

CATO INSTITUTE

POLICY FORUM

TIME TO RETHINK THE WAR ON DRUGS?

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Moderators:

Timothy Lynch, Director, Project on Criminal Justice,

Cato Institute; and

Stewart Taylor, The National Journal

With:

Joseph diGenova, Former U.S. Attorney;

Randy Barnett, Boston University School of Law;

Sally Satel, American Enterprise Institute; and

Dennis Knizely, Criminal Defense Attorney

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P R O C E E D I N G S

MR. LYNCH: Good afternoon. Welcome to the Cato Institute. My name is Tim Lynch and I am the Director of Cato's Project on Criminal Justice. I also serve in the Criminal Practice Group of the Federalist Society, which is cosponsoring this event. I want to thank Dean Reuter and Jenny Lakin, who work with the National Office of the Federalist Society, for their assistance in organizing today's event.

In a moment I am going to turn these proceedings to our guest moderator, Stewart Taylor. But before I do that, I just want to take a minute to lay something of a foundation for this afternoon's discussion.

In my view, drug policy is not seriously debated on Capitol Hill. Every year our elected representatives in Congress essentially ask themselves two questions: Number one, how much more money should we pour into the drug war effort? And number two, how should we spend this money; should we spend it on treatment or should we spend this money on law enforcement and interdiction?

What we want to do today is expand the parameters of the debate and ask some more basic and fundamental questions such as: Is this war on drugs actually creating more problems than it is solving? And if it is, can the drug war perhaps be fought in a more intelligent fashion, or do we have to end this drug war completely?

Whatever your view is on this subject, I am confident that you will have a better-informed opinion when these proceedings are over. So, I thank you very much for coming.

As I mentioned, we have a guest moderator today. Stewart Taylor I think is one of the most thoughtful and respected legal journalists in America today. His weekly opinion column appears in the *National Journal*, but he actually reaches a far wider audience because his columns are often republished in legal newspapers and legal magazines across the country.

Mr. Taylor also serves as a contributing editor at Newsweek Magazine. And he is a frequent and regular guest on network television programs, where he offers his insights on pending legal controversies here in Washington especially.

Mr. Taylor earned his history degree from Princeton University and his law degree from the Harvard Law School. After practicing law for a few years with the Washington, D.C. law firm of Wilmer, Cutler and Pickering, Mr. Taylor became a legal affairs reporter with *The New York Times* between 1980 and 1985.

Then he became a Supreme Court reporter for *The New York Times* between 1985 and 1988.

He has received numerous journalism awards over the course of his distinguished career and just time prevents me from enumerating all of them.

With that, please welcome today's guest moderator, Mr. Stewart Taylor.

(Applause.)

STEWART TAYLOR,
NATIONAL JOURNAL

MR. TAYLOR: Thank you very much. Since the moderator's job is to graciously get out of the way and make room for the people who really have something to say, I will be brief.

We have a new President, who said some vaguely soft things about the war on drugs, if I may put it that way: "Gee, maybe we ought to reconsider this or that." We have got a new Drug Czar, who seems pretty tough. The legalizers are out there, and maybe some of them are here, kind of wrestling around. The drug warriors are ready to fight back. The Supreme Court has just said "No medical marijuana," deferring to Congress. So, this issue is heating up again. Meanwhile, all sorts of planes are getting shot down in Latin America. You know all of this. So, I think it is an opportune time to have a panel on it. We have four panelists. I will introduce them one by one rather than altogether at the beginning.

The first is Randy Barnett, who has kindly boiled down his very impressive resume to the following, in the interest of brevity. He is a law professor at Boston University and a very prolific -- that is my characterization -- Libertarian scholar, a former State prosecutor in Illinois, the author of many articles and books, including the book, "The Structure of Liberty," and a leading critic, I think, we will find out in a minute, of the drug war as it has been conducted.

We will hear from him for 15 minutes, and then I will introduce each of the panelists. We will hear from them for 15 minutes each. Then, we will have rebuttals for two minutes each. And somewhere in there I may insert a couple of questions for people to address in rebuttal. Then we will have time for some input from those of you on the floor.

Randy Barnett.

(Applause.)

RANDY BARNETT,
BOSTON UNIVERSITY SCHOOL OF LAW

MR. BARNETT: I want to thank the Cato Institute for holding this debate today. It is a very important subject. I am going to get into the substance of my talk very quickly because we only have a limited amount of time.

I can summarize the debate over drug legalization as follows: What bothers people who support prohibition is the harmful effect of drug use on those who use drugs and on others. What bothers opponents of prohibition is the harmful effect of drug laws on those who use drugs and on others.

In my talk this morning, I am not going to dwell on the harmfulness of drug use. Please understand that I recognize that abuse of chemicals, including alcohol and tobacco, can often be hazardous to one's health and general well-being, which is why I, myself, have never used an illegal recreational drug. But then again, neither have I ever gone skiing.

On the other hand, even proponents of legalization overly downplay the degree to which intoxicants can be used recreationally without abusing them. If figures provided by the White House Office of Drug Policy are to be believed, two-thirds, or about 10 million, of the estimated 14 million users of illicit drugs limit their consumption to once a week or less. And 75 percent of those who use illicit drugs are employed. In other words, even according to figures provided by the White House, moderate use is possible.

In the brief time I have, however, I am going to systematically on the harms caused not by drug use existing in a vacuum, but on drug use in a climate of prohibition. In short, I want to focus on the harms caused, not by drugs, but by legal prohibition itself. And there are two categories of these harmful effects. The first are the effects on drug users and the second are the effects on everyone else.

So, let me give an example of each of these effects. Let me start with the effects on drug users. Now, normally, we don't care very much about the effects of laws, criminal laws, on those who violate them -- say on murderers, rapists or armed robbers. But drug laws are different for an important reason. For prohibiting use of intoxicating drugs is to prevent persons from experiencing the sometimes-harmful consequences of such use. Therefore, if laws themselves create enormous risks of harm to drug users, then this should be of some concern to us.

Let me begin by telling you a story of three young men, Michael Selcito, Arthur Selcito, and Frank Mussa. These three young men lived on the North Side of Chicago. One evening they wanted to buy some marijuana and smoke it. Now, marijuana, as you probably know, is illegal. You can't go to a drugstore to buy that drug. So, where do you go to buy an illegal drug? You have to go to where the criminals are. So, that is what they

did. They went down to the near North Side of Chicago, into gang territory. They went to a known gang hangout, the King Castle, on the North Side of Chicago.

They went up to the gang members there and they asked if they could buy some marijuana from them. The gang members there told them they didn't have any marijuana to sell them. But because, of course, marijuana is illegal, these guys thought that maybe these gang members didn't trust them. So, they decided to ingratiate themselves -- at least one of them decided to ingratiate himself with these guys -- by telling them how many gang members, how many Latin Eagles, he knew and how tight he was with the Latin Eagles, and how he used to ride on hits against the rival gang, the Latin Kings, while he was friends with the Latin Eagles.

Well, unknown to him, because he really wasn't all that sophisticated about gang members, he was actually in Latin Kings territory and he was telling these stories to members of the Latin Kings. Well, after hearing these stories, these members of the Kings said, "Oh, wait a second, we can tell you where you can find some marijuana. Come with us."

They drove them, in their own car, to an alleyway on the North Side of Chicago and at gunpoint ordered them out of their car and facedown in the snow. Then, one by one, they took them back into their own car and slit each of their throats from ear to ear, pushing one on top of the other and killing all three of them.

Now, how do I know that this happened? Because I was the prosecutor in the police station taking the confession from one of the four men that participated in this killing. He was subsequently convicted and sentenced to death.

Now, the link between drug laws and these three deaths is obvious. First of all, prohibition worked. Nobody got high on marijuana that night. And the Latin Kings, for all we know, didn't have any marijuana to sell. But, nevertheless, these three young men were dead. Had they been able to buy marijuana in a drugstore, for example, the way you would buy cigarettes, then they would not have needed to find a local gang to sell them an illegal drug. And they would never have died. However else they might have ended up their lives, they would never have died that winter day in an alleyway had it not been for drug laws driving them into the arms of vicious criminals.

So, this story illustrates only one of the several ways that drug laws harm drug users. Drug laws make drug users buy from criminals. This makes them to be very likely victims of crime. They must also rely on criminals to provide them with unadulterated drugs in consistent dosages.

That is just one of the consequences. Let me list some more. Drug laws raise the price of drugs to drug users, or at least in theory. My Boston University colleague, economist Jeff Myron, has recently done a study to show that in fact the alleged increase in price is widely exaggerated by proponents of prohibition. There is probably, he thinks, an increase in price resulting from prohibition, but not nearly as high as people claim.

