RACE AND PUNISHMENT:
RACIAL PERCEPTIONS OF CRIME AND SUPPORT FOR PUNITIVE POLICIES

THE SENTENCING PROJECT

RESEARCH AND ADVOCACY FOR REFORM

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EXECUTIVE SUMMARY

The American criminal justice system is at a critical juncture. In recent years, federal policymakers have called for reforms, following the lead of states that have reduced prison populations without compromising public safety. Nationwide prison counts have fallen every year since 2010, and the racial gap in imprisonment rates has also begun to narrow. Yet the recent tragic events in Ferguson, Missouri – where the killing of an unarmed African American teenager has sparked outrage – highlight the ongoing relevance of race in the criminal justice system.

To guide and give greater momentum to recent calls for reform, this report examines a key driving force of criminal justice outcomes: racial perceptions of crime. A complex set of factors contributes to the severity and selectivity of punishment in the United States, including public concern about crime and racial differences in crime rates. This report synthesizes two decades of research establishing that skewed racial perceptions of crime – particularly, white Americans' strong associations of crime with racial minorities – have bolstered harsh and biased criminal justice policies. The report concludes that:

White Americans are more punitive than people of color.

Whites are more punitive than blacks and Hispanics even though they experience less crime. For example, while the majority of whites *supported* the death penalty for someone convicted of murder in 2013, half of Hispanics and a majority of blacks *opposed* this punishment. Compared to blacks, whites are also more likely to support "three strikes and you're out" laws, to describe the courts as not harsh enough, and to endorse trying youth as adults. And yet, blacks and Hispanics are far more likely than whites to be victims of violent and property crimes.

Whites misjudge how much crime is committed by African Americans and Latinos.

White Americans overestimate the proportion of crime committed by people of color, and associate people of color with criminality. For example, white respondents in a 2010 survey overestimated the actual share of burglaries, illegal drug sales, and juvenile crime committed by African Americans by 20-30%. In addition, implicit bias research has uncovered widespread and deep-seated tendencies among whites – including criminal justice practitioners – to associate blacks and Latinos with criminality.

Whites who more strongly associate crime with racial minorities are more supportive of punitive policies.

White Americans who associate crime with blacks and Latinos are more likely to support punitive policies – including capital punishment and mandatory minimum sentencing – than whites with weaker racial associations of crime. This relationship exists even after controlling for other relevant factors such as racial prejudice, conservatism, and crime salience.

Media crime coverage fuels racial perceptions of crime.

Many media outlets reinforce the public's racial misconceptions about crime by presenting African Americans and Latinos differently than whites – both quantitatively and qualitatively. Television news programs and newspapers over-represent racial minorities as crime suspects and whites as crime victims. Black and Latino suspects are also more likely than whites to be presented in a non-individualized and threatening way – unnamed and in police custody.

Policymakers' actions and statements amplify the public's racial associations of crime.

Whether acting on their own implicit biases or bowing to political exigency, policymakers have fused crime and race in their policy initiatives and statements. They have crafted harsh sentencing laws that impact all Americans and disproportionately incarcerate people of color. Through public statements, some have stoked the public's heightened concern about crime and exaggerated associations of crime with racial minorities.

Criminal justice practitioners also operate with and reinforce racial perceptions of crime.

Disparities in police stops, in prosecutorial charging, and in bail and sentencing decisions reveal that implicit racial bias has penetrated all corners of the criminal justice system. Moreover, policies that are race-neutral on their surface – such as "hot spot" policing and certain risk assessment instruments – have targeted low-income people of color for heightened surveillance and punishment.

Racial perceptions of crime have distorted the criminal justice system.

By increasing support for punitive policies, racial perceptions of crime have made sentencing more severe for all Americans. The United States now has the world's highest imprisonment rate, with one in nine prisoners serving life sentences. Racial perceptions of crime, combined with other factors, have led to the disparate punishment of people of color. Although blacks and Latinos together comprise just 30% of the general population, they account for 58% of the prison population.

Racial perceptions of crime have undermined public safety.

By increasing the scale of criminal sanctions and disproportionately directing penalties toward people of color, racial perceptions of crime have been counterproductive for public safety. Racial minorities' perceptions of unfairness in the criminal justice system have dampened cooperation with police work and impeded criminal trials. In 2013, over *two-thirds* of African Americans saw the criminal justice system as biased against blacks, in contrast to *one-quarter* of whites. Crime policies that disproportionately target people of color can increase crime rates by concentrating the effects of criminal labeling and collateral consequences on racial minorities and by fostering a sense of legal immunity among whites. Finally, racial perceptions of crime have even led to the deaths of innocent people of color at the hands of fearful civilians and police officers.

The report concludes with recommendations for how the media, researchers, policymakers, and criminal justice professionals can address and mitigate the effects of racial perceptions of crime, and lay the groundwork for more just crime control policies.

I. INTRODUCTION

Punishment in the United States is both severe and selective. With the world's highest incarceration rate and one in nine prisoners serving life sentences, the United States remains the only Western democracy still using the death penalty.[1] Low-income people of color[2] have disproportionately borne the brunt of these policies. Nearly 60% of middle-aged African American men without a high school degree have served time in prison.[3] And while blacks and Latinos together comprise 30% of the general population, they account for 58% of prisoners.[4] Criminal justice policies and practices, and not just crime rates, are key drivers of these trends: correctional populations have grown during periods of declining crime rates and people of color are disproportionately punished even for crimes that they do not commit at higher rates than whites.[5]

The United States is now at a critical juncture in recalibrating its criminal justice policies. The majority of Americans support easing criminal punishment for drug offenses.[6] The Attorney General, bipartisan Congressional leadership, and the United States Sentencing Commission are calling for reforms to reduce the severity and disparate impact of criminal sanctions.[7] A number of states have led the way: New York, New Jersey, and California have dramatically reduced their prison populations without compromising public safety and six other states have achieved double-digit reductions in recent years.[8] Nationwide, prison counts have receded every year since 2010 after 37 years of consecutive growth.[9] The racial gap in incarceration rates has also begun to narrow.[10]

To guide and give greater momentum to these reforms, this report examines a key force driving criminal justice outcomes: racial perceptions of crime. A complex set of factors explains the severity and selectivity of punishment in the United States, including public concern about crime as well as racial differences in crime rates. This report synthesizes existing research showing that skewed racial perceptions of crime – particularly, white Americans' strong associations of crime with blacks and Latinos – have bolstered harsh and biased crime control policies.

White Americans, who constitute a majority of policymakers, criminal justice practitioners, the media, and the general public, overestimate the proportion of crime committed by people of color and the proportion of racial minorities who commit crime. Even individuals who denounce racism often harbor unconscious

1   Walmsley, R. (2013). World Prison Population List (10th Edition). London, U.K.: International Centre for Prison Studies. Available at: http://www. prisonstudies.org/sites/default/files/resources/downloads/wppl_10.pdf (pp. 1, 3); Nellis, A. (2013). Life Goes On: The Historic Rise in Life Sentences in America. Washington, D.C.: The Sentencing Project. Available at: http://sentencingproject.org/doc/publications/inc_Life%20 Goes%20On%202013.pdf (p. 1); Amnesty International (2014). Death Sentences and Executions 2013. London, U.K. Available at: http://www. amnestyusa.org/sites/default/files/act500012014en.pdf (p. 6).
2   In this report, the terms "African American" and "black" are used interchangeably, as are "Latino" and "Hispanic." "People of color" and "racial minorities" are used to refer to these two racial and ethnic groups since they are the largest affected populations and because of the preponderance of research about these groups.
3   Western, B. (2006). *Punishment and Inequality in America*. New York, NY: Russell Sage Foundation (p. 27).
4   U.S. Census Bureau: State and County QuickFacts. Available at: http://quickfacts.census.gov/qfd/states/00000.html; Carson, E. A. & Golinelli D. (2013). Prisoners in 2012: Trends in Admissions and Releases, 1991–2012. Bureau of Justice Statistics. Available at: http://www.bjs.gov/content/pub/pdf/p12tar9112.pdf (p. 37, App. Tbl. 4).
5   National Research Council (2014). *The Growth of Incarceration in the United States: Exploring Causes and Consequences*. Washington, DC: The National Academies Press. Available at: http://www.nap.edu/openbook.php?record_id=18613 (pp. 47–56).
6   Pew Research Center (2014). America's New Drug Policy Landscape. Washington, D.C. Available at: http://www.people-press.org/2014/04/02/section-1-perceptions-of-drug-abuse-views-of-drug-policies/; see also *The New York Times* Editorial Board (2014). Repeal Prohibition, Again. Available at: http://www.nytimes.com/interactive/2014/07/27/opinion/sunday/high-time-marijuana-legalization.html.
7   Peters, J. W. (2014). G.O.P. Moving to Ease Its Stance on Sentencing. *The New York Times*. Available at: http://www.nytimes.com/2014/03/14/us/gop-moving-to-ease-stance-on-sentencing.html?partner=rss&emc=rss&smid=tw-thecaucus&_r=1; U.S. Sentencing Commission (2014). U.S. Sentencing Commission Unanimously Votes to Allow Delayed Retroactive Reduction in Drug Trafficking Sentences. Available at: http://www.ussc.gov/sites/default/files/pdf/news/press-releases-and-news-advisories/press-releases/20140718_press_release.pdf.
8   Mauer, M. & Ghandnoosh, N. (2014). Fewer Prisoners, Less Crime: A Tale of Three States. Washington, D.C.: The Sentencing Project. Available at: http://sentencingproject.org/doc/publications/inc_Fewer_Prisoners_Less_Crime.pdf; Greene, J. & Mauer, M. (2010). Downscaling Prisons: Lessons from Four States. Washington, D.C.: The Sentencing Project. Available at: http://www.sentencingproject.org/doc/publications/publications/inc_DownscalingPrisons2010.pdf; Lofstrom, M. & Raphael, S. (2013). Public Safety Realignment and Crime Rates in California. San Francisco, CA: Public Policy Institute of California. http://www.ppic.org/content/pubs/report/R_1213MLR.pdf.
9   Mauer, M. & Ghandnoosh, N. (2013). Can We Wait 88 Years to End Mass Incarceration? *The Huffington Post*. Available at: http://www.huffingtonpost.com/marc-mauer/88-years-mass-incarceration_b_4474132.html.
10   Carson & Golinelli (2013), note 4 above; Mauer, M. (2013). The Changing Racial Dynamics of Women's Incarceration. Washington, D.C.: The Sentencing Project. Available at: http://sentencingproject.org/doc/publications/rd_Changing%20Racial%20Dynamics%202013.pdf (p. 8, Tbl. 1).

and unintentional racial biases. Attributing crime to racial minorities limits empathy toward offenders and encourages retribution as the primary response to crime. Consequently, although whites experience less crime than people of color, they are more punitive.

Other racial differences in views and experiences also contribute to whites being more punitive than people of color. Black Americans' negative encounters with the criminal justice system and greater recognition of the root causes of crime temper their preference for punitive policies. White Americans, by contrast, have less frequent and more positive criminal justice contact, endorse more individualistic causal explanations of crime, and are more likely to harbor overt racial prejudice.

Whites' associations of crime with people of color have helped to make the criminal justice system more punitive toward people of all races, and especially toward racial minorities, through several mechanisms. First, the public's racial perceptions of crime have gone hand-in-hand with its support for punitive crime policy, to which elected officials,[11] prosecutors,[12] and judges[13] have been responsive. Second, these perceptions directly influence the work of criminal justice practitioners and policymakers, who are not immune to these widely held biases.

A widespread consequence of racial perceptions of crime is the overrepresentation of people of color in prisons, jails, and under community supervision. A less common but more acutely tragic outcome has been the deaths of people of color due to distorted assessments of threat by police officers and armed civilians. The deaths of Amadou Diallo, an unarmed Guinean immigrant killed by New York City police officers in 1999, Trayvon Martin, an unarmed African American teenager killed by a neighborhood watch coordinator in 2012, and Michael Brown, an unarmed African American teenager killed by a police officer in Ferguson, Missouri are all-too-common flashpoints of the racialization of crime.

By disproportionately directing criminal justice penalties toward people of color, racial perceptions of crime have been counterproductive to public safety. Racial minorities' perception of unfairness in the criminal justice system has dampened cooperation with police work and impeded criminal trials. Excessive criminalization has left millions struggling to stay afloat against the anvil of a criminal record. And finally, a racially biased criminal justice system may foster white Americans' sense of legal immunity, with some studies showing that whites are more likely to break rules when they see that enforcement is racially biased.

The media, policymakers, and criminal justice practitioners can implement several proven interventions to sever associations of crime with race, and temper their impact. News producers can monitor and correct for disparities in crime reporting. Policymakers can curb excessive incarceration and develop policies to reduce disparities in sentencing and crime rates. All stakeholders – particularly criminal justice professionals – can use empirically validated tools to detect and reduce the impact of implicit racial biases.

The report is organized as follows: Section II examines public opinion about punishment, showing that Americans have grown more punitive over time and that white Americans are more punitive than African Americans and Latinos, even though they are less frequently impacted by crime. Section III describes explicit and implicit measures of Americans' racial perceptions of crime. Section IV presents studies showing that whites with stronger racial associations of crime are more punitive than whites with weaker racial associations of crime. Section V examines the role that crime rates, the media, policymakers, and criminal justice professionals have played in shaping the public's mental image of, and response to, people who commit crime. Section VI discusses other racial differences in views and experiences that account for the racial gap in punitive sentiment, including experience with police stops, causal accounts of crime, and overt racial prejudice. Section VII describes the negative consequences of a biased and punitive criminal justice system. Section VIII suggests how policymakers, criminal justice professionals, and the media can remedy their own and the public's perceived link between race and crime, and temper its influence on criminal justice.

11   Enns, P. K. (Forthcoming). The Public's Increasing Punitiveness and Its Influence on Mass Incarceration in the United States. *American Journal of Political Science*; Nicholson-Crotty, S., Peterson, D. A. M., & Ramirez, M. D. (2009). Dynamic Representation(s): Federal Criminal Justice Policy and an Alternative Dimension of Public Mood. *Political Behavior*, 31(4), 629–55; note caveats discussed in Peffley, M. & Hurwitz, J. (2010). *Justice in America: The Separate Realities of Blacks and Whites*. New York, NY: Cambridge University Press (pp. 140–8).
12   Baumer, E. P., Martin, K. H., Baumer, E. P., & Martin, K. H. (2014). Social Organization, Collective Sentiment, and Legal Sanctions in Murder Cases. *American Journal of Sociology,* 119 (1), 131–182.
13   Brace, P. & Boyea, B. D. (2008). State Public Opinion, the Death Penalty, and the Practice of Electing Judges. *American Journal of Political Science*, 52(2), 360–372.

II. PUBLIC SUPPORT FOR PUNITIVE POLICIES

Two dominant patterns emerge from public opinion surveys about criminal justice. First, Americans of all races are significantly more punitive than they once were, although punitive sentiment has been receding. Second, whites are and have been more punitive than African Americans and Latinos, even though they are less frequently victimized and are less concerned about crime. The racial gap in punitiveness persists even after noting important caveats about criminal justice polling methods.

A. HISTORICAL CHANGES IN PUNITIVE SENTIMENT

Americans grew dramatically more punitive beginning in the late 1960s, and one window into this trend is attitudes toward the death penalty. In 1966, Gallup recorded the lowest rate of public support for the death penalty, with only 42% of Americans supporting and 47% opposing this form of punishment for a person convicted of murder.[14] The public had already grown more punitive by 1972, when the Supreme Court declared then-existing state death penalty statutes to be unconstitutional. That year, 54% of Americans supported capital punishment.[15] Death penalty support reached its peak at 80% in 1994, and gradually declined to 60% by 2013.[16]

The dramatic rise and sustained high levels of support for the death penalty have been accompanied by support for other harsh punishments. Mark Ramirez has charted historical changes in the public's support for the death penalty, harsher judicial sentencing, increased law enforcement authority, and increased spending for tougher police enforcement.[17] He found that support

Figure 1. Punitive sentiment, 1951 to 2013
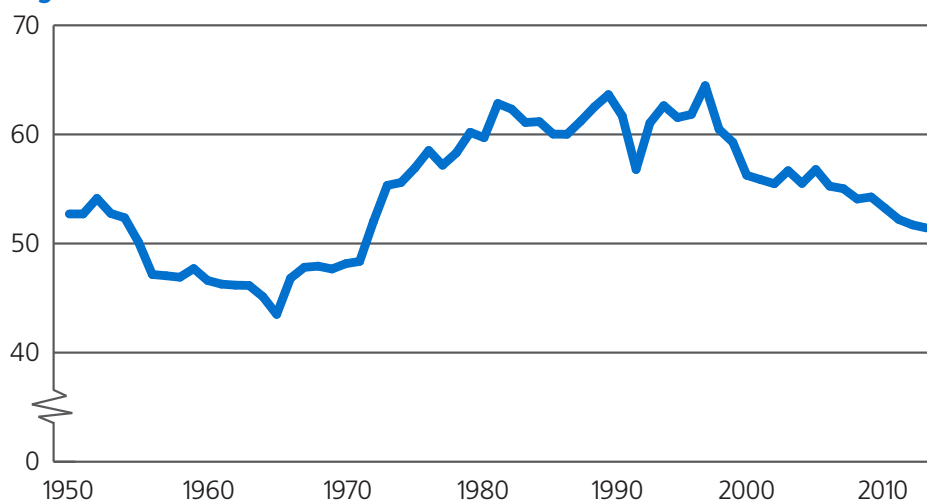
Source: Ramirez, M. D. (2013). Punitive Sentiment. *Criminology*, 51(2), 329–364 (p. 337).

14   Jones, J. M. (2013). U.S. Death Penalty Support Lowest in More Than 40 Years. Gallup. Available at: http://www.gallup.com/poll/165626/death-penalty-support-lowest-years.aspx.
15   Saad, L. (2007). Racial Disagreement Over Death Penalty Has Varied Historically. Gallup. Available at: http://www.gallup.com/poll/28243/Racial-Disagreement-Over-Death-Penalty-Has-Varied-Historically.aspx.
16   Jones (2013), note 14 above.
17   Ramirez, M. D. (2013a). Punitive Sentiment. *Criminology*, 51(2), 329–364; For recent trends in nationwide views on crime and punishment, see Ramirez, M. D. (2013b). Americans' Changing Views on Crime and Punishment. *Public Opinion Quarterly*, 77(4), 1006–1031.

for these policies rapidly escalated in tandem during the 1970s and 1980s, and remained at these high rates until beginning to decrease in 1997 (see Figure 1).

