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Written Testimony of

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**Hearing on Racial Disparities in the Criminal Justice System
and H.R. 1412, the "Justice Integrity Act of 2009"**

**House Judiciary Committee
Subcommittee on Crime, Terrorism, and Homeland Security**

United States House of Representatives

October 29, 2009

Chairman Scott, Ranking Member Gohmert, members of the Subcommittee, thank you for inviting me to testify today on behalf of the National District Attorneys Association (NDAA), the oldest and largest organization representing over 39,000 district attorneys, state's attorneys, attorneys general and county and city prosecutors with responsibility for prosecuting criminal violations in every state and territory of the United States.

The National District Attorneys Association has been at the forefront of promoting equity and fairness in the criminal justice system. Our concern with H.R. 1412, the Justice Integrity Act of 2009 is that it will not study the real reasons and causes for the perception that there are, to quote from the bill, "racial and ethnic disparities in the criminal process." H.R. 1412 reads like an indictment of the criminal justice system – mandating ten pilot programs in U.S. judicial districts, requiring each program to gather specific data points "to promote fairness, and the perception of fairness, in the Federal criminal justice system".

I am the Rockingham County Attorney and am responsible for the safety of 300,000 New Hampshire citizens spread across 37 towns, which is 25% of the population of my state. My

County runs from Massachusetts to Maine, from the ocean to the edge of Manchester – New Hampshire’s largest city. The County is bisected by I-95 and I-93 and traversed east and west by NH 101. Each of these highways is a major drug trafficking route with hard drugs traveling from New York City and Boston to Canada and Marijuana from Canada to the U.S.

When a New Hampshire State Trooper stops a car at 3 AM on any of these highways, it is unlikely that she has any idea of the race of the individual that she is stopping. It is the conduct of the vehicle that brought the driver to the attention of the Trooper, not the color of their skin.

When a young prosecutor in NH is evaluating a police report for possible presentation to the Grand Jury, the race of the victim and the Defendant is something that they are unlikely to pay any attention to. They are concerned with evaluating the evidence to see what charge, if any, is appropriate. It is unlikely that a picture of either the defendant or victim is enclosed with the police report. It may very well be that the jail has the only picture of the Defendant from their booking procedures.

There is already a wealth of statistical information regarding the factor of race in the commission of crime. According to the Bureau of Justice Statistics (BJS), using rates per 1,000 persons, a non-white person is twice as likely to be the victim of a crime of violence as a white person. A non-white person is more than four times as likely to be the victim of a rape or sexual assault as a white person. A non-white person is more than three times as likely to be the victim of a robbery as a white person.

Within the same statistics where the race of the offender is known, non-whites are suspects in double the rapes and sexual offenses as compared to suspects who are white. In robbery cases, more than double of the suspects are non-white compared to suspects who are white. In short, the data suggests that a significant number of non-whites are committing a significant number of violent crimes against non-white victims.

Recent statistics from BJS show the U.S. Criminal Justice System has succeeded in dramatically reducing victimization from appalling high rates in the mid to late 1970’s (as high for African

Americans as 40 per 1000) to a quarter of that in 2007 (10.3 per 1000 in 2007). What remains unacceptable is that the rate of victimization in 2007 was double for African Americans than Whites (10.3 vs. 5.7 per 1000), leading us to believe the disparity is actually WORSE now than it was in 1973 when BJS started measuring (37.3 vs. 20.0 for African American victims compared to White victims of homicide, rape, and aggravated assault).

Compounding this issue, a recent study by the American Association for the Advancement of Science found that “The victimization of both female and male blacks and Latinos increases during or after periods of economic recession,” according to researchers Karen Heimer from the University of Iowa and Janet Lauritsen from the University of Missouri-St. Louis.¹ Serious study of this issue should be considered.

We are concerned about how the raw data derived from H.R. 1412 will be interpreted. For example, the elected mayor and elected State’s Attorney of Baltimore City, both of whom are black, and in response to an overwhelming problem of murder and violent assaults, have asked the U.S. Attorney for assistance by federally prosecuting felons in possession of firearms. Due to the demographics of Baltimore City, these defendants are almost all black. Under the Justice Integrity Act, how will the fact that Baltimore City is only 31% white and accounts for less than 15% of the State’s population, yet accounts for nearly half of the State’s murders, be balanced against the decision to incarcerate these individuals?

Over the past several years, there have been multiple laws considered by Congress that address specific concerns with prison overpopulation and recidivism. The Second Chance Act, which many serving on this Committee co-sponsored and was signed into law in 2007, was designed to improve outcomes for people returning to the community from prisons and jails. This first-of-its-kind legislation authorizes federal grants to government agencies and nonprofit organizations to provide employment assistance, substance abuse treatment, housing, family programming, mentoring, victims support, and other services that can help reduce recidivism.

