

THE CENTURY FOUNDATION

policy in perspective
forum series

POLICY IN PERSPECTIVE FORUM

**HARD TIME:
THE LEGACY OF THE ROCKEFELLER DRUG LAWS**

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**KEN
EMERSON:**

My name is Ken Emerson and I'm with the Century Foundation. And I'd first of all I'd like to thank all of you for coming and your interest in this get together in this series, generally speaking, in a policy and perspective. This one which considers the Rockefeller drug laws is the last one of the season. We hope we'll see you again next fall when a new series of policy and perspective breakfast sessions will begin and we promise you it will be an exciting and wide ranging program. This time we're going to try to do something a little different and begin with a film. And this also gives us an opportunity to tell you a little bit about what we do during your summer vacation because the film maker Jennifer - one of the filmmakers - Jennifer Maxfield is a graduate of the Century Institute, a progressive summer program for college students from all over the country that is sponsored by the Century Foundation and underwritten by Allan Sagner and the Sagner Family Foundation. We're pleased to have Mr. Sagner with us today. Jennifer was a Sagner Fellow as we called them last year, which was our first in operation. In a couple of weeks a number of us will be returning to Williamstown, Mass., and the Williams Campus for three weeks of lectures, seminars and workshops. The purpose of the Institute is to encourage young people to get involved in public policy and to encourage them to consider careers in the field. Our hope is that successive classes of Sagner Fellows will mentor and work with the students who follow them. That gradually a progressive cadre will develop and expand into a revolutionary vanguard and then eventually we will take over the world. (laughter) Or at least make it a better, more equitable and most of all a more liberal place. In the meantime, Jennifer Maxfield who co-produced this film with Kelly Reardon who is also here with us is a native of Tenafly, New Jersey, and a 1999 graduate of Columbia. She's just graduated from Columbia Journalism School and if any of you are news directors of media market television stations, here is your prospect. She made this film at the journalism school. I had the pleasure of getting to know her in the writing workshop I conducted at the Century Institute last summer, and I'm looking forward to seeing her work in another medium. Following her film and a few remarks, very few, I hope that the film will speak for itself, we will hear from John Flateau, another friend and fellow member of the Progressive Urban Agenda Working Group. I hope you'll forgive one last plug or a second plug for a Century Institute undertaking. This is a two-year project that the Century Foundation is co-sponsoring with the Center for Urban Research at the Community Grad Center. The purpose of this project is not world domination but something almost as difficult and that is reclaiming City Hall in New York with a revitalized liberalism. And that's my last plug for the morning. Anyway, John, a former chief of



staff to Mayor David Dinkins and senior vice president of the New York State Urban Development Corporation, directs the DuBois Bunche Center for Public Policy at Medgar Evers College, and he will talk about the effects of the Rockefeller drug laws on communities of color. I noticed as I was taking the bus in this morning that even in today's *Times* there was reported a new study of the disproportionate number of African-Americans who were imprisoned for drugs compared to whites. I'm really bad with figures but as I recall it said that five times as many whites as blacks take drugs but twice as many African-Americans are in prison. Our final speaker will be Dr. Ethan Nadelmann, Director of the Linda Smith Center, a drug policy and research institute funded by George Soros. Dr. Nadelmann will talk about the alternatives to the Rockefeller drug laws. He very kindly, on short notice, agreed to appear this morning when the panelist we had advertised, Michael Massing, spurned us for an all-expenses paid conference to Buenos Aires. We countered with cab fare from the Upper West Side and (laughter) and window shopping at Prada, I thought that was an extremely generous offer but I'm afraid we lost the bidding war, anyway, Michael did ask me to extend to you his apologies and we're delighted and more than proud to present in his place Dr. Nadelmann. With that why don't we start the film?

(FILM BEING PLAYED)

EMERSON: If there are people outside who want to come there are chairs back in this side of the room. And I thought that rather than talking about the film right away we would go to our other brief speakers and we'll go from there. So, John.



**JOHN
FLATEAU:**

I would like to thank Ken Emerson and the Century Foundation and my good colleagues, Christy Hicks and Sarah Ritchie, for giving me this opportunity to talk about a critically important issue. I am going to talk about the film. I'd like to commend Jennifer for totally wiping out my presentation. (laughter, applause) So that means I'll be brief because there were so many points already made in there that basically the pretty much the entire judicial, legal establishment acknowledged the errors of their ways in taking an action over a quarter of a century ago. I would like to touch on as a student of student and practitioner of politics and public

policy, I want to put a little backdrop to the situation though and also touch on some other points. I think the genesis of this problem goes back to the '60s, at a time when there was, the foundations of the American social order was shaken when people were in the streets, when there were social movements afoot and that was also the genesis. One of the tangential movements was the rise of the drug culture. You also had urban insurrections in the '60s. And coming out of that, these issues played into national politics and the Republican Party was on the comeback trail or attempting to make their comeback. In '64 we had Goldwater and followed by Nixon. And one of the strategies developed by that national party to regain center stage was the development of their law and order theme or message and I believe that that's part of the genesis of this. We've got to remember that Nelson Rockefeller was not just a Governor of New York; he was a national political figure and a leader of the eastern liberal establishment wing of the Republican Party. And I read the *Times* editorials and I saw even some of his former colleagues on that film and there may even be some in the room, I don't know. So I think there was a political imperative. This was part of Nelson Rockefeller's move to toughen up his issue, his political image after the Eastern wing lost control of the party, basically, and, to Reagan followed by Bush. So I think that's part of the national political backdrop and it is important to put that out there because it's still out there. There has been a resurgence of the conservative Republican wing with the arise of Newt Gingrich, the 104th Congress, the Contract with America, so, and in fact the Rockefeller laws were the progenitor of, if you study Federal legislation that was passed in '94, the Omnibus Client Control Act - this is 1994 - this was the precursor 20, almost a quarter century earlier. So these same themes are still being played out on the national stage. They're driving public policy from top to bottom. And that's one of the reasons why it's still on the table. The same way that state legislators don't want to, didn't want to be painted as soft on crime or pandering to the drug cultural minorities a quarter of a century ago, we see on that film, elected officials saying the same, basically saying some of the same things today. So understanding that part of the problem also therein lies part of the solution and that's one of the underpinnings that needs to be attacked if we're going to solve these problems. Very quickly, one of the, as I was doing some background on this, I came across a very interesting additional supporter that I'd like to bring to our attention and that is the Catholic church which is normally considered to be a conservative institution but they're actually progressive on a number of social policy issues and they have a very, I've found, I'm aware they have a very well organized public policy advocacy operation and Bishop Hubbard out of Albany is their point person because he is in Albany. And their number one policy position in the public safety arena is to modify the Rockefeller drug laws so I found that, I found that very interesting. We already have a number of former legislators as Jennifer pointed out that are on board with these issues. So it's not a question, the momentum is out there, there are a lot of constituencies out there that are all at least giving the rhetoric as Ethan pointed out that says, yes, we know that needs to be changed so the question is why isn't it happening yet. And that's something we have to push for. I'm flying through my pre-empted - no, I'm only

