

The Sentencing Project

Criminal Justice Issues and Prisoners' Rights

<https://www.sentencingproject.org/publications/race-and-punishment-racial-perceptions-of-crime-and-support-for-punitive-policies/>

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Coming on the heels of the tragic events in Ferguson, Missouri, this report demonstrates that the consequences of white Americans strong association of crime with blacks and Latinos extend far beyond policing.

[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. This report concludes that:

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.

White Americans overestimate the proportion of crime committed by people of color, and associate people of color with criminality. For example, whiterespondents 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.

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.

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.

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.

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.

By increasing support for punitive policies, racial perceptions of crime have made sentencing more severe for all Americans. The United States now has the worlds 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.

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.

Punishment in the United States is both severe and selective. With the worlds highest incarceration rate and one in nine prisoners serving life sentences, the United States remains the only Western democracy still using the death penalty.¹Walmsley, R. (2013). [World Prison Population List](#) (10th Edition). London, U.K.: International Centre for Prison Studies.(pp. 1, 3); Nellis, A. (2013). [Life Goes On: The Historic Rise in Life Sentences in America](#). Washington, D.C.: The Sentencing Project. (p. 1); Amnesty International (2014). [Death Sentences and Executions 2013](#). London, U.K.(p. 6). Low-income people of color²In 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. 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.³Western, B. (2006). *Punishment and Inequality in America*. New York, NY: Russell Sage Foundation (p. 27). And while blacks and Latinos together comprise 30% of the general population, they account for 58% of prisoners.⁴[U.S. Census Bureau: State and County QuickFacts](#), Carson, E. A. & Golinelli D. (2013). [Prisoners in 2012: Trends in Admissions and Releases, 1991-2012](#). Bureau of Justice Statistics. (p. 37, App. Tbl. 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.⁵National Research Council (2014). [The Growth of Incarceration in the United States: Exploring Causes and Consequences](#). Washington, DC: The National Academies Press. (pp. 4756).

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.⁶Pew Research Center (2014). [Americas New Drug Policy Landscape](#). Washington, D.C. See also *The New York Times* Editorial Board (2014). [Repeal Prohibition, Again](#). 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.⁷Peters, J. W. (2014). [G.O.P. Moving to Ease Its Stance on Sentencing](#). *The New York Times*; U.S. Sentencing Commission (2014). [U.S. Sentencing Commission Unanimously Votes to Allow Delayed Retroactive Reduction in Drug Trafficking Sentences](#). 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.⁸Mauer, M. & Ghandnoosh, N. (2014). [Fewer Prisoners, Less Crime: A Tale of Three States](#). Washington, D.C.: The Sentencing Project; Greene, J. & Mauer, M. (2010). [Downscaling Prisons: Lessons from Four States](#). Washington, D.C.: The Sentencing Project; Lofstrom, M. & Raphael, S. (2013). [Public Safety Realignment and Crime Rates in California](#). San Francisco, CA: Public Policy Institute of California. Nationwide, prison counts have receded every year since 2010 after 37 years of consecutive growth.⁹Mauer, M. & Ghandnoosh, N. (2013). [Can We Wait 88 Years to End Mass Incarceration?](#) *The Huffington Post*. The racial gap in incarceration rates has also begun to narrow.¹⁰Carson & Golinelli (2013), note 4 above; Mauer, M. (2013). [The Changing Racial Dynamics of Womens Incarceration](#). Washington, D.C.: The Sentencing Project.(p. 8, Tbl. 1).

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 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⁾ 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), 629-655; 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. 1408). prosecutors,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. and judges¹³⁾ 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. 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.

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.

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⁾ Jones, J. M. (2013). [U.S. Death Penalty Support Lowest in More Than 40 Years](#). Gallup. 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⁾ Saad, L. (2007). [Racial Disagreement Over Death Penalty Has Varied Historically](#). Gallup. Death penalty support reached its peak at 80% in 1994, and gradually declined to 60% by 2013.¹⁶⁾ Jones (2013), note 14 above.

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⁾ 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. He found that support 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⁾ Ramirez (2013a), note 17 above (pp. 347-50). 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⁾ Ramirez (2013a), note 17 above (p. 357). After decades of draconian sentencing, a growing share of the public has described the courts as too harsh in recent years.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.

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⁾Pew Research Center (2014). [Shrinking Majority of Americans Support Death Penalty](#). Washington, D.C. 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⁾Unnever, J. D., Cullen, F. T., & Jonson, C. L. (2008). Race, Racism, and Support for Capital Punishment. *Crime and Justice*, 37(1), 4596 (p. 54).

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 offense (see Figure 3).²³⁾Peffley & Hurwitz (2010), note 11 above (p. 153). Asked if juveniles should be tried as adults, 60% of whites agreed, in contrast to 46% of blacks (see Figure 3).²⁴⁾Peffley & Hurwitz (2010), note 11 above (p. 153).

