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ADDICTED TO THE WAR ON DRUGS

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INTRODUCTION

On March 13th, 2019, the *University of Pennsylvania Journal of Law & Public Affairs* held a symposium entitled *Addicted to the War on Drugs*. Symposium speakers not only examined the statistical and historical failure of American drug policy, but also explored the institutional consequences of those failures, potential paths forward, and barriers to lasting change. After almost fifty years of violent conflict with civilian populations, America’s global War on Drugs is uniquely pervasive and normalized. Weighed against basic principles of justice and liberty, the mass incarceration of drug users may be inherently immoral. However, institutional violence is almost always defended, at least theoretically, as the lesser of two evils.¹ The extreme scale and intensity of the drug war demands

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¹*See, e.g.*, Ian Morris, *In the Long Run, Wars Make Us Safer and Richer*, WASH. POST (Apr. 25, 2014), https://www.washingtonpost.com/opinions/in-the-long-run-wars-make-us-safer-and-richer/2014/04/25/a4207660-c965-11e3-a75e-463587891b57_story.html [perma.cc/7MG3-5RW4] (arguing that the extreme human costs of war are worth it to create more peaceful, civilized societies). *See generally, e.g.*, MICHAEL IGNATIEFF, *THE LESSER EVIL: POLITICAL ETHICS IN*

a substantial benefit to justify its effects. Despite extensive evidence that militant drug enforcement causes far more damage than it might prevent, little changes.

I. AMERICA'S DRUG PROBLEM INTRODUCTION

Today, problematic drug use and addiction remain as prevalent and devastating as ever. In 2017, American life expectancy decreased for the third year in a row for the first time in a century, due in part to 70,000 fatal drug overdoses, now the leading cause of death for Americans under 55.² Our predominate response to this public health crisis is still aggressive drug enforcement and mass incarceration.³ Despite decades of concentrated reform efforts, the level of drug arrests continues to rise, driving our incarceration rate even further above every other country in the world.⁴ Regardless of what drug war proponents may claim, the most vulnerable individual users remain the primary targets and victims of prosecution.⁵ In 2017, 85% of all drug arrests were for possession alone, and nearly half of all drug arrests are still for marijuana.⁶ As the driving force of isolation and instability for marginalized communities, it is impossible to separate the drug war from

AN AGE OF TERROR (2004) (questioning the limits of acceptable violence by modern liberal democracies in the context of the War on Terror).

² Josh Katz & Margot Sanger-Katz, 'The Numbers Are So Staggering.' *Overdose Deaths Set a Record Last Year*, N.Y. TIMES (Nov. 29, 2018), <https://www.nytimes.com/interactive/2018/11/29/upshot/fentanyl-drug-overdose-deaths.html> [<https://perma.cc/X8QD-ER9H>].

³ See *The Federal Drug Control Budget: New Rhetoric, Same Failed Drug War*, DRUG POL'Y ALLIANCE (Feb. 2015), https://www.drugpolicy.org/sites/default/files/DPA_Fact_sheet_Drug_War_Budget_Feb2015.pdf [<https://perma.cc/D3JX-ZV4K>] (showing that, while policymakers increasingly speak about America's drug problem as a public health crisis, government spending remains disproportionately directed towards the criminalization of drug use and incarceration of drug users).

⁴ See *Total Annual Drug Arrests in the United States by Offense Type*, DRUGWARFACTS.ORG (2017), <https://www.drugwarfacts.org/node/234> [<https://perma.cc/2U57-L5UY>] (explaining that drug arrests have risen from 1,488,707 in 2015 to 1,632,921 in 2017); see also John Gramlich, *America's Incarceration Rate Is at a Two-Decade Low*, PEW RES. CTR. (2018), <https://www.pewresearch.org/fact-tank/2018/05/02/americas-incarceration-rate-is-at-a-two-decade-low/> [<https://perma.cc/P244-XP2>] (explaining that although the U.S. incarceration rate is at its lowest in decades, it is still the highest in the world).

⁵ *Total Annual Drug Arrests in The United States By Offense Type*, *supra* note 4; see also HUMAN RIGHTS WATCH, EVERY 25 SECONDS: THE HUMAN TOLL OF CRIMINALIZING DRUG USE IN THE UNITED STATES HUMAN RIGHTS WATCH 4-5 (2016), https://www.aclu.org/sites/default/files/field_document/usdrug1016_web.pdf [<https://perma.cc/7B7Y-ZWAS>] (explaining the disproportionate number of drug arrests occurring in urban and poor areas and their racially discriminatory pattern).

