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Abstract

The article begins by discussing the tremendous financial and social cost incurred by drug use and regulation. It then discusses some positive efforts to deal with the problem such as legalization and decriminalization. The article then states that it will take time to figure out the extent of legalization needed, and until that is figured out we need to focus efforts on harm reduction. The article then addresses whether the constitution bans drugs at all. Finally, the article concludes by stating that we can never hope to fully eliminate drug use, we can only hope to contain it, and gives some suggestions that will begin the path to controlling drug use.

KEYWORDS: drug regulation, legalization, policy

DRUG POLICY ALTERNATIVES — A RESPONSE FROM THE BENCH

*Honorable John T. Curtin**

The panelists who spoke during the *Drug Policy Alternatives* sessions of the *Is Our Drug Policy Effective? Are There Alternatives?* conference have given me quite a bit to consider.¹ My comments, however, must be limited and general in nature, because I neither have the hands-on experience of Drs. Bart Majoor nor have I studied the problem as intensely as the other panelists.

I served as United States Attorney in Buffalo, New York in the 1960s, and, since 1967, have served as a Federal District Judge in the Western District of New York. In the 1960s, there were very few drug cases on the court's calendar. That trend continued into the early 1970s, but then the number of drug cases began to increase year-by-year without pause. As Congress and New York State enacted harsher penalties,² the number of drug cases simply continued to rise.³ It appeared that the drug trade flourished more and more as the punishments became heavier and heavier.⁴

Scholars and observers have generated volumes of written work detailing our nation's utter failure to correct the curse of drug abuse and address its consequences. Yet efforts to draw the attention of Congress or the state legislatures have, thus far, largely met with failure. Since the drug war began in the 1970s, myriad statistical studies repeatedly have detailed the futility of our efforts.⁵ Not

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1. *Drug Policy Alternatives I — General Considerations, in Is Our Drug Policy Effective? Are There Alternatives?*, 28 FORDHAM URB. L.J. 178 (2000) [hereinafter *Alternatives I*]; *Drug Policy Alternatives II — Differing Proposals, in Is Our Drug Policy Effective? Are There Alternatives?*, 28 FORDHAM URB. L.J. 195 (2000) [hereinafter *Alternatives II*].

2. See generally Spiros A. Tsimbinos, *Is it Time to Change the Rockefeller Drug Laws?*, 13 ST. JOHN'S J. LEGAL COMMENT. 613 (1999) (discussing the effect of the enactment of more stringent drug laws); Comprehensive Drug Abuse Prevention and Control Act, Pub. L. No. 91-513, 84 Stat. 1236 (1970).

3. Tsimbinos, *supra* note 2, at 623-24.

4. *Id.* at 624.

5. Steven B. Duke, *Commentary: Drug Prohibition: An Unnatural Disaster*, 27 CONN. L. REV. 571 (1995) (discussing the failure of the war on drugs); see also N.Y. COUNTY LAWYERS' ASS'N, REPORT AND RECOMMENDATIONS OF THE DRUG POLICY TASK FORCE (Oct. 1996), <http://www.druglibrary.org/schaffer/library/studies/nycla/nycla.htm>; JOINT COMM. OF THE AM. BAR ASS'N & THE AM. MED. ASS'N ON NARCOTIC DRUGS, DRUG ADDICTION: CRIME OR DISEASE? (2d ed. 1971), <http://>

only have our efforts been futile, but they also have visited grievous harm on society through their almost total reliance on a punitive approach to alleviating drug abuse. While there is no need to review fully that dreary record here, a brief accounting of the latest statistical data clearly shows that we continue to lose ground.

