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Nothing About Us Without Us! The Failure of the Modern Juvenile Justice System and a Call for Community-Based Justice

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Introduction

The first juvenile court in the United States, founded in Chicago in 1899, was implemented in order to help “rehabilitate” youth away from unlawful and “incorrigible” behavior. Meant to be more developmentally appropriate for children than the adult court system, juvenile courts sprang up throughout the nation, and youth were often sentenced to time in residential “training schools” that aimed to offer “treatment” to re-fashion their moral characters and life chances. Today, mission statements emphasizing children’s accountability for crime, and punitive purposes, are more common in the juvenile justice system. The current system is also failing our society.

A literature review engenders criticism of the system at all points—arrest, court processing/litigation, and incarceration, as well as a need for change. Measured up to the original juvenile court’s goals, the current system does not effectively reduce recidivism, which is a standard measure of the rehabilitation of young offenders. The current system is wrought with racial disparities, operates with a minimal degree of cultural competence, violates human rights laws and norms, and fails to empower and reform—let alone morally transform—directly affected youth.

Juvenile justice approaches that are system-driven—relying on law enforcement controls, courts, locked facilities, and medicalized programs to manage youth crime—shatter social bonds and do not hold governmental agencies accountable for wrongdoing or ineffectiveness. System-driven approaches point to solutions and leadership outside of actual at-risk communities in order to respond to youth crime, while only nominally seeking to repair the personal and social harm done when a crime is committed. Instead of providing continually, extensively available resources and relationship-building for young offenders and their crime-ridden communities over time, system-driven approaches provide temporary assistance and then leave these groups to fend for themselves after the relevant term of service.

In contrast, community-based approaches, or approaches that are community-driven, capitalize on the strengths and assets inherent in the native communities of young offenders, while addressing systemic problems in the communities, and bolstering youth and community leadership and self-determination. Community-based approaches to juvenile justice are more closely aligned with the original goals of the system, more effectively reduce crime, cost less, are more empowering, help resolve civic fragmentation, and are more socially responsible. Only with community-based solutions can we hope to truly ameliorate, and one day eliminate, youth crime. These approaches lack the moral posturing

and implicit cultural biases of the status quo system, while helping offenders face the people and places they love and reside in for years to come. The legal profession, advocates, justice system officials, the private sector, and diverse communities should support community-based juvenile justice in order to treat each child in, and out, of the system with their fundamental human dignity.

Background

This article is the result of over ten years of work in juvenile justice. It will address the ways that much delinquent youth behavior is normative, suggesting community-based approaches that suit both youth and society. New York City and New York State will be the most common geographic referents, although other locations will be featured at times. Factually speaking, there is no federal juvenile justice system, but rather 50 separate systems housed in different states, with a wide variety of statutes, values, norms, practices, programs, and leadership structures. For the purpose of this paper, the words “child,” “juvenile,” and “youth” shall be used interchangeably to refer to individuals under the age of 18. AMA defines “child” as persons ages 1 – 12 and “adolescent” as persons age 13 – 17.

Although there are various state juvenile justice systems, racial disparities abound nationally, in every aspect of the system. In 2007, African American youth were overrepresented in the detained population in 45 states. Many advocates now agree that there is a juvenile justice system that actually works—the system that handles primarily White, middle and upper class youth who engage in trouble-making behaviors yet manage to avoid police and court-involvement altogether. Youth development experts refer to “social assets” like positive mentors, peers, and civic engagement opportunities that keep these more affluent youth from re-offending or winding up with system involvement. When these factors are considered, we learn that the majority of youth in the system can be more appropriately served outside of its confines. Community-based approaches capitalize on these logical motivators for the low-income youth of color. These approaches will ultimately keep a majority of children from breaking the law—enabling them to flourish as contributing members of society.

The present definition of community-based approaches to juvenile justice entails any, and ideally all, of the following: 1) Empowerment of communities and youth who grapple with mass over-incarceration, poverty, violence, under-performing schools, a lack of mental health and health care services, and a dearth of opportunities for growth and development. Such empowerment should honor the expertise and leadership of those directly impacted by the issues; 2) Cultural competence that merges legal service delivery, capacity-building, and advising with the cultural traditions, methodologies, and linguistic elements of the populations receiving services, while acknowledging the concrete causes of racial disparities and injustice; 3) Support for the formation of social bonds across structural, perceived, and actual adversarial boundaries; 4) Support from the private and public sectors alike; 5) The ability to hold government agencies, especially law enforcement, accountable through legal structures and requirements, community engagement, and varied cultural methodologies; 6) A foundation/accountability system rooted in human rights laws and norms.

History Coming Full Circle

While many may see community-based approaches to juvenile justice as a novel development, those who promote them are—historically speaking—actually bringing the field full circle. It is important to acknowledge that juvenile justice administration, programming, and policy happen to be highly cyclical, and that even when a radically divergent step from a present moment is taken, traces of the past can be evident. From the very first time that a case was heard in 1899, the issues of cultural privilege, racial division, moral complexity, and professional overreach were present. Parents were suspiciously absent, and the judges and attorneys attempted to serve as moral watchdogs. Turn of the century city businesses complained that the juvenile court brought the “unwashed” into the business district, referring to a largely immigrant, working class, and African-American clientele. There was a dearth of community programs and foster families, and training schools and reformatories received the bulk of delinquents at disposition. Further, experts and court administrators provided a range of explanations for delinquency, including an unfit community and geographical environment, moral depravity, hereditary degeneracy, and insanity.

While criminologist Franklin E. Zimring asserts that the original juvenile court had two motivating principles, or rationales—one “interventionist,” and the other “diversionary”—it can be argued that the latter is the most applicable today, and that the former remains as

controversial now as it was in the beginning. Diverting children away from the criminal justice system's harsh punishments, stigma, public and media exploitation, and standards of adult culpability, was primarily uncontroversial in 1899. Early founders believed that the juvenile court could do more good than the criminal court, in part, simply by doing less harm. The negative impact of adult criminal court involvement and incarceration will be explored herein, and is well known. Helping youth to avoid those pitfalls is necessary. The interventionist rationale was, and remains, more highly questionable.

Founding reformers disagreed about the extent to which the original juvenile court was meant to intervene in children's and families' lives. As this paper will show, too many juvenile justice interventions involve having outside professionals without personal experience to make a business out of servicing in at-risk neighborhoods. These professionals to attempt to "fix" offenders and their families, creating a persistent social stratification, a lack of civic empowerment, and a moral overreaching. As the original juvenile court became further established, former chief probation officer John McManaman likewise criticized that "public officials [were] peeping into the home and attempting to establish a standard of living—a standard of conduct and morals—and then measuring all people by that standard." Paul Cressey, a sociologist in the court's community association in 1925 even explained, "[I]t may be said with truth that the chief function of the [JPA]...is to attempt to apply the mores of a small New England community to a great cosmopolitan city" and that court investigators and case handlers were "unwelcomed outsiders in the neighborhoods that they investigated, surveyed, and policed."

At a turning point when many reformers agreed that the original juvenile court had become "too bureaucratic" by 1925, it was native community leaders—themselves reformed delinquents—who saw themselves as the solution. Leaders of the court explained that for society to move forward, local communities had to become more involved. When court proponents grew tired of failed attempts to send children outside of allegedly dysfunctional, low-income neighborhoods, they began providing funding to help area residents organize their own communities.

The Chicago Area Project (CAP) bears a strong resemblance to the community-based approaches promoted herein. In CAP, formerly delinquent young men began training "neighborhood leaders" to handle juvenile justice services and court concerns, instead of depending on "professionally trained leaders recruited from sources outside..." These native young men partnered with social service agencies and advised and assisted residents with school matters, court appearances, employment

opportunities, re-entry from incarceration, and other civic issues. CAP advocates bridged cultural divides between the professionalized cadre of employees within the court system, the schools, and other public institutions, and the struggling immigrant and minority communities that they hailed from and served. As the status quo juvenile justice system today continues producing unfavorable outcomes at an astronomical cost, it is time to return to community-based solutions.

Arrest

The problems with modern juvenile justice begin with police interactions with youth. Alarming racial disparities persist, despite findings that arrest patterns don't follow actual patterns of offending, and that the location of police stops and patrols do not decrease crime. African-American youth make up 30% of those arrested nationwide, while they only represent 17% of the overall youth population. While the overall juvenile arrest rate has remained near a 25-year low, disparities between White and Black arrest rates in 2006 were at the highest point in a decade. Members of the New York Police Department (NYPD) have been captured on tape describing pressure to fill arrest quotas despite an absence of rationale. If anything, the modern juvenile justice system requires going through the motions of arrest and intake, without effectiveness, efficiency, or delivery of justice to the public, crime victims, or offenders.

