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# THE NEED TO DISMANTLE THE FEDERAL NARCOTIC BUREAUCRACY

by DR. ALFRED R. LINDESMITH\*

I shall focus my remarks on one of three national experiments with the prohibition of personal vices made during the present century in this country—namely, the prohibition of opiates such as heroin and morphine. This policy is of central importance in our drug policy today. The other two areas I have in mind are those of alcohol and of marihuana, and I shall make some references to them for comparative purposes. In chronological order, the first of these programs, which became effective in 1914, was that pertaining to opiates; the second was the alcohol prohibition which went into effect in 1920; and the third was the federal prohibition of marihuana in 1937. I shall consider only federal programs, since the states have, in general, closely followed the federal models—at least until quite recently. The alcohol experiment ended in 1933 after a short, unhappy life. The marihuana and opiate prohibitions lasted much longer, but seem at present to be in a state of decay or even of bankruptcy.

These three federal programs were historically intertwined and interrelated. For example, when the Volstead Act went into effect in January of 1920 the newly appointed prohibition agents were given authority over both anti-alcohol and anti-opiate enforcement, which were allocated to the same unit of the Treasury Department. Ten years later, the two programs were separated. In 1933 alcohol prohibition came to an end. In 1937 federal action was taken against marihuana, largely at the urging of the Federal Bureau of Narcotics, which assumed enforcement responsibilities. The marihuana law was modeled after the Harrison Act of 1914 that outlawed cocaine and the opiates and which was also enforced by the Bureau of Narcotics (FBN).

As already intimated, it is my belief that all three of these programs were serious mistakes that have produced profound long-lasting evil effects upon our society and aggravated rather

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Dr. Lindesmith received the Fulbright grant to India in 1952 as a consultant in drug related problems. He was later made a member of the Indiana Citizens Council for Crime and Delinquency in 1965. Dr. Lindesmith was a delegate to the White House Conference on Drug Abuse in 1962 and a member of the National Association for the Prevention and Addiction to Narcotics.

than alleviated the problems they were addressed to. Not only does it seem to me that the prohibition policy was a mistake, but also that it was a further mistake for the federal government to involve itself in these direct attempts to suppress what were essentially personal habits of its citizens that it judged to be bad. If such interference seemed to be needed I believe that it should have been left to the states to make the decision and to do the interfering.

I know personally of a distinguished expert in the narcotic field for several decades who is conservative in outlook, who privately expressed the view that we would be better off today in this country if we had not had most of the legislation that was actually enacted concerning opiates, and if opium were still for sale in corner drug stores. I pass this outrageous idea on to you. I have a great deal of sympathy with it and feel that we should more often apply the principle of "benign neglect" when it comes to doing something about the undesirable private indulgences of vices of people other than ourselves. I am reminded that when I was child, juveniles in rural areas were said to be indulging in the evil practice of smoking corn silk. Absolutely nothing was done about it; it was not written up in the newspapers; no laws were passed concerning it; no policemen were stationed in the corn fields; no one was sent to jail, and no "problem" developed.

To convert a personal vice into a national problem it is apparently essential that it be dramatized by being made illegal and advertised by the mass media. This arouses the curiosity of those looking for adventure and excitement and often instructs them in what to do to find the new substance and how to use it most effectively. One wonders, for example, how many people in the United States tried smoking dried banana peels some years ago when this hoax was perpetrated. How many learned about the hallucinogenic properties of morning glory seeds from the mass media?

In a book published in 1936, just after the repeal of liquor prohibition, two specialists in public administration, after a two year study of liquor control, made a number of observations which seem to me to be applicable to anti-drug policies in general. They observed:

We are of the opinion that the national government should not attempt to formulate a comprehensive liquor control policy. Indeed, considering the ineptitude of Congress in dealing with this subject, we are disposed to say that the less the federal government has to do with matters related to the social control of liquor, the better. It is too far removed from the more important problems that arise in connection with *consumption* of alcoholic beverages.

It has been suggested by some persons that Congress set up a national wholesale liquor monopoly. Others advocate the establishment of regulations, uniform for the nation, governing retail sale of liquor. These proposals, we believe, are not soundly conceived, in that they would interfere with the states in their handling of the problem. The states assume the real burden of meeting the social hazards that accompany the use of intoxicating liquor. It is for them to determine the kind of controls that shall be exercised.<sup>1</sup>

In evaluating these quoted remarks, it should be noted that no matter what one thinks of present liquor controls, there has not been any serious movement whatever to reestablish prohibition or to restore the alcohol use problem to the federal government. Why not learn from this lesson of the past?

My proposal is quite simply that we apply what we seem to have learned about alcohol to the rest of the drug problem, and that we use the reforms that occurred after the repeal of the Volstead Act as a model. This would imply that the individual states would be given responsibility for determining their own policies with respect to addicts and the use of drugs. This in turn would require the repeal or drastic revision of current federal laws so as to get the federal government out of these areas, restricting federal law enforcement functions to such matters as the collection of taxes, supervising the flow of legal drugs and, perhaps, combating illicit operations across national and state boundaries. An extremely important consequence of this change would be that the present federal enforcement bureaucracy would be dismantled in its present form and greatly restricted in its powers. It might become an agency similar to the present Alcohol Tax Unit. This would remove from the Washington scene the single most powerful vested interest in the old prohibition policy of the last half century, and, more importantly, remove the greatest threat to reforms of the type that have begun to be tried in this country during the last ten years. The function of the federal government in the area of drugs would become that of advising and helping the states, rather than virtually dictating policy as it has been.

