LITIGATING RACISM: EXPOSING INJUSTICE IN JUVENILE PROSECUTIONS

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I. INTRODUCTION

While our legal system is built on a foundation of equal justice, the juvenile justice system is anything but equal. Throughout the system, minority youth—especially African American youth—are subjected to harsher treatment than white youth for similar behavior. Moreover, our current juvenile justice system perpetuates the myth that minority youth commit more crime. One way to equalize treatment is to give children of color and their families greater access to the basics that affluent children already receive, such as greater opportunities for counseling and drug rehabilitation, better schools, better housing, and job opportunities. However, while this approach might ultimately lead to greater equality for juvenile minorities, it would require a significant increase in resources, and a commitment by government officials, donors, and communities. This long and arduous process would provide little immediate relief for children of color who are charged with and appear in court at an alarming rate for "crimes" that are often little more than normative teen behavior, behavior not typically criminalized in nonminority communities and schools.

As defense attorneys for these youth, it is our responsibility to put the disparate treatment inherent in this system on trial. We must call attention to the truth behind these cases by helping judges, probation workers, and prosecuting attorneys to seriously consider this legal disparity, which ultimately favors affluent children. For example, police and judges may effectuate an arrest, or allow a juvenile charged with a delinquent act to remain in the care and custody of his family, when a child has a strong support system and can be maintained at home with family, rather than within the system. An inherent correlation exists between affluence and a strong support system, making authorities less likely to order that an affluent juvenile be maintained by the state.

As attorneys for economically disadvantaged and minority children, we can affect the outcome of these cases by fully litigating issues and refusing to accept the status quo. We can attempt to put

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the system to the test by affording judges an opportunity to dismiss charges based on faulty identification, improperly obtained evidence, and the like. But the truth is that we need to address a more insidious scourge, the very reasons these clients were brought into court in the first place, and the very reasons courts will strongly consider placing them away from home—poverty and racism.

In litigating racism in the juvenile justice system, a defense attorney must draw attention to the realities of living in an overpoliced neighborhood—where law enforcement is used to resolve school and home issues—as well as problems such as poverty, failing educational institutions, and single parenthood. These issues often lead judges to conclude that a child cannot be maintained at home. It is essential that, at each evidentiary hearing, attorneys for such children bring to light the stark truth about the ways in which the system's bias has made the behavior of minority adolescents seem criminal. Thoughtful presentation of current research on adolescent brain development and an understanding of the challenges these families face is crucial before we allow children to be taken from their homes for nothing more than shoplifting or truancy. It is the responsibility of attorneys for minority youth to approach these issues with tenacity and creativity.

II. THE FACTS

A disproportionate number of minority children live in poverty. According to statistics provided by the Children's Defense Fund, one in six black children under the age of eighteen lives in extreme poverty.[1] The majority of these children live in single-parent homes, and is nearly twice as likely to be born to a teenaged mother.[2] In fact, research shows that childhood poverty can be linked to multiple risks and disadvantages, including abuse, neglect, academic failure, delinquency, and violence. Educational disadvantages also make it more likely that children of color will enter the juvenile justice system. In 1999, fifty-two percent of black male high school dropouts had prison records by their early thirties.[3]

The statistics regarding the juvenile justice system and incarceration are equally startling. One in three black male children

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1. The Children's Defense Fund defines "extremely poor children" as those living in a family that makes less than $10,222 yearly, for a family of two adults and two children. *See* Children's Defense Fund, http://www.childrensdefense.org/site/PageServer?pagename=research_family_income_2006ChildPovertyTotals (last visited Dec. 27, 2007).

2. *Id.*

3. BRUE WESTERN, VINCENT SCHIRALDI & JASON ZIEDENBERG, JUST. POL'Y INST., EDUCATION AND INCARCERATION 6 (2003).

born in 2001 will spend time in prison at some point in his life.[4] Although they represent just thirty-four percent of the U.S. population, minority youths represent sixty-two percent of the youth in detention.[5] For those charged with drug offenses, black youth are forty-eight times more likely to be incarcerated than white youth; for those charged with violent offenses, Latinos are five times more likely than whites to be incarcerated.[6] The overrepresentation is not just limited to incarceration; rather, the discrepancies are evident at each stage of the juvenile justice system, from arrest through sentencing. Additionally, youth of color have a significantly higher probability of being arrested, being referred to court for prosecution, being adjudicated as delinquents, and being placed away from their homes.

