SUSPECT
RACE

CAUSES AND
CONSEQUENCES OF
RACIAL PROFILING

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PREFACE

As I sat working on Chapter 2 of this book in a coffee shop in my neighborhood on a winter day, I overheard a gray-haired, heavyset, Middle Eastern man sitting near me recount to his friends several instances of being stopped and questioned by local police without cause: "He was asking me questions like I was lying..." I was struck that this testimony fell into my lap while I was writing the book. I know that, even though I am a scientist, I am not immune to the psychologically distorting influence of coincidences, so I am not going to jump to any conclusions about the representativeness of my neighbor's experience. Nevertheless, it reminded me that what I have been studying and writing about is not merely an abstract concept but something very real, fairly commonplace, and troubling.

Years later, I am sitting in a different cafe in a different San Francisco neighborhood editing the manuscript, overhearing the discussion of four police officers sitting at the next table on a coffee break (no doughnut in evidence, I hasten to note). They are speaking in the relaxed, humorous banter of coworkers in any field: some business, some personal. But their discussion is sprinkled with very heavy topics, like active homicide investigations. They are casually using the term *CSI* and not referring to a TV show. It is a poignant reminder to me that the primary objects of my research on racial profiling—police officers—are very real, normal, vulnerable people.

Much has happened in American law enforcement, policy, and politics since I began writing this book in 2008. Of particular significance, the country elected an African American president. As I reflect on this period, I am struck by how little has happened on the racial profiling front. Federal legislation continues to be stymied. Few new state laws have been enacted, and none have had meaningful enforcement mechanisms. In fact, laws have been enacted in Arizona and Alabama that make racial profiling (in immigration law enforcement) *more* likely. New studies indicate continued evidence of racially biased decisions to stop and search. The one area where significant progress appears to be occurring is at the agency level, with an increasing number of police departments partnering with social scientists to develop methods to monitor for and mitigate racial profiling. Spoiler alert: This is where the chapters of this book will ultimately take us—to an understanding of the normal human psychological functions

that give rise to racial profiling, and how they can be addressed at the agency and individual officer level to mitigate the problem. At this point this is occurring mostly by agency-level initiative, in some cases with the active intervention of the U.S. Department of Justice and the courts, but there is no reason it could not be complemented and facilitated by legislative action and possibly a shift in jurisprudential disposition.

As a public policy professor trained in social psychology, I divide my time between training professional policy analysts and conducting basic and applied research at the intersection of public policy and psychology. As a social psychologist interested in stereotyping, prejudice, and discrimination, and a policy researcher interested in improving the function of government, I find racial profiling is a near-perfect nexus for my interests and expertise. Racial profiling is, after all, stereotype-based policing. Social psychologists like me have been studying stereotyping scientifically for nearly a century. We know a tremendous amount about the content, function, structure, and process of stereotypes and stereotyping. We know that stereotyping is a normal cognitive process, but that it leads to undesirable, discriminatory effects. The primary purpose of this book, therefore, is to bring to bear the social psychological understanding of stereotyping on the policy problem of racial profiling. One key insight is that stereotyping often occurs outside of our conscious awareness and control, and that even those of us with strong intentions to be fair and equitable can make stereotype-contaminated judgments.

Police are normal people with normal human cognition, and so it is very likely that their judgments of the suspiciousness of others will be biased by racial stereotypes, particularly stereotypes connecting racial and ethnic minorities with crime and aggression. Recognizing this will be helpful for officers, their supervisors, and the people in positions to set or change relevant policies.

My ideal audience for the information in this book would be police officers themselves, and I have tried to write it in such a way that it will be of interest and use to them. Racial profiling is a topic of great concern to a great many people, and so I believe that members of the general public will find it interesting and useful. However, at this stage, much of the material is covered with an expectation of some degree of social scientific expertise. Academics in criminology, law, sociology, political science, ethnic studies, public policy, and related fields should find the social psychological perspective herein of value. And psychologists who wish to embed their understanding of stereotyping in a very real policy problem, one where stereotypes have immediate and life-altering effects, will find help with that in these pages.

This book is focused almost exclusively on profiling in the United States. Racial profiling, no doubt, is a problem that exists wherever there is law enforcement and racial or ethnic stereotypes about groups regarding crime and related traits. However, laws and law enforcement practices vary by country, as do interethnic relations and attitudes. The concepts considered here will certainly apply

in the United Kingdom, Canada, Oceania, and many European countries. They may well apply to other countries, but I cannot guarantee that.

