JTIP Unit XII: Holistic Juvenile Defense Advocacy
LESSON 41, Raising Race

SAMPLE PLEADINGS:

WHAT FOLLOWS IS A SERIES OF EXCERPTS FROM SEVERAL PLEADINGS FILED BY THE ILLINOIS OFFICE OF THE STATE APPELLATE DEFENDER. THESE EXCERPTS INCORPORATE EXPLICIT RACIAL ARGUMENTS IN A VARIETY OF CONTEXTS INCLUDING A CHALLENGE TO JUVENILE TRANSFER TO ADULT COURT, A CHALLENGE TO DNA COLLECTION, A CHALLENGE TO THE USE OF PRIOR ARRESTS AT SENTENCING, AND A REQUEST FOR REVERSAL AND REMAND FOR NEW TRIAL AFTER A JUDGE'S RACIAL REMARKS DURING TRIAL.

EXCLUDED JURISDICTION/AUTOMATIC TRANSFER CHALLENGE

Rather than ensuring fairness, automatic transfer statutes in general have been associated with increasing racial disparities in the criminal justice system, both nationally and in Illinois. Illinois Juvenile Justice Initiative, *Automatic Adult Prosecution of Children in Cook County, Illinois. 2010-2012*, 4, 7-9, 11-13 (April 2014). Indeed, a recent review of excluded jurisdiction prosecutions in Cook County reveals that of the 257 children subject to excluded jurisdiction between 2010 and 2012, 83 percent were African-American and 16 percent were Hispanic. *Automatic Adult Prosecution of Children in Cook County*, at 4, 12-13. One child was white. *Automatic Adult Prosecution of Children in Cook County*, at 4, 12. A transfer system involving an evidentiary hearing and judicial discretion could do nothing but improve these disparities.

DISCRETIONARY TRANSFER TO ADULT COURT

The NAACP opposed the transfer of youth to adult court in light of the highly disproportionate impact of transfer laws on youth of color, and the Council of Juvenile Correctional Administrators "strongly opposes the expansion of eligibility criteria for the waiver and transfer of youth into the adult criminal system [given that] [t]hese policies have resulted in the placement of hundreds of youths into adult penal facilities without adequate treatment services." See Neelum Arya and Ian Augarten, *Critical Condition: African American Youth In The Justice System*, at 25, 37, citing NAACP Resolution "Opposition to Transfer of Youth to the Adult Criminal System"(available at: http://www.campaignforyouthjustice.org/documents/AfricanAmericanBrief.pdf) (last visited January 19, 2011)

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The negative effects of transfer on communities of color is striking, given that African-American youth are far more likely to be transferred to adult criminal court

and receive harsher sentences than other youth. See, *e.g.*, Michele Deitch, et. al., *From Time Out to Hard Time: Young Children in the Adult Criminal System*, Austin, TX: The University of Texas at Austin, LBJ School of Public Affairs, at 32-34 (2009) (available at: http://www.utexas.edu/lbj/archive/news/images/file/From%20Time%20Out%20to%20Hard%20Time-revised%20final.pdf.) (last visited Jan. 20, 2011).

CHALLENGE TO DNA COLLECTION

In addition to authorizing the collection of vast amounts of unnecessary information, Section 5-4-3 authorizes far greater uses of the profiles than necessary to serve the governmental purpose of resolving past and future crimes. Specifically, Section 5-4-3 authorizes the use of the data collected to create "a population statistics database," 730 ILCS 5/5-4-3 (f)(iii). Section 5-4-3 does not define the term "population statistics database," but a similar Ohio statute defines this type of database as one used "for determining the frequency of occurrence of characteristics in DNA records." Ohio Rev. Code, Sec. 109.573(A)(3). The term also appears in a 1990 report from Congress's Office of Technology Assessment which opined that "[a] population statistics database might someday yield information useful for additional investigative purposes" such as "narrow[ing] the field of potential suspects [by race]," but it noted such a use carries with it the risk of racial discrimination against individuals or groups. U. S. Congress, Office of Technology Assessment, *Genetic Witness: Forensic Uses of DNA Tests*, OTA-BA-438 (Washington, D.C.: U. S. Government Printing Office, July 1990), 120-21, http://govinfo.library.unt.edu/ota/Ota_2/DATA/1990/9021.PDF (last visited April 20, 2006).