The single most significant factor contributing to this disparity is poverty, which is exacerbated by race. Poor children of color face a disproportionate number of risks and disadvantages that, when accumulated, lead to marginalized lives and an increased probability of contact with the justice system. While children in poor communities of color appear to commit more crimes, as indicated by the number of prosecutions against them, the reality is that the police and prosecutorial offices are exercising their discretion by treating more harshly minority youth from low-income communities. Minority youth from poor neighborhoods are targeted for arrest, creating the illusion that these youth actually commit more crime.

III. THE FIRST CONTACT

To reduce the prosecution of minority youth, the community must work together to enhance prevention and diversion programs, and expand the availability of alternatives to detention. Most importantly, however, policies, legislation, and police and prosecutorial practices must be corrected to ensure that race and ethnicity do not control decisions to prosecute or incarcerate.

The first step in the process of prosecuting a juvenile occurs when the police choose to process the youth instead of issuing a warning or contacting the youth's parents to resolve the matter. Often, the decision to process the child hinges on the arresting officer's perception of the youth, his community, and his family. If the

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4. THOMAS P. BONCZAR, U.S. DEP'T. OF JUST., PREVALENCE OF IMPRISONMENT IN THE U.S. POPULATION, 1974-2001, at 1 (2003), *available at* http://www.ojp.usdoj.gov/bjs/abstract/piuspol.htm.

5. EILEEN POE-YAMAGATA & MICHAEL A. JONES, NAT'L COUNCIL ON CRIME AND DELINQ., JUSTICE FOR SOME 21 (2000).

6. FRANCISCO A. VILLARRUEL ET AL., INST. FOR CHILD., YOUTH, AND FAMILIES, DONDE ESTA LA JUSTICIA? A CALL TO ACTION ON BEHALF OF LATINO AND LATINA YOUTH IN THE U.S. JUSTICE SYSTEM (2002).

police perceive these factors to dictate a nonsupportive or unsafe environment, the police are more likely to proceed to the next phase of the juvenile justice system and refer the youth for prosecution. In poor communities, sufficient familial support systems may be lacking, community programs are often not readily available, and schools fail to provide the proper supportive education. These factors, together, often lead police to conclude that further court intervention is necessary, and this initial decision by an officer will affect each and every step made thereafter regarding the youth. Once in the system, the deficiencies within low-income minority communities will be scrutinized, effectively placing blame on the youth who has little or no control over his environment.

A youth of color in a low-income community has almost no chance of effectively exercising his rights, and without pre-judicial intervention or representation, abuse is likely to occur. Youth are particularly susceptible to police bias, as the power imbalance is even greater than with adults. Furthermore, youth are rarely empowered to resist a request or order by a police officer, even if they are aware of their rights with relation to a stop or inquiry.

The United States Supreme Court case *Florida v. Bostick*[7] illustrates the problem. In *Bostick*, police boarded a bus in Florida to conduct a random "sweep," and cornered Bostick, a young black man, in the back of the bus.[8] The police asked Bostick if they could search his bag.[9] He complied with the request, a search ensued, and the police discovered a pound of cocaine.[10] The Florida Supreme Court found the search unconstitutional on the ground that Bostick was himself actually "seized," unable to freely walk away or deny the police request for the search;[11] the police admittedly had no individual suspicion of him, a necessary component for that type of seizure. The United States Supreme Court overturned the decision, stating that the standard for defining a "seizure" was not whether a reasonable person would have felt free to leave, but, rather, whether a reasonable person would have felt free to terminate the encounter.[12]

Under this "reasonable person" analysis, we would have to assume that each and every person approached by the police feels equally empowered in asserting his right to say no to a search. As the police board buses and trains, performing legally condoned random sweeps, the problem is that who they approach is anything but

