

The background image shows a cityscape with a large cable-stayed bridge in the distance, spanning a body of water. In the foreground, there are dense, multi-story residential buildings, likely in San Francisco, with a hillside visible in the background. The image is darkened to make the white text stand out.

Examining Racial Bias at the Intersection of Housing and Policing

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MCLE Spectacular 2020

Contra Costa Bar Association

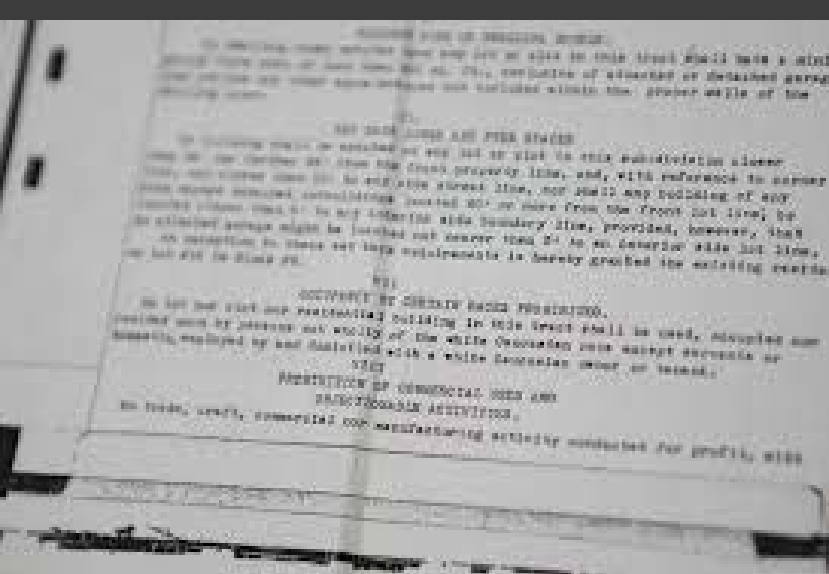


Agenda

1. Historical Overview of Racial Bias in Housing
 - a. Harms
 - b. Laws adopted in response
 - c. Critique of traditional framing of that time period
2. Current Police Practices Contributing to Racial Inequity in Housing
 - a. Drawing Police District Lines
 - b. Special Police Units
 - c. Policing Boundaries
 - d. Tenant Criminal Record Screening
 - e. “Crime-Free” Ordinances, Policies, and Practices
3. Q&A

