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Reflections on Juvenile Justice Reform in New York

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JEREMY TRAVIS

Reflections on Juvenile Justice Reform in New York

ABOUT THE AUTHOR: President, John Jay College of Criminal Justice, the City University of New York; Chair, Governor's Task Force on Transforming Juvenile Justice, 2008–09. I wish to thank the Diane Abbey Law Center for Children and Families at New York Law School for the invitation to speak at the *Juvenile Justice Reform in New York* symposium. In particular, I extend my personal thanks to Diane Abbey for her vision in creating this center, which has, in its short life, under the leadership of Professor Carlin Meyer, already become a vibrant forum for discussion of issues facing children and families in New York City. This symposium is a perfect example of how a high-quality academic institution, grounded in the issues affecting New York City and supported by civic leaders such as Diane Abbey, can advance new ideas and promote more thoughtful policies on pressing issues. I also extend thanks to my many friends and colleagues who worked with me on the Governor's Task Force on Transforming Juvenile Justice. We should be proud of the continuing impact of our Task Force report. It is very gratifying to know that, in a modest way, our work has contributed to a larger movement here in New York, one that is indeed "transforming juvenile justice."

EDITOR'S NOTE: This article is an edited version of Jeremy Travis's keynote address delivered at a symposium *Juvenile Justice Reform in New York*, held at New York Law School on April 29, 2011 and sponsored by the Diane Abbey Center for Children and Families. The citations to some of the information referenced by Mr. Travis were provided by the *New York Law School Law Review*. More information about the symposium is available at <http://www.nylslawreview.com/juvenile-justice-reform-in-new-york-program>.

REFLECTIONS ON JUVENILE JUSTICE REFORM IN NEW YORK

I. INTRODUCTION

These remarks address what I consider to be the state of the juvenile justice reform movement in New York, as I look at it from an outsider's perspective, comment on how we can place ourselves in the national context, and then step aside from that topic to suggest some overarching issues that should be of concern to anyone who pursues the goal of "youth justice," whatever that means. I think there are many issues raised by that phrase. New York Governor David Paterson's Task Force on Transforming Juvenile Justice (the "Task Force") released its report in December 2009.¹ I and other members of the Task Force, as well as editorial writers and others, often noted the irony that New York State, which had for so long been a thought-leader in juvenile justice circles, had instead become a poster-child for a juvenile justice system that had lost its way. We found little to celebrate. Our recidivism rates were extremely high, about eighty percent, and our costs were exorbitant, well over \$200,000 a year for each youth in placement. Simply put, New York was not part of a robust national policy conversation on juvenile justice reform.

II. JUVENILE JUSTICE IN NEW YORK: WHERE WE ARE TODAY

I think that we had reached the nadir of our collective sense of shame as New Yorkers in 2009 when the U.S. Department of Justice, following an extensive investigation, documented truly shocking instances of physical abuse, poor or nonexistent services, and unprofessional treatment of our young people held in facilities operated by our state's Office of Children and Family Services (OCFS).² As New Yorkers, we like to think that we observe at least minimal standards of decency in our justice facilities. So it was wrenching to read of young people who had experienced "serious injuries . . . including concussions, broken or knocked-out teeth, and spiral fractures"³ at the hands of employees of our government for behaviors such as slamming the door, storming off, refusing to get dressed, refusing to stop laughing loudly, refusing to move, and glaring at staff and "invading their space."⁴

The text of our Task Force report also documented another New York story, one that does not make the headlines in quite the same way and one that now places our state on the cusp of becoming, once again, a national leader in juvenile justice. On two parallel tracks, one at the state level and one at the city level, our government leaders, working closely with advocates, service providers, researchers, and policy

1. GOVERNOR DAVID PATERSON'S TASK FORCE ON TRANSFORMING JUVENILE JUSTICE, CHARTING A NEW COURSE: A BLUEPRINT FOR TRANSFORMING JUVENILE JUSTICE IN NEW YORK STATE (2009) [hereinafter TASK FORCE], <http://www.vera.org/download?file=2944/Charting-a-new-course-A-blueprint-for-transforming-juvenile-justice-in-New-York-State.pdf>.

