Solving the Drug Enforcement Dilemma: Lessons from Economics

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Solving the Drug Enforcement Dilemma: Lessons from Economics

Stephen J. Schulhofer†

Though no longer perceived as our number one domestic problem, drugs continue to ravage our inner cities, and drug cases increasingly clog our courts and prisons. Drug enforcement expenditures have been growing exponentially, but drug-related violence continues unabated. Recent national figures show another depressing upsurge in emergency room admissions attributable to heroin and cocaine, and usage of marijuana and LSD among young adults (aged nineteen to twenty-eight) appears to be rising again.

Skeptics wonder whether drug prohibition is worth its costs. But legalization is a complex and risky proposition, with political acceptability verging on zero. Thus, we redouble our commitment to vigorous enforcement of drug laws. Each year, the President's Office of National Drug Control Policy calls for another round of increases in expenditure for investigation, prosecution, and imprisonment of drug dealers. Yet success on this front is elusive and partly self-defeating. The billions we invest seldom bring tangible results, and dramatic drug seizures, when they occur, are rapidly offset by new shipments and alternate sources of supply. Worst of all, the genuine victories, which disrupt distribution, curtail availability, and raise street prices, only set off new waves of turf war violence and fuel predatory crime to finance the drug needs of habitual users.

† Frank and Bernice J. Greenberg Professor of Law and Director of the Center for Studies in Criminal Justice at the University of Chicago. I am grateful for the comments of Albert Alschuler, Gary Becker, Frank Easterbrook, David Friedman, William Landes, Norval Morris, Richard Posner, Peter Reuter, and Geoffrey Stone.

1 See Drug Emergencies Rising, U.S. Reports, Boston Globe 72 (Oct 5, 1993). The sharp increase in emergency room admissions from 1991 to 1992, 18 percent for cocaine and 34 percent for heroin, appears attributable, at least in part, to the aging of the population of heavy drug users.

2 Sandy Rovner, Drug Habits of Young Adults: Use of Marijuana, LSD is Up While Heavy Drinking Continues, Washington Post Z7 (July 27, 1993).
Is there another way? We need a strategy that maintains our commitment to drug prohibition but breaks the counterproductive cycle in which enforcement aggravates drug-related crime.

A straightforward and workable means to break this vicious cycle exists, but to achieve it, we need a radical reversal of priorities. We need to discard our preoccupation with the international cartels and our obsession with tracking down "Mr. Big." We should instead emphasize both public health approaches such as education and treatment (traditionally favored by liberals) and vigorous street-level enforcement (traditionally disdained by liberals and conservatives alike). To see why, we must think clearly about the distinct harms caused by dangerous drugs and about some basic lessons in the economics of supply and demand.

I. THE COSTS OF PROHIBITION

The resources absorbed by the drug war continue to grow. At the federal level, the drug enforcement budget was an impressive $1.5 billion in fiscal year 1981, and it has grown to $4.7 billion in fiscal year 1988, $11 billion in fiscal year 1991, and a recommended $13 billion for 1994. Drug distribution offenses now represent roughly 40 percent of all federal prosecutions and 50 percent of all admissions to federal prison.

State and local expenditures for drug enforcement are more difficult to quantify but are undoubtedly substantial. A 1987 study by Wharton Econometrics estimated state and local outlays for drug investigation at $5 billion for 1986, and these expenditures have grown substantially since. State and local drug arrests grew 59 percent from 1981 to 1986 and climbed an additional 23 percent from 1986 to 1991. The percent of prisoners convicted of drug offenses has risen from 7 percent of all admissions to state prison in 1980 to 32 percent of all admissions in 1990. State and local outlays for courts and prisons have likewise skyrocketed.

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9 See Office of National Drug Control Policy ("ONDCP"), 1994 National Drug Control
The costs of the drug war go well beyond these expenditures for law enforcement. Preoccupation with drugs means less attention for federal and state crimes that do far more direct harm, including violent crime, financial fraud, toxic pollution, and public corruption,\(^\text{10}\) not to mention other vital federal and state concerns such as education, prenatal care, housing, and nutrition.

If vigorous enforcement could rid us of the manifold costs of addictive drugs, it might be worthwhile. But for some time skeptics have questioned whether drug prohibition can cure the evils of drug trafficking. Drug enforcement, like alcohol prohibition in the 1920s, appears to reduce consumption, but it may exacerbate public health problems due to impurities of unregulated product and inflated prices that trigger criminogenic effects, such as increases in predatory crime to support drug habits, battles among drug dealers seeking lucrative turf, and violent death to suspected informants, competitors, and innocent bystanders, including inner-city children caught in the cross fire.

II. LEGALIZATION

These concerns have spawned a now familiar debate over legalization. Critics wonder whether legalization could possibly entail costs comparable to the tens of billions of dollars spent in direct outlays for drug enforcement, together with the costs of predatory drug crime and other harms attributable to prohibition.\(^\text{11}\)

But legalization is itself costly and very risky. Proponents of legalization are generally vague about critical matters of detail, such as the precise form of regulation—if any—that would accompany decriminalization, how black markets and sales to minors would be prevented, and how the regulatory regime applicable to psychoactive prescription drugs such as Valium would be affected.\(^\text{12}\) Moreover, the public health effects of legalizing a dangerous drug like crack cocaine are uncertain and on key points probably unknowable. Although most users of alcohol—and marijuana—are able to consume these drugs in moderation without becoming addicted, we cannot be sure that this is true of cocaine or

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\(^{11}\) See, for example, Nadelmann, 245 Science at 939 (cited in note 5).

\(^{12}\) See James Jacobs, *Imagining Drug Legalization*, 101 The Public Interest 28 (Fall 1990).
PCP. If assumptions about these matters turned out to be overly optimistic, the public health consequences for an entire generation could be catastrophic. These concerns do not necessarily indicate that prohibition is the "safe" course, for prohibition may also have catastrophic public health and public resource effects. But fear of the unknown does mean that legalization is unlikely to carry the day in the forum of public opinion any time soon. When Surgeon General Joycelyn Elders recently suggested studying the possibility of legalization, she was quickly rebuked by the White House, which issued a statement that President Clinton "is firmly against legalizing drugs, and he is not inclined in this case to even study the issue."14

The risks of legalization, together with hard political realities, mean that public policy must find a way to break the pernicious cycle of criminogenic drug enforcement without abandoning prohibition and without affording abusers limitless access to potentially dangerous drugs. In terms of practical choices, what are the options?

III. STRATEGY, RESOURCES, AND PRIORITIES

Drug control strategists offer approaches that run the gamut, from crop eradication in the Andes to awareness programs in our suburban classrooms. The principal options include education, treatment, domestic law enforcement, border control, and international initiatives to reduce drug production. Much of the debate centers on the effectiveness of each measure. Which of these strategies can work?

