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### Getting High from South of the Border: Illicit Smuggling of Rohypnol as an Example of the Need to Modify U.S. Response to International Drug Smuggling after NAFTA

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# COMMENTS

## GETTING HIGH FROM SOUTH OF THE BORDER: ILLICIT SMUGGLING OF ROHYPNOL AS AN EXAMPLE OF THE NEED TO MODIFY U.S. RESPONSE TO INTERNATIONAL DRUG SMUGGLING AFTER NAFTA

### I. INTRODUCTION

Rohypnol (pronounced roe-hip-nol) is an illegal drug whose abuse is skyrocketing in the United States.<sup>1</sup> Rohypnol, the trade name of flunitrazepam, is a benzodiazepine pharmaceutical sold in pill form.<sup>2</sup> This pill is chemically similar to the sedative Valium but is ten times more powerful.<sup>3</sup>

The Swiss-based corporation Hoffmann-La Roche, which developed the drug, produces it in several countries.<sup>4</sup> Originally, Hoffmann-La Roche developed Rohypnol as a sleeping aid to combat severe insomnia or to sedate psychotic patients.<sup>5</sup> Doctors prescribe this drug to patients who are preparing to undergo surgery, to sedate the patient and to block any memory of the surgery.<sup>6</sup> The drug is prescribed because it is extremely mind-altering, both reducing inhibitions and causing amnesia. These reactions make the drug popular with illicit drug abusers who are

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1. Rebecca Howland, *Dangerous Sedative Being Smuggled Across Border*, Dallas Morning News, June 15, 1995, at A1.

2. Benzodiazepine is defined as "any of a group of minor tranquilizers . . . having a common molecular structure and similar physiological activities, such as antianxiety, muscle relaxing, and sedative and hypnotic effects." Dorland's Illustrated Medical Dictionary 200 (Elizabeth J. Taylor et al. eds., 1988).

3. Jean Seligmann & Patricia King, "Roofies": *The Date-Rape Drug*, Newsweek, Feb. 26, 1996, at 54; Jane Meinhardt, *Police Say New Drug is Popular with Youth*, Largo-Seminole Times (St. Petersburg, Fl.), Oct. 1, 1995, at 1.

4. *Hoffmann-La Roche Emphasizes Strategy of Law Enforcement and Education to Deal with Rohypnol Misuse*, PR Newswire, June 17, 1996, available in LEXIS, News Library, Wires File. Most of the Rohypnol smuggled into the United States is manufactured in either Columbia or Mexico. Howland, *supra* note 1, at A1; Beth Shuster, *Crackdown Sought on "Date Rape" Drug*, L.A. Times, June 8, 1996, at B8.

5. Howland, *supra* note 1, at A1.

6. *Id.*

seeking a new high.<sup>7</sup> Heroin users utilize Rohypnol to increase the effect of heroin.<sup>8</sup> Cocaine users utilize it to regulate the high of cocaine.<sup>9</sup> In addition, several reports of sexual assaults indicate that rapists have used Rohypnol to incapacitate victims.<sup>10</sup> These reports have led the media to refer to this drug as the "Date Rape Pill."

Despite risks of abuse, Rohypnol use is skyrocketing, mostly in states along the Mexican border where it is readily available.<sup>11</sup> Although the Mexican government officially regulates this drug, Mexican pharmacies commonly sell Rohypnol over the counter because Mexican regulation is not as exacting as U.S. regulation.<sup>12</sup> In addition, Mexican physicians who customarily prescribe the drug for insomnia are often careless about doing so.<sup>13</sup> This easy availability, from both inattentive pharmacies and careless doctors, allows many people to acquire the drug in Mexico and smuggle it into the United States.

Because Rohypnol is readily available, it has a popularly low price, ranging from one dollar to five dollars each pill.<sup>14</sup> Sales can be very profitable because a seller can buy the prescribed box of thirty tablets for nine dollars outside the U.S. and then resell a single tablet for between three dollars to five dollars.<sup>15</sup> The head of a Florida drug treatment program for adolescents said, "[i]t will

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7. *Roche's Rohypnol Abused by Teenage Junkies*, Pharmaceutical Bus. News, Nov. 8, 1995, at 12.

8. Shuster, *supra* note 4, at B8.

9. *Id.*

10. Jackie Hallifax, *Illegal Sedative Used on Rape Victims*, L.A. Times, June 9, 1996, at A11.

11. Howland, *supra* note 1, at A1. This paper, however, will focus solely on the illegal importation from Mexico and the expected effects of NAFTA. Rohypnol is legally available in sixty-four countries, including Mexico. Hallifax, *supra* note 10, at A11. Although Rohypnol is available in many countries and smugglers could transport the drug from other countries into the United States, smugglers almost exclusively import the drug from Mexico. Thus, this paper will only deal with illegal importation of Rohypnol from Mexico.

12. See Mary Beth Sheridan, *Americans Fuel Tijuana Drugstore Boom*, L.A. Times, July 5, 1996, at A22.

13. See *Id.*

14. *Trends in Juvenile Drug Use: Hearings on Youthful Drug Use Before the Senate Comm. on the Judiciary*, 103d Cong., 2d Sess. (1995) (testimony of James N. Hall, President - Up Front Drug Information Center).

15. *Roche's Rohypnol Abused by Teenage Junkies*, *supra* note 7, at 12.

be as popular as crack because it is so cheap."<sup>16</sup> Rohypnol's climbing popularity among drug abusers proves the truth of this prediction.

Since 1992, the U.S. Drug Enforcement Administration (DEA) has seized over 123,363 units of Rohypnol and says the problem is escalating.<sup>17</sup> On February 14, 1995, the U.S. Border Patrol seized a single shipment of 57,570 Rohypnol pills.<sup>18</sup> All of these seizures occurred before the ban on personal use importation,<sup>19</sup> which will cause a further increase in the number of seizures.

Rohypnol smuggling is expected to rise even further with the easing of border restrictions under the new North American Free Trade Agreement (NAFTA).<sup>20</sup> NAFTA will challenge law enforcement by decreasing traditional customs searches at border checkpoints. In response, movements at the local, state, and federal levels have begun to combat this impending flood of Rohypnol.

This Comment analyzes the problems the United States will experience in attempting to stop Rohypnol smuggling after the passage of NAFTA. Part II of this Comment discusses Rohypnol abuse in the United States. Part III reviews the current methods

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16. Donna Pazdera, *Sedative Becomes Latest Drug of Choice*, Sun-Sentinel (Fort Lauderdale), Nov. 28, 1994, at 1A.

17. *Roche's Rohypnol Abused by Teenage Junkies*, *supra* note 7, at 12.

18. Jennifer Peebles, *Pharmacist Leads Tennessee Investigators on Drug Trail to Mexico*, The Tennessean, Nov. 7, 1995, at 1A.

