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# The Hidden Under Caste of America: An Examination of the Effects of Terry v. Ohio, Florida v. Bostick, & Whren v. United States and Colorblindness on African Americans

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5 February 2016

## The Hidden Under Caste of America

An Examination of the Effects of *Terry v. Ohio*, *Florida v. Bostick*, & *Whren v. United States* and Colorblindness on African Americans

### Introduction

The effects of the Supreme Court decisions in *Terry v. Ohio*, *Florida v. Bostick*, and *Whren v. United States* have caused a loss of Constitutional rights, economic opportunities, and a political voice for many American citizens, mostly from the African American community. Take, for example, the story of Erma Faye Stewart, who was the victim of a misinformed drug sweep, which police officers chose to act upon. Erma was taken from her two children and spent a month in jail, even though she was innocent of any crime. However, in order to return home to her children and at the urging of her court-appointed attorney, she pled guilty to drug charges. Consequently, Erma is now forever labeled as a drug felon, and is “no longer eligible for food stamps; may be discriminated against in in employment; cannot vote for at least twelve years; and is about to be evicted from public housing” all for pleading guilty to a crime she did not commit (Alexander pg. 97). Never mind that a judge later ruled the previously mentioned drug sweep invalid because it was based solely off an incorrect tip. Or, take the case of Clinton Drake, who served in the Vietnam War in order to protect American democracy,

and is no longer able to practice the most foundational aspect of American democracy, the right to vote because of being charged with marijuana possession (Alexander pg. 159). This loss of rights, opportunities, and voice is a consequence of a system of institutional racism, which has resulted from an increase in the use and over reliance on law enforcement officers' discretion in policing tactics as a result of Supreme Court cases.

In addition to the issues caused by an overreliance on police discretion, the ideal of "colorblindness" in American society has helped to create and conceal this system of institutional racism. Colorblindness is the ideal of treating people of all races the same, and since all races are treated the same there is no racism. However, because of "colorblindness, our schools have become re-segregated, our prisons have been filled with Black and Brown bodies, and the state's repressive apparatus has been dramatically expanded and strengthened" (Jones). In order for the United States to get out of the shackles of institutional racism, change needs to occur at the beginning of the criminal justice system in places such as stop-and-frisks, consent searches, and traffic stops. Furthermore, the ideal of colorblindness needs to be eradicated. This change could affect the entire criminal justice system through trickle down effects, which would in turn lower conviction rates and help to end the crisis of mass incarceration in the United States, decrease the number of American citizens who must revert to a life of crime to provide for their families, and lower the number of American citizens losing their constitutional rights.

This analysis will examine how the decisions in the cases of *Terry v Ohio*, *Florida v Bostick*, and *Whren v United States* have had a disproportionate effect on

people of color, especially African Americans, and how the ideal of colorblindness has helped to institutionalize these effects.

In order to demonstrate the importance of these cases, I will briefly describe each case's ruling individually and each case's significance to society as a whole. Next, I will examine author Michelle Alexander's main points in her book The New Jim Crow: Mass Incarceration in the Age of Colorblindness, and then concisely explain how these main ideas link up with my three court cases. Next, I will use a contemporary example of a police force enacting the stop-and-frisk tactic established in *Terry v Ohio* to illustrate how the outcome of *Terry* affected American society, especially minorities. The second step in my analysis will be an examination of different traffic stop studies, and how African Americans are stopped much more than whites. Finally, I will discuss a remedy for a lessening of reliance on law enforcement officials and the eradication of colorblindness could help end some of the problems of the criminal justice system in regards to institutional racism.

## **So What?**

The fact that many American citizens are being relegated to a second class status and being stripped of their fundamental rights due to their color is a very important issue. Our country was founded on the principle of all men being created equal, and relegating African Americans to a sort of second class citizenship obviously goes against this notion. Furthermore, our current criminal justice system causes freed prisoners to never be truly free since they have many of their Constitutional rights stolen from them upon being released from prison. In order for American democracy to flourish, the Constitutional rights of all citizens must be protected to ensure all citizens have an equal

opportunity to contribute to American society. This is because a successful democracy should help to promote a plethora of different ideas and opinions in order for the best policies to be implemented that will benefit all American citizens regardless of political affiliation, religion, or color.

The existence of a “colorblind” goal must also be ended in America.

Colorblindness is the ideal of treating people of all races the same, and since all races are treated the same there is no racism. American citizens and policy makers need to get rid of the practice of colorblindness and pay attention to the fact that an overreliance on discretion-based policing tactics are having a very large, disproportionate effect on the African American community compared to the white community. For example, someone who is not colorblind would be able to notice how it is not fair that drug usage rates amongst white people is higher than amongst African Americans, but African Americans are arrested more than three times as much as whites for drug crimes. As a result, prisons consist overwhelmingly of African Americans, but the average colorblind American does not see this problem. These changes could affect the entire criminal justice system, which would in turn lower conviction rates and help to end the crisis of mass incarceration in the United States, decrease the amount of American citizens who must revert to a life of crime to provide for their families, and lower the number of American citizens losing their fundamental rights.

