

WHERE ARE ALL THE WHITE KIDS?
THE EFFECTS OF RACE IN JUVENILE COURT DECISION MAKING

A Dissertation

by

PAUL KETCHUM

Submitted to the Office of Graduate Studies of
Texas A&M University
in partial fulfillment of the requirements for the degree of

DOCTOR OF PHILOSOPHY

May 2008

Major Subject: Sociology

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Approved by:

Co-Chairs of Committee,	Eduardo Bonilla-Silva Rogelio Saenz
Committee Members,	Holly Foster Jim Olson
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ABSTRACT

“Where Are All the White Kids?” The Effects of Race in Juvenile Court Decision
Making. (May 2008)

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Statistics consistently show that minorities are overrepresented at each level of the juvenile justice system. However, while Disproportionate Minority Contact (DMC) in the juvenile justice system is well documented, the cause is still unclear. Some have suggested that DMC is simply the result of disproportionate amounts of crime committed by minority youth, while others claim that racism, be it overt, subtle, individual or institutional, plays a significant role in DMC. Observation of juvenile court proceedings and interviews with juvenile court judges and lawyers, each coded for content analysis, were used to determine the effects of race in juvenile court decision making. In this research, I suggest that race plays a significant, yet subtle role as personal beliefs, political necessities and motives of both professional participants in the system and political and community civic leaders, result in racial stratification established within a racialized social framework.

DEDICATION

I would like to dedicate this work to my late father, Robert Edward Ketchum. I could not ask for a better father. You will always be missed.

ACKNOWLEDGEMENTS

I would like to thank my committee co-chairs, Dr. Eduardo Bonilla-Silva and Dr. Rogelio Saenz. Eduardo was there as my mentor, advisor and friend from beginning to end. His work has been the guiding force in my own research and his friendship is irreplaceable. As a fellow “gentleman rancher”, his vast knowledge of goat husbandry is astounding. Rogelio has always been only a phone call or email away and I can’t even begin to count the number of times he has helped me through one crisis or another. “Thank you” is not nearly enough to show my appreciation for all you have done for me.

My committee members, Dr. Holly Foster and Dr. Jim Olson are also most deserving of my gratitude. Without Holly’s guidance throughout both the research and writing phases of my dissertation the end product would be much less than it is. It has been an honor to have Jim Olson on my committee as he also served on my wife’s dissertation committee. Thank you for being the voice of “everyman” and keeping my work honest. Most importantly, thank you for putting up with a bunch of “Liberals”, as I know it pains you to have to explain everything so slowly.

Dr. Dudley Poston is also due much gratitude as he went well above the call of duty to help me complete my course requirements. A special thank you is also owed to Dr. Mark Fossett, department head at TAMU. I’m not sure that there is a crisis he can’t solve, and he always does so with class and infinite patience.

I would also like to thank my colleagues in the Sociology Department at the University of Oklahoma, especially Dr. Craig St. John, who has placed so much faith in

me and Dr. Kelly Dampousse whose support has never flagged. To the other faculty and staff at OU, you have all been so supportive that I can't thank you enough.

A special thank you is owed to my colleague, friend and fellow Aggie, Dr. B. Mitch Peck. Mitch has been exceedingly generous of his time, helping me through every hurdle.

I would also like to extend thanks to my TA, Ben Snyder who helped me in numerous ways. I look forward to receiving a copy of your first book in a few years.

No one is more deserving of my gratitude than my friend Dr. David Embrick. David has been the person I have turned to, most often, to help me with problems both large and small.

Thanks to my mother and late father, who gave me the tools and support to get me to this point in my life.

Finally, I want to express my love and gratitude to my wife, Dr. Heather Ketchum who has stood by my side and given me her unlimited support. Heather, now can we get rid of the return address stamp which reads "Mr. and Dr. Ketchum"?

NOMENCLATURE

Certification(TX)/Waiver(OK): transfer of a juvenile out of juvenile court to be tried as an adult

DA: District Attorney-Prosecutors Office

I: Interviewer

OJJDP: Office of Juvenile Justice and Delinquency Prevention-Federal office responsible for responding to issues pertaining to juvenile delinquency and victimization

PD: Public Defender-either contracted by counties part-time or in large cities full time public defender

Petition: a legal document which brings the case involving a juvenile into court

PP: Private Practice Attorney

R: Respondent

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CHAPTER I
INTRODUCTION

par·ens pat·ri·ae

Pronunciation: 'par-&nz-'pa-trE-'E, -'pA-, -trE-'I; 'pä-r-ens-'pä-trE-'I

Function: noun

Etymology: Latin, parent of the country

: the state in its capacity as the legal guardian of persons not sui juris and without natural guardians, as the heir to persons without natural heirs, and as the protector of all citizens unable to protect themselves because the State is supposed to proceed in respect of the child as parens patriae and not as adversary.

(Kent v. United States, 383 U.S. 541 1966)

Discourse on crime is simply coded discourse on race. This country has managed to appear to be racially neutral on crime while the black and Hispanic communities are socially, politically and economically emasculated by, among other things, criminal and juvenile justice systems which leave these communities disenfranchised. While minority youth have always been overrepresented in the juvenile and criminal justice system, in our modern era of purported color-blindness, we have achieved a level of inequality that would make any old-fashioned, overt racist proud. An overwhelming amount of research shows that minority youth are overrepresented at every stage of the juvenile justice system, from initial police contact to incarceration (Snyder and Sickmund 2006; Feld 1999; Leonard, Pope and Feyerherm 1995) and that this overrepresentation continues into the criminal court system. African American males face roughly a 30% likelihood

of incarceration in their lives (Petit and Western 2004; Bonczar and Beck 1997). On any given day, about one third of black males in their 20's, were under official criminal justice supervision (Mauer 1999). Despite consistently making up less than 15% of the overall population, blacks have grown from 29% of the prison population in 1950 to about 50% of the prison population (Russell 1998), ironically at a time of purported growing racial equality. By 1978 the arrest rate for blacks had grown to almost 100 arrests for every 1,000 blacks (Mauer 1999). At the same time, the arrest rate for whites was 35 arrests per 1,000 whites, or about two-thirds less. Juvenile rates are almost as lopsided (Mauer 1999). In 1995, blacks comprised only 15% of the overall juvenile population but 34% of all youth in the juvenile justice system including 26% of juvenile arrests, 32% of delinquency referrals to juvenile court, 41% of the juvenile detained, 46% of the juveniles in correctional facilities and 52% of the juveniles transferred to adult court (Mauer 1999). During this period, whites made up 80% of the total juvenile population but only 63% of those in the juvenile justice system (Walker, Spohn and DeLone 2000).

The criminal and juvenile court systems are small, though significant parts of the latest incarnation of a racialized society, which owes much of its development to the policies of the Reagan Era and its' dismantling of the "Great Society" programs (Marable 2000; Sampson and Laub 1993). Official data from each of the urban and suburban juvenile courts used in this study reveals that approximately two-thirds of the

juveniles entering juvenile court are ethnic or racial minorities¹, which is consistent with national averages (Krisberg 2005). In the 1980's, minority overrepresentation, though still significant, was about fifteen percent lower than today (Krisberg 2005). In short, minority overrepresentation in the juvenile justice system has become significantly more severe in the last twenty to twenty-five years.

In this dissertation I will argue that minority overrepresentation in the juvenile court system is not a) reducible to higher crime rates committed by minority youth, b) limited to racial bias on the part of overzealous police officers and/or racists juvenile justice personnel, c) merely a reflection of class-based discrimination, d) the result of differing cultural values (*eg*: culture of violence or culture of poverty) or even e) attributable to lower levels of intelligence of minorities as some have suggested (Herrnstein and Murray 1994). Rather, I will suggest that minority overrepresentation in the juvenile justice system can be attributed to two types of racism 1) *institutional racism* and 2) *color-blind racism*. I will further argue that institutional racism is actually the mechanism to employ color-blind racism. From a macro-sociological viewpoint, the overrepresentation of minorities in the juvenile justice system is part of an informally choreographed social drama highlighting minority failure as whites strive to “set things right”. Overt racism is unacceptable, yet little more than lip-service is paid to equality of opportunity. Within the framework of color-blind racism, one can see a system designed to induce, if not assure, failure for minority youth. The juvenile justice system can then confirm this failure while establishing its' own importance. All the while, the larger

¹ Rural courts are excluded because of the small number of juvenile court cases.

(white, middle-class) community can pat itself on the back for trying to help out the incorrigible black and brown children.

First described by Stokley Carmichael, *institutional racism* refers to collective tendency of institutions to treat minorities in an unequal manner. *Color-blind racism* (Bonilla-Silva 2003, 2001), described as racial stratification established within a racialized social framework, has four main frames; 1) *abstract liberalism* 2) *naturalization* 3) *cultural racism* and 4) *minimization of racism*. While *color-blind racism* derives much of its' theoretical roots from the concept of *institutional racism*, design limitations in this research limit my ability to identify some of the racialized influences upon minority overrepresentation in juvenile court beyond the level of *institutional racism*. Specifically, I will examine if the judges and lawyers working within the juvenile court system 1) exhibit tendencies of the four central frames of color-blind racism, as outlined by Bonilla Silva (2001) and 2) examine institutional biases, outside of the framework of the juvenile court, which nonetheless impact minority overrepresentation in juvenile court.

To accurately examine the effects of race/ethnicity in the juvenile court system, three things must be done. First, an observation of juvenile courts to witness not only the interaction between court personnel and juveniles within the system, but also to examine the ratio of minority juveniles to white juveniles. Second, a comparison of urban, suburban and rural juvenile courts will be made to examine the institutional effects of changes in urban and to a lesser extent suburban juvenile courts in recent years (Feld

1999). Finally, court personnel must be interviewed as it is not enough to just sample behaviors within the juvenile court system. To understand the effects of race/ethnicity in juvenile court proceedings, we must examine the interaction of personal beliefs, political necessities and motives of professionals and participants in the system, as well as the interaction between the Juvenile Court and society-at-large.

Bonilla-Silva (2001), in his work on institutional racism in the post-Civil Rights era, argues that black-white racial inequality is produced and reproduced in the United States today in a more subtle and apparently nonracial way in five areas: socially, economically, politically, ideologically, and through social control. Minority overrepresentation in the juvenile justice system is an example of a social control mechanism used by whites to maintain the current racial structure. I further suggest that bias in the juvenile court system is driven by both political pressures and individual biases. Political pressure, rooted in the 1960's movement oriented towards holding juvenile accountable for their own actions (Feld 1999) and accelerated during the Reagan era's shift from combating the social causes of crime to holding individuals responsible for their choices (Beckett and Sasson 2004; Barlow 1998; Mauer 1999), further motivating juvenile court judges to impose maximum constraints on offenders rather than face criticism or political fallout (Feld 1999). Individual biases are reflected in Mann's (1993) observation that justice officials' attitudes "...mirror the stereotype of minorities as typically violent, dangerous, or threatening". Finally, I propose that to understand the effect of color-blind racism in the juvenile court system, we have to understand how actors in the juvenile court system perceive minorities both in and out of

the criminal justice system. It is not enough to just sample behaviors within the juvenile court system, instead we need to examine the interaction of personal beliefs, political necessities and motives of professionals and participants in the system, as well as the interaction between the Juvenile Court and society-at-large.

Feld's (1999) concludes that modeling juvenile courts after criminal courts, with court appointed defenders and less latitude given to judges in decision-making (as most urban juvenile courts including those in this study have done) will reduce the negative effects of racism. I suggest instead that racism will remain, though in a more subtle form, giving the appearance of being color-blind, yet still punishing minority offenders both more often and more severely.

CHAPTER II

LITERATURE REVIEW

In effect, the juvenile justice labeling process works to single out adolescents from groups culturally alien to those in power. Those singled out, because of their powerlessness, are ill-equipped to stop the process or to intervene in it effectively to prevent themselves from having various and sundry tags imposed upon them by police, judges, probation officers, psychiatrists, and others who are employed as agents of the juvenile justice system.

(Martin 1970)

That Black male youths are overrepresented in the juvenile justice system is beyond dispute. The data overwhelmingly shows black youths in the juvenile justice system in numbers well beyond proportional representation.

According to Office of Juvenile Justice and Delinquency Preventions (OJJDP) Juvenile Court Records, black youth, compared to other racial groups are:

- 4-8 times more likely to be arrested for an indexed violent crime
- 2-4 time more likely to be arrested for a property crime
- involved in 28% of delinquency cases but result in 35% of detained cases
- involved in 22% of drug cases but 37% of detained drug cases
- Delinquency cases involving black juveniles were more likely to be petitioned than were cases involving white youth or youth of other races

- 78% of drug cases involving black youth were petitioned compared to 57% for other non-whites and 56% for whites (incl. Hispanics)
- more likely than other groups to have their case waived to criminal court/certified as an adult
- more likely to be placed in out-of-home placement than other groups

(Snyder and Sigmund 1999)

Many theories have tried to explain this significant overrepresentation of minority males, especially those who are black. While all have added to the body of knowledge, some hold more promise than others.

One possibility is that minority overrepresentation at any level in the justice system is simply due to minorities committing more crimes (*differential involvement*). Differential involvement in crime is a result of individual traits or choices either 1) independent of social problems or 2) attributable as a result of social problems. D'Sousa (1995) aligns himself with the first possibility when he states that those who are especially cautious of young black men are simply employing *rational discrimination* based on *prudent statistics* which use racial or ethnic identity combined with gender, demeanor and other factors to exclude interaction with young black men when possible because we *know* that these individuals commit more crimes, especially violent and drug related crimes. A number of scholars have suggested that young, angry men of color actually *commit* more

crimes than do other individuals (D'Sousa 1995; Herrnstein and Murray 1994; Wilbanks 1986; Wilson and Herrnstein 1985). Overrepresentation in the justice system is perceived as fallacy from this view, as observed inequities in the justice system reflect the realities of which individuals actually commit crimes rather than focusing on social problems which lead certain groups to be more or less likely to commit a crime. This concept assumes that each individual *a*) has the ability to choose whether or not to commit a crime and *b*) that social forces take a back seat to individual choice.

There are a number of mainstream criminological theories that are based upon the assumption of differential involvement, independent of social problems. Our criminal justice system is largely based upon a few of these theories. *Deterrence* theory (Agnew 2002): rests upon the certainty, severity and celerity (swiftness) of punishment as a means of dissuading commission of criminal acts. When combined with *rational choice* theory, which assumes that the commission of a criminal act is a rational decision based upon weighing of costs (effort, likelihood of getting caught, potential severity of punishment) against the benefits (rewards of monetary, social or psychological nature), the result is the basis of our criminal justice system which assumes that individuals will make a rational cost-benefit decision as to the possible outcomes of any criminal act before committing that act. Not surprisingly, empirical support for *rational choice* is very limited. Juvenile programs such as DARE, Scared Straight, Shock Incarceration and Boot Camps, which are based upon rational choice and deterrence models, are minimally effective, at best (Agnew 2002; Styve *et al* 2000).

Control theories assume that crime will occur unless prevented by strong social and personal controls. Only personal controls (guilt, religion, etc.) and social controls (punishment, public ridicule, etc.) stop most of us from committing crimes (Agnew 2002). In this view, stronger controls lead directly to a lower crime rate. Hirschi's *Social Bonding* theory (1969) is the most developed of the *control* theories. By incorporating four values (Attachment to Others, Commitment, Involvement and Belief), Hirschi proposed that the more one was invested in 1) attachment (to parents, school and peers) 2) commitment (investing time, energy and effort to conventional values), 3) involvement (of time and effort in conventional activities which minimizes idle time) and 4) belief (in society's laws, institutions and customs) the less likely an individual was to commit a deviant act.

In a similar vein, Gottfredson and Hirschi (1990) developed their Self-Control Theory which claims that individual self-control is at the heart of all actions. High levels of self-control will likely lead to socially acceptable behavior. Low levels of self-control are much more likely to lead to deviant or criminal behavior. Gottfredson and Hirschi found that the congruence between victim data and arrest rates for all racial and ethnic groups was so strong that it showed DPC was a result of disproportionate involvement rather than a system biased against minority youths. For those who subscribe to differential involvement, criminal activity is often a result of what Gottfredson and Hirschi (1990) refer to as the personality trait of "low self-control", in which family child-rearing practices and the attractiveness of criminal events coalesce somewhere along the negative end of a continuum from a law-abiding child of high self-control to a

likely criminal with low self-control. This suggests that a large part of criminality lies at the feet of inadequate parenting (resulting from teaching poor standards of individual choice). Taken a step further, minority overrepresentation in the criminal justice system may be argued as largely attributable to poor parenting by Black and Hispanic parents, as these groups are most overrepresented in both the criminal and juvenile justice systems. This echoes Daniel Patrick Moynihan's (1965) work "The Negro Family: The Case for National Action". Interestingly, this is a reoccurring theme among those interviewed for this study.

Gottfredson and Hirschi's theory appears to share common roots with James Q. Wilson and Richard Herrnstein's 1985 work, *Crime and Human Nature*, which finds that 1) genetic predisposition and related biological traits and 2) familial relationships are greater determinants of criminal or deviant activities than are social forces, such as class, education, peer influence, availability of good jobs, etc. In Herrnstein and Charles Murray's controversial *The Bell Curve* (1994) the authors state that Black's lower IQ accounts for three-quarters of the difference in Black and white crime rates. Wilson, Herrnstein and Murray see the justice system as simply addressing the disproportionate commission of crime among minority groups.

