



JAMES A. BAKER III INSTITUTE FOR PUBLIC POLICY
RICE UNIVERSITY

THE WAR ON DRUGS HAS FAILED.
IS LEGALIZATION THE ANSWER?

MARCH 2012 CONFERENCE REPORT

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The War on Drugs Has Failed. Is Legalization the Answer?

Introduction

No one doubts that drugs, explicitly including alcohol and tobacco, can cause enormous harm, can ruin the lives of those who use them and those whose lives the users touch, are implicated in a wide range of crimes, and are associated with activities that enrich criminals, endanger innocent citizens of numerous countries, involve and fund terrorism, and threaten or seriously undercut the development and practice of democracy. There is, however, considerable disagreement over the nature and extent of that harm, the factors that contribute to its many facets, and the best ways to go about addressing the numerous issues that cluster together under the umbrella of “The Drug Problem.”

For more than a century, U.S. drug policy has been based on the concept of prohibition, on the desire for a “drug-free America” with “zero tolerance” for drug users, producers, and traffickers. For the last 40 years, it has been known as the War on Drugs. It is truly a war, with all the hallmarks of war: displaced populations, disrupted economies, excessive violence, terrorism, the use of military force, the curtailment of civil liberties, and the demonizing of enemies. And, like other wars we have been engaged in over this same period, victory has been elusive. In fact, many argue that our policies of criminalization, which include crop eradication, interdiction, and incarceration, not only fail to affect the supply of drugs, but also greatly exacerbate the problems.

Prosecution of illegal drug consumption has filled our prisons without significantly reducing crime, decreasing homelessness, preventing overdose deaths, diminishing the spread of HIV/AIDS, or undermining the illegal drug market.

We do not live in a drug-free America. We never have and we never will. In addition to the legal pharmacopoeia, which runs from Oxycontin, Vicodin, Xanax, Prozac, Ritalin, Lunesta, Cialis, Valium, Lamisil, Advil, and 5-Hour Energy Drink to alcohol, nicotine, and caffeine, illicit drugs are used in various combinations by huge numbers of citizens.

Rice University’s Baker Institute Drug Policy Program pursues research and open debate on local and national drug policies in the hope of developing pragmatic policies based on common

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sense, driven by human rights interests, and focused on reducing the death, disease, crime, and suffering associated with drug use.

On March 8-9, 2012, in a lively conference titled “The War on Drugs Has Failed. Is Legalization the Answer?,” established experts representing a variety of positions, perspectives, and experiences explored the wisdom, efficacy, economic sense, and justice of policies that prohibit some drugs and punish their use quite harshly, while allowing other drugs of equal or potential danger to be regulated, legally sold, and aggressively promoted.

Rick Steves: A European Take on Marijuana

The conference opened on Thursday evening, March 8, with a keynote address by popular travel writer and television/radio broadcaster Rick Steves, who spoke on “Travel as a Political Act, with a European Take on America’s War on Marijuana.” After touting the ability of travel to other cultures to broaden one’s perspective and understanding, Steves asserted that much of the fear in American society, including the fear of drugs, “is among people who don’t get out much.” Our drug policies, he said, reflect a lack of awareness of proven alternatives to U.S. prohibition and punishment of non-medical use of marijuana and other illicit drugs.

Focusing primarily on marijuana—he is a longtime member of the board of the National Organization for the Reform of Marijuana Laws (NORML)—Steves described in detail the Netherlands “coffee shops” where adults—no minors are allowed in the establishments—can purchase and use marijuana and hashish without fear of arrest, even though the drugs are not technically legal. Despite imperfections in the system, particularly “pot tourism” in border cities, the results have been impressive. The Dutch are somewhere in the middle of marijuana use among European countries, almost no one has been arrested for personal marijuana use or possession in 25 years, and the use of harder drugs such as cocaine and heroin is significantly lower than in the United States. (According to a 2008 World Health Organization survey, U.S. cocaine use is more than eight times higher than in the Netherlands.—Ed.)¹ A key to that finding

¹ “U.S. Leads The World In Illegal Drug Use,” *CBSNews.com*, July 1, 2008, http://www.cbsnews.com/2100-500368_162-4222322.html.

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is that the coffee shops serve as a firewall between “soft” and “hard” drugs, which are strictly prohibited and aggressively policed.

Instead of imagining that the only options are to be *hard* on drugs or *soft* on drugs, Steves said Americans should follow European examples of being *smart* on drugs. While acknowledging that marijuana is not healthy, can be abused, can be addictive for some heavy users, should not be used by kids, and should be subject to the same driving under the influence (DUI) regulations as those for alcohol, he asserted that “responsible adult recreational use” should be a matter of civil liberty, not subject to criminal penalties, absent harm to others. “I believe the war on marijuana is based on fear and lies,” he said. “It’s the wrong-minded prohibition of our generation. It is counterproductive. It must be ended. It is time for caring people to think and talk more about it.”

Steves concluded with, “Happy travels—even if you’re just staying home.”

Examining the Premise: Is the War on Drugs a Failure and Is Legalization the Answer?

On Friday, March 9, the opening session featured a debate between Ethan Nadelmann, executive director of the Drug Policy Alliance and widely regarded as the leading figure in the movement to reform U.S. drug policy, and John Coleman, former key administrator within the Drug Enforcement Administration and president of Drug Watch International.

Stipulating that he is not “a dyed-in-the-wool libertarian” who believes all drugs should be legal, Nadelmann contended that U.S. policies of punitive prohibition have spawned crime, violence, corruption, adulterated drugs, disease, and the highest rates of incarceration in the world, all without making a significant dent in rates of use of illicit drugs. Noting that illicit drugs are global commodities for which there is a widespread demand that will inevitably be met, he asked, “Will we try to regulate sensibly or not? Do we have the guts and intellectual integrity to move in a new direction?”

