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Race and the War on Drugs

John P. Walters†

Michael Tonry accuses those of us who formed and implemented the anti-drug policies of the Bush Administration of racism. He says that we intentionally crafted government policy so that large numbers of young black males would be arrested, and that we did this for partisan political gain. In order to contrive this calumny, Tonry misrepresents the drug problem, what was known about it in 1989 (when the first National Drug Control Strategy was crafted), the policies of the Bush Administration, and the actual relationship between race, drug use, and drug trafficking. Tonry’s ridiculous accusations and breathless rhetoric do not deserve to be treated seriously. What I propose to do for

† President of The New Citizenship Project, an organization created to advance a renewal of American institutions and greater citizen control over national politics. Former Acting Director and Deputy Director of the White House Office of National Drug Control Policy (“ONDCP”) for the Bush administration. I gratefully acknowledge the generous support of the Lynde and Harry Bradley Foundation, the Sarah Scaife Foundation, and the Hudson Institute, which made possible much of the analysis from which this paper draws.

1 See Michael Tonry, Race and the War on Drugs, 1994 U Chi Legal F 25. It is telling that Tonry cites only a single policy document of the Bush administration. He also fails to mention that federal drug enforcement was expanded and criminal penalties made harsher before the Bush administration and Drug Czardom began. The key “toughness” legislation was the Anti-Drug Abuse Act of 1988 (“Act”), which passed with overwhelming bipartisan support. John J. Dilulio, Jr., Cracking Down, 53 New Republic 53 (May 10, 1993). See also National Drug Control Program, 21 USC §§ 1501-1509 (1988). As Dilulio has pointed out, “The ‘Clinton-Gore Crime and Drug Plan’ issued from Little Rock during the campaign highlighted the bill as one of Senator Gore’s great achievements.” Dilulio, New Republic at 53.

The only empirical evidence Tonry offers in support of his charge of racism is a hodgepodge of data on prison populations and race. He mixes federal and state data without explanation and, more to the point, he mixes data on drug offenders by race with broader categories of offenders by race. Tonry claims the drug war filled the jails and prisons with black drug offenders, but that is simply untrue. See Tonry, 1994 U Chi Legal F at 27. Drug offenders are a majority (roughly 56 percent) of the federal prison population of 71,608, but they are a much smaller share of the state and local incarcerated populations of 152,000. Bureau of Justice Statistics, Sourcebook of Criminal Justice Statistics—1991 table 6.07 at 657, table 6.57 at 627, table 6.81 at 647 (1992).

Moreover, the racial disparity in the federal prison population—that is, the higher percentage of blacks among the population of prison inmates than the percentage of blacks in the general population—is less pronounced than it is in state and local prisons and jails. Id. In 1991, the federal prison population was 66 percent white and 32 percent black; roughly equal portions of both racial groups are identified as drug offenders—57

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the purposes of this volume, and in light of the presentations at the symposium upon which it is based, is to offer a straightforward review of the drug problem as it existed in 1989, what we did to address it, and what happened, concluding with a review of the apparent demographic trends in cocaine use and cocaine addiction.

I. THE DRUG PROBLEM IN 1989

The Anti-Drug Abuse Act of 1988 (the "Act") created the Office of National Drug Control Policy ("ONDCP") within the Executive Office of the President. The Act also directed the head of the new office, the Director of National Drug Control Policy (the "Director")—popularly referred to as the "Drug Czar"—to prepare the first National Drug Control Strategy for submission to Congress, by the President, within 180 days of the confirmation and swearing-in of the Director. Thereafter, the Act required the Director to draft a new National Drug Control Strategy at the beginning of each year to coincide roughly with the release of the President's budget.2

percent of white males, 54 percent of black males. Id tables 6.95, 6.97 at 657. Over 92 percent of the federal prison population is male. Id table 6.95 at 657.

Less than 6 percent of the nation's incarcerated population resides in federal prisons, however. The vast majority of the incarcerated remain in state prisons (711,643 in 1991, of which 35 percent are white and 46 percent are black) and in local jails (426,479 in 1991, of which 41 percent are white and 43 percent are black). Bureau of Justice Statistics, Correctional Populations in the United States, 1991 table 4.1 at 26 (1991) (listing the characteristics of state prison inmates by race); id table 2.3 at 9 (listing the demographic characteristics of jail inmates by race).

According to the latest available data for 1989, only 22 percent of the male jail population had a drug offense as their most serious offense: 24 percent had violent crime, 30 percent had property offenses, and 23 percent had public order offenses. Bureau of Justice Statistics, Sourcebook of Criminal Justice Statistics—1992 table 6.39 at 597 (1993). In 1991, however, only 21 percent of all state prison inmates had a drug offense as their most serious offense, and only 25 percent of black state prison inmates had a drug offense as their most serious offense: 47 percent had violent crime, 25 percent had property offenses, and 7 percent had public-order offenses. Id table 6.70 at 623. Blacks form a plurality of the state prison population; the plurality, however, is much more the result of convictions for violent crime than for drug offenses.

Since Tonry suggests that the disproportionate incarceration of blacks is simply racist, it is also worth noting that not only are blacks much more likely to be victims of violent crime than whites, but the offenders in the vast majority of those cases are also black. In those 1991 cases in which the victims of completed violent crime were black, in over 92 percent of the cases involving a lone offender, and in over 80 percent of the cases involving multiple offenders, the offenders were also black. Id table 3.52 at 288, table 3.57 at 291.

2 The Act contains a variety of other requirements regarding the preparation, content, and submission of the National Drug Control Strategy ("Strategy"), but these requirements are not pertinent here. See National Drug Control Program, 21 USC §§ 1501-
One of the Drug Czar's first tasks was to determine the dimension and nature of the drug problem. As with most complex social problems, the available information was limited, and some of it was subject to conflicting interpretation. The illegal, covert behavior at the heart of the drug problem made measurement of the problems particularly difficult. This is not the place, however, for an extended discussion of the technical issues involved in assessing the drug problem. In short, despite some improvements over the past five years, flaws exist in all the individual measures of the drug problem. Nonetheless, these measures contain significant information, and no alternative sources of guidance exist.

In January 1989, what made the drug problem a crisis was cocaine or, more precisely, crack. But it was difficult to gauge the cocaine/crack crisis. There were two national surveys of drug use. The National Institute on Drug Abuse ("NIDA") administered the most comprehensive survey—the National Household Survey on Drug Abuse ("NHSDA")—in 1977, 1979, 1982, 1985, and 1988. This survey was designed to cover a statistically representative sample of the American population, aged twelve and older, living in households. Although this sample represented well over 90 percent of the population twelve and older, it did not represent key groups associated with heavy drug use, such as those in jails and prisons, the homeless, and addicts and heavy users not then in stable households. Moreover, NIDA conducted the NHSDA once every three years, and the results took approximately a year to prepare—the 1988 survey results were not available until July 1989.

