

***BRINGING THE TREATY OBLIGATIONS  
INTO VIEW AT THE STATE LEVEL -- MINNESOTA***

**Failures to Implement the International Convention on the  
Elimination of All Forms of Racial Discrimination  
in Minnesota**

**A Response to the 2007 Periodic Report of the United States of America**

**Submitted by:**

**Ad-Hoc Work Group-Minnesota  
Re: US Compliance With Human Rights Treaties**

**Portions of this document contributed by:**

Rachel Bengtson, Attorney  
Rose M. Brewer, Ph.D.  
Peter W. Brown, Attorney  
Gloria Contreras-Edin, Attorney  
Professor Barry C. Feld  
Michael Friedman  
Edward Goetz, Ph.D.  
Larry Hiscock  
Maria Iñamagua Campaign for Justice  
Minnesota Spokesman Recorder  
Anna Pratt  
Shawn Stuckey  
Jermaine Toney  
Professor Michael Tonry  
Luke S. Tripp, Ph.D.

**Edited by Peter W. Brown**

# Table of Contents

<b>Introduction</b> .....	2
<b>Executive Summary</b> .....	2
<b>Moving Forward</b> .....	3

## **Part I: Federal Failure to Propagate/Educate** Article 7

<b>Chapter 1: Article 7 - Failure to Propagate/Educate in Minnesota re: ICERD</b> “Survey of Minnesota Local Human Rights Commissions Documenting the Failure to Inform Relevant Local Officials about the ICERD and the Current CERD Review Process Despite Significant Openness in Minnesota to Receive this Information” by the Ad-Hoc Work Group Re: US Compliance With Racial Justice Treaty .....	4
<b>Chapter 2: Article 7 - Local Impacts of Failure to Propagate ICED at Federal Level</b> “Comments Regarding the Failure to Educate/ Propagate Regarding the ICERD at the Federal Level and the Demise of Executive Order 13107” by the Maria Iñamagua Campaign for Justice .....	8

## **Part II: Failure to adopt/implement special measures** Article 2, Section 2

<b>Chapter 3: Article 2, Section 2: Failure to implement special measures</b> “Missed Opportunities -- Minneapolis and St. Paul Contract Compliance Policies and Performance” - selected materials regarding recent studies of municipal contract compliance commitments in Minneapolis and St. Paul, Minnesota .....	12
<b>Chapter 4: Article 2, Section 2: Resistance to adopting special neighborhood benefit measures in the face of persistent racial and economic disparities</b> “Will Minneapolis Eventually Seize Realistic Opportunity to Promote Adequate Community Development in Harrison Neighborhood? Or Not?” by Larry Hiscock, Executive Director, Harrison Neighborhood Association, Minneapolis, Minnesota .....	19

## **Part III: Failure to Review Laws/Policies for Negative Racial Impact** Article 2, 1(c)

<b>Chapter 5: Article 2, 1(c) - Failure to Review for Negative Racial Impact in Formation of Minnesota Public Policy</b> The Organizing Apprenticeship Project’s (OAP’s) “Race and Budget Matters in Minnesota: A Mid-Term Progress Report” by Jermaine Toney .....	24
--	----

<b>Chapter 6: Article 2, 1(c) - Failure to Review for Negative Racial Impact</b> “Minnesota Drug Policy and its Disastrous Effects on Racial and Ethnic Minorities” by Professor Michael Tonry . . . . .	26
<b>Chapter 7: Article 2, 1(c) - Failure to Review Minnesota Juvenile Justice Laws and Policy for Negative Racial Impact</b> “Juvenile Justice Changes in Minnesota: Wrong Direction, Particularly for Minority Youth” by Professor Barry Feld . . . . .	30
<b>Chapter 8: Article 2, 1(c) - Failure to Review Laws and Policy for Negative Racial Impacts on Minnesota Families</b> “Imperiled Black Families and the Growth of the Prison Industrial Complex in the U.S.” by Dr. Rose Brewer . . . . .	35
<b>Chapter 9: Article 2, 1(c) - Failure to Review Federal Housing Policy for Negative Racial Impact</b> “Demolition and Dispersal of Public Housing: Predicted Benefits Largely Unrealized, Outweighed by Social Costs Borne by Minority Families” by Dr. Edward Goetz . . . . .	39
 <b>Part IV: Failure to Provide Equal Treatment by Organs Administering Justice</b> Article 5  	
<b>Chapter 10: Article 5 - Critique of the State Department Report Regarding Racial Profiling</b> “Comments Regarding the United States’ April 2007 Report to the CERD Regarding US Compliance With its Obligations Under the ICERD to Eliminate Racial Profiling” by Peter W. Brown . . . . .	44
<b>Chapter 11: Article 5 - Racial Profiling in the Context of the Historic Black Struggle for Freedom</b> “Racial Profiling and Criminalization/Blacks and the Judicial System: Legalized Punishment and Control” by Dr. Luke Tripp . . . . .	48
<b>Chapter 12: Article 5 - Collateral Effects of Disproportionate Incarceration of Minorities in Minnesota</b> “Collateral Effects of Convictions and Arrests in Minnesota: Disproportionate Impact Upon Minorities; Greatest Burden Upon African-Americans” by Sean Stuckey . . . . .	51
<b>Chapter 13: Article 5 - Racial Profiling - Worthington/Wilmar ICE Raids</b> “The Real Story” by Gloria Contreras-Edin and Rachel Bengtson . . . . .	56

**Chapter 14: Article 5 - Failure to Provide Effective Civilian Review of Police Misconduct Complaints**

“Police Misconduct and Civilian Review in Minneapolis” by Michael Friedman . . . . .60

**INTRODUCTION**

Although the United States ratified the International Convention for the Elimination of All Forms of Racial Discrimination (ICERD) in 1996, this is the first year that the Committee on the Elimination of All Forms of Racial Discrimination (CERD) will receive any information assessing the level of implementation of the ICERD in Minnesota. Similarly, it is the first year the Committee is receiving any assessment of the level of progress (or regression) in Minnesota towards the elimination of all forms of racial discrimination.

That over a decade has passed without the United States reporting such information for Minnesota is very telling. Since the United States is obligated to implement the provisions of the ICERD at all levels of government (federal, state, and local) and report on its progress in doing so, such information should be readily available from our State officials. Therefore, the silence from and about Minnesota, recognized to be one of the more liberal states in the union, indicates that the United States does not take its obligations under the ICERD seriously.

In this report, we have not attempted to provide an encyclopedic treatment of all the ICERD requirements and all areas of discrimination it addresses relevant to Minnesota. Instead, our effort is to provide a few specific examples of issues relevant to the ICERD to give the Committee an insight into the general state of racial justice, or “which way the wind is blowing” in Minnesota. These examples indicate that improvements in implementation of the ICERD are necessary in Minnesota. We hope to be able to report such improvements for the Committee’s next review.

As the great poet from Minnesota Bob Dylan put it:

“You don’t have to be a weatherman to know which way the wind blows.”

**EXECUTIVE SUMMARY**

The principal finding at this time is that virtually nothing is known at the state and local levels in Minnesota about the obligations undertaken by the United States (at all levels of its government) under the human rights treaties it has ratified. From government officials to media to the general population, few even recognize what the ICERD is (let alone what it requires), that it is a ratified treaty, and that ratified treaties such as the ICERD are part of the “supreme law of the land” under the US Constitution. As to what it requires, even fewer know that the ICERD requires all levels of government to, for instance:

- 1) take special and concrete measures to ensure the adequate development and

protection of certain racial groups for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms; [ICERD, Part I, Article 2(2)]

2) to take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists; [ICERD, Part I, Article 2(1)(c)] and

3) to take immediate and effective measures to propagate the purposes and principles of the ICERD. [ICERD, Part I, Article 7]

As each Chapter of this Report illustrates, there is a significant shortfall in Minnesota between the ICERD's ultimate goal (the elimination of all forms of racial discrimination) and the daily reality of Minnesota residents. Equally significant for purposes of the CERD's review of US compliance with the ICERD, however, is to recognize that with rare exception, neither the authors of our chapters nor the decision-makers whose actions and policies they describe utilize the standards established by the ICERD in addressing the issues before them.

The relative invisibility of the ICERD in Minnesota constitutes a significant failure of the United States to seriously undertake and execute its responsibilities under the ICERD to incorporate the ICERD goals, principles, and methods into our state's world-view and practical approach to how policy is made and changed in this country.

## **MOVING FORWARD**

Our findings likely apply to other states as well, but in this Report our focus is Minnesota. We believe the ICERD and other human rights treaties hold great potential for propelling the kind of mindfulness called for in the well-known Minnesota document, the Itasca Project Report, "Mind the Gap". The "Mind the Gap" report identified growing disparities between rich and poor, minority and majority populations in Minnesota and predicted serious consequences for our region if we did not, indeed, "Mind the Gap".

We recognize that this year's international review of United States compliance with the ICERD is part of an iterative process and is scheduled to be revisited in two years.<sup>1</sup> With that in mind,

---

<sup>1</sup> Under Part II, Article 9(1)(b), the United States agreed to file a report with the Committee every two years, reporting on the legislative, judicial, administrative or other measures which it has adopted and which give effect to the provisions of this Convention. The United States ratified the treaty in 1996 but did not file its first report until 2001 and thereafter did not file its next report until 2007. The value of the reporting process is undermined if implementation dialogue and accountability is not maintained as prescribed in the treaty. It is important to Minnesotans desiring to realize the full potential from the ICERD to make progress on eliminating all forms of racial discrimination that the United States begin to report on a more regular basis, consistent with the reporting obligation it undertook when it ratified the ICERD.

we submit these examples from Minnesota. Our intention in our Report is to establish an informal baseline from which to begin to measure progress in implementation of the requirements of the ICERD. We look forward to the next round in which we will be able to report on the progress made in Minnesota.

## Chapter One

# Survey of Minnesota Local Human Rights Commissions

Documenting the Failure to Inform Relevant Local Officials about the ICERD  
and the Current CERD Review Process

Despite Significant Openness in Minnesota to Receive this Information

by

Ad-Hoc Work Group

Re: US Compliance With Racial Justice Treaty

## Background

The federal government has an obligation under a human rights treaty ratified in 1994 to take “immediate and effective measures” to eliminate all forms of racial discrimination in the United States and to propagate throughout the United States the purposes and principles of, among other things, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). Part I, Article 7.

Since Minnesota’s local Human Rights Committees are publicly identified as interested in the protection and promotion of human rights, it is reasonable that federal efforts to propagate awareness of the ICERD would have been directed to them or come to their attention.

In the Fall of 2007, in an effort to gauge the level of the federal government’s efforts and success in Minnesota to inform people about the ICERD and about the current review of US compliance with the ICERD, the 44 local Human Rights Commissions in Minnesota (called Civil Rights Commission in some cities and counties)<sup>2</sup> were invited to respond to a very short survey. (See attached.) They were asked to respond regarding their awareness of federal efforts to inform them about ICERD, to involve them in public education about the ICERD, their awareness of the ICERD, and whether their commission would like more information about the ICERD and consider doing public education about the ICERD in their area.

---

<sup>2</sup> Source: the Minnesota Department of Human Rights maintains a list of Minnesota’s local Human Rights Commissions and their contact information (addresses, phone numbers, and e-mail addresses) at [http://www.humanrights.state.mn.us/resources\\_league\\_contacts.html](http://www.humanrights.state.mn.us/resources_league_contacts.html).

Potential respondents were informed that this is the year the federal government’s compliance with the ICERD is being reviewed by an international panel in Geneva, Switzerland and that their responses to the survey would be tabulated and made part of a report issued in conjunction with Human Rights Day 2007 and the review of federal activity to implement the ICERD.

**Survey Results**

Twenty-two of Minnesota’s 44 Human Rights Commissions (50 percent) responded. Totals for the responding commissions are as follows, followed by individual responses by specific city. Summary of Responses:

**TOTALS**

	<b>Received info from federal government about ICERD?</b>	<b>Received info from federal government about compliance review?</b>	<b>Been asked to disseminate info about ICERD?</b>	<b>Your awareness of ICERD before receiving this survey?</b>	<b>Likelihood your commission would be interested to learn more about ICERD &amp; consider doing public education about it for residents in your area?</b>
	Yes: 0 No: 22	Yes: 0 No: 22	Yes: 0 No: 22	None: 22 Some: 0	Likely: 19 Not likely: 3

**Individual Responses / City by City**

<b>City</b>	<b>Received info from federal government about ICERD?</b>	<b>Received info from federal government about compliance review?</b>	<b>Been asked to disseminate info about ICERD?</b>	<b>Your awareness of ICERD before receiving this survey?</b>	<b>Likelihood your commission would be interested to learn more about ICERD &amp; consider doing public education about it for residents in your area?</b>
Albert Lea	No	No	No	None	Likely
Anoka	No	No	No	None	Likely
Brooklyn Park	No	No	No	None	Likely
Crystal	No	No	No	None	Not likely
Falcon Heights	No	No	No	None	Likely
Forest Lake	No	No	No	None	Likely
Golden Valley	No	No	No	None	Likely
Grand Rapids	No	No	No	None	Likely
Minneapolis	No	No	No	None	Likely
Morris Area Human Rights Commission	No	No	No	None	Likely

New Hope	No	No	No	None	Likely
Northfield	No	No	No	None	Likely
Paynesville	No	No	No	None	Likely
Red Wing	No	No	No	None	Likely
Robbinsdale	No	No	No	None	Not likely
Rochester	No	No	No	None	Likely
Roseville	No	No	No	None	Likely
St. Paul	No	No	No	None	Likely
Shoreview	No	No	No	None	Likely
Stillwater	No	No	No	None	Likely
Virginia	No	No	No	None	Not likely
Winona	No	No	No	None	Likely

### **Comments Received From Respondents**

“We are interested in information.”

“If you are more specific about the information you have available to local human rights commissions, we’d like to see what is available. Thank you.””

“We would like more information about scheduling a speaker for one of our monthly meetings and/or a community-wide event.”

“So when do we hear more about this?”

“Fascinating! Please keep us in the loop!”

### **Conclusion**

On election evening in Minnesota, there are always half-joking references to slow-reporting precincts, such as the fabled “canoe precincts”, where the voting results are said to arrive to the tabulation area by canoe. According to the good-natured spin from candidates who are behind, these “canoe precincts” can always be counted on to turn the tide and reverse the results to-date.

However, in this instance, even if the 22 local Human Rights Commissions are returning their surveys by canoe, it is clear that their “ballots” will be entirely consistent with the first-arriving 22 surveys:

- First, the survey documents that the federal government has provided no information to the local authorities in Minnesota most likely to have a keen interest in eliminating all forms of racial discrimination.
- Second, Minnesota’s local human rights commissions are, in fact, overwhelmingly interested in receiving information about the ICERD to determine how it fits into their mission.

## Chapter Two

# Failure to Educate/ Propagate Regarding the ICERD and the Demise of Executive Order 13107

Violations of ICERD, Part I, Section 7

“States Parties undertake to adopt immediate and effective measures, . . . , with a view . . .to propagating the purposes and principles of . . . this Convention [on the Elimination of All Forms of Racial Discrimination].”

Submitted by the  
***Maria Iñamagua Campaign for Justice***

Justice For Maria! Justice For All!  
Enforce the Human Rights Treaties!

