

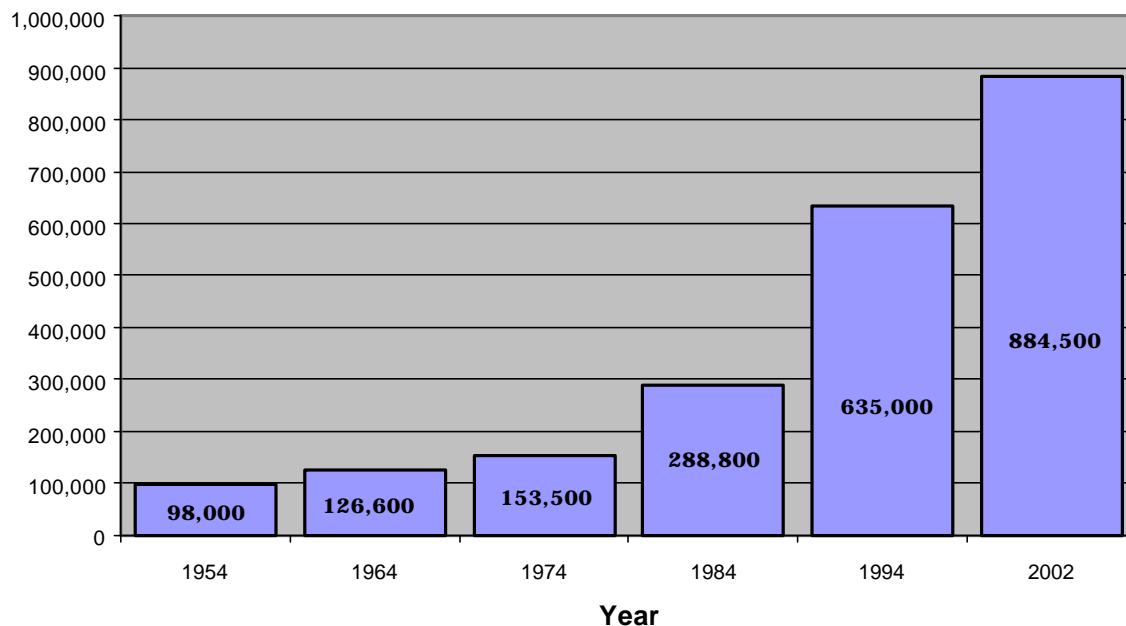
## SCHOOLS AND PRISONS: FIFTY YEARS AFTER *BROWN V. BOARD OF EDUCATION*

### OVERVIEW

The nation is currently celebrating the 50<sup>th</sup> anniversary of the historic *Brown v. Board of Education* decision that ordered the desegregation of public education. The decision in many ways marked the beginnings of the modern day Civil Rights Movement and during the ensuing half century there has been significant social and economic progress in American society. Much work needs to be done, but many institutions in society have become more diverse and responsive to the needs of African Americans and other people of color.

However, during this period no institution has changed more than the criminal justice system, and in ways that have had profound effects on the African American community. The unprecedented growth in the prison system has produced record numbers of Americans in prison and jail, and has had a disproportionate effect on African Americans. As seen in the figure below, there are now nine times as many African Americans in prison or jail as on the day of the *Brown* decision. An estimated 98,000 blacks were incarcerated in 1954, a figure that has risen to 884,500 today (See Figure 1).<sup>1</sup>

**Figure 1- African Americans in Prison or Jail**



<sup>1</sup> See Methodology section for a description of the population estimates.

These absolute numbers translate into dramatic rates for black men in particular. One of every 21 adult black men is incarcerated on any given day. For black men in their late twenties, the figure is one in eight. There are now far more incarcerated black men in this age group (161,600) than the total number of *all* incarcerated African Americans in 1954 (98,000). Given current trends, one of every three (32%) black males born today can expect to go to prison in his lifetime.

The intersection between education and criminal justice is profound as well. In 1954, Chief Justice Warren noted, “In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.”<sup>2</sup> In an era dominated by information technology where success is measured by one’s specialized training, the fact that more than half (52%) of black men in their early 30s who are high school dropouts have a prison record underscores the nation’s failure to heed Chief Justice Warren’s warning.

While the incarceration rates for women are lower overall than for men, the racial disparities are equally dramatic. One of every 18 black females born today can expect to go to prison if current trends continue, or six times the rate for white women. These odds have increased dramatically in recent decades. Black women born today are five times more likely to go to prison in their lifetimes than black women born in 1974.