kidding – John Dunne – I want to go through a few statistics now because Ken asked me to focus on these impacts on the minority community, and I think that some of the information is out there already. 90% of the inmates in state prisons today for drug offenses are there because of – there are actually two Rockefeller drug laws, OK – the adjunct to the Rockefeller drug laws, the second felony offender law, that’s the twin. And again that predates the three strikes, this was two strikes and you’re in, OK, that’s what this was in 1973. We have a law on the books that says two strikes and you’re in, that’s the second felony offender law. So between that one and the one that Jennifer talked about where I think it’s if you’re caught with four ounces or more in a sale transaction or two ounces possession, that’s the other law that says you will get a minimum 15 year to life sentence. So those are the two laws that were put on the books in 1973 that are driving much of this process. Thirty years ago, the majority of state inmates were, first of all they were white, OK, 20% and there are some tables in my material here. And you need to realize that only about 25% of New York State’s population is black and Latino is non-white. But right now about 88% of the state inmates are black and Latino. So we’ve got these major racial disparities. And we shouldn’t get lost in the fuzz, all the good reasons why certain things haven’t happened, yes, there is crime, but we’ve got to keep those, some of those basic stats on our radar. The dollar figures that were mentioned to keep someone in prison. It costs about \$30,000 a year now to maintain a New York State inmate and I think the figure you gave was over \$700 million. That’s the maintenance fee, that’s the annual hotel bill. What wasn’t mentioned is the construction bill. As I recall – and I have a little personal knowledge there – I worked for the state agency that Governor Cuomo did the back door financing for the prison buildup in New York State in the ’80s. The Urban Development Corporation actually uses bonding authority so put that \$3 billion or \$4 billion on the table as a quick way to do that transaction fearing that it might not be voted through the legislature where, for example, you had a black and Puerto Rican caucus, it might not go through as a capital budget item. So they used the public authority and their bonding authority to actually finance the state prison construction. And those figures are about \$100,000 per cell. If you take the number of beds at a facility, a 500 bed facility and look at the bill to build a maximum security prison, there’s a lot of concrete and steel, if anybody’s ever been, not minimum, the minimum securities are like hotels. A lot of open space, maybe electrified barbed wire at the perimeter if you’re in a minimum security but maximum you have to go through a series like the Greenhaven, a series of wall after wall, gates, there’s a lot of steel in that concrete and there are a lot of steel gates in those prisons. So it’s a heavy construction and they are extremely expensive. One of the figures I came across I think on the Linda Smith Webpage was that the current share of the senate, Republican Senate Crime and Corrections Committee, is Senator Nozolio from upstate Seneca County. He’s been in office about 20 years now, 18



years. He has six prisons in his district, in his senate district, and you did hear the statement that was made that there are six; I think it was Dollinger who said there are six upstate counties where the New York State Department of Corrections is the number one employer in that county. So there's a, it's, basically it's the rural and local economic development program for upstate communities. That's what the prison system is to other communities. So that if you're gonna solve this problem in the long term, we're talking pork barrel, we're talking horse trading, what are you going to do to improve the economic development, the jobs, the economy picture in upstate communities if you stop building prisons. If we can't answer that question or put something on the table and when I say we, I'm talking about we downstaters, we minorities, it's a horse-trading situation. Upstate legislators where this is their major economic engine in their local communities, they're not going to give this up unilaterally. This is unilateral disarmament for them. These jobs, in California, prison guards with five years seniority make more money than an assistant professor in the California State University system. We're trading textbooks for prison cells. There's a trade off between the amount of money that's coming out of the higher education sector in particular and the amount of money that's going into prison construction but people are not going to unilaterally disarm. So those of us that are serious about this issue, we may have to put resources on the table. Ironically downstaters, urban communities advocating for rural and upstate economic development to provide them relief so that we can dismantle, initially downsize and ultimately dismantle this prison system. And the first step is to have a moratorium. First you have to start where you are and the Rockefeller drug laws come in there and I'm going to and I'm gonna - I think I'm going to wind down in about one minute, one or two, I'm OK -

EMERSON: Yeah, you're OK.

FLATEAU: OK. This is my boss to let you know.

EMERSON: Time master here.

FLATEAU: What was my point? (laughter)

EMERSON: That I can't help you with.

FLATEAU: What was the last thing I said?

EMERSON: Yeah, what you are going to put on the table for economic upstaters, upstate.

FLATEAU: Right. And I was pointing out the economics. Those are good paying jobs, those are civil service jobs. Those are jobs that people with a high school education, OK, who aren't going to college, can get good employment. So we have to stop the construction where it is. I know where I was headed right back to the Rockefeller drug laws. So one of the arguments being made and, by the way, there were 12,000 cells in 1972. As of April of this year, there are now 72,000 cells. State, just state, I'm not talking about county jails in Monroe, Erie, I'm not even talking about Riker's Island, by the way, over 100,000 people a year pass through Riker's, you did know that, didn't you? And 95% of them are black and Latino. OK. The Rockefeller, if they, if they

do something about the Rockefeller drug laws, get some of those people out of jail because one third of that 72,000 are people that are in for drug offenses not, most of them non-violent offenders. If there were enough drug treatment programs out here, they would be in drug treatment. You can empty out a good portion of the cells that are there now. You don't have to build anymore. You just swap out the folks that don't belong there in the first place and if you need room for violent – fine, the cells are already there. There's no logical reason to keep building these prisons. There are political reasons and economic reasons to keep building them. And those are the points of attack that we have to deal with. I think I'll stop on this final point. Devastation to, I think I've thrown out just a few, enough statistics so that we understand that there's a tremendously racially, a racial disproportion between blacks and Latinos in the civilian population versus blacks and Latinos in the prison population. We're all kind of clear on that,



