

The Endless Drug War: No Winners, Only Casualties; Understanding the Real Costs of U.S. Drug Policy.

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I. Introduction

This paper will explore the general perception that criminal and civil penalties against the manufacture, distribution, and possession of illegal drugs do not appear to be alleviating the problems associated with drug use in the United States. The paper will consider many of the complex issues raised by our nation's current drug control policies and will evaluate how the cost of the “War on Drugs” distorts our judicial institutions, feeds a for-profit prison industry, infringes our civil liberties and the rule of law, disproportionately disenfranchises minorities, perpetuates violence, threatens public health, and in the end, fails to be effective in curtailing drug use.

Since the beginning of the prohibition of drugs our nation has spent hundreds of billions of dollars on the enforcement of drug laws.¹ Unfortunately, the United States has

yet to make any headway toward real reduction in narcotics abuse or trafficking.² The “drug problem” is more of a burden on society now than before it ever was prior to the “War on Drugs.”³ Despite the relentless fervor that the U.S. government exhibits for the prohibition of narcotics, illicit drug use in America remains a corruptive and corrosive force in our communities. Interdiction efforts at home and abroad have devastated many foreign and domestic democratic institutions because of the effects of corruption and enforcement’s blind lust to capture, seize, detain, and forfeit, the assets and liberties of anyone suspected of having ties to narcotics.⁴ The assault on any human associated with illicit narcotics is now driven more by a law enforcement “machine” than by any sensible desire to save individuals from some drugs’ life threatening effects.

The author clearly recognizes that any discussion of adjusting this country’s prohibition on illegal drugs opens a Pandora’s box. Sadly, most policy makers in America today do not have the political will to change the status quo, even if they recognize intellectually that current drug policies are amiss. Lobbyists from the prison industry, law enforcement, victims advocacy groups, gun and law enforcement suppliers, the alcohol and tobacco industries, the pharmaceutical industry, foreign governments seeking foreign aid, and conservative religious groups have a strangle hold on the drug policy debate.⁵ Unfortunately, there are no vocal alternative to these groups and no real debate at all. The groups that lobby our policy makers are driven by an underlying economic interest that back their respective causes, however there is little economic incentives to any one special interest group to rethink prohibition.⁶ Any time a policy maker attempts to bring up a rational debate on the issue, he or she is branded as a radical and is often attacked by misinformation and propaganda.⁷ Just consider the myth that: “illicit drugs are an

enormous danger to society”, but the reality is that the following statistics bear out the real dangers in our society:

Annual Causes of Death in the United States⁸

Tobacco	430,700
Alcohol	110,640
Adverse Reactions to Prescription Drugs	32,000
Suicide	30,575
Homicide	18,272
All Licit & Illicit Drug-Induced Deaths	16,926
Non-Steroidal Anti-Inflammatory Drugs Such As Aspirin	7,600
Marijuana	0

There are many barriers to an open dialogue one of which is that there are so many parties to the debate. Any discussion of illicit drug use automatically calls for input from the legal community, health care providers, law enforcement and corrections interests, politicians, educators, victims of crime, and those addicted to the drugs themselves. To bring all these diverging interests together and have a sensible conversation would take strong leadership at the national level. Because a large component of the drug prohibition is federal, any debate at the state and locale level is trumped by federal policy.⁹ Any attempt to reform drug policy in America must provide credible alternatives to prohibition. If an end to or modification of prohibition is to be seriously considered a few major questions must be resolved. For example, would a form of legal distribution of drugs be run by government institutions or be privatized and would that regulation be similar to the regulation of alcohol and tobacco? Furthermore, to what extent would education, prevention and treatment programs be implemented and funded?

This paper will focus primarily upon the adverse effects of a drug policy that may not be the best course of action for America. This author takes the position that the fundamental purpose of governmental regulation of societies' individual behavior with regard to drug use should be balanced and governed by a policy that protects the health, safety, and welfare of society as a whole. This author will prove that the United States government's current drug control policies are counter productive to the very health, safety, and welfare of the society they claim to protect.

II. The Problem with Prohibition

A. Roots of Prohibition; Racial Stereotypes and Misinformation

1. A Racist Past

The history of drug prohibition is not unlike the history of most other social and political programs that took hold in the late nineteenth and early twentieth centuries. Although the Nixon Administration coined the term, "War on Drugs" in the early seventies,¹⁰ the foundations of drug prohibition began much earlier. Sadly, the ideas of drug prohibition were founded upon racism, intolerance, religious fundamentalism, and general ignorance and unfortunately, not much has changed since its inception.¹¹

Racist overtones were rampant in early prohibitionist propaganda and literature. It was once believed that African Americans favored cocaine and as a result early prohibitionists exploited this stereotype and argued that this phenomenon would spread to white communities.¹² Hispanic Americans in the Southwestern United States were associated with marijuana intoxication and characterized as "violent" Mexicans.¹³ Furthermore, prohibitionists promoted the idea that opium and marijuana would "inspire minority males to act violently or express sexual interest in white women."¹⁴ Despite the

belief held by prohibitionists that drug use leads to laziness and reduced productivity in the work place, organized labor was one of the first to sign on to the movement against opium because they complained that Chinese immigrant workers under the influence of opium had an unfair advantage in the workplace and were said to work harder and longer because of the narcotic.¹⁵

2. A Backward History

Codified prohibition got its start unintentionally in 1914.¹⁶ Initially the regulation of cocaine and opiates was not prohibited.¹⁷ Prior to the twentieth century, practitioners of medicine had few tools to combat disease. At that time, all a caregiver could hope to do was alleviate pain. Then and now, doctors use opiates to give their patients an alternative to suffering. By the late nineteenth and early twentieth centuries, medical cocaine and opiates were widely available over the counter.¹⁸ Regulation was designated to eliminate the competition that legitimate doctors and pharmacists faced in the marketplace.¹⁹ In 1914, Congress passed the Harrison Act, which while not fully prohibiting these substances, limited their distribution solely to doctors and pharmacists on prescription from doctors.²⁰ The Act did not affect a doctor's ability to prescribe any of these substances in the course of professional practice and it is unlikely that the Congress ever intended to pass a law that would be used to enforce prohibition later.²¹

The Harrison Act was created for the purpose of "medicalizing" drug distribution, yet law enforcement used it for the purpose of prohibition.²² Law enforcement argued that addiction was not a disease, and therefore a doctor could not legally supply doses in the course of professional practice.²³ The Supreme Court initially rejected this interpretation

in *United States v. Jin Fuey Moy*²⁴ and held that the law was simply a regulatory measure and was not making any moral statements about drug use or addiction.

In the late nineteenth century, the temperance movement, full of intense religious associations, promoted the belief that alcohol consumption was sinful and advocated that there was a “moral” component to the public debate of drinking.²⁵ The influence that these temperance societies asserted on American society resulted in the passage of the Eighteenth Amendment to the Constitution in 1919 that prohibited alcohol from being possessed in the United States.²⁶ This prohibition lasted thirteen years before it was repealed and did little to end the problems of alcohol in our society.²⁷

In the same year of the passage of the Eighteenth Amendment, and under the same temperance climate, the Supreme Court changed its earlier *Jin Fuey Moy*²⁸ ruling in the 5-4 decision of *Webb v. United States*.²⁹ In a related Supreme Court case that year the dissent clearly stated that the government’s affirmation of power under the Harrison Act went beyond the powers delegated to the federal government and was an unconstitutional violation of the Tenth Amendment.³⁰ In one year the United States adopted both the prohibition of alcohol as well as a prohibition of opiates and cocaine.³¹ However, the prohibition of alcohol was backed by a constitutional amendment while the prohibition of opiates and cocaine came with the misinterpretation of the will of the Congress of 1914³².

By 1933, after thirteen years of alcohol prohibition, it was clear to the citizens of the United States that the Eighteenth Amendment was a failure and it was repealed.³³ However, there was no accompanying public debate on lifting the prohibition of other drugs because there had been no constitutional amendment to prohibit them.

The rationale for promoting the adoption the Eighteenth Amendment, rather than having congress simply ban liquor, was because lawmakers and prohibitionists were aware that the Tenth Amendment³⁴ prohibited the Congress from enacting powers that were reserved for the states. By adopting a constitutional amendment such as the Eighteenth, prohibitionists would be sure not to run afoul of the Tenth Amendment.

