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"ONDCP's Fiscal Year 2011 National Drug Control Budget: Are We Still Funding a War on Drugs?"

Good morning. I'm Ethan Nadelmann, executive director of the Drug Policy Alliance, the nation's leading organization advocating alternatives to the failed war on drugs. I want to thank the subcommittee for inviting me to testify on ONDCP's priorities and objectives. It is hard to talk in detail about ONDCP's overall strategy when their 2010 Strategy is not yet out, but there are certain things we know based on their proposed FY11 Budget Highlights and recent statements and remarks by Director Gil Kerlikowske and others.

I want to highlight four issues – ONDCP's flawed performance measures, the lop-sided ratio between supply and demand spending in their budget, the lack of innovation in their proposed strategies, and their failure to adequately evaluate drug policies. But first a little context is required.

The predominant role that criminalization and the criminal justice system play in dealing with particular drugs and drug use in this country is unsustainable in both fiscal and human terms. Police made 1.7 million drug arrests in 2008 alone, including 750,000 for nothing more than possession of marijuana for personal use. Those arrested were separated from their loved ones, branded criminals, denied jobs, and in many cases prohibited from voting and accessing public assistance for life.

The United States now ranks first in the world in per capita incarceration rates, with less than 5% of the world's population but nearly 25% of the world's prison population. Roughly 500,000 people are behind bars tonight for a drug law violation. That's ten times the total in 1980, and more than all of western Europe (with a much larger population) incarcerates for all offenses. More than half of federal prisoners are there for drug law violations; relatively few are kingpins and virtually none are queenpins.

Yet, despite spending hundreds of billions of dollars and arresting millions of Americans, illegal drugs remain cheap, potent and widely available throughout the country and the harms associated with them continue to mount. Meanwhile, the war on drugs is creating problems of its own - broken families, racial disparities, and the erosion of civil liberties. Few government policies have failed for so long without any serious effort to question or revise them.

U.S. Senator Jim Webb (D-VA) said recently, speaking about our country's uniquely high incarceration rate, "either we have the most evil people in the world or we are doing something wrong with the way we approach the issue of criminal justice." He went on to say "the central role of drug policy in filling our nation's prisons makes clear that our approach to curbing illegal drug use is broken." Unfortunately, ONDCP seems unwilling to reassess this role in any meaningful way.

Performance Measures

When it comes to performance measures, ONDCP historically has pointed to increases or decreases in the total number of Americans who admit to using an illegal drug within the last year as the most important criteria for judging the success or failure of U.S. drug policy. The agency sets two- and five-year goals based on annual surveys of drug use. It is not evident yet what performance measures ONDCP will lay out in its forthcoming Strategy, but when speaking before the 53rd UN Commission on Narcotic Drugs last month Director Kerlikowske said, "[t]he U.S. Strategy will emphasize and focus on our commitment to reduce U.S. drug consumption."

Drug use rates tell us surprisingly little, however, about our nation's progress toward reducing the actual harms associated with drugs. If the number of Americans using illegal drugs decreases, but overdose fatalities, new HIV/AIDS infections, racial disparities and addiction increases, the Drug Policy Alliance would consider that failure. In contrast, if the number of Americans using illegal drugs increases, but overdose fatalities, new HIV/AIDS infections, racial disparities and addiction declines, the Drug Policy Alliance would consider that success. Key performance measurements should focus on the death, disease, crime and suffering associated with both drugs and our drug policies, not drug use per se.

Simply stated, ups and downs in how many people say they used marijuana or other drugs last year are far less important than ups and downs in drug overdose fatalities, or new HIV and hepatitis C infections, or expenditures on incarceration of non-violent drug offenders.

If this subcommittee advances only one drug-related reform it should be to require ONDCP to set objectives for reducing the harms associated with both drugs and the war on drugs. ONDCP shouldn't just set short- and long-term goals for reducing drug use; it should set specific goals for reducing fatal overdoses, the spread of HIV/AIDS and hepatitis C, racial disparities, the number of nonviolent offenders behind bars, and other negative consequences of both drug use and drug control policies.

