Report from the Front Line: The Bennett Plan, Street-Level Drug Enforcement in New York City and the Legalization Debate

Michael Z. Letwin
REPORT FROM THE FRONT LINE: THE BENNETT PLAN, STREET-LEVEL DRUG ENFORCEMENT IN NEW YORK CITY AND THE LEGALIZATION DEBATE

Michael Z. Letwin*

I. INTRODUCTION

In September, 1989, the Bush administration presented its National Drug Control Strategy—popularly known as the "Bennett Plan."1 The Plan vociferously rejected drug legalization2 and, like every other federal drug war program since the Nixon administration, devoted seventy percent of the Plan's proposed resources to law enforcement,3 including federal prosecutors, courts, and prisons.4

The Plan identified the typical cocaine user as a white male high school graduate living in a small city or suburb.5 Nonetheless, based on figures that purportedly show a decline in suburban hard drug use,6 the domestic portion of the plan stressed an increase in

* President, The Association of Legal Aid Attorneys; Staff Attorney, The New York City Legal Aid Society Criminal Defense Division, 1985-1990. B.A. University of Massachusetts, 1981; J.D. Rutgers/Newark School of Law, 1985. The views expressed here, however, do not necessarily reflect those of the above-cited organizations. I owe a debt of gratitude to the many people who helped me to develop and refine this Article, above all the members of my family.

1. OFFICE OF NAT’L DRUG CONTROL POL’Y, NATIONAL DRUG CONTROL STRATEGY (1989) [hereinafter BENNETT PLAN I]; see also OFFICE OF THE NAT’L DRUG CONTROL POL’Y, NATIONAL DRUG CONTROL STRATEGY (1990) [hereinafter BENNETT PLAN II].

2. BENNETT PLAN I, supra note 1, at 6-7.


4. BENNETT PLAN I, supra note 1, at 117-18.

5. See id. at 4.

6. Id. at 1, 4; see also Casual Drug Use Is Sharply Down, N.Y. Times, Aug. 1, 1989, at A14, col. 1 (citing the 1988 National Household Survey on Drug Abuse). There is evidence, however, that hard drug use, including crack, is very widespread in the suburban white middle class. See, e.g., Malcolm, Affluent Addicts’ Road Back Begins in a Climb Past Denial, N.Y. Times, Oct. 2, 1989, at A1, col. 4 (indicating that affluent addicts are more likely to deny their addiction and better able to hide its devastating effects); Massing, Crack’s Destructive Sprint Across America, N.Y. Times, Oct. 1, 1989, § 6 (Magazine), at 38 (discussing the prevalence of crack addiction throughout the country); Malcolm, Crack, Bane of Inner City Is Now Grip-
street-level narcotics enforcement directed at the inner-city crack crisis.\textsuperscript{7} Such programs, argued the Plan, would effectively address that crisis:

when neighborhood police increase the number of drug arrests in an area, when they put pressure on local drug transactions through surveillance and undercover work, and when they force dealers to take refuge in less conspicuous places, the drug markets that menace neighborhoods cease to flourish. At the very least, young people and new users are denied easy access to drugs.\textsuperscript{8}

The Plan’s January 1990 supplement declared that “street level enforcement techniques \ldots have already shown success in so many neighborhoods”\textsuperscript{9} and therefore handed up a “stunning rebuke to the cynics and defeatists” of the drug wars.\textsuperscript{10}

Politicians of both parties have criticized the Plan on a variety of grounds, but have not challenged the need for, or the importance of, narcotics enforcement.\textsuperscript{11} Similarly, while skeptical of the Plan, politicians have criticized its funding levels.

\textsuperscript{7} Although the use and sale of illegal substances involves a wide range of drugs, including heroin and cocaine, the current crisis has coincided above all with the arrival of crack cocaine from the mid-1980s to the present. It is widely perceived that the crisis has brought a dramatic increase in inner-city crime, violence, intra-family abuse and disease. Crack is a cocaine derivative that is smoked rather than ingested through the nose. See Reinerman & Levine, \textit{The Crack Attack: Politics and Media in America’s Latest Drug Scare}, in \textit{Images of Issues: Typifying Contemporary Social Problems} 116-17 (J. Best ed. 1989).

\textsuperscript{8} BENNETT PLAN I, supra note 1, at 21.

\textsuperscript{9} BENNETT PLAN II, supra note 1, at 14.

\textsuperscript{10} \textit{Id.} at 4.

\textsuperscript{11} In the wake of the Bush speech, it was quickly noted that, despite its advertised increase, the Plan’s budget increased real spending for the drug wars in the next fiscal year by only $716 million. Weinraub, \textit{supra} note 3, at 1, col. 6. According to Sen. Joseph P. Biden (D-Del.), the Democratic spokesperson on drug policy, this meant that “the president’s plan [did] not include enough police officers to catch the violent thugs, enough prosecutors to convict them, enough judges to sentence them or enough prison cells to put them away for a long time.” Sirica, \textit{Bush Targets Casual Users, Sets Billions Against Drugs}, N.Y. Newsday, Sept.
many representatives of urban communities most directly affected by the crack crisis have supported drug enforcement generally and inner-city street-level narcotics programs in particular.13

The purpose of this Article is to focus on the urban drug war which, consistent with the Bennett Plan’s approach, is being conducted in New York City, where the crack crisis is arguably most advanced, and local law enforcement efforts most ambitious.14 Sec-

6, 1989, at 5, col. 4, 27, col. 4.

12. Both Congressman Charles Rangel of Harlem, who chairs the House Committee on Narcotics Abuse and Control, and 1988 Presidential Candidate Reverend Jesse Jackson faulted the Bennett Plan for downplaying enforcement strategies directed at the “supply-side” of drug trafficking—such as crop eradication abroad, border interdiction, and the prosecution of money laundering by the financial sector—and for failing to fund prevention and treatment on demand, or to address the underlying social conditions in the inner-cities which they identify as the reasons for abuse and trafficking. See Legalization of Illicit Drugs, Part I, Hearing Before the Select Committee on Narcotics Abuse and Control, House of Representatives, 100th Cong., 2d Sess. 1-3, 131-39 (1988) [hereinafter Legalization Hearings, Part I] (statement of Charles B. Rangel, Chairman); Jackson, A Real War On Drugs Can’t Ignore Poverty, N.Y. Newsday, Sept. 18, 1989, at 58, col. 1; see also Johnston, Bush’s Drug Strategy Is Criticized As Failing to Seek Views of Cities, N.Y. Times, Sept. 16, 1989, at 8, col. 1.


14. The source material used in this Article includes police and other data, anecdotal accounts from a variety of sources and the experience of attorneys who have represented clients charged with drug offenses. For an overview of the scholarly discussion of street-level narcotics enforcement, not fully surveyed here, see, for example, S.T. Hillsman, S. Sadd, M.L. Sullivan & M. Sviridoff, The Community Effects of Street Level Narcotics Enforcement: A Study of the New York City Police Department’s Tactical Narcotics Teams 1-14 (Vera Inst. of Just. 1989) (addressing a focal question of what effect street level drug enforcement will have) [hereinafter Vera Inst. Report]; National Inst. of Just., U.S. Dep’t of Just., Issues and Practices, Street-Level Drug Enforcement: Examining the Issues (M. Chaiken ed. 1988) (examining the extent to which the TNT effort can reduce disorderly conditions and effectuate other desired outcomes) [hereinafter STREET-LEVEL DRUG ENFORCEMENT]; L. Zimmer, Operation Pressure Point: The Disruption of Street-Level Drug Trade on New York’s Lower East Side (Occasional Papers from The Center For Research in Crime and Justice, New York Univ. School of Law 1987) (analyzing the efforts of
tion II argues that the two largest anti-drug efforts, Operation Pressure Point I and the Tactical Narcotics Teams (TNT), have failed to stem the crisis. Section III puts this failure in the context of the interaction between drug prohibition and oppressive social conditions in New York’s inner-city, particularly in the African-American communities. Section IV discusses some of the related toll of the war on drugs on these communities. Section V draws on, and in some ways goes beyond, views previously developed by drug war critics, to argue that the New York City experience illustrates the need for drug legalization, unprecedented programs to combat drug abuse, and—above all—a fundamental transformation in the overall condition of the inner-cities.

II. NEW YORK STREET-LEVEL NARCOTICS OPERATIONS

In recent years, the New York City Police Department (NYPD) has operated a variety of programs to deal with narcotics in particular geographic areas throughout the city. Operation Pressure Point I (OPP-I), a mid-1980s response to the widespread supply of heroin in Manhattan’s Lower East Side, and the Tactical Narcotics Teams (TNT), a late-1980s citywide attempt to address the crack problem, have been two of the most significant of these programs.

15. See infra notes 20-84 and accompanying text.
16. See infra notes 85-128 and accompanying text. A more complete analysis would, of course, include equal attention to other sections of New York City, particularly the Latino community.
17. See infra notes 129-65 and accompanying text.
19. See infra notes 166-75 and accompanying text.
20. Other programs have included Operation Pressure Point II in Central Harlem; Operation Pressure Point III in the area around 14th Street and Union Square Park in Manhattan; the Special Narcotics Abatement Program (SNAP); Bronx Anti-Narcotics Drive (BAND); Operation Clean Heights (Washington Heights, Manhattan); the Anti-Crack Unit; Operation 107th Street (Manhattan); Operation Q.U.E.E.N.S.; Operation Clean Up I and II; and the Park Programs. See OFFICE OF MANAGEMENT, ANALYSIS, & PLANNING OF NY CITY, FIGHTING DRUG ABUSE (1988).
A. Operation Pressure Point I

In 1984, amidst much fanfare, the NYPD launched Operation Pressure Point I (OPP-I) in Manhattan's Lower East Side, then considered "the most open heroin market in the nation." Before the program began, the Lower East Side was a mixed, largely minority community, characterized by dilapidated housing and run-down commercial buildings where rapid "gentrification" resulted in political pressure on the police to disrupt street-level drug traffic. In this context, Benjamin Ward, the first African-American New York Police Commissioner, then newly appointed, devised OPP-I to serve as "a highly visible and newsworthy project with which to begin his administration." Large numbers of rookie uniformed NYPD officers on foot dispersed crowds, made searches and arrests, and questioned those perceived to be buyers or sellers. Housing Authority and Transit Authority police intensified patrols in the housing projects and subways. Plainclothes officers from the Narcotics Division carried out surveillance and "buy and bust" operations.

The Bennett Plan asserts that OPP-I "demonstrated how an area virtually overrun by drug traffic and use could be reclaimed by a persistent and well-coordinated police effort." Indeed, by its 2000th day in September 1989 the operation had resulted in 46,903


22. Id. at 2-4. This neighborhood's composition "provid[ed] an ideal location for expansion of a drug trade that had been there a long time." Id. at 2.

23. Gentrification refers to a process in which middle class and wealthy buyers take advantage of the low cost of housing and commercial rent in poor neighborhoods to move in, displace existing African-American, Latino, white and other residents, and transform the area into a predominantly white and middle to upper middle class community. See Smith & LeFaire, A Class Analysis of Gentrification, in GENTRIFICATION, DISPLACEMENT AND NEIGHBORHOOD REVITALIZATION 49 (1984).