However, to the extent that prohibition does increase prices, higher prices may require some drug users to forego other expenses, like expenses for food, shelter and clothing. And that might mean turning to crime to fund one's drug consumption. Higher prices also induce more dangerous methods of using drugs. For example, injecting heroin by means of a needle is very dangerous as opposed to smoking it. In fact, heroin injection is largely unknown in societies that do not make it illegal. Sharing needles, for example, is another way of economizing on the expense of drugs, rather than buying new ones, especially if you can't buy one in a drug store.

Now, another consequence of drug laws is that they induce the invention and popularity of new and potentially dangerous intoxicating drugs. In a multi-part series, the Wall Street Journal told the story of how it was that the cocaine epidemic of the 1980's came about. It largely came about as a result of the spraying of paraquat on Mexican marijuana.

Now, these irrational drug consumers, these people that are not out to hurt themselves, didn't want to buy marijuana that was tainted by paraquat, because paraquat happens to be a toxic chemical. What happened was paraquat is a leaf defoliant. If you spray it on plants, it kills the plants. But if the farmers harvest the plants real fast, they can send it to market with the paraquat on it. And California consumers didn't want to smoke this toxic stuff. So, the suppliers had to shift their lines of supply from Mexico to Columbia, where they could get marijuana that was untainted by paraquat.

Once Federal interdiction efforts shifted from Mexico to South Florida and started shutting off the flow of marijuana, it was must easier to smuggle cocaine, which is much more small and much more compact. And that got put into the same supply channels as the marijuana had been, as a safe substitute for marijuana, and that is how the cocaine epidemic basically got started in the 1980's.

PCP is another example of a pretty nasty drug that became popular because other safer drugs, intoxicating drugs, were illegal and expensive.

Prior to alcohol prohibition, the most common form of consuming alcohol in the United States was basically beer. But,

of course, beer is bulky, and it is easier to catch people who are running beer than if they are running hard liquor. As a result of alcohol prohibition, American consumer taste shifted to a more strong, potent form.

Here is another consequence of drug laws, and this should be obvious to everyone: drug laws criminalize users. Drug laws make every user a criminal. And once identified as a criminal, a person is more likely to act like a criminal. Criminalization also gives law enforcement officers the power to extort illegal payments from users in the form of bribes, something I am going to get back to in a minute. Criminalization makes treatment more difficult.

Suppose I propose that we help alcoholics by making the consumption of alcohol illegal. Would people be more or less likely to hide their activity, more or less likely to seek treatment, especially in light of the fact that the first step toward seeking treatment is to publicly identify yourself as an alcoholic?

Moreover, incarcerating criminal drug users separates them from their children, and this is often -- usually in fact -- the fathers being separated from their children.

In other words, support for drug laws in the face of these serious consequences for drug users is akin to saying that we would have to punish, criminalize, poison, rob, and murder drug users to save them from the harmful consequences of using intoxicating drugs.

Now, these consequences are not accidental. They are unavoidable. They inevitably result from using force to change a person's consumption preferences, creating a criminally controlled black market for the substance that some people obviously want. Only a person addicted to drug laws could persistently ignore these consequences. But the harmful effect on drug users is just part of the story. Drug laws also create serious harms to the general public. So, let me tell my second story.

When I was a law student, working for the Cook County State's Attorney's Office, one of the first jobs I was handed was to take a quarter of our case load and send it out to new courts that were being opened up on the West Side of Chicago. At that time, the caseload per courtroom, per judge, was over 400 cases per judge in Cook County. That was way too many cases. Plea bargaining was rampant. It was very difficult to exercise any leverage over the defense when you had that many cases on your call, and the defense lawyers knew it.

By the time I reached the felony trial courts as an assistant State's attorney, the caseload in Cook County per judge had dropped to about 125 to 135 cases -- a very, very manageable

amount. We could credibly threaten to try any case on our docket, which, of course, raised our negotiating stakes in plea bargaining with defense lawyers. That was before the war on drugs heated up.

What happened to the caseload in Cook County now? Well, I happened to call some people in the Cook County State's Attorney's Office yesterday to ask them what the caseload is now. Now, the caseload is back up over 300 cases per judge, as a result of the war on drugs.

Now, that is the first consequence to society at large. And that is the drug laws drain scarce resources away from other types of law enforcement. I wanted to be a State court prosecutor, not a Federal court prosecutor like Joe, because, since I was a kid, I thought that murder, rape and robbery were the most serious crimes deserving of our attention. But now drug offenders represent 23 percent of State prisoners, in 1996, up from 6 percent in 1980, and 60 percent of Federal prisoners, up from 25 percent in 1980.

So, that is the serious opportunity cost of drug laws. Now here are some more. Drug laws lead to increased crime. I have already told you how, in terms of raising prices would obviously be a motivation for crime. But, more importantly, it is the illegal black market that creates the violence that is associated with inner-city crime and the drug trade. I would say, before the drug war ever heated up, fully half the murders I prosecuted as a prosecutor were drug related, in the senses that someone was killed because they were a drug dealer, and they were killed either for their drugs or for their money.

Drug laws make powerful organized crime possible by funding their activities. And drug laws encourage corruption of law enforcement officers, because there is just so much money out there to pay them off and because drug laws prosecute a victimless crime in the following sense: There is no complaining witness to go to the police and say a crime has been committed. That means it is entirely within the discretion of a police officer as to whether they want to go forward with an arrest or not go forward with an arrest. They don't have to worry about anyone looking over their shoulder. That is what makes the corruption, apart from the existence of the black market money, so obviously efficient and possible when you have a black market of this kind.

Finally, drug laws lead to invasions of privacy. Because drug transactions are consensual, they are deliberately taking place outside of the public purview. And in order to detect them, the police have to use such techniques as electronic surveillance, undercover agents and informants. And once these techniques are legitimated, they are no longer confined to the

enforcement of drug laws; they are used to enforce all kinds of other laws. A precedent permitting these techniques will be applied across the board.

Now, there is another and equally serious consequence for the rest of us as a result of legal prohibition. And that is that drug laws lead to the weakening of our constitutional rights. And that is what Dennis is now going to address in his talk to you today.

Thanks.

(Applause.)

MR. TAYLOR: Thank you very much.

Our next speaker is Dennis Knizely, from Mobile, Alabama. He attended the United States Military Academy at West Point for two years, graduated from the University of South Alabama, and the Cumberland School of Law, which is part of Sanford University, in Birmingham.

He has a general practice of law, including a wide variety of criminal cases that he tries, usually as a defense lawyer, and I think occasionally as a prosecutor, if I understand correctly, ranging from driving while intoxicated to drug conspiracies to capital murders -- a good background of experience to assess this issue on the ground.

He is a member of many bar associations. In June 2000, he received the Alabama Criminal Defense Lawyers' Roderick Beddow, Sr., Award for years of distinguished service in the field of criminal law.

Mr. Knizely, thank you.

(Applause.)

DENNIS KNIZELY,
CRIMINAL DEFENSE ATTORNEY

MR. KNIZELY: Thank you, Stewart.

Last spring, Kevin Williams, a 23-year-old young man that lived in Lowndes County, Alabama, was saving his money to buy a house for himself, his pregnant wife and their daughter. He had a concrete business that his father had ran for 20 years that he had just taken over, and from that business he was saving money.

In that spring, DEA agents came to his home, armed, came in, detained everyone in the home, searched the home entirely, and seized \$29,995. Over Kevin and his wife's protests that this was the money they had saved to buy a house, the DEA agents did not listen and said, "These are drug proceeds and we are seizing them right now." And they did.

After that, Kevin was indicted in Federal court in the Southern District of Alabama for conspiracy with intent to

distribute crack cocaine. Also in that indictment there was a count which attempted to forfeit his \$30,000, because it was contended to be the result of drug proceeds. During the trial of the case, there were no drugs ever introduced in the trial. There were no photographs of any drugs. There was no undercover surveillance of any law enforcement officer. There was no undercover buy. There were no tape recordings. There were no videotapes. There was nothing.

A State court judge came and testified that Kevin had negotiated with him for several months to buy some property that he could build his house on. The entirety of the testimony against Kevin was from cooperating individuals, or snitches, or people who were trading their testimony for favorable treatment with the United States Attorney's Office. They were caught, and caught red-handed, and were going to jail. And at the discretion of the United States Attorney's Office, their sentences would be reduced because of their testimony.

Fortunately, last summer in that case, Kevin was acquitted of all the charges. When the case was over, I asked the United States Attorney, "What about Kevin's \$30,000? We need to get that back." She said, "I'm going to have to talk to the DEA about that." A few days later she called back and she said, "The DEA has administratively forfeited that money, and you are going to have to talk with them." I said, "How can that be? He just got acquitted of all those charges."

