

Families and Friends for Drug Law Reform (ACT) Inc.

committed to preventing tragedy that arises from illicit drug use

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NEWSLETTER

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NEXT Meeting

Thursday 24 July 2008 at 7.30pm

Venue: St Ninian's Uniting Church, cnr
Mouat and Brigalow Sts, Lyneham.

Refreshments will follow

Editorial

The juggernaut of the Model Criminal Code rolls along.

The Model Criminal Code is a proposal, with its origins in the late 1980s, that attempts to introduce uniform criminal codes throughout Australia. Although some state laws, in respect of illicit drugs, provided better social outcomes, those developing and implementing the Model Criminal Code did not take this into account. The standardisation of the laws removed those positive aspects benefits.

Take for example the ACT Simple Cannabis Offence Notice (SCON) system that was introduced in the ACT in the late 1980s. That legislation took the penalties for minor cannabis offences out of the criminal law and provided for a fine, not unlike a parking fine. Thus offenders did not receive a criminal record for the offence, but society's disapproval was still signalled.

The Model Criminal Code has returned much of that legislation to criminal law. In addition, it introduced penalties that could see young people receive criminal records and severe penalties for other minor drug offences.

Now the Model Criminal Code is being extended to provide for uniform laws that allow controlled police operations. A Bill is currently before the Legislative Assembly, that on the surface seems reasonable.

The aim of a controlled police operation is to gather evidence and intelligence against those who organise and finance crime, rather than merely focus on couriers and intermediaries. It permits law enforcement officers to allow the scheme to unfold under controlled conditions.

During the process of allowing this to occur an undercover police officer may himself or herself need to commit acts that would be regarded as offences unless protected by law. For example, participating in the possession or sale of illegal drugs.

Of course extreme care needs to be taken with the operation of this legislation. It must be closely controlled and supervised because it opens the way for corruption. Recall the recent case of Mark Standen an investigator in the NSW Crime Commission who was involved in a controlled operation but who is now accused of involvement in a \$M120 conspiracy to import precursor

chemicals. Additionally only 1kg out of 7kg of cocaine was recovered in another operation lead by Mr Standen.

Such operations also have the potential for entrapping those who would not otherwise be involved in drug trafficking. The explanatory statement associated with the Bill had this to say on the matter of entrapment:

Controlled operations can engage the right to fair trial, under section 21 of the Human Rights Act 2004 if the operation results in entrapping a person to commit a criminal offence or improperly inducing a person to commit an offence.

It is now well established in the case law of international courts and tribunals that "entrapment, and the use of evidence obtained by entrapment, may deprive a defendant of the right to a fair trial", and "the fairness of a trial is violated if the crime for which the defendant is prosecuted has been incited or instigated by police officers": Loosely v R [2001] UKHL 53, also Teixeira de Castro v Portugal (1998) 28 EHRR 101. In Loosely, the British House of Lords determined that to allow a defendant to be tried and convicted on the basis of acts committed as a result of entrapment would amount to an abuse of state power, and would bring the proper administration of justice into disrepute.

This Bill is not intended to modify the law that would prevent a defendant to be convicted on the basis of acts committed as a result of entrapment or improper police inducement. It is intended that in any prosecution involving evidence obtained by the powers exercised under the Bill, where it is alleged that the evidence is the result of inducement or entrapment, the court retains its discretion to receive and exclude evidence or stay proceedings consistent with the right to fair trial.

The operation of these laws will provide the real test. It is possible that the new laws will lead to arrests of more users than dealers or Mr Bigs. Despite often repeated claims that police only wish to catch the dealers and the Mr Bigs, the evidence indicates otherwise.

Statistics on arrests published by the Australian Crime Commission for 2007 indicate that in the ACT 84% of drug arrests are of users, not dealers (For the whole of Australia the figure is 81%). Of the remaining 16% in the ACT (19% in Australia) a proportion would be user/dealers, ie those who are supporting their drug use through selling drugs.

The arrests of users is a figure that is likely to increase under these laws. And it is worth noting that NSW which already has this legislation is currently going through a prison building boom (see later article).

The checks and balances need to be carefully thought out and scrupulously supervised. The effectiveness of the legislation needs to be evaluated, in terms of how it has

affected the available drugs on the street rather than just headlines in the newspaper.

A second issue in respect of the roll out of the legislation that has its origins in the Model Criminal Code is that it has been driven almost exclusively by law enforcement agencies, with little input from other interested agencies and with little consideration to the collateral damage that this law enforcement driven approach has or will in the future have.