In 1990, the nation's prison population stood at 1,000,000.⁶ That number has now risen to 2,000,000—a two-fold increase in just ten years.⁷ During the same period of time, the number of prisoners who were incarcerated for drug offenses increased from about 41,000 to more than 458,000.⁸ Overall, the total number of persons under some form of legal supervision or in jail exceeds 6,000,000.⁹ In fact, every year for the past twenty-five years, the number of those incarcerated or put in supervision has increased.¹⁰ The United States Department of Justice recently reported that the average length of time served increased from twenty months in 1990 to twenty-eight months in 1998.¹¹ Of special note is the following fact: 9.4% of black men between the ages of twenty-five and twenty-nine are in state or federal prison—almost ten times the rate for white men of the same age,¹² even though studies indicate that blacks and whites use illegal substances at similar rates and in similar numbers relative to their overall population.¹³ While it is true that there has been a drop in convictions for new crimes, there also has been a sharp increase in the number of parolees returning

www.druglibrary.org/schaffer/library/studies/dacd/default.htm [hereinafter JOINT COMM.].

6. Jesse Katz, *A Nation of Too Many Prisoners?*, LOS ANGELES TIMES, Feb. 15, 2000, at A1.

7. *Id.*

8. Anthony Lewis, *Abroad at Home: Breaking the Silence*, N.Y. TIMES, July 29, 2000, at A13.

9. BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS 2000: AT A GLANCE 19 (2000), <http://www.ojp.usdoj.gov/bjs/pub/pdf/bjsag00.pdf>.

10. See generally BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, BULLETIN: PRISON AND JAIL INMATES AT MIDYEAR 1999, at 1 (2000) (detailing that the increase of 58,000 inmates for the 1999 fiscal year was the lowest since 1979), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/pjim99.pdf>.

11. Fox Butterfield, *Number in Prison Population Grows Despite Crime Reduction*, N.Y. TIMES, Aug. 10, 2000, at A10.

12. *Id.*

13. See OFFICE OF NAT'L DRUG CONTROL POLICY, SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS 1998 (1999) (estimating roughly similar rates of use for most categories of drugs), <http://www.whitehousedrugpolicy.gov/drugfact/sourcebook98/section3.html>.

to prison because of parole violations.¹⁴ Some of these violations are merely technical, such as a parolee's failing a urine test.¹⁵

In addition to the foregoing data, the Sentencing Project, a non-profit research organization, found that there are 690 prisoners per 100,000 U.S. residents in prison; that rate is six times that of Canada and five times that of any country in the European Union.¹⁶ The federal government's drug control budget naturally has increased at the same pace, and the figures are now astronomical. Specifically, the federal government's drug control budget has increased from \$1.5 billion in 1981¹⁷ to \$18.5 billion in 2000.¹⁸

Yet federal expenditures are only a small part of the total costs associated with drug abuse. For example, it has been estimated that the amount spent by drug users to buy drugs is more than \$150 billion a year.¹⁹ As a result, drug users do not spend that same money on such necessary items as food, clothing, and housing. In addition to the money spent directly for drugs, there are billions we pay for enforcement and new prison buildings and prison staff.²⁰

A few years ago in New York State, we spent much more on higher education than we did on prisons, but now the reverse is true.²¹ If it were not for our love affair with punitive measures, those who are now busy building prisons or working as prison guards could be employed more productively. That is, corrections officers who spend their days guarding inmates are not available to build better schools, improve health care, or otherwise invest in or produce goods and services which would make for a better life in our country.

Without offering further comment, it suffices to say that the negative financial and social impact of the drug laws is enormous. Saving only half of these monies would help provide for a substantial

14. Butterfield, *supra* note 11.

15. *Id.*

16. *Id.*

17. OFFICE OF NAT'L DRUG CONTROL POLICY, FACT SHEET: DRUG DATA SUMMARY 5 (1999), <http://www.whitehousedrugpolicy.gov/pdf/95253.pdf>.

18. OFFICE OF NAT'L DRUG CONTROL POLICY, NATIONAL DRUG CONTROL STRATEGY: BUDGET SUMMARY FEBRUARY 2000 1 (2000), <http://www.whitehousedrugpolicy.gov/policy/budget00/budget2000.pdf>.

19. RAPHAEL F. PERL, CRS ISSUE BRIEF 88093: DRUG CONTROL: INTERNATIONAL POLICY AND OPTIONS, CONG. RESEARCH SERV. (1997), <http://www.fas.org/irp/crs/88-093.htm>.

