

# National Disgrace

## Harry Levine on the scandal of racist marijuana arrests

Interview by Natasha Lennard, *The New Inquiry*, April 2013



image by imp kerr

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*Harry Levine has often described what reform of marijuana arrest policies should look like in this country: Everyone should be treated like white, upper-middle class people already are (“they don’t get arrested, ticketed, or fined”). The Queens College, CUNY sociology professor has published reports and articles about marijuana arrests in New York City, California, Colorado, Washington, and other states and major cities. His research, compiled with attorney Loren Siegel, has served as a key resource for those urging recognition that pot arrests in the United States are, as Levine tells TNI, racist to the point of national scandal.*

***You've said that marijuana possession arrests in the United States are a "huge national scandal" that have to be exposed. What do you mean by that?***

We think the marijuana possession arrests are a scandal, like Love Canal and the Ford Pinto were scandals. Love Canal, filled with 20,000 tons of deadly chemicals, was the first toxic waste scandal. The Pinto and its exploding gas tank is still the most famous car-design scandal. These kinds of scandals are of horrific situations, harming many people, that go on for years before being revealed. Important institutions like Hooker Chemicals and Ford benefited from what happened and did not want them exposed or the practices stopped.

The nearly 700,000 marijuana possession arrests a year in the U.S. are the same kind of scandal. They have gone on for years and harmed millions of people, but big city police departments and prominent politicians, including many liberals, keep making the arrests. And until recently they have been remarkably successful at keeping the arrests out of the public eye.

The work of exposing these huge numbers of possession arrests has only just begun, but the facts are startling. In New York City for over 15 years more people have been arrested for marijuana possession than for any other criminal charge whatsoever. One arrest in eight is for simple possession of a small amount of marijuana. That general pattern is true for many other cities and counties.

***There is some increased awareness — in the national media and state politics at least — that marijuana arrests disproportionately affect young, poor black and Latino people. This fact has been pushed into the public consciousness by an intersection of decriminalization and legalization advocates, and activists fighting racism and police abuses. Who is getting arrested for pot possession, who isn't, how much weed did arrestees have, and how did the cops find it?***

Police arrest mostly young and low-income people for marijuana possession, 90 percent men, disproportionately young blacks and Latinos. In the last 15 years, police and sheriff's departments in every major U.S. city and county have made over 10 million of these possession arrests.

Most people arrested were not smoking. They were carrying tiny amounts: a joint, part of a blunt, a few grams in what is called a "nickel" or "dime" bag, in a pocket, backpack, purse, inside a car or even a shoe. Police searched them, often illegally, found the marijuana, and made the arrests, which typically involved handcuffs, fingerprints,

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*This interview appears in TNI Vol. 15: Weed.*  
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photos, a permanent criminal record, and 24 or more hours in jail before being spit out in court or before a judge, or allowed to pay bail if they can afford it.

Teenagers are about a third of the people arrested. Nearly 70 percent are teens and adults younger than 25, and up to 80 percent are younger than 35. Blacks, who are 13 percent of the U.S. population, are about 30 percent of the people arrested. Latinos, who are now nearly 17 percent of the U.S. population, are roughly another 25 to 30 percent of the people arrested.

In New York City, nearly 90 percent of the people arrested for marijuana possession are blacks and Latinos. In Chicago in recent years, only five percent of the people arrested for possession were whites. In many cities including Los Angeles, Chicago, and New York, police have arrested blacks for marijuana possession at seven times the rate of whites, and Latinos at three to four times the rate of whites. In Ocean Hill-Brownsville in Brooklyn, where 90 percent of the residents are blacks and Latinos, the marijuana arrest rate is 150 times higher than on the Upper East Side of Manhattan, where Mayor Bloomberg lives and where 90 percent of the residents are white.

Years of federal studies have found that young whites use marijuana at higher rates than young blacks or Latinos, but the young people of color are far more likely to be stopped, frisked and searched by police than young whites. As New York Times columnist Jim Dwyer titled one of his pieces, “Whites Smoke Pot, But Blacks Are Arrested.”

