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THE RACE/ETHNICITY DISPARITY IN MISDEMEANOR MARIJUANA ARRESTS IN NEW YORK CITY*

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Abstract

Research Summary—This article examines the growth in marijuana misdemeanor arrests in New York City (NYC) from 1980 to 2003 and its differential impact on blacks and Hispanics. Since 1980, the New York City Police Department (NYPD) expanded its use of arrest and detention for minor offenses under its quality-of-life (QOL) policing initiative. Arrest data indicate that during the 1990s the primary focus of QOL policing became smoking marijuana in public view (MPV). By 2000, MPV had become the most common misdemeanor arrest, accounting for 15% of all NYC adult arrests and rivaling controlled substance arrests as the primary focus of drug abuse control. Of note, most MPV arrestees have been black or Hispanic. Furthermore, black and Hispanic MPV arrestees have been more likely to be detained prior to arraignment, convicted, and sentenced to jail than their white counterparts.

Policy Implications—In light of the disparities, we recommend that the NYPD consider scaling back on MPV enforcement and reducing the harshness of treatment by routinely issuing Desk Appearance Tickets when the person is not wanted on other charges, so that most MPV arrestees would not be detained. Furthermore, we recommend that legislators should consider making smoking marijuana in public a violation and not a misdemeanor. Lastly, we suggest ways that NYC could monitor the effectiveness of these policy modifications to assure that the city continues to meet its goals for order maintenance.

Keywords

Quality-of-Life Policing; Marijuana; Race; Discrimination

Since the 1980s, the New York City Police Department (NYPD) has undergone a fundamental transformation introducing numerous new programs and policies. (For historical reviews, see Bratton and Knobler, 1998; Giuliani and Kurson, 2002; Kelling and Coles, 1996; Kelling and Sousa, 2001; Maple and Mitchell, 2000; Silverman, 1999.) These changes included an enhanced focus on improving the overall quality of life by aggressively enforcing laws (especially by arrest) against minor offenses that occur in public and that may be deemed offensive to the general population. This approach has been alternatively referred to as quality-of-life (QOL) policing, order maintenance policing, zero-tolerance policing (because it focuses on enforcement of even the most minor offenses), and fixing broken windows (under the theory that an unkempt community invites crime). This article uses the term "QOL policing" to refer to this policy of assiduously enforcing the law against minor offenses occurring in public.

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Many public officials and analysts have credited this policing effort with improving the quality of life in New York City (NYC), increasing tourism, and reducing both minor and more serious crimes, including murder (see the references to historical reviews in the previous paragraph). Other scholars have questioned how much (if any) of the crime drop was due to policing initiatives, which of the initiatives were most effective (e.g., gun laws versus more aggressive policing), and whether the crime drop may have resulted from other factors such as the decline of the crack epidemic and its violent drug markets (Blumstein and Wallman, 2006; Eck and Maguire, 2006; Greene, 1999; Johnson et al., 2006a; Rosenfeld et al., 2005). During the 1990s, marijuana supplanted crack as the drug-of-choice among youths, especially in the inner city (Golub, 2006; Golub and Johnson, 2001). Many critics have also questioned whether these policies may have unduly and inappropriately targeted blacks and Hispanics as discussed in the literature review.

As part of QOL policing, the NYPD targeted the use of marijuana in public view (hereafter MPV).[1] A *New York Times* article appearing in 1998 reported that, "Arrests on marijuana charges have jumped to a record number this year, driven by the Giuliani administration's 'zero tolerance' approach that has police officers pursuing anyone found possessing, selling or smoking even small amounts of marijuana" (Flynn, 1998). As of 2006, Mayor Bloomberg planned to continue his focus on QOL policing and likely on MPV (*New York Times*, 2006).

Most marijuana arrestees (as described below) have been charged with criminal possession of marijuana in the fifth degree[2] as per the following statute (NYS, 2000):

> **221.10 Criminal possession of marihuana in the fifth degree**
>
> A person is guilty of criminal possession of marihuana in the fifth degree when he knowingly and unlawfully possesses:
>
> 1. marihuana in a public place, as defined in section 240.00 of this chapter, and such marihuana is burning or open to public view; or
> 2. one or more preparations, compounds, mixtures or substances containing marihuana and the preparations, compounds, mixtures or substances are of an aggregate weight of more than twenty-five grams. Criminal possession of marihuana in the fifth degree is a class B misdemeanor.

The penalties for an MPV arrest are relatively modest compared with those for other drug offenses. MPV arrestees face a day in jail pending arraignment (if detained), a criminal record (if the case is not dismissed), and the remote possibility of a few additional days in jail if convicted. Several recent analyses reported that arrestees for minor marijuana offenses are not the drug offenders filling our prisons (Caulkins and Sevigny, 2006; ONDCP, 2005). Most prisoners serving time for drug offenses were involved in dealing and most often in drugs other than marijuana (such as crack).

On the other hand, MPV arrests are unpleasant for those charged, can result in an arrest record, and can be potentially viewed as harassing and unfair. Flynn (1998:1) described the typical criminal justice experience as follows:

> Most of those arrested [for marijuana offenses] today are held for arraignment and can spend 16 to 36 hours in custody before being released, in sharp contrast to the past, when those arrested on low-level possession charges were often given a

[1]Johnson et al. (2006b) provide an extensive history of marijuana law enforcement in NYC since 1970 that examines the legal context as well as the police and court procedures.

[2]Conveniently, there are two bases for the acronym MPV: marijuana in public view and marijuana possession fifth degree, Roman numeral V.

> summons and not taken into custody. … First offenders … are eligible for a probation program known as adjournment contemplating dismissal in which charges are dismissed if a defendant stays out of trouble for a set period of time.… 'We call that doing your jail time up front,' said Tony Elitcher, a staff lawyer with the Legal Aid Society' criminal defense division. 'You are doing your sentence before you ever get in front of the judge.'

Based on an analysis of national arrest statistics, King and Mauer (2006) concluded that during the 1990s the U.S. war on drugs had transformed into a war on marijuana. This transformation certainly was occurring in NYC. By 2000, the number of marijuana arrests in NYC rivaled the number of controlled substance arrests. MPV had become the most common misdemeanor, accounting for 15% of all adult arrests. The analysis below suggests that in NYC since the 1990s that both the war on drugs and the war on civic disorder waged through QOL policing were transforming and converging into a war on smoking marijuana in public. This article examines the growth in MPV arrests in NYC in the 1990s and particularly the extent of any disproportionate effect on blacks and Hispanics.

LITERATURE REVIEW

Various observers have raised charges of possible discrimination against the NYPD's aggressive law enforcement practices during the 1990s (Amnesty International, 1996; Curtis, 1998; Eterno, 2001; Harcourt, 2001; McArdle and Erzen, 2001; Spitzer, 1999). New York State's Attorney General reported that the "Stop-and-Frisk" program (in which civilians were temporarily detained, questioned, and sometimes searched) disproportionately affected NYC's blacks and Hispanics (Spitzer, 1999). Whereas blacks comprised 26% of NYC's population, they accounted for 51% of all stops. Hispanics comprised 24% of the population but accounted for 33% of all stops. In strong contrast, whites comprised 43% of the population and yet accounted for only 13% of all stops.

Nonetheless, identifying discrimination can be complex. Any charges of bias in enforcement need to consider the possibility of differential involvement in offending by race/ethnicity. Spitzer's statistics clearly represent a substantial disparity in the impact of the stop-and-frisk procedure. However, the NYPD countered Spitzer's concerns of possible bias by noting that comparing persons stopped to residents by race/ethnicity was inappropriate (Flynn, 1999; NYPD, 1999). The NYPD argued that the 85% representation of blacks and Hispanics was consistent with the 89% rate at which victims of violent crimes described their perpetrators as black or Hispanic. In other words, they suggested that blacks and Hispanics were more highly represented within the criminal justice system because they were disproportionately involved in criminal behavior.

Ideally, we would like to analyze whether there has been discrimination in MPV arrests. However, such an analysis would require data on race/ethnicity differences in the likelihood and frequency of smoking marijuana in public, data that we do not have and that would be very difficult to collect systematically. Beckett et al. (2005a, 2005b) recently advanced this type of analysis. They compared the composition of Seattle arrestees with various measures of participation based on data collected from needle exchanges, public treatment facilities, and systematic ethnographic observation of drug markets. Their analyses supported the idea that blacks and Hispanics were disproportionately represented among drug arrestees compared with whites even after controlling for their involvement in drug use and sales, at least in Seattle. Replicating their work for NYC is beyond the scope of this article. There has been one small-scale study of a related nature performed in NYC (Johnson et al., 2006c; Ream et al., 2006). A survey of 513 respondents found that more black marijuana smokers (42%) reported that they never smoked in public than their white counterparts (20%). Hispanic respondents (33%) fell between the two. However, the interpretation of findings from this NYC survey is limited

because the study did not identify the extent that blacks were more likely to smoke marijuana at all and because the representativeness of the sample of marijuana smokers surveyed has not been established.

