

CANNABIS &  
THE RISE OF  
THE CARCERAL  
STATE

# CRIMINALS

PART I:  
POLICING

PART I

**THE POLICING  
OF MARIJUANA  
PROHIBITION**

CRIMINAL INJUSTICE:  
CANNABIS & THE RISE OF  
THE CARCERAL STATE

BROUGHT TO YOU BY:  
THE LAST PRISONER PROJECT

COPYRIGHT © 2020 NATALIE PAPHILLION  
ALL RIGHTS RESERVED

# LAST PRISONER PROJECT



The Last Prisoner Project (LPP) is a nonprofit organization dedicated to cannabis criminal justice reform.

As the United States moves away from the criminalization of cannabis, giving rise to a major new industry, there remains the fundamental injustice inflicted upon those who have suffered under America's unjust policy of cannabis prohibition.

Through intervention, advocacy and awareness campaigns, the Last Prisoner Project works to redress the past and continuing harms of these unjust laws and policies.

To date, a key focus of LPP has been our direct service work to release currently incarcerated cannabis prisoners.

But our work cannot end there.

Now, more than ever, it is imperative that we seize on the opportunity to reform our justice system through cannabis-related policy solutions that work to end the vicious cycle of Americans being caught up in every aspect of the criminal legal system.

I am hopeful that this work will enable us to more effectively push for broad, systemic change so that we may see the day where the last cannabis prisoner walks free.



SARAH GERSTEN  
EXECUTIVE DIRECTOR,  
LAST PRISONER PROJECT

On July 28, 1973, President Richard Nixon signed Reorganization Plan No. 2 into law. The executive order established the United States Drug Enforcement Administration. A few months later, Larcenia Floyd gave birth in Fayetteville, North Carolina. She named the baby George.

On May 25, 2020, that baby—now a 46-year-old man—left this world. George Floyd died after a Minneapolis policeman kneeled on his neck for eight minutes and forty-six seconds. As Floyd suffocated on the sidewalk outside of a Cups Food, bystanders pleaded with the cop to stop. As a dying Floyd called out for his dead mother, another officer taunted the crowd. “This is why you don’t do drugs, kids,” he said to no one in particular.

A decade after Floyd’s birth, Philando Castile entered this world. On July 6, 2016—a few days shy of his thirty-third birthday—he was killed during a traffic stop. It was at least the fifty-third time the school cafeteria worker had been pulled over in recent years.<sup>1</sup> The encounter was live-streamed on Facebook; a four-year-old girl wails in the backseat as the Minneapolis police officer fires at least seven rounds into the car. The cop who killed Castile was acquitted after claiming his white Oldsmobile smelled of burnt marijuana, an odor that caused the officer to “fear for his life.”

Almost ten years to the day after Castile was born, Breonna Taylor made her first appearance on this Earth. Shortly after midnight on March 13, 2020, Taylor awoke to the sound of shouting and flash-bang grenades. The police officers that opened fire on her apartment claimed to be looking for Taylor’s ex-boyfriend, an alleged drug dealer who had been in police custody hours before the raid.

# FOREWARD

Less than five minutes after the battering ram breached her apartment door, the twenty-six-year-old was dead—shot at least eight times as she cowered in her bedroom. No drugs were found at Taylor’s home.

In life, George Floyd, Philando Castile, and Breonna Taylor—all born exactly ten years apart—had little in common.

But in death, their stories became inextricably linked. As the bullets ripped through their bodies or a knee stole their last breath, they became three more casualties of America’s five-decade-long War on Drugs.

Their tragic deaths are visceral reminders of the staggeringly high costs of this unjust, unyielding crusade. The prejudicial penal code and discriminatory policing practices of our country’s drug war have destroyed millions of lives, devastated countless communities, and exacerbated the gross inequities in American society.

And despite expending trillions of dollars on drug control efforts, the nation’s “public enemy number one” remains as impervious to these efforts as it did when we declared war some fifty years ago



**NATALIE PAPILLION**

AUTHOR, CRIMINAL INJUSTICE  
FOUNDER, THE EQUITY ORGANIZATION

# TABLE OF CONTENTS

## **7 INTRODUCTION**

PREFACE  
INTRODUCTION

## **11 THE POLITICS OF PROHIBITION**

IDEOLOGICAL UNDERPINNINGS  
EARLY ENFORCEMENT EFFORTS

## **24 THE POLICING OF PROHIBITION**

PHILOSOPHICAL & PROCEDURAL IMPERATIVES  
THE 1990s & THE NEW MARIJUANA MENACE  
THE COLLATERAL CONSEQUENCES OF CANNABIS POLICING

## **45 THE PERVERSE INCENTIVES OF PROHIBITION**

DRUG WAR RHETORIC & REVENUE  
DOLLARS FOR DRUG ENFORCEMENT  
THE RISE OF THE WEED WARRIOR

## **64 CONCLUSION**

CONCLUSION  
ACKNOWLEDGEMENTS  
NOTES & REFERENCES

# INTRODUCTION

## PREFACE

In recent years, America has borne witness to a seismic shift in the public's view of our criminal justice system.

To the public's credit, people across the country have finally started to come around to the fact that the nation cannot continue to afford the social, spiritual, and financial costs of locking up over 2.3 million people in 1,833 state prisons, 110 federal prisons, 1,772 juvenile correctional facilities, 3,134 local jails, 218 immigration detention facilities, and 80 Indian Country jails.<sup>3</sup> The staggering human and economic costs of this "carceral state" have catalyzed a groundswell of public and political support for criminal justice-related reforms.

Despite rising support for criminal justice reform, policymakers and the general public have yet to seriously

broach the dismantling of the drug war. This despite the fact that one of every five people behind bars in the U.S is there due to a drug charge.<sup>4</sup>

This general apathy has held steady even as protesters overtake American streets demanding our policymakers dismantle, defund, or otherwise reform the police. Drug-related enforcement is one, if not *the*, biggest drivers of police harassment, misconduct, and violence in America. And yet, drug policy rarely comes up in conversations around police reform.

As the country finds itself on the precipice of meaningful change, we must ensure we're pushing to dismantle this ineffective crusade. Drug policy reform is criminal justice reform. It is policing reform. It is a critical piece of the work we must do to ensure a safer, more just, and more equitable society.



## INTRODUCTION

Given that everyone from Martha Stewart to John Boehner seems to be hawking a marijuana line these days, one could be forgiven for thinking the country has retreated from its century-long War on Weed. Sadly, the conflict's still very much on.

For decades, the policing of our cannabis laws has served as the backbone of our unjust, unyielding, and ineffective anti-drug crusade. It's not hyperbolic to suggest that no element of our modern-day drug control efforts has proven to be more devastating than our national policy of marijuana prohibition.

Though presidents may no longer take to the podium to declare marijuana the most dangerous drug in America, the policing of marijuana prohibition has played a critical—if understudied—role in fueling the over-policing of underserved communities, the tragedy of mass incarceration, and countless other social injustices and racial inequities.<sup>5</sup>

Every year, the enforcement of our country's cannabis laws subjects millions of people to unnecessary and often dangerous encounters with law enforcement authorities. As headline after headline sadly illustrates, these

stops all-too-frequently escalate into harassment, unjust incarceration, and even more devastating forms of state-sanctioned violence.

This burden is not equally shared by all. Although white people are just as likely to consume marijuana as their non-white peers, Black and Latinx communities bear the overwhelming brunt of cannabis-related enforcement and the harassment and police brutality it entails.

These racial disparities are not an unfortunate consequence of American policing practices. They're by design. The criminalization of cannabis was born out of an explicit desire to maintain social control over America's communities of color. And this policy hasn't just fulfilled its function— it's been more successful than its founders could have dreamed.

The *Criminal Injustice* series takes a comprehensive look at the past century of cannabis-related policies and practices and attempts to quantify the impact prohibition has had on the creation, expansion, and evolution of America's carceral state. Each of the installments of *Criminal Injustice* focuses on a different element of the criminal justice system: policing, courts and incarceration, and the collateral consequences of a

conviction.

The first installation of *Criminal Injustice* centers on “police work”: the philosophy, policies, and practices that constitute the “front door” of the carceral state. Because the police are almost always the first point of contact between an individual and the justice system, (or the “coercive power of the state and the lives of its citizens”) the priorities, tactics, and motivations of law enforcement agencies have played a tremendously important role in the growth and evolution of America’s marijuana enforcement efforts.

Despite what many would have us believe, marijuana is not a gateway drug. At least not in the sense most people imagine. It is, however, a gateway drug for Black and brown people: a gateway to arrests, incarceration, and all too often death at the hands of the state. As this paper illustrates, our ineffective and unjust policy of marijuana prohibition doesn’t just fail to live up to the American values of liberty, opportunity, and equal justice under the law. It actively undermines them.

# THE POLITICS OF PROHIBITION

THE POLITICS OF PROHIBITION

# IDEOLOGICAL UNDERPININGS

“Crime, violence, and drug use  
go hand-in-hand.”

— U.S DRUG ENFORCEMENT ADMINISTRATION

## DRUG USE AND THE AMERICAN IMAGINATION

“Drug use, crime, and violence go hand-in-hand.”<sup>1</sup>

— U.S Drug Enforcement Administration

A simplistic reading of the War on Drugs presumes that the primary goal of America’s five-decade-long crusade has been curbing drug consumption. By this measure, the country’s prohibitionist model—and the “punitive paradigm” upon which the conflict rests—has proven to be spectacularly ineffective.<sup>2</sup> Five decades and trillions of dollars later, and the drug war has done virtually nothing to curb the use or availability of controlled substances.

Yet, despite overwhelming evidence of its failure, the War on Drugs wages on. To grasp the persistence of this five-decade-long crusade, one must first look to the ideological forces underpinning America’s contemporary drug control strategy.

Like other social movements, the reality of the United States’ anti-drug efforts is more complicated than the mythology suggests. From the onset, America’s drug control strategy had less to do with deterring substance use than it did with public disdain for

the “degenerate races”.<sup>3</sup>

For most of the country’s history, Americans were free to consume any substance they so desired.<sup>9</sup> However, the social conservatism of early twentieth-century America caused politicians and the general public to begin to consider the use of intoxicating substances both immoral and un-American.<sup>4</sup>

Events like the Mexican Revolution and World War I catapulted American chauvinism to new extremes, exacerbating existing public concern around the cultural, economic, and political influence of an influx of “dangerous aliens” and the country’s increasingly enfranchised African-Americans.<sup>5</sup>

This increasingly racist and xenophobic atmosphere compounded a sociopolitical context that already understood racial and ethnic minorities to be preternaturally prone to violence, licentiousness, and criminal behavior.

The association of “alien” substances like opium and marijuana with African-Americans and Mexican immigrants reinforced a long-held myth of racial difference, while simultaneously working to paint these “foreign” drugs as inherently

criminogenic.

In this nativist and moralistic milieu, Anglo-American lawmakers used drug control as a political cudgel—a way to scapegoat these “degenerate races” for economic inequities and broader social unrest.<sup>6,7</sup>

The fearful and bigoted motivations of the anti-narcotics movement ensured America’s drug control strategy would be more focused on the social control of its disfavored classes than the deterrence of problematic drug use.<sup>8</sup> They also guaranteed the policing of drug law violations would be predicated on heavy-handed enforcement, severe sanctions, and what would become the mass incarceration of Black and Latinx communities.

The country’s contemporary drug control efforts are the modern-day manifestation of this long, sordid history of using drug policy as an instrument of social control. And by this measure, the War on Drugs might be the most successful public policy in modern American history.

## CANNABIS IN THE PUBLIC CONSCIOUSNESS

“Leading medical researchers are coming to the conclusions that marijuana, pot, grass—whatever you want to call it—is probably the most dangerous drug in the United States.”<sup>9</sup>

— Ronald Reagan, President of the United States of America 1981–1989

Drug policy, like other hot-button issues, has complicated political, emotional, social, scientific, religious, and legal dimensions. Politicians and public figures have taken advantage of this complexity to imbue intoxicating substances with meanings that stretch far beyond their pharmacological effects.<sup>10</sup> The discourse around drug use cannot be divorced from the socio-political environment in which it occurs.

The intrinsic properties of marijuana make it particularly vulnerable to this politicization. Because the plant itself is physiologically quite benign, it has served as an empty vessel: a stand-in for whatever anxieties and animus society needed it to hold. This phenomenon explains why the country has seen marijuana evolve from household medicine to “Mexican

menace" to "the most dangerous drug in America" over the past century.<sup>11 12</sup>

While the demonization of cannabis has ebbed and flowed over the years, one element has remained consistent throughout. In both its inception and enforcement, America's policy of marijuana prohibition has disproportionately harmed its communities of color.

## **THE MEXICAN MARIJUANA MENACE**

**"It has been estimated that as many as one-half the violent crimes committed in certain districts inhabited by Mexicans, Filipinos, Latin Americans, Spaniards and Negroes are attributed to marihuana abuse. The emotional temperament of these races appears to become completely unbalanced by the use of this drug."<sup>13</sup>**

— Presented by Harry J. Anslinger  
Director, Federal Bureau of Narcotics  
Congressional Hearings on the 1937  
Marihuana Tax Act

For most of the nineteenth century, Anglo-Americans were generally unfamiliar with "marijuana" and its social and spiritual uses. The average middle-class white American called

the plant cannabis and knew it to be an easily-accessible remedy for headaches and menstrual cramps. Following an influx of Mexican immigration into the American Southwest, the public's awareness around the Mexican "killer weed" called marijuana began to grow slightly. Still, its use was largely limited to Mexican immigrants, Black entertainers, and other "undesirable" elements of American society.<sup>14</sup>

But at the turn of the twentieth century, a tightening labor market, an increasingly moralistic mood, and rapid demographic changes brought about a broad social unease: many feared that internal foreign threats (namely, the inherent immorality of immigrants and non-white Americans) would soon cause the country's collapse.<sup>15</sup>

The powers-that-were exploited this fearful and bigoted social climate. In public addresses, politicians took great pains to link the marijuana use of Mexican immigrants and the 'Black urban underclass' to insanity, miscegenation, and other 'socially deviant' behaviors. Public authorities harped on the violence-inducing qualities of the plant and used ethnic slurs and offensive characterization to warn white citizens that this "weed with roots in hell" would soon find its

way into their homes and communities.<sup>16 17 18</sup> Special attention was paid to the predacious pushers said to be smuggling the drug in the shadow of American schoolhouses.<sup>19</sup>

Federal bureaucrats conspired with yellow journalists and anti-vice crusaders to publish sensationalist stories fingering marijuana as the root cause of a series of brutal robberies, rapes, and murders. Government agencies suppressed reputable scientific studies on the substance, replacing them with exaggerated and full-on fabricated findings.<sup>20</sup> Authorities made sure to exploit existing racial animus by stressing that these cannabis-induced crimes were almost exclusively committed by racial and ethnic minorities.<sup>21</sup>

A good deal of the false information peddled about marijuana's criminogenic properties was directly generated by law enforcement officials. In 1931, The American Journal of Police Science published "Marihuana as a Developer of Criminals", an article by New Orleans Defense Attorney Eugene Stanley that claimed marijuana consumption "sweeps away all restraint", exacerbates "a tendency to wilful damage and violence," and "may be attributed to many of our present-day crimes."<sup>22</sup> By using propaganda to

portray marijuana as the violence-provoking, values elixir of the "degenerate races", the Federal Bureau of Narcotics successfully shifted the public's view of cannabis from household medicine to "marihuana menace".<sup>23 24</sup>

By painting its use as a weapon wielded by "deviants", hell-bent on destroying (white, Anglo-American) lives and values, Federal Bureau of Narcotics Commissioner Harry Anslinger and his co-conspirators framed their anti-cannabis crusading as nothing less than a battle for the soul of the Republic.

In the mid-1930s, Anslinger's Federal Bureau of Narcotics began to rally policymakers around the need for a federal marijuana ban. The Bureau's race-drugs-crime framing was extraordinarily effective, ensuring easy passage of 1937's Marihuana Tax Act, which made cannabis de facto illegal.<sup>25</sup>

During Congressional hearings, the reams of scientific evidence rebutting the Bureau's official position was downplayed or purposely omitted.<sup>26</sup> Medical experts and policymakers who spoke out against the FBN's efforts were ignored or publicly disparaged.<sup>27 28 29</sup> And though it was discredited at both its onset and into



today—the myth of the ‘marihuana menace’ and the saliency of the campaign’s racist overtones ensured marijuana would always be the subject of criminal law, its users subject to heavy-handed (and racially biased) policing and severe criminal

### **HARRY J. ANSLINGER & THE FEDERAL BUREAU OF NARCOTICS**

*Efforts to control cannabis began to take shape in the early twentieth century. They were helmed by the United States Federal Bureau of Narcotics, under the domineering direction of its founding Commissioner—Harry J. Anslinger.<sup>30</sup>*

*In a 1934 report to the League of Nations, Anslinger wrote that "fifty percent of the violent crimes committed in districts occupied by Mexicans, Turks, Filipinos, Greeks, Spaniards, Latin-Americans and Negroes may be traced to the abuse of marihuana." In the same document, he quoted a California police official who said marihuana "gives men the lust to kill, unreasonably, without motive—for the sheer sake of murder itself."<sup>31 32</sup>*

*Three years later, Anslinger warned the readers of The American Magazine that marijuana users "may often develop a delirious rage during which they are temporarily and violently insane," resulting in "a desire for self-destruction or a persecution complex to be satisfied only by the commission of some heinous crime." In the article, which was published the same year as The Marihuana Tax Act, Anslinger blamed the substance for a rash of armed robberies, "degenerate sex attacks," the random killing of an elderly bootblack, cold-blooded murders of police officers, and a rampage in which a young man hacked his entire family to death with an ax.<sup>33</sup>*

sanctions. This approach would come to define American cannabis control, and the country’s broader counternarcotics strategy, for decades.

*"How many murders, suicides, robberies, criminal assaults, holdups, burglaries, and deeds of maniacal insanity it causes each year," Anslinger wrote, "can be only conjectured." He asserted that "there must be constant enforcement and equally constant education against this enemy, which has a record of murder and terror running through the centuries."<sup>34 35</sup>*

*During the Congressional hearings leading up to the passage of the 1937 Marihuana Tax Act, FBN representatives claimed that the drug "frequently leads to insanity," resulting in "revolting crimes."<sup>36</sup> Anslinger himself testified that marijuana "is dangerous to the mind and body, and particularly dangerous to the criminal type because it releases all of the inhibitions". He went on to assert "in some cases "one [marijuana] cigarette might develop a homicidal mania" and "all the experts agree that continued use leads to insanity."*

THE POLITICS OF PROHIBITION

# EARLY ENFORCEMENT EFFORTS

"There must be constant enforcement and equally constant education against this enemy, which has a record of murder and terror running through the centuries."

— Harry J. Anslinger  
Founding Commissioner  
Federal Bureau of Narcotics

## THE EBB & FLOW OF MARIJUANA ENFORCEMENT

“When I started in law enforcement the general opinion, particularly in the white middle-class community was, “Marijuana? Send them to jail”. Because they're probably black or Chicano to begin with. It wasn't something that affected us.”<sup>37</sup>

— Steve White,  
Former DEA Official

When one dives into the history of marijuana prohibition, it's clear that the enforcement of America's cannabis laws has little correlation with its consumption patterns.

By the middle of the twentieth century, Anslinger's campaign had successfully induced a nationwide anti-cannabis fervor. In the face of mounting evidence that marijuana tended to inspire passivity, not violence, the media continued to exploit American racial attitudes by characterizing the drug as a “breeder of crime” whose use inevitably led to the “destruction of moral standards”.<sup>38</sup>

39

By 1950, every U.S state had enacted (or enhanced existing) criminal laws against marijuana use.<sup>40</sup>

The McCarthy era saw Congress enact the first official federal criminal sanctions for marijuana possession. The 1951 Boggs Act introduced the country's first mandatory minimum for marijuana possession. Those caught with cannabis for the first time became subject to two years in jail and a fine of up to \$20,000 (around \$200,000 today).<sup>41</sup> The Narcotics Control Act of 1956 increased the mandatory minimums for marijuana traffickers to five-years for a first offense (and 10-years for all subsequent violations). A few years later, the death penalty was proposed.<sup>42</sup>

State-level statutes were oftentimes even more severe.<sup>43</sup> Many states passed “little Boggs Acts” that included marijuana possession penalties even tougher than those demanded by federal law.<sup>44</sup> In Virginia—a state whose colonial government had compelled residents to cultivate the plant as early as 1619—marijuana violations were the most severely sanctioned crimes in the penal code. A cannabis possession conviction netted someone a twenty-year mandatory minimum; a first-degree murder

conviction would only get them fifteen.<sup>45</sup>

These increasingly punitive penalties did little to curb 'mainstream' America's newfound penchant for cannabis use. Consumption rates skyrocketed amongst young people emboldened by the social and cultural changes of the 1960s.<sup>46</sup> But while the drug's soaring popularity amongst suburbanites worked to lessen the social stigma around its use, this shift in public opinion didn't extend to U.S. police precincts.<sup>47</sup> Between 1965 and 1970, the number of state-level marijuana arrests rose nearly ten-fold.<sup>48</sup> Enforcement increased exponentially following the 1970 passage of the Comprehensive Drug Abuse Prevention and Control Act.<sup>49</sup> Three years after it was signed into law, annual cannabis arrests had climbed to over 420,000.<sup>50</sup>

The rising crime rates of the late 1970s—and the "crack epidemic" of the mid-80s would work to draw authorities' attention away from cannabis, albeit briefly.<sup>51</sup> Unfortunately, this 'weed reprieve' was short-lived.

Starting in the late 1980s, law enforcement agencies would once again begin to allocate the majority of their drug enforcement resources to

the policing of marijuana prohibition.<sup>52</sup>  
<sup>53</sup> This strategic shift was driven by three factors:

- ❖ **The persistence of America's zero-tolerance approach to illicit drug use.** Though American crack use had cratered, drug war rhetoric (and dollars) failed to follow suit. The political imperatives of the country's counternarcotics efforts continued to demand the heavy-handed policing of drug law violations. Under pressure to justify their ballooning budgets, law enforcement agencies had little choice but to continue the crusade. Only they were in desperate need of a new controlled substance to crack down on; crack had all but disappeared off of the nation's streets.
- ❖ **Changing criminal landscape and the advent of 'quantified policing'.** In the 1980s, the country's police departments were forced to battle an uptick in serious crime. Given these procedural demands, the limited resources of the country's law enforcement agencies were allocated to the policing of more serious crime. Around the turn of the century, violent crime rates plummeted, and police departments were able to redirect their resources to the proactive policing of low-level violations. As these efforts gained steam, people of color were increasingly subjected to an oftentimes aggressive police presence in their neighborhoods. The enhanced enforcement of petty offenses like marijuana possession became both politically and procedurally advantageous.

