Report by

Scott Burns

Former Deputy Director, White House Office
Of National Drug Control Policy

For

National Alliance for Model State Drug Laws

Sherry Green, Chief Executive Officer
1414 Prince Street, Suite 312
Alexandria, VA 22314

FEDERAL OFFICIALS, AGENCIES AND LAW ENFORCEMENT HAVE SUGGESTIONS

TO ADDRESS THE DRUG PROBLEM IN THE UNITED STATES

2009

Scott Burns

1648 Roxanna Road, N.W.
Washington, D.C. 20012
Office: (202) 248-6911
Mobile: (435) 691-2837

Nominated by President Bush and unanimously confirmed, twice, by the United States Senate to serve as Deputy Director for State, Local & Tribal Affairs and Deputy Director (Deputy Drug Czar) at the White House Office of National Drug Control Policy from 2002 to 2009. Point person for several national initiatives and programs (HIDTA, Student Drug Testing, National Methamphetamine Initiative, National Marijuana Initiative, Access to Recovery Treatment Program, Native American Initiative, and National Media Campaign, among others). From 2004 to 2009, upon appointment by the President, simultaneously served as the Sports Minister of the United States and elected to represent the 40 nations of North, Central and South America on the World Anti-Doping Executive Committee; thereafter selected by Sports Ministers (180 countries in attendance) to chair the Minister's conference in Athens, Greece; and most recently, selected by International Olympic Committee and WADA to oversee Independent Observers Program (to ensure fairness of Olympic Games) at 2010 Winter Olympics in Vancouver, B.C., Canada. Testified before House and Senate Committees on numerous occasions; worked closely with major non-governmental organizations (National Alliance for Model State Drug Laws, Fraternal Order of Police, International Association of Chiefs of Police, National Drug Courts, National Congress of American Indians, National Sheriffs Association, National District Attorneys Association, National Association of Attorneys General, American Medical Association and many more); recipient of numerous awards; and represented the United States at United Nations conferences, as well as international meetings around the world, securing international cooperation in the control of drugs from source countries. Prior to serving at the White House, elected County Attorney and Prosecutor for 16 years in Iron County, Utah.

FOREWARD

The National Alliance for Model State Drug Laws has, for years, been a vital resource for federal, state, local and tribal law enforcement officers and elected officials in their individual and combined efforts to reduce illicit drug use in the United States. In addition to researching and drafting model drug and alcohol laws, NAMSDL has been recognized as the leading national organization in the facilitation of working relationships among thousands of officials, officers and public and private organizations charged with preventing drug addiction, expanding treatment for those suffering from the disease of addiction, reducing the supply from source countries and implementing policies and strategies on a national level and, as important, in individual states and tribal areas referred to collectively as Indian Country.

To assist NAMSDL in its continued mission to assess the current status of illicit drug use in the United States, and predict future trends and challenges in 2009 and 2010, this report is based upon the opinions and statements of key federal law enforcement officers and federal officials (DEA, HIDTA Directors, FBI, ICE, Treasury, Border Patrol, DHS, DoD, US Attorneys, Bureau of Prisons, among others). In order to ensure candor, and in an attempt to provide NAMSDL with current information (a task that would take several months if interviewees were required to be named and quoted) this report will not contain specific identities of those who provided information; in fact, the majority of those surveyed are current law enforcement officers and would be precluded from providing information without authorization from agency executives and public affairs offices which would defeat the very purpose of the report, to wit: provide NAMSDL with an honest, real time, assessment of the current status of illicit drug challenges and attempt to predict what is “on the horizon” in order to assist policy makers and law enforcement agencies and officers prepare for the future.

Scott Burns

EXECUTIVE SUMMARY

The questions posed, and summary responses, are as follows:

A. Describe existing drug problems officials, agencies or Congressional members or staff are attempting to address:

On the supply side, all issues related to the southwest border of the United States (smuggling, violence, firearms, gangs, prosecution guidelines). On the demand side, expanding treatment (early intervention, diversion and drug court emphasis and prison reform). As important is what federal officials and members of Congress are not addressing: marijuana.

B. What are the emerging drug enforcement problems officials, agencies or Congressional members or staff intend or hope to address in the near future?:

Methamphetamine and Prescription Drug Abuse.

C. How could state and local officials enhance or facilitate federal or Congressional efforts to address the existing or emerging drug problems?:

Model legislation addressing the scheduling of pseudoephedrine, real time Methamphetamine tracking, mandatory electronic reporting by retailers and Prescription Drug Monitoring Programs would be helpful.

D. How could federal agencies and officials, or Congress, enhance or facilitate in a non-financial manner, the efforts of federal officials or agencies to address existing or emerging drug problems?:

Federal officials would like to see Congress solve a number of current and emerging issues as opposed to the long and arduous process of "one state at a time". Suggestions include national efforts to schedule or ban pseudoephedrine products; amend Combat Meth Act to require real time tracking systems and require electronic reporting in a timely fashion; continue pressure on the border; continue support of the INCB in regulating foreign shipments; begin discussions with the FTC regarding Prescription Drug Advertising; reschedule hydrocodone (to schedule II); implement a

national Prescription Drug take back program; new laws regulating drug company representatives; and resolve (either through legislation or federal legal action) the "conflict of law" issue that exists between a number of states and the federal government.

