International Journal for Court Administration
Volume 10, Issue 1, Winter 2019
ISSN 2156-7964
URL: http://www.iacajournal.org
Cite this as: DOI: 10.18352/ijca.290

Judges and Courts Respond to Opioid Litigation Engulfing U.S. Court Systems

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Abstract

This editorial summarizes the epidemic in the U.S. of opioid addiction, its lethality in the addict community, and its impact on the justice and social-services sectors. It focuses on the pursuit by federal, state and local court systems of innovative alternatives to traditional models of civil and criminal litigation. Judicial officials are determined to save lives by expediting case processing, compelling settlements from prescription manufacturers and distributors, and orchestrating a range of social services to detour addiction's lethal path. The urgency of settlement is exacerbated by the need to reimburse an array of treatment-oriented public-sector institutions for the enormous costs they are incurring. As new laws and regulations constrain those suffering chronic pain from access to prescription opioids, many pivot to street traffickers for illicit heroin, meth, and fentanyl analogs and derivatives. Because those remedies are distributed through multi-national criminal enterprises, even the longest arms of the law are hard put to extract settlements, leaving essential and costly treatment modalities essentially unfunded except through taxpayer revenues. Whatever settlement proceeds obtain from the prescription opioid litigation must not be diverted, as they continue to be in the tobacco Master Settlement Agreement, from addressing the harm and the resulting costs of the epidemic.

Keywords

Opioid litigation, opioid courts, drug courts, opioid case consolidation, multi-district litigation, Judge Polster, opioid litigation settlement, treatment costs, fentanyl

Introduction

The United States is ensnared in a statistically explosive epidemic of addiction to prescription and, increasingly, illicit natural and synthetic opioid derivatives whose lethal consequences are staggering. In 2017, more than 72,000 Americans died from overdoses; in excess of two-thirds of those deaths resulted from opioids, including prescription pain pills, heroin and fentanyl.[1] The epidemic is estimated to affect more than 20 million Americans struggling with the debilitating and, for many, fatal symptoms of opioid-use disorder. In response, on 3 October 2018, the U.S. Congress passed and the President signed the Substance Use Disorder Prevention that Promotes Opioid Recovery and Treatment (SUPPORT) for Patients and Communities Act.[2] Taken by surprise by the sheer scale of the epidemic, the enormous and largely unbudgeted care and containment costs it entails, government officials at local, county, state and federal levels have initiated civil proceedings in America's courts to recover some of the enormous resources committed to addressing it. The defendants include prescription-opioid manufacturers and distributors for whom the prescription pain-relief market has collectively generated enormous profits.

It is not our first encounter. The nation's initial opioid-addiction epidemic commenced around 1840 and concluded around 1920. In *The Opium Habit, with Suggestions as to the Remedy*, Horace Day traced an intensely personal account of wrestling with physician-prescribed opium that resulted in chronic addiction; he posited that between 80,000 and 100,000 Americans were addicted by the latter 1800s.[3] In those 80 years, opioid ingestion crescendoed 700%. Contributing to this first epidemic, physicians erred in liberally prescribing natural opium and morphine to indiscriminately address conditions the medical profession did not fully understand. Also contributing were (i) American Chinese émigré laborers habituated to smoking opium in China where colonial-era Britain flooded markets with inexpensive product it exported from India during the scandalous Opium Wars, (ii) more prosperous U.S. households where stay-at-home mothers relied on opium-laced elixirs to relieve myriad common maladies culminating in inadvertent addiction, and (iii) use by Civil and Great War medics of morphine and opium to relieve pain and other symptoms suffered by injured soldiers

1 Hedegaard, H., Miniño A., and Warner, M. "Drug Overdose Deaths in the United States, 1999-2017," NCHS Data Brief, No. 329, U.S. Department of Health and Human Services, Centers for Disease Control and Prevention (November 2018): p. 1. Accessible at https://www.cdc.gov/nchs/products/databriefs/db329.htm

2 115th Congress, November 2018. Accessible through the National Association of State Alcohol and Drug Abuse Directors at http://nasadad.org/wp-content/uploads/2018/11/SUPPORT-Act-Section-by-Section-Summary-11.9.18-1.pdf

3 Day, Horace B. The Opium Habit, with Suggestions as to a Remedy. New York: Harper & Brothers, Publishers (1868). Accessible at https://babel.hathitrust.org/cgi/pt?id=miun.aeu2766.0001.001;view=1up;seq=6

on both sides.[4] Eventually regulations and criminalizing laws passed by the Congress diminished the epidemic, and World War II disrupted the sea lanes used to convey opium to U.S. markets, effectively choking off the primary supply corridors.

