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**TO END  
THE  
WAR  
ON DRUGS**

**A Guide For Politicians  
The Press And Public**

**DEAN BECKER**

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the Press and Public

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## PREFACE

**A**t press time, I am 65 years old. An old hippie at heart, I did thrive in the corporate world when I wanted to. I live a quiet life with my partner, Pam, and our three cats. I have four strong sons, twelve wonderful grand children, and immense hope for their futures.

Reporting the drug war news has enabled me to travel the world. In South America, I chewed coca leaves with a Justice Minister and a prison warden,. On a trip to Mexico, I saw the streets filled with guns and fear. I visited Canada to tour heroin injection clinics and cannabis dispensaries. I have traveled to dozens of cities in the US to report on Senate hearings, medical seminars, and numerous conferences.

I did not have to travel far to meet John Walters when he was our nation's Drug Czar. Walters gave a speech at a Houston Jr. High about gangs and drugs. When it was over, Walters was sitting by himself, packing his briefcase. I had been in touch with his office for weeks trying to arrange an interview. As I approached, him, I smiled, I held out my business card and offered to shake his hand. He looked at me, somewhat like a cow does when looking at a combine. Again I offered my card, and he waved his hand over his head and quickly finished packing. As he stood, four security goons surrounded him as he walked towards the exit. I kept pace with his entourage, offering my card, until Walters mumbled something, and one of the goons stepped in front of me, put his hand in his coat, and said "he doesn't want to talk to you."

This book tells you why.

## INCREMENTALISM IS A KILLER

*“I think the word ‘gradualism’ is so often an excuse for escapism and do-nothingism which ends up in stand-stillism.”*

—Reverend Dr. Martin Luther King Jr

**W**e have been duped! It starts with a small lie that many citizens think does some good for a few. It escalates by bending the Constitution to protect that vulnerable few. It increases when the populace becomes jaded to the mechanism of lies, handing the future of liberty to those who proclaim higher priorities must be given sway over principles. It continues to increase, to grow ponderous, overbearing and inquisitorial. It is what binds us to our terrorist enemies and propels our domestic dilemma of gangs, violence, bigotry, financial overload and societal fragmentation.

It is the drug war.

It’s been more than 40 years since President Nixon declared the U.S. War on Drugs in 1971 to “go after the blacks without appearing to do so.” It’s now more than 50 years since the United Nations declared they would eliminate drugs from planet Earth within five years. Truthfully though, the war on drugs is more than 100 years old. The US began its war on a select few plant products and people in 1909 with the passage of the “Opium Exclusion Act.” The opium that whites imbibed as the elixir Laudenum remained legal for another decade, but the Chinese opium smokers went to prison. In 1914, cocaine was made a federal offense when politicians proclaimed that black men high on cocaine would rape white women or, at a minimum, would fail to step off the sidewalk when a white man approached. Then in 1937, because Mexicans were taking our jobs and they just might rape white women while high on marijuana, the feds crafted the Marihuana Tax Act, later declared unconstitutional and replaced by the Controlled Substances regimen in 1970.

So who’s going to jail for drugs? It comes as no surprise that the overwhelming majority of those arrested are black, then Latinos, then whites; and it is nearly always the poor. This, despite the fact that rich white people use drugs at least as much as blacks or Hispanics. Over the lifetime of the drug war, more than 45 million non-violent American citizens have been arrested for plant products in their pocket or their home. The US has “invested” well over a trillion of our tax-

payer dollars in trying to stop the flow of drugs. At the same time, drug users worldwide have purchased in excess of ten trillion dollars worth of these “controlled” plant products from the only people the government deems apropos: criminals, gangs and terrorists... who rake in \$385 billion per year.

By what rationale do we continue to leave the production and sale of drugs in the hands of criminals, gangs, and barbarians? Before the prohibition of these drugs, a gram of pure cocaine could be purchased at the drug store for 25 cents. Today a diluted, in fact, a polluted gram of cocaine can sell for more than \$100. Prior to the drug war, a month’s supply of heroin could be purchased from Sears Roebuck for a dollar; as a bonus they threw in a syringe.

After 40 years, 50 years, more than 100 years of drug war, it’s time to face facts. When I spoke with former President of Mexico Vicente Fox, a man who knows drug war, I asked what positive things have come from the drug war. His response: “Nothing.” He provided a succinct summary: “Prohibition doesn’t work.”

The drug war was the pipe dream of men who have long since died. It has become a quasi-religion, a belief system that has attracted many adherents within law enforcement and the justice system, to speak from ignorance or bigotry. Those who make their bones from this policy, (and yes the cemetery is overflowing) cannot now back down from their prior pronouncements, they dare not jeopardize their reputation, their legacy, by now embracing the truth that drug war is a horrendous mistake.

December 17th, 2014 marks 100 years since the passage of the Harrison Narcotics Act, the beginning of national anti-drug laws. Since that time, more than 45 million US citizens have been arrested and their life’s potential tainted if not destroyed by the policy of drug prohibition.

In the early 20th century, corporate heads foresaw gleaming profits in prohibiting the use of certain plants. These men of influence and wealth had the influence to force through laws based on nothing more than rumors circulated through newspapers controlled by these same interests. They claimed that Chinamen on opium were a threat to a decent society, that Mexicans would rape white women after smoking marijuana, that blacks were impenetrable to bullets after using cocaine. The American people were fooled into believing they were saved and that the control and distribution of these herbs and their extracts should be prohibited. This "prohibited" drug commerce, according to the UN, now exceeds four hundred billion dollars per year .

Superstition and ignorance were the original means of creating this drug war.

This drug war began, and continues to this day as an unconstitutional affront to our dignity and our rights as free people. Offered the false hope that professional opinions and supervision over what we should put into our bodies would bring us health and prosperity, the American people succumbed to the pressure to accept the dictates/mandates of the Harrison Act, forgoing our God-given and

basic American rights in hopes of a better tomorrow as promised by the greedy pharmaceutical houses, the pontificating politicians, and hard-hearted law enforcement.

Drugs are much more available, purer and cheaper than when President Nixon declared the current version of the drug war. Have we managed to cut down on the violence of the drug war by arresting record numbers of non-violent drug users? Even though we arrested more than 1.5 million non-violent US citizens last year for drugs, the number of users remains just as high, and the violence associated with control of neighborhoods by street gangs continues to escalate.

In 1914, we lost our liberty to choose our own medicines in exchange for supposed security regarding drugs. Today, we are being forced to give up additional, even unknown, liberties in exchange for supposed protection. Our slide into this abyss is facilitated by the fear engendered by 100 years of propaganda that allows the drug war to flourish despite decades of miserable failure.

For nearly 500 years, colonialist powers like England, Spain and later the United States, made it their business to impose their will on lesser countries, to force new religions and morals on all the "heathen cultures" of this earth. In the process, they vilified and demonized the use of such drugs as marijuana, coca and opium which previously had been recognized for their medicinal properties and as sacraments of many religions, many cultures for thousands of years.

Before drug prohibition, drug overdose deaths were practically unheard of. Before the drug war donned the mask of savior, drug use among children was almost non-existent. Before we decided to launch an eternal war on "recreational drugs", approximately 1½ % of Americans used heroin or cocaine. Today, after the expenditure of more than one trillion dollars, the wasting of tens of millions of lives destroyed by demonization via our supposed criminal justice system and the moralistic destruction of life's potential... 1½ % of Americans use "hard drugs".

Today, cannabis has been used by more than 100 million Americans as medicine or sacrament or recreation, because it is an obvious fact that cannabis is a much safer intoxicant than other drugs, especially safer than what I consider to be the most dangerous drug of them all, alcohol.

It is time to be brave, lest the chance to restore respect for truth be lost forever to ignorance and greed.

Misunderstanding this eternal war on drugs is not our fault. We have been force fed 100 years of clap trap, balderdash, poppycock and absolute horseshit presented as science, commonsense and reality. Given the current situation, I reluctantly support the incremental drug law changes being promoted, because so few have the courage to say what needs to be said: The drug laws are a scam, a festering collection of lies, innuendo, and fear.

Sometimes people believe what they are forced to believe, for a paycheck, to align with family "moral" standards, because of religious dictates, or simply to

be accepted in one fashion or another. Millions more people must embrace what they know to be true.

In the early days of the all-out drug war, users were considered to be subversives, even communists aligned with the Viet Cong, radicals needing a multi-years-long lesson in one of America's many gulags. Over the years, the label has changed, from radical to drug reformer and now to legalizers.

In a couple more years, as this drug war takes its dying breath, I am going to retire, smoke a few bowls, and let "We the People," now fully informed, bring about a proper end to this century of lies.

This book is not just an indictment of cops and prosecutors but also an indictment of the media, religious leaders, scientists, and medical doctors who have chosen to "first do harm" to those they supposedly are to protect. Sadly, also in focus in this regard are many drug reformers who feel compelled to ask for less than they know to be necessary from the ignorant and complicit forces that run the drug war.

What started me on the path to drug reform was a singular website that enlightened me to the fact that like most inhabitants of Planet Earth, I had been duped. The site in question is DrugLibrary.Org, manned by Mr. Cliff Shaffer who I am now proud to call my friend. I was lucky to have a job with a major oil company that in 1997 had a T1 connection, the best internet hookup there was at the time, and printers that could really fly after everybody else went home. Because I am a math whiz and one hell of an auditor, I had lots of time to surf the web, and when I came across Drug Library, I had found my true calling: to end the drug war. Cliff's site has the history, the Congressional records, all the dirty deeds, lies, bigotry, and hatred that crafted this first eternal war.

This work I do does not pay enough to cover my expenses. My costs include travel, production, equipment, supplies, computers, cameras, etc. I want to record for posterity, in every possible way that I can, my understanding and commitment to ending the madness of this eternal war on our fellow man for the use of plant products. These transcripts will someday prove beneficial to future generations, so they will dare not walk down this same path of hopelessness, violence, addiction, criminality, disease, and death.

This book is written for every inhabitant of Planet Earth but most importantly for the President of the United States, all elected officials, and every prosecutor and law enforcement official. The drug war is ending, slow and bloody; we all recognize that fact. The solution now is for politicians to get on the right side of this issue.

President Obama can, with the stroke of his pen, end the federal prosecutions for possession of cannabis or any other prohibited substance. Simply remove cannabis from schedule I of the Controlled Substances Act. We will immediately find that not only was the Schedule I designation for cannabis arbitrary and capricious, we will soon discover that the same can be said for nearly all supposedly



“Controlled Substances.”

Legalization is on the horizon. Slowly, after much loss of life, health, and freedom, the drug war is coming to an end. This does not mean the fight is over, it simply means it's okay to come out of your hidey hole and proclaim what you know to be true. What will you tell your kids and grand kids you did about this 100-year fiasco? Remaining silent now will ensure that you will not be remembered as intelligent or courageous. Speak up! The time is now to contact all your elected officials, who have been even more scared than you to speak of what is so obvious and glaring. Be sure to tell your broadcast station managers, newspaper editors, pastors, police chiefs, and school administrators that the time of America's war on We the People must be brought to an end forthwith. You now have in this book more than 300 pages of expert opinions to quote, from widely variant fields, when you write, call and visit any and all of your “powers that be.” Although the citizens were indeed duped by the press, politicians, doctors and ministers, we will of necessity have to forgive them, if they readjust and re-deploy their efforts towards justice and reality.

Decriminalization is somewhat better than all out prohibition of sales, possession, and use. Decrim can mean different things to different people. It varies from telling the cops to make it the lowest law enforcement priority making few if any arrests. Another decrim scenario is to write a ticket, no arrest, pay the fine. There are other variations on decrim, but of those presented thus far, I do not see them as a stepping stone to legalization. I see decrim as a means for prosecutors and law enforcement to continue blustering from their bully pulpit, corrupting the courts and contaminating the community with their knowing lies and terroristic machinations.

Alcohol prohibition of the 1920's and '30's was in fact decrim. You could possess at home and drink to your heart's content and public drunkenness, then as now, was accepted as long as you did not make an ass of yourself. From my perspective, the best we could hope for from decriminalizing drugs is that the violence level in 2014 Chicago might diminish to the level present in Chicago in the 1920's. Have we not evolved? Did we learn nothing from our prior fiasco in controlling the will of our fellow man?

One of the saddest, most amazing facts buried in this drug war is that conscious, intelligent, educated, working, paycheck-earning, government and corporate scientists, and millions of educated and respected doctors, know the full truth of this matter and yet keep their mouths shut. The drug war is a type of mass hysteria that has led us to a decade-long wave of mass psychosis that benefits millions of profiteers and allays the fear and social bigotry of the masses. Until the attack on Pearl Harbor in 1941, America remained a fairly isolationist nation. Following WWII, the US has developed an extreme case of violent PTSD. With our troops, ships, and planes stationed across the globe, US citizens tend to think we are saviors who need lots of weapons to protect the world. This

idea of thwarting threats worldwide has led us to several wars where no gain was or ever will be possible, simply to allow the weapons makers to earn enough profit to be able to fund the re-election of the politicians who made the war possible. This circle of political life for the drug war has been cloned and extrapolated for our eternal war of terror.

There is a time and place for incrementalism. Once negotiation has started, compromise may be necessary to create a new paradigm less onerous, less destructive to individuals and to society as a whole. However, in the overall scheme of things, clinging to any aspect of prohibition will ensure more confusion, ignorance, and death.