Ramirez also searched for the sources of this punitiveness. Punitive sentiment increased, he found, when presidents framed crime as a result of a permissive criminal justice system. Other factors that were closely tied to increases in punitive sentiment included: increased public concern about crime, higher rates of drug use, and public perceptions of greater racial integration.[18] It is "no coincidence," he concludes, "that the increase in support for punitive policies occurred at the same time as the public turned away from the New Deal and Great Society solutions to poverty. […] Conservative politicians implemented a strategy that connected these issues, along with the civil rights movement, to the coddling of criminals and need for punitive solutions to crime."[19] After decades of draconian sentencing, a growing share of the public has described the courts as too harsh in recent years.[20]

B. THE RACIAL GAP IN PUNITIVENESS

Strong support for punitive policies is not only historically novel, it is also racially patterned. A 2013 Pew Research Center survey found that while the majority of whites *supported* the death penalty for someone convicted of murder (63% supported, 30% opposed), blacks and Hispanics were more likely to *oppose* rather than support this punishment (with only 36% of blacks and 40% of Hispanics supporting, and 55% of blacks and 50% of Hispanics opposing, see Figure 2).[21] Historical trends also reveal that "over a 30-year period, the divide between whites and African Americans in their opinions about the death penalty has remained virtually the same."[22]

Whites are also consistently more supportive of other forms of harsh punishment, although often the majority of both whites and blacks support these punitive measures. A national survey conducted between 2000 and 2001 showed that 70% of whites, in contrast to 52% of blacks, supported "three strikes" laws that compelled life sentences for people convicted of a third serious

Figure 2. Support for death penalty for persons convicted of murder, by race, 2013
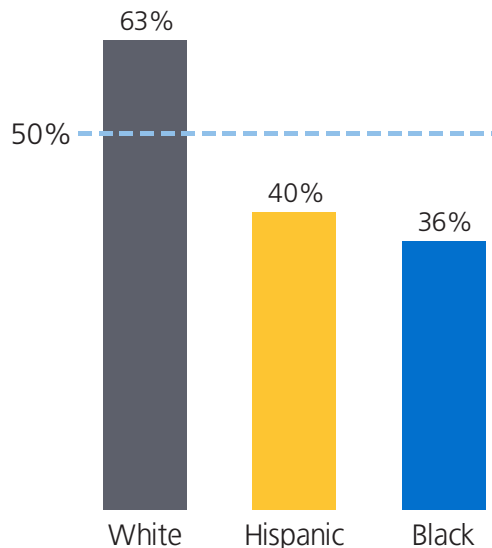
Source: Pew Research Center. Shrinking Majority of Americans Support Death Penalty. Washington, D.C. Available at: http://www.pewforum.org/2014/03/28/shrinking-majority-of-americans-support-death-penalty/.

Figure 3. Support for various punitive measures, by race, 2000-2001
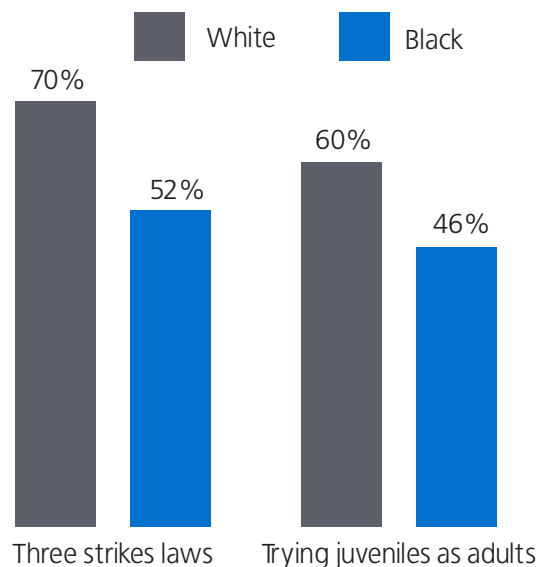
Source: Peffley, M. & Hurwitz, J. (2010). *Justice in America: The Separate Realities of Blacks and Whites.* New York, NY: Cambridge University Press (pp. 152–3).

18   Ramirez (2013a), note 17 above (pp. 347–50).
19   Ramirez (2013a), note 17 above (p. 357).
20   Ramirez (2013b), note 17 above; Muller, C. & Schrage, D. (2014). Mass Imprisonment and Trust in the Law. *The Annals of the American Academy of Political and Social Science*, 651, 139–158.
21   Pew Research Center (2014). Shrinking Majority of Americans Support Death Penalty. Washington, D.C. Available at: http://www.pewforum.org/2014/03/28/shrinking-majority-of-americans-support-death-penalty/.
22   Unnever, J. D., Cullen, F. T., & Jonson, C. L. (2008). Race, Racism, and Support for Capital Punishment. *Crime and Justice*, 37(1), 45–96 (p. 54).

Figure 4. "Do you think the courts in this area deal too harshly or not harshly enough with criminals?" 2000s

73% — White
64% — Black

"Not harshly enough"

Source: Wright, J. D., Jasinski, J. L, Lanier, D. N. (2012). Crime, Punishment, and Social Disorder: Crime Rates and Trends in Public Opinion over More than Three Decades. In Marsden, P. V. (ed.) *Social Trends in American Life: Findings from the General Social Survey since 1972*, pp. 146–176. Princeton, NJ: Princeton University Press (p. 158).

(see Figure 4).[25] Whites also consistently outpaced blacks in their preference for more punitive courts during the 1980s and 1990s, when an even higher share of both blacks and whites supported harsher sentencing.[26]

Finally, white Americans are also more likely than African Americans to endorse the use of the criminal justice system over other social policy tools to reduce crime. When asked how best to reduce crime, 35% of whites said by investing in education and job training (versus 58% of blacks), 10% said by investing in police and prisons (versus 1% of blacks), and 45% said through both means (versus 35% of blacks, see Figure 5).[27]

These figures should be interpreted with three important caveats. First, the wording of the most widely used survey questions exaggerates public punitiveness. For example, support for the death penalty diminishes significantly when respondents are given the option of sentencing someone to life without the possibility of parole.[28] In fact, a recent poll found that the majority of Americans support life without parole over execution for someone convicted of murder.[29] Punitive sentiment also recedes when questions are reworded to ask whether the courts are "too lenient" rather than "not harsh enough."[30] Second, public support for punitive policies is often based on inaccurate understanding of existing policies.[31] For example, research on federal sentencing shows that juries' sentencing recommendations are far *below* applicable sentencing guidelines.[32] Finally, Americans remain supportive of rehabilitation as a correctional goal – especially for the young[33] – and support addressing the root causes of crime rather than only responding to crime with punishment.[34] In fact, the American public is pragmatic in its crime-

offense (see Figure 3).[23] Asked if juveniles should be tried as adults, 60% of whites agreed, in contrast to 46% of blacks (see Figure 3).[24]

When asked on another national survey whether "the courts in this area deal too harshly or not harshly enough with criminals," 73% of whites responded "not harshly enough" in contrast to 64% of blacks during the 2000s

23   Peffley & Hurwitz (2010), note 11 above (p. 153).
24   Peffley & Hurwitz (2010), note 11 above (p. 153).
25   Wright, J. D., Jasinski, J. L, Lanier, D. N. (2012). Crime, Punishment, and Social Disorder: Crime Rates and Trends in Public Opinion over More than Three Decades. In Marsden, P. V. (ed.) *Social Trends in American Life: Findings from the General Social Survey since 1972*, pp. 146–176. Princeton, NJ: Princeton University Press (p. 158).
26   Bureau of Justice Statistics (1996). Sourcebook of Criminal Justice Statistics 1995. Available at: http://www.hsdl.org/?view&did=711243 (p. 172, Tbl. 2.57).
27   Thompson, V. R. & Bobo, L. D. (2011). Thinking about Crime: Race and Lay Accounts of Lawbreaking Behavior. *The Annals of the American Academy of Political and Social Science*, 634, 16–38 (p. 28, Tbl. 5).
28   Cullen, F. T., Fisher, B. S., & Applegate, B. K. (2000). Public Opinion about Punishment and Corrections. *Crime and Justice*, 27, 1–79 (pp. 19–21).
29   Ergun, D. (2014). New Low in Preference for the Death Penalty. ABC News. Available at: http://abcnews.go.com/blogs/politics/2014/06/new-low-in-preference-for-the-death-penalty/.
30   Applegate, B. K. & Sanborn, J. B. (2011). Public Opinion on the Harshness of Local Courts: An Experimental Test of Question Wording Effects. *Criminal Justice Review*, 36(4), 487–97.
31   Roberts, J. V. (1992). Public Opinion, Crime, and Criminal Justice. *Crime and Justice*, 16, 99–180 (pp. 149–50); see also review in Peffley & Hurwitz (2010), note 11 above (pp. 140–8).
32   Gwin, J. S. (2010). Juror Sentiment on Just Punishment: Do the Federal Sentencing Guidelines Reflect Community Values? *Harvard Law & Policy Review*, 4, 173–200 (p. 187).
33   Cullen, Fisher, & Applegate (2000), note 28 above (pp. 48–56); Nagin, D. S., Piquero, A. R. Scott, E. S., & Steinberg, L. (2006). Public Preferences for Rehabilitation Versus Incarceration of Juvenile Offenders: Evidence from a Contingent Valuation Survey. *Criminology & Public Policy*, 5(4): 627–651; Bishop, D. (2006). Public Opinion and Juvenile Justice Policy. *Criminology & Public Policy*, 5(4), 653–664.
34   When asked which approach would lower crime during the 1990s and 2000s, the majority of Americans agreed that more money and effort should go to "attacking the social and economic problems that lead to crime through better education and job training" versus "to deterring crime by improving law enforcement with more prisons, police, and judges": Gallup. Crime. Available at http://www.gallup.com/poll/1603/Crime.aspx#3.

Figure 5. Preferred crime reduction policies, by race, 2001
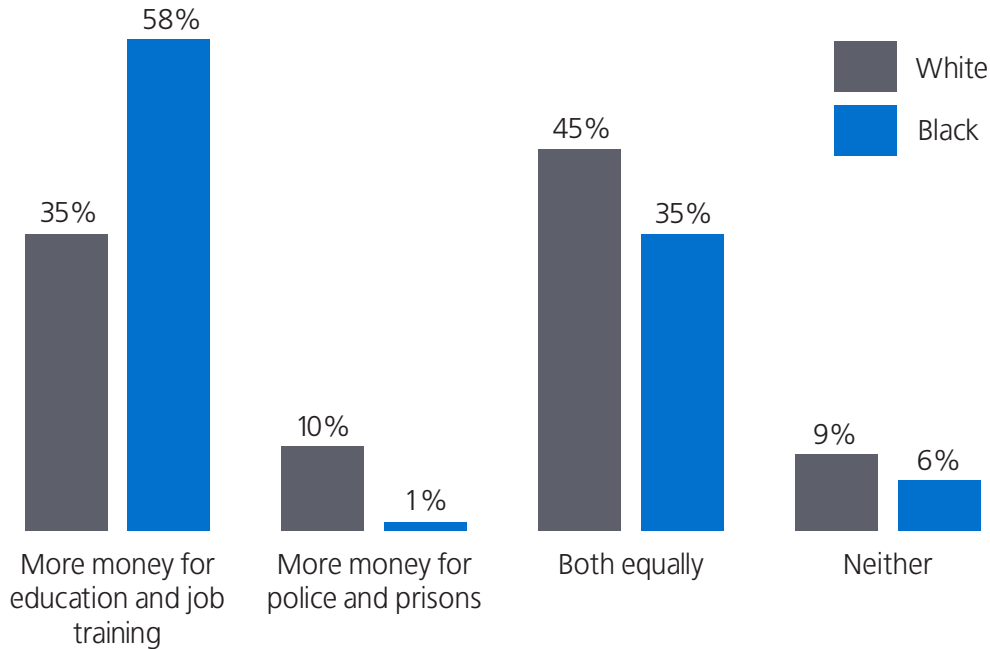
Source: Thompson, V. R. & Bobo, L. D. (2011). Thinking about Crime: Race and Lay Accounts of Lawbreaking Behavior. *The Annals of the American Academy of Political and Social Science,* 634, 16–38 (p. 28, Tbl. 5).

control preferences[35] – simultaneously supporting both punishment and rehabilitation rather than expressing ideological support for just one goal, although this finding is also affected by survey wording.[36] Yet the racial divide in punitive sentiment persists even with more nuanced survey approaches.[37]

C. THE RACIAL GAP IN VICTIMIZATION

Whites' greater punitiveness relative to people of color is especially striking because whites are far less likely than blacks and Hispanics to be victims of crime. In 2008, African Americans were 78% more likely than whites to experience household burglary, 133% more likely to experience motor vehicle theft, and experienced other types of theft at about the same rate.[38] Hispanics were 46% more likely than non-Hispanics to be victims of property crimes.[39]

Black Americans are also exposed to violent crime, especially serious violent crime, at much higher rates than whites and Hispanics. In 2012, blacks were 66% more likely than whites to be victims of sexual assault, robbery, aggravated assault, and simple assault.[40] Hispanics were 37% more likely than whites to experience these crimes.[41] Black-white victimization differences are most stark when considering homicide.

Homicide is the most common cause of death for African American men aged 15 to 34, but it is far less common for

> Whites' greater punitiveness relative to people of color is especially striking because whites are far less likely than blacks and Hispanics to be victims of crime.

35   Unnever, J. D., Cochran, J. K., Cullen, F. T., & Applegate, B. K. (2010). The Pragmatic American: Attributions of Crime and the Hydraulic Relation Hypothesis. *Justice Quarterly*, 27(3), 431–57; for a similar pattern among the Dutch, see Mascini, P. & Houtman, D. (2006). Rehabilitation and Repression: Reassessing their Ideological Embeddedness. *British Journal of Criminology*, 46, 822–36.
36   Pickett, J. T. & Baker, T. (2014). The Pragmatic American: Empirical Reality or Methodological Artifact? *Criminology*, 52(2), 195–222.
37   Unnever, J. D. & Cullen, F. T. (2005). Executing the Innocent and Support for Capital Punishment: Implications for Public Policy. *Criminology & Public Policy*, 4(1), 3–38 (pp. 16–17, fn. 4).
38   Bureau of Justice Statistics (2010). Criminal Victimization in the United States, 2008 Statistical Tables. Available at: http://www.bjs.gov/content/pub/pdf/cvus08.pdf (Tbl. 16). Note figures do not distinguish by ethnicity and therefore include a sizeable proportion of Hispanics as whites.
39   Bureau of Justice Statistics (2010), note 38 above (Tbl. 17). Note figures do not distinguish by race and therefore include a sizeable proportion of blacks among non-Hispanics.
40   Bureau of Justice Statistics (2013). Criminal Victimization, 2012. Available at: http://www.bjs.gov/content/pub/pdf/cv12.pdf (p. 7, Tbl. 7).
41   Bureau of Justice Statistics (2013), note 40 above (p. 7, Tbl. 7).

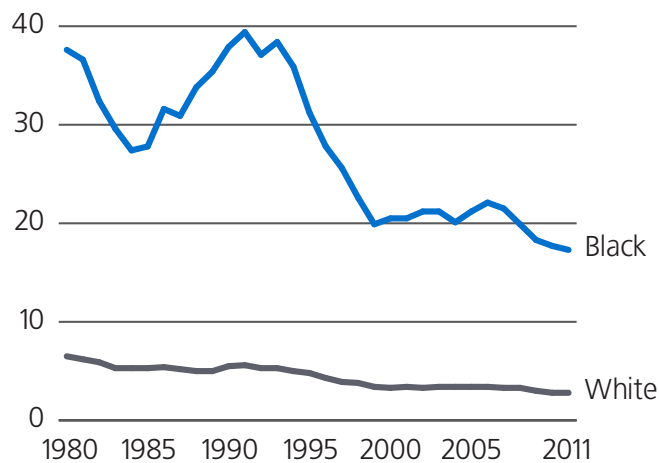## Figure 6: Homicide victimization rates, by race, 1980–2011

Figure 6: Homicide victimization rates, by race, 1980–2011
Source: Cooper. A. & Smith, E. L. Homicide Trends in the United States, 1980-2008. Bureau of Justice Statistics. Available at: http://www.bjs.gov/content/pub/pdf/htus8008.pdf (p. 11, Figure 17); Smith, E.L. & Cooper, A. (2011). Homicide in the U.S. Known to Law Enforcement, 2011. Bureau of Justice Statistics. Available at: http://www.bjs.gov/content/pub/pdf/hus11.pdf (p. 4, Tbl. 1).

Figure 7. Respondents who have an area within a mile of their home where they would be afraid to walk alone at night, 2002
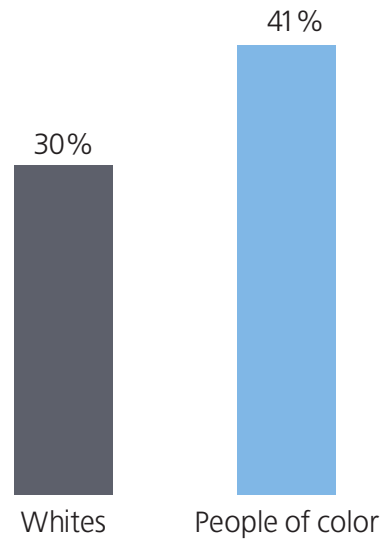
Source: University at Albany (2003). Sourcebook of Criminal Justice Statistics 2003. Albany, NY: Available at: http://www.albany.edu/sourcebook/pdf/section2.pdf (p. 130−1, Tbl. 2.38).

Figure 8. Respondents who have avoided certain places or neighborhoods to which they might otherwise want to go, 2007
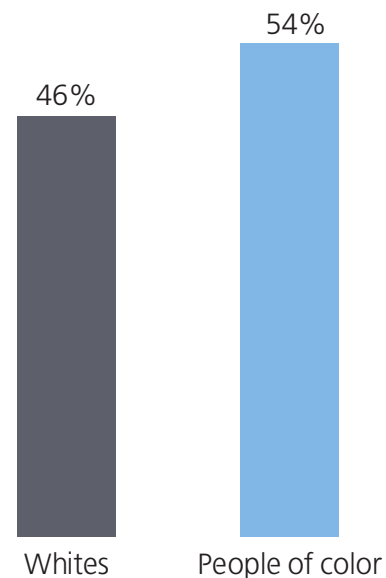
Source: University at Albany (2007). Sourcebook of Criminal Justice Statistics 2007. Albany, NY: Available at: http://www.albany.edu/sourcebook/pdf/t2402007.pdf (p. 132, Tbl. 2.40).

whites in the same age group and all other age groups.[42] The overall homicide rate for blacks was 6.2 times higher than for whites in 2011, a gap that has persisted for over three decades (see Figure 6). [43]

Racial minorities' greater rates of victimization are tied to their heightened fears about crime, and greater likelihood to adjust their behaviors because of this perceived risk. When asked, "Is there any area right around here--that is, within a mile--where you would be afraid to walk alone at night?" non-whites have more often said yes than whites since the 1970s, with 41% of non-whites saying yes in 2002 in contrast to 30% of whites (see Figure 7).[44] When asked in 2007 whether they avoided going to certain places or neighborhoods that they might otherwise want to go to, 54% of non-whites said yes, in contrast to 46% of whites (see Figure 8).[45]

These measures may even underestimate the full extent of the racial gap in crime experiences because people who are exposed to more crime may tolerate more risk than

42 Heron, M. (2012). Deaths: Leading Causes for 2009. *National Vital Statistics Reports,* 61(7). Available at: http://www.cdc.gov/nchs/data/nvsr/nvsr61/nvsr61_07.pdf (pp. 27−8, 34−5, Tbl. 1). Also available at: http://www.cdc.gov/men/lcod/2009/LCODBlackmales2009.pdf and http://www.cdc.gov/men/lcod/2009/LCOD_whitemen2009.pdf.
43 Smith, E.L. & Cooper, A. (2011). Homicide in the U.S. Known to Law Enforcement, 2011. Bureau of Justice Statistics. Available at: http://www.bjs.gov/content/pub/pdf/hus11.pdf (p. 4). Due to limitations in data submitted by law enforcement agencies, these figures do not distinguish Hispanic ethnicity.
44 University at Albany (2003). Sourcebook of Criminal Justice Statistics 2003. Albany, NY: Available at: http://www.albany.edu/sourcebook/pdf/section2.pdf (pp. 130−1, Tbl. 2.38).
45 University at Albany (2007). Sourcebook of Criminal Justice Statistics 2007. Albany, NY: Available at: http://www.albany.edu/sourcebook/pdf/t2402007.pdf (p. 132, Tbl. 2.40).

those in safer environments, and be reluctant to disclose the full extent of their fear to researchers.[46] Nevertheless, African Americans are more likely than whites to report dissatisfaction with their level of safety: in 2003, 43% of blacks said they were "very satisfied" about their physical safety in contrast to 59% of Hispanics, and 63% of whites.[47] African Americans are also more likely to rank crime as a major national problem. After crime and drugs subsided as the most highly ranked national problem in the mid-1990s,[48] more blacks than whites remained concerned. When asked to identify the nation's most important problem in a 2001 survey, 24% of African Americans pointed to "crime, violence, and drugs" in contrast to 13% of whites.[49] Whites, on the other hand, were most likely to bemoan the "breakdown of morals/family." What then accounts for whites' greater proclivity for punishment?