The country experienced a second epidemic in the latter 1960s through the early 1980s. The opioid of choice was predominantly heroin, and overdose deaths were largely concentrated among young minority males in the 20-29 age bracket residing in low-income entrenched urban districts.[5] The crisis peaked in 1970 with just under 80,000 deaths and culminated in mass incarceration for non-violent crimes involving the possession, use and distribution of illicit drugs, primarily affecting young African American men and adversely disrupting the fragile stability of low-income Black families and their communities whose recovery, in part, still idles.

The current opioid epidemic has adversely affected large segments of economically deprived White and Native American communities throughout the country, and its protracted impact on court systems' workloads is still being calculated. As of October 2018, in excess of 1,000 actions seeking redress had been filed in federal trial court jurisdictions by federal government agencies, unions, Native American tribes, hospitals, and individuals, and by local, county and state governments. State and local government officials also have opted to file civil actions seeking relief and recovery in state and local court systems. Although the staggering loss of human life from prescription opioid overdosing and related suicides is the primary concern, the associated costs are exorbitant. The potential liability collectively incurred by various defendants is anticipated to substantially surpass that of the $246 billion in settlements reached in 1998 with the tobacco industry.[6] Where the White House Council of Economic Advisors estimated that opioid crisis-related costs would total $504 billion or 2.8% of GDP just for calendar 2015,[7] a prominent nonprofit healthcare research firm projected the costs between 2001 and 2017 for the country would exceed one trillion dollars.[8]

Impact of the Current Epidemic on Court Systems

The impact of the overdose crisis continues to adversely impact the resources of federal, state, county and local court systems that serve their communities in various capacities. In family court systems, opioid addiction's impact reverberates in the dependency docket as parents rendered incompetent by their addiction forfeit custody of children who then are assigned to relatives, often aging grandparents on fixed incomes, or channeled into foster-home networks, overwhelming limited resource capacity. Care and treatment costs soar when infants born to addicted mothers require detoxification and rehabilitation services and when child support payments are diverted to bankroll addiction. Increasingly, early childhood courts rescue helpless victims whose mental and physical lives must be re-ordered. Juvenile courts respond to increased incidents of delinquency to finance addiction or to accidents attributable to the functionality losses that addictive episodes and withdrawal trigger. The adverse consequences are not limited to young dependents. Opioid-addictive behavior among adults undermines functionality in relationships, fostering domestic abuse and violence that often culminates in dissolution of marriages, forfeiture of assets, bankruptcy, loss of parental custody rights and misdemeanor- and felony-level criminal charges. The impact also disproportionately consumes resources in specialty venues that include drug courts, mental health courts and veterans' courts, among others.

Targeting Inefficiencies with Federal Trial Court Case Consolidation

Ordinarily, such an infusion of mass torts cases into the nation's judicial systems would entail enormous case-processing inefficiencies were each case separately filed, litigated by individual parties and adjudicated by individual judges. Efforts to minimize such process inefficiencies commenced in the 1960s when nearly 2,000 civil filings alleging conspiracy by a network of electrical equipment suppliers inundated the federal trial courts. Progressive restrictions on cases qualifying for class-action status in recent decades has rendered them a less-accessible vehicle for addressing mass torts. To facilitate discovery in the affected thirty-plus federal districts, then-Chief Justice Earl Warren and the Judicial Conference of the U.S. (JCUS) formed the Coordinating Committee for Multiple Litigation of the United States District Courts (Committee). Under the Committee's direction, judges and

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4 Matthew, Dayna Bowen. "Un-burying the Lead: Public health tools are the key to beating the opioid epidemic," Leonard D. Schaeffer Center for Health Policy & Economics, University of Southern California, and Center for Health Policy at Brookings (January 2018) pp. 5-6. Accessible at https://www.brookings.edu/wp-content/uploads/2018/01/es_20180123_un-burying-the-lead-final.pdf

5 Ibid., pp. 6-7.

6 As of 2017, total tobacco company payouts to the states and territories named in the November 1998 Master Settlement Agreement had reached 119.5 billion. An additional $25.4 billion had been paid to four additional states in individual agreements separate from the MSA. The payouts were designated to fund areas such as anti-smoking campaigns, support for tobacco farmers for costs incurred in shifting to other crops, treatment of smoking-related illnesses, to cite a few. The reality, however, has been that only circa 35% of nearly $150 billion in payments targeted regulating tobacco and funding the onerous burden of its sustained adverse impact on the nation's health. All states diverted significant portions of their payments to unrelated expenditures such as closing state budget shortfalls and infrastructure projects. In North Carolina, $42 million went to tobacco growers under the rubric of "modernization and marketing." A December 2014 National Institutes of Health study reported that "higher MSA payments are associated with weaker tobacco control environments." In effect, the intent of the MSA and other agreements has been reconstrued by unscrupulous state legislatures to transmute the major tobacco corporations into golden geese for prerogatives largely unrelated to addressing the damage to public health attributable to smoking. Numerous states have taken the additional step of borrowing funds and collateralizing them with future MSA installment payments, a practice that generates handsome profits for the financial institutions issuing the loans and bonds and significantly diminishes the amounts of those future payments. See Chretien, Spencer, "Up in Smoke: What Happened to the Tobacco Master Settlement Agreement Money?" The Waste Watcher (12 December 2017) Washington, DC: Citizens Against Government Waste. Accessible at https://www.cagw.org/thewastewatcher/smoke-what-happened-tobacco-master-settlement-agreement-money

7 The Council of Economic Advisors, "The Underestimated Costs of the Opioid Crisis" The White House: Executive Office of the President (November 2017) p. 1.