25. Id.

26. Id.

27. Id. at 4-6. In addition to the 25,976 members of the regular New York Police Department (NYPD), New York City has two other police departments, the 2,032-member Housing Authority Police Department (HAPD), which focuses on public housing projects and the 3,916-member Transit Authority Police Department (TAPD), which operates primarily in the extensive subway system. All three departments have the same city-wide arrest powers. See NEW YORK STATE DIV. OF CRIM. JUST. SERVS., GOVERNOR'S ANTI-CRIME ACTION AGENDA: A MONITORING REPORT ON THE NEW YORK CITY CRIMINAL JUSTICE SYSTEM 27, 29 (July 1989) [hereinafter GOVERNOR'S JULY ACTION AGENDA].

28. See L. Zimmer, supra note 14, at 6; infra note 137 (discussing "buy and bust" operations).

29. BENNETT PLAN I, supra note 1, at 22.
arrests, 36,102 of them for narcotics offenses. White, middle class community organizations took control of areas "liberated" by the police from drug traffic. Drug transactions in the target areas became less noticeable, and the operation coincided with a decrease in many drug-related property crimes. These accomplishments, in turn, further increased the rate of gentrification.

In fact, however, OPP-1 has not been the success claimed by its supporters. From the earliest days, drug traffickers adapted themselves to the program by shortening the duration and increasing the size of transactions, altering their time and location, and by utilizing more lookouts and other personnel. Those dealers who were arrested and prosecuted were quickly replaced by others. Thus, a few months after the program began, residents were left with the impression that "the drug market is seething, just under the surface, ready to explode if the police break the stalemate by withdrawing from the Lower East Side," an eventuality that the NYPD has forestalled by continuing the operation for over five years.

Despite this huge effort, by August 1989, the police admitted in internal documents that "[d]rug activity [in the OPP-1 zone] for the most part continues to be covert and occurring indoors" particularly in "numerous grocery stores". Moreover, any decline in drug trafficking and crime in the target area was due largely to displacement to poorer parts of the neighborhood and into adjacent or more distant neighborhoods, possibly as far away as Harlem. As one commentator concluded "Pressure Point I . . . clearly improved local conditions, but its effects elsewhere . . . in terms of displacing drug use and crime . . . [are] open to question." Perhaps most impor-

31. Id. at 6-8.
32. Id.; see also L. ZIMMER, supra note 14, at 11-12 (reporting the decrease of drug-related property crimes of robbery and burglary during OPP-I from 1983 to 1984).
33. L. ZIMMER, supra note 14, at 13.
34. It has been observed that "[s]treet-level dealers are a fluid group, made up of drug users who sell to support their own use and local adolescents, anxious to earn money." Id. at 9.
35. Id. at 16.
36. Memo of Sept. 5, 1989 from Project Director OPP I to Commanding Officer, PBMS (PBMS #0010-08), in Project 1989. (Hofstra Law Review was unable to obtain this source to verify the accuracy of the cited language).
38. Id. at 8-9.
tant, there is no indication that overall availability or drug consumption has declined.\textsuperscript{40} Therefore, despite OPP-1, the \textquote{\textit{\textit{value [of street-level heroin operations] . . . as crime control in big cities is . . . still to be shown.}\textsuperscript{41}}

B. \textit{The Tactical Narcotics Team (TNT) Program}

In February 1988, Police Officer Edward Byrne was shot and killed while he guarded the Queens home of a witness in a highly publicized drug prosecution.\textsuperscript{42} In the wake of Byrne's death, then-Mayor Edward Koch and Police Commissioner Benjamin Ward announced the creation of the NYPD Tactical Narcotics Teams (TNT), and The City Anti-Drug Task Force, a network of 23 city agencies\textsuperscript{43} to \textquote{\textit{win this battle against drugs.}\textsuperscript{44}} The operation was further escalated following the death of officers Michael Buczek and Christopher Hoban, who were killed in separate narcotics operations on the evening of October 18, 1988.\textsuperscript{45}

occur as a result of at least two dynamics. To some degree, when police push drug traffic out of a neighborhood at least some dealers are displaced elsewhere, which in turn pushes inter-dealer violence into the turf of rival organizations. \textit{See T. WILLIAMS, THE COCAINE KIDS (1989); P. Goldstein, H. Brownstein, P. Ryan \& P.A. Bellucci, Crack and Homicide in New York City, 1988: A Conceptually-Based Event Analysis, 16 CONTEMP. DRUG PROBS. 651 (1989) [hereinafter Goldstein]. In addition, even where there is not a large scale movement of sellers from one neighborhood to another, other dealers in adjacent or nearby areas pick up the slack by increasing their sales.}

40. \textit{Bouza, Evaluating Street-Level Drug Enforcement, in STREET-LEVEL DRUG ENFORCEMENT, supra note 14, at 44 (surveying the good and bad effects of street-level enforcement).}

41. \textit{Kleiman, supra note 39, at 29 (noting a lack of clear evidence on OPP-I's success in displacing drug trafficking and related crimes).}

42. \textit{See Fried, Officer Guarding Drug Witness Is Slain, N.Y. Times, Feb. 27, 1988, at A1, col. 1.}

43. \textit{See 3 THE TACTICAL NARCOTICS TEAM \& THE ANTI-DRUG TASK FORCE, 90 DAY INTERIM REPORT TO THE MAYOR I (July 1989) [hereinafter TNT III]; see also James, 113 Officers to Fight Drugs at Queens Site, N.Y. Times, Mar. 8, 1988, at B1, col. 5 (announcing the creation of TNT as a result of Officer Byrne's death and noting the assistance of the fire and building departments, politicians, and the United States Attorneys offices from both Brooklyn and Manhattan)\textsuperscript{.}

TNT works in conjunction with the City Anti-Drug Task Force \textquote{[i]n order to eliminate quality of life conditions in the target area that foster drug trafficking and use . . . .} TNT III, supra, at 1. TNT also works closely with the Drug Enforcement Task Force, staffed by the NYPD, Drug Enforcement Agency, New York State Police and the Joint Organized Crime Narcotics Task Force, staffed by the NYPD and the Federal Bureau of Investigation. \textit{Id.}


TNT differs from OPP-I in a number of ways. First, it is part of the largest local narcotics program ever established. In fiscal year 1989, New York City spent almost a billion dollars on drug related enforcement, and from 1988 to 1990 spent $116 million on TNT which, according to Ward, represented a commitment of “more resources to the war on drugs than any other municipality in the country.” By the end of 1989, 2,100 officers were expected to be assigned to narcotics enforcement, 725 of them in TNT, a drug war army second only to the federal Drug Enforcement Agency’s 2,800 agents. Second, it is based primarily in predominantly African-American and Latino poor and working class neighborhoods.

46. See A City Deluged, N.Y. Newsday, Dec. 17, 1989, at 14, col. 1, 15, col. 2 (estimating drug-law enforcement expenditures in New York City for fiscal 1989 to be $942.7 million dollars including costs of police, corrections, probation, legal aid, court appointed attorneys, borough district attorneys and special prosecutors).

47. Frankel & Freeland, Is Street-Level Enforcement a Bust?, AM. L. W., Mar. 1990, at 100, 102.


49. Frankel & Freeland, supra note 47, at 102.

50. Esposito, Fewer Officers Will Walk the Beat, N.Y. Newsday, Feb. 16, 1989, at 27, col. 2 (reporting that despite the New York City’s financial “crunch” the narcotics division would continue to be increased).

51. The following are portraits of typical TNT neighborhoods:

Manhattan North TNT Target Area 2 (February 15 - May 14, 1989): This section of northwest Harlem is a densely populated neighborhood of multiple dwellings and vacant buildings made up of two community districts, Districts 9 and 10. District 9 is 48.6 percent Black, 22.9 percent White and 22.7 percent Hispanic. District 10 is 91.6 percent Black, 6.5 percent Hispanic, 1.3 percent “Other” and 0.6 percent white. In District 9 the median household income is $13,500, which is approximately 33 percent lower than the city average, and in District 10, the median household income is $8,600, 60 percent below the average.

Brooklyn North TNT Target Area 1 (November 14, 1988 - February 14, 1989): This section of East Harlem is also a densely populated neighborhood of tenements and walkup apartment buildings. The population is 43.8 percent Black, 42.4 percent Hispanic, and 10.7 White. The median household income is $8,300, less than half of the city median of $20,000.


Bronx TNT Target Area 1 (February 15 - May 21, 1989): The South Bronx-Hunts
third, TNT strategy is to saturate drug-infested neighborhoods with large teams which perform undercover “buy and bust” operations for 30, 60 or 90 day periods. These teams then move on to the next target neighborhood and are replaced by smaller, permanent units. Occasionally, TNT teams return to a target area for unannounced “maintenance” days in the hope of keeping drug dealers off guard. Eventually, the NYPD argues, TNT transforms the target neighborhoods:

[a]s these operations continue, street level dealers are arrested and removed from the drug distribution chain. Eventually, the target area is no longer conducive to drug trafficking due to the increased risk of arrest faced by dealers.

By October 1989, twenty-one separate operations had been conducted throughout New York City, resulting in a large number of arrests. Defendants charged with narcotics offenses have faced

Point area is a neighborhood of large residential buildings and significant industrial and commercial areas, with a population that is 67.8 percent Hispanic, 28.3 percent Black, 1.2 percent White and 2.8 percent “Other.” The median household income, at $6,000, is 70 percent below the citywide average, and the lowest in the borough.

TNT III, supra note 43, at 19.

52. See TNT III, supra note 43, at 1 (noting that “TNT units are designed to be highly mobile, even within their defined zones of operation, their ability to strike and move on—or return—without notice reduces the potential for displacement of interdicted drug activities from one block to another or from one neighborhood to another.”); see also infra note 137 and accompanying text (describing “buy and bust” operations).

53. See Frankel & Freeland, supra note 47, at 108.

54. TNT I, supra note 44, at 18.


56. By May 1990, TNT had netted over 35,000 drug arrests. Jordan & Gelman, Officials Talk of Cutting TNT, N.Y. Newsday, May 4, 1990, at 7, col. 1, 29, col. 3. Because of TNT and related efforts, city-wide felony drug arrests in the first 11 months of 1988 rose to 90,000 out of a total 279,000 arrests, more than twice that of five years before. See DeStefano, Courts Trying Time: Drug Arrests Threaten to Clog Justice System, N.Y. Newsday, Aug. 17, 1989, at 6, col. 1 (reporting that in the first quarter of 1989 drug arrests, which accounted for nearly half of all felony arrests in New York City, were running thirty-eight percent ahead of where they were the previous year); Tyre, Drug-Tracking Plan Expands, N.Y. Newsday, Aug. 4, 1989, at 6, col. 1, col. 3 (reporting 90,000 drug arrests in 1988 with 120,000 drug arrests expected in 1989); Marriot, Markets of Death, supra note 48, at B4, col. 6 (reporting that in 1987, 27.1% of all arrests were for drug offenses). Felony drug arrests rose from forty-eight percent of all drug arrests in the second quarter of 1988 to fifty-three percent of all drug arrests in the second quarter of 1989. 2 NEW YORK STATE DIV. OF CRIM. JUST. SERVS., GOVERNOR’S ANTI-CRIME ACTION AGENDA: A MONITORING REPORT ON THE NEW YORK CITY CRIMINAL JUSTICE SYSTEM 13 (Nov. 1990) [hereinafter GOVERNOR’S NOV. ACTION AGENDA].
prosecution under severe state narcotics and predicate felony sentencing statutes. Drug prosecutions have soared. A huge number of drug offenders have been convicted and incarcerated. There has also been a decline of blatant street sales and some, but not all, non-drug crimes in TNT target areas. These facts have led the city administration and police command to declare that TNT is "able to provide a positive impact and restore social order to our communities" by making "a substantial impact in disrupting the flagrant

57. Drug laws passed between 1969 and 1973 made the sale of any amount of illegal drugs a felony. See, e.g., 21 U.S.C. §§ 841-842 (1971). Drug sale offenses are classified as various degrees of criminal sale of a controlled substance the level of which depends on drug weight. See 21 U.S.C. § 841 (1989) (defining "drug weight" as "a mixture or substance containing a detectable amount" of an illegal substance). Criminal possession of a controlled substance is based on the presumption of "intent to sell," the level of which likewise depends on the drug weight. See N.Y. PENAL LAW § 220.41 (McKinney 1989). The most serious of these charges are classified as "A-I" felonies, which carry the potential of a life sentence even for a first offender. See id. § 220.43. The most common felony drug charges are "B" felonies, which carry a maximum sentence of 25 years for a first offender. See id. § 220.39. Defendants with prior felony records face greater punishment. See id. §§ 220.00 to .65 (McKinney 1989). In addition, a 1988 statute raised possession of 500 milligrams of cocaine to a "D" felony, which is approximately six to eight vials of crack worth about $25 on the street. See id. § 220.06(5).

