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EXAMINING THE SCHOOL-TO-PRISON PIPELINE: SENDING STUDENTS TO PRISON INSTEAD OF SCHOOL

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Juvenile delinquents are often thought of as intrinsically evil. These youths are blamed for their own plight, believed to be a result of innate character flaws. However, such an obtuse perception is problematic. In many cases, these juvenile delinquents were made delinquents by a faulty system, namely, the School-to-Prison Pipeline.¹ The School-to-Prison Pipeline is a troubling phenomenon in which students are suspended, expelled or even arrested for minor offenses instead of being sent simply to an administrator's office.² Often, these students have backgrounds of poverty, abuse, neglect, and may even have learning disabilities.³ Instead of being offered counseling, "unruly" students are "isolated, punished, and pushed out" into the criminal justice system.⁴ Furthermore, non-White students are also more likely to fall victim to the School-to-Prison Pipeline.⁵ Considering that 40% of students expelled from American schools each year are Black and 70% of students involved in "in-school arrests" by law enforcement are either

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¹ *School-to-Prison Pipeline*, ACLU, <https://www.aclu.org/issues/juvenile-justice/school-prison-pipeline?redirect=racial-justice/what-school-prison-pipeline> (last visited Aug. 17, 2017).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*; Carla Amurao, *Fact Sheet: How Bad Is the School-to-Prison Pipeline?*, PBS, <http://www.pbs.org/wnet/tavissmiley/tsr/education-under-arrest/school-to-prison-pipeline-fact-sheet/> (last updated Mar. 28, 2013, 11:40 PM).

Black or Latino, this phenomenon is increasingly troublesome.⁶ Not only are students being referred to law enforcement unnecessarily, but they are also disproportionately Black or Hispanic.

The existence of the School-to-Prison Pipeline is a dynamic problem with both sociological and legal dimensions. The School-to-Prison Pipeline is hinged on three major sociological roots: lack of resources; race and socioeconomic status; and the rise of zero-tolerance policies.⁷ In addition, legal policies such as the No Child Left Behind Act of 2001 (NCLB), Every Students Succeeds Act (ESSA), and Gang Abatement and Prevention Act of 2009 (GAPA) compound the severity of the problem by institutionalizing racial inequalities and racism. This paper will not only examine each of the aforementioned sociological factors as they relate to the School-to-Prison Pipeline, but will also examine how the problem of the Pipeline is exacerbated by well-meaning but sociologically thoughtless uses of law.

By no means a comprehensive study, this paper aims to take a holistic approach in order to define and examine the multiple dimensions of the School-to-Prison Pipeline. As such, sources are all-encompassing and information is drawn from law reviews (Taslitz & Steiker; Simson), policy reports (American Civil Liberties Union (ACLU); National Association for the Advancement of Colored People (NAACP)), actual and proposed legislation (NCLB; GAPA; ESSA), and peer-reviewed journals (American Psychological Association (APA); Skiba et al.). This variety of sources was chosen because they encompass both the law and social realms. As mentioned, the School-to-Prison pipeline is truly a socio-legal problem, inherently a product of both law and societal interactions.

To start, the vicious cycle of the School-to-Prison Pipeline begins with a lack of resources, both physical and emotional.⁸ Schools that are notorious for being School-to-Prison Pipelines have seriously insufficient funding that leads to overcrowded classrooms, unqualified teachers, and no guidance counselors to

⁶ Amurao, *supra* note 5.

⁷ See generally American Civil Liberties Union, *supra* note 1.

⁸ *Id.*

support the emotional health of students.⁹ In turn, students are locked into “second-rate educational environments.”¹⁰ The subpar quality of schools is cemented by government-mandated programs that demand accountability on part of schools and teachers, such as the No Child Left Behind Act of 2001, which assesses progress and quality of schools through standardized tests.¹¹ The NCLB was signed into law by President George W. Bush as a reauthorization of the Elementary and Secondary Education Act of 1965.¹² The law increases the federal government’s role in providing both high-quality public education and increased funding for poor school districts.¹³ However, it does so by tying standardized test scores to school funding a means for holding teachers and schools accountable.¹⁴ Grants are only given to schools if test scores meet a certain minimum.¹⁵

