On October 2, 1982, then President Ronald Reagan stated in a radio address to the nation that “The mood toward drugs is changing in this country, and the momentum is with us. We're making no excuses for drugs—hard, soft, or otherwise. Drugs are bad and we're going after them.”1 Seven years later, President George H. W. Bush reiterated this, stating in his inaugural address that “There are few clear areas in which we as a society must rise up united and express our intolerance. The most obvious now is drugs. And when that first cocaine was smuggled in on a ship, it may as well have been a deadly bacteria, so much has it hurt the body, the soul of our country. And there is much to be done and to be said, but take my word for it: This scourge will stop.”2

Law enforcement agencies throughout the country responded enthusiastically to these presidents’ calls to fight a war on drugs. They developed drug courier profiles designed to identify individuals likely to be transporting drugs and they used these profiles to stop, question, and search millions of Americans traveling by bus, train, plane, or car. They trained dogs to sniff out illegal drugs and they developed paramilitary SWAT teams that executed “no-knock” search warrants at residences where drug dealing was suspected. They set up drug task forces that combined the crime-fighting arsenals of federal, state, and local law enforcement agencies, and police departments set up teams of undercover officers to target street-level drug markets in socially disadvantaged neighborhoods and make tens of thousands of arrests for drug possession and sale.

The results of these policies were predictable. Arrests for drug possession and drug sale/manufacture skyrocketed. In the nine years from 1980 to 1989, the arrest rate for possession of drugs increased by 89%, from

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199 to 375 per 100,000 population. The arrest rate for drug sale/manufacture increased even more dramatically, from 57 to 177 per 100,000 population, an increase of 210% (Snyder, 2011). Although arrests for drug sale/manufacture remained relatively constant over the next two decades, arrests for simple possession continued to increase. In 2011, the number of persons arrested for drug offenses was 1.53 million; 1.25 million of these arrests were for drug possession or use (FBI, 2013).

In this chapter, we focus on the role of the police in the war on drugs. We begin by documenting in more detail the dramatic increases in arrests for drug offenses and we show that the burden of arrest has not fallen equally on whites and African Americans. We also discuss and critique explanations for the increase in arrests. We argue that skyrocketing arrest rates were not due to increases in drug use or drug selling, but rather to policies and practices that made it easier to arrest drug users and sellers and that provided incentives for law enforcement agencies to wage the war on drugs. We end the chapter with a discussion of explanations for the racial disparities in arrests for drug offenses.

Police and the War on Drugs: A Focus on Arresting Drug Users and Sellers

In August 1985, Terrance Bostick was traveling on a Greyhound bus from Miami to Atlanta (Florida v. Bostick, 1991). When the bus stopped in Fort Lauderdale, it was boarded by two officers from the Broward County Sheriff’s Department. The officers were participating in a drug interdiction effort—a so-called “bus sweep”—in which they boarded buses at scheduled stops, asked passengers for identification, and requested that passengers consent to a search of their luggage. The officers, who admitted that they had no reason to suspect him, approached Bostick, asked him to identify himself, and then asked to inspect his identification and bus ticket. After returning his identification and ticket, which matched the information Bostick had verbally provided, the deputies explained that they were narcotics officers looking for illegal drugs and asked for permission to search his luggage. The officers claimed that they told Bostick he had the right to refuse and that Bostick consented to the search. Bostick contended that they did not tell him he could refuse and that he did not give them permission to search his luggage. The search of Bostick’s luggage yielded 400 grams of cocaine and he was arrested and charged with drug trafficking.

Terrance Bostick’s arrest on drug trafficking charges would be unremarkable, except for the fact that he challenged his conviction and that his case was heard by the United States Supreme Court in 1991 (the results of his appeal are discussed below). Had that not occurred, Bostick would simply be one of the hundreds of thousands of persons arrested and charged with drug offenses in 1985.

The role played by law enforcement agencies in the war on drugs is simple and straightforward. They arrest more than one million men and women each year, with the vast majority arrested for drug use and possession rather than drug trafficking. As shown in Figure 6.1, arrest rates (which measure the number of arrests for every 100,000 persons in the population) for drug offenses increased consistently and dramatically from 1980 through 1989. The arrest rate for drug possession went from 199 to 375 and the rate for drug trafficking went from 57 to 177. Stated another way, in nine years the arrest rate increased by 89% for drug possession and by 210% for drug trafficking. For both types of offenses, arrest rates declined somewhat from 1989 to 1991, and the arrest rate for drug sale/manufacture was relatively stable from 1991 through 2009. By contrast, the arrest rate for simple possession continued to increase; it went from 257 in 1991 to 520 in 2006, before falling somewhat from 2007 through 2009. At its peak in 2006, the arrest rate for drug use and possession was 162% higher than it had been in 1980.
Moreover, the arrest rate trends for drug offenses stand in stark contrast to trends for violent crimes. From 1980 to 2009, the arrest rate for murder and forcible rape declined by more than 50% and the arrest rate for robbery declined by more than one third (Snyder, 2011).

It is important to point out that the FBI’s Uniform Crime Reporting Program, which is the source of the data presented in Figure 6.1, defines drug abuse violations as “violations of laws that prohibit the production, importation, distribution, possession, or use of certain controlled substances (e.g., marijuana, opium, and cocaine and their derivates, and synthetic narcotics)” (Snyder, 2012, p. 12). The data, in other words, include arrests for soft drugs like marijuana as well as hard drugs, such as cocaine, methamphetamine, and heroin. In 2011, 961,218 persons were arrested for drug possession or use and 213,864 were arrested for drug sale or manufacture; 82% of all persons arrested for drug offenses, in other words, were arrested for drug possession or use (FBI, 2011). Moreover, as shown in Figure 6.2, approximately half (52.1%) of all persons arrested for drug offenses were arrested for offenses involving the sale/manufacture (6.2%) or possession/use (43.3%) of marijuana. The other 50% were arrested for drug offenses involving heroin or cocaine (6.3% for sale/manufacture and 16.7% for possession/use) or other dangerous or synthetic drugs (5.8% for sale/manufacture and 21.8% for possession/use). As these data illustrate, most of those arrested for drug offenses were arrested for possessing or using drugs and most of those arrested for possessing or using drugs were arrested for offenses involving marijuana.

The FBI data on persons arrested are broken down by the sex, age, and race of the arrestee. In 2011, males made up 80% of all persons arrested for drug use or possession and 82% of those arrested for manufacturing or selling drugs. The median age of those arrested for using or possessing drugs was 26 and the median age of those arrested for manufacturing or selling drugs was 28; 11% of those arrested for use/possession and 8% of those arrested for sale/manufacture were juveniles. Whites made up 60% of persons arrested for using or possessing drugs and 68% of those arrested for manufacturing or selling drugs; blacks made up 39% of arrests for drug use/possession, and 30% of arrests for drug sale/manufacture. The typical person arrested for a drug abuse violation in 2011, in other words, was a white male in his mid-twenties (FBI, 2013).

Racial Disparities in Drug Arrests

Although it is true, as noted above, that the “typical offender” arrested for a drug abuse violation is white, whites are not more likely than blacks to be arrested. In fact, as shown in Figures 6.3 and 6.4, the arrest rate for blacks is—and has been since 1980—substantially higher than the rate for whites, both for drug possession/use and drug manufacture/sale. The data presented in Figures 6.3 and 6.4 reveal that for both whites and blacks the arrest rates for using or possessing drugs are several times higher than the rate for manufacturing or selling drugs; over time, they are two to three times higher for blacks and are four to five times higher for whites.
The data also reveal that arrest rates for both types of offenses increased dramatically from 1980 to 1989, and that the increases were especially notable for blacks. As the war on drugs and the moral panic over crack cocaine intensified, the arrest rate for whites went from 182 to 285 (an increase of 57%) for drug possession and from 44 to 99 (an increase of 125%) for drug trafficking. For blacks, the rates increased from 341 to 1,087 (an increase of 218%) for drug possession and from 164 to 759 (an increase of 363%) for drug trafficking. After 1989, the white and black arrest rates for drug possession declined for two years and then began to increase again, reaching a peak of 428 for whites and 1,266 for blacks in 2006; in other words, from 1980 to 2006, the drug possession arrest rate increased by 135% for whites and by 271% for blacks. By contrast, the arrest rates for drug trafficking fell precipitously for blacks and gradually for whites. For blacks, the rate declined from 759 in 1989 to 312 in 2009 (a decrease of 59%) and for whites the rate declined from 99 to 72 (a decrease of 27%).

The data presented in Figures 6.3 and 6.4 also demonstrate that the racial disparity in the arrest rates for both types of offenses increased over time. Turning first to drug possession/use, in 1980 the rate for blacks was about twice the rate for whites. By 1989, the rate for blacks was nearly four times the rate for whites; for the next two decades, the black arrest rate for possessing drugs was three to four times the rate for whites. The black/white disparity was even more pronounced for drug trafficking. Blacks were about four times more likely than whites to be arrested for manufacturing or selling drugs in 1980; by 1989, blacks were seven and a half times more likely than whites to be arrested for these crimes. From 1990 to 2003,
blacks were between six and seven times more likely than whites to be arrested for drug manufacture/sales; the disparity declined to about five-to-one from 2004 through 2008, and to four-to-one in 2009.

To summarize, over time, both blacks and whites faced much higher odds of arrest for drug possession or use than for drug manufacture or sale. Arrest rates for both types of offenses and for both whites and blacks increased dramatically from 1980 to 1989. Over the next two decades, arrest rates for drug possession continued to increase, but rates for drug trafficking declined. Finally, since 1980 blacks have faced substantially higher odds of arrest than whites for both drug possession and drug trafficking.

