

War on Drugs Puts Justice in Jeopardy

Beyond Criticism of the “War on Drugs,” KCBA Proposes Workable Alternative

By Roger Goodman*

A driving force behind the King County Bar Association’s long-standing drug policy reform effort has been the desire to relieve undue pressure on the courts and thereby improve the administration of justice, as well as to foster greater respect for the law. The KCBA’s initiative has been in response to the decades of failure of the “War on Drugs,” which has tragically put justice in jeopardy. Having joined the chorus a few years ago in declaring the War on Drugs to be fundamentally flawed, the KCBA has now moved beyond mere protest and has proposed a workable “exit strategy.”

What the Current System Allows

Treating drug use as a criminal matter rather than a social and medical issue has not been successful in reducing drug use nor the harms arising from drug use. The prohibition of substances such as cannabis, heroin, cocaine and methamphetamine has ironically resulted in the ceding of control of those so-called “controlled substances” to the black market, effectively leaving their production and distribution exclusively in the hands of violent criminal enterprises. We have been continually seeking new tools to fight the persistent crime problem that has inevitably arisen from the policy of drug prohibition, meanwhile distracting both the state and society at large from effectively addressing the problem of drug addiction itself.

On a global scale the regime of drug prohibition has wrought devastating consequences, as powerful gangs threaten stability and corrupt governments in the poorer “source” countries, people and the land are poisoned by drug eradication efforts and terrorist networks tap into the big business of prohibited drugs to fund their operations. U.S. efforts to suppress drug production from source countries have repeatedly resulted in more efficient production within those countries and in the displacement of production to other countries.

History has shown that high profits are assured to those who provide through the “black market” a prohibited product for which there is an unrelenting demand. Without any regulation, this black market regulates itself through such illegal means as violence and money laundering. High street-level prices of prohibited drugs lead to higher profits for the criminal gangs, which, in turn, create stronger incentives to continue doing business in prohibited drugs, a global trade that generates about \$500 *billion* a year.

In the United States the response to prohibited drug use calls for harsh criminal sanctions, distinguishing the U.S. with the highest incarceration rate in the world. At least three-quarters of the roughly \$40 billion the U.S. spends each year to control drug

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abuse is to apprehend and punish drug law violators rather than providing prevention and treatment services.

Although whites use prohibited drugs at a rate roughly equal to that of African-Americans and Latinos, three-quarters of those incarcerated for drug law violations are non-white. There are now more young black men in jails and prisons than there are in colleges and universities, largely as a result of the “War on Drugs.” Poor, minority communities are filled with young men whose futures are bleak, with drug-related criminal histories having reduced the chances of employment and of receiving benefits like food stamps, housing and student financial aid.

The Legacy of Drug Prohibition

The unfortunate legacy of the recent federal drug laws includes a five-fold increase in federal drug convictions since the 1970s and over 67,000 sentenced drug offenders in federal prison in 2001, up from only 3,400 in 1970, where drug offenders now comprise over 55% of the federal prison population. In the states, the number behind bars for violating the drug laws has increased eleven-fold since 1980, from fewer than 42,000 at that time to almost 500,000 today. As the “War on Drugs” has intensified in the past 25 years, the number of incarcerated drug offenders has grown by over 1,000 percent, nearly 40 times greater than the growth rate of the U.S. population overall.

The tragedy of mass incarceration of drug law violators in the U.S. has been compounded by the lack of progress in reducing access to and use of drugs, especially the use of “hard” drugs by young persons. Heroin is reported to be easier for high school student to obtain today than it was in the 1970s and 1980s and one in three high school seniors say that it is now easy to get cocaine, crack or LSD. Cocaine use among teens has risen recently and the average age at first use, particularly of crack cocaine and heroin, has declined significantly in the last dozen years. In addition, high school seniors report that marijuana is easier to get now than it was during most of the 1980s and 1990s and more high school students currently use marijuana than tobacco.

The White House drug control office stresses the importance of supply reduction efforts “to make drugs more expensive, less potent, and less available.” However, despite federal expenditures of over \$45 billion since 1980 on such efforts, the White House itself has reported that cocaine and heroin “street” prices have fallen to historic lows while purity levels have risen and remained stable, signs that the criminal enterprises trafficking in drugs are becoming more efficient, selling a better product for less. Meanwhile, law enforcement agencies across the U.S. continue to report that illegal drugs are “readily available” in urban, suburban and rural areas. The abject failure of current U.S. drug policy has finally led to calls for fundamental reform.

Exit Strategy for the War on Drugs

Along with a broad coalition of professional and civic groups, the King County Bar Association recently proposed the first steps in an exit strategy for the failed “War on Drugs,” beginning a fundamental shift in the way the state addresses the chronic problem

of drug abuse. Other organizations in the legal and medical communities supporting this effort include the Washington State Public Health Association, the Washington State Pharmacy Association, the Washington Academy of Family Physicians, the Washington Society of Addiction Medicine, Washington Physicians for Social Responsibility, the King County Medical Society, the Loren Miller Bar Association, the League of Women Voters of Seattle and the Church Council of Greater Seattle, and this coalition continues to grow.

Outlining the parameters of a new legal framework for controlling psychoactive drugs, the KCBA and its coalition have requested the Washington State Legislature to establish a commission of experts in the field to make detailed recommendations for statutory changes. Hearing the call, the legislature even began this year to explore the possibility of such a new legal framework. The Washington State Senate held an important public hearing on March 2, 2005 on Senate Bill 6055, which would establish a state commission to make recommendations on how to undercut the violent “black” market in illegal drugs, how to protect children more effectively from access to drugs and how to provide addiction treatment to hard-to-reach addicts who are causing public disorder and are a major public health problem.

Culminating three years of intensive study, the KCBA has also released a landmark report, entitled *Effective Drug Control: Toward A New Legal Framework*, which is the product of a special task force of lawyers, public health experts, current and former law enforcement representatives and current and former elected officials. The report is intended to provide policymakers and the public with a road map to help reduce wasteful public spending, to shut down the criminal gangs controlling the drug trade and to provide better treatment for addiction and better protection for children.

Persuasive and voluminous research indicates that a public health approach to drug abuse – stressing research, education, prevention and treatment – is far more effective than the use of criminal sanctions. However, the policy of drug prohibition, which has spawned a range of intractable problems, from a flourishing “black market” to the spread of blood-borne diseases to official corruption, has been a major impediment to employing such a public health approach. The KCBA is now proposing more responsible use of taxpayers’ money by employing a workable alternative to the counterproductive criminal approach. KCBA members are enthusiastically invited to participate in the next phase of the Drug Policy Project’s work as it continues to refine and promote that workable alternative.

Copies of the King County Bar Association’s new report, *Effective Drug Control: Toward A New Legal Framework*, are available for no charge by calling the KCBA office at (206) 267-7001.

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