

## How to end the war-on-drugs

By Kenneth B. Johnston

The war-on-drugs is a disaster. We Americans have hundreds of thousands of law enforcement officers fighting huge criminal organizations as well as the estimated 100 million citizens who regularly use or have used illicit drugs. If our law enforcement officers were winning, illicit drugs would be hard to find and very expensive. Regrettably, the opposite is true. Virtually anyone, child or adult, who wants illicit drugs can find them, and our officers on the front lines tell us that prices on the street are falling.

The costs to society and the economy are enormous. We have filled our jails several times over and are building more. The court systems are clogged with drug cases. People are dying every day in this war. Street pushers are killing each other in turf wars. Innocent kids and adults are being killed in drive-by shootings as drug gangs battle. Low-income neighborhoods are battle zones. Some of our officers are killed, and others are corrupted. An entire underground economy has evolved, fueled by the estimated \$90 billion dollars of drug sales. Neighboring countries are being torn apart by civil strife and wars between the legitimate government and the criminal organizations that grow coca and produce cocaine.

The reason we are fighting the war-on-drugs is to save children and adults from drug addiction, and from using pleasurable drugs that might lead them astray. The goals our forefathers had in mind when they passed the laws against drugs aren't being achieved. The laws aren't working. Children introduce drugs to each other. Adults and children become addicted. If this is a war, we're not winning. If we are losing the war, it is time to find an honorable way to end it.

So far, there is nothing new here. You already knew the war-on-drugs was a disaster. Almost everyone agrees we aren't winning the war. The question now is, "How can we end the war-on-drugs?"

Every war ends in one of three ways. You win it. You lose it. Or, you negotiate a peace.

*We cannot win the war.* The demand for drugs is huge. Huge demand will always be met by plentiful supply. We are willing, and have done our best to fight those who supply drugs. We are not so willing to bring the war to the users who provide the demand. With 100 million Americans being part of the demand, we are not willing to go to war with such a large segment of our citizenry. We do catch and jail some users. In fact, we have filled our jails with them. We are not willing, or

legally able, to take the draconian steps that might stamp out the demand. We cannot require mandatory drug testing for everyone. We cannot poison the drugs we find and reintroduce them to the streets. Without a certainty of going to jail or the risk of being poisoned, the demand will continue. With a demand this large, it will be supplied. There are vast numbers of people willing to risk jail for the huge sums of money involved. We catch some. We jail them. Others pop up to take their place. The demand will be filled.

So, we cannot win the war-on-drugs.

*To lose the war means legalizing or decriminalizing drug use.* Politically we won't tolerate the idea of legalizing crack and heroin. We can't abide the idea of letting the smugglers, pushers, drug lords, or even users be free of criminal penalties.

So, we cannot tolerate losing the war.

Not able to win the war, and not willing to lose it, we fight on, desperately and hopelessly. We are stalemated.

It is time to consider the third way to end a war. We could negotiate a peace.

*Negotiating a peace in the war-on-drugs* would require lawmakers and drug users to conduct peace talks. Each side must be willing to state what they want, listen to the other sides needs, and with the help of mediation, find an acceptable compromise. To understand the process, let's imagine how such a mediation process might work.

### **Lawmakers: Initial position**

1. We want everyone to obey our laws.
2. We don't want citizens to get addicted to drugs.
3. If you need medication, we want you to use only FDA approved drugs, and have them prescribed by doctors.
4. We want to protect you from any drug you might abuse.

### **Drug users: Initial response**

1. Our nation's drug laws are arbitrary, capricious and stupid. Mixing marijuana in with addictive drugs like heroin and crack cocaine has cost you lawmakers your credibility with young people and adults alike.
2. We don't want to get addicted to drugs. We seek the mood management that drugs provide, but we don't want to become addicted.
3. We need to be able to self-medicate sometimes. Half of us can't afford doctors and don't have medical insurance.