8 Newsroom Release, "Economic Toll of Opioid Crisis in U.S. Exceeded $1 Trillion Since 2001" Ann Arbor and Washington DC: Altarum Solutions to Advance Health (13 February 2018). Accessible at https://altarum.org/news/economic-toll-opioid-crisis-us-exceeded-1-trillion-2001

counsel collaborated to (i) coordinate calendaring of pretrial discovery proceedings; (ii) designate chief plaintiffs' and defendants' counsel to depose key players; and (iii) organize a central document archive to accommodate, secure and provide party access to 1,000,000-plus documents.[9]

The case disposition-efficiencies achieved by the Committee prompted the JCUS to work with the U.S. Congress to develop a more permanent mechanism for complex case adjudication. Enacted in 1968, Section 1407 of Title 28 of the United States Code, created the Judicial Panel on Multidistrict Litigation, also known as the MDL Panel (Panel). Comprising seven sitting federal judges, the Panel is authorized under law to (i) determine whether civil actions pending in multiple federal districts and sharing common factual issues should collectively be transferred to a single federal district for consolidated pretrial proceedings, and (ii) designate the judge or judges and federal district to which such proceedings should be referred.[10] Recognizing that some 96% of the nation's collective caseload is adjudicated in state court systems, once the Panel was operative, pioneering federal trial judges to whom MDL cases were assigned, such as Jack Weinstein in the Eastern District of New York, reached out to state court colleagues adjudicating cases with similar claims brought against similar defendants and proposed they cooperate with each other and with counsel to achieve greater efficiency in case processing and disposition.[11] State court judges have been equally concerned to streamline the processing of multi-jurisdictional complex litigation, leading to the design and implementation of in-state procedural consolidation and intervention tools.

Understandably, many state and local judges view consolidation of case pretrial processes into enormous consolidated federal MDL initiatives as ceding direct judicial control to a federal counterpart balancing myriad competing, diverse and complex interests. This raises concerns that remedies essential to addressing specialized local circumstances and needs will be churned into the legal gumbo and subordinated to more global priorities. Moreover, there are legal impediments because non-diversity litigation involving state-law claims cannot be removed from state court jurisdiction for transfer to the designated MDL court.

Although existing avenues for processing complex MDL cases offer improved pretrial efficiencies that result in accelerated disposition, pioneering judges and court administrators in courts on both the state and federal levels have concluded that those avenues fail to address the urgencies compelled by mass opioid litigation. The staggering loss of human life attributable to the ongoing opioid tragedy has prompted them to pursue radical alternatives to traditional models of case adjudication. The incentives to do so were recently amplified by the Center for Disease Control (CDC) Director's sobering 29 November 2018 Media Statement on U.S. Life Expectancy. "The latest CDC data show that the U.S. life expectancy has declined over the past few years. Tragically, this troubling trend is largely driven by deaths from drug overdose and suicide."[12]

The impact of lower life-expectancy tables adversely affects, among other determinants, the size and competence of labor markets and the economies they underlie. Equally troubling is the burgeoning number of addicted mothers conceiving opioid-dependent infants. Scott Bickford, an attorney representing opioid-habituated children and their guardians, notes that in excess of 150,000 infants conceived from 2012 through 2016 began their lives in opioid withdrawal with acute symptoms that include organ damage, arrested mental and physical development, and learning disabilities. Lawyers representing opioid-addicted children and their legal guardians petitioned the MDL Panel to (i) sever their cases from the 1,500-plus litigants in the consolidated civil actions assigned to the Cleveland-based MDL court, and (ii) create a new MDL case based in another federal district on grounds that opioid-addicted newborns require multiple medically invasive critical services at birth to minimize the long-term adverse impact of dependence, rendering them a unique class of defendants.[13] In an order issued on 6 December 2018, the Panel denied the requested transfer to a new MDL case, noting that doing so would dramatically increase the pretrial discovery burden, require substantial inter-district coordination, compel the appointment of additional lead counsel and require new case-management protocols.[14]

U.S. District Court Judge Polster's Innovative Approach to Addressing Consolidated Federal Opioid Cases

