

ISSUE BRIEF **12.08.17**

Houston Area Law Enforcement Leaders Favor Drug Policy Reform

Compiled and edited by **William Martin, Ph.D.**, Director, Drug Policy Program

INTRODUCTION

Since 2000, Dean Becker, a contributing expert to the Drug Policy Program, has interviewed more than 1,000 people for his Drug Truth Network broadcasts that originate on Houston's KPFT radio and are carried on 70-plus stations throughout the country. Extensive archives of these interviews in both audio and transcript forms are available on the Drug Policy Program's website.¹ In 2014, with assistance from the Baker Institute and Law Enforcement Against Prohibition (LEAP), Becker published "To End the War on Drugs," a topical arrangement of about 100 of these interviews.

This issue brief comprises excerpts from interviews Becker has conducted with former Houston Police Chief Charles McClelland (2010–2016), current Chief Art Acevedo, Harris County Sheriff Ed Gonzalez, and District Attorney Kim Ogg, along with additional comments by Mayor Sylvester Turner and Precinct 1 County Commissioner Rodney Ellis. These interviews document a notable congruence of opinion among Houston-area law enforcement leaders regarding U.S. drug policy—federal, state, and local—and the need for reform. Their comments have been lightly edited for clarity and continuity. The original and much longer transcripts are available online.² We invite you to explore them.

— William Martin

FAILURES OF THE WAR ON DRUGS

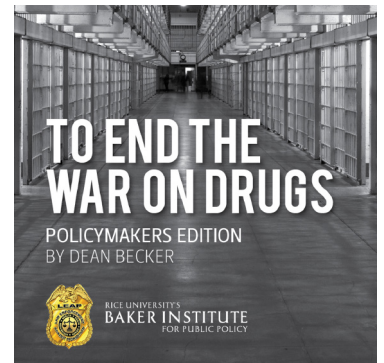
Former Houston Police Chief Charles McClelland, in a 2014 interview that attracted national attention: "Most of us who are law enforcement executives believe that the war on drugs, the 1980s drug policies, was a miserable failure. There's no doubt about that."

Harris County District Attorney Kim Ogg: "Law enforcement in this country has to acknowledge the black market, the power of demand, the absolute guarantee of supply where there's demand.

"Prohibition failed when it came to alcohol, and I think we're seeing the same thing, that it creates a monster. We are creating our own crime problem—the black market and the entrepreneurs of the black market, whom we used to call gangsters and now call the cartel."

Houston Police Chief Art Acevedo: "Gangs—Bloods and Crips—aren't really fighting over red and blue. They're fighting over green, and part of that green is the drug trafficking industry that we've created."

Harris County Sheriff Ed Gonzalez: "We spend approximately \$80 billion a year in this country incarcerating folks for one thing or another, and that's basically just incarceration. And we still have crime. We still have drug use occurring. So we



“Most of us who are law enforcement executives believe that the war on drugs, the 1980s drug policies, was a miserable failure. There's no doubt about that.... Most police chiefs understand that when it comes to marijuana use, we cannot criminalize such a large population of society that engage in casual marijuana use. You just can't continue to do that, we understand that. We do.”

— Former Houston Police Chief
Charles McClelland

definitely need to rethink what's happened, especially over the last 40 years.”

Acevedo: “When you have people who didn't commit any violent crime but are doing 20, 30, 40 years in prison for drugs, it's just not a good use of jail or prison space. If you think about a person in their mid-60s, pushing 70, who is in prison for drug dealing, who never committed any violent act, it just doesn't make sense.”

Effects on Minorities and the Poor

McClelland: “The war on drugs has disproportionately criminalized young minority men, and that has a trickle-down effect. A lot of minority men in their early 20s have a felony conviction on their résumé, and now they're unemployable. We wonder why they don't have jobs, why they're not working, not contributing to society in a productive way, but we've put them in a position in which the odds are stacked against them, and it's continuing to have negative effects on their lives.”

Gonzalez: “If you were to see the origin of a lot of arrests, you would see how it disproportionately impacts minority communities. Right now, we see some of the friction that's occurring in law enforcement across the country. Instead of every time [they] see law enforcement coming, it's going to mean some type of low-level arrest for something minor, why not build bridges instead and really get back to community-oriented policing, where they get to know our police officers, our deputies, our law enforcement professionals, where we continue to develop that bond on both sides, where they understand our work better, and we understand the community as well?”