46   Chiricos, T., McEntire, R., & Gertz, M. (2001). Perceived Racial and Ethnic Composition of Neighborhood and Perceived Risk of Crime. *Social Problems,* 48(3), 322–340.
47   Saad, L. (2004). Blacks Lag Behind Whites in Life Satisfaction. Gallup. Available at: http://www.gallup.com/poll/10258/blacks-lag-behind-whites-life-satisfaction.aspx.
48   University at Albany (2012). Sourcebook of Criminal Justice Statistics 2012. Albany, NY: Available at: http://www.albany.edu/sourcebook/pdf/t212012.pdf (Tbl. 2.1).
49   Bobo, L. D. & Thompson, V. R. (2006). Unfair by Design: The War on Drugs, Race, and the Legitimacy of the Criminal Justice System. *Social Research*, 73(2), 445–72 (pp. 455–6).

III. RACIAL PERCEPTIONS OF CRIME

Race influences public opinion about criminal justice policies in two ways. First, as described above, the race of respondents is a strong predictor of punitive sentiment. Second, the perceived race of offenders – as in, people's mental image of who commits crimes – shapes views about criminal justice policies. A number of studies have shown that Americans, and whites in particular, strongly associate crime with racial minorities, and racial minorities with crime.

A. OVERESTIMATING BLACK AND HISPANIC CRIME RATES

Racial minorities commit certain crimes at higher rates than whites, but whites overestimate these differences. When asked for numerical estimates of crime rates, whites attribute an exaggerated amount to people of color. And when asked to what degree various racial groups are "prone to violence," whites rank people of color as more violence-prone than their own race.

Survey researchers have measured the "racial typification of crime" – particularly the extent to which people associate crime with blacks and Latinos – using two types of questions.[50] One approach has been to ask respondents to estimate the racial composition of specific crimes. These studies consistently show that Americans, and whites in particular, significantly overestimate the proportion of crime committed by blacks and Latinos.

A national survey conducted in 2010 asked white respondents to estimate the percentage of burglaries, illegal drug sales, and juvenile crime committed by African Americans.[51] The researchers found that the respondents overestimated actual black participation in these crimes – measured by arrests – by approximately 20 to 30 percent (between 6.6 to 9.5 percentage points).[52] Similarly, a racially diverse group of participants in a 2002 survey estimated that 40% of people who committed violent crimes were African American, when crime victimization surveys showed this rate to be 29%.[53] These respondents estimated the overall rate of violent crime committed by Hispanics to be 27%.[54] This figure significantly exceeded Hispanics' share of the general population (14%) and prison population (17%) in that year.[55] The focus of these studies – on whites or a racially and ethnically mixed group of respondents – leaves unclear whether and to what extent racial minorities also racially typify crime. But the next measure of racial typification offers some insights into this question.

The second approach to measuring racial perceptions of crime draws on the General Social Survey (GSS). Produced by NORC at the University of Chicago, this long-running survey has asked respondents to rank various racial and ethnic groups on a scale ranging from "tend to be violence prone" to "tend not to be prone to violence." This question was last asked in the year 2000.[56] On a scale where 1 refers to not violence-prone

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50 See Chiricos, T., Welch, K., & Gertz, M. (2004). Racial Typification of Crime and Support for Punitive Measures. *Criminology*, 42(2), 359–389.

51 Pickett, J. T., Chiricos, T., Golden, K. M., & Gertz, M. (2012). Reconsidering the Relationship Between Perceived Neighborhood Racial Composition and Whites' Perceptions of Victimization Risk: Do Racial Stereotypes Matter? *Criminology*, 50(1), 145–186 (p. 155–6, 160), using data from: Federal Bureau of Investigation (2009). Crime in the United States, 2009. Available at: https://www2.fbi.gov/ucr/cius2009/data/table_43.html (Tbl. 43).

52 Respondents overestimated the proportion of robberies committed by blacks by 3% (1.4 percentage points).

53 Chiricos, Welch, & Gertz (2004), note 50 above (pp. 368–70), using data from: Bureau of Justice Statistics (2003). Criminal Victimization in the United States, 2001 Statistical Tables. Available at: http://www.bjs.gov/content/pub/pdf/cvus0102.pdf (Tbl. 40). For a similar pattern in a 1991 survey, see Pickett, Chiricos, Golden, & Gertz (2012), note 51 above (p. 150).

54 Welch, K., Payne, A. A., Chiricos, T., & Gertz, M. (2011). The Typification of Hispanics as Criminals and Support for Punitive Crime Control Policies. *Social Science Research*, 40, 822–840 (p. 827).

55 This is the only reference point because neither national victimization surveys nor national arrest records reported Hispanic ethnicity among offenders or suspects.

56 National Opinion Research Center University of Chicago (2013). General Social Surveys, 1972-2012: Cumulative Codebook. Chicago, IL. Available at: http://publicdata.norc.org:41000/gss/documents/BOOK/GSS_Codebook.pdf.

and 7 refers to violence-prone, non-Hispanic whites on average rated whites at 3.70, Hispanics at 4.20, and blacks at 4.48.[57] This represented a reduction in how much more violent whites rated blacks than their own race in 1990.[58] This question, however, is not optimal: the wording may suggest biological racial undertones that the public increasingly disavows, and it does not allow a comparison to actual crime rates.[59]

The "prone to violence" survey question can help to determine whether people of color also racially typify crime. In 1993, when violent crime was a major national concern, Reverend Jesse Jackson famously told a Chicago audience, "There is nothing more painful to me at this stage in my life than to walk down the street and hear footsteps and start thinking about robbery— then look around and see somebody white and feel relieved."[60] But the 2000 GSS data suggest that Jackson's racialization of crime may not have been representative of African Americans: non-Hispanic black respondents ranked blacks, Hispanics, and whites at essentially the same level on the violence-prone scale (4.39, 4.22, and 4.45 respectively).[61] These results indicate that racial typification occurs more strongly among whites than African Americans.

B. IMPLICIT BIASES ABOUT PEOPLE OF COLOR

While survey researchers depend on respondents to be fully aware of and willing to disclose their beliefs, experimental researchers have indirectly measured how unstated implicit biases influence behavior. Here, researchers capture unintentional and unconscious racial biases by observing people's decisions and actions. Implicit bias tests have shown that the general public holds negative associations of blacks and Latinos, and suspects them of criminality. These biases have also been documented among police officers and judges, and are believed to reach all corners of the criminal justice system.

The Implicit Association Test (IAT) examines differences in the speed with which respondents classify pictures or words into strongly or weakly associated categories.[62] In a pioneering study, Anthony Greenwald and colleagues showed white subjects names that are associated with whites (e.g., Andrew, Wilbur) or blacks (e.g., Jerome, Leroy), coupled with positive or negative words (e.g., gentle, honor; agony, disaster).[63] The researchers found that respondents were much *faster* to categorize the white-pleasant and black-unpleasant pairings than the white-unpleasant and black-pleasant pairings. Researchers have found similar results when using the IAT to measure whites' implicit bias towards Latinos.[64] Importantly, these studies have uncovered implicit racial bias even among individuals who "explicitly disavowed prejudice."[65]

> These studies have uncovered implicit racial bias even among individuals who **"explicitly disavowed prejudice."**

Implicit racial biases also permeate the work of criminal justice professionals and influence the deliberation of jurors. When researchers administered the IAT to judges[66] and capital defense lawyers,[67] they found that the majority of white and a minority of black judges and counsel exhibited bias favoring whites over African Americans. Scholars have also explored the potential impact of implicit

57   Barkan, S. E. & Cohn, S. F. (2005). Why Whites Favor Spending More Money to Fight Crime: The Role of Racial Prejudice. *Social Problems*, 52(2), 300–314 (p. 307).
58   Unnever, J. D. & Cullen, F. T. (2012). White Perceptions of Whether African Americans and Hispanics are Prone to Violence and Support for the Death Penalty. *Journal of Research in Crime and Delinquency*, 49(4), 519–544.
59   See Bobo, L., Kluegel, J. R., Smith, R. A. (1997). Laissez-Faire Racism: The Crystallization of a Kindler, Gentler, Antiblack Ideology. In Tuch, S. A. and Martin, J. K. (eds.) *Racial Attitudes in the 1990s: Continuity and Change*, pp. 15–42. Westport, CT: Greenwood Publishing Group.
60   Quoted in Tonry, M. (1995). *Malign Neglect: Race, Crime, and Punishment in America* (p. 256). New York, NY: Oxford University Press (p. 50).
61   Based on the author's analysis of these data. Hispanics rated Hispanics as more violence-prone than whites (4.40 versus 3.76, respectively) and less so than blacks (4.98), but this is based on a very small number of respondents (58).
62   Project Implicit has made a version of the test available on this website: https://implicit.harvard.edu/implicit/user/ncsc/ca/.
63   Greenwald, A. G., Mcghee, D. E., & Schwartz, J. L. K. (1998). Measuring Individual Differences in Implicit Cognition: The Implicit Association Test. *Journal of Personality and Social Psychology,* 74(6), 1464–80 (p. 1474), discussed in Jolls, C. & Sunstein, C. R. (2006). The Law of Implicit Bias. *California Law Review*, 94, 969–996.
64   Blair, I. V., et al. (2013). An Assessment of Biases Against Latinos and African Americans Among Primary Care Providers and Community Members. *American Journal of Public Health,* 103(1), 92–98. Available at: http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3518332/.
65   Greenwald, Mcghee, & Schwartz (1998), note 63 above (p. 1475).
66   Rachlinski, J. J., Johnson, S. L., Wistrich, A. J., & Guthrie, C. (2009). Does Unconscious Racial Bias Affect Trial Judges? *Notre Dame Law Review*, 84(3), 1195–1246 (p. 1210).
67   Eisenberg, T. & Johnson, S. L. (2004). Implicit Racial Attitudes of Death Penalty Lawyers, *DePaul Law Review*, 1545–55 (pp. 1546–51).

bias on the work of prosecutors[68] and defense attorneys.[69] Studies of case outcomes – including bail determinations, prosecutorial charging, and sentencing – also reveal that the work of criminal justice professionals is affected by a defendant's race even after other relevant factors are controlled, as described later. Finally, studies of mock jurors have found that a defendant's race has some impact on verdicts and sentencing.[70] Mock jurors in one recent study even exhibited skin-color bias in how they evaluated evidence: they were more likely to view ambiguous evidence as indication of guilt for darker skinned suspects than for those who were lighter skinned.[71]

Implicit bias research has been extended more directly into the realm of criminal justice with studies that assess how the public and police officers evaluate ambiguous, and potentially threatening, scenarios. In Keith Payne's formative study, non-black college students were primed with images of a black or white face and then asked to identify an object that was either a gun or tool (see Image 1).[72]

Payne found that priming subjects with the image of a black rather than white face improved the speed at which they identified guns but also reduced their accuracy by causing them to mistake tools as weapons.

Video simulated shooter studies are another means of measuring implicit bias. In these studies, subjects are asked to quickly identify and shoot armed suspects, but not to shoot unarmed suspects (see Image 2). One such study found that non-black participants more quickly and accurately decided to shoot an armed target when the target was African American, but more quickly and accurately did not shoot when an unarmed target was white.[73]

Image 1. Examples of images used in implicit bias studies
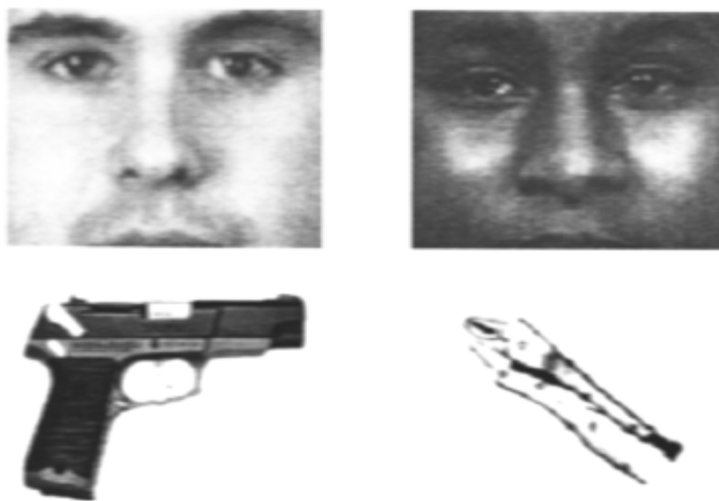
Source: Payne, K. B. (2001). Prejudice and Perception: The Role of Automatic and Controlled Processes in Misperceiving a Weapon. *Journal of Personality and Social Psychology, 81*(2), 181−192 (p. 184).

68   Smith, R. J. & Levinson, J. D. (2012). The Impact of Implicit Racial Bias on the Exercise of Prosecutorial Discretion. *Seattle University Law Review*, 35(3), 795−826.
69   Richardson, L. S. & Goff, P. A. (2013). Implicit Racial Bias in Public Defender Triage. *The Yale Law Journal,* 122(8), 2626−2649; Lyon, A. D. (2012). Race Bias and the Importance of Consciousness for Criminal Defense Attorneys. *Seattle University Law Review*, 35, 755−768.
70   On mock jury studies showing a small but statistically significant impact of race on the determination of guilt and sentencing, see Mitchell, T. L., Haw, R. M., Pfeifer, J. E., Meissner, C. A. (2005). Racial Bias in Mock Juror Decision-Making: A Meta-Analytic Review of Defendant Treatment. *Law and Human Behavior*, 627−28; Sommers, S. R. & Ellsworth, P. C. (2003) How Much Do We Really Know about Race and Juries? A Review of Social Science Theory and Research, *Chicago-Kent Law Review*, 997−1031.
71   Levinson, J. D. & Young, D. (2010). Different Shades of Bias: Skin Tone, Implicit Racial Bias, and Judgments of Ambiguous Evidence. *West Virginia Law Review*, 307−350.
72   Payne, K. B. (2001). Prejudice and Perception: The Role of Automatic and Controlled Processes in Misperceiving a Weapon. *Journal of Personality and Social Psychology*, 81(2), 181−192. See also Eberhardt, J. L., Goff, P. A., Purdie, V. J., & Davies, P. G. (2004). Seeing Black: Race, Crime, and Visual Processing. *Journal of Personality and Social Psychology*, 87(6), 876−93.
73   Correll, J., Park, B., Judd, C. M., & Wittenbrink, B. (2002). The Police Officer's Dilemma: Using Ethnicity to Disambiguate Potentially Threatening Individuals. *Journal of Personality and Social Psychology*, 83(6), 1314−1329.

Image 2. Examples of images used in video simulated shooter studies

Source: Correll, J., Park, B., Judd, C. M., & Wittenbrink, B. (2002). The Police Officer's Dilemma: Using Ethnicity to Disambiguate Potentially Threatening Individuals. *Journal of Personality and Social Psychology, 83*(6), 1314–1329 (p. 1316).

When researchers conducted this study with a predominantly white group of Denver-based police officers, they found that the officers were less likely than the general public to mistakenly shoot at black unarmed suspects.[74] However, the officers more quickly shot at armed black suspects than armed white suspects. The researchers concluded that while these officers exhibited bias in their speed to shoot, their training reduced bias in their decision to shoot. Another study of police officers from across the United States found that officers exhibited similar reaction time bias towards Latinos relative to whites and Asians.[75]

The conflation of African Americans and Latinos with criminality extends beyond perceptions of individuals: it also shapes impressions of neighborhoods. Residents – particularly whites but also blacks – of neighborhoods with higher proportion of racial minorities are more

74   Correll, J., Park, B., Judd, C. M., Wittenbrink, B., Sadler, M. S., & Keesee, T. (2007). Across the Thin Blue Line: Police Officers and Racial Bias in the Decision to Shoot. *Journal of Personality and Social Psychology*, 92(6), 1006–23.
75   Sadler, M. S., Correll, J., Park, B., & Judd, C. M. (2012). The World Is Not Black and White: Racial Bias in the Decision to Shoot in a Multiethnic Context. *Journal of Social Issues*, 68(2), 286–313.

likely to overestimate their neighborhood's crime rates.[76] Even after accounting for differing crime rates and other measures of disorder, researchers have found that the "percentage [of] young black men is one of the best predictors of the perceived severity of neighborhood crime."[77]

Together, these studies reveal that even white Americans who denounce racism still hold unconscious and unintentional racial biases, associating people of color with criminality. By demonstrating that race distorts perceptions of risk, this research sheds light on the circumstances leading to the deaths of unarmed men and women including Amadou Diallo, Sean Bell, Oscar Grant, Trayvon Martin, Renisha McBride, and Michael Brown.

76   Quillian, L. & Pager, D. (2001). Black Neighbors, Higher Crime? The Role of Racial Stereotypes in Evaluations of Neighborhood Crime. *American Journal of Sociology*, 107(3), 717–67; Sampson, R. J. & Raudenbush, S. W. (2004). Seeing Disorder: Neighborhood Stigma and the Social Construction of "Broken Windows." *Social Psychology Quarterly*, 67(4), 319–342. Whites in neighborhoods with greater racial diversity also overestimate their personal victimization risk, although this may be because they have fewer social ties and experience weaker community cohesion: see Quillian, L. & Pager, D. (2010). Estimating Risk: Stereotype Amplification and the Perceived Risk of Criminal Victimization. *Social Psychology Quarterly*, 73(1), 79–104; Pickett, Chiricos, Golden, & Gertz (2012), note 51 above (pp. 170–1); Wickes, R., Hipp, J. R., Zahnow, R., & Mazerolle, L. (2013). "Seeing" Minorities and Perceptions of Disorder: Explicating the Mediating and Moderating Mechanisms of Social Cohesion. *Criminology*, 51(3), 519–560.
77   Quillian & Pager (2001), note 76 above (p. 747).

IV. RACIAL PERCEPTIONS OF CRIME LINKED TO PUNITIVENESS

Researchers have shown that white Americans who more strongly associate crime with people of color are more likely to support punitive criminal justice policies. When individuals believe that those who commit crime are similar to them, they more readily reflect on the underlying circumstances of the crime and respond with empathy and mercy. But when people perceive a racial gap between themselves and those who commit crime, they are less compassionate and react instead with anger and outrage.

Ted Chiricos and colleagues have demonstrated the link between racial perceptions of crime and punitive policy preferences.[78] In one study, they analyzed a 2002 survey on preferences for policies including "making sentences more severe for all crimes," "executing more murderers," "making prisoners work on chain gangs," "taking away television and recreation privileges from prisoners," and "locking up more juvenile offenders." They found that whites – though not blacks and Hispanics – who attributed higher proportions of violent crime, burglary, or robbery to blacks were significantly more likely to support these punitive policies.[79] This relationship remained statistically significant even when the researchers controlled for other factors related to punitiveness including racial prejudice, conservatism, crime salience, and residence in the South. Another group of researchers found that whites who

> "Public support for punitive juvenile justice policies to some extent represents a desire to control other people's children."

agreed that "African Americans pose a greater threat to public order and safety than other groups" were more likely to hold punitive views than those who did not, and that the same pattern did not hold for blacks.[80] Strong associations of crime with Hispanics have also been linked to greater punitiveness.[81]

To determine whether racial perceptions of crime also impact views of juvenile justice, Chiricos and colleagues analyzed a 2010 national survey.[82] They found that racialized views of youth crime and victimization – in particular, the belief that black youth commit a larger proportion of juvenile crime than whites, or that whites are more likely than blacks to be victims of violent crime – led whites, but not blacks, to support punitive juvenile justice policies. The researchers concluded that "public support for punitive juvenile justice policies to some extent represents a desire to control other people's children."[83] Whites who associate crime with racial minorities therefore support both punitive adult and juvenile justice policies.