As of this date in early 2014, the President, his Attorney General, US Congressmen and Senators, governors, prosecutors, priests, and even prison guard unions are starting to call for incremental changes to our drug laws, many using words they have borrowed from the drug reform community. Democrat or Republican, they have all benefited from the drug war. Sadly the hard core drug war addicts who originally stood for ever-lasting, ever-escalating drug war cannot now back down from their stance taken, can never say they were wrong to destroy the lives of millions of Americans by virtue of these drug laws, so they will continue to do everything possible to prevent the opening of the mass graves of drug war inquisition.

After gathering info from Drug Library, MapInc, Drug Policy Alliance and other reform organizations, I began looking for like minded individual's in Houston, Texas and elsewhere with whom to organize for change. In late 2000, in Texas, the pickings were less than slim but I did find the Drug Policy Forum of Texas and their founder Dr. G. Alan Robison. Dr. Al, now retired, was a Professor of Pharmacology at the University of Texas Health Science Center and welcomed my overly enthusiastic embrace of drug reform. I was immediately named as Community Liaison for DPFT and told that there was a Houston Chapter of the National Organization for the Reform of Marijuana Laws.

Not too soon after approaching Houston NORML, I was elected president and set out to educate and motivate pot smokers to work for their own benefit. Using funds from DPFT and working for NORML, I produced music events and speaking engagements to attract and inform Texas voters and motivate them to help end the drug war.

At this same time, I found the Drug Policy Forum on the New York Times website. When I found this site it consisted of rants of other drug reform-oriented individuals along with links to the few drug related stories available on the web. I soon made arrangements with administrators at the New York Times to become liaison for their Drug Policy Forum. With this credential I was able to arrange visits to the forum by Milton Friedman, the Nobel Prize winning economist, along with Doctor Al Robison and dozens of other experts, including police chiefs, cannabis dispensary owners, authors, doctors, and many other notable

individuals. In the summer of 2002, I published a booklet: "Drug Truth, Abrahamson to Zeese" which summarized the contents and direction of the NYT Drug Policy Forum.

In late September of 2001, just after the Twin Towers were toppled, the Pacifica Network had a minor revolution and the listeners took back their stations from the corporate toadies. I pitched my idea of a radio show that dealt with nothing but the drug war, a single beat to patrol. The newly elected management thought it might be worthwhile, they would consider the idea. Listening in to our conversation was Ray Hill, KPFT's patriarch, leader of marches on DC for gay rights and anti war demonstrations. Ray also produced and hosted "The Prison Show" which has been on the air for more than two decades reaching out to the hundred thousand plus prisoners locked in Texas penitentiaries.

Ray said maybe it would appeal to his audience, gave me a 3 to 5 minute "Drug War NEWS" right in the middle of his show. Quite an honor considering the usual was wives talking to husbands locked behind bars or little boys telling their mother in jail what they got on their birthday last week.

Needless to say the sky did not fall so they gave me an hour every other Friday at 1:00 AM. This is a time when I could cuss or otherwise be free to air views of the "counter culture". Nobody died, and they gave me a new schedule of every Thursday at midnight. Eventually they moved us into prime time. As of this writing our shows air live on Sundays at 6:30 PM Central in Houston at 90.1 FM and on the web at [www.KPFT.org](http://www.KPFT.org).

As a listener-sponsored station, we are obliged to call upon our listeners with "pledge drives" and our first program Cultural Baggage (CB), set the record for pledge amounts in an hour. Approximately a month after the first CB show was released to the internet, I Googled the shows name and was astounded to learn five other broadcast stations in the US were already carrying our show without asking permission. I soon began a campaign to recruit other radio stations to the Drug Truth Network (DTN). At the peak, around 2009 we had 105 affiliate, broadcast stations in the US, Canada and one in Australia.

October of 2013 marked 12 years of Drug Truth Network which now produces a second radio program "Century of Lies" (since 2004) as well as 7 three minute "4:20 Drug War NEWS" segments (since 2003) which many of our broadcast affiliates in the US and Canada insert into other news or music programs.

In 2003 I had the good fortune to meet Jack Cole then the director of Law Enforcement Against Prohibition, (LEAP). We were attending a Drug Policy Alliance conference in New Jersey. Jack and four law enforcement associates had recently created LEAP to enable law enforcement and criminal justice officials to join an organization dedicated to ending the drug war. Because of my experience as a police officer in the Air Force I was allowed to join as an official "Speaker" for LEAP. After joining forces with my "band of brothers" I have presented for LEAP to Rotary clubs, Elks, Lions, College classes and one High

School class. Since I am a minister I have also been invited to share the gospel that “Prohibition is Evil” from the pulpit of at least eight Houston area churches.

My latest foray into spreading the good news that the drug war need not last forever involves “Unvarnished Truth” our weekly, one-hour television program. Originally airing only on HMSTV, the Houston access channel, our show is now broadcast on a few independent stations. As with all our programming at college, independent and pirate stations, all we ask of new affiliates is basic contact info and the day and time the programs air.

Likely some readers of this book work at or know someone who works at a local, independent radio or TV station where Drug Truth programs might be broadcast. There is no charge, no cumbersome paper work. All I seek is the day and time of the broadcasts. Please contact [dean@drugtruth.net](mailto:dean@drugtruth.net)

“Opening up a can of worms... and going fishing for truth” is an extract from one of the PSA's used on my radio shows. We shall open that can of worms in this book as well.

In the beginning, after my first few radio shows back in 2001, I was paranoid, wondering if the cops or the cartels might be upset with my broadcasts and kick in the door. I must report that in 12 years of producing radio and TV, in writing and speaking about the horrors we inflict on ourselves via the policy of drug prohibition I have never received even one threat from anybody at all. Therefore, if you have concerns about speaking what you know to be true, take heart.

Given the overwhelming evidence, there is no other explanation other than the drug war is a sham, scam, flim-flam hoax of Biblical proportion. Forces at every level of government in the US and nearly so worldwide are in league for profits and power derived from the continuance of the war on drugs. The horrors we inflict on ourselves via this policy are enormous, outrageous and obvious as hell. Who will be the hero, what politician will dare to speak the truth, reveal the whole truth, that drug war is akin to treason?

America is waging an eternal war wherein our efforts directly empower the enemies we seek to destroy. Our mandate to the world ensures planet wide corruption via the hundreds of billions of dollars that flow each year into the hands of barbarians. Shall we forever entice criminals to overthrow civilized nations via profits easily generated by defying laws against possession of a select few plant products?

We must work to disprove the postulation of former head of the CIA William Colby who stated: “The Latin American drug cartels have stretched their tentacles much deeper into our lives than most people believe. It's possible they are calling the shots at all levels of government.” Given that US banks have been convicted of laundering hundreds of billions of dollars for the cartels with nobody arrested and considering the escalating number of instances of governmental and organizational corruption entwined with drug war, the concept is not inconceivable.

In August of 2013, US Attorney Eric Holder made statements that seemed

bold to many pundits and way too little, too late by others, including me. Holder recognized the drug war as racist, corrupt and too often off track. He did however, promise a new perspective and diminishing prison terms in the future.

In early 2014, Senator Harry Reid, President Obama, Governor Chris Christi and my own Governor Rick Perry admitted that it was time to reexamine our nations drug laws. This modern perspective flies in the face of decades of hypocritical and propagandist rhetoric these politicians made over the years.

In 1914 with the passage of the Harrison Narcotics Act, in 1937 with the Marijuana Tax Act and again in 1970 with the passage of Nixon's ludicrously named Controlled Substance Act our nation chose to become one of control and domination over the habits of our fellow man. We now dictate this policy to the whole world. As a result of this decades old folly, deadly cartels are profiting and rising up around the globe. Millions of bloody criminals owe a huge debt of gratitude to the US drug warriors for the 400 billion dollars per year they harvest for growing forbidden flowers, shrubs and weeds. The dictators of all this madness are our own elected officials, clinging to lies, fearful of speaking the truth. They made their bones through this policy and feel they cannot now back down from their prior pronouncements.

This book is dedicated to all those whose lives have been diminished or destroyed by the ignorance, cowardice, greed and lies of drug war addicts.

## JUDGE NOT

*“Drug Prohibition is the biggest failed policy in the history of our country, second only to slavery.”*

—Superior Court Judge James P. Gray

When “the land of the free” leads the world in incarceration rates, what does that say about us? When we are perfectly willing to let white collar criminals go with a fine, like we did with the traffickers of Purdue Pharma’s Oxycontin, that killed thousands of users and addicted thousands more, what does that say about us?

Fraud of any kind is given a wink and a knowing smile. Those charged with greed, corruption, bribery, most any kind of corporate or government malfeasance, are given ample time to prepare before trial, are given every leeway the criminal justice system can mete out to allow balance and time to seek out evidence to benefit the accused. Ask the Enron millionaires or the ones at WorldCom. That’s not how we’ve filled our prisons.

The US Congress back in the 1980’s expanded their crusade against drug traffickers, crafting mandatory-minimum laws to stop the flow of drugs. Their original focus was on cartels and gangsters, those who provided millions of units of drugs, thousands of kilograms, boat loads, plane loads or truckloads of drugs. The congressmen in the Midwest realized that they were unlikely if ever to have such large amounts of drugs in their state, no way to look tough, so the barrier just kept getting lower and lower.

So the states all followed suit, legislators became Chinese acrobats jumping through hoops to ratchet up the drug laws around this nation. No need for a knock, a warrant, evidence, corroboration, or a chance to confront witnesses. Those accused of drug crimes became unconditionally exterminable, untrustworthy, cast off from society. More than 45 million Americans accused of choosing non-Fortune 500 intoxicants have thus been cast off, exiled from the mainstream, forever unable to exist as full citizens of this nation.

My hometown of Houston has for decades been a primary hub for drug distribution to the rest of North America. At the same time, Houston has been functioning as the “gulag filling station” of Texas. Each year we arrest tens of thousands of young people and send thousands of them to years long prison sentences for the

crime of having more than a miniscule amount of forbidden plant products. Our district attorneys all beat their chest and proclaim the city to be saved.

We must hold all elected officials to be responsible for our drug policy in every public venue. We must bring forward the subject of drug prohibition, to challenge the logic which allows them to stand eternally with millions of criminals worldwide. Why do they leave in place a policy which entices our children to lives of crime, degrades our neighborhoods and cities, ensures corruption so vast and deep that its simple pervasiveness has made us numb to the situation. We now have so little regard for the consequence of choosing to represent blind ignorance over truth, justice and reality itself.

Hell exists today, right now, for two million mostly young black and brown citizens of this nation behind bars, the largest portion there because of this eternal war on drugs. Most obvious and glaring is the misery inflicted on minority communities via this new Jim Crow mechanism of drug law enforcement which takes 14% of America's population, the black population, and creates 58% of our prison population. This is called success in the drug war.

### MICHELLE ALEXANDER

Michelle Alexander is a distinguished law professor and author of *The New Jim Crow: Mass Incarceration in the Age of Color Blindness*, a book so powerful that its publication in 2010 awakened politicians and pundits alike to the nature and abject failure of drug prohibition. Since its first publication, it has been featured on MSNBC, NPR, *Bill Moyers Journal*, Tavis Smiley, C-SPAN, and *Washington Journal*, among others, and in 2011 won the NAACP Image Award for best nonfiction.

DB: In your book, you write: "Like 'Jim Crow' and slavery, mass incarceration operates as a tightly controlled system of laws, policies, customs and institutions that operate collectively to ensure the subordinate status of a group defined largely by race." This should be an eye opener for a lot of people. I wish every politician in America had a chance to read it. There are so many ways that this Drug War impacts on our society, including making us the world's leading jailer. Tell us about the escalation of the prison building era and how this came about.

MICHELLE ALEXANDER: Within a relatively short period of time, we went from a prison population of 300,000 to now, nearly 2,500,000 in basically just a few decades. Our prison population quintupled. Not doubled or tripled—quintupled! This exponential increase in the size of our prison system was not due to crime rates, as is so often believed and is told to us frequently by politicians and media pundits. Rather than crime rates, the explosion of our prison population has been due, largely to the Drug War, a war that has been waged largely in poor communities of color, even though studies have now shown, for decades, that people of color are no more likely to use or sell illegal drugs than whites. People

of all races and ethnicities use and sell legal and illegal drugs in the United States.

It has been primarily and overwhelmingly poor people of color in the United States who have been stopped, searched, arrested and incarcerated for drug offenses. Once you're branded a drug felon, you're relegated to a permanent second-class status. Once labeled a felon, you may be denied the right to vote, automatically excluded from juries, legally discriminated against in employment, housing, access to education and public benefits. So many of the old forms of discrimination that we supposedly left behind during the "Jim Crow" era are suddenly legal again, once you've been branded a felon. It's the Drug War primarily, that is responsible for the return of millions of African Americans to a permanent second-class status, analogous in many ways to "Jim Crow".

DB: The thing that strikes me is that we have walked away from The Bill of Rights now that the Supreme Court and other courts have determined there is a Drug War exception to the Constitution, which allows all of this to unfold.

MICHELLE ALEXANDER: I devote a whole chapter in the book to the shredding of the Fourth Amendment in the Drug War. Once upon a time, it used to be the case that law enforcement officials had to have reasonable suspicion of criminal activity and a reasonable belief that someone was actually dangerous before they could stop them or frisk them on the street, on the sidewalk or stop and search their car. Today, thanks to a series of decisions by the US Supreme Court, as long as police can "get" consent from an individual, they can stop and search them for any reason or no reason at all. Giving the police license to fan out into neighborhoods and stop and search just about anyone, anywhere. Consent is a very easy thing to obtain. If a law enforcement officer approaches you with his hand on his gun and says, "May I search your bag? Will you put your hands up in the air and turn around so I may search you?" and you comply, that's interpreted as consent.