Middle-class and upper-class white people, on the other hand, are rarely arrested for marijuana possession. The places nationally with the lowest rates of possession arrests are wealthy, white, suburban counties. Middle- and upper-class white people do not want their children arrested, jailed, and saddled with permanent criminal records – and by and large they have the power to prevent that. They also rarely get summonses, have to appear in court, and pay hundreds of dollars in fines and court costs for possessing small amounts of marijuana. For middle-class and upper-class people, the policy has long been: no arrests, no tickets, no fines. It is scandalous that the law is applied so differently against low income families and neighborhoods, and for people of color.

***Police are increasingly coming under fire for making all these marijuana arrests. The NYPD, for example, face three federal lawsuits this year over the discriminatory nature of stop-and-frisk practices regularly used to make marijuana arrests. What interest do police departments have in making all the pot possession arrests? — it's something they rarely discuss in public.***

Police almost never talk about or claim credit for making the arrests. Police make so many because they are easy arrests and because significant constituencies within police

departments benefit from the arrests. Police work can be dangerous. Ordinary patrol and narcotics police like the marijuana arrests because they are relatively safe and easy. If an officer stops and searches 10 or 15 young people, one or two of them will likely have a bit of marijuana. All police have arrest quotas and often they can earn much-desired overtime pay by making a marijuana arrest toward the end of a shift. In New York City, arresting people for petty offenses for overtime pay is called “collars for dollars.” Every cop in the city knows that expression. From the officers’ point of view, people possessing marijuana are highly desirable arrestees. As one veteran lieutenant said, people whose only crime is marijuana possession are “clean,” meaning physically clean. Unlike junkies or winos, people arrested for marijuana don’t have HIV, hepatitis, or even body lice. They are unlikely to throw up on the officer or in the police car or van. Frequently they are on the way to a party or a date, and if they have smoked a little, they may be relaxed and amiable. Marijuana arrests are a quality of life issue – for the police.

Police supervisors at all levels also like the marijuana arrests for many reasons. The arrests show productivity and the written records demonstrate where the cops they supervise have been. Some supervisors make overtime pay when the officers under them make overtime. Making many low-level arrests of all kinds is very good for training rookie police who gain valuable experience doing many stops and searches of teenagers. If new officers screw up the paperwork or fingerprints on a pot arrest, it doesn’t matter because nobody really cares about the arrests. Also, police commanders can temporarily reassign officers making misdemeanor arrests if a crisis comes up – a fire or car wreck, the president is in town, there’s a riot or a big parade – and no investigation is affected, no crime spikes. This “reserve army” of police making many misdemeanor arrests keeps the cops busy, provides records of their whereabouts, and gives commanders substantial flexibility. There is also a push nationally, to states, counties, and city police departments, to get as many new people as possible into the criminal databases. There is nothing else police do that gets so many young people without criminal records into the criminal databases.

Finally, through Byrne Grants, a “war on drugs” program begun under Bush Senior and Clinton, and through other federal grants, the U.S. government gives states and police departments funding to buy things they want and need: cars, computers, cameras, overtime, anything. And local law enforcement can use their “drug arrests” — including the many marijuana possession arrests — as evidence of productivity for the grants. In effect, the U.S. government has been subsidizing the arrests and jailings of hundreds of thousands of young blacks, Latinos, and whites.

***Let’s locate where and how this racism resides. It’s not individual racist cops running around with racist intentions that produce these kind of statistics — this has to be institutional and structurally inscribed into U.S. police practices, right?***

Yes, exactly. This is pure institutional racism. Everywhere, police are heavily assigned to patrol in only some neighborhoods, what are called “high crime” areas. These are disproportionately places where low-income whites and people of color live. In those neighborhoods, the patrol and narcotics police stop and search many people on the street and in cars, and mainly meet their arrest quotas in those neighborhoods. And everywhere police are looking especially for certain kinds of suspects. The arrests are racist because the police, including black and Latino cops, are assigned to fish for arrests in only some areas, looking for only some fish. Some observers have termed this “racism without racists.”

*The arrests themselves are just the beginning of the problem. You have explored the way even minor, non-criminal marijuana possession arrests can lead to life-altering criminal records. How does this work out and what does this tell us about how criminal records work in the U.S.?*

Yes, the effects of the criminal records are far more serious and long-lasting than the often quite nasty experience of getting arrested and searched — including sometimes strip-searched and jailed overnight or longer. Shortly after the person is arrested, police send the criminal records to their state database and then to the FBI, never to be deleted. Expungement is a myth. The arrest records also go to criminal databases in other states, and then to a huge network of commercial databases instantly accessible on the web. Twenty years ago misdemeanor arrest records were papers in the basement of court houses or in storage. Now anyone can go to Google and search for “criminal records.” Try it yourself. Google produces a list of private firms that offer “50 state” searches using only a name, address, birth date, and possibly a social security number. The firms charge \$20, and some even offer searches for free.

