



BROKEN PROMISES:

A CWNYC RESPONSE TO DRUG
POLICING AND PROSECUTION IN
NEW YORK CITY

OCTOBER 2018

NOT IN OUR NAME!



Since February 2018, Court Watch NYC has been building the power of everyday New Yorkers to demand transparency and accountability from the criminal legal system - and its most powerful actor, the prosecutor - all with the goal to end mass incarceration.



By watching court proceedings in Manhattan and Brooklyn, reporting what we see, and organizing around the systemic injustices that we witness, we aim to shift courtroom policies, practices, and culture towards a more equitable New York City.



In the last year, the Manhattan and Brooklyn District Attorney offices (along with the NYPD) announced shifts in their policies for marijuana prosecutions and arrests.

"Our research has found.. no moral justification for the intolerable racial disparities that underlie enforcement... I urge New York lawmakers to legalize and regulate marijuana once and for all."



"Aggressive enforcement and prosecution of personal possession and use of marijuana does not keep us safer."

TO HOLD THEM ACCOUNTABLE

This summer, **132** trained **Court Watchers** spent over **423** hours in Brooklyn and Manhattan arraignments to record their observations on how drug cases were being handled in the courts.



HERE'S WHAT WE FOUND:

- Drug prosecutions in NYC disproportionately target Black and Latinx people.
- People continued to be arbitrarily prosecuted for marijuana-related charges.
- Police and prosecutors rely on entrapment and other predatory policing strategies to secure arrests and charges.
- Prosecutors request, and judges set, bail for drug cases resulting in the pretrial jailing of New Yorkers solely for the inability to pay.

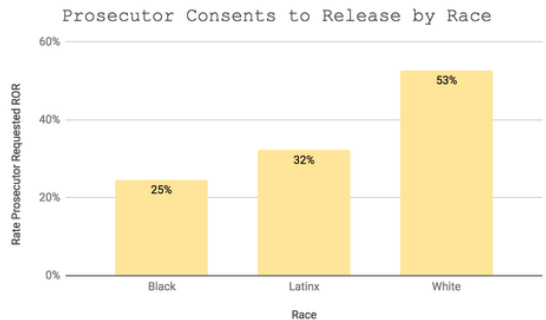
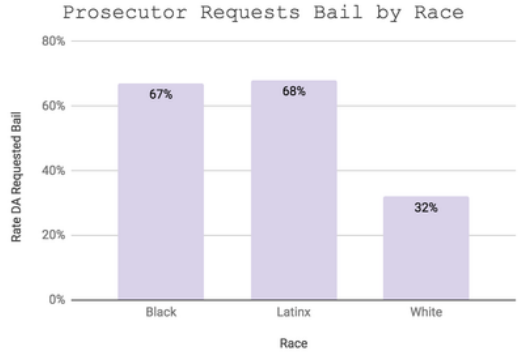
Finding #1: Black and Latinx People are Disproportionately Punished by Drug Prosecutions in NYC

Over the summer, Watchers
observed 233 cases
involving allegations of
drugs.



What remains clear is that the system is racist.

- 85% of accused people were non-White.
- Prosecutors were more likely to request bail for Black and Latinx individuals.
- Prosecutors requested bail in 67% of cases involving Black people accused of a drug crime, while only doing so for 32% of White people accused of a drug crime.



- Prosecutors were more likely to release White people without bail and on their own recognizance.
- Prosecutors consented to release in 53% of cases involving White people charged with a drug crime, compared to 32% of Latinx people and 25% of Black people.

HERE'S WHAT WATCHERS SAW:

On the same day, two men between the ages of 25-34 were arraigned in Manhattan for low-level misdemeanor possession of crack cocaine.

In the case involving a White man, ADA Dunning recommended the person take a guilty plea with a sentence of time served, which was accepted.

In the case involving a Black man, ADA Dunning offered a plea, but instead of time served, the ADA recommended a drug treatment program. If the man didn't complete the program, he would be sentenced to 10 days in jail.

Both cases resolved with guilty pleas, but the White man could go home that day, and the Black man had to complete 3 days in a drug treatment program or serve jail time. For two seemingly identical cases, the only difference we saw was the one we always see: that the person who got more leniency was White and the person who got more punishment was Black.

"The disproportionate number of people of color who have gotten saddled with drug charges continue to be unfairly treated by the courts."

- Court Watcher Harriet P.



HEY DA VANCE & DA GONZALEZ!

What is your office going to do about these racist outcomes and practices?