2. CIVIL RIGHTS DIV., U.S. DEP'T OF JUSTICE, INVESTIGATION OF THE LANSING RESIDENTIAL CENTER, LOUIS GOSSETT, JR. RESIDENTIAL CENTER, TRYON RESIDENTIAL CENTER, AND TRYON GIRLS CENTER (2009), http://www.justice.gov/crt/about/spl/documents/NY_juvenile_facilities_findlet_08-14-2009.pdf.

3. *Id.* at 5.

4. *Id.* at 7-8.

analysts have been laying the foundation for a very different juvenile justice system in our state.

At the state level, under the strong leadership of OCFS Commissioner Gladys Carrión, and after years off of the public radar, New York's juvenile justice system was opened up to public scrutiny. In a stance that earned her friends and detractors alike, Commissioner Carrión openly stated that our system of juvenile placement needed a total overhaul; that we needed to abandon a philosophy of punishment and corrections in favor of a youth development approach; that we held too many youth in our placement facilities; and that too many youth of color were being sent to facilities far away from their homes where they were abused, not helped, and emerged worse, not better.

Under Commissioner Carrión's leadership, the state's approach to juvenile justice has begun the long journey back to conformance with professional and constitutional standards. Our Task Force documented many reform initiatives then under way at OCFS, but the most striking trend that we see today is a sharp decline in the placement population.⁵ Four years ago, when Commissioner Carrión took office, there were 1158 youth held in placement facilities in New York State. Today there are 650, a forty-four percent decline, for which Commissioner Carrión deserves our applause.

On a parallel track, we have witnessed a similarly impressive policy shift at the local level. Early in his tenure as Probation Commissioner, Marty Horn, now a distinguished lecturer at John Jay College of Criminal Justice, came to the conclusion that the system of alternatives to detention was simply not working. Funds were not well spent, youth were not being well served, and the community was not engaged properly, so he shut it down. He simply did not renew the contracts.

This was, needless to say, a shock to the system, but what followed was an example of government at its best. Working with all stakeholders in the system, including judges, service providers, and advocates, the city, led by John Feinblatt and Michele Sviridoff of the Criminal Justice Coordinator's Office, went through a process over several months to research the variables that are associated with success, defined as "return to court when needed" and "absence of re-arrests while on release." Based on this research, they developed a new risk assessment instrument, which was piloted in 2007 in Queens and then was used citywide the next year.⁶

The results of this reform are stunning. Low-risk youth who had been detained at arraignment at a rate of twenty-four percent are now being detained nine percent of the time. Medium-risk detention rates dropped from thirty-nine percent to thirty-four percent. As important, the detention levels for high-risk kids went up, suggesting

5. Governor David Paterson's Task Force on Transforming Juvenile Justice recently released a report entitled, *Charting a New Course: A Blueprint for Transforming Juvenile Justice in New York State*, which documents the steps taken to carry out the twenty recommendations of the Task Force. See TASK FORCE, *supra* note 1.

6. JENNIFER FRATELLO ET AL., VERA INST. OF JUSTICE, JUVENILE DETENTION REFORM IN NEW YORK CITY: MEASURING RISK THROUGH RESEARCH (2011), <http://www.vera.org/download?file=3226?RAI-report-v7.pdf>.

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a public safety benefit. Judges finally have the information they need to make evidence-based decisions on detention. As a result, the city has witnessed a thirty-one percent reduction in the use of detention, an increase in appearance rates of young people in court, and a reduction of recidivism rates—here, referring to reconviction during pending cases—of thirty-five percent.

When the city closed the Bridges Juvenile Detention Facility, also known as “Spofford,” in early 2011 after decades of public promises to do so, the city celebrated not just a decline in the detention population, but the advent of a new, smarter approach to making decisions about the lives of young people. Today, as this audience knows full well, we have the remarkable reality that both our governor and New York City mayor are committed to the broad outlines of a lasting juvenile justice reform in New York, but we do not yet have a deal. Governor Andrew Cuomo has pledged that the state will reduce the number of juvenile placement facilities in New York. In fact, in the budget passed before April 1, 2011, he made a commitment, supported by the legislature, to close an additional 373 beds this fiscal year. He articulated the philosophy of his administration underlying this commitment with words that I think are still the most stirring parts of his 2011 State of the State address.