19. Until recently, tourists could legally bring Rohypnol into the United States. U.S. customs regulations allowed individuals to enter the country with a 90-day supply of prescription drugs for personal use. Sheridan, *supra* note 12, at A22. A recent study by the DEA and U.S. Customs found in just three weeks, Americans returning from Mexico declared over 100,000 Rohypnol tablets at the border crossing at Laredo, Texas. *Id.* One researcher found that returning Americans had declared over 1.5 million Rohypnol tablets in one year at the Laredo border crossing. *Id.* The author concluded that many of these tablets were likely destined for the illegal U.S. street market. *Id.* Thus, the personal use exception was being abused to allow legal smuggling of this illicit pharmaceutical. As a result, on March 4, 1996, President Clinton ordered the Customs Service to both remove the personal use exception and seize any amount of the drug entering the United States. See President William J. Clinton, Remarks at the Swearing-in Ceremony for the New Director of the Office of National Drug Control Policy (Mar. 6, 1996) (transcript available from Federal Document Clearing House Political Transcripts). Therefore, all Rohypnol possession is now illegal in the United States.

20. North American Free Trade Agreement, Dec. 17, 1992, U.S.-Can.-Mex., 32 I.L.M. 605 (entered into force Jan. 1, 1994) [hereinafter NAFTA]. NAFTA will link the U.S., Mexican, and Canadian economies by eliminating trade and investment barriers between these countries. NAFTA is the first step towards the long term goal of hemispheric free trade and the elimination of border controls to trade.

of preventing pharmaceutical smuggling into the United States. Part IV of this Comment examines the shortcomings of these methods in light of the relaxed border restrictions planned under NAFTA. Part V presents alternatives to control the smuggling of Rohypnol and other pharmaceuticals. Finally, in Part VI, this Comment concludes that in order to combat Rohypnol abuse and decrease its popularity, the United States must implement proactive prevention programs.

## II. CURRENT PROBLEMS OF ROHYPNOL ABUSE IN THE UNITED STATES

Rohypnol is abused in the United States for two distinct illicit purposes. Most commonly, teenagers use the drug to achieve a new illegal high.<sup>21</sup> The drug gives the user a feeling of intoxication at a low price and without painful side effects.<sup>22</sup> "It gives them what they [cannot] get with booze," said Sergeant Marvin Stoner of the Cooper City Police Department.<sup>23</sup> The drug's sedative effects are so strong that an accidental overdose may produce a coma, which happened to the late rock star Kurt Cobain of the band Nirvana.<sup>24</sup> In addition, drug users employ Rohypnol to enhance the effects of heroin and cocaine.<sup>25</sup> Overall, most Rohypnol users utilize the drug on themselves for recreation.

A few men, however, use the drug for a more insidious purpose. Some rapists use Rohypnol to incapacitate their victims.<sup>26</sup> Victims who are drugged with Rohypnol become dizzy and disoriented and have trouble moving their arms and legs.<sup>27</sup> Ultimately, the victims lose consciousness and have little or no memory of subsequent events.<sup>28</sup> For this reason, the media usually refers to Rohypnol as the "Date Rape Drug."

A South Florida prosecutor, who has successfully prosecuted

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21. *Roche's Rohypnol Abused by Teenage Junkies*, *supra* note 7, at 12.

22. Donna Pazdera, *Maker of Roofies Joins Campaign to Prevent Abuse*, Sun-Sentinel (Fort Lauderdale), June 15, 1996, at 1B.

23. *Id.*

24. Cynthia Sanz, *Hardly Nirvana; Rocker Kurt Cobain Has a Brush with Death*, People, Apr. 1994, at 55.

25. Shuster, *supra* note 4, at B8.

26. *Id.*

27. Hallifax, *supra* note 10, at A11.

28. *Id.*

Rohypnol rape cases, described the typical attack.<sup>29</sup> At a party or a bar, a woman meets a man who offers her a drink. Ten to twenty minutes later, she feels dizzy and disoriented, then nauseous and either chilly or warm. The woman then realizes that she is having trouble talking and moving her arms and legs. The man who bought the drink helps the woman, who outwardly appears to have drunk too much alcohol, to her car. He reads her driver's license, then drives her home and uses her keys to enter the home. Before the woman loses consciousness, she is briefly aware of her circumstances but is unable to respond. When she awakes, the man is gone and the woman has little memory of the rape.<sup>30</sup>

In these cases, because the man surreptitiously drops the drug into a woman's drink and the woman has little memory of the crime, successful prosecutions are difficult.<sup>31</sup> One recent case, which utilized the testimony of a man bragging to friends that he used Rohypnol to drug and rape over a dozen women, ended in a plea to only one count of sexual battery on a helpless person.<sup>32</sup>

Hoffmann-La Roche, the maker of Rohypnol, announced its plan to provide law enforcement officials with a test system that will detect Rohypnol in the victim's urine.<sup>33</sup> This test will help police determine whether rape victims were under the influence of the drug.<sup>34</sup> The company also announced its intention to conduct an education program to warn women to "watch your drink."<sup>35</sup> Hoffmann La-Roche hopes these plans will assist in the identification and prosecution of men who use Rohypnol to commit sexual assaults and also assist in educating potential victims.

### III. CURRENT CONTROL OF INTERNATIONAL PHARMACEUTICAL SMUGGLING INTO THE UNITED STATES

Currently, the U.S. response to drug smuggling is first to determine the relative dangerousness of the drug and then to

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29. Bob Nichols, Deputy State Attorney General, is a prosecutor in Broward County, Florida. *Id.*

30. *See generally id.*

31. Seligmann & King, *supra* note 3, at 54.

32. *Id.*

33. *Hoffmann-La Roche Emphasizes Strategy of Law Enforcement and Education to Deal with Rohypnol Misuse, supra* note 4.

34. Pazdera, *supra* note 22, at 1B.

35. *Hoffmann-La Roche Emphasizes Strategy of Law Enforcement and Education to Deal with Rohypnol Misuse, supra* note 4.

allocate resources based on its dangerousness. The United States allocates resources for two methods of preventing international drug smuggling. The primary method has been to increase border interception of drugs. Once the drugs cross the border into the United States, the next method is to criminalize possession of the drugs.

#### A. *Scheduling of Illegal Drugs*

To properly manage resources, the first step in an U.S. drug interception program is to determine the dangerousness of the drug. Federal law establishes five schedules of controlled substances, known as schedules I, II, III, IV, and V.<sup>36</sup> These schedules differentiate drugs based on the potential for abuse, accepted medical use, and the probability of psychological or physical dependence.<sup>37</sup>

Schedule I is reserved for those drugs that have a high potential for abuse and no currently accepted medical use in the United States.<sup>38</sup> These highest scheduled drugs are so likely to cause psychological or physical dependence that no use of the drug, even under medical supervision, is safe.<sup>39</sup> For example, both heroin and cocaine are listed on schedule I because they are extremely dangerous to users and have no legal use in this country.

