September 12, 1988

STRATEGY FOR A DRUG-FREE AMERICA: A SYMPOSIUM

INTRODUCTION

As the transcript of this symposium goes to press, the House of Representatives is considering a major "Omnibus Drug Act," with Senate consideration soon to begin. As is typical in an election year, the rush to complete action on key legislation makes it difficult, if not impossible, to see clearly what is happening until the bills already have been passed.

Nevertheless, based on the ingredients going into this particular recipe, it is possible to make several predictions about the final product. First, contrary to some reports, this legislation will contain some important changes in national drug policy. For the first time, at least the most heinous drug offenders will be subject to the death penalty; for the first time, at least some federal benefits and privileges will be withheld from those convicted of drug possession; for the first time, federal contractors will be expected to make at least some effort to keep drugs out of the workplace.

Second, despite these changes, it seems clear that the current drug legislation will not constitute the dramatic change in emphasis needed for real progress in the fight against drugs. When the dust has settled, the bulk of America's efforts still will be concentrated on efforts to interdict drugs entering the U.S., to educate people about the dangers of drugs, and to rehabilitate drug users. The $2 billion or so this new legislation will provide will, for the most part, fund a continuation of the policies that have failed to date — and it is fair to say that the most likely outcome is that the U.S. will continue to fail, but at a more expensive pace.

In 1989, America's drug policy will remain what it is today: one gigantic denial of responsibility. Drug users will continue to be seen as victims of foreign drug cartels, victims of ignorance, and victims of the inability to rehabilitate them. Despite talk of "zero tolerance," law enforcement agencies will continue to lack the resources to apprehend and

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prosecute even drug dealers, let alone users. The policy of *de facto* drug decriminalization will continue.

Readers of this symposium will learn of an alternative approach that substantially could reduce drug use in the U.S. — indeed, even eliminate drugs as a significant force in American life. These "Proposals for a Drug Free America" reflect the results of two related projects at The Heritage Foundation during this year.

First, beginning early this spring, some of America's leading drug experts assembled for a series of informal discussions and seminars. It was felt that America was failing in its efforts to win the drug war. The intention was to provide a forum to analyze the causes of this failure and recommend alternative policies.

Second, Senator Phil Gramm, the Texas Republican, and other conservative Senators also had become convinced that America's drug policies were failing; they began discussing with The Heritage Foundation a set of policies to make America drug free.

These two projects proceeded side-by-side for three months, culminating in a conference, "Proposals for a Drug Free America," on June 9, 1988. The conference begins with a briefing conducted by the Senate Task Force to release their proposals. These are the proposals of the Task Force, and are not necessarily endorsed by The Heritage Foundation or by the individual experts who participated in the series of seminars leading up to this conference or in the conference itself. At the same time, it is clear that this set of proposals, taken as a whole, offers the best hope for significantly reducing drug use in America of any of the proposals now on the table.

The remainder of the conference consists of presentations by some of America's leading experts on drug abuse. The first session, "Where We Stand," provides a fairly pessimistic appraisal of current drug efforts. The second, "Zero Tolerance: Targeting the User," offers a look at a different approach, focusing on individual responsibility and reducing the demand for drugs.

The presentations and the discussion among the experts on these panels exposes disagreement on particular aspects of policy. However, it also reveals — as it did to the Senators who heard these views develop over the course of several months — that: 1) the U.S. is not winning the war on drugs, and 2) that war can only be won if the U.S. has the will to attack the drug problem where it lives, among more than 23 million American drug users.

Jeffrey A. Eisenach
Visiting Fellow

Proposals for a Drug-Free America

Mr. Phil Truluck: Good morning, ladies and gentlemen. I am Phil Truluck, Executive Vice-President of The Heritage Foundation. On behalf of the Foundation, let me welcome you.

There is a slight change in the schedule. The portion of the conference set for 9:00 a.m. will be slightly delayed while we have some special presentations first.

We are very pleased that the Senators assembled behind me are able to be with us today. This group of Senators was brought together by Senator Phil Gramm, and over the past few months, has been grappling with the notion of a drug-free America and working on possible solutions, innovative solutions that the U.S. should be addressing.

These Senators are here today to tell you about their deliberations and some of their conclusions, and we are absolutely delighted to welcome them here this morning to get our discussions under way. And then after this session, we will immediately start Panel One as originally scheduled.

Representatives of the news media who are here are certainly welcome to stay for the Panel discussions that follow, when the experts who have been participating in these discussions will present some important background information. It should give you all a better idea of why the Senators have come to some of the conclusions they have.

At this time, I would like to turn the program over to Senator Phil Gramm of Texas. Senator Gramm.

Senator Phil Gramm: About three months ago, these members who are here and about an equal number who cannot be here today decided to try to pull together a working group to go out and talk to various experts around the country on the problems of drug abuse and law enforcement and to try to come up with a comprehensive plan to address this problem. It is the number one problem in America; we all know that. We all see the polls; we all see congressional reaction to it.

Our objective in this working group was to do more than to react, to do more than just to show our concern. Our objective was to come up with a concrete proposal to address the problem.

One of the first things we decided in our deliberations was that we were not interested in simply creating a program to respond to the problem. We came to the conclusion that the U.S. must make a fundamental decision: Do we want to win the war on drugs or do we just want to make a good show? Our conclusion was to attack head on both the problem and those who profit from destroying the health and happiness, and sometimes the lives of our children.

Senator Pete Domenici formulated the principal idea that is the foundation of our proposal. And that idea is to eliminate the use of illegal drugs in America. And in this proposal we have set a target date of 1995 for achieving that goal.

I think I can sum up very briefly the results of our discussions with experts who have been working on this problem for many years. Number one, the obvious conclusion is we are losing the war on drugs. We are committing more resources; we are confiscating more drugs. But the bottom line is that there are more drugs available on Main Street, USA today than ever before, and they are cheaper than ever.

The second thing that we concluded from our deliberations is that, although enforcement and interdiction attacking the supply side are important and indispensable, they alone will not solve the problem. No matter how much in the way of resources we commit to interdiction, we can never forge a situation where we can build walls around America and totally keep drugs out.

Comprehensive studies by the Rand Corporation and others have concluded that the value of cocaine rises 208 times its initial value in the field by the time it gets to 14th Street in Washington, D.C. And with such levels of profit, trying to interdict, trying to simply deal with the supply of drugs is destined to defeat, unless there are other parts to the attack.

We concluded we have to attack the problem across-the-board, and we have put forward some proposals that are aimed at doing that. They range from the death penalty for those who commit murder in the drug trafficking process, a mandatory ten years in prison for people who sell drugs to minors, stiff prison sentences for smugglers and pushers who carry concealed weapons, and a series of stiff penalties aimed at taking away the profits, or at least adding a cost, to those who are profiteering in the drug industry.

But more and more, as we looked at the problem, we realized that the people who use illegal drugs are stockholders in organized crime -- they are creating the profits that make this whole industry profitable. And if we are ever to deal with the problem, we must do something about use.

We have come up with a comprehensive program that my colleagues will be talking about this morning. That program includes effective deterrents for the use of drugs. We set out a program to try to make our schools drug-free, to make transportation drug-free, to make the workplace drug-free, to make the prisons drug-free. We believe that this program can work, and we are determined to make it the law of the land. We are determined to stay with this approach, and with other ideas that evolve as we try to implement it, until we have won the war on drugs.

And now here is another member of the group, Senator Pete Wilson of California.

Senator Pete Wilson: It is perfectly obvious to everyone who has been involved in this that you cannot simply say, "If there simply were no market, if there were no demand, there would be no profit." That is an obvious fact of life. And it is also true that we have spent a great deal of time seeking to interdict the supply of illegal drugs, and that effort, by itself, is insufficient.

By targeting users, we are saying to the young people of America that they are going to have to be responsible for their actions. Education, alone, in many instances, has failed — at least it has not had a permanent deterrent effect. We have tried to tell Americans, young and old, what the perils of drug use are. But it is clear that, unless individuals have sufficient self-esteem to refuse to engage in the foolish and dangerous experimentation that drug use implies, we are going to see in all levels of our society the tragedy of drug use that at the worst leads to death, but at the very least, to a terrible waste of human energy and talent.

So what we would say to 16-year-olds is that they are going to have to be responsible. They will have to understand that there are consequences to all their actions that they must consider when they make choices in life. They must understand that they are going to be confronted with those choices on the streets, in the schools, and certainly in the workplace.

I personally would go even further to urge that the recommendations here be related to driver's licenses. Here, it is recommended that those who have been convicted of drug use lose eligibility for programs such as student loans, lose their licenses, have their licenses revoked. It seems to me that we need to tell the very young, those 14-, 15-, 16-year olds who are hungering for the driving privilege, that it is indeed a privilege and that they are going to have to choose between that and drugs. And if they choose drugs, they are going to be tested, and if they test positive, they will not be allowed to exercise their driving privilege.

We cannot, in the U.S., afford to be ambivalent about drug use. We cannot turn a blind eye and condone drug use by celebrated outfielders or by other sports and entertainment figures who are the subject of adulation by teenagers. Commissioner of Baseball Peter Uebberoth has taken some of the right steps in organized baseball, but we must go much farther than that. We must tell young people that they are not too young to assume the burden of determining what their own future is going to be — of which the decision about illegal drugs is an important part.

This is the most comprehensive and the most reasonable approach because it includes both interdicting supply and curtailing demand. It expresses a zero tolerance because society cannot be ambivalent. That means there will be measured responses as the requirement arises. We are not going to be extreme. We certainly do not turn our backs on rehabilitation, but rehabilitation is expensive in time and effort and in money. We must prevent drug use in the first place. That means putting it up to each individual.

Senator Gramm: Now we will hear from Senator Chuck Grassley of Iowa.

Senator Chuck Grassley: How do we achieve a drug-free society? Beyond the goal that we seek in this program, we must build upon the principles and rights already accepted by the American people that detail what the American people are entitled to. It is an established right of those who use the highways to be free from the dangers of those who abuse drugs and alcohol. It is an accepted tenet of our education programs that young people in America have the right to learn. It is an accepted aspect of our OSHA programs that every worker in America has the right to work in a safe place.

Now the facts of modern day life and the use of drugs are that with drugs we do not have safe highways. With drugs we lose the proper environment for learning. And with drugs the workplace is anything but safe.

Building upon the accepted rights of Americans and upon the notion of punishment for those who do not respect the rights of others, we must extend the policies already set by state and local and federal governments to further protect those rights. Using the same principles that have promoted safe working places, the right to learn, and the right to travel, we must make sure that drugs, as they interfere with the rights of the majority of Americans, are in fact erased from those environments.

Senator Gramm: Senator Frank Murkowski of Alaska.

Senator Frank Murkowski: I think we all agree that America has been crying, "Do something." We have a plan now and this plan just awaits the conviction of Americans to get behind it and support it.

It has been said that no particular threat has struck our country more savagely or more viciously than drug abuse and the crime and disruption it fosters. They are manifest in failed education, impaired national defense, crippled families and communities, addiction, and of course, death. We have a moral and a patriotic duty to see that the drug kingpins in this nation as well as in foreign countries do not succeed. We must see that drug abuse is wiped out, so that U.S. children become and stay drug-free.

I believe with great conviction that the program set forth here today can accomplish that purpose. The program attacks drugs not in a piecemeal fashion, but on all fronts, and that is what is needed. It seeks to do so over the long haul because it is a long-term commitment, but it also has a specific endpoint: a drug-free America by 1995.

Commitment is vital. We have learned, in my State of Alaska that, if the commitment is not there, the entire drug effort can grind to a halt. A comprehensive solution is needed. It must include the education of our young people, international initiatives to cut drugs off at every source, and strong, fair, effective law enforcement to discourage drug users. As my colleagues have stated, advance knowledge of the specific penalties for drug use will go a long way to send a very clear message. Only then can we be sure we are doing all we can to wipe out this terrible problem.

Senator Gramm: And now Senator Rudy Boschwitz of Minnesota.

Senator Rudy Boschwitz: This group has been meeting here for a number of Thursday mornings. The result is a program that we think offers not just a new approach but also an effective approach with respect to drugs.

About 10 percent of the U.S. population uses drugs at least once a month. This costs the nation about $100 billion a year, which is a fairly broad figure that is hard to quantify, but it includes lost productivity, health problems, highway fatalities, on-the-job accidents, at all levels of society. The number really is enormous, perhaps incalculable.

