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THE HIGH COST OF JUVENILE JUSTICE

*Diane Ridley Gatewood**

I. Introduction

America is a racist society. And today, the criminal justice system reflects deep-rooted racial, social and economic inequities. Therefore, it is no surprise that minorities are over-represented in all aspects of the juvenile justice system: arrests, detention, adjudication and incarceration. To ask whether the criminal justice system is fair is an oxymoron. How can the system be fair? The statistics regarding minorities at every level of the system are alarming, outrageous and sobering. Even more frightening are the significant numbers of minority youth involved in the juvenile justice system. This Essay will discuss the high cost of incarcerating substantial numbers of minority juveniles and will advocate alternatives to detention.

A. Arrests

Part of the imbalance in juvenile detention and adjudication rates lies in the fact that black and Hispanic juveniles are more likely than white youths to be arrested for similar crimes.¹ There is a trend of racial disparity in arrest reports. Moreover, racial bias in arrest procedures has been well-documented.²

Research indicates that the police have the discretion to choose from a number of options when handling a youth.³ These options range from a simple warning, calling the parents, citing a youth, taking the juvenile into custody and/or referring the juvenile to the local family court.⁴ The most definitive research on the subject reports that police divert as many as 64% of the youth away from the formal system and another study found that the overall arrest rate for police

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1. George M. Anderson, *Punishing the Young: Juvenile Justice in the 1990's*, 166 AMERICA 158, 162 (1992).

2. *Id.*

3. National Council of Juvenile and Family Court Judges, *Minority Youth in the Juvenile Justice System: A Judicial Response*, 41 JUV. & FAM. CT. J. No. 3A, at 11 (1990) [hereinafter *Minority Youth*].

4. *Id.*

encounters with blacks was 21%, compared with 8% for encounters with whites.⁵ For instance, in 1981, just as the term "war on drugs" was becoming popular, a total of fifteen white juveniles were arrested for the sale of drugs in Baltimore, compared with 86 black juveniles.⁶ Similarly, in 1991, thirteen white juveniles and 1,304 black juveniles were arrested in Baltimore for selling drugs.⁷ The alarming rates of arrest reflect the discriminatory impact of current enforcement policies on minority communities. It was reported by the State of New York's Division of Criminal Justice Services Statistics that in 1980-1990 black males made up only 12% of our nation's drug users and whites sold most of the nation's cocaine and accounted for 80% of its customers.⁸ Therefore, the disparity in the rates of arrest reflects the inherent bias of the criminal enforcement system.

In a report released in 1992, the Federal Bureau of Investigation ("FBI") for the first time included the analysis of crime by juveniles in the Bureau's Uniform Crime Reports.⁹ The FBI found that, nationwide, juvenile arrests in 1992 increased in all races, social classes and lifestyles. Further, it stated that 1,429 of every 100,000 black youths ages ten to seventeen were arrested for violent crime in 1990, a rate five times that for white youths.¹⁰ The rate for other races was lower than for either blacks or whites. In addition, the arrest rate for murder increased 145% for black youths over the decade, while it grew 48% for whites and dropped 45% for other races.¹¹

Although these FBI statistics are dramatic, they may reflect a core of youth involved in criminal gang activity. However, the disparity in arrest rates creates great suspicion among minorities regarding treatment by law enforcement officers. It also invokes a resurging attitude among minority youth about police harassment and brutality. As a consequence, hardening attitudes against police are reflected in popular cultural media such as rap music and movies.¹²

5. *Id.*

6. Don Terry, *More Familiar, Life in a Cell Seems Less Terrible*, N.Y. TIMES, Sept. 13, 1992, at 40.

7. *Id.*

8. Alan B. Fischler, *Perspective: The Incarceration of America*, N.Y. L.J., Nov. 6, 1992, at 2. A 1991 study by the United States Sentencing Commission, however, shows that of those sentenced to mandatory minimum terms of imprisonment as drug offenders, 63% were black or Hispanic. *Id.*

9. *Violent Crime By Young Is Up 25% in 10 Years*, N.Y. TIMES, Aug. 30, 1992, at 27.

