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In Perpetual Motion: The Continuing Significance of Race and America's Drug Crisis

Clarence Lusane†

Race continues to be a significant factor, at every level of society, in shaping the destiny and development of millions of people of color in the United States. It is thus not surprising, indeed, it was expected, that the wars on drugs in the 1980s and early 1990s would impact, perhaps disproportionately, the African-American community. As Michael Tonry notes, “[t]he War on Drugs foreseeably and unnecessarily blighted the lives of hundreds of thousands of young, disadvantaged Americans, especially black Americans, and undermined decades of effort to improve the life chances of members of the urban black underclass.”¹ Of course, Tonry’s perspective, which I share, has been lambasted from the White House to the halls of academia. The architects of the drug wars deny that there is any conscious racial bias in their policies,² while conservative academics construct elaborate theories that racism has declined to the point of irrelevancy.³

I argue that race and racism continue to be significant and determinant factors in the lives of African-Americans and other people of color. And it is these dynamics that, unless “radically-altered,” as Tonry notes,⁴ will continue to guide the direction and practices of the nation’s drug war. The drug war has destroyed tens of thousands of destinies and lives in the African-American community and, at the same time, has failed to address in any substantial way America’s serious drug crisis.

Conservatives such as William Bennett, Thomas Sowell, and Walter Williams have argued that the black community must look internally for resolutions to its problems of crime, violence,

† Editor, Black Political Agenda newsletter.
¹ Michael Tonry, Race and the War on Drugs, 1994 U Chi Legal F 25, 27.
² See, for example, John P. Walters, Race and the War on Drugs, 1994 U Chi Legal F 104, 144.
⁴ Tonry, 1994 U Chi Legal F at 27 (cited in note 1).
drug trafficking, and abuse. This is a decontextualized thesis that breaks down considerably when framed by the reality of the aggregate racial experiences of African-Americans. It is only by first examining the dynamics of contemporary black life that a more rational view of the motivations of the drug war and possible resolutions to the drug crisis is possible. By examining the racial vicissitudes of the past decade in terms of the economic, social, political, and cultural life of blacks, it becomes clear that the driving forces behind the current dilemmas lie in the collective sweep of public policies and private practices that continue unabated.

Illegal drug abuse and drug trafficking in the black community must be framed by three factors: racism as an ongoing factor in U.S. society; the applications of racial dynamics in the war on drugs; and the unwillingness on the part of the federal government to advance long-term solutions. The "outlaw culture" that has come to grip much of the black community, and which must be internally resolved through a resurgence of moral and spiritual authority, arises out of the aforementioned milieu.

I. THE CONTINUING SIGNIFICANCE OF RACE

Profound changes in the U.S. economic picture during the 1980s that disproportionately punished the black community played a critical role in the increase in black underworld involvement in the underground drug market. In the 1980s, the loss of millions of manufacturing jobs was central to diminishing the fortunes of the American middle-class and increasing national poverty. In 1981, 20.2 million people worked in manufacturing. A decade later, that number had shrunk to 18.4 million—a decline of 1.8 million workers. At the same time, the number of people sixteen years of age or older grew by 19.4 million.

6 See generally Bennett, The De-Valuing of America 178-202 (cited in note 3); Sowell, Civil Rights 73-90 (cited in note 3); Williams, The State Against Blacks (cited in note 3).

7 Donald L. Barlett and James B. Steele, America: What Went Wrong xi (Andrews and McMeel, 1992).

8 Id.

9 Id.
Historically, low-skilled, entry-level employment, particularly in the manufacturing sector, has been the chief means out of poverty for young African-American males. Decline in Manufacuturing Jobs 1980s (in millions)

<table>
<thead>
<tr>
<th>Year</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>1981</td>
<td>20.2</td>
</tr>
<tr>
<td>1991</td>
<td>18.4</td>
</tr>
</tbody>
</table>

Source: Donald J. Barlett and James B. Steele, America, What Went Wrong xi (Andrews and McMeel, 1992).

Young black families, employed at factories and shops in Detroit, Chicago, Pittsburgh, Los Angeles, and many other cities and towns, were able to stabilize and have confidence that their children would be educated, that housing would be accessible, and that a future was assured. These dreams have evaporated rapidly over the last dozen years. For those young black males with criminal records, which in some cities is higher than 50 percent, employment opportunities have virtually disappeared altogether. A study by the National Bureau of Economic Research found that while 50 percent of those incarcerated had a job before they entered prison, only 19 percent had jobs after they left prison.

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11 A study issued by the National Center on Institutions and Alternatives found that 56 percent of young African-American men in Baltimore are either incarcerated, on parole, or on probation. Hobbling a Generation: Young African American Males in the Criminal Justice System in America's Cities: Baltimore, Maryland (National Center on Institutions and Alternatives, 1992).