The NHSDA indicated that while current use of marijuana declined between 1979 and 1985, cocaine use rose by 38 percent between 1982 and 1985 alone.

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1509.

3 Crack is the freebase, smokable form of cocaine.


5 Id.

6 Id.

7 Id.

8 "Current use" is use at least once in the month prior to the survey and is considered a measure of casual or semi-regular, but non-addicted, users.

The National High School Senior Drug Abuse Survey (the "High School Senior Survey"), the other major national survey of drug use, is an annual survey which began in 1975 as part of a larger program called "Monitoring the Future: A Continuing Study of the Lifestyles and Values of Youth." It is conducted by the University of Michigan's Institute for Social Research and funded by NIDA. The High School Senior Survey revealed a steady decline in overall illegal drug use from a peak in 1979. However, current cocaine use by seniors rose to a peak in 1985, and although such use declined between 1985 and 1988, measurement of crack use began in 1987 and rose between 1987 and 1988. The available results of the Household Survey and the High School Senior Survey for cocaine and crack were not reassuring.
In addition, since the High School Senior Survey measured only a nationally representative sample of high school seniors, it did not contain information about dropouts—whose rates of drug use are generally believed to be higher than their peers still in school. With the prevailing fear that crack addiction was rapidly spreading in large metropolitan areas, where dropout rates approached 50 percent, the question was: did the High School Senior Survey reveal only the tip of the iceberg?

Two other indicators of drug use caused even greater concern. The Drug Abuse Warning Network ("DAWN"), administered by NIDA, began in 1972. DAWN reported on hospital emergency room cases involving drug-related health emergencies and drug-related deaths in major metropolitan areas across the country. DAWN reported the data on a quarterly basis, but the data was not published until between six and nine months after being gathered (the last two quarters of 1988 were released during the first half of 1989, at the same time that the first National Drug Control Strategy was being prepared). The DAWN data for cocaine and heroin were generally believed to indicate trends in heavy use more than in occasional or casual use, and the data seemed to reflect a rapidly growing cocaine problem.\(^\text{12}\)

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These data suggested a worsening cocaine and crack problem, and media reports of crime related to cocaine trafficking seemed to corroborate this conclusion. Later analysis, funded by ONDCP, confirmed the status of cocaine and crack as the principal drug problem in 1989. The Drug Office initiated a study conducted by Abt Associates for the first time employing both the available drug use data and available data on the production of illegal drugs in order to estimate the size of the illegal drug market in the United States. Most recently, this study found that cocaine composes roughly three-fifths of the illegal market.

In July 1989, NIDA provided ONDCP with the results of the 1988 National Household Survey on Drug Abuse. The estimated number of current cocaine users dropped from 5.8 million in 1985 to 2.9 million in 1988—a remarkable 50 percent reduction. This drop seemed to indicate a rapid decline in casual, non-addicted use of cocaine. The results, however, were not above question. Public attitudes towards drug use in general, and toward cocaine use in particular, had become much more negative between 1985 and 1988. Even in an anonymous survey, participants were likely to underreport drug use. No one knew how much underreporting occurred in either the NHSDA or in the High School Senior Survey, or the extent to which under-

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14 Id, table A at 4.
15 OAS, Preliminary Estimates at 12 (cited in note 9).
reporting rates may have changed over time. In the absence of specific evidence to the contrary, however, the Bush Administration considered the NHSDA the best measure of drug use trends in the general population. Accordingly, the results of the NHSDA formed the foundation of Bush Administration policy.

Therefore, the first *National Drug Control Strategy* (the "Strategy"), released by the President in September 1989, began

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with the results of the NHSDA and the "very good news" it offered. However, the Strategy also acknowledged:

Most Americans remain firmly convinced that drugs represent the gravest present threat to our national well-being—and with good reason. Because a wealth of other, up-to-date evidence suggests that our drug problem is getting worse, not better.\(^7\)

In identifying the heart of the problem, the Strategy made its highest priority very specific: "What, then, accounts for the intensifying drug-related chaos that we see every day in our newspapers and on television? One word explains much of it. That word is crack."\(^8\) The Strategy characterized the crack-led drug problem in these terms:

[T]he epidemiological trend is unmistakable. We are now fighting two drug wars, not just one. The first and easiest is against "casual" use of drugs by many Americans, and we are winning it. The other, much more difficult war is against addiction to cocaine. And on this second front, increasingly located in our cities, we are losing—badly.\(^9\)

Even with the benefit of today's hindsight, we could not create a more accurate description of the 1989 drug problem.

II. How Did the Bush Administration Fight the Drug War?

The anti-drug efforts of the Bush Administration had three principal goals: first, to foster the continued decline in casual drug use by reinforcing prevention measures (particularly in segments of the nation at greatest risk from such use); second, to increase treatment capacity and treatment effectiveness for addicts; and third, to reduce the supply and availability of illegal drugs (cocaine most of all) by attacking vulnerabilities in the drug trade at home and abroad.\(^20\) In support of this effort, fed-

\(^8\) Id at 3 (emphasis in original).
\(^9\) Id at 4.
\(^20\) Tonry states that "[a]lthough good-faith arguments could be made for continuing efforts to target major importers, distributors, and traffickers, for increased support for drug education programs in schools, and for drug treatment for those who wanted it, none could be made for vastly increased emphasis on law enforcement directed at users, user-dealers, and street-level trafficking." Tonry, 1994 U Chi Legal F at 28 (cited in note 1). Had he bothered to read the policy and budget documents of the Bush administration, he
eral spending on drug control programs rose dramatically from 1989 to 1993.²¹

During the Bush Administration, federal anti-drug spending grew by almost 80 percent, with the largest increases occurring in prevention and treatment programs—up 99 percent. In fiscal year ("FY") 1993, under the last Bush Administration drug control budget, the federal government planned to spend more on drug treatment than on border interdiction ($2.2 billion versus $1.9 billion), more on prevention than on federal domestic drug law investigations ($1.5 billion versus $1.4 billion), and more on drug treatment in Veterans Administration hospitals alone than on all drug control programs in foreign countries ($753 million versus $538 million).²²

Chart 6

NATIONAL DRUG CONTROL BUDGET, FISCAL YEARS 1981-1993

A progress report published in January 1993 includes a summary of key federal drug control initiatives advanced during the Bush Administration:

- Proposed and signed into law legislation requiring federally-funded schools and colleges to implement drug prevention programs and policies as a condition of eligibility for federal assistance.