10. *Id.*

11. *Id.*

12. The rap group Body Count's single *Cop Killer*, with lead vocalist and producer, Ice T, drew considerable controversy from law enforcement officials, police and politicians. Sister Souljah's *360 Degrees of Power* and Ice Cube's *Death Certificate*, also lam-

B. Increasing Use of Detention

In the last decade, beginning with the Reagan administration, juvenile justice has moved to the right, with the focus on incarcerating delinquent youth and trying many more of them as adults. Today, more youth than ever are confined despite the fact that over the past two decades the juvenile population nationwide has dropped. As a result, statistics reflect a pattern of punishment rather than rehabilitation.¹³

The majority of juvenile codes require that an early detention hearing be afforded the juvenile. However, the use of preventive detention has eroded the constitutional right to a presumption of innocence. In a 1964 case, the Supreme Court held that juveniles merely accused of crimes may be incarcerated before trial on the basis of judicial predictions of criminal conduct, even before a finding of probable cause.¹⁴

The percentage of minority youth detained in public facilities is substantially higher than the percentage of minority youth in the general juvenile population. Of the total juveniles held in detention facilities nationwide in 1989, 61.6% were minorities: 43.7% black, 15.4% Hispanic, 2.4% other.¹⁵ Furthermore, these alarmingly high rates occur outside states with large urban areas. In Utah, whose black population statewide is less than 1%, the Division of Youth Services reported that blacks held in detention are represented eight times more frequently than would be expected from their percentage in youth populations at risk.¹⁶

From 1987 to 1989, white youth held in public facilities declined 5%, while black and Hispanic rates increased 13% and 14%, respectively.¹⁷ In general, 80% of the youths held were between the ages of 14 and 17.¹⁸ Further, 96% of the juveniles were held for delinquent

bast racist cops. See also Jon Schecter, "Cop Killer" Won't Die, *THE SOURCE*, November 1992, at 18. The magazine lists rap artists who have been pressured to withdraw singles about killing cops by their music companies. Spike Lee's *DO THE RIGHT THING* depicted a character, Radio Rahim, who is killed by a racist cop. John Singleton's *BOYZ IN THE HOOD* portrays Tre, a young black male harassed by a black cop.

13. Anderson, *supra* note 1, at 158.

14. *Schall v. Martin*, 467 U.S. 253 (1964). See also Charles Patrick Ewing, *Schall v. Martin: Preventive Detention and Dangerous Through the Looking Glass*, 34 *BUFFALO L. REV.* 173, 225 (1985).

15. U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, *SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS*, Table 6.14 (1990) [hereinafter *SOURCEBOOK*]. The data includes minority status and type of facility.

16. Anderson, *supra* note 1, at 162.

17. *SOURCEBOOK*, *supra* note 15, at 573.

18. *Id.*

offenses.¹⁹ The higher detention rates of minority youth reflect both the anti-crime policies of incarcerating criminals regardless of age, and society's perception that black youth are prone to violence. Therefore, preventive detention is justified on the premise that minority juveniles may be prone to commit further criminal acts before adjudication. This raises the issue of whether prosecutors, judges, and other court personnel are sensitive to racial, cultural and ethnic values of minority youth. These values must be considered in the decision-making process, as well as concerns such as the age of the offender, severity of the offense and amenability to treatment, in determining what is in the best interest of the juvenile.

C. Adjudication and Disposition

At the adjudicatory stage, the youth is afforded certain constitutional rights such as the right to notice, the right to counsel and the rights of confrontation and cross-examination.²⁰ The quality of legal representation at this phase is critical. Despite the precedent established in *In re Gault*²¹ affirming the right to free legal counsel for juvenile defendants, minority youth remain entangled in the criminal justice process because they are less likely to be afforded quality legal representation. Fiscal constraints in state budgets have severely impacted the quality of services provided by public defenders offices and legal aid services.

