

## HOOKS POLICY PAPERS

# Climbing Out from Under the Rock: Restoring Civil Rights, Economics, and Social Justice in Memphis and the Nation

<b>Foreword .....</b>	<b>2</b>
Daphene R. McFerren, JD	
Elena Delavega, PhD	
<b>Quick Facts: Memphis Tennessee .....</b>	<b>4</b>
<b>The Dangers of a Fragmented Educational Landscape in Shelby County .....</b>	<b>6</b>
Daniel Kiel, JD	
<b>Implicit Bias and Disproportionate Minority Contact in the Shelby County Juvenile Court System .....</b>	<b>11</b>
Demetria D. Frank, JD	
<b>The Robots Are Ready! Are We?: Automation, Race, and the Workforce .....</b>	<b>20</b>
Daphene R. McFerren, JD	
Elena Delavega, PhD	
<b>Race and Poverty: Disparities in Healthcare at the End of Life .....</b>	<b>25</b>
Ana L. Leech, MD	



NOVEMBER 2018  
FOURTH EDITION

# TABLE OF CONTENTS

<b>Table of Contents .....</b>	<b>1</b>
<b>Foreword .....</b>	<b>2</b>
Daphene R. McFerren, JD Executive Director Benjamin L. Hooks Institute for Social Change The University of Memphis	
Elena Delavega, PhD Associate Director Benjamin L. Hooks Institute for Social Change Associate Professor, Department of Social Work The University of Memphis	
<b>Quick Facts: Memphis Tennessee .....</b>	<b>4</b>
<b>The Dangers of a Fragmented Educational Landscape in Shelby County .....</b>	<b>6</b>
Daniel Kiel, JD Professor of Law The University of Memphis	
<b>Implicit Bias and Disproportionate Minority Contact in the Shelby County Juvenile Court System .....</b>	<b>11</b>
Demetria D. Frank, JD Assistant Professor of Law The University of Memphis	
<b>The Robots Are Ready! Are We?: Automation, Race, and the Workforce .....</b>	<b>20</b>
Daphene R. McFerren, JD Elena Delavega, PhD Benjamin L. Hooks Institute for Social Change The University of Memphis	
<b>Race and Poverty: Disparities in Healthcare at the End of Life .....</b>	<b>25</b>
Ana L. Leech, MD Assistant Professor, Geriatric and Palliative Medicine University of Texas Health Science Center McGovern Medical School	

**NOVEMBER 2018 / FOURTH EDITION**



## FOREWORD

An October 17, 2018 headline in The Washington Post read "U.S. named world's most competitive economy for the first time in 10 years, despite fraying economic fabric." This article summarized key findings made by the World Economic Forum about United States competitiveness. It is significant, however, that the report found that this competitive advantage would ultimately be weakened by our nation's lack of investment in people. While the growth of the innovation and sharing of technology across borders has bolstered economies, a board member of the World Economic Forum concluded that "technology is not a silver bullet... countries must invest in people and institutions to deliver on the promise of technology."

The Washington Post article aptly summed why the topics addressed in this fourth edition of policy papers from the Benjamin L. Hooks Institute for Social Change at The University of Memphis (UofM) are so critical to public discussion and debate. The average person working to make ends meet in an increasing economic, social, and racially stratified society could easily feel like the mythical King Sisyphus of Greece: eternally pushing a large and heavy rock up a horrendously steep hill. At any moment, the rock threatens to crush the man.

Many today feel they might be crushed under the rock of disparities related to health, education, incarceration, and employment. Despite greater access to the rights and privileges of society because of gains made by the civil rights movement, African American communities continue to be disproportionately adversely affected by systemic discrimination, high rates of incarceration, poor quality schools, lack of employment (or jobs that fail to pay a livable wage), and lack of access to quality healthcare. While African Americans disproportionately bear the brunt of these disparities, other minorities, the poor, and increasingly, whites, are adversely affected by these issues.

As the most "competitive" and one of the wealthiest economies, the United States is morally obligated to invest in education, training, and programs that strengthen the social net of African American and other communities. Toward that end, African Americans, minorities, and the poor must have access to a quality education that both prepares them for work and to contribute to their communities. Further, our nation cannot continue to heavily invest in a criminal justice system that isolates African Americans from American society, especially when a lack of investment in education, employment, and historical discrimination create the conditions that are then used to punish the very victims of this system.

The authors of these policy papers propose bold and implementable policies for change to strengthen Memphis and the nation. While the papers often focus on the disparate impact on African Americans and other minorities, the analysis and conclusions can also be extended to the poor in general, marginalized groups, and increasingly, whites who struggle at the fringes of the middle class and are one healthcare crisis or job loss away from financial ruin.

Demetria D. Frank, JD (Cecil C. Humphreys School of Law, UofM) addresses disproportionate minority contact in the criminal justice system in Memphis (Shelby County, TN) and the negative impact it has on African American youth. She both cautions us about the long-term effects of such contact and proposes reforms to this system to improve outcomes for African American youth.

Daniel Kiel, JD (Cecil C. Humphreys School of Law, UofM) decries the dangers of a fragmented and segregated



school system that leaves African American and poor children behind. This system is inherently unfair and discriminatory and leads to disparate outcomes. Ultimately, it prevents our nation from benefitting from the talents of these children.

Ana L. Leech, MD (University of Texas Health Science Center McGovern Medical School) tackles the disparities in healthcare that result in shorter lives and less overall quality of health for African Americans and minorities. The healthcare system excludes and penalizes the poor. Despite ongoing political and other opposition to some form of a universal healthcare system in the United States, sound healthcare policies and universal coverage for all people will positively impact their quality of life, even at the end of life. Advocates for such coverage should remain undeterred in their efforts to achieve universal healthcare. Universal coverage will help ensure healthy people, a healthier workforce, and ultimately a nation that is more competitive because its people are healthy.

Daphene R. McFerren, JD and Elena Delavega, PhD (Hooks Institute, UofM) examine the impact of technological advances in automation on the world of work. They argue that in the absence of strong policy interventions by local, state, and federal governments, and large-scale investment in education and job training (and retraining) for higher skill jobs, automation is, and will have, a devastating impact on employment for African Americans, minority workers and others, including whites.

The Hooks Institute urges our local and national government leaders, community members, activists, individuals, businesses, and legislators to work to solve the challenges confronting our nation and fraying its economic and social fabric. We recognize that this will require a level of discussion, cooperation, and bipartisanship that appears increasingly difficult in today's political climate. Nevertheless, to not do so courts disaster for the people of our nation. We, therefore, must reach across diverse aisles and be resolutely committed to lifting the burdensome economic and social disparities rock from the backs of people who are the backbone of this nation.

Daphene R. McFerren, JD  
Executive Director  
Benjamin L. Hooks Institute for Social Change

Elena Delavega, PhD  
Associate Director, Benjamin L. Hooks Institute for Social Change  
Associate Professor, Department of Social Work

Editors

November 15, 2018

# **QUICK FACTS, 2018**

## **MEMPHIS TENNESSEE**

*Elena Delavega, PhD*

*Associate Director, Benjamin. L. Hooks Institute for Social Change  
University of Memphis*

### **POVERTY**

- The African American poverty rate in the city of Memphis, as of 2018, is 28.9%; the overall poverty rate is 24.6%.
- Racial disparities in the Memphis Metropolitan Statistical Area (MSA) are glaring. In Memphis, non-Hispanic whites have a poverty rate of 8.1%, while African Americans have a poverty rate of 24.5% and Hispanics/Latinos have a poverty rate of 29.4%
- Hispanic/Latino poverty in the Memphis MSA is 29.4% overall and 43.8% for children. This is much greater than the poverty rate for this group in the United States at 19.4% overall and 26.3% for children.
- The childhood poverty rate (under age 18) in Memphis, as of 2018, is the second-highest in the United States for MSAs with more than a million people at 27.1%, with the rate for African American children (38.5%) more than four times that for white children (8.4%).
- In African American households headed by females with children under 5 years old, 49.6% live in poverty. In the same group with children under 18 years old, 44.2% live in poverty.

### **PUBLIC TRANSPORTATION**

- In Memphis, 85.2% of all workers over age 16 drive alone to work (African American, 84.9%; Non-Hispanic white, 87.4%) while 8.4% carpool (African American, 9.2%; Non-Hispanic white, 5.8%).
- Only 0.7% of all workers over age 16 use public transportation; however, 14 times as many workers over age 16 who use public transportation in Memphis are African American (1.4%) as non-Hispanic white (0.1%). There has been an important decline in the use of public transportation among all groups in Memphis since 2014 (African Americans, 3.2%; non-Hispanic white, 0.4%), but African Americans continue to use it much more than non-Hispanic whites.
- On average, Memphians take 24 minutes to commute to work.



## **EDUCATION**

- The number of African Americans over age 25 who have a high school diploma, GED, or alternative certificate as their highest level of education in the Memphis MSA is 35.8%, which is higher than the percentage of non-Hispanic whites with only a high school diploma or GED (24.8%); and also higher than African Americans in Tennessee (34.5%) and the United States (31.8%) with only a high school diploma or GED.
- The overall population in the Memphis MSA with a bachelor's degree or higher is 27.8%, while for African Americans it is 17.6% and for non-Hispanic whites it is 36.8%.

## **FERTILITY**

- In the Memphis MSA, 56.5% of all births in 2017 were to unmarried women; 36.4% of all non-Hispanic births and 78.0% of all African American births were to unmarried women.

## **INCOME AND EMPLOYMENT**

- In 2018, the overall unemployment rate in Memphis is 4.4%. In 2017, the unemployment rate for non-Hispanic whites was 3.2%; for African Americans, 9.6%; and for African American men, 11.4%.
- In Memphis, 60.3% of Memphians own their homes. However, almost twice as many non-Hispanic whites (75.5%) own their homes as African Americans (45.9%).
- Median incomes in 2018 are \$60,336 in the U.S.; \$51,340 in Tennessee; and \$39,333 in the city of Memphis.
- Median incomes in 2015 for non-Hispanic whites are \$65,845 in the U.S., \$54,748 in Tennessee, and \$59,507 in the city of Memphis.
- Median incomes in 2015 for African Americans are \$40,165 in the U.S., \$38,142 in Tennessee, and \$31,729 in the city of Memphis.

## **WORKS CITED**

- Delavega, E. (2018). 2018 Memphis poverty [Fact Sheet]. University of Memphis' School of Social Work.  
Retrieved from [https://www.memphis.edu/socialwork/research/poverty\\_fact\\_sheets.php](https://www.memphis.edu/socialwork/research/poverty_fact_sheets.php)
- Census Bureau (2018). 2017 American Community Survey 1-year estimates (S0201).  
Retrieved October 22, 2018.
- U.S. Department of Labor. (2018). Economy at a glance: Memphis, TN,-MS-AR. Retrieved from  
[https://www.bls.gov/eag/eag.tn\\_memphis\\_msa.htm](https://www.bls.gov/eag/eag.tn_memphis_msa.htm)

# THE DANGERS OF A FRAGMENTED EDUCATIONAL LANDSCAPE IN SHELBY COUNTY

*Daniel Kiel, JD  
Professor of Law, University of Memphis*

## INTRODUCTION

In every generation, the cohort of school-aged children represents a community's future and the education students receive is an investment in that outcome. Among the 175,000 school-aged children in Shelby County (U.S. Census, 2016) are individuals of diverse talents and interests, our community's future mayors and musicians and everything in between. Unfortunately, the educational landscape in which this next generation is being cultivated is ill-suited to distribute resources and opportunities in a way likely to capitalize on the talents and interests of the children. The increasing fragmentation of education in Shelby County seems destined to recreate disparities and divisions that have long plagued this community, typically to the detriment of African American students. Greater attention to the dangers of the fragmented educational space is required to ensure that, for this generation, Memphis reaches its potential.

