



MACDL

Action Report

Newsletter

MISSOURI ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

President's Letter Summer 1990

Dear Fellow MACDL Members:

As the current President of MACDL, I welcome the opportunity to update you on the activities of the Association. The Officers and Board Members met in Columbia in June, and are working diligently to carry forward the impetus created by our successful annual seminar in Kansas City last April. The seminar had the highest registration of any MACDL seminar to date and we had to turn away a number of people who wanted to attend. Our success was due to the fine leadership of our

past President, Charles Atwell, our hard-working CLE committee, the efforts of Cecil Caukins from the Missouri Bar, and the cooperation of the National Association of Criminal Defense Attorneys who provided us with several outstanding speakers. Plans are already underway to organize next year's seminar in St. Louis, where we hope to have an even larger turnout than we did this year.

Our CLE committee is working on a series of mini-seminars to be presented in various cities throughout the State on topics of interest to the criminal practitioner, and further information will be sent in the near future with specific dates, topics, and locations. MACDL will also co-sponsor, along with the Bar Association of Metropolitan St. Louis, a DWI seminar in St. Louis in November of 1990. Several nationally-recognized experts will be appearing on this

program, and it should be one of the better seminars on this topic ever presented in the State. MACDL continues to assume its leadership role in providing Continuing Legal Education to Missouri attorneys in the criminal law field, and we welcome your attendance, as well as thoughts as to topics of interest to you.

The Board of Directors is currently working on a plan to strengthen our membership roles, and to solicit new members from those attorneys in Missouri who should be members of MACDL. The stronger our numbers, the more potent a voice we will become on behalf of the ideals and principles advocated by our organization.

Our legislative committee continues to monitor and track the legislation being introduced in Jefferson City, which impacts on our practice of criminal law. Dan Viets, of Columbia, has provided invaluable

assistance to our organization through his appearances in Jefferson City and lobbying efforts on our behalf. Our lobbyist, Randy Scherr, keeps the Board of Directors informed of pending legislation and provides us with copies of proposed legislation for our review.

The State Public Defender's Office, led by Joe Downey, continues to strongly support our efforts, and our organization looks to help them wherever possible. We continue to support legislation supportive of the Public Defender System, and MACDL continues its obligation to provide the Public Defender System with their CLE requirements.

However, for our organization to remain viable and committed, we need the support and input from our members. I hope that you will continue to maintain your membership in MACDL. Should you know of any attorney who would like

October Board Meeting

The next meeting of MACDL's Board of Directors will be held in conjunction with the Missouri Bar meeting on October 5, 1990.
Time: 4:00 p.m.
Location: The Adams Mark Hotel
(Downtown St. Louis)

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MACDL

Officers:

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Bernard Edelman
11 S. Meramec, #1100
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801 Walnut, Suite 600
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Dee Wampler, Springfield
James Worthington, Lexington
Daniel Viets, Columbia
Tim Warren, St. Joseph
Joseph Downey, Columbia

Lobbyist:

Randy Scherr
P. O. Box 1543
Jefferson City, MO 65102
(314) 636-2822

*President's Letter --
Continued from pg. 1*

to join our organization,
please contact me or any
member of the Board of
MACDL and we will be
pleased to provide you
with membership infor-
mation.

I look forward to seeing
you at upcoming MACDL
activities, and hope that
you can join us in St.
Louis for the 1991
annual seminar.

Very truly yours,

Bernard Edelman

MACDL

Welcomes New Members

J. Ronald Carrier -- Springfield
Leo N Griffard, Jr. -- St. Louis
Larry C. Pace -- Kansas City
Robert L. Knapp -- Independence
Ray Conrad -- Kansas City
Mark Wooldridge -- Boonville
James F. Nangle, Jr. -- Boonville
Laura Higgins Tyler -- Kansas City
Ron Lee -- Kansas City
Ty Gaither -- Joplin
Pamela Lambert -- Columbia
Nancy Orletski -- Clayton
Jan Z. Bean -- Kansas City
Daniel L. Radke -- St. Joseph
David H. Jones -- Springfield
Cynthia L. Short -- Kansas City
John Quinn -- Kansas City
Milton Skeens -- Kansas City
John B. Gourley -- Clayton
Scott E. Walter -- Clayton
Christine Carpenter -- Columbia
Ronnie L. White -- St. Louis
Daniel J. Dodson -- Jefferson City
Charles M. Shaw -- Clayton
Dennis Schafer -- Montgomery City
James E. Sullivan -- St. Louis