But of course, it's precisely that kind of discriminatory and arbitrary police action that led the framers of the Constitution to adopt the Fourth Amendment prohibiting unreasonable searches and seizures. Today, law enforcement feels free to stop and search just about anyone, anywhere they please and they know very well that almost no one will refuse consent to a search especially in poor communities of color where people have been trained and disciplined that resisting police authority can lead to violence.

DB: I want to read a portion of a page here: "With no means to pay off their debts back in the 'Jim Crow' days, prisoners were sold as forced labor to lumber camps to brick yards, railroads, etc. Death rates were shockingly high, for the contractors had no interest in the health or well being of their laborers." We have a very similar situation that has developed in America now where prisoners work for pennies on the dollar, earning great profits for prison guards unions and others that are in effect "contractors" here.

MICHELLE ALEXANDER: Many people have no conception of how ex-



traordinarily difficult it is for people once they are released from prison to “reintegrate” into mainstream society. Not only may they be denied the right to vote and not only are they ineligible for jury service for the rest of their lives and if they’ve been branded a felon but employment discrimination is perfectly legal against them. Every time they’ve got that employment application, you got to check that box, “Have you ever been convicted of a felony?” It doesn’t matter if that felony happened last week or thirty-five years ago, for the rest of your life you have to check that box, knowing full well that the odds are that application is going in the trash once that box has been checked.

Housing discrimination is perfectly legal against those branded felons. Public housing is off limits to people released from prison for a minimum of five years and regulations encourage public housing agencies to discriminate against formerly incarcerated people for the rest of their lives. Even food stamps are off limits to people who have been convicted of drug felonies. People with HIV/AIDS and pregnant woman, aren’t even entitled to food stamps for the rest of their lives, no matter how sick or hungry they may be. The kicker here is that people released from prison are often saddled with thousands of dollars in fees, fines, court costs and accumulated back child support. You know, in some states, a growing number of states you’re expected to pay back the cost of your imprisonment once you’re released. Up to 100% of your wages can be garnished to pay back all of these fees, fines and accumulated back child support.

Back in the days of convict leasing, there was a system where African Americans were arrested for minor offenses, like loitering. They were arrested, imprisoned and then leased back to plantations where they were forced to work for little or no pay. Today, we have a similar system where African Americans are arrested for extremely minor nonviolent, drug related offenses. Arrested en mass and sent to prison where they are often forced to work for little or no pay for either private companies or their imprisonment itself. It enriches prison guard unions and private prison companies and then once they’re released, if they’re lucky enough to get a job, 100% of their wages can be garnished, resulting in what? Them unable to survive, to make it in a legal economy, and they are returned right back to prison. In fact about 70% of people released from prison return within three years and a majority of those who return, do so in a matter of months because the challenges associated with mere survival after being branded a felon are so immense.

DB: It used to be America was the Land of Second Chances, that a person could always start again, perhaps, prosper, but it has been stacked against the potential of making that second chance for those convicted of drug crimes. That black market is always out there, enticing people to come back to work for them, is it not?

MICHELLE ALEXANDER: Yes, absolutely, you know that’s the thing. Many people say, “Well, people who commit drug offenses, particularly those who sell

drugs, well they're making a choice to violate the law and so they deserve whatever they get." First of all, most of us, most people in the United States, have violated the law at some point in their lives. Most of us have broken the law by experimenting with illegal drugs at some point in our lives or by speeding on the freeway, which certainly poses more risk to human life and potential harm than smoking marijuana in the privacy of one's home. All of us have broken the law, all of us have made mistakes but it's poor folks of color, primarily, who are asked to basically forfeit their lives for youthful mistakes or indiscretions, mistakes of judgment that result in relatively minor, non-violent drug offenses. It's youth of color in inner city schools that have their schools swept for drugs and have drug sniffing dogs brought to sniff all their schools' lockers. They are stopped and frisked while waiting for the school buses. This Drug War has resulted in branding young people before they even have the opportunity to reach a voting age as criminals and felons for engaging in precisely the same kind of illegal drug activity that is largely ignored on college campuses and in middle class white communities.

Back during the "Jim Crow" era, literacy tests and poll taxes operated to keep African Americans away from the polls. On their face, they appeared race neutral. They said nothing about race, but the laws were enforced in such a racially discriminatory manner that they operated to create a caste system. The same is true with drug laws in the United States today. On their face, they appear race neutral, but the way they're enforced is so grossly discriminatory. In fact, in some states, African Americans have constituted 80-90% of all drug offenders sent to prison, even though we know that people of color aren't any more likely to violate our nation's drug laws.

DB: Isn't there one of the states where your chances of going to prison is about fifty times more likely because of these drug laws?

MICHELLE ALEXANDER: Yes, absolutely. In the Chicago area, nearly 80% of working age African American men have criminal records and are thus subject to legalized discrimination for the rest of their lives. These men, this group is part of a growing racial "under caste" not class but "caste," a group of people defined largely by race that are relegated to a permanent second-class status by law and custom. You know that's why I say we have not ended racial castes in America; we've merely redesigned it through facially race neutral drug laws that are enforced in a racially discriminatory manner and through a whole host of laws that deny basic civil and human rights to people branded felons. We've managed to effectively to create a caste system even in the age of Obama. That's the great irony.

People say, "How can there be a racial caste system today when we've just elected Barack Obama, our nation's first African American President?" but the reality is that every caste system in the United States has had Black Exceptionalism. During slavery, there were some black slave owners. During "Jim Crow"

there were some black lawyers, some black doctors and some black success stories. There are far more black success stories today, yet the reality is that there are actually more African Americans under correctional control today, in prison or jail, on probation or parole than were enslaved. If we're going to talk about the sheer scale of this system and not just those who have escaped it and proven to be exceptions to the rule, it is destroying and devastating more lives of African Americans today than slavery did at its peak.

DB: I learned from the Sentencing Project that under the most racist regime in modern history, South Africa's Apartheid Law, 851 black men were imprisoned per 100,000 population. In 2008, under the United States Drug Prohibition Law, we imprison 2,770 Hispanic men per 100,000 and 6,664 black men per 100,000. That's seven or eight times more than did South Africa under Apartheid.

MICHELLE ALEXANDER: Yes, we are incarcerating African Americans at a higher rate than South Africa did in the heart of Apartheid. We have higher incarceration rates than any other country in the world, including the most repressive regimes in the world. The excuse that's often given, of course, is violent crime and particularly violent drug-related crime. Well, nothing could be further from the truth. The Drug War has never been aimed primarily at rooting out violent offenders or drug kingpins. Federal funding flows to those state and federal law enforcement agencies that boost dramatically the volume, the sheer number of drug arrests. They're not rewarded for bringing down the drug kingpins or the most violent offenders. Law enforcement agencies have a financial incentive to round up as many people as possible and cast the net as widely as possible in poor communities of color, where these stop and frisk tactics are feasible. They can't get away with that kind of stuff in middle class white communities or on college campuses.

Many people think that the Drug War was announced in reaction to the emergence of crack cocaine in inner city communities, but it's just not true. President Ronald Reagan officially declared the current Drug War in 1982, a few years before crack first hit the streets in Los Angeles and later spread to communities of color across America. The Drug War was declared in response to racial politics, not drug crime. It was part of the effort of conservative whites, particularly in the South, to appeal to the racial resentment and the racial anxiety of poor and working class Whites particularly in the South who were anxious about, quite understandably, anxious about desegregation, busing, affirmative action and many of the gains of the civil rights movement. Pollsters and political strategists found that they could appeal to those voters and get them to defect from the Democratic Party and join the Republican Party by using racially coded "get tough" appeals on issues of crime and welfare.

DB: The Southern Strategy.

MICHELLE ALEXANDER: Absolutely, the Southern Strategy. H.R. Halderman, President Richard Nixon's former Chief of Staff, said explicitly, "The whole

problem is really the Blacks. The key is to divide the system that recognizes this, while not appearing to.” Well, they certainly succeeded. With the Drug War, they were able to effectively recreate a caste system that locks millions of African Americans in a status not unlike the one they thought they left behind.

DB: Speaking of Presidents, the last three Presidents are known to have used drugs yet the Drug War continues.

MICHELLE ALEXANDER: You would think, given the drug use of President Clinton and President Obama, their own criminal history really, that they would have a more forgiving and understanding attitude toward those who are cycling in and out of prisons for relatively minor drug crimes. The perception many people have is that most people who are in prison doing time for drug offenses are doing time for serious drug crimes. Not the case! In 2005, for example, 4 out of 5 drug arrests were for simple possession; only 1 out of 5 were for sales. Most people in state prison for drug offenses in the United States have no history of violence or significant selling activity.

In the 1990’s, the Clinton era, the Drug War escalated far beyond what the Republicans even dreamed possible. In the 1990’s, nearly 80% of the increase in drug arrests was for marijuana possession, a drug less harmful than alcohol or tobacco and equally, if not more prevalent, in middle class white communities and on college campuses as it is in the Hood.

DB: Why does not the black community focus more on this problem and work to help bring it to an end?

MICHELLE ALEXANDER: Well, it’s a good question. I wrote the book in large part because I was so alarmed by the failure of the civil rights community to prioritize the War of Drugs and the mass incarceration of poor people of color in the United States. You would think that given the sheer scale of the Drug War and of mass incarceration and its impact in the black community, that it would be the number one priority of every civil rights organization in the country.

The African American political leadership should be outspoken, calling for an end to the Drug War, but instead there’s been a relative quiet. Happily, the NAACP in recent years, under new leadership, has become more vocal and aggressive and calling for an end to mass incarceration, but there has been an eerie quiet.

I think there are many reasons for it, not at least of which is the fact that one of the primary strategies that racial justice advocates have used for centuries, since the days of slavery, has been to try to identify with those African Americans who defy racial stereotypes and try to attract public attention to them. You know, people like Rosa Parks. Try to identify with those individuals who defy prevailing racial stereotypes and hold them up as examples of why the prevailing caste system, the prevailing system of discrimination is unfair and unjust and should be eradicated but today, where the prevailing system of control criminalizes the black community, that strategy of distancing yourself from kind of the “worst”

elements of your community and trying to shine a light on those who are the most noble within the community doesn't work so well.

So there's been a reflexive tendency in the African American community to try not to draw public attention to those within the community who have gotten into trouble or who might look bad. So the plight of those cycling in and out of the criminal justice system unfortunately hasn't been a top priority, but issues like Affirmative Action have topped the list. Efforts like struggling to get African American students into the best high schools and colleges have been a higher priority. As civil rights organizations have agonized over Affirmative Action, millions, millions of people of color have been rounded up, branded felons and relegated to a permanent second-class status.

### **JEFF BLACKBURN**

In 2000, more than 40 black people were arrested in one night in the town of Tulia, Texas. Defendants were handed sentences of 60, 75 and 90 years for sales of minor amounts of cocaine to an undercover officer Tom Coleman. Attorney Jeff Blackburn represented several of the Tulia drug sting defendants and joined other civil rights attorneys to investigate the soon to be discredited agent Tom Coleman, leading to the eventual prison release and pardons for all the convicted Tulia defendants. After his work in Tulia, Blackburn founded the West Texas Innocence Project at the Texas Tech University School of Law in Lubbock, where he continues to assist people wrongfully imprisoned in Texas. He also has a private law practice in Amarillo, where he lives. This interview is from the Oct 15, 2008.

**JEFF BLACKBURN:** I've done a lot of cases against the government dealing with their insane and misguided drug war. I'm the lawyer that did the Tulia case and in the wake of the Tulia case founded an outfit called the Innocence Project of Texas, which is still doing a lot of work all around the state. But another part of my job has always been to deal with the consequences of marijuana prohibition and the insanity of the drug war as we know it. Consequently we've been working along with other lawyers, especially members of the NORML legal committee, to always find chinks in the armor and ways to use the legal system not only to win for the client but also, more important I think, to strike a blow against this failed policy.

So lately we've been doing that, and I was very fortunate to have gotten a verdict in my hometown of Amarillo, Texas, not known as a real bastion of liberal thinking, that I think will have some good consequences and some far reaching ones for other folks. We got a not guilty based on an old legal doctrine called necessity on behalf of a guy, 53 years old, who was smoking marijuana in order to deal with his symptoms caused by HIV. As far as we know, it was the first medical necessity defense that had been successful in Texas. It may be first now but I

doubt that it will be an only. I foresee a period opening up where more and more lawyers will aggressively fight these cases using the right facts. We're going to be able to win. And reason we're going to be able to win is real simple. It's ultimately political. Because what these cases do, when you're dealing with somebody that's sick and has done their best to deal with their own health problems and has had to resort to smoking because it is a proved great remedy for all kinds of health problems, when you have a person like that and they run up against the government, most people, average people, are going to say 'Hey, give the guy a break. Let him do that.' The government shouldn't be controlling every aspect of that. People are tired enough, not only of big government, but also the rule of pharmaceutical companies, to be wise enough to give people the right to control their own healthcare. And so in this very narrow way I think that we can see a lot more of these victories if lawyers will aggressively push them and if they have the right facts.

DB: Polls find 60, 70, 80, 85 percent of people approve of medical marijuana. It is the politicians who are still lingering in the early part of the last century, right?

JEFF BLACKBURN: Absolutely. I mean the people are way, way ahead in their thinking of the authority structure right now. You know, one thing that this trial illustrated to me, and it's nothing new, but it's still kind of nauseating when you see it played out all over again, is the absolute rigidity and dogmatic inflexibility of the authorities. My client, Tim Stevens, was arrested for three grams of marijuana. Under an eighth of an ounce; that's right, ten bucks worth of weed. When the cops put him in the car he explained to them that he was an HIV patient, that he was sick, that that's why he had gone to buy it, and of course what the cops on the scene told him was 'So? You should have gone to a doctor instead of doing this. That's not an excuse.' They could have even written him a ticket for that because we now can do that under Texas law but in many jurisdictions, certainly my home town included, they don't do that because they're addicted. On the one hand they fill up the jails with people accused of petty crimes and on the other hand they complain that the jails are overcrowded and they need yet more money to build bigger jails.

