

## Politically Incorrect Issue\*

### War on drugs...drugs win in counterattack.

"Loong Kyong, a 45-year-old Shan farmer who fled to Thailand, told human rights investigators this past May that Burmese soldiers actually encourage rice farmers to substitute opium for their rice crop. 'The reason the Burmese say not to grow rice is that if you grow rice you have to give some to the rebel groups, and to others, and you have to get your rice milled,' he said. 'So they say just grow opium and you can easily get money and buy your rice. The military will buy the opium.'" (*The Nation* Dec. 16, 1996).

\* A: Have you ever taken a

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serious political stand on anything?

B: Yes, for twenty-four hours I refused to eat grapes. Woody Allen, *Sleeper*, 1973.

Burma is a military dictatorship. It is run by the ironically named "State Law and Order Restoration Council" (SLORC). SLORC is recognized internationally for an abysmal human rights record, and for keeping Nobel Peace Prize recipient Daw Aung San Suu Kyi a prisoner in her home.

The U.S. Embassy in Rangoon, Burma has estimated that exports of opiates alone appear to be worth as much as all legal exports from Burma. The U.S. State Department estimates that more than 60% of all heroin seized in the U.S. comes from Burma. SLORC openly organizes and facilitates this trade.

The United States has done little to address Burma's drug trade or human rights abuses. In 1993, DEA Special Agent Richard Horn was forced out of Burma under pressure from the CIA, apparently for pushing drug eradication programs. (Horn is currently suing the CIA).

The United States policy, of acting tough about drugs domestically while supporting foreign governments, or groups, that benefit from the drug trade, has been uniformly pursued by

Democratic and Republican administrations for decades. Both, Afghan rebels and Nicaraguan *Contras* financed their wars with drugs. American politicians, who supported these groups, refuse to recognize this contradiction.

Domestically, the U.S. has also taken a number of insupportable positions on drugs. The most topical is the legal fiction that crack cocaine is 100 times more dangerous than powder cocaine. Recently, the Eleventh Circuit held that there was no ambiguity between the definitions of cocaine base and cocaine, and restated its previous position that there is a rational basis for the distinction between powder and crack. *United States v. Sloan*, 97 F.3d 1378 (11th Cir. 1996).

On November 20, 1996, The Journal of the American Medical Association published, "Crack Cocaine and Cocaine Hydrochloride, Are the Differences Myth or Reality?". The article concludes that the physiological and psychoactive effects of cocaine are the same in any form. However, the method of ingestion can effect the immediacy, duration and magnitude of the cocaine's effect.

Snorting cocaine through the nose is a less effective manner of ingestion that smoking cocaine or injecting it. However, you can inject cocaine

hydrochloride and get the same effect as so-called crack. (7% of all users do). You can take a hammer and bust up a rock of crack and you are back to powder again.

The only distinction between the forms of cocaine is that crack is hardened specifically for the purpose of making it easily placed in a pipe in small doses. As the article concludes, that is a factor that weighs against severe penalties for crack. The possessors' of crack are frequently addicts, and their crimes are often associated with addiction. Treatment, not punishment is the remedy for addiction.

America may someday recognize the contradictions and failures of its drug policies. That day has not yet come.

## Panel Members

Below is a current listing of all attorneys on the CJA Panel and the Training Panel. Members of the Training Panel are encouraged to contact any criminal defense attorney regularly practicing in federal court, or the Defender Office, and seek to assist them on federal criminal case. Such assistance is a prerequisite to admission to the CJA Panel. Applications for admission to either Panel are located in the District Clerk's Office.

Any member of the Training Panel who has assisted in the preparation and trial of a federal criminal case should document that experience in a letter to the CJA Panel Selection Committee Chairman, Magistrate Judge William H.

Steele. The Committee will then consider the applicant's assignment to the CJA Panel.

### CJA Panel

Richard G. Alexander  
Gary L. Armstrong  
Gordon G. Armstrong  
Thomas O. Bear  
Paul D. Brown  
Luke F. Coley  
Michael Dasinger  
Barre C. Dumas  
Kathryn D. Ferrell  
Tim W. Fleming  
J. Langford Floyd  
Frank T. Hollon  
Gregory W. Hughes  
Andrew M. Jones  
Cecily L. Kaffer  
Dennis J. Knizley  
Arthur J. Madden  
Peter J. Madden  
Larry C. Moorer  
Donald C. Partridge  
Arthur T. Powell  
James M. Scroggins  
William E. Scully, Jr.  
Richard E. Shields  
David A. Simon  
Domingo Soto  
Richard D. Yelverton

### Training Panel

James G. Curenton  
Donald D. Doerr  
Barry C. Prine  
Jon M. Spechalske  
Charles J. Wilson  
Sidney M. Harrell, Jr.

## Research Questions

I have always encouraged the local criminal defense bar to call us with research questions. I still do. However, if you have such a

question, please call me directly. I will either answer it or ask someone else in the office to assist me.

Please do not request help from the other lawyers in the office directly. They are too nice to tell you when they are busy on their own research.