In addition, it would be extremely helpful if Congress or federal officials would (a) eliminate "threshold" prosecution policies with respect to drug cases or (b) publish "threshold" guidelines so state and local prosecutors and policy makers could plan and budget in a transparent manner.

E. Any additional comments, suggestions, ideas or proposals which would help NAMSDL determine the scope and extent of technical assistance it should consider providing federal officials, agencies and Congress in 2009 and 2010?:

In addition to the model legislation suggestions set forth above, and in the event federal agencies are unable or unwilling to coordinate in an acceptable manner, NAMSDL could play a crucial role in facilitating cooperation among federal agencies on a number of topics (intelligence support centers, license plate reader initiative, southwest border initiative) by sponsoring meetings, summits or conferences.

REPORT & RECOMMENDATIONS

This report sets forth the current opinions and assessment of federal law enforcement officials regarding illicit drug use, and attendant policies and strategies, in an effort to assist NAMSDL in its legislative and policy efforts in 2009 and 2010. Information was obtained pursuant to telephone surveys and other outreach efforts. In addition to providing real time information, those interviewed were also asked to provide recommendations to NAMSDL regarding what technical assistance would be most helpful.

As stated herein, the underlying questions for this report were:

A. Describe existing drug problems officials are attempting to address;
B. What are emerging drug problems?
C. How could state and local officials enhance or facilitate federal efforts to address the existing or emerging drug problems?
D. How could federal officials, or Congress, enhance or facilitate

(in a non-financial manner) the efforts of a federal official or agency to address existing or emerging drug problems? And

E. Any additional comments, suggestions, ideas or proposals which would help NAMSDL determine the scope and extent of technical assistance it should consider providing federal officials, agencies and and Congress in 2009 and 2010?

A. DESCRIBE EXISTING DRUG PROBLEMS

Supply Side:

The Sinaloa, Juarez and Gulf cartels are organized, violent and currently control and facilitate the transportation of illegal drugs from Mexico to the United States and the profits and firearms back to Mexico. The southwest border of the United States, almost all agree, is the primary focus of federal agencies and officials with respect to drug policy. Nearly every federal official, law enforcement agent and member of Congress interviewed stated that the border continues to be "the" transit route for cocaine, marijuana, methamphetamine, and to some degree heroin, entering the United States and is appropriately the primary concern for federal authorities and Congress.

Mexican officials believe that the single biggest failure of United States drug policy has been the inability to stop the flow of **Firearms** from US border states (primarily from gun shows) to Mexico. While the Merida Initiative was a start, many federal officials surveyed believe that without continued and improved working relationships with the government of Mexico, cocaine, methamphetamine and marijuana will continue to flow north across the border and the violence (over 2,000 murders in Mexico in 2009) will escalate as guns are smuggled south to Mexico.

Many surveyed believe that, to date, the **Southwest Border Initiative** has resulted in increased attention from Congress, but coordination by and between federal law enforcement agencies leaves much to be desired. Several efforts and initiatives show much promise (License Plate Reader and Border Camera efforts, revival of the Gate Keeper Initiative, military presence on both sides of the border, and better intelligence techniques by the Special Operations Division of DEA and the HIDTA's) but without

coordination and intelligence sharing, the potential of these efforts cannot be realized.

Federal agencies and officials also talk a lot about **Gangs** within the United States as a key to disrupting the wholesale and retail distribution of illegal drugs in the United States. The FBI has an aggressive gang initiative and is attempting to coordinate with major cities across the country to identify and target the heirarchy within powerful gangs. HIDTA's located along the border, and in key distribution hub cities (Atlanta, Chicago, Los Angeles among others), are using intelligence and tracking tools to go after key gang members. Congress and federal authorities are also aware that America's prisons, filled with top gang leaders, must do a better job of preventing command and control communications that come from gang leaders in prison to lower level members on the outside.

It must be noted that while Congress and federal officials are currently focusing on the border, many surveyed believe that the new Administration will shift monies and emphasis to demand reduction (treatment facilities, early prison release programs, diversion programs, early intervention initiatives, drug courts etc.). While demand reduction is as crucial as supply reduction, federal law enforcement agents interviewed are hopeful that the shift does not diminish efforts along the southwest border and throughout the United States.

Demand Side:

While the previous Administration asserted that the distribution of the national drug control budget was fairly balanced (prevention & treatment, domestic law enforcement, and international efforts each receiving approximately 1/3 of the 12 billion dollar budget) many members of Congress were of the opinion that far too much was spent on law enforcement and not nearly enough on demand reduction. The current administration has clearly signaled that it will emphasize prevention and treatment.

The National Institute of Drug Abuse has already rolled out an ambitious plan to fund and implement a robust **"screen and intervene"** program wherein physicians will be compensated for including abuse and addiction queries when screening patients and, thereafter, recommend a course of treatment. The Administration and Congress have both indicated that they

will focus on reducing the number of inmates in America's jails and prisons by ramping up **"diversion programs"** (exactly what form this will take has yet to be clearly explained) and funding has increased for **drug courts**. Finally, there is much discussion about **health insurance** reform as drug abuse and addiction is now referred to as a "disease" which is not cured by a one-time 28 day program and that it is a condition that must be treated for life (the analogy of cancer in remission which could reoccur is often used).