o Created a new $100 million per year grant program to help communities mobilize against drugs.

o Increased funding for drug prevention in public housing communities from $8 million in FY 1989 to $175 million in FY 1993.

o Proposed budget increases that would have doubled federal funding for school systems ravaged by drugs and drug-related crime.

o Doubled funding for drug treatment services and research, and proposed and signed into law legislation that improves state strategic planning for drug treatment systems.

o Initiated the development of model drug treatment protocols and standards of care for treatment providers.

o Pioneered multimodality drug treatment campuses and experimental programs integrating drug treatment at Job Corps training centers.

o Enhanced the air and maritime surveillance system along the southern U.S. border and in the Caribbean.

o Championed the community policing approach to local law enforcement.

o Created a new Weed and Seed initiative to combat drug trafficking and social disorder in high-crime urban areas.

o Designated five High Intensity Drug Trafficking Areas and provided them with intensive federal resources.

o For the first time, utilized significant elements of the U.S. Armed Forces in the fight against illegal drugs.
- Expanded cooperative programs with Bolivia, Colombia, Mexico, Peru, Thailand, and other source and transit countries.

- Increased the use of boot camps and other alternative sanctions for drug offenders.

- Greatly increased the eradication of domestically-grown marijuana crops.23

These initiatives form only a part of the Bush Administration's anti-drug effort. National leadership—Presidential leadership—was always understood to be an important stimulus to action beyond anything federal budgets supported.

The legislation creating ONDCP—the Anti-Drug Abuse Act of 1988—made clear that the Strategy and the work of ONDCP was expected to provide national leadership and direction and not just guide federal efforts. From the specific responsibility to establish quantifiable national goals, to the requirement that ONDCP prepare and publish model state anti-drug legislation, the Act intended the work of the Drug Czar to move far beyond directing strictly federal activities. Most prevention efforts—in families, schools, workplaces, and community groups—draw resources from state and local government, but most of all from the private sector. The same is true of treatment and law enforcement activities.24 Thus, the Drug Czar and the President consciously planned their use of the "bully-pulpit" to stimulate much greater national effort than that directly funded by the federal budget. The 1993 National Drug Control Strategy summarizes succinctly the Bush Administration's recognition of and response to this responsibility:


24 The 1989 Strategy noted that the 1987 estimate of national treatment expenditures found that 23 percent came from the federal government, 33 percent from state and local governments, and 44 percent from private-sector sources—largely payments from private insurance policies and services provided by nonprofit organizations. ONDCP, National Drug Strategy at 38 (cited in note 17). Arrest, prosecution, and incarceration data reveal that the vast majority of drug-related law enforcement effort is carried out by state and local authorities. Bureau of Justice Statistics, Drugs, Crime, and the Justice System 142, 158, 171 (1992). See also discussion of incarceration in note 1.
The September 1989 Strategy and each succeeding Strategy have been grounded in four key principles that make explicit the Bush Administration's understanding of the nature of our Nation's drug problem:

The essence of the drug problem is drug use. Our ultimate goal, and the measure of our success, must be to reduce the number of Americans who use drugs. Heretofore, our progress in fighting drugs was frequently measured in terms of the number of arrests, conviction rates, and quantities of drugs seized. These are useful indicators, but they address only the symptoms, not the problem itself: drug use. Too little attention had been given to such indicators of drug use as drug-related deaths, injuries, and levels of drug use among various populations.

Because they are the heart of the problem, drug users must be held accountable. Although there are many reasons why individuals take drugs—such as unemployment, boredom, peer pressure, homelessness, and mental disorders—by and large, drug use is the result of bad decisions by individuals exercising free will. An important means of persuading individuals not to use drugs is to make it clear to them that using drugs will lead inevitably to specific adverse consequences and sanctions. These may and should include a range of civil and criminal penalties, from loss of professional license to court-ordered drug treatment, as well as social sanctions from family, school, and community.

To be effective, the Strategy must be comprehensive, integrating efforts to reduce the supply as well as the demand for drugs. No single tactic, pursued alone or to the detriment of others, can be effective in reducing drug use. Rather, pressure must be applied along all fronts of the drug war simultaneously, recog-
nizing that although prevention is the long-term solution, short-term measures to treat addiction and restrict the availability of drugs can give prevention a chance to work.

We must have a national, not just a Federal drug strategy. Because the drug problem is national in scope, its solution lies only in vigorous, coordinated efforts at the Federal, State, and local levels. Any National Drug Control Strategy that ignores the important roles of State and local entities, the private sector, religious institutions, and families, is destined to fail.25

President Bush and his Drug Policy Directors, William Bennett and Robert Martinez, recognized hundreds of prevention, treatment, and community anti-drug efforts and, during conferences and trips throughout the nation, publicized them as examples for others to follow. President Bush also personally presented each of the four National Drug Control Strategies prepared during his Administration and made frequent trips to highlight progress on the “front lines”—from Cartagena, Colombia to Los Angeles, California. In this way, the President forged a common purpose among many Americans who had no direct link to a federal government anti-drug program.

III. WHAT WAS ACCOMPLISHED?

The first National Drug Control Strategy emphasized that youthful casual use and experimentation spreads drug use.26 In the vast majority of cases, use begins, if ever, in the period from adolescence to the early twenties with the offer of drugs from a friend.27 It is from this first stage—casual use—that some individuals later go on to problem use and addiction.28 Addicts use greater quantities of drugs—they are in this sense a greater source of demand—than casual users. However, casual use is the “carrier,” in the epidemiological sense, of greater casual use and,

27 Smith and Rhodes, Age Cohorts at 3 (cited in note 16).
for a portion of casual users, subsequent addiction. For this reason, further reduction in casual use, particularly by young people, was a foremost policy priority throughout the Bush Administration.

The war against casual use was a huge success. Between 1988 and 1992, cocaine use by current users dropped by almost 60 percent, from an estimated 2.9 million to 1.3 million. For the population twelve to seventeen years of age, the decline in current cocaine use from 1988 to 1992 was over 70 percent, while for the age group of eighteen to twenty-five, it was over 60 percent.

Chart 7

CURRENT COCAINE USERS, AGES 12-17 & 18-25

From its peak in 1985 until 1992, current cocaine use dropped almost 80 percent. Both current use of any illicit drug and current marijuana use dropped by roughly 22 percent between 1988 and 1992, more rapidly than the rate of decline for such use between 1979—the peak—and 1988.

