

Stakeholder Report on behalf of Social Workers and Allies Against Solitary Confinement (SWASC): A Brief Submitted to support the work to Advance Racial Justice and Equality in the context of Law Enforcement

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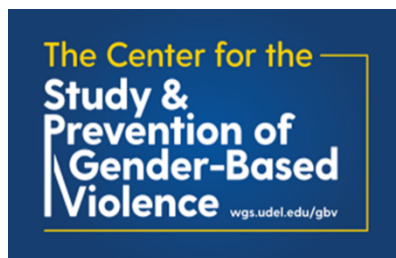
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Introduction

The criminal legal system in the United States is built on the foundation of white supremacy and rooted in slavery. These are bold claims, but they are [substantiated](#) by scholars from a variety of disciplines, including history, criminology and sociology. In this brief, we will elucidate the role of white supremacy and slavery in the development of the criminal legal system, we will provide empirical evidence that illustrates the persistence of racism and racial inequality in the criminal legal system, and we conclude with recommendations for solutions.

A Brief History

Unique to the United States, every institution, including the criminal legal system, is built on the foundation of white supremacy, which is codified into law. In 1662, just a few years after the first people who had been kidnapped from the western shores of African arrived on the shores of the colony of Virginia, the Virginia House of Commons set forth two key conditions of slavery as it would exist in the United States: the establishment of people of African descent as less than fully human (which is re-codified in the 3/5ths compromise and in the Dred Scot decision) and the categories of “white” and “slave” were established legally such that a child’s race was determined by the racial identity of the mother and not the father (Glaude 2020; Hattery and Smith 2023).

Legally defining people of African descent not only as non-citizens but as less than fully human laid the ground work for a criminal legal system that is designed for punishment, torture, and permanence. As we argue in *Way Down in the Hole* (Hattery & Smith, 2023), the structures of solitary confinement are built upon and justified by a belief that the people we lock in cages are not fully human and that all begins with the decisions in 1662 and 1789 to render people of African descent as chattel, as a fraction of a person.

It is well documented that the roots of law enforcement in the United States begin with the slave patrol (LeFlouria 2016; Oshinsky 1997). Slave patrols were organized all across the south in order to capture the enslaved who dared risk their lives for freedom. Yet, as the data we highlight in this report will reveal, the foundation upon which modern day law enforcement was built--white supremacy--remains integral to its practice. On every single measure, as the data will demonstrate, Black people are disproportionately targeted and surveilled which results in significantly higher rates of incarceration.

The Over Surveillance of Black Bodies

Black people are over-surveilled in every space in the criminal legal system, they are more likely to be the targets of “stop and frisk,” traffic stops, to be convicted of crimes, to serve longer sentences, to be sent to solitary confinement, and to be wrongfully convicted and exonerated often after having spent decades in prison. They are also more likely to be killed by the police, even when and especially if they are unarmed (Leslie et.al. 2022).

Stop and Frisk

Though some version of “stop and frisk” has been practiced in various communities throughout US history, “stop and frisk” was a significant law enforcement practice in New York City between 2003 and 2013; at its height, more than 100,000 people were stopped and frisked annually. Research by Gelman and colleagues (2007) revealed that Black and Hispanic individuals were more likely to be stopped and frisked even when controlling for precinct specific variables and race-specific estimates of crime involvement. Simply put, the laws were enacted in racist ways; Black and Hispanic people were disproportionately “stopped and frisked” even when controlling for the likelihood that they were engaged in criminal behavior.

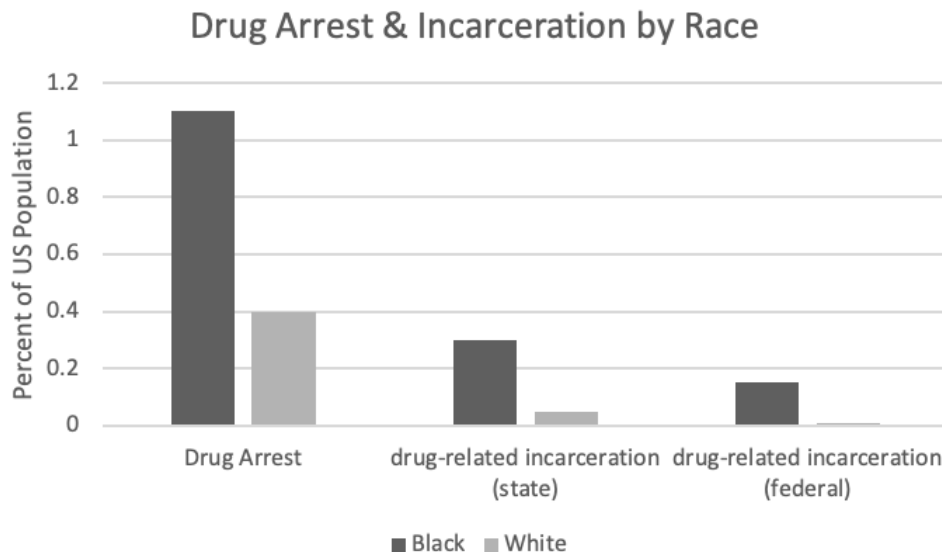
This finding is consistent with the data on drug use, surveillance, and criminal legal involvement.