The power of the United States to prohibit other drugs was never established by a constitutional amendment but the government succeeded in convincing the Supreme Court to allow the prohibition of cocaine and opiates.³⁵ By 1937, and with earlier Supreme Court approval of drug prohibition, the Congress passed the Marijuana Tax Act.³⁶ The Marijuana Tax Act would be the first of many modern drug prohibition laws.

B. The Distortion of Judicial Institutions

1. Voices of Change from the Judiciary

In the United States, federal judges have the unique perspective of being the final arbiters of federal crimes and are often a devastating weapon in the government's War on Drugs. These courts impose the sentences that land drug offenders in prisons. However, because of the government's policy of mandatory minimums in federal sentencing guidelines, judges have lost much of their discretion to make rulings regarding the sentences of drug offenders.

In the early nineties, Manhattan federal District Court Judge Robert W. Sweet came out publicly with the statement that the War on Drugs was "bankrupt" and should be abandoned.³⁷ He claimed that the prohibition of drugs was expensive, unenforceable, cruel, and actually caused crime, and proposed a solution that involved legalization and regulation of illegal drugs.³⁸ He drew sharp criticism from prohibitionists and the

conservative Washington Legal Foundation even accused him of judicial misconduct.³⁹ Despite being said at a time when the nation was at the peak of the War on Drugs, his sentiments began to be echoed in the federal judiciary, particularly among those judges who had seen the worst that the government's drug policy had to offer.⁴⁰

In the mid nineties, the tide began to turn in the judiciary against the stalwart party line that heavy-handed "get-tough" enforcement was the only solution to illicit drug use. Manhattan Senior U.S. District Judge Whitman Knapp was quoted as saying "[a]fter twenty years on the bench, I have concluded that drug laws are a disaster. It is time to get the government out of drug enforcement."⁴¹ And that "[p]eople think they can stop the drug traffic by putting people in jail and by having terribly long sentences, but of course it doesn't do any good."⁴² Furthermore, according to Federal Judge Jack B. Weinstein of Brooklyn, drug law "penalties have been increased enormously, without having any impact. It's just a futile endeavor, a waste of taxpayers' money."⁴³

In response to what Congress viewed as erratic and inconsistent sentencing behavior by some federal district judges, be it too harsh or too lenient, it passed a series of federal sentencing guidelines that required mandatory minimums for drug offenses.⁴⁴ The goal was to have drug laws enforced uniformly so that judges would not have the discretion to sentence based on their own ideological biases.⁴⁵ Unfortunately, this action has not necessarily led to more appropriate sentences, nor has it taken judicial discretion out of the equation. In reality, the effect mandatory minimums have had is not to reduce sentencing discretion but to merely transfer discretion from judges to prosecutors.⁴⁶ Now the prosecutors, rather than the judges, hold the discretion to decide whether to offer plea bargains, reduce charges, and to determine what will ultimately be the final sentence.⁴⁷

Recently, Chief Justice William Renhquist lambasted the Congress's attempts to further reduce judicial discretion with regard to federal sentencing guidelines.⁴⁸ The Chief Justice criticized the Congress for not consulting the judiciary before limiting judges' ability to impose lighter sentences. In his annual report he said the Protect Act, which was passed in May of this year, further strips judges of their judicial independence.

In 1999, the American Judges Association published a report analyzing the affects and consequences that sentencing guidelines were having on our judicial system.⁴⁹ They concluded that:

After eleven years, it should be obvious that the system has failed and that it cannot be fixed - even by the Supreme Court - because the criminal justice system has been distorted: the enhanced power of the prosecutor in sentencing has diminished the traditional role of the judge. The result has been even less fairness, and a huge rise in the prison population.

In preparation for its report, the Association interviewed many judges that were disenchanted by the policies in effect concerning sentencing guidelines. One judge remarked "[t]he people who drew up these guidelines never sat in a court and had to look a defendant in the eye while imposing some of these sentences."⁵⁰

2. A Deadlocked System

Those in charge of administering justice in drug cases are aware of the flaws in adjudicating a dysfunctional drug policy, but the perils of this system flow deeper and wider. It would be well for the taxpayers of the United States to take note of how the War on Drugs has deadlocked their judicial system.

Judicial budgets and dockets are over-stressed with an increasing volume of drug prosecutions and convictions.⁵¹ This is occurring despite national, state, and local budget cuts.⁵² Between 1984 and 1999, the number of defendants charged with a drug offense in

U.S. district courts more than doubled from 11,854 to 29,306.⁵³ The increasing burdens on the judiciary due to increased drug prosecutions have caused many courts to cut their capacity to manage civil dockets.⁵⁴ Civil jury trials have had to take a back seat to increased criminal prosecutions thereby drastically increasing the waiting period for civil trials.⁵⁵

Since 1980, the caseloads in federal drug cases have increased substantially.⁵⁶

The increase in drug cases at the state level has experienced a similar rising trend.

According to a report published by the Association of the Bar of New York City:

State court convictions for drug law violations have increased dramatically nationwide since the mid-1980s. Between 1986 and 1988, there was a nearly 70% increase in the number of persons convicted of felony drug trafficking or possession charges (from 135,000 to 225,000). The number of persons convicted who received state prison sentences rose from 49,900 to 92,500. In 1988, drug offenses accounted for approximately one-third of all felony convictions in all state courts.

The budget of the Federal Bureau of Prisons has risen from \$220 million in 1986 to \$4.3 billion in 2001.⁵⁷ This is an increase of 1,954% since the Government's enactment of mandatory minimum sentences for drug offenders.⁵⁸

C. Years of Drug Prohibition Have Created a Prison State

The incarceration of criminals in America is a multi-billion dollar industry. The federal government alone spends nearly \$3 billion every year to just keep drug offenders away from the public.⁵⁹ This figure only includes federal prison budgets for incarcerating drug offenders. The number does not include the budgets of all the state prisons, which house many times more inmates than the federal system.⁶⁰ Despite the enormous monetary expense, there is no less of a toll on communities, families, and children of inmates. There were 5.9 million adults in the correctional population by the end of 1998.⁶¹ This means that 2.9% of the U.S. adult population (1 in every 34) was incarcerated, on probation or on

parole.⁶² Since 1970, over 30 million Americans have been arrested for drug use.⁶³ Over 20 million of them were arrested since 1996, at approximately the time that the United States took a harder stance in the War on Drugs.⁶⁴ Americans seem to be committed to keeping these unwanted individuals out of society, at least for a while, despite the huge costs. But do Americans really know the true cost? Do they really understand the affects that such a vast prison empire has on society?

1. The Human Cost

Prisoners sentenced for drug offenses constituted the largest group of inmates in Federal prisons in 2001.⁶⁵ Those convicted drug offenders made up 55% of the federal prison population.⁶⁶ Over 80% of the increase in the federal prison population from 1985 to 1995 was due to drug convictions.⁶⁷ Also in 2001, drug law violators comprised 20.4% of all adults serving time in State prisons as well.⁶⁸ The United States' nonviolent prisoner population is actually larger than the combined populations of Wyoming and Alaska, and in thirteen states there are more African-Americans incarcerated than there are in college.⁶⁹ As a result of increased prosecutions and longer time served in prison, the number of drug offenders in Federal prisons increased more than 12% annually, on average, from 14,976 during 1986 to 68,360 during 1999.⁷⁰

Despite being often touted as the world's freest country, the United States has the highest prison population rate in the world.⁷¹ All in all, by the end of 2002, the United States was incarcerating 2,166,260 citizens.⁷² In America today 1 in every 143 U.S. residents are incarcerated in State or Federal prison or a local jail and 1 in every 34 people have spent time there.⁷³

With the great toll that the incarceration of individuals has on society, it is vitally important that the government's response to crime be no more harmful than the crime itself. Certainly, there are few that believe that violent criminals should be allowed to walk the streets of America, and the Government's right to protect society from those violent individuals is paramount. More problematic issues arise when the Government creates laws that incarcerate non-violent criminals. Clearly the Government possesses the right to sentence non-violent criminals to prison terms, but the state's interest in keeping non-violent offenders off of the streets must be balanced against the toll that incarcerating so many Americans has on society. How effective is it really to send first time drug offenders to prison where they may learn to perpetuate worse crimes on society when they are ultimately released? Ex-cons are stripped of many of their rights and have to find a legitimate way to earn an income all the while living with the stigma of being a felon. Persons with felony records face great obstacles to rejoining society. Most will go back to their old habits because they are now even more unlikely to find work after a prison stay.⁷⁴ As judges are stripped of their discretion to sentence drug offenders, there is no way for them to evaluate whether prison is the best possible course for the offender or society.