Rohypnol is currently listed as a schedule IV drug, along with most sleeping aids. The United States added Rohypnol to its schedules in accordance with the international guidelines. The United Nations Commission on Narcotic Drugs (CND) first decided that twenty-one benzodiazepine substances should be added to the Schedule IV of the Convention on Psychotropic Substances in 1971 (Convention).<sup>40</sup> These substances included Rohypnol, which was listed under its generic name, flunitrazepam. The Convention added Rohypnol to schedule IV because it was legal in many countries. Although the Convention establishes a minimum for the listed drugs, the countries may choose to exceed the minimum.

After signing this Convention, the United States added

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36. 21 U.S.C. § 812(a) (1994).

37. *Id.* § 812(b)(1)-(5).

38. *Id.* § 812(b)(1)-(2).

39. *Id.* § 812(b)(1)(C).

40. United Nations Convention on Psychotropic Substances, Feb. 21, 1971, 10 I.L.M. 261.

Rohypnol to schedule IV. On August 1, 1984, the DEA published a notice in the Federal Register, proposing to temporarily place the twenty-one benzodiazepines, including Rohypnol, on federal schedule IV.<sup>41</sup> This DEA notice gave all interested persons until August 31, 1984 to submit any comments or objections regarding the proposal.<sup>42</sup> The DEA received no comments or objections in response to the proposal nor any requests for a hearing, so the Attorney General ordered the DEA Administrator to add the twenty-one benzodiazepines, including Rohypnol, to schedule IV.<sup>43</sup> Therefore, the rules regarding schedule IV drugs now apply to Rohypnol.

The schedule IV rules govern the manufacture, distribution, dispensing, security, registration, record keeping, reporting, inventory, exportation and importation of Rohypnol.<sup>44</sup> Schedule IV drugs are only available from a legitimate pharmacy through a doctor's prescription.<sup>45</sup> A doctor may not prescribe Rohypnol, however, because it has no legitimate medical use in the United States. Legitimate pharmacies thus have no reason to purchase Rohypnol. Accordingly, Rohypnol possession is a federal crime.

Rohypnol possession is also a state crime. All fifty states, as well as the District of Columbia, have adopted the federal five-tier ranking system of schedules with only slight modifications. The states also use their schedules to determine the dangerousness of drugs and corresponding penalties in state court. Similar to the federal system, the more dangerous the drug the more severe the criminal penalty. As with most drugs, the state schedules for Rohypnol are copied from the federal schedules to maintain consistency.

Currently, twenty-nine states have added Rohypnol, under its generic name flunitrazepam, to state statutes that regulate drugs.<sup>46</sup>

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41. 49 Fed. Reg. 30748-9 (1984).

42. *Id.*

43. See 21 U.S.C. § 811(d)(4)(A),(C) (1994).

44. *Id.*

45. *Id.*

46. Ariz. Rev. Stat. Ann. § 36-2515 (1988); COLO. REV. STAT. ANN. § 18-18-206 (West 1986); D.C. CODE ANN. § 33-520 (1981); FLA. STAT. ANN. § 893.03 (West 1993); GA. CODE ANN. § 16-13-28 (1984); HAW. REV. STAT. § 329-20 (1992); ILL. ANN. STAT. ch. 720, para. 570/210 (Smith-Hurd 1993); IND. CODE ANN. § 35-48-2-10 (West 1993); IOWA CODE ANN. § 124.210 (West 1989); KAN. STAT. ANN. § 65-4111 (1995); LA. REV. STAT. ANN. § 40:964 (West 1992); MD. ANN. CODE art. 27, § 279 (1995); MISS. CODE ANN. § 41-29-119 (1993); MO. ANN. STAT. § 195.017 (Vernon 1993); MONT. CODE ANN. § 50-32-229 (1995); NEB.



California is in the process of revising the state's schedule IV list to include Rohypnol.<sup>47</sup> Thus, most states have made or are in the process of making Rohypnol possession a state crime.<sup>48</sup>

The rankings of illegal drugs, at both state and federal levels, are important because the drug's dangerousness influences the amount of resources expended on each method of international drug deterrence. The first method of deterrence is to intercept the drugs at the border. More effort is applied at the border for more dangerous drugs. Once the drug has entered into the United States, the second method of deterrence is to criminalize possession of the drug. Higher criminal penalties are set for more dangerous drugs. Thus, the dangerousness of the drug determines the expenditure of resources at each step of the federal drug smuggling prevention program.

### *B. Border Interception as the Current Method of International Drug Deterrence*

Interception of drugs at the border is the primary U.S. defense against drug smuggling. By seizing the contraband, interception prevents drugs from transit countries and other illegal sources from entering the United States.<sup>49</sup> If the contraband is prevented from entering, people inside the United States cannot abuse the drugs.<sup>50</sup>

In recent years, the interception of drugs has been the control method that has received the greatest funding and resources. According to the U.S. Department of Justice, interdiction efforts

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REV. STAT. § 28-405 (1995); N.Y. PUB. HEALTH LAW § 3306 (Consol. 1994); N.C. GEN. STAT. § 90-92 (1995); N.D. CENT. CODE § 19-03.1-11 (1987); OHIO REV. CODE ANN. § 3719.41 (Baldwin 1989); R.I. GEN. LAWS § 21-28-2.08 (1994); S.C. CODE ANN. § 44-53-250 (Law. Co-op. 1995); TENN. CODE ANN. § 39-17-412 (1994); UTAH CODE ANN. § 58-37-4 (1994); VA. CODE ANN. § 54.1-3452 (Michie 1993); WASH. REV. CODE ANN. § 69.50.210 (West 1986); W. VA. CODE § 60A-2-210 (1995); WIS. STAT. ANN. § 161.20 (West 1994); WYO. STAT. § 35-7-1020 (1995).

47. S. 2164 1996 California Laws; H.R. 2226 1996 California Laws.

48. Almost all states have followed federal system's ranking, in compliance with the minimum treaty standards of the Convention on Psychotropic Substances, 1971. The few states that have exceeded these minimums are discussed *infra*.

49. U.S. Dep't of Justice, Bureau of Justice Statistics, Drugs, Crime, and the Justice System 146 (1992).

50. This is especially true of illicit pharmaceuticals that cannot be easily created without sophisticated chemical production. In contrast, other illegal drugs are grown or created domestically within the United States. Rohypnol has never been created except in legitimate production in foreign factories.

led the overall increase in the federal drug law enforcement budget, accounting for twenty-seven percent of the \$6.3 billion increase in the budget from 1981 to 1991.<sup>51</sup> The portion of the budget for interdiction efforts increased 480% during the same time period.<sup>52</sup> Thus, interdiction is the primary mechanism for deterring the smuggling of drugs into the United States.

