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RACE AND THE WAR ON DRUGS: IT'S STORY TIME

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INTRODUCTION

Arthur Colbert, a young black man, was living in Philadelphia where he attended college at Temple University. One night, Arthur was driving around North Philadelphia trying to find his date's house. As he struggled to navigate his way around an unfamiliar neighborhood, the police officers that had been tailing him turned on their lights and their sirens, and pulled Arthur over. On that particular night, the police officers were out looking for a drug dealer who went by the name of Hakim. The police officers pulled Arthur over, suspecting Arthur was Hakim, and immediately escorted Arthur to a nearby abandoned house.

While in the home, Arthur tried to prove to the police officers that he was not Hakim by showing them his driver's license and his Temple University identification card. However, the police officers were still convinced that Arthur was Hakim. In an attempt to force Arthur to admit he was Hakim, one of the officers, without provocation, picked up a two-by-four and started beating Arthur. After that, both officers started hitting Arthur with their flashlights. Eventually, one officer said, "If you don't tell us what we want to know, I'm going to blow your head away. You have three seconds." The officer then cocked his gun and counted down: "Three...two... one." Arthur could not say anything to satisfy their demands. Eventually, the officers let Arthur go. The officers pulled Arthur over a local drug dealer because Arthur, like Hakim, was a young black male.¹

Arthur's experience is far from isolated. From the first drug prohibition in United States in 1875, to modern day drug restrictions, legal scholars now almost uniformly agree that the war on drugs disproportionately affects minorities. Many who oppose the war on drugs rely almost exclusively on statistics that indicate that the war on drugs is really a war on indigent black people and black communities. However, while topically relevant legal

¹ DAVID COLE, NO EQUAL JUSTICE: RACE AND CLASS IN THE AMERICAN CRIMINAL JUSTICE SYSTEM 24 (1999).

academic articles today are stuffed full of statistics, they lack stories from actual victims of racial discrimination caused by the war on drugs. This Note argues that sharing stories of racial discrimination victims more effectively communicates how racist the war on drugs is than mass data. Stories create a neurological connection between storytellers and listeners, while the human mind often greets statistics with immediate skepticism. Section II contains a brief history of various racially motivated drug prohibitions in the United States. Section III describes the racial disparities occurring today because of the war on drugs. Section IV compares storytelling and sharing statistics, and explains why sharing individual accounts of racism bred by the war on drugs is a more effective form of communication when compared to merely citing statistics. Section V is the conclusion.

I. RACIAL AND HISTORICAL UNDERPINNINGS OF THE WAR OF DRUGS

To truly comprehend how racially charged the war on drugs is today, one must examine its historical roots. The United States has often associated certain drugs with racial groups, which produces “racist myths.”² The historical background of the war on drugs demonstrates that the United States has enacted multiple “drug” laws to discriminate against a particular race.

A. Chinese Immigrants and Opium

The first anti-drug law in the United States, like many drug policies today, was enacted to target a race. In 1875, San Francisco city officials passed the first anti-drug law (“Chinese Opium Law”) in the United States.³ The Chinese Opium Law made it illegal to run opium dens; it was a misdemeanor to “maintain . . . or . . . in any way contribute to the support of any place . . . where opium [was] smoked.”⁴ San Francisco city officials

² Kenneth B. Nunn, *Race, Crime and the Pool of Surplus Criminality: Or Why the ‘War on Drugs’ Was a ‘War on Blacks’*, 6 J. GENDER, RACE AND JUSTICE 381, 413–14 (2002).

³ Dale Gieringer, *125th Anniversary of the First U.S. Anti-Drug Law: San Francisco’s Opium Den Ordinance (Nov. 15, 1875)*, DRUG SENSE (Nov. 2000), <http://www.drugsense.org/dpfca/opiumlaw.html#HAWAII> [<http://perma.cc/6FMX-Y68V>].

⁴ *The Opium Dens*, S.F. CHRON. (Nov. 16, 1875), <http://earlydruglaw.files.wordpress.com/2011/02/ordinance-passes.pdf> [<http://perma.cc/WNR-7Y2C>].

passed the Chinese Opium Law because “there [were] within three blocks of the City Hall eight opium smoking establishments, kept by Chinese, for the exclusive use of white men and women.”⁵ City officials were also afraid that “Chinese men were luring white women to have sex in opium dens.”⁶ The Chinese Opium Law went into effect after the gold rush brought thousands of Chinese immigrants to California. While there were only fifty-four Chinese immigrants in California at the beginning of the gold rush in 1849, by 1876, about 116,000 Chinese immigrants had arrived in California.⁷

Towards the beginning of the gold rush, San Francisco city officials and community members generally accepted Chinese immigrants and their habit of smoking opium.⁸ Many local gold miners considered Chinese immigrants hard-working, and would often assign them labor-intensive mining tasks that they avoided.⁹ As long as there was enough work for them to do, local miners welcomed Chinese immigrants.¹⁰ However, as the gold rush slowed and became less profitable in the mid 1850s,¹¹ relations between Chinese immigrants and local Californians deteriorated, and the anti-foreign movement in California began to gain traction with local lawmakers.¹² As work on the gold mines started running out, local California residents started labeling Chinese people as unclean, and accused them of taking jobs from Americans.¹³ As a result, citizens of California encouraged lawmakers to take action against the Chinese immigrants. Lawmakers even seriously considered sending Chinese immigrants back to China on boats, but ultimately decided not to because of how expensive

⁵ *Id.*

⁶ Frederic Block, *Racism's Hidden History in the War on Drugs*, HUFFINGTON POST (Jan. 3, 2013, 2:44 PM), http://www.huffingtonpost.com/judge-frederic-block/war-on-drugs_b_2384624.html [<http://perma.cc/XMH2-HMCX>].

⁷ HENRY K. NORTON, *THE STORY OF CALIFORNIA FROM THE EARLIEST DAYS TO THE PRESENT* 283–296 (A.C. McClurg & Co. ed., 7th ed. 1924), <http://www.sfmuseum.net/hist6/chinhate.html> [<http://perma.cc/733P-75DP>].

⁸ *Id.* at 284–86; Nunn, *supra* note 3, at 283.

⁹ NORTON, *supra* note 7, at 283–96; Nunn, *supra* note 2, at 413.

¹⁰ NORTON, *supra* note 7, at 283–96; Nunn, *supra* note 2, at 413–14.

¹¹ NORTON, *supra* note 7, at 283–96; Gieringer, *supra* note 3.

¹² NORTON, *supra* note 7, at 283–96.