## CAUSAL FACTORS

The factors contributing to the dramatic increase in the number of African Americans in prison and jail are complex, and involve dynamics both within and outside the criminal justice system. Overall, they represent a social policy that has emphasized a punitive response to the problem of crime at the expense of alternative approaches that focus on strengthening families and communities. These include the following:

***Crime Rates*** – Higher rates of involvement in some crimes explains part of the high rate of black imprisonment. For property offenses, blacks constituted 29.6% of arrests in 2002 and for violent offenses, 38%; these compare to the 12.3% black proportion of the total population. (Note that an arrest may not always be an accurate indicator of involvement in crime, but it often remains the best means of approximating this measure.) However, criminologist Alfred Blumstein, in a study on race and imprisonment, noted that higher arrest rates for drug crimes in particular were not correlated with higher rates of use in the general population. In short, drug arrest patterns were not a reliable indicator of drug offending, because African Americans are arrested more frequently than their rate of drug use would suggest.<sup>3</sup>

What appears to be a race-based relation for some offenses is in many respects one of social class. Youth surveys document that a significant proportion of teenage males of all races have engaged in serious crime. These rates drop much more sharply by the early 20s for whites than blacks, due to more ready access to adult roles – employment, college education, and stable relationships. Further, researchers have identified not just poverty, but *concentrated* poverty, as

---

<sup>2</sup> *Brown vs. Board of Education of Topeka*, 347 U.S. 483, 493. (1954).

<sup>3</sup> Blumstein, Alfred. (1993). “Racial Disproportionality of U.S. Prison Populations Revisited,” *University of Colorado Law Review*, Vol. 64, 743-760.

a significant contributor to crime rates due to the socioeconomic disadvantages it brings. Housing patterns in the U.S. often result in low-income African Americans living in concentrated poverty, but poor whites and other groups are rarely found in such situations.

***Rising Imprisonment*** – Much of the rising incarceration of African Americans mirrors the dramatic increases in imprisonment overall since 1970. From a combined prison and jail population of about 330,000, the nation’s incarcerated population has now increased to 2.1 million. This increase is largely attributable to the adoption of “get tough” policies that emphasize harsher sentencing practices, rather than any significant increases in crime rates. An examination of the growth of the prison population from 1992 to 2001 found that the entire increase was explained not by crime rates, but by an increased likelihood that convicted offenders would be sentenced to prison and by longer prison terms.<sup>4</sup>

***War on Drugs*** – Two overlapping trends since 1980 have contributed to a substantial increase in the number of African Americans in prison. First, the inception of the war on drugs has resulted in a dramatic surge in the number of incarcerated persons, rising from about 40,000 persons awaiting trial or serving a sentence for a drug charge in 1980 to about 450,000 today. The current figure is only slightly less than the total number of incarcerated persons for *all* offenses in 1980.

Second, the prosecution of the drug war has disproportionately affected communities of color. Surveys conducted by the Department of Health and Human Services estimate that blacks constitute 13.3% of monthly drug users, yet blacks represent 32.5% of persons arrested for drug offenses.<sup>5</sup> Of all persons imprisoned for drug offenses, three fourths are black or Latino. These disparities result in large part through a two-tiered application of the drug war. In communities with substantial resources, drug abuse is primarily addressed as a public health problem utilizing prevention and treatment approaches. In low-income communities those resources are in short supply and drug problems are more likely to be addressed through the criminal justice system.

***Crack/Cocaine Sentencing*** – Federal legislation adopted in 1986 and 1988 provides for far harsher punishment of crack cocaine offenders than powder cocaine offenders, even though crack is a derivative of powder cocaine. Persons convicted of selling 500 grams of powder cocaine are subject to a mandatory five-year prison term; for crack cocaine, the same penalty is triggered by possession of just five grams of the drug. Enforcement of these laws has resulted in African Americans constituting 83% of crack defendants in 2001, despite the fact that approximately two-thirds of users in the general population are white. This represents a policy decision by agencies in the criminal justice system to pursue the “war on drugs” using tactics that have a detrimental impact on the African American community.

In addition, 14 states also maintain disparities in their sentencing differentials between crack and powder cocaine. Widespread concern about these disparities led the U.S. Sentencing

---

<sup>4</sup> Karberg, Jennifer C. and Beck, Allen J. “Trends in U.S. Correctional Populations: Findings from the Bureau of Justice Statistics.” Presented at the National Committee on Community Corrections Meeting, Washington, DC, April 16, 2004.

<sup>5</sup> Substance Abuse and Mental Health Services Administration, Office of Applied Studies, *National Survey on Drug Use and Health, 2002*. Table 1.26A.

Commission to recommend the elimination of the sentencing differential in 1995. This recommendation was overwhelmingly rejected by Congress and the Clinton Administration. A subsequent effort to revise the penalty structure in 2002 was opposed by the Bush Administration's Department of Justice.

**“School Zone” Drug Laws** – In recent years many states have adopted “school zone” drug enhancement laws that increase penalties for drug crimes committed near a school. These laws, intended to deter drug-selling to school children, have in practice contributed to extreme racial/ethnic disparities, primarily due to housing patterns. In urban areas, large proportions of most cities are within the typical 1,000-1,500 foot range of these sanctions, whereas in suburban or rural communities, far fewer locations fall within this limit. Since African Americans disproportionately live in urban areas, any such crime (even a drug sale between consenting adults at 3 a.m. near a school) will produce these enhanced penalties. In one recent year, 99% of the juveniles automatically prosecuted as adults in Cook County (Chicago), Illinois under the school zone law were black and Latino.

