

OPEN LETTER TO THE JOINT COMMITTEE ON PUBLIC SAFETY
AND HOMELAND SECURITY

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RE: Racial Bias In The Courts & The Light Skin Revolution

Dear Members of the Committee; GREETINGS!!...

The Court System was found guilty of racism back in (1994) and the problems continue in a greater percentage. "The Light Skin Revolution have been played the indifference role.

Educated Mulatos and African American in the Country have reached a very strong political power and their progress does not mean that minorities in general have benefited from that progression. From the President down to the Governor and Congressmen there has been an ignoring of the racial disparities that have existed for many years in America.

Racial Bias against minorities in Court have been acknowledge by the Massachusetts Supreme Judicial Court SJC since (1994). The Supreme Judicial Court's Commission to Study Racial and Ethnic Bias in the Courts did in fact verify those issues in their report. At that time frame, Governor Deval Patrick was in charge of the Civil Rights Division for the U.S. Department of Justice in Washington, and he was very much aware of that matter.

Our Mulatto Governor, played his card during his political campaign with minorities in the entire State and when he got into power he RENEGED on racial reform because of his personal deals with Benjamin Laguer that would make him look bad in the face of a strong Judicial Political Branch that could portray him as soft against crime.

In the past six (6) years the prison system has increased and the majority of the prison populations are indeed minorities with a %55 percent of the people who are incarcerated in Massachusetts. This percentage coming from six (6) counties heavily populated by minorities. Without any question racial profiling has been playing a major role in creating the over-crowding in the present prison population.



Most recently, Our Governor appointed light skinned African Americans to key positions, The Chief Justice for Massachusetts Supreme Court and The Commissioner for the Massachusetts Department of Corrections.

The status quo continues, the only difference at this time is that the light skin revolution and the well educated African Americans are indeed responsible for the racial disparities that we have in Massachusetts. It is very clear that minorities in power does not really mean that we are making progress.

AN INDEPENDENT REPORT OF HISPANIC OFFENDERS TO THE COMMISSION OF RACIAL BIAS IN THE COURTS

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By Luis Perez

During the 4th and 5th of September 1991 we conducted several studies and selected a research team inside the prison at NCCI-Gardner. We would like to share the results of those studies.

This facility has an approximate population of 1,000 inmates, 241 of those prisoners are Hispanic. Our research team located 200 Hispanic inmates at random, 195 agreed to cooperate and 5 declined.

It is very important to mention that our research team asked questions without any obligation, without duress, or violating any CORI-LAW. The public has the right to know about prison issues and the prisoners also have the right to relate information to the public, members of the judicial system, and elected officials. This information is true to the best of my knowledge and it is presented and signed under penalties of perjury.

Counties That Are Linked Into This Study Research

The Hispanic prison population in this study indicates that out of 195 individuals, 82 of them came from Hampden County, 31 from Worcester County, 22 from Middlesex County, 16 from Essex County, and 27 from Suffolk County.

and 17 individuals could not recall the county location of their court hearings.

Evidence indicates that Hispanic citizens have been excluded from participating in the jury process. According to the 195 inmates who participated in this study, 144 pleaded guilty as charged and 51 of them went to trial. Amongst those 51 trials, there was an enrollment of 612 citizens, only five of those jurists were Hispanic, four of which came from Hampden County, and one from Middlesex County. Less than one percent of Hispanic jurists participated in deliberation.

Low Hispanic participation is either a grave oversight or a clear-cut case of judicial misconduct by the judicial administration and county commissioners. Though the Latino population does not register to vote in great number, those who are registered are not being called to serve. Hispanic citizens have been excluded from participating in the jury process and it is time that the judicial system be held responsible. Specifically, the function of the jury commissioner is to produce a registry representing an accurate cross-section of registered voters within the jurisdiction of the court.