There is an alternative view of differential involvement which suggests that higher levels of criminal behavior from the young living in poor, minority neighborhoods are rooted in environmental factors (Martinez 2002; Anderson 1999). This perspective suggests that issues such as poverty, disrupted home-life, relative disadvantage, limited

economic and educational opportunity, disenfranchisement and limited community policing are among those factors which influence both the prevalent types of crime as well as the crime rate. From this view, minority's differential involvement in crime is due to environmental factors encouraging or otherwise rewarding criminal behavior. For instance, the Oklahoma Office of Juvenile Affairs (Damphousse, Davis and Charish 2004) found that Black and Hispanic youths committed more crime than did white youth, however once environmental condition were controlled for, that difference disappeared.

The 2003 juvenile arrest records and 2000 juvenile court records from OJJDP (the most recent years available for each) clearly show significant overrepresentation of black male youths in almost every category of juvenile court records, including arrests. However, the discrepancy in arrest and conviction rates for blacks and whites cannot be easily explained as different rates of offending between white and black juveniles (Snyder and Sickmund 1999). For example, Wordes and Bynum (1995) found, in their study of the juvenile justice system in Michigan, both through official police records and interviews with officers, that race or race-related factors, such as being in the wrong neighborhood or hanging out on the street heavily contributed to a decision by officers to initiate contact. Many of the officers interviewed also noted that boys need a father figure in their lives and that single mothers (statistically a more common living situation for Blacks) cannot adequately control delinquent behavior. Similarly, in Pennsylvania, Kempf, Leonard and Sontheimer (1995) discovered that "...*offense-related, system-*

related, and social history factors are accorded different weight depending on race” (p. 120).

Differential involvement is ideologically grounded in blame assigned either fully (individual choice) or partially (rooted in social problems) based on arrest and conviction rates. It further assumes that arrest and conviction rates of minorities as compared to whites are reflective of actual rates of commission of delinquent and criminal acts. If minorities actually commit delinquent and criminal acts at rates well above those of whites, the only rational course is to address how to limit minorities’ involvement in delinquent and criminal acts.

Differential Involvement, be it dependent or independent of social problems, is not the only potential explanation for DMC. The other major option is *differential treatment*, which suggests that minorities receive disproportionate punishment for crime². Potential causes of differential treatment induced DMC range from indirect racial effect to overt racism. Indirect racial effect could be caused by juvenile justice officials focusing on factors which are strongly correlated to race, such as SES, demeanor, family structure and school status, resulting in racialized outcomes (Pope and Snyder 2003; Pope and Feyerherm 1990). Along these lines, Wordes and Bynum (1995) found that police officers sometimes formed decisions based on expectations tinged with racial/ethnic stereotypes. Bridges and Steen (1998) found the same of court officials. In fact, a number of studies have found that while the type of current offense and prior record

² Engen, Steen and Bridges (2002) also include the theoretical categories “structural-processual” and “macro-contextual.”

explain much of the observed minority overrepresentation in the juvenile justice system, these do not explain all of the racial differences (Austin 1995; Fagan *et al* 1987; Krisberg *et al* 1987; McCarthy and Smith 1986). Feld (1999) argues that “A system of justice in which the most powerful explanatory legal variables-present offense and prior record-account for only about 25% of the variance in sentencing remains a highly discretionary and perhaps discriminatory one” (p. 94).

Differing rates of official placement of juvenile offenders itself creates *de facto* segregation as 1) Latino’s are more likely to be placed in public facilities, 2) blacks and Latino’s are more often placed in private residential care and 3) white offenders are most likely to be placed in privately run group homes and private drug and alcohol treatment centers (Kempf-Leonard and Sontheimer 1995). Another cause of *differential treatment* is what Feld (1999) refers to as “justice by geography”. Feld (1999) noted that “...individualized discretion is often synonymous with racial disparities in sentencing juveniles” (p. 72). Urban and, to a lesser degree, suburban courts tend to more formalized in structure, allowing less judicial discretion. According to Feld, this is due to the larger caseloads found in urban courts, which, in turn, forces reliance upon standardized bureaucratic measures (1999).

Blacks are likely not the only group significantly affected by racial (or ethnic) profiling. Hispanics are likely often subjected to racial/ethnic profiling however, the rate at which this happens is not easy to determine. Surprisingly, minority overrepresentation is likely *substantially underreported* in the Office of Juvenile Justice and Delinquency

Preventions (OJJDP) data (Snyder and Sigmund 1999) and FBI reports (Steffensmeier and Demuth 2000) as not all police and court agencies separate *ethnic* groups, resulting in an often inaccurate, hodgepodge method of counting Latinos in the criminal and juvenile justice systems. Often only the race of those in the justice system, rather than ethnicity is recorded. This has led to numerous cases of Latinos being categorized as white, making it seem as if the system is less discriminatory by over-counting white arrest/conviction rates through the inclusion of Hispanics (Steffensmeier and Demuth 2000). In my observation of one major metropolitan juvenile court, I encountered only one phenotypically apparent white youths whose parents did not appear to be Hispanic (based on phenotype characteristics ascribed to “indigenous looking” Hispanics) or who did not have a Hispanic surname, in the 514 cases which I observed during the summer of 2003 and witnessed about a dozen who appeared to be white (based on phenotype characteristics) and did not have observable parents/biological guardians with them (there were three juvenile courtrooms used simultaneously). Interestingly, official juvenile court statistics for that jurisdiction show that approximately one-third of juvenile offenders who have contact with the juvenile court system are white.

By any measurement, minorities are over-represented in the juvenile justice system. This overrepresentation has remained fairly constant in the last decade as 1993 figures from the FBI, show that African Americans, though only 12% of the general population (about 15% of the juvenile population), accounted for 27% of all juvenile arrests, 49% of juvenile arrests for violent crime and 26% of arrests for property crime (Joseph, 1995) Significantly, the further they move through the system, the greater the disproportionate

representation (Leonard *et al* 1995). At the juvenile court level, in 1993, about 20% of all youths referred to juvenile court were detained. Of that 20%, however, judges detained about 18% of white juveniles and 26% of black juveniles (Feld 1999).

Juvenile courts are not immune from racial bias. In fact, due to the amplification effect (Walker *et al* 2000; Feld 1999; Leonard *et al* 1995), because minority youth are more likely to be arrested in the first place and a prior record is a major determining factor for further arrests, at each stage (initial contact, juvenile court, detention, criminal court and incarceration) the percentage of minority youth climbs as one moves through the system (Hendricks and Byers 2000).

The Office of Juvenile Justice and Delinquency Preventions (OJJDP) has concluded that "...institutional bias or racism occurs from the initial contact the juvenile makes with law enforcement up through the juvenile court system itself" (Lardiero 1997). Other evidence similarly suggests that race is frequently a factor at different points throughout the Juvenile Justice system. Bishop and Frazier (1996), using both analysis of case histories and interviews with officials at all levels of the juvenile justice system, conclude that race is the dominant factor at every stage of processing, but most important at the initial arrest stage. Free (1996) found that "African Americans were less likely than whites to be released by the police". Both the case history analysis and the interviews support the idea that race is more of a determining factor for the police than any other part of the juvenile system, likely due to a lack of public oversight as officers

have significant latitude in deciding to commit to initial contact and then whether to make the contact official, such as a citation or arrest (Leonard *et al* 1995).

The practice of racial profiling also makes African American youth more susceptible to initial contact (Jackson and Pabon 2000). The concepts of differential treatment and differential involvement collide most publicly with the issue of racial profiling. Key to the concept of mistrust of the justice system for many minorities is the concept of racial profiling or the “out-of-place” doctrine. Kathryn Russell (1998) points out that the “out-of-place” doctrine, which is number of courts have upheld as legal, gives police a legal justification for stopping and questioning blacks when they are in a predominantly white neighborhood. Studies indicate that black males are stopped and questioning by the police at a rate much higher than any other racial or ethnic group. According to Russell, this creates a problem in that black males are stopped and questioned in rate much higher than the level of Black involvement in crime. Of course racial targeting for the purpose of enhancing the efficiency of the criminal justice system (racial profiling) has effects upon the minority community well beyond the scope of the justice system. For instance Coates (2007) explains:

How racial nonelites respond to racial profiling may be the difference between life and death. In cities across the nation, increased levels of incarceration, fear, and even death have resulted as these nonelites have found their opportunities for freedom and security impaired...repeated episodes of racial intimidation, profiling, and discrimination may produce increased levels of stress, hypertension, and other related health conditions.

Racial profiling targets minorities and damages their lives, yet many whites see it as, at worst, a necessary evil while programs which target the enhancement of black lives are seen negatively by whites (Bobo and Kluegel 1993).

There is evidence which suggests that many minority youth and their parents may not fully understand their options in juvenile court, or trust those representing their interests (Joseph 1995; Leonard *et al* 1995). This may be related to research which shows that Blacks are significantly more likely to be represented by public defenders, rather than private attorney that may, in turn, play a role in the overrepresentation of minority youth in detention facilities (Hendricks and Byers 2000). However, a lack of private attorneys does not explain overrepresentation of minority juveniles at other stages of the juvenile justice system, such as initial police contact or arrest. Within the juvenile justice continuum beginning with initial police contact at the least severe end of the juvenile justice system and ending with juvenile *waivers*³ (moving juvenile cases to criminal court to be tried as an adult) as the most severe end of the juvenile justice continuum, there is a constant growth in overrepresentation of Black youths, with the greatest level of disproportional representation in juvenile wavers to criminal court (Leonard *et al* 1995). Interestingly, there is no rational evidence to support the disparities in sentencing or in waivers, between minority and white offenders (Hendricks and Byers 2000; Free1996; Joseph 1995; Leonard *et al* 1995).

³ In OK “certification” is used in place of the term “waiver.”

Bridges, Conley, Engen and Price-Spratlen (1995) found, during their interviews with juvenile court judges, a disturbing tendency for judges to decide that it was in the best interest of many minority youths to place them in a detention facility, as it was preferable to their home life, though they did not extend this same decision to white (non-Hispanic) youths (Leonard *et al* 1995). The specter of single parent families, or more specifically of Black women raising children alone, appears to play a significant role in the juvenile justice, decision-making process. The problem with the stereotypes and assumptions, particularly those involving parental ability and involvement, is that, in an overworked system, shortcuts, in the form of decisions made using stereotypes, may be used (Feld 1999; Singer 1996).

Few juvenile court judges believe racial disparities in confinement to be racially based (Bridges and Steen 1998). Instead, most judges (Bridges and Steen 1998; Secret and Johnson 1997; Leonard *et al* 1995) attributed the disparities to Blacks and other minorities “...substantial ethnic and racial differences in criminal behavior” (*Institutionalized Discrimination*) or the fact that youths of wealthier families have access to non-adjudicated facilities that the poor do not (*Contextual Discrimination*). Essentially, judges may use extralegal characteristics like race to create “ a mental map of the accused person’s underlying character” (Secret and Johnson 1997) and to predict his/her future behavior. Alternatively, the harsher treatment of African American and Hispanic juveniles might reflect both class and race biases on the part of juvenile court judges (Secret and Johnson 1997). In other words, “the individual’s economic and social

class and the color of his skin...determine his relationship to the legal system” (Feld 1999).

Bridges’ and Steen’s (1998) study of probation officers examined 233 narrative reports written by juvenile probation officers in three different counties in the state of Washington in 1990 and 1991. Each narrative included the probation officers description of the crime and an assessment of the factors that motivated the crime, as well as an evaluation of the youth’s background assessment of his or her likelihood of recidivism. The probation officers “...tended to attribute crimes committed by whites to negative environmental factors (poor school performance, delinquent peers, dysfunctional family, use of drugs or alcohol)... [yet]... they tended to attribute crimes committed by Black youths to negative personality traits and ‘bad attitudes’ (refusal to admit guilt, lack of remorse, failure to take offense seriously, lack of cooperation with court officials). They also found that P.O.’s (probation officers) judged Black youth to have a significantly higher risk of reoffending than white youth” (p. 174).

In this post-civil-rights era we are used to rules and laws designed to correct racial inequities. Furthermore, we have largely come to believe that either institutional level measures can correct lingering racism or that racism is so institutionalized that it can never be overcome. Theories supporting differential involvement either 1) rest upon the absurd premise that crime and delinquency are purely a result of “free will” and that minority overrepresentation is due to the failings of minority groups, either through learned attitudes or genetic predisposition or 2) that issues of class and only

coincidentally of race, are the cause of minority overrepresentation in the juvenile and criminal justice systems, essentially ruling out the influence or even existence of subtle discrimination. Current theories of differential treatment also fall short as they also tend to focus on institutional factors. My thesis focuses on the common individual motivations, biases and assumptions which, if widespread, may explain resistance to change and denial or reframing of the problem of disproportionate minority contact.

Throughout the history of the American juvenile court the conflicting themes of how to treat juvenile offenders as children and how to ensure the safety and mollify public demands for accountability for criminal actions and fears for public safety have shaped and reshaped the model for juvenile court. In the next chapter I will address the history of the juvenile court as it pertains to the modern juvenile courts structure and function.

CHAPTER III

FROM THE PROGRESSIVES TO THE “SUPER-PREDATORS”: THE HISTORY OF
THE AMERICAN JUVENILE COURT AND THE FORCES THAT SHAPED IT

But by the law as it now stands,...the capacity of doing ill, or contracting guilt, is not so much measured by years and days...For one lad of eleven years old may have as much cunning as another of fourteen; and in these cases our maxim is, that militia supplet aetatem [“malice supplies the age”].

(Eighteenth century English Lawyer William Blackstone)

Prior to the 1820’s U.S. criminal law clearly differentiated only between infants and adults. Those who were six years of age or younger were considered “infants” and legally incapable of committing crime with “vicious will”. Industrialization and urbanization created the first identifiable population of “at risk” juveniles. Up to that point, children over the age of seven who committed crimes were seen as choosing their action based on “free will”. As with the adult poor, pauper children were seen as inherently evil, their poverty caused by their own wickedness, corruption and unacceptable behavior. According to Bernard (1992) “juvenile delinquent” was originally a term meaning “potential pauper”. These delinquents were seen as the cause of many of the problems in large cities.

Eventually the perception of free will began to change. Those who were fourteen years of age or older were still considered adults, capable of understanding their own actions. These individuals were eligible for all potential punishments applied to adults. This created a third group, children between the ages of six and fourteen. For these

children, before being charged with a crime, it first had to be determined if the child understood the difference between right and wrong. If the individual did, then he or she was tried and punished as an adult, even eligible for the death sentence for a capital offense. Records show this to have been carried out on children at least as young as twelve (Feld 1999).

With time it became impossible to ignore the environmental forces which resulted in many children begging or stealing simply to survive. Two changes in public perception occurred about 1820. First, children were now seen as malleable, unlike adults who were still seen as set in their ways. This concept then made it possible to intervene in the lives of children in an attempt to change their ways. The second was the rise of the positivist school of criminology, which contended that delinquent behavior was caused by forces outside of the control of the juvenile, as opposed to individual choice. In this climate, progressive groups, typically consisting of conservative, upper and middle class white women, began to force change in how the state treated juvenile delinquents (McShane and Williams 2003).

The Progressive Movement was actually the second major reform movement in this country. The first occurred in the years preceding the civil war and consisted of social activists working to reform issues such as working conditions and the treatment of the mentally ill and prisoners. The second reform era, the Progressive Movement, which ran from the Reformation Era to World War I, was a loose-knit coalition of activist groups, largely held together by their rejection of Social Darwinism, and their belief in the possibility of bettering the lives of all people (Feld 1999). Though Progressives never

spoke with one voice, the values of the movement remained consistent. Women's rights and the Temperance Movement were among the first efforts of the Progressives, followed shortly by the Populist Movement, designed to take political control away from party bosses. The Farm Movement and other social issues facing the working class soon followed. Much of their success in challenging social conditions resulted from newspaper accounts of poverty, factory conditions, child labor, urban slums and other social ills. The newspaper stories led to popular outrage, creating an opportunity for change.

For the issue of juvenile justice, the alternatives of either often harsh punishment for a young child or the complete release from state control were too limited. Children sentenced to years in prison or even death was often seen as too extreme yet preteens committing minor crimes frequently escaped formal sanctions altogether. To address this issue, in the early to mid 1800's, the houses of refuge, the first age-segregated institutions, began to appear. Legislation governing these houses of refuge created certain legal distinctions for youths. First, there was a clear age-based distinction between juvenile and adult offenders. Second, the use of indeterminate sentences was created in order to allow necessary rehabilitation of minors. Finally, the concept of *parens patriae*, which allowed the state to assume control of a juvenile in place of the parent for young criminal offenders, neglected children or those deemed "incorrigible" by the state. By the middle of the century, the country was dotted with reformatories and youth institutions serving most cities. Cook County, Illinois, created the first juvenile court in 1899, others followed in a relatively short time. Early juvenile courts embraced

the legal distinctions first given to houses of refuge. These courts were informal civil hearings which were closed to the public to protect the reputation of the youths. In these early courts, neither a prosecutor nor a defense attorney was present. Consistent with the Progressives belief in the power of the state to regulate society, control of the life of the youth rested with the judge and his advisors, predecessors to the modern social worker. (Humes 1996). The original goal of the juvenile justice system, through the allowance for discretion at each level, was individualized justice, emphasizing prevention and rehabilitation of juvenile offenders (Hendricks and Byers 2000). Juvenile courts were seen as simply a specialized version of civil court, as opposed to a juvenile criminal court.

