

*Testimony of Glenn C. Loury  
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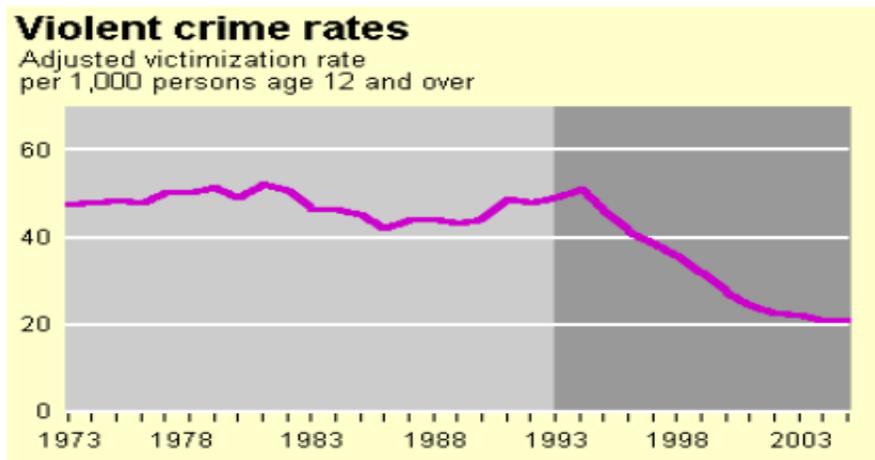
*Before the Joint Economic Committee of the United States Congress, Washington, D.C.,  
October 4, 2007*

*Mass Incarceration and American Values*

Mr. Chairman, Madam Vice-Chairwoman, and distinguished Members, I thank you for the opportunity to address this vital issue before your committee.

There are six main points about the advent of mass incarceration as a crime control policy in the United States that I wish to make with this testimony:

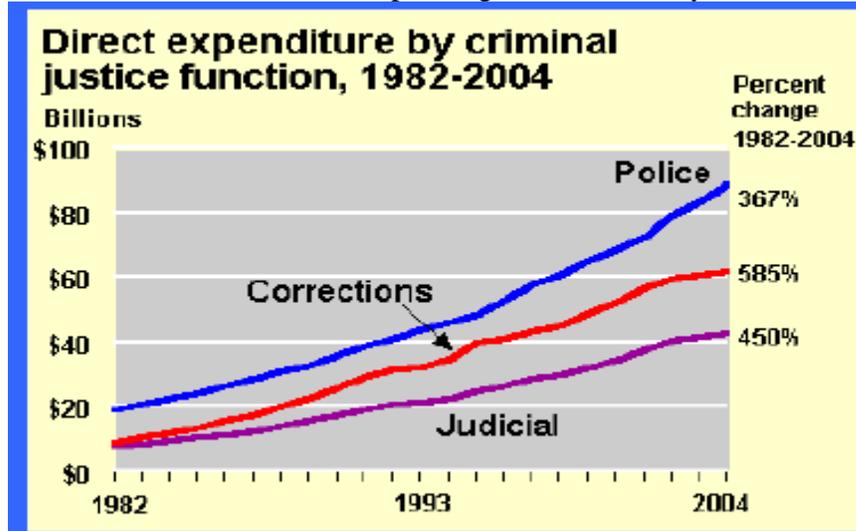
1. First, I wish to emphasize that with the advent of the mass incarceration policy we have witnessed an historic expansion of coercive state power, deployed internally on a massive scale. Violent crime peaked in the early 1990s, and began what has proven to be a long, precipitous decline. (See the Figure below. A similar trend applies for non-violent property crimes.) But, no one saw this coming. Crime was a real problem two decades ago, and fighting a war on crime was bi-partisan national policy.



As a result of this policy, the American prison system has grown into a leviathan unmatched in human history. Never has a supposedly “free country” denied basic liberty to so many of its citizens. As of December 2006, some two-and-one-quarter million persons were being held in the nearly 5,000 prisons and jails that are scattered, like an archipelago, across America’s urban and rural landscapes. Incarceration is now being used in the United States on an unprecedented scale. We imprison at a far higher rate than any other industrial democracy in the world. We imprison at a higher rate than Russia or China, and vastly more than any of the countries in Europe.

