Pot as Pretext: Marijuana, Race, and the New Disorder in New York City Street Policing

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Although possession of small quantities of marijuana has been decriminalized in New York State since the late 1970s, arrests for marijuana possession in New York City have increased more than tenfold since the mid-1990s, and remain high more than 10 years later. This rise has been a notable component of the city's "Order Maintenance Policing" strategy, designed to aggressively target low-level offenses, usually through street interdictions known as "stop, question, and frisk" activity. We analyze data on 2.2 million stops and arrests carried out from 2004 to 2008, and identify significant racial disparities in the implementation of marijuana enforcement. These disparities, present in both stops and arrests, are robust to controls for social structure, local crime conditions, and stop levels more broadly. The racial imbalance in marijuana enforcement in black neighborhoods suggests a "doubling down" of street-level policing in places already subject to heightened scrutiny in the search for weapons, a link suggesting that the policing of marijuana may be a pretext in the search for guns. Despite these ties, however, we show no significant relationship between marijuana enforcement activity and the likelihood of seizing firearms or other weapons. We also show that a large proportion of marijuana enforcement lacks constitutional justification under either federal or New York law. Marijuana stops are more prevalent in precincts where "other" and "high-crime area" justifications are more likely to be reported, two factors that are constitutionally insufficient to justify a street stop. The racial skew, questionable constitutionality, and limited efficiency of marijuana enforcement in detecting serious crimes suggest that nonwhite New Yorkers bear a racial tax from contemporary policing strategy, a social cost not offset by any substantial observed benefits to public safety.

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I. Introduction

Police enforcement of marijuana offenses in New York City has grown dramatically over the past half-century, and has intensified in recent years. Marijuana arrests have nearly doubled since the mid-1990s despite the decriminalization of marijuana possession (in small quantities) in 1977 by the New York State Legislature (Golub, Johnson & Dunlap 2006, 2007; Levine & Small 2008). This new focus on marijuana was one of the key components of then-Mayor Giuliani's strategy of Order Maintenance Policing (OMP) in New York City (Livingston 1997; Spitzer 1999; Harcourt 2001; Golub et al. 2007; Harcourt & Ludwig 2007). As part of OMP, police began targeting individuals "possessing, selling, or smoking even small amounts of marijuana" as part of their efforts to intensively enforce "quality of life" crimes and other minor misdemeanors (Flynn 1998). The central tactic in this search for marijuana was the use of aggressive "stop, question, and frisk" (SQF) tactics to identify would-be offenders (Harcourt 2001; Waldeck 2000; Fagan & Davies 2000; Levine & Small 2008).

Figure 1 shows that marijuana possession arrests skyrocketed with the advent of "quality of life" enforcement in 1994. By 2000, marijuana arrests accounted for 15 percent of all adult arrests in the city, more than any nondrug misdemeanor charge (Levine & Small 2008; Golub et al. 2007). By 2006, rates were nearly 500 percent greater than a decade earlier. In fact, New York City's four largest boroughs rank in the top five U.S. counties in per-capita marijuana arrest rates (King & Mauer 2006; Levine & Small 2008).

Figure 1:   Marijuana possession arrests, NYC.
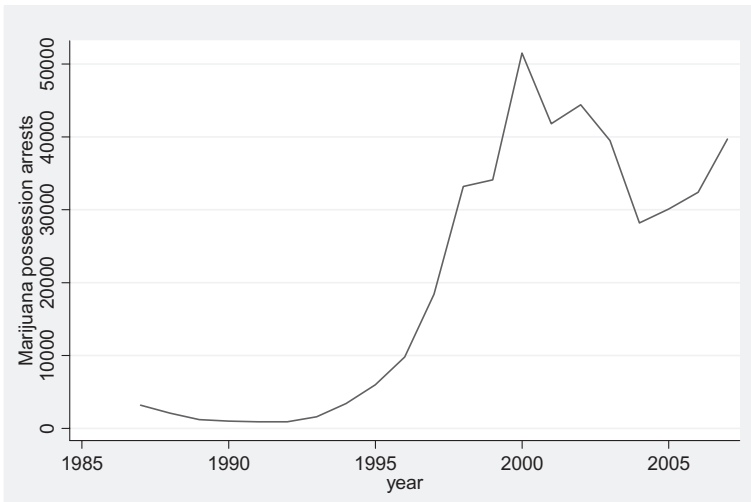
SOURCE: Levine and Small (2008).

The bulk of marijuana possession enforcement in New York City has fallen on the city's black and Hispanic residents (cf. Dwyer 2009), a skew at odds with the racial and ethnic patterns of marijuana use observed in local and national survey data. The Monitoring the Future Survey, an annual survey of substance use among high school seniors and eighth graders, shows that teenage marijuana use since 1990 is higher among whites than other racial or ethnic groups (Johnston et al. 2005). In a study of 43 urban and suburban neighborhoods, Saxe et al. (2001) show that blacks and Hispanics reported lower rates of drug use than their white counterparts. The National Survey of Drug Use and Health (SAMHSA 2007) showed very small differences in marijuana use rates between black and white teenagers, and lower rates among Hispanics. Yet marijuana arrest rates across the United States have been far higher for non-Hispanic blacks and Hispanics (King & Mauer 2006). In New York City, ground zero for marijuana enforcement nationally (King & Mauer 2006; Levine & Small 2008), youth are less like to report having used marijuana than their counterparts nationwide, and white youth are more likely to have tried illegal substances (including marijuana as well as other drugs) than blacks or Hispanics (New York City Department of Health and Mental Hygiene 2007).

The racial disparity in marijuana arrests may be explained by the availability of marijuana smokers and sellers in minority communities. Saxe et al. (2001) note that since visible drug sales are more prevalent in minority neighborhoods, police can simply choose efficiency over distributive concerns by focusing on the "low hanging fruit" of visible marijuana use. However, that choice has produced large racial disparities in misdemeanor marijuana arrest rates relative to race-specific rates of marijuana possession or use, and only tells part of the story of enforcement patterns in New York City.

Operationally, the majority of marijuana arrests in New York City stem from "stop, question, and frisk" activity (SQF), the tactical engine of OMP (Levine & Small 2008). Street stops are conducted predominantly in poor neighborhoods with high concentrations of black and Hispanic residents, at levels that exceed even what local disorder and crime conditions would predict (Spitzer 1999; Fagan & Davies 2000; Gelman et al. 2007; Fagan et al. 2010), and marijuana arrests are clustered in many of the same neighborhoods where SQF is carried out with the highest intensity (Harcourt & Ludwig 2007; Levine & Small 2008).

In this article, we examine the role that marijuana enforcement plays in the broader tactical landscape of OMP, with several tests of the links between SQF activity and marijuana enforcement. We identify racial disparities in marijuana stop and arrest patterns at both the individual and precinct levels. We also test whether any observed concentration of marijuana enforcement in minority precincts is driven by crime patterns or enforcement patterns more broadly, and how the police pursuit of marijuana ties into the primary goal of OMP, the pursuit of weapons. Next, we use the stated rationales recorded for each stop to examine the documented circumstances of these marijuana stops in order to assess the constitutional legality of this police behavior. Finally, we assess the efficiency of marijuana stops in detecting both marijuana possession and other illegal activities. To the extent that marijuana enforcement is grounded in OMP principles and practices, it raises the same constitutional and public safety concerns. These concerns are the focus of this analysis.

II. Constitutional and Criminological Background

A. *Doubling Down on Pot: A Brief History of Order Maintenance Policing*

Following the election of Rudolph Giuliani as mayor in 1993, newly appointed NYPD Commissioner William Bratton implemented a regime he called Order Maintenance Policing (OMP), which—together with other management reforms and innovations such as CompStat[1] crime mapping and accounting—dramatically and suddenly changed both the strategy and tactics of policing across the city (Bratton & Knobler 1998; Silverman 1999). The new strategy was grounded in "broken windows" theory (Wilson & Kelling 1982; Kelling & Coles 1996) and focused on the connection between physical and social disorder and violent crime (Greene 1999; Livingston 1997; Spitzer 1999; Sampson & Raudenbush 1999; Duneier & Molotch 1999; Waldeck 2000; Fagan & Davies 2000; Taylor 2001; Harcourt 2001; Garnett 2005; Fagan et al. 2010).

The broken windows theory suggested that the police "take care of the little things," such as physical and social disorder, to prevent the onset of more serious crime (Wilson & Kelling 1982). The chief architect of the OMP strategy, Jack Maple, suggested that these "little things" be taken care of through the aggressive interdiction of individuals engaged in disorderly activity, reasoning that disorderly individuals were likely to be carrying weapons or other contraband, or be on their way to or from robberies or other violent crimes (Maple & Mitchell 1999). To stop them, police were to preemptively and aggressively engage them and, if necessary, frisk and search them for weapons and contraband (Kelling & Coles 1996; Bratton & Knobler 1998; Silverman 1999; Maple & Mitchell 1999). These aggressive "stop, question, and frisk" (SQF) tactics were designed to reduce violence and weapons (especially firearms) possession (Spitzer 1999; Waldeck 2000; Fagan & Davies 2000; Harcourt 2001).

Accordingly, Police Strategy No. 5, *Reclaiming the Public Spaces of New York*, articulated a reconstructed version of broken windows theory as the driving force in the development of policing policy. It stated that the NYPD would apply its enforcement efforts to "reclaim the streets" by systematically and aggressively enforcing laws against low-level *social* disorder: graffiti, aggressive panhandling, fare beating, public drunkenness, unlicensed vending, public drinking, public urination, and other low-level misdemeanor offenses. Applying Maple's ideas, the strategy of targeting low-level offenders was thought to leverage the prevention of more serious crime as well because individuals stopped for minor offenses might also be carrying weapons, or have outstanding warrants for more serious crimes (Kelling & Coles 1996). While the shift to marijuana was not explicitly stated in any of the policy memoranda or public pronouncements that launched OMP, marijuana and serious crime have been linked rhetorically, if not scientifically, since the early 20th century

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[1]CompStat combines real-time (or nearly real-time) crime accounting with strategic analysis. CompStat generates data for systematic analysis of location-specific crime trends and problems, allocation of police resources to respond to those trends, and identification of performance measures for individual officers and their commanders based on responses of crime trends to their data. CompStat meetings, where the performance of local commanders is reviewed regularly and publicly, provide a dramatic forum where institutional norms of accountability are efficiently communicated through direct language and action such as police administrators to either reward or punish, sometimes with public shaming or humiliation, performance as measured against quantitative indicia based on crime analysis (see also Silverman 1999; Bratton & Knoebler 1998; Weisburd et al. 2004).

(Bonnie & Whitebread 1970). As OMP implementation progressed in New York City, marijuana possession quickly became a targeted offense.[2]

B. Race, Crime, and Order Maintenance Policing

The role of race in OMP has been highly contested. Critics of OMP point out not only the disproportionate stop levels faced by minority citizens and neighborhoods, but significant racial differences in poststop outcomes (cf. Dwyer 2009). Although the OMP strategy was designed as a place-based intervention, targeting areas characterized by disorder and high crime levels, the burden of its implementation has predominantly been felt by the city's minority residents and communities (Spitzer 1999; Kocieniewski 1999; Roane 1999; Jackson 2000; Fagan & Davies 2000). In a 15-month period from January 1998 through March 1999, non-Hispanic black, Hispanic black, and Hispanic white New Yorkers were three times more likely than their white counterparts to be stopped and frisked on suspicion of weapons or violent crimes relative to each group's participation in each of those two types of crimes (Gelman et al. 2007). Moreover, OMP was concentrated in predominantly minority neighborhoods at rates that far exceeded what local levels of crime and disorder would predict (Gelman et al. 2007; Fagan et al. 2010).

Street stop outcomes also suggest racial disparities: particularly in the late 1990s, stops of black citizens had significantly lower hit rates than those of whites, and these disparities persist at the neighborhood level, suggesting that residents of black neighborhoods are subject to a lower threshold of suspicion than their white counterparts (Gelman et al. 2007; Fagan et al. 2010). Poststop outcomes differ by race in other ways as well: blacks and Hispanics are more likely to be searched or frisked than whites, and more likely to be subjected to physical force (Ridgeway 2007).

Proponents of SQF practices point out that ethnic minorities are more likely to be victims of crime than their white counterparts, and that crime rates are higher in minority neighborhoods (Bratton & Knobler 1998; Smith & Purtell 2008). They justify excess stops of black citizens by claiming that the racial distribution of stops reflects the racial distribution of crime suspects (Ridgeway 2007; MacDonald 2009). However, only about 20 percent of all stops are based on a specific suspect description, leaving this justification irrelevant to the remaining 80 percent (Spitzer 1999; Fagan et al. 2010). Proponents also claim that

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[2]The origins of the formal connection between OMP and marijuana enforcement may lie in Operation Condor, one of the core crime control initiatives that drove the increase in marijuana arrests since the mid-1990s. Condor was a Giuliani Administration initiative that began in 1999 as an aggressive narcotics enforcement program targeting low-level drug transactions, and later expanding to include quality of life violations. Condor flooded high-crime areas with additional officers and, at its peak, cost more than $100 million a year in overtime costs, bringing officers in to work additional shifts on their days off to pursue drug crimes, especially marijuana (Rashbaum 2003). Condor officers were involved in the killing of Patrick Dorismond, who struggled with police officers after refusing their efforts to entice him to buy marijuana in a reverse sting (Flynn 2000). At its peak, Condor was credited with placing an additional 1,000 officers per day on patrol (Rashbaum 2002). Condor was criticized by detectives and police union officials for its aggressive tactics, such as suspicionless searches and targeting minority youths (Flynn 2000), and was, after 2004, replaced by Operation Impact, which targeted specific neighborhoods that were identified through both CompStat analysis and local intelligence, with rookie police officers. One precinct commander referred to it as "pinpoint precision bombing" (Dawan 2003).

racial disparities in stop practices are grounded in the targeting of high crime areas, rather than resulting from explicit racial targeting. In this account, the fact that those areas are populated by black New Yorkers is incidental to the pattern of stops.

The empirical support most often cited by proponents of OMP is the drastic reduction in New York City crime rates throughout the 1990s, which they credit to SQF practices (Smith & Purtell 2008; MacDonald 2009). However, the effectiveness of OMP in preventing or interdicting crime is also a topic of contentious debate. The yield of firearms and other weapons seized, perhaps the primary rationale for aggressive stops under OMP (Bratton & Knobler 1998; Spitzer 1999; Maple & Mitchell 1999), is low. In 2003, a total of 633 firearms were seized pursuant to stops, a rate of 3.9 seizures per 1,000 stops. By 2006, following a 300 percent increase in the number of stops, the seizure rate fell to 1.4 per 1,000 stops (Fagan et al. 2010). The rate of arrests pursuant to street stops also declined with rising stop rates, from 15.4 percent in approximately 125,000 street stops in 1998 (Spitzer 1999; Gelman et al. 2007) to less than 5 percent in about 500,000 stops in 2006 (Fagan et al. 2010). Proponents of SQF suggest that these low "hit rates" reflect the success of OMP in mounting a deterrent threat, leading to the withdrawal of would-be offenders from crime. However, significant crime declines in many other large cities suggest that larger secular processes may be as influential in the ongoing crime decline as city-specific processes (cf. Harcourt & Ludwig 2006; Rosenfeld et al. 2005).

