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Washington, D.C.'s Heroin Epidemic of the 1970s and Today's Opioid Crisis: A Comparative History of Government Policy Responses

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WASHINGTON, D.C.'S HEROIN EPIDEMIC OF THE 1970S AND TODAY'S OPIOID CRISIS: A COMPARATIVE HISTORY OF GOVERNMENT POLICY RESPONSES

Brian G. Gilmore*

ray charles

do you
dig ray
charles

when the
blues are
silent

in his throat

& he rolls
up his
sleeves
- Sam Cornish[1]

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* Writer and Clinical Associate Professor of Law, Michigan State University; born and raised in Washington D.C., remembers vividly the local media coverage of the heroin epidemic in the city of the late 1960s and early 1970s.

1. SAM CORNISH, *Ray Charles*, *in* AN APRON FULL OF BEANS: NEW AND SELECTED POEMS 159, 159 (CavanKerry Press, 2008).

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I. INTRODUCTION

Not long after I moved to Michigan and began directing the Michigan State University College of Law—Housing Law Clinic, it became apparent almost immediately that substance abuse of our clientele was a challenge that the clinic would have to overcome in our efforts to assist them with their housing problems. While our initial observations related to the abuse of methamphetamines amongst our clients, soon the use and abuse of opioids became the more prevalent substance that our clients were abusing.

Sometimes, the abuse of opioids was a direct cause of the housing problems our clients faced (missed employment time, mismanagement of income due to abuse and theft of rental funds by relatives or others are just some of the reasons). On other occasions, opioid use and/or abuse was just part of their lives. Nevertheless, the opioid epidemic that has been building around the country for decades was a reality in our line of work.

The current opioid epidemic in the U.S. is troubling and has had a far-reaching impact into the lives of many individuals beyond addiction issues. In Michigan, where my clinic does its work, there were over 2,600 drug overdoses in 2017, an eight percent increase from 2016[2] according to the Centers for Disease Control in Atlanta. In 2016, seventy-three percent of the overdose cases in Michigan were opioid related.[3]

On September 16, 2016, in response to the entire epidemic, then President Barack Obama signed a proclamation declaring September 18–24, 2016, "*PRESCRIPTION OPIOID AND HEROIN EPIDEMIC AWARENESS WEEK, 2016*."[4] The order, among other things, called "on the Congress to provide $1.1 billion to expand access to treatment services for opioid use

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2. Julie Mack, *Michigan Drug Overdose Deaths in 2017 Exceed Traffic, Gun Deaths Combined*, MLIVE (Aug. 17, 2018), https://www.mlive.com/news/index.ssf/2018/08/michigan_drug_overdose_deaths.html.

3. *Id.*

4. Proclamation No. 9499, 81 Fed. Reg. 65,173 (Sept. 16, 2016).

disorder."[5] The proclamation specifically sought to motivate "all Americans to observe this week with appropriate programs, ceremonies, and activities" that would "raise awareness about the prescription opioid and heroin epidemic."[6]

President Obama's proclamation, while tardy in its execution, arrived as the United States was experiencing an upsurge in the use and abuse of opioids and heroin.[7] Over the years preceding this proclamation, deaths from overdoses had sharply increased, and several high-profile fatalities drew further attention to the problem. For example, in February 2014, the celebrated actor Phillip Seymour Hoffman died of a heroin overdose in his Manhattan apartment.[8] Even more tragically, the international music icon, Prince, died from an overdose of the synthetic opioid drug, fentanyl, in his Paisley Park, Minneapolis home on April 21, 2016.[9] These high profile deaths acted as further proof of a widespread opioid–heroin epidemic in the United States.

In an attempt to examine the problem of opioid addiction and epidemic use and abuse, this Article will examine the heroin epidemic that occurred in the United States in the late 1960s and early 1970s in Washington, D.C. and compare the government response to that epidemic with the current efforts by the government to address today's opioid crisis. Part II of this Article focuses on the class of drugs from which heroin is derived (opium, morphine, etc.) and the various uses and developments over the centuries, specifically focusing on the recent rise of prescription painkillers and widespread abuse and addiction of those substances.[10] This Article will also discuss the evolution of opiate use and addiction in the United States and the progression of government actions to attempt to address the problem.

Part III is a history of the heroin epidemic that developed in Washington, D.C. in the late 1960s and early 1970s. This section is a discussion of the specific facts of the epidemic and the various new approaches that were implemented to address the problem.[11]

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5. *Id.*
6. *Id.*
7. CTR. FOR DISEASE CONTROL AND PREVENTION, OPIOID OVERDOSE: UNDERSTANDING THE EPIDEMIC (2018).
8. Christie D'Zurilla, *Philip Seymour Hoffman Overdosed on Heroin, Cocaine and More*, L.A. TIMES (Feb. 28, 2014), http://articles.latimes.com/2014/feb/28/entertainment/la-et-mg-philip-seymour-hoffman-cause-of-death-overdose-heroin-cocaine-20140228.
9. *Prince's Death: Opioid Painkillers Found at Singer's Home*, BBC NEWS (Apr. 18, 2017), http://www.bbc.com/news/world-us-canada-39625511.
10. *See infra* Part II.
11. *See infra* Part III.

Part IV examines the current opioid epidemic more closely and considers how the lessons of the Washington, D.C. epidemic and response could be applied to current challenges facing this nation.[12] The two epidemics will then be contrasted.

Finally, Part V will briefly summarize this Article and consider a specific path with respect to policy on this problem into the future, considering the emerging dynamics of opioid addiction in the United States.[13]

This Article begins now with a historical understanding of heroin and how it has become such an integral part of substance abuse and addiction in modern society.

II. KING HEROIN

A. Origins

According to Richard Ashley, a teacher and writer, the Egyptians discovered heroin.[14] The drug is "derived from morphine," which is developed from opium.[15] Opium can be traced to the opium poppy, or the "joy plant," which was cultivated extensively in Asia, but which spread from Egypt to Rome and Greece where its addictive qualities became evident to medicinal specialists.[16] For this reason, heroin—and its popularity as a drug—can only be understood by examining opium historically.

While there have historically been (and likely are) various uses for opium, its ability to "diminish apprehension," thereby allowing individuals to "tolerate pain," has become its most popular use.[17] Opium is a "domesticated annual plant," that historically has only been "associated with people, either in planted fields or in disturbed environments near cultivated areas."[18]

While debate continues as to whether the Egyptians were the first to widely cultivate opium and the poppy seed plant, established records of various sorts do confirm it was the Egyptians who made medicinal use of

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12. *See infra* Part IV.
13. *See infra* Part V.
14. RICHARD ASHLEY, HEROIN: THE MYTHS AND THE FACTS 2 (St. Martin's Press, 1972).
15. *Id.*
16. *Id.* at 2–3.
17. Joseph J. Hobbs, *Troubling Fields: The Opium Poppy in Egypt*, 88 GEOGRAPHICAL REV. 64, 66 (1998) (citing MARK D. MERLIN, ON THE TRAIL OF THE ANCIENT OPIUM POPPY (London: Associated University Presses, 1984)).
18. *Id.* at 65.

the plant and its produce for various ailments.[19] Specifically, archeological evidence supports the fact that opium was used on children suffering colic; the substance (poppy plant) continues to be used for that purpose in the modern era.[20] Eventually, Arabs began to spread opium from the confines of Egypt and North Africa, and uses of opium moved beyond medicinal purposes to pleasure seeking (recreational purposes) by the sixteenth century.[21]

While the opium poppy plant was legally and openly cultivated in many countries throughout the world for centuries, the evolution of the byproducts of the plant resulted in vast changes to this approach.[22] Specifically, opium eventually was used to produce a more potent form of the plant called "morphine"—a very well-known pain medication today used for medicinal purposes.[23] Yet, the next stage after the production of morphine was the production of heroin, a far more potent byproduct that is central to understanding the historical controversies associated with opiates.[24] In addition, the creation of heroin vastly altered policy decisions by various countries in attempting to address the addiction culture heroin can—and did—produce.[25]

Prior to the isolation of morphine, opium simply existed as "folk medicine" and a "giver of pleasure," among other things.[26] Initially, it was consumed as a liquid, but was eventually smoked once it migrated to the New World.[27] But with the creation of morphine in 1803, the potential "pharmacological effects" of "opium" and its byproducts was more self-evident.[28]

Morphine is a "natural alkaloid" of opium, and its effective use by physicians dating back to the early nineteenth century is well known.[29] The drug was widely used during the Civil War to treat soldiers; this resulted in a

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19. *Id.* at 66–67 (citing to J. M. SCOTT, THE WHITE POPPY: A HISTORY OF OPIUM (New York: Funk and Wagnalls, 1969)).

20. Michael Obladen, *Lethal Lullabies: A History of Opium Use in Infants*, 32 J. HUM. LACTATION 75, 75 (2016) ("As late as 1912, the International Hague Convention forced governments to implement legislation that effectively curtailed access to opium and broke the dangerous habit of sedating infants.").

21. Hobbs, *supra* note 17, at 67.

22. *See* John Kaplan, *A Primer on Heroin*, 27 STAN. L. REV. 801, 801 (1975).

23. *Id.* at 802.

24. *Id.*

25. *See id.* at 801–02.

26. *Id.*

27. *Id.* at 802.

