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## Introduction: In Search of a Breakthrough in the War on Drugs

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# Introduction: In Search of a Breakthrough in the War on Drugs

Steven Wisotsky

## **Abstract**

I have convened this symposium because my research has brought me to the conclusion that the War on Drugs is a serious mistake, inflicting on society the worst of both worlds: a rapidly rising tide of drug abuse exacerbated by the pernicious effects of a drug trafficking parasite of international dimensions.

**KEYWORDS:** war, drugs, trafficking

# Introduction: In Search of a Breakthrough in the War on Drugs

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I have convened this symposium because my research has brought me to the firm conclusion that the War on Drugs is a serious mistake, inflicting on society the worst of both worlds: a rapidly rising tide of drug abuse exacerbated by the pernicious effects of a drug trafficking parasite of international dimensions. Cocaine cowboy killings, corrupt public officials, subversive "narcoterrorist" alliances between guerrillas and drug traffickers and many other black market pathologies flourish in the drug underworld. Indeed, the more enforcement we have, the worse things seem to get. It is only rational to ask whether the "cure" may not be worse than the "disease." Yet there is no real public debate on that question, only an occasional parody of discussion in which crude demands to intensify or militarize the war are opposed by simplistic rejoinders for "decriminalization." This impoverished dialog gets us nowhere.<sup>1</sup> Society is stuck on the drug issue, and there seems to be no way out of the morass. How did we arrive at such an impasse?

Not many years ago, the President of the United States, in response to public fears about spreading drug use, declared war on drugs. He denounced drug abuse as "public enemy number one," declared it to be a "national emergency" and called for a "total offensive" against drugs. A like-minded Congress, which only a year earlier had comprehensively revised the federal drug laws, cooperated by expanding the drug abuse budget ten times over. Seizing the momentum, the President re-organized the drug enforcement agencies and hired hundreds more drug agents to staff DEA. The war was on. The year was 1971. The President was Richard Nixon.

Although the war on drugs soon generated record levels of drug arrests and drug seizures, it was no match for the social forces at work. Marijuana, a symbol of youthful protest among hippies and yuppies in

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1. *The Wall Street Journal* ran a front page story on Nov. 29, 1984, with these headlines and subheadings: *The Drug Trade: Experts in the Field of Narcotics Debate Ways to Curb Drug Abuse: One Side Touts Legalization, Other Wants Crackdown, Probably Neither is Right.*

the late 1960's, moved into the mainstream of American life during the 1970's and gained what now looks like a permanent foothold. Twenty-three to twenty-four million Americans report smoking marijuana, a remarkable figure that is just under one-half the number of those who smoke cigarettes.

Cocaine followed a similar social path, moving in less than a decade from underground or avant-garde status to the cover of *Time Magazine*: White powder in a martini glass, topped by an olive, captured the essence of the cover story "Middle Class High". By the time the Reagan Administration declared its war on drugs in 1982, pledging to "cripple the power of the Mob in America" and to "do what is necessary to end the drug menace," experimentation with or occasional use of illicit drugs had ceased to be an aberration and came close to being the statistical norm. According to the National Institute of Drug Abuse, about one-half of all persons under age 50 have some illegal drug experience. Two-thirds of all high school students have used illicit drugs.

Given that social context, the current war on drugs had to fail even more badly than the first. It has been an intense effort nonetheless, reflecting the Reagan Administration's negative attitudes about drugs: "The mood towards drugs is changing in this country and the momentum is with us. We're making no excuses for drugs, hard, soft or otherwise. Drugs are bad and we're going after them." And the Administration did just that.

