

## Data Organization for Mass Incarceration / Poverty Project

Racism + Politics =>

War on Drugs + Racism =>

Discriminatory Enforcement + Racism =>

Mass Incarceration =>

{ Destruction of the black family +  
Criminalization of Black Men (& some women) +  
Prison Industrial Complex =>

POVERTY

### THE SUMMARY:

“The War on Drugs is the vehicle through which extraordinary numbers of black man are forced into [prison.] ... The first stage is the roundup. Vast numbers of people are swept into the criminal justice system by police conducting drug operations primarily in poor communities of color. They are rewarded with cash – through drug forfeiture laws and federal grant programs – for rounding up as many people as possible, and they operate unconstrained by constitutional rules of procedure that once were considered inviolate. Police can stop, interrogate, and search anyone they choose for drug investigation, provided they get “consent.” Because there is no meaningful check on the exercise of police discretion, racial biases are granted free rein. In fact, police are allowed to rely on race as a factor in selecting whom to stop and search (even though people of color are no more likely to be guilty of drug crimes than whites) – effectively guaranteeing that those who are swept into the system are primarily black and brown.

The conviction marks the beginning of the second phase: The period of formal control. Once arrested, defendants are generally denied meaningful legal representation and pressured to plead guilty whether they are or not. Prosecutors are free to “load up” defendants with extra charges, and their decisions cannot be challenged for racial bias. Once convicted, due to the drug war’s harsh sentencing laws, drug offenders in the United States spend more time under the criminal justice system’s formal control – in jail or prison, on probation or parole - than drug offenders anywhere else in the world. While under formal control, virtually every aspect of one’s life is regulated and monitored by the system, and any form of resistance or disobedience is subject to swift sanction. This period of control may last a lifetime, even for those convicted of extremely minor, nonviolent offenses, but the vast majority of those swept into the system are eventually released.

... The final stage has been dubbed by some advocates as the period of invisible punishment. This term is meant to describe the unique set of criminal sanctions that are imposed on individuals after they step outside the prison gates, a form of punishment that operates largely outside of public view and takes effect outside the traditional sentencing framework. These sanctions are imposed by operation of law rather than decisions of a sentencing judge, yet they often have a greater impact on one’s life course than the month or years one actually spends behind bars. These laws operate collectively to ensure that the vast majority of convicted offenders will never integrate into mainstream, white society. They will be discriminated against, legally, for the rest of their lives – denied employment,

housing, education, and public benefits. Unable to surmount these obstacles, most will eventually return to prison and then be released again, caught in a closed circuit of perpetual marginality. (185-6)

Studies suggest that most Americans violate drug laws in their lifetime. Indeed, most of us break the law not once, but repeatedly throughout our lives. Yet only some of us will be arrested, charged, convicted of a crime, branded a criminal or felon, and ushered into a permanent undercaste. (216)

### **RACISM + POLITICS**

1. "Law & Order" to address rise in crime in 1960s – which sociologists and criminologists agree was due to baby boom – more teenagers and young adults in the population = more crime. (41)
2. Barry Goldwater – 1964 Presidential Campaign links riots in the 1960s to black crime and exploits white fear, creating the link that still exists. (42)
3. With dismantling of Jim Crow, southern segregationists reframed the 'crime-race' argument into the foundation of the conservative agenda on crime. The law and order rhetoric eventually contributed to major realignment of political parties in US. (43)
4. Richard Nixon's southern strategy, according to Nixon advisors:
  - a. H.R. Halderman: "He (Nixon) emphasized that you have to face the fact that the whole problem is really the blacks. The key is to devise a system that recognizes this while not appearing to."
  - b. Erlichman: "that subliminal appeal to the anti-black voter was always present in Nixon's statements and speeches." (44)
  - c. In 1968 Presidential election, Nixon dedicated 17 speeches solely to topic of law and order and urged voters to reject the 'lawlessness' of the civil rights activists – in case anyone missed the link to blackness. (46)
5. Ronald Reagan – 1980's presidential election
  - a. Removed language of race from campaign, to use 'code' instead: "welfare queens" and "criminal predators"
  - b. Rhetoric on crime, welfare, taxes, and states' rights clearly understood by white (and black) voters as having a racial dimension, though claims to that effect impossible to prove. (48)

