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Racial Disparities in the Criminal Justice System: Prevalence, Causes, and a Search for Solutions

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Racial disparities in the criminal justice system are well documented and widespread. The present review examines racial disparities in three areas of the system: policing, prison populations, and participation on juries. Some, but not all, of these disparities may be the result of implicit racial bias. Even if the disparities are caused by implicit racial bias, given the number of people involved in the decision making that results in these disparities and the difficulty in training people to overcome implicit bias, interventions designed to eliminate disparities by reducing implicit racial bias may fail. Instead, policies designed to constrain the operation of implicit and/or explicit bias or that eliminate (or at a minimum reduce) problematic outcomes for everyone, regardless of race, may be more effective at reducing racial disparities than are interventions designed to eliminate implicit bias.

The shooting death of Trayvon Martin is oft-cited as an example of disparate treatment of Black men by the justice system. In 2012, in Florida, Martin, a Black teenager, left home to go to a convenience store, where he bought a candy and a nonalcoholic beverage. On his way to home, Martin was seen by George Zimmerman, a 28-year-old White-Hispanic man and captain of his neighborhood watch team, who reported in a call to the police that the boy looked suspicious. Before the police could arrive at the scene, there was an altercation between Martin and Zimmerman that resulted in Zimmerman shooting the unarmed Martin, causing his death. Initially, Zimmerman was not charged with Martin’s murder because he claimed that he had been acting in self-defense. Eventually, Zimmerman was charged with second-degree murder but acquitted by a six-person jury that contained only one person of color, a Hispanic woman (Alcindor, 2013; Newcomb,

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2013). In contrast, around the same time and also in Florida, a Black woman's claim of self-defense was rejected by a jury who convicted her of aggravated assault for firing a warning shot at her husband, whom she claimed was abusive toward her (Hauser, 2017).

These two cases provide anecdotal evidence about the role of race in policing (albeit community policing) and jury decision making, but there is also substantial empirical evidence of racial disparities throughout the criminal justice system. In this article, I review the evidence for racial disparities in the criminal justice system and make recommendations about how policy makers should approach designing interventions to ameliorate this injustice. In the tradition of the Society for the Psychological Study of Social Issues' emphasis on the three Ps—traditionally, prejudice, poverty, and peace, I provide evidence for racial disparities in policing, prison populations, and participation on juries (the three Ps of criminal justice disparities). I will argue that attempts to address these disparities through interventions designed to eliminate implicit racial bias may fail. Instead, policies designed to constrain the operation of implicit and/or explicit bias or that eliminate (or at a minimum reduce) problematic outcomes for everyone, regardless of their race, may be more effective at reducing racial disparities than are interventions designed to eliminate implicit bias.

Prevalence of Racial Disparities

Racial Disparities in Policing

Encounters with the police are often people's point of entry into the criminal justice system. In these interactions, the police engage in differential treatment of community members because of their race. When investigating illegal behavior ranging in severity from relatively minor (e.g., traffic violations) to more severe (e.g., threatened or actual violence), police officers are more likely to be lenient and to use less force with White than with Black offenders.

Stops. Take, for example, traffic stops. According to a Bureau of Justice Statistics survey of a representative sample of the U.S. population, Blacks were more likely than Whites or Hispanics to have been the target of a traffic stop in the previous year (Langton & Durose, 2013). According to respondents, the police were more likely to stop Whites than Blacks for speeding violations—a violation for which there is an objective standard—but more likely to stop Blacks than Whites to check their records. The police were almost twice as likely to provide no reason to Black drivers than White drivers for why they had been stopped (Langton & Durose, 2013).

Of course, these survey data may be affected by biased responding, so it is important to examine archival data for racial bias in which drivers are stopped

by police. Findings from archival analyses mirror the survey data. For example, in North Carolina, which has collected data on traffic stops since 1999, the odds of being stopped by police while driving were higher for Blacks than for Whites or Hispanics (Baumgartner, Epp, & Shoub, 2018). Moreover, the odds of a Black driver appearing in the NC traffic stop data were 60–70% higher than the odds of a Black driver in the population in which the traffic stop occurred. An analysis of traffic stops in Connecticut revealed that the disproportionate stopping of Black and Hispanic drivers was more likely to occur during daylight than intertwillight hours (Ross, Fazzalano, Barone, & Kalinowski, 2017), suggesting that officers' racial biases were more likely to affect their actions when they could better discern the race of drivers ("the veil of darkness hypothesis"; Grogger & Ridgeway, 2006). Finally, a compilation of traffic stop data from 20 states during 2011–2015 confirms that racial disparities in police stops are not confined to a few localities; in this national sample, police officers stopped Black drivers more often than White drivers relative to their appearance in the population of citizens who were old enough to drive (Pierson et al., 2017).

Police officers can also stop people on the street if they have a reasonable suspicion that they are about to commit a crime (*Terry v. Ohio*, 1968). The courts have held that a wide variety of ambiguous behaviors can provoke reasonable suspicion, including being present in a neighborhood known for criminal activity (*Illinois v. Wardlow*, 2000; *United States v. Sharpe*, 1985) or fitting the demographic profile of someone who commits a particular crime (*United States v. Sokolow*, 1989). This wide latitude in what constitutes a permissible suspicion to stop a suspect provides fertile ground for racial bias to influence the actions of police. Indeed, police officers stop people on the street at differential rates depending on their race. For example, an analysis of all stop and frisk incidents in New York City over a 15-month period showed that even after controlling for variability in precincts and estimates of racial disparities in crime participation, Blacks and Hispanics were more likely to be stopped by police than were Whites (Gelman, Fagan, & Kiss, 2007). The NYPD's stop-and-frisk policy has been held unconstitutional because of its racially biased implementation (*Floyd v. City of New York*, 2013.).