The Progressives envisioned a country where all Americans were to enter the ranks of the middle class. Everyone was to respect private property, send their children to school, and give up whatever vices that they might have brought with them as they immigrated, so that they might become hard-working and law-abiding. The juvenile courts along with schools and other governmental agencies were used to Americanize, assimilate and acculturate immigrants (Feld, 1999). Giving the state the right and responsibility to substitute its own control over children for that of the natural parents when the latter appeared unable or unwilling to meet their responsibilities or when the child posed a problem for the community, proved a powerful tool for imposing assimilation. In essence, the legal concept of *parens patriae* provided the formal justification to intervene in the lives of immigrants and the poor. It was a tool to control “other people’s children”, a theme continued by the juvenile courts today.

In 1838, the Pennsylvania Supreme Court rejected legal challenges to the preemptory incarceration of “troublesome” youths in *Ex parte Crouse*, citing that the incarceration was in the best interest of the juvenile and merely an opportunity to rehabilitate an individual when the parents have proven unable to do so. A “troubled” child could be removed from his parents against their wishes and placed in a house of refuge both for the good of the child and the community. Because houses of refuge and later, juvenile courts were charged with decriminalizing youths’ behaviors, it allowed reformers great latitude in controlling children. Smoking, idleness, immorality and most significantly sexual activity could be regulated by the state. In fact, girls who were either sexually active or deemed “at risk” of becoming sexually active received the most severe treatment by juvenile courts, often much more severe than boys who had committed criminal acts. Judges and those in assorted social work positions had the power to decide whatever was in the “best interest” of the child.

Probation became the favored first choice of treatment for a juvenile in the Progressive era. Juvenile probation officers took on the task of reporting a child’s actions to the court as well as supervising the juvenile’s return to the community. Unfortunately, the vast majority of juvenile courts of the time had little success in rehabilitating minors, due mostly to poor training and minimal funding of courts and probation departments (Feld 1999).

The almost limitless discretion given to juvenile courts began to change in the 1960’s with a number of cases which appeared before the US Supreme Court. The first of these, in 1966, was *Kent v. United States*, in which a 14 year old boy, whom had a fairly long

criminal record, admitted to raping and robbing a woman when confronted with fingerprint evidence. His lawyer filed a motion to get the boy psychiatric evaluation and treatment, but the judge ignored the motion and waived the juvenile to be tried in adult criminal court without a hearing. The Supreme Court found that the juvenile court erred in not allowing a hearing on the matter and further chastised the court for leaving juveniles with the “worst of both worlds”; no legal protection as afforded adults, and no rehabilitative role as had been traditionally promised in the juvenile justice system.

A year after the Kent case, a 15 year old boy from Arizona was convicted of making an obscene phone call to a neighbor. This boy, who was on probation for stealing a wallet at the time, was taken into custody by the police, who neglected to even leave a note for his parents about the incident. The police simply took the boy into custody, leaving his parents to wonder, for hours, what happened to him. Neither the boy nor his parents were ever notified of the specific charges against him. No record of the hearing was made. No witnesses were ever called. The boy was sentenced to a state institution until he turned 21. This meant a possible six year term for a crime that, should he have been tried as an adult, would have carried a maximum sentence of up to 2 months in jail and a fifty dollar fine. His parents contended that due process had been denied their son. The U.S. Supreme Court agreed with the parents handing down their decision that due process must be followed for juveniles in the case which had the most significant impact upon juvenile court, *In re Gault* (1967).

In re Winship (1970) chipped away further at the both the discretion afforded juvenile courts and their non-criminal status. This time the U.S. Supreme Court found that a

“preponderance of evidence” was not a strict enough standard to convict a juvenile. Instead the criminal court standard of “beyond a reasonable doubt” must be applied. This change is significant because it signals an official shift from a juvenile civil court (“preponderance of evidence” is the typical standard in civil court) closer to a juvenile criminal court.

This shift towards forming a juvenile criminal court was limited just a year later, however, when the court found, in *McKeiver v. Pennsylvania* (1971), that a juvenile was not entitled to a “trial by jury”. This suggests that the U.S. Supreme Court was reluctant to give up on the original concept of the juvenile court as a place of rehabilitation, while, at the same time, acknowledging the failure of the court to live up to its original goal.

In many ways we have come full circle. Prior to the changes made by early Reformers, a fourteen year old would be tried as an adult. In 1998, the U.S. Congress passed the Violent Predator Act, which 1) allows the federal government to impose the death penalty on children as young as sixteen, 2) requires states to try juveniles as adults in certain circumstances, and 3) in an interesting case of historical *deja vu*, allows 14 year olds to be tried as adults. Despite the ethnocentric beliefs of the Progressives, in many ways their rationalizations for controlling other peoples’ children seem farsighted by today’s standards.

In 1974, Congress passed the Juvenile Justice and Delinquency Prevention Act which had two key components. First, states and other organizations receiving federal funding were required to deinstitutionalize juveniles convicted of status offenses (behavior which is typically legal for adults but illegal for minors). Status offenders as well as

deprived/neglected youth (juvenile victims of parental neglect) could no longer be held in training or reform schools. Second, juveniles could not be held in institutions where they had regular contact with adult offenders. This resulted in juveniles, who were tried as adults serving time in juvenile facilities and then, possibly transferred to adult institutions, usually between the ages of eighteen and twenty-one.

How did we, as a country, move from training other people's children to be assimilated members of society (perhaps not a pleasant starting point, but arguably the lesser of two evils) to characterizing crime as a black phenomena and young black males as "super-predators"? The movement to try juveniles as adults in this country has been largely fueled by the explosion of juvenile gangs and the use of guns by juvenile offenders, however, the historical roots of the movement run deep. A March, 1965 *Newsweek* article entitled "Crime in the Streets" pointed out that although blacks made up only about ten percent of the U.S. population at the time, fifty-three percent of those arrested for violent crime were black. Up to this point, most media attention regarding blacks and violence focused upon the civil rights movement. This article began to transform the view of blacks from victims to predators. *Newsweek* referred to the "high rate of Negro crime" and "the high rate of juvenile crime" as the harsh facts represented in crime reports (Barlow 1998). This set the stage to transform the more sympathetic image of the young black male from a group battered by difficult social conditions (or even biologically limited abilities) to an unsympathetic individual supremely capable of and willing to choose criminal behavior. As further testimony to the impact of this particular article, it also seems to be the source of the first mainstream media reference

to the “war on crime”, further describing crime as an epidemic (Barlow 1998). The imagery of young black males as the enemy and black culture as a disease in need of a cure proved to be so compelling that it remains with us more than forty years later.

At about the same time, The Moynihan Report: came out (“The Negro Family: The Case for National Action” 1965) which argued that the black family in America was facing a crisis. This family breakdown was rooted in four issues: 1) the legacy of slavery 2) rapidly growing urbanization 3) matriarchal family structure and 4) discrimination in education and employment. Moynihan paints a rather dejected picture of the future for black youth:

In a word, most Negro youth are in *danger* of being caught up in the tangle of pathology that affects their world, and probably a majority are so entrapped. Many of those who escape do so for one generation only: as things now are, their children may have to run the gauntlet all over again. That is not the least vicious aspect of the world that white America has made for the Negro (Moynihan 1965).

Politicians tried to create public panic about crime in this era. In 1964, Barry Goldwater tried to make fear of black crime resonate with the voters, only to have Johnson mitigate that fear by suggesting his Great Society program would deal with the root causes of crime (Chambliss 1995). Johnson appeared to have a better read of public opinion as polls consistently showed that crime was not identified as a major social problem (Barlow 1998). Conservative politicians continued in their attempt to link crime with minority urban unrest in an attempt to roll back political and social reforms recently

achieved by minorities (Omi and Winant 1994). By the 1970's, Goldwater's warnings had found an audience. For the first time in two decades, 1968 public opinion polls showed fear of crime as a major social problem (Chamblis 1995). In 1970, Time magazine ran an article entitled "Cops vs. Crime". This article attributed the "universal fear" across the U.S. of "violent crime and vicious strangers" to young black males, who typically committed the most common form of interracial crime, armed robbery (Barlow 1998). Militant black organizations, such as the Black Panthers, were viewed by both law enforcement and the general public, as a violent threat to the public (*ibid*). These groups gave white America a clear vision of the enemy, forever cementing the image of the angry young black male as the potential source of harm.

The 1980's brought a whole new wrinkle to the concept of racialized criminal behavior. The Reagan and Bush years began the "war on drugs". Using numbers from the Reagan/Bush era, according to the National Institute on Drug Abuse (1991), blacks are no more likely than whites to ever have used drugs which are commonly abused. In 1978, at a time when the black population hovered at about ten percent of the U.S. population, 21% of those arrested for drug related offenses were black and 78% were white. By 1989, fully 42% of those arrested for drugs were black and only 57% were white (U.S. Dept. of Justice 1993) Given that rates of drug use for both blacks and whites have consistently been equal, blacks were being arrested at twice the rate of whites for relatively equal levels of offending in the 1970's. Interestingly, by 1990, blacks were being arrested at a rate of almost four times that of whites. Of course, if the war on drugs was actually having the effect of minimizing illicit drug use, an argument

could be made for the greater good. However, there is no evidence that the almost three decade long war on drugs has had any discernable effect upon drug use (Tonry 1994).

The reason for this growing disparity in arrest rates appears to be one of convenience. According to Tonry (1994), drug dealers in poor black communities have greater relative economic incentives to deal drugs to strangers, while white, middle class drug dealers are better able to deal to people that they know. Poor black drug dealers are also forced to deal drugs in public settings, while white are more likely to sell drugs in private settings. Tonry (1994) and Chambliss argues that the “convenience” issue was actually premeditated and racially motivated, citing evidence such as Reagan’s attack on gains made from the civil rights movement, first made nationally in his 1964 speech supporting Goldwater’s presidential campaign, and Bush’s infamous “Willie Horton” campaign ads which used the black convict as a depiction of the consequences of being “soft on crime”.

While the Republicans may have begun the war on minorities (arguable a more accurate title than war on crime or war on drugs) as an attempt to gain mainstream votes, the Democrats, rather than opposing Reagan and Bush, tried to outdo the Republican leaders. Longtime Democratic Speaker of the House from 1977 to 1987 and longtime liberal, Tip O’Neill was an outspoken advocate for the war on drugs, especially after the death of college basketball phenomenon, Len Bias from a drug overdose, who coincidentally had been drafted by the professional team in O’Neill’s district (Barlow

1998). Clinton actually escalated the war on minorities by pushing for harsher sanctions for drug offenders (Tonry 1994).

After looking at rising rates of violent juvenile crime, Princeton political scientist (and future director of the White House Office of Faith-Based and Community Initiatives for George W. Bush's administration) John Dilulio and his colleagues published a book in which they detected a new criminal concern for the American public. Throughout the book, it is made clear that the young men Dilulio is concerned with are young men of color.

Based on all we have witnessed, researched and heard from people who are close to the action...here is what we believe: America is now the home to thickening ranks of juvenile 'super-predators'—radically impulsive, brutally remorseless youngsters, including ever more pre-teenage boys, who murder, rape, assault, burglarize, deal deadly drugs, join gun-toting gangs and create serious communal disorders (Bennett, Dilulio and Walters 1996 p. 27).

According to the Office of Juvenile Justice and Delinquency Prevention's February of 2000 report entitled "Challenging the Myths", the serious violent crime rate of juveniles (all sexual assaults, robbery and aggravated assault) remained relatively consistent from 1973 until 1989, ranging from 25 to 32 victimizations by juveniles per 100 persons aged 10-17. This number spiked to 43 in 1993 but declined again to pre-1990 levels by 1995. This spike was enough to convince Dilulio some type of evolutionary change had occurred in U.S. ghettos, changing resource poor,

disenfranchised young black men into amoral monsters. The Brothers Grimm would, no doubt be proud of his tale of black terror, but after a low key interview (with his co-author, Bennett) he excused himself for making a mistake (Pizarro, Chermak and Gruenewald 2007) but left a lingering legacy in the idea that, just maybe super-predators really do exist. It is an image that has been difficult for the black community to live down precisely because it feeds on those fears stoked by politician and the media for so long. This is evidenced by the post 1995 juvenile arrest rates for violent crime. In 1997, the arrest rate for juvenile violent crime was still almost one-third higher than the rate in the 1980's, despite similar crime rates (Snyder and Sickmund 2006). By the 1997, the frightening image of the black (or Hispanic) super-predator was sufficient to override the statistical evidence and cause the public to demand ever-harsher penalties for these monsters. So again, we no longer want to treat them as children, but as fully-formed sociopathic criminals.

The current image of the black male super-predator is not that different than the slavery and Jim Crow eras' image of the angry "young buck" out to rape white women (an irony given the reality of slave owners routinely raping slaves). The juvenile court has mimicked popular opinion through the years alternating between treating and controlling other peoples' children. All of our talk over the years on how to deal with these problem children has really been a discussion as to how to deal with these young men of color.

In chapter III, I will describe and defend the methodology used for this study, as well as some of the unexpected problems in gaining access to juvenile court professionals.

CHAPTER IV

METHODS

The goal of this project is to build upon the many studies which have shown the depth of disproportionate minority contact (DMC) in the juvenile justice system, as well as examining some of the contributing factors (Damphousse *et al* 2004; Jackson and Pabon 2000; Feld 1999; Secret and Johnson 1997; Bishop and Frasier 1996; Bridges *et al* 1995; Cohen and Klugel 1978). This research is designed to do three things: First, examine if subtle, rather than overt racism, on the part of juvenile court personnel, is the main causal mechanism explaining both minority overrepresentation in the juvenile court system as well as sentencing disparities. As a corollary of this hypothesis, the motivations and attitudes of court personnel will be examined. Second, political pressure, based upon public perceptions, rather than individual bias on the part of court personnel, will be scrutinized as a main cause of minority overrepresentation in the juvenile court system. And finally, the possibility of institutionalized racism being the major cause of discrimination in the juvenile justice system will be examined. Furthermore comparison of the results of urban, suburban and rural juvenile courts will be made as the processes and structures vary dramatically (Feld 1999).

As a matter of convenience, this research was conducted in both Texas and Oklahoma and comprised of three parts. The first was observation of juvenile court proceedings. This was followed by interviews with juvenile court judges and attorneys. Finally, the interviews were coded for content analysis. Observation of juvenile courts

was necessary in order to examine the structural component of court⁴ and to observe the possible underreporting of minority overrepresentation through either the categorization of Hispanics as white (Steffensmeier and Duluth 2000)⁵, or the exclusion of whites from formal juvenile court hearings and to examine the interaction of juvenile court professionals with defendants (Secret and Johnson 1997).

Attempts at observing juvenile court proceedings initially proved more complicated than expected. Texas law requires juvenile court proceedings of minors fourteen years of age or older to be open to the public (Oklahoma juvenile courts are closed to the public)⁶. However, one suburban Texas juvenile court judge made it impossible for me to observe by making unconventional demands, first for a letter of introduction from the university and then requiring a (new) background check once a letter from my dissertation advisor on TAMU letterhead was provided because "...we can't be too careful when dealing with children, can we?" (Suburban- Female-Judge-TX)⁷. Other courts were similarly uncomfortable with my presence (though more cooperative) as evidenced by the public defender who quipped "I hope you're not from the ACLU" (Rural-Male-PD-TX).

⁴ As Feld (1999) pointed out, organizational structure of juvenile courts differs dramatically between urban, suburban and rural, as well as from court to court.

⁵ No juvenile court personnel.

⁶ Okla. Stat. Ann tit. 10, § 7003-4.1 (1998): Juvenile hearings are private unless the court orders a public hearing; however, only persons determined to have a direct interest in the case may be admitted.

⁷ Both of these actions are incompatible with TX law.

The juvenile court personnel's perception that the observation and interviews by an "academic" as a no-win situation is understandable as they have little to gain from outside scrutiny and a fear of potentially much to lose. For this reason, it was necessary to modify how I presented myself to those being observed and interviewed. Drawing upon the work of Fontana and Frey (2005), I deemphasized my connection with academia, often referring to my research as "a hoop which I had to jump through in order to get my PhD, so that I could get a faculty position at a university". I focused on the parts of my non-academic persona which most made potential participants comfortable. Upon meeting juvenile court personnel, I quickly found a reason to make reference to owning acreage and horses, in an attempt to convey a (white) "country boy" image and then explained that while I had learned much from the academic literature available on the effects of race upon the juvenile court, that we were missing the perspective of those who "fight in the trenches every day". I further explained that the literature was largely inconclusive as to the causes of minority overrepresentation and that, while there are probably racist juvenile court personnel, I suspected that other factors were responsible for the bulk of minority overrepresentation in the system and that I just want to hear from the experts as to what those causes are. Though I never lied to the participants, I did encourage the assumption, based on stereotype, that I was racially/ideologically less progressive than I am. Once participants were comfortable believing that my views were mainstream, I placed myself in the role of "learner" (Fontana and Frey 2005). Interestingly, many took me under their wing, taking on the role of mentor once I suggested that I had much to learn from them.

To test the first hypothesis, observations of juvenile court proceedings, recorded on data collection forms and confidential interviews with juvenile court prosecutors, public defenders, private attorneys and judges, covering their individual background, philosophical/ideological view of juvenile justice and society as a whole, and their opinion on a number of potential causes for minority overrepresentation in the juvenile justice system were used. The background information (background sheet and first section of interview questions) was used assist in identifying juvenile court officials potentially living in what Bonilla-Silva (2003) refers to as “white *habitus*”. Building upon Bourdieu’s class-based concept of habitus, Bonilla-Silva contends that a “white culture of solidarity” (p. 104) is rooted in high levels of white isolation, both residential and personal. Background questions were used to address the question of residential isolation, both current and in childhood. Questions regarding the racial/ethnic makeup of close friends were dropped after practice interviews as it tended to make the participants defensive. It was decided that the loss of information on social isolation was less valuable than the loss of information from a guarded participant.