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Nadelmann conceded a lack of public support for legalizing any currently illicit drug other than marijuana, but said various measures can be taken to reduce such harms of drug use as overdose deaths and the spread of blood-borne diseases by injecting drug users, and also to reduce the negative consequences of policies that have resulted in an overflow prison population and the empowerment of gangsters. Many of these harms could be alleviated by treating drug use and abuse as a health issue rather than as a crime.

In response, John Coleman observed that Congress and state legislatures have the power to pass laws regarding the production, sale, and use of drugs and that citizens are obliged to obey those laws whether they agree with them or not. He further noted that when states pass laws in “positive conflict” with laws passed by Congress, federal law prevails, and that international treaties made under the authority of the United States—the 1961 United Nations Single Convention on Narcotic Drugs is the specifically relevant example—supersede any laws by states or Congress.²

Coleman called into question positive assessments by media and advocacy groups regarding medical marijuana and the changes in drug policy being implemented in other countries (see Alex Stevens presentation, below). He noted that legal, carefully regulated drugs are widely abused and cause more overdose deaths than illegal drugs, and asked how successful we could expect to be at designing a program restricting access to now-illegal drugs that are being misused at higher rates than street drugs.

Coleman concluded by urging people to do their own unbiased research and to be skeptical of biased claims by pro-legalization advocacy groups. He contended that the War on Drugs has not failed, asserting that drug abuse rates in the United States are far below rates in the 1970s and 1980s. Anticipating issues that would arise later in the day, Coleman closed by blaming the current drug-related violence in Mexico on historically lax drug laws and said, “Poisoning more Americans by legalizing drugs in return for less violence in Mexico is a dubious and senseless proposition.”

² For documents relevant to Coleman’s statements, see Section 903 of the U.S. Controlled Substances Act, available at <http://www.deadiversion.usdoj.gov/21cfr/21usc/903.htm>; Article 6 of the U.S. Constitution, available at <http://www.usconstitution.net/const.html#Article6>; and *Single Convention on Narcotic Drugs–1961*, available at http://www.incb.org/pdf/e/conv/convention_1961_en.pdf.

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In the exchange following their opening statements, Nadelmann pointed out that the shift in sentiment favoring legalization of marijuana, from 36 percent in 2006 to 50 percent in 2011—opposition dropped from 60 percent to 46 over the same period—is quite significant. He conceded that legalization would probably cause some rise in usage, but noted that it would still be illegal for people under 21 and stressed that he hopes it would not lead to aggressive promotion—the “Marlboro-ization” or “Budweiser-ization”—of the drug. Citing estimates that legalization could save \$10 to 12 billion a year in enforcement costs and bring in additional billions in tax revenue, reduce prison population, and cut deeply into the revenue of Mexican drug cartels, he said, “It looks much more sensible than the current policy.”

While he agreed that it is not good for people to be incarcerated for drug use alone, Coleman stressed the need for solid scientific evidence about marijuana before deciding to legalize it. “I’m not saying it’s a gateway [to use of harder drugs],” he conceded. “We don’t have the evidence for that. But we need to be skeptical of the conclusion that marijuana is a harmless drug and should be sold over the counter to everybody.”

Coleman admitted he had often been critical of government anti-drug programs, including at times the Drug Enforcement Administration (DEA) and the White House Office of National Drug Control Policy (ONDCP, whose directors have been known as the “drug czars”). Still, he said, “I would rather improve rather than disassemble the whole apparatus. The efforts of government, the private sector, and parent organizations do make a difference. With nothing, I think we would have more of the tragedies. Can we improve? Of course.”

Nadelmann responded by contending that the War on Drugs not only has failed to protect young people from drugs, but has made it more likely they would go into the black market and be exposed to drug-related violence, particularly in poor communities. “For every kid who says prison helped him get off drugs and straighten up, there are five or 10 who will say the War on Drugs pushed them in deeper.” He concluded the session by citing increasing efforts in Latin American countries to move beyond “the failed global prohibition regime of the 20th century to a new 21st century drug regime that is more grounded in science, compassion, human rights,

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[and] health. It's not about the free market or letting everything fly. It's about building a sensible regulatory system."

Law Enforcement Perspectives

The following session featured Houston Police Department (HPD) Executive Assistant Michael Dirden, Harris County District Attorney Patricia Lykos, Harris County Criminal Court Judge Michael McSpadden, and Russell Jones, representing Law Enforcement Against Prohibition (LEAP). Dirden, Lykos, and McSpadden all began their segments by addressing the burden stringent drug laws have imposed on the police, the prosecutor's office, and the courts. In 2006, troubled by watching "countless thousands and thousands of people" receive felony convictions for trace amounts of hard drugs, punishable by up to 20 years in state jail or prison, conservative Republican judge McSpadden petitioned Texas governor Rick Perry and the state legislature to lower the offense for possession of less than one gram of a controlled substance to a Class A misdemeanor, punishable by no more than a year in county jail. "In my own mind," he explained, "it was too harsh a penalty for the offense [for that amount] because a felony will stay with that person the rest of his life and never ever goes away. It also clogs the courts." At that time, he said, "Approximately 30 percent of all our cases [in Harris County criminal courts] were for less than one gram. We need to spend more time on murders, sexual assaults, robberies, your more violent offenses."