Racial Disparities Don't Uncover More Crime

Police persist in occupying and scrutinizing mostly urban schools, and in stopping and frisking mostly low-income youth of color on the streets, even though these practices do not yield more contraband or amount to productive arrests. There are roughly 12,000 arrests of youth ages seven to 15 in New York City (NYC). In NYC, Black children are 5.9 times more likely to be arrested than White children. Latino children are 3.0 times more likely to be arrested than White children. The national picture is similar. Unproductive and unnecessary stop-and-frisks are not a mere inconvenience to be taken lightly. They demoralize youth and raise serious Constitutional concerns.

Cops, not Classes: An Entrance into the School to Prison Pipeline

Several decades ago, arrests for assault, long-term exclusion from school, juvenile detention, or a restraining order were not in the picture when students misbehaved in school. Now, many youth are criminalized for fairly typical teenage behavior. Yet, most school discipline today actually does not involve weapons or extreme behavior. A very small minority of

young people, even in areas of high crime, is involved in serious criminal activities.

Punitive zero tolerance strategies for administrative and police scrutiny of youth in schools are largely responsible for school arrests. A media frenzy and political shift in the late 1980s and early 1990s warned the public against juvenile “superpredators,” casting youth of color as hardened criminals, and calling for “tough on crime” approaches. Politicians and strategists had created this phenomenon, and the media propagated these concepts, causing a flurry of punitive legal measures, including zero tolerance.

Predictions of soaring juvenile crime proved unwarranted, but the policies and media hype remained. Despite a 20-year implementation, zero tolerance does not keep children or communities safe. Zero tolerance was originally developed as an approach to drug enforcement but became widely popular in schools, to apply punitive predetermined consequences regardless of the gravity of behavior, mitigating circumstances, or situational context. The zero tolerance philosophy reasons that removing students who engage in so-called disruptive behavior will deter others from disruption. As a result, over 5,000 school safety agents (SSAs) patrol NYC schools hallways—comprising a presence greater than the entire Dallas police force.

From metal detectors, to scanners, to security cameras, to clothing bans, to automatic disciplinary consequences for drugs as innocuous as aspirin, zero tolerance policies create a prison-like environment in the very place where students should feel open and nurtured. *Lockdown High: Fear vs Facts On School Safety*, examines the phenomenon of punitive school discipline. When one stark, urban school was retrofitted to become a charter institution, the new staff was horrified to find such draconian measures as a pre-arrest lock-up space that resembled a cage. Further, there is little evidence that exclusions from school actually work. Instead, they predict higher future rates of misbehavior, law-breaking, suspension, and later likelihood of school dropout and delayed graduation. Additionally, contrary to popular belief, there is no crisis of school violence in the first place.

Later in this article, we will explore research on juvenile brain development to justify a break from the status quo system. For now, suffice it to say that zero tolerance policies do not work as deterrence strategies because deterrence hinges on rationalization and personal choice. Adolescents are at the height of a stage of brain development where impulsivity, susceptibility to peer pressure, and disregard of future consequences reign biologically over the types of rational choice – making

capabilities that will develop later in their twenties. If asked how the average teenager behaves, most individuals would describe a tendency to defy authority and to act on a whim. While the brain research is essential, it does not take scientists to figure out that deterrence – related policies are unwise for improving youth behavior. Further, national studies also reveal that criminalizing students in school can be a cause, rather than a deterrent, of youth crime.

Excessive Drug Arrests and Rising Drug Use

In 2010, the NYPD made low-level marijuana possession offenses the number one arrest category, and 70% of those arrested were under 30 years old while 86% were Black and Latino. Nationally, Black youth are arrested for drug offenses at around twice the rate of Whites, representing almost half (48%) of all youth incarcerated for drug offenses. Yet, research consistently reveals that White youth self-report using both marijuana and “harder” drugs at higher rates, and that rates of drug dealing are similar across racial lines. As legal scholar James Forman, Jr. points out, “police stay far away from prep schools awash in drugs.” Further, disparities in penalties for comparable drugs, or in the implementation of penalties themselves, persist despite their failure to decrease drug use, sales, and distribution.

Should We Just Arrest More White Kids?

Given the fact that youth drug use is on the rise in all age groups, it stands to reason that current strategies for patrolling and drug arrests are ineffective. We do not recommend, however, that police suddenly flood the suburbs, prep schools, and affluent summer camps, making arrests of more White youth to solve these problems. On the contrary—arrest and court involvement are criminogenic and will anger youth and stunt their growth. Putting more White youth into the current system would not benefit public safety or White youth either. We need strengths-based programming to keep all youth from harmful substances and behaviors.

Police and Communities At Odds, and Special Populations

Currently applied policing strategies have also created turbulent police-community relations that harm civic life and result in too many unacceptable deaths. Most heavily policed communities feel at odds with local police departments; there is particular anger about aggressive policing tactics being carried out upon vulnerable youth. Lesbian, gay, bisexual, and transgender (LGBT) youth and noncitizen youth are special populations that have especially problematic police contact. We must pay

particular attention to their experiences in order to understand the failures of the current system. LGBT youth in NYC and several other cities have documented the abuse they receive, particularly on the streets. Myriad youth organizations have created resources, “copwatches,” and activism events specifically about the police brutality and harassment that they experience. Additionally, police contact, contact with immigration officers, and subsequent embroilment in the juvenile justice system, has become the start of nightmarish circumstances for immigrant youth.

Sensational and tragic cases of police brutality point out that communities are furious, and that police departments need to approach both youth and adults with extreme conscientiousness and proper legal rationale. Police misconduct alienates and dehumanizes youth; and in addition to the ineffectiveness and abusiveness of existing arrest and patrol strategies, law enforcement remains largely unaccountable for its own misconduct and ineptitude. Current law enforcement practices in the juvenile justice system are not leading to enhanced public safety, youth wellbeing, sound resource allocation, governmental accountability, or humane justice.

Court

An examination of modern court intervention reveals further racial disparities and miscarriages of justice.

Unequal Access to Counsel, Pressure to Plead

Once a young person is thrust into the juvenile justice system, if their case is formally processed, they will need adequate legal representation. Yet, the lawyer’s office is not a level playing field. Studies reveal that youth of color and White youth receive differential access to counsel. In many states, frightened youth simply waive their right to counsel—and courts appear to welcome the reduction of the docket. While public legal services providers can be dedicated, skilled, and extremely diligent, private attorneys receive far more resources to obtain a favorable result for their client and are often able to devote significantly more time to each child’s case. These circumstances make having a private attorney a way to improve a youth’s chances of receiving less punitive treatment; and White youth are twice as likely as African American youth to be able to retain private counsel. Further, a majority of youth in the justice system is pressured to plead guilty of their crimes, avoiding trial and becoming vulnerable to lasting collateral consequences.

The Difficult Question of Discretion: Disparate Concerns, Disparate Results

While most juveniles are presumed capable of being tried in juvenile court—also called family court—some of them are transferred (also called waived) to the adult criminal court system due to the nature of their offense, the unlikelihood of their amenability to treatment in the juvenile system, and other aggravating factors. In the 1980s and 1990s, many states passed laws where prosecutors can file to transfer or waive a juvenile to adult court, and still other laws that called for automatic transfer or waiver based on offense categories. Today, prosecutorial discretion results in vastly disparate, ineffective treatment of White youth and youth of color. Prosecutorial and statutory waiver have been found to control about 85% of decisions to prosecute juveniles as adults. Currently, 15 states have “prosecutorial discretion,” “direct file” or “concurrent jurisdiction” provisions that place the decision in the hands of prosecutors.

Trying youth in adult court causes a host of problems, including harsher sentencing; exposure to sexual assault, suicide, and death in incarceration facilities; increased contact with more serious offenders for impressionable youth; likelihood of recidivism; and often insurmountable collateral consequences for work, housing, and education due to felony conviction records.

An estimated 250,000 children under 18 are tried as adults each year; and studies reveal that prosecutorial decisions about transfer are based on subjective, non-offense specific characteristics, leading to racial disparities. There is also evidence that presentence reports by probation officers portray “The delinquency of Black youth as stemming from negative attitudinal and personality traits, while portrayal of White youth stressed the influence of the social environment.”

Although there are some indications that judicial discretion may lead to fairer juvenile court outcomes, increasing judicial discretion is not the appropriate solution. Advocates in the national juvenile justice reform movement often point to racial disparities in prosecutorial discretion as a reason for enhancing judicial discretion. It is true that the juvenile court was created with the goal of having a neutral fact-finder decide the youth’s amenability to “rehabilitation” and his or her appropriateness for the juvenile court system or the adult system. In this paper, however, we contend that judges are often just as tainted by unacknowledged bias as prosecutors and any other system officials. A consistency in disparate outcomes remains.

