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PART I

INTRODUCTION

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**O**n April 8, 1992, I did something quite unusual for a trial judge: I held a news conference in the plaza behind the courthouse in Santa Ana, California, and openly set forth my conclusions that our country's attempts through the criminal justice system to combat drug use and abuse, and all of the crime and misery that accompany them, were not working. In fact, I had concluded that drug reform was the most important issue facing this great country and that our so-called War on Drugs was our biggest failure. I had reached these conclusions after spending years as a federal prosecutor in Los Angeles, a criminal defense attorney in the navy, and a trial judge since 1983 in Orange County, California. I had seen firsthand that we were wasting unimaginable amounts of our tax dollars, increasing crime and despair, and severely and unnecessarily harming people's lives, particularly our children's, by our failed drug policy. In short, I had seen that our drug laws were a failure, and I simply could not keep quiet about it any longer. Some people listened; some agreed; some were outraged and wanted to punish me for my comments.

We have been following essentially the same Drug Prohibition policy for many decades, and it has given us the worst of all worlds. Today more drugs are available in our communities, and at a lower price, than ever before. We have greatly expanded the number of prisons in the United States, but all of them are overflowing. As a direct result of the enormous amount of money available from illicit drug sales, the corruption of public officials and private individuals in our society has increased substantially. We have a much higher incidence of diseases, such as hepatitis and AIDS,

caused by the use of dirty needles, than most industrialized countries in the world. The War on Drugs has resulted in the loss of more civil liberties protections than has any other phenomenon in our history, including the results from the attack on New York's World Trade Center on September 11, 2001. Instead of being shielded, our children are being recruited into a lifestyle of drug selling and drug usage by the current system. And revolutionaries and insurgents abroad are using money procured from the illegal sale of drugs to undermine legitimate governments all over the world. We could not have achieved worse results if we had tried. These are strong allegations, but the pages that follow prove that all of them are true.

Our current Drug Prohibition policy is centered on the criminal justice system, in which we judges are required to play a significant role. There may be a few judges in this country who still believe that our current drug policy is working, but they are surely a small and decreasing minority. Most judges have strong views about how to improve our drug policies, and some of them are quite advanced. I have had many private conversations on this subject with other judges who know that the War on Drugs has failed—in other words, that “the emperor has no clothes.” But just like many politicians and law enforcement officers, judges are also concerned about undermining their effectiveness or exposing themselves to an electoral challenge by addressing this issue publicly.

There is also, however, a gratifyingly large number of judges and justices from all over the country who have agreed to be quoted publicly or have already published their thoughts themselves. Some of these judicial officers are quoted in this book, but space limitations prevent me from quoting the many, many others. Many of the statements quoted in this book were derived from a letter that U.S. District Court Judge Robert W. Sweet of the Southern District of New York sent on July 30, 1998, to state and federal judges and justices around the country, requesting their responses to several articles about our nation's drug policy that he had enclosed.<sup>1</sup> Judge Sweet graciously provided me with a copy of these responses, and I sought permission from the authors to publish some of them here. The vast majority agreed, with many supplying additional statements that I was free to quote as well. Unless otherwise noted, the quoted remarks in the pages that follow were obtained in this fashion. It must also be stated that I and all of the judges quoted herein are speaking only as individuals and that we do not speak for any of the various courts on which we serve.

A clear and concise statement of the problem is given in “An Open Letter from Judges and Attorneys,” sponsored by the Voluntary

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1. See Robert W. Sweet, “The War on Drugs Is Lost,” *National Review*, February 12, 1996:44–45.

Committee of Lawyers, Inc. This letter was originally signed by eleven judges and appellate justices, and reads as follows:

As judges and lawyers, we share with all Americans a deep concern about the threat that drugs pose to our children and our country. For more than twenty years, our nation's response to this threat has been a "war on drugs," enforced primarily through a criminal justice process which we administer and observe on a daily basis.

Though we differ in political orientation and career experience, we unanimously observe that neither drugs nor drug abuse has been eliminated or appreciably reduced, despite massive spending on interdiction and harsh punishments. Attempts at enforcement have clogged the courts, filled the prisons with non-predatory offenders, corrupted officials at home and abroad, bred disrespect for the law in important communities, imperiled the liberties of the people, burdened the taxpayers, impeded public health efforts to stem the spread of HIV and other infectious diseases, and brought the nation no closer to abstinence. As Congress and state legislatures enact more punitive and costly drug control measures, we conclude with alarm that the war on drugs now causes more harm than drug abuse itself.

