

# The NILE Report

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## From the President's Desk

*"In Pursuit of Justice"* has been NILE's undertaking since it's inception. The authors of our feature article are the new generation of Memphis activists, grounded in Christian tenets of social justice that "actions should be a reflection of their beliefs". They brought together over 250 young people traveling from Memphis to Jena making their presence and voices heard ...*in pursuit of justice*.

They clearly appreciated the dynamic of justice in action from past civil rights movements and their trip to Jena made a statement that will hopefully inspire all generations to stand up and speak out against injustice. The combination of intellectual honesty with coordinated action keeps Rev. Martin Luther King's dream alive.

Our democracy is a government of the people, by the people and for the people. We participate individually as well as through a representative form of government. But, this has little meaning if "the people" do not participate in the process.

We also focus our attention in this issue on the Prosecutor and the power of discretion. In partnership with the Brennan Center for Justice at New York University, NILE brought together former United States Attorneys to dissect that discretionary power and its impact on racial and ethnic disparities in sentencing.

While the study reviewed the disproportionate sentencing in the federal system, the resulting guidelines are offered to all of the hard working federal, state and local prosecutors from those of us who have been in the trenches. We examined our own tenures and tried to combine the everyday realities with the weighty responsibility expected as servants of all the people. As the Preamble to those guidelines note:

"Our country was founded on the principle that all are created equal. We are a nation of laws that promote liberty and justice for all without regard to race, ethnic origin, religion, creed, or gender. We are mindful that our nation's racial history has sorely tested those beliefs of equality, liberty, and justice, and that there should be no room for the vestiges of racial or ethnic discrimination in our criminal justice system."

Whether it is Jena, Louisiana, Memphis, Tennessee or any other place, our prosecutors have a responsibility to ensure that their decisions are not influenced by intentional or unintentional racial/ethnic bias. All Americans should have confidence that there is equal justice under the law and these guidelines will hopefully provide a benchmark for all prosecutors.

*Yours "In the pursuit of justice",*

Veronica F. Coleman-Davis

# From Jena to Memphis: Building and Sustaining a New Civil Rights Movement

By: Kenya Bradshaw, Harry T. Cash III, & Leah Wells

Jena, Louisiana focused attention on race, power and justice in the U.S. In spite of events like Jena, there is still a persistent sentiment that conversations about race are a throwback to an ancient time. But, consider the following:

- **Race and Power.** Black students sat under a tree that was, by custom, reserved for white students. White students who routinely sat in the shade of the school courtyard's only tree reacted to black students' sitting under the tree at lunchtime by hanging a noose the following day. What happens when people of color begin to occupy traditionally white spaces in society? Is this about a tree and nooses, or is it a bigger issue of enfranchisement, entitlement and power?

- **Uneven Justice.** Accountability in Jena meant different things for white and black students. The participation and punishment for whites was routinely minimized and trivialized, while black participation and punishment was exaggerated and intensified. Rather than treating the nooses as a hate crime, it was called a prank. Rather than being expelled, white students received in-school suspensions. On the other hand, black students were charged with attempted murder and tried as adults for a schoolyard fight. This is not an isolated circumstance where race played a role in the charges fac-

ing a young person accused of a crime. According to the ACLU, minority students are suspended from school two to three times more than other students.

- **Symbols of the Past.** The nooses that hung from the tree in Jena sent a powerful message to the black students, an echo from the past that said, "You stepped out of line."

Incidents like Jena are indicative of a larger local, regional and national conversation, racial problems that must be revisited by the current coming-of-age generation.

The Memphis response to the incidents in Jena took direction from the words of Marian Wright Edelman: "Our 'child and youth problem' is not a child and youth problem, it is a profound adult problem." Children learn what they live, and the problems facing children are a reflection of adult behavior. If the criminal justice system is indeed the third parent for children, it is because of shortcomings of the systems constructed and maintained by adults.

The reality right now for children and families in Memphis is not one of hope and opportunity.

- 1 in 4 people is under the age of 18, making Memphis a very young city.
- 2 in 5 kids live in poverty; 3 in 5 are

low-income. Kids in poverty are more likely to have lower levels of education, have earlier and more frequent encounters with the criminal justice system and to start families at earlier ages.

- Half of children live in areas of concentrated poverty. Children in concentrated poverty are less likely to encounter adults who have full-time employment and higher levels of education and are more likely to experience geographic isolation from work and school.

In many ways, Memphis is a reflection of the past because of the separate conditions that children face in school, with de facto segregated schools and enclaves of concentrated poverty in our community which are defined almost exclusively by race.

Thus, if we are to confront and amend the conditions that children and families face in Memphis, we must take direction from the Dr. King who made the connections between race, poverty and civil rights. He showed that civil rights are human rights and must be extended beyond a single-issue perspective, like crime, as well as extended to all members of the community.

