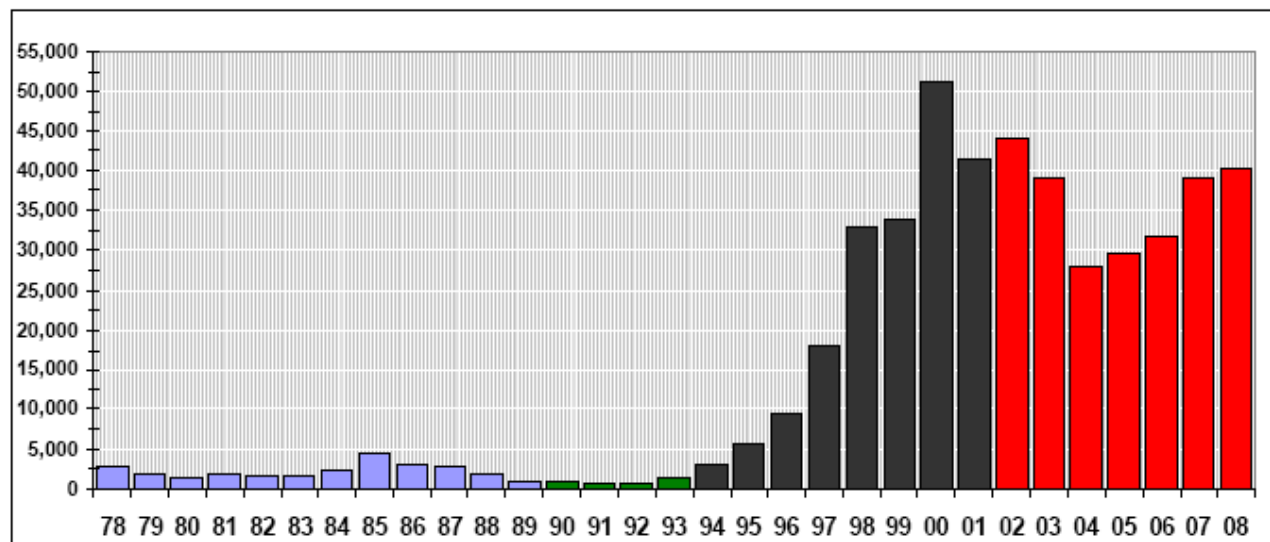


NEW YORK CITY'S MARIJUANA ARREST CRUSADE ... CONTINUES



In 2008, the New York Civil Liberties Union released a report by Harry G. Levine and Deborah Peterson Small titled *Marijuana Arrest Crusade: Racial Bias and Police Policy in New York City, 1997-2007*.

This document briefly reviews and updates key findings from that report presenting new graphs and tables showing recently released and revised arrest data from previous years and from 2008.

