



8. A Businessperson's Guide to the Drug Problem

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Most persons engaged in business routinely reanalyze the factors that affect their business—economic trends, employment conditions, credit rates, tax policy, trade, competition, current customers, potential customers, etc. Every factor that raises costs or depresses revenues should be identified and minimized. But such analyses have almost never considered the nation's drug problems as factors affecting costs or revenues. Those who are paid to analyze the business climate—locally, regionally, nationally, and internationally—almost never look at the significant economic effects of drug prohibition policy.

The hypothesis of this chapter is that drug prohibition hurts the business climate, profits, and investor returns. Drug prohibition both raises costs and reduces revenues. While intoxication from drug use increases the risks of accidents and lowers productivity, more significant influences on the business climate flow from the uncontrolled behaviors in the illegal drug market and the effects of enforcement.

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Nine Ways the War on Drugs Hurts Businesses

First, the consequences of drug enforcement and convictions reduce the purchasing power of at least five million American consumers. Second, the crime, violence, and disorder from drug prohibition make hundreds of urban commercial districts undesirable for retail and other commercial development. Third, the crime, violence, and disorder from drug prohibition make hundreds of urban residential districts undesirable for housing and housing development.

Fourth, the direct costs of drug enforcement, now exceeding \$50 billion in federal, state, and local spending each year, are a terrible opportunity cost—as taxation that restricts investment and profits. This is taxation withdrawn from the productive economy, a wasted public expenditure that does little to improve public safety and the economic climate.

There are substantial indirect costs from enforcement that accrue to the business community and hurt profits. These include, for example, fifth, the costs of compliance with onerous and ineffective money laundering regulations; sixth, the inflation of insurance premiums to pay for underwriting losses attributable to drug-prohibition crime; seventh, the significant costs of added security; and eighth, the slowing of international trade to search for contraband and as a result of growing reporting requirements in financial matters and shipments of industrial chemicals.

Ninth, still other costs are the lost productivity from drug enforcement. Among the factors reducing productivity due to drug prohibition is incarceration. Between 1992 and 1998, the productivity loss due to incarceration grew by 9.1%, according to the White House report on the economic costs of drug abuse issued in September, 2001.

Drug Use in the Workplace is a Cost

Of course, when employees are under the influence of certain drugs in the workplace, this is a real danger to other workers and to quality control. Illegal drug use in the workplace is a subset of the larger problem that includes alcohol use and the impairment from legal drugs—including prescription pain relievers and over-the-counter cold and allergy medications—that lead to motor vehicle crashes and other accidents. (The use of caffeine is not problematic in the workplace. The use of nicotine—i.e., tobacco—is increasingly problematic as a health insurance premium cost and as a litigation risk if smoking is permitted in the workplace. Taking cigarette breaks may reduce productivity. But no one is concerned about the psychic effects of nicotine on behavior or productivity.)

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When employees become addicted to drugs or alcohol, they often incur expensive treatments that result in increased health insurance premiums and frequently result in lost work. Such workers may also cause accidents that may be expensive and that may lead to lawsuits. (On the other hand, certain drug use may stimulate the creativity useful to industries that rely on innovation such as software design, computer engineering, and the many components of the entertainment industry. Many such firms do not drug test employees or prospective hires.) If our current drug policy is not reducing the costs associated with drug use, then the drug policy is hurting business, not helping it.

Is prohibition the most effective way to reduce drug use in the workplace? No. Unwanted drug use in the workplace is more effectively controlled by incorporating appropriate rules in employment contracts and employee handbooks, by effective management, and by employee assistance programs when problems develop. Stigmatizing drug use as illegal interferes with the identification and acknowledgment of unwanted and problematic drug use. This stigma significantly interferes with treating problematic drug use, as an April, 2003, report from Join Together and the American Bar Association demonstrated.¹

Off-duty drug use usually is not problematic. Using new technologies to test for actual impairment has been applauded by the business and government agencies that adopted such technologies, according to a report by the National Workrights Institute.²

Drug prohibition is less of a public health policy than a moral crusade. As a crusade, it is justified not by its effectiveness, but by its aspirations. Yet the costs of prohibition are too high and its failures too expensive for the crusade to be carried on any longer. America's business leaders must apply the rational analysis that has led to our economic greatness—and end one of America's great economic blunders.