And, it is costing us a veritable fortune. Spending on law enforcement and corrections at all levels of government now totals roughly a fifth of a trillion dollars per

year. In constant dollars, this spending has more than quadrupled over the last quarter-century. The table below indicates how this spending breaks-down by function:



2. Second, I claim that this high level of imprisonment is not any longer, if ever it was, a rational response to high levels of crime. Rather, our mass incarceration policy is an historical inheritance, bequeathed to us by wave after wave of crime-fighting at the state and the federal levels over the past 35 years. This policy response, I firmly believe, has now become counter-productive. (The so-called War on Drugs, about which I have more to say at the end of this testimony, is a leading example of one such misconceived policy initiative that now has us in its grip.)

3. Third, I wish to point out that institutional arrangements for dealing with criminal offenders in the United States have evolved to serve expressive as well as instrumental ends. We have wanted to “send a message” -- to the criminals and to the law-abiding public, alike -- and, have done so with a vengeance. In the process, we have answered the question: Who is to blame for the maladies which beset our troubled civilization? We have, in effect, constructed a national narrative. We have created scapegoats, indulged our need to feel virtuous about ourselves, and assuaged our fears. We have met the enemy, and the enemy is THEM – the violent, predatory, immoral, irredeemable “thugs.” I believe that this narrative, which supports and encourages our embrace of the policy of mass incarceration is, itself, a sociologically naive and morally superficial view.

4. Fourth, I wish to observe that these people who have offended against our laws are nevertheless human beings. And, while they may deserve punishment, imprisoning them is something that We the People of the United States of America are doing. Indeed, punishment is one of the most politically salient things that we do in a democracy: the state is forcibly depriving citizens of their liberty. And, while this practice is necessary for the maintenance of order in society, it should always be done humanely, in a manner that comports with our deepest political values. We ought never to lose sight of the essential humanity of those whom we punish – and, of the humanity of those to whom offenders are connected via intimate ties of social and psychic affiliation. Unfortunately, we have not always lived up to this high standard. Thus, *Confronting Confinement*, a

report released last year from the Commission on Safety and Abuse in America's Prisons (of which former US Attorney General Nicholas Katzenback was co-chairman), found that our penal institutions are (i) dangerously overcrowded, that (ii) they rely overly much on physical isolation to manage the behavior of inmates (a practice which, the Commission found, can have a lasting adverse effect on the prisoners' mental health), and that they are horribly, unnecessarily violent. The report estimates that more than 1.5 million people annually are released from prisons and jails with a life-threatening infectious disease – the HIV, drug-resistant staph infections, hepatitis-C, and tuberculosis; and, that at least one out of every six prisoners – over 350,000 people on a given day – are “seriously mentally ill.”

5. Fifth, I must call attention to a huge gap between the races in the incidence of punishment which exists in our country. Black Americans and Hispanics together account for about one-quarter of the overall national population, but constitute about two-thirds of state and federal prison populations. The extent of racial disparity in imprisonment rates is greater than in any other major arena of American social life: at eight-to-one, the black-white ratio of incarceration rates dwarfs the two-to-one ratio of unemployment rates, three-to-one non-marital child bearing ratio, the two-to-one black-white ratio of infant mortality rates and one-to-five ratio of net worth. As the table below makes clear, more black male high school dropouts are incarcerated than belong to unions or are enrolled in all government social welfare programs, combined.

Men Incarcerated (2000), in Unions, or in Social Programs (1996)			
	Whites	Hispanics	Blacks
All men, age twenty to forty			
In prison or jail	1.60%	4.60%	11.50%
In labor union	9.70%	10.7	11.5
On welfare	1.70%	1.40%	2.30%
In any program (including welfare)	6.70%	4.90%	10.80%
Male high school dropouts, age twenty to forty			
In prison or jail	6.70%	6.00%	32.40%
In labor union	6.30%	8.10%	2.30%
On welfare	6.20%	1.70%	3.70%
In any program (including welfare)	17.90%	6.30%	24.00%
*Survey of Incomes and Program Participation (1996)			

The scandalous fact of the matter is that the primary contact between poorly educated black American men of a certain age and the American state is via the police and the penal apparatus. For instance, among black male high school dropouts ages 20 to 40, a third were under lock and key on a given day in the year 2000, while fewer than 3% belonged to a union, and less than one-quarter were enrolled in any kind of social program (according to Harvard University sociologist, Bruce Western.) The coercive aspect of government is the most salient feature of their experience of the public sector. Western estimates that some 58% of black male dropouts born between 1965 and 1969 were sent to prison on a felony offense at least once before reaching the age of 35.