7. 501 U.S. 429 (1991).
8. *Id.* at 431.
9. *Id.* at 432.
10. *Id.*
11. Bostick v. Florida, 554 So. 2d 1153, 1157-58 (Fla. 1989).
12. *Bostick*, 501 U.S. at 434.

random. In *Bostick,* the police were free to target whomever they pleased, and, of course, the target was a man of color. Of critical importance in these cases is that targeted passengers are the passengers least likely to feel that they can assert their rights by objecting to police requests. The problem with the Supreme Court's "objective" reasonable person standard is that, in reality, not all people are similarly situated when it comes to dealing with the police.

One would be hard pressed to argue that the average thirteen-year-old black youth feels empowered enough to say no to a police officer's search request, or to terminate the encounter by walking away. More than likely, even a middle-aged white man would have difficulty extricating himself from such a situation. However, police know that a middle-aged white man could have the resources, and more importantly the credibility, to prove the stop was unwarranted and in violation of constitutional rights. Those who work in the juvenile justice field know full well that pitting a thirteen-year-old black male from an inner city neighborhood against a police officer most often results in only one outcome—the perception that the youth was being untruthful and the police officer was conducting himself in an appropriate and professional manner.

Often, it makes no difference if everyone in a courtroom knows that police in an inner-city or low-income neighborhood make a habit of approaching youth without regard to their constitutional rights, even though the same due process rights that exist for adults should also exist for children. The juvenile system bends over backwards to ignore these facts. Those who work in this system know what the Florida Supreme Court knew in *Bostick*, but what the United States Supreme Court could not admit: When it comes to police involvement, we are not all equal. Youth of color are approached differently than their white counterparts, and are unable to assert their rights as effectively.

While so many involved in the juvenile system know this truth, it is ultimately the defense attorney for an accused youth who is in the unique position to act on this knowledge. Defense counsel should take this opportunity not only to argue the specific facts of the interaction between his client and the police, but that his client is, in fact, a victim of that bias. While law enforcement would have you believe that youth of color are arrested at a higher rate because they commit more crimes, this is arguably not true. If white youth were approached, questioned, and searched at the same rate as black youth, this theory would undoubtedly fall short. Unfortunately, youth of color are arrested and processed at higher rates, lending false credence to these law enforcement claims. This in turn colors the entire juvenile justice system by allowing the public to think that

youth of color are committing more crimes, since there are more of them within the system. Attorneys for these youth must bring attention to the statistics that bear out the illegal use of "stop and frisk" in these communities. We must highlight the fact that youth rarely feel free to terminate or ignore an interaction with police, which results in a significant imbalance of power.

It is imperative that all postarrest decision makers, including the probation department, the prosecutorial agencies, and the judiciary, are made fully aware of the methods and means by which juveniles of color are approached and arrested. They must hold police accountable for their actions and understand that police are criminalizing normative teen behavior in these communities in the name of community safety. Policing in these neighborhoods requires an extraordinary amount of judicial and prosecutorial oversight to ensure fairness and protect the rights of those whose rights are most at risk. It is only by protecting the most vulnerable from mistreatment that we will ensure the overall safety of the community.

IV. REMAND AND PAROLE

The most critical juncture in the court system is the initial arraignment, during which the issue of remand (retention) or parole (release) is considered. This is the crucial stage because black youth are more likely than white youth to be detained, and detained youth are more likely to receive severe dispositions.[13] Factors such as race, family composition, and economic status may interact to influence case processing in both overt and subtle ways. In New York City, the determination whether to retain or release the youth is made with input from the probation department, which reports to the court on factors such as the youth's educational progress.

