
MARIJUANA ARREST CRUSADE

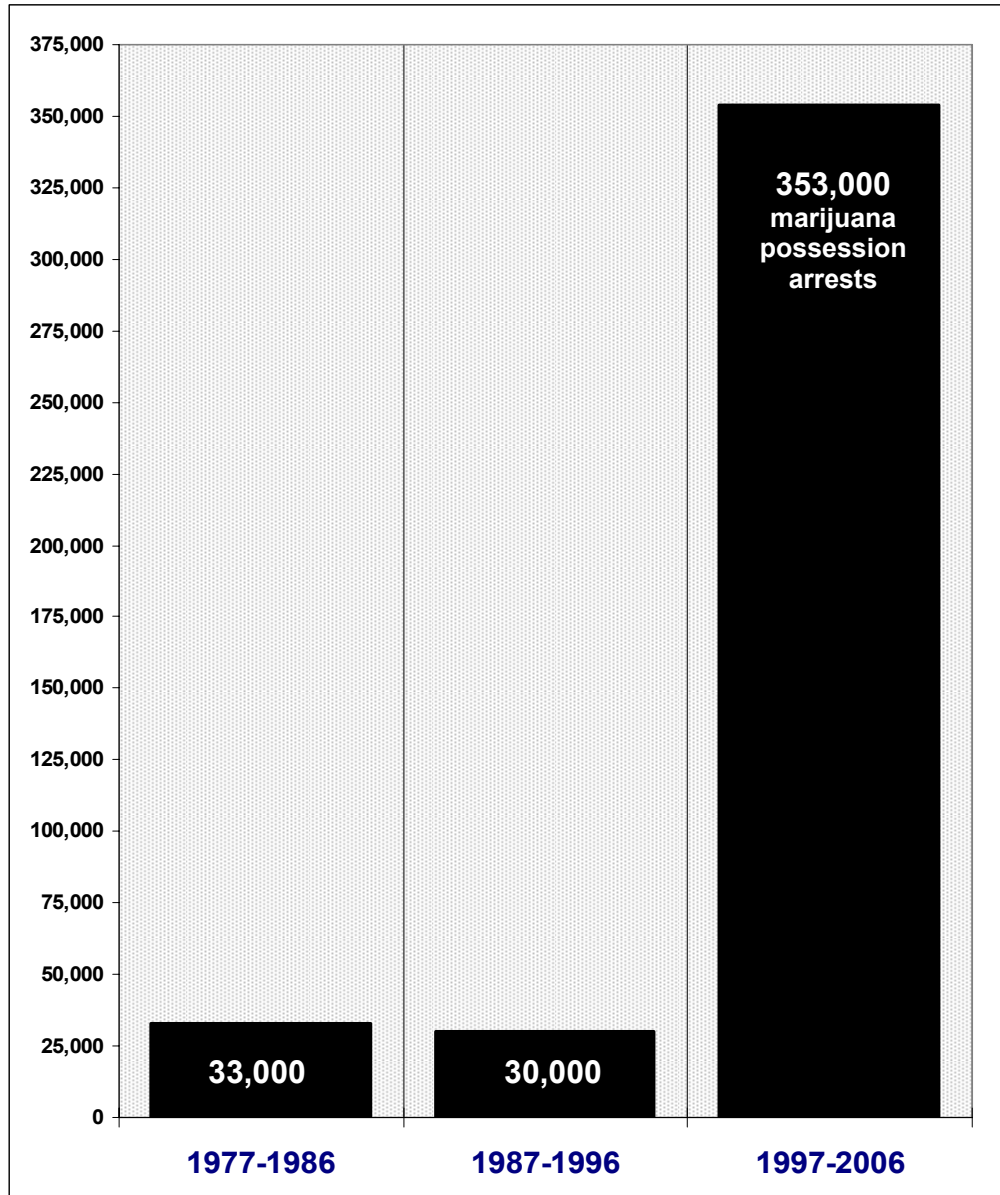
RACIAL BIAS AND POLICE POLICY IN NEW YORK CITY

1997 – 2007

HARRY G. LEVINE AND DEBORAH PETERSON SMALL



Marijuana Possession Arrests in New York City in Three Decades



Source: New York State Division of Criminal Justice Services, Computerized Criminal History System (April 2008). Includes all fingerprintable arrests for NYS Penal Law Article 221 misdemeanor offenses as the most serious charge in an arrest event. Ages 16 and older. 1978 data was used for 1977.

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THE MARIJUANA ARREST CRUSADE IN NEW YORK CITY

INTRODUCTION AND SUMMARY¹

“As nightfall does not come all at once, neither does oppression. In both instances, there is a twilight when everything remains seemingly unchanged. And it is in such twilight that we all must be aware of change in the air, however slight, lest we become unwitting victims of the darkness.”

- U.S. Supreme Court Justice William O. Douglas

From 1997 to 2006, the New York City Police Department arrested and jailed more than 353,000 people simply for possessing small amounts of marijuana. This was eleven times more marijuana arrests than in the previous decade, and ten times more than in the decade before that.²

All of these 353,000 people were charged with misdemeanors, the lowest level of criminal offense. Even so, nearly everybody was handcuffed, put in the back of a police car or van, and taken to the local police station where they were photographed and fingerprinted by the arresting officer. Most people were then incarcerated overnight in one of the city’s large jails.³

- Marijuana possession arrests in New York City are racially skewed. Blacks were 52% of the arrests, but only about 26% of the city’s population. Hispanics were 31% of the arrests, but about 27% of the population. Non-Hispanic Whites were 15% of the arrests, but over 35% of New York’s population.⁴

- From 1997 to 2006, New York City arrested and jailed approximately 185,000 Blacks, 110,000 Latinos, but only 53,000 Whites for possessing small amounts of marijuana.⁵

- U.S. Government surveys of high school seniors have consistently found that Whites use marijuana at higher rates than do Hispanics and Blacks. U.S. Government surveys of young adults 18 to 25 have also consistently found that young Whites use marijuana at higher rates than do young Hispanics and Blacks. Nonetheless, the NYPD arrests Whites for possessing marijuana at much lower rates than it arrests Hispanics or Blacks.⁶

- In New York City, the marijuana arrest rate of Hispanics is nearly three times the arrest rate of Whites, and the marijuana arrest rate of Blacks is five times the arrest rate of Whites.⁷

- The marijuana possession arrests are also skewed in terms of gender and age. Most people arrested were younger than 26; about 91% were men. For more than ten years, New York City has arrested on average nearly 100 people a day for possessing small amounts of marijuana, mostly young Black and Latino men.⁸

The ten-fold increase in marijuana possession arrests began as an initiative of Mayor Rudolph Giuliani. The arrests have continued unabated under Mayor Michael Bloomberg. In 2007, the NYPD made 39,700 misdemeanor marijuana possession arrests, the fourth largest number of such arrests in New York history. Because the New York Police Department has released almost no information about these arrests, they have attracted little media attention. To this day few New Yorkers know that for over a decade their city has been on a historically unprecedented marijuana arrest crusade.⁹

Narcotics and patrol police, their supervisors, and top commanders in the police department benefit from the marijuana possession arrests. The arrests are comparatively safe, allow officers and their supervisors to accrue overtime pay, and produce arrest numbers that show productivity. When needed, commanders can temporarily shift narcotics police off making the misdemeanor possession arrests and assign them to other duties, which provides considerable flexibility. The marijuana arrests are also the most effective means available for obtaining information (including fingerprints, photographs, and potentially DNA samples) from people never before entered in the criminal justice databases.¹⁰

New York City's marijuana arrests were not part of a similar nationwide increase in marijuana arrests. From 1990 to 2000 marijuana arrests in the U.S. went up about two and half times. Marijuana possession arrests in New York increased ten fold and make up at least ten percent of all arrests in New York City.¹¹

New York City's rate of marijuana arrests is not in line with the arrest rates of other large U.S. cities. Few cities anywhere arrest and jail people for marijuana at the *per capita* rate that New York does. Because of its large size and high rate of arrests, New York City now arrests and jails more people for possessing marijuana than any city in the United States, and more than any city in the world.¹²

New York City's dramatic increase in marijuana arrests was not the result of an increase in marijuana use, which peaked nationally around 1980.¹³

New York City's marijuana possession arrests were not of people arrested for more serious crimes who were then found to be possessing marijuana. In these arrests, marijuana possession was always the highest charge and often the only one.¹⁴

New York City's marijuana arrests were not mainly of people caught smoking in public. Most of the people arrested in New York had a small amount of marijuana hidden in their possessions, usually in a pocket, backpack or purse.¹⁵

Simple possession of small amounts of marijuana (less than 7/8ths of an ounce) is not a crime in New York State. Since passage of the "Marijuana Reform Act of 1977," marijuana possession has been a violation, like a traffic violation. Nonetheless, most people arrested and jailed for possessing marijuana were not charged with this violation but with the crime of having marijuana "burning or open to public view."¹⁶

Police typically discovered the marijuana by stopping and searching people, often by tricking and intimidating them into revealing it. When people then took out the marijuana, they were then arrested and charged with the crime of having marijuana "open to public view."¹⁷

The marijuana possession arrests are in part a fruit of New York City's aggressive stop and frisk campaign. In 2006 alone the NYPD stopped and frisked (and sometimes searched) over 500,000 men and women. The percentages of Whites, Hispanics and Blacks stopped and frisked are nearly identical to the percentages of each group that are arrested for possessing small amounts of marijuana.¹⁸

The marijuana possession arrests are expensive. From 1997 to 2006, arresting, jailing, and arraigning in criminal court an average of 35,000 people a year, mostly teenagers and young adults, cost New York City approximately 53 million to 88 million dollars a year.¹⁹

The marijuana possession arrests do not reduce serious or violent crime, and they may well increase it, primarily by taking officers off the street and diverting them from more effective anti-crime work.²⁰

For the people arrested, mostly young Blacks and Latinos, the 24 hours in police custody and jail is a humiliating, degrading, alienating experience. The arrests create permanent criminal justice records which limit employment and educational opportunities. The entire arrest, booking and court process socializes the young people from poor families and neighborhoods to the criminal justice system, teaches them how to handle themselves within it, and functions as a kind of Head Start program for future arrests, incarceration, and unemployment.²¹

In this report we refer to what is happening in New York City as a “marijuana arrest crusade” to highlight the massive, organized, even relentless pursuit of these arrests under two mayors and three police commissioners for over ten years. But the term crusade does not capture other important characteristics of these marijuana possession arrests – including their racial bias, gender bias, costliness, and other harmful effects to New York City and especially to Black and Latino young people and their families.²²

In researching these misdemeanor marijuana possession arrests in New York City and elsewhere, we have obtained arrest data from New York State and the FBI and generated many tables and graphs. We have interviewed police, public defenders, legal aid attorneys, private attorneys, prosecutors, judges, and people arrested for possessing marijuana.²³ Above all we have sought to understand how New York City's marijuana arrest policy works, who benefits from it, and what some of its harmful consequences are. The research continues, but we have created this report summarizing crucial information to make it available for elected officials, public organizations, researchers, journalists, and New York's citizens.

It is long past time for the people of New York City to know about and address what its police department and criminal justice system have been doing in this and other matters. And other cities and counties in the U.S. can learn much from New York's marijuana possession arrest policy about what *not* to do.

MARIJUANA ARREST CRUSADE

RACIAL BIAS AND POLICE POLICY

IN NEW YORK CITY, 1997 - 2007

Marijuana Possession Arrests in New York City

1987	3,200
1988	2,100
1989	1,200
1990	1,000
1991	900
1992	900
1993	1,600
1994	3,400
1995	6,000
1996	9,800
1997	18,400
1998	33,200
1999	34,100
2000	51,500
2001	41,800
2002	44,400
2003	39,500
2004	28,200
2005	30,100
2006	32,400
2007	39,700

Source: New York State Division of Criminal Justice Services, Computerized Criminal History System (April 2008). Includes all fingerprintable arrests for NYS Penal Law Article 221 misdemeanor offenses as the most serious charge in an arrest event. Ages 16 and older.

1. NEW YORK CITY'S MARIJUANA POSSESSION ARRESTS AND THEIR RACIAL BIAS

From 1997 to 2006 New York City arrested and jailed more than 350,000 people for possessing small amounts of marijuana. This was an eleven fold increase in marijuana arrests over the previous decade, and a ten fold increase over the decade before that.

All of these 350,000 people were charged with misdemeanors, the lowest level of criminal offense. Those arrested were handcuffed, put in the back of a police car or van, taken to the local police station, fingerprinted and photographed. Most were then taken to spend the night in one of the city's central jails, called "central booking."

Graph 1 shows New York City's misdemeanor marijuana possession arrests in each of three decades. Nearly all of the people arrested were charged with violating section 221.10 of the New York State Penal Code.²⁴ These are all cases where marijuana possession was the most serious offense, or the only one; these were not people arrested for more serious crimes and then found to be possessing marijuana. These were marijuana possession arrests.

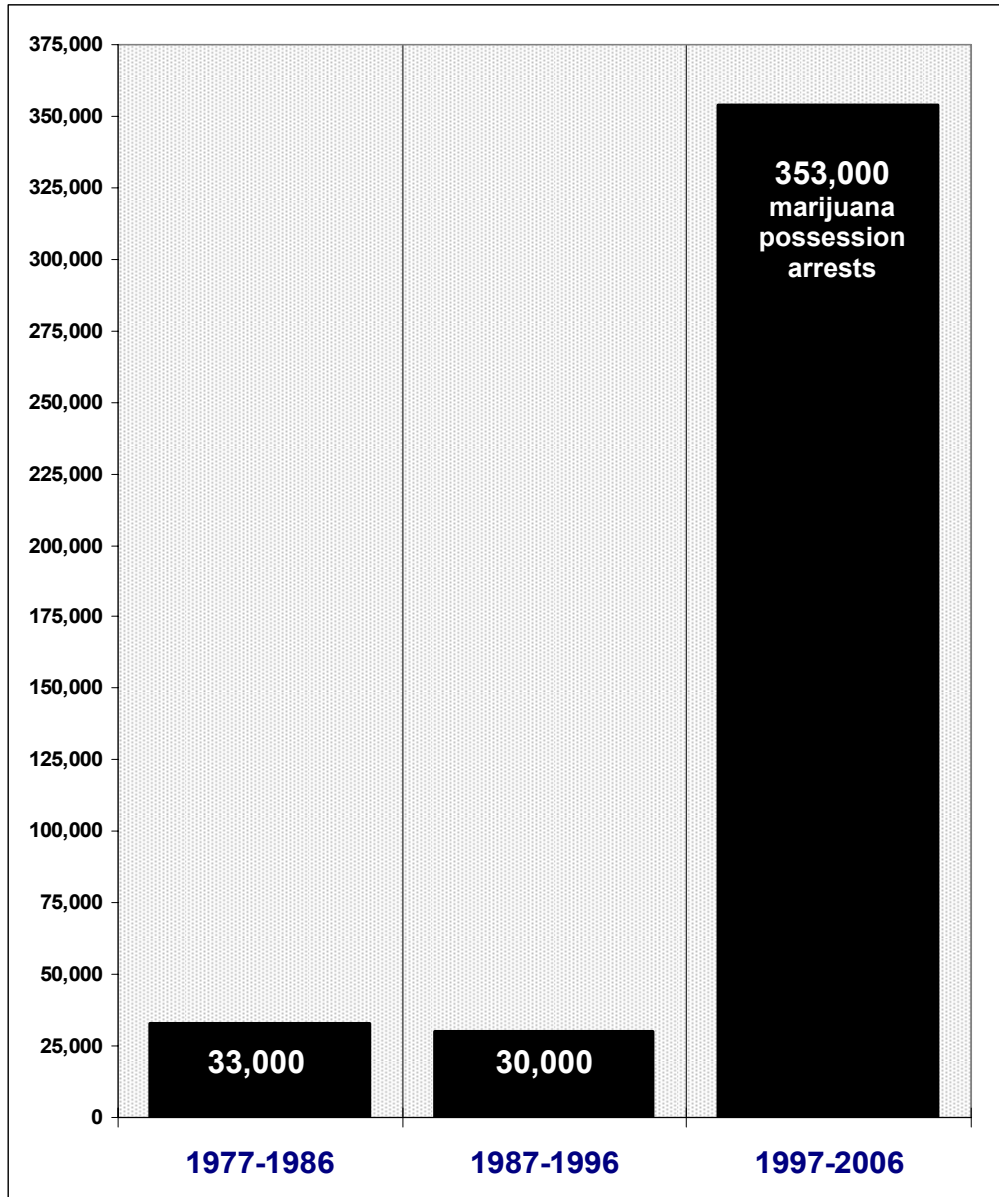
Most of the people arrested possessed only a small amount, usually a few grams in a marijuana "joint" or "blunt," or in a small, plastic bag – a "nickel bag" (\$5) or a "dime bag" (\$10). Some people arrested were merely standing with or near others with the marijuana. According to legal aid and public defender attorneys who have handled tens of thousands of these cases, most people arrested were *not* smoking in public. They simply had marijuana in their possession, usually concealed in a pocket.

This huge number of arrests has not been distributed equally among the people of New York City. Most people arrested were younger than 26 years and 91% were males arrested primarily in less affluent neighborhoods in all five boroughs.

New York's marijuana arrests have long been racially skewed, but because of the eleven-fold increase in arrests beginning in 1997, a great many more young Blacks and Latinos have been arrested than ever before in the city's history.

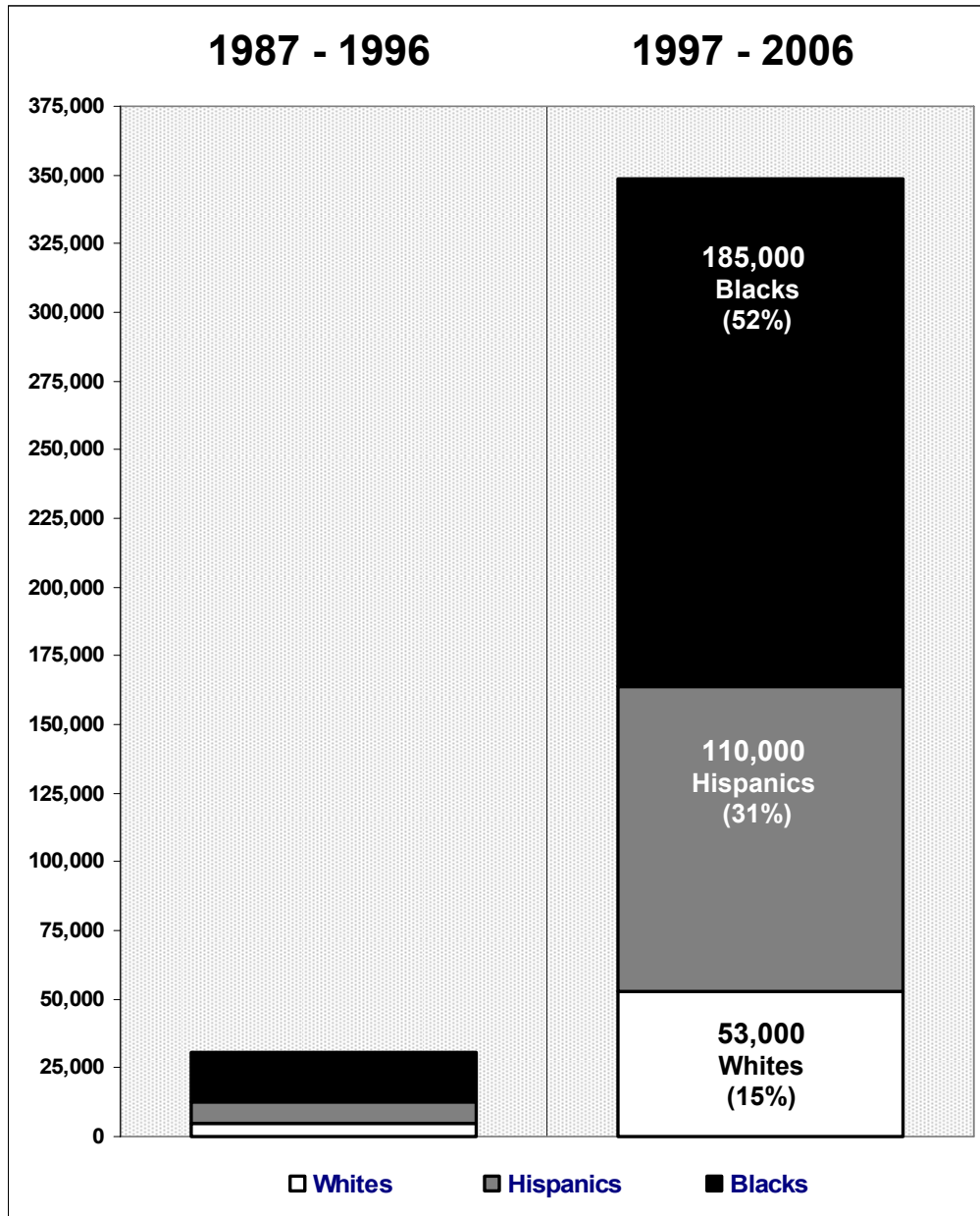
Graph 2 shows the marijuana possession arrests in the last two decades broken down by race. Of the 353,000 marijuana possession arrests in the last decade, 52% were of Blacks, 31% were of Hispanics, and 15% were of Whites. From 1997 to 2006, New York City arrested and jailed 185,000 Blacks, over 110,000 Hispanics, and 53,000 Whites for marijuana possession.²⁵

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



Source: New York State Division of Criminal Justice Services, Computerized Criminal History System (April 2008). Includes all fingerprintable arrests for NYS Penal Law Article 221 misdemeanor offenses as the most serious charge in an arrest event. Ages 16 and older. 1978 data was used for 1977.

2. Whites, Hispanics and Blacks Arrested for Marijuana Possession in New York City, in Two Decades

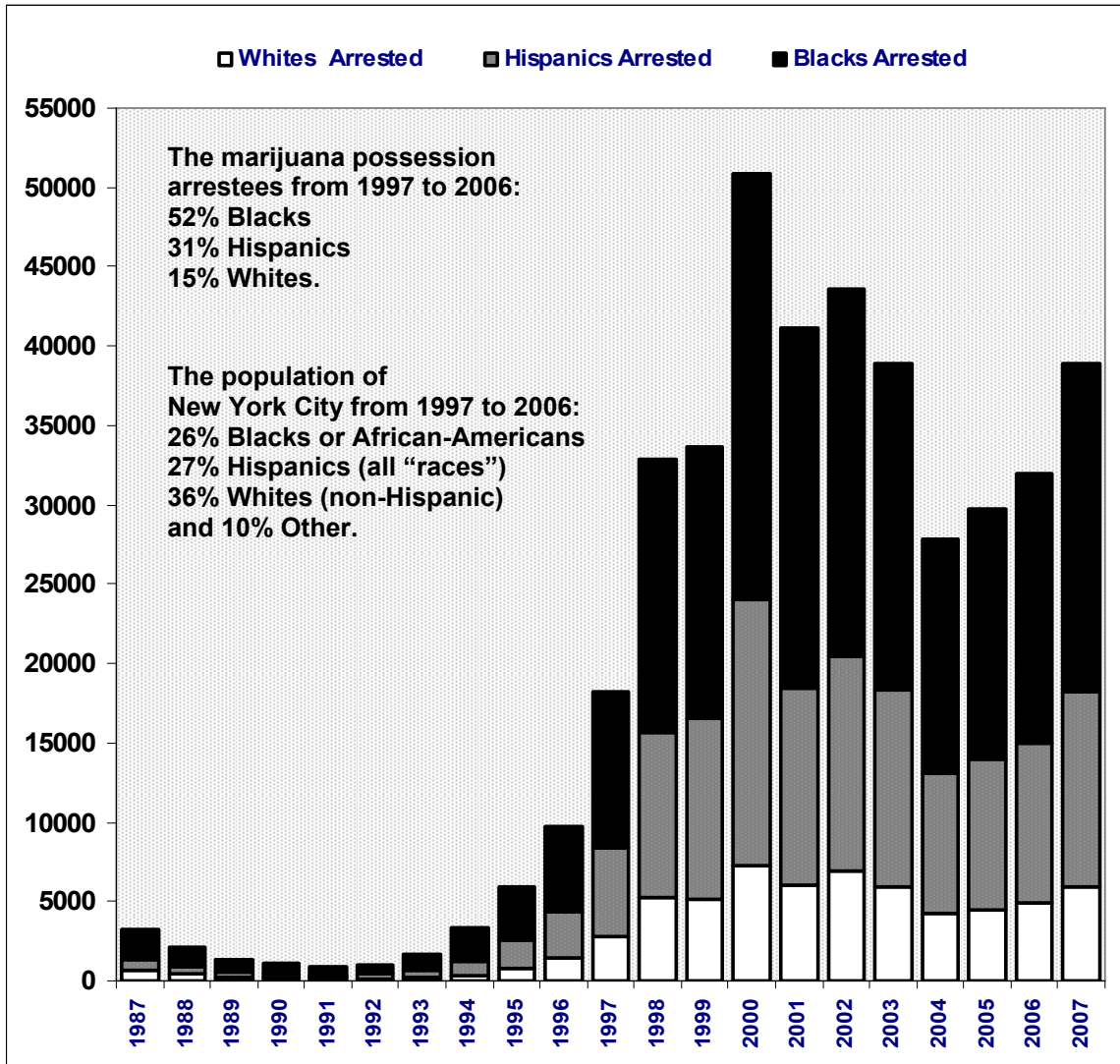


Source: New York State Division of Criminal Justice Services (NYDCJS), Computerized Criminal History System, (April 2008). Includes all fingerprintable arrests for NYS Penal Law Article 221 marijuana misdemeanor possession offenses as the most serious charge in an arrest event. Ages 16 and older. NYDCJS calculations thus far do not permit accurate counting of NYPD arrests by race for 2003-2006. Per recommendation from NYDCJS, arrest counts by race for those years were calculated using average percentages from the 1997-2002 data. Although not used here, preliminary NYDCJS arrest data for 2006, with breakdowns by race, show a higher percentage of arrests of Blacks and a lower percentage of arrests of Whites than used here.

1. Racial Bias In NYC's Marijuana Possession Arrests

Graph 3, with the arrests for each of the last 21 years, shows the portion of total marijuana arrests in each year that were of Whites, Hispanics and Blacks. Since the beginning of the marijuana arrest crusade in 1997, Blacks have been about 26% of New York's population, but 52% of the arrests. Hispanics have been about 27% of the population, but 31% of the arrests. And non-Hispanic Whites have been about 36% of New York's population, but only 15% of the arrests.

3. Arrests of Whites, Hispanics and Blacks for Marijuana Possession in NY City, 1987-2007

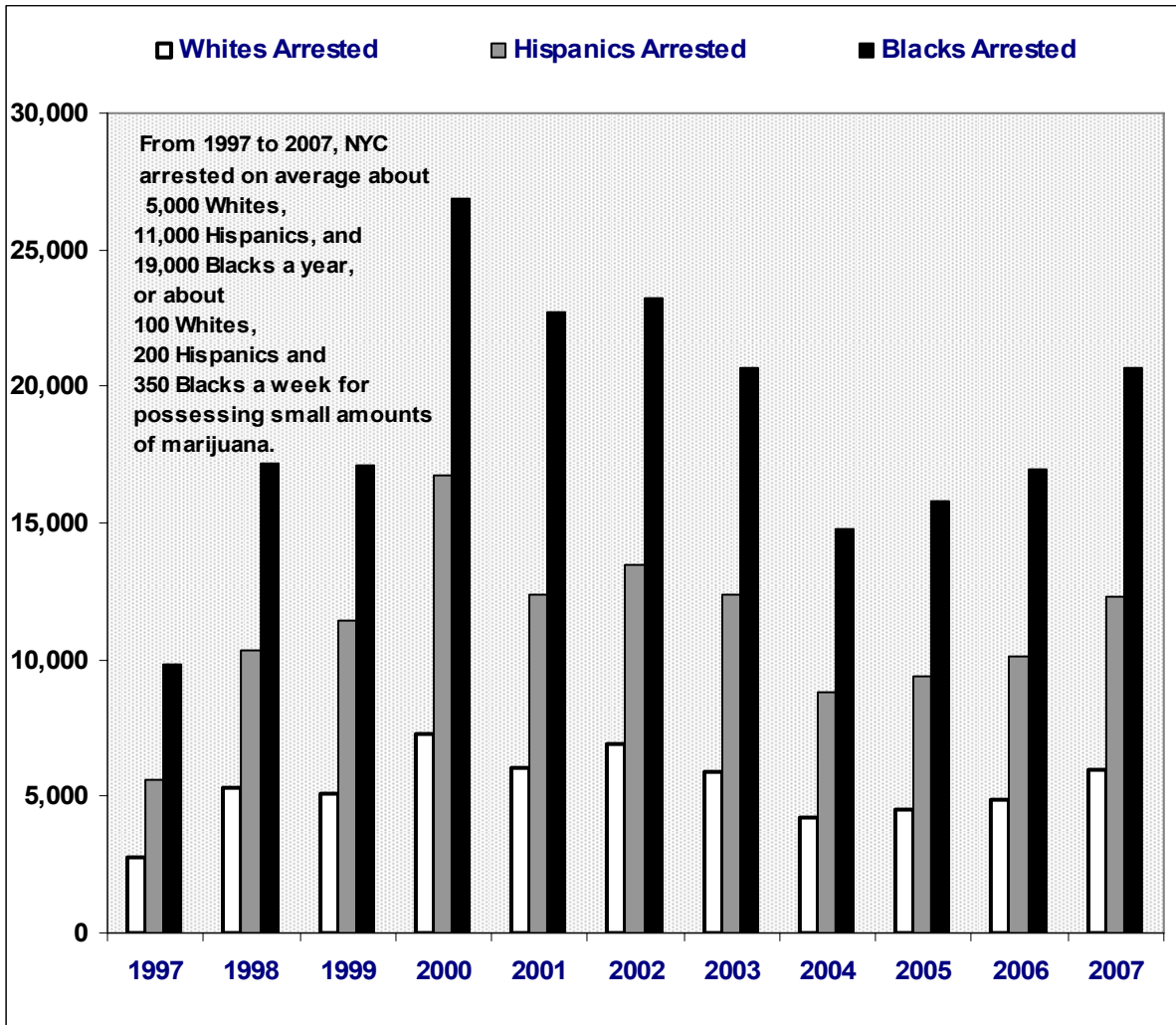


Source: New York State Division of Criminal Justice Services (NYDCJS), Computerized Criminal History System, (April 2008). Includes all fingerprintable arrests for NYS Penal Law Article 221 marijuana misdemeanor possession offenses as the most serious charge in an arrest event. Ages 16 and older. NYDCJS calculations thus far do not permit accurate counting of NYPD arrests by race for 2003-2007. Per recommendation from NYDCJS, arrest counts by race for those years were calculated using average percentages from the 1997-2002 data. Although not used here, preliminary NYDCJS arrest data for 2006, with breakdowns by race, show a higher percentage of arrests of Blacks and a lower percentage of arrests of Whites than used here.

1. Racial Bias In NYC's Marijuana Possession Arrests

Graph 4 shows the number of Whites, Hispanics and Blacks arrested for marijuana possession each year for eleven years, and includes the just released arrest data for 2007. The New York Police Department has arrested on average about 5,000 Whites, 11,000 Hispanics, and nearly 19,000 Blacks a year – which translates to approximately 100 Whites, 200 Hispanics, and 350 Blacks every week for over a decade, or nearly 100 arrests a day. *In 2007, New York City arrested 39,000 people: approximately 6,000 Whites, 12,000 Hispanics, and 20,000 Blacks.*

4. Arrests of Whites, Hispanics and Blacks for Marijuana Possession In NY City, 1997-2007



Source: New York State Division of Criminal Justice Services (NYDCJS), Computerized Criminal History System, (April 2008). Includes all fingerprintable arrests for NYS Penal Law Article 221 marijuana misdemeanor possession offenses as the most serious charge in an arrest event. Ages 16 and older. NYDCJS calculations thus far do not permit accurate counting of NYPD arrests by race for 2003-2007. Per recommendation from NYDCJS, arrest counts by race for those years were calculated using average percentages from the 1997-2002 data. Although not used here, preliminary NYDCJS arrest data for 2006, with breakdowns by race, show a higher percentage of arrests of Blacks and a lower percentage of arrests of Whites than used here.