Further, there is a widespread perception that minorities are not treated fairly in the court system.²² A report by the Williams Commission on the New York Judicial System found that the perception of bias in the courts was not limited to New York City, but was perceived nationwide by African-Americans and Hispanics.²³ The Commission also found that, "the physical conditions of the courts which minorities must use are a major source of their dissatisfaction with the

19. *Id.* at 573 (Table 6.14). The statistics provide an analysis of the sex and reason held. Delinquent offenses are defined as offenses that would be criminal if committed by adults and include murder, forcible rape, robbery, aggravated assault, manslaughter, simple assault, sexual assault, burglary, arson, larceny/theft, motor vehicle theft, vandalism, forgery, counterfeiting, fraud, stolen property, unauthorized use of a motor vehicle and unknown and unspecified delinquent offenses.

20. N.Y. FAM. CT. ACT §§ 301.1 - 380.1 (McKinney 1983 & Supp. 1993).

21. 387 U.S. 1 (1967).

22. New York State Judicial Commission on Minorities, *Report of the New York State Judicial Commission on Minorities*, 19 FORDHAM URB. L. J. 171, 199 (1992). The report is referenced as the "Franklin Williams Commission on Minorities" in the name of the late chairman, Franklin Hall Williams.

23. *Id.*

system, especially in New York City."²⁴ Crowded and dilapidated conditions contribute to the feeling that justice is not the same for minorities. Due to ongoing fiscal problems at the state level, funding has been severely curtailed, especially for maintenance and improvement. Some judges have resorted to painting their chambers and cleaning their own courtrooms to ensure an ambiance of respect for the judiciary.

Minority youth are exposed to the Family Court, which handles juvenile matters. This is one of the courts at the lowest level of the judicial system and is considered by the New York State Judicial Commission on Minorities to be a "ghetto court."²⁵ The grossly deteriorated condition of these courts sends a message to minority youth that they do not count in our society. The disrepair and uncleanness of these facilities characterize agencies that service the poor and reflect discrimination and class bias compared with the better maintained facilities for whites or anyone with financial means.

Another psychological shock for minority youth is the experience of the "white" courtroom. Most of the people in charge are white: court clerks, stenographers, lawyers, district attorneys, judges and jurors.²⁶ However, almost everyone who comes before the court is black or Hispanic. The Williams Commission report quotes a witness who testified that, "[i]t is clear that white folks are in charge, and, thus, justice means 'just us'."²⁷

The critical determination is the disposition of the juvenile delinquent or offender. A variety of options should be available. However, with the significant budgetary cutbacks at the state and local levels, alternatives to incarceration have been hampered. Projected increases in the number of state and federal correctional systems are exclusive of additional costs associated with expansion of other sections of our criminal justice system such as law enforcement agencies, courts, prosecutors, defense attorneys and related services.²⁸ Further, there is an absence of a national agenda for juvenile justice. Agencies are caught between naive reformers who believe that all juveniles should be handled through various community programs and reactionary citizens and officials who demand an increase in confinement measures. In the last decade, however, the emphasis has been on incarceration.

24. *Id.*

25. *Id.* at 198. The Housing Courts, Criminal Courts, Family Courts and Small Claims Courts are considered the "ghetto courts" because of the majority of the users are minorities.

26. New York State Judicial Commission on Minorities, *supra* note 22, at 198.

27. *Id.* at 203.

28. Fischler, *supra* note 8, at 2.

II. America's Dubious Honor — The Increased Use of the Prison System For Juveniles

A. Incarceration

The juvenile justice system has failed to rehabilitate the offender or juvenile delinquent and has equally failed to deter crime. Moreover, there is increasing evidence that the threat of detention or incarceration is not a deterrent. Recent articles have discussed the growing class of prisoners who paradoxically escape the desperate and dreary inner cities into jails and prisons.²⁹ To be sure, no one believes that jails or prisons should be better than community life, but the prison system is providing basic services such as housing, minimum health care and meals that were once perhaps part of the welfare system. In fact, it has been suggested that the prison system has become part of the new welfare system. Prisons are becoming the place where society services the poor.³⁰

In the past ten years, the number of prison buildings has doubled. New York has spent \$5 billion on prisons in this period, often utilizing Urban Development Corporation financing that was originally envisioned for housing poor people in new city apartments, not in new prisons.³¹ As some have suggested, we may be using prisons as but

the step along a continuum of injustice for [minority] youths that literally starts before birth: no prenatal care, poor health care, sub-standard housing, dirty streets, failing schools, drugs, joblessness, discriminatory deployment of police and prisons.³²

In a 1986 survey, the Justice Department found that 61.6% of state prison inmates had not completed high school and 60% had incomes of \$10,000 or less.³³ Taxpayers should be more willing to spend money on programs to improve social, economic, and educational conditions for minorities, rather than on prisons.

