Ending the Drug War: a Dream Deferred

Law Enforcement Against Prohibition
www.CopsSayLegalizeDrugs.com

June 2011
Acknowledgements:

This report was released on June 14 at an event made possible by the Drug Policy Alliance, whom we sincerely thank.

Much appreciation is due to the following individuals who provided invaluable assistance in creating this report: Tom Angell, Neill Franklin, Bill Fried, Ethel Rowland, Eric Sterling and Shaleen Title.

Graphic design by Shaleen Title.
About Law Enforcement Against Prohibition (LEAP)

LEAP is made up of current and former police, prosecutors, judges, FBI/DEA agents, corrections officials, military officers and others who fought on the front lines of the “war on drugs” and who know firsthand that prohibition only worsens drug addiction and illicit drug market violence. Including our civilian supporters, LEAP represents more than 40,000 people in more than 80 countries.

Please consider joining us and helping us to achieve our goals: 1) to educate the public, the media and policy makers about the failure of current policies, and 2) to restore the public’s respect for police, which has been greatly diminished by law enforcement’s involvement in enforcing drug prohibition.

www.CopsSayLegalizeDrugs.com
“America’s public enemy number one in the United States is drug abuse. In order to fight and defeat this enemy, it is necessary to wage a new, all-out offensive.”
President Richard Nixon
June 17, 1971

“We certainly ended the drug war, now almost two years ago, in the first interview that I did.”
White House “Drug Czar” Gil Kerlikowske
March 4, 2011
Executive Summary

President Richard Nixon officially declared a war on drugs on June 17, 1971. Thirty-eight years later, on May 14, 2009, the Obama administration’s drug czar, Gil Kerlikowske, matter-of-factly declared during a newspaper interview that he was ending the analogy of the “war on drugs”. But this wording change and the Obama administration’s many subsequent changes in verbiage have had no corresponding significant change in policy from that of the Bush administration. This report details the ongoing carnage resulting from our failed prohibition policy while the administration has simultaneously tried to score political points by adopting the rhetoric of an evidence-based policy.

Nowhere is the contrast between President Obama’s spoken words and policy toward drugs clearer than in the comparison between spending for punishment and interdiction (supply reduction) and spending for prevention, treatment and other health approaches (demand reduction). Despite President Obama’s clear -- and politically popular -- statement that “we have to think more about drugs as a public-health problem,” his administration’s budgets request funding for punishment at a much higher level than for treatment and prevention.

Similarly, the Obama administration has tried to convince the public that it supports states’ rights to enact medical marijuana laws while actually undermining such efforts at nearly every turn. The Obama administration gave great fanfare to an October 2009 memo suggesting that those in compliance with state law should not be prosecuted, leaking it to the press late on a Sunday night to ensure heavy media coverage. However, the rate of raids on medical marijuana providers during the Obama administration has actually increased since the Bush administration. Tellingly, the administration has done nothing to trumpet these raids to the press.

While the rates of drug-war-related deaths in Mexico skyrocket, the Obama administration continues to provide financial assistance to Mexico’s crackdown on drug cartels, like the Bush administration before it. Perversely, high-ranking Obama administration officials like DEA head Michele Leonhart have even described the increase in these grizzly killings as a sign of the success of prohibition. The Obama administration continues to fund Mexico’s war on drugs even as the killings increase faster each year (e.g. a 40% rise in killings from 2008 to 2009 and a nearly 60% rise from 2009 to 2010).

Meanwhile, as the Obama administration tries to ignore it, the drug war continues to cause widespread gang violence within our own borders, in addition to spillover cartel violence from Mexico. When a journalist asked U.S. Attorney General Eric Holder whether he thought ending the war on drugs would prevent the further loss of police officers’ lives in drug enforcement actions, he simply replied, “I don’t think that’s right…no” and then walked away.

