

**TESTIMONY OF**

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**AT HEARINGS OF NEW YORK STATE ASSEMBLY COMMITTEES  
ON CODES, JUDICIARY, CORRECTION, HEALTH, ALCOHOLISM AND DRUG ABUSE,  
AND SOCIAL SERVICES, NEW YORK, NEW YORK**

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**REGARDING LESSONS LEARNED FROM THE ROCKEFELLER DRUG LAWS AFTER  
THIRTY-FIVE YEARS, FROM THE MARIJUANA REFORM ACT OF 1977,  
AND FROM THE MARIJUANA ARREST CRUSADE IN NEW YORK CITY, 1997-2007**

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I am a professor of sociology at Queens College and the Graduate Center of the City University of New York. For thirty years I have been researching and writing about the history and sociology of alcohol and drug policies and problems.

This hearing is about the Rockefeller Drug Laws and I have come to present evidence about how, for the last eleven years, New York City has been handling minor offenses for marijuana. On the face of it this sounds odd. Since 1977 marijuana has not even been part of the Rockefeller Drug Laws or of Article 220 of the New York State Penal Code. Since 1977 Article 220 has covered all other illegal and non-medical drug offenses, but not marijuana. So why do I come to discuss marijuana?

I do so because for four years -- from May of 1973 to June of 1977 -- marijuana was in fact included under Article 220. For four years marijuana was one of the controlled substances covered by the same laws that governed heroin, cocaine and other drugs. For four years marijuana was governed by the Rockefeller Drug Laws. And then it was not.

In June of 1977, the New York State Legislature passed and Governor Hugh Carey enthusiastically signed "The Marijuana Reform Act of 1977." I suggest this legislation should be properly understood as the first and still most substantial reform of the Rockefeller Drug Laws enacted in the thirty-five years of its existence. The 1977 Marijuana Reform Act took one single drug out from under Article 220 and the Rockefeller Laws and created Article 221, a separate part of the State Penal Code for marijuana. For thirty-one years New York State has run a two-track drug policy, one track for every other drug including new drugs that did not even exist in 1973, and a second track only for marijuana. What has been learned from this experiment?

The first findings from the experiment on track one which included heroin, cocaine and all drugs except marijuana came in 1978. A report titled "The Nation's Toughest Drug Law" from the New York City Bar Association found that during the first four years of the Rockefeller

Drug Laws, drug availability had not decreased, drug use had not decreased, and drug selling had not decreased.

There have been investigations since including one in 1992 held by the State Assembly titled "The Rockefeller Drug Laws Twenty Years Later." Among those testifying was the former Corrections Commissioner of New York State for 14 of the first 20 years of the Rockefeller Drug Laws. The Commissioner declared the Rockefeller Drugs laws a failure. He said they had filled prisons, incarcerated the wrong people for the wrong reasons, and had cost an enormous amount of money. The Commissioner said: "The punitive effect of the Rockefeller drug laws ... do not deter, they do not lessen, nor do they cure drug addiction." Instead, he said they fill prisons with low-level drug offenders while "more street level sellers and abusers" take their place.

I would add that under the Rockefeller Drug Laws, New York has badly mishandled the crack cocaine crisis from 1986 through 1992. Under the Rockefeller Drug Laws, New York, has madly mishandled a massive and deadly HIV-AIDS epidemic spread in part by drug users sharing needles. Under the Rockefeller Drug Laws, prisons have been filled mostly with Black and Latino men. Under the experiment of the Rockefeller Drug Laws, New York has created a drug policy nightmare and catastrophe. So much for the first experiment.

What about the second experiment, the marijuana law experiment under Article 221 of the State Penal Code? In 1977 New York State totally decriminalized and removed all criminal penalties from the simple possession of seven-eighths of an ounce of marijuana. As long as people were not smoking or openly displaying it in public, especially in front of children, those possessing less than 26 grams should receive only a ticket with a \$100 fine. The clearly stated intent of the law was to make marijuana possession of less than an ounce equivalent to a traffic citation.

Other than this lowest level and by far most frequent drug offense, New York's marijuana laws are not particular liberal or tolerant. These are still quite severe laws, much harsher than those of other wealthy democracies such as Canada, Australia, and much of Europe. However, nothing in New York's marijuana legislation, or in the discussions of the legislation, encouraged the use of substantial criminal justice resources to capture marijuana sellers and imprison them with long sentences. Very much part of the marijuana law experiment was the idea that marijuana use and petty distribution were not a high priority for law enforcement – at least as compared to the drugs still under the Rockefeller Drug Law.

What can we say has happened in New York State as a result of this second experiment? Not very much at all. Marijuana use hit an all time high in 1979 and has never again come close to those levels. To repeat: marijuana use is down. In the 31 years since the passage of the Marijuana Reform Act, we have had no new marijuana epidemic, no new wave of marijuana addiction, no prisons stuffed with petty marijuana dealers serving long sentences. By and large, with one significant exception, New York's marijuana policy experiment has worked out quite well. Compared to its competitor drug policy experiment, it has saved a great deal of money and wasted far fewer lives.

Indeed it is long past time to declare New York's marijuana policy experiment a success, learn from it, and build upon it. In 1977, Governor Carey and members of the State legislature strongly urged that two ounces of marijuana be totally decriminalized, and that the sale of an ounce also be decriminalized. They asked for other quite reasonable things. It was not possible to get those provisions passed thirty-one years ago, but they are the basis for building upon the success of New York's marijuana policy reform. Further, the findings and lessons from New York's marijuana reform are directly relevant to the disastrous policy experiment run with every other drug. My first recommendation therefore is quite simple: study the results and effects of New York State's marijuana laws and apply the lessons learned to all the other drugs.

