

2003

## Engaging the Debate: Reform vs. More of the Same

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### Recommended Citation

Kevin B. Zeese, *Engaging the Debate: Reform vs. More of the Same*, 30 Fordham Urb. L.J. 465 (2002).

Available at: <https://ir.lawnet.fordham.edu/ulj/vol30/iss2/3>

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# AN EFFECTIVE DRUG POLICY TO PROTECT AMERICA'S YOUTH AND COMMUNITIES

*Asa Hutchinson\**

## INTRODUCTION

Drug abuse and addiction, and the government's response to these problems, are frequently and appropriately a topic of public debate.<sup>1</sup> Some argue that because we have not completely eradicated all illegal drug abuse, we should legalize the manufacture and distribution of *all* drugs, including cocaine, "crack" cocaine, Ecstasy, heroin, and other drugs that are highly addictive and dangerous. Some people agree that certain illegal drugs should remain illegal, but that other drugs, marijuana, for example, should be legalized, or, at least, decriminalized.<sup>2</sup> Some of these proposals stem from frustrations that the problem of drug abuse has not been completely solved, and that this problem would be better dealt with as a medical or health issue. In addition, proponents of legalization and decriminalization claim that the federal government focuses entirely on criminal enforcement, and not on prevention and treatment.<sup>3</sup> Proponents of marijuana legalization or decriminalization

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1. On April 23, 2002, the Honorable Asa Hutchinson, Administrator of the Drug Enforcement Administration ("DEA") participated in such a debate at the Fordham University School of Law. The DEA is the lead federal agency for the enforcement of narcotics and controlled substance laws and regulations. The Editorial Staff of the *Fordham Urban Law Journal* requested that the Administrator submit an Essay that discussed in greater detail some of the points he made during the April 23rd debate.

2. Decriminalization usually refers to the lessening or removal of criminal sanctions for the possession or use of small amounts of controlled substances, and focuses on the rehabilitation of drug abusers through drug treatment. The United States Department of Justice supports the decriminalization of offenses involving the possession or use of small amounts of controlled substances through its funding of its drug courts program. See 21 U.S.C. § 844a (2002). Section 844a, entitled "Civil penalty for possession of small amounts of certain controlled substances," authorizes the imposition of a civil penalty for first time offenders charged with possessing small amounts of controlled substances for personal use. *Id.*

3. To the contrary, President George W. Bush has earmarked \$6.285 billion for drug abuse treatment, drug abuse prevention, prevention research, and treatment research. OFFICE OF NAT'L DRUG CONTROL POLICY, THE WHITE HOUSE, NATIONAL

claim that smoking marijuana is safe, it has a proven medical use, and the criminal laws are being used to impose harsh prison sentences on people that used or possessed small amounts of marijuana. These claims have no factual or scientific basis. Before drawing any conclusions about the effectiveness of federal drug policy, it would be helpful to review the federal government's successes to date, review the scientific studies concerning marijuana use, and apply what has been learned from the past to our present circumstances and future drug strategy.<sup>4</sup>

### I. DRUG USE IN AMERICA

Proponents of legalization frequently cite the large number of illegal drug abusers in America as a basis to legalize some or all drugs. These are the facts. 7.1 percent of the U.S. population aged twelve or older uses illegal drugs.<sup>5</sup> Recent statistics indicate that drug use by persons aged twelve and older went from 6.3 percent in 2000 to 7.1 percent in 2001.<sup>6</sup> Over the longer term, however, per capita drug use in America is down by one-half since the late 1970s.<sup>7</sup> Since the age groups that report the highest percentage of

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DRUG CONTROL STRATEGY: FY 2003 BUDGET SUMMARY 6 tbl. 2 (2002) [hereinafter BUDGET SUMMARY], available at <http://www.whitehousedrugpolicy.gov/publications/pdf/budget2002.pdf> (last visited Jan. 15, 2003).

4. Administrator Hutchinson was also asked to comment on the King County Bar Association Drug Policy Project, *Report of the Task Force on the Use of Criminal Sanctions to the King County Bar Association Board of Trustees*, 30 FORDHAM URB. L.J. 499 (2003). The issue of illegal drug abuse has many different components to the supply and demand side of the issue. Without responding to any specific issue raised by the County Bar Association, it should be noted that the federal government's National Drug Control Strategy ("Strategy") provides a comprehensive plan to reduce abuse through treatment and education. The Strategy includes increased funding for research, education, and treatment, as well as support to state and local court efforts to begin and operate drug treatment courts. In addition, the Strategy identifies goals and provides funding for law enforcement to confront the people and organizations that profit from the sale or distribution of illegal controlled substances in our society.

5. 1 OFFICE OF APPLIED STUDIES, U.S. DEP'T OF HEALTH & HUMAN SERVS., RESULTS FROM THE 2001 NATIONAL HOUSEHOLD SURVEY ON DRUG ABUSE: SUMMARY OF NATIONAL FINDINGS 12 fig. 2.1 (2002) [hereinafter HOUSEHOLD SURVEY], available at <http://www.samhsa.gov/oas/nhsda/2k1nhsda/PDF/cover.pdf> (last visited Jan. 15, 2003).

6. *Id.* at 12 fig 2.1, 17 fig. 2.2, 2.8 (drug use by persons aged eighteen to twenty-five went from 15.9 percent in 2000 to 18.8 percent in 2001); OFFICE OF NAT'L DRUG CONTROL POLICY, THE WHITE HOUSE, 2002 NATIONAL DRUG CONTROL STRATEGY 58 tbl. 2 (2002) [hereinafter DRUG CONTROL STRATEGY], available at <http://www.whitehousedrugpolicy.gov/publications/pdf/Strategy2002.pdf> (last visited Jan. 15, 2003). "In 1999, the survey methodology changed from a paper-and-pencil interview to a computer-assisted interview. Estimates based on the new methodology are not directly comparable to previous years." *Id.* at 58 n.1.

7. See DRUG CONTROL STRATEGY, *supra* note 6, at 58 tbl. 2.

drug use are ages fourteen through twenty-five,<sup>8</sup> it is clear that when we reduce illegal drug use, we are reducing the number of young people harmed by the health and other consequences of illegal drugs. In addition, per capita cocaine use is down by seventy-three percent during the same period.<sup>9</sup> In a recent survey conducted by the National Center on Addiction and Substance Abuse at Columbia University, almost two-thirds of teenagers said that their school is drug free.<sup>10</sup> For the first time in the seven-year history of the survey, a majority of public school students reported drug-free schools.<sup>11</sup> According to the survey, “[t]eens who attend drug-free schools are at roughly half the risk of substance abuse of teens who attend schools where drugs are used, kept or sold.”<sup>12</sup>

## II. LAW ENFORCEMENT IS PREVENTING A SIGNIFICANT AMOUNT OF ILLEGAL DRUGS FROM REACHING OUR COMMUNITIES

In addition to an overall reduction in the number of persons abusing illegal drugs, law enforcement has made significant inroads in the fight against traffickers. The strategy against traffickers is proactive, targeting growers, the chemicals needed to manufacture or process illegal drugs, and the flow of illegal drugs into the United States. The DEA’s priority mission is the long-term immobilization of major drug trafficking organizations through removal of their leaders, termination of their trafficking networks, seizure of their assets, and dismantling their organizational structure.<sup>13</sup>

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8. HOUSEHOLD SURVEY, *supra* note 5, at 14 fig. 2.3.

