University of Chicago Legal Forum

Volume 1994 | Issue 1 Article 3

Toward a More Effective Drug Policy

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Although drug abuse is no longer front page news, America's drug problem is still very real. In 1992, the Office of Management and Budget estimated that drug abuse cost the nation $300 billion annually in lost productivity, crime, health care, and accidents.[1] Seventy-four million Americans acknowledge using illegal drugs; six million are believed to be so seriously addicted they require treatment.[2] As many as 375,000 babies are born exposed every year; many of them are permanently damaged by their mothers' drug use.[3] If tobacco and alcohol are included as drugs of abuse, the toll is even greater. Together, they account for 490,000 deaths annually, and untold suffering for the users and their families.[4] In an October 1993 report, the Institute for Health Policy at Brandeis University concluded that substance abuse is the single largest preventable cause of death in this country.[5]

In the past decade, drug offenses have overwhelmed the criminal justice system. At present, approximately 1.3 million people are behind bars, giving the United States the highest rate of incarceration in the world.[6] Two-thirds of these prisoners have serious drug problems, confirmed by urinalysis testing at the time of arrest.[7] Violent crime has jumped by 19 percent since

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† President, Drug Strategies. I appreciate the help of Dana Rozansky, a summer legal intern, in the preparation of this article.

[1] Mathea Falco, *The Making of a Drug-Free America: Programs That Work* 200 (Random House, 1992).

[2] National Institute on Drug Abuse, *National Household Survey on Drug Abuse: Highlights 1990* table 1 at 8 (1991).

[3] Harold L. Hodgkinson and Janice Hamilton Oultz, *Against Their Wills: Children Born Affected by Drugs* 5 (Institute for Educational Leadership, Inc., 1993). See also General Accounting Office, *DRUG ABUSE: The Crack Cocaine Epidemic: Health Consequences and Treatment* 22-23 (1991).

[4] Steven Jonas, *The U.S. Drug Problem and the U.S. Drug Culture: A Public Health Solution*, in James A. Inciardi, ed, *The Drug Legalization Debate, Studies in Crime, Law and Justice* 163 (Sage Publications, 1991).

[5] Institute for Health Policy, *Substance Abuse: The Nation's Number One Health Problem* 8 (Robert Wood Johnson Foundation, 1993).

[6] Bureau of Justice Statistics, *Jail Inmates 1992* (1993); Bureau of Justice Statistics, *Prisoners in 1991* (1993).

[7] Dean R. Gerstein and Henrick J. Harwood, eds, *Treating Drug Problems* 86 (Na-

1988; at least one-third of the increase is attributed to drugs and alcohol.[8] The recent surge in gun deaths in cities across America is closely linked to the less visible problems of addiction, dealing, and drug-related crime.

In the face of these statistics, it is not surprising that many people feel hopeless about the nation's drug problem, leading them to conclude that "nothing works." Yet the evident lack of results in this twenty-five year "drug war" reflects not a failure of resources and will, but rather a failure of policy.

I. THE SUPPLY-SIDE SEDUCTION

Since the early decades of the century, Americans have viewed drug abuse largely as a foreign problem for which other countries are to blame. Indeed, at the time the Harrison Narcotic Act was adopted in 1914, opium was associated with Chinese immigrants, who were generally thought to be dangerous subversives. Marijuana, which was outlawed in 1937, was linked to Mexican laborers, who were particularly unwelcome during the Great Depression. Drug abuse was seen as essentially "un-American," a threat to the social fabric which could best be dealt with by interdiction and law enforcement. Without foreign drugs, the thinking went, there would be no domestic problem.[9]

This vision has dominated United States drug policy ever since. The theory is that reduced supplies drive drug prices up, making drugs more expensive and harder to find. This in turn will force addicts to seek treatment or to quit on their own. At the same time, high prices and inaccessibility discourage new users from trying drugs.

In 1981, President Ronald Reagan put the supply-side theory to its fullest test. He believed that the nation's borders could effectively be sealed against the "evil scourge" of drugs in much the same way Americans could be protected from the missiles of the "evil Empire" (the former Soviet Union) by the Strategic Defense Initiative ("SDI"). He also believed drug abuse illustrated that earlier administrations had been too tolerant. As a result, he em-

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tional Academy Press, 1992) (prepared for the Committee for the Substance Abuse Coverage Study, Institute of Medicine).

[8] Federal Bureau of Investigation, *Uniform Crime Reports for the United States—1992* 11, 225 (1993); Bureau of Justice Statistics, *Drugs, Crime and the Justice System* 5 (1992).