The urgency of responding to this national epidemic has prompted Judge Dan Arron Polster, the Northern District of Ohio federal trial jurist tasked by the MDL Panel with adjudicating the consolidated opioid cases,[15] to adopt a novel procedural framework. In the course of the initial hearing on 9 January 2018, he advised counsel of his intent to circumvent pretrial discovery and the time-

9 See "An Introduction to the United States Judicial Panel on Multidistrict Litigation," accessible online at https://www.jpml.uscourts.gov/sites/jpml/files/JPML-Overview-Brochure-10-16-2018_0.pdf See also the MDL Panel website at https://www.jpml.uscourts.gov/overview-panel-0

10 Ibid.

11 See order signed by Jack B. Weinstein, Senior United States District Judge, directing "The following communication shall be sent to each state court judge who has a case related to Zyprex: … If you have any suggestion as to how your court and mine can assist each other regarding this litigation, I would be happy to hear from you. If you wish to attend any hearings in my court on this motion, I would be pleased to have you on the bench. If you think that I should attend any hearings in your court, I would do so…If there is anything else we can do to assist each other and counsel in the prompt disposition of these cases, by telephone conference or by any other means, please let me know. Document accessible via the Clerk of Court's electronic filing archive, reference: U.S. District Court for the Eastern District of New York, Case 1:04-md-01596-JBW-RLM Document 358 Filed 01/30/06 Page 1 of 4 PageID#: 3398.

12 Media Statement accessible at: https://www.cdc.gov/media/releases/2018/s1129-US-life-expectancy.html

13 For the text of Bickford's MDL motion, go to: https://www.masstortnexus.com/mass-torts-news/motion-for-new-infantnas-opioid-dependant-mdl-filed-with-jpml-september-20-2018/

14 For the text of the Panel order denying the motion, go to: https://images.law.com/contrib/content/uploads/documents/292/36627/Opioid-Babies-MDL-order.pdf

15 For the MDL Panel transfer order consolidating the initial round of federal trial court cases, In Re: National Prescription Opiate Litigation, MDL No. 2804, go to: https://www.ohnd.uscourts.gov/sites/ohnd/files/2804TransferOrder.pdf

consuming quagmire of motions and hearings generated by it. Neither would he indulge the court's time "unraveling complicated conspiracy theories." He then directed counsel to prepare to engage in settlement discussions to be scheduled forthwith but issued a gag order directing counsel to refrain from discussing settlement options and litigation strategies.[16]

The order was a harbinger of how Judge Polster, an experienced MDL case adjudicator, intended to focus less on pretrial discovery and more on claims resolution through accelerated settlement proceedings. Such resolution would target solutions that proactively address the staggering loss of life occasioned by the opioid crisis. Customarily, the judicial focus in such complex cases would commence with a time-consuming immersion into assessing the value of the claims and how that assessed value would be apportioned as damages payable by the defendants based on their comparative culpability. Conducting the assessment would entail an extensive documentary-evidence exchange and review process followed by multiple deposition sessions. Those named included, among others, opioid manufacturers, distributors, retailers, rogue prescribers, pharmacists, and neighborhood resellers. To motivate serious settlement discussions, the judge warned all parties that stalled or counterproductive negotiations might compel the need to schedule civil jury trials whose outcomes, unlike negotiated agreements, were unpredictable given the highly emotional nature of the crisis. To help facilitate settlement, he appointed three special masters.[17]

Judge Polster scheduled private sessions with lead counsel, their clients and their experts in which they briefed him on issues of concern and responded to probing questions he posed, all to more fully grasp the complex nature of the pending litigation. He also met privately with select state attorneys general representing their colleagues to probe their concerns. Some had claims pending in their own courts; others were investigating prescription opioid abuses and issues in their own jurisdictions. The sessions anticipated MDL defendants would condition their agreement to settle on being able to simultaneously resolve all state and federal claims, thereby establishing predictable liability thresholds and minimizing the likelihood of claims trickling in through various jurisdictions over a number of years. Serious settlement discussions followed with lead counsel cautiously proposing tentative solutions. Defendant manufacturer Purdue Pharma, manufacturer of OxyContin, publicly announced it would cease its aggressive marketing campaign focused on prescribing physicians and deceptively downplaying the risks of addiction.[18] As a solution, some experts considered the gesture too little, too late for the burgeoning population of addicts.

The approach taken by Judge Polster of streamlining the complex pretrial discovery process to scale back the epidemic loss of life from prescription overdosing and related suicides resuscitates the exercise of judicial authority to protect the public forged in the 1960s. In that era, federal trial courts began issuing decrees to remedy flagrant inequities in school districts, prison systems, mental hospitals, welfare agencies, and public housing authorities, among others. Trial judges invoked the authority to monitor and supervise implementation of their mandates, thereby inserting themselves into the ongoing business of public administration as a form of judgment enforcement. Precisely how the invocation of such judicial authority will play itself out in the national opioid crisis, a major public health emergency, where the need for intervention to save lives is immediate and requires orchestration of an array of public-sector institutions, remains to be determined.