For these men, and the families and communities with which they are associated, the adverse effects of incarceration will extend beyond their stays behind bars. To see how the post-1980 prison boom affected Americans differently, depending on their race and their social class, consider two birth cohorts of black and white men. The first cohort was born in 1945 to 1949, just after World War II. These individuals reached their mid-thirties by 1970, just before the rapid increase in imprisonment rates. The second cohort was born during the Vietnam War, from 1965 to 1969, and reached their mid-thirties during the height of the prison boom. The table below compares the imprisonment experience of these two cohorts, broken down by race and level of education:

Cumulative Risk of Imprisonment	Less than HS		HS or GED		All Noncollege		
	All (1)	(2)	(3)	(4)	(5)	Some Collge. (5)	
White men							
Born 1945 to 1949	1.4		4	1		2.1	0.5
Born 1965 to 1969	2.9		11.2	3.6		5.3	0.7
Black men							
Born 1945 to 1949	10.5		17.1	6.5		12	5.9
Born 1965 to 1969	20.5		58.9	18.4		30.2	4.9

Notice that the aggregate risk of imprisonment is twice as great in the later cohort – 2.9% as compared to 1.4% for white men; and, 20.5% as compared to 10.5% for black men. Moreover, one can see from the table that the experience of incarceration for poorly educated black men is estimated to be four times more prevalent in the later than in the earlier cohort – 58.9% as compared to 17.1%. The massive scale of this policy shift is stunning. To repeat: there is a nearly three-fifths chance that a black male with less than HS diploma born between 1965-69 will have gone to prison or jail at least once prior to reaching age 35.

A fundamental point to bear in mind is that the experience of prison feeds-back to affect the life course of those incarcerated in an adverse manner. The vast majority of inmates return to society. The evidence that prison adversely affects the subsequent life chances of the incarcerated is considerable and impressive.

**Table 5.2**

Wages, Employment, Earnings

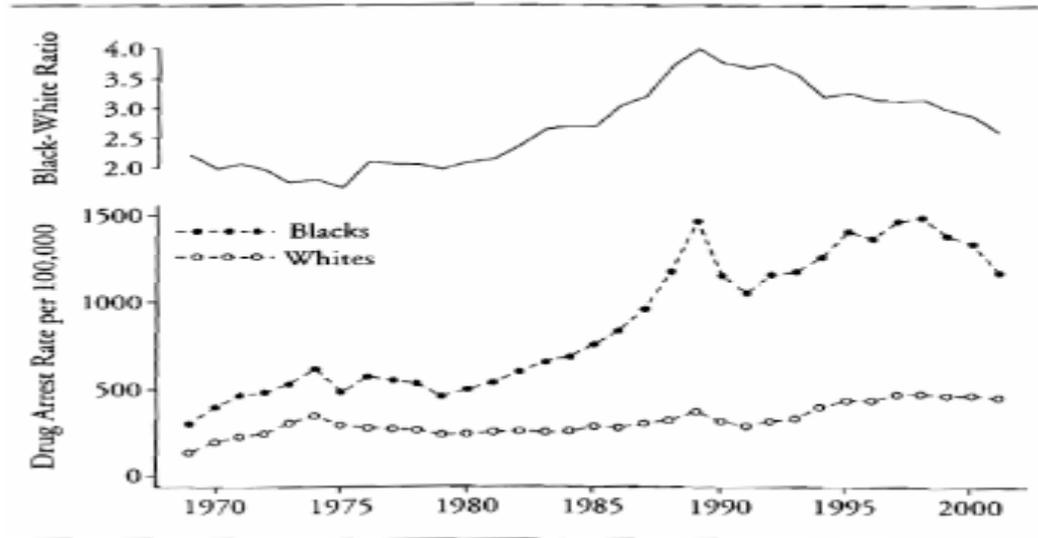
	Incarceration Status		
	Never	Before	After
Hourly wages (dollars per hour)			
White	14.7	11.14	11.8
Hispanic	13.59	12.3	10.31
Black	12.34	10.25	9.25
Annual employment (weeks per year)			
White	44	37	23
Hispanic	43	35	24
Black	40	35	21
Annual earnings (thousands of dollars per year)			
White	26.44	13.7	9.76
Hispanic	23.9	13.29	9.14
Black	20.37	13.34	7.02

