

Race Matters: Reducing Racial and Ethnic Disparities in the Juvenile Justice System

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Racial and ethnic disparities are one of the most pervasive and disturbing characteristics of our juvenile justice system. Youth of color are over-represented at key decision points, including arrest, referral, detention, transfer to adult criminal court, and commitment to state custody. As the National Research Council noted in a comprehensive review of the literature, "Several recent careful reviews...have found that 'race matters' beyond the characteristics of an offense."¹

At the same time, many juvenile justice officials find it difficult to discuss racial bias. Avoidance, denial, and fear of being the object of accusations impede attempts at reform. Moreover, despite decades of efforts to study and address disparities, few jurisdictions have implemented reforms with measurable impacts on youth of color.²

For all of these reasons, juvenile justice stakeholders, and particularly judges, should be aware of the scope of the problem, how it affects court proceedings, and effective remedial strategies.

Defining the Issue

"Racial and ethnic disparities" (also known as "disproportionate minority contact," or DMC) includes three separate but related issues.³ First, there is *over-representation* of youth of color in the juvenile justice system. Over-representation occurs when the percentage of youth of color at a particular decision point in the juvenile justice system is higher than the percentage of youth in the general population or at a previous decision point in the system. Thus, the percentage of youth of color at arrest is usually higher than the percentage of youth of color in the general population, and the percentage of youth of color in detention is often higher than the percentage of youth of color at arrest. The Relative Rate Index (RRI), which is the indicator of disparities traditionally used by the federal Office of Juvenile Justice and Delinquency Prevention, is a measure of over-representation.

A second aspect of the issue is *disparate treatment* of youth of color compared to white youth. This occurs when youth of color who are similarly situated to white youth are nevertheless treated more harshly. Research has shown that in many jurisdictions youth of color are more likely to be incarcerated, and to be incarcerated longer, than white youth, even when charged with the same offenses.

A third aspect is *unnecessary entry and moving deeper* into the juvenile justice system by youth of color. This occurs when youth of color are arrested when they could be diverted from the system, or when they are held in secure detention when they could be released to community-based alternative programs. Of course, white youth can also

be subject to unnecessary entry and moving deeper into the system, but since there are disproportionately more youth of color in the system, this problem affects them disproportionately.

The goal of system reform efforts is to reduce *all three* types of disparities.

There are also specific issues involving Hispanic and Latino youth in the juvenile justice system⁴:

- Failure to capture ethnicity separately from race in data collection, which leads to under-counting of Latino youth and other inaccuracies;
- Lack of uniform definitions for “Latino” and “Hispanic;”
- Failure to provide adequate bilingual services, written materials, and translators for Latino youth and their families;
- Failure to ensure the cultural responsiveness of services and programs;
- Consideration of immigration status at arrest and detention, resulting in incarceration, deportation, and permanent separation of youth from families;
- Anti-gang laws that sweep broadly to involve youth who are not gang members.

To be successful, reform efforts need to address these issues as well.

Research on Implicit Bias in the Juvenile Justice System

At the individual level, reform efforts must recognize the implicit biases of key system decision-makers. Implicit biases involve the use, unconsciously, of stereotypes. Such biases are common. For example, the public strongly associates crime with African-American males. Researchers at UCLA demonstrated the strength of this association.⁵ They showed test subjects three versions of an evening television newscast that included a story about an ATM robbery. In one version, there was no indication of the race of the suspect. In another version, there was a close-up picture of the suspect, a white man. In the third version, the same picture was shown but the man’s skin was darkened technologically so that he appeared to be African-American.

After a period of time, test subjects were asked what they recalled about the newscast and the alleged perpetrator. Among test subjects shown the picture of the black suspect, 70% recalled seeing a black man. Where the test subjects were *not* shown a picture of the suspect, 60% recalled seeing a picture of the suspect, and 70% of those recalled seeing a *black* suspect. Even where test subjects were shown a picture of a white suspect, 10% nevertheless recalled seeing a picture of a black suspect.

The authors of the study explain that, as a result of local news coverage and other influences, Americans have a “frame” for stories about crime and that frame includes a black person as the perpetrator. When the information provided confirms that frame, as in the newscast that showed the black suspect, a very high percentage of people remember the person’s race. When a newscast leaves information about the suspect’s race blank, the “frame” of public perceptions supplies the missing information, i.e., that

the suspect is black. Even when people are given explicit information that the suspect is white, the “frame” leads a portion of people to recall that the suspect is black.

Racial and ethnic disparities in the juvenile justice system are often the result of implicit bias by key decision-makers. In the pioneering study in the field, researchers in Washington State did structured content analyses of juvenile pre-disposition reports prepared by probation officers, and they compared reports on white youth and black youth who were charged with similar crimes and had similar delinquency histories.⁶ They found that reports on black youth were significantly more likely to include negative internal attributions (i.e., the crime resulted from the youth’s values and personality) than reports on white youth. In contrast, reports on white youth charged with the same offenses and with similar delinquency histories were more likely to include negative *external* attributions (i.e., the crime resulted from peer pressure or a bad environment) than reports on black youth. These distinctions had a critical influence on dispositions given to the youth: black youth were judged to have a higher risk of reoffending than white youth, and were given longer or more restrictive dispositions.

Judges are not free of bias. In the leading study, researchers administered the Implicit Association Test (IAT) to 133 trial court judges from three jurisdictions in different parts of the country.⁷ The IAT is a computer-administered test which elicits responses to associations between words (“white,” “black,” “bad,” “good”), pictures of faces, and other stimuli, and measures the amount of time the test subject takes to make the associations. The IAT is considered the gold-standard in identifying implicit bias. Researchers have published hundreds of academic studies using the IAT, and more than four and a half million people have taken the test.