C. Constitutional Regulation

Just as OMP, which was based on theories of social and physical disorder (Livingston 1997; Harcourt 1998; Waldeck 2000; Fagan & Davies 2000),[3] gave rise to equal protection concerns because of its racial and spatial concentration, marijuana enforcement runs similar risks based on its shared policy and tactical foundations. Likewise, since stops under OMP have raised Fourth Amendment concerns (Spitzer 1999; Gould & Mastrofski 2004; Harcourt & Meares 2010), it is reasonable to extend those concerns to the legal justifications of marijuana enforcement. The potential for legal ambiguity is greatest in "high discretion-low suspicion" stops (Spitzer 1999; Harcourt 2001), and it is clear from the New York State statute that marijuana enforcement may fall into this category. New York Penal Law Section 221, detailed in part in Appendix A, distinguishes between "unlawful possession of marijuana," which is a violation not punishable by arrest, and "plain-view" marijuana offenses, and each of these from higher grades of simple possession, which typically require observation or an act of purchase as the justifying suspicion.

The legal standard in New York that regulates the constitutionality of police conduct in citizen stops was set forth in *People v. De Bour* (1976), which expands on the *Terry v. Ohio* (1968) standard in federal case law. While *Terry* assumes that police-civilian encounters, even suspicionless ones, are consensual and could be terminated by the suspect, *De Bour* forbids inquiries "based on mere whim, caprice, or idle curiosity" (Carlis 2009). Whether

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[3]At its implementation in 1994, OMP also was based on concerted efforts to reduce violence and, specifically, to detect and remove illegal weapons. See Spitzer (1999) and Fagan et al. (2010). See also Bratton and Knobler (1998) and Silverman (1999).

the suspicion of marijuana possession is sufficient to prompt a stop, and on which charge, is frequently a matter of officer discretion (Levine & Small 2008). In New York, the court of appeals set forth a four-tiered scheme in which invasive police actions, ranging from accusatory questions to frisks and searches, must be justified by progressively elevated levels of suspicion (see Appendix B).

The elasticity of the rules established by *Terry* and *De Bour* and the soft boundaries set forth in subsequent cases created a wide space of discretion in which police craft could be justified to stop and frisk citizens at low levels of suspicion.[4] The 1999 investigation of the NYPD's SQF tactics by the New York State Attorney General's Office demonstrated the limited constitutionality of police stops under OMP tactics (Spitzer 1999). Based on a review by a team of lawyers and social scientists of a sample of 5,000 textual narratives stating the rationale for police stops and frisks over a 15-month period beginning in January 1998, the Spitzer Report estimated that approximately 15 percent of all street stops were unjustified under Fourth Amendment law in effect at that time,[5] and the constitutionality of more than one in three other stops (35.5 percent) was inconclusive. Civilians have also registered constitutional concerns about street stop activities; complaints to the Civilian Complaint Review Board increased 66 percent between 2002 and 2006, an increase concurrent with the rise in street stop activity (Clarke 2009). The substantiation rate of complaints related to frisks and searches more than doubled between 2002 and 2004, a period in which complaints related to other forms of improper police behavior saw little change in their substantiation rate (Clarke 2009).

D. This Study

The intersection of racial disparities and constitutional irregularities in police stops was the basis for litigation (*Daniels v. City of New York*, 2003) that led to a consent decree regulating

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[4]Both state and federal courts have expanded the concept of "reasonable suspicion" to include location as well as individual behavior. This opens the door to stops where suspicion is conditioned on the place where it is observed. The Supreme Court has articulated and refined this "high crime area" doctrine, in cases from *Adams v. Williams* (1972) to *Illinois v. Wardlow* (2000) (Ferguson & Bernache 2008). This line of cases allows police to consider the character of a neighborhood as a factor that may elevate the suspicion generated by a given action, reducing the individualized factors required to justify a stop. In *Wardlow*, the Supreme Court noted that although an individual's presence in a "high crime area" does not meet the standard for a particularized suspicion of criminal activity, a location's characteristics are relevant to determining whether a behavior is sufficiently suspicious to warrant further investigation. Though *Wardlow* has not been fully embraced by the New York Court of Appeals, presence in a high crime area is one factor that has been shown to elevate suspicion and justify police intervention (Kamins 2009). The resulting expansion of police authority to justify stop and search activities conflates "high crime areas" with neighborhood racial makeup, placing minority neighborhoods and citizens at increased risk of more frequent police contact.

[5]After the publication of that report, the U.S. Supreme Court decided *Illinois v. Wardlow* (holding that an individual who suddenly and without provocation flees from identifiable police officers patrolling a high crime area creates reasonable suspicion under the Fourth Amendment for the police to stop him or her). In practice, the "high crime area" doctrine permits police officers to take location into account when determining whether they have sufficient justification to stop and question a suspect. Although being present in a high crime area alone is not sufficient to justify a stop, this factor in combination with other similarly insufficient factors to justify reasonable suspicion can combine to form reasonable suspicion. See Ferguson and Bernache (2008). One impact of *Wardlow* would be the likely reduction in the estimate in Spitzer (1999) of the number of constitutionally unjustified stops.

the conduct of street stops and prohibiting the use of race as a factor in the selection of citizens for stops and subsequent intrusions. The potential for similar irregularities in marijuana enforcement is a natural consequence and risk of OMP, but the extent to which these concerns apply is unknown.

Accordingly, in this analysis we test four hypotheses. First, the similarity in the patterns of street stops and marijuana arrests under OMP have led to characterizations of marijuana as the new "broken windows," a manifestation of underlying crime and disorder problems that justifies aggressive policing in minority neighborhoods (King & Mauer 2006; Harcourt & Ludwig 2007; Levine & Small 2008). If this is indeed the case, the prevalence of street stops for marijuana, and marijuana enforcement more broadly, should be greatest in the city's minority neighborhoods, the places where OMP activity is most heavily concentrated, and where crime rates are higher. However, if these stops represent excess enforcement, their prevalence should be predicted not only by overall stop activity or by various indicia of crime, but also by neighborhood demographic and socioeconomic characteristics, especially race.

Second, if the police focus on marijuana is an attempt to link marijuana enforcement to "quality of life" crimes, based on the broken windows theory that serious crime will fall as a result, then we would expect marijuana stops to be most prevalent in areas with an immediate history of violent crime and high levels of disorder complaints. If, on the other hand, marijuana enforcement is being used as a pretext to pursue a search for weapons, then we would expect to see more intense marijuana enforcement in areas where weapons are also heavily pursued.

Third, given the Fourth Amendment concerns raised about OMP more broadly, we examine the legal justifications provided for marijuana street stops, and test whether the stated rationales comply with the "reasonable suspicion" required for *Terry* (street) stops. We estimate the extent to which these justifications explain observed patterns of stop activity, anticipating, for example, that precincts where a large percentage of stop activity is justified by suspicion of a drug transaction would also have high levels of marijuana stops, and that the narratives of suspicion would explain a large portion of the variation in stop activity.

Finally, we examine whether marijuana stops contribute to broader public safety goals. If, as internal police strategy memoranda state, the strict enforcement of minor offenses such as misdemeanor marijuana possession has positive spill-over effects and prevents more serious crime, then stopping individuals on suspicion of marijuana possession might lead to the detection of weapons and other illegal activity as well. We test the extent to which this is the case.

III. Methods

A. Data

1. Stop Activity

Our analysis is based on a unique and detailed data set from the New York City Police Department, made publicly available following a Freedom of Information Law (FOIL)

request and subsequent court order (*New York Civil Liberties Union v. New York City Police Department* 2008). The NYPD records information on a form known as the UF-250 each time a citizen is stopped by the police, according to procedures set forth in the NYPD Patrol Guide (2009). A copy of the UF-250 is in Appendix C. These records have been maintained in a digital database since 1998, when the state Attorney General began his investigation of the department's stop and frisk tactics (Spitzer 1999), and were updated following the litigation of *Daniels v. City of New York* (2003). In this analysis, we use data from 2004–2008.

The UF-250 form requires officers to record information regarding the suspect's demographic and physical characteristics, the location and time of day of the stop, the suspect's address, and information about the officer who made the stop and the supervisor who reviewed it. The form contains a free-response section where officers indicate the suspected offense that generated the stop. We identify those where the suspected crime was suspicion of marijuana possession.

Officers may use any number of phrases to describe stops based on suspicion of marijuana possession, but we use a few key and recurring terms to identify these "marijuana stops."[6] We use similar procedures to identify stops for suspicion of carrying a concealed weapon (CPW), a primary focus of OMP policing (Spitzer 1999; Fagan et al. 2010), and other suspected crimes, including "index crimes,"[7] other felonies and misdemeanors, and nonfingerprintable offenses.

The UF-250 data match each stop to its police precinct location, even if the stop was made by an officer in a command with cross-precinct patrol assignments.[8] We aggregate the records of stops conducted from 2004–2008 into a precinct-year panel, separately identifying total stops, stops for marijuana, and stops for possession of a weapon, and disaggregating stops by suspect race or ethnicity. The total sample was approximately 2.2 million stops.

2. Stop Legality

The NYPD responded to the Attorney General's investigation and the subsequent *Daniels* litigation by modifying the UF-250 to limit the information that officers could use to justify

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[6]Stops are identified as marijuana stops from the "crimsusp" (i.e., "crime suspected") field. A 30-character string, crimsusp is entered by the officers at the time of a stop, and can take on virtually any value, including typographical errors. The most common designation identifying the criminal possession of marijuana, "CPM," identifies 30,759 of the marijuana stops identified. At the other end of the spectrum, 1,328 marijuana stops are identified from "crime suspected" values that appear only once, such as "CPM MISD PSA#0243" or "POSSESSION OF MARJUINA." A complete list of the 1,738 crimsusp values used to identify marijuana stops is available from the authors upon request.

[7]Index offenses, collected by the Federal Bureau of Investigation, include murder and nonnegligent manslaughter, forcible rape, robbery, aggravated assault, burglary, larceny-theft, and motor vehicle theft.

[8]New York City police precincts are numbered nonconsecutively from 1 to 123. Cross-precinct assignments refer to those such as those in public housing. For example, enforcement in public housing is assigned a housing bureau, which in turn is organized into eight police service areas (PSAs). Officers in each PSA area may work in a catchment area including several public housing developments that span precinct boundaries. Special anti-crime units similarly work across precinct boundaries. In addition, we drop 1,276 stops from the analysis because they were not reported with a valid precinct.

a street stop (Flynn 2001). Whereas officers previously recorded their stop justification in a narrative form, beginning in 2001 they were required to check one or more of 10 boxes that indicate the legal basis for the suspicion that led to the stop. The indicia of suspicion listed on the form reflect the legal framework established by both *Terry v. Ohio* (1968) and *People v. De Bour* (1976).

The UF-250 also includes 10 categories of "additional circumstances" that may condition the initial basis for the stop in instances where the separate indicia of suspicion are constitutionally insufficient to comply with constitutional standards. For example, while a person's "furtive movements" or "turning at the sight of an officer" may be insufficient alone to justify a stop, *Illinois v. Wardlow* (2000) grants that if these factors are present in a "high crime area," the stop may pass constitutional scrutiny under federal law. Appendix D lists the factors that are available to officers to justify a stop, and the "additional circumstances" that they also can record to modify the stop factors. For both the stop factors and additional circumstances, officers can check a box marked "Other" if the basis for the stop does not fit into the available categories. Should a stop proceed to a frisk or a search, the revised UF-250 form also includes checkboxes for the rationales to justify these poststop actions.[9] The UF-250 database can thus be used to link officers' assessments of the indicia of suspicion to the characteristics of a suspect, the suspected crime, the location of the stop, and its outcome.

The UF-250s also allow a distinction between stops made in response to a previously reported crime or emergency (commonly referred to as "radio runs"), and stops initiated based on observed suspicious conduct, not previously reported. For example, an officer may, based on a radio run, stop a suspect because he or she fits the description provided by a witness during a 911 call. However, the data show that radio runs account for only 20 percent of the stops made between 2004 and 2008, and an even smaller portion (13 percent) of marijuana stops. Most stops were, instead, initiated by police officers, and require "reasonable and articulable" suspicion under *Terry* and *De Bour*.

3. Poststop Outcomes

In addition to providing officers an opportunity to mark whether a frisk or search was done, the UF-250 also includes boxes where officers can mark whether an arrest was made, contraband was seized, and, if a firearm was confiscated, the type of firearm. The UF-250

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[9]As envisioned by *DeBour*, stops, frisks, and searches are governed by N.Y. Crim. Proc. Law § 140.50(1) (2007). However, "stops" and "frisks" are considered separately under New York statutes. A police officer may stop a suspect but not frisk the suspect given the circumstances. Frisks and searches are governed by N.Y. Crim. Proc. Law § 140.50(3), which requires a legitimate "stop" as a predicate to any frisk. In many cases, reasonable suspicion that a person is engaging in violent or dangerous crime (such as murder, burglary, assault, etc.) will justify both a stop *and* a frisk. A reasonable belief that the suspect has a weapon or that the officer is in danger of physical injury can also justify a frisk. A search is permissible as a Level 4 *DeBour* stop where there is probable cause that a crime has occurred and a search can be conducted either separately from or incident to an arrest. As with the initial stop, these factors alone may or may not justify further intervention, but when combined with these additional circumstances, the actions may pass constitutional scrutiny as Level 3 and Level 4 *DeBour* stops. In each of these levels of police intrusion, the presence of one of the "additional circumstances" can create constitutionally valid justification for a frisk or search if other marginal factors are present that alone would be insufficient to justify the further action.

includes places to mark down whether force was used and, if so, the type of force. Force categories range from the use of hands to drawing a weapon.