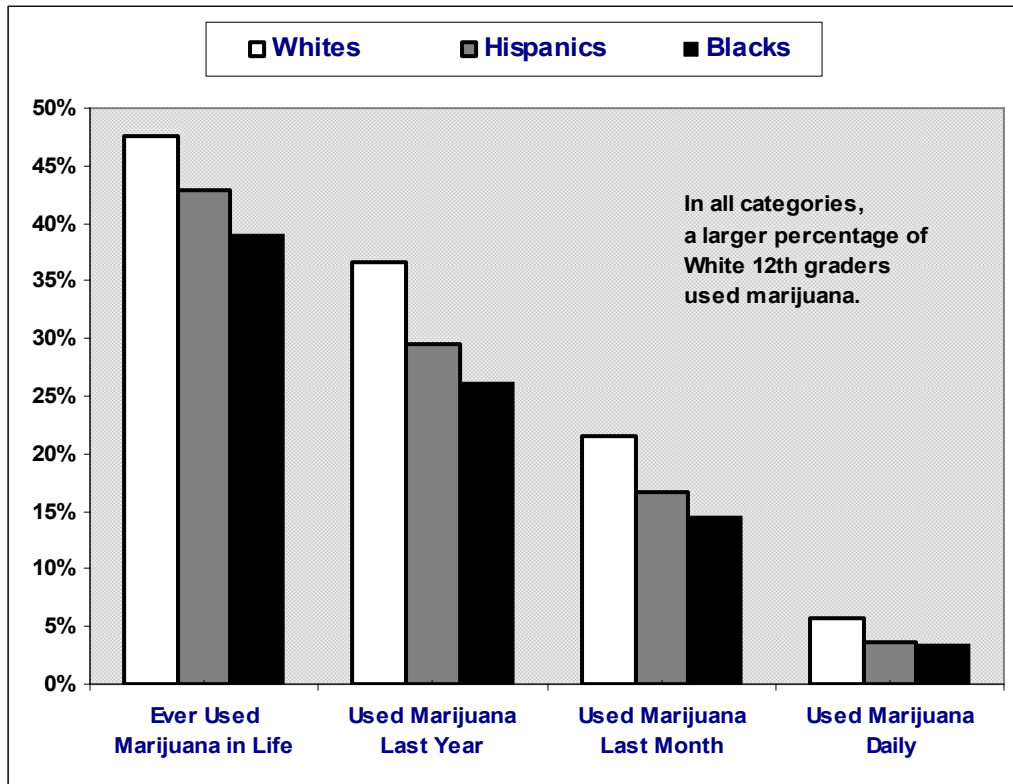
1. Racial Bias In NYC's Marijuana Possession Arrests

What about use? Do Blacks and Latinos use marijuana more than Whites, which is why so many more of them are arrested for possessing it?

Although no agency regularly makes available marijuana use information for New York City alone, two annual, national surveys, sponsored by the U.S. government, provide a widely accepted database of use patterns. National surveys have found small differences in use patterns among regions, but nothing large or unusual. There is absolutely no reason to believe that marijuana use is significantly greater in New York City than elsewhere in the region or the nation – and it may even be lower.²⁶

Graph 5 shows the marijuana use of high school seniors in 2004 and 2005. The data for these graphs is from the U.S. government's annual survey of high school students called "Monitoring the Future." The first set of columns shows the percentage of Whites, Hispanics and Blacks who used marijuana once or more in their life. The second columns show the percentage who used marijuana once or more in the last year. The third columns show the percentage who used in the last month, and the final columns show those who have used daily or nearly so. *In all cases, a greater percentage of Whites have used marijuana than Blacks or Hispanics.*

5. Marijuana Use by White, Hispanic, And Black 12th Graders, in 2004-5



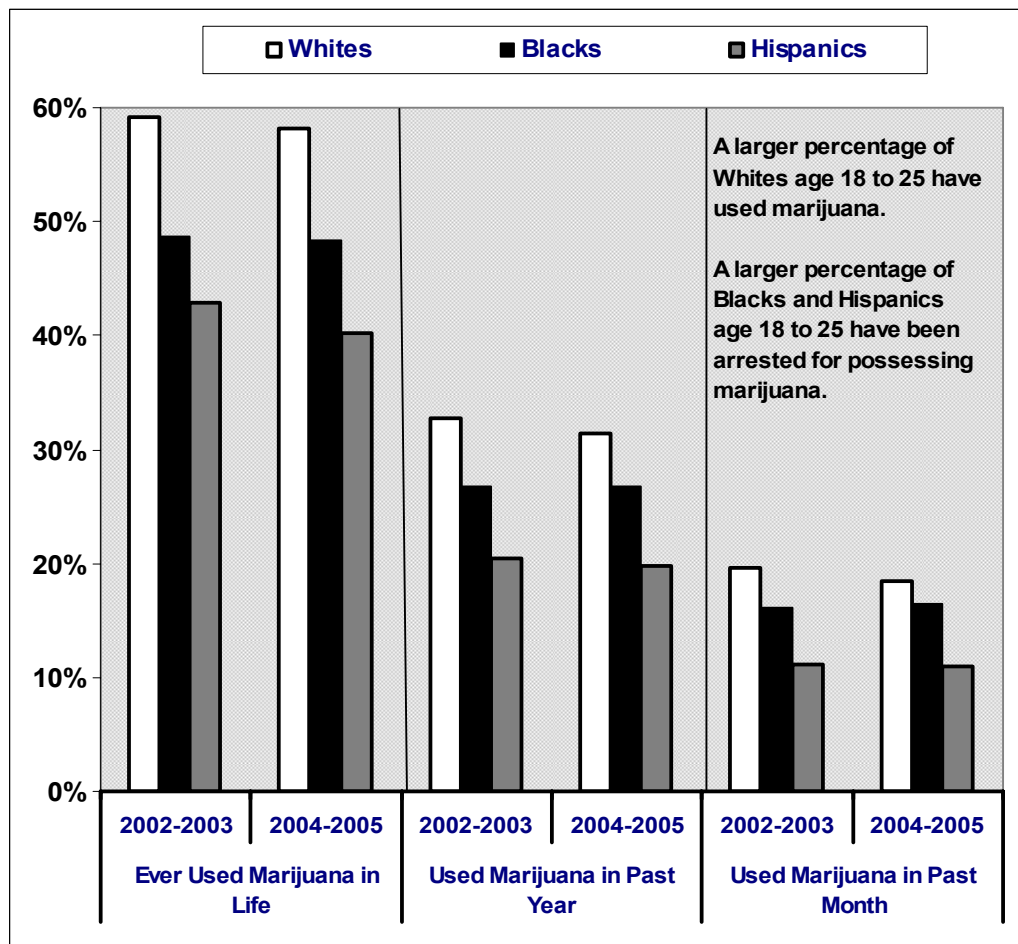
Source: Johnston, L. D., O'Malley, P. M., Bachman, J. G., & Schulenberg, J. E. (2006). *Monitoring the Future: national survey results on drug use, 1975–2005: Volume I, Secondary school students*, From Table 4-9 (NIH Publication No. 06-5883). Bethesda, MD: National Institute on Drug Abuse. At: http://www.monitoringthefuture.org/pubs/monographs/vol1_2005.pdf.

1. Racial Bias In NYC's Marijuana Possession Arrests

Graph 6 shows marijuana use of Whites, Blacks and Hispanics aged 18 to 25. The majority of people arrested for possessing marijuana in New York City are in this age group or are younger. The data come from the U.S. government's national survey of households, now formally called the National Survey on Drug Use & Health. This graph shows lifetime use, last year use, and last month use. For each category it shows two sets of columns: one with 2002 and 2003 figures, and one with 2004 and 2005 figures. These are the most recent data and (as with the high school students) surveys from earlier years show the same patterns: *a greater percentage of Whites have used marijuana than have Blacks and Hispanics.*

Nearly 60% of Whites, nearly 50% of Blacks, and about 40% of Hispanics had used marijuana once or more in their life. About 32% of Whites, 27% of Blacks, and 20% of Hispanics had used marijuana in the last year. About 19% of Whites, 16% of Blacks and 11% of Hispanics had used marijuana in the last month.

6. Marijuana Use by Whites, Blacks and Hispanics, Ages 18 to 25



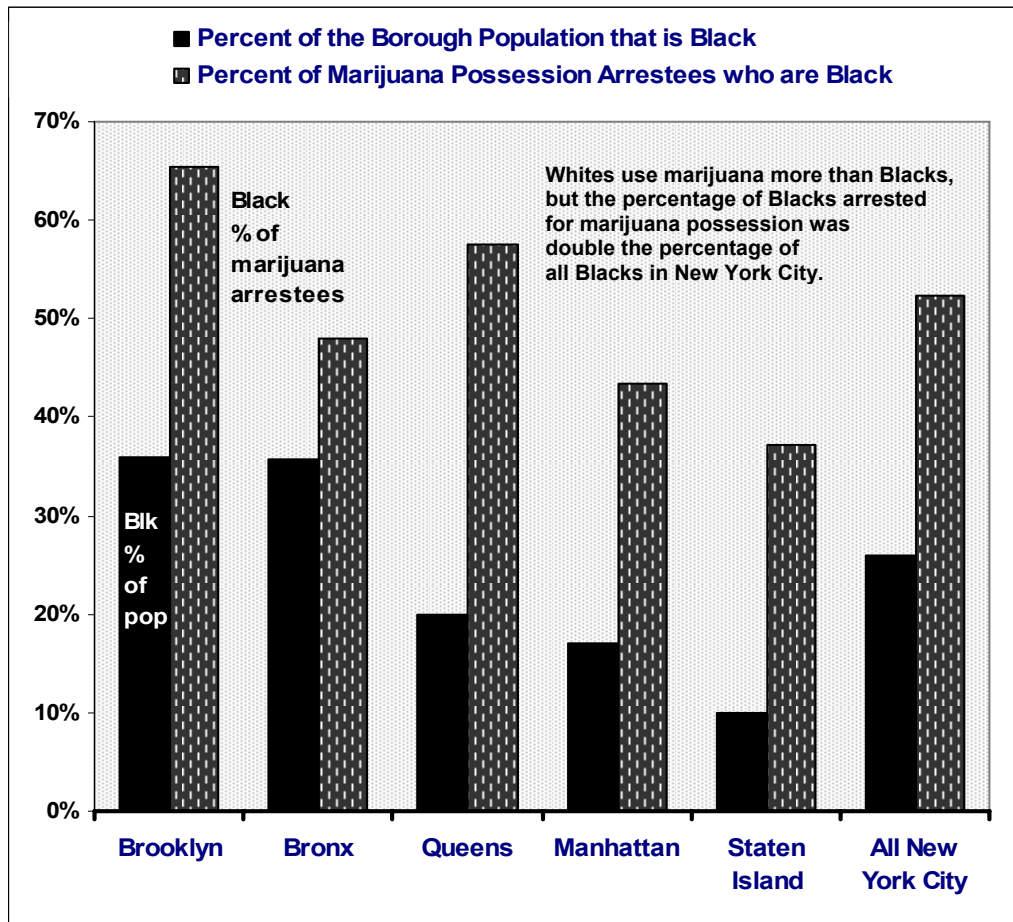
Source: U.S. Department of Health and Human Service, SAMHSA, Office of Applied Studies, 2005 National Survey on Drug Use & Health: Detailed Tables. Table 1.80B Marijuana Use in Lifetime, Past Year, and Past Month among Persons Aged 18 to 25, by Racial/Ethnic Subgroups: Percentages, Annual Averages Based on 2002-2003 and 2004-2005, At: <http://www.oas.samhsa.gov/NSDUH/2k5NSDUH/tabs/Sect1peTabs67to132.htm#Tab1.80B>.

1. Racial Bias In NYC's Marijuana Possession Arrests

Since Whites use marijuana more than Blacks or Hispanics, and since there are more Whites than Blacks or Hispanics in New York City, on any given day significantly more Whites possess and use marijuana than either of the other two groups. But every day the New York Police Department arrests far more Blacks than Whites, and far more Hispanics than Whites, just for possessing marijuana.

For each of New York City's five boroughs (or counties), Graph 7 shows both the percentage of the overall population that was Black and the percentage of the marijuana possession arrestees who were Black. *In Queens, Manhattan, Staten Island, and in the city as a whole, the Black percentage of marijuana arrestees was double or more the Black percentage of the population.*

7. Average Percentage of the Population that is Black, and Average Percentage of Marijuana Possession Arrestees who are Black, In Brooklyn, Bronx, Queens Manhattan & Staten Island, 1997-2007



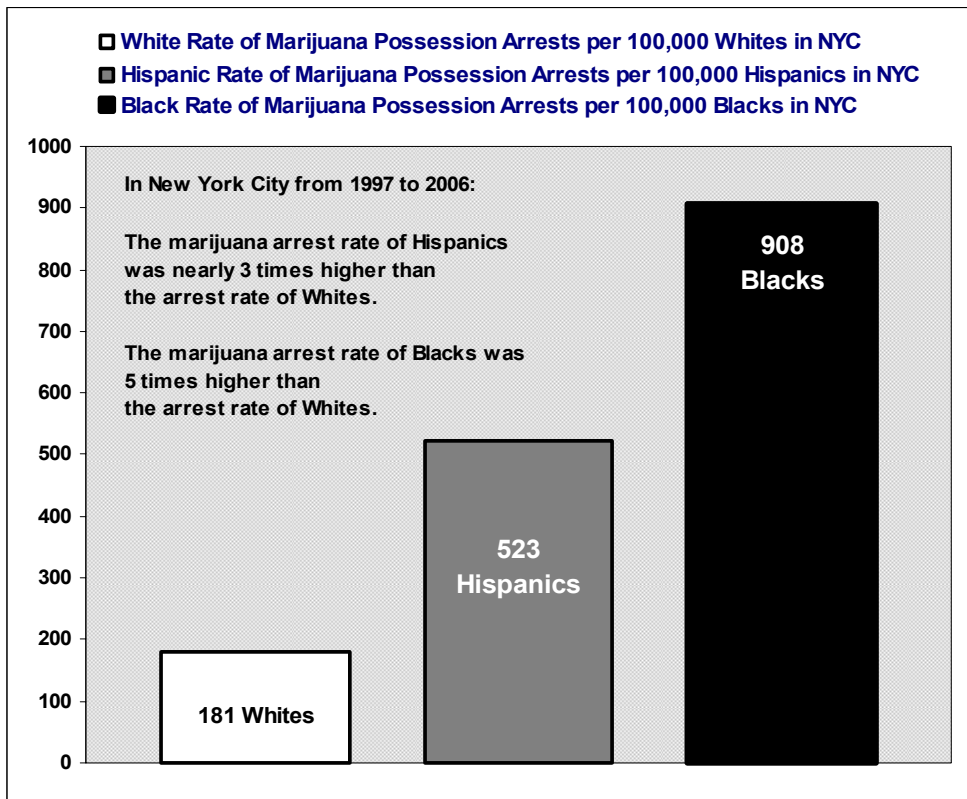
Source: New York State Division of Criminal Justice Services (NYDCJS), Computerized Criminal History System, (April 2008). Includes all fingerprintable arrests for NYS Penal Law Article 221 marijuana misdemeanor possession offenses as the most serious charge in an arrest event. Ages 16 and older. NYDCJS calculations thus far do not permit accurate counting of NYPD arrests by race for 2003-2007. Per recommendation from NYDCJS, arrest counts by race for those years were calculated using average percentages from the 1997-2002 data. Although not used here, preliminary NYDCJS arrest data for 2006, with breakdowns by race, show a higher percentage of arrests of Blacks and a lower percentage of arrests of Whites than used here.

1. Racial Bias In NYC's Marijuana Possession Arrests

In Staten Island, Blacks were about 10% of the population, but 37% of marijuana arrestees were Black. In Manhattan, Blacks were about 17% of the population, but 43% of marijuana arrestees. In Queens, Blacks were about 20% of the population, but 57% of marijuana arrestees. In Brooklyn, Blacks were about 36% of the population, but 65% of marijuana arrestees. In the Bronx, Blacks were 36% of the population, but 48% of marijuana arrestees. The White population and the White percentage of marijuana arrestees in each borough were equally skewed – in the opposite direction. *A greater percentage of Whites use marijuana, but New York arrests and jails a much greater percentage of Blacks for possessing marijuana.* One important reason that Mayors Giuliani and Bloomberg and the NYPD have not talked about the city's record-breaking and history-making marijuana arrests is because this racially skewed arrest pattern can not be justified.

Graph 8 shows the arrest rate of Whites, Blacks, and Hispanics calculated by the number of each group in New York City as a whole. *In 2006, Hispanics were arrested at nearly three times the rate of Whites. Blacks were arrested at five times the rate of Whites.*²⁷

8. White, Hispanic and Black Rates of Marijuana Possession Arrests in New York City, 1997 – 2007

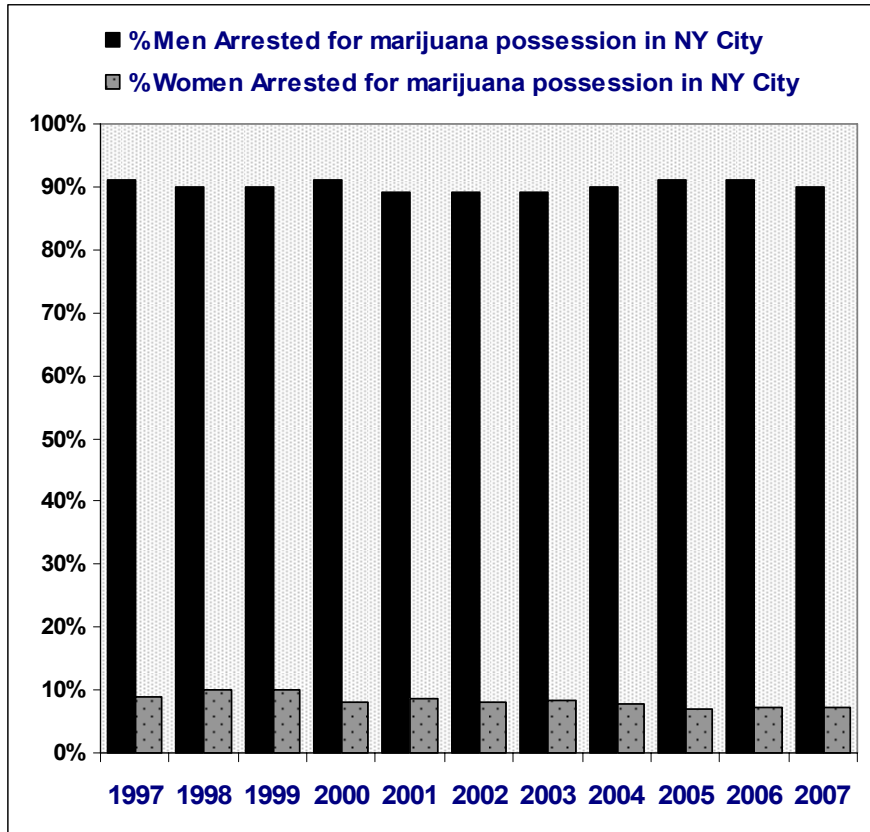


Source: New York State Division of Criminal Justice Services, Computerized Criminal History System. Includes all fingerprintable arrests for NYS Penal Law Article 221 misdemeanor possession offenses as the most serious charge in an arrest event. Ages 16 and older. U.S. Dept. of Commerce, Census Bureau. CC-EST2005-6RACE-[ST_FIPS]; County Population Estimates. NYDCJS calculations thus far do not permit accurate counting of NYPD arrests by race for 2003-2007. Per recommendation from NYDCJS, arrest counts by race for those years were calculated using average percentages from the 1997-2002 data. Although not used here, preliminary NYDCJS arrest data for 2006, with breakdowns by race, show a higher percentage of arrests of Blacks and a lower percentage of arrests of Whites than used here.

1. Racial Bias In NYC's Marijuana Possession Arrests

Finally, Graph 9 shows the percentage of marijuana possession arrestees in New York City who were men and women. Although men use slightly more marijuana than women, they are arrested far more often. Over 90% of the arrestees going back to 1997 (and before that as well) were male. The New York Police Department has long preferred to arrest men for misdemeanors. Most New York police officers are still men and the city's jails can accommodate far more men than women.

9. Percentage of Male and Female Marijuana Possession Arrestees in New York City, 1997–2007.



Source: New York State Division of Criminal Justice Services, Computerized Criminal History System (April 2008). Includes all fingerprintable arrests for NYS Penal Law Article 221 misdemeanor offenses as the most serious charge in an arrest event. Ages 16 and older.

Approximately one in three New Yorkers from ages 18 to 25 have used marijuana in the last year, and Whites have used the most. But about 83 percent of the men *and* women arrested for possessing small amounts of marijuana were Black or Hispanic.

2. THE USEFULNESS OF MARIJUANA ARRESTS TO THE POLICE: IS THE NYPD ADDICTED TO MARIJUANA POSSESSION ARRESTS?

“[Arrests] were sometimes conveniently timed to generate overtime pay for the arresting officer who typically took hours beyond his regular tour of duty to process the arrest. ‘Collars-for-Dollars’ is a practice widely known to officers, police supervisors, and prosecutors alike.... Besides overtime pay, high arrest numbers are often a factor considered for coveted assignments for patrol officers and supervisors alike.”

– "The City of New York Commission to Investigate Allegations of Police Corruption" (The Mollen Commission), July 1994

Why has the New York Police Department been making this enormous number of marijuana possession arrests, and why are they so racially biased?

The NYPD does not discuss its marijuana arrests. The police department holds no press briefings and offers no press releases or documents taking credit for capturing record numbers of marijuana offenders. It would appear that New York officials, from the Police Commissioner and Mayor on down, have not wanted attention drawn to the city’s extraordinary number of marijuana arrests. As a result there has been no significant media coverage of the arrests.²⁸ To this day few New Yorkers know that for over ten years their city has been on a major marijuana arrest crusade. And few people understand that since 1997 New York has arrested and jailed more people for possessing small amounts of marijuana than any city in the United States, and probably more than any city in the world.²⁹

The dramatic increase in marijuana arrests began in 1996 and 1997 with Mayor Rudolph Giuliani and his second Police Commissioner, Howard Safir.³⁰ The number of arrests continued to increase under Giuliani’s third Commissioner, Bernard Kerik. Marijuana arrests have continued at historically high levels under Mayor Michael Bloomberg and Police Commissioner Raymond Kelly. Indeed, the arrests have remained high even after the bombings of the World Trade Center on September 11, 2001, when other policing priorities emerged.

Because the New York Police Department is not publicly claiming credit for making record numbers of marijuana arrests, we have sought to understand who wants these arrests, or gains from them. The most important constituency we have found has been significant sectors of the New York Police Department.

The New York Police Department is an avowedly top-down paramilitary organization. Individual officers and low level commanders did not decide to make 350,000 marijuana possession arrests on their own. They were ordered to do so, sometimes indirectly, sometimes very directly. Patrol and narcotics police were rewarded for making marijuana possession arrests as part of a consciously managed, decade-long campaign, one that has continued in 2007 and 2008. The arrests are made by patrol and especially by narcotics police. Some officers have not liked making the marijuana arrests and found other police work to do. Some

2. The Usefulness of Marijuana Arrests to the Police

have made few arrests. Others, especially narcotics police, have made many of them.

From our research and interviews, we identified several major incentives for narcotics and patrol officers, and for supervisors at all levels of the NYPD, to support the policy of making many marijuana arrests, primarily of Black and Latino teenagers and young men.

- **Marijuana arrests are relatively safe, easy, and allow police officers to show they are being productive.**

Police work can be dangerous. In our interviews, ordinary New York police officers report that making marijuana arrests is safer and easier than many other forms of police work. Officers are unlikely to get shot or stabbed arresting someone for marijuana. People arrested for possessing marijuana tend to be non-violent and easy to handle. Further, as one veteran officer put it, marijuana arrestees are "clean" – meaning physically clean, not smelly or dirty. This matters because the arresting officer is "married" to the arrestee throughout the booking process, sometimes for many hours. Unlike drunks, people arrested for possessing marijuana are unlikely to throw up in the back of the squad car.³¹

In effect, making marijuana and other misdemeanor arrests has become a "quality of life" issue – for the police. According to some news reports, narcotics officers have resisted efforts to shift them to other duties or even to higher level drug work, which is often more dangerous, more tedious, and provides less opportunity for overtime.³²

Big city police departments in the U.S. have long been driven by quotas and numbers. Patrol officers have to demonstrate their "productivity," above all by arrest numbers. Since the mid-1990s and the introduction of the statistical system called CompStat, the NYPD has made numbers even more central in its internal evaluations. In such an organization, driven by productivity numbers, being able to make many routine misdemeanor marijuana possession arrests helps police officers because such arrests are easy to make and allow officers to show they are productive in a way the system values – that maintain the system's illusion of productivity.³³

Since 1996, when Howard Safir became police commissioner, the NYPD has encouraged and rewarded the arrests of people who possess even very small amounts of marijuana. One veteran patrol officer who came on the force in 1984 told us that, during his first ten years, an officer who brought in a simple marijuana possession arrest might be teased or even ridiculed by the desk sergeant or other officers. "Hey, look at what Jones brought in: a really dangerous case of pot possession. Major criminal you've got there Jonesy." Beginning in the mid-1990s, however, the attitude within the department markedly changed: marijuana possession arrests became not just acceptable but desirable and worthy of praise. "I'd like to see the rest of you making those marijuana collars like Jones has. You know they're out there. Go get some."

- **"Collars for Dollars": Marijuana Arrests Allow Police Officers to Make Much Desired Overtime Pay.**

2. The Usefulness of Marijuana Arrests to the Police

Because NYPD pay scales are at historically low levels, many officers naturally desire overtime work.³⁴ A marijuana arrest (or other low-level misdemeanor arrest) near the end of a shift guarantees an officer several or more hours of relatively clean, easy overtime – at time and a half pay. This is so much part of life within the NYPD that, among themselves, officers refer to marijuana and other misdemeanor arrests, especially at the end of a shift, as “collars for dollars.” Apparently every police officer in New York City knows the expression.

In recent years most officers can usually obtain at least 35 hours of overtime a month. Veteran police officers assured us that although this number is nowhere written down, many police and their commanding officers know it and live by it, with even greater overtime opportunities for special circumstances and projects. For many officers, making arrests toward the end of a shift is by far the most common way to obtain this much-desired overtime pay.

One way patrol officers can generate overtime is by searching for suspects who may have some sort of “contraband” in their possession. The NYPD made over 500,000 recorded “stop and frisks” in 2006.³⁵ When police stop and frisk people, they sometimes search the person’s pockets and belongings. The item that men and women are most likely to have in their possession that can justify an arrest is a small amount of marijuana. Marijuana possession arrests are, in part, a fruit of the NYPD’s many stop and frisks which are routine activities of police seeking overtime – in pursuit of “collars for dollars.”³⁶

• Narcotics Officers Benefit from High Marijuana Arrests

Although there are no official NYPD reports describing and counting the officers who make the marijuana possession arrests, knowledgeable veteran officers and long-time legal aid attorneys estimate that perhaps half of all marijuana possession arrests are made by narcotics squads. Some officers work whole days primarily making misdemeanor collars for marijuana and other drug offenses.

For narcotics police, marijuana arrests are much less dangerous than many other kinds of anti-drug operations. For narcotics police, making marijuana arrests is often more appealing and agreeable than other assignments. High-level narcotics investigations can bring many tedious hours of surveillance when nothing happens. Because serious surveillance operations must be covered by tightly scheduled shifts, they also offer fewer opportunities for overtime than street-level marijuana arrests. Focusing on people possessing small amounts of marijuana and other drugs enables narcotics police to do safer, easier, more appealing work, with high productivity and much accrued overtime.

The NYPD has used some creativity in how they have manufactured so many marijuana possession collars. In 1997 the police (with the apparently proud approval of Mayor Giuliani) created the innovative program of having narcotics officers *sell* marijuana in public places – so they could arrest then the buyers.³⁷

One technique that narcotics police use for generating many marijuana arrests, also of buyers, we have termed “net fishing.” This occurs when narcotics police stake out a storefront – such as a small grocery or record store – which is selling five and ten dollar bags of marijuana. Instead of raiding the place and closing it down, a narcotics team puts an undercover officer close by to observe.

2. The Usefulness of Marijuana Arrests to the Police

When he sees people who may have bought marijuana coming out of the store, he radios or phones a description of them to fellow officers who have set up their operation a block away. When the suspects reach the next corner they are stopped and told that they have been observed coming out of a “known drug dealing establishment” and must be searched. When the just-purchased marijuana is discovered, the people arrested – usually young Blacks and Latinos – are locked in a van parked nearby, the operation continuing until the van is filled. Like fishermen who put a net across a river to catch any fish swimming down stream, the narcotics team may return a couple times a week for many months, setting up their “nets,” and making arrests. If they bring a group of arrestees in toward the end of a shift, the officers can accumulate substantial overtime.³⁸

• Police supervisors from the precinct level up to the police chief also benefit from marijuana arrests. The arrests generate records, facilitate supervision of police activities, and allow police supervisors to show that they and their officers are productive.

Perhaps the number one concern of police supervisors at all levels is: “Where are my officers right now and what are they doing?” When officers are making many marijuana arrests (and other minor misdemeanor arrests including the rapidly growing number of “trespassing” arrests) they are keeping busy.³⁹ As a police lieutenant said: “you don’t have to worry that they are goofing off or doing something else.” At a time when serious and violent crimes (and therefore arrests) have declined significantly, making misdemeanor arrests enables supervisors, from the precinct on up, to show that the officers they supervise are not sloughing off.⁴⁰ In addition, supervisors also accumulate overtime pay when the officers working directly under them do.

• Police who chiefly make marijuana arrests (and other narcotics possession arrests) can easily be shifted elsewhere when needed.

It helps police supervisors to have officers routinely making marijuana and other misdemeanor arrests because if something big comes up – an emergency, fire, bombing, visiting dignitary – they can shift these officers elsewhere without taking resources from more important patrols and operations. No ongoing investigation or anti-crime operation is affected by temporarily reducing marijuana possession arrests. This flexibility is so central to ordinary NYPD functioning that, by the late 1990s, many of the 900 or so uniformed officers on duty at Yankee Stadium for games were unhappy plain clothes narcotics police temporarily assigned to uniformed patrol duties. In a sense, officers making marijuana and other misdemeanor arrests function as a kind of “reserve army” of police to be called upon when needed, which is quite useful for the top brass of the department.

• Marijuana arrests provide an easy way to target and acquire information – to institutionalize and routinize surveillance – on young people, particularly people of color.

Along with national and other local police agencies, the NYPD seeks to have as many young people as possible “in the system” – meaning having them

2. The Usefulness of Marijuana Arrests to the Police

fingerprinted, photographed, and now increasingly DNA tested.⁴¹ Howard Safir, the Police Commissioner from 1996 to 2000, regarded collecting information as a critical police task and became one of the most prominent national advocates for collecting what he termed “DNA fingerprints.”⁴² Similarly, Mayor Michael Bloomberg has been an enthusiastic supporter of expanding criminal justice and other data bases to include many ordinary Americans, and in January 2008, as Jim Dwyer of the *New York Times* reported, “the mayor proposed that everyone arrested for any crime in New York City—before the case has been judged—should be required to provide a sample of DNA.”⁴³

Marijuana arrests are the best and easiest way currently available to acquire actual fingerprints, photos and other data on young people, especially Black and Latino youth, who have not previously been entered into the criminal justice databases. There is nothing else the police can do to put as many new people “into the system,” and to update information on those already entered, as the wide net of marijuana possession and other misdemeanor arrests.

A researcher who worked every day for nearly a year interviewing arrestees in the criminal court detention cells of one borough told us of the daily talk to the marijuana and other misdemeanor arrestees by one guard. In a speech delivered every day for years, the guard dramatically told the tired, hungry, misdemeanor arrestees who had been held overnight that everyone else had lied to them about why they were arrested, but that he would tell them the truth. The truth, he said, was they were arrested for their fingerprints and photos. We think that he correctly reported one source of support for the arrests among some commanders within the upper echelons of the NYPD, including Commissioners Safir and Kelly.

• Black and Latino youth are disproportionately arrested for possessing marijuana because it is easy and convenient to do so, and because there is no pressure on police to stop doing this.

We have no doubt that there are White officers within the NYPD who prefer to arrest Black and Hispanic men over White men. Some prejudice, bigotry and racism appears nearly everywhere. But we do not think that most of New York’s huge number of Black and Latino marijuana possession arrests are the result of personal racism on the part of individual officers or their commanders. This is a structural and organizational problem, not one rooted in individual prejudice.

Police activities tend to be concentrated in neighborhoods designated as “high crime” areas, which in New York and other large cities also happen to be disproportionately poor and Black and Latino. It is in these neighborhoods where the NYPD concentrates its stop and frisk operations – more than 500,000 recorded stop and frisks in New York City in 2006, over 80% of Blacks and Latinos. As the 1999 report from the New York Attorney General found, and as others have since noted, stop and frisks occur much more often (at a higher rate) in Black and Latino neighborhoods. But, most significantly, the Attorney General’s report stressed that Blacks and Latinos were more likely to be stopped and frisked anywhere else in the city, even in low-crime areas and in largely White neighborhoods.⁴⁴

2. The Usefulness of Marijuana Arrests to the Police

As the graphs and discussion provided in this report reveal, the NYPD's system-wide focus on certain neighborhoods and especially certain kinds of "suspects" produces the enormous racial and gender disparities in the marijuana possession arrests. For example, White students at Columbia University on the upper west side of Manhattan walking around with marijuana in their pockets are almost never arrested – the area has one of the lowest marijuana arrest rates in New York City. However, Blacks in west and central Harlem, just a few blocks from Columbia University, are routinely stopped, searched and arrested. And Latinos in Washington Heights, just a little further north, are likewise arrested much more often.⁴⁵

For the NYPD, Black and Latino youth are easy and obvious sources of arrests. The police stop Blacks and Latinos so routinely they are often familiar with what is involved in being stopped and searched. In addition, working-class and poor people usually lack the political and social connections that might make the arrests troublesome or embarrassing for the arresting officers and their commanders. A White, middle-class appearing arrestee may be a relative or friend of a prominent politician, lawyer, or other professional who can cause difficulties for police officers and their commanders. So police find it prudent to avoid such suspects in their stop and frisks, and in their search for people possessing small amounts of marijuana and other contraband.