For example one major argument for the emasculation of the SCON system in the ACT was that large hydroponic operations had been set up and that legislation was necessary to prosecute the operators of such production systems. In reality the legislation was not necessary and most of those who had set up large hydroponic systems had been arrested and prosecuted well before the new legislation was introduced.

Now a person who simply grows one plant in their bathroom for their own personal use is considered to be growing it hydroponically and can face a criminal record. It is a very severe penalty that will seriously and adversely affect his/her future life chances. A broader and more balanced working party developing the Model Criminal Code would have provided a better outcome.

However it is difficult even at this stage to see how this Model Criminal Code juggernaut can have its course changed. There are dominant interests in providing more police powers, in building more jails and demonstrating a "tough on crime" approach.

In many other fields, governments allow or even facilitate market forces to arrive at a solution for a particular problem. The current carbon trading proposal is a case in point. The thinking is that forcing higher prices for green house gas producing commodities will mean that people will choose the alternative, cheaper non polluting commodity.

This is not the thinking with illicit drugs. The law and order approach has resulted in massive profits for anyone prepared to take the risk of being involved in the trade. Users will pay the high asking price (often with yours or my cash and jewellery), and thus keep the trade going. Despite the bold headlines in newspapers about the latest drug busts, suggesting that the war on drugs is being won, the evidence (on price, purity and availability) suggests that it is business as usual.

But would it be unthinkable for governments to facilitate market forces and cause a shift away from the corrupting and polluting Mr Bigs, like they have planned for carbon trading? That is, something that is safer, has better quality control, and which provides responsive and welcoming avenues and pathways to encourage users into treatment.

This is the U.S. on drugs

Only cops and crooks have benefited from \$2.5 trillion spent fighting trafficking.

By David W. Fleming and James P. Gray, July 5, 2008

The United States' so-called war on drugs brings to mind the old saying that if you find yourself trapped in a deep hole, stop digging. Yet, last week, the Senate approved an aid package to combat drug trafficking in Mexico and Central America, with a record \$400 million going to Mexico and \$65 million to Central America.

The United States has been spending \$69 billion a year worldwide for the last 40 years, for a total of \$2.5 trillion, on drug prohibition -- with little to show for it. Is anyone actually benefiting from this war? Six groups come to mind.

The first group are the drug lords in nations such as Colombia, Afghanistan and Mexico, as well as those in the United States. They are making billions of dollars every year -- tax free.

The second group are the street gangs that infest many of our cities and neighborhoods, whose main source of income is the sale of illegal drugs.

Third are those people in government who are paid well to fight the first two groups. Their powers and bureaucratic fiefdoms grow larger with each tax dollar spent to fund this massive program that has been proved not to work.

Fourth are the politicians who get elected and reelected by talking tough -- not smart, just tough -- about drugs and crime. But the tougher we get in prosecuting nonviolent drug crimes, the softer we get in the prosecution of everything else because of the limited resources to fund the criminal justice system.

The fifth group are people who make money from increased crime. They include those who build prisons and those who staff them. The prison guards union is one of the strongest lobbying groups in California today, and its ranks continue to grow.

And last are the terrorist groups worldwide that are principally financed by the sale of illegal drugs.

Who are the losers in this war? Literally everyone else, especially our children.

Today, there are more drugs on our streets at cheaper prices than ever before. There are more than 1.2 million people behind bars in the U.S., and a large percentage of them for nonviolent drug usage. Under our failed drug policy, it is easier for young people to obtain illegal drugs than a six-pack of beer. Why? Because the sellers of illegal drugs don't ask kids for IDs. As soon as we outlaw a substance, we abandon our ability to regulate and control the marketing of that substance.

After we came to our senses and repealed alcohol prohibition, homicides dropped by 60% and continued to

ACT Elections

Later this year the ACT will face an election. We plan to send a list of questions to each candidate to ascertain their views on drug issues. The answers will be published to assist people decide on their voting preferences.

The questions generally will ask about support for harm reduction, support for evidence based policies, support for evaluation of current practices and support for trials of alternate approaches.

As yet the questions have not been developed and input from members is sought. Send in by email any specific issues or questions you would like to be included in the list of questions. The email address is indicated on the front of this Newsletter.

decline until World War II. Today's murder rates would likely again plummet if we ended drug prohibition.

So what is the answer? Start by removing criminal penalties for marijuana, just as we did for alcohol. If we were to do this, according to state budget figures, California alone would save more than \$1 billion annually, which we now spend in a futile effort to eradicate marijuana use and to jail nonviolent users. Is it any wonder that marijuana has become the largest cash crop in California?

