

**Written Submission of the American Civil Liberties Union on
Racial Disparities in Sentencing**

Hearing on Reports of Racism in the Justice System of the United States

**Submitted to the
Inter-American Commission on Human Rights
153rd Session, October 27, 2014**

The American Civil Liberties Union (ACLU) welcomes this opportunity to submit written testimony to the Inter-American Commission on Human Rights for its hearing on racism in the criminal justice system of the United States. Our submission focuses on the significant racial disparities in sentencing decisions in the United States, which result from disparate treatment of Blacks at every stage of the criminal justice system and are consistent with a larger pattern of racial disparities that plague the U.S. criminal justice system. The human rights violations associated with such racial disparities are particularly egregious in the United States, and we hope that the Commission will take action to address them.

We welcome the initiative to hold this timely hearing and urge the Commission to take up the issue of racial disparities in sentencing in the United States; undertake a mission to observe and report on this issue in the United States; and to recommend that the government of the United States amend its sentencing laws to prevent any discriminatory impact.

I. Racial Disparities in Sentencing in the United States

There are significant racial disparities in sentencing decisions in the United States.¹ Sentences imposed on Black males in the federal system are nearly 20 percent longer than those imposed on white males convicted of similar crimes.² Black and Latino offenders sentenced in state and federal courts face significantly greater odds of incarceration than similarly situated white offenders and receive longer sentences than their white counterparts in some jurisdictions.³ Black male federal defendants receive longer sentences than whites arrested for the same offenses and with comparable criminal histories.⁴ Research has also shown that race plays a significant role in the determination of which homicide cases result in death sentences.⁵

The racial disparities increase with the severity of the sentence imposed. The level of disproportionate representation of Blacks among prisoners who are serving life sentences without the possibility of parole (LWOP) is higher than that among parole-eligible prisoners serving life sentences. The disparity is even higher for juvenile offenders sentenced to LWOP, and higher still among prisoners sentenced to LWOP for nonviolent offenses. Although Blacks constitute only about 13 percent of the U.S. population, as of 2009, Blacks constitute 28.3 percent of all lifers, 56.4 percent of those serving LWOP, and 56.1 percent of those who received LWOP for offenses committed as a juvenile.⁶ As of 2012, the ACLU's research shows that 65.4 percent of prisoners serving LWOP for nonviolent offenses are Black.⁷

The racial disparities are even worse in some states. In 13 states and the federal system, the percentage of Blacks serving life sentences is over 60 percent.⁸ In Georgia and Louisiana, the proportion of Blacks serving LWOP sentences is as high as 73.9 and 73.3 percent, respectively.⁹ In the federal system, 71.3 percent of the 1,230 LWOP prisoners are Black.¹⁰

These racial disparities result from disparate treatment of Blacks at every stage of the criminal justice system, including stops and searches, arrests, prosecutions and plea negotiations, trials, and sentencing.¹¹ Race matters at all phases and aspects of the criminal process, including the quality of representation, the charging phase, and the availability of plea agreements, each of which impact whether juvenile and adult defendants face a potential LWOP sentence. In addition, racial disparities in sentencing can result from theoretically "race neutral" sentencing policies that have significant disparate racial effects, particularly in the cases of habitual offender laws and many drug policies, including mandatory minimums, school zone drug enhancements, and federal policies adopted by Congress in 1986 and 1996 that at the time established a 100-to-one sentencing disparity between crack and powder cocaine offenses.¹²

Racial disparities in sentencing also result in part from prosecutors' decisions at the initial charging stage, suggesting that racial bias affects the exercise of prosecutorial discretion with respect to certain crimes. One study found that Black defendants face significantly more severe charges than whites, even after controlling for characteristics of the offense, criminal history, defense counsel type, age and education of the offender, and crime rates and economic characteristics of the jurisdiction.¹³

Available data also suggests that there are racial disparities in prosecutors' exercise of discretion in seeking sentencing enhancements under three-strikes and other habitual offender laws.¹⁴ For instance, a 1995 legal challenge revealed the racially biased role of prosecutorial discretion in the application of Georgia's two-strikes law. Georgia prosecutors have discretion to decide whether to charge offenders under the state's two-strikes sentencing scheme, which imposes life imprisonment for a second drug offense. They invoked the law against only 1 percent of white defendants facing a second drug conviction, compared to 16 percent of Black defendants.¹⁵ As a result, 98.4 percent of prisoners serving life sentences under the law were

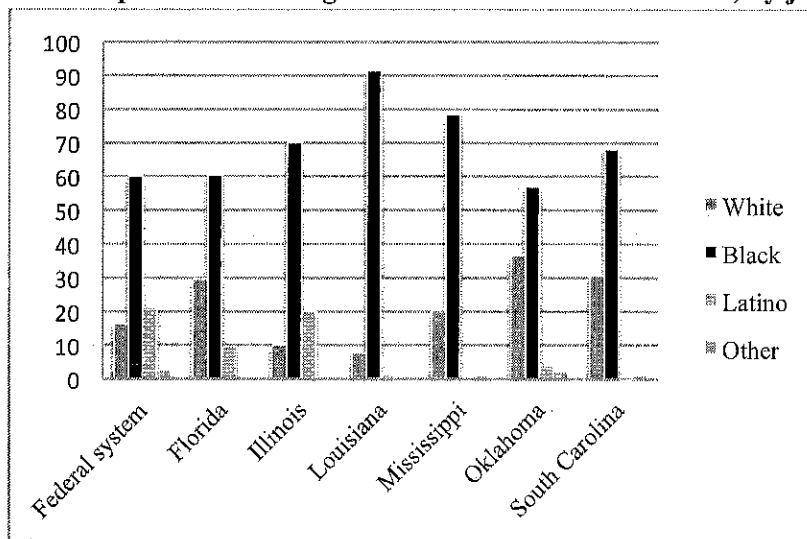
Black.¹⁶ In California, studies similarly show that Blacks are sentenced under the state’s three-strikes law at far higher rates than their white counterparts.¹⁷

Scholars have also noted that federal § 851 sentencing enhancements, which at a minimum double a federal drug defendant’s mandatory minimum sentence and may raise the maximum sentence from 40 years to life without parole if the defendant has two prior qualifying drug convictions in state or federal courts, are applied by federal prosecutors in an arbitrary and racially discriminatory manner and exacerbate racial disparities in the criminal justice system.¹⁸ While the U.S. Department of Justice and U.S. Sentencing Commission do not develop or publicize data on racial disparities in prosecutors’ application of this federal drug sentencing enhancement, the U.S. Sentencing Commission has reported that “[b]lack offenders qualified for the [§ 851] enhancement at higher rates than any other racial group.”¹⁹