CLE BULLETIN : MORE "MINIS"

MACDL will offer
one-day regional
seminars on topics
of interest to criminal
law practitioners
again this fall. Pro-
grams will be pre-
sented in Columbia,

Springfield, Cape
Girardeau, St. Jo-
seph, Kansas City
and St. Louis in Octo-
ber and November.
The CLE Committee
is finalizing plans now.
Look forward to re-
ceiving information
soon on specific
dates, locations,
topics and speakers.

BE AN ADVOCATE!

Your colleagues would like to hear from you. MACDL wants to publish high quality articles, model motions, reviews, practice pointers, and comments concerning timely issues in criminal law and procedure. Please submit your letters, motions, and articles to:

Francie Hall
Executive Secretary
MACDL
P. O. Box 15304
Kansas City, MO 64106

If you are not currently a member of MACDL, take a moment to complete a photocopy of this form and mail it today.

MACDL - MEMBERSHIP APPLICATION

Annual Dues

(Circle the Appropriate Amount)

Sustaining Member	\$200.00
Officers, Board Members & Past Presidents	
Regular Member:	
Licensed 5 Years or More	100.00
Licensed 2 to 5 Years	50.00
Licensed Less than 2 Years	35.00
Provisional Member (Non Voting)	
Includes Full-time Professors at Accredited Law Schools, Members of the Judiciary, Full-Time Law School Students, Paralegals and Legal Assistants.	20.00
Public Defender	50.00
Asst. Public Defender	25.00

NAME (Please Print) _____

ADDRESS _____ P. O. BOX _____

CITY _____ STATE _____ ZIP _____

PHONE - AREA CODE (____) _____

YEAR OF ADMISSION TO BAR _____

Please return with your check to:

MACDL
P. O. BOX 15304
KANSAS CITY, MISSOURI 64106

Past President's Corner

by Charles Atwell

As immediate past president of MACDL, I was recently asked by Francie Hall to write a few comments to be included in our summer newsletter. Initially, I thought I would review some of MACDL's recent accomplishments, including: (1) continuing lobbying efforts; (2) the successful relationship with the public defender system; (3) a growing affiliation with NACDL; and (4) our continuing excellent CLE efforts.

However, I have decided to address matters of great personal concern to me. In doing so, please be assured these comments are my personal views and are not intended (necessarily) to represent MACDL policy.

In the June 1990 issue of the *Champion*, magazine of the National Association of Criminal Defense Lawyers, Neal Sonnett wrote an article entitled "Lock 'Em Up or Legalize: Isn't there Another Choice," a copy of which is reprinted for your

review. I could not have articulated my views and thoughts regarding the nation's drug problem any more succinctly or eloquently than Neal Sonnett did in this article. He persuasively suggests a variety of themes. They include the idea that the present law enforcement-dominated approach to the drug problem is one that will fail. He also persuasively suggests that more effort should be placed in education and treatment. Lastly, while suggesting that legalization is not the answer, Neal Sonnett quite clearly suggests that the harsh penalties created by the United States Congress are simply not solving the problem and, in fact, are making the "war on drugs" also a time of "war on the constitution."

The March, 14, 1990 issue of the *Criminal Law Reporter*, referred to recent sentencing studies showing that one out of every four black male Americans between the ages of 20 and 29 are either in prison, confined, or under some type of court supervision. The study also showed that the number of black male adults in the same age group who were in college was 40 percent less than those in prison or under judicial supervision. I would suggest that we, as a society who

cherishes concepts such as equality and individual liberties, must be greatly saddened by these statistics.

