

Travis Wendel

# Zero tolerance Misreading results

**Zero tolerance policing in New York City has been a model for others, but its success appears to be coincidental to other social and economic factors**

**A**nalysis of consequences of anti-supply policing must move beyond arrest figures to understand the roles drugs play in the wider political economy.

In New York City there is little evidence to suggest that drug markets have been eliminated or even substantially reduced by 'zero tolerance' policing.

Drug markets have been reconfigured, in part due to aggressive police tactics, along with neighbourhood change and consumer preferences. 'Zero tolerance' has created more subtle, less visible markets – home deliveries and periodic 'hit and run' markets have become more common than traditional street markets.

Re-configuration of drug markets into forms less likely to intrude on non-participants may be desirable, but it is far from the ambitious goal which Mayor Rudolph Giuliani set for his second term.

In the 1990s, under Mayor Giuliani, policing became a numbers game. Giuliani's management report for midyear 1999 showed overall drug arrests at an all-time high, primarily because of an unprecedented campaign of arrests of marijuana smokers.

Gentrification and aggressive policing have re-configured and recaptured public and semi-public spaces where drugs were sold in the 1970s and 1980s, but users continue to obtain heroin, cocaine and marijuana with little difficulty. Affluent consumers have drugs delivered, while less-affluent and visible-minority consumers patronise smaller, more subtle street markets.

Changes have occurred in the technical and social organisation of distribution (large corporate structures are less common and flourish only in the delivery segment of the business).<sup>1</sup>

Policing strategies and practice in New York City have changed dramatically over the last 20 years.

Recent history of interaction between policing strategies (aimed at containing or eliminating drug markets) and drug distribution strategies (aimed at unmolested transaction of business) can be divided into three distinct periods.

### Hands off policing

In 1973 the Knapp Commission Report revealed endemic corruption in the Police Department.<sup>2</sup> As a result, uniformed police were told to take a 'hands off' approach to drug

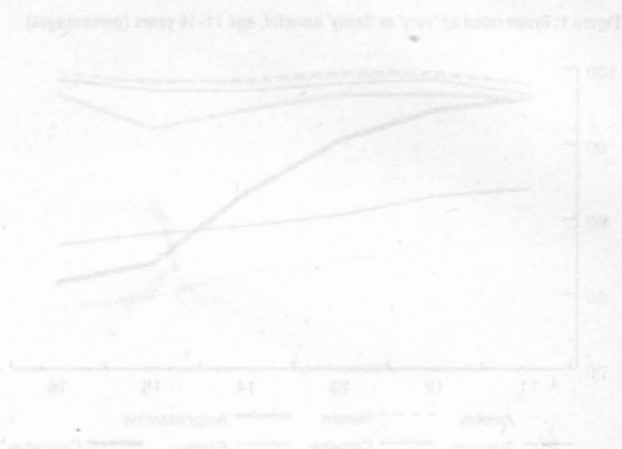
dealing. Enforcement was left to specialised squads, who could be more easily monitored to avoid corruption. From about 1973 to 1983, drug markets operated relatively openly, with little police interference. Crime rates increased steadily. There was a sense that the police could do little about crime, which was caused by underlying social pathologies they were powerless to change.

These trends resulted from residents taking advantage of the convergence of developments in the political economy of New York City, including minimal and reactive policing in large areas, and a general cutback in city services. Simultaneously, the recession of the mid-1970s led to the removal of private capital from these same areas.

This created a vacuum in governance, which was filled by drug distribution organisations. This process is reminiscent of the rise of mafia and other 'amateur governments' in areas where state authority is withdrawn or never fully established, such as rural Sicily.

The 1970s in New York City were characterised by an overall sense that urban problems – especially crime – were beyond solution by government.

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### Shooting fish in a barrel

In the mid-1980s the New York Police Department (NYPD), under Mayor Koch, began 're-criminalising' drugs and violence, in neighbourhoods which had seen formal and informal social controls collapse.

Police began a long steady assault on public drug dealing and other misbehaviour. The impact has to be understood in the context of what was happening more widely in the city.

In the 1980s, New York's economy revived, the stock market climbing steadily until the crash of 1987.

The real estate market rebounded strongly and investment returned from private investors and government programmes to some communities abandoned in the 1970s. Rather than abandon property to be seized by the city for unpaid taxes, landlords began to invest.

Apartment buildings were converted from rentals to co-ops, as landlords sought to evade the city's rent stabilisation laws and to increase profitability. The city, under Mayor Ed Koch, began to renovate the substantial number of buildings acquired during the '70s wave of abandonment, and sold some back to private developers and landlords.