4. Doctors aren't allowed to prescribe drugs that produce the effects we seek, and drug companies aren't allowed to produce mood-altering drugs that have no direct medical use.
5. We want drugs that help us cope with our lives and produce the effects we seek. Here are some examples:
  - We want drugs that lift us up when we feel down.
  - We want drugs that calm us when we are anxious or stressed.
  - We want drugs that allow us to go without sleep when we have to cram for exams, deliver the load on schedule, or finish the project by the deadline.
  - We want drugs that enhance our sexual experiences.
  - We want drugs that help us sleep well when we need to sleep and can't.
  - We want drugs that allow us to explore our inner spaces, and give us experiences we can't have without a drug.
  - We want drugs that enhance our sensory experiences of touch, smell, vision, taste, and sound.

Lawmakers: *"The drugs you are asking for are subject to abuse. We don't feel comfortable permitting drugs that some might abuse."*

Users: *"Those who would abuse the non-addictive drugs we ask for are already abusing the far worse drugs that the criminals produce and sell. You already have the abuse you want to avoid."*

Lawmakers: *"The drugs you are asking for would require FDA approval, and could only be prescribed by Doctors. If we allowed drugs to bypass the FDA and not be prescribed by Doctors, who would protect you from the risks associated with their use?"*

Users: *"We have no protections today. Drugs we purchase from criminals are quite often addictive. The quality is unknown. Buying them is dangerous. We often don't know what we are getting. If you allowed legitimate drug companies to provide non-addictive substitutes for the drugs we are using, we wouldn't have to buy from criminals and consistent quality and proper labeling would protect us. We realize there would be risks of using drugs that are not approved by the FDA and prescribed by Doctors. We are willing to take those risks. The risk posed by unapproved drugs is far less than the risks we take now when we buy unknown substances from criminals."*

Mediator: *"I think we have the basis for compromise and accommodation on each side: (If lawmakers would allow pharmaceutical companies to produce non-addictive substitutes that*

*approximate the effects that users seek, the users would buy those substitutes instead of the dangerous addictive drugs sold by criminals.)”*

Users: “We agree.”

Lawmakers: “It would be worth it to get rid of the criminals, re-deploy our law enforcement agents, empty our jails, and eliminate the untaxed underground economy. But, it would be politically difficult. We would need a strong president and a lot of political cover.”

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Sometime in the future, a courageous and visionary leader will arise to lead our nation, and other nations of the world, to break through the stalemate that exists in the war-on-drugs. This leader would sponsor an alternative to the war-on-drugs. The successful alternative would be a compromise and a middle ground between the warring parties.

One such alternative will be described here. Let’s call it the Licensed Non-Medical Use Act. Congress might call it LNONMUA.

LNONMUA would license large ethical pharmaceutical companies to market unapproved non-addictive substances for medical & non-medical uses.

**License** means that any large ethical drug company could be licensed to sell non-addictive drugs for medical and non-medical uses. To obtain the license, the ethical pharmaceutical company would agree to use national standards of disclosure and instruction concerning dosage, usage, possible side effects, interaction with other drugs, etc. The kind of disclosure and instruction that is standard today for FDA approved drugs.

**Large ethical pharmaceutical companies** are those who supply our prescription drugs today. The Pfizers, the Mercks, the Bayers, etc. Large means that only those drug companies with annual sales of at least one billion dollars annually would be eligible.

**Market** means they could legally sell their products through retail outlets, over the internet, or by mail, but would not be allowed to promote their use through advertising.

**Unapproved** means that the substances would be clearly marked as unapproved by the FDA or any other Federal agency. The label would make it clear that the Surgeon General recommends against their use and the packaging would highlight the risks, dangers, and undesirable attributes, as well as people for whom usage is contra-indicated.

**Non-addictive substances** means that when used as directed, the substance would be at least 75% less addictive than some standard illegal drug, such as morphine, or heroin. An independent body of scientists would create a reliable and measurable scale of addiction, so the ethical drug companies could measure their potential offerings against a legitimate standard.

**Medical** uses are drugs which, if the FDA approved them, would be prescribed by doctors, or purchased over the counter for the treatment of some medical condition.

