

# Implicit Racial Bias

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## Introduction

Implicit racial bias and its potential effects on criminal justice decision making have become highly visible issues in recent years. Driven by a myriad of factors, including the well-documented disparity in criminal justice involvement across racial groups and several high-profile events that have exposed rifts in the relationships between local police and the communities they serve, both discourse and research on the topic of implicit bias arguably has become more prominent than ever before. This fact sheet is intended to raise awareness about the concept of implicit racial bias, the effect of implicit racial bias in the criminal justice system, and how the issue is being addressed to enhance the fair and equitable administration of justice.

Although implicit bias can manifest itself in many different forms, such as gender, racial or religious bias, this fact sheet is focused specifically on implicit racial bias in the context of the criminal justice system. Indeed "all human beings have biases or prejudices as a result of their experiences, and these biases influence how they might react when dealing with unfamiliar people or situations."<sup>1</sup> Implicit bias, however, occurs in the unconscious state of mind, meaning that individuals are not even aware that they have it.<sup>1</sup> Automatic associations and stereotypes about certain groups of people "can influence behavior, making people respond in biased ways even when they are not explicitly prejudiced."<sup>2</sup> Implicit racial bias fundamentally differs from explicit racial bias. While the latter typically manifests as overt racism or discrimination,<sup>3</sup> implicit bias occurs unconsciously, typically without discriminatory intent. "Well-meaning people who consciously reject racism or other bias may unwittingly act in ways that result in discrimination because of implicit bias."<sup>3</sup>

The following gives a brief overview of implicit racial bias as it relates to the various stages of the criminal justice system. Various mechanisms used to address implicit racial bias are also briefly discussed along with what is known about their effectiveness.

## What is Implicit Racial Bias?

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It is important to distinguish implicit racial bias from racism or discrimination. Implicit biases are associations made by individuals in the unconscious state of mind. This means that the individual is likely not aware of the biased association.

Implicit racial bias can cause individuals to unknowingly act in discriminatory ways. This does not mean that the individual is overtly racist, but rather that their perceptions have been shaped by experiences and these perceptions potentially result in biased thoughts or actions.

No one is immune from having unconscious thoughts and associations, but becoming aware of implicit racial bias creates an avenue for addressing the issue.

## Implicit Racial Bias in the Criminal Justice System

Public confidence in the criminal justice system is a cornerstone of the rule of law and a facilitator of public safety. Research has clearly demonstrated “that people obey the law not just because they are afraid of being punished or because they believe the law is morally right, but also because they believe that the law and its enforcement are fairly administered.”<sup>4</sup> When the public perceives the criminal justice system to be fair and equitable, they are more likely to engage and cooperate with authorities when crimes are committed, which in turn leads to safer communities.

Given the well-documented over-representation of people of color in the criminal justice system — particularly behind bars — there has been a growing concern among policymakers, scholars and the public about what leads to such disparities and what can be done to reverse them. Similar concerns have emerged in recent years about the underlying causes of frayed relationships in some communities between the police and the citizens they serve. While many factors likely contribute to these problems, and there is no single solution for addressing them, research has clearly demonstrated “the adverse experiences and outcomes related to criminal justice involvement for marginalized groups,” and that “these adverse experiences can be the result of (1) unconscious discrimination; and/or (2) historic policies and related structural dynamics.”<sup>5</sup> Hence, attempts to better understand and mitigate the impacts of implicit racial bias are key to building confidence in the criminal justice system across all communities and ensuring that the administration of justice is perceived as fair and equitable for all.

Indeed, implicit racial bias and its impact on the administration of justice are being examined and discussed with greater frequency and in a far more substantive fashion than ever before. Implicit racial bias has been studied at various stages of the criminal justice process, and the potential effects of implicit racial biases on police officers,<sup>6,7,8,9</sup> prosecutors,<sup>10</sup> public defenders,<sup>11</sup> trial judges,<sup>12</sup> the courtroom in general,<sup>13,14</sup> the U.S. Supreme Court,<sup>15</sup> and capital punishment decisions<sup>16</sup> have all been examined in recent years. Findings from this research have demonstrated that racial disparities are found at virtually every point of criminal justice processing, and that implicit racial bias can manifest itself not only in the discretionary decision making of criminal justice system actors — such as law enforcement officers, prosecutors, public defenders, judges, probation, parole and correctional officers, but also in otherwise well-intentioned crime control laws and policies.

