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America's Drug War and the Right to Privacy

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AMERICA'S DRUG WAR AND THE RIGHT TO PRIVACY*

Norm Stamper**

I believe that police officers can and must work hand-in-hand with the community to achieve public safety and, at the same time, safeguard constitutional guarantees. I believe the two go hand-in-glove. The largest number of violations of your civil liberties, of Americans' civil liberties, comes at the hands of police, at the federal, state, and local levels.¹ So it seems ironic that I would be suggesting that the police ought to be at the forefront of protecting those civil liberties. But given the strategic location of police in society, it makes all the sense in the world. We have a huge battle ahead of us to convince police officers, and oftentimes police executives, that their jobs consist of two primary missions. One is to make our neighborhoods and our communities safe and healthy, the other to make sure that the individual and his or her civil liberties are in fact protected.

I would like to start with a couple of stories. It occurs to me that it might be helpful to this audience particularly to hear a little bit about the police culture and what gives rise to the abuses that I will be presenting to you.

My first experience with the police was not when I became one. It was when I was nine years of age, and, with my pal, Gary, decided to kick over the Little League fence at Kimball Park in National City (my home town, a city just south of San Diego). We did not do damage to this fence, just to be clear. It was a portable fence in segments. We had gotten tired of shooting out streetlights with our slingshots, so we went down to Kimball Park, and

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1. ACLU affiliates receive hundreds of civilian complaints of police misconduct every year, ranging from verbal abuse, to racial profiling, to inappropriate use of lethal force. See Am. Civ. Liberties Union, *Police Practices*, <http://www.aclu.org/police/index.html> (accessed Feb. 20, 2007).

we started kicking over the fence, as was our weekly habit, I guess. We were all the way from the right field fence over to the left field part of the fence when we spotted a car coming at us at a very high rate of speed, barreling across a dirt infield and stopping about two inches from our feet. It was a black and white vehicle, one that contained two uniformed police officers from the National City Police Department.

When the dust settled—and not before—they rolled their windows down. I'd just stomped out the cigarette I had in my mouth, and I looked over at Gary. His was still there, except it was dangling from his lip, he was so frightened. We were both scared to death. Long story short, we got chewed out royally. But not arrested. As far as we know, no reports were taken, although we were convinced for twenty years after that we had a permanent record in our file as a result of this contact with the police. Well, they admonished us. They told us never, in many profane words, never to return to Kimball Park. Then they supervised our replacement of the fence, which I think was perfectly reasonable: an early example of restorative justice. But I happened to notice this little orange dot inside the police car. The officer was smoking one of my mom's Chesterfield's that I had stolen from her earlier. Salt in the wound.

So, my first experience with the police wasn't a happy one. I brought it on, of course, but I have to say I didn't feel like I was protected or served that night. Likewise, when at age sixteen, I drove my brand-new used car through a fifteen-miles-per-hour blind intersection at seventeen miles per hour. This was not a radar ticket. This was a clocked ticket at seventeen miles per hour as opposed to fifteen. Later, as a police officer, I would learn the technical term for that kind of a ticket: it's *chickenshit*. Please excuse the indelicacy of my language.

Also at age sixteen or thereabouts, I recall lying on my parents' sofa, and watching Birmingham Bull Connor sick his minions on nonviolent civil rights protesters.² I saw Negroes in white short-sleeved shirts, narrow ties and porkpie hats, women in dresses, and children being beaten by police officers. I saw fire hoses turned on them. I saw dogs unleashed on them, and I was appalled. I felt sick to my stomach. These were the people who were supposed to help us, to protect us, to serve us. Despite being

2. William A. Nunnelle, *T. Eugene 'Bull' Connor*, <http://www.alabamamoments.state.al.us/sec62.html> (accessed Feb. 20, 2007).

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unpleasant, my experiences with the police weren't profound. I still held out some hope for the institution, but when I saw that, I sort of gave up all hope. If the police could do this to nonviolent civil rights demonstrators in the South, then certainly they could do it elsewhere in the country, and I generalized from that experience.

