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## Issues in the Criminal Justice System – Discussion

### Do we believe there is a problem in the criminal justice system?

Yes. Just as we recognize that we have some of the very best people who serve our communities in the criminal justice system, we also have some of those that abuse their power and this raises issues of integrity in the criminal justice system.

#### REFERENCE

"The disparate impact of our criminal justice system on racial and ethnic minorities raises serious questions about the way law enforcement officials, prosecutors, courts, and juries go about their jobs.

Whatever their cause, racial disparities are stark throughout the system. At current levels of incarceration, for example, newborn black males have a greater than 1-in-4 chance of serving prison time, while Latinos have a 1-in-6 chance and whites 1-in-23."

'Racial Profiling' produced by the Police Assessment Resource Center. Full copy of the Report is at

[http://www.vera.org/publication\\_pdf/162\\_249.pdf](http://www.vera.org/publication_pdf/162_249.pdf)

If the link is broken go to <http://www.vera.org>

### If so, where is the proof of this?

- Read the many media reports in your local and national newspapers of false arrests, wrongful convictions and even police brutality and tampering of evidence. It does happen and has happened. (We have even had people on Death Row declared innocent when the Innocence Project has become involved.) So, we can't say, our system of justice is perfect – far from it, if we have innocent people on Death Row! Refer [www.innocenceproject.org](http://www.innocenceproject.org)
- There are many social justice organizations that conduct research on police misconduct and related justice issues. Example; the Vera Institute of Social Justice in New York. We would not have these

organizations, if we didn't have a problem. Refer <http://www.vera.org/>

- Read the text listed as: *"The FBI also investigates allegations of misconduct on the part of law enforcement officers, including physical abuse, infliction of summary punishment, and deprivation of rights through fabrication of evidence. The Bureau works with state and municipal law enforcement agencies, prosecutors, and special interest/minority groups to improve reporting of civil rights violations and to design proactive strategies for identifying and mitigating systemic police brutality."* The FBI would not be looking into these areas unless they believe there is a need to be involved. Read more at <http://www.fbi.gov/libref/factsfigure/civilrights.htm>
- Read the text listed as: *"The FBI's highly sensitive public corruption investigations focus on all levels of government (local, state, and federal) and include allegations of judicial, legislative, regulatory, contract, and law enforcement corruption. Law enforcement corruption accounts for more than one-third of the current corruption investigations. These cases typically involve law enforcement officers accepting money to protect (or facilitate) drug-trafficking and organized criminal activity."* We can assume therefore, that not all in law enforcement have stellar records and maintain high standards of policing. Read more at: <http://www.fbi.gov/libref/factsfigure/publiccorrupt.htm>
- Read "Corruption of Law Enforcement Officers and Public Officials" at <http://www.drugwarfacts.org/corrupt.htm>
- Read the May 1998 "Information on Drug-Related Police Corruption" prepared by the US General Accounting Office. Click here to read.
- Read "Addressing Police Misconduct" a paper by the US Justice Department available at: <http://www.usdoj.gov/crt/cor/Pubs/polmis.htm>
- The Vera Institute of Social Justice on contract to the U.S. Department of Justice Office of Community Oriented Policing Services, wrote a report in 2005 about their findings from a case study of the Pittsburgh Police Department. They concluded that: "There are strong signs a year after most of the decree has been lifted that federal intervention can encourage long-term improvements in police accountability. More engagement of

citizens and greater participation of front-line officers might have made a good process even better". Again, we believe if there was not a problem in the way our law enforcement works then we would not have such research conducted! Click here for a copy of the paper.

- o Read about ways in which the US Dept of Justice continues to support measures that can enhance integrity in the police force - <http://www.ojp.usdoj.gov/nij/pubs-sum/209269.htm>
- o Read: "Beyond 'Scandal'" by Jason Whitehead, a Verizon net contributing author who began his paper on police brutality with: "Imagine, finally, that despite repeated and well-documented studies showing that these things are occurring, prosecutors and judges refuse to listen to claims of innocence raised by the members of the organization and instead convict them and sentence them to lengthy prison terms based on the testimony of the paramilitaries", then goes on to state: "Many, if not most, Americans would conclude that these facts, if true, constitute a grave human-rights crisis justifying massive resistance and democratization. But these things have been occurring for some time now, not in some third-world dictatorship, but in one of the most affluent and progressive urban centers of the most advanced democracy in the world" and "Together, these revelations illustrate in graphic detail what one law professor has called the "dirty little secret" of the American criminal justice system: cops lie in court all the time in order to convict people they have decided are guilty. " and finally concludes that his findings suggest "a natural outcome of a system of criminal justice designed to protect the powerful at the expense of the powerless." Click here for a copy of the paper.
- o Read an article on "INS one the most corrupt federal law-enforcement agencies' which highlights the fact that even though the public service is held to a high degree of accountability, clearly there are systemic problems that do exist in large bureaucracies. Click here for a copy of the paper.

