

**Testimony of Jonathan M. Smith, Executive Director
Washington Lawyers' Committee for Civil Rights and Urban Affairs¹
Before the Committee on Government Operations,
District of Columbia Council**

B23-0038 - Racial Equity Achieves Results Amendment Act of 2019

Thursday, April 25, 2019

The District of Columbia is a city characterized by racial inequity. By every measure, there are profound racial disparities that disadvantage people of color. Income and wealth disparities between white and African American residents are substantial and growing. In 2016, median white family income grew to more than \$120,000 per year, while Black income fell to below \$40,000.² Whites have 81 times the accumulated wealth as African Americans. The average white family's net worth is \$284,000 and the average African American family has assets worth just \$3500.³ Significantly, there are dramatic racial disparities in homeownership, a primary driver of wealth creation. A white family is nearly twice as likely to own a home in the District as an African American family. Eighty percent of whites and fewer than 45% of African Americans are homeowners and the average value of an African American owned home is one-third the average value of a home owned by whites.⁴

Similarly, there are disparities in educational achievement. African American students are, on average, 4.9 grades behind their white counterparts and 15.2 times as likely to be subject to discipline.⁵ Whites graduate from high school in the District within four years of matriculation at a rate of 90%. African Americans have a four-year graduation rate of 68% and only 61% of Latinx students graduate within four years.

District residents who live in mixed income neighborhoods express a higher level of satisfaction in their community and believe that their neighborhoods are a better place to live

¹ The Washington Lawyers' Committee was founded in 1968 to address civil rights violations, racial injustice and poverty-related issues in our community through litigation and other advocacy. The Committee has a long history of working to address discrimination in housing, employment, criminal justice, education, public accommodation and against persons with disabilities. We work closely with the private bar to bring litigation and pursue policy initiatives.

² M. Naveed, Income Inequality in DC Highest in the Country, <https://www.dcfpi.org/all/income-inequality-dc-highest-country/>

³ K. Kijakazi, R. Brooks Atkins, M Paul, A. Price, D.k Hamilton, W. Darity, The Color of Wealth in the Nation's Capital; <https://www.urban.org/research/publication/color-wealth-nations-capital>; see also, Discriminatory Housing Practices in the District: A Brief History, D.C. Policy Center, <https://www.dcpolicycenter.org/publications/discriminatory-housing-practices-in-the-district-a-brief-history/>.

⁴ Id.

⁵ Pro Publica, Miseducation of the District of Columbia, <https://projects.propublica.org/miseducation/district/1100030>

than communities that are less diverse.⁶ Yet, the District has become the sixth most segregated city in the Nation.⁷

It would be easy to blame these disparities on historic discrimination, larger social factors, decisions by federal policy makers, a racist economy, or other forces. But that would be a mistake. Without a doubt, a history of racial violence and white supremacy, federal policy and broader social and economic factors play a large role. However, key decision by District of Columbia policy makers create, sustain and exacerbate inequality and inequity.

The Racial Equity Achieves Results Amendment Act is an important step to address racial inequity created by District policy. The REAR Act will force District decision makers to consider the racial justice implications of laws, policies and governance decisions. A race conscious lens is essential to avoid future policy choices that increase inequality and that overcome the consequences of past decisions that have created the disparities we see today. Inequity is a human created condition. It is not a law of nature or an accident. The creation of equity, likewise, is something that we can achieve through deliberate choice.

The following are two examples of policy decisions that have created and sustained racial inequality in the District – housing policy and the criminalization of people of color. Had these decisions been made with the objective of eliminating the negative racial impact, it is likely there would have been a much different outcome. This same analysis could be done with the same results regarding education, health, transportation, employment, recreation and other basic needs.

Housing Policy

There is a long, well documented history of de jure housing discrimination in the District of Columbia. Post-Civil War seizures of Black owned land to create parks and roads, restrictive covenants, mortgage redlining and urban renewal displaced African American communities and maintained racial segregation.⁸ We do not need to look to history, however, to see the impact of District government policy on housing segregation. The current wave of gentrification that is destroying Black communities, increasing inequality, and enhancing segregation finds its roots in policies initiated in recent years.

