

Federal Probation

Structuring the Exercise of Sentencing Discretion in the Federal Courts ⁸³¹⁷⁰ Brian Forst
William M. Rhodes

Zero-Sum Enforcement: Some Reflections on Drug Control ... ⁸³¹⁷¹ P. Andrews
C. Longfellow
F. Martens

Inreach Counseling and Advocacy With Veterans in Prison ... ⁸³¹⁷² Bruce Pentland
Ray Scurfield

The Probation Officer and the Suicidal Client Frederick F. Casucci
Gary K. Powell

An Experiential Focus on the Development of Employment for
Ex-Offenders ⁸³¹⁷³ Stanley S. Nakamura

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Martin S. Meagher

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MARCH 1982

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This Issue in Brief

Structuring the Exercise of Sentencing Discretion in the Federal Courts.—Brian Forst and William Rhodes report results of a major study of Federal sentencing practices, focusing on highlights that have special relevance to the probation community: survey results on the purposes of sentencing, an analysis of recent sentencing decisions, and an analysis of the information contained in the presentence investigation report. The survey revealed that Federal probation officers and judges, on the whole, regard deterrence and incapacitation as more important goals of sentencing than either rehabilitation or just deserts. The judges individually, on the other hand, are divided over the goals of sentencing.

Zero-Sum Enforcement: Some Reflections on Drug Control.—This article reflects upon the dilemmas in drug control efforts and suggests that current policy and practices be reviewed and modified in order to evolve a "more coherent" approach to the problem. The authors critique the methods of evaluating drug enforcement efforts and provide a series of rationales that can be employed in the decisionmaking process.

Inreach Counseling and Advocacy With Veterans in Prison.—A self-help model of direct and indirect services is provided through a Veterans Administration veterans-in-prison (VIP) pilot program. Authors Pentland and Scurfield describe objectives and methodology of the program, including the formation of incarcerated veterans into self-help groups, organization of community-based resources into VIP teams that visit the prisons, serving veteran-related issues and services such as discharge upgrading and Agent Orange, and a diversionary program for veterans in pretrial confinement.

The Probation Officer and the Suicidal Client.—This article by Federal probation officers Casucci and Powell attempts to provide the probation officer with enough information to be able to

recognize and deal effectively with the suicidal client. The authors furnish an overview of the problem of suicide, a profile of the suicidal client, and the therapeutic response of the probation officer in this crisis situation.

An Experiential Focus on the Development of Employment for Ex-Offenders.—U.S. Probation Officer Stanley S. Nakamura of the Northern District of California states that a concerted effort

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has been made in his District to establish an employment program that would provide real assistance to those clients interested in working. Integrity, friendship, patience, professionalism, trust, placement, and followthrough are the basis of a successful employment program, he concludes.

Alienation and Desire for Job Enrichment Among Correction Officers.—Responses to a correction officer opinion survey suggest that C.O.'s hold attitudes toward their job that are similar to those of other contemporary workers, report Hans Toch and John Klofas. Like other urban workers, urban C.O.'s tend to be very alienated; like workers generally, most C.O.'s are concerned with job enrichment or job expansion.

BARS in Corrections.—Evaluating the job performance of employees is a perennial problem for most correctional organizations, according to Wiley Hamby and J.E. Baker. The use of Behaviorally Anchored Rating Scales (BARS) appears to be a viable alternative for evaluating the performance of employees in corrections, they maintain.

Redesigning the Criminal Justice System: A Commentary on Selected Potential Strategies.—Selected strategies are highlighted by Attorney Tommy W. Rogers which would appear worthy of consideration in any contemplated alteration of the criminal justice system. Suggestions are made concerning modification of the criminal law detection and apprehension strategies, improving the administrative and judicial efficiency of courts, redressing system neglect of victims, and utilization of research in planning and legislation.

Strategies for Maintaining Social Service Programs in Jails.—Social services within jails and community-based alternatives to incarceration are vulnerable to cutbacks, asserts Henry Weiss of the Wharton School in Philadelphia. His article suggests a number of strategies for maintaining the improvements in service delivery that have been so painstakingly won over the past 15 years.