While education probably helps discourage middle-class drug use, it seems much less effective—perhaps totally ineffective—in lowering consumption by ghetto crack addicts who have few other opportunities to escape bleak prospects.5

Treatment programs have had mixed success. Many approaches work quite well,6 but no program can claim com-

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13 See John Kaplan, Taking Drugs Seriously, 92 The Public Interest 32 (Summer 1988).
16 A recent, thorough review of the literature concludes that "[t]he major drug treatment modalities...have all been shown to be successful by most outcome criteria. . . . Clients entering treatment under legal coercion do as well by most outcome crite-
pletely to "cure" every addict. Heroin users frequently relapse when they return to the social environment that cues the drug experience. Cocaine addicts require a combination of social, psychological, and medical services, and drugs to block cocaine euphoria and craving have only recently become available. Imperfect outcomes increase the inherent vulnerability of publicly funded programs needed to treat the indigent. In an era when taxpayers hesitate to support neonatal care for the "deserving poor," or even roads for their own cars and schools for their own children, underclass drug addicts make unlikely candidates for public largesse.

Border control is now widely acknowledged to be a virtually hopeless endeavor.17 Given our commitments to international commerce, travel, and tourism, only a small fraction of the drugs entering the country can be intercepted.18 From 1981 to 1987, the amount of cocaine seized at the border rose dramatically, from 1.7 tons to about forty tons; nonetheless, the amount of cocaine imported rose rapidly during the same period, and the street price declined sharply.19 Even if we could double or triple our rate of success in spotting drugs at the border, the effect on the street price would be insignificant. Because production and importation costs are only about 10 percent of the total cost of distribution to the user, doubling or tripling costs incurred up to the border point has little effect.20 If our borders become less porous, then distributors can simply throw more drugs at us, ensuring that the desired quantities continue to get through.21

17 See Peter Reuter, Gordon Crawford, and Jonathan Cave, Sealing the Borders: The Effects of Increased Military Participation in Drug Interdiction 122 (Rand Corporation, 1988).
18 Federal law enforcement experts estimate that 70 to 90 percent of the cocaine exported to the United States reaches the streets here. See Joseph B. Treaster, Military Is Faulted on Effort to Stem Drug Traffic, NY Times A8 (Sept 27, 1991).
19 Peter Reuter, Can the Borders Be Sealed?, 92 The Public Interest 51, 52-53 (Summer 1988).
Or worse, they can switch to more potent, concentrated, and easily concealed drugs as interdiction efforts become more effective.

International initiatives likewise have inherently limited potential. Foreign production is difficult to restrict, and efforts to do so may disrupt the economies and politics of source countries. Moreover, such initiatives have little impact because new producing regions are available at little increase in growing costs, and because growing costs are a small part of the street price.\(^2\)

While agencies involved in the drug war constantly press for more resources, most confess that they can make only limited contributions.\(^3\) Interdiction experts express frustration at the virtually unlimited quantities to be intercepted and call on the State Department to enlist source countries in the effort to restrict supply.\(^4\) But foreign affairs specialists note that little can be done to stem production so long as opium and coca crops promise enormous profit to peasants with no other comparable source of income.\(^5\) High school educators find their task futile as long as drugs are readily available on the corner and teenage dealers sport gold chains, beepers, and fancy cars. Local police complain that street-level enforcement makes no dent in the infinitely expandable pool of small-time addict-dealers; the “Big Fish” and “Fat Cats” remain untouched. State and federal task forces focus their energies on working up the ladder to “Mr. Big.” But enforcement specialists acknowledge that this effort is illusory because subordinates and competitors, lured by enormous potential profits, stand ready to step in.

Colombian and American efforts to topple alleged drug lord Pablo Escobar made these ironies especially visible. Escobar’s capture in 1991 triggered a huge fuss over whether his “gilded cage” would really prevent him from running the Medellin cartel. This debate, of course, was quite beside the point. As Tom Cash, head of the DEA’s Miami office, commented, “If Lee Iacocca left, would Chrysler stop making automobiles?”\(^6\) When Escobar later escaped and was finally captured and killed, officials heralded the demise of this ultimate “kingpin.” Yet the consensus of law enforcement personnel interviewed at the time was to the effect

\(^2\) See Reuter, Crawford, and Cave, Sealing the Borders at vi (cited in note 17).
\(^3\) See Nadelmann, Drug Prohibition at 939 (cited in note 5).
\(^4\) See Ethan A. Nadelmann, The Case for Legalization, 92 The Public Interest 3, 9 (Summer 1988).
\(^5\) Id at 9-11.
that "beyond its symbolism, his death was not expected to affect
the flow of cocaine [through North and South America] or to have
any effect on international efforts to stamp out traffic in [the] drug . . . ."\textsuperscript{27} The acting administrator of the Drug Enforcement
Agency ("DEA") conceded that the Cali group and others "had
already filled the vacuum."\textsuperscript{28} Other experts predicted that
Escobar's death would actually make government interdiction
efforts more difficult because the remaining distributors, freed of
their conflict with the Medellin group, would find it easier to col-
laborate and to operate more efficiently.\textsuperscript{29}

The successive "drug czars" who have led the White House
Office of National Drug Control Policy ("ONDCP") have been
more optimistic. Each year, ONDCP's Annual Report renews the
government's commitment to pursuing all fronts simultaneously,
with increased funds for education, treatment, local enforcement,
high level task forces and so on. This approach makes for appeal-
ing public relations and satisfies agency constituencies, but it
obscures important choices.

The 1994 proposed federal budget, released in April 1993,\textsuperscript{30}
is summarized in Table 1. The ONDCP proposed spending $1.8
billion for education and community action programs—a $252
million increase over fiscal year 1992, and $2.5 billion for treat-
ment programs—a $387 million increase, while criminal justice
was to receive $5.8 billion, an $866 million increase.\textsuperscript{31}

\textsuperscript{27} Robert D. McFadden, \textit{Head of Medellin Cocaine Cartel Is Killed by Troops in Co-
lombia}, NY Times A1, A7 (Dec 3, 1993).
\textsuperscript{28} Id.
\textsuperscript{30} OMB, \textit{Budget Summary, 1994} (cited in note 3).
\textsuperscript{31} As Peter Reuter shows, some of these budgetary figures result from arbitrary ap-
portionment of expenditures that will be incurred in any event (at least in the short run). See Peter Reuter, \textit{Setting Priorities: Budget and Program Choices for Drug Control, 1994}
U Chi Legal F 145, 148-51. But many of the items in question, especially those involving
the criminal justice system, are directly affected by expenditure decisions and other policy
choices.
Table 1
Federal Drug Control Expenditures
(in millions of dollars, by fiscal years (FY))