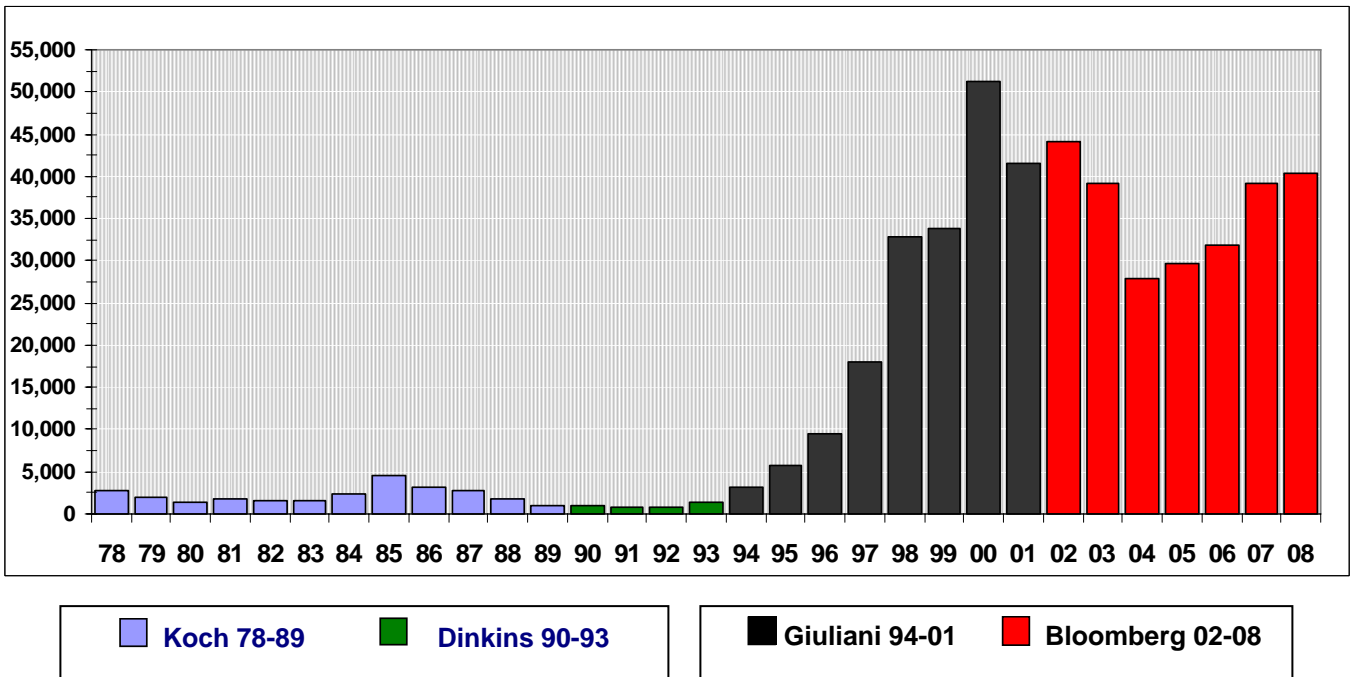
It is presented in hopes of stimulating public conversation and debate about New York City's marijuana arrest crusade.¹

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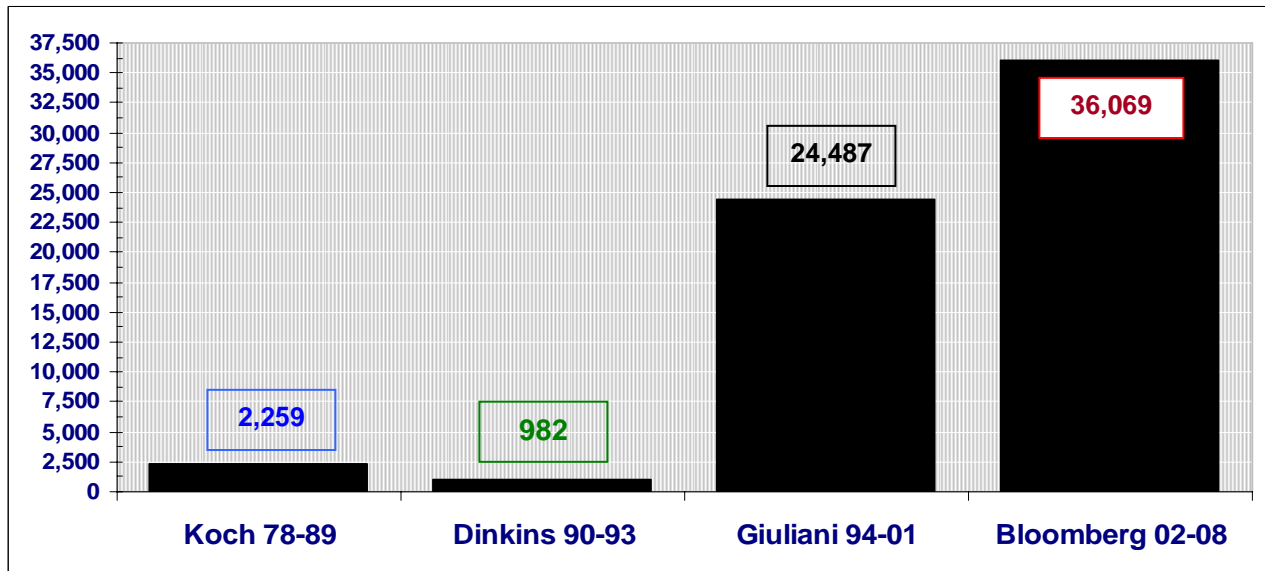
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September 2009

Mayors and Marijuana Arrests in New York City, 1978 – 2008



Yearly Average of New York City Marijuana Possession Arrests Under Mayors Koch, Dinkins, Giuliani and Bloomberg