⁶ *Total Annual Drug Arrests in the United States by Offense Type*, *supra* note 4.

our broader system of mass incarceration. Despite years of increasingly militant execution and decreasing constitutional safe guards, extensive analysis still shows no significant link between the intensity of drug enforcement and rates of drug use.⁷ Although global efforts to seize supply may have had small, temporary impacts on specific drugs, years of research have revealed no positive impact on substance use or its social costs.⁸

On the other hand, extensive evidence *has* exposed a disturbing positive feedback loop in drug war policies, amplifying the same harms used to justify them.⁹ The collateral damage of incarceration can be tremendously destructive for individuals, increasing both vulnerability to addiction and its consequences.¹⁰ Beyond imprisonment, drug convictions create substantial barriers to employment, housing, education, and public benefits, further aggravating

⁷ See Bryan Stevenson, *Drug Policy, Criminal Justice and Mass Imprisonment*, GLOBAL COMMISSION ON DRUG POLICIES, 2011, at 6, http://www.globalcommissionondrugs.org/wp-content/themes/gcdp_v1/pdf/global_com_bryan_stevenson.pdf [<https://perma.cc/GK6U-SL3Z>] (describing the negative effects of draconian “three strikes laws,” mandatory minimum sentences, and life imprisonment for low-level drug crimes); see also Stéphanie Thomson, *Experts Agree: The War on Drugs Has Been a Disaster. Is It Time for Legalization?*, WORLD ECON. F. (Nov. 29, 2016), <https://www.weforum.org/agenda/2016/11/war-on-drugs-legalization/> [perma.cc/Z57F-EACU] (arguing that the War on Drugs has done little to suppress demand or address rising drug deaths).

⁸ See CHRISTOPHER J. COYNE & ABIGAIL R. HALL, CATO INST., *FOUR DECADES AND COUNTING: THE CONTINUED FAILURE OF THE WAR ON DRUGS I* (2017), <https://www.cato.org/publications/policy-analysis/four-decades-counting-continued-failure-war-drugs> [<https://perma.cc/KU5C-RLEY>] (arguing that prohibition is both ineffective and counterproductive at achieving domestic and foreign policy goals); see also TRANSFORM DRUG POL’Y FOUND., *COUNT THE COSTS: 50 YEARS OF THE WAR ON DRUGS 13-15* (2011), www.countthecosts.org/sites/default/files/Human_rights_briefing.pdf [<https://perma.cc/MN4S-2F88>] (explaining that small localized enforcement successes are held up as examples of the power of prohibition even though their impacts are usually temporary and marginal); Mona Chalabi, *The ‘War on Drugs’ in Numbers: A Systematic Failure of Police*, GUARDIAN (Apr. 19, 2016), <https://www.theguardian.com/world/2016/apr/19/war-on-drugs-statistics-systematic-policy-failure-united-nations> [<https://perma.cc/WL29-Q5BU>] (summarizing a medical study that used long-term data collection and analysis to conclude that efforts to control the global illegal drug market through law enforcement are failing); Eduardo Porter, *Numbers Tell of Failure in Drug War*, N.Y. TIMES (July 3, 2012), <http://www.nytimes.com/2012/07/04/business/in-rethinking-the-war-on-drugs-start-with-thenumbers.htm> [<https://perma.cc/86ZH-D4JP>] (arguing that the minimal, isolated victories of the War on Drugs have paled in comparison to the war’s cost in terms of lives lost and other social harm).

⁹ See generally COYNE & HALL, *supra* note 8, at 5 (explaining how a prohibitionist approach to drug policy drives violence, disease, and criminalization); Porter, *supra* note 8 (describing the high costs of the U.S.’s ineffective drug war, in both money and lives lost).

¹⁰ See COYNE & HALL, *supra* note 8, at 2 (noting that users of color are incarcerated more frequently than White drug users); HUMAN RIGHTS WATCH, *supra* note 5, at 132 (explaining that drug convictions can impact a person’s ability to vote, rent a home, get a job, and exercise their parental rights among other things).

the social and financial instability that contribute to drug problems.¹¹ Not only do punitive policies foster desperation and addiction, they also make drug use fundamentally more dangerous.¹² Beyond the direct hazards of unregulated substances and an illicit market, drug policies often “impede access to treatment and lifesaving health services, dramatically increasing” the risks of drug use.¹³ The damage goes far beyond individuals to destabilize entire families, compounding a cycle of vulnerability.

Unfortunately, aggressive prohibition has also had a similar counterproductive effect on the crime and violence associated with drugs, further disrupting those most targeted communities. The link between increasing drug enforcement and increasing violent crime has been well documented for decades, with “overwhelming evidence” that the drug war has increased overall crime.¹⁴ Numerous studies also strongly suggest that prohibition “contributes to gun violence and high homicide rates.”¹⁵ Even increasingly sophisticated efforts to disrupt drug markets may only amplify the chaos, both at home and abroad.¹⁶ As organized crime profited tremendously, Latin America became the “most violent region” on earth with just 10% of the global population and a third of its total homicides.¹⁷ In Mexico, where cartels have almost completely “infiltrated and corrupted” law enforcement, drug violence has claimed at least 100,000 lives in the last ten years with their highest murder rate ever recorded in 2017 at over 29,000.¹⁸ Rarely

¹¹ *Id.* at 3.