20. FACT SHEET: DRUG DATA SUMMARY, *supra* note 17.

21. See NAT'L CTR. ON ADDICTION & SUBSTANCE ABUSE AT COLUMBIA UNIV., BEHIND BARS: SUBSTANCE ABUSE AND AMERICA'S PRISON POPULATION 156 (1998), available at http://www.casacolumbia.org/usr_doc/5745.pdf [hereinafter BEHIND BARS].

tax cut, construction of new schools, funding for more teachers, or improved health care. In addition to wasted financial resources, sentencing more than two million people to jail for drug-related offenses will have a lasting and devastating social impact. The National Center on Addiction and Substance Abuse at Columbia University ("CASA") recently reported "that if rates of incarceration continue to rise at their current pace, one out of every 20 Americans born in 1997 will serve time in prison—one out of every 11 men, one out of every four black men."²²

As new prisons have been built, treatment programs within and outside of prison have declined.²³ Indeed, in their obsession to control drug use, state and federal legislators, as well as governors and presidents, are turning the world's greatest democracy into the world's largest prison system,²⁴ where inmates are warehoused without the opportunity for education, treatment, or a change in their way of life.

If it continues, the present trend in drug policy promises a cruel irony: the rate of incarceration in the United States—a country that prides itself on liberty and freedom—will surpass Russia's within two or three years, making us the world's largest jailer.²⁵ Although I do not lose sight of the need to put some people in jail, the fact remains that the fastest growing part of the prison population is non-violent drug offenders.²⁶

In his remarks, Richard Evans correctly emphasized that there is no common understanding about the objectives of our drug policy.²⁷ Is there a policy? If so what is it? Is it to make our society completely drug-free? Is it only to punish people for any violation of the drug laws—whether serious or minor? Federal judges spend a considerable amount of time interpreting sentencing guidelines, but is there a serious effort to determine whether the guidelines are effective in reducing drug abuse or crime generally? Evans urges

22. *Id.* at 4.

23. *Id.* at 111-18 (showing the increasing need for treatment and its declining availability within state and federal prisons).

24. *See id.* at 51-52 (showing that the United States 1996 incarceration rate of 641 inmates per 100,000 residents was second only to Russia's rate of 690 per 100,000 residents).

25. *See id.* at 51.

26. *See id.* at 65-66 (showing a 14% increase in the proportion of state prisoners convicted for drug law violations from 1985-1995, and a 26% increase in the proportion of federal prisoners convicted of such violations in the same period). The study defines a drug-law violation as the "sale, traffic, distribution, manufacture or possession of illegal drugs," and thus as a non-violent drug offense. *Id.* at i.

27. *Alternatives I, supra* note 1, at 179.

“a good, thorough, and honest national rethinking of the wisdom and efficacy of prohibition and the [drug] war [and] what it has done to our country.”²⁸ I believe that this is a very good suggestion, yet many attempts to convince our legislators to investigate the impact of the drug laws have failed.

In a recent *New York Times* article, Anthony Lewis noted that although both political parties have ignored the social disaster resulting from the drug war, there is hope in the prospect of some Republican and Democratic delegates forming a special, or “shadow,” convention to “discuss the failed war on drugs.”²⁹ At that convention, Congressman Charles Rangel, a long-time supporter of the drug war made an about-face by labeling the war on drugs a “war against people.”³⁰ Unfortunately, the shadow convention’s hope and promise faded when the remarks made there received little notice from the press.

On a positive note, some ongoing efforts manage to deal practically and fairly with the problem, and should be supported and encouraged. On June 22, 2000, Chief Judge Judith Kaye of the New York State Court of Appeals ordered that non-violent drug offenders be given the choice of treatment rather than jail as of the year 2003.³¹ Still, many difficulties arise. Judge Kaye’s order does not apply to federal sentences,³² conflicts with the mandatory sentences required by New York’s Rockefeller drug laws,³³ and, to succeed, requires that the legislature fund and implement an effective program.³⁴

Another example of a positive ongoing effort is national drug policy director General Barry McCaffrey’s support for the use of

28. *Id.* at 185.