Racial Disparities in Life-without-Parole Sentencing for Nonviolent Offenses

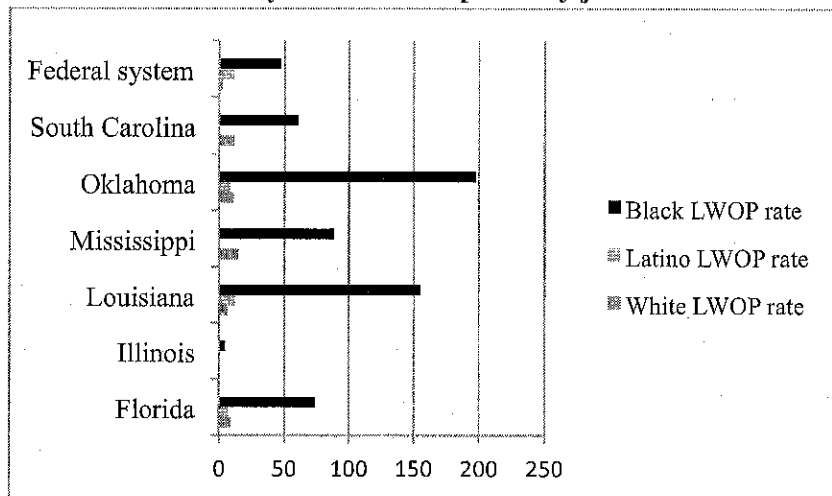
In general, studies have found that greater racial disparities exist in sentencing for nonviolent crimes, especially property crimes and drug offenses.²⁰ In particular, there are staggering racial disparities in life-without-parole sentencing for nonviolent offenses. Based on data provided to the ACLU by the U.S. Sentencing Commission and state Departments of Corrections, the ACLU estimates that nationwide, 65.4 percent of prisoners serving LWOP for nonviolent offenses are Black, 17.8 percent are white, and 15.7 percent are Latino. According to data collected and analyzed by the ACLU, Black prisoners comprise 91.4 percent of the nonviolent LWOP prison population in Louisiana (the state with the largest number of prisoners serving LWOP for a nonviolent offense), 78.5 percent in Mississippi, 70 percent in Illinois, 68.2 percent in South Carolina, 60.4 percent in Florida, 57.1 percent in Oklahoma, and 60 percent in the federal system.

Figure 1: Race of prisoners serving LWOP for nonviolent offenses, by jurisdiction²¹



Blacks constitute a far greater percentage of the nonviolent LWOP population than of the census population as a whole. In the federal system, Blacks are 20 times more likely to be sentenced to LWOP for a nonviolent crime than whites. In Louisiana, the ACLU found that Blacks were 23 times more likely than whites to be sentenced to LWOP for a nonviolent crime. The racial disparities range from 33-to-1 in Illinois to 18-to-1 in Oklahoma, 8-to-1 in Florida, and 6-to-1 in Mississippi. Blacks are sentenced to life without parole for nonviolent offenses at rates that suggest unequal treatment and that cannot be explained by white and Black defendants' differential involvement in crime alone.²²

Figure 2: Rate of prisoners serving LWOP for nonviolent offenses per 1,000,000 residents, classified by race and compared by jurisdiction



Racial Disparities in Juvenile Life-without-Parole Sentencing

There are stark racial disparities in the imposition of life without parole sentences for juvenile offenders in the United States. Nationally, about 77 percent of juvenile offenders serving LWOP are Black and Latino, while Black youth are serving these sentences at a rate 10 times higher than white youth.²³ In California—the state with the highest number of prisoners serving LWOP for crimes committed as children)—Black youth are serving the sentence at a rate that is 18 times higher than the rate for white youth, and Latino youth are sentenced to life without parole five times more than white youth.²⁴ In Michigan (the state with the second-highest number of such prisoners), while youth of color comprise only 29 percent of Michigan's children, they are 73 percent of the state's child offenders serving life without parole.²⁵ As of 2009, in 14 of the 37 states with people serving LWOP for crimes committed as juveniles, the proportion of African-Americans serving that sentence exceeded 65 percent.²⁶

Recent research also shows that that the races of victims and offenders may be a factor in determining which juvenile offenders are sentenced to life without parole, as Black youth with a

white victim are far more likely to be sentenced to life without parole than white youth with a Black victim. The percentage of Black juvenile offenders serving LWOP for the homicide of a white victim (43.4 percent) is nearly twice the rate at which Black juveniles are arrested for suspected homicide of a white person (23.2 percent).²⁷ In contrast, white juvenile offenders with Black victims are only about half as likely (3.6 percent) to be sentenced to LWOP for the homicide crime as their proportion of arrests for suspected homicide of a Black victim (6.4 percent).²⁸

These outcomes are the result of racial biases that affect who is arrested, who is detained, and who receives the harshest punishments. For example, a 1990 statistical evaluation of police intake decisions in five Michigan counties revealed that, even when controlling for other statistically significant factors such as drug charges, weapons possession, or prior convictions, “race continued to exert an independent and significant influence on detention...[while] youth of color were more likely to be charged with more serious offenses, they were also more likely to be detained independent of offense seriousness.”²⁹

Racial Disparities in Crack and Powder Cocaine Sentencing

Racial disparities are particularly pronounced in cocaine sentencing. As part of the Anti-Drug Abuse Act of 1986, Congress ignored empirical evidence and created a 100-to-1 disparity between the amounts of crack and powder cocaine required to trigger certain mandatory minimum sentences. In fact, crack and powder cocaine are simply two forms of the same drug, and the only difference between them is that crack includes the addition of baking soda and heat. As a result of Congress’s inaccurate perception of differences in the harmfulness and dangerousness between crack and powder cocaine, sentences for offenses involving crack cocaine were made much longer than those for offenses involving the same amount of powder cocaine. Thus, for example, someone convicted of an offense involving just five grams of crack cocaine was subject to the same five-year mandatory minimum federal prison sentence as someone convicted of an offense involving 500 grams of powder cocaine. The 100-to-1 ratio resulted in vast unwarranted racial disparities in the average length of sentences for comparable offenses because the majority of people arrested for crack offenses are Black. By 2004, under the 100-to-1 disparity, Blacks served virtually as much time in prison for a nonviolent drug offense (58.7 months) as whites did for a violent offense (61.7 months).³⁰ In 2010, 85 percent of the 30,000 people sentenced for crack cocaine offenses under the 100-to-1 regime were African-American.³¹

In the past five years, the United States Sentencing Commission has made two adjustments to the federal Sentencing Guidelines that reduced, though did not eliminate, the unfounded sentencing disparity between crack and powder cocaine offenses in the Guidelines. First, in 2007, the Sentencing Commission amended the Sentencing Guidelines by lowering the sentencing ranges for most crack cocaine offenses and applied the new guidelines retroactively.

