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Juvenile Justice and the American Dilemma

At the dawn of the 20th century the great American sociologist and social activist W. E. B. DuBois proclaimed that the “problem of the color line” would be the central issue of that century (DuBois, 1903). As we enter the 21st century, his prophetic words still ring true. The juvenile justice system is plagued by racial disparities and inequities that challenge its legitimacy. Despite a dominant philosophy that seeks to be “race neutral,” the decision-making processes of the juvenile justice system are anything but neutral for children of color. In this chapter the extent of this grave problem will be examined, explanations for its existence will be explored, and potential remedies will be considered.

In 1992 the federal Juvenile Justice Act was amended by Congress to require that all participating states wishing to receive funding from OJJDP be required to examine the extent of disproportionate minority confinement (DMC) in their juvenile justice systems. Besides conducting in-depth studies of the problem, participating states were required to make “good faith efforts” to reduce DMC where appropriate. Since the late 1990s there have been annual attempts from some members of Congress, most notably Senator Orrin Hatch of Utah, to remove the DMC mandate from the federal justice program. Although these efforts have weakened the

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mandate and given states great flexibility, Congress has not yet eliminated the requirement for states to examine racial disparities in their juvenile justice systems.

In 1987, Krisberg and his colleagues utilized data from the national Children in Custody survey to document the disproportionate presence of African American, Native American, and Latino youths in juvenile correctional facilities. Further, they found that minority youths were more likely to be housed in more secure facilities and to be held in places that were chronically overcrowded. Moreover, Krisberg and his associates noted that reform efforts in the 1970s that were intended to deinstitutionalize youths, removing them from secure facilities to community settings, had primarily resulted in white youth incarceration rates going down and far less of a decline in the confinement of minority youngsters. As the public policy agenda embraced tougher penalties and longer stays in custody in the 1980s, minority youths bore the overwhelming brunt of these "get tough" policies. Throughout the last two decades of the 20th century, racial disparities continued to worsen.

Before examining some of the key data on DMC, it is important to clarify some basic terminology. Although it is common to use the word *race* to describe certain groups, it must be noted that mainstream scientists regard race as a meaningless biological category. Research on human genetics has consistently shown that human genetic diversity is very limited in comparison to other living organisms. Increasingly, scientists believe that observable human differences are attributable more to geographic communities (i.e., people who have lived in close proximity for generations) than to genetic differences. It is highly questionable science to use race as an explanatory variable, in and of itself, although several conservative, media-promoted criminologists such as Charles Murray and James Q. Wilson have consistently produced flawed research using scientifically questionable data in this area (Herrnstein & Murray, 1994; Wilson & Herrnstein, 1985). Further, the extensive sexual contacts among racial groups, which is often publicly denied, makes pure racial distinctions moot. Most Americans have interracial heritages and there are no scientifically valid rules by which an individual should be assigned to one group or another. Race is, first and foremost, a social construct and a powerful life-defining category. Race-conscious societies often have intricate rules, because assignment to one or another racial group *does* have profound social and even legal consequences. For years, many southern states such as Louisiana made very fine distinctions based on the presumed percentage of one's blood that came from different racial groups. For some, even "one drop of blood" defined a person as belonging to a particular racial category. There is a rich literary and folk tradition about

people who attempted to “pass” as members of another group (for example, the classic American musical *Showboat* or the classic movie starring Lana Turner, *Imitation of Life*). Racial categories are fluid and change as society changes. At the turn of the century, Jewish and Italian immigrants were regarded as nonwhite. During certain historical periods, being part Native American was a badge of honor, but at other times this racial background was a stigma.

Related to the concept of race is that of *ethnicity*. *Ethnicity* refers to a group of people who generally share a common culture. The commonality of an ethnic group might include history, values, aesthetics, family and community traditions, and language. Most of the groups who are referred to as ethnic groups may share some of these common social and cultural elements, but more often than not, there is notable diversity within these groups. For example, the category *Latino* may refer to people with a heritage from North American, South American, Central American, or Caribbean nations. They practice several different religions and speak English, Spanish, or Portuguese, among other languages. Similarly, there is enormous cultural diversity in the African American community, whose antecedents may have originated in Africa but who lived in virtually every nation on earth. Even for those born in one nation, regional differences or rural-versus-urban experiences profoundly affect a person’s ethnic identity. There is a serious question as to whether a person can self-select an ethnic identity such as the white teenager who totally embraces the culture of urban African Americans or the Eastern European immigrant who attempts to embrace the culture of white Anglo-Saxon Protestants. As with race, the concept of ethnicity is a social construct and is most meaningful in terms of how others react and respond to an individual, as well as the ethnic identity that one projects to the outside world.

Both race and ethnicity are further complicated by differences in gender and social class. Often in discussions about DMC, people will ask whether the observed differences are really a function of economics or other indicators of social prestige. As some would observe in the trial of famous football star O. J. Simpson, the true color of justice may be green. There is no easy answer to this question. While justice agencies routinely collect data on the presumed race or ethnicity of defendants, they rarely compile data on socioeconomic status. Only more detailed data collection sometimes teases out these relationships. Further, there is almost as much ambiguity about the social meaning of class as there is about race and ethnicity. How gender differences further complicate matters will be discussed in the next chapter.

If you are feeling confused and getting a mild headache after considering these complexities, you are probably getting the right messages. Terms such as *race*, *ethnicity*, and *social class* are used imprecisely and

sometimes interchangeably. This is a big problem that is embedded in the existing data and research. There is no simple solution to this conceptual quagmire except to recognize that it exists and frustrates both good research and sound public policy discussions on this topic. One thing is clear—all of these categories are socially constructed, and therefore they can be made and unmade by people.

Disproportionate Minority Representation and the Juvenile Justice Process

The federal DMC mandate has produced a rich mix of data and analytic insights on the problems of race and juvenile justice across many states. OJJDP called for analyses of the entire juvenile justice process—the ways in which decisions at each level of the process might culminate in DMC. A national summary report of dozens of these state-specific studies that was authored by Hamparian and Leiber (1997) found that overrepresentation of minority youths increased at every stage of the juvenile justice process. Although the research indicates that the largest gap between white youths and children of color occurred at the front end of juvenile justice—at the point of arrest, court intake, and detention—the data also revealed that the initial disparities got worse at later stages in the juvenile justice process. This finding has led some observers to talk about a “cumulative disadvantage” for minority youths in the justice system (Leonard, Pope, & Feyerherm, 1995; Males & Macallair, 2000).

The most comprehensive description of this cumulative disadvantage was produced by Poe-Yamagata and Jones (2000) in their path-breaking report titled *And Justice for Some*. In this study the authors incorporate data on DMC from a very wide range of federal data sources on juvenile justice as well as on youths in the adult corrections system. The report traces the disproportionate representation of minority children from arrest through the dispositional or sentencing process.

The vast majority of youths first encounter the juvenile justice system through contacts with the police. Law enforcement responses to alleged instances of juvenile misconduct can cover a broad range of actions, including verbal reprimands and informal case handling to arrest and detention. The first decision that is made is whether to make an arrest, and police are given fairly wide latitude in making this decision. Typically, police divert or dismiss about 25% of the youths that they arrest; about two thirds of these cases are referred to the juvenile court, and about 10% are sent to the criminal court system or are referred to other community agencies. Studies of police practices by Wilson (1968),

Cicourel (1968), and Emerson (1969) have shown that there are very wide differences among police agencies in the ways in which these discretionary decisions are made at the front end of the juvenile justice system.

There were roughly 2.6 million persons under the age of 18 who were arrested in 1998, with 71% of these arrests involving white youngsters. However, African American youths are disproportionately represented, composing 26% of those arrested compared with being 15% of the total population of youths under age 18 (Poe-Yamagata & Jones, 2000). Table 5.1 breaks down these data for several ethnic groups and offense categories. The reader should note the inability of current federal statistics to provide information on Hispanic or Latino youths. For most data sources, Hispanic youths are combined with whites. Also, we will later discuss how the aggregate crime statistics mask the very high rates of juvenile justice involvement of youths from certain Pacific Islands and first and second generation migrants from Southeast Asian countries.