¹² *Id.* at 165 (explaining that criminalization drives drug use underground, limiting users’ access to emergency medicine, overdose prevention, and other risk reduction methods).

¹³ See Rebecca Schleifer & Boyan Konstantinov, *Human Rights and Drug Control: We Must Provide Solutions that Leave No One Behind*, UNDP (Dec. 12, 2017), <http://www.undp.org/content/undp/en/home/blog/2017/human-rights-and-drug-control--we-must-provide-solutions-that-le.html> [<https://perma.cc/445L-MYDQ>] (explaining that draconian drug prohibition methods negatively affect the health of the poorest and most marginalized communities).

¹⁴ COYNE & HALL, *supra* note 8, at 9.

¹⁵ INT’L CTR. FOR SCI. IN DRUG POL’Y, EFFECT OF DRUG LAW ENFORCEMENT ON DRUG-RELATED VIOLENCE: EVIDENCE FROM A SCIENTIFIC REVIEW 22 (2010), <http://www.countthecosts.org/sites/default/ICS DP-1%20-%20FINAL.pdf> [<https://perma.cc/25MN-YJ8C>].

¹⁶ *Id.* at 15.

¹⁷ Ilona Szabó de Carvalho, *The War On Drugs Has Failed. Now What?*, WORLD ECON. F. (Jan. 17, 2016), <https://www.weforum.org/agenda/2016/01/the-war-on-drugs-has-failednow-what> [<https://perma.cc/ZBS7-ZJNT>]; see also U.N. INT’L DRUG CONTROL PROGRAM, ECONOMIC AND SOCIAL CONSEQUENCES OF DRUG ABUSE AND ILLICIT TRAFFICKING 39 (1998), http://www.unodc.org/pdf/technical_series_1998-01-01_1.pdf [<https://perma.cc/K99E-PUMZ>] (noting that violence in Columbia has skyrocketed parallel to the rise in drug cultivation, and eight of the ten most violent regions in the country are major drug-producing areas).

¹⁸ COYNE & HALL, *supra* note 8, at 7; Eli Meixler, *With Over 29,000 Homicides, 2017 Was Mexico’s Most Violent Year on Record*, TIME (Jan. 22, 2018), <https://time.com/5111972/mexico-murder-rate-record-2017/> [<https://perma.cc/6DZZ-HHUB>].

do debates on immigration address the international havoc fueled by American drug policy. All this destruction is used to intensify the same counterproductive policies. Decades of failure have been met with ideological commitment rather than a reconsideration of the fundamental approach.

The path to decrease the death, disease, and violence associated with drugs has been known for decades. Studies consistently confirm that drug treatment is dramatically more effective at reducing both addiction and crime than incarceration.¹⁹ With mounting support, leading “human rights and public health bodies” have increasingly advocated explicitly for decriminalization to prevent unnecessary suffering.²⁰ Most Americans have agreed for years “that government should implement policies focused on treatment” instead of prosecution.²¹ The question remains, why has the United States been unable to shift from disastrous policies to proven alternatives?

II. INSTITUTIONAL BARRIERS AND SOLUTIONS

The pervasive nature of both drug problems and drug policies demands a multisectoral response that accounts for their widespread and complex impacts on our society. Few issues connect as many timely and lasting public affairs concerns as drug policy, reaching far beyond criminal justice to encompass gun control, immigration, health care, fundamental civil rights, and democratic values. Accordingly, this Symposium was designed to foster a collaborative, interdisciplinary discussion between a diverse array of advocates, professors, scientists, doctors, lawyers, writers, and public servants, including policy experts on the various relationships between law enforcement, incarceration, medicine, public health, and social work. The conference included four panels, each framed to consider the drug war through a different lens: *Criminal Justice & Enforcement*, *Health & Addiction*, *Policy & Politics*, and *Social Work & Community*. The resulting discussions highlighted the connections and conflicts between the professionals within these fields, and their goals.

The nature of *Criminal Justice & Enforcement* in America has been fundamentally entangled in the War on Drugs. Prohibition has been the driving force behind the militarization of local police in the United States, including the consistent and normalized use of military equipment and tactics on civilians.²² Today, drug interdiction is often the “defining feature” of how people “experience police” in America.²³ The cycle of increasingly severe measures

¹⁹ Stevenson, *supra* note 7, at 6.

²⁰ HUMAN RIGHTS WATCH, *supra* note 5, at 180.

²¹ COYNE & HALL, *supra* note 8, at 18.

²² HUMAN RIGHTS WATCH, *supra* note 5, at 55.