[9] See generally David F. Musto, *The American Disease: Origins of Narcotic Control* (Oxford University Press, 1987).

phasized much tougher enforcement of the drug laws and expanded interdiction efforts.[10]

In the first year of the Reagan administration, federal spending for drug enforcement and interdiction jumped 50 percent.[11] From 1981 through 1986, funding for drug enforcement more than doubled—from $800 million in 1981 to $1.9 billion in 1986.[12] Attorney General Edwin Meese, head of the National Drug Policy Board, noted in 1987 that these had been "the largest increases in drug law enforcement funding and manpower in the nation's history."[13]

At the same time, the Reagan administration made substantial cuts in demand reduction programs. Total federal funding for prevention, education, and treatment declined from $404 million in 1981 to $338 million in 1985; when adjusted for inflation, this amounted to a reduction of almost 40 percent.[14] Drug abuse prevention and education programs received an average of $23 million a year during this period.[15]

These cuts in demand reduction programs undermined the basic premise of earlier U.S. drug policy: that a reduction in illicit supplies would force addicts into treatment and prevent potential new users from trying drugs. The Reagan policy no longer linked supply reduction directly to demand reduction because treatment was often unavailable for addicts who could not afford private care.

President Reagan's vision was carried forward by President George Bush, who allocated 70 percent of the federal drug budget to supply control.[16] Although the U.S. Congress increased prevention and treatment funding in response to the crack cocaine epidemic, prevention and treatment still received only a third of total federal funding.[17] To date, President Bill Clinton has continued the enforcement-dominated policies of his predecessors.[18] Since 1981, more than $100 billion in federal and state tax dollars have been invested in trying to reduce illegal drug sup-

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[10] Mathea Falco, *Winning the Drug War: A National Strategy* 26 (Priority Press Publications, 1989).

[11] Id.

[12] Id.

[13] Id at 26-27.

[14] Falco, *Winning the Drug War* at 27 (cited in note 10).

[15] Id.

[16] Falco, *Making of a Drug-Free America* at 7 (cited in note 1).

[17] Mathea Falco, *Beating the Next Drug Crisis*, World Monitor: The Christian Science Monitor Monthly 46 (Feb 1990).

[18] Michael Kramer, *Clinton's Drug Policy is a Bust*, Time 35 (Dec 20, 1993).

plies.[19] The federal drug budget now devotes almost two-thirds of all funds to interdiction, foreign control programs, and domestic law enforcement.[20]

Despite these massive expenditures, heroin and cocaine are cheaper and more available than ever before. The National Security Council ("NSC") concluded in September 1993 that the $1.1 billion spent on interdiction by the military is essentially wasted.[21] The General Accounting Office ("GAO") recently conducted a series of studies that also found that interdiction has not reduced domestic drug supplies.[22] Yet there are those in Congress who argue that even greater resources are needed to stop the flow of drugs into the country.[23]

As decades of failure suggest, the supply-side theory is fatally flawed. Additional billions in new supply-side initiatives will not improve the chances of success for three basic reasons. First, illicit drug production has become a major worldwide industry, spreading even to the newly independent Central Asian Republics.[24] Hard drugs produce hard currency and are often the only reliable export for underdeveloped regions. For example, opium production in Burma has doubled since 1988, when the military regime effectively closed the country from legitimate outside trade.[25] As a result, Burma now produces more opium than all the rest of the world. Moreover, in the past five years, Colombia, which still dominates the cocaine traffic, has become the world's second largest opium producer—a direct economic response to the relative saturation of the U.S. cocaine market. Thus, opium, coca, and marijuana—the raw materials of the illegal drug trade—can

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[19] Id. This estimate is based on a Rand Corporation calculation of total drug enforcement expenditures for 1989, which found that state and local governments spent slightly more than twice as much as the federal government. Federal drug enforcement spending from 1981 to 1992 amounted to about $35 billion. Assuming the Rand ratio provides a reasonable measure, total federal, state, and local drug enforcement spending for the period exceeded $100 billion. Peter Reuter, *Hawks Ascendant: The Punitive Trend of American Drug Policy*, 121(3) Daedalus 15, 21 (Summer 1992).

[20] Office of National Drug Control Policy ("ONDCP"), *1994 National Drug Control Strategy: Budget Summary* 11 (1994).

[21] Michael Isikoff, *U.S. Considers Shift in Drug War*, Washington Post A1 (Sept 16, 1993); ONDCP, *Price and Purity of Cocaine* 6 (1992).