Research that accounts for the intersectionality of young offenders with other child-serving systems shows that the greater the permitted discretion, “the more likelihood that youth of color will be treated more negatively than their White counterparts.” Essentially, when youth are involved in the juvenile justice system, the child welfare system, the mental health system, and the health care system, or most combinations of those systems together, the biases of decision-makers in the various systems accumulate, and the greater chance there is for discretion to be exercised, the more likely the youth is to receive discriminatory treatment. Ultimately, our dependence on decision-makers that lack personal familiarity with the culture of the offenders and their communities has led to racial injustice and serious misconceptions both inside and outside of the courtroom.

Incarceration

Incarceration is another segment of the system that has proven ineffective, inequitable, and damaging to children, families, and society. It is now unsustainable. “One day counts” of juvenile detention facilities for the latest year that data are available, 2006, show that African American youth were six times more likely than White youth to be detained, Latino youth were more than twice as likely, and Native American youth were nearly four times as likely. Data shows the ineffectiveness of incarceration in diminishing youth crime; and yet, the US is home to the largest prison system in the world and continues to spend the most resources on incarceration.

Harmful Consequences and Racial Disparities

Incarcerating a child can be known as “detention,” or pre-trial, short-term confinement. Detention is comparable to jail. “Placement” or “residential care,” is another type of incarceration of children, which signifies long-term confinement—comparable to prison. Incarceration is the most serious disposition, or sentence, that is possible. The disparate use of incarceration as a form of “rehabilitation” is further confounded by the fact that incarceration facilities across the US are routinely revealed to be and/or sued for housing children in dangerous living conditions in which heinous acts of abuse and neglect by staff are commonplace.

Racial disparities in youth incarceration rates make current practice outmoded. 86% of youth in NY upstate juvenile prisons and 98% of youth in NYC detention centers are African-American or Latino. The NY Office of Children and Family Services (OCFS) reported in 2008 that Black children are 14.8 times more likely to be detained before trial, with Latinos

at 5.9. Black children were 31.8 times more likely to be placed in OCFS long-term incarceration, with Latinos at 16.4. Further, detention itself has been found to cause disparate decision-making in the system. After controlling for severity of offense, youth of color who are detained pre-trial are more likely to be formally charged and receive harsher dispositions than youth in community settings.

High Recidivism from Inappropriate Incarceration

When assessing juvenile incarceration, it is crucial to consider that a majority of incarcerated youth is being held for nonviolent offenses and could be managed safely in the community. Research shows that incarceration consistently leads youth to reoffend, reoffend more frequently, and reoffend more seriously than less punitive dispositions. The Department of Justice's most recent data on US youth shows that the 12-month recidivism rate for youth on probation is 15% on average—much lower than the rate for juveniles released from incarceration. A longitudinal study of NY youth, published in 2008, demonstrated extremely high recidivism rates for children coming from long-term confinement. As many as 89% of boys and 81% of girls from NY were re-arrested, and 85% of boys and 68% of girls were convicted as adults, by age 28. In adult facilities, the situation is similar.

The Vestiges of Slavery and Jim Crow

Juvenile incarceration is also inextricably linked to the nation's entire prison system and a legacy of mass subordination of African-Americans. Nationally, Blacks are about eight times more likely to go to prison than are Whites. Decades of scholarship by activist and professor Angela Davis, recent work by legal scholar Michelle Alexander (*The New Jim Crow: Mass Incarceration in the Age of Colorblindness*), and work by *The Wall Street Journal's* Douglas Blackmon describe this phenomenon. Davis goes as far as to make the assertion that there is a lingering incentive to expand the prison system and keep incarceration high because the Corrections Corporation of America is paid per prisoner. Paul Butler's book *Let's Get Free: A Hip-Hop Theory of Justice* describes this matter, as well. If our society seeks to be just and democratic, we must scrutinize these links and discard these vestiges of racial oppression.

The Strong Rationale for Abandoning

The Status Quo Juvenile Justice System

The status quo system violates the human rights of children. A consensus of world leaders and the US Supreme Court recognize the developmental differences between children and adults and call for governments to treat children in a more age-appropriate manner in the justice system. Several international human rights documents, the landmark case *Roper v. Simmons* (543 US 551; 125 S. Ct. 1183 (2005)), and the recent case *Miller v. Alabama* (132 S.Ct. 2455 (2012)) point to the unique characteristics of children in order to provide them with special treatment and protection.

Work in the *NJ Family Lawyer* highlighted the interplay between adolescent development research and juvenile justice. Juvenile brain studies cited in *Roper* and US Department of Health data reveal that adolescents show particular traits of impulsivity, risk-taking, thrill seeking, lack of future orientation, and susceptibility to peer pressure, regardless of their race or socio-economic status. These qualities undergird adolescent decision-making and can provide mitigating factors for juvenile defense. Research by Steinberg and Cauffman at the MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice, confirmed by Dr. Abigail Baird of Vassar and Dr. Robert Johnson, explains that while adolescent cognitive abilities rival those of adults, their “psychosocial capabilities” continue developing until their mid-20’s and heavily influence their state of mind. Neuro-scientific research involved experiments with nearly 1,000 “ethnically and socioeconomically diverse” subjects between age 10 and 30, from five geographic regions. It inspired the US Supreme Court to outlaw the juvenile death penalty and serves as guide for handling all children in the system.

Further, in 2012, the US Supreme Court re-emphasized the vulnerability and uniqueness of adolescence to outlaw mandatory juvenile life without parole sentences for any offender under 18 at the time of their crime. We now know that it is simply inappropriate to punish children harshly for indiscretions when they are, by nature, less discriminate and more rebellious than adults.

Both research and logic show us that the most common delinquent offenses—fighting, disrespect, possession of illegal substances, and school disciplinary violations—are normative; yet, they are criminalized depending on the location, race, and socioeconomic status of the youth and community involved. Most youth naturally desist from delinquency regardless of treatment. If we were to ask the average adult to describe the average teenager, chances are they would mention several of the traits identified by researchers. The American Psychological Association

(APA) similarly finds that zero tolerance is developmentally inappropriate “as a psychological intervention, taking into account the developmental level of children and youth.”

The US and Somalia remain the only two nations that failed to ratify the United Nations Convention of the Rights of the Child, and both this Convention and other treaties cast doubt upon beliefs in punitive juvenile justice. There are many proven reasons for upholding these international norms. Along with a call for community-based approaches to juvenile justice comes a call for nationwide treatment of youth under age 18 as juveniles for criminal justice purposes.

Traditional Justice Creates Generations of “Disconnected Youth”

The current system features few resources for reentry; and youth who return home from incarceration often find it nearly impossible to re-integrate. System involvement affects scores of youth who wind up largely disconnected from mainstream society. For example, in 2005, 8% of all NY State male youth and 16.2% of NYC male youth aged 16 – 19 were unemployed and not in school. NY was ranked 19th nationally in terms of numbers of disconnected youth, and about 7.7% of young men are disconnected across the country. Researchers estimated that there were 200,000 such youth in NYC that year; yet alarmingly, less than 10,000 of them received city-based services. When youth are disconnected, they are also not tied to civic groups or cohesive family environments. These young people feel completely segregated from civic life, become more dependent on similarly alienated peers, and routinely lose hope that they will even live past age 24. Behavior is a function of perceived options, and most of these youth find that prison is just a normal part of adolescence.

The cycle of incarceration and re-incarceration also leads to the chronic absence of indigenous community members—particularly men of color, in most major cities. In these places, huge segments of the community are removed as social assets, draining the areas of potential workers, family members, leaders, and crucial players in civic life. Further, the present system leaves offenders in worse shape to return to their communities; but a wide array of national probation and parole organizations, prison officials, members of Congress, advocates, and communities strongly support a reformed, more innovative reentry system.

It All Comes Down to the Money: The Current System is Run Largely for Profit, and is Exorbitant

The “Cash for Kids” scandal in PA, and ongoing investigations of private juvenile incarceration facilities in upstate NY, show that the justice system cycles offenders in and out in order to escalate profits. Many parents complain of atrocious, abusive behavior by staff at NY’s private, upstate incarceration facilities, who do not provide quality care and disregard family desires for involvement. These parents claim that the agencies simply want to shuffle youth in and out for their own financial benefit. Since the settlement with the US Department of Justice and New York State, there was even a confirmed death in a private, for-profit, upstate facility under the oversight of OCFS, which is now currently under investigation. Scholars and activists have been making claims about a “prison industrial complex” for decades. Further, states are realizing that the status quo system simply costs too much. There has been a growing national trend towards both juvenile and adult prison closures, as politicians recognize that community-based approaches cost drastically less than the current system. Alternative approaches need broader legal, financial, and public support.