### Gentrification

All this led to substantial changes in the character and socio-economic characteristics of many neighbourhoods. The East Village/Lower East Side area was one of the first to be gentrified. Job growth remained slow, especially for visible-minority men, but growing service industries spawned by the economic revival provided young people with hopes of earning a wage outside crime.

As uniformed officers returned to the streets, drug dealers were slow to react. The police made huge numbers of arrests and seized large amounts of illicit commodities. Record arrest totals were rapidly racked up.

They were less successful at eliminating drug markets, even the most public ones. Markets were not dismantled but displaced to less affluent areas. Lower East Side markets moved to across the East River to Williamsburg, Brooklyn.

Later, the city-wide Tactical



Narcotics Teams (TNT) programme (1988-93) temporarily disrupted markets. TNT involved short-term intensive interventions in geographically contained areas. The intention was to disrupt drug markets so much that they could not resume when the intervention ceased.

TNT proved to be a limited success. Markets were dispersed during a TNT intervention, but with little lasting impact on long-established markets.

The limited areas led to geographic displacement – distributors moved a few blocks, outside the TNT area (sometimes only temporarily).

Temporal displacement took several different forms:

- while TNT was in the immediate area, business paused (just as dealers often stop selling after school, so children can get home free of blatant drug sales). Dealers knew that TNT would soon move on and sales could be resumed
- distributors rapidly noticed that TNT interventions followed patterns – every Thursday or every Tuesday – so they avoided working on 'TNT days'
- TNT was almost never active on weekends, due to officers' reluctance to interfere with their leisure time – dealers responded accordingly.

Such day-to-day variations probably



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had little impact on sales in heroin markets, due to the use pattern of heroin. There may have been a more significant impact on cocaine markets, as cocaine is more often used a 'party' or weekend drug.

One distributor summed up drug dealers' reaction to TNT:

'The TNT ain't doing nothing. Their showing ain't really that potent. They come in, they rush, they raid, and they leave. It's not like they come and stay. Everything is still the same and people are still selling drugs. They're just out there. They're all around. It never has slowed down; no pressure, you know. They're still out there [selling] during the day, still out there during the night.'

Gradually, police became sensitive to the social organisation of distribution and attempted to dismantle organisations, rather than amass arrests or seizures. This approach, combined with the steady arrests and a declining overall market for drugs (especially crack), led markets to adapt. The era of the public corporate distributor was over.

### Whipping a dead horse

In this context in 1994 Rudolph Giuliani began his first term as Republican Mayor of New York City with, he felt, a mandate to 'get-tough' on crime.

New Police Commissioner, William Bratton, introduced computer mapping of crime and arrest trends, CompStat, which allowed the Police Department to hold commanders accountable for crime in their areas.

By 1996, drug markets had moved indoors and shifted to delivery. Police continued the tactics that, in their view, caused crime to decline – stringent enforcement of petty regulations.

In visible-minority communities resentment erupted in protests after several well-publicised incidents of police abuse of civilians. Residents who viewed drug dealers with abhorrence adopted a similar view of the police.

One owner of a large marijuana delivery service explained reaction to the intensified policing of the Giuliani era: 'We're not hiring black guys anymore because just basically

if you're a black guy walking around New York, at least once a week you're gonna get some cop hassling you.

I don't like Giuliani or whatever, but it just seems like it's a totally different thing to be a black guy in New York now and you know basically, you're gonna get hassled, you're gonna get rousted, it's just the way things are.

'And uh, unfortunately I gotta run a business. And that means I've got to hire squeaky clean white kids. I mean I love hiring preppy looking white kids. Because it just seems like a very assholeish thing [not to hire blacks], but you know realistically it's like hey, we're in this to pay the bills, you know.'

Since adopting this policy his marijuana delivery continued for four years without arrest.

#### Additional initiatives

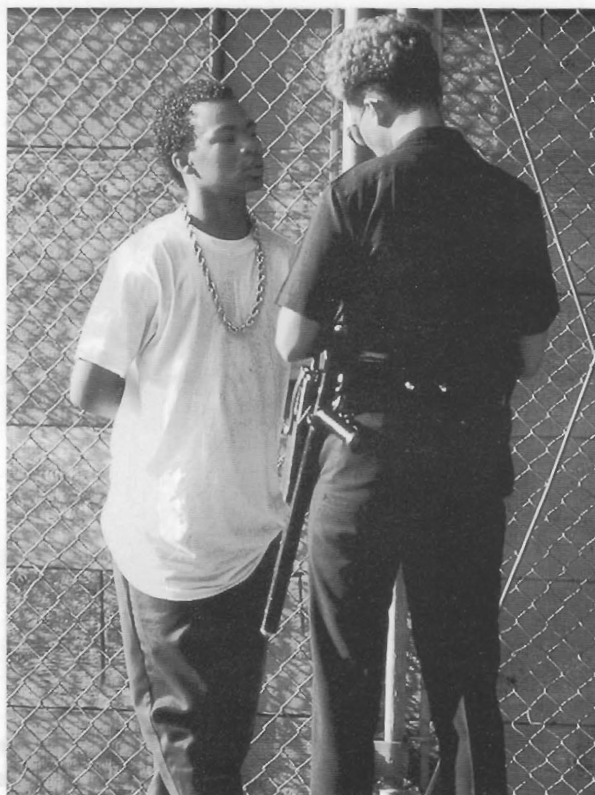
In 1998 Mayor Giuliani emphasised that his second term would be marked by yet more aggressive anti-drug initiatives: 'We will add five more drug initiatives to the four presently operating, more than doubling the resources devoted to those initiatives since my announcement of our anti-drug offensive on October 1, 1997. This will allow the Department to bring unrelenting pressure on all drug dealers in all five boroughs and drive them out of this city. There will be no place left for them to hide.'