58. A person who has been convicted of a felony and has served any part of his or her sentence within the prior ten years, is deemed a "predicate felon" subject to a mandatory minimum sentence of incarceration in state prison upon a second felony conviction. Still greater sentencing rules apply to "violent predicate felons," "discretionary persistent felons," and "mandatory persistent felons." See N.Y. PENAL LAW §§ 70.06 to .10 (McKinney 1989). These laws were enacted during the move toward harsher punishment in the 1970s. New York's use of such predicate-sentencing laws is second only to Arkansas. See The Nelson A. Rockefeller Inst. of Gov't, State Univ. of N.Y., New York State Project 2000, Report on Corrections and Criminal Justice 24 (1986) [hereinafter Project 2000].


60. The rate of felony drug convictions rose by 21.6% in the first quarter of 1989 as compared with the first quarter of 1988. See Governor's July Action Agenda, supra note 27, at 14, table 7.

61. Approximately 30% of New York City jail inmates are there on charges of drug sale or possession. Bohlen, Lessons for Prisoners and Prisons, N.Y. Times, July 30, 1989, at ES, col. 3. State prison sentences for felony drug convictions rose by 16.9% in 1988 and in the first quarter of 1989 state prison sentences by 26% as compared with the first quarter of 1988. Governor's July Action Agenda, supra note 27, at 18, Table 11. By April 1, 1990, approximately 5,367 people entered state prison as a result of TNT-based convictions and sentences. See Frankel & Freeland, supra note 47, at 108. As a result, more than 30% of state prison inmates (9,719) are serving sentences for drug-related convictions, compared with 3,194 in 1986, an increase of over 300%. See Correctional Ass'n of New York, Anti-Crime Strategies at A Time of Fiscal Constraint 4-5 (1990). In 1989, 45% of new commitments to state prisons were drug-related. Id.

62. See TNT II, supra note 51, at 8 passim; TNT III, supra note 43, at 8 passim; TNT IV, supra note 55, at 7, 12, 17, 22, 32.

63. See TNT I, supra note 44, at 48 (approving a cooperative effort by government agencies).
drug dealing that takes place on street corners."

There is, however, a great deal of evidence that TNT has failed to have any substantial impact. It appears that, like in OPP-I, the crack trade has simply adjusted to TNT. Drug dealers have moved their operations into building lobbies and stairwells, heavily fortified apartments or abandoned buildings or storefronts containing apparently legitimate businesses. Although these accommodations have not reduced drug availability, they have made it even more difficult for law enforcement to conduct narcotics operations. In addition, many dealers regard incarceration as a cost of doing business and immediately resume drug sales upon their return from jail or prison. Those dealers who do not return are quickly replaced. Return and replacement is particularly evident after TNT withdrawal.

64. See Letter from Benjamin Ward, New York City Police Commissioner and James H. Harding, Jr., Special Advisor to the Mayor to Hon. Edward I. Koch, Mayor 1 (Apr. 1989) reprinted in TNT II, supra note 51, at i.


66. See Marriot, Selling Milk, Bread and Cocaine in New York, N.Y. Times, Mar. 30, 1989, at A1, col. 3, col. 4-5 (noting that police officials state that once a drug front operation is identified, "considerable investigation, including surveillance, and undercover purchases from the premises, is usually required" before there can be an arrest).

67. After a TNT sweep by 150 police in which everyone on a block in Manhattan's Washington Heights was questioned and many arrested, a resident reported that "[a]ll of the drug dealers came back the next day. . . . The raid didn't scare them." Wright & Gelman, A Question of Police Tactics, N.Y. Newsday, July 29, 1989, at 4, col. 1, 14, col. 3.

68. For example, after a sweep of four public housing projects in western Queens by more than 100 officers, the commander of the Narcotics Division conceded that although the operation had wiped out the project's drug operations, "that doesn't mean there aren't people waiting in the wings, licking their chops to take over." Drury, 'Home Run' in Queens Drug Sweep, N.Y. Newsday, May 19, 1989, at 7, col. 1., 35, col. 4. Captain Charles Mattes, head of the Queens Area has complained that dealers "have recruited thousands of young addicts who make the street sales—and risk arrest . . . like worker ants . . . Arrest them, and somebody takes their place right away." Wines, Against Drug Tide, Only a Holding Action, N.Y. Times, June 24, 1988, at A1, col. 2, B4, col. 3.

69. For example, within days of the November 1988 withdrawal from South Jamaica, Queens where TNT had made thousands of arrests, see TNT II, supra note 51, at 3, 9, the drug trade blatantly reappeared despite a permanent police presence on the block where Police Officer Byrne was killed. See Pitt, Crack Dealers Returning to Streets That Narcotics Units Swept Clean, N.Y. Times, Dec. 5, 1988, A1, col. 1; see also DeStefano, The Streets Get Swept, But For How Long?, N.Y. Newsday, Feb. 12, 1989, at 3, col. 1. Residents on that block are afraid to open their doors or to discuss drugs despite the conviction of Byrnes' killer. See Queen, A Block Steeped in Drug Fear, N.Y. Newsday, Mar. 31, 1989, at 4, col. 1; see also McKinley, Jr., Where Fear of Street Violence Rules Life, N.Y. Times, Dec. 12, 1989, at B1, col. 2; Queen, South Jamaica Still Scourged by Drugs, N.Y. Newsday, Feb. 22, 1989, at 26, col. 2. The results were similar when TNT units left the Queens neighborhoods of Far
ticed in OPP-I, there are also clear indications that TNT simply dis-
places much of the drug traffic and drug-related street crime from
target areas to other places.  

While the seizure of cocaine is occurring at a record-setting pace, a federal drug enforcement spokesman commented that “[t]he price has remained stable, and there is no indication of a reduction in supply.” And according to the Chief Judge of the New York Court of Appeals of New York, “the cocaine market . . . particularly in New York, is as healthy now, or healthier, than it ever has

Beginning in February 1989, a local and federal task force conducted repeated drug sweeps of a housing project in the Bronx which resulted in the arrest of 380 people. McKinley, Constant Reality in a Project: Fear of Violent Drug Gangs, N.Y. Times, May 15, 1989, at A1, col. 1. One week after an indictment was voted against the leadership of the dominant drug organization, shootings and drug sales in the project had resumed. Id. at A1, col. 1.

70. From the earliest months of TNT, residents and local officials in Queens reported displacement from one block to another. See Carper, supra note 69, at 20, col. 3. Displacement also occurred in Brooklyn, Lee, supra note 65, at B1, col. 2, where residents have made similar observations. See Gelman, Cop’s Big Crack Attack, N.Y. Newsday, Feb. 15, 1989, at B3, col. 1. In East Harlem, Frankel & Freeland, supra note 47, at 102-03, 108, and the Bronx, see Vergara, Rebuilding Drug City, Village Voice, Mar. 27, 1990, at 25, col. 1.

71. See COMPTROLLER GENERAL OF THE U.S., CONTROLLING DRUG ABUSE: A STATUS REPORT 19, 22 (1988) [hereinafter CONTROLLING DRUG ABUSE]; VERA INST. REPORT, supra note 14, at 16; Kleiman, supra note 39, at 16. For example, a decline in crime in TNT Queens Target Areas was paralleled by an increase in adjacent non-TNT areas. See TNT II, supra note 50, at 10. A decline of over 35 percent in the murder rate in TNT Manhattan North Target Area 1 was paralleled by an increase in a neighboring non-TNT area of over 25 percent. See id. at 44. In Manhattan North Target Area 2, although the murder rate in the TNT area increased by 23 percent, it increased by 50 percent in the immediately adjacent neighborhoods. See TNT III, supra note 43, at 16. Robbery, burglary and grand larceny, however, which declined in the TNT area, increased more in the adjacent area than anywhere else in Manhattan North. See id.; cf. L. ZIMMER, supra note 14, at 8-12 (discussing displacement resulting from OPP-I).

72. Ladd, N.Y. Drug War A Bust, So Far, N.Y. Newsday, Oct. 15, 1989, at 4, col. 2, col. 3. A 1988 Senate study of drug availability on the national level likewise found “a greater influx of cocaine than when the war on drugs was declared in 1983, and a cheaper, higher quality product.” SENATE SUBCOMM. ON TERRORISM, NARCOTICS AND INT’L OPERATIONS OF THE COMM. ON FOREIGN REL., 100TH CONG., 2D SESS., REPORT ON DRUGS, LAW ENFORCEMENT AND FOREIGN POLICY 1 (Comm. Print 1988) [hereinafter SENATE REPORT ON DRUGS, LAW ENFORCEMENT AND FOREIGN POLICY].
been.” Nor does it appear that street-level drug trafficking has been slowed in most areas of the city, including TNT target zones. A reporter who surveyed city neighborhoods in early June 1989 found that “[m]any of the drug dealers ply their trade brazenly, with little fear of arrest. This is so despite the Police Department’s announced crackdown on street-level sales and vast sums being spent on the police saturation technique featuring the Tactical Narcotics Team, or T.N.T.” No one has been heard to claim that police operations have resulted in any decline in drug abuse. Rather, reliance on the criminal justice system to deal with the crack crisis has only traumatized the police, courts, city jails, state judicial system, and taxpayers.

