

Human Rights Violations and the Prison System

This panel explored problems of increasing levels of police brutality and violence, the pervasive influence of racial bias on the criminal justice system, and the decreasing significance of rehabilitation as a goal of punishment.

David Greenberg: When people talked about prisons back in the 1960s one would often hear the slogan, "All prisoners are political." I haven't heard that slogan in a long time. It's time to revive it. When I say that all prisoners are political, I don't mean that they all have revolutionary consciousness and were trying to overthrow capitalism when they ripped someone off. That's rarely the case. Nevertheless, the slogan conveys a profound insight: It is through political decisions that certain acts are defined as criminal while others, often far more harmful, are not. Once an act has been defined as criminal, it is a political decision how to respond to that act when it occurs. In the United States, these definitions and responses are racialized.

Supposedly, the mission of the criminal law is to protect all people from harm; manifestly it doesn't. By any reasonable standards of harmfulness, former Presidents Johnson and Nixon, Secretary of Defense Robert McNamara, Secretaries of State Dean Rusk and Henry Kissinger, and General William Westmoreland should have stood trial for war crimes in Vietnam. Former Governor Nelson Rockefeller should have been in the dock for the slaughter of prison inmates at Attica. All of them are white. No low-income African-American or Latino murderer in prison matches their records for violent deaths. It is politics, not harm, that explains their immunity from the electric chair.

When those who have little capital take someone else's belongings, the law calls this

theft and prosecutes them, while it ignores or wrist-slaps capitalists whose billions are derived from hazardous working conditions, selling unsafe products, polluting the environment, underpaying workers, and overcharging customers. Almost all of those criminals are white.

The entire history of drug legislation has been wrapped up with race and ethnicity, starting with opium laws directed at Chinese immigrants, and anti-marijuana laws targeting Mexican workers. Federal law punishes possession of powder cocaine, used mostly by affluent whites, much more leniently than crack cocaine, which, because it is cheaper, is used more by blacks. The cultivation of tobacco—which contains a highly addictive drug and is responsible for an enormous number of deaths—is not only lawful, but subsidized by the government.

Ever since the early 1970s, the United States has been undergoing an historically unprecedented expansion in its prison population. Putting together federal and state prisons with local jails, we now have roughly 2 million people behind bars, almost 1 percent of the population. Over a twenty-five-year span, this is a sixfold increase. More than 1,000 prisons and jails have been built to house this increase. During this period, crime rates have been fairly flat, or even declining. It's not because we have soaring crime rates that we've had to build more prisons. A major part of the growth has come from drug offenders violating laws that were framed on a racially prejudicial basis.

This wave of prison expansion has been part of a broader toughening process that has involved the restoration of the death penalty, the trial of juveniles in adult courts, and re-

moving educational programs from the prison system. As a result of this toughening, we have five to ten times more people per capita in prison than many other industrial countries. Western Europe has comparable levels of property crime and drug use, but we are much more likely than the Europeans to imprison people who do these things, and to give them longer sentences. This holds not just for drug offenses, but for other offenses, too, such as property crime.

An important part of the reason for this is racial politics. Roughly half the American prison population is black. Blacks are in prison at a rate that is seven times as large as for whites. Some say this is because blacks commit more crimes. If we are talking about street robbery, this is so, but it overlooks the de facto immunity elite whites enjoy because of the law's failure to define the harms they commit as criminal.

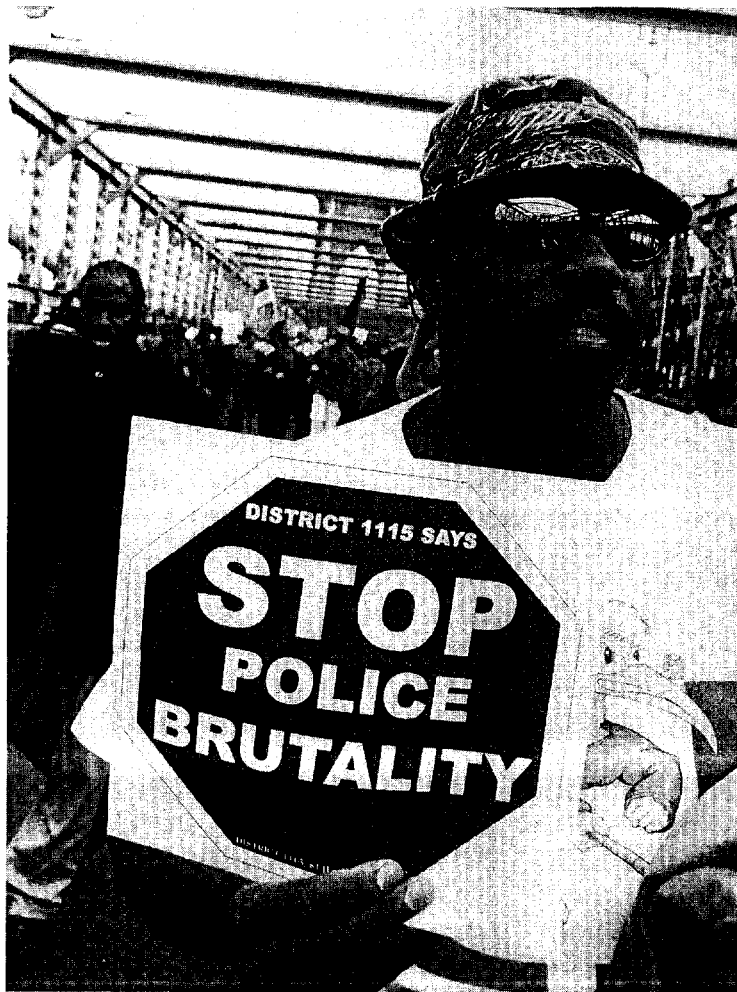
Race also affects the enforcement of law. Racial profiling by police places blacks at an elevated risk of being arrested for drugs and weapons offenses. Defendants with money—and that mostly means whites—can afford better legal representation when arrested. The overrepresentation of blacks in prison is in part due to these enforcement patterns.

