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**Racial Disparities in the
American Criminal Justice System**

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***Justice On Trial:
Racial Disparities in the American Criminal Justice System***

EXECUTIVE SUMMARY

In the half century since a tired seamstress named Rosa Parks refused to give up her seat on the bus, the United States has made significant progress toward the objective of ensuring equal treatment under law for all citizens. The right to vote and the right to be free from discrimination in employment, housing and public accommodations are enshrined in statute. The number of minorities in positions of authority in public and private life continues to grow. America's minorities now enjoy greater economic and educational opportunities than at any time in our history. While it certainly cannot be said that the United States has achieved complete equality in these areas, we continue to make slow but steady progress on the path toward that goal.

But in one critical arena – criminal justice – racial inequality is growing, not receding. Our criminal laws, while facially neutral, are enforced in a manner that is massively and pervasively biased. The injustices of the criminal justice system threaten to render irrelevant fifty years of hard-fought civil rights progress.

- In 1964 Congress passed the Civil Rights Act prohibiting discrimination in employment. Yet today, three out of every ten African American males born in the United States will serve time in prison, a status that renders their prospects for legitimate employment bleak and often bars them from obtaining professional licenses.
- In 1965 Congress passed the Voting Rights Act. Yet today, 31 percent of all black men in Alabama and Florida are permanently disenfranchised as a result of felony convictions. Nationally, 1.4 million black men have lost the right to vote under these laws.
- In 1965 Congress passed the Immigration and Nationality Act, which sought to eliminate the vestiges of racial discrimination in the nation's immigration laws. Yet today, Hispanic and Asian Americans are routinely and sometimes explicitly singled out for immigration enforcement.

- In 1968 Congress passed the Fair Housing Act. Yet today, the current housing for approximately 2 million Americans – two-thirds of them African American or Hispanic – is a prison or jail cell.
- Our civil rights laws abolished Jim Crow laws and other vestiges of segregation, and guaranteed minority citizens the right to travel and utilize public accommodations freely. Yet today, racial profiling and police brutality make such travel hazardous to the dignity and health of law-abiding black and Hispanic citizens.

The system by which lawbreakers are apprehended and punished is one of the pillars of any democracy. But for that system to remain viable, the public must be confident that at every stage of the process – from the initial investigation of a crime by the police officer walking a beat to the prosecution and punishment of that crime by prosecutors and judges – individuals in like circumstances are treated alike, consistent with the Constitution's guarantees of equal treatment under the law.

Today, our criminal justice system strays far from this ideal. Unequal treatment of minorities characterizes every stage of the process. Black and Hispanic Americans, and other minority groups as well, are victimized by disproportionate targeting and unfair treatment by police and other front-line law enforcement officials; by racially skewed charging and plea bargaining decisions of prosecutors; by discriminatory sentencing practices; and by the failure of judges, elected officials and other criminal justice policy makers to redress the inequities that become more glaring every day.

Racial disparities affect both innocent and guilty minority citizens. There is obvious reason to be outraged by the fact that innocent minority citizens are detained by the police on the street and in their cars far more than whites. Those stops involve inconvenience, humiliation and a loss of privacy that is heightened when the rationale for the police action is the color of a motorist's skin or a pedestrian's accent. But there must also be outrage about the disparate treatment of minority citizens who have violated the law. A defendant surrenders many civil rights upon conviction, but equal protection of the law is not one of them. It is an affront to all minority citizens – including the innocent – when a minority defendant is treated unfairly by the police, or by prosecutors, or at sentencing, because of his race or ethnicity.

The unequal treatment of minorities in our criminal justice system manifests itself in a mushrooming prison population that is overwhelmingly black and Hispanic; in the decay of minority communities that have given up an entire generation of young men to prison; and in a widely-held belief among black and Hispanic Americans that the criminal justice system is deserving neither of trust nor of support. All these factors contribute to a perception that lawlessness is a "colored" problem, and that the disproportionate treatment of blacks and Hispanics within the criminal justice system is a rational response to a statistical imperative.

Disparate treatment within the criminal justice system is not rational: The majority of crimes are not committed by minorities, and most minorities are not criminals – indeed, less than 10 percent of all black Americans are even arrested in a given year. Yet the unequal targeting and treatment of minorities at every stage of the criminal justice process – from arrest to sentencing – reinforces the perception that drives the inequality in the first place, with the unfairness at every successive stage of the process compounding the effects of earlier injustices. The result is a vicious cycle that has evolved into a self-fulfilling prophecy: More minority arrests and convictions perpetuate the belief that minorities commit more crimes, which in turn leads to racial profiling and more minority arrests.

The treatment of minorities in the criminal justice system is the most profound civil rights crisis facing America in the new century. It undermines the progress we have made over the past five decades in ensuring equal treatment under the law, and calls into doubt our national faith in the rule of law.