Empowerment of the Latino population should not be used as an avenue of discrimination

General Information

During the entire interview with the 195 inmates we discovered many interesting issues of great concern. For example, we know that 144 Hispanic offenders pleaded guilty, 92 inmates (46%) used the services of a public attorney and 52 inmates (26%) used the services of a private attorney. The biggest surprise was to find that only 19 Hispanic offenders have complaints against their public attorneys in connection with their individual deals with the court when they pleaded guilty. Twenty-eight Hispanic offenders have had more disturbing problems with their private attorney in arranging deals with the court. Most of their complaints related to the part of the bargain which never took place, where Hispanic offenders were pressured to plead guilty, despite the fact that the majority of them were first-time offenders.

In her book, Money and Justice, Judge Lois G. Forer provides an additional perspective on the dynamic of pleading guilty:

"Most guilty pleas now take approximately twenty minutes ... The courts conveniently dispose of 90 percent of criminal cases swiftly, legally, and without challenge because they have complied with the prescribed ritual. But conscience compels one

admit that although the
ns of justice have been
liculously followed, the
substance of equal protec-
tion of the laws is routinely
denied to many poor persons
accused of crime."

Those 144 Hispanic offend-
ers who pleaded guilty reaffirm
Forer's legal theory that 90% of
defense lawyers are pushing for
a deal with the court, 7% push
for trial and 3% are pushing to
beat the charges for their clients.

A different perspective is of-
fered by college professor, Paul
E. Dow, in his book Discretion-
ary Justice A Critical Inquiry:

"If attorneys suddenly re-
fused to bargain and de-
manded jury trials, the entire
criminal justice system
would grind to a screeching
halt. The existing system

only accommodate jury
s in approximately 10%
all cases. However, would
defendants benefit by de-
manding jury trials? That is,
would the accused increase
their chances of a more
"just" verdict or sentence?
The realities of the current
legal environment only al-
low one to speculate as to
the benefits or detriments of
curtailing plea bargains."

Nonetheless, the plea-bar-
gaining process erodes the ad-
versarial ideal and the
presumption of innocence
maxim. A disservice both to the
philosophy of our system of ju-
risprudence and to the client is
promoted by what appears to be
the extreme eagerness of coun-
sel to cooperate with their pre-
sumed adversaries.

Specifically, the motives for the
bargain appear to entail
more than the desire to provide
the best possible defense for de-

fendants. In the words of Pro-
fessor Alschuler,

"The plea-bargaining sys-
tem...subjects defense attor-
neys to serious temptation to
disregard their client's inter-
est - temptations so strong
that the invocation of profes-
sional ideals cannot begin to
answer the problems that
emerge. Today's guilty-plea
system leads even able, con-
scientious, and highly moti-
vated attorneys to make
decisions that are not really
in their clients' interests."

For every outstanding trial at-
torney, there are dozens of
what Blumberg calls "double
agents".

Interpreters and Counsel for Minorities

Another area of great con-
cern is the interpreters obtained
for court hearings and trials.
From the total of the Hispanic
offenders that we interviewed,
101 (50.5%) used the services
of the interpreters, and 93
(46%) did not use the services
of the interpreters. We have re-
ceived many complaints from
the Hispanic inmates on the
subject of translation during tri-
als and hearings. During the in-
terview, 34% of the inmates
complained that after they read
their court transcripts, they be-
lieve there were many mistakes
made by the interpreters. Most
interpreters in court were cited
as not having proper knowl-
edge to transfer legal language
and terminology into the Span-
ish language, creating a conflict
of interest and denying the de-
fendant's right to a fair trial

Average Sentence

The average sentence among
the 195 Hispanic offenders
comes to 11.5 years per person. C-
We did not count the consec-
utive sentences or concurrent
sentences; we only counted the
maximum sentence from the
first sentence which totaled
2,387 years. The charges range
from breaking and entering, as-
sault, theft, manslaughter, rape,
two individuals with first de-
gree life sentences, and two
with second degree life sen-
tences. Seventy-seven percent
of the cases in this study were
drug and alcohol related crimes.