¹³ NORTON, *supra* note 7, at 283–96. Even when the gold rush yielded fewer jobs, Chinese immigrants found work “[g]ardening, farming, laundering, cooking and housework . . . The railroads employed thousands of them and they were engaged to some extent in manufacturing.” *Id.* When America slipped into the Great Depression, whites started blaming the Chinese immigrants for low wages and the nation’s economic downfall. Nunn, *supra* note 2, at 413–14.

such an endeavor would be.¹⁴ Banning opium dens, places where Chinese immigrants met to smoke opium, rather than medicinal opium, a type of opium whites often used, was how San Francisco targeting Chinese immigrants.¹⁵ Later in 1909, Congress passed legislation that banned opium, but allowed “drinking and injecting tinctures of opiates,” a practice that was mostly popular among whites.¹⁶

B. Blacks and Cocaine

Various states and eventually Congress passed legislation that prohibited cocaine, a drug blacks primarily used in the twentieth century.¹⁷ A 1914 article from the New York Times entitled *Negro Cocaine “Fiends” Are a New Southern Menace*¹⁸ explains that when blacks used cocaine at “sniffing parties,” they would commit “wholesale murders.”¹⁹ Indeed, the author describes the effect of cocaine as “the wildest form of insane hallucinations and delusions that characterize acute mania....[The cocaine user] imagines that he hears people taunting or abusing him, and this often incited homicidal attacks upon innocent and unsuspecting victims,” including police officers.²⁰

The article also discusses how cocaine use was limited to blacks because they “couldn’t git [*sic*] nothin’ else.”²¹ Indeed, laws in some southern states banned bars all together to prevent lower class blacks from getting drunk, which resulted in blacks turning to cocaine.²² Although neither whites nor blacks could drink at bars, law makers from the South knew that whites could get their alcohol in other ways, and would “forego

¹⁴ NORTON, *supra* note 7, at 283–92; Nunn, *supra* note 2, at 413.

¹⁵ Gieringer, *supra* note 3.

¹⁶ Block, *supra* note 6.

¹⁷ Block, *supra* note 6.

¹⁸ Edward Williams, *Negro Cocaine “Fiends” Are a New Southern Menace: Murder and Insanity Increasing among Lower Class Blacks Because They Have Taken to “Sniffing” Since Deprived of Whisky by Prohibition*, N.Y. TIMES (Feb. 8, 1914), <http://query.nytimes.com/mem/archive-free/pdf?res=9901E5D61F3BE633A2575BC0A9649C946596D6CF> [<http://perma.cc/87MW-G38S>].

¹⁹ *Id.*

²⁰ *Id.* The author of the article also asserts that, unlike consuming alcohol, using cocaine is especially dangerous because it makes the user a more accurate shot. *Id.*

²¹ *See generally id.* The author refers to cocaine as “a veritable curse to the colored race.” *Id.* When referring to blacks, the author asks, “[w]hy . . . do so many of them do it.” *Id.*

²² *Id.*

the pleasure of leaning against a bar and ‘taking [their] drink...’ just to prevent blacks from drinking alcohol.²³ Police and hospital records show a spike in cocaine use among blacks when alcohol was not available to them because of “the low-class negro’s inability to get his accustomed beverages.”²⁴ Furthermore, cities that strictly enforced alcohol prohibition saw a substantial increase in cocaine usage, whereas such an increase did not occur in cities that took a more relaxed approach to alcohol prohibition.²⁵ Congress purposefully targeted blacks by making cocaine illegal in 1914.²⁶

C. Mexican Immigrants and Marijuana

Just like lawmakers criminalized opium and cocaine to discriminate against Chinese immigrants and blacks, lawmakers banned marijuana to target Mexican immigrants. Hundreds of thousands of Mexican immigrants made their way to the United States in the 1920s.²⁷ By the 1930s, during the Great Depression, locals started accusing Mexican immigrants of taking jobs away from white Americans.²⁸ Mexicans were quickly associated with marijuana,²⁹ and like cocaine, marijuana was advertised as a drug that had

²³ *Supra* note 18.

²⁴ *Id.*

²⁵ *Id.*

²⁶ Block, *supra* note 6.

²⁷ Fatema Gunja, *Race and the War on Drugs*, ACLU: DRUG POLICY LITIGATION PROJECT 2 (May 2003), <https://www.aclu.org/files/FilesPDFs/ACF4F34.pdf> [<http://perma.cc/TSN5-ERS4>].

²⁸ *Id.* at 1; see also PAUL M. GAHLINGER, *ILLEGAL DRUGS: A COMPLETE GUIDE TO THEIR HISTORY, CHEMISTRY, USE AND ABUSE* 61 (2004) (explaining that “the Great Depression of 1929 brought a backlash against Mexicans as an unwelcome labor surplus.”).

²⁹ GAHLINGER, *supra* note 28, at 61. In 1935, a marijuana prohibition advocate wrote in the *Times* that “Marijuana, perhaps now the most insidious of our narcotics, is a direct by-product of unrestricted Mexican immigration . . . Mexican peddlers have been caught distributing sample marijuana cigarets [*sic*] to school children.” Maia Szalavitz, *Blacks, Bias and Marijuana: Did Drug Stigma Contribute to Trayvon Martin’s Death?*, *TIME* (Mar. 27, 2012), <http://healthland.time.com/2012/03/27/did-marijuana-use-sentence-trayvon-martin-to-death/> [<http://perma.cc/HM87-LCLB>]. Harry J. Anslinger, the former commissioner of the Federal Bureau of Narcotics, now known as the Drug Enforcement Agency, made several remarks that associated Mexicans with marijuana. Nick Wing, *Marijuana Prohibition Was Racist From The Start. Not Much Has Changed*, *HUFFINGTON POST* (Jan. 14, 2014), http://www.huffingtonpost.com/2014/01/14/marijuana-prohibition-racist_n_4590190.html [<http://perma.cc/53CE-R6VD>]. For example, Anslinger said that “[t]here are 100,000 total marijuana smokers in the U.S., and most are Negroes,

extreme side effects, including violent tendencies and super strength.³⁰ By 1930, sixteen states in the West had already made marijuana illegal.³¹ By 1937, forty-six out of forty-eight states criminalized marijuana partially because of Harry J. Anslinger's very successful anti-marijuana campaign³². Anslinger, the commissioner of the Federal Bureau of Narcotics, now known as the Drug Enforcement Agency, attributed marijuana use to "murders, suicides, robberies, criminal assaults, holdups, burglaries, and deeds of maniacal insanity."³³ Initially, the federal government responded to marijuana by taxing it in 1937.³⁴ Later in 1952, Congress passed legislation that made possessing marijuana illegal.³⁵

Since the early 1970s, when President Nixon declared "war on drugs," and established the Drug Enforcement Agency,³⁶ the United States has actively fought illicit drugs like cocaine and marijuana.³⁷ Since Nixon's

Hispanics, Filipinos and entertainers. Their Satanic music, jazz and swing result from marijuana use. This marijuana causes white women to seek sexual relations with Negroes, entertainers and any others." *Id.* Anslinger also stated that "[r]eefers makes darkies think they're as good as white men." *Id.*

³⁰ See JAMES SWARTZ, *SUBSTANCE ABUSE IN AMERICA: A DOCUMENTARY AND REFERENCE GUIDE* 18 (2012). One El Paso policeman shared his experience with marijuana users: "I have had almost daily experience with the users of [marijuana] for the reason that when they are addicted to use they become very violent, especially when they become angry and will attack an officer even if a gun is drawn on him, they seem to have no fear; I have also noted that when under the influence of this weed they have abnormal strength and that it will take several men to handle on man where under ordinary circumstances one can handle him with ease." *Id.*

³¹ Gunja, *supra* note 27.