right? So what are the, to specifically make sure I cover my assignment before I stop, what are the specific impacts, negative impacts in the civilian communities, OK, of those of us that are still on the other side of those bars. OK. And I include myself in there. I haven't gone to prison yet. Political, there are political, economic and social consequences, major devastating consequences in our communities. Political consequences. Sensyn Project has done a study that says that there are almost two; I think it's 1.5 million African-American males in this country who are out of jail now but can't vote. One and a half million. And if

you take that closer to New York City where most studies show that the pipeline for those 72,000 prisoners is not the 62 counties, it's like seven or eight black and Latino neighborhoods in New York City account for 70% of those prisoners. It's Bedstye where I live, Bedstye, Brownsville, East New York, South Jamaica, East Harlem, Lower East Side, Central Harlem, and South Bronx. That's where most of the detainees on Riker's Island come from and that's where most of the county, the prison inmates come from. So you concentrate, now take that million, I don't know, New York, give us 10% of that, give us 20%, that's thousands at least. That's thousands of black males walking around in these local communities that cannot participate in the political process. And that in itself is a major problem. When you look at, when you add to that, high non-citizen population, heavy immigrant population – African and Caribbean – then we have a whole category of folks 'X'd' out of the political process because they're walking around with felony convictions. And, by the way, there are some states where that is forever. Once you're convicted of a felony you may never have your voting rights reinstated. In the State of New York, you can go through a process called "Obtaining a Certificate of Relief from Civil Disability" because you are civilly disabled once you receive a felony conviction. And you cannot have that right restored until your full sentence has expired. So if you're one of these convicts with the Rockefeller drug law tag, you are

'X'd' out forever because that's for life or if you get out I believe it's probation for life. OK. Only your sentencing judge can waive that. So that's part of the dire political consequences in these black and brown communities. The social consequences. Well, let me, social and economic, I'll sort of tie these together. Think about a community where there's an absence of men. Men are major social control agent in all of our communities. Italian, Puerto Rican, black, like fathers when mom can't keep the children in line, Dad's supposed to do it. Dad or uncle or grandfather or big brother, so think about a moment for communities where a lot of these "role models" are absent. That's the other problem we have. Think about a community where there are women and no men to marry because literally they're physically not available, they're not around. They're on their way back and forth to these prisons. One other piece wasn't mentioned was the recidivism problem. Almost half of the folks that go in come out and go back in. It's a revolving door. So those are the socials. Think about a little thing once you have a felony conviction you can never hold a government job, almost never, right? Civil Service job. And by the way in our communities, in some of our communities 40% of our employers are government agencies. More black and brown people work for government agencies than the general population. So these folks who do their time, come back out here, so they can't find a job. So what are they going to do? They don't, they've eliminated education, higher education. This lady on the film said I'm going to marry my (inaudible). You used to be able to get a degree while you were in prison, that's been eliminated. So all's you can do now is pump iron, watch TV and I think the state is required to make sure you get a, no it ain't, they can't force you to get a GED but you can get a high school diploma. You can no longer get a college diploma sitting in prison. OK. So no education, no job, stigmatized, what kind of employer are you going to present yourself to. So that's why that vicious cycle just keeps going round and round. So those are some of the negative consequences, impacts of the Rockefeller drug laws, of the prison industrial complex. And I'd like to stop and hear our distinguished expert, Ethan, and join in (inaudible) the dialog.

ETHAN

NADELMANN:

OK. John, thanks, that was great. And that movie was great and to you just did, that was really spectacular. I was impressed with the quality and the way you covered that. Let me pick up from where John left off. Yesterday afternoon my public policy director at Linda Smith's Center and we have another law and it's allowed to engage in lobbying. And she walks in my office around 6:00 and she looks despondent. Deborah, what's the matter? I just got back from Albany. She was depressed as hell because she spent the last two days – Monday and Tuesday – in Albany working on a Rockefeller drug law reform and talking to people there and she had had dinner with Jeff Aubrey the



night before who's been leading the minority caucus on this thing. She talked to the staffs of people on Shelley Silver's staff, the Speaker of the House and Pataki's staff and Dale Voker one of the senior people there and it's, it is amazing. You now have on the record, Pataki saying he's ready to change. Silver saying it. You have Bruno, the Senate Minority Leader saying it. You now have Voker, very powerful Republican leader saying it. And they are not making it happen. They are not making it happen. It is stuck up there for the grossest, crassest political reasons imaginable. One of the things she came back and saying, let me tell you something she says to me, Deborah says to me yesterday, you know how we talk about all the economic interest of upstate, the stuff that you guys had in your movie and how this is bringing jobs for people up there, right? Poor impoverished rural areas, some of the politicians up there, they'll say hey, look, quite frankly, nobody's offering me a mall up in, down and out in some part of upstate New York. My choice is a casino or a prison and quite frankly I think the prisons are better for us. But now it's turning out is that some of those upstate legislators actually have personal financial interests in the restaurants and hotels that have been spilt around the prisons. Hey, it seems to me that would be a good story -

FLATEAU: Small business economy.

NADELMANN: Small business - but the legislators themselves are personally, but I have never heard that one before until yesterday at 6:00. Right. Why won't Pataki do this thing? He keeps insisting, OK, he understands, this goes too far, he's not going to get blind sided by Silver on this one. He'll want to keep linking it to the abolition of parole for non-violent offenders. He abolished parole for violent offenders some years ago. Now he wants to abolish parole for non-violent offenders. It's not clear why except that somehow that resonates well in the political rhetoric of the day. Last year I went up to Sing Sing Prison, the New York Theological Seminary has a program, a master's program in Divinity Studies that Bill Weber runs up there and I went up there to talk to his master's in divinity class. And people are sitting around a table, not as nice as this in a room not as nice as this and they were I'm, John from the Bronx, I'm on Year 16 of a 22-year sentence. Yeah, Jose from Brooklyn, around the table most of them drug law offenders. These guys are in Masters in Divinity. They are praying every day that this parole, that they can get paroled because they've only been there for 16 years sometimes for a first offense. And the Governor says he wants to take away parole for them. What exactly, why? I mean it's, you're talking about a level of cold heartedness that's going on there that's just, that's just, I mean almost breathtaking. New York does have, our drug laws are worse than almost any other state in the country. I think New Jersey may have a higher proportion of new commitments to prison than we do. And New Jersey was the only state which ever topped 50% of all new commitments to prison in a year for drug law violations. Now I'm going to pass out some information here, you'll see the numbers. It's been 40 to 45% of all new commitments to state prisons in New York have been for drug law violations. I'm trying to impress upon you this because I, there is an element of callousness which has evolved in our society around this issue. But it explains this. And just as a little pitch, I mean the one thing I can say

