

Practical First Steps to Address Disproportionality and Implicit Bias

Reflections to Protect Against Implicit Bias

Ask yourself, as a judge...

- What assumptions have I made about people based on their race, ethnicity, culture, sexual orientation, gender, profession, or background?
- How might my assumptions influence my decision-making?
- How have I challenged any assumptions I might have made based on race, ethnicity, culture, sexual orientation, gender, profession, or background?
- Have my assumptions created inequitable outcomes in my Court?
- Have I maintained accountability for myself and my courtroom practices in checking and removing bias?

Talking about race is a Courageous Conversation.

1. Stay engaged.
2. Experience discomfort.
3. Speak your truth.
4. Expect and accept non-closure.

Tips to Improve Decision-Making in Child Welfare Hearings

- Make sure parties and key witnesses are present and if they are not present, assure they were properly served/subpoenaed.
- Review petition out loud with all parties present to ensure it includes allegations specific to each parent. If there is no dangerous act or omission on part of a parent, the child goes home with that parent.
- Engage the parents by name and allow opportunity for parents and youth to inform the Court of their pronouns, if desired.
- Inquire if reasonable efforts were made to prevent removal. Assure family decision making tools were utilized, such as a Family Team Meeting (FTM).
- Ask yourself if the family's cultural background, customs, and traditions have been taken into account with the events and circumstances that led to the removal. Think about whether these aspects of the family actually make a child unsafe or at risk, even if they are different from your own expectations of family life and parenting.
- Ask what is preventing the child from returning home to a relative TODAY? And consider whether any of the barriers preventing the child from returning home are related to a systemic issue that is making it more difficult for the parent or child to access the support they need.
- Consider the appropriateness of current placement and whether it is culturally responsive and provides trauma responsive supports and services.
- Allow opportunity during the hearing for discussion and concerns related to systemic issues for parents and/or children involved in the case.
- Close the hearing with a specific question to ensure that the parties understand what happened or allow an opportunity for parents to ask questions about anything they did not understand.

Adapted from NCJFCJ Courts Catalyzing Change Bench Book and Dr. Jeffrey Rachlinski, Professor of Law

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continued

What is Disproportionality?

Disproportionality is a term to describe when a particular racial or cultural group is represented within a social system at a rate or percentage that is not proportionate to their representation in the general population.

What is Implicit Bias?

- Implicit bias “refers to subconscious feelings, attitudes, and stereotypes that affect our understanding, actions, and decision-making processes in an unconscious manner.”
- Research shows that individuals naturally develop unconscious attitudes and stereotypes as a routine process of sorting and categorizing the vast amounts of sensory information they encounter on an ongoing basis.
- “Implicit” (as opposed to explicit) attitudes and stereotypes operate automatically, without awareness, intent, or conscious control, which is common to the human experience.
- These unconscious associations can influence judgment. For example, results from the Implicit Association Test showed that 80% of white adults more closely associated white faces with regular household items and black faces with weapons.
- Relying on data by counting outcomes, using tools to engage deliberate thinking, training, and judicial leadership can all counterbalance the bias which is frequently inherent in our intuition.

What are the Differences Between Equality, Equity, and Justice?

Seeking to provide families before the court with the best opportunity to achieve permanency requires a review of court practices to ensure each family receives the support and services based on their individual needs and resources. This graphic demonstrates how courts can examine system practices with a goal towards equity and justice.



Graphic recreated by the Busara Center from Tony's Ruth's depiction of Shel Silverstein's *The Giving Tree*.

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