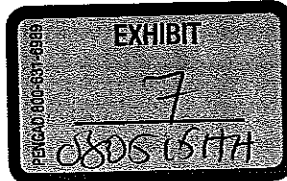


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LAW ENFORCEMENT AGAINST PROHIBITION

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May 15th, 2008

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Reference: the joint public hearing on the Rockefeller Drug Laws, conducted by the Assembly Committees on Codes, Judiciary, Correction, Health, Alcoholism and Drug Abuse, and Social Services

My name is Michael Smithson and I am a resident of Camillus, NY, a suburb of Syracuse. I am the operations director of Law Enforcement Against Prohibition, a 10,000 member educational organization with 2,531 members in New York State.

LEAP was created to give voice to law-enforcers who believe the U.S. War on Drugs has failed and who wish to support alternative policies that will reduce the incidence of death, disease, crime, and addiction, without destroying generations of our young by arrest and imprisonment.

I am also a retired air traffic controller with 23 years of service and a Navy veteran. As a controller and a sailor in the Navy I participated in drug interdiction efforts. I bear witness to the abject failure of the U.S. war on drugs and to the horrors produced by its unintended consequences.

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As a member of the Navy and aboard a nuclear powered guided missile cruiser in Oct 1982, I participated in a task force to promote President Reagan's War on Drugs. In our task force we had the nuclear powered aircraft carrier Nimitz, my ship, the USS Mississippi and our sister ship, the USS Texas plus several supporting ships. Secretary of State Charles Shultz was aboard the Nimitz plus a contingent of law enforcement people including the US Coast Guard. Over several days, dignitaries from Central American countries were flown out for a show of force by our task force so we could dazzle them with our high powered military equipment. We put on multi-ship maneuvers, did fly-bys with A6 all-weather bombers, F14 fighters made famous in the movie Top Gun, and anti-submarine warfare S3 Vikings. During this period, my ship was assigned to look into a suspected drug trafficking vessel, which turned out to be an ocean-going tug boat. After we located the ship and began discussions with the master, our captain communicated with senior Navy officials, along with State Dept. personnel both aboard the Nimitz and in Washington and the US Coast Guard commanders in Miami. After several hrs of discussion, a decision was made, ordering us to board the SS Recife. This was a monumental decision in US drug policy efforts. On this day, US Navy personnel from the USS Mississippi boarded a vessel in international waters near Panama and confiscated it because it was carrying several bails of marijuana. This was the first time a US warship had performed such a feat outside of wartime, in more than 100 years and it marked a major turning point in US drug policy.

Ironically, I was exposed to US drug policy in a great way just a few years later, this time as an air traffic controller watching over the skies in Southwest Texas during the mid-1980s. The US Border Patrol and the DEA were competing to see who could one-up the other performing intercepts of unsuspecting drug trafficking aircraft. In our facility we had a border patrol agent watching the same scopes as us,

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supposedly to keep the border patrol and DEA aircraft from intercepting "legal" aircraft but they could only watch so much of the sky in our facility's responsibility of 168,000 square miles. I saw a DEA aircraft intercept an FBI aircraft. I saw a border patrol aircraft intercept an American Airlines MD80 over Corpus Christi. I saw a DEA aircraft intercept an Air Force KC-135 tanker. Over my career I have seen similar examples of illegal activity by US law enforcement agencies, all in the name of the crusade we know as the War on Drugs.

Many members providing testimony before you—first in New York City last week and now, today, in Rochester, are providing you with data about the cost of the Rockefeller Drug Laws. Cost of keeping a person in prison per year, say \$35,000 or the cost of prosecuting a drug offender. All good information. I want to talk to you today about some concepts.

I believe that this is as big as anything facing New York and America today. It is on a par with terrorism. What "war" has gone on longer than the War on Drugs? We've lost tens of thousands to overdoses, drive-by shootings and gang violence. We've had hundreds of thousand injured and harmed by the effects of prohibition but we continue to fight it. We've spent literally trillions of dollars and every year I see you people wringing your hands over what to do with the budget. Everyone comes to Albany asking for money. Give teachers raises. Fund the school budgets better. Fund mental health better. Fund city and county budgets. Help offset business taxes as counties compete to bring in businesses. "Where's the money?" you keep asking yourselves.

I'm showing you the money. The money is in the NY State criminal justice budget. Table that for a moment while I take you to another perspective.