At least equally as troubling, the creation of such a database raises the spectre of behavioral and phenotypic research on possible genetic links between race, gender, genetic-based behavioral disorders, or physical characteristics and certain types of criminal behavior. *See* Jonathan

Kimmelman, *Risking Ethical Insolvency: A Survey of Trends in Criminal DNA Databanking*, 28 J.L. Med. & Ethics 209, 212 (2000); Green & Thomas, *DNA: Five Distinguishing Features for Policy Analysis*, *supra*, at 577, 584-85. "The existence of DNA repositories on convicted felons will eventually prove irresistible to behavioral geneticists who will seek to determine whether certain mutations that are correlated with behavioral problems are more prevalent than expected among such persons." Michael Avery, *Landry v. Attorney General: DNA Databanks Hold a Mortgage on Privacy Rights*, 44 B.B.J. 18, 34 (2000) (citation and internal quotes omitted) (discussing government efforts aimed at studying biological links to criminal behavior). Furthermore, at least one commentator has noted that collection of any genetic information gives rise to concerns of eugenics, Gostin, *Health Information Privacy*, *supra*, at 491, a far from alarmist concern in light of government efforts to sterilize convicted felons in the not-so-distant past, *see Skinner v. Oklahoma*, 316 U.S. 535, 536-37, 62 S.Ct. 1110, 1111, 86 L.Ed. 1655, 1658 (1942).

Such a population statistics database is wholly unnecessary to serve the government's primary interest in solving crimes by matching genetic profiles contained in the database to crime scene profiles. In addition, this provision also heightens the individual privacy interests at stake because it lacks an anonymity provision, 730 ILCS 5/5-4-3 (f) (iii), despite a Congressional requirement to that effect for states participating in the FBI's national database, 42 USCS 14132 (b)(3)(D), (c) (West 2005). This failure to remove personally identifying information appears to be intentional, given that the subsection authorizing the use of the database for quality assurance purposes contains an anonymity requirement. *Compare* 730 ILCS 5/5-4-3(f)(iii) *with* 730 ILCS 5/5-4-3(f)(iv); *but see* 20 Ill. Adm. Code 1285.60 (b) (West 2005) (administrative code currently provides for anonymity when profiles used to create a population statistics database). These concerns regarding the potential for future misuse of such a population statistics database are substantial. "Thomas Jefferson once warned that 'the time to guard against corruption and tyranny

is before they shall have gotten hold of us. It is better to keep the wolf out of the fold, than to trust to drawing his teeth and talons after he shall have entered.'" *United States v. Kincade,* 379 F.3d 813, 844 (9th Cir. 2004) (Reinhardt, J., dissenting), *quoting* Thomas Jefferson*, Notes on the State of Virginia* 121 (William Peden ed., 1955).

CONSIDERING EVIDENCE OF PRIOR MERE ARRESTS AT SENTENCING

First, the practice of considering mere arrests or police contacts in delinquency proceedings has conflicted with the express terms of the current Juvenile Court Act since 1999, when the legislature expressly guaranteed minors "all the procedural rights of adults in criminal proceedings, unless specifically precluded by laws that enhance the protection of such minors." 705 ILCS 405/5-101(3) (West 2008). Furthermore, the use of mere arrest evidence unnecessarily threatens the reliability and fairness of juvenile sentencing proceedings. Simply put, the mere fact of an arrest or a police contact is no more relevant or reliable simply because the person facing imprisonment is a child rather than an adult.

Of particular concern is the effect on poor and minority children, for whom the risk of unfair prejudice is especially acute. As a federal circuit court recently observed,

> "officers in affluent neighborhoods may be very reluctant to arrest someone for behavior that would readily cause an officer in the proverbial 'high crime' neighborhood to make an arrest. A record of a prior arrest may, therefore, be as suggestive of a defendant's demographics as his/her potential for recidivism or his/her past criminality." *United States v. Berry*, 553 F.3d 273, 285 (3rd Cir. 2009).

