

APPROVAL OF HONORS PROGRAM SENIOR PROJECT

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*Racial Disparity in the Judicial System of the United States Against African Americans
(1865- Present)*

This Senior Project is approved as acceptable

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**Racial Disparity in the Judicial System of the United States Against African Americans
(1865- Present)**

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HON 402: Honor's Project

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Racial Disparity in the Judicial System of the United States Against African Americans (1865- Present)

One need not to examine American history too deeply to realize that the plight of African Americans since Reconstruction (1865-1877) has had a complicated relationship with the judicial system in the United States. The first documented case of Blacks setting foot on American soil as slaves in 1619 (Hannah-Jones, 2019) makes clear that the concept of justice was not intended for those who were melanated but instead only for those who were of European origin. As a result, we find numerous examples in U.S. history, from the 1868 Opelousas Massacre in Louisiana, to the death and injustice of Emmett Till, to the polarizing Rodney King verdict of 1993, all representative of events where Black men were mistreated by white men, went before the judicial system and found no justice.

A review of numerous historical documents, interviews, videos, and media resources make clear that the racial disparity within the U.S. judicial system is biased when discussing men of color and their treatment when interacting with law enforcement and judges. Daniels (2014) points out in his work that Black men have been “betrayed by the judicial system” ever since they set foot on the continent as slaves in 1619. To validate the aforementioned statement, this work, via an analysis of historical data during Reconstruction, the Jim Crow Era, and post-1964, argues that African American men were not treated fairly by the U.S. judicial system. The term “fairly” in this work is defined as receiving the same rights as white men of European origin when interacting with the judicial system while in court or in the custody of law enforcement officers. The work is also an examination of whether the U.S. has ever truly been a colorblind nation (Alexander, 2010) when it comes to its citizens of color.

The topic of the historical mistreatment of Black men when engaging with the American judicial system will be addressed by examining data obtained from literature referencing Reconstruction, Jim Crow, and post-Jim Crow. To better probe the topic, this work will reference journal articles, newspaper articles, and books that all consider the treatment of Black men when interacting with judicial system officials who were usually White. More specifically, this work will consider each respective time period and how racial mistreatment and the American judicial system interacted from 1865 to the present.

Once all data and sources have been presented, proposed changes and recommendations will be made regarding what actions can be taken by local, state, and national entities to address the historical problem of how Black men are treated when they enter the American judicial system.

Reconstruction

History of disparity towards African American men by the U.S. judicial system during Reconstruction (1865-1877)

Reconstruction (1865-1877) was supposed to be a turning point for American citizens after the Civil War. Technically, Black people, who became American citizens during Reconstruction, were supposed to receive equal rights and protections under the newly established government, which had just ended slavery. Unfortunately, the mistreatment of African Americans (who were citizens at this point) during Reconstruction, when they engaged with the local and state judicial system, was anything but fair. From lynchings to the unfair taking of property, African Americans rarely, if ever, received fair treatment under the law during this time period. And while African American men received most of the consequences when interacting with the new judicial system (lynchings, unfair trials, beatings, etc.) during

Reconstruction, many Black women were raped and tortured as well. Reconstruction also saw the implementation of “black codes,” laws that reminded Blacks that they were only a step above slavery and further restricted the rights and freedoms of African Americans. After the Civil War, many Southern states enacted such black codes, which were a series of laws designed to control the newly freed African American population. Many of these black codes would exist well into the 20th century.

These codes, applied exclusively to Black people, replaced the old racial hierarchy of "master and slave" with a new one of "master and servant." The black codes imposed various restrictions on African Americans, including limitations on where they could live and work, curfews, restrictions on their ability to testify against whites in court, and requirements for labor contracts. The codes were designed to recreate conditions similar to slavery. They also effectively denied African Americans full citizenship and rights. Black individuals were required to seek permission from their "masters" for basic activities such as leaving the premises or having visitors. Failure to comply with these regulations resulted in severe penalties, including fines, imprisonment, or even physical punishment such as whipping. Black codes were eventually abolished with the Reconstruction Amendments, particularly the 14th Amendment. This amendment granted citizenship and equal protection under the law. However, the termination of black codes was just the steppingstone for the Jim Crow laws that would follow.

Through the Reconstruction period witnessed the beginning of American citizens being mistreated because of the color of their skin, this behavior continued to occur through the 1960s, and beyond. As a matter of fact, Daniels (2014) notes that the behavior has continued since that time to the present where the “only thing Blacks could count on was being mistreated by the

nation's White majority." The systemic nature of this treatment continues to be well documented, though often avoided in academic and casual conversation in the United States.

Wertheimer (2023), in his work, "Race and the Law in South Carolina: From Slavery to Jim Crow", carefully explores six legal disputes in South Carolina from the 1840s to the 1940s, revealing the relationship between race and the law during slavery, Reconstruction, and Jim Crow. The book demonstrates how legal disenfranchisement of Black South Carolinians varied based on their access to political and legal power. As mentioned in the work, between 1865 and 1877, Black South Carolinians experienced a fleeting moment of formal political and legal equality, supported by federal intervention. With Black voters constituting the majority of the population and Black officeholders outnumbering their white counterparts, the state saw unprecedented levels of Black political representation and legislative action aimed at serving the needs of Black residents. Despite these reforms, Reconstruction faced challenges, including resistance from white supremacist groups, political violence, and opposition from white South Carolinians who sought to maintain white supremacy. What the work makes clear is that the stereotypes present in the U.S. today stem from the results of past judicial results handed out by white lawmakers and politicians on men and women of color. Clearer even when reading the work is that there were few consequences for actions taken against Blacks during this time. One example that stands out in the work is that, in South Carolina at the time, there were so few lawyers to aid these Black men toward the latter part of Reconstruction. And even then, when many of the cases were brought forward, the judge in the cases was normally white, which often resulted in negative results for the Black defendant.