The fact of the matter is, the frustration over our nation's drug problem combined with political expediency, opportunism, and demagoguery, has created a situation in which the government has taken a narrow, hard-line approach to the nation's drug problem and crime in general. In the federal system, this has been highlighted by unreasonable sentences; often times involving statutory, mandatory minimums, increasing prosecutorial power; and decreasing individual liberties. This situation has been seen in both court decisions and by the creation of new statutes. In my view, such an approach will not only apply in drug cases, but will inevitably taint our entire criminal justice system. This short-sided Draconian approach is being duplicated by various states, and we can see examples here in Missouri. (Mention must be made that some of the legislative efforts in this regard have at least been slowed down by MACDL in its lobbying efforts.

I personally believe that members of this organization and every criminal defense lawyer in the

state should express appreciation to MACDL in this regard, especially for the efforts of Randy Scherr, J.D. Williamson, and Daniel Viets.)

I consider myself a moderate politically, even with some conservative tendencies. Further, much of my legal career has been spent as a prosecuting attorney, a job I greatly enjoined and a position which I believe merits great respect. Yet it is my personal belief that we, as people, cannot morally or financially become a nation of growing prisons and shrinking liberties. As lawyers, as Missourians, and as Americans, we cannot allow the rhetoric of Willie Horton tactics to harm the best system of justice the world has known. Our voices must be heard and we must speak loudly. Organizations like MACDL and NACDL offer excellent means of expressing our views. This is the main reason I have chosen to be active in both such organizations. I urge each of you to also become active in MACDL and NACDL because I truly believe that we can and

*See Page 8
for Neal Sonnett's
article.*

Wampler on Weiner

by Dee Wampler

At our MACDL Seminar last April, members were treated to a fantastic presentation by Jeffrey Weiner of Miami, who has impeccable qualifications as a criminal defense attorney, being past president of the Florida Criminal Defense Attorneys' Association, faculty member of the National Criminal Defense College, and member of the NACDL strike force which defends defense lawyers when they are threatened by prosecutors. He earned special appreciation from MACDL for agreeing to speak in Kansas City with, literally, 24 hours' notice when Neal Sonnett was hospitalized and forced to cancel.

Weiner is an avant-garde, energetic attorney who also hosts a regular radio talk show in Miami, and has successfully defended a long line of indefensible

cases. For our members to hear from an attorney who is on the "cutting edge" of our profession was a valuable experience.

Weiner challenged Missouri attorneys to carefully prepare and investigate cases before trial, use carefully designed and planned discovery motions to cross up the state's witnesses and to aggressively attack government snitches in the courtroom. Weiner is on a par with other notable courtroom attorneys of our time, including F. Lee Bailey, Percy Foreman, Ira London, and Gerry Spence.

Weiner's one-hour presentation was worth the price of membership in MACDL, and whatever doubts we harbored about defending criminal cases in court were mitigated by the confidence he displayed and inspired.

OPPORTUNITY KNOCKS

by Francie Hall

The National Association of Criminal Defense Lawyers is an outstanding organization. NACDL has been championing the rights of people accused of crimes, and of the intrepid souls who represent them, since 1959. The Missouri Association of Criminal Defense Lawyers is proud to be one of 37 state affiliates of NACDL.

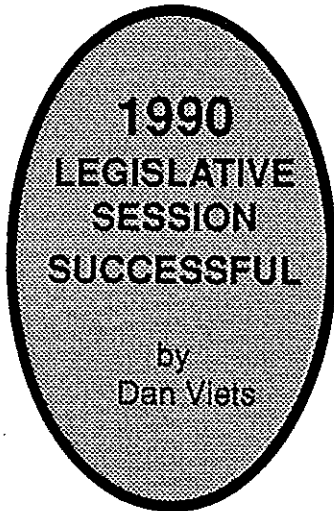
Many of you, particularly those most active in MACDL, are already members of NACDL and are well-aware of the benefits available to members. (The Honorable David Russell, Associate Circuit Judge in Clay County, is a past president of both MACDL and NACDL.) Some of you may not be familiar with NACDL but were inspired by Rich Kammen, Larry Pozner and Jeff Weiner at MACDL's April seminar in Kansas City. Our affiliation with NACDL enabled us to bring you speakers of this caliber.