So, I talked with the DEA. And they said, "We didn't care whether he was acquitted or not. We sent a notice to his mother and to his lawyer," who did not represent him in the asset forfeiture, and it was not me, and he never got a notice, "but we still don't care. That money is forfeited and that's it."

A series of exchanges went back and forth. And now, over a year later, Kevin doesn't have a house, the DEA still has his money, we are still arguing over that, and there has never, ever been a hearing on that money.

Clarence Aaron, in 1992, was a student at Southern University, in Louisiana. He grew up in a poor section of Mobile. He was fortunate enough to have some athletic skills. His grandfather worked at the shipyards and made it his lifelong goal to make sure that Clarence got a college education. So, along with his grandfather's savings and the scholarship he got for athletics, he went to Southern University. He got injured and didn't get to play too much football, but he stayed at the University. He was in his senior year, sitting in his classroom, when the DEA and FBI knocked on the classroom door, brought him out, handcuffed him, and charged him with conspiracy to distribute crack cocaine.

It appeared that some of his childhood friends had gotten into the cocaine business a pretty good bit and said -- and in a small part true -- that when Clarence came home, he used to drive the car back and forth to Houston when they went to get the dope. But his childhood friends had gotten a lot more involved in crack cocaine. One of them, Tito Watts, testified that he was a nationwide drug dealer. He had sold drugs all over the country. Others testified to their extent in the drug trade above what Clarence may have done and to the same level of what Clarence may have done.

They were all there testifying. Tito Watts received 360 months without parole -- 30 years. He was asking the United States Attorney to reduce his sentence, which eventually it was reduced, as were all the other people who had been convicted. This was coming down the chain. This is the guys above somebody, testifying against the guy that is in school, that had never been arrested for anything in his life.

Again, there weren't any drugs in the courtroom. There weren't any photographs of drugs. There wasn't any undercover buys. There weren't any surveillance tapes. There wasn't any monitoring. It was simply the testimony of those who were trading their testimony for liberty.

The jury didn't buy their argument the first time and there was a hung jury. The case was tried a second time. Clarence was convicted. All the people that were testifying against Clarence got their deal. Because they offered substantial assistance, the United States Attorney recommended that they get lower sentences, and they did. The most anybody ever got was 13 years, which the guy who said he was a nationwide drug dealer, down from 360 months. Others went from probation to five years, to eight years.

Because of the quantity of drugs testified about by these snitches -- nobody ever saw any drugs -- but because of what they said the quantity was and because of the sentencing guidelines we have in this country today, the sentencing judge had no alternative except to sentence Clarence Aaron to life without parole.

Last November, I went to the Federal penitentiary in Atlanta to talk with Clarence to see how he was doing as he spent his eighth year up there. Most of the other people are out of jail by now. He is going to be there probably for the rest of his life, although we have asked for a presidential pardon, but we don't think that is going to be possible.

These two stories of injustices, of Clarence and Kevin, is not something that is unusual. This is typical. It does not just happen in south Alabama. It happens all over the country, every day. It is the tip of the iceberg. The injustices are a

result of the paranoia of our society about drugs. We have passed laws. We have tolerated judicial decisions. We have tolerated police tactics -- all in the name of getting rid of drugs. And what it is doing is costing us our constitutional freedoms.

The things that happened to Clarence and to Kevin are three different subjects I am going to speak on very briefly today because, as Randy said, our time is limited. The three areas that have really been infringed upon, constitutional rights, by the drug war is:

One, the 4th Amendment of the Constitution that guarantees to us that we are to be free in our papers and our things from government intrusion, unreasonable government searches, and that we are not going to have a home search without a warrant for probable cause; the 5th Amendment of the Constitution says that we are not going to take someone's property without due process of law; and lastly, the separation of powers says that the Judicial Branch of the government should determine what sentences, or how much freedoms of the people are going to be curtailed, if they are found guilty of a crime, and not the Executive Branch, not the United States Attorney's Office, and not the police.

The drug war has eroded all three of those areas. The 4th Amendment, the protection against unreasonable search and seizures, has been a real victim of the drug war. Before the drug war, you couldn't have a warrant issued for someone's house unless there was reliable evidence in the affidavit supporting the warrant that could be relied upon by the court. Well, that judicial precedence, which went on for decades and decades, in 1982, was changed by the United States Supreme Court, in *Illinois v. Gates*, when it said, okay, we are going to abandon this requirement of reliability in every single case and we are going to look at every case by the totality of the circumstances.

That case opened the flood gates for an erosion of the warrant requirement for searching of people's homes, to where it gets down to where, in the Leon case, it says even if the warrant is defective, even if the warrant is defective, that if the police officer acted in "good faith" when he did whatever he did, that the evidence he sees still should be admitted into evidence.

Some people said, well, okay, he went in there and he may not have had a good warrant, but the guy had drugs, and he got drugs, and that is good, we want that in evidence. Well, that is an understandable theory, but we have to have some prohibition against the police from putting into evidence or getting convictions based on tainted evidence. If a police officer does a bad search, we don't want to go out there and put him in jail. We don't want to fine him. We don't want to fire

him. We have to have some prohibition from police officers using bad evidence, or trying to obtain bad evidence, and then being able to use it.

That is what we have with the exclusionary rule. It says that if you collect bad evidence, you can't use it at trial. The good faith exception has all but done away with the exclusionary rule. So, now there is no prohibition, nothing to keep a policeman from having a bad warrant and going in a house and getting evidence and still going to be able to use it.

Well, okay, that is good. But it is not so much about the cases where he got in and he got the dope. It is the houses that he goes into with a bad warrant and there is nothing there and the citizen's rights are intruded upon, who hasn't done anything wrong. That is what we are trying to protect. And that is why we have to have warrant requirements. And that is why we can't let the drug war erode the constitutional protections that we have protected for so many years in the 4th Amendment.

The second area where the drug war has affected the constitutional safeguards is the 5th Amendment that says we are not going to deprive anyone of their property without due process of law. You heard me talk about the DEA walking into Kevin Williams' home and looking around and, because they had some snitches that said he was doing drugs, they took his \$30,000 and still haven't had one hearing on it yet. This is not unusual.

As lawyers today, a police officer can be going down the highway and because, in his subjective opinion, a car that is a rented car in a drug corridor is a drug profile -- that is, it is a rented car and it has a Hispanic or a black in it, and when he pulls him over on the pretext of pulling him over for going three miles over the speed limit or changing the lane on the interstate without giving a light, and the Supreme Court says you can pull a person over on a pretext even if your real intent, even if your real intent, is to search the vehicle to see if there is criminal conduct afoot. After that stop, if a police officer has a subjective finding, his own subjective finding, that there is reasonable suspicion that the person in that car was involved in some criminal conduct -- for instance, if the person appeared nervous -- the Court has said that is adequate. If the person appeared calm, the Court said it is adequate.

In airline stops, if the person gets off the plane first, that could raise a suspicion. If the person gets off the plane last, that could raise a suspicion. If a person gets off the plane in the middle, courts have found all three of these things as something an officer can base his reasonable suspicion that there is criminal conduct afoot to detain this person, and, if he has money on him, to seize it.

The last thing I would like to talk to you about is guideline sentencing. I touched upon it briefly. In 1987, the Congress enacted guideline sentencing, which said if people in Miami get caught with 500 pounds of marijuana, they get three years probation. If people in Mobile, Alabama get caught with six pounds of marijuana, they get 10 years in jail. That was all wrong, so let's all have uniform guideline sentencing. That sounded okay. But what it did, the guidelines took the discretion away from the judge. He must sentence within a particular guideline, like he had to do Clarence Aaron, and he could not use his discretion as to whether to give a first-time offender have a better break or a more heinous person get a more serious penalty.

But the worse thing about guideline sentencing and taking the discretion away is putting the discretion in the executive department, with the prosecutor, that he, and only he in his sole discretion, can recommend that a person go below the guidelines because they snitched or they cooperated. It encourages people to make up and fabricate testimony against others. It makes policemen not have to go out and do their job like they used to have to do to get surveillance and that sort of thing. Snitches are calling the United States Attorney's Office routinely to get them to testify.

These principles started being applied to drug cases. They can also be applied to gambling cases, to environmental crimes, to fish and game violations. I have a person right now who has a fish and game violation who is looking at five years in prison. So, it is not just these drug cases that these principles can apply to.

But if we let these principles stand, and we don't say, "Wait a minute, just because it is an anti-drug law or anti-crime law, that we are going to support it, just because of the ruling from the court that gives more police powers to drug cases that we are going to support it, we can't do that. We have got to say that the first thing we must consider when we see an anti-crime law or a judicial ruling expanding police powers, we have to say, "How does that affect my constitutional rights? How is this going to affect my freedoms if I let these principles become the laws in this country?"