While law enforcement officials surveyed applaud demand reduction initiatives, there is great fear that supply funding will suffer. Moreover, there is almost a naivety regarding initiatives to reduce the number of drug offenders in state and federal prisons. Judges and corrections officials surveyed assert that it is extremely difficult to receive a "prison sentence" for a drug offense. Many experts argue that if you "drill down" you will find that the vast majority of drug offenders in prison are either large volume dealers or have had multiple convictions, often for crimes in addition to the underlying offense, and are sentenced to prison only after multiple attempts to correct criminal behavior have failed. By way of example, and in an attempt to respond to assertions that federal prisons are full of people who simply possessed marijuana, ONDCP analyzed Bureau of Prison data and concluded that the "average" marijuana possession offender in a federal prison possessed 90 pounds or more and that offense was almost always a result of a reduction from one engaged in major distribution.

Finally, it is almost certain the Congress will enact legislation changing the sentencing disparity between crack and powder cocaine (currently a 100 to 1 ratio). There is no question that such a change will reduce the number of "crack" offenders in federal prisons, but nobody can predict the percentages of reduction nor whether or not such a change will simply further stress the criminal justice system by requiring law enforcement, prosecutors and courts to charge and convict an offender multiple times.

Marijuana

There is no question that the prior Administration made the reduction of marijuana use and addiction a top priority. The argument was:

(a) the FDA is charged with determining what is and what is not a medicine and it has repeatedly ruled that marijuana is not a medicine;

(b) marijuana is illegal under federal law and the vast majority of America's 50 states;
(c) in the 13 states that have a "medical marijuana" statute, federal law trumps state law;
(d) the age of marijuana initiation, because of reduced perceptions of harm, has reduced to 13 and 12 year olds;
(e) the potency of marijuana has significantly increased over the years (from 2% thc in the '60's and '70's to a national average of 10% thc, with hydroponic "BC Bud" reaching levels in excess of 30% thc);
(f) that nearly 70% of Americans that abuse "any" drug, singularly or co-use marijuana;
(g) the vast majority of marijuana grown in the United States occurs in 7 states (HI, CA, OR, WA, TN, KY, WV) and that targeted eradication efforts could reduce supply;
(h) much of the domestic marijuana is grown on public lands by Mexican nationals who endanger those that would use our parks and forests and the chemicals, waste, garbage and havoc left behind by growers is unacceptable;
(i) that marijuana is the "cash crop" that fuels the violent Mexican drug cartels' ability to produce and distribute other drugs (methamphetamine, cocaine, heroin) and engage in extortions and kidnappings;
(j) NIDA neurological studies now show that marijuana "rewires" the brain of developing adolescents, similar to cocaine and other so-called "hard drugs", and that there is a scientific connection between marijuana abuse and a number of disorders, including mental illness; and
(k) that if public authorities "push back" forcefully (through a media campaign, the bully pulpit, prevention, treatment and law enforcement) we can actually reduce marijuana addiction in America and prevent thousands of young people from having to struggle with addiction for a lifetime.

It is anticipated that the current Administration will <u>not</u> make marijuana reduction a priority. By way of example, DEA is no longer targeting large marijuana dispensaries (San Diego federal agents report that all dispensaries were shut down in 2008 and that, since January 0f 2009, there are now approximately 20 operating marijuana distribution dispensaries) and that trend is anticipated to grow if left unchecked. In addition, the prior Administration "weighed-in" whenever there was a state ballot initiative (primarily funded by George Soros groups) and organized civic groups, treatment providers, physicians and law enforcement to oppose state or local legalization efforts (initiatives of various forms failed in Arizona, Nevada, Alaska, Colorado, Oregon and South Dakota).

B. WHAT ARE EMERGING DRUG PROBLEMS?

While a number of federal law enforcement agents (DEA, ICE, FBI and others) expressed concerns about marijuana and that it could possibly be the new "emerging problem" if anticipated policies and enforcement directives are lax, the majority stated that **Methamphetamine** production and use is coming back. The federal interviews were very similar to those conducted with state and local law enforcement officers and officials in that they are also seeing an increase in "smurfing", and not just by those who are actually cooking the meth. Similar to state and local trends, and with a box of pseudo going for as much as $75 per box in some areas, professional smurfers (either using a large number of friends or family members or using multiple fake ID's) are obtaining pseudo products for the sole purpose of resale. Obviously, this trend is an attempt to thwart the "Combat Meth Act" and the "Pseudo Tracking" systems in place in many states. The majority of respondents are extremely concerned that this trend will continue to increase, and spread across the country, unless addressed. The obvious outcome will be a serious increase in methamphetamine labs and use and will require DEA and other agencies to, once again, begin training state and local first responders and increase funding for clean-up.

Federal officials and law enforcement respondents acknowledged that **Prescription Drug** abuse is clearly an emerging problem in the United States. However, many of those surveyed believe that the majority of the work necessary to reverse this trend lies with state and local regulatory bodies (states regulate licensing and oversight of physicians and pharmacists and there is no federal "drug return" program or policy). Moreover, many of the methods used to illegally obtain prescription drugs (doctor shopping, theft, pill mills, forged prescriptions and rogue physicians) involve criminal behavior that is almost always investigated and prosecuted at the state and local level. Federal officials did acknowledge, however, that many aspects of the problem (national advertising, rescheduling of hydrocodone, illegal internet sites and illegal importation from foreign countries) are aspects of the problem that only the federal government can address.