Included in this newsletter is a brochure inviting you to join NACDL. Should you choose to take advantage of this offer, PLEASE SEND YOUR COMPLETED

APPLICATION FORM AND YOUR CHECK TO: FRANCIE HALL, MACDL, P. O. BOX 15304, KANSAS CITY, MO 64106. NO LATER THAN NOVEMBER 10, 1990.

NACDL is currently offering a one-time rebate to state affiliates in its membership drive. BY JOINING NACDL NOW, YOU WILL GAIN FULL MEMBERSHIP BENEFITS AND ALSO HELP YOUR OWN STATEWIDE ORGANIZATION.

If you've ever wanted a subscription to The Champion; if you've ever attended, or wanted to attend the National Criminal Defense College; if you would like to be part of the organization that helps your criminal defense colleagues throughout the nation, this is a great opportunity. You'll help yourself, your clients and the Missouri Association of Criminal Defense Lawyers. Remember, send your NACDL membership application to Francie Hall, MACDL's Executive Secretary. She will forward it to Washington. You, and MACDL, will benefit.



The big news in the 1990 Legislative Session is what did not pass. Most of the bills opposed by MACDL and other allied organizations went down to defeat.

Chief among those was the so-called "omnibus anti-drug bill" which contained dozens of provisions hostile to the rights of criminal Defendants and those who represent them. This bill would have authorized a one-quarter cent sales tax throughout the state solely for use by prosecutors and police; it would have mandated loss of professional and occupational licenses for people convicted of any drug offense including misdemeanors:

it would have mandated loss of driver's licenses for persons arrested but not necessarily convicted of any drug offense; it would have made second and subsequent possessions of small amounts of marijuana felony offenses; it would have permitted prosecutors to grant witness immunity; and much, much more.

Similar bills will doubtless be introduced again in the 1991 session. MACDL also helped to prevent the submission of an amendment to the state Constitution which would have permitted courts to deny bail altogether to persons who are alleged to represent a "danger to the community."

Among the bills that did pass is one which set a minimum age (16 years at the time of the offense) as a prerequisite for eligibility for capital punishment. The same bill set a new statute of limitations

of one year in actions against the Missouri Department of Corrections and created a new category of "persistent misdemeanor offenders."

As usual, many new crimes were created by the General Assembly. These include driving a historic vehicle more than 1000 miles (an emergency clause made this provision effective upon signature of the Governor) and illegal dumping of solid waste.

The "war on drugs" continues to be an excuse for a war on the Bill of Rights. Governor Ashcroft vetoed the money allocated for 5 new Public Defenders, but approved adding 5 new State Troopers to work on drug investigations.

With the November elections approaching, this is an ideal time to express your views to those who are candidates to represent us. Politicians are never more responsive than when they need

our votes and our money.

MACDL urges all members to contact local candidates for the Missouri Legislature and let them know that the continued erosion of civil liberties and hostility to the rights of criminal defendants do not reduce crime.

Only a reordering of priorities to emphasize education and rehabilitation of those with drug problems will produce positive change.

Last year the Governor's staff calculated that Missouri ranks dead last among the 50 states and the U.S. Territories in per capita funding of drug abuse prevention. Yet most politicians continue to clamor for more spending on prosecutions and prisons.

Don't Lie Like a Dog

by Dee Wampler

Ever since *United States v. Place*,¹ courts have ruled that the U. S. Constitution does not seem to apply to drug detecting dogs where dogs react to the scent of drugs and whine, paw or bark at the handler, who

then testifies in court that in his opinion the dog smelled controlled substances.

