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Beneath the Surface: Juvenile Adjudication Disparity in a Rural County

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Abstract

A rural county with a high Hispanic population showed small disproportionate minority contact (citation or arrest) in initial analysis of federally required Disproportionate Minority Confinement studies but closer examination of a random sample of all juveniles arrested in 2000 showed that a subtle but significant disparity still existed when a more detailed examination was conducted. While overt discrimination did not appear to be extreme, stereotypes still negatively influenced Hispanic/Law Enforcement relations at various levels and Hispanics were still over represented in contacts and confinement. Three areas were examined that may explain/inform these lingering disparity issues: Cultural, Economic and Structural factors.

The National Coalition of State Juvenile Justice Advisory Groups in its 1988 annual report to Congress, *A Delicate Balance*, brought the disproportionate confinement of minority youth in juvenile corrections facilities to the public attention. Since 1988 when amendments were added to the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, states have been required to address disproportionate minority confinement (DMC) in their state plans. In 1992 amendments to the JJDP Act, DMC was elevated to a core requirement and funding eligibility for states was tied to their annual compliance. According to DeComo (1993), studies were subsequently conducted in sixteen states. These studies indicated that African-American juveniles were being incarcerated at disproportionate rates in fifteen of the sixteen states. Minorities represented 32% of the youth population in the country, while 68% of those incarcerated in detention and secure training schools.

A great deal of additional research on over representation of minority representation in juvenile justice has been conducted. Much of it had been sponsored by OJJDP. In a review of the research literature from 1989-2001, an OJJDP (2002) report concluded that race is central in juvenile justice system in the U.S. today. Furthermore, the research clearly indicates disproportionate minority representation in the juvenile justice system.

Inequality within the criminal justice system has been a long standing concern recognized by the federal government. All states receiving federal funds for juvenile corrections are required to conduct Disproportionate Minority Confinement (DMC) studies (Juvenile Justice Delinquency and Preventions Act 2002). The data for this paper comes from such a study. A rural but urbanizing inter-mountain state conducted its DMC study in several phases. Phase One measured disparity in contact (citation or arrest) and confinement at the state wide and county levels. Phase two examined select counties in detail to better understand contacts and the outcomes of these contacts with law enforcement and the justice system.

Phase One showed that overall there were real but generally low to moderate levels of disparity especially in the largest minority group in the state, Hispanics. Within select counties, this disparity was greater due to the concentration of Hispanics in agricultural counties within the state. Several of the counties with the highest disparity had very low population levels so that a change in one or two contacts per year would reduce or eliminate the disparity recorded. Only a few counties with high Hispanic concentrations contained large enough populations to conduct extensive, statistically significant research.

While this state and particular county are small relative to other states, the research is important since Hispanics have been historically over represented in the criminal justice system but under represented in the research on inequality in the criminal justice (Schuck, Lersch, & Verrill, 2004). This research attempts to improve this understanding of representation of Hispanics in the justice system.

Compared to Caucasians, on a state wide basis, Hispanics had an Index of Representation of 1.3 for contacts and 1.6 for custody (Marsh & Patrick, 2003). This basically means that Hispanics were over represented by 30% and 60% respectively when compared to Caucasians in the population at risk group from 10 to 17 years old. In Mountain County the contacts index was 1.36 and the custody index 1.7. While slightly higher than the state numbers, Mountain County was similar to the state overall in respect to Hispanics. Mountain County showed small to moderate levels of disparity in contacts and confinement for Hispanics (other minority groups within this county made up less than 1% of the population at risk). Mountain county had the second largest population size in the state and a high percentage of Hispanics (over 14%) which allowed for more detailed analysis of differences between Hispanics and Caucasians.

Literature Review

While historically, disparity among minorities in the criminal justice system has been seen as racism, over the past several decades this historic, overt, racism has been reduced (McGarrell, 1993; Bishop & Frazier, 1988; Krisberg, Schwartz, Fishman, Eisikovits, Guttman & Joe, 1987). The racism that remains can be seen as a combination of cultural, economic and institutional factors. While the reduction in overt racism is highly commendable, the remaining inequality is both troublesome and more difficult to deal with. Some studies have shown that minorities, including Hispanics, receive more severe sentences than Whites (Demuth & Steffensmeier, 2004a; Munoz & Sapp, 2003).