Searches. Because the courts recognized that there is inherent danger when police stop suspects, they also have held that the police should be allowed to pat down or "frisk" stopped suspects (*Terry v. Ohio*, 1968) or search the passenger compartments in a car (*Michigan v. Long*, 1983) if they have a reasonable fear that the stopped suspect has a weapon. For traffic stops, the police are more likely to search people of color than Whites once they have stopped them (Baumgartner et al., 2018; Langton & Durose, 2013). Similarly, police officers are more likely to search Blacks whom they have stopped on the street as compared to Whites (Fagan, Braga, Brunson, & Pattavinna, 2016) and are particularly likely to stop Blacks and

Hispanics in contexts in which searches are unlikely to produce weapons (Goff, Lloyd, Geller, Raphael, & Glaser, 2016).

Racial disparity in searches could be warranted if there were differences in the extent to which members of minority groups versus Whites were in possession of contraband. If minority group members are more likely to carry contraband, targeting them for searches would be a good use of resources. If minority group members are more likely to possess illegal items, searching them should be disproportionately fruitful. In contrast, if searches of minority group members produce less contraband than do searches of Whites, searching minority group members at disproportionate rates would likely be the result of racial bias. It is this second pattern that appears repeatedly in the data. Of those searched, Whites are more likely to be in the possession of contraband than are people of color (Baumgartner et al., 2018; Ross et al., 2017). A similar pattern is seen in stop-and-frisk data. The frisking of Whites was more likely to result in a productive search (e.g., discovery of a weapon or contraband; Levchak, 2017) or an arrest (Gelman et al., 2007) than was the frisking of either Blacks or Hispanics. Not only is racial profiling of minority groups for police stops unsupported by the outcomes of searches, it may increase prohibited behavior in the nontargeted group (Glaser, 2015; Hackney & Glaser, 2013).

Force. Racial disparities also exist in the use of force in police–civilian interactions. Indeed, the police are more likely to use force against Blacks than against other citizens (Goff et al., 2016). There are a number of competing hypotheses for why police may be more likely to use force with minority rather than White suspects. For example, Blacks are more likely than Whites to live in racially segregated, impoverished neighborhoods with higher crime rates, which could lead to more aggressive policing in their neighborhoods. Yet, racial disparities in use of force are greater in racially segregated than desegregated communities (Levchak, 2017). Alternatively, some propose that racial disparities in crime rates result in minority suspects being disproportionately represented among suspects with whom police have used force. However, even when controlling for differential participation in violent crime, racial disparities in police use of force remained (Goff et al., 2016).

This pattern of racial bias exists for both lethal and nonlethal forces. Once they had stopped a suspect, New York City police officers were more likely to use nonweaponized force against Black and Hispanic suspects than against White suspects, even after controlling for variables like the crime rate in the precinct, suspect demeanor, and the presence of a weapon (Morrow, White, & Fradella, 2017). They were also more likely to use potentially lethal force (i.e., draw a gun) against Black than White suspects (Kramer & Remster, 2018). Disparities in police officers drawing their weapons translated into disparities in shootings; in 213 metropolitan areas, police officers were more likely to shoot Black than

White suspects, even when controlling for racial differences in criminal activity (Scott, Ma, Sadler, & Correll, 2017). Finally, according to the data in U.S. Police-Shooting Database, a crowd-sourced dataset of police shootings in the United States, the odds of an unarmed Black person being shot by police were 3.5 times greater than the odds for a White person (Ross, 2015).

Experimental studies confirmed that unarmed Black men face a greater risk of being shot by mistake than do unarmed White men, a phenomenon known as shooter bias (Correll, Park, Judd, & Wittenbrink, 2002). In these studies (e.g., Correll et al., 2002), participants viewed a series of photographs on a video monitor. Each photograph depicted a man holding a gun or an innocuous object like a cell phone or a wallet. Participants were tasked with pressing a “shoot” button when the man was holding a gun and pressing a “don’t shoot” button when the man was unarmed. Half the targets were Black and the other half were White. A meta-analysis of 42 studies investigating shooter bias confirmed that participants were more likely to shoot unarmed Black than White men and were more likely to fail to shoot armed White than Black men (Mekawi & Bresin, 2015). Both White and Black participants exhibit shooter bias. The bias is not related to personal animus toward Blacks, but is related to knowledge of the cultural stereotype associating Blacks with criminality (Correll et al., 2002). Contextual cues that prime this stereotype influence the magnitude of the shooter bias. Participants made fewer mistakes when the targets were associated with safe rather than threatening neighborhoods or appeared in safe (i.e., business suit) versus threatening (i.e., hoodie) clothing (Kahn & Davies, 2017).

Police officers engaged in this task were more accurate in their decisions to shoot than were civilian participants, but both groups showed similar racial bias in the speed of their responses (Correll et al., 2007b). Training—either on the shooting task or the training one receives as a police officer—mitigated bias, but only when that training involved repeated exposure to stimuli in which race was not linked to the presence of a weapon (Plant, Peruche, & Butz, 2005; Sim, Correll, & Sadler, 2013). However, when placed under conditions of high cognitive load, police officers showed levels of shooter bias that were similar to those exhibited by civilians (Correll, Wittenbrink, Axt, Goyle, & Miyake, 2014). Similarly, decreased sleep the night before, which can interfere with cognitive functioning, was related to increases in shooter bias in a sample of police recruits (Ma et al., 2013). Thus, conditions that police officers are likely to confront when on duty offset any reduction in bias provided by their training.