29. Lewis, *supra* note 8.

30. Joyce Purnick, *Metro Matters: Listening to a Change In the Silence*, N.Y. TIMES, Aug. 31, 2000, at B1.

31. Judith S. Kaye, *Making the Case for Hands-On Courts*, NEWSWEEK, Oct. 11, 1999, at 13; Katherine E. Finkelstein, *New York to Offer Most Addicts Treatment Instead of Jail Terms*, N.Y. TIMES, June 23, 2000, at A1; Daniel Wise, *Plan to Sentence Drug-Users to Treatment, Not Jail, Begins*, N.Y. L. J., June 23, 2000, at 1. For a detailed discussion of Judge Kaye’s planned restructuring of the New York State court system through the adoption of specialized drug-treatment courts in every jurisdiction, see John Feinblatt et al., *Institutionalizing Innovation: The New York Drug Court Story*, 28 FORDHAM URB. L.J. 277 (2000), in this volume.

32. Kaye, *supra* note 31, at 13.

33. See N.Y. PENAL LAW Art. 220 (McKinney 2000); N.Y. PENAL LAW §§ 70.00, 70.15 (McKinney 2000).

34. Kaye, *supra* note 31, at 13.

methadone treatments,³⁵ even though he would still oppose many of the recommendations of the panelists from the *Drug Policy Alternatives* sessions. Additionally, some states have approved the use of marijuana for medical purposes,³⁶ despite opposition from the federal government.³⁷

The panelists suggest that the emphasis should be on harm reduction rather than a criminal law solution.³⁸ All of the panelists seem to agree that in the short-term, "harm reduction"—in the form of more treatment, counseling, and education—may help in individual cases, and that efforts to expand these programs should be encouraged.³⁹ Dr. Reuter suggests, however, that there are different types of harms caused by the use of illicit drugs, and that we must deal with the more general harms as well as harms to individuals.⁴⁰ Dr. Reuter says that "harm reduction" is "a seductive phrase," and that it is only one step in the process of determining what path to follow.⁴¹ However the expansion of clinics, the greater use of probation, education programs, and other measures intended to alleviate harm to individuals will not address or cure the general harm to society.

Dr. Reuter goes on to argue that if we were to make these drugs legal in a substantial way (that is, make them available enough that the black market would be very substantially reduced), then the harm to society would be reduced.⁴² In saying this, Reuter admits that the use of drugs would probably increase, but that the total harm to society would go down. It is difficult to quarrel with his observation that:

The adverse consequences of our current prohibition regime are clearly borne disproportionately by the urban minority poor. If you ask whether making cocaine and heroin much more accessible, eliminating or greatly reducing the illegal market, would benefit the urban minority poor, the answer is probably yes. Even with increased addiction in those communities, the reduc-

35. Mike Mather, *Pushing a Future Without Drugs*, THE VIRGINIAN-PILOT, Oct. 4, 1998, at J1; Beth J. Harpaz, *Drug Official: Loosen Rules on Methadone*, CHICAGO SUN-TIMES, Sep. 30, 1998, at 30.

36. See e.g., ALASKA STAT. § 17-37-060 (Michie 1999); OR. REV. STAT. § 475.334 (1999); WASH. REV. CODE ANN. § 69.51A.070 (2000).

37. Michael Luo, *U.S. to Fight Man's Plea to Use Medicinal Marijuana*, LA TIMES, Feb. 26, 1999, at B3.

38. *Alternatives I*, supra note 1; *Alternatives II*, supra note 1.

39. *Alternatives I*, supra note 1; *Alternatives II*, supra note 1.

40. *Alternatives I*, supra note 1, at 190-91.

41. *Id.* at 192.

42. *Id.* at 191.

tions in crime, disorder, and incarceration would be a substantial reduction in the harm to them.⁴³

Along these same lines, a controlled distribution plan for legalized drugs could eliminate adulterated drugs, end drug wars over territory, and substantially reduce crime related to drug distribution. Moreover, such a system would save non-violent drug users from being stigmatized by criminal conviction and would allow them to function at the work place with either medication or counseling. While there is no doubt that difficult questions must be answered before anyone can fashion a change, it is imperative that we meet the challenge.