Effects on Youth

Dean Becker: “Kids who get arrested and can't make bail, many times they sit there for days, if not weeks, and meantime their car is in the impound and the cost to get it out may be more than the worth of the car. They could have lost their apartment, their

job, their girlfriend, and their relationship with their parents. And then perhaps they have to pay probation and other fees and don't have the money. It just complicates their life. I'm not saying it's an excuse, but too often that leads to other crimes—burglary, shoplifting, and other such things—which makes your job, Sheriff, even more difficult.”

Gonzalez: “It does. In addition to the list of things you just mentioned, there are things like the loss of financial aid and reduced educational opportunities, which can lessen their earning power over their lifetime. It has so many impacts that we don't think about. We simply sweep them under the rug and think, ‘Well, let's just incarcerate and not deal with the problem.’”

Ogg: “They end up with probation or convictions on their criminal records that stick with them through every job interview they have for the rest of their life, because with information technology improving and increasing at the rate we see it, every employer can find out if you've ever been charged, have a case pending, or have been convicted, given probation, etc.

“If you're a professional, a lawyer, a doctor, a nurse, you have to deal with the licensing agencies if you have something like that on your record. It's even worse for trades—air conditioning, plumbing, jobs that require you to go into people's houses. Even something small like a possession of marijuana conviction, or even probation, can keep people from getting licensed for years. That's crazy.

“I think any parent out there, Republican or Democrat, should be concerned about our children and what we're doing to their futures. And the people we arrest are somebody's children. They may not be ours, but they're somebody's, so we have to look out for each other.”

Harris County Commissioner Rodney Ellis: “Many people are in jail today for doing the same thing that maybe you and I, maybe some of your listeners, did, but they (or we) just got away with it.”

POLICE DEAL WITH CONFLICTING PRESSURES, INCONSISTENT POLICIES

McClelland: “The police chief has all of these internal and external forces tugging at him or her....Sometimes there are members [of the “rank and file” in the police force] who want me to do some things or not do some things....There are folks in the community who want me to just drive through and swoop [all drug users] up and bring them on down here to police headquarters.

“If the federal government still classifies marijuana as a Schedule I drug, and it's a federal crime, it's difficult for states to [treat it] in a way that doesn't put law enforcement in conflict with enforcing their oath of office.

“A lot of law enforcement officers see things in black and white, and they want to know from the federal government, ‘Look, if it's illegal, do you want us to enforce it or not? And if it's something that should be changed, then take it off the list.’”

POLICE ARE OPEN TO REFORM

McClelland: “Most police chiefs understand that when it comes to marijuana use, we cannot criminalize such a large population of society that engage in casual marijuana use. You just can't continue to do that, we understand that. We do.”

Gonzalez: “I think we've sort of been misguided in law enforcement now for some time. We try to find a law enforcement solution to things that simply don't have a law enforcement solution. Three of those, to prove my point, are poverty, mental illness, and drug use/addiction. We need to find other methods to address those better than through law enforcement, because our focus should be on rooting out the hardened criminals, the ones that we're truly afraid of, the ones that are intentionally harming us.”

Acevedo: “If we try something that isn't working, we have to have the intestinal

fortitude to say, ‘We've looked at this, we've been doing this, but this way hasn't worked.’

“The truth of the matter is that when it comes to draconian sentencing laws for nonviolent drug offenders, the profession that's leading the way and pushing back and trying to change these things is the American law enforcement profession, and I'm proud to be part of it. I'm the first vice president of the Major City Chiefs Association, which represents police chiefs from about the 63 largest cities in this country and from Canada and other parts of the world. We have actually taken the lead in wanting to push for sentencing reform.”

Ogg: “They're ready to divert; they know it's a waste of their time in terms of making any real dent in threats to public safety. No evidence shows that aggressive prosecution of possession of marijuana, simple possession, has ever made us safer. We're all ready to clear the table and work on robbery and murder and the real cases that our public and our constituents want us to work on.”

MEDICAL MARIJUANA

Like 83 percent of Texans,³ these leaders are open to the use of marijuana for at least some medical purposes.

McClelland: “If we have legitimate research studies to support that marijuana has certain medical properties that help people with certain diseases, illnesses, or whatever, why doesn't the FDA move to approve that? Put it in a pill or whatever form and go to CVS and Walgreens and fill your prescription.”

Ogg: “There are people who want and probably need and deserve marijuana for medical reasons, and there's no reason our state shouldn't be heading in that direction. It's important to our veterans, it's important to our aging communities to have access to every resource they can, and we are seeing the horrors of opiates

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— Harris County Sheriff
Ed Gonzalez

and other types of drugs that are being pushed on us by the for-profit community. Meanwhile, it's only the gangsters and the cartels who are making money, at least in Texas, from marijuana, and that's terrible."

