

### **III The United States of America and International Law**

#### **i) The U.S.A as a “Rogue State”- The Enemy without**

208. The **Charter of the United Nations** is recognized as the foundation of international law and world order. **Article 39** of the Charter provides that “the security council shall determine the existence of any threat to the peace, breach of the peace or act of aggression, and shall make recommendations, or decide what measure shall be taken in accordance with **Articles 41 and 42**”. These latter articles detailed the preferred “measures not involving the use of armed force” and permit the security council to take further action if it finds such measure inadequate. The only exception is **Article 51**, which provides that nothing in the Charter “shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a member of the United Nations, until the security council has taken measure necessary to maintain international peace and security...”. The purposes and principles of the United Nations are set out in Articles 1 and 2:

#### *Article 1*

The **Purposes of the United Nations** are:

1. • To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;
2. • To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measure to strengthen universal peace;
3. • To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and
4. • To be a center for harmonizing the actions of nations in the attainment of these commons ends.

#### *Article 2*

The Organization and its Members, in pursuit of the Purposes stated in *Article 1*, shall act in accordance with the following **Principles**.

1. • The Organization is based on the **principle of the sovereign equality** of all its Members.
2. • **All Members**, in order to ensure to all of them the rights and benefits resulting from membership, **shall fulfill in good faith the obligations assumed by them** in accordance with the present Charter.
3. • **All Members shall settle their international disputes by peaceful means** in such a manner that international peace and security, and justice, are not endangered.
4. • **All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state**, or in any other manner, inconsistent with the Purposes of the United Nations.
5. • All Members **shall give** the United Nations every assistance in any action it takes in accordance with the present Charter, **and shall refrain** from giving assistance to any state against which the United Nations is taking preventive or enforcement action.
6. • The Organization **shall ensure that states which are not Members** of the United National **act in accordance with these Principles** so far as may be necessary for the maintenance of international peace and security.
7. • Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the **domestic jurisdiction** of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

209. The U.N. Charter and these provisions provide the lawful way to react to a threat to world peace. If a country feels threatened, it can approach the security council to authorize appropriate measures to respond to the threats. No state has the authority to make its own determinations on these matters and to act as it chooses.

**“Defying the world – America: The Outlaw State” by Noam Chomsky, August 2000, LeMonde diplomatique, pp. 1 – 3.**

210. The United States of America, while a member of the United Nations, does not accept these conditions. **Madeleine Albright**, when **Ambassador to the United Nations**, informed the security council in connection with a U.S. confrontation with **Iraq**, that Washington would act “multilaterally when we can and unilaterally as we must” indicating an area vital to U.S. national interests. **Ms. Albright** reiterated this position in 1998 in her capacity of **Secretary of State** when **U.N. Secretary General Kofi Annan** undertook his February 1998 diplomatic mission to Iraq. Similarly, **President Clinton** indicated that if **Iraq** failed the test of conformity as determined by Washington “everyone would understand that then the U.S. and hopefully all of our allies would have the unilateral right to respond at a time, place and manner of our own choosing.”

**“Defying the world – America: The Outlaw State” by Noam Chomsky, August 2000, LeMonde diplomatique, p. 1.**

211. The security council unanimously endorsed the Secretary General’s agreement and rejected the position of the United States and United Kingdom that demanded that the security council authorize their use of force in the event of non-compliance by **Iraq**. The security council resolution warned of severe consequences but did not specify what they would be. However, the final paragraph of the security council resolution made it clear that the **United Nations** and the security council specifically would **remain seized of the matter** in accordance with its responsibilities under the U.N. Charter in order to ensure implementation of the resolution and to ensure peace and security in the area. In other words, in accordance with the U.N. Charter, **“this was a matter for the security council and no one else”**.

**“Defying the world – America: The Outlaw State” by Noam Chomsky, August 2000, LeMonde diplomatique, p. 2.**

212. U.S. reaction to the resolution included **Ambassador Bill Richardson** asserting that the agreement did not preclude the unilateral use of force and that the United States had retained its legal right to attack Baghdad at will. Similarly, **State Department’s** spokesperson, **James Rubin**, expressed the view that the U.S. did not see a need to return to the security council if there was a violation of the agreement. **President Clinton** interpreted the resolution as providing authority on the part of the United States to act if dissatisfied with Iraq’s compliance. In the **U.S. Congress**, Senate majority leader **Trent Lott** denounced the Government as having subcontracted its foreign policy powers to

the U.N. security council. **Senator John McCain** made similar remarks. **Senator John Kerry**, known as a liberal dove, added that it would be legitimate for the United States to invade Iraq if **Saddam Hussein** “remains obdurate and in violation of the U.N. resolutions”.

**“Defying the world – America: The Outlaw State” by Noam Chomsky, August 2000, LeMonde diplomatique, p. 2.**

213. In 1986, the **International Court of Justice** at The Hague condemned the United States for the unlawful use of force against the **Sandinistas** in **Nicaragua**. It demanded that the U.S. desist and pay extensive damages and declared all U.S. aid to the Contras to be military and not humanitarian. In the United States, this decision was denounced on all sides. The Democrat-controlled Congress immediately authorized new funding to step up the war against the Contras.

**“Defying the world – America: The Outlaw State” by Noam Chomsky, August 2000, LeMonde diplomatique, p. 2.**

214. **United States Ambassador to the United Nations, Daniel Patrick Moynihan**, in his memoirs, indicates pride in his success in rendering the U.N “utterly ineffective in whatever measures it undertook” following the instructions of the **U.S. State Department**, which “wished things to turn out as they did and worked to bring this about”, referring to the United States involvement in **East Timor**, which involved atrocities far greater than anything attributed to Saddam Hussein in **Kuwait**.

**“Defying the world – America: The Outlaw State” by Noam Chomsky, August 2000, LeMonde diplomatique, p. 3.**

215. The **1954 Geneva accords** ended the war between France and Indo-China. The accords were seen as a disaster by Washington which moved immediately to undermine them. The U.S. national security council apparently decreed that as far as they were concerned “local communists aversion or rebellion not constituting armed attack” would allow for the use of military force, including an armed attack on **China** if it was “determined to be a source of the subversion”. It called for the remilitarizing of **Japan** and converting **Thailand** into a “focal point for U.S. covert and psychological operations in **Southeast Asia**” and, in particular, in **Indochina (Vietnam)**. In other words, the United States Government defined “aggression” to include political warfare or subversion”.

**“Defying the world – America: The Outlaw State” by Noam Chomsky, August 2000, LeMonde diplomatique, p. 2.**

216. In December of 1989, the United States invaded **Panama**. **U.S. Ambassador Thomas Pickering** defended the U.S. position in the U.N. security council by appealing to **Article 51** of the Charter, arguing that it “provides for the use of armed force to defend a country, to defend our interest and our people” and that it, therefore, entitled the United States to invade Panama to prevent its “territory from being used as a base for smuggling drugs into the U.S.”. After Washington partially withdrew from **Panama**, there was anger throughout much of the world against Washington for its invasion. Washington was forced to veto two security council resolutions and to vote against the General Assembly resolution condemning Washington’s “**flagrant violation of International law** and of the independence, sovereignty and territorial integrity of states”. These resolutions called for the withdrawal of the U.S. armed invasion forces from Panama.

**“Defying the world – America: The Outlaw State” by Noam Chomsky, August 2000, LeMonde diplomatique, p. 2.**

217. In June of **1993**, **President Clinton** ordered a missile attack on **Iraq**, killing many civilians. **Secretary of State Albright**, relying on **Article 51**, claimed that the action was “in self defence against armed attack” referring to an alleged attempt to assassinate former **President George Bush** two months earlier – an event that was unproven and based on circumstantial evidence as opposed to ironclad intelligence – Congress and the Press supported **President Clinton** and **Secretary of State Albright** and their reliance on **Article 51**, as did the **British Foreign Secretary Douglas Hurd**.

**“Defying the world – America: The Outlaw State” by Noam Chomsky, August 2000, LeMonde diplomatique, p. 2.**

218. In **1986**, during the **Reagan** Administration, **Libya** was attacked by the U.S. as a rogue state. The bombing, orchestrated for prime time television, was used by **President Reagan** to muster support for U.S. terrorist attacks in **Nicaragua**. Washington claimed that “arch-terrorist **Gadafy**” had sent \$400 million and an arsenal of weapons and advisors to Nicaragua to bring his war to the U.S. The U.S. purportedly was exercising its “right of self defence” against the armed attack of the Nicaraguan rogue state.

**“Defying the world – America: The Outlaw State” by Noam Chomsky, August 2000, LeMonde diplomatique, p. 2.**

219. **Indonesia** shifted from enemy to friend when **General Suharto** took power in 1965. He presided over a slaughter against his own people including the slaying in the 1980's of some 10,000 Indonesians. The **Clinton** Administration described him as "our kind of guy". In December of 1975, the **U.N. security council** unanimously ordered Indonesia to withdraw its invading forces from **East Timor** without delay and called upon "all states to respect the territorial integrity of **East Timor** as well as the inalienable right of its people to self-determination". The U.S. response was to increase shipments of arms to the aggressors.

**"Defying the world – America: The Outlaw State" by Noam Chomsky, August 2000, LeMonde diplomatique, p. 3.**

220. Before the invasion of **Kuwait** by **Iraq**, **Saddam Hussein** enjoyed support in Washington. The U.S. even overlooked an Iraqi air force attack on the USS Stark killing 37 of its crew. Washington worked with Iraq in the campaign against **Iran** in 1989. It was not Saddam Hussein's massive crimes against his own people, that the U.S. was aware of, that elevated him and his country, **Iraq**, to the level of a "rogue state" but because he stepped out of line in his invasion of **Kuwait** in July of 1990, notwithstanding the Bush Administration's invasion of **Panama** a year earlier.

**"Defying the world – America: The Outlaw State" by Noam Chomsky, August 2000, LeMonde diplomatique, p. 3.**

221. **Cuba** has always qualified from a U.S. perspective as being a leading "rogue state" because of its alleged involvement in international terrorism. This is so notwithstanding U.S. terrorist attacks against **Cuba** for almost 40 years and attempts to assassinate **President Fidel Castro**.

**"Defying the world – America: The Outlaw State" by Noam Chomsky, August 2000, LeMonde diplomatique, p. 3.**

222. The **Sudan** was termed a "rogue state" by the U.S. and in August of 1998 it bombed an alleged chemical weapons factory there. **Khartoum** protested and subsequently, it was proved that the target was really only a pharmaceutical factory.

**"Defying the world – America: The Outlaw State" by Noam Chomsky, August 2000, LeMonde diplomatique, p. 3.**

223. As Professor Chomsky points out, the concept of 'rogue' or 'outlaw states' play a pre-eminent role in policy planning and analysis today. He points to the **Iraq** crisis which has continued for 10 years, since August 1, 1990, as the best known example. Here, "Washington and London declared **Iraq** a rogue state, a threat to its neighbours and the entire world and an outlaw nation led by a reincarnation of Hitler who must be contained by the guardians of world order, the **United States** and its junior partner, the **United Kingdom**." Professor Chomsky notes that "**contempt for the rule of law is deeply rooted in U.S. practice and intellectual culture**".

**"Defying the world – America: The Outlaw State" by Noam Chomsky, August 2000, LeMonde diplomatique, pp. 1 and 2.**

224. The basic concept of the "rogue state" emanates from the U.S. position that it has responsibility to protect the world even though the Cold War is over and **Ronald Reagan's** evil empire has faded. Consequently, the new rogues or threats outside the country became international terrorism, Hispanic narco-traffickers and the specific states such as **Iraq, Libya, Cuba** and **North Korea** in replacing the defunct **Soviet Union**.

