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## Crack in the System: The Racially Motivated Intentions and Consequences of the Anti-Drug Abuse Act of 1986

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CRACK IN THE SYSTEM: THE RACIALLY MOTIVATED INTENTIONS AND CONSEQUENCES OF THE  
ANTI-DRUG ABUSE ACT OF 1986

by

Caroline Garske

A thesis submitted in partial fulfillment of the requirements  
for graduation with Honors in the History

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Colin Gordon  
Thesis Mentor

Spring 2018

All requirements for graduation with Honors in the  
History have been completed.

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**Crack in the System**

*The Racially Motivated Intentions and Consequences of the Anti-Drug Abuse Act of 1986*

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Thesis Advisor: Professor Colin Gordon

University of Iowa

May 2018

On a summer's day in 1993, eighteen-year old Edward James Clary touched down at St. Louis's Lambert Airport after a visit with his older brother in California. Before even making it out of the airport, Clary was stopped by police and found with 67.76 grams of a cocaine base on him. He was immediately arrested for possession with intent to distribute.<sup>1</sup> As a young, black male with limited education and no regular employment, Clary looked like the majority of drug defendants to pass through the Federal District Court of Eastern Missouri. The crack mixture found on Clary was only about "20 percent pure, and so adulterated it melted in the evidence room,"<sup>2</sup> coming to resemble an "unsalable blob."<sup>3</sup> While Clary had no criminal record and was charged with a non-violent offense, his fate was sealed long before he first entered a courtroom. Thanks to federal guidelines dictating strict mandatory minimum sentences for crack-related offenses, Clary's personal circumstances, defense, and appeals mattered little to the Court. As he awaited sentencing in 1994, young Eddie Clary faced a minimum of ten years, in accordance with the mandatory sentences laid out by 21 U.S.C. § 841 (b)(1)(A)(iii), often referred to as the "crack statute."<sup>4</sup> The statute, which had been put into effect less than a decade before Clary's arrest, stated that the possession of 50 or more grams of a cocaine-base substance, regardless of its purity, triggered a ten-year sentence, without parole. These draconian federal guidelines, put forth in the mid-1980s, were the product of a 'drug scare' surrounding crack that prompted legislators of 1986 to seek the harshest degree of punishment for drug offenders, especially those involved with crack.

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<sup>1</sup> *U.S. v Clary*, U.S. v Clary, 846 F. Supp. 768; 1994 U.S. Dist. Lexis 2447

<sup>2</sup> Jennifer Elden, "Drug sentencing frenzy," *Progressive* 59, no. 4 (April 1995): 25.

<sup>3</sup> Doris Marie Provine, *Unequal under Law: Race in the War on Drugs*, (Chicago: University of Chicago Press, 2007), 6.

<sup>4</sup> *U.S. v Clary*, 846 F. Supp. 768; 1994 U.S. Dist. Lexis 2447

While crack cocaine is a less pure derivative of powder cocaine, Clary would need to possess one-hundred times more powder cocaine, or 5,000 grams (roughly eleven pounds), to receive the same ten years behind bars. This massive disparity suggests that there is significant and overwhelming evidence demonstrating that crack is—indeed, *one hundred times* more dangerous than powder cocaine, the very substance crack is derived from. When powder cocaine is dissolved into a basic sodium bicarbonate mixture (such as baking soda) and then cooked over heat, it is transformed into small, waxy solid “rocks,” yielding smoke-able “crack” cocaine, named for the cracking noises it makes as it is cooked on the stove. While powder cocaine is most commonly ingested nasally, via snorting, crack cocaine is smoked using a pipe, allowing it to be absorbed through the lungs. This method of entry into the bloodstream allows the effects of cocaine to be felt more quickly and produce a more intense—yet, briefer—high. Despite the alternate routes of ingestion, consuming either form of cocaine leads to almost *identical* physiological and behavioral effects.<sup>5</sup> Despite their analogous effects, the staggering 100-to-1 ratio between crack cocaine and powder cocaine’s sentences suggested that crack cocaine was unrivaled in its potency, and posed an unprecedented and unmatched threat to the safety of the American people.

This 100:1 ratio was now responsible for dictating how Clary would spend his next ten years: striving for personal and financial achievement or squandering the prime years of his life in a prison cell. The 1986 legislation responsible for the dire circumstances of Eddie Clary’s life in 1994 was a product of the 99<sup>th</sup> Congress’ opportunistic exploitation of a media-manufactured drug panic over the devious new drug crack. Amid socioeconomic uncertainties and insecurities

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<sup>5</sup> Dorothy K. Hatsukami and Marian W. Fischerman, "Crack Cocaine and Cocaine Hydrochloride: Are the Differences Myth or Reality?" *Journal of American Medical Association* 276, no. 19 (November 20, 1996): 1552.

over its place in the world, Americans of the mid-1980s were gripped by media reports of a satanic, new drug that was apparently poisoning the country from inner cities out. This volatile atmosphere prompted the swift passage of unprecedented drug legislation known as the Anti-Drug Abuse Act of 1986 (1986 ADAA). The 1986 ADAA was part a broader “war on drugs” and “war on crime” that had existed in the county for decades. While the 1986 ADAA made no explicit references to race, its stipulations, most notably the ‘crack statute,’ overwhelmingly punished and criminalized and incarcerated young men of color. Whether or not the racially skewed outcomes of the law were anticipated by those involved in its passage, there is no doubt that the racist rhetoric and imagery featured in media reports on crack were influential in the law’s creation. The popular media’s presentation of the ‘devil drug’ crack portrayed it as being pushed by inner-city blacks into suburbia and beyond. These reports tapped into latent racial stereotypes, producing strong emotional reactions from the public who began demanding these villainous criminals be punished to the harshest degree. Once the law was implemented, racial minorities and their communities became hunting ground for local law enforcement, rendering these already vulnerable urban communities defenseless. With urban cities under attack from oppressive policies, despotic law enforcement, and unforgiving legislation, the drug war of the mid-1980s led to the incarceration of, “nearly an entire generation of young black American men during the most productive time[s] of their lives.”<sup>6</sup> By the time Clary was entangled in the drug war’s web, it had already produced thousands of casualties. These casualties took the form of incarcerated black youth who, once convicted, saw virtually no escape from the criminal justice system.

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<sup>6</sup> U.S. v Clary, 846 F. Supp. 768; 1994 U.S. Dist. Lexis 2447

Following just a few short months of media bombardment in the mid-1980s, the public became extremely fearful of the new ‘devil drug’ and hostile towards the deviant black, inner-city population it was associated with. As politicians quickly and strategically exploited these public sentiments, based in sensationalized media reports, the country’s promise to ‘equally protect’ its citizens was forgotten with the passage of the 1986 Anti-Drug Abuse Act. As black youth were sent to prison in droves for the same drug white offenders often served little jail time for, the country’s centuries old legacy of disadvantaging black citizens continued. By passing the 100:1 ratio contained in the Anti Drug-Abuse Act of 1986, Congress and the U.S. government was swept away by a prejudicial moral panic and perpetuated “unconscious racism,” stifling black progress in America.<sup>7</sup> The legislation’s conclusion that crack was one-hundred times more dangerous than powder cocaine remained unquestioned. Despite the statute’s almost immediate contribution to the mass incarceration of black youth, the underlying causes of social and economic ills in inner cities remained ignored, as “crack” became the catch-all cause of urban woes. The 1986 Anti-Drug Abuse Act allowed poor, young, resource-less teens like Edward Clary to serve ten years in prison and a lifetime as a felon for crack while affluent cocaine-using whites hardly received a slap on the wrist for the same crime. The gross disparities in punishment demonstrate that the 1986 ADAA perpetuated the continuance of systemic inequality in America. By dramatically increasing punishments for low-level, inner city crack dealers and simultaneously abandoning efforts to uplift black communities from the vicious cycles of poverty and crime, the 1986 Anti-Drug Abuse Act was the newest development by white America to prevent racial equality for all.

### **Moral Panic and Historical Anti-Drug Legislation:**

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<sup>7</sup> Ibid.

The political, social, and cultural conditions that lay behind the passage of the Anti-Drug Abuse Act resembled what the sociologist Stanley Cohen has dubbed a “moral panic.” Cohen first coined the term “moral panic” in 1972 to explain for the sudden sensationalized criminalization of teenage “mods and rockers” in 1960s London. According to Cohen, moral panics occur when, “a condition, episode, person or group of persons emerges to become defined as a threat to societal values and interests.”<sup>8</sup> Thus, the perceived threat, and the group viewed as responsible for said threat, is seen as at odds with the society’s well-being, values, and interests. Twenty years after Cohen's work on moral panics, Erich Goode and Nachman Ben-Yehuda laid out five criteria necessary to deem a phenomenon a ‘moral panic.’ First, there must be a “heightened level of *concern* over the behavior (or supposed behavior) of a certain group,” and concern over the consequences it causes for the rest of society. Second, there must be an increased level of *hostility* towards the group of people seen as threatening: “A dichotomization between ‘them’ and ‘us’ takes place, and this includes stereotyping—generating ‘folk devils’ or villains on the one hand, and folk heroes, on the other, in this morality play of evil versus good.” This supposedly responsible group is seen as “deviant” to society and at odds with traditional values, ultimately threatening the stability of society as a whole.<sup>9</sup> Third, there must be a *consensus* in the society that the threat is “real, serious, and caused by the wrongdoing of group members and their behavior.” Fourth, the concern over the issue of the moral panic must be *disproportionate* to the actual nature of the threat especially if “a sober empirical evaluation” was taken of the threat. And lastly, moral panics are *volatile* in that they emerge and fade quickly

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<sup>8</sup> Stanley Cohen, *Folk Devils and Moral Panics: The Creation of the Mods and Rockers*. (London: MacGibbon and Kee, 1972), 9.

<sup>9</sup> Erich Goode and Nachman Ben-Yehuda, “Moral Panics: Culture, Politics, and Social Construction,” *Annual Review of Sociology* 20 (1994): 149.



even if the effects of the moral panic leaves an institutional or routinized legacy behind.<sup>10</sup> Given the sticking power of moral panics, the legacies of these ‘folk devils’ often remain long after the public has turned its attention elsewhere, leaving behind long-lasting stereotypes. Essentially, a moral panic occurs when a threatening behavior becomes associated with a “deviant” group and is generalized as a broad threat to society—inducing a public hysteria. Once this public fear exists, as manufactured by exaggerated media accounts and unfounded claims, it is then manipulated and exploited. Typically, this exploitation serves the interests of political actors aiming to distract the public from underlying social issues. The threatening behavior associated with a deviant group can then be portrayed as the *cause* of said social issues, and not a byproduct of existing socioeconomic circumstances. Therefore, moral panics demonize a deviant, oftentimes minority, group and ostracize them from mainstream society in order to serve political actors and distract from underlying social issues.