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29 Id at 10-11.
30 Between its 1975 initiation and 1989, the High School Senior Survey found that a majority of high school seniors had tried an illegal drug at least once prior to graduation; that is, the typical high school experience for over fourteen years included illegal drugs. Johnston, O'Malley, & Bachman, Monitoring the Future table 11 at 74 (cited in note 11).
31 OAS, Preliminary Estimates at 12 (cited in note 9).
32 Id table 15B at 61. The High School Senior Survey reported both a 62 percent reduction in current cocaine use between 1988 and 1992 and a slightly higher percentage reduction in current crack use. From the 1985 peak until 1992, current cocaine use among high school seniors dropped by over 80 percent. University of Michigan, Monitoring the Future table 4 (cited in note 11).
33 OAS, Preliminary Estimates at 12 (cited in note 9).
34 Id table 2 at 37.
On the second front of the drug war—heavy, addictive illegal drug use—the number of addicts stopped growing and seemed to stabilize over the course of the Administration, but the number apparently did not decline substantially.\textsuperscript{35}

\textbf{Chart 9}

\begin{center}
\textbf{ESTIMATED NUMBER OF HEAVY COCAINE USERS, 1988-1991}
\end{center}

\begin{figure}
\begin{center}
\includegraphics[width=\textwidth]{chart9.png}
\end{center}
\caption{Estimated number of heavy cocaine users, 1988-1991.}
\end{figure}

Despite a doubling of federal treatment funding between 1988 and 1993,\textsuperscript{36} expanded efforts have failed to reach at-risk populations with treatment services, to extend those services in the criminal justice system, and to improve the quality of treatment services generally in the hopes that greater treatment activities would reduce the number of addicts.\textsuperscript{37}

\begin{itemize}
\item \textsuperscript{35} Rhodes, Scheiman, and Carlson, \textit{What America's Users Spend} table 1 at 10 (cited in note 13).
\item \textsuperscript{36} ONDCP, \textit{National Drug Control Budget} at 4 (cited in note 21).
\item \textsuperscript{37} ONDCP, \textit{National Drug Control Strategy: A Nation Responds to Drug Use} 56-76 (1992).
\end{itemize}
There have always been some outstanding treatment programs, but, in general, the performance of the drug treatment structure nationally has been disappointing.

On August 9, 1993, Clinton Administration Director of National Drug Control Policy, Lee Brown, released a research paper entitled “Characteristics of Heavy Cocaine Users.” That study included a number of sobering points, including:

It is regrettable that so little is definitively known about the effectiveness of either punishment or treatment on heavy cocaine use. Those heavy users who are identified in the criminal justice system seem to appear repeatedly; best estimates indicate that arrestees who test positive for cocaine use will be arrested an average of 1.5 times per year when they are not confined. And while many users benefit from treatment, compulsive use is most frequently a chronic condition. The Treatment Outcome Prospectives Study (TOPS) showed that for every 10 clients who used cocaine regularly during the year prior to treatment, six clients had returned to heavy use one year after treatment, and eight clients had relapsed into heavy use within three to five years after treatment. These statistics do not accurately reflect the success of treatment outcomes. (The TOPS study is the most recent large-scale study of treatment outcomes. Many smaller scale treatment studies show results with better long-term outcomes.) Nevertheless,

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the TOPS data suggest that treated cocaine users are more likely than not to return to drug use. 39

Ironically, the one area of the anti-drug effort that seems to have made the greatest contribution to reducing drug use among heavy cocaine users is supply reduction—more precisely, interdiction and the cocaine source-country programs. This is ironic because the dogmatic advocates of greater emphasis on reducing cocaine addiction through treatment frequently recommend funds for this purpose be taken from federal spending on interdiction and foreign drug control programs. 40

After climbing steeply in the early 1980s, the cultivation of coca 41 reached a peak in 1990. 42

Chart 11

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Coca Cultivation (hectares)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1986</td>
<td>170,095</td>
</tr>
<tr>
<td>1987</td>
<td>175,310</td>
</tr>
<tr>
<td>1988</td>
<td>200,460</td>
</tr>
<tr>
<td>1989</td>
<td>220,385</td>
</tr>
<tr>
<td>1990</td>
<td>220,850</td>
</tr>
<tr>
<td>1991</td>
<td>206,240</td>
</tr>
<tr>
<td>1992</td>
<td>211,700</td>
</tr>
</tbody>
</table>

Source cited in note 44.

40 Mathea Falco advanced this same argument in her keynote address. See Mathea Falco, Towards A More Effective Drug Policy, 1994 U Chi Legal F 9, 24.
41 Cocaine and its derivatives are extracted from the leaves of the coca plant. Richard R. Lingeman, Drugs from A to Z: A Dictionary 44 (McGraw-Hill Book Co., 1969). The plant itself is actually a medium-sized bush, and, in growing areas of Peru, Bolivia, and Colombia, leaves can be harvested from the plants roughly three times each year. Timothy Flowman, Coca Chewing and the Botanical Origins of Coca (Erythoxylum spp.) in South America, in Deborah Pacini and Christine Franquemont, eds., Coca and Cocaine: Effects on People and Policy in Latin America 13 (Cultural Survival Inc., 1986). There are different varieties of coca, and this variance (as well as other factors) is known to affect the amount of cocaine that can be extracted from a particular batch of leaves. Id at 11.
42 See generally Bureau of International Narcotics Matters, International Narcotics Control Strategy Report 15-16 (1993). This chart and the next four charts are based on unpublished analysis by the staff of ONDCP's Office of Research, undertaken during the Bush administration.
Programs to eradicate coca cultivation in the Andean source countries had little effect on reducing potential cocaine hydrochloride production.\(^43\)

\[\text{Chart 12}\]

\begin{center}

**POTENTIAL COCAINE HCI PRODUCTION**

\begin{itemize}
  \item 1987: 905
  \item 1988: 850
  \item 1989: 812
  \item 1990: 890
  \item 1991: 890
  \item 1992: 1,009
\end{itemize}

\end{center}

Source cited in note 44.

The Bush Administration’s “Andean Strategy,” as it was called, marked a departure from previous United States reliance on eradication in the source countries and border interdiction near the United States to reduce the supply of cocaine. The President set forth the strategy in the September 1989 report:

The challenge is to motivate the governments of cocaine producer countries to cooperate with us in significantly damaging the cocaine industry, while proceeding with anti-drug programs of their own. A comprehensive and sustained multi-year effort, involving economic, military, and law enforcement support, will be implemented to achieve these goals. The objectives of this effort must be: isolation of major coca-growing areas in Peru and Bolivia; interdiction within these countries of the delivery of essential chemicals used for cocaine processing; destruction of cocaine hydrochloride processing facilities; dismantlement of drug trafficking organizations; and eradication of the coca crop when it can be made an effective strategy. We can and must accomplish these objectives with a minimum of direct involvement by U.S. personnel. This is a cardinal point. The countries

\[^{43}\text{The difference between the gross and net production estimates on the chart below is entirely the result of eradication.}\]
of the area must carry the principal burden themselves.\textsuperscript{44}

Although the details of the implementation of this policy lacks pertinence to the present discussion, its results are relevant.