Another reason this topic is so important to study now is because of all of the horrific recent issues America has had in regards to cases of police discretion. It seems like every week, there is another dreadful news report about an American citizen being harshly treated by law enforcement officials due to an increase of racial tensions, mostly

between the white and African American communities. Unfortunately, in many of these cases, the citizen is killed by law enforcement because the officers often view him or her as a threat. Furthermore, many of these cases involve white officers and a black victim, which makes one wonder if the overreliance on police discretion can lead to personal biases such as race to alter an officer's judgment in these split-second altercations. Take for example, one of these cases, which occurred in Chicago, Illinois on October 20, 2014. In this particular instance, a white police officer shot a black seventeen-year-old male, Laquan McDonald, sixteen times. The officer who shot the young boy claimed he feared for his life because the teen advanced towards him with a knife. However, the footage released from the squad cars at the scene dispute this claim, and even shows the victim walking away from the police officers at the moment the shots began. In addition to this, there were five other officers at the scene who did not fear for their life, and did not shoot at the victim (Madhani). Contemporary events such as these need to help initiate a real discussion of race, without policymakers and American citizens attempting to adhere to the policy of colorblindness. If this does not happen, tragic deaths like Laquan's will continue to happen, and our nation will continue to crumble along racial lines.

### **What this Essay is *Not***

First of all, this is not an essay meant to bash or disrespect the men and women who put their lives on the line each and every day to protect all of us. The main purpose of this essay is to help initiate a discussion founded on the topic of race, instead of people discussing issues in a colorblind matter because race makes them uncomfortable.

Problems such as racial discrimination and the system of mass incarceration can only be solved when people acknowledge the differences between the races.

Secondly, this essay does not presuppose that all discretionary policing decisions are based solely on explicit and purposeful racism on the part of police officers. A multitude of sociological and psychological studies have been conducted that demonstrate that both “unconscious and conscious biases lead to discriminatory actions, even when an individual does not want to discriminate” (Alexander pg. 106). In other words, even when an individual does not believe he or she is racist, racial stereotypes can be unconsciously working behind the scenes in a person’s thought process to influence his or her decisions. Consequently, “racial bias in the drug war was inevitable” because much bias operates “unconsciously and automatically—even among law enforcement officials genuinely committed to equal treatment under the law,” which I truly believe is a vast majority of law enforcement officials (Alexander pg. 107).

## **Literature Review**

The right of a citizen to be protected from “unreasonable searches and seizures” by members of the government, in this case by a police officer, was the core issue. In this case, a plainclothes police officer, Officer McFadden, observed a few men, Terry and his companions, continually walking past a shop and looking into it. As a result of these continued actions, the officer held a reasonable suspicion that Terry and his companions were “casing a job, a stick-up,” or getting prepared to rob the store (*Terry v Ohio*). Consequently, Officer McFadden approached the individuals to inquire about what the men were doing. This inquiry soon turned into Officer McFadden conducting a limited frisk of the three men due to a reasonable suspicion that the three men were going to commit a burglary, and were armed and dangerous. This limited frisk produced guns from two of the men, which were admitted as evidence of illegal firearm possession in

this case. Thus, the fundamental constitutional question of this case was whether or not the limited search by Officer McFadden violated Terry's and his companions' Fourth Amendment rights protecting them from "unreasonable searches and seizures." If the limited frisk was deemed unconstitutional, the guns seized during the illegal search could not be used as evidence against Terry and his companions.

In order for the limited search to be Constitutional, it had to pass a balancing test of the Fourth Amendment. The balancing test was an instrument implemented by the Supreme Court, and it weighed the intrusion of a person's rights against the need for the governmental intrusion. In this particular case, the intrusion on Terry's and his companions' Fourth Amendment rights weighed against the necessity of the search on the part of Officer McFadden. The Court ruled in favor of Officer McFadden for a few key reasons: the search was limited, and was the result of reasonable suspicion of possible crime, and the safety of the officer and public was at risk. Prior to *Terry v Ohio*, probable cause was required in order for a search and seizure to take place (Sundby). Warrants were one of the main ways of enforcing this probable cause to conduct a search and seizure. Specifically, probable cause needed to be demonstrated to a judge as to why a warrant was needed to search a particular subject (Sundby). However, the Court ruled this case did not need to adhere to the warrant clause because as Chief Justice Warren stated in the majority opinion, "swift action predicated upon the –on-the-spot observations of the officer on the beat...as a practical matter could not be subjected to the warrant procedure" (*Terry v Ohio*). As a result, the reasonable suspicion balancing test used in *Terry v Ohio* contrasted greatly with the historical interpretation of the Fourth

Amendment requirements of a Constitutional search and seizure. According to professor Scott Sundby of the University of California-Hastings College of Law,

“The Court's new standard of reasonable suspicion rested somewhere between traditional probable cause and no suspicion at all. Terry's innovativeness, therefore, not only provided reasonableness and its balancing test a greatly enhanced role in fourth amendment analysis but also created a whole new benchmark of individualized suspicion.”

Consequently, the Court's over reliance on individualized suspicion, or police discretion to make decisions based on reasonable suspicion over probable cause has caused a vast amount of problems, especially for African Americans. The effects of this ruling are illustrated through the different tactics the government has used in the War on Drugs, which violate individuals' Fourth Amendment rights.

