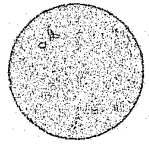


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## DRUG LEGALIZATION ISSUES

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NEW YORK STATE POLICE

Planning and Research

February 1990

## 1. INTRODUCTION

In recent months there has been a growing call, in some quarters, for a radically different approach to dealing with drug trafficking, drug abuse and drug addiction. Proponents of this argument, legalization of drugs, represent a cross-section of society and include academicians, politicians, journalists, a few criminal justice practitioners and others. However, the New York State Police in particular, and law enforcement in general, remain firmly opposed to legalization of drugs. Superintendent Thomas Constantine has publicly voiced his opposition on a number of occasions beginning with his January 8, 1990 testimony before the Senate Committee on Alcohol and Drugs.

"The criminals who traffic in illegal narcotics are well organized, well armed and are not constrained by local, county, state or even national jurisdictional boundaries. The State Police has recognized this and is developing not only a statewide, but also an interstate approach to cooperative law enforcement in an effort to identify and apprehend drug traffickers and interdict illegal drugs. The Governor's Anti-Drug Abuse Council Strategy Report will strengthen and enhance our efforts. As Superintendent of the designated lead agency for the State's law enforcement efforts I promise you an all-out, cooperative effort to ensure that we will win the war on drugs.

"Before I conclude, I cannot ignore the recent stand taken by some prominent people -- people who should, frankly, know better -- advocating the legalization of narcotics. I strongly support the Council and the Governor in opposition to this misguided position. Legalization of drugs is indefensible. It would destroy our society as it did China's in the last century.

"The calls for legalization could not come at a worse time. The Council has developed a sound approach to the illegal drug problem and we should expend every effort to implement its recommendations. Doing so will require significant sacrifices, but yielding to the siren song of legalization will require a far greater sacrifice -- our children and our future."

Beginning on the next page the Superintendent expands upon his opposition to legalization as summarized above in his remarks before the Senate Committee. Opposition to decriminalization has likewise been publicly and emphatically voiced by the Governor and the Lieutenant Governor.

## **2. SUPERINTENDENT'S MESSAGE ON LEGALIZATION**

Twenty-five years ago a new law enforcement problem was beginning to manifest itself in this country -- the rapidly spreading use of, and trafficking in, illegal drugs. Until the mid-1960's, illegal drugs and drug abuse were confined to inner cities and to groups that were considered societal outcasts. In 1963 the New York State Police did not make a single arrest for an illegal drug offense. In 1964 the number of drug cases jumped to 74, the first trickle in a flood that reached 16,687 cases in 1989.

As police officers saw the human misery and crime spawned by illegal drugs, they sounded the alarm to anyone who would listen. Unfortunately, very few were willing to listen. In fact, many people, none of whom had to deal with the problem on the streets, accused the police of using scare tactics, minimized the the adverse effects of drug abuse and the potential for addiction and even encouraged young people to experiment with drugs. So the police fought what amounted to a delaying action against illegal drugs. They fought essentially alone, waiting for society to wake up.

Society is finally awake, and it has been a rude awakening. As drug related violence and crime touch more and more people, as the number of abandoned and abused children skyrockets, and as the medical system is being overwhelmed by AIDS and other epidemic health problems related to drug abuse, people are finally recognizing that illegal drugs are perhaps the greatest threat to our security, freedom and safety that our country has ever faced. If the situation were not so desperate, it would be a good time to say, "We told you so."

Unfortunately, the situation is desperate. And in desperate situations, people are willing to grasp at straws or adopt unreasoned plans in order to save themselves. Our society is enamored with quick fixes. We want instant gratification, quick, painless solutions, results now. This desire for an easy escape from life's difficulties is a primary motivator for those who succumb to drug abuse and has been succinctly described by an American Author, Editor and Philosopher as follows, "For every complex problem there is a simple answer...and it is wrong."

The latest quick fix being offered for the problems caused by illegal drug use and trafficking is to legalize drugs. This is not a passing fad; legislation to legalize drugs has already been introduced in this session of the Legislature. While, on the surface, some of the claims made by legalization proponents sound attractive, legalizing drugs is not the answer. Legalizing drugs would be nothing short of committing societal suicide.

Proponents of legalization argue that legalization will not significantly increase the number of addicts, that legalization will reduce drug-related crime, that legalization will save money, and that we've tried everything else without success so the only thing left to do is legalize drugs. I don't have the time or space to thoroughly rebut all of the arguments here, but I want to briefly address some of the most often repeated claims. The prominence of the people who are proposing legalization and the widespread coverage their proposals are receiving in the media make it likely that this issue will remain a significant concern.