Promises and Realities of Jail Classification.—The process by which jails reach classification decisions has rarely been studied due to the preoccupation of the field with predictive models, assert James Austin and Paul Litsky of the National Council on Crime and Delinquency Research Center. The authors' opinions expressed in this article are based on their findings of a comparative process study of four jail classification systems.

Crime Victim Compensation: A Survey of State Programs.—Compensating crime victims for injuries sustained as a result of their victimization has evolved into a highly complex practice, report Gerard F. Ramker and Martin S. Meagher of Sam Houston State University. Their study showed that the state compensation programs in existence today are subject to similarities in certain organizational characteristics and also appear to share certain disparities.

Probation Officers Do Make a Difference.—This article by Marilyn R. Sánchez of the Hennepin County (Minn.) Probation Department examines the successful interaction between probation officer and client. Her article discusses a three-issue model for feedback from probationers: (1) the "exit interview" with the probationer, (2) presentations in schools, and (3) the postprobation checkoff list.

All the articles appearing in this magazine are regarded as appropriate expressions of ideas worthy of thought but their publication is not to be taken as an endorsement by the editors or the Federal probation office of the views set forth. The editors may or may not agree with the articles appearing in the magazine, but believe them in any case to be deserving of consideration.

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Zero-Sum Enforcement: Some Reflections on Drug Control

BY P. ANDREWS, C. LONGFELLOW, AND F. MARTENS

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FROM ALL official accounts, the "war against drug abuse" has resumed. Additional resources are being requested by a host of agencies to stem what some have described as a "heroin epidemic." Yet in a time of declining police resources, it is unlikely that the police will be in a position to effectively diminish the availability of narcotics and dangerous drugs and even if given the resources, serious questions remain with respect to what goals should be pursued.¹ Contemplating consolidation of Federal drug enforcement efforts in an attempt to evolve a coherent control policy, the Reagan administration has recently reorganized the Drug Enforcement Administration under direct control of the Federal Bureau of Investigation.² Regardless of how enforcement responsibilities are allocated, however, it is clear that sound and efficient enforcement practices require a serious re-examination of past policies. Personal philosophies and institutional ideologies must, out of necessity, be supplanted with reasoned and disciplined dialogue. Inasmuch as narcotic enforcement often represents an emotional and moral response to an irresolvable dilemma, a coherent enforcement posture can emerge when facts are clearly articulated and policies carefully circumscribed. The future of drug enforcement is dependent upon the ability and capacity of the police to prioritize the drug problem, realizing that a "full enforcement of the law" philosophy must give way to the selective and judicious allocation of the finite police resources.

The Dilemmas of the Drug Enforcement Administrator

The noted Harvard economist, Thomas Schelling, once wrote "It is a matter of public policy

which determines black markets." Truer words have never been spoken, for it is clear that legislative policies have created a viable and by most official accounts, a lucrative illicit market. Marijuana certainly represents a multimillion dollar business, cocaine is being used by all social stratas of society with increasing frequency, and estimates of heroin use and abuse suggest that this illicit market has captured a healthy share of the underground economy. The fact that an ounce of heroin or cocaine is worth more than an ounce of gold vividly illustrates the profitability of this illegal market. Moreover, the quantities of marijuana, heroin, and cocaine being seized certainly implies considerable if not significant public demand.³

Enforcement rationales which have emerged over the past several decades have basically relied upon simplistic measures of productivity which may not be related to success or impact on the problem. Traditionally, enforcement administrators have placed undue value on the quantity of narcotics seized, often providing impressive and startling financial estimates with respect to the value of the seizure. Within the past decade, we have witnessed additional indicators to demonstrate an effective and efficient enforcement strategy, namely purity levels and major conspiracy convictions. While such data is certainly valuable in terms of measuring productivity levels, requesting additional resources, and/or providing the public with an increased sense of security, this data is of cautioned utility in assessing the impact of the enforcement action on the illicit market.