In *Florida v Bostick*, police officers entered a parked bus and asked its occupants if the officers could search the occupants' luggage. The officers also informed the occupants they could deny the request for a search. One of the passengers, Terrance Bostick, allowed the officers to search his luggage. This search resulted in the officers finding cocaine in Bostick's luggage, and thus Bostick was arrested. Bostick alleged that even though the officers told the passengers they could deny the searches, the passengers felt coerced into accepting the searches because they were too afraid to leave the buses to avoid the officers' searches. The Supreme Court ruled against Bostick because the occupants of the bus did in fact have the ability to leave the bus instead of being the subject of a search. In other words, the Court ruled that it did not matter whether the passengers felt comfortable leaving the bus, but only if a “reasonable” person would have

felt comfortable denying the officers' search requests. This decision effectively validated random searches of passenger buses without any form of suspicion being needed on the part of law enforcement officers. Thus, this decision gave law enforcement officers "the liberty to carry out law enforcement policies in a racially discriminatory manner, against those who comprise the majority of bus travelers: minority and low-income citizens" (O'Shields).

A consent search as demonstrated in *Bostick* is simply when an officer asks a person if he can search the person or property for drugs. Unlike in *Bostick*, officers usually do not inform civilians of their right to deny a search, so most people are not aware of this right or are too afraid to tell the officer no if they do know their rights. Consent searches often occur during a pretext stop. A pretext stop is when an officer pulls a motorist over for a minor traffic violation in order to check the person or car for drugs. Pretext stops were upheld in the decision of *Whren v United States*. In this case, two individuals were driving through what was known as a high drug area. The individuals stopped for an abnormally long time, while they were unknowingly being observed by police officers. Eventually, the individuals drove off, and the officers followed them in an unmarked car because they suspected the drivers as being involved in a drug crime. The individuals then sped off and turned without using their turn signal. Consequently, the officers pulled the individuals over for the traffic violation. As the officers approached the car, they observed a bag of cocaine on one of the occupants' laps, and thus arrested the men for drug crimes.

The defendants claimed this arrest on the basis of drug charges was illegal because the officers did not have reasonable suspicion or probable cause that the men

possessed drugs before the officers committed the traffic stop. Instead, the defendants claimed the officers simply used the traffic stop as an excuse to search the car and occupants for drugs. The Supreme Court ruled in favor of the officers since they conducted a traffic stop after having reasonable suspicion that a traffic violation occurred, the turning without a turn signal. As a result, officers could now conduct pretext stops in order to search for drugs or other illegal things as long as they stopped someone for committing an actual traffic violation. The ruling of *Whren* has had a direct effect on other cases involving the use of race to determine whom a law enforcement officer should stop. This is because ever since the decision, numerous courts have ruled in favor of the law enforcement officers' stop even in cases where there is a large amount of evidence of racial discrimination leading to the stop (Chin & Vernon). This directly follows from *Whren* because in this case, "Racial profiling, the Court held, may be unconstitutional, yet it is reasonable, and therefore provides no basis for suppression of evidence" (Chin & Vernon).

In all of these cases, race was in the background of the decisions, but the impact of these decisions on racial minorities has been at the forefront of the effects. Michelle Alexander believes that these discretion-based policing tactics have had an unequal impact on minorities because the Supreme Court has allowed law enforcement officers to discriminate against certain races (Alexander pg. 130). In other words, while the Supreme Court has attempted to limit the influence of racial bias in other stages of the criminal justice system through things such as strict scrutiny, race can be a factor in discretionary-based policing decisions (Alexander pg. 130). In the court case of *New York v. Evans*,

judge Carol Berkman echoed Alexander's ideas about the racial effects of discretion-based policing tactics when she stated:

“while personal impressions and anecdotal accounts have no evidentiary value, it may be of at least background interest to comment that I arraign approximately one-third of the felony cases in New York County and have no recollection of any defendant in a [Port Authority Police Department] PAPD drug interdiction case who was not either Black or Hispanic” (O’Shields).

According to Alexander, “Because the Supreme Court has authorized the police to use race as a factor when making decisions regarding whom to stop and search, police departments believe that racial profiling exists only when race is the sole factor” (pg. 131). However, this typically never happens, so race-based policing decisions are allowed. These effects lead to a system of mass incarceration, a system much like Jim Crow and slavery because all three of these systems relegate African Americans to a second class status (Alexander pg. 12). Alexander uses mass incarceration to refer to:

“not only the criminal justice system but also to the larger web of laws, rules, policies, and customs that control those labeled criminals both in and out of prisons. Once released, former prisoners enter a hidden underworld of legalized discrimination and permanent social exclusion” (pg. 13).

Thus, as a result of this new racial caste system, African Americans have lost Constitutional rights, economic opportunities, and a political voice. In addition to this, this system of mass incarceration, while designed to reduce and eliminate crime, has instead resulted in more crime and the establishment of a permanent class of people labeled as criminals (Alexander pg. 236).