The seizure of cocaine in the source countries and in the transit countries between the Andes and the United States rose sharply as a result of expanded cooperation. This significantly changed the potential amount of cocaine available in the United States.\textsuperscript{45} The significant amounts of cocaine seized by state and local law enforcement agencies further reduced the actual cocaine available for consumption in the United States. Although we have no precise accounting of these seizures nationwide, the Drug Enforcement Agency’s (“DEA”) El Paso Intelligence Center (EPIC) has offered an informal estimate of sixty metric tons. This would make the overall estimated distribution of potential cocaine production for 1992. Thus, the extension of supply reduction efforts to the cocaine source countries has reduced the cocaine supply in general. In addition, the so-called “supply side” battle also had a unique effect on heavy, or addicted, cocaine use.

\textbf{Chart 13}

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{cocaineseizures}
\caption{Cocaine Seizures}
\end{figure}

Source cited in note 44.

\textsuperscript{44} ONDCP, \textit{National Drug Strategy} at 63 (cited in note 17).

\textsuperscript{45} The data does not subtract for state and local seizures or losses in transit.
In the late summer of 1989, what is believed to have been the Medellin Cartel, led by Pablo Escobar, carried out the assassination of a Colombian presidential candidate, Carlos Galan, and publicly declared war on the Colombian government. In response, President Verhilo Barco launched the broadest and most intense attack on the cocaine cartels in his-

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Shortly after that crackdown began, the United States military deployed the most extensive interdiction, detection, and tracking effort ever mounted against cocaine transit from the Andean countries. Furthermore, during the autumn of 1989, the largest cocaine seizure in United States history—twenty metric tons—was made near Los Angeles. These events produced a substantial disruption in the cocaine supply to the United States through the latter part of 1989, 1990, and into 1991, although there are no exact measures of the magnitude of that disruption, and the previous estimates of potential production cannot capture it. Nonetheless, as shown below, there are important indicators of significant disruption with beneficial consequences, particularly for heavy cocaine users.

Reductions in the supply of cocaine would be reflected at the retail level by an increase in street prices or a decline in purity (or both), or by scarcity, if the disruption is large and sudden enough. As the above activities occurred, law enforcement agencies periodically reported that cocaine trafficking groups experienced problems securing cocaine or securing it in a timely manner, even at a higher price. These reports could not be offered as precise empirical data.

The DEA, however, does compile data on cocaine prices throughout the nation, and it reports these data on a quarterly and yearly basis. This data reveals that in gram amounts—the accepted retail quantity—the downward trend in prices through early 1989 abruptly reversed. At the same time, the purity of the cocaine sold also began to decline.

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47 Id.
48 Tonry falsely asserts that cocaine prices declined during the Bush administration. Tonry, 1994 U Chi Legal F at 40 (cited in note 1).
49 This data is from unpublished results of an ONDCP-funded analysis of data from the Drug Enforcement Agency’s (“DEA”) System to Retrieve Information from Drug Evidence (“STRIDE”). The analysis was conducted by Abt Associates, Inc., and presented in an ONDCP briefing entitled “Domestic Cocaine Situation” (Jan 27, 1993).
A standardized price—a price that reflects both price and purity changes by calculating the cost of a 100 percent-pure gram of cocaine at each point of measurement—can perhaps best represent the magnitude of this change in availability.
The above chart portrays the results of such an ONDCP-sponsored analysis. Perhaps most important, this reduction in the availability of cocaine—driving the price up and the purity down—coincided with a 27 percent reduction in cocaine emergency room mentions between 1989 and 1990.

Deaths related to cocaine use during this period also declined, according to medical examiner reports. Analysis initiated by ONDCP and released in the publication, Price and Purity

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50 Id.
52 See generally ONDCP, Price and Purity of Cocaine: The Relationship to Emergency Room Visits and Deaths, and to Drug Use Among Arrestees (1992).
of Cocaine: The Relationship to Emergency Room Visits and Deaths, and to Drug Use Among Arrestees, found cocaine price increases; purity reductions; and declines in cocaine emergency-room cases, deaths, and cocaine use among arrestees for the twenty largest United States cities for which the data is available. The cocaine supply reduction also coincided with the decline in the estimated number of heavy cocaine users previously cited.

Chart 20

Several general points must be emphasized here. First, the available data limits the analysis. Nonetheless, the reduction in cocaine availability seems beyond question, and its role as a key causal factor in the decline in cocaine use, particularly heavy use, seems a fully justified conclusion in light of the data. However, we cannot "prove" this with the precision demanded in circumstances where the available data are more extensive.

Second, we should remember that both supply and demand most likely affect cocaine price and purity. We know from the NHSDA that casual or non-addictive use of cocaine was declining dramatically immediately prior to and during this period. While non-addictive users consume a much smaller quantity of cocaine than heavy or addicted users, an almost 80 percent drop in non-addictive users between 1985 and 1992 certainly reduced demand

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53 See id.
54 See note 35 and accompanying text regarding heavy cocaine users. This is not surprising, however, since the estimate is derived to a substantial extent from the Drug Abuse Warning Network ("DAWN") emergency room and medical examiner data, and the arrestee drug testing (Drug Use Forecasting) data.
to a significant, if limited, extent not measurable by existing surveys and analyses. In order to increase cocaine retail prices and reduce purity, supply reduction efforts would have to cut supply beyond the amount that would have satisfied the reduced demand. Thus, the actual supply disruption may be greater in magnitude than the magnitude of the change in the price and purity data.

Finally, we should ask whether most prominent cocaine traffickers have sufficient market control to manipulate prices by controlling supply. If they do, we cannot use price and purity reports to indicate market disruption directly; in fact, we may not be able to use them here at all. We have no definitive knowledge of the extent of traffickers' ability to manipulate the cocaine market. In smaller transactions and at the wholesale level in particular areas, law enforcement investigators have reported efforts by particular groups to influence prices by withholding supply. However, these have been limited in both scope and duration. There is no evidence of either large-scale efforts to manipulate availability or the ability to do so.

