

## **Criminal Justice Reform:** Making Our Ideals Match the Reality for Black and Brown People

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*"If we could read the secret lives of those we want to punish, we could find in each life enough grief and suffering to make us stop wishing anything more."*

-Anonymous

Since this country's inception we have tried to make the idealism for a fair and equitable administration of justice—expressed by the nation's architects—match the reality. To understand the institution of justice, it is important to deconstruct the pillars that support its continued existence. The most significant pillar is society's addiction to incarceration as the primary instrument of social control.

Another significant pillar is lack of accountability: the institutions of the justice system are less accountable than most public systems. Indeed, schools are measured by whether children are learning, health systems are measured by morbidity rates, and elected officials are measured by constituency satisfaction. Yet rarely is the criminal justice system held accountable for its incredibly high recidivism or its inability to rehabilitate.

The justice system in the United States—using incarceration as its primary tool—is extremely expensive, does not rehabilitate, and has no evidence-based correlatives to reducing crime. Yet, with that track record, our justice system continues to thrive, prosper, and divert precious resources from alternatives that are more effective. As a result, millions of people—increasingly, people of color—are warehoused, disenfranchised, and essentially thrown away.

It seems self-evident that our country will not be competitive in the global community if a significant percentage of our people are unable to read or realize their potential because they are recycling through this system. Eleanor Roosevelt said "that the rights for all humans begin in small places, close to home; such are the places where man, woman, and child seek equal justice, equal opportunity, and equal dignity." That idea captures the values inherent in working to reduce the impact of the justice system on communities.

### **Facts**

The latest data from the Bureau of Justice Statistics reveal that more than seven million people are under correctional supervision. Incredibly, that figure represents 3.2 percent of U.S. adult residents, or 1 in every 32 adults. It is difficult to get accurate data regarding Latinos under correctional supervision because many jurisdictions do not disaggregate Latinos from Caucasians. However, we do know that Latino incarceration rates were 163 per 100,000 in 1980 and have increased to 1,747 per 100,000 in 2007. The incarceration rate for Black men is 4,618 per 100,000; for White men, 773 per 100,000.

There are approximately 74 million youth under the age of 18 living in the United States.<sup>1</sup>

Each year, between 300,000<sup>2</sup> and 600,000<sup>3</sup> youth are detained in pre-trial juvenile detention facilities.<sup>4</sup> Additionally, nearly 106,000 young people are confined in post-trial correctional facilities. The most recent data released by the Justice Department shows that every state has racial and ethnic disparities in their youth justice systems.

We know that youth of color represent approximately 38 percent of the youth population yet 65 percent of confined youth. We also know that youth of color are arrested, charged, and incarcerated more than White youth for similar conduct. Finally, and most importantly, research clearly reveals that youth of color are incarcerated at rates that cannot be explained by crime alone. Youth of color and the communities in which they live are bearing the brunt of a disturbing trend of justice system involvement.

This unfortunate circumstance comes at a high price to our communities and society. The average construction cost required to build or expand a new facility is \$100,000 to \$150,000 per bed.<sup>5</sup> Once the construction is complete, expenses continue to rise with ongoing costs for clothing, food, bedding, furniture, and salaries for the security staff and other correctional professionals. The average annual cost of operating a single detention bed in the United States is \$36,487,<sup>6</sup> approximately the cost of a year of tuition and fees at Harvard University.<sup>7</sup> The detrimental impact incarceration has on the lives of Black and Latino men and youth, coupled with the enormous fiscal responsibility required to construct and maintain detention facilities, is scandalous and unjustifiable.

Analysis of the Latino and Black inmate population reveals that they are incarcerated at similar age and education levels. However, Black inmates come from childhood backgrounds characterized by a higher likelihood of having parents who never married and received welfare, having a working mother, and having an immediate family member who spent time in jail during youth. Meanwhile, Latinos' childhood background is notable for the relatively lower proportion of parents who divorced and whose mothers are in the workforce.<sup>8</sup>

Anecdotal research shows that Blacks and Latinos are charged more seriously, offered probation less often, offered fewer plea bargains, and spend more time in jail or prison for the same offenses, compared to their White counterparts.

Similarly, a recent survey investigating rationales for disparities in confinement amongst youth of color found that, of 44 states reviewed, 32 found evidence showing that differences in decisions to arrest and detain by race and ethnicity could not be accounted for by differential involvement in criminal activity.<sup>9</sup> Moreover, a recent review of studies on disproportionality found that the effects of race and ethnicity on juvenile justice probation and detention "works to the disadvantage of minority youth."

## Implications for Policy and Practice

Today, in many communities of color, folks justifiably think of justice systems as coercive since they reflect the punitive and retributive power of the state. However, upon reflection, it seems that justice, in order to be sustained, requires not coercion but consensus. In fact, the entire justice apparatus requires a grand bargain between those who govern and the governed. Essentially, the bargain states that we accept that justice will be applied fairly and equitably, and we in turn respect it and its apparatus.

This bargain is breached if a significant segment of the population believes that the justice system is unfair, biased, and doesn't serve their interest—in essence, they opt out. In communities of color across this country we are dangerously close to that breach now. Indeed, as communities of color and low-income folks bear the brunt of gentrification by becoming increasingly economically and geographically marginalized, the violence exhibited reflects a low grade “insurgency.” This is not good for civil society and strikes at the heart of basic democratic ideals.

Over the past two decades, juvenile justice professionals, academics, and politicians have proffered several theories as to why disproportionality has reached its current crisis level. Theories include people of color committing more crimes, poverty, dysfunctional families, conscious and unconscious biases among criminal justice decision makers, and policy mandates that have a foreseeable disparate impact on communities of color, such as mandatory minimum drug violation sentencing. While the debate continues, the crisis deepens, and it increases the need for local efforts to strategically and intentionally work to reduce racial and ethnic disparities in the justice system.