The patrol and narcotics officers' focus on Blacks and Latinos is not driven so much by individual racism as by a systemic focus within the police department on Black and Latino young men. The police catch so many more of one kind of "fish" because they are mostly searching in certain waters, looking mainly for certain kinds of fish. And the effects are clearly racially biased, discriminatory, unfair and unjust.

"For minority males across the city, the stop and frisk has become routine, experienced by every class in every neighborhood. In street interviews this week with 100 black and Hispanic males between the ages of 14 and 35, a startling number of them – 81 – said they had been stopped, patted down and questioned, without being arrested.... The respondents were asked to detail their experiences with police and their attitudes toward cops. Many offered candid accounts of incidents that left them feeling demeaned."

– *New York Daily News*, "Minority Men: We Are Frisk Targets. News Poll Finds 81 Of 100 Have Been Stopped By Cops," March 26, 1999.

3. POLICE SEARCHES OF POCKETS AND POSSESSIONS

“Those who have studied police have observed that rarely will someone who is stopped by a police officer refuse to show an ID or even understand when he or she is not required by law to show it, such is the authority that police ordinarily command. Cops know this and also how to manipulate such encounters so as to appear forceful in the encounter – using, for example, a command voice – then later testifying that the person ‘volunteered’ to be searched, when it was clearly in that individual’s self-interest not to be searched.”

– Jerome Skolnick, *Justice Without Trial*, 1994, p. 283

“It is simply fantastic to urge that a [stop and frisk] procedure performed in public by a policeman while the citizen stands helpless, perhaps facing a wall with his hands raised, is a ‘petty indignity.’ It is a serious intrusion upon the sanctity of the person, which may inflict great indignity and arouse strong resentment, and it is not to be undertaken lightly.... Even a limited search of the outer clothing for weapons constitutes a severe, though brief, intrusion upon cherished personal security, and it must surely be an annoying, frightening, and perhaps humiliating experience.”

– Supreme Court Justice Warren Burger, *Terry v. Ohio*, 1968

- **Most people arrested for possessing marijuana in New York City were not smoking it. They simply had it in their possession. Police found the marijuana by searching people’s clothing and belongings.**

Some of the people arrested for possessing marijuana had been smoking. Some had been part of a small group generally trying to be discreet – in an alley, building alcove, or park.⁴⁶ Police sometimes also arrest people just standing near the smokers. These arrests of people smoking in public were a distinct *minority* of all of New York City’s marijuana possession arrests.

Most of the people arrested for marijuana had *not* been smoking. Experienced public defenders and legal aid attorneys in New York City, some of whom have handled tens of thousands of these cases, estimate that the majority – “about two-thirds to three-quarters” – of the 350,000 people arrested and charged with marijuana possession had not been smoking, or even standing near people smoking.⁴⁷

- **Most of the marijuana possession arrests since 1997 were the result of police stops and searches. Police searches of people’s pockets and belongings, prior to arrest, are usually done legally, often by tricking people. Novice police learn from experienced partners how to search people and they become skillful at it.**

3. Police Searches of Pockets and Possessions

The Fourth Amendment to the Constitution guarantees “the right of the people to be secure in their persons.” It protects against “searches” unless accompanied by a warrant that is “supported by oath or affirmation” and that describes “the place to be searched, and the persons or things to be seized.” In 1961, the U.S. Supreme Court decision in *Mapp v. Ohio* first extended the full protections of the Fourth Amendment to searches by state and local police. In 1968 the Supreme Court made a limited exception for this. In the decision of *Terry v. Ohio*, the Court determined that police officers can legally stop and detain someone when, based on their experience, they have a “reasonable suspicion” that “criminal activity may be afoot” and especially if they believe the person possesses an illegal gun. In criminal justice and legal terminology, this is called a “Terry stop.”⁴⁸

Having made a stop, the Supreme Court ruled that police officers may then legally “pat down” or “frisk” a person – *if* they have reason to believe the person may possess a weapon.⁴⁹ When thoroughly feeling the outside of a suspect’s clothing, if the police determine the person is carrying a gun, they have legally probable cause to search and arrest the person. Except for a weapon, only after making an arrest can the police legally reach into someone’s pockets and belongings *without permission*. As a former district attorney from another major U.S. city said to us: “a cop can’t [legally] go into someone’s pocket just because he feels a lump or bag that he *thinks* might be drugs.”⁵⁰

By obtaining permission from the people they have stopped, often by tricking and intimidating them, police in New York (and every U.S. city) do legally search people’s pockets and belongings. One way for police to receive permission to search is by saying something leading such as: “You don’t mind if I search you. You don’t have anything to hide, *do you?*” The person quickly says “no” (often intending to answer only the second question) and the officer can then legally search the person’s clothing, belongings and automobile.

Everyday in New York (and every large U.S. city) police ask for and obtain permission to search.⁵¹ When people say “yes” (or perhaps do not explicitly say “no”) they give legal permission for the officer to go beyond a thorough external frisk and completely search inside clothing and belongings. As we explain further in Part 5 of this report, police are legally allowed (and even encouraged) to mislead, trick or lie to suspects in pursuit of illegal weapons and other criminal evidence. In this way, police gain permission to search and often convince people to take out of their pockets or belongings what they have and hand it over.⁵²

New police officers are sometimes surprised by how easy it can be to persuade people to allow a search. Experienced officers learn to do it well and the process becomes part of their ordinary routine. In this way, police find evidence, above all a small amount of marijuana, and make many arrests for minor offenses, and some for major ones. They also search many more people – at least nine or ten times more – who possess nothing illegal at all.⁵³

A minority of searches are not done legally.⁵⁴ In the course of a thorough pat down during a stop and frisk, officers sometimes feel what they think might be marijuana or another drug. When this happens, some officers (especially narcotics police) may reach into the jacket, shirt or pants pocket and quickly retrieve what is there. If the officers find nothing to justify an arrest, they let the suspects go. If the search finds contraband, most often marijuana, the officers have a “collar.”

3. Police Searches of Pockets and Possessions



Frisk on Amsterdam Avenue - Photo by Ed Stern at flickr.com

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3. Police Searches of Pockets and Possessions

The veteran officers we interviewed reported that when police conduct a frisk where no one can witness them, and when they separate multiple suspects, they are generally able to search as they wish.⁵⁵

If the legitimacy of a search in a misdemeanor arrest should be raised in court, the officers can testify that they asked if the suspects minded being searched and were told “no.”⁵⁶ As those familiar with New York courts explained to us, when a case with no other witnesses hinges on the word of a police officer versus that of an arrestee – especially if the arrestee is a young Black or Hispanic man – the judge almost always takes the word of the officer.

A long-time officer explained to us how novice police learn to do searches from their more experienced partners. He said that police at all levels tell new officers and those they supervise the text book rules of policing. Everyone must literally give lip service to legal, constitutional, police procedures. But real, everyday, street policing often operates by a different code. When on patrol with experienced partners, the novices learn the rule actually is: “Do what I do, not what I say.” “So,” we asked, “the new officers learn how to search people, including illegally, by watching their experienced partners?” “Right,” said the veteran. “And,” we asked, “then they practice what they see?” “Right,” he said again: “They practice *every* day.”⁵⁷

• Police stop and frisks are universally regarded as intrusive and threatening, but the searches that often accompany them are so common that many young Blacks and Latinos regard them as unremarkable. The police searches are also quick, efficient, and coolly professional.

It can be shocking to middle-aged, middle-class White people, unfamiliar with the routine workings of the criminal justice system, to learn how widespread police searches are. However, most Black and Latino New Yorkers in their twenties who we spoke with, and a number of young White men as well, knew from personal experience that police searches are routine. They had either been searched prior to arrest or, much more often, searched without being arrested because the police found they possessed nothing illegal. All had friends and acquaintances who had been searched without being arrested

Nobody likes being stopped by the police and frisked. As the U.S. Supreme Court recognized in *Terry v. Ohio*, and as the 1999 New York Attorney General’s investigation showed, a police stop and frisk is an invasive, humiliating and threatening experience.⁵⁸ Indeed, it would not be politically possible to put residents of New York’s upper-middle class communities through what is now routine in the city’s poorer neighborhoods; the young people we spoke with understand that.

The people arrested for marijuana in New York City whom we interviewed reported that their searches had been conducted quickly and efficiently. “It happened so fast I didn’t even realize I’d been searched,” said one. “It was over before I knew it,” said another. “Suddenly the cop had my stash and was cuffing me,” said a third. Arrestees talked spontaneously and sometimes at length about other aspects of the process – especially about being kept in a van while police hunted for more arrests, about the deplorable conditions in New York’s jails,

3. Police Searches of Pockets and Possessions

about the horrible food, about not sleeping because they spent the night locked up with threatening-looking prisoners. But they only mentioned the searches when asked. And because the searches happened so quickly, there was little to say about them.

None of the people we interviewed who had been arrested for possessing marijuana in New York City had been roughed up by the police. Indeed, it seems to us the police handle *most* of these arrests with precision and “professionalism” – not always, of course, but perhaps in the large majority of cases. Rather than being violent or brutal, there is something coolly efficient about these searches and arrests. The police have a job to do, and – at least in these misdemeanor marijuana cases – our finding is that most officers seek to do the job with as little muss and fuss as they can.

In this efficient manner, New York police search and arrest very large numbers of people for marijuana. As noted previously, in 2006 the NYPD made more than 500,000 recorded stop and frisks, and an unknowable number of unrecorded ones.⁵⁹ Many of those frisks included searches, and some of the searches turned up marijuana and became arrests. These constitute a substantial portion of New York City’s 32,000 misdemeanor marijuana arrests in 2006, and the hundreds of thousands more in the last ten years – mostly of young Black and Latino men.

“At 14, Rocky Harris knows the routine: You raise your hands high, you keep your mouth shut and you don't dare move a muscle.... When they don't find guns or drugs, Rocky said, they let you go. He said that he had been searched, fruitlessly, at least three times since last summer, and that he had friends who had been searched repeatedly. ‘They tell you that you're selling drugs. But I don't do nothing wrong. I just play ball,’ he said, walking through the Red Hook East housing development in Brooklyn yesterday morning, headed to a community center for a game of basketball.”

– The *New York Times*, “As Officers Stop and Frisk, Residents Raise Their Guard,” February 4, 2007.

3. Police Searches of Pockets and Possessions



Officer and arrestee in cuffs entering a Manhattan police station, Photo by Ed Stern

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4. NARCOTICS PATROLS IN A SEALED SYSTEM

“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.”

– Fourth Amendment, United States Constitution

“Frustrated by what they perceive to be unrealistic rules of law ... officers take the law into their own hands. And police falsification is the result.... We found that such motivations to falsify are often present in narcotics enforcement units, especially to justify unlawful searches or arrests.”

– The City of New York Commission to Investigate Allegations of Police Corruption (The Mollen Commission) July, 1994

The 2005 annual report from the New York City Civilian Complaint Review Board (CCRB)⁶⁰ described in detail six cases brought to the Board and how they turned out. We use one case, reproduced at the end of this report, to show a common way that narcotics police search for arrests. We also discuss how New York City’s courts handle the misdemeanor marijuana cases. New York City’s combination of routine police, prosecutor, and court procedures has effectively created a hermetically sealed system, impervious to challenges from within, and almost unknown except to people working within the system.

The Civilian Complaint Review Board has limited powers. For a variety of reasons, especially lack of corroborating evidence from an eyewitness, it frequently does not “substantiate” complaints; that is, it does not find a “preponderance of evidence” to conclude that the complaint is true. Even when the CCRB does find that a complaint is legitimate (usually because of “independent witnesses”), it has no powers of punishment. What punishment, if any, that offending officers receive is decided by the New York Police Department. There is no mechanism for “disciplining” the police department itself and its commanders.

● **Narcotics Police Search A Teenage Boy in St. Albans Park**

In February, 2004, a 24 year old woman and her 13 year old brother were sitting at a picnic table in St. Albans Park in Queens. Although the CCRB report does not describe the park or neighborhood, it is worth understanding that this is a comparatively well-equipped city park with tennis courts, ball fields, playgrounds, and other facilities, and that St. Albans is a historically Black and middle-class neighborhood, once home to African-American sports and entertainment stars including Jackie Robinson, Count Basie, and Lena Horne.

On the day in question, two narcotics officers approached the young woman and her brother. He was reading and she was talking on a cell phone. The

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officers were part of a team of perhaps five or six officers (we are not told how many), equipped with three “unmarked police vehicles, one of which was a van carrying several individuals the narcotics team has arrested earlier that afternoon.” These were not neighborhood patrol officers; these were narcotics police, almost certainly not in uniforms, looking for marijuana and other drug offenses.

The officers later said they saw the 13-year-old boy moving his hands under the table and suspected that he was rolling a marijuana cigarette. The other members of the narcotics team drove up in the unmarked van and car. One officer told the woman not to move – formally, legally, detaining her. The other officer tried to frisk the boy, which turned out to be tricky because the boy was autistic and did not immediately respond to the officer’s orders. But eventually the teenager was frisked and searched without incident. No marijuana was found on him and the police left. The young woman immediately went to the police station and requested a CCRB complaint form which she later submitted.

When the CCRB began investigating the case they found that the officers had not filed the required “stop, question and frisk report in connection with the incident.” When the police stop and frisk someone – when they make a constitutional “Terry stop” – they are legally required to file a form briefly indicating what they saw that justified the stop and frisk. The police did not do so in this case, as they have not in many other cases.

Only by using police databases were the CCRB investigators able to learn that “a specific team of narcotics officers had made several arrests in the vicinity of St. Albans Park on the same afternoon.” When finally identified, located, and interviewed, the narcotics detectives admitted that “their team interacted with the brother and sister.” However, both police officers first on the scene denied frisking and searching the boy or detaining the woman. The officers said they merely checked the boy’s hands and looked on the ground where he was sitting. The other members of the narcotics squad, who had driven up in time for the investigation, also “denied seeing any officer frisk and search the boy.”

Thus far, the only thing unusual about this case is that the young woman chose to file a complaint and pursue it. Hundreds of thousands of times a year, the New York police stop, frisk and search people, and look around the ground near them, usually finding nothing.⁶¹ Hardly anyone, especially teenagers and young men subject to an illegal stop or search that turns up no incriminating evidence, have the knowledge, motivation or time required to file and pursue a CCRB. Also, as apparently was true here, police officers conducting illegal searches are usually coolly professional. Expected by their commanders to find evidence and make arrests, they search thoroughly and arrest efficiently. In addition, as noted earlier, experienced officers are careful about conducting searches so that nobody can witness what they are doing – and the searches often happen so quickly that there is little to see.

This young woman either did not know that without a good, independent witness her complaint would have no chance of being sustained, or it did not matter to her. But in this case there was a witness. The CCRB investigator, in a clever bit of research, sought to identify and locate any arrestees inside the police van. No doubt to the surprise of the officers, one person was found who had been arrested earlier, and who, while handcuffed inside the van, had indeed observed

the events and was willing to testify. Yes, said this witness, an officer had frisked and searched the boy. Although the witness could not know the boy was autistic, the witness did see the unfolding events well enough to understand there was something different about the boy, describing him as “mentally slow.”

• Marijuana Searches and Narcotics Policing Practices

The CCRB found the testimony of the woman, combined with the testimony of the “independent witness” with telling details, to be credible. The CCRB concluded, contrary to the testimony of the officers, that they had “frisked and searched the autistic boy without legal justification.” The CCRB recommended that the police department “discipline the two officers” – though, significantly, not the other officers who clearly had lied about what they had witnessed.

For the two narcotics officers who had conducted an illegal search and lied about it, the NYPD’s entire discipline – issued eight months after the CCRB decision – was for the officers to “receive instructions, or retraining, on the law and departmental guidelines applicable to stop, question, frisk, and search procedures.”

It seems fair to conclude that there was *no punishment*. If the “training” ever happened, the officers were paid to listen to an explanation of how to conduct legal searches, something they had almost certainly heard repeatedly before and knew well. Further, the narcotics officers had no doubt conducted innumerable legal searches, so the supposed “training” was doubly counterfeit. Finally, since the officers received no real penalty for their illegal search, *their discipline was, in the literal sense of the term, “lip service.”*

Since the mid 1990s, the New York Police Department has made “sending a message” central to its definition of good policing. Small offenses should be punished, it says, because they lead to larger ones. Not surprisingly, NYPD supervisors and commanders are acutely sensitive to “messages” they send to the officers they manage. Likewise, police officers learn early on to pay close attention to such messages from their supervisors.

In this case, as in countless others that do not become part of the public record, the “message” sent to the narcotics and other police is that nothing will happen to officers who make an illegal search in a routine misdemeanor marijuana possession arrest, even when the preponderance of evidence shows that police officers illegally searched someone and then lied about it to commanders and investigators.⁶²

If asked to comment on this illegal search, a police department representative would no doubt say that, if it happened at all, it was a rare, isolated incident – a case of one officer or team that, in this particular case, had just gone too far trying to do a necessary job.

However, the veteran police officers we have spoken with say that such illegal stops or searches by narcotics squads are not rare or isolated. Contrary to what police department representatives claim, our interviews with police and arrestees find incidents like this occur with some regularity when narcotics police go trolling for arrests. As the lack of punishment in this case reveals, NYPD com-

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manders well understand that narcotics police make some unconstitutional stops or searches (and always have).⁶³

Indeed, *everything* about the narcotics police behavior in this particular stop and search was conventional, routine, ordinary. As is routine, a team of narcotics officers was searching in an overwhelmingly Black neighborhood primarily looking for young men who might possess an illegal drug, most likely a small amount of marijuana. The officers saw a teenager in a park, briefly stopped and detained him and his sister, searching him but not her. Narcotics squads on patrol have made many such stops and searches nearly every day for over ten years. In fact, the narcotics officers in this case were so committed to following routine that the teenager's autism – including his inability to easily follow directions – did not cause them to change course, to alter what they usually do and are expected to do. In searching him for drugs they were doing their assigned job – thoroughly, competently, professionally, leaving no stone unturned. And despite some initial difficulties, the narcotics team successfully and efficiently carried out their stop and search mission, found nothing, and moved on.

This small case of narcotics police illegally searching a teenage boy who possessed no marijuana was unusual and became part of the public record not because of the police, but because of an extraordinary combination of events including that: a) a determined young woman, who was also stopped, witnessed the search, filed a complaint and pursued the matter, b) the police had someone in the van and had parked it so that the person within could see what happened, c) most unusual of all, the CCRB investigator located that person and he persuasively corroborated the young woman's story, d) eventually the CCRB accepted the testimony of the woman and the witness over that of four or five narcotics detectives, e) the boy was autistic, which made it easier for the perceptive witness to prove that he really had seen what happened. Perhaps the boy's autism also provided motivation for his sister to pursue her complaint, and motivation for the CCRB to do the serious work it took to dig up the evidence supporting the woman's complaint, and to describe what happened in their annual report. All this was most unusual. The police stop and search, however, was conventional and routine.⁶⁴

• Most New York City “Stop and Frisks” are of Blacks and Latinos and Find Nothing Illegal

In 1999, the New York State Attorney General's serious investigation of New York City's “Stop & Frisks” reported that, in a fifteen-month period in 1998 and 1999, NYPD officers had filed 175,000 stop and frisk forms (called UF-250). This quite thorough investigation of 175,000 stop and frisks found them to be consistently racially skewed. Blacks constituted 50% of all police stop and frisks, Hispanics 33% of all stops, and Whites 13% of all stops. This is nearly the same as what we found as the ten-year average of arrests for marijuana possession (52% Blacks, 31% Hispanics, and 15% Whites).⁶⁵

The Attorney General's investigation also calculated the arrest rates resulting from the stops. It found that: “The NYPD ‘stopped’ 9.5 blacks for every one ‘stop’ which resulted in the arrest of a black, 8.8 Hispanics for every one ‘stop’ that resulted in the arrest of an Hispanic, and 7.9 whites for every one ‘stop’ that resulted in the arrest of one white.” This is important because this means that at

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least eight out of nine police stops – like the one of this teenage boy and his sister – found nothing illegal and no evidence of a crime.⁶⁶

The Attorney General’s investigation had no way of determining how many stop and frisks New York City police had made *without* filing the legally-required form. But researchers did closely examine a large sample of the forms to see whether the search, as described in the form, met the legal definition of a “reasonable search,” and even whether the officers provided enough information to conclude anything at all. Even if the information on the form was taken at face value, only 62% of the forms had enough information to justify a stop.

In 2001, in a *New York Times* op-ed column, former New York Police Commissioner William Bratton acknowledged that stop and frisks contribute to the image of policing as a “troubled profession,” harming public trust and police recruitment. “By providing the public detailed information about arrests and stop-and-frisk activities (as the New York City police department has recently agreed to do),” wrote Bratton, “departments can build greater trust in the community and therefore improve the climate for recruitment.” In 2002, the NYPD reported that it made 97,200 stop and frisks. Contrary to what Bratton and others believed would happen, the NYPD did not again report on the city’s stop and frisks until February 2007 – and only in response to heavy pressure from civil liberties and civil rights organizations.⁶⁷

On February 3, 2007, the *New York Times* reported that “The New York Police Department released new information yesterday showing that” in 2006 New York police officers had “stopped 508,540 individuals.” The *Times* calculated that in 2006 the police had made “an average of 1,393 stops per day.” About 55% of the people frisked were Blacks, 30% Hispanics, and only 11% Whites.⁶⁸ It was not difficult for *Times* reporters to find ordinary New Yorkers who would talk to them about being searched.⁶⁹

In 2006, New York police filed over five times as many stop and frisk forms as in 2002. Was this increase actually the result of many more stop and frisks? Or was it the result of police department supervisors requiring patrol police to keep better records of what they do? The knowledgeable people we have spoken with think it is largely better record keeping. Paul J. Browne, the current, ubiquitous, “chief police spokesman,” acknowledged as much, granting that the five-fold increase in stop and frisk reports was in part the result of “careful accounting.”⁷⁰ Even now, with this astonishing increase of recorded stops, there are no doubt still many cases where no stop and frisk report is filed.

The important point for this report is that in order to average 35,000 marijuana possession arrests a year for ten years, New York police have had to make many more stop and searches than arrests, probably at least nine or ten times more stops than arrests.⁷¹ Both the methodical, efficient stop and search conducted by the squad in St. Albans Park, and the outcome – finding no marijuana or other drug – are common among narcotics police.

• The Sealed System

What would have happened to the autistic teenager if he had been possessing marijuana? He almost certainly would have been arrested. He also might

4. Narcotics Patrols in a Sealed System

have been arrested if the officers had found a marijuana butt on the ground near him. Would his sister and a dedicated attorney been able to show in court that the narcotics police had conducted an illegal search? They almost certainly would not. In the case of a marijuana possession misdemeanor, the court and criminal justice system are so sealed, and the outcomes so pre-determined, that there is rarely a proverbial “day in court.” Briefly, this is how the process works.

When someone is arrested by a narcotics team like this one, the person is put on the floor of the van or paddy wagon with other arrestees thus far collected. With handcuffs on, he may be driven around for several hours without opportunity to use a toilet or even have a drink of water, until either the van is filled or the squad’s shift ends. The arrestees are eventually taken to the police station where they are fingerprinted and photographed, and their data is entered into the state’s criminal database. Arrestees younger than 17 may then be released from the police station in the custody of a parent or guardian and given a ticket to appear in arraignment court on a certain date (commonly referred to as a “desk appearance ticket” or DAT).⁷² Arrestees 18 years or older are almost always taken to the borough’s “central booking” and spend the night in jail, finally appearing in arraignment court sometime the next day, exhausted, hungry, and often scared.⁷³

In arraignment court, nearly all marijuana possession arrestees are represented by legal aid or public defender attorneys. The attorneys explain to the defendants, overwhelmingly young Black and Latino men, that, if this is a first or second arrest, they usually can be released with no fine on what is effectively a form of probation lasting from six months to one year. In New York’s criminal justice parlance, this is called an “ACD” – adjournment in contemplation of dismissal. Nearly everybody, especially after a difficult night in the jail system, takes that probation option because everybody wants to be done with this personal nightmare and go home – and because the alternative is so onerous and futile.

However, in the rare case that someone wants to fight the charge in court and argue that the search was conducted illegally (or, for example, to insist that the marijuana butt the police found on the ground was not his, or that he was not smoking marijuana but simply nearby someone else who may have been) – the person is assigned a new court date. He then must appear at the beginning of that assigned day and remain in the court room all day until his case is called. If for any reason he fails to appear on the assigned date, or is out of the court room when his name is called, a warrant is issued for his arrest. And despite the Sixth Amendment to the Constitution, which guarantees the right to a jury trial “in all criminal prosecutions,” in New York State a criminal defendant in a marijuana (class B) misdemeanor case does *not* have the right to a jury trial.

However, even if a marijuana possession defendant comes and stays for his court date, his case will almost certainly not be heard by a judge. Rather, at the end of the day he will be rescheduled again, because no prosecutor wants to take a misdemeanor case, especially one with a possibly illegal search. Several weeks or even months later, the person will have to again appear and wait in court all day. At the end of that day either the case will be dismissed by the Assistant District Attorney (ADA), or it will be rescheduled again. If the person continues to show up and is always in court when his name is called, and especially if he has witnesses, eventually the prosecutor will probably drop the charges. As one veteran attorney explained to us, “nobody, not the DA’s office, not the judges, and

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certainly not the police, wants to deal with a possible illegal search in a misdemeanor.” Therefore, prosecutors use the delays to pressure people with inconvenience to accept a plea deal, or to bring about a non-appearance that can be used as pressure for a plea. If this does not deter the person from pursuing the case, the prosecutor may eventually dismiss the charges.

In actual practice in New York City, this combination of police searches, court procedures, plea deals, delay tactics, and strategic dismissals, produces a kind of hermetically sealed system. The police sometimes stop and search people without legal justification knowing that even if they are found out there will be no repercussions. Most people arrested as a result of such a search spend a hard night in jail and are released on a kind of probation.⁷⁴ In the unusual case of an individual with an independent witness who rejects the deal and pleads not guilty, eventually the person will either fail to appear, or – after a bit of ordeal – the prosecutor will drop the case.

As far as we can determine, New York City’s criminal justice system is so thoroughly and smoothly rigged that there is effectively no “day in court” for most illegal stops or searches in misdemeanor arrests.

“For the vast majority of marijuana arrestees, the most important sanction and punishment was often the arrest-to-arraignment process. Arrestees usually spent 16-24 hours in police or court custody prior to release – this experience was designed to be quite unpleasant. The food and water was limited and bad; toilets had limited privacy; hard benches provided seating for only about 10 persons, so many needed to sit/sleep on concrete floors. The detention cells were often overcrowded and shared with a wide range of offenders who were often smelly and unkempt.”

– Bruce D. Johnson *et al.*, "Policing and Social Control of Public Marijuana Use and Selling in New York City," *Law Enforcement Executive Forum*, 2006, 6(5) p.70.

4. Narcotics Patrols in a Sealed System

– *The New York City Police Department's "Stop & Frisk" Practices: A Report to the People of the State of New York From The Office Of The Attorney General, Albany, NY, December 1999.*

“In roughly half of the police precincts in New York City, the majority of the population living in the precinct is white.... Of the ten precincts showing the highest rate of stop & frisk activity (measured by stops per 1,000 residents), in only one (the 10th Precinct) was the majority of the population white.”

“When crime rate is used to project a stop [& frisk] rate for each precinct, precincts (mostly minority precincts) with the highest stop rates had stop rates in excess of what would be predicted simply based upon their crime rates. By contrast, precincts with the lowest stop rates (mostly white precincts) had stop rates far below what would be predicted based upon their crime rates.”

“After accounting for the effect of differing crime rates, during the covered period, blacks were stopped [and frisked] 23% more often than whites, across all crime categories. In addition, after accounting for the effect of differing crime rates, Hispanics were stopped 39% more often than whites across crime categories.”



5. DROPSY ARRESTS: HOW POT IN A POCKET BECOMES MARIJUANA 'BURNING OR OPEN TO PUBLIC VIEW'

"Then there was the case of a man accused of possessing 40 vials of crack.... But his was what judges call a 'dropsie' case, in which the defendant is said to have dropped drugs when he saw the police approaching. The immediate suspicion in such cases is that rather than finding the drugs on the ground, the police searched the suspect without a warrant or evidence of other criminal behavior and seized the drugs."

– *The New York Times*, "Rising Pressure In Criminal Court: The View From The Bench," February 16, 1987.

"When officers unlawfully stop and search a vehicle because they believe it contains drugs or guns, officers will falsely claim in police reports and under oath that the car ran a red light (or committed some other traffic violation) and that they subsequently saw contraband in the car in plain view. To conceal an unlawful search of an individual who officers believe is carrying drugs or a gun, they will falsely assert that they saw a bulge in the person's pocket or saw drugs and money changing hands.... To justify unlawfully searching and arresting a street dealer ... a common tale was [that] the person dropped a bag and ran as the officers approached."

– "The City of New York Commission to Investigate Allegations of Police Corruption," (The Mollen Commission), July 1994

There is a final element of this story that we regard as the most dishonest part of New York's criminal justice processing of marijuana offenses. Although complicated, this can be summarized succinctly:

• Before being approached by the police, most people arrested for misdemeanor marijuana possession, who had marijuana in their possession, were actually *not guilty* of what they were charged with. Even though they simply had marijuana concealed in their clothing or possessions, they were charged with having marijuana "burning or open to public view."

In 1977 New York State rewrote its marijuana laws and decriminalized (removed criminal penalties from) possession of small amounts of marijuana. Since then, laws regarding marijuana possession and sale are covered by section 221 of the state Penal Law. The simple "unlawful possession of marijuana" is covered in section 221.05 of the Penal Law. This is *not* a criminal offense. As long as marijuana is not being smoked or otherwise in plain view, possession is *not* a "fingerprintable" crime. Simple marijuana possession is a *violation*, like a traffic violation such as driving past a stop sign. The first two sentences of the New York State Penal Law describing this say:

"A person is guilty of unlawful possession of marijuana when he knowingly and unlawfully possesses marijuana. Unlawful possession of mari-

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huana is a violation punishable only by a fine of not more than one hundred dollars.”

In most cases, people are given tickets for this violation.

In New York City since 1996, most people found with marijuana in their pockets or belongings were not charged with this 221.05 violation and given tickets for it.⁷⁵ Why not? First, the officers would have had to fill out a stop and frisk form explaining what about the person’s behavior gave them a legally “reasonable suspicion” for the stop and the search. Police regard this as onerous and at times do not have a legal justification for the stop or the search.⁷⁶ Second, the violation is not a “crime,” does not show up in New York State crime statistics, and cannot be used throughout the NYPD to show criminal arrest productivity. Finally, and perhaps most important, since the mid 1990s the NYPD has made it semi-official policy to primarily make arrests for marijuana offenses. While police can and do arrest people for violations, it is still more common to give someone a summons for a violation. Patrol and narcotics officers have been encouraged by their commanders to arrest people found possessing marijuana and to use the misdemeanor charge of 221.10 to do so. Partly because officers have also benefited from the policy – especially those who volunteered for the narcotics division and those who use the arrests to accrue “collars for dollars” overtime pay – they have done as their commanders asked without complaint, and often with cool efficiency

• Nearly all of the 353,000 people arrested in New York City from 1997 to 2006 for the misdemeanor of possessing marijuana have been charged under section 221.10 of the New York State criminal code, with having marijuana “burning or open to public view.”⁷⁷

Section 221.10 has two parts, but police and prosecutors have used only the first part to arrest and charge nearly all of the misdemeanor marijuana arrestees. It reads:

A person is guilty of criminal possession of marihuana in the fifth degree when he knowingly and unlawfully possesses: 1. marihuana in a public place, as defined in section 240.00 of this chapter, and such *marihuana is burning or open to public view*; [emphasis added]

• When first approached by the police, most people arrested did *not* have marijuana “burning or open to public view.” Approximately two-thirds to three-quarters of those arrested for marijuana possession were not smoking and most were not displaying the marijuana. Most had marijuana in a pocket or otherwise well concealed in their clothing or possessions. However, the officers who found the marijuana in a search said in their report, and when speaking to an Assistant District Attorney, that they observed the marijuana because it was “open to public view.”

Based on the experience of legal aid and public defender attorneys who have handled tens of thousands of these cases, along with that of the police officers and arrestees we interviewed, we are confident in estimating that about two-thirds to three quarters of the people arrested were not smoking marijuana. And

5. Dropsy Arrests

the majority were not handling, rolling, passing, waving, or making any kind of public display of marijuana whatsoever. Usually they were doing their utmost to keep their marijuana concealed, generally deep inside their clothing. When approached by the police the majority arrested were not guilty of having marijuana “*burning or open to public view.*”

In their very brief arrest reports the officers indicated – using conventional or stereotypical descriptions – that they saw the person in some way revealing the marijuana. The officers who found the marijuana in a search said in their report, and when speaking to an Assistant District Attorney writing the legal “complaint,” that they observed the marijuana because it was “open to public view.”