4. Precinct Socioeconomic Conditions

Precinct-level demographic data are drawn from 2006 projections of U.S. Census data (for details, see ESRI 2006). Projections of total population, race, ethnic, and age breakdowns, and unemployment are made at the tract level, and aggregated from tracts to police precincts. Because precincts do not, as a rule, share boundaries with Census tracts, we allocate tract populations to precincts based on the percent of each tract's area that falls into each precinct.[10]

Data on poverty and the concentration of foreign-born population are observed at the Public Use Microdata Area (PUMA) level from the 2005–2007 American Community Survey. This survey is conducted annually by the Census Bureau to develop mid-decade demographic and economic indicators for cities and counties. Data on physical disorder are observed at the subborough level in the 2005 New York City Housing and Vacancy Survey. These data are then allocated to the precincts that most closely fall within the boundaries of these larger administrative units.

5. Precinct Crime Conditions

Data on reported crimes by suspect race and precinct were obtained by one of the authors from the NYPD pursuant to litigation in *Floyd v. City of New York* (2008), and data on arrests were obtained from the New York State Division of Criminal Justice Services (DCJS). Both the NYPD and DCJS data identify the suspect race (where known) and alleged offense, though the categories used to classify offenses vary by reporting agency. Because the NYPD data do not include details on marijuana possession (instead classifying all controlled substance offenses as "dangerous drugs"), we base our estimates of marijuana possession arrests on DCJS data.

B. Model Specification

1. Descriptive Analysis

We begin by examining the extent to which the racial disparities observed by Golub et al. (2007) in marijuana possession arrests are also present in marijuana street stops. We compare the citywide demographic breakdown of stops for marijuana possession to the breakdown of arrests for marijuana offenses, all arrests, and the city more broadly. We also use the (X,Y) coordinates provided by the NYPD to geocode more than 75 percent of

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[10]For example, if precinct A shares area with three Census tracts (A1, A2, and A3), the precinct population is estimated as:

   % of A1 falling into precinct A * population of A1 +
   % of A2 falling into precinct A * population of A2 +
   % of A3 falling into precinct A * population of A3.

documented stops to the intersections at which they took place (or a greater level of detail), and examine the extent to which, as posited by Levine and Small (2008), marijuana street stops are concentrated in areas with high concentrations of black residents.

2. Modeling Approach: Marijuana Stop Prevalence

We next estimate a set of models to test whether any observed racial disparities in marijuana stop activity can be explained by precinct socioeconomic factors or citywide trends in policing.[11] We use generalized estimating equations (GEEs) with a negative binomial functional form to reflect the discrete nature of stop counts, and a population exposure variable to reflect the expectation of higher stop counts in more populated areas. GEEs are beneficial for nested data (such as years nested within precincts), as they allow the specification of within-subject correlations of observations (Hardin & Hilbe 2003; Ballinger 2004). We assume an AR(1) covariance of years within precincts to account for autocorrelation in rates of both the dependent variables and predictors in each precinct.

We begin by examining the extent to which stop counts vary by precinct racial composition, controlling for year fixed effects to account for citywide changes over time, and borough fixed effects to reflect organizational and social structural commonalities. Subsequent models use a similar form, with progressively more precinct controls. The second model adds controls for precinct socioeconomic conditions using the percent of the population that is foreign born, and a principal components factor to summarize the level of socioeconomic disadvantage.[12] The third model examines the extent to which marijuana stops, and their geographic distribution, vary with precinct crime conditions. Specifically, this model controls for violent crime complaints in the previous year,[13] anticipating that police resources might be allocated more heavily to high crime areas. The fourth model also includes a control for past-year marijuana arrests to test whether marijuana enforcement practices are stable over time.[14] Finally, our fifth model adds a control for the total number of stops recorded in the precinct in the year, to account for the fact that marijuana stops are likely to be more prevalent in areas subject to more stops overall.

Following our models of marijuana stop prevalence, we again examine how stop and frisk activity fits into the NYPD's broader strategy of marijuana enforcement. Levine and Small (2008) posit that the majority of marijuana possession arrests begin as street stops, and our descriptive analysis examines whether this is the case, and whether the race disparities seen in arrests are mirrored in stop activity. We also define a measure of overall

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[11]The 22nd Precinct (Central Park) is omitted from these models, as it has no relevant demographic or socioeconomic data.

[12]Principal components factor analysis is commonly used to extract common thematic elements from several highly correlated variables (see, e.g., Sampson & Raudenbush 1999). The socioeconomic disadvantage factor loads heavily on precinct poverty levels, unemployment rate, and levels of physical disorder, as computed in Fagan et al. (2010).

[13]Crime complaints are measured by thousands, but substantive results are also robust to a control for logged crime complaints. "Violent crime" complaints refer to homicide, rape, robbery, assault, arson, and kidnapping.

[14]Marijuana arrests are measured by thousands, but substantive results are also robust to a control for logged arrests.

marijuana enforcement equal to the total of stops and arrests for marijuana,[15] and replicate the stop models to test whether overall enforcement patterns follow the same patterns as marijuana stops. In this series, Models 1 through 3 examine levels of enforcement in each precinct and year, and Models 4 and 5, by controlling for past-year arrests, examine changes in enforcement patterns. Given that marijuana enforcement rose citywide from 2004–2008, coefficients in these models identify precincts in which enforcement increased more rapidly.

The next series of models examines how marijuana enforcement fits into the overall stop and frisk strategy, and the stated goals of Order Maintenance Policing. Although OMP cited the broken windows theory that the enforcement of minor crime would reduce more serious crime as well, SQF emphasized gun detection, and about one stop in five is based on suspicion of weapons possession. We test the links between marijuana stops and arrests and each of these goals by building on our marijuana enforcement models, beginning with an additional control for past-year disorder complaints.[16] To the extent that marijuana stop activity ties into a broader policy of order maintenance, we anticipate that measures of prior disorder would significantly predict precinct stop levels. Next, we add an additional control for weapons focus, or the percent of stops in each precinct and year on suspicion of weapons possession. The extent to which marijuana stops are concentrated in precincts that prioritize weapons possession may raise concerns that marijuana enforcement is used as a pretext for a street stop in what is a de facto search for weapons.

3. Legality Analysis

We next we analyze the legality of marijuana stops, and their compliance with the *Terry* standard of "reasonable suspicion." The check-off recording system on the UF-250 is grounded in case law, though it also gives officers an option to select two types of "other" factors or circumstances that motivated the stop. This check-off method can generate more than 300 unique combinations of the constitutionalizing stop factors or justifications alone. When the *additional circumstances* options are considered, more than 9,000 unique combinations of stop factors and additional circumstances are available, plus more combinations when officers include "other" as a justification.[17] For the 2.2 million stops, no single combination appears in more than 15 percent of stops, making a complete analysis of all factors listed nearly impossible.

To identify a set of cohesive and interpretable legal dimensions that reflect recurring patterns among the 9,000 combinations of stop factors and additional circumstances, we performed a principal components factor analysis with varimax rotation to extract the sets of individual factors that best capture the distinct and recurring legal narratives that officers

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[15]Marijuana arrests recorded in the street stop database are subtracted from this total to avoid double counting.

[16]Disorder complaints include those for: offenses against public order and sensibility (comprises 99 percent of disorder complaints), alcoholic beverage control law, disorderly conduct, disruption of a religious service, fortune telling, gambling, loitering, loitering for drug purposes, loitering for deviate sex, and loitering for gambling.

[17]Narrative or text explanations of the meaning of "other" were extremely rare.

use to justify their stops. The principal components analysis yields a score that reflects the weight of each individual item. We apply those weights to each record to compute a score for each of the dimensions based on the combination of stop factors and additional circumstances that are checked off for that record. We then aggregate these legality scores for each precinct and year. These legality scores then are entered as predictors in the models predicting marijuana enforcement patterns.[18]

 We use two different metrics to assess the extent to which these factors indicate reasonable suspicion. First, we assess the extent to which including them in models estimating enforcement patterns improves our model fit.[19] A consistent narrative of suspicion for marijuana possession would suggest that the documented justifications would explain a nontrivial proportion of the variation in enforcement patterns. On the other hand, arbitrary stop behaviors, or randomness in how stop justifications are invoked, would do little to improve model fit. Next, we examine whether any of the separate legality dimensions are statistically significant predictors of enforcement patterns. For example, we examine whether a legality dimension that includes behaviors indicative of "casing" a location for a crime is a significant predictor of enforcement patterns. We anticipate, for example, that marijuana enforcement would be more prevalent in precincts where drug suspicion justifies a greater portion of stop patterns.

4. Stop Efficiency and Public Safety

Finally, we examine the public safety payoffs associated with street-level marijuana enforcement, particularly the extent to which marijuana stops are associated with the success of OMP objectives. In particular, the objectives of SQF center on crime detection and weapons seizures. Whatever the economic or social costs associated with marijuana stop tactics, to the extent that marijuana stops are linked to weapons detection (measured both by the rate at which weapons stops lead to arrests, and the rate that stops lead to weapons seizures), this relationship might reflect a positive spillover, and a public safety benefit, of marijuana policing. However, the converse would indicate a public safety tradeoff or compromise: if marijuana stops are negatively associated with weapons seizures or overall arrests, then the search for marijuana offenders comes at the cost of public safety.

IV. Results

A. Data Description

1. Average Precinct Characteristics

Table 1 presents descriptive statistics for the 375 precinct-year observations in our analysis, and underscores the diversity of New York City, in terms of not only race and socioeconomic

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[18]Because the use of principal components analysis for binary variables has raised some reliability concerns, we also estimate models using several of the key binary variables themselves. Substantive results are similar.

[19]Model fit is measured using the marginal R^2 measure described in Ballinger (2004).

Table 1: Precinct-Level Enforcement, Demographic, Socioeconomic, and Crime Characteristics (*N* = 375 Precinct-Year Observations)

	Mean	*SD*	*Minimum*	*Maximum*
Marijuana possession stops	137.2	163.9	0	1,303
Marijuana possession arrests	419.9	445.9	7	2,472
Total marijuana enforcement	524.9	512.8	10	2,787
Total street stops	5,920.8	4,544.1	442	31,242
% Non-Hispanic white	30%	0.25	<1%	84%
% Non-Hispanic black	26%	0.26	<1%	89%
% Hispanic	30%	0.21	5%	79%
% Non-Hispanic other	14%	0.12	2%	70%
% Poverty	20%	0.11	5%	45%
% Unemployed	10%	0.05	3%	23%
Physical disorder (factor score)	0.06	1.66	−2.16	5.10
Violent crime (complaints)	651.0	333.1	66	1,937

NOTE: 22nd Precinct (Central Park) is excluded from calculations.

SOURCES: Street stop and crime complaints: NYPD, 2004–2008; Arrests: NY State DCJS, 2004–2008; Demographic and employment data: ESRI, 2006; Poverty data: American Community Survey, 2005–2007; Physical disorder, NYCHVS, 2005.

conditions, but crime and policing conditions as well. For example, while NYPD officers make an average of 137 stops per year on suspicion of marijuana possession in each precinct, there are some precincts where no marijuana possession stops are made in a given year, and others in which more than 1,000 such stops are made. Similar patterns are seen in stop activity more broadly: the highest-stop precinct-year had more than 70 times as many street stops made as in the lowest-stop observation.

Table 1 also suggests that while New York City is quite diverse, the city's police precincts are extremely segregated. On average, police precincts are 30 percent white and 26 percent black; however, there are precincts where virtually no whites live, and precincts where virtually no blacks live, and precincts where more than 80 percent of residents are a single race. Similar patterns emerge for Hispanics and for several aspects of socioeconomic disadvantage, as well as violent crime levels.

2. Marijuana, Order Maintenance Policing, and Race-Ethnic Disparities

Both SQF activity and marijuana possession arrests have been touted as part of the NYPD's OMP strategy. However, we find that street stops for marijuana and marijuana possession arrests are largely separate phenomena. Figure 2 shows that many of the precincts highest in marijuana arrests record the fewest stops on suspicion of marijuana possession. It is possible that differences between observed stop and arrest patterns are, at least in part, an artifact of reporting practices. Under *De Bour*, for example, the "reasonable suspicion" required for a street stop may be met and superseded by "probable cause" if marijuana is found, which would permit escalation by Level IV under *De Bour* (i.e., resulting in a "probable-cause" arrest). Although the NYPD Patrol Guide requires that street stops be documented using UF-250 forms regardless of whether an arrest results, officers may

Figure 2:   Marijuana arrests and documented marijuana stop activity.
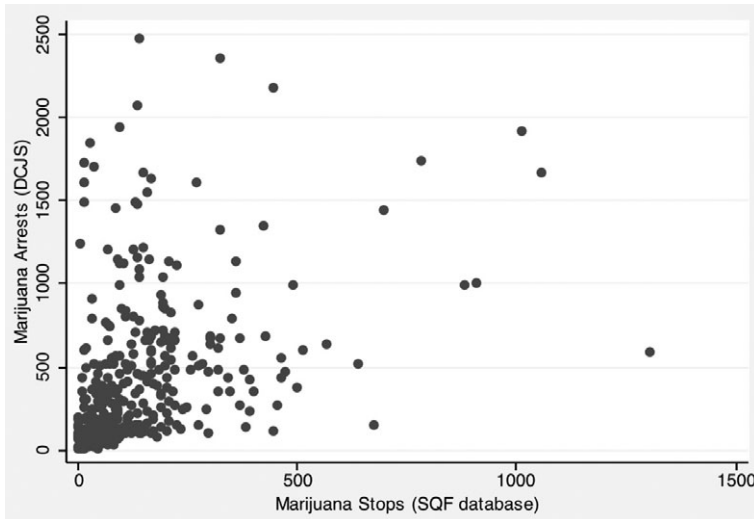
substitute arrest documentation when stops lead to arrest in place of the stop documentation. As a result, some of the arrest-producing stops are censored from the UF-250 database. The New York City Civilian Complaint Review Board (2002) and the U.S. Commission on Human Rights (2000) have both established that underfiling of UF-250 forms has historically been a problem. The inconsistency of stop documentation underscores the importance of examining race disparities in the totality of marijuana enforcement based not simply on documented stop totals or arrest totals, but considering a combination of the two.

Nonetheless, whether examining arrests or street stops, the majority of marijuana possession stops take place disproportionately in neighborhoods housing the city's minority population, both compared to their representation in the city's population, and their representation among marijuana arrestees. Accordingly, Table 2 shows that blacks are overrepresented in the NYPD's marijuana stop activity compared to their representation in the general population. For example, officers stop blacks on suspicion of marijuana possession at a rate of 14.83 per 1,000 population, while Hispanics are only stopped 5.41 times per 1,000 population, and whites are stopped only 1.96 times per 1,000 population. This pattern also holds for stop activity more broadly, with blacks stopped at a rate of 564 per 1,000 in the population and Hispanics stopped 269 times per 1,000, while whites are only stopped 93 times per 1,000.

