

THE WAR ON DRUGS: FIGHTING CRIME OR WASTING TIME?

Congressman Bob Barr v. Mr. Eric Sterling
Moderated by Mr. Juan Williams
March 14, 2001
Georgetown University Law Center

MS. LESLEY WHITCOMB: Good evening, and a warm welcome to the American Criminal Law Review's Sixth Annual Debate. I am Lesley Whitcomb, and I am proud to have served for the past year as the Editor-in-Chief of the ACLR. Before I go any further, if anyone in here has a cell phone, if they could please turn it off, we would appreciate it. Thanks. The ACLR is published four times annually and our articles, student-authored notes, and events raise today's most compelling issues for consideration by legal scholars, practitioners, and students. Five years ago, this debate series was instituted to celebrate ACLR's twenty-fifth anniversary here at Georgetown. Each year we have brought distinguished speakers to campus to discuss contemporary, legal, and public policy issues of criminal law. We then publish a transcript of this debate as a part of our fall issue. And, we are pleased to continue this tradition today. I would now like to turn things over to the main force behind this event, Judy Golden, our Executive Editor.

MS. GOLDEN: Thank you, Lesley. On behalf of the ACLR, I would like to welcome you to our annual debate, this year entitled "The War On Drugs: Fighting Crime or Wasting Time." Before I introduce today's participants, I would like to say a few words about our format. After our moderator introduces the topic, each debater will have the opportunity to make a five-minute opening statement. Following these remarks, our moderator then will direct each question to one participant. He will have five minutes to respond, and the other speaker will be allowed a three-minute rebuttal. We will preserve approximately twenty minutes for questions from you members of the audience. You can write down your questions on the note cards that you were given as you walked into the Moot Courtroom and pass your questions to the aisles where ACLR staff members will be standing to collect them from you. At the end of the debate, each participant will have five minutes to make a closing statements followed by some concluding remarks from our moderator.

I now have the distinguished privilege of introducing our guests. Congressman Bob Barr, a graduate of the Georgetown University Law Center, has represented the people of Georgia's Seventh Congressional District since 1994. Currently he is the Assistant Majority Whip and serves on the Judiciary, Financial Services, and Government Reform Committees and is the Chairman of the Judiciary Subcommittee on Commercial and Administration Law. Before becoming a member of

Congress, Congressman Barr worked at the Central Intelligence Agency, and, in 1986, President Reagan appointed him to serve as the United States Attorney for the Northern District of Georgia where he worked until 1990. Congressman Barr has supported tougher drug laws and prosecutions both as a legislator and a former federal prosecutor. He has opposed needle exchange programs, worked to hold foreign countries responsible for the drug traffic that comes into the United States, and authored an amendment that blocked efforts by the District of Columbia to legalize marijuana and other controlled substances. Congressman Barr has described the “War on Drugs” as a war for the very lives of our children.

Eric Sterling is the President of the Criminal Justice Policy Foundation, a non-profit educational organization that focuses on innovative solutions to criminal justice problems. He also currently serves on the American Bar Association Standing Committee on Substance Abuse. Mr. Sterling served as counsel to the U.S. House of Representatives Judiciary Committee from 1979 to 1989. He was actively involved in the development of the Comprehensive Crime Control Act of 1984 and the Anti-Drug Abuse Acts of 1986 and 1988. In the early 1990’s, Mr. Sterling worked to establish organizations that addressed various criminal justice issues. In 1991, he helped found Families Against Mandatory Minimums, and he currently serves on its Board of Directors. In 1993, he founded Forfeiture Endangers American Rights, a non-profit organization that works to reform federal and state asset forfeiture laws. Additionally, Mr. Sterling has served in the academic arena as an adjunct faculty member at American University here in Washington, D.C.