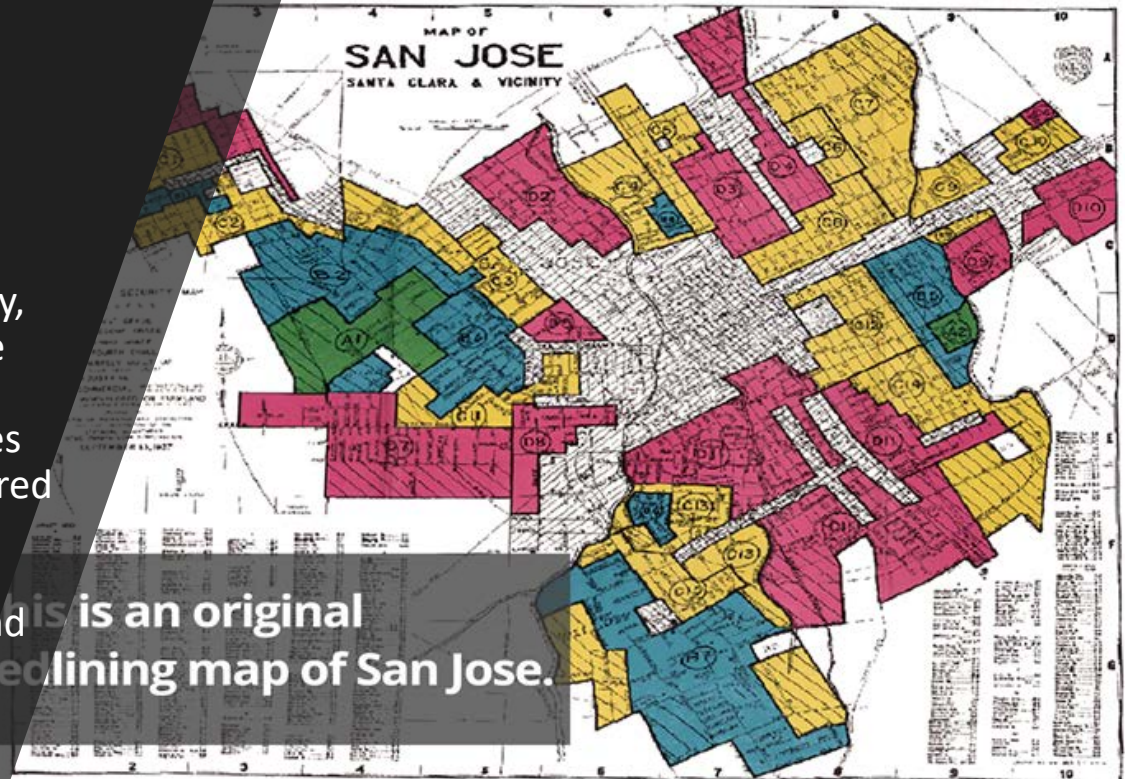
A History of Housing Segregation

- Racial violence
 - NY: “Soon after moving to the 19th Ward in 1979, Otis Poindexter found racist slurs chalked on the walk up to his front door. Two years later, Poindexter awoke to his home covered in spray-painted slurs.”
- The construction of segregated housing
- Racially restrictive covenants
 - 1945, Berkeley’s Claremont neighborhood, African-American physician DeWitt Buckingham
- Racially motivated residential steering by landlords and realtors
- Blockbusting: As Black people started moving to the neighborhood, realtors would buy cheaply from whites by saying property values were declining, and then turn around and sell to middle-class Black people at a profit.



A History of Housing Segregation

- Exclusionary zoning: “a method whereby municipalities’ zoning regulations require large lot sizes, square-footage minimums for buildings, or occupancy restrictions that make property unaffordable to or impractical for use by poor people or those who live with large or extended families.”
 - Berkeley, CA: This was the first U.S. city to implement single-family zoning. Elmwood neighborhood in 1916.
- Redlining: The Home Owners' Loan Corporation (HOLC), a federal agency, gave neighborhoods ratings to guide investment. Neighborhoods predominantly home to communities of color were marked hazardous by red on the maps. This made it hard for residents to get loans for homeownership or maintenance, and led to cycles of disinvestment.



Federal Fair Housing Law

- *Shelley v. Kraemer* (1948) 334 U.S. 1, held that racially restrictive covenants are not enforceable because they violate the Fourteenth Amendment right to equal protection under the law.
- Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color or national origin in programs and activities receiving federal financial assistance.
- Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), amended 1988, prohibits discrimination in the sale, rental and financing of dwellings, and in other housing-related transactions, based on race and other protected categories.
- *Jones v. Alfred H. Mayer Co.* (1968) 392 U.S. 409, held the 1866 Civil Rights Act, which bars racial discrimination with respect to citizen's property rights, is an exercise of Congress's power under the Thirteenth Amendment to abolish badges and incidents of slavery.
- Section 109 of Title I of the Housing and Community Development Act of 1974 prohibits discrimination on the basis of race, color, or national origin in community development block grant [CDBG] programs. Sections 104(b) and 106 (d) (5) specifically require CDBG Program grantees to certify that they will affirmatively further fair housing.
- Equal Credit Opportunity Act of 1974 prohibits discrimination in lending based on race, color, or national origin, sex, marital status, age, receipt of public assistance or the exercise of any right under the Consumer Credit Protection Act.
- Community Reinvestment Act (CRA) of 1977 encourages certain insured depository institutions to help meet the credit needs of the communities in which they are chartered, including low- and moderate-income (LMI) neighborhoods, consistent with the safe and sound operation of such institutions.