[22] General Accounting Office ("GAO"), *DRUG SMUGGLING: Capabilities for Interdicting Private Aircraft Are Limited and Costly* 5 (1989). See also General Accounting Office, *DRUG CONTROL: Impact of DOD's Detection and Monitoring on Cocaine Flow* 5 (1991).

[23] Personal communication with Congressman Glenn English.

[24] See generally Bureau of International Narcotics Matters, *International Narcotics Control Strategy Report* (1993).

[25] Id.

easily be grown in countless places, usually far beyond the control of governments, police, or armies.

Supply-side initiatives will also fail because, despite its high rate of drug abuse, the United States consumes a small portion of worldwide drug production. Experts estimate that twenty square miles of poppy cultivation would supply the nation's heroin market for a year. Similarly, four fully loaded Boeing 747 cargo planes could meet America's annual cocaine requirements.[26] Hence, even if intercepted, these supplies could easily be replaced from the vast production capacity in many countries.

The price structure of the drug market also undercuts interdiction as a viable strategy. The largest profits are made at the street level, not in foreign poppy or coca fields or on the high seas. Thus, even if the United States were able to seize half the cocaine coming from South America—a very unlikely prospect—street prices would increase by less than 10 percent.[27] Alternatively, breaking up open-air drug markets is much more effective in making drugs expensive and difficult to find—with the added benefit of making neighborhoods safer.[28]

II. POLARIZATION OF POLICY

While interdiction and source-country programs have been the focus of our international strategy, law enforcement remains the dominant approach to domestic drug problems. As a result, the criminal justice system has been deluged with drug offenders. In the past decade, arrests for drug crimes more than doubled.[29] At the same time, public frustration with escalating drug crime led to tougher laws, longer sentences, and the death penalty for major dealers. The most extreme example of this trend occurred in 1986, when a Detroit judge sentenced a 40-year-old man to life imprisonment without parole for possession of about two pounds of cocaine.[30] The offender had no previous criminal record, but Michigan law gave the judge no discretion in sentencing.[31] The U.S. Supreme Court upheld the sentence in 1991, declaring that the Michigan law was not "cruel and unusual."[32]

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[26] See Leslie H. Gelb, *Yet Another Summit*, NY Times E15 (Nov 3, 1991).

[27] Peter Reuter, Gordon Crawford, and Jonathan Cave, *Sealing the Borders: The Effects of Increased Military Participation in Drug Interdiction* ix (Rand Corporation, 1988).

[28] Falco, *Making of a Drug-Free America* at 86 (cited in note 1).

[29] Anita Timrots, *Fact Sheet: Drug Data Summary* (Bureau of Justice Statistics, 1991).

[30] *Harmelin v Michigan*, 501 US 957, 961 (1991).

[31] Id at 961 n 1.

[32] Id at 996. See Linda Greenhouse, *Mandatory Life Term is Upheld in Drug Cases*,

The number of incarcerated drug offenders has doubled since 1985, stretching prisons far beyond capacity.[33] Additional pressure comes from parole violators.[34] Drug abuse is a major factor affecting parole violations. When parolees test positive for drugs or miss appointments with their parole officers (often because they are on drug binges), they are arrested for violating the terms of parole and are sent back to prison.

The reliance on enforcement in dealing with drug abuse is costly. Nationwide, taxpayers spend about $20 billion a year maintaining prisons and jails.[35] In California, where the prison population has quadrupled in ten years, the state now spends as much on its prisons as it does on all higher education.[36] Other states are facing similar crises, with shrinking resources forcing tough funding choices between social services, education, and prisons.

The painful lesson from the continuing failure of U.S. drug policy is that drug abuse is driven far more by demand than by supply. The answers to America's drug problem are here at home—in families, schools, and communities—and not in other countries. The nation's drug strategy will be far more effective when it begins to build on what we have learned about prevention, education, treatment, and community organization.

III. DEMAND REDUCTION WORKS

What progress has been made in the past decade comes from reduced demand, which has declined even in the face of readily available supplies. Marijuana and cocaine use among better educated Americans has dropped by half since 1986, reflecting the power of health concerns and negative social attitudes towards drugs. Smoking has dropped by a third since the middle 1960s, despite multi billion dollar annual promotional campaigns by the tobacco industry. Hard liquor consumption has also declined, although more gradually, despite pervasive, sophisticated adver-

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NY Times A15 (June 28, 1991).