We believe that we have to continue to interdict drug supplies and the program provides for that, indeed, increases it. We think education should be continued, though we are less than sanguine about the effectiveness of it. But most important we believe that we have to deprive the seller of the user. Attacking the seller alone is not enough because drugs are just too profitable a business.

So our approach is a tough one that seeks to limit demand. It calls for increased funding in law enforcement, which is money well spent. We heard from a number of people in law enforcement. On the basis of this, we recommend very tough penalties for those involved in the sale and distribution of drugs, but we also recommend some very hard penalties for users: Suspending driver's licenses for a certain number of years; in the event the user is too young to have a driver's license, delaying the time when a license can be obtained; making them ineligible for college loans, or home loans, or perhaps federal employment, either for an extended period or permanently, so that the federal government will have a hand in making it very costly to use drugs.

This is truly a dramatic change in approach to the drug problem. The current approach gives a kind of tacit approval to the use of drugs. We aim to change that, while carefully observing the rights of individuals. For one of the important elements is that there will be a notification period when the program is announced, six months for instance, after which the program will be in effect. This will allow people time to change their habits and not be penalized or caught unaware.

In sum, there is no question that the seller must be deprived of the user if the war against drugs is to be successful.

Senator Gramm: Senator Malcolm Wallop of Wyoming.

Senator Malcolm Wallop: This program that we are presenting today is merely an encapsulation of a great deal of study and of some longer reports that we have prepared while working with the various analysts from the Rand Corporation and The Heritage Foundation for the last few months.

It is fair to say that the law enforcement record of the last several years has been very impressive. And that result is the key to why we think that an effort beyond just law enforcement is needed.The interdiction rate of drugs has been terrific. The cooperation of a number of foreign countries has improved. Drug arrests are up. Tonnage has been interdicted. But supplies too are up — several thousand percent. So it is not a question of the failure of law enforcement; it is a failure of something else.

What we have decided is not a politically popular thing in its entirety, but we have decided that we can no longer view the user as a victim, but must regard the user as a participant in the crime. We have decided we are ready to fight a war, not a battle, and that our goal is victory, not a draw.

The really important point is that it is a comprehensive program. It is sure to draw the outrage of some groups as it calls for increased testing. It is sure to draw the outrage of other groups as it calls for specific sanctions without exception. It is sure to draw all kinds of

resistance because it will affect the almost 23 million people in the U.S. who are users. But it must go to the very heart of the problem and attack comprehensively, as Phil Gramm has said. That means not only the law enforcement side, interdiction, and education programs, but the drug user side. That is the key to the program that we present to you today.

Senator Gramm: Senator Al D'Amato of New York.

Senator Alfonse D'Amato: I want to see a drug-free America and I subscribe to the goal to make America drug free by in 1995. And I certainly think that the dialogue should relate to the issues as they have been raised here in this task force report and agenda. It should not concern whether or not we are going to legalize drugs because we have not been successful in curbing their use. Because the use of drugs is the problem – the real problem – the question must be how to curtail their use. Can more be done in the way of law enforcement? Yes. Are there more meaningful penalties so that we do not make a mockery of the criminal justice system for the sellers? The answer is yes. What to do about the education effort that has been shockingly inept? And what about spending billions of dollars and doing little for the self-esteem of the addict who comes in and says, "I need help"? To attack this problem, the dialogue must focus on these aspects of the drug problem.

There is no problem with testing for the air traffic controller. Probably everyone in this room would say, "I do not want to be up in that sky and have someone at those controls who is under the influence." And it would be the same for airline pilots and railroad engineers. We can all agree about that. And what about that person who applies for a driver's license? "Well, I don't know. Maybe it is my Johnny or Judy; maybe they won't get a license." What about renewal of a license? And I am not so sure we should cut off student loans. I am suggesting that this is the area for dialogue, not ridiculous contention over legalization. Let us consider how to curb the demand for drugs and reduce the addiction. We have not addressed everything here. What about the addict who says, "I need some help"? If we want a drug-free America, we had better be sure that every addict who needs help and comes in for it legitimately is not going to be treated as a felon, but given help. We are going to provide the resources on a state, federal, and local level.

Now where do we get those resources? That is important question. It is subjected to a lot of demagoguery, but we had better begin to address it. So I want to applaud my associates who really are targeting the correct area, which is the use area. We have now gotten to the point of saying, "You may be just a casual user, but you are not just affecting yourself, you can very well be affecting others, as well as fueling that criminal enterprise system known as the drug cartel."

I commend my colleagues for their work. I am certain that we are going to have the kind of dialogue necessary. It will be provocative, and some will try to make a lot more of this than they should in certain areas. But overall, we are headed in the right direction.

Senator Gramm: Senator Pete Domenici of New Mexico.

Senator Pete Domenici: First, my thanks to all of you who came today and to the people here at Heritage for bringing together the experts who, I have to tell you honestly, taught us

so much. I want to thank them, too, for presenting real facts about what is going on in this country and what probably will work and what will not.

Although these proposals we are pursuing, and hope to get adopted as a national policy, may be controversial, I think everyone ought to remember that most of what we are talking about is already illegal. Here in the United States and in almost all the sovereign states, the use of certain drugs is defined and determined to be dangerous and illegal. It is illegal to sell drugs and it is illegal to use drugs.

What has happened in our great country is that we focussed most of our attention on trying to stop drugs coming into the country, trying to stop the production of drugs, or trying to stop those who sell, push, or conspire to sell. That is an admirable effort. The conclusion many of us draw from the facts is that it is destined to be only partially successful, at best. And the principal reason for that is economics. Yesterday one expert told me that in cocaine sales, $7 in the field to the farmer yields $70 thousand in the streets of New York or Washington, D.C.

I leave it to you. Is there any way to stop that? We have concluded there is not. We have concluded that the laws of this country making it illegal to use certain drugs must be enforced. And we have decided to tell the American people that there should be a new approach. First of all, we have never before set a goal of making America drug-free. We are going to urge Congress, and we hope the American people will support us, to start the next drug bill that comes before Congress with a statement of principle: By 1995, there will no longer be illegal drugs in the streets, in the schools, and in the homes, and in the workplaces of America. Then we can proceed.

I would like to make three points. One, nothing that we are going to recommend will change the due process laws of the United States of America. Second, we are going to propose and debate a measured response on the user side. One thing wrong with our current laws is the lack of a measured response. With anywhere from 15 to 23 million Americans using drugs either regularly or casually, how can law enforcement people accuse them all of being felons? We have created an absolutely impossible enforcement situation and, as a consequence, the laws are being ignored and drug users assume that America condones their conduct. Our group contends that neither should be the case.

And so the debate will go. We do not all agree on every point but through a series of measured responses from society imposed on the drug user, along with very severe penalties for the seller, the pusher, and the kingpin, we hope that our ultimate goal will be consistent with due process, trials, and the opportunity to be heard.

My final point is that if we are going to make the streets, marketplace, schools, and workplaces of America drug-free, then we are going to have to respond to the addict in a way that is consistent with America's special breed of civility and yet gets them off the street. And that means an orderly, legal process of putting them into rehabilitation and spending money to make sure they are taken care of and not out on the streets of the U.S. to sell others on their way of life.

I think this proposal has a real chance of working. It is going to be a great debate, because it is no longer just pablum, give everybody more money, more law enforcement, more FBI. Everybody is for that. That really is not the issue. The issue is are we going to continue to condone the use of drugs in the United States or not and the answer is a resounding no.

Senator Gramm: Senator Steve Symms of Idaho.

Senator Steve Symms: I am going to take a little different approach. I came here to Washington about fifteen years ago. At that time, in working on an issue such as the drug issue, it was difficult to focus, to get together, and to assemble the intellectual backing and support to put together such a proposal as this one. We have made a lot of progress with the support of The Heritage Foundation and other like-minded organizations and therefore have been able to develop the argument from an intellectually sound basis. And my colleagues have stated very well what the case is and what we are going to try to do.

But first, the U.S. has to decide it wants a drug-free America. That decision has been made here. We have now laid out, with the help of The Heritage Foundation, a proposal that will work. Although I take exception to a few elements of the package, I believe that a comprehensive zero tolerance policy will guide this country on a sound footing toward a drug-free society.

Senator Gramm: One of the experts who advised us is with us today. Former U.S. Attorney Joe diGenova has been on the front lines of this battle against drugs and we have asked him to say a few words.

Mr. Joseph diGenova: Let me, first of all, say thank you to all the members of the United States Senate who are here and those who are not here, who participated in this process, a quiet, behind-the-scenes, long, hardworking process of looking at a problem and trying to do something realistic and effective about it. All these members deserve a great deal of credit, as does The Heritage Foundation for serving as the forum in which these searching, very intelligent discussions could occur.

Senator Gramm said it best when he said that the focus should be on users who are — and I want you to remember his phrase, it is vitally important. Drug users are stockholders in organized crime. That is the bottom line for everything that is central to the drug problem — focusing on the users, drying up demand. If there were no users, there would be no sellers. If there were no buyers, there would be no sellers.

The focus of this proposal is important; it is the key. It centers the debate where it should be. It helps form a consensus, which seems to be occurring among the American people in a broad spectrum of walks of life, that we must change the strategy and deal with the real source of the problem, not just increase our efforts in the other things we are doing.

I would like to remind everyone that this may be our last clear chance, as we say in the law, to deal with this problem. The proposal by this group of Senators, while provocative in some respects, is important for that very reason. And if it leads to a healthy debate that results in a genuinely effective solution to the problem, nothing could be better for this country.

Senator Gramm: Now for questions. Please direct your questions to the person you want the answer from.

Guest: Senator Gramm, there was a report on the AP wire yesterday that the Administration, the Justice Department policy group, is considering something very similar to this. Have you been working in conjunction with the Attorney General?

Senator Gramm: We have not been working in conjunction with them. Obviously, we have had working papers out around town and, I assume that they have been talking to the same experts that we have. But there is no mystery to this. We do not claim to have come across some deep hidden secret. What we have done is try to look at the facts in a very clear, dispassionate way, and I think the facts ultimately lead anyone who is really concerned about the drug problem and committed to solving it to take this kind of broad-based approach.

There is not one miracle cure for this problem. It must be addressed from many different angles. But the bottom line is that economics dictates the demand for drugs must be eliminated to win this war. Other things could help, but convincing our young people not to use drugs, deterring people from using drugs, treating addicts — those are the things that are going to produce bottom line results.

Guest: Senator Gramm, there has been discussion today about helping drug addicts, those who want help. Will coming down harder on the drug user discourage people who want help from seeking it?

Senator Gramm: This is a very important question. No, I think exactly the opposite. I think it will encourage people to come forward to ask for help when it is clear that the country will not tolerate having 23 million people using drugs illegally. When there begins to be increased cost to drug use, I think people come forward and say, "Look, I'm addicted. I have this problem. Help me." And when they do, we are going to help them.

But that kind of rehabilitation program is very inefficient, very expensive. And while we are obligated to help those people, we cannot wait until everybody is in that position to try to deal with the problem. Deterrence, preventing people from beginning to use drugs is the efficient way to deal with this problem.

Guest: Senator Gramm, I would like to ask about possible problems with pending legislation related to the proposal. I am thinking, first, of losing eligibility for such things as student loans, FHA loans. It looks, on the face of it, as something that would be a set-up for being tossed out by the Supreme Court as discriminatory. People who are looking for student loans or any other type of federal assistance are often people with low incomes. Would this discriminate against those people, as opposed to someone else who is rich enough not to need loans?

Senator Gramm: First of all, we are going to have provisions for the states to have confiscation of property. We are going to have fines. We also are talking about people who are not responsive to such deterrents because they are not affected by them. Basically we

are saying that if you are arrested for drug use, you lose your driver's license and you have to go through a rehabilitation program to get that driver's license back. You can lose your guaranteed student loan and you would have to go through a rehabilitation program in order to get that loan back. If you take drugs into public housing, you can lose your privilege to live in public housing. Certainly those penalties would be upheld by the courts. I think they represent exactly the kind of deterrent we must have.

Senator Domenici: Could I make a point on this? I think that we all have to understand that even though the use of certain drugs is illegal today, we are talking about a different, measured response as we move toward zero tolerance. And so we have to build a body of statute. It is my idea that, since this is a very different response to those who are currently using drugs because they expect nothing, we ought to predicate it upon the period of time before the laws take effect — say six or eight months. During that time, the whole country would be advised over and over of the point in time when this new body of measured responses would go into effect. So they would have notice — those people who have driver's licenses or who want loans. We would be telling them for months in advance.

