



A Judge Against the Drug War?

Guest: Judge Jim Gray

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Judge Jim Gray is a retired superior court judge and a member of Law Enforcement Against Prohibition. He ran for vice president of the United States on the Libertarian Party ticket alongside Governor Gary Johnson in 2012. This interview originally appeared on the Peter Schiff Show, with Tom as guest host.

WOODS: I want to start off with your own personal situation. I guess you started practicing law in the early '70s. Then you were a municipal court judge, and you were a judge for about it looks like 26 years. Were you always of this view against the drug war, or at least, against some aspects of the drug war, or was this something that you came to through experience?

GRAY: Tom, I was a former drug warrior, never really gave it much thought, criminal defense attorney in the Navy. I actually wrote charge sheets for my shipmates, a lot of which were drug involvement. I was a federal prosecutor in Los Angeles, held the record for the largest drug prosecution in the Central District of California back in 1978-75 kilos of heroin, 165 pounds, was and is a lot of heroin. Then you started looking around yourself, particularly when you're on the bench in your own courtroom, and now the record prosecution is 18 tons of cocaine in one place, and you're churning low-level drug offenders through the system, and you're arresting, convicting, and incarcerating even big-time drug dealers. Does that mean that heroin or cocaine is no longer available in whatever city? No, it's just an employment opportunity for someone else, and you see that probably, as Governor Gary Johnson says, 90% of the problems in this area are drug prohibition related problems. About 10% are with the drugs. And I'm not minimizing those, but most of them are about drug money. So you finally conclude that we couldn't do it worse if we tried. So back in April of 1992, as a sitting superior court judge, I held a press conference, a somewhat unusual thing to do, and stated the absolute truth to anyone that would hear: that our nation has to look into and change away from drug prohibition because it's bringing on unbelievable harms, far more than the drugs themselves.

WOODS: Now, if you had legalization, it seems to me that you would also have, of course, a fall in the price of drugs, and so drugs would be more readily available. Given what we know about economics, if the price of something falls, the quantity demanded is going to rise. I think we

have to be honest and concede that there would be more consumption of drugs under a legalization scenario. Are you saying that that's a price that we're willing to pay because the price of trying to suppress it, which is entirely unsuccessful anyway, is just too great?

GRAY: Well, don't just listen to me. There have been so many neutral studies out there by foundations, by governments. They all conclude that even if it would result in greater drug usage, we still should go away from drug prohibition. But I am going to contest that a little bit. Drugs are fully as plentiful today, particularly for young people, as they could possibly be. In fact, you ask the next ten teenagers you find which is easier for you to get today if you want to, marijuana or alcohol, and every last one will tell you it's easier to get marijuana because the illegal dealers don't ask for ID. And then if you go to other areas such as Holland, such as Portugal, who have decriminalized these drugs in Holland for decades, the drug usage is pretty much the same as it was before. However, teenage drug usage has actually gone down. Why? You know, you take the glamour out. You take the rebelliousness out of them, and in Portugal, why should I use drugs and go see a doctor? That's no fun. So I will question even whether we would end up with greater drug usage, particularly if you were to regulate and control them like you do wine, for example, and then make treatment available. In Holland, where they actually have decriminalized all drugs, like I said, problem drug usage has gone down by 50%. Do I need to say it again? 50% because now, instead of getting a citation to come see me as a judge, they get a citation to go see a medical team, and they start dealing with them, working with them, helping them, and problem drug usage has gone way down.

WOODS: You know, Judge Gray, the item that I think really grabbed my attention was—I wasn't involved in the drug war, but just reflexively supported it because I had gone through all the elementary and high school propaganda about drug usage and all that, and I'm not minimizing that people can abuse drugs in very damaging ways. But the item that really got my attention and that emphasized to me the utter futility of it was basically back about, I guess, in the early '70s there's a judge who tells this story—Volney Brown, maybe—about how law enforcement officials in San Diego had all decided that on one particular day they were going to take down all the heroin dealers on the same day, and they somehow did it. And so for about two weeks, you couldn't get any heroin in San Diego, but within a month it was exactly as it had been before after the most unprecedented effort of law enforcement coordination ever seen, it was back exactly the way it had been before except this time they had no idea who was selling the heroin.

GRAY: No, Tom, that's funny because Volney Brown was a federal magistrate, and I practiced before him. When I came out against our nation's drug policy, and I started getting some criticism, and he wrote about that story in response to supporting me. I didn't have any idea that that's where he had been, and he ended up telling that story because he did it twice. So once was in Denver, and the second one was in San Diego, and once, like you say, they had no idea who their drug dealers were, they were a lot more violent, and he ended the story by saying we want our old drug dealers back because they had no idea what was happening

thereafter. I gave a talk one time before a very conservative group here in Orange County, California, and there were three prison wardens in the crowd, and I made the comment: look, you can get all the drugs you want in prison, for heaven's sake. How do you expect to keep them off the streets of your towns and cities? And only one of them laughed and said, oh, you can't get *all* you want. And it's true. You know, Charles Manson, a bad guy, was actually in solitary confinement in prison here in California, and he was found to be selling drugs from his prison cell.