This policy report examines the systematically unequal treatment of black and Hispanic Americans and other minorities as compared to their similarly situated white counterparts within the criminal justice system. It reviews the effects of such unequal treatment on these groups in particular and on the criminal justice system generally.

Chapter One: Race and the Police examines the issue of racial profiling and other law enforcement strategies and practices that single out blacks and Hispanics as objects of suspicion solely on the basis of the color of their skin or accent. Police officers disproportionately target minorities as criminal suspects, skewing at the outset the racial composition of the population ultimately charged, convicted and incarcerated. For example:

- Under a federal court consent decree, traffic stops by the Maryland State Police on Interstate 95 were monitored. In the two year period from January 1995 to December 1997, 70 percent of the drivers stopped and searched by the police were black, while only 17.5 percent of overall drivers -- as well as overall speeders -- were black.
- In Volusia County, Florida, in 1992, nearly 70 percent of those stopped on a particular interstate highway in Central Florida were black or Hispanic, although only 5 percent of the drivers on that highway were black or Hispanic. Moreover, minorities were detained for longer periods of time per stop than whites, and were 80 percent of those whose cars were searched after being stopped. The discriminatory treatment of minority drivers was duly noted by Volusia County Sergeant Dale Anderson, who asked a white motorist he had stopped how he was doing; the motorist responded "[N]ot very good," to which Anderson responded, "Could be worse – could be black."

Chapter Two: Race and Prosecutorial Discretion addresses the unequal treatment of minorities in the exercise of prosecutorial discretion, focusing on charging decisions in

drug cases and racial disparity in the administration of capital punishment. At every subsequent stage of the criminal process -- from the first plea negotiations with a prosecutor, to the imposition of a prison sentence by a judge -- the subtle biases and stereotypes that cause police officers to rely on racial profiling are compounded by the racially skewed decisions by other key actors. Regrettably, the evidence is clear that prosecutorial discretion is systematically exercised to the disadvantage of black and Hispanic Americans. Prosecutors are not, by and large, bigoted. But as with police activity, prosecutorial judgment is shaped by a set of self-perpetuating racial assumptions.

In 1991 the *San Jose Mercury News* reviewed almost 700,000 criminal cases from California between 1981 and 1990 and uncovered statistically significant disparities at several different stages of the criminal justice process. Among the study's findings was that six percent of whites, as compared to only four percent of minorities, won "interest of justice" dismissals, in which prosecutors dropped a criminal case entirely. Moreover, the study found, 20 percent of white defendants charged with crimes providing for the option of diversion received that benefit, while only 14 percent of similarly situated blacks and 11 percent of similarly situated Hispanics were placed in such programs. The same study revealed consistent discrepancies in the treatment of white and non-white criminal defendants at the pretrial negotiation stage of the criminal process. During 1989-1990, a white felony defendant with no criminal record stood a 33 percent chance of having the charge reduced to a misdemeanor or infraction, compared to 25 percent for a similarly situated black or Hispanic.

Chapter Three: Race, Sentencing and the "Tough on Crime Movement" reviews the issue of sentencing, and describes the role of Congress and other legislative bodies in shaping and implementing criminal justice policies that fall short of our commitment to equal treatment under the law. The decision to sentence a convicted criminal to prison has, until recently, been viewed as a profound responsibility, one entrusted solely to impartial judges. Increasingly, however, sentencing has become mundane and mechanistic, a decision effectively controlled by legislators, prosecutors and sentencing commissioners. This change in the culture of sentencing has had disastrous consequences for minorities in the United States.

One of the most thorough studies of sentencing disparities was undertaken by the New York State Division of Criminal Justice Services, which studied felony sentencing outcomes in New York courts between 1990 and 1992. The State concluded that one-third of minorities sentenced to prison would have received a shorter or non-incarcerative sentence if they had been treated like similarly situated white defendants. If probation-eligible blacks had been treated like their white counterparts, more than 8000 fewer black defendants would have received prison in that two year period, resulting in a five percent decline in the percentage of blacks sentenced to jail as a percentage of the entire sentenced population. In short, the study found, blacks are sentenced to prison more frequently than whites for the same conduct.

Chapter Four: Willful Judicial Blindness discusses the judiciary's failure to redress obvious injustices by curbing access to and restricting the use of data that reflect the disparate impact on minorities of law enforcement and prosecutorial practices. The chapter stresses that courts bear significant responsibility for the injustices suffered by minorities in our criminal system, despite this era of mandatory sentencing laws and sentencing guidelines in which judges have less authority to affect the outcome of criminal cases through the exercise of judicial discretion. In the face of the overwhelming racial disparities created by policing tactics, prosecutorial decision-making and unjust sentencing laws, courts have generally declined to examine or redress racial inequality in the criminal justice system, and have made it harder for litigants to expose such flaws.