The inequality based on culture seems to be a product of cultural differences between the criminal justice system (strongly based on middle class White culture) and the various minority groups that are over represented in the criminal justice system (Walker, Spohn, & DeLone, 2004). Researchers see this cultural difference as endemic at all levels of the criminal justice system (Rasmussen, 2004; Gaarder, Rodriguez & Marjorie, 2004; Demuth & Steffensmeier, 2004b). Even within police culture, racial and ethnic cultural differences result in officers dealing with offenders differently (Sun & Payne, 2004; Walker, et al, 2004). These cultural differences lead to differences in context for the system and members of minority groups (Bruce, 2004; Ray & Alarid, 2004) and are used in unofficial profiling (Parker, MacDonald, Alpert, Smith & Piquero, 2004).

Economic inequality exists within society and this can lead to inequality within the justice system. Research shows that children of some immigrant groups, especially Hispanic groups, can face downward mobility thus creating significantly greater relative deprivation (Waldinger & Feliciano, 2004; Brezina & Winder, 2003). This downward mobility, combined with a generally good economy, can increase the likelihood of criminal activity.

Institutional discrimination while culturally based is more built into the system or structure of society than enacted by individuals within the system. Minorities, including Hispanics, experience institutional barriers, especially if they do not assimilate into the dominate culture (Martinez, DeGarmo & Eddy, 2004, Ruggiero, Taylor & Lambert, 1996). Barriers to education and economic advancement greatly increase minorities likelihood to enter the criminal justice system (Pettit & Western, 2004). Continuing segregation also increases the likelihood of involvement with the criminal justice system (Akins, 2003).

Cultural, economic and structural inequality while separate issues cannot be fully disentangled from each other. These three indirect or covert sources of inequality in the criminal justice system can even combine or interact to increase disparity even if only one issue is addressed (Platt, 2001; D'Alessio & Stolzenberg, 2003; Phillips, 2002).

Theory

There are many views that attempt to explain the disparity in minority contacts and confinement but we will examine only three basic theoretical perspectives for this paper: Cultural, Economic and Structural theories. Cultural theories point to differences in basic values and behaviors between certain minorities and law enforcement. These conflicts result in minorities that commit criminal violations being more likely to be arrested and punished. Economic theories point to discrimination and lack of opportunity within many minority groups resulting in increased criminal behavior. Structural theories point to inequality within the basic structures of society that result in both increased likelihood of criminal activities among some minority groups and increased likelihood of being targeted by law enforcement.

There has and remains a strong debate on the theory that many minority groups exist in a sub-culture of violence that can help explain Caucasian/Minority differences in violent or aggressive behaviors (Anderson, 1990, Brezina, Agnew, Cullen & Wright, 2004). This debate also extends to the ways that minorities relate to police (Reisig, McCluskey, Mastrofski & Terrill, 2004). Cultural and sub-cultural theories purport that differences between minority cultural and law enforcement culture at all levels leads to minorities being punished for these differences.

Minorities have and continue to experience inequality in economic opportunities (Yaffe, 1994). As Hispanics make up a large proportion of immigrants, it has also been shown that assimilation often results in inter-generational downward mobility (Waldinger & Feliciano, 2004). Lower economic opportunity has been shown to result in increased criminal behavior (Harding, 2003; Walker, Spohn, & DeLone, 2004).

Structurally, institutional racism has been offered as one explanation for the over representation of minorities within the criminal justice system. Both the White hegemonic structure (Aguirre, 2004) and the culture of the police (Wilson & Dunham, 2004) and courts (Spohn & DeLone, 2000) have been offered as specific reasons for minority and specifically Hispanic, over representation in the criminal justice system.

While these theoretical perspectives are often studied separately, they often overlap and can be used together to increase their individual power and provide a more meaningful explanation of the problem.

Methodology

Phase One of the DMC study was based on a census of contacts and confinement based on records provided by the state Department of Juvenile Corrections. Phase Two was based on a random sample of all contacts within the various agencies of Mountain County. A 50% sample was selected from a citation list provided by the state Department of Juvenile Corrections and assembled by the state law enforcement statistics division. A research team visited each agency and physically examined the citations. Each subject in the sample was then followed through the records of the Department of Juvenile Corrections to obtain arrest and confinement histories.

Findings

While extensive data was collected on the 50% random sample of all contacts made by law enforcement with juveniles in Mountain County, this paper will report only the analysis of contacts and outcomes.