Seven Missouri appellate cases have reported (from 1912 to 1968) on bloodhound and German Shepherd dogs. The use of dog sniff evidence is allowed in Missouri if the dog: (1) is of pure breed; (2) has been trained to trail humans; (3) has the capacity to do so; and (4) is qualified by experience to follow a human trail. These were bloodhound cases only, and did not

involve the use of drug sniffing dogs.²

Other states hold the minority view and do not allow dog sniff evidence.³

Unfortunately, federal cases, including one in the Eighth Circuit, hold that such a dog gives a reasonable, articulate suspicion to detain luggage and establish probable cause.⁴

Apparently, dumb animals now qualify as witnesses for the state,

although they may not be sworn or cross-examined, and testify only through the conclusions of professed interpreters. The strange belief that such dogs are infallible is from generation to generation. In this golden age of enlightenment, citizens may now be deprived of their liberty or life because, forsooth, a certain dog has indicated by his conduct, that he believed

Continued on pg. 8



The new Missouri State Highway Patrol Canine Unit, (left to right) Trooper Greg Henley and "Ben" from Troop E (Poplar Bluff); Trooper David Henson and "Wiko", Troop D (Springfield); Trooper Robert Zubeck and "Asko", Troop A (Lee's Summit); and Trooper Greg Althage and "Vax", Troop C (Kirkwood). these dogs are the "alfa males", the dominant dogs in the litter. In the Troop D area, where Interstate 44 is often referred to as a "drug corridor", as drugs are being transported from the west and southwest to points east, Wiko has been responsible for seizing in excess of two pounds of methamphetamine, five pounds of cocaine, and over 1,000 pounds of marijuana in approximately 20 different sniff attempts.

LOCK 'EM UP OR LEGALIZE: Isn't There Another Choice?

by
Neal R. Sonnett
(Reprinted with permission of NACDL; June 1990 Champion)

Shortly after I began my term as your President, I created a Special Committee to undertake a detailed and comprehensive study of the effects of our current "War On Drugs" on the justice system, on individual liberties, and on our society, and to consider and recommend alternative policy approaches.

I have not attempted to limit the scope of the Committee's work, or to place any issue out of bounds; decriminalization or legalization will clearly be among the options discussed.

The debate over legalization of drugs has been widening and growing in intensity in the last year. With growing public attention to the issue, people are surprised to learn that NACDL has never taken a formal, institutional position on drug legalization and many of our own members are urging that we take such a stand. For reasons I shall discuss here, however, I hope we don't.

Frustration and the Call for Legalization

Certainly, the proposition that some or all drugs should be legalized is not new; for decades, individuals and organizations have been calling for drastic changes in the way our criminal justice system treats drugs. What is new is the changing lineup of legalization advocates; those who were once lightly and categorically dismissed as "left wing radicals," "liberals" or "pointy-headed intellectuals" have lately been joined by a Reagan-era Cabinet Officer, Members of Congress, a Federal Judge, big-city Mayors, former police and drug enforcement officials, and champions of conservative political ideology, including William F. Buckley, Nobel Prize winning economist Milton Friedman and, most recently, Donald Trump.

One common thread that unites these unlikely bedfellows is a growing frustration over the so-called "War On Drugs" or, perhaps more accurately, an increasing realization that the way in which we have been attacking the related problems of drugs and crime is doomed to failure. Not surprisingly, the current Generals in the drug war respond to the proponents of legalization with rebuke and ridicule. Each side accuses the other of offering only overly simplistic and unworkable solutions. The debate has become polarized -- "lock 'em up" vs. "legalize" -- with no middle ground and little recognition that these are not the only two choices we have.

Don't Lie Like a Dog Continued from pg. 7

the scent of some microscopic particle supposed to have dropped by the perpetrator of a crime closely resembled the scent of the accused. Like people, dogs have their limitations, but this is yet to be recognized in courts of justice.

Failure of the Current War on Drugs

In previous columns, in speeches, in articles for other publications, and on TV and radio programs throughout the country, I have forcefully argued that our current approach to the war on drugs -- the "lock'em up" approach -- has been, is, and will continue to be, an utter failure, and that the war on drugs has become a war on the Constitution. As drugs persist and public frustration grows, the criminal justice system gets blamed. Legislators and courts cut back on the rights of defendants and seek ever-tougher punishments. But the rights cut-backs cannot be confined to drug cases, and soon affect all laws and all Americans. And the tougher punishments simply consume endless billions of dollars in prison costs, with no effect on the drug problem.