**Non-Medical** uses are substances that produce effects that are desired by consumers but are not treatments for some medical condition. Non-Medical substances are those that produce the kinds of effects desired by those who use illegal drugs today. Some might produce pleasurable sensations. Some might produce mild euphoria. Some might help the user stay awake to cram for exams or finish a project on a tight deadline. Some might enhance sexual experiences. Some might enhance the senses of touch, taste, or sight.

The result of the new law would be safe, low-cost access to pure non-addictive substances that would compete with the dangerous, impure, sometimes addictive drugs sold by criminals presently.

Licensing the sale of substances for non-medical uses would allow ethical drug companies to compete with the criminals who make and sell illegal drugs. Licensing would allow ethical pharmaceutical companies to destroy the monopoly the criminals enjoy today.

**How it might work.** One could walk into a drug store, liquor store, or grocery store and find a counter marked, "Unapproved Substances." Anyone over the age of 18 seeking a pill to alter their mood, enhance an experience, add excitement to their marital relations, relieve their stress, reduce their anxiety, or sleep more peacefully, could have their choice of products. The products would all be pure, safe, relatively non-addictive, and fully labeled as to dosages, side effects, interactions with other drugs, and warnings of contra-indications. The signage would make it clear that the substances are unapproved, possibly risky, and not endorsed by the Surgeon General, the AMA, FDA or any federal agency.

What do you think would happen to the market for criminally offered products? All of a sudden, the market for cocaine, heroin, crack, and other criminally produced products would collapse. The criminals, pushers, drug lords, and empires would be out of business.

No one in their right mind would purchase illicit drugs from criminals in dark alleys, when they could approximate the effects they seek in a safe and legal manner. Who, in their right mind, would choose an

addictive product over products producing similar effects that are non-addictive?

A free market, using competition, innovation, and creativity would virtually guarantee that quality, low cost, safe substances would win in the marketplace and drive out the unsafe, unreliable, addictive products sold in back alleys.

The war-on-drugs would be over. Hundreds of thousands of law enforcement officers could be reassigned to important issues such as public safety and homeland security. The court systems would free their dockets. The jails would be half emptied. Low-income neighborhoods would be safer. Countries like Columbia, Peru, and Mexico would be freed of the narco-terrorists, drug lords, criminal empires, and civil strife.

Cities, counties, or state governments would have the right to pass laws forbidding the retail sale of unapproved substances. After all, states have such rights. The Federal legislation, however, would make it legal to possess the unapproved substances, and legal for the post office and delivery services to deliver them, so citizens desiring the unapproved substances could order them over the internet. Cities, counties and states would find it difficult to forgo the various sales, and other, taxes they could levy on the unapproved substances. In addition, few cities or states would like to attract the few remaining criminals to their locations, where criminal sales would still have a market. So, it is likely that the Federal legislation would win out and unapproved substances would be freely available to those who are willing to risk them.

### **Side Benefits**

In addition to ending the war-on-drugs, the visionary LNONMUA act would produce many wonderful side benefits to the economy. The estimated \$90 billions of untaxed revenues now going to criminals each year would be brought into the nation's economy. Local and state governments would get increased tax revenues they need so desperately today. The pushers, mules and drug lords would have to find real jobs and become taxpaying citizens. Retail outlets would get significant revenue increases. States could reallocate monies they are spending on prisons to worthwhile purposes, such as education and public safety.

The LNONMUA act would have many social and humanitarian benefits as well. Ethical drugs that are approved in other countries would be available as unapproved drugs immediately, while awaiting the lengthy FDA approval process. People with terminal illnesses, such as Cancer and Aids, might be willing to risk taking unapproved drugs in hopes of

relieving their crises. People taking cancer drugs that ravage the body with nausea and loss of appetite would have access to the nausea relief and appetite stimulating effects of THC, the active ingredient in marijuana.

Drugs would become available for rarer diseases. Ethical drug companies spend hundreds of millions of dollars to get FDA approval for a new drug. Diseases with small populations don't offer the drug companies a chance to get their research money back, so the rarer diseases get little, if any, help from drug companies. If these companies are allowed to offer unapproved drugs, and the patients are willing to take the risks associated with unapproved drugs, some relief, respite, or cures might be available for these desperate people.

