
Battlefield Conversions

Reason talks with three ex-warriors who now fight against the War on Drugs

[Michael W. Lynch](#) | January 2002 [Print Edition](#)

Like any war, the War on Drugs has its good soldiers -- a varied bunch, coming from all walks of life and filling all ranks. They include eager volunteers, from the drug czars at the top of the command chain to the beat cops, Drug Enforcement Administration and Customs Service agents out in the field. The war also has reluctant conscripts, such as state and federal judges compelled by mandatory minimum sentencing rules to enforce laws that many see as counterproductive and unjust.

Increasingly, the War on Drugs also has what its partisans might consider traitors -- former soldiers who have become convinced that U.S. drug policy is ineffective, immoral, or some combination of the two. *Reason* National Correspondent Michael W. Lynch recently spoke with three such figures who were once integral cogs in the drug war machine.

The Judge: James P. Gray

Most individuals arrested by a cop eventually appear before a judge. These days, they won't be appearing in Judge James P. Gray's Southern California courtroom. Since publicly questioning the U.S. drug strategy, the Orange County Superior Court judge has kept himself off the criminal calendar. But, like Levine and McNamara, he has witnessed the reality of the U.S. drug war -- as a defense attorney in the Navy, as a prosecutor in Los Angeles, and as a judge. Says the 56-year-old Gray, "We're flooding our courts with these cases that aren't making any difference whatsoever."

In 1998, Gray ran unsuccessfully against then-Rep. Bob "B-1" Dornan in the Republican congressional primary for the 46th District in Orange County, California. Gray is particularly frustrated with what he says is a major pillar supporting the drug war: the informal prohibition of discussing options other than, well, prohibition. "The World Affairs Council in Orange County invited then drug czar Gen. Barry McCaffrey to come here and debate me on drug policy," says Gray. "His answer was, 'No, I don't have time to give a debate, but I do have time to give a speech.'" Gray never booked a debate with McCaffrey, but he put his side of the debate in a new book, *Why Our Drug Laws Failed and What We Can Do About It* (Temple University Press).

Reason: What has been your involvement with the War on Drugs?

James P. Gray: I go way back. I am a former drug warrior. I believed in it and I did it with a bold heart. I was a criminal defense attorney in the Navy and handled drug cases. I was a federal prosecutor in Los Angeles in the U.S. Attorney's Office. For a short time, I held the record for the largest drug prosecution in the Central District in California. Having been a judge since 1983, I've seen in my own court that we just churn these people through the system and we seldom get the real top bananas.

Reason: Did any specific event prompt you to question your involvement with the drug war?

Gray: It just really evolved. I've been clipping newspaper articles now for about 20 years. It's just the lights go on, and then the lights go on a little stronger. I can't say there was an epiphany. It just was kind of a Chinese water torture. It just kept going and kept going, where eventually I just had to say something publicly about it.

Reason: What is the typical drug case that comes before your court?

Gray: The typical drug case is a small amount of drugs that is being sold by somebody to support his or her habit. You get into some larger ones. A couple of weeks ago we had a 12-ton shipment of cocaine coming towards San Diego. But mostly it's just the low-level users and the low-level drug sellers. And we fill our prisons with them.

Reason: How do you adjudicate those typically? Does the law force you to adjudicate them in ways you think are counterproductive?

Gray: The answer to the second question is certainly yes. There are documented situations in which very conservative federal judges are literally in tears because they are required by the law to sentence a particular offender to a draconian sentence.

Reason: What's the worst drug case you've had come before you?

Gray: I was on Juvenile Court for Abused and Neglected Children. I can't get these cases out of my mind. It was common that a single mother -- say she has two children -- would hook up with the wrong boyfriend, who would be a drug dealer. One fine day he would tell her, "Look, Maria, I'll pay you \$500 to take this package across town to Charlie." She basically knows it has narcotics in it. She gets arrested and gets five years in prison.

What happens to her children? They come into my court as abused and neglected children. There's the mother in a prison jumpsuit and handcuffs and I tell her the truth. "You know, ma'am, you're not going to be a functional part of your children's lives for the next five years." She starts to well up with tears. Then I tell her that unless she's fortunate and has either a close personal friend or family member who is both willing and able to take custody of her children, they are very likely going to be adopted by somebody else by the time she gets out of prison. She dissolves into tears.

Taxpayers can start to dissolve in tears, also. Because for the next year they're going to spend \$25,000 of taxpayer money to keep this mother of two in prison. We're going to spend upwards of \$5,000 a month to keep each child in a group home until they are finally adopted by somebody else. So that's \$60,000 a year per child, plus \$25,000 for the mother. We are spending \$145,000 of taxpayer money to physically separate a mother from her children. It just doesn't make any sense.

Reason: You write about a drug exception to the Bill of Rights.

Gray: When I graduated from law school in 1971, it was illegal for a police officer, even after arresting you, to search anything that was outside of your grasp. If you can reach over to something, then you could search it. But if a suitcase you were carrying was locked, the police could not go in there unless they got a search warrant first. They couldn't go into the trunk of your car, they couldn't go into the glove compartment, and they couldn't go into the backseat. That has totally been reversed. The police not only can search you and everything in your car, but they can also search your passengers. They can search your mobile home, which is in effect a home on wheels. They can go through and search everything.

Reason: There's a debate over whether the arrests for drug crimes are casual users for possession or dealers who are charged with possession because it's easier to convict. Have you thought about this?

Gray: Basically, I think that the prosecutors are right. We have people who are so overwhelmed that they have to reduce the sentences by plea-bargaining. However, they are all small pushers. They are all little guys. And a lot of them are selling small amounts of drugs in order to support their habits, because the drugs are so artificially expensive.

Reason: What has been the response of your colleagues to your speaking out on this issue?

Gray: Anyone who talks about it with me in the elevator or in the judges' lunchroom agrees that what we're doing is not working. Publicly, judges are pretty conservative people. A lot of them don't see themselves as social workers. A lot of them are concerned about their effectiveness and getting reelected, so they are just not going to say publicly what they believe privately.

That was really brought home to me when I gave four forums sponsored by the American Bar Association. After doing so, I received a letter from the present chief justice of the Supreme Court of a Southern state. He wrote, "Dear Jim: You're right. The War on Drugs isn't working. You're also right that it's fully appropriate for a sitting judge to discuss it because of what our position is in society. And I see these cases all the time coming across my desk. What we are doing simply isn't working. But I gave up a lucrative law practice for this present job. I love my job and if I were to speak publicly, I would have to spend all my time justifying myself. I just don't think I could do it."

Reason: You write that the only people whose positions have improved under the drug war are those who make more money selling drugs and those who make money enforcing the drug laws. Are you alleging a sort of bootlegger-Baptist coalition, where lawbreakers and prohibitionists end up on the same side of an issue?

Gray: De facto, yes. It was not set up that way. Just like it wasn't set up to discriminate against minorities. But it has evolved into an amazing alliance between the drug lords on the one hand, who are making just obscene amounts of money, and various officials who are getting paid money to enforce this. They both have a financial interest and incentive in continuing with the status quo.

When I was running for Congress a few years ago, I met individually with two sitting congressmen from Orange County to try to get their support. They both said that the War on Drugs isn't working, but the problem is even worse than I thought because most federal agencies get extra money to fight the War on Drugs. It's not just the obvious ones like the U.S. Customs Service and the DEA. It's the little guys too, the Bureau of Land Management, the Bureau of Indian Affairs. They are addicted to drug war funding.