For instance, if we assume that seizures of illicit drugs represent no more than 5 percent of the illicit market (a liberal estimate according to most law enforcement officials), we may conclude that 95 percent of the illicit market remains untouched. Said differently, the 5 percent "loss" merely represents "overhead" or operating costs, analogous to a licit market where regulatory costs and losses are ultimately passed on to the con-

¹Wall Street Journal, "Millions From Drug Traffic..." November 9, 1979; The New York Times, "Heroin Trade Rising Despite U.S. Efforts," February 15, 1981, p. 1; Government Accounting Office, "Gains Made Controlling Illegal Drugs, Yet The Drug Trade Flourishes," October 25, 1979.
²Narcotics Control Digest, "Rumor of Folding DEA Into FBI Rears Its Head Again," May 6, 1981.
³Narcotics Control Digest, "DEA Administrator Benseiger: New Laws, More Resources Needed To Deal With Drugs," December 24, 1980, p. 1-10.

sumer. Of course, in some cases a regulatory action may force marginal entrepreneur to liquidate, particularly one who is operating on slim profit return. Similarly, an enforcement action in the illicit sector could conceivably result in the elimination of the entrepreneur from the market, but unfortunately demand usually remains constant. Thus, it is only a matter of time—possibly minutes—before another entrepreneur, probably better organized, having access to more resources (political as well as economic) replaces the less sophisticated or amateur entrepreneur. Hence, an enforcement policy which subscribes to a quantity or dollar-value approach—one which measures success in terms of the amount or worth of drugs seized—may only create a more serious enforcement problem: the organization of a market which was heretofore unorganized. The implications of this phenomenon are certainly far-reaching. For if we have learned nothing more from the Prohibition Era, enforcement represents at best a symbolic response to a moral dilemma, and at worst, a perversion of the criminal justice process.⁴

If, on the other hand, the police adopt a quality approach to the enforcement of narcotics and dangerous drug laws, such evaluative standards as purity levels and the stature of the individual(s) arrested are used to assess impact. Regretfully, these indicators are also fraught with serious policy deficiencies. Said differently, the diminution of the purity of a particular drug or narcotic after an aggressive enforcement effort does not necessarily reflect effectiveness (nor should we necessarily assume a cause and effect relationship). For example, as drug purity diminishes, and exchange rates remain stable, the attendant effect is greater profits to the distributor. Pragmatically, if a \$10 "bag" of heroin, assessed at 30 percent pure in 1980 and is only 2% pure in 1981, this same "bag" of heroin in 1981 would cost the consumer \$150. Of course, price and purity are most likely a product of inflation and available supply. And supply may be affected by factors other than enforcement, hence any conclusive statement on enforcement effectiveness based on levels of purity must be viewed with considerable circumspect.

The remaining indicator of success or effectiveness—the stature of the individual arrested—also presents a measurement dilemma. Conspiracy cases have taken additional significance in the past decade, and with the passage of the Racketeer Influence Corrupt

Organization Act (R.I.C.O.), the Federal Government has moved aggressively at criminal organizations trafficking in illicit narcotics and dangerous drugs. Clearly, the convictions of the infamous Leroy "Nicky" Barnes, Jamiel "Jimmy" Chagar, and a host of other notables represented a well-directed and selectively focused approach to narcotic enforcement. Yet the limitations at this approach also must be recognized.

First the allocation of resources is considerable and the results are often minimal. While a well-documented, professional and/or organized criminal entrepreneur(s) has been arrested and convicted, the impact on the criminal organization may only be temporary. Analogous to a corporation which loses the services of its highest administrator, or even the entire echelon of upper-level administrators, the corporation ultimately survives and may even surpass previous earning capacity. New and innovative ideas often replace old and traditional methods of management, there is an initial surge of energy (and power), and the younger (but less experienced) administrator seeks to carve out territory. Similarly, the arrest of the upper echelon of a criminal organization, while symbolically impressive and certainly difficult, may only "make room" for the "new breed" who are seeking to make their mark. Hence, the traditional rules which governed relationships among criminal organizations and with the police may undergo serious revisions, creating a period of instability. Presumably, this period of instability will diminish profits as new rules are being renegotiated. However, the problem for police is exacerbated: the unintended consequence of criminal disorganization is often an increase in internecine violence.