By asking open-ended questions on each the most often cited causes of DMC, the door has been opened for *color-blind* responses, including 1) abstract liberalism, 2) “biologization of culture”, 3) naturalization of factors contributing to white supremacy and 4) minimization of the significance of race (Bonilla-Silva 2001). Interview responses were analyzed for racialized responses.

To examine my second hypothesis, the effect of political pressure on DMC, interview responses were also used. There is evidence that political pressures contribute

to DMC (Helms and Jacobs 2002; Garland 1990). Interview questions directed at both direct political/civic leader influence as well as general questions on changes in the juvenile justice system and its impact on the community, were designed to give insight into both overt and subtle political pressures.

Two urban (one from TX and one from OK) two suburban (both from OK) and four rural juvenile courts (one from TX and three from OK), were chosen for this study. These courts were chosen based on the following criteria: 1) similar crime rates⁸ 2) similar racial/ethnic makeup⁹ and 3) convenience, as multiple days of observation and interviews were necessary at each court site.

Each court was observed so as to gain understanding of the philosophical and structural character/style. Observations were recorded by hand on a data sheet, during the proceedings (see appendix A). This data was then coded and analyzed. Observation notes and interview transcriptions were independently scrutinized for reoccurring themes by me and David Embrick. References reflecting 1) white habitus, 2) family differences, 3) cultural differences (other than family) and 4) substitution of class for issues of race were agreed as common. Each of us, plus an honors undergraduate student (who also completed four of the interviews included in this study) independently coded all of the interviews using the numbers above, placed in the margins. More than one code could be used for a note or interview response. The majority of the coding was unanimous. In

⁸ Because of the small population served by the rural courts used in this study, it is likely that large fluctuations in juvenile crime rates in these counties will occur. For purposes of consistency, juvenile crime rates for the year 2002 were used to choose locations to be studied.

⁹ Counties with similar combined Black and Hispanic population rates (+/- 3%), however the urban and rural OK counties included large Native American populations, which were the largest minority group in the rural OK counties.

cases where only two of us coded a section the same, all three discussed (by phone and/or email with Dr. Embrick) until a coding was agreed upon.

In Texas, observations were made before interviews, as the court was open to the public and it was easier to make contact with a judge in court rather than in their office. In Oklahoma, my current status as a faculty member at the University of Oklahoma was enough to get at least a phone call with every juvenile court official¹⁰. All Oklahoma judges who were interviewed allowed me to also observe their court. Each interview participant was given a background data sheet (see appendix B) to fill out prior to participating in a semi-structured interview (see appendix C). Interviews were designed to take approximately forty-five minutes to an hour to complete, though one lasted for less than twenty minutes and another stretched to two hours and ten minutes. Each interview was audio recorded and transcribed, with all identifying names of participants removed, so as to assure their anonymity. Tapes were destroyed after transcription.

In the next chapter, I will examine the concept of *White Habitus* in an attempt to determine what role, if any white habitus plays in juvenile court decision making.

¹⁰ It was made clear that this research was for my Doctoral Dissertation at TAMU.

CHAPTER V

WHITE HABITUS

Many Whites in the United States have a strong sense of ethnic identity that is tied to their immigrant ancestors' country of origin (Italian Americans, Irish Americans, Swedish Americans) or to their experience in this country (New England Yankees, Midwestern Hoosiers, Appalachians, and so on). There are many subgroups within the White experience, but...[m]any United States Whites with a strong sense of ethnic identity do not have a strong sense of racial identity. Indeed...many Whites take their Whiteness for granted to the extent that they do not consciously think about it. Nevertheless, their identity as members of the White group in the United States has a profound impact on their lives.

(Hardiman 1994)

Rational choice and deterrence are the theoretical backbone of the criminal justice system, as noted in the first chapter. Implementation of punishment harsh enough to cause most rational individuals to choose to not participate in a criminal act has been the mainstay of our criminal justice system throughout most of our history. However, control theory arguably dominates the juvenile justice system as juveniles are not always seen as fully developed rational beings. Because they are often seen as malleable, guidance through social controls are used to help form them into contributing members of society. Essentially control theory seeks to assimilate deviant youth into mainstream culture, a logical plan for those in a position of power. In a racialized society, white ideals, standards and norms may not be easily achievable for minorities (Neckerman and Kirschenman 1991). For this reason the racial experiences, tastes and views of those in power should be examined.

Bonilla-Silva (2003) describes “white *habitus*” as exhibiting high levels of social and spatial isolation (segregation) and defining it as “...a racialized, uninterrupted socialization process that conditions and creates whites’ racial taste, perceptions, feelings, and emotions and their views on racial matters” (p104). Assuming support for Bonilla-Silva’s contention for the existence of “white habitus”, can an institution which deals primarily with the punishment/correction of minorities, yet staffed by whites, objectively do its’ job? Furthermore, do whites operate within a *white framing* of society which colors objectivity with negative stereotypes and assumptions, making it difficult if not impossible to be truly objective, even when presented with incontrovertible factual evidence (Feagin 2006)? This question is particularly relevant given that in over five hundred cases observed directly (summer of 2004), as well as in the hallways, as more than one juvenile courtroom operates in that county, in the urban Texas juvenile court observed for this study, no phenotypically white juveniles were observed, which is statistically unlikely considering whites make up fifty-nine percent of the county’s population. Of the observed court cases, Hispanic surnames and other information from the parents (given to the court), was enough to rule out non-Hispanic ethnicity. Of those in the hallways but not in a courtroom being observed, no more than a dozen appeared phenotypically to be white. At least during that summer, juvenile court in this urban Texas community was overwhelmingly a place for children of color.

All twenty-six of the juvenile court professionals interviewed for this project, are non-Hispanic whites. Of the individuals working in the juvenile courts observed for this

research, only three non-white individuals worked as either a lawyer or judge¹¹. As noted earlier, only observations and informal discussions (with notes) of TX court professionals were completed and the sole non-white (Asian American) OK court professional was unwilling to be interviewed for this project, though I was able to observe his work in the courtroom. Despite the loss of the potentially valuable perspective of the sole minority official, the most salient fact is that essentially all of those in a top position of authority in each of the nine juvenile courts observed are white and, perhaps more significantly, only two were Black (both from TX), with none being Hispanic. The two racial/ethnic groups most overrepresented in Texas and Oklahoma juvenile courts are Blacks and Hispanics.

Nineteen respondents grew up in exclusively White neighborhoods and twenty-three of them grew up in neighborhoods which either had very few minorities or none at all. Two grew up in a diverse military community and another grew up in a mixed Hispanic/White working class neighborhood. Of those who grew up in all-white neighborhoods, many seemed a bit embarrassed by acknowledging how homogenous their childhood neighborhoods were, though middle class neighborhoods have been the norm for decades (Massey and Denton 1993):

I: What was the racial and ethnic makeup of your neighborhood?

R: It was pretty white (laughs). (Urban-Female-DA-OK)

¹¹ Two of the minority individuals were unavailable for interviews and the third refused requests to be interviewed.

Others attempted to minimize the whiteness:

I: What was the racial and ethnic makeup of your neighborhood?

R: Probably 99% white. Uh, sometime during my junior year I think we did have a black family move in within probably a half mile of my house and as far as I know, they were the only black people to live within the square mile. (Rural-Male-Judge-OK)

It seems certain that there was no interaction with this black family that may have moved into his white neighborhood. The next respondent went through some pretty impressive verbal gymnastics to make her childhood appear more diverse:

I: What was your childhood neighborhood like? If you had more than one, please describe the one you most identify with. Did you live in the city, suburb, or country? Did the neighbors all know each other and how often did they interact with one another? In other words, describe the character of your childhood neighborhood.

R: Um, city, regular fairly new neighborhood, some fairly decent neighbors, some that weren't necessarily so decent.

I: Was there a lot of interaction, did people know each other?

R: They did but not to a degree that I would.... In the neighborhood I live in now, in my neighborhood, where families get together more often than I think they did growing up.

I: What was the racial and ethnic makeup of your neighborhood?

R: I'm thinking of one neighborhood that was much more integrated than others, when we first moved to Norman and rented. And in that very small rental house that we had, the neighborhood was much more integrated than another neighborhood that we live in later. Um,....

I: How about the one's that you were just referring to, when the neighbors were more acquainted?

R: I would say it was primarily um, there was a very nice Native American woman that I was friends with, my mother lived a couple doors down, uh, there was a, ah, East Indian family that lived down

the street, but primarily um, non-Hispanic, white.(Urban-Female-Judge-OK)

The judge clearly has a childhood neighborhood which springs to mind when asked about it, but she attempts to substitute a temporary rental house as her childhood home when asked about the racial/ethnic makeup of her childhood home, then, when forced to return the discussion to the first neighborhood, she appears to be reaching to find integration. This is similar to Bonilla-Silva and Forman's (2000) finding that white college students tended to overstate relationships with blacks, frequently describing acquaintances as close friends. The next respondent made a similar move when he attempted to sound quite racially progressive, touting the symbolic election of the first black student as class president, though the homogeneity of his childhood quickly becomes clear:

I: What was the racial and ethnic makeup of your neighborhood?

R: Ah, my high school was integrated about 1968, I graduated in 1969. High school got it's first black in about 1968, it might have been 1967. Ah, but I believe it was 1968, we elected him class president. He was a son of an Air force officer, he was stationed at Tinker, his name was Joe Sullivan. So there were affirmative action officer for instate, not officer, but recruiter or something.

I: So you never went to...there were never many black then when you went to school.

R: No, no.

I: See even in California, I'm 11 years behind you. But even in California, I didn't have a black kid in any of my schools. I lived behind the Orange Curtain like I said. I didn't know an African American until I went to college.

R: Right, that's me too. I never, but I never knew a Jewish person either till I went to college. Never knew anyone from Tulsa till I

went to college. Bell City is a bedroom community most of the people do the, work at Tinker, ah, I guess it doesn't make it a bedroom community, most of the people that work at Tinker ah, most of them have just about the same education, back then, same educational background, most of the were ex-GI's, ah, WW II guys, they got out and went to work at Tinker. And ah, most of the women in the neighborhood and in the city were mothers who didn't work and um, everybody, there was no wide socioeconomic disparity. Most people were in about the same position, economically. (Urban-Male-Judge-OK)

Of the three who grew up in racially/ethnically diverse neighborhoods, the first of these grew up in a working class neighborhood which included a Hispanic population, though he identified most of the Hispanics of that neighborhood as culturally White:

I: Your neighbors all know each other, interact?

R: ...It was a modest house, modest neighborhood but people you know, the biggest trouble you would have with your neighbors is, they wouldn't mow the lawn, that kind of thing. I don't recall any Black children living close to us, um, some Hispanic kids...

I: In the same neighborhood, different neighborhoods?

R: Yeah, same neighborhood, but they were all, um, they were Hispanic the way you'd see some Blue-eyed, Blond haired people be Indian. I mean their name was Hernandez but they were closer to the Valley girls then they were the "wetbacks." They went to the Catholic schools because you know, they were Catholic and they felt the need to have done to beat the crap out of their children. One of my Catholic friends were so glad that he went to Sixth grade, they got to junior high and they got to wear real clothes and the teachers just couldn't beat the crap out of them. (Suburban-Male-PD/PP-OK)

Interestingly, this same respondent again differentiated between ethnic and cultural Hispanics. When he describes "valley girl" Hernandez he is likely referring to the

second and third generation (and beyond) Hispanic immigrant generation who have shown significant success in assimilating into the American middle-class (Zhou 2007):

I: Is that(Hispanics)the largest minority group that you deal with?

R: It's getting to be. Um...

I: What percentage of your practice? A ballpark.

R: Let's see I got, next Thursday we're set down for several non-jury trials. Of them we have, a Latina girl, at least three Latino males, one of them is not going to go, hopefully he'll get his stuff done. The other two are White males, stolen property and auto burglary or something and um, the girl probably doesn't have any serious charges against her right now. There is a young black male that charged essentially with sexual assault, sexual battery, but I think they are going to drop that. I honestly believe, I don't believe very often but I believe he is innocent, but I think they're going to drop that. There's a very pretty blonde hair, blue eyed girl that's a school fist fight. Let's see and then another kid who's White, he's one of those likeable pin heads who just hasn't gotten his stuff done and he, I think will have his stuff done and probably get his case dismissed.

I: So if you had to guess, are half or more of them minorities?

R: Well it's getting right up there. I would say, I would say that ah, if you go by names, probably of that half to a good 60% are Hispanic but again, you have that other thing that, that there's Hispanic names for example Bob Hernandez. (Suburban-Male-PD/PP-OK)

As he lists upcoming cases, clearly minority are overrepresented, yet he attempts to minimize the effects of race/ethnicity by assimilating a large portion of the Hispanic population through his reference, once again, to the "Bob Hernandezes" of the world. According to the 2000 U.S. Census Data, the Hispanic population in the county he works in, comprises 3.8% of the population while the white population makes up 79.4% of the population, yet he minimizes the effects of race while pointing out that

almost 60% of his juvenile cases involve a group which represents less than four percent of the total county population, and this does not include the Black (4.3%) or Native American (4.5%) youths he represents, both of which are slightly larger population groups in the county. He also describes the white girl as “very pretty, blond haired blue eyed” and the white boy as a “likable pin-head”. Both of these white kids receive positive personal descriptions (looks and personality) as opposed to the black kid who he “honestly believes” is innocent, implying that normally, this may not be the case. The blond is the physical embodiment of Middle-America and the boy is just an example of “boys being boys”. The same attorney describes his current neighborhood and repeats his minority group assimilation.

I: Your neighborhood, any minorities there?

R: Well, not that many that I notice. Um, the ah, people to the east of us, adopted a girl from India, but again, she’s like a Valley girl, she’s a typical American kid that is grown up and has her parent’s wrapped around her little finger. Um, from what I can see, I can’t, I’m sure if you’re taking into account Indian ancestry, I’m sure there is, but I don’t know of any. If we’re saying for Blacks, I just can’t recall that there are Blacks in the neighborhood. (Suburban-Male-PD-OK)

Honorary white status is given to the Hispanic and Indian girls who he compares to “valley girls”. The term is an interesting choice as it originally, in the 1970’s, was used by white upper-class girls of the San Fernando Valley, to elevate themselves above those from other parts of the city of Los Angeles which were, at the time more racially diverse. At least one study found the term “valleygirl” synonymous with “whiteness” for both black and white teens (Kao 2000).

The next respondent was one of two who grew up next to a military base. An opportunity for added insight was missed when I neglected to follow-up as to the race/ethnicity of the childhood friend she maintains contact with. It's also unclear if she, like many other respondents, is making her childhood appear as more diverse than it really was, although this seems unlikely as the other respondent who grew up next to a military base had similar experiences:

R: Um, I grew up in a neighborhood that was right off the military base my dad was stationed at and it was primarily either retired military folks that lived there. Middle class neighborhood, everybody went to school with everybody. I'm still best friends with a kid that grew up across the street from me.

I: Did your parent's interact with a lot of people in the neighborhood?

R: Yeah, pretty much.

I: What was the racial and ethnic makeup of your neighborhood?

R: Well, the military is pretty mixed. Hispanics and ah, Blacks, Whites, and Orientals.

I: Pretty even distribution all the way around?

R: I think so, I do. (Suburban-Female-Judge-OK)

Because only three subjects came from racially or ethnically diverse neighborhoods, it is impossible to tell, from this study, the impact of childhood neighborhood diversity upon racial progressiveness. However, the only other respondent to grow up in a truly diverse neighborhood, interestingly also the only self-described "very conservative", consistently gave among the most racially progressive answers:

R: You know, I grew up in a segregated town, I grew up in Louisiana in the 50's and 60's and I think we're probably more segregated now than we were then.

I: Self segregation?

R: Self segregation and that's really sad. Ah, I mean I'm almost to the point of saying let me go back to bussing, cause that's the only way you're going to break that. A lot of our kids now, we're seeing more interracial friendships going on, both male to male, male to female, that whole thing. You see that more in the (withheld) community, because you may have some upper middle class African Americans or Hispanics who grew up in (withheld) schools and you'll see that mixing up. And the racial mix, there's probably about, probably about 18% African American you know that kind of thing. So, that community is probably doing OK, I think. Where we got problems, I think, is in the (withheld) high school where it's 99% black or down in the southwestern part of town, where it's 99% Hispanic. That's were we're not getting the integration and we're not getting the cultural intermingling of these people and if it comes, well, they're not part of my society because they're over there and they're a different color.(Urban-Male-DA-OK)

On the other hand, the only self-described “very liberal” often sounded more like the famous bigoted TV character, Archie Bunker. In one statement, he manages to endorse every black stereotype imaginable and follow it up with championing the civil rights movement, though in a rhetorically incoherent manner (Bonilla-Silva 2003), especially as the response is to question about the racial/ethnic makeup of his childhood neighborhood:

I: What was the racial and ethnic makeup of your neighborhood?