Why are whites with strong racial associations of crime more punitive? One likely explanation is that a racial gap between individuals and their conceptions of typical offenders stifles empathy. Lack of "empathetic identification," James Unnever and Francis Cullen

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78   Chiricos, Welch, & Gertz (2004), note 50 above (p. 369).
79   Chiricos, Welch, & Gertz (2004), note 50 above (p. 375–6).
80   Based on 2003 survey: see King, R. D. & Wheelock, D. (2007). Group Threat and Social Control: Race, Perceptions of Minorities and the Desire to Punish. *Social Forces*, 85(3), 1255–1280 (see p.1269 and p. 1276, fn. 20). But note that this relationship is weakened when controlling for how often whites considered blacks to be an economic threat. See also Wheelock, D., Semukhina, O., & Demidov, N. N. (2011). Perceived Group Threat and Punitive Attitudes in Russia and The United States. *British Journal of Criminology*, 51(6), 937–959 (p. 952).
81   Welch, Payne, Chiricos, & Gertz, (2011), note 54 above (p. 831): note that this study did not disaggregate respondents by race.
82   Pickett, J. T. & Chiricos, T. (2012). Controlling Other People's Children: Racialized Views of Delinquency and Whites' Punitive Attitudes Toward Juvenile Offenders. *Criminology*, 50(3), 673–710 (p. 692); Pickett, J. T., Chiricos, T., & Gertz, M. (2014). The Racial Foundations of Whites' Support for Child Saving. *Social Science Research*, 44, 44–59.
83   Pickett & Chiricos (2012), note 82 above (p. 697), referencing Feld, B. C. (1999). *Bad Kids: Race and the Transformation of the Juvenile Court*. New York, NY: Oxford University Press.

have theorized, increases the desire for retaliation, decontextualizes offensive behavior, and decreases capacity for forgiveness.[84] These factors reduce empathetic concern about the hardships of punishment. In a study with Bonnie Fisher, these scholars measured levels of empathy through degree of agreement with statements such as "When I see someone being taken advantage of, I feel kind of protective toward them," "Other people's misfortunes do not usually disturb me a great deal," and "When I see someone treated unfairly, I sometimes don't feel very much pity for them."[85] They found that individuals who were more empathetic were less supportive of capital punishment in part because they were more likely to be politically liberal and racially or ethnically tolerant. But empathy was linked to decreased punitiveness even independent of these other attributes. The authors concluded, "To the extent that people can begin to imagine 'what it must be like' to face the finality and enormity of execution, they are likely to be more reluctant to endorse the imposition of the death penalty as the preferred sanction for offenders."[86]

The weight of the evidence suggests that people with racial associations of crime are more punitive regardless of whether they are overtly racially prejudiced. But studies that have used alternative measures of racial perceptions of crime, or of punitiveness, suggest that overt prejudice plays a stronger role. One study relied on the 1990 and 2000 GSS to determine whether whites who believed that blacks were more violence-prone than whites were more likely to support capital punishment.[87] While respondents with stronger stereotypical associations of blacks and Hispanics with violence were more supportive of the death penalty in both years, this relationship lost its statistical significance in 2000. Instead, a more general measure of racial prejudice was one of the strongest correlates of support for the death penalty in 2000.

Another study examined whether respondents with stronger racial associations of crime – as measured by the 2000 GSS violence-prone question – believed there was too little "spending on halting the rising crime rate."[88] These researchers found that whites who described blacks – but not Hispanics – as more violence-prone were more supportive of greater anti-crime spending, which the researchers argued denoted criminal justice spending. But they found that this pattern was limited to whites who held more prejudicial views of African Americans. It remains unclear, though, how much these findings are products of the measures used in these studies: the problematically worded question about groups being "prone to violence," the narrow measure of death penalty support, and the ambiguously worded question about anti-crime spending.

The more white Americans attribute crime to people of color, the more they support punitive policies for adults and juveniles. Section V examines the factors that shape racial perceptions of crime. Section VI describes other racial differences in views and experiences that contribute to the racial gap in punitiveness.

84   Unnever, J. D. & Cullen, F. T. (2009). Empathetic Identification and Punitiveness: A Middle-Range Theory of Individual Differences. *Theoretical Criminology*, 13(3), 283–312 (p. 287).
85   Unnever, J. D., Cullen, F. T., & Fisher, B. S. (2005). Empathy and Public Support for Capital Punishment. *Journal of Crime and Justice*, 28(1), 1–34 (p. 12).
86   Unnever, Cullen, & Fisher (2005), note 85 above (p. 22).
87   Unnever & Cullen (2012), note 58 above (pp. 530–5). The authors do not state that their study is limited to non-Hispanic whites. For a detailed look at the conditions under which racially stereotyping blacks as violent predict support for the death penalty, see Weber, C. R., Lavine, H., Huddy, L., & Federico, C. M. (2014). Placing Racial Stereotypes in Context: Social Desirability and the Politics of Racial Hostility. *American Journal of Political Science*, 58(1), 63–78.
88   Barkan & Cohn (2005), note 57 above.

V. SOURCES OF RACIAL PERCEPTIONS OF CRIME

Why do white Americans often associate crime with blacks and Hispanics? This section explores three causes. First, racial differences in certain crime rates – resulting from socioeconomic and racial inequalities – provide some basis to the public's racial perceptions of crime. Second, media representations of crime draw on, and contribute to, racial stereotypes. Third, through their statements and policies, policymakers and criminal justice practitioners have deployed their own and reinforced the public's associations of crimes with racial minorities.

A. RACIAL DIFFERENCES IN CRIME RATES

Legacies of overt racism and contemporary practices of willful neglect have divested many black communities of the economic and social resources that act as buffers to criminal offending. In large part because African Americans are more likely to experience concentrated urban poverty, they are more likely to commit certain violent and property crimes – although racial minorities buy and sell drugs at similar rates as whites. Yet racial disparities in criminal behavior fully explain neither the public's racial perceptions of crime, nor the racial disparities in the prison population.

Because of limitations in self-reported data on criminal activity, researchers generally rely on arrest records to measure racial disparities in criminal involvement for violent and property crimes. Comparisons of arrest records with crime victimization surveys have shown that especially for the most serious crimes, the race of those arrested resembles the race of offenders as described by victims.[89] Nationwide arrest records attribute higher rates of violent and property crimes to blacks than whites, though whites still commit the majority of these crimes because of their larger numbers.[90] In 2012, blacks comprised 39% of arrests for violent crimes and 29% of arrests for property crimes, but represented only 13% of the U.S. population.[91] Blacks accounted for 49% of those arrested for the most serious and violent crimes: murder and nonnegligent manslaughter. These data, which do not distinguish by Hispanic ethnicity, depict an overall overrepresentation of blacks among arrestees, which is likely to correspond to their overrepresentation in certain violent and property crimes. Yet as described earlier, whites attribute even higher rates of crime to people of color, and overestimate rates of white victimization.

The disproportionate rate of black crime should not be surprising given that African Americans are far more likely than whites to experience and to live in communities with concentrated disadvantage.[92] But the criminal justice system does not simply mirror these differences in crime rates – it exacerbates them through codified policies and individual discretion. As Michael Tonry has observed, "Although black Americans continue to be overrepresented among arrestees, the degree of overrepresentation has

89   Sampson, R. J. & Lauritsen, J. L. (1997). Racial and Ethnic Disparities in Crime and Criminal Justice in the United States. *Crime and Justice*, 21, 311–374 (pp. 324–330).
90   This statement relies on data that do not distinguish between Hispanic and non-Hispanic whites: Federal Bureau of Investigation (2012). Crime in the United States, 2012. Washington, D.C. Available at: http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2012/crime-in-the-u.s.-2012/tables/43tabledatadecoverviewpdf (Tbl. 43A).
91   "Violent crimes" include: murder and nonnegligent manslaughter, forcible rape, robbery, and aggravated assault. "Property crimes" include: burglary, larceny-theft, motor vehicle theft, and arson. Federal Bureau of Investigation (2012), note 90 above; Humes, K. R., Jones, N. A, & Ramirez, R. R. (2011). Overview of Race and Hispanic Origin: 2010. U.S. Census Bureau. Available at: http://www.census.gov/prod/cen2010/briefs/c2010br-02.pdf.
92   See Sampson & Lauritsen (1997), note 89 above (pp. 333–341); Brown, M. K., Carnoy, M., Duster, T., & Oppenheimer, D. B. (2003). *Whitewashing Race: The Myth of a Color-Blind Society*. Berkeley, CA: University of California Press (pp. 153–159).

been falling for a quarter century."[93] And yet the profile of prisoners has been slow to adjust.[94]

While there are racial differences in violent and property crime rates, the picture is quite different for drug crimes, which account for one-quarter of state prison admissions and almost one-third of federal prison admissions.[95] Whites comprise the majority of drug users and sellers,[96] but were only 30% of the state prison population with drug convictions in 2011.[97] Surveys by the National Institute on Drug Abuse and the Department of Health and Human Services show that both recently[98] and historically,[99] whites, blacks, and Hispanics have used illicit drugs at roughly similar rates, with whites sometimes outpacing people of color. Research also suggests that drug users generally purchase drugs from people of the same race or ethnicity.[100] Thus if drug law violations were equally enforced, prosecuted, and sentenced, the racial profile of drug offenders in the prison population would match that of the general population. But police policies and practices, prosecutorial charging discretion, and sentencing laws have created a schism between who participates in the illicit drug market and who is punished for it.

> If drug laws were equally enforced, prosecuted, and sentenced, the racial profile of drug offenders in the prison population **would match that of the general population.**

Criminologist Alfred Blumstein has estimated the degree to which racial differences in crime rates account for the disproportionate presence of African Americans in prisons.[101] Based on research showing that the racial profile of those arrested for the most serious crimes is a reliable reflection of those who committed these crimes, Blumstein measured how arrestees compared to prisoners for specific crimes. He found that in 1991, blacks were imprisoned for homicide at lower rates than they were arrested: given that homicide is a primarily intra-racial crime, this outcome may be attributable to what Blumstein calls "'victim discounting,' a form of racial discrimination that diminishes the punishment if the victim is black."[102] But as the seriousness of the crime decreased, the racial gap between arrests and prisoners increased in the other direction. Differential arrest rates accounted for the over-representation of blacks in prison by 89% for robbery, 75% for burglary, and 50% for drug crimes.[103] Overall, this approach determined that racial differences in arrests accounted for 76% of the racial disparity in the prison population in 1991.[104] The remainder might be caused by racial bias, as well as other factors including differing criminal histories.[105] Blumstein concluded, "The bulk of

93 Tonry, M. & Melewski, M. (2008). The Malign Effects of Drug and Crime Control Policies on Black Americans. *Crime and Justice*, 37(1), 1−44 (p. 18). Some of the decline in the proportion of black arrests is caused by the growth of the Latino population, see Steffensmeier, D., Feldmeyer, B., Harris, C. T., & Ulmer, J. T. (2011). Reassessing Trends in Black Violent Crime, 1980-2008: Sorting Out the "Hispanic Effect" in Uniform Crime Reports Arrests, National Crime Victimization Survey Offender Estimates, and U.S. Prisoner Counts. *Criminology*, 49(1), 197−251 (pp. 201, 219−222); see also Snyder, H. N. Arrest in the United States, 1980-2009. Bureau of Justice Statistics. Available at: http://www.bjs.gov/content/pub/pdf/aus8009.pdf.
94 Mauer (2013), note 10 above (p. 8, Tbl. 1).
95 Carson & Golinelli (2013), note 4 above (p. 6, Tbl. 4); United States Sentencing Commission (2014). 2013 Sourcebook of Federal Sentencing Statistics. Available at: http://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2013/FigureA.pdf (Figure A).
96 Mauer, M. (2009). The Changing Racial Dynamics of the War on Drugs. Washington, D.C.: The Sentencing Project. Available at: http://www.sentencingproject.org/doc/dp_raceanddrugs.pdf (p. 8, Tbl. 3).
97 Carson, E. A. & Golinelli, D. Prisoners in 2012 - Advance Counts. Bureau of Justice Statistics. Available at: http://www.bjs.gov/content/pub/pdf/p12ac.pdf (p. 11, Tbl. 10).
98 Johnston, L.D., O'Malley, P.M., Bachman, J.G., Schulenberg, J.E. (2012). Monitoring the Future: National Survey Results on Drug Use, 1975-2012. Ann Arbor: The University of Michigan Institute for Social Research. Available at: http://www.monitoringthefuture.org/pubs/monographs/mtf-vol1_2012.pdf (Tbls. 4-5, 4-6, and 4-7); U.S. Department of Health and Human Services (2013). Results from the 2012 Survey on Drug Use and Health: Summary of National Findings. Available at: http://www.samhsa.gov/data/NSDUH/2012SummNatFindDetTables/NationalFindings/NSDUHresults2012.htm#fig2.12 (Figure 2.12).
99 Johnston, L.D., O'Malley, P.M., Bachman, J.G., Schulenberg, J.E. (2013). Demographic Subgroup Trends among Adolescents for Fifty-One Classes of Licit and Illicit Drugs 1975-2012. Ann Arbor: The University of Michigan Institute for Social Research. Available at: http://www.monitoringthefuture.org/pubs/occpapers/mtf-occ79.pdf (Figure 6).
100 Beckett, K., Nyrop, K., Pfingst, L. (2006). Race, Drugs, and Policing: Understanding Disparities in Drug Delivery Arrests. *Criminology*, 44(1), 105−37; Riley, K. J. (1997). *Crack, Powder Cocaine, and Heroin: Drug Purchase and Use Patterns in Six Major U.S. Cities.* National Institute of Justice. Available at: https://www.ncjrs.gov/pdffiles/167265.pdf (pp. 15−16).
101 Blumstein, A. (1993). Racial Disproportionality of U.S. Prison Populations Revisited. *University of Colorado Law Review,* 64, 743−760; Blumstein, A. (1982). On the Racial Disproportionality of United States' Prison Populations. *Journal of Criminal Law and Criminology,* 73, 1259−1281.
102 Blumstein (1993), note 101 above (p. 749).
103 As Blumstein notes, racial disparities in drug arrests are an especially poor proxy for offending patterns and so racial disparities in drug crimes, rather than arrests, likely account for far less than 50% of the disparities among prisoners.
104 See also Langan, P. A. (1986). Racism on Trial: New Evidence to Explain the Racial Composition of Prisons in the United States. *Journal of Criminal Law and Criminology*, 76(3), 666−683.
105 Unwarranted racial disparity in arrests and convictions contributes to racial minorities being more likely to have prior criminal records: see Brown, Carnoy, Duster, & Oppenheimer (2003), note 92 above (pp. 139−147); Mauer, M. (2006). *Race to Incarcerate.* New York, NY: The New Press (pp. 141−2).

the disproportionality [in the criminal justice system] is a consequence of the differential involvement by blacks in the most serious kinds of crime."[106]

Others have updated and qualified Blumstein's conclusion. A replication of his study found that differential arrests accounted for only 61% of the racial disparity in prisons by 2004,[107] though this figure is distorted by the growing Latino population being counted as white in arrest records.[108] Nationwide figures also obscure vast regional variation.[109] Still, the overall conclusion is that racial differences in criminal offending explain a substantial, but incomplete, portion of the racial differences in the prison population for non-drug crimes. If racial differences in crime rates do not fully account for white Americans' racial perceptions of crime, what else is driving these associations?

B. MEDIA PORTRAYALS OF CRIME

"If it bleeds, it leads," goes the saying about local news coverage. But not all spilt blood gets equal attention. Researchers have shown that crime reporting exaggerates crime rates and exhibits both quantitative and qualitative racial biases.[110] This includes a tendency, as described below, to exaggerate rates of black offending and white victimization and to depict black suspects in a less favorable light than whites. Although there is a broad range of media coverage about crime, with some venues and reporters cautious not to promote biased public perceptions, less mindful coverage abounds on television and in print.[111] Given that the public widely relies on mass media as its source of knowledge about crime and crime policy, these disparities have important consequences.[112]

Because of the media's gravitation toward notable crimes and ensuing policy debates, upticks in news media coverage of crime often have little to do with broader crime trends.[113] Drug-related deaths of major figures spurred crisis coverage about drugs in the 1980s, while prominent violent deaths led to an upsurge of violent crime news in the 1990s, even while violent crimes began to decline. Although audiences do not passively receive information, consuming higher levels of television news and nonfictional crime programming is associated with greater fear of crime among some.[114]

Media crime coverage not only increases the salience of crime, it also distorts the public's sense of who commits crime and triggers biased reactions. By over-representing whites as victims of crimes perpetrated by people of color, crime news delivers a double blow to white audiences' potential for empathetic understanding of racial minorities. This focus at once exaggerates black crime while downplaying black victimization. Homicide, for example, is overwhelmingly an intra-racial crime involving men (see Figure 9 and Table 1). But media accounts often

Figure 9. Homicides by race of offender and victim, 1980–2008
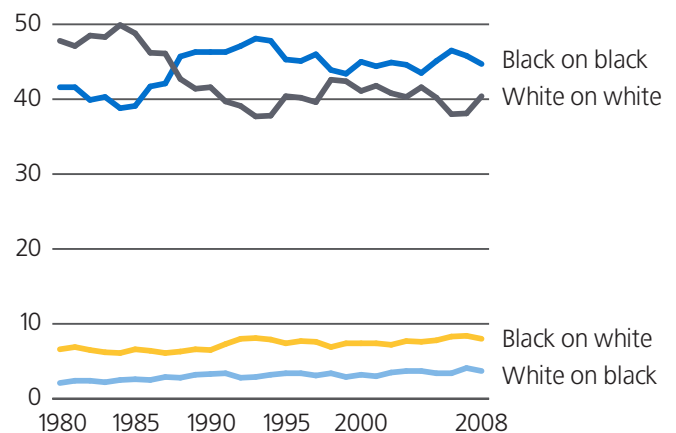
Source: Cooper. A. & Smith, E. L. Homicide Trends in the United States, 1980-2008. Bureau of Justice Statistics. Available at: http://www.bjs.gov/content/pub/pdf/htus8008.pdf (p. 13, Figure 19).