Our moderator, Juan Williams, is the host of Talk of the Nation, National Public Radio’s award-winning call-in program, which provides its 250 million listeners with a forum to discuss the issues in the news. Mr. Williams began his career as a journalist more than twenty years ago at the Washington Post where he served as an editorial writer, op-ed columnist, and White House reporter. He has won an Emmy for documentary writing along with numerous journalism awards for reporting and commentary. Magazines including Newsweek, Fortune, and The Atlantic Monthly have featured his articles. In addition to serving as a contributing political analyst for the Fox News Channel, a regular panelist for Fox News Sunday, and a co-host of CNN’s Crossfire for several years, Mr. Williams has appeared on numerous television programs, including Nightline, Washington Week In Review, and Inside Washington. Gentleman, I welcome you all, and I now turn the floor over to Mr. Williams.

MODERATOR: Thank you very much Judy, and welcome to all of you. This is going to be truly a special evening in which I hope that all of us can leave with an increased insight into this crucial debate.

Let me begin by saying that America’s struggle with drug abuse has been a long and costly one. Though the term “War on Drugs,” now so familiar, is of relatively recent vintage, its origins can be traced back to 1874 when the Women’s Christian

Temperance Union was formed to combat the use of alcohol and drugs. However, early drug use in the cities was common and in 1919, by the way, a New York City Health Commissioner declared that heroin use among teenagers was “an American disease.” Additionally, cocaine use was widespread among the American public in the late part of the 19th century. Though drugs such as cocaine and heroin were originally legal, public sentiment shifted dramatically in the early part of this century—I should say, the last century—as narcotics in addition to alcohol were perceived to be linked with violence, distorted thinking, and ruined careers. Drug use in America accordingly dropped off dramatically during this period only to rise once more in the 1960s.

As baby boomers in their teens sparked a new wave of drug use in American society and, more troubling, among the ranks of military forces in Vietnam, the federal government had a strong and negative response. On June 17, 1971, President Nixon named drug abuse “public enemy number one.” States also reacted severely. Most notably, in the early 1970s, New York State passed its so-called “Rockefeller Laws” that provided for harsh sentencing for drug-related offenses. Other states then followed suit. Although such new social and legal initiatives against drugs were launched in the 1970s, drug use continued to climb at an alarming rate. Confronted with the perceived epidemic proportions of drug use, the Reagan Administration began a hard-line stance against narcotics and drug related crimes. Spearheaded by First Lady Nancy Reagan, the “Just Say No” Program became a centerpiece of the White House Campaign to fight against drugs.

Such affirmative steps, in addition to ravaging the inner cities—the crack cocaine epidemic is what I am thinking of here, and the tragic cocaine-related death of basketball star Len Bias. This all galvanized public support for increased government action against drugs. Quickly, Washington began passing a series of drug laws that would eventually constitute the heart of the War on Drugs. President Reagan signed the Anti-Drug Abuse Acts of 1986 and 1988—a series of measures that allocated money for prisons, treatment, and drug education, but, more significantly, established strict mandatory minimum sentences for federal drug offenders. The Office of National Drug Control Policy was established by the Bush Administration in 1989, creating the position of a so-called Drug Czar to battle the nation’s problems. President Bush made the “War on Drugs” his top domestic policy priority. He proposed an additional \$1.2 billion for anti-drug efforts including a fifty percent increase in military spending for narcotics interdiction. The Clinton Administration continued to hold the line on the drug war, symbolically appointing retired Army General Barry McCaffrey to be the new Drug Czar.

And what is the news so far from the front lines of this tremendous drug effort, anti-drug effort? After twenty years, America’s prisons are filled with drug offenders. The number of inmates has tripled to nearly two million, with sixty to seventy percent testing positive for substance abuse at the time of their arrests. Despite such massive law enforcement efforts, the U.S. remains the world’s largest

consumer of illegal drugs. Cocaine continues to come into our country, primarily over the border from Mexico. Given these discouraging facts, some advocates argue that drug abuse should now be considered a disease rather a crime. Nonetheless, no administration since the Nixon Administration has spent as much on treatment as they have on law enforcement.

The current rethinking of our national drug policy has led us, then, to the debate that you will hear tonight. And the question on the floor is: Is the current focus on interdiction or criminal sanctions an effective weapon against the scourge of drug abuse or has the strategy run its course, necessitating a shift of focus to treatment and prevention? With that let me ask Eric Sterling and Congressman Barr to come up and join us.

