

Bias-Free Decision Making in the Probation Department:

*This training program is sponsored by the
Delaware Racial Justice Task Force*

Task Force Members:

Justice Henry duPont Ridgely, *Delaware Supreme Court*
Curt Shockley, *Director of the Delaware Probation and Parole*
Honorable Joseph R. Biden, III, *Delaware Attorney General*
Drewery N. Fennell, *Executive Director of the Criminal Justice Council*
Amy Arnott Quinlan, *Deputy Director of the Administrative Office of the Courts*
Peggy Bell, *Executive Director of the Delaware Criminal Justice Information System (DELJIS)*
Patricia W. Griffin, *State Court Administrator*
Janet Leban, *Executive Director, Delaware Center for Justice*
Honorable Alex J. Smalls, *Court of Common Pleas*
Colonel Robert Coupe, *Delaware State Police*
Honorable Brendan O'Neil, *Public Defender of the State of Delaware*
Richard Andrews, *Deputy Attorney General*

July 18, 2011

Siena

Dover Sheraton Hotel

Dover Delaware

Bias Free Decision Making
July 18th, 2011



Criminal Justice Section

A project funded by the Bureau of Justice Assistance

Delaware Probation Department Workshop 9:30AM to 4:00PM
Sheraton Dover, 1570 North Dupont Highway Dover
Siena Room

Conference Objectives

This workshop is organized as part of the ABA Criminal Justice Section's Racial Justice Improvement Project and is created and sponsored by the Delaware Task Force. The specific purpose of this conference is to:

1. Demonstrate important concepts such as social cognition and implicit bias and allow participants to understand the role this plays in the operation of criminal justice agencies and systems, most specifically as it relates to the Probation Department, and how these concepts are connected to perceptions about the fairness, integrity, and reliability of the criminal justice system.
2. Instruct participants on how bias-free decision making tools can facilitate better communication and relationships amongst colleagues, as well as between officer and offender.
3. Encourage participants to acknowledge and utilize trainings on the concept of Bias-Free Decision making in their local office.

Participant Learning Objectives:

Through participation in this conference, participants will be able to:

1. Understand and explain the importance and rationale for the study and application of cultural competency and implicit Bias, and how they may influence decisions.
2. Learn to recognize some behaviors that may suggest bias or differential treatment.
3. Learn some techniques that help de-bias perceptions and improve interactions.

Conference Faculty:

Edwin Burnette, Vice President of Defender Legal Services for the National Legal Aid & Defender Association

Wayne McKenzie, General Counsel, New York Probation Department

Salma S. Safiedine, Attorney, American Bar Association Criminal Justice Section.

Presentation Agenda

9:30 Introduction of the Delaware Task Force and Discussion of the Task Force's Current Progress, Bias Free Decision Making Initiatives.

Curt Shockley, Director of Delaware Probation and Parole
Justice Henry duPont Ridgely, Delaware Supreme Court
Colonel Robert Coupe, Delaware State Police

9:45 True and False - Delaware's Probation Department

Salma Safiedine, ABA Criminal Justice Section Attorney

This interactive session opens the lines of communication between presenters and attendees providing a true/false game for participants tailored specifically to the Delaware Probation Department.

10:00 Culture, Cultural Competency & the Criminal Justice System

Salma Safiedine

This session explores the language and concept of cultural competency, and the rationale for its application in the criminal justice context, delving into such questions as: What is culture? What are culture groups? What are cultural collisions? How do these concepts apply in the criminal justice context? How do these concepts apply to parole and probation specifically?

10:30 Implicit Bias

Wayne McKenzie, General Counsel New York Probation
Edwin Burnette, Vice President NLADA

This session presents the concepts of “social cognition” and “implicit bias” from the field of social psychology. Through the plenary lecture and break out discussions, participants will explore such questions as: What are “social cognition” and “implicit bias”? What role do they play in the operation of criminal justice agencies and systems? In what ways are they connected to community perceptions about the fairness, integrity, and reliability of the criminal justice system? How are these concepts related to the role of ensuring decisions are made bias-free? How do systemic justice issues impact community perceptions regarding the integrity and reliability of the criminal justice system? The probation department? Is this always a matter of “bad intent,” or is something else going on?

11:45 The Cost of Revocation

Wayne McKenzie
Edwin Burnette

Participants will engage in an interactive discussion relating to the cost of probation revocation on the criminal justice system. Efficiency and costs along with the overall effect probation revocation has on the criminal justice system and society.

12:30 Lunch



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Over Lunch, through guided discussion, participants will reflect on the opening presentations. Participants will also brainstorm strategies and opportunities for continuing cultural competency education and training in their local office.

1:15 Bias Free Decision Making for Probation

Wayne McKenzie

Edwin Burnette

Participants will engage in thought-provoking activities that will help define Bias-Free Decision making and evaluate discretionary decisions. Participants will begin to develop tools to promote Bias-Free Decision in their local office.

2:15 Session Debrief

As with the morning session, through guided discussion, participants will reflect on the opening presentations.

2:30 Break

2:45 Action Planning

Wayne McKenzie

Edwin Burnette

Participants will “map out” specific next steps for organizing a training session in their home office, and will provide feedback to project organizers regarding potential on-going project support. Discussions will include gathering input on methods that could help curtail and monitor the probation officers’ discretionary decisions regarding revocation of probation and respective implementation ideas. (E.g. amendments to revocation standards, interim sanctions for violators that do not necessarily include a transfer in probation level, or amendments to current computer programs).