*Please also review the many references on the Criminal Justice Resources: Police Corruption – Police Integrity at the Michigan State University Library site at*

<http://www.lib.msu.edu/harris23/crimjust/polcorr.htm>

Our aim is to make you understand that we do not have a perfect system and that we can make a difference through advocacy and becoming engaged in the process of change.

### **What does the Integrity-in-Justice project aim to achieve?**

*Raise awareness and engage the community in issues related to integrity in our criminal justice system*

The Integrity-in-Justice project intends to raise awareness of issues in the criminal justice system in America so that more people dialogue the issues and bring about positive change. In particular the program intends to raise awareness on issues such as:

- The overall treatment of people in the criminal justice system – how race, and socio-economic status has some relationship to type of charging, sentencing and even verdicts
- the alarming rate of arrests, even longer sentencing and incarceration of African Americans and other minorities, when they represent only a small percentage of the overall American population
- the rate at which we have increased probation, incarceration and even a privatized prison system that disadvantages people from lower socio-economic backgrounds because these people cannot afford the 'dream team' attorneys.
- the rate at which the mentally ill and the homeless go through our criminal justice system
- the after effects of an 'arrest' record and the overall impact on communities – issues of employment, housing and study opportunities.
- lack of transparency and real community involvement in police conduct cases

and many such issues! And there are many.

*Advocate for 'just' and fair punishment*

We do not advocate for 'no punishment'! We do expect every person, including a young person to take responsibility for bad behavior and poor choices and the issue here is not about whether someone needs to be punished but the type of punishment, the lack of consistency in charging and the consequences thereof. Why is it that some are arrested, others aren't; some receive minor charges, others higher, some receive shorter sentences, others longer, etc. Why are some able to remain on the outside and get help for alcohol and drug counseling whilst others are sent to jail or prisons – is it to ensure sufficient income stream for the privatized correctional facilities or is it because people of lower socio-

economic backgrounds simply don't have the will power, the resources or the know-how to navigate the system? Or, do the numbers of arrests have a bearing on the size of the infrastructure for law enforcement?

*Advocate for 'real' civilian oversight of the criminal justice system*

It is hoped that by raising awareness in our communities about issues, we will be able to get ordinary citizens interested in raising concerns about the criminal justice system so that we do have real civilian oversight of the judicial process ranging from policing right through to sentencing, probation and incarceration.

Our view is that if as a society we are comfortable in calling on ordinary people within our communities to constitute our jury system (which considers even death penalty cases), why aren't we able to draw on ordinary people to have civilian oversight of our criminal justice system? This should be particularly important and urgent in order that we address current concerns about the way in which we treat young offenders, the mentally ill and people from lower socio economic backgrounds who have committed non-violent crimes.

*Bring to the forefront of dialogue, issues surrounding the human impact of zero-tolerance policies, particularly on the young, mentally ill and the poor in our communities*

Most will agree that drinking and partying were almost a right of passage for young adolescents in the 1950's, 1960's and even the 1970's era, yet today the very people of that era now speak of zero tolerance and throw today's generation into jail with arrest records for non violent crime. Most non violent crime does relate to the use of alcohol and drugs, rebellious years whilst growing up and/or to mental illness. After arrests and the consequences thereof, many people are denied jobs, housing and access to even colleges (and college housing) - i.e. a lifetime of failure (and shaming) rather than access to successful rehabilitation in return for dropping charges in cases where crimes were of a non violent nature. Some of these (particularly young) people are even later in life denied opportunities to go abroad for a study abroad, work or volunteer opportunity as overseas governments deny them visas because they had an arrest in the USA. Yet some celebrities and people from the upper echelons of society are offered incredible deals with rehabilitation (even in return for dropping arrest charges and they don't really need to find their next pay check to cover bills so an arrest would not matter, would it?)! So, how fair a society are we? We invite you to engage in this critical dialogue because the lives of our future generation of Americans are at stake.

