

**DRUG ARRESTS AND DNA:  
Building Jim Crow's Database**

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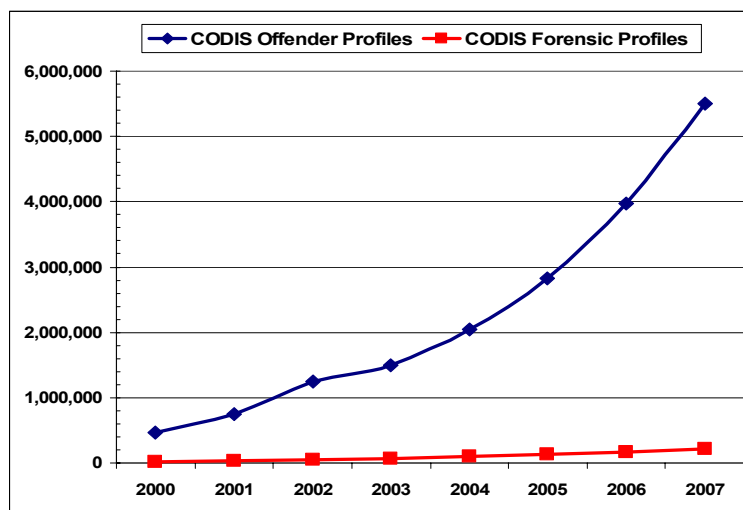
## 1. THE EXPANSION OF DNA DATABASES

Methodically collecting and storing evidence from crime scenes, especially for violent crimes like murder and rape, has long been part of good policing. In recent years scientific and laboratory techniques have increased the likelihood of obtaining DNA information from that evidence. Over two hundred people convicted of serious crimes have been found innocent, and useful leads for many other crimes have been developed, through the use of DNA contained in evidence collected at crime scenes.<sup>1</sup> Scrupulous, professional collection of forensic evidence including DNA at crime scenes is wise, sensible policy.

Building huge and ever-growing criminal justice DNA databases of potential suspects – with DNA from people convicted of misdemeanors and non-violent felonies, or even just arrested for them – is another matter entirely.

As the collection of DNA at crime scenes has increased, collection of DNA from individuals has increased much more. In 2007 the *Washington Post* reported that “the nation’s databank of DNA ‘fingerprints’ is growing by more than 80,000 people every month.”<sup>2</sup> Graph 1 shows the growth in forensic profiles (crime scene DNA evidence) and offender profiles (DNA from individuals) in CODIS, the U.S. government’s national DNA database, and the largest DNA databank in the world. As of January 2008, there were two hundred thousand forensic DNA profiles, but five and half million DNA profiles of individuals.

**Graph 1: Total CODIS Offender & Forensic Profiles, 2000 – 2007**



See Endnotes for sources for this and other graphs<sup>3</sup>

This dramatic growth in DNA collected from individuals is the result of the federal government, states, and local jurisdictions making increasing numbers of crimes of decreasing severity DNA “swipeable.” As Simoncelli and Krimsky have recently explained:

The earliest state statutes, dating back to the early 1990s, limited collection and retention of DNA samples to sexual offenders on the theory that these persons were especially prone to recidivism and most likely to leave behind biological evidence. Successes in linking DNA in some high-profile murder and rape cases, combined with an eagerness on the part of politicians to appear tough on crime, prompted states to expand their databanks in leaps and bounds.

Today forty-four states collect DNA from all felons, twenty-eight from juvenile offenders and thirty-nine from those who commit certain categories of misdemeanors.... In the last few years, enthusiasm for DNA banking has prompted some state legislatures to expand their databanks beyond convicted offenders to innocent people – both those presumed innocent until proven guilty and those who are actually innocent. Eight states – Virginia, Texas, Louisiana, California, New Mexico, Minnesota, Kansas and Tennessee – have approved legislation to allow DNA testing of some categories of arrested individuals [who have not been convicted].<sup>4</sup>

Although police, prosecutors and politicians have effectively advocated for expansion of DNA collection from individuals, the databases raise important ethical, political, and civil liberties problems as well as scientific and technical problems about their accuracy. With more and more evidence and sophistication, growing numbers of geneticists, criminologists, civil libertarians, journalists, academic researchers and others have voiced profound questions about the DNA “offender” databases, and especially about the collection of DNA for misdemeanors, non-violent felonies, and from people *merely arrested for petty misdemeanors*

### ***Problems With DNA Databases***

Contrary to what many believe, DNA evidence is not infallible.<sup>5</sup> Knowledgeable observers and insiders have pointed out that errors occasionally appear in even the best laboratories and quite often in others. Among other problems: there is mixing up and cross-contamination of DNA samples; there is considerable judgment and misjudgment in DNA analysis; biases in interpretation tend to favor the prosecution. As the size and number of DNA databases expand, so too does the potential for error and abuse.<sup>6</sup>

DNA evidence raises serious issues of privacy not present in fingerprints. The U.S. Senate has approved legislation to protect individuals from genetic discrimination for employment and health insurance. Senator Edward Kennedy introduced the bill noting “It is difficult to imagine information more personal or more private than a person’s genetic makeup.” But many key safeguards have not become U.S. law, and law enforcement has successfully pushed to add more and more individuals to the genetic databases. To solve crimes, DNA “sweeps” of people simply living in a certain area have been proposed, and they have been implemented in some jurisdictions; collecting and storing DNA of *family members* of people already in the criminal justice databases and has also been proposed and sometimes used. Procedures for destroying or returning DNA improperly collected or no longer needed to solve a particular crime usually do not exist.<sup>7</sup>

Police departments, especially in big cities, are large organizations with considerable resources to devote to promoting legislation and policy that they believe serve their interests and needs. For understandable reasons, police departments and prosecutors have played key roles in pushing for expansion of DNA databases; expected to solve crimes, law enforcement wants to use any tool that holds promise of making their jobs easier and their work more effective. In our computerized and high-tech world, police departments also desire to show they are up to date, scientific, professional. But there is no equivalent public or private organization on the other side to question police proposals and claims. The skeptics or critics of the expansion of DNA databases are generally individual academics, staff at small non-profit groups, or journalists who sometimes can briefly investigate a case or story – none of whom have even a small fraction of the public relations resources or political influence of law enforcement. As a result, there is at present little to stop or even slow down the drive to grow the DNA databases by including more crimes of decreasing severity, and to require collection of DNA not just from individuals convicted of crimes but also from the far larger number of people arrested just for misdemeanors.<sup>8</sup>

\* \* \*

Leaving aside the problems of error and the other ethical and civil liberties issues posed by the DNA databases, there is a separate, important question: who are the people most affected by expansion of the DNA criminal justice databases? The answer – much more than has been discussed or even understood – is Blacks and Latinos, above all young Black and Latino men. And the single class of offenses for which more Blacks and Latinos have been arrested is drug offenses, especially low-level, non-violent drug offenses.<sup>9</sup>

This paper presents data about drug arrests in New York City and State, and nationally, focusing on the populations affected by the proposed expansion of DNA databases to all misdemeanor convictions or even arrests. In 2007 the New York Police Department made 112,000 drug arrests, one third of all arrests in New York City, and 72% of the drug arrests were misdemeanors, mostly just for possession. Even though Whites possess and use all drugs at higher rates than either Blacks or Latinos, more than 80% of the people arrested for possessing small amounts of drugs were Black or Latino.<sup>10</sup> New York's large number of racially-skewed drug arrests are extreme, but they are by no means unique, and their racial bias is not even unusual. Looking closely at drug arrests in New York makes it easier to see what is occurring elsewhere in the U.S. and especially the racial disparities that expanding the databases can be expected to produce almost everywhere. The racial segregation laws in the United States that ran for 89 years – from 1876 to 1965 – were commonly called Jim Crow laws. We conclude that expanding this racially-skewed genetic file system should be thought of as building a Jim Crow database.

## **2. DNA COLLECTION AND NEW YORK'S RACIALLY-SKEWED DRUG ARRESTS**

Since the 1990s, police, prosecutors, and politicians in New York have pushed to increase the number of people with DNA permanently filed in the State's criminal justice databanks. New York City's Mayors and Police Commissioners have lead the campaign urging that ever more offenses become DNA swipeable.<sup>11</sup> Howard Safir, Mayor Giuliani's close ally and Police Commissioner from 1996 to 2000, was early on a prominent national advocate for collecting what he called "DNA fingerprints."<sup>12</sup> Mayor Bloomberg has also been an enthusiastic supporter of expanding criminal justice and other databases to include many ordinary Americans. As Jim Dwyer

of the *New York Times* explained, Bloomberg, a supposed political moderate, proposed in his January 2008 State of the City address “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.”<sup>13</sup>

A year earlier, Democratic Governor Eliot Spitzer proposed legislation to authorize collection of DNA from anyone convicted of any misdemeanor. Spitzer’s proposal, though seemingly less ambitious than Bloomberg’s, was still quite far reaching. New York City by itself makes over two hundred thousand misdemeanor arrests a year, with most resulting in a plea bargain admitting guilt to something criminal. Spitzer’s 2007 bill came close to becoming law. Passed by the Republican-controlled State Senate, it was ultimately held back by the Democratic-controlled State Assembly. Significant or perhaps crucial opposition came from the legislature’s Black and Latino caucuses.

Why did Black and Latino representatives in the legislature seek to prevent the expansion of the database to all misdemeanors? They did so because they understand what real-world policing means in the neighborhoods they represent. They understand that the rate and frequency of misdemeanor arrests, far more than for violent felonies, are determined by the needs and policies of police departments. As legislators from districts with many low income Blacks and Latinos, they know well that urban police departments, notably the NYPD, deploy their patrol forces heavily to only certain neighborhoods looking for only certain suspects. As a result, the misdemeanor arrests for drugs and other minor offenses are racially skewed.

Since the passage of the Rockefeller Drug Laws in 1973, New York State has been a leader in what became known as the “War on Drugs.” Nationally, the drug war has become the great engine of imprisonment in the U.S. People incarcerated for drug offenses currently make up about one quarter of the two million U.S. prisoners.

Almost 13,000 people are now 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.<sup>14</sup> A study by 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).<sup>15</sup> 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.<sup>16</sup> As Columbia University Law School 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.”<sup>17</sup>

All of the people currently incarcerated in New York State prisons for drug offenses, and many who preceded them, largely Black and Latino, are now part of the state’s DNA database –

which in May of 2007 had profiles of nearly 250,000 individuals.<sup>18</sup> Although few outside of the legislature realized it at the time (or have since), if Governor Spitzer's 2007 bill to extend DNA collection to everyone convicted of any crime had passed, New York's DNA database would have become flooded with new misdemeanor cases, over half from New York City, mostly young Black and Latino men.

### **3. NEW YORK CITY'S MARIJUANA ARREST CRUSADE AND ITS RACIAL BIAS**

Since 1997 and continuing to this day, New York City has been engaged in a massive, undeclared, marijuana possession arrest crusade. From 1997 through 2006, New York arrested and jailed overnight over 350,000 people simply for possessing small amounts of marijuana. This was a ten-fold increase in marijuana arrests over previous decades. Marijuana possession misdemeanors have constituted over ten percent of all arrests in New York City. In 2007, New York City arrested another 39,700

It is important to understand that *most of the people arrested were not smoking marijuana*. Generally they had a few grams concealed in their pockets or belongings. Police found the marijuana by stopping and searching people, often by tricking or intimidating them into taking it out. When the marijuana was found or brought out, the police arrested the people and charged them with possessing marijuana "open to public view." (The information about marijuana arrests is from Levine and Small, 2008; the full reference is in end note # 20.)

Spitzer's proposed DNA database legislation would cover many of these arrests; Bloomberg's proposed legislation would cover all of them. If Bloomberg's proposal had been put into effect in 1997 only for marijuana possession, New York State's DNA database would now be more than double its current size.