The Obama administration does deserve credit for at least recognizing that the American people are ready for fundamental changes to drug policy and that anti-drug-war rhetoric is a shrewd political move. Fully 76% of the American people and 67% of chiefs of police have declared the drug war a failure, according to polls. The administration also deserves some credit for enacting a small number of sensible changes in domestic drug policy, including lifting the ban on using federal funding for syringe exchange and reducing the disparity between sentences for crack and powder cocaine.

But as the Obama administration’s policies largely lag behind its rhetoric, state governments and prominent individuals are leading the way to reform. As of this writing, 16 states plus the District of Columbia have laws on the books making medical marijuana legal for those with doctors’ recommendations, and 14 states have decriminalized possession of small amounts of marijuana. In 2012, several state ballots are expected to feature initiatives to legalize and regulate marijuana. A growing number of prominent organizations and individuals including the former presidents of several countries, former UN secretary general Kofi Annan and other world leaders, have all come out publicly to suggest a change in the failed war on drugs. Let’s hope that the Obama administration’s policies catch up to its rhetoric before it’s too late.
Introduction

President Richard Nixon officially declared a war on drugs in a message to Congress on June 17, 1971. Thirty-eight years later, on May 14, 2009, the Obama administration’s drug czar, Gil Kerlikowske, matter-of-factly declared during a newspaper interview that he was ending the war on drugs.

“But despite the drug czar’s declaration, the war on drugs is still being waged, more vigorously than ever. Using the federal government’s own data and other sources, this report details the ongoing carnage being caused by a prohibition policy the Obama administration seems to pretend no longer exists.

Handcuffs for Health Problems?

In contrast to President Obama’s admission that “we have to think more about drugs as a public-health problem,” his drug control budget requests continue a Bush-era ratio that funds punishment-oriented (supply reduction) pro-

Figure 1. Supply Reduction Versus Demand Reduction Budgets

grams at a much higher rate than health-oriented (demand reduction) strategies. If the president really thinks we need to move away from punitive, war-like approaches to the health issue of drug abuse, why, for example, did his first drug control budget with his new drug czar in place (FY 2011) include a 13% increase in anti-drug spending for the Department of Defense, an 18% increase in the Bureau of Prisons drug control funds and a 34% percent decrease in support for anti-drug programs under the Department of Education, as compared to President Bush’s budget from FY 2009?²

In light of President Nixon’s coining the phrase “war on drugs,” most people assume that he presided over a harsh, punishment-oriented drug control strategy. But his drug control budgets, unlike those of subsequent presidents, actually emphasized funding for health solutions to problems of drug abuse over punishment strategies.

For example, along with the original 1971 declaration of war against drugs, President Nixon requested that Congress appropriate $155 million in new anti-drug funds, with more than two-thirds of it earmarked solely for treatment and rehabilitation.²

The differences in how the Nixon and Obama administrations have publicly discussed their drug con-
control strategies show just how much the political dynamics surrounding drug policy have changed over the years. While the Nixon administration’s public messaging carefully stressed punishment, it directed resources primarily toward public health. Today, the Obama administration’s press releases emphasize public health while its funding requests are actually weighted toward punishment.

In adopting talking points about treating drug abuse as a health problem, the Obama administration has been able to score political points with the three-quarters of Americans who have come to realize that the war on drugs is a failure, yet few journalists have reported that the budget reality doesn’t match the rhetoric.³

In deed, if not in word, President Obama has presided over a war on drugs that has been waged at a rate virtually indistinguishable from that of his recent predecessors. For example, the latest available federal data shows that drug arrests during President Obama’s first year in office are up compared to those during the first year of President Bush’s administration. Fundamentally, the arrest rate hasn’t changed significantly despite the White House’s own admission that we cannot “arrest or incarcerate our way out of a problem this complex.”

If the administration sincerely believes the same old drug war approach is not going to solve drug abuse problems, then it needs to match its words to its deeds and actually shift limited resources away from programs that can never work towards programs that can.