In his court, resolving the complex legal intricacies of the dispute initially was relegated to a distant sideshow in deference to the more immediate need to intervene in an unprecedented epidemic of death. As settlement discussions stalled over issues such as how financial liability for myriad opioid-epidemic costs will be distributed and whether public nuisance law can be deployed to punish companies marketing an FDA-approved and heavily regulated product, the judge relented.[19] In his April 2018 "Case Management Order One," the first of what became a succession of case-management orders (CMOs), Judge Polster observed:

> The parties in this case have been pursuing, and are continuing to pursue, settlement discussions, and they have made good progress. The parties have indicated, however, they believe settlement will be made more likely if, in addition to the "settlement track" they currently are pursuing, the Court also creates a "litigation track." Accordingly, the Court hereby enters this Case Management Plan, which directs the parties to engage in motion practice, discovery, and trial preparation for certain cases in this MDL.[20]

The latest, CMO 7 dated 13 August 2018, anticipates a final pretrial hearing for designated "Track One Cases" on 22 August 2019 and commencement of the trial on 3 September 2019, reflecting the input of counsel.[21] Because the authority of MDL judges is restricted to managing pretrial proceedings, he continues to emphasize settlement as the primary case-disposition goal. To facilitate federal/state cooperation, he issued on 9 October 2018 an order "Protocol for State and Federal Court Coordination" which, among other provisions, requires the parties, under the oversight of a special master, to maintain an up-to-date and comprehensive

16 Zezima, Katie, "As the opioid epidemic rages, the fight against addiction moves to an Ohio Courtroom." Washington Post, 7 April 2018. Accessible at https://www.washingtonpost.com/national/as-the-opioid-epidemic-rages-the-fight-against-addiction-moves-to-an-ohio-courtroom/2018/04/07/97b82b84-2636-11e8-874b-d517e912f125_story.html?utm_term=.bf87501b1116

17 See Case: 1:17-md-02804-DAP Doc #: 69 Filed: 01/11/18 1 of 8. PageID #: 443 Order accessible at https://www.ohnd.uscourts.gov/sites/ohnd/files/mdl2804-69.pdf

18 Whalen, Jeanne. "Purdue Pharma to Stop Promoting OxyContin to U.S. Doctors, The Wall Street Journal, 10 Feb. 2018.

19 Randazzo, Sara. "Opioid Settlement Talks Hit Headwinds," The Wall Street Journal, 7 March 2018

20 See Case: 1:17-md-02804-DAP Doc #: 232 Filed: 04/11/18 1 of 20. PageID #: 1084. Document is accessible at https://www.ohnd.uscourts.gov/sites/ohnd/files/cmo%201.pdf

21 See Case: 1:17-md-02804-DAP Doc #: 876 Filed: 08/13/18 1 of 2. PageID #: 20533 Document is accessible at https://www.ohnd.uscourts.gov/sites/ohnd/files/876.pdf

database of all state court prescription opioid cases. Data elements must include the "notice, calendaring, and tracking of information concerning the scheduling and cross-noticing of MDL depositions in state cases. The database will further track the status of state court protective orders and the availability of documents produced in the MDL to state court litigants." [22]

State Court Opioid Case-Processing Innovations

Innovative approaches to resolving these opioid cases also are being implemented on the state-court level. In 2016, responding to the epidemic, Ohio Chief Justice Maureen O'Connor convened a nine-state Regional Judicial Opioid Initiative (RJOI) to coordinate addressing the opioid epidemic at a regional level.[23] RJOI founding states are Illinois, Indiana, Kentucky, Michigan, Ohio, Pennsylvania, Tennessee, Virginia and West Virginia, each adversely impacted by the epidemic. RJOI's objectives are to provide prompt access to treatment, engage prescription drug-monitoring programs, target interdiction by law enforcement and coordinate with broad-based community action programs. Joining court system advocates, including chief justices and state court administrators, are medical specialists, state executive branch leaders, community supervision agencies, adult and child welfare representatives, prescription drug monitoring program officials, and key federal agency and national organization leaders. In September 2017, the U.S. Department of Justice's Bureau of Justice Assistance provided a $1 million grant to the Ohio Supreme Court for use in funding RJOI coordination and research. The National Center for State Courts is coordinating the initiative.[24]

Not all jurisdictions embrace consolidation efforts. On the state level, officials in Lehigh County, PA, expressed reservations about plans to hear all Pennsylvania opioid cases in Delaware County's courts, rejecting claims that the state is authorized to preempt Lehigh's prerogative to appoint its own plaintiff's counsel.[25] On the federal level, resolution of the MDL case is now being protracted by defendants' insistence on discovery to more precisely apportion culpability as a settlement condition. Some public sector plaintiffs with depleted resources and exhausted budgets may be pressured to pursue more immediate resolution of their claims. To do so, they may move the Panel to sever their cases from the MDL merger and pursue their claims independently in local courts.