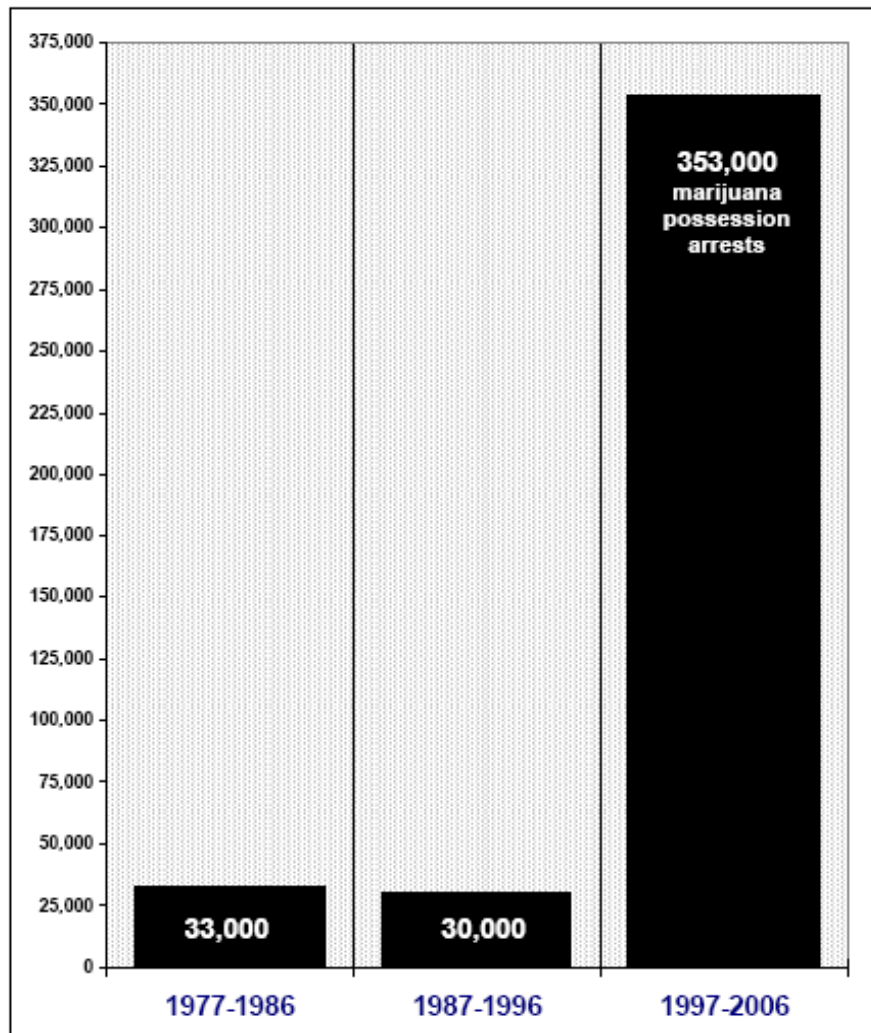
Graph 2 shows the total misdemeanor arrests for marijuana possession from 1977 to 2006. Most of the people arrested are young, between 16 and 26 years of age, and 90% are male. In all cases marijuana possession was the highest charge or the only one.

Graph 3 shows the marijuana possession arrests from 1997 to 2006 by race. Of the 353,000 marijuana possession arrests, 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.

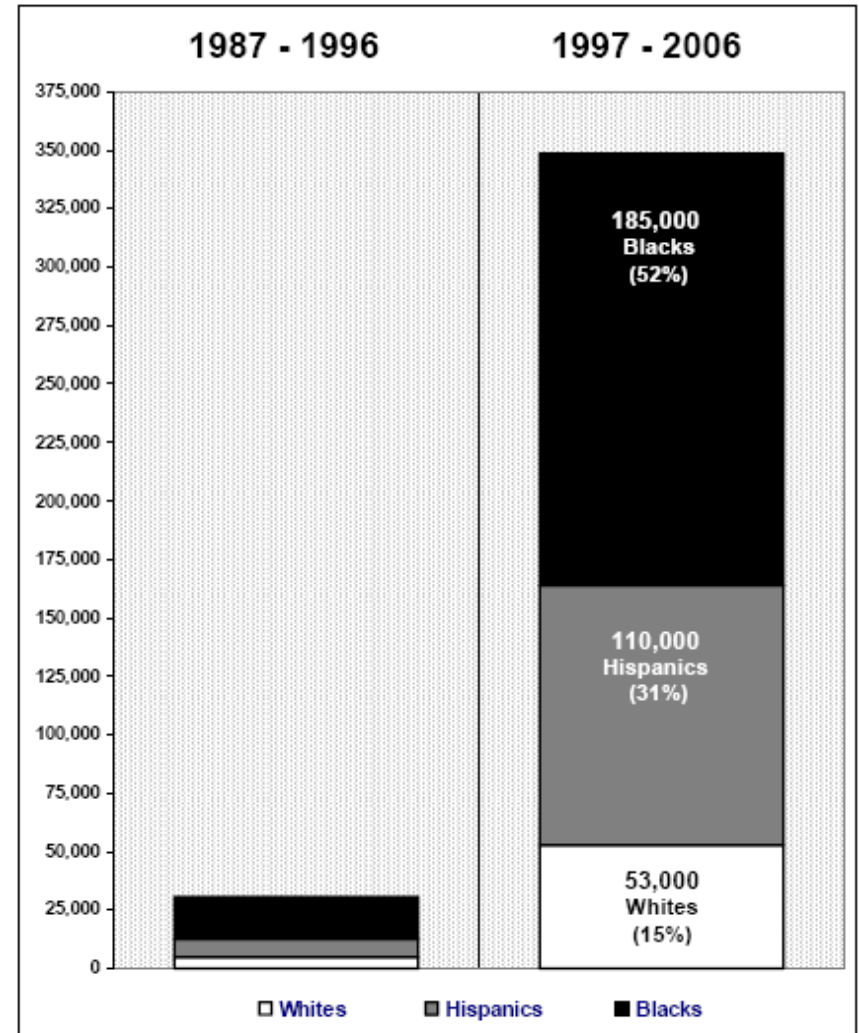
Graph 4 shows the marijuana arrests for each of the last 21 years with the portion of total marijuana arrests in each year that were of Whites, Hispanics and Blacks. Since the beginning of the marijuana arrest crusade in 1997, Blacks have been about 26% of New York's population, but 52% of the arrests. 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.

Graph 5 shows the marijuana possession arrest rates of Whites, Blacks, and Hispanics calculated by the number of each group in New York City as a whole. *Since 1997, Hispanics have been arrested at nearly three times the rate of Whites. Blacks have been arrested at five times the rate of Whites.*

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

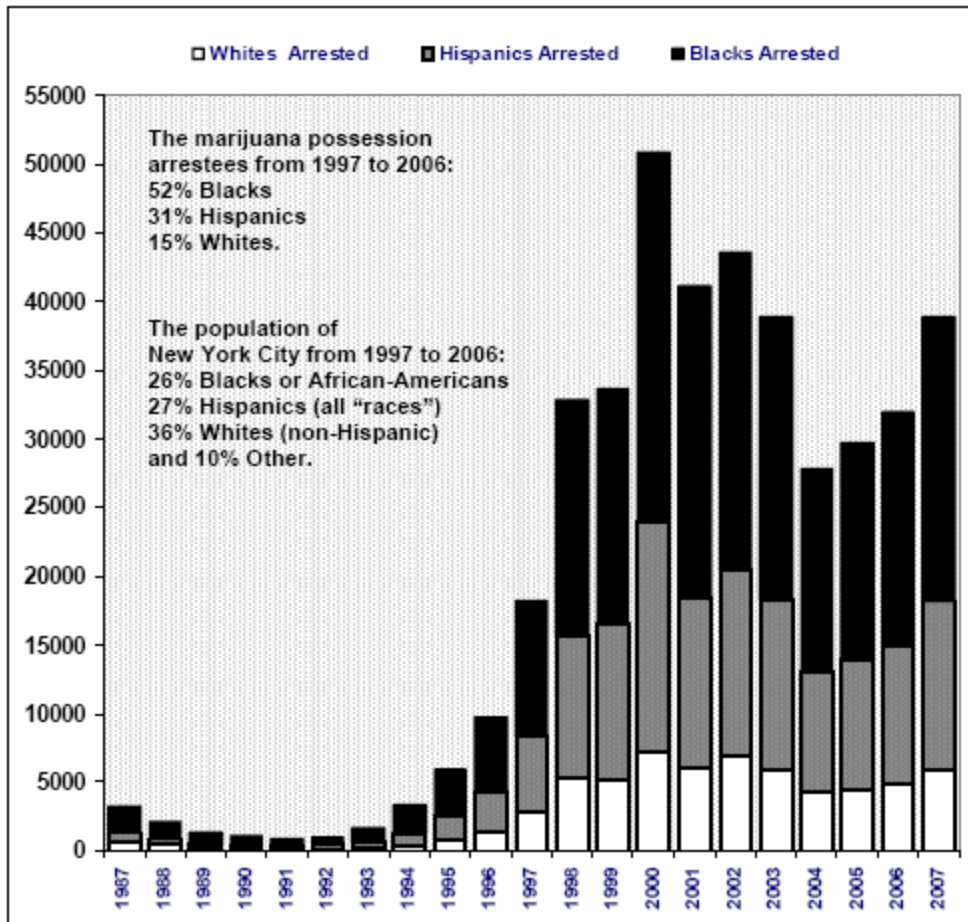


**3. Whites, Hispanics and Blacks Arrested for Marijuana Possession in New York City, in Two Decades**

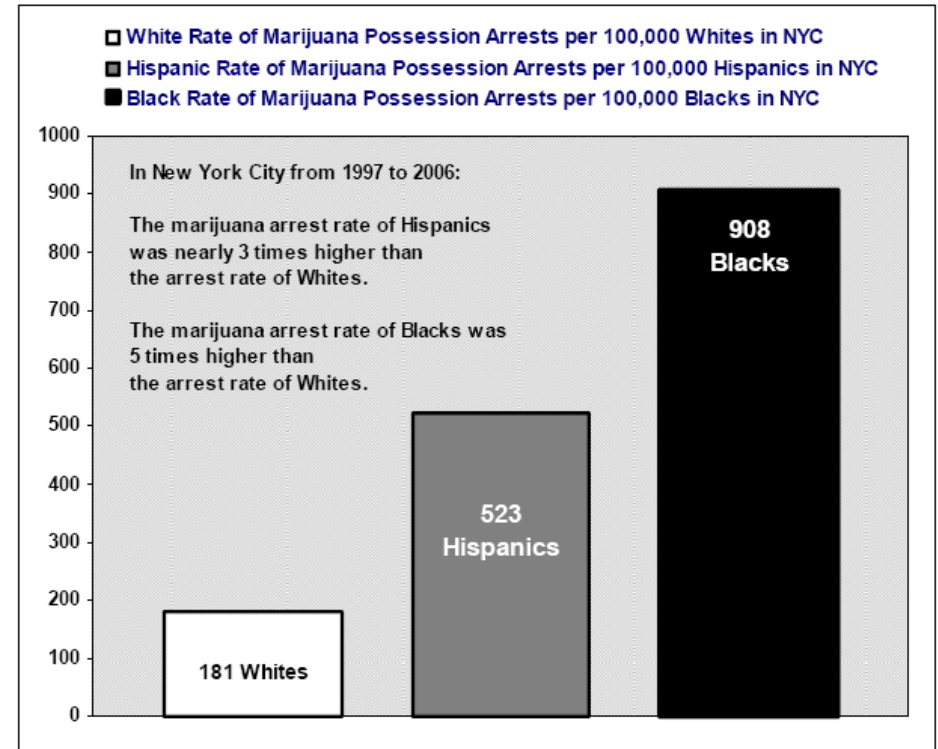


See Endnote 19 for source of these graphs <sup>19</sup>

**4. Arrests of Whites, Hispanics and Blacks for Marijuana Possession in NY City, 1987–2007**



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

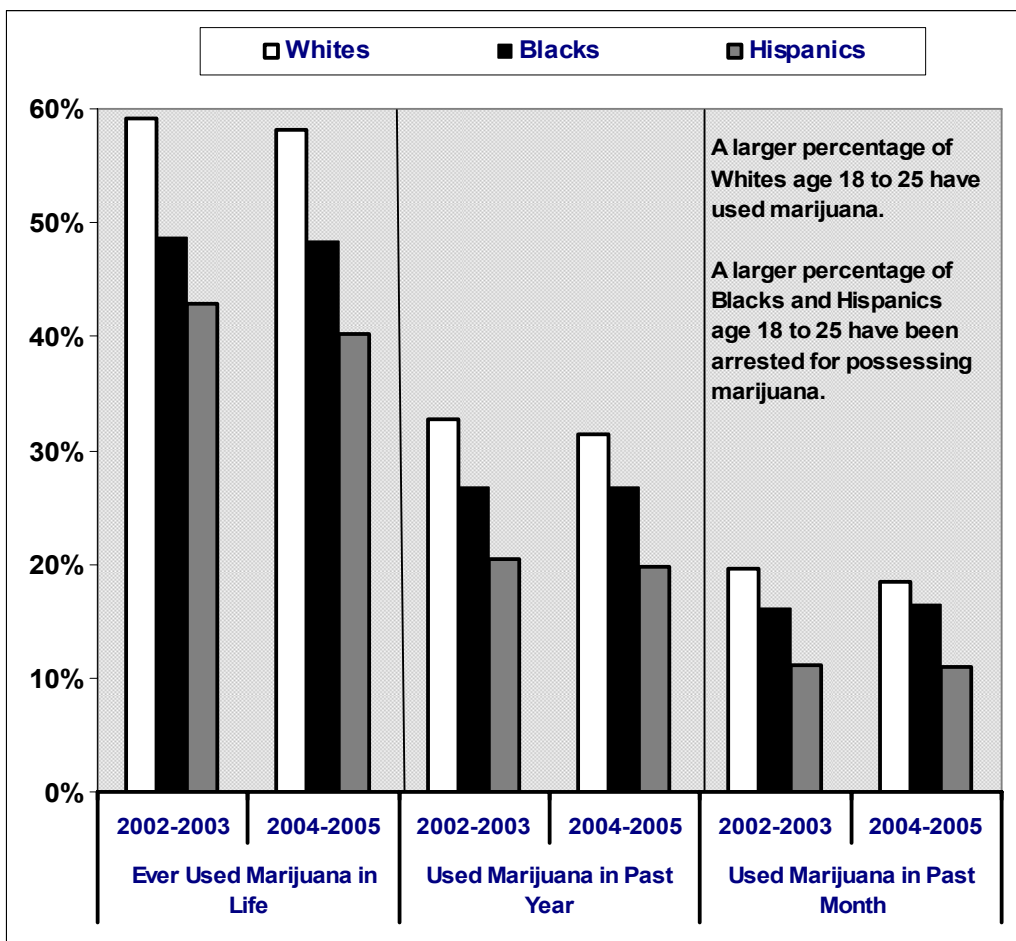


See Endnote 19 for sources



What about use? Do Blacks and Latinos use marijuana more than Whites, and is that why so many more of them are arrested for possessing it? Graph 6 shows marijuana use of Whites, Blacks and Hispanics aged 18 to 25; most 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 and 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 surveys from earlier years show the same patterns: *a greater percentage of Whites have used marijuana than have Blacks and Hispanics.*