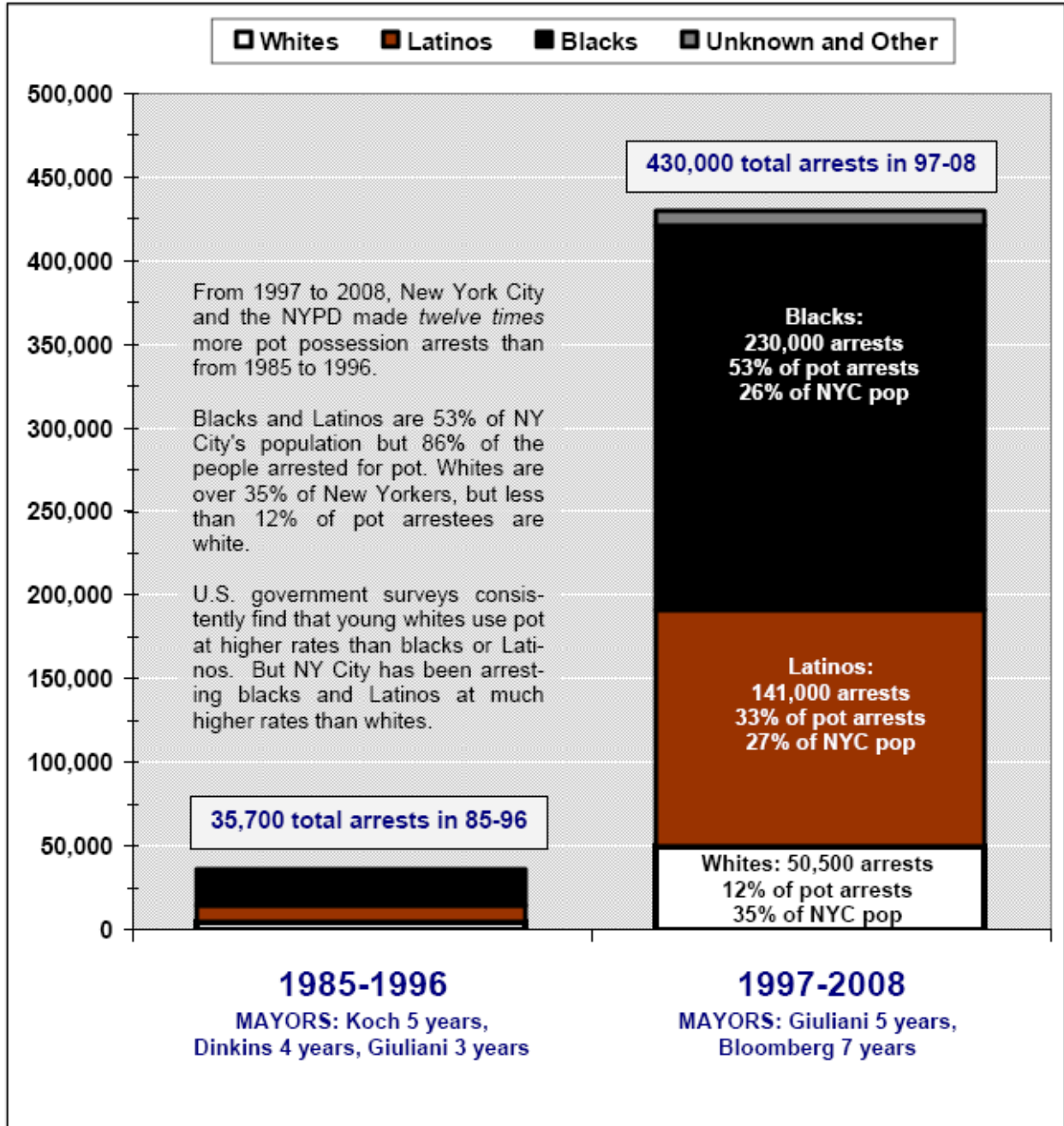
Source: New York State Division of Criminal Justice Services, Computerized Criminal History System (June 2009). Includes all fingerprintable misdemeanor arrests for NYS Penal Law Article 221.10 as the most serious charge in an arrest event. Ages 16 and older. These graphs show only the lowest-level misdemeanor marijuana arrests and charges.