DB: Very symptomatic of many States across this nation. I saw where the U.S. Attorney in Tuscon is refusing to arrest people with less than 500 pounds coming across the border. It's very hypocritical, this man with three grams brought to trial.

JEFF BLACKBURN: But I think in jurisdictions all over the country where you've got law enforcement running amok and where you've got them believing that the surefire way to political popularity is to go after every single drug case like it's the end all of law enforcement, you see this kind of thing. They're hopelessly addicted to imprisonment. They're hopelessly addicted to bloated budgets. They're hopelessly addicted to looking good by getting numbers. You know,

that's what the drug war has really become, it's about numbers for these guys, it's a racket. It's about money and numbers. The Tulia fiasco, Hearne, the Sheetrock scandal in Dallas, these were all caused by law enforcement's implacable desire to get more numbers, which gets them more money, which gets them bigger grants, which gets them fancier cars and so forth.

DB: Tell us about the Innocence Project of Texas.

JEFF BLACKBURN: A lot of our work right now is dealing with people who've been in prison 25, 26, 27 years. We've been heavily involved in that work, but I've never wanted to limit the work of our Innocence Project just to those kinds of cases--the flashy cases that people see in the media and that gain instant publicity for a day or two. What we're trying to do is to create a permanent institutional counterweight to the government through our project that can eventually begin to address the number of people that are undoubtedly innocent, falsely convicted of low level drugs crimes, which I think accounts for a huge percentage of people in the Texas Department of Corrections.

I think that there are all kinds of crimes that go without notice because they don't have that flashy DNA evidence to get them out and what we're campaigning, what we're working for on a daily basis, is to open people's minds to the fact that there are hundreds, in fact thousands, of people in TDC that don't belong there. I think the average person is willing to call a halt to this kind of government over-expansion and over-reaching. People are tired of it and I think that verdict in Amarillo, on our little marijuana case, is solid proof of that and it's one proof that we see amongst many out there of the gap that exists now between the authorities on the one hand and the way real, ordinary people think on the other.

DB: Yeah, and Jeff, we saw a major awakening not just for Texas but for the nation on the heels of the situation in Tulia. And for those who don't know or can't remember, give us a brief summation of what went on there.

JEFF BLACKBURN: Tulia was a common place throughout Texas when we had regional drug task forces, where small counties in order to get money would stage a major arrest, you know, arresting in the case of Tulia, one tenth of the entire Black population, nearly all the breadwinners in the population, for supposed drug deliveries. All the cases were made by one cop. This was common throughout Texas for years, for many years. In Tulia the difference was that this one cop was so bad that we were able to expose him successfully, not without five years worth of effort, and also not without many people going to prison on nothing but his word that they had delivered drugs to him. As we discovered, once we finally got access to test the drugs, once we finally got transcripts to show that he was a perjurer, we were able to bring him down.

But what people need to realize is that the amount of effort that you have to put into, into--you know, it takes ten minutes to convict somebody in this State and ten years to get them out. It's, the effort that has to be made is completely out of proportion to the minimal effort the State has to make on shoddy evidence,

cruddy witnesses, and virtually no truth at all, to put people in. Until you rectify that imbalance and begin to make institutional changes, we're going to continue to see more Tulias. I'm convinced there are dozens of them out there that so far have gone unnoticed because some band of lawyers hadn't been able to get together and do something about.

We know if we get involved and pass incremental laws, laws that don't seem great and certainly not exactly what we wanted, but still nonetheless make a difference, like we did in the wake of Tulia. A difference does happen. We know that after we passed the law in the wake of Tulia that required undercover snitches to be corroborated, 631 criminal cases were dismissed within three months. So we at least saved those people from clearly bogus cases, uncorroborated cases, from being convicted.

That was an incremental law; it wasn't what we wanted; it was about a quarter loaf, because what we wanted was a law that would have required cops to be corroborated. But what we got was that incremental reform. Well, it made a difference.

So progress is being made through fighting and through conflict. I'm hopeful that the verdict that we got will carry a message into the legislature in Texas and that folks will begin to question the wisdom of, at least, having this prohibition on the medical use of marijuana. One thing that I learned in the course of this case from dealing with doctors, researchers and people that are in the know on such matters is that marijuana is a very, very valid medical remedy.

The information is out there and we presented that all to the jury, we found a way to get that in through evidence, and it impressed them too. I mean, people are ready to be open on things and let me tell you something, I can pretty safely bet that not one person on our jury was a weed smoker. These are pretty square, regular people, but they were also open-minded regular people, and they were conscientious, just like you're going to find with most folks that actually get on a jury. They want to be open-minded, they want to be conscientious, and I think they're ready to reject the government on these issues. These people can continue to cling to a system that doesn't work, to an approach that nobody believes in anymore, but eventually it can give way and that's where my sense of optimism really lies.

### CLAY CONRAD

Clay Conrad is an attorney at the Houston firm of Looney & Conrad, P.C. whose specialty is the history and development of the jury system. He is the author of *Jury Nullification: The Evolution of a Doctrine*, the latest edition of which has been published by the Cato Institute."

DB: Jury nullification has a huge history. It was abused in many cases in prior times during slavery, racial bias in the old south in particular. There is a positive



side to it. Tell us the potential for jury nullification.

CLAY CONRAD: First, let me talk about the abuse that you speak of because I think the stories of its abuse are grossly exaggerated. The jury has power. It has discretion and like any other discretion that can be abused. Just like the discretion of police officers, of judges, of prosecutors can be abused.

The jury is a deliberative body. You take 12 people, hopefully from different sections of the community, and they all have to agree to come to a decision. If you have a fairly selected jury, the chances of racial bias or bigotry carrying the day are pretty small.

The other thing is those cases in the deep south that you refer to—the lynching and civil rights murder cases—very often involved prosecutors who didn't want a conviction, police officers who didn't want a conviction, judges who didn't want a conviction, and then after there was an acquittal, they all blamed the jury, for the outcome, and the jury broke up and they never were in a position to respond. When I looked into individual cases I found, for instance, in the Medgar Evers murders there were police officers who testified that they saw Byron Dillenbeck with the killer something like 200 miles away at the time when Meager Evers was getting himself killed. You can't turn around and blame the jury after they've had that kind of testimony come into court.

In another case, the prosecutor advised the jury that the evidence wasn't very strong and didn't merit a conviction. That was a case out of Pennsylvania. In another case, I found the coroner testified that the victim died in a traffic accident and that the lead pellets in his face were just dislodged dental fillings. Now they don't use lead in dental fillings, but that's what the coroner testified to.

So we have all of these cases, and then the jury gets blamed for the outcome, which was the only possible outcome under the law. Have there been cases where the jury has misbehaved? Certainly. Juries aren't perfect, just like any other human institution isn't perfect, but I think they're less likely to have done bigotry than prosecutors, judges, or police officers. They're probably the most responsible actors in the system.

Now the second question is, "What does jury nullification have to offer us today?" I know that your focus is the War on Drugs. Juries have a long history in alcohol cases of refusing to convict. In the Prohibition era as many as 60% of cases ended in acquittal. That's particularly important because under prohibition manufacturing, distributing, and selling was all that was illegal. Possessing and consuming alcohol was perfectly legal under Prohibition. So you're not talking about the users. You are talking about the dealers. You are talking about the manufacturers. 60% of the time the juries refused to convict.

If we had a 60% acquittal rate in marijuana possession cases, it would be almost impossible to maintain the War on Drugs. If we had a 60% acquittal rate in all drug cases, this nation's drug policies would be changed by this time next year. Juries are the most powerful actors in the criminal justice system. If they

say not guilty, the case is over, and it doesn't matter what any of the officials in the system say.

DB: You mentioned during alcohol prohibition perhaps 60% of those accused were acquitted by some type of jury nullification. I want to bring that to the modern era where some 90 something percent of drug cases are plea bargains. They never even go to trial. The jury never hears the evidence. Were we to take these to trial, perhaps we could again generate a number of acquittals through jury nullification. Your thought, Mr. Clay Conrad?

CLAY CONRAD: As a lawyer, the first thing you are going to look at is what is the acquittal rate that you're getting through these cases right now. If juries started to acquit at an inordinate rate in marijuana possession cases, more cases would go to trial. As more cases went to trial, the desire of the state to prosecute those cases would go down. So we would see a change in policy almost immediately if juries started refusing to convict in those cases.

Right now juries are not saying no. They are not standing up and objecting to these prosecutions. It really only takes one juror to hang the trial, to get a hung jury, so it doesn't take unanimity among the public in order for juries to make a difference. If we start seeing stubborn jurors refusing to convict in drug prosecutions, we will see cases having to be retried over and over again, which ties up the court, takes an enormous amount of resources. You will see a change in policy.

Juries have control over the system. They are the safety valve. Legal change is very slow as a rule. The laws change slowly, painfully slowly. Social change is faster. Society can change positions pretty quickly. Right now, something like 58% of society thinks marijuana should just be legal. We're not seeing that out of D.C. We're not seeing that out of the state legislatures. Even in Texas, we're seeing a majority in favor of legalizing marijuana. Nationwide, the numbers are over 80% that medical marijuana should be legal, and we've only got one-third of the states that have legalized medical marijuana.

So legal change is not keeping up with social change. Juries can make the difference. Juries are sort of the safety valve. When social change has occurred and legal change is lagging behind the juries can let the steam off. They can say we're not going to send more people to prison. We're not going to ruin more lives enforcing laws that don't protect society, don't make us any safer, and really just victimize the people who get caught in the cross-hairs. Juries have that authority.

DB: I don't know if you are aware of this or if you recall but I believe it was Jeff Blackburn up somewhere in Odessa, Tulia, somewhere who was able to get a jury to nullify a marijuana arrest up there with the thought that the gentleman needed it for medical reasons. It can happen even in Texas, right?

CLAY CONRAD: It does happen. We see it occasionally. A lot of times juries find some evidence particularly unconvincing because they just find it so unpalatable. You never really know in any individual case whether they committed jury nullification. That was one of the real challenges in writing this book.

You can look at a lot of cases, and you know if there's a 60% acquittal rate that prosecutors are not getting that sloppy and that there's some nullification going on. Any individual case, it can be very hard to say whether the jury was unpersuaded or whether they just said no because the law was misapplied or unjust. It's kind of a challenge, but you do know that in a good portion of cases (some researchers have put it at 4%, some at 15%) but in a good portion of cases juries do decide to nullify the law because they find that it's either unjust or unjustly applied.

If you factor in mistrials the numbers are probably higher—cases where the jury just couldn't reach a decision, where they couldn't all agree. There's probably even a larger number of those that involves someone who just said, "I just cannot convict in this case." It could be a drug case. It could be a 17-year-old with an underage girlfriend. A case of a battered wife killing or injuring her abusive husband in his sleep. There are just so many different scenarios that come to mind that even a good law could be misapplied, and, of course, a bad law can never be properly applied.

DB: My limited exposure to actual courtrooms kind of stifles my opinion here, but I've seen it too often on TV where the district attorney tries to eliminate anybody who thinks that the law might be wrong, and they actually set traps to try to keep them off the jury panel, right?

CLAY CONRAD: Certainly both sides try to keep off people that they know are going to vote against them. One of the biggest lies in the legal practice is that we all go up in front of the jury when a jury is being selected and say, "We all want a fair and impartial jury." Well, that's not true. The prosecutor wants the jury that's going to convict. The defense attorney wants a jury that's going to acquit. The judge wants a jury that's going to come back in time after lunch. But, we all want a jury that's going to vote our way.

Let's say that you are facing jury selection, and you know about this doctrine. There's two routes you can take. One is you can stand up, and you can tell everyone who's sitting in the room about it. That will really irritate the judge and will ensure that you will not get on the jury. They might dismiss the whole panel because they feel you've tainted the panel by letting them know about this "forbidden doctrine." Or you can keep your mouth shut, just answer the specific questions that have been asked of you, and then there's a pretty good chance you might get on the jury and really be able to piss the judge off.

DB: That brings to mind that we are starting to see surreptitious jury nullification in states like Colorado, California where the knowledgeable folks about marijuana or other drugs allow themselves to be chosen to make a difference. Each one of us has that potential, do we not?

CLAY CONRAD: Certainly. I think that one of the most ludicrous things in American education is the kids go to school and they're taught all about the role of the president, all about the role of congress, all about the role of the courts but

they are not taught anything about the role of the jurors. They are not taught the history of the jury system. They are not taught the purpose of the jury system. They are not taught how the jury system operates.

Very few of those kids are going to grow up to be the president, senator, congressman or judge. A lot of them are going to grow up to be jurors but they are not prepared for it. We see that fewer and fewer cases go to jury trial, fewer and fewer people show up when they get a jury summons. Most of them just ignore it. Fewer and fewer people are interested in serving as a juror.

It's very predictable. If you don't understand why something is important you are not going to value it. We haven't taught kids this most American institution and why they should value it, so now we have generations of people who think that jury duty is a nuisance and that the jury themselves can't be trusted to make a logical decision or a rational decision, so when you argue that the jury should have the ability to say no to unjust or misapplied laws, they look at you as though you are crazy because they've been taught that jurors are idiots, and the jury system is a nuisance. That's not what the founders thought. That's not what the history is and it's an institution that we need to resurrect to society so that the "people" can once again say, "These are our courts. These are our laws. We're the last ones who make the decisions."