The table above reproduces Harvard University sociologist Bruce Western's (admittedly crude but suggestive) estimates of the impact of imprisonment on subsequent labor market outcomes. Hourly wages of incarcerated black men are 10% lower after prison than before. And weeks worked per year of all imprisoned men are down by 1/3 or more after release, as compared with prior to their incarceration. Now, consider the nearly 60% of black male high school dropouts born in the late 1960s who will have been imprisoned before their fortieth year. For these men, their links to family have been disrupted; their subsequent work lives will be diminished; their voting rights are often permanently revoked. They will suffer, quite literally, a "civic excommunication" from American democracy. It is no exaggeration to say that, given our zeal for social discipline, these men will be consigned to a permanent, non-white, male nether caste. And yet, since these men – whatever their shortcomings – have emotional and sexual and family needs, including the need to be fathers and lovers and husbands – we will have created a biopolitical situation where the children of this nether caste are likely themselves to join a new generation of untouchables.

A central reality of our time is the fact that there has opened a wide racial gap in the acquisition of cognitive skills, the extent of law-abidingness, the stability of family relations, the attachment to the work force, and the like. This disparity in human development is, as a historical matter, rooted in political, economic, social, and cultural factors peculiar to this society and reflective of its unlovely racial history: it is a societal, not communal or personal, achievement. At the level of the individual case we must, of course, act as if this were not so. There could be no law, no civilization, without the imputation to particular persons of responsibility for their wrongful acts. But the sum of a million cases, each one rightly judged on its merits to be individually fair, may nevertheless constitute a great historic wrong. The state does not only deal with individual cases. It also makes policies in the aggregate, and the consequences of these policies are more or less knowable. And who can honestly say—who can look in the mirror and say with a straight face—that we now have laws and policies that we would endorse if we did not know our own situation and genuinely considered the possibility that we might be the least advantaged?

6. Finally, I would like to make a few observations about the so-called War on Drugs. This policy has not been successful in my view, and it has had a hugely disparate, adverse impact on the African American community. Consider the table below, showing the trend in drug arrest rates by race since 1970

**Figure 2.2 Drug Offenses and Arrest Rate Ratio**



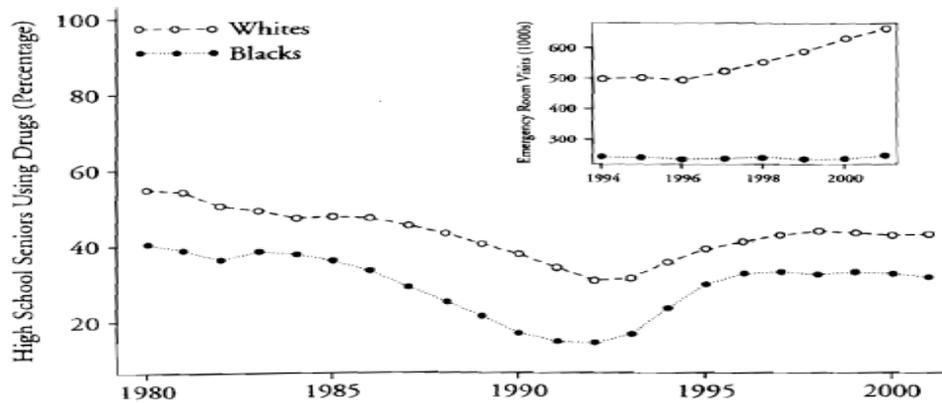
Source: Federal Bureau of Investigation (1993, 2003).