The Economics of Drug Prohibition

In March, 1980, Peter Bensinger, the head of the U.S. Drug Enforcement Administration, testified before the Subcommittee on Criminal Justice of the U.S. House of Representatives about the DEA's strategy and success. I was the counsel to the subcommittee who set up the hearing and questioned the witness. Bensinger testified that the fundamental goal of drug enforcement is to reduce supply and to drive up the retail price of illegal drugs. The objective is to make illegal drug use more expensive so that casual users will reduce their consumption and

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addicts will enter treatment and demand will be reduced. The proof of the DEA's success is measured by the increasing price of drugs in the marketplace, he testified. However, addict demand for narcotics is relatively inelastic, seriously undermining this strategy's effectiveness for those who use the bulk of the supply of heroin and cocaine. For casual users, there is evidence that when drug prices go up, use goes down.

But this rationale for drug enforcement policy doesn't make economic sense. While increasing arrests and seizing drugs may drive up the price and may reduce the quantity demanded in the short term, it has another inevitable economic effect—it draws more entrepreneurs into the business. Wherever there is increased profitability, it will draw new economic actors seeking to maximize their return on their labor or investments. This will then drive down prices. This is an unintended but simply inevitable economic result of drug enforcement.

The strategy to reduce supply by arresting participants in the distribution actually has a positive, strengthening effect on the illegal drug market. Illegal markets are inefficient in providing information to actors. There is no Dow Jones, Bloomberg, *Forbes*, *Business Week* or CNBC providing market trend and price data. There are no phonebooks, Web sites, or advertising campaigns to assist or recruit customers. Contrary to conventional businesses, disseminating information about one's products, business location, hours of operation, etc. risks shutting the enterprise down by attracting law enforcement as well as buyers. Typical competition over price, quality, and service is greatly hindered.

Drug enforcement weeds out the less effective, less ingenious participants and encourages the more ruthless and the more cunning. The illegal drug market has actually thrived over the past 20 years and become more efficient.

The data regularly reported by the Drug Enforcement Administration shows that for 20 years it has failed to drive up the prices of the narcotic drugs. The traffickers have become so efficient, the price for a pure gram of cocaine delivered at retail has gone from \$433 in 1982 down to \$184 in 1999. The price of a pure gram of heroin at retail has gone from \$3,285 in 1982 down to \$1,929 in 1999.

And the traffickers are delivering a better product at retail. Cocaine average retail purity has increased from 36% in 1982 to 64% in 1999. Heroin average retail purity has increased from 5% in 1982 to 27% in 1999.³ And yet more than 300,000 drug sellers are arrested every year! There has been no dramatic decline in consumption of heroin. (Cocaine consumption data is more ambiguous than the heroin data.) Doesn't this

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price and performance data sound like some of our most successful businesses such as computers, cell phones, DVDs, VCRs, etc.?

Reflect upon how profitable the illegal narcotic drug business is. The prices of cocaine and heroin are measured at retail in the hundreds or thousands of dollars per pure gram. An ounce of gold selling at \$330 per troy ounce means that gold is selling at \$10 per pure gram. Cannabis sells in the range of \$4 to \$19 per gram, depending on quality.

Typically, as goods move down the supply chain from manufacturer to retailer they become more expensive. But the inflation in price in illegal drugs is measured not by a few percent but in multiples. An importer of cocaine or heroin can sell the drug for three to seven times what he paid for the drug outside the United States. A retailer can sell cocaine or heroin for two, three, or four times what he paid at wholesale.