The paranoia that has caused the DEA plane to watch a military plane shoot down a missionary because they think there may be drugs aboard is the paranoia that is going to cost us our constitutional freedoms. We have to be worried about that or one day we will wake up without those freedoms.

Thank you.

(Applause.)

MR. TAYLOR: Thanks very much, Dennis.

Our next speaker is Dr. Sally Satel, who is a research specialist in areas including domestic drug policy, mental health policy and political trends in medicine. She is a staff psychiatrist at the Oasis Drug Treatment Clinic in Washington, a lecturer at the Yale University School of Medicine. She has been a professional staff member of the Committee on Veterans Affairs of the U.S. Senate, and has been an assistant professor of psychiatry at Yale University School of Medicine.

Her books and monographs are "How Political Correctness is Corrupting Medicine" last year, which has received a lot of publicity lately and a 1999 work called "Drug Treatment: The Case for Coercion." She has had articles in the American Journal of Psychiatry and in popular journals as diverse as the Wall Street Journal and The New York Times, and commentary in the New Republic.

We will hear from her now.
(Applause.)

SALLY SATEL,
AMERICAN ENTERPRISE INSTITUTE

DR. SATEL: As Mr. Taylor said, I am a psychiatrist and I work in a drug treatment clinic in Northeast Washington. You could say my area of expertise, addiction treatment, represents one of the few demilitarized zones in this drug war debate. In other words, drug liberalizers, (legalizers), and status quo adherents, (or prohibitionists), alike all agree that drug treatment has a crucial role to play in improving the lives of addicts and in decreasing the demand for drugs. But it seems we agree on little else.

Should we rethink the drug war? That is the title of this presentation. Yes, sure, we should rethink the drug war. And I have some ideas, and I will wait until the end to tell you about them. But should we rethink them to the point of legalization, which I thought was the implication of both of your presentations? There I would say no. And to explain why, I think we should consider the philosophies of legalization. I say "philosophies," because not all legalizers are alike. To my count, there are at least three species into which they fall, three categories.

Among them there are certainly some valid objections to current practice. I think Mr. Knizely summarized some of them very powerfully. Some of these objections, I think, could lead us to improve our policies, while working within the prevailing drug policy regime.

The first group I call the reluctant legalizer. I might say that William F. Buckley, Jr., is an example of that. A

reluctant legalizer is someone who has no interest in making drugs more available for easy consumption, per se, but believes that the social benefits of legalization -- for example, less money spent in the criminal justice system, obliteration of black markets and the violence associated with them, overdoses, and impurities in drugs -- would outweigh the resultant public health burden of having more addicts and users were we to legalize drugs. They feel this is a tradeoff worth making.

But I am not sure of that calculus, and I don't know that anyone can be certain. And the risks are so considerable if Mr. Buckley, who I know is very sincere about this, if he is wrong, if the speculation is wrong, the risks are huge. We might well face epidemics of addiction and attendant non-victimless crimes, such as driving while intoxicated, accidents at work, child abuse, missed employment, unemployment, violence -- violence not associated with gang warfare but the violence that we frequently see, unfortunately, with people who use crack and methamphetamine -- homelessness can also increase, and other social pathologies from addiction. And unless drugs are absolutely free, for those who cannot control their use, they would still need to engage in some crime to get the money to pay for their habits.

To the extent that legalizers worry, rightly, I think, about filling up the jails with nonviolent drug offenders, it could well be that under a legalization regime we might not have a cell occupied by a drug dealer, but we might have it then occupied by a child beater.

I mentioned earlier that I worked in a drug treatment clinic. And I find it instructive that so few of my patients -- in fact, one in the last four years -- actually believes that legalization would be a productive approach.

Now, like many folks who are in favor of legalization, though not all -- you in fact mentioned that you never even used any drugs -- but like some other species I will get to in a minute, my patients cannot control their drug use -- obviously -- otherwise they never would have walked into the clinic and I never would have known them. These are patients who couldn't control their drug lives, and their lives, as you might guess, are just horribly damaged -- families deranged, futures squandered, AIDS, Hepatitis-C, self-respect annihilated. And I think addicts are a key constituency that rarely get a voice in these discussions.

My patients, though, when I talk to them, will tell you that it would be so much harder for them to relinquish their habits and stay clean if drugs were cheaper, purer and more available. And under those same conditions, they may have even

sunk deeper into the abyss of intoxication and compulsion before coming to the clinic.

When I do an intake on people, I take a drug history. I always ask, "When was the last time you were clean?" So often, the answer is, a defined period of time that people can remember with great clarity, "Oh yeah, January 1996 to February of 1997." "Well, what was going on then?" "I was on probation." They basically had some kind of surveillance.

I have patients who are in supported housing programs. These are residential programs that they get into through some social service. And those supported houses test their urine. Those are my patients who are frequently doing the best. And those who are sent in by their employer, again, you can pretty much count on them to be doing the best in my clinic. I had some women who knew that their welfare benefits were going to be expiring pretty soon and they would have to go to work, and part of that work or work training would involve drug testing. And again they managed to clean up.

When you mentioned that drug laws are driving people away from treatment -- and you said a lot of compelling things -- but that one I really take exception with. First, there is complete confidentiality in these treatment programs. If we gave out the name of anyone in our clinic, I mean I could go to jail. I could get in terrible trouble. That is a tenet of our approach to patient care. In 1975, I believe the Supreme Court ruled that addiction itself, that drug use per se, is not a criminal problem.

And I guess ironically, you might find that the criminal justice system, in my experience, is actually an entry for many people into the treatment system, when they divert patients to drug treatment, which I am all in favor of -- and we can get back to that later. In fact, for some of the patients, the only time they have ever been in treatment is when they have been ushered in through the criminal justice system.

And what is really key -- and Mr. Taylor mentioned this book, it's called "Drug Treatment: The Case for Coercion," it is a little opium poppy red book -- it actually documents the wealth of data showing that when patients are leveraged into treatment, no matter how that is -- through the criminal justice system, through their employer, through some coercive means -- they do just as well, if not better, than people who volunteer to go to treatment. That may seem counterintuitive, because you always hear that people have to want to get better, but the data bears that out.

When patients stay in treatment longer, they almost always do when there is some coercive elements, and the outcomes are better. Because voluntary treatment has what I call a

massive retention deficit disorder. The dropout rates are absolutely huge. Maybe 5 to 10 percent of patients who came in voluntarily will still be in a program a year later.

Anyway, that said, I kind of wish one of my patients was with me last week when I participated in a drug policy panel for a group of young conservatives. That is what they were called, "Young Conservatives." And they were cute. The moderator made lots of jokes. I won't mention his name, but he is dear to the Cato Institute. He made lots of jokes about being in favor of drug use and cracked about where he can find good quality dope. And the audience was laughing conspiratorially, or at least in an effort to seem cool. The banter was light-hearted enough, but it was a poignant illustration of the gulf that separates the culture of recreational use from the millions of people who really have been terribly devastated by addiction.

Well, let me get to my second category. I just told you about the reluctant legalizer, the person who feels that the harms of the drug war exceed the current benefits. The selfish legalizer is represented by my pal, Ethan Edelman and his colleagues at the Soros-funded Linda Smith Center, and to some extent the Drug Policy Foundation which Soros used to give a lot of money to. The selfish legalizer is intoxicated with the European model, also called the harm reduction model. And the Netherlands is a showcase for that.

This is where drug use is conceptualized as a human right, but then, if the user becomes an addict, he becomes a public ward and the responsibility of the taxpayer. Addicts in the Netherlands can obtain heroin through the state, and many of them are a part of the Federation of Dutch Junkie Leagues as they lobby for better social services, like income maintenance and health care. This is a welfare approach to the addict, and it really makes public policy of the addict sphere a switch -- which is to use drugs without consequences.

I am not sure really if that culture views addicts as irascible, demanding children or as terminal patients who require palliative care. I think that is the worst of both worlds, that system.

The principled legalizer, I think, are my colleagues to the left, and there are perhaps many of you in the audience. The principled legalizer is one who sees drug use as a matter of liberty and freedom of choice, and that people who choose to use drugs then are expected to exercise discipline and be responsible in their use. And in a theoretical, antiseptic way, this actually is quite appealing to me.

But the problem is that some percentage of people who use heroin, cocaine and methamphetamines are going to get hooked. And no honest legalizer would debate that. And it is going to be

a higher percentage of those who currently try alcohol and then go on to become alcoholics. Whatever that percentage is -- and I am going to say 10 or 15, I am not sure -- but I can promise you that it will be higher for heroin, methamphetamine and cocaine, for the simple reason that, on a pharmacological basis, they are far more highly addictive drugs.