2. The Monetary Cost

Housing and managing the prison population of the United States is a daunting task. However, the private prison industry in the United States is booming.⁷⁵ Due to record numbers of inmate populations and new jails, corrections employment has gone from 300,000 in 1982 to 716,000 in 1999.⁷⁶ In addition to the cost of staffing correctional facilities it costs an average of \$20,000 per year to maintain one prisoner, \$100,000 to build a single prison cell, and \$20,000 per year to staff a prison cell.⁷⁷

To meet the soaring demands for labor, construction, and maintenance, as well as the legal and judicial activities of this vast prison empire, in 1999 alone the United States spent a record \$147 billion.⁷⁸ Furthermore, due to the exploding prison populations, and despite the enormous budgets allocated to corrections, at the end of 2002 the federal prison system was operating at 33% over capacity.⁷⁹

3. Drug Offender Populations

Skyrocketing prison populations and giant prison budgets are the direct result of harsher and longer drug sentences. Drug offenders receive harsher punishments than even the most violent of criminals.⁸⁰ They receive longer sentences than violent offenders and are sent to prison at virtually the same rate.⁸¹ In other words, if a criminal wanted to spend the least amount of time in a prison and reduce his chance of being sentenced to prison, it would be more effective for him to commit a violent crime than it would a drug crime. This is a sad fact, but it is the result of some of the most draconian laws in United States history.

The table below shows the average sentence (mean and median) imposed on Federal prisoners for various offenses in 2000.⁸² Unsurprisingly, drug felons receive longer sentences than any other criminals including murderers and terrorists.

Average Federal Sentences		
Offense	Mean	Median
All Offenses	56.8 months	33.0 months

All Felonies	58.0 months	36.0 months
Violent Felonies	63.0 months	
Drug Felonies	75.6 months	55.0 months
Property Felony – Fraud	22.5 months	14.0 months
Property Felony – Other	33.4 months	18.0 months
Public Order Felony – Regulatory	28.0 months	15.0 months
Public Order Felony – Other	46.5 months	30.0 months
Misdemeanors	10.3 months	6.0 months

D. Erosion of Civil Liberties and the Rule of Law

1. The Assault on the Bill of Rights

They that can give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety.

Benjamin Franklin, Historical Review of Pennsylvania, 1759

When the Bill of Rights was adopted in 1791, the Fourth, Sixth, and Eighth Amendments were enacted to protect citizens from unreasonable searches and seizures, excessive bails and fines, cruel and unusual punishments and to grant citizens the rights to fair and impartial trials.⁸³ Since the 1790's both federal and state governments have continually sought to erode those rights in an effort to make enforcement of their regulations more convenient. In the name of the so-called "War on Drugs," the government's ability to encroach upon these rights has expanded greatly.

In the mid eighties, when the War on Drugs came of age, the Supreme Court adopted measures that greatly expanded law enforcement's ability to pursue drug offenders, but at the same time turned a blind eye to the Fourth Amendment. The Supreme Court broadened the ability of the government to stop, question, and detain drivers of vehicles on the roads on suspicion less than probable cause⁸⁴ or with no suspicion at all at

checkpoints or fixed roadblocks.⁸⁵ The Court also allowed a warrantless search of a motor home,⁸⁶ warrantless aerial surveillance of private property,⁸⁷ and the warrantless search of a purse belonging to a public school student.⁸⁸ All of these encroachments on the Bill of Rights were in the name of finding drugs in the possession of American citizens. Our rights of privacy and rights to live free in our homes without the intrusion of the government have taken the back seat to what law enforcement deems is a greater threat to the peace and welfare of society. Despite the fact that the Fourth Amendment guarantees “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures,”⁸⁹ the Supreme Court has allowed the government to encroach dangerously close to our rights to be free from government invasion and snooping, and in some cases has gone too far.

In the name of furthering the drug prohibition, consider that the Court now allows mandatory and suspicionless drug testing in public schools.⁹⁰ And, in 1991, the Supreme Court upheld the constitutionality of a police officer’s boarding of an interstate bus and asking passengers’ for the permission to search their luggage.⁹¹ In doing so, the Court overruled the Florida Supreme Court’s holding that a question like that by the police is so inherently coercive that no true voluntary consent could be given for such a search.⁹²

Our rights to privacy have also been eroded in the name of the War on Drugs. The Supreme Court has ruled that there is no expectation of privacy in one’s own backyard, despite high fences and posted signs.⁹³ It went even further to actually hold that there would be no expectation of privacy inside of a greenhouse in an enclosed backyard because there is some chance that someone could fly over in a helicopter, airplane, balloon, or spacecraft and peer through the glass on the roof of that greenhouse.⁹⁴ What the Supreme

Court could never grasp is that an expectation of privacy is just that, an expectation. While it may be true that someone could technically fly over one's house to look inside, one still would not expect it to happen. This is the essence of the expectation of privacy. The Court tells us that an unreasonable search "occurs when an expectation of privacy that society is prepared to consider reasonable is infringed."⁹⁵ Does the Court mean to say that society is prepared to consider people flying over our homes and spying in on us as reasonable? Following that logic, one would not necessarily expect someone to break into their home, but since it is possible that they might, would the Supreme Court rationalize that there is no expectation of privacy to prevent the government from coming into the house only to look around? Or worse yet, would the Court also accept the notion that that since homes in "high crime" areas are more likely to be burglarized, they have a lowered expectation of privacy?⁹⁶

The Fourth Amendment in particular comes under fire in the War on Drugs when the government seeks to seize property it deems to have a connection with a drug offense. The federal government's forfeiture laws are very broad with over 22 major categories of offenses that give the federal government the right to seize private property.⁹⁷ In a national survey conducted in 1991, it was reported that 80% of the people who had their property seized by forfeiture were never charged with a crime.⁹⁸ Drug forfeiture is big business for law enforcement. They are highly motivated to seize property because they can keep what is seized for their departments.⁹⁹ In 1994 alone, federal forfeitures totaled approximately \$730 million.¹⁰⁰ Sadly the ability of law enforcement to benefit economically from forfeited assets, as well as large blocks of grants from Congress to fight the drug trade

“have distorted governmental policy making and law enforcement.”¹⁰¹ The effect is an built-in economic incentive to target the assets of small time drug offenders.

The Fourth Amendment is clearly under attack and it is primarily due to the government’s desire to enforce its drug prohibition. In 1999 alone, state and federal courts authorized 1,350 wiretaps, 978 of which were for drug investigations.¹⁰² This constituted 72% of all the warrants. As one commentator has noted, “[t]he war on drugs has seriously undermined the meaning of the Fourth Amendment and its application by the police.”¹⁰³

The Sixth Amendment, another victim of the War on Drugs, holds that the accused shall have speedy, public, impartial trials by juries, and shall have the right to confront their accusers.¹⁰⁴ Sadly, this amendment too will not be spared from the War on Drugs’ insatiable thirst for its utmost goal: to prohibit drug use at the expense of all other virtues of our democracy. Unfortunately, as a result of the War on Drugs, those accused of selling drugs may have no right to confront their accuser. This is done presumably in attempt to protect informants, even though the Sixth Amendment clearly states that “the accused shall enjoy the right . . . to be informed of the nature and cause of the accusation and to be confronted with the witnesses against him.”¹⁰⁵ It is perplexing that our Bill of Rights and particularly the Sixth Amendment have withstood 200 years of murderers, thieves, and rapists, but now, within less than a generation, menacing drug peddlers have some how managed to stump the government of the United States of America so much that their only solution is to change the rules in their favor at the expense of our civil liberties.