Entering the business, especially as a retailer, involves very small capital investments. A few hundred or a few thousand dollars worth of initial inventory is all that is needed. Profits accumulate rapidly. There is no capital investment in a physical plant or equipment, other than a scale and perhaps a cell phone. There is no initial need to hire or train employees.

Thus hundreds of thousands of drug sellers, primarily retailers, can be arrested annually with little impact upon the overall market for illegal drugs.

Supply Enforcement Ineffectiveness

The other side of the supply enforcement effort focuses on stopping manufacturing. A key effort is to stamp out the supply of the raw materials, the plants—opium, coca, and cannabis. But the greater the success of the plant eradication efforts, the higher the price the harvests command in the market. Again, the inevitable consequence of law enforcement strategy is to make illicit drug cultivation more economically attractive, not less attractive. The prices for crude opium and coca leaf in bulk fluctuate widely. But even at their lows, they are still profoundly more valuable to the growers than any alternative legal crops.

One reason why coca and opium are grown in the most remote regions of Asia and South America is that the farmers are very far from any market for legal crops. Crops such as coffee, bananas, coconuts, flowers, etc. are either bulky or perishable. Effective marketing requires good roads, ports, or airfields. Coca, opium, and cannabis are grown in mountainous or jungle regions without adequate roads or rivers suitable for rapid, large-scale shipment of bulk produce. Coca leaf and opium gum are quickly and easily refined using widely available industrial chemicals. Coca paste and

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morphine base, the compact semi-purified plant extracts that are the raw materials refined into cocaine and heroin, are relatively easy to ship, and enormously more valuable.

In August, 1983, I toured drug-producing regions of Peru and Colombia with the Select Committee on Narcotics Abuse and Control of the U.S. House of Representatives. We had to fly hundreds of miles from the national capitals over mountain ranges that were unbridgeable obstacles for the shipment of bulky, legal agricultural products. As I stood next to a senior member of Congress while observing government-paid laborers chop down coca bushes in Peru, he turned to me and said, “Now I understand the meaning of the phrase, ‘pissing into the wind.’” The futility of this effort was obvious—but politically inexpressible. And even though eradication has grown enormously—now conducted by fleets of pesticide-spraying aircraft—the price of coca still draws tens of thousands of growers, and the supply of cocaine remains plentiful.

Coca cultivation is now taxed by rival guerilla armies and paramilitary forces that destabilize Colombia, destroy pipelines and power transmission lines, assassinate public officials, and kidnap businesspersons. Prohibition makes this cultivation very profitable.

It must be understood that the absolute quantities of illegal drugs that are produced and shipped are infinitesimal in terms of global trade. U.S. consumption of drugs in 2000 was about 260 metric tons of cocaine, 13 metric tons of heroin and 1,047 metric tons of cannabis.⁴ All of that cocaine, for example, could be shipped in a couple dozen tractor trailers. For comparison, 1,624,000,000 metric tons of sugar were imported into the U.S. in 2001, according to the Washington Report on the Hemisphere published by the Council on Hemispheric Affairs. The U.S. price for sugar was about \$0.21 per pound (454 g) in early 2002.

If the drug problem is a costly one for American business, one of the goals of the anti-drug strategy ought to be reducing the cost to the economy. However, the latest report from the White House shows the overall economic cost of drug abuse rose 5.9% between 1992 and 1998. At the same time, Federal anti-drug spending grew from \$11.9 billion in FY 1992 to \$16.1 billion in FY 1998, a 35% increase. Evidently this has been a growing investment of public resources with a decreasing return.

Prohibition is Driving Away Your Customers

Each year since 1990, a minimum of a quarter million persons have received a felony conviction for a drug offense. I estimate that since 1980,

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at least five million persons have been sentenced for a drug felony (though this number fails to account for repeat offenders). Between one-third and one-half of these sentences are for simple possession.

