PRACTICAL APPLICATION OF BIAS MITIGATION LESSONS IN THE COURTROOM

# Problem 1: Money Matters

Data from the 2019 Survey of Consumer Finances shows that long-standing and substantial wealth disparities between families in different racial and ethnic groups remain.[[1]](#footnote-1) The typical White family (with a wealth of $188,200) has eight times the wealth of typical Black family (with a wealth of $24,100) and five times the wealth of the typical Hispanic family (with a wealth of $36,100).[[2]](#footnote-2)

Even among young families who have had relatively little time to accumulate wealth, there are stark differences among young Black and young White families.[[3]](#footnote-3) The typical young Black family has almost no wealth ($600), while the typical young White family has a wealth of $25,400.[[4]](#footnote-4) Young Hispanic families fall in between, with $11,200 in median wealth.[[5]](#footnote-5)

Not surprisingly, there are disparities among racial groups in levels of income as well as wealth. The median Black American earned 65 percent as much as the median White American in 2016, and lower-income Black Americans earned 54 percent as much as lower-income White Americans in 2016.[[6]](#footnote-6) But even for families with the same income, the racial wealth gap persists for every income group except the bottom 20 percent of households (23.5 percent Black) where median net worth is zero.[[7]](#footnote-7) Thus, for example, the median net worth for a White family in the top 10 percent by income is approximately $1.8 million versus approximately $343,000 for a Black family.[[8]](#footnote-8)

While higher educational attainment is generally associated with higher wealth, higher education does not eliminate or substantially reduce racial wealth gaps.[[9]](#footnote-9) Black and Hispanic families have less median family wealth than white families with the same education.[[10]](#footnote-10) Indeed, the typical Black and Hispanic families whose highest level of education was a bachelor’s degree had less median wealth than the typical white family whose highest level of education was a high school degree.[[11]](#footnote-11)

Economists attribute at least some portion of the wealth disparity to inheritance and the intergenerational transfer of wealth.[[12]](#footnote-12) White families are considerably more likely to have received an inheritance or gift and tend to receive larger inheritances.[[13]](#footnote-13)

Consider the following questions.

* Some people say, “I accomplish justice by treating everyone who appears before me the same.” Discuss whether this approach to imposing fines and fees might reinforce or perpetuate racial inequity.
* How have you observed money impacting a person’s ability to access various deferral, charge reduction, and alternative sentencing opportunities? What are your options when costs are prohibiting someone’s compliance? Have you observed racial disparities among the participants in such programs? If so, what did you do and what options do you have for responding to that?

# Problem 2: Courtroom Dynamics

A recent report from the National Center for State Courts defines bias as, “the unintended influence of factors that are not meant to be considered on a final decision or result.”[[14]](#footnote-14) Implicit bias is in turn defined as “a bias that is measured using an implicit, or indirect measure.”[[15]](#footnote-15) The report states that implicit biases can influence a number of judgments and actions in professional legal settings, citing research that correlates implicit biases with sentencing decisions by judges, arbitrators’ decisions, and officers’ decisions about whether to shoot a suspect.[[16]](#footnote-16) The report also notes that “other less-than-intentional biases” can affect professional decisionmaking, citing as an example one study in which irrelevant social characteristics of litigants (such as gender or race) had significant effects on the ways in which judges decided a series of hypothetical cases.[[17]](#footnote-17) In another study, researchers found that job applicants with “African-American names” got fewer callbacks for each resume they send out.[[18]](#footnote-18) They also found that resume characteristics were less predictive of callback rates for applicants with Black sounding names than applicants with White sounding names. In yet another study, researchers found that police officers spoke significantly less respectfully to Black than to White community members in everyday traffic stops, even after controlling for office race, infraction severity, stop location, and stop outcome.[[19]](#footnote-19)

Can you identify a circumstance in which implicit or unintentional bias might affect your conduct – or the conduct of other officials -- in the courtroom?

Consider the following:

* What kind of clothing have you seen or heard described as inappropriate for court?
* What kind of courtroom behavior have you seen or heard described as disrespectful?
* How might your background influence your perception of appropriate dress or respectfulness?
* Does the way that people are spoken to in court ever reinforce or perpetuate racial inequity? How about inequities based on gender nonconformity?

1. Neil Bhutta, Andrew C. Chang, Lisa J. Dettling, and Joanne W. Hsu, *Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances*, FEDS Notes. Washington: Board of Governors of the Federal Reserve System (Sept. 28, 2020), https://doi.org/10.17016/2380-7172.2797. [↑](#footnote-ref-1)
2. *Id*. [↑](#footnote-ref-2)
3. *Id*. [↑](#footnote-ref-3)
4. *Id*. *See also* Kriston McIntosh, Emily Ross, Ryan Nunn and Jay Shambaugh, Examining the Black-white Wealth Gap, The Brookings Institution (Feb. 27, 2020), <https://www.brookings.edu/blog/up-front/2020/02/27/examining-the-black-white-wealth-gap/> (noting that “family wealth allows people (especially young adults who have recently entered the labor force) to access housing in safe neighborhoods with good schools, thereby enhancing the prospects of their own children”).  [↑](#footnote-ref-4)
5. Bhutta, *supra* note *1.* [↑](#footnote-ref-5)
6. Rakesh Kochhar and Anthony Cilluffo, *Key findings on the rise in income inequalities within America’s racial and ethnic groups*, Pew Research Center (July 12, 2018), https://www.pewresearch.org/fact-tank/2018/07/12/key-findings-on-the-rise-in-income-inequality-within-americas-racial-and-ethnic-groups/. [↑](#footnote-ref-6)
7. *See* McIntosh et al., *supra* note 4. [↑](#footnote-ref-7)
8. *Id*. [↑](#footnote-ref-8)
9. Ana Hernandez Kent and Lowell R. Ricketts, *Wealth Gaps between White, Black and Hispanic Families in 2019*, St. Louis Fed on the Economy blog (Jan. 5, 2021), https://www.stlouisfed.org/on-the-economy/2021/january/wealth-gaps-white-black-hispanic-families-2019. [↑](#footnote-ref-9)
10. *Id*. [↑](#footnote-ref-10)
11. *Id*. [↑](#footnote-ref-11)
12. *See* McIntosh et al., *supra* note 4. [↑](#footnote-ref-12)
13. *Id*. [↑](#footnote-ref-13)
14. Jennifer K. Elek and Andrea L. Miller, *The Evolving Science of Implicit Bias: An Updated Resource for the State Court Community*, National Center for the State Courts, at 2 (March 2021). [↑](#footnote-ref-14)
15. *Id*. [↑](#footnote-ref-15)
16. *Id*. at 6. [↑](#footnote-ref-16)
17. *Id*. at 7. [↑](#footnote-ref-17)
18. Marianne Bertrand and Sendhil Mullainathan, *Are Emily and Greg More Employable Than Lakisha and Jamal? A Field Experiment on Labor Market Discrimination*, Vol. 94 No. 4 The American Economic Review (September 2004). [↑](#footnote-ref-18)
19. Rob Voigt, Nicholas P. Camp, Vinodkumar Prabhakaran, William L. Hamilton, Rebecca C. Hetey, Camilla M. Griffiths, David Jurgens, Dan Jurafsky, and Jennifer L. Eberhardt, *Language from police body camera footage shows racial disparities in officer respect*, Proceedings of the National Academy of Sciences (June 2017). [↑](#footnote-ref-19)