B. The Costs of Operating Prisons

In 1988, New York State spent approximately \$127 million to operate juvenile facilities — at a cost of \$55,300 per resident.³⁴ In 1989, taxpayers spent \$1.67 billion in total annual operating expenditures

29. See Fox Butterfield, *Are American Jails Becoming Shelters From the Storm?*, N.Y. TIMES, July 19, 1992, at 4; Terry, *supra* note 6, at 40.

30. *Id.*

31. Francis X. Clines, *Benefits of an Unwelcome Trend, Growing Prison Population Lifts Economy for Some Towns*, N.Y. TIMES, July 7, 1992, at B1.

32. Fischler, *supra* note 8, at 2.

33. Terry, *supra* note 6, at 40.

34. SOURCEBOOK, *supra* note 15, at 575 (Table 6.18) (Public and Juvenile Facilities

for state and local governments administering juvenile facilities.³⁵ The New York State Department of Correction's budget for fiscal 1992-93 is almost \$1.5 billion. The New York City Department of Correction's budget for 1993 is \$732.6 million. The New York City Department of Juvenile Justice spends \$97,090 per youth per year or \$266 per youth per day in Spofford Secure Center. The yearly cost to house a youth in a New York Division for Youth Secure Center is \$78,840 per year or \$216 per day.³⁶ This is a 42.6% increase over costs in 1988.

Across the country, criminal justice funding, which includes the juvenile system, is the second fastest growing segment in state budgets after Medicaid. In fiscal year 1992, which ended June 30, states spent more than \$15 billion operating prison systems and more than \$2 billion building prisons.³⁷ Although growth in operating costs is expected to increase on average by about 5% in the current fiscal year, spending on construction is expected to double to approximately \$4 billion to build 112 new prisons to house an additional 75,000 inmates.³⁸

Communities often invest in prison institutions as a growth industry. It is no wonder — during the 1980s, growth in correction jobs far outpaced that of any other category of non-federal public employee. The number of state prison workers grew 115% from 1980 to 1990, while the number of local prison workers grew 98%.³⁹ Those trends are likely to continue for at least a couple of years as the "get tough on criminals" attitude of the 1980s persists and as governments comply with numerous pending court orders to reduce prison overcrowding.⁴⁰ The specter of the Willie Horton ads looms before politicians who would experiment with alternatives to incarceration. On the other hand, the political volcano which erupted with the Los Angeles rebellion stems from police brutality and the perception of injustice by the judicial system. Which risk is the greater to society — the political risk or the fiscal cost?

Administered by State and Local Governments). The data provides the total annual and per resident operating costs.

35. *Id.*

36. Abraham G. Gerges, *Alternatives to Incarceration*, N.Y. L.J., Dec. 7, 1992, at 2.

37. Michael deCourcy Hinds, *Feeling Prisons' Cost, Governors Weigh Alternatives*, N.Y. TIMES, Aug. 7, 1992, at A17.

38. *Id.*

39. Dean Patterson, *Surge in State, Local Corrections Jobs Not Expected to End Soon*, THE BOND BUYER, Nov. 10, 1992, at 2.

40. *Id.*

IV. Looking for Alternatives

First, lawyers, judges and bar associations must strongly recommend upgrading lower court facilities which serve a substantial minority clientele. Unless the physical conditions of these courts improve, minorities will continue to perceive the judicial system as unfair. Further, court personnel should be diversified and cultural diversity training should be used to ensure that all individuals receive respect.

Second, the legal community must support greater employment of minority police officers in cities with significant minority populations. Currently, New York City has the lowest percentage of minority police officers among the top ten major cities in this country. Police need better training in cultural diversity and harassment issues. In addition, guidelines are needed to reduce the level of discretion in arrest procedures.