The cost of the entire international drug control effort for programs and assistance to foreign countries rose from $209 million in fiscal year 1988 to $690 million in 1992 (its peak); it moved from 4.4 percent to 5.6 percent of the federal drug control budget. Interdiction costs increased between 1988 and 1992, but most of that increase involved the estimated cost of Department of Defense ("DOD") activities in support of the anti-drug effort.\footnote{See ONDCP, \textit{National Drug Control Budget} at 1 (cited in note 21).}

\begin{center}
\textbf{Chart 21}
\end{center}

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{chart21.png}
\caption{DOD Interdiction Spending as a Portion of Total Federal Interdiction Spending, Fiscal Years 1988-1993}
\end{figure}

\begin{itemize}
\item \textbf{Non-DOD Interdiction Spending}
\item \textbf{DOD Interdiction Spending}
\end{itemize}

\textit{Source cited in note 21.}
Even with this increase, interdiction costs as a percentage of the federal drug control budget declined.

If measured strictly by results, our national prevention efforts produced the most outstanding achievements, and, contrary to conventional opinion, interdiction and cocaine source-country programs seem to have contributed to the greatest reductions in heavy or addictive cocaine use. However, two points must be added to this conclusion.

First, the Bush Administration drug control effort always emphasized the necessity of simultaneously putting pressure on what it identified as a series of key strategic points. These points included treatment, domestic law enforcement, and research in both demand reduction and supply reduction technologies and methods, as well as prevention, international programs, and interdiction. Each drug strategy sought to explain, in some detail, not only the areas of focus, but also how the activities called for in those areas contributed to the effectiveness of activities in other areas. I cannot recapitulate that analysis here, but the reader should note that none of the criticisms of the Bush Administration anti-drug effort presented at the symposium upon which this volume is based seriously addressed the policy.\textsuperscript{56}

Second, if the data on cocaine availability presented above is correct, why did the reduction in supply not continue throughout 1991 and beyond? Beginning in the summer of 1991, the movement of United States military resources to the Persian Gulf for

\textsuperscript{56} I urge those with a real interest in this topic to go back to the original National Drug Control Strategy reports.
Desert Shield and then Desert Storm reduced interdiction coverage, particularly with respect to some of the most powerful airborne and surface naval systems. The military never returned those resources to previous levels. Plans existed within ONDCP to make this a major policy issue for Presidential decision in connection with the fiscal year 1994 Strategy, but the Administration ended before that Strategy was crafted. In addition, without discussing all of the activities of the Andean Strategy, the crucial pressure applied in Colombia on the traffickers declined. First, the government was forced to divert significant police and military forces to provide security for a national election and a constitutional referendum. Later, after the surrender of several major traffickers, security forces focused twice on a manhunt for Pablo Escobar—before his first surrender and after his escape. This is not to say that all pressure on the cocaine trade in Colombia ended in 1991—it did not. Even the imperfect cocaine production estimates show that considerable damage was done to trafficker activities, but the damage fell short of the magnitude of the 1989-1990 period and was hampered by protracted difficulties in initiating meaningful Peruvian anti-drug efforts.

The change in the character of drug use has changed the nature of the drug issue as a political priority. Not surprisingly, as drug use in general, and cocaine use in particular, decreased quickly throughout the vast majority of society, public concern about the “drug crisis” also declined. A series of polls jointly conducted by the New York Times and CBS News illustrates the magnitude of change in the level of public concern about the drug problem. The polls were conducted at various intervals during the Bush Administration and inquired, among other things, as to what the public considered the greatest threat facing the country. In January 1989, approximately 15 percent identified the drug problem as this country’s greatest threat. This number rose to over 50 percent in September 1989—the month President Bush released the first National Drug Control Strategy. It then declined almost continuously until January 1992, when approximately 6 percent of those surveyed named drugs as the greatest problem facing the country, almost equal to “the poor/homelessness” at the time. During the entire period of

57 See Almanac, NY Times A14 (Jan 27, 1992).
58 Robin Toner, The 41st President; Optimistic Mood Greets 41st President, NY Times A1, A12 (Jan 20, 1989).
January 1989 to January 1992, no other problem or issue recorded the level of concern registered for drugs in September 1989; for example, concern over Iraq and the situation in the Mideast during Desert Shield and Desert Storm never reached more than 20 percent in the same polls.60

The change in the political situation alone necessitates a review of drug control policy. As the preceding discussion makes clear, the current problem differs from the problem faced in January 1989. Unfortunately, intelligent discussion and analysis of the drug problem is even less common today than it was during the construction of the first National Drug Control Strategy. This lack of discourse makes meaningful national leadership particularly important now. The government must sustain prevention in an environment where drug use is no longer viewed as a grave and direct threat to all citizens. Treatment and supply-reduction activities must be sustained and made more cost-effective during a time when many other priorities compete for resources and presidential attention.

In one sense, the drug war is over: the drug crisis no longer threatens to sweep the nation. Crack will not become a problem for the vast majority of Americans. During the latter part of the 1980s and into the 1990s a social revolution occurred. The rarity of the 80 percent decline in cocaine use since 1985 becomes apparent when compared to other social problems—particularly problems affecting young Americans. Consider the potential public reaction to a reduction by 50 or 80 percent in the teenage pregnancy problem, the high school dropout rate, or the transmission of HIV.

IV. RACE AND THE COCAINE PROBLEM

The drug war is not really over, of course. Those at risk today are, to a great extent, the casualties of the time when cocaine use in particular was fashionable. The problem is much smaller. Currently, we fight the problem of heavy, frequent crack use among a steadily aging population of addicts. The drug problem is also more concentrated, and the available evidence indicates that it is increasingly prevalent in our central cities among black Americans.61

61 See charts below.
Once again, the available data allows us to construct an understanding of the problem that is far from precise. However, available data seems to indicate\(^6\) that in 1985, at the peak of cocaine use—when the NHSDA found an estimated 5.75 million current users—the racial distribution of cocaine users roughly approximated the racial composition of the population as a whole.\(^6\) Blacks were just slightly overrepresented, and whites and Hispanics were just slightly underrepresented.

**Chart 23**

By 1988, the estimated number of current users dropped to 2.9 million, but the racial disparities became pronounced. Among current cocaine users, whites were clearly underrepresented in terms of their portion of the general population, and blacks and Hispanics were both overrepresented (Hispanics to a greater degree than blacks).\(^6\) The overrepresentation of blacks, however, was most pronounced in the data capturing heavy users. The NHSDA found that, among frequent cocaine users,\(^6\) over a quarter were black. Furthermore, cocaine emergency room men-

\(^6\) ONDCP, Domestic Cocaine Situation (cited in note 54); OAS, Preliminary Estimates (cited in note 9); OAS, Estimates From the Drug Abuse Warning Network (cited in note 51). There is no data for frequent cocaine users by race reported for the 1985 National Household Survey on Drug Abuse (“NHSDA”), nor is there data on 1985 cocaine emergency room mentions by race in the DAWN reports that is consistent with later data sets. DAWN data is still under analysis, and this information might be available in the future.