Not long after that, I was playing in a rhythm-and-blues band. On a Sunday we were having a rehearsal in Logan Heights, a black community of San Diego. An hour or two into the rehearsal, there was a loud rapping on the door. David Johnson, our African-American lead singer, answered the door. He was polite and courteous from the get-go. A police officer barged into the house, jabbed his finger into David's chest, punctuating a series of profanities, all racist in nature. I'd never felt so angry. Watching what I had seen on television was one thing. Seeing a police officer so thoroughly disrespect my friend was another. One of the things I came to understand that most bothered me was that I'd settled into the corner with my baritone sax and shook with anger—which meant *fear*, by the way—and didn't say a word.

I got burglarized three times over the course of the time that I lived at the National City Pet Hospital, where I was the kennel man/assistant. Burglarized three times. Somebody broke into my home and took my fifteen dollars in cash as well as some narcotics from the operating room at the veterinary hospital, my Uncle Bob's gray gabardine suit he had handed down to me for high school graduation, a \$45 hi-fi, which at that point was new, and, most devastating of all to me, 100 jazz and R&B albums. They were irreplaceable. It took me ten years to go out and buy another jazz album because of that loss. Police officers showed up two of the three times, quite late. They didn't take a fingerprint. They didn't take a foot or a shoe impression. They didn't take a note, as far as I can remember, and they certainly didn't arrest the people who were responsible for breaking into my home, violating my privacy, and stealing my most treasured possessions—I can't even call them material items. It was more spiritual than that. It was of my soul, this music, and it was gone.

And then I became a cop. It's reasonable to ask why somebody with my views, values, and experiences became a police officer. And my answer is that I needed a job, a different job. At twenty, I was married. My eighteen-year-old bride didn't particularly like living in the veterinary hospital, listening to the dogs yapping all night, the cats meowing, and having those smells waft

through the operating room through a swinging door into our living room. Probably most jarring to her delicate sensibilities were people rapping on the window to our conjugal quarters at three o'clock in the morning, telling me that Mitzi's nose was warm, that she just doesn't seem to be herself. So I needed a different job. A friend of mine—who wanted to be a cop since he was three years old—came by the pet hospital on my one Saturday afternoon off each month and said, "I'm going down to take the police test. Do you want to come along?" I said, "Why would I want to do that?" And he said, "Well, I'm going to go get a beer and a corned beef sandwich at McDini's afterwards." I said, "I'm in."

So I went with him, figuring I would park my skinny rear end under a eucalyptus tree in front of the War Memorial Building in Balboa Park while Ted took the test. But as we got out of his truck, the test proctor, standing out on the steps, said, "How about you, young man? Are you here for the police test?" I was vaguely insulted. Then she said, "You look like police material." But I thought, well, it's better than just sitting here twiddling my thumbs under a eucalyptus tree, so I went on in. In those days, you could sign up, take the test, and, if you passed it, get an application package. That's exactly what happened. I passed it. One of life's little ironies.

At each stage of the civil service selection process, I was thinking, *well, I don't have to go through with this. I mean, it's not like the Army. I have not been drafted. I can bow out after the physical exam or I can bow out after the county medical exam, or I can bow out after the police surgeon's exam.* That last exam, by the way, was a joke. The police surgeon supposedly verified that the county's medical examination had been thorough. So I walked into old Doc Williams's office, and he said, "What color is that green box?" "Green." "Do you have flat feet?" "No." "Next!" he said, signing off on the county's physical.

A couple of weeks later, after having survived the chief's interview and being welcomed aboard, I went home with my new identity in two brown paper grocery sacks, and I put all that stuff on. Standing in front of the full-length mirror on the back of our bedroom door, I was jolted by the image staring back at me. It was a full-blown police uniform, minus the badge, minus the gun. But I had the holster, and I had everything else. I looked at myself, asking what in the world was I doing. Then I told myself I would be different. *I'll be responsible. I'll be responsive. I'll be reasonable. I will never use the "N" word. I will treat people with*

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dignity and respect. I won't write chickenshit tickets, and when somebody gets hurt, I'll be there to help, even if the pain is that sense of violation that occurs when somebody invades your privacy and takes something from you. That's the kind of cop I would be, and those were my intentions.

When I started the police academy, those intentions lasted about five minutes. That's an exaggeration, of course, but I can assure you it was a breathtakingly short period of time before I found myself saying things I'd never said before in my life, doing things I had never done before in my life—not good things, not nice things, things that violated the rights of my fellow Americans, things that violated the Constitution of the United States.

