

**Statement on Behalf of the Federal Community Defender Office
for the Eastern District of Pennsylvania**

The Federal Community Defender Office for the Eastern District of Pennsylvania has been at the forefront of the effort to eliminate racial bias and to reduce racial disparities at every level of the criminal justice system. Our lawyers have paid special attention to racial disparities in sentencing that are caused by discriminatory prosecutorial charging decisions, mandatory minimum statutes, and sentencing guidelines. Racial disparity is a serious problem in the federal criminal justice system. Nearly 78 percent of federal defendants are non-White or Hispanic, and mandatory minimums are disproportionately charged against Black defendants. Further, as the lawyers for a large number of criminal defendants in cases in this district, we have appeared before and interacted with all judges in the Eastern District, and we have had the opportunity to assess their fairness and integrity.

With that experience and perspective, we are in a strong position to evaluate the highly controversial and, in our view, deeply flawed analysis of sentencing patterns of federal judges that is set forth in a paper recently posted online by The Institute for the Quantitative Study of Inclusion, Diversity, and Equity. The study presents a national statistical analysis of sentencing by federal judges to determine which judges have demonstrated racial bias in their sentencing decisions and identifies the top 2% of the judges who the authors deem to be the most biased against racial minorities.

We were shocked to see that Judges C. Darnell Jones II and Timothy J. Savage were included in this list. Over the past decades, we have represented numerous clients in their courtrooms, and we have found them to be of the highest integrity, fundamentally fair, and non-discriminatory in their judicial roles. And that is not just our view; private criminal defense lawyers who practice in this district hold the same high views of Judges Jones and Savage.

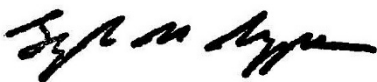
Given this assessment of the work and attitudes of Judges Jones and Savage, we reviewed the “study” to see if somehow our shared experience was belied by valid empirical data. Even on a first reading, however, there were serious questions suggesting statistical and analytical flaws in methodology. First, the authors concede that they did not have a full data base of the cases in which these and the other judges sentenced criminal defendants. Ranking judges and provocatively labeling them the “most discriminatory federal judges” based on an admittedly incomplete data set is irresponsible. Indeed, the authors state that “we cannot determine what percentage of each judge’s cases were matched in the JUSTFAIR database.” Further, it appears that there are judges and districts with no relevant data.

Second, it is not clear as to what extent, if any, the study accounted for “a sentence length of zero” which may include probationary and time served sentences. Third, the study does not appear to account for structural racism in our system, including large statutory sentencing differences in crack and powdered cocaine cases that have resulted in disproportionately longer sentences for Black defendants in drug prosecutions. And charging decisions as to mandatory minimums are especially problematic.

We strongly suspect that other system-based factors, and not the attitudes and beliefs of Judges Jones and Savage, are the reasons for whatever differentials were found in their sentencing patterns. As a leading national sentencing expert, Professor Douglas Berman, has stated, there are a host of unanswered questions raised by the study, including (1) “how can you tell if defendants are ‘relatively equally situated’ if plea negotiations have impacted the guideline calculation --- which they typically do;” (2) “the fact that the top 2 ‘most discriminatory’ judges are senior judges from one district (out of 94 districts) and that a few other districts are heavily over-represented among the ‘most discriminatory’ suggests . . . that you may be measuring a case-processing

story different than ‘discriminatory’ judges;” (3) why the judges “‘identified . . . as the ‘most discriminatory’ do not seem to have anywhere close to the most racially disparate rates of above/below guideline sentencing outcomes;” and (4) “‘most fundamentally, [how can you identify] a group of judges as ‘most discriminatory’ without a much clearer accounting of the cases and context for their sentencing decision-making. Did these judges have a lot of drug cases? Child porn cases? Firearm cases? Fraud cases? Cases that went to trial? Cases that included lots of mandatory minimums?’”

Racial bias and racial disparities have long infected the criminal justice system, from point of detention and arrest through sentencing. We encourage studies, analysis, and reforms that will eliminate these long-standing patterns of discrimination and racial bias and we agree that there should be full and fair transparency as to the actions of all criminal justice agencies. At the same time, we must ensure that those in the system, including judges, prosecutors, and defense lawyers, whose work is marked by fairness and integrity, are not unjustifiably blamed for results that are not the product of discriminatory beliefs or actions.



Leigh Skipper, Chief Federal Defender, Federal Community Defender Office
for the Eastern District of Pennsylvania

Paul Hetznecker, President, Board of Directors of the Defender Association of Philadelphia,
and Federal Trustee for the Federal Community Defender Office

David Rudovsky, Former President, Board of Directors of the Defender Association
of Philadelphia, and Federal Trustee Chair for the Federal Community Defender Office