- ❖ **An uptick in adolescent marijuana use and the cultural saliency of the “super-predator”.** A shockingly racist characterization of juvenile delinquency sowed public fears of an imminent rise in serious crime. Public discourse (and bipartisan propaganda) warned the country that these “superpredators” would soon take over American streets. Policymakers (and their constituents) called for a preemptive strike on inner-city youth.<sup>82</sup> Authorities exploited an uptick in teen marijuana use to once again inflame public concern around cannabis; statistics would be distorted to justify the increasingly oppressive policing of the country’s young men of color.<sup>83</sup>

## “A TIFFANY DRUG AT WOOLWORTH PRICES”

f

“The inner-city crack epidemic is now giving birth to the newest horror: a bio-underclass... whose biological inferiority is stamped at birth.”<sup>54 55</sup>

— Charles Krauthammer  
Columnist, *The Washington Post*

In the fall of 1985, the writer Barry Michael Cooper phoned an editor at SPIN Magazine to pitch a story about a “new, cheap, readily accessible drug circulating the ghetto.”<sup>56</sup> The substance in question was called crack, Cooper claimed, as he stressed

to his editor that “no one outside of Harlem has even heard of it”. “Crack, a Tiffany Drug at Woolworth Prices,” the first major magazine piece about the substance, describes the crack trade thusly.

“Is this a jungle? The young lions are dressed in black nylon T-shirts and black Lee carpenter jeans rolled at bare ankles to showcase shiny black Bally loafers. Sinewy arms folded across their chests laden with gold medallions, a silent roar creasing their lips in the guise of a sneer, the young lions usher their prey in and out of video parlors and misty hallways.”<sup>57</sup>

A media frenzy (and a moral panic) quickly ensued.<sup>58</sup>

In this new, crack-addled milieu, Cooper’s characterization of Black teens as predatory animals—a trope that would be repeated in other high-profile crime stories of the era—was quite nuanced, given what was to come.<sup>59 60 61</sup>

In a matter of months, the public and political reaction to the “crack epidemic” would become so hysterical that even the Drug Enforcement Administration would try to correct the record. “Crack is currently the subject of considerable media

attention," the agency wrote in September of 1986. "The result has been a distortion of the public perception of the extent of crack use as compared to the use of other drugs."<sup>62</sup>

To its credit, the article that introduced this "supercharged version of cocaine" to mainstream America did successfully convey the chaos and turbulence of its commerce. It neglected to mention, however, that American crack use was already in decline.<sup>63</sup> Despite the ink spilled around the inevitability of an epidemic crack use never came close to reaching pandemic-level proportions.<sup>64</sup> The number of crack users began to fall mere months after the Center for Disease Control began to report on them. Before the decade was over, the substance would all but disappear from American streets.<sup>65</sup>

Unfortunately, by the time a retraction was issued, it was too late. Crack had already successfully driven policymakers and the American public into what can best be described as a drug-induced hysteria.<sup>66</sup>

The crack epidemic fueled the development of what presidential speechwriter William Safire would later coin the "discourse of drug dudgeon".<sup>67</sup> The decade's wartime

rhetoric drove the severe criminal sanctions that would come to define America's drug war.

In 1986, Congress passed the Anti-Drug Abuse Act. The bill demanded more drug offenders go to prison, and stay there longer.<sup>6869</sup> New penalties for drug possession kicked off at a mandatory ten years in prison. In many states, they escalated to capital punishment.<sup>70</sup> Many of these statutes remain on the books today.<sup>71</sup>

Dr. Jonathan Caulkins, a Carnegie Mellon professor, has explained the zeal for the decade's draconian drug punishments thusly.<sup>55</sup> "We misread a lot of what was going on in the 1980s, in that we thought crack use was going to grow and take over society. The real tragedy is that, now that it's clear that crack was not the epidemic it was supposed to be, we still have these laws".<sup>72</sup>

However well-intentioned, Caulkin's lamentation fails to acknowledge the reason why the response to the crack epidemic—and drug use more generally—is so punitive.<sup>73</sup> Then, like now, these draconian drug penalties are almost exclusively imposed on Black and brown people.<sup>74</sup>

The results of the 'crack offensive' were as dramatic as they were

disproportionate.<sup>75</sup> Three years after the New York Times reported that “a new purified form of cocaine was causing alarm,” prison admissions for Black Americans had quadrupled.<sup>76 77</sup> In the five years following the Anti-Drug Abuse Act, the proportion of African-Americans in state prisons grew from 7 to 25 percent. The growth was even more dramatic at the federal level.<sup>78</sup>

And while the pernicious influence of racism pervades almost every aspect of the criminal justice system (and American society more broadly), the disparities in African-American arrests and incarceration rates are higher for drug offenses than for other types of crime.<sup>64</sup> Despite the fact that there is virtually no difference in drug consumption rates amongst different races, starting in the 1980s—and continuing into today—Black Americans are arrested on drug charges at rates 2.8 to 5.5 times higher than their white peers.<sup>79</sup> The disproportionate enforcement of drug law violations bolsters Michelle Alexander’s—the author of *The New Jim Crow*—argument that America’s drug war has been more focused on “the management and control of the

dispossessed” than public health or safety concerns.<sup>80 81</sup>

The Reagan-era did little to stem the flow of drugs in urban communities or address the health-related harms of substance misuse. It did, however, drive the mass incarceration that has worked to disappear millions of residents, hollowing out whole cities and demoralizing multiple generations.

As famed criminologist Michael Tonry noted *Malign Neglect*, his 1994 study of the drug war’s racial disparities, “the 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”.<sup>82</sup>

This is why in many Black and brown neighborhoods, the legacy of crack is not violence or addiction. Rather, it is the political alienation and economic despair caused by the wholesale and indiscriminate criminalization of entire communities.

# THE POLICING OF PROHIBITION



THE POLICING OF PROHIBITION

# PHILOSOPHICAL & PROCEDURAL IMPERATIVES

"A strong, commendable desire to see that people are treated fairly makes us worry about allowing the police to rout persons who are undesirable by some vague or parochial standard. Arresting a single drunk or a single vagrant who has harmed no identifiable person seems unjust, and in a sense it is."

— George Kelling and James Q. Wilson  
Authors, "Broken Windows"

## **“A BUSINESS APPROACH TO CRIME REDUCTION”**

"From the point of view of halting illicit drug traffic, simple possession is the least meaningful enforcement tool in terms of agent time, court time, and the Bureau's overall mission".<sup>11</sup>

— Michael Sonnenreich  
Co-Creator of the Controlled Substance Act

Beginning in the 1980s, politicians started to turn to the professional organizations of law enforcement agents when they needed to burnish their “tough on crime” credentials. Elected officials began to seek endorsements and solicit strategic advice from police unions and prosecutors associations. This conferment of political legitimacy, especially when coupled with the drug war’s influx of law enforcement funding, bolstered the credibility and influence of police unions and similar professional organizations.

These newly credentialed associations began to act like any other special interest group.<sup>2</sup> Their advocacy has worked to subvert the public’s desire for a culling of counter-narcotics efforts.<sup>3</sup> Law enforcement actors have professional and parochial interests in

the perpetuation of the drug war; their lobbying efforts have made it all but impossible for elected officials to advance a less punitive approach to narcotics control.<sup>45</sup>

The introduction of CompStat and similar “quantified policing” programs brought about another paradigm shift in American policing.<sup>6</sup> In the 1990s, the country’s “drugs on the table” style of narcotics enforcement would be displaced by computer programs that used comparative statistics to assess law enforcement activity.<sup>7</sup>

Policymakers began to evaluate a police department’s performance by the number of criminal apprehensions its officers made. Chiefs, under tremendous pressure to put big numbers up on the board, turned to an increasingly proactive policing strategy. Precinct leaders dramatically expanded their departments’ street-level efforts; patrol officers were instructed to engage in as many public encounters as possible. Law enforcement agents began to arrest more and more people for even the lowest-level criminal infractions.<sup>8</sup>

For cops looking to make ballooning arrest quotas, targeting people for low-level drug violations was a low-hanging fruit. The aggressive policing of marijuana offenses was an

easy way for cops to make rank, and maintain the federal funding upon which their bloated budgets had come to depend.

## THE DYNAMICS OF THE MARIJUANA MARKETPLACE

“To many law enforcement professionals and commentators, the idea that one would invest the enormous amount of time and effort that continuing street-level enforcement requires for nothing more than increased inconvenience to buyers and sellers of drugs seems absurd.”<sup>9</sup>

— U.S Department of Justice

Since its inception, America’s drug control efforts have focused on the supply side of the market.<sup>10</sup> This approach is premised on a simple theory: by concentrating resources on restricting the growth, manufacture, and distribution of controlled substances (via severe penalties for use and production), law enforcement agencies will force prices up, and consumption down.

And yet—five decades and billions of dollars later—the country’s cannabis consumption has remained unaffected.<sup>11</sup> Marijuana remains the most commonly used illicit drug in the United States.<sup>12</sup> The dynamics of the modern marijuana marketplace is a case study on the way enhanced drug enforcement activity can have an oppositional impact on the price and availability of a controlled substance.

Law enforcement agencies are already at a disadvantage when policing drug use. Drug law violations, unlike their violent counterparts, tend to be “victimless” crimes lacking (cooperative) witnesses. By its very nature, counternarcotics activity requires a problem-oriented policing approach.

The unique dynamics of cannabis commerce compound these obstacles. To avoid legal repercussions, the marijuana market has evolved to rely on small transactions conducted by a large volume of sellers within a highly-private social network. Law enforcement agencies quickly realized that the policing tactics developed to patrol heroin or cocaine use (sweeps, buy-busts, observation sales, etc.) were ineffective during the conflict’s cannabis crusade.<sup>13</sup>

And so the penology that emerged out of the 1990s 'marijuana offensive' was predicated on the expansion and escalation of increasingly proactive policing tactics.<sup>14</sup>

## **THE ADVENT OF 'BROKEN WINDOWS'**

"A strong, commendable desire to see that people are treated fairly makes us worry about allowing the police to rout persons who are undesirable by some vague or parochial standard. Arresting a single drunk or a single vagrant who has harmed no identifiable person seems unjust, and in a sense it is."<sup>15</sup>

— George Kelling and James Q. Wilson  
Authors of *Broken Windows* (1982)

Beginning in the 1970s, violent crime rates began to rise sharply.<sup>16</sup> As frightened constituents pressed politicians to curb crime, law enforcement officials turned to a

## **ORDER MAINTENANCE:**

"Instead of a War on Poverty, they got a War on Drugs. So the police can bother me."<sup>25</sup>

quality-of-life, also known as a broken windows, policing philosophy.<sup>17</sup> The "success" of this proactive strategy pivoted on law enforcements' ability to stop large swaths of the population for petty offenses like marijuana possession.

Then, starting in the 1990s, American communities began to enjoy the lowest crime rates they'd seen since the 1970s. Despite this low-crime reality, influential public figures like NYC Mayor Rudy Giuliani championed an (even more) aggressive drug enforcement action under the banner of 'continuing crime deterrence'. A similar strategy played out in stationhouses across the country.<sup>18</sup>

Quality-of-life (also called order maintenance) policing flooded the country's communities of color with foot patrols.<sup>19</sup> As these swelling ranks of street cops ramped up the enforcement of low-level drug violations, they doubled-down on the use of stop-and-frisk, reverse stings, and other constitutionally-questionable tactics.<sup>20</sup>

— Tupac Shakur  
*Changes* (1992)

The broken windows philosophy demands police officers come down hard on any infraction they come across, regardless of how unserious it

may seem.

Given crime rates were at some of their lowest points in recorded history, many questioned the utility of the nineties increasingly severe sanctions. But police chiefs—their resolve buoyed by a surge in federal counternarcotics funds—didn't break rank. Law enforcement officials continued to argue that harsh punishment for petty offenses would deter people from committing more serious crimes.

By the late 1990s, stop-and-frisk (and similar police-initiated encounters) had become the tactical engine of America's drug enforcement apparatus. Police chiefs deployed tens of thousands of officers onto the streets of American cities for the sole purpose of making as many of these (constitutionally-questionable) searches and seizures as they could.

Law enforcement's legislative counterparts took this "punish-to-deter" approach to the next level. By their reading, it wasn't enough to make sanctions for low-level drug possession more certain; they'd also need to be more severe. And so the 1990s' and early 2000s' proliferation of (racially biased) pretextual stops dovetailed with increasingly harsh punishments

(longer prison terms, fewer opportunities for probation, enhanced collateral consequences, etc.) for low-level marijuana infractions.

### **STOP-AND-FRISK:**

*Criminologists often call stop-and-frisks (and other pretextual stops, searches, and seizures) Terry stops, after the 1968 court case that validated their legality; laying the groundwork for their deployment on America's streets and highways.*

*Before the Supreme Court's landmark Terry v. Ohio decision, the Fourth Amendment's prohibition on unreasonable searches and seizures limited law enforcement officials' ability to search suspects without probable cause. Post-Terry, the investigatory standard was lowered to "reasonable suspicion". The ruling stipulated that a law enforcement officer was legally entitled to search (aka frisk) a pedestrian or motorist during a stop if they had 'reasonable suspicion' that the suspect in question was connected to criminal activity and/or posed a danger to the officer or the general public.*

*Subsequent court cases expanded upon what exactly constitutes reasonable suspicion. Today, a police officer's observations, tips from informants, and other factors (i.e. an individual's appearance and behavior) can all serve as "reasonable suspicion." Court decisions made under the specter of the drug war also empowers officers to use any drugs found during these stop-and-frisks as evidence in criminal proceedings.*

*Terry v. Ohio granted the police a very powerful weapon in their quest to crack down on low-level drug violations. Nowhere was this trend more pronounced than in New York City. Stop-and-frisk was introduced in the mid-1990s, grew during the early 2000s, and rapidly increased starting in 2006—when there were 500,000 stops in New York City alone.<sup>21</sup> During Michael Bloomberg's twelve-year term as mayor,*

*NYPD officers stopped and frisked roughly five million people. The city's residents of color were subjected to these invasive encounters at rates that hovered around 9X those of their white peers.*

*As the use of these random, arbitrary stops grew, evidence of their racial bias mounted. In 1999, the Attorney General of New York conducted a study of the 175,000 (recorded) pedestrian stops the NYPD made from 1998-1999. The report found that 50% of people stopped were Black, despite making up a quarter of the city's population. This community profiling was not just discriminatory, it was also ineffective. The NYPD had to stop 9.5 Black residents to yield an arrest, whereas they only had to detain 7.9 white residents for the same outcome.<sup>22</sup>*

*In 2011—the height of New York's stop-and-frisk strategy—the NYPD made nearly 700,000 (recorded) stops. 87% of those stopped were Black or Latinx, the 'suspects' overwhelmingly young men under 30. Nearly 90 percent of those stopped were found to be innocent of any wrongdoing. In fact, a 2009 analysis found that once stopped, people of color were no more likely than white detainees to be arrested.<sup>23</sup>*

*Despite overwhelming evidence of its ineffectiveness and racial bias, Mayor Bloomberg defended stop-and-frisk policies throughout his tenure, even going so far as to claim that the city's police department "disproportionately stopped whites too much and minorities too little".<sup>24</sup>*

THE POLICING OF PROHIBITION

# THE 1990S & THE NEW MARIJUANA MENACE

"Marijuana is probably the  
most dangerous drug in the  
United States today."

— Ronald Reagan  
President of the United States of America  
January 1981 - January 1989

## BLUNT CULTURE & TEEN USE AT THE TURN OF THE CENTURY

“Marijuana really was not seen as a serious public health problem--then, or today... there was an effort to imply that marijuana was a public health problem, to justify the tough measures taken against those who experimented with it. But it was really a very phony effort. It was policymakers trying to hide behind the skirts of science, trying to say that marijuana poses a threat to the health of young people.”<sup>26</sup>

— Dr. Peter Bourne  
U.S “Drug Czar” (Special Assistant to the  
President for Health Issues)  
Carter  
Administration

The end of the crack epidemic was met by cratering crime rates and a public fatigued by—if not downright suspicious of—claims that a drug war victory was around the corner. But whereas the novelty of crack easily aroused a public panic, Americans were growing tired of being lectured about the wickedness of weed.

With Americans less and less

concerned by adult cannabis use, officials turned to a new boogeyman: a slight rise in teenage cannabis consumption. Citing the spike, authorities implied that a new drug epidemic—the modern version of the 1930s ‘marijuana menace’—was imminent.<sup>27</sup> A public frenzy (its tone and tenor barely discernible from the crack-induced hysteria of the preceding decade) quickly ensued.

Authorities justified this new ‘marijuana crusade’ by exploiting an almost primordial American connection between race and crime.<sup>28</sup> A Justice Department memo laid out, in nakedly uncoded terms, the racialized underpinnings of this insidious approach. “Marijuana has replaced crack cocaine as the drug of choice among youthful adult arrestees,” the DOJ wrote. The memo went on to suggest that America’s increase in teen cannabis use could be attributed to the “youthful, inner-city, predominately black hip-hop movement.”<sup>29</sup>

In alluding to the threat of Black, marijuana-smoking juvenile delinquents, officials were capitalizing on contemporary anxieties around African-American adolescents.<sup>30 31 32</sup> The irony of it all was while teen marijuana use had indeed risen, Black teens and their hip-hop inflected



'blunt culture' weren't to blame.<sup>33 34</sup> Arrest data indicates that the uptick in adolescent use had been incubated in the country's suburbs before spreading to its urban centers.<sup>35</sup> Then, like today, teen cannabis use was more prevalent in America's middle-class white communities than in its inner cities. This has been true since the federal government started measuring adolescent drug use in 1977.<sup>36</sup>

Though the data discredited the Justice Department's thesis, the myth of the marijuana-smoking superpredator played into racial attitudes around the innate criminality of Black adolescents.<sup>37</sup> A 1991 study by the National Opinion Research Center found that the majority of white Americans believed the country's Black citizens were "violence-prone".<sup>38</sup>

The media seized upon the framing of white, suburban virtue foiled by Black, urban vice.<sup>39 40</sup> According to this reading, while marijuana might not be all that dangerous, the people who

use it certainly are.<sup>41</sup> This narrative would drive the drug war's cannabis offensive.

### THE MYTH OF THE "SUPERPREDATOR"

*Despite the 1990's downturn in juvenile violence, Ivy League theorists regularly took to the pages of national magazines to warn readers that "fatherless, Godless and jobless" Black teens had left Americans "sitting atop a demographic crime bomb."<sup>42 43 44</sup>*

*In 1996, Princeton professor John J. Dilulio claimed that "all that's left of the black community in some pockets of urban America is deviant, delinquent and criminal adults surrounded by severely abused and neglected children, virtually all of whom were born out of wedlock."<sup>45</sup> He went on to suggest that this blighted Black America had given birth to a generation of "superpredators"—"radically impulsive, brutally remorseless youngsters."<sup>46 47</sup>*

*Social scientists exacerbated the public's concern by leaning on the myth of the "superpredator" to paint a bleak outlook for the entire country. In 1995, James A. Fox—the Dean of Northeastern University's College of Criminal Justice—predicted the misbehavior of these Black juvenile delinquents would cause a "bloodbath in about 10 years."<sup>48</sup> In a 1996 report prepared for the U.S Attorney General, Fox warned that the delinquency of Black adolescents had put America "on the verge of another crime wave that will last well into the next century."<sup>49</sup>*

## A DOUBLING-DOWN ON LOW-LEVEL OFFENSES

“We’re in a war, and so even casual drug use is treason... Casual drug users ought to be taken out and shot.”<sup>250</sup>

— Daryl Gates  
Chief of the Los Angeles Police  
Department (LAPD)  
1978 – 1992

In a mid-nineties press conference, New York City Police Commissioner Howard Safir laid out his department’s drug enforcement strategy. “Our plan is to attack [drug-related crime] on all levels,” he announced. “We’re not just going after the major traffickers; we’re gonna harass the little guys on a daily basis.”<sup>51</sup>

This approach would soon be reflected in police departments across America. The post-1980s drug war has come to be defined by a proliferation of low-level drug arrests, overwhelmingly for marijuana possession.<sup>52 53</sup>

This new approach was driven more by changing police incentives and secular processes in the country’s criminal landscape than American cannabis consumption patterns.

In the 1970s, law enforcement officers devoted a significant amount of their time to the policing of marijuana-related offenses.<sup>54</sup> But during the Reagan-era ‘weed reprieve’, police authorities began to allocate most of their limited drug enforcement resources to the apprehension of major traffickers and the policing of heroin and cocaine use.<sup>55</sup> When serious crime plummeted it freed up personnel, enabling precincts to focus on petty offenses like cannabis possession.<sup>56</sup> The 1990’s deployment of COMPSTAT and other quantified policing tools only exacerbated this impulse. And new (drug war-driven) amendments to civil asset forfeiture statutes also created financial incentives for police officers to double-down on these low-level violations.<sup>57</sup>

This shift in enforcement strategy is borne out by the data. Beginning in the 1990s, law enforcement agencies allocated more resources to the policing of simple possession than taking down drug sellers. During the cannabis offensive, the arrest rate for drug possession skyrocketed, reaching its 30-year peak in 2006 at 162% above its 1980-level.<sup>58</sup> As the drug policy scholar Joseph Kennedy explains in *Sharks and Minnows in the War on Drugs*:

"The majority of [drug arrests overall] are for very small quantities of marijuana, and the majority of the remaining arrests are for very small quantities of hard drugs. Racial disparities are not just preserved but magnified throughout. The overwhelming majority of drug arrestees in state court are not "great white sharks" but small brown minnows in more than one sense."<sup>59</sup>

For decades, authorities have been resigned to the futility of this strategy.<sup>60</sup> "At first glance, the limitations and hazards of this strategy seem more apparent than its strengths," a 1989 Department of Justice memo read, "It hardly seems worthwhile to send the police out daily to battle street-level drug dealers to achieve nothing other than market disruption."<sup>61</sup>

Nevertheless, American police departments persisted. The enhanced street-level enforcement of marijuana laws has had an oppositional impact on the cost, availability, and potency of the drug.<sup>62 63</sup>

### **POT AS PRETEXT: A CASE STUDY FROM NEW YORK CITY**

*While the battles of America's War on Weed were waged across the nation, perhaps nowhere was the policing of marijuana offenses more aggressive than in New York City.<sup>64</sup> From 1975 to the early 1990s, an NYPD officer could expect to be teased—or even scolded—for apprehending a marijuana smoker.*

*That all changed in 1994, when newly-installed Police Commissioner William Bratton (under the leadership of Mayor Rudy Giuliani) began to lean more heavily into his "broken windows" policing strategy. One of the key pillars of Order Maintenance Policing (OMP) was eliminating the social visibility of marijuana use.<sup>65 66</sup> The virulently anti-drug commissioner formed a special Narcotics Initiative tasked exclusively with driving "open-air drug activity off the streets". Patrol officers were given explicit instructions to arrest any resident seen smoking, possessing, or selling marijuana in public.<sup>67</sup>*

*Bratton's successor—former Drug Enforcement Administration official Howard Safir—doubled-down on this approach. Safir, who often (falsely) claimed that "60 to 80 percent of all crime is related to drugs", pushed back against those who questioned the legality and effectiveness of this strategy.*

*Soon, the Narcotics Initiatives' efforts were bolstered by the launch of "Operation Condor", a controversial drug-enforcement effort that deputized up to 1,000 off-duty NYPD officers to make low-level drug busts each day.<sup>68</sup>*

*Operation Condor's focus on low-level offenses—its officers made over 15,000 possession arrests in the first three months of its existence—were so heavy-handed that commanders criticized his "relentless, strategic policing" publicly, arguing that the hyperfocus on low-level offenders was heightening "tension between the police and minorities."<sup>69 70 71 72 73</sup>*

*The number of NYPD officers increased by 47% between 1990 and 1997.<sup>74</sup> From 1990–2002, New York City saw a 2,461% increase in arrests for low-level possession. Of the 8 million-plus marijuana arrests made by the NYPD between 2001 and 2010, 88% were for possession alone.<sup>75</sup>*

*In New York City, the hyperfocus on low-level marijuana offenses was compounded by the rampant abuse of stop-and-frisk tactics and a loophole in the state's marijuana laws. Though the state legislature had decriminalized marijuana possession two decades before, conservative factions had fought to ensure that those caught with the substance "in plain view" were still subject to arrest.<sup>76</sup>*

*The marijuana in public view loophole became a foundational part of the NYPD's quality of life policing strategy. At the beginning of a stop, the police officer would direct the suspect to empty their pockets. If said pocket contained even trace amounts of marijuana, the drug was in "plain view", giving the officer grounds for an arrest.*

*Predictably, marijuana possession arrests increased in tandem with "stop and frisk" and other quality of life efforts.<sup>77</sup> By 2000, the NYPD was making around 50,000 marijuana*

## **MARIJUANA ARRESTS IN THE EARLY 2000s**

*"While perhaps it cannot be statistically proven that marijuana or other dangerous drugs may be the cause of originating crime, nevertheless the use of marijuana or dangerous drugs is related to increased criminal activity."<sup>81</sup>*

*— Memo Prepared for Griffin Bell  
U.S Attorney General, 1977-1979*

As gatekeepers of the criminal justice system, police officers hold the exclusive authority to enforce our

*possession arrests each year, a 5000% increase from the decade before. The same year, marijuana arrests accounted for fifteen percent of all NYPD adult arrests, making it the single-largest category of police apprehensions in the city.*

*Until Recently, the city's four largest boroughs ranked in the top five U.S. counties in per capita marijuana arrest rates. Though recent years have seen the volume of marijuana arrests in New York City dip slightly, the racial disparities remain. In 2020—although white New Yorkers are twice as likely as their non-white counterparts to consume cannabis—Black and Latinx people continue to make up over 93% of those arrested on marijuana charges.<sup>78</sup>*

*A 2009 New York Times headline had it right. "Whites Smoke Pot, but Blacks Are Arrested."<sup>79 80</sup>*

country's laws. And while "police work" encompasses a cornucopia of practices, techniques, and tactics, in the American imagination, law enforcement activity tends to be expressed (and evaluated) by a very basic figure: arrest numbers.