28. *Id.*

29. ASHLEY, *supra* note 14, at 5.

major addiction problem in the United States following the war.[30] The evolution of morphine from the opium plant eventually resulted in the development of "heroin," a pharmaceutical product created and named by Bayer.[31] Numerous scientists and pharmaceutical companies developed various derivatives of morphine at the time, as well as other very successful drug products such as aspirin, which was also developed by Bayer.[32] "Heroin" or diacetylmorphine was quite effective at treating various prominent ailments of the day including bronchitis, pharyngitis, tracheitis, and most importantly tuberculosis.[33] Addiction to the drug was considered from the very beginning, and it was not long before addiction issues became more well-known and prevalent amongst those who had been prescribed the drug or used it for recreational purposes.[34]

B. Heroin and Criminalization

Despite its value for medicinal purpose by the turn of the century, and the widely promoted idea that heroin could cure morphine addiction, heroin itself became a major problem for politicians and professionals involved in the administration and development of the drug.[35] Congressional hearings in the 1970s recalled the history of opiates (such as morphine) just as heroin was making its ascent into the social fabric of the United States.[36]

> Drug addiction in America was well established by 1900. It has been estimated that in the year that marked the beginning of the present century, one American out of every 400 was addicted to an opiate, usually morphine. So we began this century with almost 190,000 Americans living as drug addicts, a figure nearly matching the estimated number of heroin addicts in the United States today.[37]

Yet, well before the modern era, opium, morphine, and heroin—the three related substances—each were considered addictive, with the "question of

30. *Id.*
31. David F. Musto, *Introduction: The Origins of Heroin*, *in* ONE HUNDRED YEARS OF HEROIN xiii (David F. Musto ed., Auburn House 2002).
32. *See id.* at xiv.
33. *Id.* at xv.
34. *Id.* at xv–xvi.
35. H.R. REP. NO. 91-1808, pt. 1, at 5 (1971) [hereinafter HOUSE COMM. REP.].
36. *See id.* at 3–7.
37. *Id.* at 5.

formation of habit" as serious.[38] However, the rise of heroin at the turn of the century is at least part of a campaign of misinformation. While heroin is derived from a plant that proved addictive (opium)—and more directly from morphine—it was still reported that heroin did not possess addictive qualities.[39] Professor Heinrich Dresser, the discoverer of heroin,[40] reported that the drug did not cause addiction, had "no after effects," and did not "cause mental exultation."[41] Conversely, these issues were all of grave concern with the use of heroin's closely related pharmacological partner: morphine.[42]

However, it wasn't long before heroin also was considered a highly addictive substance with destructive qualities despite the benefits it did provide when used properly.[43] Based upon various incidents, a call to prohibit the sale of heroin emerged early in the twentieth century.[44] Specific instances of addiction based upon withdrawal symptoms also began to emerge in the public sphere.[45] Misinformation regarding heroin—despite its close relationship to opium—continued to be prevalent at this time as well, but the evidence continued to mount that heroin was very addictive.[46] The recreational use of the drug also continued to increase,[47] further exposing to the public the dangers of the drug on a specific basis.[48]

Even though these dangers continued to exist—and addiction was fairly obvious—opiate use and abuse remained acceptable by the public.[49] It was even estimated that there were up to one million addicts in the United States as opiates were freely used by the public as a result of various patents obtained on the opiate products developed by pharmaceutical companies.[50] The free use of the narcotic in the early twentieth century did not result in increased criminal activity or the prison population, though members of the nation's so called criminal class began using opiates, as well as Chinese immigrants, prostitutes, and gamblers.[51] The United States was also part of many

38. John Phillips, *Prevalence of the Heroin Habit: Especially the Use of the Drug by "Snuffing"*, 59 JAMA 2146, 2146 (1912).
39. *Harmless Substitute for Morphine*, CINCINNATI INQUIRER, Feb. 4, 1900, at 21.
40. *Glyce-Heroin (Smith)*, 31 NURSING WORLD 336, 336 (1903).
41. *Harmless Substitute for Morphine*, *supra* note 39, at 21.
42. *Id.*
43. *See Prohibiting the Sale of Heroin*, THE TENNESSEAN, Oct. 8, 1912, at 6.
44. *See, e.g.*, *id.*
45. *E.g.*, *Heroin Victims Arrested*, CINCINNATI INQUIRER, Dec. 9, 1913, at 16.
46. *Of the Heroin Habit*, DETROIT FREE PRESS, Feb. 2, 1913, at 60.
47. *See The Case Against Heroin*, BOSTON GLOBE, Dec. 10, 1913, at 12.
48. *Id.*
49. Major Charles G. Hoff, Jr., *Drug Abuse*, 51 MIL. L. REV. 147, 161 (1971).
50. *Id.*
51. *Id.* at 162.

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international agreements with other nations that made it necessary or desirable for some policy action to be implemented with respect to opiate products.[52]

Eventually, as a result of the evidence of addiction associated not only with opium and morphine but also heroin, the United States government took action to regulate various narcotics in the early part of the twentieth century.[53] The initial focus of congressional action as a result of the evidence related to the addictive qualities of the drug was opium "in any form or any preparation or derivative thereof."[54] However, this law was a prelude of many more actions that were to come.

This initial law, passed in 1909, was quite limited in scope. It eventually came to be known as the Narcotic Drug Import and Export Act. In summary, it made it "unlawful to import into the United States opium in any form or any preparation or derivative thereof."[55] The law also provided that "other than smoking opium or opium prepared for smoking, may be imported for medicinal purposes only, under regulations."[56]

Legislative activity continued in the United States following the passage of this initial law in an effort to control a substance that at least some in the country considered evil and a threat to the "public morals" of society.[57] In April 1913, then President Woodrow Wilson sent a letter to Congress expressing his sentiments on addressing the problem of opiates in society.[58]

However, it was the Harrison Narcotic Act[59] that signaled a real shift in the United States towards addressing the issue of cocaine and opiates in society.[60] The passage of the Act can be directly traced to the increase in the "number of persons . . . addicted to the use of habit-forming drugs and the demoralizing and destructive consequences" of these addictions.[61] The Harrison Act wasn't a pure drug prohibition law by any means. However, its introduction and passage can be directly traced to the advocacy of "Protestant missionaries in China" and the actions of "other religious groups" to convince

52. *See* HOUSE COMM. REP., *supra* note 35, at 5–6.

53. *See* Note, *The Harrison Narcotic Act*, 6 VA. L. REV. 531, 534 (1919–1920).

54. *Id.* at 534, n.1 (quoting 35 Stat. 614, c. 100, § 1, Comp. Stat. '16. § 8800).

55. *Id.*

56. *Id.*

57. JOHN SHARP WILLIAMS, MANUFACTURE OF SMOKING OPIUM, S. REP. NO. 63-130, at 1 (1913).

58. PRESIDENT WOODROW WILSON, ABOLITION OF THE OPIUM EVIL, H.R. DOC. NO. 63-33, at 1 (1913).

59. Harrison Narcotic Act, ch.1, 38 Stat. 785 (1914).

60. LISA N. SACCO, CONG. RESEARCH SERV., R43749, DRUG ENFORCEMENT IN THE UNITED STATES: HISTORY, POLICY, AND TRENDS 2 (2014).

61. *The Harrison Narcotic Act*, *supra* note 53, at 534.

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Congress that "drugs" and "drug users" were immoral.[62] Specifically, the Right Reverend Charles Brent, Episcopal Bishop in the Philippine Islands, was instrumental in influencing United States policy and world policy in the growing policy decisions regarding opium.[63]

Early cases involving its legal interpretation and application set the country on a course of total prohibition of narcotics in society, and it is that approach that continues to dominate public policy today.

According to one of the first cases rendered under the law, *United States v. Jin Fuey Moy*,[64] the Harrison Narcotic Act was actually a revenue raising law known more formally as an "Act to Provide for the Registration of, with Collectors of Internal Revenue, and to Impose a Special Tax Upon, All Persons Who Produce, Import, Manufacture, Compound, Deal in, Dispense, Sell, Distribute, or Give Away Opium or Coca Leaves, Their Salts, Derivatives, or Preparations, and for Other Purposes."[65] Other sections of this law sought to regulate the actions of professionals (physicians, dentists, etc.) who typically—at the time of the passage of the law—would be engaged in providing opiates to patients.[66] These professionals would be required to pay a small excise tax and would also have to maintain records of the individuals who were provided with the substances under their care.[67] The law did not allow individuals who were not required to register under the law to distribute cocaine or opiates,[68] but it wasn't until later Supreme Court cases that the Court clarified this position.

The first such case is known as *United States v. Doremus*.[69] In March 1915, according to a later indictment, Charles T. Doremus, a Texas physician, violated the Harrison Narcotic Act by providing "one-sixth grain tablets of heroin . . . [to] Alexander Ameris, alias Alexander Myers . . . being a person popularly known as a dope fiend."[70] Mr. Myers, according to the indictment, was not being treated for any disease but was addicted to heroin and

62. Joseph D. McNamara, *The War the Police Didn't Declare and Can't Win, in* AFTER PROHIBITION: AN ADULT APPROACH TO DRUG PRACTICES IN THE 21ST CENTURY 124 (Cato Institute 2000).

63. Charles Reasons, *The Politics of Drugs: An Inquiry in the Sociology of Social Problems*, 15 SOC. Q. 381, 387 (1974).

64. 241 U.S. 394 (1916).

65. *Id.* at 399.

66. *Harrison Narcotic Act*, 13 A.L.R. 858 (2011) (online version) (citing Section 1 of the Harrison Narcotics Act).

67. *Id.* (citing Sections 1 and 3 of the Harrison Narcotics Act).

68. *See id.* (citing Section 1 of the Harrison Narcotics Act).

69. 249 U.S. 86 (1919).

70. United States v. Doremus, 246 F. 958, 959 (1918), *rev'd*, 249 U.S. 86 (1919).

"suffering."[71] Due to the fact that the distribution was not made in Dr. Doremus's regular course of professional practice and not at the request of Mr. Myers, Dr. Doremus—at least according to the indictment—had violated the Harrison Narcotic Act.[72] While the indictment was dismissed against Dr. Doremus, the United States Supreme Court reversed the decision, providing a legal interpretation of the Harrison Act that fashions the law as one of prohibition and criminalization.[73]

The Court in *Doremus* ushered in an era of criminalization and prohibition by extending to the federal government the power to restrict who may possess controlled substances such as heroin:

> They tend to diminish the opportunity of unauthorized persons to obtain the drugs and sell them clandestinely without paying the tax imposed by the federal law. This case well illustrates the possibility which may have induced Congress to insert the provisions limiting sales to registered dealers and requiring patients to obtain these drugs as a medicine from physicians or upon regular prescriptions. Ameris, being as the indictment charges, an addict may not have used this great number of doses for himself. He might sell some to others without paying the tax, at least Congress may have deemed it wise to prevent such possible dealings because of their effect upon the collection of the revenue.[74]

Here, while the Court recognized the law as a revenue-producing statute, it is still a law designed to restrict the possession of heroin (and other substances) to physicians—and the physicians are the only individuals legally allowed to control the substances and administer them. The case also made it readily apparent that policymakers driven by other motives—not necessarily the well-being of individuals addicted to the drugs—had been successful in putting into place a law that would have long-lasting effects on the social fabric of the United States.