Thank you. Now each of them is going to have five minutes, I believe, to make an opening statement. So, let me ask Congressman Barr to begin.

CONGRESSMAN BARR: Thank you, Juan. I would like to thank you for being here this evening. I would like to thank my friend and colleague, Eric, for being here this evening. I appreciate you all coming out on a night when there are many, many other things you all could be doing. But taking part in a very important debate about one of the most serious problems that face us is one of the reasons why this is such a pre-eminent law school. And, I think back to my days here both as a student for four years in the evening program and, the last two years or so, on the Editorial Board of the ACLR, and, I have nothing but utterly and completely fond memories of every moment I spent here — as I am sure you all do also. It is wonderful to be back here. I have had the opportunity over the last few years that I have been serving in the Congress to participate in several programs here, all of which were very professional. I had very good participation that enabled me to come away knowing more about the topic at hand than when I came here. And, I hope that will be the case for you all here this evening.

I think that any debate or any discussion over the War Against Drugs has to start at the very basic level. What is it that we are talking about here? We are talking about mind-altering drugs. Surprise. Mind-altering drugs alter your mind. That's why they are called mind-altering drugs. That's why people take them. Mind-altering drugs inherently and inevitably pose a danger not just to the people taking it, but to all people who might indirectly or directly come in contact with them. The reason for that is that mind-altering drugs, in altering the ingester's mind, limit and impair, confuse, confound their ability to perceive the world around them and their ability to react to and interact with the world around them. That poses a danger to society. That is the fundamental reason why all of us have a stake in ensuring that we do not allow, to the greatest extent possible, our kids and our fellow adults to alter their mind through the use of mind-altering drugs.

Certainly the statistics that Juan stated a few moments ago are very, very revealing. We have not won the war against mind-altering drugs. In a free society, we probably never will win the war against mind-altering drugs. In a free society,

people are always, to one extent or another, going to seek ways to alter their mind to make life easier, at least as they perceive it, to avoid responsibility, to avoid accountability. Whatever the reason, people are always going to search for ways to do that. We have seen it with alcohol and when people take alcohol to the point where it impairs their ability to correctly perceive the world around them and to interact and react to the world around them, thereby posing a danger, that conduct becomes illegal. So it is with mind-altering drugs. The difference between mind-altering drugs and alcohol is any use of mind-altering drugs alters your mind and poses that danger that is the essence of society's need to protect itself and to protect its citizens. I do not believe that we should ever for a moment as a society even consider legalizing mind-altering drugs. To do so, would go against the grain of everything that has made America great. Notions such as responsibility, such as accountability, such as using your God-given talents to improve your life and the life of your fellow man, compassion: all of those things are at the heart of what makes America, America. If we allow ourselves to be seduced by the statistics or by those who say, in sort of a legal syllogism, "Well, if we legalize mind-altering drugs, we will no longer have a problem with illegal mind-altering drugs," if we ever for a moment consider that or cave into that, we will dramatically and forever change the kind of country that we are, and none of the things that it will become will be better than what we are now. We must continue to fight despite the problems and despite the difficulties and despite the frustrations. Because we are Americans, and this is at the core of what we stand for as a free nation. Thank you.

MODERATOR: Thank you very much Congressman Barr. Now, Eric Sterling.

MR. STERLING: Thanks very much. Before I begin the substance of my remarks, I wanted to thank the American Criminal Law Review and Judy Golden for the wonderful invitation to speak to you this evening. I first knew about Georgetown Law School from a graduate named Nick Guarante, a lawyer who I practiced with in the Delaware County Public Defenders Office in the mid-1970s. And, of all the newly-minted lawyers, Nick was the finest and most aggressive lawyer in our office. And, I have always felt if I could ever come to speak at a place like this and to influence students like him that would really be an honor. I would like to acknowledge that Father Robert Drinan, a distinguished professor at this law school, hired me in 1979 to work for the House Judiciary Committee, and, if he is here, I want to thank him for the opportunity he gave me. And, of course to recognize Professor Sam Dash, who has thought a great deal about these issues, who has been a colleague and mentor of mine for many years. Also, among you is Kristy Gomes, a law student who has been an intern in our office for over a year.