[33] General Accounting Office, *Drug Treatment: Despite New Strategy, Few Federal Inmates Receive Treatment* 2 (1991).

[34] See Joan Petersilia, Joyce Peterson, and Susan Turner, *Evaluating Intensive Probation and Parole Supervision Programs: Results of a National Experiment* (Rand Corporation, 1991).

[35] *The State of Criminal Justice, an Annual Report* 15 (American Bar Association, 1993).

[36] Personal communication with Andrew Mecca, Chairman of Governor's Policy Council on Drug and Alcohol Abuse, on Febuary 2, 1993.

tising, often aimed at minors for whom alcohol is illegal. Prevention and education are key to these fundamental changes in American behavior.[37]

In the past decade, promising new prevention programs have been developed which can reduce new drug use by half and new alcohol use by a third among early adolescents.[38] These programs, built on social learning theory, teach children to recognize the internal and external pressures which influence them to smoke, drink, and use drugs. They also learn how to resist these pressures through role-playing in the classroom. The effects of these programs are much stronger when prevention includes families, media, and the community in a comprehensive effort to discourage alcohol, tobacco, and drug use.

The Partnership for a Drug-Free America ("Partnership") advertising has clearly accelerated negative attitudes towards illegal drugs, particularly in markets where their ads appear frequently. A volunteer coalition of advertising, media, and public communications firms, the Partnership began its campaign to "unsell" illegal drugs in 1987. Since then, it has saturated the media with messages designed to change normative values towards drugs and drug use. Annual tracking studies on the effects of the campaign report substantial changes in both attitudes and drug use, particularly among young teenagers who increasingly view marijuana and cocaine as very risky and users as foolish. According to Partnership data, preteen children (age 9 to 12) have become the most antidrug group in the country.[39]

The power of advertising to change attitudes and behavior is also evident in the recent California offensive against smoking. Supported by revenues from higher state cigarette taxes, the program spends $25 million a year on aggressive antismoking ads for television, radio, and highway billboards, as well as $55 million dollars annually for smoking prevention and cessation programs. Over a three-year period beginning in 1988, smoking among California adults decreased by 17 percent.[40] (By contrast,

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[37] See Lloyd D. Johnston, Patrick M. O'Malley, and Jerald G. Bachman, *Drug Use Among American High School Seniors, College Students, and Young Adults, 1975-1992* (National Institute on Drug Abuse, 1993).

[38] Gilbert J. Botvin, et al, *Preventing Adolescent Drug Abuse Through a Multimodal Cognitive-Behavioral Approach: Results of a 3-Year Study*, 58 Journal of Consulting and Clinical Psychology 437 (1990). See also Mary Ann Pentz, et al, *A Multicommunity Trial for Primary Prevention of Adolescent Drug Abuse*, 261 Journal of the American Medical Association 3259 (June 1989).

[39] Partnership for a Drug-Free America, *Media Fact Sheet* (Jan 1992). See also James E. Burke, *Breaking a Habit of Mind*, Washington Post B3 (Nov 11, 1990).

[40] Ron Winslow, *California Push to Cut Smoking Seen as Success*, Wall St Journal B1

smoking nationwide has declined by only 5 percent since 1985.)[41] If current trends continue, the percentage of Californians who smoke is expected to decline to 6 percent by the year 2000, compared to 27 percent in 1987.[42]

Pessimism about society's ability to deal with drugs is deepest with respect to treatment. Most Americans do not realize that treatment works—not always, and often not the first time, but many people eventually overcome addiction.[43] Success rates are higher for people with stable families, employment, and outside interests, and lower for those who suffer from serious depression and anxiety.[44] National studies that have followed tens of thousands of addicts through different kinds of programs report that the single most important factor is length of time in treatment.[45] One third of those who stay in treatment longer than three months are drug-free a year after leaving treatment.[46] The success rate jumps to two-thirds when treatment lasts a year or longer.[47] And some programs that provide intensive, highly structured therapy report even better results.[48]

Yet since the early 1980s, treatment has been a low priority nationwide as drug enforcement has dominated state and federal spending. In 1991, treatment received 19 percent of the $11 billion federal drug budget compared to 25 percent ten years earlier, well before the cocaine epidemic created millions of new addicts.[49] The impact of this shift is painfully obvious in most cities, where addicts often face waits of six months before they can get help.[50]

In an extensive review of treatment in 1990, the Institute of Medicine ("IOM") at the National Academy of Science reported

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(Jan 15, 1992).

[41] National Institute on Drug Abuse, *National Household Survey* at 18 (cited in note 2).