The crisis threatening African-America is not simply black poverty. Rather, it centers around the chronic nature of that poverty. Under Reagan and Bush, from 1980 to 1991, more than 1.6 million African-Americans fell below the poverty line, with the period 1989 to 1991 accounting for 940,000 of that number.\(^\text{13}\) The Bush era contributed significantly to the ongoing economic devastation in the black community. According to the *Washington Post*, 841,000 young people, a disproportionate number of whom were African-American, fell under the poverty line in the first two years of the Bush administration.\(^\text{14}\) These drops in income caused the official poverty rate for blacks in 1993 to increase to 33.1 percent—10.2 million people, one-third of black America—which is higher than the poverty rate for Hispanics (30.6 percent), Asians (15.3 percent), or whites (12.2 percent).\(^\text{15}\)

![Poverty Rates for Different Racial Groups](image)

*Source: Bureau of the Census, Census Bureau Announces Number of Americans in Poverty Up for Fourth Year Although Poverty Rate Unchanged; Household Income and Health Care Coverage Drop (Oct 6, 1994) (press release).*


\(^\text{15}\) Bureau of the Census, *Census Bureau Announces Number of Americans in Poverty Up for Fourth Year Although Poverty Rate Unchanged; Household Income and Health Care Coverage Drop* (Oct 6, 1994) (press release).
African-Americans at all levels trail whites when it comes to economic cushions. According to the Census Bureau in 1988, fewer blacks had savings accounts than whites (44.5 percent versus 76.6 percent); fewer had checking accounts (30.1 percent versus 50.9 percent); fewer had stocks (7 percent versus 23.9 percent); fewer had equity in their homes (43.5 percent versus 66.7 percent); and fewer had IRAs or Keoghs (6.9 percent versus 26.4 percent).  

![Graph showing differences in Black-White Economic Cushions](chart.png)


Median black family income is about 57 percent that of median white family income—less than it was twenty-five years ago—but the net worth of black households is even less. In 1988, black household net worth averaged $27,230 as compared to $116,661 for whites. That same year, while whites were earning $6,421 per capita at financial institutions, blacks were earning only $766 per capita; while whites had $4,008 worth of equity in their businesses per capita, blacks had only $366 worth of equity per capita.

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17 Id at 138, 158.
18 Id at 138.
19 Id.
The downturns in the economy in recent years have also been felt unevenly. According to the Wall Street Journal, "[b]lack[s] were the only racial group to suffer a net job loss during the 1990-91 economic downturn." African-Americans lost close to 60,000 jobs at the companies surveyed by the Equal Employment Opportunity Commission. At companies such as W.R. Grace, BankAmerica, ITT, Sears, Roebuck and Co., and Coca-Cola, blacks lost jobs at a rate greater than twice that of the overall workforce. The jobs that were lost by blacks at these companies included blue-collar jobs, service jobs, and sales jobs.

These economic retreats alone would go a long way in explaining—though not in justifying—the move by so many young and unemployed African-Americans into the illegal drug trade. Few employment possibilities were as lucrative or available as those provided by equal opportunity, nondiscriminating drug dealers who allowed on-the-job training and required few dress codes, and for whom literacy was optional. However, at the same time that the black economic tightrope was unravelling, the social safety nets were being removed. As the black community plummeted downward, there were fewer and fewer social cushions to break the fall.

During the Cold War, billions of dollars were diverted to build military and intelligence resources to fight genocidal wars in the name of anti-Communism while badly needed social programs were underfunded, defunded, or never funded at all. During the Reagan era, military spending increased by 46 percent, while housing was slashed by 77 percent and education by 70 percent. In 1991 alone, while the United States was spending $295 billion on the military, its chief economic competitors, Germany and Japan, were spending only $34 billion and $32 billion respectively. Even the military budget reduction proposals by the Clinton administration, which campaigned on a pledge to reduce military spending, are modest. The Clinton administration proposed only a 10 percent reduction in military spending over a five-year period.

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21 Id.
22 Id at A14, A15.
23 Id.
25 Id at 8.
tary plans to spend $1.3 trillion over a five-year period, meaning that the defense budget of $290.7 billion in 1993 will only fall to about $230 billion in 1997 (in 1993 dollars).\(^2\) Indeed, the United States spends $59.4 billion a year alone just to protect South Korea.\(^2\) The economy was and is militarized at the expense of the future of the American people. The poor and people of color have suffered the most from these misplaced priorities.