Up until the eve of the twentieth century, habit-forming and mood-altering substances, including opium and cocaine, were used throughout the country as remedies to a wide range of

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<sup>10</sup> Critics of moral panic theory often question the validity of the “disproportionality” criterion. Moral panic theory holds that the disproportionality principle assumes moral panics to be, “*irrational* cognitive evaluations disproportionate to the ‘real’ threat.” Yet critics assert that “in the absence of any criterion of ‘proportionality’, it is difficult to identify the point at which a sober, realistic appraisal or evaluation, transforms into an irrational or disproportionate panic.”<sup>10</sup> This begs the question of whether or not it is even possible to render a true comparison between the “real” and the “supposed” threat. With the accuracy (and even the possibility) of “threat evaluation” in question, it becomes difficult to demonstrate that there is indeed a disproportionate fear compared to the “true” risk a threat poses. Furthermore, moral panic theory holds that mass media is the chief means of disseminating the “exaggerated” alarm to the public. While mass media remains key in the circulation of alarmist rhetoric, critics point out that in the past forty years developments in technology and modes of media have lessened the influence of mass, mainstream media. Sean Heir asserts that “with the expansion of the media, the many voices now contributing to claims and counterclaims, and the social leverage exhibited by folk devils...has given way to a more delicate web of relations.”<sup>10</sup> This notable development in recent years allows the persecuted “deviant” group to disrupt and challenge the narrative of alarmist media, undermining the effects of a media-engineered panic.

ailments<sup>11</sup> While the active agents of these substances were significantly diluted, opiates and other derivatives from the coca plant were used to treat a variety of illnesses ranging from tuberculosis to menstrual cramps.<sup>12</sup> Housewives concocted opiate-based home remedies, while physicians routinely prescribed opiate treatments to their patients. With little federal regulation, the habit-forming opium was widely available for decades.<sup>13</sup> It must be noted that the 19<sup>th</sup> century medical community had very little knowledge of opium's adverse long-term effects and the damages it was capable of. Despite this ignorance, opiates remained an applauded and versatile remedy, free of any stigma.

While European settlers originally brought crude opium to the U.S. centuries earlier, its use was not seen as troublesome or problematic until it became negatively associated with Chinese immigrants during the economic depression of the 1870s.<sup>14</sup> The first wave of Chinese immigrants reached California's golden coast in the 1850s and worked alongside white workers attempting to strike gold in the mines, and aiding the completion of the Pacific Railroad. Yet when work became scarce, due to lack of gold and the completion of the transcontinental railroad, the Chinese were willing to provide the cheap labor white workers weren't. Soon after, the disaffected white working class population began calling for the termination of Chinese immigration, ushering in an era of hostility and racist sentiment towards the Chinese. With this, the nation's first antinarcotic crusade began.

Sparked by economic depression and the undercutting of wages by Chinese immigrants, "Yellow Fever" ran rampant in the U.S.—especially in the West—as the media harshly

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<sup>11</sup> David F. Musto, "Opium, Cocaine and Marijuana in American History," *Scientific American*, Vol. 265, No. 1. (July 1991): 40.

<sup>12</sup> *Ibid.* 42.

<sup>13</sup> *Ibid.* 43.

<sup>14</sup> John Helmer, *Drugs and Minority Oppression*. (New York: The Seabury Press, 1975),19.

demonized the Chinese and their opium-smoking habit as a menace to traditional American society. As Kathleen Auerhahn notes, while moral panics are often rooted in economic tensions, “it is possible for the symbolic dimension of the conflict to take on a life of its own.”<sup>15</sup> Even when the economic strain eased, the Chinese and “their” opium-smoking continued to be demonized by the public. In 1879 a San Francisco newspaper declared that, “the Chinaman has impoverished our country, degraded our free labor, and hoodlumized our children. He is now destroying our young men with opium.”<sup>16</sup> The portrayal of Chinese immigrants as wicked heathens, purposefully plotting to disrupt American society with opium, intensified fears surrounding opium smoking. Despite the presence of opium prior to Chinese immigration, the public did not perceive opium as a “threat to society” until it became linked with the menacing Chinese amidst economic hardship. Furthermore, fears arose that the practice of opium smoking was expanding beyond the slums of Chinatown into to the upper classes of society.

In 1875, San Francisco, with its dense Chinese population, successfully passed a city ordinance against opium smoking—the first explicit piece of antidrug legislation in the country.<sup>17</sup> A local physician’s testimony was used as rationale for the legislation: he claimed, “Opium smoking had been entirely confined to the Chinese up to and before the autumn of 1876,” until it was introduced to white Americans and even into “the more respected class of families.”<sup>18</sup> Similarly, a San Francisco police officer, James Mahoney, explained that, “the

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<sup>15</sup> Kathleen Auerhahn, “The Split Labor Market and the Origins of Antidrug Legislation in the United States,” *Law & Social Inquiry* 24, no. 2 (Spring 1999): 415.

<sup>16</sup> “Ya-Pien: The Opium Dens of San Francisco.” *San Francisco Post*, March 1, 1879.

<sup>17</sup> Kathleen Auerhahn, “The Split Labor Market and the Origins of Antidrug Legislation in the United States,” *Law & Social Inquiry* 24, no. 2 (Spring 1999): 422.

<sup>18</sup> John Helmer, *Drugs and Minority Oppression*. (New York: The Seabury Press, 1975), 31.

practice [of opium smoking] will gradually extend up the social grade.”<sup>19</sup> Reports of this nature further fueled panic, as Americans feared that the “Chinaman’s” vice would deteriorate “white” American society, as they knew it, devastating even the wealthy and well respected. Federal lawmakers likewise sensed the public’s panic and responded with the 1909 Opium Exclusion Act, which “banned the importation, possession, and use of smoking opium.” Historian John Helmer noted that the country’s first antinarcotic legislation was passed with, “virtually nothing about the drug or its effects,” noted in its rationale. The circumstances surrounding the passage of the 1909 Opium Exclusion Act demonstrate the acute power racial stereotypes hold during times of social and economic uncertainty. Further, the act’s passage demonstrates the ability of a moral panic to influence institutions and trigger momentous legislation that long outlives the short-lived “panic.”

Soon after the 1909 Opium Exclusion Act, the Harrison Act of 1914 expanded the former through the regulation of all, “opium and coca and their derivatives.”<sup>20</sup> While it did not call for a complete ban on all forms of these habit-forming substances, the stringent restrictions of the Harrison Act were the most severe antinarcotic legislation put forth to date.<sup>21</sup> The Harrison Act primarily reflected the growing concern over the adverse effects of cocaine, as its use and abuse had become widespread by 1914. Purified cocaine became commercially available in 1884 and according to William A. Hammond, one of America’s most prominent neurologists of the time: “cocaine was no more habit-forming than coffee or tea.”<sup>22</sup> For several decades after purified

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<sup>19</sup>Audrey Redford and Benjamin Powell, “Dynamics of Intervention in the War on Drugs: The Buildup of the Harrison Act of 1914,” *The Independent Review* 20, no. 4 (Spring 2016): 517.

<sup>20</sup> David F. Musto, “Opium, Cocaine and Marijuana in American History,” *Scientific American* 265, no. 1 (July 1991): 44.

<sup>21</sup> *Ibid.* 45.

<sup>22</sup> *Ibid.* 44.

cocaine was made available to the public, it was largely seen as a harmless stimulant. Yet soon, as was illustrated by attitudes on smoking-opium, the pendulum of public opinion soon swung out of favor for cocaine. Sensationalized media accounts began linking cocaine with violence and framed cocaine addiction as a problem of the lower classes—specifically, the Southern black population. Hamilton Wright, a highly regarded doctor and architect of the 1909 Opium Exclusion Act, warned that the menacing cocaine habit “has steadily spread to a large part of our outlaw [sic] population and even into the higher ranks of society.”<sup>23</sup> Especially notable and terrifying to the public were the racialized accounts of black men terrorizing white women in cocaine-fueled rages of violence.<sup>24</sup> The notion that blacks were perpetuating cocaine use, and the apparent crime it was associated with, became prevalent by sensationalized newspaper reports and the popular press. For example, Colonel J. W. Watson, a prominent political figure in Georgia stated that, “many of the horrible crimes committed in the southern States by the colored people can be traced directly to the cocaine habit.”<sup>25</sup> Stirred by the public’s recent concern, in 1910, President William Taft presented Congress with a report urging that action be taken on the “the most serious drug problem America had ever had.”<sup>26</sup> As David Musto explains, the report also stirred racist fears, stating: “it has been authoritatively stated that cocaine is often the direct incentive to the crime of rape by negroes in the South, and other sections of the country.”<sup>27</sup> When cocaine became associated with supposedly ‘violent’ black users and the

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<sup>23</sup> John Helmer, *Drugs and Minority Oppression*, (New York: The Seabury Press, 1975), 37.

<sup>24</sup> David F. Musto, "America's First Cocaine Epidemic," *The Wilson Quarterly* (1976-) 13, no. 3 (1989): 64.

<sup>25</sup> Kathleen Auerhahn, “The Split Labor Market and the Origins of Antidrug Legislation in the United States,” *Law & Social Inquiry* 24, no. 2 (Spring 1999): 427.

<sup>26</sup> David F. Musto, “Opium, Cocaine and Marijuana in American History,” *Scientific American* 265, no. 1 (July 1991): 45.

<sup>27</sup>David F. Musto, "America's First Cocaine Epidemic," *The Wilson Quarterly* (1976-) 13, no. 3 (1989): 64.

lower classes, heightened public concern followed with a desire to marginalize and punish this deviant group for threatening the society's "moral values." By criminalizing drugs deemed wicked because of their association with a minority group, the U.S. lawmakers were able to legally and criminally punish 'dangerous' minorities in the name of morality.

Early twentieth-century America's enthusiasm for progressive reform and its faith in 'social engineering' continued to influence public policy, as reformers turned their attention to another immoral vice: alcohol. The country was changing at an unprecedented rate in an era of mass industrialization and urbanization. The rapid pace of this transformation did not allow the government time to address the massive social, political, and economic changes occurring within, especially in urban cities. Along with this surge in industry and manufacture came an influx of impoverished European immigrants, seeking to benefit from the newly created industry's demand for labor. According to Steven Erie, "By the 1870s, the largest U.S. cities boasted populations that were 25% to 75% foreign born."<sup>28</sup> The enormous swell of European immigrants to chiefly urban cities in the U.S. was almost immediately seen as a threatened to native-born whites. As the desperate European immigrants were willing to work for almost nothing, white laborers deeply resented them and sought out any way to exclude them and their foreign cultures from society.<sup>29</sup> Soon, the nativist movement, steeped in patriotic and religious rhetoric, flourished and reformist groups sought to stamp out all foreign influences from mainstream 'white' society. The chief 'foreign influence,' concerning these religious and social reformers was alcohol, and the foreign immigrants' apparent rampant use of it. 'Intemperance'

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<sup>28</sup> Steven P. Erie, *Rainbow's End: Irish-Americans and the Dilemmas of Urban Machine Politics, 1840-1985*, (Berkeley and Los Angeles: University of California Press, 1988), 26-27.

<sup>29</sup> Kathleen Auerhahn, "The Split Labor Market and the Origins of Anti-drug Legislation in the United States," *Law & Social Inquiry* 24, no. 2 (Spring 1999): 429.

became closely associated with European immigrants and their supposed ‘inferior morals.’<sup>30</sup>

According to Kathleen Auerhahn, temperance groups “formulated and disseminated an ideology that equated intemperance with all the social ills that accompanied rapid urbanization.”<sup>31</sup>

Further, David Kyvig similarly explains that “liquor came to be blamed in large measure for poverty...crime, child neglect, and other social ills were likewise attributed to alcohol.”<sup>32</sup>

Therefore, instead of addressing the structural socioeconomic problems of urban America, booze and drunken immigrants were to blame for the deteriorating ‘morals’ of American society. With nativist sentiments fueling nation-wide calls for ‘morals,’ the United States ratified the Eighteenth Amendment in 1919, prohibiting alcohol and further marginalizing the demonized foreign immigrants. Although the amendment was repealed thirteen years later, and is largely considered a policy failure, the zealous reformers of the temperance movement and their prejudiced ideology against European immigrants demonstrate the power of ‘moral’ drug panics.