All the national chains and big box stores with entry-level jobs search criminal databases in hiring. Landlords even of a few rental units use them. Credit agencies, banks, credit cards all run these criminal background checks. Schools and colleges do as well. Many occupations — security guards, home health care attendants, day care workers, teachers, beauticians — require licenses from the government, often the state government. Marijuana possession is considered a crime of “moral turpitude” and a guilty plea can disqualify an applicant for a licensed occupation, or it can cause people already working to lose their licenses, and their employers must suspend or fire them. Two guilty pleas to a marijuana possession misdemeanor or even a non-criminal possession offense can get a legal immigrant deported. One such guilty plea can disqualify someone from reentering the country and get them held for a year in a jail-like detention center while they try to fight the case. Family courts may intervene on the basis of a possession arrest, or even a neighbor’s report of use, and can remove children from a home and their parents.

***Does the legalization of marijuana possession and use as passed in 2012 by voters in Colorado and Washington State reduce the marijuana arrests and their consequences in those two states?***

Yes, for adults. The key issue, as you said, is the legalizing of ordinary personal possession and use. In both states the ballot measures made possession and use of cannabis legal for adults 21 and older. Almost immediately, prosecutors in both states dropped charges against hundreds of people who had been arrested before the election, citing the will of the voters. Since then thousands more have not been arrested. However, in neither state are teenagers included, and it is not yet clear how police, sheriffs, and prosecutors are dealing with them. In some jurisdictions police may try to make up the loss of adult arrests by targeting teenagers, which would be a really nasty consequence. Further, Washington's measure also included new provisions about driving under the influence that police can use, especially against medical marijuana patients. There is also the issue of the hundreds of thousands of people in both states who already have criminal records for marijuana possession. No one yet knows whether it is even possible to get state agencies and private companies to remove names from their criminal databases. Nobody has even thought about doing something on this scale before. Finally, the ballot measures in both states included systems for regulating the sale and production of cannabis, but the conflict with federal law still leaves that to be worked out with the U.S. Justice Department.

But the good news is, despite other problems, the passage of the ballot measures by wide margins — about 55 percent to 45 percent — has had the immediate effect of significantly reducing the large number of possession arrests in those two states and therefore many of the awful consequences.

***What is the national scope of the legalization effort? Will many more states be able to pass ballot measures legalizing possession and even sale of marijuana?***

The answer to your first question is yes, to some extent demographic, cultural, and even economic changes have made marijuana legalization a much less taboo idea. But unlike prohibitions of gay marriage, middle-class and wealthy people are mostly not directly affected by marijuana prohibition enforcement and criminalization. Indeed, many middle-class white people, including pot users, do not even know that huge numbers of young people are arrested daily for possessing a bit of marijuana. There are substantial numbers of wealthy individuals who fund efforts to change gay marriage laws, but still relatively few donors who financially support efforts to change marijuana laws. They don't want to come out of the closet as users or be thought of that way.

Further, for perhaps the next decade, and maybe for considerably longer, the only way to get marijuana possession legalized will be through ballot measures where voters get to decide. But only a relatively small number of states allow creation of a ballot

measure by petition. It is highly unlikely that substantial majorities of state legislatures will ever vote to legalize marijuana. Many governorships and state legislatures are now controlled by Republicans and conservative Democrats, and because of gerrymandering are likely to stay that way. And Congress will never act until there is enormous pressure from the states. Ending marijuana prohibition is a huge political and cultural change. Law enforcement — police, sheriffs, and prosecutors — constitute the most important and powerful institutional opposition to marijuana reform. In most places in the U.S., police departments and prosecutors will continue to fiercely resist and openly oppose marijuana legalization and even milder reforms. And politicians, whether conservative or not, never want to be seen as “soft on crime” or as undercutting law enforcement.