Rooted in the Christian tenet of social justice that actions should be a reflection of beliefs, we organized the Memphis response to Jena. The pilgrimage to Jena was a show of support for the Jena Six, as well as an active, explicit pedagogy whereby young people were encouraged through action to participate and reflect on their role in creat-

ing a more just society. The common sentiment among the 250 participants was that the day of the rally and march was important and pivotal, but the real work would begin when the group returned home. Now is the time to engage the community in discussions and actions to address issues highlighted by the injustice in Jena as well as the realities facing children, families and communities here in Memphis.

### **Three Strategies for Building and Sustaining a New Civil Rights Movement in Memphis**

1. We must become “Concerned Memphians United” and recognize that this is an important moment to redefine our commitment to civil rights. The themes of juvenile justice, the criminalization of children, race relations, violence and symbols of hatred have been brought to the *forefront* because of Jena Six and we must take this opportunity to learn from what went wrong in Jena so that our community can be stronger and more unified – and so that something like that does not happen here.

2. Everyone who participated in the Jena Six demonstration on September 20, 2007 has a commitment to their community to return with stories of their experiences to share with the community. Students from Memphis Challenge and Bridge Builders will be facilitating community discussions as an assessment of where Memphis stands on Civil Rights today. By learning what our

community currently thinks about the current conditions of race, violence, poverty, crime and youth, we can begin to build a movement in Memphis.

3. After the community discussions, students and interested community members will synthesize the themes that emerged and build strategies for a sustained local Civil Rights movement. We must work to systematically address the current problems of political representation, segregation and integration, the systemic violence of poverty, and juvenile justice as well as envisioning and working toward a better future for all people in Memphis and Shelby County.

4. For more information, please contact [ConcernedMemphiansUnited@gmail.com](mailto:ConcernedMemphiansUnited@gmail.com) as soon as possible to learn about future events and how you can continue to be involved, or visit <http://concernedmemphiansunited.blogspot.com/> for updates about community events.

**Authors. Pictured right to left are Kenya Bradshaw & Harry T. Cash III , Co-Founders of Concerned Memphians United. Leah C. Wells, Community Activist.**



#### Editor's Note:

The incarceration rates for juveniles according to the latest data from the Department of Justice Office of Juvenile Justice and Delinquency Prevention states:

For every 100,000 non-Hispanic black juveniles living in the U.S., 754 were in a residential placement facility on October 22, 2003 - for Hispanics the rate was 348, and for non-Hispanic whites it was 190.

- In all but 10 states, the custody rate for black juvenile offenders exceeded the rate for other race/ethnicity groups.
- Nationally, the ratio of the custody rate for minorities to that for whites was 2.6 to 1.
- In 31 states, the ratio between the minority-to-white custody rate was above the national average. In 3 states, the minority-to-white custody rate was more than 6 to 1.
- In 11 states, the ratio between the minority-to-white custody rate was less than 2 to 1.

Source:<http://ojjdp.ncjrs.org/ojstatbb/corrections/qa08203.asp?qaDate=2003>

# Prosecutorial Discretion: Principles and Guidelines to Avoid Racial/Ethnic Disparities in the Justice System<sup>1</sup>



## PREAMBLE

Our country was founded on the principle that all are created equal. We are a nation of laws that promote liberty and justice for all without regard to race, ethnic origin, religion, creed, or gender. We are mindful that our nation's racial history has sorely tested those beliefs of equality, liberty, and justice, and that there should be no room for the vestiges of racial or ethnic discrimination in our criminal justice system.

The federal criminal justice system is often viewed with great distrust because of the disproportionate numbers of African Americans, Hispanics, American Indians, and other racial or ethnic minorities in our jails and prisons — and especially because of the disproportionate severity in their sentences. The role of the federal prosecutor in the system is one of gatekeeper to ensure that as s/he “strike[s] hard blows” in the name of justice, s/he does so in a manner

that is fair and free from racial/ethnic bias or stereotyping. Doing what is just is not measured simply by the number of convictions obtained but also by the public's trust that the U.S. Attorney seeks and declines prosecutions based upon law, justice, and equality.

As former U.S. Attorneys, we know that the men and women who are the legal representatives of the U.S. government pursue the highest ethical standards with the goal of protecting our communities and preserving the rule of law. However, existing federal prosecutorial guidelines do not adequately address unwarranted racial/ethnic disparities in the criminal justice system or propose ways in which prosecutors may reduce such disparities.