Then, in 2010, in long overdue recognition of the unfairness of the sentencing disparity, Congress passed the Fair Sentencing Act (FSA), which reduced the disparity between the amounts of crack and powder cocaine required to trigger certain mandatory minimum sentences from 100-to-1 to 18-to-1. In 2011, the Sentencing Commission amended the Sentencing Guidelines consistent with the FSA and then voted to apply the new guidelines retroactively to individuals sentenced before the FSA was enacted.³² While the FSA was a step toward increased fairness, the 18-to-1 ratio continues to perpetuate the outdated and discredited assumptions about crack cocaine that gave rise to the unwarranted 100-to-1 disparity in the first place.

Unfortunately, despite Congress's and the Sentencing Commission's determinations that the previous crack cocaine penalties under which thousands of defendants were sentenced were unfair, over 16,700 prisoners still serving sentences under the 100-to-1 regime—the vast majority of whom are Black—have been unable to benefit from these sentencing adjustments. Of these, over 8,800 are still serving extreme sentences for crack cocaine-related offenses because the FSA is not retroactive and about 7,900 are categorically ineligible for reduction of their sentences, many of which are LWOP.³³ In some cases, prisoners are ineligible because their sentences were controlled by statutory mandatory minimums determined by Congress prior to the passage of the FSA. The FSA lowered the quantity of drugs that triggered the mandatory minimum but did not change the mandatory minimum sentences. In such cases, people cannot benefit from the retroactive Sentencing Guideline amendments because they remain subject to statutory mandatory minimums. For others, neither the FSA nor the Commission's adjustments resulted in a reduction of their sentencing ranges because the amounts of drugs for which they were held responsible or the enhancements applied to their sentences render review or reduction of their sentences impossible.³⁴

On July 18, 2014, the U.S. Sentencing Commission approved an amendment that would retroactively apply reduced sentencing guidelines to people who are currently serving time for select nonviolent drug offenses, including some crack cocaine-related offenses. Unless Congress disapproves the amendment, many people who are currently in prison could begin to petition courts for reduced sentences beginning November 1, 2014. Individuals whose requests are granted by the courts can be released no earlier than November 1, 2015. The U.S. Sentencing Commission estimates that more than 46,000 offenders would be eligible to seek sentence reductions in court, 18.7 percent of whom are incarcerated for crack cocaine offenses.³⁵ According to the U.S. Sentencing Commission, 30.6 percent of those eligible to seek sentence reductions are Black and 43.5 percent are Hispanic.³⁶ If a judge grants a motion for a reduced sentence, eligible offenders' sentences could be reduced by 25 months on average.

Racial Discrimination in the United States Capital Punishment System

Racial bias continues to taint the capital punishment system in the United States, from jury selection through decisions about who faces execution. The death penalty is

disproportionately imposed on people of color.³⁷ As of January 1, 2014, 42 percent of defendants under sentence of death in the United States were Black, and 43 percent were white,³⁸ although Blacks make up only 13 percent of the overall population. Further, numerous studies from across the country conclusively demonstrate that the murder of whites results in capital prosecution in far higher percentages than murders of people of color.³⁹ The disparities based on the race of the victim are often heightened in cases with Black defendants.

Despite the U.S. Supreme Court's longtime prohibition on discrimination in jury selection in *Batson v. Kentucky*,⁴⁰ people of color continue to be excluded from capital juries at alarming rates.⁴¹ A recent study of capital trials in North Carolina, for example, showed that prosecutors used peremptory strikes to remove qualified Black jurors at more than twice the rate that they excluded all other jurors.⁴² Of the 159 prisoners on North Carolina's death row, 31 were sentenced by all-white juries and another 38 had only one person of color on their sentencing juries. Appellate courts in Tennessee and North Carolina have never reversed a case under *Batson*, even in a case in which the prosecutor admitted he had struck two women from the jury because they were "[B]lack women."

In 1987, the United States Supreme Court ruled in *McCleskey v. Kemp*⁴³ that a defendant cannot rely upon statistical evidence of systemic racial bias to prove his death sentence unconstitutional, no matter how strong that evidence may be. This broadly criticized decision,⁴⁴ comparable to other shameful cases in the country's history, such as *Dred Scott v. Sanford* (holding that people of African ancestry were not entitled to the protections of the Constitution) and *Plessy v. Ferguson* (upholding racial segregation of public facilities), continues to prevent successful challenges to the racially biased practices in the country's death penalty system.

In 2009, in response to the landmark *McCleskey* decision, North Carolina passed the Racial Justice Act (RJA). This legislation required courts to enter a life sentence for any death row defendant who proves that race was a factor in the imposition of his sentence and allowed defendants to show evidence of racial bias with statistical evidence. In a historic ruling based on the RJA, in April 2012, a judge found intentional and systemic racial discrimination in the case of Marcus Robinson, a Black death row prisoner, and commuted his death sentence to life without parole.⁴⁵ Courts set aside three more death sentences under the RJA in December 2012.⁴⁶ Then, in June 2013, the North Carolina legislature repealed the RJA.⁴⁷ The state of North Carolina has appealed the four cases of the prisoners who won relief under the RJA to the North Carolina Supreme Court, where they are pending.⁴⁸

While most executions take place on the state level, the federal government can also subject people to the death penalty. In fact, a study of the federal death penalty released in 2000 found that 89 percent of defendants prosecuted capitally were people of color.⁴⁹ Fifty-seven percent of the prisoners on the federal death row are either Black or Latino.⁵⁰ The federal

government has not made satisfactory progress in its efforts to rid the country of racial discrimination in the capital punishment system.

Persistent Racial Disparities in the Criminal Justice System

Racial disparities in sentencing are consistent with a larger pattern of racial disparities that plague the U.S. criminal justice system from arrest through incarceration. There are stark racial disparities in police stops, frisks, and searches. For example, of the 4.4 million pedestrian stops made by the New York City Police Department from January 2004 through June 2012, 83 percent of the people stopped were African-American or Latino and only 10 percent were white.⁵¹ Blacks and Latinos are arrested at disproportionate rates and are disproportionately represented in the nationwide prison and jail population. For example, Blacks compose 13 percent of the general population but represent 28 percent of total arrests and 38 percent of persons convicted of a felony in a state court and in state prison.⁵² These racial disparities are particularly pronounced in arrests and incarceration for drug offenses. Despite similar rates of drug use, Blacks are incarcerated on drug charges at a rate 10 times greater than whites.⁵³ Blacks represent 12 percent of drug users, but 38 percent of those arrested for drug offenses, and 59 percent of those in state prison for drug offenses.⁵⁴ Although Blacks and whites use marijuana at comparable rates, Blacks are 3.73 times more likely to be arrested for marijuana possession.⁵⁵ In some counties, Blacks are 10, 15, even 30 times more likely to be arrested.⁵⁶