In this situation, it is certain that there would be considerable variations in policy between the states, reflecting different situations as well as different legal philosophies. North Dakota would surely not have the same kind of policy as New York. This would create a degree of flexibility and variability which would contrast sharply with the extreme rigidity that has characterized national policy for many years. In the control of mari-

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1. L. HARRISON & E. LAINE, *AFTER REPEAL: A STUDY OF PRESENT-DAY LIQUOR CONTROL* 41 (1936).

huana the states have already begun to break away from federal domination and are taking the leadership away from federal authorities. Oregon and Nebraska are outstanding examples. In Oregon there have been recent public opinion surveys on the possible consequences of new legislation that eliminated jail sentences and limited punishment for possession to a maximum of a one hundred dollar fine. Apparently the evidence is that most of the public favors the new laws, that the state is not turning to pot in a big way, and that excitement about it has diminished.<sup>2</sup>

Before going on to talk about more of the background considerations of my proposal, I'd like to make one point that is often neglected in the drug field. It is that in our tendency to devote too exclusive attention to the alleged harms that drugs can produce, we often forget that unnecessary criminal prosecutions probably produce greater personal and social evil than does any drug—even alcohol.

#### THE NARCOTIC LOBBY AND ITS POLICIES—1930-1964

With the separation in 1930 of the federal agencies concerned with alcohol and opiate control, the Federal Bureau of Narcotics came into being. This agency became a national symbol representing a particular philosophy and a single approach to drug control. It was concerned primarily with opiates, to a lesser extent with cocaine, and in 1937 it assumed responsibility for the enforcement of the federal antimarihuana law enacted in that year. Its philosophy was essentially that addiction was a crime and that the only righteous, effective and even conceivable way of dealing with it was by means of severe and rigid penalties for all involved, from users to dealers and smugglers. Included in this Bureau's program there was also a "public relations" program involving the extensive distribution, especially to Congress and to law enforcement personnel throughout the nation, of handouts depicting the antinarcotic program, on which the Bureau's life depended, as it wished that to be viewed. There was also a long term program of dealing with heretics who disagreed with the Bureau's comprehensive official line which covered all aspects of the problem. These heretics were invariably private individuals, for the Bureau's official line seemed to have been invariably supported, or at least not criticized, by any important Washington officials, including those in the health services.

In view of its dependence on a specific program and philosophy, it is not surprising that this agency (the "narcotics lobby"

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2. See THE NATIONAL ORGANIZATION FOR THE REFORM OF MARIJUANA LAWS, 4 THE LEAFLET 7 (1975).

or the "drug control establishment") was uncompromisingly hostile toward any talk of a medical approach to addiction. European programs of this type were either not mentioned at all in the handouts or they were systematically misrepresented. At hearings before committees and subcommittees of the Congress when important legislation was being considered, the testimony and views presented were controlled by Bureau representatives working with the committees. Dissident opinion was scarcely mentioned. Members of the medical professions rarely testified except when they were officials involved in the established program and under constraint not to criticize it. Private citizens, from any profession, whose views departed from the official orthodoxy were carefully weeded out.<sup>3</sup> The result, as it appeared to Congress, must have been to create the appearance of virtual unanimity that punishment and more punishment was the answer.

In official discussions during the interval from 1930 to the 1960s, I do not recall any mention or consideration of the idea of justice; the key words were not justice and mercy but deterrence and punishment.

In this situation and within the climate of opinion of these decades, the federal narcotics lobby had a virtually free hand. It dictated legislation and public policy; it harassed its few critics; it came close to controlling public opinion and public discussion; it was not challenged or investigated by the Congress; its budgets were generous; its head was viewed as a minor national hero who was saving the country from dope, as J. Edgar Hoover was saving it from communism.

In all of these endeavors, the old Bureau of Narcotics was greatly helped by the absence of reliable information, which is a common consequence of a prohibition policy. Such policy often drives problems underground, out of sight and out of control. In the absence of reliable statistics it is then relatively simple to manufacture the kind of statistics that one wants, and this the old Bureau did on a grand scale.<sup>4</sup> As a single example, on April 16, 1961, in *This Week Magazine* which was tucked into Sunday newspapers all over the country, there was an article by Mr. Anslinger, U.S. Commissioner of Narcotics, that was entitled: "We're Winning the War against Dope." The first line reads as follows: "Americans can take heart in the good news that we are defeating the cruelest enemy we've ever faced: the murderous traffic in dope." "The winning combination," Anslinger goes

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3. For a detailed account, see A. LINDESMITH, *THE ADDICT AND THE LAW* (1965).