## THE FRAGMENTING OF SHELBY COUNTY EDUCATION

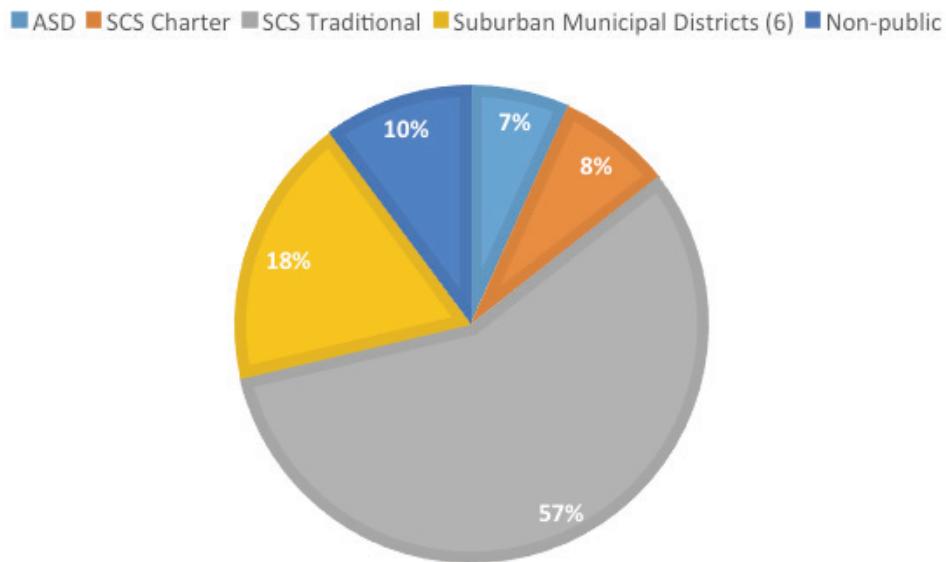
In the past decade, Memphis and Shelby County have been at the center of many efforts for education reform that reflect broader national efforts. The need for this reform is obvious and well-documented. Educational opportunity and attainment are uneven, and race and geography continue to play an outsized role in determining the education students receive (Pohlmann, 2008; Rousseau, 2014). Among these reforms has been a radical reorganization of the public educational structure such that a Memphian who left in 2008 would hardly recognize the landscape in 2018 (Kiel, 2013). To take a few of the most impactful examples:

- Enrollment in charter schools is increasing, reaching nearly 25,000 students in 2016-17 (Tennessee Department of Education, 2018). Charter schools are public schools operated independently of a traditional school district. Although charter schools are authorized by local districts and funded from the public coffers, they are governed and operated with minimal local oversight and negligible cooperation with other schools in the community.
- Beginning in 2014, the number of public school districts in Shelby County ballooned from two to seven. The old normal of Memphis City Schools serving approximately 100,000 students in Memphis alongside Shelby County Schools serving approximately 40,000 students in the county's suburbs has been replaced by a ring of six smaller municipal school districts (Arlington, Bartlett, Collierville, Germantown, Lakeland, Millington) serving suburban students (Siegel-Hawley, et al, 2018). These new districts surround a new iteration of Shelby County Schools, which now serves students within Memphis along with students in unincorporated portions of Shelby County.
- In 2010, in an effort to win federal funding through the government's Race to the Top program, Tennessee created a statewide takeover district, the Achievement School District (ASD). The ASD is a state-run district with the power to remove local control of schools repeatedly scoring near the bottom on the state's accountability tests, typically converting such schools into charter schools. In Shelby County, the ASD exercised authority over 31 schools serving 11,449 students in 2016-17 (Tennessee Department of Education, 2018).



These developments – the multiplication of school districts, the devolution of operational control from districts to schools, and the removal of some oversight from local districts to the state – have unfolded alongside the longstanding presence of a healthy private school sector that serves 16.1 percent of students (U.S. Census, 2016), further fragmenting the landscape.

**Figure 1: K-12 Students in Shelby County, Tennessee (2016-17)**



*Data supplied by Tennessee Schools Report Card, 2016-17 and U.S. Census Bureau, American Community Survey 2012-2016, Children Characteristics, Shelby County, Tennessee (2016)*

This fragmentation is reflective of a broader national education reform movement embracing school choice. Such fragmented landscapes are said to provide market-driven competition that will spur innovation and broad educational improvement in an educational marketplace. As parents and students are provided a more diverse array of choices, schools must distinguish themselves in order to survive. Within the public sector, the traditional centralized school district is transformed to manage a “portfolio” of diverse school types operating with greater autonomy to support the choice model (Hill & Campbell, 2011). It is beyond the scope of this paper to evaluate the effectiveness of school choice broadly. However, the experience of Shelby County suggests several dangers of the fragmented educational landscape often accompany a school choice model. Specifically, fragmentation maintains disparities in educational opportunities and tends to lead to greater racial segregation in schools. Further, fragmentation camouflages these effects by making a broad evaluation of a community’s educational system more difficult.

## **CONSEQUENCES OF FRAGMENTATION**

Fragmentation of political boundaries, including school district boundaries, tends to worsen racial and ethnic segregation (Bischoff, 2008). The boundaries that now exist in Shelby County are not only between school districts, but also between public and private school systems and between charter and traditional public schools. In both cases, these distinctions increase racial segregation in schools (Reardon & Yun, 2003; Frankenberger, et al, 2010).

The fragmentation present in Shelby County results further in socioeconomic segregation in schools. The costs of private schools and the cost of living within the boundaries of suburban municipal school districts make those sectors largely inaccessible to families with fewer means. Within the six suburban municipal districts, four serve student populations that are less than 10 percent economically disadvantaged, according to the state’s

definition. Meanwhile, Shelby County Schools' student population, which includes the city of Memphis, is nearly 60 percent economically disadvantaged, while schools operating under the ASD serve a 73 percent economically disadvantaged student population (Tennessee Department of Education, 2018). These disparities exist in a county with an overall child poverty rate of 34.5 percent (Delavega, 2018).

Although research suggests academic and social benefits to racially and socioeconomically diverse schooling, the harm of segregation is not confined to missing out on these benefits. Racial and socioeconomic school segregation, abetted by a fragmented structure, produces at least two actively negative effects. First, segregation reinforces a narrow – and racially-influenced – lens for viewing local education. In a fragmented environment, parents, students, and community leaders are apt to concern themselves only with their own piece of the larger puzzle. Narrowed lenses inhibit thinking of ways in which broader or cooperative solutions might be created.

Narrowly self-interested thinking is all the more prevalent in an environment of limited resources, such as Shelby County. In 2015, Shelby County Schools joined other large districts in a suit against the state of Tennessee for failure to adequately fund schools (Burnette, 2015). Tennessee is routinely in the bottom 10 nationally in per pupil public school funding and received an F in funding effort in a recent study of school funding fairness (Baker, et al, 2017). Fragmentation not only increases the competition for scarce public funds, but also contributes to the costs because multiple autonomous districts and dozens of autonomous (charter) schools inhibit efficiencies of scale.

In addition, for most people in Shelby County, each smaller piece of the educational landscape is racially-identifiable, adding layers of historical and identity-based complexity to the mix. A number of the community's private schools opened during the era of desegregation (Kiel, 2008) and they continue to serve a disproportionately white student population (Reardon & Yun, 2003). At the same time, five of the six suburban municipal districts have student populations that are more than 60 percent white, while Shelby County Schools serves a student population that is 77 percent African American and 13.5 percent Latino (Tennessee Department of Education, 2018). The charter school sector serves an even more heavily-minority student population, with over 98 percent of students African American or Latino. The racial-identifiability of the sectors within the fragmented landscape adds a racial element to the narrowed self-interest fueled by fragmentation, further twisting conversations about education in the community.

Second, in a community like Memphis, where opportunities and resources have been unevenly distributed, fragmentation – and the segregation that accompanies it – works to preserve opportunity advantages. Such hoarding of opportunity behind administrative boundaries separating school districts and types of schools undermines the egalitarian purposes of education. Instead of a community in which industry and talent yield success, fragmentation distorts the enterprise and reproduces a stratified social order for the next generation. Again, that this stratification aligns with racial identities only heightens the trouble, reviving the specter of the use of the education system to preserve white supremacy. Indeed, fragmentation produces an educational landscape marked by administratively separate systems that provide substantively unequal opportunities.

This view, however, can be challenging to see within a fragmented landscape. Comparison across sectors – public/private, urban/suburban and traditional/charter – is difficult because of the different rules and resources present in each of them. As a result, disparities may be camouflaged by fragmentation. Even where disparities are apparent, though, the fragmented structure discourages and impedes coordinated solutions. Advocates are often restricted to operating within a narrow piece of the broader educational landscape – problems within a traditional public school are only addressed with the resources and personnel assigned to that sector of the field, for example. It is not possible to tap into expertise from other educators in the community.

Despite this critique, the educational landscape in Shelby County and elsewhere is likely to remain fragmented for the foreseeable future. The number of charter schools continues to increase, municipal school districts are now written into state law, and private schooling is a constitutionally-protected reality. Solutions, then, should be focused on managing the dangers of a fragmented schooling environment to help reclaim the goal of using a community's educational system to fairly and effectively cultivate future generations.



## **IMPLICATIONS FOR POLICY CHANGE**

The suggestions below are broadly aimed at undermining both the cloistered mindset and the cloistered operation of education in Shelby County's fragmented landscape. These suggestions are supplemental to (and not in place of) continued efforts to improve all schools through advocacy for greater resources and encouragement and development of best practices, efforts that must continue at the local and state levels.

- Create a County Education Czar – At present, there is no organization (governmental or non-profit) charged with taking the broadest view of education in Shelby County, including all of its sectors. A County Education Czar could fill that gap, providing relevant comparative information and helping to coordinate information gathering and information sharing among all school types. This office need not have any operational or governing authority but should focus on serving as a clearing house for information and a facilitator of cooperation within the fragmented landscape.
- Utilize Technology to Reduce Rigidity of Boundaries – A half-century ago, administrative fragmentation would be virtually impossible to overcome. However, in 2018, technology enables communication across all sorts of once-impermeable boundaries. Within a fragmented educational landscape, technology can be used to blur lines between sectors. For example:
  - Increase Distance Learning Opportunities – A great tragedy of fragmented education is that needed resources may be present, but inaccessible to students because of administrative boundaries. Technology can be utilized to ensure that students in one school type might be able to access opportunities situated in a separate school type without having to physically change schools.
  - Build Community Across Education Sectors – Segregation by race, geography, socioeconomic status, or school type undermines the trust necessary for a community to coalesce and grow productively. Schools can help build connections across historically-separated groups by utilizing technology to create lasting partnerships. By enlarging who might be considered part of one's "community," such efforts may spur broader thinking to solve community problems in the future, serve as an example of successful cooperation across administrative boundaries, and help identify common goals.
- Invest in Programs that Diversify Educational Experiences – In 2018, segregation in schools by race or socioeconomic status is not imposed directly, but rather is the result of administrative rulemaking that determines who will attend which school. However, those administrative rules can be used to diversify schools as well. For example, inter-system choice programs may enable students to attend schools in districts other than those in which they reside. Such efforts should be aimed in particular at those students for whom the current system denies much choice in schools through lack of information and access. This investment is likely to involve advocacy at the state level to remove bureaucratic hurdles to cooperation across school sectors within Shelby County and will require resources to overcome practical hurdles, such as lack of transportation.
- Work to Shift the Narrative from Competitive to Cooperative – So long as education in Shelby County is considered a zero sum enterprise in which resources and opportunities are scarce, fragmentation will be utilized to maintain the stratified and segregated status quo. The elements for a coalition working to intervene against this exist within Shelby County. It will be important for those elements to craft a compelling narrative about the importance of a cooperative and broad effort to improve education in order to benefit the future of the region. This narrative is crucial to creating the political space for policymakers to enact other changes to reduce the dangers of fragmentation.