These five million persons with drug felony convictions have greatly reduced access to lawful employment. Their earnings are profoundly reduced. Ex-felons don't get a pre-approved application for a credit card with a 0% introductory APR in their mailbox on a weekly basis.

Without a Visa card, Mastercard, or Discover card, the desire of these millions of potential customers to purchase many goods and services is effectively blocked. This large number of felons has reduced the customer base for most businesses.

Millions of potential subscribers can't sign up for AOL or the Internet because they can't automatically bill their credit card. Millions of drug felons can't order Christmas presents by phone from catalogs. They can't order CDs or music equipment from Amazon.com. They can't order tickets to take their kids to basketball games or the circus by calling Ticketmaster or Ticketron.

Drug felons cannot qualify for mortgages to buy homes for their families. Thus, millions of potential home buyers are excluded from the marketplace. Millions of new washing machines, refrigerators, stoves, sofas, bedroom suites, and so forth are not purchased. Paint, wallpaper, and carpet are not purchased.

Without access to credit, drug felons can't buy new cars. Also at the retail level, the sale of music is depressed. Yet the overwhelming majority of those convicted of drug offenses are young, prospective consumers of music CDs. The opportunities to travel by air, stay in hotels, or go on a vacation are all much more limited because the former felon has no credit card.

It is not a cliché that the American economy is driven by consumer demand: it is an economic truth. In times of economic slump, the consequences of the war on drugs sap the economy like an intestinal parasite.

Many of these ex-felons, rehabilitated after serving the sentences and now many years away from their crimes, still can't get jobs. Many of the former drug traffickers worked hard, long hours and were successful as entrepreneurs. William M. Adler⁵ and Phillipe Bourgois⁶ have described how successful managers of drug distribution operations demonstrate the ability to solve all of the management problems of large retail organizations. But in most instances, they can't get hired for the simplest managerial positions.

Millions of workers, disheartened by their former felonies, simply don't

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try to enter the legal workplace. Yet from an employer's perspective, if they were seeking jobs, they would help keep the price of labor down. From a social perspective, they would be attractive partners for marriage and could support their families. The need for public assistance for their families would go down dramatically. They would be paying taxes instead of receiving income from the government.

Competitors You Don't Want to Have

From 1984 to 1986 I conducted congressional investigations and hearings into the laundering of money by criminal organizations. I was the attorney on the staff of the Subcommittee on Crime of the U.S. House of Representatives principally responsible for developing the Money Laundering Control Act of 1986 (P.L. 99-570) that created the federal crimes of money laundering (18 U.S.C. 1956 and 1957).

Money laundering is a necessary business challenge for any large-scale drug operation. Large-scale drug trafficking is the only major vice that relies upon cash. Prostitutes and pornographers take credit cards. Gambling casinos and race tracks take credit cards. Only the sale of dope remains on a cash-only basis.

It is a pathetic irony that if one uses or possesses large numbers of Federal Reserve Notes that say, "This note is legal tender for all debts, public and private," one becomes suspected of being a criminal. In routine police stops, if the officers find more than a small amount of cash, the officers seize it to forfeit it on the presumption that the cash is the proceeds of drug trafficking. The burden of proof is on the citizen to prove he has acquired his cash lawfully. It is a sad fact that when it comes to large transactions, usually only criminals use legal tender.

The successful drug dealer cannot have a very full enjoyment of the fruits of his crimes if he has only cash. He can't buy a car, an overseas vacation, real estate, and so forth with large sums of small bills. How can a drug dealer enjoy his profits? How can a drug dealer protect his profits?

This is the problem solved by money laundering. Numerous strategies can be employed. One approach is to open a business that typically generates large volumes of cash—a candy store, an ice cream store, a small restaurant, etc. The business does not need to be successful. Indeed, how many times have you seen a crummy little business, a lousy restaurant, for example, and wondered, "How can they stay in business?" Such businesses have a legitimate reason to make cash deposits every day. Included with the meager receipts from a few legitimate sales are sums of cash from illegal

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operations. After paying appropriate taxes, the “profits” of the crime have been laundered and can be used like real money.

