

The Scandal of Racist Marijuana Arrests

The federal government has subsidized the criminalization of millions of young people.

Harry Levine | October 30, 2013

“Whites Smoke Pot, but Blacks Are Arrested.” That was the headline of a column by Jim Dwyer, the great Metro desk reporter for *The New York Times*, in December 2009. Although Dwyer was writing about New York City, he summed up perfectly two central and enduring facts about marijuana use and arrests across the country: whites and blacks use marijuana equally, but the police do not arrest them equally. A third important fact: the vast majority (76 percent) of those arrested and charged with the crime of marijuana possession are young people in their teens and 20s.

Over the last fifteen years, police departments in the United States made 10 million arrests for marijuana possession—an average of almost 700,000 arrests a year. Police arrest blacks for marijuana possession at higher rates than whites in every state and nearly every city and county—as FBI Uniform Crime Reports and state databases indisputably show. States with the largest racial disparities arrest blacks at six times the rate of whites. This list includes Alabama, Illinois, Iowa, Kansas, Kentucky, Minnesota, Pennsylvania, Nebraska, Nevada, New York and Wisconsin.

Big city police departments are among the worst offenders. Police in Los Angeles, Chicago and New York have arrested blacks for marijuana possession at seven times the rate of whites. Since 1997, New York City alone has arrested and jailed more than 600,000 people for possessing marijuana; about 87 percent of the arrests are of blacks and Latinos. For years, police in New York and Chicago have arrested more young blacks and Latinos for simple marijuana possession than for any other criminal offense whatsoever.

Other large urban areas that make huge numbers of racially biased arrests include Atlanta, Baltimore, Buffalo, Cleveland, Dallas–Fort Worth, Detroit, Fort Lauderdale, Houston, Las Vegas, Memphis, Miami, Nashville, Philadelphia, St. Louis, Tampa and Washington, DC. And across the United States, one-third of marijuana arrestees are

teenagers; 62 percent are age 24 or younger; and most of them are ordinary high school or college students and young workers.

The essential study of these possession arrests and their pervasive racial bias is *The War on Marijuana in Black and White*, an extraordinary book-length report released by the ACLU earlier this year. It found that police arrest blacks for marijuana possession at higher rates than whites in poor, middle-class and wealthy communities (with richer counties showing the greatest bias). The glaring racial disparities in marijuana arrests are “as staggering in the Midwest as in the Northeast, in large counties as in small, on city streets as on country roads.... They exist regardless of whether blacks make up 50% or 5% of a county’s overall population.”

Young whites (age 18 to 25), however, use marijuana more than young blacks, and government studies comparing marijuana use among whites and blacks of all ages have found that both groups use it at a similar rate.

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Why are marijuana arrests so racially skewed? Such dramatic and widespread racial disparities are clearly not the product of personal prejudice or racism on the part of individual police officers. This is not a problem of training or supervision or rogue squads or bad apples. It’s a systemic problem, a form of institutional racism created and administered by people at the highest levels of law enforcement and government.

Most people arrested for marijuana possession were *not* smoking it: they typically had a small amount hidden in their clothing, vehicle or personal effects. The police found the marijuana by stopping and searching them (often illegally), or by tricking them into revealing it.

Police departments concentrate their patrols only in certain neighborhoods, usually ones designated as “high crime.” These are mainly places where low-income whites and people of color live. In these neighborhoods, police stop and search the most vehicles and individuals while looking for “contraband” of any type to make an arrest. The most common item that people in any neighborhood possess that will get them arrested—and the most common item that police find—is a small amount of marijuana.

Police officers patrolling in middle- and upper-middle-class neighborhoods typically do not search the vehicles and pockets of white people, so most well-off whites enjoy a de facto legalization of marijuana possession. Free from the intense surveillance and frequent searches that occur in other neighborhoods, they have little reason to fear a humiliating arrest and incarceration. This produces patterns, as in

Chicago, where whites constitute 45 percent of the population but only 5 percent of those arrested for possession.

The result has been called “racism without racists.” No individual officers need harbor racial animosity for the criminal justice system to produce jails and courts filled with black and brown faces. But the absence of hostile intent does not absolve policy-makers and law enforcement officials from responsibility or blame. As federal judge Shira Scheindlin recently determined in two prominent stop-and-frisk cases, New York City’s top officials “adopted an attitude of willful blindness toward statistical evidence of racial disparities in stops and stop outcomes.” She cited the legal doctrine of “deliberate indifference” to describe police and city officials who “willfully ignored overwhelming proof that the policy...is racially discriminatory and therefore violates the United States Constitution.”

