

JAMES P. GRAY\*

## Our Top Ten Drug Policy Goals

We have been actively “fighting” our nation’s War on Drugs since the time of Richard Nixon.<sup>1</sup> But during all of that time I have never heard anyone in government discuss, much less define, what our actual goals are in this effort. So, with the understanding that we are all on the same side of this issue—namely, we all want to reduce drug abuse and all of the harm and misery that accompanies it—I have made a list of the top ten goals that I think we are trying to accomplish in this area, in order of importance. See if you agree. They are:

1. Reduce the exposure of drugs to and usage of drugs by children;
2. Stop or materially reduce the violence that accompanies the manufacture and distribution of drugs, especially to police officers and innocent bystanders;
3. Stop or materially reduce the corruption of public officials, individual people and companies, and especially children, that presently accompanies the manufacture and distribution of drugs;
4. Stop or materially reduce crime both by people trying to get money to purchase drugs and by those under the influence of drugs;
5. Stop or materially reduce the flow of drugs into our country;
6. Reduce health risks to people who use drugs;
7. Maintain and reaffirm our civil liberties;

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<sup>1</sup> See Richard Nixon, President, United States 1969–74, State of the Union Message to the Congress on Law Enforcement and Drug Abuse Prevention (Mar. 14, 1973), *available at* <http://www.presidency.ucsb.edu/ws/index.php?pid=4140&st=fighting&st1=Nixon>.

8. Reduce the number of people we must put into our jails and prisons;

9. Stop or materially reduce the flow of guns out of our country and into countries south of our border;

10. Increase respect for our laws and institutions.

You might want to replace one of these goals with another, or readjust the order, but I anticipate that most people would basically agree with those top ten goals. Please give it some thought.

Upon reflection, I believe you will agree that treating the manufacture and sale of these drugs just like we treat alcohol—for adults—will actually accomplish all of those goals, and that pursuing our present policy of Drug Prohibition will never accomplish any of them. The latter has already been proved, because ever since the 1970s the entire situation has demonstrably continued to get worse.<sup>2</sup>

If we were to allow these drugs to be manufactured by reputable pharmaceutical or tobacco companies on low-bid contracts with the government, then sold to adults at government package stores in brown packaging without any trade names or any advertising whatsoever, and at prices that are about half of what they are being sold for today out on the streets, the drugs would be less available for children. Ask our young people yourselves, and they will tell you what they tell me: that it is easier for them today to get marijuana, or any other drug—if they want to—than it is alcohol. Why? Because illegal drug dealers don't ask for I.D.!

Such measures would also almost completely stop the crime related to the manufacture and distribution of drugs, just as the repeal of Alcohol Prohibition put the Al Capones of this world out of business. Today, if Budweiser has distribution problems with Coors, they do not take guns to the streets to resolve them. Instead, they file a complaint in court and have their dispute peacefully adjudicated by judges like myself.

In a similar fashion, the corruption caused by the huge amounts of available cash in today's illegal distribution of drugs would virtually disappear. Why? Because the price of the drugs would be cut in half and it would still be illegal to buy, use, sell, or possess drugs not purchased from the government outlets, illegal dealers would lose a great deal of their present market. That would run most of them out of business. And if cutting the price in half would not be sufficient, it

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<sup>2</sup> See generally JAMES P. GRAY, *WHY OUR DRUG LAWS HAVE FAILED AND WHAT WE CAN DO ABOUT IT* (2d ed. 2012).

could always be reduced further. That would also seriously reduce the flow of drugs into our country because there would not be a market for them. Furthermore, because drug dealers would no longer be making obscene profits from the sale of illicit drugs, they would not have the money or even the need to purchase guns here and smuggle them into countries south of our border.

Most of the health risks caused by the usage of illicit drugs today are caused by the unknown potency and purity of the drugs, in addition to diseases like the AIDS virus and hepatitis that are transmitted by using unclean needles.<sup>3</sup> But those are relatively easy problems to resolve, as we have seen by the FDA's resolution of virtually all of them with over-the-counter and prescription drugs decades ago.<sup>4</sup> Similarly, the repeal of Alcohol Prohibition virtually eliminated the "bathtub gin" impurities problems.<sup>5</sup>

Because most of the losses of our civil liberties have come from cases involving drug offenses,<sup>6</sup> that trend would be discontinued by legalization, thus reducing the erosion of our civil liberties. And because illicit drug dealers would be largely out of business and drug users would not be automatic criminals, the number of people we would be forced to incarcerate would be materially reduced. Furthermore, respect for our nation's laws and the agencies that attempt to enforce those laws would increase because we would no longer be arresting sick people for the use of medical marijuana, seeing people openly selling drugs on street corners in our towns and cities, or trying to enforce laws that make literally millions of people in our country automatic criminals for smoking marijuana..