In each of these cases, a moral panic precipitated a legal crackdown. First we see an exploitation of existing hostilities towards a minority group via sensationalized media coverage; then, a fear that use of the substance will spread beyond the ostracized group, thus, threatening the well-being and morality of the society as a whole. The antidrug legislation put into effect during these periods of moral panic legally marginalized threatening minorities and demonized their cultures. In operation, these laws were not only antidrug but also anti-minority and anti-underclass as they disproportionately targeted these groups and their ‘other’ ways. Through the legal criminalization of once-acceptable substances, ‘white’ America was able to uphold its

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<sup>30</sup> Ibid. 428.

<sup>31</sup> Ibid. 429.

<sup>32</sup> David E. Kyvig, “Sober Thoughts: ‘Myths and Realities of National Prohibition after Fifty Years,” in *Law, Alcohol, and Order: Perspectives on National Prohibition*, ed. David E. Kyvig (Westport, CT: Greenwood Press, 1985), 8.

power structure in periods of economic and social change. As will be demonstrated, the previously explained contexts that resulted in enactment of antidrug legislation persisted through the remainder of the century. The precedent established by the 1909 Opium Exclusion Act, the Harrison Act of 1914, and the Eighteenth Amendment endured. Despite societal progress, or appearances thereof, policies targeting racial, ethnic, and class minorities remained a method of social control throughout the twentieth century.

### **The “Death” of Jim Crow: The War on Crime and Triumph of Law and Order**

As soon as blacks were granted personhood and enfranchisement following the Civil War<sup>33</sup>, local and state governments, especially in the South, implemented legal codes barring blacks from realizing their newly granted rights. Laws stipulating the segregation of nearly all public spaces, including schools, were strictly enforced, and black citizens were confined to decrepit facilities and excluded from public life. State governments also stripped black citizens of their political voice by implementing grandfather clauses, poll taxes, and literacy tests to bar blacks from ever reaching the voting booth. Not to mention, blacks of the South were also constantly under the threat of violence, as local Ku Klux Klan chapters regularly intimidated black citizens, especially those who dared challenge the authority of Jim Crow. The pervasiveness and effectiveness of the Jim Crow system of segregation demonstrates just how determined a large faction of the country was to permanently oppress the black population. Yet after decades of second-class citizenship, the 1950s saw the emergence of a unified and determined Civil Rights Movement that demanded full equality within a nation that continued to deny it. The civil rights activists’ efforts were finally rewarded with the passage of the Civil Rights Act of 1964 and the Voting Rights Act of 1965, effectively ending *de jure* segregation.

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<sup>33</sup> Per the passages of the Fourteenth and Fifteenth Amendments (1868 and 1870 respectively).



After nearly a century under the thumb of Jim Crow, black Americans were at last granted legal equality. Unfortunately, the price of this equality was bitter resistance manifested through brutality, violence, and hatred, as many refused to accept blacks as their equals. It became immediately clear that the country's racial scars were by no means erased as the remainder of the monumental decade that signified such landmark progress, instead continued with further unrest and discontentment.

As the almost century-old system of Jim Crow unraveled, Southern segregationists and many working-class white Americans became anxious over the changing social hierarchy that Jim Crow had upheld for so long. Many feared the increasingly progressive direction the country seemed to be heading in, and desperately clung to the segregationist past. Almost immediately after the landmark civil rights legislation was signed by President Lyndon B. Johnson, “the Watts section of Los Angeles exploded in violence,” and, “before the National Guard could restore order, 34 were dead, hundreds were injured, almost 4,000 were arrested, and roughly \$35 million in damages was done.”<sup>34</sup> Sparked by a traffic-stop argument between a white police officer and a black motorist, Watts soon spiraled into a weekend of looting, bloodshed, and violence—reflecting the state of America's race relations. Meanwhile, Americans across the country fearfully watched the scenes of violence and disorderly conflict unfold on their living room TV sets. Newscasts overwhelmingly emphasized the violence and damage perpetrated by the black protesters, and often, inaccurately. The 1968 government ordered “Kerner Commission” found that, “all media [had] reported rumors that had no basis in fact. Some newsmen staged riot events for the cameras,” furthermore, these broadcasts reported,

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<sup>34</sup> Michael Flamm, *Law and Order: Street Crime, Civil Unrest, and the Crisis of Liberalism in the 1960s*, (New York: Columbia University Press. 2005), 58.

“inflated figures, leaving an indelible impression of damage up to more than 10 times greater than actually occurred.”<sup>35</sup> As news media outlets sought higher ratings and carelessly reported unfounded claims, Americans were being misled and misinformed on the true nature of the riots, as mainstream news failed to examine underlying causes of the riots. As Donna Murch explains, the black residents of Watts, “faced intense racial and class segregation, miserable schools, and large-scale joblessness. A hostile and overwhelmingly white police force engaged in routine traffic stops of motorists of color, beatings of neighborhood residents, and harassment.”<sup>36</sup> Given the oppressive conditions under which the black residents of Watts lived, the incident that sparked the Watts riot did not occur in a vacuum. Yet rather than discuss these underlying grievances and tensions causing the riots, the media drummed up fear in the public by portraying the black rioters as lawless, violent, and most importantly, unwarranted in their reasons for rioting. As Doris Marie Provine explains, “anti-black attitudes were hardening in this period, and media images of disorderly Blacks helped to fuel the growing racial sentiment.”<sup>37</sup> The media’s mischaracterization of Watts and other race riots of the time, served to provoke the white viewers’ existing racial hostilities and emotions.

Despite constant media coverage, large-scale riots like Watts and Detroit were, in fact—rare occurrences. Regardless, events like Watts provided disgruntled Americans with concrete and tangible rationale for their disapproval of an increasingly inclusive America. This disapproval soon took shape in form of cries for “law and order” on the streets of America’s

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<sup>35</sup> *Report of the National Advisory Commission on Civil Disorders*. (Washington: United States, Kerner Commission): U.S. G.P.O., 1968. 202.

<sup>36</sup> Donna Murch, “The Many Meanings of Watts: Black Power, ‘Wattstax’, and the Carceral State,” *OAH Magazine of History* 26, no. 1 (January 2012): 38.

<sup>37</sup> Doris Marie Provine, *Unequal under Law: Race in the War on Drugs*, (Chicago: University of Chicago Press, 2007), 52.

cities. Replying to the nation's fears of violence and disorder, in the fall of 1965, Lyndon B. Johnson declared a "war on crime," and proclaimed that he, "will not be satisfied...until every woman and child in this Nation can walk any street, enjoy any park, drive on any highway, and live in any community without fear of being harmed."<sup>38</sup> Johnson's noble mission to protect citizens from rampant crime produced sweeping anticrime legislation that above all: strengthened, empowered, and emboldened law enforcement units. In the wake of Watts and other urban riots, Johnson lauded the work of law enforcement, proclaiming that, "the policeman is the frontline soldier in our war against crime."<sup>39</sup> By comparing the police force to 'soldiers' at battle, Johnson lifted the work of urban police officers to those risking their lives abroad for the country, claiming that the police put their lives in danger, "just as the man does in the rice paddies of Vietnam."<sup>40</sup> This marks an important shift in America's law enforcement as rank and file officers began to see themselves as 'frontline soldiers' fighting inside urban 'warzones,' as if battling a foreign enemy.<sup>41</sup> Johnson's exaltation of the police force went beyond rhetoric, as his anticrime bills funneled massive government funds to law enforcement departments. Local police forces were soon equipped with military-grade supplies, as, "the federal government financially encouraged states to acquire surplus M-1 military carbines, army tanks, bulletproof vests, and walkie-talkies for local police by covering up to 90 percent of the costs of riot

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<sup>38</sup> Statement Following the Signing of the Law Enforcement Act, September 22, 1965, *Public Papers of the Presidents of the United States: Lyndon B. Johnson, 1965*, Book II (Washington: U.S. Government Printing Office, 1965): 1013.

<sup>39</sup> Statement Following the Signing of the Law Enforcement Act, September 22, 1965, *Public Papers of the Presidents of the United States: Lyndon B. Johnson, 1965*, Book II (Washington: U.S. Government Printing Office, 1965): 1013.

<sup>40</sup> Elizabeth Hinton, "A War within Our Own Boundaries': Lyndon Johnson's Great Society and the Rise of the Carceral State," *The Journal of American History* (June 2015): 103.

<sup>41</sup> *Ibid.* 103.

prevention programs.”<sup>42</sup> The militarization of local police made highly specialized equipment the protocol for even low ranking cops.

Equipped and empowered, municipal police departments hit the streets, especially the streets deemed “high-crime.” This being said, these police departments overwhelmingly targeted their surveillance and law enforcement efforts toward urban black neighborhoods. As Elizabeth Hinton explains, “by treating urban crime as a specific phenomenon that could be predicted and contained,” the militarized police “rationalized the concentrated deployment of police officers in black communities.”<sup>43</sup> With the constant presence of a combative police, already vulnerable black youth were rendered defenseless against the overzealous occupiers of their neighborhoods. The police became the physical representations of the ‘law and order’ movement as they came to represent enforcement of order rather than servants of the communities they served.

Further, mainstream theories on the sources of poverty and crime were changing. Daniel Moynihan’s influential 1965 report, “Employment, Income, and the Ordeal of the Negro Family,” denied structural inclusion as the source of the black and white income gap and instead attributed it to the cultural pathology and maladaptive behavior of black families.<sup>44</sup> As Elizabeth Hinton notes, this understanding of black urban conditions became widely acknowledged amidst the mounting of the modern war on crime: “To the policy makers reshaping American law enforcement, crime was an innate problem of black urban America.”<sup>45</sup> While Lyndon B. Johnson’s ambitious Great Society programs previously sought to lift urban communities out of

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<sup>42</sup> Ibid. 110.

<sup>43</sup> Ibid.104.

<sup>44</sup> Daniel Moynihan, “Employment, Income, and the Ordeal of the Negro Family,” *Daedalus* 94, no. 4 (Fall 1965): 745-770.

<sup>45</sup> Elizabeth Hinton, “A War within Our Own Boundaries’: Lyndon Johnson’s Great Society and the Rise of the Carceral State,” *The Journal of American History* (June 2015): 103.

poverty and relieve them of crime via economic empowerment and neighborhood resources, the urban unrest of the mid 1960s completely shattered this interpretation. By the end of Johnson's presidency, the goal to 'reduce poverty' was abandoned, and replaced by the goal to strictly 'reduce crime.' And *this* was to be achieved by deploying an omnipresent, aggressive, and empowered police force to underprivileged urban neighborhoods that were also, predominately black. Thus, once the dust had settled in Watts, Detroit, and other urban cities across America, the once hopeful war on poverty had become a war on crime and, covertly, a war on vulnerable black bodies.