**Total Marijuana Possession Arrests from 1978-1995 (18 years)
under Mayors Koch, Dinkins and Giuliani
and in only 2008 under Mayor Bloomberg**

NYC Mayor	Year	# of Marijuana Possession Arrests
Koch	1978	2,757
	1979	1,923
	1980	1,438
	1981	1,831
	1982	1,512
	1983	1,660
	1984	2,463
	1985	4,546
	1986	3,209
	1987	2,847
	1988	1,861
	1989	1,062
Dinkins	1990	891
	1991	774
	1992	812
	1993	1,450
Giuliani	1994	3,141
	1995	5,716
Koch + Dinkins + Giuliani	Total 78-95	39,893
Bloomberg	only 2008	40,383

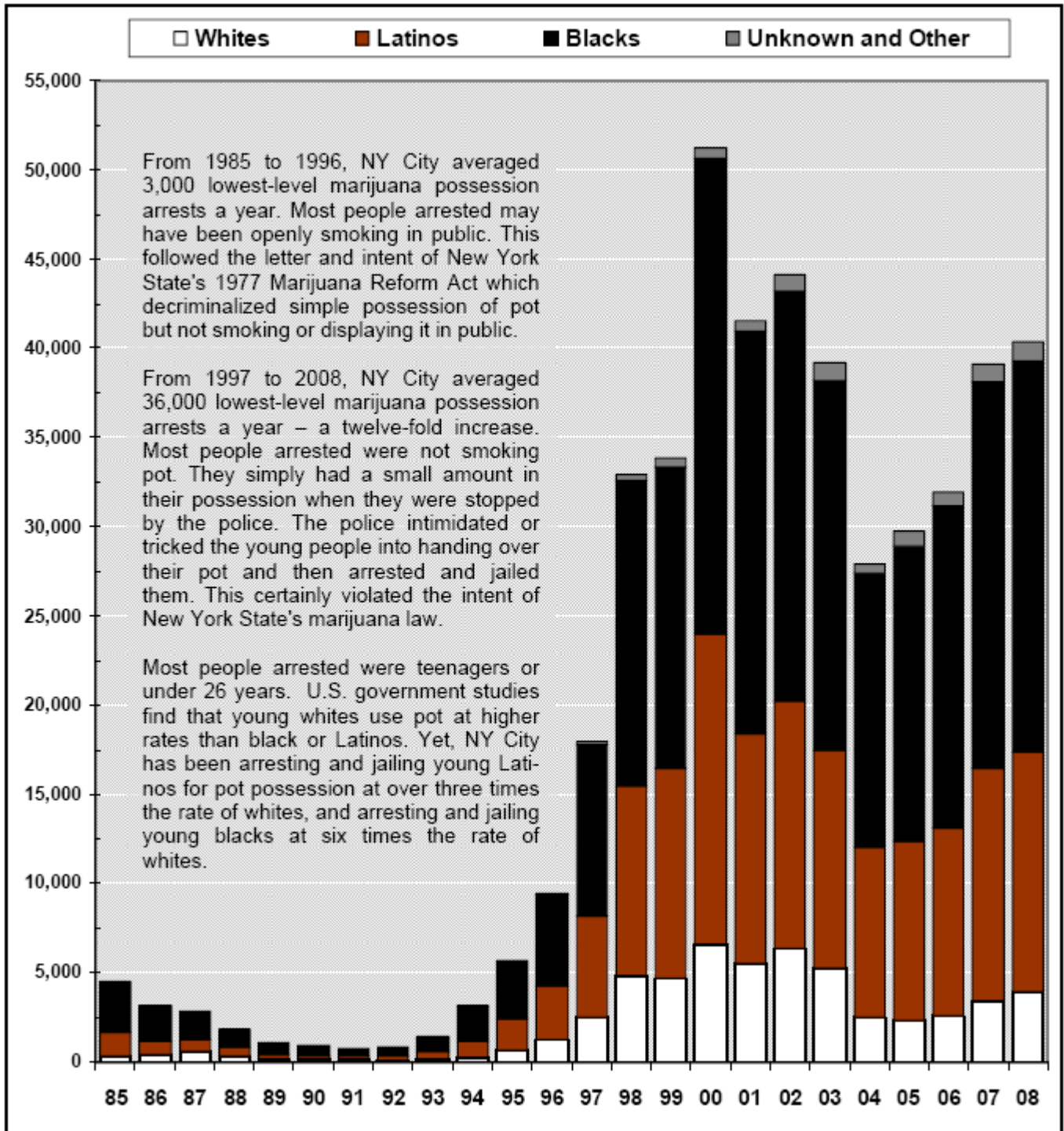
Source: New York State Division of Criminal Justice Services, Computerized Criminal History System (June 2009). Includes all fingerprintable misdemeanor arrests for NYS Penal Law Article 221.10 as the most serious charge in an arrest event. Ages 16 and older. This table shows the lowest-level misdemeanor marijuana arrests and charges.