We do not know exactly which ones will be adopted by the United States Congress and whether we will send them to the states saying, "You adopt uniform laws or we stop paying for highways." We do not know which of those approaches to take, but that is what we will debate.

Senator Wallop: I want to add something, too. It is quite obvious that if the consumption of drugs is made a criminal act, there simply are not enough jail cells or courts to handle the process by that method. It is thus a question of trying to find a sanction that has some meaning, that is credible and actually can persuade the user of the illegality of the act.

Guest: Obviously, the driver's license plays a big role in this. Have you discussed how are you going to enforce a federal regulation on something like revoking a driver's license?

Senator Gramm: We have federal regulations now on the speed limit and on highway safety. And those regulations are enforced by the states who need to enforce them in order to participate in the federal highway trust fund. That is an option that is open and one that we are considering very seriously.

Mr. diGenova: There is another point you may want to make here. Some things are already being done by the federal government that fit within these schemes. For example, in New York, in the Southern District, the U.S. Attorney's Office is seizing the leases of drug offenders with the consent of the landlord. They are actually seizing the leases of people who occupy these dwellings who either are users or have dens where crack is used, so that those people can be removed without the necessity of going through landlord-tenant court. The federal government is using civil forfeiture statutes, RICO, and other statutes to actually seize the leases. That is the kind of creative notion this proposal builds on.

Guest: Why are there no Democrats here?

Senator Gramm: We have had a few Democrats involved in our discussions. But in trying to come to a consensus, we thought it was time to go public. We asked a couple of people here who were not on the list. I believe a lot of Democrats are going to support these proposals.

Guest: Congressman Charles Rangel, who chairs the Narcotics Committee on the House side, says that this is a war on users, not on drug dealers and that we have not had a war yet, a real war, against the drug dealers, and he opposes this sort of thing without more federal aid to for that.

Senator Gramm: I think we are going to have a war on both and that is our conclusion. This of course was a Senate effort. We do not claim that we have a monopoly on good sense or wisdom or information, but we think this is a comprehensive approach.

Guest: Senator, several of you mentioned student loans this morning. Are you talking about all student aid or specifically student loans?

Senator Gramm: We are talking about all student aid in saying that no one has a right to these benefits; they are a privilege. And when we talk about trying to provide effective deterrents, one of the effective deterrents is the denial of these benefits, again saying that if a student in college is arrested for drug use, he or she can be denied a guaranteed student loan, a Pell Grant, or whatever and be required to go through a rehabilitation program in order to get the benefits back.

Guest: Senator, on the angle of drug abuse, in the European parliament, they now have a proposal to ban methadone treatment. I wondered if there is any kind of action you have considered on drug rehabilitation that does not then addict the addict to some thing else.

Senator Gramm: We are looking at rehabilitating the addict. But most of these people who are using drugs regularly are not addicts; they are people like you and me who go to work and pay taxes.

Guest: Senator, as to the target date of 1995, if we do everything that you propose, maybe we will have a drug-free America fifty years from now. But by setting this utopian goal of doing it in seven years, are you not setting yourself up for the kind of cynicism and disillusionment that Lyndon Johnson produced when he said we could abolish poverty in just a few years?

Senator Gramm: I disagree, and I would like Senator Wallop to answer that. We must set a goal. Is this an ambitious goal? Yes. Do I think it is possible with the right commitment of resources and resolve? Yes. Do I think the U.S. will be better if we do this? The answer is yes. So if anybody wants to say that it cannot be done, I say it is worth making the effort. I do not think you can be successful by saying, "Well, let's try to do something about this problem." I think you have got to say to the U.S., "We can win this war on drugs."

Senator Wallop: If we had entered World War II with the assumption that, the way it looked at the very beginning, we could not have ended it by 1945, we simply would not have set about doing it. We either have to set a goal and pursue it and call it a war and say that is the date of victory, or we follow your suggestion saying, "Maybe by fifty years we might have

a drug-free America." In that case, you are going to lose the whole consensus that could be developed around this idea.

Guest: What happens if we get to 1995 and it is not done?

Senator Wallop: If not, the goal is still there, and if you pursue 1995, you will be very close to finished by then and will surely finish by 1997. Would you have stopped World War II if our goal had been 1944, and we had not achieved it?

Guest: Senator Gramm, piggybacking on one of the statements that you have made, I have not heard the fact addressed that of the 23 million users, the majority of them certainly are not addicts. How would you deal with an individual who is not addicted to the drug?

Senator Gramm: This issue must be addressed. First of all society must say "We are not going to condone the consumption of illegal drugs." We must not condone it because it creates the profits that put the drug thugs at the door of every schoolhouse in America to corrupt our children and prey on their health and happiness and safety and lives. We are not going to condone it, and we are going to penalize the people who exhibit that kind of behavior by being sure that there are costs involved.

I mean, to what extent are we good and law-abiding citizens because it is the right thing to do, and to what extent are we good and law-abiding citizens because you can go to jail if you are not. I like to think that I am good because I want to be good, but having the deterrence there helps, and I think that is what is needed.

Guest: You have included students who may have sanctions imposed against them in terms of student loans, or driver's licenses. What about the student who does not maybe have a driver's license or who does not guaranteed student loan funding? What do you do about them – lock them up?

Senator Wallop: Each of us has some set of privileges somewhere along the line that is granted by the state, by the college or some other institution. Maybe it is just the presence in the college until you have gone through the procedure of rehabilitation. The fact that I am mentioning these various sanctions does not mean to be a conclusive or an exclusive list. It is an example of the kinds of sanctions, kinds of privileges to be denied to have some real meaning and real consequence for the use of drugs, casual or purposeful.

Senator Gramm: In conclusion let me urge everybody to read this very short document. [See Appendix.] If you will read it, you will see what are our concerns. You will see, as Pete Domenici said, we are preserving due process, but setting measured responses and penalties that are realistic. The truth is that virtually every state in the union has far more severe penalties for drug use than we have suggested. The problem is there are not enough jails. State penalties are so severe that the courts do not impose them. We are trying to come up with realistic responses that are suitable for the crime. And I think if you read it, you will see that it is a good approach.

Mr. Truluck: Our thanks to Senator Gramm and the rest of this working group.

Panel 1

Where We Stand

Participants

Jeffrey Eisenach, Visiting Fellow, The Heritage Foundation
Peter Reuter, Senior Economist, Rand Corporation, Author, *Sealing the Borders*
Joseph diGenova, Former U.S. Attorney, District of Columbia
William Kristol, Chief of Staff, Department of Education

Jeffrey Eisenach: We are here today to discuss a proposal by a group of concerned Senators for a new approach to the U.S. drug problem. Simply put, the proposal aims to target the user, thereby making an effort to reduce the demand for drugs in the United States. The purpose of our conference here today is to lay out some of the facts that form the foundation for the finding that drug use continues to be a problem in America, and then to explain the proposals and the basis for the proposals that the group adopted.

As far as we know, about 23 million Americans use drugs at least monthly. About 18 million of those are using marijuana. Another six million use cocaine at least monthly. Usage is highest among the young. Twenty-two percent of the population aged 18 to 25 uses drugs compared with only 6 percent of the population over 25.

With the exception of the concentration among the young, drug use is widespread and fairly equally distributed throughout our society. The proportion of high school seniors using drugs, for example, is only about 20 percent higher in urban areas than in rural areas. The proportion of high school seniors using drugs who go on to college is only about 20 percent higher than the proportion who do not go on to college.

There also is strong evidence that drug use is very widespread among professional and other upper-income groups in society. A *New England Journal of Medicine* article, for example, found that as many as 40 percent of the doctors in our nation's hospitals are using illicit drugs, which is a frightening statistic.

Contrary to the arguments of the proponents of drug legalization, the social costs of drug use are very high and would not in most cases be reduced by legalization of marijuana, or the legalization of all drugs. For example, the Department of Transportation has estimated that 10 to 15 percent of all highway fatalities involve drug use. Studies have found that drug users are three times as likely to be involved in on-the-job accidents as nonusers. They are more often absent from work. They incur three times the average level of costs for sickness

as nonusers. And virtually all experts agree that, while it is difficult to quantify, there is a clear relationship between teenage suicide and drug use.

The link between drugs and crime is extraordinarily well documented. As many as 80 percent of criminals arrested for serious crimes in our major cities test positive for drugs. A National Institute of Justice study found that the average heroin user imposes a $14 thousand a year cost in burglary, theft, and other drug related crimes. And Bureau of Justice statistics shows that 20 percent of all convicted murderers admit to being high on drugs at the time of the homicide.

In combining all these costs, the Research Triangle Institute in North Carolina estimates the total economic costs, economic costs only, of drug abuse in the U.S. were roughly $60 billion in 1983, and the Department of Justice updates that estimate to as high as $100 billion in 1986.

Our conference today consists of two panels, the first looking at where we stand, and the second looking at policies aimed at reducing the demand for drugs.

Leading off the first panel is Joseph diGenova, a partner in the law firm of Bishop, Cook, Purcell, and Reynolds. For four years previously, he served as the United States Attorney for the District of Columbia, the largest such office in the United States, where he supervised more than 200 attorneys in complex federal and civil matters dealing with international drug smuggling, public corruption, espionage, insider trading, tax fraud, extradition fraud, RICO export control, international terrorism, and virtually the entire range of criminal justice activities. He has had extensive experience on Capitol Hill. He was Chief Counsel and Staff Director of the Senate Rules Committee and the Counsel to the Senate Judiciary, Governmental Affairs, and Select Intelligence Committees. He is a native of Delaware and received his undergraduate degree from the University of Cincinnati and his law degree from Georgetown University.

Mr. diGenova is going to speak about the recent history of law enforcement efforts aimed at controlling the drug problem and some things that could be done to make those efforts more productive.

Joseph diGenova: In 1981, the funding of federal law enforcement was in bad shape, given the nature of the problems that we were facing. But at that time, we began to increase levels of funding. Drug law enforcement, went from $806 million in 1981 to $2.4 billion in 1988. The number of agents, obviously, went up, as did the number of assistant United States attorneys and, of course, the number of federal judges.

We began to have increased enforcement programs. We have increased the seizures. We have increased the number of convictions for serious federal drug offenses. We went from a small percentage of those in federal prison for drug offenses to nearly 40 percent of those now doing time in federal prisons, and we probably have exceeded that number now for federal drug offenses. We have seized larger and larger amounts of all drugs across the board. The sentences are longer. The number of individuals investigating and prosecuting the cases has increased.

In short, from a law enforcement standpoint, we have really fought a superb fight. And in the course of that, we have gotten rulings from the Supreme Court in the area of the exclusionary rule, to modify it, in terms of the good faith exception when a warrant has been obtained.

New federal legislation has been passed. The Administration and the Congress, both when the Senate was controlled by the Republicans and when both Houses were controlled by the Democrats, have passed the Comprehensive Crime Control Act of 1984, the Drug Abuse Prevention Act of 1986, and other major pieces of legislation. These have given law enforcement what it had demanded for a long time: stiffer sentences and better opportunities within the law to seize the assets of traffickers.

I think it can safely be said that federal, state, and local cooperation in the area of law enforcement, in general, and drug law enforcement, in particular, has never been higher. The founding of the Law Enforcement Coordinating Committees within the Department of Justice, which each United States Attorney was required to have in his or her district to meet and work regularly with state and local officials, has been a smashing success in terms of breaking down the barriers between the locals and the feds, as they used to be called. The level of cooperation and what is called cross designation, where state agents are sworn in as federal agents for particular investigations and state prosecutors are brought on as special assistant U.S. attorneys, have increased dramatically. And they have led to a wonderful combination of resources in a federalist sense to deal with the problem.

So from a resource point of view, from an enforcement point of view, in terms of the final product, we have done remarkably well when you look at the record. This would include such areas as seizures, incarcerations, lengths of prison terms, national cooperation, breaking down barriers so that agencies can work with each other, especially within the federal government, breaking down the kind of petty bureaucratic infighting that still exists in some cases, but has been dramatically reduced as a result of pressure from the top and good leadership from all the agencies involved.

Now, unfortunately, this all is nothing for us to be happy about or satisfied with because, in truth, our supply-oriented strategy has not been able to, because it was not designed to, deal with the root cause of the problem. That is demand, which will be addressed later, along with interdiction as part of the supply strategy and its flaws.

I would like to follow up on something that was said earlier by Malcolm Wallop. That is that, in my view, both as a participant for the last six years and as an observer prior to that and currently, the performance of law enforcement at all levels has been just superb. We could not have asked for more. The problem is that we are asking law enforcement to do something that it alone cannot do. There is a problem — indulgence in drugs — that really transcends law enforcement and transcends it as a vehicle of solution, the end-all and the be-all.

