

# Courts Catalyzing Change: Achieving Equity and Fairness in Foster Care—Transforming Examination into Action

By Sophia I. Gatowski, Ph.D., Candice L. Maze, J.D., and Nancy B. Miller

**R**esearch has demonstrated that children and families of color are disproportionately represented in the child welfare system and frequently experience disparate and inequitable service provision. The data are clear and striking. The National Incidence Studies of Child Abuse and Neglect have consistently found that, regardless of the standard of maltreatment used, there are “no statistically significant differences in overall occurrence rate for maltreatment between black and white families.”<sup>1</sup> However, while children of all races are equally as likely to suffer from child abuse and neglect, the percentage of African-American children who enter and remain in out-of-home care is greater than their proportion in the population.<sup>2</sup> “In states where there is a large population of Native Americans, this group can constitute between 15% to 65% of the children in foster care.”<sup>3</sup> Hispanic or Latino children may be significantly over-represented based on the locality (e.g., in Santa Clara County, Calif., Latino children represent 30% of the child population, but 52% of all child welfare cases).<sup>4</sup> “African Americans are investigated for child abuse and neglect twice as often as Caucasians,”<sup>5</sup> and African-American children who are determined to be victims of child abuse are 36% more likely than Caucasian children to be removed from their parent(s) and placed into foster care.<sup>6</sup> The first round of Child and Family Services Review data also show that Caucasian children achieve permanency outcomes at a higher rate than children of color.<sup>7</sup> In addition to being more likely to be placed in foster care, African-American children are less likely to be reunified with their parents<sup>8</sup> and receive fewer services than Caucasian children.<sup>9</sup>

Researchers and policy-makers have identified a number of theories about the causes of racial disproportionality and disparate treatment in the child welfare system, linking disproportionality and disparity to a variety of economic and social factors. All of these factors must be addressed in order to ensure that the needs of all children are equitably and fairly served. The complexity and significance of this issue points to the critical need for collaborative efforts to not only further study the



factors that contribute to racial disproportionality and disparities in the child welfare system, but also to design and implement specific actions courts and child welfare system partners can take to reduce these inequities and ultimately improve outcomes for all children and families. It is time to move forward—to transform examination and discussion about racial disproportionality and disparate treatment in the dependency court system into specific actions.

## The Courts Catalyzing Change Initiative—Purpose and Goals

The Courts Catalyzing Change: Achieving Equity and Fairness in Foster Care Initiative (CCC), funded by Casey Family Programs and supported by the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention (OJJDP), brings together judicial officers and other systems’ experts to set a national agenda for court-based training, research, and reform initiatives to reduce the disproportionate representation of children of color in dependency court systems. The Initiative’s mission is to create and disseminate judicial tools, policy and practice guidelines, and associated action plans that child abuse and neglect court systems can use to reduce disproportionality and disparities for children and families of color. The Initiative, informed by existing research, will re-evaluate federal, state, and local policy and make recommendations for changes or improvements. The Initiative will identify and evaluate *all* decision points in the dependency court system to determine where specific action can be taken, and recommend strategies for court and systems change to reduce racial disproportionality and disparate treatment.

The formation of the CCC Initiative was prompted by the previous work of National Council of Juvenile and Family Court Judges Committees on the Disproportionate Representation of Children of Color, Tribal Courts, and Diversity, the NCJFCJ Permanency Planning for Children Department’s (PPCD) Advisory Committee and National Victims Act

**Disproportionality** = a particular racial or ethnic group is represented within a social system at a rate or percentage that is not proportionate to their representation in the general population.

**Disparity** = unfair or unequal treatment of one racial or ethnic group as compared to another racial or ethnic group.

Model Court Lead Judges, and Casey Family Programs work in their successful Breakthrough Series Collaborative Initiative.<sup>10</sup> In September 2007, Casey Family Programs (CFP) formalized a partnership with the NCJFCJ to converge the two organizations' past efforts in this arena, by providing funding to bring together judicial officers and other systems' experts in a series of leadership and work group meetings, with the goal of setting a national agenda for court-based training, research, and reform initiatives. The CCC Initiative was then officially launched on Oct. 3, 2007 at the OJJDP-funded National Model Court All-Sites Conference in New Orleans, La. At that All-Sites Conference, the 29 participating dependency court jurisdictions in NCJFCJ's Model Courts Project made a commitment to reduce racial disproportionality and disparities as a national Model Court goal. The OJJDP, through its national Child Victims Act Model Court grant to the NCJFCJ, is providing support for the technical assistance necessary to facilitate Model Court achievement of this national goal.

### Courts Catalyzing Change: Organizational Structure

Two main work groups currently make up the CCC Initiative's organizational structure:

- 1) The *Steering Committee*: The Steering Committee provides leadership for the Initiative, and is comprised of a core group of judicial officers, other systems' experts, and NCJFCJ and CFP staff. The Steering Committee leads the implementation of the national agenda, and identifies ways to engage the broader judicial community in this work.