Arrests. The police also differentially arrest people of different races for the same offenses (Brame, Bushway, Paternoster, & Turner, 2014; Piquero, 2015). In 2017, Blacks were eight times more likely to be arrested for marijuana possession in New York City than were Whites, and this racial disparity in arrests was even greater in upstate New York. Hispanics were five times more likely to be arrested

for marijuana possession in New York City than were Whites (Patten et al., 2019). Rates of drug offending, nondrug offending, or residence in neighborhoods in which the police focus on drug offending did not explain racial disparities in arrests for drug-related offenses (Beckett, Nyrop, Pflingst, & Bowen, 2005; Mitchell & Caudy, 2015; 2017). Racial disparities were also found in arrests of juvenile offenders, with Black and Hispanic boys more likely to face arrest (Fite, Wynn, & Pardini, 2009; Huizinga et al., 2007; Tapia, 2011).

Law enforcement policies explain some of these disparities. For example, a focus on enforcing laws regarding crack (as opposed to powder) cocaine and outdoor (rather than indoor) drug sales could explain racial disparities in drug arrests in Seattle (Beckett, Nyrop, & Pflingst, 2006). Similarly, changes in juvenile justice policy that sanctioned more punitive treatment of juvenile offenders have increased racial disparities in arrests of juveniles (Stevens & Morash, 2015). Not surprisingly, the more frequent arrests of Black and Hispanic youths resulted in their increased rates of incarceration in correctional facilities (Stevens & Morash, 2015).

Racial Disparities in Prison Populations

The United States now imprisons a greater proportion of its population than any other country in the world (Western, 2006). Blacks are disproportionately represented among inmates. Although they constitute only 13% of the U.S. population (U.S. Census Bureau, 2019), they represent over 30% of those imprisoned (Bronson & Carson, 2019), with one in four Black men incarcerated at some point in their lives (Bonczar & Beck, 1997; Western, 2006). Although the extent of the disparity in imprisonment is less for Hispanics, they still represent about 22% of the prison population (Bronson & Carson, 2019) despite making up only 18% of the population (U.S. Census Bureau, 2019). The racial disparities in policing, specifically searches and arrests, could contribute to the higher incarceration rate of Black than White offenders. Although racial disparities in arrests account for between 70% and 75% of the racial disparities in incarceration (Beck & Blumenstein, 2018), decisions made after arrest by judges and attorneys regarding postarrest detention, plea deals, charged crimes, and sentencing also contribute to differential incarceration of Black and White offenders. Not all contributions to racial disparities in prison populations originate in the criminal justice system, with the racially biased disciplinary practices of teachers and schools also setting minority students on the road to prison.

Pretrial processing. After arrest, defendants are brought before a judge for an arraignment hearing, where defendants hear the charges against them and enter a plea. Prosecutors have a great deal of discretion in which charges they will levy against defendants as well as the plea deals that they will offer and accept. These

charging and plea decisions directly affect the length of time that defendants, if found guilty or if the plea is accepted, will serve in prison. At arraignment, judges also decide whether defendants will be released given specified conditions are met or will be detained until trial. These decisions about charges, detention, and plea deals directly affect the length of time that defendants will serve in prison.

Charges. In the case of charging, racial differences begin when offenders are young, with prosecutors more likely to charge Black than White juvenile offenders as adults under some circumstances, depriving them of the more lenient and rehabilitation-based treatment they would receive in the juvenile justice system (for a review, see Zane, Welsh, & Drakulich, 2016). Black adults also receive more punitive, longer sentences than Whites, in part because prosecutors are more likely to charge Black defendants than White defendants with crimes that carry mandatory minimum sentences (Fischman & Schanzenbach, 2012; Rehavi & Starr, 2014).

Pretrial detention. As at other stages of the processing of a criminal defendant, racial disparities exist for judges' decisions about pretrial detention, including defendants' access to bail (Arnold, Dobbie, & Yang, 2018; Schlesinger, 2005, 2007; Sutton, 2013). Take, for example, the findings from several studies of the pretrial processing of felony defendants in state courts (Schlesinger, 2005, 2007; Sutton, 2013). In those studies, Blacks and Hispanics were more likely than Whites to be denied bail, resulting in their being held in prison until they go to trial, enter a plea, or their charges are dismissed. Even when they are offered bail, Blacks and Hispanics were less likely to make that bail than were Whites who had been offered similar bail amounts (Schlesinger, 2005). However, the bail amounts offered to Whites were lower than those offered to Blacks and Hispanics even after controlling for relevant legal characteristics, including those associated with risk of dangerousness or flight (Schlesinger, 2007) and charge severity (Sutton, 2013). A similar pattern of pretrial detentions emerged in the misdemeanor and felony cases processed in Manhattan over a 2-year period; Blacks were more likely than Whites to be detained in jail prior to trial (Kutateladze, Andiloro, Johnson, & Spohn, 2014).

Pleas. Although more than 94–97% of criminal cases that result in conviction are resolved through plea bargaining rather than trial (Administrative Office of the U.S. Courts, 2016; Rosenmerkel, Durose, & Farole, 2009), there has been relatively little research attention paid to potential racial disparities in prosecutorial decision making regarding pleas (Kutateladze, Andiloro, & Johnson, 2016). What little research exists suggests that Black defendants are at a relative disadvantage. At arraignments for misdemeanors in Manhattan, White defendants were more likely than Black defendants to be offered pleas that involve community service,

a fine, or time served, whereas Black defendants were more likely than White defendants to be offered pleas that involve jail or prison time (Kutateladze et al., 2014). For misdemeanor marijuana offenses, prosecutors were more likely to offer custodial pleas (i.e., pleas that involve incarceration) and less likely to offer pleas to reduced charges to Black defendants than to White defendants (Kutateladze et al., 2016; Shermer & Johnson, 2010). In addition, the value of an offered plea—the “probability of a charge reduction and the estimated probability of a charge reduction given conviction at trial for those that pled guilty”—is less for Black defendants than it is for Whites (Metcalf & Chiricos, 2018, p. 242). Given that Black defendants received less desirable plea offers than did White defendants, it is not surprising that they were less likely to accept the deals that they were offered (Metcalf & Chiricos, 2018; Sutton, 2013).