In its opening statement regarding its compliance with Article 7, the US Report (April 2007) misstates its obligations under the Article by failing to acknowledge Article 7's requirement that State Parties propagate the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.

The US failure to acknowledge its “propagation” responsibilities in the opening paragraph is continued throughout its Report. Not one paragraph reports any action taken by the US to propagate the purposes and principles of any of the cited documents.

This failure to propagate has practical, sometimes lethal consequences for real people.

### **Practical Consequences**

Maria Iñamagua died while in the custody of Ramsey County Jail for lack of adequate, humane medical attention. In the course of our campaign to secure justice for Maria Iñamagua and for all similarly injured and to prevent the recurrence of such injuries, we have run into the practical consequences of the United States’ failure to take “immediate and effective measures” to propagate the purposes and principles or even the existence of the ICERD and other ratified Human Rights Treaties.

If “immediate and effective” measures had been taken, the fact that ratified treaties are part of the “supreme law of the land” would be common knowledge and, consequently, appropriate attention paid to the honoring (or to the dishonoring, as the case may be) of the provisions of those treaties or at least recognizing that they should be honored. Media, elected officials and government employees are plenty sharp enough people, so if they do not recognize that compliance/non-compliance with human rights treaties matters, something is seriously wrong about our society’s baseline civics 101.

**To illustrate:** if the United States had complied with its responsibilities to educated officials, media, and the general public about the ICERD and other Human rights treaties, the *Maria Iñamagua Campaign for Justice* would not have encountered the following:

**1. Non-recognition of the ratified Human Rights Treaties, of which the ICERD is a major example, by the media.** At every news conference we have held in the course of our campaign to secure justice for Maria Iñamagua’s death, we have verbally and in written materials placed Maria’s death in the context of the Human Rights Treaties. We have explained about the treaty provisions which, if honored, would have prevented her death. Despite generally sympathetic and responsive coverage of her death and interest in the investigation (on-going since September 2006), not one mainstream journalist (print, auditory or visual) has even reported that we “claimed” that ratified human rights treaties exist and apply to Maria’s tragic death. For the media to-date, Maria’s story unfolds entirely within the confines of established legal controversy and human interest narratives, which do not include the human rights treaty perspective.

**2. Non-recognition of the ratified Human Rights Treaties characterizes the federal investigatory response to Maria’s death.** In our July 14, 2006 letter to federal officials formally requesting a federal investigation into the death of Maria Iñamagua while in the custody of Ramsey County Jail we detailed seven specific provisions of ratified Human Rights Treaties that related directly to the kind of health care Ms. Iñamagua experienced while in custody. We noted the link between non-observance of the human rights standards and Maria’s death and requested that the federal investigation include assessment of compliance with the Human Rights

Treaties. We argued that acknowledging and implementing human rights standards were the most direct way to prevent a recurrence of Maria's experience.

In the ensuing 18 months, despite repeated requests from us and other interested parties, no such assurance has been given. In addition, staff of the Department of Homeland Security's Office of Inspector General who are reviewing Maria's death have told us that this question beyond their knowledge and scope of authority to decide. The point is this: it should be standard operating procedure for officials reviewing a death-in-custody to know what the relevant human rights standards are and to apply them in such investigations as a matter of course. It should not be such a novel notion that the question whether these standards will be applied that it is "beyond their scope". Our experience suggests that human rights standards are not known or applied in such investigations not due to any lack of responsibility and commitment on the part of investigating staff, but because they have not been trained by supervisory personnel up the chain of command to do so.

If, in partial compliance with the ICERD (and other ratified Human Rights Treaties) there has been an honest effort to effectively spread the word throughout federal agencies (such as the Department of Homeland Security and its divisions such as ICE) about the existence of the Human Rights Treaties and agency responsibilities under those treaties, it is certainly not apparent from our experience here on the ground in the Maria Iñamagua case. In addition, we note that there is absolutely nothing in the US State Department's Report to indicate that education about the ICERD (and other ratified Human Rights Treaties) has in fact been spread and that human rights principles and standards have been incorporated into agency practice at any relevant levels.

**3. Non-recognition the ratified Human Rights Treaties characterizes the response of local ICE officials.** The Ramsey County Jail holds immigration detainees such as Maria Iñamagua on contract with the Office of Immigration Enforcement (ICE) which is part of the US Department of Homeland Security. The contract is overseen by ICE officials whose office is in Bloomington, MN. On June 19, 2007, a letter was sent to the local ICE Office proposing a panel of qualified persons to provide information to detainees about their human rights under the ratified human rights treaties, specifically as it relates to their detention issues. Such group presentations on detainees' legal rights are specifically authorized under INS/ICE Detention Standard 9: Group Presentations on Legal Rights. No response was ever received from the ICE Office. Not providing the proposed education session to detainees on their human rights strongly suggests either a cavalier attitude toward human rights or more likely that human rights are invisible to our local ICE officials. We do not blame them entirely for that since we believe it is part of a larger culture of not understanding and honoring human rights, a culture which the US undertook to reverse by "all appropriate means and without delay" when it ratified the ICERD and the other Human Rights Treaties.

**Regarding the Shameful Treatment of Executive Order 13107: Bound, Gagged, and**

## Stuffed in a Closet

In the course of our work in the *Maria Iñamagua Campaign for Justice* we came upon Executive Order 13107 and our hearts leapt up. Finally, some leadership language from the top that not only acknowledged the existence of the ratified Human Rights Treaties but apparently established a mechanism within the federal government at least to incorporate the human rights commitments into daily government practice. We wondered why, a decade after Executive Order 13107 was issued all the federal officials we encountered did not seem to recognize the existence/applicability of human rights treaty standards to their work, but we were encouraged to see that there was at least something like Executive Order 13107 to hang onto.

We notice that in its 2001 Final Comments, the CERD also took an interest in Executive Order 13107 and the Interagency Working Group created under it. The CERD specifically asked the US to report on the powers of the Working Group and the **impact** of the Working Group's activities in its next report.

We believe the commonly understood meaning of "impact" in this context is "effect" or "results brought about" and the thing the Interagency Working Group was created to have an impact on was the awareness of the United States federal officials in all departments and agencies about the rights people have and obligations that federal government officials have under the ratified Human Rights Treaties. And what the Working Group was supposed to do about that awareness was to raise it.

We go into this length about the common sense, everyday meaning of these words because your request was clear and the State Department appears to have intentionally avoided responding to your straight forward, very understandable request. We believe that's called acting in bad faith. The State Department's Report provides no information about what the Interagency Working Group did to raise the awareness of rights and obligations among federal officials (such as the officials in the Department of Homeland Security that we have encountered during Maria's Campaign) and no information to demonstrate how successful it was at in fact raising that awareness. Instead, the Report (Paragraph 352) lists a number of activities that are 1) not directed at raising federal officials' awareness of Human Rights Treaty obligations of federal officials and 2) not within the mission of the Interagency Working Group created and charged by Executive Order 13107.

Even more significant, the State Department has not been forthright with the Committee about the actual status of the Interagency Working Group. For example, the State Department clearly refers to the Interagency Work Group as if it continues to exist. ("The Interagency Working Group continues to function . . .") Not true. In his National Security Presidential Directive #1 issued February 13, 2001 (SD-1), President Bush abolished the existing system of Interagency Working Groups and transferred the duties of the Human Rights Treaties Interagency Working Group established in E.O. 13107 to a Policy Coordinating Committee (PCC), the PCC on Democracy, Human Rights, and International Operations.

So what kind of entity is a PCC and what is the likely fate of the duties of a domestically-oriented human rights treaty Work Group rolled into a PCC? Or, more particularly, what is the likely fate of duties to implement the Human Rights Treaties domestically throughout the federal government that are transferred to the National Security Council's PCC on Democracy, Human Rights, and International Operations?

First, all PCCs were part of a National Security Council System and were defined as “the main day-to-day fora for interagency coordination of national security policy.” As defined in SD-1, their job is to “provide policy analysis for consideration by the more senior committees of the NSC [National Security Council] system and ensure timely responses to decisions made by the President.”

Second, each PCC has an Executive Secretary from the staff of the National Security Council designated by the Assistant to the President for National Security Affairs and the Chair of the PCC to which the duties of the Human Rights Treaties Interagency Working Group was “transferred” (the PCC for Democracy, Human Rights, and International Operations) is designated by the Assistant to the President for National Security Affairs. As prescribed in SD-1, the chair and executive secretary of every PCC schedule the meetings of the PCC, determine the agenda, record the action taken and tasks assigned, and ensure timely responses to the central policymaking committees of the National Security Council system.

So it is clear that the abolition of the Human Rights Treaties Interagency Working Group established by Executive Order 13107 and subordination of its duties into the National Security Council System does not square with the State Department's report that it “continues” or that it “functions”. The change that has occurred cannot be characterized simply re-naming the Human Rights Treaties Interagency Working Group. Transferring the duties of the Interagency Working Group created by Executive Order 13107 has effectively submerged them into a National Security Council System and into a PCC that has priorities at apparent odds with the goals and purpose of Human Rights Treaties Interagency Working Group.

Given these changes, it is not surprising that the State Department can cite not one federal activity that actually continues the mission and duties of the Human Rights Treaties Interagency Working Group established by Executive Order 13107.

Unless minutes of meetings by the PCC for Democracy, Human Rights, and International Operations and other relevant documentation can show to the contrary, the Committee's conclusion must be that the State Department Report (Paragraph 352) has intentionally attempted to mislead this Committee, and, as we indicate in the headline for this section, that the Bush Administration via SD-1 has bound, gagged, and stuffed Executive Order 13107 and the promising work of the Human Rights Treaties Interagency Working Group into a closet — all in violation of Part I, Section 7 of the ICERD and its fundamental responsibilities to implement the ICERD and other Human Rights Treaties ratified by the United States in good faith.

-----

### Chapter Three

## **Missed Opportunities -- Minneapolis and St. Paul Contract Compliance Policies and Performance**

Minnesota's Exhibit A regarding the obligation to take "special measures" to ensure the adequate development of certain racial groups or individuals belonging to them. Article 2, Section 2

**Editor's Introductory Note:** In ratifying the **International Convention for the Elimination of All Forms of Racial Discrimination** the United States obligated itself to take affirmative steps to eliminate all forms of racial discrimination. One of the ways the US, through the actions of its various levels of government (federal, state, and municipal) has set out to eliminate racial discrimination and its effects, is

to adopt various kind of affirmative action programs, referred to in the treaty as "special measures".

Both Minneapolis and St. Paul are to be recognized for adopting such requirements. However, as recent studies have shown, the distance between adoption and execution appears great and the distance between adoption and achievement appears even greater, wholly unsatisfactory and not in keeping with the cities' obligations under the ICERD, Part I, Article 2(2).

### **I. Minneapolis Contract Compliance Ordinance and Study**

One of those programs is Minneapolis' Contract Compliance Program that has been the subject of the recent study (June 2007) by Dr. Samuel L. Meyers, Judge LaJune Lange (retired), and Attorney Lawrencina Oramalu.

The Minneapolis study found the program to be seriously deficient in a number of respects. See the report's Executive Summary below. Particularly relevant to the Committee's assessment of US compliance with its obligations under Article 2, Section 2 is the study's following finding:

The excessive non-compliance, failure to implement consequences, poor communication, ineffective coordination, lack of clarity, and lack of resources needed to operate at full capacity and fulfill the mandate prescribed in the Ordinance do not convey a sincere commitment to achieve full compliance with the Ordinance. Report at page

In short, the study is an excellent example of the kind of information not currently provided to the international Committee that will be assessing US compliance with its obligations to eliminate all forms of racial discrimination and the bona fides of US efforts to do so. Ominously, this significant study went virtually unreported in mainstream media, but did receive appropriate coverage and notice in minority media. We include two examples of that coverage, the following news article and an editorial.

The following is the Executive Summary of the *Evaluation of the City of Minneapolis Department of Civil Rights Contract Compliance Unit*, prepared by The Roy Wilkins Center for Human Relations & Social Justice Hubert H. Humphrey Institute of Public Affairs, University of Minnesota, Dr. Samuel L. Myers, Jr., Director Judge LaJune Thomas Lange (Retired), and Lawrencina Mason Oramalu, J.D. (May 2007).

### **EXECUTIVE SUMMARY**

This report addresses seven major issues that emerged from the consultant interviews, legal analysis, and document review. The major themes and findings are summarized below:

<b>KEY ISSUE</b>	<b>FINDING</b>
------------------	----------------

Compliance	Governmental and non-governmental entities governed by the Civil Rights Ordinance are <b>NOT</b> in full <i>compliance</i> with the hiring, contracting, reporting, monitoring, and enforcement mandates described in the contract compliance provisions of the Ordinance.
Consequences	The <i>consequences</i> outlined in the Civil Rights Ordinance for failure to comply with the provisions of the Ordinance are <b>NOT</b> being applied to firms that are in non-compliance.
Communication	<i>Communication</i> within the Civil Rights Department, between the Minneapolis Department of Civil Rights (MDCR) and other City departments, as well as between MDCR and contractors needs to be improved.
Clarity & Coordination	There is inconsistent and ineffective <i>coordination</i> between MDCR and other City departments at the pre-bid, bid, and contract award stages of the contract compliance process, which may be the result of a lack of <i>clarity</i> regarding the roles and responsibilities of internal and external stakeholders.
Capacity	The Contract Compliance Unit (CCU) does not have the <i>capacity</i> to effectively fulfill its mandate.
Commitment	The excessive non-compliance, failure to implement consequences, poor communication, ineffective coordination, lack of clarity, and lack of resources needed to operate at full capacity and fulfill the mandate prescribed in the Ordinance do not convey a sincere <i>commitment</i> to achieve full compliance with the Ordinance.
Community	The City's diverse <i>community</i> deserves to have a government committed to fulfilling the social and economic goals of the Civil Rights Ordinance and the intent of the Civil Rights Ordinance through effective implementation and evaluation, thus ensuring that the civil rights policy has the impact it was designed to produce.

## II. St. Paul Contract Compliance Policy and Audit

A similar program in St. Paul is the subject of a recently released Audit. We include a newspaper article about the Audit, which was released (November 28, 2007) regarding St. Paul's contract compliance obligations, raising similar concerns as those raised about implementation of the Minneapolis contract compliance ordinance.

---

# City of Minneapolis affirmative action enforcement judged: WEAK

by Anna Pratt

*Minnesota Spokesman-Recorder* Originally posted 10/3/2007

On-line at: <http://www.spokesman-recorder.com/news/article/Article.asp?NewsID=82762&SID=4&Search=YES>

## *“We are breaking the law’ by not honoring Civil Rights Ordinance obligations*

To remedy past discrimination against women and minorities, a Civil Rights Ordinance that requires contractors for City-funded projects to employ affirmative action was passed in Minneapolis in 1967. It calls for 11 percent minority participation and six percent female participation.

Times have changed since then, though not necessarily for the better. Instead of compensating for past wrongs, enforcement of the Ordinance has become so laid back that when former Interim Director of Civil Rights Michael K. Browne, a teacher at the University of St. Thomas School of Law, asked for reports on its compliance, which are supposed to be administered regularly, he encountered “pushback.”

Browne commissioned a study by the Humphrey Institute to gain clarity on what was going on internally. The resulting 63-page report authored by Judge LaJune Thomas Lange and Lawrencina Mason Oramalu reveals “excessive noncompliance” that calls into question the City’s commitment to fulfilling the Ordinance’s objectives.