Accordingly, we join with our colleagues in calling upon our profession, elected officials, the media and the public to initiate a truly open and honest evaluation of the efficacy and consequences of our drug control laws. Only a public debate guided by mutual respect can yield better drug laws in which fear, prejudice and punitive prohibitions yield to common sense, science, public health and human rights. As America must never "surrender" to drugs, neither must she surrender to inertia or fear that shuts off debate, suppresses critical analysis, dismisses alternatives to current policies, and vilifies those who express dissenting views.<sup>2</sup>

Judge Morris S. Arnold, U.S. 8th Cir. Ct. of Appeals, Little Rock, Arkansas;

Judge Myron H. Bright, U.S. 8th Cir. Ct. of Appeals, Fargo, North Dakota;

Judge Nancy Gertner, U.S. District Court, Boston, Massachusetts;

Judge Douglas W. Hillman, U.S. District Court, Grand Rapids, Michigan;

Justice William E. Hunt, Sr., Montana Supreme Court, Helena, Montana;

Judge Morris E. Lasker, U.S. District Court, New York City, New York;

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2. See <http://www.vcl.org> for a current list of signatories.

Judge James C. Paine, U.S. District Court, West Palm Beach, Florida;  
 Judge J. Dickson Phillips, Jr., U.S. 4th Cir. Ct. of Appeals, St. Paul,  
 Minnesota;  
 Judge R. A. (Jim) Randall, Minnesota Court of Appeals, St. Paul,  
 Minnesota;  
 Judge Marvin H. Shoob, U.S. District Court, Atlanta, Georgia; and  
 Judge Robert W. Sweet, U.S. District Court, New York City, New  
 York.

This sensible but passionate plea for public debate on our failed drug policies has also been raised by such distinguished public figures as the late Milton Friedman, a Nobel laureate in economics; George Shultz, Secretary of State under President Ronald Reagan; the late William F. Buckley, Jr., a nationally syndicated columnist; Kurt Schmoke, former Mayor of Baltimore; Joseph D. McNamara, former Chief of Police of both Kansas City, Missouri, and San Jose, California; Gary Johnson, former Governor of New Mexico; Arianna Huffington, another nationally syndicated columnist; former Mexican President Vicente Fox; former United Nations Secretary-General Kofi Annan; Senator Claire McCaskill (D-Mo.); former Brazilian President Fernando Henrique Cardoso; Virgin Group founder Richard Branson; former U.S. Federal Reserve Chairman Paul Volcker; former Colombian President César Gaviria; and even the Reverend Jesse Jackson. Most of these are very conservative people who see that we are inflicting unnecessary harm on ourselves by our current drug policy and have called out publicly for reform. I received a standing ovation from both the Orange County chapter of the American Civil Liberties Union and the Young Republicans of Orange County after giving essentially the same speech on our failed drug policies. This is a nonpartisan issue that crosses all political boundaries.

The raw information for this book came from twenty years' worth of newspaper and magazine clippings, from extensive reading in the great number of books already published on the subject, and from the government's own information—in addition, of course, to my own personal experience with the criminal justice system, including my active involvement as a former drug warrior.

I have learned through my twenty years of experience that although the War on Drugs makes for good politics, it makes for terrible government. The War on Drugs is about lots of things, but only rarely is it really about drugs. We pursue it not because it is effective but because it is fundable. I am convinced, however, that when the American people realize the huge and unnecessary costs—human and financial—that we are paying because of our failed drug prohibitionist policy, they will demand its repeal.

I begin with three guarantees: (1) No one who reads this book and thinks objectively about the issues it raises will favor a continuation of our present drug policy—unless that person is making money from its perpetuation or has some other vested interest in it. Many people do have such vested interests, of course, including, most obviously, those who smuggle and sell large quantities of illicit drugs. But there are also people with careers and expertise in government-funded projects and drug law enforcement, and people who build and work in our country's jails and prisons, and people who build and supply burglar alarm equipment and other devices to protect us from increased crime. And many politicians continue to get elected by talking tough about the War on Drugs. (2) Our country *will* someday change to a materially different drug policy. I do not know when, and I do not know to what, but there will definitely be a substantive change. (3) Within a few years of this change, we will look back in astonishment that we allowed our former policy to persist for so long, much as we look back now at slavery, or Jim Crow laws, or the days when women were prohibited from voting—and we will wish fervently that we had not waited so long to abandon these failed and destructive policies. But do not expect many of the people who make up our prison-industrial complex to lead the charge for reform. Asking these people if we should continue with the status quo is like asking a barber if you need a haircut.