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 (see Figure 4).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). 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⁾Bureau of Justice Statistics (1996). [Sourcebook of Criminal Justice Statistics 1995](#). (p. 172, Tbl. 2.57).

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⁾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, 1638 (p. 28, Tbl. 5).

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⁾Cullen, F. T., Fisher, B. S., & Applegate, B. K. (2000). Public Opinion about Punishment and Corrections. *Crime and Justice*, 27, 179 (pp. 192). In fact, a recent poll found that the majority of Americans support life without parole over execution for someone convicted of murder.²⁹⁾Ergun, D. (2014). [New Low in Preference for the Death Penalty](#). ABC News. Punitive sentiment also recedes when questions are reworded to ask whether the courts are too lenient rather than not harsh enough.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. Second, public support for punitive policies is often based on inaccurate understanding of existing policies.³¹⁾Roberts, J. V. (1992). Public Opinion, Crime, and Criminal Justice. *Crime and Justice*, 16, 991-80 (pp. 14950); see also review in Peffley & Hurwitz (2010), note 11 above (pp. 1408). For example, research on federal sentencing shows that juries sentencing recommendations are far *below* applicable sentencing guidelines.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). Finally, Americans remain supportive of rehabilitation as a correctional goal especially for the young.³³⁾Cullen, Fisher, & Applegate (2000), note 28 above (pp. 4856); 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. and support addressing the root causes of crime rather than only responding to crime with punishment.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](#). In fact, the American public is pragmatic in its crime-control preferences.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. 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⁾Pickett, J. T. & Baker, T. (2014). The Pragmatic American: Empirical Reality or Methodological Artifact? *Criminology*, 52(2), 195-222. Yet the racial divide in punitive sentiment persists even with more nuanced survey approaches.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), 338 (pp. 1617, fn. 4).

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⁾Bureau of Justice Statistics (2010). [Criminal Victimization in the United States, 2008 Statistical Tables](#). (Tbl. 16). Note figures do not distinguish by ethnicity and therefore include a sizeable proportion of Hispanics as whites. Hispanics were 46% more likely than non-Hispanics to be victims of property crimes.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.

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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⁾Bureau of Justice Statistics (2013). [Criminal Victimization, 2012](#). (p. 7, Tbl. 7). Hispanics were 37% more likely than whites to experience these crimes.⁴¹⁾Bureau of Justice Statistics (2013), note 40 above (p. 7, Tbl. 7). 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 in the same age group and all other age groups.⁴²⁾Heron, M. (2012). Deaths: Leading Causes for 2009. [National Vital Statistics Reports](#), 61(7). (pp. 278, 345, Tbl. 1). Also available [here](#) and [here](#). 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⁾Smith, E.L. & Cooper, A. (2011). [Homicide in the U.S. Known to Law Enforcement, 2011](#). Bureau of Justice Statistics.(p. 4). Due to limitations in data submitted by law enforcement agencies, these figures do not distinguish Hispanic ethnicity.

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 herethat is, within a milewhere 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⁾University at Albany (2003). [Sourcebook of Criminal Justice Statistics 2003](#). Albany, NY. (pp. 1301, Tbl. 2.38). 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⁾University at Albany (2007). [Sourcebook of Criminal Justice Statistics 2007](#). Albany, NY.(p. 132, Tbl. 2.40).

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 those in safer environments, and be reluctant to disclose the full extent of their fear to researchers.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. 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⁾Saad, L. (2004). [Blacks Lag Behind Whites in Life Satisfaction](#). Gallup. 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⁾University at Albany (2012). [Sourcebook of Criminal Justice Statistics 2012](#). Albany, NY.(Tbl. 2.1). more blacks than whites remained concerned. When asked to identify the nations most important problem in a 2001 survey, 24% of African Americans pointed to crime, violence, and drugs in contrast to 13% of whites.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). Whites, on the other hand, were most likely to bemoan the breakdown of morals/family. What then accounts for whites greater proclivity for punishment?

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, peoples 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.

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⁾See Chiricos, T., Welch, K., & Gertz, M. (2004). Racial Typification of Crime and Support for Punitive Measures. *Criminology*, 42(2), 359-389. 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⁾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](#). (Tbl. 43). 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⁾Respondents overestimated the proportion of robberies committed by blacks by 3% (1.4 percentage points). 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⁾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](#). (Tbl. 40). For a similar pattern in a 1991 survey, see Pickett, Chiricos, Golden, & Gertz (2012), note 51 above (p. 150). These respondents estimated the overall rate of violent crime committed by Hispanics to be 27%.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). This figure significantly exceeded Hispanics share of the general population (14%) and prison population (17%) in that year.⁵⁵⁾This is the only reference point because neither national victimization surveys nor national arrest records reported Hispanic ethnicity among offenders or suspects. 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⁾National Opinion Research

Center University of Chicago (2013). [General Social Surveys, 1972-2012: Cumulative Codebook](#). Chicago, IL. On a scale where 1 refers to not violence-prone 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⁾ 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). This represented a reduction in how much more violent whites rated blacks than their own race in 1990.⁵⁸⁾ 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. 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⁾ 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. 154-2. Westport, CT: Greenwood Publishing Group.