### **WAR ON DRUGS + RACISM**

1. October, 1982, Reagan declares War on Drugs despite fact that only 2% of Americans were concerned about drugs. It did not matter, since the War on Drugs had little to do with drugs but a lot to do with race. The choice to respond to illegal drug use by criminalization and incarceration could have been different. "Portugal responded to persistent problems of drug addiction and abuse by decriminalizing the possession of all drugs and redirecting the money that would have been spent putting drug users in cages into drug treatment and prevention. Ten year later, Portugal reported that rates of drug use and addiction had plummeted and drug-related crime was on the declines as well."(51)
2. Anti-Drug Abuse Act of 1986
  - a. mandatory minimum sentences for the distribution of cocaine, including far more severe punishment for distribution of crack – associated with blacks – than powder cocaine, associated with whites. (53)
  - b. Public housing authorities must evict any tenant who allows any from of

drug-related criminal activity on or near public housing

- c. No student loans for anyone convicted of drug offense
- d. Use of death penalty for serious drug-related offenses
- e. Minimum mandatory sentence of 5 years for simple possession of cocaine base – with no evidence of intent to sell. Applies to first time offenders. (53)

3. Racism

- a. 1970s researchers found that racial attitudes – not crime rates or likelihood of victimization – are an important determinant of white support for “get tough on crime” and anti-welfare measures.
- b. The War of Drugs, cloaked in race-neutral language, offered whites opposed to racial reform a unique opportunity to express their hostility toward blacks and black progress, without being exposed to the charge of racism.(54)
- c. White students use cocaine at 7 times to rate of black students, use crack cocaine at 8 times the rate of black students and use heroin at 7 times the rate of black students. White youth have about 3 times the number of drug-related emergency room visits as their African American counterparts.

4. Police motivation

- a. Byrne Grant program – designed to encourage police to fight War on Drugs. Federal grant money has resulted in proliferation of narcotics task forces, turning a policing activity into a real war. Purchased by police departments using Byrne money, between 97 – 99: 253 Aircraft, 7,856 M-16 rifles, 181 grenade launchers, 8,131 bulletproof helmets, 1,161 pairs of night-vision goggles. Retired police chief in **New Haven** told NYTimes, “I was offered tanks, bazookas, anything I wanted. (73 74) Pres. Obama drastically increased funding for Byrne despite abysmal track record. (84) Drug kingpins apprehended? Not so much. Those with great assets can buy their freedom while drug users and small-time dealers with few assets are subject to lengthy prison terms. (79)

**DISCRIMINATORY ENFORCEMENT +RACISM**

- 1. Disparity in drug enforcement cannot be explained by rates of drug use
  - a. studies show people of all colors use and sell illegal drugs at similar rates
  - b. studies show small difference in rates suggest that white youth are more likely to engage in drug crime than people of color
  - c. in major cities 80% of young black men have criminal records (7)
- 2. Operation Pipeline – federally funded training program for police nationwide as part of War on Drugs.
  - a. Police learn how to use minor traffic stops and leverage into a ‘consent’ search.
  - b. 95% of stops yield no drugs.
  - c. Most stops take place in poor, urban communities
  - d. ‘Drug-courier’ developed allowing police to stop anyone meeting the profile:
    - i. traveling with luggage
    - ii. travelling without luggage
    - iii. driving an expensive care
    - iv. driving a car that needs repairs
    - v. driving with out-of-state license plates
    - vi. driving a rental care