Table 5.1 Racial Proportions of Youth Under Age 18, 1998

Most Serious Offense Charged	Estimated No. of Juvenile Arrests	Percent of Total Arrests			
		White	African American	Native American	Asian
Total	2,603,300	71	26	1	2
Violent Crime Index	112,200	55	42	1	1
Murder	2,100	47	49	3	2
Rape	5,300	59	39	1	1
Robbery	32,500	43	54	1	2
Aggravated assault	72,300	61	37	1	2
Property Crime Index	596,100	70	27	1	2
Burglary	116,000	73	24	1	2
Larceny-theft	417,100	70	26	1	2
Motor vehicle theft	54,100	61	36	1	2
Arson	9,000	80	18	1	1
Nonindex	1,895,000	73	25	1	1
Other assaults	237,700	64	33	1	1
Forgery and counterfeiting	7,100	77	21	1	2

(Continued)

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Table 5.1 (Continued)

Most Serious Offense Charged	Estimated No. of Juvenile Arrests	<i>Percent of Total Arrests</i>			
		White	African American	Native American	Asian
Nonindex (Continued)					
Fraud	11,300	64	34	<1	2
Embezzlement	1,600	61	37	1	1
Stolen property— buying, receiving, possessing	33,800	60	38	1	2
Vandalism	126,800	80	17	1	1
Weapons carrying, possessing, etc.	45,200	66	32	1	1
Prostitution	1,400	56	43	1	1
Sex offenses (except forcible rape and prostitution)	15,900	70	28	1	1
Drug abuse violations	205,800	66	32	1	1
Gambling	1,600	15	84	—	1
Offenses against the family and child	10,200	79	19	1	2
Driving under the influence	21,000	91	6	2	1
Liquor laws	157,300	92	5	3	1
Drunkenness	24,600	89	7	3	1
Disorderly conduct	183,700	67	32	1	1
Vagrancy	2,900	71	27	1	<1
All other offenses (except traffic)	453,000	73	25	1	2
Suspicion	1,300	79	20	1	1
Curfew and loitering law violations	187,800	71	27	1	1
Runaways	165,100	78	18	1	3
Note: Detail may not add to total due to rounding.					
The data do not disaggregate Latino youth from race. In 1998, 91% of Latino youth were identified as white.					

SOURCE: Adapted from Poe-Yamagata and Jones (2000).

African American youths made up 42% of those under 18 who were arrested for violent offenses (Poe-Yamagata & Jones, 2000) and 2% of minors arrested for offenses such as weapon possession, drugs, and disorderly conduct. The only offense categories in which white youth are disproportionately arrested are liquor-law violations, driving under the influence, and public drunkenness. Because these latter offenses usually occur in conjunction with traffic violations, the greater likelihood of white youths having access to cars may explain these findings.

Research by David Huizinga and Delbert Elliott (1987) suggests that the overrepresentation of minority youths, and especially African American youngsters, cannot be explained by a higher level of offending by those groups. Using self-report questionnaires as part of the National Youth Survey, Elliott and others were able to construct national estimates of the age, race, gender, and social class distribution of offending by juveniles. There has been some concern expressed that African American youths underestimate the extent of their criminal behavior. However, Elliott, Huizinga, and Ageton conclude that this alleged underreporting is not statistically significant (Elliott, Huizinga, & Ageton, 1985). In general, African American youths report a slightly higher level of delinquency, but these differences were not statistically significant. Further, African American youths did report somewhat higher proportions involved in the more serious offenses, and their frequency of offending was greater than for white youths, but these modest differences could not explain the wide discrepancies among the groups in terms of arrests or other indices of system processing. Huizinga and Elliott also report that the delinquent acts that African American youths admit to are far more likely to result in arrests than if those same offenses are claimed by white youths (Huizinga & Elliott, 1987). Their conclusion may reflect, among other factors, the density of deployment of police in minority communities compared to white areas. Police rarely go into middle- and upper-class neighborhoods looking for teen crime violations. Most police contact with juveniles takes place in public settings, including schools, playgrounds, and city streets. Also, it appears that police use informal adjustments and voluntary referrals to a greater extent for white youths. Police may perceive (sometimes correctly) that white communities possess more prevention and treatment resources to deal with offending youths.

There is some reason to believe that the legacy of police violence against persons of color and the history of excessive use of force against minority citizens exert a profound influence on the ways in which minority youths and adults interact with the police. Some observers have tried to explain the more formal and restrictive response of predominantly white law enforcement officers to minority youths in terms of the

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concept of demeanor. Minority youths are allegedly more hostile, more confrontational, and more verbally challenging to white authority figures than their white counterparts. There is scant empirical evidence to back these claims, but it is not hard to understand how historical racial patterns influence the perceptions of demeanor in tense situations (Piliavin & Briar, 1964).

The disparity among ethnic groups seen at the arrest stage is reflected in the composition of the juveniles that come to court. African American youths comprise 31% of those sent to the juvenile court—more than twice their proportion in the general youth population. This suggests that court intake workers may further exacerbate the racial differentials seen at the arrest level. At the point of the decision to detain, things get even worse for minority youths. For example, white youngsters comprised 66% of those referred to the juvenile court but 53% of those detained. African Americans make up 31% of the referrals, but 43% of those detained (Poe-Yamagata & Jones, 2000). The higher likelihood that African American youths will be detained is true for both violent offenses and property crime. However, the greatest differential among the groups occurs with drug offenses. Black youths make up about one third of those referred to the juvenile court for drug offenses, but they constitute 55% of those who are detained for drug crimes. Put differently, an African American youth who is brought to court for a drug offense is twice as likely to be locked up pretrial than is his or her white counterpart. Minority youngsters also spend more time in detention than white youths. These disparities hold even when one controls for whether the youth had prior referrals to the juvenile court before the current charge (National Council on Crime and Delinquency, 2001).

Detention is a dramatic loss of liberty and may begin a further downward spiral toward deeper penetration in the justice system. Being more likely to be detained also means that the youth is more likely to be placed out of home or incarcerated upon adjudication (Poe-Yamagata & Jones, 2000). African American youths are more likely held in overcrowded and substandard urban detention centers in which treatment and educational resources are virtually nonexistent.

Current statistical data on the juvenile court suggest that there is a smaller disadvantage for minority youths as they move through the adjudication stage compared to earlier steps in the juvenile justice process. Still, African American teens are more likely to receive a formal adjudication for delinquency for virtually every offense category. This disparity is the most pronounced for drug offenses. In 1997, roughly 78% of drug cases involving African American youths resulted in a formal petition of delinquency, compared to 56% of cases involving white youths (Snyder,

Finnegan, Stahl, & Poole, 1999; Snyder, 1999). Here again, we see that the War on Drugs has had an extremely adverse impact on young people of color.

As noted earlier, there is an increasing tendency in law and practice to transfer cases from the juvenile court to the adult criminal courts. This decision can be made mandatory based on state statutes or may result from prosecutors having the discretion to send juvenile defendants directly to the adult courts. Roughly 8,400 cases per year that are referred to juvenile courts are transferred to the criminal courts by virtue of a hearing in the juvenile court. As with other juvenile justice decision points, white youths are underrepresented in the population of those sent to the criminal courts, whereas African American young people are overrepresented in the referred population. For example, African American teens comprise about 34% of those referred to the juvenile court, but they are 46% of those referred, or waived, to the criminal court. The racial disparity is especially evident in the way in which the juvenile court handles crimes against persons and drug crimes (Poe-Yamagata & Jones, 2000).