Ideally, ONDCP will use their 2010 Strategy as an opportunity to set a new bottom line in U.S. drug policy, but if they fail to do so Congress should set it for them. The U.S. Conference of Mayors, the National Black Caucus of State Legislators, and the National Latino Congreso have all called for setting new performance measures in U.S. drug policy that focus on reducing both drug- and drug-war-related problems.

Supply vs. Demand

In terms of the broad strokes of ONDCP's proposed FY11 drug war budget, it is largely a continuation of the failed drug policies of the last three decades, with most of the money dedicated to ineffective supply-side programs, relatively little going to treatment and prevention, and almost none going to harm reduction. Director Kerlikowske told the *Wall Street Journal* last year that he doesn't like to use the term "war on drugs" because "[w]e're not at war with people in this country." Yet 64% of their budget - virtually the same as under the Bush Administration – focuses on largely futile interdiction efforts as well as arresting, prosecuting and incarcerating extraordinary numbers of people. Only 36% is earmarked for demand reduction – and even that proportion is inflated because the ONDCP "budget" no longer includes costs such as the $2 billion expended annually to incarcerate people who violate federal drug laws.

The U.S. is never going to significantly reduce the problems associated with drug use and misuse as long as most of the drug war budget is dedicated to supply reduction instead of demand and harm reduction. Drug strategies that seek to interrupt the supply at its source have failed over and over again for cocaine, heroin, marijuana and virtually every drug to which they have been applied – including alcohol during alcohol Prohibition. The global markets in marijuana, coca, and opium products operate essentially the same way that other global commodity markets do: if one source is compromised due to bad weather, rising production costs, or political difficulties, another emerges.

In contrast, experts have known for years that increasing funding for treatment is the most cost-effective way to undermine illicit drug markets and reduce substance misuse. A 1994 RAND study commissioned by the U.S. Army and ONDCP found treatment to be 10 times more effective at reducing drug abuse than drug interdiction, 15 times more effective than domestic law enforcement, and 23 times more effective than trying to eradicate drugs at their source. A 1997 SAMHSA study found that treatment reduces drug selling by 78%, shoplifting by almost 82% and assaults by 78%. More recent studies have reached similar conclusions.

In 2000, voters in California approved the Substance Abuse and Crime Prevention Act – also known as Proposition 36 – which had been drafted and sponsored by the Drug Policy Alliance and allied organizations. That initiative requires the state to provide drug treatment, rather than jail, for nonviolent drug possession offenders. It also doubled previous annual state funding for drug treatment. A recent evaluation by UCLA found that California taxpayers saved nearly $2.50 for every dollar invested in the program. Of people who successfully completed their drug treatment, California taxpayers saved nearly $4 for each dollar spent. In all, Proposition 36 is estimated to have saved the state government and localities roughly $2 billion dollars.

The problems with ONDCP's FY11 proposed drug budget involve more, however, than the bias in spending in favor of supply reduction. Most of the programs being funded are not all that different than those funded by previous administrations, yet the Bush Administration's assessment of roughly half of federal drug war programs found just one that could be rated moderately effectively, a few were rated adequate, and most were rated ineffective or results not demonstrated. Not one was rated truly effective.

The solution thus involves more than re-balancing the proportion of funds spent on supply vs. demand reduction. Drug education and prevention may be underfunded, but existing expenditures are also poorly spent. The federal government continues to waste tens of millions of dollars each year on D.A.R.E., the National Youth Anti-Drug Media Campaign, student drug testing and other scared-based prevention programs repeatedly proven to be ineffective. More funding for treatment is needed but those expenditures will prove most beneficial if they are no longer inappropriately circumscribed by drug war politics and ideology.

Lack of Innovation and Missed Opportunities

Most indications suggest that ONDCP is unlikely to propose any new initiatives that differ in significant ways from those of preceding administrations – although there are some modest steps in the right direction such as requesting funding to train physicians to identify and respond to substance misuse in their patients and better coordinating treatment and prevention services. ONDCP is requesting needed money for the Second Chance Act and other programs designed to reduce recidivism and help offenders reintegrate into society, but the prison door will remain a revolving door as long as police make 1.7 million drugs arrests each year. Reintegration will also be difficult so long as federal and state laws prohibit formerly incarcerated individuals from accessing public housing, student loans, and other public assistance.