The probation department's information is obtained from a number of sources, but primarily from the unrepresented youth and his family. Without truly understanding the context in which this information will be used, youths and their family members share information detrimental to the decision to remand or parole. In order to remand a child in New York, a court must first determine that the youth is at risk for not returning to court on the adjournment date or committing another delinquent act if released.[14] This determination is often based on information from probation, as well as from both the prosecutorial and defense counsel.While the nature of the alleged crime is considered, the most influential factors in determining release or detention are the youth's school records and the ability of

13. *See* POE-YAMAGATA & JONES, *supra* note 5, at 9.
14. N.Y. FAM. CT. ACT § 307.4 (McKinney 1999).

his parents or caretaker to control and monitor his behavior. Although these factors may not seem overly significant, a youth charged with a single misdemeanor may ultimately be detained if he has not been attending school regularly or if his parent or caretaker states that he does not always make curfew.

A matter that ostensibly enters the system as a possible act of delinquency quickly turns into a condemnation of low-income communities of color, highlighting the social issues these communities face, including insufficient academic environments, and the unreasonable expectation that adolescents from these communities cannot and should not exhibit normative teen behavior—rebellion, limit-testing, and experimentation. Instead of blaming the failing systems and allowing these children the opportunity to "grow up," the juvenile justice system criminalizes them in the name of rehabilitation. This scenario seems less likely occur in more affluent, white communities. In those communities, youth and their families are often given an opportunity to respond to adolescent behavior through more appropriate means, such as counseling and meeting with school officials to determine the availability of additional educational resources, even if the behavior rises to the level of a crime. Schoolyard fights in a low-income community of color become police matters; in more affluent neighborhoods, the schools self-police and involve parents in the resolution of such issues.

Most significantly, if schools fail to provide a strong learning environment, they effectively shut youth out of the educational system, and the youth will be blamed. If communities and families are inadequately supported in creating nurturing and safe environments in which youth can access mental health, educational, and recreational services, the youth will be treated as if they are at fault. If families experiencing the overwhelming stress of poverty are unable to find relief, the juvenile justice system will focus on punishing the youth.

The reality is that, once brought to court, all of the social injustices these children and their families face become the child's issues, and he is then "helped" by the system in the name of rehabilitation. But the harsh truth is that the system cannot "rehabilitate" a youth who is ultimately going to return to the same neighborhood. Instead, the system must rehabilitate the neighborhood so that the youth can remain with his family and community, and access the proper supports. Police views on the social norms, poverty, and race issues in these communities, views shared by many subsequent decision makers in the juvenile justice system, promote an acceptance of the arrest, which is unwarranted and damaging. It creates a construct that characterizes these youth

as more likely to be in "need" of juvenile court involvement. This is the first construct that attorneys for these clients must address, and fight.

Attorneys for low-income minority youth must use this knowledge at the remand/parole hearing. Instead of simply countering detrimental information provided by the probation officer or the prosecutor, the attorney should attempt to prove to the court that his client is being held responsible for each and every failing system within his community. Instead of creating a learning environment that considers the realities of these students' backgrounds and family lives, schools label these students as "problems" and warehouse them in special education classes.[15] These students are stigmatized as inferior, and are suspended and expelled at higher rates, leading to negative reporting to the courts and probation services. This, in turn, leads to disproportionate detention.

If the true goal is to reintroduce the student to the school setting in a more positive manner, utilizing a purely punitive approach to student "misbehavior" offers no real value. In fact, by involving the police and juvenile justice system, current policy brands these students as troublemakers at a very young age, without sufficiently attempting to solve problems within their families or communities, or reintegrate them positively into a school setting as productive individuals. To this end, the juvenile justice system does little to promote positive self-image among these children and reward positive social behaviors.

An attorney for these clients must illustrate the inherent unfairness in allowing different courts in different communities to treat normative teen behavior in completely disparate ways, simply because low-income communities do not haves the same amenities that affluent communities offer their residents. Like police officers, courts are reluctant to release youth to a family or community environment that they see as "dangerous" or even marginally unsupportive, such as the single-parent family so common in low-income neighborhoods. The idea that youth are best served when they are removed from their current environments, to "save" them from their own adolescence as well as the seeming lack of support around them, is more indicative of racial and poverty bias than of the crimes themselves and must be challenged vehemently by defense counsel. The remand/parole hearing is a perfect opportunity to bring this issue to the forefront by alleging the discrepancy in the rate of remand and detention of white children versus children of color. We must seize the opportunity to demonstrate that such discrepancies