So, then what about drug treatment, you ask. If they go on to get addicted, well, what about drug treatment? Well, I don't consider myself a Libertarian, but I did read Charles Murray's book last night, and I have a lot of colleagues who are. And since when do Libertarians want the government paying for drug treatment? I don't think that comes into the picture. Moreover, since when do Libertarians want to get between a person and the consequences of his behavior? In fact, to me that is the personal appeal of the Libertarian approach.

But once they are addicted -- and there will be some percentage of folks who go on to become addicted -- these individuals will have a diminished capacity for free exercise of choice. That, of course, is the irony of the principled approach to legalization. The very foundation upon which drug use is predicated under that system, the freedom to make a decision to use, is the very freedom that is eroded by continued use of the drugs. In this way, the very underpinning of the Libertarian society, that individuals observe their duty to ensure their own welfare, to respect the safety of others, to discharge their responsibilities as a parent, neighbor, spouse, worker and citizen, is one that, by definition, the addict cannot observe.

Can some people use drugs responsibly, as you have indicated? Yes, they can. And it is a lie to say that they can't. But our current system, we have to face it, has no place for them. There really aren't any accommodations right now for the weekend cocaine user.

Is that a constriction of his freedom? Yes, it is. But is it worth overturning our entire edifice of drug policy just for his right to smoke dope or to sniff coke on the weekends, especially when so much could be at risk for society at large? I don't think so.

In fact, for people who so passionate about liberty, I would think that the unfettered opportunity to use drugs would be pretty far down on the list of restricted liberties that you want to fight for. I kind of put Social Security privatization and school vouchers, a medical savings account and that kind of thing, a lower tax rate, up there.

In closing, at this point I certainly will admit that there are aspects of our current regime that we should rethink. Probably we should spend less money on crop eradication, for example. We should have more diversion from the criminal justice

system to drug treatment programs. We should have more residential programs. Those are key, like Phoenix House, which is excellent. We should figure out a way to get medical marijuana to that small minority of people who really do need it. There is just no question in my mind that they do. And we should repeal Draconian sentences.

But I think we can pursue these revisions without adopting legalization schemes that would make drugs more available and, ultimately, addiction more likely. We really can't lose sight of the fact that addiction itself will impair participation in a free society.

Thank you.

(Applause.)

MR. TAYLOR: Thank you very much, Sally.

Our next speaker is Joseph diGenova, whose curriculum vitae might suggest that he is a very old man. He has covered a lot of ground in his time in Washington. I will just touch on a few of the highlights.

He is a founding partner of the Washington, D.C. law firm of diGenova and Toensing, otherwise known as the most formidable Republican husband and wife tag team in Washington with the possible exception of Ted and Barbara Olson. He represents individuals, corporations and other entities before the Federal courts.

He has been an Independent Counsel in the Clinton Passport file matter. He was a Special Counsel to the U.S. House of Representatives in a Teamsters investigation. He has represented Washington figures as diverse as Congressman Dan Burton, in a Justice Department investigation, and former White House Counsel Jack Quinn, in a congressional pardon probe investigation.

His list of prosecutees include Israeli spy Jonathan Pollard, and John Hinckley, the attempted Presidential assassin. And he mentions in passing that he is a friend of Ted Olson's. And I might mention in passing that he is no friend of Bill Clinton's.

Joe diGenova.

(Applause.)

JOSEPH DIGENOVA,
FORMER U.S. ATTORNEY

MR. DIGENOVA: Thank you, Stu. Let me apologize for my voice this morning. I am recovering from a chest infection. I think we can get through this without infecting anybody. I am well beyond that, so don't worry.

Lest we think we have not been down this road before, we have. We have tried legalization in this country. It is frequently not talked about, but until the passage of the Harrison Narcotics Act in 1914, everything in this country was legal. We grew opium in the Mississippi Delta. We sold things. Let me read to you from a 1972 book, the chapter of which is entitled, "Nineteenth century America, a dope fiend's paradise":

The United States of America during the 19th century could quite properly be described as a dope fiend's paradise. Opium was on legal sale, conveniently, and at low prices throughout the century. Morphine came into common use during and after the Civil War, and heroin was marketed toward the end of the century. These opiates, and countless pharmaceutical preparations containing them, were as freely accessible as aspirin is today. They flowed mostly through five broad channels of distribution, all of them quite legal.

One: Physicians dispensed opiates directly to patients or wrote prescriptions for them. Two: Drugstores sold opiates over the counter or to customers without a prescription. Three: Groceries and general stores, as well as pharmacies, stocked and sold opiates. An 1883 to 1885 survey of the State of Iowa, which then had a population of less than 2 million, found 3,000 stores in the State where opiates were on sale. And this did not include the physicians who dispensed opiates directly. Four: For users unable or unwilling to patronize a nearby store, opiates could be ordered by mail. Five: Finally, there were the countless patent medicines on the market containing opium or morphine. And they were sold under such names as Ayres Cherry Pectoral, Mrs. Winslow's Soothing Syrup, Darby's Carminative, Godfrey's Cordial -- I love that one, Godfrey's Cordial -- McMumm's Elixir of Opium, Dover's Powder, and so on. Some were teething syrups for young children. Some were for soothing syrups. Some were recommended for diarrhea and dysentery or for, quote, women's troubles.

They were widely advertised in newspapers and magazines and on billboards as painkillers, cough mixtures, women's friends, consumptive cures, and so on. One wholesale drug house, it is said, distributed more than 600 proprietary medicines and other products containing opiates.

What happened in 1914 was that as a result of this being the "dope fiend's paradise," we had the largest per capita addicted population in our history. Huge numbers of people from every walk of life had become addicted to these over-the-counter medications. And as a society, we made a decision in 1914, with the passage of the Harrison Narcotic Act, that this was bad public policy. Because our experience had been that legalization

led to addiction. And we thought that, as a matter of public policy, this was not such a good idea.

The truth is also that legalization led to other problems then. People began to steal and commit other crimes to feed their habits, to get money that they had already spent from their household accounts to feed their legal habit. The problem with legalization is no matter how much you want to legalize it, we are never going to legalize it for children. Therefore, you create a black market. Therefore, you create drug problems. Therefore, you create enforcement problems.

Even if we were to have legalization for adults, this country would never tolerate legalization for minors. Therefore, you will have a black market and all the attendant problems.

The problem is that our drug policy does need to be rethought. I think the title of this forum is a good one. We do need to rethink our policy. There are legitimate things to be concerned about, some of which were mentioned earlier. And I think those are very, very legitimate questions, concerning law enforcement and legal situations. But those are aspects of the problem that can be dealt with by dealing with those laws.

Let me just say, if I may, what we do need to do. And I will race through this quickly so we can have more time for discussion. We need more treatment. We need more coerced abstinence, as Sally was talking about. We need to have probation, parole and drug testing not only pushed into those categories but beyond that.

We may very well need civil commitment for drug addiction. I believe very strongly that civil commitment is underutilized in this country, and I believe it could play a vital role in coercing treatment. I think civil commitment is something we need to talk about and we need to pursue vigorously -- civil commitment with the right to counsel and with counsel being provided for by the public if someone can't afford it, just as we do in criminal cases.

We do need more drug courts, where coerced abstinence is required by a court of law. We need more diversion of people out of the criminal justice system. Because the truth is we are locking up too many people for drug crimes. And we are locking up too many of the wrong people for drug crimes. I will deal with that at the end, and I have a proposal for dealing with that.

The key thing, as the Doctor pointed out, is coercion and monitoring. These people who get forced into treatment will eventually succeed if they are monitored, tested and forced to understand that this is in their best interests.

A demand reduction also requires, as part of that strategy, just phenomenal investments in education, prevention

and the notion that drugs are dangerous and they are bad, because in fact they are. They debilitate all but a few people who have the ability to carry on a casual relationship with them. And the notion that that is not so is simply ridiculous.

With regard to interdiction as part of a supply theory, of course we have to continue interdiction and we have to do a better job of it. It is also true, though, that shooting down airplanes is the dumbest idea in the world. How we could have ever agreed to such a policy with the Peruvian Government is beyond me. We do not need to be shooting down planes in air space.

I recall at the beginning of the Reagan administration a proposal came from the Customs Service to start shooting down planes between Cuba and Miami. All of us who were Federal prosecutors said, "Look, give us a break. You start shooting down the dentist from Dubuque and your drug enforcement program will go down the tubes in two minutes."

It is just too difficult to figure out who is flying those planes and what they are doing. So, I would dispense with shooting down aircraft tomorrow by an executive order from the President. Of course, the program has been stood down pending an investigation of the shooting down of the missionaries, a disgraceful exercise of executive authority by the Peruvian Government, with our regrettable cooperation.

As far as enforcement is concerned, we really don't have any choices in this area. It is true, back in the 19th century, when there was this huge addict population in our country and people were just buying this stuff off the shelf like crazy and getting sauced on it at remarkable levels, we had a different culture then. You didn't see the types of crime that you see today, because we were a different people. We were living in a different time. And, actually, the avenues for illegal behavior were not existent as they are today.