The Eighth Amendment has banned cruel and unusual punishments since 1791 and has kept the government’s punishments proportional to the crimes of its citizens¹⁰⁶. That is until the War on Drugs. Mandatory minimums have been enacted as a tool for drug warriors

to use to keep drug offenders incarcerated longer. This work has already addressed the implications that mandatory minimums have had on the judiciary and the corrections industry, and will elaborate on its disparaging affects on minorities, but for now we will consider its conflicts with the Eighth Amendment.

Mandatory minimums are sentencing guidelines that prescribe a given sentence when a certain crime has been committed. Again, the concept of judicial discretion is traded in for prosecutorial discretion. The problems mandatory minimums presents with regard to the Eighth Amendment is that many times the sentences are not proportional to the crimes. Consider that in federal court, low-level crack dealers and first-time offenders sentenced for trafficking of crack cocaine receive an average sentence of 10 ½ years, whereas a murderer receives a sentence of less than 12 years, a rapist 6 ½ years, and a weapons violator 7 ½ years.¹⁰⁷

Illegal drugs and the war on them have many victims. It has been noted that, “[t]he most important victim of illegal drugs may be the liberty of a nation.”¹⁰⁸ Furthermore, “[i]n the name of protecting citizens, the U.S. government with the aid of the Supreme Court continues to weaken and reduce each citizen's constitutional rights.”¹⁰⁹ This is why it is all too important to remember the words of President James Madison, “[l]iberty may be endangered by the abuses of liberty as well as by the abuses of power.”¹¹⁰ The prohibition of drugs forces our liberties into peril by tempting citizens to abuse their liberties on the one hand and enticing the government to abuse its power on the other. This prohibition creates an unnecessary friction between the government and its citizens for an end that is not worth the trauma to our cherished Bill of Rights.

2. The Mother of All Corruption

There is nothing new about corruption for it is an incurable disease. As long as humans have engaged in politics, there has been corruption; and there have been those who would fight to end it. One thing can be said of corruption; it is consistent. Where we shall find money, power, or greed, we find corruption. And so it is with the prohibition of drugs, we again find these venomous ingredients.

It is of course no secret that the enforcers of laws throughout time have always struggled with the constant temptations of violating their ethical obligations to the rule of law. One of the many examples of corruption leaving its evil mark on society is the widespread police corruption of the twenties.¹¹¹ Before the Twenty-first Amendment¹¹² was passed lifting the ban on alcohol, bootleggers and gangsters fought fierce battles for the loyalty and protection of police in America.¹¹³

Alcohol prohibition is long gone and was traded in for a more pragmatic approach to human behavior, but unfortunately the lessons of corruption's evil past were forgotten with the intensification of the War on Drugs. There are some differences between the corruption of the twenties and today. Then, unethical police behavior was primarily focused on exchanging money and favors for not enforcing the prohibition, i.e. "looking the other way." Now, in addition to that, there are two new problems. First, because the War on Drugs has made the drug trade so lucrative, there is the problem of police actually engaging in the drug trade themselves. And second, because of the pressure to interdict and prosecute, there is the problem of unconstitutional and even criminal methods of enforcement. In fact, in 1998, the General Accounting Office reported that:

...several studies and investigations of drug-related police corruption found on-duty police officers engaged in serious criminal activities, such as (1)

conducting unconstitutional searches and seizures; (2) stealing money and/or drugs from drug dealers; (3) selling stolen drugs; (4) protecting drug operations; (5) providing false testimony; and (6) submitting false crime reports.¹¹⁴

This same report cites examples of publicly disclosed drug-related police corruption in many major cities in the United States¹¹⁵ and that half of all the police officers that were convicted as a result of the FBI's corruption cases were convicted for drug offences.¹¹⁶

The corruption that is spawned by the War on Drugs is by no means limited to the confines of the United States. In the same way that the illegal narcotics trade and the War on Drugs are an international problem, so too is corruption. The unfortunate reality is that in many other developing nations, the greater economic disparities in those countries simply serve to intensify the temptations and effects of corruption. Not to mention that many of these nations do not share adequate civil liberties to protect their citizens from the assault of their corrupt police and politicians. In 2001, the international monitoring group Transparency International reported that Mexican police and armed services were tainted by multi-million dollar bribes from international narco-traffickers.¹¹⁷ Furthermore, in a 1998 report on the economic and social consequences of drug abuse and illicit trafficking, the United Nations International Drug Control Program reported that:

In systems where a member of the legislature or judiciary, earning only a modest income, can easily gain the equivalent of some 20 months' salary from a trafficker by making one "favorable" decision, the dangers of corruption are obvious.¹¹⁸

A World Bank survey from February of 2002, reported that in Columbia bribes are paid in 50% of all state contracts, and, it estimates the cost of corruption annually in Colombia is \$2.6 billion, the equivalent of 60% of the country's debt.¹¹⁹

Despite the War on Drugs' disastrous effects on developing nations, particularly in the Western Hemisphere, the United States government stands behind its drug policies,

maintaining that international interdiction efforts targeted at reducing supply¹²⁰ will lead to a reduction in demand in the United States. The government seems to speak out of both sides of its mouth when it comes to the War on Drugs abroad. Consider that according to a report published by the United States Senate Subcommittee on Narcotics, Terrorism and International Operations, the U.S. State Department conducted business with drug traffickers to provide assistance to the Contras in the eighties, and the State Department itself released an internal audit in the early nineties admitting poor management of anti-narcotics programs.¹²¹ Further, there is evidence that the U.S. military and CIA personnel were involved in drugs and arms smuggling in Latin America, Laos, Vietnam, and Iran under the Shah.¹²² In 1982, the CIA requested that the Justice Department not prosecute Miquel Nazor Haro, Mexico's notorious secret police chief, because he was an important source of information.¹²³ Haro was a known protector of drug lords and torturer of Mexican political prisoners.¹²⁴

The United States involvement in drug trafficking was not limited to Central America. In the eighties, the United States funded and supported Gulbuddin Hekmaryar, a well-armed Afghani, in efforts to fight the Soviet military. At that time it was well known to the CIA that Hekmatyar was a drug trafficker with links to current members of Al Qaeda and ran a heroin factory.¹²⁵

E. Felony Disenfranchisement; a Continuing Barrier to Civil Rights

In 1870, the Fifteenth Amendment gave African-American men the right to vote five years after the end of the Civil War¹²⁶ and African-American women obtained their right to vote along with all other women fifty years later with passage of the Nineteenth Amendment.¹²⁷ Unfortunately, from the mid-nineteenth century and continuing into the

twentieth century, the right to vote was still not extended to all persons of color due to the effects of the “Jim Crow” Era in the South.¹²⁸ It was not until the Civil Rights Act of 1965 that meaningful suffrage was extended to African-Americans.¹²⁹

After the passage of the Civil Rights Act of 1965, the civil rights movement¹³⁰ and African-Americans in general made many strides. However, like many other civil liberties that have been compromised by the effects of the War on Drugs, the civil rights movement has been hit hard. Today, the War on Drugs is responsible for denying the right to vote to more African-Americans than any other time since slavery.

The War on Drugs disenfranchises citizens because in virtually all states convicted felons are denied the right to vote. In forty-six states prisoners serving felony sentences are prohibited from voting.¹³¹ Thirty-two states deny the vote to persons on probation or parole.¹³² And, in fourteen of these states a convicted felon can be disfranchised for life.¹³³ The number of African-American men incarcerated in 2002 was equal to the number of Black American slaves in 1820.¹³⁴ That is 13% of all black men, totaling 1.4 million people.¹³⁵ Over ten states are responsible for disenfranchising more than 20% of their Black male population.