Sentencing. The majority of research addressing racial disparities in postarrest outcomes has focused on disparities in sentencing, overall demonstrating that Blacks and Hispanics received harsher sentences than did Whites even after controlling for legally relevant factors that should influence sentencing decisions (Spohn, 2000, 2015b; Zatz, 2000). Blacks and Hispanics charged with misdemeanors or felonies in Manhattan were more likely to receive sentences involving incarceration than were Whites (Kutateladze et al., 2014). First-time offenders in Georgia received longer sentences if they were Black rather than White, even after controlling for crime severity and socioeconomic status (Burch, 2015). Harsh sentences for repeat offenders, like three-strikes laws that mandate life sentences for those convicted of three felonies, contribute to the racial disparities in prison populations. For example, in California, less than 7% of the general population is Black, whereas around 25% of the prison population and 45% of those imprisoned under the state’s three-strikes law are Black (Ehlers, Schiraldi, & Ziedenberg, 2004). Racial disparities in sentencing were evident even when the offenders were still juveniles; judges were more likely to place juvenile offenders who were Black in discipline-based programs focusing on physical activity (e.g., boot camps) and White juvenile offenders in therapeutic programs (Fader, Kurlychek, & Morgan, 2014). Finally, Black defendants were more likely to be sentenced to death than other defendants (NAACP Legal Defense and Educational Fund, 2013), especially when their victims were White (Baldus, Woodworth, & Pulaski, 1985).

Being more phenotypically African in appearance (e.g., darker skin, wider nose, and thicker lips)—as opposed to expressing a more European facial phenotype—is also related to harsher sentencing of Black offenders. For example, the racial disparity in sentencing among first time-offenders in Georgia was primarily driven by more severe sentencing of Black offenders with darker skin; Black offenders with lighter skin received sentences similar to those received by White offenders (Burch, 2015). Similarly, an examination of the sentences of a random sample of offenders in the Florida corrections database revealed that offenders

with a more African facial phenotype received longer sentences than did those with a more European phenotype (Blair, Judd, & Chapleau, 2004). Phenotypic bias was also seen in jurors' death sentences in capital cases; jurors were more likely to award death sentences to defendants with a more stereotypically Black/African appearance than to Black defendants who looked more phenotypically European (Eberhardt, Davies, Purdie-Vaughns, & Johnson, 2006).

Thus, there is substantial evidence that racial disparities exist in the processing of criminal cases, both pre- and post-trial. It is true that the disparities can be small—even nonsignificant in some studies of individual decision points that occur while adjudicating a criminal offense, perhaps in part because early studies combined Hispanic and White defendants into a single category (Sutton, 2013). However, the accumulation of racial disparities across the number of decision points involved in case processing results in significant disadvantages to minority group members who interact with the criminal justice system (Kutateladze et al., 2014; Stolzenberg, D'Alessio, & Eitle, 2013; Zatz, 2000), with a 26% increased risk of incarceration for Black and Hispanic felony defendants than for White felony defendants (Sutton, 2013).

Wrongful convictions. There are racial disparities not only in incarceration, but also in the presence of *innocents* in prison. Innocent Black people are 3.5 times more likely than innocent White people to be convicted of sexual assault, 7 times more likely to be convicted of murder, and 12 times more likely to be convicted of drug crimes (Gross, Possley, & Stephens, 2017). Among exonerations for sexual assault because of eyewitness misidentification, one half of the cases involved a White woman misidentifying a Black man, even though only a small fraction of sexual assaults in the United States are committed by Black men against White women. Indeed, it is well documented that White witnesses are more likely to misidentify Black and Hispanic perpetrators than White perpetrators (e.g., Meissner & Brigham, 2001).

School-to-prison pipeline. It is not only racial disparities within the criminal justice system that contribute to the increased risk of incarceration that Black Americans face; there are also disparities outside the system that contribute to the increased risk. Black students were more likely to receive out-of-school suspensions, be expelled, be referred to law enforcement, or be arrested at school than were White students (U.S. Department of Education Office for Civil Rights, 2014). Although Black students were more likely to receive out-of-school suspensions or to be expelled than were White students (Gregory & Weinstein, 2008; Welch & Payne, 2010), this disparity was not explained by differences in problematic behavior (Roque & Paternoster, 2011). Instead, teachers monitored Black and Hispanic students more closely than White students and disciplined them more severely for similar infractions (Ferguson, 2000; Morris, 2005). Students who

received harsher discipline were more likely to find themselves involved with the criminal justice system in the future (Ramey, 2016), a phenomenon termed the school-to-prison pipeline (Kim, Losen, & Hewitt, 2010; Skiba, Michael, Nardo, & Peterson, 2002).

Not surprisingly, students who were removed from school for disciplinary reasons accumulated other negative outcomes. Students who were suspended showed decrements in academic achievement (Davis & Jordan, 1994), with racial disparities in out-of-school suspensions explaining about 20% of the variance in the achievement gap between Black and White students (Morris & Perry, 2016). In addition to harming students' school achievement, racial disparities in school discipline accounted for a significant portion of the racial differences in arrest rates (Barnes & Motz, 2018). There are several possible mechanisms underlying the relationship between school discipline and criminal justice involvement. Perhaps children and youth targeted for school discipline were labeled "troublemakers," and this label became a self-fulfilling prophecy (Hirschfield, 2008). Youth who have been suspended and expelled were also more likely to spend time unsupervised (Kim et al., 2010), which increased the likelihood of engaging in criminal behavior (Hoeben & Weeman, 2016). Suspension and expulsion may also cause youth to deidentify with school and form bonds with others in similar situations, which may increase opportunities to engage in criminal behavior (Unnever & Gabbidon, 2011). Whatever the mechanism, discrimination in school disciplinary actions leads to increased criminal justice involvement for minority youths, setting them on the path to prison.