For a very short time back in 1978, I held the record as an Assistant U.S. Attorney for the largest drug prosecution in the Central District of California. This was a case involving 70 kilograms (about 154 pounds) of heroin that had been smuggled into the United States from Mexico, repackaged in Los Angeles, and sent on to Detroit for distribution. We were able to convict the rancher who grew the poppies and manufactured the heroin in Mexico, as well as the prime mover of the operation, who was a very dangerous man, and two of his assistants.<sup>3</sup> That was and is a large amount of drugs. However, to my knowledge, the record now in the Central District is eighteen *tons* of cocaine, which was seized from one location in Sylmar, California.

The fact that these amounts are now so large should not be a surprise. In October 1999 Colombian and U.S. agents arrested members of a cocaine-smuggling ring in Colombia accused of smuggling around *thirty tons* of cocaine *each month* into the United States and Europe.<sup>4</sup>

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3. Narda Zacchino, "Mexican Citizen Convicted in Dope Case," *Los Angeles Times*, June 17, 1978, Part I: 16

4. Karl Penhaul, "Cocaine Ring Busted by U.S., Colombia," *Orange County Register*, October 14, 1999: News 21; Eric Lichtblau, "Huge Cocaine Ring Smashed," *San Francisco Chronicle*, October 14, 1999: A14. As a further symptom of the depth of the problem, note that the arrest of this major drug ring rated coverage only on pages 21 and 14, respectively, of these newspapers.

And those numbers continue unabated, regulated only by demand, and as long as the exorbitant profits are out there, smugglers will continue to creatively invest in new and expeditious methods, including requiring illegal immigrants to smuggle drugs into our country as part of their fee for passage, building elaborate systems of tunnels, and using airplanes, fast boats, and even submarines.

There is no question that law enforcement is doing a better job today than ever before—we now see larger seizures of drugs, larger forfeitures of assets, more arrests and convictions of drug offenders, and longer prison sentences than ever before. But this does not mean that we are better off than we were back when I was a prosecutor. One of the big reasons is that in real life when we arrest a serial rapist and send him to prison, we have fewer rapes. But if we arrest a drug dealer on any street corner, it makes no difference—other than that the taxpayers are forced to spend about \$30,000 per year to keep the dealer in prison. Why? Because other people treat this as a lucrative employment opportunity. Thus almost literally within forty minutes of the arrest, someone else is back on the same street corner selling drugs. Of course, this is also true at the wholesale cartel level, where the big money is made.

So what exactly is the current drug policy in the United States of America? Over the past several decades, our government has attempted to combat the critical problem of drug use and abuse with a program of massive prisons, demonization of drug users, and prohibition of debate about our options. This policy approaches drug use and abuse as a moral issue: “Drugs are evil, and if you take them, you are evil, and we will punish you.” But decades of failed attempts to make this policy work have shown that we cannot effectively take a medical problem and treat it as a character issue. Unfortunately, because we tend to see issues of drug usage in moral terms, many people actively resist opening their eyes to the severe damage this policy is visiting on us and fail to consider viable alternatives.

Part II addresses the damage we have inflicted on ourselves through our current drug policy. There is abundant and graphic evidence, both historical and immediate, that our present policy has violated the credo of the medical profession “First, do no harm.” It is also shown clearly that there are inherent limits to what can effectively be done in a free society to keep people from selling small amounts of drugs for large amounts of money. In short, the drug policy our government has pursued for decades has worked directly against the people of this country, and it actually strengthens the things that it attempts to destroy.