Marijuana Possession Arrests of Whites, Latinos and Blacks in Two Twelve Year Periods in New York City, 1985-1996 and 1997-2008



Source: New York State Division of Criminal Justice Services, Computerized Criminal History System (June 2009). Includes all fingerprintable misdemeanor arrests for NYS Penal Law Article 221.10 as the most serious charge in an arrest event. Ages 16 and older. This shows only the lowest-level misdemeanor arrests.

Marijuana Possession Arrests in New York City, 1985 – 2008, by Race



Source: New York State Division of Criminal Justice Services, Computerized Criminal History System (June 2009). Includes all fingerprintable misdemeanor arrests for NYS Penal Law Article 221.10 as the most serious charge in an arrest event. Ages 16 and older. This shows only the lowest-level misdemeanor arrests.

New York City Marijuana Possession Arrests in Two Twelve-Year Periods, 1985-1996 and 1997-2008

1985	4,546	1997	17,992
1986	3,209	1998	32,936
1987	2,847	1999	33,819
1988	1,861	2000	51,267
1989	1,062	2001	41,521
1990	891	2002	44,111
1991	774	2003	39,213
1992	812	2004	27,944
1993	1,450	2005	29,752
1994	3,141	2006	31,925
1995	5,716	2007	39,156
1996	9,433	2008	40,383
85-06 total	35,742	97-08 total	430,019
97-08 average	2,979	97-08 average	35,835

Marijuana Possession Arrests in New York City by Race, 1997 - 2008

Total Arrests		Whites		Latinos		Blacks		All others & Unknown	
1997	17,992	2,548	14.2%	5,626	31.3%	9,604	53.4%	214	1.2%
1998	32,936	4,861	14.8%	10,636	32.3%	17,060	51.8%	379	1.2%
1999	33,819	4,645	13.7%	11,841	35.0%	16,900	50.0%	433	1.3%
2000	51,267	6,590	12.9%	17,363	33.9%	26,670	52.0%	644	1.3%
2001	41,521	5,557	13.4%	12,860	31.0%	22,544	54.3%	560	1.3%
2002	44,111	6,324	14.3%	13,929	31.6%	22,949	52.0%	909	2.1%
2003	39,213	5,250	13.4%	12,254	31.2%	20,690	52.8%	1,019	2.6%
2004	27,944	2,468	8.8%	9,597	34.3%	15,310	54.8%	569	2.0%
2005	29,752	2,355	7.9%	9,998	33.6%	16,605	55.8%	794	2.7%
2006	31,925	2,584	8.1%	10,564	33.1%	17,990	56.4%	787	2.5%
2007	39,156	3,387	8.7%	13,114	33.5%	21,581	55.1%	1,074	2.7%
2008	40,383	3,959	9.8%	13,406	33.2%	21,954	54.4%	1,064	2.6%
97-08	430,019	50,528	11.7%	141,188	32.8%	229,857	53.4%	8,446	1.9%

Source: New York State Division of Criminal Justice Services, Computerized Criminal History System (June 2009). Includes all fingerprintable misdemeanor arrests for NYS Penal Law Article 221.10 as the most serious charge in an arrest event. Ages 16 and older. These tables show only the lowest-level misdemeanor marijuana possession arrests and charges.