The first consequence of the NCLB is that education within classrooms goes from well-rounded, rich foundational material to cold, methodical test preparation. Moreover, to better perform on these standardized tests and acquire better funding, teachers often encourage students who struggle with reading to dropout in order to improve overall test scores.¹⁶ And so, as a result of unqualified teachers and subpar mental and emotional health support systems, which are endemic to underfunded school districts, learning-disabled students are labeled delinquent for all the wrong reasons.¹⁷ Children who have learning disabilities and attend poor schools do not get the counseling and special attention they need to succeed.¹⁸ Unqualified teachers, in many cases, are unable to identify learning disabilities. But some teachers are able to identify students with learning disabilities, but choose to label disabled children as delinquent because they

⁹ *Id.*

¹⁰ *Id.*

¹¹ *How Testing Feeds the School-to-Prison Pipeline*, FAIRTEST (Mar. 31, 2010, 3:58 PM), <http://fairtest.org/how-testing-feeds-schooltoprison-pipeline>.

¹² *The New Rules*, PBS, <http://www.pbs.org/wgbh/pages/frontline/shows/schools/nochild/nclb.html> (last visited Aug. 17, 2017).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *See id.*

¹⁶ American Civil Liberties Union, *supra* note 1.

¹⁷ *See id.*

¹⁸ *See How Testing Feeds the School-to-Prison Pipeline*, *supra* note 11.

lack the training to properly help such students, are simply too lazy to care, or want to improve test scores, as mentioned.¹⁹ The NCLB wants to help underprivileged school districts, but instead ends up becoming a root cause for the delinquency these children find themselves in.²⁰ Had the NCLB task force done a socio-legal study of stakeholders and potential consequences, this pitfall might have been avoided.

Consequently, when students who are learning-challenged or emotionally damaged misbehave, they are suspended or expelled.²¹ Instead of meeting with a counselor to uncover the motive behind the disruptive behavior, these children are sent back to homes from which their original unhappiness and neglect stem.²² The inability to receive proper emotional support is a direct result of a lack of resources. Interestingly, FairTest, a fair and open testing interest group, attributes dry, test-preparation style curriculums as a cause of misbehavior, due to lack of engagement in the classroom.²³ Evidently, the NCLB both provides a reason for students to misbehave and provides an incentive to teachers to remove those very students from class.²⁴ Back to an environment of negativity and bad influences, these ex-students develop bitterness for the system that rejected to rescue them.²⁵ Some who are suspended choose to drop out of school altogether as they have fallen too far behind.²⁶ Suddenly, a child whose future could have been brighter than his parents is on the streets with no education and nothing to do; so, he turns to crime.²⁷ Thus, a child is funneled from school to prison in a matter of months.

In addition to the aforementioned vicious cycle, there is a certain predisposition that exists regarding which students are funneled through the School-to-Prison Pipeline. While troubled, urban, and poor students are more likely to be victims of the

¹⁹ American Civil Liberties Union, *supra* note 1.

²⁰ See *How Testing Feeds the School-to-Prison Pipeline*, *supra* note 11.

²¹ Amurao, *supra* note 5.

²² *Id.*

²³ *How Testing Feeds the School-to-Prison Pipeline*, *supra* note 11.

²⁴ *Id.*

²⁵ Amurao, *supra* note 5.

²⁶ *Id.*

²⁷ *Id.*

School-to-Prison Pipeline across the board, non-White students have a higher likelihood of being harshly punished for disruptive behavior in the classroom.²⁸ W.E.B. DuBois once said, “[T]he problem of the Twentieth Century is the problem of the Color Line.”²⁹ Indeed, the issue of the Color Line, or the division that exists between races, is a major sociological root of the School-to-Prison Pipeline.³⁰ Despite the progress made during the Civil Rights era in the 1960s, a child’s race still affects his chances of success in life.³¹

A particularly telling case of the increased likelihood of severe punishment for African-American youths is the Jena Six case. In a Harvard Civil Rights-Civil Liberties Law Review article, Taslitz and Steiker detail the Jena Six case which “refers to six African American students at Jena High School (‘Jena High’) in Jena, Louisiana who were expelled from school and charged with attempted second-degree murder and conspiracy to commit second-degree murder for what the students’ supporters have called a ‘school yard brawl.’”³² Though five of the six students were juveniles, the assigned prosecutor chose to try one student as an adult, without a hearing, on charges that yielded nearly twenty-three years in prison.³³ While this student was referred back to juvenile court, Taslitz and Steiker attribute the fact that this situation escalated so quickly in severity to the African-Americanness of the students, particularly in the South.³⁴

What is clear is from this example is that negative stereotypes of non-White students are perpetuated as a result of the historical segregation and discrimination faced by African-Americans and other minority groups. What was once *de jure* in terms of segregation and discrimination, though struck down, still influences the conditions of today. As Taslitz and Steiker assert regarding the Jena Six case and the general *de facto* power

²⁸ *Id.*

²⁹ W.E.B. DU BOIS, *THE SOULS OF BLACK FOLK*, at xv (Dover Publ’ns 1994) (1903).

