

ON BALANCE

A publication of the Criminal Justice Policy Foundation • SUMMER 2000

VOL. 1, NO. 1

In This Issue:

CJPF President Submits Testimony to Congress on 2000 National Drug Control Strategy..... 1

... 'And Justice For All' 1

Letter From the Editor 2

CJPF @ Work 4

CJPF Staff 8

Publications 10

Calendar 11

CJPF Membership Form 12

On Balance is published quarterly. An annual subscription is available with any contribution to the Criminal Justice Policy Foundation (CJPF). A contribution form is available on the back cover of each issue. CJPF is a private, nonprofit foundation that works to educate the public about innovative solutions to criminal justice issues.

THE CRIMINAL JUSTICE POLICY FOUNDATION

1225 Eye St., NW, Suite 500
 Washington, DC 20005
 Tel: (202) 312-2015
 Fax: (202) 842-2620
 info@cjpf.org
 www.cjpf.org

CJPF President Submits Testimony to Congress on 2000 National Drug Control Strategy

by Eric E. Sterling

Chairman [Jim] Kolbe [R-AZ], Mr. [Steny] Hoyer [D-MD], members of the Subcommittee, the National Drug Control Strategy, presented to you today, attempts to sweep monumental failure under a rug. General McCaffrey insists that 'we are winning' our fight against drug abuse, but his scoreboard must be broken – deaths are up, high school kids can get drugs more easily than ever, drug use by junior high kids has tripled, drug prices are at historic lows, drug purity is as high as ever, and we are still not treating most of the millions of addicts desperate for help.

This written testimony was submitted on March 23, 2000, to the U.S. House Committee on Appropriations, Subcommittee on Treasury, Postal Service and General Government. The National Review posted it on its website at <www.nationalreview.com/document/document041200.html>.

("Testimony" continued on Page 7)

... 'And Justice For All'

by Eric E. Sterling

When the Justice Department cracks down on the shippers of 15.8 pounds of heroin to the United States, it claims another victory in the war on drugs and highlight the long prison sentences imposed. When a fellow drug warrior pleaded guilty to money laundering April 17, he got his hand slapped.

He was Col. James C. Hiett, the U.S. Army's top drug commander in Colombia. He is the husband of a woman who sent six shipments of heroin from the U.S. Embassy in Colombia to a Brooklyn, N.Y., heroin gang, using the embassy's mail service. He admitted that he laundered drug money in paying their household bills and that he concealed the money in his safe at the U.S. Embassy. He admitted he facilitated her crimes and profited from them. He is typical of thousands of imprisoned drug co-conspirators.

This article originally appeared as an op-ed in the Baltimore Sun on May 9, 2000. An earlier version appeared in the Chicago Sun-Times on Sunday, April 30.

("Sentencing" continued on Page 9)

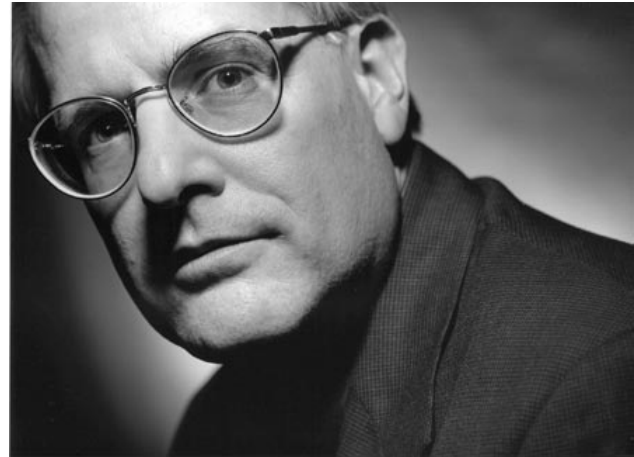
A National Security Crisis: Drugs or Drug Prohibition?

by Eric E. Sterling

The debates in Congress this spring and summer on military aid to Colombia powerfully demonstrate that fighting narcotics traffickers has replaced the traditional national security arguments as the most plausible rationale to involve U.S. military forces, prestige, and money in Western Hemisphere conflicts, in particular, the decades-old Colombian civil war. The great threat to America's security is now described as the globalization of crime (with the narcotics trade as the paradigmatic global crime) by Senator John Kerry, a Vietnam veteran, in his book, *The New War: The Web of Crime That Threatens America's Security* (1997).

The transformation of drug abuse from a public health problem to a criminal justice problem to the "war on drugs" as a national security problem has been abetted by three factors: First, politicians rhetorically characterize the need to address the problem of drugs with the urgency of war. Second, since marijuana, cocaine, and heroin are smuggled from abroad, their shipment across the border has the quality of "invasion," suggesting defense of our border by the armed forces against a form of "attack." Third, because of drug prohibition (not drugs), drug traffickers use violence to resolve disputes; use firearms to protect their inventories, receipts, employees, and assets from robbery; and use gunfire to challenge or eliminate their competitors. This violence easily leads to characterizations of war, requiring a response akin to self-defense. While the term "war on drugs" was used casually through the 1980s to hype the nature of the government's response, "war on drugs" has become synonymous with the drug problem itself ~ indeed, it has become a reality.