Dealing with the long-term epidemic of substance addiction, progressive courts have pioneered their own noteworthy innovations. As of May 2018, more than 3,100 drug courts have been established throughout the U.S. with variances in target population, program design, and accessible resources; some have existed for decades. Their service model generally includes these features:

- Offender screening to assess risks, needs, and receptivity;
- Appearance before and interaction with judges;
- Supervision and monitoring, as in drug testing, employment counseling, etc.;
- Graduated sanctions and incentives linked to performance and cooperation; and,
- Treatment and rehabilitation services.

Roughly half these drug courts exercise general jurisdiction over adult populations; the other half includes specialized forums such as juvenile, family, veterans, DWI, tribal and campus courts, among others. Most are attached to state court systems; slightly more than ten percent are adjuncts of federal trial courts.[26]

Some state jurisdictions have established a new iteration of drug court designated as "recovery courts."

- Tennessee has organized its recovery courts into an integrated statewide framework of 68 drug, mental health, family and related courts addressing substance abuse and addiction.[27] In December 2018, the Tennessee Association of Recovery Court Professionals convened its 14th annual Recovery Court Conference.[28]
- Ohio's Cuyahoga County Common Pleas Court established a unique framework of specialty courts that administer proactive interventions to specialized offender populations, all of whom wrestle with opioid and related addictions. The forums include a drug court, a post-incarceration re-entry court, a recovery court, and a mental health and developmental disabilities court, all of which coordinate closely with a network of social services agencies to confront and redirect counterproductive behaviors and attitudes.[29]

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22 Order dated 9 October 2018. Order is accessible at https://www.ohnd.uscourts.gov/sites/ohnd/files/17-2804.pdf

23 Daniel, Courtney. "Judicial Branch Takes Steps to Combat Opioid Epidemic," The Current State – The Council of State Governments, July/August 2017. Accessible at http://www.csg.org/pubs/capitolideas/enews/cs107_1.aspx

24 Staff Report. "Eight-State Regional Judicial Opioid Initiative Receives $1 Million Federal Grant," Court News Ohio, 29 September 2017. Accessible at http://courtnewsohio.gov/happening/2017/RJOIGrant_092917.asp#.XDyYZS3MzF8

25 O'Brien, John. "Legal Newsline: A Dissident Emerges in Pennsylvania's Opioid Litigation, Claims its Case has been Hijacked," Forbes, 21 June 2018. Accessible at https://www.forbes.com/sites/legalnewsline/2018/06/21/a-dissident-emerges-in-pennsylvanias-opioid-litigation-claims-its-case-has-been-highjacked/#51891aeb4dc9

26 "Drug Courts," National Institute of Justice/Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, May 2018. Accessible at https://www.ncjrs.gov/pdffiles1/nij/238527.pdf

27 A directory of the 68 courts is accessible at https://tarcp.org/court-directory

28 "Judges. Legislators Honored at Recovery Court Conference," Administrative Office of the Courts, Tennessee Courts System, 17 December 2018. Accessible at https://tncourts.gov/news/2018/12/17/judges-legislators-honored-recovery-court-conference

29 Cuyahoga County Court of Common Pleas Specialty Courts," Common Pleas Court General Division, 2019. Accessible at https://cp.cuyahogacounty.us/court-resources/specialty-courts/

- In March 2018, Maryland's Harford County supplemented its Adult Drug Court and Juvenile Drug Court programs by pioneering the state's first Adult Opioid Recovery Court. This new court restricts its clientele to hard-core, long-term addicts whose lives have reached the proverbial rock-bottom and have nowhere else to go. The court offers programs that promote rehabilitation through medication and intensive counseling for opioid-dependent participants charged with criminal offenses relating to their addiction.[30]
- On 1 May 2018, assisted by a $300,000 grant from the U.S. Justice Department, the city of Buffalo, New York convened the first session of its experimental Opioid Crisis Intervention Court where the traditional function of administering justice has been pre-empted by the more immediate objective of ensuring that defendants remain alive. Its options include full residential-treatment programs. Motivating creation of the court were opioid-overdose deaths that soared from 127 in 2014 to 300 in 2016. As with other recovery courts, the court suspends defendants' criminal cases while addressing their medical condition.[31]
- In September 2018, pursuant to Public Act 18-166, the Connecticut Judiciary formed a Task Force to Study the Feasibility of Establishing Opioid Intervention Courts. In 2017, its judicial branch court support-services office reported that in excess of 19,000 drug cases were referred to treatment programs.[32]
- In Kentucky, Jefferson County officials shuttered their drug court in 2010 due to budget shortfalls. The subsequent surge in opioid addiction and deaths prompted officials to relaunch it as a family-oriented addiction recovery court in the fourth quarter of 2018, thanks to a contribution exceeding $400,000 raised by the local chapter of the National Council of Jewish Women. Its emphases will include preserving families savaged by addiction.[33]

To support a wide variety of public-sector institutional-support agencies across the country, including courts, focused on addressing the opioid epidemic, the Department of Justice announced in October 2018 that it will commit nearly $320 million in grants.