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

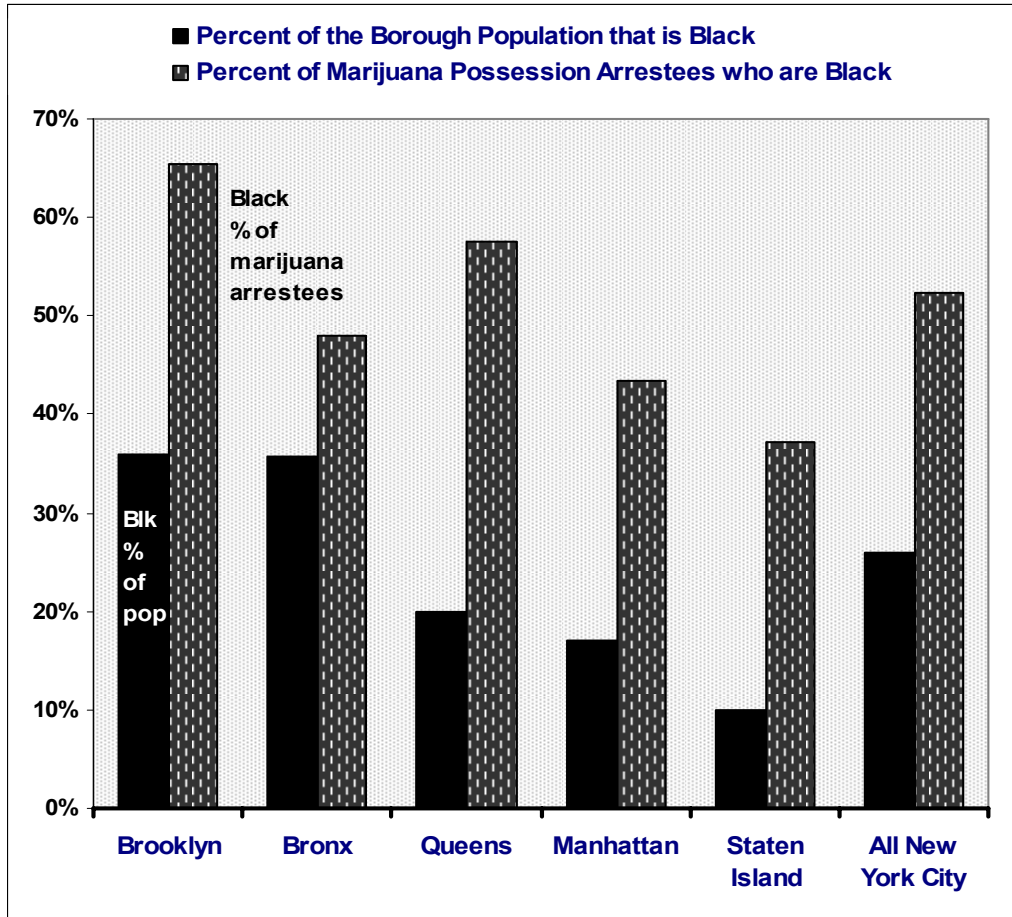


See Endnote 19 for sources

Since Whites use marijuana at higher rates 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**



See Endnote 19 for sources

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 discussed the city's record-breaking and history-making marijuana arrests is because this racially skewed arrest pattern cannot be justified. Nonetheless, if the bill which passed the New York State Senate in 2007 is eventually made into law, many of the people arrested for marijuana possession would be convicted and have their DNA taken. If Mayor Bloomberg's DNA collection proposal is eventually implemented, everyone one simply arrested for marijuana would have their DNA permanently stored in the criminal justice databases.

#### **4. THE USEFULNESS OF MISDEMEANOR ARRESTS TO THE POLICE**

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; it offers no press releases and puts nothing on the web explaining them. It would appear that New York officials, from the Police Commissioner and Mayor on down, have not wanted to draw attention to the city's extraordinary number of marijuana arrests. Until April 2008, there was no significant media coverage of the arrests and few New Yorkers knew that for over a decade their city has been on a major marijuana arrest crusade.

The dramatic increase in marijuana arrests began in 1996 and 1997 with Mayor Rudolph Giuliani and his second Police Commissioner, Howard Safir (who as early as 1998 advocated "taking DNA samples from everyone arrested in New York City – from subway turnstile jumpers on up").<sup>20</sup> 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.

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

Research recently reported in *Marijuana Arrest Crusade* (Levine and Small, 2008) 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. Here we can only briefly summarize reasons for support of the arrests within the NYPD. But as will be clear, other than being an opportunity for an arrest, this policing has little to do with marijuana, and the reasons for making these arrests are also reasons for many different types of misdemeanor arrests, especially misdemeanor possession arrests for all other drugs.

Not only in New York City but in police departments across the United States, and especially in large cities, *misdemeanor arrests constitute the large majority of all arrests including all drug arrests*. If we are to understand the implication of expanding DNA collection to people convicted of misdemeanors – and even to people just arrested for misdemeanors – then it is important to understand why many police departments find it advantageous to make many misdemeanor arrests,

such as marijuana possession, and why the arrests are so heavily skewed toward young Blacks and Latinos when they use marijuana less than young Whites.

- *Marijuana arrests are relatively safe, allow police officers to show they are being productive, and gain them much desired overtime pay.*

Police work can be dangerous and making marijuana and other misdemeanor 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.

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. 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.

Because NYPD pay scales are at historically low levels, many officers naturally desire overtime work. 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 – booking, fingerprinting, photographing and sometimes transferring the arrestee – at time and a half pay. In our interviews with current and former New York police officers we learned 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.”

One way patrol officers can generate such 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.<sup>21</sup> 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 or other drug. Marijuana and other drug arrests are in part a byproduct of the NYPD’s many stop and frisks which are routine activities of police seeking overtime – in pursuit of “collars for dollars.”

- *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, they are keeping busy.<sup>22</sup> As a police lieutenant told us: “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 “productive.”<sup>23</sup> In addition, supervisors also accumulate overtime pay when the officers working directly under them do.

- *Police who make marijuana arrests and other misdemeanor 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 more pressing 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. 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 and other misdemeanor 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 fingerprinted, photographed, and now increasingly DNA tested. Marijuana and other misdemeanor arrests are the easiest way to acquire 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.

- *Black and Latino youth are disproportionately arrested for possessing marijuana not primarily because of individual prejudice among some officers, but because police are heavily assigned to only certain neighborhoods, because it is easy and convenient to stop, search and arrest young Blacks and Latinos, and because there is no pressure on the police department 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 at much higher rates 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.<sup>24</sup>

As the graphs and discussion in this paper show, 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.<sup>25</sup>

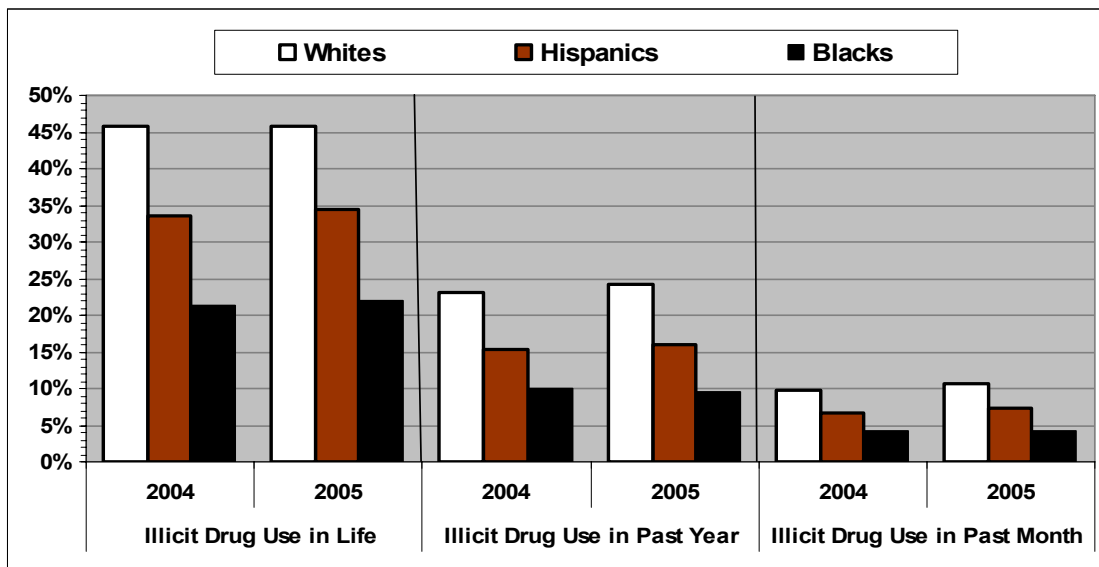
For the NYPD, Black and Latino youth are easy and obvious sources of arrests. The police stop Blacks and Latinos so routinely they are often familiar with what is involved in being stopped and searched. Working-class and poor people usually lack the political and social connections that might make these arrests troublesome or embarrassing for the arresting officers and their commanders. A White, middle-class arrestee may be a relative or friend of a prominent politician, lawyer, or other professional who can cause difficulties for arresting 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 NYPD on Black and Latino young men. The police catch so many more of one kind of “fish” because they are mostly fishing in certain waters, looking mainly for those specific kinds of fish. And the effects are clearly racially biased, discriminatory, unfair and unjust. Adding these young people to the DNA databases will compound the bias creating permanent DNA criminal suspects out of people whom the NYPD found it convenient and easy to arrest – but not out of others whom the police did not so commonly stop, search and arrest.

## 5. RACE, DRUG USE AND DRUG ARRESTS NATIONALLY

One of the least understood aspects of drug use in the U.S. is that Whites have higher rates of drug use than Blacks or Hispanics. This is true not just for marijuana but for all other drugs including crack cocaine. U.S. government national surveys of drug use have repeatedly found over many years that White Americans use drugs at a higher rate than Blacks or Hispanics. Graph 8, with data from the U.S. National Survey on Drug Use & Health, shows use of any illicit drug *except marijuana* in 2004 and 2005. This is for people aged 18 to 25, the group with the highest rates of use and the highest rates of drug arrests. In all three categories – lifetime, last year and last month – a higher percentage of Whites than Hispanics or Blacks use drugs.