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⁾ Quoted in Tonry, M. (1995). *Malign Neglect: Race, Crime, and Punishment in America* (p. 256). New York, NY: Oxford University Press (p. 50). 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⁾ Based on the authors 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). These results indicate that racial typification occurs more strongly among whites than African Americans.

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 peoples 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.

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

The Implicit Association Test (IAT) examines differences in the speed with which respondents classify pictures or words into strongly or weakly associated categories.⁶²⁾ Project Implicit has made a version of the test available [here](#). 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⁾ 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. 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⁾ 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. Importantly, these studies have uncovered implicit racial bias even among individuals who explicitly disavowed prejudice.⁶⁵⁾ Greenwald, McGhee, & Schwartz (1998), note 63 above (p. 1475).

Implicit racial biases also permeate the work of criminal justice professionals and influence the deliberation of jurors. When researchers administered the IAT to judges⁶⁶⁾ 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). and capital defense lawyers,⁶⁷⁾ Eisenberg, T. & Johnson, S. L. (2004). Implicit Racial Attitudes of Death Penalty Lawyers, *DePaul Law Review*, 1545-55 (pp. 1546-51). 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 bias on the work of prosecutors⁶⁸⁾ 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. and defense attorneys.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. Studies of case outcomes including bail determinations, prosecutorial charging, and sentencing also reveal that the work of criminal justice professionals is affected by a defendants race even after other relevant factors are controlled, as described later. Finally, studies of mock jurors have found that a defendants race has some impact on verdicts and sentencing.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*, 29, 627-638; 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*, 78, 997-1031. 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⁾ Levinson, J. D. & Young, D. (2010). Different Shades of Bias: Skin Tone, Implicit Racial Bias, and Judgments of Ambiguous Evidence. *West Virginia Law Review*, 113, 307-350.

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 Paynes 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, 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.

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

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)Correll, J., Park, B., Judd, C. M., Wittenbrink, B., Sadler, M. S., & Keese, 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), 1006-1023. 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)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.

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 likely to overestimate their neighborhoods crime rates.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), 717-767; 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. 1701); Wickes, R., Hipp, J. R., Zahnw, R., & Mazerolle, L. (2013). Seeing Minorities and Perceptions of Disorder: Explicating the Mediating and Moderating Mechanisms of Social Cohesion. *Criminology*, 51(3), 519-560. 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)Quillian & Pager (2001), note 76 above (p. 747).

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.

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.

Public support for punitive juvenile justice policies to some extent represents a desire to control other peoples children.

Ted Chiricos and colleagues have demonstrated the link between racial perceptions of crime and punitive policy preferences.⁷⁸)Chiricos, Welch, & Gertz (2004), note 50 above (p. 369). 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)Chiricos, Welch, & Gertz (2004), note 50 above (p. 3756). 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 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)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). Strong associations of crime with Hispanics have also been linked to greater punitiveness.⁸¹)Welch, Payne, Chiricos, & Gertz, (2011), note 54 above (p. 831): note that this study did not disaggregate respondents by race.

To determine whether racial perceptions of crime also impact views of juvenile justice, Chiricos and colleagues analyzed a 2010 national survey.⁸²)Pickett, J. T. & Chiricos, T. (2012). Controlling Other Peoples 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. 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 peoples children.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. 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 have theorized, increases the desire for retaliation, decontextualizes offensive behavior, and decreases capacity for forgiveness.⁸⁴Unnever, 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). 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 peoples 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.⁸⁵Unnever, J. D., Cullen, F. T., & Fisher, B. S. (2005). Empathy and Public Support for Capital Punishment. *Journal of Crime and Justice*, 28(1), 134 (p. 12). 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.⁸⁶Unnever, Cullen, & Fisher (2005), note 85 above (p. 22).

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.⁸⁷Unnever & 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. 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.⁸⁸Barkan & Cohn (2005), note 57 above. 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.

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.

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.⁸⁹Sampson, 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). 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.⁹⁰This 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. (Tbl. 43A). 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.⁹¹Violent 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. 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.

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**.

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.⁹²See 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). 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 been falling for a quarter century.⁹³ Tonry, M. & Melewski, M. (2008). The Malign Effects of Drug and Crime Control Policies on Black Americans. *Crime and Justice*, 37(1), 144 (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. And yet the profile of prisoners has been slow to adjust.⁹⁴ Mauer (2013), note 10 above (p. 8, Tbl. 1).