Finding #2: Despite the new policy of no longer prosecuting marijuana cases in Manhattan and Brooklyn, people continued to be arbitrarily prosecuted for marijuana-related charges.

IN RESPONSE TO COMMUNITY PRESSURE, MANHATTAN DA CYRUS VANCE IMPLEMENTED A NEW OFFICE-WIDE POLICY, BEGINNING AUGUST 1, 2018, STATING HIS OFFICE WOULD NOT PROSECUTE MARIJUANA CASES UNLESS “THE INDIVIDUAL OTHERWISE POSES A SIGNIFICANT THREAT TO PUBLIC SAFETY.”

ALTHOUGH COURT WATCHERS SAW A SIGNIFICANT DROP IN MARIJUANA CASES BEGINNING IN AUGUST, IT WAS CLEAR TO WATCHERS THAT THE POLICY WAS NOT BEING UNIFORMLY APPLIED TO PEOPLE SUBJECTED TO ARBITRARY PROSECUTION.

HERE'S WHAT WATCHERS SAW:

On August 14, a young adult was arraigned in Manhattan for marijuana possession and unlicensed driving. When the defense requested the ADA dismiss the marijuana charge because of the new policy, the ADA refused without a reason and requested probation and a \$500 fine.

On August 28, a young Black man took a plea for possession of synthetic marijuana, or K2. ADA Mauck offered a plea with a mandate that the man has to attend a drug treatment program or serve 10 days in jail, as well as suspending his driver's license. The defense attorney argued that the compound was unidentifiable, reminded the prosecutor about the Manhattan DA's new policy of not prosecuting low-level marijuana and requested a dismissal, which ADA Mauck and Judge Adams both rejected. The case resolved with a guilty plea and a sentence of time served and six-month license suspension.

"TIME SERVED" IS STILL PUNISHMENT

Many people will plead guilty with "time served" at arraignment in order to return to their lives, resulting in a misdemeanor conviction which adds to or creates a criminal record. However, for the average person, even one day in court can risk employment, or leave children or at risk family members without a caregiver. These pleas are a reflection of poverty and policing patterns that concentrate on Black and Latinx bodies and neighborhoods, rather than justice.

On September 24, three people between 16-24 years of age were arraigned in Manhattan for marijuana possession. In two cases involving White women, ADA Veronica Alayeva offered only marijuana ACDs and the cases resolved as such.

However, in the third case involving a Black man accused of possession, ADA Alayeva offered a marijuana ACD, with the condition that the person also complete three days of community service.

What's an ACD??

Not a guilty plea, but if the accused stays out of trouble for 6 months, their case will be dismissed and sealed

“There was a clear disparity in offers and outcomes for three identical charges. We also want to know why these charges for marijuana possession were prosecuted in the first place, since they were all after August 1st.”

– Reflection from a Watcher

The Brooklyn DA Eric Gonzalez has also committed to decreasing marijuana prosecutions, stating: “Aggressive enforcement and prosecution of personal possession and use of marijuana does not keep us safer, and the glaring racial disparities in who is and is not arrested have contributed to a sense among many in our communities that the system is unfair.” However, in its place, ADAs have **shifted to increasingly prosecute people for possession of synthetic marijuana, also known as K2.**

Until July 2018, possession or sale of synthetic marijuana was only charged as a violation, functionally the same as a parking ticket. After New York State laws changed in July 2018 to make synthetic marijuana a controlled substance, DAs in Brooklyn and Manhattan are charging sale of synthetic marijuana as a felony (punishable by upstate prison time), and possession as a misdemeanor (punishable by up to one year in jail).

HEY DA VANCE & DA GONZALEZ!

Your offices have promised to decline to prosecute marijuana, yet at the same time, have ramped up racist criminalization of synthetic marijuana. Why do you continue to prosecute primarily Black and brown people for marijuana-related charges?

Finding #3: Police and Prosecutors Rely on Entrapment and Other Predatory Policing Tactics to Secure Arrests and Charges

While the ways in which drug arrests happen are not always stated in arraignments, for cases where they were, Watchers observed 35 drug cases (misdemeanors and felonies) involving some form of predatory policing, including drug raids, questionable searches, buy and busts, or undercover officers.

In cases where race was reported, 91% were Black or Latinx. Only one case involved a White defendant.

WHAT'S A BUY AND BUST?

In buy-and-bust cases, an undercover agent, posing as a drug user, approaches an individual to buy drugs. Often these undercover agents will specifically target a person who appears to be addicted to or using drugs, and request their help in buying drugs in exchange for a small fee. When the individual does so, they are arrested and charged with felony drug sale or other charges.

