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Date January 2005 Author Tushar Kansal Program Open Society-USA History of Racial Inequality in the Criminal Justice System in the U.S. has been a long time ago. The racial dynamics of sentencing have changed over time and reflect the shift from explicit racism to more secretive manifestations and outcomes. In this publication, the Sentencing Project examines the research literature of the last twenty years on racial inequality in sentencing, drawing conclusions in six areas of issue: direct racial discrimination. Evidence of direct discrimination at the federal level is more visible than at the state level; Blacks are more likely to be disadvantaged in terms of the length of their imprisonment at the federal level, while Latinos are more likely to be disadvantaged in terms of the decision to imprison; At the state level, both Latinos and blacks are much more likely to be disadvantaged in deciding whether or not to be incarcerated, as opposed to deciding the length of their sentences. Interaction of race/ethnicity with other characteristics of the offenderWhic findings: Young black and Hispanic men tend to be sentenced more harshly than relatively white men; Unemployed black men tend to be sentenced more harshly than white men in a comparable home. Interactions and indirect effects of race/ethnicity and process-related factorsWhic are the findings: Blacks pay a higher legal penalty than relatively white people; Whites receive more reduced sentences than blacks and Hispanics for providing substantial assistance to the prosecution; Blacks and Hispanics with more serious criminal backgrounds tend to be sentenced more harshly than whites in comparable condition; Blacks are more likely to be imprisoned before trial, and therefore tend to receive harsher sentences; Whites are more likely to hire a private lawyer than Hispanics or blacks, and therefore receive a less harsh sentence. The offender's interaction with the race of the victim finds that black defendants who fall victim to whites tend to receive harsher sentences than both blacks who fall prey to other blacks (especially acquaintances) and whites who fall prey to whites. Interaction of race/ethnicity and type of crime: Latinos and blacks tend to be more severely convicted than whites for lower-level crimes, such as drug-related crimes, and Crimes; But Latinos and blacks convicted of high-level drug crimes also tend to be more severely convicted than whites at a similar level. Death penalty: In the vast majority of cases, the victim's race tends to influence the outcome of a sentence, with white victims more likely to be sentenced to death; However, in some jurisdictions, especially in the federal system, the defendant's race also affects the results, with minority defendants more likely to receive the death penalty than white defendants. RANDPublished ResearchPapers(P-7742) This paper discusses the distinction between racial inequality and racial discrimination; summarizes what is known about racial bias in cases involving capital and failure; points to the reasons why serious limitations of research methods in this area are overshadowed in order to draw reliable or credible conclusions as to whether bias is present. Racial disparities exist in the criminal justice system: although blacks make up less than 11 percent of the U.S. population, they make up nearly half of the country's population. Differences, however, are not evidence of discrimination in themselves. Comparisons between groups of the amount with which they are punished should primarily control the factors that can properly influence sentencing decisions. Only after such control can such control be investigated for the unique role of race. However, even with the use of control of the social science research procedure, there is still no valid or legally sufficient assessment of whether race influences sentencing decisions. Statistical and research methods are simply not up to the task of providing definitive evidence of racial bias present. Discrimination in cases involving the death penalty or capital insignia cannot be deduced simply because groups differ at the rate at which they receive the penalty. This report is part of a series of RAND documents. The document was a product of the RAND Corporation from 1948 to 2003, which captured speeches, memorials and derivative studies, usually prepared on the authors' own time and intended for the scientific or scientific contributions of individual authors in their professional fields. Documents are less formal than reports and do not require careful expert evaluation. 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Through September 29, 2020: Download Citation (BibTeX) Download Citation (RIS) All News Publishing Stories 5.2 million Americans are barred from voting because of criminal disenfranchisement, or laws restricting voting rights for those convicted of crimes at the level of crimes. Despite nearly two decades of declining U.S. prison population, the Sentencing Project shows that more than 1,800 young people incarcerated have tested positive for COVID-19 since March, including more than 300 in Florida and Texas. Featured story When Chris Poulos was arrested, he experienced first hand the difference that money can make in the criminal justice system. He talks about his own experience. Sentencing disparities are considered in Massachusetts and Washtenaw County, Michigan, federal prosecutors targeted black communities while handling D.C. gun charges, Berkeley's disarming traffic enforcement, and more in race and Justice News. The sentencing project held an online discussion that highlighted efforts in California and Colorado to decarcerate and prioritize funding for crime prevention and community prevention. Featured story In 2008, Willie Mays Aikens made