106 Blumstein (1993), note 101 above (p. 759).
107 Tonry & Melewski (2008), note 93 above (p. 18).
108 Steffensmeier, Feldmeyer, Harris, & Ulmer (2011), note 93 above (pp. 201, 219–222).
109 See for example, Crutchfield, R. D., Bridges, G. S., & Pitchford, S. R. (1994). Analytical and Aggregation Biases in Analyses of Imprisonment: Reconciling Discrepancies in Studies of Racial Disparity. *Journal of Research in Crime and Delinquency,* 31, 166–182.
110 Dorfman, L. & Schiraldi, V. (2001). Off Balance: Youth, Race & Crime in the News. Washington, D.C.: Building Blocks for Youth. Available at: http://www.bmsg.org/sites/default/files/bmsg_other_publication_off_balance.pdf (pp. 7–22).
111 While this section focuses on news media, scholars have also documented biases in entertainment media – particularly in dramatizations of crime and the criminal justice system: see Cavender, G. (2004). Media and Crime Policy A Reconsideration of David Garland's The Culture of Control. *Punishment and Society*, 6(3), 335–348; Beckett, K. & Sasson, T. (2004). *The Politics of Injustice: Crime and Punishment in America*. Thousand Oaks, Calif.: Sage Publication (Chapter 5).
112 Warr, M. (2000). Fear of Crime in the United States: Avenues for Research and Policy. *Criminal Justice 2000: Measurement and Analysis of Crime and Justice*, Volume 4, 451–489. National Institute of Justice (pp. 466–7).
113 Chiricos, T., Eschholz, S., & Gertz, M. (1997). Crime, News and Fear of Crime: Toward an Identification of Audience Effects. *Social Problems*, 44(3), 342–357; Beckett & Sasson (2004), note 111 above (pp. 74–5).
114 Eschholz, S., Chiricos, T., Gertz, M., Problems, S., & August, N. (2003). Television and Fear of Crime: Program Types, Audience Traits, and the Mediating Effect of Perceived Neighborhood Composition. *Social Problems*, 50(3), 395–415; Chiricos, Eschholz, & Gertz (1997), note 113 above; Kort-Butler, L. A & Sittner Hartshorn, K. J. (2011); Watching the Detectives: Crime Programming, Fear of Crime, and Attitudes About the Criminal Justice System. *The Sociological Quarterly*, 52(1), 36–55.

Table 1. Homicide offenders and victims by sex, 1980–2008

Victim/Offender Relationship	Percent
Male offender/male victim	67.8%
Male offender/female victim	21.0%
Female offender/male victim	9.0%
Female offender/female victim	2.2%

Note: Percentages are based on the 63.1% of homicides from 1980 through 2008 for which the victim/offender relationships were known.

Source: Cooper. A. & Smith, E. L. Homicide Trends in the United States, 1980-2008. Bureau of Justice Statistics. Available at: http://www.bjs.gov/content/pub/pdf/htus8008.pdf (p. 9, Tbl. 4).

Racial distortions are pervasive in crime news. A study in Los Angeles found that 37% of the suspects portrayed on television news stories about crime were black, although blacks made up only 21% of those arrested in the city.[118] Another study found that whites represented 43% of homicide victims in the local news, but only 13% of homicide victims in crime reports.[119] And while only 10% of victims in crime reports were whites who had been victimized by blacks, these crimes made up 42% of televised cases.[120] These disparities exist nationwide and are greatest when the victim's race is taken into consideration.[121]

> Newsworthiness is not a product of how representative or novel a crime is, but rather how well it can be "scripted using stereotypes grounded in **White racism and White fear of Black crime."**

portray a world overrepresented by black, male offenders and white, female victims. One study of how Columbus, Ohio's major newspaper reported on the city's murders – which were predominantly committed by and against black men – examined whether unusual or typical cases were considered newsworthy.[115] The researcher found that journalists gravitated to unusual cases when selecting victims (white women) and to typical cases when selecting perpetrators (black men). Yet reporters did not choose to cover the most infrequent murders, of blacks by whites or of white men by white women. This peculiar focus suggests that newsworthiness is not a product of how representative or novel a crime is, but rather how well it can be "scripted using stereotypes grounded in White racism and White fear of Black crime."[116] Researchers have found similar selection bias in coverage of Hispanic suspects and non-Hispanic victims on television news.[117]

Crime coverage also betrays subtler racial differences. A study of television news found that black crime suspects were presented in more threatening contexts than whites: black suspects were disproportionately shown in mug shots and in cases where the victim was a stranger.[122] Black and Latino suspects were also more often presented in a non-individualized way than whites – by being left unnamed – and were more likely to be shown as threatening – by being depicted in physical custody of police.[123] Blacks and Hispanics were also more likely to be treated aggressively by police officers on reality-based TV shows, including *America's Most Wanted* and *Cops*.[124] Mass media are therefore a major contributor to Americans' misconceptions about crime, with journalists

115 Lundman, R. J. (2003). The Newsworthiness and Selection Bias in News About Murder: Comparative and Relative Effects of Novelty and Race and Gender Typifications on Newspaper Coverage of Homicide. *Sociological Forum*, 18(3), 357–386; see also Pritchard, D. & Hughes, K. D. (1997). Patterns of Deviance in Crime News. *Journal of Communication*, 47(3), 49–67.
116 Lundman, (2003), note 115 (p. 361).
117 Chiricos, T. & Eschholz, S. (2002). The Racial and Ethnic Typification of Crime and the Criminal Typification of Race and Ethnicity in Local Television News. *Journal of Research in Crime and Delinquency*, 39(4), 400–420.
118 Dixon, T. L. & Linz, D. G. (2000). Overrepresentation and Underrepresentation of African Americans and Latinos as Lawbreakers on Television News. *Journal of Communication,* 50(2), 131–54; Gilliam, F. D. & Iyengar, S. (2000). Prime Suspects: The Influence of Local Television News on the Viewing Public. *American Journal of Political Science,* 44(3), 560–73; Gilliam, F. D., Iyengar, S., Simon, A., & Wright, O. (1996). Crime in Black and White: The Violent, Scary World of Local News. *Harvard International Journal of Press/Politics,* 1(3), 6–23; Peffley, M., Shields, T., & Williams, B. (1996). The Intersection of Race and Crime in Television News Stories: An Experimental Study. *Political Communication,* 13(1), 309–27.
119 Dixon, T. L. & Linz, D. G. (2000). Race and the Misrepresentation of Victimization on Local Television News. *Communication Research*, 27(5), 547–73.
120 Romer, D., Jamieson, K. H., & de Coteau, N. J. (1998). The Treatment of Persons of Color in Local Television News: Ethnic Blame Discourse or Realistic Group Conflict? *Communication Research,* 25(3), 268–305.
121 Dixon, T. L., Azocar, C. L., & Casas, M. (2003). The Portrayal of Race and Crime on Television Network News. *Journal of Broadcasting and Electronic Media,* 47, 498–523 (pp. 512–5); Entman, R. (1992) Blacks in the News: Television, Modern Racism, and Cultural Change. *Journalism Quarterly,* 69(2), 341–61; Entman, R. & Rojecki, A. (2000). *The Black Image in the White Mind: Media and Race in America*. Chicago, IL: University of Chicago Press; Gilens, M. (1996). Race and Poverty in America: Public Misperceptions and the American News Media. *Public Opinion Quarterly,* 60(4), 515–41; Reeves, J. L. & Campbell, R. (1994). *Cracked Coverage: Television News, the Anti-Cocaine Crusade, and the Reagan Legacy*. Durham, NC: Duke University Press.
122 Chiricos & Eschholz (2002), note 117 above.
123 Entman & Rojecki (2000), note 121 above.
124 Oliver, M. B. (1994). Portrayals of Crime, Race, and Aggression in "Reality-Based" Police Shows: A Content Analysis. *Journal of Broadcasting & Electronic Media*, 179–192.

and producers apparently acting based on their own or expectations of their audiences' stereotypes about crime.

C. POLICYMAKERS

Elected officials and candidates do more than respond to public preferences for harsh punishment. Through their words and work, they also shape public salience of crime and its racial associations.[125] One study revealed that federal and state officials' public statements about crime and drugs, rather than the actual incidence of crime or drug use, significantly influenced public concern with these issues between the 1960s and 1990s.[126]

George H. W. Bush's publicization of Willie Horton during his successful presidential bid against Massachusetts governor Michael Dukakis in 1988 is a famous example of how political discourse influences public views about crime and crime policy. Through ads and fliers supporting Bush's campaign, Bush's speeches, and media coverage, the public learned that Horton, an African American man who had been sentenced to life without parole for first-degree murder in Massachusetts, had raped a white woman and assaulted her white fiancé while temporarily released under the state's weekend furlough program.[127] Although the Bush campaign never overtly mentioned race, its frequent references to Horton prompted repeated media portrayals of his mug shot. The Dukakis team, Reverend Jesse Jackson, and others criticized the Bush campaign for flaring racial fears. Susan Estrich, Dukakis' campaign manager, told a reporter, "There is no stronger metaphor for racial hatred in our country than the black man raping the white woman."[128] Bush and his supporters denied that they were making coded racial appeals. But Tali Mendelberg's analysis of public opinion during this episode and experimental research has shown

> "Survey data have clearly been telling us, for some time now, that the public is not as conservative as policy makers think them to be."

that the campaign effectively activated racial prejudice.[129] The Horton case "was saturated with racial meaning," Mendelberg writes, and was especially effective because it was "very much a deniable play of the race card."[130]

Messaging is only one means by which policymakers contribute to a racialized understanding of crime: policies leading to the disproportionate incarceration of people of color are another. Many apparently race-neutral criminal justice policies collide with broader socioeconomic patterns to have a disparate racial impact. For example, drug-free school zone laws mandate sentencing enhancements for people caught selling drugs near school zones. The expansive geographic range of these zones coupled with high urban density has disproportionately affected residents of urban areas and particularly those in high-poverty areas, who are largely people of color.[131] Other laws with disparate racial impact include hefty mandatory minimum sentences for drugs for which people of color are disproportionately arrested and charged, restrictive admissions criteria for diversion programs and alternative courts, and habitual offender laws that disproportionately affect people of color because they are more likely to have criminal records.

Policymakers not only help to shape public opinion, they sometimes misunderstand or are unresponsive to the public's preferences. Elected officials sometimes overestimate public support for punitive policies. A study conducted during the peak of the crack epidemic found that Michigan policymakers estimated that 12% of the public supported alternative sentencing in 1985, when the actual rate was 66%.[132] Policymakers are also at times immune to public support for less punitive policies. Thus despite decreasing punitive sentiment among the public

125 Enns (Forthcoming), note 11 above; Nicholson-Crotty, Peterson, & Ramirez (2009), note 11 above.
126 Beckett, K. (1994). Setting the Public Agenda: "Street Crime" and Drug Use in American Politics. *Social Problems*, 41(3), 425–447.
127 Simon, R. (1990). How A Murderer And Rapist Became The Bush Campaign's Most Valuable Player. *The Baltimore Sun*. Available at: http://articles.baltimoresun.com/1990-11-11/features/1990315149_1_willie-horton-fournier-michael-dukakis; Love, K. (1988). Bush Backers Have Horton Victims Speak. *The Los Angeles Times*. Available at: http://articles.latimes.com/1988-10-08/news/mn-2925_1_willie-horton.
128 Rosenthal, A. (1988). Bush Campaign Called 'Racist.' *Pittsburgh Post-Gazette*. Available at: http://news.google.com/newspapers?nid=1129&dat=19881024&id=gNRRAAAAIBAJ&sjid=2W0DAAAAIBAJ&pg=5191,7433713.
129 Mendelberg, T. (1997). Executing Hortons: Racial Crime in the 1988 Presidential Campaign. *Public Opinion Quarterly,* 61, 134–57; Mendelberg, T. (2001). *The Race Card: Campaign Strategy, Implicit Messages, and the Norm of Equality*. Princeton, NJ: Princeton University Press; Jamieson, K. H. (1992). *Dirty Politics: Deception, Distraction, and Democracy*. New York, NY: Oxford University Press.
130 Mendelberg (1997), note 129 above (p. 152).
131 Porter, N. & Clemons, T. (2013). Drug-Free Zone Laws: An Overview of State Policies. Washington, D.C.: The Sentencing Project. Available at: http://sentencingproject.org/doc/publications/sen_Drug-Free%20Zone%20Laws.pdf.
132 Clark, P. M. 1985. Perceptions of Criminal Justice Surveys, Executive Summary. Lansing: Michigan Prison and Jail Overcrowding Project, cited in Peffley & Hurwitz (2010), note 11 above.

since the late 1990s (see Figure 1 above), policymakers have been slow and reluctant to implement significant reforms. In Pennsylvania, the divide between policymakers and the public – with over 80% of the public supporting investment in early intervention rather than prison construction to reduce crime – has led one group of researchers to conclude: "Survey data have clearly been telling us, for some time now, that the public is not as conservative as policy makers think them to be."[133]

D. CRIMINAL JUSTICE PROFESSIONALS

Through official procedures and individual discretion, criminal justice practitioners contribute to the racial imbalance of the justice system. From police officers' selection of whom to stop and search, judges' and administrators' bail determinations, prosecutors' charging and plea bargaining decisions, to parole board recommendations about whom to release – each stage of the criminal justice system is affected by policies and discretion that often unintentionally disfavor low-income individuals and people of color. The resulting racial disparities in arrests and correctional supervision reinforce the public's racialized perceptions of crime.

Police tactics that cast a wide net in neighborhoods and on populations associated with high crime rates disproportionately affect racial minorities. Broadly surveilling neighborhoods that are considered "hot spots" of criminal activity and disproportionately using "stop, question, and frisk" tactics on young men of color have led to their higher arrest rates even for crimes that are not racially patterned. For example, a recent study by the American Civil Liberties Union found that African Americans were 3.7 times more likely to be arrested for marijuana possession than whites in 2010, despite similar

> Prosecutors are more likely to charge people of color than whites with crimes that carry heavier sentences under mandatory minimum and habitual offender laws.

Figure 10. Racial disparities in marijuana use in past month and marijuana possession arrests, 2010

Usage rates

1.3

Blacks used marijuana at 1.3 times the rate of whites.

Arrest rates

3.7
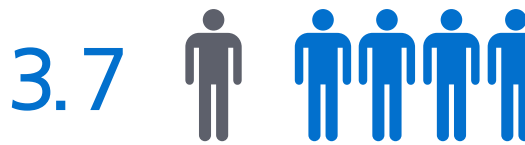
Blacks were arrested for marijuana possession at 3.7 times the rate of whites.

Source: Edwards, E. Bunting, W. Garcia, L. (2013). The War on Marijuana in Black and White. New York, NY: American Civil Liberties Union. Available at: https://www.aclu.org/files/assets/1114413-mj-report-rfs-rel1.pdf (p. 47); U.S. Department of Health and Human Services (2011).Results from the 2010 Survey on Drug Use and Health: Detailed Tables. Available at: http://www.samhsa.gov/data/nsduh/2k10NSDUH/tabs/Sect1peTabs1to46.htm (Tbl. 1.28B).

rates of drug use (see Figure 10).[134] This outcome stems from formal police policies and, as will be discussed in the following section, from implicit bias affecting officers' discretion.

Differential prosecutorial charging follows differential arrest rates. Prosecutors are more likely to charge people of color than whites with crimes that carry heavier sentences under mandatory minimum and habitual offender laws. Federal prosecutors are twice as likely to charge black defendants with offenses that carry mandatory minimum sentences than otherwise-similar whites.[135] State prosecutors are more likely to charge black rather than comparable white defendants under habitual offender laws.[136] These disparities indicate

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133 Sims, B. & Johnson, E. (2004). Examining Public Opinion about Crime and Justice: A Statewide Study. *Criminal Justice Policy Review*, 15(3), 270–293 (pp. 284, 290).
134 Edwards, E. Bunting, W. Garcia, L. (2013). The War on Marijuana in Black and White. New York, NY: American Civil Liberties Union. Available at: https://www.aclu.org/files/assets/1114413-mj-report-rfs-rel1.pdf.
135 Starr, S. B. & Rehavi, M. M. (2013). Mandatory Sentencing and Racial Disparity: Assessing the Role of Prosecutors and the Effects of. *The Yale Law Journal*, 123(2), 2–80.
136 Crawford, C., Chiricos, T., & Kleck, G. (1998). Race, Racial Threat, and Sentencing of Habitual Offenders. *Criminology*, 36(3), 481–512.

that mandatory minimum sentencing did not eliminate discretion in sentencing, but shifted it instead from judges to prosecutors.

In setting bail terms, sentences, or departing from sentencing guidelines, judges often favor whites over racial minorities, and wealthier defendants over the disadvantaged. A growing proportion of pre-trial release requires money bond,[137] and blacks and Latinos are more likely than whites to be denied bail or to be imposed a bond that they cannot afford.[138] Racial minorities are often assessed to be higher safety or flight risks because of their lower socioeconomic status, criminal records, and because of their race. Pre-trial detention increases the odds that defendants will accept less favorable plea deals.

Judges are also more likely to sentence people of color than whites to prison and jail and to impose longer sentences, even after accounting for differences in crime severity, criminal history, and educational level.[139] The race penalty is harshest for certain categories of people and offenses: it particularly affects men and the young, and is more pronounced for less serious offenses.[140]

Through codified practices and use of discretion, criminal justice professionals contribute to the overrepresentation of people of color in the correctional population. These biases affect not only the work of police officers, prosecutors, and judges, but also defense attorneys[141] and juvenile probation officers.[142] The resulting overrepresentation of people of color in prisons and jails helps to reinforce the public's racial perceptions of crime.

137 Cohen, T. H. & Reaves, B. A. (2007). Pretrial Release of Felony Defendants in State Courts. Bureau of Justice Statistics Special Report. Available at: https://www.accredited-inc.com/pdf/summaries/BJS-Special-Report-on-Pretrial-Release.pdf.
138 Jones, C. E. (2013). "Give Us Free": Addressing Racial Disparities in Bail Determinations. *New York University Journal of Legislation and Public Policy*, 16(4), 919–62. Available at: http://www.nyujlpp.org/wp-content/uploads/2014/01/Jones-Give-Us-Free-16nyujlpp919.pdf.
139 See for example, Steffensmeier, D. & Demuth, S. (2000). Ethnicity and Sentencing Outcomes in U.S. Federal Courts: Who is Punished More Harshly? *American Sociological Review*, 65(5), 705–729; Steffensmeier, D. & Demuth, S. (2001). Ethnicity and Judges' Sentencing Decisions: Hispanic-Black-White Comparisons. *Criminology*, 39(1), 145–178; Spohn, S. C. (2000). Thirty Years of Sentencing Reform: The Quest for a Racially Neutral Sentencing Process. *Criminal Justice*, 3, 427–501.
140 Steffensmeier, D., Ulmer, J., & Kramer, J. (1998). The Interaction of Race, Gender, and Age in Criminal Sentencing: The Punishment Cost of Being Young, Black, and Male. *Criminology*, 36(4), 763–798.
141 Eisenberg, T. & Johnson, S. L. (2004). Implicit Racial Attitudes of Death Penalty Lawyers. *Cornell Law Faculty Publications*, Paper 353, 1539–1556.
142 Bridges, G. S. & Steen, S. (1998). Racial Disparities in Official Assessments of Juvenile Offenders: Attributional Stereotypes as Mediating Mechanisms. *American Sociological Review*, 63(4), 554–570.

VI. PUNITIVENESS LINKED TO OTHER RACIAL GAPS IN VIEWS AND EXPERIENCES

Researchers have identified several other factors beyond racial perceptions of crime that explain why white Americans are more punitive than blacks and Latinos. First, whites have fewer and more positive encounters with the police and courts relative to racial minorities. Second, some whites harbor and express overt racial prejudice, which is strongly linked to punitive sentiment. Finally, white Americans are more likely than African Americans to attribute criminal behavior to individual failure, rather than to contextual causes. These factors lead whites to perceive the criminal justice system as legitimate while limiting their ability to "empathetically identify" with people who have broken the law.[143] African Americans – who hold little overt anti-black prejudice, are less trusting of the criminal justice system, and are more likely to recognize structural causes of crime – more often empathize with people accused and convicted of crime, and are therefore less punitive than whites.

A. WHITES' LIMITED AND FAVORABLE CRIMINAL JUSTICE CONTACT

A 2013 Gallup survey revealed that while over two-thirds of blacks believed that the American justice system was biased against blacks, only one-quarter of whites agreed.[144]

Racial differences in personal encounters with the police and courts, and familiarity with the experiences of others through social networks, have polarized perceptions of the justice system. Whites have less frequent encounters with the criminal justice system than African Americans and Latinos. And when whites do encounter the police and courts, their experiences are often qualitatively different from those of people of color. These differences contribute to whites' positive views of these institutions and greater reliance on them for crime control.

