What Have We Done?

Mass Incarceration and the Targeting of Albany’s Black Males by Federal, State, and Local Authorities

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Executive Summary

This is the third in a series of three reports released by the Center for Law and Justice in 2012. Two earlier reports described the alarming overrepresentation of minorities in the Capital Region criminal and juvenile justice systems. In this report, the Center documents the devastation wrought by recent arrest sweeps conducted in Albany minority communities by federal, state, and local authorities; as a result of the sweeps, scores of Albany’s young African-American men have been sentenced to more than 600 years in prison for non-violent offenses.

This additional punishment meted out to minorities for drug-related offenses upholds Albany County’s dubious distinction as one of the most racially-disparate sentencing jurisdictions in the state. Section I of this report presents statistical data demonstrating the local impact of the “War on Drugs”: the disproportionate representation of minorities among arrests, convictions, and sentences to state prison in Albany County. In one national study, Albany County ranked 5th in the nation in the ratio of African American to white drug admission rates.

Although steps have recently been taken to reduce inequities in state and federal drug crime sentencing, law enforcement officials are now using a new tool to arrest and prosecute drug-related crimes alleged to have been committed by minorities: racketeering laws. Section II documents how young African-American men from Albany are now being subjected to additional years in prison, in some cases for committing no new crimes. Though law enforcement officials claimed to have been targeting serious offenses, many of Albany’s black males were sentenced to serve a third of their young lives behind bars for merely having associated in one way or another --- either through a phone call, by enjoying similar music, by attending the same social function, or through some other seemingly innocuous connection --- with those suspected of criminal activity. Federal sweeps incarcerated 33 of Albany’s young African-American males for a total of nearly 300 years, for non-violent crimes; a single state sweep sent 17 non-violent offenders, all minorities, to prison for a total of 317 years, for non-violent crimes.

Section III provides historical context demonstrating that the mass incarceration of Albany’s young black men is rooted in structural racism that perpetuates a racial caste system. Sustaining an era of the new Jim Crow, the “War on Drugs” launched in response to civil rights legislation in the 1960s replicates post-Civil War laws passed to discriminate against blacks in response to Reconstruction-era constitutional amendments. Just as the vast majority of those “hanged, shot and roasted alive” in nineteenth-century lynchings were not even charged with the crime (rape) for which the “sentence” was imposed, most imprisoned for hundreds of years as a result of twenty-first century Albany drug sweeps were sentenced not for the heinous crimes of murder, robbery, and assault trumpeted by investigators, but for non-violent convictions.

Section IV describes the devastating individual and community consequences of mass incarceration. Section V explains that the enormous toll mass incarceration exacts on minority communities across the country can only be addressed through a two-pronged approach: a commitment by government entities to address the impact of mass incarceration, and a grassroots social movement to educate and mobilize communities regarding “The New Jim Crow.”
Introduction

Earlier in 2012, the Center for Law and Justice released two reports that described the alarming overrepresentation of minorities in the Capital Region criminal and juvenile justice systems: “The Disproportionate Impact of the Criminal Justice System on People of Color in the Capital Region,” and “The Disproportionate Impact of the Juvenile Justice System on Children of Color in the Capital Region.” In this third and final report, the Center documents the devastation wrought by recent arrest sweeps conducted in Albany minority communities by federal, state, and local authorities. As a result of the sweeps, scores of Albany’s young African-American men have been sentenced to more than 600 years in prison for non-violent offenses. This report explains how the actions of the Capital Region officials who conducted these sweeps serve to perpetuate the mass incarceration of minorities, a practice grounded in structural racism and historical precedent. The purpose of this report is not to castigate local officials who, after all, are replicating practices currently implemented all across the nation. Its purpose is, rather, to enlighten both officials and the community regarding the role of structural racism in the perpetuation of the mass incarceration of minorities, and to challenge all to participate in collaborative efforts to end this insidious practice.

In its first two reports, the Center called upon local police and sheriff’s departments, district attorney’s offices, the judiciary and the community at large to collaborate to address the issue of disproportionate minority representation in the criminal and juvenile justice systems. Though the reports intentionally cited no allegations of personal discrimination practiced by any criminal justice agency or its representatives, some local officials responded to the reports with defensiveness or disinterest. Many offered a version of the “color-blind” defense, arguing that decisions made by their departments and their representatives are made without regard for skin color. Others contended (without empirical evidence) that the shockingly disproportionate numbers of minorities in the Capital Region criminal and juvenile justice systems are due not to race-based prosecution and enforcement, but solely to socioeconomic factors --- fatherless homes, for example.

This third report describes structural racism inherent in actions of local, state and federal officials who participated in the 2006, 2009, 2010 and 2012 arrest sweeps conducted in Albany minority neighborhoods. The report explains how an official need not consciously determine to discriminate against particular members of any race or ethnicity, yet remain complicit in structural racism through the implementation of policies that differentially affect minorities. The mass incarceration that results from these policies is not only devastating to individuals, families and communities, but serves to intensify the adverse socioeconomic conditions cited by criminal justice system officials as causes of crime.

In this report, a distinction is made between personal discrimination and structural racism. “Personal discrimination refers to the unequal, harmful treatment of a person because of their minority status, by an individual or individuals from a dominant group.” Structural racism refers to an array of historical and contemporary conditions that have helped create inner-city

* Both reports are posted on the Center’s website, www.cflj.org.
communities characterized by racial segregation, poverty, residential instability, and low levels of social control, conditions that contribute to high rates of offending in these communities.”

Additionally, a distinction is made between incarceration and mass incarceration.

Incarceration --- punishment by imprisonment – is based on a set of laws established by any state or nation to assure public safety by the separation and isolation of criminals from society. By contrast mass incarceration results from policies that support the large-scale use of imprisonment on a sustained basis for political or social purposes that have little to do with law enforcement.

This report demonstrates that as a direct result of the “War on Drugs” originally declared by President Richard Nixon in 1971 for largely political rather than public safety reasons, the nation experienced an explosion in incarceration rates --- particularly among African Americans. Nowhere in the country was this more evident than in New York State, which quickly followed the federal declaration of the war on drugs with its own “Rockefeller Drug Laws,” resulting in a 2000% increase in drug crime incarceration from 1970 to 2000. Only recently have the State and federal governments acted to rectify the racially disproportionate impact of these laws, through New York’s modification of the Rockefeller Drug Laws and President Barack Obama’s signing of the Fair Sentencing Act in 2010.

Unfortunately, federal, state and local officials have continued the practice of mass incarceration even after implementation of the modest modifications offered by reform of the Rockefeller Drug Laws and the Fair Sentencing Act. Using the federal Racketeer Influenced and Corrupt Organization (RICO) Statute of 1970 and the New York State Organized Crime Control Act (OCCA) of 1986 --- both designed to address large-scale corrupt organizations such as the Mafia --- the federal and state governments are imprisoning Albany’s young, minority males for as much as a third of their lives for “conspiracy” and “enterprise corruption.”

The four Albany drug sweeps were conducted under federal and state statutes that prohibit “racketeering,” a catch-all phrase for associating with an organization to profit from illegal activity. Under the statutes, the respective governments can further penalize individuals for prior and current convictions for distinct crimes that already carry their own severe sentences. For example, an individual’s prior convictions for two state felonies can serve as “predicate” acts for a federal RICO (Racketeer Influenced and Corrupt Organizations) charge. If a federal prosecutor can demonstrate that the two state felony convictions --- for which the individual may already have served state time --- were committed as part of a pattern of racketeering activity to maintain an interest in an “enterprise,” the individual faces another 20 years of federal time for a RICO conspiracy conviction.

Proclaiming to be “making the City of Albany a safe place for our citizens” by arresting individuals who “preyed upon our community,” Capital Region law enforcement officers carried out the four drug sweeps that have already sent scores of Albany’s young African-American men to prison for more than 600 years for non-violent offenses. Though the sweeps apprehended a few individuals convicted of the more serious crimes alleged by officials, most of those arrested were sentenced for the single federal offense of “RICO conspiracy” or the single...
state crime of “enterprise corruption.” In essence, many of Albany’s black males were sentenced to serve a third of their young lives behind bars for merely having associated in one way or another --- either through a phone call, by enjoying similar music, by attending the same social function, or through some other seemingly innocuous connection --- with those suspected of criminal activity.