The last goals to address are the issues of crimes committed by drug users to get money to purchase drugs, and crimes committed while under the influence of drugs. I could argue that, with the price cut in half, drug-addicted people would only need to steal half as much to get their drugs. But many would argue that, because the price was reduced, those people would simply use more drugs—and to some degree they might be right. However, consider the fact that several countries such as Portugal have found that the act of decriminalizing drugs has made drug-addicted people much less fearful of their own government. As a result, those people are more

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<sup>3</sup> See *id.* at 201–05.

<sup>4</sup> See *id.* at 235.

<sup>5</sup> *Id.* at 234.

<sup>6</sup> See *generally id.* at 103–30.

likely to come forward and seek drug treatment. Furthermore, because the government was saving the money it previously spent to investigate, prosecute, and incarcerate nonviolent drug users, more money was available to pay for drug treatment programs. In addition, they found that when drug addiction was treated as a medical issue, the usage of drugs was deglamorized to the extent that younger people were not nearly as likely to go down that road. For all of those reasons, drug crimes and drug abuse in Portugal were materially reduced.<sup>7</sup>

Regarding crimes committed by people under the influence of drugs, those would still be prosecuted, just like is done today with alcohol-related offenses. Holding people accountable for their actions, instead of what they put into their bodies, is what the criminal justice system was designed for, and that is a truly legitimate criminal justice function. What is the difference? When, for example, someone drives a motor vehicle under the influence of any of these mind-altering and sometimes-addicting drugs, they are putting our safety at risk, so those are righteous prosecutions.

Thus if you really want to achieve the real goals of our nation's drug policy, help us repeal the policy of drug prohibition, which has led us down the wrong path for decades.

So where should we start? For a variety of reasons, we should start with marijuana. The best approach would be for the federal government to repeal all of its laws of marijuana prohibition and allow each state to decide how best to serve and protect its people in this area. This is the approach that was used when we finally came to our senses in 1933 and repealed national alcohol prohibition by passing the Twenty-First Amendment. That simply reduced the federal government's involvement to assisting each state in enforcement of its chosen laws. Of course, this is also consistent with the concept of Federalism, which is one of the founding principles of our great country.

Then I recommend that each state repeal all laws that prohibit marijuana possession, use, sales, distribution, cultivation, et cetera, by

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<sup>7</sup> See GLENN GREENWALD, *DRUG DECRIMINALIZATION IN PORTUGAL: LESSONS FOR CREATING FAIR AND SUCCESSFUL DRUG POLICIES* 1 (2009); see also Caitlin Elizabeth Hughes & Alex Stevens, *What Can We Learn from the Portuguese Decriminalization of Illicit Drugs?* 50 *BRIT. J. CRIMINOLOGY* 999, 999–1022 (2010); see also Barry Tatton & Martha Mendoza, *Portugal's Drug Policy Pays Off: US Eyes Lessons*, FOX NEWS (Dec. 26, 2010), <http://www.foxnews.com/world/2010/12/26/portugals-drug-policy-pays-eyes-lessons/>.

people who are twenty-one years of age or older. Specifically: acts pertaining to driving a motor vehicle under the influence of marijuana; using or being impaired by marijuana in public or in the workplace; use, possession, sales, et cetera, of marijuana by people under the age of twenty-one; or providing, transferring, or selling marijuana to a person under the age of twenty-one would still be prohibited, and any laws or regulations regarding medical marijuana would still have effect in states that have passed such laws.

There should be a distinction made between marijuana and hemp, which is used for industrial purposes. Marijuana should be defined as the cannabis plant or product that has a THC or “potency” level of 0.1 percent or higher.<sup>8</sup> This product would be governed by regulations, taxes, and fees that use the wine industry as a model.<sup>9</sup> Marijuana with a THC level of less than 0.1 percent should be classified as “industrial hemp” and should be governed by the same regulations, taxes, and fees using the cotton industry as a model.