Starting in the mid-1980s, the United States began to see a spike in the number of arrests for drug law violations.<sup>82</sup> The majority of these arrests were for 'hard' drugs like heroin and cocaine.<sup>83</sup>

Starting around the inauguration of George H.W Bush, the primary target of U.S drug enforcement efforts began a dramatic shift. The vast majority of

drug enforcement activity began to center around the policing of low-level marijuana offenses. For example, in 1990, the NYPD made less than 1,000 arrests for marijuana possession each year. Ten years later, the annual number had risen to over 50,000.<sup>84</sup>

The increase in New York City cannabis arrests reflected a national trend. The last decade of the twentieth century saw America's War on Drugs evolve into a War on Weed.

In 1991, the country saw around 88,000 marijuana arrests. In 2002, American police officers made over 730,000.<sup>85</sup> This growth cannot be attributed to an uptick in all police activity; overall arrest numbers grew a mere 3% during the same period. Nor can it be blamed on expanded drug enforcement.<sup>86</sup> In fact, nearly 80% of the decade's increase in drug arrests (450,000 total) can be attributed to marijuana possession apprehensions alone.

And despite law enforcement's purported focus on interdiction, marijuana trafficking arrests declined during this period. The proportion for

possession, however, nearly doubled.<sup>87</sup>

Apprehensions continued to soar in the early aughts. The sheer numbers behind these efforts are staggering. In 2007—arguably the war on weed's high-water mark—American law enforcement agencies made 775,000 marijuana arrests. That number has only dipped slightly since.<sup>88</sup> Starting in 1996, the number of annual marijuana arrests began to exceed those for all other types of drugs. In 2002, these infractions would account for 45% of all drug arrests across the country. That proportion has held steady into today.<sup>89</sup>

Beginning in 1999, marijuana law violations became the country's single largest arrest category, a reality that continues to be reflected in current crime reports.<sup>90</sup> In 2018, American police departments made over 600,000 arrests for marijuana possession alone, more than they made for all murder, rape, robbery, and other serious crimes combined.<sup>91</sup>

<sup>92</sup>

THE POLICING OF PROHIBITION

# THE COLLATERAL CONSEQUENCES OF CANNABIS POLICING

"... By every standard, the war has been harder on Blacks than on whites; that this was predictable makes it no less regrettable."

— Michael Tonry  
Criminologist, University of Minnesota  
Malign Neglect: Race, Crime, and Punishment in America

Many have compared America's criminal justice system to a one-way ratchet, turning only in the direction of criminalizing more conduct with increasingly more punitive penalties.<sup>96</sup> Curiously, this hasn't been the case for all cannabis consumers. History shows us that the policing of marijuana prohibition—at least in certain neighborhoods—has been largely discretionary, ebbing and flowing according to changes in the national mood.

Since the dawn of the marijuana prohibition, politicians and police departments have framed cannabis policy according to what Matthew Lassiter has coined the “suburban crisis”. In this construction, white middle-class youth are innocent victims who must be protected from both “the illegal drug markets and the criminal drug laws”.<sup>97</sup>

During the early twentieth century, Black and Mexican marijuana users were characterized as criminals hell-bent on destroying the lives of white children.<sup>98</sup> Lock them all up, ‘mainstream’ America cried. The calculus changed in the 1960s and 1970s, when vast numbers of middle-class white Americans were being threatened with felony convictions for smoking weed.<sup>99</sup> A parents' movement quickly forced politicians to reduce local, state, and

federal sanctions for marijuana use.<sup>100</sup>  
<sup>101</sup>

In the early 1990s, as the myth of the marijuana-smoking superpredator crept back into public consciousness, lawmakers ratcheted the penalties back up. In 1977, the Drug Enforcement Administration acknowledged they were considering decriminalization. A few years later, marijuana was once again “the most urgent drug problem facing the United States”.<sup>102</sup>

Unsurprisingly, the “suburban imperatives” of white, middle-class America (of which police officers are arguably the institutional embodiment of) continued to shield their children from these new laws. The country's Black and brown residents have never enjoyed such protections. Since the early nineteenth century, marijuana laws have painted marijuana users of color as predatory criminals in need of punishment.

This dynamic is reflected in the data. Starting in 1991, all racial groups experienced a substantial increase in the number of marijuana arrests. During President Clinton's first term, the number of marijuana-related arrests increased by 43%, climbing past 500,000 arrests in 1995 alone.<sup>103</sup>

But the racially-biased nature of cannabis law enforcement became

apparent almost immediately. By the end of the decade, the racial disparities had become shocking.<sup>104</sup> By 2002, though Black residents made up around 14% of the country's marijuana consumers, they would constitute 30% of marijuana arrests.<sup>105</sup> As criminologist Michael H. Tonry notes, "anyone with even the most cursory knowledge of drug-trafficking patterns and of police arrest and incentives could have foreseen that the enemy troops of the War on Drugs would consist largely of young, inner-city Black males."<sup>106 107</sup>

## **RACIAL DISPARITIES IN WEED ARRESTS**

“Urban black Americans have borne the brunt of the War on Drugs. They have been arrested, prosecuted, convicted, and imprisoned at increasing rates since the early 1980s, and grossly out of proportion to their numbers in the general population or among drug users. By every standard, the war has been harder on Blacks than on whites; that this was predictable makes it no less regrettable.”

— Michael Tonry  
“The Malign Effects of Drug and Crime Control Policies on Black Americans”  
(2008)

The vast majority of modern marijuana enforcement activity has been directed at Black and Latinx communities, a skew at odds with race-specific breakdowns of cannabis consumption.<sup>108</sup>

In public statements, politicians and police chiefs attributed the proliferation of these public-police encounters to enhanced gun control efforts. But a study of over two million pedestrian stops showed no significant relationship between marijuana enforcement activity and firearm recovery, thus rendering the primary rationale for aggressive stop activity useless. The study also confirmed that marijuana enforcement activity was overwhelmingly centered in majority-minority neighborhoods, despite the most disproportionately targeted communities having “little connection to crime or disorder.”<sup>109</sup>

These disparities have grown exponentially during the twenty-first century. A 2013 ACLU report found that, on average, a Black person is 3.73 times more likely to be arrested for marijuana than a white person, even though Blacks and whites use marijuana at similar rates.<sup>110</sup>

This dynamic continues almost unchanged today. From 2010-2019,



racial disparities actually worsened in the majority of American states.<sup>111</sup>

These disparities cannot be explained by racial differences in the frequency or geography of African-American marijuana use. Despite virtually identical usage rates, Black marijuana users are significantly more likely to be arrested for cannabis possession than their white peers.<sup>112</sup> And there is no evidence that marijuana use is substantially higher in majority-minority communities, undercutting the "neighborhood context" theory.<sup>113</sup>

A recent study found that Black people's higher probability of being arrested for a drug violation was not attributable to differences in drug use, non-drug offending, or neighborhood context. A study showed that 87% of Black residents' increased likelihood of undergoing a marijuana-related arrest can be directly attributed to racial bias in law enforcement.<sup>114</sup>

Sadly, drug war advocates remain impervious to the facts. Even after his tenure as New York City Mayor, Michael Bloomberg made a point of doubling-down on the discriminatory nature of the city's stop-and-frisk strategy. Leaked audio from a 2015 speech shows Bloomberg admitting that the deployment of the NYPD's quality-of-life policing was racially-biased. "So one of the

unintended consequences of [stop-and-frisk policies] is people say, 'Oh my God, you are arresting kids for marijuana that are all minorities'. Yes, that's true," he concedes. He went on to explain his rationale thusly, "[It's] because we put all the cops in minority neighborhoods... because that's where all the crime is."<sup>115</sup>

The racially disproportionate policing practices of the 'War on Weed' is an example of what socio-legal scholars call spatial governmentality, a "technique of government that aims to manage populations with discourses of community, risk, and security."<sup>116</sup> This technique all but guarantees a negative feedback loop. When police limit marijuana enforcement to a specific demographic, it perpetuates the impression that the weed business is the near-exclusive domain of Black and Latinx youth.<sup>117</sup>

The policing-assisted framing of drug use as the exclusive realm of the poor and nonwhite enables the (mainstream, disproportionately white) American political culture and public consciousness to conceptualize the issue as an assault on American values and society. This creates a siege paradigm that justifies existing oppressive sanctions and demands an increasingly more severe carceral response.

Simply put, marijuana enforcement efforts appear to have been less about crime reduction than maintaining social control.

## **IMPACT ON CANNABIS CONSUMPTION & PUBLIC HEALTH**

"The current policy focuses law-enforcement efforts on the lowest level of the distribution line, the street-level dealer. And unless we ignore all evidence to the contrary, the current policy has little or no impact upon the drug abuse problem."

— Michael Gelacack  
Former Vice Chairman of  
the United States  
Sentencing Commission

Despite evidence of its discriminatory practices and general ineffectiveness, police departments and politicians across the country continue to pursue broken windows policing practices.. As the headlines attest, these heavy-handed policing strategies expose people of color to a heightened risk of being brutalized and killed during a police encounter.

To add insult to injury, the costs stop-and-frisk practices have imposed on people of color has not been offset

by any substantial reduction in crime or drug consumption.<sup>118</sup> In fact, on both counts—it has had an oppositional effect. The data overwhelmingly suggests that the aggressive enforcement of marijuana law violations has had virtually no impact on American cannabis consumption. And the heavy-handed enforcement of unpopular laws like marijuana prohibition has worked to erode the legitimacy of authorities, thus reducing compliance with the law and cooperation with the police.

## **EXPANDING POLICE POWER & IMPACT ON CRIME REDUCTION**

"From the point of view of halting illicit drug traffic, simple possession is the least meaningful enforcement tool in terms of agent time, court time, and the Bureau's overall mission".<sup>119</sup>

— Michael Sonnenreich  
Co-Creator of the Controlled Substance  
Act of 1970

The aggressive policing of drug violations have reinforced negative public attitudes toward law enforcement (especially amongst America's most disadvantaged communities).<sup>120</sup> As the use of these random, arbitrary stops grew, so did

evidence of the policy's racial bias. A 1999 study commissioned by the Attorney General of New York State found that Blacks and Latinx city residents were stopped and frisked by the NYPD at a disproportionate rate, even after controlling for population and crime rates.<sup>121</sup> Over a decade later, another AG report showed the dynamic hadn't changed.<sup>122</sup>

In August of 2013, a U.S district court ruled that New York's "stop-and-frisk" policing practices—which saw NYPD officers detain and search over 4.4 million people in less than a decade, twice the national rate—represented a sweeping, systematic violation of the Fourth Amendment protections.

While the lawsuit centered on a claim that the NYPD's stop-and-frisk policy was a gross violation of the plaintiff's fourth amendment rights, United States District Judge Scheindlin's opinion—issued after the landmark ruling—touched on issues beyond the practice's unconstitutionality and general ineffectiveness. The success of law enforcement activity is in large part dependent on a community's willingness to cooperate with police departments. Scheindlin wrote:

"It is important to recognize the human toll of unconstitutional stops. While it is true that any one stop is a limited intrusion in duration and deprivation of liberty, each stop is also a demeaning and humiliating

experience. No one should live in fear of being stopped whenever he leaves his home to go about the activities of daily life. Those who are routinely subjected to stops are overwhelmingly people of color, and they are justifiably troubled to be singled out when many of them have done nothing to attract unwanted attention. Some plaintiffs testified that stops make them feel unwelcome in some parts of the city and distrustful of the police. This alienation cannot be good for the police, the community, or its leader. Fostering trust and confidence between the police and the community would be an improvement for everyone."<sup>123</sup>

Scheindlin was right. The social and psychological impacts of stop-and-frisk—a policy Brown University professor Nicole Gonzalez Van Cleve characterizes as habitual "racial degradation rituals"—cannot be overstated.<sup>124</sup>

Research suggests that the increasingly proactive and punitive policing of low-level offenses have had a deleterious psychological effect on the residents of neighborhoods where these police officers are disproportionately assigned.<sup>125</sup> Police encounters are so closely correlated with self-reported trauma, anxiety, and other mental health problems that in 2018, The American Public Health Association (APHA) declared

police violence to be a public health issue.<sup>126</sup>

And because the discriminatory deployment of stop-and-frisk-assisted marijuana enforcement engenders distrust of (and in the most impacted communities, active disdain for) police departments, heavy-handed marijuana enforcement activity can actively undermine crime reduction

efforts. While the relationship between police contact, psychological strain, and subsequent criminal behavior—especially amongst young African-American men—is hard to unpack, many studies suggest that frequent contact with law enforcement predicts increases in Black and Latinx adolescents' self-reported criminal behaviors.

# **THE PERVERSE INCENTIVES OF PROHIBITION**

THE PERVERSE INCENTIVES OF PROHIBITION

# DRUG WAR RHETORIC & REVENUE

“Fighting drugs is nearly as  
big a business as pushing  
them.”

— Gore Vidal  
"Drugs: Case for Legalizing Marijuana"  
The New York Times

# THE POLITICS OF DENIAL<sup>1</sup>

... and [Nixon] said, "You and I care about treatment. But those people down there, they want those criminals off the street." And that was the way he said it. And it was probably 99.9% right.<sup>2</sup>

- Myles Ambrose  
Head of the White House Office of Drug Abuse Law Enforcement  
Nixon Administration

As far back as the 1980s, the federal government had reams of data showing that taking a criminal justice approach to drug policy is, in a word, ineffective.<sup>3</sup>

A few years later four-star General Barry McCaffrey, who would go on to head the National Drug Control Policy Office—described the drug war as “a failed social policy [that] has to be re-evaluated” after citing the extraordinary number of drug offenders in U.S. prisons.

He went on to decry the creation of what he termed a "drug gulag" and suggested that if the US stayed on its punitive course, "we're going to bankrupt ourselves. Because we can't incarcerate our way out of this problem."<sup>4</sup>

Yet, in the face of overwhelming evidence of its ineffectiveness, drug war advocates pushed for more money, more manpower, more propaganda, and more public support for the drug war. The 1980s and 1990s' flurry of federal anti-drug funding and related drug war legislation enjoyed broad bipartisan Congressional support.<sup>5</sup>

In 1990, President George H.W. Bush declared a new War on Drugs in a nationally televised speech. In his first joint session in Congress, the newly-elected President railed against the "the scourge of drugs" and demanded an even more overwhelming commitment of federal dollars and militarized personnel to the conflict, which would be fought "house-to-house, neighborhood-by-neighborhood, and community-by-community".<sup>6</sup> A few

months later, Congress authorized an increase of around a billion dollars in budget outlays to escalate the drug war “on all fronts”.<sup>7</sup> At \$10.4 billion, Bush’s 1991 drug war budget represented a tenfold increase from 1985’s budget.<sup>8</sup>

These funds were almost exclusively allocated to law enforcement efforts.<sup>9</sup>

Why did the federal government continue to steer billions of dollars into interdiction and other law enforcement efforts in the face of mounting evidence of its failure?

Some of this can be chalked up to the politics of denial.

The biggest culprit, however, was undoubtedly self-interest. Today, as the country considers taking a more public health approach to problematic drug use, public officials continue to maintain that the drug war’s punitive measures were “good policy gone bad,” a misguided, but well-intentioned effort to serve the public interest.

The truth, of course, is much more complicated. In many ways, the drug

war continues because the interests of the American public aren’t aligned with those of the police.

### WARTIME RHETORIC

*The rhetoric of the War on Drugs—which is predicated on the moral inferiority and inherent criminality of drug consumption—has defined the construction of the conflict, as well as the policing strategies that define the country’s counternarcotics efforts.<sup>1011</sup>*

*In painting illicit drug use as an existential threat to America’s continued survival, “drug speak” implies that drug use can be curtailed through an aggressive supply-side reduction model. This framing doesn’t just establish law enforcement’s legitimacy as the “primary solution to the U.S. drug problem,” it “endorses an unprecedented vigor and reach in applying criminal and civil penalties to those who defy”.<sup>12 13</sup>*

*As Kraska & Kappler noted in 1997, “it takes little acumen to recognize how the metaphor of “war”—with its emphasis on occupation, suppression through force, and restoration of territory—coincides naturally with the ‘new science’ of the police targeting and taking control, indeed ownership, of politically defined social spaces, aggregate populations, and social problems*



*with military-style teams and tactics.”<sup>14</sup>*

*Like traditional wartime rhetoric, “drugspeak” uses images of struggle and unity—combined with characterizations of enemies and allies—to ritualize public discourse on the subject and make the public feel that they are supporting (and sometimes actively participating*

*in) a social movement of great consequence.*

*Reagan described his counterdrug campaign in military terms, using words like “battle,” “war,” and “surrender.” This enhanced militarization of the counternarcotics effort was adopted by public and political leaders on both sides of the aisle.<sup>15</sup>*

THE PERVERSE INCENTIVES OF PROHIBITION

# DOLLARS FOR DRUG ENFORCEMENT

"... Law enforcement organizations are receiving an enormous amount of funding... If you take those [marijuana] out of the equation you now have a drug problem that is tiny compared to what we have now. It would be hard for those same agencies to justify continued budgets at their current levels."

— Ralph Weisheit  
Distinguished Professor of Criminal Justice  
Illinois State University

## POLICING FOR PROFIT

"The whole drug war is a political grab bag, in that everybody has got their arm in looking for that political jackpot that will either win them an election, win them a lucrative position as a consultant or you name it."<sup>16</sup>

—Michael Levine  
Former Drug Enforcement Administration  
Officer

After the 2015 killing of Michael Brown brought national attention to law enforcement in Ferguson, the Civil Rights Division of the Department of Justice was called in to evaluate the policing practices of the St. Louis suburb. They found that Ferguson's law enforcement practices were "shaped by the City's focus on revenue rather than by public safety needs."<sup>17</sup>

The economic incentives of the drug war have promoted policing motivated by profit, rather than public safety. Unsurprisingly, this dynamic has catalyzed the proliferation of constitutionally-questionable, ineffective, and racially-biased policing across the country.

Beginning in the 1970s, an unprecedented amount of local, state, and federal dollars started to flow into police departments' coffers. To win the drug war, law enforcement leaders argued, they needed more and more money for things like narcotics detectives, foot patrols, and drug-sniffing dogs.<sup>18</sup> Politicians and policymakers—loathe to be painted as anything but the toughest on crime—were quick to acquiesce.<sup>19</sup>

When President Nixon declared "all-out, global war on the drug menace" in 1973, he announced a federal drug control budget of less than \$100 million per year.<sup>20</sup> By 1980, it had grown to nearly \$1 billion. By 2000, it had ballooned to nearly \$11 billion, with the states spending at least that much.<sup>21</sup> In 2010, the United States expended roughly \$84 billion a year on drug control efforts.<sup>22</sup> Today, local, federal, and state governments spend twice as much. The vast majority of these funds are earmarked for interdiction—not public health—efforts.<sup>23</sup>

At the same time, the allocation of federal drug war funds became even

more closely intertwined with marijuana-focused enforcement. The incentives created by the drug war's 'cannabis offensive' compelled law enforcement agencies to further drive the expansion of revenue-driven policing practices. And thanks to the drug war-driven popularity of asset forfeiture, as well as the increased use of non-carceral penal options, the seized assets of pot smokers—as well as the fines and fees levied on those apprehended for marijuana law violations—have become increasingly larger shares of local, state, tribal and federal law enforcement agencies' operating budgets.

Law enforcement practices are not keeping pace with the liberalization of public opinion and state policies around marijuana possession. In 2010, U.S states spent an estimated \$3.6 billion enforcing marijuana possession laws, a 30 percent increase from a decade earlier. During the same period, arrests for most other types of crime steadily declined.<sup>24</sup>

## AN INFLUX OF FEDERAL FUNDS

"[Drug abuse] is a major cause of crime and a merciless destroyer of human lives. We must fight it with all of the resources at our command."<sup>25</sup>

— Richard Nixon

In an effort to reduce drug-related crime and support the national agenda on drug control, The Anti-Drug Abuse Act of 1988 created The Edward Byrne Memorial State and Local Law Enforcement Assistance Grant Program (EBMGP).<sup>26</sup> The lucrative financial incentives of drug enforcement grants like the Byrne Program ensure continued police enthusiasm for the War on Drugs.