9. DRUG CONTROL STRATEGY, *supra* note 6, at 58 tbl. 2. For a discussion and comparison of varying rates of illegal drug use from 1965 through 2000, see HOUSEHOLD SURVEY, *supra* note 5, at 82-83; *see also* DRUG CONTROL STRATEGY, *supra* note 6, at 59 tbl. 3 (providing detailed comparisons of cocaine and heroin abuse by occasional and chronic users 1988 to 2000); OFFICE OF APPLIED STUDIES, U.S. DEP’T OF HEALTH & HUMAN SERVS., TRENDS IN THE INCIDENCE OF DRUG USE IN THE UNITED STATES, 1919-1992, at 27, 36 tbl. 3.6 (1996) [hereinafter TRENDS], *available at* <http://www.samhsa.gov/oas/analytic.htm> (last visited Jan. 15, 2003).

10. NAT’L CTR. ON ADDICTION & SUBSTANCE ABUSE AT COLUMBIA UNIV., NATIONAL SURVEY OF AMERICAN ATTITUDES ON SUBSTANCE ABUSE VII: TEENS, PARENTS AND SIBLINGS ii (2002) (“62 percent of 12- to 17-year olds in public school say their schools are drug free, . . . and 79 percent of those in religious schools say so . . . .”), *available at* [http://www.casacolumbia.org/usr\\_doc/TeenSurvey2002.pdf](http://www.casacolumbia.org/usr_doc/TeenSurvey2002.pdf) (last visited Jan. 15, 2003).

11. *Id.*

12. *Id.*

13. The DEA was created in 1973 by a reorganization plan that unified a number of drug-related agencies into one agency in the Department of Justice. In addition to its various investigative and intelligence gathering functions, DEA’s responsibilities also include demand reduction and monitoring drugs and listed chemicals to insure

For example, DEA's Operation *Purple* is working in twenty-eight countries to prevent the diversion of potassium permanganate, a chemical needed to manufacture cocaine, to cocaine producers.<sup>14</sup> Operations *Crossroads II* and *Caribe I* involved year-long investigations that targeted an international organization based in Puerto Rico that trafficked in multi-hundred kilogram quantities of cocaine and multi-kilogram quantities of heroin and laundered millions of United States dollars in drug proceeds. Operation *Landslide* targeted a Mexican organization that brought significant quantities of black-tar heroin, often accompanied by cocaine and methamphetamine, into California for distribution to thirty-one cities in eleven states. The third phase of Operation *Mountain Express* has, to date, arrested one hundred people involved in diverting precursor chemicals needed to manufacture methamphetamine. Operation *Perfect Storm* was a seventeen month investigation that targeted a heroin and cocaine trafficking organization operating in New York, New Jersey, and Florida, resulting in the seizure of 2,700 kilograms of cocaine, seventeen kilograms of heroin, and the arrest of one hundred and forty-four defendants. The DEA's accomplishments in investigating international and domestic drug trafficking organizations are both significant and measurable.<sup>15</sup>

Federal agencies involved in drug interdiction regularly seize large quantities of illegal drugs before they enter the United States. In addition to international efforts, the DEA and other law enforcement agencies seize large quantities of illegal drugs manufactured or grown domestically. These domestic traffickers, like their international counterparts, target America's youth.<sup>16</sup>

DEA investigations also target domestic and international money laundering. Although arrests of individuals have a significant impact upon drug organizations, labor can often be replaced. Money laundering investigations, however, deprive drug trafficking

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that they are not diverted to illegal uses. The DEA's enforcement activities are focused on dismantling organizations, rather than on use or simple drug possession. See Exec. Order No. 11,727, 38 Fed. Reg. 18,357 (July 6, 1973); see also Act of Oct. 19, 1984, Pub. L. No. 98-532, 98 Stat. 2705 (1984) (ratifying all prior federal agency reorganization plans).

14. Asa Hutchinson, Administrator, Drug Enforcement Administration, Statement Before the Senate Caucus on International Narcotics Control (Sept. 17, 2002), at <http://www.usdoj.gov/dea/pubs/cngrtest/ct091702.html> (last visited Jan. 15, 2003).

15. See BUDGET SUMMARY, *supra* note 3, at 107-08; see also the DEA's website, at <http://www.dea.gov> (providing daily updates concerning DEA's seizures and arrests) (last visited Jan. 15, 2003).

16. See HOUSEHOLD SURVEY, *supra* note 5, at 14 fig. 2.3 (reporting that drug use between the ages of fourteen to twenty-five is greater than ages twenty-six and older).

organizations of the money they need to operate and survive. Successful money laundering investigations lead to the arrest of upper-level principals, and the permanent dismantling of drug organizations.

In addition to enforcement programs directed at international and domestic trafficking, the DEA collects, collates, and disseminates drug intelligence to local, state, federal, and foreign law enforcement agencies. This sharing of intelligence effectively channels law enforcement resources throughout America and the world to target drug organizations.

### III. THE FEDERAL GOVERNMENT IS WORKING TO SIGNIFICANTLY REDUCE THE DEMAND FOR ILLEGAL DRUGS THROUGH EDUCATION AND TREATMENT

President Bush's National Drug Control Strategy ("Strategy") commits a total of \$6.285 billion, or thirty-three percent of the federal drug budget, to demand reduction and rehabilitation, through prevention and treatment research, as well as prevention education and drug treatment programs.<sup>17</sup> The Strategy sets a two-year goal of a ten percent reduction in use of illegal drugs by the age groups twelve to seventeen years old and adults age eighteen and older.<sup>18</sup> The Strategy sets a five-year goal of a twenty-five percent reduction in use of illegal drugs by the same age groups.<sup>19</sup> The Strategy includes programs that are designed to reach and help people of all cultural and economic backgrounds. The Safe and Drug-Free Schools Program commits \$644 million to fund drug and violence prevention programs for young people.<sup>20</sup> The Drug-Free Communities Program commits \$60 million to assist community groups in forming and sustaining effective community and anti-drug coalitions that fight the use of illegal drugs, alcohol, and tobacco by youth.<sup>21</sup> The National Youth Anti-Drug Media Campaign commits \$180 million for paid media messages to guide youth and parent attitudes about drug use and its consequences.<sup>22</sup> The Parents Drug

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17. Cf. BUDGET SUMMARY, *supra* note 3, at 6-9 tbls. 2, 3 (DEA's budget request for fiscal year 2003 is \$1.698 billion, compared to the total of \$6.285 billion earmarked for rehabilitation, education, and drug treatment purposes).

18. DRUG CONTROL STRATEGY, *supra* note 6, at 3.

19. *Id.*

20. *Id.* at 8.