[42] Winslow, Wall St Journal at B1 (cited in note 40).

[43] Office of Technology Assessment, *The Effectiveness of Drug Abuse Treatment: Implications for Controlling AIDS/HIV Infection* 56 (1990).

[44] Joseph Westermeyer, *Nontreatment Factors Affecting Treatment Outcome in Substance Abuse*, 15 American Journal of Drug and Alcohol Abuse 13, 19-21 (1989).

[45] Gerstein and Harwood, *Treating Drug Problems* at 135 (cited in note 7).

[46] Falco, *Making of a Drug-Free America* at 110 (cited in note 1).

[47] Id.

[48] Gerstein and Harwood, *Treating Drug Problems* at 14-15 (cited in note 7).

[49] Office of Management and Budget ("OMB"), *Budget of the United States Government Fiscal Year 1994* 47 (1993); ONDCP, *1994 National Drug Control Strategy* at 76 (cited in note 20).

[50] See Mathea Falco, *The Substance Abuse Crisis in New York City* 38 (NY Community Trust, 1989).

that private programs receive 40 percent of all treatment spending but provide only one quarter of the nation's treatment capacity.[51] Of the six million drug abusers who require treatment, as many as 4.2 million must rely on public programs.[52] Yet only 600,000 publicly funded treatment "slots" are currently available—which means that fewer than 15 percent of those who need treatment are able to get it at any one time.[53]

Moreover, criminal offenders are more deeply involved in drug abuse than any other group in the nation. Without treatment, nine out of ten return to crime and drugs after prison, and the majority are re-arrested within three years.[54] Extensive studies have shown that treatment of drug offenders does work.[55] Therapeutic communities inside prisons reduce recidivism by a third to a half after inmates return to society.[56] The most effective programs are extremely rigorous, demanding far more from offenders than passive incarceration, and they cost only $5,000 to $8,000 a year for each inmate.[57]

Yet treatment for criminals is still very scarce. The GAO reported in 1991 that only 364 of the 41,000 federal prisoners who have drug abuse problems are participating in intensive treatment programs.[58] In addition, more than three quarters of all state prison and county jail inmates are drug abusers—at least 750,000 offenders—but only 10 percent receive any help. Furthermore, the GAO concluded that even these numbers are inflated, since most treatment, which consists of drug education and occasional counseling, is ineffective.[59]

Within prisons, priority should be given to treating offenders with serious heroin and cocaine problems, since they are responsible for the largest proportion of predatory crimes.[60] Intensive, residential drug treatment, which has proven effective in reducing recidivism among this group, is the most cost-effective ap-

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[51] Gerstein and Harwood, *Treating Drug Problems* at 217 (cited in note 7).

[52] Id at 86.

[53] Id at 203-04.

[54] See generally id at 184.

[55] Gerstein and Harwood, *Treating Drug Problems* at 180 (cited in note 7).

[56] Id.

[57] Id at 177-80, 262.

[58] National Institute of Corrections, *Intervening with Substance-Abusing Offenders: A Framework for Action: The Report of the National Task Force on Correctional Substance Abuse Strategies* (1991).

[59] GAO, *Few Federal Inmates Recieve Treatment* at 18 (cited in note 33); GAO, *Drug Treatment: State Prisons Face Challenges in Providing Services* (1991).

[60] See Gerstein and Harwood, *Treating Drug Problems* at 102 (cited in note 7).

proach according to the Institute of Medicine.[61] The Institute of Medicine estimates that there are at least 250,000 prison inmates and 750,000 offenders on probation and parole who need this kind of intensive treatment.[62]

Treatment should also be provided for parolees. In 1992, a Rand Corporation study found that community supervision programs for offenders on parole or probation—regardless of their offense—usually fail unless drug treatment is provided.[63] The more intensive and structured the treatment, the more likely it is to be effective. But because the number of treatment programs of any sort are woefully inadequate, offenders must compete with noncriminal addicts for limited treatment space. Some cities, such as Miami, have created special drug courts to provide immediate treatment for drug offenders. These programs have shown good results, with a treatment cost per offender of less than $1,000.[64]

But in most cities, drug offenders do not get treatment, although most would participate if treatment were available.[65]

IV. POLITICAL IMPACT OF PUBLIC OPINION

Public concern about drug abuse as the "most important problem facing this country today" fluctuates widely, according to regular Gallup opinion surveys. In January 1985, before the outbreak of the crack cocaine epidemic, only 2 percent of those interviewed named drugs as the number one problem. By November 1989, drugs had become the predominant concern, named by 38 percent of those polled (compared to poverty, a distant second at 10 percent). But slightly more than two years later (March 1992), fear of unemployment was paramount, and concern about drugs had dropped back to mid-1986 levels (8 percent), where it has remained.[66]

Paradoxically, concern about drugs *at the community level* is increasing even as national visibility declines. Gallup polls confirm this trend, reporting that drugs are viewed as the dominant

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[61] Id at 189.

