

# Omori4REVIEW

📅 Mon, 8/30 8:16PM ⌚ 59:44

## SUMMARY KEYWORDS

people, sentencing, inequalities, racial, happening, thinking, latinos, latino, practices, prosecutors, racialized, hispanic, race, racial inequalities, system, research, criminology, courts, important, miami

## SPEAKERS

Marisa Omori, Jenn Tostlebe, Jose Sanchez



Jose Sanchez 00:14

Hi everyone! Welcome back to The Criminology Academy, where we are criminally academic. My name is Jose Sanchez.



Jenn Tostlebe 00:20

And I'm Jenn Tostlebe.



Jose Sanchez 00:23

Today we have Professor Marisa Omori on the podcast to talk to us about racial and ethnic disparities within the criminal justice system, and more specifically, the court system.



Jenn Tostlebe 00:33

Marisa Omori is an Assistant Professor of Criminology and Criminal Justice at the University of Missouri-St. Louis. She received her Ph.D. from the University of California, Irvine in Criminology, Law & Society. Her research focuses on racial inequality in the criminal legal system, courts and sentencing, and punishment and social control.

Specifically, she investigates questions of how racial inequality is created and maintained within the criminal legal system through ostensibly race-neutral practices, and how context matters for this inequality. Her work includes projects examining racial inequalities in Miami-Dade's criminal justice system at the individual and neighborhood levels, as well as how place and local practices matter for institutionalizing racial inequalities in prosecution and sentencing in the state and federal systems. Thank you so much for joining us, Marisa. It's great to have you.



Marisa Omori 01:28

Thank you. Thank you for having me.



Jose Sanchez 01:30

Yeah, we're really looking forward to this episode. So like usual, I'll want to provide a brief overview of what today's episode is going to entail. So first, we're going to talk about some general racial and ethnic inequalities within criminal justice. Then we're going to go narrow down a little bit more to racial and ethnic inequalities within the court system. And then we're gonna bring it home with talking about a paper that was co authored by Marissa and one of her colleagues. And so with that being said, Jenn, why don't you take us away?



Jenn Tostlebe 02:02

Alright, thanks, Jose. Alright, so first, we're gonna start with these general questions on inequalities in the criminal justice system. So based off of work by Michelle Alexander, who's best known for her 2010 book, *The New Jim Crow*, we know that there are these racial and ethnic disparities within the correctional system. Marisa, can you give us kind of a lay of the land of what that looks like? And then whether that translates to other areas of criminal justice, like in police stops, or arrests or files, or charges filed?



Marisa Omori 02:36

Yeah, you know, I think it's a really interesting time right now to study racial and ethnic inequalities in the criminal legal system. And in part, because we're, you know, coming at this moment, where, you know, Michelle Alexander's book was obviously really big and there have been some other big publications that have happened that have really illuminated, and I think shifted the conversation in terms of, you know, race and the criminal legal system. Where there's kind of this broad sort of general public recognition

now of large scale racial inequalities. And, you know, and I think one of the most important things that Michelle Alexander's book points out is that, you know, it's really a feature of the system, it's not something that just happened to, you know, occur, or it's something that's sort of unusual, it's a really central feature, sort of an organizing principle of the system.

M

Marisa Omori 03:23

And, you know, and I do think it translates to other areas as well, right. So it's not just that we kind of magically end up with massive large scale racial and ethnic inequalities in incarceration, right? But it's something that happens throughout the system. And it's happened, it's something that happens right on the front end of the system, right, with, you know, police stops and searches. But it's also things that happen in the middle of the system, which is kind of what I study, right. So thinking about what happens with prosecutorial practices, like filing practices, or use of, you know, mandatory minimums, or, you know, pre trial detention, like bond-decision making. And so, you know, even though there's a lot of a lot of practices might be localized, so that they look different across different places. I think there's also general, similar features, or kind of theoretical models that we kind of drawn on to start to think about all of the different organizations within the criminal legal system as a racialized system. And so for example, one of the things that, you know, that I think is important to bring to the table are some of these theories that are and frameworks that are used commonly outside of criminology and bring them into criminology. So things like institutional racism, right, which was coined by Carmichael and Hamilton, or Ian Haney-Lopez's idea about institutional racism. There's also frameworks of like, cumulative disadvantage, for example, right, which was originally I think, coined by by Robert Merton, right, and so and then some of the research from organizations as well. And so, one of the things that I think is sort of common between all of these different pieces of the system is thinking beyond sort of, thinking about bias as beyond overt acts by individuals, right, but rather as these more generalized practices that are embedded within larger organizations, right, and so really moving beyond the first individual acts of racism, and frameworks that are based on individual things like implicit bias, right. It's not to say that these things don't exist, I think they certainly do. But to think more broadly, about how different kinds of practices produce these large scale inequalities. And so in particular, you know, thinking about courts and sentencing research, there's been a lot of attention given to prosecutorial decision making and plea bargaining, you know, which, which are big kind of linchpins, I think of these large scale racial inequalities that we see in incarceration, but also these kind of generalized models of decision making. And, you know, thinking about how, you know how laws are enacted in practice, they might apply in other areas as well.



Jose Sanchez 03:57

So you mentioned, you know, bringing in these frameworks from other areas. And that sort of reminds me, or it takes me back to some of the works, that I've read that, you've had scholars sort of critique criminology, and that we don't always give race and ethnicity, sort of like the attention that it deserves? Why do you think that is? And do you think we've gotten better about that? Or, like, Are we still sort of lacking in that area?



Marisa Omori 06:33

Yeah, you know, I think it's one of those things that the the needle is starting to move, I think, which is good. You know, there's a piece that Katheryn Russell-Brown, talked about recently, where she talks about, there's this kind of academic swoon over implicit racial bias. Right. And I think that, you know, I feel like that point is really well taken. And so I do think that scholars are starting to do a better job in criminology, of incorporating these other, you know, models and ways of thinking about race, racial power, and racial structures, right. And so we still have kind of a ways to go, I think, but I want to be optimistic and say, I think we're doing a better job of pulling from all of these different disciplines.