Unfortunately, the latest national Drug Control Strategy continues to emphasize law enforcement "above all." Of its \$10 billion funding pie, 70% is designated for law enforcement and interdiction,

1. 462 U. S. 696 (1983)
2. The last Missouri case is *State v. Fields*, 434 W. W. 2d 507 (Mo. 1968)
3. *State v. Storm*, 238 P.2d 1161 (Mont. 1951); *State v. McLeod*, 146 S. E. 409 (N. C. 1929); *Brott v. State*, 97 S. W. 593 (Neb. 1903).
4. U. S. v. *White*, 890 F2d 1413 (8th Cir. 1989).

versus 30% for demand reduction measures: education, prevention, treatment.

We need leaders who understand the critical need for new and innovative strategies in the war on drugs.

Legalization is Not the Answer

While our current approach is bankrupt, I am wholly unconvinced, after reviewing most of the major literature on both sides of the issue, that legalization is the answer. Indeed, I fear that a change from "zero tolerance" to "100% tolerance" may actually exacerbate the problems related to drug abuse.

At first blush, the claimed major advantages of legalization -- taking the profit out of drugs, reducing crime and violence, saving criminal-justice costs, reducing risks of AIDS and other drug-related illnesses, increasing revenue from taxation of legalized drug sales -- are seductively appealing. These lofty promises begin to break down, however, when one searches for detailed

explanations of how drugs should be legalized, which drugs should be legalized, who will control production, sale, and distribution (private entrepreneurial conglomerates? A new government bureaucracy?), where drugs will be sold and to whom (minors, for example?), how much taxes will be levied and raised, etc.

Many legalization advocates don't deal with these nuts-and-bolts issues, dismissing them as "details" that can be worked out later or admitting that they don't know the answers to, or haven't wrestled with, these thorny subjects. Some propose legalizing marijuana only; others suggest gradual escalation to more potent drugs. Still others urge blanket legalization of all controlled substances. Legalization advocates also split on whether sale of drugs should be left to a free-wheeling private industry (like alcohol and cigarettes) or subjected to strict regulation and control on the national, state, and / or local levels.

I cannot here attempt an in-depth analysis of the flaws of these various proposals, but the startling lack of agreement on implementation of a legalization scheme serves to illustrate the host of practical, regulatory, ethical, and moral problems that would make legalization unworkable.

Moreover, the perceived benefits depend on the type of legalization. A marijuana-only system could hardly take the profit out of drugs, or dramatically reduce violent crime, or substantially diminish the incidence of IV-transmitted

diseases. Taxing the sale of legalized drugs may guarantee the continuation of a black market, particularly when new and inexpensive "designer drugs" can be manufactured in one's bathtub. Almost all who urge legalization acknowledge that any system will inevitably result in increased drug use; how much, and to what effect, is anybody's guess. And perhaps most important, almost no one has adequately addressed the most serious current drug crisis -- crack cocaine -- and how legalization might increase its catastrophic toll, particularly in our inner cities and ghetto areas.

Call me sentimental, but I worry about the many (some estimate as many as 375,000 last year) "cocaine babies" born in the United States and the long-term special health and educational treatment and assistance they will require as they grow up; school and health officials in my county are now beginning to feel the terrible effects and costs as those innocent victims reach school age. I worry about statistics demonstrating a frightening correlation between parental drug abuse and child abuse. How do we protect the innocent victims of legalization? I worry about studies that show that costs to industry and society from reduced productivity, employee absenteeism, and illness and injury are staggering and mounting -- greatly exceeding those related to crime.

The answer from most who favor legalization is to couple the end to prohibition with greatly increased attention to and resources

for education, prevention, and treatment. But if such programs will work after legalization, why not before? Why not an approach that calls for a less radical re-ordering of priorities?

The Canadian Example

Canada has drug problems much like ours. Canadians spend some \$10 billion per year on drugs. Culturally as well as geographically, they are our closest neighbors. But their approach to drugs is radically different. Their "Drug Czar" is the Minister of National Health and Welfare. Although they have and enforce criminal sanctions against drug sale and use, their anti-drug funding priorities are the mirror-opposite of ours: 70% to education, prevention, treatment and rehabilitation, and about 30% to enforcement and control. They have excellent public education programs, particularly for young people, and they afford treatment for everyone who needs it.