Alexander argues that this new racial caste system is the result of the goal of American colorblindness. Specifically, Alexander states, “It is not an overstatement to say the systematic mass incarceration of people of color in the United States would not have been possible...if the nation had not fallen under the spell of a callous colorblindness” (pg. 241). Colorblindness is the goal of turning a blind eye to race. Therefore, to a colorblind person it does not matter what color someone is, everyone should be treated the same. Consequently, racial inequalities may exist, but they are thought to exist for other reasons such as income gaps, educational levels, etc (Alexander pg. 241). While this sounds like an admirable virtue, it has had terrible consequences on the African American community. For example, due to this ideal of colorblindness, Americans do not notice how a majority of American prisons are disproportionately filled with black and brown bodies. Instead, Americans see the prisons as filled with “raceless men” (Alexander pg. 241). Due to this, many Americans cannot notice how a system of mass incarceration has essentially recreated the Jim Crow South and relegated African Americans to a permanent second-class citizenship.

One may ask how these Supreme Court decisions tie in with the ideas of colorblindness, and how does the criminal justice system have such racially discriminatory results? Alexander argues that the first way in which this occurs is to “grant law enforcement officials extraordinary discretion regarding whom to stop, search, arrest, and charge for drug offenses, thus ensuring that conscious and unconscious racial beliefs and stereotypes will be given free rein” (pg. 102). The broadening of discretion-based policing powers established in *Terry*, *Bostick*, and *Whren* clearly demonstrate the racial disparity in crime and punishment that Michelle Alexander discusses in her book.

Since the War on Drugs has adapted many of these new tactics to combat crime, these tactics have helped to create the system of mass incarceration of African Americans she described. Furthermore, because Americans hold colorblindness as an ideal and believe that they are attaining this goal, they are blind to the disproportionate effects of the discretion-based policing tactics used in the War on Drugs on African Americans.

Subsequently, colorblind Americans do not notice how allowing racial discrimination on the part of law enforcement has led to mass incarceration system, which greatly harms the African American community by “ripping apart fragile social networks, destroying families, and creating a permanent class of unemployables (Alexander pg. 237).

### **Why These Three Cases?**

A natural question one might ask is what makes these three court cases so important in the discussion of police discretion? These three cases are so vital to the study of policing tactics because each one increased the powers of police officers in their own unique ways. These increases in discretion-based policing power occurred as the result of the three new policing tactics, which were implemented after each of these cases. The ruling of *Terry v. Ohio*, allowed police officers to search a civilian without a warrant based on reasonable suspicion instead of the historically held requirement of probable cause. This gave officers much more leeway in deciding who and what to search. In *Florida v. Bostick*, the constitutionality of consent searches was upheld, which simply means that a police officer can ask anyone on the street if he can search him or her for illegal items such as drugs or weapons. The use of consent searches was an evolution and extension of the new ability to conduct searches based on reasonable suspicion given to officers in *Terry*. In other words, an officer no longer even needed reasonable

suspicion to commit a search on an individual, he just needed to simply ask the individual if he could search him or her. The decision in *Whren v. the United States* took this discretion-based policing even further by upholding the use of pretext stops. In order to conduct a traffic stop, an officer just needed to have reasonable suspicion that a traffic violation occurred such as a driver not using a turn signal. After pulling this individual over, the officer could use this traffic stop based on reasonable suspicion to then conduct a search of the car and occupants for illegal items such as weapons or drugs. Consequently, all three of these cases incrementally added significant power to police officers by giving them new tools to at their disposal to conduct searches of individuals, that police officers did not have before.

## **Effects on Policing Tactics: NYPD Stop-and-Frisk Program**

### **Analysis**

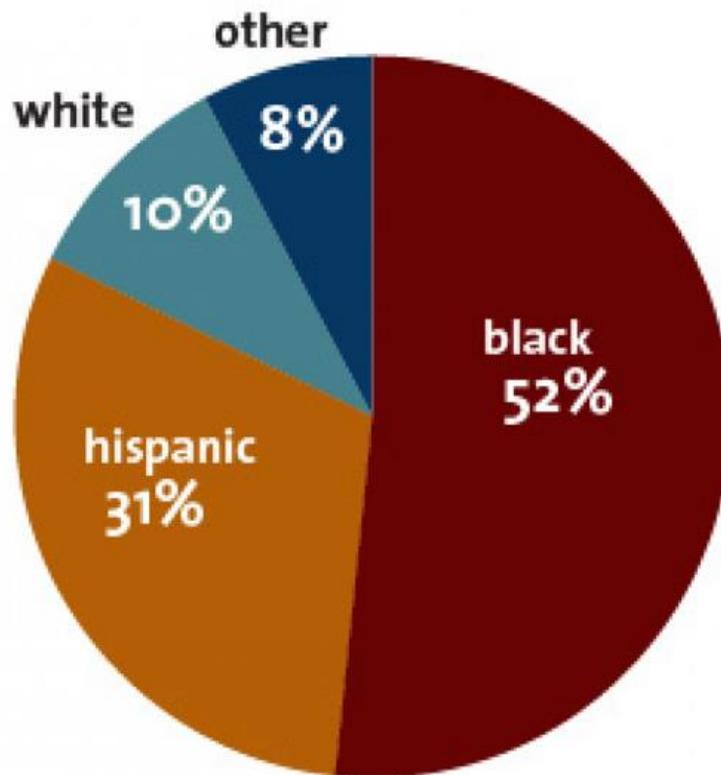
One of the main policing tactics law enforcement officials have used since *Terry v Ohio* is stop-and-frisks. The New York City Police Department's widespread stop-and-frisk program provides an interesting case study that clearly illustrates the negative effects the *Terry* ruling has had a role in establishing. The implementation of the NYPD stop-and-frisk program was in response to a violent crime wave that had swept New York in 1990's (Bellin). According to Professor Jeffrey Bellin of William & Mary Law School, the "NYPD [used] stop-and-frisk to find guns and deter gun-carrying, a goal that is theoretically forwarded when people are stopped and searched regardless of whether they are committing any breach of public order". A typical stop-and-frisk would begin with an officer stopping to question an individual in the hopes that the officer can later conduct a search. During the initial inquiry, if the officer discovers the individual was committing