President Reagan's speech of October 14, 1982, called for (and got) more of everything: (1) more personnel — 1,020 law enforcement agents for DEA, FBI and other agencies, 200 Assistant United States Attorneys, and 340 clerical staff; (2) more aggressive law enforcement — creating twelve (later thirteen) regional Organized Crime Drug Enforcement Task Forces (OCDEFs) in "core cities" across the nation "to identify, investigate, and prosecute members of high-level drug trafficking enterprises, and to destroy the operations of those organizations"; (3) more money — \$127.5 million in *additional* funding, and a substantial re-allocation of the existing \$702.8 million budget away from prevention, treatment and research programs to law enforcement programs; (4) more prison bed space — addition of 1260 beds at 11 federal prisons to accommodate the increase in drug offenders to be incarcerated; (5) more stringent laws - a "legislative offensive designed to win approval of reforms" with respect to bail, sentencing, criminal forfeiture and the exclusionary rule; (6) more (better) inter-agency coordination, bringing together federal law enforcement agencies in "a

comprehensive attack on drug trafficking and organized crime" under a Cabinet level committee chaired by the Attorney General"; and (7) improved federal-state coordination, including federal training of State agents.

The President's perception about the mood of the country seemed accurate. His antidrug initiative was not imposed from above upon an indifferent public but drew energy from a broad base of political support. Before his October 14, 1982, speech, for example, the Attorney General's Task Force on Violent Crime had recommended "an unequivocal commitment to combatting international and domestic drug traffic." In the Senate, twenty-eight Senators had banded together in the Drug Enforcement Caucus in order to "establish drug enforcement as a Senate priority." And the House Select Committee on Narcotics Abuse and Control had urged the President to "declare war on drugs."

Energized by this hardening attitude against illegal drugs, the Administration acted aggressively, mobilizing an impressive array of federal bureaucracies and resources in a coordinated attack on the drug supply. This Administration cut through bureaucratic rivalries like no Administration before it to streamline operations and force cooperation between DEA, Customs, and other agencies. The FBI was placed in charge of DEA and given major drug enforcement responsibility for the first time in history.

The Administration attempted to erect a modern anti-drug version of the Maginot Line with National Narcotics Border Interdiction System (NNBIS), a national network designed to coordinate surveillance and interdiction efforts around the entire coastline of the United States. As part of that initiative, NNBIS floated radar balloons in the skies of Miami, the Keys, and even the Bahamas to protect the nation's perimeter against drug incursions.

The CIA joined the war effort by supplying intelligence about foreign drug sources, and NASA assisted with satellite-based information about coca and marijuana crops under cultivation. Financial investigations, aided by computerized data banks and staffed by Treasury agents specially trained to trace money laundering operations, were emphasized. The State Department pressured foreign governments to eradicate illegal coca and marijuana plants and financed pilot programs to provide peasant farmers with alternative cash crops. Mutual assistance treaties to expose "dirty" money secreted in tax haven nations and to extradite defendants accused of drug conspiracies against the laws of the United States were also concluded.

President Reagan also succeeded in literally militarizing what had

previously been a rhetorical war by deploying the military forces of the United States in drug enforcement operations. The Department of Defense provided pursuit planes, helicopters and other equipment to civilian enforcement agencies, while Navy "hawkeye" radar planes patrolled the coastal skies in search of smuggling aircraft and ships. The Coast Guard, receiving new cutters and more personnel, intensified its customary task of interdicting drug-carrying vessels at sea. Finally, for the first time in American history, Naval ships, including a nuclear-powered anti-aircraft carrier, interdicted — and in one case fired upon — drug smuggling ships in international waters. On a purely technical level, the Administration could rightly claim success in focusing the resources of the federal government in an historically single-minded attack on the drug supply.

Congress reinforced the executive branch by passing its "legislative offensive" toughening the laws on bail, sentencing, and criminal forfeiture. The Supreme Court responded too by narrowing the scope of protections against unlawful search and seizure afforded citizens by the fourth amendment. In almost every case the Court ruled for the Government, upholding warrantless searches of open fields and automobiles, and dispensing with the requirement of probable cause to stop, detain and question travelers, to use a detector dog to sniff luggage, to board and search vessels on the high seas or inland water ways, and so on.

The states and localities joined the war with highway roadblocks, drug detector dogs in the schools, urinalysis proposals, TIPS (Turn in a Pusher) bounty programs, and mandatory prison terms of up to 35 years for convicted drug traffickers.

And what were the results of this extraordinary enforcement effort? It racked up new records in every category of measurement. A September 27, 1984, White House press release, "Summary of Accomplishments [of] the National Campaign Against Drug Abuse," listed these results:

- \* Arrests of the top-level organizers and financiers of the drug traffic have increased 18 percent, from 195 per month in 1981 to about 231 per month in 1984. Total arrests averaged about 1,000 per month.