## **REFERENCES**

- Baker, B., Farie, D., Johnson, M., Luhm, T. & Sciarra, D.G. (2017). Is school funding fair? A national report card. Education Law Center. Retrieved from [http://www.edlawcenter.org/assets/files/pdfs/publications/National\\_Report\\_Card\\_2017.pdf](http://www.edlawcenter.org/assets/files/pdfs/publications/National_Report_Card_2017.pdf)
- Bischoff, K. (2008). School district fragmentation and racial residential segregation. *Urban Affairs Review*, 44(2), 182-217.
- Burnette II, D. (August 31, 2015). Shelby County Board of Education files funding suit against state. Chalkbeat

- Tennessee. Retrieved from <https://www.chalkbeat.org/posts/tn/2015/08/31/developing-shelby-county-schools-to-file-funding-lawsuit-against-state/>
- Delavega, E. (2018). The poverty report: Memphis since MLK. Memphis, TN: National Civil Rights Museum.
- Frankenberg, E., Siegel-Hawley, G. & Wang, J. (2010). Choice without equity: charter school segregation and the need for civil rights standards. The Civil Rights Project. Retrieved from <https://www.civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/choice-without-equity-2009-report/frankenberg-choices-without-equity-2010.pdf>
- Hill, P. & Campbell, C. (2011). Portfolio school districts: Strife and progress in transforming public education in big cities. 37th Annual Conference of the Association for Education Finance and Policy. Retrieved from <http://www.aefpweb.org/annualconference/papers>
- Kiel, D. (2008). Exploded Dream: Desegregation in the Memphis City Schools. *Law & Inequality*, 26, 261-303.
- Kiel, D. (2013). The Endangered School District: The Promise and Challenge of Redistributing Control of Public Education. *Boston Univ. Public Interest Law Journal*, 22, 341-401.
- Pohlmann, M. (2008). Opportunity lost: Race and poverty in the Memphis City Schools. Knoxville, TN; Univ. of Tennessee Press.
- Reardon, S.F., & Yun, J.T. (2003). Private school racial enrollments and segregation. In R. D. Kahlenberg (Ed.), *Public School Choice vs. Private School Vouchers*. New York: Century Foundation Press.
- Rousseau, C. (2014). Keeping it Real: Race and Education in Memphis. In A. Dixon et al (Eds.), *Critical Race Theory in Education: All God's Children Got a Song* 113-128. New York, NY; Routledge.
- Siegel-Hawley, G., Diem, S., & Frankenberg E. (2018). The Disintegration of Memphis-Shelby County, Tennessee: School District Secession and Local Control in the 21st Century. *American Education Research Journal* 55, 651-692.
- Tennessee Department of Education (2018). 2016-17 School Report Card. Retrieved from <https://www.tn.gov/education/data/report-card.html>
- U.S. Census Bureau (2016). Children Characteristics, American Community Survey 2012-2016, Shelby County, Tennessee.
- U.S. Census Bureau (2016). School Enrollment, American Community Survey 2012-2016, Shelby County, Tennessee.
- U.S. Census Bureau (2015). Public Education Finances: 2013.



# **IMPLICIT BIAS AND DISPROPORTIONATE MINORITY CONTACT IN THE SHELBY COUNTY JUVENILE COURT SYSTEM**

*Demetria D. Frank, JD  
Assistant Professor of Law, University of Memphis*

## **INTRODUCTION**

In the age of mass incarceration, the juvenile justice system is in a state of crisis with an estimated 53,000 youth held in detention facilities at any given time. Nationally, black adolescents account for about 68 percent of all cases referred to juvenile courts despite accounting for only about 15 percent of the total youth population. Despite such high populations in the juvenile system, black youth are less likely to be diverted away from detention, at a rate of about 20 percent nationally as compared to almost 33 percent of white youth. Black youth are also three times more likely than white youth to be referred to juvenile court and nearly four times more likely to receive detention.<sup>1</sup> Much like the adult criminal system, the overuse of detention in juvenile systems coupled with significant racial disparities drives negative justice outcomes for youth of color.

This overrepresentation of black youth generally and at every phase of the juvenile court process, and the likelihood that youth of color are more likely to receive more punitive disposition outcomes is referred to as Disproportionate Minority Contact (DMC). The DMC problem has been recently highlighted in Tennessee, with black youth making up only 34 percent of the total youth population, but 59 percent of all delinquent petitions, 66 percent of adjudications or rulings, and 74 percent of adult transfer cases in juvenile courts across the state.<sup>2</sup> These notable disparities damage the credibility of the justice system and undermine the presumption of fair treatment.

## **DISPROPORTIONATE MINORITY CONTACT IN SHELBY COUNTY**

In Tennessee, the problem of DMC is most prevalent in Shelby County Juvenile Court (SCJC). Much like the statewide trend, SCJC shows documented disparities at every stage of the juvenile court process, including rate of arrest, rate of incarceration versus diversion or other dismissal, rate of transfer to adult facilities, and rate of detention. Due to the high poverty rate, high population of black residents, and urban environment of Memphis—located in Shelby County—the issue of DMC presents highly complex and controversial social justice issues for impacted communities and Shelby County Juvenile Court.

At the center of these complex issues is the measure used to determine the rate of DMC in SCJC—the Relative Rate Index (RRI). According to the U.S. Department of Justice, the RRI provides a “snapshot” racial demographic comparison of youth in the juvenile justice system at various stages of juvenile court involvement. Indeed, the U.S. Department of Justice (DOJ) has investigated and monitored the DMC practices of SCJC pursuant a memorandum of agreement since 2012 using the RRI calculation, without notable progress. In fact, the various DOJ monitors’ eleven Equal Protection Compliance Reports over the past several years have each concluded that Shelby County Juvenile Court suffers from significant DMC and outcome disparities for black youth based on the RRI at each stage of the juvenile court process.<sup>3</sup>

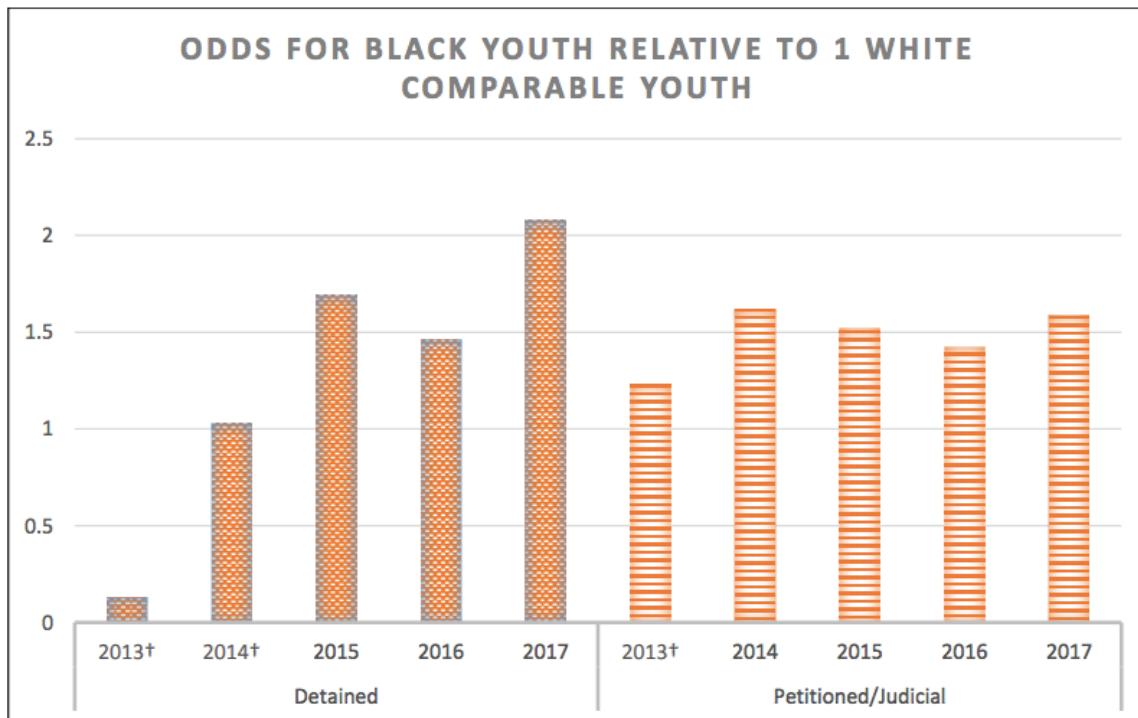
1 National Disproportionate Minority Contact Databook, 2015.

2 Joint Ad-Hoc Tennessee Blue Ribbon Task Force on Juvenile Justice, 2017 Final Report.

3 Juvenile Court of Memphis and Shelby County Tenth Compliance Report—Equal Protection, December 19, 2017.



**Figure 1.** Logistic Regression Odds by Race and Stage, 2013-2017



† Logistic regression coefficient for race main effect not statistically significant.

Note: How to read odds ratio, for example in 2017, detained 2.08 Blacks to 1 White

Figure 1 provides the odds for detention and petition for whites and black youth after factors such as crime severity and prior record are considered for the years 2013-2017.<sup>4</sup> For example, in 2017, black youth were twice as likely to be held in detention. Additionally, formal proceedings initiated against youth on alleged offenses were 1.5 times more likely for black youth in 2017. As noted by the DOJ's Tenth Equal Protection Compliance Report and illustrated in Figure 1, the DMC problem has not improved since Shelby County Juvenile Court entered the memorandum of agreement with the DOJ in 2012 and has marginally worsened since 2013. Because the calculation takes into consideration legal factors such as differences in offenses between black and white youth, disparities suggest that the race of youth entering SCJC impacts outcomes for youth on some level.

Even where objective decision-making tools are available for use by SCJC, the Equal Protection Compliance Report reveals significant DMC concerns. For instance, in February 2017 SCJC began using a revised Detention Assessment Tool (DAT3) in determining whether to detain youth brought to the court by law enforcement "in an effort to reduce DMC and achieve equitable treatment." To that end, the DAT3 instrument includes eight factors that assess whether youth should be detained, each with point values assigned. According to the DAT3 tool, a youth may score anywhere between -7 to 45 points, and only youth receiving a score of 19 or more are automatically subject to detention.<sup>5</sup>

Although the DAT3 instrument is intended to structure court decision-making in a way that provides "consistency in the factors relied upon to arrive at detention decisions," it is ineffective in accomplishing objectivity due to excessive SCJC overrides (Tenth Equal Protection Compliance Report, 2017). An "override" is a discretionary decision by the court to order detention even though the youth's total score from the DAT3 evaluation is below 19 points. While only 21 percent or 240 youth of the sample received a total risk score of 19 to justify a detention

4 Juvenile Court of Memphis and Shelby County Eleventh Compliance Report—Equal Protection, July 2018.

5 The DAT3 also includes mitigating factors, such as regular school attendance, that may reduce a youth's total score, or result in a score below 0.



decision, an additional 60 percent or 355 youth scoring *below* 19 received detention due to court overrides, resulting in 52 percent or 595 of the total sample receiving detention.<sup>6</sup> Of course, 93 percent of youth subject to this wide use of override discretion in SCJC detention decisions are black.

## **CAUSE OF DISPROPORTIONATE MINORITY CONTACT—DISPARATE OFFENDING**

Disproportionate Minority Contact stems from a variety of causes such as socioeconomic factors, disparate offending by black youth, disparate administration, and selective policing/enforcement. Of the various causes, this paper is most concerned with differences in how youth of color are treated within the juvenile justice system, and by third party decision makers such as law enforcement that impact youth court involvement. Nevertheless, understanding disparate offending as a cause of DMC is important because these youth-focused explanations often absolve juvenile court decision makers from examining systemic practices and policies in a way that would reduce levels of biased-based DMC.