Wow! One new piece of federal legislation and enormous public benefit ensues. Why don't we just do it? Why will it take a courageous and visionary leader to lead the country to this marvelous end?

### **What would it take?**

Numerous barriers will have to be overcome. Here are just a few.

1. The widespread idea that "if some will abuse it, no one can use it". This is the famously wrong kind of thinking that brought us the prohibition of alcohol. The nation quickly learned that prohibition of a substance in wide demand only brings crime, corruption, and devastation to the nation. We abandoned the prohibition of alcohol. Yet, we still have many citizens and lawmakers who harbor the idea that "if some will abuse it, no one can use it." People who still hold this disproved idea will fight against the legalization of any substance that could be abused. They will constantly need to be reminded that society has learned to handle abuse. We handle alcohol abuse by punishing the wrongful acts of abusers, such as drunk driving. We already handle the wrongful acts of those who use illegal drugs, such as driving under the influence, DUI. We could handle wrongful acts committed by users of unapproved substances in the same way. Finally, we need to remind these folks that their idea isn't working. Criminals are making sure that "anyone who wants to abuse it, can use it."

2. The AMA and FDA have long held a monopoly on the right to approve drugs and to prescribe drugs. These two incredibly powerful bureaucracies will fight with every drop of energy to maintain their monopolies. Between them, they have adopted the principle that drugs can only be used to fight a medical illness. Drugs that simply produce pleasurable sensations, or could be used recreationally are forbidden. The FDA has done a

fine job of protecting the public from impure or dangerous drugs. And, like any other bureaucracy, it will fight to protect its turf. The AMA represents most of our fine Doctors, and has done much good for society. But, MD's (and DO's) have a monopoly on prescribing drugs. As any trade association would, the AMA would fight to the death to protect their monopoly. So, the idea of allowing substances to be sold to the public that are not approved by the FDA, or prescribed by Doctors, will predictably cause these two fine organizations to fight against LNONMUA with all of the enormous influence and lobbying they possess.

As influential as these to prestigious bodies are, it will not escape the public's attention that the FDA and AMA are, inadvertently, guilty of handing the criminals a monopoly on providing pleasure-producing substances. Still, they are both powerful bodies and their resistance will be a force to reckon with.

3. Influenced by the Puritan Ethic, the remnants of Victorian thinking, and/or religious beliefs, many moral and righteous citizens believe that it is immoral and wrong to pursue pleasure. These fine, upstanding, citizens will probably never be customers for any unapproved substance. Unfortunately, many of them will also attempt to keep everyone else from having access to drugs for non-medical uses. As sad as it seems, many of these model citizens would rather continue the war on drugs that cannot be won, than to permit others to access substances that bring pleasure, relief, satisfaction, or other good feelings. Even though the criminals are already making sure that anyone who seeks these benefits can have them.

### **Who can lead?**

The visionary and courageous leader who ends the war-on-drugs will need a rare blend of courage and leadership to fight through the barriers and bring the nation, and indeed the world, to victory. Civilized nations will be victorious over the criminal empires that have exploited their monopoly on the supply of drugs for non-medical uses.

### **Some Refinements**

Let's imagine that the act contains two more refinements. First, the act could suspend patent protection during the period that a substance is sold as unapproved. This would allow other pharmaceutical companies to put out competitive versions of successful innovations, thus keeping retail prices as low as possible. The second addition would take away the consumers right to sue the pharmaceutical company for anything other than fraud, misrepresentation, or known errors in the documentation accompanying the substance. Any latent side effects



that occur occasionally, or after years of use, would be a risk that would fall solely on the user who chooses to risk taking unapproved substances. This addition would keep unapproved substances outside of the grasp of the mass tort lawyers who make fortunes from class action suits, and add to the cost of drugs by winning multi-million dollar suits and even billion-dollar settlements. Let's call this piece of the legislation a "beginning" in the movement toward tort reform. Certainly, it would lower the risks for the pharmaceutical companies and work toward keeping prices low.