or had committed a crime, he could then arrest the individual and “conduct a lawful search for weapons incident to that arrest” (Bellin). On the other hand, if the individual was not committing a crime or had not committed a crime, a frisk could still take place if the officer had any sort of “reasonable suspicion that the person is armed and potentially dangerous” (Bellin).

This stop-and-frisk program established to find illegal firearms soon turned out to be an unsuccessful initiative. This was highlighted by the fact that a mere “1.5% of frisks found a weapon, with an even smaller percentage turning up guns” (Bellin). Furthermore, this program also turned out to have a profound disparity between how many white citizens and how many African American citizens were targeted by the officers to be stopped and frisked. Jeffrey Bellin illustrated this disparity when he stated, “of those stopped in 2011, 53% were black, 34% were Hispanic, 9% were white, and about 4% were Asian.” In addition to this, due to the unsuccessful nature of the stop-and-frisks in turning up illegal guns, this program was broadened to find illegal drug possession because people carrying drugs could be reasonably assumed to be armed and dangerous. Much like the stop statistics, the numbers from marijuana arrests demonstrated a racial disparity. Specifically, the NYPD marijuana arrests were 84% black and Hispanic. These statistics do not reflect New York City’s “population or the population of drug users; like stop-and-frisk statistics, marijuana arrests skew toward the NYPD's demographic profile of violent crime suspects, tipping the NYPD's hand” (Bellin). In other words, the NYPD targeted racial minorities, especially African-Americans in its search for violent criminals and drug offenses. The pie chart below from an article from *The Washington Post*, helps to demonstrate the specific percentages of each race stopped by the NYPD from 2004-

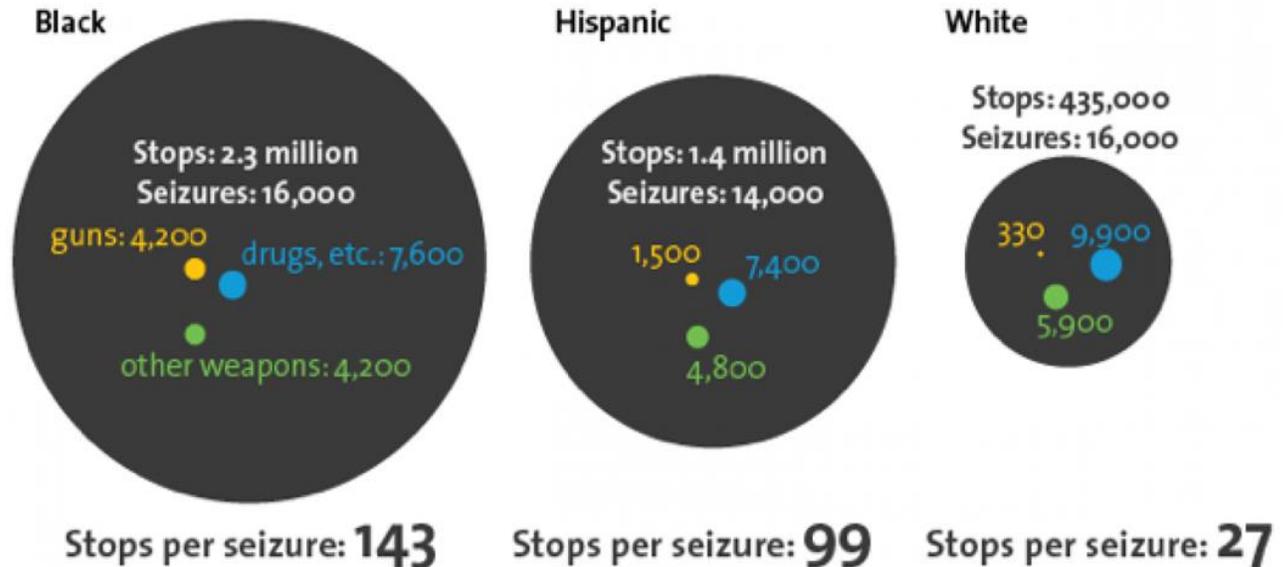
2012 (Matthews). The next graph illustrates the number of stops per race, the number and type of illegal good seized per stop, and the ratio of stops to seizures of illegal goods (Matthews).