From on high, policy makers have witnessed the nearly complete social breakdown in the black community. A health care situation incapable of meeting the health needs of most African-Americans highlights the social devastation raging in the black community. Overall, African-Americans constitute 21.9 percent of the 37 million Americans under age sixty-five who have no health care insurance.\(^2\) As one writer noted, major health issues confront African-Americans, who "die an average five years earlier than whites, are twice as likely to die before their first birthday, [and] have the highest cancer rate of any U.S. group."\(^3\)

*USA Today* reports that a study in the American Journal of Public Health, echoing other reports, found that race is a significant factor in the medical health and in the health care received by people of color.\(^3\)

Since 1987, the black infant mortality rate of 17.6 per one thousand births has been nearly twice the national rate of 8.9 per one thousand births.\(^3\) The infant mortality rate for African-American children is higher than for children in thirty-one nations, including Cuba and Kuwait.\(^3\) Infants suffer in other ways also. In 1991, there were more than twenty-two thousand boarder babies in the United States—babies that were left abandoned at hospitals.\(^3\) Three-quarters of those infants were African-American.\(^3\) Three-quarters of those 22,000 were also exposed to drugs


\(^{28}\) Id at 44.


\(^{31}\) Id.


\(^{35}\) Id.
in the womb.\textsuperscript{36} Howard University researcher Chris Booker wrote, "[fl]or Black [sic] males the disadvantaged health status is a cradle-to-grave experience."\textsuperscript{37} Black male death rates are twice that of white males at nearly every age level.\textsuperscript{38} For those aged five to fourteen, blacks die at a rate of 195 per 100,000, while for whites the rate is 145 per 100,000.\textsuperscript{39} Between the ages of forty-five and fifty-four, black male mortality is 1,244 per 100,000, while for white males the rate is 578 per 100,000.\textsuperscript{40} Overall, black male life expectancy (65.4), which fell during the Reagan years, is lower than that for white men, white women, and black women.\textsuperscript{41}

African-Americans die of the eight major causes of death at extraordinarily higher rates than whites.\textsuperscript{42} For example, blacks die of heart disease at a rate 39 percent greater than whites.\textsuperscript{43} The numbers are equally alarming for other causes, including cirrhosis and liver disease (7 percent higher), strokes (82 percent higher), diabetes (132 percent higher), cancer (32 percent higher), accidents (24 percent higher), kidney failure (176 percent higher), and homicides and police killings (500 percent higher).\textsuperscript{44} AIDS- and HIV-related death rates for black men have grown to three times that of white men, and the AIDS- and HIV-related death rates for black women have grown to nine times that of white women.\textsuperscript{45}

\begin{itemize}
\item \textsuperscript{36} Id.
\item \textsuperscript{37} Chris Booker, \textit{Racism: Challenges and Changes for the 1990s} 8 (Howard University Institute for Urban Affairs and Research, 1992) (unpublished report) (on file with the \textit{University of Chicago Legal Forum}).
\item \textsuperscript{38} Id.
\item \textsuperscript{39} Id.
\item \textsuperscript{40} Booker, \textit{Racism} at 8 (cited in note 37).
\item \textsuperscript{41} Id at 7-8.
\item \textsuperscript{42} Isabel Wilkerson and Angela Mitchell, \textit{Staying Alive!: The Challenge of Improving Black America's Health}, Emerge 28 (Sept 1991).
\item \textsuperscript{43} Id.
\item \textsuperscript{44} Id.
\end{itemize}
African-Americans have little political power to control these circumstances. In 1993, there were forty black members of Congress, the largest ever.\textsuperscript{46} There were thirty-nine black members in the United States House of Representatives and one member in the Senate.\textsuperscript{47} Black members chair two full Committees and seventeen Sub-Committees.\textsuperscript{48} Across the nation, blacks are or have been the mayor of America's largest cities and chair dozens of major city councils and school boards.\textsuperscript{49}

Yet the roughly eight thousand black elected officials in the United States account for only about 2 percent of all elected officials, far below the estimated 12 percent of the population that is African-American.\textsuperscript{50} Furthermore, there is every indication that the number of black elected officials may have peaked, as the rate of increase has slowed in the early 1990s to a trickle of less than 1 percent annually.\textsuperscript{51} Studies indicate that the principal

\begin{itemize}
\item David Bositis, \textit{The Congressional Black Caucus in the 103rd Congress} 33 (Joint Center for Political and Economic Studies, 1993).
\item Id.
\item Id at 42.
\item \textit{The Number of Black Elected Officials Continues to Grow}, Political TrendLetter 1, 4 (Joint Center for Political and Economic Studies, Mar 1993).
\item \textit{Black Elected Officials Top 8,000, Growth Continues}, Political TrendLetter 1 (Joint Center for Political and Economic Studies, Oct 1993).
\item \textit{The Number of Black Elected Officials Continues to Grow}, Political TrendLetter at 1 (cited in note 49).
\end{itemize}
reason for this slowdown is that blacks have exhausted virtually all of the jurisdictions where blacks are a majority or near-majority of the population; efforts to expand political power beyond those areas have been hampered by whites' refusal to vote for black candidates.52