**"Defying the world – America: The Outlaw State" by Noam Chomsky, August 2000, LeMonde diplomatique, p. 2.**

225. As Professor Chomsky says, the **new internal threat** in the U.S. became **fear of crime** and, particularly, **drugs** which according to the **National Criminal Justice Commission** was stimulated by "a variety of factors that have little or nothing to do with crime itself" including media practices, the role of Government and private industry in stoking citizen fear and...exploiting latent racial tension for political purposes", with racial bias in law enforcement and judicial sentencing that devastated black communities creating a "racial abyss...and putting the nation at risk of a social catastrophe". This development has led criminologists to describe the results as the **American gulag** and the **new American apartheid** with African-Americans as the majority of prisoners for the first time in U.S. history. There are more than 7 times as many African-Americans as whites in the U.S. prisons. This is disproportionate to the arrest rates and the arrest rates are already disproportionate to the actual use of drugs and trafficking and drugs by African-Americans.

**"Defying the world – America: The Outlaw State" by Noam Chomsky, August 2000, LeMonde diplomatique, p. 2;**

**Affidavit of Randall G. Shelden, sworn June 12, 2000.**

226. While the concept of “rogue state” has been officially abandoned by the U.S. to be replaced with the more vague concept of a “state of concern”, both terms are suitably flexible to suit the United States purposes. One thing is clear and that is that the United States’ use of the “rogue state” term did not describe a criminal state but rather one that defied or acted contrary to the all-powerful United States. Justice clearly, if one applies an objective definition to either term, the United States and its flagrant violations of international law both at home and abroad, clearly fits its own “damning classification”.

**“Defying the world – America: The Outlaw State” by Noam Chomsky, August 2000, LeMonde diplomatique, p. 3.**

ii) **The U.S. Criminal Justice System and International Law – The Enemy within – The People – The Poor and The Sick**

227. The United States is also in violation of its international responsibilities through the War on Drugs and the strongarm enforcement tactics associated with it.
- a) After WWII, the U.S. officially adopted the **Universal Declaration of Human Rights** on December 10, 1948;
  - b) According to **Human Rights Watch**, a group dedicated to protecting human rights of people around the world, the United States’ sentencing policies for drug offences are directly in conflict with the Universal Declaration;
  - c) **Human Rights Watch** regards “disproportionate” and “cruelly excessive” sentencing procedures as a violation of **Article 5** of the Declaration, which proscribes “**cruel, inhuman or degrading treatment or punishment**”;
  - d) The **United States** apparently leads the world in imprisoning its population (perhaps sharing the distinction with **Russia** and **China**, where data are uncertain);
  - e) The United States falls second only to Russia in imprisonment at a measure of **682 per 100,000** citizens; Russia counts 685 per 100.

**Affidavit of Valerie A. Leveroni Corral, sworn the 12<sup>th</sup> day of May, 2000, p. 4.**

- e) By the end of 1996, the prison population had reached a record 1.2 million, an increase of 5% over the preceding year, with the federal prison system 25% over capacity and state prisons almost the same. **By the year 2000, it had reached in excess of 2 million.** (**Human Rights Watch** 1997; **Donziger** 1996; New York Times 23 June 1997.);
- f) Average sentences for murder and other violent crimes have decreased markedly, while those for drug offences have shot up, targeting primarily African-Americans and creating what two criminologists, **Shelden** and **Brown**, call “**the new American apartheid**”.

**Affidavit of Randall G. Shelden, sworn June 12, 2000, paragraph 3, Exhibits “D” and “E” and paragraph 9, Exhibit “J”.**

228. A detailed examination of the violations of the **Universal Declaration of Human Rights** by the United States and, particularly by the United States Drug War, is contained in the treatise to commemorate the 50<sup>th</sup> anniversary of the signing of the U.N. Universal Declaration of Human Rights entitled, “**Human Rights and the U.S. Drug War**” by **Chris Conrad, Mikki Norris** and **Virginia Resner**. As they point out, the General Assembly of the United Nations proclaimed the **Universal Declaration of Human Rights (UDHR)** on **December 10, 1948**. It was adopted as a global response to the Nazi Holocaust and enumerates certain rights for all people. In its preamble, it proclaims the Declaration as a common standard of achievement for all peoples and all nations to the end that every individual and every organ of society is to strive by teaching and education to promote respect for the rights and freedoms enumerated in the document and by progressive measures to secure their universal and effective recognition and observance.

**“Human Rights and U.S. Drug War” – A treatise to commemorate the 50<sup>th</sup> Anniversary of the signing of the UN Universal Declaration of Human Rights by Chris Conrad, Mikki Norris and Virginia Resner, 1999, pp. 2 - 3.**

229. Many of the principles contained in the **Universal Declaration of Human Rights** are also contained in other international treaties to which the United States is a signatory. These include the following:
- a) **The International Covenant on Civil and Political Rights**, adopted by the General Assembly of the United Nations on December 16, 1966 and came into force on March 23, 1976, except for Article 41 which came into force on March 28, 1979. The **United States** became a signatory on October 5, 1977 and **Canada** acceded to that document on May 19, 1976;

- b) **The Optional Protocol to the International Covenant on Civil and Political Rights**, adopted by the General Assembly of the United Nations on December 16, 1966 and came into force on March 23, 1976. The **United States** is not a signatory whereas **Canada** acceded to it on May 19, 1976;
- c) **The International Covenant on Economic, Social and Cultural Rights** adopted by the General Assembly of the United Nations on December 16, 1966 and came into force on January 3, 1976. The **United States** became a signatory on October 5, 1977 and **Canada** acceded to this covenant on May 19, 1976;
- d) **The Convention on the Elimination of All Forms of Racial Discrimination** adopted by the General Assembly of the United Nations on December 21, 1965 and came into force on January 4, 1969. The **United States** became a signatory on September 28, 1966 and **Canada** on August 24, 1966 with ratification on October 14, 1970;
- e) **The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment** adopted by the General Assembly of the United Nations on December 10, 1984 and came into force on June 26, 1987. The **United States** became a signatory and ratified same in 1994. **Canada** became a signatory on August 23, 1985 and ratified same on June 24, 1987;
- f) **The Convention on the Prevention and Punishment of the Crime of Genocide** adopted by the General Assembly of the United Nations on December 9, 1948 and came into force on January 12, 1951. The **United States** became a signatory on December 11, 1948 and **Canada** on November 28, 1949 with accession by Canada on September 3, 1952.

**“Human Rights and U.S. Drug War” – A treatise to commemorate the 50<sup>th</sup> Anniversary of the signing of the UN Universal Declaration of Human Rights by Chris Conrad, Mikki Norris and Virginia Resner, 1999, p. 3;**

**“Human Rights – Status of International Instruments” by The Centre for Human Rights, Geneva, United Nations, New York, 1987.**

230. As **Conrad, Norris** and **Resner** point out, one of the stated goals of international human rights law is to achieve mutual tolerance, whereas the American “Drug War” is based on “zero tolerance”. This war has evolved into a huge profit driven industry which has resulted in more citizens than in any other developed nation, except perhaps Russia, being incarcerated. Apparently, over 400,000 drug offenders are behind bars nationally and the number is growing at an alarming

rate. Almost 2/3 of all federal prisoners are charged with drug activities involving drugs that were not illegal at the beginning of the century. The U.S. Government is committing substantial human rights violations against its own people. Subcultures are being demonized and scapegoated, families torn apart, children orphaned, large numbers of women are being incarcerated with additional consequences and African-Americans are disproportionately arrested and incarcerated and persecuted. These authors advocate a United States drug policy that is in full **compliance with international human rights law and the United States Constitution**. In support of their position, they have identified a number of the principles, rights and freedoms enumerated in the **Universal Declaration of Human Rights** and have then provided commentary on specific case examples of individuals whose lives have been destroyed by the “Drug War”. These case studies that document the United States human rights violations should be read in conjunction with the book, “**Shattered Lives – Portraits From America’s Drug War**”, by the same authors, which further details the outrageously disproportionate and destructive impact of the Drug War on the lives of these people and their families by the United States Government.

**“Human Rights and U.S. Drug War” – A treatise to commemorate the 50<sup>th</sup> Anniversary of the signing of the UN Universal Declaration of Human Rights by Chris Conrad, Mikki Norris and Virginia Resner, 1999, p. 4.**

**“Shattered Lives – Portraits From America’s Drug War”, by Chris Conrad, Mikki Norris and Virginia Resner, 1998 Creative Xpressions.**

231. Some of the articles of the **Universal Declaration on Human Rights** that Norris, Conrad and Resner identify as the basis for U.S. violation of these articles, among other violations, are as follows:

a) **“Due Process”**

**Article 10** of the **Universal Declaration of Human Rights** provides for an entitlement to “a fair and public hearing by an independent and impartial tribunal, ...” and **Article 11.1** provides for the presumption of innocence. The **United States Constitution Bill of Rights** provides these equivalents in the **Fifth and Sixth Amendments**.

The authors assert that these principles have been badly eroded by the U.S. Drug War as manifest by the usual finding of a “drug exception” to the Bill of Rights. Further, how much information is withheld from grand juries and trial juries. Importantly, how sentencing guidelines and mandatory minimum penalties remove judicial independence and discretion and require them to focus on criteria, such as the weight of the

drug involved and disregard mitigating circumstances. The prosecutor determines the charge and, thus, the penalty and “prosecutorial threats and backroom plea bargains have replaced public hearings”. In addition, civil asset forfeiture laws can result in the seizure of property and one’s entire life savings without even being charged, let alone convicted. Frequently, this removes one’s ability to raise funds to retain counsel to defend oneself. Defences, such as medical necessity and freedom of religion are frequently disallowed in drug cases and juries are not informed of the penalty faced by a defendant or their own power to acquit despite the evidence in the interests of justice. In addition, it is common in drug cases for witnesses to be paid or induced by the Government testify against others in secure their own release or a substantial reduction in their penalty. Police entrapment and the increase in drug quantities are used by undercover officers in order to ensure a greatly enhanced penalty by the defendant. Personal property is seized for law enforcement use. The U.S. conspiracy law is so broad that a person can be caught in a web without having committed any overt act resulting in many minor participants and even innocent participants being imprisoned for lengthy periods of time.

By way of example, the case of **Amy Pofahl** is given who was serving 24 years for conspiracy to import and distribute ecstasy simply because she refused to plea bargain or cooperate with the Government in relation to the substantive offence committed by her husband in Germany. He received only 6 years and was released after 4. She had separated from her husband before he apparently became involved in any methamphetamine conspiracy but, once he was arrested, she had tried to help him. As Ms. Pofahl pointed out:

“So much for keeping the streets free of criminals by demanding harsh mandatory minimums, because every single person who pled and was guilty in my case was handed their freedom in exchange for testimony.”

**“Human Rights and U.S. Drug War” – A treatise to commemorate the 50<sup>th</sup> Anniversary of the signing of the UN Universal Declaration of Human Rights by Chris Conrad, Mikki Norris and Virginia Resner, 1999, pp. 8 and 9;**

**“Shattered Lives – Portraits From America’s Drug War”, by Chris Conrad, Mikki Norris and Virginia Resner, 1998 Creative Xpressions, p. 10.**

Ms. Pofahl was 1 of 4 women who was recently pardoned by President Clinton along with 3 others because of the disproportionality of her

sentence to the offence charged and to her husband's role and penalty and, arguably, in light of the increased criticisms of the U.S. conspiracy law passed by Congress in 1980 that allows for the imposition of these lengthy mandatory sentences in "War on Drugs" cases.

Eric E. Sterling, an attorney, who was counsel to the U.S. House Judiciary Committee from 1979 to 1989 and was principally responsible at that time for the anti-drug legislation and other anti-crime matters. Since 1989, he has been president of the Criminal Justice Policy, a non-profit centre that promotes innovative solutions to criminal justice problems. He hailed the release by President Clinton of 4 women and 1 man from federal prison using the constitutional power of pardon as an "act of duty, mercy, and courage". He stated that President Clinton showed great political courage in releasing these prisoners who are low level non-violent first time offenders convicted under mandatory minimum laws from the '80's. Sterling said that Congress hastily handcuffed the Federal judiciary with the mandatory minimum sentences in the 1980's and that these laws have been condemned by Chief Justice Rehnquist and most of the Federal judiciary, by law professors, numerous legal and lay observers and yet Congress had failed to reform them out of the fear of being labelled "soft on drugs".

