

# RACE in AMERICA

*Restructuring Inequality*

## CRIMINAL JUSTICE

The Fourth of Seven Reports on the Race in America Conference

June 3–6, 2010

CENTER ON RACE AND SOCIAL PROBLEMS  
SCHOOL OF SOCIAL WORK  
UNIVERSITY OF PITTSBURGH

Editors: Larry E. Davis and Ralph Bangs

# **RACE IN AMERICA: RESTRUCTURING INEQUALITY**

## **CRIMINAL JUSTICE REPORT**

CENTER ON RACE AND SOCIAL PROBLEMS  
SCHOOL OF SOCIAL WORK  
UNIVERSITY OF PITTSBURGH

Despite significant progress in America's stride toward racial equality, there remains much to be done. Some problems are worse today than they were during the turbulent times of the 1960s. Indeed, racial disparities across a number of areas are blatant—family formation, employment, community violence, incarceration, education, and health and mental health.

As part of an attempt to redress these race-related problems, the University of Pittsburgh School of Social Work and Center on Race and Social Problems organized the conference *Race in America: Restructuring Inequality*, which was held at the University of Pittsburgh June 3–6, 2010. The goal of the conference was to promote greater racial equality for all Americans. As our entire society has struggled to recover from a major economic crisis, we believed it was an ideal time to restructure existing systems rather than merely rebuilding them as they once were. Our present crisis afforded us the opportunity to start anew to produce a society that promotes greater equality of life outcomes for all of its citizens.

The conference had two parts: 20 daytime sessions for registered attendees and three free public evening events. The daytime conference sessions had seven foci: economics, education, criminal justice, race relations, health, mental health, and families/youth/elderly. Each session consisted of a 45-minute presentation by two national experts followed by one hour of questions and comments by the audience. The evening events consisted of an opening lecture by Julian Bond, a lecture on economics by Julianne Malveaux, and a panel discussion on post-racial America hosted by Alex Castellanos of CNN.

This report summarizes information provided by the race and criminal justice speakers. The value of this report is that it provides access to the extensive and detailed information disseminated at the conference. This information will be particularly helpful to community and policy leaders interested in gaining a better understanding of racial disparities in criminal justice and finding effective strategies for improving these conditions.

*Disclaimer: This post-conference Race in America report includes detailed summaries of the presentations and subsequent discussions that took place. Any opinions, findings, conclusions, or recommendations expressed in this report do not necessarily reflect the views of the University of Pittsburgh School of Social Work or Center on Race and Social Problems.*

---

## Table of Contents

<b>Introduction</b>	2
<b>The Minority Majority: Imbalance in the Criminal Justice System</b>	
Racial Disproportionality in Prison <b>Alfred Blumstein</b>	4
Disparities in Incarceration: Causes, Consequences, and Cures <b>Marc Mauer</b>	8
<b>Community Relations: How Police Interact with Minorities</b>	
Police and Minority Communities: A Reconciliation <b>David Kennedy</b>	12
<b>Is Justice Blind? Raising Awareness of Racial Bias in Policing</b>	
Racial Profiling: Hypothesis, Reality, and Results <b>David Harris</b>	16
Racial Profiling: Empirical Research and Policy Implications <b>Steven Rafael</b>	20
<b>Sponsors</b>	24

## Racial Disproportionality in Prison

Presenter: Alfred Blumstein, J. Erik Jonsson Professor of Urban Systems and Operations  
Research, Carnegie Mellon University

Moderator: Witold “Vic” Walczak, Statewide Legal Director of the American Civil Liberties  
Union of Pennsylvania

Incarceration has been a major growth industry in the United States over the past 40 years, and the U.S. is now the world leader in incarceration. African Americans have been most affected and are greatly overrepresented in jails and prisons. A major contributor to the growth in imprisonment has been changes in drug policies and drug laws, such as mandatory sentences for drug offenses. These laws had little effect on drug abuse or crime, but they did fill prison cells. Because of the detrimental effects that high incarceration rates have on a community and on tight state budgets, it is important that the political and criminal justice systems find innovative ways to reduce prison rates and do so without increasing crime.

### *The Problem*

While the U.S. incarceration rate was impressively flat for the 50 years from 1925–1975, the rate has been increasing by 6–8 percent per year since the mid-1970s. Now 750 Americans per 100,000 (1 percent) are incarcerated in prison or jail, making us the world’s leader in incarceration.

African Americans have been seriously affected by the growth in incarceration. At the present time 3.2 percent of all U.S. Black males are in prison, which is 6.5 times the White rate. In addition, 29 percent of Black males can expect to be in prison at some point in their lives.

Young Black males are even more affected:

- 7.5 percent of Black males age 25–39 are in prison
- 32 percent of Black males in their 20s are under control of the criminal justice system, which includes federal prison and county jail, parole, and probation

Drug crimes represent the single largest crime type in prison, comprising over 20 percent of state prisoners and over 50 percent of federal prisoners. Drug crimes are the ones where the representation of African Americans in prison is most disproportionate compared to their representation at arrest. And incarceration for drug selling is not a very rational strategy if the intention is to use incarceration to control crime, largely because sellers sent to prison are usually replaced by others in the marketplace as long as a supply of sellers is available.

The ratio of Black/White incarceration rates, surprisingly, is highest in the northern rather than the southern states. We can speculate that that disparity occurs because Blacks in the South have been there longer and so are more socialized to local mores and understand the rules in their communities and live more in rural areas with less contact with law enforcement. The ratios are higher in the North because Blacks live more in urban areas where crime is highest, are more

mobile and less connected to social controls, tend to have peer groups who are associated with prison, and live in areas with greater socioeconomic differences.