The debate today is certainly not one about winning or losing. The issues are complex, and I don't think the answers are easy. My objective this evening is to stimulate a fundamental re-thinking of the current national approaches towards the problems of drugs. The essence of my view is that we have failed to achieve any

reasonable objectives for what a drug policy ought to be. And, in fact, our drug policy has been counterproductive.

Having then said that, the question is what we are going to do? The Congressman told us about some of the deaths and that drugs kill. And, indeed, drugs do kill. The number of deaths from drugs in the United States has doubled since 1979, when I came to Washington, from about 7,000 in 1979 to over 16,000 in 1998, according to the most recent data from the White House. This is the annual drug strategy, and this is filled with all kinds of data about the war on drugs. Hospital emergency room visits for drugs have grown steadily from 400,000 in 1988 to 550,000 in 1999—a remarkable increase. More people are going to the hospitals because of drugs. Our goals, of course, ought to be to save lives. We're failing. We ought to protect public health. We're failing. Another one of our goals, of course, is to keep kids from using drugs. And, yet according to the Monitoring the Future Survey in 1998, high school seniors said that it had never been easier to get marijuana or heroin. That is after twenty years of our current strategy. We have been asking them since 1975: "How easy is it for you to get drugs?" And, in 1998, they said it has never been easier.

When I came in 1979, the first hearing I set up was a hearing on drug enforcement, and Peter Bensinger, then the head of DEA came and testified and talked about the great success we had in driving the purity of heroin down from about five percent to three percent. Unfortunately, the purity of heroin now typically has gone to twenty-five percent according to the National Drug Control Strategy. Peter Bensinger talked about how important it was to raise the price of drugs. If we raise the price, people will go into treatment. They'll stop; they just won't be able to afford to be drug users anymore. Yet, the price of drugs, unfortunately, has fallen. Heroin prices have fallen from \$3,000 per pure gram in 1981 to \$1,800 per pure gram during the same period. Not only are drugs more available, more kids are using them. "During-the-past-months" use of marijuana by eighth graders grew from 3.2% in 1991 to 9.1% in 2000. Use of cocaine grew from 0.5% to 1.2%. LSD use grew from 0.06% to 1%. If you say, what are we trying to accomplish here? Save lives, protect public health, keep drugs out of the hands of kids? What we are doing is an astonishing failure. It is an utter failure. Now, what has been the price of all of this? We have seen an increase in drug prisoners from 20,000 or 30,000 to a half a million last year. Federal drug cases went from less than 7,000, when I came to Washington, to 27,000 last year. President Clinton sent over 100,000 drug offenders to prison. If you turn to the BOP [Bureau of Prisons] website today, 148,000 federal prisoners. There were 73,000 when Bill Clinton took the Presidency. There were 24,000 when Ronald Reagan became the President. We have seen a six-fold increase in the federal prison population. The essence of what we have established is a colossal failure and a counterproductive policy.

MODERATOR: Thank you very much, Eric. So, now we go into the debate portion, and the rules are, of course, that I set the topic and, hopefully, ask a

pointed question that will allow each person — first the person to whom the question is directed to, to answer for five minutes and then to get a response from the other person for the length of about three minutes. So, let me begin going back and forth by going to Congressman Barr. And, saying Congressman, we just heard Eric Sterling saying that in terms of limiting the availability of drugs, in terms of driving up the price, in terms of limiting the quality or purity of drugs, so far the War on Drugs has been a failure. Would you agree?