One area of racial profiling that has been the source of increasing concern and controversy in recent years is in immigration law enforcement. The passage of state laws requiring local and state police to enforce immigration law is an incitement to ethnic profiling. In Arizona, the flashpoint of immigration law enforcement, the enactment of SB1070 in 2010, necessitated that more people of Hispanic descent would be subjected to searches by police, who the law requires to verify immigration status for anyone they stop for whom there is basis for suspicion of immigration law violation. This means that a much larger proportion of Latino Americans are going to be asked for immigration documentation. Many will, in reaction, begin carrying documents that can verify status, something the rest of us do not have to do. Others will fail to comply, or will affirmatively and civilly disobey the rule, and many of them will end up spending time in jail because they cannot immediately document their status. This has a troubling potential to create a two-tiered hierarchy of classes of citizens and legal residents in the United States (or, for now, in Arizona)—those who "seem American" and those who "seem foreign." Right now, because they are the largest group, Whites are the default "American" ethnicity. These immigration issues are the topic of hot debate and will be for some time. Nevertheless, I am not covering immigration profiling in this book because there is not much in the way of a systematic analytic literature, but also because it is dramatically different from other forms of profiling. This is the case primarily because of the very close link between ethnic identity and the crime that is being profiled, particularly in regions bordering Mexico. One thing, however, is very clear: The negative effects of profiling seen in drug law and counterterrorism profiling apply to immigration profiling too. Namely, profiling necessitates that a greater proportion of the targeted minority group will be subjected to intrusion, and this is true for the innocent population as well.

Social psychology has a lot to offer law enforcement, especially those interested in racial profiling. As I mentioned earlier, racial profiling is essentially stereotype-based policing. Social psychologists know far more about it than scholars in any other discipline. And yet, while psychologists have published thousands of scientific journal articles, chapters, and books about stereotypes and stereotyping, they have published only a handful about racial profiling. This book reflects an effort to build a bridge between these two important topics.

For nonscientists, some of the material in this book will seem technical. The social psychological research described (concentrated in Chapters 3 and 4) has been published in high-quality scientific journals. These are journals with rigorous peer review systems that publish only a small proportion of the articles submitted to them. In order to be published, studies in these journals need to compellingly rule out alternative explanations to those the authors posit, usually through extensive investigation and statistical analysis. This can make the reports dense and seemingly obscure, and therefore comprehensible, let alone

exciting, only to those of us steeped in the discipline. In bringing the social psychological scientific research to bear on the issue of racial profiling, I have tried to describe the research in plain language, avoiding jargon as much as possible.

Furthermore, scientists are careful to not make overzealous claims based on just a few demonstrations. Accordingly, readers may notice that I use seemingly awkward and tentative language like "demonstrates compellingly" where more affirmative words like "proves" would feel more satisfying. This reflects the scientific norm inherent in hypothesis testing: Scientists generally do not "prove" things. Rather, we construct our experiments to reject "null hypotheses." When we have empirically falsified all the plausible alternatives to a given theory, we regard the theory as "accepted" but not proven, recognizing that there may be some as-yet-unimagined alternative explanation for the phenomena predicted by the theory. Even gravity is regarded as a theory, although it is universally accepted.

OVERVIEW

Chapter 1 begins the discussion by, in good policy analytic form, defining the core problem, which is racially discriminatory law enforcement, and examining its societal implications. This is accomplished primarily by looking at Bureau of Justice Statistics and U.S. Census data, and I readily acknowledge that the dramatic racial disparities evidenced in American criminal justice are caused by many things, not just biased policing. Chapter 2 addresses the latter, covering research on racial profiling that has been carried out with a wide array of methodologies (e.g., anecdotal, surveys, correlational analysis, and econometric modeling). The primary conclusion is that it is overwhelmingly evident that racial bias is operative in policing in many locales, but there are also places and times where it is not evident.

Chapters 3 and 4 infuse psychological theory and research into the discussion, moving beyond just *whether,* and *when and where,* profiling is happening to *how and why* it happens. The many decades of social psychological science on stereotyping, prejudice, and discrimination are considered and yield a fundamental understanding: Stereotyping—generalizing traits and behavioral tendencies to members of racial, ethnic, gender, and other groups—is normal human cognition that causes us to make inferences about individuals that are often erroneous. These inferences cause us to behave differentially and can give rise to discrimination. Stereotypes, like most human mental processes, can and do operate outside of conscious awareness, and so they can influence us whether we want them to or not. As a consequence, much of what we call racial profiling is likely spontaneous and unintended.