That request went unheeded in the 2007 session, as similar letters did in subsequent sessions, but by 2011, 18 of Harris County's 22 district judges, mostly Republicans, in the county had signed on to McSpadden's petition. "It is really unusual," he noted, "to have that many judges from both parties say it was not fair and that we needed to change the law." Once again, the legislature declined to make the change, but the effort had an impact. Soon after taking office in 2008, district attorney Lykos announced that her office would no longer prosecute "trace cases," resulting in a 60 percent reduction in cases involving less than one gram. Aware that such a decision would be controversial, Lykos met with the command staff of the police and sheriff's department and with the Harris County Criminal Justice Counsel, laying out her proposal. "There were no objections," she said. "When someone is arrested for a trace case, that officer is out of

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service for two or three hours. The neighborhood is unprotected for that period.” Given an overcrowded jail and overcrowded dockets, and the lasting effects of a felony conviction on a young person, she told police officers to ignore trace cases and to arrest dealers, suppliers, bulk cash couriers, and others higher in the supply chain.

Several city and county police unions sharply and publicly objected to the new policy, charging that taking crack users off the street lowered rates of theft, robbery, and other crimes. Lykos, facing a reelection challenge in November—she was defeated by a retired judge in the GOP primary in May 2012—pointed out that she still had the backing of the leaders of the police and sheriff’s department but that “The union bosses are unhappy with me” because of the loss of overtime pay for booking arrests and going to court.” Dirden agreed: “The publicized conflict between the DA and HPD ... is with the Houston Police Officers Union, not the department itself. The department is very cooperative with the DA. We are in one accord on that particular issue with respect to how it affects our use of police resources.”

There was less unanimity regarding the conference premise, “The War on Drugs Has Failed.” Dirden noted that open-air drug markets, common in Houston and across the country, have been greatly reduced by the combined efforts of enforcement, interdiction, and education. Further, violence related to narco-trafficking has diminished in inner cities. He acknowledged, however, that anti-drug efforts have not been as successful as hoped and that failure to reduce American appetites for illegal substances has helped fuel the violence in Mexico, as cartels fight over routes into the United States.

Lykos also denied that the War on Drugs has been a failure, despite acknowledging that the strategy has been flawed. Using dramatic before-and-after photos, she called attention to the devastation methamphetamines can cause, and pointed out that some of the most dangerous drugs available are legal drugs such as Vicodin and Xanax and analog drugs coming from China and India. What is needed, she said, is careful examination of and concentration on transnational criminal organizations involved in drug trafficking. “We are going after the big guys,” she promised. “We’re going to cut off the head of the snake.”

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McSpadden was less optimistic: “The so-called War on Drugs has not worked. No question about that. We are treading water at best.” He suggested that, since efforts to reduce demand have fallen short, the most promising approach would be to work more effectively to curb supply, to identify producing and transporting nations and threaten them with loss of foreign aid and other economic sanctions, and to put the military at our borders to keep the drugs out. He admitted, however, “It doesn’t look like any administration is ever going to take those measures.”

Russell Jones, former police officer, undercover narcotics detective, DEA agent with wide international experience, and academic who has written training programs for law enforcement regarding drug abuse, but now a leading spokesman for LEAP, asserted that the root problem is not the drugs, but their prohibition, which has left the production, distribution, and sales of the drugs in the hands of criminals. “And there’s only one question they have of our kids: ‘Have you got the money?’ They are selling a product of unknown quality and unknown strength and they’re killing people.” Alluding to similar problems with alcohol during Prohibition, he asked, “When is the last time you heard of a drive-by shooting between Coors and Bud Light? Or of Marlboro hiring 12-year-old kids to run tobacco from one street corner to another? Street gangs are not distilling alcohol and selling it to our kids in a parking lot. The cartels are not growing tobacco in our state and federal parks. Street gangs are not doing any of that because those products are regulated. Street gangs cannot compete financially with a regulated product.”

Jones also noted that “the War on Drugs has resulted in more snooping, sneaking, prying, trapping, lying, corruption, and violence than any other act of Congress.” Though it was supposed to reduce death, disease, crime, and drug use, drugs today are cheaper, stronger, more plentiful, and more people are using. Further, the effects of drug prohibition are often far worse than the effects of drug use. “You can treat addiction. A conviction is going to follow you the rest of your life. If you use drugs today and are never convicted—“a youthful indiscretion”—you can become a doctor, a lawyer, a politician.” With a criminal record, those doors, and many others, will be closed. A politician’s acknowledgement of youthful experimentation with marijuana, or even cocaine, no longer surprises and may even bring giggles from an audience. “It is not funny to the 38 million people who have been arrested because of this policy, saddled with a drug conviction for the rest of their lives.”

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Nothing short of a fundamental change in U.S. drug policy can hope to succeed, Jones contended. Such measures as reducing drug use from a felony to a misdemeanor or paying less attention to “trace cases” are “[like saying] the Emperor has no clothes and putting a hat on him ... Talk of decriminalization and softening our methods of enforcement have honorable intentions. Harm reduction keeps everyone happy. It convinces those who recognize we have a failed policy that progress is being made. The narcotics enforcement crowd is still happy because they are still in the business of arresting drug dealers. The prison industry is still happy because people are still in prison. And drug cartels are still happy because they are still selling drugs. They still control it. We are leaving the recreational drug business in the hands of the cartels.” As for an oft-recommended approach known as “decriminalization,” Jones said it would in fact strengthen the drug cartels’ position, because it typically decriminalizes only possession and use, not production and sales. “We need to fight this war economically,” he argued. “We need to legalize and strictly regulate. Yes, we need to cut the heads off the drug cartels and we will do that by taking the business away from them just as we took business away from the alcohol cartels when we legalized alcohol. We put the Meyer Lanskys, the Machine Gun Kellys, the Al Capones out of business.” The money saved could be used to educate the public about the dangers of drug use. Noting that education and regulation of tobacco have reduced usage from over 40 percent to less than 20 percent today, he pointed out that “We have done that without kicking in any doors, without shooting anyone, or throwing anyone in jail.”