As a result of the increased budget for interdiction, the United States has undertaken massive efforts to prevent drug smuggling. Operation Alliance, for example, is a multiagency effort to prevent drug smuggling across the Mexican border.<sup>53</sup> The Immigration and Naturalization Service (INS) Border Patrol, groups of customs inspectors, Border Patrol officers, DEA agents, INS agents, assistant U.S. attorneys, and state and local law enforcement officers work together to interdict the flow of narcotics across the land border between the United States and Mexico.<sup>54</sup>

In recent years, even the U.S. military has been used to intercept drugs being smuggled into the United States. Congress has authorized military operations to assist civilian law enforcement agencies.<sup>55</sup> Department of Defense personnel may assist civilian law enforcement agencies by operating equipment for the following purposes:

- (A) Detection, monitoring, and communication of the movement of air and sea traffic.
- (B) Detection, monitoring, and communication of the movement of surface traffic outside of the geographic boundary of the United States and within the United States not to exceed 25 miles of the boundary if the initial detection occurred outside of the boundary.
- (C) Aerial reconnaissance.
- (D) Interception of vessels or aircraft detected outside the land area of the United States for the purposes of communicating with such vessels and aircraft to direct such vessels and aircraft to go to a location designated by appropriate civilian officials.
- (E) Operation of equipment to facilitate communications in connection with law enforcement programs specified in paragraph (4)(A) [Drug enforcement operations].

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51. U.S. Dep't of Justice, *supra* note 49, at 128-131.

52. *Id.*

53. *Id.* at 146.

54. *Id.*

55. 10 U.S.C. § 374 (1994).

(F) Subject to joint approval by the Secretary of Defense and the Attorney General (and the Secretary of State in the case of a law enforcement operation outside of the land area of the United States)—

- (i) the transportation of civilian law enforcement personnel; and
- (ii) the operation of a base of operations for civilian law enforcement personnel.<sup>56</sup>

In addition, recent legislation has expanded the resources that the military may use to fight drug smuggling. The military is authorized to provide its vehicles, including aircraft, navy ships, and land vehicles to combat drug smuggling.<sup>57</sup> Most importantly, the federal law authorizes the use of "reserve components of the Armed Forces for drug interdiction operations of civilian drug law enforcement agencies."<sup>58</sup>

Even the Coast Guard has been pressed into service to intercept drug smuggling. In addition to the traditional roles of safety and coastal law enforcement, federal law now requires the Coast Guard to stop and search vessels suspected of smuggling drugs.<sup>59</sup> Federal law also requires the Coast Guard to reassign members to serve on navy vessels for drug interception programs if the military does not have sufficient trained personnel for law enforcement.<sup>60</sup> The focus on drug interception has even changed the mission of the Coast Guard. In a recent incident, the Coast Guard intercepted a ship loaded with cocaine off the coast of Peru evidencing that even the Coast Guard has been pressed into service to prevent drugs from entering this country.<sup>61</sup>

Overall, the United States expends huge resources on preventing drugs from entering this country. If the drugs do not enter, then people cannot abuse them. Unfortunately, pharmaceuticals continue to slip past border controls. As a result, federal and state governments have developed laws to criminalize possession of drugs that reach the United States.

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56. *Id.*

57. *Id.* § 374(b).

58. *Id.* § 374.

59. U.S. Dep't of Justice, *supra* note 49, at 147.

60. Section 379 requires that there be on board "every appropriate surface naval vessel at sea in a drug-interdiction area members of the Coast Guard who are trained in law enforcement and have powers of the Coast Guard under title 14, including the power to make arrests and to carry out searches and seizures." 10 U.S.C. § 379(a) (1994).

61. Sebastian Rotella, *U.S. Seizes Record 12 Tons of Cocaine Off Coast of Peru*, L.A. Times, Aug. 19, 1995, at A1.

### C. *Criminalizing Possession as Current Method of International Drug Deterrence*

The primary method of deterring the use of drugs that pass through border control is to drastically punish the possession and use of these drugs. The United States has been steadily increasing the penalties for drug possession such that the possession of even relatively non-dangerous drugs carries substantial penalties. For example, the Federal Sentencing Guidelines require a prison sentence of three years and a fine of \$250,000 as the maximum penalty for schedule IV drugs.<sup>62</sup> For more dangerous drugs, life sentences are not uncommon.<sup>63</sup>

States have also been increasing the penalties for drug possession. For example, Florida Attorney General Bob Butterworth adopted an emergency rule placing Rohypnol in a special classification.<sup>64</sup> Possession of ten grams or more of Rohypnol, possession of any amount within 1000 feet of a school, or employing a minor for the sale or delivery of the drug is a first-degree felony, punishable by an automatic prison term of four years.<sup>65</sup> Thus, as Rohypnol is increasingly perceived as a dangerous drug, the penalties for possession have simultaneously continue to increase.

Because the prosecution and imprisonment of drug users consumes the limited resources available for drug law enforcement, the penalties are graduated by the dangerousness of the drug. The more dangerous drugs receive higher sentences. These higher sentences are expected to deter potential users from abusing the drug. Accordingly, criminalizing possession is the current method of deterring use of drugs that pass through border controls.

## IV. ENFORCEMENT CHALLENGES AND PLANNED MODIFICATIONS TO ENFORCEMENT STRATEGY

In the near future, the current two-prong strategy of border control and possession penalties will become less effective. Currently, border interception of Rohypnol is very difficult.

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62. See U.S. Dep't of Justice, *supra* note 49, at 178 (citing NATIONAL CRIMINAL JUSTICE ASSOCIATION, A GUIDE TO STATE CONTROLLED SUBSTANCES ACTS 8-11 (1991)).

63. *Id.*

64. Louis Lavelle, *Penalty for Selling "Date-Rape Drug" to Stay in Effect*, Tampa Tribune, July 9, 1996, at 4.

65. *Id.*

NAFTA will decrease the effectiveness of border interception by allowing greater access through the borders. As a result, there is a movement to greatly increase the penalties for possession of Rohypnol. Unfortunately, this increase will not cure the problem.

A. *Potential Increase in Rohypnol Interdiction*

It is very difficult to prevent Rohypnol smuggling, even without the added problems of NAFTA. Because the drug has never been legal in the United States, it is not listed in the Physician's Desk Reference or other drug identification materials.<sup>66</sup> Thus, the police officers who discover it cannot identify it.