The recent drug sweeps that resulted in mass incarceration of the city’s young African-American men helps preserve Albany’s dubious distinction as having one of the most racially-disparate drug incarcerations rates in the state and, according to at least one study, in the entire nation. The consequences of mass incarceration are devastating to individuals and the communities in which they reside. This report examines the impact of the RICO and OCCA prosecutions on young African-American men from Albany, and on the families and communities they leave behind while incarcerated. Section I (originally documented in the Center’s February 2012 report) details Albany’s history of disproportionate incarceration of people of color, particularly for drug offenses. Section II explains the federal and state racketeering laws, and examines the impact of the four Albany drug sweeps. Section III provides historical context regarding the “War on Drugs” as the latest in a series of efforts, begun immediately after the Civil War, to use the criminal justice system to diminish and control the economic and political power of blacks. Section IV describes the devastating consequences of mass incarceration, and Section V provides recommendations.
Section I: The “War on Drugs” and Its Impact in Albany*

As a result of the “War on Drugs” declared by President Richard Nixon in 1971, there has been a 1,100% increase in the number of imprisoned drug offenders in the United States since 1980, far greater than the overall incarcerated population increase of about 350%. Nationwide, two-thirds of imprisoned drug offenders are African American or Hispanic. In New York, the infamous “Rockefeller Drug Laws” enacted in 1973 produced an even more pronounced effect in the state: from 1970 to 2000, the number of inmates incarcerated in state prisons for all offenses increased by 468%, but the number of individuals incarcerated for drug offenses increased by an astounding 2,000%.

Because of the way federal and state laws were constructed and enforced, the increased imprisonment for drug offenses produced a disproportionate impact on minorities. For example, a federal sentencing structure established in 1986 gave far harsher penalties for crack cocaine (associated with blacks) than for powder cocaine (associated with whites). Known as the "100-to-1 drug ratio," crack cocaine was accorded 100 times the weight of powder cocaine. Thus, one convicted of selling 5 grams of crack was subject to the same five-year mandatory minimum sentence as one convicted of selling 500 grams of powder cocaine.

Discriminatory enforcement only exacerbated the inherent structural inequity of the drug laws. Despite the fact that several self-report studies indicate that whites are either equally or more likely to use illicit drugs as blacks, blacks are far more often arrested and prosecuted. A “Monitoring the Future” survey conducted by the National Institute on Drug Abuse found, for example, that although African-American adolescents have slightly lower rates of illicit drug use than their white counterparts, in 2002 African-American youth were brought to court for drug-related cases at a rate of 8.2 per 1,000, compared with 6.0 per 1,000 for white youth. For that same year, SAMHSA (the federal Substance Abuse and Mental Health Services Administration) indicated that 24 percent of crack cocaine users were African American and 72 percent were white or Hispanic, yet more than 80 percent of defendants sentenced for crack cocaine offenses were African American.

Albany County historically has been particularly vigorous in arresting and prosecuting people for drug offenses. A 2007 study conducted by the Justice Policy Institute, “The Vortex: The Concentrated Racial Impact of Drug Imprisonment and the Characteristics of Punitive Counties,” compared the 2002 prison admission rates for felony drug convictions in United States counties with a population larger than 250,000. Of the 198 counties, Albany ranked 48th in the rate of admissions to prison for drug offenses, 11th in the rate at which African Americans are admitted to prison for drug offenses, and 5th in the ratio of African American to white drug admission rates. When compared to other New York jurisdictions, Albany County has had a particularly harsh adverse impact on African Americans. The number of African Americans (per 100,000 population) admitted to state prisons for drug crimes was more than triple that of Monroe County and New York City (see Chart 1).

* This information in this section first appeared in the Center for Law and Justice’s February 2012 report “The Disproportionate Impact of the Criminal Justice System on People of Color in the Capital Region.” It is repeated here to provide context for the effect of the federal and state drug sweeps on Albany’s young African-American men.
Reform of the Rockefeller Drug Laws and recent adjustments to federal sentencing guidelines have introduced the promise of a reduction in racial disparities among those incarcerated in New York State. But, although the numbers of minorities and drug offenders incarcerated has declined statewide over the past decade, analysis of data recently published by the Poughkeepsie Journal shows that Albany County’s incarceration numbers have substantially increased, and its incarceration rates continue to far exceed those of other counties. Comparing data for those incarcerated within New York state prisons on a single day in 2011 to data for those incarcerated on a single day in 2000, the Journal concluded that, statewide, there has been a significant drop in people serving time for drug crimes. Statewide, from 2000 to 2011 the number of minorities incarcerated dropped by 29%; in Albany County, the number of minorities incarcerated increased by 60% over the same time period. Statewide, the number of individuals incarcerated for drug crimes fell by 62%; in Albany County, the number of those incarcerated for drug crimes rose by 42%. An examination of the Journal 2011 data in concert with 2010 U.S. Census Bureau data further reveals that Albany County’s 2011 drug offense incarceration rate is about three times that of New York City and Monroe County (see Chart 2). Additionally, Albany County’s 2011 minority incarceration rate is more than 50% higher than Monroe.

County’s and more than four times higher than New York City’s minority incarceration rate (see Chart 3).

Chart 2: Drug Crime Incarceration Rates per 100,000 Population in 2011


Chart 3: White and Minority Incarceration Rates per 100,000 Population in 2011


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Clearly, recent federal and state drug law reform has had little impact on Albany’s racially-disparate incarceration rate. Now, the practice of conducting periodic drug sweeps using federal and state racketeering laws threatens to aggravate an already alarmingly high mass incarceration rate for African Americans in Albany. The next section examines the effect of the recent drug sweeps on African-American young men and their communities.
Section II: The Impact of the Drug Sweeps in Albany

In addition to the lengthy sentences for drug crimes already meted out disproportionately in Albany, young African-American men are now being subjected to additional years in prison --- in some cases for committing no new crimes --- under the racketeering laws of the federal and state governments. Although the federal Racketeer Influenced and Corrupt Organizations Statute (RICO, passed in 1970) and the New York State Organized Crime Control Act (OCCA, passed in 1986) originally targeted major organized crime “enterprises” such as the Mafia, recently the statutes have been used to prosecute individuals convicted of many different types of crimes. The four drug sweeps in Albany targeted the “enterprises” of alleged Albany street gangs: the Jungle Junkies, the Original Gangsta Killas (OGKs), and the Bloods. Any individual who had previously been convicted of state or federal crimes (or had pending state or federal criminal charges) faced an additional twenty years in federal prison, or an additional twenty-five years in state prison, if the prosecutor could demonstrate that those crimes were committed as part of a pattern of racketeering activity to maintain an interest in the alleged gang. This section examines the impact first of the federal sweeps, then of the state sweeps.

The Federal Sweeps

The federal Racketeer Influenced and Corrupt Organizations (RICO) Statute, originally designed to target ongoing criminal activity by notorious organized crime groups like the Mafia, has been controversial since its inception:

Few enforcement weapons used to control organized and white-collar crime have aroused such interest and controversy as the Racketeer Influenced and Corrupt Organization Statute, (RICO, 18 U.S.C. 1961-1965). Since its enactment in 1970, RICO has been the subject of sharp exchanges between critics who urge restriction of its use and advocates who lament its underutilization. By making it a crime to acquire, receive income from, or operate an enterprise through a pattern of racketeering, RICO allows prosecutors to abandon a reliance on discrete statutes. Instead, they can prosecute patterns of criminal acts committed by direct and indirect participants in criminal enterprises.\textsuperscript{14}

Prosecutors have access to a broad array of offenses to establish the elements necessary to constitute a RICO violation:

To violate RICO, a person must engage in a pattern of racketeering activity connected to an enterprise. The law defines 35 offenses as constituting racketeering, including gambling, murder, kidnapping, arson, drug dealing, bribery. … These crimes are known as "predicate" offenses. To charge under RICO, at least two predicate crimes within 10 years must have been committed through the enterprise. … This might be a crime family, a street gang or a drug cartel.\textsuperscript{15}

On its website, the FBI defines organized crime as any group having some manner of a formalized structure and whose primary objective is to obtain money through illegal activities.\textsuperscript{16}
The Bureau lists racketeering activities that can serve as predicate criminal acts for a RICO charge as the federal crimes of bribery, sports bribery, counterfeiting, embezzlement of union funds, mail fraud, wire fraud, money laundering, obstruction of justice, murder for hire, drug trafficking, prostitution, sexual exploitation of children, alien smuggling, trafficking in counterfeit goods, theft from interstate shipment, and interstate transportation of stolen property. The following state crimes are also included: murder, kidnapping, gambling, arson, robbery, bribery, extortion, and drugs. 17

The criminal RICO statute provides for prison terms of up to 20 years and severe financial penalties.18 As noted by one legal scholar, “Criminal sanctions for violations of the statute are frequently more punitive than sanctions that could be imposed for violations of the incorporated offenses.”19