Of course, a successful restaurant can launder money, too. Conversely, many cash businesses don't record all of their receipts in order to avoid paying sales and income taxes. But the revenues of these “mom and pop” operations pale in comparison to even modest drug-selling operations.

Other money-laundering schemes involve informal money exchanges, currency exchanges, or the use of precious stones or precious metals. The essence of money laundering is the concealment of the criminal origin of the funds or the concealment of the identity of the owner of the funds.

For decades, numerous countries have adopted rules designed to protect the privacy of bank customers to attract deposits. The anonymous, numbered “Swiss bank account” is the most famous example. Many other countries and jurisdictions, such as the Cayman Islands, Palau, Vanuatu, Luxembourg, and the Channel Islands, have numerous banks set up exclusively for overseas customers. While acceding to pressure from U.S. law enforcement agencies to cooperate in criminal investigations, many of them have adopted laws designed to frustrate investigators by requiring various legal processes and documents to be completed before financial records will be released.

In most capitalist nations, almost any individual can create any number of corporations, which in turn can open any number of bank accounts, in any number of other nations. Funds can now be transferred electronically from account to account, from corporation to corporation, from country to country. A great many transactions can be completed very quickly. Thus, a well-structured money-laundering scheme can take many years to unravel. In that time, the owners of the funds have numerous opportunities to further hide their tracks. A drug dealer laundering his money can comfortably gamble that at some point along a well-constructed, well-concealed money-laundering chain, the investigating agent is likely to be reassigned to a higher-priority case.

However, every bank and bank customer incur ever-growing expenses to comply with the record keeping and other regulations designed to facilitate money-laundering investigations. A decade ago the American Bankers Association estimated informally that the compliance costs for banks exceeded \$300 million annually. Since then the demands for compliance training and expensive software have grown enormously.

The demand for money laundering creates powerful incentives for criminals to branch out into legitimate business. Many legitimate businesses need a line of credit. A business designed to launder money doesn't need a

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line of credit; it actually has more capital than it can handle. A legitimate business needs to make a profit to remain viable. A money-laundering business does not need to make a profit. Indeed, the operating losses are simply a cost of the extremely profitable principal business, drug selling. Thus, any legitimate business in a field attractive to money launderers has to fight competitors who don't care if they lose money because such losses are merely a cost of keeping their major revenue generators viable.

Who Owns Your Assets? The Impact of Forfeiture

Among the government tools for fighting money laundering and drug trafficking are the civil asset forfeiture laws. Since the first Revenue Act of 1789, property used to evade the tax laws, such as smuggling vessels, has been seized by the Treasury Department. Property used to smuggle drugs, and the proceeds of drug smuggling and trafficking, have been seizable for decades. But in the 1980s Congress put pressure on the government to use forfeiture more frequently as a tool to “take the profits out” of the illegal drug trade. A major incentive they provided was to allow law enforcement agencies to keep the assets they seize instead of turning the proceeds of forfeiture sales over to the general receipts of the Treasury.

Keeping the assets means law enforcement agencies profit if they let the drug traffickers sell the drugs before they stage a raid. Simply seizing drugs does not contribute to the drug agency's budget.

To obtain forfeiture of financial assets is sometimes a more important objective of money-laundering investigations than prosecuting the criminal. But this has generated a number of problems for innocent property owners. Historically the burden of proof for the government is low. To succeed, all that must be established is probable cause that the property is derived from drug trafficking.

The government often argues, for example, that cash is forfeitable if there is any evidence of the residue of cocaine on the currency. That residue, they claim, is evidence that the money was used in a drug transaction. However, powder cocaine is often snorted through rolled-up dollar bills. The rollers on high speed currency-counting machines in banks and businesses become contaminated with cocaine residue and spread it to other currency. In fact, much of American currency has been contaminated with very slight but detectable amounts of cocaine. In the 1980s, the *Miami Herald* reported that currency borrowed from prominent citizens, including State's Attorney Janet Reno, tested positive for cocaine. Yet after a sum of cash is seized and it tests positive for cocaine, the burden

of proving that the currency was obtained lawfully shifts to the citizen. When it comes to asset forfeiture, there is no presumption of innocence or proof beyond a reasonable doubt.