[62] Id at 235.

[63] Joan Petersilia and Susan Turner, *Evaluating Intensive Supervision Probation/Parole Programs: Results of a Nationwide Experiment* (National Institute of Justice, 1991).

[64] Falco, *Making of a Drug-Free America* at 140 (cited in note 1).

[65] Id at 151; GAO, *Few Federal Inmates Receive Treatment* at 5 (cited in note 33).

[66] Bureau of Justice Statistics, *Sourcebook of Criminal Justice Statistics—1991* table 2.1 at 172 (1992).

problem in local schools.[67] At the international level as well, the vast majority of Americans view "stopping international drug trafficking" as the nation's top priority.[68] However, the so-called "influentials" (leaders of business, culture, religion, and finance) give drug problems very low priority, according to a November 1993 opinion survey by the Times Mirror Company.[69] The news media, foreign affairs leaders, and academics do not mention the international drug traffic at all![70]

Public concern about drugs influences a number of key responses, both personal and political. For example, while public concern was increasing to its 1989 peak, negative perceptions of drugs and disapproval of use were also increasing.[71] At the same time, marijuana and cocaine use fell substantially.[72] In short, heightened public concern appears to be linked to negative perceptions and attitudes which in turn affect actual behavior towards drugs.

Along these lines, Dr. Lloyd Johnston, who conducts the annual Monitoring the Future study, commented on the 1992 increase in LSD and marijuana use: "[T]he country has been working its way out of the most serious drug epidemic in its history because the dangers of drug use were becoming known to our young people and because society had been speaking loudly and consistently about its disapproval of drug use. But this must be an ongoing process if new replacement cohorts of young people are to get the same message."[73]

Similarly, surveys suggest strongly that raised awareness of the problems of drug abuse—and constant high-level warnings, which President George Bush made the centerpiece of his first two years in office—may ultimately lead to lowered drug use. The

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[67] Id table 2.2 at 173.

[68] Times Mirror Center for The People & The Press, *America's Place in the World: An Investigation of the Attitudes of American Opinion Leaders and the American Public About International Affairs* 19 (1993).

[69] Id.

[70] Id.

[71] Lloyd D. Johnston, Patrick M. O'Malley, and Jerald G. Bachman, *Smoking, Drinking, and Illicit Drug Use Among American Secondary School Students, College Students, and Young Adults, 1975-1991* 8-9 (National Institutes of Health, 1992).

[72] Loyd D. Johnston, Patrick M. Omally, Jerald G. Bachman, *National Survey Results on Drug Abuse from Monitoring the Future Study, 1975-1992* table 11 at 74 (National Institutes of Health, 1993).

[73] Loyd D. Johnston, *Decline in Drug Use Halts Among American College Students and Young Adults* (University of Michigan News and Information Services, July 15, 1993) (press release).

impact appears to be greatest on those most influenced by public opinion, health concerns, and social disapproval.[74]

Public concern about drugs also has political effects, stimulating elected officials to move beyond rhetoric to action, particularly in creating larger government programs. From 1986 (the year when public concern started climbing) to 1989 (the year of peak concern), the federal drug control budget more than doubled (from $2.8 billion to $6.6 billion).[75] Not surprisingly, public opinion regarding the adequacy of government spending "to deal with drug addiction" mirrors the salience of concern about the issue. In 1989, 71 percent of the public thought the government was spending too little; by 1991, that figure had dropped to 58 percent.[76]

Despite the decline in public concern, however, public spending has continued to grow. From 1989 to 1993, the national drug budget doubled again, and it now exceeds $13 billion.[77] This could suggest political lag time or the impact of community-level concerns on elected officials.