Of course the hemp industry goes back thousands of years, such that in ancient Greek the word for “canvas” was the same word as “cannabis,” or marijuana.<sup>10</sup> Similarly, the plantations owned by George Washington, Thomas Jefferson, and many other colonial planters grew large crops of hemp, which were used to produce rope, gunny sacks, and coarse cloth.<sup>11</sup>

Since the colonial period the uses of hemp have been greatly expanded. For example, today manufacturers can get four times the amount of paper pulp from an acre of hemp as they can from an acre of trees.<sup>12</sup> Furthermore, the hemp crop can be raised in one season of

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<sup>8</sup> This THC amount is so low that no user could possibly get any effect from smoking or ingesting it in any fashion. See CHRIS CONRAD, *HEMP: LIFELINE TO THE FUTURE* 284–85, 85 n.87 (1993).

<sup>9</sup> The wine industry is used as the model because this product is fairly effectively regulated and controlled by the government. In addition, there would be many similarities in the growing, production, and distribution of both products. For example, people can grow their own grapes and make wine, although most choose not to do so. In addition, wine cannot be sold without a special license, there are limits on advertising, and it cannot legally be sold to children. All of these restrictions should be equally applied to marijuana.

<sup>10</sup> JACK HERER, *HEMP & THE MARIJUANA CONSPIRACY: THE EMPEROR WEARS NO CLOTHES* 5 (rev. ed. 1991).

<sup>11</sup> Several authors have summarized of the extensive role of industrial hemp throughout world history. See CONRAD, *supra* note 8, at 6–37; ROWAN ROBINSON, *THE GREAT BOOK OF HEMP* 102–23 (1996); EDWARD M. BRECHER ET AL., *LICIT AND ILLICIT DRUGS* 397–409 (1972); CHRIS CONRAD, *HEMP FOR HEALTH* 14–30 (1997).

<sup>12</sup> See, e.g., Jeremy Briggs, *Can Hemp Replace Trees as a Major Source for Paper*, HEMPHASIS, [http://www.hemphasis.net/Paper/paper\\_files/hempvtree.htm](http://www.hemphasis.net/Paper/paper_files/hempvtree.htm) (last visited Feb.

about eight months, while it takes about twenty years to grow the trees.<sup>13</sup> Increased industrial use of hemp would allow the paper pulp industry in the Northwest United States and elsewhere to be reclaimed, along with all of the jobs, revenues, and taxes that this would engender.

A huge and almost immediately visible result of this entire recommended approach would be to deprive Mexican drug cartels, juvenile street gangs, and other thugs of large amounts of money. Instead this money would generate appreciable amounts of sales and income tax revenues to city, county, and state governments, all of which could be used for things such as fixing potholes in roads, paying the salaries for police and firefighters, and educating children.

It is important, however, that the new laws should prohibit all commercial advertising of the sales, distribution, and use of marijuana, except for medical marijuana and products made from industrial hemp. This provision might be controversial for some liberty-minded people, but it would go a long way toward taking the glamor out of marijuana, especially for children. Of course, if adults want to buy the product, they would readily know by word of mouth where it could be obtained.

After the Netherlands decriminalized marijuana back in the 1970s, its Minister of Health stated that the country had only half the marijuana usage per capita in their country as we do in ours—both for adults and for teenagers!<sup>14</sup> And he went on to explain why by saying, “[w]e succeeded in making pot boring.”<sup>15</sup> A system in which marijuana is no longer sold illegally and is not advertised commercially will yield the same results.

Many medical and legal professionals believe that in various ways marijuana is actually less harmful than my drug of choice, which is

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25, 2013), *see also* CONRAD, *supra* note 8, at 116–27 (describing hemp’s benefits for the paper industry).

<sup>13</sup> *See generally* Briggs, *supra* note 12; *see also* Elise Ackerman, *The Latest Buzz on Hemp: U.S. Farmers Want the Ban on Cultivating the Plant Lifted*, U.S. NEWS & WORLD REPORT, Mar. 15, 1999, at 50 (discussing increased sales and diverse usage of hemp); Craig Turner, *New Hemp Isn’t Meant for Smoking*, L.A. TIMES, May 16, 1994, at A1, A10 (describing industrial uses of hemp); Dan McGraw, *Hemp is High Fashion*, U.S. NEWS & WORLD REPORT, Jan. 20, 1977, at 54, 56 (discussing hemp’s use in clothing).