Secondly, a focused approach directed toward an identified criminal organization may only enhance the prestige and economic resource of a competitor organization. If the recent television series, *The Gangster Chronicles*, has demonstrated nothing more, it clearly suggests that even within the world of organized crime, there are passive and aggressive criminal organizations. While the police are just beginning to acquire the capacity to identify criminal organizations, they have not progressed past this rudimentary stage to more sophisticated forms of criminal intelligence analysis. Thus, it is likely that the imprecision of a focused enforcement effort, even when directed toward an identified criminal organization, may only serve the expansionist ideology of a more aggressive competitor. "Success," while impressive as it may be, has only served to expand the power,

⁴"Prohibition: A National Experiment," *The Annals*, September 1932.

influence, and economic domain of this aggressive competitor.

Lastly, if an enforcement action against criminal organizations affects its ability or capacity to generate profits, the costs to the consumer will increase. Said differently, an effective enforcement will increase risk, thus price. For those who are dependent or addicted and have no access to legitimate economic resources, predatory crime may be an unintended consequence. For those who have access to legitimate economic resources, an increase in white collar crimes may be expected. And for those who have no dependency or addiction, they will more than likely be dissuaded from continued use. Of course, it must be recognized that to maintain this optimum risk threshold, the costs to law enforcement resources will increase substantially. Moreover, while this risk threshold is being maintained, the criminal organization may opt for supply restraint, or in effect create an artificial shortage ultimately raising the cost to the consumer. Thus, random aggressive enforcement may be most advantageous to the more sophisticated criminal entrepreneur/organization, for the net effect is increased profits. This unintended consequence has certainly proven valid in the licit sector of the economy, for as the oil supply was artificially restrained, consumers paid more for less, and ultimately the oil industry profited.

Surely, the dilemmas presented to the narcotic enforcement administrator are varied and complex, yet there is a need to incorporate this knowledge into a coherent and substantive approach to the problem.

The Need for Market and Strategy Analysis

Within the context of proscriptive enforcement policies, law enforcement is tasked with what are conflicting and elusive goals. That is, if the police seek to dissuade heroin use, they may unconsciously promote an increase in predatory crime. Similarly, if major conspiracy investigations are to be the primary focus of enforcement, supply may be artificially constrained, increasing the cost of heroin to the addicted. Thus there is a distinct need to understand more about the illicit market and how law enforcement policies affect the market.

The Nature of the Market

Our understanding of the illegal narcotics market is vague and fragmented. Policymakers

have been ill-equipped to evolve sound and rational strategies from the "quality" of the data available. However, given its natural limitations, it is possible to discuss strategy from the soft, inferential data which does exist but is seldom analyzed. Succinctly, we can arrive at several qualified conclusions regarding the illicit drug market.

- **Non-monolithic.**—It appears from the numerous investigations conducted that this illicit market is comprised of criminal networks which are extremely fluid in structure and share in the various divisions of labor. This in many respects compounds the ability of police to successfully disrupt a criminal network.

- **Decentralized.**—With the exception of the heroin market, the data seems to suggest considerable decentralization of control over market allocation. This, too, has negatively affected the ability of law enforcement to mount an effective strategy against a controlling entity.

- **Violence.**—Because of the apparent lack of central control, the market is plagued with an extraordinary level of competition, often resulting in relatively high incidence of violence.

- **Corruption.**—The corruption which exists in this illegal market appears to be situational as opposed to systematic. Criminal networks generally do not appear to use the police to eliminate competition or enforce internal sanctions (as has been found in other illegal markets).

- **Money Flow.**—The data seems to suggest that money and drugs flow independent of one another. Seldom are profits seized with drugs, which again has serious implications for enforcement policy.