Lack of consequences for actions taken against Blacks can also be found in the aftermath of the 1868 Opelousas (Louisiana) incident. Ferrell Evans (2020) notes that as Blacks were

making political gains post-Reconstruction, many conservative Whites took issue with their growing power at the ballot box where people of color (men) had received the right to vote. As a result of growing angst against the perceived increase of Black rights, more than 200 Blacks were killed by Whites when rumors spread that Blacks were gathering to create an uprising. Many bodies were found in shallow graves in the area, with many victims never discovered during the event or after. For the culprits who did the killing, there would be few, if any, consequences for the death of the many Black victims in Opelousas. One parish supervisor noted that if it was found out that anyone would have voted in opposition of the white conservative candidate, the person would have been killed within a short time period.

Large scale killings of Black people during Reconstruction have been documented in recent history. A New York Times article (Robertson, 2020), addressing the lynching of Black men, details the severity of this time period, which also notes the lack of consequences for the gruesome actions of the perpetrators. Take for example, Guilford Coleman. In 1870 in Alabama, he was thrown down a well by whites who disagreed with his right to vote at a convention to nominate a Republican governor. The article also points out that the Equal Justice Initiative of 2020 documented “more than 4,400 blacks were lynched by whites in the 74 years following Reconstruction.” The Equal Justice Initiative noted that at least 2,000 lynchings took place during the 12 years of Reconstruction. The article points out the following gruesome summary of events:

“Many of the attacks during Reconstruction, particularly after black people began to gain political power, were even more brazen in their defiance of the law than those that came after. White mobs killed or assaulted stunning numbers of black elected officials and activists, including Jack Dupree, the president of a political club in Mississippi, who was dragged from his home by a group of Klansmen. The Klansmen beat him, according to the report, “slit his throat, cut out his heart and intestines and threw his corpse into a nearby creek.”

In a detailed review of the Equal Justice Initiative report, “Reconstruction in America: Racial Violence After the Civil War (2020), it is clearly documented that the lives of Black men were of

no concern to those who were in charge, especially those who were white and socially conservative. The report (Reconstruction in America, pg. 9) shares that “white perpetrators of lawless, random violence against formerly enslaved people were almost never held accountable—instead, they frequently were celebrated”. It is clear from the report that to be emancipated as a Black person during Reconstruction was not the same as receiving automatic equality in the eyes and systems of the U.S. judicial system.

The report goes into depth about the disregard of the lives of Black men during the Reconstruction era, particularly through acts of violence and terror. As stated in the report (Reconstruction in America, pg. 12), there was a disturbing period in history shortly after the passage of the Thirteenth Amendment when white mobs targeted Black people who were asserting their freedom. An example of the disregard for Black lives is evident in the violent opposition to a convention in New Orleans aimed at ensuring Black voting rights in Louisiana. When local Black men supported the convention through a march, the opposition turned violent as white police and mob members killed Black people in the area. The Congressional committee investigating the massacre concluded in 1867 that nearly two hundred people were killed and wounded during the brutal events.

The report goes on to describe this indifference seen in the brutal attack on Abram Colby, a formerly enslaved Black man who had been elected to Congress by freedmen (Reconstruction in America, pg. 16). Before the assault, a group of Klansmen, including white doctors and lawyers, attempted to bribe Colby to change parties or resign from office. When he refused, they subjected him to a brutal beating. Colby later testified before a Congressional committee, stating: “[The mob] took me to the woods and whipped me three hours or more and left me for dead.” (Reconstruction in America, pg. 25). This quote vividly highlights the extreme violence inflicted

upon Black individuals who dared to challenge the prevailing social order. The report describes how white supremacist groups, such as the Ku Klux Klan, engaged in systematic violence and terror to suppress Black civil rights and maintain white supremacy during Reconstruction. What made these acts so acceptable by the public was that many of the people killing and beating Black men were the white lawyers, white judges, white doctors, and white law enforcement officers.

During the Reconstruction era, Black people were trapped in a new form of slavery known as convict leasing (Wilson, 1998). Following the void in the Southern labor market after Emancipation, Southern legislators exploited a loophole in the Thirteenth Amendment. They did so by allowing involuntary servitude as punishment for crime. Wilson also notes that many whites established convict leasing by creating discriminatory "black codes" that criminalized newly freed Blacks and enabling states to lease prisoners to private industries. This system, described as "worse than slavery" by historians, resulted in Black prisoners enduring inhumane and often deadly working conditions without receiving any pay, while states profited from their labor. The exploitation of Black people continued for generations, and those who challenged this system faced threats, violence, and murder. An example is provided in the late summer of 1865, where a white mob brutally killed six Black men in Duplin County, North Carolina. According to the report, the men who had entered into a sharecropping agreement with their former slaveowner, were killed when they insisted on being paid for their work after the white man tried to evict them without compensation. No consequences were received by the culprits for killing these Black citizens.

What the aforementioned paragraphs make clear is that Black men have been mistreated by the U.S. Judicial System since people of color became citizens in the country. From

consequences where one seeks the right to vote or earn an education, attacks and crimes on Black people have a long history, beginning with Reconstruction as the inflection point. The information stated above provides an account of the systemic mistreatment and brutal violence endured by African American men during the Reconstruction era. Despite the intended turning point for American citizens after the Civil War, the promise of equal rights and protections for Black individuals was consistently betrayed. From the implementation of "black codes" to the large-scale killings and lynchings documented during Reconstruction, the lack of consequences for the perpetrators highlights a profound indifference to the lives of Black men by the judicial system.

Jim Crow

History of disparity towards African American men by the U.S. judicial system during Jim Crow Era (1877-1965)

As Reconstruction concluded in 1877, the mistreatment of Black men during the Jim Crow Era continued to rage within local and state judicial systems. Things like segregated prisons, convict leasing, racially biased laws, lynching and mob violence, and the lack of legal protection were all tenets of the period. Prisons and detention facilities were racially segregated, with African American men facing harsher conditions, overcrowding, and inadequate resources. Some states had convict leasing systems, where prisoners, typically African American men, were leased to private companies for forced labor. In addition, African Americans often did not receive equal protection under the law. It is during this same period where the nation observed the legacy and reinforcement of black codes, which found their roots during Reconstruction.