everybody sitting in this room or just about everybody sitting in this room is a citizen. You are a citizen; you're not just a passive listener at a Century Foundation Seminar. It is possible there are a couple of weeks right now before the session, the guys goes out of session. Things are hot up there. Things are moving to some extent. Right now I can tell you there are Republican lobbyists, Democratic lobbyists, citizen activists, all those people are working up there right now. I don't know whether, did Randy Creteco leave? He left. Well, anyway, the fellow was sitting over there with the, I don't know if anybody noticed that fellow but whose voice could be heard by the background of their film, he was the one yelling "and the Rockefeller drug laws." But one of the amazing things in this issue, if you ask in the end what was it that moved Joe Bruno, the right wing Senate Minority Leader, on this issue was it a political deal or who came out in favor of Rockefeller drug reform law last year, what, was it a political deal that was made not so far as I know. Was it some cost benefit analysis, not so far as I know. What it was was guys like Randy Creteco who's, besides being a comedian, literally, is an activist it was arranging for the family members of the inmates to actually go and meet people like Bruno and Voker and bring tears to their eyes to the point where the next day Bruno stands up and says we've got to change these things. But it stuck. And all I'm saying here is that if there's one thing you can find the time to do today, not even tomorrow, today is to sit down, you go home and write a letter to Governor Pataki, and if - any Republican legislators as well and just say, "do it, just do it, no deals, do it, do it clean, it's the right thing to do, just do it" because there's been a passivity in this community about the sort of number of people being locked up. People need to just sit down, pick up the telephone, and call the guy. Call his office, right, do it. There's a chance, actually in the next two weeks to change, make a change in the Rockefeller draw laws for the first time in 25 years. It can happen but people got to pick up the phone. They've got to try something. They've got to exert, you've got to express yourself as a citizen. Now I'll make a couple of comments on the race side of this thing. It's always a sensitive issue to talk about on the race side of this thing. There is, there are reasons why one can explain why there are even though blacks and whites use drugs at about roughly the same rate, why there are more black people behind bars than white people. You can look at that and you can say well, whites that are drug dealing are much more likely to do it in behind closed doors. They do it at work, this and that. Black drug dealers are more likely to be on the street. You have that factor. Right. You have, you have factor that judge, there's a whole, there's a range of things that you can find. Even when you take all that stuff into account, there is a racism to the drug war both on its face and beneath the surface that explains, I think, the majority of what is happening on this issue today. I mean John was very compelling talking about the impact both on the civilian communities, on the numbers. He also got into the report about the disenfranchisement. It was the Human Rights Watch Report together I think with the sentencing project that did this last year. We have in the United States, a policy that if you go to prison as you said, you lose the right to vote. I think only a couple of states in America allow you to vote when you're in prison and most of them make it as he pointed out incredibly difficult to get the vote, right to vote back. This has become de facto, a new form of Jim Crow, I mean in the

southern states you have 25 to 30% of all black men can't vote out- I mean literally, disenfranchising roughly a third of the people up there, down there. In New York, those numbers are not quite as high but they're close. Disenfranchisement of a significant proportion of the population for violating politically motivated and driven laws. Right. Supreme Court, by a close decision 20 years ago or so, with a vigorous dissent from Thurgood Marshall, said that's OK. That's OK. There is absolutely no way that this system and this policy would still be in place if 94% of the inmates for drug law violations were white and middle class. There is absolutely no way. There is a racism that's on it's face and also subtle. And I'll tell you, I noticed in your film that two of the three inmates you did were white, latter one was black, I think. And even though 94% are black and Latino and 6% are white of the inmates. And it was very interesting, when we did a commercial, we actually read a, we did a one-minute television spot against the Rockefeller drug laws last year. We ran it around upstate districts and



Long Island districts. And we went through a tough decision. Should we make, we had a, we had a, it was a pictorial of a little girl walking into a prison, holding the hand of the prison guard and then she sees her mommy behind bars and she runs to, "mommy, mommy," you know and you see them holding hands and the mom's behind bars. And a decision had to be made, should those, the actors portraying the inmates should they be white or black. And my public policy director who's our point person in these efforts, who is black, decided

that it should be white. And you know why? I mean your why is because I think on that subtle sort of unconscious, subconscious racism in American society, we thought we could strike a greater sympathy chord, right, with white actors even though that represented the minority of people. One of the things is I think what is the single most progressive humane passive, piece of legislation passed by the U.S. Congress in the area of health policy, AIDS policy, in the last 20 years, it's called Ryan White. It provided billions of dollars to deal with AIDS, drug related AIDS and other AIDS, mostly helping people of color or people with AIDS, right, and it's named after Ryan White, an 11-year old little white boy, middle class white boy, who got AIDS from a blood transfusion. And that's what was necessary in order to get a whole lot of people in Congress to vote for an otherwise progressive piece of legislation. Now what I also understand is that when we use white actors to dramatize the consequences of the Rockefeller drug laws because we think that that's going to be politically more effective in terms of public opinion, it's also disparaging and not honoring the race of the people who are actually sitting behind bars. I mean it is this very difficult dilemma. Here we are we're putting on white faces represent black people because that will be more humane, I think that's right but at the same time, are those really should be speaking for the people who are being victimized by these drug