The Byrne Program issues grants to 1,138 local law enforcement agencies to help them better "detain, prosecute, adjudicate, and rehabilitate offenders who violate state and local drug laws". With an annual budget in the hundreds of millions, The Byrne Program is the primary provider of federal criminal justice funding to state and local jurisdictions.<sup>27</sup>

By one measure, this federal funding has been quite effective. Within six years of receiving their first JAG grant, a jurisdiction can expect to see a 126 percent increase in drug trafficking arrests.

But because grant awards are calculated by looking at a jurisdiction's crime data, the allocation of JAG grants incentivizes agencies to juice the stats by continually expanding their drug interdiction activities.<sup>28</sup> Predictably, these JAG-assisted enforcement actions impact different communities quite differently. When researchers looked at cities that received Byrne grants between 1987 and 2004, they found that the JAG-enabled increase in drug arrests disproportionately affected Black and brown residents.<sup>29</sup>

A more recent study found that for every \$100 increase in (per capita) JAG grant funding, "arrests for drug trafficking increased by roughly 22 per 100,000 white residents and by 101 arrests per 100,000 black residents."<sup>30</sup>

These Byrne grants also fund the multijurisdictional drug task forces (MJDTFs) that collectively represent

one of the largest funding categories of the federal War on Drugs. Between 1988 and 1991, the number of Byrne-funded drug task forces nearly doubled; they now cover almost 90% of the US population.<sup>31</sup>

## **COPS & CASH: ESCALATION OF ASSET FORFEITURE**

"[Asset] forfeiture can be to modern law enforcement what airpower is to modern warfare."<sup>32</sup>

— Cary H. Copeland  
Director of the Justice Department's  
Executive Office for Asset Forfeiture

In 1978, the Comprehensive Drug Abuse Prevention and Control Act was rewritten to finance drug law enforcement. The amendment allows law enforcement agencies to seize money and property "furnished or intended to be furnished by any person in exchange for a controlled substance [and] all proceeds traceable to such an exchange." The Comprehensive Crime Act of 1984, further altered confiscation laws and allowed local police departments to retain the proceeds from assets seized as a result of drug enforcement activities involving federal and local police cooperation.<sup>33</sup>

In short, the new (drug war-driven) provisions in asset forfeiture statutes enabled police departments to seize the cash, cars, and valuables of almost anyone suspected of a drug law violation, regardless of how low-level. These forfeiture laws created overwhelming institutional incentives for local police departments to commit the lion's share of their limited resources to the enforcement of drug violations. According to Stephen Trott, Reagan's Attorney General, civil asset forfeiture was virtually indistinguishable from the country's cannabis control efforts, describing the confiscation policy as "forfeiting everything they own—their land, their cars, their boats, everything."<sup>34</sup>

In 1992, the Director of the Department of Justice's forfeiture unit testified to a congressional subcommittee that "because the proceeds of these seizures are split between local, state, and federal law enforcement agencies, forfeitures statutes created a perverse set of financial incentives for police."<sup>35</sup> The salaries, equipment, modernization, and departmental budgets of law enforcement agencies are highly dependent on how much money can

be generated by forfeitures. To pad their budgets, police officers are encouraged to chase after cash, not crime.<sup>36 37</sup>

Forfeiture laws give police departments remarkable discretion in the scope and scale of these programs. Because police officers are legally allowed to seize property even in the absence of compelling—or really, any—evidence that the assets were connected to criminal activity, forfeiture programs are particularly vulnerable to abuse. In a staggering 80% of civil asset forfeitures, criminal charges are never filed against property owners.

Given that the compensation of the cops called to testify is now contingent upon a conviction, asset forfeiture also has a corrupting influence on the outcomes of criminal cases. The disposition of these (rare) contested cases should be considered highly suspect.

Nearly 80% of the billions in seized cash and property are taken from people suspected of drug violations. The criminalization of cannabis has served as the backbone of this profitable police practice. Nearly 32% of the balance in federal forfeiture

bank accounts comes from cannabis-related seizures—significantly more than any other drug.<sup>38</sup>

And police aren't laying claim to the yachts and jewelry of convicted, cocaine-dealing cartel bosses. Studies have shown that forfeiture laws are disproportionately directed at the people who can least afford them.<sup>39</sup> An ACLU report from Northern California found that 85% of the proceeds of federal asset forfeiture in California go to agencies that police communities that are majority people

of color. In Philadelphia, African-American people account for 71% of owners who have cash forfeited without being convicted of a crime each year.<sup>40</sup> And because they rarely have the means to challenge property seizures, the harms of this abuse are particularly acute for low-income Americans.

Given the dollars involved in the practice, it should come as no surprise that police departments have been some of the most vociferous opponents of the liberalization of marijuana laws.

THE PERVERSE INCENTIVES OF PROHIBITION

# THE RISE OF THE WEED WARRIOR

“America's public enemy number one in the United States is drug abuse. In order to fight and defeat this enemy, it is necessary to wage a new, all-out offensive.”

— Richard Nixon  
President of the United States of America  
January 1969 - August 1974



## PARAMILITARY POLICE UNITS

"America's public enemy number one in the United States is drug abuse. In order to fight and defeat this enemy, it is necessary to wage a new, all-out offensive."<sup>41</sup>

— President Richard Nixon,  
1971

Widespread protests in the wake of the deaths of George Floyd and Breonna Taylor have drawn increased public attention to the apparent "militarization" of local law enforcement agencies. The rise of paramilitary policing is most visible in the expanded role of Special Weapons and Tactics (SWAT) teams and the increasing ubiquity of military-grade weaponry on American streets.

The drug war has been the driving force behind the growth of police paramilitarism over the past several decades. The ideological, legislative, and judicial underpinnings of the conflict work to both accelerate and normalize this shift. The adoption and

deployment of wartime weapons, attire, tactics, and organizational structures were largely driven—and continue to be maintained—by drug war-related legislation and enforcement practices. This influx and influence of military-grade weaponry, tactics, and organizational structures have resulted in modern-day police forces that look more like paramilitary units than civil servants.

The wisdom and efficacy of using the apparatus of the U.S military to fight a domestic health problem are questionable at best. Evidence suggests that this militarized approach to the policing of drug-related activity has had no impact on American drug consumption. In fact, by undermining the efficiency and legitimacy of law enforcement agencies, this shift has only further perpetuated—and oftentimes actively increased—violence (drug-related and otherwise) in American communities. The combat fatigues and mine-resistant trucks have worked to enable the "mindset of the warrior cop", leaving a trail of lost public trust

and obliterated police-public relationships in their wake.<sup>42</sup>

## FEDERAL 1003 PROGRAM

“This drug thing, this ain't police work... I mean, you call something a war and pretty soon everybody gonna be running around acting like warriors. They gonna be running around on a damn crusade, storming corners, slapping on cuffs, racking up body counts. And when you at war, you need a f\*\*\*ing enemy. And pretty soon, damn near everybody on every corner is your f\*\*\*ing enemy. And soon the neighborhood that you're supposed to be policing, that's just occupied territory.”<sup>43</sup>

Major Howard “Bunny” Colvin  
*The Wire*

In 1981, Congress amended the 1878 Posse Comitatus Act—the law that delineated between the U.S. military and civilian law enforcement agencies—to allow the Department of Defense to “assist” local police departments in the enforcement of drug laws.<sup>44</sup> The Military Cooperation with Law Enforcement Officials Act of

1981 initialized the transfer of DoD training, technology, and equipment to local, state, federal, and tribal law enforcement agencies, catalyzing what 1982's National Defense Authorization Act would call the “cooperation between military and civilian law enforcement” that would become foundational to the drug war.<sup>45</sup>

In 1986, President Ronald Reagan designated drug use as an official threat to “national security,” laying the groundwork for an even more accelerated adoption of military objectives, methods, and equipment during drug interdiction efforts.<sup>46,47</sup> Less than two years later, the National Guard was deployed to assist law enforcement agencies in eradicating marijuana grows in all fifty states.<sup>48,49</sup>

The National Defense Authorization Act of 1990 first authorized the transfer of military-grade weaponry and technology from the Department of Defense to federal and state agencies (“for use in counter-drug activities”) via the 1208 program. The same year, Congress authorized the secretary of defense to fund National

Guard involvement in state-level drug interdiction operations.

The 1033 program quickly expanded into the "1033 Program", which was created by Congress via the 1994 Violent Crime Control and Law Enforcement Act (the 'Crime Bill') and codified into law via the National Defense Authorization Act for 1997. The program allows the Department of Defense to gift military-grade weaponry to local law enforcement agencies, provided they pledge to use the equipment for counter-narcotics (and beginning in 2002, counter-terrorism) purposes.<sup>50</sup> This unfettered access to weapons of war like grenade launchers and armored vehicles has been what Major Neill Franklin—the Executive Director of Law Enforcement Action Partnership—calls "one of the single greatest contributors to the public losing trust in law enforcement."<sup>51</sup>

Contemporary public discourse illustrates that the 'drug war' is not merely a metaphor. In a 1994 speech announcing the 1033 program, U.S. Attorney General Janet Reno made it clear that the enemy troops of the

War on Drugs (American citizens of color) were virtually indistinguishable from the hostile forces the U.S. military encountered abroad. "Let me welcome you to the kind of war our police fight every day," Reno began, "And let me challenge you to turn your skills that served us so well in the Cold War to helping us with the war we're now fighting daily in the streets of our towns and cities across the Nation."<sup>52</sup>

By this reading, America's urban cities are the battlefield, and local police departments are the brigades.<sup>53</sup>

Since 1997, the 1033 Program has transferred at least \$7.4 billion worth of military equipment (hundreds of thousands of mine-resistant ambush-protected vehicles, bayonets and assault rifles, thousands of grenade launchers, airplanes, and helicopters, etc) from the Department of Defense to local law enforcement agencies.<sup>54,55</sup>

At last count, 8,200 local law enforcement agencies—representing over 80 percent of US counties—were currently enrolled in the 1033 Program.<sup>56</sup> To maintain their 1033 enrollment, local law enforcement

agencies must deploy this military property within a year of receipt. Studies have shown that the receipt of military equipment from 1033 and other federal equipment transfer programs results in an uptick in police violence, especially against Black and Latinx US residents.<sup>57</sup>

## **SPECIAL WEAPONS AND TACTICS TEAMS**

"The house of everyone is to him as his castle and fortress, as well for his defense against injury and violence as for his repose."<sup>58</sup>

— Sir Edward Coke  
The "Castle" Doctrine

On August 1, 1966, former U.S Marine Charles Whitman climbed to the top of the 32-story clock tower at the University of Texas. In the ninety minutes, it took Austin police officers to apprehend him, Whitman randomly shot 46 people, killing 14 of them.

Soon after the Texas tower incident, the Los Angeles Police Department formed the nation's first SWAT team, which would go on to acquire national prestige when it was deployed against Black Panthers in 1969.<sup>59</sup>

In the late 1960s and early 1970s, the creation of these elite units slowly proliferated around the country. These highly-specialized units were originally tasked with responding to extraordinary incidents that 'standard' law enforcement outfits weren't properly equipped to handle (i.e. hostage-takings, sniper shootings, firefights, and other extraordinary incidents).

Today, however, SWAT units are generally regularly deployed in routine policing activities. These rigorously-trained, "battle dressed" forces are now almost exclusively deputized in service of the drug war, conducting what the police call "high-risk warrant work," aka drug raids.<sup>60</sup>

These raids often go wrong. In June 2014, for example, an Atlanta SWAT team—operating under false information provided to them by Habersham County's Deputy Sheriff Nikki Autry, broke down the door to Alecia Phonesavanh's home. A flashbang grenade was thrown into a crib, where her infant son lay sleeping. The explosion left the nineteen-month

old with severe burns, permanent brain damage, and a hole in his chest.

In 1980, the country saw around 3,000 SWAT raids a year. By the mid-1990s, the figure had grown to 45,000 annual SWAT deployments, three-fourths of them drug-related.<sup>61</sup> In 2015, America saw 80,000 raids each year. Dynamic entry techniques (the use of battering rams or other forced-entry methods) were used in at least two-thirds of these raids, 80% of which occurred in private homes.<sup>62</sup>

These programs—as well as the pernicious influence of drug war ideology and policing practices more broadly—have caused a rapid rise in both the number of operational SWAT units, as well as the scope—and scale—of their deployments across the country.<sup>63</sup> The soldier's mindset of local SWAT teams has bled into the ideology of regular street-level officers.

Drug war initiatives like the Community Oriented Policing Services—COPS program (1994 Crime Bill) and the Edward Byrne Memorial Justice Assistance—JAG grants (Consolidated Appropriations Act of

2005) help to fund the staffing and outfitting of these expensive units. Drug raids—and civil asset forfeiture statutes—have worked to help local police departments generate the revenue necessary to maintain these forces.

Today, the Bureau of Justice estimates that 90% of all police departments in cities with populations over 50,000 have a variation of a SWAT team, as do federal departments including the Department of Agriculture and the Department of Education.<sup>64</sup>

While this extreme SWAT-team concentration on drug-related activity started to rise during the 1970s, this trend has been compounded by the (war on weed-driven) erosion of fourth amendment protections against unreasonable searches and seizures.<sup>65</sup> Dr. Peter B. Kraska, a criminologist at Eastern Kentucky University, has noted that SWAT deployments increased roughly fifteen-fold between 1980 and 2010, a parallel rise to the escalation of marijuana enforcement efforts. A 2014 ACLU report found that from 1980 to 2010 SWAT deployment had

increased an estimated 1,400% from 1980 to 2000. 62% of these encounters were drug-related.<sup>6</sup>

## DRUG RAIDS & NO-KNOCK ARRESTS

“We should be extremely reluctant to restrict [drug enforcement officers] within formal and arbitrary lines.”<sup>67</sup>

— U.S National Drug Control Strategy (1989)

On a similar note, the financial and ideological incentives of the drug war have also caused (oftentimes lethal) forced-entry methods like drug raids and no-knock arrests—which are almost exclusively administered by local SWAT teams—to soar.

A series of Clinton-era Supreme Court rulings empowered local law enforcement agencies to obtain forcible entry (i.e “no-knock) warrants if they had “reasonable suspicion” that announcing their presence would be dangerous and/or allow for the destruction of evidence (i.e drug-related materials).<sup>68</sup>

Paradoxically, that standard laid the groundwork for the use of SWAT-level forces in pursuit of the smallest amounts of drugs (after all, a couple of joints can be more easily discarded than bricks-upon-bricks of cocaine).

In recent years, even law enforcement organizations like The National Tactical Officers Association, have lobbied for more judicious use of “dynamic entry” tactics. Robert Chabali, a former Ohio-based SWAT officer and the group's chairman from 2012 to 2015, is particularly opposed to using forcible-entry raids to serve narcotics search warrants, citing the dangers these tactics pose to the safety of SWAT agents. “It just makes no sense,” Mr. Chabali said in a 2017 interview with The New York Times. “Why would you run into a gunfight? If we are going to risk our lives, we risk them for a hostage, for a citizen, for a fellow officer. You definitely don't go in and risk your life for drugs.” He added that NAOA believed the escalation in SWAT deployments has been waged for “financial motives, not to keep the community safe.”<sup>69</sup>

A 2017 deep-dive concluded that “as policing has militarized to fight a faltering war on drugs, few tactics have proved as dangerous as the use of forcible-entry raids to serve narcotics search warrants, which regularly introduce staggering levels of violence into missions that might be accomplished through patient stakeouts or simple knocks at the door.” While the report acknowledged that the element of surprise could ostensibly help police apprehend neighborhood drug sellers, “the unreliable informants” and “cursory investigations” that produce “affidavits signed by unquestioning low-level judges” meant no-knock raids commonly turned up only misdemeanor-level drug stashes, if the raids yielded any drugs at all. This assessment echos the results of a 2018 study by the National Academy of Sciences, which found “no evidence

that obtaining or deploying a SWAT team reduces local crime rates or lowers the rates at which officers are killed or assaulted.”<sup>70</sup>

A New York Times investigation echoed Robert Chabali's opinion when they concluded that any benefits to drug-related SWAT raids are overshadowed by the “avoidable deaths, gruesome injuries, demolished property, enduring trauma, blackened reputations, and multimillion-dollar legal settlements at taxpayer expense” these raids demand.<sup>71</sup>

But despite no-knock raids “staggering potential for violence to both occupants and police,”—as a 1994 Florida State Supreme Court opinion found—only two states have banned their use.<sup>72</sup>

# CONCLUSION



## CONCLUSION

It is clear that America's drug policies have been a key contributor to the disproportionate criminalization of Black and brown communities. Today our country grapples with a justice system—and specifically, a police force—that systematically targets Black and brown communities for cannabis consumption while all but ignoring the marijuana use of the white, wealthy, and well-connected.

In 2019, American law enforcement agencies made more arrests for marijuana possession than all "violent" crimes combined. Unsurprisingly, most of these cannabis-related encounters were centered in African-American communities. Despite virtually identical rates of consumption Black people are almost four times as likely as their white peers to be arrested on marijuana charges.

Marijuana isn't a gateway drug—at least not in the sense most people imagine. However, it is a gateway for Black people to arrests, incarceration, death, and defamation at the hands of the state. And while it's true that fewer people are serving long prison sentences for weed than they were a decade ago, our draconian and

ever-expanding system of collateral consequences means that a marijuana-related encounter can easily result in eviction, student loan ineligibility, and the impossibility of ever being able to access gainful employment.

The good news is, the vast majority of Americans agree that the War on Drugs has been an abject, spectacular failure. And though these highly polarized times mean it's rare to find an issue that brings together people of different political persuasions, when it comes to dismantling the drug war... well, there's an angle for everyone.

Libertarians can focus on the conflict's role in the expansion of civil asset forfeiture. Conservative commentators should speak up about the civil liberties violations associated with racially biased and pre-textual stops. Good governance groups should look into claims that the Department of Justice is devoting most of its resources to advancing Bill Barr's personal drug-related vendetta. Criminal justice-minded reformers can focus on claims that cities have ceased arrest quotas and "stops and frisks". After all, police departments continue to collect billions in taxpayer dollars that are directly tied to the number of drug-related arrests. Even the most

dispassionate observer should be concerned about tanks — given to police departments by the Department of Defense for counternarcotics operations—parading down small-town streets. And for those who cite the “will of the people” to justify their inaction? Almost 90% of American adults are fed up with our current approach to cannabis policy.<sup>1</sup>

Though removing marijuana from the criminal sphere will not solve all of the justice systems’ shortcomings, it is a necessary—and politically viable—first step. If we were to eliminate our national project of federal cannabis prohibition, we’re talking about millions of stop-and-frisks, traffic stops, summonses, arrests, and probation violations each year.

To be clear, marijuana policy reform will not end the over-policing of Black communities or eliminate the racial inequities embedded in American society. It alone will not eliminate state-sanctioned violence. Nor will it reverse the devastating and disproportionate harms of the War on Drugs. But—if done thoughtfully, with a focus on public health—a more

humane and equitable approach to drug policy will pull millions of people out of a penal system that marks them for life. It will help people get the help they need, while simultaneously reducing the unnecessary and unjust harassment of (predominantly Black and brown) communities. It will help change a culture that for too long has looked to drug use to justify mass incarceration, police violence, and death at the hands of the state.

It's not a panacea, but it is a worthwhile start

---

<sup>1</sup> Daniller, Andrew. (2019, November 19). Two-Thirds of Americans Support Marijuana Legalization. *Pew Research Center*.  
<https://www.pewresearch.org/fact-tank/2019/11/14/americans-support-marijuana-legalization/>

CONCLUSION

# ACKNOWLEDGEMENTS

The policing of marijuana prohibition—the first installment of *Criminal Injustice: Cannabis and the Rise of the Carceral State*—is published by the Last Prisoner Project. The report was developed, overseen, and managed by Natalie Papillion; operational support was led by Sarah Gersten, Executive Director of the Last Prisoner Project.

The primary author of *Criminal Injustice: Cannabis and the Rise of the Carceral State* is Natalie Papillion. The author thanks Sarah Gersten and Mikelina ‘Mickey’ Belaineh for their tireless assistance with the conception and editorial assistance for the paper.

The Criminal Injustice team extends their sincere gratitude to Sue Ahn, Moheb Keddiss, Tyler Codina, Allyson Neiseg, and Sherry Mizra for their assistance in conducting research and analysis for the project. We also thank Mary Bailey, Tom Lynch, Cameron Boucher, and Brandon McRae for their strategic guidance on communications, creative direction, and content strategy.

The team also owes a huge debt of gratitude to Katie Leggett, Karen Jaroneski and Linda Carbone of Press Here Publicity for their invaluable support on the communications and press outreach for this project.

CONCLUSION

# NOTES

## CANNABIS VS. MARIJUANA

The terms marijuana/marihuana and cannabis (alongside various colloquialisms) are used almost interchangeably throughout this series. The distinction between the two words has no formal basis. However, it's important to note that, given the racially-charged history of marijuana's deployment in the English-speaking Americas, many individuals—especially those working in the regulated industry—prefer to use the term cannabis exclusively.

Language is a difficult, messy thing. Many historians believe marijuana comes from the Chinese word for hemp (Chinese laborers might have introduced the plant to Western Mexico). Others suggest that the word has Semitic and/or Arabic origins, by way of Moorish Spain. There's also substantive evidence that the term draws from Catholicism—marihuana as an ode to the Virgin Mary. And while the etymology has typically been characterized as pre-Colombian and/or "Old World" there's some evidence to suggest marihuana/marijuana might also be at least partially derived from Aztec naming traditions.

But while scholars are still debating the exact origin of the word, the

general consensus is the word wasn't developed as a slur (and/or developed to be used derogatorily). Contemporarily, marijuana (which was almost exclusively spelled "marihuana" in the early part of the twentieth century) comes from Mexican Spanish.

There's no denying there's a long, pernicious history of people using the term 'marihuana/marijuana' to serve terrible aims. Beginning in the early twentieth century powerful politicians and bureaucrats weaponized the word in an attempt to exploit white, Anglo-American fear about—and prejudice against—immigrants and Mexican-American communities. As a result, many contemporary scholars, advocates, and business leaders champion a wholesale rejection of the term. Many just prefer not to use the word at all. I understand—and respect—their reasoning.

However, I have chosen to use "marijuana" and "cannabis" almost interchangeably both in spite of—and because of—this history. Unlike other racially-charged words, the term was adopted by the vast majority of the American public. Outside of the cannabis community, relatively few people are aware of its sordid and pejorative deployment in the US. That's not to say there aren't people who deploy the term derogatorily.

However, most Americans do not intend to invoke a racialized history when they use the word.

From public discourse to the penal code, marijuana is the 'mainstream' way Americans describe cannabis and its products. While the growth of the regulated industry and the increasing popularity of cannabis-derived compounds (i.e. CBD products) is changing the general public's familiarity with cannabis, studies show that most people are unfamiliar with the term.

As regulated marketplaces sprout up across the country (and around the world), I worry that relying exclusively on cannabis works to 'whitewash' the long, storied history of social & spiritual use in non-English speaking communities and regions. By using the word marijuana (while simultaneously acknowledging this racist history), I hope to be able to shine a light on—and more fully reckon with—the sordid history of marijuana prohibition and its racially-disparate impacts.