In addition, the packaging of Rohypnol makes its identification as an illicit drug even more difficult. The drug is legally available in over sixty countries, including Mexico.<sup>67</sup> When the drug is legitimately purchased in the originating country, it is difficult for customs officials to stop its smuggling because the drug's packaging looks as legal as any other permissible pharmaceutical.<sup>68</sup>

Furthermore, Rohypnol is smuggled in small quantities in the same manner as heroin.<sup>69</sup> The use of numerous couriers to smuggle relatively small quantities of heroin is a characteristic smuggling method of Mexican heroin traffickers.<sup>70</sup> These traffickers take advantage of their close proximity to the United States by stockpiling the larger quantities of heroin in Mexico and then smuggling smaller amounts as sales in the United States are arranged.<sup>71</sup> Most traffickers believe their heroin stockpiles are less susceptible to law enforcement in Mexico.<sup>72</sup> By storing heroin in Mexico, smugglers minimize the danger of U.S. authorities seizing significant amounts of heroin.<sup>73</sup> According to investigative reporting, even large polydrug Mexican organizations, that stockpile tons of cocaine and marijuana, limit the size of each heroin shipment that is smuggled into the United States.<sup>74</sup>

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66. Howland, *supra* note 1, at A1.

67. Hallifax, *supra* note 10, at A11.

68. Howland, *supra* note 1, at A1.

69. *Florida Sees Rising Abuse of Drug Known as "Rophies"*, Drug Enforcement Rep., Dec. 23, 1994, at 6.

70. Strategic Intelligence Section, Drug Enforcement Agency, U.S. Drug Threat Assessment: 1993 58 (1993).

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

Overall, Rohypnol is very difficult to intercept, even with border checks and customs searches. With the decrease in border controls under NAFTA, the problems with Rohypnol will multiply.

*B. NAFTA Will Decrease Effectiveness of Border Interception*

By opening the border between the United States and Mexico, NAFTA will provide increased opportunity to smuggle drugs through additional commerce transports. A former U.S. Customs Commissioner predicted that "NAFTA . . . is likely to promote a quantum increase in drug availability."<sup>75</sup> To illustrate, an estimated forty-five percent of Mexican foreign trade moves by truck across the U.S. Mexico border.<sup>76</sup> At the Nuevo Laredo crossing alone, between 1500 and 2000 trucks cross the border every day.<sup>77</sup> To speed the flow of goods into Mexico and to provide more tax revenue, sophisticated computer equipment was installed on both sides of the border and a red light/green light system for spot inspections of only a few trucks will soon follow.<sup>78</sup> Thus, the majority of the trucks moving through the largest Mexican border checkpoint will not be inspected. Entire truckloads of Rohypnol may be transported across the open border without interception. The decrease in customs inspections will allow greater access of all types of shipments, both legitimate and illicit.

U.S. law enforcement has already verified that "Colombian cartels are buying up businesses in Mexico in anticipation of the North American Free Trade Agreement."<sup>79</sup> The anticipated decrease in customs inspections is an obvious inducement to attempt smuggling. As a result, U.S. Customs and DEA personnel now openly refer to NAFTA as the "North American Drug Trade Agreement," showing their prediction of NAFTA's impact on drug enforcement efforts.<sup>80</sup> The immediate effect on drug enforcement will be the increase in smuggling due to the decreased risk of interception.

U.S. Attorney General Janet Reno has predicted that NAFTA,

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75. Laurie L. Levenson, *NAFTA: A Criminal Justice Impact Report*, 27 U.C. Davis L. Rev. 843, 855 (1984).

76. Susana Hayward, *Will Pollution, Drugs Roll in with Duty-Free Goods?*, Associated Press, Dec. 28, 1993, available in LEXIS, News Library, Wire file.

77. E.J. Muller, *Trucking into Mexico*, ASAP, June 1993, at 38.

78. *Id.*

79. Mark Sell, *Chasing Dirty Money*, Legal Times, July 19, 1993, at 35.

80. Levenson, *supra* note 75, at 853, n.44.

in the long run, will stem the flow of drugs into the United States.<sup>81</sup> This prediction is based largely on the hope that better relations between U.S. and Mexican law enforcement will accompany increased trade between the two countries. As the Mexican economy grows, there will be less incentive to rely on illicit businesses, such as drugs, for economic support. But one commentator is not very optimistic: "In the long term, there may be a reduction in drug trade if NAFTA is economically successful. The short-term effects, however, are not promising. It is unlikely that drug traffickers will ignore increased, and easier, routes of distribution."<sup>82</sup> Therefore, the amount of illicit drugs entering the United States will certainly increase for all types of smuggled drugs, including Rohypnol.

### *C. Proposed Increase of Penalties for Domestic Possession*

As a result of the increasing problem of intercepting Rohypnol at the border, there is a move to increase the penalties for possessing the drug after it enters the United States. This proposal follows from the traditional two-step enforcement that has been used. Because the first step of border control is decreasing, the second step of criminalizing possession may increase.

#### 1. Federal Laws

On June 20, 1996, the DEA officially recommended that Rohypnol be reclassified as a schedule I drug.<sup>83</sup> The DEA hopes that the drug will be put in the same category as heroin, cocaine and LSD in the next three months.<sup>84</sup> The Health and Human Services Administration will study the medical effects of the drug, and within the next few months, may decide with the DEA to reclassify it.<sup>85</sup> If this reclassification is approved, Rohypnol possession will become a very serious federal crime.

Under the Federal Sentencing Guidelines, the penalties for possession of a schedule I drug are far greater than the penalties for possession of a schedule IV drug. The maximum penalty for

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81. *Attorney General Says NAFTA Will Provide U.S. Immigration, Drug Enforcement Benefits*, U.S. Newswire, Oct. 7, 1993, available in LEXIS, World Library, Allwld File.

82. Levenson, *supra* note 75, at 854.

83. *DEA to Reclassify "Date Rape" Drug*, Washington Times, June 21, 1996, at A14.

84. *Id.*

85. *Id.*

a first offense of possession of a schedule I drug is a twenty year prison sentence and a \$1,000,000 fine.<sup>86</sup> In comparison, the maximum penalty for possession of a schedule IV drug is a three year prison sentence and a \$250,000 fine.<sup>87</sup>

U.S. Senator Joseph Biden, Jr. is committed to increasing the scheduled penalties for Rohypnol possession. After the recent prohibition of personal use importation, Senator Biden explained, "[t]he decision to stop all imports of Rohypnol, even for personal use, is the first step. But we also need to move forward on my legislation to reclassify this drug so that it is subject to much stricter regulation."<sup>88</sup> Senator Biden concluded, "[f]urther action is needed to make sure cracking down in the illegal trafficking of [R]ohypnol is a high priority and that illegal traffickers of [R]ohypnol are given tough sanctions."<sup>89</sup> Senator Biden then introduced legislation on March 12, 1996, to reschedule flunitrazepam from schedule IV to schedule I.<sup>90</sup> Rohypnol is soon likely to be moved to a higher federal drug schedule.