4. For an excellent recent account of this numbers game, see R. ASHLEY, *HEROIN: THE MYTHS AND THE FACTS* 36-56 (1972).

on to say, is "strict laws and tough judges." It will be recalled that the prime blame for the post World War II deterioration of the narcotic problem was placed upon what were sometimes called "soft-headed" judges, and beyond that, upon the foreigners who supplied drugs for our lucrative illicit traffic.

In Mr. Anslinger's 1961 article he cites as the total number of addicts in the United States the figure of 44,906, placing 20,648 of them in New York and 7,411 in California. Most illicit heroin, he asserted, came from Red China. The percentage of addicts under the age of 21, Mr. Anslinger said, was dropping and had declined from 12% to 3.9% between 1956 and 1960. All of these statements and figures are false and absurd; as everyone knows, the trend has been the opposite of what Anslinger claimed.<sup>5</sup> Estimates of the number of heroin addicts in the city of New York alone are several times greater than Anslinger's total for the entire nation; the average age of addicts over the long term has declined and is now thought to be under 25 years with more than 20% under 21. Even the old charge that Red China is or was responsible for much of our illicit heroin is now officially admitted to be false.<sup>6</sup>

It is obviously impossible within present space and time limitations to describe and document fully the tactics that were employed during the decades from 1930 into the 1960s by the narcotics enforcement establishment in Washington. I should like however, to emphasize especially its firm and determined opposition to any kind of medically oriented program giving control and authority to medical men rather than the police. The extent and flavor of this opposition may be indicated by some of my own experiences with it.

Shortly after taking a position at Indiana University in 1936, I published a very short article in a professional journal in which I expressed the opinion that our narcotic policy was a poor one in that it was needlessly cruel and inhumane with respect to addicts and that it generated crime. I referred to European practices, especially those in Britain, as something that we ought to study and adapt to our needs. I also made the point that the American public was being misinformed on this problem by government officials. As a consequence of this article which I called "Dope Fiend Mythology," I was visited in my

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5. Cf. note 4 *supra*.

6. See 1 *DRUG ENFORCEMENT* 35-36 (1974). This is an official publication of the DEA (Drug Enforcement Administration) created in July of 1973. It was the successor of the Bureau of Narcotics and Dangerous Drugs (BNDD), which in turn was the successor of the old Federal Bureau of Narcotics (FBN). See also A. McCoy, *THE POLITICS OF HEROIN IN SOUTHEAST ASIA* 145-48 (1972).

7. 31 *JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY* 199-208 (1940).

home by a federal narcotics agent who stated that he was acting on orders from his Washington boss. The agent indicated to me that my views were strongly disapproved by the officials of his agency and intimated that I might lose my position at the university if I persisted in expressing them. This occurred around 1940.

The last such incident occurred in 1963 when another federal agent showed up in my home town, again on federal orders, for the ostensible purpose of preventing the publication of a book which I had edited. The book consisted of a report of a joint committee on narcotics of those two radical organizations, the American Bar Association and the American Medical Association.<sup>8</sup> This report was mildly critical of our traditional policies, but its major sin was that it advocated the adoption of a medically controlled drug program. This effort to ban a book that was not even mildly pornographic, simply because it was critical of a federal police agency, is hard to understand since it could be predicted in advance that such an attempt would be practically certain to stimulate interest and sales—as it did. Perhaps it was an indication of a growing sense of insecurity in the bureaucracy in 1963.

#### *Price Support Programs for Opium Growers and Heroin Pushers*

One aspect of our national opiate prohibition policy that has received little public attention, and has been invariably supported with little question by Congress and officialdom, is that, by its focus on reducing the supply of smuggled drugs without reducing demand, it tends to keep black market prices high, thereby maintaining the prosperity of opium growers and heroin dealers in various parts of the world. The financial incentives represented by the large and lucrative American market have had a corrupting influence in many foreign countries, which, if permitted to send emissaries to the United States, would certainly have excellent grounds for objecting to our domestic policies. Within this country, the Department of Agriculture has long operated on the principle that farmers are encouraged to grow products that are in short supply, which is accomplished by withdrawing supplies from the market, destroying them, or paying farmers not to grow them. The same policy applied to opiate production is supposed to have the opposite effect. An elementary course in economics should be sufficient to demonstrate to almost anyone the simplistic nature of the assumption that we might solve our narcotics problems by such means.

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8. DRUG ADDICTION: CRIME OR DISEASE? INTERIM AND FINAL REPORTS OF THE JOINT COMMITTEE OF THE AMERICAN BAR ASSOCIATION AND THE AMERICAN MEDICAL ASSOCIATION ON NARCOTIC DRUGS (1963).