The report’s findings show problems in everything from simply getting affirmative action plans from contractors to enforcing consequences on those that don’t include enough minorities and women in their projects.

As “employee D” put it, quoted in the report, “There is a legal requirement that reports be generated to the Director... No reports have been submitted to the director in four years. We are breaking the law.”

Duane Reede, president of the Minneapolis chapter of the NAACP, said the City’s lack of accountability for civil rights is deeply disconcerting. “The Civil Rights Department doesn’t have any teeth. The Ordinance is just a placeholder,” he lamented, adding, “The report is very simple and transparent. But who reads it and who cares?”

Another critic of the City’s civil rights efforts, Peter Brown, president of the Minnesota National Lawyers Guild, is more optimistic about the report’s effect. In an email message, he said it could have international influence as an ad hoc group of racial justice advocates examines the nation’s compliance with the International Convention for the Elimination of All Forms of Racial Discrimination, to be considered by an international committee this February in Geneva, Switzerland.

Under the treaty, the U.S. is obligated to take affirmative steps to end racial discrimination, including numerous “special measures” such as the Civil Rights Ordinance. Being that Minnesota is considered such a liberal state, “This is exactly the kind of information that is likely to come to the attention of the international committee,” Brown said.

## **A toothless process?**

Joe Boone, an African American who owns locally based Boone Trucking, the sole minority-certified hauling business in Minneapolis, brought a lawsuit against the City that was settled in November of last year, with the City agreeing it would undergo the study of CCU (Contracts and Compliance Unit) as part of the settlement agreement.

Earlier on, Boone had been part of a larger lawsuit with other minorities who he said have been shut out against the City. He said he and other minority business owners continue to be shut out of City projects.

Additionally, he said the City has failed to meet other conditions of the settlement, including negotiating with Small and Underutilized Business subcontractors and “breaking down contract work items and/or services into economically feasible units to facilitate W/MBE [Women/Minority Business Enterprise] participation,” according to the agreement.

Lateesa T. Ward, an attorney who represented Boone in the case, said many people of color feel the City is falling short of compliance with the law. Some minorities are “frustrated they aren’t getting business. It’s the same people getting contracts over and over,” she said.

The Ordinance spells out the penalties of noncompliance: A contract that doesn’t meet its requirements may be canceled, terminated or suspended. Additionally, a contractor that doesn’t make a “good faith” effort to meet affirmative action goals can be fined \$500 per day of noncompliance.

The report defines a “good faith” effort as a measure of whether or not an entity has acted with honest intentions, without malice or the intent to defraud. The City may also withhold 15 percent of a contractor’s payment until it complies or block it from receiving future projects.

Additionally, CCU may bring a contractor before the Civil Rights Commission, which oversees the department, for further evaluation, or to the city council. Consequences aren’t being applied to noncompliant companies, the report points out.

The protocol instead has been to issue a Letter of Agreement (LOA) to contractors that don’t make the grade, with the promise to “do better” at an unspecified time in the future. Some companies received multiple LOAs without any further disciplinary actions.

One company that had accrued five LOAs still managed to land a couple of major projects, including one that totaled nearly \$2 million. Another serious non-complier that led a \$10 million project slipped through the cracks entirely; it wasn’t even listed in the LOA database.

Doug Heidenreich, an attorney who deals with contract law, who also teaches at William Mitchell College of Law, said via e-mail that without determining what “doing better” actually means, LOAs are too vague to stand up, legally. He explained, “If, in promising to ‘do better,’ all the contractor is promising is to do what it is already legally obligated to do under an existing contract and existing legal requirements, the deal would be subject to challenge as lacking ‘consideration.’” That is, “This legal doctrine requires that for a contract to be enforceable, each party must bargain for and receive something of legal value in exchange for its promise. Agreeing to do something that you are already legally obligated to do does not constitute legal value,” he said.

Current Civil Rights Director Michael Jordan, who took over for Browne in June, said a judge would have to make the call on whether or not LOAs are legally defensible. Jordan, who recently graduated from law school but isn’t registered with the state as an attorney, said that since “[LOAs] have been used for years, [that] suggests that they probably are [legally defensible],” he said.

He said the department would probably continue to use LOAs as one way to deal with some businesses that don’t meet goals. “We haven’t found anyone noncompliant in the sense that we stopped doing business,” he said. “I don’t think the report actually said anyone was out of compliance. It said LOAs were issued, which put the companies back into compliance.”

As for correcting past wrongdoing, at this point, “We can’t go back to someone and say, ‘Unbuild the building you built,’ or ‘Here’s a fine for something you did in 2001,’” he said.

Determining whether or not a company made a good faith effort is subjective. “Where someone might say you did enough, another might say you didn’t,” he said.

## **Examining the political will**

In a meeting in late August with the Civil Rights Commission, Jordan said he has started requiring that affirmative action plans be collected from every contractor. City department heads are also being notified of the requirement.

The Ordinance extends to the City itself: "All City of Minneapolis departments, including the Minneapolis Community Development Agency...shall at least annually develop and submit to the city council a plan, including goals and timetables for the hire," the Ordinance stipulates.

"City departments will conform to requirements when they spend the money for City services," said Jordan. "It's clearly an important item for the mayor. He's taken steps to make sure the message is sent, that we should be representative and reflective of the City we serve."

Jeremy Hanson, policy aide to the mayor, echoed him when he said, via email, that Jordan "represents the mayor's perspective on these matters. Mayor Rybak and Director Jordan take seriously the information contained in the Humphrey Institute report."

"Yes, the Civil Rights Ordinance is rightly helping to remedy past discrimination and the mayor believes that this is for good reason, since we must continue this effort. Yes, the City should and already has an effort underway to ensure that all City departments develop affirmative actions plans with clear, accountable outcomes," according to Hanson.

However, Jordan said it's premature to say whether or not the department will carry out the report's recommendations. Rather, he anticipates that a mix-and-match of some recommendations will be put into motion.

Marvin Taylor, acting manager of CCU, said the department is fine-tuning a process that would better use technology to track developments. He and others are working to make the department user-friendly, he said, by hosting training sessions for those who want to do business with the City, for example.

Altogether, they plan to be more transparent; the Civil Rights Commission, which recently formed a Contracts and Compliance Committee, will receive regular reports on compliance while job sites will be monitored more frequently. Additionally, a disparity study will help discover discrimination by evaluating minority availability in the marketplace.

City Council Member Paul Ostrow (Ward 1) said the report raises critical issues about the Civil Rights Department. "We need better enforcement, with a process that has consistent guidelines," he said. However, considering a tight City budget, he would support improving its operation in alternate ways. He doesn't think throwing more money at the problem is the answer. "I don't think funding is a given. From my experience, if there are clear guidelines, it can take less staff time," he said.

Council Member Robert Lilligren (Ward 6) disagrees. "I think it's unrealistic to expect it to be enforced without more resources. Obviously, what we're doing isn't effective. I think it doesn't appear as if there are very severe consequences for not complying," he said.

Council Member Ralph Remington (Ward 10) said ignorance about how race issues affect quality of life makes the problem difficult to overcome. Still, "Absolutely, it is good public policy. If we don't have it, then we won't be a city that will attract the creative class, diversity or culture...Those things mean a lot to me," he said. "It needs the political will to make it happen," he said.

## **Editorial**

### **Minneapolis guilty of a crime of negligence**

*Minnesota Spokesman-Recorder*

Originally posted 10/3/2007

Online at <http://www.spokesman-recorder.com/news/article/Article.asp?NewsID=82771&sID=16&Search=YES>

How many times have community members asked us why, when they pass construction sites funded with public dollars, they so rarely see people of color among the workers? Well, now we have at least a partial answer to that question: The City of Minneapolis has not been enforcing its own affirmative action mandates.

Minneapolis does have a Civil Rights Ordinance that requires specific affirmative action measures from those who contract with the City. The Ordinance also mandates that units of City government monitor those contracts and verify that they are in compliance.

Unfortunately, as recent study reveals, that monitoring has been pitifully inadequate for many years. The Minneapolis Department of Civil Rights (DCR) has been asleep at the wheel while who knows how many contractors have kicked workers of color to the curb — without consequences.

In her two-part story running this week and last, “Minneapolis affirmative action enforcement weak,” Anna Pratt summarizes a Humphrey Institute inquiry that casts grave doubt on the City’s commitment to equal opportunity. Among other things, the study reveals that:

Companies need only “register” that they have affirmative action plans at their home offices; no one is reading them nor monitoring if contractors are following the plans.

DCR staff “have not had the opportunity” to conduct the regular site visits and audits required to verify compliance with the Civil Rights Ordinance.

Contractors not in compliance are often not reported to the civil rights director, much less to the city council, as the Ordinance requires.

Throughout City government, departments have failed to notify the DCR that contracts have been awarded so that these contracts can be monitored for compliance. One of the worst offenders is where most of the big money goes: Community Planning and Economic Development (CPED).

When firms are found to be not in compliance, the consequences spelled out in the Civil Rights Ordinance are not being applied or are “extremely weak.”

The department “does not have the capacity to effectively fulfill its mission.”

When the study’s authors asked the City for copies of its departments’ most recent affirmative action plans, they were told that “the departments have not produced affirmative action plans in nearly ten years.” According to the DCR’s own business plan, “In 2005, women and minorities were awarded less than 1% of City contracts/subcontracts.”

Anna Pratt tells us that “Reactions to the report vary from shrugs to shock.” Shrugs? In our view, anyone who takes the Humphrey Institute report lightly and does not see in it cause for outrage is no friend of the countless families in our community whose breadwinners have been deprived of good jobs because of City negligence in its affirmative action enforcement.

Less than one percent of City contracts/subcontracts awarded to women and minorities! Surely that’s a crime. Is anyone in this City administration willing to call it what it is, enforce the law and punish the offenders?

-----

# St. Paul / City's contract efforts faulted

Study: Minorities, women get minimal amount of spending

BY TIM NELSON

Pioneer Press

Article Last Updated: 11/28/2007 11:44:40 PM CST

A long-awaited study of the way St. Paul apportions contracts and purchasing says only a tiny fraction of city spending goes to companies owned by women and minorities.

A Milwaukee law firm hired by the city to do a "review and performance audit" found that in 2006, less than 7 percent of \$220 million in city contracts went to such firms. The findings parallel long-standing complaints about how the city fulfills its intentions to spread public dollars among a more diverse group of suppliers and service providers.

Former Mayor Randy Kelly set a goal of 10 percent in 2004, the last time a measurable goal was made public.

"Those who do business with the city ... need to know that the city and (Housing and Redevelopment Authority) are serious about their inclusion policies and that compliance is not just a 'paperwork' requirement," the report says.

The 120-page report was handed over to the City Council at its meeting Wednesday, seven months after the \$80,000 study began.

It includes 44 densely worded recommendations, ranging from "increased clarity with regard to the various compliance goals" to installing an electronic certification data system.

**"I think the biggest thing is that there has been no accountability," said City Attorney John Choi, assigned by Mayor Chris Coleman to carry out the report's suggestions. "There is a division of management, and no one really is in charge (of monitoring results)."**

The issue dates back, officially, almost 20 years. Studies in the 1990s found indication of racial and gender discrimination in the city's contracting practices. The city established a vendor outreach program in 1997 to find more qualified suppliers and vowed to comply with existing anti-discrimination measures.

Critics say the city failed at that effort. Edward McDonald, then the city's top minority business outreach official, was fired in 2003 after publicly charging the city wasn't living up to its goals. An ad-hoc group, the Equal Access Working Group, has demanded for four years that the city bring in a third party to assess the city's track record.

Two lawsuits also have been filed making similar allegations of discrimination, one in federal court by contractor Frederick Newell and Michael Thomas of Cornerstone Community Realty & Mortgage Services.

Thomas was on hand for the release of the report and commended the effort.

"But we are seeing minority businesses closing their doors while we've been waiting for this," he said. "They just can't hold their breath any longer. These are the hopes and dreams of families that are being lost while the city is having ceremonies."

He was joined in the council chambers by another black business owner, Brian O'Connor, who said he bid unsuccessfully 22 times for city-related trucking contracts. He has sued the city in state court.

City officials wouldn't address the merits of the legal cases or how the audit might affect the city's position. But Coleman committed to making improvements on the basis of the report - the first such voluntary study of spending and contracting by any city in the country, according to James Hall, the Milwaukee lawyer who wrote the report.

"When I ran for office in 2005, it was on the premise that everyone had to be participating in what's happening in the city of St. Paul," Coleman said. "When I read this report, one of the things that I am proud of is the fact that clearly there is no ill intent on the part of the city ... but the report reminds us that we need to do better. Doing OK is not good enough."

Tim Nelson can be reached at [tnelson@pioneerpress.com](mailto:tnelson@pioneerpress.com) or 651-292-1159.

Article is on-line at: [http://www.twincities.com//ci\\_7584976?IADID=Search-www.twincities.com-www.twincities.com&IADID=Search-www.twincities.com-www.twincities.com](http://www.twincities.com//ci_7584976?IADID=Search-www.twincities.com-www.twincities.com&IADID=Search-www.twincities.com-www.twincities.com)

-----

## Chapter Four

# Will Minneapolis Eventually Seize Realistic Opportunity to Promote Adequate Community Development in the Harrison Neighborhood? Or Not?

By Larry Hiscock, Executive Director  
Harrison Neighborhood Association  
Minneapolis, Minnesota

### I. Summary

A key governmental unit in the State of Minnesota, the City of Minneapolis (the City), has not recognized, let alone met, its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), Article 2, Section 2 to take "special measures" to ensure the adequate development of certain racial, ethnic or national groups in the neighborhood we represent, the Harrison Neighborhood in north Minneapolis.

In particular, the City has to date failed to take a reasonable measures available to promote the development of minority group members in the context of a major redevelopment process in the North Minneapolis Empowerment Zone. It has failed to require developers of a major project bordering the Harrison Neighborhood (to be subsidized by \$70 million tax dollars) to sign a Community Benefits Agreement guaranteeing that community members will benefit economically (jobs and housing) from the development.

The federal government is partly responsible for this failure in that it has failed to communicate to the municipality the obligation of all levels of government in the United States (including municipalities) to engage in the fulfillment of this nation's obligations under the ICERD to eliminate persistent racial disparities with respect to economic well-being.

### II. Background: The City's Duty Under Article 2, Paragraph 2

In its Concluding Observations regarding the US CERD Report (2001), the Committee on the Elimination of Racial Discrimination (CERD) stated:

19. . . . the Committee is concerned about **persistent disparities in the enjoyment of**, in particular, the **right to adequate housing, equal opportunities for education and** employment and access to public and private health care. The Committee recommends the State party to take all appropriate measures, including special measures according to article 2, paragraph 2 of the Convention, to ensure the right of everyone, without discrimination as to race, colour, or national or ethnic origin to the enjoyment of the rights contained in article 5 of the Convention. (Emphasis added.)

The Committee also noted:

20. With regard to affirmative action, the Committee notes with concern the position taken by the State party that the provisions of the Convention permit, but do not require States parties to adopt affirmative action measures to ensure the adequate development and protection of certain racial, ethnic or national groups. The Committee emphasizes that the adoption of special measures by States parties, when the circumstances so warrant, such as in the case of **persistent disparities**, is an obligation stemming from article 2, paragraph 2 of the Convention. (Emphasis added.)