At the state and federal level, despite the growth in the number of black officials, the governing legislative bodies are not only overwhelmingly white but also overwhelmingly suburban and rural.53 The problems of the inner cities are either ignored or, worse, viewed as threatening; thus, urban containment legislation prevails. For most states, the largest part of their budget outlays targets prison construction while cutting education, health care, and jobs programs.54

Over the years, black leaders have also been diverted from the struggle for equality by relentless harassment from federal, state, and local authorities.55 While some black leaders have attempted to shift the blame for their own weaknesses and mistakes to outside forces, it is nevertheless true, and well-documented, that black elected officials have been disproportionately targeted for investigation by law enforcement agencies.56 The media has also played a critical role in that harassment, through either discriminatory coverage or undercoverage of the activities of black leaders.57

In one study on the subject, it was concluded that “harassment [is] in fact occurring; that Black elected officials [are] prevented in a variety of ways from effectively and efficiently carrying out the duties they were elected to perform.”58 Among the tactics used against black leaders are smear campaigns, IRS audits and investigations, surveillance, phone taps, burglaries, grand jury investigations and indictments, intimidation of voters, recall movements, and personal threats.59 Numerous black elect-

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55 See generally Mary R. Sawyer, Harassment of Black Elected Officials: Ten Years Later, 18 The Journal of Intergroup Relations 3 (Fall 1991).
56 Id.
57 Id at 13.
58 Sawyer, Harassment at 6 (cited in note 55).
59 Id at 13.
ed officials have had to fight these tactics, including Birmingham Mayor Richard Arrington, former Washington, D.C. Mayor Marion Barry, former Georgia State Senator Julian Bond, former Tchula Mayor Eddie Carthan, former Representative Shirley Chilsom, Representative Ron Dellums, and Representative Harold Ford, among others.\footnote{Id at 11-12.}

Finally, it should be noted that racism continues to play a strong role in popular culture, thus helping to shape popular opinion on racial concerns. Hollywood films and rap videos play their part in feeding into the public mind stereotypical images of black males as predators. For example, in the popular movie Demolition Man, the greatest criminal of the twentieth century is a black man played by the dark-skinned black actor Wesley Snipes.\footnote{Demolition Man (Warner Bros. Pictures, 1993).} By coincidence, the greatest law enforcement officer of the 20th century is Sylvester Stallone,\footnote{Id.} who is white and who has built his career on playing characters that brutalize and slaughter people of color. In Terminator 2, a black man is responsible for inventing the weaponry that launches a nuclear war that destroys future generations.\footnote{Terminator 2: Judgment Day (Tri-Star Pictures/Carolco, 1991).} In Total Recall, the character who betrays the lead character is a gold-tooth, Jehri-curled black man.\footnote{Total Recall (Tri-Star Pictures/Carolco, 1990).} Needless to say, all of these black characters die gruesome, violent deaths. These films, along with films specifically aimed at black youth audiences, such as Menace II Society,\footnote{Menace II Society (New Line Cinema, 1993).} Juice,\footnote{Juice (Paramount Pictures, 1992).} and New Jack City,\footnote{New Jack City (Warner Bros. Pictures, 1991).} project a present and future that feeds and perpetuates stereotypical views concerning African-Americans and issues of violence and drugs.

This atmosphere has perpetuated negative views of blacks by whites. According to a 1991 study by the National Opinion Research Center, a majority of whites—78 percent—said blacks are more likely than whites to “prefer to live off welfare” and less likely to “prefer to be self-supporting.”\footnote{Lynne Duke, Whites’ Racial Stereotypes Persist, Washington Post A1, A4 (Jan 9, 1991).} Further, 62 percent said blacks are more likely to be lazy; 56 percent said blacks are violence-prone; 53 percent said blacks are less intelligent; and 51
percent said blacks are less patriotic.\textsuperscript{69} In a 1993 poll by Gallup and CNN, 52 percent of blacks and 33 percent of whites believe that the United States is moving towards two separate and unequal societies, while 90 percent of blacks, but only 56 percent of whites, think that civil rights are a very important issue.\textsuperscript{70} Additionally, 70 percent of blacks, but only 33 percent of whites, feel that more laws are needed to reduce racial discrimination.\textsuperscript{71} These views are held at a time when hate crimes are on the rise in the United States. There was a 49 percent increase in hate-related vandalism from 1991-1992.\textsuperscript{72} In 1992, of the 4,755 hate crimes reported to the FBI, 2,963, or about 62 percent, were racial.\textsuperscript{73} Blacks were the victims of 1,689, or 57 percent, of those crimes.\textsuperscript{74}

\textbf{Views by Whites of African Americans}

\begin{figure}
\centering
\includegraphics[width=\textwidth]{views_white.pdf}
\caption{Views by Whites of African Americans}
\end{figure}

\textsuperscript{69} Id.
\textsuperscript{71} Id.
\textsuperscript{72} Andrea Stone, \textit{Bomb Attacks Put NAACP on Nationwide Security Alert}, USA Today 2A (July 29, 1993).
\textsuperscript{73} Id.
\textsuperscript{74} Id.
II. RACE AND THE DRUG WAR

This symphony of racial dynamics, as in drug wars of the past, has influenced and shaped the most recent war on drugs. The three areas in which racial disparity and discrimination are manifested most sharply are the legal statutes governing drug crimes; arrest and prosecution rates for drug violations; and biased sentencing and incarceration for drug convictions.