There is no denying that socioeconomic and criminogenic risk factors correlate with disproportionality. To be sure, several studies link socioeconomic status, access to health care, educational and employment opportunities, and other extrajudicial barriers with criminal justice system involvement. Research confirms widely held assumptions that socioeconomic factors outside the control of justice system decision makers is a significant contributor to law violations.<sup>10</sup>

However, these extrajudicial factors are not determinative of any jurisdiction's ability to reduce racial and ethnic disparities. Too often, reform efforts are stymied by focusing on extrajudicial factors rather than investigating whether internal justice decision making is a factor that, intentionally or not, contributes to disproportionality.

For example, despite substantial and consistent research to the contrary, many academics and practitioners still hold the belief that youth of color are disproportionately represented in the juvenile justice system because they commit more crimes. According to them, disproportionality is legitimate because it is offense-driven, i.e., “you do the crime, and you do the time.” In fact, research indicates the opposite to be true: some who do the crime do the time, while others who do the crime, do not do the time. A young person's race and ethnicity<sup>11</sup> correlates with this differential response.

The best example of this phenomenon is the system involvement as the result of drug charges. Self-reports of drug use indicate that White youth and youth of color use drugs at the same rate. In fact, some reports indicate that White youth use drugs at a higher rate than youth of color. But youth of color become involved in the justice system more often and with more severe consequences than White youth.

The disparity continues in the disposition of drug offenses. For example, White youth represented 73 percent of youth adjudicated delinquent for drug offenses but 58 percent of youth sent to out-of-home placement and 75 percent of youth whose cases resulted in probation. Conversely, Black youth represented 25 percent of the youth adjudicated delinquent for drug offenses, but they represented 40 percent of the youth placed out of home and only 22 percent of youth whose case resulted in probation.<sup>12</sup> Similarly, Latino men and youth are incarcerated at higher rates without benefit of access to mental health care, community services, and culturally aware programming.

## **Recommendations**

In order to overcome years of indifference, hostility, and lack of guidance, an intentional strategic local hands-on approach is required. In that vein, the following recommendations should be considered:

- Justice systems must collect data at key decision points and disaggregate by race, ethnicity, gender, geography, and offense to identify where disparities occur for Black and Brown youth.
- When disparities are identified, justice systems must establish an institutional response to address disparities.
- Justice systems must partner with community stakeholders in fashioning institutional responses.
- Justice systems should assure that all policies and protocols are language-appropriate.
- Legislatures should provide fiscal and other incentives that reward jurisdictions for establishing racially and ethnically neutral justice policies.
- There should be racial and disparities impact reports attached to every piece of legislation and major criminal justice policy that details the impact on communities of color.

## **Conclusion**

California is home to more than half of the top 20 counties in the country for levels of incarceration for Black and Brown people. The justice system impacts both communities significantly. Deconstructing structural barriers to reducing disparities is best achieved through unity. Both communities are better served by exercising passion, urgency, and leadership together to overcome the status quo. As poor communities of color continue to push the country to realize its ideals, we embrace the credo that every life has epic significance.

This summit gives us an opportunity to engage the issue of racial and ethnic disparities and document what has not worked in the past. More importantly, through the papers, resources, and discussions, the summit gives us an opportunity to shape a new future of unity for the twenty-first century. Now is the time to take stock and commit to demanding fairness and equity for our people. Indeed, we should never settle for anything less.

## Notes

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<sup>1</sup> U.S. Census Bureau Estimates (2007).

<sup>2</sup> *Fact Sheet*, Building Blocks for Youth, available at <http://www.buildingblocksforyouth.org/issues/conditions/facts.html> (last visited May 5, 2005).

<sup>3</sup> *Fact Sheet*, Building Blocks for Youth, available at <http://www.buildingblocksforyouth.org/issues/conditions/facts.html> (last visited May 5, 2005).

<sup>4</sup> See Howard N. Snyder and Melissa Sickmund, *supra* note 31, available at <http://www.ncjrs.org/html/ojdp/nationalreport99/chapter7.pdf>.

<sup>5</sup> Human Rights Watch, *High Country Lockup: Children in Confinement in Colorado*, (1997), available at <http://www.hrw.org/reports/1997/usacol/> (last visited April 18, 2005).

<sup>6</sup> National Council on Crime and Delinquency, *Census of Public and Private Juvenile Detention, Correctional and Shelter Facilities*, (1997).

<sup>7</sup> A year of tuition at Harvard in 2003-2004 cost \$37,928. Cable News Network, available at <http://edition.cnn.com/2003/EDUCATION/03/24/harvard.tuition.ap/> (last visited April 18, 2005).

<sup>8</sup> *Ibid.*

<sup>9</sup> Carl E. Pope from *Our Children, Their Children: Confronting Racial and Ethnic Differences in American Juvenile Justice*, (pg 358), University of Chicago Press, 2005.

<sup>10</sup> See Olatunde C.A. Johnson, "Disparity Rules" Footnote 23, *Columbia Law Review* (2007), volume 107, no. 2, citing studies that conclude that for reasons that are not racially or ethnically apparent on their face—poverty, access to education, and employment—youth of color may be more likely to be involved in criminal activity and to be arrested.

<sup>11</sup> National Council on Crime and Delinquency, 2007. "And Justice for Some: Different Treatment of Youth of Color in the Justice System," Oakland, CA: National Council on Crime and Delinquency, available at: [http://www.nccdcrc.org/nccd/pubs/2007jan\\_justice\\_for\\_some.pdf](http://www.nccdcrc.org/nccd/pubs/2007jan_justice_for_some.pdf)

<sup>12</sup> *Ibid.*