In the discussion period, Dirden, Lykos, and McSpadden all expressed concern, differing in degree, that legalizing drugs would lead to increased use. McSpadden said, “If we start [legalizing a drug], marijuana would be the best bet.” Lykos and Dirden both expressed reservations about legalizing crystal meth and cocaine, citing destruction wrought by both drugs, particularly in poor communities. William Martin, director of the Baker Institute Drug Policy Program and moderator of the panel, pointed out that the huge annual National Survey on Drug Use and Health (NSDUH), conducted by the Substance Abuse and Mental Health Services Administration and the primary source of official information about substance abuse in the United States, provides reason to question fears of runaway drug abuse if prohibition were lifted in favor of a system of sensible regulation. He noted that alcohol is by far the country’s most problematic drug, accounting for approximately two-thirds of all drug use disorders by itself and

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also intertwined with abuse of other drugs. More than 80 percent of people with a substance abuse disorder (SUD) related to major illicit drugs of abuse also have a lifetime alcohol-use disorder. Further, the pattern of drug use and abuse by age, for both alcohol and illicit drugs, is similar, rising slowly during adolescence, reaching a peak at about ages 20-21, tapering off sharply, then declining steadily over the decades. Only about 7 percent of people in the United States aged 26-plus have an SUD; 5 of that 7 percent are for alcohol only, 1 percent for alcohol plus other drugs, and only 1 percent for illicit drugs only. Even more striking, approximately 90 percent of those adults developed their SUD in adolescence. The War on Drugs, he said, ignores the fact that not all use is abuse, that alcohol causes far more problems than all other illicit drugs, and that 90 percent of lifetime SUDs develop before age 18, when virtually all the abused drugs are illegal for them. Substance abuse, explicitly including alcohol, is real and problematic, but given the commonalities between the use and abuse of alcohol and the use and abuse of other drugs, Martin said, it is difficult to understand why we treat one set of behaviors as a health problem and another set as crimes.

Marijuana

The third morning session focused exclusively on marijuana and featured a debate between Russ Belville, outreach coordinator for the NORML, and Kevin Sabet, former senior adviser to the ONDCP.

Belville began by acknowledging that he had long been a daily user of marijuana, which he had found to be much milder than alcohol, and was probably in little danger of getting into legal trouble for it, “but the law is there.” Under federal law, possession of even a tiny amount of the drug can carry a one-year prison term and a \$1,000 fine. Growing a single plant can result in a five-year prison term and a \$250,000 fine. Growing significantly more plants can, theoretically, bring a death penalty. Under federal law, he said, “You can smoke cigarettes until you get lung cancer or drink Crown Royal until you pass out, but if you want to smoke pot and that makes you want to eat Funyuns [onion-flavored snacks], we will put you in a cage. I think that’s fundamentally wrong.” Marijuana, he insisted, is far less harmful and qualitatively different from “the hard drugs that really are the face of death.”

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Citing television commercials for beer, Viagra, and anti-depression drugs, Belville observed that the “War on Drugs” is a misnomer. “We celebrate drugs! Even the Evil One, tobacco, we at least tolerate ... It’s just some drugs and some people,” overwhelmingly minorities without the “complexion of protection.” As for whether the War on Drugs has failed, he asked, “Failed at what?” and noted that it has been a tremendous success for pharmaceutical companies that don’t have to face competition from cheap medical marijuana, for the private prison industry, and the under-skilled and under-educated people who work as guards in prisons packed with violators of drug laws. He conceded that legalizing marijuana might entice some people to use it, but said, “People are smoking pot now and we haven’t seen much harm from that.” Beyond that, he said, “I reject the entire premise that it is any of the government’s business or desire to stop me from smoking pot,” given that he has long been an employed tax paying citizen doing complex brain work and causing no trouble. “One hundred and two million people have tried marijuana; 26 million will smoke pot this year. There is nothing to fear about us. Smoking pot is not going to cause us to run riot in the streets or start shooting or anything like that ... We must ask if this is really worth doing.”

Kevin Sabet addressed claims that legalizing marijuana would be an economic boon, reducing costs of law enforcement and producing significant tax revenue. While tax revenue from the sale of alcohol amounts to \$14 billion per year, the costs of alcohol harms are estimated to be \$185 billion. For tobacco, the figures are \$25 billion and \$200 billion. He predicted similar results if marijuana were to be legalized. He also challenged the belief that legalization would strike a deathblow to cartels. “Transnational criminal organizations,” the term he prefers to “cartels,” are involved in kidnapping, extortion, piracy, and “things you would not have imagined 10 years ago.” He cited a RAND Corporation study estimating that state-level legalization in California would have only a 2 to 4 percent negative impact on these organizations. Further, he said, Mexico’s problems involve weakness of legal institutions and the rule of law itself, as well as problems of inequality, education, and health care. “Legalization of marijuana is not going to stop all that.”

Citing the experience other countries have had with regimes other than prohibition, Sabet said that oft-cited examples of success, with the Netherlands as the prime example, are misleading. It

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is true that the Netherlands has lower rates of marijuana use than the United States, but the Dutch have always had lower usage rates, as have most other Western countries. He noted that after the coffee shops were allowed to expand commercialization somewhat, marijuana use increased threefold among young adults. Given a Supreme Court ruling classifying commercial speech as free speech, he doubted efforts to limit aggressive commercialization of the drug would succeed.

Addressing issues highlighted in Michelle Alexander's book, *The New Jim Crow: Mass Incarceration in an Age of Colorblindness* (the subject of an afternoon session; see below), Sabet acknowledged that police abuses exist, that "a brown or black kid smoking on the stoop in public" is more likely to get arrested than "a white kid smoking in Grandma's basement," and that inequities in enforcement need to be taken seriously. He also called saddling people convicted of petty offenses with a lifetime stigma "a travesty." But he reported that ONDCP's careful examination of arrest and conviction records did not support claims of widespread incarceration for marijuana possession alone or that drug convictions accounted for the lion's share of prison growth. "We are not breaking down doors on suspicion of marijuana possession alone," he said. "If we were doing that, it would be easy. [We could just] go to any college campus, knock on dormitory doors, and find a lot of offenders. That is not what we are doing. This is not a focus for police resources."