Enforcement is necessary for several reasons. All you have to do is go into a neighborhood in Washington, D.C., as a prosecutor, and hear people begging to stop the degradation of their neighborhood from these markets and you will understand how important it is to give people some faith in law enforcement.

The malign neglect that went on in the last administration with regard to enforcement was purposeful. The last administration made a conscious decision not to enforce the drug laws in a vigorous way because of their impact in certain communities in the country. That was a serious mistake. They did the same thing with gun laws. They did not enforce them properly.

With regard to our overseas relationships with countries, we have a major investment in stability in this world,

and particularly in our hemisphere. And the notion that we would agree to legalize drugs in this country, creating a market for the people in Colombia who would then literally legalize their product, try to export it into the United States, and then watch this issue being worked out before the World Trade Organization as to what kind of barriers the United States could raise with regard to tariffs and non-tariff trade barriers, I think would be an interesting debate to watch in the United Nations.

Of course, now that the Human Rights Commission of the United Nations and the Narcotics Council does not have the United States on either one of them, perhaps we will see such a debate in the United Nations, and it would be fun and enjoyable to watch. And if we ever get an Ambassador there, perhaps we will have something to say about it.

The political instability which would come from allowing narco-terrorists to run governments in countries south of the border is fairly obvious. We are very lucky that Vincente Fox is the new President of Mexico. This is a man of great intellect, of great courage, and a man who understands the importance of good law enforcement, honest law enforcement, and eliminating corruption from the Mexican judicial and political system.

Mexico was, until recently, a mess. It remains a mess. But there is hope with President Fox. And the United States is doing the right thing, which is assisting the Mexicans to clean up their law enforcement, their judiciary and their prosecutorial groups.

Now, to sentencing, which I think is a really serious problem for us. I couldn't agree more that one of the things we have to do is we have to get rid of mandatory minimum sentences. We have to get rid of the Federal sentencing guidelines, which are not guidelines. They are mandatory minimum sentences. The Federal sentencing guidelines require judges to impose certain sentences, given the sets of facts. They are a terrible mistake -- a bipartisan one, may I say. They are awful. They need to be taken off the books, or they need to be left as simply "guidelines," something that a judge can look at, chose to ignore, write a written opinion, and then the government or the defendant can appeal to a higher court to decide whether or not the sentence is appropriate.

The reason for that is that these mandatory minimum sentences, and the sentencing guidelines which are in fact mandatory minimum sentences, are incarcerating too many people. We simply don't need to be incarcerating all these people. We are wasting vast amounts of money, and we are taking up prison space that ought to be devoted to violent criminals, dangerous criminals, many of whom are drug dealers -- in fact a large

number of them -- but we need to make room for them. We are just locking up too many people. This includes white collar crime, as well. So, it just doesn't deal with drug offenses.

With regard to users, I think very few of them actually get sentenced in the Federal system, and actually very few of them get sentenced in the State system. The problem is with repeat offender users, they get diverted out of the system so many times that they eventually have to get prosecuted in order to get them into treatment. But there are very few plain users doing time in either Federal or State prisons. For the ones that are there, I have a proposal to make in a moment.

With regard to forfeiture, I think what was said earlier about forfeiture -- forfeiture is another example of a terrible mistake the Federal Government made when it passed legislation dealing with forfeiture, which has now, I think, gone beyond the pale. Congressman Henry Hyde and others have taken steps to cut it back. The Supreme Court itself has cut back on forfeiture in many instances. In fact, I think the Justice Department lost six straight cases on forfeiture in the Supreme Court on constitutional grounds. It is a terrible, terrible way to deal with taking away people's property.

Forfeiture should only occur after there has been a criminal conviction and a judgment by a jury in a criminal trial that those assets should be forfeited. I would also agree to a civil trial in which the defendant has the right to counsel, to present a defense, but that that property should never be turned over administratively by any Federal agency without a trial.

I have three minutes to go. Let me devote the last three minutes to my proposal, which is I think it is high time that we had a national clemency commission in this country. At the end of his term, President Clinton pardoned a few people who were rich and wealthy, and he had all sorts of problems. I don't agree with most of those pardons, but I would have pardoned a lot more people. If I were he, I would have pardoned Webb Hubble, not because he deserved it, but it seems bizarre to exclude him.

(Laughter.)

MR. DIGENOVA: He pardoned his girlfriend, why didn't he pardon his partner? I don't quite get it.

We do need a national clemency commission, just like the one which President Carter asked Congress to establish after the Vietnam War, to grant clemency to draft dodgers and evaders. I think it was a very important part of our national getting over Vietnam, although we are still not getting over it. But we need to have a national clemency commission, enacted by Congress, to review sentences all over this country and then make recommendations to the President of the United States through a very careful process, just as we did then, where the commission

would vet sentences and make recommendations to the President for commutations and full pardons.

No one would be harmed by this process -- neither police, prosecutors, correctional officers or anybody. Everyone would be helped by a process of a national clemency commission, which would deal with the inequities that were alluded to earlier, such as bad sentences because of the guidelines, or mandatory sentences. We owe it to ourselves to have a national clemency commission to get out of prison people who simply shouldn't be there.

With that, I am going to sit down. Let's have a good time.

(Applause.)

MR. TAYLOR: Thanks very much, Joe.

We are about to enter the two-minute apiece rebuttal period. I will exercise the moderator's prerogative to make a couple of observations now.

First, I think there seems to be some consensus up here among our four speakers, and certainly the moderator would concur on a few things that a Libertarian could like.

One, we should get of mandatory minimum sentences, at least for drug cases, and perhaps binding sentencing guidelines, as well. Two, some provisions should be made, I assume by Congress since nobody else can do it, authoritatively, for use of marijuana for medical purposes in cases where it is warranted. Three, the forfeiture laws have gone too far and should be modified in some regards, and that we should have more use of executive clemency in a manner that looks less like the doing of favors and more like the doing of justice.

As the panelists do their rebuttals, I have a couple of questions that I hope Sally Satel and Joe diGenova could address in particular. Those would be, first, I was going to ask about mandatory minimums and medical marijuana, but you already said what I was hoping you would say about that. Second, I am going to distribute to the panelists and hold up an intriguing chart from an advertisement recently in the New Republic, comparing the seriousness of the addictive properties and the dangers of various drugs, illegal drugs, and including alcohol.

This was an ad by a not exactly neutral group, so I invite anyone to discredit it. But I thought the most interesting thing about it was that, on most counts, alcohol comes up as a more dangerous drug in all relevant respects than marijuana does. The question this raises in my mind is: If this is true, does that mean we should go back and prohibit liquor again, or does it mean we should legalize marijuana, or something else?

I would also ask Joe what you are supposed to tell your kids about drug use if you disagree with Bill Bennett's view that it is immoral, as I do, and if you disagree -- at least marijuana use; I am talking about marijuana now.

I would like to ask Randy Barnett and Dennis Knizely, first, what specific changes would you propose? Are you legalizers, as has been suggested? How do you feel about coerced treatment, which John DeElio, I gather, of the White House, still supports, even though he now opposes mandatory minimum sentences?

Do you think that the crime drops over the last decade are completely unrelated to the drug war? Is there any correlation at all between violent crimes and drug use? Third, how would you respond to the following assertion by William Bennett in a recent op ed in the Wall Street Journal, headlined "The Drug War Worked Once, It Can Again"? And his specific numbers that he relies on are the following: According to a national drug survey, between 1979 and 1992, the most intense period of anti-drug efforts, the rate of illegal drug use dropped by more than half, while marijuana use decreased by two-thirds. Cocaine use dropped by three-fourths between 1985 and 1992.

With those suggestions, two minutes first for Randy Barnett and then in the same order as we went before. And I have been enjoined to keep the time rather strictly on this, so I will put a little piece of paper under the nose after precisely two minutes has passed.

MR. BARNETT: Thanks, Stewart. I had my own points to make that were going to take two minutes, but I will answer some of the questions.

First of all, I am a complete and total legalizer. I think that our prohibition is wrong and it is ineffective and leads to the counterproductive results that I have already described. And there is only one way to end those counterproductive results, and that is to end prohibition. There is just no other way.

What you end up hearing from people on the other side is basically nothing about how you are going to solve those problems, because they can't be solved in the regime of prohibition. So, therefore, I am a complete and total legalizer, both a reluctant legalizer as well as a Libertarian. I think I fall into both of those categories.

I am actually concerned about the welfare of the weekend user, who is able to hold down a job and have a career and occasionally use a substance that is defined as illegal. I am concerned about their life as well as other people's lives, as well as the weekend skier and the rock climber and the people who jump out of airplanes with parachutes -- which amazes me.