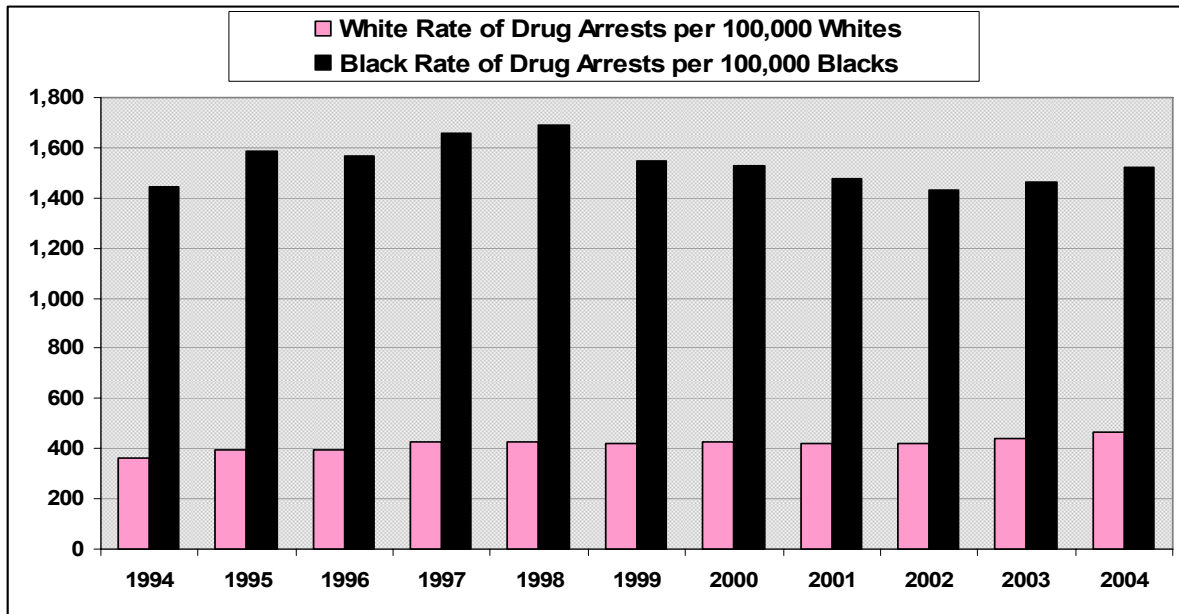
### *8. Percentage of Whites, Hispanics and Blacks 18 to 25 Who Used Any Drug Except Marijuana*



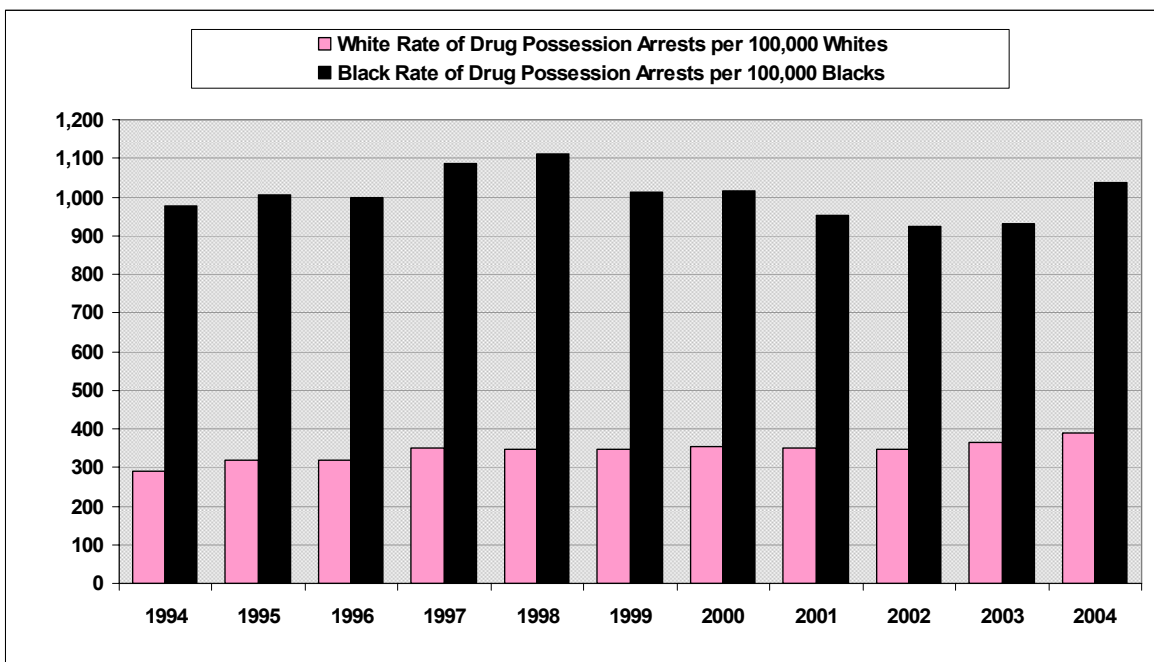
See Endnote 26 for sources <sup>26</sup>

However, for drug arrests nationally – both felony arrests and the far more plentiful misdemeanors possession arrests – Blacks and Hispanics are arrested at much higher rates than Whites. Unfortunately, unlike New York, the national data from the FBI does not distinguish Hispanics in its crime reports. Therefore, Graph 9 shows only the White and Black arrest rates in the U.S. for all drug offenses. Graph 10 shows the White and Black arrest rates in the U.S. for drug possession.<sup>27</sup>

**9. White and Black Arrest Rates For All U.S. Drug Offenses, 1994 – 2004**



**10. White and Black Arrest Rates for Drug Possession, 1994 – 2004**



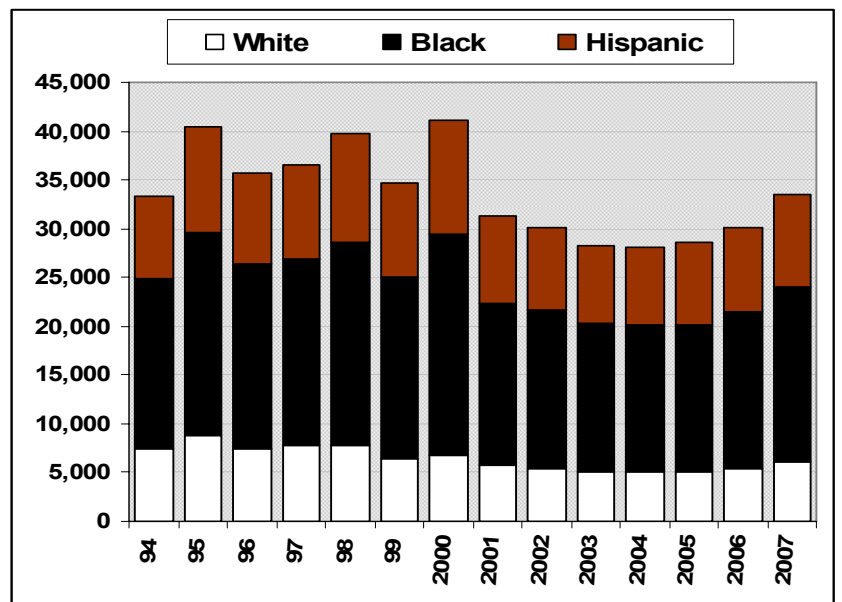
See Endnote 27 for sources

If Whites use and possess all drugs at higher rates than Blacks or Latinos, why are these drug arrests throughout the U.S. so racially skewed? They are for many of the same reasons as in New York City. Misdemeanor arrests and especially drug possession misdemeanors are relatively safe and easy compared to other police work. Arrest statistics are the metric by which police departments everywhere increasingly judge officer productivity and often supervisor productivity; when arrest numbers are high or up, many within the system benefit. Almost everywhere, especially in large cities, patrol officers and narcotics police are heavily concentrated in certain neighborhoods and therefore police make most stops, frisks, searches and arrests in those neighborhoods. The individuals searched and arrested in those neighborhoods tend to not to know important people who can make trouble for the arresting officers or their supervisors. Misdemeanor arrests allow police departments to collect information on many people not currently in their criminal justice databases, and to update their data on others. Police departments tend not to call public attention to their misdemeanor arrests and prefer that the media do not either – and police departments have considerable influence over what is reported in the local media about their routine activities. And partly because almost nobody knows about the great many misdemeanor arrests, there is no political pressure almost anywhere to reduce them.

In New York City this means that, in addition to making an average of 35,000 marijuana possession arrests a year for over a decade, the police department made an average of another 33,000 misdemeanor arrests a year for possession of drugs other than marijuana. It charged the people so arrested with violating New York State Penal Law 220.03. This offense covers possession of even miniscule amounts, including trace elements. Every day in New York City's arraignment courts one can see cases of people who were arrested for possessing a crack pipe but no crack. They are charged with this misdemeanor because scrapings can be analyzed and found to have traces of burnt cocaine.<sup>28</sup>

Graph 8 shows misdemeanor drug possession arrests of Whites, Blacks and Hispanics in New York City for all drugs other than marijuana. Not surprisingly, the arrests are heavily racially skewed. Blacks are 53% of the arrests, Hispanics 28% and Whites 18%.<sup>29</sup>

***11. Misdemeanor Drug Possession Arrests of Whites, Blacks, and Hispanics (for all drugs except marijuana) in New York City, 1994 - 2007***



*See Endnote 29 for sources*



The following pages present additional data about drug arrests nationally.

Graph 12 shows all U.S. drug arrests, misdemeanors and felonies, from 1970 to 2006. From 1980 to 2006, drug arrests more than tripled, a major effect of the so-called “War on Drugs.”

Graph 13 shows the number of all U.S. drugs arrest that were for sales (and manufacture) and those for possession. Drug sales arrests have remained at about the same level for 15 years, averaging about 333,000 arrests a year. Drug possession arrests have more than doubled, from 675,000 in 1991 to over 1,500,000 in 2006, which accounts for almost all of the increase. U.S. drug arrests are now approaching two million a year. In 2006, about 81% percent of the drug arrests were for possession, and most of those were misdemeanors. Police departments have made these arrests for many reasons, especially the ones outlined above in this paper.<sup>30</sup>

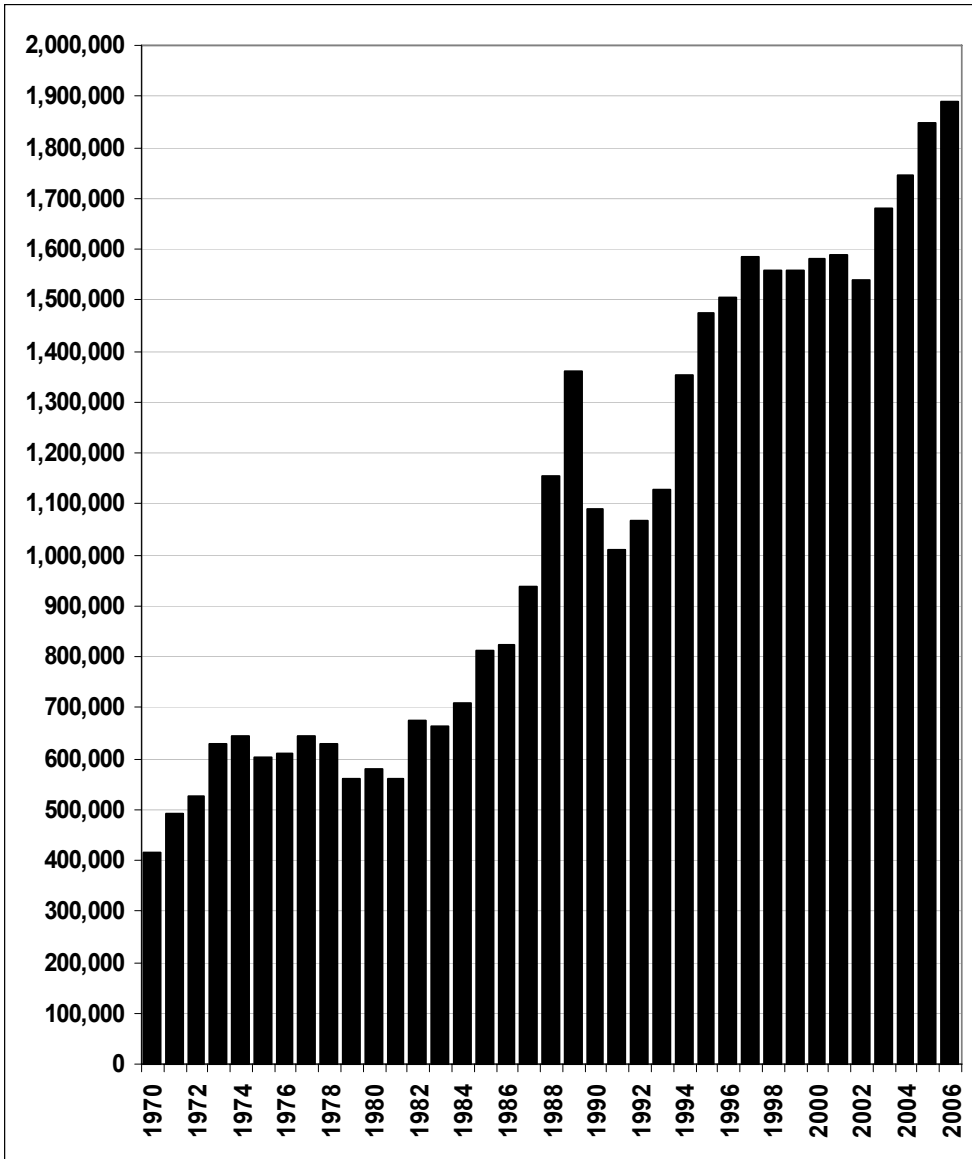
Graph 14 shows the Black and White rate of marijuana possession arrests in selected U.S. counties. Some cities and counties have relatively high rates of arrests, such as Atlanta, New York, Baltimore, San Antonio, and Denver. Some have much lower rates of arrests. But nearly everywhere Blacks are arrested at higher rates than Whites.<sup>31</sup>

Graph 15 shows the percentage of Blacks in the population of various U.S. cities and counties and the percentage of marijuana possession arrestees who are Black. Everywhere a higher percentage of the marijuana arrestees are Black than the percentage of Blacks in the city or county population.<sup>32</sup>

In May 2008, two long-standing organizations concerned with social and racial justice issued extraordinary reports about the impact of drug arrests and incarcerations on Black Americans. Human Rights Watch released *Targeting Blacks: Drug Law Enforcement and Race in the United States*, and The Sentencing Project released *Disparity By Geography: The War on Drugs in America's Cities*, by Ryan King. Both reports contain much more detailed information about the racial disparities in drug arrests and incarceration.