Perhaps most importantly, the cannabis versus marijuana debate speaks to the quandary faced by advocates working to ensure equitable access to information. Marijuana is the most widely-used and universally recognized word for the plant in the English-speaking world.

The last thing I'd want to do is 'gatekeep' information from (and/or otherwise inadvertently alienate or discredit) traditional operators, consumers, etc. by using an unfamiliar term.

CONCLUSION

# REFERENCES



## FOREWARD, PREFACE & INTRODUCTION

1. Associated Press. (2016, July 9). Philando Castile Had Been Stopped 52 Times By Police. *CBS Minnesota*.  
<https://minnesota.cbslocal.com/2016/07/09/philando-stops/>
2. Ingraham, Christopher. (2017, June 21). Officer Who Shot Philando Castile Said Smell of Marijuana Made Him Fear For His Life. *The Washington Post*.  
<https://www.washingtonpost.com/news/wonk/wp/2017/06/21/officer-who-shot-philando-castile-said-smell-of-marijuana-made-him-fear-for-his-life/>
3. Sawyer, Wendy, & Wagner, Peter (2020, March 24). Mass Incarceration: The Whole Pie 2020. *Prison Policy Initiative*.  
<https://www.prisonpolicy.org/reports/pie2020.html>
4. America's drug policies are perhaps the single greatest contributor to the size and scope of the country's bloated criminal justice system.
5. Alexander, Michelle. (2010). *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. The New Press.

## THE POLITICS OF PROHIBITION

1. U.S Department of Justice. (2010). *Speaking Out Against Drug Legalization*. U.S Drug Enforcement Administration. <https://northstarbehavioral.com/wp-content/uploads/2015/06/DEASpeakingOutAgainstDrugLegalization2010.pdf>
2. Gordon, Diana R. (1994). *The Return of the Dangerous Classes: Drug Prohibition and Policy Politics*. WW Norton.
3. Theorists have suggested that the “unique system of racial exclusion, discrimination, and stratification in the United States created the context which the racial inequality of the War on Drugs could flourish.” Campbell, Michael C., and Schoenfeld, Heather. (2013). The Transformation of America’s Penal Order: A Historicized Political Sociology of Punishment. *American Journal of Sociology*, Vol. 118(5), 1375-1423. doi:10.1086/669506
4. Hickman, Timothy A. (2000). Drugs and Race in American Culture: Orientalism in the Turn-of-the-Century Discourse of Narcotic Addiction. *American Studies*, Vol. 41(1), 71-91.
5. Dubber, Markus D. (2001). Policing Possession: The War on Crime and the End of Criminal Law. *Journal of Criminal Law and Criminology*, Vol. 91(4).
6. In Malign Neglect—Race, Crime, and Punishment in America, world-renowned criminologist Michael Tonry argues that “the War on Drugs and the set of harsh crime control policies . . . were undertaken to achieve political, not policy, objectives. It is the adoption for political purposes of policies with foreseeable disparate impacts, the use of disadvantaged black Americans as a means to achieve politicians’ electoral ends.” Tonry, Michael H. (1995). *Malign Neglect: Race, Crime, and Punishment in America*. Oxford University
7. Gordon, Diana R. (1994). *The Return of the Dangerous Classes: Drug Prohibition and Policy Politics*. WW Norton.
8. Alexander, Michelle. (2010). *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. The New Press.
9. Akchuk. (2014, September 4). *Ronald Reagan: “Marijuana... is Probably the Most Dangerous Drug* [Video file]. Retrieved from <https://www.youtube.com/watch?v=VxHBx6H-xFo>
10. Hickman, Timothy A. (2000). Drugs And Race In American Culture: Orientalism in the Turn-of-the-Century Discourse Of Narcotic Addiction. *American Studies (Lawrence, Kan.)*, Vol. 41(1), 71–91. <https://pubmed.ncbi.nlm.nih.gov/17607881/>
11. In 1988, Judge Francis Young, then the Chief Administrative Law Judge for the U.S Drug Enforcement Administration, concluded that “marijuana in its natural form, is one of the safest therapeutically active substances known to man”. United States Department of Justice. (1988, Sept. 6). In the Matter of Marijuana Rescheduling, Docket No. 86-22. *U.S Drug Enforcement Administration*.
12. In a sign of what would come to pass in its northern neighbor, Mexican elites attempted to prohibit marijuana (whose use was most popular amongst the country’s lower classes and Indigenous populations) by painting marijuana users as dirty and degenerate. Campos, Isaac. (2012). *Home Grown: Marijuana and the Origins of Mexico’s War on Drugs*. University of North Carolina Press; Walker, W. (1978). Control across the Border: The United States, Mexico, and Narcotics Policy, 1936-1940. *Pacific Historical Review*, 47(1), 91-106. doi:10.2307/3637340; and Wolf, William. (1936, May). Uncle Sam Fights a New Drug Menace: Marijuana. *Popular Science*.
13. Merrill, Frederick. (1938). *Marihuana: The New Dangerous Drug*. Foreign Policy Association.

14. The organized national anti-narcotics movement originated against the backdrop of the Great Depression and dwindling public and political support for alcohol prohibition. King, Roman. (2018). *The Resurgence Of American Nativism In The Early-Twentieth Century And Its Effects On Industrial Hemp Production In The United States*.  
<https://scholars.fhsu.edu/theses/3121>

15. Tonry, Michael H. (1995). *Malign Neglect: Race, Crime, and Punishment in America*. Oxford University Press.

16. Nocovercharge (2009, January 9). *Marijuana: Weed with Roots in Hell*. [Video file]. Retrieved from  
<https://www.youtube.com/watch?v=awrmhrCFk2o>

17. In a 1915 article entitled "Is the Mexican Nation 'Locoed' by a Peculiar Weed?", a Utah newspaper suggested that the marihuana was inciting 'Mexican bandits' to attack America. The Ogden Standard. (1915, September 25). Is the Mexican Nation 'Locoed' by a Peculiar Weed. *The Ogden Standard*.  
<https://chroniclingamerica.loc.gov/lccn/sn85058396/1915-09-25/ed-1/seq-13/>.

18. Laurie, Annie. (1930, February 27). Mother Sacrifices Children, Home, Reputation for Dope. *The San Francisco Examiner*.  
<http://www.druglibrary.org/mags/mothersac.htm>

19. In the testimony leading up to 1937's Marihuana Tax Act, Harry J. Anslinger—the founding commissioner of the Federal Bureau of Narcotics claimed that the drug's popularity amongst American youth was "abetted by the persistent avarice of the peddlers' ". Merrill, Frederick. (1938). *Marihuana: The New Dangerous Drug*. Foreign Policy Association; Vaughan, Virginia. (1937, Feb. 28). Conscienceless Racketeers Ply Trade Near Schools Selling to Youth a Narcotic Called Marihuana. *The Boston Herald*.  
<http://www.druglibrary.org/mags/bherald37.html>;

20. A commissioner helmed by the Federal Bureau of Narcotics claimed, without evidence, that charas (a cannabis derivative) users "have a propensity to crime and rapidly become dangerous criminals".

21. In the late 1930s, the FBN began an aggressive campaign in the press, legislative chambers, and any other forum it could find to rally public support for the nationwide implementation of the Marihuana Tax Act.

22. Stanley's article was introduced as evidence during the Congressional hearings that led to the passage of the 1937 Marihuana Tax Act.

23. The World Health Organization submitted its definitive statement on The Physical and Mental Effects of Cannabis for consideration. Pablo Osvaldo Wolff, the statement's author, insisted that "cannabis apparently brings to the surface the subconscious vices and tendencies which have been submerged by education and environment". Wolff did not include any evidence to back up his position.

24. Morgan, W. (1953). Police Science Legal Abstracts and Notes. *The Journal of Criminal Law, Criminology, and Police Science*, 43(6), 850-852.  
<http://www.jstor.org/stable/1139778>

25. The Marihuana Tax Act of 1937 required all cannabis buyers, sellers, importers, growers, and prescribers to purchase a tax stamp. The onerous restrictions and excessive costs of these stamps created a de facto prohibition. The Act remained in effect until 1969, when it was ruled unconstitutional.

26. In 1938, Mayor Fiorello La Guardia asked the New York Academy of Medicine to undertake a robust scientific and sociological study of marijuana use in New York City. In 1944, the Academy's team of thirty- one scientists and physicians issued an extensively researched report declaring that, contrary to popular belief, marijuana use did not induce violence, insanity, or sex crimes—nor did it or lead to addiction of other, "harder" drugs like heroin. found marijuana was only a mild intoxicant, and recommended an end to its criminalization. Anslinger pre-emptively attacked the report's

findings commissioning a hit piece in the *American Journal of Psychiatry*. Siff, Stephen. (2014). The Illegalization of Marijuana: A Brief History. *Origins: Current Events in Historical Perspective Vol. 7*(8).  
<http://origins.osu.edu/article/illegalization-marijuana-brief-history>

27. Pembleton, Matthew R. (2017). *Containing Addiction: The Federal Bureau of Narcotics and the Origins of America's Global Drug War*. University of Massachusetts Press.

<sup>28</sup>. In an official Treasury Department memo, Anslinger refuted doctors and scientists who concluded that marijuana was low-harm, stating, "despite the fact that medical men and scientists have disagreed upon the properties of marihuana, and some are inclined to minimize the harmfulness of this drug, the records offer ample evidence that it has a disastrous effect upon many of its users."

<sup>29</sup>. Shortly after James V. Bennett, then-director of the U.S. Bureau of Prisons chalked the passage of the FBN-championed Boggs and Daniel Acts to "hysteria," bureau agents began to follow him. They submitted reports directly to Anslinger. Schlosser, Eric. Marijuana and The Law. *The Atlantic*.  
<https://www.theatlantic.com/magazine/archive/1994/09/marijuana-and-the-law/308958/>;

30. Anslinger was the FBN's Commissioner from the agency's inception in 1930 until his retirement in the late 1960s. During his decades-long tenure, he was arguably the most important and influential player in domestic and international drug control.

31. He also wrote that marijuana legalization would "elevate a most despicable trade to the avowed status of an honourable business, nay, to the status of practice of a time-honoured profession; and drug addicts would multiply unrestrained, to the irrevocable impairment of the moral fibre and physical welfare of the American people". Kinder, D., & Walker, W. (1986). Stable Force in a Storm: Harry J. Anslinger and United States Narcotic Foreign

Policy, 1930-1962. *The Journal of American History*, 72(4), 908-927. doi:10.2307/1908896

32. Musto, David F., & Sloboda, Zili. (2003). The Influence of Epidemiology on Drug Control Policy. *United Nations Office on Drugs and Crime Bulletin on Narcotics*, Vol. LV(1-2).  
[https://www.unodc.org/pdf/bulletin/bulletin\\_2003\\_01\\_01\\_1\\_Art2.pdf](https://www.unodc.org/pdf/bulletin/bulletin_2003_01_01_1_Art2.pdf)

33. McWilliams, J. (1989). Unsung Partner against Crime: Harry J. Anslinger and the Federal Bureau of Narcotics, 1930-1962. *The Pennsylvania Magazine of History and Biography*, 113(2), 207-236.  
<http://www.jstor.org/stable/20092328>; Kinder, D. (1981). Bureaucratic Cold Warrior: Harry J. Anslinger and Illicit Narcotics Traffic. *Pacific Historical Review*, 50(2), 169-191.  
doi:10.2307/3638725

34. Sullum, Jacob. (2019, May). Return of the Reefer-Crazed Killer. *Reason*.  
<https://reason.com/2019/04/18/return-of-the-refer-crazed-ki/>

35. Morgan, W. (1953). Police Science Legal Abstracts and Notes. *The Journal of Criminal Law, Criminology, and Police Science*, 43(6), 850-852. Retrieved August 27, 2020, from  
<http://www.jstor.org/stable/1139778>

36. In the late 1930s, the FBN began an aggressive campaign in the press, legislative chambers, and any other forum it could find to rally public support for the nationwide implementation of the Marihuana Tax Act. The Marihuana Tax Act required all buyers, sellers, importers, growers, physicians, veterinarians, and any other persons who dealt in cannabis commercially, prescribed it professionally, or possessed it to purchase a tax stamp in order to possess cannabis legally. The onerous restrictions and excessive costs created a de facto prohibition. The Act remained in effect for almost three decades until it was held unconstitutional in 1969.

37. Public Broadcasting Service. (1997, Winter). Busted: America's War on Marijuana—Steve White Interview.

<https://www.pbs.org/wgbh/pages/frontline/shows/dope/interviews/white.html>

38. Wolf, William. (1936, May). Uncle Sam Fights a New Drug Menace: Marijuana. *Popular Science*; Brown, Clair A. (1938, May). Marihuana: The Mexican Dope Plant is the Source of a Social Problem. *Nature Magazine*;

39. On their face, American drug laws are ostensibly race-neutral. However, countless sociologists and criminal justice-focused scholars have demonstrated how the racially "coded" discourse around drug use exploits America's existing ethnic and racial animosity. Valentino, Nicholas A. (1999). Crime News and the Priming of Racial Attitudes During Evaluations of the President. *The Public Opinion Quarterly*, Vol. 63(3), 293-320. <http://www.jstor.org/stable/2991710>; Dvorak, Richard. (2000). Cracking the Code: "De-Coding" Colorblind Slurs During the Congressional Crack Cocaine Debates. *Michigan Journal of Race and Law*, Vol. 5. <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1224&context=mjrl>

40. Richard, Bonnie, & Whitebread, Charles (1974). *The Marihuana Conviction: A History Of Marihuana Prohibition in the United States*.

41. Bonnie, Richard J., & Whitebread, Charles H. (1970). The Forbidden Fruit and the Tree of Knowledge: An Inquiry into the Legal History of American Marijuana Prohibition. *Virginia Law Review*, 65(6), 971-1203.

42. In the run-up to the passage of the 1986 Anti-Drug Abuse Act, Pennsylvania Governor George Gekas announced his intention to pursue the death penalty for certain drug law violations. Balko, Radley. (2016, October 28). America's Drug War: 30 Years of Rampaging Wildebeest. *The Washington Post*. <https://www.washingtonpost.com/news/the-watch/wp/2016/10/28/americas-drug-war-30-years-of-rampaging-wildebeest/>

43. In Georgia, Louisiana, and Missouri, selling marijuana to a minor was punishable by death. In Illinois and Utah, a mandatory life sentence was in effect for a first-sale offense. In

Massachusetts, it was a felony (punishable by up to five years in prison "to be in a place where marijuana was kept or deposited, or to be in the company of anyone known to be in illegal possession of marijuana". United States National Institute of Drug Abuse. (1978). *Facts about Drug Abuse: Trainer's Manual*. Drug Abuse Center for Training and Resource Development.

44. Schlosser, Eric. (1994, August). Reefer Madness. *The Atlantic*. <https://www.theatlantic.com/past/docs/politics/crime/reefm.htm>; Schlosser, Eric. (1994, September). Schlosser, Eric. (2004). *Reefer Madness: Sex, Drugs, and Cheap Labor in the American Black Market*. HMH.

45. Bonnie, Richard J., and Whitebread, Charles II. (1974). *The Marijuana Conviction*. The University of Virginia Press.

46. In the late 60s and early 70s, lifetime use of marijuana tripled amongst those between the ages of 18-24. In the early 1970s, the complex social context of illegal drug use was recognized in the work of a new National Commission on Marihuana and Drug Abuse. Their final report identified marijuana use as a "signal of misunderstanding" between different generations.

47. At least superficially, the ever-more draconian penalties for marijuana possession aligned with public opinion. A 1969 Gallup survey found that just 12% of Americans were in favor of legalization. Increased exposure quickly shifted the public sentiment around the drug. Less than ten years after the first Gallup poll—at least 27% of the country was in favor of cannabis legalization. When President Reagan officially announced his administration's War on Drugs (October 1982), less than 2 percent of the American public viewed drugs as the most important issue facing the nation. Roberts, Julian. (1992). *Crime and Justice: A Review of Research*, Vol. 16. University of Chicago Press; Musto, David, and Kormeyer, Pamela. (2002) *The Quest for Drug Control: Politics and Federal Policy in a Period of Increasing Substance Abuse (1963-1981)*. Yale University Press; U.S. Department of Justice. (1989). *Drugs and Crime*

Facts, 1989. Office of Justice Programs: Bureau of Justice Statistics. Bureau of Justice Assistance. <https://www.bjs.gov/content/pub/pdf/DCF89.pdf>

48. In 1965, America saw around 20,000 marijuana arrests each year. Five years later, that number topped 190,000. Logan, Wayne A. (2014) After the Cheering Stopped: Decriminalization and Legalism's Limits. *Cornell Journal of Law and Public Policy: Vol. 24(2)* <https://scholarship.law.cornell.edu/cjlp/vol24/iss2/3>

49. this act included the Controlled Substances Act, which established five categories ("schedules") for regulating drugs based on their medicinal value and potential for addiction. Marijuana—alongside heroin and LSD—was designated 'Schedule 1. Schedule 1, the most serious schedule, had been reserved for drugs with "no medical value" and the "highest potential for addiction." U.S Department of Justice. *Drug Scheduling*. U.S Drug Enforcement Administration. <https://www.dea.gov/drug-scheduling>

50. Gettman, Jon B. (2005). Crimes of Indiscretion: Marijuana Arrests in the United States. George Mason University School of Public Policy / NORML. [https://static.prisonpolicy.org/scans/NORML\\_Crimes\\_of\\_Indiscretion.pdf](https://static.prisonpolicy.org/scans/NORML_Crimes_of_Indiscretion.pdf)

51. A steep uptick in cocaine and heroin-related arrests drove the drug war's 1980s-era offensive. After hovering near or just below 200 per 100,000 for most of the 1970s, marijuana arrest rates fell sharply from 196 per 100,000 in 1982 to 113 per 100,000 in 1991. During the penultimate decade of the twentieth century, the percentage of drug arrests that were cannabis-related (which topped 71% in the late 1970s) enjoyed a spectacular fall (bottoming out in 1991 at 29%). To be fair, pot-smoking did slow during the 1980s era. Government records from 1979 estimated the country had around 30 million regular marijuana users. In 1992, the figure had almost halved. Logan, Wayne A. (2014) After the Cheering Stopped: Decriminalization and Legalism's Limits *Cornell Journal of Law and*

*Public Policy: Vol. 24 (2)* <https://scholarship.law.cornell.edu/cjlp/vol24/iss2/3>; Gettman, Jon B. (2005). Crimes of Indiscretion: Marijuana Arrests in the United States. George Mason University School of Public Policy / NORML. [https://static.prisonpolicy.org/scans/NORML\\_Crimes\\_of\\_Indiscretion.pdf](https://static.prisonpolicy.org/scans/NORML_Crimes_of_Indiscretion.pdf).

52. Pembleton, Michael. (2017). The Discourse Of The Dope Menace. In *Containing Addiction: The Federal Bureau of Narcotics and the Origins of America's Global Drug War* (pp. 19-56). University of Massachusetts Press. <http://www.jstor.org/stable/j.ctv346vg7.5>

53. Rudovsky, David. (2001). *Law Enforcement by Stereotypes and Serendipity: Racial Profiling and Stops and Searches Without Cause*, *University of Pennsylvania Journal of Constitutional Law*, Vol. 3(10). <https://scholarship.law.upenn.edu/jcl/vol3/iss1/6>

54. Krauthammer, Charles. (1989, July 30). Children of Cocaine. *The Washington Post*. <http://digitalcollections.library.cmu.edu/awweb/awarchive?type=file&item=410809>

55. Though their very existence would later be exposed as a myth, the hysterical depictions and shockingly vitriolic response to "crack babies"—an purported explosion of infants born to poor, nonwhite drug users—demonstrated just how salient, incendiary and racialized the narrative around drug use had become. The covers of major magazines often depicted the crack baby in utero, driving home the idea that these "children of cocaine," to quote Krauthammer, predestined them "a life of certain suffering, of probable deviance, of permanent inferiority." But instead of empathy, crack babies got national scorn. Instead of seriously ill infants. Crack Babies were cast as the kid version of the "Welfare Queen", black people whose inevitable lifetime of graft (whether through violent crime or debilitating handicaps that demanded perpetual public support) would come at the taxpayer's expense. Krauthammer, Charles. (1989, July 30). Children of Cocaine. *The*

*Washington Post*; Chira, S. (1990, May 25). Crack Babies Turn 5, Schools Brace. *The New York Times*.  
[www.nytimes.com/1990/05/25/us/children-](https://www.nytimes.com/1990/05/25/us/children-)

<sup>56.</sup> Cooper, Barry Michael (February 1986). Crack, a Tiffany Drug at Woolworth Prices. *Spin Magazine*.  
<https://www.spin.com/featured/crack-a-tiffany-drug-at-woolworth-prices-spins-1986-feature/>

<sup>57.</sup> Ibid.

<sup>58.</sup> Just as the early anti-cocaine efforts drew from an almost primordial American connection between race and crime, media depictions of the crack epidemic cast drug use as the inevitable offshoot of unrepentant Black criminality. And while the racialization of drug use was slightly more coded than its historical antecedents, the subtext was clear. Cohen, M.M. (2006). Jim Crow's Drug War: Race, Coca Cola, and the Southern Origins of Drug Prohibition. *Southern Cultures Vol. 12*(3), 55-79. doi:10.1353/scu.2006.0031

<sup>59.</sup> Worth, Robert F. (2002, December 6). Wilding, A Word That Seared a City's Imagination. *The New York Times*.  
<https://www.nytimes.com/2002/12/06/nyregion/>

<sup>60.</sup> Morley, V.J. (1989, Nov. 20). Aftermath Of A Crack Article. *The Nation*.

<sup>61.</sup> Massing, Michael. (1989, Oct. 1). Crack's Destructive Sprint Across America. *The New York Times*  
<https://www.nytimes.com/1989/10/01/magazine/crack-s-destructive-sprint-across-america.html>.

<sup>62.</sup> Associated Press. (1986, September 25). Crack Use Not Widespread, DEA Report. *The Los Angeles Times*.  
<https://www.latimes.com/archives/la-xpm-1986-09-25-mn-10098-story.html>

<sup>63.</sup> Lazare, D. (1990, Jan. 23). How the Drug War Created Crack. *The Village Voice*.