California Fair Housing Law

- Violations of the anti-discrimination law include the following:
- Refusal to sell, rent, or lease rooms, apartments, condos or houses to protected individuals

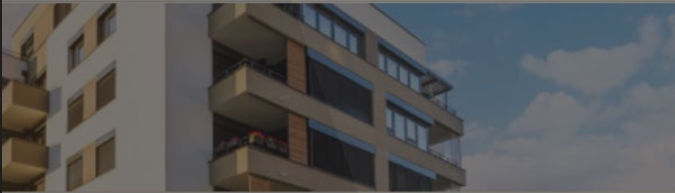
California Department of
Employment and Housing

Complaints PRA Obtain Dispute Resources Legal Search
Request Right- Resolution Info




What Discrimination Looks Like

- Refusal to negotiate for the sale, rental, or lease of housing
- Representation that a housing accommodation is not available for inspection, sale, or rental when it is in fact available
- Denial of a home loan or homeowner's insurance
- Cancellation or termination of a sale or rental agreement
- Policies, practices, terms, or conditions that result in unequal access to housing or housing-related services



What is Protected

- Offering inferior terms, conditions, privileges, facilities or services in connection with the housing accommodation
- Sexual harassment involving unwanted sexual advances or requiring sexual favors for housing rights or privileges
- Refusal to permit, at a disabled tenant's expense, reasonable modifications when necessary to accommodate a disability



Available Remedies

- Refusal to make reasonable accommodations in housing rules, policies, practices, or services where necessary to afford a disabled person equal opportunity to use and enjoy a dwelling
- Retaliation against someone filing a complaint
- Overly restrictive rules limiting the activities of daily life for families with children, including where children are allowed to play

The Traditional Framing of the Civil Rights Movement

- Bryan Stevenson: “I hear people talking about the civil rights movement and it sounds like a three-day carnival.”
- “On day one, Rosa Parks did not give up her seat on the bus. On day two, Martin Luther King led a march in Washington. And on day three, we just changed all the laws.”
- “The reality is that for decades, we humiliated people regularly.”





The Traditional Framing of the Civil Rights Movement



- Michael W. Kraus, Julian M. Rucker, and Jennifer A. Richeson (2017) found
 - Both White and Black Americans showed a tendency to overestimate current racial economic equality.
 - A significant status divide exists in the magnitude of these misperceptions: high-income White Americans' overestimates of current racial economic equality were larger than those generated by low-income White Americans and by Black Americans across the income distribution.
 - Inducing participants (mostly White) to think about Black individuals and families that are similar to themselves and their own families increases the tendency to overestimate racial equality, whereas increasing the salience of societal racial discrimination reduces it.
 - The tendency to overestimate racial economic equality is likely shaped by both motivational and structural factors that lead people to deny and/or remain unaware of the ways in which race continues to shape economic outcomes in contemporary society.
- Ivuoma Ngozi Onyeador et al. (2020) found
 - Reminding White Americans about the persistence of racial disparities produced smaller overestimates of how much progress had been made toward racial economic equality between 1963 and 2016.
 - ⚠️ Participants who read about disparities assessed the past as more equitable than participants who did not. ⚠️
- Economic inequality today: the average Black family earns just 60 percent of what the average white family earns and has a tenth the net worth. That gap has scarcely budged since the 1960s.
- De facto racial segregation