Growth in prison populations has been especially high in states with a high percentage of blacks in the population. This is true even when crime rates are controlled statistically. It would be easy to define this expansion as a war of white politicians against the black population. For some, this may be true. It's no longer fashionable to be openly racist. A war on crime can be a more acceptable way of repressing blacks. Yet this cannot be the whole story. Surveys show that blacks are almost as supportive as whites of tougher imprisonment policies, and many whites who are not racist have backed tough crime policies in the ill-conceived notion that this would protect the public.

Public opinion on crime issues has been shaped by politicians vying for votes by panicking the public and creating fears that they can exploit. They have been running a "bait and switch" program in which they terrify the public with fear of violence to get funding for more prisons, then fill them with property crime and minor drug offenders. This doesn't do much to stop predatory crime or help drug users. Ever since Prohibition it has been obvious that it is folly to criminalize the sale and consumption of drugs. Though the war on crime and drugs has been immensely destructive, especially in low-income and black communities, it has done a great deal for the careers of certain politicians. It must be stopped.

Iris Baez: Where do I start? Do I start with the justice system that is so corrupt that you don't get justice? Do I start with the cop in the corner that doesn't know the culture he is supposed to protect? Do I start with the police station that permits prostitution in the corner, that permits drugs in the corner, that permits certain areas to be ghetto, to become ghetto? Until five years ago, I didn't even know we had political prisoners, and there are a lot of people like me that get up in the morning, go to work, send your kids to school, come back on Sundays, you're at church three times a week, that don't have that time to turn on the TV and look at the news, that don't have that time to hear the radio because you are busy with the kids. There are a lot of people like me. To this day there are people that don't know what happened in my community, to my son. Though I've been out there for four years, they still don't know. "And what happened to your son?" And then how do you explain to people that this is happening every day?

My son was playing football in front of his house, two days before Christmas Eve. We're used to seeing cops in our neighborhood, because it is a drug-infested neighborhood. But we're also used to seeing cops playing with the



*Police Brutality Rally—The Brooklyn Bridge.
Photo by Kristen Clarke*

prostitutes, we're also used to seeing them just hanging around drinking coffee for hours, not one hour, not half an hour, I'm talking about hours while they are stealing somebody's purse and chain over there, while they are breaking into an apartment over there, they are there just sitting down drinking coffee, fooling around.

I say we're wrong, because we don't stand up, we don't protect what's ours, and we don't ask questions. We just take orders. And I say a policeman is a public servant, he is there to protect you, your property and that is all, and to make arrests, make arrests and take them

into prison, the station house and book them, that's his job. If the police kills somebody or steals, isn't he entitled to the same treatment that my son would have got if he would have killed or stolen something? And I asked the DA what happens if my son would have killed him, well, he would have faced the death penalty. So what are you going to do with this police officer that murdered my son? And he said he didn't get up in the morning with intention to kill. When my husband begged that officer to let my son go, that he had asthma, and he [the officer] didn't [let him go], he intended to murder my son. And that's what I got across to the DA. That's intention. It's not that he didn't get up in the morning with my son's name

in his head. So I say that's why he was so well protected that even the DA looked the other way, and his sergeant that was supposed to be monitoring him at the time because of the long record of abuse that he had in the community, didn't do nothing. He was told by his lieutenant that this man should not be left to deal with the community people, he should have no contact with the community. And then we find out that somebody had signed an order to put this man back in the community after he was taken out of the street and until this day we are still investigating that. God bless you all.

Robert Gangi: The Rockefeller drug laws were passed in 1973 when Nelson Rockefeller was governor. The motivations behind the passage of the laws were widely acknowledged to be political. Rockefeller had made a determination that he could not advance his national political ambitions while identified as a liberal Republican, particularly since the Republican Party had become more and more conservative. So he made a number of calculations about how to move to the center and to the right of the center along the political spectrum. One of them was how he handled the Attica uprising in 1971 and another was pushing through the harsh New York drug laws in 1973. The Rockefeller drug laws were the first of their kind at that time. And since that time we now virtually have mandatory sentencing of a similar nature in every state in the country.