**"Clinton's Release of Prisoners, an Act of Duty, Mercy, and Courage", July 11, 2000, the Criminal Justice Policy Foundation, Eric E. Sterling, President.**

A further example given is that of **Kemba Smith**, age 27, is also serving 24 years for allegedly conspiring to distribute crack cocaine and for money laundering and giving false statements. She never actually handled or sold any drugs but was sentenced for the entire amount of cocaine distributed by her boyfriend's operation even though she had not known him when the conspiracy began.

**"Human Rights and U.S. Drug War" – A treatise to commemorate the 50<sup>th</sup> Anniversary of the signing of the UN Universal Declaration of Human Rights by Chris Conrad, Mikki Norris and Virginia Resner, 1999, p. 11;**

**"Shattered Lives – Portraits From America's Drug War", by Chris Conrad, Mikki Norris and Virginia Resner, 1998 Creative Xpressions, p. 41.**

b) **“The Right to Life”**

The right to life is guaranteed by **Article 3** of the **Universal Declaration of Human Rights** and is contained in the **United States Declaration of Independence**. It is the foremost human right from which all other rights arise.

As the authors point out, killing innocent civilians is not acceptable in any war and certainly not as a component of domestic police policy but it happens all of the time in the United States Drug War. Frequently, the problem arises as a result of excessive force and no-knock raids in the police zeal to seize evidence and round up suspects. When someone is hurt or killed, subsequent investigations usually determine no fault and these human fatalities are forgotten. The examples cited of such casualties include the following:

- **Rev. Accelyne Williams** (MA) died of a heart attack at age 75 when drug enforcement police forcibly entered the wrong apartment and chased him around his home until he collapsed.

**“Human Rights and U.S. Drug War” – A treatise to commemorate the 50<sup>th</sup> Anniversary of the signing of the UN Universal Declaration of Human Rights by Chris Conrad, Mikki Norris and Virginia Resner, 1999, p. 13;**

**“Shattered Lives – Portraits From America’s Drug War”, by Chris Conrad, Mikki Norris and Virginia Resner, 1998 Creative Xpressions, p. 61.**

- **Shirley Dorsey** (CA) was driven to commit suicide in 1991 rather than testify against her boyfriend, who was growing medical marijuana for her use to control chronic pain.

**“Human Rights and U.S. Drug War” – A treatise to commemorate the 50<sup>th</sup> Anniversary of the signing of the UN Universal Declaration of Human Rights by Chris Conrad, Mikki Norris and Virginia Resner, 1999, p. 13;**

**“Shattered Lives – Portraits From America’s Drug War”, by Chris Conrad, Mikki Norris and Virginia Resner, 1998 Creative Xpressions, p. 64.**

- **Gary Shepherd** (KY) was a Vietnam veteran shot to death in 1993 for growing marijuana – assassinated by concealed snipers while he stood with his family on his front porch.

**“Human Rights and U.S. Drug War” – A treatise to commemorate the 50<sup>th</sup> Anniversary of the signing of the UN Universal Declaration of Human Rights by Chris Conrad, Mikki Norris and Virginia Resner, 1999, p. 13;**

**“Shattered Lives – Portraits From America’s Drug War”, by Chris Conrad, Mikki Norris and Virginia Resner, 1998 Creative Xpressions, p. 67.**

- **Annie Rae Dixon** (TX), an 84 year old grandmother, was shot to death in her sick bed during a 1992 no-knock search.

**“Human Rights and U.S. Drug War” – A treatise to commemorate the 50<sup>th</sup> Anniversary of the signing of the UN Universal Declaration of Human Rights by Chris Conrad, Mikki Norris and Virginia Resner, 1999, p. 13;**

**“Shattered Lives – Portraits From America’s Drug War”, by Chris Conrad, Mikki Norris and Virginia Resner, 1998 Creative Xpressions, p. 62.**

- **Bruce Lavoie** (VT), a mechanic, was shot to death in 1989 while attempting to shield his son from the bullets of unidentified intruders: police serving a no-knock search.

**“Human Rights and U.S. Drug War” – A treatise to commemorate the 50<sup>th</sup> Anniversary of the signing of the UN Universal Declaration of Human Rights by Chris Conrad, Mikki Norris and Virginia Resner, 1999, p. 13;**

**“Shattered Lives – Portraits From America’s Drug War”, by Chris Conrad, Mikki Norris and Virginia Resner, 1998 Creative Xpressions,, p. 61/**

- **Chad MacDonald** (CA) was a minor threatened with a lengthy jail sentence for methamphetamine when police offered him a deal to entrap meth dealers. In 1998, on his fourth setup, he was exposed, tortured and killed in a suspected drug house.

**“Human Rights and U.S. Drug War” – A treatise to commemorate the 50<sup>th</sup> Anniversary of the signing of the UN Universal Declaration of Human Rights by Chris Conrad, Mikki Norris and Virginia Resner, 1999, p. 13;**

**“Shattered Lives – Portraits From America’s Drug War”, by Chris Conrad, Mikki Norris and Virginia Resner, 1998 Creative Xpressions, p. 66.**

- **Esequiel Hernandez** (TX) died in 1997 at the age of 18 when he was shot by United States Marines while tending his family goat herd near Redford, TX, an isolated boarder town with a population of approximately 100 people. He was carrying a rifle to protect his goats from snakes and wild animals and the autopsy disclosed that he was not facing the Marine who killed him. The ***U.S. Posse Comitatus Act*** prevented military troops from engaging in domestic law enforcement until the **Reagan** administration amended the Act to permit this to occur to accommodate the Drug War.

**“Human Rights and U.S. Drug War” – A treatise to commemorate the 50<sup>th</sup> Anniversary of the signing of the UN Universal Declaration of Human Rights by Chris Conrad, Mikki Norris and Virginia Resner, 1999, p. 14;**

**“Shattered Lives – Portraits From America’s Drug War”, by Chris Conrad, Mikki Norris and Virginia Resner, 1998 Creative Xpressions, p. 63.**

- **Donald Scott** (CA) died in 1992 at the age of 62 when he was shot in his own home by a Drug Task Force member of the L.A. County Sheriff’s Department who pounded on Mr. Scott’s door and then burst into the home with a loaded weapon in hand. Mr. Scott had run into the room wondering what was going on with his revolver above his head and, as he lowered the gun, he was shot and killed from two sources. No drugs of any kind were found in his home or on his grounds and apparently he was not even a marijuana smoker. He was in a dispute with the federal government over their desire to append his land to a federal park and it has been suggested that they were hoping that they would find marijuana and, this way, be able to obtain forfeiture his property.

**“Human Rights and U.S. Drug War” – A treatise to commemorate the 50<sup>th</sup> Anniversary of the signing of the UN Universal Declaration of Human Rights by Chris Conrad, Mikki Norris and Virginia Resner, 1999, p. 15;**

**“Shattered Lives – Portraits From America’s Drug War”, by Chris Conrad, Mikki Norris and Virginia Resner, 1998 Creative Xpressions, p. 65.**

- **Robert Lee Peters** (FL) Police deputies, who did not identify themselves before breaking into Mr. Peters’ St. Petersburg, Florida house, caused Mr. Peters to think that there were burglars and to, therefore, fire his gun through the door resulting in him being killed in return by the SWAT teams’ return fire. The family was about to watch a video and there were two children and an ailing stepfather who subsequently had a heart attack in the house at the time. Peters had sold a small amount of marijuana to an undercover detective and a secret informant and 2 lbs of marijuana were seized from his home.

**“Shattered Lives – Portraits From America’s Drug War”, by Chris Conrad, Mikki Norris and Virginia Resner, 1998 Creative Xpressions, p. 62.**

- **John Fellin** (PA) was shot 5 times and killed by a special drug task force in his home in 1992 in West Hazleton, PA. He died in front of his girlfriend and 1 of his 3 children, a 2 year old girl. The police did not announce themselves and entered the residence with an invalid search warrant. They found 1 pound of marijuana, a scale and some baggies.

**“Shattered Lives – Portraits From America’s Drug War”, by Chris Conrad, Mikki Norris and Virginia Resner, 1998 Creative Xpressions, p. 62.**

- **Manuel Ramirez** (NM) was a 26 year old also killed in a no-knock drug raid in 1990 at age 26. He was asleep on the living room couch when the Albuquerque Police Department, a Special Weapons and Tactics (SWAT) team and the Navy Seals approached the front door and rear to serve a warrant, looking for cocaine. The police used a tow truck to break out the windows and doors of the apartment, causing the family to think that they were being robbed. They burst in and shot Ramirez twice in the chest without announcing who they were nor giving any order to drop the unloaded weapon that he had picked up. They found 2 marijuana cigarettes, a bottle of methamphetamine pills and a spoon with some residue in it.

**“Shattered Lives – Portraits From America’s Drug War”, by Chris Conrad, Mikki Norris and Virginia Resner, 1998 Creative Xpressions, p. 64.**

- **Johnathon West** (CA) was an AIDS patient and medical marijuana advocate whose death inspired the San Francisco Medical Marijuana Initiative of 1991 which passed with 80% of the vote and led the way to the passage of Proposition 215 in 1996, which passed by 56%.

**“Shattered Lives – Portraits From America’s Drug War”, by Chris Conrad, Mikki Norris and Virginia Resner, 1998 Creative Xpressions, p. 66.**

- **Scott W. Bryant** was 29 when he was shot by police at Beaver Dam, Wisconsin in 1995. He was unarmed and did not resist arrest. Again, the police using a no-knock warrant charged through the door of his home and shot him down. His 7 year old son watched him die. It took the ambulance 35 minutes to arrive. They found less than 3 grams of marijuana.

**“Shattered Lives – Portraits From America’s Drug War”, by Chris Conrad, Mikki Norris and Virginia Resner, 1998 Creative Xpressions, p. 66.**

- **Gary Earl Shepherd** (KY) on August 8, 1993, at age 45, Mr. Shepherd was waiting at his home in Broadhead, Kentucky, after a day-long casual standoff that began that morning when a police helicopter flew over and landed outside his home. Mr. Shepherd was a Viet Nam vet who had a crippled left arm from the war. He had deep convictions about medical marijuana which he used to relieve his pain. The helicopter and the police were going to cut down his plants and he said that they would have to kill him first. He sat guarding his plants for 6 or 7 hours with no attempt at being made to negotiate. He and his companion were then ordered to put their hands in the air and as he raised his rifle to comply, a sniper in a corn field shot him in the head and chest. His 4 year old son was sprayed with his father’s blood and watched him die. The child’s mother was also grazed by a bullet from a Kentucky drug enforcement officer.

**“Shattered Lives – Portraits From America’s Drug War”, by Chris Conrad, Mikki Norris and Virginia Resner, 1998 Creative Xpressions, p. 67.**

- **Gerardo Anthony Mosquera, Jr.** Gerardo’s father was sent back to Columbia even though his wife and children were born in the United States and he was employed as a forklift operator. He had sold a \$10 bag of marijuana to a police informant in 1989 and was, therefore, considered a “criminal alien” banned from returning to the U.S. His son, Gerardo, studied hard and worked after school to help support the family, became

despondent when his father was deported after residing in the U.S. for 29 years. Consequently, shot himself in 1998 and his father was denied permission to return to the U.S. for his son's funeral.

**“Shattered Lives – Portraits From America’s Drug War”, by Chris Conrad, Mikki Norris and Virginia Resner, 1998 Creative Xpressions, p. 67.**

- **Barb and Kenny Jenks.** Kenny Jenks was a hemophiliac who contracted AIDS through contaminated blood in 1980 and unknowingly infected his wife, Barbara. They both became too sick to work and lived on disability. They found that marijuana helped them eat and gain strength, following chemotherapy. When charged, they argued medical necessity and ultimately were able to get into the Federal Government's “Compassionate IND” program. They went public with their story and soon 300 other AIDS patients applied. More than 30 had successfully proven their medical necessity and were approved when the Bush administration suddenly shut down the intake program in 1992 and denied access to marijuana to all but a few patients. Both Barb and Kenny died soon after the IND program was terminated.