This analysis examines whether there has been a disparity in MPV arrests by comparing the race/ethnicity composition of MPV arrestees with both the general population of NYC and arrestees for other types of offenses. The first comparison parallels the analysis of stop-and-frisk by Spitzer (1999) by identifying whether blacks and Hispanics have been overrepresented according to their residential population. The second comparison parallels the analysis of stop-and-frisk by the NYPD (Flynn, 1999; NYPD, 1999) and suggests the extent that any race/ethnicity disparity might have been due to differential involvement in criminal activity.

In a previous study, we found that blacks and Hispanics were highly represented among a sample of 195 arrestees detained in NYC in 1999 for various possible QOL offenses, including farebeating, trespassing, and MPV (Golub et al., 2004). Nearly all of the QOL arrestees were either black (64%) or Hispanic (26%). However, this heavy representation among QOL arrests was similar to their representation among a sample of 265 arrestees detained for more serious offenses (64% black and 25% Hispanic). We also examined prior records to measure whether QOL policing had widened the net for arrest. A hypothesis of net widening would have been supported if there were substantially more first-time arrestees among QOL arrestees than arrestees for serious crimes. However, we found that the percentage of QOL arrestees without a prior arrest (18%) was quite small and similar to the percentage of arrestees for serious crimes without a prior record (19%). Based on the findings, we concluded that QOL enforcement likely had not widened the net for arrest but had increased the number of occasions under which a predominately minority population was arrested and detained.

This analysis replicates and extends the previous study by using a much larger data set and by examining other types of potential disparities. Discrimination can potentially occur at each successive point in the criminal justice system. This article examines disparities in the likelihood that black and Hispanic arrestees may be differentially more likely to be detained than their white counterparts, more likely to be convicted, and may tend to receive harsher sentences on average. In interpreting the data, this article analyzes whether any race/ethnicity disparities may have legitimate criminal justice justifications and whether data to establish those justifications may exist.

In the past few decades, there have been extensive efforts to address systematic bias in sentencing, especially by reducing judicial discretion with determinate sentencing (Spohn, 2000). In many jurisdictions across the United States, explicit guidelines were developed that specify the length of a sentence to be imposed based on the seriousness of the offense and the extent of an offender's prior record. These policies were designed with the goal of assuring equal treatment under the law regardless of race/ethnicity, gender, or other irrelevant extralegal factors.

Spohn (2000) provides a comprehensive review of the literature on discrimination in sentencing in the United States. She synthesized findings from all 40 published empirical studies on the topic that met three criteria: used data from the 1980s and 1990s, presented a measure of association between race/ethnicity and sentence severity, and controlled for crime seriousness and prior record using a multivariate statistical technique. Her analysis was necessarily limited by the range of available studies; only 13 states were represented, and the time periods covered differed between studies. As a preliminary meta-analysis, she examined how many of the comparisons of sentence severity identified a statistically significant disparity by race and ethnicity. Nearly half of these overall measures (48%, or 56 of 117) indicated that, on average,

blacks received harsher sentences than whites. For Hispanics, the rate was more than a third (36%, or 18 of 50).

Spohn (2000:462–463) went on to examine where the greatest disparities emerged through a more detailed review of the studies. She found that the differential harshness experienced by blacks and Hispanics varied significantly with crime type, procedural factors, and extralegal factors. Regarding crime type, blacks and Hispanics were particularly likely to be treated more harshly if they were charged with a drug offense (this finding is based on the result of seven studies) or a less serious crime (three studies). Accordingly, MPV should be a prime candidate for race/ethnicity disparities. Regarding procedural factors, blacks and Hispanics were treated more harshly than similarly situated whites if they were detained before trial (two studies), if they were represented by a public defender as opposed to a private attorney (one study), if they were convicted at trial rather than pleaded guilty (four studies), and if they had a more serious prior criminal record (nine studies). These procedural disadvantages are often experienced by poor minorities. Regarding extralegal factors, blacks and Hispanics were treated more harshly than their white counterparts if they were young (four studies), male (four studies), or unemployed (three studies).

In a Supreme Court Review, Coker (2003:829) argued that “the overwhelming empirical evidence demonstrat[e] unjust and unequal treatment in the American criminal justice system of African Americans and, to a lesser extent, Latinos.” A central point to her contention is the disproportionate representation of minorities in America’s jails and prisons. As of June 30, 2005, there were over two million people incarcerated in federal or state prison or local jails (BJS, 2006). This number included 3.2% of all black males and 1.2% of Hispanic males but a much smaller percentage (0.5%) of white males. Coker (2003) decried the extensive requirements to prove overt discrimination as well as the procedural focus on guidelines for establishing guilt rather than a focus on redressing damages. We concur with the need for a proactive approach to reducing disparities that Coker (2003:862–863) strongly advocates:

> The political discourse regarding racial disparities in the criminal justice system has largely focused on intentional discrimination committed by actors motivated by racial bias. A focus on bad actors and racial motives obscures the bigger picture of a system that systematically and disproportionately burdens communities of color with the excesses of law enforcement without many of the benefits.
>
> There are better ways to understand discrimination in the criminal justice system than to search for the bad actor. One such way would be to assess the overall impact of criminal justice policies on the well-being of communities of color, particularly African-American communities who are so frequently targeted by law enforcement efforts.

Accordingly, addressing race/ethnicity disparities may be a worthwhile goal even if discrimination cannot be proven and perhaps even if it does not exist. Reducing disparities improves our overall level of justice and helps minorities (many of whom are impoverished) establish productive lives, even if there are perpetrators within the criminal justice system who abuse their authority and go unpunished.

METHODS

This analysis of MPV arrests in NYC uses three available data sources: the decennial census, NYS arrest data, and data collected by the Arrestee Drug Abuse Monitoring (ADAM) program in Manhattan. These data sets track the population at three successive levels of penetration into the criminal justice system: general population, arrest, and in detention prior to arraignment. The NYS arrest data also provide information about disposition and sentencing. Based on the prior literature reviewed, we hypothesized that blacks and Hispanics would be

disproportionately represented among MPV arrestees compared with whites and that such disparities would persist the deeper the case went into the criminal justice system regarding detention, conviction, and sanctions. We further hypothesized that race/ethnicity disparities could not be fully explained by controlling for an offender's prior record, age, or gender. This section describes the nature of each data set and the assumptions and limitations of the comparisons made.

DECENNIAL CENSUS

Every ten years, the Decennial Census provides a direct population count of U.S. residents (U.S. Census Bureau, 2002). This information provides a general indication of the racial/ethnic composition of NYC, perhaps the best available and certainly one that is carefully documented and widely cited. However, the census data set has limitations for this analysis. In particular, the composition of NYC residents is not necessarily the same as the composition of persons at risk for arrest in NYC. The census data do not include persons who come to NYC every day to work or as tourists. The census also tends to undercount the population, especially blacks, Hispanics, and persons of lower SES (U.S. Census Bureau, 2004). And, of course, the census data set provides no information about risk behaviors such as the use of drugs, especially in public locations. Thus, there are numerous potential explanations for any differences in race/ethnicity between the NYC resident and arrest populations, and any disparity should not be viewed as clear evidence of discrimination. In particular, blacks and Hispanics in NYC may be more willing than whites to smoke marijuana in public view, although the limited available evidence suggests they are actually less likely (Johnson et al., 2006c; Ream et al., 2006).

Another difficulty is that the census uses different race/ethnicity categories than the NYS arrest data. The census asks separate questions about Hispanic/Latino origin and about race (U.S. Census Bureau, 2002). Respondents designate one or more race categories, including white, black/African American/Negro, and 13 others. The summary of NYC census data used in this analysis was obtained from the NYC Department of City Planning (2005). For comparison with NYS arrest data, the data were recategorized. Respondents who reported they were white, non-Hispanic, and not of mixed race were classified as white. Respondents who reported they were black, non-Hispanic, and not of mixed race were classified as black. The project used the older designation black for consistency with the NYS arrest designation and because the term is more inclusive than African-American; many black New Yorkers consider themselves to be of Caribbean as opposed to African origin, and others do not have U.S. citizenship. Respondents who reported Hispanic origin were designated as Hispanic, regardless of their designated race. Non-Hispanic respondents who designated Asian/Pacific Islander, American Indian/Alaskan Native, some other race, or two or more races were designated as other. Nearly three quarters (72.6%) of this group reported they were Asian.