**Drug Arrests of Blacks Spike in Late 80's**

Blacks were twice as likely as whites to be arrested for a drug offense in 1975, but four-times as likely (1,460 versus 365 per100,000) by 1989. For all of the 1990's, drug arrest rates remained at historically unprecedented levels. Yet, according to the National Survey on Drug Abuse (NSDA), drug use among adults fell from 20% in 1979 to 11% in 2000. A similar trend occurred for adolescents. In the age groups 12-17 and 18-25, usage of marijuana, cocaine and heroin all peaked at roughly the same time ( in the late 1970s), and began a steady decline thereafter (Tonry 2004, Figure 5.14, p. 132). *Thus, a decline in drug use across the board had begun a decade before the War on Drugs was initiated.*

There are some interesting discrepancies between the racial gap in drug use and in drug arrests. In figure 2.2 (above) one can see that the drug arrest rate for blacks stood at twice the rate for whites in the late 1970s, rising to 4 times the white rate by 1990. On the other hand, figure 2.3 (below) reveals that throughout this period white high school seniors reported using drugs at a significantly higher rate than blacks.

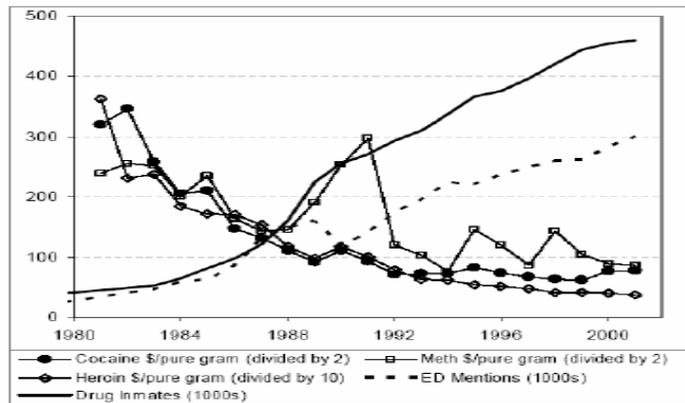
**Figure 2.3 High School Seniors Reporting Drug Use**



Presumably this relatively high rate of drug use in the early 80's in the mainstream of American society partially explains the urgency many felt to mount a national attack on the problem. Yet, how successful has the effort been, and at what cost?

As the data below make clear, retail prices on the street of illicit drugs fell steadily and sharply throughout the period 1980-2000 (with the exception of methamphetamine which experienced a price spike in the late 80's-early 90's), even as "war mobilization" caused drug incarceration rate to skyrocket:

### Winning the War? Drug Prices, Emergency Treatment and Incarceration Rates: 1980-2000

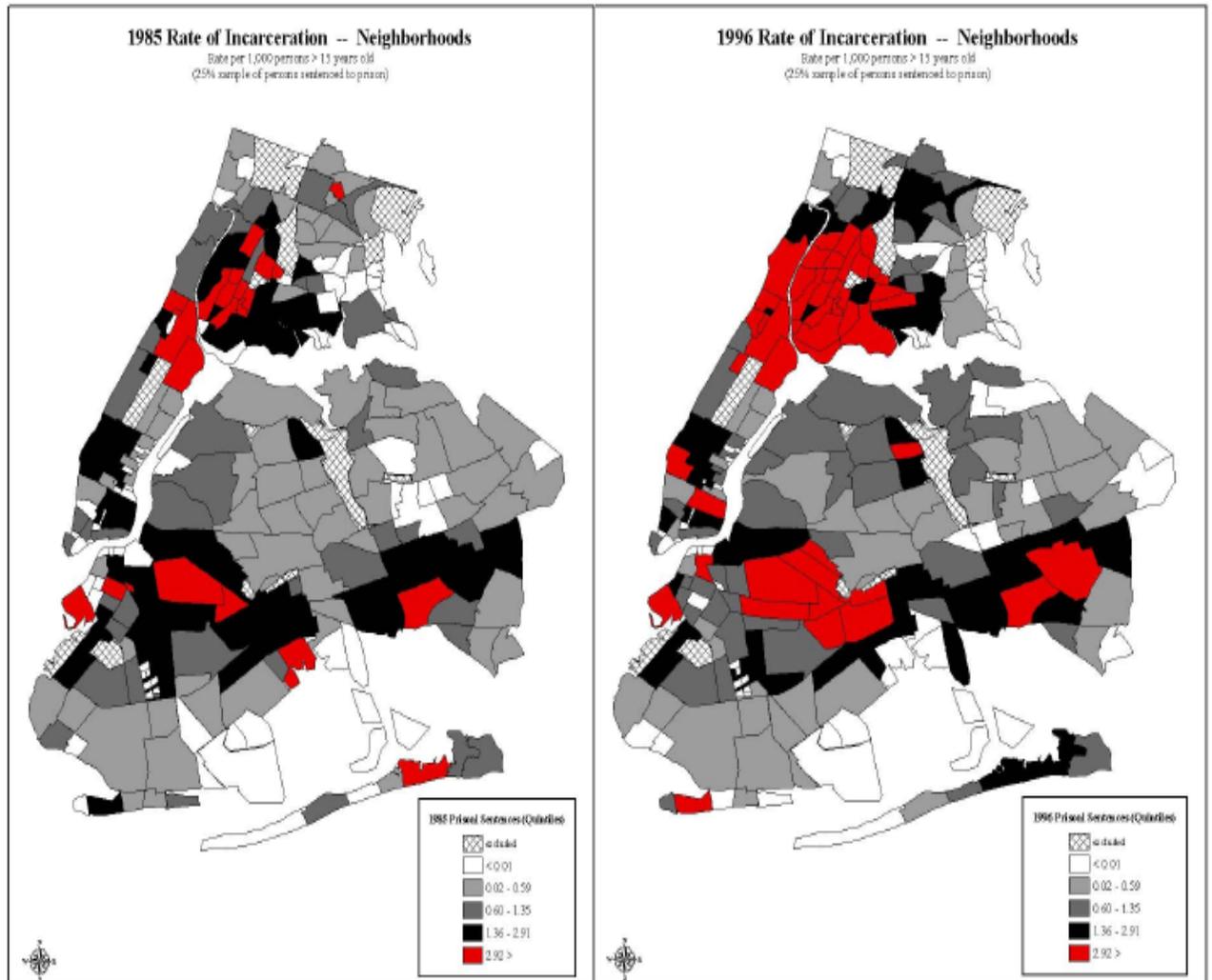


[Source: Caulkins, Reuter and Taylor, "Can Supply Restrictions Lower Price?" *Contributions to Economic Analysis and Policy* Vol. 5 (2006)]

### Spatial Effects

What all this comes to is that, to save "our" middle class kids from the threat of their being engulfed by a drug epidemic that might not have even existed by the time drug incarceration began rapidly rising in the 1980s, we criminalized "our" underclass kids. Arrests went up and up, drug prices went down and down, and drug consumptions seems not to have been much impacted by the policy.

## Changes in the spatial concentration of incarceration in New York City: 1985-1996



Source: Fagan, West and Holland, "Reciprocal Effects of Crime and Incarceration in New York City Neighborhoods." *Fordham Urban Law Journal*, 2003.