The War on Drugs

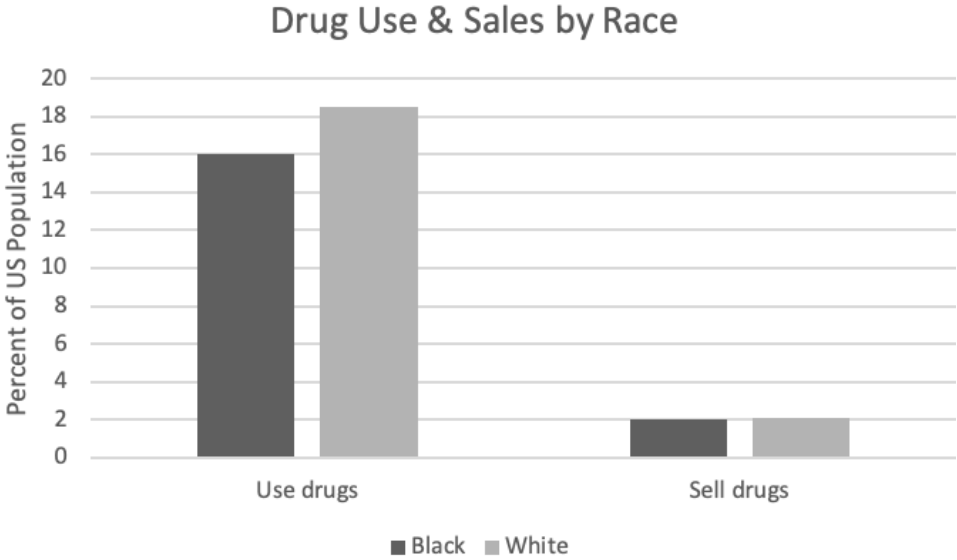
It was widely known and the subject of much informed speculation that the War on Drugs, launched by then President Nixon, expanded by then President Reagan, and deeply embedded in the criminal legal system by then President Bill Clinton, was a thinly veiled war on Black people. This was confirmed in a 2016 interview with Nixon’s former domestic policy advisor John Ehrlichman (Hattery & Smith, 2021).

Essential to this war are the sentencing disparities between crack and powder cocaine. And, despite minor adjustments to these racialized laws by the Obama and Biden administrations, crack cocaine use is more heavily sanctioned in ways that contribute to the disproportionate incarceration rates of Black people.

Of the 2.3 million people who are incarcerated in a variety of institutions, nearly 50% are Black men. And, though there are many reasons for this racial disparity, the War on Drugs plays a significant role.



All the while, Black people were no more likely to use drugs than their white counterparts.



Sociologist Erik Olin Wright argues something much more insidious than simply a “war” on Black people. He argued that mass incarceration was a tool to remove Black people from the social political economy in an era when slavery and genocide were no longer tolerable in modern democracy (Wright, 1997).