I understand, I understand, the importance of keeping jobs. I understand the importance of keeping jobs especially in upstate New York. I also understand that that does not justify the burden on the taxpayer and the violation of civil rights of the young person who is in a program that they don't need where they're not being treated hundreds of miles from their home just to save jobs. An incarceration program is not an employment program. If people need jobs, let's get people jobs. Don't put other people in prison to give some people jobs. Don't put other people in juvenile justice facilities to give some people jobs. That's not what this state is about and that has to end this session.⁷

At the city level, Mayor Michael Bloomberg has made similar sorts of commitments. He formally announced his decision to merge the Department of Juvenile Justice into the Administration for Children's Services back in November 2010. Now accomplished, this merger, in his view, will “strengthen our ability to improve long-term outcomes for youth involved with the juvenile justice system—many of whom have also been in the child welfare system.”⁸ Then, two months later, in his State of the City address on January 20, 2011, Mayor Bloomberg proposed that the city, in essence, “opt out” of the state's network of placement facilities and keep New York City youth in New York City.⁹ Under the able leadership of John Feinblatt, chief advisor to the mayor for policy and strategic planning and criminal

7. Andrew M. Cuomo, Governor of N.Y., State of the State Address (Jan. 5, 2011) (transcript available at <http://www.governor.ny.gov/sl2/stateofthestate2011transcript>).

8. Press Release, NYC.gov, Mayor Bloomberg, Speaker Quinn, Deputy Mayor Gibbs and Commissioner Mattingly Announce the Merger of the City's Department of Juvenile Justice and the Administration for Children's Services (Nov. 17, 2010), <http://www.nyc.gov/html/om/html/2010b/pr475-10.html>.

9. Michael R. Bloomberg, Mayor of N.Y.C., State of the City Address (Jan. 19, 2011) (transcript available at <http://www.wnyc.org/articles/its-free-country/2011/jan/19/transcript-mayor-bloombergs-2010-state-city-address>).

justice coordinator, and Vincent Schiraldi, commissioner of the New York City Department of Probation and a nationally recognized juvenile justice expert, the city is now developing a plan for carrying out this “realignment,” which will build upon the existing network of community-based providers and may include provisions for secure facilities in New York City.

As we sit here today, the final chapter of this remarkable story remains to be written in New York State and New York City. We do not know yet how these two visions—a smaller state system and a separate city system—will be reconciled. But there is no question, in my view, that common ground can indeed be found. I have great confidence in the individuals involved in making these decisions and firmly believe that our state and our city will emerge with a juvenile justice system that is better for young people, better for their families, less expensive, and enhances public safety.

III. JUVENILE JUSTICE REFORMS: THE NATIONAL PERSPECTIVE

One reason to be optimistic that these reforms will last is that New York State is riding a national wave of juvenile justice reform.¹⁰ The changes in juvenile justice policy around the country are truly breathtaking. I spent most of my recent professional life thinking about the adult system; I wish we had a similar story to tell in terms of adult incarceration rates, but we do not. Juvenile justice reforms can be traced to many sources, but I would start in 1993 when Ohio created a system giving juvenile courts financial incentives to keep youth in local programs rather than sending them into the state system. By 1995, state commitments had dropped by forty-three percent. A 2005 follow-up study showed impressive results for recidivism rates.¹¹ Youth who had been included in the pilot model had average recidivism rates over a two-and-a-half to a three-and-a-half year period of twenty percent, compared to fifty-three percent for youth who were released from conventional Department of Youth Services placement.

California has also witnessed a dramatic change in its juvenile prisons. Over the past ten years the number of youth in placement facilities in California has dropped from 7500 to 1200.¹² Detroit has implemented its own version of a “realignment” plan, with impressive results. In 1998, Detroit sent 730 youth to state facilities; in 2009, a decade later, the city sent only eighteen.¹³

More recently, two governors with very different political views—Jerry Brown in California and Jan Brewer in Arizona—have offered proposals to eliminate their state juvenile correction agencies entirely and shift responsibility to the county level,

10. These reforms are, in many ways, owed to the efforts of Bart Lubow from the Annie E. Casey Foundation, one of the true national heroes of juvenile justice reform.

11. CHRISTOPHER T. LOWENKAMP & EDWARD J. LATESSA, UNIV. OF CINCINNATI, EVALUATION OF OHIO'S RECLAIM FUNDED PROGRAMS, COMMUNITY CORRECTIONS FACILITIES, AND DYS FACILITIES (2005), <http://www.dys.ohio.gov/DNN/LinkClick.aspx?fileticket=I%2fNt%2bMUtWfU%3d&tabid=143&mid=763>.