It should be stated at the outset that the Reagan and Bush drug wars of symbols, slogans, and stiff sentences failed miserably. The Bush White House sought to take credit for a downturn in casual use, although downward trends were already evident as Bush came into office.75 What the Bush policies did do was ignore those groups that were most in need of treatment and attention. Despite the millions that have been spent on arresting and incarcerating drug offenders, drug use among hard-core and older users remains steady or is actually increasing.76 According to a 1993 report issued by the Drug Awareness Warning Network ("DAWN"), 433,500 drug users showed up in emergency rooms during 1992.77 Marijuana emergencies rose 48 percent—from 16,300 to 24,000.78 Cocaine episodes rose 18 percent—from 101,200 to 119,800, and heroin episodes, reflecting the lack of attention given to that narcotic in the midst of the crack hysteria, rose 34 percent—from 35,900 to 48,000.79

A. Discriminatory Laws

Unfair and discriminatory laws begin a legal process that culminates in unfair and discriminatory arrests, sentencing, and incarceration for African-Americans. Nowhere is the discriminatory character of the drug war more blatant than in the laws and politics governing cocaine usage and distribution. Many have come to believe that because whites disproportionately use cocaine powder while blacks disproportionately use crack cocaine, a two-tiered system of punishment has developed.80 The disparity between the amount of cocaine powder and crack cocaine required to warrant the same penalty for drug trafficking is 100-to-

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76 Mike Snider, Drug-abuse Cases Continue to Flood ERs, USA Today 10A (Oct 5, 1993).
77 Id.
78 Id.
79 Id.
The Anti-Drug Abuse Act of 1988 designates that for simple possession of five grams of crack, the mandatory minimum is five years. For an equal amount of powder, there is no minimum sentence; offenders may escape with probation. It takes trafficking in five hundred grams of cocaine powder to receive a five-year mandatory minimum sentence. Moreover, according to the United States Sentencing Commission, there are three times as many users of powder as crack. However, there are far more prosecutions for crack than for cocaine powder. According to the 1990 National Household Survey on Drug Abuse, although 91 percent of those who used cocaine snorted it, 31 percent smoked it, and 10 percent swallowed it, most of the law enforcement focus is on the 31 percent who smoked the substance. In 1992, of those arrested for federal crack cocaine offenses, 92.6 percent were black. According to one sampling by the United States Sentencing Commission, of the defendants charged with simple possession of crack cocaine in the second quarter of 1992, all were black.

The mandatory minimums continue to be the principal reason why the prison population in the United States has swollen to over one million in recent years, over 130 percent higher than in 1980. The impact of these sentences is compounded by the abolition of parole in the federal system. There are about one hundred mandatory minimum provisions contained in sixty statutes, but 94 percent of all cases are tied to only four statutes concerning drug and weapons charges. The Washington, D.C.-
based Campaign for an Effective Crime Policy concludes in a report on mandatory minimums that "mandatory sentences have also resulted in greater use of court resources in responding to low-level drug offenders at the expense of higher level offenders." The report also states that of those federal offenders convicted of drug charges in 1992 and given mandatory minimums, "one-third did not have a criminal record or any involvement with weapons or aggravating factors." In 1991, mandatory minimums resulted in between 4,400 and 7,000 additional prison years and cost between $79 million and $125 million.

A study published by the Federal Judicial Center reports that blacks are 21 percent more likely to receive at least the mandatory minimum terms than are whites; Hispanic offenders were 28 percent more likely. The United States Sentencing Commission reached similar findings, stating that "[f]indings imply that defendants are treated differently under mandatory minimums, based on race . . . ." The direct impact of these laws is to fill the prisons with African-Americans.

Of the 2,100 federal prisoners serving time for crack, about 92 percent are black. Of the 5,800 federal prisoners serving time for cocaine powder violations, only about 27 percent are black. There is no evidence to suggest that crack is more addictive or dangerous than powder. Other professionals argue that the violence attributed to crack is not due to its pharmacological effects. The American Civil Liberties Union persuasively points out the speciousness of the main arguments used to declare that use and sale of crack cocaine deserves harsher treat-

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USC § 844 (1993) (possession of controlled substances); 21 USC § 960 (1988) (importation/exportation of controlled substances); and 18 USC § 924(c) (1993) (minimum sentence enhancements for carrying a firearm during the commission of a crime involving drugs or violence)).