With the *Doremus* decision—and others to follow—society began the slow relegation of the addict out of society.[75] Until this period, addicts were considered patients or sufferers who needed compassion and assistance with

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71. *Id.*
72. *Id.* at 960.
73. *Doremus*, 249 U.S. at 95.
74. *Id.* at 94–95.
75. *See* Rufus G. King, *The Narcotics Bureau and the Harrison Act: Jailing the Healers and the Sick*, 62 YALE L.J. 736, 737 (1953).

a health problem.[76] This all changed when morality was the underlying attitude that began to influence policy decisions.[77]

The sentiments of the country could be summarized as follows:

> The good people of our land were terrified. The Narcotics Division of the Treasury Department came charging to the rescue: our prisons began to fill, not with illicit peddlers only, but with addicts—and reputable medical men who had tried to help them. And there has been no surcease from that day to this.[78]

By 1930, when Harry Anslinger became the Director of the Narcotics Bureau of the United States Department of Treasury, the prohibition approach to narcotics ushered in by the Harrison Act and other laws was assured for the future. Anslinger began working for the Department of Treasury during the 1920's and alcohol prohibition.[79] Once he became the Director of the Narcotics Bureau, he placed the agency on a path of law enforcement based mostly on a moral crusade approach to government action.[80] Anslinger referred to the use of substances such as heroin or marijuana as "a plot of 'civic corruption'" and a force "seeking to destroy the community."[81] Despite these pronouncements, Anslinger focused much of his attention on arresting low-level narcotic peddlers and addicts.[82] Narcotics to Anslinger were "evil," and he even suggested that drugs alone could demoralize a nation.[83]

Yet, even with a set path for public policy with respect to narcotics, activity towards these substances and users remained minimal through much of the twentieth century.[84] The nation's agency devoted to enforcing the nation's illegal narcotics laws—the Bureau of Narcotics—remained quite small and only had three-hundred agents when Harry Anslinger, the long-time director, retired in 1962.[85] Drug treatment—a critical component of any attempt by a society to address drug addiction—was limited on the federal

76. *Id.*

77. *See id.*

78. *Id.* at 738.

79. Michael Schaller, *The Federal Prohibition of Marihuana*, 4 J. SOC. HIST. 61, 64 (1970).

80. *Id.*

81. *Id.*

82. *See id.*

83. *Id.*

84. Steven B. Duke, *Mass Imprisonment, Crime Rates, and the Drug War: A Penological and Humanitarian Disgrace*, 9 CONN. PUB. INT. L.J. 17, 23 (2009).

85. Peter Reuter, *Why Has U.S. Drug Policy Changed So Little Over 30 Years?*, *in* 42 CRIME AND JUSTICE IN AMERICA: 1975–2025, 75, 80 (Michael Tonry ed. 2013).

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level to two facilities, both located as parts of federal prisons (Kentucky and Texas).[86]

But, laws continued to be passed to attempt to address the use of narcotics in society.[87] In 1939, 1942, and 1946, Congress passed various laws to address different aspects of the Nation's narcotics' problem.[88] In 1951, Congress passed the Boggs Act, a law that "set forth mandatory minimum prison sentences" even for "first time drug offenders."[89] The Boggs Act didn't solve the problems associated with heroin in society or any other narcotic—it resulted in mass incarceration of non-violent drug offenders and was eventually repealed in 1970.[90]

However, the Nation's approach to heroin and other narcotics changed with the presidency of Richard Nixon. On July 14, 1969, President Nixon—in a special message to Congress—called for a "ten step" comprehensive program to address the growing problem of narcotics in society—something he called "a serious threat to the personal health and safety of millions of Americans."[91] Nixon's ten steps to address the problem of narcotics (including heroin) included: federal legislation, state legislation, international cooperation, suppression of importation, suppression of trafficking, education, research, rehabilitation, training, and local law enforcement conferences.[92]

Nixon's charge on narcotics in America resulted in the Comprehensive Drug Abuse Prevention and Control Act of 1970.[93] The law was expansive in nature and justified its passage by stressing the "danger" associated with "illicit" drug trafficking.[94] The law set into motion several decades of aggressive attempts at halting the flow of narcotics into the United States and

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86. *Id.*

87. Kasey C. Phillips, *Drug War Madness: A Call for Consistency Amidst the Conflict*, 13 CHAP. L. REV. 645, 654–58 (2010).

88. *Id.* at 654–55.

89. *Id.* at 655.

90. Julie Stewart, *The Effects of Mandatory Minimums on Families and Society*, 16 T.M. COOLEY L. REV. 37, 38–39 (1999).

91. President Richard M. Nixon, *Special Message to Congress on Control of Narcotics and Dangerous Drugs*, THE AMERICAN PRESIDENCY PROJECT (July 14, 1969), http://www.presidency.ucsb.edu/ws/?pid=2126.

92. *Id.*

93. SACCO, *supra* note 60, at 5. *See generally* 21 U.S.C. § 801 (2012); The Comprehensive Drug Abuse Prevention and Control Act of 1970, Pub. L. No. 91-513, 84 Stat. 1236 (1970).

94. SACCO, *supra* note 60, at 5.

addressing addiction, all of which were a continuation of the "war on drugs" declared by President Nixon.[95]

Following Nixon's administration, Presidents Gerald Ford and Jimmy Carter continued policies quite similar to the Nixon Administration's "war on drug" years.[96] President Ford, though he served less than three years as President, kept a strong focus on the mandatory minimum sentencing that was first implemented in 1951 in the United States under the Boggs Act.[97] In addition, President Ford also maintained focus on illegal narcotics internationally and in particular countries that might be the site of illegal heroin trade:

> I call upon the Congress to enact my proposal for mandatory minimum sentences for drug traffickers, so those who are spreading this evil throughout our communities will be put behind bars where they belong. And I urge the Congress to ratify the Convention of Psychotropic Substances, so we can fulfill our obligations to the other nations of the world to see that strong international controls exist for all drugs. In the weeks ahead I will send to the Congress a comprehensive message on drug abuse establishing a framework for a broad government response to the problem.[98]

President Ronald Reagan also charted a similar path in drug policy towards narcotics, but he took an even more aggressive approach to the problem than his predecessors.[99] President Reagan's actions included use of the military in narcotics enforcement[100] and several additional pieces of anti-narcotics legislation.[101]

President George H.W. Bush continued the Nixon agenda as well,[102] with more funding and more bureaucracy to try to control heroin and other illegal

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95. *Timeline: America's War on Drugs*, NPR (Apr. 2, 2007, 5:56 PM), https://www.npr.org/templates/story/story.php?storyId=9252490.

96. EVA BERTRAM ET AL., DRUG WAR POLITICS: THE PRICE OF DENIAL 4–5 (1996).

97. President Gerald R. Ford, *Statement on Actions to Combat Drug Abuse*, THE AMERICAN PRESIDENCY PROJECT (Dec. 26, 1975), https://www.presidency.ucsb.edu/node/257327.

98. *Id.*

99. ANDREW BUSCH, RONALD REAGAN AND THE POLITICS OF FREEDOM 158 (2001).

100. ARNOLD S. TREBACH, THE GREAT DRUG WAR: AND RADICAL PROPOSALS THAT COULD MAKE AMERICA SAFE AGAIN 151 (1987).

101. SHAHID M. SHAHIDULLAH, CRIME POLICY IN AMERICA: LAWS, INSTITUTIONS, AND PROGRAMS 15 (2d ed. 2012).

102. Michael T. Klare, *U.S. Intervention Can Stop International Drug Cartels, in* WAR ON DRUGS: OPPOSING VIEWPOINTS 172 (Neal Bernards ed.,1990).

narcotics.[103] In fact, but for minor alterations to the nation's approach to the battle to eradicate narcotics from society, this approach has not deviated much from the path set by President Nixon. Billions of dollars in public funding has been devoted to the problem with little success to show regarding the achievement of the ultimate goal.[104] Mandatory minimum sentencing expanded, the prison population increased by thousands,[105] and the debate over governmental policy persisted.[106] This included heroin and also the presence of the drug in the District of Columbia.

III. THE DISTRICT OF COLUMBIA AND HEROIN

How did a heroin epidemic take place in Washington, D.C.? In addition, how did the nation's capital become ground zero for some of the more controversial and innovative approaches to addressing the problem? First, an examination of the heroin problem as it transpired in the District of Columbia—and the entire country for that matter—is needed.

A. Heroin in the Nation's Capital

In December 1937, U.S. federal agents busted a major international opium organization that had been operating in Chicago, Baltimore, Dallas, and Washington, D.C.[107] The federal agents seized and confiscated large caches of heroin and opium connected with the "narcotics ring," and, in addition, arrested twenty-five individuals, all of whom were of Chinese descent.[108] One year later, twenty-six people were arrested in a police raid implemented to "halt" the flow of heroin in the city that was allegedly linked to petty street crimes throughout the city of Washington, D.C.[109] Over $36,000 in heroin was seized that was part of a "city-wide chain of retail

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103. TONY PAYAN, COPS, SOLDIERS, AND DIPLOMATS: EXPLAINING AGENCY BEHAVIOR IN THE WAR ON DRUGS 2 (2006).

104. Christopher J. Coyne & Abigail R. Hall, *Four Decades and Counting: The Continued Failure of the War on Drugs*, 811 CATO INST. 1, 15 (2017).

105. Lauren Carroll, *How the War on Drugs Affected Incarceration Rates*, POLITIFACT (July 10, 2016, 6:27 PM), https://www.politifact.com/truth-o-meter/statements/2016/jul/10/cory-booker/how-war-drugs-affected-incarceration-rates.