Let's talk early Athenian Law—all the way back to the 7th century BC to a fellow named Draco. Famous guy. He was an Athenian lawgiver whose harsh legal code punished both trivial and serious crimes with death. Draco's laws were shockingly severe—so severe that they were said to have been written not in ink but in blood. On the civil side they permitted enslavement for debt, and death seems to have been the penalty for almost all criminal offenses. The idea, of course, was that it would greatly reduce crime and violence and even the most trivial misgivings would have such a harsh rendering that society would straighten up. The baddest of the bad would be eliminated and after a few more death penalties for minor crimes, everyone else would wise up and fly straight. Great plan but it didn't work.

In 594 BC another ruler or "archon" named Solon rose to power. Solon's great contribution to the future good of Athens was his new code of laws. Solon revised every statute except that on homicide and made Athenian law altogether more humane. His code, though supplemented and modified, remained the foundation of Athenian statute law until the end of the 5th century, and parts of it were embodied in the new codification made at that time.

We all know Draco thru the word "draconian" but it is Solon who was remembered throughout history as being the great lawmaker of the period. Draconian is the word often used to describe the Rockefeller Drug Laws.

Solon, like Draco, had choices. I suggest that for drug crimes, you, the legislators of New York, have basically four options. Think of a roulette wheel with four spaces titled:

- more education
- tougher sentencing
- more law enforcement
- a fourth choice which no one ever seems to consider. If the roulette wheel somehow lands on the fourth unknown choice my roulette wheel is spun again. We all know what the fourth choice is...to end prohibition. Policymakers are afraid to select this fourth option. They won't say it because they think it will taint them. They won't utter it to anyone, even staff members



because if an opponent gets wind of this idea, the incumbent will immediately be besieged by people calling them soft on crime—the albatross of a losing campaign. I'm here to tell you that this is a myth. Consider this:

A TX Democratic Senator named Morris Sheppard was known as the "father of Prohibition" and on Sept 25th, 1930 he stated: "there is as much of a chance of repealing the eighteenth amendment as there is for a humming bird to fly to the planet Mars with the Washington Monument tied to its tail. This country is for temperance and prohibition and it is going to continue to elect members of Congress who believe in that." The 21st Amendment to the Constitution that repealed Prohibition was ratified on Dec 5th, 1933, just 3 years after Senator Sheppard made his boast.

Other examples? Consider the Berlin Wall. Everyone was surprised that the Cold War would end so abruptly, but it did on Nov 9th, 1989.

The American version of the Women's Suffrage Movement began basically right down the road, in Seneca Falls, NY. Want an inspirational moment? Go and stand amid the church walls where the first meetings were held in 1848. Who knows when American men finally got around to giving women the right to vote? The 19th Amendment was passed in 1920—72 yrs later. Many folks said it would never happen—but it did.

What about the ultimate example: slavery. It existed for 200 yrs and no one believed it would ever end.

In every one of these examples, we allowed a vocal minority to lead the discussion. The vocal minority leads through scare tactics. Be afraid.

I am here, to represent the majority.

As the operations director for LEAP I arrange speaking engagements to civic groups like Rotaries, Kiwanis, Lions and Optimists. Church congregations. Retired persons. The speakers bureau has more than 80 members and booking them is easy. Everyone wants to hear what a cop, judge, prosecutor, prison warden or other criminal justice professional has to say about the war on drugs. Every single day I receive another favorable comment about the presentation my speakers have made—and they don't just say current policy is a failure—they say we should regulate and legalize all drugs.

When my speakers are talking to any size of an audience they often will pose two questions to the listeners:

If drugs were legal tomorrow--any drug—take crack cocaine, for example. Would anyone in the room use crack cocaine if it was legal tomorrow?

The answer is always the same no matter who the group is: Rotary Clubs, Lions Club, college classes, church congregations or retired military officers. Nearly everyone in the room says no. Occasionally, you have one person raise their hand.

Then, the 2nd question: who thinks that someone else in the room will use crack cocaine if it was legal? We always get the same response: at least one third of the hands go up—sometimes as many as ½ in the room. Try this simple test with your friends.

You have just witnessed the example of hysteria versus reality. The hysteria is that we all think someone else will use crack cocaine. The reality is that nearly no one will use crack cocaine. Today you will hear both hysteria and reality.

Earlier I asked you to think about the money. Many, as I have said, will point to the prison costs. The cost of running the DA's office. Important numbers to remember and consider. But let's consider the life of just one individual: Joe.

The life of Joe.