- vii. driving a car with 'mismatched' occupants
- viii. acting too calm
- ix. acting too nervous
- x. dressing casually
- xi. wearing expensive clothing or jewelry
- xii. being 1<sup>st</sup> to deplane
- xiii. being last to deplane
- xiv. deplaning in the middle
- xv. being scrupulous in obeying traffic laws. (71)

e. This covers anyone but enforced in poor, urban communities yields people with small amounts of drugs mostly in those communities. (MBK)

3. It is precisely because we know that black and brown people are far more likely to be imprisoned that we, as a nation, have not cared too much about it. (182)
4. Because mass incarceration is officially colorblind, it seems inconceivable that they system could function much like a racial caste system. The widespread and mistaken belief that racial animus is necessary for the creation and maintenance of racialized systems of social control is the most important reason that we, as a nation, have remained in deep denial. (183)

#### **MASS INCARCERATION**

1. From 1975 – 2008- US prison population goes from 300,000 to 2 million
  - a. Highest rate of incarceration in the world
  - b. No other country imprisons a larger percentage of its minority population
  - c. US imprisons larger % of black population than So. African Apartheid (6)
2. Mass incarceration refers not only to criminal justice system but also web of laws, rules, policies, and customs that control criminals in and OUT of prison. (11)
3. Convictions for drug offenses are the single most important cause of the explosion of incarceration rates in US. Drug offenses alone account for 2/3 of the rise in the federal inmate population. ... more than 31 million people have been arrested for drug offenses since the drug war began. ... vast majority not charged with serious offenses. Four out of five drug arrests were for possession... arrests for marijuana possession – a drug less harmful than tobacco or alcohol – accounted for nearly 80% of growth of drug arrests in 1990s. (60)
4. Never before in our history have such an extraordinary number of people felt compelled to plead guilty, even if they are innocent simply because the punishment for the minor, nonviolent offense with which they have been charged is so unbelievably severe. (87)
5. Prosecutors admit they routinely charge people with crimes for which they technically have probably cause but which but which they seriously doubt they could ever win in court. They “load up” defendants with charges that carry extremely harsh sentences in order to force them to plead guilty to lesser offenses.
6. \*\* Thousands of people are swept into the criminal justice system every year pursuant to the drug war without much regard for their guilt or innocence. The police are allowed by the courts to conduct fishing expeditions for drugs on streets and freeways based on nothing more than a hunch. Homes may be searched for drugs based on a tip from an unreliable, confidential informant who is trading the information for money or to escape prison time. And once swept inside the system, people are often denied attorneys or meaningful representation and pressured into plea bargains by the threat of unbelievably harsh sentences – sentences for minor drug crimes that are higher than many countries impose on convicted murderers. (89)

7. Our prison population leaped from approx 350,000 to 2.3 million in such a short period of time due to changes in laws and policies, not changes in crime rates. (93)

## **DESTRUCTION OF BLACK FAMILY**

### **CASE STUDIES**

1. Three strikes laws:

Case 1: 'imaging a young man arrested at age 17 for a school yard fight tried and convicted as an adult, A few years later, he is struggling to survive, having been branded a felon and unable to find work. He passes two bad checks, desperate for cash. That's 3 strikes: one for the prior assault and one for each bad check. His children will be raised without a father.

Case 2: Imagine a woman struggling with a drug addiction, unable to obtain treatment and desperate for money so she can feed her habit. She burglarizes a home and steals a TV set that she hopes to sell, but she is caught and arrested a few blocks away. She gets no jail time but also gets no drug treatment and now has a felony record. When she is caught with cocaine and heroin in her pocket a few months later, she has three strikes. One strike for each drug, and one for her prior felony. She will die in prison. (91)