Disparate offense explanations propose that DMC is the result of youth of color committing more crimes, more serious crimes, and commission of the types of offenses that are more likely to come to the attention of the police, e.g. weapon offenses (Clarke, 1998; Washington, 2014). Examining the three most common approaches to measuring youth offense rates (arrest and conviction statistics, self-report surveys, and victimization surveys) indicates that black youth have a high rate of serious offense (Institute of Medicine & National Research Council, 2001).

A number of experts suggest that some degree of delinquent behavior is common for all youth, and black youth do not offend in disproportionate numbers. Instead, black youth are arrested and adjudicated in disproportionate numbers because they tend to live in communities that are over-policed and/or are more likely to commit crimes that are more visible in light of the way law enforcement approach crime in urban settings (Alexander, 2010; Western, 2006). Although black youth offend at a higher rate for some crimes such as robbery, these results might be exaggerated to some extent based on policing practices and a number of other factors, including a greater likelihood that black youth committing such crimes will be reported to authorities (Institute of Medicine & National Research Council, 2001).

To the extent that black youth disproportionately offend, this phenomenon is best explained by the link between race and poverty. The collateral consequences of poverty—such as exposure to verbal aggression in the home, exposure to community violence, and broken family structure—significantly contribute to the likelihood that youth will demonstrate delinquent behavior (Shields, 2001). With almost 40 percent of all Memphis children living below the poverty line (Delevaga, 2018), other risk factors closely related to low income, such as the availability of counsel and other youth resources, also help explain disproportionate offense rates in SCJC.

## **CAUSE OF DISPROPORTIONATE MINORITY CONTACT—DISPARATE TREATMENT AND IMPLICIT BIAS**

Although juvenile courts are expected to treat all youth entering the justice system equally, regardless of race or ethnicity, this presumption is highly contradicted by the realities of the human mind. Another explanation for DMC involves implicit biases against youth of color by decision makers working within or touching the youth justice system. Implicit associations are “automatic mental associations that come to mind unintentionally, that are difficult to control once they are activated, and that may not necessarily be endorsed at a conscious level” (Galdi, 2008). Unlike explicit biases, which reflect the attitudes or beliefs that an individual endorses consciously, individuals possess biases in judgment and behavior that result from subconscious cognitive processes such as implicit attitudes and stereotypes toward particular groups.

Due to the long-standing history of negative criminal associations between blacks and criminality in the United States, black youth are particularly vulnerable to bias associations in the juvenile system. Implicit associations about

blacks and criminality impact both white and black juvenile justice system decision makers (Benaji & Greenwald, 2013). These associations and stereotypes develop over the decision maker's lifetime, and do not necessarily reflect a racist ideology on part of the individual harboring implicit biases. In addition to mostly segregated cultural experiences in our everyday living and working environments, the media is a well-documented influence on negative bias associations between black youth and criminality (Benaji & Greenwald, 2003; Gilliam & Shanto, 2000).

According to the Department of Justice, such negative bias associations about black youth likely explain at least some degree of the DMC at Shelby County Juvenile Court.<sup>7</sup> Unfortunately, the same cultural biases and stereotypes against blacks and other minority groups that permeate U.S. society generally are prone to creep into the decision-making of police, prosecutors, defenders, and even self-proclaimed "fair" judges in juvenile courts (Cornell, 2007; Eberhardt, et al., 2004; Plant, 2005; Rachlinski et al., 2009; Kang, et al., 2012; Abrams, et al., 2012). As a result, black youth are more likely to be viewed as culpable for criminal behavior, and decision makers are more likely to support harsh consequences for youth of color, including severe sentencing measures like life without parole (Ratta, et al., 2012).

## THE HIGH RISK OF BIAS ASSOCIATIONS IN JUVENILE COURTS

Several features of juvenile courts create particularly fertile ground for bias reliance in decision-making. First, implicit biases more readily translate into discriminatory behavior if decision makers have high discretion and little accountability, as is the case with most juvenile courts (Gawronski & Payne, 2010; Kang, 2012). Biases are also likely to influence decisions made under time pressures, as is often done in the juvenile court setting due to limited resources and heavy caseloads (Gordon, 1995; Bertrand, 2005). When individuals make complex decisions, like many of the decisions made in juvenile court, decision makers are more likely to rely on implicit assumptions to ease cognitive load (Bertrand, 2005). Moreover, implicit biases are more likely to occur in contexts where multiple, non-discriminatory explanations for the behavior exist, as is often the case in the juvenile court setting. For example, where a black youth has a prior violation, a decision maker is more likely to rely on implicit bias assumptions in assessing risk and the need for detention.

Additionally, decision makers more readily rely on implicit assumptions that apply to "outgroup" members, e.g., someone of a different race, and are more likely to evaluate those "outgroup" members on singular or stereotypical characteristics, rather than full factual records (Hugenberg, et al., 2002). Because an overwhelming number of juvenile court judges, prosecutors, and defenders are white, black youth are almost always an "outgroup" member. However, biases also occur with "ingroup" members—especially where cultural, educational, and economic disparities exist between the youth and the decision maker.

Deficiencies in cultural competence of black youth also present challenges to unbiased decision-making in juvenile courts and related systems. The glaring differences in black youth from traditional and societal white norms of "good kids" require cultural understanding and context to make justice decisions in unbiased ways (Brickhead, 2017). Black youth cultural departures from societal white norms in personal, family, educational, medical, and court involvement—in addition to the clothing worn, the words used, and how words are used—likely trigger implicit associations between black youth and culpability (Brickhead, 2017; Pizzi, et al., 2005). Characteristics specific to youth of color, such as darkness of skin, hairstyles, build, and size, also undoubtedly produce unconsciously biased decisions by juvenile justice decision makers (Brickhead, 2017).

Moreover, juvenile court decision makers often have little understanding of the social circumstances leading to negative behaviors in black youth. This lack of cultural and social understanding impacts how court decision makers weigh a youth's mitigating circumstances during the life of the case.



## **BIAS OF JUVENILE COURT DECISION MAKERS**

On any given case, youth are subject to a number of discretionary decisions by various actors within the juvenile court system, as well as decision makers in outside systems such as law enforcement, schools, and probation officers (Graham, 2004; Kang, 2012). Further, the concept of compound risk suggests that small differences in decision-making at one point in the juvenile process may have long-lasting, compound negative consequences as youth progress through the justice system (Institute of Medicine and National Research Council, 2001).

### ***Judges***

A number of decisions made by juvenile court judges are based on factors heavily skewed by race and ethnicity such as whether to transfer youth to adult court, what type of risk the youth might pose to the public, and whether to place youth in detention (Kang, 2012; Alexander, 2004). Moreover, when involving youth of color, many juvenile court actors, including judges, have a tendency to treat what should be viewed as normal adolescent behavior as criminal activity (Henning, 2013).

### ***Prosecutors***

Prosecutors have substantial influence over the fate of juvenile offenders, including the ability to make charging decisions (Smith & Levinson, 2012; Kang, 2012). Unfortunately, some research illustrates that the implicit biases of prosecutors likely results in youth of color being treated more harshly in charging and other decisions (Henning, 2013; Kang, 2012).

### ***Defenders***

Public defenders are responsible for advocating a wide variety of issues on behalf of alleged youth offenders and must exercise wide discretion in how to communicate and advise youth clients. Defenders are often inundated with heavy caseloads that make careful consideration of the numerous case variables difficult. It is under such conditions where biased decision-making is more likely to occur (Gordon, 1995).

## **BIAS OF OUTSIDE DECISION MAKERS IMPACTING JUVENILE COURTS**

Although most DMC explanations focus on decisions made by juvenile court actors such as judges and prosecutors, the implicit attitudes of decision makers of outside systems are also important. Law enforcement, schools, probation officers, and mental health professionals each provide referrals and/or other information to juvenile courts that ultimately influence decision-making and case disposition.

### ***Law Enforcement***

Law enforcement may exhibit biased decisions influenced by negative stereotypes of black youth in patrol, search, and arrest practices (Kang, 2012). Discretion is pervasive in the work of law enforcement where decisions must often be made without knowledge of all the relevant facts, causing police officers in contact with youth to lean heavily on implicit associations (Dannefer & Schutt, 1982).

### ***Schools***

In schools, administrators exercise discretion in whether to involve juvenile courts for rule violations, including alleged illegal behavior. Overall, black youth are disproportionately disciplined and disciplined more harshly, than white youth counterparts for similar behaviors and rule violations in schools (Morris, 2016; U.S. Department of Education for Civil Rights, 2014). In Tennessee, black youth make up about 23 percent of all students enrolled in public schools but 40 percent of school arrests (Education Week Research Center, 2017). Although certain behaviors presumptively warrant suspension under the Tennessee law, nearly all justice involvement, suspension, and expulsion decisions are at the discretion of school administrators.

### ***Probation Officers***

Implicit bias may also occur when youth probation officers make decisions whether to refer youth violations of probation terms to the juvenile court. The implicit associations of probation officers may cause them to perceive black youth as having more negative individual character traits, being more culpable, and more likely to recidivate than white youth (Graham, 2004; Bridges & Steen, 1998).



## **Mental Health Professionals**

Understanding the potential biases of mental health professionals is important when considering bias influence in juvenile courts because youth may come to court with previous mental healthcare involvement, and/or the juvenile court may have other reason to believe mental health evaluation would benefit youth outcomes. Implicit bias can heavily influence mental health professional decision makers in ways that result in worse mental health treatment for youth of color. For instance, black youth are subject to great disparities in non-diagnosis of mental health conditions, i.e., black youth receive a diagnosis where one is warranted less often than white youth (Nguyen et al., 2007; Cameron, 2002). Black youth that are diagnosed with mental health conditions nevertheless often receive disparate diagnosis, treatment recommendations, and care outcomes. Such disparities are likely due to implicit biases and stereotypes that black youth are more violent and therefore require more serious mental health diagnoses and aggressive interventions.

## **IMPACTS OF IMPLICIT BIAS ON DISPROPORTIONATE MINORITY CONTACT IN SHELBY COUNTY**

The high stakes situations that frequently appear in juvenile court contributing to DMC are especially susceptible to implicit biases, threatening the development and future prospects of Shelby County black youth in the following ways:

- *Black youth are directly impacted by the implicit biases of decision makers in the Shelby County Juvenile Court, as described above and illustrated in Figure 1.*
- *Unchecked implicit biases likely contribute to the overall ineffectiveness of Shelby County Juvenile Court in keeping black youth out of the justice system.* Due to lack of data collection and/or sharing on a number of important measures of youth success, it is difficult to determine the successes of youth of any race or ethnicity following final disposition in SCJC. However, the Memphis Shelby Crime Commission reports that in 2017 about 40 percent of justice-involved youth were repeat offenders with prior delinquency complaints in Juvenile Court.<sup>8</sup> Although the crime commission re-offense rates are not broken down by race, 93 percent of cases referred to SCJC in 2017 represented black youth. Hence, an inference of ineffectiveness with black youth is reasonable.
- *Unchecked implicit biases held by juvenile justice decision makers help perpetuate a punitive youth justice culture detrimental to youth of color.* Juvenile justice policies can appear quite fair but have unintended negative consequences for youth of color. As disproportionate and concentrated numbers of black youth enter the juvenile justice system while deviating from white cultural norms as described above, black youth are generally viewed as more culpable "bad kids" (Ratta, et al., 2012). As a result of bias, state and local resources are not routinely allocated in ways that meaningfully attack the DMC problem or the rehabilitative and educational needs of youth of color in the justice system in Tennessee.
- *Negative DMC outcomes for justice-involved black youth reinforce negative behaviors in low-income communities.* As concentrated numbers of black youth continuously cycle through the juvenile justice system, black youth learn negative behaviors through neighborhood peers (Shields & Piece, 2002). Additionally, biased-influenced DMC inflames black youth negative self-identity perceptions, reinforcing negative delinquent and illegal behavior (Apena, 2007).
- *Implicit biases of juvenile court decision makers reinforce undue paternalistic attitudes within the youth justice system, further contributing to DMC.* Subconsciously attributing criminality and delinquency in black youth to individual character failings, such as lack of work ethic or poor parenting, is harmful. Given the extreme poverty and other social problems facing Shelby County youth and families, reducing the experience of justice-involved black youth to such simplistic implicit assumptions entices decision makers to take more punitive measures toward youth that likely do more harm than good (Lowenkamp & Latessa, 2004; Liazos, 1972). Under a youth justice system with a paternalistic culture and unchecked implicit biases, even decision makers with the best intentions might resort to resolving youth problems with detention versus more appropriate community-based measures less damaging to youth.