<sup>64.</sup> At the height of concern in the late 1980s, the National Household Survey on Drugs estimated that less than one-half of 1 percent of the

population over age 12 used crack once a month. The study also found that over 75% of the high school seniors who tried crack did not continue to use it. By the time legislatures and police departments were properly suited up for battle, American crack consumption had already begun to decline. Egan, Timothy. (1999, February 28). War on Crack Retreats, Still Taking Prisoners. *The New York Times*.  
<https://www.nytimes.com/1999/02/28/us/war-on-crack-retreats-still-taking-prisoners.html>

<sup>65.</sup> The substance's waning popularity mirrored a macro trend in U.S drug consumption patterns; by the mid-1980s onward, the use of all illicit substances (including cocaine), had begun to decline. Ford, Matt. (2017, April 26). Until the Drug Dealer's Teeth Rattle. *The Atlantic*.  
<https://www.theatlantic.com/politics/archive/2017/04/james-forman-mass-incarceration/524328/>

<sup>66.</sup> This is not to say crack didn't wreak havoc in many American cities, it did. And at the time, prominent Black leaders were some of the most vociferous proponents of draconian drug sentencing. Studies have also shown that the violence can mostly be attributed to the illegality of the crack trade, not crack-induced pathologies. In a 2000 interview, Michael S. Gelacek, the former Vice-Chair of the U.S Sentencing Commission, recalled that "there was a lot of association of crack to violence," but noted that "when we looked at it, what we found is what's true with any new drug that comes on the market. The violence that's associated with the drug is not people who use the drug going out and committing crimes on innocent bystanders, although some of that occurs." Gelacek continues, "most of the violent crimes associated with crack cocaine had to do with setting down trafficking patterns, and who was going to stand on what street corner. Once that settled out, the violence died down." Public Broadcasting Service. (2000, Oct. 9). Frontline: Drug Wars—Michael S. Gelacek.  
<https://www.pbs.org/wgbh/>

<sup>67.</sup> Safire, William. (1989, September 24). Drug War Lingo. *The New York Times*.

<https://www.nytimes.com/1989/09/24/magazine/on-language-drug-war-lingo.html>

<sup>68.</sup> The mandatory minimums of the late eighties saw federal prison populations rise from 24,000 in 1980 to more than 208,000 in 2014. Half of those incarcerated in 2014 were “nonviolent drug offenders”. Saslow, Eli. (2015, June 6). Against His Better Judgement. *The Washington Post*.  
[https://www.washingtonpost.com/sf/national/2015/06/06/against-his-better-judgment/?tid=HP\\_more](https://www.washingtonpost.com/sf/national/2015/06/06/against-his-better-judgment/?tid=HP_more)

<sup>69.</sup> Balko, Radley. (2016, October 28). America’s Drug War: 30 Years of Rampaging Wildebeest. *The Washington Post*,  
<https://www.washingtonpost.com/news/the-watch/wp/2016/10/28/americas-drug-war-30-years-of-rampaging-wildebeest/>

<sup>70.</sup> U.S Department of Health and Human Services. (1999). *Summary of Findings from the 1998 National Household Survey on Drug Abuse*. Substance Abuse and Mental Health Services Administration.  
<https://www.datafiles.samhsa.gov/study-publication/summary-findings-1998-national-household-survey-drug-abuse-nid15623>

<sup>71.</sup> A 2018 Department of Justice memo reminded US attorneys that certain drug offenses were still subject to the use of the death penalty. U.S Department of Justice. (2018, March 21). *Memo to U.S. Attorneys on the Use of Capital Punishment in Drug-Related Prosecutions*. U.S Department of Justice Office of Public Affairs.

<sup>72.</sup> Caulkins, Jonathan. (1997). *Are Mandatory Minimum Drug Sentences Cost-Effective?* RAND Corporation.  
[https://www.rand.org/pubs/research\\_briefs/RB6003.html](https://www.rand.org/pubs/research_briefs/RB6003.html).

<sup>73.</sup> The disparities in African American imprisonment rates are higher for drug offenses than for other types of crime, driven in part by the harsh sentences governing crack cocaine. In 1997, celebrated criminologist Michael Tonry argued that “the sentences and enforcement for crack offenses were so severe

because penalties are almost exclusively imposed on black defendants.” Tonry, Michael. (1997). *Ethnicity, Crime, and Immigration: Comparative and Cross-National Perspective*. University of Chicago Press.

<sup>74.</sup> Drug war hawks counted many prominent Black leaders in their ranks. In fact, anti-drug efforts in the African-American community began well before the fervor took hold of white America. Prominent Black clergymen framed the battle against drug use as a “biblical struggle between good and evil.” The “law-and-order” advocacy and anti-drug crusading of Black lawmakers like New York Congressman Charles Rangel—a one-time federal prosecutor who *Ebony Magazine* called America’s “front-line general in the War on Drugs”—was crucial to the Reagan-era escalation of America’s counternarcotics campaign. In a 1970 interview, Rangel said that drug sellers “should believe that they will be arrested and go to jail for the rest of their natural life.” *Ebony Magazine*. (1970, June). *New York Age*—a popular Black weekly—led calls to “clean out this [drug] scum—and put them away as long as the law will allow.” A writer for *The Amsterdam News*, a Harlem-based daily, confessed in a newspaper column that he was in favor of burning [drug sellers] alive. “Blacks Declare War on Dope”; Fortner, Michael Javen. (2015). *Black Silent Majority: The Rockefeller Drug Laws and the Politics of Punishment*. Harvard University Press

<sup>75.</sup> In the decades immediately following the crack epidemic and the Reagan-era escalation of the drug war, the proportion of federal prisoners incarcerated for drug offenses nearly doubled (increasing from 25 percent in 1980 to 61 percent in 1994). In 2015, more than 95,000 federal prisoners were serving time for drug-related offenses (versus 5,000 in 1980). Pew Charitable Trusts. University at Albany. (2003). *Sourcebook of Criminal Justice Statistics 2003*. <http://www.albany.edu/>

<sup>76.</sup> Gross, Jane. (1985, Nov. 29). A New Purified Form of Cocaine Causes Alarm As Abuse Increases. *The New York Times*. [www.nytimes.com/1985/11/29/nyregion/](http://www.nytimes.com/1985/11/29/nyregion/)



a-new-purified-form-of-cocaine-causes-alarm-as  
-abuse-increases

<sup>77</sup>. Alexander, Michelle. (2010). *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. The New Press.

<sup>78</sup>. Provine, Doris M. (2007). *Unequal Under Law: Race in the War on Drugs*. University of Chicago Press.

<sup>79</sup>. A series of Human Rights Watch reports found that Black Americans were regularly up to 10 times more likely to be sent to prison for drug offenses than their white counterparts. Human Rights Watch. (2009). *Race, Drugs, and Law Enforcement in the United States*. Stanford Law and Policy Review.

[https://www.hrw.org/news/2009/06/19/race-drugs-and-law-enforcement-united-states#\\_ftn2](https://www.hrw.org/news/2009/06/19/race-drugs-and-law-enforcement-united-states#_ftn2) Human Rights Watch. (2000). *Punishment and Prejudice: Racial Disparities in the War on Drugs*. <https://www.hrw.org/reports/2000/usa/>; Human Rights Watch. (2008). *Targeting Blacks: Drug Law Enforcement and Race in the United States*. [https://www.hrw.org/sites/default/files/reports/us0508\\_1.pdf](https://www.hrw.org/sites/default/files/reports/us0508_1.pdf)

<sup>80</sup>. Myers, Martha A. (1993). Inequality and the Punishment of Minor Offenders in the Early 20th Century. *Law & Society Review, Vol. 27(2)*, 313-343. doi:10.2307/3053939

<sup>81</sup>. Alexander, Michelle. (2010). *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. The New Press.

<sup>82</sup>. Tonry, Michael H. (1995). *Malign Neglect: Race, Crime, and Punishment in America*. Oxford University Press.

## THE POLICING OF PROHIBITION

1. Musto, David & Korsmeyer, Pamela. (2002). *The Quest for Drug Control: Politics and Federal Policy in a Period of Increasing Substance Abuse (1963-1981)*. Yale University Press.

2. Campbell, M., & Schoenfeld, H. (2013). The Transformation of America's Penal Order: A Historicized Political Sociology of Punishment. *American Journal of Sociology*, 118(5), 1375-1423. doi:10.1086/669506

3. A mid-century Harris poll found that the vast majority of Americans felt that a hospital—not jail—was the appropriate place to send people caught consuming illicit drugs. Musto, David F., and Pamela Korsmeyer. *The Quest for Drug Control: Politics and Federal Policy in a Period of Increasing Substance Abuse, 1963–1981*. Yale University Press, 2002.

4. Benson, Bruce L., Rasmussen, David W., and Sollars, David L. (2015). Police Bureaucracies, Their Incentives, and the War on Drugs. *Public Choice*, Vol. 83(1/2), 21-45

5. Reeves, Jimmie L., and Campbell, Richard. (1994). *Cracked Coverage: Television News, The Anti-Cocaine Crusade, and the Reagan Legacy*. Duke University Press.

6. CompStat, which was created by New York City Police Chief William Bratton and his deputy, Jack Maple, is a computer program that maps criminal activity, allowing police leaders to evaluate officer-level performance according to the number of criminal apprehensions they make. "Quantified policing" proved to be foundational to the expansion of broken windows policing. Willis, James J., and Mastrofski, Stephen. (2012). Compstat and The New Penology: A Paradigm Shift In Policing. *The British Journal of Criminology*, Vol. 52(1), 73-92. <http://www.jstor.org/stable/44173472>

7. After a drug bust, members of the local vice squad would send a press release to every media contact they had in the region. Contact every news reporter in the region. Police department photo-ops masqueraded as press conferences; chiefs would briefly announce the apprehension of "major" drug dealers before

displaying the confiscated drugs for the press corps photographers. They avoided mentioning that the seized contraband would not make even the slightest difference in the substance's price or availability. As far back as 1985, prominent policy experts argued that this superficial strategy misrepresented the efficacy of law enforcement's efforts, and empowered drug war advocates to (falsely) claim America's drug control was shaping up to be a huge success. Carpenter, Ted G. (1985). *The U.S. Campaign Against International Narcotics Trafficking: A Cure Worse than the Disease*. Cato Institute. [www.jstor.org/stable/resrep04974](http://www.jstor.org/stable/resrep04974)

8. These quantified policing tools charted an officer's performance by the number of criminal apprehensions they made, street cops were even more highly incentivized to nab people for even the lowest-level violations.

9.

<sup>10</sup>. Although the available data suggest that white people are slightly more likely than either Black or Latinx people to report having sold drugs, people of color are significantly overrepresented in the ranks of those incarcerated on distribution charges.

<sup>11</sup>. Even as marijuana arrests reached unprecedented levels, marijuana consumption patterns remained stable. Put simply, this War on Weed had no measurable impact on the drug's price, access, or availability. Bray, Jeremy W., Farrelly, Matthew C., Wendling, Brett W., & Zarkin, Gary A. (1999). *The Effects of Prices and Policies on the Demand for Marijuana: Evidence from the National Household Surveys on Drug Abuse*. National Bureau of Economic Research, Working Paper No. 6940. <https://www.nber.org/papers/w6940>

<sup>12</sup>. In 2018, The National Survey on Drug Use and Health (NSDUH) found that 43.5 million US residents aged 12 or older (15.9% of the 12+ population) reported having consumed marijuana at least once within the past year. U.S. Department of Health and Human Services (2018). *National Survey on Drug Use and Health*. Substance Abuse and Mental Health Services Administration. <https://www.datafiles.samhsa.gov/study/nationa>

l-survey-drug-use-and-health-nsduh-2018-nid13623

<sup>13</sup>. Harocopos, Alex, and Hough, Mike. (2005). Drug Dealing in Open-Air Markets. *Center for Problem-Oriented Policing*. <https://www.ncjrs.gov/App/Publications/abstract.aspx?ID=208503>

<sup>14</sup>. A new focus on low-level drug enforcement led to policing tactics like the 'reverse sting'. The reverse sting sees police officers sell drugs to would-be users. This allows the arresting officer to seize a buyer's cash rather than a seller's drugs (which have no legal value to the seizing agency). Patrick Murphy, a former NYPD Commissioner, laid bare the financial motivations of the reverse sting. "Seized cash will end up forfeited to the police department, while seized drugs can only be destroyed," he explained. In October 1997, the NYPD conducted its first recorded reverse sting; the effort saw NYPD officers arrest seventy-two would-be marijuana buyers in Washington Square Park. The Southern Poverty Law Center. (2017, October 30). *Civil Asset Forfeiture: Unfair, Undemocratic, and Un-American*. <https://www.splcenter.org/20171030/civil-asset-forfeiture-unfair-undemocratic-and-un-american>

<sup>15</sup>. Kelling, George L., & Wilson, James Q. (1982, March). Broken Windows. *The Atlantic*. <https://www.theatlantic.com/magazine/archive/1982/03/broken-windows/304465/>

<sup>16</sup>. Between 1963 and 1993, the murder rate doubled, the robbery rate quadrupled, and the aggravated-assault rate nearly quintupled. Coates, Ta-Nehisi. (2015, October). The Black Family in the Age of Mass Incarceration, *The Atlantic*. <https://www.theatlantic.com/magazine/archive/2015/10/the-black-family-in-the-age-of-mass-incarceration/403246/>

<sup>17</sup>. According to prominent drug policy scholar Jeffrey Miron, much of the increase in violent crime can be traced back to the War on Drugs itself. The offensive disrupted drug markets fueled higher profits and stimulated more violent competition. Miron, Jeffrey A. (1999). Violence and the U.S. Prohibitions of Drugs and

Alcohol. *American Law and Economics Review*, Vol. 78, 78–114.

<sup>18</sup>. A sharp downturn in drug-associated violence and public disorder began as early as 1990.

<sup>19</sup>. The NYPD's quality-of-life efforts were called Order Maintenance Policing (OMP).

<sup>20</sup>. Braverman, Irus. (2013). Passing the Sniff Test: Police Dogs as Surveillance Technology. *Buffalo Law Review*, Vol. 61(1). <https://digitalcommons.law.buffalo.edu/buffalolawreview/vol61/iss1/4>

<sup>21</sup>. Geller, Amanda, & Fagan, Jeffrey. (2010). Pot as Pretext: Marijuana, Race and the New Disorder in New York City Street Policing. *Journal of Empirical Legal Studies*. <https://ssrn.com/abstract=1443441>

<sup>22</sup>. Gelman, Andrew., Fagan, Jeffrey, & Kiss, Alex. (2007). An Analysis of the New York City Police Department's "Stop-and-Frisk" Policy in the Context of Claims of Racial Bias. *Journal of the American Statistical Association*, Vol. 102(479), 813-823. <http://www.jstor.org/stable/27639927>

<sup>23</sup>. Rudovsky, David. (2001) Law Enforcement by Stereotypes and Serendipity: Racial Profiling and Stops and Searches Without Cause. *University of Pennsylvania Journal of Constitutional Law*, Vol. 933. A 2001 study of police behavior in Oakland, California found that while Black and white residents were treated equitably by police in terms of traffic stops, citation rates, and consent searches, police were more likely to pat-search and perform searches of the Black people they had stopped. Reuter, Peter., Hirschfield Paul., & Davies Curt. (2001, May). Assessing the Crackdown on Marijuana in Maryland. Abell Foundation. <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.608.4702&rep=rep1&type=pdf>

<sup>24</sup>. Peck, Adam. "Mayor Bloomberg: NYPD 'Stops Whites Too Much And Minorities Too Little,'" ThinkProgress. 28 June 2013. <https://archive.thinkprogress.org/mayor-bloomberg-nypd-stops-whites-too-much-and-minorities-too-little-7977f5c3436a/>

25. Shakur, Tupac. (1992). *Changes*. From Greatest Hits [CD]. Interscope Records.
26. Public Broadcasting Service. (2000, Oct. 9). Frontline: Drug Wars—Peter Bourne Interview. <https://www.pbs.org/wgbh/pages/frontline/shows/drugs/interviews/bourne.html>
27. Between 1992 and 1995, teen marijuana use increased by 141 percent. Many drug policy scholars attribute the uptick in adolescent use to the hyperbolic claims and scare tactics of the 1980s drug education. While a “Just Say No” approach worked for a while, as it became more obvious that teens’ brains, on drugs (at least marijuana), would likely end up being just fine, the desire to take an abstinence-only approach to marijuana use began to wane. The shift in risk perception is borne out in the data. In 1991, nearly 77% of high school seniors agreed “there were great risks to regular marijuana use”. By 2003, only 55% of seniors felt the same. Blumenson, Eric., & Nilsen, Eva. (1998). Policing for Profit: The Drug War’s Hidden Economic Agenda. *The University of Chicago Law Review*, Vol. 65. <https://doi.org/10.2307/1600184>
28. The psychopharmacological model of violence suggests that some individuals, as a result of short-term or long-term use of certain drugs, may become violent. In 2005, William “Bill” Bennett—the Director of the Office of National Drug Control Policy under George H. W. Bush, theorized on his radio show that, “if it were your sole purpose to reduce crime, you could abort every black baby in this country, and your crime rate would go down.” Tapper, Jake. (2005, Sept. 29). William Bennett Defends Comment on Abortion and Crime. *ABC News*. <https://abcnews.go.com/WNT/Politics/story?id=171385&page=1>
29. Golub, Andrew, and Bruce D. Johnson (1999). Cohort Changes in Illegal Drug Use Among Arrestees in Manhattan: From the Heroin Injection Generation to the Blunts Generation. *Substance Use and Misuse*, Vol. 34(13), 1733–1763. <https://doi.org/10.3109/10826089909039425>; Furst, R., Johnson, B., Dunlap, E., & Curtis, R. (1999). The Stigmatized Image Of The “Crackhead”: A Sociocultural Exploration Of A Barrier To Cocaine Smoking Among A Cohort Of Youth In New York City. *Deviant Behavior* 20(2), 53–181. <https://doi.org/10.1080/016396299266542>; Wallace, J., & Bachman, J. (1991). Explaining Racial/Ethnic Differences in Adolescent Drug Use: The Impact of Background and Lifestyle. *Social Problems*, 38(3), 333-357. doi:10.2307/800603; Sifaneck, Stephen J., Kaplan, Charles D., Dunlap, Eloise., & Johnson, Bruce D. (2003). Blunts And Blowt Jes: Cannabis Use Practices In Two Cultural Settings And Their Implications For Secondary Prevention. *Free Inquiry In Creative Sociology*, Vol. 31(1). <https://ojs.library.okstate.edu/osu/index.php/FICS/article/viewFile/1484/1317>
30. Traub, James. (1996, October 28). The Criminals of Tomorrow. *The New Yorker*. <https://www.newyorker.com/magazine/1996/11/04/the-criminals-of-tomorrow>
31. In a 1996 report prepared for the U.S Attorney General, Fox warned that—despite a downturn in teen violence—the delinquency of Black adolescents had put America “on the verge of another crime wave that will last well into the next century.” U.S Department of Justice / Fox, James A. (1996). *A Report to the United States Attorney General on Current and Future Rates of Juvenile Offending*. Bureau of Justice Statistics. <https://www.bjs.gov/content/pub/pdf/tjvfox.pdf>
32. In 1996, Dilulio would partner with William Bennett (George H.W Bush’s “drug czar”) and John P. Walters, who would become George W. Bush’s to write *Body Count: Moral Poverty and How to Win America’s War Against Crime and Drugs*. In the book, the authors argued that the “black kids who inspire the fear seem not merely unrecognizable but alien” to white America. Bennett, William, Dilulio, John J. Jr, & Walters, John P. (1996). *Body Count: Moral Poverty and How to Win America’s War Against Crime and Drugs*. Simon & Schuster.
33. Most contemporary historians instead attribute the 1990s uptick in adolescent marijuana use to the hyperbolic claims and scare tactics of the 1980s drug education. While a “Just Say No” approach worked for a while, as it became more obvious that teens’ brains, on drugs (at least marijuana), would likely end up being just fine, the desire to take an abstinence-only approach to marijuana use

began to wane. The shift in risk perception is borne out in the data. In 1991, nearly 77% of high school seniors agreed "there were great risks to regular marijuana use". By 2003, only 55% of seniors felt the same. Golub, A., Johnson, B. D., & Dunlap, E. (2005). The Growth In Marijuana Use Among American Youths During The 1990s And The Extent Of Blunt Smoking. *Journal Of Ethnicity In Substance Abuse*, Vol. 4(3-4), 1-21.  
[https://doi.org/10.1300/J233v04n03\\_01](https://doi.org/10.1300/J233v04n03_01)

<sup>34</sup>. In 1991, Black teens were 41% of those arrests for possession, 65% of those arrests for sales.

<sup>35</sup>. A study showed that rural teens (overwhelmingly white) were 34% more likely to use marijuana than their (predominantly Black) urban counterparts. Rudovsky, David. (2001) Law Enforcement by Stereotypes and Serendipity: Racial Profiling and Stops and Searches Without Cause. *University of Pennsylvania Journal of Constitutional Law*, Vol. 933; Soldz, S., Huyser, D. J., & Dorsey, E. (2003). The cigar as a drug delivery device: youth use of blunts. *Addiction (Abingdon, England)*, 98(10), 1379-1386.  
<https://doi.org/10.1046/j.1360-0443.2003.00492.x>

<sup>36</sup>. Data from the National Household Survey on Drug Abuse indicates that black youth (12-17) are less likely than white or Hispanic youth ever to have used or to be current users of cigarettes, alcohol, marijuana, cocaine, and most other illicit drugs. Wallace, J., & Bachman, J. (1991). Explaining Racial/Ethnic Differences in Adolescent Drug Use: The Impact of Background and Lifestyle. *Social Problems*, 38(3), 333-357. doi:10.2307/800603

<sup>37</sup>. Becker, Elizabeth (2001, February 9). As Ex-Theorist on Young 'Superpredators,' Bush Aide Has Regrets. *The New York Times*.  
<https://www.nytimes.com/2001/02/09/us/as-ex-theorist-on-young-superpredators-bush-aide-has-regrets.html>

<sup>38</sup>. Duke, Lynne. (1991, January 9). Whites' Racial Stereotypes Persist. *The Washington Post*.  
<https://www.washingtonpost.com/archive/politics/1991/01/09/whites-racial-stereotypes-persist/5d9b8bab-6362-4924-bb0d-285193b2e317/>.

Around the same time as the survey, a National Bureau of Economic Research would issue a paper that concluded that "despite its frequent use among arrestee populations, marijuana has generally been shown to inhibit aggressive behavior and violence in humans and thus it is believed not to be a major contributor to crime." Pacula, Rosalie Liccardo., & Kilmer, Beau. (2003). Marijuana and Crime: Is There A Connection Beyond Prohibition? National Bureau of Economic Research, Working Paper No. 10046.  
<https://www.nber.org/papers/w10046>

<sup>39</sup>. Lynne Abraham, then the (Democratic) District Attorney for Philadelphia was also quoted in "The Coming of the Superpredators," where she fingered Black, urban teens—"kids who have absolutely no respect for human life and no sense of the future,"—for the "big trouble that had yet to crest". In the article, Abraham warns that though "the trouble will be greatest in black inner-city neighborhoods... youth-crime problems will "spill over into upscale central-city districts, inner-ring suburbs, and even the rural heartland." Dilulio, John Jr. (1995, Nov. 27). The Coming of the Superpredators. *The Weekly Standard*.  
<https://www.washingtonexaminer.com/weekly-standard/the-coming-of-the-super-predators>

<sup>40</sup>. In a mid-nineties study, ninety-five percent of respondents pictured a black drug user while only 5 percent imagined other racial groups. Burston, Betty W., Dionne, Jones., and Roberson-Saunders, Pat. (1995). Drug Use And African Americans: Myth Versus Reality. *Journal Of Alcohol And Drug Education*, Vol. 40(2), 19-39.