Waging War Against Seriously Ill

In similar fashion, the Obama administration has tried to convince the public that it supports states’ rights to enact medical marijuana laws while actually undermining such efforts at nearly every turn. Despite reassurances that a cash-strapped federal government would not waste its limited resources attacking legitimate, state-approved medical marijuana providers, the rate of raids on those compassion centers has actually increased during this administration.

Notwithstanding an October 2009 Department of Justice memorandum that supposedly de-emphasized federal interference in medical marijuana states, Obama administration officials have thus far carried out nearly 100 raids on patients, growers, compassion

³

“In understand, from firsthand experience as a police officer and police chief, that we cannot arrest or incarcerate our way out of a problem this complex, and that a ‘War on Drugs’ mentality is too simplistic an approach to be effective.”

- White House Drug Czar Gil Kerlikowske

---

³...
centers and testing facilities in states where medical marijuana is legal. In comparison, Justice Department officials under the Bush administration conducted just over 200 such raids over the course of two entire presidential terms.⁴

But the Obama administration would rather voters not think of it as anti-medical marijuana. Knowing that its supposed non-interference medical marijuana policy would play well with the over 80 percent of the American public that supports medical marijuana, White House officials leaked the Justice Department memo to the Associated Press late on a Sunday night, ensuring that the story would be heavily emphasized during the beginning of the week’s news cycle.⁵

Tellingly, White House officials give no such fanfare to anti-medical marijuana moves by the Justice Department. For example, they have done nothing to trumpet threat letters that U.S. attorneys have issued to several state officials who are weighing approval of medical marijuana compassion centers.

If President Obama is serious about his campaign pledge that “it’s not a good use of our resources” to crack down on medical marijuana patients and providers, he needs to reign in these U.S. attorneys and DEA officials who insist on spending scarce taxpayer resources to interfere with the effective implementation of state medical marijuana laws.

**Deadly War South of the Border**

One of the ugliest signs of the failure of the war on drugs is the wildly escalating rate of
illegal drug trade murders in Mexico. Since Mexican President Felipe Calderon launched an offensive against drug cartels shortly after taking office in late 2006, nearly 40,000 people have been killed in attacks that the media calls “drug violence,” but which are in fact the predictable turf battles that accompany the policy of prohibition. The tally of dead of course includes cartel members themselves, but an alarming number of the fallen are police officers and civilian bystanders as well as some U.S. citizens. ¹⁶

The Obama administration, like the Bush administration before it, has provided financial assistance for President Calderon’s militarized approach through the so-called “Merida Initiative,” a multi-billion-dollar support package that supplies the Mexican government with money to purchase helicopters, surveillance and scanning technologies and other endlessly expensive paraphernalia required by the war on drugs.

But as the aid has been delivered, the death rates have only risen, with 15,273 losing their lives in 2010 alone, a 60 percent increase from 2009.⁷

Perversely, high-ranking Obama administration officials have even described the increase in these grizzly killings as a sign of success of prohibition. “It may seem contradictory, but the unfortunate level of violence is a sign of success

Figure 3. Drug War Killings in Mexico Since Launch of President Calderon’s Offensive on Drug Cartels

in the fight against drugs,” said Michele Leonhart, who served as acting administrator of the Drug Enforcement Administration under President Bush and whom President Obama nominated for the administrator job in early 2010.

While it is true that many killings occur after cartel leaders are brought to justice and their underlings battle it out to fill the power vacuum created by the arrests, officials like Leonhart refuse to acknowledge that this is a cycle that cannot and will not end until prohibition itself ends. As long as drugs remain illegal and thus incredibly lucrative on the black market, there will always be more people willing to step up and risk death or imprisonment for a chance at making riches in the underground market.

