Paramilitary Police
Guest: John Payne
January 16, 2014

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WOODS: What caught my eye was this piece you wrote for *The American Conservative* magazine not too long ago. It was actually a book review. You were talking about the militarization of the police, a topic that we've covered a number of items on this program. There's a lot of interest in that subject. Implicitly your take on this had a lot to do with the drug war. The book you're talking about had to do with the militarization of the police, but you were connecting the dots the way the author did to note that this didn't just occur spontaneously, as an oddball feature of American police. There seems like there's some connection between militarization and the war on drugs.

PAYNE: Yeah, absolutely. Radley Balko is the guy who wrote the book. He's been working on this for some time. He started with the Cato Institute, and now he's at the *Washington Post*. He's a part of the mainstream media now, which is kind of exciting. I've long thought that he is kind of the most important journalist working. He's exposing all these atrocious police raids that are happening, oftentimes to people that have done absolutely nothing wrong. The police actually have the wrong house, and they're busting in and terrorizing the occupants. He's been documenting this for probably about a decade now. In the book, he says there are now about 50,000 SWAT raids in this country every year.

The way that we got here, basically, was that back in the 1970s and then more in the 1980s, when Reagan ratcheted up the drug war, they started giving away military equipment to police departments. They started giving grants to enforce drug laws. The more arrests you can show, the more money you can get from the federal government, specifically for drugs. If you arrest more people for robbery, rape, murder, that doesn't register for federal grants, but if you arrest a lot of people for pot then they will give you a big chunk of money. These sorts of things are what have driven departments to focus on drug offenses and to enforce them in such a heavy-handed manner. I also do know that Radley doesn't talk about this as much in his book.

I know a chief of police who is very sympathetic. He opposes police militarization as well, and he works out in the St. Louis exurbs, out in Lincoln County here in Missouri. I've talked to him a fair amount about this. He says that one thing that Radley is kind of missing, though, is that the culture of policing changed in the 1970s and 1980s as well. They started hiring a lot of guys coming out of the military after Vietnam, and this was a trend that kept up. They didn't ever try to enforce the idea that the military and policing are two very different things. If you're in the military your job is to blow things up, essentially, whereas the job of a policeman is to keep the peace. You're not supposed to be provoking violence. You're supposed to be defusing it. So it's a really different job. A lot of people don't understand that. Even people who work in that field. That's another problem that needs to be addressed.

WOODS: But is a lot of this police militarization and a lot of these tactics like the use of SWAT teams, etc., are these really being directed at pot users? Wouldn't this be directed at drug kingpins somewhere? I could imagine the average American maybe more and more thinking maybe marijuana isn't so harmful after all. There are so many people who want to use it, there's no point in trying to lock them all up. But we've got to go get those heroin dealers, because heroin makes you drive crazy and go out and want to murder people. So in other words, I can imagine that some people are moving a little bit closer to a libertarian view on marijuana, but maybe still are wary about the harder drugs. Are you saying that a lot of these tactics that make us uncomfortable that the police are using are not really discriminating between types of drugs?

They're just as likely to go and bother somebody who's got two joints as they are somebody in heroin and harder drugs?

PAYNE: I don't know about two joints. They probably wouldn't execute a search warrant if that's all they thought a person had. But I will say that they get it wrong a lot. It doesn't really matter sometimes what they're pursuing, because if they go to the wrong house, it's going to be a bad situation. One of the more famous examples was that in Atlanta the police had been tipped off by a confidential informant that there were drugs being dealt out of this house in a pretty bad neighborhood. They didn't do anything to check out the confidential informant's statement, and they just raided the house.

The house turned out to belong to—I can't remember her exact age, but she was a very old woman—Kathryn Johnston. She didn't know what was going on, so she grabbed a little pistol that she had for self-defense. She lived in a bad neighborhood. If you live in a place like that, it certainly makes sense to have a gun. When the police started busting down her door, she fired. She didn't know it was the police. Then they responded with just an absolute hail of bullets, and when they figured out that this was not the person, this lady is not selling drugs, they attempted to plant drugs and let her bleed to death on the floor. That is an extreme example, of course, but they've had a number of these raids go wrong.

One in Columbia, Missouri where the University of Missouri is located, I guess it wasn't a wrongdoer. They thought this guy had a larger amount of marijuana than he did. When they got in, he basically had less than two joints. He had a grinder with some marijuana residue in it. That's all they found in the guy's house, and they busted down his door and shot his dogs. That's a video that went viral a few years back. It was on Judge Napolitano's show. A lot of people talked about it. That's the one where Charles Krauthammer said that this was sort of the collateral damage of the drug war, and doesn't happen that often. But the thing is, I've looked into that case in particular, and into SWAT raids in Missouri pretty extensively. It's not that it doesn't happen. It's that very few police departments actually record their police raids like the Columbia Police Department was doing at the time. So it's very rare that we actually see that happen.