- **Diversity.**—The data indicates that this particular market is ethnically and socioeconomically heterogenic.

- **Elasticity.**—This illicit market appears to be extremely inelastic in that a change in price negatively affects demand. Simply, as price rises, demand diminishes.

- **Price.**—It appears that cost is related to a variety of factors, enforcement (e.g., risk) being only one.

- **Polymarket.**—This illicit market can best be described as a polymarket,—comprised of numerous illicit substances each of varying quality. In this respect it is important to recognize that enforcement strategies must be tailored to the exigencies of the particular market.

In summation, it appears that the fluidity, diversity, and competitiveness found to exist in this market have made it uniquely immune from traditional enforcement strategies. Regardless of

resource allocated, the market has a regenerative quality which seriously constrains the policy options available.

Creating a Criminal Monopoly

Assuming the theories of rational expectations are applicable to this illicit market, changes in enforcement strategies can have a significant impact upon demand, since criminal entrepreneurs (like their "legitimate" counterparts) acting in their own self-interest, will seek to minimize risk and take advantage of opportunities. Inasmuch as this illicit market is responsive to enforcement pressures, the role of the administrator is to apply the criminal sanction in such a manner so as to induce the desired results. Applying techniques employed by market analysts, policy options (other than random arrests and prosecutions) are only limited by the imaginations of innovative administrators. Let us illustrate our point using the petroleum industry as our central focus for reference.

In analyzing the effects of monopoly on consumer behavior, we find that the collusive pricing practices of O.P.E.C. did in fact alter consumer behavior. For instance, the higher price of fuel oil resulted in (1) dissuading casual use of the automobile, (2) a consumer shift to smaller, more economical vehicles, (3) the lowering of thermostats, and (4) the birth of new energy industries, (e.g. gasohol, solar, wood stoves, and coal). Clearly, the effects of price control brought about by monopoly seriously affected consumer demand. Ironically, the heroin market bears remarkable resemblances to the petroleum market.

Schelling once remarked, "Surely some of the interests of organized crime coincide with those of society itself . . ." If our public posture toward heroin must remain one of proscription, we must then reflect upon the type of market which would be most advantageous, or should we say less deleterious to the social fabric of society. It would appear that a law enforcement strategy which induces a criminal monopoly, while fraught with serious political implications, may be in the best interest of society providing that the legitimacy of the political and criminal justice processes are not compromised in the process.

For example, if the police through enforcement were able to eliminate competitive networks engaged in the importation and distribution of heroin, it seems likely that price would be affected. In that a criminal monopoly (similar to a "legitimate" monopoly) is concerned with constricting supply, inhibiting competition and

ultimately increasing price, we may conclude that the effects will be (1) dissuading use by the casual user, (2) a shift or diversion in user demand to other drugs, and (3) the emergence of new illicit substitutes. Since it is the "user" population which comprises the largest segment of consumer demand for heroin, it appears that this enforcement strategy would be most advantageous to containing the use of heroin. Of course, we must also be cognizant of the more deleterious effects of such a policy, primarily on the addicted. Whereas law enforcement officials contend that the addicted are responsible for the majority of property crime, a criminal monopoly will, in effect, raise the cost of heroin to the addict, possibly increasing the rate of crime. It is the recognition of this unintended consequence which must be incorporated into our policy analysis.

Encouraging Competitive Markets

Again, if we assume that consumer demand can be effected through (among other variables) an enforcement strategy, it may be possible to induce a competitive market. While it may sound somewhat ironic to suggest competition in this illicit market, there are several reasons which may influence our decision on this matter.

First, if we look at competition in licit markets, it is readily apparent that real competition ensures a relatively quality product at a reasonable price. This was certainly witnessed in the auto industry (of late) where foreign manufacturers were capable of effecting consumer demand. Applied to the illicit market, then, competition should certainly reduce the cost of the product (let's use heroin as our product) making it available to those addicted at a more reasonable price. If, as enforcement authorities suggest is true, addicts are responsible for the greatest percentage of crime, the drop in the cost of heroin should also result in a comparable reduction in crime (since addicts will not need as much money to purchase heroin).