### Legalization Will Drastically Increase the Number of Addicts

Legalization proponents argue that having drugs readily and legally available will not result in a significant increase in the number of addicts. This position ignores the fact that there is little distinction in this country between what is legal and what is socially condoned. Removal of legal sanctions against drug use would result in many law-abiding citizens being tempted to experiment with narcotics. It is much easier to resist the urge to try drugs when obtaining the drugs requires a trip into a crime-ridden part of town, and contact with criminals who are just as likely to assault and rob you as sell you drugs, than it is when drugs can be obtained by walking into the local pharmacy or convenience store.

Moreover, if experimentation increases because of easy availability, addiction will certainly increase. The Drug Enforcement Administration estimates that 75% of the people who use crack cocaine will become addicted after three uses. As many as 50% may become addicted after the first use. Even with legal sanctions, there are currently 14,500,000 people in the United States who use illicit drugs once a month or more. The most tragic addicts are the babies who are born addicted because their mothers used drugs while pregnant. Legalization of drugs would result in hundreds of more addicted babies born every year and hundreds of thousands of more teenage adult addicts.

### Legalizing Drugs Will Not Reduce Crime

Legalization proponents assume that, if drugs are available legally, there will no longer be any violent battles to control drug trafficking. We only have to look to gambling and cigarettes to see the fallacy of this assumption. Legalized gambling has not eliminated the illegal numbers and book-making operations run by organized crime, and trafficking in untaxed cigarettes is a major source of income for the mobs. Unless the government gives away drugs to whoever wants them, in whatever quantity the user wants (actions that even the most liberal legalization proposals don't endorse), there will be a black market for drugs, and that black market will be controlled by violent criminals.

Legalization proponents also argue that making drugs legally available to users, at a government regulated low price, will eliminate the need for addicts to commit crimes in order to finance their drug purchases. It is questionable that a government agency can provide drugs at a lower price than illegal drug traffickers. More to the point, the current glut of cocaine has driven prices to the lowest levels in history; a rock of crack can be purchased for as little as five dollars. This low price certainly hasn't eliminated drug related prostitution, burglary and robbery. No matter how low the price, an addict with no source of legitimate income will be driven to commit crimes to obtain the money to buy drugs. I was recently on a television panel show dealing with this issue and a young man in the audience, a former drug addict, stood up and addressed this assumption most effectively. He said "Crime won't go down. If your legalize them, the only difference would be I'd be taking the money to a legal store instead of the dope man."

There is more to drug related crime than the violence committed by dealers in turf battles and the prostitution and theft committed by users to get the means to buy drugs. In the past ten years, child abuse and neglect cases in New York City have increased over 700%, almost all of which is directly related to the increase in drug addiction and abuse. It is not uncommon for drug addicted mothers to literally sell their children into prostitution in order to get money for their next hit. Legalization proponents likewise ignore the violence and mayhem caused by people under the influence of drugs. This type of crime -- child abuse, neglect and sexual exploitation, spouse abuse, vehicular assault and homicide -- will certainly increase as the number of drug users and addicts increases.

#### Legalizing Drugs Will Not Save Money

Legalization proponents object to the money being spent on interdiction and drug law enforcement. They argue that legalizing drugs would allow society to save all the money spent on enforcing drug laws, some of which would be used to expand treatment and the rest of which could be used for tax reduction or other purposes. Some even suggest that drugs could be taxed as tobacco and alcohol products are, thus becoming a new source of revenue for the State.

While I am at a loss to see how taxing drugs to raise revenue is consistent with providing them to addicts at a low price, arguing that legalizing drugs will save money ignores the increased cost of treatment, the cost of productivity losses and increased accidents caused by workers high on drugs and increased health care costs for AIDS and other drug related diseases. The cost of AIDS treatment alone threatens to overwhelm the health care system, and drug abuse is the primary method of AIDS transmission among heterosexuals, and currently is responsible for the majority of new cases of AIDS, in this country.

A major concern of both industry and government is the shrinking number of younger workers as the baby boom ends. This is a threat to our economic competitiveness, to our military, law enforcement and other public safety occupations that require younger, physically fit employees and even to Social Security, which requires a large pool of workers paying taxes to provide the benefits to retirees. Yet young people are the most susceptible to experimentation with drugs and drug addiction. Legalizing drugs would devastate young people just when they are desperately needed by our economy.

#### Legalizing Drugs is Not the Only Option Left

Legalization proponents argue that everything else has been tried and has failed, so we might as well try legalization. The first problem with this assertion is that we have already tried legalization in this country, and it was a tragic failure. The second is that we have not tried everything else, and there are signs that what we have been doing is beginning to work.