As law and order ideology and its accompanying rhetoric became pervasive throughout American society, politicians on both sides of the ideological spectrum sought to exploit the public's racially rooted fears of public disobedience and crime. The true 'triumph' of the law and order movement was demonstrated through the events surrounding the decisive election of 1968. With continuous urban rioting, increasingly hostile antiwar protests, the high profile assassinations of Martin Luther King Jr. and Robert Kennedy Jr., the 1968 election served as the battleground for America's seemingly irreconcilable cultural divide. The chaos of 1968 and the year's prior became the central focus of the GOP and Nixon's campaign strategy. After Johnson's landslide victory over far-right candidate, Barry Goldwater, Republican strategists reassessed their party platform and were determined to prevail in 1968. The GOP agreed on former candidate, Richard Millhouse Nixon. After losing out to John F. Kennedy in 1960, Nixon was similarly committed to capturing victory. With his mantra of "law and order," Nixon framed himself as the antithesis to the anarchy of the day caused by the Great Society liberals and unruly protesters: "Nixon vowed he would 'bring us together' in the wake of the internal

collapse that had taken place in an age of riots in cities and on campuses across the country.”<sup>46</sup> The Nixon campaign capitalized off of shifting political tides and racist sentiments as Nixon employed his, ‘Southern Strategy’ by making appeals, “to the so-called ‘silent majority,’ a symbolic reference meant to contrast his supporters from the Civil Rights activists ‘blamed’ for disrupting more traditional ways of life.”<sup>47</sup> With this approach, Nixon was able to take advantage of persistent race-based fears held by many white voters. While independent candidate and staunch segregationist George Wallace had a stronghold in the Deep South, Nixon and the GOP sought to capture these prejudiced voters using subtle racialized language. Former advisor to Nixon, John Ehrlichman, explained their 1968 campaign strategy: “we’ll go after the racists,” as a, “subliminal appeal to the anti-black voter was always present in Nixon’s statements and speeches.”<sup>48</sup> Thus, Nixon’s implicitly racist cues captured the Southern vote by appealing to race-based fear associated with the dismantling of Jim Crow. Nixon’s victory over Hubert Humphrey also demonstrated the victory of conservative ‘law and order’ ideology over the progressive social reforms of the Great Society era.

While at first the 1960s appeared to have ushered in an era of progress, with civil rights victories and antipoverty Great Society programs, the hostility and disquiet that followed, brought this optimism to a standstill. Highly publicized incidents of racially charged riots and fears of an overly egalitarian agenda cultivated a backlash among white Americans and made law and order the number one domestic problem. ‘Crime’ and ‘law and order’ became the

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<sup>46</sup> Bruce H. Kalk, “Wormley’s Hotel Revisited: Richard Nixon’s Southern Strategy and the End of the Second Reconstruction,” *The North Carolina Historical Review* 70, no. 1 (January 1994): 89.

<sup>47</sup> Doris Marie Provine, *Unequal under Law: Race in the War on Drugs*, (Chicago: University of Chicago Press, 2007), 131-32.

<sup>48</sup> Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, (New York, NY: New Press, 2011), 44.

blanket terms to discuss all complex issues of black communities, as whites came to conflate blacks with crime.<sup>49</sup> The public widely and enthusiastically supported ‘getting tough’ and ‘cracking down’ on urban crime. Sweeping policy changes of the era bolstered the authority of law enforcement and subsequently shifted focus to ‘high crime’ black neighborhoods. Further, the increasingly prevalent ideology that blamed the depressed socioeconomic conditions of blacks on their pathological culture rather than social inequality justified the government’s shift from antipoverty to anticrime efforts. Politicians manipulated white fears of racial change and black progress by associating the issue of crime with black insurgency. By the end of the 1960s crime control became a form of social control that served to stiffen racial equality and promote the modern carceral state.

### **War on the Home Front: Reagan’s Rhetorical Offensive**

Elected on a wave of populist conservatism, Ronald Reagan and the ‘New Right’ sought to uphold order and morality in a nation gone off-rail in the tumultuous decade of the 1970s. American exceptionalism was severely wounded at the end of the 1970s due to the economic recession, military loss in Vietnam, and the Watergate scandal. Americans began questioning their identity and the United States’ postwar standing as the leader of free world. As Natasha Zaretsky explains, the developments of the 1970s challenged the American exceptionalism so central to national identity—“the idea that the United States did not lose wars, its natural resources were boundless, its leaders wise and secure, and its economy capable of infinite

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<sup>49</sup> Ruth-Ellen M. Grimes and Dennis D. Loo, “Polls, Politics, and Crime: The ‘Law and Order’ Issue of the 1960s,” *Western Criminology Review* 5, no. 1, (2004): 61.

expansion.”<sup>50</sup> These challenges to the American identity made way for the rise of Reagan-ism and the rejection of equity-promoting liberal reform.

As globalization changed long-held economic structures, foreign competition from Southeast Asia and elsewhere changed America’s postwar economy. The 1980s saw, “the loss of millions of manufacturing jobs,” especially in urban cities like Detroit, Chicago, Pittsburgh, and Los Angeles.<sup>51</sup> While working class people across America felt the growing pains of the changing economy, black men hurt the most. Clarence Lusane contends that, “historically, low-skilled, entry-level employment, particularly in the manufacturing sector, has been the chief means out of poverty for young African-American males.”<sup>52</sup> With these opportunities for economic advancement disappearing in the late 1970s, urban blacks were no longer able to rely on these entry-level manufacturing jobs for economic advancement. Marcus Alexis explains that following World War II, the labor-market conditions largely reduced job barriers and narrowed pay differences between black and white workers, allowing mobility for black workers and equalizing the playing field.<sup>53</sup> Yet by the late 1970s, the narrowing earnings gap between whites and blacks stagnated as a result of the economic recession. Thus, the most vulnerable to the economic decline were young, urban blacks. Alexis further explains, “between 35 and 50 percent of the employment decline was experienced by African American [high-school] dropouts aged 16-24 between 1970 and 1980.”<sup>54</sup> While working class whites were similarly hurt by the

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<sup>50</sup> Natasha Zaretsky, *No Direction Home: The American Family and the Fear of National Decline, 1968-1980*, (Chapel Hill, NC: The University of North Carolina Press, 2007), 2.

<sup>51</sup> Clarence Lusane and Dennis Desmond, *Pipe Dream Blues: Racism and the War on Drugs*. (Boston, MA: South End Press, 1991), 84-85.

<sup>52</sup> *Ibid.* 85.

<sup>53</sup> Marcus Alexis, “Assessing 50 Years of African-American Status, 1940-1990,” *The American Economic Review* 88, no. 2 (May 1998): 368..

<sup>54</sup> *Ibid.* 370.



loss of manufacturing jobs, it was urban working class blacks that bore the brunt of these economic shifts, especially in the long run. Among loss of wage-jobs, the phenomena of white suburban “flight” in the 1950s and 60s similarly shifted government funding away from education and housing developments in the cities and towards those in the white suburbs. Beginning in the seventies and continuing through the century, more and more jobs moved to the suburbs and employment was scarce in urban areas that once relied on industrial based employment. Therefore, even when much of the economy recovered following the recession of the 1970s, the black residents of cities wrecked from economic depression did not.

Economic stagflation and the apparent failure of Keynesian economics produced insecurity, anxiety, and uncertainty in the American people. The white middle-class was, once again, threatened and they desperately sought the restoration of their prosperity. Even though working class blacks were the ones most deeply harmed by the economic recession, working class whites desperately needed someone to blame for the shifting international economy. To this anxious white population, the progress blacks had made in society over the past few decades was constantly considered a threat to their economic livelihood. Reagan exploited these latent race-based fears among low and middle class whites by condemning government welfare programs and black dependency on them. Race-based claims such as these boosted support for Reagan and his conservative political agenda. The expansion of welfare in the 1960s and 70s, as established by Lyndon Johnson’s Great Society, was often cited as reason for the economic setback of the 1970s. While more black families did indeed seek the benefits of Aid to Families with Dependent Children (AFDC) program in the 60s and 70s, due to, “heightened political mobilization,” conservative opponents to the program, “insisted its growth was symptomatic of a

cultural and psychological disorder within African American families.”<sup>55</sup> The notion that black families were inherently incapable of supporting themselves became a central focus of Reagan’s political message. Reagan created the ‘welfare queen’ trope and used it to portray black mothers as exploiting welfare for their own personal enrichment.<sup>56</sup> The ideas of the welfare queen and the ‘undeserving poor’ were widely accepted by Reagan’s overwhelmingly white base who feared that, “the ostensibly stable divide between white and black families was breaking down.”<sup>57</sup> Reagan’s ability to exploit race-based fears promoted the notion that blacks themselves were to blame for their own dire socioeconomic conditions. As demonstrated by the politics surrounding welfare and the welfare queen trope, Reagan’s conservatism rejected government interference as means of social equality. Instead, Reagan advocated for individualism and personal responsibility as means for advancement, denying historical inequality and the structural exclusion of blacks from economic opportunity.

Drawing on the economic fears of whites and the legacy of law and order, Reagan established his own unique war on crime by declaring a new offensive objective he called “the war on drugs.” The previously established punitive and retributive ideology of the war on crime continued to guide the justice system’s criminal policies in the United States. While few new anticrime measures had been put forth in the decade since the war on crime first began, Reagan mounted a major overhaul of these programs by synthesizing his drug war with the anticrime agenda. Although Reagan most compellingly brought drugs to the forefront of public agenda,

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<sup>55</sup> Natasha Zaretsky, *No Direction Home: The American Family and the Fear of National Decline, 1968-1980*, (Chapel Hill, NC: The University of North Carolina Press, 2007),14.

<sup>56</sup> Ann Cammett, “Deadbeat Dads & Welfare Queens: How Metaphor Shapes Poverty Law,” *Boston College Journal of Law & Social Justice* 34, no. 2, (Spring 2014): 244.

<sup>57</sup> Natasha Zaretsky, *No Direction Home: The American Family and the Fear of National Decline, 1968-1980*, (Chapel Hill, NC: The University of North Carolina Press, 2007), 13.

Richard Nixon was the first one to coin the term ‘war on drugs.’ In the summer of 1971 Richard Nixon announced that drug abuse was officially America’s, “public enemy number one,” and declared an, “all-out offensive” war on the menace of drugs.<sup>58</sup> Nixon also pushed for the passage of comprehensive federal drug statutes through the Controlled Substances Act (CSA) of 1970. The CSA created a “statutory framework through which the federal government regulated the lawful production, possession, and distribution of controlled substances,” via five schedules of drugs based on characteristics such as potential for abuse and associated health risks.<sup>59</sup> Furthermore, in 1973 Nixon established the Drug Enforcement Administration, or DEA, which coordinated federal counterdrug operations under one government agency. Via legislative and bureaucratic design coupled with the framing of America’s drug problem, President Nixon successfully laid the foundation of the country’s drug war.

For more than a decade after Nixon’s initial declaration, there had been no major changes in America’s antidrug policy. The effects of Nixon’s drug legislation were minimal, as there were minimal changes for drug arrest rates and public concern over drugs remained nominal. In fact, on the eve of Reagan’s election, drug abuse was declining and according to public opinion polls, less than 2% of the population identified “drug abuse as the nation’s most important problem”<sup>60</sup>. Despite lack of legitimate public concern, Reagan effectively employed the rhetoric of ‘war’ to launch one of the most consequential and long-lasting drug control initiatives. Reagan masterfully used the rhetoric of war to frame his policy initiatives and signal to the

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<sup>58</sup> Richard Nixon, "Remarks About an Intensified Program for Drug Abuse Prevention and Control," June 17, 1971. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*.

<sup>59</sup> Lisa N. Sacco, “Drug Enforcement in the United States: History, Policy, and Trends,” CRS Report No. R43749. Washington, D.C: Congressional Research Service, 2014, 6.