Federal officials and officers fully agreed with state and local respondents that the reason for this emergent and chronic rise in prescription drug abuse is the fact that there is a lower perception of harm than so-called "hard drugs", the fact that it is a pill and comes from a doctor and a belief that

more and more American*s* are self-medicating. Like state and local law enforcement officers, the federal agents and officials listed many reasons as to why this increase shows no sign of stopping:

- success in shutting down the supply of meth and cocaine and increased costs for both drugs;
- societal acceptance in that it comes from a doctor and a pharmacy;
- bombardment of television advertisements normalizing and even encouraging use;
- failure by the medical community to appreciate the severity of the problem, fueled by lack of training in medical school and reluctance to include as a topic in continuing medical education course requirements;
- pill mills;
- doctor shopping;
- reluctance of "adults" to throw away unused or outdated pills, ignorant of the fact that "young adults" are increasingly stealing pills from the medicine cabinet at home;
- and any number of increasing trends, including fraudulent reports re*:* theft of Oxycontin so prescription*s* can be immediately refilled;
- thefts from medicine cabinets in "open house" real estate showings;
- gaining access to homes of friends, relatives or neighbors—need to use your bathroom—resulting in theft;
- burglarizing, during the funeral, the home of the chronic pain or cancer patient that died; and the list goes on**.**

It should be noted that very little, if any, research and monitoring tools exist on the state level. Historically the National Institute of Health (NIH), the National Institute of Drug Abuse (NIDA), ONDCP and the FDA are the federal agencies charged with carrying out the majority of research and monitoring. As suggested by many state and local respondents, we have to use the tools we currently possess to better understand this problem and we have to come up with new methods of identifying the causes and the remedies. At a minimum, research must be expanded and existing monitoring tools must be funded in order to answer even the most basic questions related to this phenomenon:

- what is the overall increase in sales of Oxycontin, Lortab, Vicodin, Soma, Percocet, Methadone, etc;

- what does the "Monitoring the Future" survey show;
- what does the "National Survey on Drug Use and Health" show;
- we should closely analyze "ADAM" (drug tests of arrestees), "DAWN" (SAMHSA's Drug Abuse Warning Network located in medical settings) and "QUEST" (drug tests in the workplace) data and expand the funding for these important tools.
- what research is being done with brain imaging and other powerful tools to help determine the cause of addiction that may lead to new treatment protocols.

With the foregoing in mind, federal law enforcement agents that deal with the prescription drug abuse problem every single day, say that by far the biggest category of abuse is hydrocodone products. By simply rescheduling from Schedule III to Schedule II, there would be an immediate and dramatic decline in abuse due to stricter prescribing regulations and monitoring structures.

C. HOW COULD STATE AND LOCAL OFFICIALS ENHANCE OR FACILITATE FEDERAL EFFORTS TO ADDRESS CURRENT AND EMERGING DRUG PROBLEMS?:

In that federal officials and agents agree, for the most part, with their state and local counterparts that **Methamphetamine and Prescription Drugs** are the emerging threats, there is no question that both have a role to play. Anyone who even casually followed the explosion of meth labs, which began in the 1990's, knows that it was state and local law enforcement and legislative bodies that took bold action to reduce the problem. While several attempts were made on Capitol Hill in Washington, D.C. to regulate pseudoephedrine and call attention to this deadly problem, nothing of substance occurred by way of federal action for years. It was the Oklahoma legislature, under fierce pressure from the law enforcement community, that led the way by putting pseudo behind the counter in retail stores throughout the state and regulating the amount that could be purchased**.** Iowa soon followed and through excellent coordination and dissemination of information (all would agree that NAMSDL played a significant role in this

campaign) state after state followed suit. What followed was a reduction in labs at a pace that surprised even the most optimistic drug warriors. What also followed was the federal Combat Meth Act, an Act that most agree would never have passed had the states not led the way.

If history is prologue, it is unlikely that federal officials will take any action to mount a national effort to electronically monitor and track the sales of pseudoephedrine. It is also unlikely that all of the large national chains and thousands of mom and pop stores that sell pseudo will lead the charge. Once again, only through state and local initiatives and hard work (Tennessee is an example of a state that is leading the way) will a viable and effective electronic tracking system be implemented—and then best practices and best vendors and best systems will follow state by state.

An important and concurrent campaign to control the resurgence of smurfing and proliferation of meth labs is the Oregon Model, widely supported by law enforcement, which requires a prescription to obtain the drug. Surprisingly, California is now considering following Oregon and if that occurs, many more states will follow their lead. It goes without argument that this legislation will destroy smurfing and all but eliminate labs, as occurred in Oregon, and it would also eliminate the need to implement electronic tracking systems for pseudo as it would be folded into Prescription Drug Monitoring Programs that already exist in the all but 10 states.

Many states are already working to implement initiatives and programs to reduce Prescription Drug abuse (again, a necessity because of the lack of federal action). Some of the efforts underway are as follows:

- promoting the Oregon model and scheduling pseudoephedrine (schedule III in Oregon);
- investing in "real time" Prescription Drug Monitoring Programs (PDMPS) similar to the Utah model and tighten reporting requirements, manner of collection, and dissemination by statute;
- enacting Prescription Drug Monitoring Program legislation in the 10 states that have yet to pass a law;
- as an alternative to scheduling pseudoephedrine, enacting laws regarding pseudo tracking systems or incorporate pseudo tracking into existing Prescription Drug Monitoring Programs; and

- enacting legislation requiring participation in regional Prescription Drug Monitoring Programs.