\(^6\) See Hunt and Rhodes, Characteristics of Heavy Cocaine Users, table 2 at 6 (cited in note 39).

\(^6\) This is defined as use on a weekly basis during the past year. OAS, Preliminary Estimates at 12 (cited in note 9).
tions involved a higher percentage of blacks than whites. The overrepresentation of Hispanics found among the current cocaine users declined slightly in the frequent user NHSDA data and in emergency room mentions.

By 1991, the estimated number of current cocaine users dropped again, to just below 1.9 million; the overrepresentation of blacks among those users, however, became even more pronounced than in 1988, and the skewing increased in both the frequent cocaine user estimate and in cocaine emergency room mentions. In almost all categories of illegal drug use, whether measured by type of drug or frequency of use, the number of users has declined dramatically in recent years—and declined dramatically for users of all races. The declines, however, have not occurred at the same rate in different races. Additionally, heavy, addicted use of cocaine is the one serious exception to this trend.

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66 OAS, Estimates from the Drug Abuse Warning Network at 44 (cited in note 56).
67 Unfortunately, the latest available data from the NHSDA that contains reliable racial data on users is from 1991. See OAS, Preliminary Estimates at 26-27 (cited in note 9).
A brief review of the trends in cocaine emergency room cases offers perhaps the best available overview of the nature of the most serious remaining cocaine use problem.\textsuperscript{68} Cocaine addiction has been an increasing cause of cocaine emergency room cases.\textsuperscript{69} In this chart, and in those on cocaine emergency room cases that follow, the 1989-1991 cocaine supply disruption discussed above is visible, and the reader should note that the disruption reduced emergency room cases most among the portions of the population most overrepresented—in this instance, cocaine addicts.

\textbf{Chart 26}

\textbf{COCAINE EMERGENCY-ROOM CASES BY NATURE OF USE, 1988-1992}

\begin{itemize}
  \item Dependence
  \item Recreational Use
  \item Suicide
\end{itemize}

\textsuperscript{68} This data does not distinguish between cocaine and crack cases—crack is reported as cocaine.

\textsuperscript{69} OAS, \textit{Estimates From the Drug Abuse Warning Network} at 45 (cited in note 51).
The cocaine emergency room case reports also indicate a progressively aging, heavy-user population.\textsuperscript{70}

Cocaine users under 25 years of age comprise an ever-smaller portion of the total, while cases involving users 35 and over have almost doubled between 1988 and 1992 (21,634 versus 41,288).\textsuperscript{71}

As noted previously, the problem of heavy, addicted cocaine use increasingly concentrates itself in our central cities.\textsuperscript{72}

The DAWN reports include data on emergency room cases in twenty-one of the nation’s largest cities.\textsuperscript{73} These individual

\textsuperscript{70} Id.
\textsuperscript{71} Id.
\textsuperscript{72} Id.
\textsuperscript{73} See, for example, OAS, \textit{Estimates From the Drug Abuse Warning Network} at 33
reports reveal that the number of cocaine cases in each of the cities, although generally increasing, is not uniformly rising. The great majority of the twenty-one cities demonstrated increases in the number of cocaine emergency room cases in 1992 as compared to 1988, but in some cities the increases were very slight, such as in Denver (838 versus 832); in seven other cities—Dallas, Minneapolis-St. Paul, New Orleans, Newark, Phoenix, Seattle, and Washington, D.C.—a decline is reported. Most of these declines were small, both in the number of cases and in the percentage of total cases they represent, but Washington, D.C. represents a particular exception, with 8,478 cocaine-related mentions in 1988 and 4,236 in 1992. The cities reporting increases display a considerable variation in the magnitude of increase, from the very small (such as Denver, noted above) to the very large: the most extreme is Baltimore, with 1,994 mentions reported for 1988, and 8,078 for 1992.

Finally, the racial disparity in cocaine emergency room cases is pronounced and increasing. 

Chart 29

(cited in note 51) (for cocaine).
74 Id.
75 Id.
76 Id.
77 OAS, Estimates From the Drug Abuse Warning Network at 44 (cited in note 51).
The reader should note that an increase in the number of cases, or mentions, may not directly correspond to an increase in users. Because the cocaine emergency room cases involve an increasing percentage of older, addicted users, these individuals are likely to enter emergency rooms with greater frequency. In fact, cocaine mentions attributed to the "chronic effects" of drug use rose from 19,569 in 1988 to 23,407 in 1992, a 20 percent increase. We do not know the precise extent to which increased health problems and aging among the heavy cocaine user population are responsible for increases in the cocaine mentions. Therefore, several factors are used in combination with the DAWN data to produce the estimates of the number of heavy cocaine users. The best available data suggests that the heavy-user group stabilized, and probably even slightly declined in size, between 1988 and 1992. That evidence, compiled by NHSDA, DAWN, and Drug Use Forecasting ("DUF"), also indicates that blacks are probably a majority among the heavy users.

The crime associated with heavy cocaine use also reflects the racial disparity. As the research paper released by ONDCP in August 1993 states:

Heavy cocaine users are more involved in crime than abstainers due to economic motivations (they commit crime to obtain the resources to buy expensive drugs), the effects of the drug itself (they become disinhibited and commit crimes), or because of a life-style choice (they participate in both drug use and criminal activity). As to the latter, drug dealing is a natural outgrowth of heavy use because most heavy users will at some point stumble onto the opportunity to distribute a larger amount of drugs than they consume. Selling drugs helps them to maintain their own supply of drugs and provides supplementary income.

*Heavy cocaine use increases criminal activity, and that activity leads to higher rates of arrest and incarceration.* The ONDCP paper continues:

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78 Id at 14-16.
79 Id at 45.
80 See Hunt and Rhodes, *Characteristics of Heavy Cocaine Users* at 10-12 (cited in note 39).
81 Id at 10.
The 1991 NHSDA asked respondents if they had ever been arrested and booked for a crime and, if they had, how many times they had been arrested and booked during the 12 months before the interview. Half of the heavy users reported having been arrested or booked; only 8 percent of those who abstained from cocaine use had been arrested. Furthermore, 23 percent of the heavy users, compared with only 1 percent of those who abstained, reported being booked during the year before the interview.

NADR [the National AIDS Demonstration Research Project] respondents are also heavily involved in criminal activity. Eighty-one percent of the heavy users have been incarcerated at some point in their lives, and 30 percent have been in jail in the last six months. No data are available concerning the specific crimes committed by this group.