Director Kerlikowske has said in several recent speeches that U.S. drug policy should be "evidence-based" and "balanced" but there is little reason to believe that ONDCP's 2010 Strategy will be either. U.S., foreign and international agencies that focus on preventing HIV/AIDS domestically and internationally routinely rely on harm reduction interventions and employ the language of harm reduction. Deputy ONDCP director Tom McLellan appeared to break new ground in 2009 when he stated that "we support all harm reduction efforts that also reduce drug use." But that acknowledgement of the important role of harm reduction in drug policy was repudiated last month when Director Kerlikowske declared that "we do not use the phrase 'harm reduction' to describe our policies because we believe it creates unnecessary

confusion and is too often misused to further policies and ideologies which promote drug use." Dozens of foreign governments that employ harm reduction language and policies reportedly found the statement foolish, although they welcomed the United States' belated support of needle exchange and other science-based policies.

Congress's recent repeal of the ban on federal funding for sterile syringes to reduce HIV represented an important step forward in elevating science over politics. It is a shame that ONDCP appears to have played little to no role in accomplishing that important reform and has yet to articulate a plan for working with states to improve syringe availability to reduce the spread of HIV/AIDS and hepatitis C. Their FY11 Budget Highlight contains no dedicated funding for syringe exchange. This is a missed opportunity to create a continuum of care linking syringe exchange and other harm reduction programs with treatment and rehabilitative programs in ways that blur the boundaries among programs and truly focus on helping people manage or even stop their dependence on illicit drugs.

Director Kerlikowske has spoken eloquently and forcefully in support of reducing fatal drug overdoses from legal and illegal opiates. ONDCP, however, has yet to demonstrate any leadership in advancing the most effective (and cost-effective) means of reducing fatal ODs – increasing access to the overdose antidote, naloxone. Dedicated funding appears to be absent from their Budget Highlight and there is no indication it will be part of their Strategy. Thousands of lives a year could be saved if ONDCP prioritized this intervention.

Fatal drug overdoses increased more than 400 percent between 1980 and 1999 and more than doubled over the last decade. Overdose is now the second leading cause of accidental death (second only to automobile crashes) and the leading cause of accidental death in 16 states and among Americans aged 35 to 54. More Americans died last year from drug overdoses than firearms.

Naloxone is a highly effective opioid antagonist that rapidly reverses an overdose when administered by a peer or medical professional. Participants in overdose prevention programs are trained how to administer naloxone, perform CPR, initiate rescue breathing and put a victim in the recovery position until emergency help arrives. Naloxone distribution programs are commonplace abroad and can also be found in a growing number of U.S. cities including Baltimore, Chicago, Los Angeles, Philadelphia, New York City and San Francisco; New Mexico and Massachusetts have statewide programs. Many more would be available if federal funding were available.

ONDCP has also dismissed two other highly successful, evidence-based harm reduction strategies - supervised injection facilities and heroin assistance treatment. Their FY11 budget contains no funding for even trial or research programs on them, notwithstanding abundant evidence that they have succeeded in a diversity of foreign locations.

An estimated 90 supervised injection facilities currently operate in forty cities around the world. To date, 28 methodologically rigorous studies on the impact of supervised injection facilities have been published in leading peer-reviewed medical journals. These studies demonstrate that supervised injection sites are associated with reductions in overdose fatalities, syringe sharing, public injecting,

and publicly discarded syringes, increased uptake of drug detoxification and addiction treatment programs, and no increases in drug-related crime or rates of relapse among former drug users.

There is but a single supervised injection facility in North America – Vancouver's *Insite* program. Director Kerlikowske visited that program during his tenure as Seattle police chief and wrote a brief but straight-forward memo on it for his command staff. Public health officials in San Francisco and other U.S. cities have considered establishing pilot supervised injection sites in the U.S., but are wary of attempting to proceed in the face of federal opposition. The mixture of arrogance and fear with which ONDCP officials dismiss even the possibility of supporting research in the area is sadly reminiscent of past ONDCP opposition to syringe exchange programs notwithstanding the scientific consensus in their favor. Their opposition provides a powerful reminder that President Obama's mandate that politics no longer trump science does not extend to federal drug policy.