### **JUDGE JOHN DELANEY**

Judge John Delaney is a retired state district court judge who continues to adjudicate in Texas. He is a graduate of Princeton University and the University of Texas School of Law and a former Navy officer. John had his "light-bulb moment" in the Bryan Rotary Club in 2008 when he attended a Drug Policy Forum of Texas presentation by fellow Houston native Jerry Epstein. From Cultural Baggage / August 28, 2011.

DB: Here in Texas we're running out of money, we're firing teachers, we're shutting libraries, we're doing all kinds of things but we're not focusing on the fact that the expenditures involving most of these drug busts is a waste of our resources. Your response.

JUDGE DELANEY: Yes. We spend too much money chasing people for low-level crimes that involve possession of marijuana and even other drugs. We should be focusing our efforts on other criminal activities that impacts humans more directly and this is a hard concept for people to get their arms around but the argument really is all about harm reduction.

Where is the least harm created? Nobody in their right mind advocates the world getting stoned on drugs on a regular basis. I'm not in favor of drug abuse either. Don't use, don't intend to. Do drink coffee so I guess I use caffeine. But, the question is not whether drugs are bad or good. The question is are we creating greater harm by trying to combat drug abuse through the use of criminal law.

And the resounding answer is we are.

We've created a black market because a certain percentage of people (always has been, always will be) who want to use mind altering substances. When we make those substances criminal, that drives up the cost for them on the black market which causes criminal activity. So now drugs are still out there they just happen to be regulated by criminals instead of by government.

DB: Judge Delaney, five years back there was a situation here in the Houston area where a bunch of cocaine users went to pick up their weekend supply of cocaine from their distributors. Took it home, did their usual dose and did not wake up the next morning. 14 young people. Turns out the cocaine they bought was not cocaine at all—it was 85% heroin. Another example of the failure of controlling these drugs, right?

JUDGE DELANEY: Drive drugs underground and you put their production, distribution and sales in the hands of the criminals who don't care how old you are, only that you've got the money. Don't have a license to lose like a liquor store does and, yeah, they're likely to peddle anything that they happen to have on hand. They don't analyze it. So it's not surprising that we get people overdosing and dying. It's part of the insanity.

Let me jump in here, I've got to make an apology / disclaimer. I'm state judge that still sits. I'm subject to prudent judicial ethics and I'm subject to being sanctioned for misbehavior as a judge and I promise you that I took the oath to enforce laws and I still do that every day. My feeling about the laws being wrong-headed doesn't mean I don't have the stomach and will to enforce them. So I needed to make that disclaimer. I'm allowed to speak out about needed changes to the laws and legal system and that's what I'm doing. I'm exercising my right to do that.

DB: The federal mandatory-minimums have been handcuffing judges. That no matter what the situation, no matter how it came about, judges were forced to sentence these people to prison for long terms. Many of the judges started objecting though they did sentence them, as you say—doing their duty, but I wanted to ask you, as a working judge, is there ever any back room discussions about how stupid these laws are?

JUDGE DELANEY: Well, I don't deal in the federal system. I deal in the state system. We don't have near as many of those restrictions on us. Every once in a while the legislature will nip around at the margins and try to get tough on drugs again but that trend has kind of diminished in the state of Texas.

The federal system still has it and, of course when you have mandatory-minimums what you really have is the discretion about how to sanction a drug dealer, user, possessor that shifts into the hands of the prosecutor. Prosecutors now decide what kind of charge they're going to lay on the guy to fit within the punishment range that they think is accurate instead of letting the judge have discretion.

It's a wrong-headed system. There's no question about it.

At some point, people ask me when I talk to a rotary club or lions club like I

did a couple weeks ago, “What can I, as an individual, do to make a difference?” These people are not people who use drugs, they just have relatives dying from overdoses and are upset. I say, “Well, you can make a noise. You can make the noise repeatedly. One noise is not good. It doesn’t help a lot. We need to have a consistent noise-making effort made.” You can write every congressman that you can think of. Now the only ones that will listen to you are the ones that represent you. People in other districts don’t care about you. But if you vote for them, you’re in their congressional district—they will listen to that. That does not mean they will change their mind overnight but Rome wasn’t built in a day. You can bite at their ankles repeatedly and lend your voice to the effort.

This is a movement that has got wind in its sail. Just 10 days ago a Chicago jury in a federal trial awarded a young man named Russell and his family over 300,000 dollars in money damages for the loss of his dog. His 9-year-old Labrador Retriever, named Lady, came walking into the room, wagging her tail, when the police broke into young Russell’s apartment while executing a drug warrant. As the police sadly often do, they shot the dog to death. That was in 2009. That case finally came before a jury and incredibly, with a resounding shout, they said that dog is worth 300,000 dollars. They were so outraged by the police conduct. So the sentiments out there. It’s just a matter of tweaking the power brokers to make them toe the line behind the people.

We know what happened during alcohol prohibition. We know how that all changed. As soon as we decriminalized alcohol...and I know...I know for a fact that we’re not alone in this idea. Every time I talk to a rotary club, a lions club, I ask them three questions to start out. “Have we won the War on Drugs?” That’s the first question. No hands. Second question, “Do you think the Drug War is working?” No hands. Third question, the hardest one, “Do you think if we keep doing the same thing we’re doing in the Drug War for say the next two years, we will have begun to have won the Drug War? Will the tide change?” Again, no hands.

So the most conservative members of our community have already made up their mind that this drug war is senseless and needs to be changed somehow. What they’re not convinced about exactly is how to go about changing. So, again, they say, “What shall I do?” And I say, “Write your congressman. Write your state legislature.”

Here’s an interesting anecdote. I was at the National Convention for State Legislatures in San Antonio a week ago manning a booth along with another member of Law Enforcement Against Prohibition and these state legislatures kept coming by and looking at our display and engaging us in some talk. One very interesting woman from a western state said, “You know, if the medical marijuana people and the legalize and control people would quit fighting with each other, I might be able to get something done.” I said, “Explain that.” She said, “The medical people want to keep it and control it...doctors and like that. And the legalize and regulate say ‘let anybody have it under state regulations.’ They’re in conflict with

each other. I can't invest my political capitol if the proponents of drug liberalization won't get on the same page."

### **JAMES GIERACH**

James is a former Assistant State's Attorney of Cook County, municipal attorney, Village prosecutor, and general practitioner. A former candidate for Cook County State's Attorney and Illinois governor, raising drug policy and prison issues. One newspaper called him, "Illinois' premier conscientious objector to the war on drugs." Cultural Baggage, April 15, 2012.

DB: Right now we have a former prosecutor based in Chicago, Illinois, Mr. James Gierach. Quick quote from him, "The War on Drugs puts more drugs everywhere and is at the heart of American crisis." Much is happening in the drug war in recent days. You were an attendee to the UN Convention on Drugs this spring, correct?

JAMES GIERARCH: Yes, the Commission on Narcotic Drugs met last month in March in Vienna. I and several other LEAP members and speakers were there.

DB: There was discussion on the sidelines...much discussion about the need for change, correct?

JAMES GIERARCH: Well, individually the delegates from these almost 200 nations who are members of the three prohibition treaties that the United Nations has passed with the aid of its member states and they put prohibition in place. The delegates who came to the 55th session of the Commission in Vienna were basically sent with marching orders to support prohibition even though all of the reports that came from the secretariat regarding drug use were negative. Drug use is up. Drug trafficking is up. Therefore what do we do? More of the same.

The United States introduced a resolution to celebrate the Hague Opium Treaty, the first international prohibition treaty against opium, which was passed in 1912. This was the 100-year anniversary, so the United States introduces a resolution that says, "We should reaffirm the prohibition treaties," three of which are in place, and nail, really, all the countries of the world to the cross of drug prohibition.

DB: President Obama had something to say at the Summit of the Americas in Cartagena, Colombia, this is U.S. President Barack Obama.

PRESIDENT OBAMA: I think it is entirely legitimate to have a conversation about whether the laws in place are ones that are doing more harm than good in certain places. I, personally, and my administration's position is that legalization is not the answer. That, in fact, if you think about how it would end up operating, the capacity of a large-scale drug trade to dominate certain countries if they were allowed to operate legally without any constraint could be just as corrupting if not more corrupting than the status quo. Nevertheless, I'm a big believer in looking at the evidence, having a debate. I think ultimately what we're going to find

is that the way to solve this problem in the United States is by dealing with demand in a more effective way, but it's also going to be strengthening institutions at home.

DB: James, what did you think of the President's remarks?

JAMES GIERARCH: The President is obviously dead wrong. Prohibition is the most effective way to put more drugs everywhere. In February I was in Mexico City and Antonio Mazzitelli was the representative of the United Nations. We were there at a drug policy conference. Mazzitelli gets up and says, "We can't legalize drugs because it would make the problems of health around the world worse." I was the speaker who followed him and I turned to him and I said, "Well, how is it that this policy, this Al Capone, UN-policy paradigm that we have in place now (prohibition) it has resulted in 50,000 murders here in Mexico since Calderon took over in 2006. How is that good for the public health?!" And then I said to him, "While we're here, we've got 38 speakers from around the world, and you're saying we're worried about the health, this drug policy just resulted in the seizure of 15 tons of meth while we're here giving this speech. How is that good for public health?!"

President Barack Obama just refused to take up the subject of legalization saying it's not his policy, it's not the U.S. government's policy and the fact is that's the policy that's turning American cities into jungles. Where you can have safe streets or drug prohibition and we keep choosing prohibition.

DB: Yeah, James, I picked up from him that he said it's time to have a legitimate conversation but he's worried about certain places where, you know, the large drug trade would dominate countries. And the fact of the matter is if it were legal, nobody's going to dominate because we'd grow it in our backyard if we want to. The price would drop to a penny on the dollar. It has no basis in reality, does it?

JAMES GIERARCH: Al Capone was in favor of the prohibition of liquor because the prohibition was the foundation of his business. Today the drug cartels are in favor of prohibition because it's the foundation of their business. Yesterday when President Obama made his statement that he was opposed to drug legalization, control and regulation of substances he was siding with the drug cartels. He was siding with the street gangs. He was siding with the murder cases, with the overdoses, with the bullet holes, with the addict crime, with the building of American prisons.

Public enemy #1 in America and the world is the War on Drugs, and we have a President who, thus far, has said he supports prohibition. Inexcusable. And these Latin American leaders are putting Obama's feet to the fire, as they should be, and the American people should be putting Obama's feet to the fire because he is leading our country right into the mouth of the dragon of "public enemy #1" which is the War on Drugs, prohibition.

He's making war on people who need medical marijuana in the marijuana



states where the people themselves in this country have voted in favor of it and have declared that it's medicine. He has sicked the DEA, the Internal Revenue Service and federal agents on Oaksterdam and these other sites in California, Washington, Oregon and the western states of our country. It's outrageous and it's inexcusable for a president who cares, purportedly, about the public health, safety and welfare.

DB: James, also President Obama says that he wants to deal with demand. He's talking about American demand.

JAMES GIERARCH: This business about reducing demand is a bunch of poppycock. We have the President of the United States who with the Secret Service goes down to the Summit of the Americas in Cartagena, Colombia, and while they're down there, because of the temptation of women, because of the natural attraction of men to women, these agents get in trouble. So now how are we going to reduce the demand of the agents for female company? Outlaw female company, I suppose. We can outlaw drugs, but you can't eliminate something that's inborn with man. You can encourage him to do the right thing, but prohibition then puts the price so elevated that it tempts people to go into the business and to do these things they certainly would not be doing on the scale that they are in this War on Drugs.

DB: Well, you know, the *Guardian* newspaper had an article today taking about Colombia calls for a global task drugs task force. Let me read a bit from it. Quoting the President, "Why is Colombia leading this? Because we learned the hard way and we have the moral authority in the 1980s. We failed to face reality and as a result our society was taken to the brink and almost destroyed by violence and cartels. We do not want other places in Central America or Africa to go through the pain we went through. They and all of us have to act fast because the many-headed monster grows very fast and destroys very fast." Very profound words, aren't they?!

JAMES GIERARCH: Well, they are. This War on Drugs is number 1 the most effective way to put more drugs everywhere. Number two it's the heart of whatever crisis you want to name in America or in the world, virtually. The problem of guns, gangs, crimes, prisons, taxes, deficits, AIDS, health care, trade imbalance, corruption, no money for schools, job programs, the funding of terrorism, the corruption of the kids, the corruption of the police...and why has this war been in place so long when it's failed so mightily as the people of the world overwhelmingly conclude?

The answer is the "good guys" and the "bad guys" are both on the same side of the line of scrimmage—both in favor of drug war. Both because they're riding the drug war gravy train though in different ways. Prohibition puts money into the cartels' pockets. If you legalize any substance and you make the substance available in a regulated way it takes money out of the cartels' pockets. On the other side of the coin you've got Clinton who says we have to hire 100,000 more

policemen because we've got so much crime and violence. Well, we did—why? Because of prohibition. Then we build prisons to the point where it's the fastest growing housing in the United States in the 1990s. Where the United States—the “Land of the Free”—is now the prison capital of the world with the highest rate of incarceration than any country in the world.

We take black people and put them in jail and hire white people to run the prisons and it's a racist, just absolutely indefensible policy.

### JUDGE JAMES GRAY

Judge James Gray, a former Superior Court Judge in Orange County, California, was the Libertarian Vice Presidential candidate in 2012. He is the author of *Why Our Drug Laws Have Failed And What We Can Do About It: A Judicial Indictment of the War on Drugs*. His experience as a former federal prosecutor, defense attorney and trial judge convinced him that our nation's program of drug prohibition was not simply a failure, but a hopeless failure. *Cultural Baggage* / May 26, 2013.