Jose Sanchez 07:17

So kind of keeping in like this research within criminology topic. So a lot of the research that you see in criminology or criminal justice, they sort of tend to work in like a binary with race and ethnicity, where it's like white and non white. And, and at least in in the US, you see it a lot where it's also maybe like, white, black, Hispanic, other. But are there differences between the non white groups?



Marisa Omori 07:47

Yeah, I mean, and I think, you know, investigate, as somebody who's in the other category frequently, you know, I think it's really critical to start investigating beyond sort of the black/white binary and complicating that, right. And I think there there is, you know, there has been additional research, and it's just some of it's just starting to come out, right, that has examined sort of differences, both between racial and ethnic groups. So thinking about like, you know, Latinx, like Asian, you know, indigenous folk. But also within group, right. So thinking, for example, like thinking about thinking about kind of Latinx, as, as a group, right? There's so much diversity, right. And so, in some of the research that I've done, for example, has compared between white and black, Latinx populations, which is really important, because they experience very different outcomes, at least in in some of

the data that I've worked on where, you know, black Latinx, people have significantly worse outcomes, even relative, actually, to black, not black, non Latinx people. So, you know, I just think in part, this is important because of the sort of racial context in which the research is being done right. And so kind of foreshadowing the paper that we'll be talking about, right? It takes place in Miami, and the racial politics of Miami are very different from like, I moved there from California, right? The racial politics in California are very different from Miami. And so being able to kind of think about how that operates in a local context was really important. And so part of that, especially when I'm when I moved to Miami was was thinking about, you know, how does race and ethnicity operate here, right? How does racial power operate here? And now that I'm here in St. Louis, it's the same kind of question, right? Where even though the population here is, you know, more black and white, there's actually still we, you know, we have a small immigrant population, and there's pockets of different Asian groups, for example. And so kind of thinking about that and also, you know, the history I think, is important. And so, you know, for me, it's just absolutely more research definitely needs to be done in these areas. So not just including other groups beyond sort of black and white, right, but also examining these within group differences. So for example, there's some folks who have started to look at colorism within racialized different racialized groups, right. And also kind of like I mentioned before, like thinking about how the local context matters and how this might matter differently across places.



Jenn Tostlebe 10:12

Yeah, I love that you also brought up the within group differences. So one of my good friends in my cohort, they're interested in immigration experiences amongst Asians who are coming to the United States, and they're just so frustrated, because like we treat Asians as one group with one shared experience, and they're like, that is very much not the case. So I would imagine, you know, looking at other outcomes, it would we would see the same things.



Marisa Omori 10:40

Yeah, absolutely. And I mean, even thinking about the historical context, right, so you have some Asian group that has come in, you know, in earlier generations or from more, you know, affluent backgrounds and things like that, they're gonna have very different experiences, right? From from people who might be coming, you know, because of I don't like refugee situations or whatever. And so, yeah, I mean, absolutely. Just trying to think about what, you know, again, it's kind of come back to the context, right. Like how context matters.



Jenn Tostlebe 11:08

Yeah.



Jose Sanchez 11:09

Yeah. So do we know much about how some of these groups that fall under like the, "other" category, sort of compare to like, Black and Hispanic people?



Marisa Omori 11:23

Yeah, that's a good question. I know that there's been some, so some of the research that's been done, for example, on Asian groups have shown that Asians tend to do better than Black Americans. But you know, I think, again, there's not that much research that's been done on this before. And I also do think that, you know, it's important to study this in different sites, I think, right? For sure, you know, and even a research on like, Latinos is mixed as well, like some, you know, some studies have found that Latinos tend to fare better than non Latino black groups. And some studies have found that they tend to be punished more, right. And so I think, again, part of this explanation has to do with like, you know, who are we talking about here? Like, where is this? You know, where are the people in our study coming from right? And how does that matter? How does that play out in the political context?



Jenn Tostlebe 12:12

So can you talk to us a little bit about why we are seeing racial and ethnic inequalities or disparities across different parts of the criminal justice system? So for example, are these disparities a result of like, where individuals are residing, their behaviors, or like policies and practices? Or all of them, I suppose?



Marisa Omori 12:34

Yes. I think that's the answer. All of the above? You know, I do think that racial and ethnic inequalities, I think I've said this before, but it's absolutely endemic to US criminal justice, you know, and this is where I think, you know, we as criminologists need to do a better job at thinking about the historical context, right? Like, where did Where are these systems coming from? Right? It's really baked into our system. And you know, so there are products of things like slavery and colonialism, restrictions on immigration, right? And tied to so many other institutions. Right. So thinking about the history of like segregation, for example, you mentioned that right, different kinds of schools, and, you know, housing and

health care. And so again, taking this broad view, I think, is important, but, you know, and specific to kind of criminology, I think, like Khalil Muhammad's book, I don't know, if you all have have read that book, but the *Condemnation of Blackness*, you know, really talks about this history of thinking about criminology and race. But you know, absolutely, the ways that the system was originally shaped, or the different components of the system were originally shaped right, have a lot to do with race, we're not always the best at talking about it. But I think that's an important discussion, because it helps to explain why we're seeing what we're seeing today, too. And so while we might have these like, you know, changes or reforms or whatever, to things like policing or prosecution, right? These, we still have these sort of roots, racial and ethnic equalities, you know, at the core of the system. And that suggests that these are going to persist over time, even in the face of kind of some of these reforms that might be happening.



Jose Sanchez 14:13

Yeah, it's interesting. So it kinda reminds me I don't know if you've read the book *States of Delinquency* by Miroslava Chavez-Garcia?



Marisa Omori 14:23

I haven't, but I'll have to look at it.



