Fourteen Examples of Racism in Criminal Justice System

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The biggest crime in the U.S. criminal justice system is that it is a race-based institution where African-Americans are directly targeted and punished in a much more aggressive way than white people.

Saying the US criminal system is racist may be politically controversial in some circles. But the facts are overwhelming. No real debate about that. Below I set out numerous examples of these facts.

The question is - are these facts the mistakes of an otherwise good system, or are they evidence that the racist criminal justice system is working exactly as intended? Is the US criminal justice system operated to marginalize and control millions of African Americans?

Information on race is available for each step of the criminal justice system - from the use of drugs, police stops, arrests, getting out on bail, legal representation, jury selection, trial, sentencing, prison, parole and freedom. Look what these facts show.

One. The US has seen a surge in arrests and putting people in jail over the last four decades. Most of the reason is the war on drugs. Yet whites and blacks engage in drug offenses, possession and sales, at roughly comparable rates - according to a report on race and drug enforcement published by Human Rights Watch in May 2008. While African Americans comprise 13% of the US population and 14% of monthly drug users they are 37% of the people arrested for drug offenses - according to 2009 Congressional testimony by Marc Mauer of The Sentencing Project.

Two. The police stop blacks and Latinos at rates that are much higher than whites. In New York City, where people of color make up about half of the population, 80% of the NYPD stops were of blacks and Latinos. When whites were stopped, only 8% were frisked. When blacks and Latinos are stopped 85% were frisked according to information provided by the NYPD. The same is true most other places as well. In a California study, the ACLU found blacks are three times more likely to be stopped than whites.

Three. Since 1970, drug arrests have skyrocketed rising from 320,000 to close to 1.6 million according to the Bureau of Justice Statistics of the U.S. Department of Justice.    
African Americans are arrested for drug offenses at rates 2 to 11 times higher than the rate for whites - according to a May 2009 report on disparity in drug arrests by Human Rights Watch.

Four. Once arrested, blacks are more likely to remain in prison awaiting trial than whites. For example, the New York state division of criminal justice did a 1995 review of disparities in processing felony arrests and found that in some parts of New York blacks are 33% more likely to be detained awaiting felony trials than whites facing felony trials.

Five. Once arrested, 80% of the people in the criminal justice system get a public defender for their lawyer. Race plays a big role here as well. Stop in any urban courtroom and look a the color of the people who are waiting for public defenders. Despite often heroic efforts by public defenders the system gives them much more work and much less money than the prosecution. The American Bar Association, not a radical bunch, reviewed the US public defender system in 2004 and concluded “All too often, defendants plead guilty, even if they are innocent, without really understanding their legal rights or what is occurring...The fundamental right to a lawyer that America assumes applies to everyone accused of criminal conduct effectively does not exist in practice for countless people across the US.”

Six. African Americans are frequently illegally excluded from criminal jury service according to a June 2010 study released by the Equal Justice Initiative. For example in Houston County, Alabama, 8 out of 10 African Americans qualified for jury service have been struck by prosecutors from serving on death penalty cases.

Seven. Trials are rare. Only 3 to 5 percent of criminal cases go to trial - the rest are plea bargained. Most African Americans defendants never get a trial. Most plea bargains consist of promise of a longer sentence if a person exercises their constitutional right to trial. As a result, people caught up in the system, as the American Bar Association points out, plead guilty even when innocent. Why? As one young man told me recently, “Who wouldn’t rather do three years for a crime they didn’t commit than risk twenty-five years for a crime they didn’t do?”

Eight. The U.S. Sentencing Commission reported in March 2010 that in the federal system black offenders receive sentences that are 10% longer than white offenders for the same crimes. Marc Mauer of the Sentencing Project reports African Americans are 21% more likely to receive mandatory minimum sentences than white defendants and 20% more like to be sentenced to prison than white drug defendants.

Nine. The longer the sentence, the more likely it is that non-white people will be the ones getting it. A July 2009 report by the Sentencing Project found that two-thirds of the people in the US with life sentences are non-white. In New York, it is 83%.