• **Police trick, threaten and intimidate people persuading them to take out and hand over their small amount of marijuana, which is then “open to public view.”**

Perhaps the most common legal method that New York City police have used for many years to find concealed marijuana and arrest people for having it “open to public view” is by stopping people and asking them to reveal anything they are “not supposed to have.” Or by just directing them to hand it over. Generally this is coupled with a threat of serious consequences if they do not immediately do so. An officer can say:

“I’m going to have to frisk you. If you have anything illegal you should show it to me now. If we have to search you and then find something, it’s a much bigger deal, and we’ll have to take you to the police station and lock you up. But if you show us what you have now, maybe we can just give you a ticket or, if it’s nothing much we can let you go. So if you’ve got anything you’re not supposed to have, *show it now.*”

This kind of threat to search is a trick – because in most such cases the police have no legal justification for a search. But the people stopped, mostly young and nonwhite, do not know that or are too intimidated to say “no.” As Jerome Skolnick explained in his classic study *Justice Without Trial*, police know “how to manipulate such encounters so as to appear forceful in the encounter – using, for example, a command voice – then later testifying that the person ‘volunteered’ to be searched, when it was clearly in that individual’s self-interest not to be searched.”

Therefore, when told something like the above, a great many people with a small amount of marijuana go into their pocket and take out what they have. When people produce their marijuana, they are then arrested, handcuffed and taken to the police station, often surprised that their cooperation turned out so badly. As a 29 year old truck driver, stopped by police in a Bronx housing project, explained:

“They told me to show them if I had anything illegal. They said if I didn’t have much, there’d be no problem. So I took out the nickel bag and they arrested me. I said ‘Come on, I showed you everything I had,’ but they just put cuffs on me.”⁷⁸

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A long-time legal aid supervisor told us this process happens “all the time.” We asked whether people in such cases are then charged with marijuana “open to public view?” “Yes,” he said, “all the time.” “But how is that legally possible,” we asked. The legal aid attorney sighed and said, “*Well, when they take it out and show it to the cop, it’s now in public view.*”

Although most arrestees probably do not know it, their cooperation is not mentioned in the police report and does not come up in court. The legal aid and public defender attorneys learn about it because their clients explain that they revealed their marijuana when told to by the police, expecting their cooperation to earn them a break. It does not.⁷⁹

In addition, police do several other things to manufacture arrests. Part 2 of this report describes what we have termed “net fishing” – when a narcotics squad returns regularly to a location, like a grocery, that sells small amounts of marijuana. Instead of arresting the sellers, the police watch the operation and, about a block away, stop people explaining that they have been observed in a known drug dealing establishment. The officers ask the people to show what they bought, and when they bring it out they are arrested and charged with having marijuana “open to public view.” If the police have to search them, they will still be charged with having marijuana “open to public view” (because the narcotics officers will say they witnessed the people buying it in the shop).

One young Latino man, who had been caught twice in such narcotics squad nets, told us something that helped explain the gender bias in the arrests. He and his girl friend, dressed up for a party, had purchased several “nickel” (\$5) bags of marijuana in a record store. When stopped by the police and told to show what they had, the man took out his one bag, and the woman revealed the two in her purse. The police told the man that if he would say the marijuana was his, they would let his girl friend go. She wanted that and he agreed. He said some friends had the same experience. In this way police can stop and search many couples and yet still wind up with an arrest rate that is 91% male.⁸⁰

The case of the autistic teenager and his sister sitting at a picnic table described in Part 4 shows another method police use to make these arrests. Although the officers lied when they told the CCRB they had not searched the boy, they almost certainly told the truth when they said they had searched for evidence *on the ground* around the boy and his sister. Narcotics police are expected to search on the ground near a suspect, and they routinely do so – because it is a way to collect evidence for an arrest. The officers reported their ground search to the CCRB because they knew it was legal, because it was routine, and likely because they wanted their supervisors to know they had done their job. In this case the officers found no drugs on the ground. But when they do, they sometimes arrest people.

• Some people in New York City were arrested when police found a small amount of marijuana near them and charged them with having it “open to public view.”

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In arraignment court recently, we watched the case of a young Puerto Rican-American woman and interviewed her. She had taken a break from her job on the lower-east side of Manhattan and went outside to smoke a tobacco cigarette on a sunny afternoon. A number of other people were also on the street. A narcotics squad appeared, lined up against a wall everyone on the street, and efficiently frisked and searched them. The police found nothing on the woman but they did find a marijuana butt “stuck in a tree” not far from where she was standing. She was arrested and charged with possessing that butt “open to public view.”

Relatively few people are actually seen smoking, but when it happens the people standing with them – or even just near them – are sometimes also arrested. One White attorney told us of a Black friend who, when walking his dog, met a neighbor discretely smoking a marijuana cigarette. The police appeared and arrested both of them. The officers had the man take his dog home before handcuffing him and bringing him to the police station, and then to central booking for a night in jail. One young African-American man told of sitting with friends on benches alongside a park on a quiet evening. One man, sitting by himself, was smoking marijuana. Police well-disguised in plain clothes appeared, frisked and searched everyone on the benches, arresting three people. Other than the one smoker, nobody had any marijuana. Nonetheless, all were charged with marijuana “open to public view.”

• To sum up: Two-thirds to three quarters of the more than 350,000 people arrested for possessing marijuana in New York City from 1997 to 2006 did not have marijuana “burning” and most did not have it “open to public view.” Most people who did possess marijuana had it concealed, hidden in their clothing and belongings. The police obtained the marijuana by several methods including intimidating and tricking people into revealing it, and by putting their hands in people’s pockets in the course of a pat down.

When the police found marijuana by any method they made the arrest reporting that the marijuana was “open to public view.” This converted the offense from a violation to a fingerprintable crime, an arrest and an overnight stay in New York’s jail system. In addition, officers found marijuana on the ground or nearby and charged the people with marijuana open to public view. Finally, when the police observed someone actually smoking marijuana, they arrested that person and sometimes unlucky others who were merely nearby.

All this is no doubt surprising or even shocking to most conventional, middle-class New Yorkers. It was certainly shocking to us. Most New Yorkers do not think their city operates like this. Officers in the New York Police Department are regularly at risk for their lives, are poorly paid, and many serve the city heroically.⁸¹ Nobody wants to think that, at the same time, there also has been widespread institutionalized dishonesty in routine misdemeanor arrests and criminal justice processes over many years. And few New Yorkers, we think, would like police to use technically legal tricks in a marijuana arrest crusade that captures and jails mostly Black and Latino young men – who use marijuana less than their White peers.⁸²

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Although this will be disturbing news to many New Yorkers, some people knowledgeable about New York City's criminal justice system, and especially about narcotics policing, are more familiar with this phenomenon. Long-time legal aid and public defender attorneys first told us about something we ultimately confirmed with veteran police.⁸³

• Dropsy Cases

In the 1980s, the NYPD, especially narcotics squads, made many *cocaine* possession arrests, overwhelmingly of Blacks and Latinos. The arrest reports of these cases took on an eerily similar form. A large number of them were cases where the officer supposedly saw someone handle, pass, or, most often, drop a bag containing a white powdery substance. Again and again for years, narcotics police claimed to observe people dropping containers of white powder. Jokes developed about this. New York City, it was said, must have awfully clumsy drug users and dealers. They simply could not seem to hold on to their stuff. They kept dropping bags of cocaine all over the city, especially in front of police officers. This happened so often these arrests became known within the New York courts as “dropsy” (or “dropsie”) cases. Attorneys and police officers from that era knew the term and the phenomenon it described; several newspaper articles in the 1980s and early 1990s also discussed them. The term is still widely used within the criminal justice system today.⁸⁴

Since 1997 and continuing to this day, New York City has been having a mass epidemic of a new form of dropsy cases. In the 1980s the narcotics police were searching people, finding cocaine, and then writing up the arrests as dropsy cases – so they would not have to justify or even mention the often illegal searches.⁸⁵ For over a decade, this strategy, legally cleaned up, has been brought *en masse* to marijuana policing. Since 1997, New York has been making many thousands of technically legal dropsy-style marijuana arrests a year.

In addition to the much greater size of the decade-long epidemic of marijuana dropsy cases and their apparent legality, the other major differences between the cocaine and marijuana dropsy cases are the particular drugs and the populations affected. The cocaine cases targeted people possessing a more expensive, more addicting drug – and unlike marijuana, its possession had not been decriminalized. Although it does not matter in terms of fairness, justice or legality, it is worth noting that the cocaine dropsy cases more often tended to be arrests of repeat offenders, at least some of them with many prior arrests, often for heroin or cocaine. Although it is not our view, in the cocaine cases one could plausibly argue that police were using questionable or illegal methods to go after “bad guys.”

The marijuana dropsy cases, however, have targeted ordinary teenagers and young adults who had only a small quantity of marijuana for personal consumption. In 1977, the New York State legislature passed and the Governor signed a bill making possession of less 25 grams (under an ounce) a violation, not a crime. Two New York City mayoral administrations have opted to nullify that legislation. Under their direction, the NYPD has arrested and charged massive numbers of young New Yorkers simply for possessing the same drug that has been used by Congressmen, Senators, and the current mayor of New York City. In addition, the marijuana dropsy cases have systematically excluded the largest groups

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of marijuana users in New York City – Whites and the middle class. Instead, these hundreds of thousands of manufactured marijuana arrests and jailings have fallen overwhelmingly on people least able to defend themselves against the onslaught – young, low-income Blacks and Latinos.

Is this what the people of New York City want their police to be doing?



Police Wagon at Brooklyn Court House,
Photo by Dana J. Cohen, Esq., a staff attorney at the Legal Aid Society

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New York City, Summer 2007 – Photo by Ken Stein at flickr.com

6. COSTS AND CONSEQUENCES FOR NEW YORK CITY: AN EXPENSIVE WASTE OF TIME

• Police and Court Costs Of The Marijuana Possession Arrests

How much money has it cost New York City to arrest, jail and arraign in criminal court about 35,000 people a year for possessing small amounts of marijuana, and to do so for over ten years? No one really knows. Outside of the top managers of the police department and the mayor's office, no one has access to the information and there are limited ways to obtain it. As a district attorney from another large city suggested to us, the New York City Council, or the State Legislature, or both, could hold hearings and require the NYPD and other agencies to show various costs. Other than through official public hearings, a well-funded team of experienced investigators could go through public records, sue for access to others, and use that information to estimate the costs of the city's marijuana possession arrests. At present, the information needed to calculate the police and court costs of the marijuana arrests is hidden and inaccessible.

What does one misdemeanor arrest of any kind cost New York City for police and court time? Few researchers have attempted to calculate just the police and court costs of a simple arrest in the U.S. and, as far as we can determine, no one has attempted to do so for New York City. At first glance this is surprising because the costs of other government services are routinely calculated – for example the costs of educating one student. Many cities, counties and states hire economic and management researchers to calculate the cost per elementary, middle, and high school student, and they make the information widely available.⁸⁶

It should be easier to accurately estimate the cost per misdemeanor arrestee than the cost per student because misdemeanor arrests are more uniform. Students are in classes and schools of different types and sizes, with different resources. But in New York City, a stock broker arrested for driving without a license and a crack addict arrested for possessing a crack pipe are treated much the same. Whatever the crime, the arrestee is handcuffed, brought to the police station, fingerprinted, photographed, taken to central booking, kept with other arrestees in large holding cells over night, and finally brought before a judge and prosecutor in the arraignment court the next day. It should be possible for local and state governments to calculate and make available the personnel costs of arresting, booking, transporting, holding and arraigning someone, but it is almost never done anywhere. Unlike school systems, police departments in general, and the NYPD in particular, are rarely subject to detailed public examination of the costs of standard operations.

Some researchers working for state agencies or independent organizations have on rare occasions obtained sufficient information to calculate the average costs of an arrest for specific crimes. Mark A. Cohen, a veteran criminal justice researcher whose work has been published by the U.S. National Institute of Justice, identified only one full study of criminal justice system costs per arrest. Using data from several jurisdictions, it calculated all police and court costs to be

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about \$2000 for a rape arrest, about \$1100 for a robbery arrest, and about \$1200 for an aggravated assault arrest – in 1987 dollars. Other than this study, Cohen wrote, “I am unaware of any similar attempts to estimate per crime criminal justice costs for other crimes.”⁸⁷ We identified a few other more limited studies including one of controlling illegal immigration that calculated the cost of one arrest at the border to be \$1700 in 2002.⁸⁸

One comprehensive study of the cost per arrest is especially relevant to these marijuana misdemeanor arrests because, in addition to more serious crimes, it calculated the costs of a misdemeanor arrest. Steven Aos and his colleagues at the Washington State Institute for Public Policy calculated average police costs and court costs per arrest for all jurisdictions in the state of Washington. The cost of one arrest for murder was the most expensive, followed (in declining order) by the cost of an arrest for rape, robbery, aggravated assault, property crime, drug crime, and – least expensive of all – for a misdemeanor. Aos and his team found that the total police cost for a property crime and for a drug crime was about \$1800 an arrest, and the court cost was \$1600 – about \$3400 total cost per arrest (excluding jail and prison expenses). For a misdemeanor arrest, such as a marijuana possession arrest, the total police costs were \$764 and the court costs were \$336, for a total of \$1100 – in the year 2000.⁸⁹

The misdemeanor arrest and court costs for Washington State provide a basis for roughly estimating the marijuana misdemeanor arrest and court costs in New York City seven years later. Costs in New York City are almost certainly somewhat higher than in Washington State. By 2007 it seems reasonable to conclude that the police and court cost of a misdemeanor marijuana arrest in New York City could be \$1500 to \$2500. This covers all police time including overtime pay for arresting officers and supervisors, all pre-arraignment jail costs and all court expenses. (About ten percent of all arraignments in New York City are for marijuana possession, and the arraignment court in Manhattan routinely has at least a dozen people doing various jobs in the court room, including clerks, legal aid attorneys, prosecutors and staff, four or more police officers, some assigned full time to the court, and other office staff not present in the court rooms).

Since New York City arrested 353,000 people for marijuana possession in the decade from 1997 to 2006, or on average 35,300 people a year, using the above figures produces the following yearly range:

\$1500 per arrest X 35,300 marijuana misdemeanor arrests a year = \$53,000,000 per year

\$2500 per arrest X 35,300 marijuana misdemeanor arrests a year = \$88,000,000 per year

In 2007, New York City made 39,700 misdemeanor marijuana possession arrests, so the police and court expenses for the arrests would have been about \$60,000,000 to \$100,000,000.

In recent years, the budget for the New York Police Department alone has been about 3.5 billion dollars a year. Although \$50 million to nearly \$90 million a year is not a large portion of the total police budget, even in New York City that is a considerable amount of public money. Using these conservative figures, one can reasonably conclude that arresting 35,000 people a year for the eleven years from 1997 through 2007 cost the taxpayers of New York City from five hundred million dollars to over eight hundred million dollars.

● **The marijuana possession arrests do not reduce serious and violent crime, and they may well increase it.**

As noted earlier, the New York Police Department has never presented information about the marijuana possession arrests, has never discussed their great number, and has not been pressured by others to explain them. If eventually pressed to justify the massive number of marijuana arrests, skilled, experienced media representatives from the NYPD can be expected to offer reporters and TV cameras quotable sound bites claiming that the arrests reduce other crime. Is this accurate?

Bernard Harcourt and Jens Ludwig, experienced criminal justice researchers and statisticians at the University of Chicago, recently reported their analysis of a large dataset of arrests in New York City focusing on the effect of marijuana arrests on serious crime. In an earlier article in the *University of Chicago Law Review* in 2006, Harcourt and Ludwig reported their research on the effects on serious crime of other misdemeanor arrests in New York City. In their follow up study, they extended their research and statistical models to the case of the marijuana possession arrests. The only such study to date, the article – “Reefer Madness: Broken Windows Policing and Misdemeanor Marijuana Arrests in New York City, 1989-2000,” – was published in *Criminology and Public Policy*, one of the two peer-review journals of the American Society of Criminology, in 2007.⁹⁰

Although Harcourt and Ludwig used quite technical procedures to analyze the effects of the marijuana arrests on serious crimes including violent crimes, they explained their key findings clearly. Referring to the marijuana possession arrests as MPV arrests, they wrote:

“Whatever the conceptual underpinning of this marijuana policing strategy, we have analyzed the MPV arrests building on our previous research on broken windows policing and, using a number of different statistical approaches on these MPV arrest data, we find no good evidence that the MPV arrests are associated with reductions in serious violent or property crimes in the city. As a result New York City’s marijuana policing strategy seems likely to simply divert scarce police resources away from more effective approaches that research suggests is capable of reducing real crime.”

“...this policing strategy focused on misdemeanor MPV arrests is having exactly the wrong effect on serious crime—increasing it, rather than decreasing it.”

“[New York City’s] experiment with misdemeanor MPV arrests—along with all the associated detentions, convictions, and additional incarcerations—represents a tremendously expensive policing intervention.... [The marijuana arrest policy] had a significant disparate impact on African-American and Hispanic residents. Our study further shows that there is no good evidence that it contributed to combating serious crime in the city. If anything, it has had the reverse effect. As a result, the NYPD policy of misdemeanor MPV arrests represents an extremely poor trade-off of scarce law enforcement resources.”

6. Costs and Consequences

Harcourt and Ludwig's study is in accord with the observations of patrol officers we interviewed in New York and other cities. These experienced police officers point out that when officers spend several hours arresting and booking teenagers and young adults simply for possessing marijuana, they are off the street unable to engage in other police work. Likewise, narcotics squads searching for and arresting people possessing small amounts of marijuana are not available for other crime-fighting work. In describing these marijuana arrests, a number of police officers used exactly the same phrase, calling them "a waste of time."⁹¹



From Pulitzer-prize winning editorial cartoonist Bill Mauldin in *The New Republic*, February 26, 1972

7. HEAD START FOR UNEMPLOYMENT AND PRISON: THE IMPACT OF MARIJUANA ARRESTS ON BLACK AND LATINO YOUTH

“The disproportionate representation of black Americans in the U.S. criminal justice system is well documented. Blacks comprise 13 percent of the national population, but 30 percent of people arrested, 41 percent of people in jail, and 49 percent of those in prison. Nine percent of all black adults are under some form of correctional supervision (in jail or prison, on probation or parole), compared to two percent of white adults. One in three black men between the ages of 20 and 29 was either in jail or prison, or on parole or probation in 1995. One in ten black men in their twenties and early thirties is in prison or jail. Thirteen percent of the black adult male population has lost the right to vote because of felony disenfranchisement laws.”

– Human Rights Watch, *Punishment and Prejudice*, 2000 ⁹²

“Early involvement in crime, arrest and imprisonment have been found to significantly reduce an individual's employment prospects and earning capacity.... [Researchers report] that a prior criminal record reduced employability, leading in turn to higher rates of crime.... [Fagan and Freeman] found that incarceration produced a significant negative effect on future employment prospects... Young people growing up in criminal environments can find themselves cut off from sources of information about legitimate job opportunities, but regularly exposed to information and advice about illegitimate income-earning opportunities.... The descent of these individuals into crime may be slow and protracted, with each successive arrest, conviction or imprisonment reducing their labor market prospects.”

– Don Weatherburn, "The Impact of Unemployment on Crime," 2002 ⁹³

Head Start for Prison and Unemployment

Since 1965, the government preschool program called Head Start has helped “economically disadvantaged” preschoolers from poor neighborhoods “develop the early reading and math skills they need to be successful in school.”⁹⁴ Head Start has always sought to familiarize and socialize the children, from three to five years old, in the routines and expectations of school systems. And despite chronic under-funding, it has been remarkably successful at accomplishing its goal of giving these children a head start in education and school.

In New York and other U.S. cities, the government program of marijuana possession arrests and other low-level misdemeanor arrests serves a parallel function. Although not designed to produce this effect, the misdemeanor arrests familiarize, socialize, and prepare disadvantaged Black and Latino teenagers and young adults from poor neighborhoods for the routines and expectations of the police, court, jail and prison system.

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Since 1997, about 35% of the people arrested for possessing small amounts of marijuana in New York City had never been arrested before for anything, and over 60% had never been convicted of even one misdemeanor.⁹⁵ Other entry-level arrestable offenses such as trespassing and unlawful assembly also teach young New Yorkers about jail, court, and prison.

In the primarily Black and Latino neighborhoods where police patrols are concentrated, officers are expected by their commanders to give out at least ten non-traffic citations a month. Officers issue tickets for offenses such as spitting, littering, possessing an open beer can, and even seemingly innocuous activities – common in middle-class and White neighborhoods – such as riding a bike on the sidewalk. The young people in housing projects and other poor neighborhoods often do not have money to pay the fines (such as a \$100 or more for riding a bike on the sidewalk) and therefore the criminal court automatically issues a warrant for their arrest. The next time the police stop the young people for any reason, including for a routine stop and frisk, the warrants for the unpaid violations come up and the officers arrest and handcuff them. Like those arrested for possessing marijuana or trespassing, the young people arrested for unpaid citations may be held overnight in New York City's jail system and emerge the next day in arraignment court.⁹⁶

Although the first arrest and jailing is scary and unpleasant, the mostly Black and Latino teenagers and young men usually make it through physically unscathed. In the jail, they see many other black and brown young people like themselves. They emerge with a much better understanding of what a jail looks like, how booking and court works, and how to better handle themselves in the next arrest. They return from their ordeal with a grown-up story to tell friends in the neighborhood and at school, and they now join a circle of older youth, and sometimes relatives, who have been through the same experience. In conversations with experienced friends, neighbors, and acquaintances, they receive tips about how to handle themselves the next time and how to display bravado in the face of intimidating police, prisoners, and guards, as well as with friends and relatives. In such routine operations, the police, jails and courts provide the young Black and Latino men with a Head Start in becoming clients of the criminal justice system.

The arrests for marijuana and other petty offenses also reduce opportunities for young people to participate in non-criminal justice activities. In effect the arrests function as a Head Start for unemployment. Having an arrest record or misdemeanor conviction can limit the opportunity of young people to obtain employment and access to some schools, and for student aid.⁹⁷ Studies in a number of countries have found misdemeanor arrests and convictions, and incarceration, correlate with lower income, lower participation in the work force, less schooling, and less training opportunities. Some of this is the direct effect of an arrest: employers and schools may take someone despite a criminal record, but an arrest or conviction never increases a young person's legal employment and schooling opportunities. Additional arrests have a cumulative limiting effect on job prospects.⁹⁸

The Head Start for school programs depend upon the good will and day care needs of parents to deliver children to the program. The Head Start for prison programs, however, send police officers into poor Black and Latino neighbor-

7. Head Start for Unemployment and Prison

hoods actively seeking young people who qualify for socialization in the jails and courts merely on the basis of their failure to pay a ticket for riding a bike on the side walk, or for having a small amount of marijuana concealed in a pocket. In police-rich, economically-poor neighborhoods, with few attractive or even competing options, young people find it easy to do something, often accidentally, that the police will arrest them for. As Columbia University criminologist Jeffrey Fagan has found:

“In New York City, arrests and incarcerations, both for drug and non-drug crimes, have long been spatially concentrated in the poorest neighborhoods.... [A study in the mid-1990s] showed that just seven of New York City's 55 community board districts accounted for over 72% of all the State's prisoners. The City's patterns of racial residential segregation all but ensures that the effects of racially-skewed street-level police enforcement will translate into racially and spatially concentrated incarceration in the City's poorest minority neighborhoods.”⁹⁹

Head Start for Distrust of the Police

A New York State Assemblyman from a poor, heavily Hispanic district told us, with some anger, that police in his district were “an occupying army.” Some officers confirmed this judgment, including inadvertently. A young woman who had recently quit the NYPD after two years patrolling the public housing projects in the East New York section of Brooklyn, said one reason she left the force was because if she lived in the projects, she'd be angry to find police like herself in the halls and stairways searching for residents and visitors in violation of petty regulations. In telling about her experiences, she realized that she and her fellow officers had routinely referred to all occupants of the housing projects as “perps” – police shorthand for perpetrator, for law breakers. Many residents of the housing projects have long viewed the patrol police as an kind of occupying army, and to some extent patrol officers in the projects have regarded themselves in the same way.

Prominent criminal justice professionals who have served within the NYPD have openly discussed the distrust of police as a problem for New York City. In 2001, in a *Daily News* column, Jeremy Travis, the former director of the U.S. National Institute of Justice, and a former New York Police Department deputy Commissioner, noted that “African-Americans, for instance, have about half the level of confidence in police as whites.” But in generating experiences that cause distrust, he said, “poverty and powerlessness may matter even more than race” In a 2002 *New York Times* column, William Bratton, the former New York City Police Commissioner, frankly acknowledged that distrust of police in New York City, engendered in part by the stop and frisks (and therefore the marijuana arrests), increased the difficulty in “attracting qualified recruits, particularly from inner city neighborhoods and minority communities.”¹⁰⁰ The distrust of police also reduces the likelihood that people in low-income neighborhoods will cooperate in solving crimes, and in recent years has even given support to anti-snitching campaigns.¹⁰¹

Head Start for Drug Sales on The Corner

The great engine of imprisonment in New York State is the U.S. war on drugs aided by the State's draconian 1973 Rockefeller drug laws. Due to incarceration, the constant turnover of entry-level street sales employees in the illegal drug business makes the drug business one of the only nearby and available sources of employment regularly open to many poor Black and Latino young men.

There are now almost 13,000 people in New York State prisons on drug charges, 90% of them Black or Latino, most of them convicted of low-level and non-violent offenses.¹⁰² Human Rights Watch found that of the men and women incarcerated for long sentences on drug charges in New York State, 77% had no prior violent felony convictions, 47% had no prior arrests for a violent felony, and 50% had no prior drug felony convictions. Of those who had been previously convicted of a drug felony, 89% were convicted of the lowest categories of drug crimes (class C, D or E).¹⁰³ Overwhelmingly these were not violent offenders; "most were street-level dealers selling small quantities, bit-players in the drug trade" and nearly all were men.¹⁰⁴ The imprisonment for many years of sons, brothers and fathers disrupted families and neighborhoods, making the lives of those left behind, especially women and children, even more difficult and precarious.

The brilliant TV series "The Wire" – particularly in its fourth season which focused on poor, teenage, African-American boys – shows how limited options function to channel some young men into street corner drug sales as employees of drug dealers. The fictional stories "The Wire" tells of Baltimore mirror real-life ones occurring in New York and other U.S. cities, where impoverished young men, ignored by schools and every other institution except the police, turn to the street drug business as the only employers who will hire them. "The Wire" is frequently cited for its "Dickensian" realism, but David Simon, the former newspaper reporter who created the show, has maintained he worked from other models. In creating "The Wire," Simon told *The New Yorker*, he and his co-writers had "ripped off the Greeks: Sophocles, Aeschylus, Euripides."

"We've basically taken the idea of Greek tragedy and applied it to the modern city-state [said Simon].... What we were trying to do was take the notion of Greek tragedy, of fated and doomed people, and instead of these Olympian gods, indifferent, venal, selfish, hurling lightning bolts and hitting people in the ass for no reason—instead of those guys whipping it on Oedipus or Achilles, it's the postmodern institutions ... those are the indifferent gods'."¹⁰⁵

Head Start for DNA Databases

In recent years, the most substantial expansion of criminal justice databases has been for DNA. The FBI's Combined DNA Index System (CODIS) has grown from 460,000 offender profiles in 2000, to over 5,500,000 by January 2008.¹⁰⁶ Initially created only for serious sexual and violent crimes, CODIS has expanded so rapidly in part because of the increasing number of crimes of declining severity that legislation has made DNA collectable. In 2006 New York State made conviction of a number of petty offenses – such as trespassing – DNA

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swipeable.¹⁰⁷ Since then, Mayor Bloomberg and other prominent politicians have urged collecting DNA from everyone arrested for anything whatsoever, including therefore marijuana possession.¹⁰⁸

Blacks are already disproportionately represented in CODIS because they are disproportionately represented in the prison population. In 2008, the Pew Charitable Trust issued a report finding that 1 in 9 Black men aged 18 to 34 was currently in prison, while fewer than 1 in 55 White men of the same age were currently in prison.¹⁰⁹ And in 2000, Human Rights Watch reported that 1 in 3 Black men between 20 and 29 was in prison, parole, probation or on bail – in effect, under the supervision of the criminal justice system.¹¹⁰ In many if not most such felonies the police and courts now take DNA for the database. As a result, even without extending DNA collection to misdemeanor arrests, Blacks will continue to be increasingly over represented in the CODIS database.

Recently some police, FBI, criminal justice, and political figures have proposed increasing DNA searches (and therefore DNA collection) to family members of people already in the DNA data bases.¹¹¹ If DNA collection from all arrestees (including marijuana possession and other petty misdemeanors) is coupled with familial searching, the result is an Orwellian system where a substantial portion of ordinary Black Americans are genetically profiled in criminal justice databases and officially labeled “suspects.”



Detective Moreland speaks to a corner crew – Photo from “The Wire”

7. Head Start for Unemployment and Prison



Photo by Ken Stein at flickr.com

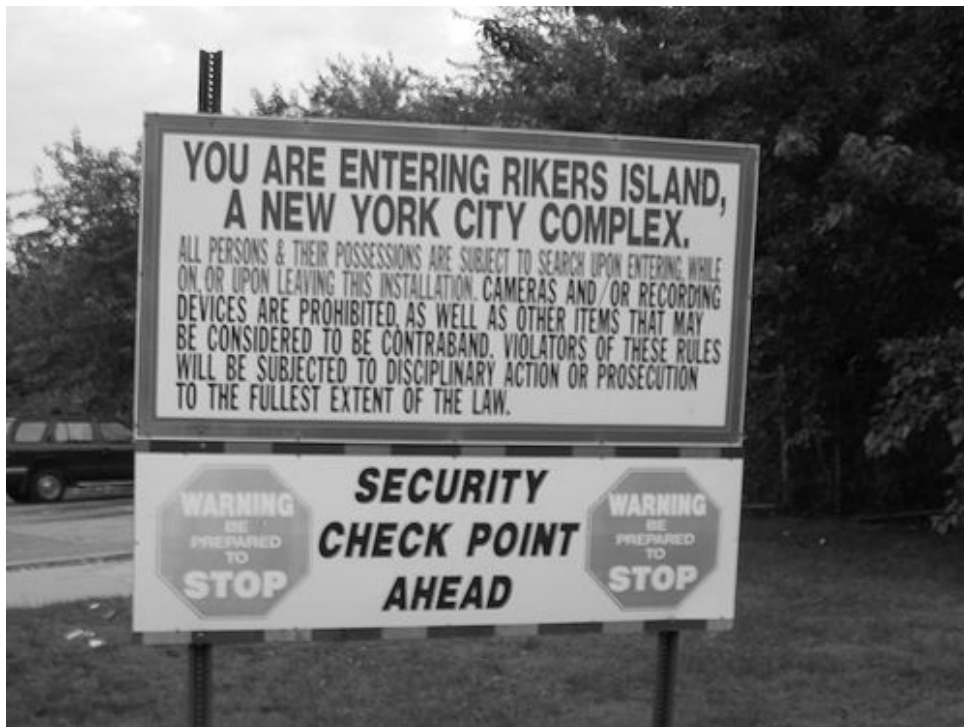


Photo by Mike Epstein at flickr.com

8. NEW YORK DECRIMINALIZES MARIJUANA POSSESSION

THE ROCKEFELLER DRUG LAWS AND NEW YORK MARIJUANA LAW REFORM IN THE 1970S

The Rockefeller Drug Laws of 1973

Nelson Rockefeller, governor of New York state from 1959 through 1973, made fighting “the scourge of addiction” a major focus of his administration. He vowed that New York would create an example for the rest of the country of how government could effectively tackle drug abuse with treatment.¹¹² By 1973 Rockefeller had given up.¹¹³ Declaring the effort at providing drug treatment a failure, and seeking to win favor with conservative Republicans in his effort to run for President in 1976, Rockefeller mimicked Richard Nixon and embraced a hard-line approach to drugs. He proposed dramatic, harsh punishments for drug possession and use, and mandatory life imprisonment of drug sellers. In his 1973 State of the State address, Rockefeller explained his change: “We have tried every possible approach to stop addiction and save the addict through education and treatment... But let’s be frank – let’s ‘tell it like it is’: we have achieved very little permanent rehabilitation – and have found no cure.”¹¹⁴

Rockefeller’s proposed laws came under severe criticism as unrealistic. Parents of young people suffering from addiction or charged with drug crimes labeled the laws as unduly harsh.¹¹⁵ The *New York Times*’s Tom Wicker summed up the perspective of many experts when he declared the proposed legislation “demonstrably unworkable, unless accompanied by unimaginable court and prison expansion.” New York Human Rights Commissioner Eleanor Holmes Norton called the proposal an “irrational nonsolution if there ever was one.”¹¹⁶ Consumers Union “urged rejection of the punitive approach – claiming that history shows it doesn’t work as a deterrent.” The New York Civil Liberties Union’s representative testified that Rockefeller’s bill was “inhumane, unworkable, unconstitutional and essentially irrelevant to the problems to which it is purportedly addressed.”¹¹⁷

The Governor’s proposal dominated much of the 1973 legislative session. Many throughout the state and in the legislature applauded the prospect of getting “tough” on drugs and drug users. Even some critics of Rockefeller’s draconian approach countered with their own hard line plans.¹¹⁸ New York City Mayor John Lindsay termed the laws “vindictive” and then proposed his own alternative which he called even “tougher.” Many politicians acknowledged that by taking an extreme position – and by dint of his office and the enormous public relations apparatus at his command – Rockefeller had forced others to take a harder line than they had ever taken before.¹¹⁹ In the end, Rockefeller got his way and the new drug laws were passed by the legislature and became effective on September 1, 1973.