laws. So it's extremely tough. Now I just want to make one last point on the Rockefeller drug laws, which is, we did a poll. We commissioned a poll, it was Aubrey Associates last year and we asked the question to the voter, to people would you be more or less likely to vote for a legislator who had advocated for repealing or reducing the Rockefeller drug laws. Right. Addressing this soft on crime issue. 50% said they would be more likely to vote for a legislator who wanted to pull back the Rockefeller drug laws. 25% said more likely to vote against. OK. So in terms of that charge, now the response of the Shelley Silver's and the others is well you didn't poll the swing districts. We only care what they say in Oneonta County or we only, that's what you've got to poll if you really want to move Albany. But basically the New York population as a whole is essentially there already. They're there. Now let me now come to the last part of what I want to say here. And this is the broader and more controversial part I guess. There is, for those of you who don't know what I do, I created something called the Linda Smith Center back in 1994 with the philanthropic support of George Soros and it's a drug policy institute that basically advocates for reforming drug policies. And we argue that drug policies should be much more of a health issue than a criminal justice issue. We support decriminalization in the area of Cannabis and harm reduction approaches and they have other drugs. We are labeled by the drug warriors as legalizers although that is not the case. But we believe that the drug war is doing a lot of evil in this society. That the drug war is actually doing more harm than drug abuse itself. And as I pointed out before we also have a political affiliate that engages in lobbying on a range of issues from the issue of needle exchange to the issue of sentencing, right, you've heard about the balloting initiatives on medical marijuana and things like that. We're involved in that stuff, too. Now I want to make a broader point here and relate this thing. The reason why that stuff you saw, that Rockefeller drug law stuff, is possible, the reason why it's possible to have gone from having 50,000 people behind bars for drug law violations in 1980 to almost half a million now. I just want to use some perspective; we have almost as many people behind bars in America today for breaking a drug law as we had for everything in 1980. OK. Just to use some perspective. I'll give you another perspective. We have more people behind bars for breaking a drug law in America than Europe has incarcerated for everything. Just to use some and they have more people all told than we do. We have under 300 million; they've got more than 300 million. Just to give you some perspective on this stuff. Numbers, statistics can be blurry, I'm trying to give you some perspective on the change here. We have increased by two or threefold the number of white men behind bars. We have increased by something like tenfold the number of black men behind bars. Something like fifteen-fold the number of white women behind bars and like thirty-fold number of black women behind bars. I mean just to give you some perspective. If 25% of all the men behind bars are there for breaking a drug law, close to 40% of all the women are there for breaking a drug law. Just to give you some perspective. Right. You have, you saw at the beginning of that system, oh, it's too bad she didn't take the plea bargain. Right. She had a choice, either rat out her boyfriend, the one guy she loved presumably who had gotten her into this mess and get three years or else be the honorable person, be loyal to everything she

had been taught otherwise in terms of keeping your word and a decency in our personal relations, right. 15 years instead. Why is that system acceptable, why is that deal permissible in our society? Why do we have a criminal justice system built on the principal that if you want to get a break you have to be the most despicable scumbag you can possibly imagine and turn in the people who (inaudible). Why is that permissible? If that was a thing of the old Soviet Union or some totalitarian country you would be like how could they, that's not what we stand for. But when it comes to the he drug war all of a sudden that deal is standard operating procedure in every New York City courtroom and almost every other courtroom in America almost every day. And we've just become accustomed, it's OK. That's the system. We don't even think any more about it. Somebody's got to remember in colleges and try to understand how it was that many decent people in Italy and Germany and elsewhere landed up voting for Fascists. How was it, what was it the books by Eric Frohm and Seymour and Lipsich political manual, how otherwise people just like us land up being responding to a sort of Fascist code in society? How was that happening? What was the desensitization? What was the process that allowed them to have millions of their fellow neighbors, Jews and homosexuals and this and that, just disappearing from their society? Well they'd say, oh, we don't know, it's OK and somebody said it's OK. But maybe that's what's happening with the drug wars today. Now why? Why, it's because we live in a society and this I think is the underlying core of this whole thing is what allows that to happen. It's the fact that we have allowed and even allowed ourselves to be persuaded by the notion that drug use per se is so profoundly evil and immoral and dangerous and threatening to our children and to our society that we have to allow that stuff or at least close our eyes when this stuff happens. That's I think what's happening. Look, the fact that we're now at 80 Americans who have smoked a joint in their life including probably both guys running for president. Yeah the fact that the Republican candidate may well have used cocaine in his youth, he won't say if he did or he didn't. While meanwhile there are hundreds of people sitting in Texas prisons for doing exactly what he may well have done. Right. But 25 million, 30 million Americans have used cocaine in this society. Sure millions have been harmed by crack addiction and all these things but tens of millions have not. We have a hypocrisy that operates at the highest levels in the most profound ways. I mean, almost when you want to oppose the Rockefeller drug laws your obliged to repeat the mantra. Drugs are bad, drugs are bad, yes, we want to get rid of - We don't want to incarcerate people. We don't to have so much a drug war but drugs are bad, right, drugs are bad. No, I don't say drugs are bad because you know what I know, drugs can be terrible. Drugs can be wonderful. Drugs are medicines. Drugs are sacramental substances. Drugs are sources of pleasure. Drugs take away pain. Drugs do all sorts of things. Right. Those drugs, cocaine is still scheduled to prescribe drug in different parts of the world for using for medical purposes. Heroin, the most horrible demon drug is still used for



purposes of pain control in England and Belgium and Canada and it is an effective pain medication. Right. There needs to be an opening up of a more honest dialog on this issue. We need a new bottom line, so long as the drug war is entirely about “trying to be a drug free society”. In 1988 when Congress passed a law saying America must be drug free by 1995. Oh, really? I mean in 1998, they have a huge shindig at the UN for the, once every decade anti-drug, where all the presidents and prime ministers come to town and say, yes, we’re against drugs. The UN control program puts out a, it’s PR material and they say a drug free world. We can do it. You know an element of unreality (inaudible) in all of this. But maybe the time has come to accept the fact that drugs are here to stay. We’ve never been a drug free world. We’re never going to be a drug free world. We inevitably will live in a drug abundant society. It is pretty overwhelming that needle exchange programs reduce the spread of HIV without increasing drug use. Now, Mayor Dinkins is now a supporter of needle exchange as are most of the other black and white leadership in this city. But in the decade that it took American leaders, black and white, to learn where people outside America understood almost immediately almost 200,000 people got infected with the deadly virus for which we had no cure. The slowness of our learning curve on this issue resulted in extraordinary levels of death and spread of disease not just among drug users but among those born to them as well. And the question is how long is a learning curve going to take now, year 2000, so that the stuff you saw in that video and the stuff that’s happening in the hospitals every day and everything else that’s happening in the drug war doesn’t have to keep going on forever and ever. Thanks.