DB: Judge, there is starting to be an avalanche of information, of politicians and publications and people willing to say what needs said.

JAMES GRAY: You know that I wrote a book called *Why Our Drug Laws Have Failed*, and whenever I endorse it, I always write, “It's OK to discuss drug policy.” If we were just to allow ourselves as a society to discuss this area honestly, truthfully, fully, we would have changed away from drug prohibition years and decades ago. So, yes, we are now allowing ourselves to discuss it, and now we're changing. These laws, initiatives in Colorado and Washington are going to be noteworthy, historic. We can now see that proverbial “light at the end of the tunnel” in view.

We are going to see that just because they do allow the recreational legal use of marijuana that that does not turn us into a bunch of drug zombies, like they've also learned in Portugal. We're going to get along very well—thank you very much—take away a whole bunch of revenue from really bad people like Mexican drug cartels and juvenile youth gangs and other thugs and really convert that money like we do with alcohol to paying our fire fighters, paying our teachers, fixing our roads.

The end is in sight and it's long since time for that to have occurred. Thanks, again, in no small measure to those like you who help get this word out.

DB: Thank you so much. To kind of underscore what I was saying a minute ago, this is yesterday's *New York Times* opinion piece by Attorney Paul Zukerberg. He was discussing the number of arrests in Washington, D.C. This is just an extract: In 1995, police in the District arrested about 1,850 people for having pot. By 2011, the number had skyrocketed to more than 6,000. It's still rising.

JAMES GRAY: You can extend that. I see this on the bench. I was a trial court

judge in California for 25 years, and the tougher we get with regard to non-violent drug offenses, literally the softer we get with regard to the prosecution of things like robbery, rape, and murder because we only have so many resources to pursue criminal justice issues. The tougher we get there, the softer we get on the prosecution on crimes that really do affect us.

In addition, the biggest safety measure we could pursue for our police would be to repeal drug prohibition. It was dangerous for Elliot Ness and those folks to attack Al Capone and the rest, and once we repealed alcohol prohibition, that problem went away. Their lives were so much safer.

If you were arrested and convicted for even a marijuana offense, the rest of your life you will probably lose your eligibility for federal educational benefits, probably for federal housing benefits. You can be convicted of rape and not lose those benefits, so it's just crazy.

So many folks believe that this is done for a racist reason. We all know that it does not take a sociologist to go through any jail or prison in our country and see the people of color are vastly overrepresented. I don't think it was intended to be that way, but it certainly has brought that result. I believe the most patriotic thing I can do for the country I love is help us repeal drug prohibition.

DB: You talk about the focus of the dollars and effort and the one that grates me so much is that if a person is busted with a bag of weed, cocaine, or any kind of "illegal drug," that bag is almost instantly analyzed and set up so they can bring that person to trial and work them through the process, whereas we have tens of thousands of rape kits around this country that sit on a shelf without the dollars, without the emphasis, without the work to get them done.

JAMES GRAY: Even in states like California where we basically made under an ounce of marijuana for an adult be a citation with the maximum penalty of \$100 fine, nevertheless we still have to process those marijuana seeds or whatever in order to determine that they're actually marijuana or whatever, so, again, the rape kits are not analyzed, and the marijuana and other drug violations are using our chemists all the time.

It just goes on and on. We've lost more of our civil liberties because of the War on Drugs than anything in the history of our country. Are we in better shape today because we lost those civil liberties? No, but it just continues to go forward.

Then you can ask the people in Mexico how many they've lost. You know better than I, 60,000 people in the last five years have died a violent death in Mexico not having anything to do whatsoever with drugs. It's all drug money that has caused those deaths and the corruption.

It just goes on and on in so many different areas. I say in front of rotary clubs and other groups, "You tell me any area of society, and I will show you how it is made worse because of our policy of drug prohibition. You can talk environment, education, health care—I don't care what you talk about, I will show to your satisfaction how this area is made worse because of this terribly failed and hopeless

policy of drug prohibition that we have pursued basically since 1913.”

DB: I read the *Houston Chronicle* a lot—home town paper. I see of late we’ve had several murders of people that were either growing pot or had a stash of pot in their house. The write up always says it was a drug-related shooting. The fact of the matter is somebody wasn’t so high on marijuana that they killed this man. No, sir, this was a prohibition-related shooting.

JAMES GRAY: Precisely., I was in the Navy in Guam—a Navy JAG attorney in the early 1970s, and when I was there, they had headlines in the local paper showing that the first homicide since the second world war had occurred, and they were so concerned, “How could this happen on our wonderful island?!” and the rest of that. It turned out it was drug prohibition-related. It was drug money-related. By the time I left about two or something years later, we were having something like every month or two another homicide that was drug-related. It’s the money. It’s the just the drug money that is doing this.

You can look at high school kids; they are not selling Jim Beam bourbon to each other in their high school campuses, but they’re selling methamphetamines, marijuana all the time because of the money. You do not see Mexican drug cartels raising illegal vineyards in our national forests in competition with Robert Mondavi. They could, but there’s no money in it. It’s the illegality that brings these things forward.

I tell a lot of high school/college students that prohibition is never as good as regulation and control. Prohibition simply doesn’t work because as soon as you prohibit some of these substances you give up all of your controls completely to the bad guys. Quality control—huge issue—the bath tub gin problem went away when we repealed alcohol prohibition. Place of sale, pricing, age restriction—all of those are completely abandoned to the bad guys such that, Dean, the term “controlled substances” is the biggest oxymoron of our lives today because, once again, once you prohibit something you give up all of your controls to the illegal drug gangs and juvenile street gangs and the Mexican drug cartels. We couldn’t design a worse policy if we tried.

DB: Exactly right. Judge, let me take a guess...when the violence started in the Philippines was it? ‘69/’70 was that about it?

JAMES GRAY: Yeah, it was in Guam and about early 1972.

DB: That’s when it all started shifting here. I’m old enough to remember when you could legally...well, not legally but you could smoke pot near a cop in Houston, and they didn’t care. It was when the “Nixononians” took hold.

JAMES GRAY: That was about 1971, Dean. Just around this same period of time. I’m just finishing writing a column for a local legal newspaper, and in that I say that in California, where I’m from, throughout our history until the year 1980 we had built 13 state prisons. Now we have 33.

So in that 33 years, we have built an additional 20 state prisons. It’s enormously expensive. The United States leads the world in the incarceration of our people

both by sheer numbers as well as per capita. Here, I assure you that “We’re number one!” does not make me proud. So many of those are non-violent drug offenders, and a lot more of those are caused because of drug money.

It’s just unbelievable the corruption, the violence we get involved with with drug money. Like you were saying earlier if I were growing marijuana or any other illegal deal or I were selling cocaine on the street corner and somebody were to rob me, I’m not going to call the police. I can’t do that because it’s illegal, so I start carrying guns to protect myself just like with alcohol prohibition.

Now if Coors has a distribution problem with Budweiser they don’t take guns to the streets. They come to judges like me, and they adjudicate it peacefully. It’s all connected.

I tell people and I mean it that drug prohibition is the biggest failed policy in the history of our country—second only to slavery. The closer you get to seeing it (as you know, my friend) it is when we finally repeal prohibition I guarantee that everybody within three or four years will link arms and look back and be aghast at how we could have perpetuated such a failed system for so long.

### JUDGE MARIA LUCIA KARAM

Even in the earliest days of her career in criminal justice, as a public defender working in Rio de Janeiro in 1979, Maria Lucia Karam was interested in helping those whose criminality was a product not of malice but of being subject to adverse circumstances, with designs on doing what she could to break the vicious cycles in which many of the least fortunate in society get caught. By 1982 Maria had already become a judge, feeling that from the bench she would have more leverage to help her fellow Brazilians. She worked in the criminal courts for eight years, where she routinely cleared defendants of drug-possession charges on the grounds that laws criminalizing behavior that does not affect the rights and freedoms of others are unconstitutional. *Century of Lies* / August 15, 2010.

DB: The Drug War seems to have its focal point seems to move from Colombia to Mexico to Afghanistan to the United States, and just a month or so ago in Jamaica there was more than a hundred dead in a shoot out, but Rio has its problems as well. Do you want to tell us about the situation in Rio de Janeiro?

MARIA LUCIA KARAM: Over here, it is not as different as Mexico. Even if Mexico now is growing violent especially because of the last four years of intensification of the war on drugs there. In Brazil, you also have the serious consequences of this violence produced by prohibition. In Rio de Janeiro, for instance, we have an average of 3,000 deaths caused by murders through the years. In 2008, for instance, there were 2,757 murders, all in the city of Besame. One in every five of these murders were summary executions during police operations against drug dealers in the slums.

DB: The police would just kind of go out and find these drug dealers and take

them out? Is that what you're saying?

MARIA LUCIA KARAM: Yes. Definitely, in Rio de Janeiro the drug dealers have their marginal lives and their territories. There's the slums, and the police go there in operations to combat them, to battle them. Many times they just kill them. There are summary executions. This is a war. It's not surprising. In a war, you have the drug prohibition brought to the criminal justice system, the idea of a war. Then the criminal became the enemy. The enemy is supposed to be eliminated. So, that's why the police in Rio is stimulated to kill.

DB: Now, here in the US, we don't have that many murders but we do have situations where the police kick in the door. They throw in a flash grenade. They point guns at the children. They shoot the dogs. They terrorize the home and on occasion, they do kill one of the children or the mother and father because of the heightened atmosphere. That they go in all excited thinking they are doing something important, when usually it's not that much drugs and it's not as dangerous a situation. The police have the upper hand and sometimes it's out of control.

MARIA LUCIA KARAM: Yes, the kings are out of control and it became a stimulation to act illegally. People, most people are proud of this violence and excess that the police make. This is also very bad for the police officers themselves. In Brazil, and I have also heard about that in Mexico, many people are more afraid of the police than of the drug dealers. The police should be respected, but people don't respect the police because the police don't respect people, especially in poor neighborhoods.

DB: A recent multi-decade review by the International Centre for Science in Drug Policy found that, when police crack down on drug users and dealers, the result is almost always an increase in violence

MARIA LUCIA KARAM: We can see that very clear, especially from the current situation in Mexico because at the end of 2006, President Calderón finally recognizes the failure of his strategies. But in late 2006, he lauded the special war against drugs there in Mexico. He sent the army, not only the police but the army. He sent more than 40,000 soldiers to battle with the cartels and after that, after four years offenses, more than 28,000 people were killed in Mexico. And it's for nothing. Because the the drug supply, the drug business goes on in Mexico. When there is an advance or a reduction in someplace, they just move to other places. This is also happening in Latin America where Colombia reduces their production but Peru increases their production. It's a business. It's life. There will be a demand and a supply

### **DISTRICT ATTORNEY PAT LYCOS**

Patricia Lycos is the former District Attorney of Harris County, Texas (Houston) who held office one term and was replaced in 2012 by a zealous Republican who soon died and then this new DA's even more zealous wife was given the job. In Houston, the party never ends. Lycos took office when the former DA, Chuck

Rosenthal, resigned in response to a scandal involving his own drug addiction as well as racial and sexist messages and jokes found on his computers. Little wonder that Houston is still the “Gulag Filling Station of planet Earth.” *Cultural Baggage* / January 22, 2012.

DB: Judge Lykos, do you think the application of the drug laws are applied fairly in our community?

PAT LYKOS: I think we have to work much more intelligently in combating the illicit drugs. What’s happening now is that you have these transnational criminal organizations and they are extremely sophisticated. We’re not approaching it by attacking their business model. We are not disrupting their command of control. We’re not dismantling their supply routes and their retail outlets. I believe that the war has not been prosecuted correctly.

DB: Do you feel that over the last 5 or 10 years we’ve made any difference with the law enforcement, the criminal justice system—any real accomplishments in ending or correcting the Drug War?

PAT LYKOS: I think it’s had some reduction, but I think it’s been a misallocation of resources. I’ve implemented my trace policy and that is, for us to prosecute someone for possession, the minimum amount they must possess is 1/100th of a gram. That’s 1/100th of a packet of say “Sweet n Low.” That’s the minimum amount that can be tested twice. That’s a due process issue.

As a result of what we’re doing, police officers no longer are taking two and three hours off the streets to book someone, charge them with the offense of possession. They are out there patrolling and preventing crime. What I want the officers to do is arrest the drug dealer and the person who supplied the drug dealer and the person who supplied him and work their way all the way up the chain and seize that bulk cash that’s going south.

DB: Taking under consideration your stance in the regards to the less than 1/100th and the thought that it frees up law enforcement time that they’re not spent booking and perhaps going to trial and all of these things...

PAT LYKOS: Well it’s two things. One, it’s justice because if it can’t be tested twice it’s not fair. The defense would not have an option. Secondly, it does free the officer up.

DB: Right. So they can attend to more violent crime or crimes of another nature. I wanted to extrapolate or think upon that that the same scenario could be found within writing tickets for less than four ounces of marijuana as the legislature and the Governor signed a law to do. That would free up the police to go after more dangerous criminals amongst us.

PAT LYKOS: We cannot implement that here in Harris County. Harris County, first of all, is the third largest county in the United States. Houston, of course, is the fourth largest city but we have 34 municipalities.

If some municipalities decide to write tickets and others don’t, can you just

see the mess that that would create and the disparity that there would be in enforcement? And if you cross the street you can get a ticket and if you're on the other side of the street, you get arrested. If the legislature wanted to do something, then they could change the law and make it universal.

DB: I'm wondering if there isn't a kind of awareness of many of these politicians that we put in office of that need for change but there seems to be a great deal of fear of touching that third rail.