**“Shattered Lives – Portraits From America’s Drug War”, by Chris Conrad, Mikki Norris and Virginia Resner, 1998 Creative Xpressions, p. 66.**

c) **“Liberty and Proportionality”**

These rights stem from the previous articles of the **Universal Declaration** and specifically **Articles 4, 5 and 8** and the provision in the **United States Constitution Bill of Rights** in the **Eighth Amendment** that prohibits excessive fines and cruel and unusual punishment.

The Drug War has led to draconian mandatory minimum sentences and asset forfeitures that are disproportionate to the offences. First time non-violent offenders are put in prison for 5, 10 and 20 years to life, without parole, often for longer terms than violent criminals convicted of murder, rape or robbery who, in turn, are also subject to parole. Under federal mandatory minimum statutes, drug offenders must serve 85% of their sentences. Judges are not allowed to consider the mitigating and other circumstances that they would normally take into account if exercising individual discretion to impose a fit sentence. Judge Franklin Billings commenting on mandatory minimum sentences has pointed out how these provisions deny to judges:

“The right to bring their conscience, experience, discretion and sense of what is just into the sentencing procedure, and it, in effect, makes a judge a computer, automatically imposing sentences without regard to what is right and just”.

**The National Judicial Conference of the United States, the special Federal Courts Study Committee, 12 federal circuit courts and the American Bar Association**, among others, have called for the repeal of these mandatory minimum sentencing laws.

The authors point to the massive collateral damage done to family members as a result of these types of sentences and the impact on society as a whole. They point out how these crimes are victimless, often involving mutual acts between consenting adults. They also point out the hypocrisy of U.S. criticism of other countries and their prison labour practices when the U.S. engages in exactly the same thing and touts labour and prisons for profit as a solution to regional economic problems. They note that UNICOR, the federal corporation that pays prisoners as little as 32¢ an hour to make products and provide services and how private prisons are marketed by companies like the **Corrections Corporation of America** and the **Wackenhut Corporation** as investment opportunities and job creation programs. The United States even provides for the death penalty for certain non-violent drug offences. 60% of federal prisoners are behind bars for drug offences and only 3% for violent offences.

- **David Ciglar** (CA) was arrested in Oakland, CA, for cultivating marijuana and is serving 10 years. He pled guilty to avoid the threat to his wife and children. His home was seized and his sentence is a mandatory minimum. He was previously a firefighter /paramedic who was injured carrying a woman from a building. He is credited with having saved over 100 lives before and was being retrained as an MRI technician. His life and the life of his family have devastated.

**“Human Rights and U.S. Drug War” – A treatise to commemorate the 50<sup>th</sup> Anniversary of the signing of the UN Universal Declaration of Human Rights by Chris Conrad, Mikki Norris and Virginia Resner, 1999, p. 19;**

**“Shattered Lives – Portraits From America’s Drug War”, by Chris Conrad, Mikki Norris and Virginia Resner, 1998 Creative Xpressions, p. 33.**

- **Loren Pogue.** Mr. Pogue is 64 years old and serving 22 years for conspiracy to import drugs and money laundering. In trying to help an employee who turned out to be a paid government informant, he became the victim of a government reverse sting operation. He had no drug history and was an upstanding member of his community. Government agents said they were going to fly 100 kilos of drugs into the U.S. and, based on that, Mr. Pogue was convicted.

**“Human Rights and U.S. Drug War” – A treatise to commemorate the 50<sup>th</sup> Anniversary of the signing of the UN Universal Declaration of Human Rights by Chris Conrad, Mikki Norris and Virginia Resner, 1999, pp. 20 – 21;**

**“Shattered Lives – Portraits From America’s Drug War”, by Chris Conrad, Mikki Norris and Virginia Resner, 1998 Creative Xpressions, p. 15.**

- **Hamedah Ali Hasan.** Ms. Hasan is 31 years old and serving life without parole. She was convicted of conspiracy to distribute cocaine/base, interstate travel in the aid of racketeering, use of a telephone to commit a felony. She was never seen doing anything illegal related to her offences. She says she is completely innocent. After her arrest, she was offered immunity and to have all charges dropped if she cooperated with the U.S. attorney to obtain a conviction against her cousin. She had no knowledge of the offences and refused to lie and, in the result, got a harsher penalty. All of the evidence against her was hearsay from people who directly benefited by either getting immunity themselves or in exchange for sentence reduction.

**“Human Rights and U.S. Drug War” – A treatise to commemorate the 50<sup>th</sup> Anniversary of the signing of the UN Universal Declaration of Human Rights by Chris Conrad, Mikki Norris and Virginia Resner, 1999, p. 22;**

**“Shattered Lives – Portraits From America’s Drug War”, by Chris Conrad, Mikki Norris and Virginia Resner, 1998 Creative Xpressions, p. 9.**

d) **“Health and Well-Being”**

These rights stem from the **Universal Declaration of Human Rights Article 25.1** which gives everyone the right to a standard of living

adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services.

The authors point that the Drug War is so intent on achieving a “drug free America” that it interferes with one’s appropriate use of medicine. They point out how the Drug Enforcement Administration (DEA) precludes doctors who are trained in medicine from making judgments with respect to the provision of medicines to their patients. The DEA sets procedures and policies in relation to prohibited drugs even when the drug, such as marijuana, does not meet the criteria for inclusion. The DEA and the National Institute on Drug Abuse (NIDA) continues to stifle and deny research into the beneficial effects of marijuana. Some patients are being prosecuted and sent to prison for cultivating their own medicine. A **DEA administrative judge, Francis Young**, in 1988 described their policy as “unreasonable, arbitrary and capricious” and directed that marijuana be moved to Schedule 2. The DEA refused to do so.

In some cases, the **Drug Enforcement Administration** has taken away pain medications used to control chronic pain from patients. One person was jailed overnight with no prescription drugs and died the next day from physical trauma and shock. **Doctor William Hurwitz**, a Virginian physician that was prepared to prescribe strong enough dosages to patients, had his licence to prescribe taken away. One of his patients killed himself as a result. Another went to see **Dr. Kevorkian** for an assisted suicide. Further, the U.S. Government thwarts people’s access to needle exchange programs and prosecutes those who offer the service. This condemns many intravenous drug users, their sex partners and offspring to exposure to potentially fatal diseases. Scientific research has shown such programs to be effective to slow the spread of HIV/AIDS and Hepatitis C without increasing overall drug use.

- **James Cox**, who suffers from cancer and radiation poisoning at age 50 was sentenced to 15 years for marijuana cultivation. He was introduced to medical marijuana following 2 surgeries for testicular cancer that had metastasized to his stomach. It helped his pain and nausea and eating disorders resulting from the cancer, chemotherapy and radiation therapy. It also helped him tolerate food and regain his appetite. He was originally prescribed Demerol but became addicted and cannabis helped him get off that addiction. He couldn’t afford to buy marijuana on the black market so he grew his own. His garden was discovered when the police were investigating a burglary. The house that he and his wife inherited from his mother was confiscated. He was sentenced to 15 years and his wife to 5. They both attempted suicide but were discovered and revived. After he got out the first time, his desire to live returned and he went back to growing his medicine but 2 years later was arrested again for cultivation

and locked away. He is now on 10 years parole. When in prison, he could not use marijuana and his stomach deteriorated to the point where he has incurable bleeding ulcers. He continues to suffer from intolerable pain but is drug tested twice a week. He has been threatened with a return to prison for testing positive for opiates prescribed by his doctor to help him handle the pain.

**“Human Rights and U.S. Drug War” – A treatise to commemorate the 50<sup>th</sup> Anniversary of the signing of the UN Universal Declaration of Human Rights by Chris Conrad, Mikki Norris and Virginia Resner, 1999, pp. 25. and 26;**

**“Shattered Lives – Portraits From America’s Drug War”, by Chris Conrad, Mikki Norris and Virginia Resner, 1998 Creative Xpressions, p. 85.**

- **Thomas James Lowe** - Mr. Lowe suffered from Crohn’s Disease. At age 49, he was sentenced to 8 years for marijuana cultivation and aiding and abetting. A photographer and naturalpathic physician, he used herbs and plants to treat his own Crohn’s Disease and heal others. He was then told about cannabis and how it would relieve his cramps, nausea and loss of appetite. He grew it for himself and AIDS, MS and glaucoma patients. After he was arrested and sentenced, he was beaten by gang members and confined in solitary. He subsequently collapsed and was taken to hospital for emergency surgery for intestinal obstruction. He was shackled and chained to his bed for 30 days with armed guards all around. Further surgery was recommended to remove 12 inches of colon, in danger of rupturing and to removed severe diverticula and tissue mass. Instead, he was transferred to another prison where the doctors refused to operate and he was given heavy doses of drugs that caused liver damage. He managed to get some cannabis while in prison, failed a drug test and went back to solitary confinement. He received a further 9 more months of solitary in 1998 for the same reason. Once on supervised release, if he tests positive for marijuana, he’ll be sent back to prison. While this would be lawful under California’s **Compassionate Use Act**, the Federal Government will take the position that it is unlawful and send him back to prison. He lost his wife and children as a result of his incarceration.

**“Human Rights and U.S. Drug War” – A treatise to commemorate the 50<sup>th</sup> Anniversary of the signing of the UN Universal Declaration of Human Rights by Chris Conrad, Mikki Norris and Virginia Resner, 1999, pp. 26 and 27;**

**“Shattered Lives – Portraits From America’s Drug War”, by Chris Conrad, Mikki Norris and Virginia Resner, 1998 Creative Xpressions, p. 89.**

- **Will Foster** - Mr. Foster served in the U.S. Army and was a computer programmer/analyst for five years. He had a wife and three children until he was arrested in Oklahoma for using marijuana for his crippling rheumatoid arthritis in his feet, hips, lower back and hands. The prescribed drugs that he received from his doctors were highly addictive and had severe side effects. He found that marijuana worked. The police searched his home with a warrant based on a confidential informant looking for methamphetamines. Nothing listed in the warrant was found but they found his small medical marijuana grow. He was denied Fourth Amendment protection against unreasonable search and seizure and false warrants and never got to confront the witnesses against him despite the **Sixth Amendment**. His medical defence was denied and he was convicted and sentenced to 93 years, 70 years for cultivation and 20 for possession in the presence of a minor (his own child), 2 for intention to distribute and 1 for not having a tax stamp.

Recently, his sentence was reduced to 20 years for using illegal medicine. He has had insufficient medical treatment while in prison and risks losing his left leg from the knee down.

**“Human Rights and U.S. Drug War” – A treatise to commemorate the 50<sup>th</sup> Anniversary of the signing of the UN Universal Declaration of Human Rights by Chris Conrad, Mikki Norris and Virginia Resner, 1999, pp. 27 and 28;**

**“Shattered Lives – Portraits From America’s Drug War”, by Chris Conrad, Mikki Norris and Virginia Resner, 1998 Creative Xpressions, p. 84.**

- **Valerie Corral** In 1973, Valerie Corral was involved in a freak accident involving a plane buzzing her car, causing an accident that left her with a head injury that led to an epileptic condition. When prescribed drugs did not work, she tried marijuana and eventually learned to control the onset of her seizures. She and her husband grew marijuana for medicinal use and in 1992 were arrested. She became the first person to successfully argue a medical necessity defence in California. She was told that she would not be rearrested. They planted marijuana again and in 1993 were arrested once again. In the result, Santa Cruz County voted to adopt a measure to protect medical marijuana patients and no further charges have been laid against her since its passage. She was appointed to the

County Alcohol and Drug Abuse Commission and is a founder of Women's Alliance for Medical Marijuana (WAMM), an organization for education and research for the provision of medical cannabis through propagation. It's non-profit registration has been revoked by the State and that decision is on appeal.