EMERSON: I’d like to thank all of our speakers and we’ll open up now but first I have a request and that is that we have two microphones which when we are recognized if you’ll just hold on for a second so that you can have a mic so that you can be recorded and the second question is that, request is that each of you sort of identify yourself for the benefit of the audience. Yes.

Q-Barr: Yeah, my name is Richard Barr and it seems to me that advancing the agenda of reform of these laws, one thing that would be very helpful in advancing it would be your return to a dialog that used to take place more often. I think than it does these days about the nature of these substances that these laws are about and it goes partially to one of your points, which is to say that if you took all of the illegal substances that the Rockefeller drug laws are designed to deal with or all of the substances that are referred to in those interminable print and electronic ads from the Partnership for Drug Free America and you added up all the people for whom all of those substances have created problems of one sort or another I suspect that that number of people would be less than those for whom problems have been paid by either cigarettes or alcohol to drugs that are legal. And so there’s a great inconsistency and hypocrisy in terms of what’s singled out to be prosecuted and proselytized against and



other things which are glorified in, I mean you look at the glossy ads in fancy magazines for alcohol and the expensive packaging on bottles and there are more people being harmed by alcohol abuse or by cigarette abuse than every one of these things put together.

EMERSON: Yes. Yeah, this is coming.

Q: Rothenberg: My name is David Rothenberg. It would seem that the point of conferences like this is to widen the constituency to overturn the Rockefeller drug law. But that is the basis, I'd like to make a couple points and hopefully dialog. In your point, Mr. Flateau, about the upstate, the horse trading, there's another problem and that is the big money that's being made on the contracts which is much more difficult to identify. There was a conference years ago at Champaign-Urbana and not called by correction people but by architects and construction companies and vendors, how do you create a climate with the public to justify the building and the maintaining of



prisons and that's a constituency - well it's not a constituency - that's a block which contributes mightily to elected officials and much more difficult to identify. They also sponsor a lot of those cop programs on, they have the products, the conglomerates that sell the products sponsor the television programs that make people fear crime. I don't know how you would identify them and beat them but that's part of the horse-trading strategy to identify that. The other is, at point of arrest, we're talking about the disproportionate number of black people that are

arrested but everybody, anybody that's ever been to East Hampton, Fire Island, a catholic school or a private school in New York, knows that there are serious drug problems and if you want a wider constituency you could ask the police and the people who determine who police arrest why there are not, why the public school kids are stopped as a matter of rote and that the serious drug problems that take place in a private and parochial schools as well as in the very white resorts are not identified. I do remember that during the Vietnam War that the constituency was increased when college kids were being drafted and therefore you had a real youth movement and I'm not suggesting we start roundups in parochial and private schools but to widen the constituency you have to identify it.

___: But didn't inadvertently Giuliani do that just a couple of weeks ago when he arrested all the white suburban kids for smoking marijuana?

Rothenberg: Well he's a kinder, gentler man now. (laughter) But the outburst from the suburban parents was, made the *New York Times* and the outburst from kids being arrested were not, there's one of the, oh, and the final thing I want to say is the macho language is very obtrusive. One of the legislators in there kept talking about soft and, and soft or tough on crime. If we'd started talking about being smart on crime and by-pass soft and tough as if it's a

posture of some measure of virility and wanted some problem solving and not worry about it and we could confront them when they talk about are you afraid about being soft on crime or tough on crime. The answer should be we want to be smart about crime and solve some problems and having the money and the lives that are destroyed as a result.

FLATEAU: Could I jump in and just say, just to, that's why I spent a little time talking about lots of concrete and heavy steel. At UDC, you're also talking about the investment houses. Every public, you're talking about the investment houses. You're talking about bond counsel firms. That's just on the front end. World major architectural firms, major general contractors, you're absolutely right, it's a big business and those that are, you track that against their FEC filings or their state election board filings and you'll see the message.

EMERSON: Let me just add another point. It's not just the people building the private business stuff, it's also the corrections officer's unions now.

___: Oh, yeah, Local Council 82.

EMERSON: (multiple conversations; inaudible) when Sacramento -

FLATEAU: But do you know what the MCI contract is with New York, the phone companies that advertise that you can get 99 cents for anywhere in the world. And inmate who has to call collect to the poorest people in the state pay \$7 for three minutes. It says \$60, the last figure in '98 was \$68 million that MCI gets, and the state gets 15% of that. A no competitive bid that went to MCI -

___: But I'll tell you, it's interesting with the corrections officer's unions, until a few years ago, these guys were mostly concerned about prison conditions and therefore, oftentimes they had an interest not in putting more and more people behind bars, right, they wanted better working conditions. What's happened now with the growth in prisons and the growth in their membership is that they have emerged as among the most powerful PACs in America. I mean I heard that the prison guards' union in Albany is now I think the third best funded. In Sacramento, it's the number one best funded. So there's going to be a ballot initiative in California this November which is going to basically say that the first two times people get popped for simple drug possession, if they have no history of violent behavior, they have to be sent to treatment. Right. And the California legislative analysts office has estimated that this will reduce by over 25,000 the number of people being sent to prison or jail next year in California. It'll save the California taxpayer a billion and a half dollars because of reduced new prison construction costs - imagine this over the next five years - and it will simultaneously increase by \$120 million a year the money for treatment which means almost double the amount of money for treatment outside the criminal justice system. So who's the number one organization that's going to be funding the opposition to this - the prison guards' union. And is it the membership that cares so much about this - not so much - it's the leadership for whom more prisons means more members of their union, more political power and therefore, we got to oppose this thing.

___: More dues, bigger treasury.

___: Exactly. Exactly.

___: And one last thing on this, did you see a piece in the *Times* about the census stuff?

___: Yes.

___: That it's not only, right, it's not only that already black and Latino districts are already tend to report, answer census questions less because of cultural suspicion and all this. It's not only that Republican dominated legislatures by and large don't want to use any statistical method to rectify for this. Right. Which is just blatant racism, right? But beyond that there are now in upstate and added town prisons by something like - what is it, 70,000 people, John, wasn't it 70,000 or something like that?

FLATEAU: 72,000.

___: 72,000 was what, you now have had a transfer of roughly 60,000 people from New York City areas and thereabouts into upstate prisons. The census counts them not for where they came from and their homes, it counts them for the districts where the prison now is. So more money is now going into there apart from the prisons. I mean -

EMERSON: Any other comments, questions? Yes.