Blood on American Streets

According to the Department of Justice, the illegal drug market in the U.S. is dominated by 900,000 criminally active gang members affiliated with 20,000 street gangs that have set up shop in more than 2,500 cities across the country.⁸

It seems every week there are reports of drive-by shootings and battles over drug turf between these gang members as they fight for control of the lucrative illegal trade. But unlike Mexico, the U.S. government makes no attempt to tally those killed in domestic drug war battles on our streets.

An additional officially-untold number of people lose their lives in police raids gone wrong during which cops are killed by suspects or vice versa. This year the organization StopTheDrugWar.org has begun tallying the number of police officers and citizens killed in such law enforcement actions. As of June 6, four police officers and 25 civilians have lost their lives so far in 2011.⁹

But the Obama administration seems to want to pretend these killings aren’t happening. When a journalist asked U.S. Attorney General Eric Holder whether he thought ending the war on drugs would prevent the further loss of police officers’ lives in drug enforcement actions, he simply replied “I don’t think that’s right… no” and then walked away.¹⁰

It is unconscionable that the U.S. government can’t be bothered with tracking how many Americans are losing their lives as a result of our failed drug policies – especially when the Mexican government has shown that such tabulation is possible.

“IT MAY SEEM CONTRADICTION, BUT THE UNFORTUNATE LEVEL OF VIOLENCE IS A SIGN OF SUCCESS IN THE FIGHT AGAINST DRUGS.”
- Michele Leonhart, Administrator, Drug Enforcement Administration
And, the violence and kidnappings perpetrated by Mexican cartels have crept over into the U.S. The Department of Justice says that Mexican drug cartels now directly control illegal drug markets in at least 230 American cities.¹¹

If drugs were legal and regulated, the financial incentives for selling drugs on the black market – and the violent turf battles that are an inherent part of the illegal trade – would disappear. After all, Budweiser and Coors distributors never get into gun fights over market share in the now-legal market for alcohol, while the gangsters who once controlled the illegal prohibition-era market for booze often did – to deadly effect.

Credit Where Credit is Due

Despite a glaring failure to lead the way toward significant reform, the Obama administration’s rhetoric does at least recognize that the American people are ready for fundamental changes to drug policy. When Obama said during his campaign that the war on drugs is a failure, he was making a shrewd political move – not going out on a limb. Fully 76% of the American people and 67% of chiefs of police have declared the drug war a failure, according to polls.¹²,¹³

Law Enforcement in the Drug War Line of Fire

Too many tragic law enforcer deaths needlessly result from a policy that charges police with enforcing an unwinnable war on drugs.

One such tragedy was the death of U.S. Marshal Derek Hotsinpiller of West Virginia who was killed this February when a drug suspect opened fire on him and two other marshals during a police raid in Elkins, West Virginia.

The marshals were serving a warrant on Charles E. Smith, who was wanted on charges related to possession with intent to distribute cocaine. Immediately upon entering the residence, all three of the marshals were fired upon and struck by Smith. The marshals returned fire on Smith and he was shot dead on the scene. Derek, who was shot in the neck, was pronounced dead at a local hospital. He was just 24 years old.

Derek came from a law enforcement family. His late father was a lieutenant and his brother was a detective for the police force in Bridgeport, W.V. He graduated from the U.S. Marshals Academy on April 23, 2010.

“Derek was one of our own. He was one of our best. And he will be missed,” said U.S. Attorney General Eric Holder. “He was a young man with big plans and unlimited potential.”

Police make great sacrifices and put their lives at risk to keep our communities safe. Asking them to wage a war that is unwinnable no matter how much talent, commitment, and resources we dedicate is asking them to complete an impossible task. How many more must lose their lives before we change our disastrous policy?
The administration also deserves credit for enacting a small number of sensible changes in drug policy. While not game-changing, reforms like lifting the ban on using federal funding for syringe exchange and reducing the disparity between sentences for crack and powder cocaine signal that it is no longer considered politically toxic to reform such obviously failed drug policies, perhaps encouraging the even more fundamental reforms that are underway in several states.