²³ *Id.*

in response to social instability has devastated the relationship between law enforcement and the communities they serve. Not surprisingly, many see racism and oppression in police aggression that has not made them safer or healthier.²⁴ The War on Drugs has been credibly framed as an evolution of Jim Crow laws, spearheading a fundamentally corrupt “system of racialized social control,” disproportionately targeting and harming Black Americans.²⁵ In the best light, drug enforcement has been oppressive in practice, but the record reflects a far more deliberately racist, classist, and political agenda.²⁶ Today, Black Americans are still at least six times more likely than Whites to be incarcerated for drug-related offenses despite similar rates of drug use, and face consequential discrimination at nearly every stage of the criminal justice system.²⁷ Beyond preexisting elements of institutional racism, a fundamental lack of empathy for drug enforcement’s primary targets has no doubt facilitated the social acceptance of militant policing and mass imprisonment. Although there is broad recognition of these unfortunate realities, improvements within criminal justice and enforcement are often aimed at symptoms rather than the underlying sickness, and in more ways than one.²⁸

²⁴ See, e.g., Stevenson, *supra* note 7, at 5 (detailing the social and economic harms suffered by communities impacted by mass incarceration); see also Doris Marie Provine, *Race and Inequality in the War on Drugs*, 7 JUST. & SOC. INQUIRY 41, 49 (2011) (“In the contemporary world of mass incarceration, the number of minorities in prison has reached unprecedented levels. Over the past 30 years, the prison population in the United States has increased more than sixfold, to approximately 2,340,000. More than 60% are racial and ethnic minorities.”).

²⁵ MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 4 (2010).

²⁶ See Mark Perry, *The Shocking Story Behind Richard Nixon’s ‘War On Drugs’ that Targeted Blacks and Anti-War Activists*, AM. ENTERPRISE INST. (June 14, 2018), <http://www.aei.org/publication/the-shocking-and-sickening-story-behind-nixons-war-on-drugs-that-targeted-blacks-and-anti-war-activists/> [https://perma.cc/DPV8-AYFF] (detailing the Nixon administration’s willful and deliberate efforts to use drug enforcement policy to suppress disadvantaged groups).

²⁷ BETSY PEARL, CTR. FOR AM. PROGRESS, *ENDING THE WAR ON DRUGS: BY THE NUMBERS* 1-2 (2018); see also *The Drug War, Mass Incarceration and Race*, DRUG POL’Y ALL. (Jan. 25, 2018), <http://www.drugpolicy.org/resource/drug-war-mass-incarceration-and-race-englishspanish> [https://perma.cc/6LQM-32FR] (explaining the disparate impacts of drug laws on White, Latino and Black communities).

²⁸ See *91 Percent of Americans Support Criminal Justice Reform, ACLU Polling Finds*, ACLU (Nov. 16, 2017), <https://www.aclu.org/press-releases/91-percent-americans-support-criminal-justice-reform-aclu-polling-finds> [https://perma.cc/3VE3-RXVK] (“The majority of Americans recognize racial bias in the criminal justice system—only one in three agree that Black people are treated fairly by the criminal justice system.”); see also Radley Balko, *There’s Overwhelming Evidence That the Criminal-Justice System is Racist. Here’s the Proof.*, WASH. POST (Sep. 18, 2018), <https://www.washingtonpost.com/news/opinions/wp/2018/09/18/theres-overwhelming-evidence-that-the-criminal-justice-system-is-racist-heres-the-proof/> [https://perma.cc /AKP7-TH3J] (cataloging “evidence of racial bias in our criminal-justice system”).

From a *Health & Addiction* perspective, it is impossible to separate the untapped potential of harm reduction from the entrenched forces of prohibition. Over 65% of incarcerated people meet the definition for drug dependence or misuse, compared to 5% of the general population.²⁹ Unfortunately, prisoners rarely receive any drug treatment, and when they do it is tragically lacking.³⁰ On a broader scale, many argue that any real attempt to fight addiction must address our systemic neglect of mental health.³¹ After overdoses, the second leading cause of death for young Americans is suicide and those who are addicted to or abuse substances are almost six times more likely to attempt suicide.³² Addiction and mental health are complicated enough, but combined with the dysfunction of health care in America, there are endless competing problems and solutions demanding attention. For example, there is significant controversy over the responsibility pharmaceutical companies bear for the opioid crisis and what should be done.³³ However, outside of assigning blame, many agree that medical professionals are

²⁹ David Sack, *We Can't Afford to Ignore Drug Addiction in Prison*, WASH. POST (Aug. 14, 2014), https://www.washingtonpost.com/news/to-your-health/wp/2014/08/14/we-cant-afford-to-ignore-drug-addiction-in-prison/?utm_term=.d949989a36ff [<https://perma.cc/HN8L-4WPZ>]. In fact,

About 58 percent of people in state prison meet the definition for drug dependence or misuse, compared to 5 percent of the general population, according to a 2017 report from the Bureau of Justice Statistics. Yet a 2017 study by Johns Hopkins researchers found that less than 5 percent of people who were referred to opioid use disorder treatment through the justice system received methadone or buprenorphine, compared to nearly 41 percent of people referred through other sources.

German Lopez, *How America's Prisons Are Fueling the Opioid Epidemic*, VOX (Mar. 26, 2018), <https://www.vox.com/policy-and-politics/2018/3/13/17020002/prison-opioid-epidemic-medications-addiction> [<https://perma.cc/URW9-8DB3>].