Similar disparities exist for marijuana arrests, with 48 blacks arrested for marijuana possession for every 1,000 in the population, 24 Hispanics arrested per 1,000 population, and 6 whites arrested per 1,000 population. The targeting of enforcement efforts toward blacks and Hispanics is dramatically out of proportion to national statistics that suggest comparable usage rates across racial groups (SAMHSA 2007) or higher rates of marijuana use among whites (Saxe et al. 2001; Johnston et al. 2005).

Table 2:   Population and NYPD Enforcement Activity by Race/Ethnicity (Rate per 1,000 Population in Parentheses)

Race/Ethnicity	Marijuana Stops	All Street Stops	Marijuana Arrests	Total Arrests	Estimated 2006 Population
Black	29,854	1,134,539	97,069	748,029	2,012,646
	(14.83)	(563.71)	(48.23)	(371.66)	
Hispanic	13,315	661,546	58,298	521,386	2,463,016
	(5.41)	(268.59)	(23.67)	(211.69)	
White	4,931	233,179	15,168	181,545	2,512,415
	(1.96)	(92.81)	(6.04)	(72.26)	
Other	3,604	191,025	2,886	56,487	1,282,782
	(2,80)	(148.91)	(2.25)	(44.03)	
Race unknown	57	3,859	1,536	15,834	N/A
Total *N*	51,761	2,224,148	174,957	1,523,281	8,270,859

NOTE: Totals may not sum to 100 percent due to rounding.
SOURCES: Stop counts and percents extrapolated from 10 percent random sample of stops from UF-250 data. Arrest totals based on DCJS counts, 2004–2008. Population distribution based on citywide ESRI projections.

Disparities in marijuana enforcement can also be seen geographically. Figure 3 details the geocoded locations of marijuana stops made between 2004 and 2008, and shows substantial clustering in areas like the 73rd, 75th, and 79th Precincts. Figure 4 arrays these precincts by race. The places with the highest concentration of marijuana stops are predominantly black neighborhoods.

B. Modeling Results

1. Marijuana Stop Levels

Table 3 presents the estimates from negative binomial GEE models predicting marijuana stop levels by precinct and year. These models further quantify the disparities suggested in Figures 3 and 4: marijuana stop activity is significantly higher in neighborhoods with a greater concentration of black residents, and this relationship is not explained by differences in local socioeconomic conditions, or by historic crime levels, or by general enforcement patterns (past-year marijuana arrests, or current year stop totals). For Hispanics, the stop rates also are higher with higher population concentrations, but these effects are not significant once controls for neighborhood social and crime conditions are included. In Model 5, marijuana stops are negatively correlated with prior-year precinct crime rates and enforcement activity: there are fewer marijuana stops in precincts in which violent crime rates are higher, and where marijuana arrests in the past year were higher. Marijuana stops are predicted by the total number of stops concurrently in the precinct. In other words, there are fewer marijuana stops in places where marijuana arrests are greater, and more stops where violent crime is lower, and where the total number of stops is higher. Marijuana stops, in these places, seem to be a marginal enforcement activity—in effect, a luxury—that is pursued in predominantly black neighborhoods beyond other enforcement efforts.

The negative relationship between past-year marijuana arrests and current-year marijuana stops can be interpreted in two ways. One interpretation is that this is a reporting

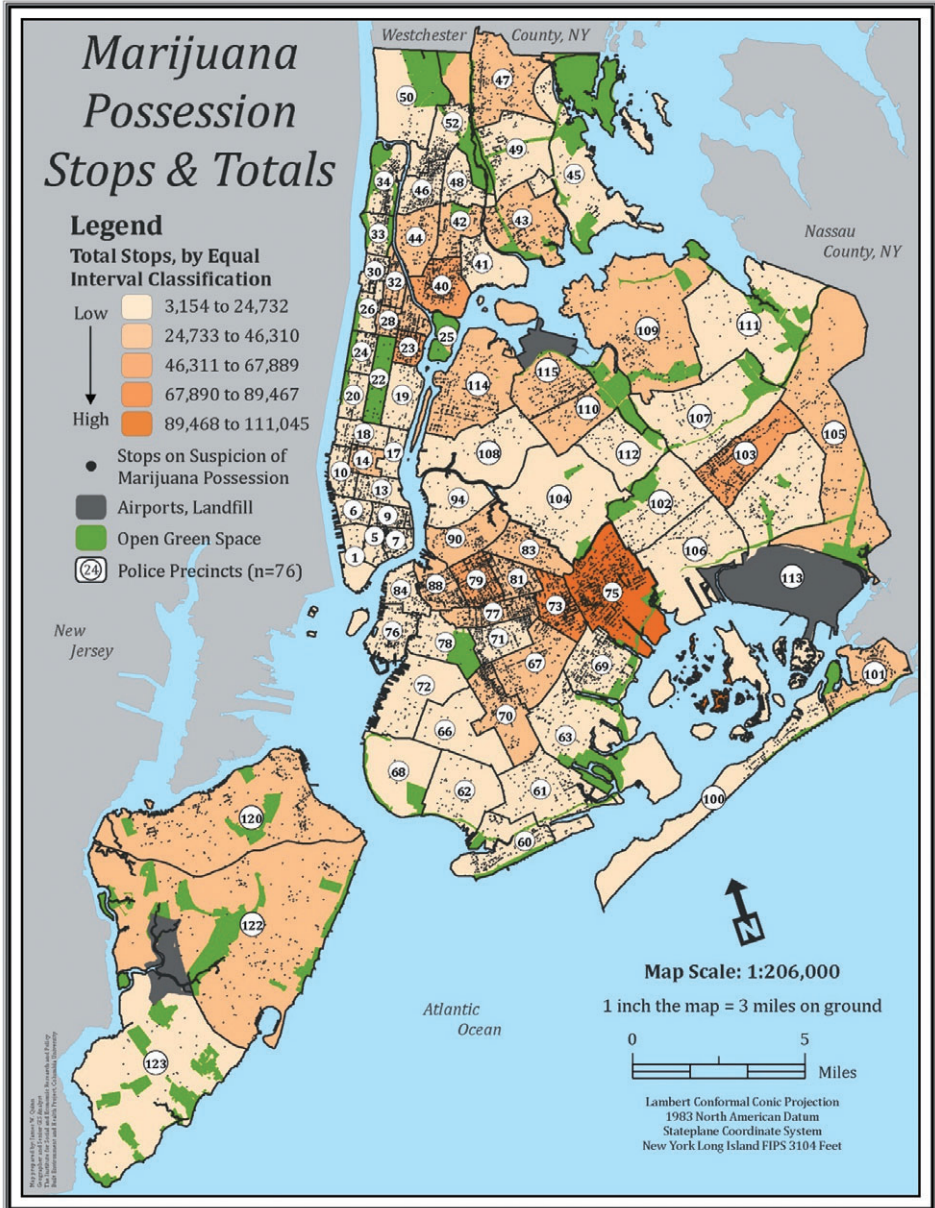*Figure 3*:   New York City map of marijuana possession stops.

Figure 4:   New York City map, shading by tract percent black, overlaid with police precinct boundaries.
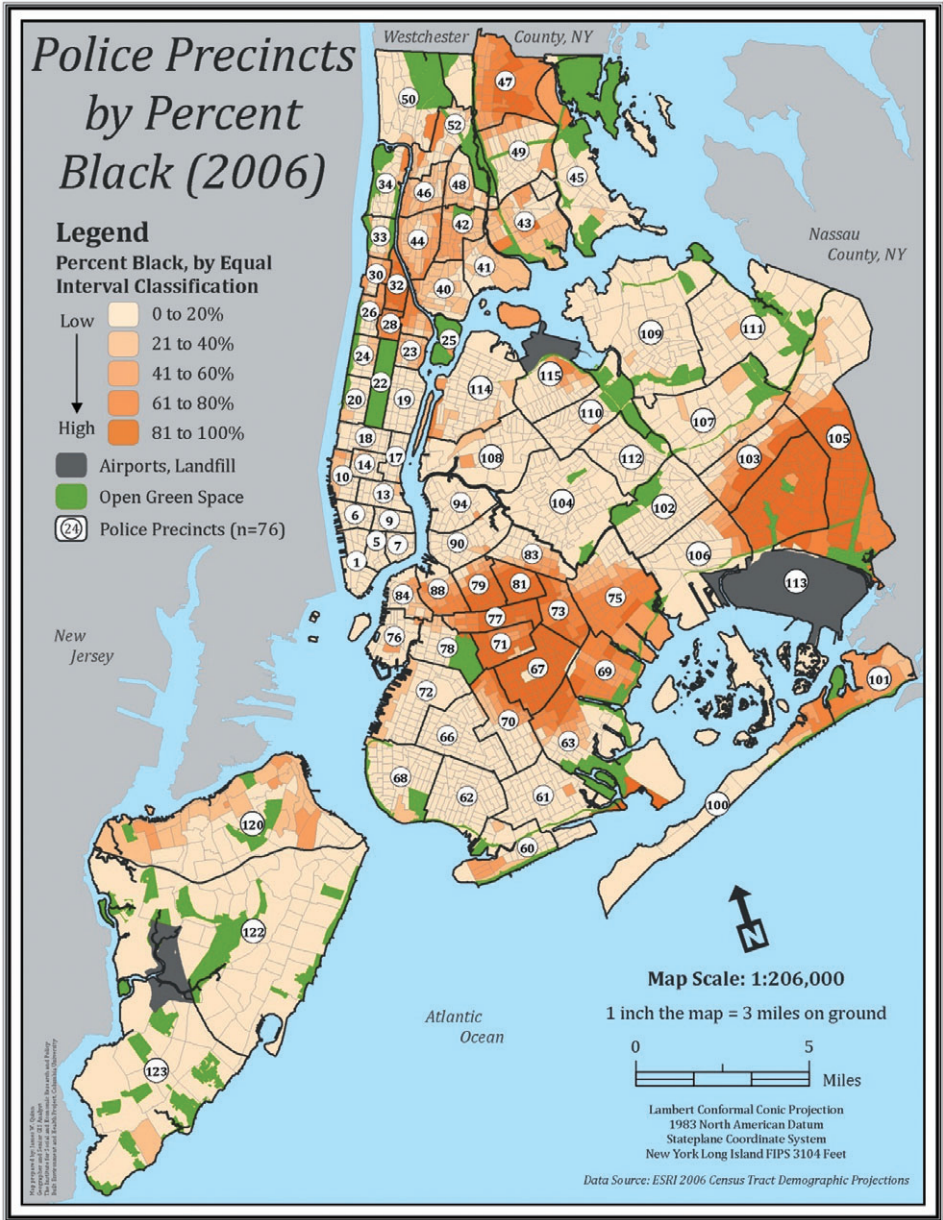
Table 3: Negative Binomial Regression of Marijuana Stops by Precinct Demography, Socioeconomic Conditions, Crime, and Enforcement, 2004–2008

Variables	Model 1 Racial Composition	Model 2 Including SES and Foreign Born	Model 3 Including Past-Year Violent Crime	Model 4 Including Past-Year Marijuana Arrests	Model 5 Including Total Stops
% Non-Hispanic black	2.706**	2.583**	2.097**	2.279**	1.654*
	[0.450]	[0.674]	[0.721]	[0.678]	[0.656]
% Hispanic	1.255**	1.73	1.485	1.612	0.614
	[0.471]	[1.032]	[1.088]	[1.056]	[0.919]
% Other race	0.746	2.049	2.144	1.939	1.045
	[0.910]	[1.331]	[1.255]	[1.247]	[1.267]
Socioeconomic disadvantage		0.0819	0.0605	0.0444	0.016
		[0.156]	[0.178]	[0.171]	[0.164]
% Foreign born		-2.658*	-2.404	-2.134	-1.274
		[1.309]	[1.338]	[1.361]	[1.134]
Past-year violent crime (1,000 complaints)			0.299	0.532	-0.65*
			[0.334]	[0.346]	[0.302]
Past-year marijuana arrests (1,000s)				-0.387**	-0.312*
				[0.131]	[0.152]
Total stops (logged)					1.06**
					[0.126]
Constant	-7.746**	-7.191**	-7.122**	-7.271**	-15.16**
	[0.349]	[0.459]	[0.511]	[0.506]	[1.186]
Observations	375	375	300	300	300
Number of pct	75	75	75	75	75
Marginal R^2	-0.01	0.23	0.32	0.31	0.46

NOTE: Models are negative binomial GEEs with population exposure and AR(1) covariance within precincts. All models include fixed effects for borough and year. Standard errors in brackets. **$p < 0.01$; *$p < 0.05$.

anomaly and artifact: officers making marijuana stops that produce arrests are bypassing the stop documentation in favor of arrest documentation. Since marijuana arrest rates in these places are higher, there may be unrecorded stops that in fact are producing arrests. Or, it could be that marijuana arrests are produced by a different process than the process that produces stops. In New York's marijuana statutes, "plain-view" possession, such as smelling smoke or observing marijuana, is itself probable cause for an arrest, and detection of marijuana under those circumstances obviates the predicate or antecedent of the stop. Levine and Small (2008) question the legality of those stops, citing a long tradition of "dropsy" arrests that essentially entrap persons who are stopped into revealing that they possess marijuana by making them empty their pockets.

2. Totality of Enforcement

If marijuana stops and arrests are conjoined in a complex enforcement process that produces marijuana arrests but suppresses indicia of stops, then explaining the totality of marijuana enforcement requires that we view stops and arrests as two parts of an integrated tactic. Accordingly, we estimated models for the totality of marijuana enforcement: that is, the sum of marijuana stops and arrests within a precinct.[20] Table 4 shows that, as with total marijuana stops, total enforcement levels are significantly higher in precincts with large black populations, and this disparity is robust to controls for socioeconomic conditions, past-year crime complaints, and prior enforcement patterns. Examining total marijuana enforcement, the disparity for Hispanics also remains significant when other precinct characteristics are controlled. The totality of marijuana enforcement is concentrated in the city's minority communities.

Here, there are interesting and important differences compared to the results in Table 3 on stops alone. First, with due regard for the limitations of comparing R^2s across models, model fits are much improved: the pseudo-R^2 in Model 5 in Table 4 is nearly 50 percent greater than in the comparable model in Table 3. Next, unlike models predicting stop activity alone, total marijuana enforcement is significantly and positively predicted by marijuana arrests in the previous year, further underscoring the importance of considering stop and arrest activity combined. Further, unlike stop activity alone, total marijuana enforcement is significantly predicted by violent crime in Models 3 and 4, though this relationship is diminished and statistically insignificant in Model 5 once total stop activity is controlled for. The insignificance of violent crime complaints in the face of overall stop activity suggests that marijuana stop and arrest activity may be a consequence of the broader stop and frisk targeted at high crime precincts. Moreover, the persistently higher enforcement levels in black and Hispanic neighborhoods suggest that the tactics used in these precincts are a disproportionate response to local crime conditions. As Fagan and Davies (2000) and Fagan et al. (2010) showed with stop activity more generally, marijuana enforcement seems to be focused not on violent crime, but on predominantly minority neighborhoods.