106. Michael Grossman et al., *Illegal Drug Use and Public Policy*, 21 HEALTH AFF. 134, 134 (2002).

107. United Press, *$100,000 Opium Cache Seized After D.C. Narcotic Arrests*, WASH. POST, Dec. 3, 1937, at 4.

108. *Id.*

109. *Spectacular Raids Feature Washington's Fight on Dope*, PITT. COURIER, Oct. 8, 1938, at 15.

narcotics outlets."[110] By 1939, the Washington Criminal Justice Association concluded in a report that the increase in crime in the District of Columbia was directly attributed to the increase in heroin use in the city.[111] Crime had increased in the city in just one year by eleven percent.[112] These brief snippets of history demonstrate that the nation's capital has a long history of heroin use, abuse, and illegal trafficking.

Even with this history of heroin in the city, the 1960's epidemic in the District of Columbia was much more severe and destructive.[113] As heroin use and addiction became more prevalent around the country, the District of Columbia was not insulated from this problem.[114] Many service members in the Vietnam conflict arrived home addicted to heroin and continued with their use and addiction.[115] In fact, the increase in the heroin trade coincides with increased involvement by the United States in military conflicts in Southeast Asia.[116]

In the District of Columbia in the mid-1960s, as in the rise of heroin use and traffic nationwide, the effects were direct, immediate, and widespread.[117] It is estimated that in Washington, D.C., 18,000 residents were directly affected by the local epidemic.[118] Specifically, the residents who were affected most by the epidemic, at least initially, were "highly concentrated among lower class young black men," though "addiction . . . existed in virtually all segments of the population" in the city.[119] The city also experienced not just an increase in heroin traffic and addiction, but also in criminal activity during this period as well.[120] The Department of Justice

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110. *Id.*

111. *Dope Blamed for Increase in D.C. Crime: Serious Violations Reported 11 Per Cent Above Year Ago*, WASH. POST, Sept. 3, 1939, at 1.

112. *Id.*

113. Candace Y.A. Montague, *The Nation is Experiencing an Opioid Crisis. The District's Has Endured Since the 1960s.*, WASH. CITY PAPER (Oct. 12, 2017, 6:00 AM), https://www.washingtoncitypaper.com/news/city-desk/article/20978976/the-nation-is-experiencing-an-opioid-crisis-dc-had-one-in-the-1960s.

114. DEP'T OF JUSTICE & OFFICE OF NAT'L DRUG CONTROL POL'Y, NATIONAL HEROIN TASK FORCE FINAL REPORT AND RECOMMENDATIONS (2015), https://www.justice.gov/file/822231/download.

115. Lee N. Robins, *Vietnam Veterans' Rapid Recovery from Heroin Addiction: A Fluke or Normal Expectation?*, 88 ADDICTION 1041, 1044 (1993).

116. *History of Drug Trafficking*, HISTORY, https://www.history.com/topics/crime/history-of-drug-trafficking (last visited Feb. 9, 2019).

117. Robert L. DuPont & Mark H. Greene, *The Dynamics of a Heroin Addiction Epidemic*, 181 SCI. 716, 716 (1973).

118. *Id.*

119. Robert L. DuPont, *A Modern-Day Epidemic Affirms Some Old Public Health Truths: The Rise and Fall of Heroin Addiction*, 39 EKISTICS 109, 109 (1975).

120. *Crime Statistics*, BALT. SUN, Apr. 11, 1970, at A16.

referred to this increase in crime in the city as a "crime wave" and sought alterations in how the city applied pre-trial detention to dangerous suspects.[121] While some observers refuted the need for drastic changes in the city's bail laws, there was evidence that in the late 1960s crime began to surge in the city.[122]

In particular, crime in the District of Columbia became so dire in the late 1960s that the Clearinghouse Association, a non-partisan group of bankers, contacted President Lyndon Johnson regarding the problem, and he sent a written response to their concerns.[123] President Johnson reiterated their concerns regarding the problem of rising crime in the city and promised to address the issue with specific actions including more funding for police salaries in the city, mobility, and better communication.[124] Johnson also proposed more funding for education, "Roving Leaders" for gang intervention, and the "strengthening" of facilities such as "juvenile" courts and police training facilities.[125] Yet, Johnson's response to the letter from the association did not once mention "narcotics" or "heroin."[126]

Heroin use in the city at the time had been increasing since 1964, and by 1965, a significant increase had occurred.[127] Increases in use occurred amongst the youth (13–25 years of age) during this period of time and even more significantly amongst black youth (14–25 years of age).[128] While only 3.6 per one thousand city residents used heroin by 1968, 14.4 per one thousand youth residents had used the drug.[129] Additionally, 34.7 per one thousands black youth residents had used heroin in 1968.[130] By 1969, youth resident use increased to 16.9 per one thousand and the black youth resident use jumped to 40.4 per one thousand.[131] The city had a full-blown epidemic on its hands and mostly amongst individuals between the ages of 13–25 and in black communities.[132]

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121. *Id.*

122. David Lawrence, *Crime in the Nation's Capital Shameful and Unchecked*, L.A. TIMES, Feb. 2, 1967, A5.

123. Letter from President Lyndon B. Johnson, to Mr. Bailer, THE AMERICAN PRESIDENCY PROJECT (Jan. 31, 1967), https://www.presidency.ucsb.edu/node/238312.

124. *Id.*

125. *Id.*

126. *See id.*

127. Mark H. Greene, *An Epidemiologic Assessment of Heroin Use*, 64 AM. J. PUB. HEALTH SUPPLEMENT, 1, 2 tbl.1 (Dec. 1974).

128. *Id.* at 2 tbl.1.

129. *Id.*

130. *Id.*

131. *Id.*

132. *Id.* at 2 tbl.1, 3.

Crime was also increasing in the city during this period. The Disaster Center, a sub-agency of the Federal Emergency Management Administration (FEMA) reports that during the late 1960s, all major categories of crime increased in the District of Columbia.[133] Burglaries increased by one-hundred percent according to the Disaster Center, and homicides doubled from 1966 to 1969.[134] In addition, violent crimes overall increased from approximately 7,100 in 1966 to over 17,000 in 1969.[135] In 1965, the F.B.I.[136] reported there were 28,000 property crimes in the city; in 1969, over 66,000 property crimes had been recorded.[137] During this same period (1966–1969), robberies also increased significantly in the city, as did larcenies.[138] Yet, most importantly, the rise in crime occurred at the same time the city was experiencing the rise in heroin use and addiction in the city, at least according to the factual data.[139]

B. The D.C. Epidemic and Government Action

When the heroin epidemic besieged the city of Washington, D.C. in the late 1960s, the nation's capital was a different city in terms of the government and policy than it is today. Washington, D.C. today is a city with an elected mayor and city council, and it has a certain degree of independent home rule powers.[140] However, during the heroin epidemic, it was a city still intimately connected to Congress in terms of administration of the nation's capital.

The city, according to the United States Constitution, is governed by Congress legally, and that was the case back in the mid 1960s. With respect to the District of Columbia, the Constitution specifically states the following regarding congressional power:

> To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the

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133. *District of Columbia Crime Rates 1960–2016*, DISASTER CTR., http://www.disastercenter.com/crime/dccrime.htm (last visited Feb. 8, 2019).

134. *Id.*

135. *Id.*

136. According to the Disaster Center, the crime statistics were provided by the Federal Bureau of Investigation.

137. *District of Columbia Crime Rates 1960–2016*, *supra* note 133.

138. *Id.*

139. Greene, *supra* note 127, at 3.

140. *D.C. Home Rule*, COUNCIL OF THE D.C., https://dccouncil.us/dc-home-rule (last visited Feb. 8, 2019).

State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;[141]

Numerous legal cases over the years have interpreted the legal status of the District of Columbia, and this legal status is important to understanding the programs and efforts instituted in the city to address the heroin problem in the late 1960s and early 1970s.[142] The District of Columbia, in other words, was governed locally by an unelected executive and legislative body, but Congress had a constitutional mandate to administer the affairs of the city, including problems such as drug abuse.

In addition, as the city's heroin epidemic began to be addressed, Washington, D.C. was also in the midst of a movement for self-rule and governance that would allow local citizens to control political autonomy.[143] Under the guise of this movement and political upheaval and change, two specific initiatives became instrumental in the District of Columbia's efforts to address the heroin epidemic. Each shall be discussed below in order to provide some understanding to the overall efforts by the city to address the problem.

C. Robert DuPont and Methadone

One of the two major developments to address heroin abuse in Washington, D.C. during this period was the use of the drug methadone in assisting individuals with addiction issues. The person most responsible for the implementation of this program was Dr. Robert DuPont, a local psychiatrist who had extensive experience addressing addiction in various jurisdictions.

Dr. DuPont is a 1963 graduate of the Harvard Medical School and has spent the vast majority of his life as a psychiatrist assisting individuals with

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141. U.S. Const. art. I, § 8, cl. 17.

142. "The District of Columbia is a unique entity within the United States of America: the District is not recognized as a 'state,' instead formed as a 'municipal corporation' by Congress and, under the Constitution, subject to Congress' authority to 'exercise exclusive legislation' over it. As a result, citizens of the District are denied fundamental rights enjoyed by citizens of any State, such as representation in Congress and a corresponding say in how the United States Government spends tax dollars levied from citizens of the District." Council of the D.C. v. Dewitt, No. 2014-CA-2371B, 2016 WL 1109117, at *3 (D.C. Super. Ct. Mar. 18, 2016) (citing U.S. Const. art. I, § 8, cl. 17; Barnes v. District of Columbia, 91 U.S. 540, 547 (1875); Banner v. United States, 303 F. Supp. 2d 1, 3 (D.D.C. 2004)).