Following Reconstruction, the government issued Jim Crow laws in an attempt to legally discriminate against African Americans. Jim Crow laws were state and local laws in the United States enacted between the 1870s and 1960s that enforced racial segregation and disenfranchisement. These laws were aimed primarily at African Americans in the Southern states, although similar practices existed in other parts of the country. Under Jim Crow laws, African Americans were subjected to discrimination in almost every aspect of life. This includes areas of education, employment, housing, healthcare, and public accommodations such as restaurants and transportation. These laws enforced racial segregation, commonly known as "separate but equal," although the facilities and services provided for African Americans were almost always inferior to those for white Americans.

In many cases, Blacks were denied the right to a fair trial, legal representation, and due process. Juries were typically all-white and biased against African American defendants. An example of such a case was that of Till. Emmett Till, a Black boy from Chicago, went to visit his uncle in Money, Mississippi, in 1954 and was murdered after he allegedly whistled at a White woman. As noted by Wall (2012), in his work titled, "*Remnants of Slave Justice; Emmitt Till to Trayvon Martin*", Till's accusers went to trial, and were found innocent within hours of jury discussion. Shortly after the trial, the two gentlemen who killed Till sold their story to a local magazine where they admitted to the murder. So, be it Emmett Till or Trayvon Martin, the author points out that it may be the conditioning that has taken place in America that puts the lives of Black males at such a high risk. Wall hypothesizes that maybe "Emmett Till should have known his place and not whistled at a white woman; Trayvon Martin should not have worn a hoodie". Would the aforementioned have kept them alive? Maybe, but Wall also reiterates that it is the "racist conditioning that provides the prism through which deadly force is embraced as a right

and a subtle instrument of control. African American male youth, quite often he argues, who are oblivious to the conditioning process of racial intimidation and control pay a high price.

Not only this, but lynching and extrajudicial violence was a very common reality for African American men in the Jim Crow era. In many cases, Black men were not even given the chance to face trial. They were lynched or subjected to extrajudicial violence by white mobs and often accused of crimes without any evidence or the chance of due process. Lynching was used as an act of terror meant to spread fear among Blacks while maintaining white supremacy over all areas of society. Despite the heinous nature of these actions, lynching was frequently committed in a public display and highly advertised through newspapers. According to PBS, “In the South, an estimated two or three blacks were lynched each week in the late 19th and early 20th centuries. In Mississippi alone, 500 Blacks were lynched from the 1800s to 1955. Nationwide, the figure climbed to nearly 5,000. As for the white perpetrators behind the lynching, they faced little to no consequences. Take for example, the lynching of Claude Neal that occurred on October 18, 1934. His story, and many other Black men alike stands as a reminder of the brutal racial violence that plagued America during Reconstruction. Claude Neal was a young African American farmhand that was accused of the rape and murder of a white woman, Lola Cannidy. With limited conclusive evidence, Neal was quickly arrested and subjected to a series of violent and dehumanizing acts at the hands of a vengeful mob. The events that unraveled following Claude’s arrest are a testament to the depths of racial hatred and the failures of justice in America at that time. Neal was relocated multiple times by authorities to avoid the mob's wrath. Unfortunately, he was ultimately seized and subjected to a horrific ordeal of torture and mutilation. Eyewitness accounts and newspaper reports detail the gruesome nature of his lynching, including harsh acts of castration, stabbing, burning, and shooting. Unfortunately, the

white mob responsible for his death faced no consequences. The aftermath of Neal's lynching left a significant impact on the African American community and instilled fear and trauma that would linger for years to come. This series of events was unfortunately the tragic reality for many other Black men during this time.

In an examination of cases shared by civil rights lawyers, editor K. Spriggs (*Voices of Civil Rights Lawyers : Reflections from the Deep South, 1964-1980*, University Press of Florida, 2017), it is clear that lawyers played an important role in challenging white supremacy and advocating for civil rights surrounding significant political and social changes. In this collection, twenty-six lawyers shared firsthand accounts of the abuses they faced and the barriers they overcame while fighting for civil rights, most often, on behalf of Black men who were not given fair treatment by a predominately white judicial system. These narratives offered unique perspectives on key moments in civil rights history, including the Selma March in 1965, the first civil judgment against the Ku Klux Klan, the establishment of ballot access for African Americans in Alabama, and the 1968 Democratic Convention. Multiple examples from the work illustrate the unfair treatment that Black men experienced during the Jim Crow era. For example, the case involving the case of John Brittain, a Black attorney who was arrested for defending the rights of Black students at the University of Mississippi (pg. 167). And while Brittain was successful in defending the students, he would later be jailed because he won a case for a Black male who was falsely accused of making obscene phone calls to a white woman. His crime? Practicing law without a license in Mississippi. This too was overturned as it was customary for licensed lawyers from one state to practice in another (at the time), as long as proper approval was received.

When reflecting on the traumatic accounts of injustice from the judicial system stated above, it is clear that this period marked a highly discriminatory chapter in the American judicial system. The utilization of eyewitness accounts, reflection of previous laws, and historical articles further backs these claims. From the implementation of discriminatory laws to the pervasive violence and dehumanization experienced in prisons and through extrajudicial means such as lynching, the plight of Black men exemplifies the deep depths of racial prejudice and injustice towards African Americans and the enduring struggle against white supremacy during the Jim Crow era.