It is beyond the purview of this overview to review the full import of the groundbreaking roles individual courts in state and federal jurisdictions are experimenting with to address the scourge of prescription opioid addiction and overdose. Although their combined efforts reflect a proactive national initiative still in process, the challenges posed to the efforts of judges and court administrators working with prevention- and treatment-oriented public-sector institutions to reduce the loss of life are fluid. Highly restrictive distribution regulations for FDA-approved synthetic prescription opioids have been implemented with the unintended consequence of limiting relief options for tens of thousands of individuals suffering from constant chronic pain. A challenge yet to be faced is how to effectively intervene in an emerging follow-up epidemic as the access of prescription-opioid addicts to painkillers authorized by physicians and sold by pharmacies is choked off.

Pain Sufferers' Desperate Transition from Regulated Prescriptions to Illicit Street Markets - The Lethal Risks of Fentanyl

The desperate response of many addicts tortured by pain and facing scaled-back access to prescription opioids has been to migrate from registered pharmacies to illicit street markets. In doing so, they defy myriad risks associated with patronizing unregulated backstreet dealers to purchase heroin, meth and, increasingly, fentanyl and its analogs, a family of highly powerful and particularly dangerous synthetic opioid pain relievers less complicated than heroin to produce and considerably more profitable.

In 2015, fentanyl-related deaths surpassed heroin-overdose deaths in 2015 and have continued to soar, giving rise to a newly emerging epidemic.[34] Tens of thousands of desperate addicts whose access to prescription opioids has been restricted or eliminated have turned to street-dealt fentanyl to alleviate recurring pain and feed the repetitive mania of addiction cycles. Originally introduced in the U.S. in the 1960s, domestic production and distribution of prescription fentanyl is strictly regulated. Most opioid-addicted Americans currently procure their fentanyl fixes illegally on the street from unlicensed dealers supplied by criminal networks. Illegally produced fentanyl is often mixed with heroin, meth or cocaine; its potency, addictive nature and overdose risks exceed those of prescription OxyContin. A single dose bought from a street dealer may be fatal.

Illicit fentanyl dealers are now encroaching on established heroin supply domains in low-income urban settings in America's large cities with severe consequences. Their target populations are primarily minorities. Since 2014, the incidence of drug-overdose fatalities for African-Americans has accelerated to more than double the rate for white Americans according to the CDC. In the District of Columbia, nearly 300 addicts died from opioid overdoses in 2017, triple the number of opioid-related deaths in 2014. Seventy-plus percent of the deaths involved fentanyl or its street variants, and more than 80 percent of victims

30 Butler, Erika. "New Harford Opiate Recovery Court is for addicts who 'have really reached the bottom,' Judge Says," The Aegis/Baltimore Sun, 24 March 2017. Accessible at https://www.baltimoresun.com/news/maryland/harford/aegis/ph-ag-opioid-court-harford-0322-20170323-story.html

31 Westervelt, Eric. "To Save Opioid Addicts, This Experimental Court is Ditching the Delays," NPR Morning Edition, 5 October 2017. Accessible at https://www.npr.org/sections/health-shots/2017/10/05/553830794/to-save-opioid-addicts-this-experimental-court-is-ditching-the-delays

32 Florin, Karen. "Judicial Branch forms task force to study feasibility of opioid intervention courts," The Day, 14 September 2018. Accessible at https://www.theday.com/article/20180914/NWS04/180919613

33 Yetter, Deborah. "Amid opioid crisis, Jefferson family drug "recovery" court is back," Louville Courier Journal, 27 September 2018. Accessible at https://www.courier-journal.com/story/news/opioids/2018/09/27/opioid-crisis-family-drug-court-back-jefferson-county/1345831002/

34 Hedegaard, H. et al. "Drugs Most Frequently involved in Drug Overdose Deaths: United States, 2011-2016," National Vital Statistics Reports, Vol. 67, No. 9, 12 December 2019. Accessible at https://www.cdc.gov/nchs/data/nvsr/nvsr67/nvsr67_09-508.pdf See also, Lewis, Nicole, et al. "Fentanyl linked to thousands of urban overdose deaths," Washington Post, 15 August 2017. Accessible at https://www.washingtonpost.com/graphics/2017/national/fentanyl-overdoses/?utm_term=.84090dcb42ca

were African-Americans.[35] Comparably alarming statistics obtain in Philadelphia's inner city.[36] The problem is compounded by the increasingly routine adulteration in street markets of heroin, meth, cocaine and crack with fentanyl. Because addicts may not anticipate its presence in their illicit drug of choice, they unwittingly overdose as the effect of the more powerful opioid is triggered. In some U.S. drug markets, users are now being warned that marijuana available on the street may be laced with fentanyl, another potentially deadly combination.