We introduce these principles and guidelines not as a cure-all for racial/ethnic and social inequalities but as a way to begin the process of eliminating unwarranted racial/ethnic disparities in the federal criminal justice system. Leadership from the top, by each U.S. Attorney, must set the tone for equal justice under the law, and the following principles and guidelines are intended to challenge and encourage all federal prosecutors to take action within their spheres of influence to ensure that law enforcement priorities and initiatives, charging decisions, and sentencing recommendations are not influenced by racial/ethnic bias or stereotyping, and do not exacerbate unnecessary disparate effects of facially neutral laws or policies.

It is against this backdrop that we trust our colleagues will recognize the need to increase public confidence in the fairness of the federal criminal justice system, will em-

brace these principles and guidelines, and will promote them within their offices and law enforcement communities.

## **GENERAL PRINCIPLES OF EQUAL JUSTICE**

- The pursuit of justice requires the fair application of the law to ensure public confidence and trust in the criminal justice system.
- Justice means observing the highest ethical standards by ensuring that racial bias and stereotyping do not play a role in federal prosecutions.
- Fairness and equality demand that similarly situated defendants be treated equally and that unwarranted racially disparate impact be eliminated.
- Prosecutorial decision-making should be well-reasoned and transparent.

## **GUIDANCE ON REDUCING RACIAL/ETHNIC DISPARITIES IN FEDERAL PROSECUTIONS**

### **I. Prosecutorial Decision-making**

- The U.S. Attorney should be conscious of potential racially disparate impact when setting district prosecution priorities.
- The U.S. Attorney should consider statistical evidence of community crime indicators and qualitative evidence of community concerns in setting prosecution priorities and initiatives.
- The U.S. Attorney should be proactive in his/her leadership and partnership with law enforcement agencies to prevent

racial and ethnic bias and ensure that similarly situated defendants receive similar charges and sentences.

- The U.S. Attorney should consider the racial effects of his/her charging and disposition policies and ensure that racially disparate effects are tolerated only where strongly justified by legitimate law enforcement needs.

### **II. Law Enforcement/Task Forces**

- The U.S. Attorney should provide oversight of all law enforcement task forces operating under his/her jurisdiction and encourage diversity of membership, leadership, policymakers, and decision-makers in each task force enterprise.
- The U.S. Attorney should charge task forces with the obligation to consciously review their rationales for conducting or declining to conduct investigations in order to eliminate racially disparate treatment and effects.

### **III. Training**

- All training of federal prosecutors should incorporate education about the role of racism in our history and criminal justice system.
- The U.S. Attorney should provide training to all supervisors, attorneys, and other staff that is specifically directed toward eliminating racial bias and racial stereotyping in recruitment, hiring, retention, promotion, supervision, and prosecutorial decision-making.
- The U.S. Attorney should provide or advocate for racial disparity/profiling training for law enforcement agencies

- Every prosecutor should review his/her own personal beliefs and biases, including use of racial and ethnic stereotypes or use of proxies for race and ethnicity (such as class/socio-economic status or geography).
- The U.S. Attorney should take affirmative steps to eliminate racial/ethnic bias or stereotyping that is within his/her control and supervision.
- As an internal office management tool, the U.S. Attorney should collect and analyze quantitative and qualitative data on the race and ethnicity of the defendant and victim at each stage of prosecution, including but not limited to: case intake, bail requests, declinations, selection of charges, diversion from prosecution or incarceration, plea offers, sentencing recommendations, fast-track sentencing, and use of alternative sanctions. Such data need not be public, but may provide the U.S. Attorney with data on individual prosecutions and in the aggregate to identify any systemic racial disparities, ensure unbiased prosecutorial decision-making, and reduce unwarranted racially or ethnically disparate effects in the future.
- As an external office management tool, the Executive Office for United States Attorneys should, during routine evaluations and reviews of U.S. Attorney's Offices, analyze the race and ethnicity of the defendant and victim at each stage of prosecution, including but not limited to: case intake, bail requests, declinations, selection of charges, diversion from prosecution or incarceration, plea offers, sentencing recommendations, fast-track sentencing, and use of alternative sanctions in

order to ensure consistency in applying the law and prosecutorial policies.

## V. Community

- The U.S. Attorney should meet with community members, including members of the bar and criminal justice professionals, to obtain their input on crime problems and effective solutions.
- The U.S. Attorney should adopt measures that allow lay community members to voice their concerns about real or perceived disparate treatment in prosecutorial policies and disparities in their final results.

## VI. Influencing Legislation/Policy

- Each U.S. Attorney has the affirmative obligation to raise the racially disparate effects of legislation and policy with the Executive Office for United States Attorneys, the Attorney General's Advisory Committee of United States Attorneys, and the Department of Justice Office of Legislative Affairs.
- The U.S. Attorney should advocate sentencing alternatives and reforms that lessen the impact on those adversely affected by racial disparities in the federal criminal justice system.