Jose Sanchez 14:25

Yeah, well, basically what she does is she, or like, her main thing is we need to look at it's based out of California. And you know, everyone sees California as like this blue progressive state. And her main thing is, well, there's a lot more to it than just like, if you look under the hood, things aren't quite what they appear. And we need to go way back to when California was first introduced as a state and sort of like the power and racial dynamics that were happening at the time, and how that sort of evolved over time and now we see this like juvenile justice system. That's not very just or there's a lot of inequality within it in this state that we often see as a bellwether state that you know, is, quote unquote progressive. So it's a really interesting book. Yeah. When I first read it, I was like, What? This is California?



Marisa Omori 15:25

I mean, it's such a huge correctional system, first of all. And of course, it had, you know, it underwent realignment, right, which was a big kind of reform, right, if you want to call it that. But it's been producing these, you know, it also has really high levels of racial

segregation, like in, you know, in the prison systems. And there's, there's a couple of people who talked about that, too. But, yeah, it's interesting to think about it, I guess, under the sort of under the auspices of being a progressive, you know, place or progressive state. And I think, even in progressive state, right, you can have these sort of liberal practices, right, that are still very, you know, racialized and punitive.

J

Jose Sanchez 16:06

Yeah, definitely. Okay, so let us kind of start moving into inequalities within the court system. And again, when we were kind of coming up with what to talk about for this episode, one of the first things that came to mind was Nicole Van Cleves book on Cook County, in Illinois, the books called Crook County, in which she detailed the differential treatment that black people experience when they're going to court. And so she observed things like prosecutors and judges sort of bad mouthing, like the black people that were coming through, or security would kind of harass them a little more than they would harass the white people that would come into the into the courts. And our first question for you is, would you say that this is more of an exception that's really maybe more unique to Cook County? Or is this more of the norm? And sort of commonplace across the US?

M

Marisa Omori 17:03

Yeah, I mean, first of all, I think Crook County is such an important book that everybody should read, right. And it's important in a lot of different ways. But one thing that I think that I think it does a nice job of is this really disrupts this sort of narrative of racial progress. So actually, we were just kind of touching on this right, but thinking about things that happen in kind of progressive places, right? Like a blue city, like Chicago even right. And so, you know, while the treatment of black people in particular in, you know, in the book Crook County is absolutely terrible, and it's really, you know, in some ways, it's really heartbreaking to read about, right. It's one of those things where I wouldn't be surprised if it exists elsewhere, right? Because I do think, again, kind of look, looking under the hood, right? I just think it's, in some ways, a book like Crook County, it might be even more visible, because it's such a large system. But I actually wonder if it's even more insidious, and less visible, in even smaller jurisdictions, right, jurisdictions that are just really tiny. Like here in St. Louis, we have, we had a situation where there were all these teeny, tiny little municipal courts, right. And it's really hard to know what's happening in the Municipal Courts, because they're really small, they are very small jurisdiction, a lot of them aren't keeping electronic records, right? They're still writing stuff down on like, carbon copy paper, and stuff like that. And, yeah, but you know, it's like, and so one of the things I think about a lot is not just like, what is happening in the sort of very hyper visible places like Cook County, right. But in even smaller jurisdictions, too, right. And I think it's something



that would be important, is important for researchers to investigate for sure.



Jenn Tostlebe 18:43

Yeah, I second, your comment that if people haven't read that book, it's like a must read. It was one that Jose and I read in our race and ethnicity class, and it was, yeah, a good one to discuss and talk about.



Jenn Tostlebe 18:56

Alright, so talking about kind of policies and practices within these different systems, then. So a lot of people would argue that policies like sentencing minimums, which for those people listening who don't know, they're just statutes that basically require judges to sentence people convicted of a crime to a specific minimum sentence, whether it's a prison, jail term, etc, for that specific crime. So a lot of people say that these policies have not made for a more equal judicial system, but instead further increase these inequalities that we're talking about. So can you tell us a little bit more about these types of policies and practices and whether or not they further increase inequalities in the criminal justice system? And why, for whichever, yes or no.



Marisa Omori 19:45

Yeah. Sentencing minimums really are one key tool, I think, to increasing racial inequalities. And it's precisely because they are a tool right? I use that word purposely. They're paired with discretion and power. But it's not judges necessarily who have the discretion over these sentencing minimums, right. It's prosecutors and its prosecutors, because they're the ones who are bringing the charges that can trigger minimum sentences. And so they know, and they know that, right. And so a lot of times they're used, the sentencing minimums are used, not necessarily for sentencing, per se, right. But they're just actually a tool for negotiation against defendants. And actually, I think a good example of this is Mona Lynch talks about this in her book *Hard Bargains* a lot, right, which is like the tool of these sentencing minimums, she talks about a couple of other tools, right in the federal system, as well. But they become one of the things that these sentencing minimums did is they really shifted the power from judges to prosecutors, right, which is something that's not necessarily an intuitive thing that, you know, for policymakers who were saying we need to have, you know, minimums for certain crimes, or we need to have some sort of standardization, so we're gonna put in sentencing guidelines, or whatever that is, right. And a function of a lot of a lot of those changes was to shift that power, right? Because again, the things that trigger these mandatory

minimums or, you know, certain kinds of sentencing enhancements, in general, are through different kinds of charges prosecutors may or may not bring, against, against people. And oftentimes, they're actually not even used very frequently, right? So one example that I think of off the top of my head is that like in the state of Florida, for example, mandatory minimums are actually applied very rarely in cases. So but the threat of them there is there, right? And so it's not just about the, what the laws and policies are on the books, right, but how they're being used in action. Like a perfect example of that, which is like they can be used or not used right by prosecutors to have leverage for plea bargaining cases.



Jenn Tostlebe 21:53

So yeah, just that a tool used.



Jose Sanchez 21:56

Yep. That kinda reminds me of, like, sentencing enhancements. So like, I do gang research. And one of the things that we've been doing is tracking gang legislation. And one of those is gang enhancements. And as far as I can tell, thus far, we don't really know how often they're actually, like used, but we do know that, yeah, prosecutors will kind of put them on the table for leverage, which is, I feel a certain way.