Sabet acknowledged that marijuana is neither as dangerous nor as addictive as some drugs, specifically including tobacco and alcohol, that it causes nowhere near the damage of a drug such as PCP, and that fears of "reefer madness" or a "stoned society" are groundless. That said, he cautioned that we should not downplay marijuana's negative effects. Today's marijuana is stronger than what was commonly available in earlier decades. "Most users stop after the first time, but 9 percent [develop dependence]. Three out of four people who try heroin will not get addicted, but that doesn't mean we don't care about it. Only one of 10 people who drive drunk will have an accident and kill somebody. That doesn't mean we are not concerned about drunk driving." He then displayed graphs showing that because of its widespread use, the number of people dependent on marijuana dwarfs those of other illicit drugs—(but is itself dwarfed by alcohol—Ed.) He also cited a significant increase between 1993 and 2007 in the numbers of marijuana users admitted to drug treatment programs, about half of whom are directed to

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treatment by the courts, as an alternative to incarceration. (Advocates of legalization claim that many of these are simply recreational users with no discernible problems, needing treatment no more than casual drinkers.)

Sabet also acknowledged that, like the opium plant and tree bark, marijuana has legitimate medical properties, and spoke positively of cannabinoid-based Food and Drug Administration-approved drugs such as Marinol, used to control nausea in chemotherapy patients. But, he contended, proper medicine should be scientifically developed and regulated for dosage consistency and purity, not simply grown by a marijuana farmer and sold as “Jerry Garcia Special” and “Super Silver Haze.” He noted that while supporters of medical marijuana tout the drug’s ability to combat symptoms associated with cancer treatment, HIV/AIDS, and glaucoma, fewer than 5 percent of cardholders at existing medical marijuana dispensaries have these conditions. Ninety percent are registered for ailments such as headaches and athlete’s foot, and more than 80 percent of cardholders in California and Colorado are white males between the ages of 17 and 35 with no history of chronic illness.

Rather than legalizing marijuana and opening up problems of the sort associated with alcohol, Sabet recommended that we develop an approach combining prevention, treatment, recovery, smart enforcement, and re-entry.

In the exchange that followed, Belville stressed that comparisons of marijuana to tobacco and alcohol are misleading, because both drugs are far more addictive than marijuana. Sabet readily conceded that alcohol leads to more dangerous behavior than marijuana does, and that smoking tobacco is harder on the lungs. But smoking marijuana impairs driving ability and can harm the adolescent brains. Belville responded that NORML consistently stresses that people should not drive while under the influence and that use should be illegal for minors.

The New Jim Crow

The afternoon segment of the program opened with a video of a speech by Ohio State law professor Michelle Alexander, author of the best-selling book, *The New Jim Crow: Mass*

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*Incarceration in an Age of Colorblindness.*³ Citing exploding incarceration rates over the last 30 years—from about 300,000 to 2.3 million—Alexander attributed much of that increase to the War on Drugs, noting that it is waged with disproportionate force on black communities. Despite the fact that whites and blacks use drugs in approximately equal proportions, blacks are far more likely to be arrested, convicted, and incarcerated than are whites. More black men are in prison today than were enslaved in this country before the Civil War. And when released, they find it difficult to find jobs, may be barred from public housing, and are legally discriminated against in myriad ways for the rest of their lives. “We have now spent \$1 trillion on the drug war since it began,” she observed, “funds that could have been used for schools, economic investment in our poorest neighborhoods, job creation, small businesses; \$1 trillion to promote our collective well-being. Instead, [the War on Drugs has] paved the way for the destruction of countless lives, families, and dreams.” Because more than a million people currently employed in the criminal justice system would lose their jobs if the War on Drugs ended, “This system is not going down without a major fight, a major upheaval, a major shift in our public consciousness ... Nothing short of a major social movement has any hope of ending this system of racial discrimination in America.”

Picking up on Alexander’s call for sweeping reform, the Rev. Edwin Sanders, pastor of Nashville’s Metropolitan Interdenominational Church and coordinator of Religious Leaders for a More Compassionate and Just Drug Policy, stressed the need to involve churches, particularly the “low-steeple churches” that serve people most victimized by mass incarceration, in the movement Alexander saw as vital. “Those communities are not easily understood by most of us in this room,” he said. “We have to line up with them as we go forward in the struggle.” He acknowledged that it is difficult for most people to comprehend the extent to which the War on Drugs is bound up with systemic racism in America. “We need to look at ourselves in the mirror. Racism has taken a different shape in modern society. Institutional, systemic, and structural racism drive the prison-industrial complex ... There was a time when we used to see some decline in incarceration of African American men. Then someone figured out a way to quantify

³ Alexander could not attend the conference, but graciously suggested the 20-minute video of a speech she gave on Martin Luther King Day in 2011. It is available at <http://video.wpt2.org/video/1748253821>.

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their worth. Black gold is being mined in our communities every day. Each man that goes into the prison ends up [bringing] \$30,000 a year [to the prison industry].”

Sanders cautioned against believing that what is happening in black communities does not affect the entire fabric of civil life. “It says something about the overall quality of life in your city, not just the beat down and held down, the oppressed. When they get paraded off to prison without any reaction because it does not seem to be any part of what you are, it affects what goes on in your suburbs, your communities, the places of the rich and the elite and the successful.” The information and analysis conveyed at gatherings like this one, he said, are good and wholesome, but “What is important is how you see yourself as part of it. You have to have a level of kinship and ownership and relationship to those persons who become part of that pipeline. You can’t get it right unless you see the truth. We are looking for a movement. [Don’t] just leave here saying we have more information than we have before. [You] must go out and involve yourself in a movement.”