Explaining Increases in Arrest Rates for Drug Offenses

What explains the fact that arrests for drug offenses—especially arrests for possessing or using drugs—skyrocketed from 1980 to 1989, and again from 1991 to 2006? Two explanations seem plausible, at least on the surface. First, the increases could reflect similarly dramatic increases in the number of persons using or selling drugs. According to this explanation, increases in arrest rates reflect, not changes in the likelihood that those who use or sell drugs would be arrested, but rather the fact that there were more drug users and sellers who faced the possibility of arrest. For example, if the percentage of persons using or selling drugs who were arrested was a constant 20% from 1980 to 2006, increases in the arrest rate during this time period would, by definition, be due to increases in the number of persons using or selling drugs. Second, the increases might reflect policies and practices that provided incentives for law
enforcement agencies to fight the war on drugs by arresting those who used or sold drugs or made arrests of drug users and sellers easier. Law enforcement agencies, in other words, may have been encouraged to focus their efforts on arresting drug offenders by a belief that doing so reduced crime and increased public safety, by court rulings that diluted prohibitions against unreasonable searches and seizures therefore making it easier to arrest and prosecute drug offenders, and/or by federal policies that provided monetary or other types of incentives (i.e., military equipment) to fight the drug war.

In the following sections, we assess the validity of these competing explanations. We focus first on explaining the overall trends in arrest rates for drug offenses. This is followed by a section that looks specifically at the racial disparity in arrest rates.

**Did Arrests Increase Because Drug Use Increased?**

Assessing the validity of the explanation that increasing arrest rates reflect increasingly large numbers of offenders is complicated by the fact that although we have good self-report data on the number of persons who use drugs, we lack reliable data on the number of persons who manufacture or sell drugs (this is discussed in more detail in Chapter 3). The FBI’s Uniform Crime Reporting Program collects data on offenses that come to the attention of law enforcement for Part I violent and property crimes (i.e., murder and non-negligent manslaughter, rape, robbery, assault, burglary, larceny-theft, motor vehicle theft, and arson); these are the crimes that are “known to the police” that figure into national data on the crime rate for the United States. Because drug offenses typically do not “come to the attention of law enforcement” unless they result in an arrest, there are no similar data for “drug offenses known to the police.” Thus, it is not possible to compare drug offenses known to the police (which is itself an imperfect measure of the amount of any particular type of crime, as it excludes offenses that are not reported or that otherwise do not come to the attention of the police) with arrests for drug offenses to determine if increases in arrests reflect increases in crime.

We do have reliable and representative self-report data on drug use. For example, Monitoring the Future, which is a research project carried out by the University of Michigan Institute for Social Research, conducts an annual in-school survey of nationally representative high school students; it also collects data on representative samples from each graduating class at ages 19 to 28. Respondents are asked about their use of various types of drugs over the course of their lifetime, within the past year, and within the past 30 days (Johnston, O’Malley, Bachman & Schulenberg, 2012a; Johnston, O’Malley, Bachman & Schulenberg, 2012b). As shown in Figure 6.5, which presents data for high school seniors and for young adults aged 19 to 28—the ages of respondents who said that they used any illicit drug in the past 30 days has declined over time. In fact, during the time period—1980 to 1989—when the arrest rate increased by 89% for drug possession and by 210% for drug trafficking, the percentage of high school seniors who reported that they used any illicit drug declined from 36.9% to 19.7%, a decrease of 47%. There was a similar pattern for persons aged 19 to 28; their use of illicit drugs declined from 23.4% to 15.9%, a decrease of 36%. According to this data source, illicit drug use during this period of rapidly increasing arrest rates was declining, not increasing.

Further evidence that increases in arrests for drug offenses cannot be explained by increases in use of drugs comes from a recent study of the probability of arrest for possession of marijuana (Nguyen & Reuter, 2012; see also Reuter, Hirschfield & Davies, 2001). The authors of this study examined “whether marijuana use has become more risky, in terms of the probability of arrest conditional on use” (p. 881). They calculated the probability of being arrested for possession of marijuana, taking into account use of marijuana during the previous year, researching the years from 1982 to 2008.
Consistent with the data for possession of any illicit drug (see Figure 6.1), Nguyen and Reuter found that arrest rates for possession of marijuana increased dramatically from 1990 to 1999, declined from 1999 to 2002, and stabilized from 2002 through 2008. They also found that marijuana use rates (that is, self-reported use of marijuana during the past year) were relatively stable from 1989 through 1999, increased from 1999 to 2002, and declined slightly from 2002 to 2008. Considering both of these trends over time, the authors reported that the probability of being arrested for possession of marijuana among past-year users of marijuana increased from 1991 to 2000, declined from 2000 to 2002, and was relatively stable for the remainder of the time period. The probability of arrest ranged from .007 in 1991 to .019 in 2000 (p. 887 and Figure 2). Among 15- to 19-year-old males, who had the highest probabilities of arrest of any age group, the probability of arrest given use increased from 2.5% in 1991 to 8.0% in 2000 and to 11.5% in 2008 (p. 888 and Figure 3). By contrast, the probability of arrest for 15- to 19-year-old females was remarkably low; it was .42% in 1991, 1.3% in 2000, and 1.4% in 2008 (p. 888 and Appendix B, Table A.1).

Considered together, the longitudinal data on use of any illicit drug and the findings of the study by Nguyen and Reuter (2012) suggest that the dramatic increases in arrest rates for drug use/possession cannot be attributed to increases in use of illicit drugs, including marijuana. Rather, the data suggest that the probability of being arrested for a drug offense increased over time. In the next section, we explore possible explanations for this change in the likelihood of arrest.
Did Arrests Increase as a Result of Changes in Policies and Practices?

The Effect of Changes in Policing Strategies

If increases in arrests for drug offenses cannot be explained away by increases in use of illicit drugs, then what does account for the increasing arrest rates for these offenses? One possibility is that law enforcement agencies began to target minor offenses, such as using or selling marijuana in public, in an effort to reduce more serious types of crime. This more proactive style of policing, which is often referred to as “order maintenance policing” or “quality of life policing,” was inspired by Wilson and Kelling’s (1982) broken windows theory. According to this perspective, law enforcement agencies can reduce crime by focusing on disorder (i.e., broken windows) and petty offenses (e.g., disorderly conduct, aggressive panhandling, and public use of marijuana). Arguing that “serious street crime flourishes in areas where disorderly behavior goes unchecked,” Wilson and Kelling (1982) suggested the police must “recognize the importance of maintaining, intact, communities without broken windows” (p. 38).

In response to Wilson and Kelling’s call for rethinking the standard model of policing, with its focus on preventive patrol and rapid response to calls for service (Weisburd & Eck, 2004), police departments in cities throughout the United States adopted more proactive approaches—community policing, problem-oriented policing, and hot spots policing—that targeted specific types of crime, certain categories of offenders, or areas of the city where crime was concentrated. Other jurisdictions—most notably New York City—adopted order maintenance policing (OMP) strategies that focused on arresting individuals for so-called quality of life offenses, such as vagrancy, loitering, prostitution, littering, graffiti, panhandling, public drunkenness, and minor drug use (Rosenfeld, Fornango, & Rengifo, 2007). A key component of OMP was its emphasis on arresting individuals who were possessing, selling, or smoking small amounts of marijuana. At the same time, many cities expanded police powers, allowing police to “stop, question, and frisk” people they considered suspicious. The result was predictable: the arrest rate for possession of marijuana skyrocketed. For example, in the decade following the advent of OMP in New York City, the arrest rate for marijuana possession increased by almost 500% (Geller & Fagan, 2010). As we discuss later in this chapter, police also developed proactive strategies targeting drug dealing. Beginning in the early 1980s, there was a proliferation of open-air drug markets in poor neighborhoods in a number of cities, along with growing community concerns that the police were allowing these markets to operate freely. At the same time, police departments were reexamining their traditional anti-drug enforcement policies that focused on penetrating drug dealing organizations with informers or undercover agents and trying to arrest the leaders of these organizations. With growing outrage over blatant open-air drug dealing, many urban police departments shifted tactics to undercover “buy-and-bust” operations, and sweeps of street drug markets. The result was thousands of arrests for heroin and cocaine possession and for the sale of small amounts of these drugs (for a detailed discussion, see Kleiman, 1992; Zimmer, 1987).

Some scholars contend that dramatic increases in arrests for drug possession also reflect the fact that recent Supreme Court decisions make “the roundup of millions of Americans for nonviolent drug offenses relatively easy” (Alexander, 2010, p. 60). In fact, Alexander claims that “the Supreme Court has seized every opportunity to facilitate the drug war, primarily by eviscerating Fourth Amendment protections against unreasonable searches and seizures by the police” (p. 60). As we demonstrate below, this claim is not without merit. Over the past few decades, the Court has diluted prohibitions against unreasonable search and seizure and, in the process, made it easier to arrest and prosecute drug users and sellers.
“Stop and Frisk” Procedures. Police behavior in stopping, questioning, and searching individuals is governed by the Fourth Amendment to the U.S. Constitution, which states,

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Fourth Amendment thus prohibits “unreasonable searches and seizures” and states that a warrant to search someone’s “person, house, papers, or effects” will not be issued unless there is probable cause to believe that the person is engaged in criminal activity. As with the other amendments to the constitution, interpreting the Fourth Amendment and determining what constitutes an unreasonable search and seizure has been left to the U.S. Supreme Court.

Prior to 1968, it was generally accepted that the police could not stop, question, and search someone without a warrant unless they had probable cause to believe that the individual was engaged in criminal activity. This changed with the landmark decision of *Terry v. Ohio* (1968), which involved a warrantless search that resulted in the confiscation of two weapons and charges against Terry and another man for carrying concealed weapons. The Supreme Court ruled that a “stop and frisk” does not violate the constitutional prohibition against unreasonable searches and seizures if the police officer (1) has a reasonable belief that an individual has committed or is about to commit a crime, and (2) believes that his safety or the safety of others is endangered by a person believed to be armed and dangerous. The Court stated that a police officer may search the person for weapons, regardless of whether he has probable cause to arrest the individual or knows with certainty that the individual is armed. Justice Douglas was the lone dissenter in the case. Noting that “there have been powerful hydraulic pressures throughout our history that bear heavily on the Court to water down constitutional guarantees and give the police the upper hand,” Douglas stated that “if the individual is no longer to be sovereign, if the police can pick him up whenever they do not like the cut of his jib, if they can ‘seize’ and ‘search’ him in their discretion, we enter a new regime” (*Terry v. Ohio* p. 38).