At the time gentrification was accelerating. With the improved economy and policing, the murder rate and crime in general has fallen to a 30-year low.

If crime is declining because of police activity it is not because of anti-drug activity - drug arrests are down significantly but arrests for other offences are the highest they have ever been.

The exception to declining drug arrests are those for misdemeanour cannabis possession. In 1998, these were up 60 per cent from 1997. 80 per cent were made by the undercover Organised Crime Control Bureau (OCCB), resulting from an increase in their focus on marijuana arrests - 18 per cent in 1993, 40 per cent in 1998.

One OCCB officer told researchers that most of his time in Brooklyn



One change in policing practice is that now any NYPD officer can sentence anyone to 24 hours in jail, without trial

South Narcotics was spent on marijuana enforcement. Arrests were easier to make than hard drug arrests and commanding officers wanted OCCB to make large numbers of arrests: 'For a while we were making real cases, concentrating on the heroin and the crack dealers. But then the numbers went down and the bosses freaked, so it was back to busting people for smoking a blunt [marijuana-filled cigar] or selling a nickel of weed.'

Seasoned narcotics detectives from the Midtown North Narcotics Zone's Central Harlem Initiative have been diverted to arrest marijuana smokers in Central Park. One detective gave his assessment of this: 'Fine, it's bullshit, it's pointless, it's not why

I became a cop. But I've got 17 years on the job, I'm three years from my pension and I don't give a shit. In the park, we've been arresting the yuppies, suits, briefcases, the whole deal. I gotta say I don't feel sorry for those assholes.'

#### Instant prisoners

One change in policing practice is that now any NYPD officer can sentence anyone to 24 hours in jail, without trial. There is no remedy or oversight from outside the NYPD. The one-day sentence is the time between arrest and court appearance, which is the first time anyone outside the NYPD considers the charges.

People are routinely jailed for at least 24 hours awaiting arraignment, however minor the accusation.

The wait can be substantially increased for recalcitrant prisoners. Corrections Officers can 'lose' their files, so preventing them from leaving custody to go to court. One Manhattan Narcotics detective said: 'I don't need to beat some guy up if he's an asshole. I've learned to be smarter than that. I keep my cool. Fuck with me? I'll speak to a C.O. [Corrections Officer] and tell them to lose his file. See how long it takes for him to see a judge.'

Many cases do not get before a judge. Prosecutors decline to prosecute an average of 50 cases a day (18,000 in 1998), twice as many as four years before.

The person arrested has already been penalised and humiliated by arrest, 20-30 hours of tedium, loss of earnings and possibly one's job, two strip searches (at the police station and on entering custody of the Dept of Corrections in the courthouse holding cells), and so on. Courts have prohibited routine strip searches unless based on probable cause, but all those arrested on drug charges, however minor, continue to be strip searched by the NYPD.

Why does this happen? The NYPD traditionally regards officers who do not make enough arrests as unproductive. The CompStat-driven obsession with statistical measures of police productivity also has a role. Ironically, the elimination of quotas to evaluate police performance was among the recommendations of the Knapp Commission in 1973.

## Methods of research

This article is based on ethnographic research conducted by the Heroin in the 21<sup>st</sup> Century Project, as well as the Lower East Side Trafficking study. Project staff conducted intensive ethnographic observations of drug users and distributors in the natural settings of drug use and distribution.

Life history interviews were conducted with each study participant and follow-up interviews explored many issues relating to the participants' activities in drug markets, interactions with police and other community actors and so on. Family members and non-drug market participants were also engaged and interviewed in an effort to place drug markets in the broader social context.

This ethnographic data was supplemented by an examination of official figures and statistics generated by the criminal justice process, as well as journalistic and scholarly accounts of policing, crime and drug markets.