R: Well, I lived on a farm and so there was, but when I went to school, it wasn't until the 8th grade that there was integration, so I'm older, I'll be sixty-___ this summer, so we didn't have integration until I was in the 8th grade. And there was a school where black children went called, god, I can't think of it. It was called “black school”, and it was a wonderful school and we'd go down there and watch play basketball and I know that's almost an ethnic slur, it can be considered

that, but I don't intend it that way, cause there were great basketball players, you could go down and watch, ah, they had a good gymnasium down there and a nice school, but we had no concept. I grew up in a generation were separate but equal, and rights to run your restaurant anyway you want to and your bus and all, which was all bullshit, but you know, I grew up in an age when that was changing. So I went to law school when the 60's, when the civil rights legislation was passed and I can remember asking professor Merrill who actually counseled Robert Kennedy on doing the law, I can remember arguing with him you know, about private rights vs. they were using the interstate commerce clause to pass it and all that, but professor Merrill had gone through the period when we made a person go to law school and this was before my time, out at the capitol, the only black student had to go out into the library and that was his law school and I didn't know that history. So, but I saw it coming in, integration, Brown vs. the Board of Education came in, in '54, but I remember the integration coming in, in the 8th grade. I don't remember before then. Um... (Urban-Male-PD-OK)

Twenty-five of Twenty-six respondents currently live in predominantly white neighborhoods. None of those twenty-five had black or Hispanic neighbors either living nearby that they knew well. Professional class Asians appear to be the most numerous non-white neighbors. Again, discomfort in acknowledging the homogeneity of their neighborhood was common:

I: What is the racial and ethnic makeup of your current neighborhood?

R: I was thinking about it because I knew that was the next question. And as I think about it, I can think of only one African American family that lives directly down the street from us. The neighborhood, we have a neighborhood association, and we get together occasionally but, the neighbors are not real outgoing or friendly and it's not, we don't socialize. There is one neighbor that is a single guy that lives next door to us and we say hello to and things, but the other folks are kind of a wave and ... (Urban-Male-DA-OK)

The suggestion is that there may be other minorities beyond the black family down the street, but he just hasn't met them because the neighborhood doesn't socialize much. It is entirely possible that more minorities live in the development, however even if there are more non-whites, the likelihood that there are more than a token few is minimal as whites tend to move into all-white or nearly all-white neighborhoods (Massey 2001; Massey and Denton 1993) The next respondent is the same one who earlier substituted a rental home for her main childhood home. When asked about her current neighborhood, she applauds the unexpected diversity of having a couple with English and India roots. They are described as two of her favorite neighbors, though again this sounds like a "some of my best friends..." statement (Bonilla-Silva and Forman 2000) which may overstate the significance of the relationship. This is not uncommon when whites are interviewed about interracial relationships as individuals likely don't want to sound racially biased (Bonilla-Silva 2003):

I: What is the racial and ethnic makeup of your current neighborhood?

R: It's um, more diverse than I anticipated. Um, there are, very, very, two of my favorite neighbors um, she's from England and he's from India. And, I would say though, the majority is very, probably more of an ethnic diversity than I ever imagined how it was 20 years ago. And um,

I: Mostly professional?

R: Mostly professional, yes

(pause)

R: I do have one aspect that concerns me recently was that, I was doing some flowers for a benefit for something, and um, the woman I was working with was African American and her husband is in an

African American physician. And she was telling me that moving in the neighborhood was very difficult for them and that a realtor had actually advised that it's, she didn't want to live there, but...

I: Ah, it's amazing how many studies have shown that realtors exert a lot of control over who moves into a neighborhood.

R: But I was surprised to hear that because I hadn't seen it and didn't expect it...

Like many whites, she attempts to minimize the effect of race, instead presenting a color-blind front (Guinier and Torres 2002). For whites, the residential segregation they live with does not appear to negatively impact them. Four of the respondents actually mentioned that they had never questioned the racial makeup of their neighborhood until this interview. Others, like the judge quoted above, seemed to be surprised rather than outraged at the segregation they live in and the effect which it has upon minorities. High levels of white segregation have been linked to a strong sense of group belonging (whiteness) but also strengthens negative perceptions regarding non-whites (Bonilla-Silva 2003; Massey and Denton 1993).

Twenty of the twenty-six respondents were born in 1961 or before, giving most of those interviewed some frame of reference for the civil rights movement. Four others were born between 1970-1975 and two were born in the early 1980's. Of the twenty individuals interviewed, nineteen made some reference to wanting to see racial equality happen:

This concludes the questions. Is there anything on the juvenile court in general, race or gender that you would like to add?

R: No, only this stand point that I think we have come along way, but at least in the treatment of the offender that race does not play much of a role at all. Not a directive, it does not play a role and that's wonderful, it's wonderful for me in the twilight of my years to walk into a courtroom and see Black attorneys, Black judges, you know. I often think now when I'm in court how wonderful it is, if you're a young Black person you come up from a delinquent docket to see that hey, I can be a lawyer, or hey, it's not all White. I can not imagine what it would be like growing up in a world, I can imagine, because I lived in D.C. for a while, when I got out of law school and I'd go downtown, Washington DC on Saturday and all the buildings and offices were open and the population was very high Black and you can at least get an idea what it's like to be you know, different and how people look at you because you're different and that, we've eliminated a lot of that. So when a kid comes down there and they're charged with a crime, I feel like they don't feel like they're charged because they're black. You know it's because you got caught stealing a Tommy Hilfiger shirt or something like that, but not because they're Black. And there's still some racism, in the world, I mean you pick a jury, the jury selection, racism is still alive and well and it's like, I might want a Black person on my jury if my client is Black but I also know that sometimes that it's the wrong Black person to get, because he's a person, not because he's Black, but he may be part of society, he might be a Black republican and you know, you got to be careful about that too, so you can no longer just pick a juror on race so that comes....but it's still in the air, you still have to challenge the prosecutor and I understand, I use to be a prosecutor, anytime they eliminate somebody and they watch us to, on trying to do ah....(Suburban-Male-PD/PP-OK)

The two youngest spoke as if discrimination is more common for whites to experience than minorities. There is evidence that this is fairly common as especially those with no personal frame of reference for the civil rights movement tend to believe that we live in a truly color-blind world (Gallagher 2006):

I: Have you run across any direct or over discrimination at any point in this system? In other words is there a point, where a

Hispanic kid is going to be treated any differently than a white kid or black kid or?

R: yes, and I think it's almost reverse discrimination. I think, I'd say it's less racial than it is, um..

I: Unfair to white kids?

R: I think, the judge can tell, not just even for the appearance of being non biased. I think it's because you can tell when a kid is from the kids from the suburbs and he's messing up doing these crimes it's like, the judge, everyone, even me included, it's like he's had every opportunity, he has no excuse... (Urban-Male-DA-OK)

It is unclear if the older respondents really longed, at least in theory, for a racially progressive society, or if they were just more experienced at couching their responses in a color-blind fashion (Bonilla-Silva 2003), though not all of the older respondents hid their biases:

Some have suggested that a culture of violence (one which accepts and even embraces violence as an acceptable means for ones goals) exists in many barrio and ghetto neighborhoods. In your experience, does this seem to be the case?

R: You know I think, ah, ah, one of the things we're not doing ah, we basically destroyed any kind of role model, male role model any kid could conceivably had out there. I mean you either got, I mean who do we got, that a kids suppose to emulate. You know I'm growing up in Davy Crockett day. Now we can go into a whole tyrate about how he killed Indians and how all that kind of stuff, I didn't know all that. He's just a wholesome, and I didn't know he was killing, he was like double bad, he killed Indians and he killed Mexicans, geese, what an evil guy until I was growing up. But back then, I just wanted to... But we don't have, ah back then, Mickie Mantel, he's from Oklahoma. Mickie Mantel we got a Yankee game in the leak. Watched Mickie Mantel, what did he bring, now it turns out he was an alcoholic most of his life and he was going out with the bait and getting drunk and coming in and hitting home runs, you know. I didn't know that, he was like an all American guy, he was somebody you could emulate, he was

somebody, if it wasn't him, it was the persona that was given to him of being a good person, a person who was decent, um, you know, someone to emulate. You can go to John Wayne, you can go to all these kind of folks that were out there that we can now say, well they really taught some bad lessons, o-Kay, well kick that around. But a male role model in this country does not exist. Um, and I don't think kids are ever going to embrace a sensitive male, um, Allen Aldus and Donahue's, as their role models. We're really failing in, and when we start talking about single parent homes, where there's no father in there, that's when it becomes important. So, he sets the standard. Who sets the standard for what it is to be a male then for these kids who don't have fathers, they are non-school, they are rejected by any males that might have been in those school, if they ever had a chance to have a male in their future, who's being raised by grandma's or mom's who sees guys as ah, coming in and going out. You know changing all the time. Who never forms a close relationship, what are they gonna be, who are they emulating as males? Um, I think it's other kids. It's the kid that's 15, um, that's ah, probably the ah, going to impress the 13 year old.(Urban-Male-Judge-OK)

It appears that the cultural socialization of these younger juvenile court professionals is much different than that of the older respondents. They are more likely to have experienced the U.S. portrayed as a successful meritocracy, where people typically get what they deserve or earn. The twenty professionals over the age of forty-five were directly or indirectly shaped by, among other things, Hollywood films and television shows of the 1970's which often openly mocked racism and racists. While the themes of these films and shows would be supplanted by modern media images, they still have their place in the creation of white habitus.

Perhaps most influential in modern media representations of race, and likely the main media reference for the youngest respondents, are local and national news and

reality police shows, such as COPS, which first aired in 1989. News and shows such as COPS have bombarded us with images of blacks and poor whites committing street crimes (Rome 2006) resulting in equating the concept of crime with blackness in the mind of most Americans despite statistics which show just the opposite.

Given the distinct residential and social isolation, and the ethnocentric representation of society present throughout the lives of most of those interviewed, it should be no surprise that these juvenile court professionals may see the world through “white lenses”. White residential and social self-segregation is perhaps the best documented aspect of white habitus (Feagin 2006; Bonilla-Silva 2003; Massey and Denton 1993). The experience of living in what Feagin terms a “white bubble” (2006), where all-white neighborhoods lead to fear of dark-skinned “others” because residential segregation creates isolation not only in housing but also directly leads to segregated schools, churches, workplaces and recreational opportunities. Without everyday experiences with Blacks and Hispanics, the obvious reference points for most of the white professionals working in the juvenile justice system lay in their position of authority over juveniles charged with a crime, and their parents. Yet all of those interviewed volunteered insights into the different family and cultural values of minorities, which shall be covered in-depth in the next two chapters.

The next two chapters will address the respondents’ explanations and observations regarding DMC. Chapter V will focus on perceived cultural differences for

minority groups while chapter VI will deal specifically with perceived differences in family, as that was singled out most often as the root cause of DMC.

CHAPTER VI

IT'S A CULTURAL THING!

The essential tenets of the racial inequality creed may be stated briefly. The devotees of this creed regard it as self evident that all races are created unequal in innate capacity. There is in the realm of races a gradation of ability, a hierarchy of capacity. Races may be rated on an ability scale, some grading low, others high. This to the orthodox believer is an indisputable fact, an axiom of faith.
(W.O. Brown, 1931)

There were a number of explanations given for disproportionate minority contact (DMC), based on the experiences and perceptions of these juvenile court professionals, most of which would fit into the broad category of cultural differences. There were also a large number of responses which specifically named family structural/cultural difference. Perceived family differences will be treated separately in the next chapter.

Many of the respondents concurred with conventional wisdom, perhaps based upon biased media representation (Kline and Naccarato 2003; Lewis and Jhally 2001), which suggest minorities and the poor use drugs more than do middle class and above whites:

I: Pretending for a moment that you had the ability, funding and support to do so (think magic or miracle if need be), what one change would you make to minimize the need for the juvenile justice system.

R: Minimize the need for it. It just seems to me that the majority of the cases I get, it's either the kids on drugs or the parent's on drugs. If there was some way, we could beat that bear, maybe something else would stick and open it's head up, but it seems like, I got who's in trouble because mom's a crack whore. I got a kid in

trouble because dads out selling dope or he's on dope and gets no supervision. Of course, the kid looks and see who's got the big car, who's got the guns, who's got all the girls, and the girls see who's got all the money to buy them things, is the drug dealers in the particular neighborhoods. And that's not just the minorities, this in the white neighborhoods too, with meyth. Ah, meyth is used in those instances. If I had to look at a common denominator in the majority of my cases, is drugs. (Urban-Male-DA-OK)

Interestingly, according to the U.S. Department of Health and Human Services Centers for Disease Control and Prevention (CDC), if we look at "cocaine or street drug use" the numbers show a very different picture. For Non-Hispanic Whites the rate of cocaine or street drug use is 23.5%, compared to rates of 18.0% and 16.4% for Blacks and Hispanic respectively (National Center for Health Statistics 2007), which is interesting given the fact that sixty-six percent of inmates in prison convicted of drug offenses are black (Chambliss 1999). In fact, whether looking at the use of all illicit drugs, marijuana, illegal use of prescription drugs or even alcohol, whites abuse each of those at a rate comparable to or higher than Blacks, Hispanics or Native Americans (National Center for Health Statistics 2006).

The other often claimed position is that poverty increases drug use. Of course, given that poverty is not equally distributed among racial and ethnic groups, and given that the CDC has shown that whites, a group with more wealth and income than Blacks, Hispanic or Native Americans (U.S. Census), clearly poverty does not increase the rate of drug use. In fact, the CDC has also controlled for poverty in their data analysis, finding that poverty has no significant effect upon the use of drugs (National Center for Health Statistics 2007).

The war on drugs is portrayed by politicians and the media as necessary to save society from the evils of (street) drug abuse. This is, of course, illogical given that these drugs are more often being used by whites. Given that the war on drugs disproportionately punishes blacks despite the contention that the target is street drugs, which, in turn are used at a higher rate by whites, the most obvious conclusion is that the war on drugs is really a war on blacks and other minorities couched in the terms of an illegal drug epidemic (Beckett and Sasson 2004, Walker, Spohn and DeLone 2000, Mauer 1999, Chambliss 1999) and this war is fought on our television every day. Our white framing of society has placed us in the role of hero and blacks and other minorities in the role of villain.

Perhaps the greatest evidence of the bias inherent in the war on drugs, is that the war on drugs began *after* drug use in the U.S. had shown a significant decline (Sampson and Lauritsen 1997) and that politicians knew that the war on drugs would severely impact the black community, already disproportionately overrepresented in the justice system (Mauer 1999). By emphasizing control over crack cocaine used in poor black communities (Mauer 1999) politicians were able to create a moral panic over drug use and sales (Sampson and Lauritsen 1997). This line of thinking leads to some rational disconnects. If drugs are negatively impacting whites, why don't the demographics of justice system reflect it? If drugs are actually a black problem and the war on drugs is decimating the black community, isn't the cure much worse than the disease?

Many respondents noted cultural differences in drug use:

I: Is that an isolated group?

R: It's not, well the deprived cases we have to deal with the Indian child or father. For instance it's a federal act, so, that's something we always have to ask and a lot of the parents that we see come in, I would not have recognized as being. I could not look at them and say you're Native American, but they are card carrying members of a tribe. There is some cultural differences, you'll find some, there's a lot of alcohol problems there. It's usually what we see in that community. It's alcohol and marijuana. If it's African American it's crack-cocaine. If it's White it's Meyth. If it's Mexican it's marijuana. Unfortunate we're started to see Meyth a lot in Mexicans. (unintelligible). (Urban-Male-PD-OK).

The “thin blue line” portrays police as the final barrier between the public and chaos caused by criminals. The urban TX court observed in this study had significantly more violent crime cases appear before it than any other court observed in this study. However, the violent crime rate for this TX county was roughly the same as all but one of the counties used in this study¹². As Feld (1999) has noted, most juvenile courts develop a standard punishment for a given set of crimes. This was the case in the urban TX court. Most of the violent felony cases received one year probation and 20-40 hours of community service, plus any incidentals relevant to the case, such as drug screening or no contact with certain individuals. Most of the kids involved in violent felony crimes were determined to have “gang affiliations”. The few that were not suspected of being gang members, such as the 15 year old black male who brought brass knuckles with him to school, in order to defend himself from a gang member who had threatened him, were

¹² One rural OK county had a much lower recorded violent juvenile crime rate, however because of smaller populations, rural crime rates vary dramatically as one incident involving multiple juveniles can cause a spike in crime rates for that year.

treated with special kindness and encouragement. One urban public defender in Texas told me "...basically they all have some gang affiliation".

There was one significant exception to this pattern. In the urban TX court, two Hispanic male juveniles (16 and 17 years old) were given a certification hearing (to possibly waive them to adult criminal court). The agreed upon story was that two Hispanic male teenagers and one adult Hispanic male in his mid-twenties (never found or identified) attacked a white couple as they strolled in a white neighborhood park after dark. There were two undercover police officers in an unmarked car on the other side of the park, as part of an unrelated "sting" operation. The officers witnessed the couple being robbed and one was hit with a short metal pipe. They further claimed that one of the defendants yelled "shoot him, shoot him", though no gun was ever seen or found. They then gave chase, but lost the fleeing attackers. Acting on a hunch, they went to a house a few blocks away from the crime and searched the house, finding an aluminum baseball bat and a small knife in the bedroom of one of the suspects.