Jenn Tostlebe 22:29

Slimy?



Marisa Omori 22:29

You're not gonna say, what certain way you feel about these?



Jose Sanchez 22:33

Yeah, I'm not. Yeah, I'm not thrilled with sentencing enhancements, especially when you when, you know, or it's come to light, like how controversial, because a lot of them sort of hinge on, you know, being able to identify this person as a gang member. And oftentimes, that's done through something like a gang database. And like, we've seen how controversial those gang databases are, especially because they're so poorly managed. So



Marisa Omori 23:00

Yeah, this is like an area where you have like big data, right, coming into big data that's very poorly managed, right, coming into contact with power and discretion. Right. And this is where it becomes like I said, a tool, you know, to negotiate more favorable outcomes for prosecutors, right?



Jose Sanchez 23:18

Yeah.



Jenn Tostlebe 23:19

So do we see higher levels of inequality when we have things like these sentencing minimums that prosecutors can leverage? Or when judges have more discretion? Or is there not a lot of data on that, maybe?



Marisa Omori 23:33

So there has been work, I've actually done a little bit of work on this with Mona Lynch in the federal system. And there are, you know, places that do have mandatory minimum sentences do tend to be more punitive. Right. So those those do translate. And so I think, again, the sort of movement that happened with mandatory minimums and shifting a lot of the power from, you know, judges to prosecutors, really did result in kind of resulted in certainly in more punitive sentences. One of the more you know, and I think one of the interesting things that has been happening in you know, more recently, is that racial inequalities in some of the systems have actually been decreasing. And so investigating, like, what's happening behind some of that, I think, is an open question right, right now for researchers, too.



Jose Sanchez 24:20

Yeah. Okay. So can you tell us a little bit more about how racial and ethnic inequalities manifest themselves, not just with sentencing, but we've talked a little bit about prosecutors. So know, how does it manifest with prosecution, bail setting, and with juries?



Marisa Omori 24:39

Yeah. And I think this is where, you know, sentencing researchers and courts researchers, I think, have started to push it in this direction. There's been sort of long calls for this too,

which is that, you know, a lot of times we study sentencing, but that is like the very end point, you know, the end point of the decision that happened and it's really the accumulation of all of these other things that happened before that. And so, you know, a lot of studies find that there's actually greater racial and ethnic inequalities in earlier stages relative to sentencing. So charging or bail setting, you know, or pretrial attention, right. A lot of times people find actually greater disparities in that part, you know, in the front part of the system than they do in the back part. Right. And part of this, I think, is because sentencing itself is often structured, right? We just talked about how it's often structured through things like, you know, sentencing guidelines, or presumptive sentences, or it might be structured through, you know, mandatory minimums or whatever, right. But the actual sentencing piece of it is often, you know, pretty structured. And a lot of times, like I said before, is a function of these previous stages, right, and in particular, charging practices. And so what ends up happening is after sentencing scholars, if you're controlling for things like, you know, sentencing scores, or \*inaudible\* sentences, you know, pretrial detention, these are all kind of standard things that sentencing people a lot of times will control for, right, a lot of times after you control for those things, the disparities really tend to be minimized in sentencing outcomes. And part of that is because they're being captured, right, they're, or they're sort of hidden in some of the earlier stages.



Jose Sanchez 26:16

So speaking about cash bail, like that's been a pretty controversial area, too. With, you know, the movements coming up to get rid of them because they further promote inequality. And we've seen some places make some progress in that area. So like New Jersey and Alaska, not completely, but for a lot of crimes, they've gotten rid of cash bail, and a few years back, I remember, there was some movement in DC about also getting rid of cash bail. I don't know exactly what came of that. But can you know, sort of give our listeners a little more insight into this discussion? And how cash bail furthers inequality?



Marisa Omori 26:59

Yeah, I mean, so a couple things. One is that pretrial detention rates have been going up over time, if you look back, I don't know how far back the data go, like, you know, 50-60 years, or whatever. The rates of pretrial detention have increased. And so, you know, part of this is trying to figure out what's what's going on, like, why have they increased so much, right. But racial inequalities are almost certainly compounded by bail, in part because Black and Latinx people are disproportionate, not only are they disproportionately impacted by the criminal justice system, right. But oftentimes, there's fewer resources to be able to post bail. And I feel like a lot of the studies talk about how,

you know, it ends up being you're borrowing from your network, from family members, women disproportionately bear the burden of paying for bail, you know, for male partners and relatives and things like that. And so it's racialized, but also gender, I think, too, and so, but people of color are less likely to be able to meet bail, you know, to be able to meet their bail, even if it is not that, you know, even if it's like, you know, \$500 or \$100, or whatever, that people of color are much less likely to be able to meet that. And so, you know, so of course, that translates into, you know, higher rates of pretrial detention, too.

J

Jose Sanchez 28:13

Yeah. And then we know that people that have to sit, tend to have worse outcomes than people that can afford bail. Right?

M

Marisa Omori 28:24

Yeah. I mean, it becomes a compounding, you know, we, some of the courts and sentencing people call this the cumulative disadvantage, right, which is like, you have that pretrial detention, people who are detained pretrial, have, you know, harsher, you know, they're more likely to be convicted, and they're more likely to be sentenced to a \*inaudible\* sentence, they're more likely to have, you know, kind of harsh sentencing outcomes, too. And part of this is, again, because people will, you know, they can be used as a negotiation tool, right, that people will plead to be able to resolve their case. And if they're, you know, held pretrial, you have a much greater incentive to plea early. Right. Yeah. And so again, it becomes a sort of this sort of tool, you know, against defendants and for prosecutors to be able to use later on down the line.



Jenn Tostlebe 29:11

And I feel like there are probably quite a few, like non criminal justice related consequences from not being able to pay, like a cash bond, like you might lose your job or your kids even or, you know, so on and so forth.