Post Jim Crow

History of disparity towards African American men by the U.S. judicial system during post Jim Crow Era (1865-Present)

As the Jim Crow Era came to a close in the United States, what became very clear was the continuation of the mistreatment of Black men within the local and state judicial systems. This section of the paper provides an illustration of the racial profiling, arrest and conviction rates, sentencing disparities, mass incarceration, and over-policing and under-policing issues that continued to torment Black men. These men were still more likely to be racially profiled, resulting in disproportionate stops, arrests, and searches by law enforcement. This practice continues to be a significant issue in many communities as Black men are disproportionately arrested and convicted for various offenses, including drug-related crimes, even though drug use rates among different racial groups are relatively similar. (Dragomir and Tadros, 2020). Also, Black men, as the following literature will show, still receive longer sentences compared to their white counterparts for similar offenses. (Peffley and Hurwitz, 2010). In some communities, there is an issue of over-policing, leading to high arrest rates, while in other areas, there may be under-

policing, which can result in a lack of protection and resources. And while these issues continue to be ongoing, there is evidence, as noted in the Portland Press Herald (2016), that the broader issue of racial inequality in America goes beyond incidents involving the police. There are disparities in education, medicine, employment, and the justice system. In essence, this is a systemic issue.

In 1998, Larry Aubry revealed a bias against African American males in the U.S., using statistics on incarceration rates. Despite comprising less than 4% of California's population, approximately 40 out of every 100 men in the state's criminal justice system are Black. His study (*System Remains Biased Towards Black Males.* Los Angeles Sentinel) emphasizes the economic and social consequences of this disproportionate incarceration. Also, suggesting that education is crucial to breaking the cycle and addressing systemic issues in the treatment of Black males within the criminal justice system. A notable quote from the article illustrates the extent of this bias: "It appears that African American men are arrested more often, charged more severely, convicted more frequently, and sentenced more harshly than other Americans." (Aubry, 1998). This statement does an excellent job at encapsulating the extended nature of the bias, including every stage of the criminal justice process. The effects of the disproportionate incarceration rates go beyond individuals but also contribute to broader issues within communities. Another alarming aspect highlighted is the disenfranchisement of large portions of the African American community due to felony convictions, which takes away individuals of their voting rights for years after release. Overall, highlighting the broader impact of biased incarceration when it comes to political representation. The disproportionate representation of Black males in prisons, combined with the challenges faced upon reentry into society, raises important questions about the fairness and effectiveness of the criminal justice system.

The pattern of racial injustice in America, where Black individuals are murdered by white perpetrators, highlighting the systematic injustice in the criminal justice system is a continuing theme. This theme is continuously reflected in racial undertones in laws like "stand your ground." Lee A. Daniels (2014) deeply examines the tragic events surrounding individuals like Oscar Grant, Jonathan Ferrell, Trayvon Martin, and Jordan Davis that highlight the injustices within the legal system. These cases drew national attention and raised significant concerns about racial profiling, police use of force, and the broader issues of systemic injustice within the criminal justice system. These issues are seen when looking deeper at the Johnathan Ferrell case. In September 2013, Jonathan Ferrell, a 24-year-old Black man, was involved in a car accident in Charlotte, North Carolina. After the accident Johnathan attempted to get help by knocking on a door nearby. The homeowner was alarmed by the late-night knocking and proceeded to call the police. When Johnathan Ferrell approached the officer in need of help, he was met with gunfire. The officer on the scene, Randall Kerrick, fired 12 shots and hit Johnathan multiple times, causing his death. When the case went to trial, it was dismissed due to a mistrial and all charges against Kerrick were dropped.

As previously mentioned, the case of Oscar Grant also reflects these same issues presented in the judicial system. Particularly when it comes to lethal force toward African Americans from the police. Oscar Grant, a Black man, was shot dead in 2009 by a transit police officer in Oakland, California. Johannes Mehserle was the officer and perpetrator. The incident was captured on video and Mehserle claimed he mistakenly used his firearm instead of a taser. Mehserle was convicted of involuntary manslaughter and sentenced to two years in prison. However, he was released on parole after serving around eleven months, highlighting the lack of

accountability and consequences faced by these white perpetrators by the United States judicial system.

Star Press (2003) also revealed that the criminal justice system continues to disproportionately affect Blacks, particularly males, who face higher incarceration rates compared to other races. Studies show that African American men are 7-8 times more likely to be imprisoned than white men. Contributing factors include biased law enforcement, racial profiling, and mandatory sentencing related to the war on drug use. The article also explains the overrepresentation of African Americans in prisons. Despite constituting about 13 percent of the national population, African American males make up 51.4 percent of prisoners in state prisons. This overrepresentation supports the claim that the system is disproportionately impacting the African American community. Statistics also suggest African American men are more likely to be arrested, and if convicted, receive longer sentences compared to their white counterparts.

It is also important to note the irresponsibility of the media as noted by Lucas and Steven (1992). Their work noted how the justice system protects the police from media scrutiny, thus causing serious questions about media credibility. Take for example the case of Rodney King in 1991, where he was pulled over by L.A. Police Officers and beaten. King, who was hurt so badly by the officers present, was unable to stand. And while he was on the ground, begging for them to stop hurting him, the officers continued to do major harm to his body. The city of Los Angeles fell into silence on Wednesday as the Rodney King trial's jury delivered not-guilty verdicts, prompting questions about racial fairness and the credibility of the judicial process. The contrast between the media trial, where the public quickly condemned the officers involved, and the actual jury trial outcome is an example of the recurring challenge of the media's ability to accurately cover legal issues. This difference between the verdict in the media trial and the

verdict in the jury trial was not the first time such a disparity has been observed. These issues only heightened the political and social tensions faced in America.

In more recent examples of racial disparities, Larry Miller (2013) writes how the Trayvon Martin case and George Zimmerman's acquittal started protests and discussions on racial disparities in the justice system. Studies show systemic issues contributing to the over-incarceration of African American men, including uneven sentencing. Trayvon Martin was fatally shot by George Zimmerman, a neighborhood watch volunteer, in Florida. George Zimmerman claimed he shot Trayvon in self-defense and as stated earlier, cited Florida's "stand your ground" law to back his claims. Under this law individuals are allowed to use deadly force if they believe it is necessary to protect themselves. However, Trayvon Martin was not armed. In fact, he was only carrying a bag of Skittles and a can of iced tea. In July 2013, Zimmerman was acquitted of all charges by a Florida jury.

