A Sane Drug Policy

by The Progressive magazine editorial staff, October, 1999.

George W. Bush's little problem with putting to rest allegations of past cocaine use does not concern us much. But what does concern us a great deal is the destructiveness of U.S. drug policy. The war on drugs is taking a terrible toll on our society. It's time to admit that prohibition is not the answer and to implement a policy based not on moralism but on public health.

The U.S. government is spending an enormous amount of money to wage this war--a figure that has exploded in the last two decades. In 1981, the federal drug control budget stood at $1.5 billion. By 1991, it was $11 billion. Today, it is $17 billion. And the lion's share of that cost goes not to drug prevention and treatment but to imprisonment.

More than any other single element, it is the war on drugs that is fueling our prison-industrial complex. Sixty-three percent of federal prisoners and 21 percent of state prisoners are drug offenders. All told, in 1997, there were 271,000 people in state or federal prisons strictly for drug offenses, according to the Bureau of Justice Statistics, ten times the number in 1981. More than 100,000 of those were there for mere possession.

As a nation, we are not solving the problem of drug abuse. We are warehousing it. We are not treating the patient; we are throwing the book at him.

People who are convicted of drug crimes are receiving penalties that are grossly disproportionate. "The laws of at least fifteen states now require life sentences for certain nonviolent marijuana offenses," The Atlantic Monthly reported in April 1997. "In Montana, a life sentence can be imposed for growing a single marijuana plant or selling a single joint." The article, by Eric Schlosser, noted that "in 1992 the average punishment for a violent offender in the United States was forty-three months in prison. The average punishment, under federal law, for a marijuana offender that same year was about fifty months in prison." And the situation has gotten worse since then, as more states have passed laws imposing mandatory sentences and longer terms for drug offenses.

The war on drugs is a war on minorities. While illegal drug use does not vary much by race, incarceration for illegal drug use sure does. In 1997, more than five times as many blacks as whites were in state prisons and jails for drug offenses, according to the Bureau of Justice Statistics. And since whites outnumber blacks in the general population by 6 to 1, blacks are imprisoned for drug offenses at thirty times the per capita rate of whites.
The figures for Hispanics are not as lopsided but are still disturbing. Hispanics outnumber whites in state prisons and jails on drug charges by 51,200 to 43,200 even though whites outnumber Hispanics in the general population by more than 6 to 1.

This crackdown on minority drug users explains much of the growth in the prison population. "From 1990 to 1994, incarceration for drug offenses accounted for 60 percent of the increase in the black population in state prisons and 91 percent of the increase in federal prisons," according to an article in the January/February issue of *Public Health Reports*.

Why this racial discrepancy? "Law enforcement pays more attention to blacks than whites," says Vincent Schiraldi, director of the Justice Policy Institute in Washington, D.C. "Blacks can't get cabs but they get police cars. Our juvenile jails are a sea of black and Latino faces. Minorities are being put behind bars for things that would be unthinkable if they were white, middle class kids. But because it's a black or a Latino face, the script is prison. For the exact same offense, a black or a Latino kid gets jail time, and a white, middle class kid gets off. Imagine how that would make you feel about your citizenship if you were a black or Latino parent and saw your kid treated significantly worse than white kids."

As the war on drugs has deepened the racial divide in our country, it has also corroded our freedoms. "The Fourth Amendment has been weakened time after time, but at least it had some threads left," says journalist and constitutional scholar Nat Hentoff. "But because of the war on drugs, the Fourth Amendment has been practically vitiated."

"The war on drugs has put political pressure on judges, which has led them to consistently overlook constitutional violations by the police where drugs are involved and to bend and stretch the law to afford the police greater ability to search without probable cause," says David Cole, professor of law at Georgetown University and author of *No Equal Justice: Race and Class in the American Criminal Justice System* (The New Press, 1999). "In that respect, the war on drugs has diminished the liberties of us all. But more specifically, the judicial diminution of rights in the criminal context has had a particular impact on minorities. They are the ones who tend to be approached in train stations, airports, on buses, and on the highways for drug searches and drug sweeps."