Justice Douglas’ assertion regarding the “new regime” proved to be prophetic, as the case of *Florida v. Bostick* (1991) demonstrated. In this case, the facts of which were discussed above, Terrence Bostick appealed his conviction for trafficking in cocaine,
arguing that the “bus sweep” that resulted in the search of his bag and the subsequent discovery of a pound of cocaine violated his Fourth Amendment rights. The Florida Supreme Court sided with Bostick and ruled consistent with the Terry decision that the Fourth Amendment prohibits the police from seizing individuals and searching them without reasonable suspicion that they have committed or are committing a crime. The Florida court also stated that a reasonable person would not have felt free to leave the bus to avoid the possibility of a search and ruled that the sheriff’s bus sweeps were therefore unconstitutional.

The U.S. Supreme Court reversed the Florida court’s decision, stating that the Florida Supreme Court erred when it ruled that the bus sweeps were inherently coercive. According to the Court, the appropriate test was whether a reasonable person in Bostick’s situation would have felt free to decline the sheriff’s request to search his bag and to terminate the encounter. If so, there was no “seizure” within the meaning of the Fourth Amendment and the subsequent search was consensual. In this situation, in other words, law enforcement officials do not need reasonable suspicion that the individual was involved in criminal activity because the individual has voluntarily agreed to cooperate. Justice O’Connor, who wrote the majority opinion, responded to the dissenting justices’ assertion that the Court is not “empowered to suspend constitutional guarantees so that the Government may more effectively wage a ‘war on drugs’” by noting that those who fight the war on drugs must respect the rights of individuals and that the Court is not “empowered to forbid law enforcement practices simply because it considers them distasteful.” (See Box 6.1 for discussion of another type of “distasteful” law enforcement practice.) In his dissenting opinion, Justice Marshall charged that “the basis of the decision to single out particular passengers during a suspicionless sweep is less likely to be inarticulable than unspeakable.” Marshall’s concern, in other words, was that racial minorities were likely to be targeted by the police during these encounters.

Subsequent court decisions suggest that Marshall’s concern was not unfounded. Consider, for example, the case of Johnny Soto Dean, who was sitting in a parked car in front of an apartment complex in Phoenix, Arizona, in March 1974 (State v. Dean, 1975). His presence there aroused the suspicions of two Phoenix police officers who were patrolling the area in an unmarked car. The officers stated that Dean and his passenger appeared to be very nervous and that Dean was moving his head rapidly from side to side as though he was attempting to watch all directions at the same time. One of the officers also stated that “the subject just looked completely out of place. . . . He just didn’t look, I mean—he was a Mexican male in a predominantly white neighborhood.” The officers stopped Dean, observed pliers and a screwdriver on the floor of the car, and asked for permission to search the vehicle. Dean was arrested and charged with burglary when the officers discovered a color television, which had been reported stolen in a burglary that afternoon, in the vehicle’s trunk.

BOX 6.1 Stop and Frisk Tactics Under Fire in New York City

Aggressive stop and frisk tactics have been carried out in New York City, where police officers stopped scores of people at public housing projects and arrested them for trespassing if they could not prove that they were residents or guests. In July 2012, the Bronx district attorney’s office announced that it would no longer prosecute these cases, unless the arresting officer was interviewed and a decision made that the arrest was warranted. After the policy was adopted, arrests for second and third-degree trespassing in the Bronx fell by 25% (Goldstein, 2012).

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Johnny Dean argued that the stop, and therefore the search, was invalid because it was made solely because he was a Mexican who appeared “out of place” in a middle class white neighborhood. The Arizona Supreme Court disagreed. The court argued that although Dean’s ethnicity was a factor in the officer’s decision to stop and question him, it was not the only factor. According to the court,

That a person is observed in a neighborhood not frequented by persons of his ethnic background is quite often a basis for an officer’s initial suspicion. To attempt by judicial fiat to say he may not do this ignores the practical aspects of good law enforcement. While detention and investigation based on ethnic background alone would be arbitrary and capricious and therefore impermissible, the fact that a person is obviously out of place in a particular neighborhood is one of several factors that may be considered by an officer and the court in determining whether an investigation and detention is reasonable and therefore lawful (State v. Dean, 1975).
Other courts that have considered this issue have generally ruled that the police may use a suspect’s race/ethnicity in deciding whether to stop, question, or detain him, as long as doing so is reasonably related to legitimate law enforcement aims and is not the only factor that prompted the stop (see, for example, State v. Weaver, 1992, and United States v. Martinez-Fuerte, 1976). Critics of these decisions contend that permitting police to use race or ethnicity as an indicator of an increased likelihood of criminality deviates “from the idea that individuals should be judged on the basis of their own, particular conduct and not on the basis—not even partly on the basis—of racial generalizations” (Kennedy, 1997, p. 157). Noting that many of these stops involve individuals suspected of drug offenses, Kennedy (1997, p. 159) also charges that “a young black man selected for questioning by police as he alights from an airplane or drives a car is being made to pay a type of racial tax for the war against drugs that whites and other groups escape.”

Critics of Terry, Bostick, and other decisions regarding “stop and frisk” practices argue that the decisions give the police carte blanche to stop individuals and search them for drugs. As one critic noted, “All a police officer has to do in order to conduct a baseless drug investigation is to ask to speak with someone and then get their ‘consent’ to be searched” (Alexander, 2010, p. 65). Other critics argue that it is unreasonable to assume that “reasonable people” will feel free to walk away from the police and refuse to answer their questions (Maclin, 1991). According to Alexander (2010, p. 65), “consent searches are valuable tools for the police only because hardly anyone dares to say no.” Critics also suggest, as Justice Marshall did in the Bostick case, that the decisions will not be made in a racially neutral manner. According to Alexander (2010, p. 106), “police officers’ snap judgments regarding who seems like a drug criminal would likely be influenced by prevailing racial stereotypes and bias.”

Those on the other side of the argument, including the police chiefs of many large cities, contend that aggressive policing, including the stop and frisk strategy, is an effective way to control crime. They argue that it enables the police to take guns off the streets and, as a result, has helped to lower violent crime rates. They also dispute allegations that the policy is racially biased. For example, Heidi Grossman, who was the lead attorney defending New York City during the trial over constitutional violations in the New York Police department’s (NYPD) use of stop and frisk, told National Public Radio that “Our defense is that we go to where the crime is.” Grossman also stated that the policy protects innocent citizens. Noting that the majority of crime victims in New York City are black and Latino, she said that “they are begging for help, and they want to be able to walk to and from work in a safe way. And so it is incumbent upon us to have our officers go out there and do their job, and keep the city safe.” (Read more of the interview with Grossman at www.npr.org/templates/story/story.php?storyId=186023458)

**BOX 6.2 How Far Can the Police Go to Recover Orally Ingested Drugs?**

In July 1949, three Los Angeles County Sheriff’s deputies, who were armed with a search warrant, entered the home of Richard Rochin. When they went into his bedroom, the deputies noticed two capsules on the nightstand. Rochin swallowed the capsules. One of the deputies attempted to recover the capsules by putting his fingers in Rochin’s mouth. When that did not work, they took

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Rochin to a hospital emergency room, where his stomach was pumped, causing him to vomit the capsules, which proved to be morphine, into a bucket.

Rochin challenged his conviction for possession of illegal drugs, arguing that the forced stomach pumping violated his right to due process of law under the Fourteenth Amendment. The U.S. Supreme Court agreed, ruling that “the proceedings by which this conviction was obtained do more than offend some fastidious squeamishness or private sentimentalism about combating crime too energetically. This is conduct that shocks the conscience” (Rochin v. California, 1952, emphasis added). The Court further stated that, “[i]llegally breaking into the privacy of the petitioner, the struggle to open his mouth and remove what was there, the forcible extraction of his stomach’s contents—this course of proceeding by agents of government . . . are methods too close to the rack and the screw to permit constitutional differentiation.”

In later cases, state and federal courts have been tasked with deciding whether use of force to recover ingested drugs violates the Fourth Amendment’s prohibition of unreasonable searches and seizures (Thompson & Dowling, 2001). These courts have ruled that officers are allowed to grab the suspect by the throat to prevent the suspect from swallowing the drugs (see, for example, United States v. Harrison, 1970, and Buck v. Commonwealth, 1995). They also may strike a suspect in the solar plexus or somewhere else on the body (State v. Victor, 1991), use the Heimlich maneuver (United States v. Jones, 1993), or use pepper spray (United States v. Holloway, 1995) in an attempt to get the suspect to expel the drugs in his/her mouth. On the other hand, officers are not generally allowed to use a choke hold on the suspect (People v. Martinez, 1954) or to use the threat of deadly force (State v. Hodson, 1995).

The rule of law applied in these cases is whether the amount of force used to retrieve the drugs was reasonable under the totality of the circumstances. According to the Supreme Court, the Fourth Amendment does not prohibit all intrusions into the body to recover ingested drugs, only those “which are not justified in the circumstances, or are made in an improper manner” (Schmerber v. California, 1966).

Pretext Traffic Stops. Another valuable tool for the police in fighting the war on drugs is the pretext traffic stop—that is, a traffic stop motivated not by a violation of traffic laws, but by a law enforcement official’s belief (or hunch) that the driver of the car might be involved in illegal drug activity. The officer uses a minor traffic violation, such as failing to signal a turn, following too closely, or failing to stop the appropriate distance behind a stop sign, as an excuse to stop the driver and search the car for drugs. Because the officer has probable cause to believe that a traffic violation has occurred, in other words, it is reasonable to stop the vehicle, even if the “real” purpose of the stop is something other than the traffic violation.
Consider the case of Michael Whren and James Brown, who were stopped in 1993 by plain-clothes vice officers from the District of Columbia Metropolitan Police Department in an area where drugs were known to be sold (Whren v. United States, 1996). The officers said that they stopped the car because Brown made a right-hand turn without signaling. When one of the officers approached the vehicle, he saw that Whren was holding two plastic bags of what appeared to be crack cocaine. Brown and Whren were arrested and charged with several violations of federal drug laws. During a pretrial suppression hearing on the admissibility of the evidence, the two men challenged the constitutionality of the stop and the resulting seizure of the drugs. They argued that the officers did not have probable cause, or even reasonable suspicion, to believe that they were engaged in illegal drug activity and that the reason for the stop was pretextual. Their motion to prohibit use of the seized drugs as evidence was denied and they were convicted of the drug trafficking charges.

