

RACE AND THE U.S. CRIMINAL JUSTICE SYSTEM

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BACKGROUND

Preventing and punishing criminal conduct are among the primary obligations of government at all levels. But it is also the obligation of government to ensure that no one is unjustly accused, convicted, or punished. In Deuteronomy 16:20, the Torah commands us, (*Tzedek, tzedek tirdof*, "Justice, justice you shall pursue"), and the sages explained that the word (*tzedek*) is repeated not only for emphasis but to teach us that we must be just in our pursuit of justice, that our means must be as just as our ends. Similarly, the Rambam lists five transgressions for which people do not repent. One of them is mistakenly suspecting an innocent person of doing wrong. One will justify his suspicion by saying, "I haven't sinned. What did I do to harm that person?" He doesn't realize that he commits a sin by considering an innocent person a transgressor (*Hilchot T'shuvah* 4:3).

In this context, we express our support for America's law enforcement agencies and our concern that aberrations that undercut fairness and justice harm the credibility and efforts of those agencies and personnel even as they erode respect for law and justice in America more generally. Notwithstanding the ideals of our criminal justice system, there is growing evidence that race and poverty play a role in determining who gets arrested, who gets a fair trial, and how those convicted are sentenced. There is an increasing perception that we have two criminal justice systems, separate and unequal: one for affluent Whites and one for racial minorities and the poor. Foremost among the complaints are disparate application of the death penalty, police brutality, racial profiling, sentencing disparity, and disparate treatment of minorities by the juvenile justice system.

Death Penalty

In 1959, the Union of American Hebrew Congregations resolved to oppose the death penalty, a position supported by the former Synagogue Council of America representing Reform, Conservative, and Orthodox rabbis. While we continue to work for the abolition of the death penalty, we cannot ignore injustices in its application. Statistical evidence, including that compiled by the Death Penalty Information Center, shows that African-American men are disproportionately represented among those on death row and those who have been executed in the last twenty years. Although people of color are the victims in more than half of all homicides, a White victim case is over four times more likely to result in a death sentence than a comparable Black victim case. Some contend that these and other statistics showing disparities can be explained by nondiscriminatory factors, but there is strong evidence that race is a determining factor. Studies also document the role of poverty in death penalty disparities. Many jurisdictions fail to provide adequate representation for indigents accused of capital crimes and adequate funding for those defending them to properly prepare their defenses. The American Bar Association in 1997 called for a moratorium in executions until each jurisdiction adopts policies and procedures to ensure that death penalty cases are administered fairly and impartially, in accordance with due process. And to minimize the risk that innocent persons may be executed, implementing, among others, ABA policies to ensure competency of counsel in capital cases and striving to eliminate discrimination in capital sentencing on the basis of the race of either the victim or the defendant. There has been little response to the Bar Association's call.

Police Brutality

The use of force by police and law enforcement agencies has contributed to a widening rift in police/community relations. The brutalizing of Abner Louima while in police custody in New York and the police shooting of a West African immigrant, Amadou Diallo, in the vestibule of his New York apartment building have raised public awareness of a long-simmering concern. These events, as well as others across the country, sparked massive protests and opened a dialogue among city officials, minority leaders, and law enforcement agents.

Discriminatory Profiling

A major factor contributing to racial disparity in prosecution and punishment is the discriminatory profiling of minorities-based on race, ethnicity, and sexual preference-as criminal suspects and, especially, as drug traffickers. Profiling is used to determine whom to stop and search in the absence of the specific identification of a suspect in a particular crime. In a significant percentage of these traffic stops and searches, no traffic offenses are cited. In 1997, Judge Stephen Reinhardt of the 9th U.S. Circuit Court of Appeals wrote: "It is clear . . . that African-Americans are stopped by the police in disproportionate numbers." In Maryland, state police statistics showed that 73% of cars stopped and searched on I-95 between Baltimore and Delaware in a two-year period were driven by African-Americans, while only 14% of those driving on that stretch of road were Black. Police found absolutely nothing in 70% of those searches. The use of Racial profiling has now been admitted in New Jersey, and evidence of its use elsewhere is widespread.

