

WHEN THE POLICE IGNORE THE LAW

Racialized Policing at Turnstile



by Harold Stolper

CRIMINALIZING POVERTY



A discussion on public policy, economic opportunity,
and racial justice in New York City.

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WHY IS THE **NYPD** **BREAKING THE LAW** AND WITHHOLDING ENFORCEMENT DATA ON **FARE EVASION?**



One thing we know: if you're **black** and stopped for fare evasion you are **4 times more likely to be arrested** than if you're white.



When the Police Ignore the Law: Racialized Policing at Turnstile

Low-income New Yorkers of color don't need to see a spreadsheet of fare evasion arrests to understand a basic reality for subway commuters: the NYPD disproportionately targets low-income, black and brown communities for fare evasion enforcement (among other low-level, non-violent offenses)—especially young black men.

But politicians often do need to see such disparities documented in clear terms. Which is what happened in New York City in January of this year, after research documented disproportionately high subway fare evasion arrest rates in lower-income, predominantly black communities of Brooklyn. Following this analysis, the New York City Council passed Local Law 47 requiring the NYPD to report detailed quarterly information on their subway fare evasion enforcement actions citywide, with the first reporting deadline on January 30, 2018. The NYPD failed to publicly report any data on January 30th, and then missed the deadlines for the next two quarters. In response, the City Council Member who sponsored the legislation (Rory Lancman – Queens) and the Community Service Society filed a lawsuit to force the NYPD to fully comply with Local Law 47.

The intent of the law was to provide public transparency of fare evasion enforcement decisions, a necessary step towards holding the NYPD accountable for a history of racialized transit policing that has served as a cornerstone of broken windows policing since the 1990s. Targeting residents in poor communities of color for arrest at the subway turnstile—literally the gateway to

economic opportunity in New York City—is a very simple recipe for the widespread criminalization of poverty and economic disenfranchisement of minority communities.

On October 4, the NYPD finally released a limited subset of data on their fare evasion enforcement actions for the past three quarters. While each quarterly data release contains nine separate spreadsheets of information, they don't include the most critical information for 462 out of the city's 472 subway stations: how many arrests were made and summonses issued at each station (arrest totals are only reported for the top 10 stations in terms of quarterly arrest and summons totals). The data does include demographic

WHILE SOME DATA IS BETTER THAN NONE, THE NYPD'S RELEASE IS WOEFULLY INCOMPLETE, AND AS A RESULT IT FAILS TO SHOW THE FULL PICTURE OF FARE ENFORCEMENT ACTIONS THROUGHOUT THE CITY.

breakdowns of quarterly arrest and summons totals for the top 100 stations (ignoring the other 372), but it is reported in a way that makes it impossible to know the total number of enforcement actions at stations 11-100. Moreover, the data fails to differentiate between subway stations with the same name. For example, for the second quarter of 2018 there are three stations listed as "125 Street" without any additional lo-

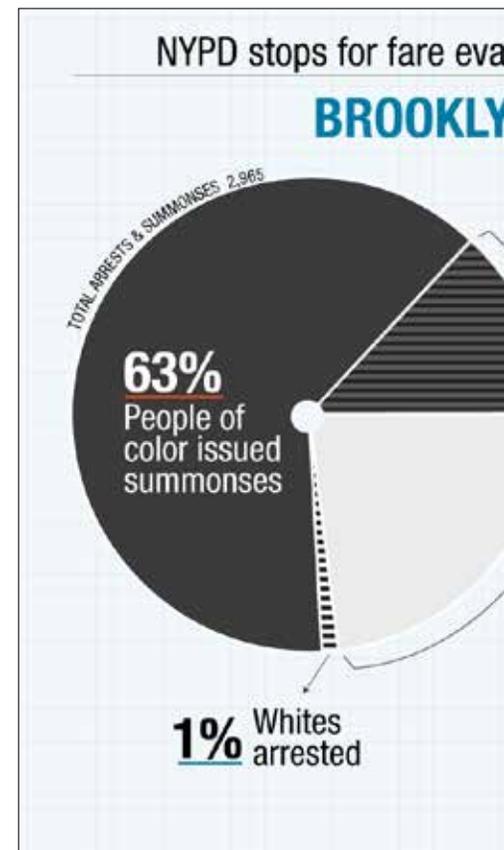
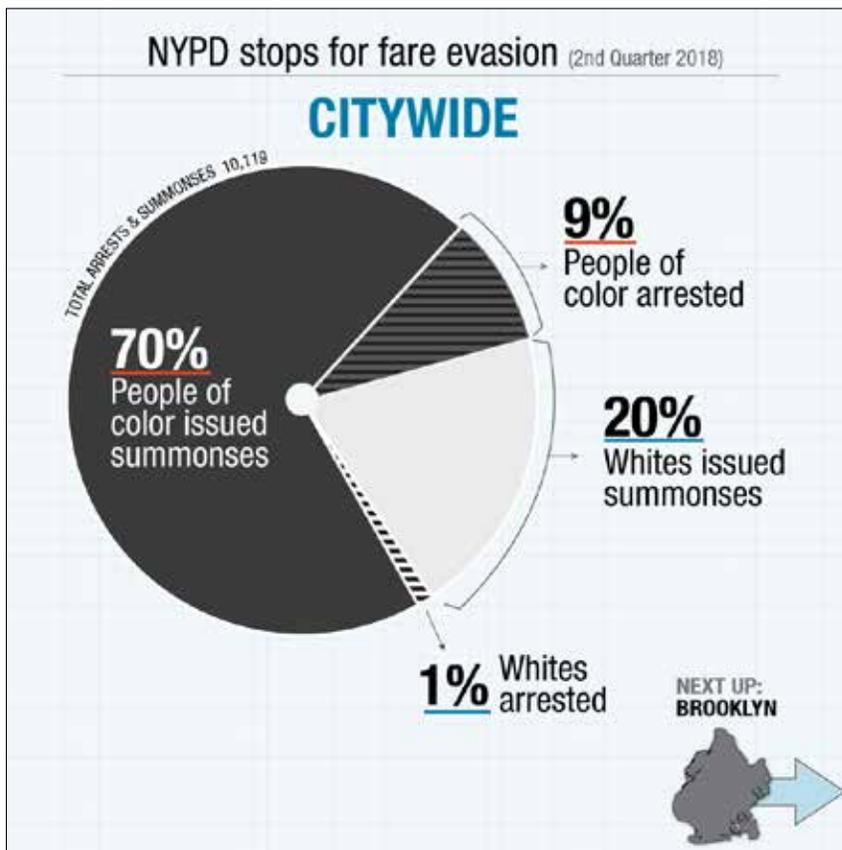
cation details, yet there are 125th Street stations on the 1 line, the A/B/C/D lines, the 2/3 lines, and the 4/5/6 lines—four completely different stations in very different neighborhoods.