Similarly, the racial disparities in juvenile LWOP sentencing are symptomatic of racial disparities throughout the juvenile justice system. For U.S. children, the racial disparities grow with each step into the criminal justice system—from arrest, to referral, to secure confinement. Black youth account for 16 percent of all youth, 28 percent of all juvenile arrests, 35 percent of the youth waived to adult criminal court, and 58 percent of youth admitted to state adult prison.⁵⁷ Black youth are twice as likely to be arrested as white youth. Among juveniles who are arrested, Black children are more likely to be referred to a juvenile court and more likely to be processed rather than diverted.⁵⁸ Among those juveniles adjudicated delinquent (i.e. found guilty), Black children are more likely to be sent to secure confinement and are more likely to be transferred to adult facilities.⁵⁹ Among youth who had never been incarcerated in a juvenile prison, Blacks are more than six times as likely as whites to be sentenced to prison for identical crimes.⁶⁰ Black children are also more likely to be prosecuted as adults and incarcerated with adults: Black youth compose 35 percent of youth judicially waived to adult criminal courts and 58 percent of youth sent to state adult prisons.⁶¹

II. Case Studies

Racially Disparate Treatment in Life-Without-Parole Sentencing for Nonviolent Offenses

In some of the cases of prisoners serving LWOP for nonviolent offenses documented by the ACLU,⁶² there is anecdotal evidence of possible disparate treatment by law enforcement and justice authorities. This includes apparently baseless traffic and pedestrian stops and searches that may be the results of racial profiling; targeted drug enforcement in predominantly Black communities; and prosecutors' successful use of peremptory strikes to systematically exclude Black potential jurors resulting in all-white juries in cases with Black defendants.

Fate Vincent Winslow is serving life without parole in the state of Louisiana for serving as a go-between in the sale of two small bags of marijuana, worth \$10 in total, to an undercover police officer.⁶³ The undercover officer had approached Winslow and asked to buy two small bags of marijuana, promising to pay him a \$5 commission. Winslow, who is Black and was homeless at the time, says he accepted the offer in order to earn some money to get something to eat.⁶⁴ Winslow bought two \$5 bags of marijuana from a white seller in a hand-to-hand transaction witnessed by the undercover officer, then sold the marijuana to the officer. Winslow was arrested immediately, and the arresting officers found only the \$5 bill on him. Police did not arrest the white seller, even though the officers found the marked bill used to make the controlled drug buy in his pocket and had witnessed him supplying the marijuana to Winslow.⁶⁵

At trial, the 10 white jurors found Winslow guilty of marijuana distribution, while the two black jurors found him not guilty.⁶⁶ He was sentenced to mandatory life without parole under Louisiana's four-strikes law based on prior convictions for unarmed burglaries committed 14 and 24 years earlier (the first burglary he committed as a juvenile, and the second burglary conviction was for opening an unlocked car door and rummaging inside without taking anything),⁶⁷ and a nearly decade-old conviction for possession of cocaine when he was 37 (an undercover officer tried to sell him cocaine, which he says he did not purchase). Winslow cannot afford an attorney and has prepared his unsuccessful post-conviction appeals, written in pencil, himself.

Sharanda Purlette Jones, a mother with no prior criminal record, was sentenced to mandatory life without parole for conspiracy to distribute crack cocaine based almost entirely on the testimony of co-conspirators who received reduced sentences for their testimony and are now out of prison. Jones was arrested as part of a drug task force operation in Terrell, a majority-white town of approximately 13,500 people in Texas. All 105 people arrested as part of the conspiracy in the small town were Black. A couple living in the town had been arrested on drug charges and became confidential government informants. While acting as government informants after their arrests, they asked Jones during a taped telephone call if she knew where they could buy drugs. Jones agreed to ask a friend where the couple might be able to buy drugs. Other than that taped phone call, there was no physical evidence, including no drugs or video surveillance, presented at trial to connect her to drug-dealing with her co-conspirators.

Jones has exhausted all of her appeals and has a petition for presidential clemency pending. If she had been convicted of the same amount of powder cocaine instead of crack cocaine, her mandatory minimum sentence would have been 30 years rather than the life without parole sentence she is serving.⁶⁸ However, she is not eligible for a sentence reduction based on sentencing reforms that have reduced the disparity in federal sentencing between crack and powder cocaine.⁶⁹

Racial Bias in Death Penalty Cases

In cases of people sentenced to death, racial discrimination in jury selection has played a key role in securing their sentences and racial bias has demonstrably played a part in the selection of individuals for capital prosecution, in the prosecution itself, and/or in the imposition of the sentence of death.

Duane Buck was sentenced to die in Texas based on testimony of a psychologist who told the jury that Buck was more likely to be dangerous in the future because he is Black.⁷⁰ The same psychologist gave similar testimony in a total of seven Texas cases. In 2000, then-Attorney General John Cornyn called for the retrial of all seven men who had been sentenced to death based on the same psychologist's testimony that their race or ethnic background made them more dangerous, including Buck. Courts granted new sentencing trials to six of those inmates, but upheld Buck's unconstitutional death sentence on technical procedural grounds. Buck remains on Texas' death row.

Kenneth Rouse, a Black man, was tried by an all-White jury in North Carolina after the prosecutor struck every eligible Black juror from the pool. One of the jurors who served on his case—and convicted him and sentenced him to die—admitted later that he decided the case based on his prejudices. Rouse remains on North Carolina's death row.

Glenn Ford, a Black man, was recently exonerated after spending 30 years on Louisiana's death row.⁷¹ He, too, was tried by an all-White jury in a parish that is 40 percent Black. At his trial, the court reporter typed the responses of White jurors as "yes, sir" and the responses of Black jurors as "yes, suh." A Confederate flag flew outside the courthouse where he was tried (and was only removed in recent years).