A Systemic Lack of Cultural Competence

The modern juvenile justice system also lacks cultural competence and holds minority communities at a cultural disadvantage. The US Department of Health and Human Services defines “cultural and linguistic competence” as

a set of congruent behaviors, attitudes, and policies that come together in a system, agency, or among professionals that enables effective work in cross-cultural situations. 'Culture' refers to integrated patterns of human behavior that include the language, thoughts, communications, actions, customs, beliefs, values, and institutions of racial, ethnic, religious, or social groups. 'Competence' implies having the capacity to function effectively as an individual and an organization within the context of the cultural beliefs, behaviors, and needs presented by consumers and their communities.

Youth-serving systems should strive to be culturally competent to approach youth and families in respectful, relatable ways, and to create positive outcomes for them. Yet, as previously discussed, selecting current justice system officials to exercise discretion is problematic. Whether police officers, defense attorneys, prosecutors, judges,

corrections officers, or probation officers make the decisions, the common thread is that the decision-making is tied to the cultural, political, social, economic and personal context and goals of those individuals. White decision-makers, and even many middle and upper class, professional decision-makers of color, inherently carry a derogatory view of disadvantaged communities. Research across youth-serving systems shows that the more discretion that exists, the greater likelihood that youth of color will be treated more negatively than their White counterparts. Studies show this disadvantage even increases as they move deeper through the system.

As most employees in the juvenile system do not reflect or relate to the demographics of the population served, stereotyping, bias, and discrimination are more likely. Punitive measures continue to pervade as the remnant of an unfounded assertion that urban, male “superpredators” of color would wreak havoc upon the nation. Underneath all professional training is a simple “gut” instinct about the capability and culpability of the child standing before us. Aforementioned research reveals that time and time again, system officials simply think that youth of color are more devious; come from personal, familial, and community dysfunction; and are unworthy of the second chance that White youth get when they commit the same crimes that research shows they do commit.

Scientific studies utilizing the Implicit Association Test, a psychological tool that predicts behavior, reveal that this “gut” instinct about the deviance of people of color is well rooted and widespread, even among people of color themselves. Harvard University has developed an entire, continuing work effort around this test and its implications. Studies of people from the US, Canada, Australia, and five European nations showed that 70% of those who took a test that measures racial attitudes, including people of color, have an unconscious, or implicit, preference for White people compared to Blacks, despite a general 20% self-report survey measure of bias. Unlawful youth behavior is far more normative than Americans like to admit, and most of the reasons why system officials pathologize poor children and communities of color—regardless of the color of the officials’ own skin— may be due to a lack of trust of those different from themselves.

While youth experiencing socio-economic disadvantage, a lack of opportunities for success, unconventional homes, a dearth of positive role models, and mental health and substance abuse issues do need help, they can receive it in more effective, just, safe, and humane ways than the current juvenile justice system offers.

There is an Articulated Need for “Family [and] Community Engagement” and Community Solutions Hold the Most Promise

Work of the W. Hawyood Burns Institute for Juvenile Justice Fairness and Equity reveals that child-serving systems are attempting to engage families and communities but need a great deal of guidance. The mental health, education, disability services, and youth development systems, and the juvenile justice system to a smaller degree, have begun to link service provision with family awareness raising and participation. Yet, the majority of “Family Nights” hosted by governmental agencies consist of agency officials or guest speakers lecturing parents, possibly a period of questions and answers or a raffle, and refreshments. Didactics and refreshments cannot surmount the cultural incompetence of an entire system. We need meaningful dialogue and participation of families and youth in actual decision-making and service provision.

System officials need far more youth, community members and advocates at the table to create culturally sensitive, civically appealing, and effective programming; and they lack sufficient public and private funding to carry out this goal. Groups and individuals directly affected by the system, such as families of offenders, reformed offenders, and youth in the system, have unprecedented expertise and leadership potential. While New York City and New York State are making limited strides in this area, particularly with the Close to Home initiative that brings youth from upstate incarceration facilities to more local programs and facilities downstate, the effort continues to struggle to draw strength and real expertise from the families of youth, other community members, and grassroots, community-based programs. Though troubled youth themselves most often seek these groups out to firmly change their own behavior, they remain a largely untapped resource.

Approaches that call for more professional intervention in the lives of disadvantaged communities, more justice system involvement, and that fail to recognize the assets and self-determination within these communities, will not effect lasting change. The current system transplants children out of their home communities, depletes those communities of social assets, isolates the children in prison, offers them scarce and fragmented services, and expects the children to return home and thrive. Research shows that children are returning home in worse shape than when they departed, and no one is investing time or resources into the communities where most of them come from and will return.

Training and holistic support for child offenders is necessary so that they can know their own strengths and pool social assets. Extremely medicalized, evidence-based programs like Multi-Systemic Therapy (MST) and Functional Family Therapy (FFT) have proven effective by working with at-risk families and youth in their individual homes, but they do not help change the disadvantaged surroundings and the dearth of opportunities that the family must grapple with when the therapists leave and the program contact ends. We need longevity in enhanced opportunities for education, civic engagement, and jobs for these youth so that a \$1,000 a day drug dealing career is not so tempting. Indigenous creation of stronger support systems for those who are tempted to choose crime, and the provision of tools and empowerment to people directly impacted by the criminal justice system, are the most promising way towards change.

Community-Based Justice That Works

There are a host of community-based approaches to juvenile justice that work. These programs are more developmentally appropriate, and in turn, are better in upholding human rights standards. All of them respectfully address the unique needs of the young offender population. There is a slippery slope when working with adolescents because despite their distinctive rebelliousness and impulsivity, they need continued opportunities to make their own choices and develop the skills to become responsible adults. Child-serving programs must be careful to avoid unnecessary paternalism and should aim to “engage [youth] in decision-making about their own lives” while modeling mature behavior.

ATDs and ATIs

Community-based Alternatives To Detention (ATDs) and Alternatives To Incarceration (ATIs) enable indigenous community organizations to work with the youth that they know firsthand and successfully decrease offending behavior. Youth in these programs would typically have faced incarceration if they hadn't been provided with another chance. These approaches seize upon the expertise and wisdom of those directly affected by the criminal justice system and repair some of the damage done by traditional justice, by acknowledging inherent community strength that has existed since before the onset of Jim Crow. In these programs, individuals from the children's home communities provide supervision, case management, recreation, educational services, personal accountability systems, and personal empowerment opportunities. These programs are especially needed because at times, the youth's home

community members are the most strict critics of youth, who may have historically sought a tough-on-crime approach to public safety themselves.

Unlike governmental ATDs and ATIs, these programs are far more culturally competent and are more likely to remain connected to youth as they mature. A primary complaint of youth in the system is that when a positive role model like a caseworker or a counselor helps them, that role model disappears within a few months or a year, and a sense of perpetual abandonment pervades. Further, ATDs and ATIs provide comprehensive attention to both the offender and the community that they have harmed and hail from. These programs address the collective harm committed from crime, so that “individual pathology” is not the focus.

When at-risk youth see their neighbors and local community as a means of support, they are more likely to avoid criminal activity in the place where they continue to reside. Community Connections for Youth (CCFY) is a New York-based nonprofit organization that mobilizes indigenous faith and neighborhood organizations to develop effective community-based alternative-to-incarceration programs for youth. Ruben Austria, a leader in the juvenile justice reform movement and the founder of CCFY, spent nearly ten years developing BronxConnect, the only Bronx-based ATI program for juveniles at a grassroots faith-based organization in the South Bronx. BronxConnect had a laudable 84% success rate in preventing youth from returning to crime. CCFY’s “three-fold approach” consists of: Community Advocacy, Training & Technical Assistance to grassroots faith and community-based organizations, and Direct Services.

BronxConnect still operates today on principles of positive youth development (PYD). Administrators assert that their main motivation is to draw from youth’s inherent talents, instill in them the ability to make sound decisions, and help them accept responsibility for their character development. Youth ages 13 to 19 years old are eligible. BronxConnect is a product of Urban Youth Alliance International (UYAI), a youth leadership organization with political and activist endeavors. They are faith-based through working with churches, and high school and college ministries, but state that they do not proselytize because they receive state funding. The program creates a unique curriculum each cycle, based on the needs of the youth enrolled at the time. There are job readiness training and numerous other services to equip them for adulthood. Staff members report that youth in the program perform community service, treat one another “like family,” and feel heavily connected to their community. Youth in BronxConnect are considered “urban leaders” and refer to themselves as such.