A study by the Pretrial Services Resource Center based on 18 urban jurisdictions showed that minority youths sent to the criminal courts suffered a similar cumulative disadvantage to those retained in the juvenile court. During the first 6 months of 1998, a stunning 82% of all minors sent to adult courts in these 18 jurisdictions were youths of color (Juszkiewicz, 2000). In six of the studied jurisdictions, minority youths comprised more than 90% of those children tried in criminal courts. For example, in Jefferson County, Alabama, African American youths comprised roughly 30% of those arrested for felonies, but they made up nearly 80% of those tried in criminal courts.

The most glaring race disparities found in the Pretrial Services Resource Center study were for drug crimes and for public order offenses. Adult felony drug charges were filed against African American youths at a rate five times that of white youths and three times that of Latino youths (Juszkiewicz, 2000).

In most instances the adult court charges resulted from the actions of prosecutors, as opposed to waiver decisions made in the juvenile court. Depending on the locale, youths tried in the criminal courts were confined pretrial in either jails or juvenile facilities. Large numbers of these youths who were tried in criminal courts were not convicted. For example, less than half (43%) of the African American youths who were charged with felonies were actually convicted, compared with 28% of Latino youths and 24% of whites. About 20% of the African American youths were transferred back to the juvenile court. These data are somewhat ambiguous in their interpretation. One might conclude that criminal

courts are more lenient toward minority youngsters (a highly unlikely hypothesis); alternatively, it might be argued that prosecutors overcharge these cases and bring weaker cases to court when these involve African American teenagers. For those convicted in criminal courts, African American youths were more likely to receive a sentence of imprisonment for virtually every offense category. Of those sentenced to incarceration, African American youths received longer sentences than other youths (Juskiewicz, 2000).

If cases remain in the juvenile court system through adjudication, the familiar pattern of racial disparity continues. African American youths are more likely than white youths to be placed out of their homes for every major offense category. White youths are more likely to be placed on probation. As observed above, drug offenses seem to produce the largest differences in outcomes among the racial groups. For white youths adjudicated as delinquents for drug crime, 61% receive probation; for African American youths, 49% receive probation.

Youths of Color in Confinement: The National Picture and State Differences

The national-level data on juvenile justice processing shed considerable light on the tragic overrepresentation of minority children in confinement. However, it is important to remember that the localized variations in juvenile justice laws and practices leading to this problem are even more severe in certain jurisdictions. OJJDP has promulgated a very simple measure of disproportionate minority confinement. The calculation compares the proportion of a given ethnic group in the confined population to that same population in the general youth population. A ratio of 1.0 would suggest that minority youths are represented in the confinement population at roughly the same level as that of the general youth population. If this same ratio is less than 1.0, this would signify underrepresentation. The more the ratio exceeds 1.0, the larger the extent of overrepresentation of minorities in custody. Let us examine the problem of DMC in a range of custody settings.

An obvious place to start is juvenile detention facilities. Detention is the entry point for the confinement system, and these lock-ups are the most frequent form of secure custody experienced by young people. A summary study of DMC reports submitted to OJJDP found that all but one state reported disproportionate minority confinement in juvenile detention centers (Hamparian & Leiber, 1997). This report found an average index of minority overrepresentation of 2.8—meaning that minority

Table 5.2 Indices of Overrepresentation for African American Youth in Detention

Alabama	1.3	Delaware	2.3	Massachusetts	5.9	Oregon	4.2
Alaska	1.6	District of Columbia	1.1	Minnesota	10.7	South Carolina	1.7
Arizona ^a	4.0	Florida	1.7	Missouri	3.3	Tennessee	3.7
Arizona ^b	3.2	Illinois	3.1	Nevada ^c	3.3	Texas	2.6
Arkansas	1.3	Indiana	4.1	New Jersey	3.8	Vermont	0.7
California	3.0	Kansas	4.5	New Mexico	1.5	Virginia	1.8
Colorado	4.4	Louisiana	1.6	New York	3.2	Washington	4.0
Connecticut	4.8	Maryland	2.8	North Carolina	1.7	Wisconsin	6.6

Note: The indices of minority overrepresentation were calculated by dividing the African American proportion of detained youth by the proportion of African Americans in the juvenile population.

a. Maricopa County only

b. Pima County only

c. Washoe County only

SOURCE: Community Research Associates (1997).

youths were confined in detention centers at a rate that was 280% higher than their proportion of the general youth population. Only Vermont reported an underrepresentation of minority youth in detention, or a ratio of 0.7. By contrast, Iowa reported the highest overall DMC ratio of 7.9.

Table 5.2 presents data on the overrepresentation in detention of African American youngsters across a number of states. Topping this list is Minnesota with a DMC ratio of 10.7 and Wisconsin at 6.6. Table 5.3 shows the same DMC ratio for Latino youths in detention. Here we can see that there are more states in which Latino youths are underrepresented in detention (Illinois and Florida, for example), and there are states in which Latino youths are confined roughly proportionally to the general youth population (California, Texas, and Arizona). However, Latino youths are confined in Colorado at a rate that is 190% of their presence in that state's youth population. The states of Connecticut and Massachusetts report even higher ratios of DMC of Latino youths (4.8 and 2.1, respectively). But, these state data on Latino youths in custody must

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Table 5.3 Indices of Overrepresentation for Latino Youth in Detention

Arizona ^a	1.5	Connecticut	4.8	Nevada ^c	1.4	Oregon	1.3
Arizona ^b	1.0	Florida	0.7	New Jersey	1.5	Texas	1.0
California	0.9	Illinois	0.1	New Mexico	1.2	Washington	1.1
Colorado	1.9	Massachusetts	2.1	New York	1.6		

Note: The indices of minority overrepresentation were calculated by dividing the Latino proportion of detained youth by the proportion of Latinos in the juvenile population.

a. Maricopa County only

b. Pima County only

c. Washoe County only

SOURCE: Community Research Associates (1997).

be reviewed with some skepticism because jurisdictions utilize very different criteria in labeling youngsters as Latino and there is far less care taken in data collection with respect to Latino youngsters (Villarruel & Walker, 2002).

Looking at the broader youth corrections data, the status of minority youth in confinement is grim. As of 1997 there were 105,790 youths residing in youth corrections facilities. Of these, almost two thirds (63%) were children of color. The residential custody rate per 100,000 youths was 1,018 for African American youngsters, 515 for Latino youths, 525 for Native Americans and 204 for whites (Snyder & Sickmund, 1999). The incarceration rate for Asian youths appears comparable to that of whites, but we will see later that this aggregate rate is misleading.

Minority youths were overrepresented in confinement for virtually every offense group. They were more than twice as likely as white youths to be confined for crimes against persons and twice as likely to be confined for public order crimes. They were more than three times more likely to be in custody for drug crimes. Minority youngsters are more likely than white youths to be locked up for technical violations of probation (59% versus 40%, respectively). There are other data suggesting that minority youths are primarily confined in public correctional programs and white youths are sent in greater numbers to private facilities (Poe-Yamagata & Jones, 2000). Private facilities are smaller, are not likely to be locked facilities, have a greater investment in treatment and educational

programs, and are rarely overcrowded. Public juvenile corrections facilities are chronically understaffed and underbudgeted and often have very poor conditions of confinement.

An analysis of data on admissions to state juvenile correctional facilities showed that African American and Latino youngsters had much higher admissions rates—and this held true both for youths with no previous experiences in state custody and for chronic offenders. See Figures 5.1 and 5.2 (Austin, Krisberg, & DeComo, 1995). These same data revealed that both Latino and African American youths had longer stays in custody facilities compared to whites, even when one controlled for the severity of their commitment offenses.