12. JEFFREY A. BUTTS & DOUGLAS N. EVANS, JOHN JAY COLL. OF CRIMINAL JUSTICE, RESOLUTION, REINVESTMENT, AND REALIGNMENT: THREE STRATEGIES FOR CHANGING JUVENILE JUSTICE (2011), <http://www.johnjayresearch.org/wp-content/uploads/2011/09/rec20111.pdf>.

13. *Id.*

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a decision that has some juvenile justice advocates very concerned. John Kitzhaber, the new governor of Oregon, has stated his intention to eliminate half of the state's placement beds. These forward-looking states are leading a national trend that is clearly reflected in the numbers. The Office of Juvenile Justice and Delinquency Prevention at the U.S. Department of Justice has recorded a drop in national juvenile placements of twenty-six percent between the years 1997 and 2008, bringing the number of juvenile placements in 2008 down to a record low of 81,000.¹⁴

IV. A FRAMEWORK FOR THE FUTURE OF REFORM EFFORTS: FIVE REALIZATIONS

How should we understand these national trends and our local reality? On one level, we can argue that these dramatic reductions in the juvenile detention population simply reflect fiscal realities. Sometimes they are portrayed that way; states need to cut their budgets. But I think there is a larger reality at work, one that holds great promise for the future of this reform movement. As a nation, we are coming to realize, perhaps again, that young people simply do not belong in prison. I think that is where we are headed. This consensus reflects the convergence of what I would call five "realizations."

First is the realization—not a new realization perhaps, but an awareness, certainly in New York—that the conditions of juvenile confinement often are horrific. According to a 2010 report from the U.S. Department of Justice, thirteen percent of youth in state juvenile facilities are sexually abused, most often by the staff of the facility. According to a recent report by the Campaign for Youth Justice, juveniles who are sent to the adult prison system, even if they are not convicted in adult court, are the most vulnerable population in terms of becoming a victim of sexual assault and rape. In addition, "youth housed in adult jails are 36 times more likely to commit suicide than are youth housed in juvenile detention facilities."¹⁵ This picture of life and risk in these facilities is compelling.

Contrasted with these findings, we also are benefitting from the emergence of a new model of juvenile facilities, in many ways pioneered by our colleagues in Missouri, a state that has garnered well-deserved national acclaim for providing a pathway out of our recent experiment with more punitive systems of detention and placement. Other states now look to Missouri for guidance; some of our Task Force members went out there as well. It was a remarkable experience. Justice officials there, under the leadership of Mark Steward, founder and director of Missouri Youth Services Institute, have transformed the placement system for youth into one based entirely on smaller, locally accessible group-living programs where youth can maintain ties to their communities and families while being held accountable for their offenses.

14. MELISSA SICKMUND, U.S. DEP'T OF JUSTICE, *JUVENILES IN RESIDENTIAL PLACEMENT, 1997–2008* (2010), <https://www.ncjrs.gov/pdffiles1/ojdp/229379.pdf>.

15. NEELUM ARYA, CAMPAIGN FOR YOUTH JUSTICE, *STATE TRENDS: LEGISLATIVE VICTORIES FROM 2005 TO 2010: REMOVING YOUTH FROM THE ADULT CRIMINAL JUSTICE SYSTEM 16* (2011), http://www.campaignforyouthjustice.org/documents/CFYJ_State_Trends_Report.pdf.

Second, we have developed a robust body of empirical research showing that juveniles have lower recidivism rates when they are treated in community-based facilities. And for those held in secure facilities, their recidivism rates are lower if they are held for shorter periods of time. This is an important empirical finding for the social science community to bring to this conversation; that treatment in community-based facilities results in lower recidivism rates and that shorter time spent in the facility results in lower recidivism rates.