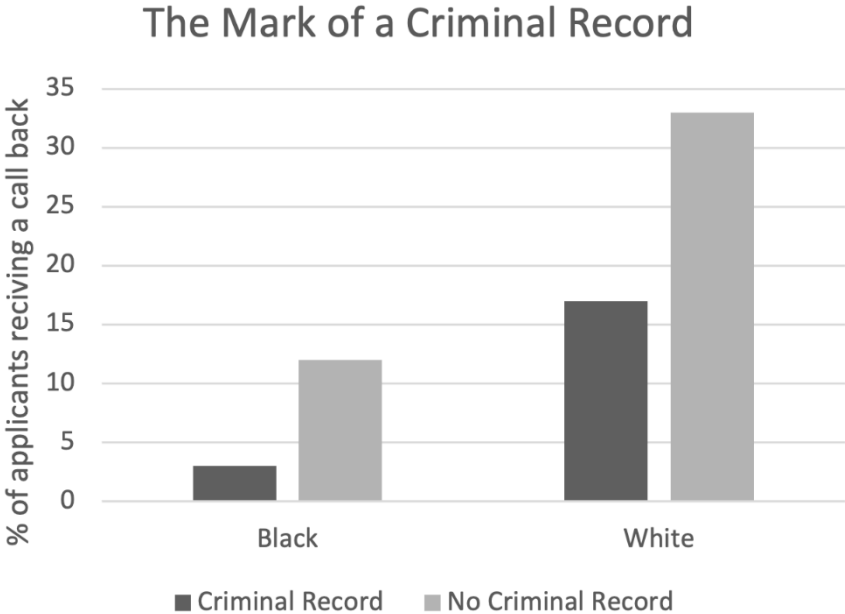
Solitary Confinement

Solitary Confinement is torture! Racial disparities continue in the invisible prison within a prison. Inside of prison, Black people are more likely to be held in solitary confinement, even though there is no evidence that they are more likely to commit misconducts that send them to the hole (Hattery & Smith, 2023). In-depth research by the authors (Hattery & Smith 2023) reveals that specific structures of solitary confinement serve to produce and reproduce white racial resentment among the overwhelming white staff who work there.



And these racial disparities have a long-term impact even after one has completed the prescribed sentence, including obstacles to employment, voting, and accessing social welfare like TANF and access to public housing.

Sociologist Devah Pager’s (2003) experiment reveals that all men with felony drug convictions face barriers to employment, but that Black men *without* a felony drug conviction are even less likely to be hired than white men *with* a felony drug conviction.



Police Brutality

At the extreme, are the cases of the killings of unarmed Black people (including children, women and those with severe mental health challenges) by the police. Though the police kill thousands of people each year, many of them unarmed, an analysis of the data reveals that the majority of the victims are Black men (Mapping Police Violence); in fact, the U.S. leads the world in the killing of their own citizens (Hattery & Smith, 2021). The average lifetime odds of being killed by police are about 1 in 2,000 for men and about 1 in 33,000 for women. Risk peaks between the ages of 20 and 35 for all groups. For young men of color, police use-of-force is among the leading causes of death (Edwards, F., H. Lee & M. Esposito, 2019).

Additionally, research by Leslie and colleagues (2022) reveals that Black people are statistically significantly more likely to be killed by police in neighborhoods that have a higher percentage of Black residents. This finding suggests that over-surveillance is a significant factor in police killings. In other words, the more often Black people encounter the police, the more likely they are to be killed by them.

After the murder of George Floyd in May of 2020 there were massive demonstrations around the U. S., and around the world. There were widespread calls for police reform, and though some

cities did enact piece-meal police reforms. Reform was more rhetoric than reality. For example, notably, New York City, home to the nation’s largest police force, became the first municipality to end qualified immunity for officers (Romine, 2021). New Jersey added “teeth” to the office of police accountability in the attorney general’s office. But data reveal that despite widespread calls to “defund the police” after the murder of George Floyd, spending under the Biden administration has increased ([NBC News 2022](#)).

While any reform is an important step, these measures often fail. No metric is clearer in assessing the value of these reforms than to examine the data on unarmed Black people killed by the police after the murder of George Floyd. Estimates have it that at least 200 unarmed Blacks have been killed by the police since the murder of George Floyd in 2020 (Mapping Police Violence, <https://mappingpoliceviolence.org>). Updates to these data inform us that since the New Year, 2023, there have been at least seven police killings of unarmed people, including Tyre Nichols.

Outside of a small Black elite, African Americans suffer second- class citizenship that allows for police brutality.

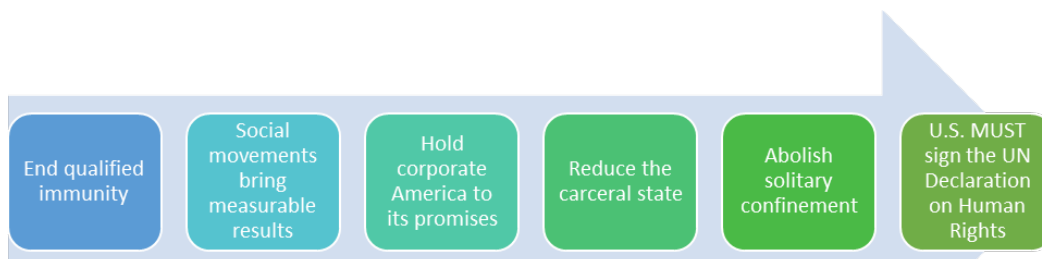
Seeing a whole group of people as less than fully human, as second- class citizens paves the way for all Black people, including members of the Black elites, to be subjected to being stopped by police, frisked, handcuffed and often jailed, often without cause. For example, in 2009, Harvard Black history scholar Henry Louis Gates was arrested when he was locked out of his own Cambridge, Massachusetts home, after a neighbor called police saying that an intruder was breaking into a house. Gates was entering his own home and the police thought he was an invader (Pilkington, 2009). Henry Louis Gates was lucky he was not shot.