However, it is drug prohibition, not drugs, that undermines national security. There is no question that the enormous profits from the illegal drug trade corrupt the American criminal justice system, the global economic system, and the political stability of our neighbors such as Mexico and Colombia. A 1994 United Nations estimate of the global drug trade - at \$180 to \$300 billion annually - reports it as larger than three-quarters of the 207 national economies of the world. Narcotics profits are hidden (and frequently not very hidden) pillars of economic and political power in



Pakistan, India, and Russia (nuclear powers), Mexico, Colombia, Bolivia, Peru, Panama, the Bahamas, Haiti, Jamaica, Burma, Thailand, Afghanistan, Lebanon, Syria, and Nigeria. At least a half dozen nations with which we have close economic, military, strategic and diplomatic ties are fairly described as "narco-republics." This means that our national interests in those regions are potentially compromised.

The political exaggeration of the public health and social problems of drug abuse as a crisis requiring a national mobilization akin to a war is not new. In November 1954, President Eisenhower called for a "new war on narcotics addiction at the local, national, and international level." Following Lyndon Johnson's "war on poverty," President Nixon declared a "national attack on narcotics abuse," in July 1969. In 1971 he declared, "The problem has assumed the dimensions of a national emergency."

At the beginning of the 1980s in Miami, Colombian criminal organizations fought to dominate the cocaine trade formerly controlled by Cubans. Their machine-gun battles in the streets gave the drug problem an extraordinarily violent visage. On October 2, 1982, one month before the mid-term election, President Reagan declared an anti-drug plan of over \$180 million and in a key speech proclaimed, "And we're going to win the war on drugs."

In 1981, members of Congress sought to authorize the U.S. military forces to directly engage in anti-drug missions on the premise that we need more people to fight the violent drug traffickers who carry

guns. With an imperative to cut the Federal budget, Congress aimed to do this cheaply, that is, not hire more Federal agents. Since the Army and Navy were not fighting a war, they were available, and armed. Beginning in 1983, Vice President George Bush's office coordinated the use of military and intelligence forces in supporting anti-drug missions in the Western Hemisphere. In 1984, to impugn the leftist Sandinista government of Nicaragua as abetting the shipment of cocaine to the U.S., White House aide Oliver North leaked photographs obtained in an anti-drug sting. By the late 1980s and early 1990s, Congress was routinely giving the military new anti-drug missions and more responsibility for gathering and analyzing anti-drug intelligence.

By 1996, President Clinton picked a four-star general to lead the Office of National Drug Control Policy (ONDCP) at the White House. Currently, about one-quarter of the staff of the ONDCP are active duty military, and more are retired military. The ONDCP's Counterdrug Technology Assessment Center (CTAC) coordinates nearly \$900 million in research and development of new tools for detection of drug cultivation, processing, shipment, smuggling, and use. (See CTAC's General Counterdrug Intelligence Plan, February 10, 2000 at the Web site of the Federation of American Scientists (www.fas.org/irp/ops/le/docs/gcip/index.html.) A principal thrust of this counter-intelligence program is to engage in surveillance that does not trigger the search warrant requirements of the Fourth Amendment. Current research into chemical sniffers to detect smugglers who swallow packages of drugs will lead to now unimaginable degrees of surveillance and detection. Soon the government will have the ability to "sniff" people to determine if they have used drugs. It will do so in places where people have no "reasonable expectation of privacy" (e.g. passing an airport security checkpoint) and therefore avoiding Fourth Amendment objection. Current research into remote sensing equipment to examine cargo containers for drugs will lead to devices that search homes for the presence of drugs without

entering the home. Current research into the architecture of the Internet and advanced techniques of data-mining will lead to identifying the contents of messages sent over the Internet. Soon the government will be able to intercept the content of email and engage in routine surveillance of Internet communications, telephone, fax, and other communications.

The CTAC plan indicates that the U.S. government is using the intelligence services of Britain, France, Israel, and other nations to assist its counter-drug mission. This facilitates anti-drug activities prohibited by U.S. law, such as covert action, assassination of drug traffickers, or intelligence gathering on the lawful activities of American citizens working to reform drug policy.

The government's mutation of drug abuse from a public health problem to a criminal justice problem to a national security problem means that the traditional restraints in policy making, which are already weakened, will be lost. Evidence of this is the ONDCP subversion of Hollywood, television networks, and national news magazines with advertising money in exchange for clandestine editorial control. And now we find the ONDCP, in violation of White House privacy policy, had been placing Internet "cookies" - bugs that report personal computer and Internet information back to the owner of the cookie - in millions of computer hard drives to track the Internet activities of persons curious about drug-related issues.

The ultimate irony is that drug prohibition is the economic engine of this national security threat. Cocaine is worth five times its weight in gold, and heroin is worth thirty-five times its weight in gold. Truly prohibition is alchemy. Legislators are the wizards who have written the not-very-secret formula, and the global outlaws are greedily following the simple recipe. If we want to restore security to states facing rebellion and corruption, as well as security for the rest of us, then we must end drug prohibition. Of course, it will be very hard to write a recipe for regulating drugs that will engender a consensus. But, we must start and persevere. •

“The government’s mutation of drug abuse from a public health problem to a criminal justice problem to a national security problem means that the traditional restraints in policy making, which are already weakened, will be lost.”