Whren and Brown appealed their convictions, arguing as they had at the suppression hearing that the drugs were seized illegally and therefore should not have been admitted as evidence in the case. They further argued that because it is almost impossible for anyone to drive for any length of time without violating some provision of the traffic code, the police almost always have a reason to stop a vehicle as a means of investigating other possible law violations, for which they have neither probable cause nor reasonable suspicion. The Supreme Court, in a unanimous decision authored by Justice Scalia, affirmed their convictions, ruling that an officer's motivations for stopping a vehicle are irrelevant to whether the stop was reasonable under the Fourth Amendment. They rejected the argument that the appropriate test was not whether the officer had probable cause to make the stop, but rather “whether a police officer, acting reasonably, would have made the stop for the reason given.” According to the Court, “the Fourth Amendment’s concern with reasonableness allows certain actions to be taken in certain circumstances, whatever the subjective intent.” In this case, then, the Court ruled that “the police are free to use minor traffic violations as a pretext to conduct drug investigations, even when there is no evidence of illegal drug activity” (Alexander, 2010, p. 67).

Subsequent decisions by the Supreme Court have further solidified the constitutionality of pretext traffic stops. For example, in Ohio v. Robinette (1996) the Court overturned an Ohio Supreme Court ruling that the police must tell a motorist that she or he is free to leave before asking for consent to search the vehicle. The Court stated that “it would be unrealistic to always require the police to inform detainees that they are free to go before a consent to search may be deemed voluntary.” The Court also has ruled that the police may bring in a drug-sniffing dog if a motorist refuses to give consent to search the vehicle (Illinois v. Caballes, 2005). In this case, the Illinois Supreme Court reversed the conviction of a driver who was stopped for speeding and then arrested for a narcotics violation when a drug-sniffing dog brought to the scene “alerted” the officer to the presence of drugs in the car. The Illinois justices reasoned that because the officer who made the stop had no reason to suspect illegal drug activity, use of the drug-sniffing dog turned a routine traffic stop into a drug investigation. The U.S. Supreme Court reversed the decision, ruling that “a dog sniff conducted during a concededly lawful traffic stop that reveals no information other than the location of a substance that no individual has any right to possess does not violate the Fourth Amendment.” (The issue of using drug-sniffing dogs to detect drugs inside residences is discussed in Box 6.3.)
In October 2012 the Supreme Court heard oral arguments in a Fourth Amendment case, Florida v. Jardines (2013), involving the constitutionality of using drug-sniffing dogs to detect drugs in residences. The case arose from the 2006 arrest of Joelis Jardines after Franky, a drug-sniffing dog, alerted agents from the Drug Enforcement Administration (DEA) to the presence of marijuana inside the house. Franky was brought to the house after the DEA received an anonymous tip that Jardines's home was being used to grow marijuana. The officers conducted a warrantless surveillance of the home with Franky and subsequently obtained a search warrant based on Franky's positive alert.

During a pretrial hearing, Jardines successfully moved to suppress the evidence seized from his home, arguing that the dog sniff constituted an unreasonable search under the Fourth Amendment. The Florida Supreme Court upheld the decision to suppress the evidence, concluding that bringing the dog to his residence was a substantial governmental intrusion into the sanctity of his home and thus violated the Fourth Amendment’s prohibition of unreasonable searches. Florida appealed the decision to the U.S. Supreme Court, arguing that drug-sniffing dogs are an essential, widely used, and reliable means of detecting illegal drugs and that a dog sniff does not constitute a Fourth Amendment search requiring a warrant based on probable cause. Jardines countered that there was an expectation of privacy within the home and that residents had a right to be free from governmental intrusion into the home unless the police have obtained a warrant based on probable cause.

During oral arguments, Justice Ginsburg asked Gregory Garre, the lawyer for the state of Florida, whether he was suggesting that the police would be able “to go into a neighborhood that’s known to be a drug dealing neighborhood, go into—just go down the street, have the dog sniff in front of every door, or go into an apartment building?” The justices also brought up the fact that the Court had previously ruled that use of a thermal imaging device or other sense-enhancing technology to obtain information regarding the interior of a house constituted a Fourth Amendment search. Garre responded that “Franky’s nose is not technology . . . he is availing himself of his God-given senses in the way that dogs have helped mankind for centuries.” This led Justice Kagan to ask, “if we invented some kind of little machine called a, you know, smell-o-matic and the police officer had this smell-o-matic machine and it alerted to the exact same things that a dog alerts to . . . the police officer could come to the front door and use that machine?”

The case was decided in March 2013 when the Court ruled 5-4 that the Fourth Amendment requires that police get a search warrant before using a drug-sniffing dog outside a private residence (Florida v. Jardines, 2013). According to the Court, “the government’s use of trained police dogs to investigate the home and its immediate surroundings is a ‘search’ within the meaning of the Fourth Amendment” and therefore requires either consent of the homeowner or a search warrant.
Franky, whose nose led to the seizure of $2.5 million in drugs and $4.9 million in drug money, retired last year after seven years on the Miami-Dade police force.

What do you think? Should the police be able to use drug-sniffing dogs to detect drugs inside a residence without a warrant? Why or why not?

Read more: www.nation.time.com/2013/03/28/supreme-court-says-a-dogs-sniff-can-be-a-fourth-amendment-intrusion/

*The oral arguments in this case can be found at www.supremecourt.gov/oral_arguments/argument_transcripts/11-564.pdf.

**Drug Courier Profiles.** The Supreme Court has also addressed the constitutionality of using drug courier profiles to identify—and stop—individuals who might be transporting drugs. First developed by Paul Markonni, a DEA special agent in Detroit, the drug courier profile is a list of characteristics thought to be common to those transporting illegal drugs through the nation’s airports (Greene & Wice, 1982). It includes the departure and destination cities of the traveler (i.e., if he or she is traveling to or from a city known to be a drug distribution point), whether the individual is traveling with little or no luggage; and whether the individual has a “funny look” or appears to be unusually nervous. This last criterion—the nervous look—has been criticized by legal scholars and has been cited in court decisions as insufficient to trigger probable cause to stop and question someone in an airport. As Greene and Wice (1982) noted, “Perhaps the most subjective of all the profile criteria, the ‘nervous look’ which triggered an agent’s investigation translated roughly to an educated guess that his quarry was a courier” (p. 271). Other outlined characteristics of a potential drug courier: use of public transportation to leave the airport, making a phone call immediately after deplaning, traveling under an assumed name, a quick turnaround for a return flight, and scanning the area after deplaning (United States v. Mendenhall, 1980). (See Box 6.4 for a more detailed description of the drug courier profile.)

Agents using the drug courier profile typically meet planes arriving from so-called source cities (e.g., Los Angeles, San Diego, Miami), spot a traveler who is acting particularly nervous or who otherwise fits the profile, and, after conducting initial surveillance, ask the individual to identify him- or herself and to produce some type of identification, usually a plane ticket or a driver’s license. As Special Agent Markonni testified in United States v. Elmore (1981), “We never demand, we always ask, ‘Excuse me. Do you have some identification we could take a look at for a second?’ Something on that order.” Because the agent usually did not have reasonable suspicion to justify a stop, he is careful to not give the individual the impression that he is in custody or under arrest and to convey that he is free to go if he so chooses (however as a result of Ohio v. Robinette, recall that the agent is not required to tell the individual that he can refuse to answer questions and that he is free to walk away). The agent then tells the individual the purpose of the stop and asks for consent to search a bag or his or her person for illegal drugs.
David Cole, author of *No Equal Justice: Race and Class in the American Criminal Justice System*, reviewed court cases in which the use of a drug courier profile was at issue. From these cases, he compiled a list of the characteristics that DEA agents said they used in determining that an individual matched the profile of persons deemed suspicious at airports. These characteristics included:

- arrives late at night/arrives in the afternoon/arrives early in the morning;
- one of last to deplane/one of the first to deplane/deplaned in the middle;
- bought coach ticket/bought first-class ticket/used one-way ticket/used roundtrip ticket;
- made local telephone call after deplaning/made long distance call after deplaning/prettended to make telephone call after deplaning;
- carried no luggage/carried brand new luggage/carried small bag/carried medium-size bag/carried two bulky garment bags/carried two heavy suitcases;
- overly protective of luggage/disassociated self from luggage;
- traveled alone/traveled with a companion;
- acted too nervous/acted too calm;
- made eye contact with officer/avoided making eye contact with officer;
- wore expensive clothing/dressed casually;
- walked slowly through airport/went to restroom after deplaning/walked quickly through airport/walked aimlessly through airport.

According to Cole, the drug courier profile does not tell agents where to focus their suspicions. Rather, it gives them a reason to stop almost anyone getting off a plane, as virtually everyone will fit several of these characteristics.