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 Carson & Golinelli (2013), note 4 above (p. 6, Tbl. 4); United States Sentencing Commission (2014). [2013 Sourcebook of Federal Sentencing Statistics](#). (Figure A). Whites comprise the majority of drug users and sellers,⁹⁶ Mauer, M. (2009). [The Changing Racial Dynamics of the War on Drugs](#). Washington, D.C.: The Sentencing Project. (p. 8, Tbl. 3). but were only 30% of the state prison population with drug convictions in 2011.⁹⁷ Carson, E. A. & Golinelli, D. [Prisoners in 2012 Advance Counts](#). Bureau of Justice Statistics. (p. 11, Tbl. 10). Surveys by the National Institute on Drug Abuse and the Department of Health and Human Services show that both recently⁹⁸ 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. (Tbels. 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](#). (Figure 2.12). and historically,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. (Figure 6). 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 Beckett, K., Nyrop, K., Pfingst, L. (2006). Race, Drugs, and Policing: Understanding Disparities in Drug Delivery Arrests. *Criminology*, 44(1), 105-137; Riley, K. J. (1997). [Crack, Powder Cocaine, and Heroin: Drug Purchase and Use Patterns in Six Major U.S. Cities](#). National Institute of Justice. (pp. 1516). 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. 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 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. 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 Blumstein (1993), note 101 above (p. 749). 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 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. Overall, this approach determined that racial differences in arrests accounted for 76% of the racial disparity in the prison population in 1991.¹⁰⁴ 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. The remainder might be caused by racial bias, as well as other factors including differing criminal histories.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. 1412). Blumstein concluded, The bulk of the disproportionality [in the criminal justice system] is a consequence of the differential involvement by blacks in the most serious kinds of crime.¹⁰⁶ Blumstein (1993), note 101 above (p. 759).

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 Tonry & Melewski (2008), note 93 above (p. 18). though this figure is distorted by the growing Latino population being counted as white in arrest records.¹⁰⁸ Steffensmeier, Feldmeyer, Harris, & Ulmer (2011), note 93 above (pp. 201, 219-222). Nationwide figures also obscure vast regional variation.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. 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?

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 Dorfman, L. & Schiraldi, V. (2001). [Off Balance: Youth, Race & Crime in the News](#). Washington, D.C.: Building Blocks for Youth. (pp. 722). 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 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), 335348; Beckett, K. & Sasson, T. (2004). *The Politics of Injustice: Crime and Punishment in America*. Thousand Oaks, Calif.: Sage Publication (Chapter 5). 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⁾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, 451489. National Institute of Justice (pp. 4667).

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**.

Because of the medias gravitation toward notable crimes and ensuing policy debates, upticks in news media coverage of crime often have little to do with broaderwhite crime trends.¹¹³⁾Chiricos, T., Eschholz, S., & Gertz, M. (1997). Crime, News and Fear of Crime: Toward an Identification of Audience Effects. *Social Problems*, 44(3), 342357; Beckett & Sasson (2004), note 111 above (pp. 745). 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⁾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), 395415; 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), 3655.

Media crime coverage not only increases the salience of crime, it also distorts the publics 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 portray a world overrepresented by black, male offenders and white, female victims. One study of how Columbus, Ohios major newspaper reported on the citys murders which were predominantly committed by and against black men examined whether unusual or typical cases were considered newsworthy.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), 357386; see also Pritchard, D. & Hughes, K. D. (1997). Patterns of Deviance in Crime News. *Journal of Communication*, 47(3), 4967. 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⁾Lundman, (2003), note 115 (p. 361). Researchers have found similar selection bias in coverage of Hispanic suspects and non-Hispanic victims on television news.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), 400420.

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⁾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), 13154; 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), 56073; 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), 623; Peffley, M., Shields, T., & Williams, B. (1996). The Intersection of Race and Crime in Television News Stories: An Experimental Study. *Political Communication*, 13(1), 30927. Another study found that whites represented 43% of homicide victims in the local news, but only 13% of homicide victims in crime reports.¹¹⁹⁾Dixon, T. L. & Linz, D. G. (2000). Race and the Misrepresentation of Victimization on Local Television News. *Communication Research*, 27(5), 54773. 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⁾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), 268305. These disparities exist nationwide and are greatest when the victims race is taken into consideration.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, 498523 (pp. 5125); Entman, R. (1992) Blacks in the News: Television, Modern Racism, and Cultural Change. *Journalism Quarterly*, 69(2), 34161; 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), 51541; Reeves, J. L. & Campbell, R. (1994). *Cracked Coverage: Television News, the Anti-Cocaine Crusade, and the Reagan Legacy*. Durham, NC: Duke University Press. 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⁾Chiricos & Eschholz (2002), note 117 above. 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⁾Entman & Rojecki (2000), note 121 above. Blacks and Hispanics were also more likely to be treated aggressively by police officers on reality-based TV shows, including *Americas Most Wanted* and *Cops*.¹²⁴⁾Oliver, M. B. (1994). Portrayals of Crime, Race, and Aggression in Reality-Based Police Shows: A Content Analysis. *Journal of Broadcasting & Electronic Media*, 179192. Mass media are therefore a major contributor to Americans misconceptions about crime, with journalists and producers apparently acting based on their own or expectations of their audiences stereotypes about crime.