Postadjudication incarceration rates differ for white and minority youths across the various states. For these commitment facilities, Iowa and West Virginia had DMC ratios higher than 5.0. Connecticut, Kansas, Kentucky, Minnesota, New Hampshire, Pennsylvania, Rhode Island, and Wisconsin had DMC ratios such that minority youths were confined at levels over 300% of their representation in the general population of those states (Poe-Yamagata & Jones, 2000). When commitment facilities are examined, Latino youths are disproportionately confined in Arizona, California, New Mexico, and Texas.

Youths in Prison

There were approximately 7,400 persons under the age of 18 who were admitted to state prisons in 1997 (Poe-Yamagata & Jones, 2000). Sentenced by criminal courts and regarded as adults for the purposes of their punishment, these young people are not protected by the provisions of the federal Juvenile Justice and Delinquency Prevention Act, which mandates sight and sound separation between juveniles and adult inmates. Three quarters of these adolescents in prison were minority youths. African American young people alone account for more than one half of these prisoners younger than age 18; Latino youth make up 15% of this group. The African American teenage population in prisons grew from 53% of the total to 61% from 1985 to 1990. During this same period, the proportion of the population of white prisoners younger than age 18 declined from 32% to 21%. Drug crimes have played a major role in the increasing presence of African American teenagers in prison. In 1985 the proportion of teenagers in prison for drug crimes was roughly 2% for both African Americans and whites. By 1997 this proportion of drug offenders had grown to 5% for whites but was 15% for African Americans (Poe-Yamagata & Jones, 2000).

In Alabama, Georgia, Mississippi, Virginia, South Carolina, and North Carolina, African Americans were more than three quarters of those

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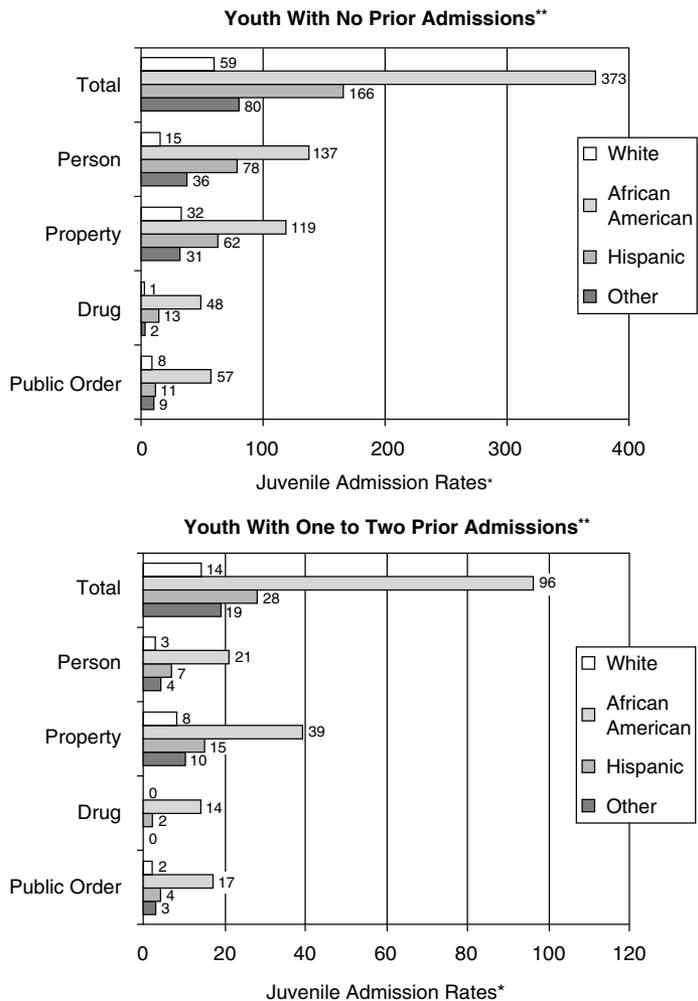


Figure 5.1 1993 Admission Rates* of Juveniles to State Public Facilities

* Rates are calculated per 100,000 youth age 10 to the upper age of juvenile court jurisdiction in each state.

** States include AK, AZ, AR, CA, DE, GA, ID, IL, IN, IA, KY, LA, ME, MD, MA, MN, MS, MO, NE, NH, NJ, NY, ND, OH, OK, OR, SC, SD, TN, TX, UT, VT, VA, WV, and WI.

Note: Persons of Hispanic origin may be of any race. White and African American categories do not include youth of Hispanic origin.

Totals contain offenses not shown.

SOURCE: Poe-Yamagata and Jones (2000).

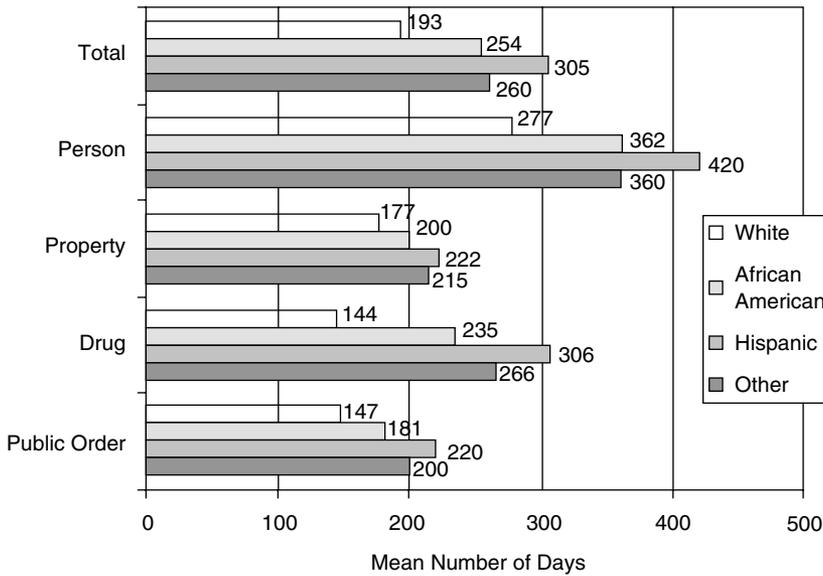


Figure 5.2 1993 Youth Mean Lengths of Stay in State* Public Facilities

* States include AK, AZ, AR, CA, DE, GA, ID, IL, IN, IA, KY, LA, ME, MD, MA, MN, MS, MO, NE, NH, NJ, NY, ND, OH, OK, OR, SC, SD, TN, TX, UT, VT, VA, WV, and WI.

Note: Persons of Hispanic origin may be of any race. White and African American categories do not include youth of Hispanic origin.

Totals contain offenses not shown.

SOURCE: Poe-Yamagata and Jones (2000).

under age 18 that were sent to prisons. In Utah and Colorado, Latino youths made up almost one half of prison admissions of minors. In South Dakota and North Dakota, Native American youngsters constitute 45% and 40%, respectively, of new underage prisoners (Perkins, 1994). There is little question that as states continue to send more juveniles to adult prisons, the burden of this ill-conceived penal policy will be most heavily borne by young people of color.

Beyond Black and White

The issue of racial disparity in the juvenile justice system is not limited to the experience of African American youths. Although the data presented in this chapter clearly demonstrate the harsh treatment received by African

American youngsters in the juvenile justice system, it is worth examining how youths from other minority communities are treated by the system. More research is needed on the plight of African American youngsters, but there is a virtual absence of data on youths who are Latinos, Asian and Pacific Islanders (API), and Native Americans. A recent literature review conducted by OJJDP found fewer than 15 articles over the last decade that cover the experiences of these significant ethnic communities and the justice system (Pope, Lovell, & Hsia, 2002). Statistical data that would help clarify key issues are almost nonexistent or are confusing at best.