<sup>41</sup>. Miron, Jeffrey A. (1999). Violence And The U.S. Prohibitions Of Drugs And Alcohol. *American Law and Economics Review*, Vol 1(1), 78-114.  
<https://www.nber.org/papers/w6950>

<sup>42</sup>. Bennett, William J., Dilulio, John J. Jr, & Walters, John P. (1996). *Body Count: Moral Poverty and How to Win America's War Against Crime and Drugs*. Simon & Schuster.

<sup>43</sup>. In "The Coming of the Superpredators," Dilulio notes that the number of African-American teens between the ages of 14 and 17 would grow 17 percent by the year 2005. Dilulio, John Jr. (1995, Nov. 27). The

Coming of the Superpredators. *The Weekly Standard*.  
<https://www.washingtonexaminer.com/weekly-standard/the-coming-of-the-super-predators>

44. Dilulio, John J. Jr. (1995, Dec. 15). Moral Poverty. *The Chicago Tribune*.  
<https://www.chicagotribune.com/news/ct-xpm-1995-12-15-9512150046-story.html>

45. Quoting Vincent Schiraldi in his Will the Real John Dilulio Please Stand Up, his 2001 essay for The Washington Post. In the same article, Schiraldi—the then President of the Justice Policy Institute—argued that “no single person has been more closely identified with unsound crime analysis and punitive imprisonment policies than John Dilulio”. Schiraldi, Vincent. (2001, February 5). Will the Real John Dilulio Please Stand Up. *The Washington Post*.  
<https://www.washingtonpost.com/archive/opinions/2001/02/05/will-the-real-john-dilulio-please-stand-up/cd4e6bec-5dac-4eeb-b431-cee7de2b33e2/>

46. Dilulio, John Jr. (1995, Nov. 27). The Coming of the Superpredators. *The Weekly Standard*.  
<https://www.washingtonexaminer.com/weekly-standard/the-coming-of-the-super-predators>

47. Bennett, William J., Dilulio, John J. Jr, & Walters, John P. (1996). *Body Count: Moral Poverty and How to Win America's War Against Crime and Drugs*. Simon & Schuster.

48. U.S Department of Justice. *Juvenile Justice Reform Initiatives in the States 1994-1996*. Office of Juvenile Justice and Delinquency Prevention.  
<https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/reform2/contents.html>

49. U.S Department of Justice / Fox, James A. (1996). *A Report to the United States Attorney General on Current and Future Rates of Juvenile Offending*. Bureau of Justice Statistics.  
<https://www.bjs.gov/content/pub/pdf/tjvfox.pdf>

50. Ostrow, Ronald J. (1990, September 6). Casual Drug Users Ought to Be Taken Out and Shot. *The Los Angeles Times*.  
<https://www.latimes.com/archives/la-xpm-1990-09-06-mn-983-story.html>

51. Ward J: NYPD View: New Procedures Credited with Crime Drop. *American City and County* 1997, 112:28-31.

52. In most jurisdictions, ‘low-level drug offender’ is synonymous with marijuana-related crimes. According to a 1990 Department of Justice report, 88% of local and state police departments made marijuana seizures. In over 50% of police departments serving more than 50,000 people, marijuana was the only drug seized. U.S Department of Justice. (1990). *Drug Enforcement by Police and Sheriffs' Departments, 1990*. Office of Justice Programs, Bureau of Justice Statistics.  
<https://www.bjs.gov/content/pub/pdf/depsd90.pdf>

53. According to UCR data for 1990, 30% of all arrests for drug law violations were marijuana-related. About 4 in 5 marijuana arrests were for possession.

54. The percent of American drug arrests that were marijuana-related rose from 31% in 1965 71% in 1971. Richard, Bonnie, & Whitebread, Charles (1974). *The Marihuana Conviction: A History Of Marihuana Prohibition in the United States*.

55. From 1980 to 1989, the increase in the arrest rate for drug sale or manufacture (210%) was twice as great as the increase in the rate for drug possession or use (89%). U.S Department of Justice. (2011). *Arrest in the United States, 1980-2009*. Office of Justice Programs, Bureau of Justice Statistics.  
<https://www.bjs.gov/content/pub/pdf/aus8009.pdf>

56. The number of murder arrests in the U.S. fell by half between 1990 and 2019. The adult and juvenile arrest rates dropped substantially in the 1990s, while both continued to fall about 20% between 2000 and 2019, reaching their lowest levels since at least 1990. U.S Department of Justice. (2011). *Arrest in the United States, 1980-2009*. Office of Justice Programs, Bureau of Justice Statistics.  
<https://www.bjs.gov/content/pub/pdf/aus8009.pdf>

57. The same laws motivated prosecutors to give leniency to large distributors (i.e “sharks”),

neutering any efforts to crack down on the drug supply.

58. U.S Department of Justice. (2011). *Arrest in the United States, 1980-2009*. Office of Justice Programs, Bureau of Justice Statistics. <https://www.bjs.gov/content/pub/pdf/aus8009.pdf>

59. Kennedy, Joseph E., Unah, Isaac, and Wahlers, Kasi. (2018). Sharks and Minnows in the War on Drugs: A Study of Quantity, Race and Drug Type in Drug Arrests. *University of California Davis Law Review, Vol. 62*, 729-801. <https://ssrn.com/abstract=3305732>

60. Grim, Ryan. (2016, September 7). A White House Drug Deal Gone Bad. *Slate*. <https://slate.com/technology/2006/09/a-white-house-drug-deal-gone-bad.html>

61. U.S Department of Justice. Moore, Mark H. And Kleiman, Mark A.R. (1989) *The Police and Drugs*. National Institute of Justice and the Harvard University Program in Criminal Justice Policy and Management. <https://www.ncjrs.gov/pdffiles1/nij/117447.pdf>

62. In *Wages of Crime: Black Markets, Illegal Finance, and the Underworld Economy*, economist R.T. Naylor argues that from Prohibition to prostitution, from gambling to recreational drugs, the story is the same. Supply-side controls act . . . to encourage production and increase profits. At best a few intermediaries get knocked out of business." Naylor, R.T. (2002). *Wages of Crime: Black Markets, Illegal Finance, and the Underworld Economy*. Cornell University Press.

63. The street price of marijuana—which had enjoyed a steady rise from 1975 to 1991, was estimated to have declined by almost 40 percent from 1992 to 1996. Grossman, Michael. (2004). *Individual Behaviors and Substance Use: The Role of Price*. National Bureau of Economic Research.

64. Bratton, William. (2015). Broken Windows and Quality-of-Life Policing in New York City. New York City Police Department. [http://www.nyc.gov/html/nypd/downloads/pdf/analysis\\_and\\_planning/qol.pdf](http://www.nyc.gov/html/nypd/downloads/pdf/analysis_and_planning/qol.pdf)

65. Ibid.

66. Rivera, Ray and Baker, Al and Roberts, Janet. (2020, July 11). A Few Blocks, 4 Years, 52,000 Police Stops. *The New York Times*. <https://www.nytimes.com/2010/07/12/nyregion/12frisk.html>

67. Bratton, William J. (1994, April 6). Driving Drug Dealers Out of New York. *New York City Police Department*. [https://dc.lib.jjay.cuny.edu/index.php/Detail/Object/Show/object\\_id/7119](https://dc.lib.jjay.cuny.edu/index.php/Detail/Object/Show/object_id/7119)

68. Chou, Jerome. (2000, April 1). Operation Condor. *The Gotham Gazette*. <https://www.gothamgazette.com/criminal-justice/1633-operation-condor>; Kocieniewski, David. (1997, August 7). Safir Plans to Add 400 Detectives To Narcotics Units. *The New York Times*. <https://www.nytimes.com/1997/08/07/nyregion/safir-plans-to-add-400-detectives-to-narcotics-units.html>

69. Safir resigned shortly after he unlawfully released the sealed juvenile records of Patrick Dorismond. Dorismond, an unarmed security guard, was killed by an undercover NYPD detective who (incorrectly) suspected Dorismond of having drugs on his person. Kolbert, Elizabeth. (2000, May 8). Personal and the Political. *The New Yorker*. <https://www.newyorker.com/magazine/2000/05/08/personal-and-political>

70. Geller, Amanda, & Fagan, Jeffrey. (2010). Pot as Pretext: Marijuana, Race, and the New Disorder in New York City Street Policing. *Journal of Empirical Legal Studies*. <https://ssrn.com/abstract=1443441>

71. Operation Condor was shut down shortly after one of its detectives ran through a crowded Brooklyn schoolyard with his gun drawn in pursuit of a suspected street dealer. Chou, Jerome. (2000, April 1). Operation Condor. *The Gotham Gazette*. <https://www.gothamgazette.com/criminal-justice/1633-operation-condor>

72. Safir resigned shortly after he unlawfully released the sealed juvenile records of Patrick Dorismond. Dorismond, an unarmed security guard, was killed by an undercover NYPD

detective who (incorrectly) suspected Dorismond of having drugs on his person. Kolbert, Elizabeth. "Personal and the Political", *The New Yorker*, 8 May 2000. <https://www.newyorker.com/magazine/2000/05/08/personal-and-political>

73. Office of the Mayor of New York City. (1997, July 1). *Mayor Giuliani Reports Crime In New York City Continues To Fall*. Archives of the Mayor's Press Office. <http://nyc.gov/html/om/html/98b/pr310-98.html>

74. Wynn, J. R. (2001). Can Zero Tolerance Last? Voices From Inside The Precinct. In A. Mcardle & T. Erzen (Eds.), *Zero Tolerance: Quality Of Life And The New Police Brutality In New York City* (Pp. 107–126). New York, NY: New York University

75. King, R. S., & Mauer, M. (2006). The War On Marijuana: The Transformation Of The War On Drugs In The 1990s. *Harm Reduction Journal*, Vol. 3(6). <https://doi.org/10.1186/1477-7517-3-6>

76. Legislators believed that criminal prosecution and felony penalties were inappropriate for marijuana possession, so in 1977, New York enacted the Marijuana Reform Act (N.Y. Penal Law § 221.)— created a separate article in the state's penal laws for the drug (not considered a "controlled substance" in New York's penal laws). Most marijuana offenses were deemed misdemeanors, but possession of more than eight ounces or sale of more than seven-eighths of an ounce were considered felonies.

77. Ridgeway G. (2007). Analysis of Racial Disparities in the New York Police Department's Stop, Question, and Frisk Practices. *RAND Corporation*. [http://www.rand.org/pubs/technical\\_reports/2007/RAND\\_TR534.pdf](http://www.rand.org/pubs/technical_reports/2007/RAND_TR534.pdf).

78. New York City (n.d.). *NYC Open Data*. <https://opendata.cityofnewyork.us/>

79. Dwyer, Jim. (2009, December 22). Whites Smoke Pot, but Blacks Are Arrested. *The New York Times*. <https://www.nytimes.com/2009/12/23/nyregion/23about.html>

80. Fagan, Jeffrey., & Davies, Garth. (2000). Street Stops and Broken Windows: Terry, Race, and Disorder in New York City. *Fordham Urban Law Journal*, Vol. 28(2), 457-504. <https://ir.lawnet.fordham.edu/ulj/vol28/iss2/2>

81. Memorandum with attachment, Stu Eizenstat and Lee Dogoloff for Griffin Bell, 9 August 1979, folder "Drug Policy [CF, O/A 727] 1]," Box 189, Stuart Eoznstat files, Jimmy Carter Library.

82. There has not a corresponding increase in arrests related to non-drug-related crimes. Lofstrom, M., & Raphael, S. (2016). Crime, the Criminal Justice System, and Socioeconomic Inequality. *The Journal of Economic Perspectives*, Vol. 30(2), 103-126.

83. In 1991, when marijuana arrests bottomed out, arrests for heroin and cocaine (possession and sale) totaled 558,000, compared with a total for marijuana of 327,000. These figures soon reversed.

84. Johnson, B. D., Golub, A., Dunlap, E., Sifaneck, S. J., & McCabe, J. E. (2006). Policing and Social Control of Public Marijuana Use and Selling in New York City. *Law Enforcement Executive Forum*, Vol. 6(5), 59–89.

85. Nearly 90% of these arrests were for possession alone. King, Ryan S., & Mauer, Marc (2006). The War On Marijuana: The Transformation Of The War On Drugs In The 1990s. *Harm Reduction Journal*, Vol. 3(6). <https://doi.org/10.1186/1477-7517-3-6>

86. From 1990 to 2002, drug arrests nationally increased by 41%, from 1,089,500 to 1,538,800. During this time, the total number of marijuana arrests more than doubled from 327,000 to 697,000 (an increase of 113%). Arrests for drugs other than marijuana rose a modest 10% during the same time. King, Ryan S., & Mauer, Marc (2006). The War On Marijuana: The Transformation Of The War On Drugs In The 1990s. *Harm Reduction Journal*, Vol. 3(6). <https://doi.org/10.1186/1477-7517-3-6>

87. The percent of all drug arrests that were marijuana trafficking-related rose from 6.1% in 1990 to 5.4% in 2002. Possession arrest percentage grew from 24% in 1990 to 40% in 2002. King, Ryan S., & Mauer, Marc (2006). The



War On Marijuana: The Transformation Of The War On Drugs In The 1990s. *Harm Reduction Journal*, Vol. 3(6).  
<https://doi.org/10.1186/1477-7517-3-6>

<sup>88.</sup> In 2019, police departments made over 600,000 arrests for marijuana possession alone. American Civil Liberties Union (2020, 17 April). *A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform*.  
<https://www.aclu.org/news/criminal-law-reform/a-tale-of-two-countries-racially-targeted-arrests-in-the-era-of-marijuana-reform/>

<sup>89.</sup> At the beginning of the new millennium, marijuana possession arrests started to account for between 37.7 and 42.1% of all drug arrests in the country. In 2002, marijuana arrests comprised 45% of all drug arrests; a percentage that's held steady into today. U.S. Department of Justice. (1999). *Substance Abuse and Treatment, State and Federal Prisoners, 1997*. Office of Justice Programs, Bureau of Justice Statistics Bureau of Justice Statistics; U.S. Department of Justice. (n.d) *Drugs and Crime Facts*. Office of Justice Programs, Bureau of Justice Statistics.  
<https://www.bjs.gov/content/dcf/enforce.cfm>; U.S. Department of Justice. (2003). *Sourcebook of Criminal Justice Statistics 2003*. Office of Justice Programs: Bureau of Justice Statistics.  
<https://www.albany.edu/sourcebook/pdf/t41.pdf> ; Mauer, Marc., & King, Ryan. (2007, September 1). *A 25-Year Quagmire: The War On Drugs and Its Impact on American Society*. The Sentencing Project.; American Civil Liberties Union (2020, 17 April). *A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform*.  
<https://www.aclu.org/news/criminal-law-reform/a-tale-of-two-countries-racially-targeted-arrests-in-the-era-of-marijuana-reform/>

<sup>90.</sup> Lynch, Mona. (2012). Theorizing the Role of the "War on Drugs" in US Punishment. *Theoretical Criminology*, Vol. 16(175–199).

<sup>91.</sup> American Civil Liberties Union (2020, 17 April). *A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform*.  
<https://www.aclu.org/news/criminal-law-reform/a-tale-of-two-countries-racially-targeted-arrests-in-the-era-of-marijuana-reform/>

<sup>92.</sup> For the purposes of this paper "serious

crimes" refers to Index I crimes, which are defined by the federal government "as the most serious and costly to society." Index I crimes consist of murder and non-negligent manslaughter, forcible rape, robbery, aggravated assault, burglary, larceny-theft, motor vehicle theft, and arson.

<sup>93.</sup> Kelling, George L., & Wilson, James Q. (1982, March). Broken Windows. *The Atlantic*.  
<https://www.theatlantic.com/magazine/archive/1982/03/broken-windows/304465/>

<sup>94.</sup> Kennedy, J.E., Unah, I., & Wahlers, K. (2018). Sharks and Minnows in the War on Drugs: A Study of Quantity, Race and Drug Type in Drug Arrests. *University of California Davis Law Review*, Vol. 62, 729-801.  
<https://ssrn.com/abstract=3305732>

<sup>95.</sup> Public Broadcasting Service. (1997, Winter). Busted: America's War on Marijuana—Steve White Interview.  
<https://www.pbs.org/wgbh/pages/frontline/shows/dope/interviews/white.html>

<sup>96.</sup> Ahrens, Deborah M. Retroactive Legality: Marijuana Convictions and Restorative Justice in an Era of Criminal Justice Reform. *Journal of Criminal Law & Criminology*, Vol. 110(3), 379-440.  
[www.jstor.org/stable/48573787](http://www.jstor.org/stable/48573787).

<sup>97.</sup> Lassiter, M.D. (2015). Impossible Criminals: The Suburban Imperatives of America's War on Drugs. *The Journal of American History*, Vol. 102, 126-140.

<sup>98.</sup> Headlines warned, "Deadly Marijuana Dope Plant Ready For Harvest That Means Enslavement of California Children" Schlosser, Eric. (1994, August). Reefer Madness. *The Atlantic*.  
<https://www.theatlantic.com/past/docs/politics/crime/reefm.htm>

<sup>99.</sup> It's not coincidental that in the wake of the Civil Rights Movement, crime reports were sensationalized and offered as further evidence of the breakdown in lawfulness, morality, and social stability. Law enforcement's public and political fortunes had sunk during the civil unrest of the movement, and in the late 1960s, they were looking for an opportunity not just to lower crime, but to get back in the public's good graces. Police chiefs around the country were

aware that this bureaucratic self-interest would be best served by conflating drug use with criminal activity, thus ensuring a drug control strategy that pivoted on a "law and order response" to the problem. The "siege paradigm" had its roots in mid-century conservative opposition to civil rights legislation, and was bolstered by the emergence of the counterculture of the late 1960s. For more than a decade – from the mid-1950s until the late 1960s – conservatives systematically and strategically linked opposition to civil rights legislation to calls for law and order, arguing that Martin Luther King Jr. 's philosophy of civil disobedience was a leading cause of crime."

100. "Carter's too liberal on drugs. We don't want treatment. We want more aggressive law enforcement. These people aren't sick, they're criminals, and we want to lock them all up and put them in prison. Heroin isn't the issue, it's marijuana smoking by suburban white kids--our children--that we're worried about."

101. This approach was buoyed by the popularity of a "disease concept of addiction", which suggested prevention and treatment should be the principal basis of the country's approach to drug use.

102. Schlosser, Eric. (1994, August). Reefer Madness. *The Atlantic*.  
<https://www.theatlantic.com/past/docs/politics/crime/reefm.htm>

103. At 503,000, marijuana possession arrests accounted for ~34% of all drug law violations (more than the combined total number of arrests for murder, manslaughter, robbery, arson, vagrancy, rape, and all sex offenses including prostitution.) Blumenson, Eric., & Nilsen, Eva. (1998). Policing for Profit: The Drug War's Hidden Economic Agenda. *The University of Chicago Law Review*, Vol. 65.  
<https://doi.org/10.2307/1600184>

104. Human Rights Watch. (2009, March). *Decades of Disparity: Drug Arrests and Race in the United States*.  
[https://www.hrw.org/sites/default/files/reports/us0309web\\_1.pdf](https://www.hrw.org/sites/default/files/reports/us0309web_1.pdf)

105. King, R. S., & Mauer, M. (2006). The War On Marijuana: The Transformation Of The War

On Drugs In The 1990s. *Harm Reduction Journal*, Vol. 3(6). <https://doi.org/10.1186/1477-7517-3-6>

106. Tonry, Michael H., & Melewski, Matthew. (2008). The Malign Effects of Drug and Crime Control Policies on Black Americans. *Crime & Justice*, Vol. 37(1).  
[https://scholarship.law.umn.edu/faculty\\_articles/499](https://scholarship.law.umn.edu/faculty_articles/499).

107. Tonry, Michael H. (1995). *Malign Neglect: Race, Crime, and Punishment in America*. Oxford University Press.

108. Ramchand, R., Pacula, R. L., & Iguchi, M. Y. (2006). Racial Differences In Marijuana-users' Risk Of Arrest In The United States. *Drug And Alcohol Dependence*, 84(3), 264–272.  
<https://doi.org/10.1016/j.drugalcdep.2006.02.010>; Geller, Amanda., & Fagan, Jeffrey. (2010). Pot as Pretext: Marijuana, Race, and the New Disorder in New York City Street Policing. *Journal of Empirical Legal Studies*.  
<https://ssrn.com/abstract=1443441>; Fellner, Jamie. (2009). Race, Drugs, and Law Enforcement in the United States. *Stanford Law and Policy Review*, Vol. 20(2).  
<https://www-cdn.law.stanford.edu/wp-content/uploads/2018/03/fellner.pdf>

109. Ibid.

110. American Civil Liberties Union (2013). *The War On Marijuana In Black And White: Billions Of Dollars Wasted On Racially Biased Arrests*.  
<https://www.aclu.org/issues/smart-justice/sentencing-reform/war-marijuana-black-and-white>

111. American Civil Liberties Union (2020, 17 April). *A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform*.  
<https://www.aclu.org/news/criminal-law-reform/a-tale-of-two-countries-racially-targeted-arrests-in-the-era-of-marijuana-reform/>

112. And while research around cannabis consumption etiquette is limited, data suggests that Blacks and Latinx youth are less likely to smoke marijuana in public than their white peers. Johnson, B. D., Ream, G. L., Dunlap, E., & Sifaneck, S. J. (2008). Civic Norms And Etiquettes Regarding Marijuana Use In Public Settings In New York City. *Substance Use & Misuse*, 43(7), 895–918.  
<https://doi.org/10.1080/10826080701801477>;

Ream, G. L., Johnson, B. D., Dunlap, E., & Benoit, E. (2010). The Role Of Marijuana Use Etiquette In Avoiding Targeted Police Enforcement. *Drugs (Abingdon, England)*, 17(6), 689–706.