21. *Id.*

22. *Id.*

Corps Program is a new initiative that invests \$5 million to train parents in drug prevention skills and methods.<sup>23</sup>

President Bush has committed an additional \$1.6 billion to the drug treatment system over the next five years.<sup>24</sup> Proposed enhancements for the Substance Abuse and Mental Health Services Administration ("SAMHSA") will provide additional funding to increase the capacity of the drug treatment system.<sup>25</sup> SAMHSA funding includes the Targeted Capacity Expansion ("TCE") Program, which is designed to support a rapid, strategic response to emerging trends in substance abuse. TCE will provide funding for state-level drug treatment services.<sup>26</sup> The Substance Abuse Prevention and Treatment ("SAPT") Block Grant will provide an additional \$60 million in funding to states for drug treatment and prevention services.<sup>27</sup> States will use these funds to provide drug treatment services to pregnant women, women with dependent children, and racial and ethnic minorities. The Residential Substance Abuse Treatment ("RSAT") Program will provide \$77 million, an increase of \$7 million, to support an expansion of drug and alcohol treatment in state corrections facilities.<sup>28</sup>

The Drug Courts program provides alternatives to incarceration. Judges assigned to drug courts provide treatment and rehabilitation alternatives to offenders charged with minor, non-violent drug crimes or other non-violent offenses. Drug courts provide opportunities for offenders to begin productive, drug-free lives through a combination of escalating sanctions, mandatory drug testing, treatment, and strong aftercare programs. The Drug Courts Program will receive an additional \$2 million that will expand the program to \$52 million in fiscal year 2003.<sup>29</sup>

Recognizing that the DEA can make a substantial contribution to use prevention education and drug treatment programs, Administrator Hutchinson has taken the initiative and established the Integrated Drug Enforcement Assistance ("IDEA") program. The IDEA website summarizes the issue of drug abuse prevention in a nutshell:

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23. *Id.*

24. *Cf.* BUDGET SUMMARY, *supra* note 3, at 8 tbl. 3 (stating the DEA's proposed annual budget for fiscal year 2003 is \$1.698 billion).

25. DRUG CONTROL STRATEGY, *supra* note 6, at 12.

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

When a community has a drug-trafficking organization in the neighborhood, DEA [A]gents will work with local law enforcement to put the dealers in jail. But that shouldn't be the end. Under the new initiative, Integrated Drug Enforcement Assistance (IDEA), the DEA will combine the enforcement effort with a partnership alongside any existing community coalitions to have a long-lasting impact to reduce demand through drug prevention and treatment programs. To accomplish this integrated approach, the DEA is committed to providing agents trained not just in enforcement but also community building to work with all the groups that have been fighting the battle for a long time.<sup>30</sup>

The IDEA program was envisioned as a means to provide long-term support to communities in developing and implementing prevention and treatment programs that address the underlying problems of drug use.<sup>31</sup> Three pilot projects have already been established in Allentown, Pennsylvania, North Charleston, South Carolina, and Portsmouth, Virginia.<sup>32</sup>

IDEA programs start with a two-day seminar funded by the DEA. Seminars are organized and led by the National Crime Prevention Council ("NCPC"). Participants include local government, civic, religious, and drug treatment group leaders, that identify community challenges, discuss solutions to the problems, and barriers to resolution of the problems. Steering committees are formed that, with the assistance of the DEA, take advantage of new and existing programs, such as Weed and Seed.<sup>33</sup> In Portsmouth, for example, enterprise zones, empowerment zones and foreign trade zones are part of the steering committee's plan for economic revitalization. IDEA steering committees identify barriers to resolving problems, and then resolve them. For example, a large percentage of the crime committed by adolescents occurs between the time school ends and parents get home from work. IDEA steering committees are addressing this problem by organizing after-school programs. Steering committees also develop and organize educational

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30. See Integrated Drug Enforcement Assistance (IDEA), at <http://www.usdoj.gov/dea/programs/idea.htm> (last visited Jan. 15, 2003).

31. *Id.*

32. See Press Release, Drug Enforcement Administration, Drug Summit Opens in Allentown (July 17, 2002), available at <http://www.usdoj.gov/dea/pubs/pressrel/pr071702p.html> (last visited Jan. 15, 2003).

33. See generally EXECUTIVE OFFICE FOR WEED & SEED, U.S. DEP'T OF JUSTICE, 2002 OPERATION WEED AND SEED FACT SHEET 1, 1-2 (2002), available at <http://www.ojp.usdoj.gov/eows/pdf/text/2002factsheet.pdf> (last visited Jan. 15, 2003).



and social resources to teach drug prevention education and drug treatment.

In North Charleston, the DEA Special Agent assigned to the Charleston IDEA program is working with the steering committee and the NCPC to begin teaching the "Teens, Crime and Community" program in the public schools.<sup>34</sup> The toughest school in the district, the disciplinary school, is being considered as the first school in the district in which the drug prevention education program will be taught. The Charleston IDEA is working closely with the 178 churches in the city to identify problems, work out solutions and implement them on a person-to-person basis.

In Allentown, the DEA Special Agent coordinator is working with corporate partners to provide new vehicles needed by police to start a canine program, and is asking the Florida National Guard to donate dogs for the program. The Allentown steering committee is also working to establish a funding stream that will provide drug detoxification to anyone that needs it, seven days a week, twenty-four hours a day.

All three pilot project Special Agent coordinators are working with local, state, and federal law enforcement agencies to maximize law enforcement's impact on reducing all crime and making the pilot project communities safer places to live. The DEA also provides specialized training to local police departments.

#### IV. FEDERAL LAW ENFORCEMENT AGENCIES FOCUS ON DRUG TRAFFICKERS

Federal law enforcement authorities investigate and prosecute the growers, manufacturers, shippers, and distributors of dangerous and addictive illegal drugs. The overwhelming majority of federal resources focus on the supply side of the illegal drug stream and target mid- and upper-level traffickers. These figures are borne out by federal sentencing statistics. In fiscal year ("FY") 2001, a total of 24,504 defendants were convicted of federal drug trafficking and drug communication offenses.<sup>35</sup> During the same

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34. See generally OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, U.S. DEP'T OF JUSTICE, OJJDP FACT SHEET: THE TEENS, CRIME, AND THE COMMUNITY INITIATIVE (2001), available at <http://www.ncjrs.org/pdffiles1/ojjdp/fs200124.pdf> (last visited Jan. 15, 2003).

35. OFFICE OF POLICY ANALYSIS, U.S. SENTENCING COMM'N, 2001, DATAFILE 2 tbl. 1 (2001) [hereinafter 2001 DATAFILE]. These categories include federal offenses prohibiting the manufacture, import, export, distribution, or dispensing of a controlled substance (or counterfeit controlled substance), or the possession of a controlled substance (or counterfeit controlled substance) with the intent to manufacture,

period, a total of 586 defendants were convicted for possession of a controlled substance.<sup>36</sup> Within the geographical jurisdiction of the United States Court of Appeals for the Third Circuit, an area comprising Pennsylvania, New Jersey, Delaware, and the Virgin Islands, a total of seventeen people were convicted of drug possession in federal court.<sup>37</sup> Nationwide, a total of 255 defendants were sentenced to federal prison for drug possession offenses, another 262 received probationary sentences, and a total of thirty received split sentences involving confinement and probation.<sup>38</sup> In the Third Circuit, a total of three defendants were sentenced to prison for drug possession, twelve were sentenced to probation, and two were sentenced to a combination of confinement and probation.<sup>39</sup> Contrary to claims by drug legalization advocates, offenders in this group were not overwhelmingly first-time offenders. Rather, offenders convicted of heroin and crack cocaine possession offenses had a median criminal history category of three.<sup>40</sup> Of-

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import, export, distribute, or dispense. This category also includes using any communication facility which causes or facilitates the commission of a federal drug felony, or furnishing fraudulent or false information concerning prescriptions, as well as any other unspecified federal drug-related offense. *Id.*

36. *Id.* Possession, for purposes of these statistics, includes possession of a controlled substance, acquiring a controlled substance by misrepresentation or fraud, and attempting or conspiracy to possess. This category also includes possession of a controlled substance on board a vessel, and possession of drug paraphernalia. Because distribution of a small amount of marijuana for no remuneration is treated as simple possession, it is also included in this category. *Id.*

37. *Id.* at 8 tbl. 5.