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WOODS: John, I want to talk about a piece that you sent me just a few minutes ago, and the headline—this is from the *News Leader*, out of Springfield, Missouri—"Concerns Aired at Council Meeting about Police-Guard Partnership." It's a proposed agreement between the Missouri National Guard and the police to work together in waging the drug war. Tell us about that.

PAYNE: This is a proposal that was just made last week, and they heard it at the council meeting on Monday, so last night. The police chief is now saying that it's just going to be a guy from the National Guard basically consulting with us on our drug raids and executing search warrants. The thing is, the proposal includes use of aerial surveillance, and it does say that the National Guard people shouldn't be armed when they're helping the Springfield Police Department out. Nevertheless, if you give people the power to use military equipment and to use military surveillance for domestic law enforcement, we are now talking about having the military enforcing domestic law.

In my review, I talk about how that's one of the main things that the colonists revolted against the British for—they were using the military to enforce domestic law and imposing them on the civilian population. It is not inaccurate to say that that is trending towards a police state. It may not be actually a police state just yet, but that would be where it's headed. I think that's still likely to pass, but I do think because of the opposition that showed up, they are likely to strip out the part about the aerial surveillance. Because they say they don't really need that. But if they don't need it, then don't have it in the bill. I'm hopeful that they'll at least take that part out.

Also, they just really have no point, there is no need to have the National Guard come in and enforce these laws. We actually had an ordinance that we were supporting down there back in 2012 that would have

decriminalized small amounts, possession, small amounts of marijuana, and that's the way the law works in St. Louis and Columbia. At the time, the city council said, we don't actually consider this to be a top priority as it is, so we don't really need to change the law around it. If it's not a top priority, then why do you need the military to come in and help you enforce the law?

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WOODS: I want to ask you, because of the organization that you belong to and the work that you're doing, some general questions on the subject of marijuana. I remember being a kid in elementary school, and the filmstrips they showed us about the dangers of marijuana. You would die within six months. Look, I've never smoked it. I'm not interested in smoking it. I have no dog in this hunt one way or the other. I just don't like being lied to. I don't want to be told something is super-dangerous when it's not, because that leads to exactly what we've been talking about today. Ridiculous overreaction, tremendous civil liberties violations. All of these problems stemming from the drug war.

I know I have no control over what the government does with the resources that it expropriates from me. But if people want to go use this stuff, I don't care. I am, on the other hand, concerned about burglaries in the city where I live. I'm concerned about crimes against person and property. But there's a certain reason that the government seems to have an incentive to go and search out people who are drug users or drug dealers and not to go after the burglars, the guys who broke into the house down my street. There's no cash reward waiting for them at the end. There's no big pile of cash as there would be in a drug raid.

Anyway, first of all: what can you say to people who say there are tremendous health risks associated with marijuana use?

PAYNE: My answer would be that it depends on how you define tremendous. There are definitely a lot of health risks associated with marijuana. However, relative to a lot of other drugs, it is not that harmful. *The Lancet*, which is sort of the British equivalent to the *Journal of the American Medical Association*, put out a study a few years back trying to assess the relative harms of various drugs, and cannabis came in fairly low. I forget the exact number. It scored as less harmful than cocaine, heroin. I think everyone would expect that, but also nicotine and alcohol. So this was not something that is tremendously dangerous, I don't think. It has its risks, certainly, but I also don't think that prohibition has actually done a whole lot to stop people from using it and to diminish any of those risks. In fact, if anything it's probably made it more dangerous, because you don't know exactly what you're getting. The quality isn't as assured.

On an open market, you can actually have some kind of idea of what you're buying. Whereas on the black market, you're dealing with drug dealers. They are not obeying the law. A lot of times the ultimate product came from the Mexican cartels. That's not good. That's encouraging violence around the market, and it's basically the same thing we had with alcohol prohibition when you had Al Capone in Chicago. Now we have the Sinaloa cartels in Mexico. In fact, it just came out the DEA had been assisting the Sinaloa cartel in exchange for their cooperation. The cooperation was one of their higher-ranking [unintelligible], who was helping them take down other cartels.