The puzzling thing about Obama’s approach is how much it acknowledges yet lags behind the public’s widespread desire for drug policy reform. In today’s political landscape, many policymakers are increasingly rejecting arrest and eradication in favor of an approach based on public health, sound science, fiscal restraint and personal freedom.

States Leading the Way

As of this writing, 16 states plus the District of Columbia have laws on the books making medical marijuana legal for those with doctors’ recommendations, with three having passed their laws since 2009. Fourteen states have simply decriminalized possession of small amounts of marijuana, while others – like Rhode Island – have a good chance of passing such legislation this year.

In November 2010, California came close to legalizing and regulating marijuana sales outright through Proposition 19. While the measure didn’t pass, it did bring in 46.5 percent of the vote, springboarding the issue of legalization onto the table for serious discussion across the U.S. and globally. It is likely that initiatives to legalize use and sales of marijuana for adults will appear on several state ballots in 2012, most likely in California and Colorado.

A growing number of prominent individuals and organizations have jumped into the pro-side of the marijuana legalization debate, including the National Black Police Association, the National Latino Officers Association, the California NAACP, the Service Employees International Union of California and the editorial boards of regional daily newspapers like The Denver Post, The Seattle Times and The Providence Journal.

Even some federal lawmakers are joining the debate. In May, a bipartisan group of members of the U.S. House of Representatives intro-

Fully 76% of the American people and 67% of chiefs of police have declared the drug war a failure, according to polls.
A commission consisting of former presidents of several countries, former UN secretary general Kofi Annan and other world leaders released a report in early June encouraging nations to experiment with models of legal regulation.

The Price of Inaction is Too High

The ongoing fiscal crisis at all levels of government means, as it did during alcohol prohibition in the midst of the Great Depression, that people are going to be increasingly intolerant of a policy that is not only inefficient and ineffective, but remarkably costly. Harvard University economist Jeffrey Miron has conservatively estimated that legalizing and regulating drugs would create $88 billion a year in savings and new revenue for U.S. federal and state governments.¹⁴

Although the failure of prohibition and the violence it causes would be unacceptable at any price, it will be harder and harder to maintain support for such a policy during what many are calling the “Great Recession.”

Conclusion

While this report hasn’t pulled any punches in pointing out where the Obama administration hasn’t matched its deeds to its words with respect to a real shift in the drug control strategy, the fault for our entrenched drug policies does not solely lie with this or any particular president. They have all been culpable since the cynical, manipulative beginnings of the war on
drugs.

The real problem is the policy of drug prohibition itself; no less susceptible to abuse and waste than our parallel experiment with alcohol prohibition. That policy also yielded unprecedented (and predictable) rises in murders, overdose deaths, corruption and a disregard for the rule of law. It funded, armed and politically empowered a brutal underworld. It deprived hard-pressed taxpayers of fiscal relief. It did a lot of things, but it surely didn’t prevent folks from drinking.

The real difference between the alcohol and drug prohibitions is the latter’s staying power and destructive impact. While America’s experiment with banning alcohol lasted only 13 years, drug prohibition has resulted in an average of one million arrests each year for the past 40 years, over a trillion tax dollars spent, and millions of working people (disproportionately people of color) denied job clearance, student loans, public housing, even the right to vote—all because of a policy which the current administration acknowledges is an abject failure and claims it is ending; and yet, a policy which persists.

The Obama administration, like at least the two that preceded it, is led by people who used illicit drugs and went on to have productive lives. It is a source of great shame that none of these presidents took real steps to end a policy, which, if fairly administered, would likely have prevented them from entering politics in the first place, let alone having access to decent jobs as they grew up.

But it is to the credit of this administration that they at least occasionally admit the futility of the war on drugs and acknowledge that the debate about its real and eventual end can no longer be silenced.