~ Eric E. Sterling

CJPF @ Work . . .

EXPLAINING THE JUSTICE SYSTEM



March 1: CJPF police policy fellow Nicholas Pastore explained the use of DNA testing to reduce crime rates in an editorial by the *Beaumont (TX) Enterprise*.



March 3: CJPF president Eric E. Sterling was interviewed on KIRO-AM in Seattle, WA, regarding juvenile crime.



March 13: Knight Ridder Newspapers reported a study by the Transactional Records Access Clearinghouse that showed shorter sentences are being served by convicted federal drug offenders. Eric Sterling explained to the reporter there was an old DOJ expression, “Big cases, big problems. Little cases, little problems.” Sterling charged that the “U.S. Justice Department is focusing too much of its effort on low-level cases.” The nationally syndicated article appeared in the *Philadelphia Inquirer*, *Houston Chronicle*, *Detroit Free Press*, and at least 19 other newspapers across the country.

CJPF has been concerned about the misfocus of Federal drug enforcement efforts for many years. In 1999, in CJPF’s statement to the House Crime Subcommittee at its hearing on DEA, we observed, “DEA is going in the wrong direction. DEA is increasing its efforts on insignificant defendants and cases. . . .” The statement is available at www.cjpf.org/speeches/deahear.html.



March 13: Eric Sterling interviewed at the BBC studio regarding U.S. drug policy.



March 15: New Milford, CT, police officer Scott Smith was convicted in the fatal shooting of Franklyn Reid. Nicholas Pastore told the *Bridgeport (CT) Inquirer*, “I see this as one small victory in a very, very long battle on the issue of police brutality.” He was quoted in the *Manchester*

(CT) *Journal Inquirer* and the *Woonsocket (RI) Call*, and interviewed on Connecticut radio news and talk shows, about the Smith verdict.



March 21: What did the killing of Patrick Dorismond, an unarmed security guard shot by police in New York City in a bungled drug sting, say about our drug policy? an Associated Press reporter in New York asked. “I think it’s fair to say when you arrest a street level drug seller, you create a job opening. . . . You’re not shutting down an enterprise. You’re not stopping crime from being committed in the future,” Eric Sterling observed. The article appeared in several New York-area newspapers, including the *Albany Times Union* and the *Utica Observer-Dispatch*. On **March 27**, the *Christian Science Monitor* quoted Mr. Sterling regarding the Dorismond killing: “This tragic shooting was in the furtherance of the war on drugs. . . . The tactic of trolling for drug suspects without any reasonable suspicion is a common one in our antidrug effort.”



March 22: Eric Sterling interviewed with Carey Graebner of MSNBC regarding heroin.



March 24: Reporting on the latest national drug control strategy, the *Christian Science Monitor* quoted Mr. Sterling: “On the most important measures . . . we are steadily losing ground.”



March 26: Regarding the national anti-drug effort, *Hartford Courant* columnist Tom Condon quoted Eric Sterling: “Gen. McCaffrey’s scoreboard must be broken. . . . Deaths are up, high school kids can get drugs more easily than ever, drug use by junior high kids has tripled, drug prices are at historic lows, drug purity is as high as ever and we still are not treating most of the millions of addicts desperate for help.”



March 27: Eric Sterling interviewed on the *Armstrong Williams Show* on Talk America radio regarding the 2000 national drug control strategy.

“When I saw that [hoopla about the raid traumatizing Elian], my immediate reaction was that this happens 1,000 times a year, especially to black kids during drug raids, and no one says a thing about that.”

**- Eric E. Sterling
Florida Times Union, May 8**



March 28: Eric Sterling interviewed on the *Phil Paleologos – The Diner Show* on Talk America radio regarding the 2000 national drug control strategy.



March 30: Eric Sterling interviewed on the *Michael Jackson Show* on KRLA-AM in Los Angeles regarding New York City and drug law enforcement.



In early **April**, nationally syndicated columnist Neal Peirce wrote about the Colombia anti-drug aid package. He quoted Eric Sterling regarding the futility of the war on drugs: “On the streets of America, the ‘war on drugs’ has left a flood of heroin and cocaine at prices skirting historic lows.”



In mid-**April**, “drug czar” Gen. Barry McCaffrey met with the *San Francisco Chronicle* editorial board, where he criticized mandatory minimum sentencing for personal drug possession. Eric Sterling told *Chronicle* columnist Debra J. Saunders, “This is not a concession about much. The injustices that exist regarding mandatory minimums are very much for the cases that involve the mandatories for trafficking.” Her syndicated column ran on **April 14**.



April 18: Eric Sterling was interviewed on the *Oliver North* radio show about an ACLU lawsuit challenging mandatory drug testing for students in Lockney, Texas, following his interview in the *New York Times*. The suit was filed by the ACLU on behalf of Larry Tannahill, whose son was suspended for refusing to take the mandatory test. Sterling suggested that the drug testing policy violates the Fourth Amendment protection against unreasonable search and seizure. On **April 29**, the *Sydney (Australia) Morning Herald* quoted Sterling’s comments to the *New York Times* that the “presumption of guilt” created by the drug testing policy contradicted the Pledge of Allegiance that students recite at school every morning. The students’ “sense of liberty and what liberty means will be offended every time they’re asked to provide a urine specimen without any cause [to believe] that they’re using drugs.”