Ironically, BronxConnect staff engenders independence and growth in their charges by providing 24/7 support and guidance. Staff members note that the program is mentorship-based and has an “open door policy.” Staff members answer their cell phones at all hours, “know the neighborhood,” and “really know the kids,” so that it is “not just a drop-in center” like many court-operated programs. However, youth are court-mandated to BronxConnect, and they receive Youthful Offender status (confidentiality of records and civil, not criminal, disposition status) upon completion. Not only do BronxConnect staff members provide extensive support, but they also partner with numerous other organizations for additional mentorship support, recreational activities, and enrichment opportunities.

BronxConnect staff are also highly present in the home lives of their youth. They provide in-home therapy, parent/teen workshops, quarterly meetings with parents, one-to-one counseling, and case management in a ten-week cycle. As many as 35 youth may be enrolled at any point. Most, but not all, are male. As many youth in the program are becoming parents themselves, they partner with the Fatherhood Initiative and other such agencies.

Much of the South Bronx has become involved with BronxConnect in some way; and the entrenched nature of the program is most likely a key factor in its success. Youth know that regardless of where they go in their educational, home, recreational, spiritual, and civic surroundings, adults are there to support them and offer them their own voice. Youth are often referred outside of the program for group therapy, anger management, and aggression replacement therapy.

Staff state that what also sets them apart from the status quo system is that youth receive the benefit of living at home, and of finding ways to cope with their old friends, families of origin, and community schools, which would not be the case if they were incarcerated. The program’s youth receive extensive amounts of “time to make positive changes that affect their whole lives,” rather than a brief stint away from home or medicalized services that offer outside professionals for brief periods of time. Admittedly, a weakness of BronxConnect has been the financial limitations that hinder staff from helping youth solve the problems that threaten their success.

Community-based ATDs and ATIs reduce recidivism for a fraction of the cost of traditional justice. BronxConnect costs about \$6,000 per year, per youth. Other NYC ATD and ATI programs include the DOME Project,

the Center for Community Alternatives, and CASES, which all have recidivism rates lower than 20%. Most other such programs regularly achieve recidivism rates of 8% to 36%. Participating youth address their family relationships while developing leadership, life, educational, and advocacy skills.

Restorative Justice

Restorative Justice (RJ) programs such as victim-offender mediation, conferencing, healing circles, restitution, peer juries, youth courts, and community service, have been proven both to stop crime at its source and to acknowledge the whole picture of how crime impacts our society. Restorative justice is a set of principles and practices grounded in the values of showing respect, taking responsibility, and strengthening relationships. It assumes that not everyone, especially in as diverse a country as the US, has learned the skills to reconcile and resolve conflict verbally. RJ focuses on repair of harm and prevention of re-occurrence, joining all stakeholders in a non-adversarial process. RJ philosophy holds that crime control lies primarily in the community, that punishment alone cannot change behavior and disrupts community harmony, and that victims are central to crime resolution. As opposed to traditional (retributive) justice's focus on establishing past guilt, RJ focuses on problem-solving, liabilities, and obligations for the future.

The Common Justice demonstration project of the Vera Institute of Justice in Brooklyn, deals with offenders between 16 and 24 years old and uses less retributive vocabulary to refer to victims and offenders, such as "harmed and responsible parties." While these young people are not technically "juveniles" under NY state law, staff at Common Justice, and many proponents in the broader advocacy community, seek to raise the juvenile court jurisdiction age. Staff assert that the program facilitates "true healing" that the traditional juvenile justice system lacks because responsible parties are able to "fix what they've broken" and show "who [they are] beyond that incident—the totality of the person there."

RJ can be utilized in a host of contexts, including in schools. In the school context, RJ can be part of an entire system of Positive Behavior Interventions and Supports (PBIS), which provide a healthy and evidence-based alternative to zero tolerance policies, and harsh and ineffective disciplinary measures. The US Department of Education, the American Psychological Association, and numerous other institutions have either implemented or promoted PBIS in schools, and there is a growing body of research to bolster this work. RJ can help students avoid the school-to-prison pipeline, even when their behavior may warrant serious discipline.

Several NYC schools utilize RJ programming. At East Side Community High School, students and staff define what respectful behavior is, and write guidelines ranging from “Be accountable/ take responsibility for your words and actions,” to “Use positive body language and tone of voice (no head on desk, eye rolling, sucking of teeth, etc).” Some schools use fairness committees of students or teachers, wherein one person brings another to the committee, believing that the person violated one of the school’s core values. Lyons Community School was first devoted to students who were pushed out of other schools. Teachers use restorative circles as a teaching technique and also as a way to resolve conflict between students. Lyons also created a Justice Panel, upon which 12 students sit (two from each grade, 7-12). Students and staff suggest that certain issues be brought there, and the Panel recommends solutions for disciplinary incidents and community issues.

One student at Bronx International High School explained that his school’s leadership program helped students avoid conflict and trouble, and that English language learners from all different backgrounds learn to work together. A guidance counselor from the Bushwick Campus asserted that RJ shows the student “the whole picture” because if one student calls another student a racial epithet the student might learn how they have offended both the particular target, but also ten other people in the room.

Gotham Schools discusses several evaluations that show the efficacy and depth of RJ programs. The Youth Justice Board of England and Wales reviewed RJ programs in 26 schools in 2004, comparing them to similar schools that did not implement RJ. The study found that 92% of conferences resulted in an agreement, and that two to three months after the conferences, 96% of the agreements had been upheld, suggesting successful long-term resolution of conflicts. Nearly all (89%) of students were happy with the outcomes, according to the report, and 93% found the process fair. School staff reported a decrease in misbehavior in RJ schools, while staff in comparison schools actually reported an increase in misbehavior. A review of RJ in Colorado found similar results, along with evidence that students were not re-offending.

RJ programs across the US are decreasing disciplinary referrals, disruptive behavior, and suspensions, while also responding to crime and violence. In inner-city Albany, NY, RJ has helped resolve an on-going, violent conflict between youths. While some participants were not initially willing to cooperate with the conferencing, RJ proponents eventually gained buy-in from skeptics. In NYC, Community Prep High School has enrolled primarily youth returning from juvenile detention and introduced RJ in a partnership with the Center for Alternative Sentencing and Employment Services (CASES) and the International Institute for Restorative Practices (IIRP), which led to a safer school and academic success for students.

Likewise, community organizing efforts like Justice For Families encourage justice system – involved families across the nation to “invest in Community Based Reconciliation,” which is a way to implement RJ outside of schools, to prevent youth from re-offending. Many families’ understanding of crime and the need for safety “is all the more acute because many have themselves survived a crime. Family Group Decision Making, Family Group Conferencing, and other RJ programs can sensitize the young person and their family to the human impact of his or her behavior, allow all parties to connect with resources in the community, and build on the strength of communities to resolve conflict. These approaches can even replace a formal court process. Family Group Conferencing has been successfully implemented in New Zealand, Australia, Northern Ireland, Baltimore, and Hawaii among other places, both with minor and more serious offenders.

Some educators, justice system officials, and others may criticize RJ for being too easy on students. It is true that “punishment” is not technically meted out in RJ, and that disciplinarians may find it lacking in authoritarianism, deprivation of privileges, and harsh realities. However, RJ creates and implements secure values, guidelines, and consequences, with the added benefit of helping students buy into the means of behavior management and school culture. Moreover, RJ has the potential to give students skills and knowledge that they can apply to life situations outside of school and the justice system, being formative in their personal development and in building independence. RJ is a proven method of improving student behavior. It requires a significant time commitment on the part of both adults and youth.

The cost of RJ is far lower than that of the current system, and it

effectively reduces recidivism. Some experts offer one-year implementation of school RJ programs at under \$3,500. A New Mexico study found that RJ programs reduced the juvenile recidivism rate by 32%. The Canadian government found that the actual cost for RJ was \$2.4 million, while the estimated cost to imprison was between \$6.2 and \$15.9 million. Victims also overwhelmingly express a sense of fairness with RJ because they are active participants in the process.

Community Engagement Task Forces

While any service delivery system is beleaguered with task forces and working groups, community engagement task forces are unique working groups that operate on community organizing principles and policy advocacy approaches. They are comprised of invested community members, service providers, advocates, organizers, families, and youth who have committed to holding the justice system accountable for racial and ethnic disparities. The Community Justice Network for Youth of the W. Haywood Burns Institute for Fairness and Equity is a national leader in helping localities establish “Racial and Ethnic Disparities Taskforces.” Across the country, these groups demand that system officials from each agency produce and publish data on disparities, then strategize and act around ways to eliminate those inequities.

The NYC Task Force on Racial Disparities in the Juvenile Justice System succeeded in pressuring the state to hire a Disproportionate Minority Contact (DMC) Coordinator with expertise in community justice, dismissing the previous office-holder who had disseminated federal DMC funding largely to libraries in predominantly White communities. To become a member of the Task Force, individuals must sign onto a mission statement and devote a specific amount of time to the work. The group trains community members and youth on juvenile justice reform issues, collecting agency data, and meeting and problem-solving with major officials and other community members.