³² Harry J. Anslinger, *Marijuana, Assassin of Youth*, *THE AMERICAN MAGAZINE* (July 1937), <http://www.redhousebooks.com/galleries/assassin.htm> [<http://perma.cc/EA29-C7DL>].

³³ *Id.*

³⁴ *Marijuana Time Line*, PBS FRONTLINE, <http://www.pbs.org/wgbh/pages/frontline/shows/dope/etc/cron.html> [<http://perma.cc/VY35-UYBE>].

³⁵ *Id.*

³⁶ *Timeline: America's War on Drugs*, NPR (April 2, 2007), <http://www.npr.org/templates/story/story.php?storyId=9252490> [<https://perma.cc/WZ33-GRBJ>].

³⁷ Nunn, *supra* note 2, at 387 ("No matter who has occupied the executive branch, the United States has pursued the same overall policies throughout the drug war."). Despite its claim that it ended the war on drugs, the Obama administration merely adjusted its approach. See Sophie Novack & Patrick Reis, *Here's How Obama Plans to Spend \$25 Billion on the War on Drugs*, *NAT'L J.* (Mar. 24, 2014), <http://www.nationaljournal.com/health-care/here-s-how-obama-plans-to-spend-25-billion-on-the-war-on-drugs-20140325> [<http://perma.cc/3APE-Y4KX>]; Jonathan Blanks, *Obama Says He Ended the 'War on Drugs.' Don't Believe Him*, *WASH. POST* (July 18,

declaration, the United States has spent over \$1 trillion to wage the war on drugs.³⁸ In 2015, the United States made more than 1.2 million arrests for mere drug possession.³⁹ From 1980 to 2011, the United States has incarcerated about 25.4 million people for drug-related crimes, a third of which were black.⁴⁰ Despite the vast amount of resources the United States has thrown at the war on drugs, many scholars⁴¹ and politicians on both

2014), <http://www.washingtonpost.com/posteverything/wp/2014/07/18/obama-says-he-ended-the-war-on-drugs-dont-believe-him/> [<http://perma.cc/FP4X-JLRU>]. And President Trump has promised to ruthlessly fight the war on drugs. Christopher Ingraham, *In Trump's 'Ruthless' Vow, Experts See a Return to the Days of the Drug War*, WASH. POST. (Feb. 10, 2017), https://www.washingtonpost.com/news/wonk/wp/2017/02/10/in-trumps-ruthless-vow-experts-see-a-return-to-the-days-of-the-drug-war/?utm_term=.53d3cff73d84.

³⁸ Richard Branson, Opinion, *War on Drugs a Trillion-Dollar Failure*, CNN (Dec. 7, 2012, 6:05 PM), <http://www.cnn.com/2012/12/06/opinion/branson-end-war-on-drugs/>.

³⁹ *Drug War Statistics*, THE DRUG POL'Y ALLIANCE, <http://www.drugpolicy.org/drug-war-statistics> [<http://perma.cc/4LQ5-J7U3>].

⁴⁰ Erik Kain, *The War on Drugs Is a War on Minorities and the Poor*, FORBES (June 28, 2011, 10:07 PM), <http://www.forbes.com/sites/erikkain/2011/06/28/the-war-on-drugs-is-a-war-on-minorities-and-the-poor/> [<http://perma.cc/NVY2-35PK>].

⁴¹ E.g. Kathleen R. Sandy, Commentary, *The Discrimination Inherent in America's Drug War: Hidden Racism Revealed by Examining the Hysteria over Crack*, 54 ALA. L. REV. 665, 665–73 (2003) (labeling the war on drugs as a failure for various economic, social, constitutional, environmental, occupational, educational, and racial reasons); Ross C. Anderson, *We Are All Casualties of Friendly Fire in the War on Drugs*, UTAH B. J. 10, 11 (Nov. 2000) (“The measures of success or failure in our current approach to the war on drugs are really quite simple. If the billions of dollars our nation has spent on source-control and interdiction efforts were a good investment, we would have fewer drugs available, with less purity, at higher cost . . . [and] we would have fewer kids taking drugs. Instead, [our] approach . . . has resulted in just the opposite. And, in the process, we have increased the tax burden on the American people; we have destroyed families, disproportionately African-American and Hispanic; we have ripped apart the lives of hundreds of thousands of our citizens; and we have filled our jails and prisons to the point that the United States [has] the highest incarceration rate in the world. The ‘war on drugs’ . . . has not been a war against drugs. It has been a war against the people of this nation-and against our fundamental freedoms.”); Richard Branson, *The War on Drugs Has Failed, So Let's Shut it Down*, HUFFINGTON POST (Aug. 3, 2014), http://www.huffingtonpost.com/richard-branson/the-war-on-drugs-has-fail_1_b_5439312.html [<http://perma.cc/5Q43-EMH6>] (explaining that the war on drugs is failing because after spending one trillion dollars, and incarcerating millions of people for drug-related crimes, “[r]ates of addiction remain unchanged, overdose deaths are at an all-time high and drugs cost less than ever before.”). Fifty-four percent of Americans today support legalizing marijuana, and “[t]wo out of three Americans think people shouldn't be prosecuted for possession of drugs such as cocaine and heroin.”; *New Pew Pole Confirms Americans Ready to End War on Drugs*, DRUG POL'Y ALLIANCE (April 2,

sides of the isle⁴² today consider the war on drugs a failure. Although legal scholars critique the war on drugs for various legitimate reasons, this Note focuses only on the racial side effects of the war on drugs, which are discussed in the next section.

II. RACIAL BIAS IN TODAY'S WAR ON DRUGS

Most criminal law scholars agree that racial bias influences how the war on drugs is enforced.⁴³ It is difficult to arrive at any other conclusion after examining some of the topically relevant studies and statistics. In 2012, blacks made up just over thirteen percent of the United States' population,⁴⁴ but comprised one-third of all drug-related arrests even though whites do drugs at higher rates than blacks.⁴⁵ Furthermore, black men are almost twelve percent more likely to go to jail for drug offenses than white men.⁴⁶

2014), <http://www.drugpolicy.org/news/2014/04/new-pew-poll-confirms-americans-ready-end-war-drugs> [<http://perma.cc/H4VH-WZ32>].

⁴² See Bill Piper, *The Growing Bipartisan Consensus for Rolling Back the Failed War on Drugs*, HUFFINGTON POST (Oct. 16, 2015), http://www.huffingtonpost.com/bill-piper/war-on-drugs-bipartisan-consensus_b_8311920.html.

⁴³ See Andrew D. Black, *"The War on People": Reframing "The War on Drugs" by Addressing Racism within American Drug Policy Through Restorative Justice and Community Collaboration*, 46 U. LOUISVILLE L. REV. 177, 177-78 (2007) (pointing out that many scholars attribute the disproportionate number of blacks in jail to racism within the war on drugs).

⁴⁴ *U.S. Census Bureau Projections Show a Slower Growing, Older, More Diverse Nation a Half Century from Now*, U.S. CENSUS BUREAU (Dec. 12, 2012), <http://www.census.gov/newsroom/releases/archives/population/cb12-243.html> [<http://perma.cc/87LZ-5RT6>].