## **IMPLICATIONS FOR POLICY CHANGE**

Prior research indicates that DMC may be curbed in part by consistent and substantial investment in community resource supports for low-income black youth, including creating additional diversionary programs and resources (Washington, 2014). Additionally, SCJC should aggressively seek the perspective of Memphis youth of color, especially those already justice-involved, for input in shaping future youth justice programs in Shelby County.

Additionally, the following measures should be implemented to directly address the implicit biases and cultural competence of Shelby County Juvenile Court decision makers that inevitably contribute to DMC:

- Regular and ongoing cultural competence and implicit bias training for Shelby County Juvenile Court personnel, the Shelby County District Attorney's Office, the Shelby County Public Defender's Law Office, Shelby County-Memphis law enforcement, and Shelby County Schools. This training should include youth-specific training that emphasizes adolescent brain development, DMC, and effective interaction with young people.
- Review of all Shelby County Juvenile Court policies and practices involving discretionary decision-making, followed by policy and practice recommendations that specifically seek to eliminate implicit biases by decision makers, including but not limited to SCJC use of the DAT3 instrument. The policies and practices of the Shelby County District Attorney and Public Defender's office should also specifically contemplate policy and practice safeguards that would identify and reduce bias. The policies and practices of new entities, such as the youth resource/assessment center contemplated by Shelby County-Memphis policymakers, should also be closely examined with an eye toward reducing bias and DMC risks.
- Improved data collection, assessment, and sharing that tracks the long-term outcomes of youth by race, gender, and other important demographics. Collaboration among agencies should be improved by better tracking with other child serving systems and the adult criminal system through datasets that are linked together (Nellis, 2005; National Juvenile Justice Network, 2014). Such data collection is important in informing DMC-reducing strategy.
- Meaningful engagement with black low-income communities, especially in developing new programs and policies intended to divert youth from Shelby County Juvenile Court. Such engagement should specifically seek to improve decision-maker understanding of all social and cultural dynamics that interplay with black youth justice involvement in Shelby County and Memphis (Bell et al, 2009; Soler & Garry, 2009). Open discussion on the impacts of DMC should be encouraged and DMC must remain a priority to encourage sustainable reductions in DMC.
- Increased local and state funding allocation to increase the number of judges in Shelby County Juvenile Court. The current SCJC judicial model essentially places full decision making authority of the court in the hands of a single judge. Increasing the number of judges would promote limiting bias impacts by spreading decision-making across two judicial authorities of relative power. This recommendation might also help ensure that judges and appointed magistrates have the time needed to make careful decisions that allow individuation of cases versus bias reliance. Any legislative measures necessary to increase the number of judges in SCJC should also be passed by the Tennessee legislature.
- Adoption of a Tennessee "racial impact law" that would require all proposed youth-related legislation provide an assessment of the legislation's impact on DMC (similar to a fiscal impact statement).

## **REFERENCES**

- Abrams, D. S., Bertrand, M., & Mullainathan, S. (2012). Do Judges Vary in Their Treatment of Race? *The Journal of Legal Studies*, 41, 347-383.
- Alexander, M. (2011). *The new Jim Crow: Mass incarceration in the age of colorblindness*. New York: New Press.
- Banaji, M. R., & Greenwald, A. G. (2016). *Blindsight: Hidden biases of good people*. New York: Bantam books.
- Bell, J., et al. (2009). The keeper and the kept: Reflections on local obstacles to disparities reduction in juvenile justice systems and a path to change. Haywood Burns Institute. Retrieved from: <https://www.burnsinstitute.org/wp-content/uploads/2013/12/BI-Keeper-Kept.pdf>



- Bertrand, M., et al. (2005). Implicit Discrimination. *American Economic Review*, 95(2): 94-98.
- Bridges, G., & S. Steen. (1998). Racial disparities in official assessments of juvenile offenders: attribution stereotypes as mediating mechanisms. *American Sociological Review*, 63, 554-570.
- Brickenhead, T. (2017). The racialization of juvenile justice & the role of the defense attorney. *Boston College Law Review*, 58, 379.
- Cameron, M., & Guterman, N. B. (2007). Diagnosing conduct problems of children and adolescents in residential treatment. *Child and Youth Care Forum*, 36(1), 1-10.
- Clarke, J. (1998/2017). *Lineaments of wrath: Race, violent crime and American culture*. New York, NY: Routledge.
- Correll, J., Park, B., Judd, C.M., Wittenbrink, B., Sadler, M.S., & Keesee, T. (2007). Across the thin Blue Line: Police officers and racial bias in the decision to shoot. *Journal of Personality and Social Psychology*, 92, 1006-1023.
- Dannefer, D., & Schutt, R. K. (1982). Race and juvenile justice processing in court and police agencies. *American Journal of Sociology*, 87, 1113-1132.
- Delevaga, E. (2018). 2018 Memphis poverty [Fact Sheet]. University of Memphis' Department of Social Work. Retrieved from <http://www.memphis.edu/socialwork/research/2018povertyfactsheet.docx>
- Drake, B., Lee, S. M., & Jonson-Reid, M. (2009). Race and child maltreatment reporting: Are Blacks overrepresented? *Children and Youth Services Review*, 31, 309-316.
- Eberhardt, J.L., Goff, P.A., Purdie, V.J., Davies, P.G. (2004). Seeing Black: Race, crime, and visual processing. *Journal of Personality & Social Psychology*, 87, 876-893.
- Education Week Research Center. (2017). Policing America's schools: An education week analysis. Retrieved from: <https://www.edweek.org/ew/projects/2017/policing-americas-schools/student-arrests.html#/overview>
- Eisenberg, T., & Johnson, S. (2004). Implicit racial attitudes of death penalty lawyers. *Cornell Law Faculty Publications*. Retrieved from: <https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1364&context=facpub>
- Frank, D. (2016). The proof is in the prejudice: A proposal confronting implicit racial bias in uncharged act evidence. *Harvard Journal on Racial & Ethnic Justice*, 32(1), 1-72.
- Galdi, S., Arcuri, L., & Gawronski, B. (2008). Automatic mental associations predict future choices of undecided decision-makers. *Science*, 321, 1100-1102.
- Gawronski, B., & Payne, B. K. (2010). *Handbook of implicit social cognition: Measurement, theory, and applications*. New York: Guilford Press.
- Gilliam, F. D., & Iyengar, S. (2000). Prime suspects: The influence of local television news on the viewing public. *American Journal of Political Science*, 44, 560.
- Gordon, R. A., & Anderson, K. S. (1995). Perceptions of race-stereotypic and race-nonstereotypic crimes: The impact of response-time instructions on attributions and judgments. *Basic and Applied Social Psychology*, 16, 455-470.
- Graham, S., & Lowery, B. S. (2004). Priming unconscious racial stereotypes about adolescent offenders. *SSRN Electronic Journal*. doi:10.2139/ssrn.601902
- Henning, K. N. (2013). Criminalizing normal adolescent behavior in communities of color: The role of prosecutors in juvenile justice reform. *Cornell Law Review*, 8, 383-461.
- Hugenberg, K., Young, S. G., Bernstein, M. J., & Sacco, D. F. (2010). The categorization-individuation model: An integrative account of the other-race recognition deficit. *Psychological Review*, 117, 1168-1187.
- Institute of Medicine and National Research Council. (2001). *juvenile crime, juvenile justice: Race crime, and juvenile justice: The issue of racial disparity*. Washington, DC: The National Academies Press.
- Kang, J., et. al. (2012). Implicit bias in the courtroom. *UCLA Law Review*, 59, 1124-1186.
- Liazos, A. (1972). The poverty of the sociology of deviance: Nuts, sluts, and perverts. *Social Problems*, 20, 103-120. doi:10.2307/799504
- Lowencamp, C. & Latessa, E. (2004). *Understanding risk principle: How and why correctional interventions can harm low-risk offenders*. Washington, D.C., U.S. Department of Justice National Institute of Corrections. Retrieved from: [https://www.uc.edu/content/dam/uc/ccjr/docs/articles/ticc04\\_final\\_complete.pdf](https://www.uc.edu/content/dam/uc/ccjr/docs/articles/ticc04_final_complete.pdf)
- Morris, E. W., & Perry, B. L. (2016). The punishment gap: School suspension and racial disparities in achievement. *Social Problems*, 63(1), 68-86.
- National Juvenile Justice Network. (2014). Reducing racial and ethnic disparities in juvenile systems—Policy update.



- Retrieved from: <http://www.njjn.org/uploads/digital-library/RED-Policy-Update-0914-FINAL.pdf>
- Nguyen, L., et al. (2007). The influence of race and ethnicity on psychiatric diagnoses and clinical characteristics of children and adolescents in children's services. *Cultural Diversity and Ethnic Minority Psychology*, 13(1), 18-25.
- Nellis, A. (2004). Seven steps to develop and evaluate strategies to reduce disproportionate minority contact (DMC). Juvenile Justice Evaluation Center. Retrieved from: <http://www.jrsa.org/pubs/juv-justice/dmc-guidebook.pdf>.
- Parsons-Pollard, N. Y. (2017). *Disproportionate minority contact: Current issues and policies*. Durham, NC: Carolina Academic Press.
- Pizzi, W., et al. (2005). Discrimination in sentencing on the basis of afrocentric features. *Michigan Journal of Race and Law*, 10, 328-353.
- Plant, E. A., & Peruche, B. M. (2005). The consequences of race for police officers responses to criminal suspects. *Psychological Science*, 16(3), 180-183.
- Plant, E. A., et al. (2005). Eliminating automatic racial bias: Making race non-diagnostic for responses to criminal suspects. *Journal of Experimental Social Psychology*, 41(2), 141-156.
- Rachlinski, J., et al. (2009). Does unconscious bias affect trial judges? *Notre Dame Law Review*, 84, 1198-99.
- Rattan, A., Levine, C. S., Dweck, C. S., & Eberhardt, J. L. (2012). Race and the fragility of the legal distinction between juveniles and adults. *PLoS ONE*, 7(5).
- Shields, N. & Pierce, L. (2001). Factors related to aggressive and violent behavior among preadolescent african-american boys. *International Journal of Adolescence and Youth*, 10(1-2), 51-68.
- Skiba, R.J. & Williams, N.T. (2014). Are black kids worse? Myths & facts about racial differences in behavior. The Equity Project at Indiana University. Retrieved from: [http://www.indiana.edu/~atlantic/wp-content/uploads/2014/03/African-American-Differential-Behavior\\_031214.pdf](http://www.indiana.edu/~atlantic/wp-content/uploads/2014/03/African-American-Differential-Behavior_031214.pdf)
- Soler, M., & Garry, L. M. (2009). Reducing disproportionate minority contact: Preparation at the local level. *PsycEXTRA Dataset*. doi:10.1037/e623992009-001
- U.S. Department of Education for Civil Rights. (2014). *Civil rights data collection: Data snapshot (school discipline)*. Retrieved from: <https://ocrdata.ed.gov/downloads/crdc-school-discipline-snapshot.pdf>.
- Washington, G. (2014). *What are the social conditions that contribute to the disproportionate confinement of young African American males in Memphis?* Memphis, TN: University of Memphis, Benjamin Hooks Institute for Social Change.
- Western, B. (2007). *Punishment and inequality in America*. New York: Russell Sage.