Most people agree that our War on Drugs is not working, but most people are simply not aware that we have viable options. Former Secretary of State George Shultz voices this fact succinctly when he says, “I have a zero tolerance attitude, but I am still searching for the best way

of implementing it.” Regrettably, however, a common tactic of the drug prohibitionists is to lump all of the possible alternatives together and label them all as the “legalization of drugs.” They exploit this idea of legalization, a concept that initially frightens people, and equate it with surrendering in the War on Drugs and giving up our children to the menace of drug addiction. This strategy enables them to refuse to discuss or even acknowledge other possible approaches. We have only one realistic course, they disingenuously argue, which is to step up our efforts in the current Zero-Tolerance War on Drugs.

In truth, however, there are numbers of distinct and very workable options to the extremes of zero tolerance on the one hand and drug legalization on the other. Some of those options, which are discussed in some depth in Part III, are programs to deprofitize these drugs, such as *drug decriminalization*, which basically means that although the drugs remain illegal, as long as people stay within very clear guidelines the police will leave them alone; *regulated distribution*, which is the strictly controlled and regulated sale to adults of designated drugs, similar to the way alcohol is sold in some states; and *legalization of drugs*, which basically leaves the distribution of these drugs to the marketplace with all of its protections under the *civil* justice system, and uses the *criminal* justice system to govern people’s behavior. Additional options are different types of *drug treatment*, such as *rehabilitation* programs, both voluntary and involuntary, public and private, and *medicalization*, which fundamentally puts drug-addicted people under the control of medical doctors and their staffs, using programs of drug treatment, needle exchange (which exchanges a dirty needle for a clean one without charge), drug maintenance (which allows prescriptions for the subject’s drug of choice to be filled at a local pharmacy or medical clinic so that the subject neither gets a high nor goes through withdrawal but is maintained at an equilibrium level), and drug substitution (which substitutes one drug, such as methadone, for the subject’s drug of choice). Many countries in Western Europe are not as concerned as we are with puritan morality and are taking a much more practical approach to their drug problems by using combinations of these alternative approaches—and with successful results!

Another option, of course, is an even more strictly administered War on Drugs, or Zero Tolerance—“only this time we will really get tough!” Unfortunately, we have been getting tougher and tougher for the last several decades, and literally every time we have done so it has made our problems worse. Finally, we examine the option of *federalism*, the rationale for the repeal of Prohibition in 1933 (which I refer to as Alcohol Prohibition to distinguish it from Drug Prohibition), which allowed each individual state to pursue its own policy and at the same time limited the federal government’s involvement in helping each state enforce its chosen



laws. This approach was contemplated by the Tenth Amendment to the U.S. Constitution and many of the Federalist Papers. Some states chose to stay dry, others allowed alcohol to be sold in government package stores under a program of regulated distribution, and still others allowed the sale of alcohol to adults by licensed private vendors.

Finally, whatever option or combination of options we eventually pursue, it must include a major educational component. The need for education about drugs and drug abuse is almost universally agreed on, even by those who would maintain our current War on Drugs.

Throughout this book you will be presented with the perspectives of state and federal judges from all over the United States, and from other countries as well. They will provide you with their insights, feelings, and conclusions about how poorly our present system has been doing, with examples from their experiences, and with recommendations for reform. And of course my own insights, gained from my experience as a former federal prosecutor and trial judge, are also sprinkled throughout the book.

Part IV looks more closely at what we can do about this situation. Each one of us, as inhabitants, citizens, and voters in this country, can effect a change away from our failed drug policy. For many years as a trial judge I had a clerk who kept a handwritten sign on her desk that read “If it’s to be, it’s up to me.” She was right, of course. Ultimately, we are responsible for the failure of our current drug policy, but at the same time no one is in a better position to change it. Appendix A contains a resolution that those who wish to may sign, and Appendix B presents some additional supporting information, including a brief summary of many neutral governmental commission studies and other public inquiries that have taken place in the United States, Canada, England, and even Jamaica over the last hundred years. Each study has concluded that while a new policy may, at least in the short run, result in some increased drug use, we must move away from the incarceration of people for using drugs and treat this matter as a medical and social problem. The beginning of the end for Alcohol Prohibition was the publication of the findings of the Wickersham Commission—which basically made the same recommendations as have the commissions on Drug Prohibition—and there is every reason to believe that our current prohibition on drugs may be reformed in the same way.