We have begun suggesting that reformers explore whether state legislatures can choose to create onetime ballot measures in order to put such a controversial and politically-charged issue in the hands of voters. It might be that politicians in some states would never vote “yes” for marijuana legalization, but large, smart, well-organized campaigns could pressure and persuade them to “let the voters decide” if such things are legally permissible. But pursuing that requires resources, funding, and activist mobilization that, at this point, appear utopian. It seems to us this is one important reason for exposing the scandal of the huge number of punitive and racist marijuana arrests. Scandals that shock the conscience can make utopian ideas seem necessary and even practical.

*You’ve said in the past that decriminalization offers a “false promise” for addressing the problem of racist marijuana arrests and their consequences. Can you explain this?*

More and more we are finding that decriminalization as it is usually understood and practiced is not a real solution — it does not fix this scandal. Under most forms of decriminalization, police continue to stop and search people looking for marijuana, and they do so in the same neighborhoods, targeting the same people. So decriminalization does nothing to address the huge racial biases and disparities in the policing of pot possession.

Making marijuana possession a civil offense can reduce some of the more onerous parts of marijuana policing and prosecution. Instead of handcuffing and arresting people, the police can or may issue summonses requiring people to appear in criminal court at a particular date. But despite what many people think and say, these are not like traffic tickets.

If the mostly young people do not appear in the criminal court at the required time — because they have a job, school, family responsibilities, or if they cannot pay the fines and court costs, which can be several hundred dollars or more — the court issues an arrest warrant. The next time they are stopped by the police for any reason, including a routine traffic stop, the arrest warrant shows up on the computer search and they are



handcuffed, brought to the police station, fingerprinted, held in jail for 24 hours or more, and charged with a serious crime: failure to respond to a court order. And when they do appear in court for the summons, they are not provided with public defender attorneys and are at the mercy of judges and prosecutors who generally recommend pleading guilty. That usually involves the mostly young and low-income people paying substantial fines and court costs, or getting arrest warrants for nonpayment.

We have begun to distinguish what we term good and bad decriminalization law. Bad decriminalization has high fines and fees, \$500 or more. Some politicians are proposing marijuana decriminalization with high fines and more intensive policing as a solution to budget crises. This is not reform but a new type of repression disguised as reform. Some proposed legislation by conservative Democrats and Republicans allows local governments or even police departments to keep the fines. This is a terrible idea because it makes local governments and police beneficiaries of the harmful, costly, and unfair tickets and arrests. It incentivizes the policing of marijuana. Police can also write many more summonses than they can make arrests, so there are often even more people who get stopped and searched and have to show up in criminal court. And the data from these offenses can also wind up in the criminal databases.

One other major problem with moving marijuana possession from a misdemeanor to a non-criminal offense or infraction is that data showing who is captured by the police is not available for the civil offenses as it is for misdemeanors and other crimes. In our work we use readily available criminal data to reveal the scandals and draw attention to the age, race, and gender biases and inequalities in marijuana arrests. But state agencies often do not have or make available the data for the non-criminal infractions. However, from various sources we know that under decriminalized systems, the number of possession offenses appearing in court often has increased among the same young and targeted populations as before. But there is currently no way to show that with public data.

Good decriminalization has low or no fines and court costs, little or no proactive enforcement, issuance of warnings, even teenagers are covered, and there are no arrest warrants. It also has all data readily and easily available. No place currently has that, though perhaps Massachusetts comes closest.

***You seem to be saying that legalization of possession, and ultimately of sale and production, is the only reform it makes much sense to push for.***

Yes, that is correct, with one additional point. Colorado's ballot measure in 2012 allowed individuals to have six cannabis plants in their homes for personal use. This creates a mechanism for people to legally obtain cannabis even without a formal, state-regulated sale and distribution system. This too seems a desirable reform. And of course if the problems with allowing state regulation and taxation of sale under current



federal law are worked out, states stand to gain hundreds of millions of dollars in tax revenue. Increasingly, surveys and polls are finding that voters think that marijuana should be regulated and sold like liquor is. Many people now think that doing that is a no-brainer, and their numbers are growing. But that policy is still not the case even in Colorado and Washington, and is unlikely to come soon in many other places.

In the meantime, the large number of marijuana possession arrests continue, disproportionately and scandalously affecting young people, young men, and especially young blacks and Latinos. To anyone who is moved by this we say: Welcome, join this righteous work. There is much to do, you will be fighting on the right side of history, and we will win.

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# THE NEW INQUIRY

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**This interview appears in TNI Vol. 15: Weed.**

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