*Bring focus to the ever increasing building program for policing and correctional facilities*

Our policing and correctional facilities continue to increase on the basis of arrests, sentencing, probation and/or sentencing. There are billions and billions of dollars put aside to build these facilities and continuously expand them; yet the very people who have ownership of these facilities (through taxes, particularly property taxes for local law enforcement) do not seem to currently have much input into this expanding program. When a citizen invests his/her money, usually the norm is that they would oversee that investment, yet currently a component of property taxes go towards the criminal justice system with only a few in the city/county halls having responsibility for this huge investment.

*Raise awareness in the community about the consequences of accepting plea deals*

We understand that many in our communities, particularly young people and those coming from lower socio-economic backgrounds do not understand the consequences they face when they accept plea deals, particularly if there is fear of wrong charges being pinned against them. Even if there is a 'no contest' plea, these are recorded as 'guilty' in the overall statistics of District Attorneys on the US Dept of Justice web sites. Furthermore, a plea deal which is a non-conviction does not mean much to employers, schools, colleges and or landlords. Whilst some plea deals are clearly in the interest of defendants, others are not. They are just simply a means of converting more arrests into 'convictions' in the statistics of work done by prosecutors. This trend must stop! Judges need to be more vigilant to actually spell out what a plea deal means in terms of employment, education, housing and immigration. It is not sufficient to say 'you may be affected' but rather it must be mandatory to say 'you will be affected'. When the use of the word 'may' is used by Judges at the front end of court proceedings, it comes with a whole lot of legal jargon and defendants can assume (wrongly) that this is for everyone that gets in front of a judge.

*Raise awareness amongst employers, landlords, housing providers, colleges and universities about problems in our justice system*

We believe that those arrested particularly for non-violent crimes and others who have served their time, continue to be disadvantaged in our communities because of 'arrest' records. Our aim is to educate and highlight the difficulties with continuing to punish people for the rest of their lives and the overall impact on our communities as a result of this.

*Request foreign governments not to discriminate against US citizens and residents that have arrest records stemming from non-violent crime or those that have already paid their dues to society*

Our view is that many of our young want to move on with their lives after a minor infraction or a bad experience (like an arrest for the wrong charge) with the law. Yet these young people are held back from going on study abroad, volunteer abroad, internships abroad and other programs because overseas governments generally reject applications if there is any criminal history whatsoever recorded on their visa applications. By raising awareness of how the current US justice system works, we hope that overseas governments will understand that there are indeed problems in the criminal justice system and therefore, they need to `investigate' further the applicant and then make an informed decision rather than blanket rejection of visa applications based on arrests. (Please note: Canada does request more information and allows applicants to provide documentation and an explanation about the crime. Our hope is to have other governments do the same.)

### **Summary**

Whilst we understand that most people in our criminal justice system are caring individuals who want to do a good job and do put themselves in danger to protect us, we also recognize that there is a rising trend of cases involving police brutality, wrongful convictions, tainted evidence, false charges, etc. and that some innocent people still go through the system without a voice because they simply

- o don't understand the system
- o can't afford the time to continuously be in court or believe they will be kept in jail for years because some police and prosecutors give them the wrong charges (worst still they should not have been arrested in the first place), so they take plea deals
- o can't afford an attorney (while we accept they may be entitled to a court appointed attorney but if they're not, they need to find one on the open market and some just don't have the money nor time to do so); and
- o don't understand the relevance of plea deals which really show up as `convictions' as far as the statistics of the judiciary are concerned. Many accepting plea deals as non-convictions believe the whole thing will go away.

There is therefore, a moral obligation on society to become engaged in dialogue so we are able to deal with issues of integrity in our criminal justice system.