But before launching too deeply into the subject matter itself, I want to present nine threshold points so that we can begin this discussion with a common understanding:

1. We are all on the same side of this issue—that is, we all desire to reduce drug abuse and all of the crime and misery that accompanies

- it. Almost all of our disagreements center on which drug policy option can best accomplish that goal.
2. Whatever drug policy we use should encourage more individual responsibility and accountability in our society, not less.
  3. Without a doubt, heroin, cocaine, methamphetamines, and so on, can be dangerous and sometimes addictive drugs. But so also are alcohol and tobacco sometimes dangerous and addictive drugs, and virtually everyone agrees that we would only compound their harm by (again) making them illegal.
  4. Just because some people discuss various options about how best to combat drug abuse, or even believe that we should employ a different option, does not mean that those people condone drug abuse.
  5. Education in the area of drug policy is critically important, and it has definitely had some positive results, but education will continue to be used effectively no matter what drug policy options we choose to employ.
  6. Law enforcement has been doing a magnificent job in attempting to enforce our current drug laws. The problem is with the drug laws themselves, not the police, the courts, or the rest of the criminal justice system. Blaming law enforcement for the failure of Drug Prohibition is no more appropriate than blaming Elliott Ness for the failure of Alcohol Prohibition.
  7. We have never been a drug-free society and we never will be. Recognizing this fact, and recognizing the fact that these harmful drugs are here to stay, we should try to employ an approach that will most effectively reduce the deaths, disease, crime, and misery caused by their presence in our communities.
  8. No matter what option we employ, there will always be an important role for the criminal justice system. Our present system is fairly effective in holding people accountable for their actions after drinking alcohol, even though it is not illegal for adults to use it, and there is no reason why the justice system cannot play a similar role regarding these other drugs as well.
  9. Drug policy is a complex and multifaceted issue that does not lend itself to little sound bites and slogans. But if we must adopt a slogan, we should use something like “If you want to keep gettin’ what you’re getting’, keep doin’ what you’re doin’.”

So what should we do now? First, we should approach this issue as managers, not as moralists. This means that we must look for ways to bring these dangerous drugs back under our laws. At first glance, that seems like a strange mandate: bring these drugs back under our laws? But the more one focuses on our current system, the more one understands

that today the only “laws” addressing the actual use, sale, and quality of these drugs are those enforced by the illegal drug sellers. In truth, to a large degree we have experienced a literal collapse of the rule of law in this area. The more we are able to bring these dangerous drugs back under the law, the fewer problems we will have.

Investigating our options, or even choosing to pursue a different option, does not mean that we condone drug use or abuse. But we must also recognize that, while the use of drugs often has some harmful consequences, Drug Prohibition has its own unique harmful consequences as well. For example, when drug dealers shoot police officers, witnesses, innocent bystanders, or even each other, that is a Drug Prohibition problem rather than a drug problem. Similarly, when drug users are forced to steal or prostitute themselves to get money to buy artificially expensive illicit drugs from the criminal underworld, that is a Drug Prohibition problem more than it is a drug problem. So too is the diversion of billions of dollars from the prosecution of violent street crime and fraud to the prosecution of hundreds of thousands of nonviolent drug sellers and millions of drug users a distinct problem of Drug Prohibition.<sup>5</sup> For those who are interested in balance-of-payment deficit issues, illicit drug sales are responsible for a larger drain of cash than anything else in our economy except oil. The image I see is a never-ending line of people pushing wheelbarrows full of fifty-dollar bills out of our country with cash generated from the sale of illicit drugs. This is uniquely a problem of Drug Prohibition and has almost nothing to do with the drugs themselves.

Since pursuit of the same failed policy has no reasonable hope of improving our position, we should study our options. Accordingly, the president and Congress should appoint one final, neutral, blue-ribbon commission to study our options as fully and as publicly as possible. The members of the commission should include representatives from law enforcement, medical and drug treatment professionals, former addicts, members of the clergy, university scholars, and so on. It could be chaired by someone like former Secretary of State General Colin Powell, former Surgeon General C. Everett Koop, or a person of similar stature and credibility.