58 Id.
59 Id at 5.
61 United States Sentencing Commission, Special Report to the Congress at 86 (cited in note 91).
62 Kevin O'Hanlon, Judges See Inequality in Sentences Given to Crack Dealers, Omaha World-Herald 1 (July 31, 1993).
63 Id.
64 Dennis Cauchon, Powder vs. Crack: The Latter is a "Dealer's Delight," USA Today 2A (May 26, 1993).
65 Id.
ment than powder cocaine. They concur with Dr. George Schwartz, an emergency medicine specialist, who contends that there is no scientific data to support the belief that crack is more addictive, leads to more dangerous activity, or induces more violent behavior than powder cocaine. Schwartz argues that whatever behavior arises from the action of the crack user is in essence no different than that from cocaine powder users.

One of the nation’s foremost crack cocaine experts, Dr. Ronald K. Siegel, a University of California at Los Angeles psychopharmacologist, called the sentencing guidelines for crack “arbitrary, capricious, silly, and Alice in Wonderlandish.”

Even reluctant media observers have become more and more critical of the mandatory minimums. As a Washington Post editorial stated in stronger-than-usual language, “It’s time to reconsider the fairness of the mandatory minimum sentence and to correct it if no justification can be found. . . . It is not being soft on crime to insist on parity in penalties for the use of what is essentially the same drug in different forms. The statute as written is discriminatory in operation and unjustifiable on its face.”

Judges are departing from the mandatory minimum sentencing guidelines in order to provide what they believe are fairer, less discriminatory judgments. Judges in Omaha, Minneapolis, Detroit, and other cities are giving some black defendants convicted on crack charges substantially lower sentences than the mandatories require. In addition to the opposition expressed by many local and federal judges, strong criticism of mandatories have come from the United States Judicial Conference, all twelve Circuit Courts of Appeal, Director of the Federal Bureau of Prisons Kathleen M. Hawk, and Attorney General Janet Reno.
B. Discriminatory Arrests and Prosecution

According to the FBI Uniform Crime Statistics data as reported in a study on racism in the drug war done by USA Today, blacks now constitute 52 percent of those arrested and 71 percent of all juveniles arrested on charges involving cocaine and opium derivatives. In 1984, blacks were 30 percent of the adults arrested on drug charges. Federal surveys show that blacks use drugs at the same rate as whites, and there is no evidence that blacks are more involved in drug trafficking than whites, yet blacks are arrested on drug charges at much higher rates than whites.

At every level, blacks are being arrested in greater numbers than whites. Blacks are arrested at a 4-to-1 ratio to whites on drug charges nationally, according to a USA Today study. In at least 30 major cities, blacks are ten times more likely to be arrested for drugs than whites. In many suburbs, however, the ratio is much, much higher. In overwhelmingly white enclaves like Livonia, Michigan, where the ratio of arrests for blacks compared to whites is 43-to-1, both resident blacks and visitors are subjected to suspicion and unwarranted stops. In St. Paul, Minnesota, the arrest ratio is 26-to-1; in Madison, Wisconsin, the ratio is 21-to-1; that ratio is 18-to-1 in Alexandria, Virginia; and the ratio in Little Rock, Arkansas is 13-to-1.

St. Paul is particularly striking. In 1986, blacks were 30 percent of those arrested on drug charges although only 7 percent of the population. Five years later, in 1991, blacks were 62 percent of those arrested on drug charges, while still only 7 percent of the population. A study performed at that time by the University of Minnesota discovered that white youths were using cocaine at almost twice the rate that blacks were.

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109 Meddis, More White Users, USA Today at 6A (cited in note 106).
110 Sam Vincent Meddis, Reno Targets Children as Front End Solution, USA Today 7A (July 27, 1993).
111 Id.
112 Sam Vincent Meddis, In Twin Cities, A Tale of Two Standards, USA Today 6A (July 26, 1993).
113 Sam Vincent Meddis, Is the Drug War Racist?, USA Today 1A (July 23, 1993).
114 Id.
115 Id.
116 Id.
117 Id.
118 Meddis, Twin Cities, USA Today at 6A (cited in note 112).
119 Id.
All across the nation, discriminatory arrest patterns are evident. In 1989, the Federal Public Defenders office in Los Angeles defended twenty-three crack cases. All of the defendants were black, and all were convicted. In the Northern District of Georgia, between December 1989 and September 1990, seventy defendants were charged with crack cocaine offenses, and sixty-nine (99 percent) were black.

As the table below indicates, blacks are being arrested at vastly different rates than whites for the sale and possession of illegal drugs.

