

## What Videos of an ATM Robbery Can Teach Us About Bias in Juvenile Justice

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April 30, 2014

Racial and ethnic disparities remain a persistent problem in the juvenile justice system despite decades of research and a federal requirement to address disproportionate minority contact (DMC).

Juvenile arrest rates are on a national decline, yet racial and ethnic disparities remain pervasive throughout the system. Youth of color are over-represented at every key decision point, including arrest, referral, transfer to criminal court, and commitment to state custody. In 2011, juvenile violent crime arrests reached their lowest point in the last 32 years and declined across all racial groups. Yet 51 percent of all juvenile arrests for violent crime involved African-American youth. In 2010, youth of color were 24 percent of the youth ages 10-17, but accounted for 36 percent of cases referred to juvenile court, 43 percent of cases detained, 42 percent of adjudicated cases resulting in commitment to state custody, and 47 percent of cases transferred to criminal court.

Under the Juvenile Justice and Delinquency Prevention Act (JJDP)—the landmark federal law that sets national standards for juvenile justice systems—states must assess and “address” DMC at key decision points in the juvenile justice system; however, this requirement is vague. Many states have spent a lot of effort on assessing and measuring the problem, and little on implementing effective reform strategies.

There are three distinct but related problems that we examine and seek to change when combating racial and ethnic disparities in the juvenile justice system:

- First is the *over-representation* of youth of color in the juvenile justice system. Over-representation occurs when the percentage of youth of color at a decision point is higher than the percentage of youth in the general population.
- Second is the *disparate treatment* of youth of color as compared to white youth. When youth of color are treated more harshly than similarly situated white youth (for example, those charged with the same offenses), they experience disparate treatment.
- Third is the problem of youth of color *unnecessarily entering and moving deeper* into the juvenile justice system. This occurs, for example, when youth of color are arrested for minor school-based infractions that could have been handled without juvenile justice intervention.

To effectively address any of these, we must look at what we know about implicit bias.

## Implicit Bias and the Juvenile Justice System

Implicit bias is one of many factors that contribute to racial and ethnic disparities in the juvenile justice system. Implicit bias reflects an unconscious preference (positive or negative) for a social category. The preference influences a person's actions or opinions without the person being aware that he or she holds a bias. Such biases are common and they operate beyond race to include gender, age, and other categories.

However, within the context of race, research shows that the American public strongly associates crime with African-American males.

A case in point: In a [study](#) conducted by researchers at the University of California, Los Angeles and Stanford University, test subjects were shown three versions of an evening television newscast that included information about an ATM robbery. One version provided no indication of the race of the suspect, a second version showed a close-up picture of a white male suspect, and a third version showed the same photo of the suspect, but darkened the man's skin so that he appeared to be African-American.

After viewing the newscasts, participants were asked what they remembered about the suspect and the newscast. Seventy percent of participants shown the picture of the African-American suspect recalled seeing an African-American male. Sixty percent of test subjects who were not shown a picture of the suspect recalled seeing a picture of the suspect, and 70 percent of those test subjects recalled seeing an African-American suspect. Finally, 10 percent of subjects recalled seeing an African-American suspect when the newscast included a picture of a white suspect.

The researchers explain that Americans have a "frame" for stories about crime that includes African-American perpetrators. When people view newscasts about crime, they are more likely to remember suspects as African-Americans or identify the perpetrator's race as African-American even if the newscast leaves out the race of the suspect. This type of association can affect how decision-makers respond to allegations that African-American youth have committed crimes.

Police officers, probation officers, and judges have all been shown to have implicit biases that affect their decision-making.

[One study](#) of police officers from a large urban police department found that they overestimated the ages of Black and Latino children who were crime suspects. Police officers miscategorized African-American 13-year-olds as adults when the youth were alleged to have committed a felony. Participants overestimated the age of African American felony suspects by a median age of 4.59 years and overestimated the age of Latino felony suspects by a median age of 2.27 years.

[Another study](#) of pre-sentence reports written by probation officers found that the reports about African-American youth were significantly more likely to include negative internal attributions than white youth charged with the same offense and similar

delinquency histories. In other words, for African-American youth, probation officers were more likely to determine that their delinquent behavior was a result of personality and personal values, while for white youth, probation officers were more likely to conclude that the criminal activity was a result of external factors such as peer pressure or a bad environment.

## **What Works? Effective Strategies for Eliminating Disparities**

There are proven strategies that reduce racial and ethnic disparities and minimize the impact of implicit biases. Effective systemic reform strategies have been developed and implemented by the Juvenile Detention Alternatives Initiative (JDAI), the John D. and Catherine T. MacArthur Foundation's Model for Change DMC Action Network managed by the Center for Children's Law and Policy, and the W. Haywood Burns Institute for Juvenile Justice Fairness & Equity. Strategies developed by these initiatives and organizations are in place in hundreds of jurisdictions across the country and include:

- Development of a collaborative of key stakeholders, including family members and community representatives, to govern the reform efforts;
- Deep analysis of key quantitative and qualitative data to understand the causes of disparities;
- Development and implementation of plans to reduce disparities that have measurable objectives;
- Creation or enhancement of programs in the community that meet the supervision needs of youth in the system without an overreliance on incarceration where it is not necessary for public safety; and
- Use of objective decision making tools to reduce the impact of bias.

**Objective Screening & Graduated Response.** Objective screening and assessment instruments can be used to determine which youth need to be detained and which youth can be safely supervised in the community.

Graduated responses are structured systems of graduated incentives for youth on community supervision to reward good behavior and graduated sanctions to respond to youth misbehavior. Utilizing a system of graduated responses to address violations of probation terms or court orders can ensure that officials make decisions based on objective factors—for, example, the type of behavior at issue and the youth's risk level.

Together, these minimize the impact of bias by limiting the opportunity for subjective decision making.

**Raising Awareness of Bias.** Education and awareness of implicit bias can help reduce its impact on decision-making.

In a recent [study](#), researchers administered the Implicit Association Test (IAT) to trial judges and the scores showed that judges carry implicit biases regarding race. The IAT is a computer-administered test that elicits responses to associations between words

(“white,” “black,” “bad,” “good”), pictures of faces, and other stimuli, and measures the time the test subjects take to make associations. Judges were given hypothetical cases and were asked to provide a ruling. When some of the judges realized that the exercise was to measure implicit bias, they were more careful in their responses and showed no racial bias in their decisions.

The fact that judges were able to compensate for their biases when they became aware of them suggests that education can play a role in changing the impact of implicit bias.

**Strengthening Federal Law.** While it is difficult, it is not impossible to reduce racial and ethnic disparities in the juvenile justice system. The JJDPa provides a framework for measuring racial and ethnic disparities at key decision points. In the next reauthorization of the JJDPa, the DMC core requirement should be strengthened by:

- (1) Establishing coordinating bodies to oversee efforts to reduce disparities;
- (2) Identifying key decision points in the system and the criteria by which decisions are made;
- (3) Creating systems to collect local data at every point of contact youth have with the juvenile justice system (disaggregated by descriptors such as race, ethnicity and offense) to identify where disparities exist and the causes of those disparities;
- (4) Developing and implementing plans to address disparities that include measurable objectives for change;
- (5) Publicly reporting findings; and
- (6) Evaluating progress toward reducing disparities.

By developing and utilizing a data-driven approach to reduce racial and ethnic disparities, states and local jurisdictions can ensure all youth receive the same treatment and the same access to resources.