

# Freedom Dies in The War on Drugs

Eric Marti

Since 1969, when Richard Nixon declared a war on marijuana, the national drug authorities have struggled in vain to combat the increasingly popular use of pot and other illicit substances. Forty million Americans have tried marijuana, 20 million smoke it regularly, some 5-6 million are habitual users of cocaine, and heroin addicts number about a half-million. Illegal drugs add up to a \$110-billion-a-year business, with marijuana now trailing only corn as the nation's most valuable cash crop. And despite President Reagan and Attorney General Ed Meese's well-publicized campaign to beef up the nation's dope-busting forces, illicit drugs are more available today than ever before.

The authorities, however, think they've found new hope in an idea proposed by the President's Commission on Organized Crime: testing American workers by urinalysis for illicit drug use. Admitting that attempts to curtail the supply of drugs have proved futile, commission leader Judge Irving Kaufman suggests that a crackdown on demand is now in order. In a report issued in March, the commission recommended mandatory testing of all federal-government employees and of all who work for government contractors, and it urged private employers to implement testing.

The proposal immediately set off waves of outraged response, with critics blasting it as unconstitutional. The outrage is certainly welcome, but by focusing on the constitutionality of testing, the debate misses the fundamental issue: the drug prohibition itself.

If testing employees for drug use were a purely voluntary system, it wouldn't be unconstitutional. Employers have the right to require testing for drug use or anything else as a condition of employment, and if employees choose to work under such conditions, so be it.

Constitutionality aside, however, indiscriminate universal testing is still repugnant. It operates on a perverse notion of presumed guilt, leaving it to the individual to prove his innocence. The attitude of those who support the testing proposal seems to be that if you haven't done anything wrong, then you have nothing to worry about. The absurdity of that position comes out by applying the same logic elsewhere: would you permit the police to enter your living-room unannounced every now and then just to make sure that you weren't, say, beating your children?

Moreover, tests are not 100 percent accurate, which means that there will be falsely accused suspects. For example, using a procedure that is 95 percent accurate to test a population in which, say, 1 percent are "guilty" would mean that for every true accusation there would be five false accusations.

Testing is also a gross invasion of personal privacy. An individual's relation with his urine and what to do with it is an intimately private matter, and to subject the stuff to inspection by boss and police alike is an affront to personal dignity.

Yet so long as drugs are prohibited by law, authorities will be drawn to such methods of detection and enforcement, methods that are abusive of personal privacy. Already, for example, the drug police, on the lookout for "money-laundering" by drug dealers, monitor the banking activities of individuals, and banks are required by law to report large cash transactions to the authorities.

John Lawn, head of the federal Drug Enforcement Agency (DEA), fairly beat his breast when, speaking earlier this year to a gathering in California, he reported some of the feds' handiwork on this score: "These financial investigations are going on all over the United States. One California bank was fined \$2.25 million for failing to report almost

7,900 separate large cash transactions amounting to \$3.98 billion during the last five years," the DEA chieftain reassured his listeners. "Another bank in California was fined \$4.75 million for failing to report more than 17,000 large cash deposits and transfers since 1980," Lawn recounted with rising glee—though noting that in this case the institution had itself uncovered its sins against the state and "voluntarily brought its violations to the attention of the Treasury Department." Thank goodness.

The drug police have to resort to such invasive surveillance techniques precisely because the "crimes" they are trying to detect involve no victims and therefore no plaintiffs. The various transactions that take place among participants in the drug trade, from producers to traffickers to buyers, are purely private and voluntary. If I peacefully sell a substance to someone who is willing to pay for it, whose rights have been violated? If I peacefully buy a substance that someone's willing to sell me, whose rights have been violated? If I peacefully ingest the substance, whose rights have been violated? No one's.


But in order to uncover those various transactions—the supposed crimes—the drug-enforcement authorities must somehow breach the privacy in which the transactions take place: through infiltration of the drug trade, through surveillance of individuals and their bank accounts, through entrapment of drug sellers and buyers. And now, of course, by proposing to collect and assay the urine of American workers, the authorities have latched onto what is thus far the most invasive monitoring of private individual conduct.

Debating the constitutionality of the testing issue, then, is ultimately an exercise in rearranging deck chairs. That the

enforcement of the law requires such bizarre and abusive measures indicates that the drug prohibition itself is fundamentally wrong and must be ended.

The pragmatic arguments for legalizing drugs are by now familiar: No enforcement efforts short of erecting a massive police state will curtail either use or supply of easily concealable and privately consumed substances that are in popular demand. Legalizing drugs would drive organized crime out of the business. It would dramatically bring down the price of addictive drugs like

heroin, relieving addicts of the need to rob to support their habits, and thus eliminating a major source of crime in American cities. It would relieve the police and the courts of burdensome and costly enforcement and adjudication responsibilities, and it would help depopulate the nation's jails and prisons. (In federal prisons alone, 37 percent of the inmates are there for drug violations.)