Six years after Markonni first implemented his drug courier profile at the Detroit Airport, a case involving a conviction that resulted from the use of the profile at that airport reached the U.S. Supreme Court (*United States v. Mendenhall*, 1980). The case involved Sylvia Mendenhall, who arrived in Detroit on a flight from Los Angeles, was approached by DEA agents while walking through the concourse, and was asked by the agents to produce her plane ticket and her driver’s license. Although her driver’s license bore the name Sylvia Mendenhall, she was traveling on a ticket that had been issued to Annette Ford. The DEA agents identified themselves as federal narcotics agents, asked Mendenhall to accompany them to the DEA office for further questioning, and, at the office, asked her if she would consent to a search of her purse and her person. She responded, “Go ahead.” The search of her person turned up two packages of heroin and Mendenhall was arrested for possession of heroin.
The issue addressed by the Supreme Court was whether Mendenhall's Fourth Amendment rights were violated by the DEA agents when they asked her to accompany them to the DEA office and when they asked her to consent to a search. The Court ruled 5 to 4 that her rights were not violated. According to the justices in the majority, Mendenhall was not coerced into accompanying the agents to the office, but went willingly. As they put it,

whether her consent to accompany the agents was in fact voluntary or was the product of duress or coercion is to be determined by the totality of all the circumstances. Under this test, the evidence—including evidence that respondent was not told that she had to go to the office, but was simply asked if she would accompany the officers, and that there were neither threats nor any show of force—was plainly adequate to support the District Court's finding that respondent voluntarily consented to accompany the officers. The facts that the respondent was 22 years old, had not been graduated from high school, and was a Negro accosted by white officers, while not irrelevant, were not decisive (United States v. Mendenhall, 1980).

The Court also ruled that Mendenhall's consent to search her purse and her person was freely and voluntarily given. The Justices noted that the agents told Mendenhall twice that she was free to decline the search and that she nonetheless consented to the search. Justice Powell, who wrote the majority opinion, also stated that “The public has a compelling interest in detecting those who would traffic in deadly drugs for personal profit,” adding that when the DEA agents stopped Mendenhall “they were carrying out a highly specialized law enforcement operation designed to combat the serious societal threat posed by narcotics distribution.” The agents, in other words, were fighting the war on drugs.

In another decision handed down in 1980, the Supreme Court reached a different conclusion and muddied the waters regarding the constitutionality of using drug courier profiles (Reid v. Georgia, 1980). In this case, Tommy Reid Jr. and another man arrived in Atlanta from Fort Lauderdale. A DEA agent, who stated that Reid appeared very nervous, approached the two men and asked if they would consent to a search of their shoulder bags. Reid said that he would, but then he began to run and abandoned his bag, which contained cocaine. The Court ruled that the agent, who stated that he identified Reid as a possible narcotics offender based on a drug courier profile, did not have reasonable suspicion that Reid was engaged in criminal activity, and therefore the evidence should have been suppressed. The Court also stated that merely conforming to a drug courier profile may not satisfy the reasonable suspicion standard that was articulated in the Terry decision. However, in a later case (United States v. Sokolow, 1989), the Supreme Court applied a “totality of the circumstances” test, asking whether all of the circumstances known to the agents at the time of the stop met the reasonable suspicion requirement. In this case, the agents who arrested Sokolow in Los Angeles stated that he appeared very nervous, was wearing the same clothing that he had been wearing when they saw him in the airport three days earlier, and was constantly scanning the area. When they brought him to their office, they submitted his luggage to a canine sniff and, based on the dog's reaction, arrested him. They found a substantial amount of cocaine in his suitcase. The Court ruled that Sokolow's behavior gave rise to reasonable suspicion and the fact that his behavior conformed to a drug courier profile was irrelevant. According to the Supreme Court, then, it is an individual’s behavior—and not the mere fact that she or he fits a profile—that constitutes reasonable suspicion that justifies stopping that person.
Financial Incentives To Fight the Drug War. The Supreme Court rulings discussed above diluted the Fourth Amendment's protections against unreasonable searches and seizures and therefore made it easier for the police to arrest hundreds of thousands of Americans each year for drug possession. However, the question remains as to why they would focus their efforts on these relatively nonserious offenses. As we explained earlier, many police departments concentrated on arresting those who committed “quality of life offenses,” including using or selling small amounts of marijuana, because they believed that doing so helped prevent more serious crimes. These departments believed, in other words, that focusing on order maintenance policing would lead to reductions in crimes, such as robbery, larceny, and assault.

Another explanation for the focus on arresting drug offenders is that the federal government provided financial incentives to state and local governments to fight the war on drugs (Benson, 2009). (See the Focus on an Issue: Drug-Related Forfeitures, for discussion of another type of incentive.) Just six years after President Reagan announced that “drugs are bad and we’re going after them,” Congress passed the Anti-Drug Abuse Act of 1988,3 one part of which established the Edward Byrne Memorial State and Local Law Enforcement Assistance Program (hereinafter the Byrne Program), which distributes federal aid to state and local criminal justice agencies. The Byrne Program “emphasizes drug-related crime, violent crime, and serious offenders” and “encourages multijurisdictional and multistate effort to support national drug control policies” (Dunworth, Haynes, & Saiger, 1997, p. 2). Although the Anti-Drug Abuse Act identified a set of authorized “purpose areas” for which funding could be used and gave states discretion to determine how to use the funds they received, an evaluation of grants awarded under the Byrne Program revealed that 40% of the funds allocated from 1989 through 1994 was used to set up multijurisdictional task forces (MJTFs). Almost $738 million in funding was allocated for these task forces, compared to only $107 million for drug treatment (Dunworth et al., 1997, p. 5).

MJTFs typically bring together law enforcement officials from sheriff’s agencies and local police departments; many also involve officials from state and federal law enforcement agencies. According to the Bureau of Justice Assistance,

A MJTF is a cooperative law enforcement effort involving two or more criminal justice agencies, with jurisdiction over two or more areas, sharing the common goal of addressing drug control or violent crime problems. MJTFs allow law enforcement agencies in different jurisdictions to work together as a single enforcement entity with the ability to improve communication, share intelligence, and coordinate activities. This allows for more efficient use of resources and targeting of offenders whose activities cross jurisdictional boundaries (Bureau of Justice Assistance [BJA], n.d.).

Although there has not been a comprehensive evaluation of the effectiveness of MJTFs, there have been descriptive reports that catalogue such things as the number of drug arrests made, the amount of drugs seized, and the amount of drug-related assets seized. According to an early report on BJA-funded MJTFs nationwide, between 1988 and 1991 the task forces made about 86,000 arrests each year and seized more than $100 million in assets (Justice Research and Statistics Association, 1992). A report on the MJTFs in Massachusetts that were funded through the Byrne Program showed that in 2005 and 2006, 5,821 investigations were conducted by the task forces and more than 11,000 drug- and weapons-related

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3The first Anti-Drug Abuse Act was passed in 1986.
Charges were filed as a result of drug task force activities. The task forces also seized 639,054 grams of cocaine and 72,909 ounces of marijuana, as well as $7,470,154 in currency (Massachusetts Executive Office of Public Safety and Security, 2007). An evaluation of MJTFs operating in California in 1999, 2000, and 2001 similarly reported that the task forces arrested 42,122 suspects, prosecuted 24,604 offenders, and convicted 20,685 offenders. The members of the California task forces also seized 3,482 drug labs, 129 million grams of marijuana, and 1.17 million grams of cocaine (California State University, Sacramento, 2003).

As these evaluations make clear, MJTFs do arrest substantial numbers of drug offenders and seize substantial amounts of illegal drugs. What is not known, however, is whether the MJTFs are more effective than traditional law enforcement approaches or whether the activities of the MJTFs lead to reductions in drug use and drug-related crime.

The Anti-Drug Abuse Act of 1988 also created the High Intensity Drug Trafficking Areas (HIDTA) Program, which is designed to reduce drug manufacture and trafficking by facilitating cooperation and the sharing of intelligence among federal, state, local, and tribal law enforcement agencies. According to the Office of National Drug Control Policy (n.d.), there are 28 HIDTAs in the United States; they are found in 46 of the 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. The mission statement for the Program states that

The mission of the High Intensity Drug Trafficking Area (HIDTA) Program is to enhance and coordinate America’s drug-control efforts among local, state and Federal law enforcement agencies in order to eliminate or reduce drug trafficking and its harmful consequences in critical regions of the United States. The mission includes coordination efforts to reduce the production, manufacturing, distribution, transportation, and chronic use of illegal drugs, as well as the attendant money laundering of drug proceeds. (Office of National Drug Control Policy, n.d.)

Each HIDTA assesses the drug trafficking problem in its area and develops a strategy to address the problem. For example, the Southwest Border HIDTA Arizona Partnership consists of seven Arizona counties located near the border between Arizona and Mexico. This particular HIDTA has five priorities: “(1) the interdiction of drug smuggling from Mexico and South America; (2) the investigation, prosecution, and dismantlement of major drug smuggling, trafficking, and money laundering organizations in Arizona; (3) the immobilization of methamphetamine laboratories, and the control of drug lab precursor chemicals in Arizona; (4) the control and reduction of violent crime associated with drug trafficking; and (5) the collection, analysis, and dissemination of drug-related intelligence to law enforcement agencies” (Office of National Drug Control Policy, n.d.). A number of the HIDTAs also emphasize prevention and treatment of drug abuse as part of the overall strategies.

Financial incentives offered by the government also led to the widespread development and deployment of paramilitary units—the so-called SWAT (Special Weapons and Tactics) teams that, beginning in the 1980s, were used for conducting drug raids. The development of these teams was made possible by a 1994 memorandum issued by the Department of Defense authorizing the transfer of military equipment and technology to state and local police. According to a report by the Cato Institute (Balko, 2006), in 1997 the Pentagon gave local law enforcement agencies 1.2 million pieces of military equipment; between 1995 and 1997, the Pentagon distributed 3,800 M-16s, 2,185 M-14s, 73 grenade launchers, and 112 armored
personnel carriers to civilian law enforcement agencies. A 1999 article in the *New York Times* reported that the Fresno, California SWAT team had “two helicopters with night-vision goggles and heat sensors, an armored personnel carrier with turret arm, and an armored van” (Balko, 2006, p. 8). By 1997, 90% of cities with populations of 50,000 or more had at least one paramilitary police unit (Kraska & Kappeler, 1997).