73. JUDICIARY, 1989, supra note 59, at 16.
74. Indeed, the street price of a kilo of cocaine in New York City dropped from $60,000 in 1983 to $15,000 in 1989. Friedman, City Losing the War on All Fronts, N.Y. Newsday, Aug. 13, 1989, at 4, col. 1; Ladd, supra note 72, at 4, col. 3.
75. Marriot, Markets of Death, supra note 48, at A1, col. 5.
76. Because of the rise in the availability of drugs and drug-related crime and violence, police patrol cars now spend 87% of their time on 911 calls. Liff, When 911 Means Call Waiting, N.Y. Newsday, Aug. 15, 1989, at 7, col. 1, 30, col. 1, which in the last five years have increased by 35%. Powell, Overrun By Calls and Crime, N.Y. Newsday, Aug. 15, 1989, at 7, col. 4. Furthermore, “arrest-to-arraignment time has increased dramatically—up to nearly two days in some boroughs—costing the city roughly 30 million a year in police overtime.” Crime in the City: The Findings, N.Y. Newsday, Aug. 13, 1989, at 4, col. 3. As a result of the increase in arrests and constraints on New York City’s budget, there are fewer uniformed police on regular patrol. See Liff, Data Shows Fewer Cops Patrol City, N.Y. Newsday, Mar. 12, 1989, at 4, col. 4. Further, it has been reported that police have been ordered by their superiors “to be less aggressive in making ‘petty’ arrests . . . .” La Rosa, Collars Off, Courts Unclog, Daily News, May 14, 1989, at 13, col. 1. The Chief of Patrol, however, denied that any such order had been given. Id.
77. The backlog of open felony cases increased 16% in 1989 as compared with 1988 and the dismissal rate increased from 8.8% in 1988 to 12.6% in 1989. DeStefano, The Streets Get Swept, but For How Long?, supra note 69, at 6, col. 3, 32, cols. 3, 4. The number of cases which went to trial have fallen to 6.6% of the cases disposed of during the first six months of 1989, down from 10.6% of the cases disposed of during the same period four years earlier. Id. at 32, col. 4. The length of prison sentences for defendants charged with “B” felony drug offenses decreased from a median of 24 - 70 months in 1984 to a median of 16 - 48 months in 1988. Id.; see also JUDICIARY 1989, supra note 59, at 80; DeStefano, Jury Delays Free 20% on Drug Raps, N.Y. Newsday, Jan. 9, 1990, at 3, col. 1; Frankel & Freeland, supra note 47, at 107.
78. The New York City Department of Corrections custody population has increased from 15,348 in the second quarter of 1988, GOVERNOR’S NOV. ACTION AGENDA, supra note 56, at 48, to 20,511 in March, 1990. La Rosa, Jail Crowding and Bloodshed, N.Y. Daily News, Mar. 13, 1990, at 27, col. 3. Overcrowding at Rikers Island resulted in major confrontations between correction officers and inmates in August 1990, including a reported mass beating of prisoners by guards. Barron, After Uprising at Rikers, Guards Are Said to Have Beaten Inmates, N.Y. Times, Aug. 16, 1990, at A1, col. 1; see Jordan, State Panel Corrects City Jail Boss, N.Y. Newsday, Aug. 30, 1990, at 8, col. 1; Letwin, Our Drug Laws Are to
prisons,\textsuperscript{79} district attorneys\textsuperscript{80} and public defenders.\textsuperscript{81} These facts have led many police to thinly veiled cynicism about the results of street-level narcotics enforcement. Assistant Chief Francis C. Hall, who helped to design TNT and until recently commanded the Narcotics Division, now admits that

"[d]rug enforcement . . . is like the Vietnam War. In Vietnam, we underestimated the number of Vietcong and their will to fight. We appear to be doing the same thing with street-level drug traffickers . . . . We lost the Vietnam War with a half-million men. We're doing the same thing with drugs."\textsuperscript{82}

At the street level, many undercover officers, who are predominantly African-American and Latino, have concluded that the police command sends them into grossly unsafe buy operations in order to achieve a high body count and the resulting headlines.\textsuperscript{83} As one team


80. In mid-1989 there were 1,393 assistant district attorneys in the six New York City District Attorney's offices. Governor's Nov. Action Agenda, \textit{supra} note 56, at 40. Yet the district attorneys are are flooded with cases. DeStefano, \textit{supra} note 69; see also Frankel & Freeland, \textit{supra} note 47, at 103.

81. Unlike most urban areas where counties employ public defenders, New York City contracts for these services with The Legal Aid Society, a private non-profit organization whose 1,000 attorneys provide indigent clients with a variety of legal services, including criminal defense and appeals, civil legal services and juvenile rights. See \textit{generally} The Legal Aid Soc'y, 1989 Annual Report [hereinafter Legal Aid 1989 Annual Report]. With 650 attorneys, the Criminal Defense Division is the largest trial-level public defender organization in the United States. See \textit{id.} at 38; see also Governor's July Action Agenda, \textit{supra} note 27, at 31. The number of cases handled by the Division increased from 172,788 in 1987, see The Legal Aid Soc'y, 1988 Annual Report 50, to 225,834 in 1989. Legal Aid 1989 Annual Report, \textit{supra}. Representation is provided to other indigent clients by attorneys who are appointed from a panel of private attorneys maintained by the courts as part of the program. New York State Div. of Crim. Just. Servs., Governor's Anti-Crime Action Agenda: New York City Criminal Justice System 9 (May 1989) [hereinafter Governor's May Action Agenda] (estimating that in 1987 in "'over 70 percent of the Supreme Court cases disposed of . . . the defendant was represented by a publicly-funded attorney.'" About 55 percent of these cases were represented by Assigned Counsel, with the remainder represented by the Legal Aid Society.)

82. Massing, \textit{supra} note 6, at 62.


http://scholarlycommons.law.hofstra.edu/hlr/vol18/iss3/9
member said, "[i]t's just not worth it anymore. . . . We're getting shot out there and the drugs don't seem to go away. . . . I'm never going to make a buy again."84

III. UNDERSTANDING THE FAILURE OF STREET-LEVEL NARCOTICS ENFORCEMENT

There are several reasons for the extremely limited effectiveness of OPP-I and the complete failure of TNT. First, such operations do not reach the multi-billion dollar international narcotics business to which drug prohibition has given birth.85 Thus, by October 1989, the NYPD reported that TNT had resulted in no completed high-level investigations.86 Second, at the street level, inner-city drug use and traffic are impervious to the various programs because of the interaction between crack, drug prohibition and declining social conditions. This is particularly true of the largely African-American and Latino poor and/or working class neighborhoods in which most TNT teams have operated.87

Historically, the African-American community has suffered a...
subordinate relationship to most other sections of society because of
the economy's need for a large, cheap and sometimes reserve labor
pool.88 In recent years, however, there has been a huge drain from
the inner-city of stable blue collar jobs which once provided work to
many of the parents and grandparents of today's youth.89 This eco-
nomic development has combined with tremendous assaults of many
of the economic and social gains of the Black movements of the
1960's—from ferocious cuts in social services, to assaults on affirm-
ative action—to push much of the community into deeper impover-
ishment and despair.90 As a result, twenty-five years since the Johnson
Administration launched the War on Poverty,91 thirty-five years af-
fter the Supreme Court outlawed school segregation in Brown v.
Board of Education,92 and 127 years after the Emancipation Procla-
mination,93 the communities which TNT and other such programs op-
erate suffer growing poverty and intolerable conditions in, and
shortages of, housing, childcare facilities, schools, transportation and

88. For a discussion of the historical relationship between the subordination of African-
Americans and the structure of the American economy, see generally D. Fusfeld & X. Bates,


90. For instance, the federal government cut $57 billion in aid nationally between 1981
and 1987, including $6.8 billion from the food stamp program and $5.2 billion from child
nutrition programs. See Hemphill, Study: City's Poverty Soars, N.Y. Newsday, Nov. 15,
1989, at 19, col. 1. See generally CENTER ON BUDGET AND POLICY PRIORITIES, STILL FAR
FROM THE DREAM: RECENT DEVELOPMENTS IN BLACK INCOME, EMPLOYMENT AND POVERTY
35-44 (1988) [hereinafter FAR FROM THE DREAM] (noting several government programs which
have been cut recently, affecting low income groups comprised mainly of black single
mothers).

In New York City, a recent study found that due to major cuts in federal poverty
programs, there has been a substantial increase in poverty since the mid-1970s. See Hemphill,
supra, at 19, col. 1. At that time 13 percent of the population in N.Y. City was below the
official poverty level; by 1987, that figure had nearly doubled to 23.2 percent. See id.

that on January 8, 1964, President Johnson announced an "unconditional war on poverty in
America.").


93. See H. Trefoisse, LINCOLN'S DECISION FOR EMANCIPATION 99-100 (1975) (stating
that Abraham Lincoln issued the Emancipation Proclamation on January 1, 1863).
decent employment opportunities. Police abuse is epidemic. New York remains a segregated city in which those of color enter many white neighborhoods only at their peril.

In essence, the description of society given by the 1968 National Advisory Commission on Civil Disorders remains valid. Perhaps even more so today than in the 1960's, there are two societies in the United States today; "[o]ne, largely Negro and poor, located in the central cities; the other, predominantly white and affluent, located in the suburbs and outlying areas." But unlike the 1960's, when the rising expectations evident in the Civil Rights and Black Power movements led many alienated youth to political activism, the absence of such hope has left many minority youth today resentful, angry, and hopeless at an early age. "For the unemployed and the desperate, the drug traffic offers money and the illusion of security. For the pained and the alienated, the confused and the dispossessed, drugs offer an anesthetic and an escape."

These conditions begin to explain why there are as many as 600,000 cocaine users in New York City—most of them crackheads—an increase of more than three times between 1986 and 1988. Moreover, by imposing risks on distributors, drug prohibition raises the street-price of crack to well-above what it would cost.

94. See generally Far from the Dream, supra note 90, at 35-44; New York City Bd. of Educ., Human Relations Task Force, Final Report (1989) (outlining the need for the restructuring of the educational systems within school districts serving largely minority and low income students so that such systems are more equivalent to programs developed in the more affluent areas); The Report of the Mayor's Commission on Black New Yorkers (1988) (indicating the extent to which African-Americans continue to be discriminated against and the restraints upon them because of such obstacles); Hemphill, supra note 90, at 19, col. 1 (discussing the extent to which federal cuts in poverty programs have affected New Yorkers).

95. See infra notes 140-44 and accompanying text.


98. Id. at 27.

99. See id. at 10-11.

100. Jackson, supra note 12, at 58, col. 1 (noting Reverend Jesse Jackson's position). Obviously, middle class suburban crack users must be drawn to drugs out of a general alienation from society rather than from the inner-city conditions described here. Cf: Levine, America's Addiction to Addictions, U.S. News & World Report, Feb. 5, 1990, at 62, 63 (noting that having an addiction might indicate that a person has "such pre-disposing traits as a sense of alienation, impulsivity, and a need for instant gratification.").
to produce and distribute legally.\footnote{102} The resulting price rise has contributed to an explosion of street crime, fueled in large part by crack-users seeking to finance their habit.\footnote{103} There has also been a serious increase in intra-family theft and violence as users seek to support their habit, and child abandonment by parents whose only focus is finding the next vial of crack.\footnote{104}

Drug prohibition has also been linked to an increase of health problems and intra-family conflict, which are on the rise in the inner-city. It has been reported that the barter by women of sex for crack in the inner-city has replaced dirty needles as the main reason for the increase in AIDS among drug users.\footnote{105} The sex for crack phenomena\footnote{106} has also led to the first syphilis epidemic in decades.\footnote{107}

\footnote{102} For a more detailed explanation of this part of the drug decriminalization debate, see Ostrowski, The Moral and Practical Case for Drug Legalization, 18 Hofstra L. Rev. 607, 647 (1990).

\footnote{103} By one estimate, 40% of all crime nationally is thus directly or indirectly related to drug prohibition. See Ostrowski, supra note 102, at 647-50 & nn. 195-97. In New York, where it is estimated that 60 percent of city jail inmates are addicted to drugs and/or alcohol when confined, see Governor's Nov. Action Agenda, supra note 56, at 62, the 1989 violent crime rate increased by 4% over 1988, and robbery, which is regarded as the main indicator of street violence, increased by 7.9% to 93,337, giving New York City the worst robbery record in the United States. McKinley, Killings in '89 Set a Record in New York, N.Y. Times, Mar. 31, 1990, at 27, col. 5. And while property crime in 1989 decreased slightly by 2.3%, it increased by 11.6% in the area of motor vehicle theft. Id. at 30, col. 4. Law enforcement attributes these increases to drugs, particularly crack. Id. On average, the 1989 violent crime rate meant a daily toll of five homicides, nine rapes and 237 robberies. See Friedman, supra note 74, at 19, col. 1.