We could generate billions of dollars by taxing the stuff, just as we do with tobacco and alcohol.

We should also reclassify most Schedule I drugs (drugs that the federal government alleges have no medicinal value, including marijuana and heroin) as Schedule II drugs (which require a prescription), with the government regulating their production, overseeing their potency, controlling their distribution and allowing licensed professionals (physicians, psychiatrists, psychologists, etc.) to prescribe them. This course of action would acknowledge that medical issues, such as drug addiction, are best left under the supervision of medical doctors instead of police officers.

The mission of the criminal justice system should always be to protect us from one another and not from ourselves. That means that drug users who drive a motor vehicle or commit other crimes while under the influence of these drugs would continue to be held criminally responsible for their actions, with strict penalties. But that said, the system should not be used to protect us from ourselves.

Ending drug prohibition, taxing and regulating drugs and spending tax dollars to treat addiction and dependency are the approaches that many of the world's industrialized countries are taking. Those approaches are ones that work.

David W. Fleming, a lawyer, is the chairman of the Los Angeles County Business Federation and immediate past chairman of the Los Angeles Area Chamber of Commerce. James P. Gray is a judge of the Orange County Superior Court.

New ways to crack opium

Robert Leeson, The Australian, July 01, 2008/

AUSTRALIAN Federal Police Commissioner Mick Keelty's trip to Afghanistan throws the spotlight on the Taliban's drug trade.

Keelty is sending 12 AFP agents to join up to 1000 international officers training the Afghan police in counter-narcotics. But the Pentagon's first post-invasion assessment of conditions in Afghanistan reveals that the Taliban killed 6500 people in 2007 (a post-invasion record), its funding base, opium production, "increased substantially" and that overall counter-narcotics efforts in Afghanistan have not been successful.

Perhaps it's time to try another tack using incentives to attack the Taliban's opium trade. Local, village-based Afghan factories should be offered licences to use opium to produce painkillers for export (the Senlis Council's "Poppy for Medicine" proposal). Hearts and minds follow income-generating crops and access to pain relief.

But the US State Department favours the 4-96 solution, whereby about 4 per cent of the crop is eradicated and the Taliban is the major beneficiary of the remaining 96 per cent.

There is a second alternative: the 100-0 cold Turkey solution. Turkish poppies were targeted in an earlier war on drugs, but Turkish politicians were reluctant to see rural income and their fragile democracy go up in smoke.

In 1974, they revoked the ban and, with UN assistance, set up poppy-processing factories. Killer heroin morphed into painkillers and in 1981 the Reagan administration agreed to provide "special protected market status" to Turkey (and later India) by agreeing to buy no more than 20 per cent of its licit needs from other countries.

Before 1974, 80 per cent of the heroin flooding into the US originated from Turkey, but after 1974 (according to the UN Office on Drugs and Crime) "no seizures of opium derived from Turkish poppies have been reported either in the country or abroad".

The State Department fears that Afghanistan might replicate not Turkey but the third alternative: the 75-25 Indian solution in which 20-30 per cent of the poppy crop avoids licit channels and is diverted, not for export, but "primarily for domestic consumption".

Even if 25 per cent of Afghan poppies were diverted, this still represents a smaller target for eradicators (even if overall production increased).

But there is an important difference. At present, one third of the Afghan workforce is deemed -- by the NATO-led eradicators -- to be criminals. If the licence (and the associated development assistance) were predicated on the absence of diversion, a farmer who broke ranks would have chosen to become an enemy of the village.

Also, the Taliban and their drug allies would have to declare war on these local village industries to regain control over their trade. They, not us, would become the enemy.

The State Department worries that licit market forces will undermine this "carefully crafted international system" and damage the "poor farmers" of Turkey and India, resting its case on deference: "We defer to the internationally recognised body, the International Narcotics Control Board, which states that the supply of opium for legal medicines is sufficient, if there was unmet demand current producers would have already fulfilled it."

The State Department should, instead, defer to economic reasoning.

Demand is a price-quantity relationship (holding income, tastes and other prices constant). At all points along a

Annual Remembrance Ceremony

Please make a note in your diary for

- ACT Remembrance Ceremony for
Monday **20 October 2008**
12:30pm.
- Sydney Remembrance Ceremony
Saturday **18 October 2008,**
6:00pm.

demand curve, demand is, by definition, "fully met", at the associated price.