### A Snapshot of What We Know ...

- The average African-American child is not at any greater risk for abuse and neglect than the average Caucasian child (Sedlak & Schultz, 2001; Ards et al., 1999), but African-American children are dramatically overrepresented in the child welfare system.
- African-American, Hispanic, and Asian/Pacific Islander children have a disproportionately higher rate of maltreatment investigations when compared to White children (Fluke et al., 2002).
- Substantiations for abuse and neglect occur at twice the rate for African-American children than for Caucasian children, and African-American children are placed into foster care at four times the rate of Caucasian children (CWLA, 2003).
- American Indian/Alaska Native children are disproportionately represented in the child welfare system, having substantiation rates for abuse and neglect at about twice the rate of Caucasian children, as well as foster care placement rates at least three times higher than that of Caucasian children (CWLA, 2003).

2) The *Call to Action Work Group*: Work Group members were selected because of their leadership role in systems' change efforts, and their expertise and involvement in efforts to reduce racial disproportionality and disparate treatment in the dependency court system. Call to Action Work Group members were tasked with the creation of a national agenda for court-based training, research, and reform initiatives.

### Courts Catalyzing Change: The Process of Developing a National Agenda

The CCC Initiative officially began its work to develop a national agenda to reduce racial disproportionality and disparities in the dependency court system with a meeting in February 2008 of the Steering Committee in Washington, D.C., and a meeting in April of the National Call to Action Work Group in Phoenix, Ariz. During both meetings, participants were led through discussions about race—engaging in “courageous conversations.”<sup>11</sup> The conversation about race equity in America, an essential foundation of any work toward developing and implementing an agenda for reducing disproportionalities and disparities in the dependency court system, is deeply personal and stirs the emotions and latent feelings of almost all involved. The opening exercise for both Steering Committee and Work Group members was a self-dialogue about how each of the participants views race; they were then asked to share their self-reflections. There was agreement that all must be willing to take risks in a conversation about race, honor those who speak their truth, and attribute good intent to speakers.

The participants also viewed a video entitled “Race—The Power of an Illusion: Episode 3—The House We Live In”<sup>12</sup> which explored the values, assumptions, and historical meanings attached to physical appearance. The video examined the laws and policies that have defined and shaped race, including Jim Crow laws, Federal Housing Administration Laws in the wake of the post-World War II GI Bill, and the Fair Housing Act, among others. Finally, Dr. Carol Wilson Spigner discussed the history of the child welfare system and the disproportionate and disparate treatment of children and families of color. The Work Group also began to focus on formulating the *National Agenda to Reduce Racial Disproportionality and Disparities in the Dependency Court System*.

**4 Tenets of Courageous Conversations:**

1. Speak your truth
2. Expect and accept non-closure
3. Experience discomfort
4. Stay engaged

### Courts Catalyzing Change: A National Agenda for Reducing Racial Disproportionality and Disparities in the Dependency Court System

The **Guiding Principles** of the National Agenda developed by the CCC Steering Committee and Call to Action Work Group are:

- Children and families of color must be an integral part of the planning and problem-solving process at all levels and all stages.
- Judges—as the final arbiters of justice—must be leaders in their communities to reduce disproportionality and disparity in the child welfare system.
- Broad-based, multidisciplinary alliances and honest collaboration must be formed to effectively and comprehensively address this issue.
- Reducing racial disproportionality and disparities in the child welfare system must be linked with a broader effort to eliminate institutional and structural racism in the child welfare system.

To achieve the Initiative's mission, NCJFCJ, CFP, Steering Committee members, Call to Action Work Group members, and Model Court Lead Judges will take the lead at the local, state, and national levels in promoting the following **National Agenda Key Strategies and Associated Action Steps** to reduce disproportionate representation and disparate treatment of children and families of color in the child welfare system.

#### ■ Engage national, state, local, and tribal stakeholders, community partners, and children and families.

##### *NCJFCJ and CFP leadership will ...*

- Take the lead to establish partnerships with national organizations in the field and encourage them to pursue reducing disproportionality and disparities in the child welfare system as a top priority.
- Serve as a clearinghouse for judges and courts nationwide regarding the information and activities related to this effort.
- Learn from and build upon the work of other national organizations that have developed successful approaches to reducing racial disproportionality and disparities in the child welfare system.
- Reach out to federal policy-makers and federal entities to educate, garner support, and bring attention to this issue.

##### *NCJFCJ Model Court Lead Judges will ...*

- Engage local and state judicial leaders and court administrators to promote the reduction of disproportionality and disparate treatment through action-oriented and solution-driven statewide advisory

- committees, task forces, and educational forums.
- Lead their local community in developing a plan to reduce racial disproportionality and disparities in the child welfare system by convening local minority families, community leaders, governmental agencies, schools, faith-based leaders, and community-based providers in community forums, town hall meetings, and collaborative planning sessions.
- Raise awareness about racial disproportionality and disparate treatment by communicating with national, state, and local media about the pervasiveness of the problem as well as efforts and initiatives to reduce disproportionality and disparate treatment.

