

*Testimony*  
*Of*  
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*Domestic Policy Subcommittee*  
*Oversight and Government Reform Committee*  
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*Making drug courts useful*

Mr. Chairman, I appreciate the opportunity to testify before you this morning. I ask that the full statement, of my colleague Rosalie Pacula of the RAND Corporation, which my remarks supplement, be entered into the record.

Let me begin by noting that Director Kerlikowske has taken a refreshingly broad view of the drug problem with which ONDCP must deal. In particular, it is welcome that his opening page referred to HIV, intimately connected to injecting drug use in this country and hence an important consideration for America's drug policy makers. Many previous National Drug Control Strategies have been totally silent on this matter, as though it was someone else's problem.

I will focus on two issues to-day. The first, which will take most of my testimony, is how drug courts should be developed so that they can emerge from their essentially boutique status to make an important contribution to reducing the nation's crime and drug problems. The second is a brief comment on the issue of whether supply programs should be cut.

Director Kerlikowske, like his predecessors, has offered support for the continued expansion of drug courts, though the funding offered by the Administration's budget is for a broader set of specialized courts. Drug courts are seen as a major innovation which, by increasing the use of treatment rather than incarceration, lower the extent of drug-caused crime and drug consumption among criminally active drug users.

Despite the rapid expansion of the number of drug courts, the number of defendants who pass through such programs remains small. After almost 20 years old and with over 2,300 separate programs having been created (BJA, 2009), a 2008 study estimated that only 55,000 drug involved defendants were processed in such courts in the middle of this decade; the same study estimated that over one million such defendants entered the criminal justice system each year (Bhati, Roman and Chalfin, 2008).

This small number of enrollees arises from several factors. For example, many jurisdictions lack administrative capacity to implement drug courts at-scale. Fifty-two percent of adult drug courts responding to one survey reported they cannot accept some eligible clients due to capacity constraints (Bhati, Roman, and Chalfin 2008). Given this constraint, there are strong administrative and political incentives for drug courts to cream-skim by serving relatively low-

risk populations most likely to achieve successful outcomes rather than the populations who would experience the greatest net reduction in criminal offending from drug court interventions.

In addition, eligibility criteria for drug courts are restrictive. Although they are effective and even cost-effective serving the specific clients they recruit, the diverted offenders are at low risk of going to prison or even jail (following sentencing, as opposed to pre-trial) in the absence of the drug court intervention. My colleagues Harold Pollack and Eric Sevigny, in a forthcoming paper, estimate that of those sentenced to prison or jail in the early part of the previous decade, fewer than 10% would be eligible for drug courts that apply the usual criteria. Given the limited capacity and the relatively low-risk populations actually served, the currently-deployed model of drug courts is unlikely to notably reduce the numbers incarcerated.

The eligibility specific criteria that generate these disappointing results are readily identified. Despite the pervasiveness of the drug treatment court model, drug courts routinely exclude most of the drug using offenders. A survey of adult drug courts in 2005 (Rossman et al 2008) found that only 12% of drug courts accept clients with any prior violent convictions. Individuals facing a drug charge, even if the seller is drug-dependent, are excluded in 70% of courts for misdemeanor sales and 53% of courts for felony sales. Other charges that routinely lead to exclusion include property crimes commonly associated with drug use (theft, fraud, prostitution), , and current domestic violence cases (only 20% accept domestic violence cases)” (Bhati, Roman and Chalfin, 2008, p.7). An earlier study conducted by the Government Accountability Office (1997) found that only 6% of drug courts accept offenders whose current conviction included a violent offense.

More difficult to determine are the eligibility rules with respect to substance abuse. Bhati et al. (2008) report that “[E]ligibility based on drug use severity is applied inconsistently—16% of drug courts exclude those with a drug problem that is deemed too serious, while 48% reject arrestees whose problems are not severe enough. Almost 69% exclude those with co-occurring disorders. Even among eligible participants, more than half of drug courts (52%) report they cannot accept some clients who are eligible for participation due to capacity constraints” (p.8).

These eligibility rules are likely to exclude most experienced users of cocaine, heroin and methamphetamine. The few cohort studies of cocaine and heroin users (e.g. Hser et al, 2001;

Hser et al, 2006) show that long-term users have accumulated long histories of convictions for property and violent crimes and that many—perhaps most—have co-occurring disorders or are polydrug users. Thus they would not be eligible for drug courts, even though they account for a large share of the cocaine and heroin consumption and related crime. This is particularly important for cocaine, since the cocaine using population is rapidly aging.

Assessing the potential effect on program effectiveness of relaxing eligibility requirements is a major research challenge. Existing effectiveness findings reflect the tight eligibility requirements. Drug courts choose certain clients, and exclude the more serious offenders, in the belief that defendants with longer and more serious criminal histories are likely to do less well in drug courts. They may be correct; without evaluations of the effects with these other client groups, the research strategies for making projections are inherently speculative. However, if they are to make a major difference to crime and drug use, they must try to reach out to those other clients, with appropriate adaptations in services and monitoring.

Let me conclude with a comment on supply side programs. The president's budget leaves those programs largely unscathed, despite a mounting unease that the federal enforcement effort, the major component of the drug budget for many years, has done little to help reduce drug use. Like John Carnevale, I believe that some of these programs, particularly in the interdiction area, should be cut. Even large increases in the share of cocaine seized in the last ten years have not led to reductions in its availability or price, for the data that have been analyzed through late 2007. Moreover there are sound analytic arguments as to why seizures at that level are unlikely to make much difference to price or availability. The cost of replacing cocaine seized on the high seas is less than 15% of the retail price and the supply of labor for smuggling is large.

If my arguments for this position lack specificity, that reflects the paucity of evaluations of the interdiction program. Despite annual expenditures of approximately \$4 billion in FY 2010, no agency involved has invested in systematic analysis of the effectiveness of the program as a whole or of its components or if they have, the results have not been published. Thus one is forced to make judgments on the basis of gross data that don't allow for much nuance. This Committee would do a considerable service if it authorized a rigorous external assessment of the

interdiction effort, after which one might be able to make more grounded statements about the value of continuing this level of support and what elements of the program are worth retaining.

I look forward to your questions.