Some commentators have argued that racial profiling is worth the sacrifice to civil liberties because it enhances public safety. Accordingly, Chapter 5 takes a closer look at the assumption that racial profiling is efficient, examining its likely

effects on criminal incapacitation and deterrence. This is a challenging task to accomplish with real data because it is difficult to determine when racial profiling has occurred, let alone to establish how it has reduced crime. My mathematical simulations of many scenarios of criminal offending and profiling indicate that, in general, gains in terms of criminal captures (incapacitation) would be surprisingly modest and can be counterproductive. The simulations also illustrate what some commentators have suspected, which is that profiling exacerbates racial disparities in incarceration rates and will create them where offending rate differences do not exist. With regard to the deterrent effect of profiling, the one known experimental test of racial profiling provides evidence for what we are calling *reverse deterrence*—increased offending by members of the groups that are not profiled. The effect of this could, ironically, be a net *increase* in crime.

Chapter 6 turns the discussion from profiling primarily in the drug war context to the more newly salient case of counterterrorism. Similarities and differences between drug and terrorism profiling are considered. The fundamental and troubling similarity is that profiling will *cause* disadvantaged outcomes for members of the targeted groups. A related consequence is that law enforcement may lose the cooperation of members of those groups, help that is crucial to successful prevention and prosecution.

Chapter 7 attempts to provide a broad review of the policy landscape for racial profiling in the United States. Generally, the chapter is descriptive, but I admittedly detour into prescription (and proscription) in places where it was prudent to point out the promise (or futility) of a particular policy.

Chapter 8 is more prescriptive in the sense that I make affirmative recommendations for policies to mitigate racial profiling. However, the chapter does not attempt to cover the breadth—local, state, federal; administrative, legislative, judicial—reflected in Chapter 7. Rather, it connects the discussion back to the social and cognitive psychological principles explained in Chapters 3 and 4, leveraging our science-based understanding of human thought and behavior to identify methods for reducing the effects of stereotypes about groups on police decisions about individuals.

In my career, I often feel like an emissary between social psychology and public policy. I am in very good and humbling company in this capacity, with Daniel Kahneman, Robert MacCoun, and others, but we are a small club with a range of topics of expertise. I am the "stereotyping and prejudice guy" (in the sense that I study them, but as Chapters 3 and 4 will make clear, I am guilty as well). This book is written in that emissarial spirit. It is my hope that it will help people from different disciplines appreciate each other's approaches and talk to each other about this issue in a more holistic and constructive way. It is my deeper hope that in connecting social psychology with public policy I have succeeded in making both more accessible to a broader audience, because they are both fascinating and, more important, crucial to a better understanding and promotion of a fairer, stronger society.

CONTENTS

CHAPTER 1
What Is Racial Profiling?

Consider that you, as a police officer tasked with apprehending drug couriers, patrolling a stretch of highway known to be a heavy drug transport corridor, see an SUV with tinted windows and two young Black men in the front driving at 1 mile per hour under the speed limit. The vehicle has a broken taillight. Do you pull it over?

The first officer to arrive at the scene of a reported assault, you see two people, a man and a woman, sprinting from the area. You shout at both to stop, but they keep running, in different directions, away from you. Which one do you pursue, and why?

Imagine the same scenario, but this time both people are men, one is White and the other is Black. Which one do you pursue, and why?

In the first assault scenario, you may have opted to go after the man, either because men are more likely than women to commit assaults, or because you may reasonably expect to catch more flak for chasing a woman. But the second scenario probably posed a more difficult dilemma. Maybe part of you felt the Black guy was more likely to be the assailant. Maybe another part of you did not want to operate on that basis. But it is worth noting that the two scenarios are basically equivalent, the only difference being the strength and social acceptability of the stereotypes about gender and crime versus race and crime.

Here is another scenario. You have been briefed that there are very reliable statistics indicating that members of Chinese ethnic gangs are responsible for the lion's share of armed robberies in your jurisdiction. Walking the beat, you see three young Asian men enter a food mart. Do you follow them in or continue on your previous course? Would it affect your decision if you knew that such robberies were very frequent? Or very rare? How big a proportion of young Asian men being involved in such robberies would there need to be for you to feel justified in following these three?