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<tr>
<td>Treatment</td>
<td>2150.8</td>
<td>2367.7</td>
<td>2538.1</td>
<td>170.4</td>
<td>387.3</td>
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<td>Education, Community</td>
<td>1537.6</td>
<td>1524.4</td>
<td>1789.9</td>
<td>-170.4</td>
<td>252.3</td>
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<td>Action, &amp; Workplace</td>
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<tr>
<td>International</td>
<td>660.4</td>
<td>538.0</td>
<td>490.0</td>
<td>-48.0</td>
<td>-170.4</td>
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<td>1765.2</td>
<td>-195.0</td>
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<td>530.9</td>
<td>548.2</td>
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<td>5374.8</td>
<td>5782.6</td>
<td>407.7</td>
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<tr>
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<tr>
<td>DEA</td>
<td>709.8</td>
<td>756.1</td>
<td>773.8</td>
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<td>204.8</td>
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<td>217.5</td>
<td>-1.4</td>
<td>12.7</td>
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<td>U.S. Attorneys</td>
<td>206.7</td>
<td>207.2</td>
<td>207.9</td>
<td>-0.7</td>
<td>1.2</td>
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<td>Offices</td>
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<td>Organized Crime</td>
<td>363.6</td>
<td>385.2</td>
<td>384.4</td>
<td>-0.9</td>
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<tr>
<td>Drug Enforcement</td>
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<td>Task Forces</td>
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<tr>
<td>Federal Courts</td>
<td>359.9</td>
<td>406.9</td>
<td>501.1</td>
<td>94.1</td>
<td>141.1</td>
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<tr>
<td>Bureau of Prisons</td>
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<td>1334.0</td>
<td>1466.3</td>
<td>132.3</td>
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<td>Total</td>
<td>11,878.3</td>
<td>12,210.8</td>
<td>13,041.4</td>
<td>830.5</td>
<td>1,163.1</td>
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Source: OMB, Budget Summary, 1994 at 147 (cited in note 3).
Among the criminal justice expenditures, several already large budget items continue to grow rapidly. The 18 percent increase in expenditures for treatment should be compared to the 39 percent increase for federal courts and the 17 percent increase for prisons. Both interdiction and international efforts face large funding cuts—10 percent and 26 percent respectively. However, published reports suggest that while ONDCP recommends reduced emphasis on intercepting drug shipments in the maritime transit zones, a move that supply reduction experts have urged for years, ONDCP also contemplates increased attention to law enforcement and crop reduction in the source countries, together with a so-called “kingpin strategy” intended to attack drug distribution hierarchies. These two approaches seem at least equally futile. What theory of ultimate goals or instrumental effectiveness guides these choices? The Office of National Drug Control Policy does not say.

In the Anti-Drug Abuse Act of 1988, Congress sought to keep priorities visible by requiring ONDCP to identify the resources devoted to supply reduction and demand reduction. But ONDCP’s first Report, issued in September 1989, responded by attacking the concept of a supply/demand distinction as “artificial and counterproductive.” The Report disparaged the supply/demand issue as primarily symbolic and ideological: law enforcement critics, it said, dismiss supply reduction as “punitive,” while they view demand reduction strategies such as education and treatment as constructive and therapeutic. In reality, ONDCP claims, law enforcement strategies commonly associated with supply reduction play a major role in demand reduction:

When street prices for drugs go up, and drug availability declines, then fewer people are likely to seek out drugs and consume them. In other words, a large portion of funding proposed in this report for traditionally

32 See notes 17-21 and accompanying text.
34 See Treaster, NY Times at A1 (cited in note 33).
35 See Part VIII of this Article.
37 Id.
understood "supply reduction" is in fact aimed at reducing demand as well.\footnote{Id at 112-13.}

Pursuing this theme, ONDCP Reports consistently seek to obliterate the coherence of a supply/demand distinction:

Granted, overseas and border activities against drugs work primarily to reduce supply. But they can have an important, radiating effect on demand, as well, because they make the purchase of certain imported drugs more difficult—and therefore less likely. In much the same way, drug treatment and education work primarily to reduce demand, but in so doing they may encourage suppliers to scale back production and distribution in an effort to sustain consistent profits.\footnote{Id at 12-13. See also ONDCP, \textit{1991 National Drug Control Strategy} 133-34 (1991).}

This analysis, though superficially sophisticated, obscures genuine differences and collapses hard choices into a muddle. There are real choices to be made: between treatment and punishment; between supply reduction and demand reduction; and between working up the ladder to kingpins and working down the ladder to neighborhoods, street-corners, and small-time sellers and buyers. Moreover, these choices determine whether our efforts will mitigate the scourge of drug abuse or only make it worse.

We can break the pernicious catch-22 in which each enforcement success makes our drug problem worse than ever. But to do this, we first need to be clear about the distinct ways in which drugs harm society.

IV. \textsc{How Drugs Cause "Drug-related" Crime}

Drugs cause harm in several distinct ways. Three causal mechanisms need to be distinguished: pharmacology, economic compulsion, and organizational dynamics.\footnote{See Paul J. Goldstein, \textit{Drugs and Violent Crime}, in N. A. Weiner \& M. E. Wolfgang, eds, \textit{Pathways to Criminal Violence} 16-48 (Sage Publications, 1989). Except as otherwise indicated, the discussion in this Part draws on the Goldstein article and the sources cited therein.}
A. Pharmacological Effects

Many drugs render users excitable or irrational. Users may be prompted to violence or poor judgment. Alcohol produces particularly dangerous pharmacological effects; barbiturates and PCP also are harmful in this way.

The pharmacological picture is more complex for the drugs that are central to the enforcement effort—marijuana, cocaine, and heroin. There is little or no credible evidence linking marijuana with violent behavior, but marijuana, like alcohol, can cause inattention and poor judgment that increase accident risk. Heroin, an opiate, strongly inhibits violent behavior. Heroin withdrawal, however, may cause irritability and aggressiveness, particularly when the user is unable to obtain another “fix.” Cocaine is said to induce an intense mellow “high,” suggesting a violence-inhibiting effect, heightened alertness and energy, which may tend to reduce carelessness, as well as feelings of omnipotence, suggesting impaired judgment and increased carelessness. In any event, after the cocaine “high” comes a “crash” associated with anxiety, depression, or paranoia; in this condition, the user can become dangerously aggressive.

Behavioral effects resulting from withdrawal syndrome or the “crash” may not deserve to be considered pharmacological because they result from unavailability of the drug rather than the drug itself. Yet some withdrawal effects seem likely even under a regime of unrestricted supply. Few cocaine users could manage to stay permanently “high.” More widespread consumption might mean growth in the “withdrawal” problem even if each user faced a smaller risk of being caught short of supply. “Withdrawal” effects are therefore partly pharmacological as well as social.