And I enjoyed it. I have a cellular memory of the joy of abusing my power. To say otherwise would be a lie and would undermine the cautionary tale to new police officers. I speak of the abuses I committed as an invitation to those outside the culture to understand what power does to a twenty-one-year-old, no matter the best intentions of academy instructors or a rousing speech from the chief or the sheriff. In the real world, out there on the streets, in the elements, all kinds of things can happen to you. Things did happen to me, and not just to me, but to most of my fellow recruits. We underwent a transformation.

We started telling stories after shift. We attended what author Joe Wambaugh calls choir practice,³ where we would drink ourselves silly and tell stories about how we had screwed over the prostitutes downtown, the transgender folks, the transvestites. We'd regale one another on how we baited an African-American to take a swing at us so that we could choke him out. I remember that particularly. It was my favorite trick.

A little background: I grew up timid, afraid of my own shadow, in a household characterized by abuse—physical and emotional abuse at the hands of my father. So, I grew up scared of almost everything you can imagine.

How is it that a timid, generally liberal, impressionable twenty-one-year-old can undergo such a conversion, such a transformation of attitudes and values and beliefs to a point where he actually *enjoys* treating people with a lack of dignity and respect? And who, in the process, violates the laws of his society? The cop culture is strong, awesomely powerful. It has this magnetic force.

3. Joseph Wambaugh, *Choirboys* (Dell Publ. Co. 1996).

I felt like I was in a family for the first time in my life. I felt like I belonged to something bigger, better than my father's family.

Sprinkled between and among the acts of abuse were moments of heroism, true courage, and fearlessness on the part of some of my fellow officers. Some were indescribable acts of kindness and decency. I mean, there were police officers who did stop people from hurting other people. I learned a lot from them, but I have to confess that I learned more from the other guys. That's just my experience, my story.

My story changed when, at twenty-two, I arrested a nineteen-year-old for Section 647(f) of the California Penal Code: "drunk in a public place, unable to care for himself or the safety of others."⁴ It wasn't a felony, but it was a criminal offense. We're more enlightened today in how we deal with alcoholics, but this kid was not an alcoholic. The truth is, he wasn't drunk. His crime? He had a bad attitude, and he questioned my authority, and my ancestry. I was not emotionally hooked by his behavior, but I knew what my job was. Find a reason to put him in jail. The police captain I worked for at that time would often say, "I'm not hearing that jail door slam!" We had a city jail across the patio, or courtyard, from the watch commander's office. "I want to hear that door clanging all night long," he said. "Get out there and find a reason to put people in jail." That was the mentality. That was the attitude. I embraced it enthusiastically.

So I hooked this kid up, put him in the back seat of my police car, and took him to jail. No screening of the booking because it was a straight drunk arrest. I remember writing a report and doing what I had been taught to write in a report. I talked about staggered gait. I talked about bloodshot eyes. I talked about the characteristic odor of an alcoholic beverage on his breath and about his person. I talked about every objective element of 647(f) P.C. and turned in that piece of fiction, signed by a sergeant. Three weeks later, I get a subpoena on it. *What is this?* You don't go to court on a straight drunk arrest. That's silly. It's a \$29 fine. You pay the fine, get on with your life. But Joseph Anthony Feldman had other plans, and he took me to court. I thought, *No problem. I've seen this done.*

On the appointed day, having worked graveyard, I went home for a quick shower, put on my \$67 Robert Hall suit, drove to the county courthouse at 220 West Broadway, stepped up the stairs,

4. Cal. Penal Code Ann. § 647(f) (West 2005).

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entered the lobby, walked across the lobby to the escalator, took it up to the mezzanine, and spotted a familiar figure—a deputy city attorney standing out in front of municipal court. He had a clipboard in hand, and was wearing a three-piece, dark blue, pin-striped suit. He had his hair slicked back, and was wearing tortoiseshell glasses, like a Hollywood lawyer. He was really cool, and I admired him for a few moments. Then I sidled up, knowing exactly how to handle this. I had seen it done.

I said, with a wink and a poke, “You may want to dismiss this case.”

“Oh? Why?”

“Well, it’s kind of a skinny pinch.”

“Tell me about it.”

“Well, I uh . . . I arrested him for 647.”

“I see that. Tell me about the circumstances.”

