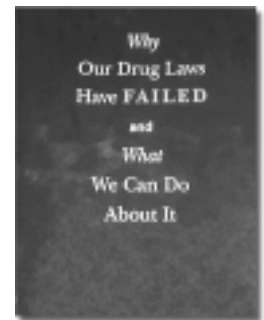


Why Our Drug Laws Have Failed and What We Can Do About It: A Judicial Indictment of the War on Drugs

by Judge James P Gray

Review by Jill Waalen, MD, MPH



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If there's any doubt that the country is awash in illegal drugs, Americans need look no further than their wallets: 79% of US paper currency circulating in this country carries detectable amounts of cocaine.¹ And headlines heralding seizure of tons of marijuana, heroin, cocaine, or other drugs are not signs of successfully fighting the "War on Drugs"; instead, such drug seizure is a sign of failure—proof that illegal drugs are being found in ever-increasing amounts within our borders.

A lively narrative filled with similarly provocative insight, Judge James P Gray's book details how current US drug laws have created a wonderland of unintended consequences. The book also pleads for acute change in the direction of these laws. As a 20-year veteran of the Superior Court in Orange County, CA, Judge Gray writes from the front line in the War on Drugs—a futile battle, which, he maintains, has to date mostly been prosecuted against drug users instead of suppliers. As a result, the laws have successfully filled ever-growing numbers of prisons across the country with nonviolent drug offenders while both availability of drugs and the criminal activity surrounding them continue to escalate.

Gray's account of the endless stream of drug offenders into the nation's prisons yields some astounding statistics. For example, the incarceration rate in the United States is higher than in any other country except Russia. This statistic is largely a result of jailing drug users: 58% of federal prisoners are serving time for drug offenses. One of every 150 Americans is in jail at any one time—and this number is growing. As a result, one in 20 white Americans and one in four black Americans will be jailed sometime during their lifetime.

One of Judge Gray's examples of unintended consequences is that our main method of getting tough on drugs—trying to "incarcerate ourselves out of the problem"—has resulted in leniency for more violent criminals: The combination of overcrowded prisons and laws that specifically require drug offenders to serve full sentences has allowed criminals serving time for violent offenses to be granted early release to make room for more drug offenders. This result occurs because, unlike the rule governing drug offenses in many juris-

dictions, serving a full sentence is not mandatory for many violent crimes (eg, bank robbery and kidnapping).

In fact, according to Judge Gray, one of the only laws that has functioned as expected in the War on Drugs is the law of supply and demand: Largely due to drug prohibition, the driving force in the increasing drug problem is the huge profit which accompanies drug trafficking.

Why Our Drug Laws Have Failed is intellectually stimulating and rivals the 2000 film *Traffic* in illustrating the pervasiveness of the drug problem in America. After reading the book, one finds it difficult to identify any aspect of American life that has not been corrupted by both our country's drug problem and our chosen method of combating it. The enormous profits to be reaped from drug trafficking have encouraged creation of youth gangs, corruption of law enforcement officials, and a dramatic increase in crime rates. At the same time, the ever-escalating War on Drugs also has had negative effects: Channeling resources away from prosecution of other crimes; threatening the environmental health of developing countries by using toxic herbicides to eradicate drug-producing plants; and, in the name of drug interdiction, stripping civil rights from many US citizens in a way unlike any other pre-September 11 law enforcement initiative.

Judge Gray's book presents an insider's view backed by quotes from many other judges across the country who echo his desperation in the fight against illegal drugs. The book goes beyond the standard call for blanket legalization of all drugs, a call based solely on comparison with the failed prohibition on alcohol. The author digs deeper, tracing historical idiosyncrasies that have created the current situation. According to Judge Gray, original drug laws were "... fundamentally racist laws aimed at perceived threats to white women ... [from the use of cocaine, marijuana, and opium] by black, Mexican, and Chinese men, respectively;"^{2,p20} and in the decades since, US Presidents and the US Congress have continued to pass stringent laws—and when these laws fail, to pass more of the same—so as to gain the political benefits of "getting tough on drugs." Judge Gray also

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describes “the Prison-Industrial complex”—prison-building industries combined with the bureaucracies running the prisons—as a self-interested force that practices political opportunism in perpetuating the status quo.

Dividing the book into two roughly equal parts (as suggested by the title), Gray performs best in the first part: How the War on Drugs is failing. Probably because it lacks concrete examples of success, the second half of the book—the part that discusses what we can do about drug abuse—is less satisfying. Judge Gray outlines specific strategies for education, mandatory drug treatment, needle exchange, and drug decriminalization as steps toward a solution. In particular, he emphasizes education—but not the “Just Say No” variety. Instead, he argues for a more realistic, truthful approach that recognizes drug use as part of the culture and that portrays drug use as risky, harmful, and unattractive—an educational approach similar to that taken in current antitobacco campaigns.

For Judge Gray, drug decriminalization—a big step toward removing the profit from drug trafficking—would restrict and regulate drug sales instead of prohibiting them outright. Here his argument is buttressed by the apparently arbitrary line between some legally prescribed drugs (eg, tranquilizers) and illicit, “street” drugs. Although Judge Gray cites some successful examples of these approaches in other countries, no currently suc-

cessful comprehensive model exists; and, as the second section of the book makes clear, changing our approach to the drug problem will ultimately require “a leap of faith,” ie, a willingness to try creative new strategies.

Although included in Judge Gray’s list of options, continuing to escalate the current War on Drugs is one option that, as the book clearly shows, is not viable. If the book attracts enough readers, its well-reasoned and convincing arguments may help increase the ranks of drug antiprohibitionists beyond the libertarian fringe and could draw a coalition of drug law reformists from all political quarters. Judging from the wide spectrum of support for the book—represented on the jacket by endorsements—from people ranging from political commentator Arianna Huffington to broadcast journalist Walter Cronkite to economist Milton Friedman—Judge Gray’s effort to assemble such a coalition is off to a good start. ❖

References

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Two Freedoms

There are two freedoms—the false, where a man is free to do what he likes; the true, where a man is free to do what he ought.

Charles Kingsley, 1819-75, English clergyman and novelist