³⁰ *Id.*; see also Chalabi, *supra* note 8 (noting that few prisoners have access to drug treatment).

³¹ See *Comorbidity: Substance Use and Other Mental Disorders*, NAT'L INST. ON DRUG ABUSE, <https://www.drugabuse.gov/related-topics/trendsstatistics/infographics/comorbidity-substance-use-other-mental-disorders> [<https://perma.cc/2LD5-9NK3>] (last updated Aug. 2018) (noting the frequent overlap of substance abuse and mental health disorders in America); see also Caitlyn Bahrenburg, *Mental Health Care Critical for Battling the Opioid Crisis*, MDMAG (Oct 22, 2018), <https://www.mdmag.com/medical-news/mental-health-care-critical-for-battling-opioid-crisis> [<https://perma.cc/TPP4-PD73>] (finding that areas in which there are high levels of depression, there are also high levels of opioid use).

³² HOLLY HEDEGAARD ET. AL., NAT'L CTR. HEALTH STUDIES, SUICIDE MORTALITY IN THE UNITED STATES, 1999–2017 (Nov. 2018), <https://www.cdc.gov/nchs/data/databriefs/db330-h.pdf> [<https://perma.cc/P56E-ACDX>]; Tatjana Dragisic et. al., *Drug Addiction as Risk for Suicide Attempts*, 27 *MATER SOCIO MEDICA* 188 (2015).

³³ See, e.g., Maia Szalavitz, *Prescribed Painkillers Didn't Cause the Opioid Crisis*, VICE (June 20, 2017), https://www.vice.com/en_us/article/a3z98b/big-pharma-didnt-cause-the

ready, willing, and able to immediately decrease the death and suffering of addiction.³⁴ Unfortunately, even when these plans do not directly interfere with drug enforcement, they have been staunchly resisted by drug war politics.³⁵ It took decades for the United States to allow clean needle exchanges to prevent the spread of HIV, hepatitis, and numerous other preventable illnesses.³⁶ In the artificial conflict between public health and criminal justice, the drug war dogma has held substantial priority over the reduction of harm. In efforts to reform, the weight of the evidence is only one of many factors, at best.

III. THE BATTLE FOR HARM REDUCTION IN PHILADELPHIA

The *Policy & Politics* battle over safe injection sites here in Philadelphia highlights the difficulty of advancing harm reduction under a deeply punitive drug war ideology with decades of momentum. At the height of the opioid epidemic, Philadelphia was deemed the “Walmart of Heroin,” reporting the highest overdose rate of America’s top ten most populated counties in 2017.³⁷ Despite aggressive drug enforcement efforts, the wave of synthetic opioids combined with heroin use has devastated communities, often those already plagued by crime and addiction.³⁸ In January 2018, Philadelphia officials, including the city’s Department of Public Health, announced support for opening

opioid-crisis-most-pain-patients-dont-get-addicted [https://perma.cc/FB7C-7942] (arguing that prescription painkillers are not in fact to blame for the opioid crisis).

³⁴ See generally PETER SCHAFER & MICHELE CALVO, N.Y. ACAD. MED., THE INTEGRATION OF HARM REDUCTION AND HEALTHCARE (2015), https://www.nyam.org/media/filer_public/54/58/54582424-33a5-4e4594abc5938f4c2024/Harmreductionhealthcareimplicationsforhealthcarereform.pdf [https://perma.cc/T9MK-FVJZ] (examining the institutional barriers that prevent current harm reduction programs from becoming a significant part of healthcare reform).

³⁵ See generally Richard Weinmeyer, *Needle Exchange Programs’ Status in US Politics*, 18 AM. MED. ASS’N J. ETHICS 252 (2016) (surveying the general hostile political environment of needle exchange programs in the United States); Tessie Castillo, *Congress Lifts the Ban on Federal Funding for Syringe Exchange Programs*, HUFFINGTON POST (Jan. 1, 2016), https://www.huffpost.com/entry/congress-lifts-the-ban-on_b_9032362 [https://perma.cc/9D4D-QTBS] (explaining the ban on federal funding for syringe exchange programs that lasted from the 1980s to 2016, with the exception of a brief period between 2009 and 2011).

³⁶ *Id.*

³⁷ See Jennifer Percy, *Trapped by the ‘Walmart of Heroin,’* N.Y. TIMES MAG. (Oct. 10, 2018), <https://www.nytimes.com/2018/10/10/magazine/kensington-heroin-opioid-philadelphia.html> [https://perma.cc/28WW-PS55] (“Philadelphia County has the highest overdose rate of any of the 10 most populous counties in America. The city’s Department of Health estimates that 75,000 residents are addicted to heroin and other opioids.”).

³⁸ BRYCE PARDO ET AL., RAND CORP., UNDERSTANDING AMERICA’S SURGE IN FENTANYL AND OTHER SYNTHETIC OPIOIDS 3 (2019), https://www.rand.org/pubs/research_briefs/RB10091.html [https://perma.cc/L764-GR4N].