Pragmatism, then, suggests that we end the costly and futile prohibition of drugs; regard for justice and freedom dictates it. 

## Civil Libertarians Cry Wolf

Marty Zupan

**W**hy was it perfectly okay, even virtuous, for grocery stores to refuse to stock nonunion grapes and lettuce in response to pressure from Cesar Chavez and his followers, but it's not at all okay, it's downright un-American, for convenience stores to pull *Playboy* and *Penthouse* from their shelves in response to pressure from Jerry Falwell and his followers? Figure it out.

The frothing at the mouth of civil libertarians over the recent decisions of 7-Eleven, Peoples Drug, and others to stop carrying adult magazines is ridiculous—and, ironically, counterproductive of efforts to protect civil liberties. "Censorship!" they cry. Hogwash! Censorship is *government* prohibition of the publication or sale of materials it deems offensive. A drug store's decision not to carry *Playboy* is no more censorship than is the decision of a health-food store not to stock cigarettes.


Ah, but one is the printed word, and that makes it different—sacrosanct—some will say. More hogwash! Is it censorship for a newsstand in Peoria not to carry the *New York Times* because they'd lose money doing so? Of course not. Is it censorship for the left-liberal *Nation* magazine not to run an article applauding President Reagan's conservative agenda? Of course not. It is not censorship for any private citizen or group of citizens (such as a corporation) to be selective in what they will read, look at, publish, say, offer for sale, advertise, etc.

Civil libertarians are going to cry

"Censorship!" once too often over private decisions they don't happen to agree with. And what will happen then when their object of protest really is a government attempt to skirt the First Amendment?

None of this is to say that pornography really is awful, as the forces of righteousness who are so gleeful over the porn purveyors' actions would have us believe. We haven't seen credible evidence linking porn and crime; and if some varieties of what is loosely lumped under the heading "pornography" are corrosive of important social values (say, the family), it still is simply not the business of the *government* of a free people.

Nor is this to condone the Justice Department's campaign against the sellers of adult magazines and videos. Early this year, the Attorney General's rapidly-becoming-infamous Commission on Pornography sent off letters to the likes of Warner Publishing, Southland Corp. (7-Elevens' parent), and Waldenbooks advising that it had "received testimony alleging that your company is involved in the sale or distribution of pornography" and "allowing" the companies an opportunity to respond to the charges. This was an outrageous attempt to intimidate.

Southland Corp., for one, said that it did not pull its adult magazines on this basis. Maybe so, maybe not. But their decision is not censorship. Civil libertarians' should point their fire in the right direction. 

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# brickbats

**T**he Los Angeles school board has voted to abolish failing grades for young children. Pupils having trouble in kindergarten, first, or second grade will now get a report card with an "N" grade, meaning "needs improvement." The change will prevent children from "feeling like failures at age six," says board member Jackie Goldberg, who was disappointed the change doesn't apply to all grades. Critics of the proposal pointed out that poor grades are not a cause of failure but a reflection of it. The school board also approved another Goldberg proposal to require parental consent whenever a student is to repeat a grade. Rather than "stigmatize" children, the learned Goldberg would have them be pushed ahead, ready or not. For their own good, you know.

**S**orry, Jeeves. Your days as a butler are numbered. That's what the posh Boston suburb of Wellesley decided when it passed a law limiting homeowners to only two live-in servants. Actually, the 200 residents who passed the new law at the annual town meeting don't have anything against rich homeowners with mansions filled with maids and butlers. The law was designed to crack down on folks *without* servants. "Groups of unrelated people, many of them students and young people, are getting together and renting an entire house" in violation of zoning laws, says planning-board member Samuel Balkan. "When we challenge homeowners, they claim the extra boarders are servants." Any homeowner with more than two servants must apply for a permit with the zoning board.

**T**he best deal in the world, if you don't have claustrophobia or a fear of lots of other people, is the Mexico City subway ride. The cost: one peso, or two-tenths of one US penny. In order to maintain the current fare, which has been in place since 1969, one-third of the Mexico City budget is dedicated to public transport. Collections from the fare box cover a mere six percent of operating costs. The fare is kept artificially low for "social policy reasons." It's naturally the most crowded subway

THE NEW YORKER JUNE 11, 1986



"AN ENGRAVED BABY CUP FROM HIS UNCLE SAM—HOW THOUGHTFUL!"

ride in the world, with more than four million passengers a day. But at that price, who's complaining? Only the taxpayers.