The Traditional Framing of the Civil Rights Movement

- **The constitutional guarantee of equal protection under the law**
 - *Washington v. Davis* (1976) 426 U.S. 229, 242, held that a racially disproportionate “is not the sole touchstone of an invidious racial discrimination forbidden by the Constitution. Standing alone, it does not trigger” strict scrutiny.
 - *Personnel Administrator of Massachusetts v. Feeney* (1979) 442 U.S. 256, 279, held that “[d]iscriminatory purpose” “implies more than intent as volition or intent as awareness of consequences. It implies that the decisionmaker ... selected or reaffirmed a particular course of action at least in part ‘because of,’ not merely ‘in spite of,’ its adverse effects upon an identifiable group.” (internal citations omitted).
- **Charles Lawrence’s critique:** “Traditional notions of intent do not reflect the fact that decisions about racial matters are influenced in large part by factors that can be characterized as neither intentional -- in the sense that certain outcomes are self-consciously sought -- nor unintentional -- in the sense that the outcomes are random, fortuitous, and uninfluenced by the decisionmaker's beliefs, desires, and wishes.”



Bias

- “A growing body of social science recognizes the pervasiveness of unconscious racial and ethnic stereotyping and group bias. There is also increasing recognition of the natural human tendency to categorize information and engage in generalizations, of which stereotyping is a part, as a means of processing the huge amount of information confronting individuals on a daily basis; these unconscious processes can lead to biased perceptions and decision-making even in the absence of conscious animus or prejudice against any particular group.” *Chin v. Runnels* (N.D.Cal. 2004) 343 F.Supp.2d 891, 906-907 (internal citations omitted).



- “Implicit bias is not a new way of calling someone a racist. In fact, you don’t have to be a racist at all to be influenced by it. Implicit bias is a kind of distorting lens that’s a product of both the architecture of our brain and the disparities in our society.” – Jennifer Eberhardt, PhD

Implicit Racial Bias

Implicit Racial Bias

- “Everett and I were on a plane. He was five years old, wide-eyed, and trying to take it all in. He looked around and saw a black passenger. He said, ‘Hey, that guy looks like Daddy.’”




Implicit Racial Bias

- The Black-crime association: “The stereotype of Black Americans as violent and criminal has been documented by social psychologists for almost 60 years.” Eberhardt et al.
- Studies found
 - When police officers were exposed to crime-related words, they paid more attention to Black male faces, meaning they were more likely to initially look at Black male faces and to continue to look, and they were also more likely to falsely identify a face that was more stereotypically Black. When police officers were asked, “Who looks criminal?” they chose more Black faces than white faces.
 - When people were asked to envision a drug user, 95% of respondents pictured a black drug user while only 5% imagined other racial groups.
 - When participants only had a half-second to respond, they more readily made a false claim of seeing a weapon if primed with black faces than if primed with white faces.
 - Shooter-study participants made the decision to shoot an armed target more quickly if he was black and made the decision not to shoot an unarmed target more quickly if he was white. Participants were more likely to mistakenly shoot an unarmed black target than an unarmed white target.”
- *United States v. Curry* (4th Cir. 2020) 965 F.3d 313, 331-34 (Gregory, C.J., concurring).



Reframing How We Think About Racial Inequity in Housing

- **What this means for housing:** Racial segregation has been framed as the product of intentional, individual choices of racist bad actors.
- **Monica Bell's reframing**
 - “Segregation entails uneven geographic distribution of ethnic groups across a coherent geographic area (separation), and the movement of marginalized ethnic groups into identifiable and stigmatized enclaves (concentration), in order to establish and reproduce hegemonic racial hierarchy (subordination), to control and economically exploit disadvantaged groups (domination).”
 - “[P]olicing contributes to the reproduction of residential segregation.”
- **The “equity” framework:** “just and fair inclusion into a society in which all can participate, prosper, and reach their full potential. Unlocking the promise of the nation by unleashing the promise in us all.”
 - U.S. Disability Rights Movement
 - Comparative International Law: Canada Supreme Court in R. v. Kapp (2008)



Reframing How We Think About Racial Inequity in Housing: Race and Space

- Discomfort with racially integrated neighborhoods, 1992-94 study surveyed 8,916 respondents from 4 cities (Atlanta, Boston, Detroit, Los Angeles) and 4 racial groups (white, Black, Hispanic, and Asian).
- Study published in 2001 based on data from Chicago “found a positive relationship between the percentage of young black men in a neighborhood and perceptions of crime, even after accounting for actual crime rates.”
- SF Bay Area adult residents (mostly white and Asian) study participants who evaluated a house for sale by a Black family rated it more negatively than those who evaluated the house when for sale by a white family.

