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Drugs, Crime and Punishment; The War On Drugs Is Self-Defeating

By JACK B. WEINSTEIN;

In the debate over national drug policy, too many policy makers, unsure of what might work or why, appear to rely upon what seems politically safe: harsher law enforcement based on more prison time.

A nonpartisan Federal Commission on Drugs needs to be formed. Its object should be to report candidly on the costs, benefits, risks and advantages of present and potential national drug policies. Such a commission could provide the fact-finding and serious analysis lacking in the political climate surrounding drugs.

The nation can look for guidance to the Wickersham Commission, appointed by President Hoover in 1929, whose report led to a full debate on Prohibition laws and a constitutional amendment returning responsibility to the states for control of alcohol. Also instructive is the National Commission on Marijuana and Drug Abuse, appointed by President Nixon in 1971, which recommended ending prosecution for possession of marijuana for private use.

So urgent is the issue that Chief Justice William H. Rehnquist in a speech in June said, "The law by itself is not going to solve the problems of drugs and violence," raising "questions of public policy which must be decided, not by lawyers, judges or other experts, but by the popularly elected branches of government" -- and ultimately, I think, by a well-informed electorate.

Attorney General Janet Reno, confronting the problem of drug crime immediately upon assuming office, emphasized the importance of reconsidering the existing policy.

America has had three national drug policies. Before 1914, a freedom model reigned. Opiates were sold as over-the-counter household remedies and marijuana was a legal crop. In 1914, we began to tax narcotics to control them, but we, like Britain, relied primarily on a medical model of treatment and prescriptions.

In the 1930's, we embarked upon a strict punitive model, and the medical profession was largely pushed out of the field. The drug supplier-law enforcement complex was enormously expanded by the war on drugs in the 1980's at an annual cost of tens of billions of dollars.

Meanwhile, in my judicial district, the Federal probation service has had to radically cut its drug-testing and medical treatment program; many parents have no place to send their children for help; educational and other nonpenal controls are ineffective, and, too frequently, ghetto youths seek to emulate sellers and thugs who brazenly walk city streets.

Largely because of drug prosecutions, our justice system is in crisis. Nationally, over one-third of all new inmates are drug offenders. Over 60 percent of those in Federal prisons have been convicted of drug offenses.

In the Eastern District of New York, we sentence about 400 drug "mules" each year. These are usually poor people who smuggle drugs, primarily heroin, from Nigeria and cocaine and heroin from Colombia. They are cheaply hired for one trip. Before the adoption of guideline sentencing, they were sentenced to 30 months and paroled in about one year.

Now they must serve an average of two additional years, and sometimes a 10-year minimum, leading to at least 800 more penal years, at millions of dollars of added expense for incarceration in our district alone.

Largely because of mandated and unnecessarily harsh sentences for minor drug offenders, which fail to deter, I have exercised my option as a senior Federal judge not to try minor drug cases.

When I wrote a report on drug laws for the City Bar Association in the early 1950's and then served as chairman of the lay board of the

North Brothers Island Hospital -- the first for teen-age narcotics users -- I believed a modified medical model was desirable. In the 60's, as a father I supported some form of criminal model because I thought that it might discourage drug use by young people. As a judge, in the 80's and 90's, I have become increasingly despondent over the cruelties and self-defeating character of our war on drugs.

A national commission could address the difficult questions. How should marijuana be treated? Has it become such a large and widely available cash crop that prohibition is neither attainable nor affordable? (In some districts Federal prosecutors decline cases involving less than a ton, while in other places people are sent to prison for years when they possess a few plants for their own use.)

How dangerous is marijuana? Does it have useful therapeutic values? How much money could be saved in law enforcement by decriminalizing its use? Would savings be offset by an increase in health and other costs attributable to a rise in consumption? Or would we find that noncriminal social controls -- ranging from taxation and bans on smoking in public places to peer pressure -- would reduce use, as they have for cigarette smoking?

For hard drugs, a national commission should consider the tradeoffs between medical controls and education, and our current punitive approach. Our investments in increased law enforcement are no longer providing adequate returns. If we reduce our criminal-penal efforts, how much of the savings could be better utilized for education and medical efforts to decrease demand? What is the optimal balance?

We must also consider moral and religious issues. Would decriminalization imply society's approval? Is there an overlooked moral dilemma in our penal approach that results, for example, in one in four black males in their 20's being under the control of the criminal justice system?

Different strategies might be required in dealing with different sectors of society. An airplane mechanic testified before me that he stopped using cocaine and marijuana when random drug testing was imposed, for fear of losing his job. Should we take greater advantage of alternative forms of control? Would such forms of control help those who may have lost hope for better lives?

Many such questions require analysis by economists, scientists, law enforcement specialists, sociologists, ethicists, religious leaders and others.

In considering loosening legal controls on narcotics, we must weigh the claim that our inner cities would be devastated against the price we now pay in daily body counts from gunfire. Unthinking acceptance of the current policy is unreasonable. It is time to compile the likely results of different drug policies. Only a national commission can do this. If we are fortunate, a national debate would follow. Perhaps then we could reduce the violence, moral degradation and waste associated with drugs in a more humane, effective and cost-efficient way.

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