The third realization is based on the fact that, contrary to what the popular media might communicate, most crimes committed by youth are nonviolent rather than extreme violent acts. In fact, the percentage of youth arrested for violent crimes each year amounts to no more than five percent of all juvenile arrests. Furthermore, and this is very important when you think about the national mood, the reality of juvenile crime is often distorted, and was particularly distorted about ten or fifteen years ago when such crime was depicted as constantly increasing. Yet statistics show that juvenile crime has been consistently dropping since 1997 and is now at a historic low. And it is very important that we add our voices to the discourse by recognizing and talking about these facts.¹⁶

Fourth, this emerging national consensus that young people are better off if they are kept out of juvenile facilities, and that juvenile facilities can be operated in humane ways, is reinforced by the strong scientific findings about the development of the brain. This research, in turn, has provided support for new U.S. Supreme Court jurisprudence on the appropriateness of punishment for young people. In its 2005 *Roper v. Simmons* decision, for example, the Court held that juveniles under the age of eighteen must no longer receive a sentence of death for any crime committed, stating that “[w]hen a juvenile commits a heinous crime, the State can exact forfeiture of some of the most basic liberties, but the State cannot extinguish his life and his potential to attain a mature understanding of his own humanity.”¹⁷ That is an indirect reference to the findings from brain research and the notion of youth development. Then, just last year, in *Graham v. Florida*, the Court had to decide another case with fundamental and national implications regarding the adjudication of juveniles to life without parole.¹⁸ Here, it was argued that “[t]he inadequacy of penological theory to justify life without parole sentences for juvenile nonhomicide offenders, the limited culpability of such offenders, and the severity of these sentences all lead the Court to conclude that the sentencing practice at issue is cruel and unusual.”¹⁹

These decisions reflect this deeper understanding and, in essence, a national consensus and an appreciation by our society of the developmental processes that are

16. My colleague Jeffrey Butts, Director of the Research and Evaluation Center at John Jay College of Criminal Justice, has done a recent analysis of the trends in juvenile arrest rates. I think we could show it to any policymakers and they would say that something significant has happened that we need to take into account. See BUTTS & EVANS, *supra* note 12.

17. 543 U.S. 551, 554 (2005).

18. 130 S. Ct. 2011 (2010), *rev'g* 982 So. 2d 43 (Fla. Dist. Ct. App. 2008).

19. *Id.* at 2016.

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supported by research studies on brain development and adolescent developmental stages. These studies consistently demonstrate that young people up to a certain age—in the approximately eighteen- to nineteen-year range—are not and cannot be considered fully culpable to the same extent as adults because their brains are not fully developed in the essential areas that define blameworthiness, such as future time orientation, a temporal perspective, identity, social maturity of judgment, self-reliance, responsibility, resistance to peer pressure, and other psychological characteristics.

Finally, the fifth realization that I think supports this national consensus is that we are witnessing a new legislative posture in several states around the country. The executive branch is doing very different things in terms of the detention levels. The judicial branch is reflecting good science and good litigation strategy, articulating a national consensus about what is appropriate and what is inappropriate in terms of punishment.

Our legislatures—not all of them, I think New York's has a long way to go—are also on the same track. Although this has not received as much public attention, a number of state legislatures have begun to roll back many of the more draconian reforms passed in the seventies and eighties. Over the past five years, four states—Colorado, Maine, Virginia, and Pennsylvania—have passed laws limiting the ability of states to house youth in adult jails and prisons. The trend was in the other direction beforehand. Three states—Connecticut, Illinois, and Mississippi—have expanded the jurisdiction of the juvenile court so that older youth, who would have been automatically tried as adults, may now be tried in juvenile courts. Ten states—Arizona, Colorado, Connecticut, Delaware, Illinois, Indiana, Nevada, Utah, Virginia, and Washington—have reformed their transfer laws, making it more likely that youth will be tried in juvenile courts. Finally, four states—Colorado, Georgia, Texas, and Washington—have reformed their mandatory minimum laws to reflect developmental differences between young people and adults.

We are fortunate that we live in what would be called exciting times. The cause of juvenile justice reform is now moving forward in many places with remarkable momentum—though certainly not in every state and perhaps not even in most states. But you get a sense that the tide is in fact shifting.

Here in New York we still have a lot of work ahead of us to close the deal on the reform agenda and to implement the recommendations of the Task Force. We hope that the governor, the mayor, and the legislature will soon reach an agreement to establish this new framework for the operation of our state's system of juvenile placement facilities. Within that framework, we have to continue our pressure to make sure the conditions of confinement are more humane, aligned with youth development principles, and are geared to successful youth re-entry and re-integration into the community. We urgently need to get our legislature on board regarding that reform agenda. To be very specific, our Task Force made a number of recommendations for statutory reform. Most importantly, we made a recommendation to limit the discretion of judges to send a youth to a placement facility to cases involving issues of public safety, abandoning the idea that this deprivation of liberty could ever be in the

best interests of the child. Public safety should be the only criteria and we recommended it. We urgently need that sort of legislative leadership.