You're a Transit Safety Administration (TSA) screener at an airport. Homeland Security has placed the terrorism threat level at its highest. Three Middle Eastern

men approach the screening area. Do you give them special attention? Why or why not? What if the TSA had announced that there was specific information that al-Qaeda was planning to perpetrate an attack in the United States in the next 2 days?[1]

There are no easy answers to most of these questions. But the variations on them surely change the likelihood that a given individual (yourself, perhaps) would choose to detain or search someone. And those decisions are based not on the suspect's specific behavior but on the fact that he fits a "profile" of a criminal who is perhaps more prone to commit a particular type of crime. Clearly, some profiles are more justifiable than others, and some conditions are more acceptable for profiling. For example, in the classic "ticking time bomb" scenario, when there is specific information that a terrorist act is imminent, the use of national origin may be much more palatable than under normal conditions. Similarly, using gender seems more acceptable to more people than using race or ethnicity, perhaps because statistics unambiguously indicate that men commit more crime, or perhaps because men are otherwise generally not a stigmatized or underprivileged group.

In fact, recent history is rife with real-world examples of the application of profiling. On the outrageous side of the spectrum is the case of forensic psychologist Walter Quijano, who testified repeatedly in death penalty cases that specific Latino defendants were more dangerous *because they were Latino*. In upstate New York in 1992, Oneonta police questioned virtually every young Black man in town in one investigation. In 1998, customs officials at Chicago's O'Hare Airport were found to have been searching Black women at a grossly disproportionate rate—Black women were, in fact, particularly *un*likely to be carrying contraband. And in 2009, after the shooting by police of an unarmed, elderly Black man in Homer, Louisiana, the town's police chief declared, "If I see three or four young black men walking down the street, I have to stop them and check their names. I want them to be afraid every time they see the police that they might get arrested" (Witt, 2009). More common examples of racial profiling have to do with traffic stops, which will be discussed extensively in Chapter 2. The point here, however, is that the use of race, ethnicity, gender, and other demographics as a basis for criminal suspicion can occur in many domains of law enforcement, and in all these domains it raises questions about fairness and effectiveness.

Most dramatically overrepresented in criminal justice, and the most common targets of racial profiling, are African Americans. Their race, as the book's title signifies, represents something that is used in suspect descriptions but is also itself often the basis of suspicion. They will, accordingly, be the focus of much of the discussion in this book.

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1. Credit goes to Stanford law professor R. Richard Banks for this type of scenario. I was first exposed to it at a conference on racial bias in policing, where Professor Banks used it most effectively in his presentation.

WHAT IS RACIAL PROFILING?

I have been using the term *racial profiling* with the assumption that there is reasonably good understanding and consensus about what that is. But it is time to clarify the discussion with a formal definition. I will return to this definition, and compare it with that of other analysts, and distinguish it from similar concepts, like *criminal profiling* and the use of race in suspect descriptions, as well. But for now, I offer the following definition, to be elaborated on later:

> *Racial profiling is the use of race or ethnicity, or proxies thereof, by law enforcement officials as a basis for judgment of criminal suspicion.*

Reasonable people can and do disagree over whether racial profiling is legal, fair, ethical, and effective. And surely it is more or less of all of these depending on the conditions. Nevertheless, public condemnation of racial profiling has been unambiguous. Furthermore, since revelations in the 1990s about its occurrence, law enforcement officials and policymakers have been quick and forceful in disavowing the practice. This condemnation has, in fact, come from the very highest levels of government, with President Bill Clinton stating in June 1999 that racial profiling is "morally indefensible" and "deeply corrosive," and asserting, "It is wrong, it is destructive, and it must stop." His immediate successor, President George W. Bush, declared in February 2001 that racial profiling is "wrong and we will end it in America." Even after the attacks of September 11, 2001, President Bush publicly condemned racial profiling, instructing the Department of Justice to ban the practice in federal law enforcement, although the administration carved out a notable exception for national security (see Chapters 6 and 7 for further discussion).

Indeed, there is legitimate reason for concern about racial profiling, to the extent that it increases the likelihood that disproportionate numbers of minorities will enter the criminal justice system. In other words, *if police pay more attention to (are more likely to stop and/or search) members of some racial or ethnic groups, then regardless of actual criminality or offending rates, those groups will bear a disproportionate share of sanctions.* In a time where millions of Americans are incarcerated, such disproportions can have profound negative effects on minority communities. Additionally, racial profiling will cause disproportionate numbers of *innocent* civilians from those groups to be subjected to stops, searches, and wrongful arrests.