While "[s]tudies have produced conflicting results as to whether offenders' race or ethnicity influences decision making in the juvenile justice system, *** [t]he scholarly consensus *** is that there may be small effects of race throughout the process that have a cumulative effect on adjudicatory and dispositional outcomes, with the greatest effects occurring likely at the early stages (arrest, juvenile court intake, detention)." Richard E. Redding, *Using Juvenile Adjudications for Sentence Enhancement Under the Federal Sentencing Guidelines: Is it Sound Policy?* 10 Va. J. Soc.Pol'y & L. 231, 252 (2002). In Illinois, "African-American youth between the ages of 10 and 16 *** [in 2005] were arrested at a level that was more than 300 percent of their representation in the general youth population" and they were "six times more likely to be arrested than [] Caucasian youth." Illinois Juvenile Justice Commission, Annual Report to the Governor and General Assembly for Calendar Years 2007 and 2008, p. 4, http://www.dhs.state.il.us/OneNetLibrary/27897/documents/CHP/Reports/AnnualReports/IJJCAnnualReport2007-2008.pdf (last visited July 20, 2010).

The question of whether delinquency courts should be allowed to rely on evidence deemed too unreliable for admission in criminal courts is an issue of broad applicability. While it is impossible to know exactly how many juvenile dispositions are unfairly affected by the introduction of mere arrest evidence, thousands of children are adjudicated delinquent in Illinois every year (Children and Family Justice Center *et al.*, *Illinois: An Assessment of Access to Counsel & Quality of Representation* http://www.law.northwestern.edu/cfjc/docs/ILAssessmentReport.pdf (last visited July 30, 2010)), and over 1200 are incarcerated in Department of Juvenile Justice facilities (2008 IDOC Report, p. 23, http://www.idoc.state.il.us/subsections/reports/annual_report/FY08%20DOC%20An

nual%20Rpt.pdf (last visited July 30, 2010)). Given the current acceptance of mere arrest evidence at sentencing, it is reasonable to assume that a substantial number of these commitments were influenced by such evidence.

JUDICIAL BIAS AND ADOPTION OF REASONABLE PERSON STANDARD

THE TRIAL COURT MADE COMMENTS SUGGESTING BIAS AGAINST THE MINOR BASED ON THE GIRL'S RACE, AND THIS CAUSE SHOULD BE REVERSED AND REMANDED FOR A NEW TRIAL BEFORE A DIFFERENT JUDGE.

Immediately after finding the minor guilty of aggravated battery of a teacher following a bench trial, the trial court delivered a long and apparently routine lecture aimed at African American minors which was charged with racial undertones. Among other things, the court admonished the minor that Dr. Martin Luther King, Jr., did not "have his brains blown out" so that African Americans could "commit crimes, get in trouble at school and not . . . contribute." This colloquy so infected the integrity of the bench trial which immediately preceded it that this Court should reverse and remand for a new trial before a different judge.

Standard of Review

As set forth fully below, this Court should adopt the reasonable person standard used by other jurisdictions to evaluate judicial comments suggesting racial bias. That standard asks whether a reasonable person hearing or reading the comments might question the impartiality of the judge based on racial considerations. *E.g.*, *United States v. Leung*, 40 F.3d 577, 586-87 (2d Cir. 1994).