This commission should examine how the U.S. government originally chose to employ the current approach. Professors Richard J. Bonnie and Charles H. Whitebread II published an extensive inquiry into the legal history of American marijuana prohibition in the October 1970 issue of the *Virginia Law Review*.<sup>6</sup> Their work includes many citations of the

5. See Ethan A. Nadelmann, “The Problem Is Prohibition,” *Los Angeles Times*, February 7, 1996, Orange County ed.: B11.

6. Richard J. Bonnie and Charles H. Whitebread II, “The Forbidden Fruit and the Tree of Knowledge: An Inquiry into the Legal History of American Marijuana Prohibition,” *Virginia Law Review*, October 1970.

*Congressional Record* that show that public health and safety issues were not even considered by Congress in making this substance illegal. Instead, the motives appear to have been racism, fear, empire building, and ignorance.<sup>7</sup> The commission should examine and publish these facts.

The commission should also investigate successful approaches to drug regulation over the past decades, as well as failures. It should look at the approaches of other countries as well. And it should inquire into the causes of the upsurge in drug use, crime, and court and prison overcrowding in the United States, an upsurge that has not occurred on anywhere close to the same scale elsewhere.

We must remember that no matter which option or options we choose, life will not be perfect. While a large part of this book is devoted to a discussion of the problems inflicted on us by our current policy, we must recognize that alternative policies will have problems as well. As I repeat throughout this book, these drugs are dangerous and can be harmful. So our goal must be to adopt a policy that most reduces the harms that can and will be caused by the presence of these drugs in our communities. We must, therefore, adopt a more medical, public-health-oriented approach for our national drug policy. Every major neutral study in the United States in the past hundred years has recommended that some form of drug decriminalization be adopted *because* of the dangers of these drugs and *because* prison is the worst, most expensive, and least effective approach. In short, we must openly discuss this entire area, consider all of the evidence, and adopt programs that will work. I suggest that any such program will have large helpings of the following four ingredients:

1. *Education*—Virtually every social problem besetting our society can be mitigated by a strong program of education, and this is certainly true with regard to drug abuse.
2. *Prevention and Treatment*—Programs of preventive maintenance and repair are effective for our automobiles, our airplanes, and our own bodies, and they work in the area of drug abuse as well.
3. *Positive Incentives*—Set up a system that encourages people to do what is socially acceptable, instead of the system we have today, which presents such strong financial incentives to sell drugs and otherwise to violate the law.
4. *Individual Responsibility*—Hold all of our people personally accountable for their *actions* through the criminal justice system. If someone burglarizes a house to get money for a new stereo or

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7. See also David F. Musto, *The American Disease: Origins of Narcotic Control*, 3d ed. (New York: Oxford University Press, 1999), in which this author from the Yale School of Medicine came to similar conclusions.

for drugs, that is a crime, and it should be prosecuted. Similarly, if someone drives a motor vehicle under the influence of alcohol, cocaine, or marijuana, he or she must be held accountable. By contrast, if adults go home after work and take a mind-altering drug, whether it be alcohol, marijuana, or anything else, without harming anyone but themselves, we should try to educate them away from this conduct if it is harmful and make drug treatment available if they need it. But prosecuting and incarcerating them for this activity is counterproductive—and even inappropriate.

All of our options in the area of combating drug abuse include a strong segment involving education of our people about the harmful effects of these dangerous, mind-altering, and sometimes addictive drugs. Beyond that similarity, each option has its own features, and necessarily, each has its own particular strengths and weaknesses. The only real enemy to change is the decades of rhetoric that prohibit an open and honest discussion of our options and equate these discussions with the condoning of drug use and abuse.

In June 1995 the Discovery Channel broadcast *The Cronkite Report—The Drug Dilemma: War or Peace?* At the end of this hour-long broadcast, Walter Cronkite made the following statement:

Just about every American was shocked when Robert McNamara, one of the master architects of the Vietnam war, acknowledged that not only did he believe the war wrong, terribly wrong, but that he thought so at the very time he was helping to wage it. That's a mistake we must not make in this tenth year of America's all-out war on drugs. It's surely time for this nation to stop flying blind, stop accepting the assurances of politicians and other officials that if only we keep doing what we're doing, add a little more cash, break down a few more doors, lock up a few more [people], then we would see the light at the end of the tunnel. Victory would be ours. . . .