#### **NO NEED to IMAGINE:**

Case 3: Emma Faye Stewart, a 30 year old, single African American mother of 2 who was arrested as part of a drug sweep in Hearne, Texas. All but one of the people arrested were African American. You are innocent. After a week in jail, you have no one to care for your two small children and are eager to get home. Your court-appointed attorney urges you to plead guilty to a drug distribution charge, saying the prosecutor has offered probation. You refuse, steadfastly proclaiming your innocence. Finally after almost a month in jail, you decide to plead guilty so you can return home to your children. Unwilling to risk a trial and years of imprisonment, you are sentenced to ten years probation and ordered to pay \$1,000 in fines, as well as court and probation costs. You are not branded drug felon. You are no longer eligible for food stamps: you may be discriminated against in employment; you cannot vote for at least twelve years; and you are about to be evicted from public housing. Once homeless, your children will be taken from you and put in foster care. A judge eventually dismisses all cases against the defendants who did not plead guilty. At trial, the judge finds that the entire sweep was based on the testimony of a single informant who lied to prosecution. You, however, are still a drug felon, homeless, and desperate to regain custody of your children.(97)

## **CRIMINALIZATION OF BLACK MEN**

1. black men labeled drug criminals are relegated to permanent 2<sup>nd</sup> class status upon release, no matter how much (or little) time spend in jail. (14)
2. By mid-1990s...90% of those admitted to prison for drug offenses in many states were black or Latino, yet the mass incarceration of communities of color was explained in race-neutral terms. (58)
3. One in 9 young black men (20 – 35) was in prison in 2006.
4. 7.3 million people currently under correctional control, while only 1.6 million of them are in prison – system includes parole, probation. They have been branded criminals or felons, ushered into a permanent 2<sup>nd</sup> class status with records that will follow them the rest of their lives.
5. A report in 2000 observed that among youth who have never been sent to a juvenile prison before, African Americans were more than 6 times as likely as whites to be sentenced to prison for IDENTICAL crimes. (118)
6. Whether a kid is perceived as a dangerous drug-dealing thug or instead is viewed as a good kid who was merely experimenting with drugs and selling to a few of his

friends has to do with the ways in which information about illegal drug activity is processed and interpreted, in a social climate in which drug dealing is racially defined. (118)

7. The Supreme Court has actually authorized race discrimination in policing rather than adopting legal rules banning it. ... In the drug war, police have discretion regarding whom to target (which individuals), as well as where to target (which neighborhoods or communities). (123) (Purkett vs Elm) (122)
8. The Supreme Court has indicated that in policing, race can be used as a factor in discretionary decision making. In *United States v. Brignoni-Ponce*, the Court concluded it was permissible under the equal protection clause of the Fourteenth Amendment for the police to use race as a factor in making decisions about which motorists to stop and search. (131) So long as officers refrain from uttering racial epithets and so long as they show the good sense not to say "the only reason I stopped him was 'cause he's black," courts generally turn a blind eye to patterns of discrimination by the police. (133)

#### **PRISON INDUSTRIAL COMPLEX**

1. After Civil War, enormous market of convict leasing grew up to keep black men enslaved and make money while doing it – farms and mines in Alabama, etc. (Slavery by Another Name)
2. In 1991, the Sentencing Project reported that the number of people behind bars in the US was unprecedented in world history, and that one fourth of young African American men were now under the control of the criminal justice system.
3. Clinton Administration's 'tough on crime' policies resulted in the largest increases in federal and state prison inmates of any president in American history. (cross-reference "Racism + Politics" (56)
4. (During Clinton Administration) Government was not reducing the amount of money devoted to the management of the urban poor. It was radically altering what the funds would be used for. ... Funding that had once been used for public housing was being redirected to prison construction.... effectively making the construction of prisons the nation's main housing program for the urban poor. (Cross-reference poverty) (57)