Ten. As a result, African Americans, who are 13% of the population and 14% of drug users, are not only 37% of the people arrested for drugs but 56% of the people in state prisons for drug offenses. Marc Mauer May 2009 Congressional Testimony for The Sentencing Project.

Eleven. The US Bureau of Justice Statistics concludes that the chance of a black male born in 2001 of going to jail is 32% or 1 in three. Latino males have a 17% chance and white males have a 6% chance. Thus black boys are five times and Latino boys nearly three times as likely as white boys to go to jail.

Twelve. So, while African American juvenile youth is but 16% of the population, they are 28% of juvenile arrests, 37% of the youth in juvenile jails and 58% of the youth sent to adult prisons. 2009 Criminal Justice Primer, The Sentencing Project.

Thirteen. Remember that the US leads the world in putting our own people into jail and prison. The New York Times reported in 2008 that the US has five percent of the world’s population but a quarter of the world’s prisoners, over 2.3 million people behind bars, dwarfing other nations. The US rate of incarceration is five to eight times higher than other highly developed countries and black males are the largest percentage of inmates according to ABC News.

Fourteen. Even when released from prison, race continues to dominate. A study by Professor Devah Pager of the University of Wisconsin found that 17% of white job applicants with criminal records received call backs from employers while only 5% of black job applicants with criminal records received call backs. Race is so prominent in that study that whites with criminal records actually received better treatment than blacks without criminal records!

So, what conclusions do these facts lead to? The criminal justice system, from start to finish, is seriously racist.

Professor Michelle Alexander concludes that it is no coincidence that the criminal justice system ramped up its processing of African Americans just as the Jim Crow laws enforced since the age of slavery ended. Her book, The New Jim Crow: Mass Incarceration in the Age of Colorblindness sees these facts as evidence of the new way the US has decided to control African Americans - a racialized system of social control. The stigma of criminality functions in much the same way as Jim Crow - creating legal boundaries between them and us, allowing legal discrimination against them, removing the right to vote from millions, and essentially warehousing a disposable population of unwanted people. She calls it a new caste system.

Poor whites and people of other ethnicity are also subjected to this system of social control. Because if poor whites or others get out of line, they will be given the worst possible treatment, they will be treated just like poor blacks.

Other critics like Professor Dylan Rodriguez see the criminal justice system as a key part of what he calls the domestic war on the marginalized. Because of globalization, he argues in his book Forced Passages, there is an excess of people in the US and elsewhere. “These people”, whether they are in Guantanamo or Abu Ghraib or US jails and prisons, are not productive, are not needed, are not wanted and are not really entitled to the same human rights as the productive ones. They must be controlled and dominated for the safety of the productive. They must be intimidated into accepting their inferiority or they must be removed from the society of the productive.

This domestic war relies on the same technology that the US uses internationally. More and more we see the militarization of this country’s police. Likewise, the goals of the US justice system are the same as the US war on terror - domination and control by capture, immobilization, punishment and liquidation.

What to do?

Martin Luther King Jr., said we as a nation must undergo a radical revolution of values.  
A radical approach to the US criminal justice system means we must go to the root of the problem. Not reform. Not better beds in better prisons. We are not called to only trim the leaves or prune the branches, but rip up this unjust system by its roots.

We are all entitled to safety. That is a human right everyone has a right to expect. But do we really think that continuing with a deeply racist system leading the world in incarcerating our children is making us safer?

It is time for every person interested in justice and safety to join in and dismantle this racist system. Should the US decriminalize drugs like marijuana? Should prisons be abolished? Should we expand the use of restorative justice? Can we create fair educational, medical and employment systems? All these questions and many more have to be seriously explored. Join a group like INCITE, Critical Resistance, the Center for Community Alternatives, Thousand Kites, or the California Prison Moratorium and work on it. As Professor Alexander says “Nothing short of a major social movement can dismantle this new caste system.”