“Well, it was in front of Pat Brillo’s, that Mexican restaurant at Fairmont and University. He got out of his car and he approached me very aggressively . . . ”

“Officer Stamper, was he drunk?”

“Well, he had a really, really bad attitude.”

“Was he drunk?”

“He called me a pig.”

“Officer Stamper, was he drunk?”

“No.”

Whereupon, this man, in his slick Hollywood suit and his slick Hollywood hairdo, asked me, “Does the Constitution of the United States mean anything to you?” Oh, I was pissed. Oh, I was enraged. What right did he have as my partner in this process of criminal justice to take me on about this, to challenge me? He strolled the corridors of San Diego County Courthouse. He had a nice office. He had his nice suit. He had his books. He had colleagues. He could consult those books and his colleagues if he needed to resolve some finer point of law and so forth. I had to make those decisions out there on the mean streets—sometimes snap decisions, peace and freedom decisions, life and death decisions. I had people hitting me. I had people spitting on me. I had prisoners from the back seat of the police car hock loogies through the cage down my neck, and he had the nerve to tell me this? I mean, I worked out there in the heat and the cold. *Who does he think he is?*

My rage lasted about fifteen seconds. It quickly evolved into embarrassment, and by the time I slithered down the steps of the San Diego County Courthouse, I was saturated in shame. I was as embarrassed and ashamed as I had ever been in my life. Earlier, I said that behind anger, yours and mine, is fear. This principled prosecutor did something that not many of his colleagues, in my judgment, would have done in 1966 or 1967: he called me out. He busted me. Other things were beginning to converge at the time, which made it a little bit easier, but he's the one. His resolute defense of the Constitution triggered a major change in my attitude—and behavior.

So what does all of this have to do with privacy and the drug war? This: the cop culture is powerful. It is magnetic. It is comprised of people who embrace you, bring you into their fold, speak a different language from people on the streets, speak a different language from your own family, come to make you understand that nobody outside police work can possibly understand you or your work. I bought that, and I believed it, and I liked it. I was different, and yet I belonged.

Enter the drug war, 1970. I had been on the PD at that time for four years. In '66, '67, '68, '69, we were making narcotics arrests, but not very many. We were mostly focused on crimes that hurt other people, but we were making those arrests. I made an arrest in Kensington of a nineteen-year-old—another nineteen-year-old.

I was, at this time, three or four years older than this young man, and well into my career as a hydrophobic gas bag of a police reformer. I'd started pointing a finger at my tainted institution. I pontificated and preached and suggested and cajoled and argued that we needed to change our system. We needed to change our culture. We needed to be more in tune with the community, and so on and so forth, but that did not stop me from arresting that nineteen-year-old. At the time, I was convinced my actions were legal. Today, I'm not sure. I'd have to go back and do some research. On the strength of the characteristic odor of burning green vegetable matter, I walked up to this home in Kensington, a very nice, affluent community in San Diego, to make an arrest for a felony committed in my presence.

I rapped on the door and said in a whisper, "*San Diego Police.*" (Evidently, I wasn't fully reformed.) And then I kicked the door. I didn't just kick it. It went off its hinges and fell to the hardwood floors of this nice home, the owners of which weren't

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home. I barged in, scooped out a handful of wet marijuana he attempted to flush down the toilet. I hooked him up, put him in the back seat of the police car, and as we're driving to jail, he says, "Oh, wow, man. Look at this cage." He asks, "You got any Fritos? You got any Cheetos?" He was stoned, but he'd been behind the door of a private home. I busted him for a crime that carried very dire consequences for him. I wrote the arrest report. It wasn't fictional this time. I wrote it just as I described it, using all the police jargon.

But it was on that trip to jail that I had my first "ah ha" experience about drugs. It took the form of a question: *Why in the world did I do this?* I could be going after a burglar—maybe of the kind who'd broken into my place. I might be able, if I weren't going to spend the next three hours writing a case report and a crime report and impounding evidence of this damp marijuana, to spend my time clearing a daytime residential burglary series plaguing my beat, crimes whose suspects were no doubt out and about at night. I could have been doing real police work. Domestic violence. Because I'm making this narcotics arrest, I'm not available to stop a man from beating his wife.