Secondly, competition in legal markets allows the consumer a choice. If one product does not meet the need or desire of the prospective user, another choice of a comparable, lesser or even superior quality exists. Similarly, in the illicit market, if competition is established in an illicit market, the ultimate consumer (in this case again, the addict) can seek out a comparable substitute. The implications of this freedom of choice are certainly clear: The supplier who consistently provides a product of marginal quality eventually is forced out of business. This minimizes the allocation of finite resources by permitting the market to

regulate itself, thus allowing the police to concentrate upon those criminal networks which are seeking to gain exclusive control of the market.

Third, not only does competition weed out the marginal supplier, it also encourages sources of information, thus enhancing the investigative process. In this respect, the illicit market does not differ significantly from the licit market; for in a highly competitive environment, the regulatory process (or enforcement process) can have a deleterious effect on profit margins. Given intense competition among several criminal networks engaged in the distribution of a particular commodity (e.g., heroin, cocaine, marijuana), it is usually the more efficient criminal organization that may use the police to eliminate competitors. Thus, it becomes quite apparent that in a highly competitive market information will be more available, allowing the police choices (i.e., alternatives) in what they will and will not pursue or investigate. Hopefully, in arriving at this decision, the implications of this choice will be more obvious (although not necessarily more comforting).

Lastly, a competitive market inhibits the concentration of power—social, economic and political—which is often characteristic of a monopolized market. As we previously implied, the political consequences of a criminal monopoly is the exclusive power which a criminal organization exercises over not only the illicit market, but also licit markets—policy, politicians, legitimate business, etc. By encouraging an unstable market through an enforcement strategy, the police are at the very least, able to retard the growth of criminal monopolies, which if unchecked, may gain a sizeable and certainly exclusive hold of a particular market making it less susceptible to police intervention.

Of course the problem is, how do the police affect market conditions? Simply in the manner in which they allocate resources. If, for instance, the police seek to encourage a criminal monopoly, investigative resources should be prioritized toward those independent, less aggressive or marginal criminal entrepreneurs who are attempting to acquire a stake in the market. If on the other hand, the police subscribe to a competitive enforcement strategy, criminal networks which are seeking to acquire monopoly or exclusive control of the illicit market are prioritized over their less aggressive counterparts. It is this concept of selective enforcement which remains fundamental to developing narcotic enforcement strategies.⁵

⁵Mark H. Moore, *Buy and Bust*, Lexington, Massachusetts: D.C. Heath & Co., 1977.

Strategic Management of Resources Through Goal Setting

While we have engaged in some rather rudimentary forms of market and strategy analysis, we cannot underestimate the need for applying this type of analysis to enforcement decisionmaking. There are certain realities to enforcement; realities which are often neglected by legislators and citizens in their quest for solutions to some of our most enduring and frightening social problems. "Full enforcement of the law," a popular clique among traditional law enforcement administrators must, out of legal and fiscal necessity, give way to the intelligent, judicious and selective allocation of finite police resources. The decade of the eighties will unquestionably represent an era of necessary circumspection; where decisions on how to allocate resources (that is, spend money!) must be made consciously and with an understanding of what it is that must be controlled. While decisionmaking in law enforcement is always political, it need not be fiscally irresponsible. The *business* of police management involves more than enforcing the law. Unless the police acquire the skill and sophistication in making critical policy choices, the future looks as dismal as the past. The strategic management of police resources, constantly balancing the costs to be incurred against the intended benefits and unintended consequences, provides a clearer sense of direction in the future.