The later panel will deal with where we need to go. And you know how I feel and how the members of Senate group feel about the effort not to reduce but increase our supply fighting effort, to put more money in law enforcement. But at the same time, there must be an increase in the efforts that demand reduction in use through various targeted and

measured programs, prevention, treatment, education, as well as different types of sanctions for users, not just criminal sanctions, but civil sanctions as well, including the suspension of various privileges. Those are a key ingredient to add on to what has been done in law enforcement.

My view is that law enforcement is now functioning at a very efficient, high-level rate. We cannot do much more, other than add numbers to what we are doing and perhaps streamline a few laws in the area of forfeitures, for example, or make creative use of forfeiture as they are in New York, by seizing leases and things of that nature to get rid of drug user emporiums not only in public housing projects, but private projects and private apartments, as well. This means increasing the ability of prosecutors and judges to have forfeiture occur more rapidly, consistent with due process.

I think that there is no way to get around spending more money on law enforcement — it is inevitable. Over the last eight years, as I have indicated, we have had a 209 percent increase in drug law enforcement expenditures by the federal government. It is substantial, but we actually need to do more. And I think the current debate in Congress will lead to that, which I consider to be a positive benefit of the ongoing debate because we do need more federal prosecutors, more judges, more federal investigators.

Mr. Eisenach: Let us turn the floor over to Peter Reuter, who is a senior economist in the Washington Office of the Rand Corporation. He initially specialized in the study of criminal investigation, resulting in the publication of *Disorganized Crime, the Economics of the Visible Hand*. Since 1983, he has worked primarily on drug policy issues and has published a number of papers and studies on drug enforcement. His most recent publication is entitled *Sealing the Borders*, which is the definitive work about the recent history and prospective future of drug interdiction activities on our borders and in foreign countries.

Dr. Peter Reuter: I want to talk specifically about how interdiction can affect and reduce the consumption of cocaine in this country. And I want to do it in a slightly pedagogical manner because I think what is more important here than the actual results of the analysis is the method used in thinking about supply-side programs. I use it specifically in the context of analysis of interdiction with some references to source country programs as well.

U.S. federal government programs have expanded very substantially, particularly on the enforcement side. Interdiction has been fairly consistent throughout the 1980s, accounting for a little over 40 percent of all the federal money that goes into drug enforcement. It comes to a little more than 30 percent of the total federal drug policy budget. And so there are good reasons for paying particular attention to the interdiction program.

And if you look specifically at its success with respect to cocaine, the most striking measure is the quantity seized in the period since 1981. In 1981, federal agencies seized about 1.7 tons of cocaine, which was probably less than 5 percent of all shipments to the U.S. in that year. By 1986, that figure had risen 16-fold to about 27 tons. And even though total consumption had expanded substantially so that the seizure rate was up, what we found was that the price of cocaine at the point of import had fallen substantially. Whereas in 1981, a kilo of cocaine in a large bundle that was sold in Miami or perhaps Los Angeles

for about $55 thousand, that kilo cost only $20 thousand by 1986 and indeed, by the end of 1987, it was even said to be down as low as $15 thousand. Again, this is in large bundles, at the first point of transaction within the U.S.

There is a paradox there. We have not only more money being spent on enforcement, but you can apparently see substantial profit from that in dramatic increases in seizures. Yet, by a measure that I hope I can persuade you is the sort of relevant measure of effectiveness, the price has fallen very substantially.

Now the framework in which we did the analysis focused on how interdiction affects consumption. And since most of us involved were economists, we first looked at the effect of interdiction on prices and then the effect of prices on consumption.

I will start with the assertion that I am willing to defend — that interdiction cannot restrict the quantity of drugs entering this country directly. That is we cannot make interdiction so effective that only 100 tons of cocaine can enter successfully. The potential production of cocaine in source countries that have leaf growing capacity and refining capacity vastly outstrips any potential demand in this country, even at a much lower price. Indeed, the U.S. consumption accounts for less than one-third, maybe much less than one-third of all the illicit coca production in the resource countries.

And by now, whatever was the case back in 1981, there is a large stock of experienced smugglers. The markets are relatively competitive. All the participants, at least all the participants in this country involved in trafficking itself, are essentially replaceable. There are not the large-scale, fixed organizations, for example that characterized heroin smuggling back in the early 1960s.

The assumption of our analysis was that, in general, more enforcement, in this case interdiction, increases risks. Higher risks raise prices, and the higher prices lower consumption.

Now in the short run, in talking about cocaine, you would assume that the effect of increased prices is fairly low, that is, the price elasticity for committed cocaine users is probably very low. If the price of cocaine is raised by 10 percent, there will be a lot less than a 10 percent reduction in the amount consumed. In the long run, it might be more elastic because new users may be deterred by higher prices.

I offer as an analogy the effect of tobacco taxes on tobacco usage. As states have increased taxes on cigarettes, there has been very little change in consumption by people who are committed cigarette users. On the other hand, there are very substantial effects on the flow of kids into using cigarettes. I would think that the same is probably true for cocaine.

Now the important thing in the relationship of risks and prices is that each kind of enforcement program imposes risks on a particular set of participants. In the drug distribution business, interdiction affects smugglers. If smuggling is riskier, it makes smuggling more costly. So the effect of more interdiction should show up in the price that

smugglers charge for their services — in effect, the difference between the import price and the export price.

That is the analytic background. We now get down to the discouraging facts. Let us look at the price of cocaine as it moves from the farm gate as coca leaves to retail sale. About 500 kilos of coca leaf go into a kilo of cocaine, and the farm gate price for that quantity of leaf is around $1,000. In 1986, at the point of export from Colombia, a kilo of cocaine, processed cocaine, sold for about $7,000, maybe down as low as $5,000. In 1986, when it landed in Miami, the price had risen to $20,000. So the smuggler's margin was about $13,000. Between the time it landed in Miami and was sold to the time that it reached the streets of American cities and was sold, broken down into one-gram units, that same kilo sold for $250,000.

So we go back to those numbers. The smuggler's margin was $13,000 and that was only 5 percent of the final price of about $250,000. And the question now is how to do something that will make a large enough difference in the smuggler's margin that will really have an effect on that $250,000 retail price.

The central problem for interdiction is that smugglers adapt. There are obviously many ways of bringing a compact drug like cocaine into the country. The most recent seizure was a four-ton lot of cocaine stuck in a Brazilian lumber cargo. The tip apparently came from Colombia, but it was a Brazilian-origin shipment, a Brazilian-origin product. Previously one ton was seized in frozen fruit pulp in an Ecuadoran container. It has, as is well known, come in Avianca shipments of roses, in Avianca airliners from Colombia, in small private planes across the Mexican border, and in private boats coming up from Colombia. There are many methods of bringing it in.

And as the stringency of interdiction against particular modes of smuggling has been increased over the years, smugglers have adapted. In the early 1980s, South Florida was the main point of entry for both cocaine and marijuana. As interdiction became more stringent, particularly against airborne cocaine brought in by private plane, smugglers moved to bring more through Mexico. This adaptation means a lessening impact as interdiction resources increase.

So we tried to figure out in a formal simulation model how increasing the effectiveness of interdiction would impact on cocaine consumption, taking into account the fact that smugglers adapt. Now, adaptation is a cost. As smugglers have to change, they choose methods of bringing in the drugs that are more expensive and less desirable to them. We therefore built a model in which they learned about the increasing severity of interdiction along particular routes and made adaptations that reflected the costs and risks associated with each of those routes. As one route became riskier and more expensive to use, they used it less frequently and shifted to other routes.

What we found was that, as we raised the probability of the interdictors being able to seize a shipment on more and more routes, we could raise the costs to the smugglers and eventually the retail price of the drug, but only a very small amount. We could effect big increases in the quantity of drugs seized, just as we have seen historically, but we were unable to get that to drive down total consumption, that is, by raising the retail price.

And the major explanation for that is simply that interdicted drugs are cheap to replace and people involved in smuggling represent very low labor costs per unit of the quantities they are smuggling. The 25 or 27 tons of cocaine that was seized in 1986 probably cost less than $500 million for the smugglers to replace. Compared to total retail sales of something like $20 billion, it is a very small share of the total cost of replacement, and it will always remain so given that there is plenty of coca leaf available in foreign countries.

The smugglers' agents, people like pilots and crewmen, may get very large payments, but these are defrayed over very large quantities of the product. The pilot that charges $250,000 to fly a private plane over the Mexican border with a shipment of 250 kilos, which is the average of the seizures from small planes, is only charging $1,000 per kilo for his delivery. If we make it a lot riskier, he might charge $750,000 to bring that over. That is a big effect, but it shows up as just an extra $2,000 in the cost of bringing cocaine into the country, less than one percent of the retail price.

We also applied our model to programs aimed at reducing supply by reducing the amount of coca leaves produced, either through crop eradication or crop substitution programs. To make a long story short, there appears to be nothing, taking into account the economics of adaptation by growers and refiners and the economics of crop substitution programs, to provide much more optimism with respect to these source country programs. Thus I do not believe that interdiction can do much to reduce cocaine consumption in the foreseeable future.

Mr. Eisenach: Our third panelist is William Kristol. He has been Chief of Staff and Counselor to the Secretary of Education, William Bennett, since December 1985. From 1983 to 1985, he was assistant professor of public policy at the John F. Kennedy School of Government, Harvard University. Prior to joining the Kennedy School, Bill taught political philosophy and American politics at the Political Science Department of the University of Pennsylvania. He received his A.B. and Ph.D. degrees from Harvard University, and publishes frequently in journals such as the *Chicago Law Review*, *Harvard Journal of Law, Public Policy*, and *Public Interest*. He has played a key role in heading up the Department of Education's excellent efforts in trying to get our drug education prevention efforts in the schools turned around to a more productive area.

Today he will talk about the efforts that they are making, as well as the efforts being made at the state and local levels.

William Kristol: On another occasion, I might argue with Peter Reuter especially about the efficacy of destroying processing plants and whether that would affect cocaine use here. I would remind you that, while this focus on the demand side is to the good, there is a conservative principle that many people in this room have endorsed, that supply creates its own demand. And I do not think that is entirely a ridiculous, fanciful principle with drugs. In fact, as Joe diGenova said, and many of the Senators too, we must keep up the fight on all fronts. I would therefore just caution that all the focus on demand and all the focus on the user not be interpreted as a message that we need not or that we cannot do anything about supply.

There is, of course, a paradox. What we are saying there is we cannot do anything about the 100 or 1,000 drug kingpins. We cannot do anything about the 100,000 or even a million drug sellers. But we are going to be really effective going after 23 million users. There is a certain offense to common sense there that I think is worth at least pausing for. There are some good arguments for it and I support doing more against users. But it is not self-evident that it is easier to enforce laws against 23 million people when we are not succeeding adequately in enforcing laws against many fewer than 23 million people.

Let me just quickly describe the situation in our schools. It is not great by any means. We have certainly done our best to call attention to the problem and to urge sound and tough policies. I should point out that it is better than it was. Drug use among high school seniors, and I think this is considered pretty good data by experts in the field, which I am not, is down from the late 1970s and is going down at a pretty good rate.

Marijuana use has been going down since the late 1970s. Cocaine use, which had been steady, finally started to go down this past year and actually went down fairly dramatically. It is still the case that about half the high school seniors have tried an illicit drug. It is still the case, I think, that 14 percent of high school seniors have used cocaine within the last year, which is a very bad figure. I could rattle off more statistics, but the main point is that the situation is not good, but is getting somewhat better, and I think there is reason to expect that it actually will continue to improve.

What causes it to get better is sound drug prevention programs, which can include both education and policies. Several people here have mentioned the fact that education is no panacea — that is true. We have had a big increase in drug education since the late 1960s and 1970s, during the time when drug use among teenagers was going way up. Many of those education programs did not help; many may have hurt insofar as they taught a doctrine of "responsible use." I am sure many of you have seen these texts in which the whole premise is that "everyone sort of uses drugs. Your parents are on cigarettes and they drink coffee or Coke. Some drugs are a little more dangerous than others, but basically it is all the same." It is a very bad message but it was the message of a lot of drug education, or at least a substantial part of it, during the 1970s.

But the efforts of many people, and the general change in the culture, have really made a difference. I think that the responsible use message is in the decline, on the defensive, against a much more straightforward no-use message. And there are now some good drug education programs which, if used in conjunction with sound policies in the schools, seem to have had some good effects. Ultimately, however, policies are more important than education programs.