A major effect of the Canadian approach is a far more moderate and constructive public debate than we have in this country. With the government speaking in terms of the attainable goal of controlling, rather than "wiping out" drugs, opinion polls reflect less public frustration; drugs are ranked not as the public's top concern, but as fourth or fifth, behind issues such as the environment and the economy. With humane preventive measures given greater priority than repressive law enforcement crack-downs, calls for

radical restructuring of drug policy -- i.e., legalization -- are virtually nonexistent. Public policy polarization is reduced; consensus is advanced.

We can learn much from Canada's example. There are rational, effective measures short of outright legalization that can be tried, and will make a difference.

There Are Other Choices

By their polarized stances, both sides have done a disservice to the serious issues and problems of drug abuse and related crime and have obscured the search for other reasoned, rational solutions to the current crisis.

I don't believe the failure of our fight against drug abuse can be blamed on the prohibition of drugs; rather, it is far more attributable to the stubborn insistence of our political leaders that we "get tough" and to the resultant skewed priorities -- allocating 70% or more of our resources to interdiction and prosecution, and 30% or less to demand reduction efforts in the areas of education, prevention, treatment and rehabilitation.

What can we do, short of decriminalization or legalization?

- Reverse the funding priorities of our national drug control strategy.

We must immediately

increase spending on demand reduction, and rid ourselves of the false notion that tougher penalties, more courts and more prisons will solve the problem. Instead of a 70-30 tilt toward law enforcement, our drug control strategy funding priorities should be reversed.

- **Provide treatment on demand.**

Treatment works, it is cost-effective, yet it is available to fewer than one-fifth of those who need and want it. A recent comprehensive study showed that 80% of treated addicts were still off hard drugs five years after completing treatment, that the percentage holding jobs doubled, and that the number committing crimes dropped two-thirds. Sen. Joseph R. Biden, Jr. (D-DE), argues that \$1 invested in treatment programs saves \$5 in reduced welfare, Medicaid and law-enforcement expenses. He estimates that a national program to provide treatment for every hard-core drug abuser who needs help would cost \$8 billion, but building jails to warehouse them would cost more than \$100 billion.

- **Provide comprehensive education and prevention programs in our schools, from kindergarten through grade twelve.**

The government's own statistics demonstrate that education works, yet only 55% of the kids in this country are exposed to

education programs, and many of those programs are not comprehensive. We must identify and implement the best educational curricula, improve training for teachers, and expand crisis intervention and dropout prevention programs.

- **Create an independent, non-partisan commission of experts from all relevant disciplines to develop a comprehensive, empirically-based and experience-tested drug control policy.**

In our testimony before Rep. Conyers's Government Operations Committee, we urged the creation of a non-partisan commission of the leading experts in areas related to demand reduction: experts in drug treatment, counseling, medical intervention, rehabilitation, literacy training, job training, community policing, youth programs, public education, and so forth. We proposed that the Drug Czar have limited ability to make policy recommendations inconsistent with the policies and priorities identified by the commission.

- **Target scarce criminal justice resources to the most serious offenders.**

For drug users -- defendants facing charges of simple possession -- emphasize pre-trial

diversion into appropriate programs of treatment, counseling and rehabilitation. For defendants convicted of possession or other low-level drug offenses, authorize greater use of non-incarcerative sanctions. It is absolutely impossible for the criminal justice system to process all drug offenses.

Prosecutorial and judicial resources must be targeted more effectively. Scarce prison space must be reserved for the most serious, violent offenders.

At the low end of the scale, this means pre-trial diversion for persons arrested for drug use or possession -- that is, the charges against them are dropped upon the condition that they successfully complete some appropriate combination of programs designed to address their individual problems of substance dependence, lack of job skills, illiteracy, and so forth. For a user who is a second offender or who has failed in pre-trial diversion, or for other defendants convicted of low-level drug offenses, there must be made available a wider range of effective non-incarcerative sanctions.