The discussion surrounding racial disparities is not a new one. A study by Pierre Thomas (1995) revealed racial disparities in the American criminal justice system, with almost one in three African American men in their twenties under prison, parole, or judicial system supervision. The report goes on to attribute the rising incarceration rate to changes in law enforcement policies, especially for drug offenses. The statistics presented in the study indicated that in 1993, an estimated 32.2 percent of African American men aged 20 to 29 were under judicial supervision, compared to 6.7 percent of white men and 12.3 percent of Hispanic men of the same age group. The report highlighted a significant racial disparity, considering that African Americans make up about 12 percent of the U.S. population.

The unfair treatment of Black men in the judicial system is evident when considering death penalty rates and arrests for marijuana. According to the Bangor Daily News (2014),

statistics reveal racially biased trends, including a disproportionate number of police shootings of Black individuals, higher rates of incarceration for Black men compared to white men, and racial biases in death penalty sentencing. Police shootings demonstrate a disproportionate likelihood of Black individuals being shot and killed by police compared to their white counterparts. The statistics from New York City between 2000 and 2011 show that police shootings disproportionately involved African Americans, despite making up a smaller percentage of the city's population. The incarceration rates also do a great job in highlighting the issue. Black men are more likely to be jailed than white men, and this trend has been increasing since 1960. The Pew Research Center analysis reveals that in 2010, Black men in the U.S. were over six times as likely as white men to be incarcerated. This disparity is even more pronounced in Maine, with the incarceration rate for Black men being 7.6 times that of white men. Not only this, but the death penalty is also highlighted as an area where racial bias is apparent. The race of the victim plays a significant role in determining whether a prisoner will be sentenced to death. Data reveals that African American defendants are three times as likely as white defendants to receive the death penalty, particularly in cases where the victims are white. Also, despite similar marijuana usage rates, African Americans are still nearly four times more likely to be arrested for marijuana possession. Studies also have consistently shown that Blacks receive longer sentences than whites (Peffley and Hurwitz, 2010). Factors such as age, employment status, and gender also contribute to harsher sentencing, with young Black males being particularly affected.

A.M. Behnke (2017) in his work, *Racial Profiling: Everyday Inequality*, noted that racial profiling is still a big issue in the United States, impacting individuals and institutions, including law enforcement and schools, who often use race or ethnicity as a basis for suspicion. This practice, identified by a large number of deaths to unarmed people of color, has sparked national

awareness and activism. In his work, Behnke mentions the constitutional safeguards put into place in the Fourth and Fourteenth Amendment designed to protect individuals from injustices within the US criminal justice system. However, despite these protections, the book highlights persistent disparities in law enforcement practices, particularly regarding racial profiling. Thus, leaving African Americans in a state of constant fear due to the lack of accountability for police misconduct as well as their mistrust in the justice system. For example, Behnke's work references the tragic death of John Crawford III at the hands of police officers which underscores the deep-rooted issues of racial profiling and police brutality that persist in many communities across the United States. John Crawford III was fatally shot by police officers in August 2014 inside a Walmart store in Beavercreek, Ohio. Crawford was holding a BB gun that he had picked up from the store's shelf. A nearby customer called 911 reporting him as "a man waving a rifle." Police responded and shot Crawford, believing the BB gun was a real firearm. The jury declined to charge the officers involved because of insufficient evidence for criminal charges. Another unjust sentence and lack of accountability by the hands of the US judicial system. Crawford's case, along with those of other victims like Michael Brown, Walter Scott, Freddie Gray, Eric Garner, Alton Sterling, and Philando Castile, has brought heightened attention to systemic injustices and sparked calls for meaningful reform. *Racial Profiling: Everyday inequality* also highlights the disproportionate use of force against people of color, as evidenced by statistics showing higher rates of fatal shootings among African Americans compared to white Americans (Behnke). The fact that unarmed Black Americans are more likely to be fatally shot by police than armed white Americans, despite the smaller size of the Black population, is a clear example of how frequent and detrimental racial bias is in policing.

The effects of over-policing and under-policing should also be discussed when considering the issues plaguing the judicial system. Over-policing and under-policing are two interconnected issues that have significant effects on African Americans living in the United States. Over-policing, the excessive presence and scrutiny of law enforcement in certain communities, often leads to increased surveillance of individuals. This process is based on factors like race and socioeconomic status. African American communities are disproportionately targeted. This constant scrutiny embeds the feelings of harassment, fear, and distrust towards law enforcement. In addition, over-policing also leads to racial profiling. Resulting in African Americans being disproportionately stopped, questioned, and searched by police officers compared to other racial groups.

Under policing, on the other hand, refers to the inadequate presence and response of law enforcement in certain communities. With under-policing, delays or failures in addressing crimes and providing protection are likely to occur. African American neighborhoods has an history of experiencing longer response times to emergency calls or less thorough investigations of crimes. This lack of attention from law enforcement also has a hand in African American communities receiving fewer resources for crime prevention and community policing initiatives. This lack of support can perpetuate cycles of violence and crime, as communities struggle to address underlying social issues without adequate assistance from law enforcement agencies. According to scholars Christopher Lewis & Adaner Usmani at Harvard (2022):

“It has become common knowledge that the police do not solve serious crime, they focus far too much on petty offenses, and they are far too heavy-handed and brutal in their treatment of Americans—especially poor, Black people. This is the so-called paradox of under-protection and over-policing that has characterized American law enforcement since emancipation.” (pg. 1)

In his work, *Race, Ethnicity and the Law* (2017), M. DeFlem explores topics such as racial and ethnic disparities in sentencing, the challenges faced by African Americans in the U.S. legal

system, inequities in drug law administration, and the impact of race on juvenile justice.