143. *D.C. Home Rule*, *supra* note 140.

mental health issues.[144] He still operates a mental health practice in the Washington, D.C. area as of the writing of this Article, following a lengthy time of service to the District of Columbia government.[145]

After serving for several years at various hospitals as a psychiatrist around the country, Dr. DuPont began working at the Washington D.C. Department of Corrections as a psychiatrist.[146] It was while employed with the D.C. Department of Corrections that Dr. DuPont began researching and considering solutions to the city's heroin epidemic that emerged in the late 1960s.[147] In August 1969, Dr. DuPont began a study to ascertain whether there was a relationship between the large increase in crime in the city and the city's heroin addiction epidemic.[148] He took urine samples from every individual entering the correctional system in Washington, D.C. in an effort to collect data and make a determination.[149] Based upon that research study, Dr. DuPont determined the following:

> Our study showed that 44% of the men coming into the jail tested positive for heroin. Even more importantly, a one-page questionnaire that the new jail inmates filled out asked them, 'What year did you first use heroin?' We could literally correlate the rising rates of the initiation of heroin use to the rising rate of crime. Heroin use started up in the late 1960s. It gathered strength over time, so that each year it was greater and greater through 1969. Looking at that graph, anyone could see the engine driving the rising crime rate.[150]

Dr. DuPont immediately implemented a methadone program to address the addiction problem.[151] The decision to implement this effort to address the heroin problem in the city remains controversial despite some basic success of the program.[152]

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144. *Robert L. DuPont, of Maryland, to be Director of the Special Action Office for Drug Abuse Prevention: Nomination Hearing Before the Comm. on Labor and Pub. Welfare*, 93rd Cong. 2 (1973) [hereinafter *DuPont Nomination Hearing*].

145. *Leadership*, INST. FOR BEHAVIOR AND HEALTH, https://www.ibhinc.org/leadership (last visited Jan. 19, 2019).

146. *DuPont Nomination Hearing*, *supra* note 144, at 2.

147. *Conversation with Robert DuPont*, 100 ADDICTION 1404, 1404–05 (2005).

148. *Id.* at 1404.

149. *Id.*

150. *Id.*

151. *Id.* at 1405.

152. John Gonzalez, *Calvert 9: On Road to Recovery, Addicts Turn to Methadone for Help*, ABC 7 WLJA (Feb. 20, 2018), https://wjla.com/news/local/on-road-to-recovery-addicts-turn-to-methadone-for-help.

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First, methadone is a "synthetic narcotic" that is prescribed to opiate (heroin) addicts.[153] It works by blocking the "euphoric effect" of opiates; therefore, the heroin addicts can "get nothing from" heroin and have no "desire to take it."[154] Methadone also has no "toxic effects" and those prescribed the pill—according to early studies—were "alert" and maintained "normal lives."[155]

In 1964, the state of New York experimented with methadone by prescribing the narcotic to 276 "hard-core" addicts in New York.[156] By 1966, seventy-five percent of the male addicts prescribed methadone in the New York City program were working full time, while approximately fifty percent of the women addicts in the program were likewise stable and doing well.[157] The use of methadone—coupled with a rehabilitation program—resulted in remarkable results during this time period with respect to heroin addiction.[158]

Due to the severity of the heroin problem in the District of Columbia in 1968, it wasn't difficult to justify and implement a methadone program in the District of Columbia. The statistical data obtained from the urine testing at the D.C. Department of Corrections by Dr. DuPont and his colleagues lead to the creation of the Narcotics Treatment Administration (NTA) in February 1970 with Dr. DuPont becoming the first director of the agency.[159] By June 1970, NTA was fully operating and was treating 1,500 addicts in the city with funding of over $2 million dollars for that fiscal year.[160]

Immediately preceding the establishment of the NTA, the United States Senate commenced a nineteen month research study on drug abuse in the Washington, D.C. area.[161] The study was conducted by a study group under the guidance of the Committee on the District of Columbia, the congressional entity most responsible for oversight of governmental affairs in the District of Columbia.[162] The interest by the congressional committee in the affairs of the city again reflected the legal status of the city and its dormant political transition to self-rule.

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153. *Heroin Cure Works*, 91 SCI. NEWS 116, 116 (1967).

154. *Id.*

155. *Id.*

156. *Id.*

157. *Id.*

158. *Id.*

159. *See* Alex Ward, *New City Drug Treatment Center, Aiding 1,500 Addicts; Seeks Help*, WASH. POST, June 12, 1970, at A14.

160. *Id.*

161. STAFF OF S. COMM. ON THE D. C., 91ST CONG., STAFF STUDY ON DRUG ABUSE IN THE WASHINGTON AREA, 1 (Comm. Print 1970 by Senator Joseph D. Tydings).

162. *See id.*

The study reached many of the same factual conclusions others had reached, including the conclusions of the D.C. Department of Corrections under the guidance of Dr. DuPont.[163] According to the committee's study, when their investigative work began, the city of Washington, D.C. was the "center for drug traffic in the entire . . . Metropolitan area."[164] The problem was described as a "narcotics-crime crisis" with "rampant" drug traffic.[165] Yet, most troubling, regarding the narcotics-crime problem in the city, the committee concluded that local officials in the city had "failed miserably to control the drug problem" on a policy implementation level.[166] City officials, at least according to Congress, had not taken the necessary steps on a policy level to implement real change regarding crime and heroin in the city just as the epidemic had begun:

> [T]he committee found that officials in the National Capitol had completely ignored the major law enforcement and treatment recommendations of the 1966 "Report of the President's Commission on Crime in the District of Columbia." That report called for establishment of a treatment program within the criminal justice system so that arrested addicts could be cured of their addiction and would no longer need to commit crimes to support their drug habits.[167]

Considering the problem of heroin addiction, the city's failure to take the necessary policy steps to address it is notable.

The President's Commission, among other things, had recommended specific policy initiatives from city leadership, including more aggressive law enforcement activities to shut down major suppliers of heroin, overhaul of police activities to address the problem, regional cooperation on the issue of heroin—but most importantly—the Commission specified several treatment projects to address the issue.[168] The Commission referred to such a program as a "large scale comprehensive, treatment program" that would "utilize all effective modes of narcotics treatment," including the use of "methadone."[169]

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163. *Id.* at 16–19.
164. *Id.* at 1.
165. *Id.*
166. *Id.*
167. *Id.* at 2.
168. *Id.* at 2–3.
169. *Id.* at 3.

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According to Dr. DuPont, the methadone treatment program was successful from the very beginning.[170] Yet, that success has to be placed into proper context. When the Narcotics Treatment Administration (NTA) began in September 1969, 153 individuals addicted to heroin were in the program.[171] At the time, there were approximately 1,636 heroin addicts in the city.[172] By December 1969, there were approximately 5,000 heroin addicts in the city.[173] Nearly two years later, in June 1971, there were 3,413 heroin addicts in the program.[174] Of these, 1,671 were on methadone maintenance and 969 were receiving decreasing doses of methadone leading to abstinence.[175] However, Dr. DuPont estimated that there were 17,000 heroin addicts in the city by June 1971.[176] This meant, at least according to Dr. DuPont, that only twenty percent of the city's estimated heroin addicts were actually receiving some treatment.[177]

Dr. DuPont also acknowledged in his testimony the dangers of methadone and its limitations:

> Methadone is a synthetic opiate which, when injected, produces euphoria. The potential for abuse of methadone is very great and must be guarded against at all times. Of equal importance, methadone can be lethal to the non patient and so it presents a special kind of public health problem. At NTA we have done everything we can think of to prevent diversion of the methadone and also to reduce the likelihood of accidental ingestion.[178]

Dr. DuPont described this scenario as a "grave concern" and also admitted that methadone alone was not a cure for heroin addiction.[179] Yet, due to his use of the narcotic to address the problem of heroin addiction, he had been labeled "Mr. Methadone" by detractors who believed that methadone was

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170. *See Hearing on Drug Addiction and Treatment in the District of Columbia Before the Subcomm. on Pub. Health, Educ., Welfare, and Safety of the S. Comm. of D.C.*, 92nd Cong. 32 (1971) [hereinafter *Hearing on Drug Addiction*] (statement of Dr. Robert L. DuPont, Director, Narcotics Treatment Administration).

171. *Id.*

172. *Id.*

173. *Id.*

174. *Id.*

175. *Id.*

176. *Id.*

177. *Id.*

178. *Id.* at 33–34.

179. *Id.* at 33–35.

trading one addiction for another.[180] With respect to methadone, the initial evidence as to the drug's effectiveness provides a mixed review.

According to the data accumulated by Dr. DuPont and Mark H. Greene, a doctor from the Center for Disease Control in Atlanta, Georgia, the heroin epidemic began to curtail when the treatment programs were implemented by NTA.[181] While Dr. DuPont and Dr. Greene admit that it is "very difficult to prove a cause and effect relationship" between treatment efforts, heroin addiction, and crime rates, they still conclude by using "indirect" sources that there is a link.[182] According to DuPont and Greene, when comparing the rise and decline of property related crimes—a chief offense of heroin addicts seeking to maintain their habits—there is a correlation with the availability of treatment that was offered in the early 1970s by NTA.[183]

However, DuPont and Greene also admit that the treatment provided for heroin addiction may have replaced heroin as a problematic issue in the Washington, D.C. community.[184] "Methadone" began to be used by individuals with heroin addiction problems as an "alternative opiate" to treat themselves "outside an established treatment program."[185] One of the by-products of the use of methadone was an increase in methadone deaths in the city from overdose.[186] Methadone was stocked in pharmacies in the city for distribution to those with prescriptions, and this likely created opportunities for individuals self-treating to gain access to that drug.[187]

Around the country—as methadone became more widely used by physicians to treat heroin addicts—the drug led to its own share of overdoses and also a black market for methadone.[188] Dr. DuPont's NTA program reported that, by 1971, over twenty-five percent of the addicts entering his program had been using illegal methadone, which was likely obtained on the black market.[189] Even before the use of methadone in the District of Columbia that was introduced by Dr. DuPont through the NTA, dissent had been expressed with respect to the use of the drug in New York City, which started

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180. *Id.* at 35.

181. DuPont & Greene, *supra* note 117, at 716 n.1, 722.

182. *Id.* at 720–21.

183. *Id.* at 721.

184. *Id.*

185. *Id.*

186. *Id.*

187. *Id.*

188. Peter Osnos, *Is It a Solution?: Controversy on Methadone as Heroin Solution Mounting*, WASH. POST, Dec. 26, 1972, at A1.

