

# DR. HUNTER S. THOMPSON

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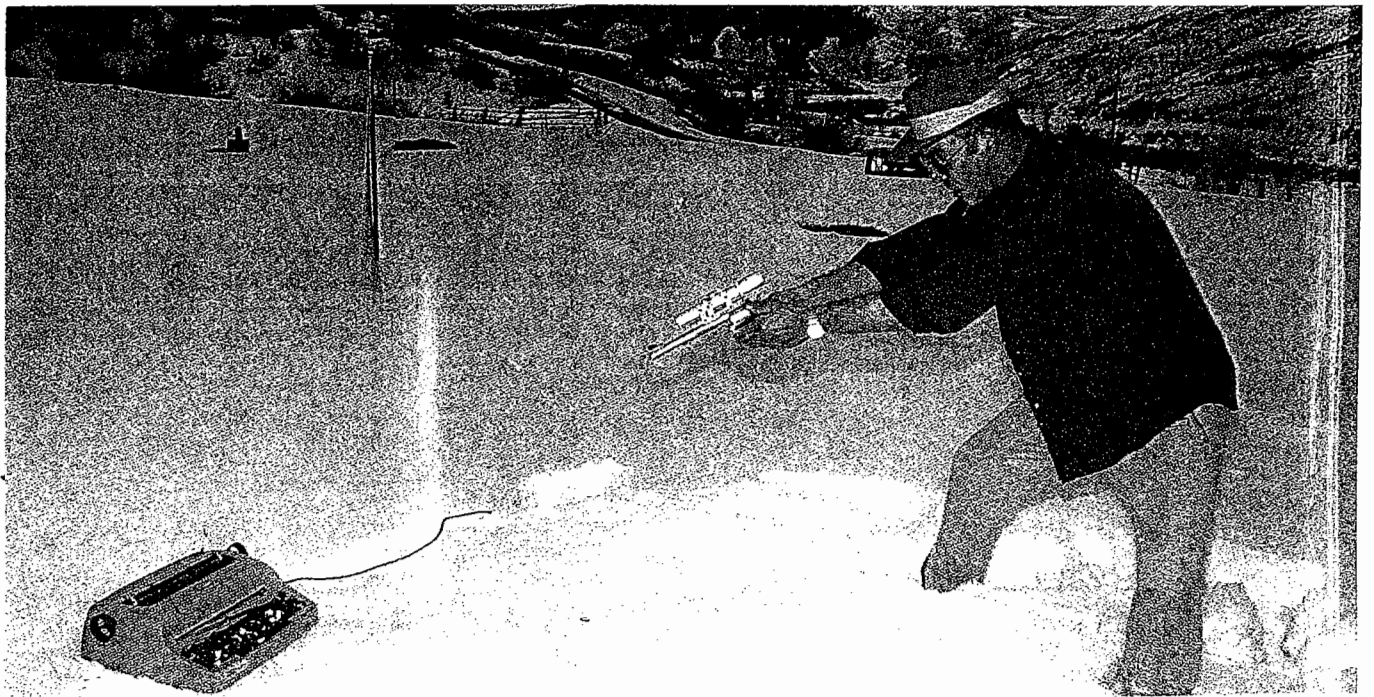
# SONGS OF THE DOOMED

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MORE NOTES ON THE DEATH  
OF THE AMERICAN DREAM

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*Gonzo Papers Vol. 3*



# FINAL ANALYSIS: GERALD GOLDSTEIN, ESQ.

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June 2, 1990

Dr. Hunter S. Thompson  
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Re: "Saving Us from Ourselves"

*Random Reflections on What It All Meant*

Dear Doc;

After dallying too long in your hospitality Thursday last, I gave some thought to what your ordeal has meant to me and others while en route back to Deep East Texas where the War on Drugs is currently venting its spleen over five black kids in an all-white courtroom.

Your persecutor, muttering something about his ethical code, said he could not proceed with the hanging because he had little faith in the credibility of his sole source of information. The Judge gratuitously queried why he could not have made such a decision before dragging you through the streets.

The real question that has to be asked is why the authorities cannot

make such determinations before they break down a citizen's door and rummage through their homes and lives in the first place.<sup>1</sup>

### *IF THEY CAN DO THIS TO THE RICH AND FAMOUS*

If they can do this to *you* over spilled cranberry juice, imagine what they must be doing to the poor and ignominious every day in courtrooms across this country.

What you did, Hunter, the reason I'd fly back halfway across the country to stand with you again, is that you had the *huevos* to fight back, to say you would not tolerate the system's intolerance. Things are not going to change in this country until the famous and not so infamous alike are willing to hold their ground and say enough is enough.

We cannot expect people to have respect for law and order until we teach respect to those we have entrusted to enforce those laws.

There is hysteria running rampant in our nation's capital and our local statehouses. Of late, it has been accompanied by serious talk of reducing citizen rights in an effort to combat the dreaded plague of drugs. To demagogue about drugs is certainly simpler, and much more popular, than the difficult task of balancing budgets. But escalating the punishment for drug offenders, bankrupting our state and national coffers warehousing these poor souls, will hardly solve our nation's social ills. It is only going to create more poverty. And poverty is a greater root cause of crime than drugs could ever hope to be.

In the late '60s and early '70s the law in my fair state provided life imprisonment for possession of one marijuana cigarette. In 1973 there

<sup>1</sup>*Who will protect us from our protectors?*

That is what Justice Jackson was talking about when he opined over forty years ago:

"[Fourth Amendment rights] . . . are not mere second-class rights but belong in the catalog of indispensable freedoms. Among deprivations of rights, none is so effective in cowering a population, crushing the spirit of the individual and putting terror in every heart. Uncontrolled search and seizure is one of the first and most effective weapons in the arsenal of every arbitrary government. . . .