Such a movement, Sanders predicted, could have a pervasive impact. “If we do this right about drug policy, it will enable us to deal with all of the social issues that haunt and systematically undermine the potential and possibilities of our society. You have to deal with jobs, education, and access to healthcare. To get it right you have to deal with the larger fabric of the issue in a way that should have a transformative effect on the totality of the community.”

International Alternatives and Insights

Europe

The remaining afternoon sessions provided opportunity to compare drug policy reform efforts across several nations, including the United States. After noting that convictions for drug offenses play a major role in the United States’ having the highest rates of imprisonment of any country in the world, Alec Stevens, professor of criminal justice at the University of England, described several European models that rely on approaches that result in decidedly lower rates of incarceration.

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In a system of *depenalization*, the production, sale, and use of a given drug are not actually legalized, but neither are they prosecuted, as long as certain criteria are met. The hundreds of marijuana and hashish “coffee shops” in the Netherlands, already described by Rick Steves, are the prime examples of this approach. Advertising, sales to minors, and sales of large amounts are prohibited and the police crack down swiftly on attempts to sell harder drugs in these establishments. Cannabis use is lower than in the United States, and separating it from the market for harder drugs has resulted in lower levels of use of heroin and cocaine as well.

Portugal has taken a further step by adopting a policy of *decriminalization*, removing criminal sanctions altogether from most drug use. After a rapid increase in injecting drug use in the 1990s, with an attendant rise in HIV/AIDS and viral hepatitis, the Portuguese government developed a new national plan that would emphasize social solidarity. Henceforth, drug users would not be treated as criminals or outcasts, but as people with needs requiring appropriate response. Beginning in 2001, it is no longer a crime to possess up to a 10-day supply of any drug, including cocaine and heroin. People whose drug use poses significant danger to themselves or others are referred to a “Dissuasion of Addiction” committee, comprising a psychologist, a lawyer, and a social worker who will determine an appropriate response. For most, an admonition may suffice, but the committees have the power to levy fines, restrict licenses, and require treatment, which has been made more widely available since the change in policy.

Skeptics feared a massive increase in drug-related problems such as crime and addiction and “drug tourists” from surrounding countries. None of these occurred. Usage fell among 16-year-olds, an important sign of success. In older age groups, rates of lifetime use have risen, but not rates of current use, indicating that some people experimented with drugs when the threat of criminal sanctions were lifted, but did not continue using. Rates of addiction, HIV, and AIDS have fallen dramatically, and fewer deaths are attributed to drugs than before the shift.

The Swiss, using a *public health approach*, have had notable success in treating heroin addiction by resurrecting and refining the practice of providing addicts with pharmaceutical-grade heroin of known strength, to be administered in a clinical setting with medical personnel present to deal with overdose or other unforeseen difficulties. Counseling and treatment are available for those

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who want them. The results over two decades of Heroin Assisted Treatment have been positive. Overall health of the addicts has improved—far fewer are living with HIV than in the United States—and their involvement in crime has dramatically decreased. They have reduced their use of both heroin and cocaine, and the availability of low-cost, no-hassle heroin has not led to increased initiation into heroin use. Swiss policy toward cannabis includes decriminalization of small-scale possession and plans are underway for making cannabis of known strength and amount available through clinics.

Stevens concluded by observing that reducing penalties for drug users does not automatically lead to increased use and harms, that allowing advertising apparently can lead to increased use and harm, that “harm reduction” measures such as heroin-assisted treatment are safe and effective, and that treating drugs through public health approaches is cheaper than imprisoning users and treating avoidable HIV/AIDS.

Mexico

Gary Hale, nonresident fellow in drug policy at the Baker Institute and former chief of intelligence in the Houston Field Division of the DEA, reported on his current work with both the U.S. and Mexican governments as they grapple with drug trafficking organizations operating in the two countries. Noting that his long experience with the DEA has focused mainly on the supply side, Hale offered a somewhat different perspective from that of most conference participants, who had given more attention to the demand side of drug trafficking.

Hale observed that, in contrast to long-standing arrangements that had allowed drug traffickers to operate with relative ease, in their successive six-year terms, Mexican Presidents Vicente Fox and Felipe Calderón, especially Calderón, had used federal police and military forces to crack down on drug gangs. As a result, it has become more difficult for traffickers to import cocaine from South America and precursor drugs used to make methamphetamines from China, and then to move cocaine, meth, and homegrown marijuana and heroin across the northern border into the United States. Most of the violence between drug gangs and between the gangs and military is over control of these import and export routes. While there is some spillover violence along the border, most of it stays in Mexico. “That’s an important point,” he stressed. “The media would

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have you think the cartels are invading the United States and the sky is falling and that we need to militarize the border.” He characterized that response as “overkill.”

Hale also expressed skepticism regarding ties between the cartels and foreign terrorist organizations. While some groups designated as terrorist organizations, including extremist Islamic groups, have a limited presence in Mexico and some individual extremists have entered the United States via the border, he said there is little evidence of extensive ties between the cartels and extremist organizations. As a rule, he pointed out, the cartels do not come across the border in significant numbers because they fear that to do so would provoke a U.S. military presence in Mexico, something neither they nor the Mexican government want.