As a collaborative strategy, community engagement task forces are likely to create buy-in from many interest groups and are less adversarial than litigation, which pits system employees against communities and youth without enabling all to take part in the solution. The ongoing work of the NYC Task Force is holding the NYPD accountable for its treatment of youth and communities of color while engaging unlikely allies. Task Force members have worked with police precinct councils and community boards—building blocks of NYC local government—in a positive way to use the system itself as “infrastructure for reform.” Both such government-sponsored decision-making bodies are comprised of business owners,

homeowners, and other residents, while precinct councils also involve NYPD leaders and officers. Although many of these groups have been cast as unsympathetic to youth justice activism under a rubric of public safety, they are also directly affected by delinquency, and the Task Force aims to create a space where everyone is moved by self-empowerment and affirmation. Dozens of similar task forces span the nation, in places like Tucson, AZ, Boston, MA, Chicago, IL, and New Orleans, LA.

Kyung-Ji Rhee, Director of the Institute for Juvenile Justice Reform and Alternatives (IJJRA) of the Center for NuLeadership on Urban Solutions, explains how her organization engenders power sharing between indigenous community organizations and justice system players through the “sea change” in the NYC juvenile justice landscape. According to Rhee, it is not enough for reform-minded system agencies to host events in local communities and locate services like probation case management in the neighborhoods from which youth hail. Essentially, there needs to be a culture shift wherein line staff inside of the agencies is asked to be a part of decision-making, and wherein funding trickles down to community-based groups that can equally help youth change their behavior. There is a particular disadvantage that indigenous community groups experience during this era of policy change because professionalized, evidence-based efforts receive grants for youth programming, regardless of how well they know the communities or how much expertise they draw from resource mapping. Rhee is partnering with the NYC Department of Probation to train line staff in reflection about trusting communities, listening to youth and each other, and valuing the expertise in the neighborhoods.

Other Forms of Community Organizing with Varied Populations

Until more people directly impacted by the juvenile justice system feel personally empowered to reform the status quo, there will be a persistent power imbalance in the scope of justice. As opposed to direct service provision, professional policy advocacy, and litigation, community organizing is a process where people in a locality form an independent organization to act in their mutual self-interest. Community-based organizations (CBOs) in the juvenile justice field prioritize personal, grassroots experience with the system and individual self-determination over professional expertise. Under organizing principles, social change necessarily involves conflict and social struggle to achieve power for the powerless. Community organizers and youth organizers build skill capacity in communities, work with governmental leaders, facilitate coalitions, and build campaigns.

Community organizing in juvenile justice serves to alter unjust conditions and to restore influence and human dignity in the lives of families and youth who feel abused and undervalued. Countless examples of organizing efforts include advocacy to influence the Virginia (VA) Board of Juvenile Justice and the VA General Assembly by Families and Allies of VA's Youth (FAVY); the campaign by Families and Friends of Louisiana's Incarcerated Youth (FFLIC) that closed the Talullah youth incarceration facility and attempted to convert it into a school; and numerous campaigns by the Ella Baker Center for Human Rights in CA, which combined public education and media work, grassroots organizing, policy advocacy, and coalition-building, and achieved the firing of a police officer who killed two unarmed Black men and stopped the expansion of a "Super-Jail" by 75%.

An exciting development has been the National Families Report by Justice for Families (JFF), led by Zachary Norris. Norris is an attorney, Soros Fellow, and former leader of the Ella Baker Center. Norris has engaged advocates and organizers from across the nation in a national movement to bolster the rights and role of families in the reform of child-serving systems like the juvenile justice system, immigration system, and child welfare system. JFF conducted a media review about the value of family voices in media coverage of these various systems, focus groups and surveys of such families, and a scan of best practices in family organizing by CBOs. The report serves as a resource for future organizations looking to promote similar social justice agendas.

The theoretical framework, or founding principles, of JFF, are Positive Youth Development and human rights ideals. The organization works for racial justice and human rights, and ensures that families are valued in every form or shape the organizing work may take— be it intergenerational respect and diversity, diversity of citizenship status, sexual orientation diversity and acceptance, other such values, and specifically partnering with local organizations across the nation that share these values.

What sets JFF apart from system-based approaches is that the status quo systems JFF seeks to reform do not view family activism as the key solution. To JFF, however, family involvement, mobilization, wisdom, and resource allocation are the answer. Families in JFF work to transform communities together; but these various child-serving systems are oriented as identifying solutions outside of the community. Instead of relying on a remote prison, or a doctorate-level counselor with an evidence-based practice who isn't familiar with needs of the community, in these organizing efforts, the community defines wellness, healing, and safety for itself. Norris points out that "cure-them or punish-them

approaches share in common an ‘outside the community framework.’” JFF recognizes the resilience and strength of families to nurture young people despite economic and historically racist systems.

More broadly, Norris asserts that child-serving systems need to be wholly transformed as part and parcel of a larger need to create a more racially and economically just society. To JFF, families need to be treated more appropriately within systems, with steps towards promoting all the alternatives described herein, and towards moving resources away from solutions that negate community empowerment. Ultimately, there is a need for community and family – driven solutions designed by the groups most impacted by the problems of crime and poverty.

Justice Reinvestment

“Justice reinvestment” is a community-based approach that holds the key to positive juvenile justice outcomes. Investing resources and capital into struggling communities is crucial for all of the aforementioned approaches, and it truly reduces youth crime and heals social fragmentation and isolation. The community-based organizations mentioned above have made numerous economically-oriented calls for legislative reallocation of detention funding to local ATDs, ATIs, and educational programs, green jobs in at-risk communities, and the movement of other new industries and beneficial programs into communities where young offenders reside. Research confirms that an investment in human resources and physical infrastructure of communities, and the provision of basic human needs and social services such as education, employment, affordable housing, and drug treatment, are positively associated with increased public safety.

The work of Justice For Families highlights how funding can be taken from the “incarceration epidemic” and invested into “human resources investments.” For example, Chicago high school students initiated a “peace building program” that enabled their school to spend funding formerly used for security equipment and security personnel on creating leadership and academic programs instead. Texas state officials invested money typically spent on adult incarceration into ATIs and a Nurse Family Partnership program that paired experienced nurses with first-time mothers.

To date, there are too few examples of justice reinvestment. However, some scholars, states, and nations are making inroads in this area. Scholar Todd Clear has researched private company justice reinvestment. He describes an open bidding process where companies get a certain return on their investment for giving some offenders a chance to work and turn their lives around. The US’s interest in social impact

bonds has grown in recent years, just at Britain utilizes these bonds more frequently. Otherwise known as “pay for success bonds” or “impact investing,” this practice involves making low-interest loans to nonprofits, making equity investments in companies that address social issues, and investing portions of a foundation’s endowment in endeavors that produce measurable benefits to society, as well as a financial return. Essentially, our society must look at creative ways to reallocate money towards efforts that can revitalize communities and relieve them of the myriad problems that they experience, while benefitting the economy as a whole.

Some may argue that impact investing is too exploitative of vulnerable social groups, that giving should be more altruistic, or that it drains empowerment from communities when they rely on businesses and investors for motivation. The impetus from these businesses incites law abiding behavior and economic success. It is true that as long as some level of profit is behind socially conscious programs and the operation of social justice, corruption and exploitation can result. However, at-risk offenders and communities are in dire need of resources, and it is better for businesses to invest in socially conscious endeavors rather than perpetuate strict financial constraints and efforts that have brought the economy to a crisis state. Young offenders and their communities often find long-lasting success once their sense of social and economic value increases through employment and civic participation. Further, it is at least more favorable for businesses to profit off of the productive activities of at-risk youth than to invest in and anticipate overincarceration and failed law enforcement techniques. Additionally, much justice reinvestment takes money that would otherwise be wasted on the status quo system and pays for youth and communities to flourish.

Finally, several types of justice system re-alignment plans, programs, and ideas also utilize justice reinvestment. NYC’s Close to Home initiative was previously mentioned. Re-deploy Illinois, Reclaim Ohio, and re-alignment in Contracosta County, CA, are all examples of efforts that invested savings from incarceration into more local solutions and programs. In CA in particular, the county was going to build a jail, and local activists succeeded in getting a newfound community board to be able to influence where the county would spend the relevant funds.