38. *Id.* at 7 tbl. 4.

39. *Id.* at 8 tbl. 5.

40. See Chart Depicting Median Drug Weight and Criminal History Category, Simple Possession Offenders, FY 2000-2001 (2002) (on file with author) [hereinafter Median Drug Weight]. The computation of an offender's criminal history category is based upon the U.S. SENTENCING GUIDELINES MANUAL § 4A1.1 (2001), which states, in pertinent part:

The total points from items (a) through (f) determine the criminal history category in the Sentencing Table in Chapter Five, Part A.

(a) Add 3 points for each prior sentence of imprisonment exceeding one year and one month.

(b) Add 2 points for each prior sentence of imprisonment of at least sixty days not counted in (a).

(c) Add 1 point for each prior sentence not counted in (a) or (b), up to a total of 4 points for this item.

(d) Add 2 points if the defendant committed the instant offense while under any criminal justice sentence, including probation, parole, supervised release, imprisonment, work release, or escape status.

(e) Add 2 points if the defendant committed the instant offense less than two years after release from imprisonment on a sentence counted under (a) or (b) or while in imprisonment or escape status on such a sentence. If 2 points are added for item (d), add only 1 point for this item.

fenders convicted of marijuana possession offenses possessed a median of thirty-seven grams of marijuana, far more than the single joint often claimed by advocates of legalization.<sup>41</sup>

In addition to supporting local and state drug courts, the federal statutory framework is set up to handle first time offenders convicted of non-violent drug trafficking crimes by making them eligible for the “safety-valve” provision of Title 18 of the United States Code and the Federal Sentencing Guidelines, and receive a punishment below the statutory mandatory-minimum sentences and applicable guideline sentencing range.<sup>42</sup> All federal drug offenders that provide substantial assistance to the government in the investi-

(f) Add 1 point for each prior sentence resulting from a conviction of a crime of violence that did not receive any points under (a), (b), or (c) above because such sentence was considered related to another sentence resulting from a conviction of a crime of violence, up to a total of 3 points for this item. Provided, that this item does not apply where the sentences are considered related because the offenses occurred on the same occasion . . . .

*Id.* For a complete discussion of criminal history computations, see U.S. SENTENCING GUIDELINES MANUAL, *supra*, cmt. & application notes for § 4A1.1.

41. See 2001 Datafile, *supra* note 35, at 8 tbl. 5; see also Median Drug Weight, *supra* note 40.

42. 18 U.S.C. § 3553(f) (2002), entitled “Limitation on applicability of statutory minimums in certain cases,” states:

Notwithstanding any other provision of law, in the case of an offense under section 401, 404, or 406 of the Controlled Substances Act (21 U.S.C. 841, 844, 846) or section 1010 or 1013 of the Controlled Substances Import and Export Act (21 U.S.C. 960, 963), the court shall impose a sentence pursuant to guidelines promulgated by the United States Sentencing Commission under section 994 of title 28 without regard to any statutory minimum sentence, if the court finds at sentencing, after the Government has been afforded the opportunity to make a recommendation, that—

- (1) the defendant does not have more than 1 criminal history point, as determined under the sentencing guidelines;
- (2) the defendant did not use violence or credible threats of violence or possess a firearm or other dangerous weapon (or induce another participant to do so) in connection with the offense;
- (3) the offense did not result in death or serious bodily injury to any person;
- (4) the defendant was not an organizer, leader, manager, or supervisor of others in the offense, as determined under the sentencing guidelines and was not engaged in a continuing criminal enterprise, as defined in section 408 of the Controlled Substances Act; and
- (5) not later than the time of the sentencing hearing, the defendant has truthfully provided to the Government all information and evidence the defendant has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan, but the fact that the defendant has no relevant or useful other information to provide or that the Government is already aware of the information shall not preclude a determination by the court that the defendant has complied with this requirement.

gation or prosecution of their co-conspirators or bosses can also receive a reduced sentence.<sup>43</sup> These facts establish that the federal drug sentencing laws are not being used to impose draconian sentences on first-time, non-violent, lower-level drug offenders.

Local and state law enforcement authorities similarly focus on drug dealers, and not on drug users. State criminal laws concerning

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*Id.*; see U.S. SENTENCING GUIDELINES MANUAL, *supra* note 40, § 5C1.2, entitled “Limitation on applicability of statutory minimum sentence in certain cases,” which states:

Except as provided in subsection (b), in the case of an offense under 21 U.S.C. § 841, § 844, § 846, § 960, or § 963, the court shall impose a sentence in accordance with the applicable guidelines without regard to any statutory minimum sentence, if the court finds that the defendant meets the criteria in 18 U.S.C. § 3553(f)(1)-(5) . . . .

*Id.* Defendants that meet the criteria set forth in § 18 U.S.C. 3553(f)(1)-(5) also receive a two level downward adjustment in their offense level in addition to any other downward adjustments that they may qualify for. See U.S. SENTENCING GUIDELINES MANUAL, *supra* note 40, § 2D1.1(b)(6), which states:

If the defendant meets the criteria set forth in subdivisions (1)-(5) of subsection (a) of §5C1.2 (Limitation on Applicability of Statutory Minimum Sentences in Certain Cases), decrease [the offense level] by two levels.

*Id.* It is important to note that the “safety valve” provided by 18 U.S.C. § 3553(f) frequently would have no substantial operative effect upon a “safety valve” eligible defendant’s sentence without U.S. SENTENCING GUIDELINES MANUAL, *supra* note 40, §§ 5C1.2, 2D1.1(b)(6). For a more complete discussion of § 5C1.2, see U.S. SENTENCING GUIDELINES MANUAL, *supra* note 40, background for §§ 5C1.2, 2D1.1.

43. See 18 U.S.C. § 3553(e), entitled “Limited authority to impose a sentence below a statutory minimum,” which states:

Upon motion of the Government, the court shall have the authority to impose a sentence below a level established by statute as minimum sentence so as to reflect a defendant’s substantial assistance in the investigation or prosecution of another person who has committed an offense. Such sentence shall be imposed in accordance with the guidelines and policy statements issued by the Sentencing Commission pursuant to section 994 of title 28, United States Code.

See also U.S. SENTENCING GUIDELINES MANUAL, *supra* note 40, § 5K1.1, entitled “Substantial assistance to authorities (policy statement),” which states:

Upon motion of the government stating that the defendant has provided substantial assistance in the investigation or prosecution of another person who has committed an offense, the court may depart from the guidelines.