THE HIGH AND HIGHER RATES OF INCARCERATION

There are significant constitutional questions surrounding issues of due process and equal protection that we will consider later. For now we will focus on the current criminal justice climate and on the high rate of incarcerations,

especially of African Americans, that gives many analysts, policymakers, and citizens cause for concern about racial profiling.

The U.S. rate of incarceration has grown dramatically over the last three decades. According to data from the Department of Justice's Bureau of Justice Statistics (BJS), the number of persons in prison or jail has gone from 503,586 (about 0.22% of the U.S. population) in 1980 (Bureau of Justice Statistics, 1995) to 2,266,832 (about 0.73% of the U.S. population) in 2010. An additional 1,338,535 people were on probation or parole in 1980; this number had grown to 4,896,190 in 2010 (Bureau of Justice Statistics, 2008b, 2011a). The statistics are more dramatic when we consider just men: In 1980, 0.28% of men in the United States were incarcerated (Bureau of Justice Statistics, 1995). In 2010, this figure was 1.35% (Bureau of Justice Statistics, 2011a).

The biggest influence on this change has been drug arrests stemming from the "War on Drugs" initiated in the early 1970s with the formation of the U.S. Drug Enforcement Agency (DEA). According to Harris (2002b), "The DEA trained tens of thousands of state and local police officers in the tactics of profiling through Operation Pipeline; these officers then went back to their own departments to train others and to set up specialized drug interdiction units" (p. 38).

Western (2006), in his analysis of punishment in the United States, estimated that the rate of drug-related incarcerations in the United States rose by a factor of about 10 from 1980 to 2001, while the rate for violent and property crimes less than tripled (Western, 2006, p. 22). Noting that there were nearly 1.6 million adult and juvenile drug arrests in the United States in 2001, Western (2006) estimated that about 12% of them led to incarceration, with an average sentence of more than 2 years. The BJS reported that in 2009, 17.8% of state prisoners were sentenced for a drug offense. That same year, a drug offense was the most serious offense for 51% of federal prisoners (Bureau of Justice Statistics, 2011b). In 2010, "drug abuse violations" was the largest single category of arrest in the United States, with 1,638,846 arrests (Federal Bureau of Investigation, 2011). The increase in drug-related arrests has been overwhelmingly driven by a precipitous climb in arrests for possession, as opposed to arrests for sales or manufacture, which have been relatively static over the last two and a half decades (Federal Bureau of Investigation, 2011). As a result, possession arrests are by far the largest share of drug arrests (about 81.9% in 2010). In sum, *the proportion of Americans in some form of custody has grown dramatically over the past three decades, and a large portion of that growth has been due to increased arrests for drug violations.*

A disproportionate number of arrests and incarcerations are from the African American and, to a lesser extent, Latino[2] populations. While Blacks represent

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2. It is difficult to estimate rates of Latino arrests and incarcerations because Latinos are typically counted as Whites in FBI/BJS statistics (hence the references to "non-Hispanic Whites").

approximately 12.5% of the U.S. population, they accounted for 28.2% of those arrested in 2007, and 35.1% of those arrested for drug abuse violations. These disproportions increased during the decades corresponding to the War on Drugs. The BJS reports that the percentage of White and Black adults under correctional supervision (jail, prison, parole, or probation) went from 1.4% of Whites and 5.7% of Blacks in 1986 to 2% of Whites and 9% of Blacks in 1997 (Bureau of Justice Statistics, 1998). This pattern is reflected in the trends over time for incarceration in state and federal prisons presented in Figure 1.1. The figure illustrates two trends: first that, overall, incarcerations were climbing at a steady rate through the 1980s and 1990s, a trend that began in the 1970s with the advent of the War on Drugs; and second that this increase was dramatically disproportionately borne by the Black population. The rates leveled off after 2000 but remained high and disparate. One might be tempted to conclude that the leveling off of these trends indicates an end to bias, but this would be a mistake. In order for the incarceration rates to remain disparate over time, they must be sustained by continuing disparate prison admissions.