Reuter points out that the urban poor clearly bear the consequences of our current prohibition. Eliminating the scourge of the illegal market in poor urban neighborhoods would make for a more peaceful environment. In these neighborhoods, millions of children grow up in an atmosphere infested with drug dealers and the crime that flows from their illegal trade. General Colin Powell has called these neighborhoods the "training camps for America's prisons."⁴⁴

Certainly, all harm reduction techniques must be improved. Yet unless we take the profit element out of the illegal drug distribution system, the terrible conditions in these neighborhoods will remain. Put another way, harm reduction measures are important, but are really just band-aid solutions to the broader problem.

Michael Massing's presentation was especially pertinent, since he discussed the chain of distribution from Colombia to the streets of Harlem.⁴⁵ Speaking of his visit to Colombia in the late 1980s, he noted, "It soon became clear to me in the course of reporting on drugs in Latin America that nothing we did there was going to have any effect whatsoever. The drugs were going to get here one way or another. The whole idea of trying to stop them at the border and trying to make war on drugs in general was a failure."⁴⁶ This comment is especially resonant when we consider the fact that President Clinton just approved substantial financial assistance to Colombia for support of that country's military efforts to suppress the drug trade and guerilla forces. At the time he was receiving this money from the United States, Colombian President Andres Pastrana echoed Mr. Massing's comments when he observed that

43. *Id.* (citations omitted).

44. *BEHIND BARS*, *supra* note 21, at 4.

45. *Alternatives II*, *supra* note 1, at 195-96.

46. *Id.* at 195.

even if drug production in Colombia were ultimately stopped, it would continue elsewhere because the trade is so lucrative.⁴⁷

There is little hope that our contribution to Colombia will prevent distribution. By allocating our resources in that way, we are striking at the wrong end of the distribution chain. As long as there is a demand for any product, there will be suppliers. As Massing stated, "The drugs [will] get here one way or another."⁴⁸ Some people will drink too much; some will smoke too many cigarettes; and others will gamble to excess. The money sent to Colombia could be spent better here in the United States on education efforts, counseling programs, and other similar initiatives.

Of special importance is Mr. Massing's discussion of the harm reduction efforts of Dr. Jerome Jaffe, the first "Drug Czar."⁴⁹ It is indeed unfortunate that Jaffe's program was in effect only for a few years. Since that time, Jaffe's ideas have not been given much attention, which is a loss because his efforts and theories, as well as the success of his program, should be recognized and given renewed consideration. As Massing explains, Jaffe was able to achieve positive results by providing methadone, detoxification services, and medical treatment for drug and alcohol abuse.⁵⁰ As a result of these policies, crime, overdose deaths, and hospital emergency room visits declined.⁵¹

Drs. Majoor described the Dutch drug policy as "pragmatic, cost-effective, and humane."⁵² Majoor says that the Dutch treat marijuana differently from other drugs. Specifically, Majoor indicated that in the Netherlands marijuana is easily obtainable and no arrests are made for either marijuana possession or the possession of other drugs.⁵³ Instead of focusing on small-time users or abusers, Dutch law enforcement officials target bigger national and international drug traders.⁵⁴ Majoor contends that good results flow from these enforcement policies. For example, drug-related AIDS cases are much lower in the Netherlands than in the United States, and drug overdoses are almost seven times higher in the United

47. See generally Television Interview by Jim Lehrer with Andres Pastrana, President of Colombia, *The News Hour with Jim Lehrer* (PBS television broadcast, Sept. 22, 1999).

48. *Alternatives II*, *supra* note 1 at 195.

49. *Id.* at 198-99.

50. *Id.*

51. *Id.* at 199.

52. *Id.* at 201.