⁴⁵ Saki Knafo, *When It Comes to Illegal Drug Use, White America Does the Crime, Black America Gets the Time*, HUFFINGTON POST (Sept. 18, 2013, 10:43 AM), http://www.huffingtonpost.com/2013/09/17/racial-disparity-drug-use_n_3941346.html [<http://perma.cc/4X7Y-MDEY>] (explaining that the only drug blacks use more often than whites is crack cocaine, while "[h]igher percentages of whites have...tried hallucinogens, marijuana, pain relievers like OxyContin, and stimulants like methamphetamine . . ."); *Criminal Justice Fact Sheet*, NAACP, <http://www.naacp.org/pages/criminal-justice-fact-sheet> [<http://perma.cc/N5QN-TW4H>] (reporting that five "times as many Whites are using drugs as African Americans, yet African Americans are sent to prison for drug offenses at 10 times the rate of Whites."); D.J. Sifton, *U.S. Prisons and Racial Profiling: A Covertly Racist Nation Rides a Vicious Cycle*, 20 LAW & INEQ. 53, 61 (2002) (explaining that though blacks only constitute thirteen percent of drug users in the United States, they make up thirty-seven percent of drug-related arrests, fifty five percent of all drug-related convictions, and seventy-four percent of all those in jail because of a drug-related offense).

⁴⁶ *Targeting Blacks Drug Law Enforcement and Race in the United States*, HUMAN RIGHTS WATCH, May 2008, at 3, 45.

The racial disparity in the war on drugs can be even more alarming in certain regions. For example, in Baltimore, police officers arrested 100 times more juvenile blacks for drug-related crimes than whites in 1990.⁴⁷ Forty-two percent of black men in Washington D.C. between the ages of eighteen and thirty-five in 1992 were either in prison, on probation, or on parole partially because of the war on drugs.⁴⁸ Once arrested for possession or use of illegal drugs, blacks are ten times more likely to be imprisoned by judges than are whites.⁴⁹

Studies also show that racial stereotypes influence how minorities are treated in the criminal justice system. For example, in society, many people associate blacks with using and possessing illegal drugs.⁵⁰ Some police officers buy into this stereotype, and therefore are more likely to arrest blacks because police officers monitor blacks' behavior more often and more carefully when compared to whites'.⁵¹ Even judges are susceptible to black stereotypes. While judges are twenty-five percent more likely to deny bail to black prisoners, when the prisoner's crime is specifically drug-related, judges are eighty percent more likely to deny black prisoners bail when compared to similarly situated whites.⁵² Many people also associate Hispanics with illegal drugs in American society.⁵³ Therefore, while judges are twenty-four percent less likely to give Hispanic prisoners the option of bail for all crimes generally, when compared to similarly situated white prisoners, judges are sixty-seven percent more likely to deny Hispanic

⁴⁷ See COLE, *supra* note 1, at 24.

⁴⁸ See Nunn, *supra* note 2, at n.4.

⁴⁹ See HUMAN RIGHTS WATCH, *supra* note 45, at 46.

⁵⁰ Traci Schlesinger, *Racial and Ethnic Disparity in Pretrial Criminal Processing*, 22 JUST. Q. 170, 172 (2005); Nunn, *supra* note 2, at 382; David Rudovsky, Symposium, *Law Enforcement by Stereotypes and Serendipity. Racial Profiling and Stops and Searches without Cause*, 3 U. PA. J. CONST. L. 296, 308 (2001) (explaining that both in and outside of "law enforcement circles," people believe that "African-Americans and other minorities commit a disproportionate number of crimes and, therefore, they are justifiably targeted not only where race is part of a reported criminal incident, but also in situations where police have a wide range of possible targets (e.g., pretextual traffic stops) or where their suspicion of criminal activity would not otherwise justify a stop or search.").

⁵¹ Alfred L. Brophy, *Losing the (Understanding of the Importance of) Race: Evaluating the Significance of Race and the Utility of Reparations*, 80 TEX. L. REV. 911, 916–17 (2002) ("Because of differential enforcement patterns, blacks are imprisoned at a rate greater than they deserve given the offenses they commit. Police commonly look in African American neighborhoods—and at African Americans—with greater scrutiny than they do in white neighborhoods or at whites.").

⁵² Schlesinger, *supra* note 50, at 183–184.

⁵³ *Id.*

prisoners bail if they have allegedly committed a drug-related crime.⁵⁴ Once convicted for a drug offense, blacks on average spend almost fifty-nine months in jail, which is about how long whites on average spend in jail for violent crimes.⁵⁵ This is partially because “prosecutors are twice as likely to pursue a mandatory minimum sentence for blacks” when compared to similarly situated whites.⁵⁶

Michael A. Lawson’s story is especially illustrative of the adverse effects blatantly racist regional police strategies have on blacks. After graduating from Harvard Law School, Michael, a black man, started working as an associate at one of the most prestigious law firms in the country. One of his fellow associates offered to give Michael a ride back to the office in her Mercedes SLC coupe from a social event sponsored by the firm. As their route took them through the Bronx, a police officer pulled them over. The officer said that Michael’s friend was speeding, and asked some odd questions. Eventually, the police officers let them go with just a warning. Michael’s friend was sure she was not speeding, and wondered why the officer pulled them over. Michael, however, was convinced that the police officer pulled them over because she was driving with a black man. Initially, she did not think Michael was correct, but after talking to an acquaintance at the NYPD, she found out that police officers were instructed to pull over black men driving with white women in nice cars in the Bronx based on the suspicion that they were drug dealers.⁵⁷

More recently, even a prosecutor exhibited his racial bias to convince the jury that the defendant, Bongani Charles Calhoun, a black man, was guilty of possessing and dealing cocaine. Calhoun accompanied some of his friends, who were black and Hispanic, on a road trip. Unbeknownst to Calhoun, the purpose of this trip was to buy a large amount of cocaine. To their surprise, the drug dealers they were supposed to buy cocaine from were two Drug Enforcement Agency agents, who arrested Calhoun and his friends when they tried to buy cocaine from them. To charge Calhoun with possessing cocaine with the intent to distribute, the prosecutor had to show that Calhoun went on the road trip with the knowledge that his friends were planning to buy cocaine. If Calhoun adequately demonstrated that he was

⁵⁴ *Id.*

⁵⁵ See NAACP, *supra* note 45.

⁵⁶ *The Drug War, Mass Incarceration and Race*, DRUG POLICY ALLIANCE 1 (Feb. 2014), http://www.drugpolicy.org/sites/default/files/DPA_Fact_Sheet_Drug_War_Mass_Incarceration_and_Race_July2014.pdf [<http://perma.cc/R46A-8S5L>].

⁵⁷ CHARLES J. OGLETREE, JR., *THE PRESUMPTION OF GUILT: THE ARREST OF HENRY LOUIS GATES JR. AND RACE, CLASS, AND CRIME IN AMERICA* 136–38 (2010).