In addition to the overwhelming disenfranchisement that is caused by the War on Drugs, the racial disparities in how this War is fought are alarming.¹³⁶ Today, 1 in 4 black men aged 20 to 29 are in prison, and 1 in 3 are on parole, probation, or imprisoned.¹³⁷ At the current levels of incarceration, newborn Black males in America have a 1 in 4 chance of going to prison during their lifetimes, while Hispanic males have a 1 in 6 chance, and white males have a 1 in 23 chance.¹³⁸ Studies indicate that drug usage is proportional by race and ethnicity to the representation of such groups in the United States.¹³⁹ Yet white

Americans, who compose 80% of all drug users, represent only 12% percent of those arrested on drug charges. African Americans, on the other hand comprise about 13% of drug users but involve 74% of those sentenced for drug possession.¹⁴⁰ Furthermore, most drug offenders are white, and five times as many whites use drugs as blacks, yet blacks comprise the great majority of drug offenders sent to prison. Black males are sent to prison on drug offenses 13 times as often as white males.¹⁴¹ Clearly, the solution to this racial inequality is not to incarcerate more whites, but to reduce the use of prison for low-level drug offenders and to increase the availability of drug abuse treatment.¹⁴²

III. Conclusion

This paper endeavored to shed some light on the perils of the War on Drugs. It was intended to show Americans how such a destructive policy has ravaged our society, its citizens and their rights. It was not meant to advocate one alternative to the war over another but to simply call for something to be done. There are countless alternatives to the War on Drugs and they run the gamut from complete legalization, to heavy regulation.¹⁴³ Clearly any change would be a favorable alternative.

This paper pointed out prohibition's bigoted and misleading history; for with a past as chaotic and unorganized, it is no wonder that today's policies are in such disarray. The toll that the War on Drugs has taken on our judiciary was explained. The fact that the War on Drugs is responsible for immense burdens on our judicial system has spurred the scorn of many judges who resent mandatory minimums and sentencing guidelines. The War on Drugs has created a prison state that puts the United States at the top of the list for countries that lock up the highest percentages of their populations. It has undermined some of the civil liberties that were so dear to our founding fathers with its broad stroke solutions to

getting around the Bill of Rights. The Fourth, Sixth, and Eighth Amendments have been drastically weakened at the expense of all Americans, and for what? So the government can lock up just a few more drug peddlers. How can it be worth it? We see now how the War on Drugs' forfeiture laws target assets rather than crime, and cause most seizures to be unaccompanied by any criminal charges. We also see how they cause plea bargains to be made that favor drug lords while penalizing small-time offenders and causing a massive shift in resources towards federal jurisdictions over local law enforcement. We know that the War on Drugs corrupts our police here and ravages law enforcement and political institutions abroad. And we have seen how the effects of the drug prohibition on felony disenfranchisement have set advancements in civil rights back years.

When will our political leaders have the courage to make the bolds statements that we can all see in front of us? This author fears it is too late. Our Bill of Rights may have been so crippled by the War on Drugs that it will not withstand the next round of assaults that are sure to come from the new War on Terror.

The government would have us believe that we as a society do not possess the ability to control our passions with regard to drug use, yet it is less adamant about saving us from the perils of alcohol abuse or corporate greed. It must be remembered that "freedom is not worth having if it does not include the freedom to make mistakes."¹⁴⁴

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¹ Since 1981 alone the United States government has allocated over 200 billion dollars to Federal Drug Control spending.

See OFFICE OF NATIONAL DRUG CONTROL POLICY, NATIONAL DRUG CONTROL STRATEGY: FY 2003 BUDGET SUMMARY, 6, Table 2, (February 2002), and TRAC analysis of the THE NATIONAL DRUG CONTROL STRATEGY, 1998: PROGRAM, RESOURCES, AND EVALUATION *available at* <http://trac.syr.edu/tracdea/findings/national/drugbudn.html>, last accessed January 2, 2004.

²In the mid-1990s, the Clinton Administration publicly stated that the “War on Drugs was a failure.” See JAMES D. COCKCROFT, *LATIN AMERICA; HISTORY, POLITICS, AND U.S. POLICY*, 681 (2d ed.1997).

³ *Id.*

⁴ Through federal forfeiture laws, the U.S. government has given law enforcement incentives to target offenders solely on the assets in their possession. A further discussion of the effects of forfeiture as well as the corruptive force that the war on drugs has had on democratic institutions in the western hemisphere will be discussed later in this paper. See *infra* at notes 97, 118, and 119.

⁵ Since 1990, the tobacco and pharmaceutical industries alone have contributed \$156,768,847 to both political parties. See Open Secrets.org, Industry Profiles, available at <http://www.opensecrets.org/industries/index.asp>, last accessed December 4, 2003.

⁶ Our state and federal legislators are lobbied by groups that stand to gain enormous profits provided that the prohibition of drugs continues. Unfortunately, groups who seek to reform our policies are not motivated by economic incentives, but human ones. There does not seem to be any money in restoring liberty, only withholding it.

⁷ Many proponents of prohibition use scare tactics to promote the idea that prohibition is working and ignore the real facts of the costs of prohibition on society.

⁸ These statistics are a compilation of annual causes of death in America by the Centers for Disease Control, the National Institute on Alcohol Abuse and Alcoholism, the Journal of the American Medical Association, the Annals of Internal Medicine, the U.S. Department of Justice, and the Drug Enforcement Administration, available at <http://www.drugwarfacts.org/causes.htm> (last updated September 8, 2001), last accessed November 26, 2003.

⁹ Federal drug enforcement ignores any attempts by states or municipalities to rethink the drug problem. When states have passed laws that reform the drug prohibitions in their localities, the justice department has ignored their will and simply stepped up enforcement in order to subvert any attempts at reform. Take for example the State of California’s attempt to legalize marijuana for medical purposes. The federal government immediately responded by targeting any doctors that might prescribe marijuana for medical uses. The federal government acts without regard to the 10th Amendment, nor does it allow for a debate on the issues of the medical legitimacy of prescription marijuana.

¹⁰ EDWARD J. EPSTEIN, *AGENCY OF FEAR* (1979).

¹¹ STEVEN B. DUKE & ALBERT C. GROSS, *AMERICA’S LONGEST WAR: RETHINKING OUR TRAGIC CRUSADE AGAINST DRUGS*, 82-83, 90-93 (1993) [hereinafter “America’s Longest War”].

¹² *Id.*

¹³ *Id.*

¹⁴ In 1881 the California legislature outlawed opium dens when the San Francisco police claimed they found “white women and Chinamen side by side” intoxicated by opium. It was characterized as “a humiliating sight to anyone with anything left of manhood.” See *America’s Longest War*, *supra* note 11, at 83.

¹⁵ *Id.* at 59.

¹⁶ Congress first passed laws limiting the sale of cocaine and opiates in order to require that doctors were not the suppliers of medications. Congress passed the Harrison Narcotics Act in order to limit the sale of these types of drugs only by pharmacists. The act was more about international trade, competing interests in the medical profession and the rivalries between physicians and pharmacists than about limiting drug use. See *id.* at 84.

¹⁷ *Id.*

¹⁸ *Id.* at 82.

¹⁹ *Id.*

²⁰ The Harrison Act was designed to limit who would have access to cocaine and opiates, partly for the protectionism of the medical industry and partly to appease the religious-based temperance forces. See *id.* at 83-84.

²¹ *Id.* at 85.

²² The Harrison Act was not created to prevent doctors from using cocaine and opiates to treat patients, but as a regulatory measure that imposed a tax and registration on the drug dispensers. See *id.*

²³ *Id.*

²⁴ 241 U.S. 394 (1916). In this *Lochner*-Era decision, the court explicitly stated that had Congress intended the Harrison Act to be a prohibition statute it would have used language to that affect. *Id.* at 402.

²⁵ See Eric J. Gouvin, *Drunk Driving and the Alcoholic Offender: A New Approach to an Old Problem*, 12 AM. J. L. AND MED. 99, (1986).

²⁶ *Id.*

²⁷ *Id.*

²⁸ *United States v. Jin Fuey Moy*, *supra* note 24.

²⁹ 249 U.S. 96 (1919). This case clearly delineated a change in the attitude toward drugs. The Eighteenth Amendment requiring prohibition had just been passed, World War I had just been fought, and the United States spiraled into a period of intolerance, suspicious and nationalism. *See America's Longest War*, *supra* note 11, at 86.