I don't have a strong opinion about forced treatment, except that I think the argument basically could apply to alcoholics as well as other drugs. That is, I am sure that some people would seek treatment for alcoholism who currently don't if they were faced with the penitentiary. But, nevertheless, it would be a terrible policy to try to accomplish whatever benefit you could accomplish that way by making alcohol illegal again.

As for the crime drop, it is anybody's guess exactly what has caused the crime drop here. I do think that the widening use of private law enforcement agencies has had a marked effect on the crime drop, as well as increased privatization of public spaces. But I wouldn't doubt that locking up a half a million more people is going to round up in that net some people who have criminal propensities. So, therefore, some people locked up on drug offenses are going to be prevented from doing other crimes. But I just don't think that is a justification for locking them up on drug offenses. It is just a justification for catching them for the other crimes, in my view.

Let me just say a couple of things here about the other points that were made. About the dope fiend's paradise, for example: Not only was this the height of laissez faire in this country, but it was also a time in which organized medicine could do nothing for your health. There is a reason why people didn't want to go to the doctor in those days, because going to the doctor made you worse off than not going to the doctor most times. And the one thing that these opiates did was made you feel better. And making you feel better was an improvement in your situation relative to what organized medicine could do.

That situation has changed and I think the decisions rational consumers would make about whether to take an opiate or see a doctor and take an antibiotic would be different today, now that antibiotics exist, than they were when antibiotics did not exist.

As to whether there would be a black market for children under conditions of legalization, I agree that sales to children would still be illegal. But I can tell you that as a father -- my son is in high school and my daughter is a freshman in college -- dope is more widely accessible to them than beer is, because they are below the age at which they can get those things. And I think most kids in that age group will tell you the same thing.

Narco-terrorists are a product of prohibition. The number one thing we could do to put narco-terrorists out of business would be deprive them of the money that prohibition provides them. And I guess I will stop there.

(Applause.)

MR. TAYLOR: Having burned Randy with some unanticipated questions, I thought it would be unfair to stop him after two minutes, so we went to three minutes. And I invite Dennis either to ignore my questions or do it in three minutes and cover the waterfront.

MR. KNIZELY. I will try not to ignore the questions. The first question: Am I a legalizer? Well, you know, all these drug laws and everything else is actually a full employment act for criminal defense lawyers. We have made more money off of this than anybody in the world. I would be crazy not to be for that.

But, that being said, realistically I can't see crack cocaine being sold over the counter. That is just something that would be unbelievable. I really haven't reflected on whether as a blanket rule drugs should be legal or illegal, or all drugs should be legal or illegal. So, I can't say that I am a legalizer. Again, I couldn't see crack cocaine being sold over the counter, because I just see no benefit whatsoever. It is a bad, bad drug that causes bad things.

However, Joe alluded to the Harrison Act. And that is right -- before 1914, no drugs were illegal. Whether the Harrison Act was a good thing or a bad thing, I won't comment on. But the bad part comes in 1972, when we created the Drug Enforcement Administration, when President Nixon did, and said, in 1972, "We are going to have a war on drugs." The institution of that war is when we began to trade off the paranoia for the constitutional rights. And that is the problem.

I hear Joe and others talk, and Stewart, that guideline sentencings are terrible and that prehearing forfeitures are terrible. I hear that but I don't see anything happening. I still see poor old Clarence languishing in the Federal penitentiary. The, foreman of that jury, when asked on a national documentary what he thought the appropriate sentence would be, he said it was three to five years. Well, Clarence is still doing life without.

And Kevin still doesn't have the money to build his house, but we are not doing anything about that. We need to speak out as a society and say that these things are wrong, these judicial rulings are wrong, and we need to restore the adherence to the constitutional safeguards or we are going to lose them.

The crime drop, I agree with Randy, I don't know exactly what the explanation for that is, but I do not think it is attributable to the war on drugs. I think that when you take the dealer off the street corner, before the tail lights of the police car get out of sight, there are two more to take his place. I just don't think you are doing anything there by just

simply putting people in jail for dealing drugs. It is not addressing the problem whatsoever.

Forced treatment, I don't think forced treatment in the way of incarcerating someone, threatening them with criminal sanctions if they don't get treatment -- again, these people like Sally are much more experienced in that field than I am -- but in my limited experience in my contact with people who have been charged with drugs and been on probation over and over again, they are just trying to get through the probation. And until that person decides in and of himself that he is going to do something about his drug treatment, the forced treatment -- again, that is Sally's expertise much more than mine -- but in my experience with criminal defendants, as far as incarceration and using the threat of incarceration, that doesn't help.

Thank you.

(Applause.)

MR. TAYLOR: Thank you.

Sally, two or three minutes, according to your preference.

DR. SATEL: I do think forced treatment works. I did flash that little booklet, which you can get from AEI really cheap. I keep talking about it because it is really an extensive review of the literature on this. It does give lie to one of the more persistent myths in drug treatment law, which is that a person has to want to get better. They do if they are walking in off the street. But if they are put in a situation where they are mandated to go to treatment or if they are given a forced choice -- you go to treatment or you lose your job, go to treatment or you lose your kids -- they do fine. A lot of them don't want to go there, and they are not at all motivated at first.

In fact, they are there and they stay initially often to avoid noxious consequences. But over time they do internalize the values of the treatment systems. And as I said, the outcomes are quite encouraging.

I want to say a word about this thing, this drug paradise. Back then, in the late 1890's and early 1900's, it was mostly oral use of these patent meds. There was some opium smoking, but that didn't apply to the woman addict, which was actually one of the more prevalent species of addict. It was actually the housewife, or Mary Tyrone in Long Day's Journey into Night. And that route of administering drugs, the oral route, is one of the most inefficient there is, which is one of the reasons why alcohol is actually, compared to these other drugs, not especially addicting.

There are other reasons, as well. But the oral route is just not an efficient way, through absorption of the gastral

mucosa. You can get yourself high, but it is not efficient. The most efficient ways are smoking and intravenous. In the early 1900's, we didn't have nice little hypodermic needles that now we can buy and throw away. So, these are just more differences, is what I am saying. It was bad enough then when people took it orally; now we have far more efficient methods of using drugs and they would be even more addictive.

As far as that table goes, I assume it is from NIDA. But it is put forth by Kevin Zees, who, like most people who are advocates in the drug policy world, you just have to check the original sources. No matter who is telling you that, whether it is the parents' groups who are zero-tolerant of everything and I think put out some fairly hysterical claims about marijuana, to folks who have a much more liberalized agenda.

Two things here. I don't know if people can see it that well, but this is just to illustrate briefly how misleading this is. First off, alcohol. The various drugs, nicotine, heroin, cocaine, alcohol, caffeine, and marijuana, are rated on several variables, but just take intoxication. The highest you can be rated on is six. And that is what alcohol is given. Heroin is given five. Cocaine is given four. And of course, marijuana and caffeine less, which makes sense.

But a six for alcohol is absurd. It is only intoxicating if you drink to the point of intoxication. Alcohol, compared to cocaine, heroin and marijuana, is probably one of the few drugs that is often used not to achieve intoxication, but just because you like it because it tastes good. So, that is just a little misleading thing here.

Another is to give nicotine the highest dependence rating of all of these, higher than cocaine and heroin. Nicotine is given the highest dependence rating. What does that mean? It means that it has the highest relapse rate and it is the most difficult drug to quit. That is how it is operationalized here. That is very misleading when it comes to nicotine, though, keep in mind. Because the cues for nicotine smokers are all around them. One of the instigators to relapse is when you are re-presented with what is called the people, places and things that you used to get high with. That is what the people who do heroin and cocaine learn. They have to recognize these cues so they can either stay away from them or modify them. You can't stay away from nicotine-related cues because cigarettes are all around and you have used them in every environment.

Finally, nicotine compared to these other drugs, heroin and cocaine, the consequences of nicotine use that are noxious are very delayed. They are years down the road. That is why it is hard to quit. And it is disingenuous, I think, in that way to compare it with cocaine and heroin.

MR. TAYLOR: Thank you.

Joe diGenova. I invite you to ignore what I said and do it in two minutes so we will have a little time for audience questions.

MR. DIGENOVA: I think you asked the question about how would I respond to Bill Bennett's question about something and what would I tell my kid if alcohol is legal and cigarettes are legal.

MR. TAYLOR: I think I sidetracked you there. Bill Bennett claims the drug war is working. Do you agree? And forget about the other one.

MR. DIGENOVA: I think the drug war is working in one sense and not working in another sense. I have outlined that in what I had to say. We need to calibrate the drug war in several different ways. And I think we can deal with most of the problems. The one problem we can't deal with is the issue of legalization. That is a fundamental, moral, political, ethical question that the people of the United States have decided for the moment. I don't see any likelihood that it will be decided otherwise.