Earl McGahee, a Black man, was tried by an all-White jury in Selma, Alabama. When the judge asked the prosecutor to explain why he had struck all 24 eligible jurors from the jury pool, he said that he felt that many of them were of "low intelligence."⁷²

III. Suggested Recommendations to the United States Government

The ACLU commends the Commission for taking up the important issue of racism in the criminal justice system of the United States. We thank the Commission for the opportunity to submit information about the significant racial disparities in sentencing decisions in the United States. The ACLU urges the Commission to conduct an in-depth review of this issue and to issue the following recommendations to the government of the United States:

1. Amend the federal sentencing guidelines to prevent any discriminatory impact on minorities including by further reducing the disparity in penalties for crack and powder cocaine offenses. Crack and powder cocaine are two forms of the same drug, and Congress should eliminate any disparity in the amount of either necessary to prompt mandatory minimum sentences.
2. Abolish the sentence of life without parole for offenses committed by children under 18 years of age. Enable child offenders currently serving life without parole to have their cases reviewed by a court for reassessment and resentencing, to restore parole eligibility and for a possible reduction of sentence.
3. Abolish the sentence of life without parole for nonviolent offenses. Congress should eliminate all existing laws that either mandate or allow for a sentence of LWOP for a nonviolent offense. State legislatures should repeal all existing laws or the portions of such laws that either allow for or mandate a sentence of life without parole for a nonviolent offense. Such laws should be repealed for nonviolent offenses, regardless of whether LWOP operates as a function of a three-strikes law, habitual offender law, or other sentencing enhancement. Make elimination of nonviolent LWOP sentences retroactive and require resentencing for all people currently serving LWOP for nonviolent offenses.
4. Congress should enact comprehensive federal sentencing reform legislation such as the Smarter Sentencing Act of 2013 or the Justice Safety Valve Act of 2013, which would reduce some mandatory minimum sentences for drug offenses and would retroactively apply the Fair Sentencing Act—which reduced the crack/powder cocaine sentencing disparity—to those currently serving sentences for these offenses.
5. Initiate studies to examine racial disparities in sentencing, including racial disparities in prosecutors' exercise of discretion in seeking sentencing enhancements under three-strikes, § 851 federal drug enhancements, and other habitual offender laws and disparate racial effects of drug policies such as mandatory minimum sentences and school zone drug enhancements.
6. Immediately cease all federal death penalty prosecutions and impose a moratorium on executions to ensure that racial bias does not play a role at any stage of the capital

punishment process. The federal government should encourage state governments to do the same.

7. Fulfill the U.S. commitment in the first Universal Periodic Review (UPR) process to study the racial disparities of the death penalty in the United States and fully implement the recommendations of the U.N. Special Rapporteur on extrajudicial, summary, or arbitrary executions to review and respond to racial discrimination in the administration of capital punishment.
8. In the event that capital prosecutions and executions continue, the United States should institute a permanent independent review committee to determine whether racial bias played a role in capital cases on a case by case basis, and/or pass legislation or binding administrative rules to ensure the same.

Should you have further questions regarding the information in this submission, please contact Jennifer Turner at the American Civil Liberties Union at 212.519.7888 or jturner@aclu.org.

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¹ See, e.g., Sonja B. Starr & M. Marit Rehavi, *Racial Disparity in Federal Criminal Charging and its Sentencing Consequences*, U OF MICHIGAN LAW & ECON, EMPIRICAL LEGAL STUDIES CENTER PAPER NO. 12-002 (2012); Marc Mauer, *Addressing Racial Disparities in Incarceration*, 91 PRISON JOURNAL (2011); THE SENTENCING PROJECT, RACIAL DISPARITY IN SENTENCING: A REVIEW OF THE LITERATURE (2005), available at http://www.sentencingproject.org/doc/publications/rd_sentencing_review.pdf.

² U.S. SENTENCING COMM'N, REPORT ON THE CONTINUING IMPACT OF *UNITED STATES V. BOOKER* ON FEDERAL SENTENCING (Jan. 30, 2013), available at <http://www.uscc.gov/news/congressional-testimony-and-reports/booker-reports/report-continuing-impact-united-states-v-booker-federal-sentencing>.

³ Cassia C. Spohn, *Thirty Years of Sentencing Reform: The Quest for a Racially Neutral Sentencing Process*, in 3 CRIMINAL JUSTICE 427 (2000), available at <http://www.justicestudies.com/pubs/livlink3-1.pdf>.

⁴ Sonja B. Starr & M. Marit Rehavi, *Racial Disparity in Federal Criminal Charging and its Sentencing Consequences*, U OF MICHIGAN LAW & ECON, EMPIRICAL LEGAL STUDIES CENTER PAPER NO. 12-002 (2012).

⁵ See, e.g., D.C. Baldus & C. Woodworth, *Race Discrimination and the Legitimacy of Capital Punishment: Reflections on the Interaction of Fact and Perception*, 53 DEPAUL L.R. 1411 (2004).

⁶ ASHLEY NELLIS AND RYAN S. KING, THE SENTENCING PROJECT, NO EXIT: THE EXPANDING USE OF LIFE SENTENCES IN AMERICA 11-14, 17, 20-23 (2009), available at http://www.sentencingproject.org/doc/publications/publications/inc_NoExitSept2009.pdf.

⁷ AMERICAN CIVIL LIBERTIES UNION, A LIVING DEATH: LIFE WITHOUT PAROLE FOR NONVIOLENT OFFENSES (2013), available at www.aclu.org/livingdeath.

⁸ ASHLEY NELLIS AND RYAN S. KING, THE SENTENCING PROJECT, NO EXIT: THE EXPANDING USE OF LIFE SENTENCES IN AMERICA 11-13, table 3 (2009). The states with over 60 percent African-American lifers are Alabama, Delaware, Georgia, Illinois, Louisiana, Maryland, Michigan, Mississippi, New Jersey, North Carolina, Pennsylvania, South Carolina, and Virginia.

⁹ *Id.* at 13-15.

¹⁰ *Id.*

¹¹ See, e.g., Marc Mauer, *Addressing Racial Disparities in Incarceration*, 91 PRISON JOURNAL (2011); JOSHUA ROYNER, THE SENTENCING PROJECT, DISPROPORTIONATE MINORITY CONTACT IN THE JUVENILE JUSTICE SYSTEM (2014), available at http://sentencingproject.org/doc/publications/ij_Disproportionate%20Minority%20Contact.pdf.

¹² M. Crow & K. Johnson, *Race, Ethnicity, and Habitual-Offender Sentencing*, 19 CRIMINAL JUSTICE POLICY REVIEW 63 (2008).

¹³ Sonja B. Starr & M. Marit Rehavi, *Racial Disparity in Federal Criminal Charging and its Sentencing Consequences*, U OF MICHIGAN LAW & ECON, EMPIRICAL LEGAL STUDIES CENTER PAPER NO. 12-002 (2012).

¹⁴ See, e.g., MICHELLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS 114 (2010); JUSTICE POLICY INSTITUTE, RACIAL DIVIDE: AN EXAMINATION OF THE IMPACT OF CALIFORNIA'S THREE STRIKES LAW ON AFRICAN-AMERICANS AND LATINOS (2004), available at <http://www.prisonpolicy.org/scans/jpi/Racial%20Divide.pdf>; Florangela Davila, *State 'Three-Strikes' Law Hits Blacks Disproportionately*, SEATTLE TIMES (Feb. 18, 2002), available at <http://community.seattletimes.nwsourc.com/archive/?date=20020218&slug=sentencing18m>.