On **April 24**, the *White Plains (NY) Journal News* wrote about drug courts. Eric

Sterling commented, “The downside is that the judge in a drug court can end up abandoning a kind of impartiality that is appropriate to the role.” When judges get into monitoring treatment, he said, “they diminish their role as an impartial fact finder and adjudicator of constitutional standards.”



In a major report entitled “And Justice For Some,” released on **April 25**, the National Council on Crime and Delinquency and the Youth Law Center reported on the major racial disparities in the U.S. juvenile justice system. Associated Press writer Anjetta McQueen, in reporting on the study, quoted CJPF’s Eric Sterling: “We have at least a two-class system of justice,” Sterling explained. The article appeared in numerous newspapers across the country. The report can be ordered from <www.nccd-crc.org>.



April 25: *Chicago Sun-Times* columnist Mary A. Mitchell quoted Eric Sterling regarding race disparity in the criminal justice system: “Too often commentators and politicians have made the absurd statement that blacks are more likely to use crack cocaine. Three times as many whites use crack cocaine as blacks,” he said.

Sentencing is perverse in war on drugs



April 30: The *Chicago Sun-Times* published an op-ed by Eric E. Sterling, titled “Sentencing is perverse in war on drugs,” regarding the sentencing of Col. James C. Hiett. A similar, longer op-ed was published on **May 9** in the *Baltimore Sun*, titled “. . . ‘And justice for all,’”. The *Baltimore Sun* op-ed is reprinted on page 1.



May: Dorothy Gaines, a Federal prisoner serving 240 months for a drug conviction based on the testimony of snitches who received leniency in their cases for testifying, is seeking Presidential clemency. A letter that individuals can e-mail to President Clinton regarding the Gaines case is on CJPF’s website at <www.cjpf.org/gaines.html>. The site was noted in May 2000 issue of *Marie Claire* magazine on page 126.



May 8: The nation was shocked to see the photograph of a Federal agent in SWAT gear pointing an assault weapon toward 7-year-old Elian Gonzalez. Those of us familiar with the

war on drugs thought “this is typical of several thousand drug raids a year.” (*Jacksonville Florida Times-Union* columnist Tonyaa Weathersbee quoted Eric Sterling: “When I saw that [hoopla about the raid traumatizing Elian], my immediate reaction was that this happens 1,000 times a year, especially to black kids during drug raids, and no one says a thing about that.”



On May 5, the *Baltimore Sun* published an op-ed by Dan Morhaim, MD, advocating the use of hospitals to treat drug addiction. In a letter-to-the-editor published in the *Sun* on **May 12**, Eric Sterling wrote: “Dan Morhaim has the right idea. Indeed, using hospitals to treat drug addiction was part of the recommendation of the Mayor’s Working Group on Drug Policy Reform (submitted to Mayor Kurt L. Schmoke in Nov. 1993) that all primary care providers be encouraged to provide substance abuse treatment.” Sterling was a member of the working group.



May 22: In a two-part series about civil asset forfeiture, the *Kansas City Star* discussed the difficulties in reforming these laws. CJPF police policy fellow Nicholas Pastore was quoted: “We have become forfeiture junkies.” Eric Sterling commented, often policy makers and other public officials are hesitant to support reform out of fear of looking soft on crime or anti-police. “It is dangerous to democracy that nonpolice public officials feel sufficiently threatened that they will not challenge police lawlessness,” Sterling said. The series was syndicated nationally by Knight Ridder.



May 25: The *Boston Globe* quoted Eric Sterling regarding a witness protection program rejected by the Massachusetts legislature: “It should not be seen as a matter of special courage or heroism that one is cooperating with police. Rather, it should be seen as a routine public service for which one is not going to be put in any jeopardy.”

PUBLIC PRESENTATIONS

March 1: Cornell Law School. Eric Sterling spoke on “What Our Failed Anti-Drug Policy Means For America’s Future.”

March 17: Eric Sterling made a presentation, titled “Is Our Drug Policy Effective?” at a two-day conference on drug policy, sponsored by The Association of the Bar of

the City of New York, The New York Academy of Medicine (NYAM), and the New York Academy of Sciences. His well-received remarks were substantially similar to those later presented to the House Appropriations Subcommittee, reprinted on page 1. His analysis followed the defense of drug policy effectiveness by Edward Jurith, General Counsel for the White House Office of National Drug Control Policy. The presentation was held at the NYAM.

March 23: Eric Sterling submitted a written statement to the Subcommittee on Treasury, Postal Service and General Government of the Committee on Appropriations, U.S. House of Representatives. The testimony was published on-line in the *National Review Online* at www.nationalreview.com/document/document041200.html. The statement is reprinted in this issue of *On Balance* on page 1.

March 24-26: CJPF Police Fellow Nicholas Pastore made presentations in Louisville, KY, at a forum sponsored by the Kentucky Alliance Against Racist & Political Repression. In **mid-May** in Louisville, Mr. Pastore made presentations at “The Kentucky Attorney General’s Conference on Empowering the Black Community in the 21st Century.”