As Table one shows juveniles can be cited or arrested for many different offenses, and they can be separated into 5 basic categories. There are differences between Hispanics and Caucasians in many of these 5 categories. Hispanics were slightly less likely (28.1%) to be cited or arrested for minor behavioral problems like curfew violation or

smoking than for Caucasians (31.8%). Hispanics were also less likely to be arrested for drugs and alcohol offenses (11.3%) than Non-Hispanics (17.0%). On the other hand Hispanics were more likely than expected to be arrested for both property crime (35.4%) and Violent crime (28.6%) than Caucasians (31.0% and 13.6% respectively).

Collapsing criminal categories often create tables that are easier to analyze yet they can sometimes miss interesting differences. Table two shows that minor behavior violations in this study were made up of Run away/Curfew violations as well as minor traffic and smoking violations. When we looked at the categories that made up what we call minor behavioral offenses, we saw that Hispanics were slightly more likely than expected to be cited for runaway and curfew violations (25.9%) than Caucasians (23.5%). There was little difference between the ethnic groups in vehicular violations (not including DUI) (1.4% for Hispanics versus 1.2% for Caucasians). It was in the category of tobacco use that Caucasians dramatically outnumbered Hispanics (7.1% versus 0.7% respectively). When we examined Alcohol/DUI and Drugs we saw that Caucasians were more likely than expected to be cited or arrested than Hispanics (9.4% versus 6.4% respectively). When we turned to the various types of property crime we saw that only in the case of Grand Theft/Burglary do Hispanics (13.2%) significantly outnumber Caucasians (8.7%). For Petty Theft there was virtually no difference between Caucasians and Hispanics (15.9% versus 16.0% respectively). Other property crimes (trespassing, vandalism, etc.) showed only a very small difference (6.1% for Hispanics versus 6.4% for Caucasians). When we looked at violent crimes, assault and gun use, we found that Hispanics (16.3% and 2.4%) were more likely than Caucasians (12.5% and 1.1%) to be charged.

While juveniles could be arrested or cited for more than one charge during a single contact, the most serious charge was usually listed first and as the number of charges increased the N of the sample decreased. Therefore we will not discuss then secondary charges in this paper.

The ultimate outcome for the contacts listed in these data, shown in table three, can be varied. Hispanics were slightly less likely (4.8%) than expected to be committed to some form of confinement for the current charge while Caucasians were slightly more likely (6.0%) to be committed. There was virtually no difference in the expectations of receiving some form of probation (70.5% for Hispanics versus 70.4% for Caucasians). Hispanics were much more likely to have the charges dismissed (21.4% for Hispanics versus 14.9% for Caucasians). Caucasians were somewhat more likely (8.7%) to receive some other outcome including such things as transfer of jurisdiction than Hispanics (3.3%).

While it appeared that Hispanics were less likely to be confined and as likely to be given probation compared to Caucasians as a result of the current contact, this was not the case when looking at future involvement. Table 4 shows that Hispanics were significantly less likely to avoid future contact with the justice system (28.0% for Hispanics versus 38.0% for Caucasian with no future contact). Hispanics were also more likely (33.9%) to be confined when compared to Caucasians (25.1%). This was interesting in that it shows that with long term, multiple contacts Hispanics were more likely to receive confinement than Caucasians.

Discussion

We have seen from the findings that while disparity in contact and confinement in this county was lower than one might expect, it still existed. The question of the reason for the disparity in contact and confinement remains. While this paper, based only on Phases One and Two, cannot definitively answer this question of the cause, we can speculate based on solid theory.

The following discussion examines each of the criminal categories first and then considers outcomes.

Minor Behaviors Crimes

Minor behavioral crimes are common among juveniles as they grow and explore their world (Bureau of Justice Statistics, 1997). Curfew violations are the most common or modal crime for everyone. Some of the communities in this county have early curfews and during the summer there is often several hours of day light remaining when the

curfew begins. This results in juveniles often being on the streets long after the curfew has begun. While overall, Caucasians were more likely to be cited for minor behavior crimes, this is due to their overwhelming numbers in the more specific category of tobacco crimes (Blum, et al, 2000). Hispanics were more likely to be cited for curfew/runaway crimes.

Were Hispanics less likely to use tobacco than Caucasians but more likely to be on the streets after curfew? Economic theories point to poor Hispanic juveniles as over represented in this category, being more likely to be unsupervised (U.S. Department of Health and Human Services, 2000; Crowder & South, 2003). This lack of parental supervision and having fewer recreational opportunities could lead them to being on the streets more often than more affluent juveniles. Is this supported by other statistics or is law enforcement more likely to attempt to stop Caucasians from smoking as well as more likely to enforce curfew laws for Hispanics on the streets. Some research shows that minorities are less likely to smoke than Caucasian but for Hispanics this difference is small (Johnson & Hoffmann, 2000). It is not enough to explain the significantly lower incidence of citations for Hispanics, especially considering their higher likelihood of citation for curfew. There seems to be unexplained disparity with minor behavioral violations.