In the international sphere the United States has paid Turkish farmers in the vicinity of \$35 million not to grow opium, thus encouraging its cultivation elsewhere.<sup>9</sup> A few years ago 26 tons of what was alleged to be opium was purchased from dealers in the Golden Triangle and publicly burned near the Thai city of Cheng Mai, and according to a recent television program, Shan operators from Burma offered to sell about 400 tons to the United States for \$20 million. Ironically there was recently a complaint that cuts in opium production and drought in India produced an acute shortage of opiates used in medical practice. To meet this shortage, the United States is said to have encouraged expanded cultivation of the poppy in India and to have considered initiating the cultivation of the poppy in the United States.<sup>10</sup>

Another related enforcement practice which provides the domestic illicit traffic with a direct financial subsidy is the "buy and bust" tactic in which public money is used by narcotic agents to make purchases of illicit heroin from dealers and peddlers. It was recently reported that the D.E.A. had requested a fund of \$9 million for this purpose and that it was able also to draw on another fund of \$9 million for the same purpose.<sup>11</sup> Most of such expenditures are not recovered but simply end up in the pockets of underworld entrepreneurs and sometimes, no doubt, of the agents. Considering that the "buy and bust" tactic is generally used in narcotic enforcement at the state as well as the federal level, it seems evident that government agencies in the United States constitute one of the biggest direct sources of revenue for the illicit traffic. Insofar as the supplies purchased in this manner are destroyed rather than being returned to illicit channels, this practice also contributes to the maintenance of high illicit price levels and profits.

An added absurdity in the American campaign against the cultivation of the poppy abroad is that if this plant were to become extinct, the illicit trade would undoubtedly turn to the synthetic opiate-type heroin equivalents which could be manufactured in illicit laboratories. The immense lucrative American market for opiate-type drugs offers such huge economic rewards that it is almost inconceivable that it could be neglected by entrepreneurs in this and other nations. The opiate addict, indeed, is an ideal subject for exploitation, both by underworld

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9. J. CUSACK, *TURKEY LIFTS THE POPPY BAN, DRUG ENFORCEMENT*, Vol. 1, No. 5 (1974).

10. E. Epstein, *Poppycok*, *The London Sunday Times Magazine*, March 9, 1975 at 17.

11. R. Ostrow, *The Louisville Courier-Journal*, June 9, 1975 at 2. In 1974, it was reported that \$160,000.00 was recovered of \$4,000,000.00 spent. See *The Louisville Courier-Journal*, June 10, 1975 at 5.

personages and interests and by corrupt officials. There are many kinds of monkeys on the addict's back.

### *Americanizing the Drug Problem Abroad*

Speaking in November, 1973, John R. Bartels, Jr., then head of the Drug Enforcement Administration, said:

In 1963 there were only 14 narcotics agents stationed overseas. Today we have over 150 special agents advising other governments on ways to improve enforcement capabilities and intercept narcotics before they reach American shores. . . . It is anticipated that within twelve months there will be an additional 50 to 100 of these specialists overseas.<sup>12</sup>

These agents are said to be located in 41 countries. One wonders how these agents are viewed abroad and whether any foreign governments send agents to the United States to advise us on how we might improve our handling of the drug problem! One of the American narcotics agents stationed abroad is in Britain where the number of addicts recorded annually is about 3000. A naive observer might suppose that the United States, with an estimated addict population of from perhaps 250,000 to 500,000, would solicit British help and advice on how to improve its enforcement capabilities. Far from it. Some years ago a former Home Office official told me in conversation that after participating in a conference in this country, in which he had made some comparisons between the American and British ways of handling the narcotics problem, he had returned to his London office to find a letter of reprimand from the United States for interfering in American internal affairs.

It would be a fair bet that there are not any more heroin addicts in all of the 41 nations in which we have emissaries than there are in the United States alone.<sup>13</sup> Our practice of sending such agents abroad is as good an example as any of the arrogance of power. Such agents should be sent abroad only when requested, and then only temporarily.

It has long been American practice to urge upon foreign governments its own prohibition policy, which does not work abroad any better than it does at home. This policy was pressed upon European powers during and after World War II with respect to their Asiatic colonies.<sup>14</sup> In that part of the world before the War, opium smoking was common and often legal. The opium poppy was cultivated in Asia mainly to furnish smoking opium. When opium smoking was prohibited after the War

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12. J. BARTELS, *THE MISSION BEFORE US, DRUG ENFORCEMENT*, Vol. 1, No. 2 at 1 (1974). This article consists of excerpts from a talk given by Mr. Bartels at the Fourth Annual Conference of the International Narcotics Enforcement Officers Association in Nassau.

13. A. LINDESMITH, *supra* note 3, at 179-83.

14. *Id.* at 198-206.

through American and U.N. pressure, there was a massive shift to the use of heroin by inhalation and to some extent by hypodermic injection. To meet the new demand for heroin, heroin laboratories were first set up in the big port cities and then moved close to the opium fields, as for example, in the so-called Golden Triangle where Laos, Thailand and Burma meet.<sup>15</sup> Unlike opium for smoking purposes which is little used in the United States, heroin production in Southeast Asia is of direct concern to the United States and is said to be finding its way into this country in increasing quantities.

A few years ago I visited Thailand for a few months, and while there I watched heroin addicts use heroin by intravenous injection just as addicts do in the United States. In 1959 when Thailand outlawed opium smoking most of the users were older Chinese opium smokers. Today, the main mode of use is heroin by inhalation and the habit has spread among the youth of Thailand. Interviewing Thai narcotic agents both in Bangkok and in the Northern or Golden Triangle area of Thailand, I found them familiar with American enforcement practices and policies. Some had been trained in the United States. They told me of the American narcotic agents stationed in their country. As in other parts of Southeast Asia, the drug problem in Thailand is rapidly being Americanized. While we have reproached Thailand for not checking the flow of heroin from Golden Triangle laboratories in the north to Bangkok and the international illicit market in the south, we have ourselves never managed, in more than a half-century of effort, to stop the flow of heroin from New York to Chicago.