March 29: Eric Sterling spoke at an American University forum regarding the death penalty.

April 5: Nicholas Pastore was a keynote speaker at “Winners and Losers in America’s War on Drugs,” a conference at the University of Northern Iowa. Mr. Pastore’s comments were covered in the *Des Moines Register* and the *Waterloo Courier*.

April 13: CJPF operations manager Chad Thevenot presented a talk, “Liberty and the ‘War on Drugs’: Can They Coincide,” at the University of Virginia in Charlottesville, sponsored by the Students for Individual Liberty.

May 19: Chad Thevenot moderated a panel, titled “Using the Media to Advance Your Cause,” in Washington, DC, at the 13th International Conference on Drug Policy Reform, sponsored by the Drug Policy Foundation.

May 25: Nick Pastore discussed police-community relations at a two-day forum in Bridgeport, CT, sponsored by the Connecticut Advisory Committee to the U.S. Commission on Civil Rights

TESTIMONY (continued from page 1)

I have been following closely our national anti-drug strategy since 1979 when I became the counsel to the House Judiciary Committee principally responsible for anti-drug matters. I set up for the Committee dozens of hearings on every aspect of our anti-drug effort, and accompanied the House Select Committee on Narcotics Abuse and Control to Colombia, Peru, Bolivia, Mexico and Jamaica in 1983. I have heard almost every top Federal anti-drug official testify since Peter Bensinger headed the DEA. In 1986 and 1988, I was a principal aide in developing the Anti-Drug Abuse Acts of 1986 and 1988 which created the source country certification requirement, the mandatory minimum sentences, the Federal crime of money laundering, and the drug czar's office, among hundreds of provisions. In 1989, I left the committee, and have continued to work extensively on narcotics control matters as President of The Criminal Justice Policy Foundation.

Mr. Chairman, sadly, I don't believe that General McCaffrey can be trusted to give you an accurate appraisal of our drug situation. Gen. McCaffrey is claiming progress with declines in coca production in Peru and Bolivia, just as he did when he unveiled the 1999 strategy a year ago. But when he testified before a House subcommittee on August 6, 1999 he confessed, "In Peru, the drug control situation is deteriorating . . . Peruvian coca prices have been rising since March 1998." (Clifford Krauss, "Peru's Drug Successes Erode as Traffickers Adapt," The New York Times, Aug. 19, 1999).

I suggest, Mr. Chairman, that the indices that Gen. McCaffrey are most proud of are the least important – the declines in casual use of cocaine and marijuana by adults. Casual drug users are not the cancer at the core of America's drug crisis.

What is most important for our anti-drug policy to achieve? Saving lives, keeping drugs out of the

hands of kids, and keeping as many people as healthy as possible. What are the facts? Deaths from drugs have more than doubled since 1979, from 7,101 in 1979 to 15,973 in 1997 as reported in the latest strategy. Why aren't we more effective in saving lives? How can we be winning when more people die each year than the year before?

Our policy is not keeping drugs out of the hands of kids. High school seniors report that heroin and marijuana are more available now than at almost any point since 1975. Marijuana was "fairly easy" or "very easy" to get for 90.4% of seniors in 1998, the highest point in history. Heroin was "fairly easy" or "very easy" to get for 35.6% of seniors, compared to 24.2% in 1975, and 18.9% in 1979, at the height of the modern drug epidemic. Availability of heroin to high school students has increased by 1/3 since the Anti-Drug Abuse Act of 1986 was passed, when it was 22.0%. Ecstasy availability has almost doubled since 1989 from 21.7%, to 38.2% in 1998. LSD availability is greater than at any point in the 1970s or 80s, and at 48.8%, is easily available by half our high school seniors. PCP availability is near record highs, at 30.7%.

"General McCaffrey insists that 'we are winning' our fight against drug abuse, but his scoreboard must be broken – deaths are up, high school kids can get drugs more easily than ever, drug use by junior high kids has tripled, drug prices are at historic lows, drug purity is as high as ever, and we are still not treating most of the millions of addicts desperate for help."

**~ Eric E. Sterling
to the House Appropriations Subcommittee
March 23, 2000**

More kids in 8th grade – junior high school – report that they are using illegal drugs according to the Monitoring the Future Survey. Use in the past 30 days of marijuana among 8th graders tripled from 1991 to 1997, from 3.2% to 10.2%. Cocaine use almost tripled from 0.5% in 1991 to 1.4% in 1998. Use of LSD by 8th graders almost tripled from 0.6% in 1991 to 1.5% in 1997.

How can General McCaffrey, with a straight face, tell you and the American people that we are winning?

In the streets, our policy is a failure. As best we can reckon, the street prices of heroin and cocaine are near historic lows. A pure gram of cocaine was \$44 in 1998, down from \$191 in 1981. Heroin prices have fallen from \$1200 per gram to \$318 per gram over the same period. This means traffickers are discounting the

risks they face. This means the traffickers are finding it easier to get drugs to our streets, not harder.

