

Who or what is to blame for the racial disparity in Utah's prison population?

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By Jessica Miller

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So what explains the racial disparity in Utah's prison?

The American Civil Liberties Union's Jason Groth said it's implicit bias by police and prosecutors who continue to seek long sentences without adequately weighing alternatives.

That argument, laid out in a recent Utah Bar Journal article, frustrated a prominent Utah County prosecutor, so he responded, writing his own piece that laid the blame not on the system but on the people of color who commit crimes.

"The ACLU is often quick to blame 'The Man' or 'The System' for perceived disparities," wrote Tim Taylor, Utah County's criminal chief deputy, "but perhaps the ACLU should also consider individual responsibility."

Groth, ACLU of Utah's Smart Justice coordinator, says the prosecutor's response ignores the data, that 43% of Utah's prison population were ethnic minorities in 2017, while they represent only 20% of the general population. Even Taylor's boss said his comments are an overly simplistic view of a complicated problem.

Taylor told The Salt Lake Tribune this week that he wrote the letter — which was published in a magazine sent bi-monthly to every active attorney and paralegal in the Beehive State — because he felt that the ACLU article implied that Utah's prosecutors are racist or consider someone's race in their charging decisions. That's simply not true, he said.

"We just don't take a person's skin color or ethnicity into account when we charge or handle a case," he said. "Maybe I'm saying, 'Not in my backyard.' I know how hard we work to be fair and unbiased, and we try to look at the facts because that's all we can prove in court."

A letter to the Utah State Bar Journal from Deputy Utah County Attorney Tim Taylor, printed in the May/June 2019 edition.

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Taylor knows that people of color are going to prison at a higher rate — he’s just not sure police and prosecutor bias are to blame.

He said in Utah County investigators target drug distributors aggressively. Most of the drugs, he said, come from Mexico.

“Are we being racist by focusing on those individuals actually committing the crimes?” he said. “We know a lot of drugs comes from Mexico. Just because they become part of our focus, are we racist? I don’t think so.”

But Groth said Taylor’s viewpoint is conflating two issues — “individual responsibility” and systemic discrimination. Communities of color are over-policed, prosecuted and punished in Utah, Groth argued, and it’s a problem that those in the state’s criminal justice system need to start thinking about.

In 2017, black Utahns were imprisoned at a rate eight times higher than that of white people, according to an ACLU analysis of state data. Latinos are incarcerated at twice the rate of white people, while Native Americans are at a rate six times higher.

And the percentage of minorities behind bars has risen in recent years. In 2015, 34% of the prison population were ethnic minorities. Two years later, that had jumped to 43%. This is despite a sweeping reform passed by legislators in 2015 that reduced penalties for drug crimes and put more emphasis on rehabilitation.

Everyone in the criminal justice system — from public defenders to prosecutors to police — should be looking at their practices to try to lessen that disparity, Groth said. Specific to prosecutors, Groth wants them to undergo more training about implicit biases and provide more alternatives to incarceration, including treatment programs.

Letter to the Editor

Dear Editor:

In the January/February issue of the *Utah Bar Journal*, Mr. Jason M. Groth penned an article entitled, “Criminal Justice Reform in Utah: From Prosecution to Parole.” One of Mr. Groth’s concerns in his article dealt with the disparate incarceration rates among certain groups of individuals. Because Mr. Groth believes that prosecutors and law enforcement are somewhat responsible for the disparate incarceration rates, he provides suggestions as to how prosecutors can help limit racial disparities within the criminal justice system. Although some of Mr. Groth’s suggestions may have merit, the issue of ‘individual responsibility’ is conspicuously absent from his article. Mr. Groth advocates for more programs, resources and holding law enforcement and prosecutors more accountable to help reduce “racial

disparities.” However, a plethora of programs and maximum oversight will not result in lower criminal conduct until an individual chooses to change his/her behavior. The great Justice Reinvestment Initiative has helped empty the prison but the number of criminal cases we receive from law enforcement has not decreased. And with all due respect to Mr. Groth, the prosecutors in my office do not screen cases differently based on a person’s skin color. The ACLU is often quick to blame “The Man” or “The System” for perceived disparities but perhaps the ACLU should also consider individual responsibility.

Respectfully,
Timothy L. Taylor

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“Racial disparities exist, that’s not up for debate,” he said. “We need to take a hard, honest look at how the criminal justice system treats people of color.”

Taylor's stance on the issue seems to be in conflict with his new boss, Utah County Attorney David Leavitt, who has promised to dramatically reform the criminal justice system in the county or fail trying.

Leavitt hadn't seen Taylor's letter until a reporter sent him a text message asking about it. He said that while Taylor is right in that there needs to be personal accountability, it's much more complicated than that. A prosecutor should also analyze the "social constructs," he said, and the circumstances that led to a crime when making decisions on how to proceed.

The county attorney, who took office in January, said he's revamping the process they use in deciding to pursue criminal charges. A case will now be screened by more than one person, he said, in an effort to try to eliminate any bias that could unknowingly creep into the process.

They are also reprioritizing what sorts of cases they file, with the goal of reducing the number of cases that Utah County prosecutors are juggling. Leavitt said he hopes that gives his prosecutors more time to think deeply about each case, and to ask themselves hard questions. "It's engaging in a process where we try to recognize our own bias," he said, "and accommodate that through discussion and more eyes looking at it."