15. *See* HERBERT GROSSMAN, ENDING DISCRIMINATION IN SPECIAL EDUCATION (2d ed. 2002).

are based on bias related to the social issues facing poor minority communities, as opposed to a real fear that these children will not return to court or will commit further delinquent acts.[16]

V. PRETRIAL HEARINGS AND FACT-FINDING

Though requesting pretrial hearings to challenge identification, confessions, and searches seems, at first glance, an obvious initial step to challenging an illegal arrest, such hearings have the unfortunate result of pitting a police officer against a child. Yet there is significant opportunity at this stage to bring police arrest patterns and bias to light. The issue in most pretrial hearings is whether the police obtained evidence of the alleged crime in a legal manner, or whether the police employed illegal searches, coerced confessions, or faulty identification procedures. A common scenario involves police officers approaching a youth or a group of youths and performing either custodial questioning under the guise of a routine inquiry or performing a search with insufficient cause. These often coercive methods, while defended by police entities and prosecutors as proper, are well known in minority neighborhoods, and are documented by research that illustrates the high percentages of arrests of minority youth as compared to white youth. The argument that high-crime neighborhoods require aggressive policing or that residents of these neighborhoods request a significant police presence begs the question of the need for police to actually carry out their professional duties as regulations, policy, and law demand.

A defense attorney requesting a pretrial hearing must think in broad terms about the arrest incident. Zealous advocacy during cross-examination of a witness or police officer can uncover police misconduct, but judges are loathe to determine that a police officer is not credible, even when testimony sometimes appears rehearsed or is inconsistent. Therefore, attorneys for these youth must use broad strokes to paint the picture of policing tinged with bias. Attorneys should provide statistical and research evidence of the methods by which policing occurs in these communities, illustrating the number

16. A relative rate index comparison to white juveniles in New York State showed that minorities were 1.52 times more likely to be arrested, 4.10 times more likely to be securely detained, and almost five times more likely to be confined in secure juvenile correctional facilities. This is true even though minority youth represent only approximately forty-three percent of the state's juvenile population. In fact, minority youth represent fifty-four percent of total juvenile arrests, eighty-three percent of juveniles in secure detentions, and eighty-five percent of youth in secure placements post fact-finding. FRANKLIN H. WILLIAMS JUDIAL COMM'N ON MINORITIES & N.Y. ST. FAMILY CT. JUDGES ASS'N, THE DISPROPORTIONATE NUMBER OF MINORITY YOUTH IN THE FAMILY AND CRIMINAL COURT SYSTEMS, STATISTICAL OVERVIEW OF DISPROPORTIONATE MINORITY CONTACT IN NEW YORK STATE (2006).

of arrests of minority youth versus arrests of white youth, who comprise the larger youth populace in New York City.

In an effort to discredit an officer's version of events, defense counsel should illustrate that the unfair practices by police in these neighborhoods make it unlikely that the arrest occurred in the manner in which the police officer testifies. Police officers themselves, especially minority officers, can attest to the illegal policing practices that occur in low-income neighborhoods. Groups of minority law enforcement personnel such as 100 Blacks in Law Enforcement and The Guardians not only keep statistics, but speak out against this type of discriminatory policing. By attempting to show a pattern of illegal police practice within these communities, especially with regard to adolescents, defense counsel will be able to chip away at the veneer that results in judges crediting incredible police testimony.

Racial profiling, a tactic utilized by law enforcement, defines a broader social problem in racial terms, often resulting to falsities sounding like truth. For instance, the premise that most drug offenses are committed by minorities, which is factually untrue, has become somewhat of a self-fulfilling prophecy. Because police look for drugs primarily in low-income minority neighborhoods, they find a disproportionate amount of contraband; as a result, minorities are arrested, prosecuted, and incarcerated. This reinforces the perception that minorities are responsible for drug trafficking and creates more stops of minority youth in the search for drugs. This vicious cycle, based on a falsehood, has quickly become a justification for police dealings with minority youth.[17] Further, police often rely on arrest statistics as indications of where the most crime is occurring. This may seem reasonable at first, but is less so when one considers the discrepancy in arrest rates for similar behavior between white and nonwhite communities. In truth, the arrest rates indicate increased policing, but not necessarily increased crime, especially among juveniles. Racial profiling, while known to occur, is not often brought to light and addressed in an effective manner. Defense attorneys should utilize all information at their disposal to illustrate the types of illegal behavior police often exhibit in low-income neighborhoods.