The supervising police officer, who was not at the crime scene, testified that the boys in custody were the perpetrators because they found the baseball bat used in the crime in one of the boys bedroom. The prosecutor, whose face could not be seen by the judge, in fact could only be seen by me as I sat alone in the jury box, mouthed the words "pipe, not baseball bat, pipe" to the officer, who then misstated that the pipe had been found in the bedroom. The prosecutor corrected him and asked if the bat could have been mistaken as a pipe, to which the officer agreed. The judge refused the waiver

request and the juvenile hearing was scheduled after my observation at that site was completed. However, a couple of interesting things came from this case. First, the crimes these boys were accused of, while very serious, were no more violent than many other crimes which came before the court. In fact, these kids had no criminal history, and one of them worked thirty hours per week at *Domino's* while attending high school (he has since turned 18). Both were average students who were expected to graduate from high school. Neither boy had any record of discipline problems at school. The only apparent difference in this case was that the victims were successful professional whites. The second interesting observation is how willing to manipulate the evidence both the prosecutor and police officer were. The officer was even mildly admonished by the judge at the end of his testimony. I'm not sure what to make of the third significant observation. After the judge's decision, the officer raised his voice and asked the judge to reconsider because these kids were "gang members and very dangerous". The two defendants' guilt or innocence is irrelevant to this research, however, the fact that the only difference between the violent crime they were accused of, and other cases, is that the victims, this time, were successful whites while the perpetrators were persons of color. At least in this instance, the police made every attempt to hold the thin blue line.

The most common cultural attribution was gang affiliation. While some believed that white gang membership is a problem, only one respondent offered an experience with a white gang member, and even this reference was white membership in traditionally black gangs:

R: Yeah, I think gang affiliation is an important thing, but believe it or not, even gangs have become more racially diverse. I've got clients that are white, that are in what traditionally would be Black gangs. Now, I haven't seen that in Hispanics.... (Urban-Male-DA-OK)

Interestingly, a judge in a neighboring suburban county had a completely different take on white gang membership:

I: Are they more likely to focus on the minority kids that gather than White kids that gather?

R: I don't think so because you have ah, the White kids that ah, if they're doing anti gang stuff, there are White kids in these gangs or wannabes, they're mostly wannabes, there are very few actual, they're basically guys that want to walk with their pants down and have their hat on backwards and having an excuse for being complete dweebs. But ah, (names community) is sort of on that _____ county front line where the (same city) PD, it doesn't matter to them ah, as far as I can tell, they will come and talk to you and they won't give you crap just for wearing baggy pants and being Black but they will know who you are. They are very good, and (names different city in same county) PD is pretty good at that, they keep a list just like everybody else. (Suburban-Female-Judge-OK)

More common were comments distinguishing different racial/ethnic gang characteristics such as this Oklahoma DA who experiences more problems with Hispanic gangs:

I: In the little bit kind of gang participation that you may have seen, do you see or have observed any racial or ethnic differences in gang participation? Does the Hispanic community have a tendency toward that?

R: Yes, it's primarily the Hispanic community that those affiliations arise from. (Rural-Female-DA-OK)

This judge was surprised to have interaction with Malaysian and Vietnamese gangs in her courtroom, finding the Malaysian gangs to be pretty violent:

I: Is the Malaysian community pretty good sized compared to...

R: The Vietnamese and Malaysian, I'm not good enough about those numbers to tell you who's who. I just know that because of the issues that arose in the slam, I learned a little more about the Malaysian gangs, than I had previously known.

I: Are they typically pretty separate from the Vietnamese gangs?

R: Seems to me they have a tendency to be a little more violent.
(Urban-Female-Judge-OK)

While the remark was not intended to point out a unique problem within the Malaysian or Vietnamese communities or that there is a major problem in this metropolitan area with gangs from these communities, it seems somewhat surprising that more information was offered about Vietnamese (total population of just over 8,000) and Malaysian (total population under 2,000) gang activity than white (350,000) gang affiliation. Repeated references to gang affiliation for minority groups, in many ways, appears to be an indirect way of pointing out how minority groups are "just different". The next respondent takes a more direct approach, as he clearly bemoans the loss of traditional American culture:

I: Some have suggested that a culture of violence, one which accepts and even embraces violence as an acceptable means for one's goals, exists in many barrio and ghetto neighborhoods. In your experience, does this seem to be the case?

R: You know I think, ah, ah, one of the things we're not doing ah, we basically destroyed any kind of role model, male role model any

kid could conceivably had out there. I mean you either got, I mean who do we got, that a kids suppose to emulate. You know I'm growing up in Davy Crockett day. Now we can go into a whole tirade about how he killed Indians and how all that kind of stuff, I didn't know all that. He's just a wholesome, and I didn't know he was killing, he was like double bad, he killed Indians and he killed Mexicans, geese, what an evil guy until I was growing up. But back then, I just wanted to... But we don't have, ah back then, Mickey Mantie, he's from Oklahoma. Mickey Mantle we got a Yankee game in the leak. Watched Mickey Mantle, what did he bring, now it turns out he was an alcoholic most of his life and he was going out with the bait and getting drunk and coming in and hitting home runs, you know. I didn't know that, he was like an all American guy, he was somebody you could emulate, he was somebody, if it wasn't him, it was the persona that was given to him of being a good person, a person who was decent, um, you know, someone to emulate. You can go to John Wayne, you can go to all these kind of folks that were out there that we can now say, well they really taught some bad lessons, OK, well kick that around. But a male role model in this country does not exist. Um, and I don't think kids are ever going to embrace a sensitive male, um, Allan Alda and Donahue's, as their role models. We're really failing in, and when we start talking about single parent homes, where there's no father in there, that's when it becomes important. So, he sets the standard. Who sets the standard for what it is to be a male then for these kids who don't have fathers, they are non-school, they are rejected by any males that might have been in those school, if they ever had a chance to have a male in their future, who's being raised by grandma's or mom's who sees guys as ah, coming in and going out. You know changing all the time. Who never forms a close relationship, what are they gonna be, who are they emulating as males? Um, I think it's other kids. It's the kid that's 15, um, that's ah, probably the ah, going to impress the 13 year old. (Urban-Male-Judge-OK)

Clearly frustrated, this male judge minimizes his childhood hero's killing of Mexicans and Native Americans, two of the largest minority groups in his county and then tears into the loss of the traditional patriarchal nuclear family. Perhaps better than any other respondent, this man expresses frustration at social challenges to the *status quo*,

which, of course holds him in a dominant position. The same gentleman earlier in the interview implied that minorities waste (equal) opportunities afforded them by the community, thereby blaming the minorities for their own failure. According to him, the quality of education offered is either equal to that of whites or if not, it is because minorities would squander the opportunity:

R: But let me talk about quality of education. It's not so much that the schools, the quality of education is ah, good any...what it is, ah, the general breakdown of our educational system. Our educational system lacks the ability to deal with the kids that come into it these days. Doesn't have the ability to discipline them. It's ah, doesn't have the ability to call up their parents because it would be to find them ah, doesn't have the ability to motivate a community, because it would be hard put to find a community. So, it's response to what's happening, necessarily ends up being expulsion, suspension, weeding out, the kids that make it impossible for the other kids to learn, is what they would think. We solve their problem to a degree but creates a larger problem for us, cause the kids are no longer in school and the kids are now in the street with the other kids that were the, had the same fate. So the educational failure of being able to keep kids in school in relates, it's a larger issue, and just well, we don't have quality teachers and we don't have ah, we don't have quality teachers or we don't have the right facilities. Much different, It's a much larger question than that. You can have the best building, with the best teachers, and the heart of ah, Oklahoma City, with a brand new building, with Harvard graduate teachers and you'd have the same results.

I: Now you mentioned part of that is because of lack of community?

R: Lack of community, lack of parent's.

I: Now are educational opportunities better for the wealthier kids?

R: The school, if you wanted to say, are the academics in the school better, they're probably the same. If you want to say, who people with more money are the suburban schools that they're kids

are going to, are they better schools in a since that they have community support, parental support, absolutely. The educational experience OK, is much superior and those places where you have middle income and upper middle income folks.

I: So the upper middle income folks are going to have more of a community for more integrated communities?

R: They're going to have more community involvement, all right. Now, I'm not going to say that the middle income, upper middle incomes have real community, but one of the few bastions of community left around is that which surrounds the school. Ah, in the education of our kids. Just like teen sports. (Urban-Male-Judge-OK)

As this judge sees it, minorities are not as involved in raising their children and we, white middle class America, are left the impossible task of trying to save these kids, to try to make something out of them. There is also a "fish or cut bait" message implicit in this dialogue as he would prefer to focus valuable resources on those who appreciate them and make use of them. There is an implicit view that if we are going to help "others" they should show their appreciation. Blumer (2007) spoke of prejudice being based upon group position. In line with neoconservative thinking, this judge suggests that only those worthy of help deserve help.

For all of the perceived cultural differences of minorities, the only universal concern was cultural family norms, though the specific concerns were not always identical. Family issue, ranging from families conditioned to not care to younger generation minorities' rejection of positive family norms are addressed in the next chapter.

CHAPTER VII

THE PROBLEM IS IN THE FAMILY!

The ways in which families are formed, function and evolve vary greatly from country to country, as do perceptions of the family's role in society. But in any culture, the family provides the natural framework in which individuals -- especially children - receive the emotional, financial and material support indispensable to their development. It is within the family that children learn the values that will guide them for the rest of their lives. It is within the family that they form their earliest relationships, learn to communicate with others and interact with the world around them. It is within the family that the notion of human rights becomes a reality lived on a daily basis. If tolerance, respect and equity permeate family life, they will translate into values that shape societies, nations and the world.

(Kofi Annan)

The most common explanation for DMC in juvenile court was that it was grounded somehow in cultural family differences. For many of the respondents, family failures, often stemming from misguided cultural values, led directly or indirectly to the child appearing in juvenile court. There was often a feeling of frustration conveyed at not being able to actually address the root causes of many troubled juvenile's behavior, the family:

I: Pretending for a moment that you had the ability, funding and support to do so (think magic or miracle if need be), what one change would you make to minimize the need for the juvenile justice system.

R: Ah, It seems like a lot of these cases come up. Ah, miracle of not having crappy parents.

I: A lot of the issue seems to be rooted in family structure issue?

R: Yeah. Which is probably a way of saying crappy parents. Just people having, I mean, I have to get analytical about it, I guess, birth control, more responsible, you make that more available to people. Irresponsible people having children, people that don't want to have children having children, yeah. I believe a mother in my court room, 25 or 26 has nine kids, I mean stuff like that. Not only kids having kids, but just, I mean, we see deprived cases, too, which is, DHS (Department of Human Services) gets involved and they're taking away kids, because you know. That's the other half of what our courtroom does, well, every courtroom does here, is the deprived cases. I just think, that, yeah, a lot of it is just having bad parent's and parent's that ran out and don't take responsibility. In a lot of ways, a crappy parent and not having a hold on your kid.
(Urban-Male-DA-OK)

This respondent, the youngest to be interviewed, clearly sees a breakdown in family values, rooted in poor individual choices. This portion of his response could be interpreted as fairly racially neutral however he follows up with a more direct reference to black families.

I: Are you referring to more traditional family roles?

R: A more traditional family structure I guess.

I: A lot of the problem, a large part of it is due to breakdown of family structure?

R: Apparently. I just noticed it seems like, some of the stuff, with these kind of more ethnic families, African American families, poor families, they are little more less kind of less fair about their kid so,... (Urban-Male-DA-OK)

In the next chapter, passages showing this DA using “wealthy” as code for “white” and “poor” as code for “minority”, especially blacks, as he does in the above quotation will be examined in more detail. At this point, however, his responses make it clear that the concepts of “family breakdown” and “minority” are closely linked. Many of these family deficiencies were tied to minority group norms.

Most respondents had unfavorable views of at least one racial or ethnic group’s family norms. Eight respondents specifically brought up issues with Native American families, which appear to be the least understood group for the juvenile court professionals, perhaps due to multiple tribes living in most counties and jurisdictional limitations with juveniles living on tribal land but committing crimes in county jurisdiction:

I: Some have suggested that a culture of violence, one which accepts and even embraces violence as an acceptable means for one’s goals exists in many barrio and ghetto neighborhoods. In your experience, does this seem to be the case?

R: I would say, uh, yes, in a sense that I have seen families who um, the parent’s are incarcerated often times for violent crimes, and then I see more violence among their children and then so, domestic abuse I think makes a tremendous difference. Domestic abuse in the home and I think children learn to settle differences with physical violence. So I wouldn’t say that it’s a, uh, cultural imperative um, in the sense that um, it’s a tribal influence to settle things with violence, I wouldn’t say that by any means, so I think it would be just uh, but I do see it perpetuated from generation to generation as no respect for the law and no concern about the consequences and instead of dealing with something in a legally and appropriate way, to just take matters into their own hands and go after, I’ve seen that regardless of a minority.

I: Finally, what role have you seen difficult family issues play?

R: Well for what ever reason, I think there are at least I see it in my court, I see, let's say if we look at the number of White families that are single parent homes vs. the number of Native American families that are single parent homes. Let's just say the ones in my court, of all the juvenile delinquents that I have in my court, not talking about people who have not yet come to my court, but for those kids who have been in the system and in my court, I would say that the number of single parent homes among minorities is higher than it is among Whites.

I: Would that also be a reflection of poverty then?

R: No doubt related in large to poverty, as to whether there are cultural differences um, I think that's possibly more likely Native Americans than it is in Blacks from my understanding. But again, I'm not an Ethnologist or Sociologist but uh, I do understand that, I get the impression that among Native American communities or homes, the more traditional they are, the more common it is for a child to be in the responsibility of the entire clan if not tribe. (Rural-Male-Judge-OK)

This judge is careful not to accuse Native American tribal culture directly of being overtly violent, though he still sees certain patterns among Native American families. It is not clear which racial/ethnic group he is referring to at the beginning of this passage as he speaks of a culture of vigilante violence which holds the law in disregard. It may be the Native Americans he mentions, yet he follows it up with by stating that this vigilante culture is passed down from generation to generation in all racial/ethnic groups. He does seem to see more problems in the Native American family than in any other group. A higher rate of single parent households and group (tribal/extended family) participation in raising the children concerns him. It is interesting to note that his statement appears to apply equally to the wide range of culturally distinct, individual tribes. The following comments from another juvenile

court professional further illustrate the limited understanding of Native American family structure:

I: Do you deal much with Native American juveniles?

R: I have.

I: Any cultural issues there?

R: Yeah, there are. What I've seen with the ones I have in juvenile court is that the natural parent's aren't involved.

I: A tribe then?

R: I really haven't even seen the tribes be involved. The majority of the Native American kids I've had, have been in a legal guardianship of an Aunt or most usually been an Aunt, it's hard to deal with that situation. (Suburban-Female-Judge-OK)

While it is not clear in the transcription, this judge emphasized the word “aunt” , using a palms-up gesture and a facial expression showing uncertainty, signifying that she was not sure weather “aunt” meant blood relative or some other level of tribal/community role. Again, concerns for unclearly defined extended families raising the children are brought up. The concern for each of these judges may simply be that not understanding clearly which adult has responsibility for raising the child makes their job more difficult or they may be uncomfortable with a family structure that is unassimilated. At any rate, there is a tendency in many tribes to use other family or non-family members as co-parents, even extending the terms “mother” or “father” to individuals in those roles (Cole 2007).

This same respondent was comfortable enough to discuss cultural differences for each of the local minority communities, many of which follow conventional stereotypes. Asians are seen as hardworking, traditional, yet somehow cold and out-of-touch with their children. Though there is a tendency to group statistically more successful East Asians (Japanese, Chinese) with Southeast Asians (Vietnamese), the latter group has experienced much less success in the U.S. than their East Asian counterparts (Cole 2007):

Have you witnessed any other cultural problems, other than language that your office has run into?

R: Well, you know, like with the Vietnamese, I don't know enough about their culture to understand what's going on. You know they don't have that same value system, how,... I don't know how to say it, how we supervise our kids. It's almost like when I observe, the parent's are very hard working people and they somehow just expect their kids to be responsible they don't you know, they don't understand why he's doing what he's doing. They're never home because they're busy working all the time. And it's hard to talk with them about parenting issues. (Suburban-Female-Judge-OK)

According to this respondent, Asian people embrace the puritan work ethic yet manage to embrace it to excess, then are too proud to accept help from outsiders. In essence, Asians are too wrapped up in their careers to successfully manage children, naively leaving their children without supervision. The high expectations placed upon the Asian community (both externally and internally) can be the cause of significant family and individual stress (Wu 2002). There are other pressures for the typical Vietnamese-American family as they are more likely to experience more severe poverty and lower

levels of education than whites or East Asians, have earlier marriages for young women, more single parents and a greater influence by youth gangs (Cole 2007). Much like the issues faced by black families in America, the Vietnamese family struggles under the weight of social forces for which it has little control. That being said, it is unclear how this judges description is unique to Asians as these are the very same issues being faced the white middle class. The lengthening workday, both parents from intact families working, more single-parent families, businesses without family-friendly employment policies and the shrinking relative wage are all issues common for all Americans which result in children having to be more self-sufficient and parents having less time to directly supervise their teens and preteens (Milke and Peltola 1999).

The next respondent referenced similar Asian stereotypes, though she seemed to look upon the parents more compassionately, though her comments seem somewhat insincere:

I: Have you witnessed any other cultural problems, other than language that your office has run into?

R: Yes. Um, one of the, um, Asian families that I worked with was wonderful, even though we didn't communicate well, the parent's didn't speak any English or very little. The respect for family is typical of that. Communication of that, was very much there. And dealing with um, possibly particularly a female person telling them what they were going to do, in the beginning I think it was a little difficult by the time we were through, they were very, very, pleased. And they had respect to come back and realized that it was something that we had accomplished.

I: So for cultural reasons, you always had to earn their respect?