Returning to the primary issue before the conference, Hale described himself as neither a proponent nor an antagonist regarding legalization of marijuana. “At some point in the not-too-distant future,” he said, “whether a year or 10 years from now, legalization is going to happen. We need to prepare for that. The legal, social, and economic implications have not been sufficiently addressed.” Among the topics needing attention, he listed the following:

- How will driving under the influence (DUI) be measured and penalized? Since cannabis is a hallucinogen and alcohol a depressant, how will the definition of impairment differ? How will THC be measured, compared to alcohol?
- How will courts decide branding rights? “BC Bud” and “Acapulco Gold” have long been applied to specific strains of marijuana. Who owns those labels? Who has commercial rights to them?
- U.S. farmers have complained that Mexican farmers are dumping tomatoes, avocados, and other produce. This could be true of marijuana as well. Will Mexico, the United States, and Canada engage in trade wars over marijuana? Would marijuana be considered a drug or a vegetable when considering importation?
- Will anyone who provides marijuana to underage youth be subjected to the same penalties as for giving alcohol to minors or will it be harsher, given its designation as a hallucinogen?

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- Will the United States, as a significant consumer of drugs, be obligated to increase support to Mexico to enable the Mexican government to deal with increased violence among producers, should that occur?

The United States: Current Developments

Bill Piper, assistant director of the Drug Policy Alliance, followed Hale's prediction that legalization of marijuana is on the horizon with a discussion of where that process actually stands at present. He focused on three assertions about what might happen if states and other countries decide to legalize marijuana despite continuing prohibition in U.S. federal law and in United Nation regulations.

1. States have a legal right to decriminalize or legalize marijuana.

Nothing in the Constitution, he noted, requires states to criminalize anything in particular. Texas could eliminate its entire criminal code and the federal government could do nothing about it. Although federal agents can come into a state to enforce federal laws prohibiting the production and sale of cannabis, as when DEA agents, acting with the approval of U.S. attorneys, have raided medical marijuana dispensaries in California and arrested people acting in accord with state laws, federal authorities cannot abrogate those laws nor can they compel state officials to join them in enforcing federal prohibition. Certain aspects of legalization may be trickier to negotiate, such as those involving taxation, licensing, and quality control, but it is "beyond dispute that a state can remove criminal penalties." (In Alaska, for example, one can legally possess up to four ounces of cannabis and grow up to 25 plants. Others states have lowered offenses from felony to misdemeanor level.) It is only a matter of time, Piper said, before a state will take the next step and treat marijuana as it now treats alcohol.

2. There is little the federal government can do about that.

When Arizona and California passed the first medical marijuana initiatives in 1996, the Clinton administration reacted quickly and harshly, threatening to prosecute and remove the license of any doctor who dared recommend marijuana to their patients. But after the Ninth Circuit Court of Appeals ruled that this would violate the First Amendment rights of physicians, the Supreme

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Court declined to hear the case. No doctor has been prosecuted, threatened, or arrested for recommending marijuana. The George W. Bush administration raided dispensaries and seized cash and medical records, but did not actually bring any charges, although a number of people did go to jail. During his campaign, President Barack Obama said that the Justice Department under his administration would not waste resources prosecuting people for doing what was legal under state law. That held for a couple of years, but in 2010 the administration changed its course, authorizing raids of dispensaries and threatening to prosecute landlords and seize their property if they dared to rent space to medical marijuana dispensaries. Further, the Internal Revenue Service is denying medical marijuana dispensaries the right to deduct everyday business tax expenses. U.S. attorneys have also hinted they would arrest state employees involved in implementing medical marijuana laws. Piper regards these threats as largely hollow, but acknowledges that it makes state officials apprehensive, and admitted that federal forces “might go ballistic” if states actually legalize marijuana, as Colorado and Washington may do in the November 2012 elections. Given the size of the growing medical marijuana industry and popular support in the 70-80 percent range, however, he characterized the federal government as having “a really big bark but a surprisingly small bite.”

3. If other countries are considering legalizing marijuana, they should go ahead and do it, even if Washington doesn't like it.

Given the violence, the transfer of tens of billions of dollars into the hands of international criminals, and the corrupting effect on legitimate government of leaving control of drugs in the hands of criminals, plus the fact that in country after country racial and ethnic minority populations are disproportionately arrested and prosecuted, legalization is being seriously considered in several Latin American countries. While there are risks to offending the United States, it will be difficult for the United States to demand that these countries continue to uphold drug prohibition, when 16 states and the District of Columbia have some form of legal access to medical marijuana and a number of states have essentially decriminalized possession of modest amounts for recreational use.

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Concluding Plenary: Senator Larry Campbell

The closing plenary address was delivered by The Honorable Larry Campbell, senator in the Canadian parliament, former mayor of Vancouver, former chief coroner of Vancouver and British Columbia, and former undercover narcotics officer with the Royal Canadian Mounted Police. Campbell's experiences as coroner formed the basis for the long-running Canadian television program, *Da Vinci's Inquest*, and a sequel, *Da Vinci's City Hall*.

In recounting the arc of his career, Campbell explained how his views on drugs and drug policy evolved. As an undercover cop in Vancouver, he concentrated mainly on heroin users, but said, "I never laid a marijuana charge. What's the crime? I just didn't get into that." After three years as a Mountie, he applied for and got the position of coroner in Vancouver, remaining in the coroner service for 20 years and retiring as chief coroner of the province. The coroner's job, he explained, is to determine why people die and to try to figure out ways to keep them from dying. When Vancouver experienced a dramatic outbreak of HIV/AIDS in the gay community in the early 1980s, it soon spread to intravenous drug users, especially on the Downtown Eastside of the city. In the 1990s, that same area suffered a rash of overdose deaths traceable to an influx of almost pure heroin, as much as 10 times stronger than addicts were accustomed to using. With Campbell's encouragement and the backing of then-mayor Philip Owen, the city's newly appointed drug czar, Donald McPherson, a professor of health science at Simon Fraser University, established Canada's first needle exchange program, providing clean syringes to injecting drug users, to prevent the transmission of blood-borne diseases such as HIV/AIDS and hepatitis C through the sharing of contaminated needles. The program also provided condoms, street nurses to address common health problems in such populations, and warned addicts against using heroin of unknown strength. When opposition to these measures led Owen to decide not to seek reelection, Campbell ran for and was elected mayor, sweeping into office with a substantial number of other reform-minded candidates whose platforms consisted mainly of promising to open the first supervised injection site in North America. The new administration made good on that pledge with the opening of Insite in 2003.