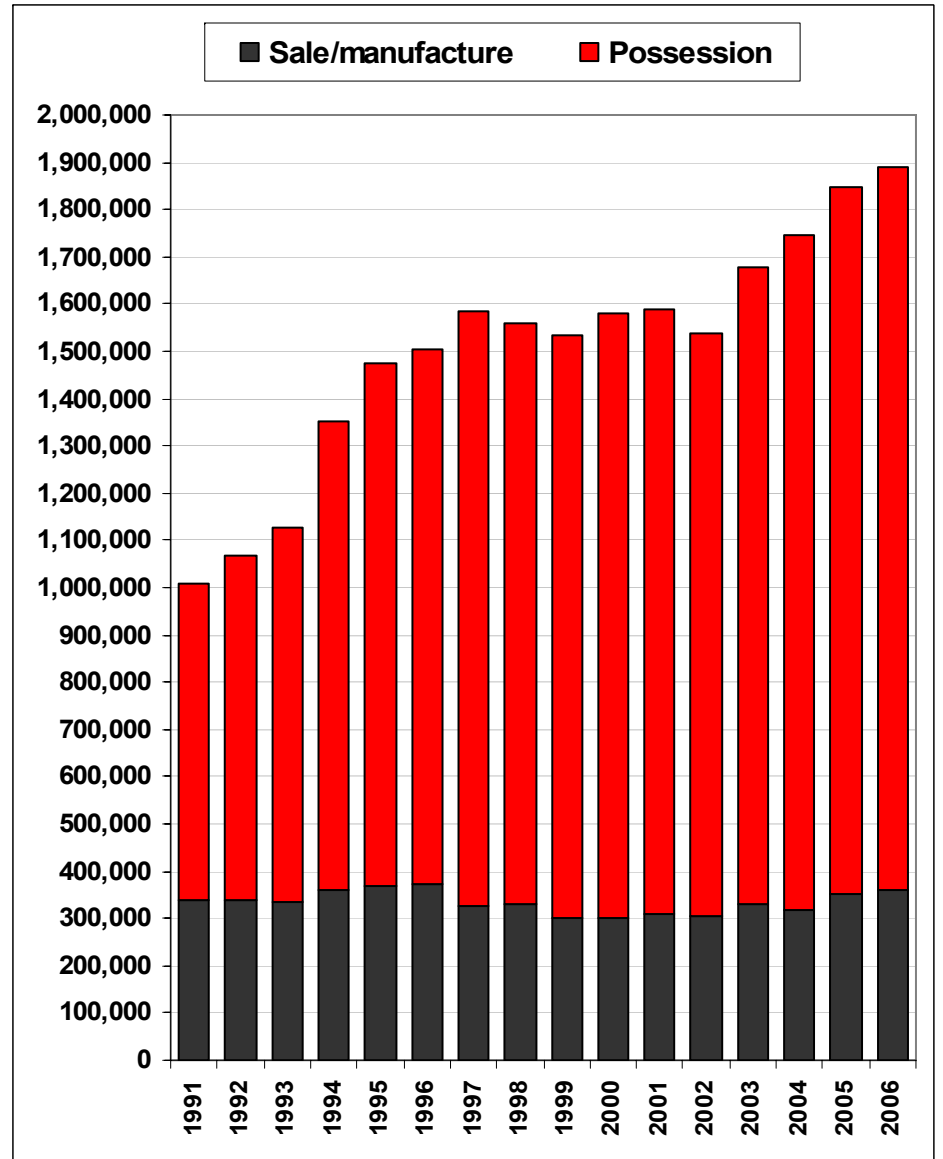
Table 1 is from *Disparity by Geography* and shows the White and Black rates of all drug arrests in 43 U.S. cities. It shows the rates of drug arrests for 1980 and again for 2003 and calculates the percentage change. As this paper has suggested, although the vast majority of arrests everywhere are misdemeanors, arrest rates, especially by race, vary significantly according to the policies of local police departments. Some of what is recorded in FBI data as “arrests” are also violations, not technically fingerprintable crimes. However, for most cities the arrests are chiefly misdemeanors with a smaller percentage felonies. The table shows a doubling, tripling or even greater increase in the drug arrest rate of Blacks in most U.S. cities.<sup>33</sup>

12. All U.S. Drug Arrests, 1970 - 2006



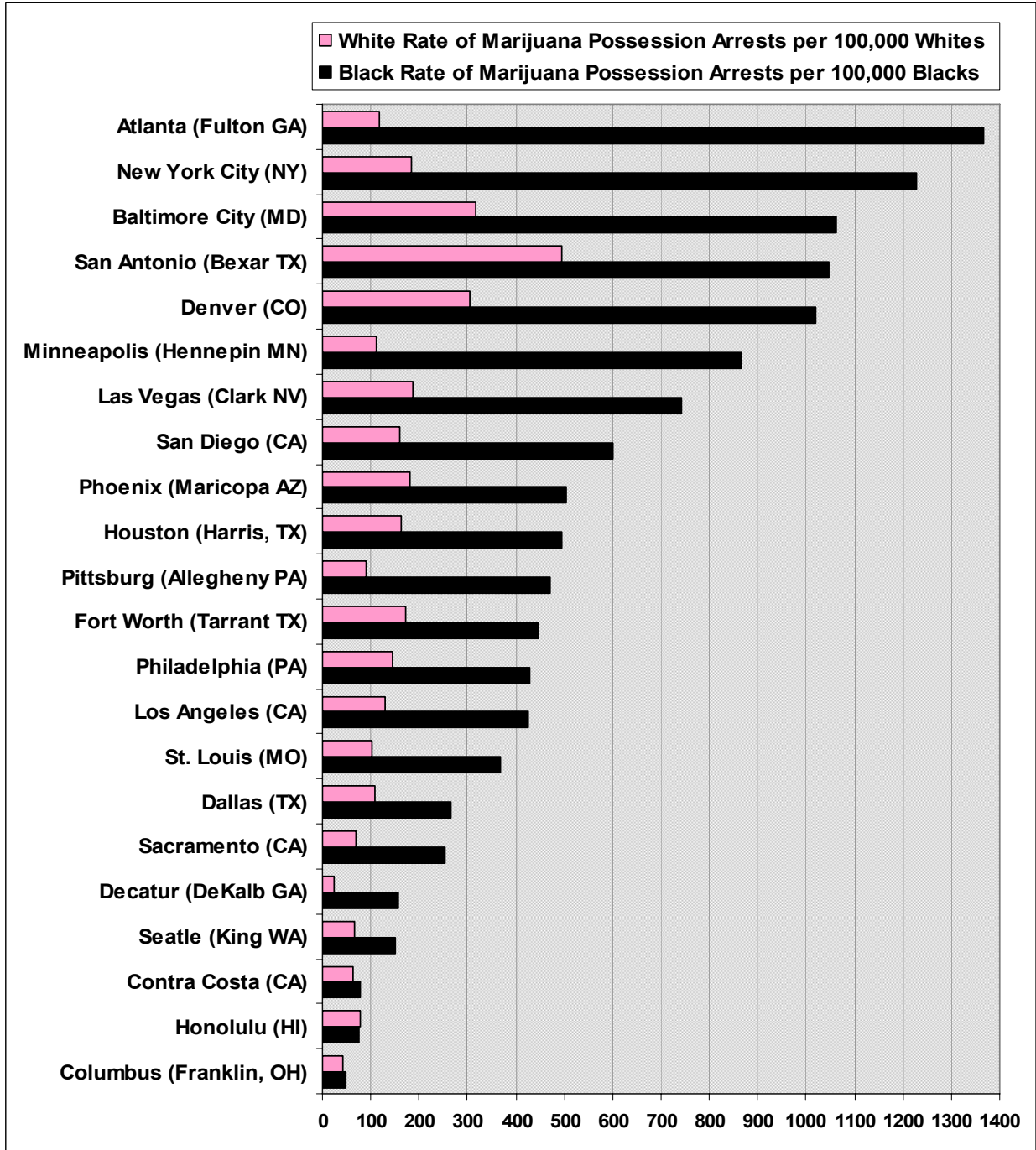
See Endnote 30 for sources

13. U.S. Sale and Possession Drug Arrests, 1991 - 2006



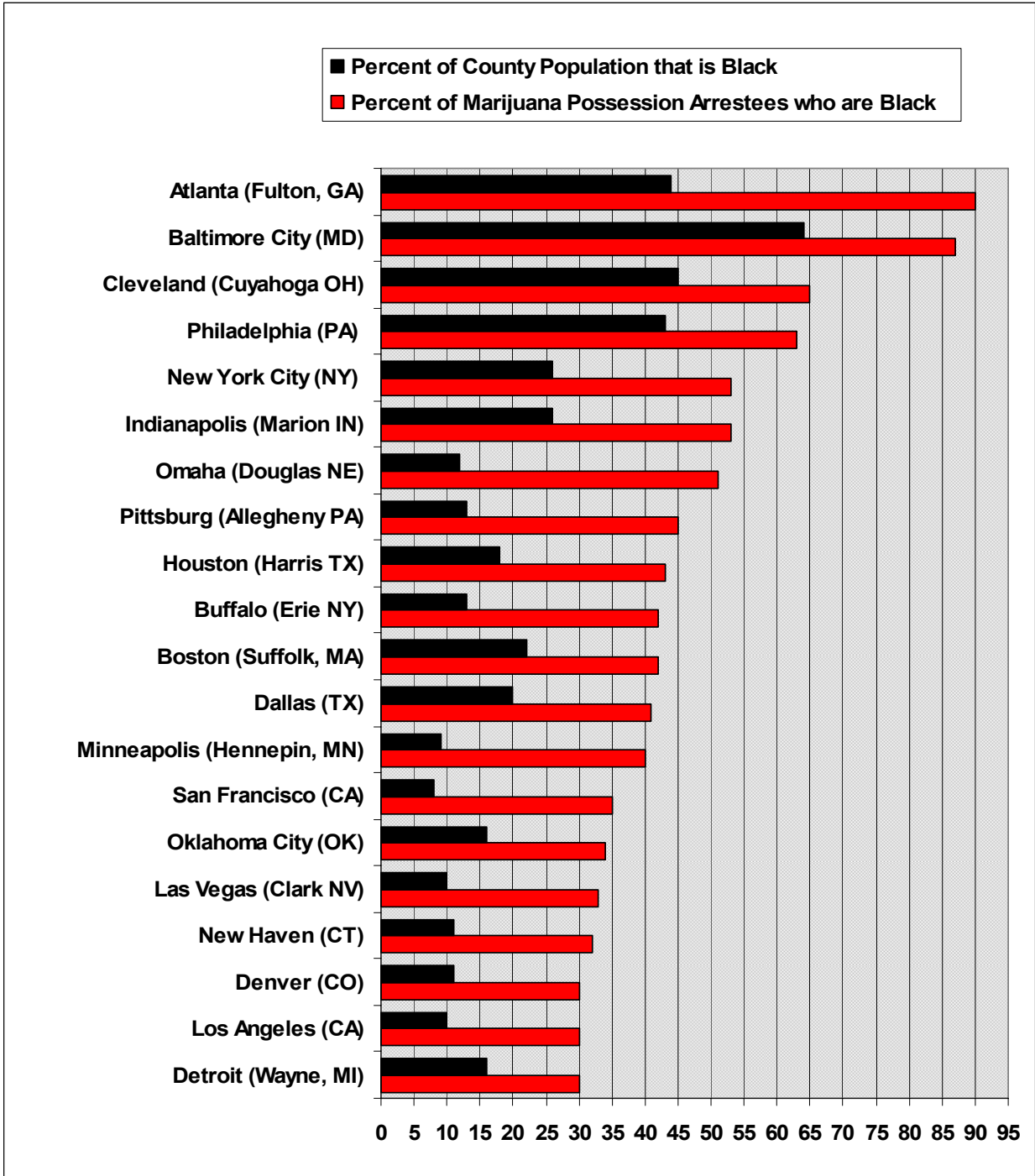
See Endnote 30 for sources

**14. White and Black Rates Of Marijuana Possession Arrests  
In Major U.S. Counties in 2004**



*See Endnote 32 for sources*

*15. Percentage of Marijuana Possession Arrestees Who Are Black  
In Major U.S. Counties in 2004*