The "persistent disparities" negatively impacting communities of color in Minnesota have been well documented in the Itasca Project Report, a well-researched, highly publicized, and well-received report in Minnesota.<sup>3</sup>

The nature and chief findings of the Itasca Project Report are as follows:

- There are persistent and substantial disparities based on race, class and location within the Twin Cities (Minneapolis/St. Paul, MN) Metro Area. The median income for a white household was \$56,642 while the median income for an African American household was \$29,404 – which is a \$27,238 difference.
- Homeownership is a vital component of wealth building for families in the United States. The Itasca Report noted that 76 percent of whites own homes while only 32 percent of African Americans own their homes. People living under the poverty line is only 4 percent for whites, but one-third of all Hmong live below the poverty line.
- Disparities are concentrated in the Twin Cities. Minneapolis and St. Paul account for only “23 percent of the region’s total population, but 54 percent of all poor residents and 54 percent of the region’s persons of color.
- Racial disparities are further concentrated in North Minneapolis compared to the rest of Minneapolis.

### **Persistent Disparities Trigger Obligation to Take "Special Measures"**

As rightly noted by the Committee in its 2001 Concluding Comments, the existence of the economic disparities negatively affecting the development of members of racial, ethnic, or national groups trigger obligations under the Treaty (Article 2, Paragraph 2) to take "special measures" (affirmative action) to ensure their adequate development.

### **Persistent Disparities in the Harrison Neighborhood**

Nearly a century of urban policies and land use decisions have contributed to the environmental deterioration, social marginalization and economic decline seen in Near North communities.

---

<sup>3</sup> See “*Mind the Gap: Reducing Disparities to Improve Regional Competitiveness in the Twin Cities*” (October 2005), was written by the by the Brookings Institution Metropolitan Policy Program but commissioned by the Itasca Project, hence commonly referred to as the Itasca Project Report. The Report found that underneath broad regional successes are some disturbing social and economic disparities, demonstrating that progress is not widely shared. The Report argued that reducing such disparities is not only the right thing to do, it is also the smart thing to do to protect the continued economic success of the region. The Report is online at <http://www.mncn.org/bp/MindtheGap.pdf>. The report was widely covered in mainstream media.

The result in the Harrison neighborhood and the area known as Bassett Creek Valley is isolated by major roadways and municipal waste and car storage sites. Additionally the area has been home to three superfund sites and 15 toxic waste sites.

The Bassett Creek Valley, which consists of more than 200 acres, is likely the largest piece of underutilized land next to downtown Minneapolis. The redevelopment of this area will greatly impact both the surrounding neighborhood and the City of Minneapolis as a whole. The current proposal for the area will create over 1 million square feet of office space and 1500 housing units. The potential for creating jobs, housing and other opportunities to build wealth and reduce racial and economic disparities is enormous.

The Harrison neighborhood is located in north Minneapolis, with a population of 4,156. According to the 2000 Census: 39 percent of the residents are African American, 27 percent are Southeast Asian, and 25 percent are White. The Southeast Asian population has grown 92percent since the 1990 Census. The population of Harrison overall has grown 21percent in ten years without an increase in housing units. Accompanying the population increase is the startling statistic that 37% of those in Harrison are under the age of 18, and of those, 63 percent live in poverty.

Some of the uniqueness of Harrison can be found in the statistic that as of 1997, 24% of Harrison residents reported speaking a language other than English at home, and just over half do not speak English very well. Additionally, the median income for a Harrison family is \$21,314. A reported 61 percent of Harrison families have a female head of household.

Historically, revitalization and redevelopment has lead to the gentrification of the surrounding area dislocating low-income people who are predominately of color. The focus of the Harrison Neighborhood Association is to promote racial and economic equity by ensuring that current residents directly benefit from the publicly subsidized redevelopment of Bassett Creek Valley.

### **III. Proposed Community Benefits Agreement**

Reducing racial and economic disparities is an organizational focus of the Harrison Neighborhood Association. This focus has led community leadership to use a Community Benefits Agreement as a tool to secure concrete and measurable benefits to the diverse racial groups in Harrison and North Minneapolis. A Community Benefits Agreement (CBA) is a legally binding document negotiated between community and a developer. Local municipalities in other states often support these efforts by encouraging or requiring a CBA for a development and/or by adopting the negotiated agreement into the formal City Development Agreement with a developer.

The Harrison Neighborhood Association is in early conversations with Ryan Companies. What follows are general points that community members want in a Community Benefits Agreement.

- Direct participation by community in a transparent project planning process at all levels of planning and plan implementation
- Rigorous construction employment and contracting goals that exceed City of Minneapolis standards with a concrete goal of hires from Minneapolis Empowerment Zone neighborhoods
- Maximize number of living wage jobs resulting from the development, including goals and cooperation with local job training agencies

- Aggressive affordable housing goals with agreed upon strategies to achieve long-term affordability
- Agreement on connecting the redevelopment to the entire community versus creating island of a development
- Commitment to incorporate sound environmental standards through the development

#### **IV. Community Efforts to Secure**

Promoting Racial and Economic Equity for our region is a major priority of the Harrison Neighborhood Association and the community it represents. Over 160 residents, 70% of whom were people of color, and nearly a third being immigrants or refugees approved the following vision and organizational course:

Our Vision is this: we are creating a prosperous and peaceful community that equitably benefits all of Harrison's diverse racial, cultural, and economic groups. We will combat racism and other forms of oppression by establishing an environment of stewardship where all individuals can participate through shared power and mutual accountability.

Community leadership organized two large community meetings that were planned and facilitated by resident leaders. More than 100 residents participated with over half being people of color, a third being immigrant/refugees, and nearly 50% being renters. By the end we developed "Guiding Principles" calling for development that benefits the community and which employs tools to guard against displacement and gentrification. It is these community developed principles that provide the basis for our ongoing community benefits agreement work.

Harrison residents and Harrison Neighborhood Association (HNA) staff have interviewed over 40 experts in housing, job development, and financing to prepare to negotiate a Community Benefits Agreement. HNA leadership and staff have participated in over 20 presentations educating community members, elected officials and some developers about CBAs and the need to reduce racial disparities. HNA has met with 10 of 13 Council Members educating them on Bassett Creek Valley, neighborhood needs, priorities and the importance of a well defined Community Benefits Agreement to address entrenched disparities.

#### **V. Government Resistance**

The 7th Ward City Council Member representing predominately white and affluent neighborhoods and Chair of the Community Development Committee has refused all requests by constituents, faith-based organizations, and HNA representatives to discuss a Community Benefits Agreement designed to reduce racial and economic disparities concentrated in Harrison and North Minneapolis.

Warden Oil Superfund Site: Community group advocacy led to the remediation of the heavily polluted superfund site to residential standards. The City Council approved Masterplan calls for a residential development to be located on the site due to the proximity to residential homes.

Unfortunately, Hennepin County government staff have tried repeatedly to convert the site back to industrial or parking uses. Both uses will negatively impact the quality of life, property values, and undermine market driven changes in the area. Luckily, neighbors have been able to stop or slow negative proposals.

Staff of the Minneapolis Community Planning and Economic Development (CPED) Department staff have refused to include CBA language and language regarding racial and economic equity in the Request for Proposals (RFP) for 56 acres of public land. The RFP also did not request that respondents demonstrate how their proposal would proactively reduce racial disparities or provide opportunities for low-income people and people of color.

The entire 230 acre project area is in a Federally recognized Empowerment Zone. The Request for Proposals did not state the mission, purpose of the Empowerment Zone, which is to reduce racial and income disparities. Additionally, Empowerment Zone goals and objectives were not used as part of the proposal criteria. The existence of the Empowerment Zone is only referenced as a potential source of tax credits.

City of Minneapolis staff have consistently spoken against the need for a Community Benefits Agreement in public and private settings. They additionally advocate current policies which have not proven successful at reducing racial and economic disparities.

A Senior Policy Aide to the Mayor of Minneapolis said that the Mayor's office would not support a Community Benefits Agreement. When asked to suggest other options to reduce racial disparities – the Policy Aide said that it was too philosophical of a discussion.

## **VI. Conclusion: Beyond an Exhortation to "Do the Right Thing"**

The Itasca Project Report shows that racial and economic disparities are concentrated in the urban core. Evidence also shows that there is a “super concentration” of these disparities in North Minneapolis as a result of discriminatory policy making. Racial disparities and economic gaps have only increased under current policies. “Business as usual” approach to government policy and public subsidies only maintains the existing inequities. This places a special responsibility on local units of government to develop and support innovative strategies designed to address entrenched racial disparities.

Community Benefits Agreements are an effective tool that can be used by community in partnership with private developers and the City of Minneapolis to affirmatively address discrimination and reduce racial disparities.

The Itasca Project Report argued that it is in the region's economic interest to “mind the gap” and reduce economic disparities. As pointed out in this article, it is also a governmental obligation under the ICERD to do so, taking “special measures” (such as by requiring a Community Benefits Agreement) when disparities (as shown to exist in Harrison neighborhood) persist.

## Chapter Five

# **RACE AND BUDGET MATTERS IN MINNESOTA: A Mid-Term Progress Report (April 2007)**

By Jermaine Toney  
**Organizing Apprenticeship Project**  
Minneapolis, MN 55406

**[Abbreviated version: for full Report, go to <http://www.oaproject.org>]**

Over the past few months, Minnesota has debated competing budget proposals from the governor and leadership in the House and Senate. Clearly, all the proposals differ in what we should invest in and how. But the one thing the budgets and public messages about these budgets share is a resounding silence on their potential impact on communities of color and American Indians.

This silence is potentially damaging to racial equity. It stands “colorblind” in the face of the well documented racial disparities and barriers to American Indian well being that are rooted in complex structures and institutions.<sup>1</sup> Whether intended or not, “colorblind” budget proposals, without explicit attention and commitment, will fail to anticipate disparate racial outcomes and only exacerbate the racial disparities. On the flip side, when budget proposals are race-conscious they can help to reduce and eliminate structural and institutional racism,<sup>2</sup> the greatest challenge to racial equity and opportunity in Minnesota.

The prevailing silence also stands in stark contrast to Minnesota’s values. State budgets are not just checkbooks, they are moral documents. They reveal whether our values of fairness and justice, our national reputation as a leader in work for equity and inclusion and our policy outcomes match our state’s egalitarian tradition and vision. It follows that budget proposals have to explicitly document and address race-based disparities to ensure equitable outcomes for all. Race and budget matters.

In November 2006, the Organizing Apprenticeship Project and partners released the Minnesota Legislative Report Card on Racial Equity. It is the first report of its kind to hold state policymakers accountable for leadership and action to end racial disparities in the state. A major finding of this report was that legislators on the honor roll cut across racial, party and geographic

lines. In addition, the report card highlighted a number of legislative missed opportunities.

This Mid-Term Progress Report applies the principles of racial equity to the state budget. First, we examine the racial impact of central elements of the governor's FY 2008-09 budget proposal in areas of health and education.<sup>1</sup> While these central elements are highlights of the governor, they are also areas of great interest and concern for communities of color and American Indians. Second, we pose policy questions on the proposals that we believe should be considered by the governor, House and Senate as they move into final negotiations and conference committees to adopt the budget.

## FINDINGS

*We selected 10 high-profile budget priorities of the governor for FY 2008-09 in health and education that appeared to have a positive impact on communities of color and American Indian communities.*

- I. Whether intended or not, 8/10 proposals had elements that could maintain or actually exacerbate race-based disparities in education and health.
- II. Numerous funding proposals appeared to be promising on the surface. Yet 4/10 proposals were inadequately funded, which could help to maintain or exacerbate the race-based disparities.
- III. Since funding decisions are tied to policy directions, we raised 44 policy questions that could positively improve the racial impact of the governor's proposals. The questions act as frameworks for proactively discussing and making budget decisions that lead to eliminating race-based disparities in Minnesota.
- IV. To avoid reinforcing race-based disparities, we believe that state budget proposals have to explicitly document and address these disparities.

Finally, the **Report** highlights 40 critical racial equity bills that we are watching during the 2007 legislative session. We have raised and highlighted some tough challenges and great opportunities for action. Our values, reputation and economic future depend on breaking the silence, by making racial equity a priority in budget decisions.

-----

**NOTE: The foregoing in an abbreviated version of the Report. To Download the Full Report as Well as the Minnesota Legislative Report Card on Racial Equity (2005-06), Visit <http://www.oaproject.org>**

-----  

---

<sup>1</sup> Minnesota Minority Education Partnership, “2006 State of Students of Color,” 2006; Rebecca Sohmer, “Mind the Gap: Disparities and Competitiveness in the Twin Cities,” Brookings Institution, October 2005; Minnesota Department of Health, “Minnesota Health Access Survey for 2001 and 2004,” 2006; Laura Smith, “Native American Trust Land Transfers in Minnesota,” Center for Urban and Regional Affairs, University of Minnesota, Spring 2004; Minnesota Housing Finance Agency, “Emerging Markets Homeownership Initiative,” 2004; Institute on Race and Poverty and Council on Crime and Justice, “Minnesota Statewide Racial Profiling Report: All Participating Jurisdictions, Report to the Minnesota State Legislature,” 2003.

<sup>2</sup> Poverty and Race Research Action Council, ““Structural Racism,” Volume 15, Number 6, November/December 2006; Glen C. Loury, *The Anatomy of Racial Inequality*, Harvard University Press, 2002.

I

3. In total, the governor’s budget proposal is \$34.4 billion, balanced and contains no tax increases.

## Chapter Six

# Minnesota Drug Policy and its Disastrous Effects on Racial and Ethnic Minorities

By Michael Tonry

*Michael Tonry is Sonosky Professor of Law and Public Policy and director of the Institute on Crime and Public Policy, University of Minnesota, and senior fellow, Netherlands Institute for the Study of Crime and Law Enforcement, Leiden. He is author or editor of several books, including *Thinking About Crime: Sense and Sensibility in American Penal Culture*, and editor, *Crime and Justice – A Review of Research*, published since 1979 by the University of Chicago Press.*

Current Minnesota drug policies damage minority communities and help assure that many minority group members remain locked in multi-generational cycles of disadvantage and social exclusion. If Minnesota is ever to offer equal opportunities and life chances to all its citizens, it will have radically to rethink and revise its responses to drug use and abuse. Current policies cause much more harm than they prevent, and require tens of millions of dollars of annual expenditure on law enforcement and corrections that could be much more constructively committed to improving people’s lives. Doing better will require that emphases on drug treatment and reduction of harms associated with drug use (and drug law enforcement) replace current preoccupations with arresting street-level drug dealers and sending thousands of people to prison and jail.

It was not always so. Although Minnesota has experienced among the steepest increases in prison use overall in the country since 2000, during the 1960s through the 1980s, the state was widely admired for its sparing use of imprisonment and its moderate and sensible policies toward

---

crime and drug abuse. Only rarely in the 1960s and 1970s were people sent to state prison for drug offenses. In 1989, only 173 prison inmates had been convicted of a drug crime; by 2004 (and since) more than 2000 inmates were drug offenders. Between 1989 and 2005, the number of prisoners other than drug offenders increased by 128 percent. The number of drug offenders increased ten times faster, by 1159 percent.

In recent years, the number of white prisoners convicted of methamphetamine offenses has increased, but for most of the past 18 years crack and cocaine have been the substances that led to prison, and most of the drug offenders sent there were minority group members. In 2006, 90 percent of prisoners sentenced for crack offenses were minorities as were 71 percent of cocaine prisoners.