In 2005, the federal government (in cooperation with state and local law enforcement) began monitoring the activities of the Jungle Junkies (the “enterprise,” in RICO parlance), a street gang that allegedly operated in the neighborhoods of West Hill and Arbor Hill. As described by the Albany Times Union:

… the U.S. Attorney's office had stepped into the fray of Albany's gang violence and helped organize a task force that would bring together the resources of the Albany police, DEA, FBI and the Bureau of Alcohol, Tobacco, Firearms & Explosives (ATF), among others. Many of the gangs' drug deals were being monitored. The ATF built a database of the shootings using every shell casing and bullet recovered from crime scenes. The guns, many of them stolen in other states, were connected to the gang members who used, sold or kept the weapons. As the task force quietly built its cases, the Jungle Junkies and OGK continued their war seemingly unaware that their gunfire, drug deals and incriminating telephone calls were being rolled into the region's largest prosecution ever under the Racketeer Influenced and Corrupt Organizations Act (RICO).20

The federal government’s monitoring of these activities would serve to establish the “predicate” offenses (many of which had already been prosecuted in state court) that constituted a “pattern” of illegal activities (alleged by the federal government to include attempted murder and other violent crimes) to maintain an interest in an “enterprise” (the Jungle Junkies). The investigation culminated in a “drug sweep” in October 2006:

Thirty reputed members of the city's "most violent" street gang were charged Friday with running a large-scale crack and marijuana ring, dealing a severe blow to drug sales in the Arbor Hill and West Hill neighborhoods, police said. Investigators said the "Jungle Junkies" not only recruited members from city schools but used violence and intimidation to protect its turf - even using self-produced music videos to warn rivals. The 29 men and one woman charged Friday were arrested after a yearlong investigation by federal, state, county and local authorities. It was hailed as the area’s largest bust in recent memory. According to the charges, the gang conspired to "engage in criminal activities
including narcotics and marijuana trafficking, attempted murder, robbery, witness tampering and other crimes."\textsuperscript{21}

Twenty-five of the defendants were charged with conspiracy under federal Racketeer Influenced and Corrupt Organizations Act guidelines,\textsuperscript{22} giving federal prosecutors the opportunity to argue for a twenty-year federal sentence for each person charged. When the charges and possible penalties were read aloud in court, the defendants’ families, defense attorneys and local activists were horrified.

When Assistant U.S. Attorney Carlos Moreno informed U.S. Magistrate Judge David Homer that some of the suspects are accused of moving more than 50 grams of crack cocaine, the crowd acted shocked. Some said the charges were exaggerated.\textsuperscript{23}

When Moreno told the judge that some of the defendants, many of whom are 18, could get 20 years to life in prison, shouts went up, and some in the audience cried.\textsuperscript{24}

But attorneys for (Defendant A and Defendant B)\textsuperscript{*} said the government's case is flimsy and relies on prior felony convictions to weakly link their clients to the alleged conspiracy. "This indictment is nothing more than a rehashing of what he has already been charged with," defense attorney Cheryl Coleman said of (Defendant B), 21, of Albany … The government has chosen to charge him with crimes he has already been convicted of," Coleman said.\textsuperscript{25}

(Defendant A’s) attorney, Donald Kinsella, said prosecutors have offered no proof his client committed any crime since he was paroled in March. He said (Defendant A), 20, has begun taking classes and even joined the business technology club at Bryant & Stratton College in Albany.\textsuperscript{26}

The federal case focuses not on the individual crimes themselves, but on their totality. Prosecutors say they prove of [sic] organized illegal activity. But like others before him, (Defendant C’s) attorney, Michael Jurena, called the prosecution's case linking (Defendant C) to the gang's alleged activity "a stretch" - especially when the government admits he is not a member. Jurena also questioned how (Defendant C) could be connected to the alleged crack ring when most of the government's evidence deals with relatively small amounts of marijuana. In 2003, the indictment alleges, (Defendant C) was caught with one bag of crack and 25 bags of marijuana. "What they were portraying in this detention hearing today is a small-time marijuana dealer," Jurena said later. "Even if he is a small-time marijuana dealer - and I'm not saying that he is - that certainly doesn't make him involved in the conspiracy."\textsuperscript{27}

\* Names of defendants and their families are omitted from this report.

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Local activists have become restive, with the roundup sparking fears that federal racketeering laws, designed to give the government latitude to target organized crime, have become another way to send young men from mostly poor, minority neighborhoods to prison without giving them a chance at a straight life.28

Of the 29 people reported by the Times Union to be facing charges as a result of the 2006 RICO sweep of West Hill and Arbor Hill, 27 were African-American males, 1 was a white male, and 1 was a female.29 Though the FBI described the activities of those arrested as including “attempted murder, robbery, witness tampering and other crimes,”30 of the 28 individuals sentenced to date, 16 pled guilty to a single charge of “RICO conspiracy.”31 All sixteen who pled guilty to the single “RICO conspiracy” charge were African-American males. Four were only 18 years old at the time of the indictment, and the median age of the sixteen was 20.32 The median sentence for these sixteen African-American males, none of whom was older than 21 at the time of the indictment, was 10 years; they were sentenced to a total of approximately 155 years in prison.33 The eighteen-year-olds sentenced for a single charge of “RICO conspiracy” will see more than a third of their lives pass by the time their sentences for non-violent crimes expire. The incarceration of these 16 young African-American males for non-violent crimes is the equivalent of imprisoning more than three-fifths of the 20-year-old African-American male population of West Hill, or more than two-fifths of the 20-year-old African-American male population of Arbor Hill.34

Facing such a harsh sentence, why would a defendant plead guilty? The Albany drug sweeps are typical of such raids being carried out all across the country. In A Plague of Prisons, Ernest Drucker describes tactics used in two such sweeps in the state of Texas:

An allegedly widespread cocaine trafficking operation in the east Texas town and county of St. Augustine was “taken down” in a big drug bust called Operation White Tornado. A press conference was held to showcase the work of the two hundred agents from local, state, and federal law enforcement agencies who had arrested twenty-five local residents --- mostly poor blacks. At that conference, former sheriff Nathan Tidal and the U.S. attorney for the Eastern District of Texas announced that the local drug trade had been “what you would expect to find in a major metropolitan area.” They said that seventy-five pounds of cocaine --- with a street value of more than $3 million --- had been moving through St. Augustine each week.

Yet months of surveillance, undercover work, and the raid itself netted only five ounces of cocaine. All the claims turned out to be based on false testimony and evidence planted by informants and police agents. Ultimately, this case was a prototype for many of the large-scale drug busts of small-time drug

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*Not all arrested in the sweeps had been sentenced as of August 1, 2012. Some individuals arrested in the federal sweeps have not yet been sentenced pending the outcome of a Supreme Court case, Hill v. United States, that may affect the applicability of the 2010 Fair Sentencing Act to their cases.

† It should be noted that some were awarded credit for time already served for the “predicate” offenses that served as the basis for the RICO charges. The total credit time awarded for the sixteen was approximately 19 years, or 12% of their total federal sentences.
dealers that would occur over the next decade, filling our prisons with users portrayed (and prosecuted) as dealers.  

[New York Times columnist Bob] Herbert described the subsequent trials as “pro forma proceedings in which convictions were a foregone conclusion...[that] resulted in grotesque sentences” --- in some of the early cases, sentences of ninety years or more. These first sentences were then used to intimidate the remaining thirty-eight defendants and pressure them to plead guilty in return for lesser punishment --- still sentences of five years or more in most cases.

Facing a substantial term in federal prison, Albany eighteen-year-old “Defendant D” arrested in the 2006 sweep ultimately accepted a deal to plead guilty to a single RICO count in exchange for a lesser sentence:

The indictment accuses (Defendant D) of selling crack on a West Hill street in March. He had already pleaded guilty to that charge and was serving a six-month sentence when the government unsealed the racketeering indictment in October. Unlike state law, federal RICO statutes allow the government to use crimes that have already been prosecuted by the state to build a racketeering case.

"It is absolutely surreal to me that I have to sit down and explain RICO and 20-year minimums to these folks, for a kid this young," Molloy said, adding that his client told him he doesn't recognize many of the names of the people that were indicted with him. "I believe he's a kid who committed a low-level drug sale and has the misfortune of living in close geographical proximity to these people," he said.

(Defendant D) pleaded guilty, over his mother's protests, last week to aiding the gang's racketeering conspiracy in Arbor Hill and West Hill, a charge that could land him life in prison. The sentence would be less with a plea. "They scared him into that, saying they will do another indictment if he doesn't plea," (Defendant D’s mother) said last week.