According to this work, wrongful convictions represent a profound miscarriage of justice within the legal system, undermining trust and perpetuating societal injustices. While scholarly literature has traditionally focused on factors such as witness error, prosecutorial misconduct, and flawed forensic evidence, recent research has shed light on the intersecting dynamics of race and institutional biases that contribute to wrongful convictions. Marginalization within the criminal justice system, selective law enforcement, and racial disparities in drug legislation were often ignored factors. However, a deeper examination reveals that these systemic biases play a significant role in perpetuating wrongful convictions.

According to Deflem, witness error emerges as a key factor, with over 70% of DNA exonerations involving mistaken identifications, as highlighted by the Innocence Project. This aligns with Borchard's research in 1932, which found that witness error was present in half of wrongful convictions. Cross-racial identifications worsen this issue, highlighting societal and cultural influences on memory recall. Additionally, prosecutorial and police misconduct, including evidence tampering and witness coercion, significantly contribute to wrongful convictions. *Race, Ethnicity and the Law* goes on to shine light on the issues revolving false confessions. False confessions further underscore the vulnerability of certain demographics, such as minorities. The Innocence Project reports that false confessions were present in over half of their DNA exonerations, while Warden and Fredrickson (2012) found them in over half of wrongful convictions in Illinois. Harmful processes like interrogation tactics, prolonged questioning, and fear of repercussions contribute to these coerced admissions of guilt. Additionally, reliance on informants and snitches who are often incentivized to provide false testimony exacerbates racial disparities. Not only this, but inadequate legal representation,

particularly for poorer defendants, perpetuates wrongful convictions. Specifically, disproportionately affecting people of color. Poverty, unmotivated defense lawyers, and systemic biases within the legal system all contribute to ineffective assistance of counsel. Furthermore, flawed forensic analyses, perjured testimony, and overlooked plea bargaining dynamics all have a hand in adding to the issue.

A truly compelling case is the one initiated in 1984, captured in book form. “Picking Cotton”, written by Jennifer Thompson-Cannino, Ronald Cotton, and Erin Torneo, captures the wrongful conviction of a Black man falsely accused of raping a white woman. Ronald Cotton, a Black man from Graham, NC, was falsely accused of raping a white Elon College student, Jennifer Thompson. Mr. Cotton, while in prison, would actually see the gentleman who did indeed rape Ms. Thompson. It was only after DNA evidence was entered into evidence in 1992 that he was found not to be the culprit. Even so, during all of his appeals, the book notes that there was evidence of local-area police and attorneys who would unfairly influence Ms. Thompson’s perspective by tainting the line-ups, where she was shown different visuals during in-person versus picture lineups. As a result, Mr. Cotton stayed in prison for 11 ½ years for a crime he did not commit.

Expanding on the concept of judicial unfairness, Free, Jr, and Ruesink (2012) in their work, *Race and Justice: Wrongful Convictions of African American Men*, investigated about 350 wrongful convictions of African American men, extending the scope beyond homicide to include sexual assault, drug dealing, and nonviolent crime. The data exposes racial disparities, particularly in cases involving Black men accused of crimes against white victims and urges an examination of systemic issues within the criminal justice system that lead to the wrongful conviction of innocent individuals. Take for example the case involving Kenneth Adams. In this

case, a white woman named Carol Schmal and her fiancé, Lawrence Lionberg, were abducted, raped, and murdered. Thus, leading to the wrongful conviction of four men known as the Ford Heights Four. Kenneth Adams, one of the defendants, became a suspect based on unreliable witness testimony and flawed forensic evidence. The prosecution heavily relied on the testimony of Paula Gray, who later recanted her statement and claimed to be coerced by the police during questioning. Despite her recantation, Adams and his co-defendants were convicted and sentenced to prison. However, the case took a turn when the Center on Wrongful Convictions at Northwestern University intervened and shed light on significant exculpatory evidence that had been previously overlooked. This evidence included witness accounts of different perpetrators fleeing the crime scene and selling items stolen from the victims. Despite this insight, the police failed to pursue this lead, and crucial information was withheld from the defense. Ultimately, DNA testing proved the innocence of the Ford Heights Four, leading to their exoneration and eventual release from prison in 1996. The true perpetrators of the crime were identified through confessions.

Thematically, the concept of incarceration flows intimately throughout research addressing judicial fairness. Pettit (2012) in his work, *“Invisible Men: Mass Incarceration and the Myth of Black Progress”*, reveals the reality that, for African American men without a high school diploma, incarceration is more common than employment. His work continues to expound on the problems faced by disproportionate incarceration of Black men that continually gets looked over due to the false narrative of progress, particularly in family life. Over the years, the number of minors with a parent behind bars has surged dramatically. Racial disparities in incarceration are shown by the fact, there were more Black children with incarcerated parents than children of any race or ethnicity. Astonishingly, the majority of parents in prison are serving

time for nonviolent offenses, such as drug or property crimes. The impact of parental incarceration extends far beyond the prison walls. It destabilizes family life by separating children from their parents and disrupting their emotional and financial support systems. Moreover, the challenges faced after being released by formerly incarcerated parents, including limited economic opportunities, further increase the hardships experienced by their children. Recent research underscores the detrimental effects of parental incarceration on children's development, particularly among boys who are at greater risk of experiencing behavioral problems and developmental delays. In addition, the concentration of incarceration within specific social and demographic groups, coupled with high levels of residential segregation, continues a cycle of incarceration within already marginalized communities. Despite the significant impact of incarceration on children, families, and communities, conventional surveys often overlook, or undercount individuals affected by the prison system.