Lifetime chances of imprisonment are one measure of the differing rates of exposure to the criminal justice system. Bruce Western has determined that "prison has become commonplace for African American men born since the late 1960s," with more than 20% of black men in that generation experiencing incarceration by their mid-30s.[145] The comparable rate for whites is 3%. Consider next the chances of being arrested. A recent study found that although a high proportion of white men (38%) reported having been arrested by age 23, the rate was still higher for African Americans (49%).[146] And finally, consider police stops. As discussed below, police officers are more likely to make discretionary traffic stops, to conduct searches, and to rely on physical force against

143 Unnever & Cullen (2009), note 84 above (p. 286).
144 Newport, F. (2013). Gulf Grows in Black-White Views of U.S. Justice System Bias. Gallup. Available at: http://www.gallup.com/poll/163610/gulf-grows-black-white-views-justice-system-bias.aspx. Similarly, Pew's 2013 survey found that seven-in-ten blacks and one-third of whites said that blacks are treated less fairly than whites in their dealings with the police while 68% of blacks and 27% of whites said blacks are not treated as fairly as whites in the courts: see Pew Research Center (2013). King's Dream Remains an Elusive Goal; Many Americans See Racial Disparities. Washington, D.C. Available at: http://www.pewsocialtrends.org/2013/08/22/kings-dream-remains-an-elusive-goal-many-americans-see-racial-disparities/.
145 Western (2006), note 3 above (pp. 25–26); see also Bonczar, T. P. (2003). Prevalence of Imprisonment in the U.S. Population, 1974-2001. Bureau of Justice Statistics. Available at: http://www.bjs.gov/content/pub/pdf/piusp01.pdf.
146 Brame, R., Bushway, S. D., Paternoster, R., & Turner, M. G. (2014). Demographic Patterns of Cumulative Arrest Prevalence by Ages 18 and 23. *Crime & Delinquency*, 60(3), 471–486.

people of color. While some of these disparities may be due to differences in suspect behavior, a detailed look at the data indicates that bias plays a key role.

Traffic stops are a domain of civil law that can lead to criminal charges. While the frequency of stops has not differed significantly by race in recent years, the causes and outcomes of stops have. In 2011, blacks were 30% more likely than whites and Hispanics to report a recent traffic stop, though this disparity has faded in some recent years.[147] Officers' stated reasons for making a stop differed significantly by the driver's race. While half of traffic stops for whites were for speeding, the rate for blacks and Hispanics was under 40%, meaning that racial minorities were more frequently stopped for other reasons. A closer look at those reasons suggests that the police relied more on discretion to stop people of color: blacks and Hispanics were significantly more likely than whites to be stopped for a record check (14.0%, 9.7%, and 9.0% respectively), for a vehicle defect (19.0%, 16.5%, and 12.7% respectively), or for no reason at all (4.7%, 3.3%, and 2.6% respectively).[148] These national statistics also obscure staggering disparities in some jurisdictions.[149]

Charles Epp and colleagues conducted a study of police stops between 2003 and 2004 in Kansas City, a nationally representative metropolitan area. [150] The researchers distinguished between traffic-safety stops (reactive stops used to enforce traffic laws or vehicle codes) and investigatory stops (proactive stops used to investigate drivers deemed suspicious). They found that rates of traffic-safety stops did not differ by the driver's race, but rates of investigatory stops did, and did so significantly.

> Traffic-safety stops, the authors conclude, are based on "how people drive," whereas investigatory stops are based on "how they look."

Among drivers under 25 years old, 28% of black men had experienced an investigatory traffic stop, as had 17% of black women, 13% of white men, and 7% of white women.[151] While older age reduced the likelihood of experiencing these stops, it did not diminish the racial gap. Consequently, "Black men must reach age 50 years or older to have the same likelihood of being stopped for an investigatory reason as white men under age 25."[152] Epp and colleagues also found that class differences mattered but did not fully account for the racial disparity. Drivers of lower-valued cars experienced investigatory stops more frequently than those in higher-valued cars. But black men and women under age 40 were over twice as likely as their white counterparts to experience investigatory stops for both the highest and lowest valued cars.[153] Traffic-safety stops, the authors conclude, are based on "how people drive," whereas investigatory stops are based on "how they look."[154]

Nationwide surveys also uncover vast racial differences in outcomes of traffic stops. Once pulled over, blacks and Hispanics were three times as likely as whites to be searched (6% and 7% versus 2%)[155] and blacks were twice as likely as whites to be arrested during a traffic stop.[156] Police officers' greater reliance on discretion when stopping racial minorities suggests that differences in drivers' behavior alone are unlikely to account for these disparities.

Racial disparities in the causes, rates, and outcomes of traffic stops contribute to marked differences in drivers' outlooks about their personal experiences. Among whites who were pulled over, 84% believed that the police had a legitimate reason for doing so, in contrast to 74% of Hispanics and 67% of blacks.[157] Traffic stop trends help

147 Langton, L. & Durose, M. (2013). Police Behavior during Traffic and Street Stops, 2011. Bureau of Justice Statistics. Available at: http://www. bjs.gov/content/pub/pdf/pbtss11.pdf (p. 3); Eith, C. & Durose, M. R. (2011). Contacts Between Police and the Public, 2008. Bureau of Justice Statistics. Available at: http://www.bjs.gov/content/pub/pdf/cpp08.pdf (p. 7).
148 Langton & Durose (2013), note 147 above (p. 4).
149 Cole, D. (1999) No Equal Justice: Race and Class in the Criminal Justice System. New York: The New Press (pp. 34–38).
150 Epp, C. R., Maynard-Moody, S., & Haider-Markel, D. P. (2014). Pulled Over: How Police Stops Define Race and Citizenship. Chicago, IL: The University of Chicago Press (pp. 6–9, 59). Based on respondents' reports of the officer's reasons for the stop, the researchers defined traffic-safety stops to include: speeding at greater than 7 miles per hour, suspicion of driving under the influence of drugs or alcohol, running a red light, reckless driving, and random roadblock checks for driving under the influence. Investigatory stops were defined to include: failure to signal a turn or lane change, malfunctioning light, driving too slowly, stopping too long, expired license tag, check for valid license or to conduct warrant check, and no justification given for the stop. See also Epp, C. & Maynard-Moody, S. (2014). Driving While Black. Washington Monthly. Available at: http://www. washingtonmonthly.com/magazine/january_february_2014/ten_miles_square/driving_while_black048283.php.
151 Epp, Maynard-Moody, & Haider-Markel (2014), note 150 above (p. 67). Black respondents viewed traffic safety stops as legitimate but were critical of investigatory stops. See also Epp & Maynard-Moody (2014), note 150 above.
152 Epp, Maynard-Moody, & Haider-Markel (2014), note 150 above (p. 67)
153 Epp, Maynard-Moody, & Haider-Markel (2014), note 150 above (p. 69).
154 Epp, Maynard-Moody, & Haider-Markel (2014), note 150 above (p. 64).
155 Langton & Durose (2013), note 147 above (p. 9); see also Epp, Maynard-Moody, & Haider-Markel (2014), note 150 above (Chapter 4).
156 Eith & Durose (2011), note 147 above (p. 9).
157 Langton & Durose (2013), note 147 above (p. 4).

to explain why people of color are more likely to believe that the police have discriminated against them because of their race: one of every three African Americans reported being treated unfairly by the police because of their race, whereas closer to only one of ten whites reported unfair treatment for any reason at all.[158] Researchers have shown similar patterns with youth. In Chicago, black high school students were more likely to have police contact than Latinos, who were more likely than whites.[159] Students with more police contact were more likely to perceive the criminal justice system as unjust.

Perceptions of police brutality – arising from both personal experience and awareness of others' experiences – also differ significantly by race. Several surveys conducted between 2002 and 2008 have shown that Hispanics were up to twice as likely, and blacks were up to three times as likely as whites to experience physical force or its threat during their more recent contact with the police.[160] Given that most people exposed to force saw it as excessive, and at similar rates across races, racial minorities more frequently reported experiencing excessive force. More broadly, when a 1999 Gallup survey asked Americans about perceptions of police brutality in their neighborhoods, 58% of non-whites believed police brutality took place in their area, in contrast to only 35% of whites.[161]

Racial differences in criminal justice experiences have polarized perceptions of fairness in the justice system, and assessments of its equal protection. Mark Peffley and Jon Hurwitz observe that "being treated unfairly by the police is associated with sharp decreases in appraisals of system fairness."[162] They also show that evaluations of the police and criminal justice system are based not only on personal experiences, but also on "vicarious experiences" – the experiences of those in one's community.[163] These racial differences lead to the majority of blacks describing

the justice system as discriminatory and the majority of whites rejecting this characterization (see Figure 11).[164]

Similarly, a 2002 survey found that while three-quarters of blacks and half of Hispanics expressed that the police treated blacks and Hispanics worse than whites in their city, three-quarters of whites stated that the police treated all of these groups equally.[165]

Black and white Americans' conflicting evaluations of the criminal justice system also extend to their differing explanations for African Americans' higher rates of arrest and incarceration. White Americans more often attribute this disparity to higher rates of crime among blacks and to lack of respect for authority among black youth; black respondents more often point to a biased police force and justice system.[166] Whites are also more likely to see disparate police treatment of blacks as rational discrimination given differences in crime rates, whereas

Figure 11. Respondents who think the American justice system is biased against black people, 1993–2013

68%   67%   68%   Blacks

33%   32%   Whites
              25%

1993   2008   2013
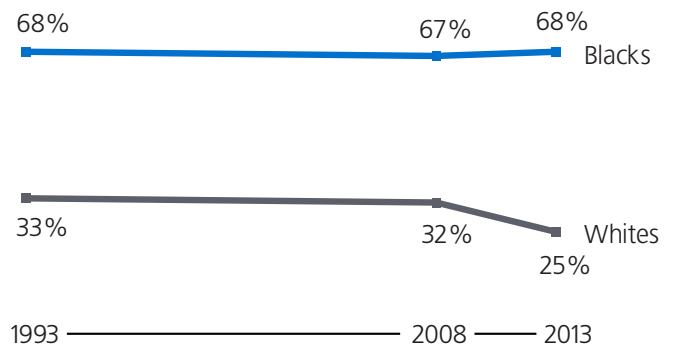
Source: Newport, F. (2013). Gulf Grows in Black-White Views of U.S. Justice System Bias. Gallup. Available at: http://www.gallup.com/poll/163610/gulf-grows-black-white-views-justice-system-bias.aspx.

158 Peffley & Hurwitz (2010), note 11 above (pp. 41–2); Similarly, a 1999 Gallup survey found that blacks are nearly twice as likely as whites to report personal unfair treatment by the police (43% versus 24%, respectively), and nearly four times as likely to report experiencing unfair police treatment because of their race (34% versus 9%, respectively): Gillespie, M. (1999). One Third of Americans Believe Police Brutality Exists in Their Area. Gallup. Available at: http://www.gallup.com/poll/4003/one-third-americans-believe-police-brutality-exists-their-area.aspx.
159 Hagan, J., Shedd, C., & Payne, M. R. (2005). Race, Ethnicity, and Youth Perceptions of Criminal Injustice. American Sociological Review, 70, 381–407.
160 Eith & Durose (2011), note 147 above (pp. 6, 12).
161 Gillespie (1999), note 158 above; See also Peffley & Hurwitz (2010), note 11 above (p. 43) for black-white differences in other measures of disparate treatment in the criminal justice system.
162 Peffley & Hurwitz (2010), note 11 above (pp. 92, 124, 132); see also Weitzer, R. & Tuch, S. A. (2005). Racially Biased Policing: Determinants of Citizen Perceptions. Social Forces, 83(3), 1009–1030.
163 Peffley & Hurwitz (2010), note 11 above (pp. 42f.); see also Klein, E. (2013). White People Believe the Justice System is Color Blind. Black People Really Don't. The Washington Post. Available at: http://www.washingtonpost.com/blogs/wonkblog/wp/2013/07/22/white-people-believe-the-justice-system-is-color-blind-black-people-really-dont/.
164 Newport (2013), note 144 above; Pew Research Center (2013), note 144 above.
165 Weitzer & Tuch (2005), note 162 above (p. 1017).
166 Peffley & Hurwitz (2010), note 11 above (pp. 87–88, 170–2, 178–9) see also Unnever, J. D. (2008). Two Worlds Far Apart: Black-White Differences in Beliefs About Why African-American Men Are Disproportionately Imprisoned. Criminology, 46(2), 511–538 (pp. 523) and note that he finds that while African Americans are more likely than whites to attribute high rates of black incarceration to structural factors and bias, they are also more likely to attribute this to a problem with morals and parenting.

blacks see it as unjustifiable because it leads to law-abiding individuals having to confront a "presumption of wrongdoing."[167] As a young black man interviewed in one study observed: "When black people walk with our hands in our pockets, we look like we're up to something. When a white man walk with his hands [in his pockets] we know he cold."[168] Another young black man stated: "Always assuming the worst when it's someone of color."[169]

Whites' experiences with the criminal justice system – which are both less frequent and less frequently perceived as unjust than the experiences of racial minorities – help to explain whites' greater trust in these institutions to address crime. Based on personal and vicarious experiences, people of color are more likely to experience greater use of discretion in police stops, more intensive investigation during these stops, and more frequent use of physical force. These experiences lead many to believe that the criminal justice system is biased, violent, and illegitimate. But whites' personal exposure and indirect observations bolster their view of these institutions as legitimate and effective.

> "When black people walk with our hands in our pockets, we look like we're up to something. When a white man walk with his hands [in his pockets] we know he cold."

B. RACIAL PREJUDICE

Overt racial prejudice is another major reason why whites support more punitive policies than blacks. Most white Americans no longer endorse traditional forms of prejudice associated with the era of Jim Crow racism – overt beliefs about the biological inferiority of blacks and support for segregation and discrimination. As Lawrence Bobo has observed, "The single clearest trend shown in studies of racial attitudes has involved a steady and sweeping movement toward general endorsement of the principles of racial equality and integration."[170] Bobo and his colleagues have illustrated this point by noting that in 1942, 68% of white Americans supported school segregation, but only 7% did so by 1972. In 1944, 55% of whites thought whites should be given preference

in job openings, but only 3% expressed this opinion in 1972 – such a low rate that surveyors stopped asking this question in future years.[171] Surveys also show slower-to-rise but eventually overwhelming support for school integration and lower but rising rates of support for interracial romantic relationships. But as Bobo and colleagues establish, Jim Crow racism has been replaced by a "kinder, gentler antiblack ideology," which they label "laissez-faire racism."[172]

This modern form of racism, according to Bobo and co-authors, includes persistent negative stereotypes of blacks based on culture rather than biology, individualistic rather than structural accounts of racial inequality, and resistance to ameliorative public policies. As late as 1990, the majority of white Americans expressed the belief that blacks were less intelligent, lazier, more prone to violence, and more likely to prefer living on welfare compared to whites.[173] A smaller proportion of white Americans continued to express these views in 2008, with just over 40% describing whites as more hard-working than blacks and about one-quarter describing whites as more intelligent. And while the majority of whites attributed the black-white economic inequality during the late 1990s to individualistic factors such as the need for blacks to try harder or to have more motivation, only a minority endorsed structural factors including discrimination in the labor market – though a majority agreed with the more ambiguous statement "most Blacks just don't have the chance for education that it takes to rise out of poverty."[174] The prevalence of lingering prejudices and the reluctance to acknowledge structural racism creates a schism for many whites between widely-held egalitarian principles and support for policies to address racial gaps: "Whites are increasingly unwilling to support public policies such as affirmative action that they believe offer unfair advantages to a group of people they believe are unwilling to help themselves."[175]

167   African American woman quoted in: Weitzer, R. (2000). Racialized Policing: Residents' Perceptions in Three Neighborhoods. *Law & Society Review*, 34(1), 129–155 (p. 138).
168   Weitzer (2000), note 167 above.
169   Weitzer (2000), note 167 above.
170   Bobo, L. (2001). Racial Attitudes and Relations at the Close of the Twentieth Century. In Smelser, N. J., Wilson, W. J., Mitchell, F. (eds.) *America Becoming: Racial Trends and Their Consequences, Volume 1*, pp. 264–301. Washington, D. C.: National Academy Press (p. 269).
171   Bobo, Kluegel, & Smith (1997), note 59 above (p. 23).
172   Bobo, Kluegel, & Smith (1997), note 59 above (p. 15).
173   Bobo, L. D., Charles, C. Z., Krysan, M., & Simmons, A. D. (2012). The Real Record on Racial Attitudes. In Marsden, P. V. (ed.) *Social Trends in American Life: Findings from the General Social Survey since 1972*, pp. 38–83. Princeton, NJ: Princeton University Press (Figure 11).
174   Bobo (2001), note 170 above (pp. 283–4); see also Bobo, Charles, Krysan, & Simmons (2012), note 173 above (Figure 13).
175   Bobo, L. D. & Charles, C. Z. (2009). Race in the American Mind: From the Moynihan Report to the Obama Candidacy. *The Annals of the American Academy of Political and Social Science*, 621, 243–259 (p. 248).

For example, when white Americans were asked in 2008 whether the government has a special obligation to help improve the living standards of African Americans because of longstanding discrimination, the majority said no, with fewer than one in four saying yes.[176]

Researchers have shown that both traditional and modern forms of prejudice and racism are strong predictors of punitiveness. Devon Johnson found that from the late 1970s until the early 2000s, traditional and laissez-faire racism were significant predictors of support for punitive policies.[177] Racial animus and negative racial stereotypes were also strong predictors of punitiveness in the studies described above, on the link between racial perceptions of crime and punitiveness.[178] The strong connection between prejudice and punitiveness is perhaps clearest for the death penalty.

James Unnever, Francis Cullen, and colleagues' sustained investigation of public opinion about the death penalty has led them to conclude that racial animus is "one of the most salient and consistent predictors of American punitiveness."[179] Like others,[180] they found that in both 1990 and 2000, racial prejudice against blacks and Hispanics – as measured by disapproval of interracial marriage and residential integration – was one of the strongest predictors of support for the death penalty.[181] Analyzing a 2000 survey, they estimate that almost one-third of the black-white divide in support for capital punishment could be explained by their measure of white racism.[182] Similar findings led Steven Barkan and Steven Cohn to write in 2005 that "if we had a society composed solely of blacks and nonprejudiced whites, only slightly more than half of Americans would support the death penalty."[183]

Thus whites who harbor overt racial prejudices – and many still do – are very likely to support the death penalty and other harsh penalties. But this alone does not fully explain whites' punitiveness: racial perceptions of crime, and the other factors described in this section, inspire punitive preferences even among those who do not express overt prejudice.

C. INDIVIDUALISTIC ACCOUNTS OF CRIME

Another reason that whites are more punitive than racial minorities is their attribution of crime to individual shortcomings, rather than to structural causes. Crime is the product of both an individual's choices and the life circumstances that shape those choices. But black and white Americans differ in which of these forces they emphasize when accounting for crime.