<sup>14</sup> *See* Ethan Nadelmann, *Europe’s Drug Prescription*, ROLLING STONE, Jan. 26, 1995, at 38.

<sup>15</sup> *Id.*

alcohol,<sup>16</sup> and others believe that it can actually be used effectively to relieve pain and fight many diseases, as well reducing the harmful symptoms from chemotherapy for cancer patients.<sup>17</sup> So if adults choose to use recreational marijuana instead of alcohol, no governments, as a matter of freedom and liberty, should be able to prohibit them from doing so.

To pursue this subject a bit further, it makes as much sense to me for the government to control what I as an adult put into my body as it does to control what I put into my mind. It is simply none of the government's business! Instead, government does have a right to control my actions if those actions have a realistic propensity of causing harm to others.

Yes, the use, possession, growing, and sale of marijuana and hemp under this proposal would remain illegal under federal laws, unless those laws were to be changed. But all state laws should contain a provision that prohibits anyone working for or contracting with any state, county, or city governments from cooperating with any such federal investigations, prosecutions, punishments, or forfeitures, as long as the subjects of the investigations were acting within the provisions of that state's laws. Thus, if the federal government still wanted to enforce its laws prohibiting marijuana, it would be forced to do so alone, and to bring its criminal cases before juries made up of citizens of states in which using, possessing, or selling marijuana was not illegal.

About fifteen years ago, I was in the offices of two sitting members of Congress in Orange County, California, and each Congressman separately told me in his own words, "Jim, you're right, the War on Drugs is not working, and most people in Washington understand this. But even though the War on Drugs is not winnable, it is eminently fundable, and Washington is addicted to the drug war funding." In other words, what we have today is an amazing partnership between the good guys and the bad guys, as they are bonded together by the receipt of huge amounts of money! It is long since time for "We the People" to stand up and stop this. In fact, I will go so far as to say that the policy of drug prohibition is the biggest failed policy in our country's history, second only to slavery!

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<sup>16</sup> See DRUG WAR FACTS 12–13 (Douglas A. McVay ed., 4th ed., 2004) (regularly updated at [www.drugwarfacts.org](http://www.drugwarfacts.org)); see also JACOB SULLUM, SAYING YES: IN DEFENSE OF DRUG USE 7–24 (2003) (comparing cultural, psychological, and physical effects of alcohol and drugs).

<sup>17</sup> See SULLUM, *supra* note 16, at 256.

Nevertheless, we continue to pursue that policy, even in the face of transparent failure and open hypocrisy. We all know the story about President Clinton, who stated that he had used marijuana, but “didn’t inhale,” which now has turned into a national joke. But it wasn’t so funny when it was revealed that Olympic swimmer Michael Phelps had been smoking marijuana,<sup>18</sup> showing once again that the most harmful thing about using marijuana is getting caught. That same message is starkly clear with regard to President Obama, who voluntarily acknowledged in one of his books that he used marijuana quite regularly while he was a community organizer in Chicago, and even used cocaine.<sup>19</sup> What do you think it would have done to his chances of ever winning any elective office had he been even arrested, much less convicted, for such use? Obviously Mr. Obama was luckier than millions of other people in our country who have had their lives ruined by drug arrests and convictions.

So, once again, why do we pursue such a failed policy? There are many reasons for this in addition to the funding issues, and much of the fault can be traced directly to us as voters. One of the truisms of our lives today is that politicians are great at followership, which is to say that politicians will follow wherever the votes are. So they have showed how “tough” they are by railing about how they will “put drug dealers in prison and save our children.” Of course we increasingly know that this approach doesn’t work, but it sounds good—and we the voters have rewarded politicians for these proclamations by continually electing and re-electing them to public office.

Another reason is more subtle. In the year 2011, according to FBI statistics, there were 128,000 more arrests for marijuana possession than for all violent crimes combined.<sup>20</sup> How can this happen in these

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<sup>18</sup> See Juliet Macur, *Photograph Costs Phelps 3 Months and a Sponsor*, N.Y. TIMES, Feb. 6, 2009, at B9.