This eighteen-year-old was sentenced to eight years in prison as a result of the plea. By the time his sentence expires, he will have seen nearly a third of his life pass by. Like Defendant D, most of those arrested in the 2006 sweep were convicted of violating federal 18 U.S.C § 1962 (d), the least substantive of four possible crimes that can be charged under the RICO statute.

RICO (18 U.S.C. §1961 et seq.) declares it a crime to (a) use income derived from a pattern of racketeering activity to acquire an interest in an enterprise affecting interstate commerce, (b) acquire or maintain an interest in an enterprise affecting interstate commerce through a pattern of racketeering activity, (c) conduct or participate through a pattern of racketeering activity in the affairs of an enterprise affecting interstate commerce, or (d) conspire to carry out any of the foregoing
actions. Conspicuously absent from RICO is any required mental state: violation of RICO does not require intent, recklessness, willfulness, or even knowledge on the part of the accused.\(^{41}\)

Thus, most Albany defendants were not convicted of any of the substantive crimes described in sections (a), (b), and (c) of the RICO statute, but rather of simply conspiring to commit crimes. What constitutes “conspiracy” in this situation has been differently interpreted by law enforcement officials and community members:

In the Jungle Junkies case, parents and defense lawyers have argued that the defendants, some of whom were admitted drug dealers, were linked only by the fact that they attended the same schools and by their desire to make rap music.\(^{42}\)

But federal prosecutors paint a less innocuous image, arguing the rap music was a form of intimidation, often articulating the violence and threats that gang members were willing to carry out against rival gangs and in defense of their drug network.\(^ {43}\)

Were the impact of the investigation not so grave for the defendants, one could almost find humor in the Albany Times Union’s summary of the investigation, invoking images of cops, mobsters, and snitches:

While several reputed members of an Arbor Hill street gang gathered in mid-August to mark the birthday of a slain friend, Albany detectives covertly snapped photographs from a distance. It is a scene reminiscent of Hollywood mob movies, where agents track the comings and goings at gangster funerals. These photos, along with intercepted cellphone conversations and the guidance of an unnamed turncoat gang member, lie at the center of a yearlong investigation into what authorities say is the city's largest and most violent gang.\(^ {44}\)

The evidence obtained from these activities was used to support the charges of violation of 18 U.S.C § 1962 (d), RICO conspiracy. Subsections (c) and (d) of the RICO statute have been particular subjects of controversy:

Section 1962(c) is the most frequently utilized substantive section of criminal RICO, and section 1962(d) (conspiracy) is practically ubiquitous in RICO indictments. What does subsection (c) really prohibit? Violation of RICO is defined as participation in a group of individuals, associated however loosely, “through” commission of at least two other crimes. By definition, the truly wrongful acts in RICO are already criminalized under other statutes. What does RICO add to the criminal code by making it a crime to associate with others “through” commission of crimes? The lack of a satisfactory answer to this question highlights the problematic implications of the fact that RICO is a highly derivative criminal statute. Assuming for the moment that the crimes listed in the RICO statute are themselves properly characterized as crimes, nothing is gained
by making it a new and separate crime to associate with others ("conduct or participate in an enterprise") through commission of other crimes.\textsuperscript{45}

In reality, RICO acts as an arbitrary penalty enhancer and prosecutorial bargaining tool. A violation of RICO is a crime of convenience—for prosecutors, that is. What defendant, charged with a predicate act carrying a potential sentence of a few years, would refuse to bargain with a prosecutor who says, "I’ll take the RICO charge with its mandatory twenty-year sentence off the table if you plead guilty to the predicate offense"? If this tactical weapon fails, a prosecutor faced with a resolute defendant determined to roll the dice at trial can still rest easy, knowing that RICO has stockpiled new procedural weapons in the prosecutor’s war chest. For example, RICO allows the government (to) join into a single prosecution widely diverse defendants and crimes that, absent RICO, would be too disjointed to be allowed in the same trial under the rules of evidence and criminal procedure.\textsuperscript{46}

Owing to the highly derivative character of RICO offenses, a prosecutor has options when deciding what charges to seek in an indictment. There are few constraints on a prosecutor’s discretion to include a RICO charge along with others. Given the formidable sentences RICO threatens and the relatively weak evidence needed to prove that a defendant associated with a group of individuals who committed other crimes, prosecutors have much to gain by including a RICO charge. Such abuse of prosecutorial discretion aids politically motivated or vindictive prosecutions and produces concomitant suffering and injustice for the victimized defendants.\textsuperscript{47}

Indeed, it has been suggested that the RICO investigation of the Jungle Junkies has enhanced the career of at least one prosecutor:

U.S. Attorney Richard Hartunian was an assistant U.S. Attorney and at the helm of the case when it began five years ago (in 2006). Some Albany legal observers say Hartunian's work in the case helped gain his appointment last year (in 2010) as U.S. Attorney for New York's Northern District.\textsuperscript{48}

A second Albany RICO sweep was conducted in 2009. This time, federal, state and local law enforcement officials turned their attention to a gang allegedly operating in the city’s South End, the Original Gangsta Killas (OGKs):

In a long-awaited takedown of one of Albany's most notorious street gangs, 25 members and associates of the South End-based Original Gangsta Killas were charged Thursday [October 29, 2009] with a vicious crime spree of drug dealing, robbery and gang violence dating back to 2000. Federal prosecutors in Albany say the gang — known commonly as OGK — not only protected its "downtown" turf from rivals with bullets, but brazenly posted not-so-subtle messages on the Internet through compact discs, video-tapes and DVDs.
Gang members even allegedly produced a rap video like their fierce "uptown" rivals, the Jungle Junkies street gang, whose leadership was toppled in a similar racketeering case in 2006.

They allege at least 14 shooting incidents, four robberies and a stabbing across Albany in a period spanning from May 2001 to March 2009. The alleged drug dealing, which included marijuana, crack cocaine and heroin, dated back a year earlier.49

According to the U. S. Attorney’s press release:

Twenty four (24) Albany men and one (1) Albany woman were charged in a federal indictment unsealed today, United States Attorney Andrew T. Baxter announced. Twenty-three (23) were charged with conspiracy to commit racketeering activity and all twenty-five (25) were charged with conspiracy to possess with intent to distribute cocaine base (crack cocaine), cocaine and marijuana. The Indictment alleges that twenty-three (23) defendants were members of, and conducted racketeering activity through, a criminal organization known as the Original Gangsta Killers (also known as the “OGK”) gang. The Indictment further alleges that the gang has operated within the City of Albany from approximately 2000 through the present. The 23 defendants were charged with conspiring to engage in a pattern of racketeering activity which includes multiple acts of drug trafficking, robbery and attempted murder.50

A total of 25 were arrested in the 2009 RICO sweep of the South End; 23 were African-American males, 1 was a white male, and one was a female.51 As in the 2006 sweep, despite the myriad charges alleged by investigators, most of the 21 sentenced to date* pled guilty to a single charge of RICO conspiracy.52 Seventeen African-American males pled guilty to a single “RICO conspiracy” charge (and its accompanying “forfeiture allegation”). The median sentence for the 17 was eight-and-a-third years, and the seventeen young men were sentenced to a total of approximately 144 years in prison.53† These 17 individuals ranged in age from 19 to 29, with a median age of 24.54 A nineteen-year-old sentenced for a single charge of “RICO conspiracy” will see nearly a third of his life pass by the time his federal sentence expires. The incarceration of these 17 African-American males is the equivalent of imprisoning the entire 24-year-old African-American male population of the South End, and then some.55

The two federal sweeps thus incarcerated 33 of Albany’s young (under 30) African-American males for a total of nearly 300 years, for non-violent crimes.

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* Not all arrested in the sweeps had been sentenced as of August 1, 2012. Some individuals arrested in the federal sweeps have not yet been sentenced pending the outcome of a Supreme Court case, Hill v. United States, that may affect the applicability of the 2010 Fair Sentencing Act to their cases.