Racial Disparities in Jury Participation

Racial disparities in participation on juries may also contribute to disparities in prison populations. The participation of Blacks in the jury system is suppressed in a variety of ways. One method is through the disenfranchisement of people who have committed a felony. One in every 13 Black citizens continues to be barred from voting after having served a prison sentence (Chung, 2018), a rate that is four times higher than the disenfranchisement of White citizens (Uggen, Shannon, & Manza, 2012). Until recently, three states (Florida, Kentucky, and Virginia) barred more than 20% of its Black citizens from voting because of a previous felony (Chung, 2018).¹ Voter registration rolls are a primary source of names used to compile lists of people called for jury duty; therefore, Black citizens will be significantly underrepresented in jury pools because of felony

¹In the November 2018 election, Florida residents supported a state constitutional amendment to restore voting rights to felons who had completed their sentences (including probation and parole), with the exception of those convicted of murder and sexual offenses (Fla. Const. art. VI, § 4).

disenfranchisement. Even if minority group members are called for jury duty, they are less likely to report for jury duty because increased rates of poverty make it more likely that they will have relocated from their address of record—resulting in jury summons that are returned as undeliverable—or because the cost of missing work to report for jury duty is prohibitive (Joshi & Kline, 2015). As a result, racial and ethnic minorities are underrepresented in jury pools relative to their presence in the eligible population of jury-eligible citizens (Fukurai & Krooth, 2003; Hannaford-Agor & Waters, 2011).

Even if Black citizens are called and report for jury duty, they are not equally likely to be seated on juries (Equal Justice Initiative, 2010), despite legal prohibitions against excluding jurors because of their race (*Batson v. Kentucky*, 1986). During the jury selection process known as *voir dire*, attorneys may remove jurors from jury service through challenges for cause or peremptory challenges. Challenges for cause are theoretically limited only by whether an attorney can convince a judge that a venireperson is too biased to impartially evaluate the case facts and apply the law. In contrast, attorneys typically do not need to provide justification for challenging a particular juror unless the opposing counsel objects that they are removing jurors because of their race (*Batson v. Kentucky*, 1986) or gender (*J.E.B. v. Alabama*, 1994).

Although attorneys are limited in the number of peremptory challenges that they can use, their exercise of these challenges, with limited accountability for their choices, is rife with the possibility of racial bias. In studies of simulated *voir dire*, race predicted whether attorneys would use a peremptory challenge to strike a juror, with prosecutors being more likely to strike Black than White venirepersons (Kerr, Kramer, Carroll, & Alfini, 1991; Sommers & Norton, 2007). This pattern of racial bias in prosecutors use of peremptory challenges holds for jury selections in real cases as well (Clark, Boccaccini, Caillouet, & Chaplin, 2007; Rose, 1999). Prosecutors of death penalty cases in North Carolina were 2.5 times more likely to use peremptory challenges to excuse Black venirepersons than those who were not Black, even after controlling for variables that should have affected the exercise of peremptory challenges, like death penalty attitudes or previous experience with crime (Grosso & O'Brien, 2012).

Because of concerns about the unconstitutional removal of potential jurors from jury service due to their race, the Supreme Court has outlined a process for attorneys to challenge race-based removal of venirepersons from jury service (*Batson v. Kentucky*, 1986; *Miller-El v. Dretke*, 2005; *Snyder v. Louisiana*, 2007). In practice, however, these challenges are rarely successful (Gabbidon, Kowal, Jordan, Roberts, & Vincenzi, 2008). Race-neutral explanations for challenging Black venirepersons are relatively easy for attorneys to generate (Sommers & Norton, 2007). Thus, racially biased strikes are generally not corrected by judges, who accept attorneys' race-neutral justifications for excluding the venirepersons in a majority of challenges (Gabbidon et al., 2008).

Consequences of racial disparities in jury participation. The exclusion of Blacks from the jury pool has consequences for criminal defendants. The presence of even one Black venireperson (i.e., potential jury member) in the jury pool affected the distribution of guilty verdicts for Black and White defendants (Anwar, Bayer, & Hjalmarsson, 2012). When there were no Black venirepersons in the jury pool (i.e., all venirepersons are White), the juries that were seated from that homogenous pool were more likely to convict Black defendants than White defendants. Specifically, as the number of Black venirepersons increased, the conviction rate for Black defendants decreased. In contrast, for White defendants, as the number of Black venirepersons increased, the conviction rate increased. The presence of a single Black venireperson in the jury pool effectively eliminated the racial disparity in convictions, even if that Black venireperson was not seated on a jury.

Beyond the effects of minority representation in jury pools, the racial composition of a jury influences the outcomes that defendants receive. Indeed, meta-analytic results demonstrated that jurors showed out-group bias when deciding verdicts in criminal cases, with jurors being more likely to convict and recommend harsher sentences for members of their racial outgroup than members of their ingroup (Mitchell, Haw, Pfeifer, & Meissner, 2005). The proportion of White jurors on a jury also affects guilty verdicts. Mock juries with a majority of White jurors were more likely to convict a White than a Hispanic defendant, whereas the verdicts rendered by juries with a Hispanic majority did not differ as a function of defendant race (Perez, Hosch, Ponder, & Trejo, 1993). In capital cases in which the defendant was Black and the victim was White, when juries were composed of five or more White men, there was an increase of more than 40% in the likelihood that the jury would sentence the defendant to death (Bowers, Steiner, & Sandys, 2001). Similarly, the presence of a single Black juror reduced the likelihood of a death sentence by 29% in capital cases with a Black defendant and a White victim.