<sup>60</sup> Bureau of Justice Statistics, *1993 Sourcebook of Criminal Justice Statistics Drugs and Crime Facts*: 1994, NCJ 154043.

public that drugs were indeed, an enemy worth ‘defeating.’ Reagan was certainly not the first to declare war on a domestic problem in order to bolster public attention, as there had been a war on crime, poverty, and inflation in just the previous few decades. While none of these would rival the effectiveness of Reagan’s war on drugs, the metaphor proves useful in providing a framework for the public to understand issues at hand. William Elwood explains, “the perspective or pattern war metaphors convey always include the image of a threatening ‘other’ that is waiting for a chance to destroy America’s freedom, democratic form of government, and her other sacred rights.”<sup>61</sup> These powerful appeals to American patriotism, especially in a time of national anxiousness, prove extremely effective and called on average Americans to ‘defend’ and ‘protect’ their unique rights and privileges as American citizens. “Presidents present war as a moral crisis or as a challenge to American ideals,” as William Elwood suggests, “thus, they state that their motives for war are not for revenge or gain, but to protect and defend a threatened United States.”<sup>62</sup> Reagan’s extended war metaphor provided the country with a discernable enemy and the notion that they could win. After decades of living in Cold War fear and watching the Vietnam hostilities unfold, the public was especially sensitive to this kind of rhetoric, desperate for an attainable victory.

In 1986, Ronald and Nancy Reagan spoke together from the West Wing of the White House, urging the country to join them in their “new national crusade” against drugs.<sup>63</sup> Their speech was broadcasted live on nationwide radio and television, demonstrating how urgent they felt this threat to America was. As the Reagans described just how menacing the threat of drugs

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<sup>61</sup> William N. Elwood, “Declaring War on the Home Front: Metaphor, Presidents, and the War on Drugs,” *Metaphor and Symbolic Activity* 10, no. 2 (1995): 96.

<sup>62</sup> *Ibid.* 96.

<sup>63</sup> Ronald Reagan “Address to the Nation on the Campaign Against Drug Abuse.” September 14, 1986.

were to the country's freedom and their youth, Reagan compares this "war" to previous wars Americans have fought abroad: "My generation will remember how Americans swung into action when we were attacked in World War II." He connects the nation's victorious past to the current problem at hand, "now we're in another war for our freedom, and its time for all of us to just pull together again."<sup>64</sup> By referencing the nation's previous victories that were fought against global powers abroad, Reagan implies that illegal drugs were just as threatening as the Axis powers in WWII. Thus, the war on drugs was discussed as any other war, and politicians on both sides of the aisle used this war ploy to press the urgency of drugs. "You're in as much jeopardy in the streets as you are from a Soviet missile," claimed Joe Biden in 1982.<sup>65</sup> Further, Oklahoma congressman Glenn English explained, "We in the Democratic Party realize that the war on drugs has to be fought like World War II—a complete and thorough effort, one dedicated to victory at any cost."<sup>66</sup> This powerful analogy galvanized the public against illegal drugs and gave the drug war widespread support. By framing the war on drugs as a patriotic war and call to duty, *not* supporting the war on drugs became unpatriotic and un-American.

Continuing with the war allusion, Reagan's rhetoric framed the drug issue, like almost all wars, as a contest between good and evil. Similar to the interminable fear of Communism, Reagan presented drugs as a sin that needed to be exterminated by the good of Americanism. By painting the picture that drugs were a moral threat to American values, Reagan and others were deftly able to play into the repeated idea of morality. In the 1986 speech, Nancy Reagan declared that, "the inanimate enemy [drugs] is a bandit, a murderer, a violator of the values our

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<sup>64</sup> Ibid.

<sup>65</sup> Elizabeth Hinton, *From the War on Poverty to the War on Crime: The Making of Mass Incarceration in America*, (Cambridge, MA: Harvard University Press, 2006.), 310.

<sup>66</sup> Ibid. 310.

children embody, a threat to our children, a thief in the night who steals the American dream from our hopes for the future.”<sup>67</sup> By pitting drugs against the nation’s most precious asset, its children, Nancy Reagan made the war also about American family values, a concept so central to Reagan-ism and the New Right’s brand of conservatism. By putting things in terms of black and white or “good and evil,” the creation of the war on drugs manipulated classic war propaganda. As drugs came to represent everything deviant from traditional American beliefs, Americans felt obliged to defend these sacred ideals. Drugs symbolized a rejection of mainstream values, priming the nation for a no tolerance approach of any and all drug offenders.

Just as it played a key role in the public’s support of the war on crime and the condemnation of welfare queens, the country’s racial animus was similarly exploited in the war on drugs. While outwardly the declared war was against illegal substances the manipulation of the drug issue by the media and public officials at all levels of government, similarly to the war on crime, tapped into emotion-laden racial stereotypes to broadly demonize drugs and most consequentially their alleged users. Illegal drugs, with the help of the media, became an affliction of ‘dangerous’ minorities. While not overtly racist, Presidential rhetoric took advantage of a vulnerable and anxious white population in order to augment their base while simultaneously changing how the country perceived and thought about illegal drugs. Michelle Alexander expanded on Reagan’s mastery, “of exploiting racial hostility or resentment for political gain without making explicit reference to race... condemning ‘welfare queens’ and criminal ‘predators.’”<sup>68</sup> These stereotypes and implicit references to the black population as perpetrators

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<sup>67</sup> Ronald Reagan, “Address to the Nation on the Campaign Against Drug Abuse,” September 14, 1986.

<sup>68</sup> Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, (New York, NY: New Press, 2010), 48.

of violence, drug use, and criminality proved stubborn and became widely accepted despite little to no grounds. Further, the uncertain economic situation predisposed uneasy Americans, especially low and middle-class whites, to see blacks as undeserving and criminal. Thus, the language referring to illegal drugs and its users and traffickers became coded language to reference urban, black youth.

Up until 1984, the ‘drugs’ referenced by politicians and the mainstream media referred to all types of narcotics, as a general umbrella term. Yet in 1985, a new drug known as ‘crack cocaine’ hit the streets of metropolitan cities across the country, and became the face of the drug war. The emergence of the frightening, ‘instantly addictive’ crack cocaine irrevocably intensified the war on drugs and its association with black America.

### **Killing Our Children and the Death of Dreams: Crack Cocaine’s Media Frenzy**

Practically overnight, the crack cocaine ‘pandemic’ exploded onto newspaper headlines, invaded the front pages of magazines, and flooded television screens across the country. While crack cocaine was only mentioned by one major media outlet before 1984, in the months leading up to the 1986 elections, “more than 1,000 stories appeared on crack in the national press,” with *Time* citing crack as, “Issue of the Year,” and *Newsweek* calling it, “the biggest news story since Vietnam and Watergate.”<sup>69</sup> Crack quickly became the central focus of media attention, as reports emphasized the substance’s “instantly addictive” quality and its association with acts of violence, inciting a panic among the population.<sup>70</sup> Despite its relatively limited reach, the public came to believe that crack was ravaging suburbs and schoolyards; threatening American society,

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<sup>69</sup> United States Sentencing Commission Report to Congress on Cocaine and Federal Sentencing Policy, February 1995. 122.

<sup>70</sup> Craig Reinerman and Harry G. Levine, "Crack in the Rearview Mirror: Deconstructing Drug War Mythology," *Social Justice* 31, no. 1-2 (2004): 185.

as they knew it. The alarmist rhetoric of media reports on crack cocaine suggested that a dangerous foreign enemy was prepared to invade the United States and wreak havoc on its people and values.

Crack, or cocaine freebasing, emerged in the late 1970s as a method of achieving a more intense high from cocaine via absorption through the lungs. Many of the users were “stockbrokers and investment bankers, rock stars, Hollywood types, and a few pro athletes.”<sup>71</sup> No legislative action was taken, nor was there widespread public concern. Yet as cocaine freebasing spread among inner cities with impoverished African Americans and Latinos and became nicknamed “crack,” for the sound it made while cooking on the stove, notice was taken. Suddenly, crack was a deadly “plague,” portrayed as seeping out of inner cities to the rest of the population.. While powder cocaine was typically sold in half-gram or one-gram units for \$50 to \$100, crack was sold in small “rocks” for \$5 to \$10 in small vials or “baggies.” Crack, in this sense, was a “marketing innovation,” not a new drug.<sup>72</sup> Morgan and Zimmer explain that, “what crack did was to lower dramatically the cost of the ‘cocaine high,’”<sup>73</sup> thus making it widely available to people of all classes and all races.

The media presented crack cocaine as an entirely different drug with very little association to its antecedent, powder cocaine, despite the fact that with just fifteen minutes, “a box of baking soda, a pot of water, and a microwave or a stove,”<sup>74</sup> the relatively uncontroversial

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<sup>71</sup> Craig Reinerman and Harry G. Levine, *Crack in America: Demon Drugs and Social Justice*, (Berkeley: University of California Press, 1997), 182.

<sup>72</sup> Craig Reinerman and Harry G. Levine, *Crack in America: Demon Drugs and Social Justice*, (Berkeley: University of California Press, 1997), 25.

<sup>73</sup> John P. Morgon and Lynn Zimmer, “The Social Pharmacology of Smokeable Cocaine: Not All It’s Cracked Up to Be,” in *Crack in America: Demon Drugs and Social Justice*, ed. Craig Reinerman, and Henry G. Levine, (Berkeley: University of California Press, 1997),134.

<sup>74</sup> United States Sentencing Commission, *Cocaine and Federal Sentencing Policy*, Special Report to the Congress. February 1995. 201.



powder cocaine could be transformed into the dangerous crack cocaine. It was also reported that the inhalation of crack would induce the user into a crazed and vicious rampage. By 1986, suddenly every front-page was hysteric over the dangers of crack and the nightly news bombarded television sets with footage regarding the “devil drug.” The *Los Angeles Times* declared crack “The Deadliest Form of Cocaine” in a 1986 article warning parents that a single encounter could be a death sentence.<sup>75</sup> In 1986, *The Washington Post* exclaimed that crack’s “violent presence” had infiltrated New York with a sensationalized story of a teen murdering his mother over an alleged fight for his crack.<sup>76</sup> On the three major television networks in July 1986 alone, over seventy-four evening news segments were broadcasted on drugs, half of them on crack.<sup>77</sup>

Furthering this panic was the death of University of Maryland college basketball star, Len Bias. Days after being drafted to the Boston Celtics as the NBA’s number two overall pick, Len Bias was found dead, due to a cocaine overdose. The cover of next month’s *Sports Illustrated* featured Bias’ face front and center and read, “The Death of a Dream,”<sup>78</sup> as the cover story highlighted the deadly costs of drug use. Congressman Tony Coelho explained that Bias became a symbol for every family’s nightmare, “An all-American kid, from a nice family, a good person from all indications, he got involved with a drug and quickly he was dead.”<sup>79</sup> This stirred existing fears that crack was a threat to everyone. While crack, among other drugs, posed

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<sup>75</sup> John Brennan, "Crack: The Deadliest Form of Cocaine," *Los Angeles Times*, August 19, 1986.

<sup>76</sup> Dody Tsiantar, “‘Crack’ Making Violent Presence Felt in New York,” *The Washington Post*, June 13, 1986.

<sup>77</sup> Craig Reinerman and Harry G. Levine, *Crack in America: Demon Drugs and Social Justice*, (Berkeley: University of California Press, 1997), 34.

<sup>78</sup> "Death of a Dream." *Sports Illustrated*, June 30, 1986.