**“Shattered Lives – Portraits From America’s Drug War”, by Chris Conrad, Mikki Norris and Virginia Resner, 1998 Creative Xpressions, p. 83;**

**Affidavit of Valerie A. Leveroni Corral, sworn the 12<sup>th</sup> day of May, 2000.**

- **Jimmy Montgomery** has been in a wheelchair for 22 years as a result of paraplegia. He found that marijuana controlled spasms typical of spinal cord injuries and stimulated his appetite. He was convicted of possession of less than 2 ounces of marijuana found in the back of his wheelchair and possession of paraphernalia, namely a pipe. He lived in a home belonging to his 62 year old mother so they charged her and tried to seized their homes. Jimmy received a life sentence originally which was reduced to 10 years and, after nearly dying twice in custody due to lack of adequate treatment for highly communicable diseases, he was released on appeals bond in 1993. He was reimprisoned in April of 1995 and subjected to lengthy periods of solitary confinement and being handcuffed to his prison bed with inadequate medical treatment. He was finally released on medical parole due to public pressure. Since leaving prison, he has lost a leg from an ulcerated bed sore that his doctors were unable to cure.

**“Shattered Lives – Portraits From America’s Drug War”, by Chris Conrad, Mikki Norris and Virginia Resner, 1998 Creative Xpressions, p. 83.**

- **Norm and Pat Major.** Norm Major was injured in an industrial accident in 1966 which caused recurring tumors in his back. He was forced to undergo a hindquarter amputation, sacrificing a leg and half of his pelvis. In 1972, the cancer spread to this lung and it was removed. Recurring cancers, including a brain tumor, led to repeated surgery. He had more than 80 surgeries and built up a tolerance for prescribed pain killers. He became addicted to legal drugs and this was destroying both his life and his wife's. He was a former member of the board of governors of the Elks Club and spends his time working at the Altar Society at St. Peters Catholic Church. They have 3 children and 8 grandchildren. Ultimately, his doctors recommended that he try marijuana and he found that it

worked. He weaned himself off all of his prescription drugs and was able to resume a reasonably normal life. They grew their plant which led to them being raided, charged and convicted. They had to pay a \$23,500 fine to save their family home from forfeiture.

**“Shattered Lives – Portraits From America’s Drug War”, by Chris Conrad, Mikki Norris and Virginia Resner, 1998 Creative Xpressions, p. 87.**

- **Alan McLemore** had a reputation as a good lawyer until his alcoholism began to interfere with his life. His wife divorced him and his health gave out. He suffered from numerous conditions, including chronic clinical depression. After trying everything, he started smoking cannabis and found that it works. He managed to stop drinking and his health improved dramatically. He obtained a prescription for Marinol. He then grew some cannabis to help himself and his friends and in 1995, was arrested and charged. He is now serving 6 1/2 years for marijuana cultivation. He is unable to get a prescription for Marinol in prison. He now suffers once again from severe depression, loss of appetite and has twice been rushed to the prison medical facility.

**“Shattered Lives – Portraits From America’s Drug War”, by Chris Conrad, Mikki Norris and Virginia Resner, 1998 Creative Xpressions, p. 88.**

- **Elvy Musikka** was very opposed to marijuana use but suffered from severe glaucoma. Prescribed drugs had little effect and surgery resulted in her going blind in one eye. She then tried marijuana and found that it did reduce her intraocular pressure. She experimented with eating brownies and began to grow cannabis. She was arrested and charged and argued medical necessity. On the facts, the judge ruled that she would have been insane to not use medical marijuana and she was placed on the federal IND program until it was shut down in 1992. She still continues to receive marijuana through that program and her vision has improved due to her steady use of marijuana.

**“Shattered Lives – Portraits From America’s Drug War”, by Chris Conrad, Mikki Norris and Virginia Resner, 1998 Creative Xpressions, p. 90.**

- **Dennis Peron**, a Viet Nam veteran, Mr. Peron has been a political activist and pot advocate and gay rights activist since the ‘70’s in San Francisco. He has been arrested many times and ran for office while in jail. His friend and lover, Johnathon West, died of AIDS and had used medical

marijuana. Mr. Peron collected 16,000 signatures to place Proposition P: Marijuana as Medicine Initiative on the San Francisco ballot in 1991 which passed by 80%. This paved the way for the San Francisco Cannabis Buyers Club which, at its peak, provided cannabis to over 12,000 patients. In 1994 and 1995, the California legislature adopted 2 bills allowing medical marijuana and, while they passed by large margin, they were vetoed by the Governor. Consequently, Peron started a statewide ballot initiative, Proposition 215, which ultimately led to the passage of the Compassionate Use Act of 1996. The Attorney General, Dan Lungren, still ordered raids on the Clubs in San Francisco and Los Angeles and tried to censor the Doonesbury cartoon that ridiculed him. In 1998, the Club was shut down, depriving 8,000 patients of their medicine. Mr. Peron still faces prosecution for his 1996 arrest and faces a lengthy prison sentence, if convicted.

**“Shattered Lives – Portraits From America’s Drug War”, by Chris Conrad, Mikki Norris and Virginia Resner, 1998 Creative Xpressions, p. 91.**

e) **“Personal Privacy”**

This right is protected by **Article 12** of the **Universal Declaration and the Fourth Amendment** to the **United States Constitution or Bill of Rights**.

Police powers, invasive technology and citizen spies are now the rule of the day in the United States of America. American citizens suffer increasing invasions of privacy involving wiretaps, urine tests, garbage and mail searches, computer searches of bank records and utility bills and infrared scans of homes to determine the heat signature given off. Warrantless searches are executed with battering rams and gunfire. High-tech monitoring systems, surveillance and hearsay are often the basis for warrants.

Apparently, the U.S. police wiretapped 2.27 million conversations in 1997. They have been known to sweep neighbourhoods and block public roadways and arbitrarily search people, sometimes using dogs. People are targeted by profile, either racial or cultural. Police in school districts randomly search students’ locker and pay them to turn each other in for drugs. Billboards and print ads solicit rewards for anonymous neighbourhood spies.

Buying garden supplies can lead to a search of your home, paying cash for a plane ticket or using large bills can be used against you. Employees are now subject to drug tests as a job requirement without probable cause

or a warrant. Long time employees have been fired and denied pensions over negative test results that may show that marijuana has been consumed over the last month or so but without any impact on their job performance. Inaccurate, adulterated or “false positives” in the testing process are disregarded. Probation and parole is revoked on the basis of negative tests. Some have been returned to prison for eating poppy seed bread. Families are excluded from public housing if a member is accused of participating in drug activity. College students lose their educational loans and grants and can be kicked out of school. Drug testing is becoming a prerequisite for a driver’s licence or to participate in sports and school activities. The U.S. Government’s interest in pursuing the Drug War appears to have removed any “reasonable expectation of privacy” than an American citizen might have.

- **The Tucker Family** – Gary Tucker is serving 16 years, Joanne Tucker 10 years and Steve Tucker also 10 years. Their crime is a conspiracy to manufacture marijuana. In 1992, the DEA was engaged in Operation Green Merchant which targeted hydroponics stores and their customers by copying down licence plate numbers of customers, following them and spying on them by stealing their trash and looking into their utility bills to look for high electrical usage. The object was to eradicate the indoor marijuana cultivation business across the nation. Operation Triox grew out of Operation Green Merchant, targeting a small store in Georgia called Southern Lights and Hydroponics, Inc. which was owned by the Tuckers. Gary Tucker, who was asked by the DEA to put hidden cameras in his shop to film customers but when he refused, they not only threatened to shut him down but convicted him of conspiracy to manufacture marijuana along with his wife and brother. They did this on the basis of some of the customers to the store with whom they had no contact beyond selling them perfectly legal garden equipment. To quote Gary Tucker:

“My main concern is that America is becoming a police state – that we are losing our liberties and the politicians are using the drug war as an excuse.”

**“Human Rights and U.S. Drug War” – A treatise to commemorate the 50<sup>th</sup> Anniversary of the signing of the UN Universal Declaration of Human Rights by Chris Conrad, Mikki Norris and Virginia Resner, 1999, pp. 31 and 32;**

**“Shattered Lives – Portraits From America’s Drug War”, by Chris Conrad, Mikki Norris and Virginia Resner, 1998 Creative Xpressions, p. 14.**

- **Joe Pinson** – Mr. Pinson served a 5 year sentence for cultivating marijuana. A severe asthmatic, who was near to death on numerous occasions as a child, suddenly at age 18 appeared to his family to get better after many different types of pharmaceutical drugs had not worked. They thought that he had grown out of it. In fact, he had found out that the use of marijuana controlled his asthma. Unknown to his family, he bought some growing equipment and grew some plants in the attic of the family home. He was investigated after buying some growing equipment. His utility records showed high electrical usage. Agents using an infrared heat sensing device flew over the property with helicopters and discovered the heat from the attic which led to his charges and conviction. The family home was seized and his mother had to pay \$25,000 to get it back. When in prison, he was given steroid drugs with known harmful side effects.

**“Human Rights and U.S. Drug War” – A treatise to commemorate the 50<sup>th</sup> Anniversary of the signing of the UN Universal Declaration of Human Rights by Chris Conrad, Mikki Norris and Virginia Resner, 1999, p. 33.**

f) **“Family”**

By **Article 16.3** of the **Universal Declaration of Human Rights**, the family is considered the natural and fundamental group unit of society and is entitled to protection by society and the state.

The War on Drugs has had a devastating effect on many families and children due to the lack of sentencing options. While the War is often put forward as being for the “protection of children”, it is the children who have become, in many cases, the casualties of the War. They are left to endure painful, traumatic separation from their parents who are serving long prison terms. They are sentenced to years without having their parents love and support. They are displaced from their schools and communities. They are often left in single parent families without money after the home and car has been seized and forfeited. If there are no extended families or friends to support them, they have to support themselves or become wards in foster homes. This can lead to further behavioural problems and problems in school. Children of prisoners are more likely to be incarcerated, too, according to statistics. Psychologists say that the loss of a child’s parent to prison is the emotional equivalent of losing them to death. This sentence is imposed upon children as a result of their parents’ involvement in non-violent offences and pose no threat to society whatsoever.

- **Martin Sax** – At age 49, he is serving 22 years for conspiracy to distribute marijuana and money laundering. His wife has been left to raise her son, Benjamin, herself with no support from her husband and his father. His son, Benjamin, will be 20 years old before his father gets out.

**“Human Rights and U.S. Drug War” – A treatise to commemorate the 50<sup>th</sup> Anniversary of the signing of the UN Universal Declaration of Human Rights by Chris Conrad, Mikki Norris and Virginia Resner, 1999, p. 36;**

**“Shattered Lives – Portraits From America’s Drug War”, by Chris Conrad, Mikki Norris and Virginia Resner, 1998 Creative Xpressions, p. 45.**

- **Laichem Sae Lee** – At age 34 was sentenced to 10 years for conspiracy to import and distribute opium. She has seen her children once in 4 years as she is thousands of miles away from them. They are without both parents.

**“Human Rights and U.S. Drug War” – A treatise to commemorate the 50<sup>th</sup> Anniversary of the signing of the UN Universal Declaration of Human Rights by Chris Conrad, Mikki Norris and Virginia Resner, 1999, p. 37;**

**“Shattered Lives – Portraits From America’s Drug War”, by Chris Conrad, Mikki Norris and Virginia Resner, 1998 Creative Xpressions, p. 46.**

- **Lovetta Clark** – At age 43, she is serving 30 years for conspiracy to import and distribute cocaine. Her children are suffering more than she is.

**“Human Rights and U.S. Drug War” – A treatise to commemorate the 50<sup>th</sup> Anniversary of the signing of the UN Universal Declaration of Human Rights by Chris Conrad, Mikki Norris and Virginia Resner, 1999, p. 37;**

**“Shattered Lives – Portraits From America’s Drug War”, by Chris Conrad, Mikki Norris and Virginia Resner, 1998 Creative Xpressions, p. 47.**

**See also “Almost 1.5 million U.S. children have a parent in prison, study shows”, by Terry Frieden, CNN Interactive, August 30, 2000;**

See also “1.5M Kids Have Parent in Prison”, Associated Press, August 30, 2000.

g) **“Racism and Discrimination”**

This right is protected by both **Articles 2 and 7** of the **Universal Declaration of Human Rights** and the **Fourteenth Amendment** to the **Bill of Rights in the U.S. Constitution**.