Not only does racial diversity on a jury affect the verdict and sentencing severity for minority defendants, but also diversity among jurors has a positive influence on the quality of jury deliberations and verdict fairness. The exclusion of those with a felony conviction from jury service is one way in which diversity on juries is decreased. Rationalizations for excluding convicted felons from serving on juries even after they have served their sentence include that they are unfit to serve because they will be biased toward the defense and that their lack of integrity will damage the deliberative process (Binnall, 2019). However, a jury simulation study found that ex-felon participants brought up more novel case facts during deliberations and did so more accurately than did nonfelon participants (Binnall, 2019), suggesting that ex-felons may even improve the deliberation process. Similarly, racially diverse juries show signs of higher quality deliberations than racially homogenous juries, deliberating longer, discussing more evidence, and making fewer errors in their discussions of the evidence (Sommers, 2006).

The removal of felons from the jury pool and the systematic deselection of Black jurors decrease the chances that juries will benefit from the effects of diversity.

A Search for Solutions

The evidence is overwhelming that racial disparities in the criminal justice system exist, raising the question of what is the best method for eliminating them? The most effective interventions are targeted at the processes underlying the behavior that one wishes to reduce or eliminate. Typically, scholarship has examined whether racial disparities are better explained by implicit rather than explicit racial biases (e.g., Kang et al., 2012; Smith & Levinson, 2013). Although there is serious debate about the definition of implicit bias (Jussim, Careem, Honeycutt, & Stevens, 2019), much of the legal scholarship on racial disparities in the justice system has defined implicit bias as a set of negative beliefs or associations about a particular racial group that is held without awareness and would not be consciously endorsed but results in discriminatory behavior (see Kang et al., 2012). Conversely, explicit bias is intentional racial discrimination based on conscious beliefs that groups should be treated differently.

Perhaps because of a belief that much discriminatory behavior is the result of implicit rather than explicit bias (e.g., Smith & Levinson, 2013), many have called for police screening or training to eliminate implicit racial bias among police officers. For this strategy to work, three assumptions must be met. First, the racial disparities in the criminal justice system must be the result of implicit racial bias; otherwise, an intervention to train away implicit bias will not work. Second, we must have the resources that allow us to screen all potential decision makers in the chain of events that lead from police stop to conviction and sentencing (e.g., police, judges, attorneys, and jurors) for implicit racial bias. Third, we must have effective interventions for eliminating implicit bias among those who are identified with it. If any of these conditions are not met, we must identify alternative solutions for addressing racial disparities in the criminal justice system.

Causes of Racial Disparities

There is no doubt that some racial disparities in the criminal justice system are the result of implicit racial bias. Race-based stereotypes associate criminality and violent behavior with Blacks (Eberhardt, Goff, Purdie, & Davies, 2004). Among other evidence of implicit bias contributing to racial disparities, shooter bias was exacerbated by the priming of stereotypes associating Blacks with crime (Correll, Park, Judd, & Wittenbrink, 2007a). White judges demonstrated implicit bias toward Blacks on an Implicit Association Test, which tests the extent to which respondents associate Black with bad and White with good (Rachlinski, Johnson, Wistrich, & Guthrie, 2009). Those judges with an implicit preference for Whites

gave harsher sentences to defendants in a sentencing simulation study when they had been primed with words associated with Blacks rather than Whites (Rachlinski et al., 2009). People also hold an implicit association between Blacks and guilt, and those with stronger associations were more likely to interpret ambiguous evidence as evidence of guilt (Levinson, Cai, & Young, 2010).

However, not all racial disparities are the result of implicit racial bias. In her book, *The new Jim Crow* (2010), Alexander forcefully argues that racial disparities in incarceration rates are the result of explicit and intentional policies to focus policing on crimes that are disproportionately committed by Blacks. Neither implicit bias nor intentional policing strategies are necessary to produce racial disparities in arrests. Take, for example, racial disparities in marijuana arrests. Even though Blacks are no more likely to use marijuana than are Whites, they are twice as likely to purchase it outdoors and three times more likely to buy from a stranger, placing them at greater risk of being observed by police (Ramchand, Pacula, & Iguchi, 2006). These differences in behavior, rather than implicit racial bias on the part of police, may at least partially explain racial disparities in arrests for marijuana possession. Indeed, drug arrests are correlated with citizens' calls to the police to report drug activity (Engel, Smith, & Cullen, 2012). Calls to report drug activity are likely to increase when drug-related behaviors are occurring in plain view, which seems to be more likely among Black drug users (Ramchand et al., 2006).

In courtrooms, implicit racial bias may underlie racially biased jury selection, but attorneys may also enact an intentional trial strategy to remove jurors based on race (Grosso & O'Brien, 2012). For example, when the court limits attorneys questioning during voir dire, attorneys may intentionally rely on race and/or ethnicity as a proxy for attitudes toward the criminal justice system when choosing which venirepersons to remove. Data on attorneys' explanations for their jury selection decisions when challenged about their use of race-based peremptory challenges show that only 75% of attorneys claimed race-neutral reasons for challenging particular jurors; 25% did not even try to pretend that their challenges were race neutral (Gabbidon et al., 2008). Similarly, racial biases in criminal sentencing are likely the result of some combination of implicit racial bias on the part of judges and prosecutors who charge and sentence offenders and purposefully enacted policies during the war on drugs that were intended to reduce crime but differentially affected minority offenders (Spohn, 2015a).