We currently have a `feeder' system allowing a government/private partnership that is questionable because it attacks the very fundamentals of a humane and kind society. Our private prisons and incarceration facilities make billions of dollars for their shareholders whilst ordinary people from lower socio-economic backgrounds are arrested and thrown in jail for non-violent crimes and not even able to contact their families regularly because of the cost of telephone calls from these facilities, leave alone the cost of buying jerseys and socks (to keep them warm)! Our probation system continuously expands on the basis that the more people that are on probation, the more the `system' earns! More and more people accept guilty or `no contest' pleas so they don't have to keep coming to court and can go back to work and/or their families and our `system' continues to rope them in, particularly if they know the ones being arrested for non-violent crime are not the ones likely to fight in court with dream teams of attorneys, yet they bring in the bucks to support court and probation costs.

Our statistics can really be skewed to increase policing and incarceration facilities and bring in more public funding including property taxes - all in the name of zero tolerance. As a society we allow this to happen and we do not question, because we assume that the `system' must work because it is America and we do have a Constitution that protects us all.

Congress has decided that various classes of people - among them immigrants & prisoners - are not entitled to representation by legal services lawyers. Congress also decided that poor people who do receive representation from legal services lawyers will be represented by lawyers who operate under restrictions that do not apply to lawyers representing anyone else. Lawyers with legal services programs operate under a whole host of restrictions. For example, they cannot challenge welfare regulations, they cannot bring class action suits.

Congress also eliminated funding for programs that were attempting to provide legal representation for the 3,500 men, women and children on death row at the stages of review where no lawyer is provided. And the promise of *Gideon* has never been realized. Courts have held that lawyers who are asleep, drunk, under the influence of drugs, or fail completely to investigate and defend their clients are sufficient "counsel" for purposes of the Sixth Amendment.

Denying lawyers denies people access to the legal system. What Congress has done is only one part of a disturbing trend to deny the poor any access to the courts by simply denying them lawyers.

**Keep the Dream of Equal Justice Alive by Stephen B. Bright 1999**

Often where there is mental illness, alcoholism and drug use, instead of rehabilitation in the true sense, our current system believes any infraction of the law whatsoever deserves a lifetime of punishment through lost

opportunities. How fair a system is this? What type of society have we created?

It is important to mention that some communities in America are better equipped and more tolerant. They work hard to maintain fairness, common courtesies and fair play in the justice system - they treat the non-violent criminal and the young person with a lot of care, respect and compassion. They understand that they need to provide support and rehabilitation. Still this is not enough. It is not enough to have only some communities working hard to promote fair play in our justice system. Right around the US we continue to have an alarming increase of arrest rates for non violent crimes and disproportionately it is people of color and people from lower socio economic backgrounds that get arrested. Some cities arrest the homeless for being homeless and standing on the wrong street corner.

Most who own homes pay through property taxes for policing and the judicial process (through the State), yet this `system' continues to expand at an alarming rate and providing a `feeder' into the probation and even the privatized prison and post-prison system. These property owners need to know that putting their money into training programs and education would provide far greater return. These property owners also need to have a vested interest in ensuring that the way the criminal justice system works is truly fair and reflects the needs of the people. People need to also know that safeguarding their young and demanding better solutions than arrests and a lifetime of `shaming' does not provide dividends - instead we create criminal minds with criminal intent. We also need to address the fundamentals as to why certain groups of people are arrested more often than others for minor and non-violent crimes? Are they an easy target because they cannot afford to be in court every week or access an attorney and taking a `plea' deal means a quick end to their problems so they can go to work again? (A further point is that this group of people will continue to financially support the criminal justice system through their monthly probation payments and court costs.) At some point the `shamed' criminal with an arrest record who is denied jobs, housing and supportive study opportunities will re-offend to survive and eventually move to a lifetime of crime. When we drive by and see homeless people in shelters do we wonder how their lives began - could some have commenced their lives on the streets due to an infraction with the law? We need to question our current draconian practices with the criminal justice system, particularly as we seem to be in the business of producing more and more criminals and an increase in property taxes to support our local criminal justice system.

The issue of transparency about cases and in particular police conduct is not new. Many, many social justice projects directly or indirectly raise serious concerns about the lack of accountability. High profile cases get plenty of attention in mainstream media yet we continue to hear about unethical and criminal behavior within our criminal justice system only by reading the back pages of the local papers. Most police departments and other areas of the judiciary including corrections facilities have 'systems' in place to look at issues and report back to a hierarchy system of management from within; however, the reality is that self regulation and management does not provide public scrutiny. Given the many instances of police cover-ups, targeting of individuals, raids on homes in the guise of probation checks, wrong charges, questionable plea deals by prosecutors, should we not have civilian boards appointed to review cases?