Public concern about stopping the international drug traffic strongly affects United States foreign policy. In December 1989, when Americans were deeply worried about drug abuse as a national issue, President George Bush authorized the invasion of Panama and the seizure of its dictator, General Manuel Noriega, who had extensive links to the Colombian cocaine cartels. The President justified this intervention in terms of reducing the supply of cocaine coming into the United States. Four years later, Noriega is incarcerated in an American prison, after an expensive and lengthy trial, and the cocaine traffic through Panama has quadrupled.[78]

The 1993 National Security Council ("NSC") review of the military's $1.2 billion drug control efforts concluded that interdiction was largely ineffective. Reflecting the power of popular faith in international measures, however, the NSC recommended shifting $200 million towards programs to strengthen controls in drug source countries like Peru, Thailand, and Colombia.[79] These pro-

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[74] See generally Philip M. Boffey, *U.S. Attacks Drug Suppliers But Loses Battle of the Users*, NY Times A1 (Apr 12, 1988).

[75] See ONDCP, *1994 National Drug Control Strategy* exhibit 7-1 at 76 (cited in note 20).

[76] See Bureau of Justice Statistics, *Drug and Crime Facts, 1992* 28 (1993).

[77] ONDCP, *1994 National Drug Control Strategy* at 2 (cited in note 20).

[78] Bureau of International Narcotics Matters, *Strategy Report* at 172 (cited in note 24).

[79] Speech by Office of National Drug Control Policy Director Lee Brown (Jan 27,

grams have not succeeded in reducing the flow of drugs to the United States in the past. To the contrary, drug production has increased dramatically despite substantial United States investments in efforts to establish alternative crops and increase police enforcement capacities.[80] Even worse, in some situations these programs have driven local farmers involved in drug cultivation towards insurgent groups, like Peru's Shining Path.[81] Yet despite their continuing failure to produce positive results, these efforts retain widespread support within the United States.[82] The view that other countries are the source—and solution—of our drug problem dominates public thinking now as it has for much of this century.

V. PARADOXICAL PUBLIC RESPONSE

A 1993 survey of 2,500 community antidrug coalitions reported that they would like to see three-quarters of the federal drug budget allocated to prevention and treatment, compared to the current one-third allocation.[83] Similarly, nationwide Gallup polls confirm a strong public preference for prevention and treatment over law enforcement in dealing with illegal drugs, because reducing demand is viewed as more effective than punishment.[84]

If the American people support a different approach to substance abuse, why does policy remain essentially the same? The inevitable time lag between changing public perception and political action is, of course, one explanation for this seeming paradox. This lag may be particularly pronounced when conflicting concerns are at work, as for example, between the fear of crime, which encourages enforcement, and the need to reduce addiction. In November 1993, a *New York Times/CBS News Poll* reported that "crime and violence" is seen by 16 percent of those polled as "the most important problem facing the country today" (compared to only 1 percent in January of that year).[85] The November 1993 elections rewarded candidates perceived as "tough" on crime.[86]

1994) (ABA Summit on Crime and Violence, Washington, DC).

[80] Bureau of International Narcotics Matters, *Strategy Report* at 1 (cited in note 24).

[81] See id at 3.

[82] Times Mirror Center, *America's Place in the World* at 19 (cited in note 68).

[83] *1993 Report to the Nation: Community Leaders Speak Out Against Substance Abuse* 34 (Join Together, 1993).

[84] *Surveys of the Attitudes of American Adults and Teenagers Toward the Drug Crisis and Drug Policy* (The George H. Gallup International Foundation, Aug 4, 1989).

[85] Franci X. Clines, *As Gunfire Gets Closer, Fear Comes Home*, NY Times 4-1 (Dec 12, 1993).

[86] See, for example, Catherine S. Mannegold, *A Road of Many Turns, an End Trium-*

Reacting to these trends, the U.S. Senate immediately adopted a crime bill (after years of stalemate) which authorized $23 billion for new prisons, boot camps, and additional police officers.[87] Yet the bill also authorized $1.2 billion for drug treatment, job training, and alternatives to incarceration for *nonviolent* drug offenders—a reminder that American voters still believe that punishment by itself will not cure addiction.[88]

VI. POLARIZATION OF DEBATE

The polarization of policy—which has continued largely unchanged since 1981—has also polarized debate. The apparent failure of law enforcement to solve the nation's drug problems has led many Americans to demand even tougher enforcement and more prisons, while others urge that drugs be legalized.