“simply along for the ride,” then he likely would be found not guilty. The night before Calhoun and his friends departed on the trip, Calhoun noticed that his friends had a large bag full of money. Therefore, to prove that Calhoun knew that his friends embarked on their road trip to buy drugs, the prosecutor asked Calhoun: “[y]ou’ve got African-Americans, you’ve got Hispanics, you’ve got a bag full of money. Does...a light bulb [go] off in your head and say, this is a drug deal?”⁵⁸

The racial bias in the war on drugs has led to the mass and disproportionate incarceration of blacks, and “has produced enormously harmful . . . results.”⁵⁹ The war on drugs is sometimes referred to as the “War on Minorities,”⁶⁰ or the “War on the Poor”⁶¹ because of how directly and severely the war on drugs affects indigent people and minorities. For example, many scholars today consider the war on drugs as one of the biggest reasons why so many black children grow up in single-parent homes.⁶² The war on drugs also keeps prices for illegal drugs high, which encourages blacks in urban communities to resort to dealing drugs to make money instead of finding legal sources of employment.⁶³ Those who deal

⁵⁸ Lincoln Caplan, ‘You’ve Got African-Americans, You’ve Got Hispanics’, N.Y. TIMES (Feb. 26, 2013, 1:40 PM), <http://takingnote.blogs.nytimes.com/2013/02/26/youve-got-african-americans-youve-got-hispanics/> [<http://perma.cc/B72C-8KNZ>].

⁵⁹ Kenneth B. Nunn, *Race Crime and the Pool of Surplus Criminality: Or Why the “War on Drugs Was a “War on Blacks”*, 6 J. GENDER RACE & JUST. 381, 383 (2002).

⁶⁰ Kain, *supra* note 40.

⁶¹ *Id.*

⁶² John McWhorter, *Cato’s Letter: How the War on Drugs Is Destroying Black America*, 9 CATO INST. 1, 2 (Winter 2011), <http://www.cato.org/sites/cato.org/files/pubs/pdf/catosletterv9n1.pdf> [<http://perma.cc/GNZ6-HKX3>] (explaining that “[i]n poor and working-class black America, a man and a woman raising their children together is, of all things, an unusual sight” partially because of the war on drugs); Kenneth B. Nunn, *The “Darden Dilemma”: Should African Americans Prosecute Crimes?*, 68 FORDHAM L. REV. 1473, 1481 (2000) (pointing to the war on drugs’s tactic of targeting black men as the reason why black children sometimes grow up without a father and why there are so many black single wives).

⁶³ McWhorter *supra* note 62, at 2. While it is difficult to provide a reliable average wage for drug dealers because of the illegal nature of dealing drugs, it is safe to assume it can be financially profitable to sell drugs, especially when compared to the federally-mandated minimum wage. See Nunn, *supra* note 59 at 383 (claiming that the war on drugs has caused “the loss of earnings and wealth for the African American community.”). Compare Anonymous, *I Went to Law School and Became A Drug Dealer*, BUS. INSIDER (July 20, 2013, 11:49 AM), <http://www.businessinsider.com/i-went-to-law-school-and-became-a-drug-dealer-2013-7> [<http://perma.cc/XL6J-PTCM>] (explaining that as a mid-level drug trafficker, one could make up to \$3,000 per week), *with Wage and Hour Division: Minimum Wage Laws in the States*, U.S. DEPT. LABOR (Aug. 1, 2016),

drugs run the risk of ending up in jail, and, thereby, forgo time and resources they could have used to obtain an education or develop “job skills for legal employment.”⁶⁴ The war on drugs is also one reason why gang violence exists in urban communities,⁶⁵ and why many black teens drop out of high school.⁶⁶ Furthermore, some argue that sending people to jail for drug-related crimes makes them more likely to commit violent crimes and drug-related crimes throughout their entire lives because they have been further exposed to and acquired such behaviors while in prison.⁶⁷ Because of how conclusive the statistics on race and the war on drugs are, the vast majority legal scholars consider the war on drugs a racist war that significantly affects minorities and the indigent. The next section explores storytelling’s role in the legal profession, and how sharing first-hand accounts of racial discrimination should fit into the discussion on race and the war on drugs.

III. UTILIZING STORIES IN LEGAL ACADEMIC WRITING

Legal scholars and media reporters who argue that the war on drugs is a racist endeavor often rely exclusively statistics to support their assertions.⁶⁸ However, many academic articles do not incorporate personal accounts of people who have actually experienced the racist side effects of the United States’ failing war on drugs. This Note asserts that while statistics are helpful for understanding how widespread racism is within the war on drugs, inserting stories into legal academic articles would help readers experience the racial effects of the war on drugs for themselves.

<http://www.dol.gov/whd/minwage/america.htm#Utah>, archived at <http://perma.cc/64P2-XXS3> (stating that the federal minimum wage is \$7.25, which is \$290 per week for full-time workers).

⁶⁴ McWhorter, *supra* note 62, at 2.

⁶⁵ *Id.* at 3.

⁶⁶ *Id.* at 4.

⁶⁷ Samuel R. Wiseman, *Pretrial Detention and the Right to be Monitored*, 123 YALE L. J. 1344, 1354 (2014).

⁶⁸ Sandy, *supra* note 41, at 665–673 (citing numerous facts and statistics in an attempt to persuade supporters of the war on drugs to reconsider their position); Black, *supra* note 41, at 177 (opening the article with several statistics on race and the war on drugs while failing to include any relevant stories); Nunn, *supra* note 2 (supporting assertions about race and the war on drugs mostly with statistics and facts); Kain, *supra* note 40 (citing eight sets of facts and statistics to support ending the war on drugs); Jonathan Rothwell, *How the War on Drugs Damages Black Social Mobility*, BROOKINGS (Sept. 30, 2014), <http://www.brookings.edu/blogs/social-mobility-memos/posts/2014/09/30-war-on-drugs-black-social-mobility-rothwell> [<http://perma.cc/S589-JQDW>] (referring to a variety of statistics that show how the war on drugs disproportionately affects blacks).

This Note also argues that by sharing stories in legal academic articles, authors will better generate empathy in their readers, which will prompt readers to act against the racism within the context of the war on drugs. The next section describes the legal narrative movement, and its role in changing the method by which academics and practicing lawyers alike now utilize storytelling.

A. Background to Stories in Legal Academia: The Legal Narrative Movement

In the late eighties and early nineties, many legal scholars started arguing that the legal academic community should include stories⁶⁹ of people who “have experienced discrimination” because they “speak with a special voice to which [legal academics] should listen.”⁷⁰ Before this legal narrative movement began, the ivory tower of legal scholarship had almost completely rejected stories of those outside of the legal community, or those from “the bottom” of social, racial, and economic rankings.⁷¹ The legal narrative movement exposed the legal community to specific acts of gender and race based discrimination,⁷² and “enriched understandings of the

⁶⁹ Nancy Levit, *Reshaping the Narrative Debate*, 34 SEATTLE U. L. REV. 751, 753 (2011); e.g. Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411 (1988); Kathryn Abrams, *Hearing the Call of Stories*, 79 CALIF. L. REV. 971 (1991).

⁷⁰ Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323, 324–26 (1987).

⁷¹ See *Id.* at 325–26 (“Looking to the bottom for ideas about law will tap a valuable source previously overlooked by legal philosophers.”).