Current Police Practices Contributing to Racial Inequity in Housing

- Drawing Police District Lines
- Special Police Units
- Policing Boundaries
- Tenant Criminal Record Screening
- “Crime-Free” Ordinances, Policies, and Practices

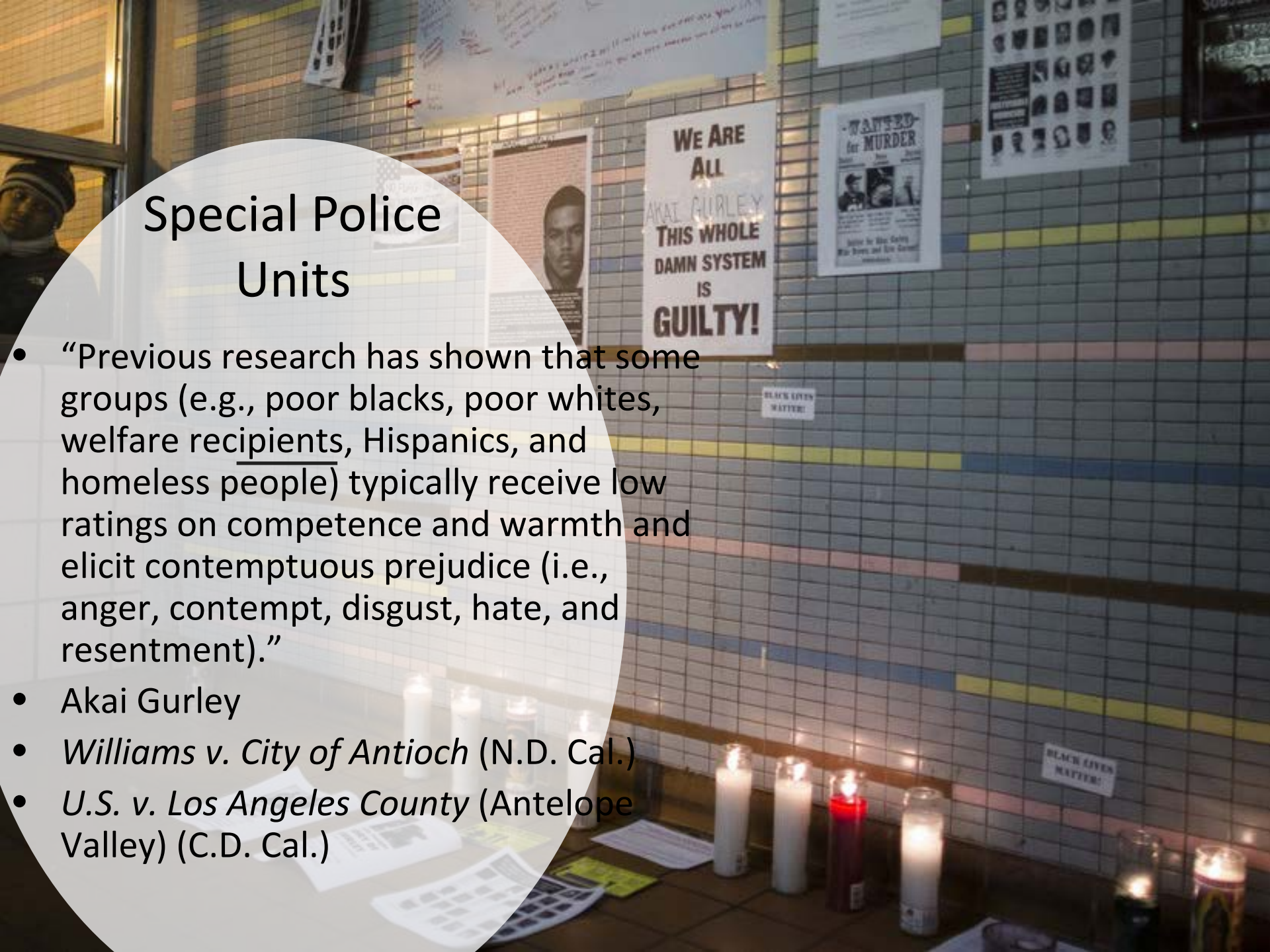


Drawing Police District Lines

- “One way that policing constructs urban space is by the segmenting of police departments into districts, precincts, and service areas.”
- Professor Danika Gordon’s case study of a mid-western police department