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[20]To avoid double counting stops that lead to an arrest and are documented in the UF-250 forms, we subtract the number of marijuana arrests documented in the UF-250 forms from the "stop plus arrest" totals.

Table 4: Negative Binomial Regression of Total Marijuana Enforcement by Precinct Demography, Socioeconomic Conditions, Crime, and Enforcement, 2004–2008

Variables	Model 1 Racial Composition	Model 2 Including SES and Foreign Born	Model 3 Including Past-Year Violent Crime	Model 4 Including Past-Year Marijuana Arrests	Model 5 Including Total Stops
% Non-Hispanic black	2.583**	2.387**	2.089**	1.986**	1.688**
	[0.337]	[0.455]	[0.466]	[0.446]	[0.466]
% Hispanic	2.230**	1.973**	1.968**	1.899**	1.580*
	[0.408]	[0.688]	[0.719]	[0.708]	[0.677]
% Other race	−0.602	−0.637	−0.365	−0.234	−0.624
	[0.684]	[0.936]	[0.846]	[0.853]	[0.814]
Socioeconomic disadvantage		0.0915	−0.0299	−0.0244	−0.0458
		[0.112]	[0.112]	[0.111]	[0.11]
% Foreign born		−0.221	−0.253	−0.475	−0.143
		[0.772]	[0.842]	[0.886]	[0.745]
Lag violent crime			0.665*	0.580*	0.131
			[0.269]	[0.259]	[0.221]
Complaints (thousands)					
Lag marijuana arrests (thousands)				0.192*	0.241**
				[0.0757]	[0.0665]
Total stops (logged)					0.454**
					[0.0878]
Constant	−6.498**	−6.294**	−6.625**	−6.548**	−9.97**
	[0.396]	[0.445]	[0.426]	[0.426]	[0.794]
Observations	375	375	300	300	300
Number of pct	75	75	75	75	75
Marginal R^2	0.61	0.61	0.73	0.76	0.76

NOTE: Models are negative binomial GEEs with population exposure and AR(1) covariance within precincts. All models include fixed effects for borough and year. Standard errors in brackets. **$p < 0.01$; *$p < 0.05$.

3. Marijuana Enforcement and OMP

Table 5 examines the links between total marijuana enforcement and the two documented objectives of order maintenance: reduction of disorder and the search for weapons. Through programs such as Operation Condor,[21] marijuana enforcement was an application of broken windows theory, where policing of minor crimes was instrumental in reducing rates of violent crime by reducing disorder. Weapons were a part of this focus. We estimate a series of models that include crime complaints for several disorder crimes, such as public drunkenness, loitering, and other offenses against public order, and the concentration of street stops for weapons.

Table 5: Negative Binomial Regressions Predicting Total Marijuana Enforcement by Demographics, Crime, Other Enforcement, and OMP Objectives

Variables	Model 1 "Full Model" from Table 4, Model 5	Model 2 Including Disorder Complaints	Model 3 Including Weapons	Model 4 Including Disorder and Weapons
% Non-Hispanic black	1.688**	1.669**	1.59**	1.573**
	[0.466]	[0.457]	[0.464]	[0.455]
% Hispanic	1.58*	1.491*	1.507*	1.421*
	[0.677]	[0.670]	[0.672]	[0.665]
% Other race	−0.624	−0.638	−0.562	−0.574
	[0.814]	[0.803]	[0.803]	[0.794]
SES disadvantage	−0.0458	−0.0738	−0.0676	−0.0962
	[0.110]	[0.107]	[0.106]	[0.103]
% Foreign born	−0.143	0.0446	−0.107	0.0782
	[0.745]	[0.788]	[0.726]	[0.769]
Lag violent crime	0.131	0.344	0.1	0.316
	[0.221]	[0.246]	[0.221]	[0.246]
Lag marijuana arrests	0.241**	0.243**	0.244**	0.246**
	[0.0665]	[0.0654]	[0.0670]	[0.0650]
Total stops (log)	0.454**	0.467**	0.473**	0.485**
	[0.0878]	[0.0881]	[0.0892]	[0.0898]
Lag disorder complaints		−0.479		−0.479
		[0.349]		[0.349]
% Weapons stops			0.598*	0.588*
			[0.241]	[0.245]
Constant	−9.97**	−10.03**	−10.19**	−10.24**
	[0.794]	[0.777]	[0.798]	[0.784]
Observations	300	300	300	300
Number of precincts	75	75	75	75
Marginal R^2	0.76	0.78	0.76	0.78

NOTE: Models estimated as GEEs with AR(1) covariance within precincts. All models include fixed effects for borough and year. Standard errors in brackets. Significance: **$p < 0.01$; *$p < 0.05$.

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[21]Supra note 3.

Model 1 in Table 5 reproduces Model 5 from Table 4, examining the demographic, socioeconomic, violent crime, and general enforcement predictors of marijuana stop activity. This sets out a baseline to examine the influence of disorder in Model 2 in Table 5. Model 2 shows virtually no relationship between disorder complaints and marijuana street stops. The model fit is only slightly changed, and the parameter estimate for disorder is not significant. The racial disparity for the percent non-Hispanic black population and the percent Hispanic also is unaffected with the inclusion of disorder.

Model 3 of Table 5 tests the link between marijuana stop activity and the other principal goal of OMP, the search for weapons. We again find a strong and significant connection between marijuana enforcement and precinct stop activity (total stops), and also find a significant relationship between marijuana enforcement and the share of stops that are based on suspicion of weapons possession. Marijuana stops and arrests are more prevalent not only in precincts where overall stop activity is greater, but in precincts where, holding stop levels constant, a greater portion of stops are on suspicion of weapons possession. As in Model 1, marijuana enforcement is not predicted by violent crime, though prior-year marijuana arrests predict current-year activity, a sign of the stability of the pattern and practice over time.

In Model 4 of Table 5, which includes both disorder complaints and weapons focus as additional controls, the predictive power of weapons focus is virtually unchanged. Not only is enforcement disconnected from local crime conditions once overall stop patterns are controlled for, but it also is disconnected from the indicia of disorder that are central to the logic of OMP.

Marijuana enforcement activity is most active in precincts where overall enforcement is most focused on weapons detection, but with little connection to crime or disorder conditions in those places. This pattern raises unsettling concerns that officers use marijuana enforcement as a pretext for searching for weapons. It seems that marijuana enforcement is an adjunct to overall OMP enforcement, disconnected from local crime conditions but closely tied to the search for weapons. Total OMP enforcement, including the search for weapons, leads to more extensive marijuana enforcement, but the allocation logic is more closely tied to the racial and ethnic composition of the area than to crime conditions or social structure.

4. The Legality of Stops

The modifications of the UF-250 form following the Spitzer Report (1999) have enabled a more structured identification of the legal circumstances justifying a street stop; however, officers retain considerable flexibility in reporting stop circumstances. Table 6 presents factor loadings from a principal components factor analysis of the stop-level data, identifying consistencies in the cited stop rationales. Although these factors combine to explain only half the total variation in stop justification, several consistencies emerge.

The first factor suggests that stops justified by a suspect description are frequently also justified with a report by a victim, witness, or officer. This relationship is encouraging because it indicates that the descriptions used to justify stops have been obtained from

Table 6: Factor Loadings from Principal Components Analysis of Case-Level Stop Justifications ($N = 2,224,148$)

	Factor 1	Factor 2	Factor 3	Factor 4	Factor 5	Factor 6	Factor 7
Stop Rationales							
Carrying suspicious object	−0.041	−0.085	0.014	−0.054	−0.113	−0.015	**0.783**
Fits a relevant description	**0.818**	−0.079	−0.094	−0.035	−0.082	−0.059	−0.040
Casing a victim or location	−0.142	0.015	0.152	**0.723**	−0.217	−0.244	−0.034
Acting as a lookout	−0.058	0.087	0.187	**0.607**	−0.184	0.034	−0.070
Wearing clothes commonly used in a crime	0.107	0.258	0.321	−0.112	0.015	−0.167	0.069
Actions indicative of a drug transaction	−0.083	0.050	0.026	−0.059	−0.100	**0.817**	−0.028
Furtive movements	−0.144	0.578	0.064	−0.162	−0.296	0.042	−0.090
Actions of engaging in a violent crime	0.116	0.482	0.102	0.115	0.135	−0.120	0.112
Suspicious bulge	−0.161	0.042	0.136	−0.573	−0.330	−0.326	−0.081
Other	−0.121	−0.158	0.037	−0.138	**0.804**	−0.046	−0.007
Additional Circumstances							
Report by victim/witness/officer	**0.722**	−0.045	−0.147	−0.007	−0.026	0.036	0.040
Ongoing investigation	0.159	0.254	0.393	0.200	0.026	−0.207	0.068
Proximity to scene of offense	0.558	0.049	0.280	−0.091	0.001	−0.064	−0.055
Evasive response to questioning	−0.040	**0.692**	−0.069	0.086	−0.025	0.069	0.018
Associating with known criminals	0.170	0.143	0.277	−0.011	0.104	0.433	0.021
Change direction at sight of officer	−0.100	**0.651**	−0.055	0.028	−0.158	0.079	−0.043
Area has high crime incidence	−0.204	−0.115	**0.694**	0.091	−0.030	0.113	0.002
Time of day fits crime incidence	−0.048	0.015	**0.718**	0.102	−0.019	−0.002	−0.011
Sights or sounds of criminal activity	0.013	0.124	−0.022	0.050	0.155	−0.014	**0.639**
Other	−0.005	0.051	−0.141	−0.022	0.569	−0.116	−0.091
Eigenvalue	2.170	1.701	1.533	1.225	1.174	1.123	1.047
Factor variance explained	0.1085	0.0851	0.0766	0.0613	0.0587	0.0561	0.0523
Cumulative variance explained	0.1085	0.1936	0.2702	0.3315	0.3902	0.4463	0.4986

NOTE: Factor loadings based on varimax rotation. "Thematic" stop justifications (with factor loading magnitudes greater than 0.6) are highlighted in **bold**.

legally sufficient sources,[22] rather than from a vague profile unconnected to the case. The second factor identifies suspicion generated by the suspect changing direction at the sight of the officer and offering evasive responses when questioned. The third factor identifies suspicion generated by suspects in a "high crime area" at a time of day fitting the incidence of a crime.

The fourth factor identifies suspects who appear to be casing a victim or a location, or acting as a lookout in conjunction with a planned crime. The fifth factor identifies stops justified for "other" reasons, either as a stop justification alone or in conjunction with "other" as additional circumstances. The sixth factor identifies actions indicating a drug transaction, and the seventh identifies stops based on an individual carrying a "suspicious object." Although these factors explain only half the variance in the justifications for stop

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[22]People v. Benjamin (1980); People v. Schwing (2005).

activity, they form substantively meaningful narratives that may explain disparities in marijuana street stop practices.

Table 7 replicates the marijuana enforcement models from Table 4, including additional controls for the strongest individual items in each of the seven stop factors. We also estimated these models using only marijuana street stops, since only a portion of marijuana arrests result from undocumented marijuana stops. The results are the same for both sets of models, suggesting that legal narratives fit comparably in explaining both stops and total enforcement. For each model, we note changes in goodness of fit when the stop rationales are included.

In each of the models, several of the stop factors computed in Table 5 are indeed significant predictors of marijuana enforcement at the precinct level. In all models, marijuana stops are significantly more prevalent in precincts where stops are likely to be justified by suspicion of a drug transaction, suggesting that police officers are particularly sensitive to drug issues in these precincts. It is unlikely that the "drug transaction" factor simply reflects high levels of marijuana stops, since documented marijuana stops comprise fewer than 3 percent of the stops recorded in the city from 2004–2008. Instead, the factors are likely to reflect police enforcement priorities and narratives of suspicion in each precinct.

Marijuana stops are also more prevalent in precincts where large portions of street stops are justified by "other" rationales, and in some models, when stops take place in what officers deem a "high crime area" (which is correlated with "time of day"). These stop rationales are cause for concern, as neither of these factors, on its face, is constitutionally sufficient to justify a street stop, and is opaque with respect to the specific conditions that motivated the stop. While "high crime area" may justify a stop in conjunction with other factors, it is not legally sufficient in conjunction with "time of day." Finally, marijuana stops are less prevalent in precincts justifying a large portion of stops with suspect descriptions, or the suspicion of casing. Table 4 suggested that when considered in the context of overall stop patterns, marijuana enforcement was disconnected from crime conditions, and the negative influence of these crime-specific stop rationales seems to confirm that disconnect.