Safehouse, the first supervised safe injection site in the United States.³⁹ Adding credence to their support, Mayor Jim Kenney and District Attorney Larry Krasner publicly declared both that the War on Drugs has failed the people of inner cities by treating the crack epidemic “as a law enforcement problem rather than a health problem” and further, that race had “no doubt” played a part in the implementation of the hostile policies at the center of the nation’s antidrug efforts.⁴⁰ On the very same day, the DA’s office announced that it was “suing 10 pharmaceutical companies in connection with the opioid epidemic” and “dropping all outstanding marijuana possession charges.”⁴¹ The potential positive impact of key institutional actors willing to advance change cannot be overstated. However, the resulting political rhetoric and legal battle over a single safe injection site shows just how ingrained drug war ideology is in our democracy.

When Philadelphia’s plans for a safe injection site moved forward, the Department of Justice, represented by United States Attorney William M. McSwain, responded by bringing a civil suit against Safehouse and its executive director Jose A. Benitez to stop the site from opening, claiming that the proposal violated federal law under the Controlled Substances Act.⁴² A major goal of the Safehouse model is to prevent overdoses by providing medical supervision for those injecting opioids.⁴³ However, the site also plans to offer addiction treatment, recovery counseling, and a range of other medical services aimed at reducing the harms of addiction.⁴⁴ Then U.S. Deputy Attorney General Rod Rosenstein wrote an op-ed for the *New York Times* to make the unsubstantiated claim that safe injections sites create a “serious public safety risk,” further asserting that they are “very dangerous and would only make the opioid crisis

³⁹ See Nina Feldman, *Judge to Hear Nuts and Bolts of How Philly Supervised Injection Site Would Work*, WHYY (Aug. 19, 2019), <https://whyy.org/articles/judge-to-hear-nuts-and-bolts-of-how-philly-supervised-injection-site-would-work/> [<https://perma.cc/J9A3-TYTR>] (noting that city officials, including Mayor Kenney and the Department of Health, have announced their support for the initiative).

⁴⁰ Jim Kenney & Larry Krasner, *Criminalizing Crack Addiction was a Mistake*, PHILA. INQUIRER (Feb. 15, 2018), <https://www.inquirer.com/philly/opinion/commentary/opioid-safe-injection-sites-cues-comprehensive-user-engagement-philadelphia-jim-kenney-larry-krasner-20180215.html> [<https://perma.cc/DF2T-BAXB>].

⁴¹ Joe Trinacria, *Larry Krasner Sues Big Pharma, Drops All Marijuana Possession Charges*, PHILA. (Feb. 16, 2018), <https://www.phillymag.com/news/2018/02/16/krasner-big-pharma-marijuana-possession/> [<https://perma.cc/8EQ8-S537>].

⁴² See Press Release, U.S. Dep’t of Justice, *Civil Lawsuit Filed to Seek Judicial Declaration that Drug Injection Site Is Illegal Under Federal Law* (Feb. 6, 2019), <https://www.justice.gov/usao-edpa/pr/civil-lawsuit-filed-seek-judicial-declaration-drug-injection-site-illegal-under-federal>; <https://perma.cc/T293-8MHG> (announcing the lawsuit).

⁴³ See *The Safehouse Model*, SAFEHOUSE PHILLY, <https://www.safehousephilly.org/about/the-safehouse-model> [<https://perma.cc/SZ6V-A9U7>] (last visited Oct. 27, 2019) (listing a medically supervised observation room as one of the components of the initiative).

⁴⁴ *Id.*

worse” and warning that federal law enforcement would be “swift and aggressive” for anyone providing a “haven to shoot up.”⁴⁵ Rosenstein pointed to the existing dangers of drug use and addiction without any evidence or explanation for how a safe injection site might *increase* the risks.⁴⁶ The evidence strongly suggests the opposite is true, “that safe injection sites reduce the transmission of HIV and hepatitis, prevent overdose deaths, reduce public injections, reduce the volume of shared or discarded syringes, and increase the number of drug users entering treatment programs.”⁴⁷ It seems certain that some lives would be immediately saved and improved. The downstream effects may be up for debate, but after decades of vehemently resisting any harm reduction, the burden of proof should be on those who would interfere with the good faith judgement of experts and medical professionals in the midst of a public health crisis. Although it is not surprising that federal officials would defend the enforcement of federal policies, ignorance cannot fully explain or excuse the intensity of the accompanying rhetoric.

United States v. Safehouse went to trial here in Philadelphia in August of 2019.⁴⁸ At face value, providing a venue for the injection of illegal drugs would violate a strict application of a federal law aimed at crack houses.⁴⁹ While some have framed this as a conflict between law and morality, the reality is that enforcing a “crack-house statute” on professionals in a medical setting is a choice.⁵⁰

⁴⁵ Rod Rosenstein, *Fight Drug Abuse, Don't Subsidize It*, N.Y. TIMES (Aug. 27, 2018), <https://www.nytimes.com/2018/08/27/opinion/opioids-heroin-injection-sites.html> [<https://perma.cc/H6R3-RJLD>].