53. See *id.*

54. *Id.*

States than in the Netherlands.⁵⁵ Finally, Majoor rightly urges that we stop demonizing and criminalizing the use of drugs.⁵⁶

General McCaffrey and others have challenged the accuracy of the favorable reports from the Netherlands.⁵⁷ Indeed, the Dutch have admitted that they have had problems with their coffee shops.⁵⁸ Along these same lines, Drs. Majoor recognizes that there are many differences in attitude, culture, tradition, and history which may rule against our adoption of the Dutch model.⁵⁹ Yet instead of simply denouncing presentations like Drs. Majoor's, we should review carefully what the Dutch do in order to determine whether we can learn from their experience.

In his comments, Professor Steven Duke forthrightly admits that decriminalization or legalization will bring up many legitimate concerns that must be addressed.⁶⁰ Duke notes that there are preposterous arguments made by both drug war activists and by legalizers. For example, it is preposterous for the Drug Enforcement Administration ("DEA") to contend that legalization would result in sixty million Americans becoming daily drug users. Likewise, it is equally preposterous for extreme legalizers to urge the immediate repeal of the present drug laws without a plan for control and distribution. Such a course of action represents an impossible and undesirable proposition. The solution lies somewhere in between.

We must decide whether we should legalize all drugs, or only some of them. Shall we have state or federal regulation, or a combination of both? How do we prevent distribution to children? Recently, a study found that most drug abusers began their drug use because of family influence and not because of the presence of street corner dealers.⁶¹ With that in mind, how do we control family use? Would it be up to the state or private firms to manufacture and dispense drugs? Would the Food and Drug Administration

55. *Id.* at 203.

56. *Id.* at 204, 205-06.

57. Paul Bedard, *McCaffrey Takes His Charge to Officials in Netherlands; Has Interpol Data Showing Dutch Drug Policy Is Failure*, WASH. TIMES, July 15, 1998 (Nation), at A4; Adam J. Smith, Editorial, *The General Invades (and Insults and Infuriates) The Netherlands*, 50 THE WEEK ONLINE WITH DRCNET, July 17, 1998, at <http://www.drcnet.org/wol/50.html#editorial>.

58. *E.g.*, Justin Sparks, *International; Crime Gangs Feed on Dutch Coffee Shops*, SUNDAY TELEGRAPH (London), April 16, 2000, at 28.

59. *Alternatives II*, *supra* note 1, at 202.

60. *Id.* at 308.

61. *E.g.* S. Milberger et al., *Substance Use Disorders in High-Risk Adolescent Offspring*, 8 AM J. ON ADDICTIONS 211 (1999).

have a role? What about advertising? We do not want to advocate the use of drugs to anyone, but how can you have advertising without advocacy? These are only a small sampling of the many questions which must be addressed and answered before we can even think of legalization. Clearly it is a long road, the end of which we cannot reach for some time, but because of the serious state of affairs at present we must make a beginning. In the meantime, we should focus our efforts on extensive harm reduction.

The last speaker, David Boaz, posed a most interesting and provocative question: Where in the Constitution does the federal government find the power to ban or regulate drugs?⁶² Boaz noted that in 1920 when alcohol was banned, a constitutional amendment was ratified.⁶³ The argument follows that if the government wants to outlaw drugs entirely, then a similar constitutional amendment should be enacted. If people have the individual right to smoke, drink, or gamble, then why shouldn't they also have the right to use drugs? On a related note, isn't there something dishonest about drug policies in which lower-class drug users are labeled as criminals and go to prison, while middle-class alcoholics go to therapy? Yet we do not have the luxury to debate that question, which is essentially an academic one. Our nation has a ban on drugs—constitutional or not. Our drug laws are what they are, even if the consequences associated with alcohol and tobacco abuse are much more serious than those of drug abuse. Again, it is important to keep in mind that alcohol abuse has proven to be much more dangerous than drug use. By way of example, drunken drivers cause at least 16,000 deaths a year,⁶⁴ and alcohol abuse is causally connected to many murders, assaults, and incidents of spousal abuse.⁶⁵

At this point, it must be asked: Why is there such fierce opposition to amending the drug laws? Unfortunately, there is a popular tendency to equate advocacy of drug legalization or softening of drug laws with advocacy of drug use. This is an absurd notion. Nevertheless, it is one that seems to be ingrained in the minds of many legislators and political leaders. Certainly, drug use should

62. *Alternatives II*, *supra* note 1, at 217.