⁷² E.g. Abrams, *supra* note 69 (breaking down the elements of Susan Estrich’s personal narrative about being raped by her husband); Ruth Ginsburg, *Women at the Bar—A Generation of Change*, 2 U. PUGET SOUND L. REV. 1, 4 (1978), reprinted in 34 SEATTLE U. L. REV. 649 (2011). (recounting her law school peers and teachers asking her “what [she was] doing in law school occupying a seat that could be held by a man.”); David A. Harris, *The Stories, the Statistics, and the Law: Why “Driving While Black” Matters*, 84 MINN. L. REV. 265 (1999) (including an excerpt from an interview with a black man who had been striped searched during a pretextual police stop); Richard Delgado, *Rodrigo’s Chronicle*, 101 YALE L.J. 1357 (1992) (filling an entire law review article with the author’s personal experience with affirmative action policies). While legal academic articles about race and the war on drugs often do not include stories, some newspaper articles and websites present stories of those who have suffered because of the racial bias inherent in the war on drugs. See e.g., Jenny Deam, *He’s No Longer a Prisoner of the War on Drugs*, L.A. TIMES (Sept. 26, 2014, 3:00 AM), <http://www.latimes.com/nation/great-reads/la-na-cl-billy-wheelock-drug-war-20140926-story.html#page=1> [<http://perma.cc/XS3Q-RJUX>] (describing a man who was recently released from jail after receiving a lifetime sentence for cocaine possession); *Race and*

situations of disempowered people.”⁷³ However, opponents of the legal narrative movement argued that stories should not be included in legal academic work because they considered stories unreliable, isolated, subjective, one-sided, and emotionally charged.⁷⁴ Regardless, the legal narrative movement taught legal scholars that sharing stories helps readers comprehend and mentally experience the effects of gender and racial discrimination. Indeed, “[s]torytelling became part of a reconstructive project of reimagining law.”⁷⁵

Certain aspects of modern legal academia prove that the narrative movement at least partially achieved its goal of unleashing the voices of many victims of discrimination. Legal scholars started including stories into their articles and books, judges began putting stories into their opinions, and legislators started reciting stories to better illustrate their position on certain issues.⁷⁶ Law professors even started to incorporate stories in their lectures⁷⁷ because lawyers, like storytellers, must construe the facts of any given case in a persuasive manner; their audience becomes the judge and jury.⁷⁸ While the legal community largely embraces storytelling as method by which both practicing lawyers and academics can demonstrate authentic discrimination in many contexts, scholarly articles and media outlets still focus largely on statistics and research to prove that the war on drugs

Bail in America, PRETRIAL JUSTICE INSTITUTE, <http://projects.pretrial.org/racialjustice/> (sharing many stories of minorities who have suffered in pretrial detention because of their race).

⁷³ Levit, *supra* note 69, at 754.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.* at 755; *see, e.g.*, Ginsburg, *supra* note 72; Delgado, *supra* note 72.

⁷⁷ *See* William M. Sullivan et al., *Educating Lawyers: Preparation for the Profession of Law*, CARNEGIE FOUND. FOR THE ADVANCEMENT OF TEACHING 5–6 (2007), http://www.carnegiefoundation.org/sites/default/files/publications/elibrary_pdf_632.pdf [<http://perma.cc/4TAF-SNLD>] (explaining that law students today focus on the facts of any given case to learn legal principles).

⁷⁸ *See* JONATHAN GOTTSCHALL, *THE STORYTELLING ANIMAL: HOW STORIES MAKE US HUMAN* 117–18 (2012). A prosecutor by the name of Brad Leventhal utilized his storytelling ability in a murder trial, presenting his opening statement as a story: “It was a bright, sunny, clear, brisk fall morning, and on that brisk fall morning, a young man, a young orthodontist by the name of Daniel Malakov, was waking down 6th Road in the Forest Hills section of Queens County just a few miles from where we are right now. With him was his little girl, his four-year-old daughter, Michelle...As Daniel stood outside the entrance to Annadale Playground, just feet from the entrance to that park, just feet from where his little girl stood, the defendant Mikhail Mallayev stepped out as if from nowhere. In his hand he had a loaded and operable pistol.” *Id.* The prosecutor won in part because of his storytelling skills. *Id.*

discriminatorily targets minorities. The next section examines the neurological effects of storytelling, and whether storytelling is a viable and persuasive form of communication in the legal community.

B. How Effective Is Storytelling from a Neurological Standpoint?

From a neurological viewpoint, storytelling is one of the most effective ways of communicating.⁷⁹ Indeed, neurological studies demonstrate that storytelling not only excites the human brain, but also “changes how [humans] act in life.”⁸⁰ Many scholars assert that part of being human is listening to and telling stories⁸¹ because people “dream in narrative, daydream in narrative, remember, anticipate, hope, despair, doubt, plan, revise, criticize [*sic*], construct, gossip, learn, hate and live by narrative.”⁸²

There are many reasons why storytelling is an effective method of communication, one being that people easily understand stories. People comprehend stories well because the human mind is designed to spot and

⁷⁹ See *id.* (asserting that many ancient texts, whether religious or not, are stories); JACK ZIPES, *THE IRRESISTIBLE FAIRY TALE: THE CULTURAL AND SOCIAL HISTORY OF A GENRE 2* (2012) (“Though many ancient tales might seem magical, miraculous, fanciful, superstitious, or unreal to us, people believed them, and these people were and are not much different from people today who believe in religions, miracles, cults, nations, and notions such as ‘free’ democracies that have little basis in reality.”); see L. Michael White, *Important of the Oral Tradition*, PBS FRONTLINE (April 1998), <http://www.pbs.org/wgbh/pages/frontline/shows/religion/story/oral.html> [<http://perma.cc/3DEF-V2MV>] (stating that storytelling was a prominent form of communication among early Christians).

⁸⁰ Annie Paul, *Your Brain on Fiction*, N.Y. TIMES (Mar. 17, 2012), <http://www.nytimes.com/2012/03/18/opinion/sunday/the-neuroscience-of-your-brain-on-fiction.html> [<http://perma.cc/CD5R-9SR4>].

⁸¹ GOTTSCHALL, *supra* note 78, at 15 (“Humans are creatures of story, so story touches nearly every aspect of our lives.”); Bret Rappaport, *Tapping the Human Adaptive Origins of Storytelling by Requiring Legal Writing Students to Read a Novel in Order to Appreciate How Character, Setting, Plot, Theme, and Tone (CSPTT) Are as Important as IRAC*, 25 T.M. COOLEY L. REV. 267, 268 (2008); John Bickle & Dean Keating, *Storytelling 2.0: When New Narratives Meet Old Brains*, CULTURE LAB (Nov. 16, 2010, 2:22 PM), <http://www.newscientist.com/blogs/culturelab/2010/11/storytelling-20-when-new-narratives-meet-old-brains.html> [<http://perma.cc/59ZP-5UV2>] (asserting that humans create themselves through narratives).