Q-Porter:

Hi, I'm Rachel Porter. I'm a researcher at the Vera Institute of Justice. Congratulations. I think you've raised you brought us all up to date on what these issues are but I have to wonder, can we distinguish between the sort of defensive position of "no, it's not like that" or "no, we shouldn't be putting people in because they're non-violent or they have kids or whatever" and just taking strong positions of "you know what, this is racist" or "this is severely limiting judicial discretion" and we have a country that is predicated upon a certain amount of judicial discretion. And I'm curious for those of you who are looking to expand the coalition - those of us - what direction, do you think you need to choose between those two. Do you think that, do you that you can present all of this material and successfully use all of these arguments to pull people in.



___: And the answer is that's what we're doing. We're trying to use all of the arguments on the fact that this is racist is a compelling argument with some and not with others. And the fact that this unduly restricts the flexibility of judges is a compelling argument with some and not others. Remember, one reason these Rockefeller drug laws came in was 27 years ago, there was a sense that judges had too much discretion and that they were letting heinous criminals get away. So what happened was they put all the power in the hands of the prosecutors. If you ask the public who should have more discretion the judges or the prosecutors, they lean in favor of the judges but

that's not the issue that most engages them. So it's those two arguments and many, many others as well.

EMERSON: I'd like to hear what Jen and Kelly might have to say about that. As TV people if they had to make a 30-second spot ad as opposed to a 24-minute documentary how would you answer this question. What would you focus on? What do the two of you think is the most powerful argument?

**JENNIFER
MAXFIELD:**

I don't know what I would necessarily do in a 30-second spot but just in answer to your question, I think that it's one thing to say, yes, it lowers judicial discretion but you're talking about New York State. You're talking about a lot of people many of whom are not as well educated perhaps as the



people in this room and if you're going to appeal to people I think you have to take a number of different levels which I think justifies, I saw, I don't know if anyone's seen that Linda Smith's Center ad with the daughter running to her mother. I mean most drug law inmates are men. Yet on some visceral level it appeals to people to see a woman and if, for whatever reason, if you can get people to at least start, be interested in the issue I think then you can introduce them to the other levels. But I think, I mean that's why our film starts with a story. It doesn't start with going to Albany

because I think people are human beings, you have certain feelings and emotions and if you can get people interested in something and get them and pull them in then they can learn about the broader spectrum of arguments but I think that you have to acknowledge.

NADELMANN: Yeah. I think one of the most powerful parts of the film was the teenage girl who was leafleting whose mother had been in jail for, since her birth, really. I mean I think that we all know how potent the family unification arguments are and whether Elian should be with his mother, has, should have, had respected the wishes of his mother or be returned to his father. I think that those issues, the mother-daughter or and not necessarily, but we may be racists but let's not be sexists, too. Father-son.

___: Once you open yourselves up to that kind of, there's a story here. Well obviously the counter is going to be the guy who gets out and killed them. Right. And there you have your justification for parole.

___: But so many of these people are non-violent. It's not, I mean, -

___: Right. When it takes only one person to mess everything up, right in the State of Pennsylvania. I mean if -

___: Well, look at the guy, that the Wendy's, that horrible guy who killed those people. Right. He was on parole or probation and so it's true (multiple conversations; inaudible). But even if it happens it is true, when you have the stats and the numbers of these first time offenders and you see the pictures of these people is the guy with multiple, what disease did he have -

MAXFIELD: Muscular dystrophy.

NADELMANN: Muscular dystrophy. I mean it's hard to see him killing seven people in Wendy's. So there are people there who just seem so crazy to imagine that they're going to be - I remember Walter Cronkite did a wonderful one-hour special on this just a few years ago. He went up to Bedford Hills prison and he showed these three women who got like master's degrees behind bars and he showed their kids who were being brought up in foster families. And then he had the ticker going about how much it cost to keep these three women incarcerated for 12 to 15 years. And so he used all of the arguments essentially. The non-violence, the waste of resources, the waste of life, the cost benefit.

EMERSON: Yes, could you identify yourself?

Q- Jeffrey: Yeah. My name's Scott Jeffrey. I run the legalized dotcom Website for marijuana legalization. I'm also running for Congress in the 15th District, which is Upper Manhattan. It's kind of to build on what we were just talking about. I noticed the one issue that no one's really talked about today is the drug problem. And although the drug war is devastating in my district, the drug problem itself is equally devastating and I think when we're talking about how do we frame the question? How do we motivate the public? I think part of it is addressing that concern. And just from what I'm doing with the legalized dotcom Website by pushing marijuana legalization, first of all, marijuana is a stepping-stone. Kids get involved in wanting a legal drug, all of a sudden doing acid or E or coke doesn't seem so crazy. If you legalize pot for the first time, you can have a consistent and credible condemnation of a lesser drug use from all segments of society. Also I know from campaigning in my district, I'm out there, hi, I'm Scott Jeffrey running for Congress to legalize marijuana. People turn around, people are walking by me, and they hear that -



___: Oh, I think so. (laughter)

Jeffrey: Yeah, that's right. And it's like no doubt. So -

EMERSON: Now can you frame this also in the form of a question perhaps not just a soft speech.

Jeffrey: Yeah. Not just a campaign ad. So I guess my question is -

EMERSON: With all due respect, I don't mean to be -

Jeffrey: What's the alternative to the Rockefeller drug laws? I mean to just say that we're just going to repeal something; all you're doing is presenting a negative. You need to present a new vision and I'm wondering from the panelists if they have a vision as to how to solve the drug problem?

EMERSON: Want to go for it?