(a) The appropriate reduction shall be determined by the court for reasons stated that may include, but are not limited to, consideration of the following:

- (1) the court’s evaluation of the significance and usefulness of the defendant’s assistance, taking into consideration the government’s evaluation of the assistance rendered;
- (2) the truthfulness, completeness, and reliability of any information or testimony provided by the defendant;
- (3) the nature and extent of the defendant’s assistance;
- (4) any injury suffered, or any danger or risk of injury to the defendant or his family resulting from his assistance;
- (5) the timeliness of the defendant’s assistance.

drug possession focus on rehabilitative and restorative programs, rather than automatic incarceration for drug users. In Michigan, as in many other states, minor drug offenders can obtain drug treatment without any judgment of conviction being entered.<sup>44</sup> First-time drug offenders charged with possession, and first- and second-time offenders charged with use, can be placed on probation and required to participate in drug treatment.<sup>45</sup> Upon successful completion of the program, defendants' records are expunged. Some claim that prisons are full of first-time offenders serving lengthy sentences for possession of small amounts of marijuana. This claim is not supported by the facts. In Michigan, for example, the penalty for the use of small amounts of marijuana is a maximum of up to ninety days in prison, or a fine of up to one-hundred dollars.<sup>46</sup> In more serious cases, Michigan judges can impose sentences below the guidelines, where the judge determines that it is appropriate.<sup>47</sup> A recent study conducted by the Michigan Department of Corrections determined that out of a state prison population of more than 47,000, only five hundred people were in prison for drug possession.<sup>48</sup> Of that five hundred, 485 had actually been convicted of multiple offenses, or had been sentenced to prison after negotiating a guilty plea to the lesser crime of drug possession.<sup>49</sup> A total of fifteen people out of population of 47,000 were in prison on first-time drug possession charges.<sup>50</sup>

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44. See MICH. COMP. LAWS ANN. § 333.7411 (West 2002).

45. *Id.*

46. *Id.* § 333.7404, entitled "Use of controlled substance or controlled substance analogue; penalties," which states:

(1) A person shall not use a controlled substance . . . unless the substance was obtained directly from . . . a valid prescription . . . .

(2) A person who violates this section as to: . . .

(d) Marihuana, is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not more than \$100.00, or both.

47. *Id.* § 333.7403(3).

48. This statistic is based upon a January 22, 2002 snapshot of the Michigan Department of Corrections Prison and Camp population. MICH. DEP'T OF CMTY. HEALTH, OFFICE OF DRUG CONTROL POLICY 2002 (on file with author).

49. *Id.*

50. *Id.* (noting that only fifteen people were incarcerated where the only charge was a low-level drug possession offense).

## V. THE PERILS OF LEGALIZATION

### A. Legalization of Marijuana or Any Other Drug Would Not Eliminate the Black Market

Marijuana is viewed by some as a harmless and safe drug.<sup>51</sup> Proponents argue that it should be legalized to eliminate the black market sale of marijuana, and associated criminal activity. Even proponents of the legalization of marijuana would prohibit the sale or distribution to minors. Even after establishing the bureaucracy necessary to license and monitor the marijuana growers, distributors and sellers, a black market would still exist to supply marijuana to minors and to others that do not want to pay for the regulated, more expensive, legal marijuana.<sup>52</sup> Because a large portion of illegal drugs are used by people under the age of twenty-one,<sup>53</sup> the black market would continue to flourish as a source of illegal drugs for minors that would not be able to legally obtain them. Sellers seeking to avoid the license or inspection fees associated with legal marijuana sales would simply sell their product on the black market. The government would be forced to spend substantial sums to ensure compliance with license and inspection protocols established to monitor the safety and purity of the marijuana.

Similar restrictions would necessarily apply to efforts to legalize all illegal drugs, including cocaine, heroin, methamphetamine, lysergic acid diethylamide (“LSD”), Ecstasy, and phencyclidine (“PCP”). Significant expenditures on drug-related law enforcement and regulation would continue. These expenditures would continue, in part, because it is unlikely that pure drugs would be allowed. In addition, absent a program of unlimited free drugs to anyone that asked for them, law enforcement would still be required to enforce restrictions on sales to minors, and to prohibit

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51. Marijuana is a Schedule I Controlled Substance. Substances listed on Schedule I have a high potential for abuse, have no currently accepted medical use in treatment, and lack accepted safety for use under medical supervision. See 21 U.S.C. § 812 (2002) (“Schedules of controlled substances.”).

52. Governments would probably choose to regulate and tax marijuana just as alcohol and tobacco. With no criminal penalties to deter sales or use, people that did not want to grow, sell, or buy taxed marijuana, would become part of the black market where the untaxed and less expensive marijuana would be obtained. Common sense tells us that black market dealers will not check age cards, or set limits on the amounts of marijuana sold to a buyer. Black market dealers will probably not maintain insurance to cover property and liability damage when one of their customers causes an auto accident while under the influence of marijuana.

53. For percentages of reported use by all age categories, see HOUSEHOLD SURVEY, *supra* note 5, at 14 fig. 2.3.

the manufacture, sale, or possession of drugs that are impure or too potent.

Considerable expenditures would also be needed to prevent unlicensed and untaxed drugs from reaching the United States to be sold on the black market. Rather than quietly going away, international and domestic criminal organizations would simply recast themselves to meet and create new drug markets. New markets might involve unregulated and untaxed, and therefore, lower priced drugs, or minors that cannot obtain drugs under the government's plan. Another new market might involve sales to drug abusers that have already consumed their "legal" allotment. It is preposterous to conclude that criminal organizations operating outside the United States would willingly forego their profits because of a plan that distributes some amount of drugs to certain authorized "consumers" of it. Similarly, domestic drug gangs terrorizing communities will shift marketing strategies to meet new demands. Drug cartels would continue to employ violence and corruption to protect their product, profit margins, and markets; law enforcement costs would continue to rise, and not become available for education or treatment.

While the violence inflicted by international cartels and domestic traffickers is significant, violence suffered by America's youth in our cities and towns would continue to devastate society. The truth is that unless all illegal drugs are decriminalized, made available upon demand, with a high degree of purity, to all people, regardless of age, and free of charge, the black market for drugs will continue to exist.

### **B. Legalization of Some or All Illegal Drugs Will Not Eliminate Drug-Related Violence and Other Drug-Related Harms**

Contrary to the claims of advocates, legalization of some or all illegal drugs will not eliminate the violence associated with drug abuse. Drug use affects one's mind, and it changes behavior. Drugs are illegal because they harm people. In 1999, there were 19,102 deaths from drug-induced causes.<sup>54</sup> In 2000, there were a

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54. DRUG CONTROL STRATEGY, *supra* note 6, at 71 tbl. 20. Causes of death attributable to drug-induced mortality used to determine this statistic include: drug psychoses (292); drug dependence (304); non-dependent use of drugs, not including alcohol and tobacco; accidental poisoning by drugs, medicaments, and biologicals; suicide by drugs, medicaments, and biologicals; assault from poisoning by drugs and medicaments; and poisoning by drugs, medicaments, and biologicals (it being undetermined as to whether these deaths were accidentally or purposely inflicted).