Racially biased marijuana enforcement stretches far beyond New York City—and its pernicious effects extend far beyond the degrading experience of being arrested and jailed. Most serious are the lifelong criminal records produced by a single arrest. Twenty years ago, misdemeanor arrest records were papers stored in dusty file cabinets. Now they are computerized and instantly available for \$20 or less from commercial database firms—and easily found by a Google search for the phrase “criminal records.” (Try it yourself.) Employers, landlords, schools, banks and credit card companies rule out applicants on the basis of these now universally available records, which have been aptly described as a “scarlet letter” and a “new Jim Crow.” The substantial damage caused by criminal records from the millions of marijuana arrests has also been willfully disregarded by top officials almost everywhere, including in Congress and the White House.

Perhaps surprisingly, police departments, prosecutors and elected officials rarely discuss their marijuana arrests. They don’t take credit for—or try to justify—arresting and jailing people in record-breaking numbers for possession. In fact, they usually seek to keep marijuana arrests out of the public eye.

This makes it difficult for many white Americans to believe that so many people are being arrested for possessing small amounts of marijuana. The news media don’t report on these cases; nor are white Americans likely to personally know anyone who has been arrested (or whose children have been arrested) for marijuana possession. To an extraordinary extent, middle-class and especially upper-middle-class and wealthy white Americans have been shielded from information about—and remain unaffected by—the policing of marijuana possession. The near-invisibility of these arrests has also hidden the strong support for them by police departments and prosecutors.

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The national crusade against marijuana can be traced to the early 1990s, as the “war on drugs” shifted its focus from crack cocaine to marijuana under Bill Clinton. Since then, Congress has regularly allocated billions in federal funding to local police and prosecutors under the Justice Department’s anti-drug and police programs. Grantees often report their drug possession arrests as evidence of their accomplishments using these funds—and as proof that they should receive more. Federal money has thus subsidized the arrests of millions of young people for possessing marijuana, disproportionately young people of color. Prominent blue-state Democrats like Joe Biden, Dianne Feinstein, Charles Schumer, Hillary Clinton and Barack Obama have strongly supported these grants over the years; in 2009, the fiscal stimulus actually doubled the anti-drug funding for local law enforcement agencies.

More than many people realize, prominent liberals have long been among law enforcement’s most important political allies. A substantial power bloc of “drug war liberals”—or what might more broadly be termed “law-and-order liberals”—has played a major role in sustaining this drug war policing. Police departments depend on liberal Democrats to defend their funding and policy needs. Liberals in Congress and the White House, in turn, depend on police lobbying groups to support important legislation, such as their endorsement of immigration and gun reforms. And politicians at all levels of government gain credibility with many voters by having top police officials vouch for their steadfastness in “fighting crime.”

With this federal support and encouragement, arrests for marijuana possession climbed from a crack-era low of 260,000 in 1990, to 500,000 in 1995, to 640,000 in 2000, to 690,000 in 2005, to 750,000 in 2010. The ACLU calculates that these arrests have cost taxpayers at least \$3.6 billion a year. And there is absolutely no evidence that they reduce serious or violent crime—or even drug use.

So the question again becomes: Why? Why have these millions of arrests happened? Why is it so hard to stop them? While federal funding and drug war propaganda have helped drive marijuana arrests, police and sheriffs’ departments have had their own reasons to embrace and fiercely defend the practice. Central to understanding the national marijuana arrest crusade is the fact that significant constituencies within police departments benefit from marijuana arrests, find them useful for internal departmental purposes, and want them to continue.

For ordinary patrol officers, marijuana arrests are relatively safe and easy work. Policing can be dangerous, but officers are unlikely to get shot or stabbed while searching and arresting teenagers for marijuana possession. All police departments have formal and informal activity quotas; in many departments, officers can show productivity and earn overtime pay by stopping and searching ten or so young people near the end of a shift and making a marijuana arrest. Police officers in New York have

long used the term “collars for dollars” to refer to the practice of making misdemeanor arrests to earn overtime pay. Also, from the officers’ point of view, people possessing marijuana are highly desirable arrestees. As one veteran lieutenant put it, they are “clean”; unlike drunks and heroin addicts, young marijuana users rarely have HIV, hepatitis, tuberculosis or even body lice. They are unlikely to throw up on the officer, in the patrol car or at the station. Marijuana arrests are indeed a quality-of-life issue—for the police.