# THE ROBOTS ARE READY! ARE WE? AUTOMATION, RACE, AND THE WORKFORCE

*Daphene R. McFerren, JD and Elena Delavega, PhD<sup>1</sup>  
Benjamin L. Hooks Institute for Social Change, University of Memphis*

On May 10, 2018, the national press and YouTube erupted with gasps of intrigue, terror, and doomsday predictions of the future of humanity after Boston Dynamics, an engineering and robotics design company, released some interesting videos, the first of which shows a robot in human form who runs, jumps, and has ease of movement like that of humans (Boston Dynamics, 2018). The second video features two robot dogs. One dog approaches a closed door with a doorknob that needs to be turned and opened for the dog to exit. To the rescue of that robot dog, comes along another robot dog who has an extended arm. The second dog reaches up, grabs the knob handle and opens door, thereby allowing both dogs to exit the room (Guardian News, 2018). What these robots made clear is that our world has embarked on a technological revolution that will change the world, including the world of work. Technological advances and automation both make our lives easier and have and will continue to displace humans who previously have performed jobs (Frey & Osborne, 2013).<sup>2</sup> Labor-saving devices and technology have also resulted in lower need for human labor and have greatly diminished the jobs for telephone operators, tax preparers, bookkeepers, cashiers, food service preparation, cleaning and more (Kelly, 2018; Saunders, 2017). Robots are projected to perform such tasks as truck driving, policing, manufacturing, medical surgeries, and numerous others now performed by humans or under human direction (Frey & Osborne, 2013). While these tasks would require great leaps in the creation of machine learning or software development, automating such tasks is within the realm of reasonable possibilities within a couple of decades, a time not far away (Broady, 2017; Frey & Osborne, 2013). As the technology advances, even occupations that demand extensive education, training, and complex problem solving have not been exempt from the effects of technology.<sup>3</sup>

Boston Dynamics' videos of their robots pulled back the curtain to reveal a possible future where humans are replaced by robots in many common tasks. Technological advances of the past would pale in comparison to replacement of the labor force that will take place because of automation. This has profound implications for the nation's workforce and it has particularly worrisome implications for African Americans and other minorities who tend to bear the brunt of such changes first and with the most force (Boshara, Emons, & Noeth, 2015). This is particularly true as we discuss in this paper.

It is important to note that there are disagreements among researchers about whether automation creates more jobs in the aggregate than jobs lost. Some argue, for example, that an e-commerce retailer, such as Amazon, may

1 The authors would like to thank Reina Henderson, a Hooks Institute graduate assistant and a master's degree candidate in history at the University of Memphis for research assistance.

2 In a seminal article on automation, Frey and Osborne (2013) distinguish between Machine Learning, software engineering, and Mobile Robotics, the actual machinery that performs the commands. Machine Learning and Mobile Robotics will be collectively referred to here as "automation" or "technology."

3 For example, even legal services and medical care, occupations that demand extensive education, training, and complex problem solving, have not been exempt from advances in technology. Self-service websites provide modestly-priced legal services for routine business, estate planning, and intellectual property matters. Internet medical websites are often consulted before patients seek professional medical diagnosis. Computers now perform number crunching and analysis of databases previously relegated to the work of assistant university professors. (Basken, 2017). While it is highly unlikely that such high-skilled jobs will disappear because of advances in technology, the evidence shows that they do not have immunity.



cause disruption in the retail industry through loss of sales jobs, but in the end, create more jobs in distribution centers, package delivery, and supply chain management companies or entities. They also note, for example, that ATMs have freed up tellers from low-level tasks such as processing cash deposits and withdrawals, thereby allowing banks to open more branches where staff can focus on higher level transactions such as loans and personal banking issues. On the other side of the debate are researchers who argue that the jobs displaced by automation are never fully recovered in net numbers by the new jobs created. A critical question that remains unanswered is whether technological advancements and the resulting job loss in one part of the country, say Silicon Valley, would result in job gains in other parts of the country, like Memphis. The research suggests that the answer is negative, particularly in areas of the country with lower skill levels (Frey & Osborne, 2013; Haar, 2016; Hansen & Bohle, 2016).

### **LABOR WORKFORCE DISRUPTION AND JOBS LOSS DUE TO AUTOMATION**

The landscape of the nation's workforce has changed in dramatic and unprecedented ways since the 18th century industrial revolution created a seismic shift in the production of goods (Krakovsky, 2018). The devastating impact automation would have on 16th century England was not lost on Queen Elizabeth I. As Frey and Osborne (2013, p.7) cite Daron Acemoglu and James A. Robinson (2012):

*This was nicely illustrated by the example of William Lee, inventing the stocking frame knitting machine in 1589, hoping that it would relieve workers of hand-knitting. Seeking patent protection for his invention, he travelled to London where he had rented a building for his machine to be viewed by Queen Elizabeth I. To his disappointment, the Queen was more concerned with the employment impact of his invention and refused to grant him a patent, claiming that: "Thou aimest high, Master Lee. Consider thou what the invention could do to my poor subjects. It would assuredly bring them to ruin by depriving them of employment, thus making them beggars (Acemoglu and Robinson, 2012, pp. 182-183).*

This concern is as relevant today and it was then. However, Queen Elizabeth's solution to prohibit automation advances is not a viable solution in our international economy where capital and technology have no borders. The question we should seek to answer is can automation complement labor and allow us to increase productivity while preserving jobs and maintaining high standards of living for workers?

Policy makers, government officials, corporations, academic, labor unions, and others must devote considerable time and resources to creating policy and workforce solutions to manage automation's impact on the labor force. This includes how it might impact the increasing concentration of wealth among the richest few and basic social issues, such as collection of taxes and health care in the face of prolonged or permanent unemployment.

### **MEMPHIS AND TENNESSEE SHOULD POSITION ITSELF TO HELP LEAD THE NATION IN DEVELOPING POLICIES AND PRACTICES TO MITIGATE DISPLACEMENT OF WORKERS DUE TO AUTOMATION**

"Artificial Intelligence, Automation, and the Economy," issued by the Executive Office of the President (Dec. 2016) and other researchers, (Frey & Osborne, 2013; Haar, 2017) have posited that over the next two decades automation could eliminate as much as 47 percent of jobs in the United States. While there is some disagreement as to the exact number of jobs lost, there is absolute consensus that automation will lead to job displacement (Arnts, Gregory, & Zierahn, 2016). In Tennessee, it is projected that 50 percent of the state's workforce, or 1.4 million jobs, will be eliminated because they either become obsolete or replaced by automation (Haar, 2017).

During his administration Tennessee Governor Bill Haslam has created initiatives with a focus on creating better educational and employment outcomes for the state's residents. *Tennessee Promise* provides scholarships to people with a high school degree or its equivalent (received prior to their 19th birthday) to attend two-year community colleges, private colleges that grant two-year degrees or colleges of applied technology (Tennessee Reconnect, 2018). *Reconnect Tennessee* provides scholarship aid and other assistance to adults seeking to return

to four or two-year colleges or colleges of applied technology (Tennessee Reconnect, 2018). These initiatives are intended to create a better educated and prepared workforce that can, for example, meet the more complex technological needs of Tennessee employers. These strategies supplement initiatives by state universities, for example, that are also focusing on increasing the retention and graduation rates of students to create a more qualified workforce (Hansen, & Bohle, 2016; Tennessee Reconnect, 2018). However, to be effective, these initiatives and the education system must be responsive to the workforce needs of the 21st century. Currently only 11 percent of employers believe that the education system in Tennessee is achieving that goal (Hansen & Bohle, 2016). There is inadequate access to computers in the classroom, thus leaving students woefully unprepared for the technological future of work (ACT, 2012). More importantly, computer access is not equitable; there are serious disparities in access to equipment that is crucial to learn the skills needed in the 21st century (ACT, 2012). Unfortunately, Memphis is no stranger to racial and economic disparities (Delavega, 2018).

Memphis is a minority-majority city with African Americans making up 63.6 percent, Hispanics 6.8 percent, and whites 29.6 percent of the population (U.S. Bureau of the Census, 2018). In the African American population, there are clearly some bright spots regarding income and educational gains. Today, African Americans in Memphis graduate from high school at almost the same rates as whites (Delavega, 2018). Post-secondary education completion by African Americans is also rising, with 19.6 percent of African Americans completing college, an increase of 1500 percent since 1950 (Delavega, 2018). This is an extraordinary achievement given that this progress has taken place approximately 50 years after 1968, a seminal year marking the assassination of Dr. Martin Luther King, Jr. as he aided union efforts for fairer wages for Memphis Sanitation Workers. Nevertheless, gains in income for African Americans in Memphis remain far below that of whites, with African Americans earning 50 percent of what whites earn (Delavega, 2018). While these gains are significant and should be celebrated, the fact remains that a significant amount of the African American workforce in Memphis is employed in production, transportation, and material moving occupations (23.7 percent), food service preparation (7.2 percent), cleaning (4.0 percent) and other jobs that are the most vulnerable to automation. The percent of African Americans doing such jobs (34.5 percent) is much higher than the percent of African Americans in such occupations nationwide (27.3 percent). Additionally, in Tennessee, 21.9 percent of Hispanic workers hold service jobs, and almost 12 percent of these workers are employed in the transportation and warehouse industries, which place them at high risk for automation.

Compared to other cities, Memphis may have the most to win or lose by advances in automation. Memphis is one of the largest distribution centers in the world, employing over 60,000 (more than 40,000 of which are African American) people in distribution, warehouse, freight and other jobs that are vital to providing employment, and a tax base for the city and Shelby County. It bears repeating that two thirds of those jobs are held by African Americans who, among racial and ethnic groups, may be the most adversely affected by automation.

The changing workforce shaped in large part by automation advances has the potential to further diminish the income of African Americans in Memphis, if not totally eviscerate wages by eliminating jobs. In a community where creating shared prosperity will require raising the boats of all racial and ethnic groups, this conceivable future has potentially devastating consequences unless government officials, community leaders, nonprofit groups, and concerned citizens develop a comprehensive strategy to address these issues now.

According to the Joint Center for Political and Economic Studies report, *Race and Jobs at High Risk to Automation*, jobs held by African Americans nationally are the most vulnerable to automation. The report (Broady, 2017, p. 1) found the following:

- *Automation will have a significant effect on African American and Latino workers. Over 31 percent of Latino workers and 27 percent of African American workers are concentrated in just 30 occupations at high-risk of automation. By comparison, these 30 occupations account for 24 percent of all White workers and 20 percent of all Asian American workers.*
- *African Americans are overrepresented in particular jobs with a high risk of being eliminated or fundamentally changed by automation. For example, compared to White workers, African American workers are:*
  - o *Over one-and-a-half times more likely to be cashiers, cooks, combined food preparation*



- and serving workers (including fast food), production workers, and laborers and freight/stock/material movers; and*
- o *Over three times more likely to be security guards, bus drivers, and Taxi drivers/chauffeurs.*

Unlike other cities with more diversified economies, the workforce in Memphis may face more imminent disruption due to automation. With this possible future, statewide initiatives are on target in focusing on outcomes that elevate educational levels for young students as well as non-traditional students (adults returning to school after other career or life experiences). Such programs, especially as they apply to African Americans and other minority groups, should also be assessed for effectiveness in such communities as Memphis. Different strategies may be warranted based on community leadership, the disproportionate impact of automation on jobs and the Memphis economy, and unique histories of communities such as Memphis.