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Predictably, the new center drew criticism, not least from the United States. ONDCP characterized Insite as “state-sponsored suicide.” Campbell scoffed at this description. “People don’t wake up one day and decide, ‘Well, we’ve got Insite now. I think I’ll be a junkie.’ That makes no sense.” Instead of becoming a death factory, the clinic recorded 276,000 visits, an average of 702 per day, serving 5447 unique users, including 484 older adults—all without a single death. Overdoses occurred, but nurses were present to administer drugs to counter their effects. Costs at a hospital that had previously treated drug-related cases dropped so significantly that a study estimated the program had saved \$18 million.

Campbell did not pretend that Canada had everything figured out. “Our aboriginal population suffers in exactly the same way that minority populations do in the United States,” he acknowledged. “It’s virtually identical: 10 to 15 percent of the population make up 35 to 40 percent of the prison population. Nobody can tell me there is not racism going on when you see figures like that.”

Campbell acknowledged that he had not been in favor of injection sites before he was elected, but when he went to Switzerland, an addict sat him down and showed him the facts. “I went to a supervised injection site. Addicts who had come to inject heroin or to inhale cocaine were sitting there having coffee, cigarettes, doing their laundry, talking with nurses.” A trial program in Vancouver has had a similar normalizing effect, helping a substantial proportion of those receiving Swiss-style Heroin Assisted Treatment recover at least a semblance of normal life. Relieved of the pressure to sell their bodies, steal, or otherwise figure some way to get their next fix, Campbell observed, “You have people ready to step back, look at their lives, and say, ‘I’ve got to change.’”

Campbell wound up by asking what could be done with the estimated trillion dollars spent on the War on Drugs, and agreeing with Bill Piper’s assertion that meaningful change will have to come from cities and states rather than from the federal government. He called for “an overwhelming uprising” that proclaims, “We are not going to play this game anymore. We are not going to pay for all of this with my tax money. We don’t believe it’s a problem. If there is a problem, it’s the prohibition, not the use. And it will end.”

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The Takeaway

Since conference participants were invited for the express purpose of exchanging known differences of opinion, it is not surprising that they failed to achieve unanimity by day's end. That said, the presentations revealed considerable convergence on a number of important points.

- While speakers differed in their assessment of the War on Drugs, all recognized that, despite the expenditure of hundreds of billions of dollars, illicit drugs remain easy to get and rates of their use and abuse have changed little over the past 40 years, apart from occasional minor departures from a stable norm. All acknowledged the legitimacy of considering changes in existing policy, from tinkering at the margins to a sweeping overhaul.
- Aggressive enforcement of violations involving small amounts of marijuana and minute traces of cocaine and other drugs, absent violent or other criminal behavior, wastes police time, clogs courts, and results in overcrowded prisons and lives forever scarred by a criminal record.
- Minorities, in the United States and elsewhere, consistently suffer from inequities in law enforcement at every level, from suspicion and arrest through adjudication to incarceration. They also have inadequate access to preventive, treatment, and rehabilitative resources.
- Alcohol abuse causes far more personal and social harm than the major illicit drugs of abuse. This well-documented fact leads drug policy reformers to favor treating abuse of illicit drugs as a medical and public health problem, to be treated after the manner of alcohol addiction. It leads those uncomfortable with policy change to fear that legalization would inevitably cause a rise in the use of other potentially dangerous intoxicants.
- The use and abuse of alcohol, tobacco, and other drugs, licit and illicit, is especially dangerous for adolescents, whose unfinished brains and personalities leave them at greater risk for serious harm. No speaker favored making such drugs legal for underage youth. Reformers contended that putting the control of now-illicit drugs in the hands of law abiding citizens acting under careful government regulation and oversight will protect young people far better than leaving that control in the hands of criminals with no

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incentive to restrict their use or distribute them in a responsible manner. Commercialization, regarded by some as inevitable, was acknowledged to be a challenge to responsibility.

- Despite consistent pressure from the U.S. government to adhere to policies of strict prohibition, some nations, particularly in Europe, and some states and cities in this country have devised alternatives that produce better outcomes than reliance on punishment. These include depenalization, decriminalization, and treating drug abuse as a medical and public health problem rather than as a crime.
- While proven or promising ways of dealing with abuse of hard drugs offer promising models for adoption or adaptation—e.g., heroin maintenance in Switzerland and the United Kingdom, decriminalization of all drugs in Portugal, and needle exchange programs for injecting drug users in the Netherlands and elsewhere—marijuana is the only now-illicit drug with a plausible chance of being legalized in some fashion beyond medical use in the United States in the foreseeable future. One implication of this is that while legalization of marijuana would undoubtedly have a negative impact on the income of Mexican drug-trafficking organizations, they would still be able to rake in billions from the sale of heroin, cocaine, and methamphetamines, as well as from non-drug criminal pursuits.
- The impetus for the legalization of marijuana is building. Attitudes are changing, and in many places the law is moving toward leniency. Medical marijuana is currently legal in 16 states and the District of Columbia. Voters in Washington State and Colorado can decide to legalize the drug in the November 2012 election. As this process continues, all concerned should carefully examine the claims made by opposing sides, rely on the best available evidence, particularly peer-reviewed science, and encourage extensive further research.

A full agenda and video recordings of the conference are available on the Baker Institute website at <http://bakerinstitute.org/events/drugs2012> (scroll to the bottom of the page for videos).

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