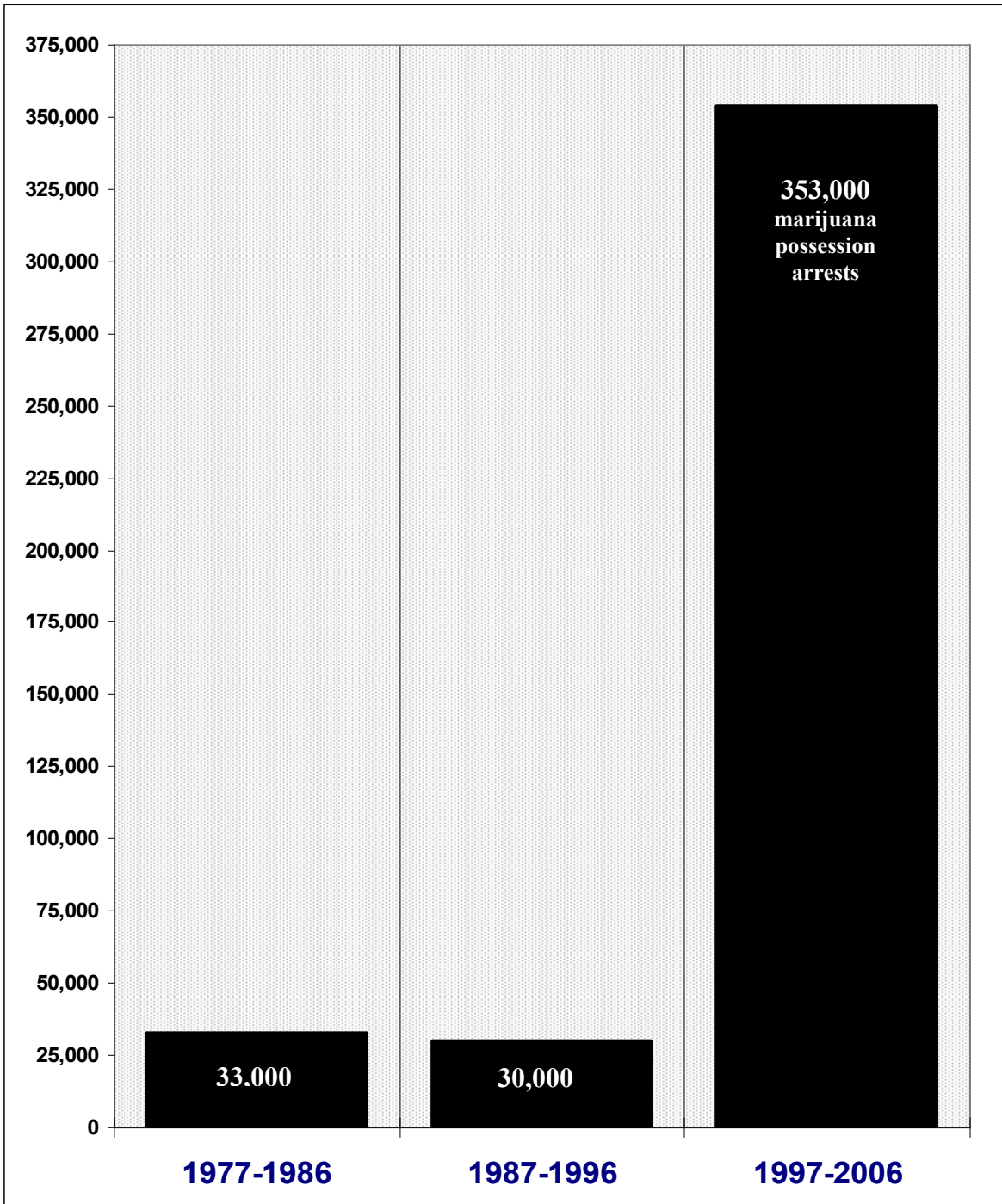
I wish the story ended at this point, but as I indicated there is one more unhappy experiment to briefly mention. Since 1997, without fanfare or publicity, and without media coverage, the City of New York has engaged in a massive marijuana arrest crusade. For eleven years, New York City has been arresting and jailing overnight almost 400,000 people simply for possessing small amounts of marijuana. Nearly everybody arrested has been handcuffed, put in the back of a police vehicle, and taken to the local police station where they were photographed and fingerprinted. Most people were then incarcerated overnight in one of the city's awful jails. The majority of the people arrested were under twenty-five years of age. Although young Whites use marijuana more than Blacks or Latinos, eighty three percent of the people arrested are Black or Latino. New York City now arrests Blacks at five times the rate of Whites, and Latinos at three times the rate of Whites, simply for possessing a small amount of marijuana. Everybody arrested receives a permanent criminal record which seriously limits their opportunities for employment and schooling. I have brought a hundred page report by Deborah Small and myself describing New York City's enormous, expensive, racially-biased marijuana arrest experiment and its predictably bad consequences.\* The report shows how far policy can be taken away from the law's intent, and it includes some straightforward recommendations which may be of use to you.

You have the opportunity to move beyond the failures of the Rockefeller Drug Laws and of New York City's marijuana arrest crusade, and you have the opportunity to absorb and build upon the quite impressive results of New York's 1977 marijuana reform act. Many other countries also provide useful models and lessons. There is now much good evidence showing that drug polices which make arresting and imprisoning people a low priority are far better for public safety and public health than what New York has endured under the Rockefeller Drug Laws. And that, I suggest, is quite good news – if the lessons of New York's two track drug policy experiment are learned.

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\* 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.

## 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.