## 2. State Laws

As with most drugs, state schedules for Rohypnol patterned after the existing federal schedules to increase consistency. Currently, thirty-one states have listed flunitrazepam, the chemical in Rohypnol, under schedule IV.<sup>91</sup> This follows the current federal schedule.

A few states, however, have surpassed the current federal guidelines in scheduling Rohypnol. Texas has increased the listing of Flunitrazepam to schedule III.<sup>92</sup> Texas law defines schedule III depressants as material "that contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system."<sup>93</sup> The penalty for

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86. U.S. Dep't of Justice, *supra* note 49, at 178 (citing NATIONAL CRIMINAL JUSTICE ASSOCIATION, A GUIDE TO STATE CONTROLLED SUBSTANCES ACTS 8-11 (1991)).

87. *Id.*

88. Senator Joseph Biden, Jr., *Biden Calls Ban on Rohypnol an Important Step Forward in the Fight Against Drugs*, Cong. Press Releases, Mar. 6, 1996, available in LEXIS, News Library, Curnws File.

89. 142 Cong. Rec. 33,1868 (1996).

90. S. 1609, 104th Cong., 2d Sess. § 1 (1996).

91. See *supra* note 46.

92. Tex. Health & Safety Code Ann. § 481.104 (West 1995). The Texas statute refers to schedules as penalty groups. *Id.*

93. *Id.*



schedule III drug possession in Texas is greatly increased when compared to schedule IV.<sup>94</sup> Thus, Texas has deviated upwards from the current federal ranking for Rohypnol due to the skyrocketing problem of abuse in Texas.

In response to Rohypnol abuse, the neighboring state of Oklahoma has just passed emergency legislation raising flunitrazepam to schedule I.<sup>95</sup> This legislation, which became effective immediately on April 10, 1995, sets Rohypnol at the same punishment level as heroin, LSD, or opium.<sup>96</sup> Schedule I is defined as including substances that (1) have a high potential for abuse and (2) have no accepted medical use in the United States or lack accepted safety for use in treatment under medical supervision.<sup>97</sup> As a result, the punishment for Rohypnol possession in Oklahoma is a felony with a mandatory sentence of no less than five years and a fine not to exceed \$100,000.<sup>98</sup> This penalty greatly increases the severity of punishment for Rohypnol.

As both Texas and Oklahoma demonstrate, there is a growing movement to reclassify Rohypnol as a higher level drug with greater punishments. Idaho also has recently moved Rohypnol to the schedule I list.<sup>99</sup> Several other states are in the process of moving flunitrazepam to the schedule I.<sup>100</sup> Florida, in contrast, has kept the drug at schedule IV, but has greatly increased the criminal penalties for possessing the drug.<sup>101</sup> Almost all states

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94. *Id.*

95. Okla. Stat. Ann. tit. 63, § 2-204(A) (West 1995).

96. *Id.* § 2-204.

97. *Id.* § 2-203.

98. Okla. Stat. Ann. tit. 63, § 2-401(B)(1) (West 1995).

A substance classified in Schedule I or II which is a narcotic drug or lysergic acid diethylamide (LSD), upon conviction, shall be guilty of a felony and shall be sentenced to a term of imprisonment for not less than five (5) years nor more than life and a fine of not more than One Hundred Thousand Dollars (\$100,000.00). Said sentence shall not be subject to statutory provisions for suspended sentences, deferred sentences, or probation except when the conviction is for a first offense.

*Id.*

99. Idaho Code § 37-2705 (1995).

100. S. 2856, 79th Legis. Sess., 1996 Minn. Laws. (enacted on April 2, 1996); S. 6629, 219th Gen. Assembly., 2d. Sess., 1996 N.Y. Laws (the New York State Senate has returned to the Committee on Health this amended bill to reclassify flunitrazepam).

101. Lavelle, *supra* note 64, at 4. Instead of increasing the schedule of Rohypnol, Florida passed a special provision. This provision mandates that "any unauthorized activity under this section which involves flunitrazepam shall be subject to the same penalties as are provided for in this section for violations involving controlled substances named or described in [schedule I]." H.R. 49, 1996 Fla. Laws (enacted June 1, 1996).

are increasing the penalties for Rohypnol possession due to its sudden proliferation. State legislators optimistically hope these increased punishments will deter both potential abusers from using the drug and smugglers from risking importation of the drug.

*D. Past Ineffectiveness of Drug Interception and Increased Possession Penalties*

Using increased penalties to prevent drug abuse has been the dominant theory behind U.S. drug policy. "The theory is that reduced supplies drive drug prices up, making drugs more expensive and harder to find. This in turn will force addicts to seek treatment or to quit on their own. At the same time, high prices and inaccessibility discourage new users from trying drugs."<sup>102</sup> This supply-side theory has been the driving force of recent U.S. drug policy. Mathea Falco, President of Drug Strategies explained:

In 1981, President Ronald Reagan put the supply-side theory to its fullest test. . . . As a result, he emphasized much tougher enforcement of the drug laws and expanded interdiction efforts.

In the first year of the Reagan administration, federal spending for drug enforcement and interdiction jumped 50 percent. From 1981 through 1986, funding for drug enforcement more than doubled — from \$ 800 million in 1981 to \$ 1.9 billion in 1986. Attorney General Edwin Meese, head of the National Drug Policy Board, noted in 1987 that these had been "the largest increases in drug law enforcement funding and manpower in the nation's history."

At the same time, the Reagan administration made substantial cuts in demand reduction programs. Total federal funding for prevention, education, and treatment declined from \$ 404 million in 1981 to \$ 338 million in 1985; when adjusted for inflation, this amounted to a reduction of almost 40 percent. Drug abuse prevention and education programs received an average of \$ 23 million a year during this period.

These cuts in demand reduction programs undermined the basic premise of earlier U.S. drug policy: that a reduction in illicit supplies would force addicts into treatment and prevent potential new users from trying drugs. The Reagan policy no longer linked supply reduction directly to demand reduction

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102. Mathea Falco, *Toward a More Effective Drug Policy*, 1994 U. Chi. Legal F. 9, 10.

because treatment was often unavailable for addicts who could not afford private care.