### **What Went Wrong?**

“Reefer Madness,” a 1950s film used in drug education programs, has come to exemplify the harm that results when anti-drug policies become hysterical and moralistic. The film’s images of slaving, lurching, out-of-control, marijuana-smoking drug fiends, intended to persuade young people that drug use is a bad idea, more closely resembled film versions of Dr. Frankenstein’s monster than of students’ marijuana-using friends and popular musicians. Showings of the film were often accompanied by laughter from student audiences and are generally understood to have discredited the intended message and reinforced the idea that marijuana use is harmless.

The series of American drug wars are seen by most informed people outside the United States, and many inside, as equally hysterical and destructive. Drug war elements such as decades-long prison sentences for dealers, emphasis on arrest and prosecution of street-level dealers, and refusal to provide treatment facilities to meet drug-dependent peoples’ needs, have given millions of people jail and prison records and ruined hundreds of thousands of people’s (and their children’s) life chances and lives. They have also cost a huge amount of money that could have been spent constructively or not at all. Reduce the scale of the numbers, and the same things are true in Minnesota.

Worse than this, though, modern drug wars date from the early 1970s administration of Richard Nixon and Attorney General John Mitchell, shortly after the first serious federal anti-discrimination laws were enacted, and have served to keep black Americans “in their place.” At a time when civil rights and welfare policies aimed at improving opportunities and living standards for black Americans, drug and crime policies worsened them. University of California at Berkeley sociologist Loïc Wacquant has shown how modern wars on drugs and crime have operated in the same ways as slavery and “Jim Crow” legalized discrimination did in earlier periods to de-stabilize black communities and disadvantage black Americans, especially black American men.

The results are plain to see. For two decades, nearly half the population of American prisons has been black, up from about a third in the early 1960s. Depending on how the numbers are calculated, the chances that a black American is in prison are 6 to 8 times greater than a white

---

American's. The U.S. Bureau of Justice Statistics estimates that on any given day, one in three young black men is in jail or prison or on probation or parole and that 32 percent of black American men born in 2001 will spend some time as a jail or prison inmate (compared with 6 percent of white men). On New Year's Day 2006, more than 8 percent of black men aged 25-29 were in prison, and another 4 percent were in jail. All of these sad realities are traceable to American wars on drugs and crime, but especially to the wars on drugs.

Reasonable people can differ about the details of modern American crime policies targeting violent crime, but no one can doubt the importance of the goal—reducing the incidence of victimization by serious violent and sexual crimes, many of which occur within racial and ethnic groups. Most assaults and sexual crimes are of whites against whites, blacks against blacks, Hispanics against Hispanics. Severe punishments suffered by members of minority groups who commit serious violent and sexual crimes are at least related to concern about crimes afflicting members of their groups.

Aggressive law enforcement and severe penalties for drug offenses are a different matter. The drug wars are fought to lessen drug use among the general population, which is mostly white middle and working class. The people arrested, prosecuted, convicted, and imprisoned for drug crimes are mostly non-white. In other words, huge numbers of disadvantaged black (and Hispanic) people are being sent to prison, and serving long periods behind bars, to lessen the attraction and use of drugs among non-disadvantaged whites.

Most Minnesotans, accustomed to thinking of themselves as living in one of the more liberal minded and socially enlightened states, probably accept that what has been said so far is true, but in other parts of the United States. Perhaps I speak of national averages, or of experiences in bigoted southern and western states?

Alas, no. Increases in the use of imprisonment in Minnesota have outpaced the rest of the country since 1980, and have stunning outpaced other states since 2000. And drug laws, accordingly to the Minnesota Sentencing Guidelines Commission, are among the harshest in the country—harsher than in other midwestern states, harsher than national averages, harsher even than in states such as California and New York where the politics of law and order rules.

## **Imprisonment**

Consider imprisonment first. Table one [See Table 1A] shows imprisonment trends since 1980 in Minnesota, Maine (the state that traditionally alternated with Minnesota in having the country's lowest imprisonment rates), Louisiana and Texas (both traditionally among the most punitive states in America), and in the 50 states taken as a whole. Using a common statistical method for comparing trends, the rate in 1980 is set at 100 and the rates in subsequent years are expressed relative to that starting point. Thus the figure 150 for a subsequent year means the rate is 50 percent higher than in the starting year.

For the last 25 years, Minnesota imprisonment rates grew faster than Maine's, Texas's, or the

---

average of all 50 states. When the comparison is made between 1990 and 2005 [See Table 1B], Minnesota's imprisonment rate grew more than twice as fast (150 percent) as the average for all states (60 percent) and exceeded the increases even in stereotypically punitive states like Texas (138 percent) and Oklahoma (87 percent). The increase over those 15 years in Maine was 22 percent. During the most recent period, 2000 to 2005 [See Table 1C], the average national imprisonment rate increased by less than one percent, those in Texas and Louisiana fell, and that in Maine rose by 11 percent. Minnesota's rate rose 41 percent. In a state where 35-40 percent of prisoners are black, prison inevitably is cutting ever more deeply into the lives and neighborhoods of its minority residents.

### **Drug policy**

Minnesotans have little to be proud about in relation to the state's handling of drug dependence and abuse and their unhappy consequences. A critical turning point may have been the legislature's response to the Minnesota Supreme Court's ruling in *State v. Russell*, 477 NW 2d 866 (1991) that laws punishing crack offenses, typically committed by blacks, much more harshly than more powder cocaine offenses, more often committed by whites, were unconstitutional. The legislature could have responded simply by amending the law so that the powder cocaine provisions applied to all cocaine offenses. Instead, penalties for all cocaine offenses were ratcheted up to crack levels. And penalties for other drug crimes were raised. The result is startling. Minnesota's prison population tripled between 1989 and 2006. The number of drug offenders in prison, by contrast, 173 inmates in 1989, six percent of the population, had grown to 2176 in 2005, nearly a quarter of the population. Their number grew thirteen-fold.

The result is something of which no Minnesotan can be proud. Nearly a quarter of inmates in Minnesota have been sent there for drug offenses, and many more were imprisoned for crimes that were related to their drug dependence. Minnesota's imprisonment rate for drug offenses alone, about 49 per 100,000 Minnesotans, is as high as Minnesota's total imprisonment rate in 1980.

We know why drug-offense prisoners in recent years have mostly been minority group members. National data show that about the same percentages of blacks and whites admit to drug use. The problem in Minnesota is that blacks and Hispanics are much more likely than whites to be stopped by the police, to be arrested for drug crimes, to be convicted, and to be sent to prison than are whites.

Studies carried out as part of the Racial Disparity Initiative of Minnesota's Council on Crime and Justice demonstrate why members of minority groups are so much more likely to wind up in prison. Blacks in Minneapolis were in 2000 much more likely than whites to be the subject of police vehicle stops. Blacks constituted 18 percent of the population but experienced 37 percent of stops. Whites, 65 percent of the population, experienced 43 percent of stops. In 1999, 77 percent of males aged 18-to-30 arrested for narcotics offenses in Minneapolis were black; 13.8 percent were white.

---

Woefully few drug-dependent inmates receive treatment. The Department of Corrections in 2006 had 849 treatment beds and is funded to treat 1800 inmates annually. This is in a system in which nearly 3000 admitted inmates each year, 85 percent of all admissions for terms long enough to complete treatment, are assessed to need drug treatment. And those numbers ignore inmates admitted in earlier years, many of whom also need treatment.

A recent Minnesota Sentencing Guidelines Commission report compared Minnesota sentencing laws to those of other states. A 10-gram transaction in crack or powder cocaine or in methamphetamine triggers a 30-year prison sentence in Minnesota. The equivalent threshold amounts in Midwestern states are much higher: Illinois (900 grams); Iowa (5 kilograms for methamphetamine, 500 grams for powder, 50 grams for crack); Michigan (1 kilogram for crack or powder); Wisconsin (50 grams for methamphetamine, 40 grams for crack or powder). Similar comparisons were made of presumptive sentences for sales of 10 grams and possession of 25 grams. Minnesota sentences were 4-to-6 times higher than in Washington and Oregon, the other two pioneering sentencing guidelines states, 6 times higher than in New York, and 40 percent (sale of 10 grams) to 300 percent (possession of 25 grams) higher than in Texas.

So what can be done to lessen the damage current Minnesota drug policies do to minority communities (and to Minnesotans generally)? Almost any Minnesota policy-maker active in the 1960s and 1970s, were he or she brought by time machine to the present, would support five proposals:

1. Repeal all mandatory minimum sentence laws for drug offenses;
2. Reduce sentence lengths set out in sentencing guidelines to levels equal to the lowest of those in contiguous states;
3. Provide sufficient resources to make possible provision of drug treatment to any and all Minnesota prisoners and jail inmates who need it;
4. Provide sufficient resources to make drug treatment available in the community to all drug-dependent people who need it;
5. Greatly de-emphasize use of law enforcement approaches to handling the public health problem that, at bottom, drug abuse primarily is.

**For the tables-- or go to this URL:**

[http://www.crimeandjustice.org/albums/a001/Tables\\_michael\\_tonry\\_paper.gif](http://www.crimeandjustice.org/albums/a001/Tables_michael_tonry_paper.gif)

#### **References**

Bureau of Justice Statistics. Various years. *Prisoners in 2005* [and other years]. Washington, D.C.: U.S. Bureau of Justice Statistics, U.S. Department of Justice.

Bureau of Justice Statistics. 2003. *Prevalence of Imprisonment in the U.S. Population, 1874-2001*. Washington, D.C.: U.S. Bureau of Justice Statistics, U.S. Department of Justice.

Council on Crime and Justice. 2006. *Racial Disparity Initiative—African American Males in the Criminal Justice System*. Minneapolis, Minnesota.

Minnesota Department of Corrections. Various publications (available on line).

Minnesota Sentencing Guidelines Commission. 2007. *Updated Report on Drug Offender*

---

Sentencing Issues, January 31, 2007. St. Paul, MN: Minnesota Sentencing Guidelines Commission.

Tonry, Michael. 1995. *Malign Neglect: Race, Crime, and Punishment in America*. New York: Oxford University Press.

Wacquant, Loïc. 2002. "Deadly Symbiosis: Rethinking Race and Imprisonment in Twenty-first-century America." *Boston Review* (April/May 2002).

-----

## Chapter Seven

# Juvenile Justice Changes in Minnesota: Wrong Direction, Particularly for Minority Youth

Professor Barry C. Feld  
University of Minnesota Law School

### Summary

Over the past four decades, judicial, legislative, and administrative changes have transformed Minnesota's juvenile courts from a nominally rehabilitative social welfare agency [which was intended to address the "real needs" of the juvenile offender] into a scaled-down, second-class criminal court that provides youths with neither therapy nor justice. These changes have had negative consequences which fall disproportionately heavily on minority youth (Feld 1999; 2003).

### Review of the Changes

In 1967, the Supreme Court in *In re Gault* concluded that most states' juvenile court procedures violated the Constitution and required a substantial overhaul. The Court required juvenile courts to use "fundamentally fair" procedures – notice of charges, a fair and impartial hearing, assistance of counsel, an opportunity to confront and cross-examine witnesses, and the privilege against self-incrimination.

In *In re Winship*, 397 U.S. 358 (1970), states were required to prove delinquency "beyond a reasonable doubt," rather than by the lower, civil "preponderance of the evidence" standard of proof. However, in *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971), the Court denied

---

delinquents the procedural safeguards of adult criminal trials and withheld the right to a jury trial. *McKeiver* denied that delinquents required protection from the State, invoked the imagery of the paternalistic juvenile court judge, ignored the jury's crucial role in upholding *Winship's* standard of "proof beyond a reasonable doubt," and rejected concerns that juvenile courts' closed hearings could prejudice the accuracy of fact finding.

As a result of the Court's decisions, juvenile and criminal courts have converged substantively and procedurally. By adopting some criminal procedures, the Court shifted juvenile courts' focus from "real needs" to criminal deeds and formalized the connection between criminal conduct and intervention.

Constitutional theory, states' delinquency laws, and actual practices provide youths with less adequate procedural safeguards than adult criminal defendants receive, such as the right to a jury and access to effective assistance of counsel. Despite these deficiencies, once states provided delinquents with even a semblance of procedural justice, they more readily departed from a rehabilitative model and adopted "get tough" policies. Although racial inequality provided the initial impetus for the Court's focus on juveniles' procedural safeguards, granting delinquents some rights legitimized the increasingly punitive, "get tough" penalties that now fall most heavily on minority offenders (Feld, 2003).

Since 1980, the Minnesota legislature and Supreme Court have adopted laws and rules of procedure that have fostered a criminalizing of juvenile justice. On the one hand, the legislature explicitly endorsed punishment as an element of juvenile sentencing policy, repudiated juvenile courts' original premise that children should be treated differently than adults, and contradicted *McKeiver's* assumptions that delinquents require fewer procedural safeguards than do criminal defendants. At the same time, Minnesota does not provide youths with either procedural safeguards equivalent to those of adult criminal defendants or with special procedures that more adequately protect them from their own immaturity. Instead, state laws and judicial opinions place juveniles on an equal footing with adult criminal defendants when formal equality acts to their detriment, and employ less effective juvenile court procedures when they provide the state with an advantage (Feld, 1984; 1989; 1995).

The 1980 legislature significantly modified provisions of the juvenile code directed at serious young offenders and the interface between juvenile and criminal court sentencing practices (Feld, 1981). The legislature repudiated its earlier "rehabilitative" commitment to provide "care and guidance . . . as will serve the spiritual, emotional, mental and physical welfare of the minor and the best interests of the state" and redefined the purpose of juvenile courts.

For delinquents charged with criminal misconduct, the purpose of the juvenile court is "to promote the public safety and reduce juvenile delinquency by maintaining the integrity of the substantive laws prohibiting certain behavior and by developing individual responsibility for lawful behavior (Minn. Stat. § 260.011(2)(1980); Feld, 1981)." The legislature enacted a presumption in favor of waiver to criminal court for older juveniles charged with various combinations of present offense and prior record (Minn. Stat. § 260.125 (3)(1980); Feld, 1981).

---

Although juvenile courts conducted informal hearings without a jury, the new law required them to adhere to the criminal rules of evidence (Minn. Stat. § 260.155(1)(1980); Feld, 1981). The 1980 legislature also adopted the Sentencing Guidelines for adults that required judges to base decisions whether or not to imprison and the length of the sentence primarily on the seriousness of the present offense and prior record. The sentencing guidelines partially included juvenile offenders' felony offenses in an adult offender's criminal history and required judges to sentence youths transferred for prosecution in criminal court under the guidelines applicable to adult offenders (Feld, 1981).

Cumulatively, these changes shifted focus from the offender to the offense and began a substantive convergence between the juvenile and criminal justice systems.

In 1983, the Minnesota Supreme Court replaced an urban- and rural-county patchwork of rules with one set of statewide rules to govern juvenile court proceedings (Feld, 1984). The Court made a number of policy decisions to provide delinquents with less adequate safeguards than those afforded criminal defendants.

In instances in which the Court could have recognized youths' immaturity and vulnerability and provided them with more effective procedural safeguards than those afforded criminal defendants, it treated juveniles just like adults. Conversely, in every instance in which the Court had an opportunity treat delinquents at least as well procedurally as criminal defendants, it adopted juvenile procedures that provided less effective safeguards (Feld, 1984).