Analysis

The Due Process Clause of the Fourteenth Amendment to the United States Constitution guarantees an individual accused of a crime the right to be tried before an unbiased judge. *People v. Campbell*, 129 Ill.App.3d 819, 820 84 Ill.Dec. 913, 914, 473 N.E.2d 129, 130 (4th Dist. 1984), *citing In re Murchison*, 349 U.S. 133, 75 S. Ct. 623, 99 L. Ed. 942 (1955). When bias is based on

race, equal protection guarantees are violated as well. *See Batson v. Kentucky*, 476 U.S. 79, 97-98, 106 S.Ct. 1712, 1723-24, 90 L.Ed.2d 69, 88 (1986). As a general matter, judges have a duty to uphold "the integrity and reputation of the judicial process." *See People v. Lambert*, 288 Ill.App.3d 450, 463, 224 Ill.Dec. 360, 369, 681 N.E.2d 675, 684 (2d Dist. 1997). That obligation includes "assuring the public that justice is administered fairly, because the appearance of bias or prejudice can be as damaging to public confidence as would be the actual presence of bias or prejudice." *People v. Bradshaw*, 171 Ill.App.3d 971, 975-76, 121 Ill.Dec. 791, 794, 525 N.E.2d 1098, 1101 (1st Dist., 3d Div. 1988).

> "Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all provisions of this code are precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law."

Ill. Sup. Ct., Preamble, Proc. R.

Although the United States, including its judiciary, has a shameful history on the issue of race in many respects, *see Plessy v. Ferguson*, 163 U.S. 537, 16 S.Ct. 1138, 41 L.Ed. 256 (1896), our courts have spent the last several decades condemning the improper treatment of race inside American courtrooms, *see*, *e.g.*, *Batson*, 476 U.S. at 97, 106 S.Ct. at 1723, 90 L.Ed.2d at 88 (racial discrimination in jury selection violates equal protection). For example, inappropriate racial references by prosecutors now meet with universal condemnation in Illinois courts. In *People v. Turner*, this Court reversed as a matter of plain error where the prosecutor used the phrase "blackey

tromp whitey" and denigrated the intelligence of an African American juror in closing argument. *Turner*, 52 Ill.App.3d 738, 739-40, 10 Ill.Dec. 599, 600-01, 367 N.E.2d 1365, 1366-67 (4th Dist. 1977). Similarly, in *People v. Richardson* the appellate court reversed as a matter of plain error where the prosecutor argued in closing that African Americans did not value the truth and would lie "to protect one of their own." *Richardson*, 49 Ill.App.3d 170, 172-73, 7 Ill.Dec. 3, 5, 363 N.E.2d 924, 926 (5th Dist. 1977); *see also People v. Johnson*, 114 Ill.2d 170, 199, 102 Ill.Dec. 342, 355, 499 N.E.2d 1355, 1368 (1986) (condemning prosecutorial reference to defendant as "'that black man'" as "intemperate and improper"); *People v. Bramlett*, 211 Ill.App.3d 172, 180, 182, 155 Ill.Dec. 528, 534, 536, 569 N.E.2d 1139, 1145, 1147 (4th Dist. 1991) (assuming impropriety of prosecutor's argument that a police officer and defendant shared an identity of interests based on race).

If racial comments by a prosecutor are "intemperate and improper," similar comments by the trial court are even less acceptable, given the judge's special role as "a highly visible symbol of government under the rule of law," Ill. Sup. Ct., Preamble, Proc. R. Canon 3 of the Code of Judicial Conduct specifically addresses the issue of racial bias on the bench:

> "A Judge Should Perform the Duties of Judicial Office Impartially and Diligently.
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> * * *
>
> A. Adjudicative Responsibilities
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> * * *
>
> (8) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, . . ."

188 Ill.2d R. 63.

In *People v. Wardell*, 230 Ill.App.3d 1093, 172 Ill.Dec. 478, 595 N.E.2d 1148 (1st Dist., 3d Div. 1992), the Illinois Appellate Court had occasion to address racially improper remarks by a trial

judge. Prior to sentencing two African American defendants for armed robbery and aggravated criminal sexual assault, the trial court stated, "You were going to have some more fun with some white girls." *Wardell*, 230 Ill.App.3d at 1097, 1103, 172 Ill.Dec. at 481, 485, 595 N.E.2d at 1151, 1155. The appellate court found that the judge's comment demonstrated that he considered the cross-racial nature of the crime in imposing sentence, and it reversed and remanded for resentencing. *Wardell*, 230 Ill.App.3d at 1101-03, 172 Ill.Dec. at 481, 484-85, 595 N.E.2d at 1151, 1154-55.

