

'Summit on Racial Disparities' encourages dialogue

A Utah boy is suspended from school for giving his cousin a cold pill prescribed to both students. A Rhode Island kindergartner is booted for bringing a plastic knife to school so he could cut cookies, and a 5-year-old Florida girl is handcuffed and arrested for throwing a temper tantrum in her elementary school.

It's called "zero tolerance," and it is society's answer to school violence. Yet mounting evidence suggests the policy does little to protect children while putting youth on a path to incarceration, school failure and adult crime. Equitable in theory, it is discriminatory in practice – hitting minorities hardest.

The policy also squanders police resources and clogs juvenile court dockets.

"Zero-tolerance strategies – they just really don't work," says Noble Wray, chief of the Madison, Wis., Police Department.

These were consensus findings of a daylong conference in Indianapolis on Aug. 27, addressing improvements to the juvenile justice system. The "Summit on Racial Disparities in the Juvenile Justice System: A Statewide Dialogue," sponsored by the Indiana State Bar Association, drew more than 200 representatives from all major points of contact in the system, including the judiciary, law enforcement officers, legislators, educators, prosecutors and social workers.

The summit was an outgrowth of the Commission on Disproportionality in Youth Services, established by the Indiana General Assembly in 2007, and was meant to fill the gap between the commission's recommendations and real action.

Freelance writer
Indianapolis, Ind.
walton_dick@yahoo.com

Dr. Russell Skiba,
director of the Equity
Project at the Center



Dr. Russell Skiba

for Evaluation & Education Policy at Indiana University, presented preliminary results from 2008 data showing that black youth in Indiana are on average about three times as likely to be arrested than other races.

Blacks also were about twice as likely as other races to be detained, and more likely than whites to be confined for minor offenses such as disorderly conduct. Black youth were much more likely to receive detention than white youth arrested for similar offenses, Dr. Skiba said.

African-American youth were more than six times as likely to be held for drug offenses – despite being arrested for such crimes less often than whites.

"Once in the system," Dr. Skiba said, "there is very clear evidence that there is differential treatment." To access Dr. Skiba's PowerPoint presentation, go to www.inbar.org and click on "ISBA Links" at the top of the home page (among the menu of clicks is "Racial Disparities Summit").

In Indiana and across the country, the juvenile justice system confines many more youths than can be justified.

In the keynote speech, James Bell, founder and executive director of the W. Haywood Burns Institute,

a San Francisco-based youth advocacy group, described the U.S. juvenile justice system as quick to incarcerate but slow to justice – especially for racial minorities.

"I am offended by the notion that being confined in an 8-by-6 room is seen as an unfortunate but necessary byproduct for youth of color to get basic counseling," he said. "It ain't right, and it ain't justice."

Youth who serve time in juvenile detention commonly are suspended or expelled from school; many drop out. Often they are jobless, in poor health and living in poverty. Treated like criminals as kids, they *become* criminals.

"There are more black boys and men getting their GEDs behind bars than graduating from college," Bell said.

Born in the 1980s from parental concerns about gun violence, the zero-tolerance movement gained impetus after the 1999 Columbine High School shootings that left 13 people dead. The gunmen – two students – committed suicide after the attack.

But zero tolerance, which originally targeted the most serious offenses, has come to encompass the gamut of student misbehavior.

"Kids have been kicked out of school for possession of Midol, Tylenol, Alka-Seltzer, cough drops and Scope mouthwash – contraband that violates zero-tolerance, anti-drug policies," reported *USA Today*. "Students have been expelled for Halloween costumes that included paper swords and fake spiked knuckles, as well as for possessing rubber bands, slingshots and toy guns – all violations of anti-weapons policies."

Critics of zero tolerance say that by failing to draw distinctions between the seriousness of different offenses, the policy has produced injustices.



James Bell: 'It ain't right, and it ain't justice'

"A machete is not the same as a butter knife," the Associated Press quoted a Rhode Island state senator as saying. "A water gun is not the same as a gun loaded with bullets."

Zero tolerance came under intense scrutiny – and criticism – after the handcuffing and arrest of a 5-year-old girl in her Florida school in 2005.

A video camera, in use as part of a teacher's classroom self-improvement exercise, captured images of the African-American kindergartner tearing papers off a bulletin board, climbing onto a table and hitting an assistant principal.

The youngster appeared to calm down before three officers pinned her arms behind her back and attached the handcuffs. "No!" the girl screamed.

Strikingly, Bell said, the nation's juvenile justice system is so dysfunctional that everyone involved in the incident could plausibly claim they were just doing their jobs. "Teachers say, 'We were told if they act out, call the police.' Cops say, 'Hey, when they call, our job is to come.' The juvenile justice

system will say that [it's not] here for 5-year-olds. Everybody's going to point – [it's] a circular firing squad."

There is enough blame to go around, experts say.