M

Marisa Omori 29:26

Yeah, for sure. I mean, there's a whole area of like, you know, thinking about bond and also within the larger context of sort of, like fines and fees and things like that. And, you know, it's not just about people losing Yeah, it's about people losing their jobs and about, you know, like, your networks and sometimes people need those like you have to show up for housing or you have to make payments for something else. And it really does become

a big interruption to people's lives and you know, in a punitive one right and this is before their pleading, anything.



Jose Sanchez 29:55

Yeah.



Jenn Tostlebe 29:56

Well, shall we move then into your paper that we're talking about today.



Marisa Omori 30:01

Yeah, sure.



Jenn Tostlebe 30:02

All right. So the paper we're discussing for this episode is authored by our guest, Marisa, as well as her co author, Nick Petersen. It's called "Institutionalizing inequality in the courts: Decomposing racial and ethnic disparities in detention, conviction, and sentencing." It was published in Criminology last year in 2020. And so just to provide a short summary on this paper, this study focuses on racial and ethnic inequalities in pretrial detention, conviction, and incarceration, as well as how much of these inequalities can be explained by differences in charging decisions, prior criminal history, and pretrial detention. The authors used a sample of approximately 84,000 people who had been arrested for felonies in Miami-Dade between 2012 and 2015. There are three main contributions that come from this paper. First off, the role that racialized criminal history, pretrial detention, and charging decisions have on inequality. Secondly, how inequalities operate within the different levels of the criminal justice system and how they affect later stages. And finally, an observation of both racial and ethnic inequalities. So would you say that's a decent summary? Quick little summary of your paper?



Marisa Omori 31:20

Yeah, yeah, absolutely.



Jenn Tostlebe 31:22

Okay. So our first question for you then, and one that we always start with, when it comes to these papers, is what was the motivation for writing this paper?



Marisa Omori 31:32

This paper really came out of, you know, conversations with my co author, Nick Petersen, and some of the graduate students, you know, that we're also working on this project. And it, you know, part of it was really motivating, was wanting to move beyond understanding racial inequality, you know, in the court system, in a couple of different ways. And one of these was thinking about the sort of theoretical frameworks that we've, we've already touched on before, right, and moving beyond these sort of individual frameworks of, you know, either implicit biases or implicit biases, or decision making, you know, to move a little bit beyond that sort of individual focus, thinking about the broader, you know, practices and policies that might happen. And then the second was sort of a methodological question of finding inequalities in what was sort of left over right, after controlling for other legal factors, and which is what happens, right, in these sort of traditional regression based models, right, which is, we, a lot of times we after we control for them, we find these very small racial and ethnic, you know, inequalities, right? And so the interests of this paper came out of wanting to understand how formally sort of "race neutral" practices produce these racially unequal outcomes, right. And to understand the mechanisms of racial inequality in the courts in Miami Dade.



Jenn Tostlebe 32:52

Can you just touch on what race neutral policies and practices entail?



Marisa Omori 32:58

Yeah, so I think a lot of times, I put race neutral in quotes, I was using air quotes as well, I don't know how effective that is in a podcast, but but you know, things that seem neutral on their face, right, like failed decision making, or, you know, charging practices or things like that, that are structured maybe by, you know, maybe by like guidelines or policies about like, ways to charge somebody for like, how do you count criminal history, right, in that consideration, or how criminal history, for example, is built into, like, sentencing guidelines, right? All of those things are things that might be like kind of formally, race neutral. But in fact, they are highly racial, right? Because they produce very racially unequal outcomes. And so I was really interested in thinking about that process. And that was part of what I wanted to bring in with paper.



Jose Sanchez 33:45

So in your study you have four ethno-racial groups, right? You have white non-Latino, white Latino, Black non-Latino, and Black Latino. Can you tell us why it's important to make the distinction between Latino and non Latino within these groups?



Marisa Omori 34:05

Yeah, and it's kind of became a mouthful in the manuscript, but I don't feel like there's a better way to get around that a little bit. But, again, this is sort of where context matters, right. And especially in Miami, where the study takes place, it was important to differentiate between black and white racial groups, but also Latino and non Latino ethnic groups. Right. And part of that is because of Miami's demographic composition. It's different from a lot of other places in the US, right in that it is majority white, white Latino, I think the population of Miami Dade County is about 60% white Latino, so that's majority population there, right. And not only are white Latinos the majority population there, but they also have considerable economic and political power in the county. And that might be really different, again, this was very different for me coming from, you know, like the west coast and thinking about how different racialized groups operate there. And so for us, it became really important to distinguish between, you know, white Latino, and black Latinos, for example. And it became important in our results too, because white Latinos and black Latinos had very different outcomes, you know, black Latinos, we found, for example, were, you know, disadvantaged even more relative to black non Latinos.



Jose Sanchez 35:18

So you used what we thought was an interesting method to serve, classify your sample, you coded someone as Latino, if 75% or more of the individuals who shared their last name self identified as Hispanic. Can you tell us a little bit more about this method and its validity. This is legit the first time that I've seen this method used. So yeah, we might get a little nerdy with it. But I'm very intrigued with it.



Marisa Omori 35:48

And I'm, you know, it was one of those things where it was a big, you know, again, if we have 60% of our county population is like white Latino or white Hispanic, as they say, Miami, you know, in the county, our data did not have ethnicity. And this was a huge problem for us, right? Because we need to be able to, you know, be able to identify better, you know, all these different racialized groups. And so, for us, this was a big kind of methodological problem, because we want to be true to what's happening on the ground,



you know, in this particular place, right. And so, I think it was Nick who found the Hispanic surname analysis, this was actually a method that was developed by health researchers. It has been used by other criminologists as well, I think Katherine Beckett used it in one of her early studies. So it was mostly developed and used by health researchers. And what they do is they match peoples last names or surname names, right, to the census. And then they look and see the percentage of people with that last name on the census who identified as Hispanic. And so and then what they did is they found that if they chose like a 75, if 75% of the people with a particular surname, you know, self identified as Hispanic, you know, then they identified or sorry, then they coded them as being Hispanic or Latino. And we chose the 75% threshold, because that was what was validated and used in other studies. And so, and other studies actually found that I think it was over, I think it was like 93% of self identified Hispanic people have a surname, that is what they call, you know, heavily Hispanic or it meets that 75% cut off. And so one of the robustness checks that we did with our study was to use different percentages, right? Because it's like, what is 74% of the people identify, you know, with that surname identified as Hispanic? Or what about like, you know, what about a different threshold. And so we actually redid our analyses with a 90% cut off. But our results were pretty much the same.