While the development of an appropriate enforcement rationale represents a formidable task for the narcotic enforcement administrator, establishing and implementing enforcement goals appear to remain elusive. Indeed, as we wander through the various definitions of the drug problem, we are confronted with inherent conflicts and contradictions which often paralyze the decisionmaking processes. Although we are sensitive to the dilemmas confronting the administrator, without the verbal and written articulation of goals, any program becomes unmeasurable and ultimately, meaningless. This will result in well-intentioned efforts being ritualized and symbolized to demonstrate success. Let us briefly address the goals available to the narcotic enforcement administrator, realizing that regardless of the inherent conflicts that exist, viable programs require the formal articulation of goals.

Reducing Public Visibility

The most expedient and certainly popular goal of a vice commander is reducing the visibility of drug use and abuse within a community. Often com-

munity pressure is the primary reason for pursuing such a goal, and police must remain sensitive to community interests. While some may perceive this goal as symbolic in nature, it is certainly not inappropriate for the police to engage in symbolism if the result is community support. Thus, while we clearly recognize that this goal may accomplish very little with respect to reducing supply and may have only a marginal effect on demand, it may in the short term allay community fear and frustration.

Diminish Predatory Crime

Many narcotic enforcement officers suggest that heroin addicts are responsible for a large volume of predatory crime. While we may question the volume of crime these addicts are actually responsible for, there appears to be enough evidence to indicate that, at the very least, a significant (5% - 20%) percentage of property crime could be eliminated if addicts were able to acquire their necessary "fixes" at reasonable costs. Assuming that legal dispensing of heroin remains out of the question, the next likely alternative is lessening enforcement efforts against heroin addicts, hopefully reducing the cost of heroin to addicts (assuming cost is related to risk). Understandably, this enforcement strategy is unpopular, for there is a countervailing philosophy which strongly suggests that increasing enforcement against heroin addicts will either divert addicts to methadone maintenance programs or increase incarceration rates, having the effect of reducing predatory crime. Unfortunately, both arguments deserve further testing, for it is certainly arguable whether, in this illicit market, price is affected by local enforcement efforts and whether the criminal justice or the social service systems possess the resources to accommodate the large volume of arrests/diversions that would presumably be generated. Regardless, however, if the problem is defined in terms of predatory crime, the goal must be its reduction through diversion, incarceration and/or lessening of consumer costs.

Dissuade New Use Demand

If we accept that the state through the criminal justice process has an obligation to dissuade the use and abuse of various narcotics and dangerous drugs, we must then allocate the finite resources of the police toward that aspect of the problem that is

most likely to yield the most beneficial results. In this respect, "beneficial results" shall be defined as dissuading those who have not yet experimented with an illicit substance. Assuming the police through enforcement are able to effect risk and inconvenience, it would appear most advantageous to focus available resources toward areas of "new use" and lessen enforcement in areas of "consistent abuse." Pragmatically, this could be translated into increasing the cost of drugs to "new users," the risks of being identified or apprehended, and forcing "new users" to areas where their probability of criminal victimization is significantly increased.⁶ Moreover, it may be possible to measure this deterrence phenomenon if, under carefully controlled conditions, we were able to rigorously evaluate an experimental zone as opposed to a nonregulated zone.⁷ This would in the long term enable law enforcement to make some conclusive statements regarding containment of the contagious qualities of heroin abuse.

Reducing Supply

If, on the other hand, the enforcement administrator opts for a supply reduction strategy, the focus of enforcement is directed toward the distributors or suppliers of narcotics and dangerous drugs. (In this case, the user/abuser is perceived as the "victim" of the supplier.) Criminal sanctions are applied for the primary purpose of increasing operating expenses, thereby reducing profit margins and interrupting distribution routes. It must be recognized, however, that this particular strategy assumes that the costs incurred will reduce profit—a tenuous assumption given the ability of the criminal organization to pass on costs to the consumer. Theoretically, at least, we must assume that it is possible to increase costs to such an extent so as to make the profit margin negligible, in essence forcing "bankruptcy" or permanent disruption. Of course society must sustain the costs of such enforcement, and if we have learned nothing more, such enforcement is costly. It is certainly arguable whether a demand or supply reduction strategy is most cost-efficient and effective. Nonetheless, it is this policy paradigm which deserves further empirical testing if administrators are to acquire the data necessary to subsequently assess their enforcement efforts. And it is certainly within the realm of management to selectively focus enforcement resources in order to measure effectiveness. Toward this end, the strategy must be carefully and systematically formulated, updated, and if necessary, reformulated.