And what about the growing number of Blacks who die in police custody? Rissman and Harris (2017) noted in their work, *“Race and policing”*, how recent incidents of mistreatment or deaths of minorities in police custody, have historical foundations regarding how the current policing system interacts with Blacks. The book mentions relevant institutions and laws, while also examining efforts by police departments and communities to enhance communication and relationships. Ironically, the book begins with the murder of Black New Yorker, Eric Gardner, who was killed by NYPD officers, on July 17, 2014, for selling individual (non-packaged) cigarettes (pgs. 6-8). The murdering police officer, Pantaleo, used an illegal choke hold on Gardner, and had been sued three times for racially motivated misconduct (pg. 9). And even with video evidence, coupled with a police officer who had mixed reviews in the community, there were still those who saw Gardner as the threat because he was a “big, black man (pg. 10). And

where would these images come from historically? The authors surmise that the consistency in seeing Black people as threats has its roots in the history of pre, during, and post slavery policies in America. Consider the 1875 Civil Rights Act, which briefly “promised freedom and safety for all Americans” (pg. 18) after slavery ended. This too ended up not being supported by the white American judiciary as the U.S. Supreme Court found it to be unconstitutional in 1883.

Bobo and Thompson, in their 2006 work, *“Unfair by Design: The War on Drugs, Race, and the Legitimacy of the Criminal Justice System”*, argue that the impact of policy changes on the crime response complex in the United States, particularly the War on Drugs, continues to lead to a rise in Black incarceration. The authors argue that the idea of a fair society, where citizens stand equal before the law, is in jeopardy due to policies that have led to a significant rise in Black incarceration. This, they argue, is especially the case when considering Black men. Take for example the following position taken by the authors:

“Of critical importance is that while federal, state, and local mandates pursued a “War on Drugs,” local police departments were under pressure to show progress. The quickest way to show results (for example, arrests) is to enhance policing and arrest in already disadvantaged neighborhoods, which are disproportionately poor and black. The predictable outcome, according to Tonry, is a rise in black arrests and incarceration (Tonry, 1995). Indeed, the end result has been a rising disproportion of black-to-white in jails and prisons. In 2004, for example, black males constituted 43.3 percent of those incarcerated in state, federal, and local prisons or jails, though only 13 percent of the total population. Whites on the other hand represented 35.7 percent of the male inmate population in 2004, well under their 75 percent of the total male population.” (pg. 451)

Take for example the effects of the “crack epidemic”. In the 1980s and early 1990s, there was a mass emergence of crack cocaine. Media reports sensationalized crack, portraying it as an epidemic with links to violent behavior. During the mid-1980s, coverage had intensified to the point where crack cocaine was declared as a national crisis only with limited evidence supporting such claims. In response, the federal government enacted the Drug Abuse Acts of 1986 and 1988. These laws imposed harsh mandatory sentences for drug offenses, with particularly severe penalties for crack cocaine compared to its powdered counterpart (which was predominantly used

by white Americans). This legislative approach, however, disproportionately affected African American communities. Mandatory minimum sentences for crack cocaine offenses were significantly harsher than those for powder cocaine, despite similar effects and usage patterns. Thus, there was a stark increase in the incarceration rates of African Americans for drug offenses. Data from the US Department of Justice illustrates the widening gap in incarceration rates between white and African American individuals for drug offenses over a five-year period. Additionally, drug possession arrest rates soared for African Americans, despite comparable rates of drug use between racial groups. Even among juvenile populations, African American youths experienced a disproportionate increase in drug possession arrests compared to their white counterparts. According to the information found in this work, it states that despite similar rates of drug use between racial groups, the proportion of drug-possession arrests for African Americans soared from 21 percent to about 35 percent between 1980 and the early 1990s. Similarly, the arrest rates for drug possession among African American juveniles rose from 13 percent in 1980 to around 40 percent by the early 1990s.

Regarding the design of the judicial system, some researchers would argue that the system is working the way it was designed to work. Butler (2016) noted in his work, "*The system is working the way it is supposed to: The limits of criminal justice Reform.*", takes the position that making changes to the current system has produced limited results, deliberately. Specifically, the author notes that we should all question the efficacy of law when it comes to addressing systemic judicial issues. The work identifies certain issues, like police violence and disproportionate arrests of African Americans, are not only legal but integral to the U.S. policing and punishment system, causing doubt about the potential for reform. An example noted in the article is its insight on critical race theory. In his work, Butler provides insights into critical race theory and

its analysis of how law intersects with race and perpetuates racial inequalities. Critical race theory argues that the law doesn't merely reflect societal attitudes towards race but actively constructs racial categories, hierarchies, and disparities. It claims that racial inequalities persist across various areas of law, including those not explicitly race-related. Such as civil rights, property, criminal, and corporate law. Critical race theory also argues that supposedly neutral standards often perpetuate systemic biases and injustices. For instance, the use of "reasonable person" standards may mask underlying racial biases. According to the article, "insights loom large in the criminal justice context because the Supreme Court's adoption of reasonableness standards for stop-and-frisk and the use of deadly force have enabled police violence against African-Americans" (pg. 1443).

The article also mentions Derrick Bell's theory of interest convergence stating that advancements in racial justice in the United States have historically occurred when the interests of Black people align with those of white people. This theory challenges the notion that progress towards racial equality is solely driven by a genuine concern for justice. Instead, suggesting that such measures are often adopted when they also serve the interests of the dominant white population, such as the Supreme Court's decision behind *Brown v. Board of Education*.

"Bell cites global public opinion during the Cold War, the participation of Black soldiers in World War II, and segregation as a barrier to industrialization in the South as reasons for the Supreme Court's decision in Brown v. Board of Education." (pg. 1445).

This goes to show the true lack of concern for the rights and lives of African Americans by the judicial system, unless for an alternative motive.

The extensive body of research presented in the aforementioned paragraphs sheds light on the deeply embedded systemic injustices faced by Black men within the United States judicial system post Jim Crow. From racial profiling and biased law enforcement practices to wrongful

convictions and disproportionate sentencing, the narratives and analyses paint a vivid picture of the ongoing struggle against racial inequality. Despite efforts to address these issues, as evidenced by the many cases mentioned previously, the persistence of racial bias and discrimination remains a pressing concern.

Proposed Changes/Recommendations to the U.S. Judicial System

The United States prides itself on principles rooted in justice, equality, and fairness, yet these issues of systemic racial disparities persist within its judicial system, particularly affecting African American men. To rectify this injustice and create a more equal society, reforms are imperative.