The bottom rows of Table 7 examine the goodness of fit of stop models, both with and without controls for precinct-level stop rationales. While Model 1 suggests that stop rationales explain more of the variation in stop patterns than does racial composition itself, these factors explain less than 5 percent more of the variance in enforcement activity. Moreover, as more controls are added for precinct socioeconomic conditions, crime levels, and more general enforcement patterns, models including stop justifications actually explain a smaller portion of total variance in enforcement. More detailed models with progressively more controls indicate that the stop rationales explain less and less of the variation in marijuana stop levels. These models suggest few systematic links between the rationales for street stop activity and the levels of marijuana enforcement realized. Instead, even with a full set of legal justifications, marijuana enforcement seems to be explained by the racial composition of the area and previous enforcement levels, rather than by crime conditions or social structure. Despite the inclusion of legal justifications and rationales for stops, marijuana enforcement is significantly higher in precincts with large black and

Table 7: Negative Binomial Regression of Total Marijuana Enforcement by Precinct Demography, Socioeconomic Conditions, Crime, Enforcement, and Stop Justifications, 2004–2008

Variables	Model 1 *Racial Composition Only*	Model 2 *Including SES and Foreign Born*	Model 3 *Including Past-Year Violent Crime*	Model 4 *Including Past-Year Marijuana Arrests*	Model 5 *Including Total Stops*
% Non-Hispanic black	2.025**	1.832**	1.615**	1.512**	1.442**
	[0.371]	[0.427]	[0.455]	[0.451]	[0.426]
% Hispanic	1.94**	1.577**	1.81**	1.749**	1.635**
	[0.389]	[0.575]	[0.589]	[0.575]	[0.547]
% Other race	−0.371	−0.672	−0.177	0.0085	−0.151
	[0.672]	[0.847]	[0.747]	[0.726]	[0.687]
SES disadvantage		0.074	−0.0532	−0.0481	−0.0652
		[0.101]	[0.0981]	[0.0956]	[0.0966]
% Foreign born		0.307	0.0537	−0.247	−0.147
		[0.520]	[0.574]	[0.603]	[0.595]
Lag violent crime			0.686**	0.567*	0.234
			[0.238]	[0.221]	[0.204]
Lag marijuana arrests				0.265**	0.292**
				[0.0825]	[0.0821]
Total stops (logged)					0.400**
					[0.101]
Legal Justifications					
Fits relevant description	−0.973**	−0.988**	−0.968**	−0.994**	−0.469
	[0.202]	[0.205]	[0.274]	[0.271]	[0.290]
Evasive response	0.411	0.417	0.399	0.379	0.428
	[0.238]	[0.241]	[0.284]	[0.276]	[0.258]
High crime area	0.274	0.271	0.527*	0.528*	0.391
	[0.161]	[0.162]	[0.209]	[0.209]	[0.205]
Casing victim or location	−0.0944	−0.0894	−0.165	−0.124	−0.148
	[0.195]	[0.196]	[0.199]	[0.199]	[0.193]
Other stop justification	0.406*	0.424*	0.731**	0.757**	0.83**
	[0.177]	[0.178]	[0.247]	[0.237]	[0.238]
Drug transaction	0.790**	0.786**	0.732**	0.782**	0.868**
	[0.175]	[0.179]	[0.204]	[0.205]	[0.208]
Carrying suspicious object	0.282	0.287	0.326	0.357	0.372
	[0.306]	[0.313]	[0.395]	[0.394]	[0.397]
Constant	−6.298**	−6.201**	−6.549**	−6.476**	−9.669**
	[0.392]	[0.435]	[0.445]	[0.443]	[0.809]
Observations	375	375	300	300	300
Number of precincts	75	75	75	75	75
Marginal R^2 (no justifications)	0.61	0.61	0.73	0.76	0.76
Marginal R^2 (with justifications)	0.64	0.64	0.69	0.69	0.65

NOTE: Total marijuana enforcement computed as: marijuana stops + marijuana arrests — marijuana arrests in stop documentation. Models structured as GEEs with AR(1) covariance within precincts. All models contain fixed effects for borough and year. Standard errors in brackets. Significance: **$p < 0.01$; *$p < 0.05$.

Hispanic populations. The persistent race disparities in marijuana enforcement activity suggest legality may simply be a cosmetic or post-hoc justification for overall marijuana enforcement.

5. Stop Efficacy and Public Safety

Given the emphasis of OMP on weapons detection and seizure, and the links between marijuana and weapons policing demonstrated in Table 5, we evaluate the public safety implications of marijuana enforcement based primarily on its role in weapons detection. Table 8 classifies the 2.2 million stops between 2004 and 2008 into four categories, based on the crimes suspected that are recorded for each stop: marijuana possession stops, weapons possession stops, violent crime stops, and "other" stops, encompassing property crimes, minor crimes such as trespass and quality of life offenses, other offenses, and stops with no suspected crime interpretable. The table suggests that street stops are highly unlikely to lead directly to weapon seizures—weapons are seized in fewer than 1 percent of stops. Even among stops driven by suspicion of weapons possession, seizure rates are less than 3 percent. Marijuana stops, despite a prevalence that covaries with weapons stops at the precinct level, lead to weapon seizures in only approximately one-half of 1 percent of stops. If marijuana enforcement is designed to stop more serious crime by catching criminals "on their day off" (Maple & Mitchell 1999), it is quite inefficient.

At the precinct level, the link between the tactic of marijuana street stops and success in the search for weapons is equally tenuous. Figure 5 shows that the average annual count of weapons seizures is indeed higher in precincts where police make more marijuana stops.[23] However, this relationship is likely spurious to other policing factors: weapons seizures are more often produced by stops unrelated to marijuana. Moreover, Figure 6 suggests that at high levels of marijuana stops within a precinct, the likelihood that *any* type of stop yields a weapon seizure declines. In other words, these additional marijuana stops have diminishing marginal returns in the search for weapons.

Table 8:   Weapons Seizure Rates Associated with Four Categories of Street Stops, 2004–2008

Crime Suspected	Number of Stops Made	Weapons Seizure Rate
Marijuana possession	52,018	0.49%
Weapons possession	442,552	2.37%
Violent crime	340,792	0.71%
Other offenses	1,388,786	0.43%
Total	2,224,148	0.86%

NOTE: Weapons seizure rates based on seizures documented in UF-250 database, resulting from each type of stop.

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[23]This relationship is sensitive to measurement choice. Figures 5 and 6 demonstrate the relationship between enforcement and public safety using logarithmic transformation of both stops and seizures. When using raw counts of stops and seizures, the positive relationship between stops and seizures appears to be driven by a single high-stop observation (103rd Precinct, 2004), and the relationship between stops and seizure rates declines more rapidly.

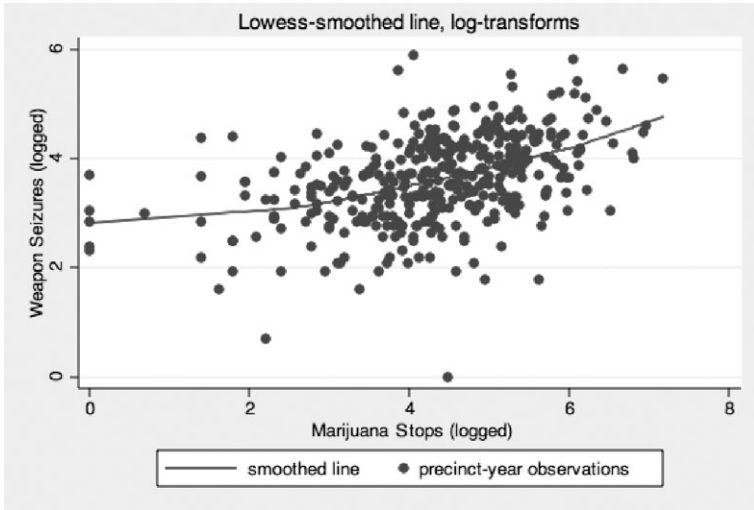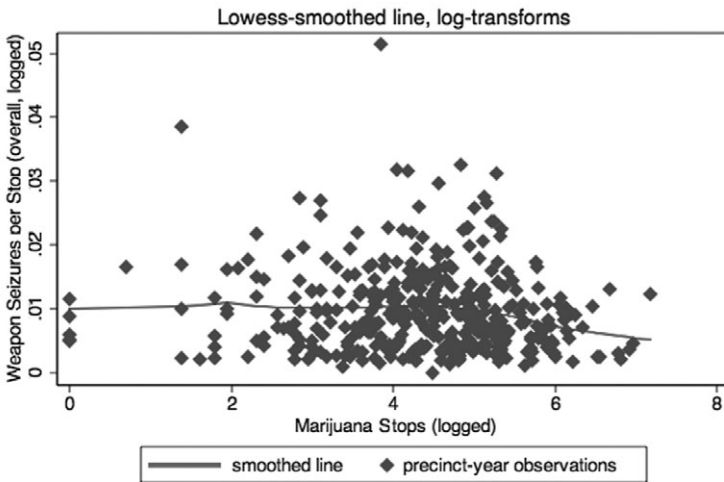*Figure 5:* Precinct-level weapon seizures and marijuana stop volume.

Figure 6: Precinct-level weapon seizure rate and marijuana stop volume, 2004–2008.

The negative relationship between marijuana stops and weapon seizures may, alternatively, reflect a deterrent effect in which citizens refrain from carrying weapons in anticipation of being stopped by the police. However, per-capita homicide rates declined by 2.7 percent across the country between 2004 and 2008, suggesting a nationwide decrease in the prevalence and use of firearms. The reduced prevalence of weapon possession in New York City is likely to reflect this secular trend, rather than a causal effect of local policing practices, and high levels of street stops are likely to be limited in their productivity.

We test this notion further in a series of models that examine the public safety benefits associated with marijuana stop activity. Table 9 presents the regression coefficients from four models, each with a negative binomial functional form predicting the number of weapons seizures made from street stops in a given precinct and year. The first two models in this table, like the stop and enforcement models in Tables 2–4 and 6, use a population exposure. The third and fourth models use precinct stop totals as an exposure for seizures, thereby approximating a model of the precinct seizure rate.[24]

Models 1 and 2 of Table 9 suggest that weapon seizures are indeed higher in precincts and years with higher overall stop volumes; however, they suggest no significant relationship between marijuana enforcement and weapons detection above and beyond that associated with total stop volume. In other words, marijuana enforcement adds no public safety benefit to overall OMP efforts. Moreover, when considering the likelihood of each individual street stop to lead to a weapon seizure in Models 3 and 4, marijuana enforcement is not only unrelated to weapon seizures, the relationship between total stops and seizures per stop is significant and negative, suggesting that stop-and-frisk patterns may have diminishing returns in the search for weapons when conducted in conjunction with marijuana enforcement.

V. Discussion

A. Epidemiology of Marijuana Enforcement

Since the mid-1990s, OMP strategies have leveraged the enforcement of social and physical disorder in attempts to identify more serious offenders, uncover weapons, and reduce crime opportunities. The result was the aggressive interdiction, temporary detention, and questioning of New Yorkers, an average of more than half a million times each year beginning in 2004, with about nine in ten resulting in no finding of wrongdoing (Fagan et al. 2010). The manifestation of disorder that attracted the most intensive police attention was the plain-view possession of marijuana (Levine & Small 2008; Golub et al. 2007; Harcourt & Ludwig 2007). Over the decade beginning in 1998, NYPD officers made more than 35,000 misdemeanor marijuana arrests per year (Levine & Small 2008), an effort that required a massive mobilization of police resources, and a substantial outlay of public dollars.

The NYPD's focus on low-level disorder, and on marijuana in particular, has raised recurring concerns related both to the racial distribution of enforcement patterns and to the disconnect with the crime control interests of criminal justice policy. We find that these concerns remain salient, and are well-grounded empirically. We show significant racial disparities in the implementation of marijuana enforcement activity; street stops for

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[24]We estimated the risk of Type II error in identifying the effects of marijuana stops (or overall enforcement) on weapons seizures by conducting a power analysis. We use *G*Power 3* (Faul et al. 2007) to estimate power for varying effect sizes, using the Cohen (1988) convention of 0.2, 0.5, and 0.8 for small, medium, and large effect sizes. We find over 90 percent power to detect even small effects using two-tailed *t* tests at $\alpha = 0.05$ with 300 precinct-year observations.

Table 9:   Negative Binomial Regression of Weapons Seizures as a Function of Marijuana Enforcement Activity and Covariates

Variables	Model 1 Based on Marijuana Stop Volume, Population Exposure	Model 2 Based on Marijuana Stops + Arrests, Population Exposure	Model 3 Based on Marijuana Stop Volume, Total Stop Exposure	Model 4 Based on Marijuana Stops and Arrests, Total Stop Exposure
Marijuana stops (thousands)	0.406 [0.332]		0.264 [0.265]	
Total marijuana enforcement (thousand stops + arrests)		−0.0524 [0.247]		0.104 [0.152]
% Non-Hispanic black	0.847* [0.373]	0.911* [0.373]	0.191 [0.226]	0.202 [0.227]
% Hispanic	0.723 [0.577]	0.727 [0.567]	0.0167 [0.321]	0.000263 [0.320]
% Other race	1.142 [0.717]	1.133 [0.696]	0.597 [0.366]	0.633 [0.372]
SES disadvantage	0.0721 [0.0994]	0.0704 [0.104]	−0.101 [0.0544]	−0.0967 [0.0552]
% Foreign born	−2.072** [0.682]	−1.999** [0.677]	−0.187 [0.360]	−0.212 [0.359]
Total stops (thousands)	0.0547* [0.0236]	0.0648** [0.0231]	−0.0572** [0.0150]	−0.0542** [0.0128]
Lag violent crime (thousand complaints)	0.169 [0.257]	0.178 [0.273]	0.833** [0.213]	0.799** [0.216]
Lag marijuana arrests (thousands)	−0.308* [0.142]	−0.285 [0.213]	−0.142 [0.110]	−0.215 [0.148]
Constant	−7.191** [0.343]	−7.23** [0.319]	2.371** [0.198]	2.39** [0.201]
Observations	300	300	300	300
Number of precincts	75	75	75	75
Pseudo-R^2	0.24	0.24	0.66	0.66

NOTE: Total marijuana enforcement computed as: marijuana stops + marijuana arrests — marijuana stops + marijuana arrests in stop documentation. All models include fixed effects for borough and year. Models estimated as GEEs with AR(1) covariance within precincts. Standard errors in brackets. Significance: **$p < 0.01$; *$p < 0.05$.

marijuana are more prevalent in precincts with large black populations, as are combined marijuana stop and arrest totals. This disparity holds up across neighborhoods after controlling for local crime and socioeconomic conditions. Moreover, stop patterns are disconnected from patterns of the social disorder complaints that are a central feature of Order Maintenance Policing. Instead, marijuana stops are higher in precincts with a greater focus on weapons enforcement.

1. The Reengineering of Broken Windows Theory

The disconnect between marijuana enforcement patterns and precinct disorder conditions underscores the divergence of OMP tactics from their underpinnings in the broken windows theory. In its pristine form, "broken windows" presented disorder as a signal that local guardianship was weak and that crime would be tolerated, inviting a criminal invasion (Wilson & Kelling 1982; Skogan 1990). In the development of OMP, Jack Maple saw this link as mystical, and dismissed the idea that murderers and other serious offenders would be affected by neighborhood conditions such as graffiti, abandoned cars, or trash-strewn vacant lots (Maple & Mitchell 1999). He was therefore far less concerned with the much-publicized "squeegee men" who harassed motorists at the entrances to bridges and tunnels entering Manhattan, and more concerned with the idea that serious offenders, when not actively involved in violent crimes, were likely to be engaged in disorderly behavior such as public drinking or smoking marijuana. This meant that the disorderly were likely to be carrying weapons or other contraband, or to be on their way to or from robberies or other violent crimes. To stop them, police had to preemptively and aggressively engage them, question them, and, if necessary, frisk and search them for weapons or contraband.

The disconnect between marijuana enforcement and disorder complaints, and its close ties to weapons enforcement and precinct racial composition, suggests that street stops for marijuana possession may serve as a pretext for higher rates of citizen interdictions in pursuit of weapons in minority neighborhoods, rather than the regulation of low-level offenses or even enforcement of marijuana laws. In other words, police in New York are doubling down on weapons enforcement by also searching for marijuana.