headlines when a federal judge reduced his lengthy prison sentence to 14 years as a result of the U.S. Sentencing Commission's adjustment to crack cocaine sentencing guidelines. Aikens was released in June 2008. A key newsletter for the Sentencing Project provides a compilation of major developments in the criminal justice system over the past few decades. Iowa Governor Kim Reynolds has signed an executive order restoring voting rights for people with felony convictions. Iowa was the only state that still permanently disenfranchised people with felony convictions if the governor didn't intervene. Recommended sentences for federal drug offenses are based on the amount of drugs, not on a person's role in a crime. The emphasis on quantity rather than the role of the offender, along with conspiracy laws, too often results in disproportionate sentences, even for crimes that have committed crimes such as garrisons for the first time. North Carolina's criminal crime-free law reinforces the difficulty that the criminal justice system disproportionately visits black Americans; exacerbates sharp racial disparities in income, wealth and economic opportunity; and unnecessarily mutes the voices of the Black North Carolines in public affairs. Nearly a third of States called emergency sessions in response to questions related to COVID-19 or the police. Special or emergency sessions can give criminal justice reform coalitions the opportunity to advance decarceration priorities, address racial inequality and challenge Consequences. School districts across the country defund police, California disproportionately excludes black and Latino jurors, U.S. protests over George Floyd spark global activism, and more in race and Justice News. The D.C. Council passed a law allowing residents held in prison or with a conviction for a felony. The county joins only two states, Maine and Vermont, that retain the right to vote for imprisoned citizens. The United States criminal justice system is the largest in the world. As of 2015, more than 6.7 million people were under some form of re-election in the United States, including 2.2 million who were incarcerated in federal, state or local prisons and prisons. The U.S. is a world leader in incarceration rates, which overshadow the pace in almost all other countries. Such broad statistics mask the racial disparities that permeate the U.S. criminal justice system, and african-Americans in particular. African Americans are more likely than white Americans to be arrested; after their arrest, they are more likely to be convicted; and after sentencing, and they were more likely to be sentenced to long prison terms. Adult African-Americans are 5.9 times more likely to be incarcerated than whites, and Hispanics are 3.1 times more likely to be incarcerated. As of 2001, one out of every three black boys born this year could expect to work in prison during his lifetime, as was one in six Hispanics, compared to one in every seventeen white boys. Racial and ethnic differences between women are less significant than among men, but are still widespread. The source of this inequality is deeper and more systemic than over-the-line racial discrimination. The United States, in fact, operates two different criminal justice systems: one for rich people and one for poor people and people of color. The rich can gain access to an energetic system of the enemy, abounding with constitutional protection for defendants. However, the experience of the poor and minority defendants in the criminal justice system is often very different from this pattern because of a number of factors, each of which contributes to the over-representation of such persons in the system. As David Cole, a former Georgetown law professor, argues in his book No to Equal Justice, these double standards are certainly not explicit; at first glance, criminal law is color blind and class-blind. But in some ways, it only makes the problem even worse. The rhetoric of the criminal justice system sends a message that our society carefully protects everyone's constitutional rights, but in practice the rules ensure that the prerogatives of law enforcement tend to prevail over the rights of minorities and the poor. Theoretically, granting criminal suspects substantial constitutional rights, the Supreme Court affirms the results of the criminal justice system as fair. This formal justice hides systemic problems that need to be addressed due to the fact that the population is overwhelmingly poor and disproportionately black. By creating and perpetuating policies that allow such racial differences to exist in its criminal justice system, the United States violates its article 2 obligations and 26 International Covenant on Civil and Political Rights, ensuring that all its inhabitants, regardless of race, would be treated equally in accordance with the law. The Sentencing Project notes that the United Nations Special Rapporteur is working with U.S. civil society organizations on contemporary forms of racism, racial discrimination and related intolerance. We welcome this opportunity to provide the UN Special Rapporteur with an accurate assessment of racial inequality in the U.S. criminal justice system. The Sentencing Project, founded in 1986, is working on