NEW YORK STATE ARRESTS

The NYS Division of Criminal Justice Services (DCJS) is the single state agency responsible for compiling and maintaining all records of arrests in NYS. These records are routinely used to produce criminal histories (rap sheets) in support of law enforcement activities. Under special arrangement, the project obtained records of all adult arrests recorded in New York State from January 1, 1980 through January 12, 2005. The data set does not represent a complete accounting of arrest activities because it does not include arrests of persons under age 16 who are designated as juveniles in NYS (NYS, 2000). All personal identifiers (names, addresses, criminal IDs) were removed from the research data set. This data set includes many "sealed" arrests that are not routinely made available to criminal justice agencies. Under various circumstances, the state will officially seal a record of an arrest, especially arrests for minor offenses such as MPV that are subsequently dismissed. Officially, these arrests remain in the DCJS database but are coded as sealed. Sealed arrests are not provided on rap sheets generated

for subsequent arrests. For this analysis, exclusion of sealed arrests would have led to a serious undercount of aggregate police activity, as shown below.

This study examined all arrests occurring up to December 30, 2003, to assure the data set was virtually complete over the period of analysis. NYS law enforcement agencies are sometimes delayed in sending their reports to DCJS. Steven Greenstein (2005) of DCJS estimated that the data for 2003 should be more than 98% complete. The year 2003 also conveniently coincides with the last year of the ADAM data collection program. The complete 1980–2003 data set includes just under 12 million official adult arrests occurring in NYS: 6,429,992 in NYC and 5,345,926 in the rest of NYS. Initially, the project intended to analyze marijuana arrests throughout NYS. However, it soon became apparent that the massive growth in marijuana arrests occurred primarily in NYC. Marijuana arrests in NYS peaked in 2000. Of the 67,088 marijuana arrests that year, nearly all of them (92%) occurred in NYC.

For the purpose of this analysis, the type of arrest was classified according to the top charge at arrest into the following categories: MPV, MJ misdemeanor sale, nondrug misdemeanor, nondrug felony, and controlled substance. Early in the analysis, MPV arrests emerged as the most common marijuana offense and the basis for the growth of marijuana arrests over time. In 2000, at the peak of marijuana arrests in NYC, MPV arrests accounted for most of the marijuana arrests (83%) and nearly all of the marijuana possession arrests (98%). Of the remaining marijuana arrests, most of them were charged with misdemeanor sale of no more than 25 grams of marijuana (84%). Other marijuana arrests—including felony sales, possession of larger quantities, and five cases of possession of no more than 25 grams by persons convicted of a drug crime within the past 3 years—were excluded from the breakout of arrests. Thus, the arrest categories include most arrests but are not completely exhaustive.

The most common nondrug misdemeanors included simple assault in the third degree (18%), theft of service such as farebeating (17%), petit larceny (11%), and trespassing in the second (8%) and third (6%) degrees. These arrests may have resulted from QOL policing initiatives; however, they could also have been the result of routine policing. The NYS arrest data do not distinguish between these two sources of arrests. Of special importance to this analysis, all QOL arrestees detained prior to arraignment would have been charged with a misdemeanor. Less serious charges for violations generally do not justify detention; rather, they are typically dealt with by means of a C-summons (like a traffic ticket) that inform the recipient that they must appear in court at a later date (Johnson et al., 2006b). The most common nondrug felonies included aggravated assault in the second degree (19%), robbery in the first (7%) and second (6%) degrees, and grand larceny in the third (5%) and fourth (7%) degrees. Controlled substance arrests in NYS mostly involved heroin, crack, and powder cocaine; about half of them were felonies (52%), and the remainder of them were misdemeanors (48%).

The arrest data set provides only the most basic demographic information: race/ethnicity, gender, and age. Race/ethnicity categories include white, black, Hispanic, and other. The data set also provides information about the final disposition of a case and about the minimum and maximum sentence imposed. The data set does not contain details about the size of fines imposed nor length of time actually served in detention or jail.

ARRESTEE DRUG ABUSE MONITORING PROGRAM

In 1987, the National Institute of Justice established the ADAM (formerly DUF) program to interview persons being held pending arraignment (a first appearance before a judge) at participating locations including Manhattan. These ADAM subjects are referred to as *detainees* below, whereas cases in the arrestee database are referred to as *arrestees*. This analysis used the public-use data sets collected from 2000 to 2003. Starting in 2000, ADAM implemented procedures to obtain a representative sample of adult male detainees (ADAM,

2003; Hunt and Rhodes, 2001; NIJ, 2001). The ADAM-Manhattan program collected data for typically two weeks, every quarter from 2000 to 2003, except for the third quarter of 2001 when the World Trade Center was destroyed. To avoid individual disclosure, the public-use data sets do not contain any individual identifiers. Additionally, the authors signed agreements with the National Archive of Criminal Justice Data (NACJD) assuring that the data would be used for research purposes only and that confidentiality of individual information would be maintained.

Not all detainees selected by ADAM agreed to participate in the program. However, this analysis only needed each detainee's top arrest charge and race/ethnicity. Therefore, we decided to use the information on candidates selected for the ADAM program instead of the information from respondents. The ADAM public-use data sets provide each candidate's basic information, regardless of whether they agreed to participate. Hence, this analysis was not affected by any bias in the ADAM response rate.[3] For each candidate respondent, the ADAM program obtained the detainee's basic demographic information and arrest charges from their rap sheet. This same information is maintained by DCJS in the database of NYS arrests used in the analysis of arrestees.

The analysis excluded various ADAM-Manhattan detainees because either they were arrested outside of Manhattan, they were not charged with a misdemeanor or felony, or their race/ethnicity information was missing. The final sample used in this analysis included 4,238 adult male ADAM-Manhattan candidate respondents detained from 2000 to 2003.[4]

ANALYSIS OF DISPARITY IN DETENTION

A comparison of the NYS arrestee and ADAM detainee data sets provided an interesting opportunity to estimate any race/ethnicity disparity in detention for adult male arrestees in Manhattan. During 2000–2003, there were 284,644 males arrested in Manhattan. The ADAM-Manhattan detainee sample includes only 1.49% of these arrestees (4,238/285,644 × 100%). This low percentage is because not all arrestees are detained and because ADAM-Manhattan is only a sample of the detainees. Because ADAM-Manhattan procedures were designed to provide a representative sample, the composition of the detainee sample, as compared with the composition of the arrestee data set, should only reflect differences in which arrestees were detained. Moreover, the contrast of the composition of the arrestee and detainee data sets should indicate which arrestees were more or less likely to be detained. For example, the arrestee data set includes 40,845 MPV arrests and the detainee data set includes 443, a ratio of 1.08%. This indicates that MPV arrestees were less likely to be detained than arrestees charged with other offenses.

[3]The ADAM public-use data files include postsampling stratification weights for adult male arrestees to account for differential probability of sampling associated with time of arrest and booking facility (Hunt and Rhodes, 2001). However, these weights are only available for candidates that choose to participate. Hence, they were not used in this analysis. The ADAM-Manhattan candidate data were not affected by multiple facilities because all arrestees in Manhattan that are detained for any substantial period of time are brought to the borough's central arraignment facility. The ADAM sample could be potentially biased to the extent that there was substantial variation in each candidate's likelihood of inclusions with time of arrest and that this variation in time was correlated with arrest charge. However, no weights were developed given a lack of information on the number of detainees in each year. This analytic simplification could have contributed a small bias to the analysis. However, there was no a priori indication as to the extent or nature of any such bias.

[4]During 2000–2003, ADAM interviewed a combined sample of 4,729 male detainees in Manhattan. A total of 119 (3%) were arrested outside of Manhattan. These detainees may have been brought to Manhattan for a variety of reasons, such as an officer's convenience or crowding at detention centers in other boroughs. Overall, 344 (7%) had a severity that was neither a misdemeanor nor a felony: Just under half of these were for traffic violations (160), some were designated as severity other (123), and others were missing (60). Altogether, 109 (2%) did not have a race/ethnicity designation: 73 were missing a designation and 36 were designated as multiracial. ADAM interviewers were instructed to record the race/ethnicity of every ADAM candidate as it appeared on the offender's rap sheet. The 73 "race missing" cases represent instances when the ADAM staff did not complete their assignment. The 36 multiracial cases represent instances when ADAM staff did not follow their precise instructions, because NYS rap sheets do not include a designation of multiracial. Some ADAM detainees had two or three bases for exclusion. ADAM did not collect representative samples of female arrestees, so this analysis is limited to males. Also excluded were first-quarter 2000 ADAM subjects (N = 420) interviewed in the Bronx, Brooklyn, Queens, or Staten Island.