Other pharmacological effects deserve mention. Especially tragic are injuries to the fetuses and nursing infants of drug abusing mothers, which are manifested by crack and fetal alcohol syndromes. Drugs that lower inhibition or “give courage” may increase violent crime by persons already predisposed. Injury to the user’s own health is particularly serious for alcohol and nicotine. Studies suggest few, if any, serious health effects from marijuana, but the opportunity for wide-scale study is, of course, lim-
ited. The long-term health effects of cocaine and opiate use likewise remain unclear and to some extent unknowable. Dramatic examples of drug-related harm such as toxic reactions, drug overdose deaths, and the spread of AIDS among needle-sharing addicts are more probably the result of black market conditions than of the drugs themselves.

Finally, pharmacological effects increase the chance that users will become victims of crime. Drug-related aggressiveness can provoke violent retaliation against the drug user. Intoxication, especially in the case of alcohol and opiates, can leave the user more vulnerable to predatory crime.

Though there is much that we do not know about pharmacological effects, what we do know is unquestionably sufficient to support vigorous efforts to discourage drug use.

B. Economic Compulsion

The economic needs of drug users generate predatory crime, not all of which is violent. Heroin users are said to avoid violent crime if nonviolent alternatives are available. The principal forms of crime that support drug habits are thought to be shoplifting, prostitution, and drug-dealing itself. Nevertheless, economic need often drives drug users to burglary and robbery as well.

Here prohibition produces a well-known dilemma. In its effort to discourage consumption, enforcement of prohibition restricts availability and drives up the price, thereby generating more predatory crime to support the increased economic needs of drug users. Conversely, street crime by drug addicts, the argument goes, could be vastly reduced by legalization.

The legalization position has been questioned from two directions. First, some recent research suggests that although a high proportion of robberies and other street crimes are committed by drug users, it is crime that causes drug use rather than the other way around. Justice Department data indicate that most drug abusers began their criminal careers and experienced arrest before trying drugs, 51 percent of them more than a year before.45 Drugs may simply be one of the luxury consumption items that predators purchase after a successful score.46

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46 Goldstein, Drugs and Violent Crime (cited in note 41).
To the extent that these arguments are valid, drugs do not "cause" predatory crime, and thus legalization would not reduce it. Robbers would just have more disposable cash to spend on luxuries, including drugs. (Legalization would at least permit more of the fruits of predatory crime to be recycled back into the legitimate economy.) But once the user becomes addicted, he will need to commit more crimes than he did before, especially if prohibition has inflated prices.

The benefits of legalization have also been questioned from the other direction. The White House Office of National Drug Control Policy, writing on legalization, stated that "[c]rimes committed by addicts to pay for their habits might theoretically decline a bit. But since addicts use drugs—especially cocaine—as often as they can, less expensive drugs might just as well mean more frequent purchases and a still-constant need for cash-producing burglaries and robberies."47

The idea that addicts would use drugs "as often as they can" conceives of the user's need for drugs as independent of the amount already consumed and as virtually insatiable. Under this view, the drug user would commit as many crimes as possible because, no matter how great his consumption, he would still want more drugs and need cash to pay for them.

This picture is obviously inapplicable to the non-addict user and is contrary to most of what we know about addict consumption, particularly in the case of heroin addicts. Since ONDCP economists estimate that prices under legalization would be only about five percent of the current black market price for drugs like heroin and cocaine, ONDCP must assume that a twenty-fold increase in consumption would not quench an addict's thirst for more drugs. Even the crack addict, portrayed in some accounts as capable of an almost unlimited binge, would surely commit less predatory crime in these circumstances, if only because of self-inflicted "incapacitation": the user who gets "high" twenty times more often each day would hardly be in a position to commit predatory crime with the same frequency and success.

Undoubtedly, then, legalization would reduce predatory crime, and by more than "a bit."

C. Organizational Dynamics

Lethal turf wars among drug dealers have been vividly documented. Other crimes connected to the distribution of contraband goods are also important. Because drug lords need to protect their organizations against infiltration by rival gangs and the police, the intimidation and even murder of informants, as well as suspected informants, become important tools. Large cash transactions invite robbery and require violent countermeasures for self-protection. To collect debts, enforce promises, police expectations about product quality, and enforce the other requirements of well-developed commerce, legal process is obviously unavailable. Thus, lethal violence becomes a crucial means for governing the system of distribution. Organizational needs also prompt bribery, extortion, and efforts to corrupt law enforcement.

Like crimes of economic compulsion, organizational crimes result primarily from prohibition rather than from drug consumption. Systemic violence would essentially disappear with legalization, just as it has in the liquor industry since the end of Prohibition. Conversely, more intensive enforcement exacerbates organizational crime. Higher prices increase the incentive to attack cash transactions and the need for violent means of self-defense; enforcement upsets established market arrangements and creates more need for extra-legal sanctions—such as murder—to preserve existing distribution networks; and undercover work generates violent retaliation and draconian deterrent strategies for organizational self-protection.

V. COSTS AND BENEFITS OF DRUG PROHIBITION

The dilemma of drug enforcement is embedded in these mixed causes of “drug-related crime.” Drug enforcement reduces consumption and thus reduces the pharmacological harms of drug use. Yet by increasing prices, enforcement increases predatory and organizational crime.

The debate over drug legalization has centered on comparing the benefits of prohibition, primarily pharmacological, to its costs, which are reckoned in economic and organizational harms.

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48 There are a few qualifications to this point. Some rebellious adolescents may use drugs because of the illicit aura surrounding them. Prohibition increases death and injury from impurities.

This debate is important but destined to be inconclusive because no one can reliably estimate the costs and benefits or the precise ways they would change in response to legalization.

The aim of drug policy is to minimize all three kinds of harm. But because efforts to reduce pharmacological harm tend to increase economic and organizational harm, drug control seems to involve an inherent trade-off, with hidden costs attached to every victory. The problem would be simple if we could deter consumption without raising prices and drug cartel profits, but policy planners have assumed that the real world offers no way to accomplish these seemingly contradictory objectives simultaneously.

Whether these objectives are in fact contradictory, however, is a commonplace issue in economics. To trace the effects of law enforcement on price, quantity consumed, and supplier profits, we need to review a few basic principles of supply and demand.

VI. SUPPLY REDUCTION STRATEGIES

Figure 1 presents the economist’s basic supply and demand curves. The line S shows the quantity Q of a product (in this case cocaine) that distributors will supply at any given price P. They are willing to supply more as the price of each unit rises. The line D shows the amount that purchasers will buy. They want to buy less as the price of each unit rises. In this example, the market is in equilibrium at price A, where the quantity X demanded equals the quantity X supplied.