## Reversible Errors

### Supreme Court

Old Chief v. United States, 117 S.Ct. 644 (1997) (A court abuses its discretion if it refuses to accept the defendant's offer to stipulate that he is a felon, in a trial for being a felon in possession of a firearm). [Big win for the Montana Defenders Office].

### Circuit Courts

United States v. Ahmad, 101 F.3d 386 (5th Cir. 1996) (The jury instructions in a pollution case implied strict liability rather than the requirement of knowledge).

United States v. Agis-Meza, 99 F.3d 1052 (11th Cir. 1996) (The court had an insufficient basis to calculate a quantity of marijuana based upon cash and money wrappers seized).

United States v. Smith, 106 F.3d 350 (11th Cir. 1996) (A defendant could not be denied credit for acceptance of

responsibility merely because his attorney objected to the amount of loss calculated in the PSI).

United States v. Ekinici, 101 F.3d 838 (2d Cir. 1996) (Unlawful dispensing of drugs by a doctor is not subject to an enhancement for proximity to a school).

United States v. Jolly, 102 F.3d 46 (2d Cir. 1996) (Corporate principle does not get abuse of trust enhancement for defrauding lenders).

United States v. Londono, 100 F.3d 236 (2d Cir. 1996) (The defendant's deportation did not moot his appeal).

United States v. Barton, 100 F.3d 43 (6th Cir. 1996) (Enhancement under §2K2.1(a) (1) relating to prior convictions covers only those before the instant offense).

United States v. Moit, 100 F.3d 605 (8th Cir. 1996) (Possession of shotguns and hunting rifles qualified for "sporting or collection" reduction).

United States v. Berger, 103 F.3d 67 (9th Cir. ), cert. denied, 117 S.Ct. 1456 (1997) (A firearm stored near drugs did not meet *Bailey* requirements).

United States v. Ruggiero, 100 F.3d 284 (2d Cir. 1996) (1. A judge properly refused to apply an obstruction of justice enhancement; 2. A single false denial does not bar

credit for acceptance of responsibility).

United States v. Pettiford, 101 F.3d 199 (1st Cir. 1996) (A writ was granted for Armed Career Criminal whose priors were later vacated).

United States v. Thournout, 100 F.3d 590 (8th Cir. 1996) (The government breached an agreement from another district to recommend concurrent time).

United States v. Cruz-Rojas, 101 F.3d 283 (2d Cir. 1996) (Guilty pleas were vacated to determine whether factual basis existed for carrying a firearm).

United States v. Cruz-Rojas, 101 F.3d 283 (2d Cir. 1996) (Guilty pleas were vacated to determine whether factual basis existed for carrying a firearm).

United States v. Davis, 94 F.3d 1465 (10th Cir. 1996) (There was no reasonable suspicion to stop suspicious male in a high crime neighborhood).

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Downey v. Crabtree, 100 F.3d 662 (9th Cir. 1996) (BOP may not deny a sentence reduction for drug treatment merely because the defendant's sentence contained an

enhancement for a firearm, when the underlying sentence was nonviolent).

United States v. Etherton, 101 F.3d 80 (9th Cir. 1996) (The court had authority to reduce the sentence after a revocation of supervised release when the guidelines were later amended to provide for a lower range).

United States v. Weaver, 99 F.3d 1372 (6th Cir. 1996) (Bare bones, boilerplate affidavit was insufficient to justify warrant).

United States v. Leake, 95 F.3d 409 (6th Cir. 1996) (Neither the independent source rule, nor the inevitable discovery rule, saved otherwise inadmissible evidence).

United States v. Grable, 98 F.3d 251 (6th Cir.), cert. denied, 117 S.Ct. 691(1997) (Contempt order could not stand in light of incorrect advice about fifth amendment privilege).

## Seminars

Mobile does not get lavish continuing legal education seminars on criminal law. We are lucky that New Orleans is a 2-hour drive. There are several excellent seminars there in early 1997 that should be considered.

On February 12 - 15, 1997, the National Association of Criminal Defense Lawyers is sponsoring "Cutting Edge Defenses That Win Cases." All speakers are nationally prominent criminal defense

attorneys, including Barry Scheck and Gerald Lefcourt., among others. The seminar will be held at the Meridien Hotel. For information call 202-331-8269.

On March 6 -7, 1997, the Criminal Justice Section of the ABA will present "White Collar Crime 1997." There will be excellent speakers on a myriad of white collar issues. Mobile's own Ginny Granade and Fred Helmsing will participate in panel discussions. The seminar will be held at the Marriott Hotel. For information call 800-285-2221.

On April 24 - 26, 1997, the Louisiana Association of Criminal Defense Lawyers sponsors "Law & All that Jazz." Not only does this course include many great trial lawyers, like Gerald Goldstein and Frank Rubino, but it is a great excuse to be in New Orleans during Jazzfest. This seminar will be at the Doubletree Hotel. For information call 504-387-3261.

An excellent death penalty seminar will be held here in Alabama. On February 20 -22, 1997, the Associations of Criminal Defense Lawyers of Alabama, Georgia, Tennessee, Louisiana, & Greater Birmingham will present "Loosening the Death Belt." Speakers include David Bruck, Stephen Bright, and Bryan Stevenson. The course will be held at the Radisson Hotel in Birmingham. For information call 404-876-0562.

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