R: I did. I really did. Um with my run of the Asian families I have. The immediate response by the father through a lawyer who speaks English was that he believed he would be discriminated against because of where he was from. He believed his daughter would be discriminated because of where she was from. And that wasn't the case. His daughter was in a lot of trouble. (Urban-Female-Judge-OK)

There is almost a passive-aggressive context as she compliments the family while pointing out their shortcomings in a somewhat condescending manner. The one wonderful family is a) unable to communicate with her effectively, b) forces her to prove herself to them, c) are sexist and d) suspicious of both the judge's and the systems motives. Finally, e) things ended up poorly for the family as the daughter was in a lot of trouble. It is unclear what part of the interaction with the judge left the family "pleased" though the judge seems genuinely pleased that she was able to earn the families respect.

Much like Asian families, Hispanic families were given high praise for family values, especially as it was rooted in Catholicism. No religious references were made regarding Asian families though. Much like Asian families, Hispanic delinquents were admonished for their failure to follow traditional Hispanic family values:

I: And the Hispanic community either?

R: No. I would say that out of the Indian, Hispanic, and Blacks, probably the Hispanics would traditionally have the mother and father both in court. With the Blacks it's mostly mom in the majority of the cases.

I: Any idea why the difference between the two?

R: I hate to speculate, but I think the Hispanic families are just much more intact, you know. They seem to be old country and they all seem to be in someway connected with the Catholic Church, the

kids aren't. But the parent's still have, when I talk to the parent's they blame the neighborhood, they run around with so and so, doesn't listen to me. They seem to have a more sense of family.

I: Does that seem to maybe keep down the number of Hispanics who come here?

R: I don't know that it does...

I: The reason I ask is because I know family becomes so significant and I'm trying to find from your experience, the, whether Hispanics are represented at the same level of Blacks. Is that because they have other hurdles or families compensating partially for that, because it sounds like, you have a stronger set of traditional family values, more intact which are pluses, but there may be other minuses some where.

R: You know, I wondered about that too, in watching some of these kids. It's kind of like they reject the parent's values. They want to run around with, we have a lot of Hispanic gangs that they just get into, want to have an image of being, where they're rebellious.

(Suburban-Female-Judge-OK)

Judges often chastised parents or guardians for a "lack of traditional family values" leading to their child's current legal problem. Admittedly, most juvenile court systems have a limited arsenal for dealing with delinquent and criminal youth. Perhaps because intact families are likely to have more resources to assist in raising children (Oliver and Shapiro 1997), the judge in the above passage seems genuinely disheartened that traditional family values are not a better solution for the juvenile justice system. Her solution is to shift the blame to individual choice on the part of the juveniles.. The problem with this line of reasoning is twofold. First, if the ethnic and racial groups exhibiting both high (Hispanics and Asians) and low levels (Blacks and Native Americans) of adherence to traditional family values are all experiencing

disproportionately high rates of contact with the juvenile justice then perhaps she is looking at the wrong variable. Second, the ideal of assimilated white middle class family values can be maintained while DMC can be attributed to rebelliousness in teens. Unfortunately, rebelliousness in teens is not limited to minorities who reject traditional values but includes kids of all racial/ethnic and socioeconomic backgrounds (Mednick 1996).

Not all of the respondents were guarded in their response to Hispanic family values. The next respondent is less than positive in his view of Hispanic cultural norms. He clearly views the cultural family norms of Hispanics as out-of-control and even sexually predatory:

I: Dealing with either the Hispanic community or perhaps more directly with some of the tribal communities, do you run into any other cultural barriers when you're dealing with these...

R: What I found and what's interesting to me, you find that the problem in the deprived cases as well, but in the juvenile cases, the Hispanic is such, that when that male reaches about 14, mom can't tell him what to do anymore and it's almost a cultural thing where mom understands that, I can't tell him what to do anymore, so mom is almost like, she's working for him. Ah, cause it's obvious, the interaction that you have with the two in court, you know, mom is kind of standing over there meekly and the kid is answering all the questions and he's telling mom what to say and what to do. And I see that frequently in the Hispanic community.

I: So he's essentially reached adulthood?

R: And what we see, and one of the real problems I think we have from the deprived side, if I can diverse on that a little bit, is the 14 year old girls. When they reach 14, I guess in Mexico, 14 year old girls can get married and they can have kids. Well we'll have a 14 year old who is pregnant. She's got an 18 year old boyfriend, who

has a job, he's working and he's paying her parent's. The parent's, you know, the whole family is being taken care of by this 18 year old kid who's a roofer or something, working real hard, but now a 14 year old with a baby and they're not married and they have no intention of getting married. Ah, he just comes over and sleeps while he's down here. And we're seeing that cultural environment is such that even if we wanted to charge statutory rape, we're not going to get any cooperation, and the parent's are happy because they're getting paid, it's a cultural thing, but I would like to charge more statutory rape on them, because I think we need to try and put a stop to that. (Urban-Male-DA-OK)

The most severe judgments, however, were typically reserved for black families.

Many of the respondents held black family structure in contempt:

I: Finally, what role have you seen difficult family issues play? Single parent families, death in the family, extended families, uh, have family issues played a role in perhaps DMC?

R: I think they have more grandparents taking care of kids in black families than I do in others, but does it play a role into it, um, more of them being involved, I don't think so. I think one of the worst things that music's done or the televisions done along time and romanticized baby's daddy or baby's momma, as opposed to, get married and have a family. Um, because I had young man who was black and I think that coming from, and that is a black issues, because primarily in that area. Um, that he was proud of the age of 17 and bragged about the fact that he had 3 children.

I: Perhaps things like media aimed at young, especially young minorities...

R: I think they are. The first time I started seeing that it really was concerning to me, because my response to that is I'm learning enough to pay child support. So they understand, it's not just a matter of being cool and saying you have babies out there, it's a matter of responsibilities....

I: So, it's some sort of cohesive family structure?

R: I think so. And I think one of the issues, substance abuse, that I see um, is the same thing as with the property issues, I think they're on drugs and someone has to raise my children. And someone in the family steps in and does that and they're not helping them any and they're still keeping the kids in the system. (Urban-Male-Judge-OK)

The black community faces higher rates of justice system supervision resulting in a significant portion of the male black community spending time incarcerated (Mauer 1999), lower rates of employment and discrimination in the job market, lower levels of education (Marable 2000), discrimination in housing (Massey and Denton 1993), earlier marriages and higher rates of divorce and single parent families (Cole 2007) and a host of other issues not typically faced by most whites. Few would argue against the desirability of an intact family for child development, however to hold the individual fully responsible for the families failure to live up to traditional white family values ignores the daily realities of living without white privilege.

The next chapter will examine the reoccurring theme from the interviews that race is really just a proxy for class, thereby explaining minority overrepresentation as an accident of transitional socioeconomic forces.

CHAPTER VIII

IT'S POVERTY NOT RACE!

In this chapter I will address two questions concerning poverty. First, is the juvenile court system structured in such a way as to institutionally treat the “haves and have-not’s” in completely different manners? Second, are respondents using income as rhetorical code for minority, substituting a palatable hierarchy for a publicly unacceptable one, race? Because of significant structural differences between urban, suburban and rural juvenile courts (Feld 1999), each type of juvenile court jurisdiction will be analyzed separately in order to address the first question.

The Texas urban court used in this study automatically approved a public defender for all juveniles appearing before them. The Oklahoma urban courts had a similar policy. As a judge from the Texas urban court explained to me, this was done because “pretty much everyone appearing here qualifies”. This is the court discussed earlier in Chapters I and IV, which had no observable white defendants. The few private attorneys observed seemed overwhelmed and received a significant amount of coaching from the public defenders. One wore an ill fitting, light blue, polyester suit which may or may not have indicated financial success, but was clearly underdressed for the courtroom. Both public defenders and private attorneys who contracted as public defenders in OK agreed that the specialization required for juvenile court made most private practice attorney less effective. This urban PD explains the working relationship between his office and the DA’s:

I: For ah, legal counsel, ah, do many juveniles get private counsel or do they almost all get...

R: It's pretty small in private counsel because they're fairly expensive and quite honestly, I don't think there's that many private attorneys that do juvenile offenses. Now the deprived cases, there are some attorneys that do that. We have four excellent public defenders over here. Ah, Kirk (last name withheld), a fellow that's in court with me, ah, has done numerous, ah, defended numerous, he was downtown for a number of years, defending numerous murder, murder one trials and first chaired murder one trials, and he's a good guy. One of the things I like about out here, is our relationship with the public defenders office is very different from downtown. In that, Kirk will come over and say, you know, Pat you know, I need this kid to get this, will you do this for this kid and he and I will agree that you know, we need to get this kid in to doing this. Most of the kids come in here, they did what they were said. I will tell you that, I've been here about 10 months, twice Kirk has come in and said, Pat you need to come talk to this kid. I don't think he did it and we'll go in and sit down and we'll talk to the kid. On one of them, I came out and said I agree with you Kirk, I don't think he did it and I dismissed the case. And the other one I said, I'm not as comfortable as you are that he didn't do it, so let's just research it a little more and I think eventually we're going to dismiss because I'm still not convinced he didn't do but I'm not convinced that he did it either. But that's kind of the relationship we have. If Kirk were to walk in here and say, you know Pat I think this kids innocent. I would take that very, very, seriously. Now, we go to trial, and there are things were the client will say, nope I didn't do it. And Kirk will go, OK, I'll try again take the deal, he says he didn't do it, let's go to trial and will go to trial. So, it's not like a blanket, we're going to plead everything. If the client doesn't want to, Kirk doesn't have no problem going to trial, if the client, and that's in all forms, if the client, you know if he says something about guilty and not guilty, then we'll let the judge or the jury decide. (Urban-Male-PD-OK)

The informal collegial working arraignment along with the structured sentencing in most urban courts (Feld 1999) leave private attorneys at a disadvantage. Of course there is a whole section of juveniles missing from this part of the picture. Juveniles from

white middle class and wealthy families rarely appear in juvenile court, which begs the question, “what happens to the kids with resources that get into trouble”? Most of the respondents sidestepped the question by pointing out, correctly, that it didn’t really apply to them as only the District Attorney had the power to accept alternative treatments/programs in lieu of court proceedings. While interviewing legislators, Marcello (1985) experienced a similar problem. He found that only by developing long term relationships with politicians could he get more than minimal responses for potentially sensitive questions and even this was no guarantee of success as some responses always sounded like press announcements. Only one member of an urban DA’s office offered any insight:

I: Would that be a structured family or wealthier family?

R: wealthier, like a family that’s together and wealthy, just more families that are more together, I feel like they do a better job, keeping it from needing possibly police or court intervention and they kind of know what to do also because they are more savvy about it. (Urban-Male-DA-OK)

While this research shed little light on what happens to middle class and upper class white kids, it is clear that both the Texas and Oklahoma juvenile courts treat poor (based upon the high percentage of court appointed attorneys in juvenile court), minority juveniles differently than they do other children. One of the urban Oklahoma judges was kind enough to get me a printout entitled “Ethnicities of Juveniles Referred to Probation Through 3 Quarters of FY06” which listed both the number of juveniles and percent of each of the major racial/ethnic groups for the first three-quarters of 2006 who were referred to any type of probation, by far the most common sentence ordered. The county

population for the same year (using US Census Bureau Data) for whites is 74.3% while the white juveniles given probation were 37% of the total. This is almost exactly half of what should be expected. The black population, on the other hand, constitutes 15.4% of the county population and 45% of those given probation. Hispanics (11.2% and 15% respectively) were represented close to proportionally while Native Americans (3.6% and 2%) and Asians (3.2% and 1%) were underrepresented. It is unclear from these numbers alone, whether the significant black overrepresentation is class based, racial or a combination of the two. It should also be kept in mind that, even when income is controlled for between whites and blacks, black wealth is much lower (Oliver and Shapiro 1997). In either case, the system exhibits enormous racial discrepancies.

A suburban defense attorney in a neighboring county added a little more information. Describing the typical crimes committed by juvenile, he offers some interesting revelations:

R: ...I think people will be surprised at how many burglaries they (juveniles) do. I think people will be surprised that most of the serious violence is probably not done by kids, although some of it. They get the impression that they're gang members and they're all walking around. The trouble is, the kids that do the burglaries are the kids that look normal in your neighborhood, I mean they might wear their pants down off their hips and they might have some sunny jewelry in there, but when I was 17, I had a swaggering attitude too, I mean, but I didn't steal from people. I think they're expecting them to be television gang bangers, expecting them to wear colors and you know, be this and be young Black kids that are menacing or Hispanic kids. Heck the only burglars I know are little blond head, blue eyed guys, that say hey, hi, how are you doing and then steal you blind when you turn your back. That's how I think they (the public) both over and underestimate. (Suburban-Male-PP/PD-OK)

He makes it clear that, at least in the numerous jurisdictions he works (contracted by the state for different counties and private practice) that the stereotype of violent juvenile gang members is overblown. Most of the crime committed by juveniles is from mainstream white kids. Walker, Spohn and DeLone (2000) using U.S. Department of Justice data for the year 2004, found that 69% of the minors arrested for indexed crimes (those recorded nationally by the FBI for comparison purposes) were white. Notably, white juveniles were arrested at higher rates for both violent and serious property crime. The attorney later explains that these kids' parents can afford to hire good private attorneys and get into some private facility instead of facing juvenile court. Because suburban counties surrounding metropolitan areas are typically very white (Massey 2001), this lawyer's experiences may not be valid in urban counties (though he does have significant experience working in the urban OK county used in this study), however he offers a plausible explanation for the "missing white kids". The total percent of minority cases was less for the suburban counties than for the urban counties, this may be largely attributed to the significantly smaller minority population in the suburban counties (84% and 86.6% white for the two suburban counties used in this study), however similar levels of DMC seems likely given the responses of the suburban professionals.¹³

Because there appears to be a two-tiered system for middle class white juveniles and poor, minority juveniles, a strong case could be made for institutional racism in both

¹³ Unlike the Urban courts, racial/ethnic demographics were not made available for suburban courts.

urban and suburban courts as minorities are overrepresented even though most respondents referred to it as class segregation.

Contrary to Feld's (1999) observation, no disparate treatment was detected in rural juvenile courts. Of course this contradictory finding may be explained by two things: First, the small sample of courts may not be representative of most juvenile courts. I may have observed and interviewed relatively progressive rural court professionals. Second because of comparatively small population, there are very few juvenile court cases in most rural courts. Of the juvenile court cases observed only three involved minority youths, two of whom were brothers and all of whom were involved in an act of vandalism with other boys who were white. In other words, no rural cases involving only minority juveniles were available for observation. One rural court in Texas was even kind enough to contact me when a case came up so I would have an opportunity to observe.

The second question, "are respondents using income level as code for class", has significant implications by itself. If class is being used to describe an effect that is racial in nature, then the significance of race in society becomes minimized. There is no doubt that minorities, especially blacks, have lower incomes, higher rates of poverty and less wealth when controlling for income than do whites (Oliver and Shapiro 1997). America is often portrayed as a nation which prides itself as a colorblind meritocracy where capitalism rewards those who have the right talents and work ethic resulting in a high level of individual control over one's standard of living, place of residence and educational level, though this is less true for blacks than whites (Oliver and Shapiro

1997). Echoing the old idea of Social Darwinism, if an individual has a level of control over their own quality of life, then it is their responsibility to find success and their fault if they do not. The following respondent seems to place at least some of the blame for poverty upon those suffering from it. If the families had more “structure” then the kids would commit fewer crimes:

I: This concludes the questions. Is there anything on the juvenile court in general, race or gender that you would like to add?

R: From where I stand, it’s just more of a socioeconomic deal than it is a race deal. It just seems like, poorer families have worse structure, it’s just not a healthy situation for the kid, it leads to those kids committing more crimes.

I: So, perhaps left over from an era of more racial discrimination where you have minorities left behind

R: You can say that. I don’t know how they got there, but however, these poor families ended up poor. It’s causing their kids, in more of a possession of being juvenile delinquents.

I: Do you see that as much in poor white families as you do in poor minority families.

R: Um hum.

I: I mean, you talked about a pattern.

R: Yeah, I mean it’s almost guaranteed that they are going to be messed up in the end. (Suburban-Male-PD/PP-OK)

Exemplified by the outrage over racially biased remarks made by Mel Gibson, Michael Richards and Don Imus, it is largely unacceptable (though not entirely so, given the vocal support, especially for Imus) to make public statements which derogate another group based on race. After all, race and ethnicity are essentially imposed upon an

individual, with little option for change at the individual level. Blaming minorities for their lot in life offers little explanation for higher rates of minority crime without focusing on the systemic prejudice which negatively impacts their daily lives (Walker, Spohn and DeLone 2000). Economic status, however, is largely seen as changeable (D'Souza 1995). Do individuals use "class" as code for "race" because chastising and individual for failure to achieve economic success is socially acceptable? In the last chapter I briefly addressed the next respondent's use of "class" as a proxy for "race":

I: Are you referring to more traditional family roles?

R: A more traditional family structure I guess.

I: A lot of the problem, a large part of it is due to breakdown of family structure?

R: Apparently. I just noticed it seems like, some of the stuff, with these kind of more ethnic families, African American families, poor families, they are little more less kind of less fair about their kid so,...

I: So cultural differences in family structure?

R: It just seems like the, more wealthy families are more active families and their kids lives are more likely to keep, steer their situation away form necessitation of police intervention.

I: Are the middle class and wealthier kids getting in as much trouble, not with the police, but are they doing as much deviance and stuff and it just doesn't go through the system?