"But the right to be secure against searches and seizures is one of the most difficult to protect. Since the officers are themselves the chief invaders, there is no enforcement outside the court." *Brinegar v. U.S.*, at 180-181 (1949) (Jackson, J., dissenting).

were thirteen individuals serving life sentences for possession of small quantities of that drug. Yet, during that same period of time, first-time use of marijuana rose at a greater rate than during any other period in our history.

The last five administrations have declared war on drugs. Last term in *Mistretta v. U.S.*, 109 S.Ct. 647 (1989), the Supreme Court approved the Federal Sentencing Guidelines which upped punishments, eliminated parole, and virtually did away with probation. The 1984 Incomprehensible Crime Control Act raised everything from minimum mandatory sentences to prosecutors' salaries. And the incessant Anti-Drug Abuse Control Amendments simply add insult to the injury. Under these enactments, many of our clients begin serving their sentences at the time of arrest, rather than conviction.

"No, no!" said Queen. "Sentence first—verdict afterwards." Lewis Carroll, *Alice in Wonderland*.

In *Solerno v. U.S.*, 481 U.S. 739 (1987), the Supreme Court upheld Bail Reform Act amendments providing for the detention of presumptively innocent citizens, without bail, prior to any trial or determination of their guilt. We often house these presumptively innocent citizens under deplorable conditions, without rehabilitation, education, or recreation. Then, after we convict them, send them to a "Club Fed" for punishment.

With many citizens not getting bail, none getting paroled, and all facing the prospect of higher minimum mandatories under the Sentencing Guidelines, there soon will be no more room at the Inn. The Federal Bureau of Prisons, now running at 150 percent of capacity, estimates that their inmate population will quintuple in the next five years.

*The Fatal Shore*, a popular book a few years back, depicted a period in English history when over two hundred property crimes carried the death penalty, yet they couldn't kill people fast enough. Prison overcrowding had become such a problem that "private" prisons were created to deal with the overflow. Ultimately they took 160,000 of their most incorrigible inmates, put them on "prison ships," and banished them to an island in the South Pacific, which Captain Cook had visited seventeen years before and no one had seen since. We do not have an Australia. And unless we intend simply to fence off Oklahoma, we are not going to be able to build prisons fast enough.

The Third Reich did not impose its will upon an unwilling, unre-

ceptive public. Hitler rode into power on a groundswell of public opinion, fueled by law-and-order rhetoric and scare tactics, not unlike those being unleashed in our legislatures today.

What may appear to be innocuous incursions in the face of this perceived fear have a cumulative impact. None of us complained when our bodies and our baggage became the subject of scrutiny at our airports in the face of repeated hijackings and terrorist attacks. Yet, if our grandparents had been told their persons and personal effects would be searched before they could board a means of public transportation, they would have been shocked. And it was these very airport "security checks" that served as an example for the Supreme Court's approval last term of intrusions into our bodily fluids. See: *National Treasury Employees Union v. Von Raab*, 489 U.S. (1989) [approving urine tests of certain government employees]. Almost one hundred years before, that same Court had noted:

"It may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way, namely by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of the Courts to be watchful for the Constitutional rights of the citizen, and to guard against any stealthy encroachments thereon. Their motto should be *obsta principiis*." *Boyd v. U.S.*, 116 U.S. 616, 635 (1886).

Last year, as if our skies were not unsafe enough already, Congress narrowly missed passing a statute permitting drug agents to shoot down suspected drug smugglers. And, exalting form over substance, recreated the federal crime of flag desecration. While encouraging the crass commercial and partisan political exploitation of our national symbol, our legislators have seen fit to criminalize its symbolic use by those with whom they do not agree. President Bush even ate an American flag birthday cake for the television cameras, and one must assume excreted what was left the following day. That would appear to make defecation of our flag a laudable gesture, while burning it, as a form of pure political speech, constitutes a federal crime.

However the public may view the so-called drug problem, stripping the citizenry of two hundred years of civil liberties is not the solution. And beating the public into a frenzy, willing to throw their own pro-

tections away, poses even greater dangers than whatever evil they seek to prevent. When the Supreme Court addressed our government's newfound interest in its own agents' bodily functions, it was surprisingly Ray-gun's appointee Justice Scalia who retorted:

“There is irony in the Government's citation, in support of its position, of Justice Brandeis's statement in *Olmstead* . . . that '[f]or good or ill, [our Government] teaches the whole people by its example.' Brandeis was there dissenting from the Court's admission of evidence obtained through an unlawful Government wiretap. He was not praising the Government's example of vigor and enthusiasm in combating crime, but condemning its example that 'the end justifies the means.' An even more apt quotation from the famous Brandeis dissent would have been the following:

“[I]t is . . . immaterial that the intrusion was in aid of law enforcement. Experience should teach us to be most on our guard to protect liberty when the Government's purposes are beneficent. Men born to freedom are naturally alert to repel invasion of their liberty by evil-minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well meaning but without understanding. . . .’

“Those who lose because of the lack of understanding that begot the present exercise in symbolism are not just the Customs Service employees, whose dignity is thus offended, but all of us—who suffer a coarsening of our national manners that ultimately give the Fourth Amendment its content, and who become subject to the administration of federal officials whose respect for our privacy can hardly be greater than the small respect they have been taught to have for their own.” *National Treasury Employees Union v. Van Raab*, 489 U.S. (1989) (Scalia, J., dissenting).

What you did was important. Thank you for letting me be a small part of it. As J. Frank Dobie said: “You'll do to ride the river with.”

Sincerely,

Gerald H. Goldstein  
for Goldstein, Goldstein and Hilley