

PROGRAMMATIC SUGGESTIONS REGARDING CRIMINAL JUSTICE AND COMMUNITIES OF COLOR

An Update to the 2014 Program Guide

In the wake of a growing number of high-profile deaths of young black men in which police have been involved, ACS would like to provide some helpful background and resources for chapters that wish to conduct programming and activities related to criminal justice and communities of color. In particular, we would like to draw your attention to our 2014 Program Guide, [Brown v. Board and Beyond: Racial Equality in America 50 Years After the Civil Rights Act](#). Section IV “Equality and the Criminal Justice System” provides a helpful examination of case law and reports regarding racial profiling and mass incarceration. ACS has also provided a [Speakers List](#) to which chapters can refer for ideas about possible speakers for their events.

Below are some additional information and resources that you may also find useful in preparing programming.

Background

On July 17, Eric Garner died as the result of a New York City police officer placing him in an illegal chokehold. On August 5, John Crawford was shot and killed by police in an Ohio Walmart, after he picked up an unloaded air rifle that was on display in the store. On August 9, an unarmed Michael Brown was shot to death by a Ferguson, Missouri police officer. On September 10, Darrien Hunt, who was wearing a decorative sword on his back as part of a costume, was shot six times – including four times in the back – by police in Saratoga Springs, Utah and died. In each case the victim was a black man and in each case the prosecutor or grand jury declined to indict the police officers involved in the death, despite serious concerns that these deaths were preventable.

In the absence of state or local prosecution of police, the U.S. Department of Justice has authority under 18 U.S.C. § 242 to prosecute police who deprive a person of “any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.” However, the Supreme Court has limited the scope of the statute by requiring a “specific intent... to deprive a person of a right which has been made specific either by the express terms of the Constitution or laws of the United States.”¹ As a result, a successful prosecution must establish that a police officer intended to deprive the victim of his or her constitutional or statutory right, not just that the officer intended to cause a more generalized harm to the victim.

The Department of Justice may also bring suit against a police department that demonstrates “a pattern or practice of conduct... that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States” under 42 U.S.C. § 14141. Suits under this statute often result in consent decrees pursuant to which police departments agree to take remedial actions and submit to federal monitoring to address systemic constitutional violations. While individual officers face

¹ Screws v. United States, 325 U.S. 91, 104 (1945).

no criminal penalties in these cases, federal monitoring can help to limit future violations. The Justice Department recently entered into negotiations for such an agreement with Cleveland, Ohio, based on [findings](#) that its police department engages in a pattern or practice of excessive use of force.

Racial disparities in policing and criminal justice are not new, but the events of the past six months have served as a tragic reminder of this inequity. According to FBI data, between 2010 and 2012, young Black men were 21 times more likely to be killed by cops than their white counterparts.² FBI data also shows that, while Black Americans make up 13 percent of the US population, they account for 32 percent of victims killed in police shootings.³

The Issues

These events, and the nationwide protests that have developed in response, raise a number of constitutional and policy issues related to disparate racial impacts that are ripe for examination. A few of the issues these events implicate include:

- Racial Profiling (see the recently released revision to DOJ’s [Racial Profiling Guidance](#));
- Overpolicing in communities of color;
- Overmilitarization of police forces;
- Benefits and costs of police use of on-body cameras;
- Reemergence of “[broken windows](#)” policing;
- Use of stop-and-frisk;
- Standards for police use of force;
- Overcriminalization; and
- Role of prosecutors and grand juries.

Underlying all these issues are questions about jurisprudential approaches to equality, as discussed in the 2014 Program Guide.

Resources

In addition to the Program Guide, ACS has a number of other resources for chapters interested in holding programs.

ACS recently held a congressional briefing on Capitol Hill, [Militarization and the Changing Culture of Policing in America](#), hosted by Rep. Hank Johnson (D-GA). The panel provided an analysis of changing policing culture – prompted in part by the availability of federally-provided military equipment – and proposals for greater accountability. Panelists included advocates, academics, and former law enforcement. Additional information regarding police militarization can be found in the ACLU report, [War Comes Home: The Excessive Militarization of American Police](#).

² Ryan Gabrielson, et al., *Deadly Force, in Black and White*, PROPUBLICA (Oct. 14, 2014), available at <http://www.propublica.org/article/deadly-force-in-black-and-white>.

³ Dara Lind, *What we know about who police kill in America*, Vox (Aug. 21, 2014), at <http://www.vox.com/2014/8/21/6051043/how-many-people-killed-police-statistics-homicide-official-black>.

The ACSblog, as well, has recently featured a number of posts touching on a host of policing and criminal justice issues, including:

- [Prosecuting Police Misconduct](#) by Erwin Chemerinsky
- [Attorney General Announces Guidance for Law Enforcement in Response to Ferguson Protests](#) by Thomas Nolan
- [Reforming the Criminal Justice System](#) by Caroline Cox
- [Averting the Next Ferguson](#) by Zoltan Hajnal
- [Seeing Ferguson Through the Lens of Structural Racism](#) by Atiba R. Ellis

Beyond ACS-produced materials, chapters can refer to The Marshall Project, a non-profit, criminal justice-focused news outlet, which provides a brief primer on racial disparities in policing entitled [What We've Learned About Racial Disparity in Policing](#). In addition, the National Association of Criminal Defense Lawyers has a [Grand Jury Resource Page](#) that provides information regarding the role of grand juries and suggestions for reform.

Chapter Events

Recent and upcoming events by lawyer and student chapters around the country include:

- Chicago Lawyer Chapter: [Forum on Chicago Police Accountability](#)
- Chicago-Kent: [Police Militarization Panel](#)
- Columbus Lawyer Chapter & Ohio State: [The Ferguson, MO Series - Panel Discussion of the Constitutional Issues](#)
- Columbus Lawyer Chapter & Ohio State: [The Ferguson, MO Series - Minorities and the Police - Personal Snapshots](#)
- Faulkner: [Hands up! Discussion of Constitutional issues pertaining to Ferguson](#)
- Florida: [Police Brutality - Constitutional Rights Panel](#)
- George Washington: [A Discussion on Police Brutality](#)
- Georgetown: [Ferguson Panel](#)
- Harvard: [Town Hall on Ferguson, MO](#)
- Howard: [Perceptions, Racial Profiling and Policing](#)
- Indiana Maurer: [The Beavercreek Walmart Police Killing](#)
- LSU: [From Ferguson to New Iberia](#)
- Minneapolis-St. Paul Lawyer Chapter: [Pints, Privacy and the Police](#)
- Missouri-Columbia: [Forsaking Ferguson: A Discussion](#)
- North Carolina Lawyer Chapter & UNC: [Policing the Bull City: Race, Class, and Police Accountability in Durham](#)
- Pepperdine: [From Gaza to Ferguson](#)
- Saint Louis: [Ferguson Policy Solutions Workshop](#)
- SMU: [What Should Have Been Said That Day in Ferguson?](#)
- Tulsa: [Racial Injustice in Police Practices](#)

- UT-Austin: [How Do We Police the Police?](#)
- UT-Austin: [Ferguson Speak Out](#)
- Washington-St. Louis: [Legal Observation Training](#)

Other Chapter Activities

Several of our chapters have signed onto press releases, endorsed statements and/or participated in “die-ins,” including [Northwestern](#) and [Yale](#).

ACS will continue to develop materials related to policing and communities of color, which we will circulate to our members as they become available. In the meantime, if you need additional guidance as you prepare your programming, please feel free to contact ACS.

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