I think the notion of legalizing all narcotics -- and it would have to be all narcotics -- because the moment you leave something illegal, you have created a black market. And if you create a black market, then all bets are off on what happens in that black market and who goes into that black market.

With regard to juveniles, there is no way, even assuming the American people were willing to accept legalization of all drugs for adults under highly controlled circumstances, that they would ever accept legalization for minors, nor would I suggest that they should. I think, again, the arguments for legalization are, to me, arguments that lose the battle all the time because of what drugs do to people. The fundamental notion that you are going to condone this, even though we condone nicotine, alcohol, all of which have been a part of our society from Colonial days, is obviously a conundrum. It is a troubling one. But we make lots of public policy choices where we have counterintuitive data about other things.

The drug war is not a perfect answer. The problem is there is no perfect answer to the drug problem. That is because people are human, children are vulnerable, and children can be taken advantage of. If we didn't have any kids, this would be an easy problem to solve. But we do have kids so we are not going to solve it with legalization.

MR. TAYLOR: Thank you.

That leaves us about nine or 10 minutes for questions from the floor. Please raise your hands and I will call on you. Before you start asking your question, please wait for the intern

with the microphone so that everyone can hear you. In the interest of more questions, let's do them as fast as we can. Thanks.

QUESTION: I would just like to correct something that Mr. Knizely said. Mr. Nixon, whether you like him or not, declared war on drugs in a speech in California in 1968 when he was running for the presidency. He reaffirmed it in 1969. The creation of the Drug Enforcement Administration was done primarily to stop the wrestling back and forth between what was then the Bureau of Customs and the Bureau of Narcotics and Dangerous Drugs. And I am well aware of it because I am the guy who put DEA together.

MR. TAYLOR: Dennis Knizely, any response?

MR. KNIZELY: Was it 1972 when the DEA for formed?

QUESTION: The DEA for formed in 1972.

MR. KNIZELY: Well, I would characterize that as being the commencement of the war on drugs. But you were there and I wasn't, so I would certainly take your word for it.

QUESTION: I would like to hear Sally and Joe address specifically the legalization of marijuana as opposed to other narcotics.

DR. SATEL: Well, my sound bite on marijuana is that people make compelling arguments that it is as dangerous, or perhaps less dangerous, than alcohol. I think you can make some compelling arguments that there may be less physical harms from it. Nevertheless, until we are very serious about alcohol-related crimes, like drunk driving -- and we are in some States, but it is uneven -- I don't see the reason to introduce another intoxicant. But I think we should get serious about medical marijuana.

MR. DIGENOVA: I think that marijuana remains, in my opinion, a dangerous drug. It is not cocaine and it is not heroin, there is no question about that. And it is not crack and it is not PCP and it is not all these other goofy things that they are manufacturing now. And it is certainly not meth, which is just an awful problem which is going to get worse, thanks to California naturally, where all the great ideas come from. All the power lunches have been cancelled in California because there is no electricity.

But the issue here with marijuana is, and I happen to believe this, that it is in fact a gateway drug. Just look at Robert Downey, Jr., and Darryl Strawberry. Robert Downey, Jr., was introduced to marijuana by his parents, filmmakers in Hollywood. That doesn't mean that we shouldn't study it, do more analysis. There should be research on it, if it can be prescribed for medical purposes. I don't have a problem with a doctor prescribing marijuana for medical purposes under

controlled circumstances. I do have a problem with these places, the buyers clubs, in essence.

QUESTION: Actually, I wanted to address the issue of medical marijuana and say that I think it is probably the most successful public relations campaign that is totally false that I have ever seen in the 20 years that I have been fighting the drug issue. And just so it doesn't sound like I am a hysterical parent, let me say that it was researchers at NYU, Columbia University and the National Institutes of Health who have said that since THC in marijuana attacks the same lymphocytes as does the AIDS virus, you are putting them at double jeopardy. An NIH statement, and I quote, says that people with HIV and others whose immune system is impaired should avoid marijuana use.

I think we have to be very, very careful about misleading on this. We talk to kids all the time in treatment who tell us that "We thought marijuana wouldn't hurt you. We thought it was good for you because everyone is saying it is medicine." It has no therapeutic value.

MR. TAYLOR: I will take that as a statement, not a question, and invite the gentleman in the fourth row to say what he wants.

MR. BOCHMA: I have a comment. I am Peter Bochma, Counselor for Health, from the Netherlands Embassy. I just want to comment on the remark by Ms. Satel, who said that there is free heroin available from our government. There is no such thing.

Maybe I want to make a few remarks. I am always a bit surprised at the obsession of the proponents and the opponents of legalization with our country. It is the size of Massachusetts. It has the population of New York. So, why this obsession with our country?

In Holland, we have the policy that we view it as a public health problem. All drugs are illegal in the Netherlands, although we don't prosecute people who use less than five grams of marijuana. And that would exactly prevent the example of the three brothers example by Mr. Barnett. And in that way we can achieve a separation of marijuana with hard drugs. The other thing is that we want to limit the risk to society and the risk to the population. On that basis, we have a policy which is supported by a large majority of the population in the Netherlands.

MR. TAYLOR: Resisting the temptation to ask you about assisted suicide, I am going to call on this gentleman and note, as I failed to note earlier, please note who you are and your affiliation if it is relevant before you pose your question or statement.

QUESTION: I think something of a straw man has been created with the notion of legalization as it is being discussed by the panel. Prozac is legal, but it is not sold over the counter. Many other substances are legal and not sold over the counter. In fact, I forget the name of the law that creates the scheduling --

MR. TAYLOR: The Controlled Substances Act.

QUESTION: The Controlled Substances Act, which created the scheduling. Some of these substances that have not been discussed, like MDMA, probably don't belong on Schedule 1 because it does have therapeutic value. I am just wondering if the panel wouldn't consider scheduling these drugs on a scientific basis rather than as a political act by Congress.

MR. TAYLOR: Yes, another question?

QUESTION: I am with the Parents Anti-Drug Movement. I have been involved for about 25 years. I am aware that Barry McCaffrey has put out the figure that 52,000 people die each year from drug-related causes. And there are other figures that about 15,000 die from overdoses directly. When I hear talk about harm, I can't get too excited about some people who are selling these substances that are killing Americans. I can't get too excited about that.

Then, on the idea of universal agreement up there with treatment, are you people aware that there is a movement to do student drug testing in this country? There are two laws in Congress right now that would authorize testing and treatment of students to keep them from getting involved with drugs. There are over 500 communities already doing it in the country. And the Supreme Court has ruled it is okay. Are you aware of this?

MR. TAYLOR: I don't think the Supreme Court has ruled carte blanche for drug testing of kids. I think they ruled that kids who are going to be in athletic programs, for example, can be tested.

Does anyone on the panel want to comment on that?

(No response.)

MR. TAYLOR: Another question then?

MALE VOICE: This question is for Dr. Satel. If somebody comes into your office and says, "I have a big drug problem and I need a fix," do you have the wherewithal or the authority to help this person by giving him the fix he needs and helping him get past this initial problem? Is there something like that in your programs? And if so, how are they working out? There is methadone, for example. Suppose somebody wants something a little stronger than methadone; they need something stronger?

DR. SATEL: We just raise the dose.

QUESTION: So you give them what they need?

DR. SATEL: Yes.

QUESTION: And how has this been working? What is your success rate?

DR. SATEL: The success rate nationally? Let's put it this way. Methadone is a great socioeconomic investment, in that people will use fewer drugs, will end up in ER's less, more stay in employment. I would say that for our patients, maybe a third are able to be completely drug free while they are on methadone. That is not a great outcome, but it is much better than being on the street and using heroin.

MR. TAYLOR: We are out of time, but I will take one last question from the lady on the railing.

QUESTION: I am the Legal Director for NORML.

I wanted to point out that there is another collateral casualty of the war on drugs. And that would be the children being placed in foster care by youth and family services organizations, mostly State organizations across the country. We have calls every day from people: What can I do? They're taking my kid.

One of the problems that we have encountered is that there seems to be a disconnect between the treatment times and the treatment programs that are frequently six months to a year or longer and the times that are allotted by State programs to get your act together to get your kids out of foster care. And especially for Dr. Satel, if you could make any comments. Are there any movements in the treatment realm for making better coordination between the family courts and the treatment organizations?

DR. SATEL: I'm sure there are efforts, and there are also efforts to develop residential treatment centers that allow women to bring their children, so they don't have to be separated, which is a great idea.

MR. TAYLOR: I think we have to stop now. Let's thank our panelists.

(Applause.)

MR. TAYLOR: Abolish mandatory minimums, legalize medical marijuana -- with all due respect to the objection, and do it right. Thank you.

(Whereupon, the Cato Policy Forum was adjourned.)