† It should be noted that some were awarded credit for time already served for the “predicate” offenses that served as the basis for the RICO charges. The total credit time awarded for the sixteen was approximately 41 years, or 28% of their total federal sentences.
In the wake of the passage of the federal Racketeering Influenced Corrupt Organizations Act in 1970, several states passed similar legislation that would allow prosecution of organized crime activity within individual states. New York State passed the “Organized Crime Control Act” (OCCA) in 1986.\textsuperscript{56} Conviction for the crime of “enterprise corruption” (the state equivalent of “racketeering”) under the act entails the following:

New York OCCA’s pattern definition is one of several that requires three predicate acts. The acts must have been committed within ten years of the commencement of the criminal action and may not be isolated incidents, nor so closely related and connected in point of time or circumstances of commission as to constitute the same criminal offense or criminal transaction. Two of the acts must be felonies other than conspiracy and two of the acts, one of which must be a felony, must have occurred within five years of the commencement of the criminal action. Each of the acts must also have occurred within three years of a prior act.\textsuperscript{57}

Enterprise Corruption is a Class B felony punishable by imprisonment for up to 25 years.\textsuperscript{58}

In September 2010, New York State Attorney General Andrew Cuomo announced a “major takedown of 41 members and associates of the violent ’Bloods’ street gang who were operating a narcotics distribution ring that sold cocaine, heroin, marijuana, and guns throughout the Capital Region and elsewhere in New York.”\textsuperscript{59}

As part of a multi-agency investigation code-named “Operation Blood Trail,” state and local law enforcement agents led by the New York State Attorney General’s Organized Crime Task Force (OCTF) and the Albany Police Department conducted a seven month-long investigation that included undercover operations, hundreds of hours of covert surveillance, and wiretaps. The investigation was sparked by a tip detailing a massive and violent drug operation. The subsequent investigation established the existence of a narcotics pipeline that flowed from Long Island and Brooklyn to Albany’s South End, Arbor Hill, Clifton Park, Lake George, Watervliet, Schenectady, Troy, and Cohoes. Every month, these gang-affiliated dealers were responsible for tens of thousands of dollars in illicit drug sales. During the investigation, undercover agents heard dozens of crimes being planned while monitoring wiretaps. Through coordination with different departments, those potential crimes were stopped without jeopardizing the investigation. Those potential crimes included assaults and robberies.\textsuperscript{60}

Though serious crimes were alleged as the result of this raid (law enforcement seized eight handguns, a rifle, an assault rifle, approximately $65,000, six pounds of marijuana, one ounce of bulk heroin, one ounce of bulk cocaine, approximately 4 bundles of heroin, numerous small bags of cocaine, a digital scale, and drug packaging),\textsuperscript{61} seventeen of those sentenced to date were convicted not of weapons charges or violent offenses, but solely on enterprise crimes.
corruption and/or conspiracy and/or drug offense charges. These seventeen offenders (all minorities) have a combined total maximum sentence of 317 years, with a median maximum sentence of 15 years. Given the median age (31) of the seventeen offenders convicted of non-violent crimes, approximately a third of their lives will have passed by the time their maximum sentences expire.

And on March 27, 2012 --- too recently to allow analysis of conviction and sentencing data --- New York State Attorney General Eric Schneiderman spearheaded another raid, charging 52 “reputed Albany gang members and associates.” It is likely that the results will be similar to those of the 2006, 2009 and 2010 sweeps, and many more minorities will be incarcerated for a substantial portion of their lives for non-violent convictions.

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* Maximum sentences reported here are from the more conservative NYS Department of Corrections and Community Supervision figures, rather than the sentences pronounced in court, as the former figures are a more accurate assessment of time that will actually be served. For example, one individual convicted of more serious crimes was sentenced by a judge to 141 years in prison for his convictions, but will actually serve a maximum of 54 years in state prison.
Section III: The Albany Drug Sweeps in Context: Structural Racism at Work

The previous section demonstrated that as a result of three of four arrest sweeps over the past six years, at least 50 of Albany’s minority males have been sentenced to more than 600 years in prison for non-violent offenses; these figures do not include the results of a fourth sweep, which are pending. In two previous reports, the Center described the alarmingly disproportionate numbers of minorities prosecuted by the criminal and juvenile justice systems in the Capital Region.

Some local justice officials contend (without empirical evidence) that the disproportionate numbers can be explained solely by socioeconomic factors and that race-based enforcement and prosecution bear little responsibility. It is far more likely that the numbers from the Capital Region reflect a phenomenon characteristic of criminal justice systems across the country: the proliferation of mass incarceration as a manifestation of structural racism. It would be difficult to prove that minorities are disproportionately incarcerated because individual actors within Capital Region criminal justice agencies consciously engage in “unequal, harmful treatment of a person because of their minority status” (personal discrimination). However, the complicity of local criminal justice officials in perpetuating mass incarceration through drug law enforcement techniques grounded in structural racism is readily demonstrable, as reported in Section IV.

The War on Drugs discussed in Section I is but the latest in a series of discriminatory campaigns implemented nationwide since the Civil War, all designed to limit and control the political and economic power of blacks. Though space does not permit a thorough accounting of the history of structural racism in the criminal justice system in the United States here, it is possible to demonstrate the manner in which the War on Drugs (a response to the passage of the Civil Rights Act of 1964 and the Voting Rights Act of 1965) replicates post-Civil War structural racism (a response to the abolition of slavery).

After passage of the Thirteenth, Fourteenth and Fifteenth amendments, late nineteenth-century anti-abolitionists were threatened with the economic reality that free labor no longer existed, and the political threat that blacks now had the vote. Efforts arose to legitimize practices designed to limit blacks’ power (e.g., vagrancy laws implemented to provide free labor through jail crews, poll taxes to prevent blacks from voting). The 1890 United States census, the first to include prison statistics reported by race, provided the fodder needed by anti-abolitionist sociologists to make the case that, as demonstrated by their overrepresentation in prisons, blacks were innately inferior to whites:

New statistical and racial identities forged out of raw census data showed that African Americans, as 12 percent of the population, made up 30 percent of the nation’s prison population. Although specially designed race-conscious laws, discriminatory punishments, and new forms of everyday racial surveillance had been institutionalized by the 1890’s as a way to suppress black freedom, white social scientists presented the new crime data as objective, color-blind and

incontrovertible. Neither the dark color of southern chain gangs nor the pale hue of northern police mattered to the truth of black crime statistics.

More progressive sociologists were quick to point out that the statistics were more a reflection of the behaviors of criminal justice officials than of criminals:

With 90 percent of all African Americans residing in the South, [sociologist Frances] Kellor painted a striking picture of a corrupt, vindictive, and racist criminal justice system that tailored its discriminatory laws through the county fee system, the all-white jury, felony enhancements targeting black agricultural workers, the chain gang, convict leasing, and the prison farm for the purposes of extracting financial profits from the bodies of black men, women and children.

Public policy, however, was shaped largely by those sociologists who viewed criminal behavior by blacks as the manifestation of innate shortcomings of the race, but attributed criminal behavior by whites to inequalities in society’s economic structure; for example:

[Sociologist Frederick L.] Hoffman interpreted whites’ self-destructive behavior as a consequence of a diseased society, not of a “diseased manhood and womanhood.” White criminality was a response to economic inequality rather than a response to a “race proclivity.” On the white side of the color line, it would take nothing short of “emergency measures” to save modern civilization from itself.

Hoffman’s emergent advocacy was bidirectional. On the one hand, he interpreted the data on black morality as a race problem, a call to do nothing. On the other hand, he interpreted the data on white morality as a social problem, a call to do everything possible --- to “leave nothing undone.”

These philosophical underpinnings laid the groundwork for social work in the first half of the twentieth century, resulting in public and private programs geared to providing services for white immigrants who had broken the law, but not for blacks:

...white settlement workers “largely ignored” black migrants, calling instead for “black self-improvement organizations, which they thought would begin the slow ‘civilizing process’.” Meanwhile, for white immigrants they sought structural changes in the “local political economy and provision of social services.”

Thus, the statistics of the 1890s census, themselves the product of structural racism designed to limit the economic and political power of blacks after passage of the Thirteenth, Fourteenth and Fifteenth Amendments, formed the basis of criminal justice policy well into the first half of the twentieth century. Fast forward now to the second half of the twentieth century, after passage of the Civil Rights Act of 1964 and the Voting Rights Act of 1965, which outlawed discrimination in voting practices.