The harshest provision of the Rockefeller drug laws, just to give you an idea of how severe they are, requires a mandatory minimum prison sentence of fifteen years to life for the sale of two ounces or the possession of four ounces of a hard drug. I'd like to talk a little bit about some of the ill effects of that policy to give you some specific idea of the problems they cause.

The first is simply how expensive these laws have been. There are in New York state today over 22,300 drug offenders. It cost New York state over \$2 billion to build the prisons to house those people. It cost taxpayers over \$215 million a year to pay for the cost of confining those people. This kind of expenditure has contributed to a skewing of government priorities. We now spend in New York state, let's say government spends, I should say, more on prisons than it does on higher education by nearly \$300 million a year. We now lock up in New York state every year more black and Latino people on drug charges than black and Latino people graduate from our system of higher education.

These drug laws have contributed to difficult conditions inside our prison system. Despite all the money that we have spent on building and operating new prisons over the years, our prisons are still dangerously overcrowded. We double-cell or double-bunk over 12,000 inmates in New York state. That's a particularly hazardous condition given the resurgence of tuberculosis inside our prisons, which is an infectious illness. This kind of overcrowding increases levels of tension and increases the number of violent incidents. It's a dangerous place, prisons are dangerous places both for inmates and for the people who work there.

Another problem with the Rockefeller drug laws is probably in some ways the most overlooked problem of the laws and the most significant problem of the laws is that it places the main criterion for guilt not on your role in the drug transaction but on the amount of drugs you have in your possession when you are arrested. There is someone in this audience, Tracy Huling, who first brought that to my attention a number of years ago when she worked at the Correctional Association.

So what happens is the drug kingpins, being savvy people, know the principal way that they will avoid apprehension and prosecution under these laws is never to carry drugs. So what these laws do, I'm going to use the word skew again, is they skew the way we allocate our law enforcement resources because it becomes almost an incentive for politicians to deploy police in certain kind of ways. With these laws in place, drug sweeps and buy-and-bust operations have an automatic payoff not only to high-level police officials and to people who work in places like City Hall but also to prosecutors who can rack up high incarceration numbers with those kind of police practices in place and with these kind of laws in place.

Laws contribute to really gross kinds of injustices. Clyde Haverman is the columnist for the *New York Times*, and he has a piece talking

about some of these problems. What you have because of these laws is a number of cases where people were only marginally involved in the drug trade, sometimes it was literally their first time they ever committed a criminal act, first time they were arrested, they get caught with a small amount of drugs on them, they consider themselves to be virtually innocent so they don't take the plea that is offered to them of a year to life or three to life, they decide to go to trial and they are convicted at trial and then the court has no choice but to hit them with the mandatory minimum, which is fifteen years to life. Now, this is a harsher sentence than people convicted of rape get, people convicted of arson, people convicted of armed robbery get. And it's on the laws of the books of New York state.

The last point I want to make relates to the issue that all of us, all the previous speakers, mentioned in one form or fashion and that's the racial factor that goes into the prosecution of the drug laws. Despite the fact that the majority of people who use drugs are white, and many observers think that the majority of people who sell drugs are white, although that's more difficult to prove, the vast majority of people who get sent to prison under the drug laws are people of color. Over 94 percent of the people who are doing time for the possession or sale of narcotics in New York state are African American or Latino. It's an extraordinary figure.

And one of the reasons this happens relates to the point I made earlier in terms of how police are deployed. Most of the white people who use drugs, most of the middle-class and upper-class people who use drugs of any race don't do it out in the streets. They do it in their offices or they do it in their homes. The drug trade that is carried out in our low-income, inner-city neighborhoods is carried out largely on the streets. And there is also more violence associated with that kind of drug

trade so it's more disruptive to the community and there is more call for police action. It's so much easier to arrest those people, and given again the fact that we have these laws on the books and with the criterion for culpability based on these laws, you know you are going to be able to prosecute those people, you know you are going to be able to send large numbers of those people away to prison. So one of the benefits that would likely result from the repeal of these laws, or even the significant reform of these laws, would be a change in some of the racially discriminatory police practices that go on today in places like New York City. Another point to make that I think is very relevant to the issue and relevant to the advocacy work that people like me and others are involved in is that more and more research is coming out that shows that treatment is not only more humane and not only much less expensive than prison, treatment is also more effective in reducing the crime associated with the drug trade than imprisonment. So now we can say without apology and in complete confidence that these laws are wasteful, they are ineffective, they are unjust and they are marked by racial bias and it's time to change them. And what is important for all of us I think to recognize is there is a very broad based movement in New York state today aimed at changing these laws and that people are a part of this movement coming from all corners of the state and across the political spectrum. There are even some former Republican state senators who have joined the coalition of people calling for significant reforms of these laws. And so there is a movement in place, this is an opportunity, an immediate and pragmatic opportunity, for us to have an effect on the policy that has contributed to some of the destructive trends that we are here to address at this conference. So I urge all of you to in some form or fashion participate in that effort.