Acevedo: "I'm a law enforcement officer. My job is to enforce the law. I didn't go to school to be a scientist or a doctor. We're going to rely on [scientists and doctors] to give us their best assessment of the facts as it relates to the benefits and some detriments—you know, there are detrimental side effects as well. Once they weigh in, I think the legislature will have to make a decision based on what they should follow—the scientific evidence and not [decades of belief that marijuana is a bad drug]. Let's face it, alcohol probably does more damage than any drug. More people die probably from cirrhosis of the liver and drinking and driving and things of that nature than people who get impacted by marijuana."

"No evidence shows that aggressive prosecution of possession of marijuana, simple possession, has ever made us safer."

— Harris County District Attorney Kim Ogg

"SYNTHETIC CANNABIS"

One result of marijuana prohibition has been the proliferation of "synthetic cannabis" or "SynCans,"⁴ concoctions with names such as K2, Kush, and Spice that are marketed as similar to marijuana and used by people seeking a cheap high or who don't want to be snared in a drug test that could send them to jail or prison, such as people on probation or parole. Opposition to these drugs is unanimous among Houston law enforcement leaders.

McClelland: "Synthetic marijuana is a misnomer, because it has nothing to do with marijuana. It has all to do with chemicals that could be anything from insecticides to cleaning fluids, embalming fluids, materials and different ingredients from China or anywhere around the world but that certainly have no medical benefit, haven't been tested by anyone, haven't been approved by anyone, and can cause serious bodily injury and death."

Acevedo recalled an incident during his time as police chief in Austin when, viewing monitors fed by cameras at the Austin Resource Center for the Homeless (ARCH), he watched people throwing up profusely from having smoked Kush or some other SynCan. "It was horrific! Just horrible! It's not even a drug. It's absolute poison that dealers are putting in there. Some of the packaging looks like Pokemon cards and things of that nature, to try to get young people to get into that stuff—stuff that's going to kill them."

Gonzalez: "We need to inform people that these are dangerous substances that have no relation to marijuana. You have no idea what's come into your system."

Ogg: "I *hate* the synthetics. We read horrible stories about people having reactions to them, really crossing over, being out of their minds, and terrible things happening. They are a pure result of prohibition and a black market economy. We're creating monsters unintentionally—entire industries and products that never existed before and probably wouldn't exist but for the demand and the unfortunate way the supply is provided."

ROLE OF THE DISTRICT ATTORNEY

In 2016, Kim Ogg was elected Harris County district attorney⁵ after running on a platform whose most notable plank was a pledge to change the way misdemeanor marijuana offenses are dealt with in the county. She explained how she would be able to do this:

"Though not part of the legislative branch, the district attorney possesses great discretion about who is and is not charged with a crime. Police arrest folks all day, every day for a variety of crimes, but many people don't know that police officers really can't keep someone in jail without express permission from the DA. That permission is called a criminal case filing. So it's actually the district attorney

who decides who goes to jail, how long they stay, what they're charged with, and ultimately what the offer or plea bargain may be in such a case."

A New Approach

On Feb. 17, 2017, 47 days after taking office, the new DA revealed how she intended to use that discretionary power at a press conference where she was joined by Mayor Sylvester Turner, several city council members, Commissioner Ellis, Sheriff Gonzalez, Chief Acevedo, the head of the Houston Area Police Chiefs Association, several constables, a district judge, a number of pastors and community activists, her "brothers and sisters in the District Attorney's Office," and a sizable contingent of media whom she thanked warmly "for the work you do [to] ensure our freedom."

Ogg announced that her office was implementing a new policy, effective on March 1, that would "divert all misdemeanor marijuana cases and their offenders around the jail, away from bail, into an 'accountability class' where they will learn better decision-making, and out of our criminal justice system without a criminal record."

She then laid out the rationale for the new approach: "For 107,000 cases over the last 10 years, we have spent in excess of \$250 million [approximately \$26 million per year] prosecuting a crime [without any] tangible evidence of improved public safety.

"Additionally, the collateral damage to our workforce is unmeasurable, because what we have done is unnecessarily disqualify thousands of people from greater job, housing, and education opportunities by giving them a criminal record for what is, in effect, a minor law violation.