All over the city, we were making these arrests. I worked next to a guy who drove a police ambulance, which meant he didn't have a cage in his car. So, if he made a bust, an adjoining beat officer was called to transport his prisoner, which I had to do a lot for this guy. He had an obsession about marijuana, and was constantly in search of a seed, anything that would justify a felony arrest. Any excuse to get in your pants pockets or dresser drawers or the back seat of your car, over and over again, all night long.

This was before the drug war was declared. The moment that occurred in 1971, with President Richard Nixon's declaration, the clock started ticking, and the Federal Treasury started bleeding.⁵ We have spent over \$1 trillion since 1970 prosecuting this un-winnable and immoral war,⁶ \$69 billion a year to finance the prosecution of this war.⁷ And what do we have to show for it? Drugs are more readily available today than they have ever been.⁸ The DEA

5. Dana Adams Schmidt, *President Orders Wider Drug Fight*, N.Y. Times A1 (June 18, 1971).

6. Jack A. Cole, Law Enforcement against Prohibition, *End Prohibition Now!* 25 n. 16 (Apr. 18, 2007) (available at http://leap.cc/Publications/End_Prohibition_NOW_07-04-18.pdf).

7. *Id.* at 13.

8. *Id.* at 8–9.

will tell you that.⁹ The prices of those drugs are cheaper comparatively, adjusting for inflation, than they have ever been.¹⁰ The purity level of those drugs is greater than it's ever been.¹¹ How can we possibly claim that we are even making progress on the drug war?

What's most troubling to me, I think, is the theme that brings us all together here: the violation of millions of Americans' civil liberties in the name of this drug war. I was in Washington, D.C., two or three weeks ago, and was speaking at the Cato Institute.¹² I had been asked to respond to a report, *Overkill*, written by Radley Balko.¹³ The title pretty much says it all. It talks about this country's mindless drug war and the rise of the proliferation of SWAT units¹⁴ being used to attack homes of nonviolent drug offenders. The numbers are staggering. I don't have them at my fingertips, but suffice to say that we have seen an explosion in the number of SWAT units, particularly in rural communities, in some cases communities with only three or four cops.¹⁵ It's like the whole department is SWAT.

What's accounting for this phenomenon? Why this sudden surge in fielding these SWAT units and financing them? Homeland Security, Department of Defense, DEA. The Department of Defense has been providing funds to local law enforcement agencies in the form of equipment: armored personnel carriers, semi-automatic weapons, and the trainers who come along with that: *military personnel training American law enforcement officers*.¹⁶

9. See *id.* at 22 n. 8.

10. *Id.*

11. *Id.*

12. Cato Inst., *Policy Forum, Overkill: The Rise of Paramilitary Police Raids in America* (Sept. 12, 2006) (video available at <http://www.cato.org/event.php?eventid=3175>).

13. Radley Balko, *Overkill: The Rise of Paramilitary Police Raids in America* (Cato Inst. 2006).

14. "Special Weapons and Tactics." *E.g.* http://www.lapdonline.org/inside_the_lapd/content_basic_view/848.

15. Balko, *supra* n. 13, at 4; see also Timothy Egan, *Soldiers of the Drug War Remain on Duty*, N.Y. Times A1 (Mar. 1, 1999) (reporting the "militarization of Mayberry").

16. Balko, *supra* n. 13, at 4-6; Ron Martz, *Police Benefit from Castoff Military Gear: Armored Vehicles Get a New Civilian Life*, Atlanta Journal-Constitution A1 (Apr. 30, 2007); Radley Balko, *Tanks for Nothing*, <http://www.reason.com/blog/show/119952.html> (May 1, 2007). See also Dept. of Homeland Sec.—Off. of Grants & Training, *Homeland Security Grant Program: FY 2007*, http://www.ojp.usdoj.gov/odp/grants_hsgp.htm (updated Jan. 30, 2007) ("The 2007 Homeland Security Grant Program (HSGP) will award more than \$1.6 billion to enhance the ability of states, territories, and urban areas to prepare for, prevent, and respond to terrorist attacks and other major disasters."); Exec. Off. of the Pres.—Off. of Natl. Drug Policy, *Funding: Criminal Justice*, http://www.whitehousedrugpolicy.gov/funding/crim_justice.html (updated Dec. 13, 2006) ("The National Defense Authorization Act

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And the DEA. Think of the revenue generated by seized and forfeited assets. The feds funnel substantial sums of money to local government to help finance the war on drugs.¹⁷