#### THE FEDERAL BUREAUCRACY RUNS INTO TROUBLE—1965-1973

As I have indicated in the preceding pages, the Washington narcotics establishment had things its own way for about three decades. Its policies and its enforcement strategies were generally not questioned or investigated by Congress or the Department of Justice. Supporting its policies with handout propaganda literature and fake statistics, and capitalizing on a lack of public interest and information, it succeeded in convincing both the Congress and the public that all was going well, that the problem was being contained or reduced, and that whatever weaknesses there were could be attributed to influences outside the enforcement area, such as judicial incompetence. Around 1960 this golden age of the bureaucracy began to be tarnished by a series of events that could no longer be covered up by public relations techniques.

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15. A. McCox, *supra* note 6, at 233.

Perhaps the most important of these was the increasingly obvious deterioration of the heroin problem, especially in the large cities. Actually there is evidence that at least by the end of World War II the number of addicts was increasing and their average age diminishing. Optimistic handouts concealed this for a time, but the deterioration gradually became more and more obvious to more and more people as the 1960 decade progressed.

In that decade there developed a growing awareness of an urban crisis that seemed to threaten to make our large cities virtually uninhabitable both because of pollution and general decay and also because of crime, much of it committed by addicts. In New York City, for example, it became clear to citizens and to officials that the old policy of locking up addicts to protect the public from their depredations had become bankrupt and could not possibly work. Taking even the most conservative estimates of the number of addicts in that city, if fifty percent of them had been arrested and sentenced to jail or prison, the entire penal establishment of the State of New York would have been unable to contain them even if all other prisoners had been released.<sup>16</sup> Moreover, the financial condition of New York City was such that a sufficient enlargement of the penal institutions to accomplish this purpose was out of the question on these grounds alone. Under these circumstances, New York administrators and politicians realized that a new approach to the problem was urgently needed.

Under these circumstances the optimistic propaganda emanating from Washington was discredited and quietly disregarded, and attention quite naturally turned to the kind of program utilized by most of the nations of the western world, almost all of which have miniscule drug problems compared to that of the United States. Indeed, there were, no doubt, many more opiate addicts in New York City alone than there were in all of Europe. Special attention, of course, was given to British practices. American urbanites, accustomed to the dangers of urban life at home, found to their surprise that when they traveled abroad they felt safer on the streets of the foreign cities they visited than they did at home. If they were interested in the narcotics problem it was easy for them to discover that part of the difference was accounted for by the absence in European cities of large numbers of predatory heroin addicts looking for money to buy their next fix. They could also easily discover for themselves, especially in

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16. R. ASHLEY, *supra* note 4, at 46 wherein the author notes that the New York City Narcotics Register, which began in 1964, had a list of unduplicated names of local addicts numbering 58,095 by 1968, 94,699 by the end of 1969, and about 150,000 by the end of 1970. Ashley estimated the addicted population of the City at more than 300,000.

Britain where communication was easy, that they had been grossly misinformed by their own government as to what European practices were. The result was a growing disillusionment with our prohibition policy and a rising tide of criticism and demand for reform.

It was in this atmosphere of doubt and disillusionment that Drs. Vincent Dole and Marie Nyswander secured permission in Washington for their well known experiment with methadone maintenance. The federal bureaucracy which had solidly opposed giving physicians authority to provide addicts with legal drugs and which had prosecuted many for doing so, was now confronted with the fact of a widely known program in New York in which this was being done openly and apparently with positive results. Early attempts by the enforcement establishment at sabotaging the methadone experiment were made when it began to show signs of success and began to expand. Nevertheless, no criminal prosecution was undertaken to stop the program and it continued to expand and spread throughout the nation until in recent years the number of addicts on such programs reached a total of from about 70,000 to 80,000. Needless to say, the methadone movement posed a distinct threat to an already somewhat disillusioned and embattled enforcement establishment, since it clearly suggested that the paramedical professions might eventually replace the police as the prime custodians of the heroin problem.

Another factor that added to the woes of the supporters of the status quo was the rising tide of criticism and bitterness concerning the marihuana laws when, in the late 1960s, pot began to be smoked by sons and daughters of the well-to-do and affluent middle and upper classes. Parents in these social classes may have approved earlier of the severe penalties imposed by marihuana laws on violators who were mainly from the slums, the black ghettos and the lower classes. But now their own children were involved and they often hired expensive lawyers to defend them and to attack the laws themselves. Serious attempts to enforce the marihuana statutes produced a divisive debate between the older and younger generations and there was a serious erosion of confidence among the latter in the entire system of justice. All of this was another headache for the bureaucracy.