See Endnote 32 for sources

*Table 1. White and Black Drug Arrest Rates in 1980 and 2003*

<b>CITY</b>	<b>WHITE 1980</b>	<b>WHITE 2003</b>	<b>CHANGE 1980-2003</b>		<b>BLACK 1980</b>	<b>BLACK 2003</b>	<b>CHANGE 1980-2003</b>
TUCSON	282	1444	<b>411%</b>		341	4381	<b>1184%</b>
BUFFALO	35	468	<b>1204%</b>		166	1717	<b>930%</b>
TOLEDO	96	307	<b>218%</b>		175	1730	<b>884%</b>
INDIANAPOLIS	61	291	<b>375%</b>		166	1637	<b>884%</b>
KANSAS CITY, MO	139	699	<b>400%</b>		326	3202	<b>881%</b>
SACRAMENTO	247	885	<b>258%</b>		314	3006	<b>856%</b>
BALTIMORE	573	1633	<b>185%</b>		832	7152	<b>759%</b>
NEWARK	448	2501	<b>458%</b>		471	4002	<b>749%</b>
VIRGINIA BEACH	452	343	<b>-24%</b>		170	1413	<b>729%</b>
OMAHA	138	511	<b>269%</b>		411	3280	<b>698%</b>
MEMPHIS	220	182	<b>-17%</b>		131	840	<b>541%</b>
AUSTIN	386	448	<b>16%</b>		352	1742	<b>394%</b>
CHICAGO	433	910	<b>110%</b>		790	3856	<b>388%</b>
BOSTON	136	465	<b>242%</b>		328	1594	<b>385%</b>
PHILADELPHIA	226	870	<b>284%</b>		430	2080	<b>383%</b>
SAN ANTONIO	261	807	<b>208%</b>		348	1668	<b>379%</b>
PITTSBURGH	267	579	<b>117%</b>		428	1981	<b>362%</b>
LOUISVILLE	763	950	<b>24%</b>		721	3227	<b>347%</b>
HOUSTON	323	450	<b>39%</b>		350	1516	<b>333%</b>
LONG BEACH	524	1320	<b>152%</b>		1188	4665	<b>293%</b>
COLUMBUS	145	85	<b>-41%</b>		188	740	<b>293%</b>
DENVER	395	828	<b>109%</b>		592	2302	<b>289%</b>
NEW YORK	279	1236	<b>343%</b>		718	2753	<b>283%</b>
ST. LOUIS	335	417	<b>25%</b>		720	2631	<b>265%</b>
ALBUQUERQUE	250	401	<b>60%</b>		398	1435	<b>260%</b>
TULSA	390	518	<b>33%</b>		384	1289	<b>235%</b>
CHARLOTTE	256	209	<b>-19%</b>		346	1144	<b>230%</b>
MILWAUKEE	859	320	<b>-63%</b>		727	2227	<b>206%</b>
PORTLAND	212	359	<b>70%</b>		626	1730	<b>176%</b>
OAKLAND	295	578	<b>96%</b>		840	2167	<b>158%</b>
ATLANTA	1162	629	<b>-46%</b>		1040	2513	<b>142%</b>
SAN FRANCISCO	618	859	<b>39%</b>		2061	4891	<b>137%</b>
OKLAHOMA CITY	581	553	<b>-5%</b>		837	1779	<b>113%</b>
FORT WORTH	283	415	<b>46%</b>		449	927	<b>106%</b>
SAN JOSE	499	997	<b>100%</b>		1081	1962	<b>82%</b>
DETROIT	222	206	<b>-7%</b>		359	584	<b>62%</b>
PHOENIX	329	454	<b>38%</b>		769	1196	<b>55%</b>
EL PASO	274	611	<b>123%</b>		813	1075	<b>32%</b>
HONOLULU	180	123	<b>-31%</b>		203	261	<b>28%</b>
SAN DIEGO	1111	1086	<b>-2%</b>		3196	3524	<b>10%</b>
LOS ANGELES	569	663	<b>16%</b>		2019	1913	<b>-5%</b>
DALLAS	742	313	<b>-58%</b>		946	750	<b>-21%</b>
LAS VEGAS	635	336	<b>-47%</b>		1652	1015	<b>-39%</b>

*See Endnote 33 for sources*

## 6. DNA FROM MISDEMEANOR AND FELONY ARRESTS: CONCLUDING COMMENTS

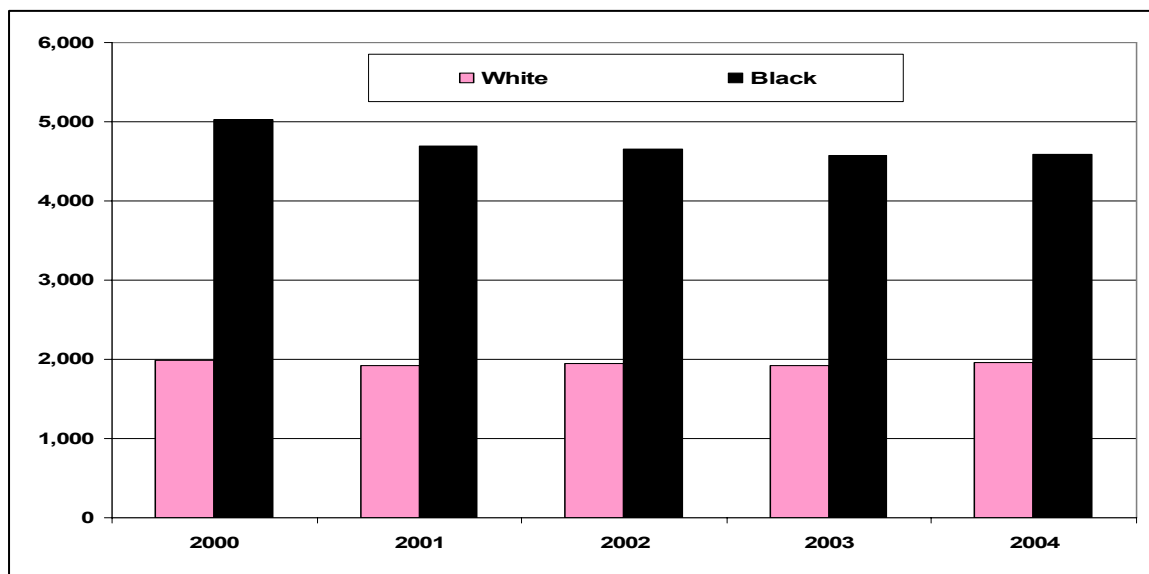
When CODIS, the U.S. criminal justice DNA database, was created in 1994 it was based on serious violent crimes such as murder and rape. These crimes leave specific victims; police investigations usually follow after someone reports the crime. As the DNA databases have expanded to include more and more crimes of decreasing severity, they include more of more what have conventionally been called victimless crimes, especially misdemeanor drug possession.

Most arrests of all kinds throughout the U.S. are misdemeanors. In New York State in 2007, misdemeanors were 70% of all arrests. The FBI's Uniform Crime Reports do not distinguish between misdemeanors and felonies, so misdemeanor numbers and percentages have to be inferred from other knowledge. Most drug possession arrests, for example, are misdemeanors – at least 80%.

The racially-biased arrest patterns for drug misdemeanors are also found in many other misdemeanors. Graph 16 shows the rate of Black and White arrests nationally for a collection of minor offenses that includes mostly misdemeanors. In the case of these common non-drug misdemeanors as well, Blacks are arrested at two to three times the rate of whites.<sup>34</sup>

### *16. U.S. White and Black Arrest Rates For Minor Offenses, 2000 – 2004*

*(Vandalism, Gambling, Liquor laws, Drunkenness, Disorderly conduct, Vagrancy, Suspicion, Curfew and Loitering violations, Runaways, and All other non-traffic offenses)*



*See Endnote 34 for sources*

Misdemeanor arrests of all sorts usually share a common characteristic with most drug possession arrests and with the much larger number of non-criminal offenses such as parking tickets: *there is almost never a formal “victim” or a complainant other than the police.* To a large extent misdemeanor arrests are actually generated by the police. As with parking tickets, officers go looking for misdemeanors, often to meet arrest quotas. New York City’s model of policing begun in

the mid-1990s and continuing to this day has emphasized pro-active policing that encourages officers to make misdemeanor arrests. As New York City's marijuana arrest crusade shows, this can produce huge numbers of arrests heavily skewed toward Black and Latino teenagers and young men.

This policing strategy has major implications for the DNA databases which are increasingly including misdemeanors, and for understanding proposals to collect and store DNA from all people arrested for anything, such as the one in 2008 from New York's Mayor Bloomberg. This paper has sought to examine what it will mean to continually expand CODIS and other DNA databases to include all drug offenses, especially minor marijuana and drug possession offenses. It has shown that Blacks and Latinos use marijuana and all other drugs at lower rates than Whites, but that they are arrested at much higher rates than Whites.

Expanding the databases to more drug offenses, and especially to the large number of drug possession misdemeanors, will add ever greater numbers of Blacks and Latinos to the databases, far out of proportion to their percentage of the population or their percentage of drug users. The effect of this will be to produce DNA databases that are increasingly and unfairly racially biased – Jim's Crow's database.

Some have argued that innocent people should not care that their DNA is in the criminal justice databases. If they are not guilty, it is said, they will have no problems. We recommend that legislators who claim the DNA databases are free from error and who advocate including DNA from misdemeanors arrests, neighborhood sweeps, or familial searches should be encouraged to put their own DNA and that of their immediate family members into the databases. Most are unlikely to do so because being in the DNA databases does indeed put one at risk of being falsely accused and even convicted of serious crimes. It is also revealing that police departments and police unions fiercely oppose putting police officers' DNA in the databases.

The DNA databases are now being used, and will be used ever more in the future, to identify suspects and to convict people – and DNA database evidence is prone to technical errors and to errors of interpretation. Because of the growing DNA databases, the young Blacks and Latinos who are disproportionately and unjustly arrested for marijuana possession and other misdemeanors are also disproportionately at higher risk of being falsely suspected, accused and even convicted of more serious crimes – and so are their genetically similar relatives.

### ***Felony Drug Arrests: Targeting Blacks***

Much of this paper has discussed what will happen if, as seems increasingly likely, DNA collection for CODIS and other criminal justice databases expands to drug possession cases and other misdemeanors. However, in New York and many other states DNA is already taken from anyone convicted of a drug felony. Graphs 17 and 18 are from Human Rights Watch's new report, *Targeting Blacks*. Both graphs show the dramatically different rates of imprisonment on drug charges for Whites and Blacks in 34 states and for their populations as a whole. *Targeting Blacks* summarizes well what has already occurred:

[In 2003] African Americans constituted 53.5 percent of all persons who entered prison because of a drug conviction. Blacks were 10.1 times more likely than whites to enter prison for drug offenses. A black man was 11.8 times more likely than a white man

to enter prison for drug offenses. A black woman was 4.8 times more likely than a white woman to enter prison for drug offenses. Among all African Americans entering prison, almost two out of five (38.2 percent) were convicted of drug offenses, compared to one in four whites (25.4 percent)....