African-Americans and Hispanics who comprise a reasonable small percentage of the total U.S. population are disproportionately represented in the country’s federal and state prison. Over 50% of the state and federal prisoners are African-Americans and in excess of 15% are Hispanics. 1 in 3 African-American males in their 20’s are under some form of criminal justice supervision, either in prison or on probation or on parole. The loss of voting rights that accompanies a conviction has resulted in the disenfranchisement of a large segment of the African-American community, contributing to break up of families and erosion of the participation in community.

Mandatory minimums have been shown to be discriminatory in their application, creating racially based sentencing disparities. 5 grams of crack and 500 grams of powder cocaine trigger a 5 year federal mandatory minimum sentence – 100 fold disparity. While white Americans have higher rates of crack use than blacks, African-Americans are serving 88% of the prison sentences for crack cocaine and those sentences are, on average, 28% longer than other sentences.

Inner city neighbourhoods are often targeted by law enforcement where street activity is more visible. People in economically depressed areas are often lured into the drug trade by the opportunity to make quick cash. A lack of educational opportunities and the lack of employment in these areas create a “revolving door” to prisons. Instead of addressing the root causes of this problem, the United States has chosen to incarcerate them with heavy investments in imprisonment.

- **Everett Gholston, III** – a black male who, at age 40, is serving almost 13 years for conspiracy to distribute cocaine.

**“Human Rights and U.S. Drug War” – A treatise to commemorate the 50<sup>th</sup> Anniversary of the signing of the UN Universal Declaration of Human Rights by Chris Conrad, Mikki Norris and Virginia Resner, 1999, p. 41;**

**“Shattered Lives – Portraits From America’s Drug War”, by Chris Conrad, Mikki Norris and Virginia Resner, 1998 Creative Xpressions, p. 27.**

- **“Shomari” Stanley Huff** – a black male, is serving 15 years for trafficking in 1/2 kilo of cocaine.

**“Human Rights and U.S. Drug War” – A treatise to commemorate the 50<sup>th</sup> Anniversary of the signing of the UN Universal Declaration of Human Rights by Chris Conrad, Mikki Norris and Virginia Resner, 1999, p. 41;**

**“Shattered Lives – Portraits From America’s Drug War”, by Chris Conrad, Mikki Norris and Virginia Resner, 1998 Creative Xpressions, p. 17.**

- **Michael Clarke** – a 28 year old black male who is serving 13 years for possession with intent to distribute crack cocaine.

**“Human Rights and U.S. Drug War” – A treatise to commemorate the 50<sup>th</sup> Anniversary of the signing of the UN Universal Declaration of Human Rights by Chris Conrad, Mikki Norris and Virginia Resner, 1999, p. 42;**

**“Shattered Lives – Portraits From America’s Drug War”, by Chris Conrad, Mikki Norris and Virginia Resner, 1998 Creative Xpressions, p. 29.**

h) **“Private Property”**

**Article 17.2** of the **Universal Declaration of Human Rights** provides that no one shall be arbitrarily deprived of his property. The **United States Constitution** and **Bill of Rights** similarly so provides in the **Fifth Amendment** and the **Seventh Amendment**.

Civil asset forfeiture laws now allows the U.S. Government to seize property without charging anyone with a crime and to keep the property without ever having to prove its case. Police have seized homes, cars and people’s life savings and the property is presumed to be criminal and can be forfeited based in hearsay or a tip from an informant. Police and secret informants divide up and keep the assets that they confiscate and are, therefore, in an obvious conflict of interest.

Both Democratic and Republican congressmen have spoken out against these laws. **U.S. Representative Henry Hyde, a Republican from Illinois**, has said:

“Civil asset forfeiture laws are being used in terribly unjust ways, depriving innocent citizens of their property with nothing that can be called due process....You never have to be convicted of any crime to lose your property. You never have to be charged with any crime. In fact, even if you are acquitted by a jury on criminal charges, your property can be seized.”

**U.S. Representative John Conyers, a Democrat from Missouri**, has been quoted to have said:

“A law designed to give cops the right to confiscate and keep the luxury possessions of major drug dealers mostly ensnares the modest homes, cars and hard-earned cash of ordinary law-abiding people. This was not the way it was supposed to work.”

- **Scott Walt** – At age 39, is serving 24 1/2 years for conspiracy to possess marijuana with intent to distribute. When the police attended at their home with a warrant, they essentially gave the Walts the options of having the house ripped apart or signing a waiver. They signed the waiver and the police found no drugs or anything else to implicate them. They seized Mrs. Walt’s money from her cosmetic business, simply asserting that the money was drug money. At sentencing, the judge pointed out that his hands were bound by the sentencing guidelines and that he otherwise felt that the time was excessive and pointed to the fact the murderers receive less. He refused to impose a \$250,000 fine that the Government asked for.

**“Human Rights and U.S. Drug War” – A treatise to commemorate the 50<sup>th</sup> Anniversary of the signing of the UN Universal Declaration of Human Rights by Chris Conrad, Mikki Norris and Virginia Resner, 1999, p. 45;**

**“Shattered Lives – Portraits From America’s Drug War”, by Chris Conrad, Mikki Norris and Virginia Resner, 1998 Creative Xpressions, p. 52.**

- **The Kubinski Family** – Ken Kubinski is serving life and his wife, Jackie, 6 1/2 years for conspiracy to distribute cocaine, hashish

and marijuana. A Government Drug Task Force attended at their house in 1993 to indicate that they were seizing everything, all of their property, both corporate and personal. They alleged that Mr. Kubinski had acquired his businesses with drug proceeds and used his business to launder money. No arrests were made, nor any drugs found at the time of the property seizure. As time progressed, any money that they earned was seized by the Government, thereby preventing them from hiring a lawyer. They became destitute. They used to be active members of their community. Mr. Kubinsky ran a family construction company and his wife, Jackie, was an active member in her church, a volunteer at her children's school and a board member for the American Diabetes Association. They lost their home, their business, their freedom and each other while in prison. Their children were put in an orphanage until friends from the church asked for custody.

**“Human Rights and U.S. Drug War” – A treatise to commemorate the 50<sup>th</sup> Anniversary of the signing of the UN Universal Declaration of Human Rights by Chris Conrad, Mikki Norris and Virginia Resner, 1999, pp. 45 and 47;**

**“Shattered Lives – Portraits From America’s Drug War”, by Chris Conrad, Mikki Norris and Virginia Resner, 1998 Creative Xpressions, pp. 56 and 57.**

- **Alfreda Robinson** – is serving 10 years, at the age of 43, for conspiracy to distribute crack cocaine. When her son, David, was arrested, he called her from jail asking for her help. He needed money for an attorney and a friend owed him some money. He asked his mother to phone the friend to get the money for his legal expenses. By making that phone call, his mother was classified as a “conspirator” and when the police raided her home, they found \$4,500 in marked monies in her basement safe that her son had placed there without her knowledge. This evidence was used by the Government to seize her house that had been legally purchased with documented and verified funds from an automobile accident settlement. Her son’s friend became an informant, resulting in her son getting a 45 year sentence and Alfreda the 10 year sentence. She was a high school counsellor at the time of her arrest.

**“Human Rights and U.S. Drug War” – A treatise to commemorate the 50<sup>th</sup> Anniversary of the signing of the UN Universal Declaration of Human Rights by Chris Conrad, Mikki Norris and Virginia Resner, 1999, p. 48;**

**“Shattered Lives – Portraits From America’s Drug War”, by Chris Conrad, Mikki Norris and Virginia Resner, 1998 Creative Xpressions, p. 55.**

**See also The Successes and Failures of George Bush’s War on Drugs”, by Dan Check, [www.drugsense.org](http://www.drugsense.org).**

**i) “Freedom of Religion and Culture”**

By **Article 18** of the **Universal Declaration of Human Rights**, the freedom of thought, conscience and religion is protected. **Article 27.1** provides the right to freely participate in the cultural life of one’s community. The **First Amendment** to the **United States Constitution** and **Bill of Rights** is to much the same effect. The Drug War has been used to persecute people on account of their religion, to suppress their cultures, to infiltrate their communities and to harass them based on cultural profiles and lifestyles. All traditional religions that use cannabis as a sacrament have been outlawed by the United States Congress and the Drug Enforcement Administration. These include the **Rastafarians, Coptic Christians, Sufi Moslem, Sadhu Hindu** and **numerous others**. It is forbidden to establish a new religion that involves the use of a mind expanding drug. A special exemption was created by Congress for the **Native American Church’s** ceremonial use of peyote in the **Religious Freedom Restoration Act** of 1993. However, the U.S. Supreme Court struck it down and the U.S. courts routinely exclude all testimony or reference to religious use, preventing juries from hearing this evidence.

The Drug War targets the “drug culture”, hippies and fans of jazz music, reggae, hip-hop, psychedelic and even specific groups like the Grateful Dead. Roads leading to political rallies and cultural events are often barricaded and individuals searched, harassed and intimidated.

- **Rev. Tom Brown** – is serving 5 years for cultivating marijuana. Rev. Brown founded a church in 1988 entitled “Our Church” which uses cannabis as a sacrament in its religious services. The church was incorporated in 1994 and is recognized by the State of Arkansas as a tax exempt religion using the cannabis flower and peyote among its sacraments.

Rev. Brown was a licensed minister of the church. The church’s creed is that the use of God-given herbs and plants provide spiritual insights. In an effort to exercise his religious beliefs, he gave an acre of his 39 acre to the church for members to grow their holy plants. They met with the local

county sheriff to explain the plan and promise not to sell any. They relied upon the Religious Freedom Restoration Act.

In August of 1994, he was arrested and charged with the manufacture of 435 marijuana plants and 3 peyote plants. At trial, he was not allowed to present any evidence of his religious defence or even mention the church. He was originally sentenced to 10 years, but that was reduced to 5 when they changed the federal plant weight calculations. His entire farm was seized even though alleged crime was committed on a separately deeded parcel.

**“Human Rights and U.S. Drug War” – A treatise to commemorate the 50<sup>th</sup> Anniversary of the signing of the UN Universal Declaration of Human Rights by Chris Conrad, Mikki Norris and Virginia Resner, 1999, p.51;**

**“Shattered Lives – Portraits From America’s Drug War”, by Chris Conrad, Mikki Norris and Virginia Resner, 1998 Creative Xpressions, p. 73.**

- **Calvin Treiber and Jodie Israel** – Mr. Treiber was 38 years old and now serving 29 years and Jodie Israel was 34 years old and is now serving 11 years. They were both charged and convicted of conspiring to produce marijuana. Calvin Treiber is a Rastafarian. His wife, Jodie Israel, and 24 others were indicted for an alleged marijuana conspiracy in Montana. It was called “Operation Reggae North” as most of the defendants were Rastafarian – a distinctive cultural group that believes in smoking “ganja” as a religious sacrament that brings them close to God. In the result, their children have been orphaned as their parents serve mandatory minimum prison sentences.

**“Human Rights and U.S. Drug War” – A treatise to commemorate the 50<sup>th</sup> Anniversary of the signing of the UN Universal Declaration of Human Rights by Chris Conrad, Mikki Norris and Virginia Resner, 1999, pp. 52 and 53;**

**“Shattered Lives – Portraits From America’s Drug War”, by Chris Conrad, Mikki Norris and Virginia Resner, 1998 Creative Xpressions, p. 72.**

An organization exists in the United States entitled **“Religious Leader For a More Just and Compassionate Drug Policy”** based in New York. It represents a group of religious leaders, both clergy and religious academics, who have felt the need to speak out on an unpopular and controversial policy,

namely the “War on Drugs”, as being unjust and discriminatory laws against drug abusers. They express the view that they have resulted in “cruel and unusual punishment” and gross violations of civil liberties resulting in a dangerous threat to public health and needless numbers of AIDS patients.