In this analysis, pre-arraignment *detention ratios* were calculated for the sample subdivided by arrest charge and by race/ethnicity. The standard error (S.E.) for each ratio (P) was calculated using the following conventional formula, where *n* is the number of arrestees within the subpopulation:

$$S.E = \sqrt{\frac{P \times (1 - P)}{n}}$$

The estimate of the ratio was suppressed when the number of arrestees represented within a cell was less than 2,000. An average value of 1.49% based on only 2000 arrestees would have a standard error of 0.27%, which is 18% of the estimated value (0.27 ÷ 1.49 × 100%), indicating a minimally acceptable level of reliability.

A racial disparity index was estimated as the detention ratio for black arrestees divided by the detention ratio for white arrestees. For example, a racial disparity indicator of 2.0 would indicate that blacks were twice as likely to be detained as their white counterparts. An indicator of 1.0 would indicate that they were equally likely to be detained. A standard z-test was used to determine if the difference between the detention ratios was statistically significant. An analogous ethnic disparity measure was calculated to compare Hispanic arrestees' detention experience with their white counterparts.

ANALYSIS OF DISPOSITION

Most MPV arrestees from 1992 to 2003 received a disposition of either dismissed, fine, time served, or jail. The dismissed category includes cases that were dismissed outright at arraignment and others that were "adjourned in contemplation of dismissal" or ACOD. ACOD serves as a warning. An ACOD disposition will be changed to dismissed contingent upon the person not being rearrested within a period of time of 12 months or less as specified by the judge (NYS, 2000, Criminal Procedure Law 170.56). Once a case is dismissed, DCJS seals the record of that arrest. Out of more than 360,000 MPV arrests from 1992 to 2003, a few were sentenced to probation (922), community service (99), prison (45), and other (23). Combined, these cases comprised less than 0.5% of the MPV arrests. These cases as well as an additional 3.9% of the cases that were missing a disposition were excluded from the analysis of disposition. Many of the cases missing a disposition were more recent arrests for which the disposition had not yet been set or had not been recorded.

Multinomial logistic regression was used to analyze how disposition systematically varied with number of prior arrests, race/ethnicity, age, gender, and year. These few variables represent the complete demographic information available in the data. This analysis was necessarily limited because the data do not include information about arrestee's education, employment, marital status, location of residence, demeanor at arrest, or use of a private lawyer or public defender. The data do include the precinct of arrest, which provides some indication of whether MPV arrests tended to be made in impoverished minority communities. We performed an extensive analysis of that variable, which is presented in another article that is summarized in the conclusion (Golub et al., 2006).

Regression models have the desirable property of identifying how much the dependent variable such as disposition varies with an independent variable of interest such as race/ethnicity, after controlling for possible systematic variation attributable to other variables. Based on prior research, we hypothesized that black and Hispanic MPV arrestees would be more likely to receive more severe sanctions (jail, fine, and time served as opposed to dismissal) than their white counterparts. We also hypothesized that MPV arrestees with more prior arrests would receive more severe sanctions. Age, gender, and arrest year were included as broader control variables. A standard likelihood ratio test was used to test whether the variation associated with

each factor was statistically significant. The X^2-statistic associated with this test was used as an approximate indicator of the relative importance of each factor.

FINDINGS

During the 1980s, the number of adult arrests in NYC nearly doubled, capping out at 281,000 (1988)—see Figure 1. (Note: Total arrests follow the scale on the right of Figure 1. Arrests within each category follow the scale on the left. Arrest counts reported below were rounded to the nearest 1,000.) This increase coincided with a period of growth in violent crime, much of which was attributable to the growth in use of crack cocaine and its violent markets. Controlled substance arrests ballooned from a modest 13,000 (1980) up to 88,000 (1989). Nondrug felony arrests also grew during this period reaching a high of 102,000 (1989) as did nondrug misdemeanors 99,000 (1987). Nondrug misdemeanors then dipped to 84,000 (1989). Throughout the 1980s, marijuana arrests[5] comprised a relatively small portion of all arrests hitting its highest level of 16,000 in 1985.

The arrests statistics confirmed the decline of crack and its associated violence since the 1990s. Controlled substance arrests declined from a peak of 88,000 (1989) to 52,000 (2003). Nondrug felony arrests (including arrests for more serious violent offenses) declined from 102,000 (1989) to 65,000 (2003). These changes drove the number of total arrests down in the early 1990s. However, as the 1990s progressed, NYPD priorities shifted to QOL policing. Consistent with this program's intolerance of minor offenses, nondrug misdemeanors rose to a new peak of 141,000 in 1997, pushing the total number of adult arrests to an even higher peak of 344,000 (1998).

By 1990, MPV arrests had fallen to a low of less than 1,000. During the 1990s, MPV arrests increased slowly and then more rapidly leading to a peak of 51,000 (2000), at which time it became the most common misdemeanor arrest charge in NYC. In comparison, the most common nondrug misdemeanors included simple assault in the third degree (22,000), theft of services such as farebeating (20,000), and trespassing in the second (9,000) or third (7,000) degree. Thus by 2000, MPV had become (and remained in 2003) the leading arrest charge resulting from QOL policing. The remainder of this article examines how MPV arrests affected blacks and Hispanics more heavily than whites at each stage of the criminal justice system including arrest, detention, conviction, and incarceration.

DISPARITY IN ARREST

Table 1 presents the demographic composition of MPV arrestees, other arrest categories, and census data for 2000, when MPV arrests peaked in NYC. There was a clear race/ethnicity disparity in MPV arrests. In 2000, black adults comprised less than one quarter of the resident population (23%) of NYC but more than half of MPV arrests (52%). The percentages are more in line for Hispanics, who comprised 25% of the population and 32% of MPV arrestees. However, this too represents a disparity when contrasted with the figures for whites, who comprised 38% of the population and only 15% of MPV arrestees. The respective ratios of MPV-to-resident population are 2.3:1 for blacks (calculated as 52% ÷ 23%), 1.3:1 for Hispanics, but 0.4:1 for whites, and only 0.1:1 for other race/ethnicities. This disparity was not limited to the year 2000; blacks and Hispanics combined always comprised 74% to 91% of MPV arrests in every year from 1980 to 2003 (figures not shown).

On the other hand, Table 1 also presents strong evidence that this race/ethnicity disparity was not unique to MPV arrests. In 2000, blacks comprised an even more disproportionate

[5]All marijuana arrests are broken out in Figure 1 as "MJ in Public View" and "All Other MJ Offenses." This latter category is more comprehensive than the "MJ Misdemeanor Sale" category used in subsequent tables.

percentage of MJ misdemeanor sales (67%) and controlled substance arrests (53%) and slightly less disproportionate percentages of nondrug misdemeanors (47%) and felonies (50%). Hispanics comprised similar percentages in all five arrest categories (28–33%). Restated, blacks and Hispanics comprised disproportionate percentages compared with whites in all arrest categories including MPV arrests.

Males were also disproportionately overrepresented among arrestees for MPV (92% compared with 46% of residents) and MJ misdemeanor sale (95%) more so than among controlled substance (81%) and nondrug misdemeanors (78%) and felonies (85%)—see Table 1. Young adults aged 16–29 were also disproportionately represented among arrestees for MPV (72% compared with 27% of residents) and MJ misdemeanor sale (66%) more so than among controlled substance arrests (31%) and nondrug misdemeanors (36%) and felonies (55%), perhaps reflecting the preference for marijuana among more recent birth cohorts.

DISPARITY IN PRE-ARRAIGNMENT DETENTION

Table 2 presents the racial disparity in detention analysis comparing adult male arrestees with detainees by arrest category and race/ethnicity. Overall, arrestees for MPV (1.08%) and MJ misdemeanor sale (1.22%) were less likely to be detained than arrestees in any of the other categories (1.24–1.81%).

Among MPV arrestees, there was a substantial race/ethnicity disparity. Black MPV arrestees (2.66) were more than two-and-a-half times as likely to be detained as their white counterparts. Smaller disparities in detention were found for other types of arrests. Black nondrug misdemeanants (2.02) were still much more likely to be detained than their white counterparts. The disparities were less for nondrug felonies (1.61) and controlled substance arrests (1.34). Hispanic arrestees were more likely than their white counterparts to be detained for MPV (1.85) and nondrug misdemeanors (1.45) but were comparably likely to be detained for nondrug felonies and controlled substance arrests. Consistent with prior research, the disparity in detention given an arrest was more pronounced for less severe offenses, such as those associated with QOL policing, especially MPV.