³⁰ *School to Prison Pipeline*, NAACP LDF, <http://www.naacpldf.org/case/school-prison-pipeline> (last visited Aug. 17, 2017).

³¹ *See id.*

³² Andrew E. Taslitz & Carol Steiker, *Introduction to the Symposium: The Jena Six, the Prosecutorial Conscience, and the Dead Hand of History*, 44 HARV. C.R.-C.L. L. REV. 275, 275 (2009).

³³ *Id.* at 275-76.

³⁴ *Id.* at 276-77.

of Whiteness, “racialized meaning of modern actions also affects public attitudes toward crime[] [and] the content of resulting legislation . . . [C]ontrol over cultural meanings, including in the legal system, is an immense form of social power.”³⁵

As such, preconceived notions influence the actions administrators take when dealing with challenging students. An NAACP policy report shows that students of color often receive harsher punishments for engaging in the same misconduct as White students.³⁶ In fact, students from African-American families are 2.19 to 3.78 “times as likely to be referred to the office for problem behavior as their White peers.”³⁷ For example, a study conducted by the Advancement Project in 2007 found that for every 100 suspended students, “15 were Black, 7.9 were American Indian, 6.8 were Latino, and 4.8 were White.”³⁸ The same study goes on to report that the U.S. has increased funding for incarceration by 127% between 1987-2007 versus only a 21% increase in funding for higher education during the same period.³⁹ The study explores the numbers projected by the U.S. Department of Education and supports the observation of the race factor in school suspensions as punishment for misbehavior.

Aside from the direct role of race in the School-to-Prison Pipeline, there is also a more subtle socio-legal consequence. African-Americans are more likely to be impoverished as a result of historical segregation, discrimination, and unfair bank lending practices. In fact, the unemployment rate in 2013 for African-Americans was 12.6% whereas the unemployment rate for Caucasians was 6.6%.⁴⁰ Consequently, African-Americans are “highly concentrated in neighborhoods with high poverty” as a result of the existing income disparity between African-

³⁵ *Id.* at 295.

³⁶ NAACP Legal Defense Fund, *supra* note 30.

³⁷ Russell J. Skiba et al., *Race Is Not Neutral: A National Investigation of African American and Latino Disproportionality in School Discipline*, 40 *SCH. PSYCHOL. REV.* 85, 85 (2011).

³⁸ Amurao, *supra* note 5.

³⁹ *Id.*

⁴⁰ Drew DeSilver, *Black Unemployment Rate is Consistently Twice That of Whites*, PEW RES. CTR. (last visited July 21, 2017), <http://www.pewresearch.org/fact-tank/2013/08/21/through-good-times-and-bad-black-unemployment-is-consistently-double-that-of-whites/>.

Americans and Caucasians.⁴¹ This translates to African-Americans primarily living in rundown, low-resourced urban areas. Moreover, crime statistics have shown that poor urban cities have higher crime rates relative to suburban neighborhoods.⁴² Essentially, African-Americans are unable to escape the lingering effects of historical discrimination.

What does this mean for African-American children? For one, they are most likely to be attending underfunded public schools in unsafe neighborhoods. African-American students who have learning disabilities or require counseling because of neglect and abuse are unable to get the help they need because the schools they attend do not have means or qualifications to provide such help. In the same vein, impoverished African-American children are often not in the financial position to frequent medical doctors and have medicine prescribed in order to control learning disabilities like Attention Deficit Hyperactivity Disorder.⁴³ In fact, in a government report filed by Daniel J. Losen, Director of the Center for Civil Rights Remedies of the Civil Rights Project at UCLA, it was found that approximately 25% of African-American children with disabilities were suspended at least once versus 0.09% of Caucasian students.⁴⁴ So, the misbehavior of Caucasian students is written off as a medical condition whereas the misbehavior of African-American students is considered an inherent character flaw.⁴⁵ Such persisting inequality puts African-Americans, as well as other minority students right at the cusp of the School-to-Prison Pipeline.