63. *Id.*

64. NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., IMPAIRED DRIVING IN THE UNITED STATES: STATE COST FACT SHEETS USER'S GUIDE (June 2000), http://www.nhtsa.dot.gov/people/injury/alcohol/scost/Users_gd.htm.

65. NAT'L INST. ON ALCOHOL ABUSE & ALCOHOLISM, ALCOHOL ALERT No. 38 – ALCOHOL, VIOLENCE AND AGGRESSION (Oct. 1997), <http://silks.nih.gov/silks/niaaa1/publication/aa38.htm>.

not be encouraged. On the other hand, jailing people for using drugs does much more harm than good.

The question should be recast: How will our government and society respond to the inescapable fact that many people choose to use drugs and will continue to choose to use them? Further, what are the consequences of the current approach? What would happen if drug laws were amended to permit more counseling and treatment? What would be the result of decriminalization or legalization? To determine the consequences of continued enforcement procedures, we need only look to the record of the last twenty-five years. In short, we are wasting our financial and human resources because we are too stubborn to consider other alternatives to harsher and harsher penalties for drug use. Most sentences are given to users, and to petty dealers who are also users. Yet we are dealing with a medical and psychological problem, not a criminal one. Penal laws did not prevent people from drinking in the 1920s. We should know by now that similar laws will not discourage people from using drugs today. Punishment will not correct this sort of human behavior. Our experiment with Prohibition in the 1920s was, as Mr. Evans explained, "a huge flop."⁶⁶ We should have learned our lesson from the failed experiment with Prohibition.

Among other benefits, legalization would certainly reduce the price paid for drugs. Even if use went up as a result of legalization, it would be highly unlikely that any such increase would be substantial. Under this scenario, every dollar no longer spent on illegal drugs could be spent on things such as food, clothes, hygiene, and shelter. As far as any possible increase in use of drugs there is no reason why a sane, non-punitive program could not be instituted to discourage use.

My suggestion is that a serious national forum, sponsored either by the government or a consortium of foundations and corporations, must be convened to hear suggestions from the diverse voices that have contributed to this growing dialogue. The best minds in medicine, law enforcement, psychiatry, social science, economics, business, and other fields should be represented at such a forum. Suggestions from different disciplines are needed if we are to understand all facets of the problem and perhaps strike upon an ultimate solution, especially in light of the fact that the drug problem has proven to be so incredibly difficult and intractable.

66. *Alternatives I*, *supra* note 1, at 185.

Most legislators oppose any change in the war on drugs because they do not want to be depicted by the opposing political party as being soft on crime. It therefore becomes necessary for ordinary people to force Congress and the state legislators to face facts and to face up to their obligations. We must tell them that the so-called drug war is lost, and that they should substitute a better remedy. Too long in enacting legislation, Congress and the legislatures have relied upon sloganeering and gut reactions without calling upon experts. If our political leaders did call on a diverse field of experts, they would be able to find out why we are stuck in this morass and would be able to begin the process of rationally figuring a way out. From time to time, many newspapers have run editorials urging that Congress and legislators change the current drug policies.⁶⁷ This has been all to no avail. There must be a grass roots movement if the laws are to be changed.

Today, there are many programs in place to treat alcoholics effectively without punishment. We should learn from that experience and recognize that drug addiction is essentially a medical problem, not a law enforcement problem. No doubt there are differences between drug addiction and alcoholism, but we can learn much from our experience in dealing with the disease of alcoholism.

We still will need laws and law enforcement officers to protect us from dangerous drug users. Yet we also need laws and law enforcement officers to protect us from dangerous alcoholics. Anyone who operates any kind of motorized vehicle or method of transportation—a car, train, airplane, boat—must be monitored for the consumption of alcohol or other drugs. Similarly, drug users whose addiction leads them to violate criminal laws prohibiting murder, assault, theft, etc., should be punished accordingly.