Monopolists, cartels and colluders will always attempt to pick a supply point along a demand curve so as to maximise long-run profits.

But the State Department interprets supply fixing by India and Turkey (stockpiling and de-licensing farmers) as conclusive evidence of the absence of "unmet demand".

In poppy markets, supply restrictions benefit suppliers: the Taliban benefits from eradication campaigns (which raise prices and increase revenue) and Turkey and India benefit from State Department poppycock (which protects incumbents by restricting entry).

Each year millions of sufferers (cancer, AIDS) receive no appropriate pain relief and a separate humanitarian case could be made for satisfying this widespread (non-market) demand. But elementary economics suggest that the increasing purchasing power of the formerly poor will focus disproportionately on necessities such as painkillers.

Freeing markets creates losers as well as winners: India and Turkey may require alternative diplomatic kickbacks for the loss of their privileged market position. However, the cost would be a tiny fraction of the \$US300 billion (\$310.8 billion) farm kickback bill that just passed the US Congress.

So far, 867 coalition troops have been killed in Afghanistan. More troops will pay the price for the market-fixing power that seeks to deny a legal outlet for a crop that provides \$US500 million in combined annual farm income but also generates \$US3.5 billion for smugglers and refiners. We must urgently explore options that enlist market forces rather than support futile attempts to outlaw them.

Robert Leeson is a visiting professor of economics, Stanford University and adjunct professor, Murdoch and Notre Dame, Australia, universities.

Canadian judge backs Sydney's injection rooms

Dr Alex Wodak, President, Australian Drug Law Reform Foundation

Sydney and Vancouver are two drop-dead gorgeous harbourside cities with the largest concentration of injecting drug users in their respective countries.

In both cities, concern about the large number of deaths from drug overdose led to the establishment of a medically supervised injecting centre against vehement and relentless opposition. In both countries, a conservative Federal government tried to close down the centre despite strong support from the respective state governments, local health authorities and local residents. In both countries, opponents ignored impressive scientific evidence of benefit and cost-effectiveness and the absence of serious unintended negative effects.

Insite, the medically supervised injecting centre established in 2003 in Vancouver, Canada, was given a reprieve on 27 May by the British Columbia Supreme Court. Canadian researchers have published more than twenty scientific papers evaluating Insite in leading peer-reviewed national and international medical journals.

The ruling by BC Supreme Court judge Ian Pitfield gave the Federal government one year to pass legislation making it clear that the facility should be exempt from prosecution.

Judge Pitfield declared that the facility is a place where health care takes place and that drug addiction is a health care issue, making it immune from federal drug prosecution.

The centre was due to close on June 30 when its exemption from federal drug laws runs out.

Judge Pitfield ruled that the policy of harm reduction trumps the illegal possession of heroin and cocaine by persons using the centre. He declared that the country's drug laws conflict with health concerns and that constitutionally they are a responsibility of Canada's Provinces, as well as conflicting with the Canadian Charter of Rights and Freedoms.

In a 59-page decision, the judge said people dependent on illicit drugs deserved the same kind of health care as those dependent on alcohol or tobacco. Judge Pitfield concluded that national laws blocked drug users from a health care facility that could reduce or eliminate their risk of death from an overdose or from contracting an infectious disease, thereby violating their right to life and security.

"While there is nothing to be said in favour of the injection of controlled substances that leads to addiction, there is much to be said against denying health care services that will ameliorate the effects of their condition," said Judge Pitfield.

The federal Conservative government of Stephen Harper has announced that it will appeal the judgment while the Province of British Columbia says that it is considering joining the defence.

Sydney's Medically Supervised Injecting Centre has a licence to continue operating until 2011, but only as a research project. With the next NSW elections due in March 2010, the future of Sydney's Medically Supervised Injecting Centre may well turn on judgments made in Canadian courts.

New \$150m jail for Nowra

The Canberra Times, 14/07/2008

NSW is to build another prison on the state's South Coast.

The jail at Nowra will house 500 prisoners and cost up to \$150million.

The state, which opened a lock-up at Wellington in September last year, holds just under 10,000 prisoners and the Government says that figure is expected to grow as harsher parole rules for serious offenders begin to bite.

Richard Crookes Constructions, which has already built two jails in NSW, has been awarded the tender for the initial \$123million construction phase.

NSW is also planning a 250-bed expansion of Cessnock Jail and another new 250-bed prison.

About 110 ACT prisoners held in NSW jails are expected to be brought back to the territory from September to serve out their sentences in the new Alexander Maconochie Centre at Hume.