High incarceration rates are a problem not just for the people incarcerated. They are also a problem because:

- Communities and families are disrupted as people move in and out of prison.
- Prison mores and culture are brought into communities through community-prison networks.
- People with a criminal record, and especially ex-prisoners, find it difficult to re-enter the labor force and community.
- The community-level social stigma of having been to prison is reduced as more young people are incarcerated, and this reduces the effect of incarceration as a crime deterrent.
- The large racial disproportionality in prison raises concern in the Black community that the differences are all attributable to discrimination, thereby diminishing the credibility of the criminal justice system.

### *Causes*

Incarceration rates began to increase rapidly four decades ago as control over prison populations shifted from the officials in the criminal justice system to political officials, especially legislators, in response to public demands to “do something” about the crime problem. Since those in the political system are constrained by time (terms in office) and a limited repertoire of possible responses, the easy solution was to pass laws to increase prison terms for criminal offenses. Unfortunately, the increased sentences were of diminishing effectiveness at reducing crime.

Trends in the prison population also reflect actions by prosecutors, judges, and parole boards. They must be responsive to changes in legislation, and those who run for office, most prosecutors and many judges, are motivated by the same political influences that affected legislators. Their actions include deciding what offense to charge (most crimes with a mandatory minimum have a non-mandatory variant), the length of a sentence imposed, when to permit parole release and on what basis to return a parole violator to prison. Corrections-officer unions also can become politically active and can pressure legislatures to enact laws that increase incarceration in order to secure the jobs and increase the wages for their members.

In 1998, 70 percent of the Black-White differences in incarceration rates were due to corresponding differences in arrest rates for the crimes that are likely to lead to prison. Thus, the Black-White ratio at arrest is very close to that in prison, perhaps even an under-representation in prison. Blacks are slightly over-represented in prison for robbery, greatly over-represented for drug offenses, and under-represented for murder. The other 30 percent can be accounted for by differences in socioeconomic situations, prior arrest records, as well as possible discrimination by prosecutors, judges, or parole authorities.

The notorious 100:1 crack-powder cocaine disparity is one reason for the over-representation of Blacks in prison on drug charges. In the early 1980s, crack was an important technological

innovation that made the pleasures of cocaine available to poor people at a low price, and the newly established crack markets used violence as an important means of competition. In an attempt to suppress the violence, Congress passed the Anti-Drug Abuse Act of 1986, which imposed a mandatory minimum sentence of five years for possessing five or more grams of crack cocaine and the same sentence for 500 or more grams of powder cocaine. This resulted in many street-level crack dealers being sent to federal prisons for extended terms, and many states followed suit.

The crack-powder disparity also contributed great racial disparities in prison since 85 percent of the people convicted for crack cocaine are Black, whereas only 30 percent of those convicted for powder-cocaine offenses are Black. People convicted of crack offenses serve about 50 percent more time than those convicted of powder cocaine. Since 1986, the crack markets largely stabilized and the violence diminished, and so the disparity looked more and more like racial discrimination. However, it took Congress 25 years to reduce the disparity, and then only to a crack-powder ratio of 18:1.

Black under-representation in prison for murder is probably a consequence of what has come to be known as “victim discounting,” punishing more severely for offenses against Whites than against Blacks. Most murders are intra-racial, and so Blacks convicted of murder could benefit from this form of racial discrimination. This issue was raised in the McCleskey case as a “disproportionate impact”, but the Supreme Court refused to act on it.

### ***Solutions***

Although it is hard to attribute the 6:1 disproportionate representation of Blacks in prison as attributable entirely to racism in the presence of their differential involvement in the crimes that lead to prison, it is hard to argue that racial discrimination plays no role. There are many opportunities for discrimination to appear, and it is important to root out discrimination wherever it exists.

Part of the solution will be to view the drug epidemic in America as a public health problem rather than a crime problem and deal with that through the public health system accordingly. In addition, policy makers need to recognize the futility of averting drug transactions through deterrence or incapacitation when replacements for drug sellers are available. Incarcerating a rapist removes his rapes from the community, but incarcerating a drug dealer opens the door for a replacement to serve the demand for drugs. Also, it is possible that the replacements represent a greater threat to public safety than the people they replaced; in the crack experience, the replacements were younger and less restrained in using the guns they had to carry to protect themselves from street robbers, and so there was a major rise in homicide with guns by young people as a result. Locking up the dealer does not solve the issue of drug use in society and could well make matters worse.

In addition, we need to facilitate redemption by informing employers that the risk of a new crime drops below that of the general population when the former offender has stayed clean for a reasonable amount of time. Employers who follow such a policy could be protected against due-diligence liability by statute. State criminal-record repositories can choose not to disseminate such stale criminal-record information.

There is also the need to reduce incarceration by dramatically shortening the long sentences and increasing certainty of punishment and celerity or immediacy of response. The HOPE program in Hawaii is a good model. HOPE tests drug-using probationers weekly on a randomly chosen day. Those who fail the test are subject to immediate incarceration for several days. The certainty of the response and its immediacy has been shown to be an effective means of reducing the probationers' drug abuse, and thereby avoids the much greater cost of sending them back to regular incarceration as probation violators.

Part of the solution also involves reducing crime by reducing disadvantage, such as facilitating employment opportunities through education, job skills, and reentry services. This also warrants a focus on the next generation. For example, home visitation by nurses has been shown to be effective in giving young mothers the knowledge and support for raising their children.

The primary challenge involves a willingness to pursue rational and evidence-based policies and avoid the ideological and discriminatory policies that have driven too many of our actions regarding crime over the past 40 years. The pressure on state government budgets created by the Great Recession represents an important opportunity for convergence in an otherwise highly polarized political environment.