Commonly known as the “Rockefeller Drug Laws,”¹²⁰ the new legislation did not specifically mention marijuana but left it included in the existing list of “narcotic drugs” subject to the severe new penalties.¹²¹ The same year, the legisla-

ture expanded mandatory sentencing to include anyone convicted of a second felony offense within 10 years of the first.¹²² This also included marijuana offenses.

The Rise and Failure of New York Marijuana Law Reform In 1971

During the same period that New York State legislators were designing new, harsh narcotics laws, a very different conversation was developing about marijuana policy. In the late 1960s and early 1970s, marijuana use had become increasingly common in the U.S. and many other countries.¹²³ In college campuses throughout New York State, students began protesting arrests by local police for marijuana possession and challenging authorities to justify the practice. As one student said after a raid that arrested 27 students at the State University of New York at Stony Brook, “I think someday we’ll look back on this raid like our parents looked back on police raids of the Prohibition Era.”¹²⁴ The U.S. Senate voted unanimously in early 1970 for a bill that would make marijuana possession for personal use a misdemeanor instead of a felony offense.¹²⁵ In New York as elsewhere in the U.S., when children of the middle-class and well-to-do were arrested and charged with “serious narcotics offenses” for possession of marijuana, many people began questioning the legitimacy of policies that treated marijuana as a ‘narcotic drug’.¹²⁶ In 1970, Governor Rockefeller created a state commission to study drug laws, with a subcommittee, chaired by New York State Senator John Dunne, focused exclusively on marijuana laws and policy.

The marijuana subcommittee held hearings, heard testimony, and issued a thorough, thoughtful report on marijuana in 1971; it drew upon and summarized a substantial body of scholarly, scientific, legal and medical research on marijuana¹²⁷ Early on the report made clear its central finding:

“Notwithstanding our conclusion that marijuana should not be legalized, it is patently clear that our present penalty structure [in New York State] is grossly disproportionate to the nature of the offense.”¹²⁸

The commission report found that police, prosecutors and judges were often unwilling to strictly enforce the marijuana laws. Attributing this failure to the collective sense that the penalties for marijuana were utterly inappropriate, the report quoted Thomas Mackell, the District Attorney of Queens.

“Since marihuana is classified as a narcotic, although it is not, a person convicted of possessing only one ounce of marihuana is guilty of a class C felony and faces imprisonment of up to 15 years... The same defendant could be convicted of possessing a ton of barbiturates and amphetamines, drugs far more dangerous than marihuana, and be sentenced to no more than a year’s imprisonment.”¹²⁹

The commission report stressed a point made by many others at the time and throughout the 1970s – that the arrests and jailings of people for possessing and using marijuana, *and the criminal records that resulted*, were more harmful than smoking marijuana. The report observed:

“It is not surprising that law enforcement officials, confronted with laws containing penalties not in keeping with known risks, are reluctant to impair many young people’s futures by stigmatizing them with a criminal record”.¹³⁰

8. New York Decriminalizes Marijuana Possession

The commission report insisted that an arrest for marijuana can seriously harm someone's chances for employment and for economic and professional advancement.

“What is clear is that the present [marijuana] laws can and do brand many young and inexperienced offenders with the stigma of an arrest and/or conviction which will be a blight on their records for the rest of their lives and will jeopardize their opportunities for future employment and advancement. Presently, both New York City and New York State require disclosure of arrests on job applications regardless of whether the arrest was followed by conviction...” [emphasis added]

“The President’s Commission on Law Enforcement conducted a survey of employment agencies in the New York City area and found that 75% of the private employment agencies inquire about arrests and as a matter of regular procedure do not refer any applicant with an arrest record, regardless of whether the arrest was followed by conviction. Applications for professional licenses require disclosure of arrests and convictions as do most applications for colleges and universities.... “

“Although it is impossible to arrive at a numerical estimate, it can, nevertheless, be safely stated that the current laws on marijuana have permitted judges to impose prison terms on first time teenage offenders and those barely out of their teens, thereby criminalizing some otherwise law-abiding young people.”¹³¹

The commission’s first major recommendation was to significantly reduce the penalties for marijuana. It urged that possession of small amounts of marijuana for personal use be deemed a *violation* instead of a misdemeanor so it would *not* constitute a crime.

“Throughout the hearings conducted across the State, there was nearly unanimous condemnation of existing penalties for possession and use of marihuana [including by]... judges, district attorneys, probation officers and others connected with the criminal process.... Nowhere else in the law is such purely private disobedience of the law so severely criminalized....”

“By reducing the offense to a violation it is our intention not only to lower the maximum penalty for minimal possession ... but to remove the stigma attached to a person because of his [arrest and] conviction for a ‘crime’.”¹³²

The first group to publicly support the commission’s proposal was the New York State District Attorneys Association, which put forth a marijuana decriminalization plan even more far-reaching than the one advanced by the report.¹³³

Despite the commission’s serious, knowledgeable report, and substantial support, the commission’s recommendations about marijuana were *not* put into law by the New York legislature. On May 18, 1971, after more than three hours of debate, a bill to reduce possession to a violation was defeated by a bipartisan vote of 79 to 64. The bill’s most prominent proponents were its co-sponsors, Republican Assemblyman Chester Hardt and his Democratic colleague, Eli Wagner of Nassau County. Among the opponents of reform were eight of the nine black

and Puerto Rican members of the State Assembly who argued that the bill would make marijuana more widespread and increase drug problems in their neighborhoods.¹³⁴

The “Marijuana Reform Act of 1977”

In the next few years following the failure of marijuana law reform in 1971 – as the Rockefeller drug laws were debated, passed and implemented – the New York legislature did not again consider reform of New York’s marijuana laws. The question of reform, however, did not go away. In 1972, the National Commission on Marihuana and Drug Abuse (the Shafer Commission), appointed and then ignored by President Nixon, recommended that possession of marihuana for personal use no longer be an offense.¹³⁵ The same year, the American Bar Association passed a resolution saying that laws punishing the use of marijuana “substantially outweigh any benefit derived” and that excessive penalties should be eliminated.”¹³⁶

By 1975 support nationally for decriminalizing the possession and use of marijuana had gained even greater legitimacy. In that year four states enacted laws making possession of small amounts of marijuana a civil offense; the U.S. Congress, with the encouragement of President Carter, considered legislation to do the same. Support for marijuana law reform in New York and elsewhere in the U.S. was driven in part by the increasing number of marijuana possession arrests, the negative impact on young people of the arrests and of criminal records, and the substantial costs of marijuana law enforcement.¹³⁷

In New York state, reasons for reform became increasingly obvious. State law still deemed possession of one quarter ounce of marijuana a felony, punishable by up to 15 years in prison. Because the Rockefeller drug laws limited the ability of judges and prosecutors to accept pleas, persons who previously would have been able to receive probation or short jail terms for possessing marijuana now faced prison sentences. And local marijuana law enforcement often targeted events like rock concerts attended by large numbers of young people.¹³⁸

In 1974 Hugh Carey was elected governor of New York. Early in his first term he signaled his support for easing the state’s marijuana laws saying, “We just don’t want to put people in prison with hardened criminals for a crime which is, frankly, without victims.”¹³⁹ In 1976 Governor Carey put forth a proposal to decriminalize the possession of up to two ounces of marijuana and the free (non-monetary) “transfer” to another person of up to one ounce. The proposal made little headway among legislators wary of rocking the boat in an election year and was opposed by State Senator Warren Anderson, the powerful leader of the Republican majority.

In 1977 the legislature finally considered bills advanced by members of both houses to implement the recommendations made in the 1971 New York commission report on drug laws. The bills sought to decriminalize the possession and free transfer of small amounts of marijuana (such as passing a “cigarette” from one person to another). The bill was hotly debated in both houses of the legislature with supporters arguing that similar changes in the laws in Oregon and California showed that reducing the punishment of marijuana offenses did not in-

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crease marijuana use.¹⁴⁰ The vote was so close that Democratic leaders flew Senator Abraham Bernstein to Albany three days after he had been released from the hospital. Entering the chamber in a wheelchair minutes before the vote, Senator Bernstein told his colleagues that: “It is inequitable, unfair and even catastrophic for a youngster or young adult, because of a small quantity of marijuana in his possession, to run the risk of being arrested and being convicted and having a criminal record remain with him for the rest of his life.”¹⁴¹

“The Marijuana Reform Act of 1977,” as the legislation was titled, was signed by Governor Carey on June 29. *The New York Times* reported that the bill “would make the possession of up to 25 grams of marijuana a violation, the same category as a traffic infraction, with fines up to \$100 for a first offense. Twenty-five grams is just over seven-eighths of an ounce.” Richard J. Meislin covered the hearings for the *Times* providing an unusually good review of the legislature’s conflicts over the legislation and the growing understandings about marijuana that had developed in recent years. As his article in the *Times* explained:

[The legislation passed and signed by the Governor was] “considerably more stringent than a bill that was reported out of the Codes Committee of the Democratic-controlled Assembly earlier this year, and is in some ways even more stringent than the one approved by the Codes Committee of the Republican-controlled Senate.”

“Mr. Gottfried’s proposal to make free transfer – such as the passing of a marijuana cigarette from one person to another – a violation was scrapped in the compromise... The toughening of some aspects of the bill was the price exacted by conservative Republicans in the State Senate, who said in conference earlier this week that they would otherwise not allow the measure to pass. Mr. Gottfried’s earlier measure would have allowed the resentencing of persons convicted under the present laws, and would have made the cultivation of marijuana a violation... These provisions also have been eliminated in the compromise bill.”

“But the bill would eliminate the vast majority of arrests for marijuana possession. About 25,000 people a year are arrested in the state for possession of marijuana.... Instead of being arrested, those charged with possession of a small amount would be given citations, similar to traffic tickets.” [emphasis added]

“Governor Carey proposed last year to decriminalize possession of up to two ounces of marijuana and the free transfer of up to one ounce. But his proposal made little headway in the Senate...”

“A recently released report financed by the Federal Government said that harsh penalties did not keep people from smoking marijuana and that moderate use probably posed no substantial health hazard. The 375-page report also said that states that had decriminalized marijuana possession had shown a ‘substantial savings’ of tax dollars previously spent in arresting, housing and prosecuting marijuana users. It noted that reducing criminal penalties for marijuana possession did ‘not generally lead to an immediate increase in total marijuana use, although the long term effect of penalty reduction are less clear’.”

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“Although conceding that its evidence was not complete, the reported, based on a survey of data from nine states in which a law decriminalizing marijuana possession has been enacted, said there was a strong suggestion that ‘savings on personnel resources and public costs are substantial with respect to law enforcement and the courts’.”

“The report also said that an analysis of medical literature indicated that ‘the preponderance of evidence shows that marijuana is not physically addictive, and infrequent or moderate use probably does not pose an immediate substantial health hazard to the individual....’ The Report was released March 31 at the National Governor’s Conference.”¹⁴²

Among the reasons given by New York legislators for supporting the Marijuana Reform Act of 1977 was the high cost of arresting and incarcerating “otherwise law abiding citizens” for a relatively minor offense when “scientific evidence clearly shows no significant harm...from marijuana use.”¹⁴³ In its report to the legislature on the proposed law, the New York State Bar Association noted that “in 1975 there were 27,644 arrests for marijuana possession in New York State, 94% of these arrests were for possession of small amounts, mostly involving young people at a cost to taxpayers ranging from \$45 to \$60 million.” The Bar Association went on to note the change would help foster respect for the law “since enforcement of the harsh, outmoded marijuana law has encouraged invasion of privacy and violation of civil liberties.”¹⁴⁴

Or so it seemed at the time.

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(COMPLETE ALL CAPTIONS)			
STOP, QUESTION AND FRISK REPORT WORKSHEET PD344-151A (Rev. 11-02)		Pct. Serial No. _____	
		Date _____	Pct. Of Occ. _____
Time Of Stop _____	Period Of Observation Prior To Stop _____	Radio Run/Sprint # _____	
Address/Intersection Or Cross Streets Of Stop _____			
<input type="checkbox"/> Inside	<input type="checkbox"/> Transit	Type Of Location _____	
<input type="checkbox"/> Outside	<input type="checkbox"/> Housing	Describe: _____	
Specify Which Felony/P.L. Misdemeanor Suspected _____			Duration Of Stop _____
What Were Circumstances Which Led To Stop? (MUST CHECK AT LEAST ONE BOX)			
<input type="checkbox"/> Carrying Objects In Plain View Used In Commission Of Crime e.g., Slim Jim/Pry Bar, etc.			
<input type="checkbox"/> Actions Indicative Of Engaging In Drug Transaction.			
<input type="checkbox"/> Furtive Movements.			
<input type="checkbox"/> Fils Description.			
<input type="checkbox"/> Actions Indicative Of Engaging In Violent Crimes.			
<input type="checkbox"/> Actions Indicative Of "Casing" Victim Or Location.			
<input type="checkbox"/> Wearing Clothes/Disguises Commonly Used In Commission Of Crime.			
<input type="checkbox"/> Actions Indicative Of Acting As A Lookout.			
<input type="checkbox"/> Suspicious Bulge/Object (Describe) _____			
<input type="checkbox"/> Other Reasonable Suspicion Of Criminal Activity (Specify) _____			
Name Of Person Stopped _____		Nickname/ Street Name _____	Date Of Birth _____
Address _____		Apt. No. _____	Tel. No. _____
Identification: <input type="checkbox"/> Verbal <input type="checkbox"/> Photo I.D. <input type="checkbox"/> Refused <input type="checkbox"/> Other (Specify) _____			
Sex: <input type="checkbox"/> Male <input type="checkbox"/> Female Race: <input type="checkbox"/> White <input type="checkbox"/> Black <input type="checkbox"/> White Hispanic <input type="checkbox"/> Black Hispanic <input type="checkbox"/> Asian/Pacific Islander <input type="checkbox"/> American Indian/Alaskan Native			
Age _____	Height _____	Weight _____	Hair _____ Eyes _____ Build _____
Other (Scars, Tattoos, Etc.) _____			
Did Officer Explain? If No, Explain: _____			
Reason For Stop <input type="checkbox"/> Yes <input type="checkbox"/> No			
Were Other Persons Stopped/ Questioned/ Frisked? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, List Pct. Serial Nos. _____			
If Physical Force Was Used, Indicate Type:			
<input type="checkbox"/> Hands On Suspect <input type="checkbox"/> Drawing Firearm <input type="checkbox"/> Suspect On Ground <input type="checkbox"/> Baton <input type="checkbox"/> Pointing Firearm At Suspect <input type="checkbox"/> Pepper Spray <input type="checkbox"/> Handcuffing Suspect <input type="checkbox"/> Other (Describe) _____ <input type="checkbox"/> Suspect Against Wall/Car			
Was Suspect Arrested? <input type="checkbox"/> Yes <input type="checkbox"/> No	Offense _____	Arrest No. _____	
Was Summons Issued? <input type="checkbox"/> Yes <input type="checkbox"/> No	Offense _____	Summons No. _____	
Officer In Uniform? <input type="checkbox"/> Yes <input type="checkbox"/> No	If No, How Identified? <input type="checkbox"/> Verbal	<input type="checkbox"/> Shield	<input type="checkbox"/> I.D. Card
Was Person Frisked? <input type="checkbox"/> Yes <input type="checkbox"/> No IF YES, MUST CHECK AT LEAST ONE BOX <input type="checkbox"/> Inappropriate Attire - Possibly Concealing Weapon <input type="checkbox"/> Furtive Movements <input type="checkbox"/> Verbal Threats Of Violence By Suspect <input type="checkbox"/> Actions Indicative Of Engaging In Violent Crimes <input type="checkbox"/> Knowledge Of Suspects Prior Criminal Violent Behavior/Use Of Force/Use Of Weapon <input type="checkbox"/> Suspicious Bulge/Object (Describe) <input type="checkbox"/> Other Reasonable Suspicion Of Weapons (Specify) _____			
Was Person Searched? <input type="checkbox"/> Yes <input type="checkbox"/> No IF YES, MUST CHECK AT LEAST ONE BOX <input type="checkbox"/> Hard Object <input type="checkbox"/> Admission Of Weapons Possession <input type="checkbox"/> Outline Of Weapon <input type="checkbox"/> Other Reasonable Suspicion Of Weapons (Specify) _____			
Was Weapon Found? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, Describe: <input type="checkbox"/> Pistol/Revolver <input type="checkbox"/> Rifle/Shotgun <input type="checkbox"/> Assault Weapon <input type="checkbox"/> Knife/Cutting Instrument <input type="checkbox"/> Machine Gun <input type="checkbox"/> Other (Describe) _____			
Was Other Contraband Found? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, Describe Contraband And Location _____ Remarks Made By Person Stopped _____			
Additional Circumstances/Factors: (Check All That Apply) <input type="checkbox"/> Report From Victim/Witness <input type="checkbox"/> Evasive, False Or Inconsistent Responses To Officer's Questions <input type="checkbox"/> Area Has High Incidence Of Reported Offense Of Type Under Investigation <input type="checkbox"/> Changing Direction At Sight Of Officer/Flight <input type="checkbox"/> Time Of Day, Day Of Week, Season Corresponding To Reports Of Ongoing Investigations, e.g., Robbery Pattern <input type="checkbox"/> Ringing Alarms <input type="checkbox"/> Criminal Activity <input type="checkbox"/> Signs And Sounds Of Criminal Activity, e.g., Bloodstains, Ringing Alarms <input type="checkbox"/> Suspect Is Associating With Persons Known For Their Criminal Activity <input type="checkbox"/> Proximity To Crime Location <input type="checkbox"/> Other (Describe) _____			
Pct. Serial No. _____	Additional Reports Prepared: Complainant Rpt. No. _____	Juvenile Rpt. No. _____	Other Rpt. (Specify) _____
REPORTED BY: Rank, Name (Last, First, M.I.) _____		REVIEWED BY: Rank, Name (Last, First, M.I.) _____	
Print _____		Print _____	
Signature _____		Signature _____	
Tax# _____		Tax# _____	
Command _____		Command _____	

NYPD Stop, Question, and Frisk From

The New York Times, May 4, 1977

ALBANY AGREEMENT REACHED ON EASING MARIJUANA CURBS

Measure's Passage Appears Certain
—Some Penalties Would Be Cut
to Traffic-Offense Class

By RICHARD J. MEISLIN

Special to *The New York Times*

ALBANY, May 4—Legislative action to remove the threat of jail for the possession of small amounts of marijuana for personal use was virtually assured tonight when negotiators for the Assembly and Senate announced agreement on such a measure.

The measure announced tonight is considerably more stringent than a bill that was reported out of the Codes Committee of the Democratic-controlled Assembly earlier this year and is in some ways even more stringent than the one approved by the Codes Committee of the Republican-controlled Senate.

8. Recommendations

People have information, and they want to control information.... Controlling information is power, and they don't want to let it go – it is as fundamental as that.”

- New York City Police Commissioner Raymond Kelly, March 24, 2008

New York City has experienced more than ten years of unprecedented numbers of marijuana possession arrests, primarily of Black and Latino young people. One consequence of this racially-skewed policing has been a loss of confidence in, trust of, and support for local police. Many residents of high crime neighborhoods want a strong police presence to enhance public safety. However, like the members of the New York State Legislature who seriously considered this exact question in the 1970s, New Yorker's today do not think that arresting young people for possessing small amounts of marijuana constitutes a reasonable use of police resources or a significant deterrent to crime. Most people recognize there is little correlation between marijuana use and other criminal activity, particularly serious and violent crime.

It is a perversion of law and law enforcement that the New York Police Department has targeted precisely the people who the Marijuana Reform Act of 1977 was designed to protect – *youthful marijuana users*. Central to New York State's marijuana decriminalization legislation was the effort to prevent young people from being stigmatized with criminal records. Yet, stigmatizing young people with permanent criminal records is exactly what New York City has done to hundreds of thousands of Black and Latino youth for more than a decade. Many inner-city young people express the view that the police department is committed to their arrest and incarceration. This may not be accurate, but it is certainly a reasonable conclusion to draw.

RECOMMENDATIONS

To New York State Policymakers

Hold public hearings and otherwise thoroughly examine the racial, gender, age, and class disparities in enforcement of marijuana possession offenses and other misdemeanors and violations throughout the State.

Thoroughly assess the impact of initiatives to expand DNA collection to persons arrested for misdemeanor offenses.

Develop policies to eliminate racially skewed stop and frisk practices.

To New York City Policymakers and Civic Organizations

Substantially increase the pay scale for local law enforcement to reduce the need for overtime and improve the quality of life of New York City police officers.

Ensure that enforcement of marijuana offenses is consistent with the intent of New York State law.

Require the New York Police Department to provide the City Council and the State with detailed, accurate, and timely data on its arrests, citations, and other practices. Make that information available to researchers and public organizations.

Hold public hearings and thoroughly examine the impact of the NYPD's marijuana arrest practices on police and community relations, on young people, and on communities of color.

Hold public hearings and otherwise determine the costs of marijuana law enforcement for police, courts, and detention facilities.

Thoroughly assess the impact of police narcotics squads and of a policing strategy emphasizing stop and frisks, misdemeanor arrests, and writing petty citations.

To Community Organizations, Activists and Educators

Systematically inform youth about their constitutional rights including their rights during common police encounters. Include civil liberties and human rights education in the school curriculum from grades 6-12.

Educate New Yorkers, particularly those living in neighborhoods with high police presence, about the process for filing complaints about questionable police activities; provide support throughout the process to those making complaints.

Organize community forums where people can provide personal testimony about their encounters with police.

Work for true civilian oversight and control of the New York Police Department including a civilian review board with power to hold police department commanders accountable for the actions of officers they supervise.

To Academics, Researchers, Foundations

Study the influence of police departments over their local newspaper and media outlets.

Research the impact of marijuana arrests and jailings on young people and their families.

Conduct research on routine police practices such as stop and frisks and searches without depending upon police departments for assistance. Examine the effects of such practices on communities of color.

Study the ways prosecutors and criminal courts handle the misdemeanor cases that constitute much of their work.

Study the relationships between misdemeanor law enforcement and school retention, unemployment, and imprisonment.

Recommendations

Research the ways “war on drugs” funding to police departments affects enforcement priorities and mass incarceration; study further the effects of punitive sentencing policies.

To Journalists

Investigate and regularly cover routine police practices such as misdemeanor arrests and writing citations not linked to dramatic incidents or corruption cases.

Feature stories chronicling the human costs of criminal justice polices, particularly for minority youth.

To New Yorkers

Ask yourself if you want your tax dollars spent arresting and jailing people for possessing or using small amounts of marijuana.

Ask yourself whether the police treatment regularly meted out to Black and Latino youth would be fair and acceptable for you, your son, daughter, spouse, parent, loved one or friend.

Ask yourself whether you want New York City to be arresting more people for marijuana offenses than any other city in the world.

If not, insist such polices end.

Appendix A:
One of six summarized cases in the Annual Report of
the New York Civilian Complaint Review Board for 2005

CCRB INVESTIGATION:

Detective Unlawfully Frisked and Searched 13 Year-old Autistic Boy

At 5:50 p.m. on February 29, 2004, a 24 year-old woman was sitting at a picnic table in St. Albans Park in Queens with her 13 year-old, non-verbal, autistic brother. The woman was talking on her cell phone while her younger brother read a magazine. Two narcotics detectives (one male and one female) claimed that they saw the boy with his hands under the picnic table, and suspected that he might be rolling a marijuana cigarette. The officers pulled into the park in an unmarked gray Pontiac and approached the two civilians. The female detective stood by the woman and told her not to move, while the male detective ordered the autistic boy to put his hands on his head.

When the boy did not comply, his sister informed the officers that the boy was autistic; she feared that he could make a sudden movement, as he is prone to do, and startle the officers. The male detective frisked and then searched the boy. While the two detectives were interacting with the brother and sister, two other unmarked police vehicles, one of which was a van carrying several individuals the narcotics team had previously arrested earlier that afternoon, arrived in the park. The detectives did not find any evidence that the autistic boy or his sister possessed marijuana, and proceeded to leave. The woman asked the officers what precinct they were from, and they told her that they were from the 113th. The officers provided no explanation as to why they stopped the woman and searched the boy. After the incident, the woman drove her brother home, proceeded to the precinct, and obtained a complaint form, which her mother submitted later at another precinct. The CCRB took a statement from the woman, though due to his autism the boy could not be interviewed.

Although police commands' responses to CCRB records requests provided no indication that police had filed a stop, question, and frisk report in connection with the incident, the CCRB investigator identified the narcotics officers through the use of the police department arrest database. Arrest records showed that a specific team of narcotics officers had made several arrests in the vicinity of St. Albans Park on the same afternoon as the brother's and sister's encounter with police. Upon being interviewed, the team of narcotics detectives admitted that their team interacted with the brother and sister. Yet the male and female detectives who first arrived on the scene denied frisking and searching the boy or detaining the woman. These detectives' colleagues denied seeing any officer frisk and search the boy. Although accounts differed slightly, the first two detectives both stated that seeing the boy fidgeting with his hands under the picnic table had aroused their suspicion. They claimed that they had approached the siblings, but upon seeing that there were no drugs in the boy's hand or on the ground around the pair, they left without incident.

The investigator, however, again through the use of the police department arrest database, was able to identify and interview one of the individuals inside the prisoner van that entered St. Albans Park. When asked to describe what had happened in the park this man gave an account, without prompting, that corroborated the fundamental portions of the woman's story—that an officer had frisked and searched her brother, whom the man described as "mentally slow."

The woman's testimony, combined with the confirmation of an independent witness, proved by a preponderance of the evidence that the male and female detective stopped the siblings and that the male detective frisked and searched the autistic boy without legal justification. On November 9, 2004, the board substantiated these allegations and recommended that the department serve disciplinary charges against the officers. It further recommended that the department discipline the two officers for failing to prepare a stop, question, and frisk report as required by the NYPD Patrol Guide. In July of 2005, the police department ordered that both officers receive instructions, or retraining, on the law and departmental guidelines applicable to stop, question, frisk, and search procedures.

APPENDIX B: RESEARCH ON THE NYPD AND ITS MARIJUANA POSSESSION ARRESTS

Although New York's newspapers, magazines and TV stations have not yet investigated and seriously reported on the city's wave of marijuana arrests, some academic and professional researchers have been studying them. We have drawn upon their path-breaking work. See:

- Bernard E. Harcourt and Jens Ludwig, "Reefer Madness: Broken Windows Policing and Misdemeanor Marijuana Arrests in New York City, 1989-2000", *Criminology and Public Policy* 6:1 pp 165-182, 2007. Available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=948753.

- Andrew Golub, Bruce D. Johnson, and Eloise Dunlap, "Smoking marijuana in public: the spatial and policy shift in New York City arrests, 1992-2003", *Harm Reduction Journal* 3:22, 2006. Available at: <http://www.harmreductionjournal.com/content/pdf/1477-7517-3-22.pdf>.

- Andrew Golub, Bruce D. Johnson, and Eloise Dunlap. "The Race/ethnicity Disparity In Misdemeanor Marijuana Arrests In New York City", *Criminology and Public Policy* 6:1 pp 131-163, 2007

- Bruce D. Johnson, Andrew Golub, Eloise Dunlap, Stephen J. Sifaneck, James E. McCabe, "Policing and Social Control of Public Marijuana Use and Selling in New York City," *Law Enforcement Executive Forum*, 2006, 6(5)

Note: All of the above articles use the phrase "MPV arrests" (marijuana in public view) to describe cases when people were charged with violating section 221.10 of the New York State Penal Law. This term "MPV Arrests" is not a NYPD or New York criminal justice term, but was coined by Andrew Golub. Like us, until we interviewed police officers and legal aid attorneys, he and his coauthors assumed these were arrests of people smoking marijuana in public. As this report explains, the majority of these arrests were of people possessing marijuana, generally in a pocket or belongings, who were searched and then charged with having marijuana "burning or open to public view." See Part 5 of this report for a fuller discussion of what actually happens in these arrests.

New York City's "war on marijuana" was described in graphs and text by The Sentencing Project in 2005. Their research emboldened us to further investigate the arrests. See: Ryan S. King and Marc Mauer, *The War on Marijuana: The Transformation of the War on Drugs in the 1990s*, The Sentencing Project, Washington, D.C., 2005. Available at: http://www.sentencingproject.org/Admin/Documents/publications/dp_waronmarijuana.pdf. Also see: <http://www.harmreductionjournal.com/content/pdf/1477-7517-3-6.pdf>.

Before this report, two New York journalists discussed the research presented here: Nathan Riley, *Gay City News*, Feb 9, 2006. And Sheryl McCarthy, "Arrests for Pot Are Excessive," *Newsday*, July 16, 2007.

The first group to seriously focus attention on New York City's extraordinary number of marijuana arrests was the National Organization for Marijuana Reform (NORML), which mined FBI data in the 1990s, and again in the early 2000s, and made the information publicly available. Two NORML executive directors, Keith Stroup and Allen St. Pierre, and the researcher Jon B. Gettman, repeatedly called attention to what was happening in New York City. The tables and other data they made available are still on the web. (For data from

95-97 see: http://www.norml.org/index.cfm?Group_ID=5074&wtm_format=wide. For data from 2000-2002 see: "Crimes of Indiscretion" (2005) Table 61, p 119 at http://www.norml.org/pdf_files/NORML_Crimes_of_Indiscretion.pdf).

In 2001, during the New York mayoral election, NORML ran a series of high-profile advertisements in New York City with a quote from candidate Michael Bloomberg admitting that he had smoked marijuana and enjoyed it. As far as we know, this was the first and largest attempt to draw attention to New York's marijuana arrest crusade. See:

http://norml.org/index.cfm?Group_ID=5237. The New York media responded by focusing on Bloomberg's embarrassment and graceful handling of the news, and then never examined the issue again. The media took little or no notice of the campaign's real point: New York City's record-breaking marijuana arrest rates and policies. NORML also posted a graph showing New York City's marijuana arrests in April 2002, at: http://norml.org/index.cfm?Group_ID=5232.

The Police Department and The Media

As this report shows, it is possible to obtain much information about New York Police Department practices from a wide range of sources including by interviewing knowledgeable insiders willing to speak confidentially. But beyond official announcements and releases, one rarely can learn much from the NYPD directly. The department has never been an open or transparent organization; under Mayors Giuliani and Bloomberg its commanders have often been unwilling to make available even routine information about its activities (such as the counts and racial breakdowns of the stop and frisks). Sometimes the department ignores requests for information from the City Council, and refuses requests from civil liberties and civil rights organizations. By all accounts, the NYPD's widespread corruption, investigated and documented by the Knapp Commission in the 1970s, and by the Mollen Commission in the 1990s, has abated. But the NYPD's commitment to secrecy and control of information, also central to those cases, has intensified, especially among its top commanders.

For example, in 2007, the *New York Times*, the New York City Bar Association, and a group of 21 academics from across the country filed briefs in the New York Supreme Court in support of the New York Civil Liberties Union's lawsuit challenging the NYPD's "refusal to disclose an electronic database detailing police stops of hundreds of thousands of New Yorkers, most of whom were black and Latino." The briefs and other documents are at: <http://www.nyclu.org/node/1569>.

In another stunning example, in 2006 the NYPD banned from One Police Plaza the long-time New York police reporter Leonard Levitt, who for ten years wrote a police beat column for *Newsday*. Levitt, the author of six books including an Edgar Award winner, has covered the NYPD with sympathy and honesty, especially for regular police, but some of his columns critical of department commanders upset Commissioner Raymond Kelly. The Commissioner would not speak to Levitt but instead drove out to *Newsday*'s offices in Long Island to complain directly to the reporter's editors. They later told Levitt that Kelly "wants your head on a platter." In 2007, the NYPD denied a routine renewal of Levitt's press credentials. In 2008, the New York Civil Liberties Union sued the NYPD on Levitt's behalf. Levitt has discussed the NYPD attempts to silence him at:

<http://nypdconfidential.com/columns/2006/060109.html>, and in other columns at the site. The NYCLU's suit and a video interview with Levitt discussing what has happened to him is at: <http://www.nyclu.org/node/1637>. Although the public is unaware of this case, the many newspaper and TV reporters who regularly get information from the department are acutely aware of the risks of upsetting Kelly and the department.

Because the city's major newspapers and broadcast media depend upon the police department for so many of their daily stories and so much routine information, most of the time the media cannot afford to alienate the police department by reporting police activities the department does not want reported, or investigating matters the department does not want uncovered. Plainly put, their news sources in the department can quickly dry up; as the case of Levitt shows, this can be done with impunity to even highly-regarded veteran journalists. The media do investigate and report on *individual* police abuses, on "bad apples," including a corrupt or brutal officer, team, squad, or even an entire precinct and its commanders. But the media rarely investigate, on their own initiative, system-wide police abuses, especially not ones that go on daily for over a decade such as the marijuana and other misdemeanor arrests. This is not unique to New York City, although it may be somewhat extreme here; throughout the U.S. police departments have enormous influence over what is and is not said about them in the papers and other media. However, on occasion papers can write more critically about the routine police abuses in *other* cities, sometimes alerting astute readers to the possibility that the same things may be occurring at home. Hopefully, the New York media will report, at least briefly, on the findings of this report and other public queries about the marijuana arrests – such as one to be held by the New York City Bar Association on April 30, 2008, after the release of this report.