“The year 2000 is a Jubilee year in Judaism and Christianity. People of faith are called upon this year to forgive debt and to free prisoners”.  
(Leviticus 25:10)

**“Clinton’s Release of Prisoners, an Act of Duty, Mercy, and Courage”, July 11, 2000, the Criminal Justice Policy Foundation, Eric E. Sterling, President.**

**“Religious Leaders For a More Just and Compassionate Drug Policy”,  
<http://religiousleaders.home.mindspring.com>.**

**j) “Livelihood, Tolerance and Equal Rights”**

**Article 23.1** of the **Universal Declaration of Human Rights** gives everyone the right to work, to free choice of employment and to just and favourable conditions of work and to protection against unemployment. **Article 26.2** provides that education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It is to promote understanding, tolerance and friendship. **Article 26.3** gives parents a prior right to chose the kind of education that shall be given to their children.

Former **U.S. Presidents Washington** and **Jefferson** were hemp farmers. Today, they would face the death penalty for growing hemp which is mislabelled as “marijuana”. The Drug War prevents people from becoming involved in this industry, involving industrial hemp which is a non-drug seed and fibre crop. In the result, domestic jobs and industry and, perhaps, many millions of dollars in business are lost.

The federal drug policy of “zero tolerance” stigmatizes and criminalizes targeted individuals and their lifestyle. If you are arrested at college for drug use, you can be expelled and this can do serious damage to your life time earning potential. If you are identified as a drug felon, it is difficult to get employment. Even in grammar school, a drug involvement can stain one’s permanent record and follow one for life.

The **DARE (Drug Abuse Resistance Education)** program puts police officers into grammar schools to talk to children about the private lives of

their parents and friends. Personal betrayals are rewarded. Studies show how DARE actually increases drug use in some communities. Children have been encouraged to turn in their parents for drug use and this has led to arrests and the break up of families. Parents who keep their kids out of the program have been investigated by the police. This intolerance breeds bigotry and human rights abuses.

In conclusion, the authors through the **Family Council on Drug Awareness** put out a **call for a truce in the Drug War**. Pointing out that no civilized nation makes war on its own citizens, and how they did not wish to declare war on their own Government or to fight in its drug war, they petitioned the Government for redress of grievances, calling for the following:

- a) Calling on the United States to withdraw from and repudiate or amend all international treaties or agreements that limited its ability to alter domestic drug policy;
- b) Calling on the Government to provide that no patient shall be prosecuted nor any health care professional penalized for possessing or using any mutually agreed upon medication;
- c) That drug policy should protect all fundamental rights so that each person retains all inalienable, constitutional and human rights without exception;
  - i) That an accused always be given the benefit of the doubt when liberty or property are at risk and a defendant should be entitled to present to a jury his defence based on his human rights, including any explanation of motive or mitigating circumstances such as religion, culture or necessity;
  - ii) That, if there is no victim, there should be no crime. The burden of proof and any corroboration in proceedings should be on the Government. No secret witnesses or paid testimony should be permitted in Court, including that of any government agent or informant who stands to materially gain through the disposition of a drug case for forfeited property. No civic asset forfeiture should be levelled against a family home or legitimate means of commercial livelihood;
  - iii) Government agents who violate the law should be held fully accountable and prosecuted accordingly. Issues of entrapment, government motive and official misconduct

should be presented to juries in drug cases, whether civil or criminal;

- iv) Mandatory minimum sentences undermine the U.S. system of justice and should be abolished. Juries should be informed of all penalties attached to any offence before deliberating. Courts should have a discretion to reduce penalties in the interests of justice.
- d) With a Drug War Truce, that all non-violent drug prisoners be released provided that they were otherwise law-abiding citizens.
- e) No non-violent drug offences against adults shall be enforced or prosecuted until all parties have agreed to an implemented drug policy that is based on full respect for fundamental rights and personal responsibility.

See “**The Successes and Failures of George Bush’s War on Drugs**”, by Dan Check, [www.drugsense.org](http://www.drugsense.org).

232. During the 7<sup>th</sup> **United Nation’s Congress on the Prevention of Crime and the Treatment of Offenders** held at Milan from August 26 to September 6, 1985, the Congress adopted the “**Basic principles on the independence of the judiciary**” and these Basic Principles were endorsed by the **General Assembly of the United Nations in Resolution 40/32** on November 29, 1985 and in **Resolution 40/146** on December 13<sup>th</sup>, 1985. In the preamble to the Principles, references made to the **Universal Declaration of Human Rights** and how it enshrines, among other things, the right to a fair and public hearing by a competent, independent and impartial tribunal established by law. Reference is also made to the **International Covenants on Economic, Social and Cultural Rights on Civil and Political Rights**, which guarantee the exercise of those rights. The preamble goes on to express that there still exists a gap between the vision underlying these principles and the actual situation in that the organization and administration of justice in every country should be inspired by these principles and efforts should be undertaken to translate them into reality. There are **20 basic principles** and the **first 7 deal with the independence of the judiciary** and are as follows:

- 1) The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.

- 2) The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, **without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.**
- 3) The judiciary shall have jurisdiction over all the issues of a judicial nature and shall have **exclusive authority** to decide whether an issue submitted for its decision is within its competence as defined by law.
- 4) There **shall not be any inappropriate or unwarranted interference with the judicial process**, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.
- 5) Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.
- 6) The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.
- 7) It is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions.

**“Human Rights – A Compilation of International Instruments” by The Centre for Human Rights, Geneva, United Nations, New York, 1988.**

233. It would appear that the United States criminal justice sentencing process consisting of mandatory minimum sentences and sentencing guidelines that preclude the judge from exercising a discretion in the individual circumstances of a case and requires the Court to merely rubber stamp the decisions of the prosecutor not only interferes with the independence of the judiciary but precludes them from deciding matters before them impartially on the basis of facts and in accordance with the law, without any restrictions, amounting to inappropriate and unwarranted interference with the judicial process and certainly precludes the judiciary from ensuring that judicial proceedings are conducted fairly and that the rights of the parties are respected.

**Affidavit of Michael Cutler, sworn June 1, 2000, generally;**

**Affidavit of Randall G. Shelden, sworn June 12, 2000, generally;**

**See also Affidavit of Harold Michael Gray, sworn March 28, 2000, paragraphs 2 and 3 and Exhibit "B", his book, "Drug Crazy: How we got Into This Mess and How We Can Get Out";**

**Race to Incarcerate – The Sentencing Project, by Marc Mauer, the New Press, New York, 1999, chapter 1 / Introduction.**

**"Pot Bust at, on (or Near) the Border", by Jeffrey Steinborn, May 18, 2000;**

**"A DEA Agent Joins The Fight Against The War On Drugs", Ex-DEA Agent Celerino Castillo, III, Prevailing Winds Magazine, Number 5.**

234. The abuses suffered against women in prisons are of paramount concern. Recently, **Amnesty International** began a campaign to expose the atrocities occurring in American prisons against women; women who are often raped and tortured by male prison guards, sold to male prisoners for sex, provided with inadequate medical care and improper nutrition.

**Affidavit of Valerie A. Leveroni Corral, sworn the 12<sup>th</sup> day of May, 2000, p. 2.**

235. Currently, the **United Nations, Amnesty International** and **Human Rights Watch** have all documented extensive abuse of **women prisoners** in the United States in violation of international human rights norms generally and, specifically, in violation of international standards of the treatment of prisoners. Recently, the **United States General Accounting Office (GAO)**, the investigative arm of the U.S. Congress, documented sexual misconduct by prison authorities against women in the United States.

These reports documenting widespread abuse of women prisoners in the United States and in California in particular, are appended to the affidavit of Eugene Oscapella and contain extensive, specific details in support of their findings and recommendations.

**Affidavit of Eugene Leon Oscapella, sworn April 12, 2000, generally.**

The 1999 Amnesty International report entitled "**United States of America: Rights for All: "Not Part of My Sentence", Violations of the Human Rights of Women in Custody**" describes violations of the human rights of women in the prisons and jails in the United States of America. These rights are set out not only in the American Constitution but also in a number of international agreements that have been adopted by an overwhelming majority of the

countries of the world. This report details sexual abuse by prison guards on woman prisoners and the difficulty that women prisoners may have in complaining about and preventing such conduct because of her status and lack of credibility. The United States of America permits male guards to supervise female prisoners in the absence of a female guard which is contrary to international standards.

**Affidavit of Eugene Leon Oscapella, sworn April 12, 2000; paragraph 3, and see also Exhibit “B”, “Not Part of My Sentence’ – Violations of the Human Rights of Women in Custody”, Amnesty International, March 1999.**

236. The second Amnesty International in 1999 dealt with the conditions of the **California Valley State Prison for Women (VSPW)** which is the largest women’s prison in the United States. Again, this report documents sexual abuse of prisoners by male guards, the cruel use of restraints on pregnant and ill women, allegations of inadequate medical and mental health care and complaints about the conditions and Security Housing Unit, which is the high security unit where women are isolated for 22 – 24 hours a day in conditions of extreme deprivation. Most of the women in the California prisons, as elsewhere in the United States, are serving sentences for non-violent offences and usually possession and sale of drugs. Several guards at the Institution were being investigated for sexual misconduct, including an alleged rape. The report concludes that the prison conditions at this prison violate international norms which require the presence of a female officer to accompany any male officers dealing with women prisoners. At VSPW, women were victims of sexual abuse, including reports that it was common for male officers to watch them dressing and undressing. Abusive pat searches were also reported. Amnesty International found many of the practices and procedures at this prison to be degrading towards women and in violation of international standards.

**Affidavit of Eugene Leon Oscapella, sworn April 12, 2000, paragraph 5, Exhibit “C”, “The Findings of a Visit to Valley State Prison for Women, California, U.S.A.”, Amnesty International, April 1999.**

237. In December, 1996, Human Rights Watch, which was founded in 1978 and is now the largest U.S. based human rights organization, completed its report on the sexual abuse of women in the U.S. State prisons entitled “All Too Familiar – Sexual Abuse of Women in the U.S. State Prison”. It identified serious sexual violations of women in U.S. prisons contrary to international law norms. It described being a woman prisoner in the United States as a “terrifying experience”. If one is sexually abuse, one cannot escape from the abuser and grievances or investigatory procedures are often ineffectual. Prison staff continue the abuse knowing that they will rarely be held accountable. Few

people outside the prison walls know what is going on or care about it. Women had been vaginally, anally and orally raped and sexually assaulted by male correctional officers. The guards would use the power or authority that they held over the women to deny them goods or privileges if they didn't comply. This report describes the custodial environment in State prisons for women which is often "highly sexualized and excessively hostile". According to Human Rights Watch, the United States is clearly bound by its own Constitution and its international human rights law commitments to punish sexual misconduct but the United States is shirking its international human rights obligations. At the same time, sexual misconduct is so entrenched that it is largely invisible and often flatly denied. The Governments have failed to establish a credible, internal grievance and investigatory procedure but does not expose complainants to retaliation or punishment. This report concludes:

"The tendency of the U.S. government to neglect the problem of custodial sexual misconduct in state prisons for women is perhaps best exemplified by its first report to the U.N. Human Rights Committee, which monitors compliance with the ICCPR. In the entire 213-page report, the problem of custodial sexual misconduct in U.S. state prisons for women is mentioned only once and then only to state that it is "addressed through staff training and through criminal statutes prohibiting such activity." This statement is at best disingenuous. At worst, it makes clear to the international community, to the people of the United States, to the state departments of corrections and the women they incarcerate, and to us, that the United States has almost completely abdicated its responsibility to guarantee in any meaningful way that the women held in its state prisons are not being sexually abused by those in authority over them"

**Affidavit of Eugene Leon Oscapella, sworn April 12, 2000, paragraph 6 Exhibit "D", "All Too Familiar – Sexual Abuse of Women in U.S. State Prisons", Human Rights Watch, December 1996.**

238. A subsequent Human Rights Watch report was completed in 1998. It concluded that since the publication of its 1996 report, it had "continued to receive reports of sexual abuse of and retaliation against women incarcerated in jails, state prisons and federal prisons. These included reports of a campaign of retaliation against several of the women who were active in civil litigation against the Department of Corrections alleging widespread sexual abuse by guards and staff. This retaliation had a chilling effect on other prisoners with complaints. The report concluded that the abuse of women in these situations violated international norms and was representative of conduct against women prisoners elsewhere throughout the United States. The report asserts that the conduct of the U.S. correctional officials amounted to either torture or cruel, inhuman or degrading treatment as defined by international law.