Drug and Alcohol Crimes

Contrary to prison population statistics, these data showed that Hispanics were less likely than Caucasians to be involved in drug crimes as well as the use of alcohol (Blum, et al, 2000). We speculate that this may be an example of Hispanic family structure keeping their children out of the drug culture or some other factor (Pabon, 1998)? While adults may be involved in drug crimes, their children may be prevented or protected from these violation by their family structures (Blum, et al, 2000). While less probable, this lower incident of contact for drugs and alcohol for Hispanic could be for the same reasons as for the smoking disparity seen above. Maybe law enforcement doesn't care about alcohol use among Hispanic youth. This seems unlikely but something must explain this lower involvement for Hispanic youth in drug incidents, especially in the face of the statistically recorded higher involvement for Hispanic adults. This seeming inconsistency should be studied further.

Property Crime

While Hispanics were under represented compared to Caucasians for some minor crimes, as well as drug crimes, they were over represented for property crimes. This raised the question of whether Hispanics committed more property crime, especially serious property crime, or were they more likely to identified and prosecuted because of their ethnicity (Blum et al, 2000; Walker et al 2004)? Unfortunately, this research does not provide insight into this and requires further study.

Violent Crime

Hispanics were also more likely to be arrested for violent crime, both crimes against persons and gun crimes. This offers an insight into the differential treatment of Hispanics by the law enforcement and the court system when compared to Caucasians. Do these data indicate that law enforcement and the courts more likely to take more serious actions against Hispanics that would be overlooked for Caucasians? This is a rural county where hunting is a common practice. Up until a few years ago, after the Columbine shootings, it was common for high school students to have hunting rifles in the trunks of their cars on school property. It also appears from these data that Hispanic youth may succumb to the cultural of violence seen in other research (Brezina, Agnew, Cullen & Wright, 2004). This county also shows a small but growing gang problem.

Current and Future Outcomes

In this research for current crimes it was interesting to find that Hispanics were more likely than expected to have the charges against them dismissed and less likely to be confined. Does this indicate that they had good legal defenses and/or strong family/community support or an example of weak original charges (D'Alessio & Stolzenberg, 2003; Walker, et al, 2004)?

Over the long term it appeared that Hispanics were more likely to end up in confinement. This was contrary to the results of the shorter term original charges. Was this an example of Hispanics committing more crimes and therefore ultimately being caught more often or was this an example of law enforcement repeatedly arresting Hispanics and the overwhelming weight of arrests resulting in conviction and confinement? Other research shows that at both the misdemeanor and felony levels, minorities are more likely to be convicted and confined (Munoz & Snapp, 2003, Demuth & Steffensmeier, 2004a; Spohn & DeLone, 2000). This disparity/inequality in the criminal justice system seems to be at all levels, from contacts to sentencing and confinement (Free, 2002; Walker, et al, 2004).

Culture

While great advancements have been made in reducing disparity in this county, this state and across the country, more can be done. America is becoming a more and more heterogenous society. While White, Anglo-Saxon, Protestant males still dominate, this domination is changing. In the near future Whites will no longer be the absolute majority in American society and the criminal justice system must take this into account. Cultural sensitivity training at ALL levels from line police officers through supervision, courts and corrections must be undertaken. Even minorities that make it into the legitimate system as police officers and even judges often are those that have assimilated most into Caucasian culture.

Additionally, the criminal justice system can reach out to the Hispanic community with programs designed specifically to connect with this community's culture. In this way it may be possible to reduce negative perceptions held by minority groups about the justice system (Weitzer & Tuch, 2004). If the disparity seen here is based on cultural differences, changes in the culture of the criminal justice system should result in reductions in disparity.

Economics

Short of a cultural revolution, the improvement of the economic conditions of certain minority groups will be slow. Through continued support of affirmative action in the hiring of criminal justice professionals both cultural and economic improvements can be made. This is one example of the possible combination of these perspectives. Training and other changes to the criminal justice system might allow those role models that make it into the system (Hispanic police, prosecutors and judges) to remain part of the establishment while still maintaining their cultural heritage (Ruggerio, et al, 1996; Carter, 1986). If role models are seen as making it within the system without losing their culture others may be more likely to follow in their footsteps. This can only reduce the animosity that currently seems to exist between certain minority groups and law enforcement.