³⁰ *United States v. Doremus*, 249 U.S. 86 at 95 (1919) (White, C.J., dissenting). The four dissenting Justices followed the reasoning of the district court which dismissed the indictment on the grounds that regulating the practice of medicine was a power reserved and retained by the states. The district court reasoned that, "to extend the incidental moral objects of the taxing measure by a liberal construction would be to unfairly and without certain right encroach upon the state's sovereign powers... It is accordingly held that the indictment does not state an offense against the laws of the United States, in that the acts of the defendant charged in the words of the statute to have been omitted and committed therein are violations of police regulations incidental to the taxing purpose of the act, but which do not tend to render effectual its prime object, revenue. To that extent the act is in violation of article 10 of the amendments to the Constitution of the United States." *United States v. Doremus*, 246 F.958, 965 (W.D. Tex 1918).

³¹ The Eighteenth Amendment to the constitution was passed prohibiting alcohol in 1919, the same year that the Supreme Court held that the US government had the authority to prosecute a physician for selling heroin to patient in violation of the Harrison Act. *United States v. Doremus*, 249 U.S. 86 (1919).

³² The original intent of the Harrison Act in 1914 was not to criminalize cocaine and opiates, but to regulate how medical professionals supplied the substances to patients. Prior to and with the enactment of Act, the Congress did not mean to say that it would legislate how doctors should practice medicine, rather that it would aid the medical profession in keeping a close tab on the patients who would receive such medications. When the Court in *Doremus* and *Webb* allowed physicians to be prosecuted for violating the regulatory provisions of the act, the Court over stepped its bounds by conferring on congress a power that the Congress never indented to take. 249 U.S. 86 (1919), 249 U.S. 96 (1919). The Court gave the Congress the power to regulate medical cocaine and opiates not based on its medical use, but because there was a perception in society that these medical uses could not be differentiated from their vices. The 1914 Congress made no inferences that they were in the position to understand the medical effects of medical cocaine and opiates, however the court did, and it did so with no evidence or research on the record to substantiate the legitimate or non-legitimate effects of the use of medical cocaine and opiates.

³³ U.S. Const. amend. XXI. The Twenty-First Amendment to the constitution, ratified in 1933, repealed the Eighteenth Amendment's prohibition of alcohol.

³⁴ U.S. Const. amend. X. The last article in the Bill of Rights which guaranties that powers not explicitly delegated to the United States, nor prohibited by it to the States, are reserved to the state or local governments.

³⁵ *See Webb v. United States* 249 U.S. 96 (1919); *United States v. Doremus*, 249 U.S. 86 (1919).

³⁶ The Marihuana Tax Act, 26 U.S.C.S § 4742, made it unlawful for any person, whether or not required to pay a special tax and register under 26 U.S.C.S § 4751 to 4753, to transfer marihuana except pursuant to a written order form to be obtained by the transferee.

³⁷ *See* Diana R. Gordon, *The Lawyers Bookshelf*, NEW YORK LAW JOURNAL, 2 (August 17, 2001) (Diana R. Gordon, Ph.D. Program in Criminal Justice, City University of New York describes how many federal district judges' sentiments toward the War on Drugs has changed to one of anti-prohibition).

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Simon Jenkins, *A Policy Gone to Pot*, TIMES NEWSPAPERS LIMITED, June 8, 1994.

⁴² Abraham G. Gerges, *Changing Times Require Changing Strategy*, NEW YORK LAW JOURNAL, 2 (July 14, 1993) (In this article for the New York Law Journal, Judge Gerges, a State Supreme Court Justice in Brooklyn, New York, outlines his reasons why the federal drug policy must be reformed. He states that the statistics that are often cited in support of continued prohibition are misleading and that the laws, policies, and programs in place are not current with today's society. He claims that the War on Drugs has not been a success and the costs far exceed any of the benefits. He calls on policy makers to become more creative in their approach to a solution to illicit drug use. He believes funds can be better spent in more positive programs that focus on education at "at-risk" youth).

⁴³ *Id.*

⁴⁴ While the Congress was attempting to implement uniformity in the federal sentencing process, by setting mandatory minimums, it was targeting the more lenient judges rather than the harsh judges.

⁴⁵ The problem with a uniform sentence for all offenders is that even though it may prevent judges from interjecting their biases, it may not always fit the offense.

⁴⁶ See Common Sense for Drug Policy, Drug War Facts: Mandatory Minimums, *available at* <http://www.drugwarfacts.org/mandator.htm> (last updated November 29, 2000), last accessed August 23, 2003, (citing CAULKINS, J., ET AL., RAND CORPORATION, MANDATORY MINIMUM DRUG SENTENCES: THROWING AWAY THE KEY OR THE TAXPAYERS' MONEY? 24 (1997)).

⁴⁷ *Id.* at 16-18.

⁴⁸ See Bill Mears, *Rehnquist Slams Congress Over Reducing Sentencing Discretion*, CNN.COM, (January 1, 2004)

⁴⁹ See Common Sense for Drug Policy, Drug War Facts: Mandatory Minimums, *available at* <http://www.drugwarfacts.org/mandator.htm> (last updated November 29, 2000), last accessed August 23, 2003, (citing, ALEXANDER SMITH, & HARRIET POLACK, AMERICAN JUDGES ASSOCIATION, *Curtailing the Sentencing Power of Trial Judges: The Unintended Consequences*, COURT REVIEW, 6-7 (1999)).

⁵⁰ *Id.* at 6.

⁵¹ See COMM. ON DRUGS & THE LAW, *A Wiser Course: Ending The Drug Prohibition*, ASS'N OF THE BAR OF THE CITY OF N.Y., 49 THE RECORD 523 (1994) [hereinafter "A Wiser Course"].

⁵² See *id.*

⁵³ JOHN SCALIA, US DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, FEDERAL DRUG OFFENDERS, 1999 WITH TRENDS 1984-99, 7 (August 2001). [hereinafter "Federal Drug Offenders 1999"].

⁵⁴ See A Wiser Course *supra* note 50.

⁵⁵ See *id.*

⁵⁶ See *id.*

⁵⁷ Common Sense for Drug Policy, Drug War Facts: Prisoners, *available at* <http://www.drugwarfacts.org/prison.htm> (last updated November 29, 2000), last accessed August 23, 2003, (citing US DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS 1996, 20 (1997)), [hereinafter "Sourcebook of Criminal Justice Statistics"]; and EXECUTIVE OFFICE OF THE PRESIDENT, BUDGET OF THE UNITED STATES GOVERNMENT, FISCAL YEAR 2002, 134 (2001).

⁵⁸ *Id.*

⁵⁹ According to the Office of National Drug Control Policy, the federal government gave the Bureau of Prisons \$2.525 billion and the federal prisoner detention centers \$429.4 million to incarcerate drug offenders and suspects. See OFFICE OF NATIONAL DRUG CONTROL POLICY, NATIONAL DRUG CONTROL STRATEGY: FY 2003 BUDGET SUMMARY, 7-9, Table 3 (February 2002). *available at* <http://www.whitehousedrugpolicy.gov/publications/policy/03budget/index.html>, last accessed August 23, 2003.

⁶⁰ In 2001, the total number of inmates in the incarcerated in state prisons was over 10 times the number of inmates in federal prisons with 1,962,220 in state jails and 143,337 in federal ones. See PAIGE M. HARRISON, & ALLEN J. BECK, PH.D., US DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, PRISONERS IN 2001, 2 (July 2002).

⁶¹ THOMAS BONCZAR & LAUREN GLAZE, US DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, PROBATION AND PAROLE IN THE UNITED STATES, 1 (August 1999).

⁶² *Id.*

⁶³ US DEP'T OF JUSTICE BUREAU OF JUSTICE STATISTICS, CRIME IN THE UNITED STATES, ANNUAL, UNIFORM CRIME REPORTS (July 2003), *available at* <http://www.ojp.usdoj.gov/bjs/glance/tables/drugtab.htm>, last accessed August 23, 2003, and FEDERAL BUREAU OF INVESTIGATION, UNIFORM CRIME REPORTS ANNUAL CRIME REPORTS FROM 1970 THROUGH 2001 (2001).

⁶⁴ *Id.*

⁶⁵ See PAIGE M HARRISON. & ALLEN J. BECK, PH.D., US DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, PRISONERS IN 2002, 11 (July 2003). [hereinafter "Prisoners in 2002"].