NEW YORK CITY'S MARIJUANA ARREST CRUSADE ... CONTINUES

From 1997 through 2008, the New York City Police Department arrested 430,000 people simply for possessing small amounts of marijuana, mostly teenagers and young adults. This was twelve times more marijuana arrests than in the previous twelve years.²

All of these 430,000 people were charged with misdemeanors, the lowest level of criminal offense. Nearly everybody was 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 jails.³

In 2008 alone, the NYPD made 40,300 lowest-level misdemeanor marijuana possession arrests. These pot possession arrests constitute over ten percent of *all* arrests in New York City.⁴

The dramatic increase in marijuana possession arrests began as an initiative of Mayor Rudolph Giuliani. The arrests have continued unabated under both terms of Mayor Michael Bloomberg. **Under Bloomberg, New York has made more marijuana arrests than under Giuliani, and more than any city on the planet. New York City is now the marijuana arrest capital of the world.**

In 2008 alone, the NYPD under Bloomberg made more pot possession arrests than in the twelve years of Mayor Koch, *plus* the four years of Mayor Dinkins, *plus* the first two years of Mayor Giuliani. In other words, in one year, 2008, Bloomberg made more pot arrests than in 18 years of Koch, Dinkins and Giuliani *combined*.

* * * *

The marijuana possession arrests do not reduce serious or violent crime, and they may well increase it. Professors Harcourt and Ludwig at the University of Chicago Law School analyzed NYPD data and concluded that the pot possession arrests took officers off the street and distracted them from other crime-fighting activities. "New York City's marijuana policing strategy," they reported, "is having exactly the wrong effect on serious crime – increasing it, rather than decreasing it." Veteran police officers agree terming the possession arrests "a waste of time." **The arrests drain resources not just of police, but also of courts, jails, prosecutors and public defenders.⁵**

U.S. government studies have consistently found that young whites use marijuana at higher rates than do young blacks or Latinos. But the NYPD has been arresting young blacks and Latinos for pot possession at much higher rates than whites.⁶

In 2008, blacks were about 26% of New York City's population, but over 54% of the people arrested for pot possession. Latinos were about 27% of New Yorkers, but 33% of the pot arrestees. Whites were over 35% of the City's population, but less than 10% of the people arrested for possessing marijuana.

In 2008, police arrested Latinos for pot possession at four times the rate of whites, and blacks at seven times the rate of whites – even though whites use marijuana at higher rates.

New York's marijuana possession arrests are also skewed by gender and age. Most people arrested were younger than 26 and about 90% were men. **For twelve years, New York City has arrested on average 100 people a day for possessing small amounts of marijuana, mostly young black and Latino men.**

The New York Police Department is an avowedly top-down paramilitary organization. Individual officers and low-level commanders did not decide to make hundreds of thousands marijuana possession arrests on their own. However, narcotics and patrol police, their supervisors, and others within in the NYPD frequently benefit from the marijuana possession arrests. The arrests are relatively safe, easy, and provide training for new officers. The arrests gain overtime pay for patrol and narcotics police and their supervisors. The pot arrests allow officers to show productivity, which counts for promotions and choice assignments. Marijuana arrests enable the NYPD to obtain fingerprints, photographs and other data on many young people they would not otherwise have in their criminal justice databases. And the arrests continue because there is very little public criticism and thus far no political opposition to New York City's marijuana arrest crusade.

* * * *

In addition to the above, several addition things should be understood about the arrests.

New York City's dramatic increase in marijuana arrests was not the result of an increase in marijuana use, which peaked nationally around 1980.

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.

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 in their possessions, usually in a pocket, backpack or purse.⁷

Simple possession of small amounts of marijuana (less than 26 grams or 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 "open to public view."⁸

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 and handed it over, they were arrested and charged with the crime of having marijuana "open to public view."

The marijuana possession arrests are, in part, a fruit of New York City's aggressive stop and frisk campaign. In 2008 alone the NYPD stopped, frisked, and often searched over 500,000 people. The percentages of blacks, Latinos, and whites being frisked are nearly identical to the percentages of each group that are arrested for possessing small amounts of marijuana.⁹

The marijuana possession arrests are expensive. From 1997 to 2008, arresting, jailing, and arraigning in criminal court an average of 36,000 people a year, mostly teenagers and young adults, cost New York City taxpayers approximately \$53 million to \$88 million a year.

For the people arrested, mostly young blacks and Latinos, the twenty-four hours in police custody and jail is a humiliating, degrading experience – just as his recent arrest was for Harvard Professor Henry Louis Gates. The arrests produce permanent, criminal records which potential employers can easily find, often on the internet. As even the New York City Health Department recognizes, "A marijuana conviction can keep you from getting a student loan, a job, a house or an apartment – even years later." For young people from predominately poor families and neighborhoods, these stigmatizing arrests function as a kind of Head Start program for future arrests, incarceration and unemployment.¹⁰

* * * *

New York City's marijuana arrests have targeted ordinary teenagers and young adults who possessed 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 26 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, the last three U.S. Presidents, and the current mayor of New York City.