<sup>19</sup> John Swaine, *Barack Obama’s Marijuana Smoking Days with the ‘Choom Gang,’* THE TELEGRAPH (May 25, 2012), <http://www.telegraph.co.uk/news/worldnews/barack-obama/9290972/Barack-Obamas-marijuana-smoking-days-with-the-Choom-Gang.html>.

<sup>20</sup> According to FBI statistics, 43.3% of 2011 drug arrests were for possession of marijuana. *Crime in the United States 2011: Persons Arrested*, FBI, <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/persons-arrested/persons-arrested> (last visited Feb 27, 2013). That constituted 663,032 of the total 1,531,251 drug arrests. See *Crime in the United States 2011: Table 29*, FBI, <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/tables/table-29> (last visited Feb. 27, 2013). Arrests for violent crimes in 2011 totaled 534,704—a figure over 128,000 fewer than arrests for possession of marijuana. *Id.*

days of scarce resources? Because in many ways policing has become a numbers game and drug offenses are the “low-hanging fruit.”

To explain, in the world of drug statistics, no crime has occurred until after an arrest has been made. This is true because the buyers and sellers of illicit drugs are all getting what they desire, so no one files a complaint. This in turn means that there are normally zero unsolved drug crimes on police records. Then once a drug arrest occurs, a case is opened and instantly solved, so the rate for unsolved drug crimes still remains at just about zero.

Bureaucrats live and die by statistics, and the War on Drugs materially helps to keep unwanted statistics lower. For example, the unsolved case rates nationwide in 2011 were thirty-five percent for murder, fifty-nine percent for rape, seventy-one percent for robbery, and forty-three percent for aggravated assault.<sup>21</sup> As I think everyone will agree, the average for these unsolved crimes is high. But, when the zero rate for unsolved drug crimes is added to the formula, the total unsolved crime rate drops, which is a bureaucratically desirable result.

Fortunately, the national climate that allows for the continuation of the policy of drug prohibition is changing. The largest indication of that is the voters’ passage in November 2012 of initiatives in Colorado and Washington to treat marijuana like alcohol.<sup>22</sup> Over time, those two initiatives will be seen as the beginning of the end of drug prohibition in the United States and many other countries of the world. Already Mexico, Uruguay, Guatemala, and other countries are openly discussing alternatives to this failed policy.<sup>23</sup> And the positive experiences in Portugal, the Netherlands, Switzerland, and other Western European countries which have adopted alternative approaches are also being much more widely and affirmatively discussed. For example, people are beginning to openly discuss the fact that the tens of thousands of violent deaths in Mexico since President Calderon began his own War on Drugs have nothing to do with drugs, and instead are only related to drug money.<sup>24</sup>

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<sup>21</sup> *Crime in the United States 2011: Clearances*, FBI, <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/clearances> (last visited Feb. 27, 2013).

<sup>22</sup> See Allison Linn, *Colorado, Washington Approve Recreational Marijuana Use*, NBC NEWS (Nov. 6, 2012, 9:34 PM), [http://nbcpolitics.nbcnews.com/\\_news/2012/11/06/14977250-colorado-washington-approve-recreational-marijuana-use?lite](http://nbcpolitics.nbcnews.com/_news/2012/11/06/14977250-colorado-washington-approve-recreational-marijuana-use?lite).

<sup>23</sup> JEFFREY DHYWOOD, *WORLD WAR D: THE CASE AGAINST PROHIBITIONISM: A ROADMAP TO CONTROLLED RE-LEGALIZATION* 232–24 (2011).

<sup>24</sup> See Kevin Casas-Zamora, *Tough Love for Central America*, L.A. TIMES, June 22, 2011, at A15; Nicholas Casey, *Mexican Drug War Spills Over to a Neighbor*, WALL ST. J.,

From my perspective, helping to repeal the failed and hopeless policy of drug prohibition is the most patriotic and effective thing I can do for the country I love. I have been publically involved in this effort since 1992, and because of that involvement I have been exposed to some of the finest people I have ever met. Some of them have been to prison, many use drugs, and some are even drug addicted; others are like me in that they have never used any presently illicit drugs. But all of them have reached similar conclusions to mine based upon their own individual life experiences. And this serves to underscore our absolute conviction that this movement is on the right track. If you agree, please join us. You will be amazed and gratified at the positive contribution you will be able to make.