Purity of cocaine, even for the smallest quantities, has increased on average from 40% in 1981 to 71% in 1998. Heroin street purity has increased from 4.7% in 1981 to 24.5% in 1998. How can the “drug czar” tell the American public that “we are winning” when there has been a 500% increase in heroin purity?

This high purity is sending more people to hospital emergency rooms – the 1998 number of drug-related ER admissions was the greatest recorded.

Despite repeated promises, we are failing to help the people who are most hurt by drugs – the addicts. The crudely estimated number of persons needing drug abuse treatment has grown from 8.9 million in 1991 to 9.3 million in 1996. The number of hard core addicts needing treatment has grown from 4.7 million in 1992 to 5.3 million in 1996. There are still 3 million untreated hard core addicts, more than in most of the 1990s. And it is the untreated drug addicts who are the core of our drug abuse problem. Their tragedies rip American families apart. Their desperation drives them to crime. Their demand finances the Mexican and Colombian cartels, and pays the farmers of coca and opium around the world.

Treating the addicts is not only the most humane thing we can do, it is the most effective. Our failure to adequately treat the drug addicts, independently of the criminal justice system, is a national disgrace.

Gen. McCaffrey will tell you his strategy is based on hard data and he has promised measurable results described in so-called “Performance Measures of Effectiveness.” Several years ago he announced 12 Key Drug Strategy Impact Targets. He promised, for example, to:

- Reduce the number of chronic drug users by 20% by 2002, and by 50% by 2007.
- Reduce the availability of illicit drugs in the U.S. by 25% by 2002, and by 50% by 2007.
- Reduce the rate of shipment of illicit drugs from source zones by 15% by 2002, and by 30% by 2007.
- Reduce the domestic cultivation and production of illicit drugs by 20% by 2002, and by 50% by 2007.

His documents reveal that for each of those important objectives, there is no actual U.S. government estimate for the base.

Regarding the number of chronic drug users,

“At this point [February 1999], no official, survey-based government estimate of the size of this drug-using population exists.” (National Drug Control Strategy 1999, Performance Measures of Effectiveness: Implementation and Findings, p. 15, hereafter 1999 PME:IF).

Regarding the availability of illicit drugs in the United States, “The problem is that there are no official government estimates of the available supply of drugs in the United States.” (1999 PME:IF, p. 16).

Regarding the rate of shipment of illicit drugs from source zones, “There is no official U.S. government estimate for the outflow of drugs from source zones.” (1999 PME:IF, p. 17).

Regarding the domestic cultivation and production of illicit drugs, “Currently there are no estimates of drugs of U.S. venue available in the U.S. for distribution.” (1999 PME:IF, p. 18).

Mr. Chairman, how can a cabinet-level official look a Member of Congress in the eye and say that he has a strategy to reduce a complex problem by a precise percentage by a certain year, when he does not know – with any precision – the size of the problem he is promising to address?

These are all worthwhile objectives, but as presented to you and the nation, they are fraudulent. This is a Potemkin Village anti-drug strategy, Mr. Chairman.

Mr. Chairman, I urge you to hold a follow up hearing on this “strategy” to look at it in detail, and to invite a broad range of experts to testify.

Americans can no longer tolerate a strategy that brazenly insists that our “National Anti-Drug Policy is Working” because the trend of anti-drug spending is up. (1999 National Anti-Drug Strategy, p. 9). It is time for a completely different emphasis. •

CJPF Staff:

Eric E. Sterling, President

esterling@cjpf.org

Nicholas Pastore, Police Policy Fellow

cjpfct@snet.net

Chad Thevenot, Operations Manager

chad@cjpf.org

David A. Guard, Policy Analyst

dguard@cjpf.org

Kristy Gomes, Research Assistant

kgomes@cjpf.org

SENTENCING (continued from page 1)

Typically, when a spouse or lover participates in drug crimes, as Colonel Hiett did, they get sentences like the 24 years imposed on Amy Pofahl or the 24 years given to Kemba Smith. Pofahl had been married briefly but was separated from her husband, a wealthy businessman. His “ecstasy” manufacturing and smuggling empire was busted in Germany, and she helped bail him out, using money he had secreted. She was convicted of his drug trafficking and money laundering in 1990. He received a four-year sentence in Germany and has long been free. Amy Pofahl will be in prison until 2014.

Kemba Smith was a love-struck college student who helped her abusive boyfriend, Peter Michael Hall, a crack dealer, rent apartments and hide out. She turned herself in and was cooperating. But he was murdered. Her cooperation was no longer needed, so the government turned on her. She gave birth to their son chained to a bed. He will be 24 years old when he first sees his mother free. She will be 48.

The government’s plea bargain was a great deal for Colonel Hiett. They let him plead guilty to the obscure crime of “misprision of felony.” Judges are often handcuffed by the sentencing guidelines to give unconscionably long sentences. Here the prosecutors picked a crime in which the judge cannot give more than three years. Judge Edward R. Korman said he will probably give Colonel Hiett a 12-to-18 month sentence, which prompted considerable criticism by prominent leaders in Colombia.