⁶⁶ *Id.*

⁶⁷ See CHRISTOPHER J. MUMOLA & ALLEN J. BECK, PH.D., US DEPARTMENT OF JUSTICE, BUREAU OF JUSTICE STATISTICS, PRISONERS IN 1996 (1997).

⁶⁸ There were 246,100 convicted drug offenders out of 1,208,700 State prison inmates in 2001. See Prisoners in 2002, *supra* note 65, at 10.

⁶⁹ See JUSTICE POLICY INSTITUTE, *CELLBLOCKS OR CLASSROOMS? THE FUNDING OF HIGHER EDUCATION AND CORRECTIONS AND ITS IMPACT ON AFRICAN AMERICAN MEN*, 10 (2003), and JOHN IRWIN PH.D., VINCENT SCHIRALDI, AND JASON ZIEDENBERG, JUSTICE POLICY INSTITUTE, *AMERICA'S ONE MILLION NONVIOLENT PRISONERS*, 4 (1999).

⁷⁰ Federal Drug Offenders 1999, *supra* note 53, at 7.

⁷¹ In the United States 701 citizens out of 100,000 are incarcerated, followed by the Cayman Islands with 664, Russia with 638, Belarus 554, Kazakhstan 522, Turkmenistan 489, Belize (459), Bahamas 447, Suriname 437 and Dominica 420. However, more than 62.5% of countries have rates below 150 per 100,000. The United Kingdom's rate is 139 per 100,000 of the national population. See Prisoners in 2002, *supra* note 64, at 2, and ROY WALMSLEY, UK: HOME OFFICE RESEARCH, DEVELOPMENT AND STATISTICS DIRECTORATE, *WORLD PRISON POPULATION LIST*, 1 (4th ed 2003).

⁷² In 2001 there were 1,361,258 individuals in federal and state prisons, 16,206 in territorial prisons, 665,475 in local jails, 8,748 in INS facilities, 2,377 in military facilities, 1,912 in Indian reservation jails, and 110,284 in juvenile facilities. See Prisoners in 2002 *supra* note 65, at 1.

⁷³ Prisoners in 2002, *supra* note 65, at 2.

⁷⁴ Studies in the nineties found that roughly 67% of all prisoners in the United States would be re-arrested within 3 years of their release. See PATRICK A. LANGAN, PH.D. & DAVID LEVIN, PH.D., US DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, *RECIDIVISM RATE OF PRISONERS IN 1994*, 11 (June 2002).

⁷⁵ See Damien Cave, *The Business of Law and Order*, SALON.COM, (March 29, 2001) and Jane Twomey, *Media Fuels Fear About Youth Crime*, THE BALTIMORE SUN, May 13, 2001, at 1C.

⁷⁶ From 1982 to 1999 the total number of state and Federal inmates grew from 400,000 to 1,300,000. This was accompanied by the opening of over 600 new state and at least 51 federal correctional facilities. The number of local jail inmates also tripled, from approximately 200,000 in 1982 to 600,000 in 1999 and the number of adults on probation increased from over 1.3 to nearly 3.8 million persons. See GIFFORD, SIDRA LEA, US DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, *JUSTICE EXPENDITURE AND EMPLOYMENT IN THE UNITED STATES*, 1999, 7 (February 2002).

⁷⁷ *Id.*

⁷⁸ This amount includes all state and federal spending for police protection, corrections, and judicial and legal activities. The Nation's expenditure for operations and outlay of the justice system increased 309% from almost \$36 billion in 1982. Discounting inflation, that represents a 145% increase in constant dollars. See *Id.* at 1.

⁷⁹ In addition to federal correctional facilities run at over capacity, overall the state facilities by the end of 2002 were operating at between 1% over their highest capacity and 16% above their lowest capacity. See Prisoners in 2002, *supra* note 65 at 7.

⁸⁰ See US DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, *FEDERAL CRIMINAL CASE PROCESSING, 2000, WITH TRENDS 1982-2000*, 12, Table 6 and figure 3 (November 2001).

⁸¹ *Id.*

⁸² *Id.* at 12, Table 6.

⁸³ U.S. Const. amend. IV, U.S. Const. amend. VI, and U.S. Const. amend. VIII.

⁸⁴ See *United States v. Sharpe*, 470 U.S. 675 (1985) where the Court upheld the conviction of a defendant for transporting marijuana when a DEA agent observed an overloaded van and radioed a state trooper pull over the defendant. While neither the agent nor the trooper had probable cause to stop the van, they did so anyway and then search it without a warrant. The trooper had the defendant pulled over for 20 minutes before the DEA agent had arrived. The court said the officer pursued his investigation in a diligent and reasonable manner.

⁸⁵ See *Texas v. Brown*, 460 U.S. 730 (1983) where the Supreme Court allowed a warrantless search by police officers of a vehicle at a license checkpoint. An officer searched the defendants vehicle and discovered a small balloon of heroin.

⁸⁶ See *California v. Carney*, 471 U.S. 386, 390 (1985) where the Court applied the vehicle exception to the warrant requirement to motor homes when a DEA agent entered and searched the defendants motor home that was parked in a parking lot without a warrant or consent.

⁸⁷ See *California v. Ciraolo*, 106 S. Ct. 1809, 1813 (1986) where the defendant was arrested for growing marijuana in his yard. The Court held that there was no expectation of privacy from surveillance from above even though the defendant had erected a 10-foot fence and the Court said that the yard was within the curtilage of the home.

⁸⁸ See *New Jersey v. T.L.O.*, 469 U.S. 325, 333 (1985) where a school principle searched the purse of a female student who he suspected had cigarettes. The Court ruled that the search did not violate the 4th Amendment and was permissible in light of the defendant's age and sex.

⁸⁹ 27 U.S. Const. amend. IV.

⁹⁰ See *Bd. of Educ. v. Earls*, 122 S. Ct. 2559 (2002) and *Veronia Sch. Dist. 47J v. Acton*, 515 U.S. 646 (1995) where the Court held that students are not entitled to the 4th Amendments protections when the state has a compelling interest in preventing drug use and that athletes have a decreased expectation of privacy.

⁹¹ See *Florida v. Bostick*, 501 U.S. 429 (1991). This decision was merely one of a number of rulings since the early eighties that authorized police stops and questioning of airline, train, and bus passengers without the level of suspicion generally required for Fourth Amendment search and seizure purposes.

⁹² See *id.*

⁹³ See *Oliver v. United States*, 466 U.S. 170 (1984) where the Court held that a no trespassing sign does not create an expectation that society will recognize.

⁹⁴ See *Florida v. Riley*, 488 U.S. 445 (1988) where the court held that there was no expectation of privacy of a greenhouse owner when the police flew over at 400ft. and peered inside to find contraband.

⁹⁵ *United States v. Jacobsen*, 466 U.S. 109, 113 (1984).

⁹⁶ This line of logic is not at all that inconceivable when we consider that discretionary drug stops now occur when the only probable cause is that a stop is made in a high crime area. See Kathleen R. Sandy, *The Discrimination Inherent in America's Drug War: Hidden Racism Revealed by Examining the Hysteria over Crack*, 54 ALA. L. REV. 665 at 668 (2003).

⁹⁷ 21 U.S.C. Section 881.

⁹⁸ Andrew Schneider & Mary Pat Flaherty, *Presumed Guilty: The Law's Victims in the War on Drugs*, THE PITTSBURGH PRESS, August 11, 1991.

⁹⁹ See UNITED STATES DEPARTMENT OF JUSTICE, UNITED STATES ATTORNEY'S MANUAL, §9.111.000 (1997), available at http://www.usdoj.gov/usao/eousa/foia_reading_room/usam/title9/111mcrm.htm, last accessed January 2, 2004.

¹⁰⁰ D. Heilbroner, *The Law Goes on a Treasure Hunt*, THE NEW YORK TIMES, December 11, 1994, at Section 6, 70, (quoting the 1992 testimony of Cary H. Copeland, then director of the Justice Department's executive-office asset forfeiture unit).