### ***References***

Blumstein, Alfred and Jacqueline Cohen (1973). A Theory of the Stability of Punishment. *The Journal of Criminal Law and Criminology*, 64(2): 198-207.

Blumstein, Alfred (1995). Youth Violence, Guns, and the Illicit-Drug Industry. *Journal of Criminal Law and Criminology*, 86(4): 10-36.

Blumstein, Alfred and Kiminori Nakamura (2009). Redemption in the Presence of Widespread Criminal Background Checks. *Criminology*, 47(2): 327-359.

Blumstein, Alfred (1993). Making Rationality Relevant - The American Society of Criminology Presidential Address, *Criminology*, 31(1): 1-16.

## **Disparities in Incarceration: Causes, Consequences, and Cures**

Presenter: Marc Mauer, Executive Director of the Sentencing Project

Moderator: Witold “Vic” Walczak, Statewide Legal Director of the American Civil Liberties Union of Pennsylvania

Minorities continue to be imprisoned at higher rates than Whites. Disparities along racial lines in arrest and incarceration rates across the country demonstrate how race continues to play a major role in criminal justice decisions. Criminal justice policies tend to be race neutral when taken at face value. However, crime legislation in practice tends to have severe racial consequences that have been the cause of much of the disproportionality in criminal convictions in the United States.

In particular, race continues to be a major factor influencing drug policy. Sentencing tends to be more severe for the use or distribution of drugs that are considered to be used primarily by minorities than drugs considered to be used by Whites. The penalty for the possession or use of crack cocaine, which is largely thought of as a Black drug, is much more punitive than sentencing for the possession of cocaine in its powder form, which is considered to be the drug of choice for Whites and people of higher socioeconomic status.

It would be advantageous to change decisions about which groups go to prison. For those who commit marginal crimes, social services can be offered as an alternative to jail time, given the stigma that is associated with having a criminal record. In addition, it would be helpful to evaluate criminal policy surrounding drug crimes. Since drug use is mainly a public health issue, it should not be expected that the criminal justice system would be effective in solving the nation’s problem with drugs. Increased funds should be allocated for preventative measures that make becoming involved with drugs less attractive to individuals.

### ***The Problem***

Today, there are over 900,000 African Americans behind bars. The crime problem in the U.S. has been defined as an African American problem. It is this belief that has spearheaded most of the legislation around present day criminal justice and drug policy.

### **What makes a safe neighborhood and good community?**

The factors that make up a good neighborhood have little or nothing to do with the criminal justice system. They may include:

- Good schools
- Opportunities for employment and recreation for children and teens during the summer
- Families with resources to devote to their children
- Neighborhood cohesion

## **The History of Drug Use**

*Marijuana* – During the 1930s, marijuana was considered to be a drug used by Mexican Americans and the underbelly of society in the racy parts of town. Societal attitudes about marijuana began to shift in the 1960s as Whites began using the drug in large quantities. As the perception of marijuana users began to include Whites and as marijuana became part of popular culture, public outcry for decriminalization of the drug began.

*Crack Cocaine* – This has been identified as an African American drug and an African American problem. Solutions for dealing with the crack cocaine issue were primarily handled within the criminal justice system. Penalties surrounding the use or distribution of crack cocaine tend to be harsh and extremely punitive.

## **Society's Approach to Drug Use**

America has a two-tier approach to problems of drug use, based on socioeconomic status. First, middle-class and upper-middle class families with access to greater resources do not typically rely on the criminal justice system to deal with issues of drug use by their children. They deal with it as a public health problem and find a program that is suited to help them. If one program is unsuccessful, they have the resources available to seek out other programs. Second, criminal justice resources are used for those believed to have less access to family and community resources.

## **The Role of Race in the Criminal Justice System**

Penalties for crimes dealing with drug use, possession and distribution are often at the discretion of legislators and law enforcement agencies in a particular area, which can make race a major factor. In addition, race is often used as a qualifier in determinations regarding probation and parole. Race disparities continue to exist in who qualifies for early release from prison.

Further, law enforcement workers may unintentionally make decisions based on racial bias. An example of this occurred in the Washington State juvenile justice system. When practitioners added descriptive information suggesting whether or not a child should be prosecuted for a crime, a majority of their presentence statements for White children suggested that their issues stemmed from environmental factors, such as problems with family and peer groups. For Black children, a majority of the presentence statements suggested that Black children have trouble because of anti-social issues. Environmental problems can be handled with the proper resources being made available to the individual and their family while anti-social personalities cannot be changed simply by providing family resources. Statements such as these can be highly influential in determining whether a child is prosecuted for a crime and their length of stay.

## Sentencing Policy

Criminal justice policies have a tendency to be very race neutral on the surface; but in practice they tend to have significant racial effects that could have been predicted at the time they were enacted:

- There are major differences in how crack is penalized as opposed to powder cocaine, and crack is considered to be an African American drug.
- School zone laws that increase the penalty for drug crimes committed around schools inadvertently affect more African Americans because they tend to live in more densely populated areas that contain more schools than those that would be found in suburban or rural areas. New Jersey recently rescinded its school zone law because 97 percent of the people affected were Black or Latino.
- The race of the perpetrator remains a key factor in how death penalty cases are decided.

Further, half of the states have “three strike” laws that state that after a third felony charge, an offender will receive a minimum sentence of 25 years to life in prison. California has the most stringent of the “three strike” laws. If your first two felony charges are serious in nature and you receive another felony charge, then you will face a minimum of 25 to life regardless of the severity of the crime. In California, 29 percent of the prison population is African American and 45 percent of the African Americans in prison are currently serving sentences under the “three strikes” law.