SWAT teams initially were used to respond to emergencies, such as hijackings, hostage takings, and barricaded suspects. According to the Los Angeles Police Department’s website,

The Incident Commander shall request SWAT when at a barricaded or hostage incident when the suspect is probably armed; the suspect is believed to have been involved in a criminal act or is a significant threat to the lives and safety of the public and/or police; the suspect is in a position of advantage, affording cover and concealment or is contained in an open area and the presence or approach of police officers could precipitate an adverse reaction by the suspect; and, the suspect refused to submit to arrest. (www.lapdonline.org/inside_the_lapd/content_basic_view/848)

The LAPD website also notes that SWAT teams “initiate service of high risk warrants for all Department entities.” In fact, many would argue that today the primary purpose of SWAT teams is to serve search warrants on suspected drug dealers (Kraska & Cubellis, 1997). These warrants are typically issued in response to a tip from some type of confidential informant and are executed late at night or just before dawn by heavily armed SWAT teams with forced, unannounced entry into the home. According to Balko (2006, p. 1), “These increasingly frequent raids, 40,000 per year by one estimate are needlessly subjecting nonviolent drug offenders, bystanders, and wrongly targeted civilians to the terror of having their homes invaded by teams of heavily armed paramilitary units dressed not as police officers but as soldiers.” (See Box 6.5 for a more detailed explanation of how SWAT teams operate.)

**BOX 6.5 Anatomy of a SWAT Team Raid**

Police generally break open doors with a battering ram, or blow them off their hinges with explosives. Absent either, police have pried doors open with sledgehammers or screwdrivers, ripped them off by attaching them to the back ends of trucks, or entered by crashing through...
Critics of SWAT teams argue that the “militarization” of the police is problematic given the differing roles of the military and law enforcement agencies (Balko, 2006; Skolnick & Fyfe, 1993). According to Balko (2006),

The military's job is to seek out, overpower, and destroy an enemy. . . . Police, on the other hand, are charged with “keeping the peace,” or “to protect and serve.” Their job is to protect the rights of the individuals who live in the communities they serve, not to annihilate an enemy. (p. 15)

Balko and others contend that militarizing law enforcement agencies leads to a mind-set in which those who use drugs or commit other relatively minor crimes are regarded as “the enemy.” Nick Pastore, a retired New Haven, Connecticut, police chief who was one of only a few police chiefs to turn down the military equipment offered by the Pentagon, agreed. He told the New York Times in 1999 that outfitting police officers in military gear “feeds a mind-set that you're not a police officer serving a community, you're a soldier at war. I had some tough-guy cops in my department pushing for bigger and more hardware. They used to say, ‘It's a war out there.' They like SWAT because it's an adventure” (Egan, 1999).

Critics also charge that using SWAT teams to execute search warrants at the homes of suspected drug users, manufacturers, or sellers has the potential to turn a routine police procedure into a violent police-citizen interaction (Balko, 2006). The members of the SWAT team typically arrive at the residence at night, enter without knocking or announcing themselves, and point guns or rifles at anyone inside. The chaos is compounded by the fact that SWAT teams often use diversionary tactics, such as flashbang grenades that are designed to cause temporary blindness and deafness. The residents of the home understandably believe that their home is under siege and many react by grabbing a gun to defend themselves. According to Balko (2006, p. 19), “It isn't difficult to see why a gun owner's first instinct upon waking under such conditions would be to disregard whatever the intruders may be screaming at him, and reach for a weapon to defend himself.” The outcome of these volatile and dangerous confrontations is not surprising: Many are botched raids that result in the deaths of innocent bystanders, police officers, and/or nonviolent drug offenders.
FOCUS ON AN ISSUE: POLICING FOR PROFIT—DRUG-RELATED FORFEITURES

In 2012, Russ Caswell and his wife were ensnared in what George Will, a Pulitzer-prize-winning newspaper columnist, characterized as “a Kafkaesque nightmare unfolding in Orwellian language” (Will, 2012). Alleging that the rooms at the Tewksbury, Massachusetts, budget hotel owned by Caswell and his wife were being used to facilitate drug dealing, the U.S. Department of Justice filed suit to seize the motel, sell it, and split the profit with the Tewksbury Police Department. According to the lawsuit (which does not indicate that the Caswells had any knowledge of what was going on in their motel rooms), from 1994 to 2012, 30 motel customers were arrested on drug-dealing charges. According to Will, “this is the government’s excuse for impoverishing the Caswells by seizing this property, which is their only source of income and all of their retirement security.”

The Caswells are victims of a policy known as civil forfeiture, which allows the government to seize property connected to illegal activity and which has been a major weapon in the federal government's war on drugs since the mid-1980s. As former President George H. W. Bush stated, “Asset forfeiture laws allow [the government] to take the ill-gotten gains of drug kingpins and use them to put more cops on the streets.” Unlike criminal forfeiture, which occurs following a criminal conviction and typically is part of the sentence imposed on the offender, civil forfeiture lawsuits proceed against the property itself and do not require that the owners of the property be charged with or convicted of a crime. According to the authors of Policing for Profit: The Abuse of Civil Asset Forfeiture, “with civil forfeiture, a property owner need not be found guilty of a crime—or even charged—to permanently lose her cash, car, home, or other property” (Williams, Holcomb, Kovandzic, & Bullock, 2010, p. 6). Moreover, the owners of the property must prove their innocence—once the government establishes that there is probable cause to believe that the property is involved in illegal activity and is therefore subject to seizure, the owner must prove by a preponderance of the evidence that it should not be subject to seizure.

Use of civil forfeiture exploded during the war on drugs, largely in response to statutory changes that created new incentives for its use. In 1984, Congress amended the Comprehensive Drug Abuse and Prevention Act of 1970, which included a civil forfeiture provision, but which provided that proceeds from forfeitures went into the government’s general fund, to allow federal agencies to retain and spend all proceeds from asset forfeitures and to allow state and local police agencies to retain up to 80% of the assets’ value. The statutory changes, in other words, gave federal, state, and local law enforcement agencies a financial incentive to use civil forfeiture to offset the costs of fighting the war on drugs and to increase their budgets. According to Williams and her colleagues (2010, p. 11), “With these changes, the modern era of policing for profit had begun.” By 2008, the Department of Justice Asset Forfeiture Fund (which is the fund into which all proceeds from asset forfeitures initiated by the federal government are deposited) topped $1 billion in net assets (Williams et al., 2010, p. 11).

Critics of asset forfeiture—and of civil forfeiture in particular—argue that the policy invites abuse by law enforcement agencies who see forfeiture as a way to pad their budgets and by law enforcement officials who bend the law in an effort to seize property or cash. Consider the case of the Oakland (California) Housing Authority Police Department (OHAPD), which provides
security and police services to the residents of Oakland Housing Authority (OHA) properties. In 1989, the OHAPD created an independent drug suppression task force to deal with drug use and drug dealing on OHA property. According to testimony in a federal case in which four of the drug task force officers were convicted of violating the civil rights of individuals they encountered on OHA property, the task force officers would drive in two or three vehicles to an area where they suspected drug activity and, in the words of one of the officers, “just take anything and everything we saw on the street corner . . . more or less like a wolf pack” (*United States v. Reese et al.*, 1993). The commander of the group told the officers assigned to the task force that “a lot of ‘dirty’ drug money would be passing through their hands and that it would not really matter if they kept some of it for themselves.”

There are many other examples of law enforcement officers who bend—indeed, break—the law as they attempt to seize cash, cars, and property:

- Between 2006 and 2008, law enforcement officials in Tenaha, Texas, stopped more than 140, mostly black, out-of-state drivers. They arrested them, took them to jail, and threatened to file charges against them unless they signed statements relinquishing any claim to their valuables, including cash, cars, cell phones, and jewelry. One of those stopped was Roderick Daniels, who was allegedly exceeding the speed limit by two miles per hour. He was carrying $8,500 in cash, which he intended to use to purchase a new car. He surrendered the cash after the officers took him to jail and threatened to charge him with money laundering unless he turned the cash over to them. An attorney who represented eight of the individuals whose property was seized estimated that officials garnered $3 million between 2006 and 2008 from improper seizures (Williams et al., 2010, p. 16).

- Journalists in Florida and Louisiana reported that police used traffic violations as a pretext for stopping motorists to confiscate cash. In Florida, they found that highway traffic stops were used as a pretext to confiscate “tens of thousands of dollars from motorists against whom there [was] no evidence of wrongdoing” (Blumenson & Nilsen, 1998, p. 83).

- In 2007, Michael Annan, an immigrant from Ghana, was stopped for speeding in Camden County, Georgia. The officers searched his car, finding no evidence of illegal activity, but $43,720 in cash, which they confiscated. Annan said that the money was his life savings. Annan eventually got the money back, but only after paying a lawyer $12,000 to assist him. Several months later, the Georgia Bureau of Investigation began looking into expenditures by the then Camden County Sheriff, Bill Smith, whose deputies had seized more than $20 million in assets over 15 years. They discovered that Smith used the funds to purchase a $90,000 sports car and a $79,000 boat, to buy gas for employees’ personal vehicles, and to pay tuition for deputies at area colleges (Williams et al., 2010, p. 19).

Abuses like these led to passage of the Civil Asset Forfeiture Reform Act in 2000. A major change is that the government must show by a preponderance of the evidence that the property is subject to forfeiture. The act also eliminated the cost bond, which required an individual contesting the seizure of his or her property to post a bond of 10% of the value of the seized

(Continued)
In the following sections, we address another important issue—why the burdens of the war on drugs have fallen disproportionately on racial minorities (especially blacks), their families, and their communities.