Whites are significantly more likely than blacks to emphasize *individualistic* causes of criminal behavior – agreeing, for example, that "people commit crime because they don't care about the rights of others or their responsibilities to society," or because they are lazy – over *structuralist* explanations – agreeing, for example, that "people turn to crime because our society does not guarantee that everyone has regular employment," or that "poverty and low income are responsible for much of crime."[184] Individualistic explanations of crime are

176 Bobo, Charles, Krysan, & Simmons (2012), note 173 above (Figure 7).
177 Johnson, D. (2001). Punitive Attitudes on Crime: Economic Insecurity, Racial Prejudice, or Both? *Sociological Focus*, 34(1), 33–54; Johnson, D. (2008). Racial Prejudice, Perceived Injustice, and the Black-White Gap in Punitive Attitudes. *Journal of Criminal Justice*, 36(2), 198–206. For an experimental demonstration of the impact of racial prejudice on punitive policy preferences, see Hurwitz, J. & Peffley, M. (1997). Public Perceptions of Race and Crime: The Role of Racial Stereotypes. *American Journal of Political Science*, 41(2), 375–401.
178 Chiricos, Welch, & Gertz (2004), note 50 above (p. 374); Unnever & Cullen (2012), note 58 above; Welch, Payne, Chiricos, & Gertz, (2011), note 54 above (p. 830); Pickett & Chiricos (2012), note 82 above (p. 692). Prejudice is also related to attributing racial disproportionately in prisons to crime rates rather than bias: Peffley & Hurwitz (2010), note 11 above (pp. 101–3).
179 Unnever, J. D. & Cullen, F. T. (2010). The Social Sources of Americans' Punitiveness: A Test of Three Competing Models. *Criminology*, 48(1), 99–129 (p. 119).
180 Barkan, S. E. & Cohn, S. F. (1994). Racial Prejudice and Support for the Death Penalty by Whites. *Journal of Research in Crime and Delinquency*, 31(2), 202–209; Cohn, S. F., Barkan, S. E., & Halteman, W. A. (1991). Punitive Attitudes Toward Criminals: Racial Consensus or Racial Conflict? *Social Problems*, 38(2), 287–296 (p. 293); Barkan & Cohn (2005), note 57 above; Soss, J., Langbein, L., & Metelko, A. R. (2003). Why Do White Americans Support the Death Penalty? *The Journal of Politics*, 65(2), 397–421.
181 Unnever & Cullen (2012), note 58 above. Racial or ethnic animus is a significant predictor of support for capital punishment not only in the United States but also in other countries including Great Britain, France, and Japan: Unnever, J. D., Cullen, F. T., & Jonson, C. L. (2008). Race, Racism, and Support for Capital Punishment. *Crime and Justice*, 37(1), 45–96 (pp. 73–81); Ousey, G. C. & Unnever, J. D. (2012). Racial-Ethnic Threat, Out-Group Intolerance, and Support for Punishing Criminals: a Cross-National Study. *Criminology*, 50(3), 565–603.
182 Unnever, J. D. & Cullen, F. T. (2007). The Racial Divide in Support for the Death Penalty: Does White Racism Matter? *Social Forces*, 85(3), 1281–1301. Another study found that racial resentment explains a significant proportion of whites' continued support for harsh punishments in the face of information about racial disparities: Bobo, L. D. & Johnson, D. (2004). A Taste for Punishment: Black and White Americans' Views on the Death Penalty and the War on Drugs, *Du Bois Review* 1(1), 151–180.
183 Barkan, S. E. & Cohn, S. F. (2005). Reaction Essay on Reducing White Support for the Death Penalty: A Pessimistic Appraisal. *Criminology*, 4(1), 39–44 (p. 42).
184 Thompson & Bobo (2011), note 27 above (p. 22).

also more popular among conservatives, Republicans, southerners, and older individuals.[185] Researchers have shown that those who attribute crime to individual dispositions are more punitive and less supportive of rehabilitation than those who emphasize environment factors.[186] Whites who attribute crime more to individual failings rather than to social contexts are also more likely to believe that crime rates, rather than bias, drive the over-representation of blacks in prisons.[187]

While accounts of crime "strongly affect how individuals wish to see public policy respond to the problem of crime," they explain only "a small but significant fraction of the black-white difference in crime policy views."[188] This factor combines with others – association of crime with racial minorities, evaluations of the justice system, and overt prejudice – to create a more comprehensive explanation of whites' limited empathy toward people who break the law.

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185 Thompson & Bobo (2011), note 27 above (p. 26).
186 Pickett & Baker (2014), note 36 above (pp. 209−210); Peffley & Hurwitz (2010), note 11 above (pp. 101−3, 170−2, 178−9).
187 Peffley & Hurwitz (2010), note 11 above (pp. 92, 124, 132).
188 Thompson & Bobo (2011), note 27 above (p. 16).

VII. CONSEQUENCES OF A BIASED AND PUNITIVE JUSTICE SYSTEM

Widespread racial perceptions of crime have helped to make the American criminal justice system more punitive towards people of all racial and ethnic backgrounds. Changes in sentence lengths, arrest rates, and prison admission – rather than crime rates – drove the 260% increase in incarceration rates between 1980 and 2010.[189] Racialized views of crime have also created criminal justice policies and practices that disproportionately affect people of color. The heavy presence of racial minorities in jail, prison, and under community supervision cannot be fully explained by racial differences in crime rates.[190] This section examines the toxic effects of a harsh and selective criminal justice system.

A. ERODED PERCEIVED LEGITIMACY

Unfair, illegitimate, and excessive – these are descriptors that people of color often use to describe their own experiences with the justice system and to characterize the system as a whole.[191] Racial perceptions of crime have been a driving force of this outcome. People of color who are not personally impacted by criminal justice policies are often close to someone who has been. In one national survey, half of African Americans reported having a close friend or relative who was currently incarcerated, in contrast to one out of ten white respondents.[192] These encounters have created "an enormous racial chasm in responses toward the U.S. criminal justice system."[193] With its legitimacy tarnished, the justice system struggles to evoke the respect, trust, and cooperation needed for its effective operation.

When asked to reflect on their personal experiences, those of their communities, or about high-profile cases, people of color routinely register disapproval with how the criminal justice system treats and protects the rights of racial minorities.[194] When 68% of blacks but only 25% of whites said that they saw the criminal justice system as biased against blacks in 2013, this represented the largest gap on this question since the early 1990s.[195] Controlling for class differences between blacks and whites does not eliminate these differences in views. In fact, more highly educated blacks and whites are more skeptical of the criminal justice system than their less-educated counterparts.[196] Whites and blacks also hold divergent views about instances of police misconduct, outcomes of high-profile cases, and the overrepresentation of racial minorities in the justice system.[197] For example, blacks are much more likely than whites to "attribute higher rates of black male imprisonment to both structural barriers (e.g. few job opportunities and bad schools) and a racist criminal justice system (e.g. police targeting African-American men and courts more willing to convict black men)."[198]

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189 National Research Council (2014), note 5 above. Incarceration rate change calculated using: Beck, A. J. & Gilliard, D. K. (1995). Prisoners in 1994. Bureau of Justice Statistics. Available at: http://webapp1.dlib.indiana.edu/virtual_disk_library/index.cgi/5772776/FID1/pdf/pi94.pdf; Guerino, P., Harrison, P. M., & Sabol, W. J. (2011). Prisoners in 2010. Bureau of Justice Statistics. Available at: http://www.bjs.gov/content/pub/pdf/p10.pdf.
190 Blumstein (1993), note 101 above (p. 751).
191 Gillespie (1999), note 158 above; see also Peffley & Hurwitz (2010), note 11 above (p. 43); Langton & Durose (2013), note 147 above (p. 4); Eith & Durose (2011), note 147 above (pp. 6, 12).
192 Bobo, L. D. & Thompson, V. R. (2010). Racialized Mass Incarceration. In Markus. H. R. & Moya, P. (eds.) D*oing Race: 21 Essays for the 21st* Century, pp. 322–356. New York, NY: Norton (p. 350).
193 Peffley & Hurwitz (2010), note 11 above (p. 5)
194 See Section VII Part A above.
195 Newport (2013), note 144 above.
196 Weitzer, R. & Tuch, S. A. (1999). Race, Class, and Perceptions of Discrimination by the Police. *Crime & Delinquency*, 45(4), 494–507 (p. 500); Peffley & Hurwitz (2010), note 11 above (pp. 51–2, 92, 95); Unnever (2008), note 166 above.
197 Hurwitz, J. & Peffley, M. (2005). Explaining the Great Racial Divide: Perceptions of Fairness in the U.S. Criminal Justice System. *The Journal of Politics*, 67(03), 762–783; Unnever (2008), note 166 above.
198 Unnever (2008), note 166 above (p. 530); see also Peffley & Hurwitz (2010), note 11 above (pp. 87–88).

This distrust has thrown a wrench into the criminal justice system's operations. African Americans' lack of trust in the police may be one factor contributing to the lower clearance rates of black versus white murder cases in New York City.[199] Jury mistrust of police officers has also interfered with criminal trials.[200]

Outrage about the racial inequities and excesses of the justice system has encouraged some public intellectuals to advocate for jury nullification and to encourage defendants to decline plea offers so as to motivate reforms. Legal scholar and former federal prosecutor Paul Butler encourages jurors to engage in nullification for many drug crimes – wherein jurors pronounce defendants not guilty despite evident guilt – and to engage in other forms of non-cooperation to help defendants avoid the ramifications of a conviction.[201] Criminal justice scholar and former civil rights attorney Michelle Alexander encourages defendants to decline plea deals and request trials so as to create a "tsunami of litigation" that would jam a system that relies on cases being settled without trials.[202] These tactics seek to circumvent the barriers that get in the way of fair outcomes in the justice system.

High profile cases spotlight the racial divide in views of the criminal justice system. Soon after a jury acquitted George Zimmerman of second-degree murder and manslaughter for Trayvon Martin's death, Gallup surveyed Americans on their views. The poll showed that 85% of blacks said the verdict was wrong while a majority of whites, 54%, said the verdict was right.[203] Cases like this have created a familiar pattern of acquittal followed by expectations of unrest of the type that Los Angeles experienced after the 1992 verdicts in favor of the police officers who beat Rodney King.

To summarize, familiarity with injustices resulting from racial perceptions of crime reduces confidence in the criminal justice system among people of color. Perceived illegitimacy breeds limited cooperation. As a result, police departments struggle to clear cases, prosecutors struggle to secure convictions, and the public fears unrest after episodes of police brutality. The racial gap in perceptions of fairness and justice also has more direct implications for public safety, as discussed next.

B. UNDERMINING PUBLIC SAFETY

Racial perceptions of crime harm public safety. The most acute and severe consequence of these perceptions is the killing of innocent people because of racially motivated fear. A broader consequence is a criminal justice system that is on overdrive, with lifelong consequences for all Americans who are convicted of crimes, and particularly for low-income people of color. Mass incarceration compounds economic disadvantage, increasing the likelihood of criminal offending across generations. The perception of a biased criminal justice system may also foster a sense of legal immunity among white Americans.

The impact of a criminal conviction is felt long before and after a sentence and affects those around the person that is being punished. Overcriminalization has led young black men in Philadelphia who have warrants out for their arrest to turn away from "the activities, relations, and localities that others rely on to maintain a decent and respectable identity." [204] The "mark" of a criminal record tarnishes employment prospects,[205] contributes to aggregate levels of racial economic inequality,[206] and can bar individuals from welfare benefits, food stamps,[207] public housing, and

199 Uneven distribution of police resources and fear of cooperating with the police are other reasons: Paddock, B., Riley, S., Parascandola, R., & Schapiro, R. (2014). Tale of Two Cities. *New York Daily News*. Available at: http://www.nydailynews.com/new-york/nyc-crime/forgotten-record-murder-rate-cases-unsolved-article-1.1566572. On the other hand, "snitching" – defined as criminal suspects providing information for reduced criminal liability – may occur at high levels: Natapoff, A. (2011). *Snitching: Criminal Informants and the Erosion of American Justice*. New York, NY: New York University Press (pp. 15, 107).
200 Eckholm, E. (2014) As Justice Department Scrutinizes Local Police, Cleveland Is Latest Focus. *The New York Times*. Available at: http://www.nytimes.com/2014/06/18/us/justice-department-examining-local-police-turns-focus-to-cleveland.html?_r=4.
201 Butler, P. (2009). *Let's Get Free: A Hip-Hop Theory of Justice.* New York, NY: The New Press 2009 (Chapter 4). On the Stop Snitching movement, see Natapoff (2011), note 199 above (pp. 72–3 & Chapter 5).
202 Alexander, M. (2012). Go to Trial: Crash the Justice System. *The New York Times*. Available at: http://www.nytimes.com/2012/03/11/opinion/sunday/go-to-trial-crash-the-justice-system.html?_r=0.
203 Newport (2013), note 144 above.
204 Goffman, A. (2014) *On the Run: Fugitive Life in an American City*. Chicago, IL: The University of Chicago Press (p. 53); Rios, V. M. (2011) *Punished: Policing the Lives of Black and Latino Boys*. New York: New York University Press.
205 Pager, D. (2007). *Marked: Race, Crime, and Finding Work in an Era of Mass Incarceration*. Chicago, IL: University of Chicago Press.
206 Western, B. (2002). The Impact of Incarceration on Wage Mobility and Inequality. *American Sociological Review*, 67, 526–546; Pettit, B. (2012). *Invisible Men: Mass Incarceration and the Myth of Black Progress.* New York, NY: Russell Sage Foundation.
207 Mauer, M. (2013). A Lifetime of Punishment: The Impact of the Felony Drug Ban on Welfare Benefits. The Sentencing Project. Available at: http://sentencingproject.org/doc/publications/cc_A%20Lifetime%20of%20Punishment.pdf.

voting.[208] Incarceration has long-term material, physical, and mental health consequences for prisoners' children and other family members.[209] Christopher Wildeman writes that "by promoting incarceration among the children of the prison boom, parental imprisonment may have the potential to lay the foundation for an enduring form of inequality in which the imprisonment of the disadvantaged is transmitted from one generation to the next."[210] The criminal justice policies and practices of the past four decades have not only broadened these impacts, but concentrated them on racial minorities.

Crime policies that excessively target people of color have been directly associated with increased offending among both racial minorities and whites. When people do not see the police and justice system as fair, they see it as less legitimate and are less likely to follow its rules.[211] Research has shown that youth who have had contact with the police – even just being stopped and questioned – report higher rates of future delinquent behavior compared to otherwise similar youth, and those who have been previously arrested are more likely to be rearrested.[212] This is in part because labeling young people as criminals excludes some from activities and peers that deter crime and leads to "secondary deviance," and because police are more likely to identify and intervene in the transgressions of previously arrested youth.

Perceived illegitimacy of the police also erodes communities' capacity for, and expectations of, informal interventions to address problematic youth behavior. "Lack of faith in the police," resulting from perceived procedural injustice and inefficacy, "inhibits informal social control activities, and in fact explains lower capacities for informal social control in minority communities."[213] Finally, a criminal justice system that targets people of color may increase crime among whites. An experiment about classroom cheating found that white participants were more likely to cheat on a test in a setting where black participants were singled out for scrutiny, compared to whites in a setting where no racial profiling occurred.[214] "Racial profiling could increase crime among nonprofiled groups, having a counterproductive effect," the researchers concluded.[215]

> "Racial profiling could increase crime among nonprofiled groups, having a counterproductive effect."

Mass incarceration has created barriers to employment, welfare benefits, and housing, exacerbating conditions that promote crime across generations. The labeling effects of contact with the criminal justice system, and dissatisfaction with the police, degrade barriers to crime. Moreover, racial profiling of people of color may lead some whites to take greater criminal risks. These outcomes suggest that excessive incarceration has not only been unjust and expensive, but also counterproductive. Yet we stand at the threshold of a potential criminal justice awakening. A number of field-tested tools can help to eliminate the unwanted consequences of racial perceptions of crime, and undo their damage.

208 Manza, J. & Uggen, C. (2002). Democratic Contraction? Political Consequences of Felon Disenfranchisement in the United States. *American Sociological Review, 67*, 777–803.
209 Braman, D. 2004. *Doing Time on the Outside: Incarceration and Family Life in Urban America*. Ann Arbor: University of Michigan Press; Wakefield, S. & Wildeman, C. 2011. Mass Imprisonment and Racial Disparities in Childhood Behavioral Problems. *Criminology & Public Policy, 10*, 791–817.
210 Wildemann, C. (2009) Parental Imprisonment, the Prison Boom, and the Concentration of Childhood Disadvantage. *Demography*, 46(2), 265–280 (p. 277).
211 Tyler, T.R. (1990). *Why People Obey the Law*. New Haven: Yale University Press; Tyler, T. R. & Huo, Y. J. (2001). *Trust in the Law: Encouraging Public Cooperation with the Police and Courts*. New York, NY: Russell Sage Foundation.
212 Wiley, S. A., Slocum, L. A., & Esbensen, F.-A. (2013). The Unintended Consequences of Being Stopped or Arrested: an Exploration of the Labeling Mechanisms Through Which Police Contact Leads To Subsequent Delinquency. *Criminology*, 51(4), 927–966; Liberman, A. M., Kirk, D. S., & Kim, K. (Forthcoming). Labeling Effects of First Juvenile Arrests: Secondary Deviance and Secondary Sanctioning. *Criminology*.
213 Drakulich, K. M. & Crutchfield, R. D. (2013). The Role of Perceptions of the Police in Informal Social Control: Implications for the Racial Stratification of Crime and Control. *Social Problems*, 60(3), 383–407 (p. 403).
214 Hackney, A. A. & Glaser, J. (2013). Reverse Deterrence in Racial Profiling: Increased Transgressions by Nonprofiled Whites. *Law and Human Behavior*, 37(5), 348–53.
215 Hackney & Glaser (2013), note 214 above (p. 351).

VIII. REMEDIES AND RECOMMENDATIONS

The media, researchers, policymakers, and criminal justice practitioners can draw on proven interventions to reduce racial perceptions of crime and mitigate their effects on the justice system. News producers can monitor and correct disparities in crime reporting, using the recommendations from the Center for Children's Law and Policy as a starting point.[216] Researchers and pollsters can improve measures and representation of public opinion, incorporating lessons from past research. Policymakers can craft legislation to scale back overly punitive sanctions, and to reduce racial disparities in sentencing and crime rates.

The Sentencing Project has developed a manual for assessing and tackling disparities in the justice system,[217] the *New York University Journal of Legislation and Public Policy* has profiled several reforms in its recent symposium issue,[218] and the Annie E. Casey Foundation and MacArthur Foundation are among several organizations that have produced overviews and guides about successful efforts that have downscaled the juvenile justice system.[219] Finally, all stakeholders – particularly criminal justice professionals – can tackle implicit bias by drawing on field-tested methods such as those compiled by the National Center for State Courts.[220]

A. THE MEDIA AND RESEARCHERS

The media play a crucial role in determining how and how much people think about crime. Following their critical assessment of media crime coverage, Lori Dorfman and Vincent Schiraldi have made several recommendations to reporters and editors.[221] These include expanding sources beyond criminal justice professionals, contextualizing crime within broader underlying social problems, providing in-depth coverage of more typical crimes rather than highlighting anomalous ones, and auditing content to compare coverage with regional crime trends. They describe practices that were adopted by organizations including the *Los Angeles Times*, the *Chicago Sun-Times*, and KVUE-TV in Austin, Texas.