One major problem is that the way in which the federal government collects and reports statistical data on a range of ethnic communities. For example, the U.S. Bureau of the Census has only recently permitted people of mixed racial heritage to acknowledge that reality in the 10-year population counts. Further, the federal government imposes the arbitrary rule that Latinos (or Hispanics in their terminology) constitute an "ethnic category" whose members might be of any racial group. Why this distinction is reserved only for Hispanics and not other groups is not well explained. Moreover, federal data are extremely uneven with respect to more detailed breakdowns of subpopulations within the racial categories. This is becoming an increasing problem as the United States welcomes immigrants from a long list of other countries and these newer immigrants are lumped into statistical categories with long-standing immigrant populations. Most federal reports mix together groups that have little or nothing in common based on culture, citizenship status, life experiences, or language. For example, more than 50 nations have contributed to the U.S. population of Asian Americans, including ethnic groups that speak more than 100 distinct languages. The U.S. government adds to this broad category current and former residents of the Pacific Islands and Native Hawaiians. Despite the more accepted term of Native Americans, the U.S. Census continues to refer to "American Indians," although the many ethnic groups within this category contain virtually no persons with historic connection to the Indian subcontinent. It has been more than five centuries since those hopelessly lost European explorers thought that they had sailed to India rather than the New World, yet our government continues to institutionalize their mistake. To make matters worse, the various Native American peoples are merged with a variety of indigenous groups who primarily come from Alaska and parts of Canada. These arbitrary and apparently meaningless statistical categories render virtually useless most of the data on these groups.

This data situation gets worse at the state and local levels. Every state has its own policies with respect to the racial and ethnic identifications

used to compile statistics on crime and justice. There is virtually no training for law enforcement and other justice personnel on how to correctly identify an individual's racial or ethnic affiliation. Some agencies ask the defendant to self-identify, but others rely on guesses. Because the justice system employs far too few people of color, one cannot be too sanguine about the accuracy of these racial and ethnic identifications. Moreover, as indicated at the beginning of this chapter, the categories traditionally used in analyses of race and ethnicity are highly interconnected and subjective in their interpretations and practical impacts. Despite these enormous problems, it is worth examining some of the unique juvenile justice issues faced by Latino, Asian American, Pacific Island, and Native American youths.

¿Dónde Está la Justicia?

Despite the great difficulties in obtaining accurate data on Latino youths and the juvenile justice system, the Institute for Children, Families, and Youth at Michigan State University produced an extremely valuable summary of the issues (Villaruel & Walker, 2002). Similar to the findings for African American youngsters, Latino youth are overrepresented at virtually every stage of the justice system. They appear to receive harsher treatment than white youths, even if the alleged offenses are the same. As noted earlier, an NCCD study reported that Latino youths were more likely than their white counterparts to be sent to state juvenile correctional facilities, even when one controlled for the severity of the commitment offense and prior record (Poe-Yamagata & Jones, 2000). These disparities also existed for the lengths of stay that individuals from each ethnic group spent in state facilities. Data from Villaruel and Walker (2002) reveal that Latino youths are incarcerated in adult prisons and jails at 3–6 times the rate of whites in nine states, and 7–17 times the white rate in four states. An in-depth study in Los Angeles County, California, covering the period 1996–1998, showed that Latino youths were more than twice as likely to be arrested compared to white youths; they were more than twice as likely to be prosecuted as adults, and more than seven times more likely to be sent to state prisons.

Solid information on Latino youths in the justice system requires a significant investment in both staff time and resources to improve the glaring gaps in data. There are also very important definitional and conceptual problems that must be solved. The federal government and many states do not have a uniform definition of who is Latino or Hispanic. Different agencies utilize different categories. Further, these categories are treated

as overlapping with existing racial statistical designations—meaning that a Hispanic person may be of any race. Due to the fact that most Latinos are designated as white, the net result is an overestimation of the number of whites and an undercounting of minorities in confinement.

Currently, states and counties may or may not participate fully in federal data collection efforts, so that the effort aimed at achieving accurate categorization is extremely varied. Moreover, there are little or no funds made available either to train justice system personnel in collecting data on Latinos or to support supplementary data gathering on Latino populations. The absence of bilingual staff in the justice system poses another challenge to achieving accurate data collection. Traditionally, states with large Latino populations such as Arizona, California, Colorado, and Texas have made a greater attempt to assemble data on Latinos. But, as this fastest growing segment of the U.S. population continues to expand in many other states, especially in the Southeast and the Midwest, data collection has not kept pace. The consequence of these discrepancies in data collection is that comparisons among states on Latino youths are virtually meaningless.

Beyond the problems of data collection, the absence of bilingual staff in the justice system has profound and negative consequences for Latino youths and their families. It is estimated that as many as half of Latino youths possess limited proficiency in the English language and that this issue may even be greater for their parents (Villarruel & Walker, 2002). For many of these youths and their families, the failure to have adequate bilingual services means that legal documents go untranslated and unread. Youth and their families may not be fully aware of how to exercise their legal rights or to adequately participate in their own defense. Difficulties in communication among families and justice system personnel tend to exacerbate an already critical situation. Further, the failure to offer meaningful bilingual services may mean that various social and psychological assessment tools that are used by the court may be grossly inaccurate; identifying and diagnosing mental health issues is especially problematic. The limits on communication can also hamper the effectiveness of counseling, aftercare, and other treatment services and fuel the perception that Latino youths are less amenable to home-based services, thus propelling them to out-of-home settings.

Language barriers are just the tip of the iceberg. Lack of understanding of cultural nuances within diverse Latino cultures may lead to harsher treatment of these youngsters. Villarruel and his associates point out that a downcast gaze in the presence of an authority figure is a sign of embarrassment in many Latino cultures, but may be interpreted by the non-Latino juvenile justice person as a sign of disrespect or a lack of remorse.

Moreover, given that the Latino community consists of a broad array of cultures, including Mexican, Puerto Rican, Cuban, Guatemalan, Salvadoran, Nicaraguan, to name a few, there exists a wide range of more specific cultural values, family structures, socioeconomic statuses, and immigration histories. The ability or inability of the juvenile justice system to provide services that are "culturally competent" can help or hinder the system's ability to provide meaningful interventions and services. For example, those who have recently immigrated from countries with totalitarian regimes may feel an understandably strong hostility toward or fear of law enforcement officials. The ability to trust that one's family will be treated fairly by authority figures is key to the successful functioning of the juvenile justice system. When juvenile justice personnel appear to have no understanding or appreciation of various Latino cultures, it is difficult to build a foundation of trust.

Latino youths are also detained for both short and long periods by the Immigration and Naturalization Service (INS). Each year almost 5,000 immigrant youths are confined in more than 90 INS facilities across the nation (Villarruel & Walker, 2002). While not all of these youngsters are Latino, the vast majority are from Mexico and other Central and South American nations. These youths have committed no crimes other than being in the United States without proper documentation. Many of these youngsters migrated with their families, but they are often separated from family members and held in different facilities. Detention may take a few days or many months. Parents may be reluctant to visit their detained children for fear that they themselves will be deported. These youths are given virtually no legal representation, nor are they told what is likely to happen to them. The INS often has few bilingual staff. Culturally competent programming is virtually nonexistent. Some INS facilities do not meet even minimum standards for housing children. Even worse, the INS record-keeping and computer systems are so inadequate that it is difficult to determine how long these youths remain in custody or what happens to them upon release.

Latino youths suffer disadvantages in the juvenile justice system due to questions about their immigration status. Youths who are citizens or who are in the United States via legal immigration are often presumed by law enforcement officials to be illegals. Latino youths are often stopped and searched by police using the sole rationale that they are potentially illegal immigrants. The assumption that a youth is breaking U.S. immigration laws can result in incarceration until parents or guardians are located. Also, a youth who is wanted by the INS may be housed in a juvenile detention facility until INS officials decide how they wish to handle that particular case. Such youngsters are not eligible for release to their parents

or to any other alternatives to detention. These youths are in limbo—they are charged with no offense, but the legal process sits in suspension, sometimes for extended periods of time.