J

Jose Sanchez 37:51

Those, it's really interesting, and it kind of gets to one of, I think, an annoyance that many of us have, with official data, sometimes is that it's very useful and sometimes you can only answer your question with that kind of data. But in, it may not necessarily be the cleanest or have something that we might consider sort of common sense or a must have, because they might just not care for it. Right. Like it might not suit their needs.

M

Marisa Omori 38:21

Yeah, I mean, you know, the administrative data is like, they're not, Miami Dade, you know, officials weren't collecting this with the intention of researchers using it for, you know, to run models on or whatever and do analysis, right. They're using it for administrative purposes. And so, you know, I think that is the challenge of using administrative data, regardless of where you are. But I always, you know, one of the things I always try to do is think about the question I want to answer first, right? I try to think about that, like that research question, first and foremost, and then if there are pieces of missing information, or you know, things that we don't have, or variables that we don't have, for whatever reason, I try to think about, like, either the proxies or good ways to, like, resolve that. Right. But I feel like that's, you know, for me, it's like, I always try to think about that question first. And, you know, this just it happened to be, of course, it's not a perfect solution, right. But in some ways, you know, neither as race, right, it's a very messy concept, and I think

thinking about how different different groups and different people even if different individuals are racialized, right? There's a lot of different kinds of cues that go into that. And so, you know, so this is obviously an imperfect, you know, way to capture that. But for me, the fact that we were finding these patterns, even with when we were using different thresholds and stuff gave me a lot of confidence that this method was, you know, that this method is, you know, is something that we can use, at least in this context, for sure.

J

Jose Sanchez 39:52

Yeah, definitely. But yeah, it's just, I swear I'm pretty sure I was still I was like alive when Hispanic/Latino was considered its own racial group. And then at some point, I had to fill out an official government document. And I kept looking for my bubble that said Hispanic slash Latino under the race box. And I asked the clerk I like, hey, so what do I put here? I'm like, none of these. And he's like, Oh, you fill in white? I'm like, What do you mean? I'm like, I am most definitely not white. Like, but uh, okay, I guess that's what I am now. Yeah. And yeah, the next box was ethnicity. And it was like, sometimes they'll give you a couple options like Hispanic, Latino, Puerto Rican, Cuban, Central American, Mexican. Sometimes it's just, like, Hispanic, non Hispanic.

M

Marisa Omori 40:52

Yeah, and I think it's, you know, it's interesting, because I think there's like, you know, you can think about the way that like different laws shape, you know, how we think about race and vice versa. And this is a real example of that, right? Looking at how the census has changed over time, actually, I think is a really interesting way to think about, you know, how does that reflect how we think about race and ethnicity and. But the problem you pointed out too, is, you know, if people are interested in thinking about racial and ethnic inequalities, for example, and for example, if and I think this is actually the case, most people who identify as Hispanic, just like you were saying, they end up checking white for race because they don't know what else to say, or whatever. Right. I think it's something like, I think it was like something like 90% of people who checked Hispanic or Latino identify also as or don't identify, but they've checked the white box. Don't quote me on that. But I think it's a it's a pretty high percentage. And so, you know, if you think about the implications for doing research on racial and ethnic inequality, right, if you're not able to capture that, then, you know, you're you're having a whole group of folks who might not even self identify as white, but are checking white on that form. Right. Being combined, you know, being sort of homogenized with, you know, with other white non-Latinos, and so, so, you know, like I said, in part, this was where it became really important for us to try to just figure out, you know, ethnicity.



Jose Sanchez 42:14

Yeah, definitely. Especially because I feel like it's been maybe less than 10 years since I first started hearing the word like Afro Latino, and I'm pretty sure that I started hearing it from like, people that I've met from places like Florida, I think that's sort of where I heard it the most, like this term, Afro Latino, or like, What's an Afro Latino? Like? Well, you know, it's like, like, we're Hispanic, but we're not white. Like, I guess like, that's, that's, like, we no longer have Hispanic as our choice, right, of our racial category. So it's interesting how like, all of this has slowly started to evolve, because now we have like your white Hispanic/Latinos, and then like your Afro Hispanic/Latinos.



Marisa Omori 42:55

Yeah, for sure. And I mean, I think there's a longer, you know, there's a history of that, too. And like, like, when I was I lived in New York for a couple of years. And, you know, there's a lot of like, I know, a lot of Afro Latinos there. And so, you know, again, this is where like, I think that thinking about, like, different immigration patterns and different, you know, demographic patterns is how that matters for how we think about racial groups. Right?



Jenn Tostlebe 43:19

Yeah, absolutely. All right. Well, can you hit us with like, the key findings of your paper?



Marisa Omori 43:28

Yeah, I think, so, you know, so you all did a nice job of summarizing the main points. But one of the things that we first did was estimated, what we called kind of like the modal regression model that we just did, like kind of a traditional regression model, right, where you're controlling for race, you have a bunch of legal factors in there. And then we looked at the, you know, predicted probabilities of different groups, you know, being pre-trial detained, convicted, and sentenced to incarceration. And then we broke out the model by different-the four different, you know, race ethnicity groups that we had-and estimated separate models. And we actually found that when we estimated the separate models, right, that differences between black and white racial group, regardless of ethnicity, actually, but differences between black and white racial groups, in particular, were minimized when we ended up pooling the whole sample together to do kind of the traditional regression models. And so, and part of this is because, you know, estimating, when you're estimating regression models, you're estimating the relationships between variables that are based on sort of average characteristics for the whole sample, right? And so this to us suggested that there were likely differences between our different racial

and ethnic groups, right, and some of these legal factors that were maybe contributing to these to these differences. And not only that, but would be kind of hidden, right if we were just to sort of estimate these traditional regression models.