### Table 1

<table>
<thead>
<tr>
<th>Drug Arrests By Race</th>
<th>Arrests for All Drug Crimes (per 100,000)</th>
<th>Arrests for Sales/Manufacturing (per 100,000)</th>
<th>Arrests for Possession (per 100,000)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Blacks</td>
<td>1,600</td>
<td>640</td>
<td>900</td>
</tr>
<tr>
<td>Whites</td>
<td>400</td>
<td>120</td>
<td>270</td>
</tr>
</tbody>
</table>


And it is not just black adults who are feeling the backlash of a drug war gone berserk. Black youth are being arrested on drug charges at an even more disproportionate rate than adults. In 1991, for example, black youths were 65 percent of those arrested for sales, while white youths constituted only 34 percent of those arrested. Black youths were 41 percent of those arrested for possession, while white youth totaled 58 percent.

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120 Barbara Piggee, Fact Sheet: Families Against Discriminative Crack Laws 1 (on file with the University of Chicago Legal Forum).

121 Id.

122 Id.

123 Meddis, Reno Targets, USA Today at 7A (cited in note 109).

124 Id.

125 Id.
C. Discriminatory Sentencing and Incarceration

Arrest these days means longer sentences because of mandatory minimums and the tough-on-crime mentality being advocated by politicians. The Campaign For An Effective Crime Policy wrote: "Mandatory sentencing has resulted in an increased proportion of non-violent drug offenders in prison and a decrease in incarcerated violent offenders."\(^{126}\) Whereas at one time many small drug possession and sale offenses resulted in probation, fines, or other nonimprisonment sanctions, virtually any conviction on a drug charge in the present era will lead to jail or prison time. As implied above, discriminatory laws lead to discriminatory sentences.

As Table 2 indicates, a study by Howard University’s Richard Seltzer of drug convictions under federal sentencing guidelines from October 1991 to September 1992, broken down by trafficking and possession, demonstrates the racial disparities in sentencing.\(^{127}\)

### Table 2

**Racial Differences in Cocaine Sentencing**

<table>
<thead>
<tr>
<th></th>
<th>Crack</th>
<th>Powder</th>
</tr>
</thead>
<tbody>
<tr>
<td>trafficking:</td>
<td>white (3%)</td>
<td>white (97%)</td>
</tr>
<tr>
<td></td>
<td>black (54%)</td>
<td>black (46%)</td>
</tr>
<tr>
<td>possession:</td>
<td>white (7%)</td>
<td>white (93%)</td>
</tr>
<tr>
<td></td>
<td>black (55%)</td>
<td>black (45%)</td>
</tr>
</tbody>
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\(^{126}\) Campaign for an Effective Crime Policy, *Evaluating Mandatory Minimum Sentences* at 6 (cited in note 92).

These disproportionate, incredibly long sentences have the impact of further destabilizing communities already under economic and social siege. It takes no great insight to see that incarcerating large sectors of a community where joblessness, low educational attainment, few job skills, and a general desperation are already rampant only exacerbates the crisis. While politicians and conservatives boldly call for more prisons, more mandatory minimums, harsher penalties, revocation of parole and Miranda rights, and while hapless law enforcement officials pad their statistics with easy arrests, the long-term consequences on society in general, and on these communities in particular, are ignored.

If there is a lesson to be learned from the most recent drug war disaster, it is that this is not a problem that can be arrested away. Going after low-level dealers and desperate addicts, both more visible in inner-city, low-income black neighborhoods, is not a war on drugs, but a war on particular communities. It has addressed neither the real security concerns felt by war zone communities nor the fundamental reasons why crime, street violence, and drug trafficking and abuse are so rampant in the United States. The conditions that nurture and feed the drug crisis—both broad and general, local and specific—can no more be ignored than any deadly cancer that eats away at the body where immediate intervention is required; long-term care must be administered if the body is to survive. The immediate intervention of “just say no” slogans and “lock ‘em up” practices must give way to social, economic, and drug policy reforms that address the needs of the poor and provide employment and educational opportunities that currently do not exist.

III. DRUG WAR REDUX

There must be a national imperative to reduce drug use. Surely this is a national goal that can unite us all, across the boundaries of party, race, region, and income.128

Any successful program to limit the harmful effects of drug abuse and the accompanying trafficking that goes with it must start from the vantage point that law enforcement cannot be the

principal vehicle of resolution. It has been shown that the most obvious effect of a law enforcement-driven approach is to discriminate against certain groups, destroying communities and countless lives in the process, while making little of a dent into the hard-core users, high-level traffickers, the invisible drug-using suburbs, or those people who have determined that they have nothing to lose.

To rescue community and nation will require a partnership of community, local, state, federal, and international entities committed to long-term solutions, a health-oriented perspective, and law enforcement focussing on violent offenders and high-level traffickers. This effort must be sensitive to the necessity of saving as many young people from a career path in crime as possible. To this end, new gauges must be developed that measure success.