189. *Id.* at A12.

a methadone program well before the NTA's program.[190] However, even that inquiry discovered that a majority of the individuals treated in that program were functional in society and employed.[191]

Two constants regarding methadone could not be denied considering the gravity of the heroin problem in the District of Columbia. First, methadone could not cure the addiction to heroin by itself; and second, methadone is highly addictive.[192] It also is associated with abuse of other substances such as alcohol and barbiturates.[193] Regardless of the fact that methadone enabled heroin addicts in the city to cease their use of heroin and live normal lives again, it was not a total cure for the problem of addiction. It is simply a narcotic that will allow heroin addicts to be able to end the destructive cycle of addiction and petty crime long associated with heroin addiction.

Following his service at NTA, Dr. DuPont touted the success of methadone by the NTA in treating addicts. According to Dr. DuPont, the introduction of methadone into the treatment regimen in the city for heroin addicts was a key component in gaining control of the problems associated with the epidemic.[194] Dr. DuPont described the arresting of the epidemic as follows:

> The heroin scene changed dramatically in Washington as the epidemic peak passed. Overdose deaths, which rose to eighty-two in 1971, fell to seventeen in 1973—and only four of these occurred during the last six months of the year. In early 1972 more than 30 percent of the defendants arraigned in DC Superior Court tested positive for heroin. Today that number has fallen to fewer than 10 percent.
>
> The number of patients peaked in July 1972, when more than 4,700 people were in NTA treatment. By the spring of 1974 this number had fallen to less than 2,000. Significantly, the crime rate in the nation's capital, as in some other cities, has also dropped dramatically.[195]

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190. Maurice Carroll, *Witnesses Challenge Council on Use of Methadone for Addicts*, N.Y. TIMES, Oct. 10, 1967, at 37.

191. *Id.*

192. *See* Robert J. Bazell, *Drug Abuse: Methadone Becomes the Solution and the Problem*, 179 SCI. 772, 773 (1973).

193. *Id.* at 774.

194. *See DuPont Nomination Hearing*, *supra* note 144, at 12–13.

195. DuPont, *supra* note 119, at 110.

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Dr. DuPont attributed this success in addressing the epidemic to several factors: law enforcement activity, education, and "the provision of treatment" offered to heroin addicts in the city.[196] These treatment options included in many cases the use of methadone.

D. RAP Incorporated

The other important development in the heroin epidemic in the District of Columbia during this period was the founding of the drug treatment organization, RAP Incorporated.[197] Unlike NTA, RAP, Inc. did not use methadone in its treatment and rehabilitation of heroin addicts.[198] In fact, RAP, Inc. asserted that using methadone to seek to cure addiction produced "zombies."[199]

The organization was founded in 1970 as the Regional Addiction Prevention (RAP) Incorporated.[200] Ron Clark, a former addict from California who worked in treatment centers around the country, took the approach of advocate for the rights of addicts when he founded RAP, Inc..[201]

The organization's mission is "to empower individuals to choose a productive life over addiction."[202] In addition, RAP, Inc. teaches those in recovery "behavioral skills, attitudes and values necessary to prosper physically, emotionally, and spiritually; and to reconnect clients to loved ones and to their community with a new appreciation of self and social responsibility."[203] This mission is in congruence with their approach to help individuals overcome substance abuse. RAP, Inc. believes in a "therapeutic community (TC) approach to substance abuse treatment."[204] RAP Inc.'s method is to offer "drug and alcohol-free residential settings that use the influence of the community consisting of treatment staff and those in recovery, as key agents of change."[205] This is in stark contrast to the methadone approach instituted by many providers around the country and by

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196. *Id.*
197. REGIONAL ADDICTION PREVENTION, INC., http://rapinc.org/index.html (last visited Feb. 10, 2019).
198. Angela Terrell, *RAP: Help for Addicts*, WASH. POST, Sept. 27, 1972, at B6.
199. *Id.*
200. *Id.*
201. *Id.*
202. REGIONAL ADDICTION PREVENTION, INC., *supra* note 197, at *Mission*.
203. *Id.*
204. *Id.* at *Substance Abuse Treatment*.
205. *Id.*

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Dr. DuPont at NTA.[206] In fact, RAP, Inc. was founded specifically as "an alternative to NTA" and the methadone approach.[207] Additionally, Ron Clark and RAP, Inc.'s vision were rooted in the overall African-American struggle in the United States:

> Clark and others around him viewed the battle against drugs a continuation of the struggle against racism. He believed that low self esteem by Blacks, in which racism played a direct and central role, led to drug addiction and other negative behavioral patterns. Treatment programs that ignored racism (or worse, perpetuated it) could never be fully successful.[208]

This is Clark's and RAP Inc.'s specific critique of methadone. Despite the success of methadone in curtailing the cycle of addiction and criminality, the drug did not totally cure the individual. Like Dr. DuPont, Clark also testified before the United States Senate as the heroin epidemic in the District of Columbia began to intensify during the early 1970s.[209] According to Clark, RAP, Inc. accomplishes its mission through a "drug-free counterculture" approach that puts "revolutionary concepts in education, community activity and political commitment" into action.[210] Clark contended that society as a whole has "gotten away from" education "which prepares a young person for the art of survival."[211] RAP, Inc. intended to make the person "capable of productively and creatively caring for" himself "or the people of his community."[212] RAP, Inc. was part of the local government's official, more intensified efforts to use private community-based organizations to address the heroin epidemic that developed in the late 1960s.[213] The city awarded RAP, Inc. and four other organizations contracts to provide for the treatment of heroin addicts of approximately $144,000 each.[214]

Clark and RAP, Inc. not only promoted their own vision, but, at the beginning, the organization published pamphlets attacking the methadone treatment efforts in the city.[215] The organization asserted that methadone was

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206. CLARENCE LUSANE, PIPE DREAM BLUES: RACISM AND THE WAR ON DRUGS 161 (South End Press ed., 1991).

207. *Id.*

208. *Id.*

209. *Hearing on Drug Addiction*, *supra* note 170, at 70.

210. *Id.* at 72.

211. *Id.*

212. *Id.*

213. Timothy Hutchens, *City Opens Anti-Drug Push*, EVENING STAR, Sept. 2, 1970, at 33.

214. *Id.*

215. LUSANE, *supra* note 206, at 161.

dangerous and demonstrated little compassion and care for the many African-Americans addicted to heroin. The real issues with respect to drug addiction, according to Clark, were racial and economic.[216] The disproportionate amount of drug addiction amongst blacks, according to Clark, was the result of "oppressive economic and social conditions that existed" in black communities in the United States.[217] Black people were using various mood-altering substances to escape these "conditions."[218]

By November 1972, RAP, Inc. was a "drug free collective of 104 women and men in D.C."[219] The organization accepted individuals into its program of long term treatment as a "full-time resident" only after they became "drug free" and demonstrated their "willingness to change their lifestyle."[220] The person was "detoxified" and then encouraged to re-educate themselves and participate in RAP Inc.'s programs involving medical and legal information, prison programs, films, free lunch programs, welfare and tenant issues, and a liberation school.[221] The person had to sever connections with family and friends for several months and, if necessary, take advantage of extensive educational programming.[222] Eventually, the person was encouraged to return to the community after approximately eighteen month—a point in time when it was determined that he or she could live drug free.[223]

In 1975, RAP, Inc. was part of the film entitled "Methadone: An American Way of Dealing."[224] This film highlighted the "drug free" rehabilitation program promoted by RAP, Inc. contrasted with the various programs that used methadone addiction as a means of curing heroin addiction.[225]

Even Dr. DuPont eventually admitted that methadone use in treating addiction symbolized "[e]nslavement" of the "black underclass" and governmental intervention in the black quest for self-determination with respect to heroin and the racial component to the epidemic in the late 1960s and early 1970s.[226]

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216. *Hearing on Drug Addiction*, *supra* note 170, at 73.
217. *Id.*
218. *Id.*
219. Pam Kalishman & Barbara Farr, *Sisters and the Plague*, 3 OFF OUR BACKS 28, 28 (1972).
220. *Id.*
221. *Id.*
222. *Id.*
223. *Id.*
224. Timothy Hutchens, *Rap on Film*, EVENING STAR, Apr. 7, 1975, at 26.
225. *Id.*
226. *Interview Dr. Robert DuPont*, PBS FRONTLINE, https://www.pbs.org/wgbh/pages/frontline/shows/drugs/interviews/dupont.html (last visited Feb. 10, 2019).

RAP, Inc. did not alter its direction of basing its work against addiction on the individual's needs. By 1975, the organization had hired teachers to "instruct" residents on "basic math" and "reading and writing skills."[227] The goal was "to equip residents with the skills and desire to continue either academic or vocational pursuits."[228] By 1975, the organization had sixty residents in its facility, most of whom were high school dropouts,[229] thus prompting the need for more educational components.

While the available data on the number of individuals serviced is elusive, RAP, Inc. was a key player in the struggle to stem the tide of the heroin epidemic, along with NTA. On July 20, 1976, the local city council declared August 21, 1976, as "RAP, Inc. Day" in the city.[230] The local heroin crisis and the accompanying crime that increased in the city to support the habits of addictions was brought under control by the mid to late 1970s.[231]

In sum, Dr. DuPont, in congressional testimony in 1973, reported on the success of various local efforts to address the problems that included his work and the work of RAP, Inc.[232] These two approaches encompassed a cogent and sustained government policy effort to stem the tide of a drug epidemic in one United States city. According to Dr. DuPont, the heroin epidemic in the city was at the most serious level between 1966 to 1970, and the associated crime peaked in 1969.[233] Crime, heroin supply in the city, and the number of individuals actively using the drug began to decrease shortly thereafter as indicated by arrest rates, urine testing of individuals arrested, and the increased price of heroin in the city due to the reduction in supply.[234]

E. Today's Epidemic

Considering the severity of the heroin (opioid) epidemic in the District of Columbia in the late 1960s and early 1970s, the question is "what lessons can be learned from the success and failure of the epidemic to address the current problems of opioids in society?" First, a brief description of the current problem is needed.