<https://doi.org/10.3109/09687630902817993>; Saxe, L., Kadushin, C., Beveridge, A., Livert, D., Tighe, E., Rindskopf, D., Ford, J., & Brodsky, A. (2001). The Visibility Of Illicit Drugs: Implications For Community-based Drug Control Strategies. *American Journal Of Public Health*, 91(12), 1987–1994. <https://doi.org/10.2105/ajph.91.12.1987>

113. Police officers engage in both racial profiling “neighborhood profiling”; the disproportionate canvassing of geographic areas composed of specific groups of people (mostly underrepresented racial and ethnic groups). Cheney, Brendan. (2018, March 7). Data Don't Show Link Between Marijuana Complaints And Arrests. *POLITICO*. <https://www.politico.com/states/new-york/city-hall/story/2018/03/07/data-dont-show-link-betwe-en-marijuana-complaints-and-arrests-294825>

114. Spohn, C., Kim, B., Belenko, S., & Brennan, P. (2014). The Direct and Indirect Effects of Offender Drug Use on Federal Sentencing Outcomes. *Journal of Quantitative Criminology*, 30(3), 549-576. <http://www.jstor.org/stable/43552165>

115. Levine, Harry G. (2009, September). *New York City's Marijuana Arrest Crusade Continues*. Drug Policy Alliance. [https://www.drugpolicy.org/sites/default/files/Levine\\_NYC\\_MJ\\_Arrest\\_Crusade\\_Continues\\_Sept\\_2009.pdf](https://www.drugpolicy.org/sites/default/files/Levine_NYC_MJ_Arrest_Crusade_Continues_Sept_2009.pdf). In one year—2008—the Bloomberg administration made more pot arrests than the Koch, Dinkins, and Giuliani had made combined; Peck, Adam. (2013, June 28). Bloomberg: NYPD Stops Whites Too Much And Minorities Too Little. *ThinkProgress*. <https://archive.thinkprogress.org/mayor-bloomberg-nypd-stops-whites-too-much-and-minorities-too-little-7977f5c3436a/>

116. Sanchez, Lisa E. (2004) The Global Erotic Subject, the Ban, and the Prostitute-Free Zone: Sex Work and the Theory of Differential Exclusion. *Environment and Planning: Society and Space*. Vol. 22(6), 861–883

117. The public is also well-aware of the limitations of enforcement-related resources. The more resources devoted to policing one type of person or police, the fewer resources are devoted to others. By decreasing the credibility of punishment in non-target communities, law enforcement is implicitly encouraging more frequent engagement in the undesired behavior by individuals living in those under policed communities. Brown E. (2010). Race, Urban Governance, And Crime Control: Creating Model Cities. *Law & Society Review*, 44(3-4), 769–804. <https://doi.org/10.1111/j.1540-5893.2010.00422.x>

118. Lopez, German. (2017, September 13). The New War on Drugs. *Vox.com* <https://www.vox.com/policy-and-politics/2017/9/15/16135848/drug-war-opioid-epidemic>

119. Musto, David & Kormeyer, Pamela. (2002). *The Quest for Drug Control: Politics and Federal Policy in a Period of Increasing Substance Abuse (1963-1981)*. Yale University Press.

120. Nunn, Kenneth B. (2002). Race, Crime, and the Pool of Surplus Criminality: Or Why the War on Drugs Was a War on Blacks. *The Journal of Gender, Race, and Justice*, Vol. 6, 381-429.

121. The 1999 report found that 50% of the people stopped from 1998-1999 were Black, though Black residents made up 25.6% of the city's population. And yet, while the NYPD had to stop 9.5 Black residents to yield an arrest, they only had to stop 7.9 white residents to garner the same results. Rudovsky, David. (2001) Law Enforcement by Stereotypes and Serendipity: Racial Profiling and Stops and Searches Without Cause. *University of Pennsylvania Journal of Constitutional Law*, Vol. 933.

122.

123. Green, C. (2015). Reverse Broken Windows. *Journal of Legal Education*, 65(2), 265-277. <http://www.jstor.org/stable/26453459>

124. Gonzalez Van Cleve, Nicole. (2016). *Crook County: Racism and Injustice in America's Largest Criminal Court*. Stanford University Press.

125. Del Toro, J., Lloyd, T., Buchanan, K. S., Robins, S. J., Bencharit, L. Z., Smiedt, M. G., Reddy, K. S., Pouget, E. R., Kerrison, E. M., & Goff, P. A. (2019). The Criminogenic and Psychological Effects of Police Stops on Adolescent Black and Latino Boys. *PNAS Proceedings of the National Academy of Sciences of the United States of America*, 116(17), 8261–8268.  
<https://doi.org/10.1073/pnas.1808976116>

126. Turning to the CDC's accounting of 76,440 policing-driven non-fatal injuries in 2018, the APHA cited a "clear connection between increased exposure to stops and an elevated risk of death or physical harm by law enforcement officers." Beller, Sarah. (2018, November 15). The American Public Health Association Declares Police Violence a Public Health Issue. Filter Magazine.  
<https://filtermag.org/the-american-public-health-association-declares-police-violence-a-public-health-issue/>

## THE PERVERSE INCENTIVES OF PROHIBITION

1. Blumenson, Eric., & Nilsen, Eva S. (1998). Policing for Profit: The Drug War's Hidden Economic Agenda. *University of Chicago Law Review*, Vol. 65  
<https://ssrn.com/abstract=959869>; Gray, Mike. (1998). *Drug Crazy: How We Got Into This Mess and How We Can Get Out*. Random House.
2. Public Broadcasting Service. (2000, Oct. 9). Frontline: Drug Wars—Myles Ambrose Interview.  
<http://www.pbs.org/wgbh/pages/frontline/shows/drugs/interviews/ambrose.html>
3. There is no evidence that crime control efforts reduced levels of drug use in the United States. Drug use was declining years before the war was declared. Tonry, Michael. (1994). Race and the War on Drugs. *University of Chicago Legal Forum*, Vol. 1994(4).  
<https://chicagounbound.uchicago.edu/uclf/vol1994/iss1/4>
4. While many leaders and corrections officials argued that the country's skyrocketing rates of incarceration were the appropriate democratic response to increasing drug use, in op-ed pages and academic publications, most serious drug policy scholars analysts almost unanimously described the drug war as a failure. Vidal, Gore. (1970, Sept. 26). Drugs: Case for Legal Marijuana. *The New York Times*.  
<https://www.nytimes.com/1970/09/26/archives/drugs-case-for-legalizing-marijuana.html>; McVay, Doug. (2002, Sept. 29). An American Gulag in the Making. *Orlando Sentinel*.  
<https://www.orlandosentinel.com/news/os-xpm-2002-09-29-0209280010-story.html>
5. These bills (namely the Anti-Drug Abuse Act of 1986, the Anti-Drug Abuse Act of 1988, and The Violent Crime Control and Law Enforcement Act of 1994) provided for millions of dollars in federal aid to be funneled to local and state law enforcement agencies, the establishment and training local narcotics task forces, allowed for the use of illegally obtained evidence in drug trials, and amended of asset forfeiture laws to allow state and local police agencies to retain up to 80% of the value of assets confiscated. In addition, Congress allowed for—and increasingly incentivized—the Department of Defense and the National Guard to provide personnel and equipment to local police departments to fight the drug war.
6. During his tenure, H.W Bush Had proclaimed "zero tolerance for casual drug use" and called for using the military to quash the "threat to our national health and spirit" represented by "narcogangsters". Gordon, Diana. (1994). Drugspeak and the Clinton Administration: A Lost Opportunity For Drug Policy Reform. *Social Justice*, 21(3 (57)), 30-37.  
<http://www.jstor.org/stable/29766823>
7. The United States of America. (1989, Feb. 9). Address: George Bush to Joint Session of Congress.  
<https://bush41library.tamu.edu/archives/public-papers/51>
8. In 1989, President Bush created the Office of National Drug Control Policy (ONDCP) and appointed William Bennett as the country's first drug 'czar'. Under Bennett's tenure, federal spending on both treatment and law enforcement increased; but treatment remained less than 1/3 of the total budget.
9. 75% of the 1991 drug war budget was earmarked for law enforcement efforts.
10. After all, a war requires an enemy as well. As Nunn notes—"for the constituency the Reagan Administration was trying to reach, it was easy to construct African Americans, Hispanics, and other people of color as the enemy in the War on Drugs." After all—even before the drug war, white Americans already considered these people of color to be the culprit behind vice and crime.
11. Drugspeak suppresses all but the most academic discussion of policy alternatives, deflects attention from items on the shadow agenda of anti-drug activists, and prevents

consideration of the structural sources of the most destructive forms of drug use.

12. Gordon, Diana. (1994). Drugspeak and the Clinton Administration: A Lost Opportunity For Drug Policy Reform. *Social Justice*, 21(3 (57)), 30-37. <http://www.jstor.org/stable/29766823>

13. As Kenneth Nunn wrote in 2002, " these kinds of measures are more analogous to the military tactics one would expect to see in warfare than are demand-reduction measures, which are primarily social service-based.". Nunn, Kenneth B. (2002) Race, Crime and the Pool of Surplus Criminality: Or Why the "War on Drugs" Was a "War on Blacks. *Gender, Race & Justice*, Vol.6(381). <http://scholarship.law.ufl.edu/facultypub/107>

14. Kappeler, Victor., & Kraska, Peter B. (1997). Militarizing American Police: The

15. Segregationist Senator Strom Thurmond called drug dealers "merchants of death". Black progressive Jesse Jackson argued that drug use was threatening the very foundation of American society.

16. Schlesinger, Richard. (1990, March 29). CBS Evening News with Dan Rather.

17. U.S Department of Justice. (2015). Investigation of the Ferguson Police Department. *United States Department of Justice Civil Rights Division*. [https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson\\_police\\_department\\_report.pdf](https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf)

18. In the case *Jardines v. Florida*, a police officer (who lacked a warrant) used a narcotics-sniffing dog to confirm an unverified tip that the defendant (Jardines) was growing marijuana in his home. When the dog was 'alerted', the officer then received a warrant to search Jardines home The Court concluded that it was a Fourth Amendment "search" for a police officer to walk a "narcotics dog" up to the front door of a house to sniff for drugs.

19. In real (inflation-adjusted) dollars, state and local police-protection expenditures per capita

rose 26% from 2000 to 2017, as they rose 26% from 2000 to 2009. U.S Department of Justice. (2020). *State and Local Government Expenditures on Police Protection in the U.S., 2000-2017*. Office of Justice Programs: Bureau of Justice Statistics. <https://www.bjs.gov/content/pub/pdf/slgeppus017.pdf>; Benson, B., Rasmussen, D.W., & Sollars, D.L. (1995). Police Bureaucracies, Their Incentives, And The War On Drugs. *Public Choice*, 83, 21-45; Mitchell, O. (2009). Ineffectiveness, Financial Waste, And Unfairness: The Legacy Of The War On Drugs. *Journal of Crime and Justice*, 32, 1 - 19; Helms, R.W., & Costanza, S.E. (2009). Race, Politics, And Drug Law Enforcement: An Analysis Of Civil Asset Forfeiture Patterns Across Us Counties. *Policing and Society*, 19, 1 - 19

20. Duke, Steven B. (1995). Drug Prohibition: An Unnatural Disaster. *Connecticut Law Review*, Vol. 27(2), 571-612. [https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1824&context=fss\\_papers](https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1824&context=fss_papers)

21. Johnson, Gary E. (2000, December 30). Another Prohibition, Another Failure. *The New York Times*. <https://www.nytimes.com/2000/12/30/opinion/another-prohibition-another-failure.html>; United States Department of Justice. (2010, February). National Drug Control Budget: FY 2011 Funding Highlights, *Office of National Drug Control Policy: Bureau of Justice Statistics*. <https://www.bjs.gov/content/dcf/dcb.cfm>

22. David A. Anderson (2012), The Cost of Crime. *Foundations and Trends in Microeconomics*, Vol. 7(3), 209-265.

23. William Bennet, George H.W Bush's drug czar, testified before Congress that he was "not a person who says that the first purpose of punishment is rehabilitation. The first purpose is moral, to exact a price for transgressing the rights of others." Balko, Radley. (2013). *Rise of the Warrior Cop: The Militarization of America's Police Forces*. PublicAffairs.

24. Urbina, Ian. (2013, June 3). Blacks Are Singled Out for Marijuana Arrests, Federal Data Suggests. *The New York Times*.

[https://www.nytimes.com/2013/06/04/us/marijuana-arrests-four-times-as-likely-for-blacks.html?\\_ga=2.91294362.1209844504.1598881663-483095414.1595190547](https://www.nytimes.com/2013/06/04/us/marijuana-arrests-four-times-as-likely-for-blacks.html?_ga=2.91294362.1209844504.1598881663-483095414.1595190547)

25. United States of America (1973, March 28). Address: Richard Nixon Message to the Congress Transmitting Reorganization Plan 2 of 1973 Establishing the Drug Enforcement Administration.

<https://www.presidency.ucsb.edu/documents/message-the-congress-transmitting-reorganization-plan-2-1973-establishing-the-drug#axzz1PCjydjl5>

26. The Byrne Program is the narcotics-focused evolution of The Law Enforcement Assistance Administration, a grant-administering agency that was created in the wake of the 1968 Omnibus Crime Control and Safe Street Act.

27. Local law enforcement agencies are set to receive \$271,348,268 worth of JAG Grants in 2020. United States Department of Justice. (2020, March 11). *Edward Byrne Memorial Justice Assistance Grant (JAG) Program: FY 2020 Allocations and Disparate Information*. Bureau of Justice Assistance. <https://bja.ojp.gov/program/jag/fy-2020-allocations-and-disparate-information>

28. United States Department of Justice. (2020, March 11). *Edward Byrne Justice Assistance Grant (JAG) Program Fact Sheet*. Bureau of Justice Assistance. <https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/jag-fact-sheet-5-2020.pdf>

29. Cox, Robynn, & Cunningham, Jamein. (2017). Financing the War on Drugs: The Impact of Law Enforcement Grants on Racial Disparities in Drug Arrests.

30. Ibid.

31. Blumenson, Eric., & Nilsen, Eva. (1998). Policing for Profit: The Drug War's Hidden Economic Agenda. *The University of Chicago Law Review*, Vol. 65. <https://doi.org/10.2307/1600184>

32. Quoting the 1992 testimony of Cary H. Copeland, then-Director of the Justice Department's Executive Office for Asset Forfeiture. See also *United States v Two Tracts of Real Property*, 998 F2d 204, 213 (4th Cir 1993) ("One of the most potent weapons in the government's war on drugs is its ability to obtain the civil forfeiture of property that aids violations of the drug laws.").

33. While its official aims were curbing terrorist activity, September 2001's Patriot Act was a boon for law enforcement agencies' ability to police drug violations. The Act granted police departments tools like delayed warrants, wiretaps, etc.); 76% of these "sneak and peek searches" were drug-related. Mack, Marvin. (2020, August 31). How America's State Police Got Military Weapons. *Business Insider*. <https://www.businessinsider.com/how-did-local-police-acquire-surplus-military-weapons-2020-8>

34. Gerber, Rudolph Joseph. (2004). *Legalizing Marijuana: Drug Policy Reform and Prohibition Politics*. Praeger.

35. In 1984, Congress also allowed federal law enforcement agencies to retain the proceeds from asset forfeitures in a specially-created Department of Justice Assets Forfeiture Fund to be used exclusively for law enforcement (before, assets were deposited in the Treasury's General Fund).

36. O'Harrow, Robert Jr., Rich, Steven., & Tan, Shelley. (2014, October 14). Asset Seizures Fuel Police Spending. *The Washington Post*. <https://www.washingtonpost.com/sf/investigative/2014/10/11/asset-seizures-fuel-police-spending/>

37. Research has shown that in states where agencies get to keep the lion's share of forfeiture proceeds, drug arrests constitute a significantly higher percentage of all arrests.

38. In the ten years between 2002 and 2012, the federal government processed \$1 billion worth of assets from marijuana. Elinson, Zusha. (2014, January 9). Pot Legalization Crimps Funding of Drug Task Forces. *The Wall Street Journal*.

<https://www.wsj.com/articles/pot-legalization-criminals-funding-of-drug-task-forces-1389304446>

39. Local agencies get up to 80% of the shared proceeds back, with the federal agency keeping the rest. The divvying-up is known officially as "equitable sharing."

40. American Civil Liberties Union. (2015, June 2). New ACLU Report Shows Philadelphia DA Seizes \$1 Million In Cash Annually From Innocent Philadelphians. <https://www.aclu.org/press-releases/new-aclu-report-shows-philadelphia-da-seizes-1-million-cash-annually-innocent>

41. Nixon, Richard. (1971, June 17) *Remarks About an Intensified Program for Drug Abuse Prevention and Control*. 17 June 1971. <https://www.presidency.ucsb.edu/documents/remarks-about-intensified-program-for-drug-abuse-prevention-and-control#axzz1PCJydjl5>

42. Nolan, Tom. (2014, June 24). Stop Arming the Police Like a Military. *Defense One*. <https://www.defenseone.com/ideas/2014/06/stop-arming-police-military/87163/>

43. Simon, David, and Colesberry, Robert F. *The Wire (2002-2008) [Television Series]*. HBO.

44. The Military Cooperation with Law Enforcement Officials Act of 1981 encouraged the military to (a) make available equipment, military bases, and research facilities to federal, state, and local police; (b) train and advise civilian police on the use of the equipment, and (c) assist law enforcement personnel in keeping drugs from entering the country. The act also authorized the military to share information acquired during military operations with civilian law enforcement agencies.

45. In 1986, the President's Commission on Organized Crime declared that the amending of the Posse Act represented "perhaps the single most valuable development in the area of [drug] interdiction in recent years". President's Commission on Organized Crime (1986). *America's Habit: Drug Abuse, Drug Trafficking,*

and Organized Crime: President's Commission on Organized Crime.

46. Richburg, Keith B. (1986, June 8). Reagan Order Defines Drug Trade as Security Threat, Widens Military Role. *The Washington Post*. <https://www.washingtonpost.com/archive/politics/1986/06/08/reagan-order-defines-drug-trade-as-security-threat-widens-military-role/309fdc6f-e5b8-4a64-8249-7b51182b3db1/>

47. President Ronald Reagan shifted more than \$700 million of federal funding from drug education, treatment, and research to law enforcement. Robinson, Matthew B. (2005). *Justice Blind? Ideals and Realities of American Criminal Justice*. Pearson Prentice Hall.

48. Johnson, Julie. (1988, July 4). Plan Calls for National Guard Action Against Marijuana Crop. *The New York Times*. <https://www.nytimes.com/1988/07/04/us/plan-calls-for-national-guard-action-against-marijuana-crop.html>

49. Beginning in the early 1980s, the DEA launched an ambitious campaign to eradicate American marijuana farms. Despite these enhanced interdiction efforts, domestic operations doubled from 12 percent in 1984 to 25 percent in 1989. Pollan, Michael. (1995, February 19). How Pot Has Grown. *The New York Times Magazine*. <https://michaelpollan.com/articles-archive/how-pot-has-grown/>

50. In 1994 the Department of Justice and the Department of Defense signed a memorandum of understanding, which has enabled the military to transfer technology to state and local police departments.

51. Franklin, Neill. (2017, Sept. 1). Retired Police Major: Police Militarization Endangers Public Safety. *American Civil Liberties Union*. <https://www.aclu.org/blog/criminal-law-reform/reforming-police/retired-police-major-police-militarization-endangers>

52. Weber, Diane Cecilia. (1999, Feb. 28). Police Develop 'Military Mindset'; With Aid Of Pentagon, Civilian Forces Acquiring Army-style



Look, Approach. *The Baltimore Sun*.  
<https://www.baltimoresun.com/news/bs-xpm-1999-09-12-9909150450-story.html>

53. Bill McCollum, chairman of the Subcommittee on Crime of the House Judiciary Committee, still criticized the Clinton administration's drug enforcement efforts. "The drug crisis is a top—if not the top—national security threat facing our nation today . . . [the Clinton] administration's clear unwillingness to wage an all-out drug war cannot go unchallenged."

54. In his confirmation hearing in January 2001, Rumsfeld noted that "the drug problem in the United States is overwhelmingly a demand problem and to the extent that demand is there and it is powerful, it is going to find ways to get drugs in this country."

55. U.S Department of Defense. (2020, June 10). Then and Now: A 2020 Look into LESO. Defense Logistics Agency.  
<https://www.dla.mil/AboutDLA/News/NewsArticleView/Article/2214350/then-and-now-a-2020-ok-into-leso/>

56. Radil, Steven M., Dezzani, Raymond J., & McAden, Lanny D. (2017). Geographies of U.S. Police Militarization and the Role of the 1033 Program. *The Professional Geographer*, Vol. 69(2), 203-213. 10.1080/00330124.2016.1212666; Delehanty, Casey., Mewhirter, Jack., Welch, Ryan., & Wilks, Jason. (2017, June 14). Militarization And Police Violence: The Case Of The 1033 Program. *Research and Politics*, Vol. 4(2).  
<https://journals.sagepub.com/doi/pdf/10.1177/2053168017712885>

57. Ibid.

58. Fawcett, Adrienne W. (1997, September 14). Who said: "A Man's Home Is His Castle". *The Chicago Tribune*.

59. Weber, Diana. (1999). Warrior Cops: The Ominous Growth of Paramilitarism in American Police Departments. Cato Institute.

60. Kappeler, Victor., & Kraska, Peter B. (1997). Militarizing American Police: The

61. Dansky, Kara. (2014, June 26). *Another Day, Another 124 Violent SWAT Raid*. The American Civil Liberties Union.  
<https://www.aclu.org/blog/smart-justice/mass-in-carceration/another-day-another-124-violent-swat-raids>

62. Mack, Marvin. (2020, August 31). How America's State Police Got Military Weapons. *Business Insider*.  
<https://www.businessinsider.com/how-did-local-police-acquire-surplus-military-weapons-2020-8>

63. U.S Department of Justice. Reaves, Brian A. (2015). *Local Police Departments, 2013: Personnel, Policies, and Practices*. Office of Justice Programs: Bureau of Justice Statistics.  
<https://www.bjs.gov/content/pub/pdf/lpd13ppp.pdf>

64. Ibid.

65. Interestingly, the Senate spent a lot of time wrangling over no-knock provisions. Lawmakers Harold Hughes and Sam Ervin were the provisions' most vociferous opponents. Even Nixon aides were cautious, claiming that if the no-knock provision was included in the CSA, "the only thing that was reported in the media was that we would be kicking in doors without announcing authority and purpose."

66. In a recent study of 2011-2012 SWAT deployments in 20 different US cities, the ACLU concluded that 42 percent of those subjected to SWAT search warrant raids were black, 12 percent Hispanic. A battering ram—which is more often than not a gift of federal counter-drug funds—was used in 65% of those raids. American Civil Liberties Union. (2014, June). *War Comes Home: The Excessive Militarization of American Policing*.  
<https://www.aclu.org/sites/default/files/assets/jus14-warcomeshome-report-web-rel1.pdf>

67. The White House. (1989). *National Drug Control Strategy*. Office of National Drug Control

Policy.

<https://www.ncjrs.gov/pdffiles1/ondcp/119466.pdf>

68. It's no surprise that in 1996 President Bill Clinton appointed a military commander, Gen. Barry R. McCaffrey, to oversee the Office of National Drug Control Policy.

69. Sack, Kevin. (2017, March 19). Door-Busting Drug Raids Leave a Trail of Blood. *The New York Times*. <https://www.nytimes.com/interactive/2017/03/18/us/forced-entry-warrant-drug-raid.html>

70. Mummolo, Jonathan. (2018, September). Militarization Fails to Enhance Police Safety or Reduce Crime but May Harm Police Reputation. *Proceedings of the National Academy of Sciences*, Vol. 115(37) 9181-9186. <https://doi.org/10.1073/pnas.1805161115>

71. The Times found that from 2010 to 2015, an average of at least 30 federal civil rights lawsuits were filed each year to protest residential search warrants executed with dynamic entries. Sack, Kevin. (2017, March 19). Door-Busting Drug Raids Leave a Trail of Blood. *The New York Times*. <https://www.nytimes.com/interactive/2017/03/18/us/forced-entry-warrant-drug-raid.html>

72. Ibid.