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Racial Disparities in Sentencing in the U.S. and Georgia

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Incarceration represents the ultimate use of coercive power, and in the state of Georgia, that power is being disproportionately levied upon people of color, particularly African Americans.¹ According to 2011 statistics from the Georgia Department of Corrections, the total prison population statewide was approximately 53,341 inmates. The majority of that number were Blacks (33,069 inmates), followed by Whites (17,752 inmates), Hispanics (2,306 inmates) and other ethnic groups.

These numbers reveal that blacks are being imprisoned at a much higher rate than other groups in Georgia. The right to be treated equitably regardless of race, gender, or nationality is enshrined within the 14th Amendment and other civil rights laws, and should therefore be upheld by Georgia's legal system. Sadly, this does not appear to be the case.

In Georgia, taxpayers are hit with the annual price tag of more than \$18,000 (approximately) to pay for each incarcerated inmate, and the overall budget for the Georgia Department of Corrections was nearly \$1 billion dollars as of 2011. For these reasons, the need to eradicate unjust and unneeded incarceration is paramount.

In their examination of state-by-state incarceration rates in 2005, researchers Mauer and King found that more than 1% of African Americans in 49 states and the District of Columbia were imprisoned nationwide, but nowhere in the United States was there a rate of incarceration that high for whites. Their report was published by The Sentencing Project, a D.C. - based nonprofit that focuses on criminal justice policy issues. In 2005, The Sentencing Project reported that blacks in Georgia were incarcerated at a ratio of more than 3 to 1 compared to whites. The ratio decreases to less than 1 to 1 when comparing the incarceration rate between whites and Hispanics in Georgia.

The organization contends these stark discrepancies could decrease if legislation was changed to promote rehabilitation and treatment for drug users rather than solely punitive measures; if judges were granted more autonomy in imposing sentences that take into account the circumstances involving an offense and the defendant; and if lawmakers revisited some "race neutral policies," such as mandatory sentencing laws for crack and cocaine possession, that have significantly contributed to harsher sentences given to blacks and Hispanics. National research also reveals that whites are more likely to be sent to jail rather than prison. And "[s]ince jail stays are relatively short compared to prison terms, the collateral consequences of incarceration – separation from family, reduced employment prospects – are generally less severe than for persons spending a year or more in state prison," (Mauer and King, 2007).

¹ All opinions are those of the author

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In their study, *Judging Judicial Discretion: Legal Factors and Racial Discrimination in Sentencing*, authors Bushway and Piehl (2001), write that a judge's discretion plays a significant role in perpetuating racial discrimination during sentencing. This explains why black males, on average, receive sentences 20% longer than their white counterparts who commit the same crime. After examining federal sentencing data, the authors state that some disparities involved valid variables like criminal history, the type and/or severity of a crime. They also discuss "unwarranted" disparity that includes race, gender, and other factors that should not influence sentencing. Their analysis modeled an indirect racial bias through interactive systems (plea vs. jury trial), and concluded the quantitative results depended on the actors in the cases, specifically the judges. Thus, the longer sentences imposed on African-American males stemmed from the judge's discretion. This holds true even after controlling for age, gender, and the severity of the offense.

Bias in the criminal justice system is also explored by Lynch and Haney (2011), who conclude white male jurors in capital cases are more willing to sentence black defendants to death rather than non-white or female jurors. However, the odds of white male jurors sentencing white males to the death penalty is significantly less than for black male defendants. The research used qualitative data collected from focus groups and a simulated murder trial. Lynch and Haney (2011) employed 539 participants and assigned them to one of 100 small groups, with four to seven jurors per jury. The jurors were paid, and each jury watched one of four versions of a mock capital murder trial. The trial evidence and presentation were exactly the same; the only change was the race of the victim on trial. Lynch and Haney discovered white male jurors were more likely to recommend black males receive the death penalty, and less likely to recommend the same penalty for a white male who committed the same crime.

Overall, criminal justice research suggests that our national and local justice systems produce biased outcomes. One way to reduce these disparities is to enforce proper juror selection methods, which means ensuring a diverse jury. A second way is to make sure judges are aware racial disparities can easily occur during sentencing and perhaps allow appeals in Georgia courts as the federal system does with sentences that appear to deviate from offender sentencing norms. A third way is to educate the public about racial stereotyping and its impact on how jurors perceive a defendant.

References

- “The Persistent Problem of Racial Disparities in the Federal Death Penalty.” National Institute of Corrections. America Civil Liberties Union, n.d. Web. 21 Nov. 2011. <<http://nicic.gov/Library/022443>>.
- Bordt, R. "Only Some Are Dead Men Walking: Teaching about Race Discrimination and the Death Penalty." *Teaching Sociology* 32.4 (2004): 358-373. ProQuest. Web. 30. Sep. 2011. Cohen, G., and Robert Smith. "The Racial Geography of the Federal Death Penalty." *Washington Law Review* 85.3 (2010): 425-92. ProQuest. Web. 20 Nov. 2011.
- Bushway, S. and Piehl, A. "Judging Judicial Discretion: Legal Factors and Racial Discrimination in Sentencing." *Law & Society Review* 35.4 (2001): 733-764. ProQuest. Web. 30. Sep. 2011.
- Flexon, J. "Does Racism Fuel Conviction Proneness Among Non-African Americans? Assessing The Impact Of Juror Bias At The Conviction Stage Of Capital Trials." *Journal Of Ethnicity In Criminal Justice* 9.3 (2011): 218-237. SocINDEX with Full Text. Web. 21 Nov. 2011.
- Georgia Department of Corrections. Annual Report 2011. Available at http://www.dcor.state.ga.us/Research/Annual_FY_GDC_annual_reports.html.
- Guarnaschelli, S., McKelvey, R. and Palfrey, T. "An Experimental Study of Jury Decision Rules." *The American Political Science Review* 94.2 (2000): 407-23. ProQuest. Web. 30. Sep. 2011.
- Kansal, T., and Mauer, M. (January 2005). “Racial Disparity in Sentencing: A Review of the Literature.” The Sentencing Project.
- Lynch, M., and Haney, C. “Mapping the Racial Bias of the White Male Capital Juror: Jury Composition and the Empathic Divide. *Law & Society Review* 45.1 (2011): 69, 69-101. ProQuest. Web. 30 Sep. 2011.
- Mauer, M. and King, R. (July 2007). “Uneven Justice: State Rates of Incarceration By Race and Ethnicity.” The Sentencing Project.
- Schanzenbach, M.. Racial and Gender Disparities in Prison Sentences: The Effect of District-Level Judicial Demographics. *Journal of Legal Studies*, Vol. 34, No. 1, pp. 57-92, January 2005. Available at SSRN: <http://ssrn.com/abstract=668544>
- Scheb, J., Lyons, W. and Wages, K. “Race, Prosecutors, and Juries: The Death Penalty in Tennessee." *Justice System Journal* 29.3 (2008): 338-X. ProQuest Research Library. Web. 20 Nov. 2011.