

The War on Drugs in Context

by Eric E. Sterling

Drug policy does not exist in a vacuum. It exists within a complex social, political, and cultural context that creates enormous obstacles to reform. Obvious major obstacles to achieving change in drug policy are the widespread ignorance of facts about drugs, the widespread belief that our children are especially endangered by drugs, and stereotyping surrounding drug use. In another social context, expanding



needle exchange and making medical marijuana available to patients who need it are stalled because political and bureaucratic

imperatives trump public health imperatives.

However, the realm of law and the justice system is where the principal crises of drug policy exist. The issues we identify as ripe for reform and around which we organize — mandatory minimum sentences, abuses of property forfeiture laws, evisceration of constitutional protections of privacy and due process, prison overcrowding, police and prosecutorial misconduct — are processes of the justice system. Yet as discrete as these reforms may be, they are frustrated by larger forces.

I sense that drug policy is part of a more comprehensive and perhaps intractable crisis of the criminal justice system. I fear our nation's legal culture is inured to injustice and corruption, and that our society is resigned to unfairness. The gulf between our myths of the ubiquitous scales of justice and the reality of the

grimy, deal-cutting, case-processing punishment machine is becoming unbridgeable. The contemporary legal culture is fundamentally indifferent to guilt or innocence, indifferent to the denial of due process, indifferent to vindicating equal protection of the laws, indifferent to perjury, indifferent to injustice.

The American Bar Association, I am pleased to say, has repeatedly adopted policies in favor of due process, in opposition to mandatory sentences, in support of needle exchange, and has expressed its collective opinion in favor of equal access to justice. But, I believe, it doesn't speak for America's lawyers. The active membership of the ABA is a tiny fraction of American lawyers.

The injustices of drug policy are well known to us, but they are few compared to the injustice that faces our legal system today.

First, the nation, the Congress, and state legislatures are indifferent to careless and hasty law writing. In 1979, when I started working for the Congress, the House Judiciary Committee invested extraordinary care in drafting legislation. Bills were generally short, and every page, line, and word was scrutinized. But by

October 1984, the House of Representatives passed hundreds of pages of anti-crime legislation after 20 minutes of debate. Last fall, Congress bundled \$500 billion in appropriations for a host of agencies along with dozens of pieces of important legislation into a single bill for a simple up-or-down vote. This corrupt process barely drew notice.

Second, the courts are indifferent to the accused persons who appear before them. The Supreme Court has systematically ruled that processing cases is more important than guaranteeing due process. In a footnote the Court states that, even if racism infects a state's criminal justice system, it doesn't matter. It was acceptable to the Supreme Court that a man face execution whose counsel slept through the trial.

Courts everywhere are willfully blind to the perjury of witnesses, particularly if committed by police officers or government informants. Courts are eager to accept guilty pleas — even from men who judges suspect are probably not guilty. Judges routinely observe incompetent counsel practicing before them without disqualifying or replacing them.

Third, at the level of policing, there is a widespread culture of indifference to those who are not, in police argot, "citizens." Rarely is anyone who is poor, non-white, poorly dressed, young, not fluent in English, disabled, or mentally ill a "citizen." "Non-citizens" are suspects. Suspects, of course, can be beaten or shot, if "necessary."

Fourth, at every level in the processing of criminal cases, almost every functionary is indifferent to claims of injustice. Even the journalists who cover the police beat or the court-

The Justice Gerald Le Dain Award for Achievement in the Field of Law

Gerald Le Dain, while dean of the Osgoode Hall Law School at York University in Toronto, served as the chairman of the Canadian government's Commission of Inquiry into the Non-Medical Use of Drugs, which made recommendations in 1970 and 1972. The commission recognized that the harm caused by a conviction for simple possession of a drug was "all out of proportion to any good it is likely to achieve." As a result, the recommendations of the Le Dain Commission included "no one should be liable for imprisonment for simple possession of a psychotropic drug for non-medical purposes." Later, Dean Le Dain was appointed a justice of the Supreme Court of Canada.

The Justice Le Dain Award recognizes the accomplishments of those who face the difficult task of working within official institutions during those times when extremist pressures dominate government policies.

Past Awardees:

- 1988 - Law Firm of Steptoe and Johnson
- 1989 - Georges Apap
- 1990 - Gerald Le Dain
- 1991 - Robert W. Sweet
- 1992 - Tony Serra & Michael Michaelson
- 1993 - James P. Gray
- 1994 - Michael Moore
- 1995 - Patrick Hallinan
- 1996 - John Morgan
- 1997 - Connecticut Law Revision Commission

1999 Awardee:

Eric Sterling, a former staff counsel for the House Judiciary Committee, is the president of the Criminal Justice Policy Foundation, 1225 Eye Street NW, Suite 500, Washington, DC 20005. Phone: (202) 835-9075. Fax: (202) 833-8561. Web: www.cjpf.org.

house, and the bar officials charged with overseeing the conduct of attorneys, are largely indifferent because "that's the way the system is."

Fifth, there is a great irony in this indifference, because our society is everywhere raising the stakes for infractions. As a kid, I routinely took to school my Swiss Army Knife, a gift from my father. I used it in the cafeteria to peel oranges and open sardine cans. Today, of course, I would be expelled from school for this.

Finally, there are few meaningful avenues for complaint about misconduct. In New York City, misconduct by police officers is reviewed by a Civilian Complaint Review Board. Since 1993, complaints about police conduct have increased from 2,173 to 7,183 in 1997, a jump of 230 percent.

Eighty-eight percent of these complaints come from persons who were neither arrested nor ticketed. Investigating 18,336 complaints from 1993 through December 1996, only 215 officers were disciplined. Not until December 1997 did the police department begin monitoring police officers who were involved in shootings. The department discovered 250 officers who were involved in three or more shootings. Seven officers had been involved in six or more shootings.

The federal watchdog against police brutality is also toothless. In last year's report by Human Rights Watch on police brutality in the United States, *Shielded from Justice*, the authors reported that in 1996 there were 3,026 referrals to various U.S. Attorneys' offices for civil rights violations by public officials. But they sent only 96 cases to a grand jury for prosecution.

Stupid decision-making, with life-endangering consequences, is

routine and commonplace in America and around the world. Red lights are run and speed limits are wantonly exceeded — thousands die. Food safety regulations are disregarded — thousands are sickened, hundreds die. Firearms are sold and misused — thousands are maimed, thousands are killed.

I fear that we will never reform drug policy without effecting more profound social change. Many drug policy reformers focus their concern about reforming society by enhancing their own freedoms. Yet it is only through a widespread undertaking of the protection, improvement, and reform of our communities and our institutions — which requires full participation in community — that we will restore our nation's compassion and commitment to justice.

Those who make the claim that drugs can be used responsibly, and offer themselves as evidence of such responsible use, must demonstrate not merely that they have not harmed society, but that they participate constructively in society. This participation cannot merely be political activity to expand their freedoms, but must be a committed engagement to benefit others. Engagement in drug policy reform without struggling to improve many other dimensions of our society is futile.

Through drug policy reform, I have met thousands of persons committed to their communities, to their neighbors and to the betterment of society. These persons are pushing aside indifference where they find it, struggling for justice and building a society of compassion. These are men and women, young and old, whose work we should emulate and whose successes give me tremendous hope. ♦