FLATEAU: Yeah, I'll take a shot. There's a concept that I work with called criminalization and by my concept we have to take into account that laws are made by people just you and I. They invent them every day of the week, and then there are imperatives out there that are just as deadly. For example, in New York City, we have this whole initiative around quality of life "crimes." It might not even be on the books in Albany yet. All it takes is a call from City Hall to the police commissioner and down the command and then all of a sudden the troops are fanning out and now it's a crime for somebody to stand on a corner drinking a can of beer. It wasn't a crime on that same corner 25 years ago, when I was standing there with my can. So I think that the drug law issue, this is just a piece of it. There's a total web out there. If you go back, for example, to the Omnibus Crack Control. Bill if you're in the legislative arena you know that every day there are people sitting in their offices inventing new crimes for people to get caught, picked



up on. So I'm, personally, I'm concerned with the total net because as he pointed out only one, I'm concerned about the other two thirds. I'm here because I was invited here to talk about Rockefeller drug law, that's only one third of the people in the state prisons. I'm also concerned about the other two thirds up there but that's not the topic for today. So I'm concerned with the totality of politically driven legislation, which is criminalizing in a racially disparate way people that look like me. I'm more afraid, I'm raising two black teenage sons in BedSty right now and I'm more afraid of the criminal justice, we already know who the criminals are. Anybody, any old lady that lives on your block knows everybody's business. Everybody already knows who the petty thief is. Who's breaking into our cars that the police never come to catch. We already know who they are. I'm more concerned about my sons in the criminal justice system. So I'm totally concerned with the entire criminal justice system and I think there's a racially driven imperative that's creating a whole bunch of laws that's

dragnetting males of color, criminalizing their backgrounds and negating us socially, politically and economically. That's my total picture and I'm here because this is an important piece of that but this isn't the whole picture.

NADELMANN: Yeah. And what I would say is that, the real issue should be marijuana. It's interesting to look at the numbers in New York. The first year of the Giuliani administration, there were roughly 4000 arrests for marijuana charges – 80 something percent for possession. Last year, 4000, right. New York's had just about the highest growth rate in marijuana arrests in America, tenfold increase under Rudy Giuliani. OK. Now, notwithstanding the rest of all those white suburban kids at that march a few weeks ago, marijuana is sometimes seen as a white issue, suburban issue, as marijuana arrests in the country have doubled over the last seven years, the annual number of arrests and as the rest of New York has gone about tenfold. The ratio proportion has gone up dramatically as well in the direction of black and Latino. 10 years ago, you had young black, Latino kids who were more likely to get involved in the cocaine business, this or that. There's no young black kids, almost no young black kids, getting into crack or heroin right now. It's 40s and a blunt. Forties a malt liquor, and a blunt – the marijuana is put into the little blunt cigar, right? Kids are getting picked up, this is becoming a system that's – basically in which the criminal justice system gets its first nick, and there is part of what I think the Giuliani, the kind of quality of life policing, when you take quality of policing and don't just take its kinder, gentler side, but take its uglier side, the side that we've seen in the city for many years, we've seen both sides. Part of what it's doing is getting that little nick, that little first encounter with the criminal justice system on an ever growing proportion of the youthful population, especially people of color, right? That's what this is about. And so now you start to say, all of a sudden



now start arresting people – as you said, for drinking beer, standing on the corner with a beer. Things that were part of neighborhood life, right? And not discriminating among the ones who are the predatory people engaged in that stuff and the totally non-predatory. I mean, I know – it's funny, I went to my dentist, and he goes, oh I know what you do, I'm kind of – I'm not exactly sure how I feel, which I'm not crazy about when he's trying to drill something in my mouth (laughter) (inaudible) get hurt. But he says, I've got to tell you something. One of my other clients, my patients, she was in Central Park and she's 52 years old, she was white, and she lit up a joint, right? Snatched – this is standard operating procedure, (inaudible) was just talking about. Standard operating procedure now is if you – and don't – if any of you smoke marijuana, don't do it outside, don't do it in the park, don't do it at a concert, this or that – they are actually picking up, and they'll throw you in the back of a van for up to six hours. Then you go down to the

jail, you can be up to – in there for up to 48 hours, right, the hell with your home life, the hell with expectations, one phone call. In a cell with people who are really criminals. Now that was an unusual case of a 52-year-old white woman who also had – was mildly schizophrenic, who could have had a terrible break and ended up in – didn't happen. But then another friend of mine, his grandson, who's black, college kid, walking through the Worldwide Plaza at 50th Street between 8th and 9th with some friends, they had a joint. Snatched. Two days in jail, right? And then that's the punishment essentially; I mean they're not going to prison after that. But is that the civilized way to deal with this stuff? So you asked what's the vision – let me just tell you this, it's a one-liner, literally a one-liner. If you ask –

EMERSON: We only have time for a one-liner, so (laughter).

NADELMANN: This is – OK, this is – the one-liner is this. I actually think, for me there is core principle about where this all should be headed, and it's the principle – I think it's going to sound bizarre to many of you, and it's going to sound radical to others of you, but I think it's the core principle on which you create an alternative paradigm for drug control, and it's not a legalization principle, but it's this one: I fundamentally believe that people should not be punished for what they put into their bodies. That people should not be punished for what you put into your bodies. That's my core principle, that you hold people responsible for their actions as they affect others. So people go out and they rob, steal, rape, whatever, they got to be punished, and the fact that they're a drug user, a drug addict, that can't be an excuse. It may be a factor, but it can't be an excuse. But people stick something in their bodies and they don't go out – I think we're a lot healthier as a society if the criminal justice system just does not own those people because of what they stuck into their body.

EMERSON: We have time for one last question. One person who did not have a chance to speak before is – I'll let Polly Cleveland say something.

Q- Cleveland: All right. I'm Polly Cleveland, Partnership for Responsible Drug Information. Actually, I just have a question for Jennifer, which is: first of all, what was she trying to accomplish with this film? And what is – and what are you planning to do with it, that's where is it going to be distributed and used? I think it's a wonderful film, and I hope that very productive use can be made of it.



MAXFIELD: This film was made as part of completing our master's at Columbia Graduate School of Journalism. We were both in the broadcast concentration, and so we made this for that. One of the problems we actually encountered, which from a very practical standpoint is indicative of the state of corrections in New York today, because we were students at the Columbia School of Journalism and we were not accredited press, we actually could not get into a prison. I mean, we went and visited people, but

never with a camera. So the shots of the prison are actually archival footage from other various news organizations. What's that?

___:

It worked.

MAXFIELD:

Well, it worked, but you can't sell it with that in it. You have to – we would have to be licensed. So in any case, we are showing it at various policy conferences, but that's basically what it is. I mean, we'd like to do something with it, but the problem is with that footage. So I don't know. Maybe we can eventually get back into the prisons and –

EMERSON:

Well, I'd like to thank all of our speakers, our presenters, everybody who's here (applause). Once again, I hope that you've been stimulated by this year's Policy in Perspective breakfast, and I look forward to seeing – we all look forward to seeing you next year. Bye.