As this report was being completed, a newspaper story about the conflict between the FBI and NYPD quoted Police Commissioner Raymond Kelly on the importance of controlling information. Describing the FBI's attitude in way that also captures well the understanding and perspective of the NYPD, Kelly said,

"People have information, and they want to control information.... Controlling information is power, and they don't want to let it go -- it is as fundamental as that."

(Quoted by Dafna Linzer, "Turf War Between NYPD and FBI Centers on Terrorism," *The New York Sun*, March 24, 2008.)



APPENDIX C: SOURCES, METHODS, ACKNOWLEDGEMENTS

Both authors of this report were raised in New York City and attended its public schools. We have lived and worked here most of our lives, with enduring networks of family, friends, neighbors, work colleagues and professional associations. In researching the marijuana possession arrests and creating this report, we have drawn upon our personal and professional relationships to meet people throughout the criminal justice system to understand how the arrests, jailings and court procedures operate in New York. We have also obtained information and data from more conventional sources.

a) *Arrest data*: The New York City marijuana arrest statistics reported in the graphs and discussed in the report are from the New York State Division of Criminal Justice Services, Albany, New York, based on NYPD reports. Staff at the NYSDCJS have been knowledgeable and highly competent. We could not have done this work without them. Full source citations are included with each graph and in end notes. For other U.S. cities and counties we have drawn upon arrest data from the Federal Bureau of Investigation, Uniform Crime Reporting Program, through the Inter-university Consortium for Political and Social Research, Ann Arbor, Michigan. Although this national data is not included in this report, it is the source for the information about marijuana arrests elsewhere that we mention briefly. Jon Gettman at Gettman RDA Consulting, Lovettsville, Virginia, handled brilliantly all the data analysis and consulted with us throughout this project.

b) *Printed sources*: This report draws much information from books, scholarly articles, newspaper and magazine articles, and official reports. Citations and web links for sources are provided in the end notes and appendices. This report would have been much poorer without the growing body of research from academic researchers and non-governmental organizations about the major increases in recent decades in the size and racial disparities of the U.S. criminal justice system.

c) *Observations in New York Criminal Courts*: We have spent over fifty hours observing arraignments in New York City criminal courts, an eye-opening experience we recommend to anyone interested in criminal justice processing and procedures. Much about the criminal justice system is closed to research and investigation by citizens. Without getting arrested, an ordinary citizen cannot see the jails or holding pens, and there are no pictures of them available even on the internet. Policing is similarly impenetrable for ordinary citizens. But courts are open to anyone, and New York's arraignment courts run all day and into the late evening, seven days a week. New York City arraigns on criminal charges over 300,000 people a year, or nearly a thousand a day, most of them on misdemeanor charges. For many years, New York City college and university professors in a number of fields have sent students and visiting scholars to observe the criminal courts, particularly the arraignment courts. At the courts we also met legal aid and public defender attorneys and interviewed people who had just spent 24 hours locked up for possessing marijuana (35 percent of such people have never been arrested before for anything). The web site for the New York Criminal Courts is at: <http://www.nycourts.gov/courts/nyc/criminal/index.shtml>. There is much information there including the detailed annual reports of the city court system.

d) *Interviews with attorneys* in New York City and elsewhere in the U.S. who handle many marijuana and other drug cases, especially misdemeanor cases: The New York City legal aid and public defender attorneys we have relied upon have almost always been highly experienced, with many years working daily in New York's courts. Individually they have handled or supervised many thousands, or even tens of thousands, of misdemeanor mari-

juana cases. Despite serving literally on the front lines of the U.S. criminal justice system, the attorneys we have spoken with have not lost their sense of indignation and often outrage about the injustices they confront daily. Robin Steinberg and a group of her attorneys at the Bronx Defenders, which handles half of all criminal cases in the Bronx, gave generously of their time and knowledge at a crucial stage of our research. Edward McCarthy, the Supervising Attorney for Legal Aid in Manhattan, helped us in uncountable ways. We also spoke with some prosecutors, former New York Assistant District attorneys, and former District Attorneys from other cities. They confirmed many things we learned elsewhere, and sometimes made acute observations about how this arrest system works in New York. Alan St. Pierre and Keith Stroup of the National Organization for the Reform of Marijuana Laws (NORML) helped us reach and interview many attorneys throughout the U.S. and graciously invited us to attend a major conference of attorneys whose practice includes many marijuana arrestees. They also shared with us data about people who contact them seeking information about their own marijuana possession arrests.

e) *Interviews with people arrested for possessing marijuana*, overwhelmingly Black and Latino young men: Some people we met through friendship, family, or work networks. We took them out for dinner or paid them \$20 to talk with us for up to an hour describing their arrest, jailing and experiences in New York's criminal justice system. We held some of these interviews very early in our research and learned much known to almost nobody but arrestees and people working daily in the system. Eventually we began interviewing arrestees in the court houses, observing in arraignment court until marijuana possession cases came before the judges, and then following defendants out of the court room, introducing ourselves, and explaining our research and our desire to interview them about their arrests. All the men and women we approached told us about their arrests, and were usually glad to speak with sympathetic observers and professionals concerned about what New York City has been doing. We recommend observations in the arraignment courts to anyone who would like to see and meet people who have been arrested for possessing small amounts of marijuana.

f) *Interviews with current police officers and retired police officers*: Together we attended two annual training conferences of the National Black Police Association (NBPA) and one of us has attended several others. The NPBA, the oldest and largest international professional organization of Black police officers, is devoted to high-quality professional policing, civil rights and justice. The NBPA's annual training conferences, nearly a week long, are attended by officers from all over the U.S., Canada, and the U.K., some sent by their local police departments, most coming on their own. The August 2006 conference was, for the first time, held in the U.K. with over 1000 police officers attending, mostly uniformed patrol police and detectives from all three countries. At the August 2007 NPBA conference in Miami, we together presented our preliminary findings at a session attended by over sixty current police officers. NPBA members, officers and its executive director, Ron Hampton, helped us enormously and encouraged us in our research. At NBPA conferences we have had countless conversations with current police officers from many different cities and regions, including much of the U.K., about how their police departments and criminal justice systems handle and process marijuana possession arrests. Some people we met at the conferences became regular contacts, sources of information, and people we turned to for understanding how the policing of petty offenses works in different jurisdictions. The NBPA conferences offered a protected environment in which current police officers could speak with us frankly and confidentially. Nearly all of the police officers from the New York Police Department that we spoke with and interviewed, often repeatedly, were either retired, sometimes recently, or close to retiring when we first met them. We met a few NYPD officers first at the NPBA conferences, but most we met through professional and friendship connections in New York City.

The well-known police “code of silence” is very real and police officers throughout the U.S. can face severe consequences for speaking honestly or critically about their departments to journalists and academic researchers. One retired NYPD officer who spoke frankly with us numerous times about NYPD practices would not let us even meet his son, a current NYPD detective, because doing so could cause the young man to “lose his shield” and be driven from the force. This report is possible because veteran and retired officers broke that code of silence believing that people in New York City and elsewhere in the U.S. have a right to know more about what police departments are doing, in particular about these racially-skewed marijuana and other misdemeanor arrests. Retired officers, who often retain strong ties to their home departments and to policing, were also among the very closest and most thorough readers of drafts of this report, offering nuance, corrections, and detailed margins comments. More than anyone else, veteran and retired police officers, often indignant about what they regarded as bad and biased policing, taught us about the policing patterns discussed in this report.

All of our interviews with arrestees and police officers were confidential and most with attorneys, prosecutors and judges were as well. Some of the people we interviewed may choose on their own to reveal in various forum what they know. Our information was gained from focused in-depth interviews with key informants, observations and ethnography. This was not a survey and we have not tried to sample the opinions of New York police. We have sought to understand how the policing, booking, jailing, and criminal court processes work as routine, daily occurrences in New York City.

In researching marijuana possession arrests, we have learned from, leaned upon, and been helped in innumerable ways by many people, often more than they know. Lynn Zimmer, Craig Reinerman, Troy Duster, Sheigla Murphy and Loren Seigel were the primary consultants and advisors through various phases of research and writing; they were generous, brilliant, and wise. We also wish to single out for gratitude and praise: Adele Bernard, Allen St. Pierre, Alex Wodak, Andrew Beveridge, Andrew Golub, Aryeh Neier, Bernard Cohen, Bernard O’Brien, Betty Phillips, Brian Slater, Bruce Johnson, Christopher Dunn, Clare Carroll, Daniel Abrahamson, Dan Goldman, Dawn Yuster, Dean Savage, Donna Lieberman, Douglas Greene, Edward McCarthy, Elaine Frezza, Eloise Dunlap, Ernest Drucker, Ethan Nadelmann, Flutura Bardhi, Frank Phillips, Franklin Zimring, Gabriel Sayegh, Graham Boyd, Ira Glasser, James Kenney, Jeffrey Fagan, Jennifer Carnig, Jerome Skolnick, Jesse Levine, John P. Morgan, Jon Gettman, Judith Greene, Keith Stroup, Lorenz Bollinger, Mark Mauer, Marsha Rosenbaum, Michael Letwin, Nicholas Eyle, Noah Potter, Norm Stamper, Peter Cohen, Rafeeq Raheem, Randy Lee, Raquiba LaBrie, Robert Perry, Robin Steinberg, Roger Abel, Ron Hampton, Shailly Agnihotri, Stephanie Vogel, Stephen Sifaneck, Sundrop Carter, Tania Simoncelli, Terence Hallinan, Thomas Haines, Vincent Warren, and the many police officers, arrestees, government officials, and others who found it prudent to remain anonymous.

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MARIJUANA ARREST CRUSADE:

Racial Bias and Police Policy in New York City, 1997 to 2007

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NOTES AND SOURCES

Introduction

¹ Each bullet point in the Introduction and Summary has an end note explaining where in the report the information for that point can be found. In addition, the graphs in Part 1 and the bullet points throughout the report can be read by themselves as an additional summary of important findings and conclusions.

² New York City's marijuana possession arrests over three decades are shown in Graph 1. Other researchers have examined New York's large number of marijuana arrests. See the various publications and reports discussed in the appendices in this report.

³ The mechanics of an arrest and arraignment are discussed in various places. See: Part 4, especially pp. 34-36

⁴ For all New York City marijuana arrest data: See Graphs 1, 2, 3, 4 on pp.9-12. Also see pp. 8-12.

⁵ A note on terminology: Different sources and individuals use different terms to describe the same or similar groups. For this report we have adopted certain conventions and usage.

- The words Black and White are capitalized when describing racial groups. The terms Latino and Hispanic are used interchangeably, depending upon context. Police and other government data have traditionally used Hispanic. New Yorkers whose families came from Latin America, especially younger ones, tend to describe themselves as Latino. Black is used rather than African-American because in New York City Blacks are also African, Caribbean, South and Central American. In this report Whites always refers to non-Hispanic Whites, a category used by the U.S. Census

- In New York City, attorneys who work for agencies that, under contract with the city, represent people for free in the criminal court are called both "legal aid attorneys" and "public defenders," depending upon the agencies they work for. When both titles are not mentioned, the terms are used interchangeably.

- Police are referred to as "officers," avoiding the more colloquial "cops," even though nearly everyone, including the police, sometimes uses that term.

⁶ For marijuana use data see Graphs 5 and 6. pp. 13-14. Also see Note #25

⁷ For the arrest rates for Whites, Hispanics and Blacks in 2006, see Graph 8, p.16.

⁸ All the marijuana arrest and use data summarized in this introduction is covered in Part 1 (pp 8-17) and its notes. The arrest data is from the New York State Office of Criminal Justice Services. The marijuana use data is from annual U.S. household and high school surveys of drug use. The gender breakdown of the marijuana arrests are shown in Graph 9. p. 17. For additional information and sources see Notes #25 and 26.

⁹ For comparison of the arrests under Mayor Giuliani and Police Commissioner Bratton see, note #30. For a review of the research on the marijuana arrests in New York City, and obstacles to media coverage of them, see the appendices in this report.

¹⁰ The usefulness of the marijuana arrests to patrol and narcotics officers, police supervisors, and top commanders is discussed at length in Part 2 of this report, pp. 18-22.

¹¹ In the U.S., from 1990 to 2000, marijuana arrests went from 300,000 a year to over 700,000 a year. Ryan S King and Marc Mauer, "The war on marijuana: The transformation of the war on drugs in the 1990s." At:

<http://www.sentencingproject.org/PublicationDetails.aspx?PublicationID=332>. It was also published in *Harm Reduction Journal* 2006, 3:6, February.

<http://www.harmreductionjournal.com/content/3/1/6>. For a graph showing marijuana arrests from 1996 to 2006 see, NORML, Annual Marijuana Arrests in the US, At:

http://www.norml.org/index.cfm?Group_ID=7042.

We have said that over 10% of all New York City arrests are for marijuana possession. Golub, Johnson and Dunlap found that in 2000, marijuana possession arrests constituted "15% of all NYC arrests, more than any nondrug misdemeanor arrest charge." Andrew Golub, Bruce D. Johnson, and Eloise Dunlap, "The Race/Ethnicity Disparity In Misdemeanor Marijuana Arrests In New York City", *Criminology and Public Policy* 6:1 pp 131-163, 2007. The annual report of the New York City Criminal court for 2006 shows 332,496 "total arraignments," which is about the same as the number of arrests for criminal offenses. In 2006, the NYPD made over 32,400 marijuana misdemeanor possession arrests, nearly 9.7% of the total arraignments. In 2007, the NYPD made 39,700 marijuana arrests, likely more than 10% of total arrests. See: *Criminal Court Of The City Of New York 2006 Annual Report*, Office of the Administrative Judge of New York City Criminal Court, New York, NY: April 2007, Table "Court Operations – Arraignments" p. 34. At: <http://www.nycourts.gov/courts/nyc/criminal/index.shtml>.

Most discussion in this report focuses on the decade of arrests from 1997 to 2006 when the NYPD made 353,000 misdemeanor marijuana possession arrests. As this report was nearly completed the 2007 arrest data became available: 39,700 arrests. In the decade from 1998 to 2007, New York City arrested 375,000 people for marijuana possession. In the eleven years from 1997 to 2007, New York arrested 393,000 people.

¹² For discussion of the information that New York City arrests more people for possessing marijuana than any city in the world, see Note #29.

¹³ In 2005, 27.9% of Americans aged 18 to 25 (and 32% of those in New York State) had used marijuana once or more in the last year. Twenty-six years earlier, in 1979, 46% of Americans 18 to 25 had used marijuana in the last year. Source: SAMHSA, Office of Applied Studies, National Survey on Drug Use and Health, 2004 and 2005. See: Table B.2 Marijuana Use in Past Year, by Age Group and State: Percentages, Annual Averages Based on 2004 and 2005. At:

<http://www.oas.samhsa.gov/2k5/State/AppB.htm#TabB.2>.

The marijuana, alcohol and cocaine use data from 1974 to 1993, by age group, is shown on pages 29-31 of *Crack in America: Demon Drugs and Social Justice*. Edited by Craig Reinerman and Harry G. Levine Univ. of Cal Press, 1997. The source for those use numbers are National Institute on Drug Abuse, *National Household Survey on Drug Abuse, Main Findings*, 1991, 1993.

¹⁴ That marijuana possession was the highest charge for the misdemeanor arrests shown on the graphs is part of the source description of the arrest data from New York State Department of Criminal Justice Services. See source descriptions at the bottom of the graphs and in Note #25.

¹⁵ The finding that most people arrested for marijuana possession were not smoking is discussed in a number of places in the report, most fully in Part 5, pages 38-43.

¹⁶ Some people have been charged with both the misdemeanor of marijuana possession and the violation. See the discussion of the law and police practice in Part 5 of this report. Marijuana possession was originally covered (along with heroin and cocaine possession) in the Rockefeller Drug Laws in 1973. In 1977, the New York State legislature revised State law to make marijuana its own section (221) of State Penal Law and to make simple possession of marijuana a violation and not a crime. See the discussion of the making of the Marijuana Reform Act of 1977 in Part 8 of this report.

¹⁷ The finding that people were often tricked or intimidated into allowing a search or revealing their small amount of marijuana is discussed in Part 5, on pages 38-40, and in the accounts of police searches, stop and frisks, and "Terry" stops in Part 3, pp. 24-26.

¹⁸ For the 2006 stop and frisk numbers See: Al Baker and Emily Vasquez, "Police Report Far More Stops And Searches. *The New York Times*, February 3, 2007; also: Aubrey Fox, "Who's Stopped? Who's Frisked?" *Gotham Gazette*, 17 Dec 2007. <http://www.gothamgazette.com/article/crime/20071217/4/2382> For the NYPD's privately-commissioned study of the 2006 stop and frisks (which some observers have termed a "whitewash") see: Greg Ridgeway, "Analysis of Racial Disparities in the New York Police Department's Stop, Question, and Frisk Practices," Rand Corporation, Santa Monica, CA: 2007. For discussion of the patterns of stop and frisks, their connection with the marijuana arrests, and their racial and geographic breakdown see Part 2 of this report, pp. 31-32. and Note #44.

¹⁹ The cost of the arrests to the taxpayers of New York City is discussed in Part 6 of this report, pp. 46-47.

²⁰ The impact of the arrests on serious crime and on police capacity to deal with it is discussed in Part 6 of this report, pp. 48-49.

²¹ For a discussion of the marijuana and other misdemeanor arrests as an unintended Head Start for Prisons program, see Part 7. pp. 50-54.

²² It is difficult to know what to term these arrests. Is it a ten-year marijuana arrest wave, epidemic, or dragnet? A war on marijuana possession? To some extent, all these terms and others apply. One must turn to metaphor because social science, history, journalism and policy analysis lack vocabulary for defining and categorizing such a massive, enduring, expensive and consequential policy – one that affects only certain people, primarily young Black and Latino men, leaving most New Yorkers untouched and even unaware of its existence.

²³ See the appendices in this report for discussion of other studies of the marijuana arrests in New York, and of sources and research methods.

Part 1: Racial Bias in NYC's Marijuana Possession Arrests

²⁴ Part 5 discusses New York State Penal Code 221 covering marijuana, especially the meaning of 221.10 and the lesser offense of 221.05. See pages 38-41

²⁵ The full source information for the arrest data in Graphs 1, 2, 3, 4, 7 and 8 is:

Source: New York State Division of Criminal Justice Services (NYDCJS), Computerized Criminal History system, (April 2008). Includes all fingerprintable arrests for NYS Penal Law Article 221 marijuana misdemeanor possession offenses as the most serious charge in an arrest event. Ages 16 and older. NYDCJS calculations thus far do not permit accurate counting of NYPD arrests by race for 2003-2006. Per recommendation from NYDCJS, when necessary arrest counts by race for those years were calculated using average percentages from the 1997-2002 data. Although not used here, preliminary NYDCJS arrest data for 2006, with breakdowns by race, show a higher percentage of arrests of Blacks and a lower percentage of arrests of Whites than used here.

Virtually all of the people arrested were charged under section 221.10 of New York State Penal Law. The graphs also include arrests charged under the misdemeanor 221.15. From 1987 to 2007, New York City averaged 312 such arrests a year; they constitute less than one percent of New York City's misdemeanor marijuana possession arrests.

For Graph 5, the full source information is: Johnston, L. D., O'Malley, P. M., Bachman, J. G., & Schulenberg, J. E. (2006). *Monitoring the Future: national survey results on drug use, 1975–2005: Volume I, Secondary school students* (NIH Publication No. 06-5883). Bethesda, MD: National Institute on Drug Abuse. From Table 4-9: "Racial/Ethnic Comparisons of Lifetime, Annual, Thirty-Day, and Daily Prevalence of Use of Various Drugs, Eighth, Tenth, and Twelfth Graders, 2005. Percentages are based on 2004 and 2005 data combined." pp 129-132.

For Graph 6 the full source information is: U.S. Department of Health and Human Service, SAMHSA, Office of Applied Studies, 2005 National Survey on Drug Use & Health: Detailed Tables. Table 1.80B Marijuana Use in Lifetime, Past Year, and Past Month among Persons Aged 18 to 25, At:

<http://www.oas.samhsa.gov/NSDUH/2k5NSDUH/tabs/Sect1peTabs67to132.htm#Tab1.80B>.

²⁶ Data on regional marijuana use (and other drug use) is available from the U.S. government. See the tables at:

<http://oas.samhsa.gov/NSDUH/2k4NSDUH/2k4tabs/LOTsect1pe.htm#GMJ>. Table 190B shows "Marijuana Use in Lifetime, Past Year, and Past Month among Persons Aged 18 to 25, by Geographic Characteristics: Percentages, 2003 and 2004." The table distinguishes four major regions – Northeast, Midwest, South, West – and then sub-regions within them. The Northeast breaks down to New England and Middle Atlantic. For 2003 and 2004, for lifetime, past year, and past month marijuana use, New England had the highest percentage using marijuana, probably because of the large number of college students. For 2003, the Middle Atlantic states (including NY City) had lower lifetime use percentages than the Midwest or West. For 2003 and 2004, past year and past month marijuana use in the Middle Atlantic states was lower than in New England and slightly above the other regions. The table also notes that for both years and in all categories, marijuana use in large cities is *lower* than it is in smaller cities. And in some categories "completely rural" locations have the same or higher marijuana use rates than large cities.

New York City health surveys also find that the city's marijuana use patterns are similar to – and use rates are sometimes even lower than – the national patterns. The March 2007 issue of *NYC Vital Signs*, published by the city's Department of Health and Mental Hygiene, reported that "Youth in NYC are less likely than youth nationwide to report ever using marijuana" – and also that in New York City "White youth are more likely to be offered drugs at school (38%) than [are] black (26%) or Hispanic youth (25%)." In: "Substance Use Among New York City Youth," *NYC Vital Signs*, Vol. 6, No. 1, New York City Department of Health and Mental Hygiene, March 2007. At: <http://www.nyc.gov/html/doh/downloads/pdf/survey/survey-2007subsAbuse.pdf>.

A 2005 report from SUNY's Downstate Medical Center found that White students and adolescents in New York City use marijuana *more* than Black and Latino students and adolescents. "Report on Substance Abuse," SUNY Downstate Medical Center, 2005, p. 16. At: http://www.hscbklyn.edu/bhr/substance_abuse.pdf

²⁷ In February 2007, the New York State Division of Criminal Justice Services (NYSDCJS) provided us with marijuana arrest data for 2006 broken down by race. This data showed that 57% of the marijuana arrests were of Blacks. In April of 2008, shortly before the report was going to the printer, we learned that NYSDCJS had withdrawn the 2006 arrest numbers by race. We were told that NYSDCJS computer and statistical advisors found that serious problems resulted in transferring from the NYPD's new computer system to the NYSDCJS system. Although we changed the graphs and have not used that 2006 data of arrests by race, we have mentioned that preliminary data in the sources for the graphs to indicate that the percentage of Blacks arrested may be higher than shown. Staff at NYSDCJS express hope that by the end of 2008 the problems will be resolved and they will be able to show the count of arrests by race for 2003 through 2007.

In this report, we have used graphs and rounded numbers partly because all arrest and population numbers, whether from New York or elsewhere, *must* always be understood as approximate. Likewise, in the text we have often used words such as "about" and "approximately" when discussing population and arrests for the same reason.

²⁸ See the appendices in this report for other research on New York City's marijuana arrests.

Part 2: The Usefulness of the Marijuana Arrests To The Police

²⁹ To highlight the large number of marijuana arrests, we have pointed out that since 1997 New York City has arrested and jailed more people for possessing marijuana than any city in the world. This is not hyperbole; as best as we can determine, this statement is accurate; New York City leads the world in marijuana arrests. How can this be true?

New York City is about the thirteenth largest city in the world. Most larger and somewhat smaller cities are comparatively poorer, are located in third world countries, and simply cannot afford to use police in the way that New York does. Few places in the world, including dictatorships, devote many resources to arresting and jailing people for possessing marijuana. In much of Europe, marijuana possession is effectively decriminalized. People found possessing marijuana, and often even smoking it, are either sent on their way with a warning or, in some cases, given a "desk appearance" ticket. This also occurs in some areas in the U.S. including most of California. The counties in the

U.S. with the *lowest* rates of marijuana arrests and tickets tend to be large, wealthy, overwhelmingly White suburban counties (such as Fairfax, Virginia). In the U.S. even people given tickets for marijuana possession often face stiff fines, loss of their driver's license, and seizure of their automobiles – and arrest warrants are issued for those that fail to appear for the desk appearances. One county in the U.S. that has consistently arrested and jailed people for marijuana possession at even higher rates than New York City does is Atlanta's Fulton County, where the population is 43% Black but where the marijuana arrestees are 90% Black. Fulton County has a much smaller population than New York City, and much fewer total marijuana possession arrests.

Most U.S. cities are not as large as the counties they are in. New York City is composed of five large counties (or "boroughs") and each one has high marijuana arrest rates. In the late 1990s and again in the early 2000s, Jon Gettman, a professional researcher using the FBI's Uniform Crime database, concluded that of over one hundred U.S. counties with a population greater than 250,000, five of the top ten counties with the highest rates of *per capita* marijuana possession arrests were: Brooklyn, Bronx, Queens, Manhattan and Staten Island. The arrest rate calculations for 1997 can be found at: http://www.norml.org/index.cfm?Group_ID=5074&wtm_format=wide. The arrest rate calculations for 2000-2002 can be found in "Crimes of Indiscretion," Table 61, p 119 at http://www.norml.org/pdf_files/NORML_Crimes_of_Indiscretion.pdf

³⁰ Howard Safir was appointed New York Police Commissioner on March 28, 1996. He began his career at the Federal Bureau of Narcotics (renamed the Drug Enforcement Administration in 1970) and spent fourteen years at the anti-drug agency, rising to the rank of Assistant Director. The marijuana arrest crusade did not begin with William Bratton, Giuliani's first Police Commissioner (currently Chief of the LAPD). Rather, the crusade began following Safir's appointment in early 1996. Not surprisingly, after Safir's long experience in federal anti-drug agencies, in New York City he emphasized anti-drug operations and put considerable resources into the NYPD's narcotics squad. Numerous *New York Times* articles reported on Safir and Giuliani's anti-drug initiatives.

Graphs 3 and 4 in this report show the difference in arrests between Bratton's two years as Commissioner in 1994 and 1995, and Safir's first two years in 1996 and 1997. In 1996 alone, the NYPD made almost 9,800 marijuana misdemeanor possession arrests, as many as in Bratton's two previous years combined (9,400). By 1997, Safir's NYPD made 18,400 marijuana possession arrests. Since then the number of marijuana arrests has been considerably higher, never again getting back to even the 1997 levels. And in 2007 the NYPD arrested 37,700 people for the misdemeanor of marijuana possession, even more than in 2003.

From 1996 to 2001 under Giuliani, Safir and Kerik, the NYPD made 189,100 misdemeanor marijuana possession arrests, an average of 31,500 a year. From 2002 to 2007, under Bloomberg and Kelly, the NYPD made 214,400 misdemeanor marijuana possession arrests, or an average of 35,700 a year. *The rate of marijuana arrests under Mayor Bloomberg now substantially exceeds what they were under Mayor Giuliani.*

Bratton, as Chief in Los Angeles, has not pursued a policy of making many marijuana arrests. Again, New York City's great marijuana arrest crusade was not Bratton's policy, but Giuliani's and Safir's, and then eventually Benard Kerik, Giuliani's hand-picked third Police Commissioner.

³¹ After we interviewed numerous police officers, we read *Blue Blood*, Edward Conlon's detailed and justly acclaimed account of life within the NYPD beginning in 1995. Conlon describes explicitly the close physical contact between officers and the people they arrest, and how repellent and disgusting some arrestees are, especially drug addicts and

drunks. Early in the book Conlon almost poetically describes an arrest as a “blind date” where the cop asks personal questions, gets physically close, and even holds hand for a few minutes when taking someone’s finger prints (p.17). Edward Conlon, *Blue Blood*. New York: Riverhead Books, 2004.

³² Rocco Parascandola, "Narcotics cops told: Think big, Sources say the new strategy of limiting misdemeanor busts puzzles and angers some drug officers," *New York News-day*, June 23, 2005

³³ One colleague of former New York Police Commissioner Patrick Murphy told us that, when speaking of police productivity, Murphy often pointed out that it was a mistake to judge officers on the basis of arrests rather than “good arrests.” Nothing provides a better example of that distinction than this epidemic of petty marijuana possession arrests in New York since 1977.

³⁴ Articles about the low pay of New York police include: “Lots of Finest head to 'burbs,” by Michael Saul, *New York Daily News*, Jan. 20, 2007; “LAPD Rookies Get Double N.Y. Pay,” by Michelle Caruso and Alison Gendar, *New York Daily News*, Jan. 9, 2007; “NYPD Shocker: Recruiting Drive Plus Salary Slash Equals Bad Idea,” *New York Magazine Daily Intelligencer*, Jan. 8, 2007; “NYPD Bemoans Paltry Pay for Rookies: New York’s Finest Bemoan Paltry Starting Police Pay As Recruitment Sags,” by Tom Hays, *Associated Press*, Feb. 19, 2007; “Low Pay May Further Hurt Police Recruiting, Officials Warn,” by Thomas J. Lueck and Steven Greenhouse, *New York Times*, May 24, 2007; “PBA out in the cold,” *New York Daily News*, Editorial, July 30 2007; The low NYPD pay is discussed at “Real Police,” a police blog: <http://forums.realpolice.net/showthread.php?t=47930>

³⁵ Al Baker and Emily Vasquez, "Police Report Far More Stops And Searches," *The New York Times*, Feb. 3, 2007

³⁶ In covering Safir’s swearing in ceremony, the *New York Times* noted that officers are “increasingly grumbling over cuts in overtime.” Safir used to the speech to send the message, thinly veiled, that he would address the problem. According to our interviews with long-time New York police officers, overtime increased greatly after Safir become commissioner, especially on narcotics squads, with marijuana arrests contributing to the increase. *New York Times*, April 16, 1996, “In High Ceremony, Safir Is Sworn In To Lead Police,” by Clifford Krauss.

³⁷ *New York Times*, Oct. 29, 1997, "The 1997 Elections: The Mayor Unveils Sting Strategy Against Drugs," by Norimitsu Onishi.

³⁸ We have been unable to obtain consistent estimates of the portion of the marijuana possession arrests that result of such “fishing net” operations. Some insiders have estimated a relatively large portion. Our sense is that at least a half or more are made by narcotics squads in various operations, including stop and frisks and net fishing.

³⁹ Trespassing arrests constitute one of the fast growing and most troubling trends in New York City policing, especially in the numerous public housing projects. Since August of 2006, New York State law allows police to take DNA from people convicted of trespassing.

A retired officer with relatives currently on the force talked indignantly about one method police currently used (late 2007) to manufacture trespassing arrests. He said that when teenagers in a group (overwhelmingly Black or Latino) enter a building or are waiting at a housing project elevator, the police will separate them and require them to name the apartment and resident they are going to or coming from. If they cannot do so – which most cannot because they are simply tagging along with a friend – they are arrested for trespassing. In this way officers can boost their arrest statistics, get back to the police station, and accumulate overtime. The NYPD collects fingerprints, photos, and (since 2006) DNA samples, often of young people not previously entered into the criminal justice databases.

A legal aid attorney we spoke with recently reported he has seen numerous such trespassing cases, including on the previous day five teenagers at one time from a housing project. Police have also recently arrested middle-aged women visiting friends and, in one case, charged a man with “attempted trespassing.” This is just the tip of the iceberg of the heavy-handed policing of trespassing and other minor offenses, especially in housing projects. Indeed, the policing of the housing projects – with over 400,000 mostly low-income, non-White, not politically-connected and therefore vulnerable residents, and their visitors – is a whole other often sordid story.

⁴⁰ The substantial drop throughout the U.S. in all categories of reported crime since the early 1990s, is discussed in: Alfred Blumstein and Joel Wallman, *The Crime Drop in America, revised edition*, Cambridge Univ. Press, New York: 2006; Franklin E. Zimring, *The Great American Crime Decline*, Oxford Univ. Press, New York 2007. Although a discussion of the crime drop is beyond the scope of this report, we have concluded that the rise in marijuana possession arrests and other misdemeanor arrests is to some extent, perhaps a very large extent, a thought-out police department response to the drops in nearly all categories of reported crime. The bread-and-butter of much traditional policing is responding to people calling police to report crimes. When those calls decline, as they have since the early 1990s, police departments must find something else to do with their officers. We suggest that the NYPD’s strategy of sending out narcotics and patrol officers to make low-level misdemeanor arrests, which keeps numbers up and officers busy, has been, in part, a response to the crime drop.