**F**orget about Russian submarines, scandalous libertines, and frigid winters. The residents of Sweden have bigger woes—snoopy sociologists. It was recently discovered that a team of the ubiquitous researchers has for 20 years been compiling detailed profiles of nearly 15,000 Swedes by rummaging through computerized official records. Project Metropolitan is a sociological study designed to follow all 10-year-olds who lived in Stockholm in 1963 through the next 20 years of their lives. Since every Swede has a 10-digit "person number," access to personal data is simple. The problem is, nobody ever bothered to let the 15,000 subjects of the study know that every facet of their lives, including political attitudes, was being continuously monitored. Actually, this isn't so unusual in Sweden, where any adult will appear in at least 100 official registers open to the public. But this blatant secret snooping by sociologists was too much even for Swedes to take. A government board ordered the researchers to "de-identify" its files so that no

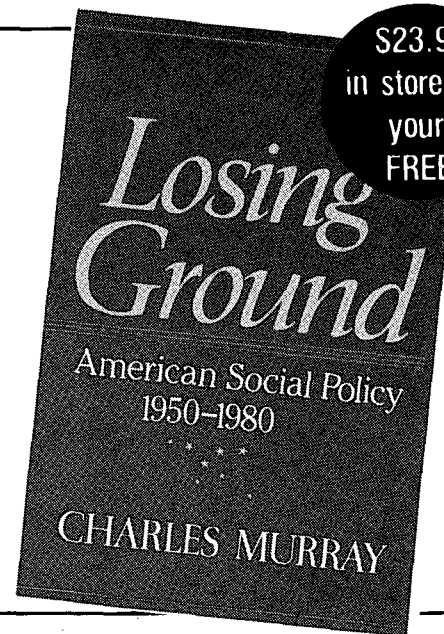
name can ever be connected to the personal information about individuals. Undaunted, one seeker of knowledge protested, "It is sometimes unethical not to do research if we can get answers we should know about."

**T**he Los Angeles Community Re-development Agency is spending nearly \$1 million to build a downtown transit tunnel that goes nowhere and will probably never carry passengers. The Bunker Hill Transit Tunnel, a block-long corridor about 15 feet high and up to 28 feet wide, was supposed to serve a Downtown People Mover. But plans for that \$259-million system were quashed in 1981 by the Reagan administration. Agency officials say they intend to someday incorporate the remnants of the people-mover tunnel into a new transit project, although they concede that they don't know how or when that will be accomplished. They're also not quite sure what destinations the system will serve. But none of that matters, for scarce federal funds are available for the project. "If we don't spend the money, there is a possibility of losing the grant," said one worried bureaucrat.

—Mark Edward Crane

# "Murray... has finally and unanswerably demolished both the moral and the practical claims of the welfare state"

—GEORGE GILDER, *The American Spectator*



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***This breakthrough book is making conservatives purr and liberals squirm . . .***

"Murray's book, relentlessly logical and well-documented, should convince any serious reader that it must at least be squarely faced. . . . The heart of the book, the best and most devastating part, is a long compilation of data meant to prove that the poor have done worse as government programs aimed at them have flowered. It is especially uncomfortable reading because the case is made by comparing blacks to whites. . . . No doubt that racists will love Murray's book. So what? When millions of people are suffering, it seems irresponsible for the left to expend its intellectual energies on these blame-shifting exercises. . . . his is a vision that coheres, as the left's on this subject doesn't any more. . . . This is the problem that liberals must address; Murray's book in effect throws down the gauntlet to them. The standard responses (most of which Murray neatly sets up and demolishes) won't do, because they don't offer real hope of a solution." —*New Republic*

"Irrefutable." —John Chamberlain, syndicated column

"Without bile and without rhetoric, it lays out a stark truth that must be faced." —*Business Week*

"Devastating. . . . Those who already believe welfare is a poverty trap that undermines independence, ambition, and upward mobility will find Charles Murray's new book a powerful and well-documented affirmation of that belief." —*National Review*

"A great book. Others have recently made the same argument. . . . But Charles Murray's version . . . is particularly convincing. He writes with flair, but his tone is steadfastly nonpartisan; he marshals an immense amount of data . . . but never loses the reader in numbers; and he never ventures a conclusion for which he has not laid the most elaborate and convincing groundwork. . . . By the time Mr. Murray gets around to conclusions, even devotedly non-Reaganite yuppies will be ready to agree. . . . James Coleman, the University of Chicago sociologist, is quoted on the dust jacket . . . as saying 'future discussions of social policy cannot proceed without taking the arguments and evidence of this book into account.' Dust-jacket puffery is notorious, but in this case the compliment is, if anything, restrained. Mr. Murray's book is so well wrought that it is likely to dominate those discussions well into the 1980s." —*Wall Street Journal*