On average, taxpayers spend \$29,600 annually on detention and incarceration facilities per resident, while New Yorkers spend over \$50,000.⁴¹ Not every delinquent or offender needs to be locked up. Generally, alternative programs cost less than keeping a person in an institution. Perhaps income vouchers could be dispensed to the families of delinquents or offenders, with supervision, to improve education, socio-economic circumstances, or psychological treatment.

A variety of alternatives to incarceration are needed. One option is diversion from the juvenile justice system. Within the juvenile justice system, one option is more effective use of foster homes and group homes. In addition, better utilization of mental health programs, community supervision, probation services, and court services could alleviate the problem. Lastly, other alternatives include: victim restitution programs, day treatment, shelter care, residential care, community service programs, halfway houses, work programs, flexible education programs, vocational programs, special problem treatment (i.e., offense and chemical abuse), and aftercare programs of all types.⁴²

Cost-benefit analysis could be a useful tool in determining which types of programs would provide the greatest benefits for a given community with certain types of juveniles.⁴³ Generally, in human service

41. SOURCEBOOK. *supra* note 15, at 575.

42. Lloyd W. Mixdorf, *Juvenile Justice, We Need A Variety of Treatment, Programming Options*, 51 CORRECTIONS TODAY 120, 122 (1989).

43. Allen R. Roberts & Michael J. Camasso, *Juvenile Offenders Treatment Programs and Cost-Benefit Analysis*, 42 JUV. & FAM. CT. J. No.1 at 37 (1991). The article discusses cost-benefit analysis in providing benefits. The actual income benefit approach would be

and correctional programs, a desired benefit is measurable as the estimated reduction in social costs of deviant behavior due to a specific activity or program.⁴⁴ However, in analyzing a specific alternative activity or program from a cost-benefit analysis approach, the monetary benefit would be assessed as the difference between the social cost of subsequent juvenile offenses by youths who have completed the program and the criminal justice and welfare costs of repeat offenses by individuals with similar legal histories who did not complete the program. A valuation method postulated is the present value/annuity factor which is used in financial analysis to determine cost savings and earnings.⁴⁵ Controversy over cost-benefit analysis persists concerning the required time horizon to evaluate cost savings and earnings and the appropriate discount rate to be used to compute the costs or benefits.⁴⁶

The success of programs such as Head Start which identified at-risk preschoolers and provided educational, health and social resources could be achieved in a "Life Start" program for at-risk teenagers. The purpose of the program would be to provide educational, health and social services to economically disadvantaged youth. Lawyers and judges should advocate spending money on creative programs to build self-esteem, character and employable skills rather than spending billions of dollars on detention and incarceration facilities.

V. Conclusion

In 1989, the National Council of Juvenile and Family Court Judges stated that,

[i]n a society committed to pluralism and social justice, the growing numbers of incarcerated minority youth is a harbinger of future social turmoil. This problem must be placed at the top of our national agenda — reform the juvenile justice system. . . . [It is a] disaster of major proportion . . . on the same level as the school dropout rate and unemployment. [T]he consequences of this situation are grave both for the minority groups involved and for larger

the amount of money a criminal offender earns in a supported work program. The actual cost-saving benefit approach would determine money not expended by offender incarceration and for related victim expenses. The inferred income approach would assess the projected productivity, employability and earnings of program participation over time. The inferred cost-savings approach would assess quality of life factors which are difficult to measure or monetize. *Id.*

44. *Id.*

45. *Id.* at 39-42.

46. *Id.* at 39.

society in the long run.⁴⁷

The statistics overwhelmingly demonstrate that minorities are over-represented at all levels of the juvenile justice system. Billions of dollars are being spent on warehousing young people; these funds must be redirected to develop productive lives. Most of the youth enter the system illiterate, leave the system illiterate, and graduate to the adult criminal system. Increasingly, incarceration is no longer an effective deterrent against crime. Americans cannot afford the social, political and economic costs of juvenile delinquency. To meet the global challenge of the 21st century, pragmatic and creative solutions must be initiated and implemented to achieve a just and fair society for all. The legal community has the responsibility to ensure that our judicial system treats every individual with respect.

47. *Minority Youth*, *supra* note 3, at 1.