REDUCE RACIAL DISPARITIES IN CRIME COVERAGE

By measuring and tracking the racial composition of offenders and victims in crime news and comparing these

216 Dorfman & Schiraldi (2001), note 110 above (pp. 27–36).
217 The Sentencing Project (2008). Reducing Racial Disparity in the Criminal Justice System: A Manual for Practitioners and Policymakers. Washington, D.C. Available at: http://www.sentencingproject.org/doc/publications/rd_reducingracialdisparity.pdf (pp. 11–57).
218 *New York University Journal of Legislation and Public Policy* (2013). 16(4). Available at: http://www.nyujlpp.org/issues/volume-16-number-4/.
219 Hoytt, E. H., Schiraldi, V., Smith, B. V., & Ziedenberg, J. (2001). Reducing Racial Disparities in Juvenile Detention (2001). Baltimore, MD: Annie E. Casey Foundation. Available at: http://www.aecf.org/m/resourcedoc/aecf-Pathways8reducingracialdisparities-2001.pdf; Shoenberg, D. (2012). Innovation Brief: Reducing Racial and Ethnic Disparities in Pennsylvania. Chicago, IL: MacArthur Foundation. Available at: http://www.modelsforchange.net/publications/351; National Association of Counties (2011). Juvenile Detention Reform: A Guide for County Officials, Second Edition. Available at: http://www.aecf.org/m/resourcedoc/aecf-JuvDetentionReformForCountyOfficials-2011.pdf.
220 National Center for State Courts. Helping Courts Address Implicit Bias: Resources for Education Williamsburg VA. Available at: http://www.ncsc.org/ibeducation.
221 Dorfman & Schiraldi (2001), note 110 above (pp. 27–36).

with regional crime rates, news producers can improve the representativeness of their coverage. More nuanced attention is also needed to improve *how* – not just *how much* – crime reporting differs by race. Content analysis can help to identify racial disparities in the extent to which suspects are presented in non-individualized and threatening ways. In addition to these recommendations, media producers should address implicit racial bias using the tools described later in this report.

CONTEXTUALIZE SENTENCING AND CRIME STORIES

By reporting on criminal sentences that are representative, and documenting their lifelong consequences, news producers can help to educate the public about the reality of existing penalties. By contextualizing specific crime stories or policy debates within crime trends, they can avoid creating the impression of a false crisis. Correctly reporting on crime trends in part requires recognizing the difference between the Department of Justice's two crime measures: the Uniform Crime Reporting (UCR) Program and the National Crime Victimization Survey (NCVS).[222]

The UCR measures crimes reported to the police – which are affected by changes in victim reporting and police categorization practices – as well as arrests – which are heavily influenced by law enforcement practices. The NCVS measures crime victimization regardless of whether incidents were reported to or cleared by the police. The two data sources sometimes depict conflicting trends.[223] Noting these nuances and accurately reporting levels of crime and sentencing would help both policymakers and the public develop more informed views about crime policies.

IMPROVE PUBLIC OPINION POLLING AND REPORTING

Researchers and pollsters play a crucial role in measuring and representing public opinion. Given the repercussions of presenting distorted measures, the wording and formats of some survey questions should be revised to not exaggerate the public's support for punitive policies. As described in Section II, Americans are far less supportive of the death penalty when provided with life imprisonment as a sentencing option. And although the public expresses a great deal of pragmatism in its views of crime policy – supporting not just punishment, but also rehabilitation and prevention – this range of preferences is lost in many reports.

B. POLICYMAKERS

Policymakers have never simply followed public opinion; they have also shaped it through their words and work. Elected officials can therefore lead by educating the public about the harms of excessive punishment, as they are beginning to do in the United States and have been doing in other countries. Canadians are as punitive as Americans, but their government has less severe sentences.[224] England and France abolished the death penalty at a time when their populations supported the sanction, but now the majority of British and French residents oppose executions.[225] With years of declining crime rates and reduced public punitiveness, American policymakers have the opportunity to develop criminal justice policies that are morally sound, fiscally responsible, and effective.

222 Federal Bureau of Investigation (2004). Crime in the United States 2004. Washington, D.C. Available at: https://www2.fbi.gov/ucr/cius_04/appendices/appendix_04.html.
223 Blumstein, A. (2004). Disaggregating the Violence Trends. In Blumstein, A. & Wallman, J. (eds.) *The Crime Drop in America,* pp. 13–44. New York, NY: Cambridge University Press; Beckett & Sasson (2004), note 111 above (pp. 13–23).
224 Kugler, M. B., Funk, F., Braun, J., Gollwitzer, M., Kay, A.C., Darley, J.M. (2013). Differences in Punitiveness Across Three Cultures: A Test of American Exceptionalism in Justice Attitudes. *Journal of Criminal Law and Criminology*, 103(4), 1071–1114.
225 Death Penalty Information Center (2014). International Polls and Studies. Washington, D.C. Available at: http://www.deathpenaltyinfo.org/international-polls-and-studies-0.

CURB EXCESSIVE INCARCERATION

Several states and the juvenile justice system serve as models for ending excessive incarceration. New York and New Jersey have reduced their prison populations by 26% since 1999 without harming public safety.[226] California's experience with decarceration also offers useful lessons.[227] The juvenile justice system, which has reduced youth confinement and detention by over 40% since 2001,[228] can also serve as a model for the adult system.[229]

Policymakers should support the growing commitment to overhaul excessively harsh sentencing at the federal level. Congress has the opportunity to pass two bi-partisan bills that seek to curb federal prison populations – the Smarter Sentencing Act and the Recidivism Reduction and Public Safety Act, both of which passed the Senate Judiciary Committee in 2014. These reforms would build on recent executive action, including Attorney General Eric Holder's guidance to federal prosecutors to curb mandatory minimum sentences[230] and President Barack Obama's recent Clemency Initiative.[231]

ELIMINATE RACIAL DISPARITIES IN CRIME POLICIES

Policymakers should identify and reform ostensibly race-neutral polices that have been shown to have a disparate racial impact. Iowa, Connecticut, Oregon, and Minnesota now have a policy in place to conduct racial impact analysis before codifying a new crime or modifying the criminal penalty for an existing crime.[232] Some jurisdictions have begun to assess the racial bias inherent in risk assessment instruments used for criminal justice decision making.[233] Addressing class-based inequalities in justice outcomes – by better funding indigent defense, for example – would also help to reduce racial disparities.

At the federal level, the Fair Sentencing Act of 2010 reduced from 100:1 to 18:1 the weight disparity in the amount of powder cocaine versus crack cocaine that triggered mandatory minimum sentences. Greater effort is needed not only to reduce the remaining disparity, but also to make the change retroactive.

TACKLE RACIAL DISPARITIES IN CRIME RATES

Eliminating racial disparities in incarceration also requires addressing the socioeconomic inequality and racial discrimination that underlie differential crime rates. Because the criminal justice system is an institution that primarily reacts to – rather than prevents – crime, it is ill-equipped to address many of the underlying causes of crime. But mass incarceration's hold on vast public resources and its collateral consequences have eroded the economic and social buffers that prevent crime. Consequently, scaling back punishment and *reinvesting* the resulting savings into disadvantaged communities would promote public safety.

Policymakers are increasingly aware that branding people with criminal records harms public safety and wastes public funds. Accordingly, some states have opted out of the federal welfare and food stamp ban for people with felony convictions.[234] States and local jurisdictions are also lowering barriers to employment for people with criminal records. Twelve states and sixty cities and counties now "Ban the Box" in public sector hiring – removing the question about conviction history from the initial job application and delaying background checks until later in the hiring process.[235]

To fully realize the benefits of these approaches, savings from decarceration should be redirected to crime prevention and drug treatment efforts. Susan Tucker

226 Mauer & Ghandnoosh (2014), note 8 above; Greene & Mauer (2010), note 8 above.
227 Mauer & Ghandnoosh (2014), note 8 above; Raphael, S. & Stoll, M. A. (2014). A New Approach to Reducing Incarceration While Maintaining Low Rates of Crime. Washington, D.C.: The Hamilton Project. Available at: http://www.hamiltonproject.org/files/downloads_and_links/v5_THP_RaphaelStoll_DiscPaper.pdf.
228 See Sickmund, M., Sladky, T. J., Kang, W., & Puzzanchera, C. (2013). Easy Access to the Census of Juveniles in Residential Placement. Pittsburgh, PA: National Center for Juvenile Justice. Available at: http://www.ojjdp.gov/ojstatbb/ezacjrp/.
229 In addition to note 219 above, see MacArthur Foundation's Models for Change. Available at: http://www.modelsforchange.net/reform-areas/index.html; The W. Haywood Burns Institute. Available at: http://www.burnsinstitute.org/.
230 Holder, E. (2013). Memorandum: Department Policy on Charging Mandatory Minimum Sentences and Recidivist Enhancements in Certain Drug Cases. Washington, D.C.: Office of the Attorney General. Available at: http://www.justice.gov/oip/docs/ag-memo-department-policypon-charging-mandatory-minimum-sentences-recidivist-enhancements-in-certain-drugcases.pdf.
231 Department of Justice (2014). Announcing New Clemency Initiative, Deputy Attorney General James M. Cole Details Broad New Criteria for Applicants. Available at: http://www.justice.gov/opa/pr/2014/April/14-dag-419.html.
232 Clark, M. (2013). Should More States Require Racial Impact Statements for New Laws? The Pew Charitable Trusts. Available at: http://www.pewstates.org/projects/stateline/headlines/should-more-states-require-racial-impact-statements-for-new-laws-85899493903.
233 Hoytt, Schiraldi, Smith, & Ziedenberg (2001), note 219 above (pp. 56–60); The Sentencing Project (2008), note 217 above (p. 31).
234 Mauer (2013), note 207 above.
235 National Employment Law Project (2014). Statewide Ban the Box: Reducing Unfair Barriers to Employment of People with Criminal Records. New York, NY: Available at: http://www.nelp.org/page/-/SCLP/ModelStateHiringInitiatives.pdf?nocdn=1; see also National Employment Law Project (2014). Ban the Box: A Fair Chance for a Stronger Economy. Available at: http://www.nelp.org/page/content/banthebox/.

and Eric Cadora's vision for the concept of "justice reinvestment" urges policymakers to redirect some of the funds that had been spent on corrections to "rebuilding the human resources and physical infrastructure — the schools, healthcare facilities, parks, and public spaces — of neighborhoods devastated by high levels of incarceration."[236] Downscaling prisons should therefore be accompanied by reinvestment into communities harmed by mass incarceration.

C. PRACTITIONERS AND OTHER STAKEHOLDERS

Although implicit racial bias is nearly ubiquitous – affecting both individual discretion and agency policies – it is not intractable. Several interventions have been shown to reduce implicit bias among jurors, police officers, prosecutors, and judges, helping to bring their decisions closer in line with their ideals.[237] Defense attorneys can also benefit from greater awareness of their implicit biases, raise awareness of these issues during cases, and implement interventions in the courts.[238] Incorporating these lessons into police work, along with developing more equitable enforcement policies particularly for drug crimes, would help to reduce perceptions of over-policing and mend police-community relations in low-income communities of color.

RECOGNIZE IMPLICIT RACIAL BIAS

In their comprehensive review of implicit racial bias research, the Kirwan Institute for the Study of Race

> **Dispelling the illusion that we are colorblind** in our decision making is a crucial first step to mitigating the impact of implicit racial bias.

and Ethnicity concludes that "education efforts aimed at raising awareness about implicit bias can help debias individuals."[239] Dispelling the illusion that we are colorblind in our decision making is a crucial first step to mitigating the impact of implicit racial bias. Mock jury studies have shown that *increasing* the salience of race in cases *reduces* bias in outcomes by making jurors more conscious of and thoughtful about their biases.[240] For criminal justice professionals, taking the Implicit Association Test can help raise awareness of biases and increase support for interventions to reduce their effects.[241]

ADDRESS IMPLICIT RACIAL BIAS AND REVISE POLICIES WITH DISPARATE RACIAL IMPACT

The Kirwan Institute describes a number of debiasing strategies shown to reduce implicit racial bias in both experimental and non-experimental settings. These include providing exposure to counter-stereotypic imagery, increasing inter-racial contact, and monitoring outcomes to increase accountability.[242] Increasing racial diversity in criminal justice settings also reduces biased outcomes and tempers punitive sentiment. Research on mock juries has shown that a diverse group of jurors deliberate longer and more thoroughly than all-white juries, and studies of capital trials have found that all-white juries are far more

236 Tucker, S. B. & Cadora, E. (2003). Justice Reinvestment. Ideas for An Open Society 3(3). New York, NY: Open Society Institute. Washington, D.C.: Available at: http://www.opensocietyfoundations.org/sites/default/files/ideas_reinvestment.pdf.
237 Staats, C. (2014). State of the Science: Implicit Bias Review 2014. Columbus, OH: Kirwan Institute. Available at: http://kirwaninstitute.osu.edu/wp-content/uploads/2014/03/2014-implicit-bias.pdf (pp. 20−1, 25−6, 33−6); Staats, C. (2013). State of the Science: Implicit Bias Review 2013. Columbus, OH: Kirwan Institute. Available at: http://www.kirwaninstitute.osu.edu/reports/2013/03_2013_SOTS-Implicit_Bias.pdf (pp. 53−63); Kang, J., et al. (2012). Implicit Bias in the Courtroom. *UCLA Law Review*, 59(5), 1124−1186 (pp. 1169−86); Fridell, L.A. (2008). Racially Biased Policing: The Law Enforcement Response to the Implicit Black-Crime Association. In Lynch, M.J., Patterson, E.B., and Childs, K.K. (eds.) *Racial Divide: Racial and Ethnic Bias in the Criminal Justice System,* pp. 39−59. Monsey, NY: Criminal Justice Press (pp. 50−58).
238 Rapping, J. A. (2013). Implicitly Unjust: How Defenders Can Affect Systemic Racist Assumptions. *New York University Journal of Legislation and Public Policy*, 16(4), 999−1048 (pp. 1022−42).
239 Staats (2014), note 237 above (pp. 20−1, 25−6, 33−6); Staats (2013), note 237 above (pp. 53−63).
240 Sommers, S. R. & Ellsworth, P. C. (2001). White Juror Bias: An Investigation of Prejudice Against Black Defendants in the American Courtroom. *Psychology, Public Policy, and Law*, 7(1), 201−229.
241 One version of the test is available on this website by Project Implicit: https://implicit.harvard.edu/implicit/user/ncsc/ca/.
242 Staats (2014), note 237 above (pp. 20−1, 25−6); Staats (2013), note 237 above (pp. 53−63) Note that one study has shown that interracial friendships among urban whites increases concern about crime: Mears, D., Mancini, C., & Stewart, E. (2009). Whites' Concern about Crime: The Effects of Interracial Contact. *Journal of Research in Crime and Delinquency,* 46(4), 524−552. Another has shown that exposure to counter-stereotypic imagery can increase denial of racism: Critcher, C. R. & Risen, J. L. (2014). If He Can Do It, So Can They: Incidental Exposure to Counterstereotypically-Successful Exemplars Prompts Automatic Inferences. *Journal of Personality and Social Psychology*, 106, 359−379.

likely to sentence offenders to death.[243] North Carolina's Racial Justice Act, now repealed, sought to correct for the "stubborn legacy" of racially biased jury selection.[244]

The National Center for State Courts (NCSC) has documented pilot programs developed in California, Minnesota, and North Dakota to educate judges and court staff about implicit racial bias and has made a number of related resources available on its website.[245] The Vera Institute of Justice's Prosecution and Racial Justice program has also worked in several jurisdictions to reduce unwarranted racial and ethnic disparities caused by prosecutorial decision making.[246] Prosecutors in New York City are demonstrating how this stage of the justice system can reduce upstream disparities. The Brooklyn District Attorney's office has announced that it will stop prosecuting many minor marijuana arrests to reduce the overcriminalization of young people of color, and the Manhattan District Attorney has been urged to decrease the role that arrest history plays in shaping plea offers.[247]

Information about racial disparities must be presented carefully to help people reconsider, rather than cement, their views. Being informed about racial disparities reduces punitiveness about some crimes: in one study, whites became less supportive of the disparity in crack-cocaine federal sentencing when presented with information about this policy's uneven racial impact.[248] But support for the death penalty has been less responsive to some messages about racial disparities. For example, one study found that white respondents who were first told that "blacks are about 12% of the U.S. population, but they are almost half (43%) of those currently on death row" did not report lower rates of support for the death penalty in murder cases compared with those who were not given this prompt.[249] Another study found a "backlash effect," with white Americans who were first told, "Some people say that the death penalty is unfair because most of the people who are executed are African Americans" being more likely to support the death penalty for murder convictions than those who did not receive this message.[250] Similarly, white Californians who were encouraged to overestimate the proportion of blacks in the state's prisons were less likely to support restricting the state's "three strikes" law than those who were not, just as white residents of New York City who were led to overestimate the proportion of incarcerated blacks were less supportive of ending the stop-and-frisk policy.[251] Resources provided by the NCSC and the other organizations mentioned above can help to calibrate interventions to avoid flaring automatic biases.

This is a critical period of declining crime rates, increasing concern about public budgets, and growing moral ambivalence about blunt criminal justice sanctions. A clear understanding of the factors that misguided the American criminal justice system will help to steer it to a better path. There are many reasons to be optimistic. Substantial portions of the American public support rehabilitation and less punitive criminal sanctions when provided with alternatives and informed about offenders. Political leaders on both sides of the aisle have been increasingly rising to this occasion. Advocates, the media, policymakers, and criminal justice professionals should use this opportunity to help align our policies with our principles.

243 Sommers, S. R. (2006). On Racial Diversity and Group Decision Making: Identifying Multiple Effects of Racial Composition on Jury Deliberations. *Journal of Personality and Social Psychology*, 90(4), 597−612; Bowers, W. J., Sandys, M., & Brewer, T. W. (2004). Crossing Racial Boundaries: A Closer Look at the Roots of Racial Bias in Capital Sentencing When the Defendant is Black and the Victim is White. *DePaul Law Review*, 53(4), 1497−1538.

244 Grosso, C. M. & O'Brien, B. (2012). A Stubborn Legacy: The Overwhelming Importance of Race in Jury Selection in 173 Post- *Batson* North Carolina Capital Trials. *Iowa Law Review,* 97, 1531−1559. Available at: http://digitalcommons.law.msu.edu/cgi/viewcontent.cgi?article=1455&context=facpubs.

245 National Center for State Courts, note 220 above.

246 Davis, A. J. (2013). In Search of Racial Justice: The Role of the Prosecutor. *New York University Journal of Legislation and Public Policy*, 16(4), 821−52. Available at: http://www.nyujlpp.org/wp-content/uploads/2014/01/Davis-In-Search-of-Racial-Justice-16nyujlpp821.pdf.

247 Clifford, S. & Goldstein, J. (2014). Brooklyn Prosecutor Limits When He'll Target Marijuana. *The New York Times*. Available at: http://www.nytimes.com/2014/07/09/nyregion/brooklyn-district-attorney-to-stop-prosecuting-low-level-marijuana-cases.html?_r=0; *The New York Times* Editorial Board (2014). How Race Skews Prosecutions. Available at: http://www.nytimes.com/2014/07/14/opinion/how-race-skews-prosecutions.html?_r=0.

248 When respondents were told "Most of those convicted for crack cocaine use are Blacks and most of those convicted for powder cocaine use are Whites," they were less likely to support harsher sentencing for crack versus cocaine offenders: Bobo & Johnson (2004), note 182 above (pp. 166−7).

249 White respondents who were first told "Blacks are about 12% of the U.S. population, but they are almost half (43%) of those currently on death row" were not less supportive of the death penalty in murder cases than those who were not given this prompt; Bobo & Johnson (2004), note 182 above (pp. 162−4).

250 Peffley & Hurwitz (2010), note 11 above (p. 165; see also 157−166); Peffley, M. & Hurwitz, J. (2007). Persuasion and Resistance: Race and the Death Penalty in America. *American Journal of Political Science*, 51(4), 996−1012 (p. 1002).

251 Hetey, R. C. & Eberhardt, J. L. (Forthcoming). Racial Disparities in Incarceration Increase Acceptance of Punitive Policies. *Psychological Science*.

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