Eliminating Implicit Bias

Despite the evidence that implicit bias is not the root of all racial disparities in the criminal justice system, one might consider whether it would be possible to screen decision makers for implicit bias or at least warn them that would reduce implicit bias. Although there are methods of measuring implicit bias, like the

Implicit Association Test (Greenwald, McGhee, & Schwartz, 1998; Greenwald, Nosek, & Banaji, 2003; Levinson et al., 2010), it would not be practical to screen all decision makers who contribute to racial disparities given the number of people involved. There is some evidence that attorneys do use their peremptory challenges to remove venirepersons who have levels of implicit (but not explicit) bias that are unfavorable to their adversarial role (low bias for prosecutors and high bias for defense attorneys) when litigating a criminal case with a Black defendant (Morrison, DeVaul-Fetters, & Gawronski, 2016). However, controlling for the race of the venireperson eliminates the statistical significance of this effect, suggesting that attorneys' success in eliminating jurors with unfavorable levels of implicit bias is at least in part based on the race of the venireperson, a legally impermissible consideration.

If screening for biased decision makers is not practical, perhaps we could warn or train decision makers to act without bias. Unfortunately, the limited research examining whether warnings to avoid bias reduce the effects of racial bias on legal decision making suggests that warnings will not be effective. Warning prosecutors about restrictions against using gender to make jury selection decisions (which, like using race, is legally prohibited) did not decrease restricted eliminations but instead prompted attorneys to provide more elaborate category-neutral justifications for their decisions (Norton, Sommers, & Brauner, 2007). And although some have argued that judges should instruct jurors about implicit bias and the importance of avoiding it (Kang et al., 2012), these suggested jury instructions did not reduce convictions of Black defendants across a number of jury simulation experiments (Close & Kovera, 2019).

Interventions designed to eliminate implicit bias or train decision makers to avoid it are also unlikely to eliminate racial disparities. For example, intergroup contact does not reduce implicit bias in the majority group (Henry & Hardin, 2006). Empathy training, perspective taking, imagining intergroup contact, considering racial injustice, priming feelings of nonobjectivity, instilling a sense of common humanity, and priming egalitarianism were not effective at reducing implicit bias (Lai et al., 2014). In contrast, repeated exposure to counter-stereotypic examples (e.g., associating Black with good) and evaluative conditioning (e.g., pairing Black faces with positive words and White faces with negative words) did reduce implicit bias (Burns, Monteith, & Parker, 2017; Lai et al., 2014). Although immediately effective, these interventions were not effective over several hours or days (Lai et al., 2016). Moreover, self-regulation of bias takes time and effort that busy decision makers may not have (e.g., when making quick decisions about whether to shoot suspects). Thus, although implicit bias may be reduced, the effect sizes associated with these reductions are relatively small and the reductions do not translate into changes in explicit bias or behavior (Forscher et al., 2019).

Alternative Strategies for Reducing Racial Disparities

Instead of attempting interventions designed to identify or reduce bias, which appear to have limited effectiveness, perhaps efforts would be better spent identifying ways to constrain the ability of decision makers to act on their racial biases. This idea is not new. Similar suggestions were made in the American Psychological Association's (1991) amicus brief to the U.S. Supreme Court in *Price Waterhouse v. Hopkins*, a case in which the plaintiff, Ann Hopkins, sued Price Waterhouse for gender discrimination in their employment decisions. The psychologists who wrote the brief never argued that evaluators in employment situations should be trained to avoid bias or that they should be assessed so that decision-making authority would be taken away from biased evaluators. Instead, the authors suggested specific procedures for performance evaluations that would make it difficult for gender bias to influence the evaluations, including increasing interdependence/teamwork, underscoring the importance of accurate evaluations, and having third parties review evaluations for accuracy. Although far from exhaustive, the final section of the article takes a similar approach, proposing potential interventions that could make either make it more difficult for racial bias to influence decisions or reduce problematic outcomes for all people, regardless of race.

Reducing disparities in policing. Changes in organizational policies could reduce racial disparities in policing. For example, investigatory stops are an organizational practice that result in racial disparities. Requiring police officers to record all stops, including the race and ethnicity of the driver and the results of the stops, could increase accountability and reduce disparities (Epp, Maynard-Moody, & Haider-Markel, 2017). In addition, when states passed laws prohibiting racial profiling, racial disparities in traffic stops were reduced (Tomaskovic-Devey & Warren, 2009).

Statistical modeling can also be used to identify the characteristics of stops that are most likely to result in the recovery of a weapon when a search is executed, such as the precinct in which search was conducted or the location of the search (e.g., searches in public housing were unlikely to be fruitful but likely to be a search of a minority suspect; Goel, Rao, & Shroff, 2016). It can also be used to identify which characteristics the police already rely on to initiate a stop are more likely to recover a weapon. For example, of the 18 criteria police reported using to determine whether to conduct a search, only five had a nonzero association with recovering a weapon: a suspicious object, sights and sounds of criminal activity, a suspicious bulge, an ongoing investigation, and a witness report (Goel et al., 2016). These researchers also developed decision rules about when to conduct searches by estimating the probability that a stop would produce a weapon from data on whether a weapon was recovered in over

300,000 police stops in New York City during 2009–2010. With this information, the researchers estimated the probability that stops made in 2011–2012 would result in the recovery of a weapon and then evaluated different decision rules to see whether reducing the number of stops increased the number of fruitful searches while decreasing racial disparities. Their modeling suggested that making 6% of current stops would uncover a majority of weapons and 58% of stops would recover 90% of weapons, all while significantly reducing racial disparities in stops (Goel et al., 2016). Similar methods have been used to develop models that allow judges to make pretrial detention decisions based on the risk of reoffending and failure to return to court rather than race (Milgram, Holsinger, Vannstrand, & Alsdorf, 2015).