⁸² Rappaport, *supra* note 81, at 268.

understand patterns.⁸³ Indeed, when people hear a story, it is nearly neurologically impossible for the human mind not to recognize patterns and create mental images that parallel the events in the story.⁸⁴ Another reason why storytelling is a successful way of communication is because stories are easy for people to remember. When people hear stories, the brain creates images that it later saves in the mind's memory.⁸⁵ Images become symbols when they are stored, which makes them easier to recall.⁸⁶ Indeed, "humans retain only 20% of what they read, but they recall 80% of symbols."⁸⁷ Neurological studies show that storytelling is an engaging method of communication because it stimulates many different regions of the brain such as the sensory, motor, olfactory, visual, and auditory cortexes.⁸⁸ But what makes storytelling especially powerful in both the academic and practical groups of the legal community is the fact that storytelling rouses "both the rational (the frontal cortex) and the emotional (midbrain neural centers) parts of the brain."⁸⁹ Additionally, stories are also easy for people to relate to because they often include human characters that experience familiar emotions.⁹⁰ Thus, listening to or reading stories creates an emotional bond between the characters and the reader, which "encourage[s] empathetic imagination."⁹¹

For example, in one study ("Zak's Study"), volunteers were asked to watch a short and simple video about a fictional father and his two-year-old son, Ben.⁹² The narrator explained that Ben, although happy and very

⁸³ GOTTSCHALL, *supra* note 78, at 3; Paul J. Zak, *Why Your Brain Loves Storytelling*, HARV. BUS. REV. (Oct. 28, 2014), <https://hbr.org/2014/10/why-your-brain-loves-good-storytelling> [<https://perma.cc/U7SA-ZDBC>].

⁸⁴ GOTTSCHALL, *supra* note 77, at 3; Paul, *supra* note 79.

⁸⁵ Michael Berman, *A Few Words on Story-Telling*, HUMANIZING LANGUAGE TEACHING (May 2003), <http://www.hltmag.co.uk/may03/pubs4.htm> [<http://perma.cc/CQ8W-UHYY>].

⁸⁶ *Id.*; Levit, *supra* note 68, at 759.

⁸⁷ Levit, *supra* note 68, at 759.

⁸⁸ Paul, *supra* note 79.

⁸⁹ Levit, *supra* note 68, at 759.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² Paul J. Zak, *Empathy, Neurochemistry, and the Dramatic Arc*, YOUTUBE (Oct. 1, 2012), [http://www.youtube.com/watch?v=dSyyAcrsnT4&spfreload=10%20Message%3A%20Unexpected%20end%20of%20input%20\(url%3A%20http%3A%2F%2Fwww.youtube.com%2Fwatch%3Fv%3DdSyyAcrsnT4\)](http://www.youtube.com/watch?v=dSyyAcrsnT4&spfreload=10%20Message%3A%20Unexpected%20end%20of%20input%20(url%3A%20http%3A%2F%2Fwww.youtube.com%2Fwatch%3Fv%3DdSyyAcrsnT4)). A brief synopsis of the film and Zak's findings is available at the following URL: <http://futureofstorytelling.org/video/empathy-neurochemistry-and-the-dramatic-arc/> [<http://perma.cc/83WM-RNHH>]. Zak's results are consistent with the

playful, was terminally ill with brain cancer. The father couldn't bring himself to play with Ben because he, unlike Ben, knew that Ben would be dead in a few months.⁹³ After volunteers watched the video, their blood showed a significant increase in cortisol and oxytocin, neurochemicals associated with empathy.⁹⁴ The volunteers' empathetic reaction translated into action—at the end of the video, many participants who experienced higher levels of cortisol and oxytocin chose to donate some of the money they received for participating in the study to various charities.⁹⁵ In fact, the amount of cortisol and oxytocin people experienced after watching the video directly correlated to the number of dollars people would donate to charity.⁹⁶ However, participants were much less likely to donate their money to charities when they watched a video that did not reveal that Ben was terminally sick with brain cancer, but merely portrayed Ben and his father enjoying a day at the zoo.⁹⁷ Zak's Study shows that storytelling is a powerful method of communication for neurological reasons—telling a story generates empathy, which often prompts people to act on the message they've heard or read. Zak's Study also found that when people hear a set of facts, they tend not to have the same neurological response, and therefore do not act. The next section compares the neurological effects of reading or hearing facts and statistics with the effects of reading or listening to a story.

results of similar studies. *E.g.* Joshua Gowin, *Why Sharing Stories Brings People Together: Our Brains Sync up When We Tell Stories*, PSYCHOLOGY TODAY; YOU, ILLUMINATED (June 6, 2011), <http://www.psychologytoday.com/blog/you-illuminated/201106/why-sharing-stories-brings-people-together> [<http://perma.cc/369E-C2SR>] (showing that storytelling generates empathy in listeners because as people “listen to stories and understand them, [they] experience the exact same brain pattern as the person telling the story”; listeners' brains literally experience the events of the story). Research on this subject is so conclusive that the Department of Defense is planning on using storytelling to influence foreign citizens' behavior, and thereby prevent international conflicts. Nina Laramore, *Studying 'the Brain on Story'*, THE PRESS DEMOCRAT: SANTA ROSA (Aug. 31, 2012), <http://santarosa.towns.pressdemocrat.com/2012/08/news/studying-the-brain-on-story/> [<http://perma.cc/7M6V-QU9H>] (using fifteen years of research to conclude that “humans are evolutionarily hardwired to understand and make sense of information when it is presented in story form.”).

⁹³ Zak, *supra* note 91.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

C. The Effectiveness of Hearing Statistics and Facts from a Neurological Standpoint

As mentioned previously, when people listen to or read well-crafted stories, they experience empathy, and as a result, desire to act on the story they've heard.⁹⁸ However, when a story is merely a group of related facts or a timeline of events, people do not have a similar empathetic reaction.⁹⁹ Reading or hearing statistics does not affect the human brain in the same way listening to or reading a story does. Unlike storytelling, listening to or reading statistics and facts mainly excites two regions of the brain, Wernicke's area and Broca's area, both of which deal with language comprehension.¹⁰⁰ Problems in understanding can occur when the brain attempts to sift through too many facts at once.¹⁰¹ Furthermore, listening to a set of facts doesn't automatically paint an image in the mind because hearing statistics or facts doesn't stimulate the sensory, motor, olfactory, visual, or auditory cortex like stories can.¹⁰² Without generating a mental image, delivering messages full of facts and statistics are not as understandable, persuasive, memorable, and are not as likely to generate empathy and change when compared to stories.¹⁰³ Although legal scholars at first thought stories did not have a place in legal writing because of their unreliability, research now shows the exact opposite—people's minds initially tend to trust stories more than statistics. When the brain examines facts and statistics, it “moves into analytical mode,” which prompts people to question the validity and source of the data.¹⁰⁴

⁹⁸ Zak, *supra* note 91.

⁹⁹ *See id.* “By contrast, stories that fail to follow the dramatic arc of rising action/climax/denouement—no matter how outwardly happy or pleasant those stories may be—elicit little if any emotional or chemical response, and correspond to a similar absence of action.” *Id.*

¹⁰⁰ Paul, *supra* note 79.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ Zak, *supra* note 91; Goodman, *infra* note 106.