Perhaps it was because some of the disillusionment and frustration produced by these developments spread to the rank-and-file enforcement officers, that there occurred at about this time between 1968 and the present, a series of major scandals involving spectacular evidence of corruption in the federal narcotics force, in the huge narcotic squad of the New York City

department, and elsewhere as well.<sup>17</sup>

One of these was the disappearance from the police vaults in New York of about 50 pounds of relatively pure heroin seized in the case of the famous "French Connection." Later checks indicated that a total of around 400 pounds of illicit drugs valued by the press at more than 70 million dollars had vanished. With respect to the New York City scandal, the initiative that brought this to light in the Knapp Commission Report of 1972, came from a few individual New York City policemen who rebelled and tried to do something about the widespread corruption of which they were aware. The name of Serpico is, of course, famous in this connection. The Knapp Commission stated from its investigations that the illegal drug trade was the single most lucrative source of graft for the department. Quoting a State Investigation, the Knapp Commission observed that local narcotic law enforcement was bad enough without corruption, but that with corruption added it became a "tragic farce" and a "waste of time."<sup>18</sup>

The federal scandal involved narcotics agents who were or had been stationed in the New York District office. The investigation was initiated in Washington about 1968. Before it was terminated about fifty agents resigned and a number were prosecuted for various forms of corruption.<sup>19</sup> The normal number of federal agents stationed in New York at that time was about eighty and the total national force numbered less than three hundred men—about 280.

It is reasonable to suppose that corruption of the magnitude suggested by these collective incidents reflects rather basic demoralization and a loss of faith in the enforcement program on the part of those charged with carrying it out. The Knapp Commission noted, significantly, that corruption appears to have increased in recent years as the heroin problem deteriorated.<sup>20</sup> There are, of course, many other possible causes for corruption and demoralization than this, and I am only suggesting that the heroin crisis probably played its part. It is of interest that alcohol prohibition also had a demoralizing effect on the enforcement ranks and that it also failed most conspicuously in the big cities.

In the early months of 1975 there has been a renewal of charges of corruption and mismanagement against the federal enforcement bureaucracy and, for the first time, many of its

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17. Cf. R. ASHLEY, *supra* note 4, at 136-39; and G. BRAZILLER, THE KNAPP COMMISSION REPORT ON POLICE CORRUPTION at 91-98 (1972).

18. G. BRAZILLER, *supra* note 17, at 112.

19. R. ASHLEY, *supra* note 4, at 137.

20. G. BRAZILLER, *supra* note 17, at 91.

traditional enforcement tactics are being investigated. I shall say more of this in the next section.

#### CURRENT TRENDS AND PROSPECTS—1973-1975

As long ago as 1936, a distinguished police administrator and an authority in his field, August Vollmer, made the following prophetic statement:

Drug addiction, like prostitution and like liquor, is not a police problem; it never has been and never can be solved by policemen. It is first and last a medical problem, and if there is a solution it will be discovered not by policemen, but by scientific and competently trained medical experts whose sole objective will be the reduction and possible eradication of this devastating appetite. There should be intelligent treatment of incurables in outpatient clinics, hospitalization of those not too far gone to respond to therapeutic measures, and application of the prophylactic principles which medicine applies to all scourges of mankind.<sup>21</sup>

During the last ten years in this country we seem to have acquired some dim appreciation of Vollmer's point and there has been a proliferation of therapeutically oriented and medically directed programs for addicts. The most notable of these has been that of methadone maintenance. This trend was generated and made possible by crisis and by the apparent bankruptcy of the old system. My concern is that the progress of these last years may be lost and that, through the maneuvering of bureaucratic vested interests, we may revert to the old patent medicine scheme that we have been using. I hope that I am wrong, but I should like to mention a few reasons for my concern. I will confine these remarks largely to the methadone program and my reaction to it.

While the methadone maintenance experiment was begun with the advance approval of government officials, these officials generally disapproved of the philosophy of these programs and probably expected and even wanted them to fail. As DeLong, speaking as a knowledgeable citizen and non-official, observed a short time ago in the *New York Times*, there are probably very few Government officials today even in N.I.M.H. and other health agencies who are enthusiastic supporters of methadone maintenance.<sup>22</sup> Unquestionably, when these programs showed favorable results, a great deal of crow had to be eaten in a Washington officialdom that had, for so many decades, solidly and bitterly opposed any alternatives to the old punitive

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21. A. VOLLMER, *THE POLICE AND MODERN SOCIETY* 118 (1936).

22. J. DeLong, *The Methadone Habit*, *New York Times Magazine*, March 16, 1975, at 16, 78, 80, 86, 90, 92, 93.

program.<sup>23</sup> It should also be noted that the new programs, and the new attitudes they represent, have not been accompanied by any basic legislative change. The Congress too, like most of officialdom, is suspicious and could easily revert to type. Its attitude is suggested by the fact that it permits the government agency that has the most to lose from the success of methadone maintenance to exercise a major supervisory and regulatory power over it.<sup>24</sup> It has put the cat in charge of the canaries. This could easily be the eventual kiss of death—death by strangulation with red tape.