⁶ Michael Bader, *Diversity in the D.C. Area: Findings from the 2016 D.C. Area Survey*, American University Center for Latin American and Latino Studies (October 2016) Available at:

<http://apps.washingtonpost.com/g/documents/local/diversity-report/2164/>

⁷ Nate Silver, *The Most Diverse Cities are Often the Most Segregated*, (May 1, 2015). Available at:

<http://fivethirtyeight.com/features/the-most-diverse-cities-are-often-the-most-segregated/><https://s4.ad.brown.edu/Projects/Diversity/index.htm>

⁸ W. Darity, *The Color of Wealth in the Nation's Capital; Mapping Segregation*, Prologue DC,

<https://www.arcgis.com/apps/MapJournal/index.html?appid=061d0da22587475fb969483653179091>

For a range of reasons, including the growth of an African American middle class, from 1980 to 2000, racial integration of the City was increasing.⁹ But in the early 2000s, the City made a decision to go in a new direction, which led to the crisis we are facing today.

In April of 2003, Mayor Williams announced a policy to attract 100,000 high income new residents. This policy drove economic development that transformed neighborhoods.¹⁰ The plan targeted specific neighborhoods for redevelopment, include Shaw, H Street, N.E., Near South East, Congress Heights, Petworth, Fairlawn, Takoma, Bellevue, and Minnesota/Benning. Each of the targeted neighborhoods was overwhelmingly African American and had experienced decades of disinvestment. These neighborhoods were identified as having “untapped potential” and “identifiable opportunity sites.” The plan called for the District government to “coordinate commercial, housing and capital investments.”¹¹

The District’s investments and policy decisions to encourage private investment in these neighborhoods caused housing costs to rise dramatically and drove out current residents. In particular, investments created a crisis for families. Rapidly gentrifying neighborhoods targeted by the District government for development have replaced family sized rental housing with smaller units and created housing cost pressures that drive working and poor families out while richer and mostly white singles and young couples move in.¹² Families are forced to more remote and segregated parts of the District. Wards 5, 7 and 8 are home to some of the only affordable four- and five- bedroom apartments in the D.C. area.¹³

Displacement also interferes with economic opportunity. Workers who are forced out of neighborhoods with access to transportation or near a metro stop to a more remote corner of the City have a harder and more costly time getting to work. Low-wage work can often have unpredictable hours and reliable and efficient transportation is essential. Access to opportunities for employment is among the most effective strategy to lift families out of poverty and to create opportunity for social mobility.¹⁴

Had the District taken into account the racial justice impact of its decisions regarding economic development and housing policy, we could have had a very different outcome.

⁹ Noah Sawyer and Peter Tattain, *Segregation Patterns in the District of Columbia: 1980 to 2000*, Urban Institute (October 2003). Available at: <http://www.neighborhoodinfodc.org/pdfs/DC-Segregation-data.pdf>

¹⁰ Neighborhood 10: Ten Strategies for a Stronger Washington, April 17, 2003. https://www.brookings.edu/wp-content/uploads/2016/06/20030417_revitalizingdc_williams.pdf

¹¹ Id.

¹² Taking Stock of the District’s Housing Stock, D.C. Policy Center, https://www.dcpolicycenter.org/wp-content/uploads/2018/03/DC-Policy-Center-Housing-Report.final_.March25.pdf.

¹³ U.S. Census Bureau, *Census 2000 Summary File 3*. Issued 2001. Available at <http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=CF>; U.S. Census Bureau, *2010-2014 American Community Survey 5-Year Estimates*. Issued 2015. Available at

¹⁴ Urban Institute, *Maintaining Economic Diversity and Affordability: A strategy for Preservation of Affordable Rental Housing in the District of Columbia* (Dec. 2014); Available at <http://www.neighborhoodinfodc.org/dcpreservationcatalog/Preservation%20Strategy%20Dec2014.pdf>

Without question, the neighborhoods targeted by Mayor Williams for investment had been ignored for far too long and investment was long overdue. But that investment could, and should, have been made for the benefit of the long-term residents who have lived in and build lives and communities in those neighborhoods. The transformation of the City we are seeing today, that leaves far too many life-long African American residents to ask “Is there a DC for me?”¹⁵, could have been avoided.