"Police have been taking about four hours of law enforcement time to stop, arrest, transport, and book [each] misdemeanor offender. We believe our officers should spend more time patrolling the streets, investigating and arresting serious offenders—burglars, robbers, rapists. That is why, in collaboration with more

than 160 law enforcement agencies here in Harris County, we have come together in agreement to give this policy a try.

"We also believe our crime labs are spending too much money prosecuting drug cases—over \$1.7 million testing approximately 10,000 cases a year—and our constituents believe those labs should be testing DNA and working on cases where people have been victimized.

"Our jail has been spending as much as \$13 million a year housing marijuana offenders.

"Further, at any given time, this crime takes up 10 percent of our court dockets.

"And once that criminal record attaches, that will change your life forever, and not for the better."

Perhaps anticipating questions about the limits of her authority, Ogg said, "This is not a grab for legislative power. We are not decriminalizing marijuana, we are not legalizing marijuana, we are simply doing something that is within the lawful discretion of every DA in the country."

Program Basics

Ogg then explained how the program would work: "If you are found by law enforcement to be in possession of a misdemeanor amount of marijuana, you will be advised that this program is available and told whether you are eligible for it....[Offenders who possess marijuana in drug-free zones around schools or in a correctional facility, or who are already on probation, bond, or deferred adjudication will be ineligible and will continue to be arrested and prosecuted.]

"The law enforcement officer will contact the DA's office to approve the stop and make sure that the stop itself was lawful, that probable cause existed.

"If eligible, you will be offered a chance to sign an acknowledgement form, promising to take a cognitive decision-making class that takes four hours and costs \$150. You'll be required to do that within 90 days. If you are too poor to afford the program, we will make arrangements for you.

"When you see all these police chiefs here, the constables, and the leader of the Chiefs of Police here in Harris County, what you're seeing is unity. What some may characterize as being soft on crime, we're trying to be smart on crime, focusing on what's important to the people of this community, which is life, limb, and their property."

— Houston Police Chief
Art Acevedo

“It’s up to our legislature to act responsibly and really consider the damage being done through the imposition of permanent criminal records against thousands and thousands of people statewide.”

— Ogg

“The contraband will be seized. Upon completion of the class it will be destroyed and you will have no criminal record. If you fail to take the class and fulfill the obligations that you promised the officer and our office that you would complete, an arrest warrant will be issued and you will be arrested for misdemeanor possession of marijuana.”

Winding up, Ogg noted that “This is the largest collaboration between law enforcement and the district attorney’s office in the country to do this.”

Comments

Mayor Sylvester Turner then thanked the DA “for taking a very bold step in enhancing public safety and doing it in a cost-efficient manner...for delivering on her promise, and taking what I believe is an innovative and very smart approach to dealing with our criminal justice system.”

Gonzalez: “This program means that certain drug offenders will never set foot inside our doors, alleviating a great deal of administrative duties. [Ogg’s plan is] one smart solution to help our struggling criminal justice system. It’s extremely helpful and will benefit the community greatly.”

Acevedo: “When you see all these police chiefs here, the constables, and the leader of the Chiefs of Police here in Harris County, what you’re seeing is unity. What some may characterize as being soft on crime, we’re trying to be smart on crime, focusing on what’s important to the people of this community, which is life, limb, and their property.

“One of the things that called me here was the desire to really work for a mayor and a council that’s very supportive—across the board, from progressive liberal on the left to conservative on the right. They really have a singular focus on making Houston safe and ensuring that we’re being smart on how we police in this city.”

FUTURE OF DRUG POLICY REFORM IN TEXAS

Acevedo: “I always want to caution people that marijuana does impact your motor skills, your depth perception. Some folks think they can drive after smoking a lot of dope. You really shouldn’t be driving or operating machinery [or doing] stuff of that nature. Having said that, I think the future will show that marijuana violations will end up being decriminalized, either becoming a civil matter or just not controlled much.

“[We should] focus on people who have addiction issues and because of that are making some poor decisions and are burglarizing homes and breaking into cars and stealing. If we can deal with the addiction and put more resources into [prevention and treatment], it might cost us a little bit more money at the front end, but at the back end we’re going to save a lot.

“I want to focus on those who are involved in the violence of the drug trade, the big movers and shakers who are poisoning young people, not on the people who are addicted. We need to get them help.”

Ogg: “I think by ending the prosecution of marijuana at a misdemeanor level in the fourth-biggest city and third-biggest county in the country, we will begin for real the process in Texas toward making marijuana legal, first for people who need it for medical purposes, and then we’ll see what the future holds in terms of legalization for recreational purposes.”