2. Pot as Pretext

The legal rationales for marijuana enforcement also suggest both a racial skew and a pretextual nature of citizen stops and marijuana arrests. Despite recent litigation requiring police officers to specify the reasons for each stop, we find recurring patterns of stops that lack legal justification under both federal and New York law. The documented justifications for street stops suggest that marijuana stops are most prevalent not only where officers place a high priority on drug transactions, but also where stops are justified based on suspects' presence in a "high crime area" and "other" nonspecific circumstances, justifications that, on their face, are constitutionally insufficient to justify a street stop. Moreover, the legal narratives of suspicion provided for stop activity do little to explain the precinct-level variation in stop activity. Black and Hispanic precincts seem to be targeted for marijuana enforcement at levels above what legal justifications and other precinct characteristics would suggest are appropriate.

B. Public Safety Implications

Marijuana enforcement is inefficient to a point where it may distract from other strategies to produce security. While weapons seizures are indeed more prevalent in areas with higher stop levels, each street stop made is associated with a lower probability of weapon seizures, suggesting diminishing returns to SQF activity. Although the detection of weapons is one of the overarching goals of OMP, and marijuana enforcement is one of the tactical engines of OMP, fewer than one half of 1 percent of marijuana stops lead to the seizure of a weapon, and marijuana enforcement is not significantly correlated with the detection of weapons.

The public safety rationale for marijuana enforcement is not well-grounded in criminological theory. Beyond the relative futility of marijuana stops, and street stops more generally, in the detection of firearms, the links between marijuana and more serious crime are tenuous. Given the doubts cast on the causal relationship between physical and social disorder and more serious crime (Sampson & Raudenbush 1999; Harcourt 1998, 2001; Taylor 2001), there is little reason to expect that the disruption of marijuana possession and use will reduce violent crime or any other crime.

Marijuana itself is also largely disconnected from dangerous behavior, particularly violent crime. As early as the 1930s, while lurid headlines across the country proclaimed that marijuana was a dangerous drug that caused crime, these claims were dismissed in a six-year scientific study at the New York Academy of Medicine (Mayor's Committee on Marihuana 1944). The NYAM scientists found that marijuana is neither addictive, nor a "determinating factor" in major crimes. Research beginning in the 1970s concluded much the same. The linkage of marijuana to crime is both contingent on contextual factors, and spurious to underlying personal characteristics (for reviews, see Watters et al. 1985; Fagan 1990, 1993; MacCoun et al. 2003).

In addition, contrary to "gateway" hypotheses, few users of marijuana progress to using harder drugs, and the causal paths are complex and mediated by both observed and unobserved personal characteristics. For example, Golub and Johnson (2001) dismiss dire predictions of future hard-drug abuse by youths who came of age in the 1990s. They examined several waves of the National Household Survey on Drug Abuse from 1979–1997, and concluded that any increase in youthful marijuana use in the 1990s has been offset by lower rates of progression to hard-drug use among youths born in the 1970s. Connections between marijuana use and progression to other drugs is more likely to be produced through a correlation with (unobserved) personal characteristics rather than a causal path (van Ours 2003). Nor is there a connection through marijuana markets: several studies show that marijuana markets are segmented from cocaine and heroin markets, reducing the likelihood that disrupting marijuana buys will have any effects on the more violence-prone heroin and cocaine markets (for a review, see Caulkins & Reuter 1998).

In light of the empirical evidence documenting marijuana's equivocal relationship to both more serious forms of drug use and to other crimes, the city's dogged pursuit of marijuana use begs explanation. For a short time after the war on marijuana began in New York, the discourse on the escalation of marijuana enforcement focused on how marijuana

markets had replaced the waning street markets in cocaine and crack, how marijuana had become more potent and its users more behaviorally unpredictable, and that the violence of those markets had migrated to marijuana markets (Flynn 2001). However, the prediction of marijuana-fueled violence seems to have been a false alarm. Homicides reached a 45-year low of 466 in 2009, and overall crime is down by 35 percent since that discourse on marijuana was first advanced nearly a decade ago. Marijuana use rates among high school and college students across the nation have been relatively flat since 1999 (Johnston et al. 2005), yet the insistence on marijuana's dangers still translates into widespread and racially imbalanced misdemeanor marijuana arrests. Nor are the arrests brief and nonintrusive encounters: persons arrested on misdemeanor marijuana charges are routinely booked, strip searched, and detained for as long as 48 hours until they are arraigned on charges that are almost always dismissed (Golway 2000). Observing a sweep of six marijuana arrests at the outset of the current war on marijuana a decade ago, one detective lamented that rather than lowering crime, "[w]e're just ruining people's lives now" (Sargent 2001).

VI. Conclusion

The striking feature of the war on marijuana in New York City is not simply the racial imbalance in enforcement compared to the racial distribution of marijuana use (cf. Saxe et al. 2001; Johnston et al. 2005), nor its disconnect from crime conditions or the legality of marijuana stops, nor its diminishing returns in the chase for weapons; rather, the broad reach of marijuana enforcement, and of OMP more generally, deserves the greatest attention. In 2006, the NYPD made more than 32,000 arrests for marijuana possession, and over 506,000 stops, including 64,166 stops of black males between the ages of 15 and 19, or an average rate of 77 stops for every 100 such persons.[25] Of these stops, fewer than 4 percent resulted in an arrest, and fewer than one half of 1 percent revealed a weapon.[26]

OMP practices have persisted through sharp criticism (Spitzer 1999; Greene 1999; Harcourt 2001; Levine & Small 2008) and civil rights litigation against the city. However, the intractability of racial disparities in police practices in the face of prior judicial efforts at constitutional oversight raise difficult questions about the prospects for either legal or democratic regulation of policing. The deep reach of OMP into the city's minority communities has serious social costs, undermining perceived police legitimacy, and potentially

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[25]ESRI projections suggest that approximately 6.6 million of the city's 8.3 million residents in 2006 were over the age of 15.

[26]Street stops are hardly neutral with respect to the person stopped and found to be innocent of any wrongdoing. Stuntz (1998) notes four distinct harms that victims of unjustified and inaccurate stops might suffer. "The first is a harm to the victim's privacy—the injury suffered if some agent of the state rummages around in the victim's briefcase, or examines the contents of his jacket pockets. The second is . . . 'targeting harm,' the injury suffered by one who is singled out by the police and publicly treated like a criminal suspect. Third is the injury that flows from discrimination, the harm a black suspect feels when he believes he is treated the way he is treated because he is black. Fourth is the harm that flows from police violence, the physical injury and associated fear of physical injury that attends the improper police use of force."

leading to civilian withdrawal from the co-production of public safety (Tyler & Fagan 2008). The diminishing returns of street stops in the production of public safety suggests not only that the practice has an unjustified and disparate impact on the city's minority population, but that the broader enforcement strategy is misguided in its approach to crime control.

Marijuana enforcement consumes a great deal of police resources, and for the past decade has been a stable feature of the policing landscape in New York. The social and political objectification of marijuana through this time gave police institutions the opportunity to transform marijuana enforcement to a use virtually unrelated to their central aim of crime reduction. The purpose of the marijuana doctrine, instead, may be the expansion of the panoptical or intelligence-generating dimension of police work, enhancing the centrality of police organizations without the burden of distributional or efficiency concerns. As practiced, the lack of police discretion in marijuana enforcement signals indifference to those concerns, and threatens to instantiate among the policed a deeply rooted culture of permanent challenge to police authority. Whether policing without legitimacy is sustainable remains a worrisome question.

References

Adams v. Williams, 407 U.S. 143 (1972).

Ballinger, Gary A. (2004) "Using Generalized Estimating Equations for Longitudinal Data Analysis," 7 *Organizational Research Methods* 127.

Bonnie, Richard J., & Charles H. Whitebread (1970) "The Forbidden Fruit and the Tree of Knowledge: An Inquiry into the Legal History of American Marijuana Prohibition," 56(6) *Virginia Law Rev.* 971.

Bratton, William, & Peter Knobler (1998) *Turnaround: How America's Top Cop Reversed the Crime Epidemic.* New York: Random House.

Carlis, Adam (2009) "The Illegality of Vertical Patrols," 109 *Columbia Law Rev.* 2002.

Caulkins, Jonathan P., & Peter Reuter (1998) "What Price Data Tell Us About Drug Markets," 28(3) *J. of Drug Issues* 593.

Clarke, Stephen (2009) "Arrested Oversight: A Comparative Analysis and Case Study of How Civilian Oversight of the Police Should Function and How It Fails," 43(1) *Columbia J. of Law & Social Problems* 1.

Cohen, Jacob (1988) *Statistical Power Analysis for the Behavioral Sciences.* Hillsdale, NJ: Laurence Erlbaum Associates.

Daniels v. City of N.Y., Stipulation of Settlement, 99 Civ. 1695 (2003).

Dawan, Shaila (2003) "The Mayor's Fiscal Plan: The Breakdown; Schools, Clinics, Museums, Garbage . . . the Cuts Are Spread Around," February 27 *New York Times* B1.

Duneier, M., & H. Molotch (1999) "Talking City Trouble: Interactional Vandalism, Social Inequality, and the 'Urban Interaction Problem'," 104(5) *American J. of Sociology* 1263.

Dwyer, Jim (2009) "Whites Smoke Pot, But Blacks Are Arrested," December 22 *New York Times* A24.

ESRI (2006) *ESRI ® Demographic Update Methodology: 2006/2011.* White Paper. Redlands, CA: ESRI.

Fagan, Jeffrey (1990) "Intoxication and Aggression," 13 *Drugs & Crime—Crime & Justice: An Annual Rev. of Research* 241.

—— (1993) "Interactions Among Drugs, Alcohol, and Violence: Dilemmas and Frameworks for Public Health Policy," 12(4) *Health Affairs* 65.

Fagan, Jeffrey, & Garth Davies (2000) "Street Stops and Broken Windows: *Terry*, Race, and Disorder in New York City," 28 *Fordham Urban Law J.* 457.

Fagan, Jeffrey, Amanda Geller, Garth Davies, & Valerie West (2010) "Street Stops and *Broken Windows* Revisited: The Demography and Logic of Proactive Policing in a Safe and Changing City," in S. K. Rice & M. D. White, eds., *Race, Ethnicity, and Policing: New and Essential Readings.* New York: NYU Press.

Faul, Franz, Edgar Erdfelder, A.-G. Lang, & Axel Buchner (2007) "G*Power 3: A Flexible Statistical Power Analysis Program for the Social, Behavioral, and Biomedical Sciences," 39(2) *Behavior Research Methods* 175.

Ferguson, Andrew Guthrie, & Damien Bernache (2008) "'The High-Crime Area' Question: Requiring Verifiable and Quantifiable Evidence for Fourth Amendment Reasonable Suspicion Analysis," 57 *American Univ. Law Rev.* 1587.

Floyd v. City of N.Y., No. 08 Civ. 1034 (S.D.N.Y. 2008).

Flynn, Kevin (1998) "Arrests Soar in Crackdown on Marijuana," November 17 *New York Times* B1.

—— (2000) "Shooting Raises Scrutiny of Police Antidrug Tactics," March 25 *New York Times* A1.

—— (2001) "After Criticism of Street Frisk Records, Police Expand Report Form," January 5 *New York Times* B6.

Garnett, Nicole Stelle (2005) "Ordering (and Order in) the City," 57(1) *Stanford Law Rev.* 1.

Gelman, Andrew, Jeffrey Fagan, & Alex Kiss (2007) "An Analysis of the NYPD's Stop-and-Frisk Policy in the Context of Claims of Racial Bias," 102 *J. of the American Statistical Association* 813.

Golub, Andrew, & Bruce D. Johnson (2001) "Variation in Youthful Risks of Progression from Alcohol and Tobacco to Marijuana and to Hard Drugs Across Generations," 91(2) *American J. of Public Health* 225.

Golub, Andrew, Bruce D. Johnson, & Eloise Dunlap (2006) "Smoking Marijuana in Public: The Spatial and Policy Shift in New York City Arrests, 1992–2003," 3 *Harm Reduction J.* 22.

—— (2007) "The Race/Ethnicity Disparity in Misdemeanor Marijuana Arrests in New York City," 6 *Criminology & Public Policy* 131.

Golway, Terry (2000) "Price of Ambition: A City Under Arrest," April 3 *New York Observer* 2.

Gould, Jon B., & Stephen D. Mastrofski (2004) "Suspect Searches: Assessing Police Behavior Under the U.S. Constitution," 3(3) *Criminology & Public Policy* 315.

Greene, J. A. (1999) "Zero Tolerance: A Case Study of Police Policies and Practices in New York City," 45(2) *Crime & Delinquency* 171.

Harcourt, Bernard E. (1998) "Reflecting on the Subject: A Critique of the Social Influence Conception of Deterrence, the Broken Windows Theory, and Order-Maintenance Policing New York Style," 97(2) *Michigan Law Rev.* 291.

—— (2001) *Illusion of Order: The False Promise of Broken Windows Policing.* Cambridge, MA: Harvard Univ. Press.

Harcourt, B. E., & J. Ludwig (2006) "Broken Windows: New Evidence from New York City and a Five-City Social Experiment," 73(1) *Univ. of Chicago Law Rev.* 271.

—— (2007) "Reefer Madness: Broken Windows Policing and Misdemeanor Marijuana Arrests in New York City, 1989–2000," 6 *Criminology & Public Policy* 165.

Harcourt, Bernard E., & Tracey Meares (2010) *Randomization and the Fourth Amendment.* Working Paper. New Haven, CT: Yale Univ. School of Law.

Hardin, James W., & Joseph M. Hilbe (2003) *Generalized Estimating Equations.* New York: Chapman & Hall/CRC.

Illinois v. Wardlow, 528 U.S. 119 (2000).

Jackson, David (2000) "Winning War on Crime Has a Price: Giuliani Alienates Many in New York City's Black and Hispanic Communities," April 20 *Denver Post* A23.

Johnston, Lloyd D., Patrick M. O'Malley, Jerald G. Bachman, & John E. Schulenberg (2005) *Monitoring the Future: National Survey Results on Drug Use, 1997–2005, Vol. 1: Secondary School Students.* Bethesda, MD: U.S. Department of Health & Human Services.

Kamins, Barry (2009) *New York Search and Seizure.* Albany, NY: Matthew Bender & Company, Inc.

Kelling, George L., & Catherine M. Coles (1996) *Fixing Broken Windows: Restoring Order and Reducing Crime in Our Communities*. New York: Free Press.

King, Ryan D., & Mark Mauer (2006) "The War on Marijuana: The Transformation of the War on Drugs in the 1990s," 3(6) *Harm Reduction J.* Available at <http://www.harmreductionjournal.com/content/3/1/6>.

Kocieniewski, David (1999) "Success of Elite Police Unit Exacts a Toll on the Streets," February 15 *N.Y. Times* A1.