Racial disparities, for example, have been found at the initial point of contact with police, particularly in practices such as the “stop and frisk”, which give law enforcement officers broad discretion about who to stop and who to take into custody.<sup>17</sup> Implicit racial bias also has become a central feature of discourse concerning tensions between the police and citizens in some communities.

Implicit bias is in fact being acknowledged in recent national police reform efforts. For example, in its 2015 final report<sup>1</sup>, the Task Force on 21<sup>st</sup> Century Policing<sup>1</sup> noted that decades of research and practice support the premise that people are more likely to obey the law when they believe that the authority of those who are enforcing it is legitimate – and that the public confers legitimacy only on those they believe are acting in procedurally just ways. The report also noted that procedural justice focuses in part on the ways police officers and other legal authorities interact with the public and how the characteristics of those interactions shape the public’s trust of the police. Moreover, “external procedural justice” (i.e., the practice of fair and impartial policing), the report argues, is built on understanding and acknowledging human biases,<sup>1</sup> both explicit and implicit. Witnesses testifying at the task force sessions directly addressed the need for a change

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<sup>1</sup> The Task Force on 21<sup>st</sup> Century Policing was established by Executive Order of the President on December 18, 2014.

in the culture in which police do their work, including the implicit biases that may lead officers to rely upon race in the context of stop and frisk. The Task Force concluded that to help achieve legitimacy, mitigating implicit bias should be a part of training at all levels of a law enforcement organization to increase awareness and ensure respectful encounters both inside the organization and with communities.<sup>1</sup>

Racial disparities also have been documented at the prosecution stage of criminal processing. Prosecutors are afforded broad discretionary powers in charging and plea bargain decisions, as well as in making pre-trial release and sentencing recommendations. As the 2014 Vera of Justice Institute report titled *A Prosecutor's Guide for Advancing Racial Equity* points out, while factors contributing to racial and ethnic disparities in criminal justice outcomes are varied and complex, the actions prosecutors take can play a role.<sup>18</sup> Prosecutors have significant discretionary power, and "the act of exercising discretion may result in unintended consequences harmful to members of certain racial groups. Despite efforts to be fair and equitable, prosecutors may unintentionally contribute to the overrepresentation of minorities in the nation's courtrooms, prisons, and jails."<sup>18</sup>

In corrections, minority over-representation in our nation's prisons is well documented, and racial disparities in who is sent to prison can be aggravated by laws prescribing more severe sentences for offenses for which people of color are disproportionately arrested.<sup>19</sup> For example, the Anti-Drug Abuse Act of 1986 established much tougher sentences for crack cocaine offenses than for powder cocaine cases under federal law. Distribution of just 5 grams of crack carried a minimum 5-year federal prison sentence, while for powder cocaine, distribution of 500 grams – 100 times the amount of crack cocaine – carried the same sentence.<sup>20</sup>

While the tougher sentences for crack cocaine were designed in part to account for certain harmful conduct believed to be associated to a greater degree with crack cocaine offenses than with powder cocaine offenses,<sup>2</sup> the 100:1 drug quantity ratio promoted unwarranted sentencing disparities based on race.<sup>21</sup> Because of its relative low cost, crack cocaine is more accessible for poor Americans, many of whom are African Americans. Conversely, powder cocaine is much more expensive and tends to be used by more affluent white Americans. Nationwide statistics compiled by the U.S. Sentencing Commission reveal that African Americans are more likely to be convicted of crack cocaine offenses, while whites are more likely to be convicted of powder cocaine offenses.<sup>21</sup> Thus, the sentencing disparities punishing crack cocaine offenses more harshly than powder cocaine offenses disproportionately penalized African American defendants for drug trafficking comparable to that of white defendants. Compounding the problem is the fact that whites are disproportionately less likely to be prosecuted for drug offenses; and when prosecuted, they are more likely to be acquitted; and when convicted, much less likely to be sent to prison.<sup>22</sup>

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<sup>2</sup> See 2002 USSC Report: Many of the assumptions used in determining the 100:1 ratio have been proven wrong by more recent data. For example, numerous scientific and medical experts have determined that in terms of pharmacological effects, crack cocaine is no more harmful than powder cocaine – the effects on users is the same regardless of form. In addition, research indicates that the negative effects of prenatal crack cocaine exposure are identical to the negative effects of prenatal powder cocaine exposure. Other assumptions, such as the epidemic of crack use by youth, never materialized to the extent feared.