The *Mollen Report*,[18] which was released by New York City in 1994, provided proof of this problem. Focusing on five New York City precincts, the commission found disturbing patterns of police corruption and brutality, including police engaging in unlawful

17. *See* Donna M. Bishop & Charles E. Frazier, *The Influence of Race in Juvenile Justice Processing,* 25 J. RES. CRIME & DELINQ. 242, 258-59 (1988) (discussing the influence of race on juvenile justice processing).

18. CITY OF N.Y., COMM'N TO INVESTIGATE ALLEGATIONS OF POLICE CORRUPTION & THE ANTI-CORRUPTION PROCEDURES OF THE POLICE DEP'T, MOLLEN REPORT (1994).

searches and car stops, dealing and using drugs, lying to justify unlawful searches and arrests in order to forestall complaints of abuse, and indiscriminate beating of the innocent and the guilty alike.[19] The commission also found that officers and their supervisors accepted the lying and brutality in part because of what they perceived to be unrealistic legal constraints on them and, in part, because of an "us versus them" mentality prominent in minority neighborhoods.[20] Discouragingly, there is no reason to believe that these problems have been rectified in the thirteen years since the *Mollen Report*'s release. On the contrary, police departments remain unable to effectively police themselves and appear to be inured to complaints from the public.

This type of behavior will continue largely unchecked, unless we who are responsible for holding police accountable in the courtroom are willing to actually do so. Defense attorneys for these juveniles must utilize every resource to prove that, in fact, their client's version of events is consistent with the research and reports, that their client's version is consistent with what is truly occurring in these neighborhoods, and that the police officer's version is simply not believable. Instead of accepting the status quo, defense attorneys should force the courts to demand greater justification for "stop and frisks." We should urge the courts to define the reasonable person in a manner more consistent with the reality of police-citizen encounters, especially those between minority children and police officers. We must remind the court that the ability of officers to use their discretion for all actions short of arrest leads to law enforcement based on stereotypes and prejudice, and results in disproportionate numbers of minorities being stopped, questioned, and searched without individualized suspicion. We need to ask the courts to make decisions that demand equal protection policing, rather than permit racial profiling and discrimination.

Litigating in this way can be likened to the issue of the unreliability of eyewitness testimony. For example, in one law school experiment, a criminal law professor set up an interaction in which a stranger entered the classroom during a lecture and engaged the professor in an argument in front of the class. After about five minutes, the stranger left the class and the professor asked his students to describe the stranger and the interaction as they remembered it. Needless to say, there were twenty-four students in the class and the professor received twenty-four versions of the encounter, as well as twenty-four different descriptions of the stranger. The most disturbing aspect of the experiment was how

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19. *See id.* at 21-50.
20. *Id.* at 58.

inaccurate the majority of those descriptions were, with very few describing the stranger's actual appearance. Insofar as many crimes take place very quickly and under significant stress, eyewitness reliability is questionable at best.

A recent New York Court of Appeals opinion recognized this problem. In *People v. LeGrand*,[21] the court found that if the only testimony against a defendant is that of an eyewitness, such testimony could be rebutted by expert testimony as to the general unreliability of eyewitness testimony.[22] In much the same way, a defense attorney at a pretrial or fact-finding hearing should be able to present testimony to rebut the reliability of a police witness, utilizing the well-documented evidence of police bias and improper behavior in minority neighborhoods. Courts must not only be willing to address the problems that exist regarding eyewitness testimony, but must also be made to grapple with the evidence that stems from illegal policing procedure, which is as prevalent a problem as eyewitness unreliability. An expert who has researched the issue of policing procedures employed in minority neighborhoods could testify credibly as to the inherent unreliability of police testimony, which could imply the officer followed inappropriate procedure in situations involving youth of color in poor communities.

