



TO: Texas Judges Hearing Child Protective Services Cases

FROM: Hon. John Specia (ret.), Jurist in Residence  
Office of Court Administration

DATE: September 1, 2010

RE: Implicit Bias in Judicial Decision-Making

I wanted to update you on a very worthwhile conference I attended this summer. The conference was on implicit bias in judicial decision-making and how cultural and institutional racism contributes to the over-representation of African American children and families in our child protection system. These practices also affect the Native American and Hispanic populations of our state. Another term you may have heard recently to describe the over-representation of African-American children is “Disproportionality.”

**Q: How do we know Disproportionality, or over-representation exists?**

A: Numerous studies indicate that African-American children are overrepresented in child welfare systems across our nation. In Texas, although African-American children make up about 12% of the child population, they account for almost 28% of the children removed from their homes due to allegations of abuse and neglect.

Not only are they removed at higher rates nationally and in Texas, once they enter foster care, a lower percentage of African-American children are successfully reunited with their families and a higher percentage age out of foster care without an adoptive family or other permanent placement. The data also shows that African-American families are less likely than Anglo families to receive in-home family services to prevent removal. See the [DFPS Webpage on Disproportionality](#), and the [March 2010 DFPS report on Disproportionality](#).

Disproportionality in various state systems, such as juvenile justice and child welfare, has been on the national and state radar for years. In Texas, efforts to address the issue gained traction when the 79th Legislature mandated an analysis – which controlled for other factors such as family structure and poverty – to determine whether Texas had a problem, and if so, to create a remediation plan. [79th Legislative Session, Senate Bill 6](#).

**Q: Do we know what variables influence Disproportionality?**

A: One very strong predictor of whether a child will be removed is poverty. More than 60% of the children removed in Texas come from families with annual incomes of \$10,000 or less, and poverty rates are higher among African-American families.

**Q: Why should judges care about Disproportionality?**

A: Because judges can unintentionally allow cultural, institutional or personal biases to influence the decision-making process from removal to reunification or termination. Judges with a heightened awareness that the problem exists can ensure decisions made by other institutions and professionals are not influenced by unrecognized and implicit biases.

**Q: What can judges do?**

A. Judges can help ensure that families experience equal treatment in our justice system by becoming educated about the nature of these biases and by using tools to counteract them.

The National Council of Juvenile and Family Court Judges (NCJFCJ) has taken the lead in addressing the issue with a project called Courts Catalyzing Change: Achieving Equity and Fairness in Foster Care Initiative (CCC), which is funded by Casey Family Programs and supported by the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention. [NCJFCJ Courts Catalyzing Change Initiative](#).

The program brings together judicial officers and other systems' experts to set a national agenda for court-based training, research, and reform initiatives to reduce the disproportionate representation of children of color in dependency court systems. In August, the NCJFCJ published a bench card to judges to help reduce racial Disproportionality and disparate treatment of children and families of color. [New NCJFCJ Courts Catalyzing Change \(CCC\) Bench Card to Address Disproportionality](#). This bench card will also be included in the CPS Bench Book being launched by the Children's Commission this fall.

**Q: Is there special assistance available for my jurisdiction?**

A: Yes. The Children's Commission, in collaboration with the Department and Casey, is offering Implicit Bias and Undoing Racism training at no expense to the county. This two and one-half day program is groundbreaking and with strong judicial leadership can bring about true systemic change in your jurisdiction. For assistance planning a training event for your community, please contact Tina Amberboy, Executive Director of the Supreme Court Children's Commission at [tina.amberboy@courts.state.tx.us](mailto:tina.amberboy@courts.state.tx.us) or [children@courts.state.tx.us](mailto:children@courts.state.tx.us).