Positive Youth Development

Positive Youth Development (PYD) is a strengths-based—rather than a deficit-based—way of dealing with adolescents that leads to high levels of youth success. PYD research and programs reveal that many youth simply need social assets, opportunities for work, positive role models,

skill development, venues for creativity, and chances for civic leadership and engagement rather than medication, therapy, and to be shipped away to prison. Instead of focusing on an adolescent's flaws such as substance use, family turmoil, or negative behaviors, PYD stresses "resilience" as the set of qualities that supports healthy development in the face of adversity. Youth in PYD programs gain benefits that youth in wealthy neighborhoods already have.

When youth in middle-class and wealthy White neighborhoods exhibit behavioral problems in school, at home, or in the neighborhood, their family and community members tend to naturally surround them with nurturing adult influences, extra-curricular activities, and even rewards for improved behavior. Monitoring is a crucial aspect of behavior modification, and is often under-valued. The differences between one household and another also involve the ability or lack thereof to monitor what a child is doing—and there is often more supervisory capacity in a two-parent home in the suburbs, where youth need a car to go somewhere, and parents can monitor where they go. In the city, trouble is right around the block, so youth need more effective adult supervision. Research shows that youth in the justice system flourish when given equal chances, role models, opportunities for recreation and exploration, and expectations.

Mentoring programs such as Aftercare for Indiana through Mentoring (AIM) are part of the PYD framework and have also cut delinquency dramatically. In AIM, community mentors serve as holistic caseworkers to help young offenders. AIM utilizes volunteer mentors as well as fulltime staff. Wraparound services similar to those used by ATDs and ATIs are employed to create an atmosphere of full support for youth, so that they, in turn, can support themselves. The program starts working with youth during incarceration, and they engage in anywhere from four months to two years of meetings during incarceration, preceding a long period of follow-up. At times, the services are inconsistent because of lack of buy-in from the youth. The mentor and youth create a basic reentry plan to address employment opportunities, education, health, finances, relationships, living arrangements, leisure, transportation, personal wellbeing, and social interactions. Mentors help youth work on their goals, finding the purpose behind the goals, and finding the steps they need to take to achieve those goals once they leave incarceration facilities.

While AIM youth feel heavily supported by their adult mentors, administrators of the program insist that each mentee remain in the driver's seat. Together, the youth and mentor refine the reentry plan to make sure it is feasible. Mentors provide a continued support system, but they are not counselors, so they do not try to fix the youth's problems or

even give extensive advice. Mentors can be anyone old enough, with the right attitude, within certain limits. There are background checks for safety, but profession or other individual characteristics don't matter. Many college students serve as mentors. Older individuals also play a mentorship role.

As the PYD theoretical framework of AIM is applied, mentors focus on what youth can use to succeed and reach their dreams. Eventually, the youth "start to feel good about what they have to offer." They may get their GED, get a job, and even go to community college or a four-year college. Sadly, sometimes a mentor is one of the only positive forces in a young offender's life. For example, one youth got into college and told his father, and his father replied, "What do you think? You're better than me?" An AIM mentor is someone a youth can share their hopes with, who will listen to them. Mentors mostly serve as a sounding board to point youth in the right direction.

Football, basketball, and rapping are what the students typically want to do, but AIM works with them on achievable goals. While trying not to quash young dreams, mentors remind their mentees that they have to eat and have a roof over their heads, on the way to a bigger goal. Short-term goals are often most important. A young person may work in the food industry for a year while exploring other options. Once incarcerated students see what other youth are doing on the outside, the success can be infectious. Some youth are engaged in AIM's micro-enterprise efforts, where they make scented candles and sell them. Ultimately, mentors let youth make decisions for themselves, with strong commitments to catch them if they fall.

What sets AIM apart from system-based approaches is the focus on relationships, rather than programs and mandates. While probation sometimes mandates that AIM work with students, that doesn't help students give their best to the mentoring relationship. AIM mentors insist that no one can be "fixed," so one must simply give youth assistance, patience, and opportunities to find a better way for themselves. Through AIM, youth are connected to a network of internships, jobs, schools, and "things they never thought about before." Toastmasters, the public speaking club, has even become involved. Some youth state that they aren't getting out of "the hood" but want the chance to do so. AIM tells them they do have options, while showing them that their communities also hold promise.

As opposed to therapeutic or trauma-focused models, AIM doesn't focus on liabilities and dysfunctions. They may link youth to therapists or counselors, but typically don't try to compare themselves to medicalized

approaches. Every youth is treated expressly as an individual, and mentors only work with youth who seek to work with them. AIM has been part of a Task Force with therapists for many years and has started to transition out of the group.

Given current funding constraints, AIM has many challenges. Mentors pick up their youth all over the city in vans, which takes a large amount of time and money. If they had more funds for staffing, they could do more. AIM receives funding through local grants, Second Chance mentoring dollars, federal grants, and is always looking for other fund-raising venues. AIM provides stipends and job readiness, so that youth actually get paid while participating in the micro-enterprise. As youth sell candles all around the city, this helps generate funds for the program. As grants phase out, youth need to find ways to generate income for themselves.

Currently, AIM has less than a 20% recidivism rate. AIM reduced recidivism by 35.9% between 2005 and 2008 and continues to bring youth new lives, despite the transient nature of their funding and their mentee population. Twenty-five percent of assisted youth get back into school, get their diploma or GED, and are employed within 60 days of release. Some of the youth have children at young ages, but since everyone else tells them how poorly they are doing with that, they may need someone like a mentor just to listen. Since many young offenders lack a solid support system and may be physically transient, employers often hesitate to keep them on staff. After incarceration, many youngsters need to go right back into same local situation they were in before. For that reason, AIM mentors and staff try to remain a stabilizing force for a year or longer as the youth's independence grows.

Innovative Education Programs

Providing at-risk children with unique educational opportunities is a chief way to lower youth crime, in contrast to ineffective zero tolerance policies. Maya Angelou Public Charter School at New Beginnings in Washington, DC partners with community-based organizations and works with incarcerated youth and other students who lacked success in traditional high schools. The school makes local volunteers an integral part of program implementation, and after a full day of educational programs and paid work within a central facility, youth receive academic assistance from the volunteers in the evenings. Founder and law professor James Forman, Jr. describes the school as, "the kind of institution conservatives support—a place that offers opportunity but demands responsibility. Students are in school ten and a half hours a day, year-round...When not in class, they

work in student-run businesses...[M]ore than 90 percent of graduates go on to college, compared with a citywide rate of just 50 percent...”

At Maya Angelou, the DC Department of Youth Rehabilitative Services (DYRS) contracts with community agencies, and utilizes the Missouri (MO) model of juvenile facility operation. Perhaps surprisingly, the school implements both PYD and a trauma-focused theoretical framework. Dual goals are helping youth capitalize on their assets and gain independence, and also helping them address the personal trauma that has impacted them. All charges are high school aged boys. 2013 marks the first year combining PYD with a trauma recovery model. Youth learn about Post-Traumatic Stress Disorder (PTSD), and are aware that they may operate from a perspective of “hyper alert.” Teachers can relinquish control and give the students more control over events in the facility, and their lives more broadly. There is serious transition planning on each youth’s special education Individualized Education Program (IEP), and vocational training. A lot of youth at Maya Angelou need a paycheck immediately upon leaving the facility. Like others, they may have a child to support, so the school’s preparation keeps them in the community—and out of incarceration—longer.

Staff call themselves Youth Development workers, and youth move through achievement levels one through six. Therapy and behavioral change are a focus. Each youth presents their biography to the group, manages their core issues, improves, and is expected to have a plan for how they will succeed in life when they leave. Each youth has a hand leading circles and “check-ins.” Most activities are described by a teacher as “mini group therapy,” and all classes start with a “check-in.”

As a subcontractor with DYRS, the school runs its own behavioral and academic program, utilizing best practices. The goal is often high school credit recovery, to get youth back on track for graduation. If a youngster is too far behind, they can apply and test to get accepted into the GED track. PBIS are implemented, and everyone is also trained in RJ. Core values are expressed as “RISE: Respect, Responsibility, Integrity, Self-determination, and Empathy.” Youth earn \$25 per week if they exhibit good behavior in the classroom, with a point tracking system where points are awarded each class period. There are two teachers per class, and a maximum of ten “scholars,” or youth. There are usually Integrated Co-Taught classes (ICT) with a general education and special education teacher, and sometimes a case manager, all in one classroom. School staff insist that this high level of adult support and attention is what the students need.

Fortunately for staff at Maya Angelou, funding shortfalls have never been presented as a serious issue. The school is funded by the DC government, and its founders and staff consistently fund-raise. Teachers describe the school as a warm and friendly place with multiple laptop carts and adequate materials to facilitate youth development and personal growth.