There is considerable variation across regions and states in terms of incarceration rates and racial disparities, but the overall pattern is quite clear: A nontrivial proportion of Americans, especially young men, are under correctional
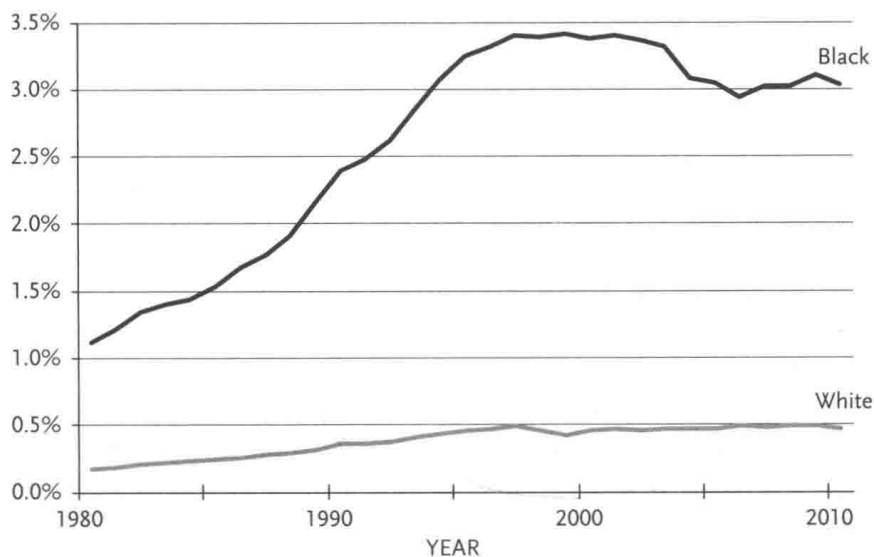

Figure 1.1
Percentage of Black and White American men (aged 18 to 64) serving sentences of 1 year or more in state or federal prison, 1980 to 2010.
Sources: Bureau of Justice Statistics (1996, 2000a, 2000b, 2011a, 2011b, n.d.); U.S. Census data retrieved from IPUMS (King et al., 2010).
Note: For all years but 1998, the BJS provided statistics only for those serving sentences of 1 year or more. For 1998, I interpolated incarceration numbers between 1997 and 1999. Prior to 1999, the BJS included Hispanics in the White category. Accordingly, the percentage of Whites reported in this graph was calculated using all Whites as the denominator prior to 1999 and, from 1999 on, White/non-Hispanic for the prison (numerator) and general population (denominator) counts.

supervision, and that proportion is dramatically higher among minorities, particularly Blacks. The impact is dire; in 2003, the BJS projected that, assuming existing incarceration rates persisted, 5.9% of White men born that year would be incarcerated at some point in their lifetime. For Latinos it would be 17.2%, and for African Americans, 32.2% (Bureau of Justice Statistics, 2003).

WHAT CAUSES THESE DISPARITIES?

An obvious candidate for what could explain these disparities would be higher rates of crime among African Americans. Indeed, the National Crime Victimization Survey (NCVS) indicates that Blacks are identified as perpetrators of crime at relatively high rates. For example, single-offender victimizations in 2006 involved Black offenders 22.4% of the time (Bureau of Justice Statistics, 2008c, Table 40). However, these disparities in offenders reported by victims are insufficient to explain the differences in arrest, conviction, and incarceration rates described earlier, which are considerably larger. Furthermore, it is not clear that these offending rates are relevant to racial profiling.

Racial profiling is most commonly associated with drug law enforcement, and with regard to drug arrests it is harder to find baseline statistics of offending rates against which to compare arrest, prosecution, conviction, and incarceration rates. The NCVS is based on a large annual survey of Americans with regard to crime victimization. Because drug crimes are typically victim*less*, they do not show up in the NCVS. However, survey research on illicit drug use as one indicator of rates of drug law violations indicates that Blacks are not much more likely than others to break drug laws. Specifically, the U.S. Department of Health and Human Services' (2008) National Survey on Drug Use and Health for 2007 found that Blacks were only slightly more likely than Whites to report having used illicit drugs in the preceding month (9.5% and 8.2%, respectively). Johnston, O'Malley, and Bachman (2001), in their report for the National Institute on Drug Abuse, found that, from 1975 to 2000, Black 8th, 10th, and 12th graders consistently reported lower rates of illicit drug use, including crack and methamphetamines, than White and Hispanic youth. This would lead one to expect that Black youth would be arrested for drug abuse violations at a relatively low rate, and yet, according to BJS statistics, Black youth are arrested for drug abuse violations at a significantly higher rate than are White youth (Bureau of Justice Statistics, 2008a, Table 43).

Perhaps the overrepresentation of Blacks (including Black youth) among those arrested has more to do with drug dealing and related offenses like weapons possession, which could be higher among Blacks. Here survey statistics also indicate that Blacks are arrested at rates that are much higher than would be expected based on their behavior. A Centers for Disease Control and Prevention survey of students, the Youth Risk Behavior Survey, found that Black students