While many of these questions can only be answered definitively over time and with research on the impact of automation on the workforce, Memphis can start planning now for this technological revolution so that it can lead the nation in developing the best practices to sustain and grow a diverse workforce this century and beyond.

## **IMPLICATIONS FOR POLICY CHANGE**

We urge Memphis to create a master plan to address upcoming changes to the workforce wrought in part by advances in automation. Leaders from diverse sectors that include business, government, university, non-profit, and grassroots groups should form the core members of such a working group. Recommendations for change include the following:

- Preparing the African American workforce for a future that demands higher-skill workers because of advances in automation is imperative. This is not to say that other groups should be left out, but rather because African Americans comprise the majority in Memphis (almost 65 percent of the population), their educational, occupational, and financial success directly impacts the efforts of Memphis to be a world-class center. If we want to attract companies that pay livable wages and a strong workforce, education is key.
- Becoming a city that attracts people seeking not only employment but a quality of life that involves rich cultural, social, and other activities, demands a healthy economy supported by a tax base that rests on profitable businesses and middle-class incomes. Policies should be implemented that support this outcome to prevent the evisceration of the workforce.
- State, local, university, and other initiatives are fundamental to increasing the skills required for complex tasks associated with high-performing jobs. Increasing the numbers of those with skills in science, technology, engineering, and math (the STEM areas) is urgently needed to meet workforce demands for employees skilled in these areas.
- Memphis has a leadership role shaping the national discussion with think tanks, heads of industry, state and federal government, and labor groups etc. on the impact of automation on the workforce. Memphis has the most to lose or to gain depending on the actions the city takes with respect to becoming a leader in this arena.
- The humanities must play a significant role in shaping the national discussion on automation (Ehrlich, 2010). As automation takes on a more prominent role in our personal and work lives, and even how we fight our wars, ethical issues regarding its use must be deeply probed to determine if advances in technology serve, diminish, or help destroy humanity.

Automation is likely to result, either temporarily or permanently, in the loss of jobs across sectors. Alternative forms of taxation on robots, rather than people, and social safety nets, including universal health care, guaranteed minimum income, long-term care, and other social protections will be needed to prevent massive economic disruption resulting in increased poverty. Thoughtful, informed, and bi-partisan leadership from diverse political, business, social, and regional sectors is required to create and implement innovative and far-reaching approaches, including a social net that has universal features to protect people's health, happiness, and financial security. This will help to buffer disruptions in the social fabric of the United States which is already in the throes of a technological revolution.



## REFERENCES

- Acemoglu, D. & Robinson, J. (2012). *Why nations fail: the origins of power, prosperity, and poverty*. New York, NY: Crown Business.
- ACT. (2012). National curriculum survey: Policy implications on preparing for higher standards. Retrieved from <https://www.act.org/content/dam/act/unsecured/documents/NCS-PolicySummary2012.pdf>
- Arnts, M., Gregory, T., & Zierahn, U. (2016). The risk of automation for jobs in OECD countries: A comparative analysis. OECD Social, Employment, and Migration Working Papers No. 189. OECD Publishing Paris. Retrieved from <http://dx.doi.org/10.1787/5jlz9h56dvq7-en>.
- Basken, P. (2017, Feb. 20). Job-killing computerization sets its sights on the university researcher. *The Chronicle of Higher Education*. Retrieved from <https://www.chronicle.com/article/Job-Killing-Computerization/239248>
- Boshara, R., Emmons, W.R., & Noeth, B.J. (2015). *The demographics of wealth: Essay 1: Race, ethnicity and wealth*. St. Louis, MO: Federal Reserve Bank of St. Louis.
- Boston Dynamics (2018). Getting some air, Atlas? Retrieved from <https://www.youtube.com/watch?v=vjSohj-lclc>
- Broady, K. (2017). Race and jobs at high risk to automation. Joint Center for Political and Economic Studies. Retrieved from [https://jointcenter.org/sites/default/files/Race%20and%20Jobs%20at%20High%20Risk%20to%20Automation%2012-18-17%2011\\_30%20am.docx-2\\_0.pdf](https://jointcenter.org/sites/default/files/Race%20and%20Jobs%20at%20High%20Risk%20to%20Automation%2012-18-17%2011_30%20am.docx-2_0.pdf)
- Delavega, E. (2018, September). *2018 Memphis poverty*. [Fact Sheet]. University of Memphis' Department of Social Work. Retrieved from <http://www.memphis.edu/socialwork/research/2018povertyfactsheet.docx>
- Delavega, E. (2018). *The poverty report: Memphis since MLK: How African Americans and the poor have fared in Memphis and Shelby County over the past 50 years*. Memphis, TN: The National Civil Rights Museum.
- Ehrlich, P.R. (2010). The MAHB, the culture gap, and some really inconvenient truths. *PLoS Biol* 8(4), 1-3.
- Executive Office of the President. (2016). Artificial intelligence, automation, and the economy. Retrieved from <https://www.whitehouse.gov/sites/whitehouse.gov/files/images/EMBARGOED%20AI%20Economy%20Report.pdf>
- Frey, C.B., & Osborne, M.A. (2013). *The future of employment: How susceptible are jobs to computerization?* Oxford, GB: The Oxford Martin Programme on Technology and Employment.
- Guardian News. (2018). New dog-like robot from Boston Dynamics can open doors. Retrieved from <https://www.youtube.com/watch?v=wXxrussq4E>
- Haar, S. (2016). Tennessee workforce disruption index. Retrieved from <https://www.tnecd.com/files/368/workforcedisruptionindex-1-.pdf>
- Hansen, N., & Bohle, E. (2016). Effective industry recruitment. Tennessee Department of Education. Retrieved from [https://www.tn.gov/content/dam/tn/education/ccte/cte/180212\\_CTE\\_BestPracticesforBuildingIndustryPartnerships.pdf](https://www.tn.gov/content/dam/tn/education/ccte/cte/180212_CTE_BestPracticesforBuildingIndustryPartnerships.pdf)
- Kelly, H. (2018, January 29). Robots could kill many Las Vegas jobs. *CNN Business*. Retrieved from <https://money.cnn.com/2018/01/29/technology/las-vegas-automation/index.html>
- Krakovsky, M. (2018). The new jobs. *Communications of the ACM*, 61(1), 21-23.
- Morris, I. (2017, Feb 17). "Tax The Robots" Says Bill Gates. Forbes. Retrieved from <https://www.forbes.com/sites/ianmorris/2017/02/17/tax-the-robots-says-bill-gates/#4063d0631096>
- Saunders, P. (2017, June 25). Cities and automation 2.0. *Forbes*. Retrieved from <https://forbes.com/sites/petesanders1/2017/06/25/cities-and-automation-2-0/#1376dd526350>
- Tennessee Reconnect (2018). Ready to reconnect? Let's get started. Retrieved from <https://www.tnreconnect.gov/>
- U.S. Bureau of the Census (2015). *Sex by occupation for the civilian employed population 16 years and over: Tennessee 5-year estimates: Hispanics*.
- U.S. Bureau of the Census (2017). *Sex by occupation for the civilian employed population 16 years and over: Memphis MSA 1-year estimates; African Americans*.
- U.S. Bureau of the Census. (2018). QuickFacts: Memphis: 2017. Retrieved from <https://www.census.gov/quickfacts/fact/table/memphiscitytennessee#viewtop>.



# RACE AND POVERTY: DISPARITIES IN HEALTHCARE AT THE END OF LIFE

*Ana L. Leech, MD  
Assistant Professor, Geriatric and Palliative Medicine  
University of Texas Health Science Center McGovern Medical School*

## INTRODUCTION

Memphis is the center of healthcare in the state of Tennessee with multiple healthcare providers, a medical school, nursing school, allied health professions school, and world-renowned research institutions such as St. Jude's Children's Research Hospital. Yet, Memphis ranks among the worst 20 cities for health insurance with a 15-18 percent uninsured rate and as a result many Memphis residents do not benefit from the healthcare system in their backyard (American College of Emergency Physicians (ACEP), 2015; Delavega, 2017; Open Data Network, 2018; U.S. Bureau of the Census, 2017). Creative solutions abound, including the Church Health system, a great example of how to provide improved whole person care—which includes physical, emotional, and psychosocial components—but it relies on donations and volunteer work for many of its services, limiting its reach in the community. Healthcare disparities affect the poor and undereducated at disproportionate rates, and unfortunately African American residents suffer from poverty at greater rates than other residents (Delavega, 2017). As a result, they endure a greater burden from a healthcare system that does not provide basic services for all, up until the time of their death.

## HEALTH DISPARITIES AFFECT AFRICAN AMERICANS

African Americans suffer much greater rates of morbidity through their lifetimes, and they have much shorter life expectancy, dying much younger than whites. For instance, African Americans suffer from diabetes at twice the rate of whites, but more importantly, the percent of undiagnosed (and thus untreated) diabetes is more than twice the rate of whites (U.S. Department of Health and Human Services (USDHHS), 2016). This is the case with other illnesses such as high blood pressure, cancer, and others. These differentials in health throughout their lifetimes have tremendous impacts on life expectancy. On average, African American males die 4½ years earlier than white males and African American females die three years earlier than white females (USDHHS, 2016). Access to healthcare is a huge problem that results in inequalities, particularly because access to preventative care is so disparate. The proportion of uninsured and poor African Americans in Memphis and the degree to which the poor receive lesser quality care is concerning. While 17 percent of the population in Tennessee is uninsured, that number raises to 20 percent for African Americans and 49 percent for Hispanics (2), giving them not only an inadequate start in life, but also an undignified death.

## THE QUANDARY

The healthcare quandary in America is this: we have a for-profit system based on production rather than outcomes and we completely ignore the people who can't afford care until we have to provide emergency services. Then, we expect the for-profit system to care for those emergencies for free, but costs are passed on to the paying population. We reward offering more procedures rather than appropriate procedures for patients. We reward patient satisfaction, which has been shown to increase costs with worse outcomes (Fenton, Jerant, Bertakis,



& Franks, 2012), rather than better care. It is not possible for healthcare to be both a right, at least in case of emergencies, while at the same time being driven by profit and special interest groups. The premise on which our healthcare system has been developed has become a tragic oxymoron with the poor and uninsured as scapegoats.

As a patch to what ails us, the federal Emergency Medical Treatment and Labor Act (EMTALA) ensures that all unstable, sick patients and pregnant women in labor get emergency care and whatever services are necessary in Medicare participating hospitals. Patients must be cared for by the admitting hospital until a safe discharge is possible and the acute medical problem has been fully addressed. This provides emergency care and saves lives but does not address prevention and shifts the costs of healthcare to the private for-profit system, as the public system has taken a step back since the inception of EMTALA (4). In addition, only taking care of emergencies eliminates the opportunity to improve health and potentially reduce costs.

The elephant in the room is the big business and the special interests involved, including but not limited to pharmaceutical companies, for-profit health care providers, and device manufacturers. Average annual healthcare costs in the U.S. exceed \$10,000 per capita, which is double what comparable countries such as Germany and Canada average, but our health is not twice as good (Kamal & Cox, 2018). In fact, according to the Commonwealth Fund, which was founded over 100 years ago to promote high quality healthcare to underserved populations, we have the lowest life expectancy of similar countries. Although the costs of healthcare have gone up across the board, the increases in administrative costs, medications, and medical supplies have increased at a faster rate since the 1990s (Kaiser Family Foundation, 2012). These increases in costs are partly due to advanced technologies, but the administrative costs of healthcare in America play the largest role in the trend as the reimbursement system has become more complex in one of the most regulated industries in the country. Unfortunately, the fragmented healthcare system in combination with our political system discourages changes in healthcare delivery that may lead to decreased income for the healthcare industry and as a result our healthcare costs continue to increase. Clearly, poor communities suffer a greater proportion of the ills created by this healthcare system as they do not have the resources to feed the for-profit system.