DISPARITIES IN CONVICTION AND SENTENCE LENGTH

Table 3 presents the variation in dispositions for MPV, MJ misdemeanor sale, and nondrug misdemeanor arrests. Most MPV arrests were dismissed (80%). Among those found guilty, many were sentenced to time served (9%) and no additional sanctions. Some were given a fine (8%), and a small percentage were sentenced to additional jail time (3%). MPV sentences tended to be quite short, relative to sentences for more serious offenses. In nearly every case (99.7%), the minimum sentence was for zero additional days. The median for the maximum sentence was only five days. Hence, the major form of punishment in most MPV cases was being detained for up to 24 hours while awaiting arraignment. Often, the MPV arrests were eventually sealed. Nearly all MPV arrests that were dismissed (94%) were subsequently sealed. In comparison, about two thirds of cases resulting in a fine (65%) and about a third of cases sentenced to time served (38%) or additional jail time (33%) were subsequently sealed. Black (22% = 100% – 78%) and Hispanic (22%) MPV arrestees were twice as likely to be convicted as white (11%) MPV arrestees. Black (10%) and Hispanic (10%) MPV arrestees were much more likely to be sentenced to time served than white (4%) MPV arrestees. This disparity could be because they were more likely to have been detained in the first place (see Table 2). Black (4%) and Hispanic (3%) MPV arrestees were also much more likely to be sentenced to additional time in jail than white (1%) MPV arrestees.

MJ misdemeanor sale and nondrug misdemeanor arrestees were less likely to be dismissed (69% each) than MPV arrestees (80%) and much more likely to be sentenced to additional time

in jail (16% and 12%, respectively) than MPV arrestees (3%). There were also wide race/ethnicity disparities in the percentage receiving additional jail time for MJ misdemeanors (17% for blacks and 12% for Hispanics versus 6% for whites) and for nondrug misdemeanors (16% black and 11% Hispanic versus 9% white). Of course, this aggregate analysis of nondrug misdemeanors did not control for the variety of offenses. Possibly, blacks and Hispanics may have been arrested for more serious nondrug misdemeanors. Additionally, these analyses for all three misdemeanor arrest categories do not control for an arrestee's prior record.

The multinomial logistic regression of disposition for MPV arrests presented in Table 4 does control for prior arrests as well as various demographic factors. The intercept presents the odds of each disposition for the reference population, those respondents whose characteristics match the reference category for each independent variable (black males arrested in 2000, aged 21–29, with one prior arrest). The odds of a sentence of time served was 8.3:100 for the reference population, which corresponds to a probability of 7.7% (8.3 ÷ [8.3 + 100]). Similarly, the probability of a fine was 12.7% and jail was 1.1%. Accordingly, the probability of dismissal for the reference population was 78.5% (100% – [7.7% + 12.7% + 1.1%]).

The most variation in disposition was associated with number of prior arrests (X^2-statistic = 68,644.6). Almost all MPV arrestees with no prior arrest record had their case dismissed (99%; figures not included in Table 4). The likelihood of a conviction increased substantially with the number of prior arrests. As the number of prior arrests increased beyond 1, the odds of a sentence for time served increased up to 6-fold and the odds of additional jail time increased up to 29-fold for those with 10 or more priors. The residual variation in race/ethnicity after controlling for prior arrests and several demographic factors was still statistically significant; black (odds ratio or OR = 1.0) and Hispanic (OR = 1.0) MPV arrestees were more likely to be sentenced to jail than white (OR = 0.6) MPV arrestees and somewhat more likely to be sentenced to time served (OR = 1.0 and 1.1 vs. 0.8). White (OR =1.4) and Hispanic (OR = 1.4) MPV arrestees were more likely to be fined than black (OR = 1.0) MPV arrestees. Older MPV arrestees were more likely to be sentenced to time served. Female MPV arrestees were somewhat less likely to be fined. Sentences of time served increased during the 1990s, but this was partially offset by a modest drop in the likelihood of a sentence to additional jail time.

Table 5 examines the variation in the percentage of MPV, MJ misdemeanor sale, and nondrug misdemeanor arrestees sentenced to additional jail time as it varies with both race/ethnicity and number of prior arrests. The variation in sentenced to additional time in jail with number of prior arrests for MPV arrests confirms the findings of the multinomial logistic regression (Table 4). The range in the percentage sentenced to jail from 0.1% for MPV arrestees with no prior arrests up to 14.3% for those with 10 or more arrests (Table 5) is greater than the variation associated with race/ethnicity (from 1% for whites to 4% for blacks; Table 3). However, there is still some residual variation with race/ethnicity, even after controlling for variation with prior arrests. MPV arrestees with one prior arrest were unlikely to receive extra jail time (Table 5). Black (1.0%) MPV arrestees with one prior arrest were three times as likely as their white (0.3%) counterparts, and Hispanic (0.8%) MPV arrestees were more than twice as likely. Even among MPV arrestees with extensive criminal records of 10 or more prior arrests, blacks (15%) and Hispanics (14%) were still more likely to receive additional jail time than their white (10%) counterparts.

Black and Hispanic MPV arrestees were affected by the increase in the likelihood of additional jail time associated with prior arrests in two ways. First, black and Hispanic MPV arrestees were more likely to be sentenced to additional jail time than their white counterparts even when they had the same number of prior arrests. Second, black and Hispanic MPV arrestees were much more likely to have prior arrests. White (63%) MPV arrestees were almost twice as likely to have no prior record as their black (33%) and Hispanic (35%) counterparts. Conversely,

black (31%) and Hispanic (30%) MPV arrestees were 2.5 times as likely to have three to nine prior arrests as their white (12%) counterparts. A substantial percentage of black (13%) MPV arrestees had 10 or more prior arrests; four times as many as white (3%) MPV arrestees. Hispanics (8%) MPV arrestees were between the two. Hence, the policy of punishing MPV arrestees with more prior arrests more harshly also contributes substantially to the race/ethnicity disparity in MPV sentencing.

Similar race/ethnicity disparities pertained to MJ misdemeanor sale. Blacks with no prior arrests (0.9%) or one prior arrest (4.3%) were nearly twice as likely to be sentenced to jail as their white counterparts (0.4% and 2.3%, respectively). Blacks with 3–9 arrests (16%) were more likely to be sentenced to jail than their white (13%) counterparts. Hispanic arrestees had rates in between those of their black and white counterparts. Just like MPV arrests, black MJ misdemeanor sale arrestees (19%) were less than half as likely to have no prior arrests as their white (46%) counterparts and three times as likely to have 10 or more arrests (27% versus 9%). Again, the rates for Hispanic arrestees tended to be between those of their black and white counterparts.

For nondrug misdemeanors, only one of the race/ethnicity disparities pertained. Black, Hispanic, and white nondrug misdemeanor arrestees were comparably unlikely to go to jail if they had no prior arrests (0.8–1.0%), and comparably likely if they had 10 or more arrests (33–36%). Black and Hispanic nondrug misdemeanor arrestees with one to nine prior arrests were only slightly more likely to be sentenced to jail than their white counterparts. On the other hand, black nondrug misdemeanor arrestees (29%) were about 40% less likely to have no prior arrests than their white (49%) counterparts and nearly twice as likely to have 10 or more prior arrests (29% vs. 15%). Hispanic nondrug misdemeanor arrestees had a distribution of prior arrests similar to their white counterparts.

LIMITATIONS OF THE ANALYSIS

This analysis identified substantial race/ethnicity disparities associated with MPV law enforcement in NYC since the 1990s in arrest, detention, conviction, and disposition. These data are consistent with the possibility that discrimination may be taking place, possibly at each stage of the criminal justice system. By themselves, however, these data do not constitute proof of discrimination. Regarding arrest, the data analyzed do not provide any information about the extent that blacks and Hispanics may be more likely to smoke marijuana in public than whites. There is some limited evidence that those blacks and Hispanics who do smoke marijuana are less likely than their white counterparts to do it in public (Johnson et al., 2006c; Ream et al., 2006). On the other hand, this study found that the percentages of MPV arrestees that are black or Hispanic are similar to the percentages for other arrest types ranging from MJ misdemeanor sale to nondrug felonies (Table 1), which suggests that blacks and Hispanics in NYC have been more likely than whites to be arrested for a wide range of crimes, including MPV.