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⁾Enns (Forthcoming), note 11 above; Nicholson-Crotty, Peterson, & Ramirez (2009), note 11 above. 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)Beckett, K. (1994). Setting the Public Agenda: Street Crime and Drug Use in American Politics. *Social Problems*, 41(3), 425-447. 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)Simon, R. (1990). [How A Murderer And Rapist Became The Bush Campaigns Most Valuable Player](#). *The Baltimore Sun*; Love, K. (1988). [Bush Backers Have Horton Victims Speak](#). *The Los Angeles Times*. 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)Rosenthal, A. (1988). [Bush Campaign Called Racist](#). *Pittsburgh Post-Gazette*. 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 that the campaign effectively activated racial prejudice.¹²⁹)Mendelberg, T. (1997). Executing Hortons: Racial Crime in the 1988 Presidential Campaign. *Public Opinion Quarterly*, 61, 1345-7; 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. 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)Mendelberg (1997), note 129 above (p. 152). 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)Porter, N. & Clemons, T. (2013). [Drug-Free Zone Laws: An Overview of State Policies](#). Washington, D.C.: The Sentencing Project. 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)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. Policymakers are also at times immune to public support for less punitive policies. Thus despite decreasing punitive sentiment among the public 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)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).

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.

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

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 rates of drug use (see Figure 10).¹³⁴)Edwards, E. Bunting, W. Garcia, L. (2013). [The War on Marijuana in Black and White](#). New York, NY: American Civil Liberties Union. 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)Starr, S. B. & Rehaui, M. M. (2013). Mandatory Sentencing and Racial Disparity: Assessing the Role of Prosecutors and the Effects of. *The Yale Law Journal*, 123(2), 280. State prosecutors are more likely to charge black rather than comparable white defendants under habitual offender laws.¹³⁶)Crawford, C., Chiricos, T., & Kleck, G. (1998). Race, Racial Threat, and Sentencing of Habitual Offenders. *Criminology*, 36(3), 481-512. These disparities indicate 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)Cohen, T. H. & Reaves, B. A. (2007). [Pretrial Release of Felony Defendants in State Courts](#). Bureau of Justice Statistics Special Report. and blacks and Latinos are more likely than whites to be denied bail or to be imposed a bond that they cannot afford.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. 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⁾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), 705729; Steffensmeier, D. & Demuth, S. (2001). Ethnicity and Judges Sentencing Decisions: Hispanic-Black-White Comparisons. *Criminology*, 39(1), 145178; Spohn, S. C. (2000). Thirty Years of Sentencing Reform: The Quest for a Racially Neutral Sentencing Process. *Criminal Justice*, 3, 427501. 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⁾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), 763798.

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 attorneys¹⁴¹⁾Eisenberg, T. & Johnson, S. L. (2004). Implicit Racial Attitudes of Death Penalty Lawyers. Cornell Law Faculty Publications, Paper 353, 15391556. and juvenile probation officers.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), 554570. The resulting overrepresentation of people of color in prisons and jails helps to reinforce the public's racial perceptions of crime.

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⁾Unnever & Cullen (2009), note 84 above (p. 286). 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 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⁾Newport, F. (2013). [Gulf Grows in Black-White Views of U.S. Justice System Bias](#). Gallup. Similarly, Pews 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). [Kings Dream Remains an Elusive Goal: Many Americans See Racial Disparities](#). Washington, D.C. 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⁾Western (2006), note 3 above (pp. 2526); see also Bonczar, T. P. (2003). [Prevalence of Imprisonment in the U.S. Population, 1974-2001](#). Bureau of Justice Statistics. 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⁾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), 471486. 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 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⁾Langton, L. & Durose, M. (2013). [Police Behavior during Traffic and Street Stops, 2011](#). Bureau of Justice Statistics.(p. 3); Eith, C. & Durose, M. R. (2011). [Contacts Between Police and the Public, 2008](#). Bureau of Justice Statistics. (p. 7). 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⁾Langton & Durose (2013), note 147 above (p. 4). These national statistics also obscure staggering disparities in some jurisdictions.¹⁴⁹⁾Cole, D. (1999) *No Equal Justice: Race and Class in the Criminal Justice System*. New York: The New Press (pp. 3438).