The effect of law enforcement strategies that reduce supply is depicted by a new supply line, S’. Because of crop eradication, border interdiction, punishment of dealers, etc., the distribution system is willing and able to offer a smaller amount of drugs at any given price. Conversely, it will need to collect a higher price in order to continue supplying any given quantity of drugs. The new equilibrium price is B, where the quantity Y demanded equals the quantity Y supplied.
Figure 1 shows in graphic form the dilemma we have been discussing. Successful supply reduction has reduced consumption from X to Y, but it has raised the price from A to B, creating increased need for those who do buy to commit predatory crime to support their purchases.

Has enforcement increased or decreased dealer profits? The answer depends in part on whether we should consider only the dealer's monetary profit. When the probability of arrest or the expected sentence increases, the dealer's non-monetary costs in effect increase, so his overall profit declines. But with these increases in non-monetary cost, the need to protect the organization, weed out informants, and corrupt the police becomes greater. Some dealers may even turn increased enforcement to their advantage by informing on competitors, so that they gain a larger share of sales at the higher prices. Thus, the increase in non-monetary costs and the corresponding decline in overall profit have effects on dealer behavior that are in many ways similar to those that occur with a decrease in monetary costs: the dollar stakes are higher and incentives for violence increase. So for most policy purposes, the objective should be to reduce the dollar revenue accruing to drug distribution.

To determine whether supply reduction has reduced revenue, we need to know the "elasticity" of demand, that is, the degree to which demand decreases in response to increases in price. For
the typical addict, demand is probably inelastic. Because he tries to maintain his level of consumption, the percentage decrease in his consumption is less than the percentage increase in price. The casual user is more likely to cut consumption as price rises, so his demand may be more elastic. But some estimates find that marijuana demand—largely derived from non-addict, recreational users—is also inelastic, possibly because marijuana expenditures, even at currently inflated prices, remain a small part of the user's income.\textsuperscript{50} Available estimates nearly all find modest to substantial inelasticity in the overall demand for heroin and cocaine, especially in the short run.\textsuperscript{51}

Figure 1 illustrates the effect of supply reduction under conditions of elastic demand. Price rises, but the quantity sold falls by a proportionately greater amount. Total revenue collected by drug distributors, represented by the area BOYN, is smaller than it was before supply reduction, when total revenue was represented by the area AOXM.

In short, supply reduction can reduce consumption and dealer revenue, provided that user demand is elastic. But this condition is unlikely to be satisfied in the market of addict users. In any event, because supply reduction drives up price, it has undesirable side effects even when aggregate demand is elastic. Those atypical individuals who have inelastic demand and limited funds will be driven to increasingly risky and dangerous crimes to support their drug habits. And although aggregate dealer revenue drops, individual dealers (the best organized or most violent ones) can preserve most of their sales as competitors are eliminated. Because prices are higher, these surviving dealers will wind up with higher cash revenues. And their incentive to use violent means of self-protection will grow as the value of each sale increases.

\textsuperscript{50} See Reuter and Kleiman, \textit{Risks and Prices} at 299 (cited in note 21). An earlier study found an elastic demand for marijuana, specifically a 1.5 percent decrease in consumption for each 1 percent increase in price, in one important subsection of the market: full-time college students. See T. C. Misket and F. Vakil, \textit{Some Estimates of Price and Expenditure Elasticities Among UCLA Students}, 54 Review of Economics & Statistics 474-75 (1972).

Figure 2 illustrates the effect of supply reduction under the more likely assumption that demand is inelastic. The increase in price is proportionately much greater than the decrease in quantity. Dealer revenues increase (from COWK to DOZL), even though enforcement appears to be "succeeding" through crop eradication, border interdiction, drug seizures, and convictions. Indeed, the more dramatic the supply reduction success, the more dealer revenue will increase, not just for some competitors but for the whole industry. Enforcement successes increase dealer costs (monetary and non-monetary), but because revenues are also higher, the incentives for violence once again increase.

VII. DEMAND REDUCTION STRATEGIES

Figure 3 illustrates the effect of reducing demand. With demand represented by line D, the market is in equilibrium at price E, where the quantity R supplied equals the quantity R demanded. As a result of demand reduction efforts, as indicated by line D', consumers want to buy a smaller quantity of drugs at any given price. The new equilibrium price is F, where the quantity T supplied equals the quantity T demanded.
The advantage of demand reduction is clear. Supply reduction reduces consumption only by driving up price, dealer revenue, predatory crime, and systemic violence. Demand reduction reduces consumption while lowering price, dealer revenues, and the incentives for predatory and organizational crime. Demand reduction makes it possible to cut through the dilemmas of prohibition by reducing the pharmacological harms of drug use and the criminogenic harms of drug enforcement simultaneously.

VIII. FROM THEORY TO PRACTICE

The preceding analysis points to demand reduction as a best-of-both-worlds solution for the dilemmas of drug enforcement. But how can we make this theoretical prescription operational? Which strategies will reduce demand?

A. Production And Distribution

Let us begin with foreign crop eradication. By all reports this is an expensive, politically complex task that offers few prospects for reducing drug availability. But suppose that we can, by some miraculous feat of statecraft, cut foreign production dramatically. This supply reduction “success” decreases consumption by raising prices, a largely counterproductive achievement as the

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prior analysis shows. Border interdiction has exactly the same faults, as does eradication of domestic marijuana crops; ironi-
cally, marijuana supply reduction tends to steer consumption to-
ward more potent, more easily concealed—and more danger-
ous—drugs like heroin and cocaine. Opponents question whether
these strategies can have any significant impact on availability.
But these expensive policies\textsuperscript{53} are poor choices, even if—indeed,
\textit{particularly if}—proponents are right about their potential effec-
tiveness.

What about domestic law enforcement? Where should local
police, DEA agents and U.S. Attorneys focus their attention?
Conventional wisdom stresses the search for “Mr. Big.” This ef-
fort takes three concrete forms. First, penalties increase as we
move up the distributional ladder. The U.S. Sentencing Guide-
lines provide a multilevel table, derived in part from mandatory
minimums set by Congress, in which punishments rise with each
increase in drug quantities sold.\textsuperscript{54} A low-level dealer convicted of
distributing one kilogram of cocaine or a mere five grams of crack
faces a real-time sentence of sixty-three to seventy-eight months
in prison, a little over five years.\textsuperscript{55} His supplier, who may have
helped distribute fifteen kilograms of cocaine—not an exception-
ally large quantity these days—must serve 151-188 months,
about fifteen years.\textsuperscript{56} For the leader of the fifteen kilogram sup-
ply operation, add an \textit{additional} seven to nine years.\textsuperscript{57} Drug
“kingpins” face life imprisonment without parole.\textsuperscript{58}