Special Police Units

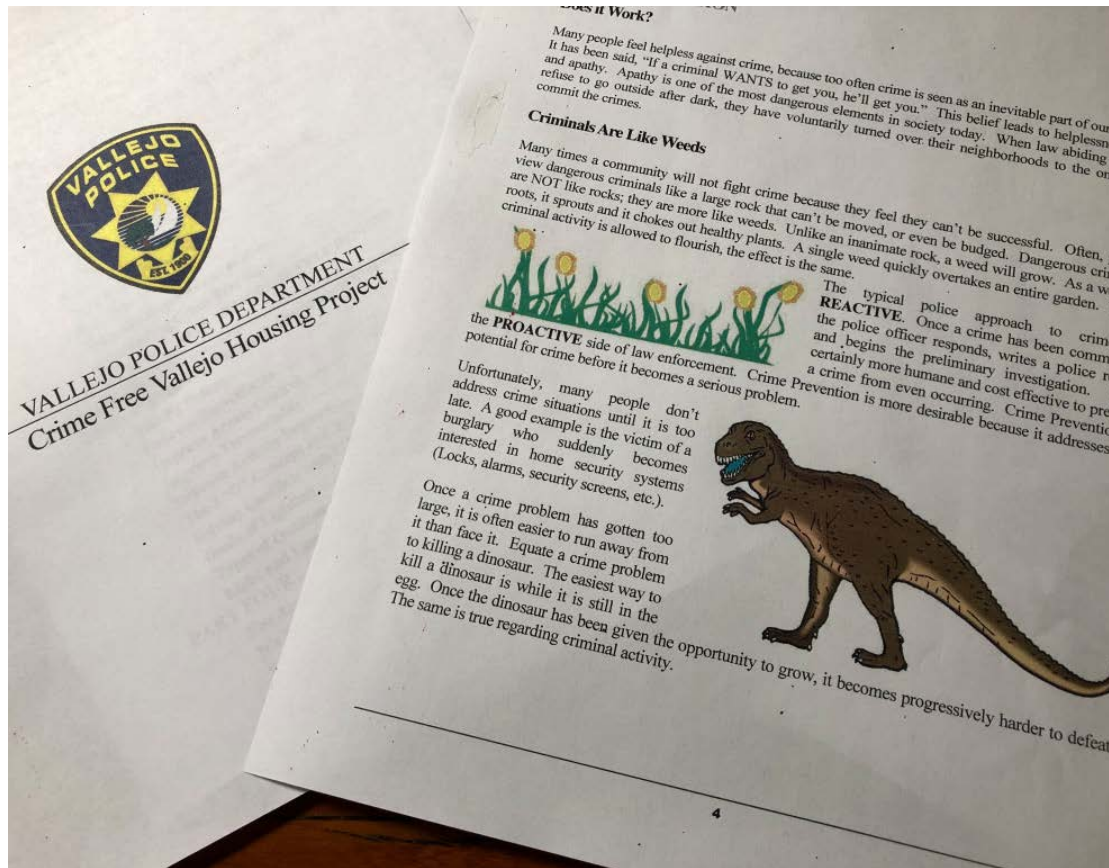
- “Previous research has shown that some groups (e.g., poor blacks, poor whites, welfare recipients, Hispanics, and homeless people) typically receive low ratings on competence and warmth and elicit contemptuous prejudice (i.e., anger, contempt, disgust, hate, and resentment).”
- Akai Gurley
- *Williams v. City of Antioch* (N.D. Cal.)
- *U.S. v. Los Angeles County* (Antelope Valley) (C.D. Cal.)