¹⁵ MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 114 (2010).

¹⁶ *Id.*

¹⁷ See, e.g., JUSTICE POLICY INSTITUTE, *RACIAL DIVIDE: AN EXAMINATION OF THE IMPACT OF CALIFORNIA'S THREE STRIKES LAW ON AFRICAN-AMERICANS AND LATINOS* (2004), available at <http://www.prisonpolicy.org/scans/jpi/Racial%20Divide.pdf>; CENTER ON JUVENILE AND CRIMINAL JUSTICE, "THREE STRIKES": THE NEW APARTHEID (1996), available at http://www.cjcj.org/uploads/cjcj/documents/three_strikes_the_new_apartheid.pdf.

¹⁸ See, e.g., Sarah French Russell, *Rethinking Recidivist Enhancements: The Role of Prior Drug Convictions in Federal Sentencing*, 43 U.C. DAVIS L. REV. 1135, 1139, 1169 (2010); Lynn Adelman, *What the Sentencing Commission Ought to be Doing: Reducing Mass Incarceration*, 18 MICH. J. RACE & L. 295 (2013). For example, under the § 851 drug sentencing enhancements, if a federal drug conviction involves a particular quantity of drugs (such as 50 grams of methamphetamine, 280 grams of crack cocaine, or five kilograms of powder cocaine) and the defendant has two prior qualifying drug convictions in state or federal courts, no matter how old those convictions are, he or she *must* be sentenced to mandatory LWOP. These enhancements are solely within the unreviewed discretion of the Department of Justice prosecutors. See 21 U.S.C. § 851 (2012).

¹⁹ UNITED STATES SENTENCING COMMISSION, REPORT TO THE CONGRESS: MANDATORY MINIMUM PENALTIES IN THE FEDERAL CRIMINAL JUSTICE SYSTEM 256, 257, 261 (2011). The Department of Justice and U.S. Sentencing Commission also do not publish prosecutorial policies on § 851 enhancements by individual districts and nationally, with the relevant statistical data about eligibility and application by the Department of Justice. See *U.S. v. Young*, No. CR-12-4107-MWB (N.D. Iowa 2013).

²⁰ THE SENTENCING PROJECT, *RACIAL DISPARITY IN SENTENCING: A REVIEW OF THE LITERATURE* (2005), available at http://www.sentencingproject.org/doc/publications/rd_sentencing_review.pdf.

²¹ Federal data based on data provided by the U.S. Sentencing Commission documenting the race of 2,948 prisoners admitted to federal prison between 1999 and 2011 and sentenced to LWOP for nonviolent offenses. This federal data does not represent the race of federal prisoners currently serving LWOP for nonviolent offenses, which the Bureau of Prisons refused to provide in response to a FOIA request filed by the ACLU. State data provided by state Departments of Corrections, except that of Louisiana, which is based on ACLU documentation of the cases of 187 Louisiana prisoners serving LWOP for nonviolent offenses, or 43.6% of the total 429 prisoners serving the sentence for nonviolent crimes. The Louisiana Department of Corrections did not provide offense-specific race data in response to a FOIA request filed by the ACLU.

²² See, e.g., Sonja B. Starr & M. Marit Rehavi, *Racial Disparity in Federal Criminal Charging and its Sentencing Consequences*, U OF MICHIGAN LAW & ECON, EMPIRICAL LEGAL STUDIES CENTER PAPER NO. 12-002 (2012); Robert L. Carter, *Fourth Annual W. Haywood Burns Memorial Lecture, The Committee on Minorities and the Law*, 3 N.Y. CITY L. REV. 267 (2000), citing MARC MAUER, THE SENTENCING PROJECT, RACE TO INCARCERATE (1999), available at http://www.cunylawreview.org/wp-content/uploads/2013/11/Summer-00-v3-no-2_Ch-12-Carter.pdf. Studies show that Blacks and whites use drugs at comparable rates. See, e.g., U.S. DEP'T OF HEALTH AND HUMAN SERVICES, RESULTS FROM THE 2012 NATIONAL SURVEY ON DRUG USE AND HEALTH: SUMMARY OF NATIONAL FINDINGS 24 (2012), available at <http://www.samhsa.gov/data/NSDUH/2012SummiNatFindDetTables/NationalFindings/NSDUHresults2012.htm>; HUMAN RIGHTS WATCH, TARGETING BLACKS: DRUG LAW ENFORCEMENT AND RACE IN THE UNITED STATES 42 (2008), available at http://www.hrw.org/sites/default/files/reports/us0508_1.pdf. See also THE SENTENCING PROJECT, RACIAL DISPARITY IN SENTENCING: A REVIEW OF THE LITERATURE (2005).

²³ THE SENTENCING PROJECT, *JUVENILE LIFE WITHOUT PAROLE* (2011), available at http://sentencingproject.org/doc/publications/JLWOP_Facts_Aug_2011.pdf; HUMAN RIGHTS WATCH AND AMNESTY INTERNATIONAL, *THE REST OF THEIR LIVES: LIFE WITHOUT PAROLE FOR CHILD OFFENDERS IN THE UNITED STATES* (2005), available at <http://www.hrw.org/reports/2005/10/11/rest-their-lives>.

²⁴ HUMAN RIGHTS WATCH, *WHEN I DIE THEY'LL SEND ME HOME: YOUTH SENTENCED TO LIFE WITHOUT PAROLE IN CALIFORNIA* (2008), available at <http://www.hrw.org/reports/2008/10/17/when-i-die-they-ll-send-me-home>.

²⁵ *Michigan v. Raymond Curtis Carp*, *Michigan v. Wolfgang Eliason*, and *Michigan v. Cortez Roland Davis*, Amicus Curiae Brief of the NAACP Legal Defense and Educational Fund, Inc. in Support of Defendant-Appellants, S.C. Michigan No. 146478 (Feb. 20, 2014).

²⁶ ASHLEY NELLIS AND RYAN S. KING, THE SENTENCING PROJECT, NO EXIT: THE EXPANDING USE OF LIFE SENTENCES IN AMERICA 20-21, table 8 (2009), available at http://www.sentencingproject.org/doc/publications/publications/inc_NoExitSept2009.pdf. These states are Alabama, Arkansas, Delaware, Illinois, Louisiana, Maryland, Minnesota, Missouri, North Carolina, Pennsylvania, Rhode Island, South Carolina, Texas, and Virginia.