a fair and effective U.S. criminal justice system by promoting sentencing policy reforms, addressing unfair racial inequality and practices, and promoting alternatives to incarceration. Officers from the Sentencing Project testified before the U.S. Congress and state legislatures and submitted memos to the United States Supreme Court on various issues related to incarceration and criminal justice policy. The organization's research results are regularly policy-based and covered by major news outlets. This report describes the racial inequality that permeates all stages of the United States criminal justice system, from arrest to trial and sentencing and imprisonment. In particular, the report highlights research on indicators of racial inequality and their root causes throughout the criminal justice system. The report concludes with recommendations on how federal, state and local officials in the United States can work to address racial disparities in the criminal justice system and meet their obligations under the Covenant. Racial disparities in the U.S. criminal justice system A. Policing In 2016, black Americans accounted for 27 percent of all those arrested in the United States, double their share of the total population. Black youth account for 15 percent of all children in the United States, but in the same year they accounted for 35% of arrests of minors. What may initially seem like a link between race and crime is largely a function of concentrated urban poverty, which is much more common among African Americans than for other racial groups. This represents a significant proportion of the increased likelihood that African-Americans will commit some violent and property crimes. But while there is a higher black level of participation in some crimes, white Americans overestimate the proportion of crimes committed by blacks and Latinos, ignore the fact that communities of color are disproportionately victims of crime, and discount bias in the criminal justice system. In 1968, the Kerner Commission called on the country to make massive and sustainable investments in jobs and education to reverse the segregation and poverty that have created devastating destructive in the racial ghetto. completely unknown to most white Americans. Fifty years later, a lone surviving member of the Commission concluded that in many ways the situation has not improved or deteriorated. The increase in mass incarceration begins with a disproportionate level of police contact with African-Americans. This is striking, in particular, for drug-related crimes, which are committed at roughly the same rate between races. One of the reasons minorities are disproportionately stopped is because the police see violations where they are, said Louis Dekmar, president of the International Association of Chiefs of Police and chief of the Lagrange Police Department. The chief added: Crime is often significantly higher in minority areas than elsewhere. And that's where we allocate our resources. Dekmar's view is not uncommon. In the absence of meaningful efforts to address social segregation and disproportionate poverty, U.S. criminal justice policy has cast a drag on African-Americans. The war on drugs, as well as police policies including Broken Windows and Stop, Issue and Friske, sanction a higher level of police contact with African-Americans. This includes a higher level of police contact with innocent people and a higher rate of arrests for drug offences. So: More than one in four people arrested for drug law violations in 2015 were black, although drug use rates are not significantly different in race or ethnicity, and drug users tend to buy drugs from people of the same race or ethnicity. For example, the ACLU found that blacks were 3.7 times more likely to be arrested for marijuana possession than whites in 2010, though their level of marijuana use was comparable. Top officials in New York turned a blind eye to evidence that officers are conducting stops in racial discrimination, Judge Shira A. Sheindlin concluded about the city's stop-and-frieze tactics, declaring it unconstitutional in 2013. The policy, which generally targets men living in low-income neighborhoods of color to expose drugs and guns, has proved ineffective, and this estimate was further corroborated when New York continued to reduce crime after the cuts in foot and Friske. However, other localities continue to deploy this practice. New York City, like many other cities, remains reluctant to scale Broken Windows Police, a public safety approach that relies on suppressing petty offenses and neighborhood riots. Between 2001 and 2013, 51% of the city's population over the age of 16 were black or However, during this period, 82% of those arrested for misconduct were black or Hispanic, as were 81% of those who received subpoenas for violating the administrative code (including such behavior as public consumption of alcohol, petty hooliganism, hooliganism, cycling on the sidewalk.). However, studies show that policing strategies have only a small impact on serious crime and are causing enormous damage to communities of color. These strategies also put people of color at greater risk of being killed in a confrontation with the police. In addition to policies that do little to reduce crime and impose high costs on people of color, policy makers and criminal justice leaders have been late in addressing discriminatory policies for which they have no justification, such as the biased use of the discretionary powers of officers and the revenue-driven police. So: In recent years, black drivers have been somewhat more likely to be stopped than whites, but were much more likely to be searched and arrested. The reasons and outcomes of these stops vary by race, and in some jurisdictions there are staggering racial differences in the frequency of police stops, indicating uncontrolled racial bias, whether intended or not, at the discretion of the officers. A closer look at the causes of traffic stops shows that police are more likely to stop black and Hispanic drivers for discretionary reasons - for investigative stops (active stops used to investigate drivers deemed suspicious) rather than road safety stops (reactive stops used to enforce traffic rules or vehicle codes). Nationwide surveys also revealed differences in the results of police stops. After being stopped, black and Hispanic drivers were three times more likely than whites to search (6% and 7% vs. 2%) and blacks are twice as likely to be arrested as whites. These models hold, although police officers tend to have a lower contraband hit rate when they search for black vs. white drivers. Ferguson's law enforcement practices are shaped by the city's attention to revenue, not public safety needs, the Justice Department's Civil Rights Division (DOJ) concluded in 2015 after the killing of Michael Brown by police drew national attention to tensions between police and society in St. Louis, Missouri. The Department of Justice found that the disproportionate number of police stops, searches and arrests of black residents stemmed from the growing reliance of city officials on municipal fines and fees that police and judicial officials were admonished to deliver through aggressive enforcement of traffic violations and minor offenses. ArchCity Defenders, authors of an early and influential white paper on the problem system judges have shown that many other St. Louis municipalities have similar or worse practices than Ferguson. B. Pre-trial African-Americans were imprisoned in local prisons 3.5 times more than non-Hispanic whites in 2016. These differences are due in part to the policing policies and practices described earlier, but are exacerbated by those introduced at this stage of processing. Processing, that almost two-thirds (65%) of those who did not have a good time. People who went to prison in 2016, detained pending trial, policies and decisions affecting pre-trial detention play a key role in addressing inequalities in the prison population and beyond. Pre-trial detention has been shown to increase the chances of a conviction, and people who are in detention awaiting trial are also more likely to accept less favourable plea bargains, be sentenced to prison and receive longer sentences. Seventy percent of pretrial releases require cash bonds, especially the high barrier for low-income defendants who are disproportionately people of color. Blacks and Latinos, more likely than whites, will be denied bail, have higher bond set money, and be detained because they cannot pay their bonds. They are often assessed as higher safety and flight risks because they are more likely to face socio-economic disadvantages and have criminal records. Implicit bias also contributes to people of color worse than comparable whites in determining collateral. C. Although African Americans and Hispanics make up 29% of the U.S. population, they make up 57% of the U.S. population. This leads to prison sentences for African-American and Hispanic adults, who are 5.9 and 3.1 times higher for white adults, respectively, and at a much higher rate in some states. It is noteworthy that these differences exist for both the least and most serious offenses: of the 277,000 people imprisoned nationwide for drug offences, more than half (56%) of those in prison. African-Americans or Latinos. Nearly half (48%) of those who said they would like to have a Of the 206,000 people serving life sentences and virtual life sentences, African-Americans and another 15% are Hispanic. Among young people, African-Americans are 4.1 times more likely than whites to be able to afford accommodation, American Indians 3.1 times more likely, and Hispanics 1.5 times more likely. Although youth detention has declined significantly in recent years, the racial gap between black and American Indian and white youth has widened. Racial disparities in adult and juvenile justice systems are due in part to previously described police and pre-trial factors and are exacerbated by discretionary decisions and sentencing policies that adversely affect people of color on the basis of race or higher rates of socio-economic disadvantage. These include: Biased use of discretionary powers: Prosecutors are more likely to charge people of color with crimes that carry harsher sentences than whites. Federal prosecutors, for example, African-Americans are twice as likely to be charged with crimes that carry a mandatory minimum sentence than similar whites. State prosecutors are also more likely to charge black, rather than similar white defendants, under customary offender laws. Policies that disadvantage people of color: Drug-free school zone laws call for higher sentences caught selling drugs in designated school zones. The vast geographical range of these zones, coupled with the high density of cities, has disproportionately affected urban dwellers, especially in high-poverty areas, which are mostly people of color. Lawmakers in New Jersey have scaled back their state laws after a study found that 96% of those subject to these improvements were African-American or Latino. All 50 