Organizational policies may also help reduce disparities in use of force by curtailing behaviors that lead to racial disparities. Reductions in police stops not only increase the likelihood that a weapon will be recovered when a suspect is searched (Goel et al., 2016), but also reduce the disparities in use of force against Blacks and Hispanics to nonsignificance (Levchak, 2017). Police use of force often follows their pursuit of a suspect, which results in a rush of adrenaline that can interfere with controlled cognitive processing that is needed to counteract stereotypical associations like those that lead to racial disparities in shooting. The use of force against suspects may be reduced by policies that prohibit the first officer who apprehends the suspect from touching him but require the officer to wait for another officer to take the suspect into physical custody (Alpert, Kenney, & Dunham, 1997). Although body-worn cameras did not reduce use of force in a meta-analysis of randomized control studies testing this hypothesis (Ariel et al., 2016b), an internal analysis of one of these studies suggested that wearing the cameras did reduce use of force when police officers followed the research protocol rather than used their discretion to turn off the camera during some encounters (Ariel et al., 2016a). Thus, an adoption of body-worn cameras in an attempt to reduce use of force must be accompanied by a prohibition against officers turning off the cameras at their discretion.

Reducing disparities in prison populations. Addressing racial disparities in prison populations could be achieved by simple changes in pretrial processing of criminal suspects. Because minorities are more likely to be poor than Whites, they also disproportionately suffer from judge's reliance on money bail to ensure that defendants will appear in court for hearings and trial as well as from fines leveled for minor offenses. Because they lack financial resources to make bail or pay fines, minorities are more likely to spend time in prison than are Whites. Reducing the reliance on money bail to ensure court appearances would reduce racial disparities in incarcerations (Woolredge, Frank, Goulette, & Travis, 2015).

Changes in sentencing practices could also reduce racial disparities in prison populations. One potential change is to reduce the number of lower

level crimes that result in custodial sentences (Spohn, 2015b). Thus, legislation intended to reform sentencing practices may be one way to reduce racial disparities in prison populations. The federal Fair Sentencing Act (2010) reduced sentencing disparities between those convicted of offenses related to crack and powder cocaine, differences that differentially harmed racial minorities. More recently, the FIRST STEP Act (2018) shortened mandatory minimum sentences for nonviolent drug offenses and made the provisions of the Fair Sentencing Act retroactive. Although the FIRST STEP Act was intended to reduce the number of all people in prison, it is a step toward reducing mass incarceration, which has disproportionately affected members of minority groups (Alexander, 2010).

Changes in disciplinary practices in schools can disrupt the school-to-prison pipeline that disproportionately affects minority youths. Briefly training educators to adopt a more empathetic and less punitive mindset toward disciplining students reduced student suspensions by half (Okonofua, Paunesku, & Walton, 2016). Another intervention that combined teachers adopting a more empathetic mindset toward discipline, consistent disciplinary practices, and proactive classroom management techniques reduced disciplinary referrals to the school office by half and reduced racial disparities in referrals by a similar amount (Cook et al., 2018). Interventions with students can also disrupt the pipeline. Identifying situations in which racial disparities in discipline exist and educating students about behavioral expectations for those situations reduced racial disparities in discipline for those situations (McIntosh, Ellwood, McCall, & Girvan, 2017). Thus, training both teachers to respond differently to behavioral disturbances and students to meet behavioral expectations can decrease disciplinary actions that contribute to the school-to-prison pipeline.

Reducing disparities in jury participation. Legislation designed to restore voting rights to convicted felons who have completed their prison sentences is one way to reduce racial disparities in citizens appearing in jury pools in some jurisdictions. Changing the diversity of the jury pool would not, however, reduce racial bias in the exercise of peremptory challenges. Some scholars have recommended that the best way to reduce racial bias in jury selection is to eliminate the peremptory challenge, either entirely (Hoffman, 1997) or in specific circumstances (e.g., for prosecutors in capital cases in which a Black defendant has killed a non-White victim; Hatoum, 2018). Bills have been introduced, for example in the New Jersey state legislature, that would eliminate peremptory challenges (but not challenges for cause). Although it is likely that the elimination of peremptory challenges would reduce racial disparities in who is excluded from jury service, it is unknown whether this procedural change would have other unintended consequences for the quality of justice dispensed.

Conclusion

Racial disparities plague the U.S. criminal justice system. Although some of these disparities may be rooted in the implicit racial bias held by key decision makers, including the police, judges, attorneys, and jurors, others may result from specific crime reduction or litigation strategies. Thus, even if implicit bias training were effective and easily implementable for all the decision makers in the system—a questionable assumption—attempts to reduce racial disparities through implicit bias training may not be maximally effective because implicit bias is not the only root cause.

Rather than directly attacking implicit bias, changes to other policies may reduce racial disparities in the criminal justice system. Efforts for these types of reform may be met with opposition given that the presence of racial disparities in the criminal justice system increases support for the types of punitive policies that produce the disparities (Hetey & Eberhardt, 2014; Peffley & Hurwitz, 2007). However, finding a solution to racial disparities is imperative as there is mounting evidence that being imprisoned serves a criminogenic function: those who spend time imprisoned are at increased risk of committing future crimes (Cochran, Mears, & Bales, 2014; Nagin, Cullen, & Jonson, 2009). At some point, the disparities become self-fulfilling as the increased rates of incarceration of minority people will result in increased offending among the same group, with disparities in imprisonment becoming a function of disparities in offending. Given the importance of remedying these racial disparities in the criminal justice system, we need to look beyond efforts to train away implicit bias, which is an admirable goal but likely difficult to enact on a large enough scale to improve the dispensation of justice any time soon. The identification of structural issues that contribute to the racial bias in our system and the elimination or change of those structures may prove a more practical path for systemic change.

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