

UNFORGIVABLE RACISM: BLACK MEN, CRIMINAL JUSTICE

O, yes,
I say it plain,
America never was America to me.
And yet I swear this oath—
America will be!—Langston Hughes

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Throughout our history the virus of racism has infected America's criminal justice system, and official crime statistics and data from the Sentencing Project reflect the continued existence of racism in criminal justice. Black females, for example, are incarcerated at three times the rate of white females. But the principal victims of criminal justice racism are black men. Because of criminal convictions, 13% of black males are ineligible to vote. Although blacks make up 12.1% of the population, 28% of arrestees are black (almost all of them male), as are 34% (almost all of them male) of all drug violation arrestees. Blacks (almost all of them male) make up 44% of all sentenced inmates in federal or state prisons and 39% of inmates in local jails. In seven states, black prison inmates—almost all of them male—are incarcerated at more than 10 times the rate of white persons. One-eighth—12%—of black males aged 25-29 are incarcerated in prisons or jails, compared to 1.7% of white males in that age group. Black males have a 32% chance of serving time in prison at some point in their lives, compared to a 6% chance for white males. In Georgia, where blacks are 30% of the population, 61% of inmates in the state prison system are black, almost all of them males. Incredibly, according to a recent study by the Oklahoma Criminal Justice Resource Center, more than 38% of adult black men in that state have been convicted of a felony and 27% had been incarcerated in a state prison.

Additional perspectives on racist criminal justice may be gained by even brief examinations of the so-called criminal records of three of the most memorable black Americans of the 20th century: heavyweight boxing champions Jack Johnson (1878-1946) and Muhammed Ali (1942-), and the great civil rights leader and humanitarian, Dr. Martin Luther King, Jr. (1929-1968), winner of the 1964 Nobel Peace Prize.

Because of racist abuse of power by police and prosecutors, all three men suffered arrest, imprisonment, and conviction, as well as other violations, major and minor, of their human rights.

Jack Johnson's travails with criminal justice are recounted in Geoffrey Ward's *Unforgivable Blackness: The Rise and Fall of Jack Johnson* (2004). White America despised Johnson for defeating white boxers and winning the heavyweight title, for marrying three white women and having affairs with numerous others, and for protesting racial discrimination. Local police frequently gave Johnson traffic tickets "because white officers couldn't bear to see a black man behind the wheel of his costly car." For years federal prosecutors and federal law enforcement agents, "determined to get Jack Johnson, one way or another," spent prodigious amounts of energy to uncover evidence, any evidence, that he had committed some federal crime. Finally, on Nov. 7, 1912, a federal grand jury indicted Johnson for violating the newly enacted Mann Act

(now 18 U.S.C. § 2421), which criminalizes transporting women in interstate commerce for purposes of prostitution or debauchery. Two days later the Chicago-American newspaper ran this headline: "Johnson Locked Up in 4½ by 8 Ft. Cell: Negro In Rage As He Is Jailed." Johnson was detained in pretrial custody because the judge refused to allow him to post cash bail (!), and, when he sought release on bail via the writ of habeas corpus, he was denied relief. *Johnson v. Hoy*, 227 U.S. 245 (1913). Johnson's trial began in Chicago on May 5, 1913. The jury included (in the words of a pleased federal agent) citizens "strongly prejudiced against negroes." Although the prosecution's case was trumped up and its evidence dubious, the jury convicted Johnson on all counts after less than two hours of deliberation. He was sentenced to one year and one day of imprisonment, and was an inmate in the Leavenworth federal prison from Sept. 19, 1920 until July 9, 1921. Although Johnson did receive time for good behavior, "functionaries at the Department of Justice, ... outraged that he had slept with white women," "sabotaged" his efforts for early release on parole.

Because he was black, a vocal defender of colored peoples, a convert to Islam, and an opponent of the Vietnam War, Muhammad Ali, like Jack Johnson 60 years earlier, was ferociously hated by white America. Persecution by law enforcement authorities was inevitable. Local police harassed Ali. In December 1968 he spent 10 days in jail in Miami, Florida, for a minor traffic offense. Beginning in 1966, the FBI secretly investigated him, put him under clandestine surveillance, and commenced preparing a fat dossier on him. Ali was also spied on by Army intelligence. On May 8, 1967, Ali was indicted by a Texas federal grand jury on bogus charges of draft evasion. On June 19 and 20, 1967, Ali was tried in federal district court in Houston; the all-white jury convicted Ali after deliberating only 21 minutes. He was sentenced to the maximum, five years imprisonment. His conviction was twice upheld on appeal, *Clay v. U.S.*, 397 F.2d 901 (5th Cir. 1968), and 430 F.2d 165 (5th Cir. 1970), but, due to an amazing stroke of fate, miraculously reversed by the Supreme Court, 403 U.S. 698 (1971). For an account of the extraordinarily unusual occurrences which caused the Court to revise its preliminary determination that the conviction should be upheld and to surprise almost everyone, including itself, by unanimously ruling in Ali's favor, see Howard Bingham and Max Wallace, *Muhammad Ali's Greatest Fight* 237-49 (2000). The decision could not alter the fact that due to the conviction Ali had previously been stripped of his heavyweight title and barred from professional boxing during the prime years of his athletic life.

Dr. Martin Luther King, Jr., was persecuted by both local and federal law enforcement agencies. Numerous times he was illegally arrested for purposes of harassment or for violating state and local racial segregation laws, and he spent months in jail. Here in Georgia, Dr. King was convicted on September 23, 1960 of a minor traffic offense in DeKalb county; absurdly, he was sentenced to 12 months imprisonment, even though the maximum penalty authorized was 6 months! *King v. State*, 103 Ga. App. 272, 119 S.E.2d 77 (1961). Dr. King was even incarcerated for a time at the Georgia State Prison at Reidsville!

The FBI's massive program, beginning in the 1960s, to use its law enforcement powers to hobble Dr. King's civil rights efforts and to destroy his reputation is well-documented in government reports, e.g., Dr. Martin Luther King, Jr., Case Study, Supplementary Detailed Staff Reports on Intelligence Activities and the Rights of Americans, Final Report of the U.S. Senate Select Committee to Study Government Operations With Respect to Intelligence Activities, vol. 3, pp.

79-184 (1976); Report, Select Committee on Assassinations, U.S. House of Representatives, pp. 407-16 (1979), and scholarly works, e.g., Michael Friedly and David Gallen, *Martin Luther King, Jr.: The FBI File* (1991); David J. Garrow, *The FBI and Martin Luther, King, Jr.* (1981).

The FBI began spying on Dr. King in the mid-1950s. Then, in the words of the Senate Committee: "From December 1963 until his death in 1968, Martin Luther King, Jr. was the target of an intensive campaign by the Federal Bureau of Investigation to 'neutralize' him as an effective civil rights leader." The FBI illegally kept Dr. King under surveillance and monitored his activities; it illegally tapped his telephones and planted listening devices in his home and offices and the hotel and motel rooms he stayed in; and it surreptitiously engaged in a wide range of dirty tricks designed to discredit, intimidate, or embarrass Dr. King.

The administration of criminal justice will continue to mock America's basic ideals--liberty, justice, and equal rights for all--until the supreme injustice, racist enforcement of the criminal law, is purged from this land.