If Colonel Hiett had been Mr. Hiett, he would have been charged with conspiracy to traffic in more than a kilogram (2.2 pounds) of heroin with a mandatory minimum sentence of 10 years, with a possibility of life without parole. He would have been charged with possession of a firearm (his Army-issued weapons) in the furtherance of drug trafficking with a mandatory five-year consecutive sentence. If his



Signe Wilkinson. Copyright 2000, The Washington Post Writers Group. Reprinted with permission.

weapon were an assault weapon, or an automatic weapon, he would face a mandatory 10 years, or 30 years, on top of the drug sentence. Mr. Hiett would have been charged with money laundering, facing up to 20 years. Mr. Hiett would, at a minimum, have been charged with aiding and abetting his wife’s money laundering, facing 20 years.

The likely sentence for Mr. Hiett for the drug offense would be 11 1/4 to 14 years, in addition to the mandatory five, 10 or 30 years for the gun possession. For money laundering, 4 3/4 to six years.

The court could increase the sentence if it found that the public welfare or national security was significantly endangered, such as by profoundly embarrassing the U.S. anti-drug program with Colombia, or that the offense was committed “to facilitate or conceal the commission of [his wife’s] offense.”

Colonel Hiett’s deal - his “misprision of felony” for not reporting his wife’s money laundering - starts at 18 to 24 months. Acceptance of responsibility drops the sentence to 10 to 16 months. The judge can provide for home detention. Since Colonel Hiett is providing “substantial assistance,” the judge could put him on probation.

Reportedly, the military is not instituting court martial proceedings. Apparently, they will let him retire with an honorable discharge and military retirement benefits.

Currently, our anti-drug sentencing is perverse. The U.S. Sentencing Commission reported in 1995 that more than 55 percent of federal drug defendants were the lowest level offenders: couriers, “mules,” bodyguards, or street-level dealers. Only 11.2 percent were high-level traffickers. Of more than 20,000 federal drug defendants in 1998, only 41 were kingpins.

The Justice Department is not going after the high-level traffickers. The imprisonment of most our 84,000 federal drug prisoners is doing very little to solve America’s drug problem.

If the modest punishment for Colonel Hiett’s drug and money laundering crimes is just, the determination should be made by a judge in open court, not by a prosecutor a few years out of law school behind the closed doors of the prosecutor’s office. The arbitrary application and non-application of mandatory sentences is a stench in every federal courthouse.

Eric E. Sterling, an attorney, is president of the Criminal Justice Policy Foundation. He was counsel to the U.S. House Judiciary Committee from 1979 to 1989.

PUBLICATIONS

The War on Drugs: Addicted to Failure – Recommendations of the Citizens’ Commission on U.S. Drug Policy. The Institute for Policy Studies (IPS), Washington, DC. May 2000. CJPF president Eric E. Sterling wrote the introduction to the report. The report and other related materials are available from IPS, 733 15th Street, NW, Suite 1020. Tel: (202) 234-9382. Fax: (202) 387-7915. E-mail: <ipsp@igc.org> or <stree@igc.org>. Web: <www.ips-dc.org>. The report costs \$10.



The Drug PolicyLetter. Published every two months by the Drug Policy Foundation (DPF). CJPF operations & research manager Chad Thevenot has served as guest editor of the periodical since November 1999. For copies or a subscription, contact DPF, 4455 Connecticut Ave., NW, Suite B-500, Washington, DC 20008-2328. Tel: (202) 537-5005, Fax: (202) 537-3007. E-mail: <dpf@dpf.org>. Web: <www.dpf.org>. A subscription is available with annual DPF membership dues of \$35.

Racially Disproportionate Outcomes in Processing Drug Cases. By Eric E. Sterling. An 8-page report describing the disproportionate impact of drug prosecutions on African-Americans and other racial minorities. Reports the data on the increasing and gross racial disparity at every stage in the processing of drug cases – from arrest to incarceration. Contact CJPF for a free copy or visit our website at <www.cjpf.org/pubs/outcomes.html>.

Colombia Anti-Drug Aid Package Briefing Paper. Updated in June 2000. By Kristy Gomes, CJPF research assistant. The paper is a short report detailing the current state of anti-drug efforts in Colombia and issues regarding the proposed \$1.7 billion anti-drug aid package to Colombia, recently approved by Congress. Contact CJPF for a free copy or visit the CJPF website at <www.cjpf.org/pubs/ColombiaPaper.html>.

NewsBriefs – the newsletter of the National Drug Strategy Network (NDSN). From 1989 until 2000, NDSN published **NewsBriefs**, a digest of drug-related news. Back copies of the periodical for free by contacting CJPF. An archive of **NewsBriefs** stories is on-line at <www.ndsn.org>.

UPCOMING PUBLICATIONS

Crises of the Anti-Drug Effort, 2000. By Chad Thevenot, CJPF research manager, and Kristy Gomes, CJPF research assistant. The report is an update of the 1999 version published in March 1999. The report discusses problems with current drug policy and itemizes some proposed reforms. Covers many issues in drug policy, including mandatory minimum sentencing, the prison boom, racial disparity, erosion of civil liberties, international developments, drug treatment, and harm reduction. Contact CJPF for a free copy or visit our website at <www.cjpf.org>.

