Bias

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So far . . .

- History/context
- Disproportionalities throughout CJS
- Proffered causes
  - Crime commission
  - Neutral policies with disparate outcomes
  - Bias
<table>
<thead>
<tr>
<th>Conscious/explicit</th>
<th>Unconscious/implicit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Admission</td>
<td>Linguistic</td>
</tr>
<tr>
<td>Survey</td>
<td>Micro-facial movements</td>
</tr>
<tr>
<td></td>
<td>fMRI</td>
</tr>
<tr>
<td></td>
<td>Cardiovascular</td>
</tr>
<tr>
<td></td>
<td>IAT</td>
</tr>
<tr>
<td></td>
<td>Decisions/behaviors</td>
</tr>
</tbody>
</table>
Attitudes and Stereotypes (cont.)

Expressed racial attitudes (white respondents)

<table>
<thead>
<tr>
<th></th>
<th>Support law against Black/White intermarriage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1964</td>
<td>60%</td>
</tr>
<tr>
<td>2002</td>
<td>10%</td>
</tr>
</tbody>
</table>

But in 2002, 24% still opposed intermarriage between Blacks and Whites

Implicit racial biases (all respondents)

- Pervasive
- Large in magnitude

“[W]e are not, on average or generally, cognitively colorblind”
## Attitudes and Stereotypes (cont.)

### Expressed racial attitudes (white respondents)

#### Causes of Black inequality

<table>
<thead>
<tr>
<th></th>
<th>Blacks lack ability</th>
<th>Blacks have no motivation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1977</td>
<td>27%</td>
<td>66%</td>
</tr>
<tr>
<td>2006</td>
<td>7%</td>
<td>52%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Blacks are treated unfairly by police</th>
</tr>
</thead>
<tbody>
<tr>
<td>1997</td>
<td>36%</td>
</tr>
<tr>
<td>2004</td>
<td>35%</td>
</tr>
</tbody>
</table>

### IAT stereotypes (all respondents)

- 72% associated MALE with SCIENCE and FEMALE with HUMANITIES

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American = White
Undocumented = Latino
Foreign = Asian
Connecting bias to behaviors and outcomes

Conscious/explicit
- Bias
  - Problem of proof
  - Concealed motives
- Behavior
- Outcome

Unconscious/implicit
- Bias
  - Problem of proof
- Behavior
- Outcome
Outcomes and Problems of Proof

Med-mal case, Eastern WA
- Bias
- Behavior
  - “Mr. Miyagi”; “Mr. Kamikaze”; “Pearl Harbor Day”
- Outcome?


Experiment involving Disabled Person
- Bias
- Behavior
  - Seating choice
- Outcome
  - Disabled person watching movie alone, more often than not, if movie choice given
Price Waterhouse v. Hopkins (specific)

Conscious/explicit
- gendered comments

Unconscious/implicit
- “unwitting or ingrained bias is no less injurious or worthy of eradication than blatant or calculated discrimination . . . the fact that some or all of the partners at Price Waterhouse may have been unaware of that motivation, even within themselves, neither alters the fact of its existence nor excuses it”
- 825 F.2d 458 (D.C. Cir. 1987)
## White- and Black-sounding Names (aggregate)

### Conscious/explicit
- **Bias**
  - Proof?
- **Behavior**
  - Callback decision

### Unconscious/implicit
- **Bias**
  - Proof?
- **Behavior**
  - Callback decision

- “White” candidates received 50% more callbacks than “Black” candidates
- Lower-skilled “White” candidates got many more callbacks than highly skilled “Black” candidates
- High quality “Blacks” received same calls as average “Blacks”
Traffic Stops

**Conscious/explicit**
- Bias?
- Behavior
  - Decision to search/citation

**Unconscious/implicit**
- Bias?
- Behavior
  - Decision to search/citation
Traffic stops, WSP  
Nov. 1, 2005-Sept. 30, 2006

18 year old male, daytime, interstate, non-Latino  
White male officer, one non-serious violation

Predicted search rate

<table>
<thead>
<tr>
<th></th>
<th>Low discretion</th>
<th>High discretion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Native American</td>
<td>3.1%</td>
<td>1.6%</td>
</tr>
<tr>
<td>Latino</td>
<td>1.1%</td>
<td>.7%</td>
</tr>
<tr>
<td>Black</td>
<td>1.2%</td>
<td>.6%</td>
</tr>
<tr>
<td>Non-Latino White</td>
<td>.8%</td>
<td>.4%</td>
</tr>
<tr>
<td>Asian/PI</td>
<td>.6%</td>
<td>.25%</td>
</tr>
<tr>
<td>East Indian</td>
<td>.1%</td>
<td>.1%</td>
</tr>
</tbody>
</table>

All stops

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
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</thead>
<tbody>
<tr>
<td>DUI, search</td>
<td></td>
</tr>
<tr>
<td></td>
<td>91%</td>
</tr>
<tr>
<td></td>
<td>85.9%</td>
</tr>
<tr>
<td></td>
<td>84.9%</td>
</tr>
<tr>
<td></td>
<td>81.7%</td>
</tr>
<tr>
<td></td>
<td>77.7%</td>
</tr>
<tr>
<td></td>
<td>82.4%</td>
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</tbody>
</table>

Loveritch et al., No evidence of intentional discrimination
Effects of Bias
(explicit, implicit, or in combination)

• Initial Stereotypes and Associations
• Suspicion, Investigation and Interrogation
• Arresting and Charging
• Pretrial detention/bail
• Eyewitness Testimony
• Conviction and Sentencing
# Limits of Current Antidiscrimination Law

<table>
<thead>
<tr>
<th>Intentional discrimination</th>
<th>Disparate impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Perpetrator who has</td>
<td>Actor</td>
</tr>
<tr>
<td>Discriminatory intent which brings about</td>
<td>Disparate impact on a protected group</td>
</tr>
<tr>
<td>Action that causes</td>
<td>Insufficiently justified policy/practice</td>
</tr>
<tr>
<td>Discriminatory outcome</td>
<td>Limited applicability</td>
</tr>
</tbody>
</table>
Interventions

Conscious/explicit
- Accountability
- Education
- Exposure
- Other

Unconscious/implicit
- Accountability
- Education
- Exposure
- Other
At the end of the day

- Disproportionalities throughout CJS
- Crime commission rates do not account fully for these disproportionalities
- Facially neutral policies + bias at work
- Race matters in ways that are not fair, that produce racial disparities, that do not advance legitimate public safety objectives, and which undermines confidence in our legal system