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227. *Dare to Struggle*, RAP INC. NEWSL. (RAP, Inc., Washington, D.C.), Dec. 1975, at 1.
228. *Id.*
229. Letter from Ron Clarke to William Krause (May 27, 1975) (on file with the Library of Congress).
230. City Council Res. 1, 347th Leg., Reg. Sess. (D.C. 1976).
231. *DuPont Nomination Hearing*, *supra* note 144, at 10–11.
232. *Id.*
233. *Id.* at 11.
234. *Id.*

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According to the National Institute on Drug Abuse, the United States today experiences 130 overdoses per day as a result of opioid abuse.[235] In addition, the abuse of opioids is costing the nation approximately $78.5 billion in lost productivity, treatment, health care, and criminal justice.[236] In 2013, according to Colorado Congresswoman Diana Degette in congressional hearings convened to attempt to address the growing problem, "[p]rescription painkillers were involved in over 16,000 overdose deaths, and heroin was involved in an additional 8,257 deaths."[237] There are, according to Congresswoman Degette, "over 2.1 million" prescription opioid addicts in the United States and approximately "467,000" heroin addicts.[238] Yet, even though the problem of opioid and/or heroin addiction is considered a "public health" issue, only ten percent of the individuals addicted to the substances received treatment for the disorder.[239]

There are various factual theories as to the origins of the current opioid epidemic in the United States. According to one popular theory, a 1980 letter to the editor that appeared in the New England Journal of Medicine declared that the use of narcotics to treat pain would likely never result in addiction or dependency by the patient.[240] "We conclude that despite widespread use of narcotic drugs in hospitals, the development of addiction is rare in medical patients with no history of addiction," the letter stated.[241]

Since 1980, this letter to the editor has been cited 608 times to justify the prescribing of narcotics to treat pain in patients.[242] This contention, according to some involved in the struggle against opioid addiction, contributed to a false narrative and the overprescribing of painkillers by hospitals and physicians.[243] This, many contend, coincided with an expansion in the prescribing of opioids and the developments of new drugs to be prescribed for

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235. *Opioid Overdose Crisis*, NAT'L INST. ON DRUG ABUSE (last updated Jan. 2019), https://www.drugabuse.gov/drugs-abuse/opioids/opioid-crisis#one.

236. *Id.*

237. *Examining the Growing Problems of Prescription Drug and Heroin Abuse: State and Local Perspectives: Hearing Before the Subcomm. on Oversight and Investigations of the H. Comm. on Energy and Commerce*, 114th Cong. 6 (2015) (statement of Hon. Diana Degette, Member, H. Comm. on Energy and Comm.).

238. *Id.*

239. *Id.*

240. Jane Porter & Hershel Jick, Letter to Editor, *Addiction Rare in Patients Treated with Narcotics*, 302 NEW ENG. J. MED. 123, 123 (1980).

241. *Id.*

242. Pamela T.M. Leung et al., Letter to Editor, *A 1980 Letter on Risk of Opioid Addiction*, 376 NEW ENG. J. MED. 2194, 2194 (2017).

243. *Id.* at 2194–95.

pain in particular, both mental and/or physical.[244] Another theory links the current opioid crisis with physicians who have overprescribed opioids and caused mass addiction in communities across the nation.[245] President Barack Obama's remarks in a 2015 speech in West Virginia support this theory. President Obama stated that, "since 1999, sales of powerful prescription pain medications" had increased "300 percent."[246] In 2012, President Obama added "259 million prescriptions were written for these drugs," enough to provide "every American adult their own bottle of pills."[247]

Whether that letter or a combination of causes was the catalyst for the expansion of opioid prescriptions in society does not matter at this point because the country is in the midst of an opioid-heroin epidemic that began to formulate approximately 25–30 years ago.[248] News report after news report has documented the crisis in specific detail, such as this description of the crisis in the Washington Post:

> 22,134 people died in 2010 from unintentional pharmaceutical drug overdoses, nearly triple the 7,523 deaths reported in 1999, according to the CDC. About three out of four of those overdoses—16,652—were from opioids. Most of the rest of the overdoses came from such drugs as Xanax, Valium and Ativan, which are used for anxiety or sleeplessness and are categorized scientifically as benzodiazepines.[249]

The response from the federal government over the past few years has now recognized that the crisis is serious, though the response has been, at best, inadequate and outdated.

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244. *Id.* at 2194 (citing Jane C. Ballantyne, *Opioid Therapy in Chronic Pain*, 26 PHYSICAL MED. AND REHABILITATION CLINICS N. AM. 201 (2015)).

245. Graeme Wood, *Drug Dealers Aren't to Blame For Heroin Boom. Doctors Are.*, NEW REPUBLIC (Mar. 19, 2014), https://newrepublic.com/article/116922/what-makes-heroin-crisis-different-doctor-prescribed-pills.

246. President Barack Obama, Remarks By the President at Community Forum at East End Family Resource Center (Oct. 21, 2015) (transcript available at https://www.presidency.ucsb.edu/documents/remarks-and-question-and-answer-session-community-forum-prescription-drug-abuse-and-heroin).

247. *Id.*

248. Irfan A. Dhalla et al., *Facing up To the Prescription Opioid Crisis*, 343 BRIT. MED. J. 569, 569 (2011).

249. Joel Achenbach, *Philip Seymour Hoffman's Death Points to Broader Opioid Drug Epidemic*, WASH. POST (Feb. 7, 2014), https://www.washingtonpost.com/national/health-science/philip-seymour-hoffman-heroin-death-points-to-broader-opioid-drug-epidemic/2014/02/07/42dbbc5a-8e61-11e3-b46a-5a3d0d2130da_story.html?utm_term=.a382240dcb95.

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In September 2016, outgoing President Barack Obama issued a proclamation declaring September 18–24 the Prescription Opioid and Heroin Epidemic Awareness Week. In the proclamation, President Obama called upon "Congress to provide $1.1 billion to expand access to treatment services for opioid use disorder."[250] President Obama stated that the federal resources could be used to fund "new investments" that "would build on the steps we have already taken to expand overdose prevention strategies, and increase access to naloxone—the overdose reversal drug that first responders and community members are using to save lives."[251] President Obama also proposed "targeted enforcement activities" to address the issue of opioid prescription abuse by medical providers.[252]

Prior to that proclamation, President Obama signed into law the Comprehensive Recovery and Addiction Act of 2016 on July 22, 2016. This law, among other things, requires "HHS to award grants to states to: (1) streamline state requirements and procedures to assist certain veterans to meet state certification, licensure, and other requirements applicable to civilian health care professions; and (2) develop or expand career pathways at institutions of higher education to support veterans in meeting such requirements."[253]

IV. OPIOIDS FOREVER

A. *A Legacy of Failure*

Shortly after President Donald Trump took office as President of the United States, and during the 2016 Presidential campaign, it was evident that Trump's approach to the current drug epidemic was mostly a rehash of most of the failed methods tried in the United States to address the narcotics problem. It was a law and order approach, with a focus on attempting to achieve a drug free society by using enforcement by the nation's criminal justice apparatus.[254] This policy approach had a long history of failure. "The supply-side approach to drug control has been thoroughly tested by both

250. Proclamation No. 9499, 81 Fed. Reg. 65,173 (Sept. 16, 2016).

251. *Id.*

252. *Id.*

253. Comprehensive Addiction and Recovery Act, Pub. L. No. 114-198, § 105, 130 Stat. 695, 695 (2016).

254. Christopher Ingraham, *Donald Trump's Drug Policy Is an Alarming Throwback To the 1980s*, WASH. POST (Mar. 3, 2016), https://www.washingtonpost.com/news/wonk/wp/2016/03/03/donald-trump-thinks-a-wall-will-solve-the-nations-heroin-problem/?utm_term=.b5efa579022e.

Republican and Democratic administrations," and it is mostly about "[b]laming foreigners for America's recurring drug epidemics."[255] In other words, the goal is to attempt to curtail the importation of illegal narcotics from other nations.

While there has always been brief success with this approach, it is usually "limited" in nature and results in the expansion to new markets from other countries.[256] For example, the United States spent $23 billion on this approach between 1981–1996; all supplies of "illegal" narcotics doubled in the this country including opioids.[257] Additionally, between 1980–2010, United States drug policy has not changed much at all despite constant complaints by all elected officials and the dominant political factions.[258] The only real success in United States drug policy during this period was an increase in the prison population and the formation of a massive incarceration super structure that now finds over 500,000 individuals incarcerated, many for non-violent drug crimes.[259]

B. What Else to Do?

When I think of what should be done to address the current opioid crisis, I recall a client our clinic assisted who missed a month of work as a contractor in the home building industry. The lost time at work was directly related to mental and physical pain and his use of prescribed pain-killers (opioids) which began during his time in the military serving on the front line of America's most recent wars. Additionally, there was another client we assisted who was addicted to prescribed opioids and who could not maintain employment or any semblance of a normal daily existence due to opioid addiction. The client had attempted suicide on one occasion and was threatening another attempt when our clinic began trying to assist him. My clinic encountered both of these individuals for the first time in housing court where they were both facing eviction from their units. While opioid abuse was not the only cause of their problems, it was a factor in creating their difficulties. Neither of these individuals were considered addicted, and neither of them had any treatment relating to their abuse of narcotics or the underlying pain (mental and physical) that had caused them to become abusers of the substances.

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255. Mathea Falco, *U.S. Drug Policy: Addicted to Failure*, 102 FOREIGN POL'Y 120, 121 (1996).

256. *Id.* at 122.

257. *Id.* at 124.

258. Reuter, *supra* note 85, at 75–76.

259. *Id.* at 75.

Considering the success of research into opioid addiction and the application of that research in addressing the issue during the Washington, D.C. heroin epidemic, there are specific policy changes in how the problem is addressed that should be able to help individuals like the two former clients I have described. This is likely true despite the differences between the heroin problem of the late 1960s and early 1970s and the opioid/heroin addiction epidemic that has slowly emerged today.

First, the heroin epidemic in Washington, D.C. I described involved mostly black men, and all of them were abusing illegal substances (under the law).[260] Today's crisis involves almost all racial groups, and in particular, white Americans who are abusing legal substances.[261] This fact does not alter the approach to this epidemic, but it must be taken into account.