<sup>79</sup> Edward Walsh, "Bias' Death Fueled Antidrug Fervor," *The Washington Post*, September 14, 1986.

serious danger to Americans with its addictive nature, the broadcasting of this peril was presented as much more than a public health warning, especially in proportion to its overall prevalence. Crack was launched into the spotlight as America's single biggest threat. Dubbed the "cocaine summer," 1986 rapidly shifted the public's attention to crack. The onslaught of media coverage suggested that crack was one of the (if not *the*) most serious dangers threatening American society. While the sheer amount of media coverage on crack successfully struck fear into the public about the dangers of crack, it also asserted that a typical crack user was, almost unquestionably, a young black male. Thus, crack presented itself as the perfect pawn in Reagan's drug war because of its, "potency, transportability, and low cost, but most importantly because media attention ensured that no one would miss its connection with the terrifying inner city and its restless Black youth."<sup>80</sup>

With almost round-the-clock coverage, the media depictions of crack cocaine and its users were highly racialized, presenting the substance as an almost exclusively black drug, flooding out of inner city neighborhoods and boarded-up crack houses. While not always explicit in references to race, oft-used phrases such as "ghettoes," "gangs," "inner-city" and the overwhelming media depictions of drug offenders as people of color, left little question over who the public was meant to associate crack use with. In summer of 1986, Tom Brokaw of NBC Nightly News aired a special segment dedicated to discussing a, "new, highly addictive form of cocaine." The report then shifted to a correspondent in a predominantly black neighborhood in Miami discussing "crack houses" and the police's attempts to close down the rampant problem.<sup>81</sup>

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<sup>80</sup> Doris Marie Provine, *Unequal under Law: Race in the War on Drugs*, (Chicago: University of Chicago Press, 2007), 104.

<sup>81</sup> Edwin Diamond, *The Media Show: The Changing Face of the News, 1985-1990*, (Cambridge, MA: MIT Press, 1991).

*Newsweek's* cover story in June 1986 warned of, "Crack and Crime." The story discussed three high profile crack dealers in Miami and displayed the pictures of two black men and the other perpetrator described as a "Trinidadian gangster." The hysterical article described the inner cities as a, "domestic Vietnam."<sup>82</sup> Subsequently, CBS aired a dramatic documentary titled, "48 Hours on Crack Street," in which Dan Rather, "take[s] you to the streets, to the war zone, for an unusual two hours of hands-on horror." Hidden camera footage was shot inside ghettos with almost exclusively footage of black Americans.<sup>83</sup> A study conducted by Reeves and Campbell examined "270 news reports broadcasted on the major networks between 1981 and 1988," and they claim the central finding of their study to be, "the disparity in news treatment of 'white offenders' and 'black delinquents.'<sup>84</sup> The fundamental characterization of black and white drug users demonstrates the racial undertones of the 1980s media reports. Despite crack's similarly statistical prevalence among white populations, the media presented crack cocaine as an affliction of black America.<sup>85</sup>

Choosing to ignore the origins of poverty and crime, politicians instead manipulated racial prejudices among whites in order to market drugs, most notably crack, as the true source of urban societal ills, negatively constructing the black urban male population as the deviant underclass responsible. Therefore, in the context of the media frenzy surrounding the so-called "crack epidemic," the black urban males were targeted as the perpetrators of rampant drug use and the associated street violence. In 1986, "politicians and the media focused on crack—and

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<sup>82</sup> "Crack and Crime." *Newsweek*, June 16, 1986. 15-22.

<sup>83</sup> Craig Reinerman and Harry G. Levine, *Crack in America: Demon Drugs and Social Justice*, (Berkeley: University of California Press, 1997), 45.

<sup>84</sup> Doris Marie Provine, *Unequal under Law: Race in the War on Drugs*, (Chicago: University of Chicago Press, 2007), 106-107.

<sup>85</sup> Clarence Lusane and Dennis Desmond, *Pipe Dream Blues: Racism and the War on Drugs*, (Boston, MA: South End Press, 1991), 45.

the drug scare began—when cocaine smoking become visible among a ‘dangerous’ group.”<sup>86</sup> This deviant class of urban blacks often labeled, as “crack heads “or” inner-city delinquents, became the “face” of the crack craze. Reinerman and Levine contend, “Reagan and the New Right constricted the aperture of the attribution for America’s ills so that only the lone deviant came into focus.”<sup>87</sup> So while the addictive cocaine base substance was not new, it was not widely blamed for social evils until a clear connection could be made between crack and a minority subgroup, playing into racial stereotypes and drumming up public fear.

### **“Tough On Drugs”: The Congressional Reply to Crack**

Following Ronald Reagan’s highly publicized 1986 antidrug speech and the summer’s media blitz on crack, Congress quickly got to work and immediately began drafting antidrug legislation. With their constituents panicked at the thought of crack “killing” their children, and the President signaling to the urgency of drug use, members of Congress were quick to act, just in time for the 1986-midterm elections. The highly televised speech in which the President and First Lady declared, “Drugs are menacing our society. They’re threatening our values and undercutting our institutions. They’re killing our children.”<sup>88</sup> coupled with the media bombardment had effectively roused public concern. Members of Congress, especially those up for re-election, were particularly sensitive to their constituents’ concern and were determined to demonstrate their strong commitment to fighting drugs, especially the new and frightening crack cocaine. Both parties sought to establish the drug issue as their own and scrambled to present their party as the “toughest” on drugs.

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<sup>86</sup> Craig Reinerman and Harry G. Levine, *Crack in America: Demon Drugs and Social Justice*, (Berkeley: University of California Press, 1997), 47.

<sup>87</sup> *Ibid.* 58.

<sup>88</sup> President Ronald Reagan and First Lady Nancy Regan, “Address to the Nation ‘Just Say No,’” September 14, 1986.

The death of basketball star Len Bias hit close to home for members of Congress. As Congressmen lived and worked on Capitol Hill, Bias was, “a local hero in Congress’ backyard.”<sup>89</sup> Within a week of Bias’ death, Congress broke for the Fourth of July recess and flew home to their respective districts and states and found that the drug scare was, indeed—very real. House Majority Leader James Wright Jr. (D-Tex.) went to Fort Worth where his staff compiled the results of a questionnaire sent to the constituents a month prior. To the surprise of Wright, who represented a comfortable middle-class district, “82 percent of the respondents said they felt drug use had become a ‘serious problem’ in their neighborhoods and the local schools.”<sup>90</sup> The media’s cries were heard loud and clear, as the nation feared crack was seeping into all social classes and into the suburbs. Speaker of the House, Democrat, Tip O’Neil represented the Boston area where Bias was drafted to play for the Celtics, and was thus, especially sensitive to the crack scare. The stage was set, for both parties, to seize the drug issue as their own. When returning to Congress with only four months before the elections, both sides of the aisle went to work, with Democrats determined to get a stake in the drug war that Reagan brought to the forefront of the public mind.

Drugs, and crack especially, were by no means a partisan issue, as Democrats Tip O’Neil and Jim Wright teamed up with leading Republicans to draft omnibus legislation that would ensure crack and its perpetrators were locked away for good. With policy blueprints already underway, congressional hearings were quickly held. Within these Congressional hearings, Senators and Representatives employed the *same* hysterical rhetoric and racial inferences that the media did. Facing an uphill battle to maintain her seat, Senator Paula Hawkins (D-Fla.), in her

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<sup>89</sup> Edward Walsh, "Bias' Death Fueled Antidrug Fervor," *The Washington Post*, September 14, 1986.

<sup>90</sup> *Ibid.*

remarks to Senate, expressed that there had been a well-deserved increase in media attention to the problem of crack. She claimed, “the new cocaine distillate that makes many other drugs look like *candy* by comparison.”<sup>91</sup> Hawkins praised the media’s surge in crack coverage as a “public service,” because not only was crack dangerous and deadly, it also engendered crime. After her statements, Senator Hawkins introduced a recent *Newsweek* article: “Mr. President, I commend this *Newsweek* article to my colleagues and ask that it be printed in the record.”<sup>92</sup> The article that followed was the highly racialized and frantic *Newsweek* piece about the black-run crack market in Miami. It became clear that the very same media reports terrorizing the citizenry were also propelling Congress towards penal legislation. Hardly a week later, Senator Lawton Chiles (D-Fla.) further stressed the detriment of crack. Speaking to Senate, Chiles explained that six months prior, he did not even know what rock and crack cocaine were but “today I consider it the no. 1 drug problem in the nation.”<sup>93</sup> Reminiscent of Hawkins’ recent references, Chiles cited the media’s reports as his primary source of evidence, “*Newsweek* calls it a plague. According to *Time*, the rate of addiction to rock cocaine may prove worse than the wave of heroin addiction...*The Washington Post* says that rock has swept through affluent and poor neighborhoods alike.”<sup>94</sup> The significant reliance on hyperbolic news reports demonstrates that Congress was as deeply influenced by the racialized media accounts. Chiles then suggested harsh penalties to deal with the “emergency” of crack and keep it out of the children’s hands. Chiles’ proposed legislation promised to apply the heaviest of penalties for possessing just one gram of crack. In regards to these proposals, Chiles explained, “some think I am being too harsh with

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<sup>91</sup> *Crack and Crime*, 99<sup>th</sup> Cong., 2<sup>nd</sup> sess., *Congressional Record* 132 (June 9, 1986): S 7123.

<sup>92</sup> *Ibid.*

<sup>93</sup> Senator Chiles, speaking on S. 2560, 99<sup>th</sup> Cong., 2<sup>nd</sup> sess., *Congressional Record* 132 (June 17, 1986): S 7636

<sup>94</sup> *Ibid.*

these penalties, I do not have such qualms... In my book if you have 20 rocks on you—you should have the book thrown at you.”<sup>95</sup> The treatment of crack as a serious and lethal threat to the country and its children was used to justify these harsh stringent measures. Further, his testimony claimed that crack was moving into “affluent” and “white” neighborhoods. The worry over upper class families being desolated by the drug as much as impoverished neighborhoods added heightened urgency to the matter.

As senators and representatives scrambled to prove they were doing everything in their power to stop crack, further hearings were hastily held. On July 15, 1986, shortly after holiday recess, a hearing was held before the Permanent Subcommittee on Investigations of Senate on “Crack” Cocaine. Chairman Roth (R-Del.) opened the hearing by stating, “a number of recent studies indicate that cocaine, once the expensive ‘drug of choice’ among wealthy jet-setters, entertainers, and others who could afford it, is now becoming the ‘in’ drug for young people of all social classes.”<sup>96</sup> Roth was implicitly referring to the growth of crack in inner cities among minority populations. After citing Len Bias’ death as proof that “cocaine kills,” Roth then referenced the “Black Plague” of Medieval Europe. He urged that in 1980s America, “thousands more could die by their own hands from an equally deadly white plague, the plague of cocaine.”<sup>97</sup> While there was a legitimate concern over the danger of cocaine and crack, the employment of dramatized allusions to the Black Plague and other devastating public health scares was misleading and deceptive. The hearing continued with Senator D’Amato’s (R-NY) opening remarks on the “tidal wave” problem of crack. D’Amato expressed his belief that the

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<sup>95</sup> Ibid.

<sup>96</sup> U.S. Congress, Senate, Committee on Governmental Affairs, “Crack” Cocaine: Hearings before the Permanent Subcommittee on Investigations, 99<sup>th</sup> Cong., 2<sup>nd</sup> sess., 1986.1.