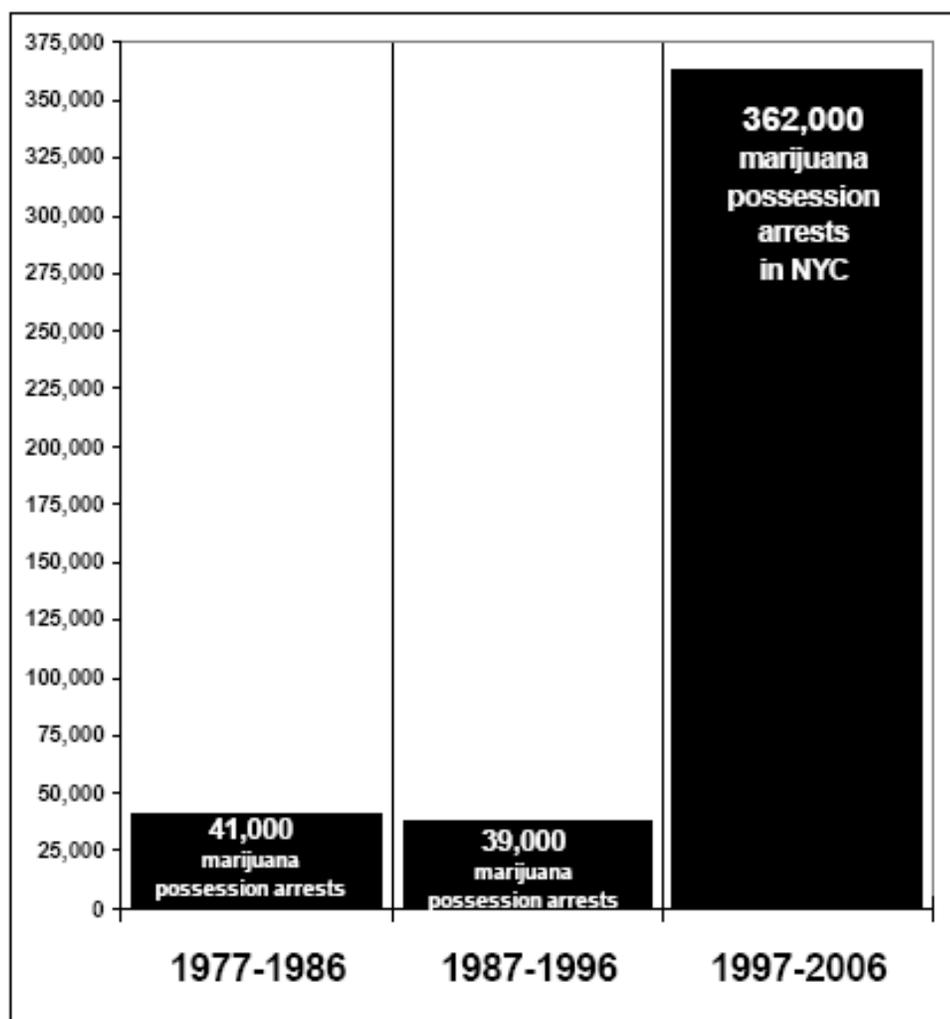
An interesting case in point is New York City. Columbia University criminologist Jeffery Fagan and his colleagues have analyzed data on arrests in various New York City residential neighborhoods and police precincts. They report that, 70% of state inmates in New York come from New York City. Between 1990 and 2003 the number of state prison inmates coming from the city rose from 55,000 to 70,000. The City also had an average daily jail population of nearly 18,000 in 1999. "Rates of incarceration in NYC have been largely unaffected by the city's dramatic declines in crime. Moreover, the increase in incarceration is in part "attributable to aggressive enforcement of drug laws, especially street-level enforcement resulting in large numbers of felony arrests of retail drug sellers." They note that "drug-related offenses have accounted for an increasing proportion of prison admissions – up from 12% of state prison admissions in 1985 to 31% in 1990, to 38% in 1996. Some 11,600 residents of NYC entered the NY state prison system on drug-related offenses in 1996, compared to 9,345 in 1990.

As the maps above make clear, incarceration was highest in the City's poorest neighborhoods though these were not in every instance the neighborhoods where crime rates were highest. Most interestingly, when these data were analyzed at the level of police precincts, the authors discovered a perverse positive feedback of incarceration on crime: higher incarceration in a given neighborhood seemed to predict higher crime rates one year later in that same neighborhood. They concluded that the growth and persistence of incarceration over time were due primarily to drug enforcement and to sentencing laws that require imprisonment for repeat felons. Police scrutiny was more intensive and less forgiving in neighborhoods high incarceration neighborhoods, and parolees returning to such neighborhoods were more closely monitored. This discretionary, spatially discriminatory police behavior led to a high and increasing rate of repeat prison admissions in the designated neighborhoods, even as crime rates fell.

Further evidence along these lines can be found by examining the experience of anti-marijuana law enforcement. Comprehensive data on this have been collected for New York City by the Queens College sociologist Harry Levine and his colleagues, and are presented in the tables that follow. These data speak volumes about the racially discriminatory and spatially selective enforcement of anti-drug statutes. Bear in mind when viewing these data that U.S. government statistics have consistently found that White teenagers and young adults use marijuana as much, or more, than Blacks and Hispanics do. Nonetheless, in 2006 in New York City, the per capita arrest rate of Blacks was nearly 8 times the rate of Whites.