While the *Wardell* court concluded that the trial court demonstrated actual bias in its ruling, a showing of actual bias should not be a prerequisite for reversal when the record indicates judicial bias based on race. Comments which might lead a reasonable person to question the impartiality of the judge based on racial considerations should warrant reversal as well. This so-called "reasonable person" standard is employed by a variety of jurisdictions when evaluating racial remarks by a trial court. For example, Maryland's highest court recently addressed the following racially tainted judicial comments in *Jackson v. State*, 364 Md. 192, 772 A.2d 273 (2001):

> "Now, unfortunately, a number of communities in the lovely city of Columbia have attracted a large number of rotten apples. Unfortunately, most of them came from the city. And they live and act like they're living in a ghetto somewhere. And they weren't invited out here to behave like animals. Drugs and guns and drugs and guns. Its nonsensical. Other people don't want that. Other people don't tolerate that. . . . That's why people move out here. To get away from people like Mr. Jackson. Not to associate with them and have them follow them out here and act like this was a jungle of some kind. So. It's not. And our only chance to preserve it is to protect it."

Jackson, 364 Md. at 197-98, 772 A.2d at 275-76. The court found that the foregoing comments gave the impression that the judge based his sentence, at least in part, on the fact that the defendant came

from an urban area. *Jackson*, 364 Md. at 201, 772 A.2d at 278. The court further noted that the trial court's terminology could lead a reasonable person to conclude that the judge was racially biased. *Jackson*, 364 Md. at 202, 772 A.2d at 278-79.

While the Court of Appeals could not determine the existence of actual racial bias on the part of the trial court, it found that the racial overtones of the judge's comments were no less improper than more blatant comments by prosecutors which had been condemned in earlier cases; "the potential for a racially biased result remains the same." *Jackson*, 364 Md. at 202-03, 772 A.2d at 279. Accordingly, the Court of Appeals reversed and remanded for resentencing based on a "reasonable person" standard, which asks whether a trial court's comments could lead a reasonable person to question the impartiality of the judge. *Jackson*, 364 Md. at 207-08, 772 A.2d at 282.

The Second Circuit similarly has concluded that, even when it is confident that the trial court harbored no actual racial bias, comments which might suggest otherwise warrant reversal based on the appearance of impropriety. *Leung*, 40 F.3d at 586-87. The standard applied was whether "there is a sufficient risk that a reasonable observer, hearing or reading the quoted remarks, might infer, however incorrectly, that [the accused's] ethnicity . . . played a role" in the outcome. *Leung*, 40 F.3d at 586-87.

The Missouri Supreme Court reached a similar conclusion in *Missouri v. Smulls*, holding that a trial court's reference to "one drop of blood" in determining whether a particular venireperson was black "manifest[ed] a lack of understanding of the import of the issues underlying *Batson* and of what the codewords 'one drop of blood' mean to many participants in the judicial system." *Smulls*, 935 S.W.2d 9, 26-27 (1996).

> The reasonable-person standard . . . is not hypersensitive. It merely acknowledges the fact that prejudice is most often subtle, sometimes masquerading in superficially neutral language. No one would dispute that a judge should never use words or terms that suggest racism. Where there is ambiguity, the Court's obligation is to

> construe language in favor of assuring the appearance of fairness to the litigants.

Smulls, 935 S.W.2d at 27. Based on the reasoning of these courts, and given the particularly sensitive concerns surrounding racial bias, this Court should adopt the reasonable person standard in evaluating the propriety of race-based judicial comments and hold that judicial comments which would lead a reasonable person to question the impartiality of the judge based on race violate the Fourteenth Amendment to the United States Constitution and warrant reversal. *See Jackson*, 364 Md. at 207, 772 A.2d at 282-83.