\footnote{104} Over the past four years, domestic violence has increased by 157 percent. See N.Y. Times, June 23, 1988, at B4, col. 3 (stating that William Grinker, Commissioner of New York City's Human Resources Administration, has linked these figures to the crack epidemic). From 1985 to 1989, child neglect and abuse cases in New York City rose by 232% due in large part to drugs. See Judiciary 1989, supra note 59, at 15. In addition, outside the New York City area, neglect and abuse cases rose by 76%. Id.

\footnote{105} See Lambert, AIDS Danger Rises for Cocaine Users, N.Y. Times, Nov. 28, 1988, at A22, col. 5; see also Hildt, Spread of AIDS by Heterosexuals Remains Slow, N.Y. Times, May 1, 1990, at C1, col. 4; Altman, Who's Stricken and How: AIDS Pattern is Shifting, N.Y. Times, Feb. 5, 1989, at A1, col. 1 (stating that "[t]he AIDS virus has been slowly spreading among heterosexuals who do not use intravenous drugs, but again, the spread is mainly among the sex partners of drug abusers."). AIDS is becoming a disease of poor African-American and Latino heterosexuals and babies, who now together constitute one quarter of the current AIDS cases. See Altman, supra at A1, col. 1. Single adults dying of AIDS, and mentally ill crack abusers, are the fastest growing segment of the homeless. See Foran, AIDS, Crack Swell Homeless Ranks, N.Y. Newsday, Jan. 29, 1989, at 19, col. 1. Nearly one third of the city's 34,000 single adult homeless fall into one or both of these categories. See Partnership for the Homeless, Inc., AIDS—The Cutting Edge of Homelessness in New York City 47 (1989).

\footnote{106} See Queen, Drugs Stimulate the Spread of Prostitution, N.Y. Newsday, Sept. 19, 1988, at 9, col. 1, col. 2.
which has resulted in thousands of stillborn births and birth defects.\footnote{108}{See Kerr, Crack and Resurgence of Syphilis is Spreading AIDS Among the Poor, N.Y. Times, Aug. 20, 1989, at A1, col. 1, col. 2.} Moreover, because the production of crack is completely unregulated, its inherent hazards are significantly magnified by adulteration and impurity.\footnote{109}{See French, Rise in Babies Hurt by Drugs Is Predicted, N.Y. Times, Oct. 18, 1989, at B1, col. 5.} None of this is to say that such problems exist only because of crack or that the only harm in crack abuse is due to drug prohibition. The point, however, is that drug prohibition has greatly exacerbated these problems.

Furthermore, drug prohibition has acted on these same social conditions to lead many inner-city youths into the crack trade. The mid-level organizations supply cocaine in powder form to the street-level dealers who easily convert it into crack.\footnote{110}{See Kerr, supra note 108.} The retail street trade is conducted largely by teenagers, some of whom earn up to several thousand dollars a week\footnote{111}{See supra note 109.} and are thereby the primary source of income for many poor families.\footnote{112}{Police believe that a crack and heroin ring run out of one family's apartment in East New York earned $8,000 a day. Seaton, Three Held on Drug Rap, N.Y. Daily News, Sept. 15, 1989, at KSI 1, col. 3.} Large numbers of teenage girls have enlisted in the trade,\footnote{113}{See supra note 112.} and even elementary school children participate, some earning as much as $300 per day.\footnote{114}{Mid-level traffickers enlist children and young teenagers in the trade because they face less severe penalties if caught and are generally easier to manipulate than adults. Recent arrests of such children have totalled between 130 and 150 per month. Bernstein, Crack Arrests of Young Soar, N.Y. Newsday, Mar. 14, 1989, at 4, col. 1, and along with their involvement in the trade has come a dramatic increase in the arrest of children with weapons (up 24.5% since 1986). DeStefano, Big Jump in Arrests of Armed Kids; Officials Blame Crack for Increased Cases, N.Y. Newsday, Mar. 22, 1989, at 5, col. 1.} As a result, many community residents have strong family and economic steady ties to people who use and/or sell drugs. Thus it is more difficult than in areas with substantial white middle class populations for
police to identify dealers and receive community cooperation. As Zimmer pointed out:

 poor, run-down neighborhoods hold some advantages for street-level drug dealers. . . [T]here is often a transient population on the streets and in the local parks, making it difficult for the police to identify persons involved in the drug trade. Buyers and sellers often live in the neighborhoods themselves and are similar to other residents in terms of class, race, ethnicity and general appearance, again making them indistinguishable to the police. And even residents may be reluctant to report them, either out of loyalty or fear of retaliation.

Young people sell drugs on the streets either to finance their own crack habit, or as an alternative to welfare or the minimum wage at McDonald’s. In large part, selling drugs is a matter of making a decent income. As a Washington Heights street-level trafficker explains, “I have tried to work for the white man . . . But the more you work, the richer he gets.” Phillip Bourgois, an anthropologist who recently spent five years studying street culture in East Harlem, has noted that enlistment in the crack trade is the closest that many inner-city youth can come to the pursuit of success, pointing out that:

ambitious, energetic, inner-city youths are attracted to the under-

115. For example, on the predominantly Latino block in the Bushwick section of Brooklyn, a reporter found that:

[Although many] hate the sight of dealers on the same street where their children play, they do not see them as an invading army. Many of the dealers and addicts, residents say, are part of the community’s intricate web of blood ties and friendship . . . they [residents] have learned to live safely in the shadow of the drug trade by following a simple live-and-let-live rule. The dealers pose no danger to ordinary residents unless they [dealers] believe someone is telling the police of their activities.

McKinley, Jr., Friendship and Fear Undermine a Will to Fight Drugs in Brooklyn, N.Y. Times, Sept. 18, 1989, at A1, col. 5.

Obviously, other TNT zone residents try to rid their communities of drugs, as has been demonstrated in community anti-drug patrols. See, e.g., Morgan, Muslims Start Patrol to Fight Crack in Brooklyn, N.Y. Times, Jan. 23, 1988, § 1, at 29, col. 2; Jamieson, Blacks and Hasidim Join to Fight Drug Addiction, Newsday, July 5, 1988, at NY-B 23, col. 2; Kerr, Citizen Anti-Crack Patrols: Vigilance or Vigilantism?, N.Y. Times, May 23, 1988, at B1, col. 2; Thousands Demonstrate Against Crime, Newsday, Aug. 9, 1989, at 33, col. 1; English, Gregory, Sharpton Put Drug Dealers on Notice, Newsday, Oct. 6, 1989, at 23, col. 2.


117. See Bourgois, Just Another Night on Crack Street, N.Y. Times, Nov. 12, 1989, § 6 (Magazine), at 53, 62, cols. 2-3, 65, cols. 3-5.

118. See T. Williams, supra note 39, at 67; see also Bourgois, supra note 117, at 62, col. 3 (stating that many drug dealers are proud that they are not being exploited by the “white man” by holding jobs such as delivery boy, supermarket bagger or hospital orderly).
ground economy precisely because they believe in the American dream. Like many in the mainstream, they are frantically trying to get their piece of the pie as fast as possible. In fact, they follow the traditional model for upward mobility: aggressively setting themselves up as private entrepreneurs. Without stretching the point too much, they can be seen in conventional terms as rugged individualists on an unpredictable frontier where fortune, fame and destruction are all just around the corner.\footnote{Bourgois, \textit{supra} note 117, at 65, cols. 3-4.}

The supervisor of one FBI office conceded, "\[w\]hat alternative have I got for them [young dealers]? . . . I don't like to admit it, but they're pretty good capitalists,"\footnote{Mayer, \textit{In the War on Drugs, Toughest Foe May Be The Alienated Youth}, Wall St. J., Sept. 8, 1989, at A1, col. 1, A7, col. 1.} Added to, and perhaps as important as the money, is the excitement, status and self-respect also accorded to successful street-level dealers.\footnote{See Bourgois, \textit{supra} note 117, at 94. In reality, however, most street-level dealers make very little money. Kolata, \textit{Despite Its Promises of Riches, the Crack Trade Seldom Pays}, N.Y. Times, Nov. 26, 1989, at 1, col. 1.}

Employment opportunities, however, are offset by the tremendous violence that accompanies the local drug trade. In 1989, there were a record 1,905 homicides in New York City, the highest number of any city in the country.\footnote{McKinley, Jr., \textit{Killings in '89 Set a Record in New York}, N.Y. Times, Mar. 31, 1990, at B1, col. 5. Of those killed in 1989, at least 30 were hit by stray bullets as innocent bystanders. Daley, \textit{Wrong Place at the Wrong Time: Stray Bullets Kill More Bystanders}, N.Y. Times, Jan. 14, 1990, at 1, col. 1. \textit{But see} Hevesi, \textit{Drug Wars Don't Pause to Spare the Innocent}, N.Y. Times, Jan. 22, 1989, at A25, col. 3 (reporting that no agency keeps statistics on the frequency of crimes against bystanders).} Many of these were due to the violent competition between traffickers,\footnote{One study, which examined homicides in 23 percent of New York City's 75 precincts during 8 months of 1988, determined that 52.7 percent of the killings were due to drugs, and that of those, 74 percent had a "systemic" link to disputes between rivals in the unstable distribution system of crack and other drugs. P.J. Goldstein, H.H. Brownstein, P.J. Ryan & P.A. Bellucci, \textit{supra} note 39. According to the Manhattan District Attorney, over two-thirds of the homicides in Northern Manhattan in 1989 resulted from turf wars between 30 rival gangs. McKinley, Jr., \textit{supra} note 122, at 27, col. 5., col. 3. Dr. Kildare Clarke, Associate Medical Director of the Kings County Hospital emergency room in Brooklyn, noted that except for car accidents, nearly all of the critical wounds suffered by his patients under the age of 25 were the result of drug-related violence. Gelman, \textit{City Doc: Drugs Should Be Legal}, N.Y. Newsday, July 25, 1989, at 19, col. 1, 32, col. 3.} and has led residents to feel the need to arm themselves.\footnote{A Gallup Poll taken for \textit{New York Newsday}, a New York daily newspaper, showed that almost 1 out of every 10 New Yorkers kept a gun in their homes and that 1 out of every 20 reportedly carried a gun when going out. \textit{See} Richards, \textit{Living in Fear}, N.Y. Newsday, Aug. 13, 1989, at 4, col. 1, 18, col. 1. In 1988, police seized 16,370 firearms, a 9 percent}
related violence is also reflected in the fact that drug dealers no longer respect the unwritten rule against shooting police, a development which led a DEA supervisor to conclude that "we're in the beginning of the situation you see now in Colombia."125

In light of these dynamics, it is no surprise that law enforcement has failed to have any impact on inner-city drugs, or on drug-related crime and violence. As sociologist Terry Williams noted, conditions in Washington Heights are a set-up to lure kids into the "underground [which] offers status and prestige—rewards they are unlikely to attain in the regular economy—and is the only real economy for many."126 No matter how harsh, the criminal justice system's sanctions are still less deadly than the well-known occupational hazards that inner-city youth in the drug trade accept as the price of unparalleled opportunity for money, prestige and power.127 If anything, street level enforcement has the effect of stimulating enlistment in the crack trade, just as the leading actor's illness makes room for the understudy. Attorney James Ostrowski explains that "[t]he publicized conviction of a drug dealer, by instantly creating a vacancy in the lucrative drug business, has the same effect as hanging up a help-wanted sign saying, 'Drug dealer needed — $5,000 a week — exciting work.'"128

IV. THE PRICE OF STREET-LEVEL ENFORCEMENT

In addition to their ineffectiveness and the general damage they cause as an arm of drug prohibition, New York City street-level nar-
cotics operations take a high toll on inner-city communities through the criminalization of residents, the trampling of constitutional rights, police brutality and the drain of badly-needed fiscal resources.