The future leader with the vision and courage to get an act such as LNONMUA through congress will earn the eternal thanks of future generations of Americans, and citizens of the many countries being ravaged by civil strife because of the enormous demand of our citizens. He or she will have ended the drug war, allowed the reassignment of hundreds of thousands of law enforcement officers, unclogged the courts, half emptied the jails, brought billions of dollars from the underground economy into our national economy and destroyed the criminal empires inside and outside the nation.

When will this happen? One can't say. How often are those who lead us courageous? More and more citizens are realizing that the war-on-drugs isn't being won and cannot be won by more of the same, because the demand for pleasure producing substances is too high. Demand will always be met. Everything we know about supply and demand tells us that a huge demand will produce a huge supply. Our citizens increasingly realize that we, as a nation, are paying an enormous price for a war that cannot be won the way we are fighting it. More and more people want the war to end. Sometime, hopefully soon, a bold and visionary leader will emerge to give the people what they want.

### **A Side Benefit**

LNONMUA would produce an additional side benefit that might be worth even more to society than ending the war on drugs. The new act would lower the cost of prescription drugs! Prescription drugs are expensive and getting more expensive. Retirees often have to choose between buying food and buying their drugs. Networks are being formed to buy drugs from Canada. State Medicaid programs are going broke providing drugs to the indigent. Currently, congress wants to add a drug benefit to Medicare, but struggles with the staggering cost. The enormous cost of getting FDA approval for a drug forces drug makers to price their drugs at exorbitant prices. Patents give drug makers long periods of time to sell their drugs at high prices before other companies can compete with generics.

LNONMUA and the forces of competition and free markets offer the potential of great benefit. For example, let's examine the class of drugs called 'statins.' These cholesterol-lowering drugs are also shown to reduce heart attacks and are generally agreed to have many benefits. Annually, the makers of statins sell almost \$20 billion dollars to patients annually. The most popular drugs, such as Lipitor and Zocor are quite expensive. They also require prescriptions from doctors. Between the cost of doctor visits, and the costs of the drug, many people who would benefit from the use of a statin drug can't afford to use them. Under LNONMUA, drug makers would have the option of placing statin drugs on the unapproved shelves. If your drug company was offering the third, fourth, or fifth best selling statin, you might see great opportunity in placing your brand on the unapproved shelves. Your market would be the 75 million Americans who are, or have been, without medical insurance-the ones who have difficulty paying for a doctor's visit. People, who struggle with the high cost of visits to doctors and high costs of prescription drugs, might well be willing to pay the much lower prices of unapproved statin drugs. The instructions in the packaging would instruct the buyer to get the requisite blood test at a low cost blood lab that would check the individuals liver function to assure that he or she could use a statin safely.

LNONMUA would bring about a revolution in medical care. Low-income individuals would be able afford low-cost unapproved versions of drugs they couldn't otherwise afford. Low-cost medical clinics are already in business and growing rapidly to offer individuals the lab tests that previously had only been available through prescription by doctors.

Some might argue about a two-tiered medical system. They would object to one system for those with access to good medical care and another for those without insurance. They would object to a system with prescription medicines for those who can afford them and unapproved medicines for those who cannot. If they object real hard, perhaps society could find a way to provide some form of universal health coverage. Until then, the poor and uninsured would at least have access to the drugs that only the affluent and insured get now.

Even the affluent would have a choice. One might give up his or her prescription Lipitor to take an unapproved statin if there was a big difference in price. The net effect of LNONMUA would be downward price pressures on expensive prescription drugs.

Let's summarize the benefits of LNONMUA.

- A. The criminals would be out of business. Drug empires would collapse. Drug lords would be unemployed. Smugglers, mules, dealers and pushers would have to find other work.

Terrorists would have to find other sources of funds. Peace might return to Columbia, Peru and other states torn by civil strife.