Indeed, President Obama, in response to a question from Law Enforcement Against Prohibition’s retired deputy sheriff MacKenzie Allen admitted during a YouTube forum in January that legalization is “an entirely legitimate topic for debate.”¹⁵

“[Legalization] is an entirely legitimate topic for debate.” - President Obama, in response to a question from Law Enforcement Against Prohibition’s retired deputy sheriff MacKenzie Allen

But it is curious that he apparently has not seen the disconnect between his sure knowledge of prohibition’s dangerous folly and his continuation of it.

Our president is chasing change.

He needs to catch up.
Endnotes


“The drug war has arguably been the single most devastating, dysfunctional social policy since slavery.”
– Norm Stamper, Chief of Police, Seattle P.D. (Ret.)

“Legalization won’t be an immediate cure-all for drug abuse. What legalization can do, though, is take a $500 billion a year industry away from the control of gangs and cartels.”
– Terry Nelson, U.S. Border Patrol, Customs, Dept. of Homeland Security (Ret.)

“If prison-building were our goal, it would be a good reason to leave our drug laws as they are. But as a taxpayer and a professional, it’s certainly not a goal of mine.”
– Richard Van Wickler, Corrections Superintendent of Cheshire County, NH
“Our failed drug policies are nothing more than a killing field, battering communities, pillaging minority families and subjecting generations of Americans to poverty, violence and a depth of hopelessness from which not even the strongest child can emerge without scars that haunt for a lifetime.”
– Leigh Maddox, Captain, Maryland State Police (Ret.); Visiting Law School Assistant Professor, University of Maryland School of Law

“It pains me to know that there is a solution for preventing tragedy and nothing is being done because of ignorance, stubbornness, unsubstantiated fear and greed.”
– Neill Franklin, Narcotics Commander, Maryland State Police & Baltimore P.D. (Ret.)

“When our government’s policies have brought us to the point that we imprison black males at a rate six times greater than South Africa’s heinous apartheid, it is time for all of us to acknowledge its racist roots.”
– Matthew Fogg, U.S. Marshal (Ret.)
Every citizen has an important role to play in ending the war on drugs. Here’s what you can do to help:

- Join Law Enforcement Against Prohibition. Any criminal justice professional can become a member of LEAP for free, and civilians may join as well. Visit www.CopsSayLegalizeDrugs.com to join.

- Make a tax-deductible contribution to support the efforts of LEAP, a 501(c)(3) organization, by visiting www.CopsSayLegalizeDrugs.com/donate.

- Meet with your elected officials to personally inform them about the need to end the war on drugs. Chances are, your representatives are not going to take a leadership role in this important effort unless they see support for doing so from constituents like you.

- Take action at www.CopsSayLegalizeDrugs.com/take-action. If you agree that the war on drugs is hurting our economy, making our streets more dangerous and harming public health, LEAP offers many opportunities for you to become involved in changing the policy.

- Talk to your friends and family about the failure of the war on drugs and what they can do to change our policies. Make sure that everyone you know is aware of how the war on drugs affects their pocketbooks and the safety of their streets.

- Write letters to the editors of your local newspapers. Getting letters published is easy, effective and rewarding. Just remember that short and to-the-point letters increase your chances of getting published. Valuable tips and resources for writing LTEs can be found online at www.MAPinc.org.

- Call your local talk radio stations to weigh in about the costs of the war on drugs during segments on the economic crisis, for example. Talk show hosts love to discuss hot-button issues like drug legalization and regulation.

- Build the movement for change by becoming involved with prominent local organizations and inviting them to learn about and take action against the harms of prohibition. For example, you might try connecting with local NAACP, ACLU, NOW and League of Women Voters chapters, as well as chambers of commerce.

- Run for office if you aren’t happy with the leadership your elected officials are providing you with. If, after approaching your representatives in good faith, you find that your concerns aren’t being addressed, then replace them. Be the change you wish to see!