**The Racial Disparity in Arrest Rates**

We have shown that since 1980, blacks have faced substantially higher odds of arrest than whites for both using and selling drugs. For drug possession, the black arrest rate ranged between two and four times higher than the white rate; for drug trafficking, the black arrest rate was between four and seven times higher than the white rate. These disparities, which reflect data for the nation as a whole, are also found in states and cities. For example, more than 80% of adults arrested for felony drug offenses in California in 1989 were black or Hispanic (Mosher, 2001). That same year, Operation Hammer, a policing strategy employed by the Los Angeles Police Department, resulted in the arrest of more than 1,000 persons for drug offenses over the course of one weekend; all of them were black or Hispanic (Walker, Spohn, & DeLone, 2012). A similar policing strategy in New York City—Operation Pressure Point—led to dramatic increases in arrests of street dealers, almost all of whom were non-white (Belenko, Fagan, & Chin, 1991). Also in New York City, the implementation of quality of life policing resulted in both a dramatic increase in arrests for possession of marijuana in public (arrests increased from fewer than 1,000 in 1990 to 51,000 in 2000) and racial disparity in arrests for this crime; in 2000, blacks made up less than one quarter of the population of New York City, but constituted 52% of arrests for use of marijuana in public (Golub, Johnson, & Dunlap, 2007). And in Seattle, where blacks constituted only 8.4% of the population in 2000, they made up 36.4% of arrestees for possession of marijuana, 22.6% of arrestees for possession of powder cocaine, and 63.1% of arrestees for possession of crack cocaine; they also made up 79% of arrestees for delivery of crack cocaine (Beckett, Nyrop, Pfingst, & Bowen, 2005; Beckett, Nyrop, & Pfingst, 2006).
Why are blacks so much more likely than whites to be arrested for drug offenses? There are three possible answers: blacks use drugs at higher rates than whites, blacks sell drugs at higher rates than whites, and police arrest blacks for drug offenses in numbers disproportionate to their involvement in using and selling drugs. As we show below, there is little evidence that blacks use or sell drugs at higher rates than whites. Rather, the racial disparity in arrest rates is due to the fact that the war on drugs has been fought primarily in black communities. According to Jerome Miller (1996, p. 80), “from the first shot fired in the drug war, African Americans were targeted, arrested, and imprisoned in wildly disproportionate numbers.”

**Do Blacks Use or Sell Drugs at Higher Rates Than Whites?**

There is compelling evidence that blacks do not use or sell drugs at substantially higher rates than whites. (As we showed in Chapter 4, self-report data from inmates in state prisons document that whites are more likely than blacks to meet clinical criteria for drug abuse and dependence.) Turning first to use of illegal drugs, Figure 6.6 presents longitudinal data from the National Survey on Drug Use and Health (formerly the National Household Survey on Drug Abuse) on illicit drug use in the past month by persons age 12 and older. Over time, relatively small percentages of blacks and whites report

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**Figure 6.6 Any Illicit Drug Use in Past Month, Persons 12 and Older, by Race: 1992–2010**

![Figure 6.6](https://nsduhweb.rti.org/)

using any illicit drug, and the rates for blacks, which are higher than the rates for whites in some years, do not vary by more than two percentage points from the rates for whites over the time period. Moreover, when the data are disaggregated by age, different patterns appear. The higher rates of use found for blacks than for whites shown in Figure 6.6 are primarily due to higher rates for blacks among respondents age 25 and older. Among juveniles, on the other hand, the rates of illicit drug use are lower for blacks than for whites. From 1978 to 2004, as shown in Figure 6.7, lower percentages of black and Hispanic 12th graders than of white 12th graders reported that they had used any illicit drug in the past year. For example in 2004, 42% of whites, 34% of Hispanics, and 28% of blacks said that they had used any illicit drug in the past year. Similar patterns are found for 8th and 10th grade students and the differences (that is, higher prevalence among whites than among blacks) were even larger for use of any

**Figure 6.7** Any Illicit Drug Use During Past Year: High School Seniors, 1978–2004

![Graph showing the percentage of high school seniors using any illicit drug from 1978 to 2004 by race and ethnicity.](image)

drug other than marijuana. Among 12th grade students, 22.8% of whites, 16.2% of Hispanics, and 6.5% of blacks reported using an illicit drug other than marijuana in the past year (Johnston, O’Malley, Bachman, & Schulenberg, 2005, Table D-6).

The data presented in this chapter also shows that blacks are more likely than whites to be arrested for selling or trafficking in drugs. Like the explanation proffered to explain racial disparity in arrest rates for drug use, this difference could reflect differences in the rates at which blacks and whites sell drugs. However, data from a variety of sources suggest that blacks do not sell drugs at a higher rate than whites. For example, data from the National Longitudinal Survey of Youth (NLSY), which involved annual interviews with a nationally representative sample of youth who were ages 12 to 17 at the end of 1996, revealed that blacks were significantly less likely than either whites or Hispanics to report selling drugs; 17% of whites, 16% of Hispanics, and 13% of blacks reported that they sold drugs at least once by the time they were 17 (Snyder & Sickmund, 2008). According to a 2006 national survey of drug abuse conducted by the Substance Abuse and Mental Health Services Administration, 1.6% of white adults and 2.8% of black adults reported selling drugs in the past twelve months (Fellner, 2009). As this report pointed out, although the proportion of sellers was higher among blacks than among whites, in absolute numbers far more whites (2,461,797) than blacks (712,044) reported selling in the previous year (Fellner, 2009, p. 268). Similarly, a study conducted in Seattle revealed that a majority of the heroin, methamphetamine, and Ecstasy drug delivery transactions, and a plurality of the powder cocaine transactions involved a white drug dealer (Beckett et al., 2006).

As these data make clear, blacks are not arrested more often than whites for drug offenses because blacks are more likely than whites to use or sell illegal drugs. Although there is some evidence that black adults use drugs at a slightly higher rate than whites, the evidence regarding adolescent substance abuse points in the opposite direction: Black adolescents use drugs less often than white adolescents. Similarly, the typical drug seller is white, not black. Thus, the racial disparities in arrest rates for using or possessing drugs and for selling drugs cannot be explained away by racial disparities in rates of drug offending.

Are Police More Likely to Arrest Blacks Than Whites for Drug Offenses?

Critics of the war on drugs contend that the high rates of arrest for blacks primarily reflect racial differences in drug law enforcement. According to Tonry (2011, p. 70),

Black arrest rates for drug crimes are high for two reasons. First, police invest more energy and effort in arresting people in inner cities and on the streets, circumstances that disproportionately target drug transactions among blacks. Second, racial profiling in police stops of citizens identifies disproportionate numbers of black people possessing drugs who can be arrested.

Alexander’s (2010, pp. 101–102) critique is similar. Noting that “the ubiquity of illegal drug activity, combined with its consensual nature, requires a far more proactive approach by law enforcement,” she contends that law enforcement agencies decided to use their discretion to fight the war on drugs in black communities. Those on the other side of the issue argue that the higher arrest rates for blacks (and Hispanics) do not reflect racism, but rather the fact that street-level drug dealing and open air drug markets are concentrated in the communities where racial minorities live. Lee Brown, who served as drug czar under President Clinton, emphasized the relative ease of making arrests in low-income communities. As he put it (Brown, 1992, as quoted in Bertram, Blachman, Sharpe, & Andreas, 1996), “in most large cities, the police focus their attention on where they see conspicuous drug use. . . . It’s easier
for police to make an arrest when you have people selling drugs on the street corner than those who are selling (or buying) drugs in the suburbs or in office buildings. The end result is that more Blacks are arrested than Whites because of the relative ease of making those arrests.” Kennedy (1997) and others also argue that the residents of these poor neighborhoods are the ones who lobby the police for increased enforcement and disruption of street drug markets. They want the police to arrest street dealers and close down the drug markets.

There is evidence in support of the argument that high arrest rates for blacks reflect the fact that police concentrate on arresting people in inner cities and on the streets, where using and selling drugs is more conspicuous and where it is therefore easier to make arrests. A number of surveys reveal that blacks are more likely to buy drugs from someone they do not know and that these transactions are more likely to occur outdoors in public settings than in private homes or college dormitories. This is particularly true of those who buy and use crack cocaine. According to the Office of National Drug Control Policy (ONDCP, 2009), which summarized the results of a survey of people arrested for serious crimes in 10 U.S. cities, crack is

often exchanged in an open air or more public market; in 9 of 10 sites at least 40% of arrestees report that their crack purchases were made in outdoor settings and in some sites (i.e., Atlanta, Washington, D.C., New York, and Chicago), that proportion is even higher (63–87% report outdoor sales). (p. viii)

Compelling evidence of the degree to which disproportionately high black arrest rates for drug offenses reflect police enforcement strategies that focus on inner city drug markets, particularly for crack cocaine, also is found in two studies conducted in Seattle, Washington. Katherine Beckett and her colleagues examined racial disparities in drug possession arrests (Beckett et al., 2005) and drug delivery arrests (Beckett et al., 2006) using data on drug use obtained from three sources: (1) a needle exchange survey, in which those who arrived to exchange needles were asked to report their race/ethnicity, the drugs present in the needles just exchanged, whether they obtained the drugs in Seattle or elsewhere, and the race/ethnicity of the person from whom they obtained the drugs; (2) public drug treatment admissions data, which included the race/ethnicity of those admitted to treatment; and (3) ethnographic observations of two open-air drug markets, one in downtown Seattle and one in a neighborhood (Capitol Hill) known for drug activity. Information on the race/ethnicity of those arrested for drug possession or drug delivery was obtained from Seattle Police Department Incident Reports.

Turning first to drug possession arrests, the authors compared both the populations of drug users and drug arrestees and found that blacks were significantly overrepresented among marijuana, methamphetamine, and crack arrestees; Hispanics were overrepresented among heroin and crack arrestees; and whites were underrepresented among crack arrestees. For example, according to the needle exchange survey, blacks made up 6.2% and whites made up 84.6% of marijuana users; however, blacks comprised 36.4% and whites comprised 50.8% of those arrested for marijuana possession. Similarly, blacks made up 15.6% of crack cocaine users, but 63.1% of those arrested for use of crack cocaine, while whites made up 68.8% of crack users, but only 26.3% of arrestees for crack possession. The authors also concluded that the overrepresentation of blacks among those arrested for drug possession was largely due to the fact that “possession arrests were far more likely to involve crack offenders than any other type of drug user” (Beckett et al., 2005, p. 429). In fact, from January 1999 to April 2001, the Seattle
Police Department made 3,058 arrests for possession of crack, but only 384 arrests for possession of methamphetamine, Ecstasy, and powder cocaine combined. As the authors noted (p. 429), “the focus on crack is the primary cause of the racial disparity in drug possession arrests.”