M

Marisa Omori 44:54

And so we ended up then estimating decomposition models, right which looks at how much of the racial and ethnic disparity between the groups is, can be attributed to differences in average characteristics or average legal factors, right. And so in other words, like how much of this inequality of the racial and ethnic inequality between middle white non Latinos and you know, black non Latinos, and black Latinos, how much of that inequality in pretrial detention and conviction and sentencing is due to legal factors between groups. And so we find, actually, that between about half and three quarters of the inequality in pretrial detention, conviction, and prison sentencing is explained through these legal case factors. And I think you all hit on this before, but this was especially the case for like criminal history, and in some cases, charging and pretrial detention. And then actually, to the points that you all brought up before, we actually also found differences in economic marginalization and that contributes to inequalities, too. We don't focus as much on that in our paper, because we're more focused on sort of the legal factors. But that was definitely another finding that we had.



Jenn Tostlebe 46:03

So one of your findings, and I think you you touched on this earlier, or Jose did, one of you did, but it was that white individuals in the sample, both Latino and non Latino, had these similar predicted chances of detention, conviction, and jail sentence, whereas black Latinos had the highest predicted chances. Do you have any guesses theoretically, as to why that is?

M

Marisa Omori 46:31

You know, I feel like, especially talking on the ground to local, you know, so we spent some time also on the ground, which I think is important for quantitative research. Right. On the ground, we observed court sessions, we, you know, did informal interviews with a lot of the court actors, we worked, you know, really closely with the ACLU of Florida with the data and all that and we knew kind of the practices on the ground. And so a couple things. One is that, like I said, before, you know, white Latinos or white Hispanics in Miami have a lot of economic and political power. And so actually, for example, both our both the, you know, head prosecutor and the head public defender are both they're both, you know, white

Latino, a lot of folks in the police department are white Latino, so it was very, you know, again, for thinking about these are localized racial dynamics, right, really did matter. And so that was one of the first explanations that we had, was that, because of the way race and power work in Miami, right? White Latinos actually have a lot of power in Miami, and so have very similar outcomes to white non Latinos, but the black Latinos had, in fact, the worst outcome. And so, you know, some we talked to some of the court actors, and like I said, some of the folks on the ground and, you know, and they, they talked a lot about people being sort of doubly disadvantaged within the system. And so again, we don't know exactly what some of those reasons are. But that's what, you know what, that's what some people kind of talked about with us, when we were, we were kind of talking about our findings and trying to figure out what was happening.



Jenn Tostlebe 48:06

Yeah. Yeah, it sounds like this study really needs to be done in a lot of other places. Going back to your comment about how much context matters, seeing if the same findings are the end result?



Jose Sanchez 48:20

How much or if at all, do you think colorism or discrimination based on skin color kind of comes into play? Because Jenn and I sort of talked about this a little bit and we, Jenn has a project on you know, colorism. So we imagined that Hispanics or Latinos that are white passing might have better outcomes than you know everyone else, basically. But then even thinking about, say, someone like me, where I'm technically a white Latino, but I'm not necessarily what you would consider white passing. Yeah, I guess like, what are your thoughts on on that on colorism?



Marisa Omori 49:00

I'm glad I'm glad you asked. Because I think we're actually working on some follow up stuff with colorism actually right now. And so I will let you all know. But I certainly think that's at play. And I think within you know, within sort of this large category of, you know, Latinos or Hispanic people in Miami, right, there's a large kind of diversity of skin tones as well. But almost certainly, I think, you know, colorism is, you know, I think is definitely a factor where people with darker skin tend to be punished more severely than people with lighter skin. And, and it's for the reason you said Jose, I mean, a lot of folks who are, you know, light skinned Latino in Miami are, are not just like passing but they helped to define what whiteness is in that place. Right? Because there's because that's the majority of the

population. Right? And so, again, it's like we think about ideas of whiteness, like whiteness, contextualized there, right is also includes, you know, or maybe, you know, represented by kind of white Latinos in some ways. And so folks who are darker skinned Right, darker skinned Latinos tend to have the most punitive outcomes.



Jenn Tostlebe 50:06

Yeah, you'll have to keep us informed on your work on that.



Marisa Omori 50:08

I will, yeah.



Jenn Tostlebe 50:11

All right, so at one point, in your paper, you mentioned an empirical and methodological issue, which is that a lot of studies or most studies have focused on individual bias and direct racial and ethnic differences. So can you tell us a little bit more about what this issue is? How your approach differs from that, and why focusing on individual bias and indirect racial and ethnic differences has been the focus rather than what you and your co-author did?



Marisa Omori 50:41

Yeah. And you know, I should say this, we're not, we're definitely not the first person to talk about this. I mean, I can't, like we're not taking credit for that whatsoever. People like \*inaudible\* early on, you know, talked about pushing prosecution and sentencing scholars to look beyond these sort of direct, you know, direct disparities to thinking about indirect ones. And so there's been, you know, there has been like a trajectory of research that we're building on, that has worked on has worked on this, and people have even done decomposition models before, right. In the courts and sentencing research, it hasn't been quite as common, but you know, but But again, this is decomposition models themselves, we're actually traditionally developed to examine differences in wages. And were originally were originally proposed by a statistician and demographer named Evelyn, Allah. And so this sort of like an interesting history there, but traditionally, they've used they've been used in sort of like looking at work, you know, in occupations and salaries and so in a totally different context. But again, you know, it's a nice sort of compliment or sort of alternative approach to take, because in part, because this sort of traditional regression based modeling is based around this idea that after controlling for other

factors, right, or only that we observe the sort of isolated and direct differences between racial groups, right. And then a lot of times, what ends up happening is that we end up attributing the direct difference to some sort of bias by different actors, right, either they're implicitly bias or some iterations of the local concerns literature are also sort of individually based, even though I think the original authors did not intend for that to be the case. You know, sometimes I think they're interpreted in the sort of individualistic way.