Over Policing and Under Serving Communities of Color

Involvement with the criminal legal system is a major driver of inequality in the District of Columbia. The District has a high rate of incarceration that disproportionately affects African American men, women and families. Ninety percent of the District’s prison population is African American and only four per cent is white despite that the City is almost half white and half Black.¹⁶ The District has one of the highest rates of incarceration in the nation.¹⁷

The disparity in criminal system involvement cannot be explained by behavior differences between whites and African Americans. A report of the United States Department of Health and Human Services found “significantly higher likelihood of having ever been arrested among blacks, when compared to whites, even after accounting for a range of delinquent behaviors. Importantly, after controlling for racial composition of the neighborhood, these disparities were no longer present, suggesting the importance of neighborhood context in influencing racial/ethnic disparities in arrests.”¹⁸ In other, less academic words, police enforce the laws one way in white communities and a different way in Black communities. Black people get arrested when white people do not for the same conduct.

While policing practices are only one factor in creating inequity in the criminal legal system – one must look at the behavior of prosecutors, courts, prisons, legislators and other system players – for the purposes of this testimony, I will focus on the very front door to the system. A similar analysis across the system continuum would show similar results.

Two studies conducted by the Washington Lawyers Committee demonstrate how police practices vary depending on the color of the skin of the persons being policed. The Committee

¹⁵ Keep DC 4 Me is one example of an important movement to push back against the forces of gentrification in the District. <https://www.facebook.com/KeepDC4Me/>

¹⁶ District of Columbia Custodial Population Study: Seeking Alignment between Evidence Based Practices and Jail Based Reentry Services, Justice Research and Statistical Association, (September 2017), <https://www.jrsa.org/pubs/reports/jrsa-dc-custodial-pop-study-9-2017.pdf>.

¹⁷ Bureau of Justice Statistics, Correctional Populations in the United States. <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=5177>

¹⁸ Understanding Racial and Ethnic Disparities in Arrest: The Role of Individual, Home, School and Community Characteristics; <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5509345/>

completed a study of MPD arrest practices in 2013.¹⁹ After reviewing arrest data kept by MPD, we concluded:

- More than eight out of 10 arrests in our city were of African Americans.
- Wards with more African American residents witnessed far more arrests. The five wards where seven out of 10 arrests in the city were made are home to nine out of 10 African American residents of the city. Even in wards where fewer African Americans live, African Americans made up a disproportionately high percentage of arrestees.
- More than 19 out of 20 arrests in Washington, D.C. were for nonviolent offenses. Four of the largest categories of offenses — arrests classified by under the drug, traffic, disorderly conduct, and “other assault” charge categories — alone accounted for about six out of 10 arrests in the District. Offenses in these categories are not considered violent crimes within the definitions used by the FBI’s Uniform Crime Reporting system.
- Nine out of 10 individuals arrested for drug offenses were African American. African Americans were the overwhelming majority of drug arrestees, across all major categories of narcotics, including powder cocaine, crack cocaine, heroin and other drugs.
- Six out of 10 drug arrests were for simple possession, and nearly nine out of 10 of arrests for possession involved African American arrestees. Marijuana arrests represented the lead category of arrests.²⁰
- While there are significant disparities between whites and African Americans in drug arrests, drug use survey data shows much less disparity in drug use among the two groups. Drug use survey data shows little disparity in drug use among wards in contrast to the large disparities in drug arrest numbers among the wards.
- Nearly seven out of 10 traffic arrests were of African Americans. The disparity was less evident for traffic offenses that involved conduct more obvious to an observer, like Driving Under the Influence, as opposed to conduct that is less externally obvious, such as driving on a suspended license.

¹⁹ Racial Disparities in Arrests in the District of Columbia: Implications for Civil Rights and Criminal Justice in the Nation’s Capital, (July 2013); https://www.washlaw.org/pdf/wlc_report_racial_disparities.PDF

²⁰ A separate 2016 study confirmed this result and found that 80% of those arrested for smoking marijuana in public were African American. https://www.washingtonpost.com/local/dc-politics/stark-racial-divide-remains-in-pot-arrests-in-dc/2016/04/05/775594b0-fa7f-11e5-80e4-c381214de1a3_story.html

Similarly, in 2018, the Committee reviewed data from the Metro Police on their practices to enforce the fare evasion statute. We commend the District Council for its vote to decriminalize fare evasion and its override of the Mayor's veto. This was an important step for racial justice.