⁴¹ In the spring of 2007, the New York State legislature first considered legislation that would require collecting DNA from everyone in the state convicted of a misdemeanor. In January 2008, Mayor Bloomberg proposed collecting DNA from everyone arrested. If the State legislation passes, many of the tens of thousands of people New York City has been arresting every year just for possessing marijuana would have their DNA permanently on file in the criminal database. If Bloomberg’s proposal is enacted, *all* marijuana arrestees would be in the database. Such data can be and has been mislabeled and mishandled, and people whose DNA is stored in the databases – and their relatives – can become potential criminal suspects. See the testimony of Robert Perry from the NYCLU: <http://www.nyclu.org/node/1028>. An early report on our research was also presented as testimony at those hearings. At: http://www.nyclu.org/files/dna_database_levine_tstmnny_053107.pdf Also see: Nat Hentoff, “Bloomberg Wants to Get in Your Genes,” *The Village Voice*, Jan 29, 2008. Hentoff termed Bloomberg’s proposed mass DNA collection “an assault on the most fundamental constitutional rights of New Yorkers.”

⁴² For an example of Safir’s enthusiasm for collecting information on people see: Howard Safir and Peter Reinharz, “DNA Testing: The Next Big Crime-Busting Break-

through," *The City Journal*, (published by The Manhattan Institute), Winter 2000. At: http://www.city-journal.org/html/10_1_dna_testing.html.

⁴³ See the full text of Bloomberg's 2008 State of the City Address at:

<http://www.nytimes.com/2008/01/17/nyregion/17stateofnyc.html?pagewanted=print>.

Bloomberg made his proposal to collect DNA from all arrestees as part of a series of information gathering, storing and distributing proposals defended above all for crime-fighting:

"In the year ahead, we'll use the latest technology to continue turning up the heat on criminals.... Two years ago, we convinced the State Legislature to expand DNA testing to cover all convicted felons, and some misdemeanors. This year, we will urge Albany to follow ... [collect] DNA fingerprints from all those who are arrested. This would help keep the innocent out of jail and the guilty off our streets."

Bloomberg has encouraged other general population information gathering and storage plans, including, in 2006, creation of a national fingerprint and DNA database of all workers, which he likened to the Social Security number system. It is hard to believe, therefore, that Bloomberg does not understand and appreciate the information-gathering usefulness of the marijuana and other misdemeanor arrests. The New York State expansion of DNA collection in 2006, that Bloomberg enthusiastically supported, permitted DNA collection from misdemeanor trespassing arrests, which have increased substantially in New York City in the last few years. See: Sara Kugler, "NYC Mayor Advocates U.S. Worker Database," Associated Press, May 24, 2006. At:

http://www.breitbart.com/article.php?id=D8HQE6B80&show_article=1 Also see: Nat Hentoff, "Bloomberg Wants to Get in Your Genes," *The Village Voice*, Feb 5, 2008.

⁴⁴ *The New York City Police Department's "Stop & Frisk" Practices: A Report to the People of the State of New York*. From The Office of the New York State Attorney General, Albany, NY. Dec. 1, 1999. The text of the Attorney General's report is available online in sections, and in a downloadable pdf. Neither are user friendly though the web version is probably easier to read. At:

http://www.oag.state.ny.us/press/reports/stop_frisk/stop_frisk.html. For the executive summary see: http://www.oag.state.ny.us/press/reports/stop_frisk/executive_summary.html.

Among the findings of the Attorney General's report are the following, from the "Executive Summary":

"During the covered period, minorities – and blacks in particular – were 'stopped' at a higher rate than whites, relative to their respective percentages within the population of New York City"

"Blacks comprise 25.6% of the City's population, yet 50.6% of all persons 'stopped' during the period were black. Hispanics comprise 23.7% of the City's population yet, 33.0% of all 'stops' were of Hispanics. By contrast, whites are 43.4% of the City's population, but accounted for only 12.9% of all 'stops'."

"This disparity in 'stop' rates is particularly pronounced in precincts where the majority of the population is white. In precincts in which blacks and Hispanics each represent less than 10% of the total population, individuals identified as belonging to these racial groups nevertheless accounted for more than half of the total 'stops' during the covered period."

"Finally, precincts where minorities constitute the majority of the overall population tended to see more 'stop & frisk' activity than precincts where whites constitute a majority of the population."

The racial bias and other problems with stop and frisk operations have been discussed by various authors. See the excellent editorial (by J. Fagan), and three excellent articles (by J. Gould and S. Mastrofski, by B. Harcourt, and by J. Fyfe) in the July 2004 issue of *Criminology and Public Policy* (at: <http://www.blackwell-synergy.com/toc/cpp/3/3>).

Also: "U.S. Detects Bias In Police Searches," by Benjamin Weiser, *New York Times*. Oct. 5, 2000. Also see: "An Analysis of the NYPD's Stop-And-Frisk Policy in the Context of Claims of Racial Bias" by Andrew Gelman, Alex Kiss and Jeffrey Fagan. Columbia University, Department of Statistics and Department of Political Science, Columbia Public Law Research Paper No. 05-95. June 2006.

http://www.stat.columbia.edu/~cook/movabletype/archives/2005/12/an_analysis_of.html

<http://www.stat.columbia.edu/~gelman/research/unpublished/frisk7.pdf>

The authors write: "In this paper, we analyze data from 125,000 pedestrian stops by the New York Police Department over a fifteen-month period.... *We find that persons of African and Hispanic descent were stopped more frequently than whites, even after controlling for precinct variability and race-specific estimates of crime participation.*"

⁴⁵ Excellent maps of marijuana arrests in New York City by neighborhood can be found in: Andrew Golub, Bruce D. Johnson, and Eloise Dunlap. "Smoking marijuana in public: the spatial and policy shift in New York City arrests, 1992–2003," *Harm Reduction Journal* 3:22, 2006. Available at: <http://www.harmreductionjournal.com/content/pdf/1477-7517-3-22.pdf>

Because most of the marijuana arrests were *not* of people smoking in public, the title of this good article is inaccurate. The title was actually suggested by one of us (Levine) when serving as an independent, scholarly reviewer for the journal. This was before we had interviewed many police and public defenders and learned how these arrests are manufactured with 'dropsy' arrests. Like the authors of the article, we wrongly concluded that these were arrests of people smoking in public – which is what the NYPD would like people to assume. But mostly they are not. We report this to show that even experienced researchers working with the NYPD's arrest data investigating the marijuana arrests were, until recently, unaware of what the police have been doing. See the longer discussion of the way marijuana in a pocket is turned into marijuana "burning or open to public view" in Part 5 of this report, pages 36-37.

Part 3. Police Searches of Pockets and Possessions

⁴⁶ Most marijuana arrests are of young people, but we suspect that an even higher percentage of people arrested for actually smoking were teenagers. Teens rarely have houses or apartments they can use, and low-income teenagers do not have even private bedrooms. Many Black and Hispanic teens do not smoke at home out of respect for their parents, and out of fear of landlords, especially the New York Housing Authority, which can evict entire families for one person's drug offenses. We also suspect that younger people, Whites, and out-of-towners are disproportionately among those arrested for openly smoking in public because they are less likely to be aware of the NYPD's methodical dragnet for misdemeanors, especially marijuana.

⁴⁷ Learning that most marijuana arrests in New York City were not of people smoking but the result of stops, frisks and searches was, for us, the most surprising finding of our research. Even other researchers who know well the arrest statistics were unaware of this – because the only way to discover this has been by interviewing police, legal aid and public defender attorneys, and people who have been arrested. However, from our

interviews we learned that many people working within the criminal justice system were aware that police frequently stopped and searched people's clothing and belongings.

For example, we received an incredulous look when we asked a long-time Legal Aid Supervisor at one of the city's arraignment courts – where tens of thousands of misdemeanor cases are handled yearly – what percentage of the people arrested for marijuana were actually smoking, or even just standing with people smoking. “Smoking?” he said, “actually smoking?” And he just shook his head. We asked, “Maybe one third of the arrests had something to do with smoking?” He said: “I was going to say 20 or 25 percent. Not much. No, we don't see a lot of that.”

Other researchers and reporters – and also New York City Council and NY State Legislature hearings – can also interview public defenders and legal aid attorneys who have handled thousands of these cases. If funding was available, arrestees could be interviewed in large numbers. We strongly encourage such investigations by honest, experienced researchers. In short, it is certainly possible to systematically test and confirm our finding – that the majority of the misdemeanor marijuana possession arrests in New York City are not of people smoking in public but rather of people who had a small amount of marijuana in their possession, generally in a pocket.

⁴⁸ In 1999, the U.S. Commission on Civil Rights investigated New York City's police practices in the wake of the scandals about the police assault and rape of Abner Louima and the killing of Amadou Diallo – and then issued a detailed 200 page report, edited by Mary Frances Berry, the Commission chair. Chapter 5 of its report – “Stop, Question, and Frisk” – is a thorough discussion of Terry stops and of stop and frisk practices in New York City. Mary Frances Berry (editor) *Police Practices and Civil Rights in New York City: A Report of the United States Commission on Civil Rights*, Diane Publishers, Aug. 2000. At: <http://www.usccr.gov/pubs/nypolice/main.htm>.

⁴⁹ In *Maryland v. Pringle* (2003), the Supreme Court said: “The probable-cause standard is incapable of precise definition or quantification into percentages because it deals with probabilities and depends on the totality of the circumstances.” In *Ornelas v. United States* (1996) the Supreme Court said: “Articulating precisely what ‘reasonable suspicion’ and ‘probable cause’ mean is not possible. They are commonsense, nontechnical conceptions that deal with the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians act.” Police departments and prosecutors throughout the U.S. have used these ambiguities to justify stop and frisks in a huge range of circumstances – including more than 500,000 of them in New York City in 2006 alone.

In Justice Without Trial (Macmillan, New York: 1994) Jerome Skolnick suggested that when courts focus on the *reasonableness* of the arrest rather than its *legality*, they give police greater freedom to search. “To the lay reader, the distinction may appear without substance, but it is crucial in the law of arrest, searches and seizures. When the courts focus on the legality of the arrest, police actions are more closely constrained, at least legally. By contrast if the focus [of courts and policy] were on the reasonableness of the search, the police would have considerably greater latitude” (p.208). Most court and policy discussion, as quoted above, seems to focus on reasonableness of searches and not on legality.

⁵⁰ In a traditional Terry stop, officers can only search inside clothing and pockets when, during a frisk, they feel a weapon, usually a gun. However, the 1993 U.S. Supreme Court case of *Minnesota v. Dickerson* introduced the ambiguous concept of “plain feel”

or “plain touch” during a frisk to expand legal searches, under some circumstances, to contraband other than weapons, mostly drugs. Though embraced by narcotics police and prosecutors, “plain feel” remains a highly contested and disputed area of law. Different courts and states have ruled in disparate ways as to its legality and applicability. When allowed, “plain feel” and “plain touch” searches constitute a serious shrinking of Fourth Amendment protections about search and seizure.

⁵¹ When police say to suspects “You don’t mind if I search you,” some people, perhaps many people, say nothing. This is frequently taken by police as tacit consent.

⁵² For a discussion of tricks and lying as part of “good” policing see Note #78 in Part 5 of this report.

⁵³ The New York State Attorney General’s finding that about eight out of nine searches found nothing illegal is discussed in Part 4, pages 33-34.

⁵⁴ Many officers make few or no illegal searches; some do it all the time. At a police training conference, at a session attended by 150 experienced police officers from across the country, we watched an excellent instructor warn against illegal searches. At one point he turned around and, with his back to the officers, said: “I can’t see anything – so raise your hand if you’ve *never* done an illegal search.” He waited a few moments, his back to the audience the whole time, while not one officer raised a hand indicating he or she had never illegally searched a suspect. The savvy instructor then turned to face the class and said, “I didn’t see anything, but you did. Now that we understand each other, let me be clear: *Don’t* do it.” He went on to explain at length why it was in their interest not to do illegal searches.

Such serious and heart-felt instruction and reminders, though good, especially when coming from an experienced and trusted instructor like this one, run up against a widely-shared understanding of the role of police officers: that sometimes officers have to bend or break the rules to do good policing. Which is why, on the street, the experienced officers teach the novices to “Do what I do, not what I say.”

Also see the classic discussion of police motivation to search illegally in Jerome Skolnick, *Justice Without Trial: Law Enforcement in a Democratic Society*, Third Edition, Macmillan, New York: 1994, especially Chapter Ten, “Conventional Morality, Judicial Control and Police Conduct.” Skolnick (p.214) writes:

“It is part of the police officer’s job to locate and confiscate illegal substances. Thus even if a search revealing possession of an unlawful weapon or an unlawful narcotic was conducted not as incident to an arrest, the police officer would have done part of what was required simply through the act of retrieval. By failing to make the putatively unreasonable search, the officer would not only have failed to gain a conviction but would also have missed collecting objects or substances regarded as dangerous. In the police officer’s view, only good can come of a search legally defined as ‘unreasonable,’ provided the search jibes with the normative assumptions of the police organization about reasonableness.”

One former officer told us that she never needed to search illegally because she could get people to “give up” what they had: “You can work your way around anything,” she said, “you learn how to talk, you learn what words to say.”

⁵⁵ Nobody knows how often illegal searches occur. The experienced police officers we spoke with, including some former big-city police chiefs, believed that illegal searches, where no attempt at all was made to obtain permission, are not rare anywhere in the United States, and that they are more common (or “far more common”) among narcotics police.

Illegal searches and falsification of documents were discussed at length in the Report of the 1994 “City of New York Commission To Investigate Allegations of Corruption” (called the “Mollen Commission”). The “Mollen Commission” was a blue-ribbon commission that conducted a serious investigation of New York City police corruption with lengthy public and private testimony from many police, prosecutors, and judges. The Commission issued a book-length report in 1994 which identified a number of situations where police often falsified arrest and police reports to support illegal searches for drugs.

“Officers reported a litany of manufactured tales. For example, when officers unlawfully stop and search a vehicle because they believe it contains drugs or guns, officers will falsely claim in police reports and under oath that the car ran a red light (or committed some other traffic violation) and that they subsequently saw contraband in the car in plain view. To conceal an unlawful search of an individual who officers believe is carrying drugs or a gun, they will falsely assert that they saw a bulge in the person's pocket or saw drugs and money changing hands. To justify unlawfully entering an apartment where officers believe narcotics or cash can be found, they pretend to have information from an unidentified civilian informant or claim they saw the drugs in plain view... To arrest people they suspect are guilty of dealing drugs, they falsely assert that the defendants had drugs in their possession when, in fact, the drugs were found elsewhere where the officers had no lawful right to be... As with other forms of police corruption, falsifications are most prevalent in high-crime precincts... Frustrated by what they perceive to be unrealistic rules of law and by their own inability to stem the crime in their precincts through legal means, officers take the law into their own hands. And police falsification is the result... We found that such motivations to falsify are often present in narcotics enforcement units, especially to justify unlawful searches or arrests.”

See: Chapter 4: “Perjury and Falsifying Documents” in *The City of New York Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department*, (The Mollen Commission Report), July 1994, pp 36-43. Similarly, in Skolnick’s discussion of questionable or illegal police searches in Chapter Ten of *Justice Without Trial (1994)*, most of the examples he gives are from narcotics cases, and many are for marijuana.

⁵⁶ Among themselves, police call giving false testimony “*testilying*.” Some use the term disparagingly; some as a neutral, descriptive term. If obliged to testify and lie, most view it as an unfortunate or distasteful part of their job. Patrol and narcotics officers naturally worry about being “hung out to dry” – abandoned by their commanders for doing what they have been expected, if not directed, to do. But most officers probably understand that, for these misdemeanor arrests, they are unlikely to ever be called to court, and unlikely to suffer consequences for doing what the NYPD has encouraged them to do – stop, frisk and search people looking for misdemeanor contraband, especially marijuana and other drugs. The Mollen Commission found that “testilying” was particularly common “in connection with arrests for possession of narcotics and guns.” According to one researcher, “the term ‘testilying’ was coined by police officers in New York City” and the use of the term was first reported by the Mollen Commission (Larry

Cunningham, "The Prosecutor's Response to In-Court Police Deception," *Criminal Justice Ethics*, Vol. 18, 1999).

⁵⁷ The observation that police officers mostly learn from and influence each other has been made by police researchers and scholars. For example, one researcher quoted as accurate a U.S. government study that found: "the average police officer is less influenced by his knowledge of the legal standards than by his observations of how more experienced officers react in such situation." In: Dallin H. Oaks, "Studying the Exclusionary Rule in Search and Seizure," *The University of Chicago Law Review*, Vol. 37, No. 4. Summer, 1970, p.701.

⁵⁸ The 1968 U.S. Supreme Court decision, *Terry v. Ohio*, defining a legal stop and frisk, a "Terry stop," recognized the invasiveness of a police stop and frisk. In his majority decision, Chief Justice Warren Burger wrote movingly about the intrusive, frightening, humiliating character of police stops and frisks (quoted at the beginning of Part 3.) The 1999 New York Attorney General's report contained a section describing the humiliating experiences of a number of people stopped and frisked and found with nothing. See Chapter 4, "Community Perspective" at:

http://www.oag.state.ny.us/press/reports/stop_frisk/ch4_intro.html.

On March 26, 1999, in the wake of the shooting of Amadou Diallo, the *New York Daily News* published an unusually thorough story about police frisks and searches. The *News* sent reporters to Black and Latino neighborhoods to interview 100 men about whether they'd been stopped and frisked. The *News* found: "For minority males across the city, the stop and frisk has become routine, experienced by every class in every neighborhood. In street interviews this week with 100 black and Hispanic males between the ages of 14 and 35, a startling number of them – 81 – said they had been stopped, patted down and questioned, without being arrested... The respondents were asked to detail their experiences with police and their attitudes toward cops. Many offered candid accounts of incidents that left them feeling demeaned." The article has quotes from many of the men about how common the invasive police frisks and searches had become. - "Minority Men: We Are Frisk Targets, News Poll Finds 81 Of 100 Have Been Stopped By Cops" *New York Daily News*, March 26, 1999, by Leslie Casimir, Austin Fenner and Patrice O'Shaughnessy.

⁵⁹ A number of things have changed since *Terry v. Ohio* in 1968, and especially since the mid 1980s, to make frisks and searches more common nationally and in New York City. The enormous growth in the number of narcotics police is probably the most important single factor. In recent years more openly conservative and "law-and-order" politicians have held office (i.e. Rudolph Giuliani) and given the police a freer hand with suspects. Some less bellicose and more moderate-sounding politicians have done the same (i.e. Michael Bloomberg). Politicians and police in New York and other cities have emphasized making many misdemeanor arrests – often called "broken windows" or "quality of life" policing. In addition, the bombings of Sept. 11, 2001, the anthrax attacks immediately following, and the heightened concerns about terrorism and retribution for the War in Iraq, have all contributed to a weakening of support among politicians, police, and some of the electorate for civil liberties and civil rights. These developments have contributed to making more common stops, frisks, and searches.

Part 4. Narcotics Patrols In A Sealed System

⁶⁰ The web site of the New York Civilian Complaint Review Board (CCRB) is at: <http://www.nyc.gov/html/ccrb/home.html>. Created in 1993 in the wake of serious police scandals described in part in the “Mollen Commission” Report (see Note #55). Also see the excellent report *Mission Failure: Civilian Review of Policing in New York City 1994-2006*, by Robert A. Perry. The New York Civil Liberties Union, 2007, p. 27. At: <http://www.nyclu.org/node/1345>.

⁶¹ Our interviews with young New York City men have produced a number of stories of determined police searches of the ground for a marijuana butt. One told of being with a friend who dropped a marijuana butt down a grate, where it lay on another grate several feet below the deserted street. An officer found a long stick and used a piece of chewing gum to retrieve the evidence, and then made the arrest. Another youth told of an officer crawling around “for a long time” at the bottom of a housing project staircase looking for a marijuana butt. A third told of police searching on hands and knees in a deserted lot. The determination and thoroughness that police display in looking for marijuana butts is evidence of what we are suggesting here: patrol and especially narcotics police understand that their supervisors and the police department encourage them to spend their time searching for evidence to make very minor marijuana arrests of all kinds, and reward them when they successfully do so.

⁶² See the report on the many failures of New York’s Civilian Complaint Review Board – by Robert A. Perry, a long-time observer of the Board and expert on its handling of cases from its beginning. In summarizing the NYPD’s long record of tolerating police misconduct, the report says:

“These findings only corroborate what has been well documented elsewhere: that the NYPD infrequently disciplines serious misconduct, such as acts of brutality, directed at civilians. Virtually every analysis of police misconduct in New York City has concurred in this finding. A study by Human Rights Watch has documented ‘cycles of scandal’ that have exposed widespread corruption and brutality among members of the New York City police force. The study also found that these police officers were rarely held accountable by the NYPD, even when a jury had awarded millions of dollars in damages to the victims of rogue cops. The Mollen Commission report found that tolerance of brutality existed deep within the culture of the NYPD and that supervisors exhibited a ‘willful blindness’ to police officers’ use of excessive force.”

“A report published by the New York City Public Advocate’s Office in 2000 concluded that police officers’ use of excessive force was no impediment to advancement within the NYPD. The report included case examples in which police officers with records of substantiated complaints of excessive force had received promotions, or had been awarded medals and awards.” (emphasis added)

Mission Failure: Civilian Review of Policing in New York City 1994-2006, by Robert A. Perry, The New York Civil Liberties Union, 2007, p. 27. At: <http://www.nyclu.org/node/1345>

⁶³ In 1994 New York City’s Mollen Commission (see Note #55) explicitly described the tolerance of police commanders, including the very top, and also of prosecutors, for illegal searches and falsification of arrest reports. The Commission said:

“When officers genuinely believe that nothing is wrong with fabricating the basis of an arrest, a search, or other police action and that civil rights are merely an obstacle to aggressive law enforcement, the Department’s top commanders

must share the blame.... For example, supervisors were rarely, if ever, held accountable for the falsifications of their subordinates. We are not aware of a single instance in which a supervisor or commander has been sanctioned for permitting perjury or falsification on their watch. Nor do we know of a single, self-initiated Internal Affairs Division investigation into patterns of police perjury and falsification.... There is no evidence that anyone in the Department's chain of command had focused on eliminating this practice, including past Police Commissioners and Internal Affairs chiefs, who apparently turned a blind eye to unlawful practices that were purportedly committed to fight crime and increase arrest statistics."

"Members of the law enforcement community, and particularly defense attorneys, told us that this same tolerance is sometimes exhibited among prosecutors. Indeed, several former and current prosecutors acknowledged – 'off the record' – that perjury and falsifications are serious problems in law enforcement that ... are ignored."

See: Chapter 4: "Perjury and Falsifying Documents" in *The City of New York Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department*, (The Mollen Commission Report), July 1994.

As we have indicated, we learned about this process by speaking confidentially with police, prosecutors, legal aid attorneys, knowledgeable observers, and people arrested. Many people who work within New York's criminal justice system know about and understand many parts of this process. Our rough sense is that:

Prosecutors generally believe that narcotics police probably conduct some or even many illegal stops or searches, but few prosecutors are routinely told about them by police, and few try to learn much on their own. It does not help prosecutors do their job, or sleep well, to be told that the narcotics police they must rely on are illegally stopping or searching people and, when asked, lie about it. This is true for judges as well.

Most legal aid, public defender, and private attorneys also know that narcotics police sometimes illegally stop or search and lie about it. But the options they can offer their clients are limited by the decisions of the prosecutors and the police department. (We discuss this point further in Part 5 of this report.) Police officers probably understand how this all works better than almost anybody within the criminal justice system. It is from them that we have received the best understanding, with many details added by others, especially by legal aid and public defender attorneys.

Regarding searches by narcotics police: one recently-retired police lieutenant told us that after more than 25 years on the force he had concluded that "most narcotics stops were *not* legal and could not be" – because in most cases there is no way to tell if someone possesses a small amount of an illegal drug.

⁶⁴ Considering what it took to produce the evidence about this one case, and how skillful police officers become at quickly and discreetly making the searches, and the lack of any real consequences as a result of the CCRB's findings in this and many other cases, no one should be surprised that there are almost no public records formally documenting illegal searches for marijuana possession in New York City. (See: *Mission Failure: Civilian Review of Policing in New York City 1994-2006*, by Robert A. Perry, The New York Civil Liberties Union, 2007)

Skolnick points out that "if the police can give some reason to their organizational superiors (including the district attorney) for conducting a search [illegally], in practice the worst punishment they can suffer is the loss of a conviction. If a search yields no incriminating evidence, those who are illegally searched are usually pleased to drop the matter" (*Justice Without Trial*, 1994, p.215).

⁶⁵ The NYPD sent its 2006 stop and frisk data to the Rand Corporation to analyze. Released in November 2007, Rand found that: "In 2006, 53 percent of NYPD pedestrian stops involved black suspects, 29 percent Hispanic, 11 percent white, and 3 percent Asian, and race was unknown for the remaining 4 percent of the stops." (This is about the same as New York's marijuana arrests - See Graphs 2, 3 and 4 on pages 12-14 in this report). Greg Ridgeway, "Analysis of Racial Disparities in the New York Police Department's Stop, Question, and Frisk Practices," Rand Corporation, Santa Monica, CA, 2007, p.13. This is also nearly the same as found in the 1999 New York State Attorney General's report on Stop and Frisks. See Note #44.

⁶⁶ *The New York City Police Department's "Stop & Frisk" Practices: A Report to the People of the State of New York.* From The Office of the New York State Attorney General, Albany, NY, December 1, 1999. At: http://www.oag.state.ny.us/press/reports/stop_frisk/stop_frisk.html.

The New York State Attorney General's investigation of stop and frisks also considered the relationship between White, Black and Hispanic crime rates. It reported that: "After accounting for the effect of differing crime rates," Blacks were stopped 23% more often than Whites, and Hispanics were stopped 39% more often than Whites "across all crime categories."

⁶⁷ William J. Bratton, "A Cloudy Future for Policing," *New York Times*, Aug. 3, 2001. In its Feb. 3, 2007 article ("Police Report Far More Stops And Searches" by Al Baker and Emily Vasquez) on the 2006 stop and frisks, the *New York Times* reported:

"The guidelines to monitor stop-and-frisks in detail were set forth in a city law signed in 2001, and in a federal court case.... Both called for the Police Department to release to the City Council, four times a year, basic data about the people who are stopped and questioned by officers, and the reasons for such encounters. But until yesterday, it had been a year since the department reported its stop-and-frisk activity, and those numbers dated from a three-month period ending in September 2003." [emphasis added]

"In the meantime, the Civilian Complaint Review Board, an independent city agency that investigates charges of police misconduct, found that complaints involving stops and searches have more than doubled in recent years, increasing to 2,556 last year from 1,128 in 2003. Complaints involving police stops now account for 33 percent of all complaints, up from 20 percent in 2003. At a City Council hearing on Jan. 24, Police Commissioner Raymond W. Kelly assured council members that his officers were not practicing racial profiling in street stops. 'Officers are stopping those they reasonably suspect of committing a crime, based on descriptions and circumstances,' Mr. Kelly said, "and not on personal bias'." [emphasis added]

We agree with Commissioner Kelly that most police officers are not stopping people on the basis of personal bias. We have concluded that police are making the stops because they are ordered and expected to do so, and they are stopping Blacks and Latinos far more than Whites because they are heavily assigned to make the stops in only certain neighborhoods, are expected to look everywhere for only certain kinds of suspects, and because they find it easy and convenient to stop and search such suspects. The stops are not mainly the result of "personal bias" but of an undeclared system-wide preference for stopping and searching predominately Black and Latino young men.

⁶⁸ *New York Times*, Feb. 3, 2007, "Police Report Far More Stops And Searches," by Al Baker and Emily Vasquez.

⁶⁹ The *New York Times* story opened this way:

"At 14, Rocky Harris knows the routine: You raise your hands high, you keep your mouth shut and you don't dare move a muscle.... When they don't find guns or drugs, Rocky said, they let you go. He said that he had been searched, fruitlessly, at least three times since last summer, and that he had friends who had been searched repeatedly. 'They tell you that you're selling drugs. But I don't do nothing wrong. I just play ball,' he said, walking through the Red Hook East housing development in Brooklyn yesterday morning, headed to a community center for a game of basketball." The *New York Times*, February 4, 2007, "As Officers Stop and Frisk, Residents Raise Their Guard," by Trymaine Lee.

Although this story, like nearly all news reports, does not explicitly mention searches obtained by tricks, intimidation or without permission as part of a frisk – with police putting their hands in a suspect's pockets – the quote from Rocky Harris seems to be reporting such things. The teenager says that he and his friends have been "searched repeatedly," and that police let people go when they frisk and "don't find guns or drugs." The key terms here are "searches" and "drugs." Guns are large and can be felt through outside of clothing. In a frisk and pat down, police cannot distinguish drugs, certainly not in small quantities, from many ordinary and innocuous items. And except possibly in some highly unusual cases, "drugs" are not a legal reason to go beyond an external pat down. Without a person's permission or cooperation, to find drugs an officer must go inside the clothing and illegally search someone. This is what Rocky Harris seems to be saying happens to him and his friends. We suspect that most readers of the *New York Times* do not understand that, as we did not until these searches were repeatedly described to us by arrestees and police officers.

⁷⁰ The *New York Times*, February 4, 2007, "As Officers Stop and Frisk, Residents Raise Their Guard," by Trymaine Lee.

⁷¹ The Rand report on the NYPD's stop and frisk in 2006 found that "for every stop that resulted in an arrest or summons, there are nine stops that do not result in an arrest or summons." See: Greg Ridgeway, "Analysis of Racial Disparities in the New York Police Department's Stop, Question, and Frisk Practices," Rand Corporation, Santa Monica, CA, 2007, p.10. However, the Rand report found: "Officers recovered contraband (such as weapons, illegal drugs, or stolen property) in 6.4 percent of the stops of white suspects. The contraband recovery rate was 5.7 percent for similarly situated black suspects and 5.4 percent for similarly situated Hispanic suspects." In other words, arrests made after finding drugs occurred in far fewer than one in ten stops, and closer to one in 20 stops.

⁷² If a person given a desk appearance ticket fails to appear in arraignment court, an arrest warrant is issued.

⁷³ Some individuals older than 18 are given desk appearance tickets – pregnant women, for example, and some high school students – perhaps especially White ones released in the custody of a parent.

⁷⁴ Skolnick points out the mere presence of contraband, however obtained, give the police and prosecutor great leverage. Skolnick writes:

“If something is found, the moral burden immediately shifts to the suspect. The illegality of a search is likely to be tempered – even in the eyes of the judiciary – by the discovery of incriminating evidence on the suspect. For example, when a suspect turns out actually to possess narcotics, the perception of surrounding facts and circumstances about the reasonableness of the arrest can shift in only one direction – against the defendant and in favor of the propriety of the search – even if the fact might have appeared differently had no incriminating evidence been discovered.” (*Justice Without Trial*, 1994, p. 215).

Part 5. Dropsy Arrests: How Pot In A Pocket Becomes Marijuana “Open For Public View”

⁷⁵ Although it is a cliché of scientific research that any publication must recommend more research, we stress that *everything* about New York City’s misdemeanors and violations seriously needs much more investigation and understanding, ideally by agencies with subpoena power. The annual reports of the New York Criminal Court indicates over 10,000 marijuana 221.05 violations in 2005 and 2006. Police can arrest people for violations and some people may have been arrested in New York City for the violation of marijuana possession. Some people may have been given a summons for this violation when police, answering an emergency call, especially in the city’s housing projects, were let into a home and found marijuana.

⁷⁶ A retired police officer who read this section pointed out that when an officer wants to write a ticket for a minor violation (spitting, having an open beer can, littering) the NYPD regards “lack of proper I.D.” (including possible fake I.D.) as grounds for bringing the person back to the station for a more thorough background investigation. Bringing the person to the station would then justify handcuffs and a search. If the search yielded marijuana or other contraband, the officers could make the arrest for that.

⁷⁷ The graphs also include arrests charged under the misdemeanor 221.15. From 1987 to 2007, New York City averaged 312 such arrests a year; they constitute less than one percent of New York City’s misdemeanor marijuana possession arrests.

⁷⁸ Although many people, like this man, are surprised when the police lie to them, police officers point out that lying to suspects is a routine, inherent and *legal* part of police work. Anyone who has seen some of the innumerable police procedural movies and television shows (such as “Law and Order”) has witnessed a scene where police falsely tell a suspect that they have incriminating evidence, or that his buddy is right now implicating everyone else. Some viewers may think this blatant lying to suspects is fiction or literary license, but policing lying to suspects occurs everyday, sometimes to solve serious felonies.

All of which raises important and complicated questions about police truthfulness and lying in other contexts. The role of police officer is filled with this contradiction. Young officers are taught on the job to lie to suspects, rewarded for doing so effectively, and learn that this is an important part of good police work. They are also taught by veteran partners to discreetly disregard at least some explicit instructions they learn at the academy and at training sessions and instead to “do what I do, not what I say.” And

they learn that their commanders, and even police chiefs, must sometimes speak in code, publicly saying one thing, but privately indicating something else entirely. The routine police department denials of quotas for tickets and arrests – despite the fact that arrest and ticket quotas are an ever present and inescapable part of everyday police work – is but one obvious example of how this double message system works. It operates in countless other ways as well. It may well be that a successful career as a patrol officer or detective requires either being a naturally-gifted convincing liar, or at least possessing the ability, with much practice, to become good at lying persuasively. Except perhaps for some other military and paramilitary occupations like “intelligence,” there may be no other common legal and respected profession where lying is so integral to the job. Is it any wonder then that “*testilying*” in court – or in arrest reports – is common?