I represent two drug policy reform organizations. I'm on the advisory boards of both NORML (National Organization for the Reform of Marijuana Laws) and LEAP (Law Enforcement Against Prohibition).¹⁸ The conclusion of each organization is that the drug war is not working, and that it will not work, because it cannot work. It did not work in the drug war of 1920 to 1933, called Prohibition, called the Volstead Act.¹⁹ It took that generation of Americans only thirteen years to come to the realization that Prohibition had produced an underclass, a violent criminal underclass.²⁰ It invented Al Capone.²¹ Prohibition is responsible for all of those pictures, moving and still, that we have in our minds. Massacres carried out by the mob: a direct product of Prohibition. The same thing is happening today.

If you are a drug trafficker in this country or in the Middle East or, much closer to home, in Mexico, you arm yourself to expand and protect your markets. You arm yourself with semi-automatic weapons and other weaponry and artillery of incredible array.

It saddens me to see what's happening in a town I used to visit before I was legally old enough to do so: Tijuana. It is disheartening to realize that the tentacles of the Arellano-brothers cartel has found its way deep into the fabric of American society and, in some sad cases, into the clutches of American law enforcement officers, those who succumb to the temptation of obscene

[Pub. L. No. 105-261, 112 Stat. 2173 (1998)] established the requirement for procedures to be developed by the Department of Defense that would enable State and Local governments to buy Law Enforcement equipment suitable for counter-drug activities through the Federal procurement channels.”); Nathan Canestaro, *Homeland Defense: Another Nail in the Coffin of Posse Comitatus*, 12 Wash. U. J.L. & Policy 99, 100 (2003) (“Since the attacks [of 9/11], the military has dramatically widened the scope of its domestic activities.”).

17. E.g. David Heilbroner, *The Law Goes on a Treasure Hunt*, N.Y. Times Mag. 70 (Dec. 11, 1994); but see Stephen Labaton, *House Passes Bill Making It Harder to Seize Property*, N.Y. Times A1 (June 25, 1999).

18. Natl. Org. for the Reform of Marijuana Laws, <http://www.norml.org/> (accessed May 2, 2007); Law Enforcement Against Prohibition, <http://leap.cc/> (updated Jan. 18, 2007).

19. The official name for the Volstead Act was the National Prohibition Act, Pub. L. No. 66-66, 41 Stat. 305 (1919) (repealed by the Liquor Law Repeal and Enforcement Act, Pub. L. No. 74-347, 49 Stat. 872 (1935)).

20. Eric Blumenson & Eva S. Nilsen, *How to Construct an Underclass, or How the War on Drugs Became a War on Education*, 6 J. Gender Race & Just. 61 (2002).

21. Cynthia Grant Bowman & Ben Altman, *Wife Murder in Chicago: 1910-1930*, 92 J. Crim. L. & Criminology 739, 750 (2002).

amounts of money.²² The Arellano cartel made billions and billions of dollars before the brothers were finally caught or killed.²³ The tragedy of drug cartels and drug kingpins is that the moment one falls by arrest or death, he is replaced by one of the forty or fifty people marking time and waiting to move up, and that is precisely what's happened. So we'll see if the next generation of drug kingpins in Mexico, in the Baja area of Mexico alone, is as vicious as the Arellano brothers' generation.

The Arellano brothers, by the way, began the practice of beheading their enemies: rival drug dealers, of course, but also police officers and judges and the families of rivals.²⁴ These are places I used to visit in my youth and as a young adult many, many times. Their heads show up strategically in locations like Tijuana.

Why do they get this vicious? How do they get this vicious? I don't want to get psychological about it, but we must implicate the billions of dollars available to them by trading in these illicit drugs.

So the drug war has caused violence. The drug war has broken up families. We like to wring our hands, gnash our teeth, sometimes sob big tears for the break-up of the black family here in America. Well, how has that come to pass? No small part of that answer is found in the drug enforcement. Nonviolent African-American men are being sent to prison for long periods of time; longer than whites convicted of the same crimes.²⁵ And no data suggest any correlation between race and criminality.²⁶ The treatment of minorities is unconscionable. It's morally reprehensible. It is systemic racism, and it needs to be confronted, as do, I think, the other harms caused by the drug war.