⁴⁶ *Id.*

⁴⁷ JEFFREY SINGER, CATO INST., HARM REDUCTION: SHIFTING FROM A WAR ON DRUGS TO A WAR ON DRUG RELATED DEATHS 6 (Dec. 13, 2018), <https://object.cato.org/sites/cato.org/files/pubs/pdf/pa-858.pdf> [<https://perma.cc/3V2Y-NH5B>].

⁴⁸ *United States v. Safehouse*, No. CV 19-0519, 2019 LEXIS 170912, *1, *28, (E.D. Pa. Oct. 2, 2019).

⁴⁹ See 21 U.S.C. § 856 (2018) (making it unlawful to “knowingly open, lease, rent, use, or maintain any place . . . for the purpose of manufacturing, distributing, or using any controlled substance”).

⁵⁰ See, e.g., Bobby Allyn, *Is Philly's Supervised Injection Site Legal? Backers Make 'Moral And Religious' Defense?*, WHYY (Apr. 3, 2019), <https://whyy.org/articles/is-phillys-supervised-injection-site-legal-backers-cite-moral-and-religious-claim-in-legal-filing> [<https://perma.cc/8PES-JEBH>] (reporting on Safehouse as a conflict between humanitarians and legal/political authorities). As Safehouse argued,

The CSA affords registered medical practitioners wide discretion to use reasonable clinical judgment in the regulated practice of prescribing, administering, or distributing controlled substances. Section 856 therefore should not be interpreted to override medical and public-health judgment about how and where medical staff will offer opioid reversal agents and

The hostility to harm reduction is not an automatic consequence of existing policy but rather a deliberate and continuous act, and here, one of prosecutorial discretion. A powerful combination of special interests and perverse incentives mutually reinforce the political economy of appearing “tough on drugs.”⁵¹ Furthermore, when a deeply rooted “prison-industrial complex” profits from a continued problem, it is easy to see why there is an absence of “political will” to solve it.⁵² Fortunately, federal district court judges enjoy lifetime appointments and so, more often than not, apply the law free of political interests. On October 2nd, 2019, Judge McHugh of the Eastern District of Pennsylvania held that “the ultimate goal of Safehouse’s proposed operation is to reduce drug use, not to facilitate it, and accordingly § 856 does not prohibit Safehouse’s proposed conduct.”⁵³ In Philadelphia, a few key public officials took risks to enable progress which, perhaps surprisingly, remains alive.⁵⁴ However, it is the consistent efforts of dedicated professionals and local stakeholders that make real and lasting local change possible.

other urgent and primary care for individuals suffering from opioid and substance use disorder—medical interventions that the CSA does not regulate.

Safehouse’s Memorandum of Law in Opposition to the Department of Justice’s Motion for Judgment on the Pleadings at 4, *United States v. Safehouse*, No. 2:19-cv-00519, (E.D. Pa. June. 28, 2019); *see also* Ed Rendell, Jose A. Benitez & Ronda B. Goldfein, *We’re Launching the Nation’s First Safe-Injection Site. We Hope It Will Be One of Many.*, WASH. POST (Oct. 15, 2019), <https://www.washingtonpost.com/opinions/2019/10/15/were-launching-nations-first-safe-injection-site-we-hope-it-will-be-one-many/> [<https://perma.cc/35CC-CVXL>] (discussing the *Safehouse* opinion and expressing hope that this victory will lead to the opening of supervised injection sites nationwide).

⁵¹ *See* Barrett K. Peavie, *United States War on Drugs: Addicted to a Political Strategy of No End* 14, 21, 46 (2002) (unpublished monograph, United States Army Command and General Staff College School of Advanced Military Studies), <http://www.dtic.mil/cgi-bin/GetTRDoc?AD=ADA391171&Location=U2&doc=GetTR.Doc.pdf> [<https://perma.cc/F7PS-8N3S>] (explaining the recent political and economic origins of our present War on Drugs).

⁵² *See* andré douglas pond cummings, *All Eyes on Me’: America’s War on Drugs and the Prison-Industrial Complex*, 15 J. GENDER, RACE & JUST. 417, 419-20 (2012) (noting that the revenue from the prison-industrial complex makes it extremely difficult for elected officials to attempt to roll back the system).

⁵³ *Safehouse*, No. CV 19-0519, 2019 LEXIS 170912, at *56.

⁵⁴ *See* Nina Feldman, *Funders, Operators Sought to Start Safe-Injection Sites in Philly*, WHY (Jan. 23, 2018), <https://why.org/segments/funders-operators-sought-start-safe-drug-injection-sites-philly/> [<https://perma.cc/63HH-JPHM>] (describing local officials such as the Philadelphia Health commissioner and the District Attorney who came out in favor of safe-injection sites).