Finally, strict zero-tolerance policies in schools across the nation combine the sociological factors of insufficient resources and race with legal authority in order to perpetuate the School-to-Prison Pipeline. Zero-tolerance policies automatically impose severe punishments on students despite the circumstances in

⁴¹ Algernon Austin, *African Americans Are Still Concentrated in Neighborhoods With High Poverty and Still Lack Full Access to Decent Housing*, ECON. POL'Y INST. (July 22, 2013) <http://www.epi.org/publication/african-americans-concentrated-neighborhoods/>.

⁴² Michael Wodnicki, *A View of the Urban Underclass: How Crime and Poverty Create a Poor Society*, ETHICS OF DEV. IN A GLOBAL ENV'T. (June 4, 1999), http://www.stanford.edu/class/e297c/poverty_prejudice/soc_sec/hview.htm.

⁴³ *Attention-Deficit/Hyperactivity Disorder (ADHD)*, CTR. FOR DISEASE CONTROL & PREVENTION, <http://www.cdc.gov/ncbddd/adhd/>. (last visited July 21, 2017).

⁴⁴ American Civil Liberties Union, *supra* note 1.

⁴⁵ Smiley, *supra* note 3.

which the misbehavior occurred. The American Civil Liberties Union, in a recent policy report, attributed the rise of zero-tolerance policies to “lacking resources, incentives to push out low-performing students, and [responses] to a handful of highly publicized school shootings.”⁴⁶ After the Columbine shootings in 1999, schools have responded with strict school rules and even stricter punishments for miscreants. However, false accusations are often made in this system. Zero-tolerance policies work in a way that students are never afforded the chance to explain their behavior. For example, a school that has a zero-tolerance policy on cellphones will not care that a child’s father is in the hospital and therefore needs to carry a cellphone to be in touch with his mother. Simple things like dress code violations and talking in class lead to intervention by law enforcement officers, who have been patrolling schools more and more – also a result of the increase in school shootings.⁴⁷ In fact, since Columbine, there has been a significant increase in the reliance of police in schools. Often, school districts employ “school resource officers’ to patrol school hallways, often with little or no training in working with youth.”⁴⁸ In this way, school-based arrests increase and the “criminalization of school children” begins.

Zero-tolerance policies are problematic because there is always serious racial disproportionality present. As mentioned earlier, perpetuated negative stereotypes lead to African-American students receiving harsher punishments, like suspension and expulsion, and less mild discipline than their Caucasian peers.⁴⁹ An example of this punitive disparity is in New Orleans, Louisiana. The Orleans Parish School’s expulsions under zero-tolerance policies were 100% African-American with 67% of their school-related arrests being African-American students.⁵⁰ The trend continues throughout the nation in regions with the same socioeconomic demographic as New Orleans.

⁴⁶ American Civil Liberties Union, *supra* note 1.

⁴⁷ Rick Rojas, *Zero-Tolerance Policies Pushing Up School Suspensions, Report Says*, L.A. TIMES (Oct. 6, 2011), <http://articles.latimes.com/2011/oct/06/local/la-me-1006-discipline-20111006>.

⁴⁸ American Civil Liberties Union, *supra* note 1.

⁴⁹ *Zero Tolerance and Alternative Strategies: A Fact Sheet for Educators and Policymakers*, THE NAT’L ASS’N OF SCH. PSYCHOLOGISTS (last visited July 21, 2017), http://www.naspcenter.org/factsheets/zt_fs.html.

⁵⁰ Smiley, *supra* note 3.

In addition, proposed legislation such as the Gang Abatement and Prevention Act of 2009 (herein GAPA) signals a troubling trend among lawmakers to further institutionalize overzealous intervention by law enforcement in schools.⁵¹ GAPA expands the scope of power of law enforcement to arrest and prosecute individuals involved in gang-related crime. This spells trouble for already-targeted and disadvantaged youth of color. As per the NAACP, “of special concern is the expansion of the definition of a ‘gang’ and ‘Gang Crime,’ which are so broad and vague in S. 132 [GAPA] that they will dramatically increase unwarranted federal prosecution of children and youth, especially low-income youth and youth of color.”⁵² Because there is no inclusion of “criminal intent” as a main tenet of the definition, the NAACP argues that “a group of young people who come together for any legal group activity and not for the purpose of committing gang crime will still be vulnerable to federal prosecution under this bill,” resulting in discriminatory enforcement.⁵³ And so, even if non-Caucasian children behave properly in class, they are vulnerable to predatory law enforcement on the playground. This is a Catch-22 if there ever was one.