This analysis strongly suggests that black and Hispanic MPV arrestees have been much more likely to be detained after arrest than their white counterparts, more so than for other crime types (Table 2). However, various legal and extralegal factors could potentially explain this disparity. On average as compared with their white counterparts, blacks and Hispanics (especially those of lower SES) caught smoking marijuana in public may have been more likely to be repeat offenders, more likely to have had an extensive prior record, or more likely to have been on probation or parole. Indeed, this analysis clearly found that black and Hispanic MPV arrestees have had longer prior records, on average, than their white counterparts (Table 5). Regarding possible extralegal factors, blacks and Hispanics (especially those of lower SES) caught smoking marijuana in public may have been more likely to not have identification with

them or may have been less cooperative with the police. These factors could have influenced officers' decisions regarding arrest in the first place and then regarding subsequent detention.

This analysis clearly indicates that black and Hispanic MPV arrestees have been more likely than their white counterparts to be convicted and to be sentenced to additional time in jail, even after controlling for prior record length (Table 5). This disparity may be because blacks and Hispanics have been more likely to follow a different legal course of action than whites. In particular, black and Hispanic MPV arrestees (especially those of lower SES) in contrast to their white counterparts may have been more likely to plead guilty, more likely to have represented themselves, more likely to use a public defender (or Legal Aid) rather than a private lawyer, or more likely to display a bad attitude in court. Further research might explore court documents to see whether they identify this type of differential action.

POLICY DISCUSSION

This study found that the growth in MPV arrest activity has had a substantial and disproportionate impact on black and Hispanic communities, especially on young black and Hispanic men. We concur with Coker's (2003) perspective that race/ethnicity disparities in the criminal justice system need to be addressed even when definitive proof of overt discrimination may be lacking. Ending the disparities associated with MPV arrests would increase the level of justice in NYC (whether overt and intentional discrimination had existed), help NYC's (and especially the NYPD's) relationships with black and Hispanic communities, and help black and Hispanic youths and young adults (especially those of lower SES) in their efforts to establish or maintain productive lives by not further burdening them with criminal justice sanctions and official criminal records. A reduction in the processing of MPV arrests would also allow the NYPD to focus police resources on other priorities. Indeed, the burden on the criminal justice system resulting from the recent growth in marijuana arrests has led several jurisdictions in the United States and several foreign nations to stop or reduce prosecuting cases for possession of small amounts of marijuana, to not pursue such arrests, and even to consider decriminalization of marijuana possession for personal use (King and Mauer, 2006). Based on our research findings, we recommend the NYPD consider several policy modifications:

Policy Recommendation #1: Reduce the Intensity of MPV Patrolling

The primary counterargument for current levels of MPV arrest activity is to preserve the quality-of-life gains NYC realized during the 1990s. As discussed, it has not been systematically established how much of these advances (if any) resulted from policing initiatives nor which aspects of the initiatives were essential. Our purpose in this article is not to debate that point but to forestall any arguments that current policies must be maintained exactly as they are to uphold these gains. In particular, we question whether the numerous arrests and subsequent detention of MPV arrestees are necessary to prevent smoking marijuana in public.

The NYPD's focus on arrest for smoking marijuana in public has been ongoing for more than 10 years. Perhaps this initiative has already achieved most of its potential benefit. In a companion analyses, we found strong evidence to support this claim (Golub et al., 2006). We analyzed the geographic distribution of MPV arrests and its change over time from 1992 to 2003. We found that in the early 1990s that most MPV arrests were recorded in the lower half of Manhattan (NYC's business and cultural center) and by the police in the transit division (responsible for subways and buses). This distribution is consistent with the goal of QOL policing, to reduce the offensive behavior of marijuana smoking in highly public locations. However, since the mid-1990s and into the 2000s, most MPV arrests have been recorded in higher poverty, minority communities outside the lower Manhattan area and by the NYPD's policing of low-income housing projects. This geographical shift suggests that smoking

marijuana in public may have been brought under control in highly public locations and that the continued emphasis on MPV arrest has shifted to lower income communities. We recommend that the NYPD return its focus to NYC's most public locations. This could result in a dramatic decline in the number of MPV arrests. Because most of the MPV arrestees have been black or Hispanic, this policy modification would greatly benefit these populations.

Policy Recommendation #2: Routinely Issue Desk Appearance Tickets [Dats] for MPV Arrests Instead of Detaining Arrestees Pending Arraignment

We recommend that the NYPD return to the policy of issuing DATs for MPV arrest similar to the policy that was in place from 1975 to 1994 (Johnson et al., 2006b). Under the proposed policy, an officer would take the MPV arrestee into custody and bring him or her to the local precinct house. A standard record check would be performed to identify any outstanding warrants (including failure to appear in court for a prior MPV arrest) or that an arrestee is on probation or parole. If these checks come back negative, the desk officer would issue a DAT and the MPV arrestee would be released at the precinct house. The DAT is somewhat similar to a traffic ticket that requires the arrestee to appear in court in about a month. The most important change from current NYPD procedure is that the typical MPV arrestee would not be transported to the central arraignment facilities and would not be held in a detention cell for up to 24 hours or more before appearing before an arraignment court judge. This change would help eliminate the substantial race/ethnicity disparity in detention by eliminating detention for most MPV arrestees. No longer would the vast majority of minority MPV arrestees be "doing their jail time up front" before ever getting in front of the judge.

In the mid-1990s, police and prosecutors objected to these DATs, which they mockingly referred to as "disappearance tickets." Almost half the arrestees receiving DATs in the 1990s never appeared in court. However, since 1995, the NYPD has greatly advanced its ability to track all forms of crimes or violations and offenders, which should greatly enhance compliance with DATs. The NYPD now uses electronic equipment at the precinct house to obtain a digital handprint of every arrestee, as opposed to the older fingerprinting procedure. This new technology allows the NYPD to quickly compare each arrestee's handprint with an electronic database of handprints maintained by the department. This automated record check can identify repeat offenders or those with outstanding warrants. Under the new procedures, the NYPD could then selectively detain this smaller group of MPV arrestees at the arraignment facilities. Conversely, the technology can identify the vast majority of other MPV arrestees who are not wanted and who would be released with DATs.

Policy Recommendation #3: Change MPV to a Violation Rather than a Misdemeanor

If political agreement could be reached, the NYS legislature should be encouraged to consider making MPV a violation rather than a misdemeanor. This could be done by removing the first numbered phrase in NYS (2000) Penal Law 221.10: "[W]hen he knowingly and unlawfully possesses marihuana in a public place … and such marihuana is burning or open to public view." MPV is only a misdemeanor crime because it occurs in public. The most common nondrug misdemeanors (simple assault, farebeating, petit larceny, and trespassing) are criminal offenses whether they occur in public or not. Hence, reducing the harshness associated with an MPV intervention would not violate the legal principle that the punishment should be in proportion to the seriousness of the crime.

NYS (2000) Penal Law 221.05 specifies that possession of 25 grams or less of marijuana is unlawful but not criminal; rather it is a "violation punishable only by a fine of not more than one hundred dollars." If the proposed modification were adopted, then persons that smoke marijuana in public would no longer be subject to arrest, but they would be subject to noncriminal penalties such as fines and graduated fines for repeat offenders. The result would

be that persons caught smoking marijuana in public would be treated similarly to those caught in private (although they would be easier to detect) or drinking alcohol in public. These violations usually result in arrest and detention only when the violator has also committed a more serious offense such as assault, aggravated harassment, reckless endangerment, or criminal mischief. Under the proposed policy, MPV violators not charged with any other offense would be issued a C-summons requiring they appear in court about a month later and potentially pay a fine. Reducing the severity of the charge from a misdemeanor to a violation would benefit blacks and Hispanics who are frequently affected by arrest and processing for MPV. It would reserve criminal sanctions and a criminal record for those people who commit more serious offenses.

Policy Recommendation #4: Monitor Smoking Marijuana in Public to Assure that Quality-Of-Life Goals Are Continually Met Under the Modified Policy

We believe that implementation of our policy recommendations has strong potential for continuing to meet the NYPD's goals regarding order maintenance. Geographic and survey analyses suggest that new civic norms against smoking marijuana in highly public locations may have developed (Golub et al., 2003, 2006; Johnson et al 2006c). Such civic norms could prove to be a more powerful and longer term mechanism for order maintenance (in this case not smoking marijuana in public) than fear of arrest. Indeed, the expanded deterrence literature has found that extralegal motivators associated with acceptance of civic norms are typically much stronger than fear of legal consequences (Foglia, 1997; Nagin, 1998). Sanctioning the occasional violator with tickets and fines may prove sufficient to preserve the broader knowledge that smoking marijuana in public is unacceptable. Furthermore, ending the current focus of MPV arrests in housing projects and low-income residential areas should not affect civic norms prevailing in NYC's most popular business and cultural areas.