Ira Glasser, executive director of the American Civil Liberties Union (ACLU), calls the war on drugs "a civil liberties and constitutional disaster in every way." But he points, in particular, to its discriminatory effect. "The tremendous racial disparities make the violation of rights even worse than if they were randomly distributed," he says. "And one of the consequences of the war on drugs, since all but four states permanently disenfranchise felons, is that 14 percent of African American males are disenfranchised and up to 30 percent in some Southern states. We are disenfranchising the victims of the war on drugs."

The war on drugs has had a similarly malignant effect on Latin America. By using its leverage to force countries to enlist in the war on drugs, "the United States has fueled the
corruption of the military in many countries in Latin America and has brought greater involvement of the military into traditional civil functions in places like Mexico," says Eric Olson of the Washington Office on Latin America. "The war on drugs has also had a negative impact on human rights, as it has led to attacks on civilians in Colombia, Bolivia, Peru, and Mexico."

In addition, the eviction of peasants from their lands and the spraying of toxic chemicals that are prohibited in the United States have served to exacerbate social and environmental problems in several Latin American countries, says Larry Birns, the director of the Council on Hemispheric Affairs.

**Perhaps most pernicious** of all, the war on drugs is preying on the addicted. "For those who are drug-dependent or addicted and cannot gain access to effective treatment, these laws dictate a life of crime and of degradation, deceit, and (for the poor) prostitution and drug trafficking to obtain the money needed to shop in a violent and expensive marketplace," writes Ernest Drucker in *Public Health Reports*. Drucker, who is a professor of epidemiology and social medicine at the Montefiore Medical Center/Albert Einstein College of Medicine, adds that even though overall drug use has been declining, drug-related admissions to emergency rooms are on the rise, as are drug-related fatalities. "African Americans fare dramatically worse than whites," he points out. "African Americans have 3.5 times the rate of drug fatalities of whites."

"To put people in jail for having this stuff, for needing this stuff, is really criminal," says Kenneth Sharpe, professor of political science at Swarthmore College and co-author of *Drug War Politics: The Price of Denial* (University of California Press, 1996). Sharpe points out the absurdities in the way our society treats addicts. Many cannot receive treatment for their addictions unless they are in prison, and the line in prison is long, so sometimes judges give addicts stiffer sentences to ensure that they will eventually get treatment. "That's totally perverse," Sharpe says. "For many addicts, access to treatment is easier if you're in the criminal justice system."

Even so, treatment in prisons is on the decline. "In state prisons, one in ten inmates in 1997 had participated in treatment since admission to prison, down from one in four inmates in 1991," according to the Sentencing Project in Washington, D.C.

Today, the rhetoric of prohibition often gets in the way of public health. For instance, Mayor Giuliani of New York last year tried to withdraw methadone treatments from heroin addicts, and the U.S. government refuses to provide funds for needle-exchange programs, though its own studies demonstrate that such programs would save lives.

The war on drugs is, to a large extent, a war on marijuana: 43 percent of state drug prisoners are behind bars on possession charges alone, and the vast majority of those are for possession of marijuana, the least dangerous of the illegal substances, and one that is far less toxic than alcohol or tobacco.
Official data from coroners in 1996, collected by the National Institutes of Health, show that drug overdoses killed 9,484 people: alcohol accounted for 37 percent of these, heroin 42 percent, and cocaine 47 percent (some were in combination). Not one single death was attributed to marijuana.

For context, tobacco accounts for 430,700 deaths per year, according to the Centers for Disease Control. And the total number of alcohol-related deaths is anywhere between 19,500 a year, according to the National Center for Health Statistics, and more than 100,000 a year, according to a December 1996 *Scientific American* article, which counted car accidents, homicides, and suicides--factors that the National Center did not count.

**The United States has three choices** when it comes to drug policy: continue to wage the war on drugs, legalize all drugs, or take a public health approach with an emphasis on decriminalization where feasible. It is this last option that we favor.

The war on drugs is a failure. It has not solved the problem of drug abuse in our society, and the costs--economic, political, social, international, and public health--are exorbitant. To continue to wage this war (or to escalate it, as some suggest) would only increase those costs. What's more, the war on drugs is based on a faulty assumption, an unrealistic goal: that we can attain a drug-free, zero-tolerance society. We can't. And the very effort to attain this goal is already tearing at the democratic fabric of this country.