## **HEALTHCARE DISPARITIES AT THE END OF LIFE**

Our healthcare system focuses on management of chronic illnesses and treatment of acute events, but downplays the importance of preventative care, which puts a great strain on patients with limited funds. Poverty has been shown to have a detrimental effect on health due to poor access to care in addition to ongoing stressors and limited options for a healthy lifestyle (Paul-Sen Gupta, de Wit, & McKeown, 2007). Furthermore, the poor seek care when their illnesses are more advanced, sometimes when treatment options are no longer available due to disease progression (Macleod, 2000). As a result, according to the Kaiser Family Foundation, which works to provide non-partisan analysis of healthcare policy, African Americans in Tennessee are expected to die three years earlier than their white cohorts and eleven years before their Asian American counterparts (National Center for Health Statistics, 2016).

Advances in modern medicine in conjunction with American culture have led us to behave as if death were optional but all modern medicine can do is delay death, potentially at great physical and emotional cost. However, society faces serious challenges when dealing with inevitable death. In general, healthcare professionals are uncomfortable having these conversations while patients and families have a hard time accepting the news. In addition, death is generally considered a failure of the healthcare system because the goal of intervention is to prolong life; thus, when death happens there is a general sense of failure by the medical team. In addition, the public's trust in the healthcare system has been degraded by the conflicts of interest inherent in our system and worse still in the African American communities by events such as the Tuskegee experiments, during which a group of African American males with syphilis had effective treatment withheld for decades, resulting in eroded trust from those communities and ethical violations from the medical community. In addition, health literacy in the U.S. is dismal, with up to 35 percent of the population having basic or below basic skills to manage their own healthcare needs, such as being able to take medications properly (USDHHS, n.d.). Unfortunately, this also affects the poor disproportionately since they tend to have less educational resources and opportunities, creating an



additional challenge when it comes to end of life decisions since the clinical information can be very complex. In part because of the lack of trust and the low levels of healthcare literacy, the poor also have lower rates of living will/advance directives completion (Rao, Anderson, Lin, & Laux, 2014), leading to inappropriately aggressive end of life care.

Even when appropriate treatments are provided chronically ill patients usually need a caregiver to assist with activities of daily living and transportation. The caregiver is either a family member who is not compensated or someone paid privately from the patient's resources, placing an additional burden on lower income families. Hospice services are available to people with terminal illness and a life expectancy of less than six months and cover medical needs, equipment, and supplies but they do not provide round-the-clock care. Hospice is available at no cost under Medicare Part A and Medicaid, though not all health plans cover this service as it was not considered essential during the development of the Affordable Care Act. While federal guidelines mandate that hospice agencies provide two percent of the care as charity, there is unfortunately a much greater need based on the nearly 10 percent national uninsured rate. It is much worse in Memphis where 15-18 percent of the population is uninsured (ACEP, 2015; Delavega, 2017; Open Data Network, 2018; U.S. Bureau of the Census, 2017).

Furthermore, the hospice benefit as designed by the federal government has not changed much since its inception in the 1980s, a time when it was not uncommon to have one-income households and family members available to provide free care (National Hospice and Palliative Care Organization, 2016). The poor are particularly affected by this assumption as they usually do not have the luxury of paid vacation time, or using Family and Medical Leave Act (FMLA) benefits since that is unpaid time off. Hiring a caregiver or placing a loved one in a nursing home can be very costly, ranging from \$3,000 to \$10,000 per month and is prohibitive for a family earning minimum wage. Medicaid pays for long term care in a nursing home for the poorest citizens, but the application process takes a month or more, and families usually do not have access to funds even for the first month of care. Unfortunately, this leads to further distress and suffering for the patient and family as well as further increasing healthcare costs.

## **IMPLICATIONS FOR POLICY CHANGE**

The costs of healthcare continue to increase while our national health is either stable or declining as evidenced by the 2017 report from the U.S. Department of Health and Human Services that shows overall decrease in life expectancy, worse in the 15-64 year-old age groups (Kochanek, Murphy, Xu, & Arias, 2017). Mortality statistics are important, but ultimately human mortality is 100 percent and can't be changed. But we can focus on prevention to limit morbidity, that is the disability, pain, and suffering secondary to poor health outcomes, and improve the quality of care at the end of life when treatment options are no longer viable. Policy and procedure changes can lead to better care for all at lower overall costs.

The inclusive recommendations below address present shortcomings in the healthcare system and mitigate the effects of the disparities, but they will require resources and time to be fully implemented. In the meantime, two prompt policy changes will have a lasting impact on the healthcare of the poorest citizens: 1) Include required communication education for healthcare professionals; 2) Provide residential hospice for patients with life expectancy under 4-6 weeks.

### ***Education***

Improve health literacy by starting to introduce the concepts of self-care, prevention, basic health understanding, and improved reading and math skills at an early age and throughout the primary and secondary school years. In addition, health care workers should be trained in communication skills to bridge the gap between their education and that of their patients. Assessing the communication curriculum at the academic health centers in Memphis would be an initial step toward improving healthcare along with working with the school system to improve basic health literacy skills.



## **Healthcare Access**

Prevention is by far the most effective way to manage population health. Poor access to care leads to increased morbidity and worse outcomes at a greater cost to funding sources and society. Providing baseline healthcare access for all to address preventative care would improve outcomes and satisfaction for a fraction of the cost of managing complications of advanced diseases. Additionally, by providing access to care and education one can expect the individual patient to have greater responsibility for their health outcomes provided that the resources are available to make the right decisions. Multiple programs throughout the country, for example, have been piloted to improve diet by providing fresh fruits and vegetables to food desert communities with favorable results (Chrisinger, et al., 2018).

## **Encourage Advance Directives**

Part of the educational drive to improve health should include discussions about goals at the end of life. Discussions should be ongoing, but open communication would improve trust in the healthcare system and understanding from the perspective of the patients and families. The goal is to improve quality of life and decrease morbidity. Increasing the percentage of people with advance directives would improve patient and family satisfaction as well as reduce overall costs.

## **End of Life Care**

Hospice care should be covered by all funding sources – private and public insurance as well as county services – to improve end of life care to all. Federal guidelines mandate that hospice agencies provide two percent charity care, but that is clearly suboptimal as most of the uninsured will still be unable to access this needed service. Additionally, hospice should include residential care for those with very limited life expectancies as many people, even when insured, are unable to provide round-the-clock care for their loved ones. The Medicaid application process for nursing home care takes at least 30 days but when completed Medicaid pays retroactively to when the application was started. However, if the hospice patient dies during this time the application is voided and as a result patients are not able to secure a nursing home bed while waiting for Medicaid to complete the process as the nursing home fears the patient will die before they get paid. One option would be to continue the application for those patients who die while waiting for Medicaid provided they are enrolled on hospice care at the time so that their stay at the nursing home during the last few weeks of life is covered. This would enable families to choose the right level of care for their loved one regardless of their ability to pay for 24-hour care.

## **REFERENCES**

- American College of Emergency Physicians (ACEP). EMTALA (Emergency Medical Treatment And Labor Act). (2015). Retrieved from <http://newsroom.acep.org/2009-01-04-emtala-fact-sheet>
- Chrisinger, B.W., Ramos, A., Shaykis, F., Martinez, T., Banchoff, A.W., Winter, S.J., & King, A. C. (2018). leveraging citizen science for healthier food environments: A pilot study to evaluate corner stores in Camden, New Jersey. *Front Public Health*. 2018 Mar 26(6), 89.
- Delavega, E. (2017). Memphis Poverty: 2017 Update. Retrieved from <http://www.memphis.edu/socialwork/research/2017povertyfactsheetwebversion.pdf>
- Kaiser Family Foundation. (2012)Health care costs: A primer: Key information on health care costs and their impact. Retrieved from <https://kaiserfamilyfoundation.files.wordpress.com/2013/01/7670-03.pdf>
- Kamal, R., & Cox, C. (2018). How do healthcare prices and use in the U.S. compare to other countries? Kaiser Family Foundation. Retrieved from <https://www.healthsystemtracker.org/chart-collection/how-do-healthcare-prices-and-use-in-the-u-s-compare-to-other-countries/#item-on-average-other-wealthy-countries-spend-half-as-much-per-person-on-healthcare-than-the-u-s>
- Kochanek, K.D., Murphy, S.L., Xu, J., & Arias, E. (2017). Mortality in the United States, 2016. NCHS Data Brief No. 293. Retrieved from <https://www.cdc.gov/nchs/data/databriefs/db293.pdf>
- Macleod, U., Ross, S., Gillis, C., McConnachie, A., Twelves, C., & Watt, G.C. (2000). Socio-economic deprivation and stage of disease at presentation in women with breast cancer. *Ann Oncol.*, 11, 105-7.
- National Center for Health Statistics. (2016). Health, United States, 2016: With Chartbook on Long-term Trends in Health. Hyattsville, MD. 2017. Retrieved from <https://www.cdc.gov/nchs/data/hus/hus16.pdf#015>
- <https://www.kff.org/other/state-indicator/life-expectancy-by-re/?currentTimeframe=0&selectedRows=%7B%22states%22:%7B%22tennessee%22:%7B%7D,%22texas%22:%7B%7D%7D%7D&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>



- National Hospice and Palliative Care Organization. (2016). History of hospice care: Hospice: A historical perspective. Retrieved from <https://www.nhpco.org/history-hospice-care>
- Open Data Network (2018). Tennessee: Percent uninsured. Retrieved from [https://www.opendatanetwork.com/entity/0400000US47/Tennessee/health.health\\_insurance.pctui?year=2014&age=18%20to%2064&race>All%20races&sex=Both%20sexes&income>All%20income%20levels](https://www.opendatanetwork.com/entity/0400000US47/Tennessee/health.health_insurance.pctui?year=2014&age=18%20to%2064&race>All%20races&sex=Both%20sexes&income>All%20income%20levels)
- Paul-Sen Gupta, R, de Wit, M.L., & McKeown, D. (2007). The impact of poverty on the current and future health status of children. *Paediatrics & Child Health*, 12, 667–672.
- Rao, J.K., Anderson, L.A., Lin, F.C., & Lau, J.P. (2014). Completion of advance directives among U.S. consumers. *Am J Prev Med*, 46, 65–70.
- U.S. Bureau of the Census. (2017). QuickFacts: Memphis city, Tennessee. Retrieved from <https://www.census.gov/quickfacts/fact/table/memphiscitytennessee/PST045217>
- U.S. Department of Health and Human Services (USDHHS). (2016). Health, United States: With chartbook on long-term trends in health. National Center for Health Statistics [NCHS]. Retrieved from <https://www.cdc.gov/nchs/data/hus/hus16.pdf>
- Fenton, J.F., Jerant, A.F., Bertakis, K.D., & Franks, P. (2012). The cost of satisfaction: A national study of patient satisfaction, health care utilization, expenditures, and mortality. *JAMA Int Med*, 172, 405-411.
- U.S. Department of Health and Human Services (USDHHS). (n.d.). America's health literacy: Why we need accessible health information. Office of Disease Prevention and Health Promotion. Retrieved from <https://health.gov/communication/literacy/issuebrief/>

## **NOTES**



## **NOTES**

## **NOTES**





# THE BENJAMIN L. HOOKS INSTITUTE FOR SOCIAL CHANGE

[memphis.edu/benhooks](http://memphis.edu/benhooks)

[bhi@memphis.edu](mailto:bhi@memphis.edu) | 901.678.3974

FOLLOW US ONLINE



@benhooksinstitute



@hooksinstitute



@hooksinstitute