Who are Your Partners?

One of the virtues of the American economy has been that since the earliest settlement, it has been a place for foreign investors to invest. Since the 17th century, and especially in the 19th and 20th centuries, money has flowed into the United States to develop real estate, to build factories and railroads, to buy securities, and so forth.

Criminals with funds that have been laundered seek the same kind of security and dependable rates of return that other investors have found in the United States. Today, developers seeking capital are always at risk that ostensibly legitimate investors are actually using laundered funds. One consequence of money laundering and the forfeiture laws is that any investor with partners is always at risk that the government will forfeit a partner's share of the property and become a new partner, inquiring into all of the advantageous elements of the investment.

Buy Property, Lease Property, or Squat

The business of drug trafficking adversely affects the real estate market in other ways. When drugs are used or sold out of a fixed location—an apartment or a business—the owners of the property, if they fail to take sufficient steps to stop the use or sales, are subject to prosecution under state “nuisance” laws. In 1993, the law firm of Cadwalader, Wickersham and Taft published a guide to using such laws titled “A Civil War: A Community Legal Guide to Fighting Street Drug Markets.” A federal law, the so-called “crack house act,” (21 U.S.C. 856), is also being used against property owners. This law carries a penalty of 20 years imprisonment and a \$500,000 fine, and corporate property owners can be fined two million dollars per count. On April 30, 2003, President Bush signed the Illicit Drug Anti-Proliferation Act (P.L. 108-21), which now allows a civil fine of \$250,000 per incident. And such properties can be forfeited. Actions taken by the property owner or managers to deter drug use or sales, ironically and unjustly, have been held to be evidence that the property owner was aware the illegal drug use or sales were taking place.

If dilapidated property happens to be occupied by persons using or selling drugs, such laws are a deterrent to buying the property in order to rehabilitate the property.

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Because of such high penalties, drug sellers don't buy real estate in which to sell drugs. And property owners work as hard as they can to push drug sellers outside onto the street. As a consequence, many neighborhoods are plagued with outdoor illegal drug markets. These drug markets are inevitably places of violence.

Business Problems for the Drug Dealer: Security

Imagine you are a cutting-edge, out-of-the box retailer: imagine you are a drug dealer. Whether you have located your retail operation indoors or on the street, you share a problem with most of your legitimate cousins: providing security for your employees, your customers, your inventory, and your receipts. Shoplifting isn't much of a problem, as your wares are not on display for customers to examine before purchase. You have techniques to send a very strong message to your employees that employee pilferage won't be tolerated.

Your big security problem is the professional robber. Think of the places someone can rob for money. The obvious targets are businesses with very high volumes of cash—banks, liquor stores, drug stores, food stores, fast food outlets, convenience stores. For many of these high-volume retail outlets, a high proportion of the receipts are non-negotiable credit-card slips and, to a lesser extent, checks. Those with the most cash usually have security systems of safes, video cameras, alarms of varying sophistication, and professional security guards, even off-duty police officers. But your receipts, as the illegal drug seller, are exclusively cash.

You also have a unique inventory. Every other inventory that might be stolen will be sold for a substantial discount. Stolen computers, televisions, jewelry, clothing, automobiles, farm equipment, medical supplies, steaks, or disposable diapers are sold or fenced for much less than their retail price. Uniquely, however, stolen cocaine or stolen heroin can be sold for the same price you were asking. No one asks the drug sellers any questions about where the heroin or cocaine came from.

Illegal drugs are compact, extremely valuable, and an ideal product for the robber to run away with, unlike, say, television sets. Thus your illegal drug market is always being cased by professional robbers.

