Memorandum

To: Legislative Committee Members


Date: February 18, 2008

Re: Realignment of the Criminalization of Illicit Drugs to Treatment: Advocacy with Supporting Legislative History

Overview

The non-medical use of cocaine was federally regulated for the first time in 1914 with the passage of the Harrison Act in 1914 (“Drug Facts”). Since then, the government has devoted considerable efforts and resources to the fight against illicit drugs in our country. In fact, this policy area is most commonly referred to in terms of violent metaphors, including, for example, the “war on drugs.” Because we are in a “war against drugs,” our policy response focuses not on helping people with drug addiction problems (although drug prevention and treatment are a part of the policy response), but on “defeating our enemy.” However, our “enemy” in this war is our own citizens who have become addicted to drugs. While the legislation summarized below often refers to treatment efforts, only a very small percentage of resources are actually devoted to treatment. According to Jim Moye, an attorney with the District of Columbia Office of Corporation Counsel, “only four cents of every dollar budgeted is spent on drug prevention and treatment” (Moye, 276).

Another aspect of the criminalization of drugs is that it leaves the production and distribution in the hands of criminals. This system, then, creates a criminal underclass to fill the need for drugs. This illegal system is ruled by violence and there is little to no concern for the safety of the actual product (either in terms of appropriate dosing or in materials used to create or to “cut” the pure drug).

Finally, there are significant costs associated with the war on drugs. First, there are significant resources devoted to the arrest, prosecution and imprisonment of people who use illicit drugs. Vast sums of resources are spent each year by law enforcement, the court system, and the prison system on this war on drugs. One estimate places the U.S. government spending approximately $26 billion a year on the war on drugs (Moye, 276). A second significant cost consideration is the loss of potential tax revenues from the sale of drugs. A final significant cost in the war on drugs is the loss of respect for the legal system by certain citizens. Studies show the current policy appears to disproportionately impact African-Americans. For example, University of Chicago Law School Professor Tracey L. Meares cites a study that provides that “in 1993, African Americans comprised 35% of those arrested for drug offenses, 55% of those convicted for drug offenses, and 74% of those who received prison sentences for drug offenses” (Meares, 140).
While there is a large number of drugs that are illegal to possess, manufacture, distribute, and so on, we address only cocaine as a starting point for the possible transition from a focus on punishment to a focus on treatment for drug abusers in our country. If cocaine were legalized, then the resources currently devoted to enforcing and imprisoning cocaine users could be diverted to drug prevention and treatment programs. Also, and importantly, the government would no longer have to define a portion of its constituents as an “enemy.”

The legislative summaries that follow describe a federal response to our drug problem that ostensibly provides for both law enforcement and treatment. Unfortunately, the reality is that this legislation results in a system where nearly all of the available resources are devoted to law enforcement and punishment, not treatment.

**Major Legislation**

**91st Congress**

**H.R. 18583: “Comprehensive Drug Abuse Prevention and Control Act of 1970.”** This Act was designed to increase research into and prevention of “drug abuse and drug dependence,” provide for “treatment and rehabilitation of drug abusers,” and to “strengthen existing law enforcement authority” in the area of drug abuse. This Act became Public Law No. 91-513 on October 27, 1970.

This Act was promulgated before the introduction of “crack cocaine.” Crack cocaine became a cheap alternative to other illicit drugs and resulted in what many referred to as an epidemic.

**99th Congress**

**H.R. 5484: “Anti-Drug Abuse Act of 1986.”** This Act was designed to “strengthen Federal efforts” to halt “international drug traffic . . . provide strong Federal leadership in establishing effective drug abuse prevention and . . . to . . . support drug abuse treatment and rehabilitation efforts.” Among other things, this Act increased criminal penalties for drug trafficking, permits the seizure and forfeiture of property or funds involved in money laundering, provides grants to states for treatment, prevention and rehabilitation programs, and shares the sense of Congress that the media should refrain from “producing material that glamorizes” illegal drugs.

Other than block grants to the states for treatment efforts, this Act focuses on reinforcing the federal government’s ability to fight illicit drugs by increasing the punishment levels for trafficking and by expanding the scope of the criminal arm of the law to include the seizure and forfeiture of property or funds in the hands of “money launderers.” The focus of this Act is made clear by the power the federal government kept—the ability to fight against illegal drugs. Treatment efforts, on the other hand, are passed on to the states as
block grants. Treatment efforts, then, became as varied as the states themselves, with no central or powerful voice in government.

100th Congress

**H.R. 5210: “Anti-Drug Abuse Act of 1988.”** This Act is designed to “prevent the manufacturing, distribution, and use of illicit drugs.” Among other things, this Act increases the federal response to illicit drugs by establishing the Office of National Drug Control Policy and the position of the “drug czar,” funds U.S. Attorneys and their staff for the purposes of pursuing asset forfeiture and other civil remedies, criminalizes trafficking in anabolic steroids and prohibits the sale of certain consumer products containing butyl nitrite (“poppers”), establishes the “sense of Congress in opposition to the legalization of illegal drugs” by, among other things, making drug-related criminal activity grounds for termination of public housing tenancies and declaring the policy that America would be “drug-free” by 1995, and establishes the death penalty for certain Federal drug-related crimes. As with the Anti-Drug Abuse Act of 1986, the treatment provisions are limited to block grants—it amends the Public Health Service Act to provide for block grants to states for alcohol, drug abuse, and mental illness prevention and treatment, and research.

Again, this legislation evinces a clear focus by the federal government on law enforcement, with the treatment components being limited to a block grant system.

**Relevant Legal opinions**

While there are myriad cases dealing with the issue of drug laws, one Supreme Court opinion reflects the phenomenon that occurs when our government is engaged in a “war”—a willingness to accept injury to innocent noncombatants. While injury to innocent people often happens in war (despite the best, and often heroic, efforts by military personnel to avoid it), our government should not be engaged in a war against its own citizens simply because those citizens have made the unhealthy choice to use illicit drugs. Our government should be treating their addiction, not waging war against them.

In the following decision, the U.S. Supreme Court ruled on the side of the drug enforcement community and allowed four poor, elderly citizens—all four of whom were innocent bystanders—to be evicted from their own homes.

**Department of Housing and Urban Development v. Rucker,** 535 U.S. 125 (2002): A provision in an amendment to the United States Housing Act of 1937 (this Act gave Congress the power to authorize public housing authorities) gives public housing authorities the right to punish people engaged in drug-related criminal activity. In *Rucker*, the U.S. Supreme Court found in favor of a public housing authority who evicted four so-called “innocent tenants” for the drug-related activities of their grandchildren, caregivers, and guests. The four defendants in this case were elderly long-time residents of public housing who were evicted by the Oakland Housing Authority, not for engaging in any kind of
drug-related activity themselves, but for having family members or guests involved in drug activity on or simply near the Housing Authority premises.

Works Cited