Schools have relinquished authority for student discipline to "school resource officers," who often patrol school hallways armed

with little or no training in working with youth. And juvenile court judges accept referrals for low-level offenses that in decades past would never have reached a courtroom.

Addressing judges, Bell said: "Schools and public agencies refer these problem cases to you because you have jurisdiction, because you exercise it, and because you hold out juvenile court a false promise. That false promise is that you can provide solutions for these young people. Actually, I don't know that you can." To access Bell's PowerPoint presentation, go to www.inbar.org and click on "ISBA Links" at the top of the home page (among the menu of clicks is "Racial Disparities Summit").

When Steven C. Teske took the juvenile court bench in Clayton County, Ga., in 1999, the average caseload was 165; two-thirds were for minor offenses. In 2003, school referrals reached 1,262 – accounting for almost a quarter of the total referrals to court.

(continued on page 12) →

Law enforcement finds 'a better way'

The ISBA sponsored the "Pre-Summit Law Enforcement Roundtable" on Aug. 26 with more than 75 police officers, lawmakers and members of the legal community in attendance. In Indiana, black youth are significantly over-represented at arrest. Recognizing that over-representation of black youth at arrest makes a strong contribution to disproportionate minority contact at other key points of contact, the State Bar reached out to police officers, allowing them to weigh in on the unique challenges confronting them on the street.

"We're not pointing fingers," said JauNae M. Hanger, Indianapolis, a former member of the Indiana Commission on Disproportionality in Youth Services. "We want to get beyond the defensiveness and get excited about what Indiana can do to improve on this issue."

Eighty-six percent of students from Boston Public Schools were minorities; three-fourths of the transit police were white.

Large, often unruly groups of teens hung out at the stations after school. Passengers – mostly white – felt threatened.

To the youth, the cops were out to harass and arrest them. To Massachusetts Bay Transit Authority Police, their job was to keep the system safe. "We were given orders to clean up the youth disorder, and so this is what we did," Transit Police Chief Paul S. MacMillan said.

MacMillan, among speakers at the Indianapolis pre-summit meeting in August attended by police, judges, prosecutors and probation officers, said "T" police adopted a policy of zero tolerance – and cracked down.

(continued on page 15)

SUMMIT

continued from page 11

Alarmed by the trend, police, schools and parents joined with the juvenile court to devise a protocol that standardized consequences for misbehaving youth.

On the first minor offense, the school resource officer issues a citation. The officer may issue two more citations before requiring that the student and his parent attend an educational workshop. If the student re-offends after that, he may be referred to juvenile court.

The protocol was approved in August 2004. In 2005, school referrals to court dropped by 45 percent. In 2007, there were 523 referrals – a 59 percent drop from the high mark in 2003.

The number of serious weapons brought on campus fell 70 percent. The decline was ascribed to students' new willingness to share information with police, who they no longer saw as the enemy.

Today, the caseload in Teske's court is 30. But these are the kids "you need to be scared of," the judge says. Because of increased scrutiny and treatment, the recidivism rate among high-risk offenders has dropped 50 percent.

"My question is, who's *really* tough on crime?" Teske said. "Is it me or the zero-tolerance people?"

In Wisconsin, "sheer embarrassment" became an engine for change, said Madison Police Chief Wray.

Leaders in that progressive state were appalled at data showing Wisconsin had one of the nation's highest rates for incarcerating people of color. Publicized arrests of minority youths raised parental doubts about the safety of the school system.

Officials, Wray said, feared "white flight."

"When that happens, when the schools go, the cities go. And

there's the perception that we have to intervene."

Bell proposes a three-tiered hierarchy for juvenile offenders: high-risk individuals, who are detained; medium-risk, who are supervised in the community; and low-risk, who are sent home.

He noted the case of Jenna Bush, daughter of former President Bush, who at age 19 was cited in 2001 for underage drinking. Properly judged as low risk, she was released. No thought was given to referring her to Juvenile Hall, Bell said.

"Now, let Julio Rodriguez be busted for underage drinking in that same Austin, Texas, bar, and juvenile court [may be] totally appropriate for him. Same offense, different outcome."

Despite research showing the ineffectiveness of confining youth for minor offenses, the drumbeat for incarceration – Bell calls it a national addiction – continues. Politicians such as State Rep. Matt Pierce, Bloomington, who advocate early-intervention strategies over detention get an earful from their hard-line peers.

"We love to just pound the table: zero tolerance, mandatory sentences. People who do these crimes are going to do the time," the Monroe County Democrat said. "That's really popular around election time. But it just ends up bankrupting us."

According to the Justice Policy Institute, states waste billions of dollars each year confining nonviolent youth. Approximately 93,000 young people are held in juvenile justice facilities across the United States. Seventy percent of these youth are held in state-funded, post-adjudication, residential facilities, at an average cost of \$240 per day per youth.

But the cost to the nation is actually much higher, Bell says.