Having explored in detail the phenomenon of the School-to-Prison, the gory details beg the question: what is to be done? First, it would be illogical to expect a sensible, systemic remedy from the judiciary or legislators. Passing new laws, especially if sociologically thoughtless, only compounds the problem. In December 2015, the Every Student Succeeds Act (ESSA) was signed by President Barack Obama in an effort to repeal NCLB.⁵⁴ Yet, the new legislation only pushes standardized test performance targets to the states from the federal government, rather than doing away with mandatory goals all together. ESSA is simply a shift of accountability from the federal government to the states. Students will continue to take standardized tests and continue to fall victim to the pitfalls of thoughtless legislation. In fact, ESSA may prove to be even more detrimental as states may

⁵¹ S. 132, 111th Cong. (2009).

⁵² *Action Alert: NAACP Opposes Discriminatory Provisions In Gang Abatement And Prevention Act*, THE WICHITA BRANCH NAACP BLOG (last visited July 21, 2017), <http://wichitanaacp.blogspot.com/2009/07/action-alert-naacp-opposes.html>.

⁵³ *Id.*

⁵⁴ Every Student Succeeds Act, Pub. L. No. 114-95 § 114 Stat. 1177 (2015-2016).

choose to scale back funding for minority and impoverished students. Because states are now free to design their own accountability plans, it is likely that the education gap for minority and poor students in the United States will be exacerbated.

Moreover, well-meaning politicians wanting to seem “hard on crime,” eager for votes from constituents, cannot be trusted to act in the best interest of those underprivileged students whose voices are stifled. Fortunately, many activist groups are aware of the racial disparities in the over-criminalization of juveniles. Several interest groups are working to abolish zero-tolerance policies across the nation, though it is difficult for them to affect change in individual school districts among states. The NAACP Legal Defense and Educational Fund testified in front the U.S. Senate Judiciary Committee’s hearing on ending the School-to-Prison Pipeline.⁵⁵ In this hearing, the NAACP requested annual reporting of disciplinary indicators used by schools and additional funding to develop more inclusive disciplinary techniques. However, the most effective way to specifically target the School-to-Prison Pipeline would be to both de-emphasize standardized test scores that are used to determine funding for schools and to nationally ban zero-tolerance policies for petty mistakes. As evidenced by the recent passage of ESSA, the likelihood of these measures being struck down is quite slim. Perhaps the most feasible start to abolishing the School-to-Prison Pipeline is equipping educators and school administrators with the proper skills to handle learning-disabled students, or knowing when to handle a matter within the school system as opposed to legally.

The downside to the aforementioned policy proposals is that zero-tolerance policies are effective in controlling students and ensuring safety. To dilute zero-tolerance policies would prove problematic in avoiding future large-scale shooting or other catastrophes. The downside to increased funding, on the other hand, is a potential mismanagement of funds that will not affect students who need help positively. Every policy has its cons; however it is imperative action be taken to keep students in schools and out of prisons. The only policy that may not have too

⁵⁵ NAACP Legal Defense Fund, *supra* note 30.

serious a negative consequence is further training and professionally developing on-the-ground teachers and administrators. In any case, more knowledgeable educators always benefit students.

In conclusion, the School-to-Prison Pipeline is a troubling phenomenon in which students are suspended, expelled or even arrested for minor offenses instead of being sent simply to an administrator's office. Three major sociological roots: lack of resources, race and socioeconomic status, and zero-tolerance policies, in conjunction with legislation and once-legal but now persisting structural discrimination result in the creation of disproportionately minority victims of the School-to-Prison Pipeline. Schools that are underfunded and lack quality teachers fail to provide adequate resources to disabled students. Often, these students are African-American and unable to visit doctors to substantiate their disabilities, thus going undiagnosed. When vulnerable students commit one minor slip-up, zero-tolerance policies ensure that they will be punished harshly and thus the School-to-Prison Pipeline is born. While several interest groups are working to initiate valid policies that will reduce the number of youths in prison, it would behoove society to invest in prevention and early intervention. Relying on the courts or legislators for an answer will simply not do. Educators must be compassionate and highly trained. Zero-tolerance policies must not be followed with blind deference. There is no room for bias in educational facilities, nor is there room for lazy educators. It is easy to ignore this problem if one is unaffected by it, but such a stance is dangerous. Society as a whole will suffer in the future if today's youth are not given the proper resources, help, and compassion needed to become tomorrow's leaders.