Again, it is critically important to recognize that implicit racial bias is not overt discrimination or racism. Moreover, attempts to understand and mitigate its impacts are not accusations of racism or explicit discrimination on the part of an individual or institution.

**The Kirwan Institute for the Study of Race and Ethnicity**<sup>3</sup> at The Ohio State University has been studying and disseminating scientific evidence concerning implicit bias since 2003. The Institute publishes an annual *State of the Science: Implicit Bias Review* to deepen public awareness of implicit biases and the challenges they pose. According to the Institute, research from the neuro-, social and cognitive sciences shows that hidden biases are distressingly pervasive, that they operate largely under the scope of human consciousness, and that they influence the ways in which we see and treat others, even when we are determined to be fair and objective. Everyone possesses implicit biases, even people with avowed commitments to impartiality. Moreover, the implicit associations we hold **do not necessarily align with our declared beliefs** or even reflect stances we would explicitly endorse.

A recent publication from the Kirwan Institute for the Study of Race and Ethnicity<sup>5</sup> summarized the research conducted on implicit bias in the criminal justice field, as well as in other areas such education, health, and housing. One prominent study cited was carried out by Lorie Fridell and Hyeyoung Lim who analyzed field data on police use of force on Black subjects.<sup>23</sup> Using police reports, Fridell and Lim examined competing empirical perspectives related to use of force with Black subjects, including the implicit bias perspective. Consistent with that perspective, the results indicated that police were more likely to use electronic control devices vs. lower-level restraint methods on Black subjects, but not on White subjects.<sup>23</sup>

Another study cited in the Kirwan Report was that of Clair and Winter who conducted interviews to examine judges' perceptions of racial disparities in the courts and what they determined was the best way to address them.<sup>24</sup> Focusing on the processes of arraignment, plea hearings, jury selection, and sentencing, the researchers interviewed judges in the upper and lower courts of a state where Blacks and Latinos were disproportionately incarcerated. When discussing racial disparities, judges pointed to the presence of "disparate treatment" (e.g., a court official's implicit and explicit biases) or "disparate impact" (e.g., the differential impact of seemingly neutral laws, or how poverty affects offense rates). Most judges believed that a combination of these two sources explained racial disparities. As part of the discussions on disparate impact, many judges reported the contribution of their own implicit biases. Several noted their familiarity with research on implicit bias in sentencing either through the media or conferences; this knowledge led many to reflect on their biases and consider how these biases influenced their decision-making.<sup>24</sup>

This important body of research has enormous potential for helping to reduce implicit bias and unwanted disparities in the criminal justice system. Indeed, one of the key characteristics of implicit bias is that it is **malleable**. The implicit associations we have formed as a result of life experiences can be gradually unlearned through a variety of de-biasing techniques.

## Addressing Implicit Racial Bias

Addressing implicit racial bias at all levels of the criminal justice system is a challenging but important undertaking. As the President's Task Force on 21<sup>st</sup> Century Policing recently indicated, understanding the

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<sup>3</sup> <http://kirwaninstitute.osu.edu/>

negative impact of “implicit racial bias on police-community relations and then taking constructive actions to train officers and the community on how to recognize and mitigate” implicit bias is essential to ensure fair and impartial policing.<sup>25</sup> Beyond police, The Sentencing Project has asserted that all key decision makers in the criminal justice system should receive regular training on the role of implicit, unchecked bias in order to reduce its impact.<sup>17</sup>