In The New Jim Crow, Michelle Alexander describes how, following passage of the 1960s’ civil rights acts, a deliberate political strategy was devised to end the Democratic New
Deal coalition that had “evolved into an alliance of urban ethnic groups and the white South that dominated electoral politics from 1932 to the early 1960s.” In short, under the leadership of Richard Nixon, the Republican Party would demonize blacks to frighten southern whites into supporting Republicans:

That dominance came to an abrupt end with the creation and implementation of what has come to be known as the Southern Strategy. The success of law and order rhetoric among working-class whites and the intense resentment of racial reforms, particularly in the South, led conservative Republican analysts to believe that a ‘new majority’ could be created by the Republican Party, one that included the traditional Republican base, the white South, and half the Catholic, blue-collar vote of the big cities. Some conservative political strategists admitted that appealing to racial fears and antagonisms was central to this strategy, though it had to be done surreptitiously. H.R. Haldeman, one of Nixon’s key advisors, recalls that Nixon himself deliberately pursued a southern, racial strategy: “He [President Nixon] emphasized that 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.” Similarly, John Ehrlichman, special counsel to the president, explained the Nixon administration’s campaign strategy of 1968 in this way: “We’ll go after the racists.” In Ehrlichman’s view, “that subliminal appeal to the anti-black voter was always present in Nixon’s statements and speeches.”

And thus was born the “War on Drugs”:

During this period [the 1970s], conservatives gave lip service to the goal of racial equality but actively resisted desegregation, busing, and civil rights enforcement. They repeatedly raised the issue of welfare, subtly framing it as a contest between hardworking, blue-collar whites and poor blacks who refused to work. The not-so-subtle message to working-class whites was that their tax dollars were going to support special programs for blacks who most certainly did not deserve them. During this period, Nixon called for a “war on drugs” --- an announcement that proved largely rhetorical as he declared illegal drugs “public enemy number one” without proposing dramatic shifts in drug policy. A backlash against blacks was clearly in force, but no consensus had yet been reached regarding what racial and social order would ultimately emerge from these turbulent times.

What followed was a series of legislative acts by the federal and state governments that disproportionately impacted blacks. For example, one federal sentencing structure established far harsher penalties for crack cocaine (associated with blacks) than for powder cocaine (associated with whites). Known as the "100-to-1 drug ratio," for the purposes of sentencing crack cocaine was accorded 100 times the weight of powder cocaine. The results of these laws --- most notably, the mass incarceration of African Americans --- are detailed in Section I. Public support for these laws was initially obtained and subsequently sustained by playing upon public fears. As long as law enforcement officials could justify their actions by claiming to protect the public from what it most often characterized as violent offenders, it simply did not matter how many blacks were incarcerated for non-violent crimes. And today, as long as a
United States Attorney can claim to be protecting the public from murderers, it simply does not matter that 50 Albany African Americans are sentenced to 616 years in prison for non-violent crimes. This outcome is all too reminiscent of rationalizations of the nineteenth- and twentieth-century practice of lynching, justified on the basis of protecting white women from brutal, black rapists. The lynching justification was debunked by sociologist Ida B. Wells in her 1890s publications:

> The heart of her condemnation was her meticulous reading, one by one, of press accounts of just over eleven hundred black men, women, and children who were “hanged, shot and roasted alive from January 1st, 1882 to January 1st, 1894,” of whom 31 percent were actually “charged with rape.”

Just as the majority of those “hanged, shot and roasted alive” in a nineteenth-century study of lynchings were not even charged with the crime (rape) for which the “sentence” was imposed, the majority of those imprisoned for hundreds of years as a result of the twenty-first century Albany sweeps were sentenced not for the heinous crimes of murder, robbery, and assault trumpeted by investigators, but for non-violent convictions.

It is far past time to debunk the “justification” for mass incarceration and end this abhorrent practice.
Section IV: Mass Incarceration’s Impacts on Individuals, Families, and Communities

The impacts of the arrests and sentences resulting from the Albany drug sweeps can be categorized into two groups: those that directly impact the individuals, their families, and their communities, and those that serve to perpetuate mass incarceration through reinforcement of the myth of the innate criminality of African Americans. These two groups of impacts are discussed in separate sub-sections, below. The first sub-section first appeared in the Center’s February 2012 report, “The Disproportionate Impact of the Criminal Justice System on People of Color in the Capital Region,” and describes limitations imposed as the result of a criminal conviction. The second sub-section describes the manner in which structural racism exaggerates black criminality and understates white criminality, and how mass incarceration “reproduces” itself.

A. The Direct Impacts of a Criminal Conviction

In “The Consequences of Criminal Charges: A People’s Guide,” the Bronx Defenders explain the concept of “collateral consequences:”

“Collateral consequences,” is a popular label for the legal, social, and economic barriers to a person’s reentry into his or her community. Although many people released from prison or jail leave with the hope of a fresh start, these barriers to reintegration can feel like the continuation of a prison sentence. In fact, these collateral consequences may take place at both ends of the criminal process system: at the beginning when an individual is arrested, charged, and perhaps considering a plea bargain; and at the end when an individual is released from prison. Even a mere arrest, or minor charges with no jail time, may result in collateral consequences. Collateral consequences have been described as “invisible punishment” because they are not clearly set forth in the New York criminal law. Therefore, they are not usually explained the way prison terms and parole eligibility typically are, as part of the direct consequences of criminal convictions. Instead, the rules that result in collateral consequences are found scattered throughout New York and federal civil laws, making them more difficult to find and understand, and avoid.73

The collateral consequences of a criminal conviction vary from state to state, and being convicted of a crime may place limitations on rights and privileges granted by the federal government. In New York, a convicted felon may face barriers to employment, housing, and educational opportunities. An American Bar Association database lists 1,113 statutes that impose collateral consequences, in New York State alone!74 Although employers in New York may not discriminate against a job applicant simply on the basis of a criminal conviction, some specific occupations (particularly those requiring a license, such as bus drivers and private security guards), may have additional requirements for those with criminal convictions.

Federal law provides municipal housing authorities the right to deny public housing to an applicant with a criminal history. In some jurisdictions, the housing authority conducts a criminal background check on not only the applicant, but everyone the applicant currently lives
with, everyone 16 or older who might live with the applicant, and the biological parent(s) of any of the children in the household (even if that person doesn’t live with the applicant).

Eligibility for federal student financial aid can be affected by a criminal conviction. A person convicted of any offense involving the possession or sale of drugs may have his or her financial aid eligibility suspended for one to two years.

Perhaps the most significant collateral consequence of a criminal conviction is suspension of the right to vote. As of 2010, incarcerated felons in forty-eight jurisdictions (all but Maine, Vermont, and Puerto Rico) and the District of Columbia were ineligible to vote; in thirty-five of these states, persons on probation and/or parole were also ineligible, and in twelve states even people who completed their felony sentence may be ineligible to vote, and are subject to lifetime disenfranchisement in four of those states. In New York, those incarcerated for a felony conviction or on parole for a felony conviction may not vote. Once released from incarceration and/or parole supervision, a person with a felony conviction may register or re-register to vote.

Disenfranchisement of those with a felony conviction serves to not only stifle the political voices of individuals, but diminishes the electoral power of an entire subset of the American population: minorities. An estimated 38% of the total disenfranchised population in the country is African American, far greater than their share of the national population (about 13%). Nationally, an estimated 13% of all black men are unable to vote due to felony disenfranchisement. In New York State, African Americans comprise 16% of the general population, but an astounding 64% of the disenfranchised.

Given the severe consequences of a criminal conviction in New York State and the demonstrably disproportionate impact of the criminal justice system on minorities, it is imperative to explore the roots of the disparate treatment of minorities in that system. The declaration of a federal “war on drugs” and the passage of the state “Rockefeller Drug Laws” spurred a phenomenal surge in mass incarceration in New York during the last three decades of the twentieth century. Regrettably, the mass incarceration of people of color from the Capital Region, particularly from Albany County, has historically far exceeded (and continues to exceed) other jurisdictions in the state.

B. The Self-Perpetuation of Mass Incarceration

Mass incarceration of minorities for drug crimes initially occurs largely because blacks are arrested and prosecuted for crimes for which whites, who use drugs to the same or even greater extent than blacks, are treated much more leniently. If arrested, whites’ experiences with the criminal justice system are much different than blacks’:

The white middle-class drug user, even if arrested with drugs, is far more likely to have legal counsel, to be able to make bail, and to avoid jail time. His family typically has more resources to make bail and provide a home, and he likely has a social and family network that helps him get jobs and access to education. White middle-class youth arrested for drugs are more likely to get probation and to go to
counseling or drug treatment, while black teens go to juvenile detention centers that are the nurseries for future prison careers. These minority youth are initiated into the criminal justice system early and in large numbers. The longer sentences of the mandatory drug penalties and the recidivism that is so common allow ample time and opportunity to form or solidify relationships in prison based on criminal networks involving gangs or dealing drugs that carry over to the community after release. Long sentences, often far from home, also erode prosocial family and community relationships on the outside. \(^{80}\)

Mass incarceration of minorities not only unfairly punishes blacks compared to whites who commit similar offenses, but actually serves to create additional crime. As explained by Ernest Drucker in *A Plague of Prisons*, mass incarceration reproduces itself in three significant ways:

First, the criminalization of drugs and the use of large-scale arrests for low-level offenders mean that millions of individuals a year --- most of them young men of color --- are “infected” by exposure to the criminal justice system, most often by arrest at a young age. \(^{81}\)

As documented in the Center’s February 2012 report, “The Disproportionate Impact of the Criminal Justice System on People of Color in the Capital Region,” once exposed to the criminal justice system minorities are more disproportionately overrepresented at each successive stage of the process.