Recommendations

We must hold policing agencies accountable!

As we have demonstrated in this brief, the criminal legal system in the United States is built on the foundation of white supremacy and, as designed, it perpetuates racial inequality. In order to truly eradicate racism in the criminal legal system it must be torn down and rebuilt on a new foundation. And, the first step in doing this is to acknowledge the foundation on which it is built. Politicians can ban the teaching (and reading) of critical race theory all they want to, but until the United States, as a whole, is willing to grapple with the historical foundation of white supremacy, there is little that reforms can accomplish.

That being said, in the short term, we suggest some areas for immediate action:



End Qualified Immunity

Police unions are strong and their interest is in preserving the police brotherhood over ensuring justice. As common as police killings of unarmed Black people are, as noted more than 200 since the murder of George Floyd, the opposite is true of police accountability. Only a handful of officers or police surrogates have been held accountable in any meaningful way. Police violence will continue until there is meaningful accountability. Not only must citizens advocate for ending qualified immunity, but the UN and the federal government should consider proclamations and laws that render qualified immunity illegal.

Social Movements Must Bring Measurable Results

Though we are heartened by the Black Lives Matter movement, especially the multi-racial, multi-gender protests in the wake of the murder of George Floyd and Breonna Taylor, we see the need for a well-coordinated, national social movements like those that stopped Jim Crow segregation in Greensboro, North Carolina at the segregated Woolworth lunch counter that began on February 1, 1960 in the south. Likewise, like the movement that crossed the Edmund Pettus Bridge on "Bloody Sunday," on March 7, 1965. These social movements had purpose. They had staying power. Unlike the financial promises from capitalist corporations after the George Floyd murder, promises that they would fight injustices including violence and racism against Black Americans, that were never kept.

Hold Corporate America to its Promises

In the wake of the social movements following the murders of George Floyd and Breonna Taylor, corporate America--from Nike to Google--were quick to get out in front and associate their companies and their brands with racial equity. And, yet, those promises were short-lived and never realized.

“Now, more than a year after America’s leading businesses assured employees and consumers they would rise to the moment, a Washington Post analysis of unprecedented corporate commitments toward racial justice causes reveals the limits of their power to remedy structural problems” -Tracy, McGregor & M. Hoyer (2021).

Significantly Reduce the Carceral State

As we and others have argued, the US incarcerates a higher percentage of its citizenry than any other country, including nations often associated with detention, including Russia, China, and North Korea. More focused than a simple call to “defund the police,” essential to achieving racial equity in law enforcement is to eliminate racism in every aspect of policing including race-based surveillance, eliminating racial bias in charging, prosecution and sentencing. Though this is easier said than done, and will require political buy-in, training, and the passing of race neutral

policies and practices, it is achievable. For example, in order to reduce racial bias in traffic stops, we recommend eliminating armed police patrols and replacing them with both cameras--often used to detect the running of red lights or to collect tolls in easy-pass lanes--and unarmed “meter maid” officers. Similar to the legislation that reduced sentencing disparities by eliminating mandatory minimum sentences for crack and powder cocaine in federal cases, state legislatures could also modify drug laws to reduce if not eliminate racial bias.

Abolish Solitary Confinement

Plain and simple solitary confinement must be abolished in the United States. Period. This means more than re-naming it, it means abolishing it. It should be used sparingly, in the tiny fraction of instances in which someone must be isolated for a brief period of time--no more than a few hours--in order to keep them and others safe.

The United States MUST Sign the U.N. Declaration on Human Rights

Finally, we believe that in order to truly eliminate racism in the criminal legal system the United States MUST sign the UN Declaration on Human Rights. The US must reckon with the origins of policing built on the foundation of white supremacy to control the Black population. This type of racial reckoning will be difficult, but examples from South Africa and Germany offer models that could be adjusted and implemented in the US context. A good first step would be to un-do the policies of people like Florida Governor Ron DeSantis, and *require, rather than eliminate*, the teaching of the true history of race in the United States, beginning with the 1619 project.

About the Authors

Drs. Hattery and Smith are the authors of 12 books, including, most recently: [WAY DOWN IN THE HOLE: Race, Intimacy and the Reproduction of Racial Ideologies in Solitary Confinement](#) (Rutgers University Press, 2023) and [POLICING BLACK BODIES: How Black Lives are Surveilled and How to Work for Change](#) (Rowman and Littlefield, 2021)

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