The frustrating aspect the underlies all of this is the fact that we know what works (cut off the supply of pseudo and labs and use go down, build and fund real time PDMP's and prescription abuse goes down) but because federal legislation is not forthcoming these policies and programs must be implemented state by state, which takes time, all the while people are dying and more of our citizens become addicted and enslaved to drugs. The reality is that unless the United States Congress can be convinced to fund and implement these programs on a national scope, the only way "state and local officials can enhance or facilitate federal or Congressional efforts to address the existing or emerging drug problems" is to do it themselves and hope, as with pseudo control, the federal government follows suit.

D. HOW COULD FEDERAL OFFICIALS OR CONGRESS ENHANCE OR FACILITATE (IN A NON FINANCIAL MANNER) THE EFFORTS OF A FEDERAL OFFICIAL OR AGENCY TO ADDRESS EXISTING OR EMERGING DRUG PROBLEMS?

As stated above, there are a number of things Congress and federal officials could do to address existing and emerging drug problems:

- support the scheduling of pseudoephedrine;
- provide disincentives (withhold monies) in the 10 states that refuse to enact Prescription Drug Monitoring Programs.
- support efforts to stand-up "real time" PDMPs;
- support pseudo tracking systems (either as a stand-alone or in conjunction with a state's PDMP); and
- support regional participation in PDMPs and pseudo tracking systems.
- making the drug "take back" issue a priority;
- support per se "driving while under the influence of drugs" statutes;

- look at the feasibility of requiring state licensing boards to require physicians and nurse practitioners to attend mandatory training regarding prescribing protocols (especially as related to opiate drugs);
- advertising restrictions regarding prescription drugs; and
- focus on the practices of drug sales representatives.

In that many of the key "fixes" can only take place on a state level, federal officials surveyed agreed that Congress can implement disincentives to states that do not enact laws that are consistent with known practices that are effective. By way of example, we all know that physicians, physician's assistants and nurse practitioners are all licensed, monitored and regulated by their respective states and to change this to a "national system" would necessitate a massive overhaul of the entire medical practice regulation system. However, the federal government withholds monies from states that do not comply with federal highway standards (many states don't want to have speed limits, or enforce tinted window regulations) and it is an effective tool to shape policy and programs.

A few states are launching pilot programs regarding "drug take back" in an effort to educate citizens and reduce availability and diversion. However, this is clearly a federal issue as well and while it would require changes in DEA regulations and incentives for pharmacies to assist, it is something that would be far more effective on a national level.

The number of drivers on our highways that are operating motor vehicles while under the influence of a drug has to be increasing dramatically given the alarming increase in abuse of pharmaceuticals across the country. Many states have "per se" drug driving laws or the ability to restrict drivers who are under the influence of a properly prescribed drug, if the use of that drug renders one unable to safely operate a motor vehicle. This is definitely an issue that Congress could address in the same fashion it engaged in establishing the appropriate age to drink alcohol or smoke cigarettes.

Medical schools do not address issues related to prescription drug abuse (how to discern when a patient may be addicted, identification of "pill seekers", special care in prescribing hydrocodone and all opiates) and Continuing Medical Education programs don't address it either. Again, the federal government provides hundreds of millions of dollars to universities in this country and could take steps to see that this education is mandatory.

Another key aspect (some would say the most important aspect) that must be considered in reducing prescription drug abuse is the media. While some federal respondents were of the opinion that the "national anti-drug media campaign" needs serious modifications, almost everyone agrees that something must be done to educate Americans and provide positive anti-drug messages. If it is true that some 70% of all pills obtained by young people (between the ages of 12 and 18) come from the medicine cabinet at home or from a friend or relative, educating and encouraging Americans to take control of their Prescription Drugs is paramount. Educating Americans to discard outdated or unwanted pills and hide or keep close control of personal prescriptions, especially those most sought after like opiates or drugs that have potential mind or mood altering side affects, is critical. However, if the Drug Companies continue to saturate all forms of media (television, print, radio, billboards, and the internet) with ads encouraging and normalizing the increase of use and reliance upon prescription drugs, the anti-use media campaign becomes much more difficult. This is clearly something that federal agencies, officials and Congress must address if we are serious about reducing abuse of pharmaceuticals.

In that this is a survey of key federal officials, law enforcement leaders and officers in the field, it would be expected that many respondents believe there are a number of things Congress and federal agencies can (and should) do to address existing and emerging drug threats. Keeping in mind that the question emphasizes "In a Non-Financial Manner", this question evoked a wide range of responses, and perhaps the easiest way to report this is to address by drug category, to wit:

Methamphetamine:

A number of those surveyed believe that we should, like Mexico and on a national level, either ban pseudoephedrine products or schedule all drugs containing pseudoephedrine consistent with the Oregon model. While the Combat Meth Act was a good try, if "smurfers" are already circumventing the legislation and numbers of labs are going up, more drastic measures are required. It was also suggested that Congress could require that all retail distributors of pseudoephedrine products provide "Combat Meth" reporting information electronically, within a prescribed timeframe (perhaps no longer than 30 days) to the appropriate state Prescription Drug Monitoring Program or Pseudo Tracking Program in their respective states. Obviously, many state efforts are frustrated by the fact that a number of retailers (especially

some large national chains) continue to submit "log book information" in an untimely fashion. While technically their submissions are in compliance with the law, the information is basically useless. Many respondents, in general terms, also called upon Congress and Federal Agencies to:

- continue working with Mexico;
- continue focusing on our borders;
- continue supporting and working with our international partners (the International Narcotics Control Board (INCB) in particular) to track and monitor the flow of ephedrine worldwide; and
- acknowledge that methamphetamine labs are increasing and we cannot rest upon the successes of the past few years.
-

Prescription Drug Abuse:

As has been reported in various sections of this report, respondents believe that the federal government and Congress, could do several things to reverse the upward trend of Prescription Drug Abuse. The First Amendment to the Constitution, and particularly case law supporting Commercial Speech, makes commercial advertising difficult to regulate. Despite this, older Americans will remember the "Marlboro Man" and a host of commercials peddling hard liquor that were banned from television, radio and other forms of advertising. If the Prescription Drug problem is to be taken seriously, there is a consensus that Congress is going to have to restrict the bombardment of drug commercials.

Another positive step would be to "reschedule" certain drugs that are exceptionally problematic (make pseudoephedrine a schedule III drug and move hydrocodone and Soma to Schedule II) and look at better ways of regulating Oxycontin and methadone.

Federal respondents often mentioned The Prescription Drug Act and, specifically, the requirement of at least one "face to face" encounter between a physician and patient before prescribing as a solution to shutting down "pill mills" and inappropriate and unlawful access via "internet pharmacies". However, some areas of the country are already seeing abuse. Fraudulent doctors simply line up hundreds of people they will be prescribing to, run them through a 30 second appointment and then prescribe away. While the

"one on one" will certainly help, unless the most abused prescription drugs are made schedule II, the abuse will continue.

Marijuana:

If the White House Office of National Drug Control Policy's numbers are anywhere near correct, some 60% of the 21 million Americans illicitly using drugs singularly or co-use marijuana. The reduction of marijuana use, especially among young people, must be a key component to any national drug control strategy.

Congress and federal agencies must decide how to address marijuana. A couple of things that Congress and federal agencies could do, that would help immensely, would be to either "legalize marijuana" (which neither this author nor any of the respondents support), or bring the issue of states' attempts to legalize "medical marijuana" to a close. The confusion of ballot initiatives in cities and states and federal law enforcement's efforts to fill the void (California dispensaries are a great example) should end. If marijuana is legalized, everyone's job becomes easier. As long as it is illegal under federal law, as long as the FDA and scientific studies refuse to recognize marijuana as a medicine, and as long as federal law enforcement officials (and state officials in at least 38 states) are charged with enforcing the law, then the law should be enforced.

It has been recommended that the Department of Justice file suit and enjoin the 12 or 13 states that claim to have "legalized" medical marijuana. It has been recommended that Congress take steps to punish those states that attempt to frustrate federal marijuana laws (similar to withholding transportation funding if a state refuses to implement seatbelt standards or restrict certain forms of tinted windows). It has been recommended that federal law enforcement and treatment grants be withheld from states that continue to pass laws in direct conflict with federal law. The suggestion is to send HIDTA, Byrne, COPS, Treatment grants and monies from other funding streams to those states that are in compliance and are working to reduce addiction and drug abuse, and allow the "medical marijuana states" to either comply or deal with their problem with their own funding. While it is not likely that many of these recommendations would ever be implemented, it is important to have a discussion.

Finally, a key factor relating to what can be expected in the months and years to come will depend on the program priorities and policy decisions made by the new administration and the new Drug Czar and staff at the White House Office of National Drug Control Policy. If there is a "lax" approach to marijuana, it will set the standard and send a clear message to Americans that marijuana will no longer be a key aspect of the national drug control policy. If that happens, expect to see an immediate rise in marijuana use and addiction numbers. We will also send a message to our neighbors in Mexico who are engaged in a war right now, with marijuana serving as a cash crop that fuels violent cartels.

Cocaine, Heroin, Ecstasy:

In that cocaine, heroin and ecstasy are, almost exclusively, produced outside of the United States the key is securing the borders and continued efforts to prevent smuggling by all of its forms. Law enforcement officials in a number of major cities across the country (at one point 38 major cities) have reported a sustained trend of lowering purity of cocaine and increasing prices, clearly a result of tighter controls on the border and increased efforts to prevent these drugs from entering our borders. While heroin and ecstasy flows are also down, these advances could be reversed if we as a nation do not remain vigilante. Congress and federal government officials can assist, in a non-financial manner, by increasing awareness of the drug/terror nexus and making certain that those trained and funded to prevent a terrorist attack also have the training and ability to interdict narcotics being shipped into the United States from foreign countries.

E. ANY ADDITIONAL IDEAS, SUGGESTIONS OR PROPOSALS WHICH WOULD HELP NAMSDL DETERMINE THE SCOPE AND EXTENT OF TECHNICAL ASSISTANCE IT SHOULD CONSIDER PROVIDING FEDERAL OFFICIALS, AGENCIES AND CONGRESS IN 2009 AND 2010?