A. Violation of Constitutional Rights and the Erosion of Due Process

A study by the American Bar Association noted that "[a] certain disregard for the Fourth Amendment, specifically in drug cases, may be an unavoidable by-product of a drug problem so pervasive that the police feel they sometimes must violate constitutional restraints in order to regain control of the streets." In the 1960's, street-level narcotics operations in New York City generated the notorious "dropsy cases" in which officers routinely related perjured testimony in which defendants had conveniently thrown drugs to the ground just as police arrived at the scene. In the early days of Operation Pressure Point I, the police put all of those arrested "through the system" for several days in order, according to an observer, to subject "every arrestee . . . to some sanction, including those against whom drug charges were later dropped and even those few who were acquitted." Today, mass indiscriminate arrests without probable cause are common during drug sweeps. In addition, law enforcement officials in all branches

129. See infra notes 145-59 and accompanying text.
130. See infra notes 133-39 and accompany text.
131. See infra notes 140-44 and accompanying text.
132. See infra notes 160-65 and accompanying text.
133. See CRIMINAL JUST. SECTION, AM. BAR. ASS'N, CRIMINAL JUSTICE IN CRISIS 46 (1988).
134. See Kleiman, supra note 39, at 27.
135. See supra notes 21-41 and accompanying text.
136. See L. ZIMMER, supra note 14, at 5. Violations of constitutional rights were also evident in other pre-TNT operations. For example, following observation sales and some "buy and busta," 30 police officers indiscriminately surrounded, seized and searched dozens of people who happened to be in the area, during a lunchtime sweep at the W.R. Grace & Co. Plaza in midtown Manhattan on October 30, 1985. See Wilkerson, Midtown Drug Sweep Criticized as Violation of Civil Rights, N.Y. Times, Nov. 12, 1985, at B3, col. 1.
137. For example, in a publicized sweep on July 19, 1989, the Chief of the Organized Crime Control Bureau (OCCB), led 150 officers to a block in upper-Manhattan's Washington Heights. See Wright & Gelman, supra note 67, at 14, col. 3. Police sealed off the block and detained virtually all of the 100 people who were present there for up to two hours, during which time police taped numbers on the chests of those arrested, took their pictures and had them viewed by undercover officers. Id. at 4, col. 2 By the end of the operation, police made only 24 felony and two misdemeanor narcotics arrests, id. at 14, col. 1, which strongly suggests that there was no probable cause to seize those who were arrested.
of government justify proposals to reduce defendant's rights in such cases where Latino defendants were arrested without probable cause.

June be assumed that the same does not violate the State constitution). To take a breath sample for later testing is not violative of the Federal Constitution, it cannot be assumed that the same does not violate the State constitution. See, e.g., People v. Alvarez, 70 N.Y.2d 375, 521 N.Y.S.2d 212, 515 N.E.2d 898 (1987) (holding that although police failure to take a breath sample for later testing is not violative of the Federal Constitution, it cannot be assumed that the same does not violate the State constitution).

In one case, which concerned a "buy and bust" operation in the Bronx, evidence was suppressed because the court found that the backup team had seized a man whose only resemblance to the perpetrator was that he was an African-American. See People v. Shay, N.Y.L.J. June 1, 1989, at 24, col. 4 (N.Y. Crim. Ct. Bronx Co.). Evidence was suppressed in other cases where Latino defendants were arrested without probable cause. See, e.g., People v. Martinez, N.Y.L.J., May 22, 1989, at 24, col. 5 (N.Y. Sup. Ct. Bronx Co.) (allowing suppression of money found on defendant after his arrest for drug sale because conversation with suspected drug dealer is not probable cause); People v. Rodriguez, N.Y.L.J., Dec. 23, 1987, at 13, col. 3 (N.Y. Crim. Ct. Bronx Co.) (allowing suppression of LSD pills found on the defendant because merely being present in the vicinity of a "buy and bust" is insufficient justification to warrant arrest); People v. Reynolds, 136 Misc. 2d 307, 518 N.Y.S.2d 551 (N.Y. Crim. Ct. 1987) (allowing suppression of evidence where a defendant was merely present in the vicinity of a buy and bust).

Evidence has also been suppressed in numerous other drug arrests on the street, in cases following automobile stops, and in building and apartment arrests. See, e.g., People v. Mills, 145 A.D.2d 578, 535 N.Y.S. 2d 759 (1988), appeal denied 73 N.Y.2d 924, 539 N.Y.S.2d 309, 536 N.E.2d 638 (1989) (without opinion) (allowing suppression of physical evidence because probable cause to arrest was not established by observation of exchange in drug prone area); People v. Marine, 142 A.D.2d 368, 536 N.Y.S.2d 425 (1989) (allowing suppression of gun found on the defendant because there was no probable cause); People v. Knight, 138 A.D.2d 294, 526 N.Y.S.2d 102 (1988) (holding that there was a lack of probable cause for police search of brown paper located on taxi cab floor between defendant's legs); People v. Archie, 136 A.D.2d 553, 523 N.Y.S.2d 172 (1988), appeal dismissed, 71 N.Y.2d 892, 527 N.Y.S.2d 1001, 523 N.E.2d 308 (1988) (dismissed without opinion) (stating that mere observation of defendant standing with three other men on the corner of a drug prone location did not constitute probable cause); People v. Leung, 116 A.D.2d 666, 497 N.Y.S.2d 734 (1986), aff'd 68 N.Y.2d 734, 506 N.Y.S.2d 320, 497 N.E.2d 687 (1986) (stating that suppression of physical evidence is not required where police officers were justified in approaching defendant in "drug zone"); People v. Reyes, N.Y.L.J. May 30, 1989, at 23., col. 1 (S.Ct., N.Y. Co.) (allowing suppression of evidence because knocking on the door of an apartment that the police were searching did not constitute probable cause); People v. Munoz, N.Y.L.J., Apr. 24, 1989, at 24, col. 4 (S. Ct., Bronx Co.) (allowing suppression of evidence because a mere exchange of an unidentified item for cash in a drug-prone area is not sufficient to establish probable cause); People v. Holman, N.Y.L.J. Mar. 22, 1989, at 22, col. 6 (S. Ct., N.Y. Co.) (allowing suppression of evidence because probable cause was not established where there was no evidence of the original information given during an alleged 911 call); People v. Britch, N.Y.L.J., Jan. 20, 1989, at 23, col. 3 (S.Ct., Bronx Co.) (allowing suppression of physical evidence seized from defendant while a passenger in a car because defendant's hand movement inside his jacket while the driver's papers were being checked did not constitute probable cause); People v. Quinones, N.Y.L.J., Dec. 17, 1988, at 25, col. 5 (N.Y. Crim. Ct., N.Y. Co.) (holding that
areas as grand jury proceedings, peremptory challenges to prospective jurors and the right to jury trials in misdemeanor cases, and regarding the prosecution’s duty to turn over prior statements of witnesses, use of currently inadmissible defendant statements, and a defendant’s speedy trial rights.

B. Police Abuse

Police abuse in the minority communities which has often resulted in the death of civilians under questionable circumstances, is a chronic epidemic in New York City. The 1964 shooting death of a fifteen year-old black youth by a white police officer in Harlem set off days of rebellion in the City’s African-American neighborhoods. In more recent years, the police have been widely criticized in the deaths of African-American citizens. And in the summer of 1989, while Spike Lee’s film Do the Right Thing depicted the mur-

radio message about suspicious activity giving only the description of the Latino defendant was insufficient to establish probable cause); People v. Fernandez, N.Y.L.J., Sept. 15, 1988, at 19, col. 1 (Sup. Ct., Bronx Co.) (allowing suppression of physical evidence because mere presence of an individual in a high crime area cannot transfer his otherwise innocuous behavior into reasonable suspicion of criminal activity); People v. Smith, N.Y.L.J., June 21, 1988, at 23, col. 1 (N.Y. Crim. Ct., N.Y. Co.) (allowing suppression of evidence found during a search because a crack pipe in the defendant's pocket could not justify the full search of the defendant); People v. Lee, N.Y.L.J., May 23, 1988, at 23, col. 4 (S. Ct., Bronx Co.) (allowing suppression of physical evidence because police observation of money exchange did not justify search); People v. Crosby, N.Y.L.J., Sept. 21, 1987, at 16, col. 2 (N.Y. Crim. Ct., N.Y. Co.) (allowing suppression of physical evidence found on the defendant in a residential building lobby because an anonymous tip was not specific enough to justify a search).

It has been the author’s experience that the unusually high number of these decisions understate the depth of the problem as many courts diligently attempt to justify police conduct so as not to be perceived as being "soft on crime." Moreover, a prosecutor or judge who is aware of the potential for serious constitutional attack may sweeten the plea offer before the search and seizure issue is litigated.


139. See, e.g., NEW YORK ST. LAW ENF. COUNCIL, LEGISLATIVE PROPOSALS, 1989, at 43-46.


der of a young African-American by white police in the Bedford-Stuyvesant section of Brooklyn, at least three African-Americans died in custody, allegedly as a result of police abuse.\textsuperscript{142} The aggressive and largely indiscriminate tactics employed in narcotics operations have contributed significantly to this pattern of abuse.\textsuperscript{143} Such abuse is bound to increase with rising police casual-


\textsuperscript{143} Since February 1987, serious questions have been raised by at least eight incidents in which police involved in narcotics operations shot civilians, most of them African-American. For instance, in February 28, 1987 police assigned to Operation Pressure Point II in Central Harlem shot and killed Nicholas Bartlett, an African-American street vendor and Army veteran, although some eyewitnesses dispute police claims that Bartlett had, for no reason, attacked police with a metal pipe. See Purdum, \textit{New York Officers Are Cleared In Death of Vendor}, N.Y. Times, May 9, 1987, at 1, col. 1; Morgan, \textit{Questions in Death of Harlem Vendor}, N.Y. Times, Mar. 25, 1987, at B1, col. 2; McFadden, \textit{Man With Lead Pipe Shot Dead On Harlem Street By 3 Policemen}, N.Y. Times, Mar. 2, 1987, at A1, col. 5.

In May 19, 1987, police shot and killed Mark Cullar, an African-American, during a raid on a Bedford-Stuyvesant crackhouse. Police, who were the only witnesses, claimed that Cullar had attempted to assault them by holding a knife in his right hand, which from childhood was missing three fingers. See Purdum, \textit{Officer Kills Knife-Wielding Man in Raid on Brooklyn Crack House}, N.Y. Times, May 20, 1987, at B3, col. 1.

On November 21, 1988 a Transit Police officer drew his weapon and wounded an anonymous teenager in a subway station after seeing him and three other youths in a "suspicious transaction." Police later admit that the victim committed no crime and that no drugs were found. See Goldman, \textit{Officer Shoots Youth Accidentally, Police Say}, N.Y. Times, Nov. 21, 1988, at B3, col. 2.