Similar results were found in the study of drug delivery arrests in Seattle (Beckett et al., 2006). As part of the needle exchange survey, exchangers were asked to identify the race/ethnicity of the person who provided them with each of the drugs they used. The authors found that racial and ethnic patterns of involvement in drug delivery varied by type of drug. The majority of those who delivered methamphetamine (81.9%), heroin (55.1%) and Ecstasy (83.3%) were white; relatively equal percentages of whites, blacks, and Hispanics were identified as deliverers of powder cocaine; and whites (40.6%) and blacks (46.9%) were about equally likely to deliver crack cocaine. Because the authors believed the responses for crack cocaine probably underestimated black involvement as dealers of this particular drug, they concluded that it was “reasonable to assume that a majority of crack transactions involve a black crack dealer” (Beckett et al., 2006, p. 118). Turning to the data on arrests for drug delivery, the study revealed that blacks constitute 64.2% of those arrested for drug delivery; 17.4% of those arrested were white, and 14.1% were Hispanic. Among those arrested for delivering crack cocaine, 79% were black. As was the case with drug possession arrests, the Seattle Police Department made 2,018 arrests for delivering crack cocaine, but only 138 for Ecstasy, methamphetamine, and powder cocaine combined. The authors concluded that “although a majority of drug transactions involving the five serious drugs under consideration here involve a white drug dealer, 64% of those arrested for drug delivery . . . were black” (p. 121).

Both of the studies conducted by Beckett and her colleagues in 2005 and in 2006 revealed that the Seattle Police Department focused on arresting those who used and sold crack cocaine—they made eight times as many arrests for possession of crack cocaine than for possession of the other drugs combined and they made almost 15 times as many arrests for delivery of crack cocaine than for delivery of the other types of drugs. To explain this focus on crack cocaine, the authors considered the possibility that crack is purchased more frequently and is more likely to be purchased outdoors than are other drugs. They found that only one-third of all outdoor drug transactions, but 75.2% of all outdoor drug possession arrests, involved crack. Similarly, 25% of all indoor drug transactions, but 69.6% of all indoor arrests for drug possession, involved crack. According to the authors (Beckett et al., 2005, p. 433), “In short, the available evidence indicates that neither the prevalence of crack use in the Seattle area nor the frequency with which it is acquired explains the preponderance of crack users among arrestees.”

They also considered, and rejected, arguments that the focus on crack cocaine was a function of the fact that the crack cocaine market was associated with a higher level of violence, or of the concentration of crack transactions in outdoor public spaces. These findings led them to conclude (Beckett et al., 2005, p. 436) that “it appears that both the focus on crack and the overrepresentation of blacks and Latinos among those arrested for crack and other drugs reflect a racialized conception of ‘the drug problem.’”

The validity of these findings and conclusions were called into question by a recent study that also focused on drug arrests in Seattle (Engel, Smith, & Cullen, 2012). The authors of this study argued that the original study by Beckett and colleagues underestimated the role played by police deployment strategies (i.e., the saturation of police patrols in high-crime areas), that citizen calls for service (CFS) about drug activity were a “more appropriate benchmark available for comparisons to Seattle Police Department (SPD) drug arrests” (p. 665), and that it was important to examine racial disparities in arrest rates in smaller geographic areas (city blocks) than used by Beckett and her colleagues (census tracts). Using data from January 2004 through September 2007 on drug-related arrests, the authors...
found that blacks comprised 53.3% of all arrests citywide; whites comprised 33.6% and Hispanics comprised 4.4%. They also examined 911 calls regarding drug-related activity, which included the location of the incident and a description, including race/ethnicity of the person(s) about whom the caller was complaining. When they compared drug arrests to drug-related calls for service in the two areas examined by Beckett and her colleagues (i.e., Downtown and Capitol Hill), they found that the race/ethnicity of the individuals identified by those who called 911 was very similar to the race/ethnicity of those arrested. In the downtown area, for example, 26.5% of the CFS and 24.9% of the arrests involved whites, 63.9% of the CFS and 65.4% of the arrests involved blacks, and 6.5% of the CFS and 3.5% of the arrests involved Hispanics (Engel et al., 2012, Figure 1).

According to the authors their findings indicate that “Blacks and Hispanics are not overrepresented among drug arrestees in the city of Seattle when compared with CFS data” (p. 619).

The differences in the findings of these methodologically sophisticated studies, which Engel and her colleagues acknowledge are most likely due to differences in their research designs, and, particularly, their indicators of drug-related activity, correspondingly suggest that answers to questions regarding the meaning of racial disparities in arrests for drug offenses remain elusive.

**Summary: Policing Drugs and Drug Offenders**

In 1989, President George H. W. Bush sent Congress a document outlining the first National Drug Control Strategy. The report, which was authored by the White House’s Office of National Drug Control Policy (ONDCP) noted that “No strategy designed to combat illegal drug use can succeed if it fails to recognize the crucial role of criminal justice.” The report stated that “pressure must be brought to bear on the entire drug market, dealers and users alike” and that “we need a national drug law enforcement strategy that casts a wide net and seeks to ensure that all drug use—whatever its scale—faces the risk of criminal sanction” (ONDCP, 1989, pp. 17–18).

As we have shown in this chapter, law enforcement agencies responded to this call to arms by arresting increasing numbers of men and women for drug offenses. In fact, the number of persons arrested for possession or use of illegal drugs—as opposed to manufacturing or selling drugs—skyrocketed throughout the 1990s and into the first few years of the 21st century. In 2010, 1.3 million people were arrested for using drugs and about 300,000 were arrested for manufacturing or selling drugs. The fact that most of those arrested were using or possessing drugs and that over half were arrested for offenses involving marijuana, suggests that law enforcement agencies heeded the ONDCP’s call to “cast a wide net” around drug offenders.

The dramatic increases in arrests for drug offenses over the past three decades cannot be attributed to equally dramatic increases in the number of persons who use or sell drugs. Rather, arrests for drug offenses increased as a result of changes in federal, state, and local policies and practices. Law enforcement agencies adopted a more proactive style of policing that targeted quality of life offenses, such as using or selling drugs in public, and states expanded police powers to “stop, question, and frisk” suspected drug offenders. Concomitantly, the United States Supreme Court weakened the Fourth Amendment’s prohibition against unreasonable searches and seizures and, in so doing, made it easier for the police to arrest hundreds of thousands of Americans each year for minor drug offenses. The federal government also got into the act, providing financial incentives to state and local law enforcement agencies to wage the war on drugs and to go after drug offenders and their assets using paramilitary tactics and civil forfeiture proceedings. These initiatives, coupled with passage of the Anti-Drug Abuse Acts of 1986 and 1988, encouraged states to increase enforcement of drug laws and to be more proactive in arresting drug offenders and more punitive in punishing them.
The “wide net” cast by law enforcement agencies waging the war on drugs did not fall evenly on whites and racial minorities, especially blacks. Despite the fact that blacks are no more likely than whites to use or sell drugs, since 1980 they have faced substantially higher odds of arrest than whites for both drug possession and drug trafficking. We argue that these differences reflect the fact that the war on drugs has been fought primarily in black and poor communities. The reasons for this are complex. Although it reflects the fact that drug use and drug dealing in inner city areas with high concentrations of blacks and Hispanics are more likely to take place in public spaces where it is easier to make arrests, it also can be attributed to policy decisions by law enforcement agencies. Proactive policing strategies that targeted using or selling drugs in public, especially marijuana, and policies that prioritized arresting those who used or sold crack cocaine ensnared large numbers of blacks and Hispanics. Court decisions that allowed police to use race and ethnicity as indicators of an increased likelihood of criminality also played a role; these decisions made it easier for law enforcement agencies to stop, question, and search blacks and Hispanics who looked suspicious or “out of place.”

**DISCUSSION QUESTIONS**

1. Throughout this chapter is the suggestion that policy changes in drug law enforcement, and not increases in drug use, influenced the arrest rate for drug offenses. What are the underlying justifications of the policy changes enacted during the 1980s and 1990s?

2. The data presented in Figure 6.1 indicate that drug arrest rates for drug sales or manufacture were constant, while arrests for simple possession increased. Does the data presented in this figure reflect outcomes that the drug enforcement policies were meant to address? If not, what might have gone wrong in the implementation of drug enforcement strategies?

3. The causes of the great crime decline in the 1990s have been fiercely debated among criminologists. As briefly discussed in this chapter, over the past three decades, there has been a substantial drop in arrest rates for murder and rape, while there has been an increase in arrest rates for drug possession. What are possible explanations for these contradictory trends?

4. Also discussed is that the war on drugs has been largely waged on African Americans situated in large, urban cities. What role do you think the war on drugs played in states or rural areas with predominantly white populations? How has the drug war differed in these regions when compared to urban regions?

5. Many of the most prominent policy changes in policing over the past few decades are premised on Wilson and Kelling’s (1982) theory of broken windows. The core argument of Wilson and Kelling is that addressing small and petty disorder in a community reduces serious street crime. Do you agree with this hypothesis?

6. In the case of *Florida v. Bostick*, the U.S. Supreme Court reversed a Florida court’s ruling, reasoning that the “bus sweep” was not illegal, as long as police secured consent from the passenger. Do you agree or disagree with the Supreme Court’s majority ruling? More specifically, was there probable cause to stop and search the passenger, and would a reasonable person have felt free to decline law enforcement’s request to search a bag?
7. Box 6.3 presents the characteristics of a drug courier; are any of these characteristics problematic? Why? Do you believe that police officers should be allowed to use profiles like these to identify potential drug offenders? Why or why not?

8. How have the financial incentives from the federal government changed the way in which local police deal with drug offenders? Are these positive or negative changes?

9. Critics of the war on drugs suggest that racial disparity in drug arrests is more likely to reflect racially biased policing than racial differences in use or distribution of drugs. Do you find this argument persuasive? How can we make sense of the competing results of the two studies on this issue that were discussed in this chapter (Beckett et al., 2005 and Engel et al., 2012)?