President Reagan's vision was carried forward by President George Bush, who allocated 70 percent of the federal drug budget to supply control. Although the U.S. Congress increased prevention and treatment funding in response to the crack cocaine epidemic, prevention and treatment still received only a third of total federal funding. To date, President Bill Clinton has continued the enforcement-dominated policies of his predecessors. Since 1981, more than \$ 100 billion in federal and state tax dollars have been invested in trying to reduce illegal drug supplies.<sup>103</sup>

The federal drug budget now devotes almost two-thirds of all funds to interdiction, foreign control programs, and domestic law enforcement.<sup>104</sup> In addition, the penalties for possession of drugs are the harshest in decades. Life sentences for drug possession are possible.<sup>105</sup>

Despite these massive expenditures and heavy penalties, heroin and cocaine are cheaper and more available than ever. In September 1993, the National Security Council (NSC) concluded that the \$1.1 billion spent on interdiction by the military was wasted.<sup>106</sup> The General Accounting Office (GAO) recently conducted a series of studies that also found that interdiction has not reduced domestic drug supplies.<sup>107</sup> The ever-increasing penalties have not stopped addicts from finding and using drugs.

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103. *Id.* at 10-11 (citations omitted).

104. *Id.* at 12. This estimate is based on a Rand Corporation calculation of total drug enforcement expenditures for 1989, which found that state and local governments spent slightly more than twice as much as the federal government. Federal drug enforcement spending from 1981 to 1992 amounted to about \$35 billion. Assuming the Rand ratio provides a reasonable measure, total federal, state, and local drug enforcement spending for the period exceeded \$100 billion. *Id.* (citing Peter Reuter, *Hawks Ascendant: The Punitive Trend of American Drug Policy*, 121 *Daedalus* 15, 21 (1992)).

105. U.S. Dep't of Justice, *supra* note 49, at 178 (citing NATIONAL CRIMINAL JUSTICE ASSOCIATION, A GUIDE TO STATE CONTROLLED SUBSTANCES ACTS 8-11 (1991)).

106. Michael Isikoff, *U.S. Considers Shift in Drug War*, *Wash. Post*, Sept. 16, 1993, at A1.

107. Falco, *supra* note 102, at 12 (citing General Accounting Office, DRUG SMUGGLING: CAPABILITIES FOR INTERDICTING PRIVATE AIRCRAFT ARE LIMITED AND COSTLY 5 (1989); General Accounting Office, DRUG CONTROL: IMPACT OF DOD'S DETECTION AND MONITORING ON COCAINE FLOW 5 (1991)).

### 1. Failure of Supply-Side Interdiction Attempts

The supply-side theory is fatally flawed. Mathea Falco has explained that additional billions in new supply-side initiatives will not improve the chances of success for three basic reasons:

First, illicit drug production has become a major worldwide industry, spreading even to the newly independent Central Asian Republics. Hard drugs produce hard currency and are often the only reliable export for underdeveloped regions. For example, opium production in Burma has doubled since 1988, when the military regime effectively closed the country from legitimate outside trade. As a result, Burma now produces more opium than all the rest of the world. Moreover, in the past five years, Colombia, which still dominates the cocaine traffic, has become the world's second largest opium producer—a direct economic response to the relative saturation of the U.S. cocaine market. Thus, opium, coca, and marijuana—the raw materials of the illegal drug trade—can easily be grown in countless places, usually far beyond the control of governments, police, or armies.

Supply-side initiatives will also fail because, despite its high rate of drug abuse, the United States consumes a small portion of worldwide drug production. Experts estimate that twenty square miles of poppy cultivation would supply the nation's heroin market for a year. Similarly, four fully loaded Boeing 747 cargo planes could meet America's annual cocaine requirements. Hence, even if intercepted, these supplies could easily be replaced from the vast production capacity in many countries.

The price structure of the drug market also undercuts interdiction as a viable strategy. The largest profits are made at the street level, not in foreign poppy or coca fields or on the high seas. Thus, even if the United States were able to seize half the cocaine coming from South America—a very unlikely prospect—street prices would increase by less than 10 percent.<sup>108</sup>

### 2. Failure of Increased Penalties

The most graphic demonstration of the failure of increasing penalties is the current crack cocaine crisis. Crack cocaine is a crystallized form of powdered cocaine that causes intense feelings in its abusers.<sup>109</sup> Although crack cocaine is chemically the same

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108. Falco, *supra* note 102, at 12-13 (citations omitted).

109. See Leslie H. Gelb, *Yet Another Summit*, N.Y. Times, Nov. 3, 1991, at E15.

as powder cocaine, the penalties for the former are substantially harsher. The Federal Sentencing Guidelines have a special provision that increases the penalty for possession of crack cocaine.<sup>110</sup> Although the penalty is draconian in its severity, crack cocaine abuse has not decreased in proportion to the increase of the penalty. The ongoing crack cocaine crisis clearly highlights the failure of increasing penalties to prevent drug abuse.

#### V. ALTERNATIVE METHODS TO REPLACE OUTDATED U.S. RESPONSES TO INTERNATIONAL DRUG SMUGGLING AFTER NAFTA

Because border interception is becoming more difficult and because increased penalties are unlikely to prevent the influx of Rohypnol, the United States must find alternative methods to deal with Rohypnol smuggling. Instead of a reactive approach, the United States needs to take a proactive approach to prevent the drug smuggling before it begins. Thus, the focus should be on both stopping the drugs at their source and reducing the demand that makes smuggling profitable.

##### A. *Pressure on Mexico*

The obvious starting point is eliminating the supply of Rohypnol available to be smuggled from Mexico. The United States could bring pressure to bear on the government of Mexico. In the past, the United States has mixed economic pressure with financial rewards to force Mexico to enforce U.S. drug policies. The United States has effectively shut the border to trade to force Mexico to comply.<sup>111</sup> This method, however, will no longer be available under NAFTA because of the agreement to keep trade unrestricted.

Thus, the United States will instead need to increase its financial assistance to Mexico. Currently, the federal government spends \$639.6 million dollars on international drug control.<sup>112</sup> Some of this money supports federal drug enforcement personnel

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110. *See Id.*

111. In 1969, President Nixon ordered "Operation Intercept," which was a surprise, three-week intensive search of every vehicle traveling across the border. The operation was intended to force Mexico to allow the United States to assist with Mexican drug eradication programs. Tom Barry, CROSSING THE LINE: IMMIGRANTS, ECONOMIC INTEGRATION, AND DRUG ENFORCEMENT ON THE U.S.-MEXICO BORDER 64-65 (1994).

112. U.S. Dep't of Justice *supra* note 49, at 129.

abroad.<sup>113</sup> Much of the money provides countries with both surplus military equipment and direct grants.

In 1991, the federal government provided \$150 million to countries under this grant program.<sup>114</sup> Eighty-eight percent of this direct financial assistance went to Latin American countries.<sup>115</sup> Mexico, in particular, received fifteen percent or \$18.3 million dollars.<sup>116</sup> The United States could tie additional grants to Mexico's regulation of Rohypnol sales.