## NYPD Stops by Race, 2004-2012



## The NYPD's Low Yield

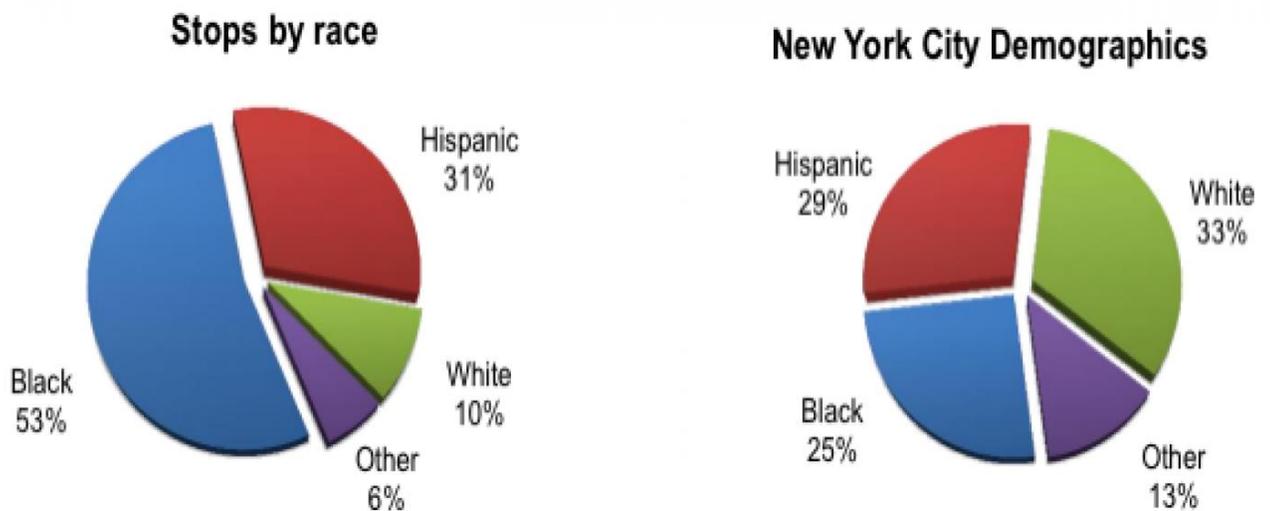
Police stops vs. seizures of illicit goods, 2004-12



Although the NYPD's stop-and-frisk program disproportionately targeted African-Americans, and did not have much success, it was implemented for a few key and well-intentioned reasons. One such reason was the hope of limiting gun possession by having people fear they could be stopped-and-frisked at any time by a police officer. If someone is too afraid to carry an illegal firearm, then he or she would be much less likely to commit a violent crime, thus reducing violent crime in New York City (Bellin). In addition to this, if someone does decide to carry an illegal firearm, the nature of a stop-and-frisk could easily lead to the officer finding the gun through a very limited search. This was demonstrated in *Terry* because Officer McFadden discovered that Terry possessed a firearm through a frisk limited to Terry's outer garments.

Another argument proponents of the NYPD's stop-and-frisk program use to attempt to defend the program's racial disparity in stops is that the high percentages of African Americans stopped was simply because many African Americans lived in high

crime areas where stop-and-frisks were more likely to take place (Vesely-Flad). Thus, the officers were targeting high crime areas, not African Americans. However, this argument was found to be false by a 2011 demographics study, which concluded “that disproportionate numbers of “blacks and Latinos [were] stopped in precincts that have substantial percentages of white residents”” (Vesely-Flad). Consequently, the officers were targeting African Americans in areas where African Americans residents were outnumbered by white residents. Due to this unequal stop rate, “critical activists have deemed the surveillance practices that have resulted in disproportionate arrests of blacks in seventy out of seventy-six city precincts as a form of “social control”” (Vesely-Flad). The establishment of this sort of social control of African Americans can be used to demonstrate how the problem of institutional racism does exist in American society. These two following data charts represent the fact that African Americans were targeted more heavily than whites during the NYPD’s search for illegal drugs and weapons even though whites outnumbered African Americans in New York City (Matthews).



As a result of the stop-and-frisk program and others similar to it, many African Americans were sent to prison to serve lengthy sentences mostly for drug offenses, and even after they were freed, they never stopped serving time. This is because once someone has a felony conviction, he or she struggles to find successful employment since “nearly every state allows private employers to discriminate on the basis of past criminal convictions” (Alexander pg. 149). In addition to this, people with drug-related felony convictions are no longer able to receive federally funded assistance such as food stamps. The problems do not end at jobless, and starving, but are increased by the inability to find adequate housing. Even someone with a very minor criminal background can find themselves barred from even applying for housing, let alone purchasing some sort of housing to provide shelter for one’s family. These forms of legal discrimination against “freed” people lead many past convicts to revert back to a life of crime in order to make money for themselves and their families.

Furthermore, in many states criminals with felony convictions lose the right to vote in elections so they are essentially shut out of the political system as well as the economic system. Legal scholar, Michelle Alexander highlighted these claims, when she discussed with NPR how the system of mass incarceration of black males has led to former inmates being categorized in a “permanent second-class status, stripped of the very rights supposedly won in the civil rights movement — like the right to vote, the right to serve on juries, the right to be free of legal discrimination and employment, and access to education and public benefits.” This denial of fundamental rights to African Americans is another example of how institutional racism exists in American society and creates a hidden under caste of “undesirables.”