## Consequences of Mass Incarceration

The effect of mass incarceration on crime is more modest than policy makers believe. This is particularly so with drug offenses. Research suggests that because of tougher jail sentences, violent crime has seen a reduction of 10–25 percent. If these numbers are true, then three-fourths of crimes have nothing to do with increased incarceration.

However, the effects on individuals, families, and communities are immense. For example, if you have a felony drug conviction, you can be barred for life from applying for:

- Cash assistance
- Food Stamps/Supplemental Nutrition Assistance Program
- Housing assistance/Living in public housing
- Federal financial aid/Pell Grants

In addition, some employment opportunities become unavailable for ex-convicts despite their crime having no particular relationship to the job. It is understandable why you may not want a pedophile working in a day care center. However, it is harder to comprehend why someone with a drug felony cannot be a barber or remove asbestos.

Another large consequence is the disenfranchisement of felons. Over 5 million ex-convicts were unable to vote in the Obama/McCain Presidential election. Of that 5 million, 40 percent (2 million) were African American.

Further, in 48 states you cannot vote if you are incarcerated. Of those 48 states, 35 forbid you to vote if you are on probation or parole. Eleven states do not allow you to vote even after your sentence is complete. In Virginia and Kentucky, if you have a felony conviction, you lose your right to vote for life, despite the severity of the offense. The only way to receive the right to vote again is through a pardon from the governor.

Some of the other consequences of mass incarceration include:

- People with limited education and skills reentering society after stints in prison.
- Separation of individuals from their families and communities for several years at a time.

### **Reasons for Decreasing Crime Rates since the late 1990s**

The decrease in crime since the late 1990s could be attributed to the healthy economy from 1995–2000, the waning of the crack epidemic of the late 1980s and early 1990s, and changing behavior by both law enforcement and families.

### ***Solutions***

To improve public safety we need to start with investments in preschool programs and investments in initiatives that increase high school graduation. In terms of criminal justice solutions, we need to:

- Increase the availability of indigent defense so that low-income defendants can see a public defender before a trial
- Offer social services to those who commit marginal crimes rather than requiring jail time
- Renounce the “War on Drugs” by recognizing that the drug problem is a public health issue and not a criminal justice issue
- Allocate more funds on the front end to prevent individuals from becoming involved with drugs in the first place
- Reduce jail sentences by 10 percent and redirect money to the communities with the most people incarcerated to establish neighborhood initiatives to increase public safety
- Invest more in reentry programs for ex-offenders.

### ***Suggested Readings***

The Sentencing Project (2008). *Reducing Racial Disparity in the Criminal Justice System*.  
[http://www.sentencingproject.org/doc/publications/rd\\_reducingracialdisparity.pdf](http://www.sentencingproject.org/doc/publications/rd_reducingracialdisparity.pdf).

## **Police and Minority Communities: A Reconciliation**

Presenter: David M. Kennedy, Director of the Center for Crime Prevention and Control and Professor of Anthropology, John Jay College of Criminal Justice, City University of New York

Moderator: Nathan Harper, Chief of Police, City of Pittsburgh

Gang and drug violence across the nation's urban centers has increased greatly in recent decades. In many poor and urban communities throughout the United States, the aura of mistrust that exists between community residents and law enforcement continues to be a barrier to eliminating crime and overt drug activity. The relationship between local police and community residents in many neighborhoods has deteriorated to the point where it is almost impossible for the two sides to create solutions without facilitation from outside parties.

It should be a fundamental right for all people to feel secure in the communities in which they live. In order for deeper work around health care, education, economic development and family support to be effective, neighborhoods have to become safer. Law enforcement has to work harder to change the perception that they are perpetuating the drug problem for their own gain. Community residents need to feel as if the police are there to protect and serve their neighborhoods. In addition, there needs to be an increase in social services and employment opportunities to those in need. Preventative measures like workforce development, job readiness, and programs that facilitate youth excelling in education are vital to neighborhoods where crime and drug activity are rampant.

### ***Operation Ceasefire (Boston, Mass.)***

Around 1995, at the height of the crack epidemic in Boston, there was on average one child a week that was the victim of homicide and at least six people wounded by gunfire. By the time Operation Ceasefire was initiated, the problem of homicides in Boston had been ongoing for at least six years. Boston's drug and homicide problem was a microcosm of the problem that had been going on in urban neighborhoods across the entire country. The homicide problem was almost exclusively young Black men.

There was an increase in violence due to the presence of informal neighborhood drug gangs, although few of the killings were drug related. Most of the killings were due to minor disagreements, and not based on disputes about drugs or drug turf.

There were approximately 60 drug crews and 1,300–1,500 individuals that belonged to these crews. Out of over 150 homicides that were researched, 60-70 percent were connected with the drug crews. Those who committed homicide in these cases and the victims of homicide averaged over 12 prior arrests. One-quarter of those who committed homicide were on probation or parole.

Some of the violence in Boston was due to the culture of violence perpetuated by the media, urban music, and video games. Welfare reform and firearm availability also contributed.

In response to the homicides, Operation Ceasefire was established by the Boston Police Department's Youth Violence Task Force (Gang Task Force). The operation included the Department of Juvenile Corrections, the Department of Probation and Parole, and several African American community activists and spiritual leaders. Partnerships were created with for-profit businesses in Boston to provide summer jobs to urban youth.

### **How did Operation Ceasefire work?**

Prominent members from each gang were placed in a room for a presentation by police, social service providers, and people who represented the community. In the police presentation, the Gang Task Force stated that they will heavily prosecute every member of the gang associated with the next murder in the city. In the social services presentation, agencies offered alternatives to engaging in criminal activity and provided linkages to resources and employment. In the community leaders' presentations, they spoke about the harm caused when friends and loved ones are murdered or incarcerated for committing murder.