While some data is better than none, the NYPD's release is woefully incomplete, and as a result it fails to show the full picture of fare enforcement actions throughout the city. After a nine-month delay, the NYPD has handed over lots of figures, but relatively little information.

There is some good news to report: the data confirm a substantial drop in citywide subway fare evasion arrests of almost 70 percent from the last quarter of 2017 to the second quarter of 2018. Civil summonses fell by 7.5 percent over this

period. (Note: the documented drop in arrests should continue as the city phases in the Fair Fares program in the coming year; the availability of half-fare MetroCards to eligible adults will make it far easier for the neediest New Yorkers to pay the fare rather than risk jumping the turnstile because they just don't have enough money in their pockets to make ends meet.) Yet despite the large drop in enforcement activity, the racial disparity remains appallingly stark—people of color represented almost 94 percent of fare evasion arrests for which race was determined.

The downward trend in subway fare evasion arrests is strongest in Manhattan, where District Attorney Cyrus Vance announced that his office would no longer be prosecuting most fare eva-

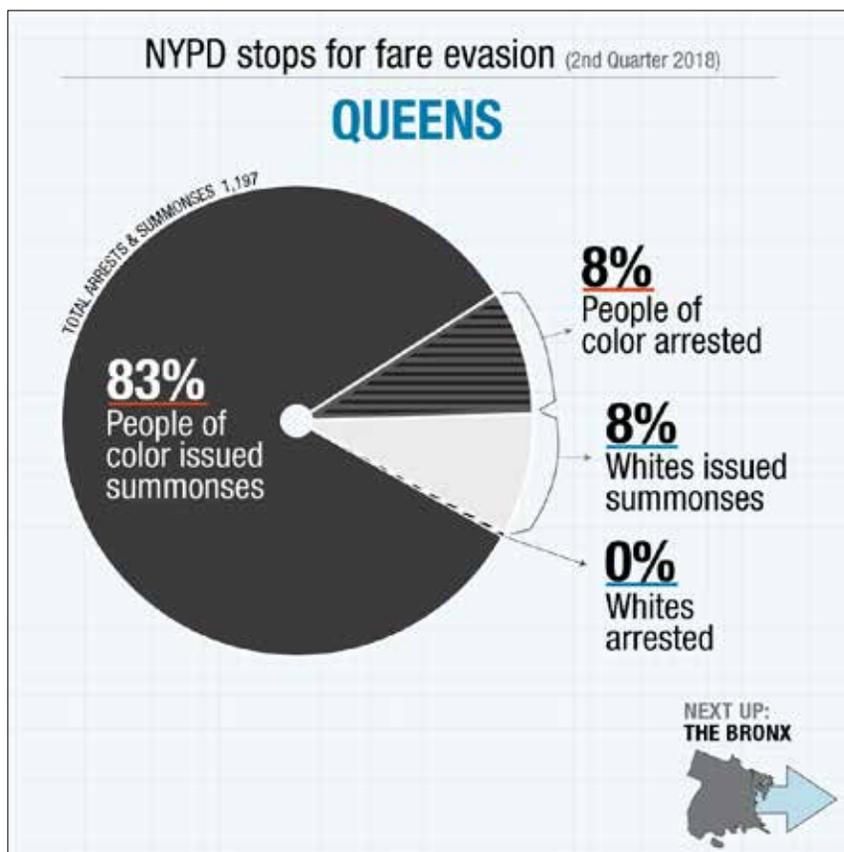
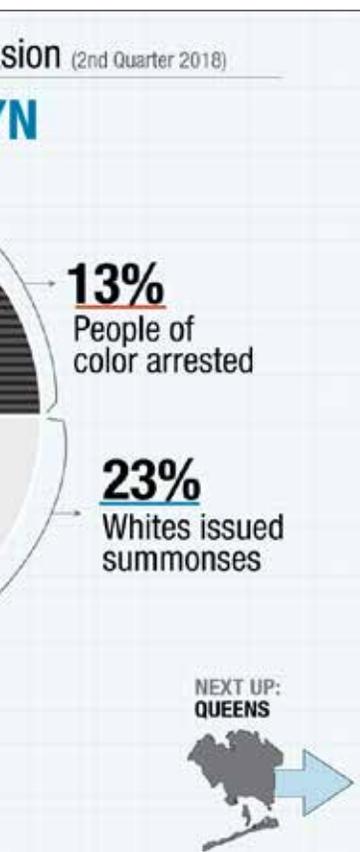