- B. Hundreds of thousands of law enforcement officers could be assigned to more productive tasks, like homeland security, or fighting violent crime.
- C. Drug addicts would wean themselves off of the addictive drugs and get the effects they seek by using non-addictive alternatives.
- D. Crimes against persons and property would be reduced, as addicts no longer have to commit crimes to support their addictions.
- E. The court systems could return to normal with case loads a fraction of what they are today.
- F. Jails would gradually empty, and new ones would not need to be built.
- G. The economy would get a huge surge as an estimated \$90 billion dollars of taxable sales move from the underground economy to the national economy.
- H. Poor people, the elderly, and those without medical insurance would have access to low cost drugs they need and could afford.
- I. Local, State, and Federal governments would gain needed tax revenues, cut Medicaid costs, and reduce the cost of any promised Medicare drug benefit.
- J. Businesses of all sizes would lower their costs of providing prescription drug benefits to their employees.
- K. New drugs, approved elsewhere such as the U.K. or the EU could be available immediately in the U.S. for those willing to risk taking unapproved drugs.
- L. New drugs, for those afflicted by rarer diseases might find drug companies willing to discover and market drugs on the unapproved shelves if patients were willing to risk taking unapproved drugs.
- M. Ethical pharmaceutical companies would gain huge revenue increases from their research and production of non-addictive substances for the unapproved shelves. These huge revenue gains would offset the reduced revenues they will receive from their prescription drugs due to competition from unapproved offerings.

The benefits from legislation like LNONMUA would be enormous. The courageous leader who sponsors such a world-shaking innovation, and the lawmakers, who have the courage to vote for it, would face strong opposition and numerous questions.

### **Some Questions:**

Here are a few of the questions that will be up for debate:

*Who would protect consumers if unapproved drugs can bypass the FDA?*

- Some citizens will argue that only the government can protect consumers.
- Other people will argue that clear instructional pamphlets, consumer protection web sites, and user recommendations will allow the consumer to protect himself.
- It will become clear that every drug has risks; even the most common drugs available now to everyone, such as aspirin. Each person must weigh the risks against the benefits of using any drug, whether sold over the counter or through prescription.
- Proponents of LNONMUA will point out that the FDA hasn't been able to protect users from unanticipated side effects or long term negatives. They will point to Thalidomide and Baycol and hormone replacement therapies. Any drug, even approved drugs, carries risks.

*Has the existing strategy for protecting people from the terrible affects of addictive drugs failed?*

- People who support the present system will argue for still more enforcement, even longer mandatory sentences, and still more pressure on drug producing countries.
- Proponents of LNONMUA will point out that the present system protects no one. Everyone who wants an illicit drug experience can get one. Society is paying all the prices of crime, corruption, imprisonment, and drug users still have easy access.

*Is it wrong to allow people to satisfy their demand for unapproved substances?*

- Many people will argue that the pursuit of pleasure for pleasure's sake is morally wrong.
- Other citizens will argue that people should have the freedom to choose for themselves.

*Can ethical pharmaceutical companies actually create drugs that approximate the effects sought by today's users but are not nearly so addictive?*

- No one really knows because they have never been allowed to try. Creativity and innovation have been stifled by the ban on any drug that doesn't have a specific medical usage. Only criminals have been allowed to create pleasure-producing drugs, and criminals have no incentive to make drugs less addictive.
- Ethical pharmaceutical companies would enthusiastically pursue the goal of providing non-addictive forms of drugs that produce the effects desired by the estimated 100 million citizens who use or have used illicit, dangerous, and possibly addictive drugs.

It is important to notice that a proposal like LNONMUA will produce important thoughtful examination of the issues. Those who have explored the history of the war-on- drugs point to the lack of public debate. The public was never consulted. Even the lawmakers who first passed the laws gave the issue little attention or debate.

For a nation with so many wars to fight, it is time to open the war-on-drugs to thoughtful public discussion and debate. Most citizens only see two choices. Either continue the war-on-drugs or legalize addictive drugs. A courageous leader will arise to help citizens see that there is a middle ground-the legalization of non-addictive substances that would satisfy the demand that has led to addiction, crime, corruption, an underground economy and the war-on-drugs that we fight today. When this leader arises, I will vote for him or her. And, I imagine, so will you.

**The end. Or, the beginning.**