### **Was Operation Ceasefire successful?**

In the months following the establishment of Operation Ceasefire, homicide was reduced by 65–70 percent. As gang violence in the communities began to wane, street gang workers noted that in order to keep homicides out of the streets, there needs to be more opportunities for employment for gang-affiliated young men. The U.S. Department of Labor provided a large grant to create employment slated for those that were gang-affiliated. One of major factors in the program's success was that it offered an alternative to jail time for marginal offenders and an opportunity to access resources, like employment and life skills that may keep individuals from engaging in crime in the future.

## ***Race and Crime***

There is a belief that overt drug activity in communities cannot be eradicated because there is a breach in trust between police departments and those living in the neighborhoods they serve. Communities and police cannot work together because each side feels the other is innately corrupt.

### **Community Perspectives**

People in crime-ridden communities have a deep belief that the police will do nothing to increase safety. A majority of those in the hardest hit communities believe that it is a deliberate conspiracy by law enforcement to use the law to do them damage. The suspicion is that government is bringing drugs into their neighborhoods or that the government could stop it if they chose to do so. They believe that the drug epidemic is perpetuated by law enforcement so that they can keep their jobs and that crack was created by the government and purposely unleashed in their communities. They believe that their children are being exploited by law enforcement to fill jails and boost the economic standing of those that work in the prison system. They believe that the police constantly harass residents without just cause.

Poor treatment by the law enforcement makes the community silent and uncooperative. If you are a young Black male living in New York City, you have a 90 percent chance of being stopped and frisked by the police.

The Black community has a long history of being exploited and victimized by the government and law enforcement, including:

- Slave capturing
- Slavery enforcement
- Establishment of the Black Codes to take away the gains of the Civil War
- Enforcement of Jim Crow Laws
- Police brutality during the Civil Rights Movement

However, contrary to what community residents may accept as true, there have been many community efforts to stop violence that have been initiated by the police. In many cities law enforcement has sought the help of community leaders, churches, and social service agencies to create programs that would be effective in reducing violent crime and making neighborhoods safer.

### **Police Perspectives**

Law enforcement in areas with high rates of crime tend to believe that many of the people that live in these communities benefit financially from crime and drug trade. They feel that community residents too often turn a blind eye to criminal offenses and drug activity in their neighborhoods; and that residents are too unlikely to assist them in enforcing laws and identifying crime. In addition, police believe that individuals that engage in crimes like drug dealing and homicide are sociopaths that care little about the lives of the people they endanger, the community, or even their family and loved ones.

### ***Solutions***

There needs to be an increase in social services and employment opportunities for those in need. In order for deeper community work to occur around health care, education, economic development and family support, neighborhoods have to be safer places to live. Overt drug markets need to be eliminated. Law enforcement has to actively change the perception that they are perpetuating the drug problem for their own gains. Communities need to know that the police care.

The following examples describe situations where police and community members cooperated to reduce crime.

### **Drug Market Intervention with Informal Social Control (High Point, North Carolina)**

In High Point, North Carolina law enforcement engages in video surveillance of low-level drug deals. The mothers of the people involved in the taped drug sale are contacted and warned that their children will be placed in jail if their involvement in crime continues. The mothers agree to

work with police and social services to keep their children out of trouble. The individuals involved in the drug sale are told that despite having the evidence to convict them with a felony, they will drop the charges if they agree to change their ways. If the person caught becomes a repeat offender, the original warrant will be signed and the person will be prosecuted. As a result of the Drug Market Intervention, there was a 40 percent reduction in homicide and violent crime.

#### **Cincinnati Initiative to Reduce Violence (CIRV in Cincinnati, Ohio)**

In 2007, homicide in Cincinnati, Ohio reached an all-time high. The specific groups of people and/or gang members that were associated with the most homicides were identified. In addition, rivalries and ill will between specific gangs were also recognized. It was discovered that less than 3/10 of 1 percent of the city's population was responsible for 75 percent of the killings that were occurring in Cincinnati. The Cincinnati Initiative to Reduce Violence (CIRV) targeted the most active crime offenders within these gang populations because homicide tended to be carried out by those with longer and more serious criminal histories. The police, community activists, social service agencies, and potential employers presented these individuals with the most criminal offenses the opportunity to reform by taking advantage of the resources that they would provide to boost them to self-sufficiency. Conversely, if there was a murder of an individual that happened to be a rival member of the gang that they were affiliated with, the police would prosecute them and all other known members of their gang for all their crimes to the fullest extent of the law, no questions asked. After CIRV was initiated, Cincinnati experienced a reduction in homicide.

## **Racial Profiling: Hypothesis, Reality, and Results**

Presenter: David Harris, Professor at the University of Pittsburgh School of Law

Moderator: Sala Udin, President and CEO of the Coro Center for Civic Leadership in Pittsburgh

Racial profiling is a tool that is used in all segments of law enforcement from small local police departments to large federal agencies like the Federal Bureau of Investigation (FBI) and Homeland Security. The use of racial profiling does not always derive from overt racism on the part of police departments. For the most part, law enforcement agencies rely on racial profiling because they assume that it can help them weed out criminals more effectively. Many in law enforcement ascribe to the notion that race and ethnicity can be reliable indicators of criminal and noncriminal behavior. Although the focus of racial profiling has shifted with the occurrence of different events in America's history, the underlying belief that race plays a role in why some individuals engage in illegal behavior has been unrelenting.