Sentencing Disparity

While African-Americans constitute about 12% of the U.S. population and 13% of drug users, they make up 38% of persons arrested for drug offenses, 59% of those convicted of drug offenses, and 63% of those convicted of drug trafficking. African-Americans who are convicted of drug offenses are sentenced to prison at much higher rates and for longer terms than Whites convicted of the same offenses. The disparity in the treatment of users of crack and powder cocaine contributes to the disproportionate incarceration of minorities. In 1988, Congress distinguished crack cocaine from powder cocaine and other drugs by creating a mandatory minimum penalty for the simple possession of crack cocaine, the only such federal penalty for a first offense of simple possession of a controlled substance. Under this law, the possession of more than five grams of crack cocaine triggers a minimum sentence of five years in prison. On the other hand, the simple possession by a first-time offender of any quantity of any other illegal substances, including powder cocaine, is a misdemeanor punishable by a maximum of one year in prison. The impact of this disparity has fallen principally on African-Americans, who are predominant among crack cocaine defendants. Thus far, attempts at reforming these sentencing disparities have failed.

Other drug sentencing laws that mandate stiff prison sentences for first offenders, often without the possibility of parole, contribute to the disparate incarceration of minorities. Civil rights leaders, religious leaders, and many former supporters of mandatory minimum sentences have blamed these federal and state laws for devastating minority communities--in which one out of every four young Black men is in prison, on parole, or on probation. Many federal judges and law enforcement groups are also opposed to mandatory sentences for first offenders, appealing for new approaches to dealing with the drug problem.

Juvenile Justice

Despite legislation meant to stop the disproportionate confinement of juveniles who are members of minority groups, over the last ten years, a growing body of evidence shows that African-American youths between the ages of ten and seventeen are twice as likely to be arrested and seven times more likely to be placed in a detention facility than Caucasian youths. Analysis shows that this large discrepancy cannot be attributed simply to the fact that young people of different racial groups commit different types of crimes because the rates of confinement for African-American juveniles for every offense group are significantly higher. African-American juveniles are also disproportionately referred to adult criminal courts and treated as adults for purposes of trial and sentencing. Enforcement of the law does not require the use of numerical quotas or the arrest or release of any juvenile from custody based on race, but it does require that disproportionate minority confinement must be analyzed and addressed when it does exist. To date, the law has been largely unenforced.

THEREFORE, the Union of American Hebrew Congregations resolves to:

1. Reaffirm its strong and long-standing opposition to the death penalty;
2. Call upon all branches of government, at the federal and state levels, until such time as the death penalty is abolished, to:
 - (A) Provide for the collection and analysis of data to determine the extent, if any, to which the disparate

treatment of those sentenced to death is attributable to the race or ethnicity of the defendants or the victims and act to eliminate the disparities, where they exist.

(B) Reform the systems for the appointment of counsel for indigent defendants to ensure that all those accused of capital offenses are afforded competent counsel and that they have adequate funding to ensure that their defenses are fully investigated.

3. Speak out against incidents and patterns of police brutality and support action to improve police community relations, for example:

(A) Increasing outreach to and the recruitment of law enforcement officers from minority communities so that the police will look more like the communities they serve;

(B) Supporting programs that encourage police officers to develop close ties to the neighborhoods they serve; and

(C) Appealing to congressional leaders of both parties to follow through and immediately fund the provision of the Crime Control Act of 1994 that provides for the accurate collection of comprehensive national data on the use of excessive force by police. This would also include data on the number of people killed or injured by police shootings or other types of force; and

(D) Urging communities to create a mechanism for civilian oversight of law enforcement activity and, working with law enforcement agencies, to develop a set of community standards by which police actions would be judged.

4. Support legislation that prohibits discriminatory profiling and requires law enforcement agencies to provide accurate and timely data on such practices by law enforcement officials and to condemn law enforcement profiling;
5. Support legislation to repeal state and federal laws that require mandatory incarceration of first-time drug offenders, and to restore judicial discretion in sentencing first-time offenders;
6. Support legislation to end crack cocaine and powder cocaine sentencing disparities;
7. Call on government officials and especially juvenile correctional systems to treat juveniles at all phases of juvenile proceedings without regard to their race or ethnicity;
8. Call for the full enforcement of the existing federal mandate that disproportionate minority confinement of juveniles must be analyzed and addressed when found to exist and for the application of the penalties required by law against those systems that fail to fulfill the federal mandate; and
9. Call for a moratorium on the death penalty until all of the above matters are properly addressed...

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