Instead, we should recognize that "drug use is here to stay," as Ethan Nadelmann bluntly puts it. Nadelmann is the director of the Lindesmith Center, a drug policy research institute in New York that is affiliated with George Soros's Open Society. Nadelmann has some sympathy for the libertarian argument in favor of legalizing drugs. "We are taking what is a health issue and a personal relaxation and enjoyment issue, and we are criminalizing it with a pervasive, far-reaching, insidious, prohibitionist regime."

But Nadelmann prefers, as we do, a "harm-reduction" approach to that of total legalization of all drugs.

Sharpe makes the case against the libertarian argument for legalization. "We shouldn't allow the free market to be in control here any more than we would for alcohol and tobacco," Sharpe says. "We don't need to endorse companies making huge profits by selling things that are bad for people."

Nor do the libertarians allow for any governmental role to help addicts, whereas we do. As Sharpe puts it, "There is a public responsibility for treatment and prevention."

In our view, it's important to distinguish between marijuana and harder drugs like cocaine, amphetamine, and heroin. We believe that all offenses related to marijuana should be decriminalized immediately.
Barry McCaffrey, the drug czar, says marijuana is a "gateway" drug that leads to the harder stuff. But Sharpe says "it's not a gateway drug because of the properties of the drug but because of the way the sales mechanism works." Dealers in the harder drugs try to get their customers to buy upscale, he explains. But if you split the market in two between a decriminalized and criminalized one, there would be less chance of the gateway phenomenon occurring. And by decriminalizing this most popular drug of all, the United States would go a long way toward reducing the violence that comes with the drug business.

We also believe that imprisoning people for possession of hard drugs is wrong. It invades their privacy, and it punishes them for their addictions.

Prosecuting the dealing of large amounts of harder drugs like cocaine and heroin still makes sense, however, since these drugs can be devastating. Even the Netherlands, the most permissive of European nations, pursues large-scale peddlers, Sharpe notes.

But European nations have a more enlightened approach to hard drug users. In England and Switzerland, for instance, heroin addicts can receive the drug in clinics under the supervision of medical professionals.

Prevention and treatment, by the way, is a lot more cost-effective than the prohibitionist approach. A 1997 RAND Corporation study entitled *Mandatory Minimum Drug Sentences: Throwing Away the Key or the Taxpayers' Money?* concluded that it is about eight times more expensive to reduce consumption through mandatory sentences than it is through treatment.

Prohibitionists argue that by lessening the penalties on illegal drug use, you will increase the number of drug abusers, and as a result, more people will be ruining their lives. But "it's not well established that decriminalizing would increase drug use," Nadelmann says. In an article published in the January-February issue of *Foreign Policy*, he wrote: "Between 1973 and 1978, eleven states approved decriminalization statutes that reclassified marijuana possession as a misdemeanor, petty offense, or civil violation punishable by no more than a $100 fine. Consumption trends in those states and in states that retained stricter sanctions were indistinguishable."

If the United States took a harm-reduction approach to drugs, it would federally fund needle exchange programs. It would allow for the use of medical marijuana, as voters in Alaska, Nevada, Oregon, and Washington have demanded. It would devote a lot more resources to prevention and treatment.

But such a change of policy is not on the agenda right now. And the reason is political.

"Why is it that a policy that is such a total failure cannot be discussed? It's due, in part, to the politics of rhetoric and toughness, and the Democrats are just as guilty of this as the Republicans are," says Sharpe. "If change is going to come, it's not going to come from the President, and it's not going to come from Congress. It will happen at the local level,
from people who are involved in the medical marijuana effort, from people who are advocating needle exchange. There needs to be a slow, grassroots transformation of opinion. Until then, no politician in his right mind is going to come forward with a more sensible policy."

That transformation of opinion is already under way. And with any luck, George W. Bush will have unwittingly pushed it along.

Addiction, Pain, & Public Health website
www.doctordeluca.com/