For example, allowing juveniles to waive their Miranda rights and right to counsel under the adult standard of "knowing, intelligent, and voluntary" under the "totality of the circumstances" is an example of the Court's endorsement of a formal equality that produces practical inequality. Developmental psychologists long have recognized that juveniles – especially those younger than sixteen years of age – lack the understanding, maturity, judgment, experience and competence to exercise legal rights on a par with adults (Feld, 2006).

Despite juvenile courts' increased punitiveness, the legislature and Court continued to deny delinquents the right to a jury trial that adult criminal defendants enjoy. Illustrating the punitiveness and procedural schizophrenia of juvenile justice, the 1986 legislature opened delinquency hearings to the public of juveniles sixteen years of age or older and charged with a felony level offense while simultaneously denying them the right to a jury trial. Minn. Stat. § 260.155 Subd. 1(c) (1986).

In the early-1990s, increases in youth violence and homicide, especially within the urban black male population, provided impetus nationwide and in Minnesota to "get tough" and "crack down" on juvenile crime (Feld 1999; 2003). In 1995, the Minnesota legislature enacted a comprehensive package of law reforms that fostered even greater substantive and procedural convergence between juvenile and criminal courts (Feld 1995). The 1995 amendments used the offense criteria of the adult sentencing guidelines to make it easier to waive juveniles to criminal court and excluded from juvenile court jurisdiction youths sixteen years of age and older charged

---

with first-degree murder (Feld 1995). Once the state tries youths in criminal court, judges sentence them as if they were adults and impose mandatory sentences of life imprisonment on youths as young as fourteen or fifteen years of age without any recognition of youthfulness as a mitigating factor. *State v. Mitchell*, 577 N.W.2d 481 (MN. 1998). In addition, the legislation expanded and extended the use of delinquency convictions in the criminal history score to enhance the sentences of adults. As a result, waived juveniles and young adult offenders may receive substantially longer sentences based on delinquency convictions obtained without the right to a jury trial (Feld, 1995; 2003).

In addition, although it is easier to convict delinquents in juvenile courts than it is to convict adults in criminal courts because judges and juries apply *Winship's* standard of proof "beyond a reasonable doubt" differently, (Feld, 2003), Minnesota includes those procedurally deficient delinquency convictions in the criminal history score to enhance adult sentences. *State v. McFee*, 721 N.W.2d 607 (MN. 2006). *McKeiver* also denied delinquents a jury trial because it feared that juries would bring to the juvenile system "the traditional delay, the formality, and the clamor of the adversary system and, possibly, the public trial." 403 U.S. 528 (1971). Although *Gault* likened the seriousness of a delinquency proceeding to a felony prosecution, Minnesota's use of the adult waiver standard – "knowing, intelligent, and voluntary" under the "totality of the circumstances" – to gauge juveniles' waivers of the right to counsel has denied many juveniles effective assistance of counsel (Feld, 1989; 1993). Research conducted in the late-1980s reported that a majority of delinquents who appeared in juvenile courts lacked the assistance of counsel, including one-third of those removed from their homes and nearly a quarter of those confined in institutions (Feld, 1989; 1993). Moreover, despite statewide laws and procedural rules, judges in different parts of the state appointed counsel, detained, and sentenced youths very differently and provided "justice by geography" (Feld, 1991; 1993). Urban judges appointed counsel for delinquents more than twice as often as did rural judges (Feld, 1991; 1993).

### **Racial Disparities**

Both nationally and in Minnesota, studies consistently report racial disparities in detention, sentencing, and waiver decisions by juvenile court judges (Feld, 2003). The Minnesota Council on Crime and Justice (2006) also reported that the Hennepin County Juvenile Detention Center detained disproportionately more black juveniles for all forms of violations – new offenses, warrants, and arrest and detention orders – and for longer periods than their white counterparts. The Minnesota Supreme Court Task Force on Racial Bias in the Judicial System (1993) reported substantial disparities in Minnesota's juvenile justice system in rates of detention and out-of-home placement of minority youths compared with white juveniles charged with similar offenses and prior records. The Race Bias Task Force also reported substantial geographic disparities in detention and sentencing that compounded racial disparities.

Black youths engage in higher rates of violent and firearms offenses than do white juveniles and these account for some of the racial differences in sentencing (Feld 1999). Part of the differences in rates of offending by race results from differential exposure to risk factors

---

associated with crime and violence – poverty, segregation and cultural isolation in impoverished neighborhoods, lack of access to health care, and the like (Feld 1999; 2003). Regardless of the causes of crime, no society and, especially the law-abiding victims within the affected communities, can tolerate youth violence. But, justice system responses may aggravate the cumulative disadvantage of minority youths.

### **Cumulative Disadvantage Aggravated by the Juvenile Justice System**

In a society marked by economic and racial inequality, minority youths are most “in need” and therefore most “at risk” for juvenile court intervention. Once that intervention occurs, the structure of juvenile justice places minority youths at a dispositional disadvantage. Urban juvenile courts are procedurally more formal and sentence all delinquents more severely. Urban courts have greater access to detention facilities and juvenile court judges sentence detained youths more severely than those who remain at liberty. Because proportionally more minority youths live in urban counties, the geographic and structural context of juvenile justice administration interacts with race to produce minority over-representation in detention facilities and correctional institutions (Feld 1989; 2003).

After controlling for the seriousness of the present offense and prior record, juvenile court judges are more likely to transfer minority youths than similarly-situated white youths to criminal court (Feld 2003). Empirical evaluations of judges’ delinquency sentencing practices report two consistent findings. First, the ordinary principles of the criminal law – present offense and prior record – explain most of the variance in how juvenile court judges sentence delinquents. Because the state defines delinquency jurisdiction based on a child committing a criminal act, judges’ sentencing practices focus primarily on youths’ present offense and prior record.

Secondly, after controlling for offense variables, juvenile courts consistently produce racial disparities in pre-trial detention and sentencing (Feld 1999; 2003). Research consistently reports that even after controlling for variables such as the seriousness of the offense and prior record, judges detain and sentence minority youths at higher rates than they do white youths (Feld 1999, 2003).

### **Conclusion**

The juvenile court in Minnesota today is a very different one from that envisioned a century ago. There has been a substantial convergence between the sentencing policies and procedures of the juvenile and criminal justice systems. Minnesota’s greater emphasis on punishment is reflected in the juvenile code purpose clause, judges’ delinquency sentencing practices, the greater use of the adult sentencing guidelines to structure prosecutorial decision-making, extended jurisdiction juvenile prosecutions and waiver decisions, and the expanded role of delinquency convictions in the adult criminal history score (Feld 1995).

Juvenile courts’ trials simply replicate those of criminal courts, albeit with fewer, less adequate procedural protections. The denial of a right to a jury trial affects every other aspect of juvenile

---

justice administration – adherence to the criminal standard of “proof beyond a reasonable doubt,” access to and the performance of counsel, the timing of evidentiary hearings, and the like. Minnesota denies delinquents jury trials in an increasingly punitive juvenile justice system and then compounds that inequity when it uses those nominally rehabilitative sentences to extend terms of adult imprisonment. Finally, criminal courts sentence youths tried as adults without any formal recognition of youthfulness as a mitigating factor in sentencing.

All of these changes have had negative consequences for all Minnesota youth but appear to fall disproportionately heavily on minority youth. (Feld 1999; 2003).

### References

Council on Crime and Justice. August, 2006. “An Analysis of Racial Disproportionality in Juvenile Confinement: An Analysis of Disproportionate Minority Confinement in the Hennepin County Juvenile Detention Center.”

Barry C. Feld, “Juvenile Court Legislative Reform and the Serious Young Offender: Dismantling the ‘Rehabilitative Ideal’,” 65 *Minnesota Law Review* 167 (1981).

Barry C. Feld, “Criminalizing Juvenile Justice: Rules of Procedure for the Juvenile Court,” 69 *Minnesota Law Review* 141 (1984).

Barry C. Feld, “The Right to Counsel in Juvenile Court: An Empirical Study of When Lawyers Appear and the Difference They Make,” 79 *Journal of Criminal Law & Criminology* 1185 (1989).

Barry C. Feld, “Justice By Geography: Urban, Suburban, and Rural Variations in Juvenile Justice Administration,” 82 *Journal of Criminal Law & Criminology* 156 (1991).

Barry C. Feld, *Justice For Children: The Right to Counsel and the Juvenile Courts* (Boston: Northeastern University Press 1993).

Barry C. Feld, “Violent Youth and Public Policy: A Case Study of Juvenile Justice Law Reform,” 79 *Minnesota Law Review* 965 (1995).

Barry C. Feld, *Bad Kids: Race and the Transformation of the Juvenile Court* (New York: Oxford University Press 1999).

Barry C. Feld, “The Constitutional Tension Between *Apprendi* and *McKeiver*: Sentence Enhancements Based on Delinquency Convictions and the Quality of Justice in Juvenile Courts,” 38 *Wake Forest Law Review* 1111 (2003).

Barry C. Feld, “Race, Politics, and Juvenile Justice: The Warren Court and the Conservative ‘Backlash’,” 87 *Minnesota Law Review* 1447 (2003).

Barry C. Feld, “Juveniles’ Competence to Exercise Miranda Rights: An Empirical Study of Policy and Practice,” 91 *Minnesota Law Review* 26 (2006).

Marcy Rasmussen Podkopacz and Barry C. Feld, “The Back-Door to Prison: Waiver Reform, (Blended Sentencing, ( and the Law of Unintended Consequences,” 91 *Journal of Criminal Law and Criminology* 997 (2001).

---

-----

## Chapter Eight

# **Imperiled Black Families and the Growth of the Prison Industrial Complex in the U.S.**

Rose M. Brewer, Ph.D.

Rose M. Brewer, Ph.D., is the Morse Alumni Distinguished Teaching Professor of African American & African Studies at the University of Minnesota. She has extensive scholar and activist experience with United for a Fair Economy, Environmental Justice Advocates of Minnesota, AfroEco, and Black Radical Congress. Her research is in gender, race, class, black feminism, and social justice.

My focus here is specifically on Black family structure, and even though the analysis of racial/ethnic families in the U.S. includes multiple groups, my research and writing centers on Black families. I contend that these families are the most imperiled by the growth of the prison industrial complex in the United States (although many communities, especially Brown and Native are at risk).

Additionally, I argue in these remarks that crime policy, prison policy, the structural growth of the prison industrial complex in the U.S. and racial/ethnic family structure are deeply interconnected. I contend that crime and justice policies in their articulation have little, if any, systemic edge and critique of societal structures. This must change. Responses to crime have been almost completely reduced to individualistic explanations that collapse a structural problem into individual and community misbehavior.

---

I mince no words here. The source of the incarceration ills are not fundamentally rooted in bad African American families, men, women or children, but in a set of broad scale policy and societal shifts that put at risk for incarceration large segments of the African American population. This holds no less true for the state of Minnesota where the incarceration rate for Blacks is 26.8 times that for whites. Minnesota is also a state where Black women are imprisoned at five times their population rate (Levy-Pounds, 2001). This translates into the fact that 25% of the women incarcerated in Minnesota are Black with broad scale consequences for Black family structure. In fact research has shown these things are true about family structure and the growth of the prison, industrial complex:

1. Over half of incarcerated Black men with children lived with those children before incarceration. Any emotional and economic support provided by the fathers has been removed. Family's structure is destabilized by the removal of these fathers (Roberts, 2004).
2. The growth of female headed families is connected to the deep sex ratio imbalances and the loss of marriageable men in many Black communities. (Wilson, 1987). This is an important factor in the growth of female, single parent family structures.
3. The explosive rate of Black female incarceration is creating an even greater family structure crisis, destabilizing fragile families further. These women have traditionally held families together. They are less able to do so today given removal from households through incarceration. This growth in female incarceration in states like Minnesota is fueled by mandatory sentencing laws, giving long sentences to mothers. The majority of Black women are locked up for nonviolent property and drug crimes (Terborg-Galloway, 2005).
4. The explosive growth of foster care thus flows from the increasing fragility of Black families in the wake of mass incarceration. About half of all children in foster care today are Black and a disproportionate number have incarcerated parents (Roberts, 2004).
5. As more and more Black juveniles are sucked into the criminal justice system, another hit is taken on Black families. The removal of these young people from families can be as jarring to the family structure as the removal of mothers and fathers (Roberts, 2004).

### **Rethinking the Framing of Crime and Justice Policy in the Wake of Mass Incarceration**

I'd like to turn once again to the questions given to the respondents and turn the assumptions on their head. My fundamental point is that it is not family structure per se that is causative in the explosion in crime and incarceration, BUT the devastating impact of crime and prison policy on Black family structures. These policies have to be transformed if healthy Black and other racial ethnic families will be built. Indeed, it is imperative that crime and justice policies craft a systemic analysis targeting deeply rooted racialized inequality in the U.S. These historical inequalities have taken new form in the 21<sup>st</sup> century, what Loic Wacquant (2002) refers to as the movement from slavery to mass incarceration.

The mass incarceration of African Americans goes far beyond individual culpability and Black family incapacity. It is a structural reality that places the societal commitment to racial, gender,

---

and class justice in the U.S. off the agenda. In fact, what has occurred is the growth of a prison industrial complex in the state of Minnesota, the country, and increasingly, globally. Davis (2005) describes the prison-industrial complex as:

. . . a vast set of institutions from the obvious ones, such as the prisons and the various places of incarceration such as jails, “jails in Indian country,” immigrant detention centers, and military prisons to corporations that profit from prison labor or from the sale of products that enable imprisonment, media, other government agencies... ( 2005:69).

And as Davis powerfully asserts,

The law does not care whether this individual had access to good education or not, or whether he/she lives under impoverished conditions because companies in his/her communities have shut down and moved to a third world country, or whether previously available welfare payments have vanished. The law does not care about the conditions that lead some communities along a trajectory that makes prison inevitable (2005: 94)

The basic number facts are chilling as well. Roberts (2004) provides the following data in her important essay:

The US has the largest prison population in the world and over half of it black. The number of incarcerated Americans increased 500% in the last thirty years, from fewer than 200,000 inmates to 1.2 million in 1997. (2001 :1010).

In a decade that number has doubled again to over 2.2 million people. These numbers are fueled by locking up young black men. The standard explanation is that Black men commit a large proportion of the crime. This preferred explanation, of course, is imbedded in the ideology that bad family culture or bad seed individual behaviors are driving the numbers. The evidence does not support this. Indeed, longer prison sentences for drug dealing, a very broad arrest net for minor violations in the state of Minnesota and nationally, have fueled the gross expansion of the prison population, especially the Black male imprisoned population. And as sobering is the increasingly number of Black women caught up in mass incarceration. Their numbers are increasing more quickly than the Black male population (Davis, 2005). In fact crime is down overall and sentencing and drug policies that target nonviolent crimes have fueled the bulk of the growth in mass incarceration matched by the growth in the private prison and the development of prisons for profit (Davis, 2005; Terborg-Galloway, 2005).

Of course the roots of mass incarceration among the Black population are deeper than crime policy per se. Indeed, Black vulnerability to crime and the subsequent deleterious impact on family structure is the end product of a more insidious process of educational exclusion, poor if any job possibilities, and the general economic crisis in the context of 21<sup>st</sup> century racism in U.S. society. The confluence of these social forces are crucial to the assault on Black family structures and the growth of families headed by women.