**Affidavit of Eugene Leon Oscapella, sworn April 12, 2000, paragraph 7, Exhibit "E", "Nowhere to Hide: Retaliation Against Women in Michigan State Prisons", Human Rights Watch, July 1998.**

239. In March of 1999, the United Nations released the Report of the Special Rapporteur on violence against women, its causes and consequences. The Special Rapporteur was Ms. Radhika Coomaraswamy. The report is pursuant to U.N. Human Rights Commission resolution 1997/44 and is entitled "Report of the mission to the United States of America on the issue of violence against in state and federal prisons". With respect to California, this report points out that the introduction of mandatory minimum sentences for drug related offences in California Courts and Federal Court is clearly the reason why 70% of the women in the prisons are incarcerated for non-violent offences. It discloses how the number of female staff at female institutions is less than the number of male staff. It also points to the inadequate administrative of penal protection against sexual misconduct in custody. In fact, the California Department of Corrections has no comprehensive procedures for reporting or investigating allegations for sexual abuse in its facilities. Complaints were received with respect to strip searches and pat frisk searches and the abuses occurring in relation thereto. This report made these same observations with respect to the lack of privacy for women in showers and other parts of the institution, including the toilet. Fear of rape and sexual abuse appeared in endemic and the lack of any maximum limitation on the detention period and administrative segregation was also a significant concern.

**Affidavit of Eugene Leon Oscapella, sworn April 12, 2000, paragraph 8 Exhibit "F", "Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, in accordance with Commission on Human Rights resolution 1997/44: Report of the mission to the United States of America on the issue of violence against women in state and federal prison", United Nations, January 1999.**

240. In June of 1999, the United States General Accounting Office (GAO), the investigative arm of the United States Congress, released a report on the sexual misconduct of correctional staff against women in prisons. This report pointed to laws and policies that minimize this misconduct but reports that, notwithstanding these laws and policies, sexual misconduct is still occurring. 23 departments of corrections were facing class actions or individual damage suits related to sexual misconduct. In 1996, the Association of State Correctional Administrators identified staff sexual misconduct as one of its major management concerns. The full extent of the problem is unknown and is likely underreported due to fear of retaliation and vulnerability. In one case, the Federal Bureau of Prisons

settled for the sum of \$500,000 in relation to 3 women to end a law suit in which they claimed that they had been beaten, raped and sold by guards for sex with male inmates. Most U.S. correctional systems do not adequately capture or track data related to such allegations. This makes it difficult to monitor the incidents of this type of misconduct and to keep track of abusive employees. In other words, the codes of silence and the fear of retaliation prevent the extent of the situation from being known and corrective measures from being taken.

**Affidavit of Eugene Leon Oscapella, sworn April 12, 2000, paragraph 9 Exhibit "G", "The Report to the Honourable Eleanor Holmes Norton, House of Representatives on Women in Prison – Sexual Misconduct by Correctional Staff", GAO, June 1999.**

241. In view of the above, it is a small wonder that the United States continues to resist being subject to an International Criminal Court. While the U.S. continues to press for **Milosevic** to be taken before the International War Crimes Tribunal at the Hague, along with **Karadzic** or **Saddam Hussein**, its position with respect to the International Criminal Court clearly shows that "Washington is ready to deal it out, but wholly unprepared to take it". As Martin Kettle reports in the *Guardian Weekly*, June 22 – 28, 2000 at page 6, "If ever there were a textbook case of the workings of power without responsibility, then it is here". Ninety seven nations, including Britain and its European partners have signed the treaty setting up the permanent International Court which is designed to try perpetrators of war crimes, genocide and crimes against humanity. As Mr. Kettle points out, while Washington claims to support and lead a new world order across the globe that has respect for the rule of law, human rights and democratic process and declares those governments that do not adhere to these principles as being "rogue" states, nevertheless:

"It is becoming increasingly certain that the court will come into existence without the participation of the nation that has repeatedly been in the forefront of international calls for justice against war criminals. It is hardly surprising that many around the world will regard the U.S. as a hypocritical defender of human rights, ready to talk the talk, as they say here, but adamantly opposed to walking the walk"

**Guardian Weekly , June 22 – June 29, 2000, "Judge, jury and executioner on human rights, but never in dock", by Martin Kettle.**

### iii) **The International Evidence Regarding Marijuana – The Context and the History**

242. Before moving to consider drug prohibition and the United States marijuana laws specifically, the findings and conclusions of various commissions and inquiries into marijuana since 1894 should be born in mind for background and context. These commissions and their findings are briefly summarized in “Marijuana Myths Marijuana Fact – a review of the scientific evidence” by Lynn Zimmer and John Morgan.

**“Marijuana Myths Marijuana Fact – a review of the scientific evidence” by Lynn Zimmer and John Morgan, The Lindesmith Center, New York and San Francisco, 1997.**

#### a) **Indian Hemp Drugs Commission, 1984**

The commission has come to the conclusion that the moderate use of hemp drugs is practically attended by no evil results at all.

**Indian Hemp Drugs Commission, *Report of the Indian Hemp Drugs Commission*, Simla, India: Government Central Printing Office (1894).**

#### b) **Panama Cana Zone Report, 1925**

The influence of [marihuana]....has apparently been greatly exaggerated....There is no evidence....that it has any appreciably deleterious influence on the individual using it.

**Canal Zone Committee, *The Panama Canal Zone Military Investigations* (1925).**

#### c) **LaGuardia Commission Report, 1944**

There [is] no direct relationship between the commission of crimes of violence and marijuana....and marijuana itself has no specific stimulant effect in regard to sexual desires. The use of marihuana does not lead to morphine or cocaine or heroin addiction.

**Mayor’s Committee on Marijuana, *The Marijuana Problem in the City of New York: Sociological, Medical, Psychological, and***

***Pharmacological Studies*, Lancaster, PA: Jacques Cattell Press (1944).**

**d) The British Wootten Report, 1969**

[We] intended to present both sides of the controversy....But once the myths were cleared, it became obvious that the case for and against was not evenly balanced. By any ordinary standards of objectivity, it is clear that cannabis is not a very harmful drug.

The association in legislation of cannabis and heroin...is inappropriate and new legislation to deal specifically and separately with cannabis...should be introduced as soon as possible...Possession of a small amount of cannabis....should not be punished by imprisonment...Sale or supply of cannabis should be punishable...with a fine not exceeding £100, or imprisonment for a term not exceeding four months.

**Advisory Committee on Drug Dependence, *Cannabis*, London: Her Majesty's Stationery Office (1969).**

**e) The Canadian LeDain Commission Report, 1970**

Physical dependence to cannabis has not been demonstrated and it would appear that there are normally no adverse physiological effects....occurring with abstinence from the drug, even in regular users.

Since cannabis is clearly not a narcotic we recommend that the control of cannabis be removed from the Narcotic Control Act....The Commission is of the opinion that no one should be liable to imprisonment for simple possession.

**Canadian Government on Marijuana and Drug Abuse, *The Non-Medical Use of Drugs*, Ottawa, Canada: Information Canada (1970).**

**f) National Commission on Marijuana and Drug Abuse, 1972**

There is little proven danger of physical or psychological harm from the experimental or intermittent use of natural preparations of cannabis....Existing social and legal policy is out of proportion to the individual and social harm engendered by the drug.

Marijuana's relative potential for harm to the vast majority of individual users and its actual impact on society does not justify a social policy designed to seek out and firmly punish those who use it....Existing social and legal policy is out of proportion to the individual and social harm engendered by the drug.

**National Commission on Marihuana and Drug Abuse, *Marijuana: A Signal of Misunderstanding*, Washington, DC: U.S. Government Printing Office (1972).**

**g) The Dutch Baan Commission, 1972**

Cannabis does not produce tolerance or physical dependence. The physiological effects of the use of cannabis are of a relatively harmless nature.

The current law does not respect the fact that the risks of the use of cannabis cannot be equalled to the risks of the use of substances that are pharmacologically much more potent....This hurts the credibility of the drug law, and the prevention efforts of the law are made untrustworthy.

**Werkgroep Verdovende Middelen, *Background and Risks of Drug Use*, The Hague: Staatsuitgeverij (1972).**

**h) Commission of the Australian Government, 1977**

One of the most striking facts concerning cannabis is that its acute toxicity is low compared with that of any other drugs...No major health effects have manifested themselves in the community.

Legal controls [should] not [be] of such a nature as to....cause more social damage than use of the drug....Cannabis legislation should be enacted that recognises the significant differences between....narcotics and cannabis in their health effects....Possession of marijuana for personal use should no longer be a criminal offence.

**Senate Standing Committee on Social Welfare, *Drug Problems in Australia – An Intoxicated Society?*, Canberra: Australian Commonwealth Government Printing Office (1977).**

**i) National Academy of Sciences Report, 1982**

Over the past 40 years, marijuana has been accused of causing an array of anti-social effects including....provoking crime and violence, ....leading to heroin addiction,....and destroying the American work ethic in young people. [These] beliefs...have not been substantiated by scientific evidence.

The advantages of a policy of regulation include...the savings in economic and social costs of law enforcement...,better controls over the quality and safety of the producer, and, possible, increased credibility of warning about risks.

**National Research Council, *An Analysis of Marijuana Policy*, Washington, DC: National Academy Press (1982).**

**j) Report by the Dutch Government, 1995**

Cannabis is not very physically toxic....Everything that we now know....leads to the conclusion that the risks of cannabis use cannot....be described as “unacceptable”.

It has been demonstrated that the more or less free sale of...[marijuana] for personal use in the Netherlands has not given rise to levels of use of significantly higher than in countries which pursue a highly repressive policy....Dutch policy on drugs over the last twenty years....can be considered to have been successful.

**Ministry of Health, Welfare and Sport, *Drug Policy in the Netherlands: Continuity and Change*, The Netherlands (1995).**

**“Marijuana Myths Marijuana Fact – a review of the scientific evidence” by Lynn Zimmer and John Morgan, The Lindesmith Center, New York and San Francisco, 1997, generally.**

**k) The Heidelberg Declaration**

The “**Heidelberg Declaration**”, an international petition, asks to end the common practice of imprisoning non-violent drug offenders and to replace this approach with a “policy that is rational, compatible with good health, and linked to a sense of self-responsibility”.

“Heidelberg Declaration”, [www.lycaenum.org/drugwar/heidl.html](http://www.lycaenum.org/drugwar/heidl.html).

243. As the “cannabis” report of the **Commission of Inquiry into the non-medical use of drugs (LeDain Commission)** in **Canada** concluded in this regard:

“In spite of strong disagreement among extremists on many points in the cannabis controversy, major governmental and international reports by independent groups of various backgrounds, and covering three-quarters of a century, have come to some surprisingly similar conclusions regarding the use and effects of cannabis. However, the effects of these reports on government policy have generally been limited. Major reports include the British *Indian Hemp Drugs Commission Report* (1893-4); Mayor La Guardia’s report on *The Marijuana Problem in The City of New York* (1944); the South African *Dagga Report* (1952); the United States President’s Commission on Law Enforcement and Administration of Justice *Task Force Report: Narcotics and Drug Abuse* (1967); the British Advisory Committee on Drug Dependence *Cannabis* (1968), a report prepared under the chairmanship of the Baroness Wootton of Abinger; our own *Interim Report of the Commission of Inquiry Into the Non-Medical Use of Drugs* (1970); the Swedish Government’s official investigations on *The Narcotic Problem: Part III, Coordinated Measures* (1969); the *First Report* of the Board of Health Committee on Drug Dependency and Drug Abuse in New Zealand (1970); the United States Department of Health, Education, and Welfare report *Marihuana and Health* (1971); the Australian *Drug Trafficking and Drug Abuse* report (1971); and the World Health Organization technical report on *The Use of Cannabis* (1974).

**Canadian Government on Marijuana and Drug Abuse, *The Non-Medical Use of Drugs*, Ottawa, Canada: Information Canada (1970), p. 16.**