Those who would legalize drugs are frustrated that, despite the efforts made to interdict drug trafficking and enforce drug laws, drug abuse and addiction has not been eliminated. Certainly nobody is more frustrated than those of us who have been in the trenches in the war on drugs for the last twenty-five or thirty years. Up until this point, however, all of our weapons have been essentially defensive and all of our battles have been holding actions. Just as defensive battles will not win a war, interdiction and arrest will not eliminate the drug problem. But law enforcement has finally been given an offensive weapon, one that shows promise as a means to ultimately win this war.

Our offensive weapon is education -- programs like LEARN, DARE and Scared Stiff. For the first time, polls show that drug use among high school students is declining. More importantly, the attitude of high school and grammar school students is changing to intolerance of illegal drug use. There have even been repeated reports of children convincing their parents to give up illegal drug use. Truly this is the answer to those who say we can never win the war on drugs.

The calls for legalization could not come at a worse time. We are finally beginning to win battles. Our program of concentrated enforcement through Drug Enforcement Task Forces, Troop Narcotics Units, the new Community Narcotics Enforcement Teams, and intensive efforts to seize the assets of illegal drug dealers are having a major impact on illegal narcotics trafficking in New York. Enforcement alone cannot win the war, but enforcement is essential to contain the enemy while we expand our education efforts, which can win the war. Winning will require significant sacrifices, but yielding to the siren song of legalization will require a far greater sacrifice -- our children and our future.

### **3. ARGUMENTS IN FAVOR OF DRUG LEGALIZATION**

The balance of this report discusses several arguments of proponents for the legalization of drugs along with counter-points often cited by those opposed to decriminalization of narcotics.

#### **A. The War Against Drugs Cannot Be Won.**

Legalizers argue that enforcement and interdiction efforts in the U.S. for over 70 years (since the Harrison Narcotics Act of 1914) are costly and ineffective.

Response:

- We haven't had a war on drugs yet. The estimated annual cost of U.S. domestic drug enforcement of \$10 billion per year, or about \$44 per U.S. citizen. Not only is spending for drug law enforcement resources relatively low, law enforcement efficiency is reduced by restrictive rules regarding search and seizure and restrictions on the introduction of evidence for prosecution.

- There is evidence that enforcement efforts to date have had a positive effect. In Washington DC the number of arrestees testing positive for cocaine has dropped from 67 percent to 54 percent. The most recent report of a survey of high school students done by the University of Michigan shows that marijuana smoking is down and powdered cocaine use is down. The same survey shows that use of crack cocaine, cigarette smoking and alcohol use has remained level in recent years among high school students.

#### **B. Legalization Will Reduce Drug Trade Violence**

Legalizers argue that because drugs are illegal and the stakes are high a propensity to use violence to protect supplies, turf and markets is created. If drugs were legalized and became cheaper violence would be reduced. The reduction in violence after prohibition ended is sometimes cited as evidence.

Response:

- This argument rests on the premise that if drugs are legal they will be cheaper. This may or may not in fact be true.
- The argument is aimed at drug trafficker violence and ignores drug user violence, which will increase. With legal support drug use will escalate. With increased drug use a proportional increase in addiction can be expected. This will mean increased fatalities due to impaired drivers, increased child and wife abuse, increased assault, or robberies and homicides.
- Unless all drugs are legalized, the propensity to use violence to protect supplies, turf and markets will continue for those drugs which remain illegal.

#### **C. Legalization Will Reduce Crime**

The argument that legalization will reduce drug crime is based on the proposition that if the profit motive is removed from the drug trade, then criminality related to drug profits will disappear.

Response:

The likelihood of this happening was expressed by a drug treatment center resident appearing on an Albany public access television program when he said: "Crime won't go down. When I was using, I would steal anything that wasn't bolted down. If you legalize them, the only difference would be I'd be taking the money to a legal store instead of the dope man."

#### **D. Alcohol and Cigarettes Are Harmful, But Are Legal**

Citing the well known health and public safety hazards of tobacco products and alcohol, drug legalization proponents argue that the Government cannot restrict individual freedom of choice regarding drug-taking, because we've already allowed ready access to two drugs.

