

Do Public Defenders Spend Less Time on Black Clients?

Some suspect “implicit bias” is not just a problem for police, prosecutors, and judges.

By Maurice Chammah. Posted on Monday, May 2, 2016 at 10:00 p.m.

Earlier this year, when San Francisco public defender Mark Jacobs addressed a group of potential jurors in the murder trial of a young black man, he asked them point-blank to consider whether they might judge him more harshly because of his race. “Look at my [anno-selector i=1]client[/anno-selector],” Jacobs said, noting his dark skin. “He’s the stereotype of everything you think is scary.”

[anno-body i=1]Jacobs asked that his client’s name remain anonymous because the case is ongoing.[/anno-body] Jacobs was surprised the judge allowed such explicit talk of race in the courtroom, but he was even more surprised at himself; he would not have made this sort of remark a few years ago. The moment reflected a rising awareness among public defenders that they may harbor the same hidden biases about race and ethnicity that are frequently attributed to police and prosecutors.

A growing body of research has attempted to draw links between “implicit bias” — beliefs that unconsciously drive decisions and behavior — and the racial disparities that cut across every stage of the criminal justice system, from arrest to charge to incarceration to release. One study found that black defendants in Connecticut had bail amounts 25 percent higher than comparable white defendants, and another found black defendants drew sentences 12 percent longer in federal courts.

Much of that research is focused on prosecutors, jurors, and judges, the triad that puts people away. But scholars are beginning to discuss how it also affects the work of public defenders, to the surprise of many. “I figured: we understand racism, we know our clients, we get it,” says Jeff Adachi, the elected public defender of San Francisco. But now Adachi is one of the converted, running twice-yearly all-day sessions for his staff in which they discuss how unconscious prejudices can sneak into their work. “It’s like waking up from a dream,” Jacobs recalled. Discovering research that correlated skin tone with the harshness of sentences “just made me sick.” He remembered times in the past when he defended immigrants. “I’d think, well this case isn’t as important as that of an American kid. It was a feeling of, they’re just going to plead guilty so why should I bother?”

“[Bias] might manifest in whether the defender believes in the guilt or innocence of the person they’re representing,” says Phoebe Haddon, the chancellor of Rutgers University-Camden. “Or their assessment of their fellow counsel, the credibility of witnesses, whether to take a plea bargain.”

Haddon and the American Bar Association are developing videos to push judges, prosecutors, and defenders to discuss bias, and the first features a string of judges in a rare show of penitence. William Missouri, a black retired circuit court judge from Maryland, says he studied his own sentencing patterns and found “I was biased against my

own people.” He looks stricken. “Being accused of bias is like a knife slicing your skin; the cut may be shallow, but the hurt is deep.”

It goes beyond race: Cheryl Cesario, a former Chicago judge, admits that being Catholic meant that when a Catholic defendant came before her, “I would expect more from them.”

Data is scant, since multiple factors create sentencing disparities, but many defenders believe one of the main consequences of “implicit bias” is how much time they spend on cases. Their offices tend to be poorly funded and inundated with far more cases than they have time to handle. “They may expend more effort on cases in which they believe their client is factually innocent,” professors Song Richardson and Philip Atiba Goff wrote in a 2013 article for the Yale Law Journal.

If they are interpreting “ambiguous evidence,” a “judgment of guilt may be cognitively easier to make because of the strong implicit association between blacks and crime.” The surrender to implicit bias is exacerbated by stress, exhaustion, and speed — “exactly the context in which public defenders find themselves.”

The research is still mostly theoretical, and the concrete suggestions tend to be vague. The video for judges suggests that they try to be more humble, slow down their work, and do more self-examination. Videos and other materials for public defenders and prosecutors will be released by the American Bar Association later this year. The association encourages all lawyers to take the Implicit Association Test, an online tool developed at Harvard University.

Anecdotally, increased awareness has emboldened more public defenders to raise the issue of unconscious bias more explicitly in the courtroom, as Jacobs did at the recent murder trial. Another defender in Adachi's office, Demarris Evans, told a judge she felt his refusal to release her client on his own recognizance was based on the fact that he was a tall black man. The judge threatened to hold her in contempt of court.

“If we don't see it in ourselves,” Adachi said, “we're not going to be effective at our jobs.”

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