**“Three Strikes” and Habitual Offender Policies** – Sentencing legislation that imposes harsher prison terms on offenders with prior convictions exerts a disproportionate effect on African Americans. Judges have always had the ability to impose lengthier terms on repeat offenders, but this effect has been magnified through policies such as habitual offender laws and “three strikes and you’re out” legislation. Whether one believes that African Americans are more likely to engage in crime or are subject to racial profiling and other discriminatory forms of decisionmaking, the result is that African Americans are more likely to have a prior criminal record than other groups. Therefore, policies that impose harsher penalties based on criminal history will have a disproportionate effect on African Americans. In California, for example, blacks constitute 29% of the prison population, but 44.7% of the persons serving a “three strikes” sentence.<sup>6</sup> These disparities take on added significance due to the extreme disparities created by such policies. A non-violent offense in California that might otherwise lead to no more than a few years in prison becomes a sentence of 25 years to Life when treated as a third strike offense.

**Inadequate Defense Resources** – Forty years after the historic *Gideon* decision guaranteeing right to counsel in criminal cases, the state of indigent defense remains highly inadequate in many areas of the country. An estimated 80% of criminal defendants are indigent and a 2000 report by the Department of Justice declared that public defense was in a “chronic state of crisis.” In Virginia, for example, the maximum payment for attorneys representing a defendant in a felony case that can result in a life sentence is \$1,096. In Lake Charles, Louisiana, the public defender office has only two investigators for the 2,500 new felony cases and 4,000 new misdemeanor cases assigned to the office each year. Since African Americans are disproportionately low-income, they are more likely to suffer the deficiencies produced by these dynamics.

**Zero Tolerance Policies** – In response to the perceived problem of school violence, many states and school districts have enacted “zero tolerance” policies for violations of school regulations. Such policies result in automatic suspension or expulsion of students for infractions that in

---

<sup>6</sup> California Department of Corrections. *Second and Third Strikers in the Institution Population*. Sacramento, CA: Data Analysis Unit. (February 2004).

previous times might have been handled by school officials. While ostensibly targeted at gun violence and other serious crimes, in practice these policies have led to disciplinary action for behaviors such as bringing Advil or water pistols to school. Zero tolerance policies contribute to higher rates of suspension and expulsion, and ultimately to increased numbers of school dropouts. Children of color have been disproportionately affected by these policies. According to the Department of Education, 35% of African American children in grades 7-12 had been suspended or expelled at some point in their school careers, compared to rates of 20% for Hispanics and 15% for whites.<sup>7</sup> These figures in turn result in increased risk of involvement in the juvenile and adult criminal justice system.

## IMPLICATIONS

At current rates of incarceration, one of every three black males born today can expect to be imprisoned at some point in his lifetime. Whether or not one believes that current crime control policies are “working” to reduce crime, such an outcome should be shocking to all Americans. Imposing a crime policy with such profound racial dynamics calls into question the nation’s commitment to a free and democratic society.

Current imprisonment policies affect not only the nearly 900,000 African Americans in prison and jail, but increasingly, their families and communities as well. One of every 14 black children has a parent in prison on any given day; over the course of childhood, the figures would be much higher. Family formation, particularly in urban areas heavily affected by incarceration, is also affected by these trends. In the highest incarceration neighborhoods of Washington, D.C., the absence of black men has created a gender ratio of only 62 men for every 100 women.<sup>8</sup>

Community power is affected by felon disenfranchisement laws as well, which restrict voting rights while serving a felony sentence or in some cases permanently, depending on the state in which one lives. In the coming Presidential election, one of every eight black males (13%) will not be able to vote as a result of a current or previous felony conviction. These laws affect the political influence not only of people with a felony conviction, but of their communities as well. People in these neighborhoods who do not themselves have a felony conviction also have their political voices diluted since fewer residents representing their interests are able to participate in the electoral process.

None of these issues suggests that crime is not a problem for all Americans, or for African Americans in particular. But the approaches taken to address this problem over the past several decades have created a situation whereby imprisonment has come to be seen as an almost inevitable aspect of the maturing process for black men, and increasingly for black women. The social cost of these policies is substantial and growing larger each year. In this 50<sup>th</sup> anniversary of the *Brown* decision, it is time for the nation to reflect on progress in education, but also to assess how the overall status of the black community has been affected. The dynamics of criminal justice policy suggest that the nation has taken a giant step backward in this regard.

---

<sup>7</sup> *Status and Trends in the Education of Blacks*, U.S. Department of Education, September 2003, p. 38.

<sup>8</sup> Braman, Donald. (2002). “Families and Incarceration,” in Mauer, Marc and Chesney-Lind, Meda, (Eds.), *Invisible Punishment: The Collateral Consequences of Mass Imprisonment*. New York: The New Press. P. 128.

## **METHODOLOGY**

Prison and jail custody data for Figure 1 were collected from various Bureau of Justice Statistics publications. Where possible, exact numbers were taken directly from the Bureau of Justice Statistics report. In the case of years in which exact prison or jail data were not available, the numbers were interpolated based on available information for contiguous years. These estimates were most commonly produced by taking the difference between the two points in time and assuming an average annual increase based on the number of years.

This briefing paper was written by Marc Mauer and Ryan Scott King, Assistant Director and Research Associate respectively, of The Sentencing Project.