Response:

- While alcohol causes impairment, tobacco does not, and is not a useful comparison when attempting to set public policy for psychotropic drugs. The sole purpose for taking many derivatives of cocoa and opium is to achieve a "high" or altered state of mind. What is the effect on other people of having individuals "high" or "stoned"? Certainly the individual feels good for a time, but what is the benefit or detriment for the rest of society?
- While use of tobacco generally affects the individual user most heavily, misuse of alcohol has severe consequences on people surrounding the alcohol abuser and in particular can kill innocent victims who do not even know the drinker. Alcohol use by motor vehicle drivers was related to 735 highway deaths in New York and 23,352 highway deaths nationwide in 1988.
- While harder to count accurately, we know alcohol contributes to crime, family violence, and accidents which cause tragedy and reduces productivity. Some portion of the 13,011 alcohol related motor vehicle accidents in New York in 1988 could have been reduced with attenuated alcohol consumption.
- The cost of the current policy of legal tobacco and alcohol is very high in terms of death, illness and lost productivity, and in a way it makes more sense to reduce rather than increase access to these substances.

**E. Taxing Drugs Can Provide Income For Treatment Programs**

Legalization proponents argue that if drugs are legalized, new taxes will provide a source of revenue to fund treatment programs. The revenue generated from cigarette and alcohol taxes is cited as an example.

Response:

- Lacking accurate estimates of the potential revenue generated by narcotic drugs and the potential cost of effective narcotic drug treatment we cannot say with confidence that the formula will balance. It does appear, however, that present cigarette and alcohol tax revenues are insufficient to provide adequate treatment for those adversely affected by these drugs. In addition there is a powerful temptation to use this revenue for other important purposes as is the current situation with the Social Security Tax.
- Taxing drugs raises their price. The higher the price, the greater tendency to produce black market supply sources and increase drug trade violence. Consider that cigarette costs have risen over the last 20 years due to increased taxes. Sin taxes have created a black market to avoid payment of taxes. The same will likely occur with narcotics. The taxes designed to discourage tobacco use have been less effective than envisioned.

**F. Enforcement Cost Can Be Spent For Treatment**

Legalization proponents argue that resources spent on drug enforcement are wasted because they are not 100% effective, and would be more productively spent on drug addict rehabilitation.



Response:

- Because drug enforcement efforts have been less than 100% successful is not sufficient reason to abandon them.
- Enforcement alone cannot solve this drug crisis. As US Drug Czar William Bennett and Lieutenant Governor Stan Lundine's Task Force have pointed out, a concerted effort is needed to attack this problem: Enforcement - Prevention - Treatment. This total effort has never been undertaken in concert; therefore it is too early for the legalizers to throw in the towel and surrender. The State Police stand ready to lead a concerted law enforcement effort, and assist in educational efforts to insure a positive attack is mounted and is successful in reducing both drug supplies and drug demands.

**G. Legalization Would Wipe Out Drug Lord Income**

Believing that the very high profit margins in drug trade are the root cause of violence and other problems, legalizers argue that removing the opportunity for profit making will cause the collapse of international drug trade. They propose that Government operated or Government sanctioned supply, processing and distribution can be done so cheaply as to drive out the competition of illegal suppliers.

Response:

- This argument is true only if the Government is willing to supply all desired drugs to anyone who wants them in any requested quantity. If not, there will still be room for illicit drug commerce.
- The argument is true only if the Government or other supply system can consistently supply the desired drugs at prices lower than alternative channels.
- US Congressman Charles Rangel responded to this argument by saying:

"Those advocating legalization or a discussion of it frequently speak of the fact that it would "take the profit out" of drug sales. Absolutely not. The profit would simply be transferred from the outlaws to entities like the multi-national pharmaceuticals. Profits cannot be taken away. Nobody is going to be getting anything free. There will always be profits."

**4. ARGUMENTS AGAINST DRUG LEGALIZATION**

In this section several arguments against the notion that narcotic drugs should be legalized are presented and discussed briefly.

**A. Increased Availability Means More Addicts**

If the Government were to remove penalties for drug production, sale and use, those who were previously inhibited from trying or using drugs might be induced to sample or begin using them. In order to successfully eliminate illicit market competition, supply and availability of drugs must be greatly increased, and this would serve as an inducement to increase the number of drug users in the population.

Response:

- We lack hard figures in this area and the magnitude of the increase is subject to speculation. A good way to look at this would be to think what would happen if we removed all criminal, legal, and civil sanctions involved with impaired driving. Would DWI decrease, or would it increase considerably?
- The British experience with heroin legalization indicates heroin addicts increased. British Secretary of State for Health Norman Fowler said in 1983: "The number of narcotic drug addicts known by the Home Office to be receiving drugs in 1972 was 1,620, but by 1982 the figure had risen to 4,400. Norman Fowler continues "These figures relate only to known narcotic addicts. The true figure for drug misuse is much higher and must take into account people who are dependent on other types of drugs. Research suggests there could be as many as 40,000."