Federal funds for treatment programs and for methadone maintenance programs have recently been cut and many such programs have been closed, reduced, or are being phased out. At the same time, it was indicated that the number of federal narcotics agents, which was about 280 in 1963 and about 2000 in 1973, was to be increased to more than 3000. Similarly, the number of narcotics agents abroad was to be increased from 14 in 1963 and 150 in 1973, to between 200 and 250.<sup>25</sup>

In the meantime there has been a progressive tightening up of regulations on the methadone programs with a tendency to make these programs more costly, more cumbersome, less attractive and less comprehensive.<sup>26</sup> As a single example, expenditure for urinalyses in a single recent year was reported to be twenty million dollars!—or ten percent of the budget.<sup>27</sup> This seems to be an extraordinarily large investment in this product, and it is hard to believe that there is no better way to spend twenty million dollars.

I cannot, of course, examine in detail the arguments and counterarguments that rage around the methadone maintenance programs, but I should like to make a few general observations.

I am puzzled by much of the outcry, and by the criticisms of these programs, because they are, in a sense, only a continuation of what we had already been doing. We have for decades been operating maintenance programs. The one with which everyone is familiar is the do-it-yourself heroin maintenance in which garbage quality heroin is supplied by the black market and consumed by addicts under the most degrading circumstances conceivable. True, the Government does not openly approve of

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23. A. LINDESMITH, *supra* note 3, at 262-66.

24. Along with the D.E.A., the F.D.A. and N.I.M.H. also exercise supervisory functions.

25. J. BARTELS, *supra* note 12, at 1.

26. Cf. J. DELONG, *supra* note 22, at 92. See also *Methadone Use and Abuse—1972-1973: Hearings before the Subcommittee to Investigate Juvenile Delinquency of the Committee on the Judiciary, United States Senate* (1973). This point was repeatedly made by witnesses.

27. J. DELONG, *supra* note 22, at 92.



this maintenance program, but it knows perfectly well that governmental policies have made the black market completely inevitable and that the supplies entering the illicit trade never have been cut off and never can be. The actual practical choice is whether the heroin addict will be maintained by a legal maintenance system supervised by medical personnel or by an illegal one supervised by gangsters.

There is another less well known morphine maintenance program that we have also had from the beginning. It has been operated by the medical profession for certain privileged addicts who have quietly been supplied with legal opiates, usually morphine, and exempted from the criminal sanctions prescribed by law. These favored few to whom the criminal law is not applied are sometimes persons from the middle and upper social classes such as doctors or persons from the world of entertainment. Others are addicts in rural areas and small towns, especially in the south and midwest, and many are simply elderly users. In many instances this practice is known to narcotic agents and given their tacit consent. The significant aspect of this program from the present point of view is that these addicts rarely are arrested by the police and that they do not present a significant social problem.<sup>28</sup> Nevertheless, the regulations devised by federal agencies such as N.I.M.H., the D.E.A. and the F.D.A. for control of methadone maintenance programs do not authorize private physicians to handle addicts in this manner when they are given methadone. In this *sub rosa* morphine maintenance program there are no urinalyses and no regulations at all except as the doctor in charge may decide.

Many years ago, Harry J. Anslinger, who was then head of the Federal Narcotics Bureau, authorized a member of Congress who was a junkie to obtain regular supplies of his drug from a Washington pharmacy until he died.<sup>29</sup> This is something which physicians are not permitted to do according to regulations and practice. In this case also there were no urinalyses and no regulations. Mr. Anslinger, from his own account of the incident, only asked the addicted Congressman to promise not to buy illicit drugs, and he did not even insist on sending him to the Lexington hospital for a cure.

During recent years the enforcement bureaucracy in Washington has undergone a series of organizational changes and has again come under attack and investigation. During the Nixon years the old Bureau of Narcotics was switched from the Treas-

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28. The most definitive information on this practice is found at J. O'DONNELL, *NARCOTIC ADDICTS IN KENTUCKY*, No. 1881 (1969).

29. See H. ANSLINGER & W. OURSLER, *THE MURDERERS! THE SHOCKING STORY OF THE NARCOTIC GANGS*, at 181-82 (1961).

sury Department to the Department of Justice. In 1973 the Drug Enforcement Administration was created with John R. Bartels in charge. It consisted of an amalgamation of the former Bureau of Narcotics and Dangerous Drugs and portions of the Customs staff concerned with narcotics. In 1975 a new Attorney General, Edward Levi, was appointed. Levi was formerly President of the University of Chicago and before that, Dean of its law school. In 1975 Levi's Department of Justice was conducting investigations of charges against the D.E.A. officials. Bartels was asked to resign and was replaced by Henry S. Dogin. In the meantime, a committee headed by Senator Jackson began public hearings undertaking a comprehensive investigation of the D.E.A.; there was said to be speculation that the agency might be dismantled and its functions turned over to the F.B.I. and to the Bureau of Customs. It is reported that a poll of Bureau heads of the F.B.I. by its Director indicated that none of them wished to take over responsibility for narcotic law enforcement. The question has been raised as to whether the law is enforceable at all.

