

blacks could compete for construction jobs was to work for union-free contractors for market wages lower than union-scale wages. Those union-free contractors and their black employees were effectively excluded from those projects by Davis-Bacon, which was racist in intent and effect.

Chapter five deals with New Deal labor laws including the National Labor Relations Act (NLRA, 1935) and the Fair Labor Standards Act (FLSA, 1938). Section 9(a) of the NLRA made monopoly bargaining the law of the land, and unions with monopoly power often excluded blacks from membership. The FLSA, which was advocated by Northern politicians, unions, and many employers, was designed to inhibit competition from southern employers, many of whose workers were blacks. If the Supreme Court hadn't tossed out Lochnerian jurisprudence, the offending legislation would never have been allowed to stand and black workers might be much better off today.

At the very least, the author makes it clear that Lochnerian jurisprudence provided a safe haven for blacks against class legislation aimed at them. The market, not politics, is the best friend of all victims of discrimination. Thanks to David Bernstein for emphasizing that vital point with his excellent historical, legal, and economic analysis. □

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Why Our Drug Laws Have Failed and What We Can Do About It

by James P. Gray

Temple University Press • 2001 • 288 pages
• \$18.95

Reviewed by Paul Armentano

Among regular readers of this publication, the notion that America's drug war brings more harm than good is hardly a news flash. But while the message of

Why Our Drug Laws Have Failed and What We Can Do About It may not be unique, its messenger, Orange County (Calif.) Superior Court Judge James P. Gray, certainly is.

As a former federal prosecutor, who once held the record for the largest drug prosecution in the history of the Central District of California, and as a veteran trial judge, Gray has observed the consequences of both drugs and the drug laws up close. His assessment is unequivocal. "The results of our country's Zero Tolerance Drug Prohibition policy are multifaceted, overlapping, and overwhelmingly negative," he writes. "I have learned from over twenty years of experience that although the War on Drugs makes for good politics, it makes for terrible government."

How so? Consider this. Since 1988, the year Congress passed the U.S. Anti-Drug Abuse Act declaring its farcical intent to create a Drug-Free America by 1995, the federal government has spent more than \$161 billion enforcing U.S. anti-drug policies. (State governments have spent nearly an equal amount.) In addition, police have arrested approximately 16.7 million Americans on drug charges, a total greater than the combined populations of New Mexico, West Virginia, Nebraska, Idaho, Maine, New Hampshire, Hawaii, Rhode Island, Montana, Delaware, South Dakota, Alaska, North Dakota, Vermont, and Wyoming. Yet, despite this unprecedented campaign, Gray laments: "Today there are more drugs available in our communities, and at a lower price, than ever before. As a direct result of the enormous amount of money available from illicit drug sales, the corruption of public officials and private individuals in our society has increased substantially. We have a much higher incidence of diseases, such as hepatitis and AIDS. The War on Drugs has resulted in the loss of more civil liberties protections than any other phenomenon in our history. Instead of being shielded, our children are being recruited into a lifestyle of drug selling and drug usage by the current system. And revolutionaries and insurgents abroad are using money procured from the illegal sale of drugs to undermine legitimate governments all over the world. We could

not have achieved worse results if we had tried."

Gray's evidence is persuasive. No one who reads this book and thinks objectively about the issues it raises will favor a continuation of our present drug policy. But perhaps most noteworthy about Gray's book is his avowal that he is not alone in his beliefs. "[Although] there may be a few judges in this country who believe that our current drug policy is working, they are surely a small minority," Gray maintains. Most judges have strong views about how to improve our drug policies and many, like Gray, are unafraid to voice their criticisms publicly.

Gray's treatise is punctuated with critiques from some of the judicial community's most prestigious members, including Gilbert S. Merritt of the U.S. Court of Appeals in Nashville, Senior Judge John K. Lane Jr. of the U.S. District Court in Denver, Idaho Supreme Court Justice Byron J. Johnson, and Phoenix Appellate Judge Rudolph G. Gerber. Taken together, their remarks offer one of the strongest denunciations to date of America's misguided drug-war policies. Coming from judges, it will be hard for the usual gang of drug-war proponents to dismiss it as irresponsible or self-serving.

Unlike many previous indictments of U.S. drug policy, *Why Our Drug Laws Have Failed* also proposes some solutions. From an individual perspective these include educating ourselves to viable drug-policy alternatives, looking critically at television and news coverage on illicit drugs, and publicly confronting those with vested economic or psychological interests in maintaining the status quo. On a national level Gray recommends "de-profitizing the illegal drug market" (by which he means treating currently illicit drugs like other regulated intoxicants or prescription medicines already sold in the market), rescinding America's international anti-drug treaty obligations, turning drug policy over to the states, eradicating mandatory minimum sentencing, reforming asset forfeiture laws, licensing physicians to prescribe medical marijuana, and ending federal subsidies for growing tobacco.

As is the case throughout the book, the author's conviction in his principles is unwavering. "I am so convinced of the rightness and benefits of the course I am proposing that I will end this discussion with a guarantee," he writes. "If we abandon our failed drug policy and implement the programs I have outlined here, crime in the United States will be reduced by a minimum of 35 percent." *That* should attract some attention.

Someone once said that all truth passes through three stages. First, it is ridiculed. Second, it is violently opposed. Third, it is accepted as self-evident. In Judge Gray's opinion, America is nearing the self-evident stage when it comes to recognizing our drug-policy failures. As long as he and those like him resolve to speak out publicly, loudly, and often, we will inevitably reach that third phase sooner rather than later. □

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A Question of Intent: A Great American Battle with a Deadly Industry

by David Kessler

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Reviewed by Sam Kazman

How should we regard the tobacco industry? Specifically, how should we view its actions before the late 1990s, when a combination of regulatory and litigation onslaughts changed its very nature? Before that time, was the industry engaged in dishonestly hooking the public on a product that it knew to be deadly, or was it legitimately catering to human desires?

My own view is that once the federal government mandated cigarette warning labels in 1965, people had adequate notice of the risks of smoking. This was so even though the industry continued to argue there was no proven link between smoking and disease, and even though tobacco ads were full of healthy,