<sup>97</sup> Ibid. 2.

current drug war was insufficient and that it had not gone far enough: “we say that we have a war on drugs. That is fallacious. There is a war, but we haven’t really utilized the military in even the simplest of manners.”<sup>98</sup> Falling back on the war metaphor, D’Amato suggested that the government had not gone far enough and must use all weaponry possible to defeat the “enemy” at hand. He went further to compare the dangerousness of the “drug epidemic” as, “dangerous, if not even more so, than any other terrorist that this nation faces, including the Quadhafi’s, the Khomeini’s.”<sup>99</sup> The comparison to terrorists worked to rouse fear into the legislators and pushed them to go further with their anti-drug efforts. Later in the hearing, Sheriff James Adams of Sumter County, Florida spoke about his county’s crack problem. He described the average rock seller as, “black, male, 18 to 45 years of age.”<sup>100</sup> Throughout the Congressional hearings on crack, crack users were almost exclusively presented as black males, revealing, who exactly Congress saw as the face of the crack scare. Despite these fear-inducing statements, Charles R. Schuster, PhD and Director of the National Institute on Drug Abuse, spoke later on in the hearing and broke down the science of crack. While Dr. Schuster agreed that crack was a very dangerous substance, he urged the Senators to place crack’s danger “into perspective.”<sup>101</sup> Schuster instead suggested education and targeted prevention efforts over strict penalties. Despite Charles Schuster’s brief expert testimony advising against exceedingly punitive penalties for crack, the references to the Black Plague, the Quadhafi’s, and drug pushing blacks were heard much louder in the Congressional chambers.

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<sup>98</sup> Ibid. 12.

<sup>99</sup> Ibid 12.

<sup>100</sup> Ibid. 31.

<sup>101</sup> Ibid. 17.



After rushed discussion and debate over the horrors of crack, the Anti-Drug Abuse Act of 1986 (ADAA) was speedily laid out. The ADAA specified twenty-nine new mandatory minimum sentences, an unprecedented degree of punitive action. The ADAA initially contained *no* sentencing disparity between cocaine and crack, as they were both punished to the same degree.<sup>102</sup> But soon, members from both sides of the aisle engaged in a display of “political one-upmanship” or a “partisan bidding war” over who could be the “toughest” on crack.<sup>103</sup> Despite the fact that crack would not exist without powder cocaine, two weeks after the initial even ratio was proposed, the Reagan administration and Republican Senate leadership suggested crack be punished twenty times harsher than powder.<sup>104</sup> That same month, Democratic leadership in the House introduced a 50:1 ratio contained in omnibus legislation. But apparently, it was still not “tough” enough. The next day, Senate Democrats put the ratio up to 100:1, arbitrarily doubling the punishment in order to, “symbolize congressional seriousness.”<sup>105</sup> Crack became the only drug that first-time offenders could receive a five years mandatory minimum sentence. This meant that a first-time offender caught with 5 grams of crack (the weight of two sugar packets) was bound to five years of prison. Meanwhile, powder cocaine, crack’s precursor, required 500 grams to trigger a five-year prison sentence.

The pace of this omnibus bill was spectacular. Within just five weeks of its introduction, the bill passed in the House with a vote of 392-16 and passed in the Senate 97-2 with sweeping support from both sides of the aisle. While typically this process is lengthy and consists of

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<sup>102</sup> LaJuana Davis, "Rock, Powder, Sentencing--Making Disparate Impact Evidence Relevant in Crack Cocaine Sentencing," *The Journal of Gender, Race, and Justice* 13, no. 2 (2011): 383.

<sup>103</sup> David A. Sklansky, "Cocaine, Race, and Equal Protection," *Stanford Law Review* 47, no. 6 (1995): 1283.

<sup>104</sup> *Ibid.* 1283.

<sup>105</sup> *Ibid.*

several hearings and markup sessions, much of this procedure was disregarded. Few hearings were held in the House on the enhanced penalties for crack offenders, despite the lack of fact gathering about crack. The aforementioned Senate hearing of July 1986 was the single Senatorial hearing held regarding the bill took place from 9:40 a.m. to 1:15 p.m., including recesses.<sup>106</sup> Congress' disregard for its usual practices highlights their haste and lack of close examination during the passing of the unprecedented criminal drug statutes. The election-year sensitivity combined with a manic electorate prompted Congress to respond abnormally and illogically by treating a health problem as a criminal problem. The excessive punishment for crack offenders, perceived to be mostly black, provided politicians with political capital, as white suburban voters were relieved to know that dangerous inner city "crack heads" were going to have the book thrown at them. Therefore, Congress' capitalization of the media-manufactured drug panicked served their personal interests, while they simultaneously turned a blind eye to the racially hostile sentiments, and grossly unequal mandatory minimum sentences.

### **Uncertain Intentions: The 99<sup>th</sup> Congress' Flawed Logic and the Discriminatory Effects of the 1986 Anti-Drug Abuse Act**

In the absence of expert opinion regarding the scientific and pharmacological differences between crack and powder cocaine, Congress' hasty passage of the 1986 Anti-Drug Abuse Act overwhelmingly relied on anecdotal evidence from sensationalized media reports, steeped in racial animus. Pressured by the public concern manufactured by these exaggerated and racialized media accounts, Congress disregarded the economic, social, and political factors driving the rise of crack use in underprivileged minority neighborhoods. Instead, Congress was complicit in allowing the black underclass to bear the burden of in the country's latest drug

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<sup>106</sup> U.S. v Clary, 846 F. Supp. 768; 1994 U.S. Dist. Lexis 2447.

panic, as perpetrated by the 1986 Anti-Drug Abuse Act. As a result of the 99<sup>th</sup> Congress' misguided logic, the 1986 Anti-Drug Abuse Act, in operation, inordinately punished disadvantaged people of color.

In almost all of the mandatory minimum sentences laid out by the 1986 ADAA, these measures were meant to apply to defendants who “posses or sell quantities of narcotics supposedly indicative of relatively large-scale dealing,” or those who would be considered a “kingpin” or “major trafficker.”<sup>107</sup> For example, it would take “100 grams of heroin or 500 grams of powder cocaine” to receive a mandatory minimum sentence of five years.<sup>108</sup> By removing individuals at the top of drug distribution chain, these mandatory minimums effectively terminate the illegal drugs from being further disseminated into the hands of mid-level or low-level dealers or users. Yet for crack cocaine, the 1986 ADAA's treatment of mandatory minimums is notably different, as it abandons the legislation's chief objective to remove high-level kingpins from the streets. In the case of crack, Congress did not objectively establish the amount necessary to qualify as “kingpin” level, as it did with other drugs; they simply divided the thresholds for powder cocaine by 100.<sup>109</sup> Thus, crack cocaine offenders need only possess *five* grams for a five-year sentence and fifty grams for a ten-year sentence. The arbitrary method used to determine crack's mandatory minimums, demonstrates a major departure from the logic employed by Congress when setting the thresholds for *all* other illegal drugs. David Sklansky explains, “As Congress appears to have recognized, large-volume drug traffickers generally do not deal in crack; they deal in its precursor, powder cocaine,” thus,

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<sup>107</sup> David A. Sklansky, “Cocaine, Race, and Equal Protection,” *Stanford Law Review* 47, no. 6 (July 1995): 1287.

<sup>108</sup> *Ibid.* 1287.

<sup>109</sup> *Ibid.* 1287

“defendants caught trafficking in crack are almost always street-level retailers...not the wholesalers.”<sup>110</sup> Because of the simple conversion process, powder cocaine is typically not converted to crack until the end of the drug distribution chain. Congress had to have understood that the ones affected by these crack mandatory minimums would be low, street-level dealers living in impoverished neighborhoods. Yet with poorly funded schools, lack of capital in their neighborhoods, and scant job opportunities, youth in America’s urban cities were forced to look elsewhere for income. This explains why so many individuals turned to prostitution or drug dealing, as these underground aspects of the inner city economy were seemingly the only way to prosperity. As Michelle Alexander explains, “the decline in legitimate employment opportunities among inner-city residents increased incentives to sell drugs—most notably crack cocaine.”<sup>111</sup> Despite the economic wreckage of America’s inner cities, these very individuals who were suffering the most, with almost nowhere to turn, were additionally threatened by the harshest drug legislation the country had ever seen. In effect, these mandatory minimums predominately applied to the poor, young, black males who were dealing in small quantities of crack, typically on their neighborhood street corners to local users. Given that this was the racial profile of a crack dealer provided by sensationalized media reports influencing Congress’ decision, it was clear early on, that these poor, black urbanites were the ones who would bear sentences typically reserved only for those overseeing large-scale, geographically far-reaching (oftentimes international) drug operations. Despite being excluded from many of the opportunities white suburban America had available to them, poor, inner-city blacks were further burdened by drug laws directly targeting the desperate low-level street dealers.

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<sup>110</sup> Ibid. 1288.

<sup>111</sup> Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, (New York, NY: New Press, 2010), 51.

Another troubling aspect of the Congressional hearings held on the 1986 Anti-Drug Abuse Act is the fundamental misunderstanding and lack of evidence regarding the scientific and pharmacological differences between crack and powder cocaine. Throughout the brief sessions Congress held during the drafting of the 1986 ADAA, testimony was heard from members of the Drug Enforcement Agency, police officers from local narcotics divisions, professional basketball players and coaches, and individuals working at drug abuse centers. Largely absent from these testimonies was expert opinion regarding the pharmacological differences between crack and powder cocaine. Information regarding the different effects the two forms of cocaine is crucial in justifying the 100:1 ratio between sentences for crack and powder cocaine defendants. Congress cited crack's addictive qualities and increased health risks as reasons the extreme disparity between them was necessary. The hundreds of news reports invading popular media repeatedly cited crack's "instant addictiveness" as reason to fear the new killer drug. Despite the circulation of this claim, in the mid-1980s, "no scientific studies of the drug had been conducted."<sup>112</sup> Instead, the media quoted, "a handful of 'experts'—mostly law enforcement officials and drug treatment providers."<sup>113</sup> Morgan and Zimmer describe these 'studies' that were oft quoted by the media: "Although clothed in scientific garb, most of these studies were simply case reports of crack and cocaine users enrolled in drug abuse treatment programs."<sup>114</sup> The lack of factual knowledge and research on crack allowed the media to fabricate claims about crack's properties and thus, misinform the public on the true nature of crack. These sensationalized claims about crack thus became accepted as fact and unchallenged by the public,

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<sup>112</sup> John P. Morgan and Lynn Zimmer, "The Social Pharmacology of Smokeable Cocaine: Not All It's Cracked Up to Be," in *Crack in America: Demon Drugs and Social Justice*, ed. Craig Reinerman and Henry G. Levine. (Berkeley: University of California Press, 1997):134.

<sup>113</sup> *Ibid.* 135.

<sup>114</sup> *Ibid.* 135.

and now—Congress. Therefore, Congress failed to thoroughly backup these false claims about crack’s dangers relative to powder cocaine. While ingesting crack can be more addictive, due to its quicker absorption into the bloodstream via the lungs, “cocaine in any form produces the same physiological and subjective effects.”<sup>115</sup> Despite having no scientific evidence to attest to crack’s supposed more addictive nature, Congress still stood by its claim that crack was, indeed—one hundred times more dangerous than powder cocaine.

Once the 1986 Anti-Drug Abuse was put into effect, the racial animus present in the passage of the act was crystalized by the staggering numbers of blacks arrested, sentenced, and incarcerated by the “crack statute.” By 1993, “this sentencing guideline led to 22 times more convictions among African Americans than whites.”<sup>116</sup> Central to the droves of blacks being incarcerated due to the crack statute was the law enforcement tactics implemented by local police divisions in urban neighborhoods. While crack was already heavily associated with minorities living in poor, urban neighborhoods, the perception of crack as a drug of the ghettos was, “strengthened by the way police and prosecutors have enforced the law,” as, “police resources have been overwhelmingly concentrated on poor minority neighborhoods.”<sup>117</sup> The sheer amount of law enforcement attention given to these areas reveals the incongruent probability of being questioned or searched in an inner city area in comparison to a white suburb. In well-to-do suburbs, cocaine and other drug transactions often took place behind closed doors of private residencies between friends at social gatherings or between colleagues in business settings. But

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<sup>115</sup> Dorothy K. Hatsukami and Marian W. Fischerman, "Crack Cocaine and Cocaine Hydrochloride: Are the Differences Myth or Reality?" *Journal of American Medical Association* 276, no. 19 (November 20, 1996): 1581.