And today there is a new wrinkle to changing Black family structure. As the number incarcerated

---

women increases, the risk of foster care for Black children has gone up dramatically. Dorothy Roberts (2002) sheds key light on this issue. Her research indicates that while young black children are about 17percent of the nation's youth, they are now about half of the children in foster care. This explosion in foster care has been fueled by the destabilization of families and the mass incarceration of Black men and women.

Thus we're dealing with punitive policy for Black families. Indeed as Roberts notes, the explosion of foster care and imprisonment "work in tandem with one another." We do know that incarceration, the growth of the prison industrial complex, gender, race and poverty have a devastating impact on Black family structures. With regard to the implications for Black families in Minnesota, former Minnesota Department of Corrections Commissioner, Cheryl Ramstad Hvass, observed "that a lot of children are without fathers because of these numbers and this increases their own chances for being incarcerated." I would add too that many children are without mothers because of incarceration --with untold consequences for these families.

Again the racial/ethnic family structure questions must be turned on their heads. Rather than assuming family structure is the core contributor to the growth in crime and incarceration, policy makers must consider the sobering fact that these families and communities are being devastated because of the mass incarceration of over a million black men and women.

Rather than the overarching assumption that family structure leads to crime and incarceration, the question must be how have deeply rooted systemic racial, class, and gender inequalities led to the racialization of crime and the lock-up in the United States of the largest number of people in the world? The toll such incarceration has placed on families is chilling. At base is the punitive state, the state that locks away men, women, boys and girls far too often for the most minimal of crimes.

In sum, crime and justice policy and the growth of the prison industrial complex over the past few decades have produced deep consequences for Black families. We must view this systemically. To say the problem lies overarchingly within the cultural practices and values of Black families is a profound misspecification.

### References

- Davis, Angela. 2005. *Abolition Democracy: Beyond Empire, Prisons, and Torture*. New York: Seven Stories Press.
- Are Prisons Obsolete?* 2003. New York: Seven Stories Press.
- Levy-Pounds, Nekima, "Minnesota Imprisons Black Woman at Five Times Population Rate." BlackPressUSA.com.<http://www.blackpressusa.com/news/Article.asp?SID=3&Title=National+News&NewsID=11947>
- Roberts, Dorothy. 2004. "The Social and Moral Cost of Mass Incarceration In African American Communities." *Stanford Law Review*, Vol. 56:127, pp. 1271-1305.
- Shattered Bonds: The Color of Child Welfare*. 2002. New York: Basic Books.
- "Criminal Justice and Black Families: The Collateral Damage of Over-Enforcement" 2001: University of California-Davis Law Review. Vol. 34:1005, 2001, pp. 1005-1028.
- Terborg-Galloway, Sherry A. 2005. "Apartheid Resurrected: How American Incarceration Policies Wage War on Poor African American Communities." Law 391: A Research Seminar
- Wacquant, Loic. "From Slavery to Mass Incarceration: Rethinking the Race Question in the U.S."

## Chapter Nine

### Editor's Note:

This chapter of the Minnesota-focused, community-based CERD Shadow Report relates to the obligation of government to engage in no act or practice of racial discrimination against persons or groups of persons and to ensure that all public authorities, national and local, act in conformity with that obligation (Part I, Article 2 (1)(a) and to amend or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination (Part I, Article 2(1)(c).

Public housing demolitions, “no build“ guidelines, and site selection policies for public housing based in whole or in part on the racial composition of public housing tenants/applicants or their communities is prohibited racial discrimination under this treaty where, as demonstrated in the following article, the benefits of such policies for the relevant tenant population are demonstrably outweighed by the social costs imposed on minority tenants and warrant international condemnation.

Minnesota is no stranger to the imposition of large-scale demolition of affordable housing justified in large part on the theory that destroying affordable housing in areas containing an “unacceptable” number of minority residents and forcibly relocating them from their communities against their will is sound public policy. Similar large-scale demolitions of public housing in pursuit of this policy have occurred or are planned to occur across the country: Chicago, New York, New Orleans, etc.

---

# **Demolition and Dispersal of Public Housing: Predicted Benefits Largely Unrealized, Outweighed by Social Costs Borne by Minority Families**

Edward G. Goetz  
University of Minnesota  
Humphrey Institute of Public Affairs  
Minneapolis, Minnesota

November 2007

Concerns about segregation and the diminished life-chances of families living in neighborhoods highly segregated by race and poverty have led to an extreme policy solution. That solution focuses on the demolition of affordable housing units in high poverty areas, the destruction of communities of low-income families, and the forcible removal of those families to other neighborhoods in order that they may 'benefit' from a better environment and that their old communities may be remade into mixed-income communities more attractive to private sector investment.

This policy approach has many faces; the most benign being a set of voluntary 'mobility' programs in which families are given portable housing subsidies (vouchers) to relocate to non-segregated neighborhoods. Less benign is the HOPE VI policy of displacement, demolition, and dispersal that forces the relocation of families away from their communities and their established networks of informal support, and demolishes the affordable housing once occupied by these families. Finally, at the extreme are those who advocate that HUD reject affordable housing projects in the central neighborhoods of American cities for fear of furthering patterns of racial and income segregation. Such approaches are misguided in at least three ways: They ignore the importance of informal networks of support that poor families rely upon, they underestimate the disruptive effective of residential displacement, and they overestimate the benefits that public housing families receive from such forced relocation.

HOPE VI has been operating for close to 15 years, ample time to have produced a track record of success that could be used to justify a continuation of displacement, dispersal, and demolition. Instead, what we find in reviewing studies of HOPE VI is that the benefits to low-income families are few, inconsistent, and modest. The cumulative picture emerging from these studies is that the social costs borne by these families outweighs the scant and inconsistent benefits achieved by the HOPE VI forced relocation. The findings being reported from studies around the country confirm one very important point: very low income families who are forced to move out of their homes do not report much in the way of benefits from such moves.

---

First, there is ample evidence that even in the worst of the 'dysfunctional' public housing demolished by HOPE VI, large percentages of residents do not want to move out (e.g., Gibson 2007). When they are forced to, they move nearby, typically to other neighborhoods that have high and increasing levels of poverty and racial segregation (e.g., Comey 2007; Trudeau 2006; Fischer 2003; Kingsley et al. 2003; Fraser et al. 2004; Goetz 2003; Buron 2002). Most families feel attached to their communities and are reluctant to move away (Kliet and Manzo 2006), and these neighborhoods provide residents with very real benefits in the form of support networks that allow poor families to meet daily needs (Trudeau 2006; Reed 2006).

HOPE VI has not benefited the children of public housing families. Gallagher and Bajaj (2007) report no major changes in school engagement for children in five HOPE VI sites across the country. Children who do manage to relocate to suburban schools are frequently placed in special education programs (Ibid, 83). Jacob (2004) finds that children in households relocated due to HOPE VI-like public housing redevelopment, show no educational improvements relative to control group members on a range of academic achievement measures.

HOPE VI, along with all dispersal programs, has been most glaringly ineffective in the area of employment and earnings. The research evidence consistently indicates that dispersed households do not benefit in terms of employment, earnings, or overall income (Clampet-Lundquist, 2004; Goering & Feins, 2003; Goetz, 2002; Levy & Woolley, 2007; Rubinowitz & Rosenbaum, 2000; Turney et al., 2006; Curley 2006). As Levy and Woolley (2007, p. 1) write, "HOPE VI relocation and voluntary supportive services are unlikely to affect employment or address the many factors that keep disadvantaged residents out of the labor force."

These disappointing findings related to employment, along with the increased housing costs that generally accompany relocation from public housing, contributes to greater levels of financial insecurity among HOPE VI relocatees according to a number of studies. Barrett et al. (2006) find that two-thirds of relocatees in Fort Worth worry about having enough money for food, a large increase over the pre-displacement percentage. Economic insecurity is the typical reason for the residential instability of displaced persons who move out of public housing (Buron et al. 2007; see also, Clampet-Lundquist 2004; Reed 2006; Buron et al. 2002). Nationwide, for example, three out of five HOPE VI relocatees with vouchers reported difficulties paying rent or utilities within the previous year (Popkin 2006, 82). Among displaced public housing residents in Fort Worth, Texas, one-half reported fear of eviction due to their economic insecurity (Barrett et al. 2006). In Portland, one-third of HOPE VI displacees reported hardship making their rent payments and 60 percent reported difficulties paying for utilities (Gibson 2007). Such outcomes are troublesome in and of themselves, but they are especially worrisome because the HOPE VI program is actually meant to improve the economic self-sufficiency of public housing families.

Contrary to the hopes of HOPE VI advocates, a national study (Manjarrez et al. 2007) finds that HOPE VI has had no impact on the physical health of displaced residents. Three-fourths of the national panel study respondents indicate no change in health or a decline. There was a significant increase in the number of respondents indicating health conditions that required regular, on-going care. Among involuntary relocatees in the HOPE VI panel study, the mortality

---

rate is greater than that for African-American women in general and higher than among low-income residents who do not move (Ibid.).

HOPE VI research has shown little in the way of creating successful social integration of displaced families (Clampet-Lundquist 2004, Curley 2006; Kleit and Manzo 2006). Indeed, the trauma of displacement and forced relocation can produce very real negative impacts on families (Fullilove 2004).

This accounting of the research on HOPE VI demonstrates a decided lack of benefits for the low-income families who ostensibly make up the target population for this program. On the other side of the ledger is evidence that families report feeling safer in their new neighborhoods after they are moved, an effect that might have been produced without the trauma of displacement if sufficient resources had been devoted to crime prevention and project management.

The policy of demolition and dispersal significantly oversimplifies the condition of low-income families in segregated neighborhoods. People are not plants that can be relocated to a sunny spot and thereby thrive. A responsible approach to improving the lives of those living in segregated neighborhoods would account for the complexities of the human and social capital resources necessary for people to establish economic self-sufficiency. HOPE VI has in fact damaged social capital resources of families while doing nothing to augment human capital endowments.

The undeserved faith in the dispersal model is so great that American housing policy advocates go so far as to argue that we should stop building and rehabilitating affordable housing in central neighborhoods of our cities. This suggestion repeats the simplistic mistakes embodied in the HOPE VI demolition approach. Most of the impacted neighborhoods in question have aging housing stocks that are difficult to maintain, and typically financially troubled. Owners disinvest because rents do not cover costs, triggering a downward cycle that self-perpetuates. Most of the affordable housing built and operated by nonprofit organizations physically improves the worst of the declining private housing stock and converts ownership from disinterested or overwhelmed private owners to community-based nonprofits in the business of providing decent, safe, and affordable housing. The housing increases nearby property values, it reduces crime at the location, and stabilizes the property. Furthermore, the tenants, who benefit from reduced rents and better living conditions, stay in their units, reducing the high turnover rate characteristic of rental properties in low-income neighborhoods. In many cities, publicly subsidized rehabilitation of the housing stock is the only form of investment taking place. To cut off those funds and to reject all proposals for housing improvements in central neighborhoods is to pursue a bizarre policy of willful, public sector red-lining.

Finally, it is not at all clear that turning off the spigot of community development rehabilitation in central cities will actually achieve the goal of racial and income desegregation. The fact that we decline to produce affordable housing in a given central city neighborhood in no way compels a surrounding suburb to accept it. Furthermore, if by some unforeseen circumstance, the suburbs do begin to build large amounts of subsidized, affordable housing, we can fully expect that it will become occupied by low-income families who already reside in suburban areas. A recent study by the Brookings Institution indicates that there are now more poor people

---

living in American suburbs than in the central cities. Most suburban communities have a pent up demand for affordable housing. Should we succeed in significantly increasing the availability of affordable housing in the suburbs there is every reason to expect that it will be occupied by existing suburbanites and will have little to no impact on prevailing patterns of racial and income segregation.

Beyond being ineffective in dealing with the problems of concentrated poverty, dispersal strategies to desegregate may, in fact, be counterproductive. Ironically, acceptance of the logic of dispersal may undercut support for affordable, subsidized housing throughout a metropolitan region. This is because the way dispersal is being carried out through federal housing policy equates concentrated poverty with subsidized housing. The justification for dispersal is that subsidized housing 'anchors' poor people in neighborhoods, and the concentration of subsidized units in a given area then directly contributes to a concentration of poor people. Thus, central city neighborhood groups and city officials convinced of the need to disperse and desegregate conclude that they must at least create no additional subsidized housing in core neighborhoods, and in fact, might benefit from reducing the number of such units (through demolition or conversion). Dispersal thus justifies the stance of some low-income neighborhoods that they have done their 'fair share' of affordable housing - in fact, more than their share. At the same time, the dispersal argument provides the basis for low-poverty neighborhoods to continue to oppose subsidized housing, by equating social pathologies with segregation and with concentrated poverty, and concentrated poverty with subsidized housing. In the end there is something perversely uniting about the dispersal argument - it leads to almost universal resistance to subsidized housing.

In contrast, to U.S. policy approaches, the European community looks at the evidence showing that neighborhoods have important effects on the lives of families living in segregated conditions and they have responded with place-based initiatives aimed at turning around the worst conditions prevailing in disadvantaged neighborhoods (Tunstall, 2003; Kearns 2002). Continuing on our path of dispersing subsidized housing populations, often against their own desires, will not produce the positive outcomes hoped for. American housing policy needs to more realistically reflect the needs of disadvantaged families in segregated neighborhoods.

**Sources:**

Atkinson, R. and Kintrea, K. (2001) Disentangling area effects: Evidence from deprived and non-deprived neighbourhoods. *Urban Studies* 38 (12): 2277-2298.

Barrett, E.J., P. Geisel, and J. Johnston. 2006. The Ramona Utti Report: Impacts of the Ripley Arnold Relocation Program: Year 3 (2004-5). Paper prepared for the City of Fort Worth, Texas.

Buron, Larry, Susan Popkin, Diane Levy, Laura Harris, and Jill Khadduri. 2002. "The HOPE VI Resident Tracking Study." Washington, DC: The Urban Institute.

Clampet-Lundquist, Susan. 2004. "Moving Over or Moving Up? Short-Term Gains and Losses for Relocated  
Comey, Jennifer. 2007. HOPE VI'd and on the move. Brief No. 1, Washington, D.C.: Metropolitan Housing and Communities Center, The Urban Institute.

Curley, Alexandra M. 2006. HOPE and housing: The effects of relocation on movers' economic stability, social networks, and health. PhD diss., Boston University.

---

Fischer, Paul (2002) "Where are the public housing families going? An update." Available at <http://www.viewfromtheground.com/view.cfm/stories/sullivanreports.html>.

Fraser, J., W. Rohe, S. Van Zandt, and C. Warren (2005) Few Gardens HOPE VI evaluation: Baseline values for economic development and neighborhood revitalization. Report for the Durham Housing Authority. Chapel Hill, NC: The Center for Urban and Regional Studies, University of North Carolina at Chapel Hill.

Fullilove, M.T. 2004. *Root Shock: How Tearing Up City Neighborhoods Hurts America and What We Can Do About It*. New York: Ballantine Books.

Gallagher, Megan, and Beata Bajaj. 2007. Moving on: Benefits and challenges of HOPE VI for children. June Brief No. 4, Metropolitan Housing and Communities Center, The Urban Institute.

Gibson, Karen J. 2007. The relocation of the Columbia Villa community: Views from residents. Paper presented at the annual meeting of the Urban Affairs Association, April 26, in Seattle, Washington.