Our report found significant racial disparities in enforcement. Among the most critical findings were:

- Metro Police stopped more than 30,000 people for suspected fare evasion between January 2016 and February 5, 2018 and issued more than 20,000 citations/summons for fare evasion.
- The number of people who were given citations more than doubled between 2016 and 2017, and the number of people stopped and given a warning or a citations/summons almost doubled. Additionally, the percentage of people who were given a citations/summons instead of a warning has significantly increased. In 2016, 59% of people stopped were given a citation/summons. In 2017, 80% of the people stopped were given a citation/summons.
- Ninety-one percent of citations/summons were issued to Black people – 72% Black men, 20% Black women and 46% Black youth (under 25 years of age). Black children as young as seven have been stopped.
- Metro Police targeted stops heavily used by youth of color with 15% of all stops in or around Gallery Place and 14% in or around the Anacostia station.²¹

The problem is not just over policing, but underserving African American communities. While crime is at historic lows in the District and the nation, predominately working and low-income African American neighborhoods continue to face significant public safety concerns.²² In a recent study conducted by the Consortium of Legal Services Providers of 590 District residents living under 200% of poverty, 27.8% reported being stopped by the police for no reason, 15.1% reported that police did not take them seriously when they called for assistance, another 14.3% reported that police responding to a call made them feel at fault for the crime that had victimized them and more than 10% reported police asking them inappropriate questions. The majority of those surveyed felt that the police were indifferent, at best, to the issues in their community²³ A separate study found that only 51% of African Americans in the District trust the police.²⁴

²¹ Unfair: Disparities in Fare Evasion Enforcement by Metro Police; https://www.washlaw.org/wp-content/uploads/2018/12/2018_09_13_unfair_disparity_fair_evasion_enforcement_report.pdf

²² <http://crimemap.dc.gov/Report.aspx>

²³ Report of the Community Listening Project; <https://www.lawhelp.org/dc/resource/community-listening-project>

²⁴ http://www.cpd.org/wp-content/uploads/2016/06/Perceptions-of-Public-Safety_FINAL_w-COVER1.pdf

If policing practices are put through a racial justice lens, we would have a very different result. Disparities in the way that we police different neighborhoods would be questioned, reviewed and addressed. More significantly, we may decide that, in fact, we need fewer police, and more social workers, teachers, counselors and cultural workers. The racial justice answer to community needs might be resources other than more police.

DC Initiative on Racial Equity and Local Government Proposed Amendments

While we strongly endorse the REAR Act, we do believe it can be improved. We support the changes proposed by the DC Initiative on Racial Equity in Local Government, including

1. **Scope of the amendment.** REAR currently applies only to DC agencies. We support expanding the bill to include the District Council.
2. **Evaluating present and future policies.** The racial equity tool requirement in REAR should focus on both existing policies and practices and future activities.
3. **An independent body.** The racial equity assessment should be conducted by an independent body, such as the Office of the Inspector General.
4. **Training.** All agency employees should be required to participate in racial equity training.
5. **Community Engagement:** REAR should require truly meaningful community engagement at all stages of the process and ongoing.
6. **Accountability.** We urge that efforts and outcomes in the area of racial equity be included as a component of employee performance evaluations, especially for managers and supervisors.
7. **Transparency.** Materials and data related to measuring and reporting progress in the area of racial equity should be made available for public review.
8. **Independent review and oversight.** We urge that REAR require that the Office of the Inspector General (OIG) issue an independent, annual report on the overall performance of agencies under the bill's provisions.
9. **Effective Data Use and Coordination.** REAR must ensure that agencies have effective systems for capturing data (i.e., race, ethnicity, sex, etc.), tracking it and, more importantly, sharing/coordinating data with other agencies.

10. **Racial Equity and the Comprehensive Plan.** We urge that agency activities under REAR – including implementation and outcomes related to their use of the racial equity tool – be incorporated into the DC comprehensive plan process.

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We applaud the Council for considering this important legislation. While it is a first step, it is an important one. We cannot address the inequity created by policy decisions unless we first understand their impact. The REAR Act will develop a process to do just that.