- **Repeal all statutory mandatory minimum sentences and make the federal sentencing guidelines noncompulsory.**

Scott Wallace's Legislation column in last month's issue of *The Champion* made a compelling case for repeal of mandatory minimum sentences. More recently,

the final report of the Federal Courts Study committee has called for repeal, joining the judges of the Third, Eighth, Ninth and Tenth Circuits, as well as the Criminal Law Committee of the Judicial Conference. The Federal Courts Study Committee also recommended that "serious consideration" be given to changing the guidelines to operate "not as compulsory rules but, rather as general standards that identify the presumptive sentence."

The only stumbling block to adoption of these erudite recommendations seems to be primal fear on the part of individual legislators that they could end up being "Willie Horton-ized" in a 30-second spot in the next election. The criminal justice system -- and justice itself -- must not be laid waste for so dishonorable a purpose.

NACDL Should Not Enter the Legalization Debate

One final thought about the legalization debate and NACDL. We can and should play a role in helping to focus the debate on the failures in our current approach to the war on drugs and its impact on us all. We can serve as a catalyst, in bringing together groups and individuals with diverse views. We can encourage a comprehensive national debate that will seek solutions for a better, healthier, and safer society.

Even if my personal views on legalization were

different, however, I would argue that it is both unnecessary and unwise for NACDL to advocate either position as an important or priority item on our agenda. There are many fine organizations devoted to making the case for such reform of our drug laws, and many of our most active and dedicated members play leadership roles in them. But NACDL's major mission and responsibility has been, is, and must continue to be, to secure full due process and constitutional rights for those accused of crimes, to preserve the independence, integrity and credibility of the criminal defense bar, and to improve the administration of justice.

Identification of NACDL with this highly volatile and emotional issue will inevitably divert the attention of the media and legislative leaders from our more critical goals, will diminish our effectiveness and credibility in Congress, and might well divide our membership at a time when absolute unity in the organized criminal defense bar has never been more important.

The issue, of course, cannot simply be ignored. But how we treat it as an organization may impact on our goals and objectives, and is certainly vital to our future. I therefore encourage your input; I hope you'll write or call to share your views with us, and I hope that, whatever your feelings on this controversial issue, we can all continue to work toward a better and fairer system of justice for all Americans.

ATTENTION: MISSOURI PUBLIC DEFENDERS

As most of you are aware, the Missouri State Public Defender System pays a fixed annual fee to **MACDL** and, in return, **MACDL** sponsors quality CLE seminars on criminal defense topics which Missouri's public defenders are invited to attend at no charge. In other words, the State Public Defender pays the cost of your annual Mo-CLE requirement.

You may not know, however, that you are not members of **MACDL**. At our June 22, 1990 Board of Directors Meeting, it was moved and carried that: Missouri public defenders shall become members of **MACDL** upon payment of annual dues in the amount of \$25.00 for Assistant Public Defenders or \$50.00 for Public Defenders

(i.e., heads of offices.)

Why, you may ask, should you pay dues when you already receive "free" CLE?

BECAUSE MACDL speaks in Jefferson City, through full-time lobbying efforts, on behalf of all criminal defense practitioners (and their clients) to influence pending legislation.

BECAUSE MACDL speaks to the Missouri Bar Association on your behalf through people like past **MACDL** president Hugh Kranitz, member of the Mo. Bar Board of Governors, and J.R. Hobbs, recently invited to serve as Criminal Law Representative on Mo. Bar's Legal Education Committee.

BECAUSE MACDL's credibility as the state voice of public and private defenders is growing

daily. **BECAUSE**, as a state affiliate of the National Association of Criminal Defense Lawyers, **MACDL** shares information and resources with Washington, D.C. and many states. **BECAUSE MACDL** wants to provide more services to members, e.g., membership cards, brief banks, a state directory, more amici assistance, "advice lawyers", even strike forces. **BECAUSE** ... all these activities require funding.

The Missouri Association of Criminal Defense Lawyers asks that you join us in the ongoing struggle for human rights and liberties. Please join **MACDL** today. Let your voice be heard. You'll find a registration form in this issue.

Thank you.

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