The issue we need to consider is that if a jury of people randomly drawn from our general population is good enough to consider factual information and conclude a person's guilt or innocence (even in death penalty cases), why is it that we are not able to draw randomly on every day citizens to also have oversight of the work of law enforcement and other areas of the judiciary, including prosecutors who are supposed to serve the public? It appears that in recent years, some police departments have opened themselves up to scrutiny but this scrutiny is usually brought in from other public servants i.e. people drawn from local government, mayoral and/or city/county offices. This still means that one component of a public office scrutinizes another. The issue for our communities is whether this is good enough or whether we can demand that our general population also be involved randomly to review facts and make decisions about our bureaucracies including police departments, correctional facilities and even prosecutor offices. We also ask that you read the 2002 paper on "Building Public Confidence in Police Through Civilian Oversight" written by the Vera Institute of Justice in New York, which states that: "It may be the permanent lot of police in democracies that the public vacillates between seeing the police at times as protectors and at other times as oppressors." [Click here for a copy of the paper.](#)

Whilst recognizing that in many areas we have had civilian review boards operating, one needs to question whether they were set up for performance or failure? Are they truly representative of communities i.e. drawn from the general public as juries are? How were these review boards structured? If we are able to draw on civilians at random on an annual or semi-annual basis to serve on civilian review boards and preferably bring them from outside the immediate policing region so that

there is no police 'influence', we may find ourselves protecting those on these civilian review boards and ensuring that they can fairly assess a situation without being too close to the problem or feel intimidated in any way due to recriminations resulting from their involvement. Click here to read the 2002 paper titled: "Civilian Oversight of Policing" by Joe Miller at the Vera Institute of Justice in New York.

It is hoped that such awareness (and advocacy) will lead to positive changes in our judiciary which will ultimately benefit all Americans from all socio-economic backgrounds. Justice will not just be for the wealthy, the privileged or those from the upper echelons of our society who can afford 'dream teams' of attorneys but rather it will be a fairer system for all. Integrity should be the cornerstone of public office. The alarming rate of arrests will no longer be driven by the need for an expanded justice program of more police, prosecutorial and incarceration facilities but rather involve communities in finding solutions particularly aimed at our young people. These young people become the adults in jails. We need to find out why we have private prisons and 'return to society' programs managed by private contractors worth billions of dollars when we could put more money into our inner city schools to teach and train our young. We also need to ask ourselves why is it that only certain groups of people end up more often in jail – usually the people from lower socio economic backgrounds and in particular African Americans and other minorities. Is our jury system tainted? Or is our justice system skewed to bring in the criminals that can ill afford attorneys or to take time off weekly to be at a hearing (when you need to work so saying you're guilty and taking probation i.e. a plea deal is the easy fix)? Instead we need to move to a system of real arrests of the hardened criminals in our society!

Read the paper on Global Forum for Fighting Corruption and Safeguarding Integrity II at <http://usinfo.state.gov/topical/econ/bribes/gf2declaration.htm>

As a leader of the western world, America needs to do more to address the issues existing in our justice system. Our current system is simply not working. In the name of zero tolerance we are locking up the mentally ill and people committing non-violent crimes due to abuse of alcohol and/or drugs. We are also at times convicting innocent people and/or charging people with the wrong crime just to 'get them' or to 'get even'. Instead of finding ways to rehabilitate, our law enforcement is trained to 'lock them up' because the data on numbers of arrested, makes sensational reading and provides even more city, county, State and country resources to develop a high powered incarceration structure ranging from county jails to prisons, to halfway houses to privatized prisons.

The future of the next generation of Americans is being jeopardized because they are being stigmatized through arrests and the consequences thereof.

We invite you to continue to become engaged in the process of bringing change to our system of criminal justice. This is your world. The change begins with you. Be an advocate for change by discussing these issues in your communities, in your places of worship, your schools, colleges, your work place - in short begin dialogue because you can make a difference!

***Wake up America -, we need to do more to improve our criminal justice system so that it truly represents all people in a fair and just way!***