Goetz, Edward G. 2003. *Clearing the Way: Deconcentrating the Poor in Urban America*. Washington, DC: Urban Institute Press.

Jacob, B. (2004) Public housing, housing vouchers, and student achievement: Evidence from public housing demolitions in Chicago. *American Economic Review* 94 (1): 233-258.

Kearns, Ade. 2002. Response: From residential disadvantage to opportunity? Reflections on British and European policy and research. *Housing Studies* 17 (1): 145-150.

Kingsley, G. Thomas, Jennifer Johnson, and Kathryn S. Pettit. 2003. "Patterns of Section 8 Relocation in the HOPE VI Program." *Journal of Urban Affairs* 25(4):427-47.

Kleit, Rachel Garshick and L. Manzo. 2006. To move or not to move: Relationships to place and relocation choices in HOPE VI. *Housing Policy Debate* 17(2): 271-308.

Levy, Diane K., and Mark Woolley. 2007. Relocation is not enough: Employment barriers among HOPE VI families. June Brief No. 6, Metropolitan Housing and Communities Center, The Urban Institute.

Manjarrez, C.A., S.J. Popkin, and E. Guernsey. 2007. Poor health: Adding insult to injury for HOPE VI families. June Brief No. 5, Metropolitan Housing and Communities Center, The Urban Institute.

Reed, Matthew Z. 2006. *Moving out: Section 8 and public housing relocation in Chicago*. Ph.D. dissertation, Department of Sociology, Northwestern University.

Trudeau, Daniel. 2006. The persistence of segregation in Buffalo, New York: Comer vs. Cisneros and geographies of relocation decisions among low-income black households. *Urban Geography* 27(1): 20-44.

Tunstall, Rebecca. 2003. 'Mixed Tenure' policy in the UK: Privatization, pluralism or euphemism. *Housing, Theory and Society* 20 (3): 153-159.

---

**Chapter Ten**

**Comments Regarding the United States’  
April 2007 Report to the CERD  
Regarding US Compliance With its Obligations  
Under the ICERD  
to Eliminate Racial Profiling**

By Peter W. Brown

As several chapters in our report attest, racial profiling is a problem in Minnesota as well as in other parts of the country. In its report entitled “Threat and Humiliation: Racial Profiling, Domestic Security, and Human Rights in the United States”, Amnesty International USA (AIUSA) approximates the number of people in Minnesota who have been directly impacted by this problem at any time in their life-time: Black -- 79,342; Hispanic --32,358; Multi-Racial -- 13,519; Asian -- 15,519. The purpose of this Chapter in our Report is not to detail the scope of

---

this problem, but to comment on the federal government's report regarding performance of its obligation to eliminate this discriminatory practice.

In response to continuing widespread concerns regarding racial profiling in the United States, the State Department's CERD Report (April 2007) provides 3 paragraphs. Those paragraphs (Paragraphs 111, 112, and 113) and our corresponding comments are as follows:

**State Department CERD Report, Paragraph 111. Racial Profiling.** The mission of the Justice Department Civil Rights Division (DOJ/CRD) includes combating racial profiling.

**Comment:** The nature and efficacy of the Division's actual "combat" against racial profiling is the real thing at issue. Without data demonstrating achievement, the fact that combating racial profiling is in an agency's mission statement is inadequate to demonstrate compliance with CERD requirements.

Furthermore, the way the Report then describes the way the DOJ/CRD wages this "combat", raising serious concerns about the adequacy of the DOJ/CRD's approach. The Report states:

The Civil Rights Division receives and investigates allegations of patterns or practice of racial profiling by law enforcement agencies. If a pattern or practice of unconstitutional policing is detected, the Division will typically seek to work with the local agency to revise its policies, procedures, and training protocols to ensure conformity with the Constitution and federal laws.

**Comment:** The reported limited scope of "enforcement" by the DOJ/CRD shows that the DOJ/CRD is not authorized to effectively eliminate or even substantially reduce racial profiling by law enforcement agencies at the federal or state level. Under the reported approach, as a practical matter, persons who are subject to racial profiling bear the burden of compiling evidence if a "pattern or practice" of racial profiling to get the Division's ear. Even then, even if the Division concludes, after conducting an investigation (an investigation that it may or may not have adequate funding and staff to conduct) that a federal agency has engaged in a "pattern and practice" of racial profiling, the consequence for the offending agency is simply that it must sit down with someone from the DOJ/CRD with an eye to revising the agency's "policies, procedures, and training protocols to ensure conformity with the Constitution and federal laws."

This is a formula for inefficacy. No compensation for the victims of racial profiling and more important, no accountability/discipline for the perpetrators or the perpetrators' agency. No consequence for perpetrators of the racial profiling means their effective impunity, which translates into business as usual. No wonder the Report provides no documentation to verify even one instance in which such an approach has resulted in a sit-down with DOJ/CRD to revise policies, let alone actually documented that this approach has eliminated or substantially reduced racial profiling in any law enforcement agency.

---

The Report continues:

The current Administration was the first to issue racial profiling guidelines for federal law enforcement officers and remains committed to the elimination of unlawful racial profiling by law enforcement agencies. See *Guidance Regarding the Use of Race by Federal Law Enforcement Agencies*.

**Comment:** In asserting that the current Administration (via the DOJ Guidance Document) is the first Administration to issue racial profiling guidelines for federal law enforcement officers, the Report injects an irrelevant partisan note. It does nothing to support the State Party's case for compliance with the Treaty to assert that this is the first Administration to counteract racial profiling by federal law enforcement officers. After all, our nation's ICERD treaty obligations to eliminate such activity (racial profiling) have existed since the treaty was ratified in 1992.

More fundamentally, however, whether this Administration is the first to address racial profiling by federal law enforcement officers is not the point. The point is whether the Administration (in office since 2000) and Congress have taken the steps required by its obligations under the treaty to eliminate racial profiling by law enforcement officials in the United States.

Analysis of the policy the Report relies on to indicate compliance, the DOJ's *Guidance Regarding the Use of Race by Federal Law Enforcement Agencies* (DOJ Guidance Document), shows that the adopted policy (implementation aside for the moment) is entirely inadequate to meet US obligations on this issue even on the limited federal level to which it applies.

To assess the potential of the DOJ's Guidance Document to effectively reduce racial profiling by federal law enforcement agencies, the document should be viewed in light of the reasonable effectiveness benchmarks. In its Report cited previously, AmnestyUSA states:

After reviewing all existing and proposed state legislation addressing racial profiling (as of June 1, 2004), AIUSA determined that in order to effectively combat the most common forms of racial profiling a statute should:

**Include** a comprehensive effective ban on racial profiling. Such a ban would prohibit the profiling of individuals and groups by law enforcement agencies even partially on the basis of race, ethnicity, national origin, or religion, except when there is trustworthy information, relevant to the locality and timeframe, that links persons belonging to one of the aforementioned groups to an identified criminal incident or scheme.

- **Ban** pretextual stops (those instances in which police use minor/common traffic violations to inquire about drugs, guns, or other breaches of the law) of pedestrians and motorists.
- **Criminalize** violations of the racial profiling ban and specify penalties for officers who repeatedly engage in racial profiling

---

- **Require** mandatory data collection for all stops and all searches (traffic and pedestrian) in all circumstances (citations and warnings given). Such data would include perceived race, perceived gender, perceived age and whether immigration status was inquired about during the stop.

- **Require** data analysis and publication of the data collected.

- **Create** an independent commission to review and respond to complaints of racial profiling and regularly publish results of racial profiling investigations.

- **Allow** for individuals to seek court orders to stop individual departments from continuing to engage in racial profiling.

- **Provide** funds for periodically retraining officers and installing in-car video cameras for monitoring traffic stops.

Review of the DOJ's Guidance document shows that it does not meet any of these standards for an effective anti-racial profiling measure.

In addition, the State Department did not report a legislative setback for efforts to eliminate racial profiling. During the Reporting Period, the US Congress failed to adopt a realistic approach to eliminating racial profiling, the End Racial Profiling Act of 2004).

Nor does the State Department Report report on recent U.S Supreme Court decisions that have weakened the constitutional guarantees against racial profiling and imposed further barriers to the legal recourse against racial profiling.

**State Department CERD Report, Paragraph 112 states:** As noted above, in June of 2003 the Department of Justice issued policy guidance to federal law enforcement officials concerning racial profiling. . . .

On June 1, 2004, then-DHS [Department of Homeland Security] Secretary Tom Ridge formally adopted the DOJ June 2003 guidance and directed all DHS components to develop agency-specific racial profiling training materials, in concert with the DHS Office for Civil Rights and Civil Liberties. That Office is responsible for implementing the DOJ guidance on racial profiling and continues to work with all DHS components to update and strengthen racial profiling training of law enforcement personnel.

**Comment:** The DHS policy regarding racial profiling is essentially the same as the DOJ's and therefore contains the same weaknesses identified for the DOJ Guidance document above in our comment regarding Paragraph 111. To help assess implementation of the DHS policy against racial profiling, see also the Chapter of this Report regarding racial profiling in Wilmar and Worthington, Minnesota by DHS employees in Immigration and Citizenship Enforcement (ICE).

---

**State Department CERD Report, Paragraph 113 states:** Under section 1906 of the 2005 Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, P. L. 109-59, a new grant program was established to strengthen prohibitions on racial profiling by state and local authorities. The grants are administered by the Department of Transportation. A state may qualify for a section 1906 grant in one of two ways: (1) by enacting and enforcing a law that prohibits the use of racial profiling in the enforcement of state laws regulating the use of federal-aid highways, and making available statistical information on the race and ethnicity of drivers and passengers for each motor vehicle stop on such highways (a “Law State”); or (2) by providing satisfactory assurances that the state is undertaking activities to prohibit racial profiling and to maintain and provide public access to data on the race and ethnicity of drivers and passengers (an “Assurances State”). A state may qualify for a grant as an Assurances State for no more than two years.

**Comment:** The Report is supposed to document not only “activity”, but to show the efficacy of that activity, by documenting any progress made in reducing racial profiling in the United States. The US Report provides no information to substantiate the efficacy of the grants program.

At the outset, we note that the grants program is limited to supporting the prohibition of racial profiling in the enforcement of state laws regulating the use of federal-aid highways. In addition, receipt of the grants does not appear to be tied to reduction of racial profiling and so may be renewed with no showing of progress. At the same time, even if it a state demonstrates that progress is being made due to the grants, states may only receive grants for two years.

Further, the Report provides no information on the use and impact of the grants program in reducing racial profiling. What states applied and received grants? Were grant recipients required to agree to provide, as a condition of receiving the grant, documentation at the end of the program period regarding the impact of the grant on reducing racial profiling on their federal-aid highways. If so, that information should be provided to the Committee to assess the efficacy of the grant program. Without on-going evaluation of efficacy of measures taken, reporting States can report an endless chain of “activities” which, by miscalculation or by calculation, make no dent in racial profiling.

## Chapter Eleven

# Racial Profiling and Criminalization

## Blacks and the Judicial System: Legalized Punishment and Control

Dr. Luke Tripp  
Professor and Chair  
Department of Community Studies  
St. Cloud State University

The struggle against racial profiling is directly linked to the historic freedom struggle of Black people. From 1619 to 1865 the struggle for freedom was against racial slavery and from 1865 to 1968 it was against racial segregation. In this post civil rights period, the main struggle is against the criminal justice system and the prison industry. Throughout American history the government has created institutions that functioned to maintain white privilege and supremacy, resulting in the continuing oppression of Black people. One major arm of the government that is used to control Blacks is its criminal justice system. Since the very inception of the United States, through its ratification of the Constitution in 1787, Black people have had to fight against the legal system which legitimized our dehumanization and enslavement.

Today the criminal justice system is being used to control and weaken the Black community by felonizing a very large segment of the Black male population. Blacks are over-represented in the criminal justice system. About 50 percent of the 2.2 million people incarcerated in the United States are Black, while Blacks represent only 13 percent of the population. The Human Rights Watch Press Backgrounder issued on February 22, 2002, reported that although Blacks make up three percent of Minnesota's population, for each White person incarcerated there are 14.3 Blacks incarcerated. Moreover, the National Corrections Program of 1996 found that 49 percent of all African Americans who are incarcerated in Minnesota are drug offenders. Racial profiling is a manifestation of the political strategy to control and stigmatize Blacks as violent criminals and dangerous drug dealers.

### **"Black American Problem" and the "War on Drugs".**

Criminal justice and incarceration as a political strategy began in the 1960s with a call for law and order in reaction to Black people's human rights struggle of that era. In 1969 President Nixon said, "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." (Parenti, 1999). He was the first president to declare a war on drugs. Later President Ronald Reagan signed into law the Anti-Drug Abuse Act of 1986. This law mandated harsher penalties for drug possession and trafficking. The "War on Drugs" has had devastating effects on the Black community. Blacks are much more likely than Whites to be stopped, searched, arrested, and imprisoned. In fact, one in four Black men aged 20 to 29 are in prison. Moreover, one in three is on parole, probation, or in prison.

According to the National Institute of Drug Abuse, 13 percent of all monthly drug users in America are Black, which is about the same as the percent of the population that is Black. However, 35 percent of those arrested for drug possession are Black; 58 percent of those convicted of drug possession are Black; and 74 percent of those imprisoned for drug possession are Black. In 2001, 60.5 percent of white persons, aged 18-25, had used illicit drugs in their lifetime compared with only 49.4 percent of their Black counterpart (National Household Survey on Drug Abuse." 2001. 6 Feb. 2006). Although Black Americans have used less illegal drugs in their lifetime, they are incarcerated at 9.6 times the rate of White Americans. Consequently,

---

Black drug offenders are much more likely than White offenders to develop a criminal record. It is ironic that in America a major egregious injustice is in its legal justice system.

### **Turning the Black Community Against Itself**

The social, economic, and political consequences of stigmatizing and criminalizing Black males have seriously weakened the social fabric of the Black community. Black ex-convicts are viewed as social pariahs. They have been virtually banished from the labor market, and in many states they have been banned from civic engagement by the Felony Disenfranchisement Laws. They return to the Black community from prison with very few skills or opportunities to lead constructive lives. Thus, out of despair many succumb to illegal activities and serve as negative role models for the youth. As a result many Black youth get involve in criminal activity, largely preying on Blacks in their community, and end up being raised from their teenage years to adulthood in the penal system.

The social dysfunctions in the depressed areas of the ghetto can be largely attributed to the anti-Black functions of the criminal justice system which operates to debilitate the Black community by felonizing a large proportion of Black men who then prey largely on members of their own community- Black on Black crime. Racial profiling is a tactic used in the strategy of the criminal justice system to maintain the subordination of Black people. But we are fighting back. The mass protest marches to free the Jena 6 in Louisiana show our resolve to struggle against racial injustice in America.

### **References**

- Administrative Office of the United States Courts, 2006 Wiretap Report (Washington, DC: USGPO, April 2007), p. 7.
- Ann Golenpaul, ed., Information Pleas Almanac, 829 (Boston: Houghton Mifflin, Bonnie, Richard J., " The Meaning of 'Decriminalization': A Review of the Law, "Contemporary Drug Problems 277, 278 (Fall 1981).
- Bureau of Justice Statistics, "Traffic Stop Data Collection" (Washington, DC: US Dept. of Justice, December 2001), p. 1.
- Bureau of Justice Statistics, "Traffic Sto