<sup>1</sup>This project was made possible through the generous support of the Open Society Institute and Brennan Center for Justice at New York University. The Brennan Center for Justice and the National Institute for Law and Equity extend their sincere thanks to the following individuals for their support of this project and their commitment to equal justice: Professor Rachel Barkow, Buck Buchanan, Janice McKenzie Cole, Veronica F. Coleman-Davis, Richard H. Deane, Jr., Donnie Dixon, Saul A. Green, Terry Harris, B. Todd Jones, Doug Jones, Gaynelle Griffin Jones, Raquiba LaBrie, Karla Lopez, Sherry S. Matteucci, Luther Mercer II, Wayne S. McKenzie, Jose de Jesus Rivera, Dan Verhine, and Sharon J. Zealey. For a full copy of this report with sectional commentary, email us at [thenile2007@aol.com](mailto:thenile2007@aol.com).

## According to the U.S. Department of Justice Office of Justice Programs, Bureau of Justice Statistics:

### Prevalence of imprisonment in the United States

- As of December 31, 2001, there were an estimated 5.6 million adults who had ever served time in State or Federal prison, including 4.3 million former prisoners and 1.3 million adults in prison.
- Nearly a third of former prisoners were still under correctional supervision, including 731,000 on parole, 437,000 on probation, and 166,000 in local jails.
- In 2001, an estimated 2.7% of adults in the U.S. had served time in prison, up from 1.8% in 1991 and 1.3% in 1974.
- The prevalence of imprisonment in 2001 was higher for -- black males (16.6%) and Hispanic males (7.7%) than for white males (2.6%) -- black females (1.7%) and Hispanic females (0.7%) than white females (0.3%)
- Nearly two-thirds of the 3.8 million increase in the number of adults ever incarcerated between 1974 and 2001 occurred as a result of an increase in first incarceration rates; one-third occurred as a result of an increase in the number of residents age 18 and older.

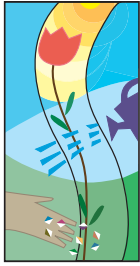
### Lifetime likelihood of going to State or Federal prison

- If recent incarceration rates remain unchanged, an estimated 1 of every 15 persons (6.6%) will serve time in a prison during their lifetime.
- Lifetime chances of a person going to prison are higher for
  - men (11.3%) than for women (1.8%)
  - blacks (18.6%) and Hispanics (10%) than for whites (3.4%)

Based on current rates of first incarceration, an estimated 32% of black males will enter State or Federal prison during their lifetime, compared to 17% of Hispanic males and 5.9% of white males.

Source: <http://www.ojp.usdoj.gov/bjs/crimoff.htm>





## *Mothers of the NILE*

### *Cultivating a Just Society*

In 2003, NILE, developed a community advocacy group called *Mothers of the NILE*. *Mothers of the NILE*'s **Vision** is to "Cultivate a just society." Its **Mission** is "To reduce the number of children entering the juvenile and criminal justice system".

It is a membership organization grounded in the belief that both individual and institutional responsibilities must be addressed to cultivate a just society. Through training, information gathering and research, realistic activities are developed to reach the project's goal of reducing the number of children entering the Memphis and Shelby county juvenile and criminal system.

Our **Core Values** are:

**Knowledge** – Self-directed life long learning which demands the acquisition of factual information that empowers us to action.

**Integrity** – Truthfulness with self and others allowing the best solutions to present themselves.

**Respect** – Accepting your uniqueness and that of others in a non-judgmental manner and recognizing all contributions to the group.

**Courage** – Drawing from the inner strength of your convictions and converting it into voiced directions or actions. And

**Advocacy** – Supporting, speaking and/or acting on behalf of those that need support or cannot speak or act for themselves.

*Mothers of the NILE* has undertaken several projects during its short existence. In 2004 it developed a pilot project, the Parent Partner Program, in a middle school to mentor parents of truant children and demonstrated that if you help parents, their children will go to school. The school selected was one with a large number of students who were truant on a daily bases. The children who's parents participated in the program reduced their unexcused absences by 100%.

In 2006 *Mothers of the NILE* hosted a "Juvenile Justice Summit Part I- How to be a Village". Over 50 community members and leaders participated in one of eight pillars of the "Village". The 8 facilitated pillars were: parents, youth, faith based, law enforcement, media, business and foundations, social service agencies and education. We are looking forward to hosting Part II of the Summit in 2008.

In 2007 we initiated a quarterly luncheon series called "Back to Basics- Focusing on Advocacy" This series featured distinguished local speakers who are knowledgeable about the criminal and juvenile justice systems and seek positive changes for our families and youth. Our speakers included Sara Lewis, City of Memphis Youth Services Director, Dr. Yaschica Williams, Assistant Professor University of Memphis' Department of Criminal Justice, school principle Leviticus Pointer, and Dr. Leon Caldwell, Associate Professor, University of Memphis School of Urban Affairs.

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