As Bill Bennett likes to say, you can have all the good drug education you want. You can have persuasive lectures and worthwhile videotapes. But if the kids walk out of the classroom into the halls or into the schoolyard and drugs are being bought to sell and to use, that education program is laughed at. It is simply a kind of preaching and a hypocrisy that no one takes seriously.

Sound policies are needed to bolster a good education program, and we know of many sound policies. All of them have basically the same features. Anne Arundel County,

Maryland, which we spoke of originally in our book, *Schools and Drugs,* is an example. First-time users are suspended. Their parents are called in. Parents and kids are forced to go through a drug counseling program, which parents do not like. They do not like being called into school and having to sit in a drug counselling program with their child. But more generally, family and parental involvement is extremely important for some drug policies. Pushers are expelled, deprived of the company of their peers. Sound policies do work. They work even in schools in very bad neighborhoods where drugs are being sold a block away from the school. But of course, we should also stop the drugs from being sold a block away from the schools. We can clean up schools and create schools without drugs, even if the neighborhoods and the society,around those schools are is still much more drug-related than we would like.

In that respect, I think we can be somewhat optimistic about schools if we do the right things. The schools are controlled environments in a way. Adults are, or are supposed to be, in charge. Many school principals are made very cautious by what they regard as constitutional legal problems. But while we might quarrel with certain court interpretations, the fact is the law provides plenty of latitude for principals and superintendents in most cities and states to have tough, sound drug policies. There are some policies in school systems that we would recommend changing, but whatever Supreme Court decisions you might quarrel with, it is not impossible to get clean schools, to get schools without drugs.

So I think, in schools, it can be done. It does not require much more in the way of resources. It does require schools to have sound policies and sound education programs and to work with law enforcement and the parents.

Let me just say one word about the broader issue that has been discussed by everyone else today. I am sympathetic, in general, to the program that was unveiled by the Senators today. But I am a little nervous about a program that involves quite a few new laws and regulations when we really are not doing a good job of enforcing the laws and regulations that are on the books. We may be doing as good a job as we can do, given the resources, but these laws clearly are not having the effect that they should.

Student aid could be cut off to college students who are drug users. It would be the Department of Education's purview and would be done only if the student were convicted of a crime. The problem today, as Joe diGenova knows much better than I, is that the courts are so clogged up and prosecutors are so overburdened, that you are not going to convict your basic, one-time college student user of a crime. We are not convicting them now and surely these people are more scared of being convicted than losing their Pell Grant or their student loan. So adding the fact that they might lose their student loan does not strike me as likely to make a huge difference.

What we must do is see that schools and colleges get serious about being tough on drugs and manage the law enforcement situation so that it is tough on both sellers and users. The notion that cutting off federal student aid is going to make a big difference may or may not be correct. It may be good to send a signal that people have no right to student aid. You can make a reasonable argument that if they are breaking important laws against illegal drugs, they will be deprived of aid, but it cannot be the centerpiece of a war on drugs.

And now leaving aside the details of the arguments about interdiction and source, and those about sellers or pushers, I think there is an issue beyond the economic analysis. There is an issue of almost moral symmetry. You cannot have a situation where you are sending the signal, "We're really going to crack down on 15-year old kids in the ghetto, but there's nothing we can do about kingpins abroad and actually there's not a whole lot we can do about kingpins at home." There is a certain danger in the movement of the debate to a perception that the new focus is on the user, which as I say I mostly endorse. For it becomes a perception that the user is really the heart of the problem, and we are really going to go after that user. Society could develop a perception that the laws are harsher or the energies more devoted to going after the poor kid who is the user, rather than going after the pusher who is preying on him or the kingpin who is running the processing plant in Colombia or organizing the smuggling ring into the nation.

And, therefore, I would argue even if the economic and cost-benefit analyses of spending more on interdiction, shooting down some planes coming in, or busting up major sellers or even street level sellers, are not entirely convincing, it would seem to be very important from the point of view of the overall war on drugs to be at least as tough on those people as on the individual user. And that is why the assault has to be across all fronts. Otherwise, we run the risk of the sort of popular backlash that says, "Gee, it's really government's responsibility to keep the drugs out. It's the government's responsibility to keep the streets clean." It is dangerous to convey that government has failed in its basic responsibilities of national security and law and order, and so it will start getting tough and depriving federal aid to a lot of people who have been induced to use drugs. I do not mean these people are helpless victims. They are responsible for their actions and they should be punished. But we need to be consistent — across the board.

Mr. Eisenach: Now for questions or comments from the audience.

Guest: I am struck by the fact that we have a law enforcement expert who says that the problem needs to be addressed by cracking down on the demand side. And there is somebody from the Education Department who says, "No, no, we need to concentrate on the things that are outside of my purview." As long as there is that pattern of each bailiwick in society saying, "The major effort should be somewhere else but the area that's my responsibility; I am unwilling to accept major disruptions in my relationships with my constituency, major sacrifices in the way I normally do business," then in fact, despite the rhetoric, we do not have a consensus.

Mr. diGenova: Let me respond to that. I am delighted to accept any disruption in the symmetry of my area of expertise, which is law enforcement. If Congress would like to disrupt it by passing new laws, changing old ones, fine. What I am trying to do by saying law enforcement has done what it has been asked to do is to pinpoint the fact that there is more to do. There is not, as you painted, an inconsistency in what you are hearing. In fact, there is the symmetry you say it lacks. This is an attempt by people not to do what is traditionally done, which is to look only at their area and say, "We are winning. We have won. We are right." This is an effort to be a little more realistic, perhaps self-effacing, even, about the fact that we are not kings, that we do not always succeed at what we do, and an effort to reach out to try to find solutions that go beyond our particular disciplines. I think that is very healthy, given the fact that we are not exactly doing what I would call a bang-up job of

convincing Americans that they should not use drugs. The fact is we are doing a bang-up job in enforcement, but it apparently is not enough. We need to do more of that, which I indicated earlier.

And the program, as was put forth today, indicates that we need to do more in law enforcement, more in education, more in prevention, more in treatment. And it will require an awfully big budget. And that is good because, if you are going to be honest about what it takes to solve some of these problems, you have to admit that it is going to cost some money.

So I am not disturbed by this apparent lack of symmetry. In fact, I see it as a unique and developing kind of symmetry where people really talk to each other about disagreements and agreements and, in fact, maybe something good could come out of that instead of the old rhetoric.

Dr. Reuter: I must say I have made the same observations myself. Ian MacDonald is sort of the last high-level public figure to be a real enthusiast for tough enforcement in the Administration. The head of the Drug Enforcement Administration, on the other hand, is indeed a strong advocate for good prevention and treatment programs.

I think that the issue is clearly the acceptance that all of these things make some contribution, and the question is the balance. I am not suggesting abandoning the interdiction program. It is just that, in the context of a program, it takes up 40 percent of the enforcement budget, which Congress is determined to make a lot bigger. I think it is appropriate to get some notion of its limits.

We have a system that, whatever has been said this morning, is still enormously oriented toward sellers and punishing sellers. It is correct to maintain some balance, but the balance now is very clearly all on the seller's side.

Mr. Eisenach: You have hit on exactly the reason why I think the press conference this morning was so very significant.

You have nine United States Senators and others who have worked with them and are likely to join them who are standing up and saying, "I am willing to tell my constituents who pay taxes, who vote, who work in my district, that they have got to stop. And I realize there is a cost to that, but I am telling them and their kids that they have got to stop using drugs. We are going to stop this fantasy that drugs are a problem in the fields in Bolivia and they are a problem in the Caribbean and they are a problem in our central cities, but they are not a problem next door." You have nine United States Senators who are willing to say no to 23 million Americans who are using drugs, "We have got to tell them to stop," and that is a willingness to stop displacing the blame and to bring the problem here to you and me where it belongs. That is what is significant about what is happening today.

Mr. Kristol: The point is right in this way. Illegal drug use is a public policy problem, and there are numerous public policy solutions, in the military, law enforcement, education, and crackdown on users. Ultimately, all these things have to be included as much as we can through public policy. But the key determinant to drug use is something that is only marginally affected by all these public policy proposals. If there were to be a religious

revival among those 23 million drug users and they became sincere believers in a religion that had enough force, which deterred them from using drugs, it would solve the drug problem. While this unlikely to occur, it points out that it is a problem of values, which affect all these things. All these government public policy proposals should be evaluated, in addition to cost benefit evaluation, in terms of how they influence the values of people out there, in terms of the message they send. That is terribly important in the school context; it is actually important in a way we do not often realize in the context of law enforcement and the military. And that is why all these dramatic sweeps with TV cameras are good, even though there is a certain amount of sophisticated, "Wow, this is just a show, and it is not going to be cost effective stuff to really be defended." If it has any effect at all we are sending a signal that this society is serious about drugs, and that would be true of other policies. We can argue on different lengths for law enforcement, education, treatment, and the military, but in a way, all of them are attempts to make a bit of a dent in the problem that ultimately requires a change in attitude and values.

Guest: I think from what I have heard that we are taking things a step further; we are not eliminating the drug patrol at the border, but we are taking it a step further, and we are going to the user. But I agree with Mr. Kristol that we ought to take a step further, in that internal force is much more powerful than external force. The problem is that there needs to be internal motivation within to stop using drugs. I do not disagree with what has been said about border patrols and targeting the user, but I think we need to target that internal force also.

For example, in the school system where most of the problem begins, we should use the forces that students look up to. Unfortunately, they do not look up to their teachers, they do not look up to a government official coming in and telling them drugs are bad or Nancy Reagan saying, "Just say no." But I do see students looking up to their peers, for example, the football players. Maybe you do not have to take someone's driver's license away, but just put some restrictions on someone being put on the football team and use the football players to talk to their peers about drugs.

Mr. Kristol: I would just say the good news on drugs is if you do not use drugs by the time your are 18, you are very unlikely to use illegal drugs. While there are people in the pipeline, unfortunately, who may have contracted bad and dangerous and horrible habits, there still is an opportunity and something you can achieve; you can change attitudes and policies with regard to young people, primarily, though not only in the schools. Once you have solved the problem there, with that generation, you have probably mostly solved it forever.

Guest: Did I understand Mr. Reuter to say that the U.S. only uses about 30 percent of the illegal drugs produced?

Dr. Reuter: The U.S. cocaine consumption accounts for about 30 percent of cocaine production. With respect to heroin, the U.S. accounts for 5 percent of the world's opium consumption.

Guest: I have heard a lot about how we are going to stop the drug use and there is a lot of prevention and border patrol, and I think it is very good also to focus on the user. But I

think we also need to come up with some positive programs to encourage kids not to use drugs, to start bars and clubs where they are not allowed to use drugs and where it is very socially popular to belong. Or as was mentioned, you can only be on the football team if you do not use drugs.

But I think we also need to take a look, insofar as policy, not just at stopping use but also at rewarding non-use.

Mr. Eisenach: They are doing that in the schools, are they not, Bill.

Mr. Kristol: A lot of that is very important and it really works quite well if it is done well. There can be peer approval and peer pressure programs that are silly and become laughable. Probably, some of them are counterproductive. But, obviously, there are many good ones and they work well, and much can be accomplished in that way.

But to be fair, a lot is being done. The mood is very different. I have talked to kids in public schools. It is very different now than it was six or seven years ago, and that is thanks to the efforts of people across the board.

I have one last point. It was said at the beginning, that today's data show that drug use is fairly spread out across the society, both by income and by geography. My sense of things, and this is just a guess, is that this is changing. I think the kinds of things you referred to, the atmosphere in schools, the school policies, the peer pressure, are is beginning to make a dent, especially in the your basic middle-class communities. I have just noticed this where we live. These kids in Fairfax County have drilled into them, so far as I can tell from kindergarten, that they should not use drugs. And it seems like a fairly effective, sensible message. Again, the change in attitudes has been sufficiently great in the last ten or fifteen years that those parents in Fairfax County are really aware of not wanting their kids growing up with a police arrest on their record. And I think that we have a reasonable shot at doing pretty well in terms of illegal drug use among the high school kids of Fairfax County ten years from now.

What concerns me is that there may be a bifurcation of the level of drug use across society. What concerns me is the inner cities, where you have the problem of kids who for whatever reason have very difficult backgrounds. Obviously they think they have lower prospects, and they see how a fourteen-year old can make $500 a week. That creates an awful lot of peer pressure, peer reinforcement. It is pretty hard to ask a fourteen-year old kid, whose life is otherwise not the best, to have the hope to say, "Well, I'll resist the temptation of the $500 a week."