We recommend that the NYPD (or NYC or NYS government) implement a monitoring program to assure that policy changes do not lead to significant increases in smoking marijuana in public in NYC's most widely visited locations. To obtain the most accurate results, it would be preferable if an outside consultant administered this program. Under this proposed policy, trained observers would routinely visit a sample of highly public locations to count how often smoking marijuana in public occurs and how often the NYPD intervenes. We further recommend that NYC hire an outside consultant to conduct a survey of residents living near highly public locations to learn whether they have observed persons smoking marijuana in public, how much the activity restricts or diminishes their enjoyment of public locations, and how they revise their activities in response. We also recommend monitoring the proportion of persons given DATs or C-summons for MPV as well as the proportion that are subsequently brought into compliance because they are arrested for a new offense. This information would document whether these less severe measures can maintain the prevailing civic order as well as the current policy of arrest and detention.

Administering these monitoring procedures over time could measure the extent that any policy modification resulted in a change in the incidence of smoking marijuana in public, especially if they were incorporated into a controlled field experiment. Moreover, all of this monitoring would assist the NYPD in developing an effective policy while avoiding race/ethnicity disparities when possible. Should civic norms shift over time, the NYPD might need to consider returning to a more aggressive response to smoking marijuana in public. However, the results of this study suggest avoiding the use of arrest and especially detention for smoking marijuana in public if possible because this policy has led to substantial race/ethnicity disparities since the mid-1990s.

CONCLUSION

This study has shown that MPV arrest has become one of the NYPD's biggest law enforcement activities since the mid-1990s. In 2000, there were more than 50,000 MPV arrests accounting for 15% of all NYC arrests, more than any nondrug misdemeanor arrest charge and rivaling the number of controlled substance arrests. This study further documented that the burden of MPV arrest has been falling disproportionately on blacks and Hispanics and that members of these minority groups, on average, have been receiving harsher treatment within the criminal justice system. Black and Hispanic MPV arrestees have been more likely than their white counterparts to be detained, convicted, and sentenced to further time in jail even controlling for prior arrests. These results suggest it is time to reassess whether the NYPD's goal of keeping marijuana smoking out of public locations can be met through a less punitive approach. We have provided several recommendations towards this end.

The growth in marijuana arrests across the United States indicates that locations other than NYC experienced a substantial increase in marijuana arrests (King and Mauer, 2006). Further research is needed to determine whether this increased arrest activity has resulted in race/ethnicity disparities elsewhere and whether these marijuana arrest policies are continuing to serve their intended purposes.

Biographies

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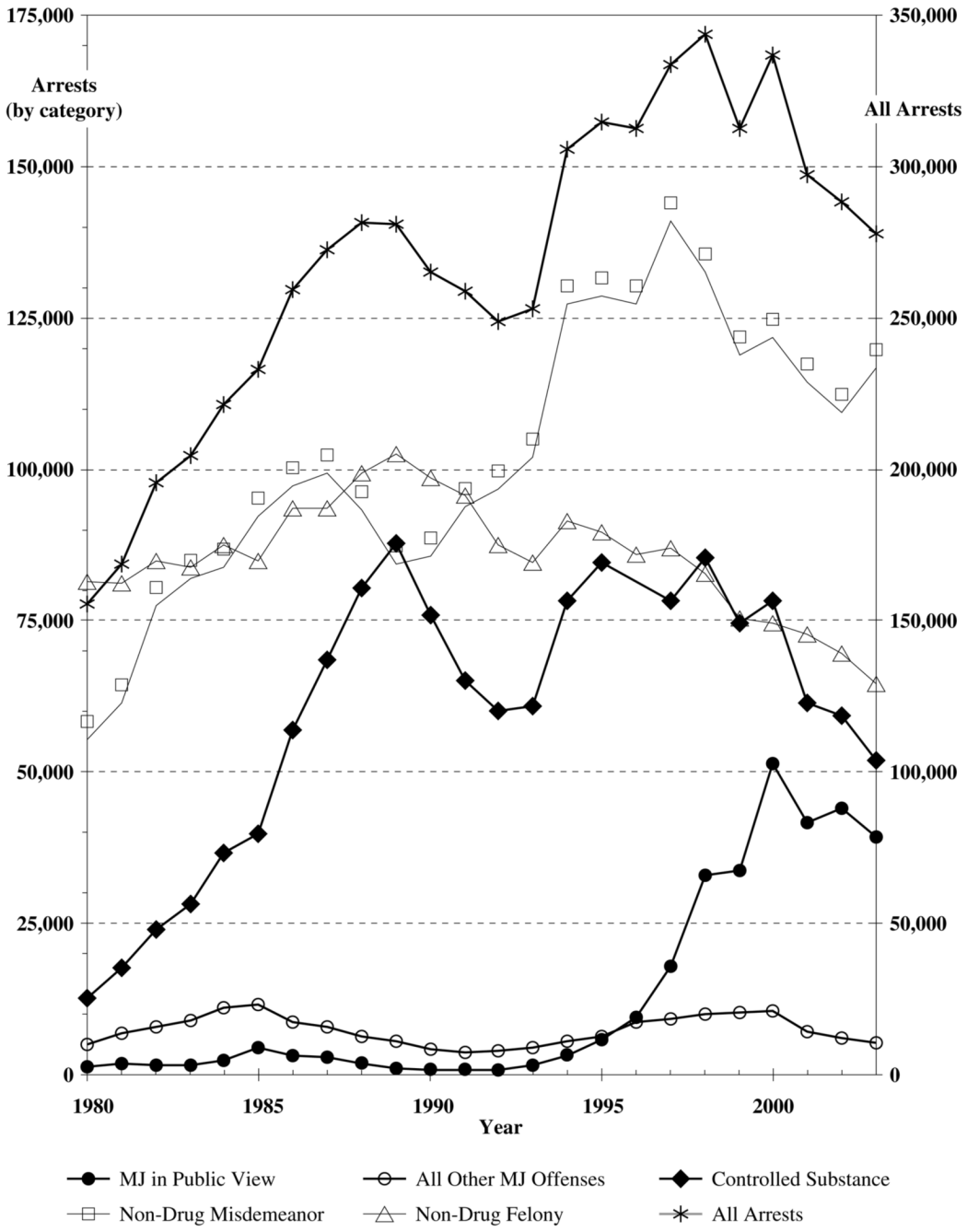

FIGURE 1.
NYC ADULT ARRESTS BY CHARGE CATEGORY, 1980–2003

TABLE 1

DEMOGRAPHIC CHARACTERISTICS OF ARRESTEES BY CHARGE TYPE, NYC 2000 ARRESTEES

	Demographic Category by Charge (%)						
	MJ in Public View	**MJ Msdmr Sale**	**Nondrug Misdmr**	**Nondrug Felony**	**Controlled Substance**	**All Arrests[a]**	**NYC 2000 Census[b]**
Race/ethnicity							
Black	52.2	67.0	47.3	50.2	52.9	50.6	23.2
Hispanic	31.8	28.0	32.0	31.8	33.0	31.8	25.0
White	14.7	4.2	16.7	14.2	13.6	14.2	38.2
Other	1.3	0.7	4.0	3.9	0.5	3.9	13.7
Gender							
Male	91.9	95.3	78.3	84.9	81.0	83.0	46.4
Female	8.1	4.7	21.7	15.1	19.0	17.0	53.6
Age							
16–17	10.6	10.1	7.3	9.4	3.4	7.4	3.3
18–20	22.2	21.4	12.4	15.5	8.1	13.9	5.2
21–29	39.1	35.1	26.7	29.9	19.1	27.8	18.5
30–39	18.3	20.3	29.1	26.0	34.5	27.8	21.5
40+	9.8	13.1	24.4	19.1	35.0	23.1	51.6
Median	23 yrs	24 yrs	31 yrs	28 yrs	36 yrs	30 yrs	40 yrs

[a] Includes marijuana arrests other than MJ in public view and MJ misdemeanor sale.

[b] Residents age 16 and above only.