¹ <http://esciencenews.com/articles/2009/02/15/study.finds.recession.associated.with.increases.minority.victims.crime>

This law specifically benefits the minority population since it has been shown that African-Americans are more often rearrested and reincarcerated than whites.² However, because The Second Chance Act is a new program and funding began only in FY'09, many performance measurements and outcomes of these new programs will not be available for several years. Mandating a study for perceived racial and ethnic biases where laws have recently been enacted to give convicted offenders opportunities previously unavailable is premature – allowing the Second Chance Act's programs to receive adequate funding and measure its outcomes over time would be a better alternative.

Additionally, a recently proposed bill by Senator Jim Webb (D-VA) - S. 714, the National Criminal Justice Commission Act of 2009 – would form a commission to analyze perceived problems within the U.S. Criminal Justice System; specifically, the overcrowding of the U.S. Prison System by low-level drug offenders. While NDAA does not support a narrowly-focused commission that addresses one or two perceived “problems” within criminal justice, we would fully support a top-to-bottom, comprehensive study looking at the entire criminal justice system, similar to the Commission on Law Enforcement and the Administration of Justice spearheaded by President Lyndon Johnson in the 1960's. A broad-based study analyzing both the positive and negative aspects of the U.S. Criminal Justice System, including the perception of racial and ethnical biases within it, could only benefit America.

One area where NDAA supports change is the U.S. Sentencing Commission's recent findings regarding the sentencing disparity between crack cocaine and powder cocaine. NDAA does agree the 100:1 ratio in federal sentencing guidelines between crack cocaine and powder cocaine is outdated and needs to be addressed. However, it is also important to note that in the 1980's, when the crack epidemic was at its peak in America, it was prominent members of the Congressional Black Caucus – many whom are now pushing for lighter punishments - who called for the current sentencing guidelines for crack cocaine because of the devastating impact crack cocaine had on their Congressional districts. While we agree that something needs to be done about the current 100:1 ratio, we are still working with Congress in concert with our law

² “Created Equal: Racial and Ethnic Disparities in the US Criminal Justice System”, National Council on Crime and Delinquency, page 28

enforcement and criminal justice advocacy group partners to identify the appropriate disparity ratio and ensure that a fair-minded legislative solution is reached.

Another area in which NDAA has been a national leader is with student loan relief for prosecutors in an effort to recruit, train and retain minority attorneys in prosecutor's offices across this country. We have for years pointed out that without relief from the burdens of student loans many minority prosecutors in metropolitan offices are lured away by higher salaries from city law firms. If more minority prosecutors stayed in prosecution then it would affect the perception of bias. NDAA has worked closely with the U.S. Department of Justice and members of Congress to authorize and fund the John R. Justice Student Loan Repayment Program – a program that would help State and local prosecuting offices recruit and retain recent law school graduates who would otherwise be lured into more lucrative private practices.

Federal training programs for State and local prosecutors have taken major cuts in funding over the past several years – specifically, NDAA's National Advocacy Center. Authorized at \$4.75 million, the National Advocacy Center is the only federally-funded program which trains State and local prosecutors on how to be an effective prosecutor, including training on ethics, accountability and prosecutorial responsibility. Currently, the National Advocacy Center is funded at \$150,000 in the House version of the FY 2010 C-J-S Appropriations bill – a little more than 3% of its authorized amount.³ While we are aware that federal, State and local budgets are stretched thin during these troubling economic times, doesn't it make sense to provide desperately-needed ethics training and curriculum for prosecutors to prevent any unintentional indiscretions instead of funding a pilot program meant to collect data on perceived biases?

NDAA is made up of State and local prosecutors who have been leaders in introducing drug courts, diversion programs, re-entry programs, mental health courts and many other initiatives in our communities. State and local prosecutors are blind in matters of race, color, gender, nationality and sexual orientation; they prosecute offenders under the rule of law only. We handle juveniles, first offenders and others who are offered creative alternatives to incarceration.

³ Committee Report to H.R. 2847, H Report 111-149 (<http://thomas.loc.gov/cgi-bin/cpquery/T?&report=hr149&dbname=111&>)

There have been countless studies regarding disproportionate minority representation in the criminal and juvenile justice systems. These studies have shown that there is no deliberate bias or discrimination in those systems, and yet their results sit on the shelf and we call for another study looking for an expected result. While many of our prosecutors are facing shortages of funds for critical projects in the criminal justice system, we believe it is inappropriate to divert funds and resources for a study and leave higher priorities unmet.