Charles Epp and colleagues conducted a study of police stops between 2003 and 2004 in Kansas City, a nationally representative metropolitan area.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. 69, 59). Based on respondents' reports of the officers' 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*. 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 drivers race, but rates of investigatory stops did, and did so significantly.

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⁾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. 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, Maynard-Moody, & Haider-Markel (2014), note 150 above (p. 67) 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⁾Epp, Maynard-Moody, & Haider-Markel (2014), note 150 above (p. 69). Traffic-safety stops, the authors conclude, are based on how people drive, whereas investigatory stops are based on how they look.¹⁵⁴⁾Epp, Maynard-Moody, & Haider-Markel (2014), note 150 above (p. 64).

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

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⁾Langton & Durose (2013), note 147 above (p. 9); see also Epp, Maynard-Moody, & Haider-Markel (2014), note 150 above (Chapter 4). and blacks were twice as likely as whites to be arrested during a traffic stop.¹⁵⁶⁾Eith & Durose (2011), note 147 above (p. 9). 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⁾Langton & Durose (2013), note 147 above (p. 4). Traffic stop trends help 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⁾Peffley & Hurwitz (2010), note 11 above (pp. 412); 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. 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⁾Hagan, J., Shedd, C., & Payne, M. R. (2005). Race, Ethnicity, and Youth Perceptions of Criminal Injustice. *American Sociological Review*, 70, 381407. 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⁾Eith & Durose (2011), note 147 above (pp. 6, 12). 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⁾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.

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⁾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), 10091030. 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 ones community.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 Dont](#). *The Washington Post*. 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⁾Newport (2013), note 144 above; Pew Research Center (2013), note 144 above..

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⁾Peffley & Hurwitz (2010), note 11 above (pp. 8788, 1702, 1789) 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), 511538 (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. Whites are also more likely to see disparate police treatment of blacks as rational discrimination given differences in crime rates, whereas blacks see it as unjustifiable because it leads to law-abiding individuals having to confront a presumption of wrongdoing.¹⁶⁷⁾African American woman quoted in: Weitzer, R. (2000). Racialized Policing: Residents Perceptions in Three Neighborhoods. *Law & Society Review*, 34(1), 129155 (p. 138). As a young black man interviewed in one study observed: When black people walk with our hands in our pockets, we look like were up to something. When a white man walk with his hands [in his pockets] we know he cold.¹⁶⁸⁾Weitzer (2000), note 167 above. Another young black man stated: Always assuming the worst when its someone of color.¹⁶⁹⁾Weitzer (2000), note 167 above.

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.

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.¹⁷⁰Bobo, 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). 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.¹⁷¹Bobo, Kluegel, & Smith (1997), note 59 above (p. 23). 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*.¹⁷²Bobo, Kluegel, & Smith (1997), note 59 above (p. 15).

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

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.¹⁷³Bobo, 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. 388-3. Princeton, NJ: Princeton University Press (Figure 11). 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 dont have the chance for education that it takes to rise out of poverty.¹⁷⁴Bobo (2001), note 170 above (pp. 283-4); see also Bobo, Charles, Krysan, & Simmons (2012), note 173 above (Figure 13). 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.¹⁷⁵Bobo, 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.¹⁷⁶Bobo, Charles, Krysan, & Simmons (2012), note 173 above (Figure 7).

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.¹⁷⁷Johnson, 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. 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.¹⁷⁸Chiricos, 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). 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.¹⁷⁹Unnever, 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). Like others,¹⁸⁰Barkan, 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. 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.¹⁸¹Unnever & 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), 459-6 (pp. 738-1); 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. 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 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. 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 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).

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.

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 Thompson & Bobo (2011), note 27 above (p. 22). Individualistic explanations of crime are also more popular among conservatives, Republicans, southerners, and older individuals.¹⁸⁵ Thompson & Bobo (2011), note 27 above (p. 26). 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 Pickett & Baker (2014), note 36 above (pp. 209-210); Peffley & Hurwitz (2010), note 11 above (pp. 1013, 1702, 1789). 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 overrepresentation of blacks in prisons.¹⁸⁷ Peffley & Hurwitz (2010), note 11 above (pp. 92, 124, 132).

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 Thompson & Bobo (2011), note 27 above (p. 16). 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.

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 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; Guerino, P., Harrison, P. M., & Sabol, W. J. (2011). [Prisoners in 2010](#). Bureau of Justice Statistics. 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 Blumstein (1993), note 101 above (p. 751). This section examines the toxic effects of a harsh and selective criminal justice system.