So let's face the reality. The drugs are here to stay. Let's try to work with them, reduce the harm, and help with quality control. For example, people do not die from heroin. They die from unknown strengths of heroin. They die from the unknown quality of the heroin. So we can work with people, save thousands of lives, and do that. We all know smoking cigarettes is harmful for your health. That's clear. But at least if you go to a local mini-mart and buy a pack of Marlboros, you're going to know it's not laced with methamphetamines, or it doesn't have pesticides in it, that sort of stuff. I've sentenced, myself, several young men for being under the influence of methamphetamines, and they would say at time of sentencing: I just smoked marijuana; I didn't know it had methamphetamines in it, and I got myself hooked. Those are problems that we can address, and should, and must, and then deal with the people's actions. That's the secret.

You know, Robert Downey Jr. is a lifelong heroin addict, and he's doing real well now, and he's a gifted actor, but he's going to have to be careful. He'll always have that craving, but putting Robert Downey Jr. in jail for that which is a medical problem is the same thing as putting Betty Ford in jail for her alcohol problem. That's a medical issue. Bring them closer to medical professionals that can help them, but if Robert Downey, Jr., Betty Ford, you or I, Tom, drive a motor vehicle impaired by—you name it—alcohol, which is my drug of choice, marijuana, methamphetamines, whatever—bring them to a judge. Why? Because now they are putting our safety at risk, a legitimate criminal justice issue. But as far as what I as an adult put into my body, it's none of the government's business any more than what I put into my mind. So that's my libertarian view, and I think pretty much everyone else, if they thought about it, would agree.

WOODS: As a judge you would have a particular perspective on this, and a policeman might have a particular perspective on this. Sitting there in a courtroom, you would be able to see the misallocation of resources going on here because you know there are violent crimes that go on out there, and that law enforcement has a difficult time keeping up with them all, and then you have some poor, misguided soul who has a drug problem, who is dragged before you, and it's some small quantity, and it takes up the resources of six people in a courtroom and half a day, and all these—for what? It accomplishes nothing. Right? Is that one of the aspects? That's not the most important thing, but did you ever just shake your head that I can't believe I'm using my time for this?

GRAY: Yes, yes, very much so, and there's so much to talk about there, but the bottom line is that the tougher you get with regard to non-violent drug offenses, literally, the softer you get with regard to the prosecution of everything else. In fact, I wrote a book called *Why Our Drug Laws Have Failed* and devoted a chapter to these sorts of things, quoting statistics that in 1980, we were twice as successful in prosecuting homicides as we were nationwide in 1990. Why? Because the Reagan administration, again, ramped up the war on drugs and used all of these resources to prosecute the drug issues meant directly homicide prosecution was only half as successful 10 years later. It just goes on and on.

I went on vacation one time for a week, talked to my court reporter, and when I got back—and she was with other people—and I said what did you do? Well, I worked on felony preliminary hearings. I said, okay, how many did you work on? She said, 10. Okay, of those, how many were drug offenses? And she thought for a moment and said there were six, and the last one was the stupidest because there was this homeless guy pushing a cart, begging, panhandling, and the rest until one fine day he sold a bindle of cocaine, which is \$10 worth, to an undercover officer, so now this poor homeless guy is being brought through the system. Like you say, we had four police officers waiting to testify, and we had the judge. We had the reporter. We had the clerk. We had the prosecutor, and the criminal defense attorney, and the witnesses, and all that sort of stuff. What a colossal waste of time. And is it going to make any difference at all as to the availability of drugs in our communities? No. And he was homeless anyway and probably mentally ill. So these are things that you just shake your head and finally realize that, look, let's get smart on crime instead of tough on crime and put our resources where they will serve to keep us from being damaged by others instead of people we're mad at.

WOODS: We're talking to Judge Jim Gray, who is a member of Law Enforcement Against Prohibition. When we come back, I want to talk about, among other things, the supply of drugs. Isn't there some way that we could just grab them all and keep them out of the hands of users? Couldn't we just go to Colombia and destroy all the drugs? Isn't that a possible solution?

[commercial break]

WOODS: Judge Gray, before we went to the break I was facetiously noting that another strategy here, if you can't deal with the demand, is to deal with supply. Has the U.S. government ever come anywhere near the amount of seizures that would be necessary to make a dent in the drug market here in the U.S.?