One of the fundamental aspects of reforming the judicial system is addressing implicit biases and enhancing cultural competency among judicial officials. The implementation of mandatory training programs for judges, prosecutors, and law enforcement officers is crucial to increase the awareness of biases. When constructing these training programs, it should be designed to have a focus on gaining an understanding of diverse perspectives and experiences. Therefore, enabling judicial officials to recognize and lessen the impact of implicit biases in decision-making processes. Not only this, but the judicial system needs to work on promoting diversity in these same roles. Promoting diversity within the legal profession is vital for fostering trust and ensuring equitable representation. Also, allowing marginalized groups to feel seen in a system that has a steep history of overlooking their issues. Efforts to increase diversity through scholarships, mentoring programs, and recruitment initiatives empower underrepresented communities and promote fairer outcomes. The positive effects of this method have been proven when looking at the life and work of Bryan Stevenson. Bryan Stevenson is a prominent American

lawyer, social justice activist, and founder of the Equal Justice Initiative. He's well-known for his work advocating for marginalized communities, particularly in the criminal justice system. In 1989, Stevenson founded the Equal Justice Initiative, a non-profit organization dedicated to challenging racial and economic injustice and protecting the rights of the most vulnerable in society. The Equal Justice Initiative has been instrumental in exonerating innocent prisoners, advocating for criminal justice reform, and confronting issues such as mass incarceration and racial inequality. Further proving how a more diverse judiciary and legal profession can help to better understand and address the needs of all individuals, contributing to a more inclusive society.

It is important to recognize the pivotal role transparency and data collection play in identifying and addressing racial disparities. When the statistics that visualize the injustice done to African American men by the hands of the judicial system are broadcasted, it may help in the efforts of limiting these disparities. Mandating the collection and public reporting of data on arrests, convictions, and sentencing broken down by race enables policymakers to pinpoint areas of concern and track progress over time. This transparency helps to foster accountability and informs evidence-based decision-making to reduce disparities effectively.

The issues revolving sentencing laws are stated all throughout this paper. These laws highlight a huge point of inequality and in no way can continue when meeting the goal of ensured fair outcomes. As stated previously, African American men face much larger sentences compared to their white counterparts for similar crimes (Peffley and Hurwitz, 2010). The implementation of sentencing guidelines that consider factors such as the crime's severity, the defendant's criminal history, and societal and economic circumstances is crucial to bridge the gap between the sentencing disparities. By providing a framework for consistent and equal sentencing practices,

these guidelines can play a major role when it comes to reducing the influence of unconscious biases and contributing to fairness in the criminal justice system. Therefore, when Blacks are charged for things like drug-related crimes, they should have a similar sentence of their white counterparts charged for the same thing. Also, the lack of accountability faced by white individuals for committing a crime against African Americans, like George Zimmerman, should not be a reoccurring issue. Expanding alternative sentencing programs should also be considered when considering changes the judicial system should undergo. Increasing access to things like diversion programs and rehabilitation services can provide alternatives to incarceration, particularly for nonviolent offenders. These programs address underlying issues such as substance abuse and mental health disorders while reducing reliance on punitive measures that disproportionately affect African American communities. Funding these services also provides individuals with opportunities for redemption and reintegration into society, which has been a constant struggle for Black men of every era.

Police practices play arguably the most significant role in perpetuating racial disparities within the criminal justice system. Many changes must be implemented when addressing and reforming policing actions. For example, providing and mandating comprehensive training programs for law enforcement officers on cultural sensitivity, implicit bias, de-escalation techniques, and non-violent conflict resolution are important strategies that need to be applied. Not only this but revising the policies and trainings covering the use of force to prioritize de-escalation techniques is imperative for reducing incidents of police violence, particularly against African American men. There should be clear guidelines on when and how force can be used, coupled with diligent oversight, to ensure that officers operate within legal and ethical

boundaries. By promoting a culture of restraint and respect, law enforcement agencies can minimize the disproportionate impact of force on minority communities.

Another key component to limiting racial disparities by the hands of law enforcement is holding them accountable. Countless of occurrences, several of which is highlighted in this paper, show how common it is for law to injure or take the lives of Black Americans without facing any consequences. Cases like the ones of John Crawford III, Oscar Grant, and Rodney King stand as a clear reminder of this fact. A technique to consider is to require law enforcement agencies to regularly report on their activities, including interactions with the public, use of force incidents, and complaints against officers. When doing so, it is important to hold leadership accountable for addressing any disparities or misconduct identified through these reports. Another effort to keep law enforcement accountable could be to establish independent community oversight boards with the authority to review complaints against law enforcement officers, conduct investigations, and recommend disciplinary action. These changes are essential to fostering trust and legitimacy. Addressing discriminatory policing practices at the entry point of the criminal justice system is crucial to preventing unjust outcomes and promoting community safety.

Addressing racial disparities within the US judicial system requires a varied approach that encompasses training, promoting diversity, transparency, sentencing reform, investment in alternatives to incarceration, police accountability, and so much more. By implementing comprehensive reforms, the US can move closer to its ideals of justice, equality, and fairness for all its citizens. These reforms are not only morally imperative but also essential for fostering trust in the judicial system and building a more equitable society for generations to come.

Conclusion

To assume that this work has a conclusion would be an incorrect assumption to make. It is clear that the unfair treatment of Black men still occurs within the American judicial system. Whether or not this system can change to the degree that people of color in the United States can get a fair “shake” when interacting with law enforcement, lawyers, and judges, is yet to be seen. Maybe the words of President Joe Biden, made during the 2024, State of the Union address, can come to fruition, when thinking about the plight of the less fortunate in this country: “While America has never lived up to her ideals, she has not abandoned them”. But then again, maybe the *New Zealand Herald* (2021) was correct in its assessment that the U.S. judicial system is “stacked” against African Americans.

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