Each of these punishments costs taxpayers hundreds of thou-
sands of dollars to inflict. A 28-year-old “kingpin” can expect to
spend about forty years in prison, at an average of $52,000 in
construction costs for his cell, $19,000-$21,000 in annual operat-
ing expenses, and $4,000-$5,000 in annualized amortization of
capital costs, for a total expenditure of nearly $1 million.\textsuperscript{59} Mid-

\textsuperscript{53} These policies cost nearly $3 billion in fiscal year 1992. See Table 1 at page 214.
\textsuperscript{54} United States Sentencing Commission, \textit{Guidelines Manual} §2D.1.1(c) (Nov 1993).
\textsuperscript{55} Id at §2D1.1(c)(9) (base offense level of 26); id, ch 5, Part A (level 26 guideline
range of 63-78 months for first offender).
\textsuperscript{56} Id at §2D1.1(c)(5) (base offense level of 34); id, ch 5, Part A (level 34 guideline
range of 151-188 months for first offender).
\textsuperscript{57} Id at §3B1.1(a) (four-level enhancement for leadership role); id, ch 5, Part A (level
38 guideline range of 235-293 months for first offender).
\textsuperscript{58} See 21 USCA § 848(b) (West 1981 & Supp 1993).
\textsuperscript{59} See Mark A. R. Kleiman and David P. Cavanagh, \textit{A Cost Benefit Analysis of Prison
Cell Construction and Alternative Sanctions} 12-18 (1990). Kleiman and Cavanagh esti-
mate that, in 1988 dollars, operating costs are likely to average between $19,000 and
$21,000 per year, and start-up and construction costs are likely to run on average be-
tween $4,000 and $5,000 per year on an annualized basis; the result is direct expenses, on
level dealers whose sales of cocaine reach the 150 kilogram level, or a total of 1.5 kilograms of crack, face real-time sentences of twenty years, which will cost $500,000 per inmate to inflict. Even discounting these expenditures to present value—and ignoring the lost productivity of these individuals—the investment in punishment is enormous, and it escalates rapidly as we ascend the ladder to larger dealers and organizational leaders.

The second key feature of current enforcement policy qualifies the first. After snaring a dealer, every drug agent's first priority is to find the higher-ups. Cooperative defendants are pumped for information, used as witnesses, and turned into undercover informants. Defendants who offer "substantial assistance" can obtain reduced sentences. Result: prosecutors get closer to "Mr. Big," but the penalty for subordinates drops sharply. The real losers are the insignificant couriers and go-betweens, who are involved with quantities large enough to generate a long sentence but who are too low on the totem pole to have useful information that would enable them to make a deal.

Item three in the search for "Mr. Big" is Organized Crime Drug Enforcement Task Forces (OCDETF), one of the darlings of recent federal enforcement policy. This elite unit, created in the late 1980s, targets high-level distributors and international networks. It attracts the brightest and toughest prosecutors, together with a budget of $384 million for fiscal year 1994. To put this figure in perspective, consider that in fiscal year 1988, well into the Drug War but before OCDETF was formed, the DEA spent $492 million, a hefty sum for the time. Federal prison average, of $24,500 per year, or a total of $980,000 in 1988 dollars over a 40-year period.

60 USSC §2D1.1(c)(3) (cited in note 54) (base offense level of 38); id, ch 5, Part A (level 38 guideline range of 235-293 months for first offender).

61 Kleiman and Cavanagh estimate that lost wages of imprisoned felons and costs of supporting a prisoner's dependents add further average expenses of $17,408 per prisoner per year. See Kleiman and Cavanagh, A Cost Benefit Analysis at 17 (cited in note 59).

62 18 USC §3553(e) (provision that, on the prosecutor's motion, a judge may impose sentence lower than the mandatory minimum, based on the defendant's substantial assistance in the investigation or prosecution of others); USSC §5K1.1 (provision that, on prosecutor's motion, a judge may depart downward from guideline sentencing range, based on the defendant's substantial assistance in the investigation or prosecution of others) (cited in note 54).

63 See Stephen J. Schulhofer, Rethinking Mandatory Minimums, 28 Wake Forest L Rev 199, 211-13 (1993) (discussing the "cooperation paradox" in which drug sentencing policy produces more serious penalties for less serious offenders); United States v Bringham, 977 F2d 317, 318 (7th Cir 1992) (discussing "inverted sentencing").

64 See Budget Summary, 1994 at 3 (cited in note 3).

expenditures for incarcerating drug law violators totalled $446 million, and the combined drug enforcement expenditures of all U.S. Attorneys Offices was only $81 million. These budgets have grown rapidly; the DEA’s budget grew to $774 million, and the U.S. Attorneys’ budget increased to $208 million for 1994. But OCDETF’s claim for 1994 is almost double that budgeted for the U.S. Attorneys and almost as large as the entire 1988 budgets for the DEA or the federal prisons.

Without doubt, OCDETF work is extremely difficult and challenging. But is the money well spent? Again, skeptics question whether efforts directed against big “kingpins” can make any dent in the resilient distribution networks. No drug cartel is a mindless and unmotivated collection of automatons, incapable of functioning the minute its leadership is removed. Underlings, competitors, and new entrants stand ready to step in enthusiastically when law enforcement creates a vacancy. The other cornerstones of current enforcement policy—sharply escalating penalties and the focus on mitigating small cases in order to work up to bigger ones—are dubious for the same reasons.

Though enforcement enthusiasts sometimes question these conclusions, the pessimistic assessment of supply-side prospects is by now widely shared. What I want to stress here, however, is a point that goes beyond the factual assumptions underlying enforcement strategy. As we have seen, the hoped-for successes, if they ever materialize, will cut drug consumption only by driving up price. This “victory” will fuel predatory crime and aggravate organizational violence, which catches innocents as well as bad guys in the cross fire. Again, this expensive strategy is a poor choice even if proponents are right about its potential effectiveness.

What about the links between supply and demand stressed in ONDCS Reports? (“When street prices for drugs go up, and drug availability declines, then fewer people are likely to seek out drugs and consume them. In other words,... ‘supply reduction’ is in fact aimed at reducing demand as well.”) This approach, we can now see, is confused, if not deliberately misleading. A price increase produced by aggressive law enforcement will of course reduce consumption. But this reduction is not the

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66 Id.
67 Budget Summary, 1994 at 3 (cited in note 3).
68 See text accompanying notes 26-29.
result of a decrease in demand; it reflects only a price-determined decrease in the quantity demanded. The difference is not simply semantic. Genuine demand reduction means that users purchase less at constant prices. Dealer revenue falls, and the criminogenic effects of supply-side strategies are avoided. Just the reverse is true when law enforcement reduces “demand” by driving prices upward.