PAT LYKOS: I think there certainly is posturing by some. I do think that the legislature is making a good faith effort to recognize all the dynamics involved. I can tell you that I'm the new chair of HIDTA. (See Furce, Stan) Our whole focus is going after the really bad guys and girls—the one's who are smuggling not just drugs but can be involved in human smuggling, extortion, kidnapping, assassinations and so forth. That's who we're going to focus on.

DB: HIDTA is High Intensity Drug Trafficking Area Group. And it involves kind of an association between various law enforcement, the DEA, and others, correct?

PAT LYKOS: Federal, state, and local law enforcement agencies, yes.

DB: I want to take out those high echelon guys just like you. Truthfully, those are the barbarians. They are the ultra-criminals living on this planet.

PAT LYKOS: The barbarism is just unbelievable when you see what they engage in—the torture and the mutilation of individuals and so forth. It's indescribable. It is such evil that the mind can't comprehend it. Also these people are financing terrorism. They're financing Al Qaeda. They're narco-terrorist. They are taking over entire governments. Do you know what the murder rate in Honduras is now? It's 82 per 100,000 because it's a corridor for smuggling. And there's 8 million people in that country. Los Angeles County, which has 10 million people, their murder rate is 7 per 100,000. It shows you the evil and the tragedy that results from the illicit drug trade.

DB: Do you feel we need to at least reexamine this policy and perhaps make some changes to our drug laws?

PAT LYKOS: I think we need to reexamine our strategy but, Dean, let me pose a question to you, alright? You know what pharmaceutical diversion is.

DB: Oh yes.

PAT LYKOS: OK. These are legal drugs and yet people are going in there and physicians, pharmacists and others and diverting these drugs and selling them in the underground. I mean we are the hub for the transshipment of pharmaceuticals, OK? We even have a name called the Houston Cocktail which is Vicodin, Soma and Xanax. Legalization is not the answer. Why do people want to poison themselves? Isn't life itself a high?!

DB: I would agree that it's driving itself off the cliff—this situation. I agree with you 100% but I don't think that more people in jail is going to be the solution. More education, more treatment but the fact of the matter is that despite



100 years or 40 years since Nixon declared the Drug War—drugs are cheaper, they're purer, they're more freely available to our children than ever before. So therefore I don't feel that prohibition is the answer.

PAT LYKOS: Well, what's happening now in Los Angeles County is the cartels are moving in on so-called legal purveyors of marijuana. I agree with you that we need certainly more treatment and certainly more education, more public service announcements. The way I was reared it just isn't done. That's all. Period. No matter how much you're tempted, we do not do that. So if we could impose more social control that way...those are the strongest anyway.

DB: The Drug Czar and his minions go around the country talking about the need for more treatment, more education but the fact of the matter is the Drug War rolls on—still arresting 1.6 million basically young people and basically of color for minor amounts of drugs. Your response.

PAT LYKOS: Well that's one of the benefits of my trace policy. Believe it or not that's a state jail felony. A first time burglar of a motor vehicle is a misdemeanor offense so these people who have a trace (not a useable amount—less than 1/100th of a gram) were being prosecuted for a state jail felony. I agree with you that that is inequitable but, again, because it's a due process and a fairness issue—I have to have an amount that's useable. Substance abuse, and that includes alcohol, is involved in 50—80% of the child welfare caseload. As a society we have to do something about that.

DB: The fact of the matter is 5 out of 6 of those abusive situations deal with alcohol and not hard drugs.

PAT LYKOS: How do you propose to distribute drugs? If you could wave a magic wand and legalize—what would you legalize?

DB: For the hard drugs go through a doctor. The doctor would educate you on how to use them properly. How not to kill yourself and get some sort of maybe a stamp on your driver's license that says you're authorized. As far as marijuana or the softer drugs—adults only and anybody selling drugs to our kids—lock them up.

PAT LYKOS: Who's going to produce these drugs, and who's going to sell the drugs?

DB: I would prefer Merck and Pfizer make them and so far as marijuana just the good name of the grower.

PAT LYKOS: But you see the problem we have with pharmaceutical diversion, and these are legal drugs. Can you imagine what legalization would do?!

### EUGENE OSCAPELLA

Eugene Oscapella is a Canadian attorney who specializes in research about legislative, trade, and social policy developments in Canada. For more than a quarter century he has produced research and policy advice on issues including privacy, human rights, drug policy, medical-legal subjects, defense, intelligence, national

security and criminal justice matters. Century of Lies June 7, 2009.

EUGENE OSCAPELLA: I've worked for over twenty years on Drug Policy Reform issues. I teach drug policy at the Department of Criminology at the University of Ottawa here, as well and I've been pressing for a long time for a move away from using the Criminal Justice System to deal with drugs, to treat it more as a health and a social issue.

DB: Canada is trying to follow, it seems like, in the footsteps of the US 'Draconian' drug war. Are they going to get there?

EUGENE OSCAPELLA: Well, It's a very scary time right now. Because a bill was introduced in Canada's Parliament a few months ago that was going to introduce mandatory minimum penalties, just at a time when the Rockefeller Drug Laws are being abandoned or greatly changed and moving away from mandatory minimum penalties, in many American jurisdictions. The Canadian government is moving towards mandatory minimum penalties for drug offences here, and in Canada the legal system's a little bit different. Our drug law's are all federal, so we have one federal drug law. So, if the federal government introduces mandatory minimum penalties, it applies right across the country. So there's no escaping it. We're just very afraid that we're going to go in that direction. We've watched in the United States how badly mandatory minimum penalties have failed, and yet, for some reason, Canada wants to do the same thing, and the one political party that could put a stop to this, is sort of cowering in the corner, afraid of arousing any public angst about it. They're so concerned about getting re-elected that they don't want to do anything that could receive any sort of criticism.

DB: That's kind of the way it works everywhere though.

EUGENE OSCAPELLA: Yes, yes. Politician's cower in the corner. They're supposed to lead, not cower. But, unfortunately, they cower more often than they lead sometimes.

DB: Canada's backsliding into our abyss. That's scary.

EUGENE OSCAPELLA: Yeah. Well, we seem to make the same mistakes, only we do them about five years later so, there's just a bit of a time lag and so, that's the scary thing right now. There's a chance that some of these laws will be declared unconstitutional, but only a chance. That's the problem.

DB: A week or two ago I had David Rosenbloom, the new head of CASA—the Council on Alcoholism and Substance Abuse and I tried to ask him if they ever considered 'the cut'; the contaminants that are put into these 'street' recreational drugs. The Levamisole—which is a de-wormer for animals—that is used in about one third of the cocaine here in the US, and it actually destroys a persons immune system. I asked him, 'Did they ever take into consideration the contaminants that are put into these so-called recreational drugs?' and he said, "Oh, it doesn't matter either way. They're both bad for you."

EUGENE OSCAPELLA: I think I would disagree very, very strongly with

him. Some of your listeners will remember, I think it was the 1970's, the US government was helping to spray Paraquat on Mexican cannabis fields and that ended up causing tremendous harm to people who bought the cannabis. Because, of course, the people who were selling it didn't care and Paraquat is a very dangerous substance when it's ingested.

The contaminants that are associated with these drugs are terrible. Look at all the quality control's we have on other normal consumer products in society. We have them, because we know the dangers of getting adulterated products. Why is there no concern about adulterated drugs?

Essentially what it is, that to me, is an attitude that says that, 'Look, they're drug users. We don't really care what happens to them,' and there's this mythology around the notion that the drug itself is so terrible. In fact it's quite often, as you point out, the contaminants that cause much of the harm and, of course, you don't know the potency of the dosage you're getting in a situation like that. So, the total absence of quality control is extremely dangerous.

DB: A word I use about that stance taken to drug users is that, they're unconditionally exterminable,...

EUGENE OSCAPELLA: Yes.

DB: ...because well, if he died in a ditch, he's better off than using.

EUGENE OSCAPELLA: They're expendable people. They don't figure as members of society. That is the attitude of too many people who look at drug users and that's an attitude that we've been trying to change for decades now. Because these people are human beings and some of them have problems with drug dependencies, there's no doubt about that. It's pretty hard to find a human being who doesn't have a problem of some kind and I think we need to exercise the same sort of compassion about people who have drug problems as we do for compassion as we do for people who have other sorts of problems in their lives. But that's part of the fear mongering that goes along with attempts to stop the legitimate, sort of medicinal uses of some substances too.

DB: I often hope or just wish that we could bring your Parliamentarians to Houston and let them see what the world's leading jailer looks like. Let them take a look though our jails. Let them visit our prisons. Let them go to the nearby states where we house the rest of our prisoners because we don't have enough prison beds to hold them all, and let them look at the reason's why. It's for minor amounts of marijuana and microscopic amounts of hard drugs.

Our moral 'benchmark' is broken. Just this past week, it was discovered by the Federal Government that our jails are unconstitutional. Depriving people of their rights, medical attention and all of these things, because we can't keep up because we have so many thousands of people in jail and in prison, for basically nothing; for minor amounts of drugs. I only wish they can come down here and see what they're envisioning.

EUGENE OSCAPELLA: I wish they could too, because we've been watching

this for years, from Canada and I'm watching us go in the same direction. Unfortunately, some politicians, they're so ideologically 'hide bound' by their thinking that nothing is going to change the way they think. I think some of them, when they realize what's going on, if they could see that, it might help. But there are others who it doesn't matter.

These guys have a 'bent' on punishment. It's almost what I would consider an authoritarian instinct, to punish; to control other people and the fact that people suffer because of it, is irrelevant to them. I hate to have to say this, because that's not the sort of leaders I want in my country. That's not the sort of democratic representatives I want, but some of these people with this very, very, I call it the weak conservative 'bent' here meaning conservative in the sense of controlling, in the way that we would use it in this country. They frighten me, because I don't think they can be persuaded by the facts

### JUDGE ELEANOR SCHOCKETT

Another favorite LEAP speaker on the Drug Truth Network was Judge Elanoer Schockett who passed from this earth in 2008. This was recorded just weeks before her passing. Cultural Baggage, January 16, 2008.

ELEANOR SCHOCKETT: If you want to get rid of cases you plea bargain. But that doesn't mean that people are going to get justice. Forget it. There is no such thing as justice. I'm sorry that I ever used the term. You tell somebody "if you want to get out of jail, sign this piece of paper." If you don't want to get out of jail right now, if you're sure you're innocent and you want to plead innocent, well you can stay here another six months or a year before we'll get around to trying you. Now, is something wrong with that folks? I think there is.

Are you a better or more efficient judge because you coerce people in taking pleas? I've actually tried to talk people out a plea, and I would say to them "this plea is a trap." They know you can't make probation. They probably also know that they're not going to be able to convict you. Because they don't have time to convict you, they don't have the money to bring the policeman in, whatever, they just want you out of their way. And they don't have to worry, because you will plea, and you'll violate your probation because most of the time you're homeless, and you can't live up to the criteria, and the probationary requirements generally are so ridiculous that nobody can survive them.

You have to use triage in the justice, don't call it justice, in the judicial system just the way you do in a hospital. There are only so many patients you're going to be able to take into an emergency room. You have to take the most important. And they're not willing to take the most important.

They are looking for statistics, they want to see how many cases they can get off the books and off the streets in a hurry. The policemen want to make a lot of arrests because it helps their statistics with the legislature. The prosecutor wants

to make the policemen look good. And this is the way they do it.

It was when I was in criminal court that I saw how bad it was. And I related it back, things had only gotten worse. They hadn't gotten better. The statistics have gotten worse. It was cheaper to get drugs, more people were getting killed on the street. What have we been doing in all these fifty years? What was the benefit? I couldn't see it.

I used to say there were people in my own motions calendar, I am going to, my new life's work is going to be drug reform. I can't stand this anymore. We need to do something to help people, not to hurt them. And I'm seeing the politics, the dirty under side of all of this.

So, that's how you found me here today. Because, fortunately for me, when I retired from the bench I went online to try to find an organization. And I couldn't find one that was for me because I don't use, I don't drink, I don't have friends or relatives or family that are in prison because of the unfair laws. None of these applied to me.

But then the president of one of the Florida organizations put me in touch with Jack Cole, and that was a marriage made in heaven. He invited me up to the DPA conference in New Jersey at the time, and we've been working together ever since. And this is what we need to do. My patience with stupidity has run very thin. I'm tired of people pretending that they're being tough on crime, they don't need to be tough on crime, they need to be smart on crime. You don't have wars internally. So don't tell me this is a war on drugs, because it's a war on people. Its not a war on drugs. And why? They don't really even know.

I've talked to an awful lot of prison officials, and what every single one of them tells me is that you cannot take drugs out of a maximum security prison. And I ask you, if you can't take it out of a maximum security prison, how are you going to take it out of a grammar school or a high school? You're not.

### TONY SERRA

Tony Serra is a renown San Francisco attorney and civil rights activist who was the subject of the 1989 movie *True Believer*. Century of Lies April 13, 2007.

DB: Tony Serra is a very busy fellow. He just got out of the federal pen for the second time. If you will, Tony, for our listeners out there who don't know about your career tell about your time as an attorney.

TONY SERRA: I'm the "last of the Mohicans" and that means that I started in the mid-60s in San Francisco. I'm local to San Francisco. I went to both UC Berkeley for law school and undergraduate to Stanford. I started in the era of mass protests, demonstrations firstly centered around the Vietnam War and then became more expansive. I represent all the so-called radical groups in the 60s. That's when I first started. I always, in retrospect, say that was the golden age in the practice of criminal defense because the Constitution was alive and well. The

judges were anxious, really, to suppress evidence if there was a bad search. Jurors were anxious to acquit if there was reasonable doubt. Law enforcement at that time hadn't the swollen strength and the aggressiveness that they have presently. The Constitution was strong so it was a wonderful way to start.