Most important, police department supervisors at all levels find that marijuana possession arrests are very useful. They are proof of productivity to their superiors; some supervisors also receive overtime pay for the extra work by officers under their command. Making many searches and arrests for minor offenses is also excellent training for rookie police. If a new officer screws up the paperwork, it doesn’t matter because, as one sergeant explained, “it’s just a pot arrest.” And if a crisis or emergency comes up, police commanders can temporarily reassign officers making arrests for marijuana without hindering an ongoing investigation. This “reserve army” of police focusing on petty offenses keeps officers busy, provides records of their whereabouts and productivity, and gives commanders staffing flexibility.

Marijuana arrests also enable police department managers to obtain fingerprints, photographs and other data on young people who would not otherwise end up in their databases. There is nothing else the police can do that gets so many new people into their system as the broad net of marijuana possession arrests.

Police officials and managers have become so dependent on marijuana arrests that one could reasonably conclude that their departments are addicted to them. And they don’t want to give up their habit. In recent years, police agencies, prosecutors’ offices, and their influential network of political and lobbying organizations have emerged as the chief opponents of drug-law reform. It is not the religious right, or anti-drug groups, or even the drug treatment industry that lobbies and campaigns against marijuana ballot initiatives and legislative drug-law reforms. Rather, law enforcement organizations are leading the charge as well as providing the troops to defend the drug war.

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The ACLU’s report emphatically calls for an end to marijuana possession arrests, noting that the only way to accomplish this is by legalizing the possession and use of marijuana, and ultimately by regulating its production and sale.

Although the decriminalization of marijuana possession has been implemented in countries with a national police system, in the United States this has turned out to be a false solution. When possession becomes a “noncriminal” offense but still an illegal

one, local law enforcement agencies often continue many of the same practices as before—but now without public defenders to represent the young people charged with a “drug offense,” and without public data to document what police, prosecutors and courts are doing. Some police departments simply ignore the decriminalization laws, as the NYPD has done for over fifteen years.

However, as Colorado and Washington have proved in just the last year, there is a very good alternative: even without instituting commercial sale, the legalization of marijuana can stop most of these possession arrests.

The larger goal of ending punitive and biased drug arrests requires seismic changes in law enforcement: it will mean creating policing for a post-drug war America. One reform that makes others possible is guaranteeing public access to much more aggregate criminal justice data, both historical and current. With it, researchers and journalists can reveal routine police, prosecutor and court practices, as some of us have been doing for marijuana arrests and stop-and-frisks.

One way of conceptualizing these changes is to view them as bringing the civil rights movement to policing policies. In the last two decades, police department staff have become increasingly racially integrated. But in many cities and counties, the day-to-day practices of police and sheriffs’ departments are still determined by the race, class and ethnicity of a neighborhood’s residents. Despite the many successes of the civil rights movement, we continue to live within two worlds of policing, separate and unequal: one for middle-class and wealthier people, the other for poorer Americans and, especially, people of color.

It is time for America to fully embrace equal policing for all. Unfortunately, like all humane, just and progressive change, this will not be granted. It must be won.

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This document is online at:

<http://marijuana-arrests.com/The-Scandal-Of-Racist-Marijuana-Arrests.html>

This article at The Nation: <http://www.thenation.com/print/article/176915/scandal-racist-marijuana-arrests-and-what-do-about-it>

THE WAR ON MARIJUANA IN BLACK AND WHITE

Billions of Dollars Wasted on Racially-Biased Arrests

The ACLU's 200 page report, released in 2013, with graphs and data for 50 states and hundreds of cities and counties

ACLU page for the report and links to the pdf

<https://www.aclu.org/criminal-law-reform/war-marijuana-black-and-white-report>

Pdf of *The War on Marijuana in Black and White*

<https://www.aclu.org/files/assets/100413-mj-report-rfs-rel1.pdf>

Very good web materials about the report: animated charts, brief videos, more

<https://www.aclu.org/billions-dollars-wasted-racially-biased-arrests>

"End the Numbers Game: Police Should Not Be Rewarded for Making Marijuana Arrests"

By Ezekiel Edwards, ACLU Criminal Law Reform Project & Vanita Gupta, ACLU Center for Justice

<https://www.aclu.org/blog/criminal-law-reform-racial-justice/end-numbers-game-police-should-not-be-rewarded-making>

"The War on Marijuana Has a Latino Data Problem"

By Lynda Garcia, Soros Fellow, Criminal Law Reform Project, ACLU

<https://www.aclu.org/blog/criminal-law-reform-racial-justice/war-marijuana-has-latino-data-problem>