Many of the suggestions and proposals set forth by federal officials and federal law enforcement, with respect to what NAMSDL should do in 2009 and 2010 to support federal efforts, mirror the responses from state and local officials. While there were different perspectives between the federal and state respondents they all, for the most part, came to very similar conclusions and recommendations.

The vast majority of the federal respondents said that Methamphetamine and Prescription Drug Abuse were the major threats and they would like to see technical assistance to address these problems. Like the state respondents, they recommended:

**Continue to provide technical support to the remaining 10 states that have yet to pass Prescription Drug Monitoring Program legislation; moreover, continue to provide leadership in encouraging states to improve (real time, electronic systems) their PDMP efforts.

**Conduct a survey of states that have, and states that do not have, statutes prohibiting driving motor vehicles under the influence of illicit drugs or under the influence of prescribed drugs if one is rendered incapable of safely operating a motor vehicle. Thereafter, engage in a concerted effort to encourage states to study and pass "model legislation" that could be provided through the technical support and expertise of NAMSDL.

**Survey what the various states are doing, if anything, with respect to "pharmaceutical take back programs" and, if possible, draft model legislation if there are best practices in one or more states.

**Conduct a study of Oregon's experience with respect to scheduling pseudoephedrine and draft model legislation to be considered by other states experiencing an increase in methamphetamine labs and circumvention of the Combat Meth Act by smurfers.

**NAMSDL is encouraged to continue to provide leadership in efforts to enact legislation and implement "pseudo tracking" systems in the various states and to provide model legislation if requested.

**Facilitate communication by and between key state and local leaders and federal officials to determine depth of nationwide support for a number of

possible steps to confront Prescription Drug Abuse (rescheduling certain opiates, a national drug take back program, Prescription Drug Advertising).

**NAMSDL should continue to plan and host relevant conferences or summits to bring key state and local leaders together to discuss current and emerging drug threats and assist in coordinating a national strategy and action plan.

**One recommendation, that was not addressed by state and local officials, was to ask NAMSDL to study the health care systems and prescription practices at the Department of Defense (DoD), the Veterans Administration (VA) and Indian Health Services (IHS) and make recommendations as to whether or not a Prescription Monitoring System (PDMP) is in place in these departments and offices. It was reported that millions of prescriptions are handled by these agencies every year and if they do not have a PDMP, the certainly should.

In addition to those recommendations set forth above, federal officials also suggested a number of other areas where NAMSDL could provide technical assistance and, while many of these may be too large in scope, beyond an NGO's statutory authority, or too political for NAMSDL to consider, they are as follows:

**Survey all 98 United States Attorney's Offices re their "threshold policy" in drug cases and publish the results so that an honest discussion can take place between state and local prosecutors and the DoJ re workloads.

**Act as liaison between the ONDCP HIDTA program and the DHS Intelligence Center Program to determine whether or not they can be co-located to provide better coordination and negate duplication of efforts.

**Act as liaison between federal, state, local and tribal law enforcement agencies to facilitate efforts to better coordinate the License Plate Reader Programs that are springing up across the country. NAMSDL could also draft and seek consensus with respect to policies and procedures to be followed by all cooperating agencies in handling the collection and dissemination of LPR intelligence.

**Survey the health care system nationwide and determine what benefits are currently being offered (acknowledging that there may be great variances)

under insurance policies to care for those suffering from the disease of addiction and in need of treatment.

ANALYSIS & RECOMMENDATIONS

As I found in conducting the state and local surveys, I am pleased to report that NAMSDL is well known and respected by federal law enforcement agents and officials as well (DEA, FBI, ICE, DHS, and DoJ among others) and many commented how NAMSDL always seems to have the ability to focus on immediate issues and needs, not yesterdays. I was honored to inform those I contacted for this report that I was associated with, and working for, NAMSDL. The Board of Directors, CEO and employees should be proud as praise and respect from the federal community, for an NGO, is really quite rare.

It is clear from this survey, as well as responses from state and local officials, that Methamphetamine and Prescription Drug abuse are the current and emerging categories of concern. While we cannot decrease efforts with respect to other drugs of abuse (cocaine, heroin, ecstasy and marijuana) it is clear that NAMSDL, with its limited budget, should consider concentrating on these two categories of abuse. In addition, if the current Administration does not engage on the "marijuana issue", and a leadership and coordination void is created, NAMSDL would be the obvious entity to step forward to facilitate discussion, recommendations and a plan of action.

Methamphetamine:

In that NAMSDL was crucial in coordinating state**s'** efforts to regulate pseudoephedrine, and cut off the supply from foreign sources as well, NAMSDL has great credibility on this issue. While NAMSDL is encouraged to assist state efforts to stand-up PDMP's in all 50 states, move to make them "real-time" and continue to lead the way in developing pseudo tracking programs in the states—rescheduling pseudoephedrine (the Oregon Model) is by far the best and most effective solution.

It is unlikely that the Congress will move anytime soon to reschedule pseudoephedrine, but California just might. If California follows the Oregon

Model, and requires a prescription for pseudoephedrine, it is anticipated that many more states will follow just as they followed Oklahoma when it was put behind the counter. NAMSDL could be very effective in assisting the efforts in California and, if it passed, in replicating rescheduling in other states across America.