Consider the life of a single Rockefeller Drug Law recipient: Joe. Joe has been charged and then convicted of a drug crime. Consider the stigma of having a drug conviction on your record for the rest of your life. Joe is a young man in his early 20s. He attends a party where someone passes a marijuana joint with a couple of friends and the police bust the party. Joe may never go to prison but he now has a

conviction of possession and possibly a conviction with an intent to sell or distribute based on the quantity.

Every time Joe applies for a job he is asked the question about any drug convictions and he is faced with two questions: say **yes** and explain what it was, or, **no**, and lie, and hope they won't actually do a criminal background check. Joe knows that he may not get the job if he says yes and he knows that he may get the job but then still lose it and get fired if he lies on his application.

Joe will have this conviction following him around for the rest of his life. Some employers will overlook it. Many employers will not. Many jobs such as mine as a retired air-traffic controller, will be unavailable to Joe. Joe and many people like him will be stuck with taking jobs that have few benefits such as medical insurance or retirement.

Joe's conviction will impact his credit rating, will impact his lone approval rating and impact his ability to acquire a job with good benefits. Joe's conviction is a Scarlet Letter and will basically make him and many people like him wards of the state.

Advance the timeline by 10 years...

See Joe after he is married and raising his family. Someone is ill so he goes to a clinic or a hospital emergency room. He doesn't have health benefits through his job. Consider the cost of childbearing and raising children.

Now go 5 years further into Joe's life. Joe will make use of food stamps, free breakfast programs for his children at school, and any other welfare program that is available. While things may appear well for Joe and his family, it is the New York State taxpayers who are paying the bill. Joe is probably living paycheck to paycheck and unable to save money for colleges for his children. Remember he had a bad credit rating so even if he could get a home loan he is paying a higher percentage for his loan.

Again, Joe will be looking for assistance from the state and the federal government to help get his children through school. Does he try for a college loan for his kids or are they doomed to options that don't require a college education? Maybe Joe is able to put a few dollars into a retirement fund.

Look well into the future for Joe, as he ponders retirement. He's working into his 60s and probably into his 70s, unable to put much money into any kind of retirement plan. He'll be hoping for assistance to live in addition to his Social Security but he will have been hoping for his 401K to build. How much of it did Joe need to access when his kids asked for college funds? Plus, don't forget that the SUNY tuition rates have been going up—the legislature has taken funds from the SUNY/CUNY budget to offset the need to increase the criminal justice budget.

And what of Joe's children or grandchildren? Will the cycle continue?

My description of Joe's life is certainly a worst-case scenario, but I'm sure that I've described the life of many people with drug convictions.

Should Joe have stayed away from drugs? Absolutely. Where does the responsibility lie for Joe's mistakes? Clearly with Joe. But, the state has a responsibility, too. Policymakers have a responsibility to write effective law., not like Draco; like Solon.

We have a saying at LEAP: you can get over an addiction but you can never get over a conviction. Joe's conviction will chase him throughout his lifetime.

Concepts.

I've spoken about the money—let me tell you a bit more. Last week I received a call from a city councilor who spoke of a police chief that came to his committee asking for funds. The police chief had been told that a cocaine trafficking crew was operating in his town of 35,000 and that if he could get \$50,000 from the police trust fund to help cover his overtime, he could work this drug dealing case and rid the town of these dealers. The DEA said that he would qualify for a federal money grant if he helped them on this case and busted the team. So here's an example of a police official looking to the money as the basis for his decisions about resource management.

The same thing happened to a LEAP advisory board member, Joe McNamara. Joe's a retired police chief from San Jose, CA and before that, New York City. After seeing zero dollars allocated to his department for new police cruisers, he spoke to the city manager. The city manager said: "Joe, you don't need money from me. You have acquired millions thru the drug busts and assets.

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Pay for your own cruiser." McNamara realized the box he had been painted into and resigned soon after.

Concepts.

Consider the clearing of cases. In 2006 the Dept of Justice reported that nationwide, 44.3% of violent crimes and 15.8% of property crimes were cleared by arrest or exceptional means. According to the DoJ, this was the lowest rate for the clearance of cases in the history of reporting on these items. How could that be, you might ask. We have more cops, more money going to law enforcement. Surely we are doing better at solving these crimes. My family went through just such a crime—my daughter's car stereo was stolen from the lot of her university-area apartment. The police department blamed drug addicts and though her credit card was used several times that morning before we cancelled it there was never any effort to find the culprit.

This is about **resource management**.

Law enforcement officials are challenged to go after specific crimes because of the federal "carrot"—the dollars made available thru grants.