Unlike conventional retailers, the illegal drug seller cannot employ security firms such as Wackenhut, Brinks, or Wells Fargo, nor legitimate off-duty police officers. You can't go to the Yellow Pages to find a security firm. You must deploy your own security force to protect employees, receipts, inventory, and customers. How would you as a drug dealer recruit

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security employees? What are the qualifications you would like to see from job applicants for providing security to your illegal drug market?

The ideal candidates to provide security at street markets have widely known reputations for committing extreme acts of violence. Imagine the job interview: You: "Who have you shot?" Job candidate: "John Doe." You: "I never heard of that shooting." Or "How do I know you shot him? If you shoot so and so [your rival or disloyal former employee], you've got the job."

The security guard always has his weapons. The violence he has inflicted always faces retaliation. The danger of accidental or non-job related violence is always very high as well.

If the robber is successful, he does not have to worry that the victims will call the police. He escapes with cash and drugs many times more valuable than gold, that are easily sold.

America's \$50 billion per year retail drug business is the nation's greatest employer of killers and psychopaths. Drug prohibition assures that they are fully employed, well-armed, and standing on street corners throughout the nation.

Dispute Resolution

The illegal drug business faces the inevitable disputes of any business. A supplier fails to deliver goods as promised. A customer fails to pay for goods he has accepted. But unlike the other businesses in your community, you have no recourse to the courts to enforce your contracts. You can't sue for breach of contract or to enforce a warranty of merchantability under the Uniform Commercial Code. The courts won't award you a judgment to obtain payment for goods you have sold.

Or imagine that a senior employee decides to leave your organization to go into business for himself, taking valued suppliers and customers. One can't go to court to enforce a covenant not to compete. Imagine an employee has been embezzling receipts or inventory. You can't call the police or district attorney and file a complaint for embezzlement or theft.

All of these conflicts are resolved exclusively through the application of violence. These problems can be prevented only by threatening violence. With the presence of illegal drug markets in a neighborhood, violence is all but inevitable, utterly depressing the attractiveness of the neighborhood for housing, business, and employment.

And, of course, homes and businesses in such neighborhoods must pay higher insurance premiums, totaling hundreds of millions of dollars each year.

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All of this violence, and all of this increased cost of doing business, is exclusively the result of the fact that the sale of these drugs is illegal.

A Barrier to Treatment

Drug prohibition actually undermines the impetus to get drug treatment. The stigma of the illegality of drug use is a major barrier to effective treatment that doesn't exist for alcoholics. For example, former Congressman Bill Emerson (MO) announced a number of years ago that he was taking a leave of absence to enter an alcohol treatment program. He was re-elected several times and elevated to Vice-chairman of the House Agriculture Committee.

At about the same time, it was widely known and rumored in Washington, D.C. that Mayor Marion Barry was using cocaine. Because he was the honorary chairperson of every anti-drug program in the city, he and his advisers could never admit that he had an illegal drug problem. Law enforcement efforts to find corruption in his administration never reached him, but he was trapped by the FBI using an ex-girlfriend to lure him to a hotel room to have sex and smoke crack cocaine. Only then did his cocaine problem lead to drug treatment. The stigma of illegality blocked admission of his problem and delayed his treatment.

Controlled Substances: Our Great Oxymoron

In an effort to fight the growing illegal drug problem, in 1970 a Uniform Controlled Substances Act was proposed by the National Conference of Commissioners on Uniform State Laws. It has been adopted by almost every state. In 1970 Congress enacted the Controlled Substances Act. Yet these drugs are the most out-of-control substances in the American economy. Calling them “controlled substances” is an oxymoron.

The American government has demonstrated a genius for regulation. While libertarians will gag at that characterization, they will completely concur that nearly every aspect of the American economy is subject to some form of regulation—except the illegal drug business. While libertarians will dissent that much of this regulation is necessary or wise, they will concur that prohibition makes the peaceful mechanisms of market control and non-government regulation impossible.