And so I think, looking down the road, the strategy of what is effective for a middle-class community may be somewhat different from what needs to be done in inner-city situations, where the softer stuff, the peer pressure, although it is terribly important, will not be sufficient.

Mr. Eisenach: Thanks to all three of our panelists, for being with us this morning.

Panel 2

Zero Tolerance: Targeting the User

Participants

Jeffrey Eisenach, Visiting Fellow, The Heritage Foundation
Robert DuPont, Former Director, National Institute of Drug Abuse
Joseph Perkins, Editorial Writer, *The Wall Street Journal*
Richard Willard, Former Assistant Attorney General, Civil Division, Department of Justice

Mr. Eisenach: We have three excellent panelists for our second panel on the topic of Zero Tolerance: Targeting the User. And what we hope to do here is talk about some proposals, some more controversial than others, for the kinds things we ought to be doing to discourage drug use.

First, is Dr. Robert DuPont, who actually ought to be given credit for most of what you have heard so far and what you are going to hear today. It is all derivative of the work he has been doing for the past two decades.

Bob has been one of the nation's leaders in drug abuse prevention since the late 1960s. He developed the Narcotics Treatment Administration, which was the comprehensive program that treated over 15,000 heroin addicts in the District of Columbia between 1970 and 1973 while he was director. He then moved to the federal government. He was the first director of the National Institute on Drug Abuse, served in that capacity from 1973 to 1978. And from 1973 to 1975, he was also the White House drug czar, a motion proposed sometimes today as a solution to all our problems if we were to create one again.

As NIDA director, Dr. DuPont visited more than twenty nations to study their drug problems and represented the United States for five consecutive meetings of the United Nations Commission on Narcotic Drugs.

Since leaving the government, he has been president of the nonprofit American Council for Drug Education in Rockville, Maryland. He directs the Center for Behavioral Medicine, which provides clinical psychiatric services from offices in Baltimore, Rockville, Richmond, Norfolk, and Raleigh – which is to say that he is not just talking about this problem, but making an effort to do something about it.

He is a graduate of Emory University and the Harvard Medical School, a clinical professor of psychiatry at Georgetown Medical School, and visiting associate clinical

professor of psychiatry at Harvard Medical School. He is a fellow of the American Psychiatric Association.

Dr. Robert DuPont: As Jeff mentioned, I have been in the drug field for 20 years. I guess I grew up professionally in the drug field. I was involved twenty years ago in treating heroin addicts in centers near where we are right now and have spent a lot of time not just trying to do something about it, although obviously that is very important, but also trying to understand what the problem is. The conviction I have had is that if we can understand it better, we are way ahead in being able to do something about it.

I guess in the way of personal disclosure, I should say I am a practicing psychiatrist. I also confess here in full disclosure that I have been a registered Democrat all of my life. But I was appointed to the White House by two Republicans, Nixon and Ford. My commitment obviously is not to any partisan point of view. I am completely shameless in working with either liberals and conservatives. My only interest is in doing something to solve the drug problem. And one of the things that I have found is it is not easy to use a political compass to find where support is going to come from to solve the drug problem.

Now, let me give you a couple of conceptual ways of thinking about this. As a medical doctor, I think the most important thing you have to understand is that drugs really work. Fundamentally, it is a biological process in which the chemical that is the drug interacts with the user's brain in a very specific way to produce feelings the user likes. If we do not understand that underlying biology, nothing else is going to make any sense. We are not going to understand why people use drugs, why they continue to use them, how the price can be so high and they continue to use them. All the rest of everything that is going on is lost, unless we understand that drugs work on a very fundamental, important, biological level that has nothing to do with whether you are black or white, or young or old, or rich or poor. The drugs work.

And the issue is whether a person is willing to use the drugs to produce that feeling. It is an important question of social and political values, but the biology is there for everybody, no matter what their politics or values are.

Now thinking about the drug interaction, what the drug experience is, I see it as a continuum, starting when the drug molecule is synthesized and extending all the way until the drug molecule is destroyed. I call it the drug pathway. It starts for most drugs with a plant that grows out in the sun that synthesizes the drug molecules. Cocaine is an excellent example of that, or heroin, marijuana being a little more complicated chemical because the whole plant is consumed, but let us say THC is the molecule we are talking about. Now that is the synthesis; that is where it starts. But drugs also can start in laboratories. PCP and LSD are examples of that.

Then the drugs go through a long pathway, a route that has to do with the distribution system. When they reach the user, they are consumed by the user by various routes. They can be smoked, injected, eaten. They can be snorted up the nose, any way that gets into the user's body. In the user's body, a drug goes to the brain, where it has its effect, goes to the liver where it is metabolized and it is excreted in the kidneys. Now that is the drug pathway. It starts in the plant. It ends in the urine. That is the whole thing.

Now what we have done as a policy is to focus on the middle of the pathway which has to do with the drug trafficker. And the assumption has been that by pulling out that trafficker, we can cut down the supply of the drugs and reduce the use. It is not an irrational philosophy, but it has an inherent problem. It has the seeds of its own destruction built into it. And that is the more successful you are at raising the price of drugs by pinching off that distribution system, the greater the incentive you create for the supply system to provide more drugs.

I will just give you the simple example of heroin. Our supply reduction strategy was so effective with heroin that we have inflated the price of heroin 200 times. Heroin could be sold easily as a commercial product for about one cent a milligram right now, using the same kind of markup that we have on other commercial products. The actual cost on the street is more like two dollars a milligram. That 200-fold inflation in price is a result of our successful prohibition, and it has established an enormous financial incentive in the illegal distribution market. That is an inescapable fact with a supply reduction strategy.

Now in the short run, it is very successful. We had this happen in 1971, when we took Turkey out of the market for heroin and broke the French connection. And we really had a big fall in the heroin epidemic. It worked.

Again, the problem is over the long haul. Peter Reuter was talking about the adaptation ability of the distribution system because of the money involved in it. It makes supply reduction a limited strategy, by definition.

Now my thought of what is a new approach for 1988 is to think of the two ends of the continuum where we have not done very much, and that is where the drug is produced and where it is consumed. In those two places it is very difficult to conceal, unlike the middle where it is very easy to conceal. It is high value, low volume in the middle and easy to conceal, but it is not easy to conceal where it is grown. I have visited South America and Southeast Asia and seen the fields growing opium poppies and coca bushes and the marijuana fields in Mexico and all, and I can tell you they look like Kansas wheat fields. They are not difficult to detect.

From my point of view, we need an international commitment with U.S. leadership that says no drug crop will be permitted to grow anywhere on the face of the globe, and it will be destroyed as a matter of international law. I feel very strongly about that and I feel that there is a lot of benefit to come from that. There are some limitations to that, but I think it is important.

The other end of the continuum, the user, is even more important. It cannot be concealed there either, and that is why drug testing is so important. It has to do with pulling back the veil of secrecy of drug use and exposing the drug user to those forces in the society that will convince him not to use the drug. As long as you leave that veil up, the drug use goes on. This is called the denial, and it is not in the interests of the drug user or his family or the society. It is very important to pull that back.

There are problems with both the crop eradication and the drug testing approach, however, and let me mention two of them. One of them is a political values problem, which is very substantial. For example, the sovereignty issue in terms of crop eradication or the issue of the international relations dimensions are very serious and need to be addressed. That is why I think that we need to consider it more in multilateral terms, rather than bilateral terms. But nonetheless, the principle is important. And as far as I am concerned, the same standards should be held to the U.S. domestic cultivation that are held for Colombia or anywhere else in terms of international supervision, an aggressive action to terminate cultivation.

In terms of drug testing, there are privacy issues and legal problems, as well as collective bargaining and other problems that have to be confronted. Both are solvable on both ends, but we need to do much more about eradication and drug testing.

However, there is adaptation at both ends as well as the adaptation of suppliers. When you take out the Kansas wheat fields as cultivation of drugs, what happens? And we had this happen in Mexico. The drug cultivators, the drug growers go to small plots, and they conceal their plants by intercropping with other plants, so they make it much more difficult to interdict. That is the adaptation that they have made, and it works. But it does not work very well. They are not able to produce it nearly as efficiently when they do that and so we had some success when we forced them out of the enormous cultivation and into a one plant at a time kind of cultivation. There is a benefit there.

The same thing is true of drug testing. Drug testing is inherently limited in terms of submitting false samples, for example, or use of drugs that are not easily detected by drug testing. There are countermeasures that drug users can take. Again, they are not terribly effective, but they are there and, over the long haul when there is heavy emphasis on testing, there are going to be more.

Crop eradication and drug testing are limited, important strategies that need to be exploited, but the real battle is for the hearts and minds of our whole population. And we simply need to push forward, I think, toward reducing the nation's tolerance for drug use.

If I were to pick the one thing going on in this country that makes me most optimistic right now, it is not the new thinking on the government side, although I think that is tremendous, and I am optimistic about it. But the best is the development and widespread use of a system of initiatives that spring from Alcoholics Anonymous, the 12-step programs.

There is nothing more American than that program, and there is nothing more effective in dealing with the drug problem than the self-help movement that involves not only Alcoholics Anonymous, but Narcotics Anonymous, Cocaine Anonymous, Adult Children of Alcoholics. There is a revolution in the United States today going on all around us. It is affecting millions and millions of people, and it is going to make the biggest difference in what happens in our society.

The opportunities are tremendous regarding the principles of Zero Tolerance and measured response, to essentially convince the 23 million drug users that the cost of using drugs is too high. We ought to raise that cost.

Let me say one last thing about the issue of punishing or being tough, versus loving. There is a term in my field called tough love. A lot of times, the kinds of attitudes that I am expressing and that you have heard about this morning of being tough toward drug users can sound inhumane or not caring. I believe exactly the opposite is the case. I think it is the person who says no and makes it stick who is the loving, caring one.

When we are talking about entitlement programs, for example caring for the poor, again going back to my experience with heroin addiction here in the city, the people who are the poorest, the most disadvantaged, are the most ravaged by the drug problem. They will be the most benefited by efforts to eliminate the drug problem. That means taking very tough measures. And those people who care in human terms about the drug problem should take the most difficult line, that is, not backing away one step from a very tough stand against drug use.

Mr. Eisenach: I would like next to introduce Joseph Perkins. Joe is an editorial writer with the *Wall Street Journal*, where he has recently done some work on the drug problem, in particular, an editorial in the *Wall Street Journal* a week or two ago entitled "How to Put Drug Dealers Out of Business."

He was a visiting scholar at The Heritage Foundation in 1986, a graduate of Howard University, and he has worked at publications such as *The Washington Post*, *The Wall Street Journal News*, *National Journal*, and *The Baltimore Sun*. He has appeared on "Good Morning, America," and "Nightwatch" and has an article forthcoming in *Policy Review*.

He is going to talk about some of the penalties to consider levying on drug users.

Joseph Perkins: As Jeff mentioned, I recently published a piece in the *Journal* about drugs. And in the four years that I have been there, no piece that I have written has elicited as much response. Most of the response has been quite favorable, which suggests to me that a consensus is building on the subject of drugs and what we should do to abate drug trafficking in this country.

Recently, I spent most of a day observing proceedings at a special narcotics court in Manhattan. More than 100 offenders came before the judge that day on various drug felony charges. In the hours that I spent in that courtroom, not one of the drug criminals, not one, was sentenced to even a day of jail.

Now from what police have told me, most of these felons are probably on the streets today, trading in drugs much as they were when they were arrested and, I think, making sport of our criminal justice system. And New York is not unlike many other cities in the U.S., engaged in what I consider to be a rather hopeless war on drugs as it now stands. This war on drugs is being lost not because federal, state, and local law enforcement authorities are failing to bring drug offenders to justice, but because our justice system is breaking down.

In New York City, for example, a record 37,000 felony drug arrests were made last year. And of those arrested, only one in seven ultimately received a prison term of one year or more. One in three drug felons actually got off without spending even a day of prison time.

All told, there were some 88,000 drug arrests in New York last year, felonies and misdemeanors. Those arrested spent an average of 18 hours in the court system and less than 5 percent of drug arrestees ultimately spent more than 30 days in jail.

What this means is that New York's drug court has become a revolving door. The police I have spoken to say that offenders are arrested sometimes thirty or forty times, and when they are up for sentencing, they receive no more than a slap on the wrist.

Now given that the prospect of receiving stiff punishment is so remote, not only in New York, but in most jurisdictions throughout the country, is it any wonder that drug sellers and drug users act with virtual impunity?