The research has consistently shown a strong “white preference” among white subjects. This means, for example, that white participants more quickly associate stimuli such as faces of white individuals with positive words or concepts, and take more time to associate words like “black” and faces of African-Americans with positive words and concepts. Black test subjects have shown mixed results, with some showing a “white preference” and some showing a “black preference.” In the second part of the study, the researchers gave the judges a series of vignettes or hypothetical cases to decide, then compared their race preference with their decisions. In some of the hypotheticals the defendant’s race was not presented, and in others it was explicit.

The researchers reported three conclusions. First, the IAT scores showed that judges, like everyone else, carry implicit biases concerning race. Second, the decisions in some of the hypothetical cases provided evidence that implicit biases can affect judges’ judgments. Third, and most interesting, when judges are aware of the need to monitor their responses for the influence of implicit racial biases, and are motivated to do so, they can compensate for those biases. This occurred when some of the trial judges figured out the purpose of the exercise and became more careful about their responses. When that happened, they showed no racial bias in their decisions.

How Implicit Bias Can Affect the Juvenile Justice Process

The research suggests that many key decision-makers in the juvenile justice system have implicit racial biases. This can affect the juvenile justice process in several ways. Judges are, first and foremost, decision-makers on the cases before them. Particularly in criminal and juvenile delinquency cases, judges need to be aware that they likely have some implicit racial biases. In juvenile court, they particularly need to be watchful at key decision points such as detention, violations of probation or other court orders, transfer to adult criminal court, and disposition (i.e., whether to commit the youth to state custody). Judges need to make sure that any implicit biases they have do not affect their decisions. The research on trial judges indicates that such efforts may be very successful.

Judges are also managers of the courtroom and key participants in other aspects of the juvenile justice process. They need to be aware that *other* key decision-makers in the juvenile justice system *also* are likely to have implicit racial biases. Therefore, they need to be watchful for bias at other points in the process such as referrals to court by school administrators, arguments by prosecutors, presentations by defense attorneys, recommendations in mental health studies, and recommendations in pre-disposition reports. And, like judges, other key decision makers need to be aware that *they* likely have some implicit racial biases, and need to be watchful that any biases don't affect their own decisions.

System Reforms to Reduce Racial and Ethnic Disparities in Juvenile Justice

Judges and others related to the courts should also be aware of successful efforts to reduce racial and ethnic disparities at the *system* level. The Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative (JDAI) has been working to reduce unnecessary secure detention, protect public safety, and reduce racial and ethnic disparities for the past 22 years. JDAI now includes some 250 sites in 39 states and the District of Columbia. Many JDAI sites have achieved significant reductions in racial and ethnic disparities, particularly at the detention decision point.⁸

The W. Haywood Burns Institute for Juvenile Justice Fairness & Equity, based in San Francisco, has worked in more than 100 jurisdictions over the past ten years to reduce racial and ethnic disparities. The Burns Institute also provides training on reducing disparities to JDAI sites.⁹

The John D. and Catherine T. MacArthur Foundation's Models for Change juvenile justice reform initiative has made reduction of racial and ethnic disparities one of its key goals over the past ten years. The MacArthur Foundation also supported a DMC Action Network, managed by the Center for Children's Law and Policy, which involved efforts in 17 jurisdictions in eight states.¹⁰

All of these efforts use the same basic components in their approach:

- Development of a collaborative of key stakeholders, including family members and community representatives, to govern the reform effort;
- Identification of key decision points in the juvenile justice process where disparities occur;
- Regular collection and analysis of data on youth at key decision points, the alternative-to-incarceration programs available to those youth, and the effectiveness of those programs;
- Use of objective screening and assessment instruments to determine which youth need to be detained and which can be safely supervised in the community;
- Creation or enhancement of alternative-to-detention programs in the community to meet the supervision needs of youth who are taken into custody;
- Development and implementation of plans to reduce disparities that have measurable objectives; and
- Regular monitoring and evaluation of progress toward reduction of disparities.

These strategies should be part of any effort to reduce racial and ethnic disparities affecting youth of color in the juvenile justice system.

¹ National Research Council. (2013). *Reforming Juvenile Justice: A Developmental Approach*. Committee on Assessing Juvenile Justice Reform, Richard J. Bonnie, Robert L. Johnson, Betty M. Chemers, and Julie A. Schuck, Eds. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press.

² *Ibid.*

³ Soler, M., Shoenberg, D., & Schindler, M. (2009). Juvenile justice: Lessons for a new era. *Georgetown Journal on Poverty Law & Policy*, 16, 483-541.

⁴ Villarruel, F. A., & Walker, N. (2002). *¿Donde esta la justicia? A call to action on behalf of Latino and Latina youth in the U.S. justice system*. Washington, DC: Building Blocks for Youth.

⁵ Gilliam, F.D., Jr., & Iyengar, S. (2000). Prime suspects: The influence of television news on the viewing public. *American Journal of Political Science*, 44, 560-573.

⁶ Bridges, G., & Steen, S. (1998). Racial disparities in official assessments of juvenile offenders: Attributional stereotypes as mediating mechanisms. *American Sociological Review*, 63, 554-570.

⁷ Rachlinski, J.J., Johnson, S., Wistrich, A.J., & Guthrie, C. (2009). Does unconscious racial bias affect trial judges? *Notre Dame Law Review*, 84, 1195-1246.

⁸ Information about the Juvenile Detention Alternatives Initiative may be found at the JDAI Help Desk: www.jdaihelpdesk.org.

⁹ Information about the Burns Institute may be found at its website: www.burnsinstitute.org.

¹⁰ Information about Models for Change may be found at the Models for Change website: www.modelsforchange.net.