One weakness of the six level program is that it is difficult to do substantial youth development and trauma-focused work in that brief a time frame. Another challenge is finding community supports in the DC area that actually welcome young ex-offenders, like appropriate post-secondary schools, housing, independent living arrangements, and employment programs. The school follows youth up until they have been out of the program for six months. The categories of achievement are: A) passing classes, achieving success on the outside; B) showing up at school, but need significant help; C) not successful; or D) reincarcerated.

The school started their vocational program a year and a half ago and offers students instant wage earning upon release. There are informal advocacy partnerships, and at Level Six, a youth can leave the facility to go on job interviews. Community campuses of sister charter schools can hold two or three seats for New Beginnings students, without their needing to enter the lottery, for an easy transition to a community school.

Ms. Julie Catalano describes Maya Angelou as a “different breed of charter school” from those that are controversial in public education debates. The students she teaches “need second, third, and fourth chances. Students are not expelled or turned away for behavioral reasons, and the institution has a commitment to seeing them through the stormy time of adolescent incarceration.

The climate at Angelou and at Urban Academy, an NYC second chance charter school, is home-like, and full of evidence of youth creativity, such as wall murals. Urban Academy founders explained that removing security scanners and clothing bans of articles such as “do-rags” was both a literal and metaphorical rejection of “an authoritarian, corrections-like strategy” for handling school discipline. Like Angelou, Urban Academy is comprised mostly of students “stereotyped as violent and failing.” Co-founder Herb Mack says of his school’s safety, “I’ve never had any kind of incident to report. If the security agents get weapons, I haven’t seen them.” Indeed, eliminating zero tolerance measures in schools can actually enhance safety. There is a difference between security and discipline,” says Mack. “Discipline is talking to kids.

Creatively Addressing Youth and Police Conflict

There are also effective, creative, community-based methods of handling conflicts between police and youth. Lisa Thurau, founder of Boston-based Strategies for Youth (SFY), states that unimaginable innovations can happen with a paradigm shift. According to Thurau, and as supported by evidence herein, police officers do not understand that adolescent development includes “reactive behavior;” and if they did, they would not likely “ascribe intentionality or punish [children] so much...They could use a PYD approach.” The current view of youth of color by law enforcement “doesn't help public perceptions of safety.”

SFY employs skits between police officers and youth during interactive trainings of combined groups and each such group alone. When an officer has authoritative pitch and intensity, youth typically become defensive and refuse to comply. They explain, “We are entitled to respect.” Youths’ defensiveness also increases with fear; and that, in turn, produces fearful reactions by police, escalating minor incidents into show-downs. Trainings of police involving teens in communities as diverse as Salinas, CA and Nantucket, MA have provoked identical responses by youth when they are asked to explain why they will or won’t comply with police demands. Ironically, while the US does not sign on to human rights covenants, American youth believe they are entitled to basic human rights, including dignity and respect. Thurau states that “When officers personalize the interaction, promote a respectful opening...youth say they feel respected.” This work confirms anthropological and sociological research about interpersonal relationships.

Thurau’s work also utilizes capacity-building to enhance youth knowledge about police interactions and the system. Her Juvenile Justice Jeopardy game was piloted in NYC in July 2011, and was previously used in Boston, Los Angeles, and West Monroe, LA. The game reveals that little facts make a big difference in the way youth and police behave. For example, children watch television and expect their interaction with police to resemble that with detectives, not patrol officers. They are therefore often doubly offended when patrol officers approach them very authoritatively instead of the way detectives seeking information might approach them. Instead of focusing on legal rights, the game addresses concrete examples of communication and behavior by police and youth that can escalate or de-escalate a situation. The game also develops youths’ ability to recognize situations with police and peers and make them aware of the ramifications of behaviors in those situations.

“We think it’s more developmentally appropriate to approach this complicated set of relationships [this way] than by simply explaining the law,” said Thurau. “Not every kid has access to attorneys who can protect

their rights; and even those kids that do find that the courts expect respect and obedience for authority.” To customize the game for each jurisdiction, Thureau works with all major juvenile justice stakeholders, including police, to devise questions that ensure typical police/youth and peer experiences are captured and used to teach youth effectively.

Although Thureau says it is difficult to find funding due to an “anti-prevention culture,” her program undeniably has an impact. SFY’s police training and advocacy brought juvenile arrests by the MBTA Transit Police Department in Boston down from 646 in 1999 to 74 in 2009. Numbers remain low without an increase in crime. The MBTA Transit Police mediation program also provides different ways for transit police to work with youth for typical offenses like theft of an iPod or cell phone. Thureau adds, “The trainings and advocacy worked well with leadership of the agency. We know training can’t eliminate brutality; but it can give officers more skills to use to de-escalate situations.” Thureau noted that the MBTA Transit Police Department is now considered the leader in policing youth in Boston and has developed innovative programs that increased both youth and community support while leading to national recognition for non-tradition approaches. Scholar and Yale Law School Dean Tracey Meares also writes extensively about youth, crime, community policing, and engages in successful demonstration projects that effectively decrease crime.

Several NYC-based programs improve police – youth interactions in grounded, innovative ways. Conversations for Change (CFC) strengthens community-police relations through large-scale dialogue and collaborative action. This ameliorative discourse between police, youth, and communities uncovers a host of community members’ personal biases towards law enforcement, and biases of law enforcement towards communities—creating strong bonds. CFC finds highly personal solutions to police – community strife. This approach is effective and inexpensive. Lenora Fulani’s All Stars program in NYC is similarly effective.

Finally, NYC’s Audrey Lorde Project has an initiative to make communities safer without relying on law enforcement crackdowns. The program Safe OUTside the System (The SOS Collective) “is an anti-violence program led by and for Lesbian, Gay, Bisexual, Two Spirit, Trans, and Gender Non Conforming [LGBTSTGNC] people of color” in Brooklyn. This group’s Safe Neighborhood Campaign educates local businesses and community organizations on how to stop violence without relying on law enforcement. They have been instrumental in organizing actions against police brutality throughout the city over the last two decades, largely in response to the “Quality of Life” policies of the Giuliani

administration. The SOS Collective provides support for LGBTSTGNC people of color who have survived police and hate violence, and joined several organizations around the nation in opposing the Matthew Shepard/James Byrd Act because it allocated more resources to law enforcement, which they find “make[s] us less safe.”

Who “Belongs” in these Programs?

Naturally, one might ask whether it makes sense to keep children from disadvantaged neighborhoods all together in these indigenous programs, whether the programs are also suitable for more advantaged White youth, or whether the goal should be to move disadvantaged youth to different settings and communities as much as possible. The appropriate response is that practicality and opportunity should be balanced to enable all youth to both feel safe and grow to their fullest potential. For example, an ATD program for former gang-involved youth of color might not be the most appropriate place to bring White suburban youth for recreation, social services, and life skills training. Just as youth from rough neighborhoods struggle with trusting people of privilege, and at times posture with toughness (feigned or not), more sheltered youth struggle with intimidation by youth with more exposure to inner city environments and even with unfair presumptions of having greater intelligence and talent than youth of color.

For that reason, there should be both “safe spaces” and “growth spaces,” not to be mutually exclusive. Safe spaces can exist for youth with particular backgrounds to be with others like themselves and open up among like peers. Chances are, the seemingly toughest youth may not feel quite trusting enough to let their guard down with too many people who seem foreign to them. Many urban youth groan at the prospect of an affluent, White mentor because they feel that this person could not know where they are “coming from” and what they are “going through.” Formerly incarcerated individuals sometimes make exceptional mentors for court-involved youth because they provide a realistic model for success. Programs like CCFY are cultivating “credible mentors” among the ranks of formerly system-involved adults. Likewise, chances are suburban youth may not feel at home quite yet with a room full of youth of color who live such different lives from themselves. Contrastingly, there should also be plenty of growth spaces for stretching beyond one’s own comfort zones--- at city-wide training programs, jobs, enrichment programs, sporting events, summer camps, interest-groups and extra-curricular clubs and activities, where young people from diverse backgrounds can learn about

one another, learn from one another, become leaders and practice ways of making a safe, strong civil society regardless of their differences.

Conclusion

“Nothing About Us Without Us!” is an old adage of community organizing efforts, which provides a rallying cry for communities directly affected by an issue. Essentially, this adage asserts that lasting change can only occur when solutions to social problems are born from equal partnership and leadership from oppressed groups and impacted persons. Overwhelming evidence shows that the current juvenile justice system will not lead to safety, justice, cost-effectiveness, or positive life outcomes for anyone except possibly those corporations and officials who directly profit from it. Community-based approaches were utilized in the early years and can now be re-invigorated. They are more effective, socially responsible, affordable, culturally competent, and uphold human rights laws and norms. These approaches need support from all sectors, but especially from the legal community and the private sector. We cannot continue to put stock in the status quo system without being disappointed at the results.

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