Thus, contrary to the prevailing articles of faith, pursuing “Mr. Big” should be placed very low on our list of enforcement priorities. Attacks on production and distribution produce ambiguous benefits even when they succeed.

B. Treatment

Treatment programs offer an obvious vehicle for attacking drug demand directly. While official rhetoric touts the goal of reducing drug use, the current shortage of treatment facilities and the lack of support for quality programs is no less than a national scandal.

In a peculiar twist, Drug Czar William Bennett’s first ONDCP Report, issued in September 1989, defended its law enforcement emphasis as, in part, a treatment strategy, stating that “[w]hen we vigorously enforce drug laws we achieve a number of related goals: we get the dealers and users off the street . . . we direct those needing treatment to the help they might not have sought on their own.” Pressuring addicts to seek help makes sense when there are facilities prepared to treat them. Yet news articles over the preceding year documented the inadequacy of inner city treatment facilities, and ONDCP itself acknowledged a lack of treatment capacity and long waiting lists in urban areas.

In fairness to ONDCP, it consistently recommended funds for more treatment slots. But the amounts sought were inadequate to meet current needs, while supply-side enforcement efforts enjoyed priority. Though it presented law enforcement as a “treatment” strategy, ONDCP policies did not force addicts into treatment. It forced them onto waiting lists. Meanwhile, the funds needed to treat those who already sought help remained unavailable. The results included thousands of addicts on waiting

70 Id at 17.
71 See, for example, A Good Way to Fight Drugs and AIDS, NY Times A34 (Dec 8, 1988).
lists and delays of up to eight months in Los Angeles and other cities; countless discouraged addicts either gave up and returned to the drug life, or never bothered applying for help. The latest strategy report issued by ONDCP seems to put increased stress on the importance of expanding the Nation's drug treatment capacity, but so far, the new Administration has made no dramatically visible change in its funding priorities. The increased appropriations recommended for treatment are 7 percent more than in 1993 and 18 percent more than in 1992, almost precisely parallel to the increases recommended for criminal justice expenditures, which were 8 percent and 18 percent respectively.

Why not make treatment available to every addict who seeks it? ONDCP officials have not dismissed this as an unattainable goal but have criticized it as undesirable. Herbert Kleber, who was Bennett’s Deputy Director for Demand Reduction, wrote in a New York Times Op-Ed piece that treatment on demand “won’t work” because in designing treatment techniques “we do not have all the answers,” and because “only half, at best, of cocaine addicts are drug-free one to two years after treatment.” Further, Kleber worried that some addicts “seek only to . . . reduce their tolerance so the same high is achieved from lower and cheaper doses.”

These are disappointing comments, especially from a specialist who once led ONDCP’s “demand reduction” effort. They imply a commitment to demand elimination, but nothing less. Kleber’s insistence that treatment programs demonstrate something close to perfect effectiveness presents an interesting contrast to the standards by which interdiction and other supply reduction strategies are judged. If “only” 50 percent of cocaine addicts remain drug-free one to two years after treatment, the reduction in aggregate demand—and the corresponding social benefit—is enormous. Kleber’s concern about addicts who manipulate the treatment system is similarly misplaced. While we hope to get addicts completely free of drugs, there is a clear demand-reduc-

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75 See Table 1 at page 214.
76 Herbert D. Kleber, No Quick Fixes for Drug Addicts, NY Times A31 (Jan 26, 1990).
77 Id.
tion benefit when an addict merely reduces his tolerance and uses lower doses.

Though treatment programs are no panacea, the case for more effort in this direction is overwhelming. If half of those with drug problems can be treated (a not unreasonable goal79) and if half of these can be kept drug-free for two years, the result would be a massive reduction in demand, with unambiguous gains for public policy. Nothing remotely comparable lies ahead for any of our costly supply-side enforcement techniques.

C. Education

Lasting reductions in demand require special emphasis on education about drugs. Educational efforts have probably played some role in reducing the appeal of drugs to middle-class users, though independent shifts in health attitudes seem to have been a more important factor.80 Underclass consumers responsible for much of the demand for crack present an even more difficult challenge.81 Because realistic opportunities for personal growth or economic advancement are so often lacking in the inner city, the escape into drugs is not simply an irrational behavior that a few health warnings can cure.

Because we do not yet know how to reduce underclass attraction to crack, research and experimentation are imperative. Inexpensive information, awareness, and peer counseling programs are surely worth more than the perfunctory attention they are typically given. At a more ambitious level, improved schools, job training, and scattered site housing for welfare recipients would surely tend to reduce long-term cocaine demand, and of course would be worthwhile for their own sake, if funds could be found to support them. In the meantime, spending to incarcerate dealers, near $1.5 billion in current federal funds alone,82 is often counterproductive, as this approach has no direct impact on underclass demand and increases predatory crime and organizational violence with every decrease in drug consumption.

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79 Id at 39-43.
80 See Nadelmann, Drug Prohibition at 945 (cited in note 5).
81 See Botvin, Substance Abuse Prevention at 510 (cited in note 15).
82 See Budget Summary, 1994 at 3 (cited in note 3).
D. Street-level Enforcement

Supply/demand effects are the most complex in this area. Street sweeps and arrests of retail dealers restrict availability, a supply-side effect that tends to raise dollar prices. These tactics also mean that users must spend more time looking for sellers and may have to go into dangerous neighborhoods to find them. As enforcement drives up these “search costs,” buyers are willing to buy less at any given price.\(^3\) In other words, demand is reduced and prices then fall. Arresting users has the same effect: as the buyer’s risk of punishment increases, his willingness to buy falls.

Most economists would deny that these effects represent genuine reductions in demand. Rather, they would say that search costs and expected punishment costs are part of the “price” the buyer pays. Street-level enforcement drives up “price,” so the quantity sold decreases even though underlying demand is unchanged. But if this is a supply-side effect, its implications are the reverse of conventional supply reduction that attacks production and distribution to raise dollar prices. In the latter case, social gains from reduced consumption are offset by higher prices, which drive predatory crime and organizational violence. An increase in *non-monetary* price has the opposite effect. Buyers cannot finance higher non-monetary prices, such as search time and expected punishment, by committing more predatory crime. Dealers cannot collect non-monetary prices and channel them to Swiss bank accounts. Thus, supply-side increases in the buyer’s non-monetary price have the same unambiguous advantages as genuine reductions in demand: consumption drops and monetary price falls; predatory crime, dealer revenue, and organizational violence all decrease.

This analysis suggests that attempts to work up to “Mr. Big” are not only dubious but perverse. The more that enforcement moves away from the retail level to focus on larger dealers and “kingpins,” the more that success will increase only the monetary component of price. The goal instead should be to drive up the non-monetary price, so that buyers make “payments” that cannot be financed by predatory crime and cannot line drug cartel treasuries. This means focusing on search costs and expected punishments at the *retail* level or, in other words, on the costs assumed

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by the smallest buyers and sellers. Instead of working up to "Mr. Big," we should be working down the chain to retail sellers and to the customers whose willingness to pay is the real source of the drug problem.