VI. DISPOSITION

The dispositional or sentencing phase is the most natural part of the process to utilize evidence of racial bias in the juvenile justice system. At this critical juncture, the judge will determine the long-term needs of the youth and whether or not the youth requires incarceration or placement. It is at this stage that every unfortunate social issue that has been too prominent a part of the juvenile's life comes into play once again and the blame for these failures is placed on him.

Another factor detrimental to youth is the subjectivity allowed in the decision-making process. Although judges seek input from probation and mental health professionals as to the least restrictive alternative for each child, this analysis is extremely discretionary and is often unfavorable toward poor youth of color. The statistical and anecdotal data suggest that discretionary decision making and reporting is often influenced by gender, race, family circumstances, and demeanor.[23] Because of this discretion, it is at this stage that we see the highest levels of racial disparity, raising serious issues of

21. 867 N.E.2d 374 (N.Y. 2007).

22. *Id.* at 378-79.

23. *See* Dale Dannefer & Russell K. Shutt, *Race and Juvenile Justice Processing in Court and Police Agencies,* 87 AM. J. SOC. 1113 (1982).

fairness and equality. The decision made by the judge at this stage is often substantially similar to previous decisions made by the police or those made at the remand/parole hearing.

Defense attorneys at this stage are placed in the unique position of litigating the inherent unfairness in penalizing the child for the social, educational, and health systems that are culturally incompetent and have failed to properly respond to the myriad issues facing low-income children of color and their families. Instead of pointing the finger at these failures, the juvenile justice system simply removes the child from his low-functioning environment, ostensibly for his own benefit, since, in theory, juvenile justice dispositions are not punitive. The same mindset that allows for the racial disparity in the filing of child welfare matters also allows for the removal of juvenile delinquents from their families. Thus, if we are unwilling to devote the time and resources to truly address the social ills that are part and parcel of these poor communities, we will continue to interfere in parenting relationships and liberty interests in the name of "helping" children. Instead of supporting these communities in a way that would allow for the maintenance of families and the retention of children in their homes, placement becomes the "easy fix" for those who feel there is no realistic alternative.

VII. CONCLUSION

The juvenile justice system and those involved in it need to move quickly toward more equitable processes for youth of color. Disparities must be openly discussed at every stage of the system. Defense attorneys must address the lack of access to health care and mental health care, the lack of good quality early education, educational disadvantages as a result of failing schools, racial and economic disparities in systems serving low-income youth, and the criminalization of children at earlier ages. They must challenge the prosecutors and judges who are aware of the questionable tactics police utilize to question and arrest youth in poor communities, and speak out against those tactics each and every time illegally-obtained evidence is admitted or staged testimony is utilized as the basis for a finding.

Juvenile defense attorneys must challenge the willingness of prosecutors and judges to continue to have faith in a system that has been proven useless in providing rehabilitation of any sort. We must insist that judges and prosecutors address societal biases as they make determinations to "help" children by placing them away from their homes primarily because of social factors beyond their control. Knowing that reentry into society is fraught with social and educational obstacles that make it nearly impossible to reintegrate

successfully, defense counsel must push prosecutors and judges to acknowledge that placing these youth in facilities hundreds of miles away is ineffective and unfair. Most importantly, they must illuminate in every way possible the real problem—that minority youth are arrested and prosecuted at a far greater rate than their white counterparts for the same behavior.

Only through utilizing all the litigation tools available, as well as statistical resources and experts, can an attorney develop a sound theory that points out the inherent unfairness of criminalizing children of color for normative teen behavior and social ills outside their control. Through aggressive litigation, defense attorneys can uncover the injustices in a system that purports to be fair and ostensibly aims for rehabilitation rather than punishment. Such an approach would force all involved to see what is truly at play in the prosecution of these children and, perhaps, effectuate a more humane result.