In December 1993, the Surgeon General, Dr. Joycelyn Elders, told the National Press Club that legalization deserves study—the first time a high government official has made such a suggestion.[89] The White House promptly reaffirmed President Clinton's opposition to legalization.[90] For Dr. Elders and other advocates, the heart of the argument is that legalization would reduce crime and violence. Abolishing criminal penalties for drug possession and sale would immediately remove hundreds of thousands of offenders from the criminal justice system. Advocates believe legalization would also eliminate crimes committed to get money to buy drugs and reduce violent crime associated with dealing. Moreover, the billions of dollars currently devoted to drug enforcement could be used for prevention, treatment, and other social programs. Legalized drugs, they argue, would provide a major new source of public revenue, which some estimate could yield as much as $12 billion annually in new taxes.[91]

Yet, for many reasons, legalization is not the answer. Anything less than unlimited access to drugs would result in an underground market with its attendant criminal activity. Yet few advocates of legalization contemplate unlimited distribution. Furthermore, crimes of violence caused by the effects of newly legal-

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phant, NY Times B3 (Nov 3, 1993).

[87] Clifford Kraus, *Senate Approves Broad Crime Bill*, NY Times A1 (Nov 20, 1993).

[88] Id.

[89] James Rogland, *Kelly Says Drug Legalization "Deserves Serious Consideration"*, Washington Post C1 (Dec 10, 1993).

[90] Id.

[91] See generally Avram Goldstein and Howard Kalant, *Drug Policy: Striking the Right Balance*, 249 Science 1513 (1990).

ized drugs would probably increase, particularly if crack use, which produces erratic, violent behavior, becomes widespread.

Proponents of legalization actually recognize that it would result in increased use.[92] One cannot estimate the size of the increase precisely, but patterns for tobacco and alcohol use may give some indication of the magnitude of the population that legalization might produce. About 110 million Americans drink; fifty million smoke. Deaths attributable to alcohol are estimated at 100,000 a year; deaths from smoking at 320,000.[93] About eighteen million Americans have serious drinking problems.[94]

Legalization would also signal a fundamental change in American attitudes, reflecting social acceptance rather than disapproval of drug use. For example, legalization would indicate toleration at the threshold of first use by children, teachers, and other role models. Because they are illegal and socially unaccepted, cocaine, heroin, and marijuana are generally not used openly and are more difficult to obtain than tobacco and alcohol. Their illegality and the negative attitudes about their social use may have helped keep down the numbers of adolescents who have sampled them—considerably fewer than those who have tried alcohol and tobacco. Half the high school seniors surveyed in 1987 reported they tried marijuana, and 15 percent tried cocaine, but 67 percent smoked cigarettes, and 92 percent tried alcohol.[95]

The legality and social acceptability of alcohol and tobacco for adults make these substances sanctioned credentials of maturity that adolescents are impatient to attain. They are also readily available in society, even with age restrictions on their sale. Their cost is very low when compared to illegal drugs—in some states a six-pack of beer costs less than a six-pack of cola.[96] As a protection against this easy access, stronger legal barriers are beginning to emerge: higher drinking-age laws, stricter enforcement of no-sale-to-minor laws, and stringent no-smoking laws.

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[92] Id at 88.

[93] Ethan A. Nadelmann, *The Case for Legalization* in Rod L. Evans and Irwin M. Berent, eds, *Drug Legalization: For and Against* 24 (Open Court Publishing Co., 1992).

[94] Jonas, *The U.S. Drug Problem and the U.S. Drug Culture* at 164 (cited in note 4).

[95] Johnston, O'Malley, and Bachman, *National Survey Results on Drug Abuse* at 74 (cited in note 72).

[96] See Perry Lang, *Hard Sell to Blacks of Potent Malt Beer Called 'Irresponsible'*, San Francisco Chronicle A2 (Nov 3, 1990).

CONCLUSION

The experience of many Western European countries is instructive. Even within the context of criminal laws prohibiting drug possession and sales (except for Spain, the Netherlands, and Italy, which provide administrative sanctions for possession for personal use), demand reduction is given priority. Arrest and imprisonment are a last resort, reserved for dealers and addicts who repeatedly reject treatment. Treatment and social services are readily available, and prevention is the primary strategy for reducing the spread of drug use.[97]

In the United States, the current laws provide sufficient flexibility for a major shift away from supply control and enforcement as the dominant policy towards a more comprehensive approach which emphasizes prevention, education, and treatment. Law enforcement still has an important role to play, particularly in helping citizens reknit the fabric—and safety—of their communities. But the effectiveness of current enforcement policies will have to be carefully examined, subject to the same scrutiny as prevention and treatment programs, so that additional billions of tax dollars will not be wasted in a futile "war on drugs."

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[97] Ed Leuw, *Drugs and Drug Policy in the Netherlands*, in Michael Tonry, ed, 14 Crime and Justice: A Review of Research 229 (University of Chicago Press, 1991).