A number of organizations and individuals, including Task Force Committee Chair Michael Corriero, are now mounting a strong campaign on other related topics—including the age of criminal responsibility and youth courts—to bring New York in line with the rest of the country. The advocates in this room, perhaps with the assistance of the Diane Abbey Center, should think about how to build that legislative agenda.

V. OVERARCHING CONCERNS IN THE PURSUIT OF JUVENILE JUSTICE REFORM

I also want to challenge us all to step back from the topic of juvenile justice reform in New York and from the above discussion in order to adopt a wider framework as we work on the cause of youth justice. It is very easy for people who work in the field, any field, to become intellectually complacent—for us to talk only to each other, to talk only about what we are comfortable with, and to preach only to the choir of like-minded reformers. But it is important, particularly when we talk about youth justice, to keep a focus on two very important realities: the reality of crime on the streets and the reality of justice as experienced by young people. We have a tendency in the justice reform world to become “system-centric.” We think the world is defined by the operations of the courts, prosecutors, corrections and other agencies, and even the services that operate in tandem with us. We think that is how we define the world; whether the system is working better or not. That perspective is not unimportant, but that is not the world. It is like Columbus saying, “Okay, I’m willing to go as far as I can see.” The challenge is to look at some external realities, many of which we know about and often focus on, but we have to keep them in the forefront of our thinking.

I believe strongly in the work I do with corrections, re-entry, and re-integration. But advocates for justice reform, for systemic reform, are more effective if they are also intelligent advocates for public safety; if they are conversant with the realities of crime and violence and can engage in the public debates about how to reduce the level of crime in our society. I say this for two reasons; first, this is important for strategic value, and second, for intellectual consistency.

First, the public is justifiably concerned about the high levels of crime in our country, and youth crime in particular. Just to compare, levels of violence in our country are five to seven times higher than in Europe. We think we have the New York miracle. When I left the New York City Police Department in 1994 we had 2245 homicides in New York—that was a really scary time. It has come way down nationally and in New York; New York more so than the country, but we still have rates of violence that would shock most of our counterparts in Western democracies.

The public is, and should be, particularly concerned about youth crime. A lot of the public’s concern is about what happens on the street; most of that involves young people and public violence. Those who advocate for better treatment of youth need to have an answer to the public’s understandable concerns and questions. How will our

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proposals address the crime problem in our communities? It is politically, strategically, and intellectually important to think about it and have an answer to those questions.

In our field, we typically say that the answer is that what we are doing will reduce recidivism; that is how we think about public safety. Who would want to advocate for a program that increases recidivism, right? It is ultimately a social science question, subject to proof and replication, whether program X does or does not reduce recidivism. I am not saying for a moment that it is not an important issue for us to consider, whether the intervention or the program or the realignment for those children, those young people, increases or decreases their chances of engaging in antisocial behavior that we call crimes. We need strong evidence. We cannot argue with that; in fact, I have argued for that often in many forums. But we have to be truthful with ourselves; the new crimes committed by young people exiting the juvenile justice system account for only a small percentage of all crimes committed by youth in our city.

I therefore have a special admiration for justice reformers who also have a well-developed position on the effectiveness of crime reduction strategies. I also have a special admiration for those who advocate for crime reduction strategies who also have a point of view on system reform. Both of those arguments have a way of gaining confidence in the elected officials and the public they represent. If we can address, when we talk about justice, systemic reform, we can also address the public's concerns.

The second reason to link a justice reform agenda with a public safety agenda is that the young people we care about typically grow up in neighborhoods and families marked by very high levels of violence. A youth development perspective on the world should encompass both a concern about institutional treatment in juvenile facilities and a concern about the impact of child abuse, exposure to domestic violence, exposure to violence generally, bullying, victimization, and teenage dating violence. Intellectual consistency, a concern about young people, and a sincere commitment to their future requires us to deplore those inhuman conditions of life as much as we deplore the inhuman conditions of confinement.