²⁷ ASHLEY NELLIS, THE SENTENCING PROJECT, *THE LIVES OF JUVENILE LIFERS: FINDINGS FROM A NATIONAL SURVEY* 3, 14-16 (2012), available at http://sentencingproject.org/doc/publications/jj_The_Lives_of_Juvenile_Lifers.pdf.

²⁸ ASHLEY NELLIS, THE SENTENCING PROJECT, *THE LIVES OF JUVENILE LIFERS: FINDINGS FROM A NATIONAL SURVEY* 3, 14-16 (2012), available at http://sentencingproject.org/doc/publications/jj_The_Lives_of_Juvenile_Lifers.pdf.

²⁹ Madeline Wordes et al., *Locking Up Youth: The Impact of Race on Detention Decisions*, 31 J. RESEARCH IN CRIME & DELINQ. 149, 156 (1994).

³⁰ U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, COMPENDIUM OF FEDERAL JUSTICE STATISTICS 112 (Table 7.16) (2003), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/cfjs03.pdf>.

³¹ See U.S. Sentencing Comm'n, Office of Research & Data, *Analysis of the Impact of Guideline Implementation of the Fair Sentencing Act of 2010 If the Amendment Were Applied Retroactively*, May 20, 2011, at 19, available at http://www.ussc.gov/sites/default/files/pdf/research/retroactivity-analyses/fair-sentencing-act/20110128_Crack_Retroactivity_Analysis.pdf; R.D. Hartley and J.M. Miller, *Crack-ing the Media Myth: Reconsidering Sentencing Severity for Cocaine Offenders by Drug Type*, 35 CRIMINAL JUSTICE REVIEW 67 (2010).

³² Congress gave the Commission authority to make its amendments retroactive in 28 U.S.C. § 994(u).

³³ Al Jazeera America, *Waiting on a Fix* (Mar. 24, 2014), available at <http://projects.aljazeera.com/2014/crack-cocaine/>.

³⁴ For example, the 2011 retroactive guideline adjustment only benefited those crack cocaine offenders who were convicted of less than 8.4 kilograms, just as an earlier retroactive guideline adjustment reducing the sentencing ranges for crack cocaine by two levels that took effect in 2008 only benefited those crack cocaine offenders who were convicted of less than 4.5 kilograms.

³⁵ U.S. Sentencing Comm'n Office of Research and Data and Office of General Counsel, *Analysis of the Impact of the 2014 Drug Guidelines Amendment If Made Retroactive*, May 27, 2014 at 12, available at http://www.ussc.gov/sites/default/files/pdf/research-and-publications/retroactivity-analyses/drug-guidelines-amendment/20140527_Drug_Retro_Analysis.pdf.

³⁶ *Id.* at 11.

³⁷ U.S. Dep't of State, *Fourth Periodic Report of the United States of America to the United*

Nations Committee on Human Rights Concerning the International Covenant on Civil and Political Rights (Dec. 30, 2011), available at <http://www.state.gov/drl/rls/179781.htm>.

³⁸ Deborah Fins, NAACP Legal Def. and Educ. Fund, Inc., *Death Row USA* 1 (Jan. 1, 2014), available at http://www.naacpldf.org/files/publications/DRUSA_Winter_2014.pdf.

³⁹ See, e.g., Katherine Beckett, et al., *The Role of Race in Washington State Capital Sentencing, 1981-2012* (Jan. 27, 2014), available at <http://www.deathpenaltyinfo.org/documents/WashRaceStudy2014.pdf>; David Baldus, et al., *Racial Discrimination in the Administration of the Death Penalty: the Experience of the United States Armed Forces (1984-2005)*, 101 J. Crim. Law & Criminology 1227 (Fall 2011); Katherine Barnes et al., *Place Matters (Most): An Empirical Study of Prosecutorial Decision-Making in Death-Eligible Cases*, 51 Ariz. L. Rev. 305 (2009); Scott Phillips, *Racial Disparities in the Capital of Capital Punishment*, 45 Hous. L. Rev. 807, 812 (2008); John J. Donohue III, *Capital Punishment in Connecticut, 1973-2007: A Comprehensive Evaluation From 4600 Murders To One Execution* (2008), available at http://works.bepress.com/john_donohue/55; Michael J. Songer & Isaac Unah, *The Effect of Race, Gender, and Location on Prosecutorial Decisions to Seek the Death Penalty in South Carolina*, 58 S.C. L. Rev. 161, 164 (2006); Glenn L. Pierce & Michael L. Radelet, *The Impact of Legally Inappropriate Factors on Death Sentencing for California Homicides, 1990-1999*, 46 Santa Clara L. Rev. 1, 38 (2005); Amnesty Int'l, *United States of America: Death by Discrimination – the Continuing Role of Race in Capital Cases* (Apr. 2003); Glenn Pierce & Michael L. Radelet, *Race, Region, and Death Sentencing in Illinois, 1988-1997*, iii (Mar. 2002); Isaac Unah & Jack Boger, *Race and the Death Penalty in North Carolina: An Empirical Analysis, 1993-1997* (2001); U.S. Dep't of Justice, *The Federal Death Penalty System: A Statistical Survey (1988-2000)* (Sept. 12, 2000); Thomas J. Keil & Gennaro F. Vito, *Race and the Death Penalty in Kentucky Murder Trials: 1976-1991*, 20 Am. J. of Crim. Justice 17, 24-27 (1995); Michael L. Radelet & Glenn L. Pierce, *Choosing Those Who Will Die: Race and the Death Penalty in Florida*, 43 Fla. L. Rev. 1, 22-28 (1991); U.S. Gen. Accounting Office, *Death Penalty Sentencing: Research Indicates Pattern of Racial Disparities* 5 (1990); Samuel R. Gross & Robert Mauro, *Death and Discrimination: Racial Disparities in Capital Sentencing* 66, 68-69 (1989).

⁴⁰ *Batson v. Kentucky*, 476 U.S. 79 (1986).

⁴¹ Equal Justice Initiative, *Illegal Racial Discrimination in Jury Selection: A Continuing Legacy* (Aug. 2010), available at <http://eji.org/eji/files/EJI%20Race%20and%20Jury%20Report.pdf>.

⁴² Barbara O'Brien & Catherine Gross, *Report on Jury Selection Study* (Sept. 29, 2011), available at https://www.aclu.org/files/assets/jss_revised_report_with_appendix_29_sept_2011.pdf.

⁴³ *McCleskey v. Kemp*, 481 U.S. 279, 312 (1987).

⁴⁴ See, e.g., Scott E. Sundby, *The Loss of Constitutional Faith: McCleskey v. Kemp and the Dark Side of Procedure*, 10 Ohio St. J. Crim. L. 5, 5 n.2 (Fall 2012) (collecting cites).