¹⁰⁴ Jodi Bepler, *The Science Behind Storytelling*, GET STORIED (Nov. 2, 2015), <https://storyu.net/science/the-science-behind-storytelling/> [<https://perma.cc/CJ7W-E953>]; *see also* John Allen Paulos, *Stories vs. Statistics*, N.Y. TIMES: THE STONE (Oct. 24, 2010, 5:15 PM), http://opinionator.blogs.nytimes.com/2010/10/24/stories-vs-statistics/?_php=true&_type=blogs&_r=0 [<http://perma.cc/R6ZL-3SWZ>] (“In listening to stories we tend to suspend disbelief in order to be entertained, whereas in evaluating statistics we generally have an opposite inclination to suspend belief in order not to be beguiled.”).

A study (“Save the Children Study”), much like Zak’s Study, shows that people are much more likely to act after listening to a story than hearing a set of statistics and facts.¹⁰⁵ The Save the Children Study offered college students five one-dollar bills for completing a short survey.¹⁰⁶ Upon completing the survey, students picked up an envelope that contained five one-dollar bills.¹⁰⁷ However, the envelope also contained a letter from Save the Children, a charitable organization that provides various forms of relief to children in Africa.¹⁰⁸ The envelope contained one of two versions of the letter: one version provided information and statistics on poverty, hunger, and displacement in various African countries.¹⁰⁹ The other version contained a story about Rokia,¹¹⁰ a seven-year-old girl from Mali, who would inevitably perish unless she received food and basic medical care that the participant’s donation would facilitate.¹¹¹ Those who received the letter containing facts and statistics about poverty and hunger in Africa on average donated \$1.14, while those who received Rokia’s story on average donated \$2.38.¹¹² The Save the Children Study shows that “people relate more to personal stories than to numbers, and when the numbers are particularly large (e.g., millions displaced and going hungry), [people] simply cannot relate and instead look the other way.”¹¹³ While statistics are useful in some circumstances,¹¹⁴ to truly engage readers and listeners on a neurological level, thereby producing empathy and effectuating change, storytelling is the best way of communication. The next section explains why storytelling, rather than presenting statistics, is a better way to discuss racism within the context of the war on drugs.

¹⁰⁵ Andy Goodman, *Stories or Data: Which Makes the Stronger Case?*, CONTRIBUTIONS MAG., <http://www.contributionsmagazine.com/featured/storiesordata.html> [<http://perma.cc/RNP8-D79U>].

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ To view a similar solicitation in video format, visit Save the Children, *One Child (TV Advert)*, YOUTUBE (Jan. 13, 2012), <http://www.youtube.com/watch?v=99pQ0KJfdoE>.

¹¹¹ Goodman, *supra* note 104.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *E.g.*, DAVID WEISBURD & CHESTER BRITT, STATISTICS IN CRIMINAL JUSTICE 3–4, (2007) (explaining that legal scholars in criminal law use statistics often “to provide a comprehensive portrait of a large group of [criminal] offenders.”).

D. Legal Scholars Should Use Stories to Address Racism in the War on Drugs

As previously mentioned, legal scholars and media reporters today almost exclusively use statistics and facts to demonstrate that racism is inherent in the war on drugs.¹¹⁵ While using statistics can certainly demonstrate how pervasive racism is within the war on drugs, sharing stories of specific acts of racism is a better way of generating empathy and action among readers. To truly address racism in the war on drugs, legal scholars must incorporate the stories of those who have actually experienced racial discrimination. Unless legal scholars have experienced racial bias themselves, they should reach out to the “organic intellectuals” or those who have “concrete experience of oppression.”¹¹⁶ Those who have not experienced racial discrimination within the war on drugs context cannot “recreate the experience of the life on the bottom” with statistics accurately or deeply enough to neurologically connect with the reader or listener.¹¹⁷ Without this connection, readers and listeners will react to racism in the war on drugs just like those in Zak’s Study reacted: their brains will not experience an increase of cortisol or oxytocin, and people will therefore do nothing as a result of the information they have received.¹¹⁸ Furthermore, statistics and facts slip from readers’ minds much easier than stories do, meaning that no matter how compelling statistics on racial bias in the war on drugs may appear, people are much more likely forget them, and do nothing as a result of reading them.¹¹⁹ Conversely, sharing stories of people who have actually felt the effects of racial discrimination in relation to the war on drugs would create images in the readers’ minds that are much easier to recall than statistics.¹²⁰ Listeners or readers are also much more likely to take an analytical stance towards statistics on race within the war on drugs context, making it more likely for readers to question and ultimately reject studies on race and the war on drugs even if the statistics do have merit.¹²¹ On the other hand, people are much more likely to listen to stories of those who have suffered from racial discrimination rather than question their validity because human brains are designed to listen to stories, empathize with the victim, and then act to support the victim.¹²²

¹¹⁵ *Supra* note 66.

¹¹⁶ Matsuda, *supra* note 69, at 325.

¹¹⁷ *Id.*

¹¹⁸ Zak, *supra* note 91.

¹¹⁹ Berman, *supra* note 84.

¹²⁰ *Id.*

¹²¹ Paul, *supra* note 79.

¹²² *Id.*; *see also* note 93 & 107.

CONCLUSION

I would like to conclude this Note how I started it: with a story. A man whom Tonya Drake barely knew approached her and asked her to send a package for him. He offered to give her \$100 to cover the package's shipping cost, and as payment, he would allow her to keep the change. Even though Tonya thought that the package contained drugs, she sent it anyway because, as a financially struggling twenty-five-year-old mother of four on welfare, she desperately needed the money to provide for her family. Because the package contained crack cocaine as opposed to powder cocaine, after the police arrested Tonya, she received a mandatory minimum sentence of ten years in jail even though her only prior offenses were traffic violations. After the judge sentenced her, he said, "[t]his woman doesn't belong in prison for 10 years for what I understand she did. That's just crazy, but there's nothing I can do about it." If the package had contained powder cocaine, Tonya would have been guilty of a crime with no minimum prison sentence. By amplifying the punishments typically given to crack-using blacks, Congress has effectually made it so whites receive a less severe punishment than blacks for essentially the same criminal act because whites almost exclusively use powder cocaine, and hardly use crack cocaine. As egregious as all of the statistics about race and the war on drugs are, they are nowhere as significant as the injustice Tonya experienced on the day she sent that package.¹²³

Generally, legal scholars today agree that the war on drugs is not only a complete failure, but a racist undertaking. Those who are against the war on drugs present a large variety of facts and statistics to demonstrate how pervasively racist the war on drugs truly is. While many studies on race within the war on drugs have merit, this Note asserts that legal commentators may more fully convince their readers of the racial side effects of the war on drugs by sharing the stories of victims of racial discrimination. When compared to statistics, stories are neurologically more memorable, persuasive, and are more likely to cause readers to act on the message that they have heard or read. The brain greets statistics with immediate disbelief and skepticism, making it harder for people to emotionally relate to and connect with statistics. While there are benefits to using statistics and facts, legal scholars will more likely influence the racist policies within the war on drugs by sharing stories.

¹²³ COLE, *supra* note 1, at 141–42.