Levine, Harry G., & Deborah Peterson Small (2008) *Marijuana Arrest Crusade: Racial Bias and Police Policy in New York City, 1997–2007*. Newe Yrok: New York Civil Liberties Union.

Livingston, Debra (1997) "Police Discretion and the Quality of Life in Public Places: Courts, Communities, and the New Policing," 97 *Columbia Law Rev.* 551.

MacCoun, Robert, Beau Kilmer, & Peter Reuter (2003) "Research on Drug-Crime Linkages: The Next Generation," in *Toward a Drugs and Crime Research Agenda for the 21st Century*. National Institute of Justice Special Report. Washington DC.

MacDonald, Heather (2009) "New York's Indispensable Institution: The NYPD's Crime-Fighting Sparked the City's Economic Revival and is Essential to its Future," July 7 *City J.* Available at <http://www.city-journal.org/2009/nytom_nypd.html>.

Maple, Jack, & Christopher Mitchell (1999) *The Crime Fighter: Putting the Bad Guys Out of Business*. New York: Broadway Books.

Mayor's Committee on Marihuana (1944) "The Marihuana Problem in the City of New York," in David Solomon, ed., *The Marihuana Papers*. New York: Howard W. Sams & Co. Publishers.

New York City Civilian Complaint Review Board (2002) *Status Report, January–December 2001*. Available at <http://www.ci.nyc.ny.us/html/ccrb/pdf/ccrbann2001.pdf>.

New York City Department of Health and Mental Hygiene (2007) "Substance Use Among New York City Youth: A Report from the New York City Youth Risk Behavior Survey," 6(1) *New York City Vital Signs*.

New York Civil Liberties Union v. New York City Police Dep't, 2008 WL 2522233 (N.Y. Sup. Ct., May 7, 2008).

People v. Benjamin, 414 N.E.2d 645 (N.Y. 1980).

People v. De Bour, 40 N.Y.2d 210 (1976).

People v. Schwing, 787 N.Y.S.2d 715 (3d Dep't 2005).

Rashbaum,William K. (2002) "Kelly Plans to Cut Money for Overtime Police Patrols," January 10 *New York Times* B3.

—— (2003) "The Mayor's Fiscal Plan: The Breakdown; Schools, Clinics, Museums, Garbage . . . the Cuts Are Spread Around," April 17 *New York Times*.

Ridgeway, Greg (2007) *Analysis of Racial Disparities in the New York Police Department's Stop, Question, and Frisk Practices*. Technical Report TR-534. Santa Monica, CA: RAND.

Roane, Kit R. (1999) "Minority Private-School Students Claim Police Harassment," March 26 *N.Y. Times* B5.

Rosenfeld, Richard, Robert Fornango, & Eric Baumer (2005) "Did Ceasefire, CompStat, and Exile Reduce Homicide?" 4 *Criminology & Public Policy* 419.

Sampson, Robert J., & Stephen W. Raudenbush (1999) "Systematic Social Observation of Public Spaces: A New Look at Disorder in Urban Neighbrhoods," 105(3) *American J. of Sociology* 603.

Sargent, Greg (2001) "Top Cop Pleads to Rudy: Take It Easy!" April 3 *New York Observer* 1.

Saxe, Leonard, Charles Kadushin, Andrew Beveridge, David Livert, Elizabeth Tighe, David Rindskopf, Julie Ford, & Archie Brodsky (2001) "The Visibility of Illicit Drugs: Implications for Community-Based Drug Control Strategies," 91 *American J. of Public Health* 1987.

Silverman, Eli B. (1999) *NYPD Battles Crime: Innovative Strategies in Policing*. Boston, MA: Northeastern Univ. Press.

Skogan, W. G. (1990) *Disorder and Decline: Crime and the Spiral of Decay in American Neighborhoods*. Berkeley, CA: Univ. of California Press.

Smith, Dennis, & Robert Purtell (2008) "Does Stop and Frisk Stop Crime? Lessons from New York City's Record Setting Crime Decline," presented to the Association for Public Policy Analysis and Management.

Spitzer, Eliot (1999) *The New York City Police Department's "Stop and Frisk" Practices: A Report to the People of the State of New York*, New York State Office of the Attorney General, ed. New York: New York City.

Stuntz, William J. (1998) "*Terry* and Legal Theory: *Terry*'s Impossibility," 72 *St. John's Law Rev.* 1213.

Substance Abuse and Mental Health Services Administration, Office of Applied Studies (SAMHSA) (2007) *The NSDUH Report: Illicit Drug Use, by Race / Ethnicity, in Metropolitan and Non-Metropolitan Counties: 2004 and 2005*. Rockville, MD: SAMHSA.

Taylor, R. (2001) *Breaking Away from Broken Windows*. Boulder, CO: Westview Press.

Terry v. Ohio, 392 U.S. 1 (1968).

Tyler, Tom R., & Jeffrey Fagan (2008) "Legitimacy and Cooperation: Why Do People Help the Police Fight Crime in Their Communities?" 6 *Ohio State J. of Criminal Law* 231.

U.S. Commission on Human Rights (2000) *Police Practices and Civil Rights in New York City*. Available at <http://www.usccr.gov/pubs/nypolice/main.htm>.

Van Ours, Jan C. (2003) "Is Cannabis a Stepping-Stone for Cocaine?" 22(4) *J. of Health Economics* 539.

Waldeck, Sarah E. (2000) "Cops, Community Policing, and the Social Norms Approach to Crime Control: Should One Make Us More Comfortable with the Others?" 34 *Georgia Law Rev.* 1253.

Watters, J. K., C. Reinarman, & J. A. Fagan (1985) "Causality, Context, and Contingency: Relationships Between Drug Abuse and Delinquency," 12 *Contemporary Drug Problems* 351.

Weisburd, David, Stephen D. Mastrofski, Rosann Greenspan, & James J. Willis (2004) *The Growth of Compstat in American Policing*. Washington, DC: Police Foundation.

Wilson, James Q., & George L. Kelling (1982) "Broken Windows," 249(3) *Atlantic Monthly* 29.

APPENDIX A: NEW YORK STATE PENAL LAW

§ 221.05-221.30: Possession of Marihuana

§ 221.05 Unlawful possession of marihuana. A person is guilty of unlawful possession of marihuana when he knowingly and unlawfully possesses marihuana. Unlawful possession of marihuana is a violation punishable only by a fine of not more than one hundred dollars. However, where the defendant has previously been convicted of an offense defined in this article or article 220 of this chapter, committed within the three years immediately preceding such violation, it shall be punishable (a) only by a fine of not more than two hundred dollars, if the defendant was previously convicted of one such offense committed during such period, and (b) by a fine of not more than two hundred fifty dollars or a term of imprisonment not in excess of fifteen days or both, if the defendant was previously convicted of two such offenses committed during such period.

§ 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.

§ 221.15 Criminal possession of marihuana in the fourth degree. A person is guilty of criminal possession of marihuana in the fourth degree when he knowingly and unlawfully possesses 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 two ounces. Criminal possession of marihuana in the fourth degree is a class A misdemeanor.

§ 221.20 Criminal possession of marihuana in the third degree. A person is guilty of criminal possession of marihuana in the third degree when he knowingly and unlawfully possesses 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 eight ounces. Criminal possession of marihuana in the third degree is a class E felony.

§ 221.25 Criminal possession of marihuana in the second degree. A person is guilty of criminal possession of marihuana in the second degree when he knowingly and unlawfully possesses 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 sixteen ounces. Criminal possession of marihuana in the second degree is a class D felony.

§ 221.30 Criminal possession of marihuana in the first degree. A person is guilty of criminal possession of marihuana in the first degree when he knowingly and unlawfully

possesses 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 ten pounds. Criminal possession of marihuana in the first degree is a class C felony.

Appendix B: Specific Police Conduct Permitted Under *De Bour*

1. What is a Stop?

Police stop and frisk procedures have been ruled constitutional under specific conditions articulated in *Terry v. Ohio* (1968). Under *Terry*, Fourth Amendment restrictions on unreasonable searches and seizures allow a police officer to stop a suspect on the street and search him or her without probable cause to arrest if the police officer has a reasonable suspicion that the person has committed, is committing, or is about to commit a crime. For their own protection, police may perform a quick surface search of the person's outer clothing for weapons if they have reasonable suspicion that the person stopped is armed. This reasonable suspicion must be based on "specific and articulable facts" and not merely upon an officer's hunch.

2. Permissible Behaviors

New York law regulates police conduct more thoroughly than does *Terry*. New York law articulates a four-step analysis articulated in *People v. De Bour* (1976) and *People v. Holmes* (1996). Stops are governed by N.Y. Criminal Procedure Law Section 140.50(1) (2007):

> In addition to the authority provided by this article for making an arrest without a warrant, a police officer may stop a person in a public place located within the geographical area of such officer's employment when he reasonably suspects that such person is committing, has committed or is about to commit either (a) a felony or (b) a misdemeanor defined in the penal law, and may demand of him his name, address and an explanation of his conduct.

"Stops" and "frisks" are considered separately under New York statutes. A police officer may stop a suspect but not be permitted to frisk the suspect given the circumstances. Frisks and searches are governed by N.Y. Criminal Procedure Law Section 140.50(3), which requires a legitimate "stop" as a predicate to any frisk.[27] In many cases,

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[27]"When upon stopping a person under circumstances prescribed in subdivisions one and two a police officer or court officer, as the case may be, reasonably suspects that he is in danger of physical injury, he may search such person for a deadly weapon or any instrument, article or substance readily capable of causing serious physical injury and of a sort not ordinarily carried in public places by law-abiding persons. If he finds such a weapon or instrument, or any other property possession of which he reasonably believes may constitute the commission of a crime, he may take it and keep it until the completion of the questioning, at which time he shall either return it, if lawfully possessed, or arrest such person." N.Y. Crim. Proc. Law § 140.50(3).

reasonable suspicion that a person is engaging in violent or dangerous crime (such as murder, burglary, assault, etc.) will justify both a stop *and* a frisk. Table B1 shows the circumstances that are necessary for a stop to escalate to a frisk and ultimately to an arrest. Table B2 shows the specific police actions that are permitted at each level of a *Terry/De Bour* stop in New York.

Table B1:   De Bour's Four Levels of Street Encounters[a]

Predicate	Permissible Response
Level 1	Objective credible reason approach to request information
Level 2	Founded suspicion—common-law right of inquiry
Level 3	Reasonable suspicion stop and (if fear of weapon) frisk
Level 4	Probable-cause arrest and full search incident

[a]*People v. De Bour*, 40 N.Y.2d 210 (1976).

Table B2:   Permissible Actions by Police Officers During Stops

Predicate	Permissible Response
Level 1	PO can ask nonthreatening questions regarding name, address, destination, and, if person carrying something unusual, police officer can ask about that. Encounter should be brief and nonthreatening. There should be an absence of harassment and intimidation. PO can: say "STOP" (if not "forceful") approach a stopped car touch holster. PO cannot: request permission to search cause people to reasonably believe they're suspected of crime, no matter how calm and polite the tone of the questions
Level 2	PO can ask pointed questions that would reasonably lead one to believe that he/she is suspected of a crime. Questions can be more extended and accusatory. Focus on possible criminality. PO can: request permission to search PO cannot: pursue forcibly detain
Level 3	PO can: forcibly detain frisk for weapons if in fear pull car out of traffic flow order defendant to lie on the ground handcuff (for good reason) pursue
Level 4	PO can arrest and search suspect

Appendix C: Replication of the NYPD's UF-250 Form

(COMPLETE ALL CAPTIONS)

STOP, QUESTION AND FRISK REPORT WORKSHEET
PD344-151A (Rev. 11-02)

Pct.Serial No.		
Date		Pct. Of Occ.

Time Of Stop	Period Of Observation Prior To Stop	Radio Run/Sprint #

Address/Intersection Or Cross Streets Of Stop

☐ Inside   ☐ Transit   Type Of Location
☐ Outside ☐ Housing   Describe:

Specify Which Felony/P.L. Misdemeanor Suspected	Duration Of Stop

What Were Circumstances Which Led To Stop?
(MUST CHECK AT LEAST ONE BOX)

☐ Carrying Objects In Plain View Used In Commission Of Crime e.g., Slim Jim/Pry Bar, etc.
☐ Fits Description.
☐ Actions Indicative Of "Casing" Victim Or Location.
☐ Actions Indicative of Acting As A Lookout.
☐ Suspicious Bulge/Object (Describe)
☐ Other Reasonable Suspicion Of Criminal Activity (Specify)

☐ Actions Indicative Of Engaging In Drug Transaction.
☐ Furtive Movements.
☐ Actions Indicative Of Engaging In Violent Crimes.
☐ Wearing Clothes/Disguises Commonly Used In Commission Of Crime.

Name Of Person Stopped	Nickname/ Street Name	Date Of Birth
Address		Apt. No.	Tel. No.

Identification: ☐ Verbal   ☐ Photo I.D.   ☐ Refused
☐ Other (Specify) _____

Sex:☐ Male   Race:☐ White ☐ Black☐ White Hispanic ☐ Black Hispanic
☐ Female   ☐ Asian/Pacific Islander ☐ American Indian/Alaskan Native

Age	Height	Weight	Hair	Eyes	Build

Other (Scars, Tattoos, Etc.)

Did Officer Explain Reason For Stop   If No, Explain:
☐ Yes   ☐ No

Were Other Persons Stopped/ ☐   Yes   If Yes, List Pct. Serial Nos.
Questioned/Frisked?   ☐   No

If Physical Force Was Used, Indicate Type:
☐ Hands On Suspect
☐ Suspect On Ground
☐ Pointing Firearm At Suspect
☐ Handcuffing Suspect
☐ Suspect Against Wall/Car

☐ Drawing Firearm
☐ Baton
☐ Pepper Spray
☐ Other (Describe)

Was Suspect Arrested? ☐ Yes ☐ No	Offense	Arrest No.
Was Summons Issued? ☐ Yes ☐ No	Offense	Summons No.

Officer In Uniform?   If No, How Identified? ☐ Shield   ☐ I.D. Card
☐ Yes ☐ No   ☐ Verbal

APPENDIX D: STOP RATIONALES AND ADDITIONAL CIRCUMSTANCES LISTED ON UF-250

Stop Rationales	*Additional Circumstances*
Carrying suspicious object	Report by victim/witness/officer
Fits a relevant description	Ongoing investigation
Casing a victim or location	Proximity to scene of offense
Acting as a lookout	Evasive response to questioning
Wearing clothes commonly used in a crime	Associating with known criminals
Actions indicative of a drug transaction	Change direction at sight of officer
Furtive movements	Area has high crime incidence
Actions of engaging in a violent crime	Time of day fits crime incident
Suspicious bulge	Sights or sounds of criminal activity
Other	Other