Prescription Drugs:

Federal responses to Prescription Drug issues were almost identical to the state responses in that just about everyone surveyed believes that the Prescription Drug abuse problem (and attendant addiction and deaths) will continue to rise if not confronted with all of the tools available to federal, state, local and tribal officials. In addition**,** all agree that it is much more complicated than the methamphetamine challenges as there are so many moving parts that have to be separately addressed:

- doctor shopping,
- the internet,
- pill mills,
- national drug advertising promoting more use,
- ignorance of prescribers due to lack of training,
- failure of all states to establish a PDMP,
- failure of all states to make tracking real time,
- reluctance of some in the law enforcement community to take this issue seriously,
- lack of a comprehensive and well funded anti-use campaign,
- lack of a solution to disposal of unused or expired prescriptions,
- lack of coordination with Veterans Administration, Indian Health Services and Department of Defense drug programs.

State and local respondents have asked NAMSDL to work with ONDCP and engage a number of key stakeholders (AMA, state physician regulatory officials, Drug Company officials, national Pharmacy representatives, SAMHSA, DEA, DHS, DoD, National Congress of American Indians, Veterans Administration, HHS, federal, state and local officials, National District Attorneys, Chiefs and Sheriffs and local law enforcement officers) to come up with solutions. If NAMSDL decides to coordinate and facilitate solutions from these key groups, it would be the perfect forum to push for

rescheduling pseudoephedrine to Schedule III nationally and reschedule Hydrocodone products to Schedule II.

One aspect of the problem that was not mentioned by state and local respondents, when requesting help to stand-up PDMP's nationwide, was the prescribing practices and prescription monitoring systems (if any) in the Department of Defense, Veteran's Administration and Indian Health Services. NAMSDL could play a crucial role in (a) determining if safeguards and monitoring systems are in place and (b) replicating state systems in federal agencies if they do not exist or are deficient.

Marijuana:

If ONDCP statistics are even remotely close (60%+ of America's 21 million illegal drug users singularly or co-use marijuana) this is an issue that cannot be ignored. Taking no action, making no policy decisions, and failing to act will undoubtedly result in increased use, an explosion of so-called marijuana dispensaries, and with increased use increased demand resulting in an expansion of growing operations on public lands. It also goes without saying that we will see a number of states and cities across America, either by legislation or ballot initiative, pass "medical marijuana laws" further confusing citizens and law enforcement.

If the policy is legalization, then that needs to be stated and pursued. If legalization does not occur, then the states that have "medical marijuana laws" should be enjoined. If the policy is to allow each state to treat the marijuana issue as it deems appropriate, then that should be stated so federal law enforcement leaders and agents can move on to other threats and state and local law enforcement officials can deal with the issue individually. I think all would agree that taking no action is, in fact, the worst outcome for all parties concerned.

In past years, NAMSDL was "the" organization that coordinated all stakeholders to address Methamphetamine. Regional summits were held across the country and policies and strategies were shared with individual states and a cohesive and logical strategy emerged. NAMSDL is in the unique position of being the obvious choice to coordinate a national discussion and the development of a national policy regarding Marijuana.

It was not difficult to illicit from federal respondents what they think are the "current" and "emerging" drug issues in the United States and it is not too terribly difficult to report what many federal officials believe is the best course of action to meet these threats. The difficult task is to distill that information and make recommendations to NAMSDL, from the federal perspective, that (a) are realistic and within budget constraints, (b) concentrate on the most acute and emergent issues and (c) set forth a plan of action. As with the state and local report, it is tempting to recommend a number of efforts (I could list a hundred specific tasks and program priorities that NAMSDL is well suited to address) as I would avoid scrutiny by those that could otherwise point out that something is missing.

Based upon the foregoing, and from a federal perspective, I would recommend that NAMSDL consider in the following activities in 2009 and 2010, to wit:

1. **Convene, with the assistance of ONDCP if possible, one National Summit (recommend a minimum of 3 days) with top-level representatives from each state (ideally one from law enforcement and one from treatment/prevention) to address the Oregon Model and determine whether or not it is possible to make pseudo a Schedule III drug nationwide. Moreover, NAMSDL should immediately contact California officials to determine whether or not NAMSDL could be helpful in their efforts. In addition, the Summit could address strong support for rescheduling hydrocodone to Schedule II and develop a strategy to support that action.**

2. **Convene, with the assistance of ONDCP if possible, four (4) Regional Conferences. These conferences would address Marijuana exclusively, would be by invitation only and attendees would represent all interests related to these issues (law enforcement, elected officials, physicians, treatment providers, media experts, Congressional staff, and subject matter experts). I would recommend that NAMSDL follow its "tried and true" conference model of panel presentations, subject matter break-out sessions and recommendation/action plan process.**

3. **Conduct a study of the prescription programs and systems currently in place at the Department of Defense, the Veteran's Administration and Indian Health Services and determine whether or not a PDMP**

system is in place and, if not, coordinate key stakeholders to address the issue. If the federal systems are lacking, best practices from state PDMP programs could be implemented.

CONCLUSION

While this report was prepared for NAMSDL, in an attempt to discern the current and emerging drug problems facing the United States and to provide recommendations, please know that I am more than willing to discuss any aspect of this report in the event NAMSDL submits a request or provides authorization. I am also willing to disclose recommendations of individual officials and law enforcement officers, if requested, but only after obtaining permission so as to not jeopardize anyone's employment, especially those in subordinate positions.