In the drug abuse area, a reduction in hard-core use must be a priority. In the Bush administration, the focus was on casual users, who for the most part are nonviolent. While casual use has historically risen and fallen whether there was a drug war or not, hard-core use has become the intractable drug problem of the 1990s. Repeal of the mandatory minimums is a critical step in reducing the prison population and moving toward a drug policy that separates violent, career criminals from non-violent users or small-time sellers. Commuting the sentences of non-violent marijuana possessors on a case-by-case basis would also contribute to building a new consensus on a new approach.

More than ever, it is necessary that enough treatment be available so that those who want treatment will not be turned away. A successful reduction of addiction will lead to a decrease in the numbers of those going to jail on drug charges. This also means providing treatment in prisons and creating drug courts, similar to the system used by Janet Reno in Florida, where successful completion of a court-sanctioned drug treatment program allows those caught with small amounts of drugs to avoid prison or jail time.129

To move in this direction means a shift in the priorities of the drug budget. In recent years, about 70 percent of the budget has focused on law enforcement and supply-reduction strategies, while only about 30 percent has focused on education, prevention,
and treatment programs. If the necessary health orientation is to be implemented, then the budget must be turned on its head. The involvement of more health professionals in the effort to end drug abuse social harm must be a real priority. Health professionals must dispense medicines, use inexpensive and effective treatments such as acupuncture, administer clean needle exchange programs, and be given the resources to do the kind of research that will lead to long-term solutions.

Measures suggested by progressive drug policy reformers should be collectively assessed at the national level and involve community leaders, elected officials, law enforcement officers, medical professionals, and those active with the user community. Baltimore mayor Kurt Schmoke, a long-time advocate for reform, has recommended the “creation of a national commission to study how all drugs—legal and illegal—should be regulated.”

More broadly, there is no getting away from the fact that attacking poverty, improving public education, and ensuring universal health care will go a long way in addressing the concerns raised by the drug crisis. Economic stability and advancement, quality and accessible educational opportunities, and preventive and quality health care are the basic pillars of life that have been nonexistent in inner-city communities over the last two decades. In the area of public education, full funding for Headstart, implementing curriculums that teach peaceful conflict resolution, creating effective truancy reduction programs aimed at the very young, and other innovative but relatively inexpensive programs can be instituted easily within the next few years if the political will is strong enough.

President Clinton’s Drug Strategy has made an effort to address many of these concerns. It calls for more drug treatment for hard-core users; making drug treatment a part of the administration’s health care package; more education materials aimed at children concerning illegal drugs and alcohol use; increased police presence using community policing strategies; and greater attention to joint international efforts and building a global alliance against drug trafficking.

How can this new thrust and other suggestions be funded? First, the military budget still needs to be cut. The always sus-
pect Cold War justification simply has no merit in the current era, and even Persian Gulf War types of situations do not require the kind of outlays being demanded by the Pentagon, Capitol Hill hawks, and some in the administration. The budget submitted by the administration in 1993 called for only a 10 percent cut beyond the last Bush budget. The United States will spend $1.3 trillion over the next five years on the military. That is approximately $400,000 a minute; that will keep spending near the same level as during the height of the Cold War.

Second, there is still a need for progressive tax reform. Efforts to reduce income disparities have often had the opposite impact. The Tax Reform Act of 1986 was supposed to guarantee that no one in the country escaped paying at least some tax. Instead, the number of people paying taxes who made over $1 million fell by 85 percent.

In terms of the national budget, cities have been left out of the game for many years. The call for massive funding to rebuild the urban centers grows louder and more urgent each day. The Milton Eisenhower Foundation concluded that cities need $30 billion a year for ten years. Other groups, such as the Urban League, the National Rainbow Coalition, and even congressional commissions, have reached similar conclusions.

While it is clear that most people feel that crime and violence, much of it associated with drug trafficking and abuse, are major concerns, it would also appear that most favor approaches that have been given low priority up until now. A Gallup Poll found that almost 40 percent of those surveyed felt that “teaching young people about the dangers of drugs” was the most productive use of government resources in the fight against drugs.

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133 Borosage, Disinvesting in America at 346 (cited in note 26).
134 Id.
135 Id.
136 Bartlett and Steele, America at 3-5 (cited in note 6).
137 Id at 5.
138 Id at 8.
142 Id (citing a 1990 Gallup Poll).
Next, 28 percent felt that stopping the inflow of drugs by working with foreign governments was not the most productive use of this money. Additionally, 19 percent felt that more arrests of drug sellers was the most productive use of these resources, while only 4 percent said that arresting drug users was the most productive use.

Changing policies regarding illegal—and legal—narcotics will not resolve the problems of race and racism in U.S. society. However, given the pivotal role that those policies have played in perpetuating the problems of and in the black community, a new approach promises high benefits. Continuing along the same path should frighten even the most casual observer. Replacing drug war practices with reforms in the areas of drug, economic, and social policy could potentially take the nation a huge step down the path of equality, fairness, and hope.

143 Id.
144 Id.