If you want to enforce these laws you have to become morally compromised yourself, and that's basically what we're seeing in law enforcement. Yes, that's also why they're going after drug crimes more than they're going after other crimes: there's a financial incentive under current law, as you pointed to. Asset forfeiture allows the government to come in and say, okay, this property was associated with a crime, and therefore we can take that property, and we can keep it. Specifically, the law enforcement agency that seizes it can keep it, at least under federal forfeiture statutes. As long as there is a federal agent associated with that investigation the federal government keeps 20 percent, and they can kick back up to 80 percent to the law enforcement agency that seizes it. I think that's going back to the Springfield thing, that's clearly what is going on there. That's why their interest is in it.

The Missouri National Guard Counterdrug Task Force actually put out a press release at the end of 2013 saying, hey, we seized $24 million in assets this last year. I'm quite certain that the city council member who introduced the measure down there saw that and said why can't the Springfield PD be getting some of that action? So yes, there is a financial incentive here, and when you start taking police away from the work that we really want them to do, stopping violence and property crimes, and directing it towards nonviolent drug offenses, I think you've actually made society substantially less safe for everyone. So whether you use these substances or not or whether you're ever interested in using them, that doesn't matter. What matters is that you're actually making society less safe by taking our scarce resources away from efforts to protect us against people who seek to do us harm.

WOODS: I could be wrong about this, John, but I'm pretty sure that in a lot of these asset forfeiture cases they invert the traditional presumption of innocence. You have to prove you weren't involved in growing or producing anything illegal on your property. Once you can prove that to their satisfaction, then maybe you can get your property back.

PAYNE: That's pretty accurate. In federal forfeiture law, states have different statutes on forfeiture. But the thing is that it almost always ends up going federal, because they can do that. As long as they have a federal agent associated with it, and if you're dealing with any sort of drug task force, they will. The federal forfeiture statues are the loosest. They're the ones that most agencies will pursue. Under those statutes, if you go to a trial for a criminal offense, they are trying a person. A person has constitutional rights. Property, however, does not have constitutional rights. What they're literally doing is bringing charges against a piece of property. so there are cases out there that are United States Federal Government versus $20,000 in cash. United States Government versus Cadillac Eldorado.

When they get into court in those cases, they don't have to prove their case beyond a reasonable doubt, as they would against a person. They only have to prove their case with a preponderance of the evidence. If the burden is actually on you to get your property back, because they already have your property, you have to go to court. You have to take them to court. If you don't do anything, they'll eventually just get to keep it. You have to come in there and present evidence that this property was not involved in a crime. If you can prove that to their satisfaction, then you get the property back. That also requires hiring a lawyer. You could potentially do this yourself, but you're probably not going to win that way. You basically have to hire a lawyer, and if they've taken, say, $300 from you, would it even be worth your time to go get a lawyer? Of course not.

So there are a lot of cases out there where the police have essentially engaged in shakedowns. You'll see the ledger. It's just $50, $100. Whatever cash this guy has on him. The worst example of this is probably Tenaha, Texas a few years back where it was, literally, basically like a speed trap. But instead of giving people speeding tickets, they were just taking whatever money they had on them through asset forfeiture statutes. It was, at least on the face of it, totally legal. Eventually, when that pattern of behavior became evident, they did get sued, and they did have to return the money that they took from all these people. That was several years before that actually happened. They're hardly the only place that has done it, but they're one of the few places that have actually been sanctioned for doing something like that.

WOODS: One more thing: I don't recall hearing this recently, but I know at one time people used to claim that what we might call the softer drugs like marijuana were gateway drugs. You're smoking a joint one day, and tomorrow its crystal meth. Is there evidence for this?

PAYNE: There is some truth in that very few people that have used heroin have not used marijuana. So that is the inkling of truth that people use to shove the gateway myth down everyone's throats. There is no evidence for that, because the vast majority of people that smoke marijuana don't even go on to become regular marijuana users. Most people smoke marijuana and say, that's okay. Not really for me. If you look at those statistics there's about half the population at this point, and a majority of people under the age of

about 50, who have smoked marijuana at some point in their lives. The vast majority of those people are not regular marijuana users.

The regular marijuana users are about seven percent, eight percent of the population. That's substantial, but it's also clear that most people are not going out there and getting hooked on marijuana and then moving onto harder things. If you look at the number of people that use so-called harder drugs like cocaine and heroin, you're talking about one million or two million people, so less than a percent of the population in most studies. That means that the vast majority of people that use marijuana don't go on to use it regularly, and the vast majority of the marijuana users that use it regularly do not go on to use other substances with any regularity.

WOODS: John, if people want to follow the work that you're doing at your institute how can they do that?

PAYNE: They can go to ShowMeCannabis.com. That'll probably be the easiest way, or they can also text SMC for Show Me Cannabis to 42420.

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