As Skolnick put it: “Police thus work within a severe, but often agonizingly contradictory, moral order which demands certain kinds of fidelities and insists upon other kinds of betrayals. The police milieu is normatively contradictory, almost to the point of being schizophrenogenic,” Jerome Skolnick, “Police Deception,” *Criminal Justice Ethics*, Vol. 1, No. 2 (Summer/Fall 1982).

⁷⁹ When stopped by the police, some people will hand over what they are carrying *without being asked*. One young African-American man, a college student from Buffalo, New York, who we interviewed at the Manhattan Criminal Court, was stopped on the entry ramp to the George Washington Bridge on his way home. Police signaled for him to pull over. He simply took his recently-purchased half-ounce of marijuana from his pocket and handed it to the cop. Why? Its smell was so strong, he said, “they would have found it anyway.” Both his girlfriend in the front seat and his pal in the back seat agreed that the marijuana had a very strong smell and would have been found anyway. They thought their friend had done the best thing. Given what happens in New York City, it could well be they were right.

Police tell us arrests like this happen all the time. As one said: “It’s amazing. People just hand things over.” Experienced public defenders agree and say that such cooperation rarely makes a difference in the case – and usually is not even mentioned in the police report. The legal aid attorneys learn about it because their clients describe what they did.

⁸⁰ One NYPD officer suggested to us that the gender bias in the arrests is in part the result of what he calls “chivalry” on the part of many cops. Many police officers are from solid working-class families and retain some traditional values about gender. They feel more protective and sympathetic to women and are reluctant to subject them to the harshness of the New York jail and criminal justice system. Interesting, the young Black and Latino men stopped by the police feel exactly the same way. As a result, the police offer to let the men “take the weight” is appreciated by the men. We think “chivalry” may indeed be part of what is going on, but there is no doubt that it is often inconvenient and logistically complicated for male police to arrest and book women, and a female officer needs to be located to handle at least some stages of the booking process.

⁸¹ For recent articles about the low pay of New York police, see Note #34.

⁸² One police officer who read a draft of this report wrote in the margins next to this paragraph: “Welcome to the ‘real world’.”

⁸³ Such arrests were described in the 1994 Mollen Commission Report, although the term “dropsy” was not used. See the quote at the beginning of Part 5 of this report, and in Note #55.

⁸⁴ See: *The New York Times*, February 16, 1987, "Rising Pressure In Criminal Court: The View From The Bench," by Douglas Martin.

Dallin Oaks described the rise of dropsy cases in New York City in the years following the *Mapp v. Ohio* decision in 1961 in: “Studying the Exclusionary Rule in Search and Seizure,” *The University of Chicago Law Review*, Vol. 37, No. 4. (Summer, 1970), p. 696-699.

Jerome Skolnick discussed dropsy cases briefly in 1982 writing: “[In New York City] Such lies came to be known as ‘dropsy’ testimony since the police testified that those charged with drug possession were now dropping illicit drugs on the ground.” Jerome Skolnick, “Deception by Police,” *Criminal Justice Ethics*, Vol 1, No 2, 1982.

In 1994, legendary New York journalist Murray Kempton wrote a column about police graft and criminality discussing the use of “dropsie” arrests for numbers runners (in the old days) and for drug arrests more currently. Murray Kempton, “Graft Legacy Is NYPD Blues,” *Newsday*, Sept. 30, 1994.

In 1993, Fordham Law School Professor Abraham Abramovsky discussed “dropsy” cases in an op-ed about the wrongful convictions revealed by the Mollen Commission. He writes:

“Prosecutors and defense lawyers alike know the telltale signs of corrupt and brutal cops. A pattern of drug collars that include “observations” from blocks away and depend on the ability to see through closed doors and windowless vans are dead giveaways. A large number of so-called “dropsy” cases, where suspects just happened to drop packets of narcotics in the presence of an officer, and ubiquitous “bulges” in coats, jackets and back pockets are also hints of impropriety.” Abraham Abramovsky, “What About The Victims Of Rogue Cops?” *Newsday*, Oct. 14, 1993.

⁸⁵ Other than people working in the criminal justice system and close observers, few New Yorkers today know about the dropsy cases of the 1980s and earlier. However, some people learn about them in odd ways. Recently we met an eminent New York businessman curious about our research who quizzed us about how these arrests are made. When we finally explained how people with marijuana in their pocket are searched and then charged with marijuana “burning or open to public view,” he said: “Oh, these are dropsy cases.” With considerable surprise we asked how he knew about dropsy cases? He explained that in the late 1980s, he was on a jury for a dropsy case so obviously fraudulent that his fellow jurors eventually acquitted. The prosecutor had made a mistake in letting the case go to trial, a mistake not often repeated. There are no doubt a few other New Yorkers like this businessman who have learned about cocaine dropsy cases by serving on juries, but probably not many, partly because prosecutors try to avoid bringing them to juries – and no one serves as a juror on a *marijuana* dropsy case because in New York people do not have a right to a jury trial for a misdemeanor charge. Like many of the things we describe in this report, illegal searches and dropsy cases are part of the well-hidden world of narcotics policing.

Part 6: Costs and Consequences For New York City

⁸⁶ The costs per student for Virginia are discussed in: *The Washington Post*, "Does Higher Per-Pupil Spending Guarantee Success? The Numbers Say No," by Ian Shapira, May 18, 2006; For a study comparing Atlanta's costs per student compared with those of a number of other cities see: Robert J Enger III et al., *A Cost Per Student Analysis of Atlanta Public Schools*, Andrew Young School of Policy Studies. Georgia State University, 2006. <http://www.atlanta.k12.ga.us/content/schools/CostPerStudent.pdf>. New Hampshire's costs per student in various districts from 1997-98 to 2005-06, are provided by the New Hampshire Department of Education at: <http://www.ed.state.nh.us/education/data/financial.htm>. New York State and City's costs per student, compared with other school systems are discussed in: *New York Times*, "New York Is Top State in Dollars Per Student," by Sam Roberts, May 30, 2007; *New York Times*, "Westchester School Districts Among Top Spenders," by Ford Fessenden, June 10, 2007; and *New York Times*, "Last Year, Cost Per Pupil In City Schools Jumped 9.3%," by Randal C. Archibold, Jan. 27, 1999.

⁸⁷ These figures and the quote appear in two publications, see: Mark A. Cohen, *The Costs of Crime and Justice*. New York: Routledge, 2005, pp.84-5; and Mark A. Cohen, "Measuring the Costs and Benefits of Crime and Justice." pp. 263-316 in Volume 4: *Measurement and Analysis of Crime and Justice*, National Institute of Justice, July 2000, NCJ 182411. Available at: http://www.ncjrs.org/criminal_justice2000/vol_4/04f.pdf. p. 297.

⁸⁸ Douglas S. Massey, "Backfire at the Border: Why Enforcement without Legalization Cannot Stop Illegal Immigration," Cato Institute, Washington, D.C, June 2005, p.8. For other calculations of cost per arrest see: Peter W. Greenwood *et al.* "Three Strikes and You're Out: Estimated Benefits and Costs of California's New Mandatory Sentencing Law," Rand Corporation, Santa Monica, CA. 1994. p.15; also: C. Peter Rydell and Susan S. Everingham, "Controlling Cocaine: Supply Versus Demand Programs," Rand Corporation, Santa Monica, CA. 1994. They calculated that the court costs per narcotics arrest was \$1166 in 1990.

⁸⁹ Steve Aos, Polly Phipps, Robert Barnoski, Roxanne Liebet. *The Comparative Costs and Benefits of Programs to Reduce Crime*, (Version 4), Washington State Institute for Public Policy Olympia, Washington, May 2001. 180 pages. See Table IV-D, Estimates of Marginal Resource Operating Costs, Per Unit, P. 85 At: <http://www.wsipp.wa.gov/pub.asp?docid=01-05-1201>, and at: <http://www.wsipp.wa.gov/rptfiles/costbenefit.pdf>

⁹⁰ Bernard E. Harcourt and Jens Ludwig, "Reefer Madness: Broken Windows Policing and Misdemeanor Marijuana Arrests in New York City, 1989-2000", *Criminology and Public Policy* 6:1, pp. 165-182, 2007. Available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=948753

For Harcourt and Ludwig's larger study of broken window's policing in New York and five other cities see: Bernard E. Harcourt, Ludwig, Jens, "Broken Windows: New Evidence from New York City and a Five-City Social Experiment," *University of Chicago Law Review*, Vol. 73, 2006, Available at: <http://ssrn.com/abstract=743284>. For a good brief summary of critiques of broken windows and quality of life policing see: "Bratton's 'broken windows'," *Los Angeles Times*, April 20, 2006. At: <http://www.law.uchicago.edu/harcourt-broken-windows.html>.

⁹¹ Golub, Johnson and Dunlap, long-time drug researchers in New York City, found that the marijuana possession arrests, which they called MPV arrests, are not in accord with the claimed aims of “quality of life” policing strategies. They concluded:

“These MPV arrests do not appear to primarily serve the goals of QOL [Quality of Life] policing. Moreover, controlling marijuana use in NYC hardly advances other traditional goals of crime control.... Controlling crack and its associated activities could be justified as attacking the roots of much of the prevailing crime and violence. The current situation with marijuana is much less critical. Marijuana use and its sales in NYC have been associated much less with other forms of criminal activity.”

Andrew Golub, Bruce D. Johnson, and Eloise Dunlap. “Smoking marijuana in public: the spatial and policy shift in New York City arrests, 1992–2003,” *Harm Reduction Journal* 3:22, 2006. Available at: <http://www.harmreductionjournal.com/content/pdf/1477-7517-3-22.pdf>. See the appendices in this report for explanation of the term “MPV arrests.”

Part 7: Head Start For Unemployment and Prison: The Impact on Black and Latino Youth

⁹² Human Rights Watch, “III. Incarceration and Race” in *Punishment and Prejudice: Racial Disparities in the War on Drugs* by Jamie Fellner, Human Rights Watch, New York, May 2000. The quote is at: <http://www.hrw.org/reports/2000/usa/Rcedrg00-01.htm>. The whole report is at: <http://www.hrw.org/reports/2000/usa/>.

⁹³ Don Weatherburn, “The Impact of Unemployment on Crime,” in: Richard Taylor and Peter Saunders (eds), *The Price of Prosperity: The Economic and Social Costs of Unemployment*,. Sidney, UNSW Press, 2002, p. 234-5.

⁹⁴ “About The Office of Head Start” at:
<http://www2.acf.dhhs.gov/programs/hsb/about/index.html#mission>.

⁹⁵ Source: NYS Division of Criminal Justice Services, Computerized Criminal History system. Includes all fingerprintable arrests for NYS Penal Law Article 221 misdemeanor offenses as the most serious charge in an arrest event.

⁹⁶ On July 10, 2002, Mayor Bloomberg signed a bill increasing fines for riding bicycles on the sidewalk to \$100 with more severe penalties (up to \$300) if the rider “endangers any other person or property.” In a press release titled: “Mayor Michael R. Bloomberg Signs Bill Increasing Fines For Riding Bicycles On Sidewalk: Testimony by Mayor Bloomberg During Public Hearing on Local Law” PR-185-02, July 10, 2002. Officers have told us that young people in New York’s poverty neighborhoods are so familiar with the tickets and their penalties that someone about to be given a ticket for this will sometimes ask (or even beg) to instead be given a citation for an open alcohol container because the fine is \$25. In 2006, the third highest number of summons (approximately 25,000) was for riding a bike on the sidewalk. See: *Criminal Court Of The City Of New York 2006 Annual Report*, Office of the Administrative Judge of New York City Criminal Court, New York, NY: April 2007, p.49.

⁹⁷ Graham Boyd of the ACLU writes: Congress has used the ‘war on drugs’ to create an additional barrier to youth of color, who already face a gauntlet of obstacles in the path to higher education. Under the Higher Education Act (HEA) of 1998, any drug convic-

tion, even for a misdemeanor marijuana offense while a student will disqualify one for federal educational assistance, including loans and even work-study programs. Graham Boyd of the ACLU writes: “[Given] the fact that this law will not affect the wealthy who do not need financial aid, the HEA plainly targets low-income people of color. Murder and rape do not render a person ineligible; someone could burn a nursery or bomb a federal building and still receive financial aid. But smoking marijuana in the privacy of one's own room means a student risks losing financial aid and having to leave college or graduate school.” “The Drug War is the New Jim Crow. NACLA Report on the Americas,” July/August 2001. At: <http://www.aclu.org/drugpolicy/racialjustice/10830pub20010731.html>.

⁹⁸ In the last few years scholars have produced a number of brilliant books on the destructive effects of the mass imprisonment on those incarcerated, their families, communities, and on American society. See:

- Devah Pager, *Marked: Race Crime, and Finding Work in an Era of Mass Incarceration*, University of Chicago Press, 2007

- Todd R. Clear, *Imprisoning Communities: How Mass Incarceration Makes Disadvantaged Neighborhoods Worse*, Oxford University Press, 2007

- Doris Marie Provine, *Unequal Under Law: Race In The War on Drugs*, University of Chicago Press, 2007

- Bruce Western, *Punishment And Inequality In America*, New York: Russell Sage Foundation, 2006

- Jeremy Travis, *But They All Come Back: Facing The Challenges Of Prisoner Reentry*, Washington, DC: Urban Institute Press, 2005

- Mary Pattillo, David Weiman, and Bruce Western (eds), *Imprisoning America: The Social Effects of Mass Incarceration*. New York: Russell Sage Foundation, 2004

- Jeremy Travis, *But They All Come Back: Facing The Challenges Of Prisoner Reentry*, Washington, DC: Urban Institute Press, 2005

The following excellent works also discuss the effects of arrest, conviction and incarceration on employment opportunities:

- Jeffrey Fagan and Richard B. Freeman, "Crime and Work" in Michael Tonry (ed), *Crime and Justice: A Review of Research*, Vol 25, University of Chicago Press, Chicago, 1999, pp. 113-178.

- Herbert S. Miller. *The Closed Door: The Effect of a Criminal Record on Employment with State and Local Public Agencies*, Manpower Administration, U.S. Department of Labor, 1972. (This classic study, written the year before passage of the Rockefeller Drug laws, has been put on the web in its original form, at: http://www.eric.ed.gov/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/3b/4d/97.pdf The first of what it calls its “major findings” is: “A juvenile record and an arrest record not followed by conviction are substantial obstacles to employment.”

- Dorothy E. Roberts, “The Social and Moral Cost of Mass Incarceration in African American Communities,” *Stanford Law Review*, Vol. 56, 2004.

- Mercer L. Sullivan, *Getting Paid: Youth, Crime and Work in the Inner City*, Ithaca: Cornell University Press, 1990.

- David F. Weiman, “Barriers to prisoners' reentry into the labor market and the social costs of recidivism,” *Social Research*, Vol 7, No. 2. Summer 2007. (The entire issue is titled *Punishment: The U.S. Record*, and includes many articles about the consequences of the enormous growth in the U.S. prison population). At: <http://www.encyclopedia.com/printable.aspx?id=1G1:168397567>

- Bruce Western, Jeffrey Kling and David F. Weiman, “The Labor Market Consequences of Incarceration,” *Crime and Delinquency*, Vol. 46, No.2 (July), 2001

- Bruce Western and Becky Pettit, "Incarceration and Racial Inequality in Men's Employment," *Industrial and Labor Relations Review*, October 2000

- Don Weatherburn, "The Impact of Unemployment on Crime," in *The Price of Prosperity: The Economic and Social Costs of Unemployment*. (eds.), Richard Taylor and Peter Saunders, Sidney: UNSW Press, 2002.

The excellent recent report *Unlocking America: Why and How To Reduce America's Prison Population*, coauthored by nine major criminologists, offers practical measures to reduce the U.S. prison population. Published by JFA Institute, Washington, D.C., 2007. At: <http://www.jfa-associates.com/publications/srs/UnlockingAmerica.pdf>

The magazine City Limits does excellent investigative journalism on New York including work on hidden parts of New York criminal justice system. See for example its brilliant report on bail in: Jarrett Murphy, "Prisoners Dilemma: How NYC's bail system puts justice on hold." *City Limits Investigates*. Fall 2007, at: <http://www.citylimits.org/>

⁹⁹ Jeffrey Fagan, Valerie West & Jan Holland, "Reciprocal Effects of Crime and Incarceration in New York City Neighborhoods," *Fordham Urban Law Journal*, March 2003. p. 14. At: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=392120#PaperDownload.

¹⁰⁰ Jeremy Travis, "Cops Cut Crime, Now They Must Build Trust," *New York Daily News*, March 6, 2001; William J. Bratton, "A Cloudy Future for Policing," *New York Times*. Aug. 3, 2001

¹⁰¹ See, for example: *New York Times*, "Scared Silent: So Many Crimes, and Reasons to Not Cooperate," by David Kocieniewski, Dec. 30, 2007; *New York Times*, "She Aided Victims of Shootings, and She Became One," Dec. 17, 2007.

¹⁰² The 13,000 imprisoned are 90% Black and Latino. From: Drop The Rock, the Rockefeller drug law reform organization, at: <http://www.droptherock.org/>.

¹⁰³ Human Rights Watch News, "Official Data Reveal Most New York Drug Offenders Are Nonviolent," Jan 7, 1999. At: <http://hrw.org/english/docs/1999/01/07/usdom793.htm>.

¹⁰⁴ Quote is from: "Official Data Reveal Most New York Drug Offenders Are Nonviolent" *Human Rights News*. Human Rights Watch, New York, Jan 7, 1999. At: <http://www.hrw.org/campaigns/drugs/ny-drugs.htm> Also see: <http://www.droptherock.org/>.

¹⁰⁵ Quoted in Margaret Talbot, "Stealing Life: The Crusader Behind 'The Wire'," *The New Yorker*, October 22, 2007

¹⁰⁶ CODIS, Combined DNA Index System is the largest DNA database in the world. The U.S. government web site for it is: http://www.dna.gov/uses/solving-crimes/cold_cases/howdatabasesaid/codis/. The U.S. National Criminal Justice Reference Services describes CODIS here: <http://www.ncjrs.gov/nij/DNAbro/comb.html>; Source for the CODIS data is a 4 page FBI fact sheet at: www.fbi.gov/hq/lab/pdf/codisbrochure.pdf; Source for 2008 figures are: CODIS Program Office, FBI. Personal Communication)

¹⁰⁷ The following lists some misdemeanors currently designated by New York State Law as "DNA Misdemeanors" (as of 06/23/06) in which a DNA sample can be taken. The offence is listed followed by its section of the New York State Criminal Code:

Assault in the Third Degree (120.00), Attempted Menacing in the First Degree (100/120.13), Menacing in the Second Degree (120.14), Menacing in the Third Degree (120.15), Reckless Endangerment in the Second Degree (120.20), Attempted Stalking in the Second Degree (110/120.55), Attempted Sexual Misconduct (110/120.55), Criminal Trespass in the Second Degree (140.35), Possession of Burglar's Tools (140.35), Petit Larceny (155.25), Absconding From a Community Treatment Facility (205.19), Patronizing a Prostitute 3rd Degree (230.04), Attempted Patronizing a Prostitute 3rd Degree (110/230.04), Attempting Patronizing a Prostitute 2nd Degree (110/230.05), Endangering the Welfare of an Incompetent or Physically Disabled Person (260.35).

From a two page photocopy obtained in February 2008 from the Criminal Court of New York, titled "Misdemeanors That Are Designated Offenses Under Executive Law 995(7) [DNA Misdemeanors]."

¹⁰⁸ The New York Times. "Mayor Bloomberg's 2008 State of the City Address," Jan. 17, 2008; At: <http://www.nytimes.com/2008/01/17/nyregion/17stateofnyc.html?pagewanted=print>. See quote from Bloomberg in Note #43

¹⁰⁹ *One in 100: Behind Bars in America*, Pew Charitable Trusts, Washington, D.C., 2008. At: http://www.pewcenteronthestates.org/report_detail.aspx?id=35904. Table A-6.

¹¹⁰ For the Human Rights Watch Report see the quote at the beginning of Part 7 and Note #92 and at: <http://www.hrw.org/reports/2000/usa/>.

¹¹¹ *The Wall Street Journal*, "The Gene Police," by Gautam Naik, Feb. 23, 2008. *The Guardian* (U.K), "Judge Wants Everyone in UK on DNA Database," Sept. 5, 2007; *All Things Considered*, "Police Use DNA to Track Suspects Through Family," by Ari Shapiro, Dec. 12, 2007. At: <http://www.npr.org/templates/story/story.php?storyId=17130501>; Troy Duster, "The Molecular Reinscription Of Race: Unanticipated Issues In Biotechnology And Forensic Science," *Patterns of Prejudice*, Vol. 40, Nos. 4/5, 2006. At: <http://www.longviewinstitute.org/research/duster/molecularreinscription/view>. For a discussion of DNA dragnets, where law enforcement collect DNA from hundreds or even thousands of people, see: Troy Duster "Explaining Differential Trust of DNA Forensic Technology: Grounded Assessment or Inexplicable Paranoia?" in *Journal of Law, Medicine & Ethics*, Summer 2006. At: <http://sociology.fas.nyu.edu/docs/IO/229/DusterJLMEtrust606.pdf>

Part 8. New York Decriminalizes Marijuana Possession

¹¹² "Governor Presses Treatment of Addicts," by Barbara Campbell, *New York Times*, August 4, 1970

¹¹³ "Critics Find State's Program for Addict Care in Disarray," by James M. Markham, *New York Times*, September 18, 1972.

¹¹⁴ "Governor Rockefeller's State of the State Address - Drugs," *New York Times*, January 3, 1973

¹¹⁵ "Drug Users' Relatives Call Governor's Plan Too Hard on Youths," by Lawrence Van Gelder, *New York Times*, Jan. 14, 1973

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- ¹¹⁶ “The Mandatory Illusion,” by Tom Wicker, *New York Times*, January 9, 1973.
- ¹¹⁷ “A Tough Program By Lindsay,” William E. Farrell, *New York Times*, Feb. 18, 1973.
- ¹¹⁸ “State Drug Laws Panel Gives Alternative to Rockefeller Plan,” by Lawrence Van Gelder, *New York Times*, Mar. 14, 1973.
- ¹¹⁹ “A Tough Program by Lindsay,” William E. Farrell, *New York Times*, Feb. 18, 1973.
- ¹²⁰ The 1973 drug law was enacted as Chapters 276, 278, 676 and 1051 of the 1973 Laws of New York State. Codified in NY Penal Ch. 40, Pt. Three, Title M, Art. 220 Controlled Substances Offenses.
- ¹²¹ Under the law at the time, marijuana was included within the definition of narcotic drugs and it was a crime to either possess or sell marijuana. (Public Health Law § 301.38)
- ¹²² Penal Law §70.06 Sentence of imprisonment for second felony offender. 1. Definition of second felony offender. "(b) For the purpose of determining whether a prior conviction is a predicate felony conviction the following criteria shall apply: (i) The conviction must have been in this state of a felony, or in any other jurisdiction of an offense for which a sentence to a term of imprisonment in excess of one year or a sentence of death was authorized irrespective of whether such sentence was imposed". See also, “Headin’ for Stir” by Nicolas F. Hahn and Scott Christianson, *New York Times*, May 10, 1975, on the impact of the Second Felony Offender Law.
- ¹²³ “The Drug Scene: Many Students Now Regard Marijuana as a Part of Growing Up,” *New York Times*, Jan. 11, 1968.
- ¹²⁴ “Students Decry Stony Brook Raid,” by Francis X. Clines, *New York Times*, Jan. 18, 1968
- ¹²⁵ “Senate Approves Narcotics Curb by 82-to-0 Vote,” by Warren Weaver, *New York Times*, Jan. 29, 1970.
- ¹²⁶ “Three Girls at Private School Arrested on Marijuana Charge,” *New York Times*, Jan. 20, 1968. The headmaster at the school in Dobbs Ferry, New York said thought the police characterization of marijuana as a “dangerous drug” was an overstatement. See also, “Marijuana: That was the Week that Was,” *New York Times*, Feb. 1, 1970, noting the arrests of John P. Cahill, son of New Jersey Governor William T. Cahill, Harvey Fleetwood 3d, son a of prominent New York banker and Howard Samuels, Jr. son of then New York gubernatorial candidate Howard Samuels on charges of possessing marijuana and hashish.
- ¹²⁷ This lengthy and serious report was produced by the Subcommittee on Marijuana was titled *Marijuana: Interim Report of the Temporary State Commission to Evaluate the Drug Laws*, State of New York Legislative Document No. 8, Albany, New York, 1971.
- ¹²⁸ *Marijuana: Report of the State Commission* p. 10.
- ¹²⁹ *Marijuana: Report of the State Commission* p. 46.

- ¹³⁰ *Marijuana: Report of the State Commission*, p. 46.
- ¹³¹ *Marijuana: Report of the State Commission*, p. 47
- ¹³² *Marijuana: Report of the State Commission*, p.10.
- ¹³³ "Lesser Penalties in Marijuana Act Urged For State; District Attorneys Suggest Lighter Sentences for Possession or Sale," by Thomas P. Ronans, *New York Times*, Jan. 13, 1971
- ¹³⁴ "Assembly Retains Marijuana Laws," Francis X. Clines, *New York Times*, May 19, 1971.
- ¹³⁵ *Marihuana: A Signal of Misunderstanding*, The Report of the National Commission on Marihuana and Drug Abuse, ('The Shafer Commission' appointed by President Richard M. Nixon), Washington, DC, US Government Printing Office, March 1972. The Shafer Commission's major findings are briefly summarized in: Lynn Zimmer and John P. Morgan, "Marijuana and Science" in *Marijuana Myths, Marijuana Facts: A Review of the Scientific Evidence*. The Lindesmith Center: New York, 1997.
- ¹³⁶ "A.B.A. Would Ease Marijuana Laws," by Fred P. Graham, *New York Times*, August 17, 1972.
- ¹³⁷ "In a Sometimes Bitter Fight, States and Cities are Easing Marijuana Laws," by Lesley Oelsner, *New York Times*," July 13, 1975.
- ¹³⁸ "36 Are Arrested for Drugs at Nassau Coliseum," by George Dugan, *New York Times*, Sept. 9, 1973.
- ¹³⁹ "Anderson Scores Marijuana Plan: Opposes Carey's Proposal to Lift Criminal Penalties in Sale of Small Amounts," by Iver Peterson, *New York Times*, Feb. 10, 1976.
- ¹⁴⁰ See Legislative Memo from Assemblyman Richard N. Gottfried on *Marijuana laws and level of use*, dated June 9, 1977, included in bill jacket for S. 4481-A.
- ¹⁴¹ "Compromise Version Of Marijuana Bill Approved In Albany; Governor Is Certain To Sign," by Richard J. Meislin, *New York Times*, June 29, 1977. For a review of the problems created by a criminal record and the difficulties they pose, written at the time, see: Aryeh Neier, "Marked For Life: Have You Ever Been Arrested," *New York Times Magazine*, April 15, 1979.
- ¹⁴² "Albany Agreement Reached on Easing Marijuana Curbs," by Richard J. Meislin, *New York Times*, May 4, 1977.
- ¹⁴³ See: Memorandum in Support of Assembly bill A.10-B (1977) and Senate Bill S-4411 (1977) submitted by New York State Assembly Committee on Codes, June 30, 1977.
- ¹⁴⁴ "New York Bar Association Legislation Report No. 143 in support of S. 4481," June 1977. The cost per marijuana arrest offered for recent years in Part 6 this report ("Costs and Consequences") is actually lower than the cost per arrest the New York Bar Association found over thirty years ago, suggesting that the costs offered here are low. See Part 6 of this report, "Costs and Consequences."

Advanced Praise for

**MARIJUANA ARREST CRUSADE:
RACIAL BIAS AND POLICY POLICE IN NEW YORK CITY, 1997-2007**

By Harry G. Levine and Deborah Peterson Small

"*Marijuana Arrest Crusade* is a clearly written, well-documented account of the large number of marijuana arrests that New York police have made, primarily of black and Hispanic young men. Based on in-depth interviews and official arrest data, it reveals common policing patterns – including racially-skewed stops, frisks, and searches – still poorly understood by the general public. People who care about the fate of American cities and the incarceration of racial minorities should read this fine study. As a New York City police officer quoted in the report says: 'Welcome to the real world'."

– GEORGE NAPPER, FORMER CHIEF OF POLICE OF ATLANTA, GEORGIA

"Every day in New York City, many young men, mostly blacks and Hispanics, are arrested for possessing small amounts of marijuana. Most of them are not smoking marijuana or displaying it in any way. They are stopped by police, often as part of a stop and frisk, and are usually tricked or intimidated into taking out and handing over their contraband. When they do so they are arrested and generally spend the night locked up. Legal Aid attorneys who work in the city's criminal courts see this every day. *Marijuana Arrest Crusade*, by Levine and Small, clearly describes this process and begins the important task of opening the NYPD's policing practices to public scrutiny. I hope its findings and recommendations receive much attention."

– EDWARD MCCARTHY, SUPERVISING ATTORNEY, NY LEGAL AID, CRIMINAL DEFENSE DIVISION

"In vivid graphs and lucid prose, *Marijuana Arrest Crusade* describes the great many arrests that the NYPD has made of people possessing small quantities of marijuana. Although simple marijuana possession has been decriminalized by New York State law since 1977, the NYPD has nonetheless pursued these arrests for over a decade, stopping, frisking, and searching mostly blacks and Hispanics. Young whites use marijuana at a higher rate than blacks, but the police arrest blacks at over five times the rate of whites. As the report rightly points out, the arrests function as a kind of Head Start program for unemployment, incarceration, distrust of the police, and – if some politicians get their way – for having private biological information permanently stored in DNA data banks.... A shocking and important report."

– DAVID ROSNER, RONALD LAUTERSTEIN PROFESSOR OF HISTORY AND PUBLIC HEALTH, COLUMBIA UNIVERSITY, AUTHOR OF DECEIT AND DENIAL, DEADLY DUST, AND OTHER BOOKS.

"New York City's current marijuana arrests are exactly analogous to the roundup of gays in the 1950s and 1960s that Mayor Lindsay stopped. And the offenses represent exactly the same level of risk to the public. Making marijuana arrests a priority is a waste of police resources and does not reduce street violence. Illegal, trivial, meaningless arrests undermine confidence in the justice system and corrupt the enforcers. New York's marijuana arrests are counter productive, a classic misapplication of police resources."

– ANTHONY V. BOUZA, FORMER CHIEF OF POLICE OF MINNEAPOLIS, FORMER NYPD COMMANDER IN THE BRONX, AND AUTHOR OF THE POLICE MYSTIQUE, POLICE UNBOUND, AND OTHER BOOKS.

"Levine and Small lay bare the corrosive policy of low-level marijuana enforcement in New York. They reveal disturbing patterns of racial and neighborhood disparity that mirror similar trends in street stops and frisks as well as the enforcement of trespass laws. This senseless policy fails the tests of legality, efficacy, and fairness, while costing New Yorkers more than \$50 million each year. This perverse waste of money, resources and lives soils respect for the law and discourages citizens from joining with the police as full partners in the co-production of security."

– JEFFREY FAGAN, PROFESSOR OF LAW & PUBLIC HEALTH, CO-DIRECTOR, CENTER FOR CRIME, COMMUNITY AND LAW, COLUMBIA UNIVERSITY

"New York City's marijuana possession arrests are a part of the "war on drugs" and are sometimes justified as improving 'quality of life.' Nobody thinks that misdemeanor marijuana arrests reduce serious drug problems. And according to *Marijuana Arrest Crusade*, the chief quality of life they improve is that of some police officers and their supervisors, who use the arrests to accumulate much-needed overtime pay. The young blacks and Latinos, most of whom were not smoking marijuana or even displaying it, suffer the most. As those who work in New York's criminal courts daily know, when police tell people to take out and hand over what they have in their pockets, including a bit of marijuana, people do so because they are intimidated and fear the police, often with good reason. This otherwise excellent report could emphasize that even more."

– MICHAEL LETWIN, LEGAL AID ATTORNEY IN BROOKLYN, FORMER PRESIDENT OF THE ASSOCIATION OF LEGAL AID ATTORNEYS, UAW LOCAL 2325.

"Police throughout the U.S. have long used 'dropsy' arrests and other unlawful or unethical methods to make drug arrests of addicts and dealers. In the last decade New York City appears to have applied this strategy, with extraordinary efficiency, to ordinary teenagers and young adults. Although whites use marijuana more often than racial minorities, over 80 percent of those jailed by NYPD are black and Hispanic, mostly young men.... Like the authors of *Marijuana Arrest Crusade*, I believe the two New York City Mayors and three Police Commissioners who have presided over these practices are not motivated by personal racism. But the effects of these practices are deeply, undeniably discriminatory, as well as damaging to legitimate crime fighting, community relations, and police morale. New Yorkers should read this superlative report, weep for what their city has done, and demand an end to the outrage."

– NORM STAMPER, FORMER CHIEF OF POLICE OF SEATTLE, WASHINGTON, AND AUTHOR OF BREAKING RANK: A TOP COP'S EXPOSE OF THE DARK SIDE OF AMERICAN POLICING (NATION BOOKS, 2006).



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Marijuana Arrest Crusade: Racial Bias and Police Policy in New York City, 1997 - 2007

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