Within the criminal justice system, training programs for addressing implicit racial bias largely have been focused on law enforcement. Arguably, the first POST (Peace Officer Standards and Training) certified training on procedural justice and implicit bias in the nation was developed and offered in California in 2015.<sup>4</sup> Developed by the California Department of Justice in partnership with Stanford SPARQ (Social Psychological Answers to Real-world Questions), the Oakland and Stockton Police Departments, and the community organization California Partnership for Safer Communities, California's Principled Policing course focuses on:

- Procedural justice and implicit bias and how they operate,
- the goals and motivations of police officers,
- the sources of stress and cynicism in policing,
- the historical and generational effects of policing, and finally
- strategies for simultaneously enhancing police-community trust and improving the health and safety of police officers.<sup>26</sup>

Another noteworthy initiative is the U.S. Department of Justice funded Fair & Impartial Policing® (FIP)<sup>5</sup> program. In 2016, the U.S. Department of Justice issued a memorandum for all Department law enforcement agents and prosecutors announcing an implicit bias training program for “personnel who have the most direct involvement in our criminal justice system.”<sup>27</sup> This announcement by the federal government acknowledged the growing body of evidence about the prevalence and adverse impacts of implicit bias and the need for comprehensive training programs to address implicit bias.

The Fair & Impartial Policing® (FIP)<sup>6</sup> program “trains officers on the effect of implicit bias and gives them the information and skills they need to reduce and manage their biases.”<sup>28</sup> Developed by a national Curriculum Design Team comprised of experts on implicit bias, police executives, first-line supervisors, officers, community stakeholders and social psychologists, the FIP training program is based on the fundamental principles of fair and impartial policing listed below:

- All people, even well-intentioned people, have biases
- Having biases is normal to human functioning
- Biases are often unconscious or “implicit,” thus influencing choices and actions without conscious thinking or decision-making

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<sup>4</sup> State of California Department of Justice Press Release: <https://oag.ca.gov/news/press-releases/attorney-general-kamala-d-harris-kicks-first-its-kind-law-enforcement-training>

<sup>5</sup> <https://fipolicing.com/>

<sup>6</sup> <https://fipolicing.com/>

- Policing based on biases or stereotypes is unsafe, ineffective and unjust.
- Fair & Impartial Policing® is a cornerstone of procedural justice and important for the achievement of agency legitimacy.
- Officers can learn skills to reduce and manage their own biases.
- Supervisors can learn skills to identify biased behavior in their direct reports and take corrective actions when they detect biased policing
- Law enforcement executives and their command-level staff can implement a comprehensive agency program to produce Fair & Impartial Policing®.

Currently, there are Fair & Impartial Policing® curricula customized for academy recruits and/or in-service patrol officers, first-line supervisors, mid-level managers, command-level personnel (or command personnel and community leaders) and law enforcement trainers.<sup>28</sup> The training curriculum was recently updated to include more recent scientific evidence on human bias, expand its coverage of types of biases (beyond race/ethnicity), discuss additional ways bias can be manifested in policing, enhance practical application exercises to convey relevance to all aspects of policing, and improve the adult learning techniques used to promote participant engagement and interest.<sup>7</sup>

Another example of innovative training aimed at reducing implicit bias is the Chicago Police Department's use of role-playing exercises with recruits in the Department's police academy. As part of these role-playing exercises, police recruits are provided feedback about stereotype-consistent behavior, thereby making them aware of their implicit biases and their propensity to lead to poor policing decisions. As part of the debriefing process, recruits also are provided tools to counteract biased behavior.<sup>29</sup>

While comprehensive trainings to address implicit racial bias in the criminal justice system have largely been focused on law enforcement to date, other efforts to reduce implicit bias and racial disparity in the criminal justice system do exist. For example, under its Prosecution and Racial Justice Program (PRJ), the Vera Institute published a guidebook for prosecutor offices that are seeking innovative solutions to the problem of racial disparity in the criminal justice system. Grounded in the belief that "giving prosecutors a coherent, evidence-based picture of their offices' performance in the area of racial fairness is the essential first step toward achieving more equitable results,"<sup>18</sup> the guidebook presents a roadmap for conducting analyses designed to enhance the capacity of prosecutor offices to better understand the "cumulative impact on case outcomes of their policies, procedures, and daily practices"<sup>18</sup> so prosecutors gain the knowledge they need to:

- identify institutional factors that may lead to disparate racial outcomes;
- assess how they are applying their discretion;
- implement corrective courses of action if needed; and
- serve as leaders for racial equity in their jurisdictions.