CONGRESSMAN BARR: If you look back to the last period of time, Juan, in modern American history, during which period we had a consistent, a strong, a very visible policy against mind-altering drugs, and that is during the Reagan Administration and through probably about the first two years of the first Bush administration, we saw a dramatic decrease in virtually every category by which you objectively measure whether or not we are winning the so-called War against Drugs. The reason is simple. We had a consistent, clear, aggressive public articulation of an anti-drug policy: “Just Say No.” It wasn’t as with the Clinton administration: “Just Say Maybe.” It wasn’t “Just Don’t Inhale.” It has become “Drug War, What Drug War?” When you talk with General McCaffrey—and, during the last several years, the General, who I believe is very committed to and would like to, were he not hampered by the political realities of the prior administration, would have been a very, very effective Director of the Office of National Drug Control Policy, also known as the Drug Czar. But, during the period of time during which he served as the head of ONDCP, can anybody here recall one major policy address by the President of the United States, William Jefferson Clinton, on drugs? Can anybody here remember one specific major policy initiative in the War Against Drugs? We had just the opposite. Virtually every time Congress, reflecting the will of the people over the last six years, attempted to take some meaningful steps in the area for example of drug interdiction or helping those in the Andean source countries, most notably Colombia, fight the war against the development and the shipment of those drugs, not only was the Clinton Administration not there helping us, they were sabotaging our efforts. So the answer to your question, Juan, is, during the Clinton Administration, yes, it has been a failure, but it has been a deliberate failure. And that is the only conclusion that you can legitimately reach if you look at what this administration did not do and the tiny steps that it did take. If we now, as I believe George W. Bush, will go back to and learn something that Republicans rarely do, and that is learn from our successes, if we go back as an administration and as a majority party in the Congress and do what we did during that last period of time where we saw a significant success in getting young people off of drugs and stopping them from trying mind-altering drugs, the answer to your question then will be as it was back then, yes, it is succeeding. If we have the will to succeed, if we take those steps to succeed, we will succeed.

MODERATOR: Thank you Congressman. Eric, you have about three minutes.

MR. STERLING: This is phenomenal. Speeches by the President are the most effective public policy, the most inexpensive way of changing public health. Have

the President go out and speak. Death rates will go down, people will stop using drugs. This is phenomenal! If only it were true. The death rate in 1981 when Ronald Reagan came in was 3.1. It went up steadily. When he left in 1989 it was 4.3. That is the death rate per 100,000 from drugs. It's absurd to think that drug addicts or high school kids are going to watch C-SPAN breathlessly waiting to hear the President's announcements about what we should do about the drug problem. In fact, during President Reagan's presidency, we went from a period of never having heard of crack cocaine to a crack cocaine epidemic. We went from never having heard of HIV or AIDS to having HIV and AIDS as a major problem as a consequence of drugs. General McCaffrey, I am sorry to say, was equally a failure. McCaffrey was too busy beating the drum for the White House. This is what we get from the White House. This is the 1999 Anti-Drug Strategy. And the President's strategy says "National Anti-Drug Policy is working." Well this is — frankly, it is a crock.

If you look at these four charts, cocaine production going down in Peru and Bolivia. That's true. But why do we now have a 1.3 billion dollar Colombian anti-cocaine endeavor? On the bottom right, what you are looking at is "National drug control budget funding trend up." You see, we have not been looking at this from the right perspective. It's not about deaths. It's not about kids. It's about the fact that the budget-funding trend is up. The agencies are now getting nineteen billion dollars a year to fight the War on Drugs. General McCaffrey came forward with performance measures: "We're going to come up with the hard data. We're going to objectively deal with this problem. We're going to reduce things like the number of chronic drug users by twenty percent. We're going to reduce the flow of drugs into the United States by fifteen percent." Well, when you open up the data in the back of the book, they say, "Well, funny thing, we don't really know exactly how many chronic drug users there are. We don't really know how many drugs are coming into the country." Imagine the gall. I'm surprised that Members of Congress, in all of the years that this has been out there, never said to General McCaffrey, "General, how can you come up and tell us you are going to reduce this by fifteen percent by the year 2002 and you don't know what the baseline is?" That's the kind of fraud that underlies our anti-drug policy today.

MODERATOR: Thank you, Eric. Eric, let me throw this question to you—and, again, you will have five minutes to respond and, then, the Congressman will have three to follow up. You have been very critical of the current drug strategy. But, I wonder if instead of focusing on the law enforcement side as we do now, do you have any strategy in mind to replace it in terms of halting the drug problem in this country?

MR. STERLING: I think we have to think about the problem both in short-term and in long-term senses. Short-term, what is clear that we can do is try to make appropriate drug treatment available. Drug treatment not only works; it is cost effective. When you compare drug treatment to treatment for heart disease, high