- \* Convictions for all drug law violations have increased 90 percent, from 485 per month in 1981 to about 921 per month in 1984.

- \* Convictions for top echelon organizers and financiers have increased 186 percent, from 88 per month in 1981 to about 252 per month in 1984.

- \* U.S. seizures of cocaine during the first seven months of 1984

are 216 percent greater than cocaine seizures during all of 1981. Heroin seizures are 67 percent greater for the first seven months of 1984 than in all of 1981.

\* In the first half of 1984, over 25 metric tons of cocaine were seized in the United States and Latin America, compared to approximately 3.7 metric tons in 1981.

But the bottom line of the War on Drugs showed new highs in the volume of cocaine imported to the United States, about 100 metric tons (a trebling in six years); new highs in the number of persons who had tried cocaine or become addicted to it; new highs in the purity of cocaine available on the street; and a lower price for cocaine than when the war started.

With marijuana, imports dropped, but domestic production rose to fill the market demand. A large-scale American marijuana industry has emerged to fill the gap in foreign supply caused by intensive interdiction of marijuana freighters in Caribbean and Atlantic waters. As a result of this "successful" interdiction of marijuana from abroad, we now have extensive, and still burgeoning, cultivation of high potency marijuana in the United States. In one three-day "sweep" during 1985, DEA agents sighted 3,010 illegal plots of marijuana. The National Organization for the Reform of Marijuana Laws estimates that marijuana is now America's third largest cash crop, worth nearly \$14 billion per year. Notably, prices of commercial grade marijuana at \$40-\$60 ounce are less, after correcting for inflation, than they were fifteen to twenty years ago.<sup>2</sup>

Theoretically, a highly committed program of interdiction, with a level of border security characteristic of closed societies, might become more successful. But such a program would also be very costly, as shown by a General Accounting Office study of interdiction:

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2. Heroin, which used to carry the stigma of a ghetto drug, has now penetrated the lifestyles of the rich and famous. John Belushi's death was one notorious case. A Kennedy son was another. A *Rolling Stone* magazine story suggested that heroin has become the plaything of the progeny of the rich and occupies the same chic social status that cocaine held fifteen years ago. The story gets worse. "China White" and other heroin analogs have entered the lexicon as "designer drugs." These laboratory creations are said to be far more potent and more toxic than the "real" thing. The ingenuity of the creators of these drugs shows the potential for an infinite supply of new domestic drug products. Further, because they require no smuggling to get to market, they lie even further beyond the reach of law enforcement officials.

[T]he Coast Guard has estimated that it would have to seize 75 percent of the marijuana entering the United States before drug traffickers would be driven out of business . . . [at a cost of] \$2.3 billion in additional operating funds. . . . Estimates to seize 75 percent of the cocaine, heroin, and dangerous drugs entering this country are not available, but it would also take billions of dollars.

It would also disrupt the flow of commerce and damage normal business operations. Most of all, it would have no impact on domestically produced drugs. The Department of Justice concedes these limitations of drug interdiction. "[Y]ears of experience have shown that this band-aid approach to controlling illegal drugs — stopping them midway along the delivery chain — is nothing more than a maintenance effort which, standing alone, will never have any permanent effect on drug traffic."

Thus, despite the Administration's bigger-than-ever statistics in every category — seizures, forfeitures, investigations, indictments, arrests and convictions — the fact remains that the black market in drugs, especially cocaine, has grown to record size. In fact, by 1980, Americans had consumed twice as much cocaine per capita as they did in the basically free market that prevailed in the years before enactment of the Harrison Narcotics Act of 1914. Moreover, this rapid market growth occurred in the face of President Reagan's doubling of the federal drug enforcement budget from \$645 million in fiscal year 1981 to over \$1.2 billion in fiscal year 1985. This budgetary expansion seems all the more remarkable when compared to the equivalent budget for FY 1969 of \$34.2 million. The social "return" on the extra billions spent during that decade and a half is a drug abuse problem of historic magnitude, accompanied by freewheeling drug trafficking that corrodes our political institutions and destabilizes the governments of our allies in this Hemisphere.