The illegal drug seller—even one inclined to nonviolence—must resort to arms because the state, with its monopoly on the lawful use of force, will not intercede to protect him. When every other participant in the market relies upon implicit and explicit threats of violence, it is disastrous

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not to do so as well.

Part of what drives many businesspersons to the Libertarian Party is their desire to make as many of their business practices as possible be considered legal. One goal of a sane and just society ought to be to bring as much as its commerce under the protective umbrella of the law as possible.

When defenders of the prohibitionist *status quo* claim to be considering the merits of drug legalization, they commonly ask if crack cocaine should be sold in the supermarket next to the sugar or the cigarettes. They frame legalization in this way to imply that potentially addicting drugs will be sold everywhere, with the complete absence of any controls. Yet today, crack cocaine is readily purchased outside or behind supermarkets in every state, without any control, and with little effective restraint.

Some proponents of drug legalization argue that the state should be given the monopoly in selling drugs, or that the liquor stores run by some states should become the somewhat antiseptic outlets for cannabis, cocaine, heroin, and other drugs. But the regulatory options are not simply between these two poles. Drug policy scholars Rob MacCoun and Peter Reuter have identified seven types of regulatory models for drugs in their outstanding book, *Drug War Heresies*.⁷

Libertarians recognize there is a vast range of private regulatory control mechanisms available as well. Drug sellers could organize in professional guilds, with professional standards. They could offer warranties of the purity of their products and obtain insurance to make such warranties meaningful to customers who may be injured by adulterated or mislabeled products. Injured users could seek redress in the courts for any of the product liability protections the public is entitled to.

The Bottom Line

American business is being hurt by drug prohibition. Vast pools of customers are cut off from the tools of the marketplace—credit cards, catalog shopping, Internet shopping, telephone ordering—by drug convictions. Society has outlawed the drug business, forcing it out of the nonviolent dispute mechanisms that reduce conflict and violence in the society. Yet a vast, prohibited drug trade remains, burdening communities with the very high costs of the violence that prohibition makes necessary and inevitable. A vast taxpayer-supported industry operates futilely to enforce the drug laws but is structurally incapable of doing so. This industry is counterproductive and justifies itself with a parade of horrors that are largely a consequence of its work.

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Of course, throughout the American economy and throughout our history, there are numerous instances in which industries or individual businesses have taken advantage of the government's power to regulate to give themselves advantages over their competitors. Many industries directly profit from drug prohibition even though the nation's economy, as a whole, does not.

The challenge for all businesspersons interested in public policy is to determine whether their business climate is being damaged as the collateral damage of the war on drugs. If they find such damage, they have an obligation to the owners, and to their community, to mobilize to end this drag on profits, on economic growth, and on society, with the same zeal they mobilize to change tax policy or other regulations perceived to be costly and unnecessary.

Notes

1. Join Together, *Ending Discrimination Against People with Alcohol and Drug Problems*, April, 2003, www.jointogether.org/discrimination.
2. National Workrights Institute, *Impairment Testing—Does it Work?* www.workrights.org/issue_drugtest/dt_impairment_testing.html.
3. White House, *National Drug Control Strategy*, February, 2002, page 81.
4. *Ibid.*, page 85.
5. William M. Adler, *Land of Opportunity: One family's quest for the American dream in the age of crack*, Atlantic Monthly Press, 1995.
6. Phillipe Bourgois, *In Search of Respect: Selling Crack in El Barrio*, Cambridge University Press, 1996.
7. Rob MacCoun and Peter Reuter, *Drug War Heresies*, Cambridge University Press, 2001.

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Voices
of Dissent
Challenge
the Drug War



Foreword by Governor Jesse Ventura
Edited by Sheriff Bill Masters

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Foreword by Governor Jesse Ventura (Ret.)

Edited by Sheriff Bill Masters

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