preferable, as opposed to 18.9% who supported incarceration (“Results for Zogby International Poll” 1).

Traditional courts have been seen as actually continuing drug abuse, because defense counsel functions and court proceedings can reinforce the defendant’s denial of a problem (Hora 13). Therefore, the court system must be reoriented to deal with the drug problem. This change is both imminent and gradual, as the need for change has been recognized, but will take a number of years in order to properly reshape the mindset of individuals.

Overall, despite the changes which still need to be made, drug courts have been an immense success in fighting drug addiction and abuse. The case study of the Rochester drug court shows the numerous advantages they can offer to the individuals in the program, as well as the community. The effects on neighborhoods, the economy, and the quality of life all improve with the success of drug court. Drug court lives up to the ideals of therapeutic jurisprudence in curing the defendant of their addiction. The success of drug court has been documented and is therefore the best option in winning the “war on drugs.”

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