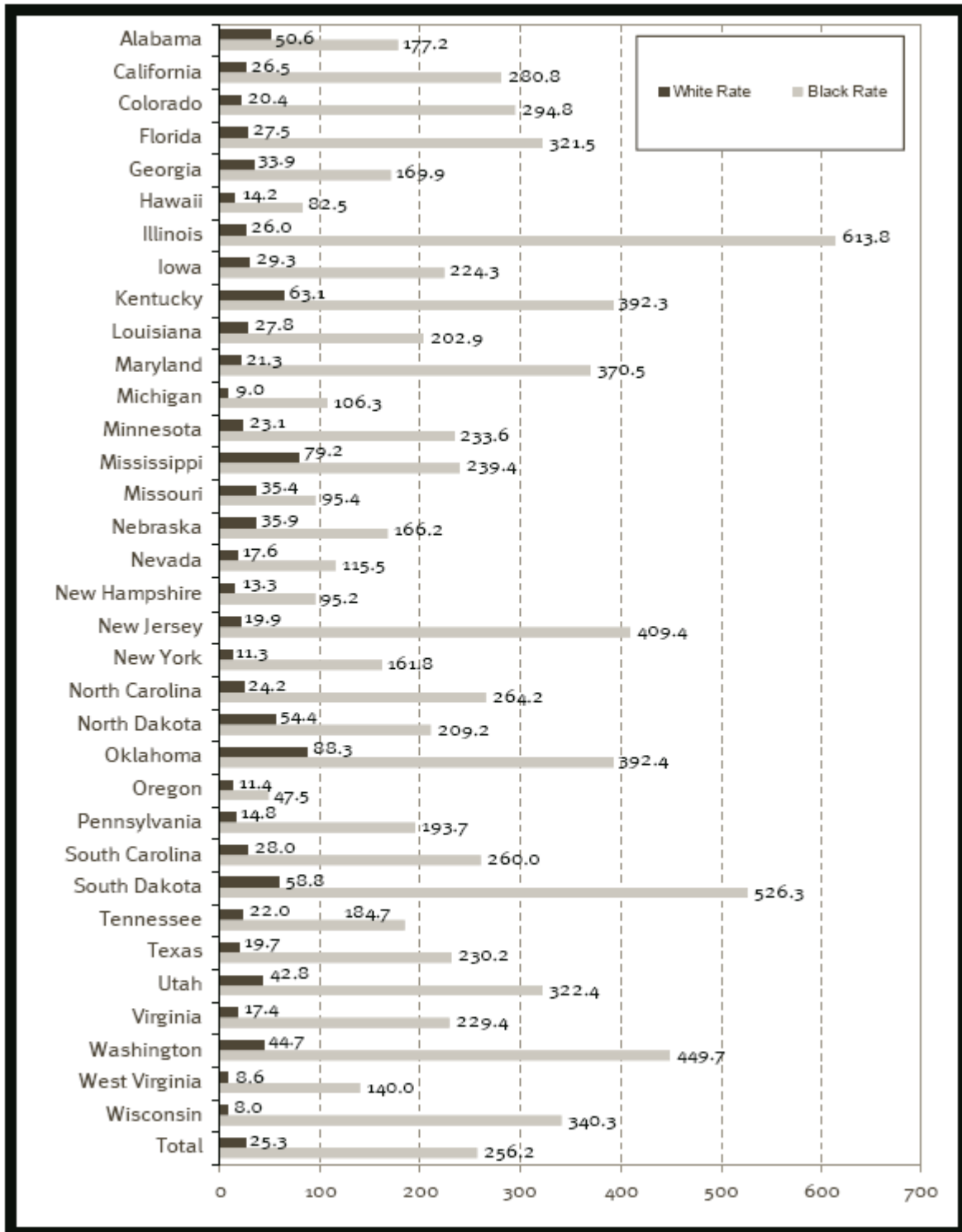
The 59,535 adult African Americans who entered prison with drug convictions in 2003 in the 34 reporting states form just part of the unknown numbers of African Americans who have been incarcerated over the past two-and-a-half decades at rates greatly disproportionate to whites. Since the mid-1980s, the nation's drug problem has been perceived to be primarily an urban black problem, even though ... *there may be six times as many white drug offenders as black*. The racially disproportionate results presented in this report are as predictable as they are unjust... (*emphasis added*)

The punitive anti-drug policies of the last 20 years bear heavy responsibility for the extremely high and disproportionate representation of black Americans in the US prison population. Drug offenses have played a greater role in black incarceration than white: 38.2 percent of all blacks entering prison in 2003 with new sentences had been convicted of drug offenses, compared to 25.4 percent of whites. Between 1990 and 2000, drug offenses accounted for 27 percent of the total increase in black inmates in state prison and only 15 percent of the increase in white inmates. Among blacks currently serving state prison sentences, 22.9 percent were convicted of drug offenses; among whites, 14.8 percent. In some individual states, the impact of drug policies on black incarceration has been far greater: for example, in Illinois, the number of black admissions for drug offenses grew six-fold between 1990 and 2000, while the number of whites admitted for drug offenses remained relatively stable.

Most of these people have had their DNA collected and stored in CODIS and other criminal justice databases. Right now, in the 21<sup>st</sup> century, this is already a major part of Jim Crow's database.



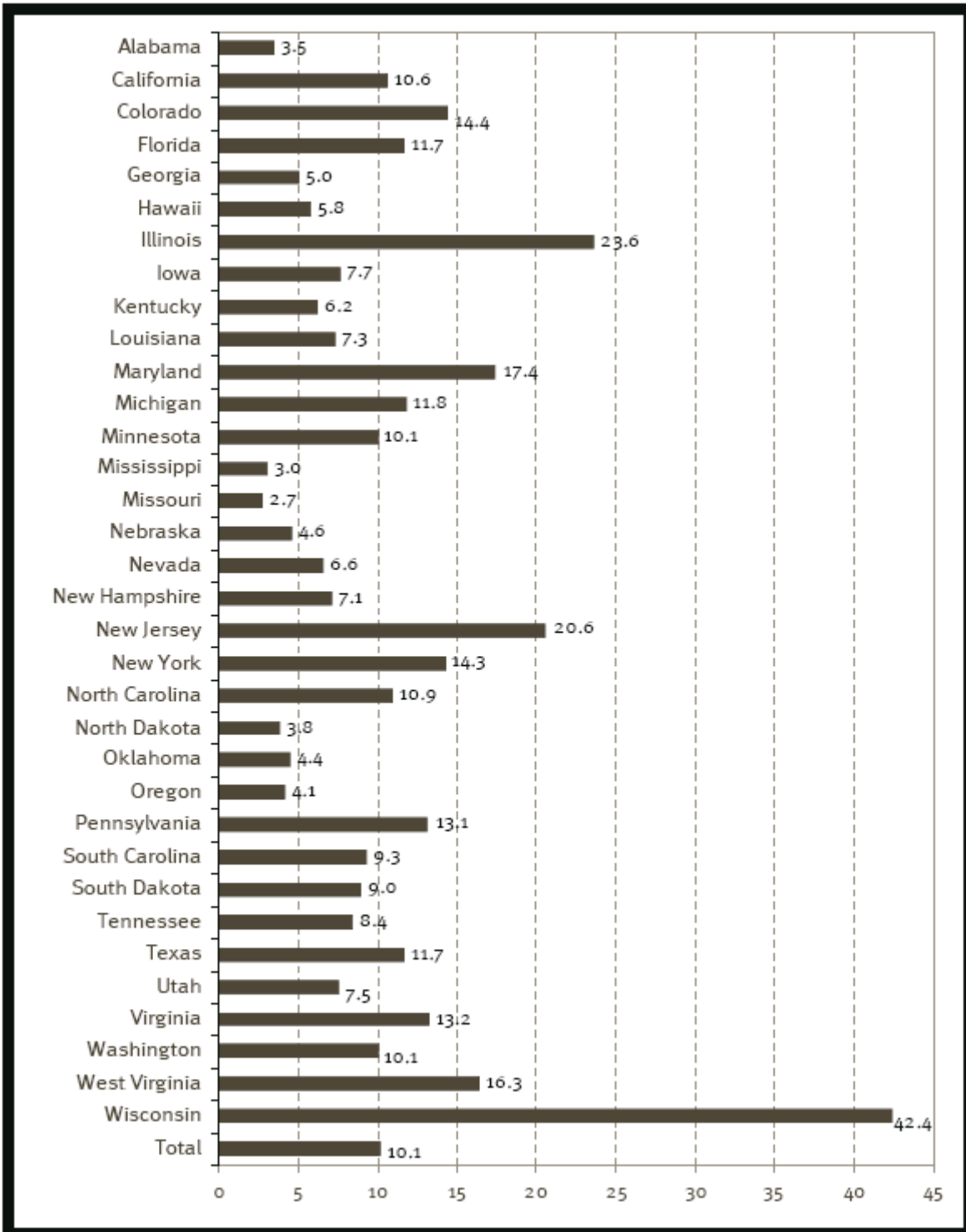
**17. White and Black Rates of Prison Admissions for Drug Offenses, 2003**  
*(Rates calculated per 100,000 residents of each race)<sup>35</sup>*



Source: National Corrections Reporting Program, 2003.

See Endnote 35 for sources

**18. Ratio of Black to White Rates of Prison Admissions for Drug Offenses, 2003**  
*(Rates calculated per 100,000 residents of each race)*



Source: National Corrections Reporting Program, 2003.

See Endnote 35 for sources

## Endnotes

\* *A note on terminology:* Different sources and individuals use different terms to describe the same or similar groups. For this paper 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. People whose families came from Latin America, especially younger ones, tend to describe themselves as Latino. Black is used rather than African-American because Blacks are also African, Caribbean, South and Central American.

<sup>1</sup> For information about the use of DNA to exonerate see The Innocent Project pages at: <http://www.innocenceproject.org/about/Mission-Statement.php>

<sup>2</sup> Rick Weiss, "Vast DNA Bank Pits Policing Vs. Privacy," *Washington Post*, June 3, 2006,

<sup>3</sup> Graph 1: Total CODIS Offender & Forensic Profiles, 2000 – 2007 is based on the following.

*Total CODIS Individual and Forensic Profiles, 2000 - 2007*

	2000	2001	2002	2003	2004	2005	Dec. 2006	Jan. 2008*
Individual Profiles	460,365	750,929	1,247,163	1,493,536	2,038,514	2,826,505	3,977,433	5,505,794
Forensic Profiles	22,484	27,897	46,177	70,931	93,956	126,315	160,582	208,115

Source for Graph 1: CODIS: COMBINED DNA INDEX SYSTEM (FBI Brochure) [www.fbi.gov/hq/lab/pdf/codisbrochure.pdf](http://www.fbi.gov/hq/lab/pdf/codisbrochure.pdf)

2007 Source, as of Jan 2008: CODIS Program Office, FBI Personal Communication.

<sup>4</sup> Tania Simoncelli and Sheldon Krinsky, "A New Era of DNA Collections: At What Cost to Civil Liberties?" *American Constitution Society for Law and Policy*, August 2007. <http://www.acslaw.org/node/5338>

<sup>5</sup> For a state of the art discussion of the problems with the newest DNA evidence from a forensic perspective see: Erin Murphy, "The New Forensics: Criminal Justice, False Certainty, and the Second Generation of Scientific Evidence," *California Law Review*, 95, June, 2007. At: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=896128](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=896128). Also see: William C. Thompson, "The Potential for Error in Forensic DNA Testing (and How That Complicates The Use of DNA Databases for Criminal Identification), Council for Responsible Genetics Forum on Racial Justice Impacts of Forensic DNA Databanks, New York City, June 19, 2008. Available at: <http://www.gene-watch.org/>,

<sup>6</sup> See: Robert Perry, Testimony on "Legislation Addressing New York State's DNA Database" May 31, 2007, <http://www.nyclu.org/node/1028>. William C. Thompson et al., "How the probability of a false positive affects the value of DNA evidence," *Journal of Forensic Science*, Vol. 48, No. 1, January 2003.

<sup>7</sup> Among other sources see: Tania Simoncelli and Sheldon Krinsky, "A New Era of DNA Collections: At What Cost to Civil Liberties?" *American Constitution Society for Law and Policy*, August 2007. <http://www.acslaw.org/node/5338>; Troy Duster, "The Molecular Reinscription Of Race: Unanticipated Issues In Biotechnology And Forensic Science," *Patterns of Prejudice*, Vol. 40, Nos. 4/5, 2006. At:

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<http://www.longviewinstitute.org/research/duster/molecularreinscription/view>

For a discussion of DNA dragnets where law enforcement collects DNA from hundreds or even thousands of ordinary 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>.

Rick Weiss, "Vast DNA Bank Pits Policing Vs. Privacy," *Washington Post*, June 3, 2006.

"In Louisiana, Debate over a DNA Dragnet," *Christian Science Monitor*, Feb. 21, 2003, available at <http://www.csmonitor.com/2003/0221/p03s01-usju.html>; Troy Duster, "Race and DNA Dragnets: Larger Social Context, History and Future," Council for Responsible Genetics Forum on Racial Justice Impacts of Forensic DNA Databanks, New York City, June 19, 2008. Available at: <http://www.gene-watch.org/>,

<sup>8</sup> As is often the case with highly-touted, expensive, large-scale, anti-crime measures advocated by law enforcement, the DNA databases also have a questionable track record compared to other uses of funds and resources. Simoncelli and Krinsky (2007, above) make this point very well:

While the prevailing notion with respect to these databanks is "the bigger the better," it is worth noting that the ability to use DNA in crime solving is limited by the ability to collect uncontaminated and un-degraded DNA at a crime scene, not by the number of people in the databank. As the databanks expand to people convicted of minor offenses or merely arrested, the chances that any given profile in the database will help resolve a future crime apparently diminish. In the United Kingdom, the enactment of arrestee testing in 2004, which has corresponded with a ballooning of the UK database from 2 million to 3 million profiles (including those of more than 125,000 people never charged with any crime), has actually corresponded with a slight decrease in matches with crime scene evidence.