The case study of the NYPD's stop-and-frisk program, exemplifies how the overreliance on police discretion following the decision of *Terry v Ohio* has had lasting consequences on American society. Tovah Calderon points out how placing so much power in the hands of police officers could lead to the negative effects on African Americans the stop-and-frisk program illustrated. Calderon also expressed how this discretion will eventually "reflect the biases and prejudices of individual officers". This was highlighted by the great disparity that existed in the percentages of African Americans stopped and arrested compared to whites in New York, even in areas where whites outnumbered African Americans. Justice Douglas warned the American criminal justice system and American citizens about the possible negative consequences for African Americans due to this over reliance on police discretion in his dissenting opinion from *Terry*. Justice Douglas warned, "if the individual is no longer to be sovereign, if the police can pick him up whenever they do not like the cut of his jib, if they can "seize" and "search" him in their discretion, we enter a new regime" (*Terry v Ohio*).

### **Effects: Traffic Stops Analysis**

During the War on Drugs, multiple studies of traffic stops were conducted to investigate allegations of racial profiling. The two most renowned of these studies took place in New Jersey and Maryland during the 1990's, and produced much of the same results as the numbers from the NYPD stop-and-frisk program. Along the New Jersey Turnpike, racial minorities made up 15% of all motorists, but accounted for 42% of the traffic stops, and African Americans counted for 73% of all arrests even though whites and African Americans violated traffic laws at nearly the exact same rate. These traffic stops were similar to the traffic stop in the case of *Whren v. the United States*, where the

officers' search of the car was legal because the officers first held reasonable suspicion that a traffic violation had occurred. In other words, the law enforcement officers along the New Jersey Turnpike were stopping African American motorists for violating traffic laws in order to search their cars for drugs, while ignoring the white motorists who violated the same traffic laws at nearly the same rate as African Americans. Another New Jersey study conducted by the attorney general of New Jersey found that "77% of all consent searches were of minorities" (Alexander pg. 133). These consent searches were the policing tactic upheld in the case of *Florida v. Bostick*, where a law enforcement officer pulls someone over then simply asks if he or she can search the person's car. The numbers illustrate how law enforcement officers chose to heavily target minority motorists even though they made up a very small portion of total motorists on the New Jersey Turnpike. The Maryland studies discovered very similar findings to New Jersey's. Specifically, along I-95 outside Baltimore, African Americans made up only 17% of the total motorists, but accounted for 70% of those subjected to a stop and search (Alexander pg. 133).

These numbers are so interesting because these same two studies found that "whites were actually *more* likely than people of color to be carrying illegal drugs or contraband in their vehicles" (Alexander pg. 133). In New Jersey, white motorists were nearly twice as likely to be found in possession of illegal drugs or contraband in their vehicles compared to African Americans. However, either due to explicit or implicit racial bias, African American motorists were viewed as much more suspicious and more likely to be carrying illegal drugs or contraband, resulting in a much higher number of stops and searches.

Many other studies were conducted across a number of states following the New Jersey and Maryland ones. One study done in Volusia County, Florida, examined video footage from highway stops. The study discovered that a mere 5% of motorists were African American or Latino, but accounted for 80% of the people stopped and searched by law enforcement officials. Another racial profiling study was done in 2001, in Oakland, California, provided evidence that African Americans were “twice as likely as whites to be stopped, and three times as likely to be searched” by law enforcement officials” (Alexander pg. 134).

## **Concluding Remarks**

Unfortunately, the racial bias of law enforcement officials can never be completely eradicated especially since some of the racial bias takes place unconsciously. As a result, change is not very likely to occur or be possible at the level of law enforcement interactions with the public. During his presidency, Lyndon Johnson commissioned a Task Force Report on the Police in order to examine how the reliance on discretion-based policing tactics could be scaled back or at least given more guidelines to attempt to combat the severe issue of racial bias affecting policing decisions (O’Shields). This task force reported that

“For the police, the Negro epitomizes the slum dweller and, in addition, he is culturally and biologically inherently criminal. Individual policemen sometimes deviate sharply from this general definition, but no white policeman with whom the author has had contact failed to mock the Negro, to use some type of stereotyped categorization, and to refer to the interaction with the Negro in an exaggerated dialect when the occasion arose. The argument that police behavior is

uninfluenced by racial discrimination clearly contradicts most studies, which reveal what many police officers freely admit: that police use race as an independently significant, if not determinative, factor in deciding whom to follow, detain, search, or arrest. Although racially disparate crime rates might well be rooted in incidental factors, many police officers believe that race itself provides a legitimate basis on which to base a categorically higher level of suspicion” (O’Shields).

This finding by President Johnson’s task force still holds true today as demonstrated by the analyses done in the late 1990’s and early 2000’s, on race being used as a major factor in traffic stops. Furthermore, the discussion from the *What this Essay is Not* section about the influence unconscious racial bias can have on law enforcement officers’ actions also still holds true today. Therefore, many current studies done on the topic of racial bias have reinforced the ideas given by President Johnson’s task force report. However, by placing less emphasis on police discretion and reverting back to the standard of probable cause instead of reasonable suspicion in order to conduct a “search and seizure,” this bias could be thwarted.

In addition to lessening the reliance on discretion-based policing methods, public policy makers need to abandon the practice of colorblindness and pay attention to the fact that discretion-based policing tactics are having a very large, disproportionate effect on the African American community compared to the white community. American citizens must stop discussing crime policy as simply crime statistics in order to realize there exists great racial disparities in the criminal justice system. Much like public policy makers, citizens can do this by abandoning the “value” of colorblindness in order to recognize and

discuss the racial problems that exist in the American criminal justice system.