The goal is to arrive at a holistic, thickly descriptive picture of the changing dynamics of the interactions among policing, neighbourhoods and drug markets as they have evolved over the last 20 years.

Police Benevolent Association President James 'Doc' Savage told the *New York Times* that police officers '... are under constant pressure to get more and more numbers, more summonses. Even though the crime rates are down they have to maintain the same level of activity.'

The large volume of arrests that this approach generates has consequences for the neighbourhoods where they are concentrated. It has been said that drug enforcement may be considered as an adverse outcome of drug use – a measure of social morbidity with negative consequences for those caught up in the criminal justice system. But enforcement can also be viewed as an independent variable – worsening many social and public health problems attributed to drug use.

Large percentages of young men in New York's most hard-pressed neighbourhoods shuttle in and out of short jail terms. Tenuous ties to conventional institutions and legitimate economic opportunities are weakened, while opportunities for crime are expanded through

contacts made in prison.

As the young men of whole neighbourhoods become inured to repeated contacts with the criminal justice system, the deterrent effects and stigma inevitably diminish. Incarceration is seen as a rite of passage. This is happening in an era of declining crime.

## Effectiveness claims

Some have claimed New York City's declining crime rates are a consequence of increased police aggressiveness under the Giuliani administration. Not least Mayor Giuliani himself: 'One of the main reasons crime is down so dramatically in New York City is that we no longer let the drug dealers control the streets of the city.'

This claim does not stand much examination. The crime rate in New York City started to decline prior to Mayor Giuliani's term, which began in 1994.

Violent crime in New York City declined from a 1990 peak rate of 2,385.6 per 100,000 people. Murder and robbery both peaked that year then both began to decline.

Property offences peaked in 1988 (during Ed Koch's third term) and have declined since. The city's overall rate of index offences also peaked in that year, because property offences are more numerous than violent ones. Arrests for violent felonies peaked in 1989, a year before violent offences. Such arrests declined from 1989 to 1993.

Arguably the economic changes in New York City have 'made the difference' rather than the high profile policing and targeting of 'zero tolerance'. Run-down areas have been re-populated by residents with a stake in localities, plus basic policing services and patrolling have resumed. Drug markets reflect patterns in the society of which they form a part.

## Positive policing alternatives

'Zero tolerance' was rooted in Wilson and Kelling's 'broken windows' theory, which argues that tolerance of disorder breeds serious crime, as one broken window creates an impression of abandonment or indifference and leads to more windows being broken.<sup>3</sup>

'Broken windows' theory argues

that police dealing with petty crime and disorder will decrease more serious crime. It advocates a return to foot patrols, as an effective strategy in crime control and to enlist the co-operation of residents.<sup>4</sup>

The original 'broken windows' idea incorporates consultation with the community on attitudes and the degree of tolerance for variations in public order. That is not what was implemented in New York. A narrow policy was followed that ignored community participation in determining acceptable norms and policing policies. Kelling argued that 'zero tolerance' policing distorted the approach he advocated.<sup>5</sup>

Law enforcement interventions have had little lasting impact on drug use and are only partially responsible for the major transformations in New York's drug markets over the last 15 years.

## Realistic aims

Policing plays a role in re-shaping markets, so what can local policing of drug supply aim for realistically?

When working with wider local economic, social and policy changes the Police Department has proved good at containing and controlling public drug markets. They should continue to do so.

Public drug sales have been eliminated in most of New York City. No longer do corporate distributors, control entire blocks and neighbourhoods, with enforcers. Violence has declined tremendously. In a recent report, the Brooklyn District Attorney's office concluded that 9 per cent of Brooklyn murders were drug related in 1999, down from around 25-50 per cent in the mid-1990s.

Drugs continue to be sold and used throughout New York, but drug markets seldom impinge on non-participants. These recent gains are at risk if the Police Department re-alienates wide communities by maximising arrests – playing the performance indicator game at its crudest.

Policy makers, citizens and officers should insist that policing be accountable. The focus should be on minimising market-related harm, as well as minimising drug supply. Neither objective is achieved by targeting users ■

1. Wendel & Curtis. *From shooting fish in a barrel to whipping a dead horse: Policing and the 'Quality of Life' in New York City neighborhoods*. 2000 in press.

2. Committee to Investigate Allegations of Police Corruption and the City's Anti-Corruption Procedures. *The Knapp Commission Report of Police Corruption*. New York: George Braziller. 1973.

3. Wilson J. & Kelling G. 'Broken windows.' *Atlantic Monthly*. 249(3), March 1982.

4. New York Police Department. *Police Strategy No. 5: Reclaiming the Public Spaces of New York*. New York: City of New York. 1994.

5. Kelling G. & Coles C. *Fixing broken windows*. New York: Touchstone Books. 1997.

Full references available from Druglink.