Now mind you, this is not because the existing drug penalties are too lenient, as some think, but because the full weight of our drug laws is rarely brought to bear against drug offenders. The reason that the drug trade is flourishing throughout the country, as the previous panelists have said, is because the profits are high for sellers and the risks are low for buyers. So my argument is that the way to curb the drug trade is to reduce the profit margin for sellers and to greatly raise the risk for buyers. We can do this, I believe, by redirecting the anti-drug effort to the demand side from the supply side.

What I am talking about is a full frontal assault against the drug user, an unadulterated policy of zero tolerance. Those who are arrested for possession or use should be prosecuted to the fullest extent of the law. A minimum sentence for those convicted on misdemeanor drug counts should be two or three days in the local jail, and no exceptions should be made for first-time or casual offenders. The thinking here is that maybe the shock of jail will deter some of those who might be first-time or casual users.

Mandatory jail sentences on misdemeanor counts should become progressively stiffer with repeated offenses. That a person can be arrested thirty or forty times, as often happens in New York, without serving a day in jail for any of these offenses is a travesty and makes a mockery of the justice system.

I think our point should be to send a message to drug users that, no matter how small the amount of drugs they are caught with, they will do at least several days in jail. Those convicted on felony use, it seems to me, should do mandatory prison time of at least one year. Those drug felons receiving parole after serving at least a minimum one-year sentence should be closely monitored by probation officers to make sure that they do not sink into recidivism. And as a condition of probation for drug crimes, offenders should be regularly tested for drugs. Those failing tests should be returned to serve out the remainder of their terms.

I also think it is important that juveniles be subjected to punishment for drug offenses. If they are guilty of misdemeanors, they, too, should do some time in detention. Perhaps local jails might designate certain sections for youth offenders. Juveniles charged with drug felonies should be tried as adults. If kids are not dissuaded from early drug use, they will become more incorrigible as adults.

The argument frequently heard against zero tolerance, one that I heard even this morning, is that the courts would be swamped and the nation's crowded prisons would be further overtaxed, and this would be true if we just maintained the status quo.

A suggestion here is that we redirect most of the billions that we spend on such anti-drug efforts as interdiction and education to expanding the courts' capacity to process drug cases and the prisons' capacity to hold drug criminals.

Congress should consider creation of a federal narcotics court that would be akin to our tax and bankruptcy courts. Such a court might handle all drug violations, much as the federal courts covered violations of prohibition in the 1920s. Or it could handle only the more serious drug cases. The point is that all drug cases should be tried.

In addition, the number of prisons throughout the country should be increased. The money to build these new facilities should come from the $6.9 billion a year Congress is expected to approve this term for the federal anti-drug fund. As it is now, 75 percent of these funds go to fighting the supply side of the drug problem, with negligible results. Additional funds for prison construction should come from the seized assets of drug offenders. Last year for example, the Drug Enforcement Administration seized $500 million, nationwide. Now with the cost of $71,000 per bed for a maximum security prison, it would cost about $7.1 billion to increase the total available prison space in the U.S. by 20 percent. Nearly three times that amount has been spent on the drug war since 1981. We could spend considerably less if some of that money were invested in minimum security prisons.

If, after these public outlays for new prisons, we found that the available prison space was still insufficient to accommodate drug inmates, then the government should turn to the private sector for assistance. Corrections entrepreneurs could arrange private financing in exchange for lease contracts or lease purchasing agreements. At the very least, private corrections facilities could be used to house misdemeanor drug offenders.

The point is that, by raising the risk of a jail term for both casual and hard-core users of drugs, the demand for illegal drugs could be greatly discouraged. And by reducing the demand, the profit margin for sellers would be lowered, and with a lower profit margin, sellers might actually find legal commerce more lucrative.

The drug trade flourishes here, in America, because users are not punished for their crimes. And the unwillingness of the courts to put drug offenders away sends a message to those involved that they can act with impunity. The way to put drug traffickers, drug dealers out of business is to deprive them of their customers and this can be done only by putting drug users in jail.

Mr. Eisenach: Our next speaker is Richard Willard of the law firm of Steptoe and Johnson. Until this March, Mr. Willard was Assistant Attorney General in charge of the Civil Division of the U.S. Department of Justice. The Civil Division is the largest litigating division in the Department of Justice, with more than 400 attorneys who represent the United States in a wide variety of civil litigation, trials in appellate courts, torts contract claims, and federal regulatory matters. Most important for our purposes, Mr. Willard

played a leading role in formulating the federal government's policy with respect to drug use by federal employees.

Richard Willard: I agree with much of what Joe has just said, but I have to express some reservations about some of the ultimate conclusions in terms of their cost effectiveness and timing. After complying with environmental laws and other requirements in building a new prison in the U.S. it may take five or six years, even if you appropriate the money immediately.

Our criminal justice system is, as a result of our Constitutional system, a very expensive system to operate. People have a right to be indicted, to be tried before a jury, to have proof beyond a reasonable doubt, and then of course, there are such costs as incarceration and probation. It is a very expensive way to modify behavior. And for that reason, even if we could vastly expand the resources to deal with 23 million drug users, which would be necessary because the system now is clogged and breaking down, that might not be the most cost effective way to spend the money. Some steps in that direction might be a good idea.

As it is now, users face virtually no prospect of a criminal penalty. Most of the figures Joe was citing to you dealt with people arrested for drug trafficking who are not going to jail. So it would be quantum leap in our law enforcement system to make users fear going to jail when even traffickers do not have that fear. In addition, I have to express some reservations about some of the noncriminal sanctions that we have talked about today because they would necessarily have to be based upon conviction. As a legal matter, in order to take away someone's driver's license or student loan based upon a criminal conviction, there would have to be the criminal conviction first. Such sanctions of a noncriminal nature premised on a conviction would require a revolution in our criminal justice system in order to be effective. Passing a law that says, if you are convicted of a drug offense, you lose your driver's license would only affect the fairly small number of traffickers who are being convicted today.

In addition, legally, I do not think you could base sanctions of this nature, even noncriminal sanctions, on a mere arrest. Constitutionally, the courts would say there must be a conviction or some kind of due process hearing before even a noncriminal sanction could be imposed.

For that reason, I think that the user accountability effort is most profitably directed at removing the legal barriers that now protect users and their habits. It is surprising to discover how many laws there are on the books that protect the drug user from the natural consequences of the habit, particularly drug users in the workplace.

Under our federal handicap discrimination laws, for example, drug addiction is viewed as a handicap. It is against the law to discriminate against drug users if you are in a government or if you receive federal funds or you are a federal contractor. In fact, to read the law one way, you would have to comply with affirmative action to recruit and promote and hire drug addicts. The law actually only covers drug addicts and not the so-called recreational user of which there are large numbers, so it is not an impenetrable barrier. But it is an illustration of how our laws, in their effort to be caring, treat drug users as victims

rather than co-conspirators. They actually protect users from sanctions they would otherwise feel.

In the area of education, a whole series of legal constraints hamper effective anti-drug programs. The courts have held that there must be due process hearings before students can be disciplined in such ways as expelling them from school. The process is judicialized and the schools are discouraged from imposing discipline. Courts have passed limits on schools' searching handbags or briefcases or lockers, after various legal tests were directed to protect that. Courts have outlawed the use of drug-sniffing dogs in schools in some areas. Courts have invalidated in some cases using drug testing for student athletes.

In all likelihood, the courts would invalidate mandatory drug testing of students in schools as a condition for attending public school, although I think there are ways to structure voluntary programs that might be effective. But the fact is, the law is a real barrier to achieving effective programs.

I would like to devote most of my remarks to the workplace area because that is what I have dealt with in the government, and it is the area where I now advise clients in the private sector. Here, again, Congress and the state legislatures have been making it harder to adopt effective anti-drug programs.

Two years ago, Executive Order 12564 was adopted, mandating a comprehensive drug-free federal workplace program, relying on various kinds of drug testing programs. Congress immediately sprang into action by passing, in 1987, the Hoyer-Mikulski Amendment to the Supplemental Appropriations Act, which created a whole new set of bureaucratic hurdles that so far have prevented any federal drug testing from being conducted under the 1986 Executive Order by requiring all kinds of additional bureaucratic procedures.

This year, S. 2205 is pending, which a number of Senators have cosponsored, including a number of conservative senators, such as Senators D'Amato, Domenici, Dole, Wilson, and Grassley, not to mention Senators Mikulski, Kerry, Weicker, Sarbanes, and Cranston.

But Title 8 of this bill, which is supposed to be an anti-drug bill, would actually prohibit probably 90 percent of the drug testing that now goes on in the private sector by requiring private sector drug testing programs to adhere to the new Department of Health and Human Services guidelines that were adopted for federal drug testing. And I think there are a number of booby traps, as well, built into the legislation as drafted.

A number of states have adopted in the last year restrictive legislation, making it much harder to implement drug testing in the private sector. These states include Connecticut, Iowa, Minnesota, Montana, and Vermont, all of which have passed legislation that, as a practical matter, eliminates 90 percent of the kind of drug testing that private employers would want to conduct.

There are really three cutting edge issues in the area of workplace drug testing and I would like to mention them briefly. The first cutting edge issue is the nexus issue, whether or not you prohibit employees from using drugs off duty. The attitude of some people is, as

Dr. DuPont mentioned, that a veil of secrecy should be drawn over what people do in their private lives. One court here in D.C. said that drug testing is very intrusive because it reveals information about which the employee has a legitimate expectation of privacy in his or her personal life while off duty.

In my view, there are many reasons why employers would be concerned if their employees were using drugs off duty. For one thing, even if they do not come to work euphoric or intoxicated on drugs on Monday mornings, the fact that they are using crack or PCP on weekends makes them less desirable employees. They are more likely to be absent from work, have health problems, more likely to steal from employers or coworkers to support the illegal habit, not to mention the fact that many of these drugs, all of these drugs, are ultimately addictive. And those who start having a recreational, off-duty habit will normally progress to heavier use, to the point where they are using drugs on the job.

In addition, employers are concerned because the most effective way to treat drug use is to prevent it in the first place. Most drug users, as Dr. DuPont pointed out, are still at a recreational stage. And so a great deal of drug use could be stopped if these people simply had incentive or a deterrent not to do it.

The second issue that sometimes comes up in workplace drug testing issues is, random testing opponents say, "Isn't that pretty invasive?" Or, "Why not test only if you have a reasonable suspicion that someone is under the influence of drugs?" One problem with that is on-the-job impairment, waiting until someone is actually stoned at work before you have a reasonable suspicion they are using drugs at all or on the job. A random testing program, on the other hand, is nonaccusatory and will actually deal with the problem at an incipient stage. In addition, random testing has a deterrent impact that suspicion-based testing does not have. And for many reasons, as a practical matter, the suspicion-based drug testing simply does not have a useful impact on workplace drug use.

The final issue that has to be confronted is whether to give employees a free bite at the apple. A lot of legislation, a lot of programs say, "If someone's caught through a drug testing program, we will send them to rehabilitation, and if they complete that, they can't be fired, no penalty will be imposed." That gives everyone notice that they are going to get a free bite at the apple. They can continue using drugs until they are caught and then, if they clean up their act, everything will be all right.

I strongly resisted efforts to write that kind of provision into the federal workplace drug testing program, but it persists and many of these states that I mentioned have passed laws that require their employers not to discipline employees caught using illegal drugs if they claim to be willing to go through rehabilitation, which the employers are required to pay for.

If any of this makes sense, you certainly must be able to see a bigger picture than I can. The fact is that the law, both court made law and legislatively made law in the states and in Congress, seems to be always designed to protect drug users from the natural consequences of their habits and make it harder to impose sanctions on users.

So it seems to me that, while I approve of many of the measures in the package that was unveiled this morning by the Senators, I think we have to take a careful look at clearing

away some of the legal underbrush, which would be an important first step in developing a program and holding users accountable.

Mr. Eisenach: It appears there has not been 100 percent agreement on anything in either of these panels, which is a healthy sign.

One point I would like to make concerns the amount of federal spending and the resources that need to be devoted to this problem. The federal government will spend less in fiscal 1988 on the drug problem – which is regarded I believe correctly, by Americans as the number one problem facing our country – than it will spend on subsidizing urban mass transit systems. It will spend less on the drug problem than it will give to Iowa and Kansas for federal agricultural subsidies, just the two states of Iowa and Kansas.