**B. Health Care Costs Would Increase**

Increased drug availability is likely to result in increased drug use, and this will create increased demand for acute and long term health care. The number of new patients and the cost of their treatment is speculative, but we know that presently treatment for alcoholism costs more than most individuals can pay on their own without insurance coverage. We do know that doctors are more expensive than policemen.

Response:

- Consider the problems that current drug use, including alcohol, produces:

13,000 motor vehicle accidents per year in NYS, and an unknown number of industrial and home accidents. 1,878 New Yorkers died in 1988 due to drinking related diseases. Hundreds of newborn babies with Fetal Alcohol Syndrome have a reduced chance of surviving infancy, and show a greater likelihood of having birth defects. Homicides and shooting accidents are closely related to alcohol use. The same is true for domestic violence. In 1988 1,200 New Yorkers died as a result of using illegal drugs. Of this total, 1,120 were drug-dependent users, 21 were non-dependent or casual users, and 59 were accidental or experimental users.

**C. Government Approval Makes Education More Difficult**

Reduction in cigarette smoking in the United States has been attributed to educational efforts. It is more difficult to convince an audience that smoking is harmful when the Government has not banned its sale, and anti-smoking educational campaigns would probably have been more successful if cigarettes were not so widely available.

Response:

- Narcotic drug use can be seen as a choice between individual pleasure and social responsibility. Naturally the fabric of society needs contributions by socially responsible citizens to continue itself, and drug use can be seen as an impairment to accomplishing the greater societal goal. Drug legalization or decriminalization may tend to reduce the contribution of individuals to the greater goal of responsible citizenship.

#### **D. Legal Narcotics May Lead to More Dangerous Drugs**

Legalization of cocaine reduces inhibitions about taking this drug and may result in reduced inhibitions about taking crack - a more addictive and behaviorally dangerous derivative of cocaine. Legal narcotics may increase demand for hallucinogens like PCP (Angel Dust) and smokeable amphetamines (Ice) which have been associated with wildly dangerous behaviors by users. Also, new drugs are being developed - about which we have little or no experiential knowledge.

#### **Response:**

- One of the newest law enforcement and drug treatment problems is the manufacture of Ice or a smokeable form of methamphetamine, made in Clandestine Laboratories. This method of ingestion gives a more intense and longer lasting "high". Presently the manufacture of this drug appears to be centered in Hawaii.
- Evidence from studying amphetamine use patterns indicates that users start with oral administration of the drug, go to intravenous injection to get a greater rush, and then to a smokable form (Ice) to achieve an ever greater effect. There is little or no evidence to suggest drug users voluntarily reduce their ingestion of these substances.

#### **E. Black Market and Illicit Trade May Still Exist**

If a drug user is unable to get the drugs he wants to use through legal channels, he may turn to illegal channels just as he does now. If we do not dispense any drug, in any quantity, to any person without stigma or bureaucratic procedure, cheaper than the competition can supply, there will be alternative suppliers willing to meet these needs. In short, there will probably always be a black market of illicit drug trade.

#### **Response:**

- The British Report that even after two decades of legalized heroin, only about one tenth of the heroin addicts are registered with Government clinics, and sale of heroin in both prescription pill form and traditional illicit form is a common and persistent problem.

#### **F. Increased Drug Use Means Reduced Productivity**

Drug takers are not as ready, willing and able to put in a day at work than non-drug takers. Work lost to use of our two present legal drugs has reached a serious and even intolerable level, according to some. Increased drug use will result in more car, truck, train, and airplane crashes. The United States is entering a period of increased competitiveness with other economic powers at a time when the young work force is diminishing. Increased drug use will diminish our national productivity and hurt our ability to compete in international markets.

Response:

One of the strongest forces behind the passage of the Harrison Narcotics Control Act of 1914 was the complaint by industrialists and businessmen that people taking drugs were not fit for work in factories. Observations of drug-taking populations today indicate that addicts are not well-suited to hold a job. Finally, there is the issue of diminished alertness by truck drivers, railroad engineers, etc. who have taken drugs -- even marijuana and prescription drugs. We see no evidence that narcotic drugs increase productivity, and no way to counter this argument.

**G. A Government Which Provides Drugs Incurs A Liability**

In our present litigious society, people who suffer a loss or injury sometimes seek to blame their misfortune on others. Smokers have sued tobacco companies for supplying a dangerous product; drivers have sued high performance automobile manufacturers for selling powerful sports cars; and citizens sue the State and Federal Government often.

Response:

- The deadly effects of alcohol and some drugs were not well known before they were legalized. In this case, we already know of the detrimental effects of Crack, Ice, PCP, etc. How can we legalize and condone their use and not be held responsible for the predictable disastrous effects?

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