<sup>116</sup> *Ibid.* 1581.

<sup>117</sup> Doris Marie Provine, *Unequal under Law: Race in the War on Drugs*, (Chicago: University of Chicago Press, 2007), 3.

in inner-city landscapes, crack dealers often sold their small “baggies” on open-air street corners, as they lacked private spaces in their capital-less neighborhoods. Black drug dealers who lived in decrepit urban neighborhoods did not have the privilege of private spaces where they could complete drug transactions in a protected space. To the advantage of law officers, “since low level street dealers in urban areas are predominately Black, they are easier to arrest.”<sup>118</sup>

Therefore from an officer’s point of view, the highly concentrated urban areas, especially the impoverished ones where ‘low level street dealers’ were likely to be found increased the likelihood of arrests. Thus, the poor socioeconomic conditions of these neighborhoods exposed black crack dealers to an increased risk of police inspection, rounding them up

The high degree of police surveillance in urban neighborhoods was further warranted by the popular belief that street dealers were the cause of the county’s drug problem making them, “clear targets for the interdiction and enforcement proposed to stop drug use.”<sup>119</sup> Law enforcement officials viewed the poor ‘crack heads’ as representative of the country’s increased drug use and carried out the new harsher crack statute in these neighborhoods. To the advantage of law officers, “since low level street dealers in urban areas are predominately Black, they are easier to arrest.”<sup>120</sup> Therefore from an officer’s point of view, the highly concentrated urban areas, especially the impoverished ones where “low level street dealers” were likely to be found, were guaranteed to produce arrests. The racial slant of these policing practices helps explain the

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<sup>118</sup> Clarence Lusane and Dennis Desmond, *Pipe Dream Blues: Racism and the War on Drugs*, (Boston, MA: South End Press, 1991), 45.

<sup>119</sup> Dara O’Rourke, "The War on the Poor: Civil Liberties, Human Rights, and the War on Drugs," *SCAR News*, June 1, 1990.

<sup>120</sup> Clarence Lusane and Dennis Desmond, *Pipe Dream Blues: Racism and the War on Drugs*, (Boston, MA: South End Press, 1991), 45.

beginnings of the racial disparities that escalate through every level of the criminal justice system amounting to a massive gap between whites and their minority counterparts.

. The war on drugs of the mid-1980s revitalized the war on crime's mission to overzealously monitor "high-crime" inner-city neighborhoods and remedy crime and poverty with incarceration, rather than invest in long-term solutions to poverty. Donna Murch explains that, "the state effectively co-opted much of the anger and disorientation caused by the Reagan urban crisis into an anticrime framework that blamed the pathological culture of black and brown youth for the problems of poverty and urban divestment."<sup>121</sup> Similar to the Johnson and Nixon era war on crime ideology, the war on drugs became the latest call for increased police presence in urban neighborhoods. The rhetoric disseminated by politicians and the media that harshly demonized crack users (overwhelmingly portrayed as black), predisposed the public to "throw the book" at any offenders. This rhetoric dehumanized crack users and thus justified the harshest of punishments towards these offenders, as they were seen as subhuman and undeserving of any sympathy. Thus, the punitive ideology surrounding Reagan's war on drugs permitted unjust and prejudiced police practices, as blacks living in the impoverished inner-city neighborhoods were considered 'at fault' for their dire circumstances. By disregarding all other factors in the urban drug crisis, the media's and politicians' presentation of the issue viewed inner-city blacks as the *cause* of the violence and drugs, not simply collateral damage to the larger-scale issue of poverty. Continuing, the country's drug problem became a catch all "scapegoat" for any problem of the time, "they [politicians] could blame an array of problems on the deviant individuals and then expand the nets of social control to imprison those people for causing the

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<sup>121</sup> Donna Murch, "Crack in Los Angeles: Crisis, Militarization, and Black Response to the Late Twentieth-Century War on Drugs," *The Journal of American History* (June 2015): 170.



problems.”<sup>122</sup> The focus and emphasis on the black inner-city youth as the source of the country’s problem, allowed politicians to capitalize greatly from white suburban fears of crack and violence seeping into their own “traditional” communities. This fear was thus harnessed to pass sweeping penal drug penalties and ramp up already despotic

The racial disparities that stemmed from the 1986 ADAA demonstrate that Reagan’s war on drugs was a continuation of previous moral drug panics that used antidrug legislation as means of racial and social control. Regardless of the design and intent of the 1986 ADAA, in execution it operates to persecute the black underclass. By targeting a ‘deviant’ minority population, the 1986 Anti-Drug Abuse Act, similar to the drug panics that preceded it, sought to stiffen black progress towards equality through punitive drug legislation, unjust law enforcement tactics, and the failure to address true sources of socioeconomic decline.

### **Racism in Flux: The Myth of Racial “Equality”**

In February of 1994, young Edward Clary anxiously awaited the decision of Justice Clyde Cahill, as he, empowered by the United States’ Eighth District Court, held the prospects of Clary’s future in his hands. Since being caught with his “unsalable blob” of 67.76 grams of a cocaine base, Clary’s teenage life had been turned upside down by one ill-advised and foolish decision. Eddie Clary could be facing 21-27 months of imprisonment, *with* the possibility of probation had he been caught with the predecessor of his crack mixture—powder cocaine. Instead, Clary was looking at a minimum of 121 months, without the possibility of parole. Like many poor criminal defendants, Clary was unable to elect a lawyer for himself and was given no choice but to rely on the counsel of an over-worked and underpaid public defender appointed by the court. Because of the strict mandatory minimum sentences prescribed for Clary’s crime,

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<sup>122</sup> Ibid. 170.

there was little room for legal argumentation or judicial interpretation. Despite the dismal odds Clary was up against, he filed a motion to challenging the constitutionality of the crack statute on the grounds that it, “violated his equal protection rights guaranteed by the Fifth Amendment.”<sup>123</sup> He asserted that the, “penalty differential of the “100 to 1” ratio of cocaine to cocaine base...has a disproportionate impact on blacks,” and that, “providing longer sentences for possession of cocaine base than for the identical amount of cocaine powder treats similarly situated defendant in a dissimilar manner.”<sup>124</sup> Clary’s motion, while not unprecedented, was a bold attempt at challenging a statute that, despite its controversy, was repeatedly upheld in federal court. While Clary pleaded guilty to possession with intent to distribute cocaine base, he filed a motion challenging the constitutionality of the crack statute and contended, “The sentence enhancement provisions contained in it and United States Sentencing Guidelines violated his equal protection rights guaranteed by the Fifth Amendment.”<sup>125</sup> Thus, Clary asserted that the “100 to 1” ratio differential of cocaine to cocaine base has a disproportionate impact on blacks, “providing longer sentences for possession of cocaine base than for the identical amount of cocaine.”<sup>126</sup> Among other things, the stringent mandatory minimum sentences of the Anti Drug Abuse Act of 1986 prevented justices from fashioning specific sentences for defendants, prohibiting them from considering the “totality of circumstances.” Justice Cahill therefore had the choice of applying the fixed mandatory sentence Washington commends, or departing from the federal guidelines to reevaluate the Constitution’s true definition of equality before the law. Judge Clyde Cahill then

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<sup>123</sup> U.S. v Clary, 846 F. Supp. 768; 1994 U.S. Dist. Lexis 2447.

<sup>124</sup> Ibid.

<sup>125</sup> Ibid..

<sup>126</sup> Ibid.

took it upon himself to evaluate past arguments put forth in front of the court and then put forth his own comprehensively analysis of the crack statute.

While Justice Cahill acknowledged that his decision would likely be overturned, he granted Clary a downward departure from his sentence and sentenced him to a mere four years of prison followed by three years of supervised release. Accompanying Cahill's lessened sentence for Clary was a lengthy opinion in which Cahill sought to outline the, "dual system of criminal punishment based on racial discrimination," that, "can be traced back to the time of slavery."<sup>127</sup> Cahill's exhaustive opinion delineated the lasting effect that slavery and Jim Crow had over the American psyche. Cahill described the persistence of "unconscious racism" in American society and most especially, within the criminal justice system. Cahill stated that Congress "failed to follow its own customary procedural standards," with it's hasty passing of the 1986 Anti-Drug Abuse Act and allowed the panicked white suburban population to cloud their rational judgment.<sup>128</sup> As a result, thousands of young black men had already been sentenced to lengthy prison terms thanks to the stipulations of the crack statute. Cahill argued that, "had the same type of law been applied to powder cocaine, it would have sentenced droves of young whites to prison for extended terms. Before the enactment of such a law it would have been much more carefully and deliberately considered."<sup>129</sup> Yet judges called upon to examine this statute continued to plead ignorance and maintain that the law was fair and equal despite the mass of evidence proving otherwise.

Justice Cahill understood that by hailing from the economic warzone of East St. Louis, Illinois, defendant Edward Clary stood little chance of achieving prosperity in the ruins of urban

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<sup>127</sup> *Ibid.*

<sup>128</sup> *U.S. v Clary*, 846 F. Supp. 768; 1994 U.S. Dist. Lexis 2447.

<sup>129</sup> *Ibid.*

decay. Like much of the industrial Midwest, East St. Louis' economy had become virtually nonexistent. The socially and economically marginalized black community undoubtedly bore the brunt of economic change. Furthermore, between 1989 and 1992, the Eastern District of Missouri, Clary's jurisdiction, 55 of 57 crack violations belonged to black defendants.<sup>130</sup> Justice Cahill was keenly aware of these skewed statistics that crack statute produced, a part of America's larger legacy of racial bias in the criminal justice system. Cahill argued that it was, "foreseeable that the harsh penalties imposed upon blacks would be clearly disproportional to the far more lenient sentences given to whites for use of the same drug."<sup>131</sup> Yet the criminal justice system continued to deny any racially disparate impact as the law's fault. Instead, young and poor blacks were tossed aside and forgotten once in the prison system.

Despite the meticulous and comprehensive opinion of Justice Clyde Cahill that closely examined the criminal justice system's legacy of racism, the pervasive presence of unconscious racism, the events surrounding the passage of the 1986 Anti-Drug Abuse Act, and the constitutionality of the 'crack statute,' the appellate court (as Cahill expected) rejected Cahill's recommendation for a reduced sentence. According to the appellate court, the prescribed sentence for crack offenders was indeed, constitutional and did not violate Edward Clary's equal protection rights guaranteed by the Fifth Amendment. The appellate court's reversal of Cahill's decision required that eighteen-year-old Eddie Clary spend 151 months, twelve and a half years, in federal prison, with no possibility of parole. By refusing to re-examine the flawed and unjustified crack statute, even in the face of the mass incarceration of black males, the criminal justice system continued to deny the possibility of racist intent in the 1986 Anti-Drug Abuse Act.

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<sup>130</sup> Ibid.

<sup>131</sup> Ibid.

As Cahill explained, the law needn't be explicit in its references to race, as, "Our historical experience has made racism an integral part of our culture even though society has more recently embraced an ideal that rejects racism as immoral."<sup>132</sup> Despite modern society's shallow belief that they are incapable of being immorally racist, the country's legacy of racism persisted, as it took on different, more covert forms. The racial animus present in the 1986 Anti-Drug Abuse Act's origination and outcome demonstrated the perpetuation of an unequal America, determined to uphold a system based on the legal oppression of minorities, as a form of social and racial control.

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<sup>132</sup> *Ibid.*

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