"Murray unabashedly asserts that slashing social spending is the greatest favor the Government can bestow upon the poor. . . . Conservatives have made that argument before, but no one has documented it as thoroughly as Murray does." —*Time*

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## How Do You Spell Relief for Ailing Rural Hospitals? P-R-O-F-I-T-S

A transfusion of the profit motive into the health-care market seems to work wonders for ailing rural hospitals—despite prophecies to the contrary by critics of for-profit health care. Profit-motivated health-care providers, critics have long warned, would “skim the cream” of the market, setting up shop only in wealthy suburban areas, where the cases are easy and the money abounds. Yet for-profit health-care companies are moving into rural areas—home to one fourth of the

*Profits are the prescription: Westworld Community Healthcare revived the ailing 16-bed Custer Community Hospital in Custer, South Dakota, with a dose of profit-based operation. The firm has similarly resuscitated more than 20 other rural hospitals.*



population—where they are reviving municipally run, money-losing hospitals, *Venture* magazine recently reported.

For instance, when Westworld Community Healthcare, Inc., of Lake Forest, California, took over a 38-bed hospital in Tooele County, Utah, the place was in critical, red-ink condition. In less than a year's time, Westworld had it back on its feet. The county agreed to give Westworld a 40-year lease on the hospital at \$1 a

year. In return, Westworld promised to retire some of the hospital's debt and to invest \$6 million in the facility over a three-year period (the company has already put \$1 million into it). Because so many rural hospitals are in terrible financial shape, Westworld is able to lease most of its 36 hospitals from county governments under similar favorable terms.

Four-year-old National Healthcare, Inc., of Dothan, Alabama, has also focused on rural markets, with 23 operations in towns of up to 20,000 residents. Other names in the field include Basic American Medical (Indianapolis) and Hospital Management Associates (Naples, Florida). Private-sector interest in rural health-care facilities may well

grow even more—Westworld itself has a list of 2,465 rural markets with populations under 25,000. Of those, some 800 look attractive.

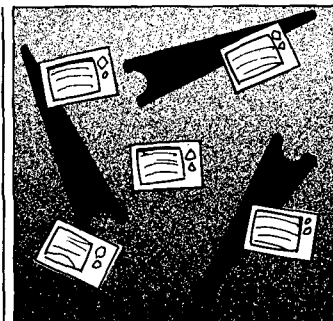
Critics of for-profit health care haven't yet appreciated that so long as the law allows open competition, providers will identify and seek to serve markets wherever they exist—even in rural America. And the 60 million people who live there are no doubt quite thankful that companies see such opportunities in their midst.

## Rip Van Cable Wakes Up to Competition

A lot of regulators and their academic supporters must be frustrated. For years they've been pointing to cable television as a prime example of a “natural monopoly,” where one and only one firm can efficiently serve consumers. In this situation, goes the argument, competition would lead to overbuilding and eventual bankruptcies. Knowing this, no company would be interested in making the capital investment necessary to build up a cable system. So, continues the argument, government must forbid competition and guarantee a monopoly franchise to one company—the quid pro quo for this lucrative opportunity being government control of rates and other matters.

But several private firms that don't enjoy monopoly franchises have nevertheless constructed cable systems, throwing a wrench in the theory that a free-entry policy won't work. And an increasing number of companies that want to get in on the action of the cable market are building their own cable systems alongside existing ones, further undermining the natural-monopoly argument. Mobile, Alabama, has recently joined the growing list of 30-40 cities where such competition between cable companies has resulted in lower rates for customers.

Before competition reared its head in Mobile, Group W Cable offered consumers a 12-channel service for about \$11 a month. Then along came Mobile Cablevision,



laying a system next to Group W's and offering customers a 40-channel service for the same price.

How can they do it? Mobile Cablevision's manager, Tony Thompson, explains that they can “undercut” because “Group W was overcharging.” Group W has responded as the classic theory of competition predicts—it began offering 30 channels for the same 12-channel price. The company has also begun to upgrade its services, starting, not surprisingly, in the neighborhoods where it competes directly with Mobile Cablevision.

Thompson is getting good at battling entrenched cable companies. He's led similar efforts in Baton Rouge and Hammond, Louisiana, and says he did “extremely well” in both cities. “I don't know of any city in love with its cable monopoly,” Thompson told REASON. “For 20 years the cable companies knew nothing but monopoly. And you don't have to work very hard when you're the only boy on the block.”

The two companies who share the block in Mobile are certainly working hard now. But Westinghouse Electric, which owns Group W Cable, may be finding the work too hard. It's decided to sell all its cable operations (except in Chicago).

Regulators who are paying attention should be scratch-