Second, massive imprisonment of young men and women, most of whom are parents, has now created several generations of “children of the incarcerated.” \(^{82}\)

The wholesale imprisonment of young men and women, 52 percent of whom are parents, has created a generation of “children of the incarcerated” --- the second major reason mass incarceration has become self-sustaining. Over half of these parents (44 percent of men and 83 percent of women) either lived with or had regular contact with their children at the time of arrest and incarceration. Their children therefore grow up without access to at least one parent for about 50 percent of their childhoods. These children are statistically at extremely high risk of themselves becoming prisoners later in life. \(^{83}\)

Significantly, one Capital Region judge has suggested that fatherless homes are associated with crime. Surely, the decade-long removal of 50 parenting-age young men from Albany’s minority neighborhoods cannot be helpful. In fact, removing scores of young men from minority neighborhoods actually makes the communities more susceptible to the development of criminogenic conditions, the third manner in which mass incarceration reproduces itself:

Mass incarceration, concentrated as it is in specific communities, may alter the social ecology of these neighborhoods --- often irreparably --- and this is the third major reason that mass incarceration is self-perpetuating. As more and
more residents of neighborhoods targeted in the war on drugs are arrested, these levels of incarceration begin to damage the social fabric that typically keeps individuals functioning as law-abiding citizens --- family, church, and neighborhood social support networks. These forms of social capital typically sustain the fabric of communal support that is especially important in the poorest communities, which are exactly the ones most heavily impacted by mass incarceration.\footnote{84}

The three neighborhoods targeted by federal, state and local officials in the Albany arrest sweeps --- Arbor Hill, the South End and West Hill --- are already socioeconomically disadvantaged compared of the rest of the city. Though the 2010 median family income in the city of Albany as a whole was $52,215, the median income for families in Arbor Hill, the South End and West Hill were $21,755, $22,000, and $32,267 respectively. And, though 17.4% of the city’s families are below the poverty level, that figure stands at 46.4% for Arbor Hill, 40.6% for the South End, and 33.3% for West Hill.\footnote{If census figures included those currently incarcerated who resided in these neighborhoods prior to incarceration, the figures would likely be even more disparate.}

Mass incarceration has a devastating impact on individuals and their families, and its self-perpetuation takes an extremely destructive toll on minority communities throughout the United States. Each jurisdiction replicates the horrific consequences of mass incarceration by enacting, enforcing, and prosecuting laws that disproportionately impact people of color, though those laws may appear on the surface to be race-neutral. Rooted as it is in centuries-old historical precedent, mass incarceration can only be eliminated through a two-pronged approach: a commitment by government entities to assess and address the impact of mass incarceration, accompanied by a grass-roots social movement to educate communities concerning “The New Jim Crow” and mobilize them into taking action to end the heinous policy of mass incarceration.
Section V: A Call to Action

As demonstrated in this report, the recent long-term imprisonment of scores of young, Capital Region African-American men for non-violent crimes is not simply an unavoidable consequence of law enforcement efforts to maintain public safety. It is, rather, a manifestation of a centuries-old commitment by determined policy makers ---- encouraged by the willing participation or enabling apathy of others ---- to ensure that blacks are relegated to the status of second-class citizens, with limited economic opportunities and diminished political power. Those with a vested interest in the subjugation of blacks have formulated strategies to accomplish their objectives while obfuscating their less than noble motives. The “War on Drugs” is but the most recent government-sponsored policy that consigns blacks to an inferior status. While it would be a daunting task to redress all the race-based wrongs committed throughout the course of American history, modifying the criminal justice system to eliminate the devastation caused by mass incarceration is certainly within the realm of possibility in New York State.

Since the end of the Civil War, those who would benefit from the relegation of blacks to inferior social, economic, and political positions have devised strategies and mechanisms to convince Americans of the virtue of government actions designed to control African Americans. Most often, the promoters of such measures have played upon fear to persuade others---some of us enthusiastic participants and others of us, complicit through indifference --- that blacks are innately inferior to whites. The particular deficiency cited has been adjusted to suit the policy maker’s particular need at the time. For example, to suppress the political power of blacks in the late nineteenth century (citizenship rights had been established through Reconstruction Era constitutional amendments), fears that blacks would exercise their voting rights were exploited by promoting the notion that blacks are intellectually inferior to whites; the poll tax and voter literacy tests were borne of this fear. Though these requirements were on their face race-neutral, “vagrancy” laws were more likely to ensnare blacks, who were more likely to be jobless following the abolition of slavery. Convict leasing, in which inmates were contracted out to the highest bidder, served two economic purposes: it kept blacks out of the labor market and provided white-owned enterprises --- many of which had previously relied on slavery --- with low-cost labor.

To suppress the economic power of blacks following the Civil War, policy makers played upon white fears regarding the supposed innate slothfulness and criminality of blacks. It was argued that “Negroes,” previously cared for by their masters pre-emancipation, would simply not know how to fend for themselves in the world and consequently would resort to victimizing whites. Here, too, while statutes were configured in a seemingly race-neutral manner, “vagrancy” laws were more likely to ensnare blacks, who were more likely to be jobless following the abolition of slavery. Convict leasing, in which inmates were contracted out to the highest bidder, served two economic purposes: it kept blacks out of the labor market and provided white-owned enterprises --- many of which had previously relied on slavery --- with low-cost labor.
The criminal justice system has provided a convenient vehicle for subjugating blacks while proclaiming a noble motive: keeping Americans safe from crime. As described in this report, figures from the 1890’s census detailing the racial breakdown of prisoners indicated that blacks were overrepresented among prisoners, compared to the general population. Contemporary anti-abolitionist sociologists seized upon the numbers as evidence of the innate criminality of blacks ---- completely ignoring the fact that “specially designed race-conscious laws, discriminatory punishments, and new forms of everyday racial surveillance had been institutionalized by the 1890’s as a way to suppress black freedom.”87 With more laws targeting blacks following the end of the Civil War, it is only logical that more blacks would be imprisoned.

In keeping with decades of statutes designed to subjugate blacks, the “War on Drugs” initiated in the 1970s was borne of a successful attempt to exploit white fears of black political power following the passage of the Civil Rights Act and the Voting Rights Act in the 1960s. As described in this report, as part of the “Southern Strategy” partisan politicians devised a plan to lure fearful white voters from the Democratic Party to the Republican Party by declaring the latter would “get tough on crime.” “The War on Drugs, cloaked in race-neutral language, offered whites opposed to racial reform a unique opportunity to express their hostility toward blacks and black progress, without being exposed to the charge of racism.” 88

As detailed in this report, federal and state statutes enacted to implement the war on drugs have had an explosive impact on African-American incarceration rates, particularly in New York State, where the state prison population grew by 2000% from 1970 to 2000. Although recent federal and state legislation has reduced the discriminatory impact of the drug laws, prosecutors with economic, political, and career motivations are now using racketeering laws to imprison African Americans for terms longer, in some cases, than the sentences they would have served for drug crime convictions.

Beyond the direct impact of the punitive, incarcerative sentence itself, mass incarceration resulting from the enactment, enforcement, and prosecution of laws that differentially and adversely impact people of color takes an enormous toll on minority communities across the country. This report details the impact of mass incarceration in the Capital Region, and calls for an end to the practice through the implementation of a two-pronged approach: a commitment by government entities to assess and address the impact of mass incarceration, and a grass-roots social movement to educate communities concerning “The New Jim Crow” and mobilize them into taking action to end the heinous policy of mass incarceration.

A. Government Action: A Gubernatorial Mandate

The current national injustice of mass incarceration, the latest iteration of the American racial caste system following slavery and the era of Jim Crow, can be rectified only through bold measures resulting in systemic change. The State of New York is in a position to spearhead a revolution in criminal justice advantageous to all New Yorkers, and the Center for Law and Justice calls upon the Governor and the Legislature to initiate action in the State’s 2013-2014 budget. The following circumstances compel this recommendation:
1. Mass incarceration of minorities for non-violent drug crimes is rampant in New York State. On January 1, 2011, there were 8,664 people incarcerated in New York State prisons for drug crimes. Recent drug sweeps are likely to increase the number incarcerated in federal and state prisons for drug and other non-violent crimes; in addition to the four Albany sweeps documented in this report, recent drug sweeps have been conducted on Long Island, in New York City, in the State’s Southern Tier, and in Schenectady, Utica, Syracuse, and Western New York.