Over the past few decades, racial profiling has manifested itself in law enforcement in three distinct waves:

- The War on Drugs during the 1970s and the 1980s
- Targeting people of Middle Eastern descent after the terrorist attacks of September 11, 2001
- Targeting Latinos in recent anti-immigration campaigns

The problem with racial profiling is that it is a highly inefficient method of conducting police work. The ratio of uncovering criminal behavior is relatively low when race is used to determinate stops and searches. It would be more effective if law enforcement agencies placed more resources in learning the actual behavior of criminals rather than falsely assuming someone is a criminal based on their race.

It is also often the case that members of a particular race and ethnicity may be the best people to inform law enforcement of the nuances of criminal behavior in their communities. If law enforcement preempts the opportunity for exchange of information with a particular community by assuming that each one of its members is possibly guilty based on their race or ethnicity, they eliminate the chance to gain valuable information about and observe behavior of real criminals.

### ***The Problem***

Race and ethnicity often are used as predictors of criminal activity by many law enforcement agencies. Racial profiling is defined as the use of racial or ethnic appearance as one factor, among others, to decide which persons should be stopped, questioned, and/or searched.

Racial profiling is based on false hypotheses:

- Using race or ethnicity to decide who to stop, question, search, etc., will help police find more bad guys per stop because it “ups the odds” by focusing police on the group that presents the danger
- It is a good tool for fighting crime

There have been three waves of racial profiling. First, in the 1980s and 1990s, law enforcement used profiles that included race and ethnic appearance to find drug couriers on highways and roads. African Americans and Latinos were targeted, and for them it was a universal experience to be stopped for trivial offenses and asked for consent to search. Police denied that racial profiling existed and assumed it was just criminals playing the “race card.” As data emerged that racial profiling was “real, not imagined” (New Jersey A.G. Interim Report, 1999), police changed the argument and said racial profiling is “about effective crime fighting” and is the most effective way to fight crime.

The second wave was using profiling after September 11, 2001 to fight terrorism. Profiling was used to stop, question, and search Muslims and people of Middle Eastern descent at airports and national borders in an effort to find potential terrorist attackers. There was strong public support for this, even among African Americans and Latinos. Before the 9/11 attacks, 80 percent of Americans understood what profiling was about and agreed that it was wrong and should be stopped. After the attacks, over 60 percent of Americans felt racial profiling was acceptable as long as it was around airports and targeted Arabs.

The assumptions behind the profiling were:

- The threat comes from Muslim men in the Middle East.
- We know who the enemy is.
- It’s a matter of probabilities.
- Therefore, it just makes obvious common sense to use a profile focusing on men from the Middle East and Muslim countries.

The third wave, using profiling in immigration, started around 2004 and included rebranding immigration measures as national security issues. The two main policies adopted were:

- Section 287(g) of the Immigration and Nationality Act, which **authorized the Federal Government to enter into agreements with state and local law enforcement agencies and to designate officers to carry out immigration law enforcement functions.**
- Arizona’s S.B. 1070 Law, which allows the state police to perform checks on a person if they have “reasonable suspicion” that they may be an illegal immigrant. Police are also allowed to arrest individuals for not carrying ID papers.

It is possible to test the hypothesis underlying racial profiling, which is that using race/ethnicity to decide when to act will help police catch more bad guys per stop. Using data from law enforcement highway stops, it is possible to determine the “hit rates” along racial lines of finding those engaging in criminal activity. The steps involved in testing the hypothesis are:

Step 1: Does police department X stop/search by race or ethnicity?

Step 2: If so, at what rate do officers find evidence of criminal activity when they stop/search each racial/ethnic group?

Step 3: Do results support the profiling hypothesis?

In an effort to test the racial profiling hypothesis, the New York State Attorney General ordered a study of all stops and frisks registered by the New York City Police Department after the police murder of an unarmed man, Amadou Diallo. Using data from first quarter 1998 through first quarter 1999 (n=175k), the study found city police were engaged in racial profiling:

- *Latinos* were 22–23 percent of the population and 33–34 percent of the people getting stopped and frisked.
- *Blacks* were 25 percent of the population and 53 percent of those people that are stopped and frisked.
- *Whites* were 43 percent of the population and 12 percent of the people that are stopped and frisked.

The NY City Police Department suggested a number of alternative explanations for these disparities in an attempt to justify racial profiling:

- These disparities are the result of crime reports, and Blacks and Latinos are simply reported as offenders more often. [Actually, the majority of the stops and frisks were police initiated, and not as the result of the report of a particular offender of a certain race.]
- Higher crime neighborhoods, where more minorities live, have more police present; therefore, those citizens are more likely to be stopped and frisked. [Actually, the data showed that most of the stops and frisks of Blacks and Latinos took place in low-crime, predominantly White areas, instead of high-crime minority areas.]

The study also found that racial profiling is inefficient in that police focused their stops and frisks on Blacks and Latinos even though stopping and frisking Whites produced higher hit rates (rate that police discover criminal activity during a stop and frisk):

- Whites: 12.6 percent
- Latinos: 11.6 percent (the difference between Latino and White “hit rates” is 10 percent)
- Blacks: 10.6 percent (the difference between Black and White “hit rates” is 20 percent).

### ***Solutions***

- Intelligence collection, analysis, and use. In order to understand the behavior of criminals and terrorists, we need to foster relationships with the communities (such as Muslim communities) in which they may thrive and not the race of people.
- Incorporate multiple-layered systems in law enforcement to recognize inconsistencies with stops and actual hit rates.
- Don't waste resources by engaging in police tactics that do little or nothing to uncover criminal activity.

- Don't just grab for the conventional wisdom. Be hesitant to buy into ideas just because they are assumed to work. Many in law enforcement engage in profiling because they assume that Blacks and Latinos are the targets because they engage in criminal activity more often.
- Question the assumptions.