GRAY: Well, of course not. By definition, and you did facetiously say, well, why don't we just go into Thailand, or Burma, or Afghanistan, and just buy up the whole crop. And that'll be great: we'll get all the worthless stuff, and then they'll go into the back forty and raise really quality stuff, and then they'll win both ways. The government makes a mess of anything it gets involved with. They would go down to Colombia and spray this, in effect, industrial-strength Roundup, and then basically the wind would blow—of course, they don't figure that out, so you kill the bananas. You kill the crops. You have kids with sores on them because they've had this

Roundup dropped on them from the sky, and then you wonder why they hate us. It just doesn't work. We pour all of this money down into South America or Afghanistan. Finally, the DEA has given up trying to eradicate it from Afghanistan because it was so destabilizing, and simply, we do the same thing here at home. Today, Tom, the federal government is literally bribing the police forces in cities and towns all around the country by giving them law enforcement grants—ah, but the strings, ropes, and chains attached to that money is you have to use them to fight the war on drugs. So one way or the other, when I was running for Congress I sat in the offices of two sitting congressmen, Republican, conservative guys here in Orange County. They brought up the issue of drugs, I didn't, and they told me in their own words, almost verbatim: Jim, you're right, most people in Washington realize the war on drugs is not winnable, but it's eminently fundable and they are addicted to the drug war funding. We're talking huge, mammoth amounts of money here, and it's an amazing partnership between the good guys and the bad guys. They are all making huge amounts of money because of the war on drugs.

So it's just simply a question of talking about this. A minute ago it was mentioned on your show [in the bumper music]: Thomas Jefferson and Tom Paine, they'd be libertarian. They would be outraged at what the government is doing today with regard to the war on drugs. And you talked about self-respect in this blurb just a few minutes ago. It's only a question of getting people to speak about this failure of the war on drugs will get the respect necessary. It's happened in the states of Washington and Colorado—which, by the way, are witnessing the end of marijuana prohibition, and when marijuana prohibition is over, drug prohibition is close to follow. We're almost there. And then I guarantee you and all of our listeners people will link arms about two or three years after we repeal drug prohibition, look back, and be aghast that we could have perpetuated such a failed system for so long.

WOODS: Well, you're right that there are vested interests involved, and that this is why the progress has been so slow. One of the talking points that I have in some of my public speaking is that it's not enough to say, look, I was the captain of my high school debate team, and I can make a really good argument against the war on drugs. That doesn't matter when people's livelihoods are wrapped up in this thing, and they are wrapped up in it at the local level, the state level, and at the federal level. But yet, as you're suggesting, even with all those vested interests at stake, eventually you can reach a point at which public opinion is so opposed to an existing policy that it can finally actually wash it away, even in the face of those vested interests.

GRAY: And you're right.

WOODS: So how do you see this unfolding? In the states where it's started to happen are they actually just going to lie down and say, well, it was fun getting all that federal money, but all good things must come to an end? In other words, you're saying that eventually we're going to win in terms of drug prohibition. But how does it happen? What is the pathway to it?

GRAY: Well, we're there now. If you check the polls, and a lot of people do in Colorado, Washington—all the government was against this initiative to treat marijuana like wine, but the people trumped them, and they overrode that. We in California tried to have something on the ballot called "Regulate Marijuana like Wine" in 2012. We didn't get the money needed to get the signatures. We needed 808,000 valid signatures. But we did send it through the attorney general's office. So we got the language back that would have been on the ballot had we been able to get the initiative on the ballot, and it guaranteed success. It said we will save tens of millions of dollars by this measure every year in California on enforcement costs and generate hundreds of millions of dollars in revenue. Now, look, the marijuana is here anyway. It's the largest cash crop in our state and probably yours all around the country, but at the moment, who's making all the money? We're getting it to Mexican drug cartels, and juvenile street gangs, and other thugs. Wouldn't it be better to use these tens and hundreds of millions of dollars to pay our firefighters and pay our teachers and fix our roads and regain the quality and make drugs less available for children, and not so strongly encourage our children to follow that path and sell drugs for a living because that's where the money is? So again, I call this the biggest failed policy in the history of the United States of America, second only to slavery. We couldn't do it worse if we tried. So let's go back to our libertarian roots, back to our constitutional roots, and understand that the Ninth and Tenth amendments still are there and allow each state to decide how best to serve and protect its people in this area and many more. And as Governor Johnson said, that will result in some spectacular successes that can be copied as well as some noteworthy failures that can be avoided. But truly, the federal government does not have all the answers in this or any other area. Allow each state—Colorado, New Mexico, wherever—to choose how to address this. It's called the concept of federalism. It will work, and we will finally get some liberty back along the way, too.

WOODS: Well, Judge Gray, first of all, I would say that the U.S. government getting, or any level of government, state, whatever, getting additional revenue from any of this, would be the one drawback from decriminalization or legalization, but if that's what it takes, I would be willing to do it, and then we can chip away at that from there.

I really appreciate your time. This is an extremely important issue, and it's one of these rare issues in which in our lifetimes we can actually expect to see real change. I don't expect to see the Department of Agriculture change very much in my lifetime or any of these other fixtures, but this is a very interesting and exciting time when it comes to the issue of drug prohibition, and you've been generous with your own time with us today, and we certainly appreciate that. Thank you.

GRAY: Well, absolutely. Vote for Governor Gary Johnson and help encourage him to run for president in 2016. You'll even see a difference in the Department of Agriculture, Tom, so help is on the way.