In addition, the marijuana possession arrests have systematically excluded the largest groups 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?



Photos by Ed Stern and Ken Stein at Flickr.com

Endnotes

¹ This update was prepared with help and encouragement from: Gabriel Sayegh and Tony Newman at the Drug Policy Alliance, Bob Perry at the NYCLU, and Loren Siegel at LS Consulting

² All arrest data reported here are from the NYPD made available through the New York State Division of Criminal Justice Services. Additional information was collected by Levine and Small from interviews with police officers, legal aid and public defender attorneys, prosecutors, judges, and people arrested for possessing small amounts of marijuana. A pdf of the NYCLU report *Marijuana Arrest Crusade* can be found at: http://www.nyclu.org/files/MARIJUANA-ARREST-CRUSADE_Final.pdf.

The arrest data in this document differ slightly from those in *Marijuana Arrest Crusade*, which also included the tiny number of arrests under 221.15, which is also a misdemeanor.

³ All arrests in this document refer to cases of people charged with violating section 221.10 of the New York State Penal Law. This makes it a crime to possess any amount of marijuana that is "burning or open to public view." As noted above and explained in *Marijuana Arrest Crusade*, although most people arrested were not smoking marijuana when approached by the police, they were tricked or intimidated into allowing a search or taking out their marijuana and showing to the police. When they did so, they were then arrested and charged with possessing marijuana "open to public view."

⁴ New York City total felony and misdemeanor arrests from 1999-2008 are at: <http://criminaljustice.state.ny.us/crimnet/ojsa/arrests/nyc.htm>. From 1999 to 2008, the lowest-level marijuana possession arrests averaged 12% of all NY City arrests. In 2008, they were also 12% of all arrests.

⁵ 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

⁶ Graphs showing that young whites use marijuana at higher rates than young blacks and Latinos, and the source data, is in *Marijuana Arrest Crusade*, pp 13-14, 78. The New York City Department of Health reported data in 2007 showing that youth in New York City use marijuana at lower rates than youth elsewhere in America. *Vital Signs*, vol 6, no 1. at: www.nyc.gov/html/doh/downloads/pdf/survey/survey-2007subsAbuse.pdf. Also see the NY City drug use data reported on page 31 of the excellent issue of *City Limits (Summer 2009)* titled "Buy And Bust: New York City's War on Drugs At 40" by Sean Gardiner; at http://www.citylimits.org/content/articles/viewprintable.cfm?article_id=3773.

⁷ The fact that most people were not smoking pot is based on information from several sources, especially veteran New York City legal aid and public defender attorneys and supervisors from Manhattan, Brooklyn and The Bronx. They estimate that about two-thirds to three-quarters of the people arrested for misdemeanor possession merely had a bit of marijuana in a pocket or belongings and were not smoking it when first approached by the police. But the young people had either allowed a search or been tricked or intimidated into taking out their small amount of marijuana – usually a few grams in a cigarette or small plastic bag – and handing it over. As long as the pot was in a pocket or purse, its possession was not a crime but a violation, subject to a \$100 fine. But by cooperating with the police and showing their pot, the young people's marijuana became "open to public view" and therefore technically a crime subject to arrest. This process is discussed at length in *Marijuana Arrest Crusade*; see chapters 3 and 5.

⁸ The lowest-level marijuana possession misdemeanor is section 221.10 of New York State law. The marijuana possession violation is section 221.05. All data reported here are only of people charged under 221.10. The text of the violation and the misdemeanor can be found here: http://law.onecle.com/new-york/penal/PEN0221.05_221.05.html, and http://law.onecle.com/new-york/penal/PEN0221.10_221.10.html.

⁹ New York City's stop and frisks have been investigated by State's Attorney General, covered by the city's newspapers, and monitored most closely by the NYCLU. See: <http://www.nyclu.org/stopandfrisk>.

¹⁰ The costs of the marijuana possession arrests and the way the arrests function as a Head Start program for imprisonment and unemployment are discussed in *Marijuana Arrest Crusade*, pp 46-54.