⁶*Ibid.*

⁷See "Toward A Heroin Problem Index—An Analytical Model for Drug Abuse Indicators," National Institute on Drug Abuse, 1978, for a method of assessing prevalence.

Divesting Criminal Monopolies

A most attractive goal with respect to narcotic enforcement that we can suggest is the redefining of the narcotic and dangerous drug problem in terms of criminal monopolies. The one aspect of the drug problem which appears to represent the greatest threat to society, and is least understood or discussed, is the monopolization of this illegal market by a limited number of criminal organizations. Once control over an illicit (or licit) market is exacted and maintained, supply can be artificially constrained, thus raising price and profit. Conceivably, the benefits of criminal monopolies—less violence, increased price thus dissuading new use, poorer quality, etc.—outweigh the purported liabilities. However, as we have witnessed in other illicit markets, the political and economic power which a criminal organization acquires when a market is monopolized can weaken and undermine the social fabric of the community to a greater extent than does the service being provided. It is from this perspective, then, that the divestiture of criminal monopolies may represent the most judicious allocation of narcotic enforcement resources, given the inherent constraints of the criminal justice processes. Essentially, then, we are arguing that conspiracy and racketeering investigations are a viable enforcement methodology, *providing the purpose is not supply reduction but market divestiture.*

Ensuring Market Stability

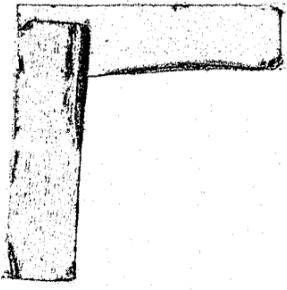
As we previously pointed out, encouraging market stability through the criminal monopoly provides law enforcement with a means of containing the contagious effects of heroin abuse. While we recognize that demand is dependent upon a number of factors, price is certainly a variable in this question. Inasmuch as we believe price to be

related to risk (or the lack thereof), increasing the probability of being apprehended for distributing heroin would, under rational conditions, increase costs to the user/abuser. Moreover, price is related to competition (and the lack thereof), thus eliminating competition in this illicit market could have an appreciable effect on cost inflation. In effect, the goal is creating a criminal monopoly in this illegal market, "permitting" through enforcement, a stable, noncompetitive market. Ostensibly, this goal is politically unpopular, yet it brings to the surface and consciously articulates the complexity of enforcing laws which, although in the best interests of society, fail to acknowledge the economics of criminalizing marginal behavior.

Conclusion

Short of creating a police state where risk is increased at unconscionable levels, the ability and capacity of law enforcement to address what appears to represent a social and medical issue is appropriately constrained. As we previously pointed out, the enforcement strategies discussed all rely upon the rationality of the prospective "customer," "victim," or "supplier" to respond to various risk thresholds. Possibly, rationality may not adequately characterize the behavior of the customer, who often is the supplier as well as the abuser of narcotics and dangerous drugs. Nonetheless, if narcotic enforcement dialogue is to transcend the moral and philosophical arguments that have paralyzed enforcement strategies, understanding both the limits and strengths of the criminal sanction in establishing risk thresholds is central to a viable enforcement program. While impressive arrests and convictions sometimes occur, the durability and vitality of criminal organizations and illicit markets to regenerate appears to minimize any lasting consequence. In "Zero-Sum" enforcement, whatever the successes, there are undeniable failures.⁸ If we have done nothing more than articulate the issues and revitalized the dialogue, we have achieved our modest goal.

⁸Lester Thurow, *The Zero Sum Society*, New York: Basic Books, 1980. Thurow essentially argues that there is a loser for every winner which in fact constitutes a zero-sum game. Applied to narcotic enforcement, for every gain there is a commensurate loss.



END