2. Mass incarceration resulting from policies that support the large-scale use of imprisonment for non-violent crimes has taken a devastating toll on New York’s minority individuals, families and communities. As a result of just the three drug sweeps conducted in Albany in 2006, 2009, and 2010, fifty African-American men younger than 30 were sentenced to a total of more than 600 years in prison for non-violent crimes. Families suffer as parents are removed from households for decades at a time, and then are precluded from meaningfully contributing to the support of their families after release by the collateral consequences of conviction imposed by federal and state laws. Communities are incapacitated by the removal of a sizeable portion of a single generation from their midst, tearing huge rents in the social fabrics of entire neighborhoods. The cycle of mass incarceration actually creates crime, by engendering circumstances that allow criminogenic socioeconomic conditions to flourish.

3. Despite recent actions taken by the New York State and federal governments to reduce racial disparities in the handling of drug crimes, prosecutors have discovered a new (old) tool to circumvent the reduced sentences newly accorded to drug crimes. Using racketeering statutes originally designed to address offenses perpetrated by large organized crime families such as the Mafia, federal and state prosecutors are now using United States RICO (Racketeer Influenced and Corrupt Organizations) and New York State OCCA (Organized Crime Control Act) statutes to sentence such offenders as a low-level, 18-year-old marijuana seller to prison for a third of his life for “conspiracy.”

4. Like fear-based justifications for post-Civil War criminal statutes that targeted blacks, claims that recent federal and state drug sweeps lock up murderers and robbers are vastly exaggerated. Of those sentenced to date who were arrested in the 2006, 2009 and 2010 Albany drug sweeps, seven out of every ten were sentenced for non-violent crimes.

5. The fifty young Capital Region African-American men documented in this report as having been sentenced to more than 600 years in prison represent but a miniscule fraction of the tens of thousands of New York lives that have been destroyed as a result of the “War on Drugs.” As explained in this report, the federal “War on Drugs” declared in 1971 was borne not out of a sincere concern to address the impacts of substance abuse but, rather, out of political machinations designed to lure voters from one political party to the other, preying upon white
fears of the impact of the passage of civil rights legislation in the 1960’s. The resultant devastation created throughout the following decades by the mass incarceration of blacks is nothing short of a national tragedy.

As indicated earlier in this section, it would be a daunting task to devise a method to redress all of the race-based wrongs committed throughout the course of American history. It is, however, possible for New York State to consider modifying its criminal justice system to eliminate the policy of mass incarceration that disproportionately incarcerates people of color. The Center for Law and Justice therefore recommends that the Governor and the New York State Legislature, with funding in the 2013-2014 budget, appoint a Mass Incarceration Truth and Reconciliation Task Force designed to examine and address the impact of mass incarceration in New York State. The group should be tasked with providing a report to the Governor and Legislature that:

a. has relied on a “truth and reconciliation” process where, as described in part by Ernest Drucker in A Plague of Prisons, “local law enforcement and the community at large can open a conversation with those who have served time in prison and with their families;”\textsuperscript{90}

b. candidly and comprehensively addresses the scope and impact of mass incarceration in New York State since 1970, including an assessment of the economic implications of reducing the size of the prison industrial complex (nationally, the prison industry supports one full-time employee for every one of the 2.3 million people behind bars);\textsuperscript{91} and

c. provides bold, systemic recommendations to halt the practice of mass incarceration in New York State, as well as redress grievances of those already harmed by this ill-advised and tragic policy.

B. Community Action: “The New Jim Crow” Movement\textsuperscript{*}

In her book The New Jim Crow: Mass Incarceration in the Age of Colorblindness, Michelle Alexander reports that more African Americans are under the control of the criminal justice system today – in prison or jail, on probation or parole – than were enslaved in 1850. Discrimination in housing, education, employment, and voting rights, which many Americans thought was eliminated by the civil rights laws of the 1960s, is now perfectly legal against anyone labeled a “felon.” And since many more people of color than whites are made felons by the entire system of mass incarceration, racial discrimination remains as powerful as it was under slavery or under the post-slavery era of Jim Crow segregation.\textsuperscript{92}

Alexander describes how mass incarceration today serves the same purpose as pre-Civil War slavery and the post-Civil War Jim Crow laws: to maintain a racial caste system. She defines “racial caste” as a racial group locked into an inferior position by law and custom. Jim

\textsuperscript{* Portions of this section originally appeared in the Center’s February 2012 report, “The Disproportionate Impact of the Criminal Justice System on People of Color in the Capital Region.”}

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Crow and slavery were caste systems, and our current system of mass incarceration is also a caste system: “The New Jim Crow.” The original Jim Crow laws, after slavery ended, promoted racial discrimination in public housing, employment, voting, and education. The powerful Civil Rights struggles of the 1950s and 1960s seemingly ended the Jim Crow era by winning the passage of the Civil Rights Act of 1964 and the Voting Rights Act of 1965. Alexander demonstrates, however, that the racial caste system has not ended; it has simply been redesigned.

According to Alexander, nothing short of a major social movement can end the new caste system. Alexander issues a challenge to establish a grass-roots movement to deal with the very foundation of the mass incarceration system:

If the movement that emerges to end mass incarceration does not meaningfully address the racial divisions and resentments that gave rise to mass incarceration, and if it fails to cultivate an ethic of genuine care, compassion and concern for every human being – of every class, race, and nationality – within our nation’s borders, including poor whites, who are often pitted against poor people of color, the collapse of mass incarceration will not mean the death of racial caste in America. Inevitably a new system of racialized social control will emerge ... No task is more urgent for racial justice today than ensuring that America’s current racial caste system is its last.  

The Center recommends that there be a series of community-wide discussions regarding “The New Jim Crow in the Capital Region.” Additionally, community organizations should devise and implement methods to educate the general public regarding the impact of mass incarceration on people of color in the Capital Region.
Notes


2 Martin, 2.


5 United States Attorney’s Office.


11 Justice Policy Institute 7.

12 Justice Policy Institute 25.


17 FBI.

18 Justia.

19 Rebovitch, 5.


22 Gardinier.

23 Gardinier.

24 Gardinier.


29 Race and ethnicity information was obtained from the United States Bureau of Prisons (<http://www.bop.gov/iloc2/LocateInmate.jsp>) and the New York State Department of Corrections and Community Supervision (<http://nysdoccslookup.doccs.ny.gov/>).

30 Gardinier.

31 Federal sentencing data were obtained from the Public Access to Electronic Court Records (PACER) website, <http://www.pacer.gov/findcase.html>.

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32 Ages were obtained from Albany Times Union articles.

33 PACER.

34 Neighborhood age data were obtained from the United States Census Bureau (<http://factfinder2.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t>).

35 Drucker, 84.

36 Drucker, 85.


40 PACER.


45 Anderson, 90-91.

46 Anderson, 90-91.

47 Anderson, .


51 Race and ethnicity information was obtained from the United States Bureau of Prisons (<http://www.bop.gov/iloc2/LocateInmate.jsp>) and the New York State Department of Corrections and Community Supervision (<http://nysdoccslookup.doccs.ny.gov/>).

52 PACER.

53 PACER.

54 Ages were obtained from Albany Times Union articles.

55 Neighborhood age data were obtained from the United States Census Bureau (<http://factfinder2.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t>).


57 Floyd, 569.

58 Floyd, 576.


60 New York State Office of the Attorney General.

61 New York State Office of the Attorney General.

62 State sentencing data were obtained from the New York State Department of Corrections and Community Supervision, <http://nysdoccslookup.doccs.ny.gov/>.


65 Muhammad, 89.

66 Muhammad, 41.

67 Muhammad, 128-129.

69. Alexander, 43-44.

70. Alexander, 47.


72. Muhammad, 60.


80. Drucker, 102.


82. Drucker, 80.

83. Drucker, 80.

84. Drucker, 105.

86 Muhammad, 89.

87 Muhammad, 4.

88 Alexander, 53.


90 Drucker, 188-189.

91 Drucker, 45.

92 Alexander, 1.

93 Alexander, 245.
What Have We Done?
Mass Incarceration and the Targeting of Albany’s Black Males
by Federal, State, and Local Authorities

“If there is no struggle, there is no progress”
–Fredrick Douglass

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