In the DUF sample, 52 percent of all robbery arrestees and 52 percent of all burglary arrestees test positive for cocaine, indicating recent use.  

Heavy cocaine use is associated with criminal activity outside that which is directly involved in drug trafficking and use. Both heavy cocaine use and serious crime have become concentrated in central cities, even as drug use and crime elsewhere have declined.

This brings us to the question of whether trends in law enforcement, and drug-related law enforcement in particular, are, if not racially unjust, simply ineffective or excessive. On this point, it is worth quoting John J. DiIulio, Jr. at some length. In his review of four books on the illegal drug problem, he discusses this issue in relation to books by Mathea Falco and Elliott Currie, both critical of law enforcement:

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82 Id.

83 Tonry argues that more minorities are arrested on drug charges because: (1) "it is easier to make arrests in socially disorganized neighborhoods," and (2) more arrests indicate greater "productivity and effectiveness," for both "individual officers and for departments." Tonry, 1994 U Chi Legal F at 52-53 (cited in note 1). This may all be true, but Tonry ignores two issues. First and foremost, where is the greatest concentration of criminal activity, particularly activity that is most harmful to the law-abiding community? Second, Tonry does not mention that most local law enforcement is driven by citizen complaints and calls to the police. Making arrests at open-air drug markets may be easier for police than making other kinds of arrests, but many times it is the repeated calls from neighbors in areas where such markets exist that virtually compel police action.

84 See generally Mathea Falco, The Making of a Drug-Free America: Programs that
[T]here is no factual basis for Falco's and Currie's confidence that law enforcement efforts have been all cost, no benefit. [James Q.] Wilson summarizes studies that found a reduction in heroin use among young blacks in Harlem: "Why did heroin lose its appeal for young people? When the young blacks in Harlem were asked why they stopped, more than half answered ‘trouble with the law’ or ‘high cost’ (and high cost is, of course, directly the result of law enforcement)."

In fact, it is not unreasonable to argue exactly the opposite of what Currie and Falco do, namely, that the problem with the "get tough" approach of the last twenty-five years is that it hasn’t actually been followed. Despite mandatory sentencing laws, most drug offenders and other felons continue to spend only a fraction of their sentences behind bars. In 1986 the median time served in confinement was fifteen months, the same as it was in 1976. In 1984 most felons served less than half of their time behind bars.65

Indeed, while imprisonment rates (the number of prisoners divided by the total U.S. population) have soared, what might be termed “punitive rates” (the number of prisoners divided by the number of crimes for which people may be sent to prison) most certainly have not. The number of commitments to state prisons for each 1,000 serious crimes was 163 in 1960, 100 in 1970, 134 in 1980 and 131 in 1989. Between 1975 and 1986 the number of days a criminal could expect to stay in prison was about one-fifth what it was in 1960. And in many states, the likelihood of a convicted felon being

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65 Dilulio, 53 New Republic at 55-56 (cited in note 1). During the symposium upon which this volume is based, a number of references were made to mandatory minimum sentences. Some of the participants alleged that these sentences were grossly unjust and applied frequently against nonviolent, first-time offenders. In light of the strength with which these opinions were expressed, it is worth noting that on November 26, 1993, The Washington Post reported that a review of such sentences initiated by Attorney General Janet Reno found justification for supporting “only tinkering that would reduce terms for less than 10 percent of the 38,000 inmates admitted each year to federal prisons.” Michael Isikoff, Reno Has Yet to Make Mark on Crime, Washington Post A1 (Nov 26, 1993). The Post story notes that the Clinton administration Department of Justice supported “a narrowly focused amendment, offered by Sen. Strom Thurmond (R-S.C.), that would enable judges to exempt first-time, nonviolent drug offenders from mandatory sentences.” Id at A11.
sentenced to prison has remained under 50 percent for all crimes except homicide.

The risks of going to prison for drug crimes may be especially low. Based on a survey conducted in Washington, D.C., [Peter] Reuter has calculated that a drug dealer who makes 1,000 transactions in the course of a year faces an imprisonment risk per transaction of only about 1 in 4,500—much lower than the risks associated with other crimes, such as burglary and robbery. A prisoner self-report survey in 1990 found that the average number of unpunished drug offenses committed each year by the typical prisoner ran into the hundreds. Perhaps this helps to explain why more than half of the prisoner-respondents agreed that experienced criminals “never seriously think about going straight.”

Thus the arrest and imprisonment binge of the 1980s can just as well be viewed as mild relief from a starvation diet that began in the 1960s and early 1970s. Currie’s and Falco’s notion that inner-city citizens would be better off with even less criminal justice action against the predatory street punks and drug gangsters in their midst borders on the fanciful.

When we step back from all the “get tough” and “get compassionate” rhetoric, it is remarkable that in America’s cities, open-air drug markets are a politically accepted fact of urban life. This reality translates into an acceptance of the principle that the rule of law, insisted on in our suburbs and almost everywhere else, is not expected to extend fully to inner-city neighborhoods. In most of our major cities, mayors and police chiefs do not confront sufficient public demand that they close the markets that are the obvious and open signs of victimization and serious crime. Moreover, when bringing security to our inner-city neighborhoods is discussed, the liberal segments of America’s “chattering class” still tend to refer to inner-city criminals as essentially victims of, rather than perpetrators of, injustice. This occurs despite the overwhelming evidence, which merely confirms common sense, that criminals, including violent criminals and crack dealers, commit the vast majority of their crimes where they live, victimizing their neighbors.

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86 DiIulio, 52 New Republic at 55-56 (cited in note 1).
87 See, for example, Tonry, 1994 U Chi Legal F at 52 (cited in note 1).
If we are going to address today's drug problem rationally, we must discard the liberal dogma that disadvantaged circumstances cause criminal behavior. We must also abandon the notion that the difference between the disadvantaged who engage in crime and those who are law abiding is of no particular importance for public policy. The NHSDA has conducted a special oversampling of six cities as a means of tracking illegal drug use in metropolitan areas. 

Chart 30

RATES OF DRUG USE IN SIX CITIES BY RACE

These findings remind us, once again, how small the drug using population has become, even in areas where it seems most concentrated. However, these findings also remind us that the vast majority of Americans do not use drugs, the vast majority of minority Americans do not use drugs, and the vast majority of black Americans living in our cities do not use drugs.

Aside from everything else, for Michael Tonry to argue that enforcing laws against drug trafficking is a racist attack on black Americans is, to my mind, simply bigoted. Nevertheless, it remains one of several forms of bigotry accepted by much of the intellectual and political world. That the University of Chicago Law School would publish such an utterly groundless and partisan attack is shameful.

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88 OAS, Preliminary Estimates at 20 (cited in note 9).