#### **POVERTY**

1. The birth of the "undeserving" poor – in 60s & 70s, Conservatives argued that poverty caused not by structural factors related to class and race but rather by black culture. (45)
2. TANF (Temporary Assistance to Needy Families) imposed a five-year life-time limit on welfare assistance, as well as a permanent, lifetime ban on eligibility for welfare or food stamps for anyone convicted of a felony drug offense – including simple possession of marijuana. (57)
5. Comprehensive Drug Abuse Prevention and Control Act (1970) – authorizing government to seize and forfeit drugs, drug manufacturing, storage equipment and conveyances, list of items eventually included cash, cars, and homes of people only suspected of drug use or sales and since police could retain up to 80% of asset's value, seizures skyrocketed. Property or cash could be seized based on mere suspicion of illegal drug activity, with no notice or hearing. Neither owner of property nor anyone else need be charged with a crime. A person could be found innocent of any criminal conduct and the property could still be subject to forfeiture. Between 88 – 92, drug task forces seized over \$1 billion in assets. (78-79) Women whose husbands or boyfriends are accused stand to lose their property – creating

- homelessness. Owner of property is not entitled to the appointment of counsel unless he or she is charged with a crime. Overwhelming majority of forfeiture cases do not involve any criminal charges. (82)
6. Approx 80% of criminal defendants are indigent and thus unable to hire a lawyer. (85) Tens of thousands of poor people go to jail every year without ever talking to a lawyer and those who do meet with a lawyer for a drug offense often spend only a few minutes discussing their case and options before making a decision that will profoundly affect the rest of their lives. (84)
  7. What about court appointed lawyers? Some states deny representation to impoverished defendants on the theory that they should be able to pay for a lawyer, even though they are scarcely able to pay for food or rent. (85)
  8. A felony conviction causes poverty: "Barred from public housing by law, discriminated against by private landlords, ineligible for food stamps, forced to "check to box" indicating a felony conviction on employment applications for nearly every job, and denied licenses for wide range of professions, people whose only crime is drug addiction or possession of a small amount of drugs for recreational use find themselves locked out of the mainstream society and economy – permanently. (94)
  9. So long as mass drug arrests are concentrated in impoverished urban areas, police chiefs have little reason to fear a political backlash, no matter how aggressive and warlike the efforts may be.
  10. Today, discrimination against felons, criminal suspects, and their families is routine among public and private landlords alike. (144) Housing officials began exercising their discretion to deny poor people access to public housing for virtually any crime... (145) [They] are free to reject applicants simply on the basis of arrests, regardless of whether they result in convictions or fines. (146) These people usually cannot find housing with other family members. They would be in danger of losing their housing if they are found to have taken in a drug offender. Vulnerable families have nowhere to go, and the impact is inevitably discriminatory. (147)
  11. 65 million people have criminal records, including tens of millions of Americans who have been arrested but never convicted of any offense. Thousands of them become homeless. (147)
  12. Nearly every state allows private employers to discriminate on the basis of past criminal convictions. In fact, employers in most states can deny jobs to people who were arrested but never convicted of any crime. (149) so unemployment = poverty.
  13. Legal employment discrimination – 4 decades ago, employers were free to discriminate explicitly on the basis of race; today employers feel free to discriminate against those who bear the prison label, no matter the circumstances. (151) Jobless rate for young black male dropouts including those incarcerated, is a staggering 65%. (152) How about efforts to 'ban the box?' - Without disconfirming information in the job application itself, employers may (consciously or unconsciously) treat all black men as though they have a criminal record, effectively putting all or most of them in the same position as black ex-offenders. (152-3)
  14. Debtor's Prison: In US, newly released prisoners are required to make payments to a host of agencies, including probation departments, courts, and child-support enforcement offices. In some jurisdictions, ex-offenders are billed for drug testing and even for drug treatments they are supposed to receive as a condition of parole. (154)
  15. Pre-conviction service fees: jail per diem assessed to cover the cost of pretrial detention, public defender application fees, bail investigation fee.

16. Post-conviction fees: presentence report fee, public defender recoupment fees, fees levied on convicted persons placed in a residential or work-release program .
17. Poverty penalties – piling on additional late fees, payment plan fees, interest when unable to pay all at once, enriching private debt collectors in the process. (155)
18. they can be sent back to prison for not paying. (156)