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<sup>7</sup> <https://fipolicing.com/about-us/>

## Effectiveness of Implicit Racial Bias Training

Research on the effectiveness of implicit bias training arguably is in its infancy, as few studies have assessed the impact of training on long-term behavior or racial disparity in the criminal justice system. Assessments that have been conducted, however, have produced some promising findings. Trainings that employ mental imagery<sup>30</sup> and that expose individuals to counter-stereotypes<sup>30,31,32</sup> have been found to moderate implicit stereotypes, and those that establish a change in individual perception appear to be a practical and viable method for addressing implicit racial bias among criminal justice system professionals.<sup>29</sup>

Lai, et al. (2014), for example, examined the effectiveness of seventeen interventions aimed at reducing implicit racial bias<sup>33</sup> and found that those that provided experience with counter-stereotypical exemplars and strategies to override biases were effective. Decreases in implicit racial bias were only measured in the short-term, however, and research that examines the durability of positive training effects over longer time periods is needed.

Devine and colleagues (2012)<sup>34</sup>, for example, developed and studied the impact of a bias education and training program on 91 non-Black introductory psychology students during a three-month longitudinal study. The program described the adverse effects of discrimination and how to utilize strategies to reduce bias in daily life, much like breaking a habit. These strategies included stereotype replacement, counter-stereotypic imaging, individuation, perspective taking and increasing opportunities for contact. The intervention required participants to learn about the contexts that activate bias and how to replace biased responses with responses that reflect one's non-prejudiced goals. In their assessment of the impact of the program, Devine and her colleagues found that after training participants practiced the bias reducing strategies they found most useful, implicit race bias was reduced and the reduction effect persisted for an 8-week period after the training.<sup>34</sup>

The Principled Policing course developed by the California Department of Justice and its partners was evaluated by researchers at Stanford SPARQ using a pre- and post-training survey of training participants. Based on survey responses, the researchers concluded the training was well-received, effective in educating law enforcement leaders and could have the ability to improve community relations.<sup>26</sup> The Fair & Impartial Policing training program sponsored by the DOJ also has received high marks in terms of participant's satisfaction.<sup>28</sup> While assessments of these training programs have produced promising results, more research is needed to determine the long-term impact of the trainings on implicit racial bias and most importantly on biased behavior.

## Conclusion

Public confidence in the criminal justice system is a cornerstone of the rule of law and a facilitator of public safety. Research has clearly demonstrated that when people perceive the criminal justice system and the enforcement of criminal laws to be fair and equitable, they are more likely to obey the law and engage and cooperate with authorities when crimes are committed, which in turn leads to safer communities.

Given the well-documented over-representation of people of color in the criminal justice system and the frayed relationships that have emerged between police and citizens in some communities, there has been a growing concern among policymakers, scholars and the public about what leads to such disparities and discord. While many factors likely contribute to these problems, research has demonstrated that the

adverse experiences and outcomes related to criminal justice involvement for people of color can be the result of implicit racial bias.

Indeed, scientific research has demonstrated that hidden biases are pervasive, that they operate largely under the scope of human consciousness, and that they influence the ways in which we see and treat others, even when we are determined to be fair and objective. Simply put, everyone possesses implicit biases, even people with avowed commitments to impartiality, and they can influence choices and actions without conscious thinking or decision-making. But implicit biases are also malleable, meaning they can be unlearned through various de-biasing techniques.

Trainings designed to raise awareness about implicit racial bias, reduce its prevalence, and mitigate its impacts are increasingly being developed and offered to criminal justice professionals, particularly in law enforcement. California's Principled Policing program and the Fair & Impartial Policing® program are examples. While studies of these training programs suggest they are well received by participants and that they have produced promising results, knowledge about the long-term effects of these types of training programs on biased behavior are largely unknown, as the number and scientific rigor of evaluations conducted to date have been limited. Clearly, more research on the effectiveness of implicit bias training programs is needed. There also is a need to expand the reach of training programs across the criminal justice system.



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