Evidence in support of heroin assisted treatment is equally strong. These programs enable people addicted to street heroin who have not succeeded in other treatment programs to be prescribed pharmaceutical heroin as part of a broader treatment regimen. Heroin assisted trials have now been conducted in six countries – Switzerland, the Netherlands, England, Spain, Germany, and Canada. Denmark recently decided to skip pilot projects and go straight to offering heroin assisted treatment for those who need it because the evidence from elsewhere was so conclusive.

Peer-reviewed studies around the world have concluded that heroin assisted treatment is associated with reductions in crime, overdose fatalities, risky behavior and other problems as well as improvements in physical and mental health, employment and social relations. Cost-benefit studies demonstrate that the relatively high cost of heroin-assisted treatment is more than covered by reductions in criminal justice and health care costs. Some of these results were reported in an evaluation of the Canadian research trial (known as NAOMI – the North American Opiate Medication Initiation) published in the distinguished *New England Journal of Medicine*. By contrast, few reports can be found in refereed scientific journals demonstrating any significant failures or harmful consequences of heroin assisted treatment.

Professor Peter Reuter at the School of Public Policy and Department of Criminology, University of Maryland, College Park published a report last year (http://www.abell.org/pubsitems/cja_HeroinMaintenance_0209.pdf) that analyzed heroin assisted treatment programs around the world and considered whether Baltimore should establish a pilot project. He concluded:

> The potential for gain...is substantial. Even in the aging heroin-addict population, there are many who are heavily involved in crime and return frequently to the criminal justice system. Their continued involvement in street markets imposes a large burden on the community in the form of civil disorder that helps keep investment and jobs out. If heroin maintenance could remove 10 percent of Baltimore's most troubled heroin addicts from the streets, the result could be substantial reductions in crime and various other problems that greatly trouble the city. That is enough to make a debate on the matter worthwhile.

The same could well be said of dozens of other U.S. cities where heroin is used illegally by significant numbers of residents. For those who hesitate to allow the legal prescription of heroin, it is worth pointing out that two research trials found that longtime users of heroin could not distinguish it, in controlled double blind studies, from hydromorphone (more commonly known by its trade name, Dilaudid), which is widely used in pain management both here and abroad.

During his speech at the UN Commission on Narcotics Drugs, Director Kerlikowske told representatives from other nations that "We [the U.S. government] support evaluating individual programs and policies on their own merit, not on whether they do or do not fall under any particular ideological label." Yet ONDCP's persistent refusal to support even trying what has worked so well in every foreign research trial cannot help but call into question its commitment to science over ideology.

Need for Reassessment

Finally, ONDCP's request for $15.5 billion in drug war expenditures for FY11 includes virtually no allocation for rigorous assessment of the efficacy of U.S. drug policies. This continues a long ONDCP tradition of spending enormous amounts of taxpayer money on demonstrably failed policies without examining alternatives. Even a modest allocation to commission the National Academy of Sciences (or a similarly objective, non-politicized entity) to assess alternative drug policies both here and abroad would represent an important breakthrough in holding U.S. drug policies accountable to more objective evidence-based criteria. So would a requirement that federal agencies involved in the drug war devote a portion of their budgets to evaluating the efficacy and unintended consequences of their policies and programs.

Congress and the Obama administration have broken with the costly and failed drug war strategies of the past in some important ways – by allowing federal funding of syringe exchange to reduce HIV, by allowing state governments greater latitude to regulate the availability of marijuana for medical purposes, by moving forward on reducing racially discriminatory crack/powder mandatory minimum sentences, and by working more diligently to integrate effective drug treatment into ordinary medical care. But the continuing emphasis on interdiction and law enforcement in the federal drug war budget, the persistent preference for typically futile supply reduction initiatives over demand and harm reduction efforts, the refusal to jettison federal programs that show no signs of success, the arrogant rejection of harm reduction initiatives that have proven successful abroad, and the absence of any commitment to rigorous evaluation of current policies and alternative options – all suggest that ONDCP's plans for the future are far more wedded to the failures of the past than to any new vision for the future.

I urge this committee to hold ONDCP and federal drug policy accountable to a new set of criteria that focuses on reductions in the death, disease, crime and suffering associated with both drugs and drug prohibition.