total of 601,776 drug-related emergency room episodes.<sup>55</sup> More than half of those arrested in 1999 tested positive for illegal drugs at the times of their arrest.<sup>56</sup> Six times as many murders are committed by people under the influence of drugs, as those committed by people who are looking to buy drugs.<sup>57</sup> Twenty-four percent of the people that assault police officers are under the influence of illegal drugs.<sup>58</sup> It was determined in the same study that seventy-two percent of police assailants had a history of drug law violations.<sup>59</sup> Other negative effects of illegal drug use are well established.<sup>60</sup> For example, a United States Postal Service study that examined twenty-nine acts of violence involving postal workers that resulted in thirty-four murders determined that twenty of the perpetrators involved had a history of substance abuse, or were under the influence of illegal drugs or alcohol at the time of the crime.<sup>61</sup> People suffering from the effects of illegal drug use will

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Drug-induced causes exclude accidents, homicides, and other causes indirectly related to drug use. Also excluded are newborn deaths associated with mothers' drug use. In 1999, the method of coding the cause of death was revised. Modified figures for 1998 were calculated based on comparability ratios for drug-induced deaths according to the revised coding method. The new coding scheme yields 19.5 percent more drug-induced deaths compared to the old system using 1998 data. The implementation of the new coding system represents a break in the trend data. For a detailed explanation of the changes to the coding system, see *id.*

55. A much larger number of cases, 1,100,539, involved emergency room episodes where drugs were mentioned. There were a total of 96,446 cases in which marijuana was mentioned; 97,287 cases in which heroin was mentioned; and 174,896 cases in which cocaine was mentioned. *Id.* at 72 tbl. 21.

56. ARRESTEE DRUG ABUSE MONITORING PROGRAM (ADAM), NAT'L INST. OF JUSTICE, 1999 ANNUAL REPORT ON DRUG USE AMONG ADULT AND JUVENILE ARRESTEES 1 (2000). In twenty-seven of the thirty-four sites monitored by the ADAM program, sixty percent of the adult male arrestees tested positive for the presence of at least one of five drugs, including cocaine, marijuana, methamphetamine, opiates, and PCP. *Id.*

57. BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, COMPARING FEDERAL AND STATE PRISON INMATES, 1991, at 10 tbl. 15 (1994).

58. FED. BUREAU OF INVESTIGATION, U.S. DEP'T OF JUSTICE, IN THE LINE OF FIRE: A STUDY OF SELECTED FELONIOUS ASSAULTS ON LAW ENFORCEMENT OFFICERS 28 (1997).

59. *Id.* at 26 fig 7.

60. For example, an estimated eight million people reported driving under the influence of an illicit drug at some time in the past year. Among young adults aged eighteen to twenty-five years, 12.4 percent drove under the influence of illicit drugs at least once in the past year. See HOUSEHOLD SURVEY, *supra* note 5, at 24. Seventy-seven percent of the eight million persons had also driven under the influence of alcohol during the same period. *Id.*

61. See Press Release, The National Center on Addiction and Substance Abuse at Columbia University, Postal Commission Releases Groundbreaking Report on Workplace Violence (Aug. 31, 2000), available at [http://www.casacolumbia.org/newsletter/1457/newsletter\\_show.htm?doc\\_id=34000](http://www.casacolumbia.org/newsletter/1457/newsletter_show.htm?doc_id=34000) (last visited Jan. 15, 2003).



continue to pose a danger to themselves and others. They will continue to commit crimes in order to get money to buy their drugs from legal or black market suppliers, or they will commit crimes to rob lawful possessors of their drugs. In any case, violent crime will continue to occur, most likely at a greater scale.

### **C. Smoking Marijuana Has No Proven Medical Benefit and It Remains a Dangerous Controlled Substance**

Before any drug can be marketed in the United States, it must undergo rigorous scientific scrutiny and clinical evaluation overseen by the Food and Drug Administration (“FDA”). This approval process ensures that claims of safety and therapeutic value are supported by valid clinical evidence, and it keeps unsafe and ineffective drugs off of the market. As a result of this established process, drugs sold lawfully in the United States are the safest in the world.

There have been suggestions that smoking marijuana<sup>62</sup> has beneficial effects for those who suffer from pain, glaucoma, nausea, and AIDS. Contrary to the claims of advocates, no medical study has established that smoking marijuana is effective in treating these or any other medical condition. There is no reason to exempt marijuana from a process that applies to every other medicine. Indeed, of the most common conditions for which some claim that marijuana may benefit patients, there are other commonly available prescription medications that are safe and more effective for treating these conditions. No matter what condition has been studied, other drugs have been shown to be more effective than inhaled marijuana.

The primary psychoactive ingredient in marijuana is delta-9-tetrahydrocannabinol, or THC.<sup>63</sup> In 1999, the Office of National Drug Control Policy commissioned the Institute of Medicine (“IOM”) to assess the potential health benefits and risks of smoking marijuana and the cannabinoids contained in it by conducting a

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62. Some of the psychological effects of smoking marijuana include a feeling of well-being, rapid mood changes, sudden anxiety and panic, reduced ability to concentrate, and impaired short-term memory. Some users experience withdrawal symptoms when they stop using marijuana, including cramping, drug craving, irritability, and mild agitation. See DRUG IDENTIFICATION BIBLE 774 (Tim Marnell ed., 2002).

63. There are over four-hundred chemical substances in marijuana, sixty-six of which are found only in the marijuana plant. These sixty-six compounds are called cannabinoids, and are responsible for the psychoactive properties of the plant. THC accounts for virtually all of the psychoactive effect in marijuana. *Id.*

review of the existing scientific evidence. Upon completing this review, the IOM concluded:

The therapeutic effects of cannabinoids are most well established for THC, which is the primary psychoactive ingredient of marijuana. But it does not follow from this that smoking marijuana is good medicine.

. . . .

Although marijuana smoke delivers THC and other cannabinoids to the body, it also delivers harmful substances, including most of those found in cigarette smoke. In addition, plants contain a variable mixture of biologically active compounds and cannot be expected to provide a precisely defined drug effect. For those reasons, there is little future in smoked marijuana as a medically approved medication. If there is any future in cannabinoid drugs, it lies with agents of more certain, not less certain, composition.<sup>64</sup>

Among the recommendations made by the IOM was that research should continue into the physiological effects of synthetic and plant-derived cannabinoids, including the effects attributable to THC alone. The IOM also recommended, in limited circumstances, clinical trials of marijuana use for medical purposes under medical supervision. The IOM stated that “the purpose of clinical trials of smoked marijuana would not be to develop marijuana as a licensed drug but rather to serve as a first step toward development of nonsmoked rapid-onset cannabinoid delivery systems.” The IOM further recommended short-term use of smoked marijuana (less than six months) under very limited circumstances for patients with debilitating symptoms, such as intractable pain or vomiting. The IOM proposed that such use of marijuana only take place under medical supervision, and in a manner that allows for assessment of treatment effectiveness.<sup>65</sup>

Since the IOM issued its report in 1999, one pilot study involving smoking marijuana has been completed, and others are expected to begin in the near future. This research, however, is in the early stages, and comprehensive data on whether marijuana is safe or effective for any indication has not been developed.<sup>66</sup> Consistent

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64. JOHN A. BENSON ET AL., *MARIJUANA AND MEDICINE: ASSESSING THE SCIENCE* BASE 177-78 (Inst. of Med. eds., 1999).