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 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). 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 Bobo, L. D. & Thompson, V. R. (2010). Racialized Mass Incarceration. In Markus, H. R. & Moya, P. (eds.) *Doing Race: 21 Essays for the 21st Century*, pp. 322-356. New York, NY: Norton (p. 350). These encounters have created an enormous racial chasm in responses toward the U.S. criminal justice system.¹⁹³ Peffley & Hurwitz (2010), note 11 above (p. 5) 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 See Section VII Part A above. 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 Newport (2013), note 144 above. 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 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. 512, 92, 95); Unnever (2008), note 166 above. 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 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. 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 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 systems 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⁾ 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*. 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). Jury mistrust of police officers has also interfered with criminal trials.²⁰⁰⁾ Eckholm, E. (2014) [As Justice Department Scrutinizes Local Police, Cleveland Is Latest Focus](#). *The New York Times*.

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⁾ Butler, P. (2009). *Lets 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. 723 & Chapter 5). 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⁾ Alexander, M. (2012). [Go to Trial: Crash the Justice System](#). *The New York Times*. 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 Martins 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⁾ Newport (2013), note 144 above. 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.

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⁾ 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. The mark of a criminal record tarnishes employment prospects,²⁰⁵⁾ Pager, D. (2007). *Marked: Race, Crime, and Finding Work in an Era of Mass Incarceration*. Chicago, IL: University of Chicago Press. contributes to aggregate levels of racial economic inequality,²⁰⁶⁾ Western, B. (2002). *The Impact of Incarceration on Wage Mobility and Inequality*. *American Sociological Review*, 67, 526546; Pettit, B. (2012). *Invisible Men: Mass Incarceration and the Myth of Black Progress*. New York, NY: Russell Sage Foundation. and can bar individuals from welfare benefits, food stamps,²⁰⁷⁾ Mauer, M. (2013). [A Lifetime of Punishment: The Impact of the Felony Drug Ban on Welfare Benefits](#). The Sentencing Project. public housing, and voting.²⁰⁸⁾ Manza, J. & Uggen, C. (2002). *Democratic Contraction? Political Consequences of Felon Disenfranchisement in the United States*. *American Sociological Review*, 67, 777803. Incarceration has long-term material, physical, and mental health consequences for prisoners children and other family members.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, 791817. 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⁾ Wildemann, C. (2009) *Parental Imprisonment, the Prison Boom, and the Concentration of Childhood Disadvantage*. *Demography*, 46(2), 265280 (p. 277). 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⁾ 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. 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⁾ 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), 927966; Liberman, A. M., Kirk, D. S., & Kim, K. (Forthcoming). *Labeling Effects of First Juvenile Arrests: Secondary Deviance and Secondary Sanctioning*. *Criminology*. 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.

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

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.²¹³Drakulich, 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). 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.²¹⁴Hackney, A. A. & Glaser, J. (2013). Reverse Deterrence in Racial Profiling: Increased Transgressions by Nonprofiled Whites. *Law and Human Behavior*, 37(5), 348-53. Racial profiling could increase crime among nonprofiled groups, having a counterproductive effect, the researchers concluded.²¹⁵Hackney & Glaser (2013), note 214 above (p. 351).

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.

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.²¹⁶Dorfman & Schiraldi (2001), note 110 above (pp. 273-6). 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,²¹⁷The Sentencing Project (2008). [Reducing Racial Disparity in the Criminal Justice System: A Manual for Practitioners and Policymakers](#). Washington, D.C.(pp. 115-7). the New York University Journal of Legislation and Public Policy has profiled several reforms in its recent symposium issue,²¹⁸[New York University Journal of Legislation and Public Policy](#) (2013). 16(4). 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.²¹⁹Hoytt, E. H., Schiraldi, V., Smith, B. V., & Ziedenberg, J. (2001). [Reducing Racial Disparities in Juvenile Detention](#) (2001). Baltimore, MD: Annie E. Casey Foundation; Shoenberg, D. (2012). [Innovation Brief: Reducing Racial and Ethnic Disparities in Pennsylvania](#). Chicago, IL: MacArthur Foundation; National Association of Counties (2011). [Juvenile Detention Reform: A Guide for County Officials, Second Edition](#). 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.²²⁰National Center for State Courts. [Helping Courts Address Implicit Bias: Resources for Education Williamsburg VA](#).

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.²²¹Dorfman & Schiraldi (2001), note 110 above (pp. 273-6). 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.

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

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).²²²Federal Bureau of Investigation (2004). [Crime in the United States 2004](#). Washington, D.C. 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.²²³Blumstein, A. (2004). Disaggregating the Violence Trends. In Blumstein, A. & Wallman, J. (eds.) *The Crime Drop in America*, pp. 134-4. New York, NY: Cambridge University Press; Beckett & Sasson (2004), note 111 above (pp. 132-3). 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.