Dr. DuPont, one of the key players in addressing the heroin epidemic in Washington, D.C., describes today's epidemic as a "massive" epidemic that is affecting all segments of society.[262] Dr. DuPont links the epidemic—as do many others—to the legal supply of pain medicine, and the increase in supply of synthetic opioids on "illegal" global drug networks.[263] This is vastly different from the epidemic in Washington, D.C. and in other cities in the late 1960s where the epidemic was confined to mostly black areas with a population that was usually impoverished.[264] This is specifically why President Trump's initial idea to seek a drug free society through law and order approaches is not likely to have much of an effect upon the current opioid problem in the United States. Considering many of the current opioid addicts in the United States became addicted through legal prescriptions, old policy approaches are outdated.

President Trump's commission on the opioid problem recommended a different approach to the problem and also recommended that the problem of opioid addiction be declared a national emergency.[265] The Commission, in its draft interim report, recommended that President Trump declare a national emergency under the Public Health Service or the Stafford Act.[266] In addition,

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260. *Id.* at 121.

261. German Lopez, *Why Are Black Americans Less Affected by the Opioid Epidemic? Racism, Probably.*, VOX (Jan. 25, 2016, 11:10 AM), https://www.vox.com/2016/1/25/10826560/opioid-epidemic-race-black.

262. Americans for Responsible Drug Policy, *What is the Opioid Epidemic? Dr. Robert DuPont*, YOUTUBE (June 28, 2017), https://www.youtube.com/watch?v=z__9dbH9DRE.

263. *Id.*

264. *Id.*

265. Letter from Comm'n on Combating Drug Addiction and the Opioid Crisis, to President Donald Trump (on file at https://www.whitehouse.gov/sites/whitehouse.gov/files/ondcp/commission-interim-report.pdf).

266. *Id.* at 2.

the report recommended specific initiatives that reflect the current problem of opioid addiction.[267] Among the recommendations: more Medication Assisted Treatment (MAT) (such as Methadone); the use of the overdose reversal medicine, naloxone; more assistance and more equal assistance to individuals suffering from mental health issues; and surprisingly, an increased focus upon education, prevention and treatment for those addicted to narcotics and prescription drugs.[268] My two former clients would have benefited from this more comprehensive approach.

The treatment component, proposed by the commission, was especially specific as it recommended an increase in treatment "[r]apidly."[269] This was again motivated by the same problem that existed in the epidemic in the District of Columbia: a lack of adequate treatment opportunities.

According to the commission, and despite the millions of individuals now abusing illegal drugs and prescription drugs around the country in various forms, only about ten percent are actually receiving the necessary treatment for their addiction.[270] Finally, while the commission also recommended some law enforcement efforts, these efforts were focused upon stopping the illegal importation of synthetic opioids which have proven to be the most dangerous.[271] Initially, President Trump hesitated to declare a nationwide emergency and called for more law and order and incarceration, but he quickly reversed himself in one day and announced that he would declare the emergency.[272]

In addition, the Trump Administration relented to the magnitude of the crisis to a certain degree and worked to pass a bipartisan effort to address the problem. Known as "SUPPORT" or The Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act,[273] the law is being both criticized and hailed for its passage. The law, according to its most ardent supporters, provides for treatment as well as efforts to halt the flow of opioids into communities.[274] Those who sought more resources and a more bold and long-term approach describe the law as

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267. *Id.* at 2–8.

268. *Id.* at 4–8.

269. *Id.* at 2.

270. *Id.* at 1.

271. *Id.* at 6–7.

272. Ali Vitali & Corky Siemaszko, *Trump Declares Opioid Crisis National Emergency*, NBC NEWS (Aug. 10, 2017, 3:25 PM), https://www.nbcnews.com/storyline/americas-heroin-epidemic/trump-declares-opioid-crisis-national-emergency-n791576.

273. Kevin B. O'Reilly, *10 Ways the New Opioid Law Could Help Address the Epidemic*, AM. MED. ASS'N (Oct. 24, 2018), https://www.ama-assn.org/delivering-care/opioids/10-ways-new-opioids-law-could-help-address-epidemic.

274. *Id.*

an "initial step," an opinion of many involved in the struggle. The American Medical Association was mostly supportive of the law, including its efforts to expand treatment options, expand programs already in existence, and provide flexibility to health care providers and insurance companies in making services available for those suffering from addiction.[275]

If there is one individual likely applauding these policy developments which take a more health policy approach to addiction, it is former Baltimore, Maryland Mayor, Kurt L. Schmoke.[276] Schmoke was one of the early public officials to strongly suggest a shift in government policy in addressing the drug problem in the United States.[277] His ideas on how to address the drug problem in the modern era are consistent with my beliefs on the issue, especially considering my own observations on illegal narcotics while living in Washington, D.C., interactions (as a public interest lawyer representing low income tenants) over the years with clients with addiction issues, and in previous research projects involving criminal justice matters.

Schmoke had direct experience with the failed policies of narcotics control as a State Attorney in Baltimore and as Mayor of Baltimore City.[278] Schmoke acknowledged years ago that drugs in the United States are viewed through "a narrow prism" and the ineffective response has always focused upon solving the problem with prison, police, and prosecution.[279] Schmoke also compared this failed strategy to the attempt in the twentieth century to convert the United States to an alcohol free nation with prohibition laws on alcohol.[280] This effort, like the drug policies in the United States, failed terribly according to Schmoke.[281] His personal experience as a governmental official, charged with the task of addressing the illegal drug problem, and the history of the failure of prohibition, convinced him that the problem of narcotics in society (opioids included) had to be addressed by treating it as a public health issue.[282]

Schmoke endorsed several important fundamental steps to take: First, marijuana should be treated separately from other illegal substances (such as

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275. *Id.*

276. Currently, President of the University of Baltimore, former Mayor of the City of Baltimore, and Dean of the Howard University College of Law. *Office of the President*, U. BALTIMORE, http://www.ubalt.edu/about-ub/offices-and-services/president (last visited Feb. 10, 2019).

277. Kurt L. Schmoke, *Guest Editorial: Dark Cloud Over Education: A Personal Perspective On The Drug War*, 76 J. NEGRO EDUC. 93, 97–99 (2007).

278. *Id.* at 93.

279. *Id.*

280. *Id.* at 94.

281. *Id.*

282. *Id.* at 100.

opioids); second, treatment and prevention measures (education) for drug addiction should take a strong role; and third, therapeutic sentencing should also be part of any effort to address the problem.[283] Schmoke's thoughts on the issue are not much different from the presidential commission's recent recommendation for more treatment opportunities for those addicted to opioids and prescription drugs.

Others have endorsed addressing the issue of sentencing for illegal narcotics and have endorsed and recommended lighter sentences for heroin addicts.[284] This is consistent with the public health policy approach to the problem.

In an effort to address the problem in a different manner, Denmark, the Nordic country, took an even bolder and more experimental approach years ago when it began providing individuals with opioids a place to use heroin and/or methadone (opioid maintenance) in a controlled area.[285] The experiment was highly successful, though it occurred many years ago.[286] Despite the success of a program that provided addicts with methadone and, in some cases, heroin, resistance to such a policy approach has remained strong. However, that did not silence the opinions of those who contend that heroin maintenance is effective: "Overall, we see no convincing reason why heroin-assisted maintenance treatment should not be part of a comprehensive system for opioid dependence."[287]

One reason cited for this assertion is the success of the Swiss trials.[288] In addition, those dependent upon the opioids were carefully monitored, there was low mortality during the study, no one was released from the location of the study while still under the influence of the opioid, and the program was cost efficient.[289]

V. CONCLUSION

Considering the governmental policy efforts during the heroin epidemic in the District of Columbia in the 1970s and other successful policy

283. *Id.* at 99–100.

284. Jonathan P. Caulkins & Peter Reuter, *Reorienting U.S. Drug Policy*, 23 ISSUES SCI. & TECH. 79, 79–85 (2006).

285. Peter Reuter & Robert MacCoun, *Heroin Maintenance: Is a U.S. Experiment Needed?*, *in* ONE HUNDRED YEARS OF HEROIN 159, 159 (David F. Musto ed., Auburn House 2002).

286. *Id.* at 162–68.

287. Jurgen Rehm & Benedikt Fischer, *Should Heroin Be Prescribed to Heroin Misusers?*, 336 BRIT. MED. J. 70, 70 (2008).

288. *Id.*

289. *Id.*

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alterations, some kind of opioid maintenance effort should be part of future policy in addressing the current opioid epidemic. The ideas and efforts of RAP, Inc. also utilized in the 1970s and beyond in the District of Columbia seem useful to the current problem in promoting a "drug free" existence through long term treatment therapy. Education and prevention also should be at the center of government policy to stem the current tide of opioid abuse in the United States. The new laws—the first a proclamation by President Obama, and the second, the bipartisan law signed only recently by President Trump—incorporate these ideas into their framework. The primary focus of both laws seems to be treatment and providing those addicted to narcotics an opportunity for long term treatment, and in many cases, rescue from death. In addition, the flexibility now built into existing programs will also assist in this policy direction.

Finally, while the experience in Washington, D.C. with its epidemic might not directly figure into the policy decisions being made directly, the direction the United States is taking mirrors many of the efforts Washington, D.C. took in the 1970s to stop the epidemic that was occurring in the city. With a focus on treatment, maintenance, resources, and taking a realistic approach to the problem, Washington, D.C. was able to address the problems of heroin in the city. If the United States continues in this direction, it will likely achieve some success in addressing the national problem currently confronting the nation.

However, the government cannot forget that, despite the prevalence of addiction to legal substances, the addiction to heroin (an illegal substance) cannot be forgotten either. And finally, the long-time problem of heroin in America's black communities also cannot be forgotten. The new law, just passed by the elected officials, has again failed to address this long time problem that was festering long before the current opioid crisis became a concern to more Americans.[290] If this new law is the initial step, as many assert, a later step should consist of fully funding a public health approach to addiction and resist the temptation to again resort to failed policies of the past involving incarceration.

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290. "The disproportionate impact of the current epidemic on white communities, however, may be one reason the response to the crisis has been fairly different from the response to previous drug epidemics. While the crack cocaine epidemic, for instance, produced a response mostly through the criminal justice system, the opioid epidemic has led mostly to a public health response. Race offers one explanation for that historical discrepancy." Lopez, *supra* note 261.

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