The Media & the War on Drugs. By Kristy Gomes, CJPF research assistant. A shorter version of Ms. Gomes’ honors thesis for the criminal justice program at the George Washington University. The report looks at editorial coverage of drug policy in the last two years by four major editorial boards: *The New York Times*, *The Wall Street Journal*, *The Washington Post*, and *The Los Angeles Times*. Copies will available for free by contacting CJPF or visiting our website at <www.cjpf.org>.

Two ninety-second videos on gun policy by Eric Sterling are available on-line by looking up “Gun Issues” on the **Freedom Channel** website at <www.freedomchannel.com/vod/viewsnews/>. CJPF is producing other short videos.

CALENDAR

July 29 - August 4, 2000, Philadelphia, PA, and August 11-17, 2000, Los Angeles, CA - Shadow Conventions 2000: A Citizen's Intervention in American Politics. Sponsored by nationally syndicated columnist Arianna Huffington, The Lindesmith Center, Common Cause, Public Campaign, and Call to Renewal. Shadowing the Republican National Convention in Philadelphia and the Democratic National Convention in Los Angeles, the Shadow Conventions will address three issues not being addressed by the two major parties: drug policy reform, campaign finance reform, and poverty. Contact the Lindesmith Center. Tel: (212) 548-0695. Fax: (212) 548-4670. E-mail: <shadow@sorosny.org>. Web: <www.lindesmith.org>.

Summer 2000, Washington, DC - Drug Policy Film Series. Sponsored by the Institute for Policy Studies (IPS) Drug Policy Project, cosponsored by CJPF. The series includes videos and lectures, including a presentation of "Snitch," produced by PBS' *Frontline*, with remarks by Eric Sterling, who is featured in the video. The series will be held Thursdays, 12:30 - 2:30 P.M., from July 6 to August 17 at IPS, 733 15th Street, NW, #1020, Washington, DC 20005. Contact Sanho Tree. Tel: (202) 234-9382 ext. 266. E-mail: <stree@igc.org>.

Summer 2000, New York, NY - Harm Reduction Training Institute (HRTI). HRTI offers numerous training workshops during the summer. The workshops are held at HRTI, 22 West 27th Street, 5th Floor, New York, NY 10001. Contact HRTI. Tel: (212) 683-2334 ext. 32. Fax: (212) 213-6582.

July 20-21, 2000, Springfield, VA - Innovations in Restorative Justice for the New Millennium. Sponsored by the Opportunities, Alternatives and Resources (OAR/USA) of Fairfax County, Inc. Held at the Holiday Inn Express, 6401 Brandon Ave. Contact OAR/USA, 10640 Page Ave., Suite 250, Fairfax, VA 22030. Tel: (703) 246-3093.

September 9-13, 2000, St. Louis, MO - 2000 National Conference on Correctional Health Care. Sponsored by the National Commission on Correctional Health Care (NCCHC). Held at the Cervantes Convention Center. Contact NCCHC, 1300 W. Belmont Ave., Chicago, IL 60657. Tel: (773) 880-1460. Fax: (773) 880-2424. Web: <www.ncchc.org>.

September 12-16, 2000, Minnetonka, MN - 17th Annual International Training Institute & Conference: Innovative Practices in Restorative Justice and Victim Offender Processes. Sponsored by the Victim Offender Mediation Association (VOMA). Held at the Ramada Plaza West. Contact VOMA, 143 Canal Street, New Smyrna Beach, FL 32169. Tel: (904) 424-1591. Fax: (904) 424-6129. E-mail: <voma@voma.org>. Web: <www.voma.org>.

September 13-15, 2000, Durham, NC - The North American Conference on Fathers Behind Bars and on the Streets. Sponsored by the Family & Corrections Network and the National Practitioners Network for Fathers and Families (NPNFF). Held at the Regal University Hotel. Contact NPNFF, 1003 K Street, NW, Suite 565, Washington, DC 20001. Tel: (202) 737-6680. Fax: (202) 737-6683. Web: <www.npnff.org>.

October 21-25, 2000, Miami, FL - The Third National Harm Reduction Conference. Sponsored by the Harm Reduction Coalition (HRC). Held at the Wyndham Hotel Miami-Biscayne Bay. Contact HRC, 22 West 27th Street, 5th Floor, New York, NY 10001. Tel: (212) 213-6376 ext. 31. E-mail: <hrconf@harmreduction.org>.

INSIDE THIS ISSUE . . .

- CJPF's tells Congress that the 2000 National Drug Control Strategy is a "monumental failure"
- The double standard in the sentencing of Col. James Hiatt, former head of U.S. Army Counter-Narcotics Efforts, Colombia

Criminal Justice Policy Foundation Contribution Form

The Foundation relies on contributions to continue its important educational work. Contributors receive *On Balance*, CJPF's quarterly newsletter.

My contribution to The Criminal Justice Policy Foundation is enclosed:

\$100 \$50 \$25 Other _____

NAME: _____ TITLE: _____

ORGANIZATION: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____

PHONE: _____ FAX: _____

E-MAIL: _____ WEB: _____

CJPF is a tax-exempt educational charity under section 501(c)(3) of the Internal Revenue Code.

Please return this form to CJPF, 1225 Eye St., NW, #500, Washington, DC 20005-3914