R: I don't know, I mean, some of these situation all seem clear, you know...It was kind of a situation like that where the court never got involved. I think it might have been by the virtue of me being in a nicer area, these kids are in crappy areas, there's plenty more of police activity there anyway, you know, I mean there's more of a police presence I mean, so, I mean, some kids walking around

drunk, in the crappy part of South side are more likely to get picked up for public intox or something like that, than two kids drinking at the park in (withheld).

I: You mentioned family issues a couple of times. You mentioned children having children. We talked about role model issues and parenting, poverty within families, any other issues that you see like, single parent families, where you see patterns.

R: Yeah, the reason, the kid's family structures have depleted so they have less accountability to their parents, so I think that's the first place accountability needs to be if you're a kid growing up. I mean how are you going to, if you parent's never really made it through anything, didn't really care what you did, then you're not going to...

I: Is that typical for a single parent family or...

R: Yeah, it's got to be harder for a single parent, single mother. You know what I mean... (Urban-Male-DA-OK)

He briefly but clearly equates race and poverty and then notes a number of issues often equated stereotypically with black and Hispanic families, such as single parents, lack of parental supervision and poor role models. After discussing the relatively equal problems associated with growing up in a black or Hispanic neighborhood in this urban area and the respondent stating that poverty was the primary cause of DMC, the following exchange took place:

I: So the accompanying socioeconomic conditions such as poverty, substance abuse, few job opportunities and high crime rates? To sum up what you're saying, are you ah, saying that seems to be the most significant issues?

R: yeah, that's 90% of it. I'll get the rich kid that's an alcoholic or a drug addict.

I: Ah, to your knowledge are the Latino neighborhoods as poor as the Black neighborhoods are in this area? And the reason I ask is, poverty makes a lot of sense, but if we're not seeing the percentage of overrepresentation of Hispanics then perhaps there's something else going on. Um, so my question is, do we seem to see relatively proportional amounts of poverty, relatively equal levels of poverty, poverty between Black and Latino neighborhoods, yet still overrepresentation of Blacks...

R: I say there's probably two things. I think probably poverty maybe isn't quite as bad, not quite as bad, it's still something you and I will not be comfortable with, but I think there's more of a family unit... (Urban-Male-PD-OK)

The racial hierarchy followed in this discussion seems to be, from top to bottom, white, Hispanic and then black which would be in line with research in the area of new or colorblind racism (Bonilla-Silva and Embrick 2006; Mills 1997; Arce *et al* 1987). Poverty is given as an explanation for black overrepresentation but when asked why Hispanics are not overrepresented, poverty is discarded in favor of cultural family differences. All the while, it seems that we are really speaking about blacks, just trying to find a different way to phrase it.

The final chapter will summarize my findings and examine policy recommendations which may alleviate DMC.

CHAPTER IX

CONCLUSION

This research was designed to examine the causes of disproportionate minority contact within the juvenile court system. Three specific potential causes for DMC were examined. First, to examine if subtle, rather than overt racism, on the part of juvenile court personnel is the main causal mechanism explaining both minority overrepresentation in the juvenile court system as well as sentencing disparities, urban, suburban and rural juvenile courts were observed and judges and lawyers working in those courts were interviewed. As a corollary of this hypothesis, the motivations and attitudes of court personnel were examined using content analysis. Second, the effect of public opinion, in the form of political pressure was examined through the use of interview responses, as a potential cause of minority overrepresentation. Institutional racism was examined as potential cause of DMC. Finally, a comparison of the results of urban, suburban and rural juvenile courts was made as the processes and structures vary dramatically (Feld 1999).

Significant support was found for color blind racism through both the interviews with juvenile court personnel and observations of juvenile court proceedings. Not only were urban and to a lesser degree, suburban juvenile courts disproportionately a place for children of color, but the individuals in a position of authority, judges and lawyers, were very rarely minorities. These juvenile court professionals also live lives steeped in

white habitus, giving them little frame of reference and few opportunities to empathize with the everyday obstacles faced by minorities.

The four frames of color blind racism, as described by Bonilla-Silva (2003; 2001), *abstract liberalism, naturalization, cultural racism* and *minimization of racism* were all present throughout the interviews and observations. Abstract liberalism, the use of meritocracy arguments based on assumed equality of opportunity and denial of current discrimination, was present in the “savior” role so many juvenile court professionals placed themselves. Their role is to “fix” the family that makes poor individual choices without acknowledging the social forces which have limited those choices in the first place. Naturalization, an explanation for racism based upon the unchallenged idea, “that’s the way it is”, was present in the respondents often unquestioning acceptance of the racially homogenous neighborhoods they lived in and of the blatant racial segregation in their workplace. The third frame, cultural racism was most evident in perceived cultural and family differences of minorities described in the interviews. Finally, minimization of racism was present as “class” or “poverty” was used as a socially acceptable method of referring to “race”.

The overall impression from the interviews, observations and analysis is one of unspoken, choreographed actions and beliefs, most of which if taken individually would have little significance, combined to maintain the *status quo*, evidenced by the overwhelming overrepresentation of blacks in the system, while paying little more than lip-service to acknowledging the racism so clearly present though the use of color blind

rationalizations (Mills 1997). All of the individuals interviewed were very likable. I had the impression that most of them would abhor any overtly racist action. The racism present was subtle but understood by all. So systemic is the racial bias that many of the respondents included rhetorical moves which suggested that I understood their racialized assumptions, such as the race/class switching in the last chapter when the individual describes the problems faced by (black) single parent families. “Yeah, it’s got to be harder for a single parent, single mother. You know what I mean... “. Most importantly, there was no question what he meant. So powerful is the racialized system, I knew immediately that he was referring to the stereotype of the poor single black mother. Wellman (1993), also using interviews, found racism to be culturally acceptable beliefs that defend the advantages enjoyed by whites.

When Stokely Carmichael described institutional racism as the collective tendency of institutions to treat minorities in an unequal manner, he couldn’t have found a better example than the juvenile justice system in urban and suburban counties included in this study. Future research is needed to trace the treatment of middle class wealthy white juvenile delinquents, as juvenile court is clearly not the place to examine the process for this group. However, I found no support for sentencing disparities based on race. As Feld (1999) had found, within a court, sentencing was very consistent. Whites and minorities were given the same sentence for similar levels of crime, almost always consisting of similar terms of probation and community service. I also found very little difference in sentencing between the courts observed, as most gave similar lengths of probation for most defendants found guilty.

As a corollary of my hypothesis examining subtle racism as the main causal mechanism in minority overrepresentation in juvenile court, I examined the pressures from local politicians and the public. Neither had any discernable effect as all of the professionals felt that the public was poorly informed and lacked interest in the juvenile justice system. In fact, the judges and lawyers often felt that the public was naively unaware of the amount of crime committed by juveniles. They also suggested that the DA's office was relatively immune from sudden political changes. Only two respondents noted the move towards criminalization of the juvenile court, possibly because many of those who worked in juvenile court only did so for a few years, before moving on to criminal or civil court.

Like Feld (1999) I found that there were differences between urban, suburban and rural juvenile courts. Feld (1999) fears the individual latitude given to rural courts, a fear supported by some Texas court professionals who spoke of courts where they had heard of overtly racist judges. While I share his concern, the greater problem is the institutionalized racism present in urban and suburban courts. Feld recommends modeling juvenile court after criminal courts, thereby protecting the juveniles with formal procedure and public defenders. The problem with Feld's solution is that it ignores the segregation present *before* juveniles get to court. By the time they appear in juvenile court, the system has effectively racially segregated the juveniles.

There are some fairly straightforward steps which could be taken to minimize the occurrence of DMC in juvenile courts, especially urban and suburban courts. First and

foremost, the ideal of Lady Justice being blind should be revived in practice. A two tiered system in which the poor and minorities attend juvenile court and middle class and wealthy whites go directly to private treatment should be abolished. Minority, especially black, judges and lawyers should be recruited to work in the juvenile court system.

Understandably there is a shortage of black legal professionals (perhaps cause and effect at work) but early intervention into the effects of the system upon minorities is a reasonable priority. Most important but most difficult to achieve is widespread challenge of the traditions which maintain a racialized society.

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APPENDIX A

JUVENILE COURT OBSERVATION DATA SHEET

*All names are pseudonyms

Judge: _____ Defendant: _____

Judge's race/ethnicity: _____ Defendant's race/ethnicity: _____

Judge's gender: _____ Defendant's gender: _____

Charges: _____

Physical description of judge:

Physical description of defendant:

Is the defendants family present? Y/N:

APPENDIX B

BACKGROUND DATA SHEET

Date and time of interview (to be completed by Mr. Ketchum): _____

Please provide the following background questions about yourself using an ink pen:

1) *What is your age range?*

less than 25 30-34 40-44 50-54 60-64
 25-29 35-39 45-49 55-59 65 or older

2) *What is your gender?* Male Female

3) *What is your family or household yearly income?*

below \$20,000.00 \$40,000 - \$59,999 \$80,000 - \$99,999
 \$20,000 - \$39,999 \$60,000 - \$79,999 \$100,000.00 and above

4) *What is your ethnic and/or racial background? Please check all that apply.*

African American/Black Hispanic Native American
 Asian American/Pacific Islander non-Hispanic White other

5) *Which best describes your political/ideological perspective?*

very conservative conservative moderate liberal very liberal
 conservative moderately conservative moderately liberal liberal
 conservative liberal

6) *What is the highest degree earned by each of your parents, if known?*

Father: _____ Mother: _____

7) *How many years have you been in your current job position?*

less than 2 years 6-9 years 15-19 years
 2-5 years 10-14 years 20 years or more

8) *What is your official title in your current position?* _____

9) *What degrees, certifications or specialized training do you have, relevant to your current position?*

10) Please give a brief description of you job duties.

11) Please list any other jobs or experiences you have had either working with juveniles or within the juvenile or criminal justice system.

APPENDIX C

INTERVIEW QUESTION SHEET

Interview Questions

Date and time of interview: _____

(INTRODUCTION)

I have turned on the tape recorder. Would you confirm that you aware that our interview is being recorded?

As noted in the Informed Consent form, signed by you, any mention of your name and any specific references beyond the state and whether you work in an urban, suburban or rural setting will replaced in the transcription of this interview with pseudonyms. Furthermore, all tapes will be destroyed as will all paper references, such as the background sheet, which may identify you, after the completion of transcribing this material. Until such material has been transcribed, it will remain in a locked file cabinet in my home office in Newalla, OK.

Is this acceptable to you?

Do you understand that this interview is strictly voluntary and that you may refuse to answer any question at any time and furthermore, that you may stop this interview at any time?

Then we will begin. I will ask you scripted questions, though I may deviate from the script to pursue relevant information. I encourage you to give detailed answers rather than a simple yes or no answers.

This interview will revolve around the effects of racial and/or ethnic minority overrepresentation in the juvenile justice system, with a focus on the juvenile court. Before that, I will ask background questions, for later analysis of responses. I will also ask some questions on the effect of gender in juvenile court.

(BACKGROUND)

Let's begin with your background. Where did you grow up?

Describe your family's socioeconomic standing, when you were growing up. Were you poor, lower middle class, middle class, upper middle class, professional class such as doctors and lawyers or were you simply very, very rich?

What did/does your father do for a living?

What did/does your Mother do for a living?

As a child, what were your dreams and expectations for your future?

Do you recall what your parents' dreams and expectations were for you?

What was your childhood neighborhood like? If you had more than one, please describe the one you most identify with. Did you live in the city, suburb, or country? Did the neighbors all know each other and how often did they interact with one another? In other words, describe the character of your childhood neighborhood.

What was the racial and ethnic makeup of your neighborhood?

What were the socioeconomic characteristics of your neighborhood like? Did most of your neighbors seem to have similar incomes as your family? Think back to things like the size of the houses, add-ons like pools, types and number of cars owned, etc.

How would you characterize your current economic standing? Poor, lower middle class, middle class, upper middle class, professional class or are you simply very, very rich?

Please describe the character of your current neighborhood.

What is the racial and ethnic makeup of your current neighborhood.

Are the socioeconomic characteristics of your neighborhood pretty similar to your childhood home?

Do you interact with any of the neighbors; Do you consider any of the neighbors to be your friend; Do you interact with any of the minorities in your neighborhood; Do you consider any of the minorities in the neighborhood to be your friend; What kinds of activities do you do with these friends

(GENERAL JUVENILE JUSTICE)

Let's deal with the juvenile justice system in general for a moment

Are the goals of protecting society and working for the best interests of a juvenile offender mutually exclusive? If there is a conflict, which takes priority? **Could you explain?**

Do most people have an accurate picture of the scope and significance of juvenile delinquency and crime? Overestimate? Underestimate?

Pretending for a moment that you had the ability, funding and support to do so (think magic or miracle if need be), what one change would you make to minimize the need for the juvenile justice system.

How influential is a juveniles prior record?

Who (by office or title instead of by name) makes the decision about an individual case which results in you working with a juvenile? In other words what office, offices or system make decisions regarding juveniles which results in your working with them?

Probe for more than one office

During your tenure at this position, has the focus of the juvenile court changed at all?
How has it changed or how has it remained the same

How do state and local politicians and leaders influence your job?

(RACE)

Let's move the discussion to race and ethnicity

Do you know if for official data, this court record Latinos as a separate ethnic category or are they counted as white?

For purposes of this interview I will frequently refer to minority overrepresentation in the juvenile justice system as "disproportional minority contact" or "DMC" which is the term used by the Office of Juvenile Justice and Delinquency Prevention (OJJDP).

An overwhelming amount of data reveals that disproportionate minority contact occurs at almost every point in the juvenile justice system. However, there is also a large body of research that shows that DMC differs dramatically from jurisdiction to jurisdiction. The purpose of this interview is to gain insights from those who work within juvenile courts, in an effort to understand how race and/or ethnicity becomes a factor in juvenile court, be it direct or indirect.

From your experience, are minority youths overrepresented in official contact with your office?

How significant is the overrepresentation? In other words, is there a lot of overrepresentation, a little, or somewhere in between?

Which group or groups are most overrepresented?

Is this from your own experience and observations or are you familiar with official numbers for your office?

Let us address the issues outside of direct influence of the juvenile justice system. What effects, if any have you seen a lack of quality educational resources play in DMC?

Probe for examples

What about the accompanying socioeconomic conditions such as poverty, substance abuse, few job opportunities and high crime rates? **Probe for examples**

Some have suggested that a culture of violence (one which accepts and even embraces violence as an acceptable means for ones goals) exists in many barrio and ghetto neighborhoods. In your experience, does this seem to be the case?

Do you think DMC can be largely explained by class? In other words, is DMC a reflection of poverty?

Finally, what role have you seen difficult family issues play? **Probe for examples**

Moving on to factors within the control of the juvenile justice system, what diversion programs are options for juveniles in this court? **Probe for descriptions and who goes to them.**

In your expert opinion, how effective are the programs?

What percentage, approximately, of juveniles that have contact with this court, do not have English as their first language?

What other primary languages have you run into?

What resources do you have to deal with parents and juveniles who don't speak English fluently?

Have you witnessed any other cultural problems, other than language that your office has run into? **Probe for Tribal issues/conflicts, Asian communities, other smaller minority group**

The OJJDP also notes that in some jurisdictions, misuse of discretionary authority, such as stacking multiple offences on a single incident or other methods of selective harsh treatment may be an issue. Are there legitimate reasons for being selectively harsh on a particular juvenile offender? Without being overly specific, could you provide me with any examples?

Are there times when using stereotypes within the juvenile justice system, such as gang affiliation, benefits the larger community?

Have you observed any racial or ethnic differences in gang participation? In other words, are some racial or ethnic groups more likely to belong to gangs?

What effect, if any, does direct, or overt discrimination have in juveniles ending up in the juvenile justice system?

Is disproportional minority contact (DMC) a problem or merely a reflection of the “real world”?

Is there a racial or ethnic difference in legal representation,? For example is there a difference in who gets it, public vs private counsel?

Are waiver (certification) hearings limited to judicial, or are there prosecutorial waivers or other statutory methods for moving an individual out of juvenile court?

How common are waiver (certification) hearings?

How significant is DMC in waiver (certification) hearings?

What percent of waiver (certification) hearings result in waiver to criminal court?

What circumstances on the part of the juvenile would likely result in a waiver (certification) hearing?

An unexpected finding, thus far in this research, is that many juvenile justice employees have volunteered information about courts in other jurisdictions regarding philosophical and structural differences.

Do you have knowledge or experience that suggests that there are significant differences in the “character” of various juvenile courts, especially when comparing rural, suburban and urban courts. **Probe for specifics**

Are you familiar enough with the reputation of other juvenile courts to compare strengths and weaknesses of yours with others?

(GENDER)

Finally, I would now like to move on to some questions upon the effect of gender in the juvenile court.

Nationwide, we see a significant overrepresentation of males in both the juvenile and criminal justice systems.

Is this true for the court you work in?

Could you tell me, either approximately or exactly if you know that statistics, what percentage of juveniles that you work with are females?

What option programs are available to you for a case involving a female?

Probe for special programs, organizations, specialized treatments

What parameters are used in choosing an option?

I've seen statistics on your courts website on some programs for women, but how successful are these programs? Why are they successful (or unsuccessful)

In your experience, how does deviant behavior differ between males and females?

Is this based upon biological differences such as those labeled "natural or innate" differences or just roles and expectations imposed differently on boys and girls?

Compared to males, how often are females involved in waiver hearings?

Of the females within the system, what proportion are minorities?

This concludes the questions. Is there anything on the juvenile court in general, race or gender that you would like to add?

Thank you for your assistance in this research. Please don't hesitate to contact me with any questions which you may have.

VITA

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