65. *Id.*

66. The DEA has granted a registration to researchers conducting a study on marijuana. See Press Release, Drug Enforcement Administration, Response to JAMA Article Titled “Marihuana as Medicine,” (June 20, 1995), available at <http://www.usdoj.gov/dea/pubs/pressrel/pr950620.htm> (last visited Jan. 15, 2003).

with the foregoing statements by the IOM, researchers are currently attempting to develop safe methods of delivering THC in precise dosages, such as inhalants, dermal patches, and suppositories. Such products would be designed to deliver fixed quantities of THC in a known product formulation, rather than smoking or ingesting the entire marijuana plant, and all of its chemical components in unspecified amounts.

As a result of legitimate research, a drug containing synthetic THC, Marinol®, has been approved by the FDA, and available to the public since 1985. Marinol® contains only one active ingredient, synthetic THC, in a gelatin capsule. Importantly, the THC in Marinol® is pure and each capsule provides a consistent amount of active ingredient.<sup>67</sup> In addition, Marinol® has undergone rigorous scientific scrutiny and review to determine its safety, efficacy, and therapeutic benefits in medical treatment as a THC-containing product.

In contrast, the marijuana plant contains over four-hundred different chemicals. Studies of marijuana suggest that the health risks associated with smoked marijuana outweigh any of its potential benefits. Regular marijuana smokers suffer from many of the same problems as tobacco smokers, including daily cough and phlegm, chest colds, and chronic bronchitis.<sup>68</sup> Moreover, marijuana may be a risk factor for lung cancer, in that it contains up to four times the tar as tobacco smoke.<sup>69</sup>

A review of research comparing THC to other analgesics or placebo, published by the *British Medical Journal*, concluded that cannabinoids are no more effective than codeine in controlling pain.<sup>70</sup> Cannabinoids also have depressant effects on the central nervous system, such as dizziness, numbness, and disorientation which occur more frequently than with codeine. THC has also been compared to a common prescription drug used to increase the appetites of cancer and HIV patients. The prescription drug was more effective than THC for both groups. In a cancer patient study, THC was only slightly better than the placebo. In other words, the pa-

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67. It is interesting to note that just as the medical community regulates morphine, rather than recommending patients smoke opium, Marinol® is the better choice for ill persons, rather than smoking marijuana.

68. MARIJUANA AND MEDICINE, *supra* note 64, at 113.

69. *Id.* at 111.

70. See Fiona A. Campbell et al., *Are cannabinoids an effective and safe treatment option in the management of pain? A qualitative systematic review*, 323 BRIT. MED. J. 1, 4 (July 2001), available at <http://bmj.com/cgi/reprint/323/7303/13.pdf> (last visited Jan. 15, 2003).

tients who received no drug at all showed an improved appetite nearly as often as did the patients who received THC.

On June 19, 2001, the American Medical Association (“AMA”) rejected an attempt to amend their policy regarding marijuana. Current AMA policy recommends that marijuana remain a Schedule I controlled substance while research on marijuana is ongoing.

The placement of marijuana in Schedule I has been affirmed by the courts. In upholding the DEA’s continued placement of marijuana in Schedule I in 1994, the United States Court of Appeals for the District of Columbia Circuit stated in *Alliance for Cannabis Therapeutics v. Drug Enforcement Administration*<sup>71</sup> that:

[O]ur review of the record convinces us that the [DEA] Administrator’s findings are supported by substantial evidence.

. . . .

The Final Order [retaining marijuana on Schedule I] canvasses the record at length. It recites the testimony of numerous experts that marijuana’s medicinal value has never been proven in sound scientific studies. The Administrator reasonably accorded more weight to the opinions of these experts than to the anecdotal testimony of laymen and doctors on which petitioners relied.

. . . .

These findings are consistent with the view that only rigorous scientific proof can satisfy the CSA’s “currently accepted medical use” requirement.<sup>72</sup>

The United States Supreme Court recently affirmed that marijuana has no accepted medical use under federal law, and stated that the CSA “reflects a determination that marijuana has no medical benefits worthy of an exception (outside the confines of a Government-approved research project).”<sup>73</sup>

In 2001, the DEA again examined the scientific evidence regarding marijuana in consultation with the FDA. After extensive review of the medical and scientific literature, the FDA advised the DEA that marijuana continued to meet the criteria for placement in Schedule I. Based on the findings and recommendation of the FDA that marijuana remain in Schedule I, and all other relevant

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71. 15 F.3d 1131 (D.C. Cir. 1994).

72. *Id.* at 1137.

73. *United States v. Oakland Cannabis Buyers’ Coop.*, 532 U.S. 483, 491 (2001).

data, the DEA declined to initiate rulemaking proceedings to reschedule marijuana.<sup>74</sup>

Utilizing the process mandated by law, the federal government has, and will continue to approve legitimate scientific research to study whether, and in what form, marijuana should be approved for medical use. As a result of this established process, drugs sold lawfully in the United States are the safest in the world. This is precisely because our nation, through its laws, has insisted on careful and scientific deliberation before allowing drugs to be approved for marketing. The current FDA approval process has protected the public for decades, and serves as the model for many other nations. There is surely no justification to exempt marijuana from a process that applies to every other medicine before being used by the public.

## **VI. OUR EFFORTS TO SOLVE THE PROBLEM OF ILLEGAL DRUGS INVOLVES NEW IDEAS**

Local, state, and federal governments are employing new ideas in solving illegal drug use. While law enforcement is taking advantage of the latest technology to acquire and share information, all levels of government are implementing new ideas to address drug use and addiction. Since such a large portion of all defendants have been involved in some form of drug use, criminal justice agencies are incorporating effective drug treatment programs into their programs, and judges are fashioning sentences that include an opportunity to treat drug addiction. Defendants facing minor drug or other non-violent criminal charges are given a rehabilitation option to work toward a better, drug-free life. These defendants are given opportunities to learn job skills, perform community service, undergo drug treatment with accountability, and, if successfully completed, have their record expunged. The National Drug Control Strategy, as explained above, includes more funds than ever to provide drug use prevention education and treatment. These efforts at prevention are multifaceted, offering programs to people in many different circumstances. The Strategy funds treatment for pregnant mothers, to offer a healthy, drug-free life to mother and child. It provides money to get the anti-drug message out to a large segment of our population through a targeted media campaign, and also provides funding for treatment to prisoners. Importantly, the

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74. The scientific and medical evaluation by the United States Department of Health and Human Services, and the DEA's decision to leave marijuana in Schedule I, are published in the Federal Register at 66 Fed. Reg. 20,038 (Apr. 18, 2001).

Strategy does not exclude anyone from treatment and encourages a return to a productive, rewarding life.

New ideas are not limited to big, far-reaching programs with large budgets. DEA's Integrated Drug Enforcement Assistance program puts a face on government by placing trained and experienced DEA Special Agents in communities. These Special Agents partner with civic, business, government, and religious leaders to solve drug problems and the underlying circumstances that breed drug abuse.