In the aftermath of the attack on the World Trade Center in New York City, the U.S. Justice Department encouraged local law enforcement agencies to assist in the work of identifying persons with questionable immigration statuses. This policy, if fully implemented, will result in even higher numbers of Latino youngsters being arrested and incarcerated.

Another serious burden faced by Latino youths is the popular stereotype that most are gang members. Even though there is scant evidence that Latino youths are more involved in gang activities than youths from other ethnic groups, media portrayals of the “Mexican bandit” have shaped public perceptions and law enforcement responses to Latino young people. Being labeled as a gang member increases one’s likelihood of arrest and detention. Under certain state laws (such as California’s Proposition 21), even the allegation that one is a gang member can result in a wide range of adverse consequences. Proposition 21 permits a youth as young as 14 to be tried as an adult at the discretion of prosecutors. Offenses allegedly tied to gang activities permit automatic filing of juvenile cases in criminal courts. Many law enforcement agencies have implemented computerized gang intelligence systems. Every time a youth comes in contact with the police, officers may access this gang intelligence file. The problem with these systems is that there is no real legal standard for defining a person as a gang member. Having a relative or friend who is alleged to be part of a gang is enough to get a youth labeled. School officials have identified youths as gang members based on the clothes they wear, including the logos of most professional and college sports teams. Likewise, driving certain types of cars may lead school personnel or police to conclude that an individual is a gang member.

Even worse, once one is labeled as a gang member, it is nearly impossible to be deleted from these automated files. Youths and their parents are not informed that they are included in these files and have no means to expunge their names once in the database. Being labeled a gang member, for all too many Latino youths, is a lifetime disadvantage.

In juvenile correctional facilities it is not uncommon for virtually all incarcerated youths to be treated as if they are active gang members. If a fight between two suspected Latino gang members breaks out, correctional officials may lock down all Latino youths in the facilities, whether they were part of the altercation or not. Housing assignments in prisons and juvenile facilities are sometimes dictated by staff perceptions of gang membership. A youth who is unaffiliated is faced with the difficult choice of joining a gang or being victimized by other gang members.

Hysteria about gangs has led to intensified police patrol in Latino neighborhoods and targeted police sweeps in these areas. Some cities, such as Los Angeles, have also enacted laws that prohibit presumed gang members from associating with one another—this can include family members. Latino youths are frequently harassed by police as probable gang members. The image of the Latino gang member is often merged with sinister racial stereotypes of the “illegal alien.” In the aftermath of the September 11 tragedies, there have been several instances in which Latino youths were treated as if they were terrorists. There was a somewhat ambiguous case of a young Puerto Rican man in Chicago who had taken on an Islamic name and was allegedly found with some nuclear waste material. Although it now seems highly unlikely that this case was in any way related to Al Qaeda, there was enhanced surveillance on Latino gangs in many cities. This is yet another example of how Latino youngsters are marginalized and feared by white Americans.

Asian Americans and Pacific Islanders: The Burden of Invisibility

Between 1977 and 1997, arrests of Asian Americans and Pacific Islanders (API) increased by 726% (Federal Bureau of Investigation, 1997). During this same time period, arrests of African Americans declined by 30%. The increase in API arrests far outstripped API increase in the general population (which virtually tripled from the 1980 Census to the 2000 Census). Although the FBI data do not break down the API arrests by specific ethnic groups within this population category, data presented below demonstrate that refugee populations from Southeast Asia were very involved with the justice system. Migrants from Southeast Asia contained high concentrations of war victims, refugees, and other dispossessed populations. Youths who are Samoan have very high rates of arrest and confinement in California (Asian/Pacific Islander Youth Violence Prevention Center, 2001). For example, Samoan young people had a higher arrest rate than African American youths in San Francisco. Southeast Asian youngsters and Samoan youths are much more likely to be placed in out-of-home settings than white youths. In the state of Hawai'i, Native Hawaiian youngsters are disproportionately detained and imprisoned.

Vietnamese youths make up a highly disproportionate number of juvenile arrestees in both Alameda and San Francisco counties in California (Le, Arifuku, Louie, & Krisberg, 2001; Le, Arifuku, Louie, Krisberg, & Tang, 2001). Statewide, the number of Asian youths committed for the first time to the CYA rose from 4% to 7.4% of the total new commitments

during the 1990s (State of California, Department of the Youth Authority, n.d.). A survey of the February 2002 residents of CYA found that 25% of the API youths in custody were committed for homicide, compared to 6% for whites, approximately 9% for Hispanics, 12% for Native Americans, and 8% for African Americans. Thai, Laotian, and Cambodian youths from California's Central Valley are overrepresented in the CYA population (National Council on Crime and Delinquency, in press). Although API groups have been left out of many studies of self-reported delinquency, the limited available data suggest that Southeast Asian youths self-report higher rates of antisocial behavior than non-API youths (Asian/Pacific Islander Youth Violence Prevention Center, 2001). A recent report suggested that young women from Southeast Asian communities have the highest rates of teenage pregnancy compared to girls from other ethnic groups (Asian/Pacific Islander Youth Violence Prevention Center, in press).

These facts are striking in contrast to the dominant perception of API youths as members of the "model minority." A very pervasive view of the API population is that they are a racial minority group that has overcome its disadvantaged status and achieved a very high degree of educational success, financial independence, and social acceptance. The myth of the "model minority" is that APIs prove that strong family values, a strong work ethic, and a commitment to educational attainment can overcome generations of racism and legal discrimination against Asian Americans (Lee & Croninger, 1996; Sue & Kitano, 1973). The presumed success of the API population is offered as evidence of the powerful existence of the American meritocracy that transcends racial or class differences. Other ethnic groups are advised, by implication, to follow the lead of the API population to find the keys to advancement in American society. API achievement has been used to attack affirmative action programs, social welfare policies, and the decline in family values among other ethnic groups. It is certainly true that some segments of the API population are doing better after years of suffering under racial discrimination and legally imposed barriers; however, there are many segments of the API community that are not succeeding at all (Takagi, 1989). For example, the 1990 Census reported that Laotian and Hmong Americans had rates of poverty that were more than six times those of the general U.S. population. Cambodian Americans had a poverty rate of 47%, and Vietnamese Americans had a poverty rate of 34% (President's Advisory Commission on Asian Americans and Pacific Islanders, 2001). Whereas 38% of all Asian Americans held college degrees in 1990, this was true for only 6% of Cambodian Americans, 7% for Laotian Americans, 3% of Hmongs, and 17% of Vietnamese Americans (Sok, 2001).

The myth of the model minority means that very needy segments of the API community are ignored by government agencies and social

services agencies (Lee & Zahn, 1998). Moreover, the API population exhibits very low rates of voting and consequently has very few elected representatives at any level of government (Espiritu, 1992). With few exceptions, API populations live in ethnically segregated communities along with other disenfranchised ethnic groups (Ong & Miller, 2002). This further contributes to the political invisibility of the API population.

API youths are confronted with many of the problems discussed above in connection with Latinos. Despite the growing numbers of API youths entering the justice system, there have been few, if any, accommodations to the special needs of the API population. There are very few police, judges, prosecutors, defense lawyers, or correctional officials from the API community and even fewer justice officials. Language barriers are enormous for groups that together speak over 100 different languages and dialects. Interpreters are virtually nonexistent. Even in jurisdictions such as San Francisco, in which APIs constitute almost a majority of the youth population, there has been little attention paid to developing culturally competent programming.

API youths also suffer from a range of racist stereotypes in their encounters with justice system officials. Contemporary law enforcement officials are fond of promulgating the images of the evil Chinese gangs that originate in Hong Kong, Taiwan, or China and victimize American citizens. These images are as old as those presented to the gullible public in the late 19th and early 20th centuries by the Hearst and McClatchy newspaper chains that showed cartoons of sinister Asian men luring attractive white women into opium dens, forcing them into lives of degenerate white slavery. These racist images set the stage for a wide range of anti-Asian legislation and exclusionary immigration policies. The mass media has trumped-up the Asian American criminal as one of its most frightening images.