Likewise, DNA dragnets have proven to be highly ineffective. In a study conducted by the University of Nebraska, only one of eighteen dragnets conducted in the United States was found to have led to the actual perpetrator, and this was a dragnet that only involved 25 people who were all staff at a nursing home where repeated sexual offenses were taking place. In other words, the obvious small pool of suspects already existed. Worse still, some dragnets have even been found to interfere with crime-solving....

In the case of familial searching, it is perhaps too soon to tell how helpful this technique could be for law enforcement. But with this and surreptitious DNA sampling it is likely that only the successes will be made public. Law enforcement officials are unlikely to publicize failures or the dead ends or the number of people who are investigated without their consent or knowledge....

An over-reliance on these practices could well undermine law enforcement. Some law enforcement officials have expressed concern that the tremendous resources funneled into building and expanding forensic DNA banks are channeling money away that should be put into following up on investigational leads or placing police officers on the streets. In addition, crime laboratories all over the country are plagued by extraordinary backlogs resulting from the heedless expansion of the databanks.

<sup>9</sup> *White, Black and Total U.S. Arrests for Property, Violent, and Drug Crimes, 2006*

	Total Estimated All Arrests*	White %**	Total Estimated White Arrests	Black %**	Total Estimated Black Arrests
Property Crimes	1,540,297	68.20%	1,050,483	29.40%	452,847
Violent Crimes	611,523	58.50%	357,741	39.30%	240,329
All Drug Violations	1,889,810	63.60%	1,201,919	35.10%	663,323

Blacks are about 13% of the U.S. population. Whites (including most Hispanics) are about 74% of the U.S. population.

Source: FBI Crime in the United States. \*Table 29, Estimated Number of Arrests, [http://www.fbi.gov/ucr/cius2006/data/table\\_29.html](http://www.fbi.gov/ucr/cius2006/data/table_29.html). \*\* Table 43, Arrests by Race, 2006. [http://www.fbi.gov/ucr/cius2006/data/table\\_43.html](http://www.fbi.gov/ucr/cius2006/data/table_43.html) (Table 43 presents hard data from 11,249 agencies with a 2006 estimated coverage population of 216,685,152. The racial percentages from Table 43 have been applied to the total estimated arrest data from Table 29 to produce estimates of the total number of Whites and Blacks arrested for each listed offense category.

<sup>10</sup> The New York State Division of Criminal Justice Services has on the web tables showing the arrests for four broad categories of felonies (Drug, Violent, DWI, Other) and four broad categories of misdemeanors (Drug, DWI, Property, Other). It shows this for all counties in NY State, as well as totals for the five counties of New York City, and for all counties other than New York City. It has tables showing the arrests for every year from 1997 through 2007. For 2007 see: "Adult Arrests: New York State by County and Region – 2007" At:

<http://criminaljustice.state.ny.us/crimnet/ojsa/arrests/year2007.htm>

The racial breakdown in New York City misdemeanor marijuana arrests is shown in Graphs 3, 4, 5, and 7. The racial breakdown in all other New York City misdemeanor drug arrests is shown in Graph 11.

<sup>11</sup> 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:

Criminal Trespass in the Second Degree (140.15), Possession of Burglar's Tools (140.35), Petit Larceny (155.25), Patronizing a Prostitute 3<sup>rd</sup> Degree (230.04), Attempted Patronizing a Prostitute 3<sup>rd</sup> Degree (110/230.04), Attempting Patronizing a Prostitute 2<sup>nd</sup> Degree (110/230.05), Endangering the Welfare of an Incompetent or Physically Disabled Person (260.25).

"NYS DNA Databank Qualifying Offenses," New York State Division of Criminal Justice Services, at: <http://www.criminaljustice.state.ny.us/forensic/dnaoffenses.htm>

<sup>12</sup> 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 Breakthrough," *The City Journal*, (published by The Manhattan Institute), Winter 2000. At: [http://www.city-journal.org/html/10\\_1\\_dna\\_testing.html](http://www.city-journal.org/html/10_1_dna_testing.html).

<sup>13</sup> 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 ... [collect] DNA

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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. 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](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.

<sup>14</sup> The 13,000 imprisoned are 90% Black and Latino. From: Drop The Rock, the Rockefeller drug law reform organization, at: <http://www.droptherock.org/>.

<sup>15</sup> 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>.

<sup>16</sup> 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/>.

<sup>17</sup> 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](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=392120#PaperDownload).

<sup>18</sup> Patrick McGeehan, "New York Plan for DNA Data in Most Crimes," *New York Times*, May 14, 2007

<sup>19</sup> The full source information for the New York City marijuana arrest data in Graphs 2, 3, 4, 5, 6 and 7 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, 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.

Source for Graph 6 "Marijuana Use by Whites, Blacks and Hispanics, Ages 18 to 25":

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>.

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<sup>20</sup> John Kifner, "Safir Says DNA Proposal Would Cut Property Crime," *New York Times*, December 13, 1998.

For the full report (Levine and Small, 2008) about New York City's Marijuana Arrests see: Harry G. Levine and Deborah Peterson Small, *Marijuana Arrest Crusade: Racial Bias and Police Policy in New York City, 1997-2007*. New York Civil Liberties Union, April 2008. Available at: [http://www.nyclu.org/files/MARIJUANA-ARREST-CRUSADE\\_Final.pdf](http://www.nyclu.org/files/MARIJUANA-ARREST-CRUSADE_Final.pdf)

<sup>21</sup> Al Baker and Emily Vasquez, "Police Report Far More Stops And Searches," *The New York Times*, Feb. 3, 2007

<sup>22</sup> 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 use to manufacture trespassing arrests. He said that when teenagers in a group (overwhelmingly Black or Latino) enter a housing project building or are waiting at an 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.

Legal aid attorneys we spoke with recently reported they have 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. If DNA collection is extended to misdemeanor arrests, some astonishing percentage of New York City's Black and Latino teenagers and young adults would wind up with their data in the database.

<sup>23</sup> 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 paper, 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.

<sup>24</sup> *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:

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[http://www.oag.state.ny.us/press/reports/stop\\_frisk/stop\\_frisk.html](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](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/~cook/movabletype/archives/2005/12/an_analysis_of.html) and at <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.*"

<sup>25</sup> 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. 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 investigating the marijuana arrests with the NYPD's arrest data were, until recently, unaware of what the police have been doing.



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<sup>26</sup> Source for Graph 8. “Percentage of Whites, Hispanics and Blacks 18 to 25 Who Used Any Drug Except Marijuana”: SAMHSA, Office of Applied Studies, National Survey on Drug Use and Health, 2004 and 2005. Table 1.70B Illicit Drug Use Other Than Marijuana in Lifetime, Past Year, and Past Month among Persons Aged 18 to 25, by Demographic Characteristics: Percentages, 2004 and 2005 <http://www.oas.samhsa.gov/NSDUH/2k5NSDUH/tabs/Sect1peTabs67to132.htm#Tab1.70B>

<sup>27</sup> Sources For Graph 9 and 10.

Graph 9. “White and Black Arrest Rates For All U.S. Drug Offenses, 1994 – 2004,” and

Graph 10. “White and Black U.S. Drug Possession Arrest Rates, 1994 – 2004”:

U.S. Dept. of Justice, Federal Bureau of Investigation. Uniform Crime Reporting Program Data [United States]: Arrests By Age, Sex, And Race, [Computer files]. Ann Arbor, MI: Inter-university Consortium for Political and Social Research [producer and distributor].

<sup>28</sup> New York State Penal Law 220.03, for which 33,000 people a year have been arrested for over a decade, covers possession of less than half a gram of cocaine, less than a gram of any other stimulant (amphetamine, methamphetamine, MDMA / Ecstasy), less than a gram of phencyclidine (angel dust), less than 3 grams of a narcotic (heroin, morphine), and less than one milligram (1/1000 of a gram) of LSD. Whites use these drugs at higher rates than Blacks or Hispanics, but the latter are arrested for possessing them a much higher rates than Whites.

<sup>29</sup> Source for Graph 11. “Misdemeanor Drug Possession Arrests of Whites, Blacks and Hispanics (for all drugs except marijuana) in New York City, 1994 – 2007”:

New York State Division of Criminal Justice Services (NYDCJS), Computerized Criminal History System, (April 2008). Includes all fingerprintable arrests for NYS Penal Law Article 220.03 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 2001-2007. Arrest counts by race for those years were calculated using average percentages from the 1997-2000 data.

<sup>30</sup> Source for Graph 12. “All U.S. Drug Arrests, 1970 – 2006”: Crime in the United States, annual, Uniform Crime Reports, U.S. Bureau of Justice Statistics, <http://www.ojp.usdoj.gov/bjs/glance/tables/drugtab.htm>.

Source for Graph 13. “U.S. Sale and Possession Drug Arrests, 1970 – 2006”: FBI, Crime in the United States, annual, Uniform Crime Reports, U.S. Bureau of Justice Statistics, <http://www.ojp.usdoj.gov/bjs/DCF/tables/salespos.htm>

<sup>31</sup> For some jurisdictions, the FBI data overstates the number and rate of White arrests because, for FBI purposes, Latinos do not count as a racial group and are almost entirely included with Whites. As a result, in places such as San Antonio, Denver, Phoenix and Houston, the actual arrest rate of non-Hispanic Whites is significantly lower, because many of the “whites” counted in the rates are actually Latinos.

<sup>32</sup> Sources For Graphs 14 And 15.

U.S. Dept. Of Justice, Federal Bureau Of Investigation. Uniform Crime Reporting Program Data [United States]: Arrests By Age, Sex, And Race, 2004 [Computer file]. ICPSR04460-v1. Ann Arbor, MI: Inter-university Consortium for Political and Social Research [producer and distributor], 2006-09-13.

Note: New York City data is from New York State Office of Criminal Justice Statistics.

U.S. Dept. of Commerce, Census Bureau. CC-EST2005-6RACE-[ST\_FIPS]: County Population Estimates with Sex, 6 Race Groups (5 Race Alone and One Group with Two or More Race Groups) and Hispanic Origin: April 1, 2000 to July 1, 2005 [Computer file]

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Note: Arrests Rates by Race are based on allocations of UCR reporting agency coverage populations on a proportional basis according to Census population estimates by county.

<sup>33</sup> Source for Table 1. Ryan S. King, "Table 4 – "Changes in Drug Arrest Rates per 100,000 by Race, 1980-2003," in *Disparity By Geography: The War on Drugs in America's Cities, The Sentencing Project*, Washington D.C., May 2008, p.11.

<sup>34</sup> Sources for Graph 16: U.S. Dept. of Justice, Federal Bureau of Investigation. Uniform Crime Reporting Program Data [United States]: Arrests By Age, Sex, And Race, 2000 - 2004 [Computer files]. Ann Arbor, MI: Inter-university Consortium for Political and Social Research [producer and distributor].

<sup>35</sup> Graph 17 is from: *Targeting Blacks: Drug Law Enforcement and Race in the United States*, Human Rights Watch, 2008, p. 20.

<http://www.hrw.org/reports/2008/us0508/>

<http://www.hrw.org/reports/2008/us0508/us0508webwcover.pdf>

On racial disparities in the drug war also see: Doris Marie Provine, *Unequal under Law: Race in the War on Drugs*. University of Chicago Press, 2007. Ira Glasser, "Drug Busts = Jim Crow," *The Nation*, June 21, 2006. At: <http://www.thenation.com/doc/20060710/glasser>. Katherine Beckett, Kris Nyrop, Lori Pfingst, and Melissa Bowen, "Drug Use, Drug Arrests, and the Question of Race," *Social Problems* 52:419-441, 2005; Katherine Beckett, Kris Nyrop, and Lori Pfingst, "Race, Drugs, and Policing: Understanding Disparities in Drug Delivery Arrests," *Criminology* 44:105-138, 2006; Curtis Marez, *Drug Wars: The Political Economy of Narcotics*, University of Minnesota Press, 2004; Craig Reinerman and Harry G. Levine, *Crack in America: Demon Drugs and Social Justice*, University of California Press, 1997; Michael Tonry, *Malign Neglect: Race, Crime, and Punishment in America*, Oxford University Press, 1995.

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