### ***References***

- Harris, D. A. (1999, June 7). *Driving While Black: Racial Profiling On Our Nation's Highways*. American Civil Liberties Union. Retrieved January 5, 2011, from <http://www.aclu.org/racial-justice/driving-while-Black-racial-profiling-our-nations-highways>
- The State of New Jersey Department of Law and Public Safety (1999, April 20). *NJ Attorney General Report on Racial Profiling*. AELE Law Enforcement Legal Center. Retrieved January 5, 2011, from <http://www.aele.org/NJprofil.html>

## Racial Profiling: Empirical Research and Policy Implications

Presenter: Steven Rafael, Professor in the Goldman School of Public Policy at the University of California, Berkeley

Moderator: Sala Udin, President and CEO of the Coro Center for Civic Leadership in Pittsburgh

Racial profiling continues to be used in assessing whether or not police should stop and frisk individuals, despite its inefficiency. This use of race in the decision to make a stop may or may not be fueled by racial prejudice. Blacks and Latinos frequently experience higher rates of traffic stops than Whites, even when they have a much lower percentage of residents in a particular area than Whites.

Law enforcement agencies often explain racial profiling as the result of higher rates of criminal activity in neighborhoods where more ethnic and racial minorities reside. To dispute police department claims that racial profiling is just part of the job and to create more effective arguments against racial profiling at all levels, there needs to be more statistical research into how profiling plays out within smaller segments of society. One method of research that may be beneficial is to disaggregate racial profiling statistics within cities. By doing this we can discover if there are differences in rates regarding being stopped in parts of town that are majority White in comparison to being stopped in parts that are majority Black. Information on the stops and arrests of single officers in cities or neighborhoods can be researched to uncover disproportionality at an individual level. In addition, it would be useful to study the correlates of unsuccessful searches by individual police officers. This type of research may uncover how productive the stops and frisks of police officers are and whether people are being arrested for frivolous reasons that could have been avoided.

### *The Problem*

Racial profiling occurs when race exerts an independent impact on the likelihood that an officer stops a motorist or pedestrian. These stops:

- May be driven by racial prejudice
- May be the product of *Statistical Discrimination*, which is when an individual takes the average characteristic of a group and assigns it to an individual when making a choice.

There is usually a lot of disproportionality along racial lines in regard to the number of people stopped by the police:

- In research data from Maryland (circa 1990s) of drivers along the Interstate 95 corridor, 63 percent of the people stopped were Black and 29 percent were White.
- In Missouri in 2001, Blacks and Latinos accounted for 75 percent of all people stopped.
- In St. Paul, Minn., 27 percent of all traffic stops were of Black drivers.
- In Oakland, Calif., 48 percent of all traffic stops were Black drivers.

### ***Cause: A Police Officer's Racial Profiling Equation***

It is useful to think of a police officer's decision about racial profiling as an equation:

- The officer sets a threshold of factors which determine whether they choose to stop and frisk an individual.
- A predetermined numeric threshold of police interaction with Whites is used as the benchmark in this equation. If the crime index is at or below that predetermined numeric threshold set for Whites, the officer may choose not to stop an individual. If the crime index surpasses the numeric threshold for Whites, then an officer may choose to stop and frisk that person.
- If the officer perceives that there is a relationship to criminality that is independent of everything else, then he will hold the Black citizen to a lower threshold.
- If the officer is able to accurately estimate the relationship between race and crime, they will stop African Americans more frequently due to statistical discrimination. They will also be stopping more innocent African Americans at higher rates. This reaction may not be due to prejudice or erroneous beliefs about Blacks. If the officer is actually prejudiced, then the number of stops they have which were based on their perceived relationship between race and criminality will be in excess of the actual relationship between race and criminality. Both prejudiced and non-prejudiced officers can engage in racial profiling.

### ***Strategies to Fight Racial Profiling and Statistical Discrimination in Court***

If you were trying to win a court case against racial profiling that was not overtly racist in nature (statistical discrimination) then you would have to use statistical arguments. You would need to show that the probability of being stopped for Blacks is higher than the probability of being stopped for Whites:

- If the ratio is equal to or less than 1, then there is no racial profiling toward Blacks.
- If the ratio is greater than 1, racial profiling exists.

The problem that many researchers face with this argument is that this scenario is not generally observed. If you divide the probability of being Black and stopped by the police by the probability of being Black in a population and then divide the probability of being White and stopped by the probability of being White in a population, then you can properly use the White probability of being stopped as the benchmark for proving that Blacks are racially profiled.

### **Examples of Using Data to Create Benchmarks for Racial Profiling**

First, census data can provide a benchmark. For example, Blacks might be 12 percent of the population surrounding a highway but 26 percent of traffic stops. This argument could be rejected, because the resident population is not necessarily the same as the population of drivers on the interstate.

Second, the race of licensed drivers could be the benchmark. For example, traffic stops of African Americans were greater than the proportion of licensed drivers in North Carolina.

Third, the location of traffic accidents can be used in relation to the race of the drivers involved in accidents but not at fault to estimate the population at risk of Blacks being racially profiled. This has been found to show disproportionality in the stops of African Americans.

Fourth, the race of people stopped and reported by the police in regard to the race of people caught on cameras running red lights. This has provided evidence of racial disproportionality in the traffic stops for Blacks and Latinos.

Fifth, disproportionality of traffic stops should increase during daylight hours when the race of drivers is actually visible as oppose to nighttime hours when drivers are less visible. Use of this method in Oakland, CA found that African Americans were 55 percent of total traffic stops, 45 percent of daytime traffic stops, and 65 percent of nighttime traffic stops.

If there is no disproportionality once you properly benchmark crime, then police are not engaging in racial profiling by stopping and arresting more Blacks. If there is disproportionality in stops and arrest, racial profiling exists. There tends to be more disproportionality in searches after a person is stopped. One percent of those stopped are actually searched. Blacks are six to seven times more likely to be searched when stopped than Whites.