When it comes to the goals of reducing drug use and abuse, as well as the crime and misery that accompany them, everyone is on the same side of the issue. The disagreement, then, concerns the best way to accomplish that goal. Without a doubt, heroin and cocaine are dangerous and highly addictive drugs. Yet as I have already noted, the societal devastation brought on by alcohol and tobacco use is far greater than the consequences of cocaine and heroin use. In addition to the evidence on alcohol that I have discussed earlier, there is also the fact that cigarette use has not only

67. E.g., *Drug Laws that Destroy Lives*, N.Y. TIMES, May 24, 2000, at A24; Marjorie Williams, *Make No Mistake: Drugs and Candidates*, WASH. POST, Mar. 10, 2000, at A21; Timothy Lynch, *All Locked Up*, WASH. POST, Feb. 20, 2000, at B7.

given rise to untold misery for users and their survivors, but it also has caused society to bear the tremendous costs of treatment and to suffer the further losses associated with the untimely deaths of many otherwise healthy and productive individuals. Again, the harms caused by substances like alcohol and tobacco are much greater and more serious than the harms connected with the use of other drugs.

We must realize that we can never have a drug-free, alcohol-free, or tobacco-free society. There always will be individuals who will use and, indeed, abuse these substances. Acknowledging that drug users and abusers will always be with us does not mean that we urge anyone to begin the use of drugs, alcohol, or tobacco. It is especially imperative that children or young adults up to their early twenties refrain from using these substances.

In summary form, the panelists have set forth the need for reform, suggested a general plan for reform, and detailed many of the difficulties we will encounter in bringing reason to this intolerable situation. Further, they have laid out a broad plan of action. We should begin the difficult task of putting that plan into effect as soon as possible. We must consider the practical political problems and avoid the pitfall of trying to do too much at one time. In making change, we should address the least controversial questions first.

Still, there are many difficulties. For the last thirty years, study after study has concluded that we are failing to control the drug problem.⁶⁸ Although this failure is a national disgrace, those who could promote change only choose to ignore the problem. We must find a way to pressure our legislators, both federal and state, to begin the process of creating a real solution. The most effective way to pressure legislators is to sway public opinion. On this count, we must find ways to convince the American public that the drug problem, although bad now, will only get worse unless we begin to take meaningful action. Without real change in policy and popular attitudes, we will continue to expend funds without positive results. More importantly, the process of jailing more and more individuals will result only in more and more severe social problems in the years to come.

Here are some suggestions I think will start us on the road to finding a solution:

68. *E.g.*, N.Y. COUNTY LAWYERS' ASS'N, *supra* note 5; JOINT COMM., *supra* note 5.

1. Develop an ongoing research program, funded either by the government or by a consortium of private corporations and foundations, and staffed with experts from many fields, in order to create the best solutions to the many challenges we face in confronting the drug problem.
2. Make access to methadone treatments as convenient as possible for heroin users.
3. Make clean needles freely available in order to prevent the spread of AIDS.
4. Greatly increase the number of clinics to provide for medical assistance, counseling, and education.
5. Expand other harm-reduction measures.
6. Don't send users of drugs to jail on the basis of their drug use, instead provide them with as much harm-reduction assistance as possible.
7. Train and employ more counselors, medical technicians, and probation officers, who can deal with the everyday problems associated with drug use and abuse.
8. Repeal laws like New York State's Rockefeller drug laws which require mandatory terms for petty drug users and small-time dealers.
9. Make every effort to keep drug users and low-level user/sellers out of jail and in harm-reduction programs.
10. Remember that law enforcement still has a most important place, especially in urban neighborhoods where petty crimes, assaults, thefts, etc., must be vigorously investigated and controlled.
11. In those same neighborhoods, educational and job opportunities must be expanded.
12. In order to succeed fully, the profit must be taken out of the drug distribution system. Whether this can be accomplished by legalization or some other method should be left to study and research.
13. Finally, we must find ways to secure the attention of federal and state legislators who can begin to put these changes into place.