This new fentanyl-fueled epidemic is spawned by criminal enterprises supplied by Chinese manufacturers whom the Xi Jinping government only sporadically pursues and prosecutes.[37] Much of it is conveyed into the U.S. via international commercial couriers such as Federal Express, DHL and UPS and the U.S. Postal Service.[38] The American scourge does not discriminate between disadvantaged whites in rural communities in chronic economic decline and economically underprivileged minority populations in our urban cores. As this infestation takes hold, the option of pursuing significant civil relief through courts to fund the enormous costs incurred by public-sector institutions and adjunct private social services largely vanishes. Rarely are the deep pockets of international criminal enterprises accessible to domestic courts, even when cases are heard and verdicts issued. Judges and courts in this emerging fentanyl epidemic focus primarily on adjudicating criminal charges lodged against minor players such as street vendors and their suppliers apprehended by law enforcement. This will generate renewed pressure on public-sector institutional resources, including those of courts at all levels, to provide a range of services to addict populations without recourse to substantial civil relief extracted under law from the illicit profits of foreign manufacturers and suppliers beyond the reach of even the longest arms of the law.

Ensuring that State Legislatures do not Divert Opioid Litigation Settlement Proceeds from Service Providers and Victims

A prospective solution does exist to subsidize the public costs incurred if the looming prospects of another epidemic fueled primarily by illicitly marketed opioids materializes. Assume that:

(i) Judge Polster and lead counsel in the MDL case are able to navigate the equivalent of a master agreement that calls for a schedule of protracted payments over several decades as in the tobacco MSA;

(ii) Any such agreement mandates the commitment of those payments to targeted addiction recovery and directly related services and prohibits their diversion to other unrelated projects and services, whether by state legislatures or other state officials or agencies; and

(iii) Any such agreement prohibits state legislatures or other state officials or agencies from engaging in financial transactions that use any scheduled payments under the agreement as collateral to secure loans or bonds for any purposes with an enforceable proviso that if they do, they will forfeit a substantial percentage of future payments and that the forfeited amount will be redirected to relevant agencies of the U.S. Department of Justice to dispense as direct grants for addiction-recovery and related services to appropriate state and local social services agencies.

If the agreements are meticulously crafted based on detailed research and include appropriate enforcement authority subject to court-based monitoring, then the diversion of funds for purposes unrelated to the tobacco MSA and supplemental agreements can be avoided, and the payments generated by the settlements will serve the purposes they are intended to serve.

To the extent that there is good news, it is that the national rate of opioid-related deaths in the timeframe December 2017 – April 2018 indicates a slight but consistent decline. More dramatic reductions in urban areas such as Dayton, Ohio, may result from the dawning recognition by traffickers that the sale of carfentanil, an analog of fentanyl that exceeds morphine's potency by a factor of 10,000, is killing their consumers, prompting them to reduce its availability on the street to preserve their dwindling markets.[39]

35 Jamison, Peter. "As fatal heroin overdoses exploded in black neighborhoods, D.C. officials ignored life-saving strategies and misspent millions of federal grant dollars. More than 800 deaths later, the city is still reckoning with the damage it failed to prevent," Washington Post, 19 December 2018. Accessible at https://www.washingtonpost.com/graphics/2018/local/dc-opioid-epidemic-response-african-americans/?utm_term=.91d95b2580b8

36 Whelan, Aubrey. "Cocaine/fentanyl deaths in Philly show fatal unpredictability in drug supply," The Inquirer, 20 February 2018. Accessible at http://www.philly.com/philly/health/addiction/cocaine-fentanyl-deaths-in-philly-show-fatal-unpredictability-in-drug-supply-20180221.html

37 Deprez, E., Li, H. and Wills, K. "Deadly Chinese Fentanyl is Creating a New Era of Drug Kingpins," Bloomberg News, 22 May 2018. Accessible at https://www.bloomberg.com/news/features/2018-05-22/deadly-chinese-fentanyl-is-creating-a-new-era-of-drug-kingpins

38 Nixon, Ron, "U.S. Struggles to Stop Smuggling of Mail-Order Opioids," The New York Times, 30 May 2018. Accessible at https://www.nytimes.com/2018/05/30/us/politics/drug-smuggling-mail-order-opioids.html

39 Goodnough, Abby. "This City's Overdose Deaths Have Plunged. Can Others Learn From It?" New York Times, 25 November 2018. Accessible at https://www.nytimes.com/2018/11/25/health/opioid-overdose-deaths-dayton.html

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