On February 15, 1989, A TNT detective shot and killed Shawn Glenn, another African-American man, following a "buy and bust" operation at a Harlem crack house. Police claim that Glenn attacked the detective in an abandoned building and had attempted to take the detective's revolver; they admitted, however, that Glenn was not a drug dealer and that no drugs were found on his body. See Gelman, \textit{Cop Kills Man in Harlem Drug Raid}, N.Y. Newsday, Feb. 17, 1989, at 30, col. 1.

On April 12, 1989 police shot and killed William John DeVito in Far Rockaway Queens

http://scholarlycommons.law.hofstra.edu/hlr/vol18/iss3/9
ties in the drug wars, ongoing pressure from superiors to achieve results, the continuing ineffectiveness of street-level narcotics operations, and the NYPD's decision to equip narcotics officers with much heavier weaponry. 144

C. The Criminalization of Inner-City Residents

1. Overall Destructive Impact. — Street-level drug enforcement has resulted in tens of thousands of New Yorkers being arrested, prosecuted, convicted and incarcerated because of narcotics offenses. 145 Because of the attractiveness of using crack to escape reality and its great profit potential, there has been a particularly high increase in the number of predicate felons, many of whom are arrested on new drug charges for which they, if convicted, face mandatory incarceration. 146 Criminalization also makes it harder
than it already is for felons to find legitimate work, thereby increasing the likelihood of a new arrest and/or parole or probation violation, and further incarceration. The impact of criminalization clearly falls disproportionately and overwhelmingly on the minority communities, especially African-Americans. This disparity is not primarily the result of racism on the part of individual officers, district attorneys or judges,—although it is very often a factor—but, rather, flows from the fact that street-level narcotics enforcement, and the cost that it brings, is inherently directed at communities which are most victimized by the combination of oppressive social conditions and drug prohibition.

2. Indiscriminate Prosecution.— Several features of street-level drug operations have contributed to the probability that many of those arrested were not involved in drug sales. One factor is the NYPD’s use of arrest “body counts” reminiscent of the Vietnam War to measure the success of the highly publicized drug operations. Anthony Bouza, a former Minneapolis police chief and one-time high-ranking NYPD official, points out that “pressures to produce ‘good cases’ have resulted in flaking [planting evidence], dropsy, perjury, entrapment and framing, by cops anxious to please demanding superiors.” Members of narcotics units also have a sig-


149. See Vera Inst. Report, supra note 14, at 7 (noting that “[t]he NYPD expects TNT to have high visibility, but a visibility achieved through high arrest volume and community announcements rather than a uniformed presence.”); see also Governor’s July Action Agenda, supra note 27, at 9 (reporting 8,133 TNT city-wide arrests since March 14, 1988).

significant economic incentive to make arrests since each collar can result in as much as $500 in overtime for the arresting officer.\textsuperscript{161}

The "buy and bust" operations that characterize TNT are particularly responsive to these dynamics. In theory, plainclothes officers buy narcotics and arrest the sellers.\textsuperscript{162} In reality, buy and bust operations often result in indiscriminate arrests\textsuperscript{163} and invite attempts to

---


152. In theory, a "Buy and Bust" begins with the deployment of a team of plainclothes officers at a drug trafficking location (the "set"). The undercover member of the team purchases ("makes buys") from dealers, usually with marked currency ("pre-recorded buy money"). Occasionally the undercover wears a radio transmitter (a "wire") to record and/or transmit the transaction to the rest of the unit (the "backup team"), which waits just out of sight. Sometimes another officer (the "ghost") keeps the undercover in visual contact. After the buy, the undercover transmits a description of the seller to the backup team, which detains those who match the undercover's radio description. Some time later, the undercover views and makes a confirmatory identification of the suspect, either at the scene (a "drive-by") or in the precinct. Where a buy was made from a crack house (a "peep-hole" sale), police secure a search warrant and conduct a raid. At trial, prosecutors lead experienced police witnesses through a recitation of the above process in order to impress upon the jury the idea that any defendant arrested in a "buy and bust" operation must be guilty.

For further discussion of how "Buy and Bust" operations are supposed to be performed, see People v. Hill, 136 Misc. 2d 670, 671-72, 519 N.Y.S.2d 166, 167-68 (S.Ct. Queens Cty. 1987); ORGANIZED CRIME CONTROL BUREAU, N.Y. POLICE DEP'T, INVESTIGATOR'S GUIDE (1985); NEW YORK POLICE DEPT', NARCOTICS DIVISION MANUAL OF PROCEDURES Procedure No. 40 (July 1985); Drug Enforcement Admin., U.S. DEP'T OF JUST. & BUREAU OF OPERATIONS & RES., INT'L ASS'N OF CHIEFS OF POLICE, NARCOTICS INVESTIGATOR'S MANUAL 99-102 (1983);.

153. To remain above suspicion, an undercover police officer must not appear too obviously interested in the seller's appearance. Therefore, the description given to the back up team is usually general, such as "Black male, tee-shirt, jeans and sneakers." In order to protect the undercover's identity, a drive-by identification at the scene is quick, at a distance and from a moving vehicle. Precinct identifications are inherently suggestive and unmonitored and an identification may occur hours after the transaction, during which interval the officer will have made numerous buys from other sellers. Cf. GOVERNOR'S NOV. ACTION AGENDA, supra note 56, at 17 (pointing out that district attorneys around the city have dismissed a disproportionately high number of drug felonies within 30 days of arrest—6.2 percent in comparison with 3.1 percent for other types of felonies in the second quarter of 1989—an action which demonstrates that there are inherent problems in arrest methods).

For example, in discussing a typical buy and bust operation, one court found that "the back-up team . . . swept through the block and lined up, against the wall, any male who happened to be in the vicinity and since the defendant was in the vicinity he too was ordered
frame drug suspects. In most cases, these realities are shielded out of his van." People v. Franklin, N.Y.L.J., May 26, 1989, at 23, col. 4, col. 5 (N.Y. Sup. Ct., Kings Co).

154. The undercover's initial transmission to the backup team is rarely recorded at the time it is received; rather, arresting officers typically write the descriptions of alleged perpetrators on police reports, after a defendant has been arrested and is being processed at the precinct. While it is impossible to know which defendant is truthfully maintaining innocence, and which is crying wolf, it is indisputable that accusations of a "frame-up" occur with much greater frequency in narcotics than most other types of cases. In New York City, the main police reports completed in "buy and bust" operations include the OCCB Buy Report (PD 321-152); Buy Corroboration Report (PD 381-140); Expense Report (PD 102-061); and Investigator's Daily Activity Report (439-156).

This presents the question of whether the arresting officer wrote in the space for "perpetrator" the description of the person who sold the drugs, or only the appearance of whoever happened to end up cuffed to a chair in front of the desk at the precinct, and whether pre-recorded buy money, drugs or other evidence were found on suspects, or merely attributed to that suspect after they were in police custody? Defendants commonly report that when police find drugs dropped in the street during a sweep, they inform the first available suspect that "these are yours." Moreover, since many defendants are arrested without drugs or any other contraband, many narcotics cases are based solely on an officer's testimony that the apprehended person sold drugs to the undercover officer. In other cases, the arrest is made on the claim that police witnessed the defendant sell drugs to a civilian buyer, who often remains "unapprehended."

One highly publicized pre-TNT drug frame arose in 1985, when six African-Americans arrested in separate incidents charged that they had been tortured with electric shock "stun guns" and beaten by white officers in the 106th precinct in Queens. The arresting officers wanted them to falsely admit to selling marijuana to undercover officers. One of the defendants reported that while under torture, he screamed for his mother, to which a white officer replied, "[t]his ain't TV, n—.” See Fried, Stun-Gun Trial Ends with Four Being Convicted, Feb. 25, 1988, at B2, col. 6; Fried, Two Queens Officers Convicted in Stun-Gun Trial, N.Y. Times, May 3, 1986, at 1, col. 4; 6th Man Describes Stun-Gun Assault, N.Y. Times, May 8, 1985, at B9, col. 1; McFadden, No. 3 on Police Force Retiring Amid Torture Case, N.Y. Times, Apr. 30, 1985, at A1, col. 4; Raab, A Second Charge of Torture in Queens Precinct Is Made, N.Y. Times, Apr. 24, 1985, at B3, col. 5; Raab, Police Sergeant and Officer Are Charged with Torturing Youth After Arrest, N.Y. Times, Apr. 23, 1985, at B1, col. 1; McFadden, Youth's Charges of Torture By an Officer Spur Inquiry, N.Y. Times, Apr. 22, 1985, at B3, col. 5.

from exposure by the traditional "blue wall of silence," by a dangerous assignment in which officers depend heavily on the team, and widespread drug-related corruption and drug use in the NYPD.\textsuperscript{155} Perhaps most importantly, police know that the vast majority of false accusations will never be challenged because the criminal justice process systematically coerces defendants to plead guilty by threatening to impose the extremely heavy sentence authorized for felony drug offenses\textsuperscript{156} if defendants who maintain their innocence are later convicted. Under intense pressure, the vast majority of drug defendants—guilty and innocent—capitalize.\textsuperscript{157} Although this pro-

\textsuperscript{155}. Dismissals of NYPD officers for failing, or refusing to take, the "Dole" drug test doubled between 1986 and 1988, and officials report the use of drugs by undercover narcotics officers. N.Y. Newsday, May 13, 1989, at 8, col. 4. Similarly, in 1986, thirteen officers at the 77th precinct in the Bedford-Stuyvesant area of Brooklyn were charged with accepting bribes from internal affairs investigators posing as dealers, and with selling confiscated cocaine. See Purdum, \textit{Wider Police Corruption Inquiry is Seen}, N.Y. Times, Sept. 26, 1989, at B3, col. 1. Six officers were convicted after trial, and another officer committed suicide. See Daly, \textit{The Crack in the Shield, The Fall of the Seven-Seven}, N.Y. MAG., Dec. 8, 1986, at 49-50. Some officers claimed that the scandal was just the tip of the iceberg. See Purdum, \textit{supra}, at B3, col. 1; see also M. MICALARY. BUDDY BOYS (1988).

Currently, civilian complaints against officers for alleged drug use, sale, theft and corruption have risen dramatically. For example, seven Housing Police officers detailed to the NYPD's Organized Crime Control Bureau are alleged to have run a ring which provided police identification cards and parking permits to drug dealers, used confidential Narcotics Division reports to seize and sell caches of cocaine, and served as enforcers for and provided information to an organized crime family. See Tyre, \textit{How a Housing Cop Crossed the Line}, N.Y. Newsday, Sept. 19, 1989, at 4, col. 1; see also Tyre, \textit{Cop Drug Ring Suspects Feared to Have Sold Police ID Forms}, N.Y. Newsday, Sept. 9, 1989, at 5, col. 1; Tyre, \textit{State Investigating Leaks to Cop Drug Ring Suspects}, N.Y. Newsday, Sept. 8, 1989, at 3, col. 1; Peters & Krajicek, \textit{Police Shakeup}, Daily News, Aug. 25, 1989, at 14, col. 1. Ironically, thirty other officers implicated in the scandal were reassigned to TNT. Tyre, \textit{Brass Says They're Scapegoats}, N.Y. Newsday, Sept. 9, 1989, at 5, col. 1.

\textsuperscript{156}. For a discussion of sentencing structures, see supra notes 57-58 and accompanying text. For example, following his 1989 conviction, a Queens court sentenced Gary Veil to 10 - 20 years in prison for making a $10 crack sale. His prior record consisted of three misdemeanor drug sales. See Ain, \textit{10 Years is Message for $10 Crackseller}, Daily News, Apr. 29, 1989, at 6, col. 1. Also in 1989, Fred Boston, a 23-year-old "steerer" (one who directs a buyer to a seller) received a sentence of 9 - 18 years in Brooklyn as a result of a TNT arrest. See McCallister, \textit{Jail for Dealer Caught in TNT Net}, Daily News, Sept. 7, 1989, at KSI 1, col. 1.

