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DEATH PENALTY SENTENCING:
Research Indicates Pattern
of Racial Disparities

Statement of
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Before the
Subcommittee on Civil and Constitutional Rights
Committee on the Judiciary
U.S. House of Representatives

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Mr. Chairman and members of the Committee:

Thank you for inviting us to discuss our GAO report, Death Penalty Sentencing: Research Indicates Pattern of Racial Disparities.¹ The Anti-Drug Abuse Act of 1988 (Public Law 100-690) mandated that GAO study capital sentencing procedures to determine if the race of either the victim or the defendant influences the likelihood that defendants will be sentenced to death. To fulfill this requirement we did an evaluation synthesis--a critical review and integration of existing research on the subject. This approach was feasible because a substantial body of research was already completed on this topic.

Approach

The first step in the synthesis process was to identify and collect all potentially relevant studies from both published and unpublished sources. Our search included culling computerized bibliographies and citations in studies that we obtained, and a survey of researchers known to be working in the field.

We screened more than 200 citations for relevance and obtained 53 studies that met our criteria. We included studies based primarily on post-Furman (1972) data which examined race as a

¹Death Penalty Sentencing: Research Indicates Pattern of Racial Disparities. GAO/GGD-90-57 February, 1990

factor that might influence death penalty sentencing.² After reviewing these studies, we excluded those that did not include empirical data or were duplicative. Twenty-eight studies remained.

Next, we rated each of the 28 studies in terms of the quality of research. We considered five dimensions--design, sampling, measurement, data collection, and analysis. Two social science analysts rated each study independently. A third analyst reviewed the raters' assessments to ensure consistency. Also, a statistician reviewed those studies that used advanced analytic techniques to make sure they had been used and interpreted correctly.

Our reviewers also recorded all relevant information on the relationship of race to death penalty sentencing from each of the studies.

Description of the Studies

The studies we reviewed covered different time periods until 1988. They included many states that have the death penalty and spanned the geographic regions of the country.

²In Furman v. Georgia, 408 U.S. 238 (1972), the Supreme Court found unconstitutional death sentences imposed under state statutes which allowed juries to impose these sentences in an arbitrary or capricious manner. In response to this decision, states adopted new statutes that addressed the concerns raised by the Court.

We rated about half of the studies as high or medium quality; the remainder were rated as low. We judged a study to be high quality if it:

- was characterized by a sound design that analyzed homicide cases throughout the sentencing process;
- included legally relevant variables (aggravating and mitigating circumstances); and
- used statistical techniques to control for factors that correlate with race and/or capital sentencing.

We identified three major limitations among these studies. One is known in the research community as sample selection bias. Sample selection bias would be present here if the cases under consideration are not representative of all the cases of interest. Race may influence decisions at one or more of the various stages in the criminal justice process. A study that considered only whether persons convicted of murder were sentenced to death will not measure the disparities in treatment that may have occurred at earlier points in the process.

A second limitation was the problem of omitted variables. If all relevant variables were not included in the analysis the effect of race could be overestimated. Only a few variables have been shown to be highly explanatory and these are included in the better quality studies.

A third limitation related to the consequences of the small sample sizes in the analyses of death penalty imposition. Since imposition of the death penalty is a relatively rare event, the statistical analysis of differences at this stage is limited because of small sample sizes.

Findings

Our synthesis of the 28 studies showed a pattern of evidence indicating racial disparities in the charging, sentencing, and imposition of the death penalty.

In 82 percent, or 23 of the 28 studies, race of victim was found to correlate with being charged with capital murder or receiving the death penalty. This finding was remarkably consistent across data sets, states, data collection techniques and quality of studies.

Although a race of victim influence was found in all stages of the judicial process across the studies, the evidence of race of victim influence was stronger for earlier stages in the judicial process (e.g. prosecutorial decision to charge defendant with a capital offense, decision to proceed to trial rather than plea bargain) than at later stages. This is because the earlier stages were comprised of larger samples allowing for more rigorous analyses.

Legally relevant variables, such as aggravating circumstances, were influential but did not fully explain the racial disparities researchers found. In the higher quality studies researchers controlled for legally relevant factors such as prior criminal record or heinousness of the crime and still found that differences remained in the likelihood of receiving the death penalty based on the race of the victim.

The influence of the race of the defendant on death penalty outcomes was equivocal. Although slightly more than half of the studies found the race of defendant influenced the likelihood of being charged with a capital crime or receiving the death penalty, the relationship between race and outcome was complex. For example, one study found that, while in rural areas black defendants were more likely to receive death sentences, in urban areas white defendants received death sentences more often.

Finally, more than three-fourths of the studies that found a race of defendant effect found that black defendants were more likely to receive the death penalty. The remaining studies, however, found that white defendants were more likely to be sentenced to death.

Summary

In summary, we found studies of sufficient quality to support the use of an evaluation synthesis approach to assess the relationship between race and death penalty sentencing. The results show a strong race of victim influence: the death penalty sentence was more likely to be sought and imposed for an offender if the victim was white. The race of offender influence is not as clear, and varies across a number of dimensions.

This concludes my comments. I would be happy to answer any questions concerning our work.