Might things be even worse but for the War on Drugs? I doubt it. In the United States in the 1960's and 1970's, smoking marijuana was an idea whose time had come. No marshalling of the forces of law in a free society could then (or now) begin to control the private behavior of twenty-four million Americans.<sup>3</sup> Social behavior proceeds independently of legal regulation. Thus, the few states that decriminalized ma-

3. Not even a police state can do it — the Soviet Union, for example, now confronts a growing supply of heroin and opium (smuggled in from Afghanistan) to add to its already serious problem of alcoholism.



rijuana in the 1970's encountered no perceptible increase in the level of smoking. Similarly, if marijuana smoking is now on the decline among high school youth, as some surveys suggest, it is not because of law enforcement (and certainly not because of any shortage of supply) but because, as with cigarette smoking, the health movement and other social developments now work to undermine it. The same thing will eventually happen with cocaine as its reputation worsens.

The law has very little role to play in these trends. Worse, it does not even have any realistic goals. In their wildest fantasies, do law enforcement officials dream of cutting the black market in cocaine by, say, one-half? While that would be a heroic achievement, given the limited powers of law enforcement, its impact on public health would be minimal. It would, after all, only roll back the black market in cocaine to the level of the early 1980's, the very level which triggered the War on Drugs hysteria in the first place. Moreover, the social benefit would be quite modest. Cutting the black market in cocaine back to forty or fifty tons would save perhaps a hundred lives and a few thousand emergency room visits each year, far less than would be accomplished by comparable expenditures on, say, highway safety. For example, the Department of Transportation estimates that mandatory seat belt use by front seat passengers would save 10,000 lives each year. Zero cocaine and heroin use would save perhaps 2,000 lives. Zero cigarette consumption would save 360,000 lives! The rhetoric of death and destruction about illicit drugs so obscures the true state of affairs that the War on Drugs lacks all sense of proportion.

The ultimate question is whether the War on Drugs makes a net contribution to the quality of life in the United States. Does it promote or harm the safety and well being of the nation? To answer that question intelligently, we must ask about the price we pay for it. What does it cost society to maintain the War on Drugs?

The direct budgetary cost of the War on Drugs — \$1.5 billion — is the least of it, not even a drop in the bucket of a trillion dollar federal budget.<sup>4</sup> The true cost of the War on Drugs comes from its creation and perpetuation of a massive black market. Responding to the laws of supply and demand, the alchemy of prohibition transforms a \$60.00 ounce of pharmaceutical cocaine into \$2000 or \$3000 worth of black market cocaine. Economists call this a crime tariff, a "tax" for

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4. On the state level, however, the criminal justice systems suffer a massive diversion of resources resulting from the processing of 750,000 drug arrests each year, most of them for simple possession or minor sales.

the benefit of criminals willing to break the law. The paramilitary pounding away at the production and distribution of cocaine props up its exorbitant price, thereby creating a vast underground economy estimated by the Government at \$80-100 billion in yearly revenues, \$30 billion of it from cocaine alone.

These black market billions feed the growth of powerful crime syndicates willing to commit murder and to corrupt public officials in order to protect their operations. One quarter of all the homicides in Miami, Los Angeles and New York are "drug-related," *i.e.*, drug hits or drug rip-offs. Bribery of public officials is so pervasive and the amounts of money so great that according to former Attorney General William French Smith, corruption "threatens the very foundations of law enforcement." Indeed, whole nations — Bolivia and the Bahamas stand out — have been captured by drug syndicates. The black market also supports international terrorism and subversion by funding unholy alliances between drug traffickers and guerrillas who protect drug operations in return for arms. "Narcoterrorism" thus threatens the stability of friendly governments in Colombia, Peru, and elsewhere.