sion charges—suggestive evidence that prosecutorial policies can help reduce the extent of broken windows-style policing. On the other hand, the downward trend is weakest in Brooklyn, where racialized fare evasion enforcement has been plainly documented, which is home to more black residents living under the federal poverty

DESPITE THE LARGE DROP IN ENFORCEMENT ACTIVITY, THE RACIAL DISPARITY REMAINS APPALLINGLY STARK—PEOPLE OF COLOR REPRESENTED ALMOST 94 PERCENT OF FARE EVASION ARRESTS FOR WHICH RACE WAS DETERMINED.

line than any other borough (and more black residents living in poverty than Manhattan and Queens combined).

Despite the shortcomings of the data, the availability of summons totals by race does allow us to document another dimension of racialized enforcement: fare evading while white is much more likely to end in a summons than an arrest, compared to fare evaders of color. Citywide, 78 percent of civil summonses for subway fare evasion were issued to people of color, while almost 94 percent of fare evasion arrests were people of color. Said another way, only three percent of white individuals stopped for subway fare evasion were arrested, compared to more than 14 percent of black individuals. This disparity grows



even wider when comparing the experiences of different racial groups across boroughs: blacks stopped for fare evasion in Brooklyn are 30 times more likely to be arrested than whites stopped for fare evasion in Manhattan. And if white individuals are more likely to be let off with a warning rather than a civil summons, then these numbers only understate the racial arrest disparity.

For white individuals, fare evasion is thus a far less risky endeavor—a civil summons comes with a \$100 fine (a hefty sum for individuals who didn't have \$2.75 to spare for the fare), but no risk of jail time or a criminal record that can limit access to jobs and public housing for years to come, and even serve as grounds for deportation.

This hugely polarized enforcement is likely not just the byproduct of individually held racial biases and police discretion, but at least in part due to NYPD departmental policies. For years, NYPD policy has been to arrest so called “transit recidivists,” as determined from internal NYPD records of prior arrests and summonses (including those dismissed or terminated in favor of the accused). The transit recidivist database “virtually ensures that Black and Latinx communities continue to bear the brunt of aggressive order-maintenance policing,” according to an amicus brief filed by a host of public interest groups earlier this year.

The very existence of this transit recidivist database reinforces the need for

transparent reporting about who the NYPD is arresting for fare evasion, and where. Yet because it does not contain arrest or summons totals for each station, the data released by the NYPD fails to provide this transparency for virtually all of the most heavily policed communities.

For example, why did the Bronx experience a 34 percent increase in summonses between the first and second quarters of 2018, while all other boroughs saw drops in both arrest and summons totals? Was this increase driven by heightened enforcement at certain stations, in certain communities? The data released by the NYPD makes



it impossible to tell. We just don't know what station-level patterns the NYPD is hiding by failing to report enforcement action totals beyond the top 10 stations each quarter..

What is patently clear, however, is that despite considerable progress towards reducing the number of fare evasion arrests, racial disparities remain just as prevalent as before. Among recorded stops for fare evasion, white fare evaders are far more likely to get off with a civil summons and avoid arrest. An overwhelming number of those arrested for fare evasion citywide continue to be people of color.

Transparency is often a necessary (though not always sufficient) step towards increasing police accountability. For example, when used properly, police body cameras have the potential to serve as a valuable oversight tool. So does the public

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release of police enforcement data. A more sincere effort by the NYPD to comply with the reporting requirements of Local Law 47 may or may not alter our understanding of how race-based fare evasion enforcement plays out across the city. But reporting fare evasion enforcement figures station by station—and in the process obeying the law the NYPD is mandated to follow—is a necessary step towards achieving a more racially just system of transit policing and ending the inherent racism driving enforcement of one of the most common broken windows offenses: the crime of being short \$2.75.



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