\textsuperscript{157}. Defendants often spend up to four days or more in police custody before reaching arraignment in Criminal Court and the first brief interview with an attorney. Citing the seriousness of felony drug offenses, and the fact that many drug defendants have prior open cases or convictions, judges often set bail which defendants cannot raise.

Under New York's Criminal Procedure Law, the jailed defendant will next appear in a maximum of one hundred and forty-four hours after arrest to learn whether the case will remain a felony, whether a plea bargain will be offered, whether a grand jury has voted indictment, or whether the case will be dismissed altogether. See N.Y. CRIM. PROC. LAW § 180.80 (McKinney 1989). In recent years, narcotics defendants have made such appearances in the "N Part," a special branch of Supreme Court, the trial level felony court which is designed to
cess may work to the advantage of those guilty defendants who lack the basis with which to fight their case, it also deters defendants from testing the legality and/or strength of the prosecution’s case.\textsuperscript{158} The danger of this process is clearest when a jailed defendant accepts probation and is released pending sentence, while the defendant who maintains innocence remains in custody for an extended period. Under these circumstances, it is a gross mockery for defendants to admit, as they must in every guilty plea, that they are pleading guilty because they are guilty.\textsuperscript{159}

quickly dispose of the tidal wave of drug arrests. \textit{See infra} note 159 (discussing the quick disposition of cases in the “N Parts”).

Compared with the potentially draconian long-term incarceration which hangs over a felony drug defendant, plea offers made by the prosecution and/or the court in the “N Part” are of bargain basement proportions. By plea bargaining, defendants charged with “B” felonies and who have no prior felonies can receive five years probation, sometimes to be preceded by six months in city jail, in exchange for pleading guilty to a felony. Prior (“predicate”) felons are offered indeterminate sentences in state prison in the area of one-and-a-half to three years up to three to nine years, depending on the length and seriousness of the defendant’s prior record and the prosecution’s perception of the strength or weakness of the new case. \textit{See} N.Y. PENAL LAW §§ 70.06 to .10 (McKinney 1989). Those with multiple open cases are offered a heavier sentence. \textit{Id.}

158. Thus, even in cases where clients vehemently protest their innocence, even the most combative defense attorneys must caution clients that a grand jury is likely to indict prior to the time at which release in the “N Part” would be required; that the chance of winning even a valid suppression issue, decided by a judge who must determine the credibility of the witnesses and issues of law, are slim; that police witnesses bearing physical evidence will testify at trial that the defendant is the person who committed the offense charged; and that jurors may well convict them out of a desire to put a dent in crime and/or other prejudices. These factors are discussed in a crowded noisy cell, after a week or more without clean clothes, a shower, sanitary toilets, healthy food, sleep, or in many cases family contact, and with only a few minutes before the case is called. \textit{See} Glaberson, \textit{Trapped in the Terror of New York’s Holding Pens}, N.Y. Times, Mar. 23, 1990, at A1, col. 2. The system continues to apply this pressure to defendants who move toward trial.

159. Asking a defendant in court whether they are pleading guilty because they are guilty is intended to elicit an answer to support the voluntariness of a defendant’s plea for the record. For further discussion of the judicial process in New York City drug cases, including the “N Parts,” \textit{see}, e.g., \textit{Judiciary} 1989, \textit{supra} note 59, at 19-20; Kurtz, \textit{In New York Courts, Next Drug Plea, Please}, Wash. Post, Oct. 8, 1988, A1, col. 3 (stating that almost one fifth of the defendants in the “N Part” plead guilty); Fried, \textit{More Queens Drug Defendants Are Pleading Guilty}, N.Y. Times, May 5, 1988, B8, col. 4 (stating that the “N Part” has jurisdiction over all felony drug cases during the first six days after arrest and that by concentrating all drug cases into one part, the court accelerates the disposition of many of them); Kerr, \textit{Drug Court Cuts New York Backlog}, N.Y. Times, Jan. 6, 1988, at 1, col. 1 (noting that some defense attorneys believe that their clients are pressured into pleading guilty before the attorneys can study the cases and before the case goes before the grand jury).
D. The Effect on Other Services

While "surplus" funds were being diverted to TNT,\(^{160}\) ordinary New York residents are making great sacrifices in other government programs to pay for these enforcement programs. The City implemented $160 million in new taxes as well as a $300 million hiring freeze and service cuts\(^{161}\) which resulted in steps such as the eviction of 200 men from a homeless shelter to make room for an overflow of female jail inmates.\(^ {162}\) Other proposed measures include cuts in the Fire Department, sanitation, foster care workers, drug treatment for children, home-care services for those with AIDS, child care, job training, libraries, schools, parks and recreation.\(^ {163}\) The newly installed administration of David N. Dinkins, New York City's first African-American mayor, has imposed still harsher cuts.\(^ {164}\) Perhaps most ironically, the state has cut plans for drug treatment, which is already nearly impossible to find for the poor.\(^ {165}\) These measures make it even more attractive for inner-city young people to use and/or sell narcotics.

V. THE LEGALIZATION ALTERNATIVE

Although this Article focuses on New York City, the dynamics of street level enforcement discussed here are typical of those across the United States. For this reason, the failure of New York's drug wars, the reasons for that failure, and the destructive impact of the war in predominantly African-American and Latino inner-city communities, have national implications.

Above all, the analysis presented here provides strong support for ending the inner-city drug wars. First, criminalization has had little, if any, deterrent effect on crack abuse or trafficking, and given the dynamics of these activities it is extremely unlikely that such wars will do so. Second, it is the combination of prohibition and oppressive inner-city conditions—rather than crack itself—that is responsible for the deepening vortex of crime, violence and disease that

---

\(^{160}\) See Governor's Nov. Action Agenda, supra note 56, at 22.

\(^{161}\) See Lubasch, New York Adopts $26.6 Billion Budget, N.Y. Times, July 1, 1989, at 27, col. 4

\(^{162}\) See Hemphill, Female Inmates, N.Y. Newsday, Apr. 7, 1989, at 6, col. 1

\(^{163}\) Preston, Koch's Budget Cuts Cut Deficit, N.Y. Newsday, Oct. 25, 1989, at 3, col. 2

\(^{164}\) See, e.g., Purdum, Dinkins Forecasts Wider Budget Gap As Revenues Slip, N.Y. Times, Apr. 6, 1990, at A1, col. 4

\(^{165}\) See, e.g., Sack, Cuomo Plans for Drug Centers in Campus Settings Is Shelved, N.Y. Times, Mar. 15, 1990, at A1, col. 1
constitutes the crack crisis.\textsuperscript{166} And third, prohibition intensifies the harm already inflicted on these communities by the criminal justice system. In other words, prohibition has not only failed to impact on, but is itself an integral part of, the crack crisis.

For these reasons, it is necessary to explore other solutions, starting with drug legalization,\textsuperscript{167} an alternative which has support among a growing number of African-American leaders.\textsuperscript{168} Yet many who live in communities most heavily affected by the crisis fear that legalization would send to young people the message that “drugs are o.k.” and thereby result in greater drug abuse.\textsuperscript{169} Because of the very serious consequences which crack has had in these communities, this apprehension is understandable.

In reality, however, legalization would in all likelihood effectively address most of the manifestations of the current crack crisis. Distribution of drugs at their actual production cost\textsuperscript{170} would eliminate the overwhelming majority of drug-related crime, and dramatically undercut the current explosion of inner-city AIDS, syphilis and other diseases. Just as repeal of alcohol prohibition dramatically reduced the gangland wars of the 1920's and early 1930's, drug legalization takes the profit out of drug distribution, and thereby brings about a dramatic reduction in the slaughter which plagues the inner-city and at the same time undermines the role model status which low level drug dealers currently represent to young people. As one advocate of legalization argued:

\begin{quote}
166. One feature of the crack crisis that is not as directly related to prohibition is the growing problem of “crack babies” who are born addicted due to maternal drug use during pregnancy. See, e.g., Colen, Cocaine Babies, N.Y. Newsday, Mar. 27, 1990, Part III, at 1, col. 1. Unfortunately, however, drug prohibition has not successfully addressed this problem. As with large numbers of children who are born alcoholic or who suffer birth defects due to the conduct of pregnant women, and like that problem, must be addressed through means other than prohibition.

167. The terms “legalization” and “decriminalization” are often used interchangeably. Many regard decriminalization as a less radical alternative to legalization. For an in-depth discussion of all aspects of the legalization/decriminalization debate, see supra note 18 (listing other authors commenting on the debate).


169. See, e.g., Rangel, Legalize Drugs? Not on Your Life, N.Y. Times, May 17, 1988, at A25, col. 1, col. 1. Thus, a 1988 poll conducted among New York City residents showed that support for legalization was less among African-Americans (14%) and Latinos (7%) than among whites (19%). See Richardson, Poll: Legalizing Drugs Opposed, N.Y. Newsday, June 26, 1988, at 3, col. 3.

170. There are many different blueprints for just how decriminalization or legalization would be implemented. See supra note 18 (listing other sources on decriminalization).
\end{quote}
The day after legalization went into effect, the streets of America would be safer. The drug dealers would be gone. The shootouts between drug dealers would end. Innocent bystanders would not be murdered anymore. Hundreds of thousands of drug "addicts" would no longer be roaming the streets, shoplifting, mugging, breaking into homes in the middle of the night to steal, and dealing violently with those who happened to wake up. One year after prohibition was repealed, 825 innocent people who would otherwise have been dead at the hands of drug criminals would be alive.

In addition, an end to prohibition would help to "demilitarize" inner-city neighborhoods that are currently under siege not only by drug dealers, but also by the criminal justice system.

Moreover, there are numerous effective ways for combating crack abuse under legalization. To begin with, it is necessary to create an unprecedented level of drug education and drug treatment on demand, neither of which effectively exist under prohibition. In addition, sending a message that drugs such as crack are "not o.k." would require a ban on the type of advertising that is currently permitted for alcohol and tobacco, whose inherent effects are far more destructive to human health than is crack.

However, such programs and policies are not, by themselves, sufficient. While important, drug education will not deter those without hope. As one former addict commented, "[y]ou know how bad [crack] is, but you still do it." Residential drug treatment on demand and a ban on advertising would have limited impact if the lives of many community residents remain uncharacterized by a deeply-felt oppression and the lack of opportunity.

For these reasons, a solution to widespread drug abuse must address the institutional racism and poverty that continues to spawn such deep hopelessness in this country's inner-cities. Such conditions have long been imposed on the African-American and Latino community. Even the Civil Rights and Black Power movements of the 1960's were unable to win more than token increases in social spending when compared either with military expenditures or objective

---

172. See Ostrowski, supra note 102 at 695-702.
need, let alone a fundamental change in the overall power relationships in which these communities exist. Similarly, despite the existence of a potentially large “peace dividend”, the vast resources necessary for a meaningful drug treatment policy—let alone broader change—will not be made available without a fight. The challenge is for those who seek a genuine solution to drug abuse to free those resources and reorganize society to remove the cause of the widespread drug abuse that prevails today.

175. Treatment on demand for the estimated six million people in the U.S. who are addicted to heroin and cocaine will cost as much as $116 billion. Cohen, Helping Addicts Help Each Other, N.Y. Newsday, Jan. 25, 1989, at 58, col. 1.