### **Problem with Omitted Variables**

Are there other legitimate factors that correlate with race but do not represent an explicit decision by police to disproportionately stop Blacks at higher rates? One such factor is that people may be subject to warrantless search because they are on probation or parole. Second, police services may be unequally allocated to neighborhoods. If services are allocated in proportion to the distribution of emergency calls, some police departments argue that they are just stopping people in relation to where they are deployed. If this argument is true, than one question that can be raised to challenge its legitimacy is whether there is over-policing in minority areas.

### ***Solutions/Areas for Future Research***

There needs to be more research into whether or not people respond to differential policing by offending less. If “driving while Black” is true and Blacks change their driving behavior due to racial profiling, in what other ways does racial profiling change the behavior of Blacks and Latinos?

There needs to be more efforts to disaggregate racial profiling statistics within cities. Are there differences in being stopped in White parts of town in comparison to Black parts of town?

Further, information on stops and arrests can be researched by individual officers in cities or neighborhoods. Are there officers that are prone to more frivolous stops than others?

In addition, studying the correlates of unsuccessful searches can be beneficial in managing police resources and rooting out racial profiling. Addressing the following types of car searches by police that are most often unproductive (i.e., yield no illegal items) could reduce racial profiling:

- Stops for mechanical problems that are unsuccessful in finding criminal activity
- Searches related to reports of resisting arrest (arresting people just because the officer thought they were being difficult)
- Searches related to reports of interfering with the duty of the police officer.

There also needs to be research on how racially charged abuses and time on the force correlates.

### ***References***

Harcourt, B. (2007). *Against prediction: profiling, policing, and punishing in an actuarial age*. Chicago: University of Chicago Press.

Harcourt, B. (2004). Rethinking Racial Profiling: A Critique of the Economics, Civil Liberties, and Constitutional Literature, and of Criminal Profiling More Generally. *The University of Chicago Law Review*. 71(4): 1275-1383.

Harris, D. (2002). Racial Profiling Revisited: Just Common Sense in the Fight Against Terror. *Criminal Justice*. 17(2): 32-41.

Harris, D. (2006). U.S. Experiences with Racial and Ethnic Profiling: History, Current Issues, and the Future. *Critical Criminology*, 14(3): 213-239.

Harris, D. (2007). The Importance of Research on Race and Policing: Making Race Salient to Individuals and Institutions within Criminal Justice. *Criminology and Public Policy*. 6(1): 5-23.

Institute on Race & Poverty, University of Minnesota (2001, March 5). *Components of Racial Profiling Legislation*. Retrieved January 16, 2011, from <http://www1.umn.edu/irp/publications/racialprofiling.html>

Knowles, J., Persico, N., Todd, P. (2001). Racial Bias in Motor Vehicle Searches: Theory and Evidence. *Journal of Political Economy*, 109(1): 203-229.

The Rand Corporation Public Safety and Injustice Program. (2004). *Assessing Racial Profiling More Credibly. A Case Study of Oakland, California*. Retrieved January 23, 2011, from [http://www.rand.org/content/dam/rand/pubs/research\\_briefs/2005/RAND\\_RB9070.pdf](http://www.rand.org/content/dam/rand/pubs/research_briefs/2005/RAND_RB9070.pdf)

## **Sponsors**

**Race in America: Restructuring Inequality was generously supported by the following organizations:**

### **GOLD Sponsors**

Richard King Mellon Foundation  
The Heinz Endowments  
The Pittsburgh Foundation

### **SILVER Sponsors**

BNY Mellon  
Staunton Farm Foundation  
UPMC

### **BRONZE Sponsors**

The Buhl Foundation  
EQT Corporation  
Falk Foundation  
Ford Foundation, Institute of International Education, Inc.  
Highmark Blue Cross Blue Shield  
Jewish Healthcare Foundation  
PNC Financial Services Group, Inc.

### **UNIVERSITY OF PITTSBURGH Sponsors**

College of General Studies  
Computing Services and Systems Development  
Division of Student Affairs  
Graduate School of Public and International Affairs  
Graduate School of Public Health  
Learning Research and Development Center  
Office of Institutional Advancement and the Pitt Alumni Association  
Office of the Provost  
School of Arts and Sciences  
School of Dental Medicine  
School of Education  
School of Health and Rehabilitation Sciences  
School of Information Sciences  
School of Law  
School of Medicine  
School of Nursing  
School of Pharmacy

Swanson School of Engineering  
University Center for International Studies  
University Center for Social and Urban Research  
University Honors College  
University Library System  
University of Pittsburgh at Bradford  
University of Pittsburgh at Titusville

**NATIONAL UNIVERSITY Sponsors**

Boston College, Graduate School of Social Work  
Bryn Mawr College, Graduate School of Social Work and Social Research  
Case Western Reserve University, Mandel School of Applied Social Sciences  
Fordham University, Graduate School of Social Service  
Howard University, School of Social Work  
Rutgers, The State University of New Jersey, School of Social Work  
University of Buffalo, School of Social Work  
University of Georgia, School of Social Work  
University of Houston, Graduate College of Social Work  
University of Illinois at Chicago, Jane Addams College of Social Work  
University of Kentucky, College of Social Work  
University of Maryland, Baltimore, School of Social Work  
University of Michigan, School of Social Work  
University of Texas at Austin, School of Social Work  
University of Washington, School of Social Work  
Washington University in St. Louis, George Warren Brown School of Social Work

**ADDITIONAL Sponsors**

The Anderson-DuBose Company  
Three Rivers Community Foundation