¹⁰¹ The structure of the federal forfeiture laws and federal drug policy in general has the effect of creating an agenda that targets assets rather than crime, cause 80% of seizures to be unaccompanied by any criminal prosecution, makes plea bargains that favor drug kingpins and penalize the 'mules' without assets to trade, reverses stings that target drug buyers rather than drug sellers, cause an overkill in agencies involved in even minor arrests, and causes a massive shift in resources towards federal jurisdiction over local law enforcement. See E. Blumenson & E. Nilsen, *Policing for Profit: The Drug War's Hidden Economic Agenda*, 65 U. CHI. L. REV. 35 (Winter 1998).

¹⁰² See ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS, 1999 WIRETAP REPORT, 17 (2000).

¹⁰³ Paul Finkelman, *The Second Casualty of War: Civil Liberties and the War on Drugs*, 66 S. CAL. L. REV. 1389 at 1411 (1993).

¹⁰⁴ U.S. Const. amend. VI.

¹⁰⁵ 54 ALA. L. REV. 665 at 668 (2003) *supra* note at 96.

¹⁰⁶ U.S. Const. amend. VIII.

¹⁰⁷ US SENTENCING COMMISSION, SPECIAL REPORT TO THE CONGRESS: COCAINE AND FEDERAL SENTENCING POLICY, 150 (February 1995); and Sourcebook of Criminal Justice Statistics *supra* note at 57, at 476, Table 5.58.

¹⁰⁸ Stephen Saltzburg, *Another Victim of Illegal Narcotics: The Fourth Amendment*, 48 U. PITT. L. REV. 1 at 25 (1986).

¹⁰⁹ Randy E. Barnett, *Bad Trip: Drug Prohibition and the Weakness of Public Policy*, 103 YALE L.J. 2593, 2612 (1994) (reviewing STEVEN B. DUKE & ALBERT C. GROSS, AMERICA'S LONGEST WAR: RETHINKING OUR TRAGIC CRUSADE AGAINST DRUGS (1993)).

¹¹⁰ The Federalist, No. 53 (James Madison).

¹¹¹ See Thornton, Mark, *Alcohol Prohibition Was A Failure*, CATO POLICY ANALYSIS NO. 157, (July 17, 1991), [hereinafter "Alcohol Prohibition Was A Failure"], available at <http://www.cato.org/pubs/pas/pa-157.html>, last accessed August 23, 2003.

¹¹² The twenty-first Amendment repealed alcohol prohibition in 1933. See U.S. Const. amend. XXI.

¹¹³ See *Alcohol Prohibition Was A Failure*, *supra* note at 111.

¹¹⁴ See GENERAL ACCOUNTING OFFICE, REPORT TO THE HONORABLE CHARLES B. RANGEL, HOUSE OF REPRESENTATIVES, LAW ENFORCEMENT: INFORMATION ON DRUG-RELATED POLICE CORRUPTION, 8 (1998).

¹¹⁵ The GAO reports corruption in the following cities: Atlanta, Chicago, Cleveland, Detroit, Los Angeles, Miami, New Orleans, New York, Philadelphia, Savannah, and Washington, DC. See *id* at 36-37.

¹¹⁶ See *id* at 35.

¹¹⁷ According to Transparency International, “[t]hrough the problem is not as pervasive in the military as it is in the police, it is widely considered to have attained the status of a national security threat.” See TRANSPARENCY INTERNATIONAL, GLOBAL CORRUPTION REPORT 2001, 158 (Robin Hodess, ed., 2001).

¹¹⁸ See UN INTERNATIONAL DRUG CONTROL PROGRAM, TECHNICAL SERIES REPORT #6: ECONOMIC AND SOCIAL CONSEQUENCES OF DRUG ABUSE AND ILLICIT TRAFFICKING, 39 (1998).

¹¹⁹ HODESS, ROBIN, TRANSPARENCY INTERNATIONAL, GLOBAL CORRUPTION REPORT 2003, 108 (2003).

¹²⁰ BUREAU FOR INTERNATIONAL NARCOTICS AND LAW ENFORCEMENT AFFAIRS, OFFICE OF NATIONAL DRUG CONTROL POLICY, INTERNATIONAL NARCOTICS CONTROL STRATEGY REPORT 2002: POLICY AND PROGRAM DEVELOPMENTS (March 2003), available at

<http://www.state.gov/g/inl/rls/nrcrpt/2002/html/17942.htm>, last accessed August 23, 2003.

¹²¹ See JAMES D. COCKCROFT, LATIN AMERICA; HISTORY, POLITICS, AND U.S. POLICY, 64-65 (2d ed.1997).

¹²² *Id* at 65.

¹²³ *Id*.

¹²⁴ *Id*.

¹²⁵ *Id*.

¹²⁶ U.S. Const. amend. XV.

¹²⁷ U.S. Const. amend. XIX.

¹²⁸ In the late nineteenth century and through part of the twentieth century African-Americans were disenfranchised of their right to vote in many southern states through poll taxes, literacy tests, intimidation, and, the threat of violence or even death. The laws that accompanied and enabled this disenfranchisement came to be known as “Jim Crow” laws.

¹²⁹ Voting Rights Act of 1965, 42 U.S.C. § 1973.

¹³⁰ The Civil Rights Movement was a non-violent national campaign started by southern black church leaders in the fifties and sixties to end racial segregation in America. It was lead by such notable figures as the Rev. Dr. Martin Luther King. Dr. King was supported by millions of black and white Americans in the fight to end racial inequality and segregation in the south.

¹³¹ See Leonard E. Birdsong, *Drug Decriminalization and Felony Disenfranchisement: The New Civil Rights Causes*, 2 BARRY L. REV. 73 at 76 (2001).

¹³² *Id*.

¹³³ Ten states permanently disenfranchise even rehabilitated felons who have served their sentences. Those states are: Alabama, Delaware, Florida, Iowa, Kentucky, Mississippi, Nevada, New Mexico, Virginia, and Wyoming. Also, see *id*.

¹³⁴ Graham Boyd, *New Voices on the War on Drugs: Collateral Damage in the War on Drugs*, 47 VILL. L. REV. 839 at 846 (2002).

¹³⁵ *Id*.

¹³⁶ It must be noted that simple possession of five grams of crack is considered a felony, while simple possession of any amount of powder cocaine (which is pharmacologically the same drug as crack) is a misdemeanor. The reason this is significant is that laws that punish crack cocaine violations are specifically targeted to incarcerate African-Americans, while more lenient laws for cocaine offenses generally benefit white drug offenders. See 21 U.S.C. § 844, *United States v. Sharp*, 12 F.3d 605 (6th Cir. 1993), and 54 ALA. L. REV. 665 (2003) *supra* note at 96 at 669.

¹³⁷ " Ira Glasser, *American Drug Laws: The New Jim Crow*, 63 ALB. L. REV. 703, 719 (2000).

¹³⁸ THOMAS BONCZAR, & ALLEN J. BECK, US DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, LIFETIME LIKELIHOOD OF GOING TO STATE OR FEDERAL PRISON (March 1997).

¹³⁹ Coramae Richey Mann, *We Don't Need More Wars*, 31 VAL. U. L. REV. 565, 567 (1997), quoting Marc Mauer and Tracy Huling, *The Sentencing Project, Young Black Americans and the Criminal Justice System: Five Years Later*, at 9, 13 (1995).

¹⁴⁰ *Id*.

¹⁴¹ HUMAN RIGHTS WATCH, RACIAL DISPARITIES IN THE WAR ON DRUGS (2000), available at <http://www.hrw.org/campaigns/drugs/war/key-facts.htm>, last accessed August 23, 2003.

¹⁴² *Id*.

¹⁴³ This purpose of this paper was to bring attention to the problems with the War on Drugs and not necessarily tackle the complex issues on legalization, deregulation, or decriminalization. The first step on our way to preserving America is informing Americans of the real problems with the drug war. For some realistic programs and initiatives that can be realistically implemented in the near future *see id.* Many of these solutions include: repealing mandatory minimum sentencing laws for drug offenders; increasing the availability of alternative sanctions; eliminating different sentencing structures for powder cocaine and crack cocaine; increasing the use of drug courts; increasing the availability of substance abuse treatment; and eliminating racial profiling, requiring police to keep and make public statistics on the race of arrested drug offenders and the location of the arrests.

¹⁴⁴ Famous quote from Mahatma Gandhi as he and the Indian people were fighting for independence from British colonial rule.