states and the District of Columbia have some form of drug-free school zone law. Policies that put poor people at a disadvantage: Most jurisdictions do not adequately fund their programs of poor defense programs. Although there are many high-quality public lawyers, in too many cases the poor are represented by over-loading public defenders or appointed counsel with limited experience in criminal defence. Public defenders in Louisiana recently sued the state and those in Kansas City, Missouri protesting their crushing caseloads. D. Parole in an era of mass incarceration, the declining proportion of inmates has a sentence that allows discretionary release on parole, as lawmakers have demanded the courts move from unspecified sentences (the release of which requires a discretionary parole decision) to long-term sentences (which set release dates). Among the sentences that allow discretionary parole, the process may be tricky for people of color. Some studies show that parole boards are influenced by the applicant's race in their decision-making, although more research is needed in this area. Racial bias among correctional officers also shapes the results of parole. According to a New York Times investigation into New York prisons, comparable behavior in prison, one of the main defining parole decisions, can lead to discrepancies in disciplinary records for blacks and Hispanics compared to whites. Based on an analysis of nearly 60,000 disciplinary cases from state prisons, the reporters found that discipline differences were greatest for violations that gave discretion to guards, such as disobeying an outright order. Underinvestment and racial disparities also persist in community surveillance, with many parole and probation systems offering oversight with little support, and with evidence that parole and probation officers are more likely to repeal people of color than whites for comparable behavior. For example, consideration Institute for the Abolition of Probation in Dallas County, Texas; Iowa Sixth Circuit District; Multnomah County, Oregon-Oregon; and New York showed that black testers had been abolished at a disproportionately high rate in all writing sites at levels that raised concerns about bias at the expense of black interns. E. Postal prison/the attendant effects of African-Americans, especially black men -- side effects associated with criminal record. In 2010, 8% of all adults in the United States were convicted of a felony. Among African-American men, the figure was one in three (33%). that require a professional license, a requirement that sometimes bars and often creates cumbersome obstacles for people with criminal records. In sectors that do not require licensing, employers are 50 percent less likely to outweigh white job seekers with a history of incarceration than comparable applicants without prison records. African-American job seekers, who are less likely to get a callback than whites to start with, experience even more pronounced discrimination associated with criminal records. According to a study by the scientist Virgin Payer, whites with a criminal record receive more favorable treatment than blacks without a criminal record. People with criminal records also faced discrimination in the private rental market, and those convicted of drug offences faced restrictions on access to housing with the assistance of the Government. The Social Security Reform Act of 1996 introduced a lifetime denial of cash aid and food stamps for people convicted in state or federal courts of drug-related crimes, unless states waive the ban. Given the dynamics of the social class and the related racial consequences of the criminal justice system, women and children of color suffer disproportionately from the exclusion law. By 2018, 24 states had completely waived the food stamp ban, 21 others had done so only partially, and five states continued to fully enforce the ban. Even more states continue to impose a partial or total ban on cash assistance to people with felonies. The models of disenfranchisement also reflect a sharp increase and the disproportionate impact of criminal convictions. A record 6.1 million Americans were banned from voting because of their criminal record in 2016, up from 1.2 million in 1976. In 2016, the disenfranchisement rate of African Americans reached 7.4 percent, four times the rate among non-African Americans (1.8%). sentences or remaining under observation during probation or parole. Recommendations to the UN Special Rapporteur, as the study presented in this points out that the causes of racial inequality in the U.S. criminal justice system are complex and deeply entrenched. Studies have repeatedly shown that the cumulative effects of racial inequality are felt throughout the country's criminal justice system. The belief that the current system is not subject to centuries of a clearly racist past is wishful thinking and potentially blind decision-makers to the implicit racial bias that orients American consciousness and is embedded in its official policy. The United States could take concrete steps to reduce both the existence and the effects of racial bias in its criminal justice system. Thus, the Sentencing Project urges the UN Special Rapporteur to recommend that the United States adopt the following recommendations. The end of the war on drugs. The United States must substantially end the war on drugs. In particular, the Ministry of Justice should review and reduce the number of low-level drug offenders prosecuted in federal court. Government officials may