M

Marisa Omori 52:19

And so, you know, so one of the things that we wanted to bring to the table was that, again, how much of the of this inequality can be attributed to differences in the independent variable, right can be attributed to differences in legal factors? And so in other words, it raises this question of like, how much are different legal factors racialized? Right? And how much does that contribute to the racial inequality that we're observing? And so for example, if black people are over criminalized relative to white people, which our research suggests that they are right, this might be reflected in longer criminal records, for example. Right. And so and then criminal records, in turn, right, become a mechanism of producing, you know, more severe outcomes in in a court case, right. So prosecutors might charge people with longer criminal records more severely, sentencing guidelines often take criminal records directly into account, right. And so these, again, sort of become mechanisms that are, you know, race neutral, but in fact, are very racialized in terms of resulting in, you know, in black people being overrepresented in the criminal justice system. And so it's not because of like overt, or even, I don't know, implicit racial animus, right, that this is happening. But it's because of these broader policies and practices that become embedded in systems of decision making, you know, that are resulting in these large scale and equalities. And that's really what the kind of push I wanted to, to help make, right. And again, I'm not going to claim I'm the only person, you know, that we're the only people doing this right. But I think this is hopefully a step in that direction. Right. And so moving beyond these models, but also beyond sort of individual framings are important, not to just examine, so not to just examine individual bias, which again, I think, definitely happened, right, I think some of the, you know, some other pieces have done this, but to also examine broader practices that resulted in racial inequalities.

J

Jose Sanchez 54:14

Okay, so, can you discuss with us the implications that your study may have? You know, first maybe for, you know, and you touched on this a little bit, but for, you know, future research, but then also for the general public and policymakers?

M

Marisa Omori 54:31

Yeah, for sure. Yes, the academic one, you know, like I said, before, some of the theoretical, I think, implications are that, you know, especially for criminology, I think we need to bring in and do a better job of engaging in race scholarship. You know, so it's not just about the courts. We think, you know, sometimes we get stuck in these little like, I do policing research, or I do courts research or I do you know, whatever corrections research, right, it's not just about these like individual institutions, right. It's about broader practices, right and broader practices that might be happening even outside of the criminal justice system, right? So these kinds of things might be happening in other kinds of organizations and institutions like schools or workplaces or housing, right? And so as criminologists, I want to, you know, I want to push people into thinking more about not just like race differences, but also racialized institutions that have power, right? And then kind of methodologically. You know, I'm not necessarily just, I know, I'm hard on regression models, I'm not I'm not necessarily suggesting we need to abandon them altogether. But I do think, you know, I do think that we should think about the assumptions we're making more estimating them, right, like, what does it mean, when we have variables that are highly correlated with each other, right? And it's played on all of that variation. Right? Especially when they're highly correlated with things like race. Right? And, you know, and also how we interpret results, right? Like when we're variables represent. So for example, if Black people do have longer criminal records, like which they do in our data, like, what does that mean? Like, what does that a product of? Right? And so, I think just thinking about, like, even how we're interpreting our results matters, too, right? And so it becomes just, you know, especially for people who are doing kind of racial inequality research, it becomes just not about like, just controlling for race in your model, right, and then everything else is equal, right? That's an impossible assumption to make in the way our society function. And especially in the way that our, you know, criminological society functions, right? Assuming race neutrality is not a realistic thing for us. And so, again, kind of approaching it from a different perspective.

M

Marisa Omori 56:41

And then you asked about sort of the practical implications. You know, I think, again, there's a lot of attention given to these individual frameworks, you know, there, like implicit bias trainings are like really ubiquitous right now. Right, for example. And again, it's not to say, I don't know, maybe they're effective. But it's not just about these, you know, these individualized or individual kinds of solutions. It's about these sort of broader, you know, practices and policies that are resulting in large scale racial inequality. Right. So rethinking things like bond schedules and sentencing guidelines. And, you know, even prosecutorial policies, right, the prosecutors offices have policies about how they charge different things, right, those kinds of things. Right. That's what I think this research really



can shine light on is thinking about, What are these? What are the localized policies and practices that might be producing these unequal outcomes?



Jenn Tostlebe 57:33

All right, those are all the like, main questions do we have for you? Do you have any other comments or anything else that you would like to touch on? Comment on?



Marisa Omori 57:44

No, I mean, I think like I said, I just, you know, thanks for inviting me and I think this was a really great conversation and happy to, you know, talk with folks, you know, if they have any questions.



Jose Sanchez 57:56

Yeah, no, it was great having you.



Jenn Tostlebe 57:58

Yeah.



Jose Sanchez 57:58

Is there anything you'd like to plug? I know, we sort of talked about your colorism paper? I don't know if that's coming out anytime soon.



Marisa Omori 58:04

Yeah, we do. We do. The first one is coming out soon. So I will put that one in when it's out.



Jose Sanchez 58:11

Perfect. And where can people find you like, Twitter, Google Scholar, researchgate? Email?



Marisa Omori 58:18

Yeah, I'm on Twitter so @MarisaOmori on Twitter. I have a website that I keep up occasionally. You know, and I think, like I said, I really want to acknowledge, you know, my

co author on this paper, Nick Petersen and, you know, a number of folks who helps with feedback and early ideas on the paper I workshop, this paper through the racial democracy crime and justice networks, summer research institute. So, you know, I have to give them a shout out for sure. And also, you know, the partners on the ground that we had, the ACLU of Florida and it's greater Miami chapter.



Jose Sanchez 58:54

Awesome. Well, thank you again. We really appreciate you taking time to speak with us. We had a great conversation.



Jenn Tostlebe 59:02

Thank you.



Marisa Omori 59:03

Yeah, thank you.



Jose Sanchez 59:04

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