Inmates Born in Foreign Countries

There are 241 Hispanic of-
fenders in this institution, 59 of
that total number were born in
foreign countries. Dominican
Republic has 33, Cuba has 12,
Columbia has nine, Chile one,
Peru one, Uruguay one, Ecu-
ador one, and Brazil one. With
the exception of three, each one
had a detainer from the Immi-
gration and Naturalization Ser-
vice (INS). Administrators from
different facilities have been us-
ing this civil INS Detainer as if
it were a criminal warrant. In-
mates with INS Detainers have
to serve more time than any
other inmates with similar sen-
tences. The notification of a de-
tainer means that you cannot
obtain a normal transfer
through the chronological
movement program. Even
though everyone is deportable,
the Cubans are the only ones
who have no country to return
to, because the Cuban Govern-
ment continues to refuse to take
them back. Instead, the Cubans

ive to be transferred to the custody of the federal government for many years and as a result, we have seen many violent incidents inside the prison system, including murders, suicides, riots, hostage-taking situations, and millions of dollars in damaged facilities. These should be seen as screams of desperation from desperate men.

Massachusetts Department of Corrections and Policies Toward Minority Offenders

The following report recognizes that there are a complexity of problems in corrections across the nation, however we are focusing on the Massachusetts prison system because it plays a roll in the national picture with the Willie Horton fiasco during the 1987 Dukakis Presidential Campaign.

On one hand we have to understand the damage that crime in general is inflicting on our national well being, the impact of drugs, violent crimes, gangs, money laundering, white collar crimes and corruption in banking systems, etc. On the other hand, we have to redefine the role of corrections in dealing with these issues while suffering from short budgets, overcrowding, prisoners with AIDS, tuberculosis, labor disputes, discrimination and the supposed coddling of criminals.

It is very difficult to understand and comprehend the objectives of corrections, when dealing with poor people and minorities. Traditionally, when the Massachusetts Department of Corrections is under public pressure, it either reacts to the extreme left, or to the extreme

right, with ultimately no position of moderation. While politicians from both parties are playing on public fear during state and federal elections, creating additional problems that are counterproductive in running a system of justice within the Commonwealth of Massachusetts of particular concern, are those politicians who are be- rating the criminal justice system by concentrating on the punishment aspect, rather than on creating a balance between treatment and punishment. Unfortunately, the legislative body is revamping the legal system across the board without first examining the complexity of problems that are affecting the entire criminal justice system.

NCCI-Gardner is a medium security facility with a superintendent who is a program-oriented person, with a staff of approximately 250 people. It is one of the best facilities in the system.

However, there are only three Hispanic officers within the NCCI staff, with two of these officers working between 11 p.m. and 7 a.m. The officers include a part-time teacher who speaks Spanish, a recreational officer, and a psychologist who provides services for 1,000 inmates, 241 of them being Hispanic.

A report titled "Ethnic Composition of DOC Population January 1, 1980 to 1989" shows an awareness by the DOC of the many different problems of Hispanics in prison. However, we feel that it is unfortunate that this report, like so many others of its kind, will never result in any real-life changes in the system. It is a classic example of what Massachusetts Governor William

Weld referred to as "entrepreneurial government". Even professional people like Deputy Commissioner Mike Maloney and Dr. Dennis Humphrey, have been aware of this problem for a long period, but they are afraid that public pressure would terminate them from their jobs if they acted upon it. They are also concerned with media remarks such as "Dukakis holdover". All of this confusion shows a lack of leadership and lack of non-partisan goals. Documented discrimination in all areas dealing with minorities, if allowed to continue constitutes an act of discrimination and must be dealt with.

Recidivism

We also find information in relation to recidivism among the Hispanic offenders. Of the 195 that we interviewed, 20 of them either are parole violators or have returned with a new sentence. If we compare this number with the total of Hispanic offenders under the custody of the DOC, we will have a 65% recidivism rate.