Chapter Five: Race and the Juvenile Justice System examines the disproportionately harsh treatment of minorities in the juvenile justice system, an area in which especially pronounced disparities pose ominous consequences for minority communities. For example, minority youths are disproportionately targeted for arrest in the war on drugs. In Baltimore, Maryland, 18 white youths and 86 black youths were arrested for selling drugs in 1980. One decade later, juvenile drug sale arrests had increased more than 100 percent overall, and the almost 5-to-1 racial disparity that existed a decade earlier had become a 100-to-1 disparity: white youths were arrested 13 times for selling drugs in 1990 – less than in 1980 – while black youths were arrested 1304 times, a 1400 percent increase from 1980.

These figures reflect the broader national experience: From 1986 to 1991, arrests of white juveniles for drug offenses decreased 34 percent, while arrests of minority juveniles increased 78 percent. All this despite data suggesting that drug use rates among white, black, and Hispanic youths are about the same, and that drug use has in fact been lower among black youths than white youths for the last couple of decades. Similar disparities appear in relation to non-drug-related crimes.

Chapter Six: The Consequences of Too Little Justice outlines the consequences of unequal treatment of minority Americans in the criminal justice system – for those caught up in the system, for their families and communities, and for society as a whole. Today it is beyond debate that America's minorities are treated unfairly within the criminal justice system. Innocent minorities are stopped, detained and interrogated more than innocent whites. Minorities who violate the law are more likely to be targeted for arrest, less likely to be offered leniency and are subject to harsher punishment when compared to similarly situated white offenders. Each successive measure of unequal treatment compounds the prior disparities. Meanwhile minority youths face similar inequities, with the added consequence that they are disproportionately vulnerable to politicians' efforts to "adultify" juvenile justice, and are therefore more likely than white youths to be transformed by government policies into career criminals.

Chapter Seven: Recommendations outlines several proposals to ameliorate the racial disparities that dominate the criminal justice system today. Recommendations include establishing accreditation for law enforcement, increased statistical compilation, the

diversification of law enforcement, abolishing or suspending the death penalty, reforming sentencing guidelines, repealing felony disenfranchisement laws and repealing efforts to move juveniles into the adult justice system.

Neither in Chapter Seven nor elsewhere does this report propose less public safety or ineffective law enforcement. The issue is not whether to be *tough* on crime, but rather whether to be *fair* and *smart* in the course of being tough on crime. Contrary to the assertions of some politicians, it is entirely consistent with effective policing to treat citizens fairly and humanely. **There is no contradiction between effective law enforcement and the promotion of civil rights.**

The policies advocated in this report are designed to enhance public safety by replacing current enforcement efforts that do more to breed crime than combat it. For example, over-reliance on incarceration as a means of addressing social problems in the inner city harms those communities by reducing the stigma of a criminal conviction and by siphoning scarce resources from needed health and education programs. It may sound *tough* to advocate more prisons and it may sound *soft* to advocate changes in the sentencing laws that would permit non-violent drug addicts to receive treatment instead of warehousing. But the opposite is true. Politicians who advocate more of the same, tired, lock-'em-up nostrums are taking the easy way out. The ones willing to confront the ineffectiveness and unfairness of current crime policies deserve to be called tough and courageous.

Regardless of how vigorously we choose to enforce our criminal laws, racial and ethnic neutrality is an imperative. Should two similarly situated but racially or ethnically different individuals – whether they be two innocent motorists or two marijuana dealers – be treated the same regardless of the color of their skin or their ethnic heritage? Our Constitution says that the answer to this question must be in the affirmative.

This report compiles and synthesizes a growing body of empirical evidence proving that our criminal justice system discriminates against minorities. But the goal of this report is not to identify intentional racism by criminal justice personnel. Overt bigotry is relatively rare, relatively easy to uncover, and, when uncovered, subject to public opprobrium. Although overt bigotry surely exists in pockets of the system, the report does not rest its condemnation of the criminal justice system on those grounds.

Instead, we seek to highlight a pervasive pattern of unequal treatment of black and Hispanic Americans throughout that process, and to describe the consequences of this pattern for our system of democratic government and for our people. Whether the unequal treatment we discuss is intentional is (almost) beside the point. Our civil rights laws are premised on the notion that disparate treatment of minority groups, whether identifiably intentional or not, is unacceptable given the guarantees of equality imbedded in our constitutional system.

As the Leadership Conference on Civil Rights celebrates its 50th Anniversary, it takes pride in its accomplishments and girds itself for the struggle ahead. Just as we

worked together to meet the historic civil rights challenges of the late 20th Century, so the racial disparity that infects the criminal justice system demands our attention as a united movement today.

JUSTICE ON TRIAL

Racial Disparities in the American Criminal Justice System

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**Leadership Conference on Civil Rights
Leadership Conference Education Fund**

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