HERE'S WHAT WATCHERS SAW:

A middle-aged Black woman was charged with selling \$45 worth of crack cocaine to an undercover officer. According to the public defender, the woman was struggling with addiction, which the **undercover agent likely exploited by offering her financial incentive** to sell her own stash. Brooklyn ADA Langsam charged the woman with felony drug sale and then **requested \$7500 bail**. Judge Espinal set \$5000 bail, an amount she was likely unable to afford, **sending her to Rikers Island to await her next court date.**

In another case, a 22-year-old Black man was prosecuted for misdemeanor possession of crack cocaine and possession of a knife. **He was walking down the street with his cousin, when he was stopped by the police and searched.** Watchers noted that **the search seemed to occur for “no apparent reason,”** that it seemed “unlawful,” that it was **“frustrating to watch this case occur at all because the police had no reason to stop him.”** The prosecution wanted the young man to plead guilty and serve 10 days jail time. The defense rejected the offer, deciding instead to fight the charges. Although the prosecutor requested \$750, the judge released the young man without bail.



HEY DA VANCE & DA GONZALEZ!

Why is your office colluding with the NYPD and not challenging their predatory policing tactics that target people of color?

Finding #4: Prosecutors Request and Judges Set Excessive Bail for Drug Cases, Which Jails Poor New Yorkers Before Any Finding of Guilt

HERE'S WHAT WATCHERS SAW:

On July 10, a Manhattan prosecutor requested \$50,000 bail on a homeless person accused of felony possession of a controlled substance.

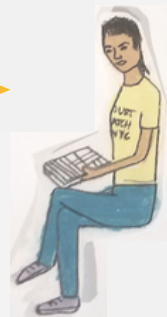
The public defender mentioned that their client had two young children and was currently looking for a job and had strong ties to the community. The judge still set \$10,000 bail, even though it was clear the accused wouldn't be able to afford it.

Watchers witnessed ADA Sattar request \$10,000 bail on a case where the person was accused of felony sale of a controlled substance. According to what watchers learned from the appearance, the accused person had diabetes, used heroin, and was currently part of a methadone program. The public defender conveyed their client's worry that he wouldn't be provided adequate medical attention or treatment for substance use in jail. The judge set bail at \$5,000.

While watchers observed judges setting lower bail than what the prosecutor requested, judges set bail in 81% of cases where the prosecutor requested bail. Watchers did not witness any cases where the judge set bail if the prosecutor consented to ROR.

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It's sickening to watch people repeatedly come through on these low-level drug cases, and know that nothing about the criminal-legal system is going to help somebody that is struggling with drug use... it's demoralizing to see that cycle play out right in front of you



Since 1980, the number of people imprisoned for drug charges has grown by a factor of ten, far surpassing growth in drug use nationally, with 171,245 people in jail in 2015 on drug charges compared to just 17,200 in 1980. In 2017 alone, Brooklyn sent 1,969 people to jail for misdemeanors and incarcerated 609 for drug felonies. In Manhattan, in 2017, DA Cy Vance sent 791 people to jail for misdemeanors, and incarcerated 1343 people for drug felonies.

On August 6, 2018, Court Watchers in Brooklyn observed prosecutors arraign a Latinx man charged with criminal possession of a controlled substance with intent to sell, a class D felony. The accused was approached by undercover police officers, who alleged the man was selling synthetic marijuana. The ADA requested \$2,500 bail. As the accused was ushered through a door at the back of the courtroom in handcuffs, his family members sat in the audience and cried.

“The pain that the war on drugs causes was palpable in the courtroom, the pain that families and individuals are forced to bear in the name of “public safety.” I wonder how prosecutors and judges can watch bereaved families and continue to support bail?”

- Court Watcher Michelle L.



HEY DA VANCE & DA GONZALEZ!

Do you think it's fair that poor people have to sit in jail before trial while rich people go free?

BUILD THE MOVEMENT

- Visit www.courtwatchnyc.org to register for the next CWNYP 101 training.
- Follow CWNYP on Twitter & Instagram @CourtWatchNYC.
- Voice your concerns to your DA's directly on twitter or by phone @ManhattanDA (614-656-1525) & @BrooklynDA (337-660-2661).

Court Watch NYC is a collaborative project with the Brooklyn Community Bail Fund, 5 Boro Defenders, and VOCAL-NY.



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