"You cannot compete in a global [economy] with a significant percentage of the population unable to read, wasting their potential by standing in line at some facility, eating in silence and believing they have had a good day when they can manipulate the guards to get an extra helping of spaghetti," he said.

The ABA, noting that zero-tolerance results in expulsion or suspension "irrespective of any legitimate explanation," is on record opposing discriminatory, zero-tolerance policies in schools. While designed for students who intentionally offend, the policy too often is applied to those who misbehave as a result of emotional problems or other disabilities, the group found.

"Zero tolerance has become a one-size-fits-all solution to all the problems that schools confront," the ABA position paper says. "It has redefined students as criminals, with unfortunate consequences."

Brandon Jordan was lucky. The youth appeared headed toward a life of crime after spending time in a juvenile correctional facility. But he was helped by a group that mentored him. "For the first time in his life, Brandon had someone who cared about him," said Marion Superior Court Judge Tanya Walton-Pratt.

Now a freshman at Ivy Tech, he participated in the summit's final discussion panel.

"It's hard for me to explain what it feels like to have a second chance," he told the audience. "If they had not been there for me ..." His voice trailed off.

As Brandon fought back tears, applause washed over him. 🎧

Efforts like those in Indiana are courageous and important as they attempt to address the needs of young people of color, their families and the governmental systems that serve them. While it may seem to be an overwhelming task to replicate these types of significant changes, the summit's purpose was to expose and educate Indiana's key stakeholders to the kinds of changes that can sweep across Indiana and have a huge, positive impact on the rate at which youth are currently entering the juvenile justice system, specifically youth of color. The summit is not the final step, but an extremely important step, among many to follow. A summit report will be released later this year, and a working group will be designated to continue this effort.

We hope this article will spur other bar associations to take the lead in their respective states. Bar associations are in a unique position to reach out to all stakeholders, getting all points of contact in the juvenile justice system sitting around the same table. If you are interested in learning more about Indiana's "Summit on Racial Disparities in the Juvenile Justice System: A Statewide Dialogue" or would like permission to adapt the ISBA's summit materials (to include press packet materials), please contact JauNae Hanger at 317/375-8623 or jhanger@wapleshanger.com.

LAW ENFORCEMENT

continued from page 12

Between 1996 and 1999, juvenile arrests rose 47 percent. Arrests of black teens jumped 31 percent, from 209 to 273. Hispanic teen arrests jumped 235 percent, from 26 to 87.

The arrests – many for minor offenses such as disorderly conduct and vandalism – brought cries of racism from parents.

Courts questioned the validity of the charges.

One legislator called the police actions “child abuse.”

“This is not how you do it,” said Lisa H. Thureau, a Massachusetts attorney and youth advocate, who filed a lawsuit in 2001 on behalf of 11 students who claimed police interrogated and arrested minorities without cause. “You tell a youth, *stop doing that*. You explain it and reason with him. Use it as a teachable moment, not as a slap-down.”

A task force named to study allegations of racial bias found that the police unfairly targeted black, Hispanic and Asian youths. The panel said this bred mistrust and hostility in minority communities.

“It appears the current philosophy and approach ... has created more problems than it sought to solve and was implemented to the detriment of children, particularly children of color,” the task force report said.

From the chaos came StopWatch, a nationally recognized program in which Massachusetts transit police partnered with schools, faith-based groups and the city of Boston to strengthen ties with schools and the public.

The suit by the 11 youths was settled, and Thureau went from department critic to its teacher. She trained officers in how to interact non-confrontationally with adolescents. For minor offenses, officers

‘We are addicts’

According to the quotable James Bell, founder and executive director of the W. Haywood Burns Institute, at the “Summit on Racial Disparities in the Juvenile Justice System: A Statewide Dialogue”:

“The awesome power of the state as manifested by the machinery of justice falls most heavily on the poor and, in the United States, people of color.”

“People talk about appropriate services for kids with mental health problems. *Where are they?* They are collapsing in the community around

us. Juvenile detention is becoming the mental health facility for so many communities.”

“We are addicts. That addiction has always been and remains our society’s reliance on incarceration as a primary instrument of social control. We are addicted to incarceration as a way to change behavior.”

“We have seen in some jurisdictions that referrals from the schools to juvenile hall are somewhere between 40 and 55 percent. Twenty years ago, you would have never seen those statistics. It’s a direct result of this notion: We ask no questions. *You go.*” •

began foregoing arrests in favor of counseling or referral to social service agencies.

Officers visit schools to educate students about crime prevention and the right way to behave on public transport. And a transit station is chosen daily where representatives from schools, youth agencies and other groups go to visit and interact informally with youths.

Juvenile arrests are down from a high of more than 600 to fewer than 100 last year.

Before the controversy, transit officers knew only one approach to take toward misbehaving youths: Arrest them.

“We found a better way,” Chief MacMillan said. – RW