You arrest a nonviolent drug offender, a user, one perhaps suffering from mental illness. And you put that person in prison? What kind of a society are we? We're doing that every day, all

22. Tim Golden, *War on Drugs Fails to Corral Mexican Gang*, N.Y. Times A1 (Jan. 10, 2000).

23. Ginger Thompson, *Mexico Arrests Leading Suspect in Drug Cartel*, N.Y. Times A4 (Aug. 24, 2004).

24. BBC News, *Mexican Police Seize "Cartel Head"*, <http://news.bbc.co.uk/2/hi/americas/6522679.stm> (Apr. 3, 2007); see also Kevin Sullivan & Mary Jordan, *U.S. Called the Loser in War on Drugs: In Prison Interview, Alleged Kingpin Says Demand Fuels Trade*, Wash. Post A1 (Oct. 31, 2002).

25. E.g. Christopher Wren, *Less Disparity Urged in Cocaine Sentencing*, N.Y. Times A12 (Nov. 20, 1996).

26. Deborah A. Ramirez, Jennifer Hoopes & Tara Lai Quinlan, *Defining Racial Profiling in a Post-September 11 World*, 40 Am. Crim L. Rev. 1195, 1211 (2003).

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over this country. Last year we arrested in the neighborhood of 785,000 marijuana users—not traffickers—nonviolent offenders.²⁷ We have 2.2 million people in jail and prison, in this country now.²⁸ We lead all other nations of the world.²⁹ America has 5% of the world's population, 25% of its prisoners. I have colleagues who praise that ugly fact, and point to it as a huge success.³⁰ I think it's an abysmal failure. The drug war, from every perspective, has been a colossal failure. The answer to it, the answer to helping to ensure the privacy and other civil liberties of Americans, is to end the drug war now. Replace the criminal model with a public health system, and a medical approach for those who are addicted. It's imperative, it seems to me, if we want to end the violence, if we want to build trust and respect, or in some cases, rebuild trust in local law enforcement.

I'd like to end with an account of how the drug war mentality affected me personally. Back in the 1970s, my wife and I had a dear friend who suffered from adult diabetes. She had a permanent shunt in her arm because the medical professionals struggled during her hemodialysis treatments to find a vein. Connie was a stunning woman, tall, blond, and, tragically, wasting away, her thirty-two-year-old life coming to an end. Long before talk of medical marijuana, she began to smoke pot. It was the only drug that gave her relief from the nausea. My wife and I found her dead on the toilet, nude, the ultimate indignity. But what pissed me off is what happened to our friend in the last months of her life. Almost blind, she groped her way from her apartment half a block away to a 7-Eleven. She'd gone there at the urging of my wife who'd told her, "Connie, you've got to get out. Feel the sunshine, walk to the store." As Connie handed the clerk some coins for whatever purchase she'd made, a uniformed police officer grabbed her arm, looked at the shunt and needle marks in her arm, and said, "What's this?" with the zeal and the passion of a crusader, a *drug warrior*. He was doing his job. She explained her situation but,

27. Natl. Org. for the Reform of Marijuana Laws., *Marijuana Arrests for 2005*, http://www.norml.org/index.cfm?Group_ID=7040 (posted Sept. 18, 2006).

28. Bureau of Just. Statistics, *Prison Statistics*, <http://www.ojp.usdoj.gov/bjs/prisons.htm> (last updated Jan. 21, 2007).

29. King's College London, U. of London, Intl. Ctr. for Prison Stud., *Entire World-Prison Population Totals*, http://www.kcl.ac.uk/depsta/rel/icps/worldbrief/highest_to_lowest_rates.php (updated Jan. 28, 2007).

30. See e.g. Kent Scheidegger & Michael Rushford, *The Social Benefits of Confining Habitual Criminals*, 11 *Stan. L. & Policy Rev.* 59 (1999).

humiliated and traumatized, Connie never left her apartment again, unless she was in our company.

When today I hear of a medical marijuana patient having his or her home invaded by the police, his or her medicine seized in the privacy of his or her own home, I am so deeply affected, it's hard for me to put it in words.

For all the right reasons—to stop the bleeding of our treasury, to re-establish the personal freedom of adult Americans to choose what they put into their bodies, to end the punishment of those who suffer from drug abuse, to reduce race and class discrimination, to make our communities safe and healthy, and to restore public confidence in law enforcement—it is time for us to end the drug war.