Many Americans see the violence on TV and call their legislators to get hopping in their area. They do, the police make some busts and move on. But what most people do not know is that in the annual reporting of arrests and violent crime, the DoJ only reports on the four so-called "Biblical Crimes": **Rape, robbery, assault and murder**. Drug arrests are not listed in the annual census. LEAP believes that if the public was told the whole truth and not just part of it, then the drug laws would change. Last year in America, drug arrests out-distanced the four Biblical crimes—by several hundred thousand. That's what the War on Drugs has done: focused police assets on drug crimes and forgotten the other crimes.

Concepts.

Consider some of the other items impacting the policy.

Around the country we have had a proliferation of SWAT teams, even for small towns like my own. There is no need for these para-military cops for all of these small towns but thru drug asset-forfeiture funding and federal grants, they are equipped with the best wiz-bang weapons known to law enforcement. And what to do with the special weapons teams? Why, we use them, and often. Over 100 raids per day are conducted by SWAT, somewhere in the US, according to Radley Balko's White Paper published by CATO in 2007. Non-invasive warrant issuances could occur but more and more lately there has been a reliance on these teams to perform this role and accidents, er, "collateral damage", occurs.

"Collateral Damage" and "law enforcement" were two phrases that never used to co-exist together. Collateral damage was something involving military operations but that line has blurred, too. We are becoming more accepting of the mistakes made by police when they serve warrants to wrong addresses. Examples like when the SWAT team crashes thru the door, shoots first and finds out later that they had the wrong address or their "CI" had lied to them.

We are often asked by an audience what they can do to help change the climate. I direct them to their representatives in Albany and other state capitals. We tell them that legislators are like surfers: they don't make the wave, they ride the wave. I'm challenging you to help make this wave because the wave of drug policy reform is building. It is a tsunami coming at you and you can be part of it or be washed over. Be the wave. Show the courage that the 1848 Women's Suffragettes showed us. Show the courage of Governors Johnson and Richardson of New Mexico as they put changes into place in NM. Be the wave.

You will hear today from the NY State District Attorney Association, a cabal of people protecting their power. They have been doing this ever since the enactment of the Rockefeller Drug Laws. You will be shown more hysteria and many will talk of their drug rehabilitation programs. They

will talk of their sincerity to save people from drugs. Several years ago the Onondaga County DA told an audience that even if just one person was saved through his drug program he would consider it worth the effort, time and cost. Why is it that we accept such results? Would we want a teacher that is only able to graduate one student from an entire class?

Changes must be made in New York and not more of this tweaking that has been performed over the years. Remember my roulette wheel of options? In Suffolk County they are trying an idea that was attempted here in Rochester two years ago. Looked good. Nothing changed. It is the same in every community. Spin the wheel, spend more money and try something new—but it is never new. More education, tougher sentencing, more law enforcement. Spin the wheel.

LEAP has performed thousands of presentations over 5 years with hundreds of them conducted in New York. At every single function we get a terrific response. Maybe you are thinking that they are just being nice to our speaker and respectful of his work in law enforcement. Actually, we believe that EVERYONE easily fits into one of four categories. We tell the audience the categories and suggest that they will know immediately where they lie.

The A group: completely agreed with us before we started the presentation. We hope they enjoyed the show.

The B group: completely agrees with the A people that the War on Drugs is a failed policy but that "L" word—a bit to extreme for them and they are looking for other options.

The C group: they had come to the meeting thinking that the War on Drugs didn't effect them nor did they know anyone with a so-called drug problem. They may feel slightly embarrassed after the presentation because they are seeing the connections to so many issues and know that they need to research the issue.

The D group: our favorite since it is this group of people that will be happiest when we leave the room.

The make-up of America, of New York, of your district your town or your neighborhood is comprised of the same 4 groups. 15-20% are completely in agreement with ending the War on Drugs. 15-20% are aggressively opposed to ending prohibition. And the 60-70% in the middle are actually leaning in the direction of the A group. We just need to reach the, explain the issue and change will occur. So we do that, on nearly a daily effort somewhere in the US or Canada.

If we could reduce death, disease, crime and addiction by legalized regulation of drugs why have we been fighting this war?

I know you can't end the war on drugs but you can reduce some of the horrible unintended consequences of this war.

End the mandatory-minimum prison sentences given to those found guilty of illegal drug offenses.

Use the money you will save to create drug treatment, drug education, and other programs that give people hope for the future. If they have hope for their futures, people will not need to use drugs.

Sincerely,

Michael Smithson
Operations Director, LEAP

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