I represented Black Panthers and White Panthers. I represented SLA. I represented leaders of a number of prison groups. I represented the World Liberation Front. I later represented the Hells Angels and their large RICO prosecution. I did very well. I was a back-to-back trial specialist. and I certainly won more than I lost. I kind of achieved a name for myself as a radical lawyer. I've been now practicing for 44 years. I've continued to try to have as many politically orientated cases as I can. I still do back-to-back jury trials.

I have become in the last 20 years a medical marijuana activist. I started prior to the passage of so-called Prop 215 in California. which was the medical marijuana allowance. I've gone on circuit and talked about medical marijuana. Gone on circuit and talked about the diminishment of constitutional rights throughout the country and the burgeoning strength of the prosecution and the burgeoning strength of law enforcement.

I'm anti-government informant which I think has polluted the integrity of the judicial system. I'm, on occasion, what they call an "anti-lawyer lawyer." I'm a person who has been a tax resister for 44 years. I just recently did 10 months in Lompoc prison—the camp facility which is very benign. These are only misdemeanor convictions—not moral turpitude—so, although I get suspended for a short period of time, I'm fully licensed and restored to my status quo ante which is that I vigorously pursue justice through the justice system.,

When I got out, I carried with me the image of the prison industry which, from my perspective and the perspective of the inmates, is very oppressive and very exploitative. People in camps are deemed to be non-violent (federal camps I'm talking about) and deemed to be non-escapists and, therefore, really should be allowed home. There's no parole in the federal system now but still they should be allowed out. Instead they're placed in the camps where they are forced to work for prison industries and many times exposed to toxic elements, industrial type accidents. They are weary. They work hard. They are dirty at the end of the day. Their clothes, you know, are soiled.

I saw that and then I saw, through research, that in the prison industry—UNICORE as it is called—there is about 80 different types of work that are performed, different factories, different service industries...like down in Lompoc camp there is a dairy industry and a cable factory, and they are forced to work there. That's why these camps exist.

It's a form of in-sourcing because they pay pennies. They pay anywhere from 5 cents an hour to about a buck sixty-five. I got 19 cents an hour, and they are making millions—profiteering off of the slave labor, involuntary servitude (from my perspective) that they enforce on the inmates in these camps.

For instance, in 2005 they report approximately \$165 million gross—that's national. There's about 65 different industries, private, that contract with the Bureau of Prisons, and they exist in the camps throughout the country. So they reported \$165 million gross and they claim \$65 million net. From my perspective, part of the component of this large profiteering is the low amount of money that they pay the inmates.

So as soon as I got out, I brought as plaintiff not as a lawyer but as a plaintiff, as an ex-inmate at a camp facility, I brought a class action against the Bureau of Prisons and prison industries to force them to pay the inmate laborers a minimum wage. Minimum wage, as you know, is for the most part 5 dollars and I think a quarter per hour. Out here in California, it's much higher. In San Francisco, it's much higher and probably varies from state to state, but nonetheless it's still peanuts, but they still will make their millions. This would be a great benefit to the inmates who are forced into this involuntary servitude because they would have money to send home. They would have pride. They would have self-respect. They could support their children. They could save a little bit so it would ease the transition when they are ultimately discharged.

It wouldn't hurt one bit to dignify the working class. But understand the prison industries and Bureau of Prisons have no interest, no incentive, to seek rehabilitation, to seek job training, to seek education. They pride themselves in some sadistic way in the statistic that 60 to 70% of these federal inmates will be recidivistic. It's almost like they encourage recidivism by not training, by not giving them self-respect, by not encouraging work ethic by payment.

Prisoners have such a small degree of due process afforded to them. I anticipate it will be thrown out. They are fearful that if we ever get to a jury, we would really make an impact because juries would sympathize with the human plight, and, if not, they would see that these forms of monopolistic Bureau of Prisons industrial activity deprive the working class and the unions of contracts of work and money, so the middle class and upper-lower class suffer as a consequence.

From many perspectives it's a good thing, and a jury would reward us, but I have a hunch it will be dismissed, and we'll be up on appeal. We want to illuminate this condition. It's becoming more and more present. As we inhibit the ability to have migrant workers from Mexico, many states are trying to use inmate labor. Some will pay minimum wage, and others won't. I'm talking about some get 2 cents an hour working in state facilities.

It is a dirty little secret that the prison industries and the Bureau of Prisons and some of the states seek to hide that they are profiteering, they are capitalizing, they are exploiting prison labor.

The announced objective of the federal system...they presently statistically claim they use 17% of the prison population in prison industries and they want to use 25%. After they get 25%, they'll want to use 50%. Then they will convert ultimately the inmate population into slave labor category and make millions.

There's no real reason not to, and the far cry from the right is, "They're prisoners. This is part of the punishment. What do you expect?"

But that's not the law. The law is, the punishment is what is meted out by the judge. The punishment is being incarcerated. The punishment is being exiled. The punishment is isolation and deprivation of social contact with friends and loved ones and family. You're not put into prison so that the prison guards punish you. That, you know, is something that no sophisticated, no civilized country has ever done in present time. We're kind of carrying that torch outside of prison but in order to reform prison.

It's sad, but the prison inmates are not in a position really to militate against this inequity because should they do that they would be thrown back into the hard concrete and steel facility, so they kind of take it. They universally disdain it. They don't want to work for nothing, and they don't want to bare the prospect of injury and toxic whatever damage to their system, but it's better than being in the hard jail, the hard prison behind bars, and so they have to kind of just accept it as victims, oppressed victims at every level have to.

It is something that you can only bring from the outside, so it's kind of one of the things I'm proud of bringing from my very easy prison experience. I'm old now. I'm 72, so I didn't have to do hard labor, but I watered the grounds and attended the plants and the flowers and the trees. It was kind of relaxing in a way. Lompoc camp is very esthetic. There's woods, trees and fields and meadows that surround it, so it was a benign experience for me, but I went to the verge. I looked in. It's like looking in at the first circle of "Dante's Inferno" and you can see how bad it gets as it proceeds into the more darker regions of prison.

Lots of reform is necessary. I wrote an article for the California State Bar that they solicited about prison reform—things like no parole, no conjugal furloughs, and medical services being wholly inadequate, the law library kind of like being a sick joke, the camp being infested with informants, the brutality and sadism of the administrators and the guards. All of these kinds of things I gave protest to.

I often remark that being in prison for me was like a doctor being locked up in a hospital because they use my people, and I respect their plight, and I respect their being psychologically damaged forever. Their sentences, in general at the federal level, are what they call draconian—young people going in for 10, 15, 20 years, drug offenses being the most flagrant of these long sentences. People's lives taken from them, people being kicked out of the gene pool and left to be withered and warehoused in prison conditions.

It's, as I said before, kind of like a dirty little secret that our prisons domestically kind of metaphorically are the same as what we have been doing and what they have been uncovering in terms of what we did in Iraq. America is going along. Prisons are part of the wrong that ended the strengths of the Constitution.

So there is a lot out there. I tell young lawyers nowadays, "My God, in the sixties there were all these clauses, and you could be idealistic and proud of your



work, and it becomes a calling, and it has political and even spiritual overtures to it.” Even now—this is true now more than ever—we need young, idealistic lawyers to go out there and fight the oppressive government, to fight the evils of the prison system, to fight for mental integrity, to fight against racism and sexism. There is a lot of good, idealistic work for young lawyers. I’m about at an age where I’m going to pass the baton in about 10 years so I’m hopeful. I see in San Francisco a lot of them. We see in the urban areas of San Francisco and New York City and Los Angeles and Miami. I’ve encountered them more in the urban than in the rural areas. I think there’s still a lot of hope that the pendulum will swing back.

DB: You mentioned about the slave wages, basically pennies an hour, if I dare say my experience talking to people at the Harris County Jail what little monies they have they use to buy a jar of peanut butter or something to that effect.

TONY SERRA: Exactly the same. They are not paid enough to save or to send home money and really to dignify their labor, so it’s all expended in the commissary, and the commissary is another device for the prisons to make money. You don’t get anything cheap in the goddamn commissary. Just what you said, people supplement their diet so you can get some good things, and peanut butter is one that is purchased a lot. There’s vitamins you can buy in the federal system.

Too often the inmates crave the things they miss most in their imagination, and so they’ll buy sweets like candies and cookies and stuff like that, so it’s kind of like taking your pennies to buy necessities and the indulgences are a peanut butter or can of sardines along with sweets, so they get back every goddamn cent that they give out. They give out pennies, and they take out pennies, and the money goes directly into the commissary. You never see a dollar.

DB: And the same holds true with, at least here in Houston, with the the phone companies charging inordinate amount for a phone call.

TONY SERRA: You’re right. They rip off the inmates left and right. We have to put money on the telephone account so you have money sent in. It goes to your commissary account, and then it can be funneled over to the telephone account but it’s a huge expense. You’re cut off, so they only give you calls (at least at Lompoc camp) that are 15 minutes in duration, and then they cut you off and you can’t call immediately thereafter. There’s a wait period. I guess that’s one way of monitoring the expense.

I do agree with you that probably it’s the prison putting the surcharge on what the telephone companies charge, so probably they’re making money on it. What is even worse and sicker than that is every single phone call that goes out of the facility at Lompoc camp is recorded and the administration has immediate access to it. A lot of times they’ll bring inmates in and they’ll say, “You were swearing over the phone.” Or “You were treating you wife poorly.” They’ll castigate them after listening to the conversation, so you just have that feeling that big brother

is everywhere, and there's utterly no privacy.

We don't expect Fourth Amendment in prison, but we expect to be treated humanely. It's just not true. They go through your lockers periodically in your absence, and they look in all the mail that comes in and all the mail that goes out. You are not treated with any civility. You are not a human being. You are an automaton to them. Your life is programmed.

The routine and the conformity are the attributes of prison life, and that ultimately destroys the best part of people—your emotions, your softer feelings, your feelings for love, your feelings for empathy with common people is all destroyed because you have to be hard and brittle on the outside to resist the tedium of the conformity. Then, with time, the inside goes also, and you see long-termers who have lost an awful lot of their humanism and emotional life. They have few words and few feelings for esthetics or love or things like literature and poetry. It's very sad. It's a dehumanizing procedure with draconian sentences. The feds aren't dealing with homicides very often—1 out of 10,000 is a homicide—so there's no reason why any federal crime should not have just a top of 10 years for everyone. They're putting these people in for 20s and 30s and 40s and I'm talking literal—20, 30, 40 years. Some of these sentences are for dope cases and these large conspiracies that they concoct out of dope cases. It's just ridiculous.

You know how large a percent of minorities are there. They prey on minorities. A lot of crimes are crimes that arise out of privation and deprivation, economic stresses. They take these people as a consequence when they were just really struggling to survive. These large sentences are just not fair, and no civilized country should have them.

DB: You were talking about the need for these young attorneys to embrace the need for standing up for the truth, for embracing the Constitution, for helping to re-instill that spirit in America but the voters out there need to step up, need to quash this fear which is disseminated by the government everywhere you look. They need to stand up and make their difference as well. Do they not?

TONY SERRA: I'm a jury trial specialist so what I see that has eroded since 9/11 is that the jurors are completely pro-law enforcement and pro-prosecution because they are in a state of fear and trembling. They are in a state where they believe they are in imminent peril. They think terrorists lurk everywhere. The police state, the "KGB-ing" of America, is predicated on manipulating their fears.

They're voting things in like death penalty, things like three strikes. They're voting things in like no parole. It's all based on the fear factor that the government manipulates and exasperates. It's the sad demise of our Constitutional rights because the citizenry will give up the Constitutional rights, "Well, I don't have drugs in my house so therefore the Fourth Amendment exclusionary rule shouldn't really be actionalized."

Well, you find out when your 4th Amendment goes or your 1st Amendment goes or your 5th Amendment goes, and mind you they are evaporating right in

our faces—you never get them back. That is, what is taken is never given back. It only goes harsher.

You ought to see some of these white collar criminals in the camp that I've seen—business people who enjoyed material wealth and prosperity and, in their minds, because of technicalities that should have been civil they find themselves in prison, felons doing 5 or 6 years. They are so enlightened. They become politicized. They never knew their government was corrupt. They never knew their government was oppressive. They never could believe that law officers would lie. They never believed that the informant system lacks credibility and the white collar persons' establishment in prison becomes the most vociferous voice for reform.

That's the way totalitarianism works. First you attack a class that is vulnerable. The inmate class is a victim class in our culture, and you can attack that with impunity. Then it spreads from there to criminal prosecutions. It spreads from criminal prosecutions to what used to be civil matters, and ultimately your relative, your child, your loved one will be incarcerated.

In this country, the statistics show one out of five is going to be incarcerated—the hugest amount of prisoners in any civilized country, so it's not a good thing, and the citizenry has to wake up. The ordinary person who is not touched by criminal law and is beholden to law enforcement has to take another look at what they are doing by their silence.

There was a time in this country that wherever there was inequity and reform was needed, there would be a rush from all strata to try to change it, to better it. Moral rights for more people, more distribution of wealth—these were creeds that I grew up on. Now it's just the opposite. The rich are getting richer, and the poor are getting poorer. The middle class is shrinking. Constitutional rights are evaporating. The government is so strong; the Executive has never been stronger in the history of our country. The judicial process has been swallowed up by the legislative process. There's an awful lot of change needed. Without the citizens being enlightened, nothing is going to change—it will only get worse.

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