Within the United States, frustrated reaction to the growth of the black market leads to increasing demands for enlarged police powers,<sup>5</sup> destroying the civil rights of both criminal defendants and ordinary citizens. The pressure debases the rule of law through a gradual but obvious result-oriented squeezing of the Constitution.<sup>6</sup> If preventive detention is "necessary" to "get" drug traffickers, then let's pass a law and the Eighth Amendment be damned. As the Supreme Court itself has recognized, "[T]he history of the narcotics legislation in this country 'reveals the determination of Congress to turn the screw of the criminal machinery — detection, prosecution and punishment — tighter and tighter.'" Pretrial detention, longer (or mandatory) prison sentences, enhanced fines and property forfeitures, good faith exception to the exclusionary rule, roadblocks, drug detector dogs, compulsory urine samples, wiretaps, informants, undercover agents, extradition treaties, tax investigations, computers, currency controls — the list grows and

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5. The crackdown contributes nothing at all to public safety but paradoxically makes it worse. The pressure of drug prices "compels" many addicts to commit street crimes in order to pay for their habits.

6. Justice Hugo Black warned that "grave evils such as the narcotics traffic can too easily cause threats to our basic liberties by making attractive the adoption of constitutionally forbidden short cuts . . ." *Turner v. United States*, 396 U.S. 398, 427 (1970). "Our Constitution was not written in the sands to be washed away by each wave of new judges blown in by each successive political wind . . ." *Id.* at 426.

grows. And still it is not enough. Always the Government needs more.

That, ultimately, is the truly insidious quality of the War on Drugs: The drug enforcement system can never have enough power, never enough resources, to win the war. Legislative reforms, doubling of "troops," administrative directives, task forces, executive coordination — all of these have proven ineffective in controlling the drug supply and, short of a police state, always will. Yet the reflexive response of the system is always to do more, always to expand. "In one sense," said former Attorney General William French Smith, "to deal with this problem, we have to blanket the world."

Blanketing the world, of course, begins at home. When one initiative and then the next fails to produce any discernible or lasting impact on the black market in drugs, the frustrated impetus for control carries the system to its next "logical" extension. And the internal logic of the War on Drugs, coupled with its insatiable appetite for resources and power in its futile pursuit, leads inevitably to repressive measures. The demand for capital punishment for drug dealers is one current manifestation of this attitude. But the trump card of the black market in cocaine is that it can never be deterred. Rather, it thrives on enforcement, depends on it for its profitability. There is thus no escape from the drug supply, or from the destructive effects of drug enforcement.

The blind refusal of federal policy-makers to acknowledge this truth and to confront it in some realistic and constructive way presents an easy target for critics of the status quo. Yet, the criticisms are not only fair, but imperative. The federal drug enforcement system is out of control, unaccountable and irresponsible. It mindlessly claims "success," for example, when enforcement pressure in the Caribbean diverts smugglers to alternative routes or, worse, from bulky marijuana shipments to more easily concealable cargoes of cocaine. These consequences may be unintended but they are surely predictable.

The War on Drugs has made things worse and will do so in the future. Yet we remain stuck on this course of action. Isn't there a better way? The need is to precipitate a breakthrough, a turning point, a transformation of social context so that the destructive machinery of the War on Drugs ceases to be the only conceivable response to the problems created by illegal drug use.

Many people agree with this analysis but are stymied by the lack of a reasonable alternative. "Professor, what's the answer; what should replace the war on drugs," they ask. They shouldn't ask. First, it has taken the Government seventy years and billions of dollars to produce the present messy state of affairs. No individual should be expected to

produce a quick fix. Second, the truth isn't really "tellable." It's something people have to discover for themselves. They can be guided toward it, however. Thus, if the Government were really interested in meliorating "the drug problem" rather than waging a holy war on inanimate objects, it could begin a serious study of alternatives. It would not take the ridiculous position that drug abuse and drug supplies are worse than ever but that we can't even *consider* doing anything other than continuing on a failed course of action.

I refuse to believe that the human mind that created our political system of representative democracy, the most dynamic free enterprise system in the world, the computer revolution, and a culture whose popular entertainments captivate the imagination of the world, is not up to the task of devising a principled and effective response to the drug problem. I would start by first recognizing that the War on Drugs is unwinnable, a policy disaster that inevitably produces destructive consequences worse than the disease it is intended to "cure." I would then convene a panel of experts, brilliant scholars and experienced professionals such as the ones you have before you, to begin a search for new directions.