IV. SOCIAL WORK & THE PATH FORWARD

The collaboration of *Social Work and Community* interests can provide the countervailing power necessary to focus political will and the existing infrastructure ready to fill the void of failed drug policies. The Code of Ethics of the National Association of Social Workers states that “[t]he primary mission of the social work profession is to enhance human well-being and help meet the basic human needs of all people, with particular attention to the needs and empowerment of people who are vulnerable, oppressed, and living in poverty.”⁵⁵ Informed professionals, committed to that mission, have advanced harm reduction policies for their communities around the country.⁵⁶ Unfortunately, the drug war approach continues to limit the ability of social workers to support and reintegrate those suffering from problematic drug use and drug convictions. Beyond billions of dollars in lost opportunities, counterproductive policies create barriers to intervention and recovery.⁵⁷ This reality combined with the “profession’s historical advocacy for individuals with limited resources and no political power demands social work involvement in drug policy reform.”⁵⁸ Social work is already the front line in connecting the personal issues of real people with the public interests of a complex bureaucratic system. From criminal justice and mass incarceration to public health and the opioid crisis, social workers manage the point of conflict and experience the realities of policy.⁵⁹ While the War on Drugs is driven at the national level with

⁵⁵ *Code of Ethics*, NAT’L ASS’N OF SOC. WORKERS, pmb. (2019), <https://www.socialworkers.org/About/Ethics/Code-of-Ethics/Code-of-Ethics-English> [<https://perma.cc/ZST4-JUKT>].

⁵⁶ See generally Patricia Welte, *The Social Worker and Successful State Social Policy* (May 2016) (unpublished Master of Social Work clinical research paper, St. Catherine University), https://sophia.stkate.edu/cgi/viewcontent.cgi?article=1691&context=msw_papers [<https://perma.cc/9NKF-ZQJF>]; see NAT’L ASS’N OF SOC. WORKERS, *A SOCIAL WORK PERSPECTIVE ON DRUG POLICY REFORM 9* (2013), <https://www.drugpolicy.org/sites/default/files/Drug%20Policy%20Reform%20Brief%20Social%20Justice%20Dept.pdf> [<https://perma.cc/5MMJ-X6WS>] (“The social work profession is a major part of the criminal justice workforce, and social workers have an obligation to be proactive in advocating for reforms that set priorities for treatment and other biopsychosocial interventions over cycles of incarceration for individuals with histories of substance use disorders, serious mental illness, or co-occurring disorders.”); see also *Substance Abuse*, SOCIAL WORK POL’Y INST., (May 18, 2006, 9:50 AM), <http://www.socialworkpolicy.org/research/substance-abuse.html> [<https://perma.cc/TL6C-3PMN>] (providing a list of “national research and resource centers and to research findings in recent publications”).

⁵⁷ See *supra* notes 6–14 and accompanying text.

⁵⁸ See NAT’L ASS’N OF SOC. WORKERS, *supra* note 56, at 1.

⁵⁹ *Id.* at 5.

global consequences, the local mechanics of everyday enforcement create an opportunity for communities to change course. With local support, social workers can demonstrate the true value of constructive social intervention rather than incarceration.

CONCLUSION

The battle for safe injection sites is just one symptom of the drug war's penetrating influence beyond traditional criminal justice. The intense hostility to change has gone beyond the systemic failures of current policies to interfere with the development of positive social programs. What makes this case particularly disturbing is that advocates are not pleading for resources to pursue a solution, they are simply asking that professionals be allowed to do their job. The conflict is not an inherent incompatibility of harm reduction and prohibition, but rather a product of unbalanced institutional powers. The relentless prosecution of individual users is a symptom of an ideology brought to the extreme, independent of the motivations or consequences. The deep foundation of prevailing drug war interests, combined with decades of zealous propaganda, form an incredible barrier to changing the national mindset. Now more than ever, advancing reality over rhetoric is vital to the integrity of democracy. Yet mountains of evidence, the professional consensus, and expert analysis all pointing to tangible solutions are clearly not enough. The real competition is a battle for the hearts and minds of the public.⁶⁰ Advocates must encourage more empathy and less fear to foster an environment where fundamental policy changes are possible. For decades, small incremental improvements have sparked hope, but the underlying system has gone unchallenged. Empowering medical professionals and social workers will absolutely save and improve lives. However, without a fundamental realignment of institutional power, the War on Drugs will continue to perpetuate subjugation and fuel mass incarceration. The first step towards recovery is admitting that we have a solution.

⁶⁰ See Ethan Nadelmann, Founder, Drug Pol'y All., Keynote Address at the University of Pennsylvania Journal of Law & Public Affairs Symposium: Addicted to the War on Drugs (Mar. 13, 2019) (on file with the University of Pennsylvania Journal of Law & Public Affairs) (charting the ways public perception of drug use and drug users has shaped drug policy in the U.S.).