also enact legislative changes to divert prison-related prisoners to effective alternatives to prison programmes. Local police departments should significantly reduce drug-related arrests. Resources saved by reducing prosecutions should be invested in evidence-based drug prevention and treatment measures. Elimination of mandatory minimum sentences. The United States must abolish mandatory minimum sentences. Judges should be allowed to consider the individual characteristics of the case when sentencing the accused on a case-by-case basis. Mandatory sentences do not eliminate discretionary powers in the courtroom - they simply shift them from judges to prosecutors, thereby reducing transparency in decision-making. Reduce the use of cash collateral. Defendants should be detained before trial only if they pose a security or flight threat, not because they cannot afford bail. A well-calibrated and transparent risk assessment tool can be used to determine who should be released on a non-exit order, who should be released with certain requirements and who should be detained. Fully funded poor defense departments. The United States must fully fund the poor's defence agencies through a combination of local, state and federal resources. The federal government should increase support for training and technical assistance for defense, and document flawed jurisdictions that do not meet the established standards of the Bar Association for caseloads and training. Adopt a policy requiring the use of racial impact statements. Policies should be adopted at the federal and state levels requiring the use of racial impact statements for the proposed sentencing policy. Such a policy would require lawmakers to prepare an analysis assessing the possible untold racial implications of any proposed legislation before enacting it, to avoid any unintended racial consequences. Four states - Iowa, Connecticut, Oregon and New Jersey - have adopted claims of racial impact since 2008. Develop and implement training to reduce racial bias. The United States should develop and implement training to mitigate the impact of implicit racial bias at all levels of the criminal justice system: police officers, public defenders, prosecutors, judges, juries and parole boards. While it is difficult to eliminate racial bias at the individual level, studies have repeatedly shown that it is possible to control the impact of implicit racial bias on individual decision-making. In other words, while it may not be possible in the current culture of the United States to ensure that people are cognitively color blind, one can train people to be behaviorally color blind. The United States should work with leading scholars on implicit bias in the development of the most effective curricula and to work with monitoring and accountability systems to reduce the impact of implicit racial biases. Address the collateral consequences. Depriving the entire class of citizens of the right to vote is deeply problematic for a democratic society and counterproductive to effective interference. The federal government should allow Americans to vote regardless of their conviction status, and of course after they have completed their sentences. States must also ensure the full democratic participation of their citizens. Government officials should also review policies that serve no public safety function but impose collateral effects on people with criminal records, such as employment, education, housing and social protection, and encourage similar reforms in the private sector. For decades, the United States of America has used mass incarceration as a convenient answer to uncomfortable questions. This policy has produced a sharp rate of imprisonment, which particularly disproportionately affects communities of color. In addition to a number of harmful effects on people of color, mass incarceration is a failed policy on public safety outcomes. Studies have documented that the impact of incarceration on crime is modest and that, at the current level, incarceration is significantly reduced due to a decrease in the impact on public safety. Mass incarceration diverts resources away from prevention and treatment initiatives that could lead to much more effective approaches to reducing crime. In recent years, The U.S. government has addressed some of the glaring racial inequalities that permeate all aspects of its criminal justice system, but these efforts have been relatively modest in scope. The government continues to promote and perpetuate the perpetuation of in clear violation of their obligations under the International Covenant on Civil and Political Rights, as well as other international agreements. The spread of racial inequality in the U.S. criminal justice system has a profound impact on the lives of people of color. Behind each statistic lies the face of a young black man or woman whose potential has been interrupted by harsh prison sentences sanctioned by draconian drug laws. Behind every percentage point lurks the face of a latina child who will know his parents only through hasty, clumsy visits to the prison visiting room. Behind every set of data hides a community of flowers, devoid of hope, because its young people were locked up. It is the human face - the face of color - that the racial injustice of the United States criminal justice system is the most good reason for reform. The time has come for the United States to take positive steps to address racial disparities in its criminal justice system.

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