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.

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.²²⁴Kugler, 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. 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.²²⁵Death Penalty Information Center (2014). [International Polls and Studies](#). Washington, D.C. 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.

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.²²⁶Mauer & Ghandnoosh (2014), note 8 above; Greene & Mauer (2010), note 8 above. California's experience with decarceration also offers useful lessons.²²⁷Mauer & 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. The juvenile justice system, which has reduced youth confinement and detention by over 40% since 2001,²²⁸See 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. can also serve as a model for the adult system.²²⁹In addition to note 219 above, see [MacArthur Foundations Models for Change](#); [The W. Haywood Burns Institute](#).

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.²³⁰Holder, 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. and President Barack Obama's recent Clemency Initiative.²³¹Department of Justice (2014). [Announcing New Clemency Initiative, Deputy Attorney General James M. Cole Details Broad New Criteria for Applicants](#).

Policymakers should identify and reform ostensibly race-neutral policies 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.²³²Clark, M. (2013). [Should More States Require Racial Impact Statements for New Laws?](#) The Pew Charitable Trusts. Some jurisdictions have begun to assess the racial bias inherent in risk assessment instruments used for criminal justice decision making.²³³Hoytt, Schiraldi, Smith, & Ziedenberg (2001), note 219 above (pp. 5660); The Sentencing Project (2008), note 217 above (p. 31). 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.

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 incarcerations 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.²³⁴Mauer (2013), note 207 above. 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.²³⁵National Employment Law Project (2014). [Statewide Ban the Box: Reducing Unfair Barriers to Employment of People with Criminal Records](#). New York, NY; see also National Employment Law Project (2014). [Ban the Box: A Fair Chance for a Stronger Economy](#).

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

To fully realize the benefits of these approaches, savings from decarceration should be redirected to crime prevention and drug treatment efforts. Susan Tucker and Eric Cadoras 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.²³⁶Tucker, S. B. & Cadora, E. (2003). Justice Reinvestment. [Ideas for An Open Society](#) 3(3). New York, NY: Open Society Institute. Washington, D.C. Downscaling prisons should therefore be accompanied by reinvestment into communities harmed by mass incarceration.

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.²³⁷Staats, C. (2014). [State of the Science: Implicit Bias Review 2014](#). Columbus, OH: Kirwan Institute. (pp. 201, 256, 336); Staats, C. (2013). [State of the Science: Implicit Bias Review 2013](#). Columbus, OH: Kirwan Institute. (pp. 5363); Kang, J., et al. (2012). Implicit Bias in the Courtroom. *UCLA Law Review*, 59(5), 1124-1186 (pp. 116986); 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. 5058). 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.²³⁸Rapping, J. A. (2013). *Implicitly Unjust: How Defenders Can Affect Systemic*

Racist Assumptions. New York University Journal of Legislation and Public Policy, 16(4), 9991048 (pp. 102242). 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.

In their comprehensive review of implicit racial bias research, the Kirwan Institute for the Study of Race and Ethnicity concludes that education efforts aimed at raising awareness about implicit bias can help debias individuals.²³⁹ Staats (2014), note 237 above (pp. 201, 256, 336); Staats (2013), note 237 above (pp. 5363). 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 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), 201229. 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 One version of the test is available from [Project Implicit](#).

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 Staats (2014), note 237 above (pp. 201, 256); Staats (2013), note 237 above (pp. 5363) 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), 524552. 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, 359379. 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 likely to sentence offenders to death.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), 597612; 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), 14971538. North Carolinas Racial Justice Act, now repealed, sought to correct for the stubborn legacy of racially biased jury selection.²⁴⁴ Grosso, C. M. & OBrien, 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, 15311559.

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 National Center for State Courts, note 220 above. 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 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), 82152. Prosecutors in New York City are demonstrating how this stage of the justice system can reduce upstream disparities. The Brooklyn District Attorneys 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 Clifford, S. & Goldstein, J. (2014). [Brooklyn Prosecutor Limits When Hell Target Marijuana](#). The New York Times; The New York Times Editorial Board (2014). [How Race Skews Prosecutions](#).

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 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. 1667). 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 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. 1624). 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 Peffley & Hurwitz (2010), note 11 above (p. 165; see also 157166); Peffley, M. & Hurwitz, J. (2007). Persuasion and Resistance: Race and the Death Penalty in America. American Journal of Political Science, 51(4), 9961012 (p. 1002). Similarly, white Californians who were encouraged to overestimate the proportion of blacks in the states prisons were less likely to support restricting the states 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 Hetey, R. C. & Eberhardt, J. L. (Forthcoming). Racial Disparities in Incarceration Increase Acceptance of Punitive Policies. Psychological Science. 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.

Footnotes[+]

Increase in U.S. jail & prison population in the last 40 years

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