The investigation being conducted by Senator Jackson promises to be most comprehensive and damaging to the D.E.A. This committee appears to be looking into not only charges of routine types of corruption connected with the "buy and bust" tactic, but is also evidently questioning the role played by narcotics agents stationed abroad.<sup>30</sup> That there may be something to look for in this area is indicated by a report in *The London Times*<sup>31</sup> that Graham Martin, former ambassador to Thailand and to South Vietnam, once suggested to Nelson Gross, Senior Advisor to the Secretary of State for Narcotics Control, that "the only practical way of disrupting the supply from the Golden Triangle was to organize 'assassination teams' to kill a few traffickers." In the same article it is reported that a member of the National Commission on Marihuana and Drug Abuse, J. Thomas Ungerleider, stated in a memorandum that "there was some talk about establishing 'hit squads' (assassination teams) as they are said to have in a South American country." In view of the attention that the C.I.A. has received, it is relevant to observe that the narcotic agents abroad have often collaborated very closely with it, and that C.I.A. agents have been employed by the D.E.A. The argument for "hit squads" is that the key figures in the illicit traffic are known, but their involvement cannot be proved in a court of law or the person is

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30. See N. HORROCK, *Drug Agency Has Failed to Stop Drugs*, *New York Times*, May 25, 1975 Section 4, at 3; and *New York Times*, April 24, 1975, at 1, 26.

31. N. HORROCK, *supra* note 30, at 14.

protected from prosecution. It is argued that 100 to 150 assassinations would throw the illicit traffic into chaos.

Despite these current vulnerabilities of the enforcement establishment, one should not expect it to do anything but fight against any attempt to abandon the old prohibition approach. To expect anything else is like expecting the Pentagon suddenly to turn pacifistic and promote disarmament. In June of 1975 Vice-President Rockefeller was reported to be in charge of a high level task force hearing at which the various Washington agencies were expected to do battle for control of the narcotics problem. The only agreement said to have been reached at the first session was to separate the problems of supply and demand and appoint different committees for each.<sup>32</sup>

One should remember, however, that the current investigations and problems that beset the bureaucracy will eventually end, that public interest is likely to shift, and that there will be a new Attorney General and a new President. The Washington enforcement establishment will recover from whatever wounds it sustains and resume its old path unless that path is blocked. Turning most of the drug abuse problem over to the states is one practical way, which has already been used in the case of alcohol, to achieve this purpose. Another which lawyers might consider would be to challenge in court the constitutional authority of such agencies as the N.I.M.H., F.D.A., and D.E.A. to dictate the practice of medicine in handling addicts in the methadone programs. Since the courts have long held that addiction is a medical matter, and since the federal government does not have a constitutional mandate to regulate medical practice, it seems pertinent to ask by what authority any of these agencies can threaten physicians in the methadone programs with criminal prosecution.

#### CONCLUSION

The American experience of more than a half-century has demonstrated and effectively illustrated that the prohibition system of controlling personal vices is counterproductive and futile. Experience in the United States and in most of the rest of the world confirms this principle with respect to drug control, and suggests that no one ought to be sent to prison for the mere use or the simple possession of any drug. The weight of the collective experience of the nations of the world with the opiate problem indicates that the evils associated with opiate addiction have been most effectively minimized in the advanced modern nations by giving the medical profession effective control

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32. *Louisville Courier-Journal*, May 31, 1975, Section A, at 2.

and by allowing addicts to have regulated access to legal drugs. The prohibition system in the United States has been a conspicuous exception to the usual practice in western nations, and during the last decade has been recognized as a monumental failure and a model of what not to do.

With the development of the methadone maintenance program in the 1960's, I, and probably others, thought that the decisive breakthrough had come and that it would only be a matter of time before a genuine, full-fledged medical program would be established in this country which would make the old prohibition system a dead issue. This has not happened. Instead, narcotic policy has become schizophrenic. While there is a methadone maintenance program, the idea of heroin maintenance seems to be viewed with horror. The fact that individual medical practitioners do provide privileged addicts with drugs, with the knowledge and consent of the enforcement officials, and the fact that this extra-legal practice seems to have operated admirably for decades seem to be ignored. Nor is there any apparent tendency to extend the practice. Discussions of the drug problem seem to be increasingly dominated by enforcement considerations of the traditional type focusing on the elimination of the supply. The methadone maintenance program is judged by prohibition standards, and many of the arguments advanced against it are so logically atrocious that it is evident they were invented as political weapons. As of old, the public discussion of policy is again dominated by lawyers, police officials, prosecutors, and politicians. The federal bureaucracy, that for decades bitterly opposed giving the medical profession any significant role in the problem, is busily inventing regulations and restrictions to apply to the methadone program. These regulations and restrictions carry with them the threat of criminal prosecution, and have effectively checked the growth of a comprehensive program.

It is essential, if the trend toward a rational drug program is to continue, and if the advances of the last ten years are not to be nullified, that the federal narcotic enforcement bureaucracy, as it now exists, be dismantled and restricted in its powers and functions. This bureaucracy is both the symbol of the old, discredited prohibition system and also the base of its political power. It has more than earned oblivion by its record of a half-century of futility flavored with arrogance, ruthlessness, and corruption. In view of the investigations of this bureaucracy that are now in progress, the time may be at hand for a final and decisive break with the discredited tradition it represents.