We strongly believe that recidivism is a result of confusing the objectives of rehabilitation with warehousing. The roles being played by inmates and employees in relation with parole, "time served" and chronological transfer to other facilities have been conducted according to a given criteria, not according to earned privileges.

We have to understand the roles played by DOC employees, from the commissioner and directors through the ranks of correctional officers and case

There are big differences between criteria, procedures and proper evaluations.

The classification committee at the institution level is composed of a case worker, officer and unit manager. Most of the time these individuals do not really know if a person whom they are classifying is indeed rehabilitated or not. Therefore, many offenders play the game in 'faking the move' and taking advantage of the situation. Consequently, we have a major problem with inmates who have been improperly released with the media sensationalizing the issue; and all paying as a result. There are many people who sincerely work toward their own personal rehabilitation and many times, those are the ones who have a very difficult time obtaining opportunities.

There is another important issue linked to the recidivism rate, and that is the lack of employment for inmates released on parole or by time served. If, for example, we compare the recidivism rate between the State of Texas and the Commonwealth of Massachusetts, we will find that Texas is forced to release hundreds of inmates every day - resulting in an average sentence of 26 days per year with 40% returning within 6 months. In comparison, Massachusetts makes its prisoners serve more time than most other states, but recidivism still remains a major problem. Maybe the problems persist because the system unconsciously perceives criminal justice as a business enterprise.

According to a report by the Boston Bar Association and Crime and Justice Foundation, Massachusetts has made a stag-

gering financial investment in its criminal justice system during the last decade. Capital expenditures on corrections include \$415.7 million on state prisons, \$613.7 million on county facilities, and an additional \$15 million on related infrastructure improvements. This investment has enabled the Department of Corrections to increase its design capacity by over 62% in ten years, from 2,819 beds in 1980 to 4,574 beds in 1991. Over the same period, county corrections capacities have almost doubled, from 2,455 to 4,885.

Operating Cost

Projected annual expenditures for fiscal 1991 for the operations of the Department of Corrections, the Parole Board and county corrections totaled \$391.6 million. However, since the fiscal year began on July 1, 1990, several rounds of cuts have reduced the FY 1991 corrections budget to \$385 million. This would be a 9% increase over FY1989 actual spending. Despite \$385 million in expenditures, it will lack adequate monies for health care and other basic life and safety requirements.

Another economic report made by the Boston Bar Association was that in addition to their increasing share of the state budget, the correctional agencies are also employing a higher percentage of state personnel. The number of full-time employees in the Department of Corrections grew from 3,234 in 1983 to 4,740 in 1990, an increase of 46%. At the Parole Board, the work force grew from 161 in 1983 to 215 in 1990, a 33.5% increase. Paral-

lating this trend, the operating expenses per inmate have reached approximately \$30,000 per inmate per year.

It is important to mention that the confusion of money and crime is creating a criminal justice system in this country that is the second biggest industry next to Wall Street.

We can't look at crime as a business, we have to look at crime as a social problem. The system has to recognize that public safety is best served if a prisoner is gradually prepared for a return to the community. As it is now, corrections represents a criminal justice system gone awry. In fact, what we have is a breeding ground for rapes, drug addiction, violent crimes and homosexuality, because incarceration alone only addresses the symptom, rather than the root (depraved social conditions). We see the system as a juggernaut, an entity that has created a micro-economy so deeply woven into the American fabric that altering the pattern would disturb the status quo. Crime itself has been a way of life for many Americans. Noting the gamut of offenses from white-collar embezzlement to street pushers, if people stopped doing crime for one year, we'd have a partial economic crisis.

(TODAY 6/16/2011-REPORT)

11,500 prisoners DOC jurisdiction population - 24,061 county and house of correction with a total of 25,561. Minorities are majority within the entire prison population. **Overcrowding snapshot as of 9/29/11. Operating cost 1.1 billion dollars per year. Operating cost for DOC-Fiscal Year 2012 is \$ 1.1 billion, without counting the projected cost for County jails.**