Immigration issues also plague youths from API communities. They face many of the same kinds of injustice and insensitivity encountered by Latino youngsters. The image of the Asian youth gang leads police to arbitrarily stop many API youths. Laws designed to crack down on gangs are disproportionately applied in API communities.

Native American Youths: Outsiders in Their Own Land

Ironically there are less data available on the involvement of Native American youths in the juvenile justice system than for any other major ethnic group. Although the FBI reports that there were 20,295 "American Indian or Alaskan Native" juveniles who were arrested in 1999, it is

impossible to determine the accuracy of this number. Native Americans reside both inside and outside tribal territories. Some of the tribal areas are regarded as sovereign nations; others are not. The bulk of the juvenile arrests reported by the FBI are from urban areas, suggesting an under-reporting of arrests occurring in tribal areas (Maguire & Pastore, 2000).

Melton (1998) points out that reliable statistics on Native American crime are missing for several reasons. First, data collection methods differ from tribe to tribe, and there are no uniform methods governing these data. Second, many crimes that occur in tribal territories are not even reported to the FBI. Other federal data on Native American crime are collected by the Bureau of Indian Affairs (BIA) or U.S. Attorneys on cases under investigation, but these data are very incomplete. Law enforcement in tribal areas is provided by a mixture of local, state, and federal agencies. According to Melton (1998), about 60% of 304 Native American reservations operate their own tribal police with financial support from the federal government. The BIA of the U.S. Department of the Interior has only about 400 sworn law enforcement officers that are assigned to about 40 locales, primarily in the western states. The BIA also has criminal investigators that support the work of these police officers. As mentioned earlier, there are circumstances in which U.S. Attorneys, the FBI, and other federal law enforcement agencies are involved in policing Native American territories. Observers have raised concerns about the poor level of coordination among these multiple law enforcement agencies, which contributes to the absence of reliable data about crime and the operation of the justice system in tribal areas. There are also concerns that services to Native American victims are inadequate, prosecutions are often hindered by confusing jurisdictions, and law enforcement training is uneven (Melton, 1998).

Adult and juvenile correctional facilities on tribal territories are operated by the BIA. In 1995, there were a total of four juvenile facilities operated by the BIA. There are also nearly 40 adult facilities that have some capacity to hold juveniles. In all, there may be as many as 339 beds to hold Native American juvenile offenders (Melton, 1998). Besides the correctional beds operated by the BIA, there are a number of contracted facilities used to house minors. There are very little reliable data on the programs and conditions of confinement in these contracted facilities. Some Native American youths who are convicted of federal offenses are transferred to the custody of the Federal Bureau of Prisons, which in turn contracts with state and private agencies to hold these youngsters. One consequence of this arrangement is that Native American youngsters are often confined in facilities that are hundreds of miles from their home communities. For example, Navaho youths from Arizona are often sent to the facilities of

the California Youth Authority. It is rare that these contracted programs have either staff or programs that are culturally appropriate for Native American youngsters.

Native American families and youths confront many serious problems related to youth crime. Substance abuse, especially alcoholism, is a major problem. Child maltreatment is a major problem in tribal areas (Hammond & Yung, 1993). There are increasing reports of the growth of gang membership among Native American youths (Coalition for Juvenile Justice, 2000; Melton, 1998). Community resources that are available to respond to these challenges are extremely underfunded and in some instances nonexistent. Community-based options, home-based services (in lieu of confinement), or out-of-home placements are badly needed. Not surprisingly, this situation leads to disproportionate incarceration among Native Americans, both in tribal areas and in the outside community. Because many Native Americans live in rural communities, the excessive confinement of these youngsters is further propelled by the general lack of alternatives to incarceration in rural areas, as well as the punitive philosophies that tend to dominate rural justice systems (Parry, 1996).

The task of bringing justice to Native American youths is enormous. There is a paucity of solid research to guide program development. There are few well-tested models of working effectively with Native American youngsters and their families. We need to travel the long journey to educate justice system officials about culturally appropriate interventions. The severe balkanization of law enforcement services and correctional programs must be reduced.

As with API and Latino youths, we must focus positive public attention on these children and families. The American legacy of violence against and exploitation of its native peoples is an issue of enduring national shame. The continuing plight of Native American youths should not be allowed to perpetuate that tragic history.

In Search of Answers

In our society, race and ethnic differences affect virtually all aspects of life. One's racial or ethnic identity exerts a major influence on where one lives, the quality of health care one receives, where one's family attends religious services, the friends that one associates with, the neighborhoods that one is likely to live in, the range of educational and vocational opportunities available, and the quality of justice one can expect. Indeed, race and ethnicity affect a person's life expectancy and where bodily remains will be placed after death. It would be odd if the juvenile justice system were *not* profoundly impacted by race and ethnicity.

Though there is little doubt that American society has made significant strides to eliminate legally sanctioned segregation and discrimination, the remaining disparities are nevertheless extremely important. America's long and tragic history of racism is still with us. Like a virus, we are all infected by racist concepts and fears. The virus may lie dormant for a time, but it is nearly impossible to escape its pernicious influence. The benefits that accrue without effort to all white Americans (sometimes referred to as "white privilege") is a seductive reason to deny that racism still exists or that one has any specific responsibility in the nation's legacy of racial oppression. Some of the racial disparities discussed in this chapter are the result of prejudiced individuals who consciously set out to harm people of color. If these individuals were the major source of the problem, the remedies would be rather straightforward—screen out biased criminal justice personnel and punish those who use race or ethnicity as inappropriate criteria in the exercise of their legal responsibilities. Unfortunately, the issue is far more complex, and the unconscious influence of racism is far more pervasive and difficult to purge from the operations of the justice system. One example of the effects of unconscious race bias is offered by the research of Bridges and Steen (1998). They systematically reviewed the court reports produced by probation officers in a Northwestern urban juvenile court. The findings were startling. The probation officers were much more likely to attribute the delinquency of white youths to environmental factors, of which the youths were victims. For black youths, the probation officers concluded that the misconduct was due to fundamental character flaws. It was typical to read that black youths "showed no remorse" or were "cold-blooded" offenders. The white youths were often portrayed as tragic figures of family maltreatment, mental health problems, or bad companions. Bridges and Steen found that these probation officer analyses differed even when the circumstances of the offenses were almost identical. Similarly, the probation officers were more likely to recommend incarceration as the appropriate punishment for African American youngsters. They were more willing to consider home-based treatment approaches for white youths.

The contrasting stories of two youths from Southern California further illuminate the forces that influence disparate treatment of minority youths by the justice system. In 1995 the California legislature enacted a new law that permitted youths as young as 14 to be tried in adult courts for murder. It should be noted that since that time California voters have voted for even more expansive procedures to prosecute very young children in criminal courts.

The first two youths who were tried under the 1995 statute were both from Orange County, California. While the names of the youths have been changed to protect their confidentiality, the facts of the case illustrate how racial and ethnic bias can corrupt the justice process (Krisberg, 2003). The first youngster, whom we will call Sean, is a white youth. Sean took his father's gun and killed his mother in a dispute over cookies that Sean wanted to eat. The second youth, whom we will refer to as Hector, was Latino. Hector was an accomplice to an armed robbery in which his co-defendant murdered a convenience store clerk. Hector had no gun and fired no shots. He was simply at the wrong place at the wrong time. Both youngsters were 14 years old at the time of these events.