TABLE 2

VARIATION IN PRE-ARRAIGNMENT DETENTION BY CHARGE AND RACE/ETHNICITY, MANHATTAN-MALE ARRESTEES 2000–2003

	MJ in Public View	MJ Msdmr Sale	Nondrug Misdmr	Nondrug Felony	Controlled Substance	All Arrests[a]
Manhattan Male Arrestees						
Black	17,846	4,260	52,100	27,521	35,075	137,762
Hispanic	12,933	2,655	33,098	18,212	20,906	88,251
White	9,464	466	21,469	9,730	9,023	50,285
Other	602	31	5,006	2,223	475	8,346
Total	40,845	7,392	111,673	57,686	65,479	284,644
(%)	(14.3%)	(2.6%)	(39.2%)	(20.3%)	(23.0%)	(100%)
ADAM-Manhattan Male Detainees						
Black	246	62	1,141	396	537	2,407
Hispanic	124	19	520	175	227	1,076
White	49	3	233	87	103	490
Other	24	6	126	58	48	265
Total	443	144	2,020	716	915	4,238
(%)	(10.5%)	(2.1%)	(47.7%)	(16.9%)	(21.6%)	(100%)
Pre-arraignment Detention Ratio[b]						
Black	1.38%	1.46%	2.19%	1.44%	1.53%	1.75%
Hispanic	0.96%	0.72%	1.57%	0.96%	1.09%	1.22%
White	0.52%	—	1.09%	0.89%	1.14%	0.97%
Other	— .	— .	2.52%	2.61%	— .	3.18%
Total	1.08%	1.22%	1.81%	1.24%	1.40%	1.49%
Standard Error of Pre-arraignment Detention Ratio						
Black	0.09%	0.18%	0.06%	0.07%	0.07%	0.04%
Hispanic	0.09%	0.16%	0.07%	0.07%	0.07%	0.04%
White	0.07%	—	0.07%	0.10%	0.11%	0.04%
Other	— .	— .	0.22%	0.34%	— .	0.19%
Total	0.05%	0.13%	0.04%	0.05%	0.05%	0.02%
Race/Ethnicity Disparity in Detention Ratio[c]						
Black:White	2.66	—	2.02	1.61	1.34	1.79
Hisp:White	1.85	—	1.45	n.s.	n.s.	1.25

[a] Includes marijuana arrests other than MJ in public view and MJ misdemeanor sale.

[b] The pre-arraignment detention ratio is the number of ADAM arrestees (for a specific charge category and race/ethnicity) divided by the corresponding number of NYS arrestees and multiplied by 100.

[c] The race/ethnicity disparity is calculated as the detention ratio for blacks (or Hispanics) divided by the detention ratio for whites. A racial disparity of 1.0 indicates no difference between the detention rates. All reported racial disparities are statistically significant at the $\alpha = 0.01$ level (larger than 1) in a two-sided z-test. Disparities that were not significant are designated as "n.s."

—Ratio suppressed if number of Manhattan arrestees is less than 2,000.

TABLE 3

DISPOSITION OF MPV, MARIJUANA MISDEMEANOR SALE, AND NONDRUG MISDEMEANOR ARRESTS BY RACE/ETHNICITY, NYC ARRESTS 1992–2003

Race/Ethnicity	Disposition			
	Dismissed	Time Served	Fine	Jail
MPV				
Black	77.8%	10.5%	7.8%	4.0%
Hispanic	77.8%	9.7%	9.5%	3.0%
White	88.9%	3.9%	6.4%	0.9%
Other	89.9%	3.0%	6.0%	1.1%
Total	79.7%	9.1%	8.0%	3.2%
% Sealed	93.9%	38.5%	64.6%	32.7%
Marijuana Misdemeanor Sale				
Black	66.7%	6.6%	9.3%	17.3%
Hispanic	73.7%	7.3%	6.7%	12.3%
White	78.9%	4.4%	10.3%	6.5%
Other	78.5%	5.8%	9.1%	6.6%
Total	69.0%	6.7%	8.8%	15.6%
% Sealed	79.2%	35.0%	62.8%	13.1%
Non-Drug Misdemeanor				
Black	67.4%	11.7%	5.4%	15.5%
Hispanic	69.3%	9.2%	10.7%	10.9%
White	70.2%	7.3%	13.9%	8.6%
Other	77.6%	3.8%	15.8%	2.8%
Total	68.8%	9.9%	8.8%	12.5%
% Sealed	86.2%	35.7%	55.6%	14.6%

X^2-tests indicate that the variation of disposition with race/ethnicity and of percent sealed with disposition are statistically significant at the $\alpha = 0.01$ level for each arrest category.

TABLE 4

VARIATION IN DISPOSITION AMONG MPV ARRESTEES, NYC 1992–2003 (RESULTS OF MULTINOMIAL LOGISTIC REGRESSION)

Covariates and X^2-Statistic[b]	Odds Ratio by Disposition[a] Time Served	Fine	Jail
Intercept Odds (%)	8.3:100 (7.7%)	14.5:100 (12.7%)	1.1:100 (1.1%)
Prior Arrests (68,644.6)			
0	0.0	0.1	0.1
1[c]	1.0	1.0	1.0
2	1.4	1.2	2.2
3–9	3.2	1.5	7.7
10+	6.2	1.6	28.7
Race/Ethnicity (15,957.2)			
Black[c]	1.0	1.0	1.0
Hispanic	1.1	1.4	1.0
White	0.8	1.4	0.6
Other	0.6	1.1	0.6
Age (16,351.6)			
16–17	0.6	0.6	1.1
18–20	0.8	0.8	1.1
21–29[c]	1.0	1.0	1.0
30–39	1.3	1.1	1.0
40+	1.4	0.9	1.0
Gender (15,309.4)			
Male[c]	1.0	1.0	1.0
Female	0.9	0.7	0.9
Year (16,945.6)			
1992	0.7	2.5	1.9
1993	0.6	1.7	1.1
1994	0.6	1.3	1.3
1995	0.6	0.5	1.1
1996	0.7	0.6	1.2
1997	0.8	0.7	0.9
1998	1.1	0.7	0.9
1999	1.2	0.8	1.0
2000[c]	1.0	1.0	1.0
2001	1.0	0.9	0.9
2002	0.9	0.9	1.0
2003	0.8	1.4	1.2

[a] The reference category for the categorical dependent variable is case disposed.

[b] The X^2-test examines the significance of the variation across all 4 categories of the dependent variable. The test for each independent variable was statistically significant at the $\alpha = 0.01$ level.

[c] Reference category of independent variable.

TABLE 5

PERCENTAGE OF ARRESTEES SENTENCED TO JAIL BY TYPE OF MISDEMEANOR ARREST, RACE/THNICITY, AND NUMBER OF PRIOR ARRESTS, NYC ARRESTEES 1992–2003

Percentage Sentenced to Jail by Race/Ethnicity and Number of Prior Arrests					
MJ in Public View	**0**	**1**	**2**	**3–9**	**10+**
Black	0.1**	1.0**	1.9**	5.5**	14.9**
Hispanic	0.1	0.8**	1.9**	5.1**	13.7**
White	0.0	0.3	1.1	3.3	10.1
Other	0.0	0.4	—	4.5	—
Total	0.1	0.8	1.8	5.2	14.3
MJ Misdemeanor Sale	**0**	**1**	**2**	**3–9**	**10+**
Black	0.9**	4.3**	7.5	16.3	38.4
Hispanic	0.6	3.1	6.6	15.8	35.8
White	0.4	2.3	—	13.1	—
Other	—	—	—	—	—
Total	0.8	3.8	7.2	16.1	37.8
Nondrug Misdemeanor	**0**	**1**	**2**	**3–9**	**10+**
Black	0.9**	4.1**	7.1**	14.4**	36.5**
Hispanic	1.0**	4.5**	7.3**	15.2**	35.2**
White	0.8	3.0	5.7	13.5	33.2
Other	0.4**	2.0**	4.6	13.0	36.4
Total	0.9	3.9	6.9	14.5	35.8
			Number of Prior Arrests by Race/Ethnicity (%)		
MJ in Public View	**0**	**1**	**2**	**3–9**	**10+**
Black	32.7**	14.1**	9.8**	30.8**	12.7**
Hispanic	35.3**	15.3	10.9**	30.3**	8.1**
White	63.2	15.1	6.8	11.7	3.3
Other	57.1**	15.2	9.8**	16.3**	1.6**
Total	38.8	14.6	9.6	27.3	9.7
MJ Misdemeanor Sale	**0**	**1**	**2**	**3–9**	**10+**
Black	19.0**	11.2**	8.9	33.5**	27.4**
Hispanic	24.1**	13.7**	10.7**	37.0**	14.4**
White	45.5	15.7	8.5	21.3	9.0
Other	—	—	—	—	—
Total	21.6	12.0	9.3	33.7	23.3
Nondrug Misdemeanor	**0**	**1**	**2**	**3–9**	**10+**
Black	29.3**	9.6**	6.6**	25.5**	29.0**
Hispanic	42.6**	10.8**	7.1**	22.9**	16.6**
White	49.2	11.6	6.2	17.8	15.1
Other	75.0**	9.7**	4.5**	7.9**	2.9**
Total	38.5	10.3	6.6	22.7	21.9

— Estimates based on fewer than 500 cases are suppressed.

** Difference in percentage from rate for white arrestees is statistically significant at the $\alpha = 0.01$ level based on a two-sided z-test. Test not performed if either estimate is suppressed.