Adoption of the reasonable person standard for race-based instances of potential judicial bias has several advantages. First and foremost, the reasonable person standard serves the fundamental aim of preserving the appearance of fairness and the integrity of the court which is indispensable to our system of justice. Second, even well-intentioned statements may lead to the impression that the results of a proceeding are due to racial bias. Under the reasonable person standard, the integrity of the judiciary is preserved without the need to label an insensitive or well-intentioned judge as harboring actual hostile racial sentiments. Third, the reasonable person standard is consistent with subsection (C) of Canon 3 which provides that, "'[a] judge shall disqualify himself or herself in a proceeding in which the judge's impartiality *might reasonably be questioned*, including but not limited to instances where . . . the judge has a personal bias or prejudice concerning a party or a party's lawyer,'" 188 Ill.2d R. 63(3)(C)(1)(a) (emphasis added).

The trial court in the instant case engaged in conduct which would lead a reasonable person to conclude that racial considerations affected the court's decisions, tainted the integrity of the proceedings, and gave rise to an appearance of impropriety. In what apparently is a routine speech necessarily aimed at African American children who appear in delinquency court (Vol. IV, R. 18), the trial court engaged in the following exchange with the minor, a fourteen-year-old black girl:

> "THE COURT: . . . when you go to school have you ever studied at all about black history?

THE RESPONDENT: Yes, ma'am.

THE COURT: Okay. So do you have knowledge about people like Rosa Parks and Martin Luther King?

THE RESPONDENT: Yes, ma'am.

THE COURT: And therefore you would have the knowledge that Martin Luther King had basically his brains blown out because of the efforts that he was making to see that the black people in this country had the same rights as the whites, right[?]

THE RESPONDENT: Yes, ma'am.

THE COURT: Okay. Now do you think that Martin Luther King's brains being blown out all over the street, do you think that you are doing any honor to his efforts --

THE RESPONDENT: No, ma'am.

THE COURT: -- for you and the people? Do you think?

THE RESPONDENT: No.

THE COURT: Okay. Do you think his vision was that you're gonna give all the African Americans the right to vote, right to education, every right they should have but that you're gonna just flip the bird at it, commit crimes, get in trouble at school and not do what you need to do which is to contribute. I mean, is that what you think he was expecting?

THE RESPONDENT: No, ma'am.

THE COURT: But that's what's happening, isn't it?

THE RESPONDENT: Yes.

THE COURT: So between now and the time you come back I want you to think about all this and I want you to be prepared to make a

statement. Because I have told the State's Attorney and I've told the Public Defender that I will not put up with kids hitting teachers at school, and that it's my attitude that kids who do that ought to go to prison. So I want you to come back on sentencing and explain to me why I shouldn't send you to prison, okay.

THE RESPONDENT: Yes, ma'am."

(Vol. IV, R. 18-20)

The trial court went on equated race to mental health and learning disabilities:

"THE COURT: Anything wrong with your IQ, your mental health, anything like that?

THE RESPONDENT: No, ma'am.

THE COURT: Got any learning disabilities?

THE RESPONDENT: No, ma'am.

THE COURT: Then you got no excuse, do you?

THE RESPONDENT: No, ma'am.

THE COURT: And this isn't an excuse either. The color of your skin, is it?

THE RESPONDENT: No, ma'am."

(Vol. IV, R. 21)

Based on the foregoing exchange, a reasonable person could easily infer that the trial judge who had just rendered a guilty verdict was racially biased. That portion of the trial court's comments which implied that blacks are more prone to "commit[ting] crimes, get[ting] in trouble at school, and not . . . contribut[ing]" smacked of the racial stereotypes condemned in *People v. Richardson*, where the prosecutor argued in closing that the black defense witnesses, "don't live in the same social structure that we do. . . . The society they live in [*sic*] do not consider the truth a great virtue. The society they live in, they lie every day. It is nothing to them to protect one of their own kind by

lying. . . . We abide by the law – they do not. That is the difference. . . . They are lying to save a friend, lying to bust society, our society, that is the difference." *Richardson*, 49 Ill.App.3d at 172-73, 7 Ill.Dec. at 5, 363 N.E.2d at 926. Equally offensive was the court's equation of race with mental and learning disabilities as "excuses" for criminal behavior. *Cf. Turner*, 52 Ill.App.3d at 739-40, 10 Ill.Dec. at 600-01, 367 N.E.2d at 1366-67 (prosecutor's denigration of the intelligence of an African American witness in closing warranted reversal).