Gonzalez: “The knee-jerk reaction is sometimes just to criminalize or prohibit instead of trying to see how do we educate, how do we bring other interventions, how do we look at managed care instead of just simply incarcerating, because we’re not solving the problem.

“We’ve seen a great amount of success with the Houston Sobering Center.⁶ It’s been college students, it might be a homeless veteran, it could be a business

professional. It could be just somebody that had one drink too many at one of the local special events that we have, like the rodeo or cook-offs and things like that. In the past, they would have been incarcerated. There's no need to be paying that cost. Let them go sleep it off. It doesn't go on their criminal record. We're saving taxpayers money and at the same time we're dealing with a better intervention. It has really been a great model. We've had people visiting from all over the country to see how we're doing it. It's not unique to Houston; other cities have tried it as well, and I think that's a start.

"There are intervention programs that could sometimes be used as an alternative to incarceration. Seattle's LEAD program⁷ is one that I'm a proponent of, and studies have already been done that will show the cost savings here to Harris County. I'd also like to see how we can continue to [reduce prosecutions] for trace amounts [of other drugs] as well."

ROLE OF THE LEGISLATURE

McClelland: "When it comes to laws the people feel are unjust, they need to work hard to get them changed. In the civil rights era, there were certain laws that were unconstitutional, but [people] participated in civil disobedience, trying to get those laws changed. That's what we have to do as a country, as a community. Any time people feel like the law is unjust, then you must rise up in our democracy and go through that process. Law enforcement can't do it for you. We're not in that position."

Acevedo: "We're not policymakers. We don't pass the laws. It's the legislative branch that actually legislates. We're part of the executive branch. We have to go out and do whatever is legislated, and then the courts interpret and tell us what's constitutional and not. I really believe in the next few years that we're going to be a little bit more thoughtful as a nation as it relates to drug enforcement."

Ogg: "It's up to our legislature to act responsibly and really consider the damage being done through the imposition of permanent criminal records against thousands and thousands of people statewide.

"This is a matter of political will, and I hope that leadership from the front on the issue of marijuana here in Harris County would inspire some of our legislators to make the move and at least vote in favor of medical marijuana legalization, because I think our veterans, people with children who've got serious epileptic disorders, and others suffering from chronic pain really need compassionate alternatives to pharmaceutical relief.

"I'm proud of what we're doing, and I urge the legislature to move forward. I urge the community to keep the pressure on and keep talking to their legislators and pushing them. It's one place where a liberal Democratic and a Libertarian-Republican alliance could move this thing through the legislature, but they're going to have to have the political will to do it."

Gonzalez: "Too often politicians are just stuck in the way things have always been, but I think we're seeing a wave of newer leaders out there who are starting to open up the dialogue, being open to thoughtful discussions and being more practical, more realistic, seeing that simply incarcerating people is way too costly when we look at the real facts. I'm encouraged by some of the conversations that are out there and I'm very open to this as well. That's why elections matter, because the more we can bring in forward-thinking, progressive thought leaders, the more hopeful we [can be about seeing] the change that we need in our drug policy."

Ellis: "Let's be responsible about how we do this and join other democracies around the world in being smart on crime. I think the stars are aligning. The moment is ripe; we've got to seize it. We're the leaders of the free world. It's time for us to act like it."

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— Precinct 1 County Commissioner Rodney Ellis

ENDNOTES

1. See <http://bit.ly/2mJpvdz>.
2. Interviews can be accessed at <http://bit.ly/2mJpvdz>, arranged chronologically. Within years, they can be searched by name.
Acevedo: 12/30/16; 10/30/17
Ellis: 6/3/15; 10/30/17
Gonzalez: 8/26/16; 10/30/17
McClelland: 12/5/14; 2/27/15; 10/23/15
Ogg: 6/10/15; 10/30/17; 5/12/17
Turner: 1/17/17
3. See <http://bit.ly/2zLwIPJ>.
4. See Katharine Neill Harris and Jay Jenkins, *Fake Weed, Real Consequences: Effective Strategies for Addressing Synthetic Cannabinoids in Houston*, Rice University's Baker Institute for Public Policy, Houston, Texas, <https://www.bakerinstitute.org/files/11432/>.
5. Kim Ogg bio: <http://bit.ly/2jKsP7a>.
6. See <https://houstonrecoverycenter.org/sobering-center/>.
7. See <http://leadkingcounty.org/>.

AUTHOR

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DRUG POLICY

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