We should not forget that those most at risk are our young people. The National Household Survey on Drug Abuse found that out of the 15.9 million illegal drug users twelve or older,<sup>75</sup> young people ages fourteen to twenty-five are the largest percentage users of illegal drugs, and that there is a significant drop in the reported use of illegal drugs after the age of twenty-five.<sup>76</sup> For example, 10.9 percent of children fourteen-or fifteen-years old report illegal drug use in the past month.<sup>77</sup> Among young people ages sixteen or seventeen, 17.8 percent report illegal drug use in the period.<sup>78</sup> Among youth age eighteen to twenty,<sup>79</sup> 22.4 percent reported illegal drug use, and 16.3 percent of young people age twenty-one to twenty-five report illegal drug use.<sup>80</sup> Everyone agrees that individuals who grow, manufacture, distribute, or sell illegal drugs that find their way to these young people should face severe criminal penalties.

Common sense dictates that once the criminal penalties are removed for drug trafficking offenses, the flow of drugs to young people will increase substantially, with dire consequences. Children and young people going through the formative years of their lives will be surrounded with mind- and personality-altering drugs. While the percentage of overall illegal drug users at present is relatively low, the potential harms caused by illegal drugs is high. A single airplane pilot, train engineer, or eighteen-wheel truck driver doing her job while impaired by a mind- or personality-altering

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75. HOUSEHOLD SURVEY, *supra* note 5, at 12-14 figs. 2.2-2.3.

76. *Id.* at 15-17 figs. 2.5-2.8. Overall, 4.5 percent of adults age twenty-six or older reported using an illegal drug in the past month. *Id.* at 17 fig. 2.8.

77. *Id.* at 14 fig. 2.3.

78. *Id.*

79. *Id.*

80. *Id.*

drug poses a much greater danger to public safety, than one who is drug free.<sup>81</sup>

### CONCLUSION

People who know the facts and understand the problem realize that a small percentage of the population uses drugs. The solution to drug abuse is vigilance coupled with thoughtful planning and action; we should not surrender to the problem. It is always interesting to look at issues from a theoretical standpoint. The reality is that drugs are illegal because they are dangerous.<sup>82</sup> They cause pain and suffering to individuals and families, as well as neighborhoods and communities, and cost our society substantial sums of money.<sup>83</sup> There is no reason to think that allowing the free flow of any mind altering illegal drug in America would reduce the number of users or addicts, or reduce the overall cost of protecting our citizens from its harms.

Common sense tells us that we must work to reduce the number of people using illegal drugs. Legalization would substantially increase the number of people in school or college, at work, or in business, who would suffer the residual effects of a drug that has no useful purpose. At a time when we are working to improve public health by reducing alcohol and tobacco use by teens, when we check identification before we sell cigarettes or alcohol to someone, it seems counterintuitive that a small but vocal minority is

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81. See *National Institute for Drug Abuse*, at [http://www.nida.nih.gov/NIDA\\_Notes/NNVol11N1/Marijuana.html](http://www.nida.nih.gov/NIDA_Notes/NNVol11N1/Marijuana.html) (last visited Jan. 15, 2003) (noting several studies discussing the impairment of balance and coordination caused by marijuana alone, as well as marijuana and alcohol together).

82. For example, prolonged use of cocaine and crack cocaine causes physical and psychological problems, including aggression, paranoia, hallucinations, seizures, heart attacks, strokes, and suicidal behavior. Cocaine is a psychologically addictive stimulant, causing severe addiction in one in ten users. Ecstasy alters sensory perceptions, including touch, vision, and hearing. The most common long-term effects of Ecstasy use include anxiety, depression, paranoia, confusion, irritability, and sleep disturbances. Heroin users quickly develop a tolerance to heroin and larger doses are required to reach a euphoric high, which, in turn, wears off more quickly. Some of heroin's effects include respiratory depression, constipation, drowsiness, loss of coordination, mental clouding, and slow, slurred speech. If a heroin addict is unable to obtain a dose of heroin, symptoms of withdrawal begin within twenty-four to seventy-two hours. Some common signs of withdrawal include agitation and restlessness, depression, muscle pain and spasms, and stomach cramps. See *DRUG IDENTIFICATION BIBLE*, *supra* note 62, at 723, 746, 796.

83. Estimated costs to society of drug abuse in 2000 are a total of \$160.664 billion dollars, including \$14.899 billion in health care costs, \$110.491 billion in productivity losses, and \$35.274 billion in other costs. See *DRUG CONTROL STRATEGY*, *supra* note 6, at 70 tbl. 18.

working to create a society in which there is free access to the chemicals that we know are dangerous to individuals and society.

The facts on this issue make a strong case for a national policy geared toward effective drug abuse education and prevention, and treatment for people dependent on illegal drugs. Our nation should also continue to conduct research to determine the most effective means of educating children and youth about the dangers of illegal drugs and the best ways to rehabilitate illegal drug users. On the supply side, the criminal justice system should continue to impose sanctions on people and organizations that are in the business of growing, manufacturing, transporting, and distributing illegal drugs.

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**DRUG ENFORCEMENT ADMINISTRATOR  
ASA HUTCHINSON**

Asa Hutchinson served as the Administrator of the Drug Enforcement Administration from August 2001 to January 29, 2003. On January 29, 2003, he was sworn in as the Under Secretary for Border and Transportation Security in the newly created Department of Homeland Security.

Mr. Hutchinson was born on December 3, 1950, in Gravett, Benton County, Arkansas. He graduated from the University of Arkansas School of Law in 1975 with a Juris Doctor. After graduation, he practiced law in Bentonville, Arkansas. From 1977 to 1978, he served as Bentonville City Attorney. In 1982, President Ronald Reagan appointed Mr. Hutchinson to serve as the United States Attorney for the Western District of Arkansas, making him the youngest U.S. Attorney in the country at the time. Mr. Hutchinson served until 1985, before entering private practice. From 1986 to 1996 he was a member of Karr and Hutchinson, a private law firm, in Fort Smith, Arkansas. He has tried more than one hundred jury trials.

On November 5, 1996, he was elected to represent Arkansas' Third Congressional District in the U.S. Congress. In Congress, Mr. Hutchinson was a member of the Select Committee on Intelligence as well as the Judiciary, Government Reform, Transportation and Infrastructure, and Veterans Affairs Committees. He served on a total of six Subcommittees, including the Subcommittee on Criminal Justice, Drug Policy and Human Relations, as well as the Speaker's Task Force for a Drug Free America, a group charged with finding new approaches to reduce drug use among



the nation's youth. He was serving his third term in Congress when President George W. Bush nominated him to serve as Administrator of the Drug Enforcement Administration. Mr. Hutchinson was confirmed by a 98 to 1 vote in the U.S. Senate on August 2, 2001.

As Administrator of the DEA, Mr. Hutchinson focused enforcement efforts on top-level drug trafficking and money laundering organizations and advocated increased prevention and treatment programs. He developed and launched the Integrated Drug Enforcement Assistance Program, which combines law enforcement action with community prevention efforts to keep neighborhoods safe and drug free. He has engaged in public debates arguing against legalization of drugs and has been a visible spokesperson on the need for a balanced drug policy that combines demand reduction, enforcement, and treatment. In addition, he has advocated the use of drug treatment courts for non-violent drug offenders that combine drug treatment and strict accountability to successfully rehabilitate addicts.

On November 25, 2002, President George W. Bush announced his intention to nominate Mr. Hutchinson as Undersecretary of Border and Transportation Security at the new Department of Homeland Security.

Mr. Hutchinson is married. He and his wife Susan have four children and two grandchildren.