The drug problem continues to create major foreign policy disruptions, it affects 23 million Americans, it is named the number one problem by Americans, which reflects the fact that it is impacting on them in their homes and their families. Yet the federal government response remains vastly incommensurate with the magnitude of the problem.

Both the House and the Senate, in the current budget resolution, have made a commitment to spend an additional $2-1/2 billion, roughly, on the drug problem, which would bring total spending to something in the neighborhood of $7 billion. That seems to me a minimal level of federal commitment appropriate to the magnitude of the problem.

And as Joe diGenova and others pointed out, law enforcement resources are really not very expensive in the context of things that the federal government buys. For something like $600 million to $1 billion, the federal government can add 1,500 additional DEA agents, investigators, 2,500 prosecutors, 1,500 additional judicial personnel. The bottom line is this: somebody walking down the streets in the District of Columbia today, smoking a marijuana cigarette knows that if a police car drove by, it would keep going. None of these programs means anything unless that police car stops and puts him in the back seat. If that does not happen, then all these fancy innovative penalties, the driver's licenses and so on, really will not make any difference.

But the encouraging thing is for not all that much money, you can make some of that happen. And you do not have to make that much of it happen in order for the average one of the 23 million American drug users to say, "Well, maybe not. I'm not sure that's such a good idea."

And so that is the contribution that I would like to make to this, is that I do not think, in terms of the amount of resources we are talking about, that it is very large relative to the kinds of things that the federal government routinely wastes money on any given day.

So with that, let me throw it open to questions. Sir?

Guest: What is the value of drug testing when only 10 percent of those who voluntarily apply to drug rehabilitation and treatment centers are accepted; the other 90 percent are put on a waiting list that ranges from six to eighteen months?

Dr. DuPont: That is an interesting question. One of the arguments against identifying drug users is we cannot afford to treat them, anyhow, so why identify them. That essentially is the argument I think that is made against testing.

We are not going to be able to provide drug treatment for all the 23 million people. Does that mean that we should not do anything about it? I think the answer is no. A lot of those people can get well without going to formal treatment. Alcoholics Anonymous and Narcotics Anonymous are totally free programs. And when you look at what goes on in drug treatment, most of the people are really going to get well through their participation in a self-help movement anyway.

Many of my clients now, unlike when I was with the city government, are very rich people. They can afford anything. But how do they really get well? They go to expensive inpatient programs for 28 days, but what happens when they leave? I will tell you. They go to AA and NA because that is the only way they are going to get well, no matter how much money they have.

The Navy also found this out when they did the testing. They said they could not afford to identify all their drug users, that they would weld the ships to the docks because they could not afford the treatment programs for the drug users.

The main reason for testing is prevention and deterrence. Most people do not need the treatment, anyhow. I am all for treatment, but I do not think using treatment as a reason not to identify makes any sense.

Guest: In light of the bottleneck in our criminal justice system and the fact that many of the suggested sanctions depend upon a conviction, what are your thoughts on setting up magistrates given power under the federal court system, the federal judges. It might have been somewhere in the proposal.

Mr. Perkins: It is well within the power of Congress to create either a temporary or permanent narcotics court. We have a tax court; we have a bankruptcy court. There may be a federalism problem when it comes to whether a state or a federal government has jurisdiction over certain laws, but Congress can determine that as well. That is certainly one way of getting around the bottleneck, creating a special court to deal exclusively with drug cases.

What it comes down to is illustrated in a recent movie, "The Untouchables." As Elliott Ness's mentor lay dying, his words to Ness were, "Are you willing to do what's necessary to get Capone?" Are we willing to do what is necessary to stem the drug trade in this country? If we are, then we would be willing to take the step of creating a special court to deal with these narcotics cases.

Guest: This is not so much a question as a comment which came to mind from something that Mr. Willard said about shielding people from the consequences of their actions. More and more, it seems that society is being asked to clean up the messes that people create for themselves. And it goes back to the liberal notion that people are not responsible moral agents, that impersonal institutions or societal courses impact on people and sway them

hither and thither, and whatever they do, whatever choices they make, they are not really their own choices, but something out in the society or the cosmos that forces them to do it. So when people break the law and knowingly begin to use illegal drugs, making great messes of their lives and creating a lot of social havoc, and the bill comes due, it ends up being paid by the people who stayed and resisted the drug route.

Mr. Eisenach: Your point is exactly right, and that higher level of responsibility is part of what we are all seeking.

Guest: A question for Mr. Perkins. Currently, 39 states are under court order to increase prison capacity because of overcrowding. Even if we were to find the $7 billion to pay for the 20 percent capacity increase — and I did not see in your article how you would pay for it — 30 or 32 states would still be under that court order to reduce prison overcrowding. Is that an effective policy?

Mr. Perkins: When I said $7 billion, I meant just federal spending. And we could be even more efficient if we had a combination of not only maximum security prisons, but also medium and minimum security prisons. We might be able to expand space by 30 percent, and when the states are also factored in, we might be able to increase capacity even more. And for whatever shortfall we have, we should use the forces of the private sector to build more prisons or at least to handle the misdemeanor offenses.

In other words, I advocate putting people guilty of misdemeanor offenses in jail for two or three days, at the very least. And at the very least, I think that the private sector could handle that. Private prisons are in operation in various jurisdictions around the country. They are cost effective and administer justice as efficiently as government does.

Guest: So your funding mechanism is the private sector?

Mr. Perkins: No. What I mean is that we should direct funds away from interdiction, education, and a plethora of programs dealing exclusively with the supply side of the equation over to the demand side, which is prosecution and incarceration of the user.

Guest: As a follow-up on that, I agree with you that these cases have to go through the criminal system, which is overworked. But beyond that, on incarceration, how aggressively is the Justice Department going after alternative sentencing, alternative needs, home incarceration, monitoring? Are they being innovative? Are there other ways? Is it not, with the users, a matter of establishing the stigma of drug use? How about their reputations, getting to their assets, and not necessarily putting them in prison?

Mr. Willard: That is certainly a good point because right now, users are not being prosecuted at all. We could significantly toughen up our system by prosecuting users and convicting them, even if they never went to jail for a day. They would certainly suffer a stigma they do not now suffer.

The people that Mr. Perkins was talking about who are being tried and convicted and not going to jail are dealers. Our system is so overloaded that we cannot even punish the

dealers, much less the users. But the idea of shock incarceration for a few days is certainly something that could be done.

But my point was that, even apart from punishment, which costs money in varying degrees, alternative programs cost money, as well as the process of arresting and gathering enough evidence to convict and try people before juries, and setting up alternative courts is very expensive. The cost of a drug test is only about $25. Most people using drugs are either in school or have jobs. If they have a realistic fear that they might be tested and lose their job or be kicked out of school if they test positive, that should have a major deterrent impact that does not currently exist.

I am in favor of backing it up by enforcing the laws, too, but I think we have a long way to go. Right now, realistically, users face no sanctions imposed by the system. The other extreme, the most severe sanction, would be to put them in a maximum security jail for a long period of time. There is a long way to go before we have to tighten the screws to the point where we are actually prosecuting, convicting, and sending users to jail, and that includes workplace sanctions, loss of driver's licenses, loss of government benefits, and other ideas that could be developed.

Guest: I assume that the reason we are putting them in jail is the shock effect and not just to get them off the streets. It seems that these are actually solutions for the middle-class or social user: stigma, loss of job, the two days spent in a minimum security prison. But what happens with the serious users, the people in the crack houses and slum places?

Mr. Willard: That is a very good point. Dr. MacDonald, the White House drug advisor divides the problem into four parts. He includes an easy half and a hard half. And he includes young people and old people. Among old people, the hard part are the addicts; the easy part are the recreational users who are in the workplace, the vast majority of adults who use drugs.

With young people, again, he says there is the easy part. These are the impressionable children who come from stable homes and families who can be reached by a Just Say No Program and by education. And then there are the children who come from broken homes, who live in poverty, and who have a multitude of social problems. Drugs make all of this much worse. But if you eliminated drugs, they would still have lots of problems and that is a hard problem to solve.

My feeling is that we ought to at least try to solve the easy parts and reduce the number of people using drugs. If we could eliminate all of the people who use drugs, who have paying jobs, who are going to school, or who otherwise live in normal, stable life situations, we would be eliminating two-thirds or three-fourths of the demand for drugs. That would make the supply-side effort much more effective.

If instead of 23 million drug users in America there were one or two million, interdiction programs would have much more chance of success.

So I think we have to do other things for people who have real problems and are addicted. We need to have compassionate programs of treatment, although, realistically,

most of them do not work very well. For children from broken homes who have other social problems, we have to try to deal with the underlying problems, too.

So it is not to say they should not be addressed. It is just that we have a huge target out there — the millions of Americans who are contributing to this problem because they provide the demand for the drugs.

Guest: I felt that the Senators today were dealing with the whole thing from a very middle-class point of view. To follow up on what someone said, I think there are a whole series of different kinds of drug users, and I like the quadrant idea because there are different solutions for each one. I think you have to recognize that prison is not the deterrent that a lot of people think it is. I worked out at Lorton. The recidivism rate is such that it shows that prison is not the terrible stigma that you think. When I worked with the young men out there, I asked them how they felt about going back to the city again, and universally, the word was "scared." Prison is really a more comfortable place for them. They were scared about going back to the city where the social pressures would be so great, where the economic pressures would be so great that they could not turn down a $500 deal. And they recognized that it was going to be very, very difficult going back.

So I think we have to have a different set of consequences for different people. For the dealers, take their money. Let them pay for the rest of the things. I think it would be more effective with to them than even prison.

Mr. Eisenach: It is important to emphasize that no one here today is suggesting limiting or reducing the efforts to limit supply. In fact, the Senators were talking about, for example, a three-time loser rule for dealers that says mandatory life in prison.

But I come back to a point that Darryl Gates, the police chief in Los Angeles, made recently that the evidence is that our rehabilitation programs are not working very well, that our efforts to limit supply are not working very well, and one reason we have a supply problem is that we do have a demand problem. A person may be making $500 because there is someone driving in from the suburbs who is willing to pay that kind of price. So we need to take an approach that clamps down on this problem or we could end up with 23 million drug users turning into 40 million drug users over the next decade. That would be not only more middle-class drug users, but more problems in the center cities.

I think one of the important components of cracking down on demand is taking away the market and the incentive to sell drugs, because it is very difficult to tell a 14-year-old kid who is watching his friends rake in $500, $1,000 a week, "Don't do that." You have to eliminate that demand.

Guest: I wrote to Nancy Reagan once and got a reply back from her secretary. I suggested that "Just Say No" to the kids in the inner city just sounds as though it is an easy thing to do, and it is not. So, I proposed the posters of "Get Smart, Be Tough, Say No" to drugs and drug dealers, because the kids do not want to be thought of as stupid or weak. I thought it could have a real impact. But plain "Just Say No," forget it.

Mr. Perkins: There is no panacea for it, obviously, but certainly it seems to me that users must know that there is certain punishment for their crime, and I advocate imprisonment. Others might say fines or seizure of driver's license or denial or taking away student loans, but the point is that 95 percent of the people arrested – I do not mean all the people who use it and get away with it, but just those who are arrested – get away with a light slap on the wrist or nothing at all.

Guest: That takes away the incentive for the police too. They are is not going to take risks if nothing happens.

Mr. Perkins: Indeed it does. And when I was talking about those 37,000 cases in New York, I meant felonies – people caught with several hundred vials of crack on their person, and because it is their first offense, they walk away. And when you translate that over the course of a year, it means about half a million vials of crack by a given dealer, who just walks away scot free. And until those people understand that there is a price to pay for commission of that crime, there will be an incentive, not a disincentive, to trade in drugs.

Mr. Willard: There have been several questions that have raised this issue about the emphasis on user accountability. Is it going to be a middle-class program, because obviously losing a driver's license is not much of a disincentive if you do not own a car or have access to a car, and it is true that much of this proposal is targeted this way. But my feeling is that the middle-class user of drugs is largely to blame for the problem we have, not to mention the celebrity user, the upper-class user as well. These people create the demand for drugs that has destroyed so many inner-city neighborhoods, that has diverted so many young people into a life of crime. Middle-class families do not have to worry that their children will become drug dealers. Maybe their children will still go to college and get a job, but if these children are going down to the city and buying drugs, they are corrupting the life of whoever is selling to them.

We have to get tough with everyone, and in my view, this is not a program that is designed to help the middle class avoid a problem. It is designed to get tough on the middle class and make it clear that they are to blame in large measure for the drug problem we have today.

Mr. Eisenach: Our thanks to all of the panelists and all of you who joined us to listen and participate.