Under the 1995 law, both youths were eligible to be tried as adults, but the outcomes of these cases were quite different. Hector was tried in a criminal court and is serving a prison sentence of 25 years to life. Sean was kept in the juvenile court, was sent to the California Youth Authority, and was eligible for parole in a few years. Both Hector and Sean were initially sent to a Youth Authority Reception Center for a diagnostic assessment. Sean had no prior criminal record, whereas Hector had a few prior arrests for minor property crimes. Neither youth had an official history of past violent behavior. Correctional professionals from the Youth Authority concluded that both young people were amenable to the treatment programs of the juvenile justice system.

Sean became the focus of national media coverage. His father appeared on the *ABC Nightline* show pleading for leniency for his 14-year-old son. Hector's case achieved minimal media attention, with only a very brief report in the Orange County version of the *Los Angeles Times*.

During his hearing, Sean was portrayed by his counsel as a tragic and sympathetic figure in need of mental health treatment services. In court, Sean, a tall and muscular high school football player, acted contrite and despondent. Hector, who was very slight of build, swaggered and grinned, showing the adolescent bravado that he had learned on the streets of Long Beach, California. The judge in Hector's case referred to him as "a cancerous growth on society." Neither boy said he could remember the details of his crime. Hector's lack of memory was interpreted by the prosecution as "a lack of remorse." Sean's claim of not recalling the murder was explained by a court-appointed psychiatrist as "post traumatic amnesia" (Krisberg, 2003).

Neither family had much money, and both boys were represented by public counsel. In Sean's case, he was defended by a very able public defender that put on a "virtual capital defense" to allow the court to see him as a sympathetic figure. Sean's public defender asked the court to

pay for a psychiatrist who examined the troubled 14-year-old and made a convincing case for leniency. The court heard from a broad range of adults who knew Sean his whole life. By contrast, Hector was given an assigned counsel, a private lawyer who periodically takes on cases of indigent clients. In general, the assigned counsels are somewhat less familiar with the local juvenile court culture. Unlike Sean's adroit public defender, Hector's lawyer did not request a court-appointed psychiatric exam and did not put on a lengthy case. In fact, there was no formal court hearing for Hector; his plea for leniency amounted to the filing of papers.

Sean clearly benefited from skillful legal representation as well as community sentiments favoring compassion and understanding. Hector was not as fortunate. As one observer reported, "There is a sea of Hectors in Southern California, and we can hardly even distinguish them as individuals" (Krisberg, 2003).

Blatant racism would be an easy explanation for the disparate outcomes between Hector and Sean. After all, the white youth got the benefit of the doubt and the Latino youth was harshly punished—even though the offense committed by Sean seems much more frightening than that of the unarmed codefendant, Hector. The racially charged atmosphere in Southern California, especially the bias against Latino citizens, surely contributed to the end result. Clearly, there were two standards of justice that were applied in these two cases. Yet it is unlikely that the criminal justice officials set out to conspire against Hector. More realistically, unconscious race and class prejudices came into play. No less pernicious, racism that exists below the cognitive level can exert a very powerful influence on human decision making (Lawrence, 1987). One might raise the broader issue that unarticulated racial biases were crucial to convincing legislators that children as young as 14 should be tried in adult courts (Krisberg, 2003).

The cases of Hector and Sean provide humanistic texture to the social science research of Bridges and Steen (1998). These data also point us in the direction of possible remedies to the unfair treatment of minority youths at every level of the juvenile justice process (Krisberg et al., 1987; Poe-Yamagata & Jones, 2000). One such solution, which seeks to make decision makers more aware of their unconscious biases, involves training in racial and ethnic sensitivity. Diversity training has become increasingly important in criminal justice training curricula. Though we have little completed empirical research on the effectiveness of these training investments, there is scant evidence that actual decision-making practices have changed in very many locales. Typically, justice system workers

deny that they are using inappropriate decision-making criteria; they put forth a range of explanations and justifications for unfair outcomes. Most prominent is the erroneous assertion that solving racial bias in the justice system will require the imposition of a quota system for who gets arrested and detained. Diversity trainers confront predominantly white justice system employees who feel defensive about claims that the system is racially slanted. Moreover, diversity training is often subtly presented as something to be done for public relations reasons. Front-line workers often do not get a clear message that top management is totally committed to changing policies and practices.

More promising results have been reported in jurisdictions that have an explicit goal to reduce minority penetration into the juvenile justice system, especially in those places that have moved to more objective decision-making tools. For example, two sites supported by the Annie E. Casey Foundation, Santa Cruz, California, and Multnomah, Oregon, have achieved impressive results in lessening racial and ethnic disparities in their detention centers (Hoytt, Schiraldi, Smith, & Ziedenberg, 2001). The Building Blocks for Youth project is now working actively with a number of jurisdictions that are willing to make a commitment to reducing racial disparity and that are willing to examine every level of decision making throughout their systems. NCCD's research has consistently demonstrated that research-guided decision systems can reduce the racial disparities that seem endemic to clinical or subjective systems in both juvenile justice and child welfare (Baird, Erath, & Wagner, 1999).

Another reform direction suggested by the research and case examples is to increase the quality and extent of legal representation that is available to all youths. Often this is an issue of money—who can pay for adequate legal representation or which jurisdictions provide the best quality of legal defense of indigent clients. Research and demonstration projects need to be launched to test whether improved legal services can help reduce the racial biases of the juvenile justice process.

Because the decision to transfer youths to the criminal court seems to have an especially significant impact on minority youths in the justice system, it makes sense to oppose the expansion of transfer practices and even attempt to reverse some of the very bad laws that have been enacted during the past decade. Franklin Zimring (in press) has argued that focusing on reducing the growing trend to try juveniles as if they were adults is a "harm reduction" strategy that will positively impact minority youngsters without explicitly challenging the racial biases in decision making.

Finally, it appears that early interactions between minority youngsters and the police or detention intake workers are crucial to the ultimate disparate outcomes. It is very important to create a range of new community-based options that will be available in the communities in which most children of color reside. Diversionary programs have too often been instituted only in predominantly white communities. Specific attention should be paid to developing inner-city program options to keep nonviolent offenders out of the justice process whenever possible.

Research pointing to proven alternatives is woefully inadequate. We need to know more, but we also need to *do* more. Large-scale demonstrations of how to reduce racial disparity in the juvenile justice system have not been undertaken. Simple justice demands a course of action different from the current one. Indeed, if the reality of the justice system for children of color is that "justice means just us," the very legitimacy of the legal process is compromised. There are few issues more central to the reform of juvenile justice than rectifying the racial biases that seem to infect every aspect of the process.

Summary

In 1992 the federal JJDP A was amended to require all states wishing to receive funds from OJJDP to examine the extent of DMC in their juvenile justice systems. In addition to conducting the studies, states were required to make "good faith efforts" to reduce DMC. Many of these studies have documented the disproportionate presence of children of color at every stage in the juvenile justice process. In particular, African American, Latino, and Native American youngsters are much more likely than white youths to be detained, to be placed out of the home, and to be sent to prisons.

Research that explains why these disparities occur is less well defined. The available data on race and ethnicity and juvenile justice are very uneven. It appears that many factors contribute to an "accumulated disadvantage" that pulls children of color into the deep end of the juvenile justice system. There are previously ignored issues that adversely affect the handling of Latino, Native American, Asian American, and Pacific Islander youngsters. These include inadequate language and cultural resources in the juvenile justice system, excessive focus on gangs, racial biases that are embedded in juvenile justice decision making, and detrimental policies of the Immigration and Naturalization Service and the Bureau of Indian Affairs. There are several promising approaches to

reduce DMC, and some jurisdictions have made significant progress in this area.

Review Questions

1. What is the best way to measure the extent of DMC, and what stages of the juvenile justice process are most important in generating disproportionate treatment of children of color?
2. What is "cumulative disadvantage," and how does it increase DMC?
3. What are some of the key conceptual and data problems that limit our ability to really understand the causes of DMC?
4. What approaches have proven successful in reducing the extent of DMC?