Policing Boundaries

- The Expanded Neighborhood Patrol in Dallas, Texas
- 2009: Harvard Professor Henry Louis “Skip” Gates in 2009
- 2020: Santa Clara University Professor Danielle Morgan & her brother, Carlos Fuentes
- 2020 Former NFL player Brandon Marshall





Tenant Criminal Record Screening

- Anti-Drug Abuse Act of 1988 "gave PHAs the authority to exclude applicants with criminal records and to evict tenants who engaged in undefined "criminal activity."
- In 1996, "Congress passed the Housing Opportunity and Extension Act in order to amend the Anti-Drug Abuse Act and expand the reach of the policy to cover any drug-related criminal activity, whether or not it occurred on public housing premises
- 1994 John Ehrlichman interview: "You want to know what this was really all about? ... The Nixon campaign in 1968, and the Nixon White House after that, had two enemies: the antiwar left and black people. You understand what I'm saying? We knew we couldn't make it illegal to be either against the war or black, but by getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course we did."



VALLEJO POLICE DEPARTMENT Crime Free Vallejo Housing Project

Criminals Are Like Weeds

Many times a community will not fight crime because they feel they can't be successful. Often, people view dangerous criminals like a large rock that can't be moved, or even be budged. Dangerous criminals are NOT like rocks; they are more like weeds. Unlike an inanimate rock, a weed will grow. As a weed, it roots, it sprouts and it chokes out healthy plants. A single weed quickly overtakes an entire garden. When criminal activity is allowed to flourish, the effect is the same.

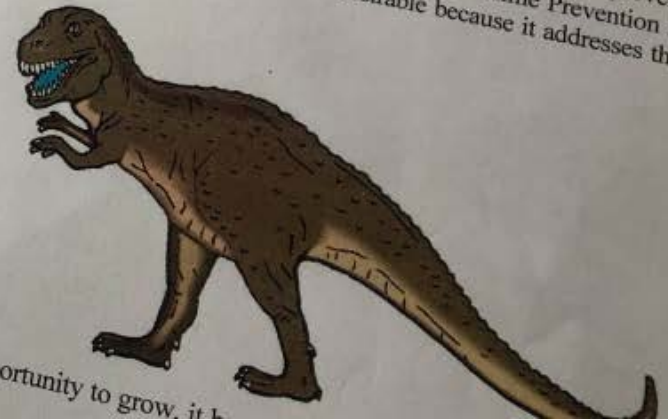


The typical police approach to crime is **REACTIVE**. Once a crime has been committed, the police officer responds, writes a police report and begins the preliminary investigation. It is certainly more humane and cost effective to prevent a crime from even occurring. Crime Prevention is more desirable because it addresses the

the **PROACTIVE** side of law enforcement. Crime Prevention is more desirable because it addresses the potential for crime before it becomes a serious problem.

Unfortunately, many people don't address crime situations until it is too late. A good example is the victim of a burglary who suddenly becomes interested in home security systems (Locks, alarms, security screens, etc.).

Once a crime problem has gotten too large, it is often easier to run away from it than face it. Equate a crime problem to killing a dinosaur. The easiest way to kill a dinosaur is while it is still in the egg. Once the dinosaur has been given the opportunity to grow, it is too late. The same is true regarding criminal activity.



"Crime-Free" Ordinances, Policies, and Practices

Use of criminal legal
system involvement
as basis for initiating
eviction proceedings



Questions?