3:45 Closing Remarks, Q&A

Wayne McKenzie

Edwin Burnette



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IMPLICIT BIAS DISTORT DECISION MAKERS THROUGHOUT THE CRIMINAL JUSTICE SYSTEM

PROBLEM

The criminal justice system involves numerous actors—such as police officers, prosecutors, judges, jurors, and eyewitnesses—whose decisions and judgments have a significant impact on the conviction and punishment of criminal defendants. A great deal of research has shown that race significantly affects the decisions and judgments of most people. Some of this research has been conducted on particular actors (or tasks) within the criminal justice system. For example, the research on bias tends to show that a juror who associates Blacks (as opposed to Whites) with a particular crime will be more likely to convict Blacks (as opposed to Whites) of that crime on the *same* evidence. These biases are subtle phenomena that have some influence in any given case, but which have their most substantial effects over time. The research suggests that biased decision-making artificially inflates the proportion of minorities in the criminal justice system, which likely creates more stereotypes and associations, and thus results in a negative feedback loop.

The research and studies discussed below are either well-recognized meta-analyses (that is, evaluations of large collections of similar studies, used to determine the general state of knowledge regarding a particular issue), or particular studies selected for their relevance, elegance, clarity, and methodological rigor. Unfortunately, the vast majority of research to date has evaluated race as a White-Black dichotomy. Nevertheless, the studies that have expanded the race evaluation to other minority groups have tended to show similar results. Thus, no distinction between minority groups is drawn here, and further treatment of that issue is beyond the scope of this summary.

KEY POINTS

- **Individuals in our society generally associate minorities with criminality; exhibit implicit bias against minorities; and also exhibit divergent behavior in experimental conditions based on the manipulation of race.** Researchers have shown that Whites tend to exhibit relatively increased levels of activation in the amygdala—an area of the brain that is associated with emotional stimulation and most notably fear—when presented with Black as opposed to White faces.¹ This effect has been correlated with performance on the Implicit Association Test (IAT), which measures implicit conceptual associations, and which has been used by researchers to measure implicit bias in individuals.² Whites generally exhibit implicit bias against Blacks under the IAT. Namely, Whites tend to find it more difficult to associate positive concepts with Black (as opposed to White) faces or names (and the reverse is true with negative concepts). In

¹ Elizabeth A. Phelps et al, *Performance on Indirect Measures of Race Evaluation Predicts Amygdala Activation*, 12 Journal of Cognitive Neuroscience 729 (2000).

² *Id.*

particular studies, the IAT also has been correlated with biased behavior and decision-making (although these studies are less rigorous and methodologically clean).³

Other findings have been made regarding mental associations of Blacks with criminality. In one study, individuals primed⁴ with crime-related concepts attended relatively more to Black faces as opposed to White faces—and this effect was replicated in a group of police officers.⁵ Further, when asked whether faces “looked criminal,” a group of police officers judged Black faces to be much more criminal-looking.⁶ And these studies involved officers of many races, not only Whites.

- **Criminal investigations and arrests are influenced by the race of potential/actual suspects, and often are based on a faulty application of majoritarian cultural norms.** The racial component of a given case may influence judgments of character and guilt, expectations of recidivism, and decisions to arrest and charge. In one study, priming police and probation officers with Black-related concepts significantly influenced responses to race-neutral vignettes of juveniles committing theft and assault.⁷ Specifically, the officers were more likely to rate the juveniles negatively, to expect recidivism, and to recommend arresting the juveniles, if primed with Black-related concepts (such as “homeboy” or “minority”). Another study, of general import, observed that White store employees were more likely to monitor and follow Black (as opposed to White) customers who asked to try on sunglasses with a security sensor removed.⁸

Next, a good deal of work has been conducted on deadly force simulations, in which subjects must decide quickly whether to shoot or not-shoot figures appearing on a screen who are carrying either a gun or an innocuous object (such as a wallet). Whites have been shown to commit substantially more errors regarding Black (as opposed to White) target figures.⁹ Further, this biased effect was increased in one study when subjects read newspaper articles involving Black (as opposed to White) criminals prior to testing—once again showing the power of underlying stereotyping.¹⁰ Another such deadly force

³ Jeremy D. Heider & John J. Skowronski, *Improving the Predictive Validity of the Implicit Association Test*, 9 N. Am. Journal of Psychology 53 (2007); Allen R. McConnell & Jill M. Leibold, *Relations among the Implicit Association Test, Discriminatory Behavior, and Explicit Measures of Racial Attitudes*, 37 Journal of Experimental Social Psychology 435 (2001).

⁴ “Priming” occurs when a subject is shown an image or word so quickly that the image or word is not registered in consciousness, but nevertheless has a subconscious impact and affects behavior. This is a common and accepted method of investigating underlying mental processes in the field of social psychology.

⁵ Jennifer L. Eberhardt et al, *Seeing Black: Race, Crime, and Visual Processing*, 87 Journal of Personality and Social Psychology 876 (2004).

⁶ *Id.*

⁷ Sandra Graham & Brian S. Lowery, *Priming Unconscious Racial Stereotypes About Adolescent Offenders*, 28 Law and Human Behavior 483 (2004).

⁸ George E. Schreer et al, “*Shopping While Black*”: *Examining Racial Discrimination in a Retail Setting*, 39 Journal of Applied Social Psychology 1432 (2009).

⁹ Joshua Correll et al, *The Police Officer's Dilemma: Using Ethnicity to Disambiguate Potentially Threatening Individuals*, 83 Journal of Personality and Social Psychology 1314 (2002).

¹⁰ Joshua Correll et al, *The influence of stereotypes on decisions to shoot*, 37 European Journal of Social Psychology 1102 (2007).