Unfortunately, this eradication of the colorblind ideal could prove to be very difficult for both policy makers and citizens alike. This difficulty was demonstrated by a study on racial bias, which found that “some whites are so loath to talk about race and so fearful of violating racial etiquette that they indicate a preference for avoiding all contact with black people” (Alexander pg. 238). If these changes occur, they could affect the entire system, which would in turn lower conviction rates and help to end the crisis of mass incarceration in the United States, decrease the amount of American citizens who must revert to a life of crime to provide for their families, and lower the number of American citizens losing their fundamental rights.

## **Limitations**

One area of limitation for this essay deals with the Supreme Court cases. One specific problem is the fact that I did not have the time or space in the paper length to include very detailed explanations of each of the three cases I discussed. I would have liked to briefly outline each case in the “Literature Review” and then do an in-depth explanation of each case, but that would have simply been too much. Another possible issue is the fact I could not include more cases, which could have had an effect on the increase in discretion-based policing. Again, for the purposes of this relatively short inquiry, I did not have the ability to incorporate or analyze more cases than I did. With that being said, I chose the three cases in this essay because I believe they were key turning points where law enforcement was granted different increases in discretion-based policing.

Another area of limitation is that there has not been much research done on the idea of colorblindness and its impact on American society outside of Michelle Alexander's, The New Jim Crow. While this book was an incredible source, full of valuable information for my inquiry, I believe my essay would be even stronger if I was able to discuss colorblindness and the issues it causes from the varying views of multiple sources. In relation to the minimal amount of sources available on the topic of colorblindness, I wish I could have been able to find a set of possible solutions for how to get rid of the goal of colorblindness. In the "Moving Forward" section of my inquiry, I discuss some possible routes of action for this to be done, but I wish I would have had actual sources to draw from for that section. In addition to being limited in finding more concrete solutions for the ideal of colorblindness, I was also unable to find specific policy changes to alter the current law enforcement methods, which mainly depend on officers' discretion. Obviously, lessening the amount of discretion-based policing law enforcement officers do is one possible route, but I was not able to find an exact way of how this could be accomplished.

## **Acknowledgements**

While the entire Senior Inquiry project has been a long and testing journey, I have not had to embark upon it alone. My companions on this journey have made this project quite a bit of fun, have kept me sane, and have greatly helped me mold this project from a few abstract ideas into the final piece in front of you.

First of all, I would like to extend my most gracious gratitude to the different members of the political science department that have helped me with this project. My interest in the entanglement of law, particularly Supreme Court cases, and current events

first sparked in Dr. Dave Dehnel's Constitutional Law 1 course. This spark eventually began to burn a little more brightly during my research for my term paper for this course, which was my first research done on the effects of *Terry v. Ohio* on law enforcement policies, and consequently the effects of this Supreme Court decision on the American people. With each successive course I took in Dr. Dehnel's American politics tract, I began to research more and more on this topic, which eventually culminated in me deciding on this topic during my research practicum. So I would like to thank Dr. Dehnel for not only reading the plethora of drafts, listening to my variety of ideas over the past couple of years, helping me with the law school admissions process, but also for first sparking the fire that is my interest for this topic. An interest I will continue to pursue in law school this fall at Drake University.

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difficult and at times abstract course because it is a fairly new realm of research. Consequently, a majority of the work we did was very difficult, from the lengthy and dense readings, to our term paper. However, the toughness of this course is really what made it so influential on my life. Of course I gained various reading comprehension and critical reasoning skills as a result of the piles and piles of reading we had to do, which will greatly aid me in law school, but I also learned two very important lessons from Dr. Weissburg. These lessons were to never give up when something seems “too difficult”, and do not rely on others to help you solve your problems for you because quite frankly, they will either not be as smart as you or not care as much about your success as you do. For all of this, I am forever grateful, and I know I speak for a great number of Vikings when I say that we miss you at Augustana.

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main goal, and Dr. Mariano greatly helped me to increase the understandability and persuasiveness of this paper. Through all of this, I can truly say Dr. Mariano has been not only a mentor or a professor, but also a friend.

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Dr. Mariano's and Dr. Gould's enthusiasm for all of the topics they taught really instilled within me the value of doing something you love because if you really love what you do, you never have to work a day in your life. I came back to this valuable life lesson I learned when I went through a mini mid-college crisis when I did not know if I really wanted to go to law school after graduating from Augustana. While reflecting on this decision, I realized I have always wanted to go to law school and love the various

topics it covers. In the end, sticking with my original ambition to go to law school was easy once I remembered what I had learned from Dr. Mariano and Dr. Gould.

This is what sets Augustana apart, the ability students have to get to know their professors on such a personal level that they become friends. If I was at big state school, maybe I never would have developed such close ties with my advisors, I certainly do not think I would have become friends with them due to the large amounts of students they have to interact with everyday. As a result of the friendships I made with my two advisors, I was able to make an important, and correct life decision by choosing to not only attend just any law school, but a great one at Drake University, on an almost full-ride scholarship.

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