"[O]ur system of law has always endeavored to prevent even the probability of unfairness . . . . Such a stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties. But to perform its high function in the best way justice must satisfy the appearance of justice." *In re Murchison*, 349 U.S. at 136, 75 S. Ct. at 625, 99 L. Ed. at 946. It is difficult to imagine how one could satisfactorily explain to a child and her parents that a judge who harbored the sentiments expressed by the trial court in the instant case could have provided a fair trial. As the appellate court observed in evaluating the prejudice from racially insensitive comments by the trial court in *People v. Wardell*, "If it is on [her] tongue, it most assuredly must be on [her] mind." *Wardell*, 230 Ill.App.3d at 1103, 172 Ill.Dec. at 485, 595 N.E.2d at 1155. The damaging effect of the trial court's lecture, which was by its very nature limited to African Americans, cannot be underestimated. *See Brown v. Board of Educ.*, 347 U.S. 483, 494, 74 S.Ct. 686, 691, 98 L.Ed. 873, 880-81 (1952) (noting that racially disparate treatment breeds a sense of inferiority and undermines mental development of black children).

"[T]he offensiveness of [an] act is not transformed by the different skin colors of those persons involved," *Wardell*, 230 Ill.App.3d at 1103, 172 Ill.Dec. at 485, 595 N.E.2d at 1155, yet this is exactly what the trial court's comments suggested in the instant case. Even if the judge's comments did not indicate actual prejudice, they gave rise to an appearance of impropriety which so undermined confidence in both the verdict and sentence that this Court should reverse and remand for a new trial before a different judge.

Although trial counsel did not object to the foregoing comments or move for a new trial, this Court should not consider the foregoing error forfeited on appeal. First, as a general matter, forfeiture is less frequently applied when the error arises from the judge's own conduct. *People v. Nevitt*, 135 Ill.2d 423, 455, 142 Ill.Dec. 854, 867, 553 N.E.2d 368, 381 (1990). The relaxation of forfeiture principles under such circumstances "stems from the fundamental importance of a fair trial and the practical difficulties involved in objecting to the conduct of the trial judge." *People v. Wardell*, 230 Ill.App.3d at 1102, 172 Ill.Dec. at 484, 595 N.E.2d at 1154 (internal quotes and citations omitted).

Second, a suggestion of race-based bias in a judicial proceeding warrants plain error review under Supreme Court Rule 651(a) because of the threat such errors pose to the integrity of the judicial process. The United States Supreme Court has recognized that the damage arising from racial discrimination in the courtroom "extends beyond that inflicted on the defendant . . . to touch the entire community . . . [and] undermine public confidence in the fairness of our system of justice. . . . Discrimination within the judicial system is most pernicious because it is a stimulant to that race prejudice which is an impediment to securing to black citizens that equal justice which the law aims to secure to all others." *Batson*, 476 U.S. at 87-88, 106 S.Ct. at 1718, 90 L.Ed.2d at 81-82 (internal quotations and citations omitted); *see also Richardson*, 49 Ill.App.3d at 173, 7 Ill.Dec. at 6, 363 N.E.2d at 927 (inappropriate racial references "destructive of the proper administration of justice").

In *People v. Turner*, this Court recognized that race-based errors affect the substantial rights of the accused and should be reached as a matter of plain error. *Turner*, 52 Ill.App.3d at 739-40, 10 Ill.Dec. at 600-01, 367 N.E.2d at 1366-67; *see also Richardson*, 49 Ill.App.3d at 174, 7 Ill.Dec. at 7, 363 N.E.2d at 927 (reached racially prejudicial closing argument as plain error). In addition, as set forth *supra* at 15-18, the evidence against the minor was so closely balanced as to give rise to a reasonable doubt of guilt, and plain error review is warranted under the remaining prong of Rule 651(a) as well.