Again, I wish to express my gratitude to the Committee for this opportunity to present my reflections on this urgent matter of national policy. GL

## 1. Marijuana Possession Arrests in New York City in Three Decades

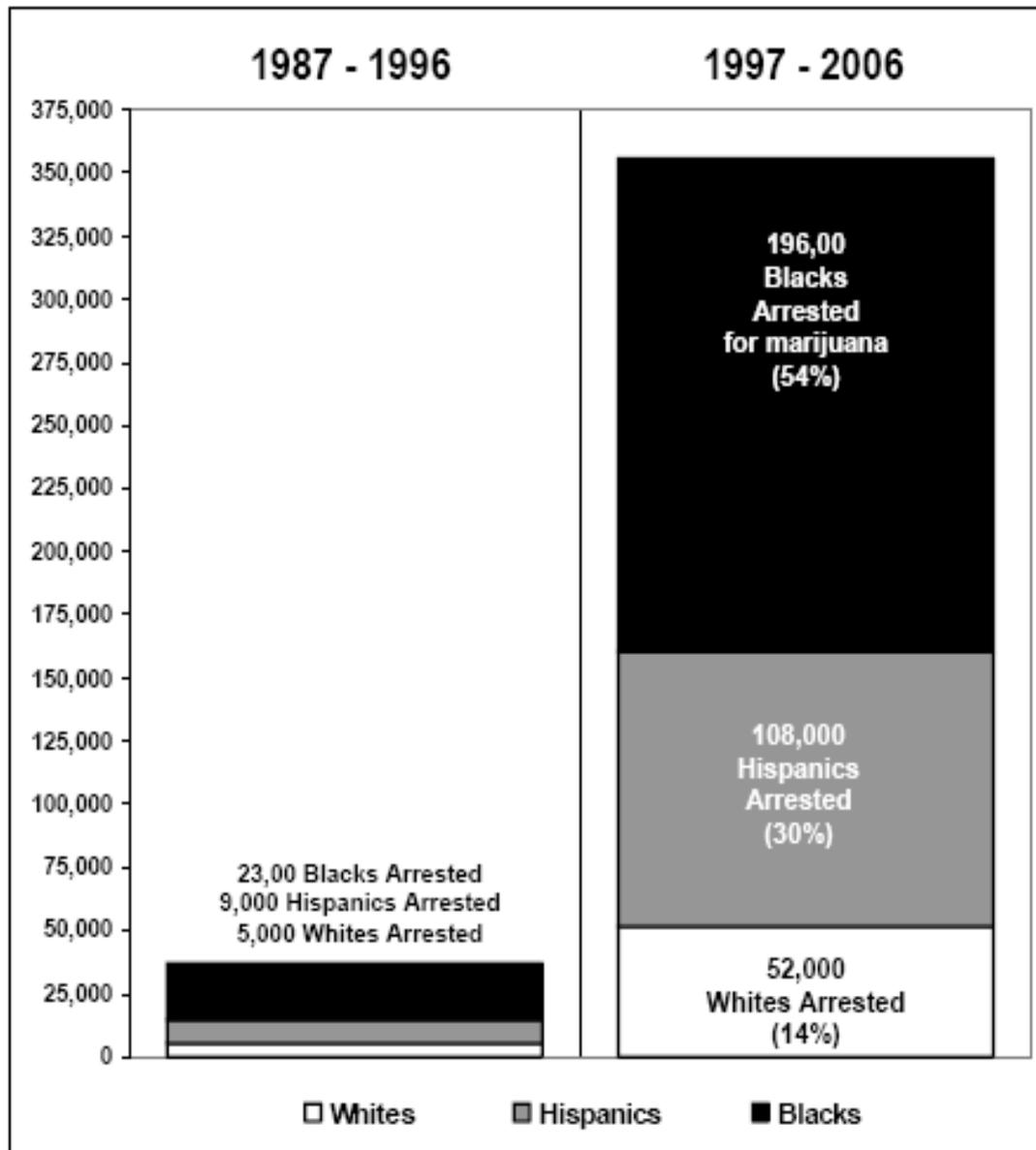


Source: New York State Division of Criminal Justice Services, Computerized Criminal History system. Includes all fingerprintable arrests for NY State Penal Law Article 221 offenses as the most serious charge in an arrest event. Ages 16 and older. 1978 data was used for 1977.

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## 2. New York City Marijuana Possession Arrests of Whites, Hispanics and Blacks in Two Decades



Source: New York State Division of Criminal Justice Services, Computerized Criminal History system. Includes all fingerprintable arrests for NY State Penal Law Article 221 offenses as the most serious charge in an arrest event. Ages 16 and older.

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