Finally, I would urge this audience to focus on the realities of justice as experienced by young people. If our hopes are realized, they will number no more than a few hundred a year. But hundreds and thousands of youth experience our justice system every year. They will be stopped by the police, sometimes frisked, and occasionally arrested. They will receive summonses for various infractions. They will be required to go to court in response to those summonses, often plead guilty, often pay fines, and often end up with warrants because they have not done either of those things. They will be arrested for minor offenses, such as public possession of marijuana. They will be subjected to police interventions for allegations of unruly, and sometimes criminal, behavior in schools. These "retail interactions" with the justice system occur with high levels of frequency, often outside of public view, and outside of the supervision and oversight—inadequate as it is—of the traditional justice system.

In recent years, the experiences of our young people with our justice system have changed dramatically. Between 2003 and 2009, according to police statistics, the

number of police stops in New York City more than tripled. Youth advocates should be concerned about these trends. The Center for Court Innovation (CCI) has just completed a survey of residents in Brownsville, Brooklyn, New York, which is also highlighted in the *New York Times*. CCI's survey sheds light on this phenomenon of police stops at the street level.

According to CCI's forthcoming report, twenty-eight percent of the individuals surveyed in Brownsville reported they had been stopped and frisked by the police in the past year; that is over a quarter of all people surveyed. On average, they had been stopped and frisked five times in the past year. For young people between the ages of sixteen and twenty-four, the rate was even higher; forty-four percent had been stopped and frisked in the past year, an average slightly higher at five and a half times.²⁰

It is indisputable that there is a significant increase, according to city and state data, in the number of marijuana arrests. In the past ten years there have been more marijuana arrests than in the previous fifteen years combined. This is happening, with great racial disparities in terms of the individual's arrest, even though the national household survey of drug use among young people shows that whites use marijuana at a slightly higher rate as teenagers than African Americans and Hispanics. There has been little change in those rates for a long period of time. We have significant increases in drug arrests among young people and significant declines in arrests for violence and other property crimes at a time when the levels of usage are basically flat, and when the racial disparities reflect no corresponding disparities in youths. We have to be very concerned about these interactions, these retail interactions with the justice system, if we really are true to our youth development principles.

The interaction between our justice system and our young people has changed in profound ways, with unknown costs and benefits. For those of us who are proponents of the theories of procedural justice, developed by NYU Professor Tom Tyler, Yale Law School Professor Tracey Meares, and others, and, specifically, of the concept and theory of procedural justice that looks at the impact of these street-level interactions between enforcers of the law and those on the other end of the enforcement activity, this is not a matter of faith and belief. But if you are familiar with the research and follow the empirical findings, you will find that the people who are at the receiving end of the enforcement, depending on how the enforcement is carried out, either have higher or lower respect for the rule of law and higher or lower conformance of the law in the future; that theory would cause you to be very concerned about an increase in street-level interactions. The potential is for these

20. Add to this the fact that we are starting to see some interesting public discourse about the phenomenon of marijuana arrests in our city. Radio station WNYC broadcast a two-part series in late March 2011. The series talks about the significant increase in marijuana arrests in New York, the relationship between that and the stop and frisk practices, and raises some important and very challenging questions about the legality of the legal standards for those arrests. Ailsa Chang, *Alleged Illegal Searches by NYPD May Be Increasing Marijuana Arrests*, WNYC NEWS (Apr. 26, 2011), <http://www.wnyc.org/articles/wnyc-news/2011/apr/26/marijuana-arrests>; Ailsa Chang, *Alleged Illegal Searches by NYPD Rarely Challenged in Marijuana Cases*, WNYC NEWS (Apr. 27, 2011), <http://www.wnyc.org/articles/wnyc-news/2011/apr/27/alleged-illegal-searches>.

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experiences to undermine the level of trust in the rule of law and the legitimacy of the justice system itself. We do not know if this is true or not; to be clear, I cannot say there is research on this in New York.

If we are concerned that young people, particularly young people of color, who are experiencing these increases, are growing up with a feeling of alienation from the agencies of government entrusted with the power to enforce the law and administer justice, that is a very profound concern for our democracy. Many of these young people will never be residents in a juvenile facility, but all of them are citizens of our city and so our future depends on their active engagement in civic life.

VI. CONCLUSION

In closing, I want to encourage all of us to continue the work that we are doing, particularly the work on system reform, so that we can bring about some deep and lasting reforms, not only in operations of the justice system for young people, but also in the lives of young people who will benefit if they grow up in safe communities, in healthy relationships, and with a positive experience of justice.