It seems to this reporter that the time has come for President Clinton to do what President Hoover did when [alcohol] prohibition was tearing the nation apart: appoint a bipartisan commission of distinguished citizens, . . . a blue ribbon panel to reappraise our drug policy right down to its very core with a commission with full investigative authority and the prestige and power to override bureaucratic concerns and political considerations. Such a commission could help us focus our thinking, escape the clichés of the drug war in favor of scientific fact, more rationally analyze the real scope of the problem, answer the questions that bedevil us, and present a comprehensive

drug policy for the future. We cannot go into tomorrow with the same formulas that are failing today. We must not blindly add to the body count and the terrible cost of the war on drugs only to learn from another Robert McNamara thirty years from now that what we've been doing is wrong, terribly wrong.<sup>8</sup>

Without question, our present drug policy materially affects everyone in our country, abusers and nonabusers alike. The evidence of its failures is all around us. Wherever you are, pick up today's newspaper. The odds are good that there will be at least one account of a tragedy that was caused solely by our current drug policy. The papers are full of stories of an innocent bystander or a police officer being injured or killed during a shootout with drug dealers; of overdoses caused by the unknown strength or purity of a drug; of the corruption of people in this country and all around the world because of the enormous profits to be made by the selling of illicit drugs; of the cutting back of hours or outright closing of public libraries and homes for mentally ill; and so on because of increased spending for prisons and the other necessities of the War on Drugs.

In 1988 Congress adopted a resolution that declared its intention that the United States be drug free by 1995. Obviously that goal was hopelessly naive. By February 1994 President Clinton more realistically adopted a national drug control strategy he called *Reclaiming Our Communities from Drugs and Violence*. But even this more modest goal has not been realized. The late actor Carroll O'Connor, after observing this nation's drug policy for years, and after losing his son Hugh to drugs, put the case succinctly:

It's time to admit that our approach to the drug problem has failed. After more than a decade of the "war on drugs," too many lives are still being shattered. We spend billions to enforce laws that return small benefit. The hard drug market is strictly illegal, and the drugs are everywhere easily obtainable. We run from the drug problem and hide behind verbiage that demands no special action and no new expense: "Work on education! Education is the sole remedy! People must learn to refrain; they have to do it by themselves!" Meanwhile, nothing changes. Why should it? Nothing has been done.

Is legalizing drugs an answer? I don't advocate legalization, but people who yelp that legalization would "open the floodgates" haven't noticed, or perhaps won't admit, that the floodgates were

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8. Walter Cronkite, Epilogue, *The Cronkite Report—Drug Dilemma: War or Peace?* Discovery Channel, June 20, 1995.

pushed open years ago. Addiction is created by a number of conditions, but availability of drugs is not one of them.<sup>9</sup>

Surprisingly enough, all of the multifaceted and complex issues surrounding illegal drugs can be distilled into two fundamental questions. First, understanding that, no matter what we do in a free society, these drugs are here to stay, do we want to address this situation as managers or as moralists? And second, if we choose to be managers and we understand that any other drug policy option that would take at least some of the profit out of these drugs and bring them back under the law would result in significant benefits to society, would those benefits outweigh the increased drug use that might—or might not—result from that different policy?

As a trial judge and former federal prosecutor, I have seen firsthand the devastation brought on the people of this country both by the presence of dangerous drugs in our communities and by our failed policy of Drug Prohibition. For me—and for fellow judges who are quoted in these pages—the evidence is in, and now is the time to act on it. My own view is that we should readopt the concept of federalism, described above, and allow each state to adopt the policy or policies that it concludes will best meet its needs. We should likewise revise our treaties so that all other countries will be able once again to address their domestic drug problems in the manner they deem most effective. It is clear after all these many years that our federal government does not have the right answers. It is time for other, more local governments to retake command.

Dick Cavett was once quoted as saying, “It’s a rare person who wants to hear what he does not want to hear.” To that comment I offer a corollary: “Friends tell friends the truth.” The real problem in this area actually is not the drugs themselves. The real problem is that our citizens and our leaders simply will not look at the evidence, even though it is all around us. Our present policy is exacerbating the problems and will not stand up to scrutiny. What we really need to do is to open the subject to rigorous public debate. This is our best and perhaps our only hope for moving forward to a better strategy and to adopting programs that work. Advocates of the status quo stand firmly against full or open discussion of federal drug policy, but what we really need to do is explore our options realistically, and tell each other the truth.

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9. Carroll O'Connor, “Let’s Get Real,” *Parade Magazine*, July 16, 1995:8.