This recommendation to focus enforcement on retail sellers and users raises both practical and philosophical problems. Philosophically, the typical drug user, especially the addict, appears as a victim. Justice seems to require harsh punishment for the drug lord who gets rich by exploiting a user's weaknesses. To turn our punishment scale upside down would be unthinkable. But the addict need not face a twenty- or forty-year prison term. Pretrial diversion into treatment makes sense for the first arrest; recidivists might face terms of one to three months, coupled always with treatment for those who seem amenable. Penalties need not be draconian, so long as the user's risk of arrest and conviction is steadily increased.

There are two practical problems. First, retail dealing and consumption often occur out of sight in alleys or private residences. While street sweeps have proven effective against open drug markets, they have been unsuccessful in combatting these "discreet" sales. Clandestine retail sales should be no harder to penetrate, however, than clandestine distribution networks and warehouses. In fact, the retail level should be easier to penetrate because informants have much less to fear from those whom they expose.

Above all, success in containing street-level markets requires a change in law enforcement attitudes. Police and prosecutors disdain the "two-bit case." Retailers and users are either not arrested, quickly dismissed, or allowed to plead out and return immediately to the streets. Meanwhile, enforcement energy focuses on the challenging and seemingly more important task of finding big distributors. This emphasis means that every dealer caught is seen as a resource in the search for higher-ups. Drug agents pressure him to finger his supplier, and the supplier is pressured to finger his own supplier, and so on, up to the "real

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85 Mark Kleiman notes, "The belief that high-level enforcement is the real drug war, and that enforcement nearer the street is merely a series of holding actions, is . . . common among [federal and] state police forces and the elite special narcotics units of some big-city police departments." Kleiman, Against Excess at 136 (cited in note 20).
We need instead to pursue his buyers, and pursue them all the way down to the user. Deterrence or incapacitation of "Mr. Big" only makes room for another ambitious dealer. Deterrence or incapacitation of users more effectively hurts the cartels by making a permanent dent in demand.

The second practical problem is one of resources. At the retail level, the number of sellers and users is enormous. As Mark Kleiman notes, attempts to intervene effectively at the retail level "pose a massive operational, organizational, and even political challenge for police management." Part of the answer is to concentrate on community policing strategies that make use of neighborhood resistance and mobilize the resources of other public agencies, without necessarily generating arrests and prosecutions. Another part of the answer is to turn draconian, quantity-driven sentences of mid-level sellers into more numerous but shorter and more productive sentences for retail sellers and users. One mid-level dealer may draw thirty years of imprisonment; for the same resources we can sentence 120 small sellers to three months each. But this is not a complete answer, especially for the short run: the retail focus requires all 120 jail cells right now. Limited prison capacity, along with overburdened police, prosecutors, and courts, have proven major obstacles to street-level enforcement in a number of cities.

Yet vigorous retail enforcement need not swamp the judicial system if initial sanctions are modest and if court officials are prepared for the influx. The Washington, D.C. court system coped well with a crackdown that was well planned and systematically implemented. With the resources required to give one dealer a thirty-year sentence, or 120 small sellers a sentence of three months each, we can place several hundred users on intensive-supervision probation. Other useful but relatively inexpensive sanctions include pretrial diversion into treatment, substantial fines or overnight jail stays for nonaddict users, and short (fifteen to thirty day) jail terms for a first repeat offense. Provided that

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66 Id at 144.
67 Id at 145.
68 Kleiman and Smith, State and Local Drug Enforcement at 87 (cited in note 84).
69 Id.
70 A Rand Corporation study found unexpectedly high program and court costs in several California counties using intensive-supervision probation. See Joan Petersilia and Susan Turner, Intensive Supervision for High-Risk Probationers: Findings From Three California Experiments xi (Rand Corporation, 1990). But the estimated average costs ($7,240 to $8,902 per offender per year) are still less than half the annual cost per offender of incarceration. Id. See text accompanying note 59.
retail-level sentences have real bite and that the risks of apprehension become serious, we can begin to deter many sellers and users for each one we actually arrest. Carefully planned, selective enforcement can maintain pressure on retailers without absorbing unlimited funds or diverting attention from other important police priorities. In addition, a shift in strategy at the federal level would release enormous resources to ease the strain on local law enforcement. Simply scaling back international efforts, interdiction, and OCDETF to 1988 funding levels would free almost $1.5 billion for retail level initiatives. By contrast, in 1992 five "high intensity drug trafficking areas" with the worst problems—New York, Los Angeles, Miami, Houston, and the Southwest Border—together received a paltry $36 million in federal grants to state and local enforcement agencies.

Above all, federal budget makers, local prosecutors, and judges all need to understand the importance of the "two bit case." We cannot attack the drug problem at its "source" by exposing "Mr. Big" or by obliterating the Andean coca crop. To do it, we must attack, and attack seriously, the user's willingness to buy.

CONCLUSION

The drug problem has posed a harrowing dilemma for American social policy in the 1990s. New and more dangerous drugs threaten public health and safety, but law enforcement drives up drug prices and generates additional violence and predatory crime in the very process of attempting to restrict consumption. We rightly hesitate to legalize dangerous drugs, but we shudder at the massive resources invested in our draconian but partly counterproductive law enforcement effort.

We need not choose between the harms of drug use and the harms of drug enforcement. We can avoid the dilemma, but to do so we must radically reverse the strategy and assumptions that guide the drug control effort. In theoretical terms, we must emphasize demand reduction rather than supply reduction and raise the buyer's nonmonetary cost rather than the dollar price of drugs. In practical terms, we must assign a low priority to international initiatives, interdiction efforts, and costly attempts to

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disable the big cartels. We must stop the perverse justice of imposing absurdly expensive multidecade prison terms on couriers and lookouts while more knowledgeable co-conspirators get reduced charges and short sentences to reward their cooperation. We must pay more attention to local conditions, to education, to treatment, and to related community initiatives to discourage drug use.

This approach does not imply "decriminalization," or a shift to an entirely therapeutic, public-health approach. Law enforcement remains a vital component of the demand reduction effort. But the emphasis must be on retail-level enforcement that clears the streets, protects local neighborhoods, and makes it difficult for users to find and buy drugs with impunity. Instead of working up the ladder to "Mr. Big," law enforcement must concentrate on working down the ladder, locating users and blocking their willingness and ability to buy. With this reversal of thinking and strategy, we can hope to address our serious drug problem constructively, without in the process causing more problems than we solve.