Structural

Overt racism, while not being eliminated, has been contained but structural or institutional racism is more difficult to overcome (Walker, et al, 2004). It is built into the culture and only through a concerted effort can the structural cause of disparity be found and removed. Removing the language barriers that currently exist will help greatly. While replacing English as the dominate language will not happen, making translators available at many levels will be the key to removing the structural language barriers. Additionally, recruiting and promoting Hispanics within the criminal justice system while celebrating the Hispanic culture may help the institutional inequality to wither away.

Conclusions

This research showed that while disparity is not as great as it once was, it still remains in this state and within this county. The disparity in contacts showed that Hispanics were still more likely than expected to be cited or arrested for some offenses such as curfew, property and aggressive crimes but less likely than expected to be cited or arrested for tobacco, alcohol and drugs. The third phase of this disparity study should focus at the more micro level of analysis within all the levels of the criminal justice system in order to understand why in the short term Hispanics seem less likely to be confined but more likely to end up in confinement in the long term. This research gives credibility to the

argument that Hispanics, although less likely to be confined in the short run, do tend to ultimately penetrate further into the system than non-Hispanics. This appears to indicate differences in their justice processing because of their ethnicity, socio-economic status, cultural background, and structural issues in the juvenile justice system.

Limitations

The Hispanic community in this inter-mountain state are predominately of Mexican-American origin and do not represent the vast diversity of Hispanic Culture in the United States of America. Therefore these findings cannot be directly transferred to other states with large Hispanic populations from different cultural backgrounds.

This research depends greatly on “officially” recorded criminal activities and therefore did not address the potentially large number of violations that do not make it into the official record. Phase III should examine these informal relations. Are Caucasians more likely to be let off with a warning and therefore not make it into the system.

Finally, much of the theoretical analysis of these data have been speculative. More detailed demographic data are needed to confirm our theoretical speculation.

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Table 1

Re-coded First Listed Violation by Ethnicity

	Caucasian	Hispanic	Total
Minor Behavioral Problem	255 31.8%	119 28.1%	374 30.5%
Drugs or Alcohol	136 17.0%	48 11.3%	184 15.0%
Property	248 31.0%	150 35.4%	398 32.5%
Violence	109 13.6%	79 18.6%	188 15.3%
Other	53 6.6%	28 6.6%	81 6.6%
Total	801	424	1225

Chi Square = 13.42, Sig. = 0.01

Table 2

First Violation Listed by Ethnicity

	Caucasian	Hispanic	Total
Runaway/Curfew	188	110	298
	23.5%	25.9%	24.3%
Moving Violation	10	6	16
	1.2%	1.4%	1.3%
Tobacco	57	3	60
	7.1%	0.7%	4.9%
Alcohol/DUI	75	27	102
	9.4%	6.4%	8.3%
Drugs	61	21	82
	7.6%	5.0%	6.7%
Petty Theft	127	68	195
	15.9%	16.0%	15.9%
Burglary/Grand Theft	70	56	126
	8.7%	13.2%	10.3%
Property, Other	51	26	77
	6.4%	6.1%	6.3%

	Caucasian	Hispanic	Total
Aggression	100	69	169
	12.5%	16.3%	13.8%
Gun Use	9	10	19
	1.1%	2.4%	1.6%
Other	53	28	81
	6.6%	6.6%	6.6%
Total	801	424	1225

Chi Square = 47.17, Sig. = .012

Table 3

Ultimate Outcomes by Ethnicity

	Caucasian	Hispanic	Total
Commitment of Some Kind	25	10	35
	6.0%	4.8%	5.6%
Probation of Some Kind	292	148	440
	70.4%	70.5%	70.4%
Dismissed	62	45	107
	14.9%	21.4%	17.1%
Other	36	7	43
	8.7%	3.3%	6.9%
Total	415	210	625

Chi Square = 9.08, Sig. = .03

Table 4

Ultimate Future Outcomes by Ethnicity

	Caucasian	Hispanic	Total
No Future Contact	162 38.0%	61 28.0%	223 34.6%
Commitment of Some Kind	107 25.1%	74 33.9%	181 28.1%
Probation of Some Kind	133 31.2%	74 33.9%	207 32.1%
Other	24 5.6%	9 4.1%	33 5.1%
Total	426	218	644

Chi Square = 9.00, Sig. = .03