⁴⁵ *ACLU, North Carolina v. Robinson* (Apr. 20, 2012), available at <https://www.aclu.org/capital-punishment-racial-justice/north-carolina-v-robinson>.

⁴⁶ *ACLU, Blog of Rights, Sweeping Ruling about Racial Bias in Capital Jury Selection Shows the Need for Sweeping Reforms* (Dec. 17, 2012), available at <https://www.aclu.org/blog/capital-punishment-racial-justice/sweeping-ruling-about-racial-bias-capital-jury-selection>.

⁴⁷ Kim Severson, *North Carolina Repeals Law Allowing Racial Bias Claim in Death Penalty Challenges*, N.Y. Times (June 5, 2013); *ACLU, In Battle of Racial Bias vs. Racial Justice in North Carolina, Governor Insists on Racial Bias* (June 21, 2013), available at <https://www.aclu.org/blog/capital-punishment-racial-justice/battle-racial-bias-vs-racial-justice-north-carolina-governor>.

⁴⁸ Alan Blinder, *Appeal to Return 4 to Death Row is Heard*, N.Y. Times (April 14, 2014).

⁴⁹ Ronald Weich & Carlos Angulo, *Justice on Trial: Racial Disparities in the American Criminal Justice System* 195 (2000).

⁵⁰ Deborah Fins, NAACP Legal Def. and Educ. Fund, Inc., *Death Row USA* 38 (Jan. 1, 2014) available at http://www.naacpldf.org/files/publications/DRUSA_Winter_2014.pdf.

⁵¹ *Floyd et al. v. City of New York*, No. 08 Civ. 1034(SAS), 2013 WL 4046209, at *4, 6-7 (S.D.N.Y. Aug. 12, 2013).

⁵² ASHLEY NELLIS AND RYAN S. KING, THE SENTENCING PROJECT, NO EXIT: THE EXPANDING USE OF LIFE SENTENCES IN AMERICA 14 (2009). Latinos represent 15 percent of the general population, but comprise 22.3 percent of those in prison.

⁵³ *ACLU, Drug Sentencing and Penalties*, <https://www.aclu.org/criminal-law-reform/drug-sentencing-and-penalties>; U.S. DEP'T OF HEALTH & HUMAN SERVICES, SUBSTANCE ABUSE & MENTAL HEALTH SERVICES ADMINISTRATION, RESULTS FROM THE 2012 NATIONAL SURVEY ON DRUG USE AND HEALTH (Sept. 2013), available at <http://www.samhsa.gov/data/NSDUH/2012SummNatFindDefTables/NationalFindings/NSDUHresults2012.htm>.

⁵⁴ NAACP, *Criminal Justice Fact Sheet*, <http://www.naacp.org/pages/criminal-justice-fact-sheet>.

⁵⁵ *ACLU, THE WAR ON MARIJUANA IN BLACK AND WHITE* 8-9 (2013), available at <https://www.aclu.org/files/assets/114413-mj-report-rfs-rell.pdf>.

⁵⁶ *Id.*, at 9.

⁵⁷ NATIONAL COUNCIL ON CRIME AND DELINQUENCY, AND JUSTICE FOR SOME: DIFFERENTIAL TREATMENT OF YOUTH OF COLOR IN THE JUSTICE SYSTEM (2007), available at http://www.nccdglobal.org/sites/default/files/publication_pdf/justice-for-some.pdf.

⁵⁸ JOSHUA ROVNER, THE SENTENCING PROJECT, DISPROPORTIONATE MINORITY CONTACT IN THE JUVENILE JUSTICE SYSTEM 2 (2014), available at http://sentencingproject.org/doc/publications/fj_Disproportionate%20Minority%20Contact.pdf.

⁵⁹ *Id.*

⁶⁰ BILEEN POE-YAMAGATA AND MICHAEL A. JONES, BUILDING BLOCKS FOR YOUTH, AND JUSTICE FOR SOME: DIFFERENTIAL TREATMENT OF YOUTH OF COLOR IN THE JUSTICE SYSTEM (2000), available at <http://cclp.org/documents/BBY/jfs.pdf>.

⁶¹ ASHLEY NELLIS AND RYAN S. KING, THE SENTENCING PROJECT, NO EXIT: THE EXPANDING USE OF LIFE SENTENCES IN AMERICA 20 (2009); NATIONAL COUNCIL ON CRIME AND DELINQUENCY, AND JUSTICE FOR SOME: DIFFERENTIAL TREATMENT OF YOUTH OF COLOR IN THE JUSTICE SYSTEM 3 (2007), available at http://www.nccdglobal.org/sites/default/files/publication_pdf/justice-for-some.pdf. See also HUMAN RIGHTS WATCH, BRANDED FOR LIFE: FLORIDA'S PROSECUTION OF CHILDREN AS ADULTS UNDER ITS "DIRECT FILE" STATUTE, 29-32 (2014), available at http://www.hrw.org/sites/default/files/reports/us0414_ForUpload%202.pdf.

⁶² See AMERICAN CIVIL LIBERTIES UNION, A LIVING DEATH: LIFE WITHOUT PAROLE FOR NONVIOLENT OFFENSES (2013), available at www.aclu.org/livingdeath.

⁶³ *State v. Winslow*, 45,414 (La. App. 2 Cir. 12/15/10); 55 So.3d 910, writ denied 11-0192 (La. 6/17/11); 63 So. 3d 1033.

⁶⁴ Letter to the ACLU from Fate Vincent Winslow, Louisiana State Penitentiary, Angola, Louisiana, May 16, 2013.

⁶⁵ *State v. Winslow*, 55 So.3d 910.

⁶⁶ The state of Louisiana does not require a unanimous jury to convict and instead allows convictions by 10 out of 12 jurors.

⁶⁷ *State v. Winslow*, 29888-Ka (La. App. 2 Cir. 10/17/97).

⁶⁸ ACLU telephone interview with Brittany Byrd, attorney for Sharanda Jones, Dallas, Texas, Mar. 5, 2013; e-mail communication to the ACLU from Brittany Byrd, Mar. 12, 2013.

⁶⁹ *Id.*

⁷⁰ NAACP, *Legal Defense and Educational Fund, Duane Buck: Sentenced to Death Because He is Black* (Dec. 5, 2012), available at <http://www.naacpldf.org/case-issue/duane-buck-sentenced-death-because-he-black>.

⁷¹ ACLU, *Blog of Rights, 30 Years a Prisoner* (Mar. 24, 2014), available at <https://www.aclu.org/blog/capital-punishment/30-years-prisoner>.

⁷² Equal Justice Initiative, *Illegal Racial Discrimination in Jury Selection: A Continuing Legacy* 31 (Aug. 2010), available at <http://eji.org/eji/files/EJI%20Race%20and%20Jury%20Report.pdf>.