In contrast, the Anti-Drug Abuse Act of 1986 withholds half of U.S. foreign assistance to any country that is a major illegal drug producer or transit location.<sup>117</sup> In addition, the Act requires U.S. executive directors of multilateral development banks to vote against grants or loans to such countries.<sup>118</sup> These restrictions, however, do not apply to countries the President determines have fully cooperated with the United States or have taken adequate steps to control illegal drugs.<sup>119</sup> Furthermore, a 1988 amendment to the Act makes it unlawful to certify a country's compliance unless the country is a signatory to a bilateral or multilateral agreement with the United States that addresses drug eradication, chemical control, and cooperation with U.S. drug enforcement agencies.<sup>120</sup> In 1990, Afghanistan, Burma, Iran, and Syria were denied certification for any aid under this amendment.<sup>121</sup> The United States could use this Act to base future grants to Mexico upon the Mexican Government increasing Rohypnol regulation.

These payments might not be popular with U.S. taxpayers. A survey in 1989 found that only fifty percent of respondents favored increasing foreign aid to Latin American countries to combat cocaine traffic to the United States.<sup>122</sup> Thus, direct payments to Mexico to stop the illicit sales of Rohypnol will be politically difficult, especially during an election year.

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113. *Id.*

114. *Id.* at 129.

115. *Id.*

116. *Id.*

117. *Id.* at 103.

118. *Id.*

119. *Id.*

120. *Id.*

121. *Id.* at 145.

122. U.S. Dep't of Justice, *supra* note 49, at 98 (citing Louis Harris, *The Harris Poll* (Creators Syndicate, Inc., Los Angeles, CA), Aug. 27, 1989, as presented in BJS, *Sourcebook on Criminal Justice Statistics 1989*, (1990) table 2.87, 202.)

### B. Pressure on Hoffmann-La Roche

The United States instead could place pressure on Hoffmann-La Roche, a public company producing many pharmaceuticals that are legal in the United States. Governmental pressure on this company might decrease the supply of Rohypnol flowing into the United States. At a recent meeting with U.S. Food and Drug Administration officials, Hoffmann-La Roche representatives admitted that the company was aware of Rohypnol abuse in the United States.<sup>123</sup> According to Hoffmann-La Roche, the problem stems from the drugs being obtained by prescriptions, not being stolen from factories.<sup>124</sup> The company stated that it has no plans to withdraw the product because some patients who legitimately need it should not be denied the drug.

In spite of the company's stated position, governments have successfully pressured it to control Rohypnol. Hoffmann-La Roche admitted that growing concern over Rohypnol in Europe has led it to replace the two milligram prescribed dose form with a one milligram tablet.<sup>125</sup> In response to the concerns in the United States, Hoffmann-La Roche has slashed the number of distributors in Mexico from 200 to only 16.<sup>126</sup> Hoffmann-La Roche also claims to have restricted direct sales to all Mexican pharmacies.<sup>127</sup> If federal and state governments continue to pressure Hoffmann-La Roche to decrease production in Mexico, the supply of Rohypnol available for smuggling would likely decrease further.

### C. Legalization is Not an Option Under Current Treaties

Rohypnol was added to the U.S. schedules in accord with international guidelines. In agreement with the United Nations Commission on Narcotic Drugs, Rohypnol was added to schedule IV of the signatory nations laws.<sup>128</sup> This treaty requires the United States to regulate the manufacture, distribution, dispensing, security, registration, record keeping, reporting, inventory,

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123. *Roche's Rohypnol Abused by Teenage Junkies*, *supra* note 7, at 12.

124. *Id.*

125. *Roche Voices Concerns Over Rohypnol Abuse*, Marketletter, Oct. 23, 1995, available in LEXIS, News Library, Curnws File.

126. *Hoffmann-La Roche Issues Statement Regarding Rohypnol*, PR Newswire, Apr. 2, 1996, available in LEXIS, News Library, Wire file.

127. *Id.*

128. United Nations Convention on Psychotropic Substances, *supra* note 40.

exportation and importation of Rohypnol.<sup>129</sup> Although countries may deviate upward from these minimums, they may not drop below this floor. Therefore, the importation or possession of Rohypnol must remain a federal crime.

#### *D. Increase in Drug Prevention Efforts*

The most effective method to combat the rise in drug smuggling, including Rohypnol smuggling, would be to reduce the demand for smuggled pharmaceuticals. Such a reduction in demand will necessarily decrease the supply. This prevention strategy involves education and skills development to prevent or minimize the use of drugs.

The most visible example of the prevention strategy is the Partnership for a Drug Free America (Partnership).<sup>130</sup> The Partnership created the famous advertisement of a frying egg, with the voice-over saying, "[t]his is your brain on drugs." Prevention strategies have been effective in lowering the number of people abusing drugs, and thus, decrease the demand.<sup>131</sup>

In addition, the U.S. public favors this approach. A 1989 survey found that reducing the demand for drugs by teaching young people about the dangers of drugs was the most favored approach among the U.S. public (forty percent).<sup>132</sup> This response was higher than either working with foreign governments to reduce the export of drugs to this country (twenty-eight percent) or arresting drug dealers (nineteen percent).<sup>133</sup>

Demand reduction strategy has proven effective in combatting Rohypnol abuse. The president of the Up Front Drug Information Center in Miami explained before the U.S. Senate Committee on the Judiciary:

[b]ecause of our rapid detection of this new drug problem in south Florida, we have been able to effect several community-based responses to flunitrazepam intoxication. . . . Community alerts have allowed treatment programs to share strategies for addressing its abuse. Prevention programs have

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129. *Id.*

130. *See*, Falco, *supra* note 102, at 15.

131. *Id.*

132. U.S. Dep't of Justice, *supra* note 49, at 98 (citing Louis Harris, *The Harris Poll* (Creators Syndicate, Inc., Los Angeles, CA), Aug. 27, 1989, as presented in BJS, *Sourcebook on Criminal Justice Statistics 1989*, (1990) table 2.87, 202.)

133. *Id.*



developed campaigns about the generic problem of combining alcohol and medications, rather than publicizing specific abuse of Rohypnol.<sup>134</sup>

These prevention programs have worked to decrease the demand for all drugs, including Rohypnol. The reduced demand for Rohypnol decreases the amount smuggled into this country.

## VI. CONCLUSION

Rohypnol is being abused in the United States in ever-increasing amounts. Relaxed border restrictions with Mexico under NAFTA are expected to swell the supply of the drug entering this country. Currently, the planned response is to severely raise the penalties for possession in order to lower the demand. But the recent history of sustained crack cocaine abuse despite draconian penalties, shows that sanctions alone will not be sufficient to reduce the demand. Therefore, expanded drug prevention programs are required to lower the demand for Rohypnol.

*Douglas Herring\**

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134. *Trends in Juvenile Drug Use: Hearings on Youthful Drug Use Before the Senate Comm. on the Judiciary*, *supra* note 14.

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