### ■ Transform Judicial Practice.

*NCJFCJ and Casey Family Programs leadership will ...*

- Re-examine the NCJFCJ *RESOURCE GUIDELINES* through a racial equity lens and develop a specific set of judicial decision-making tools directed at reducing racial disproportionality and disparate treatment.
- Develop and promote judicial education, training, and guidance on the issue of disproportionality and disparate treatment in the child welfare system.
- Develop formal feedback processes for children and families who are involved with child welfare proceedings.

*NCJFCJ Model Court Lead Judges will ...*

- Examine personal biases and prejudices to understand and moderate their impact on judicial decision-making.
- Practice and promote principles of therapeutic jurisprudence through family engagement both in court and in the child welfare case-planning process.
- Conduct thorough hearings examining all decision points and make well-reasoned findings on the record.
- Commit to training and education for themselves and their colleagues in the juvenile court.
- Ensure services are culturally appropriate.

### ■ Participate in Policy and Law Advocacy.

*NCJFCJ and Casey Family Programs leadership will ...*

- Identify and examine state and federal laws and policies that drive children into the child welfare system in a racially biased way and identify model laws that combat this problem.
- Seek the active participation of federal lawmakers, administrators, and relevant government agencies and departments to develop a cross-systems and collab-

orative approach to evaluate and amend laws and policies that perpetuate racial disproportionality and disparities.

- Work to ensure that Child and Family Services Review (CFSR) outcomes and performance measures assess racial disproportionality and disparity in the child welfare system and that program improvement plans (PIPs) require solutions to negative findings in this area.
- Work with the U.S. Department of Health and Human Services to ensure that Court Improvement Projects (CIPs) provide incentives and funding to jurisdictions working to reduce racial disproportionality and disparate treatment.

*NCJFCJ Model Court Lead Judges will ...*

- Seek the active participation of state and local lawmakers and relevant government agencies and departments to develop a cross-systems and collaborative approach to dismantling state and local laws and policies that perpetuate racial disproportionality and disparities.
- Seek statewide uniform ethical guidelines regarding the judiciary engaging in community advocacy that enable the judiciary to fully participate as active members of systems and community reform and improvement efforts.
- Promote open child welfare hearings and encourage community members to become aware of the decision-making process.
- Work within their state and jurisdiction to promote retaining judges in juvenile court and advocate against policies and

#### **Disproportionality: Theories from Research**

- Minority children are more likely to be in poor, single-parent homes—all risk factors for maltreatment.
- Minority families are more likely to come into contact with social service or other workers who notice and report maltreatment.
- Minority families are more likely to be reported for abuse and neglect and less likely to be reunified due to biased decision making.
- Minority children and families have less access to services that prevent placement and hasten permanency.

#### **Disproportionality: Theories from Child Welfare Administrators, Supervisors, Case Workers**

*Disparate treatment can result from:*

- Lack of familiarity with other cultures and with what constitutes abusive behavior;
- Lack of community resources to address a range of issues, such as substance abuse and domestic violence;
- Media pressure to remove children; and
- Poverty and related issues, such as homelessness.

*Congressional Research Services.  
Race and Ethnicity in Child Welfare (August 2005)*

laws that rotate judges through juvenile court rather than allowing judges to develop expertise in this area.

- Promote the full scale (from hotline to permanency), statewide implementation of objective decision-making processes and tools (such as structured decision-making).

### ■ Examine and Employ Research, Data, and Best Practices.

*NCJFCJ and Casey Family Programs Leadership will ...*

- Promote a multidisciplinary, multi-level approach to data analysis in the area of racial disproportionality and disparate treatment in the child welfare system to ensure a jurisdiction's ability to effectively analyze barriers, challenges, and opportunities to reducing this problem.
- Develop and define measures of well-being, safety, and permanency in relationship to reducing disproportionality and disparate treatment for children and families of color in the child welfare system.
- Promote uniform use and acceptance of these measures on a local, state, and national level.
- Identify and answer critical data-related questions about racial disproportionality and disparate treatment in the child welfare system.
- Provide forums for ongoing education and technical assistance to local, state, and national leaders and key decision-makers by national research entities that have examined and analyzed data related to racial disproportionality and disparate treatment.

*NCJFCJ Model Court Lead Judges will ...*

- Improve understanding of local child welfare system and court data around the issue of racial disproportionality and disparate treatment.
- Address and improve local jurisdictions' capacity to collect and analyze data related to racial disproportionality and disparate treatment within each child-serving entity and within the court system.
- Collect and evaluate data at the case level, by judge and by jurisdiction.
- Create opportunities within their own jurisdiction for discussing the meaning of the data and underlying causes of racial disproportionality and disparate treatment.
- Select outcome measures and develop strategies to improve permanency-related outcomes for children of color in the child welfare system.
- Take the lead in educating colleagues and systems partners about using local data to analyze causes for racial disproportionality and disparities in the child welfare

## CCC STEERING COMMITTEE

Judge Karen Ashby, Denver, Colo.  
Judge Katherine Delgado, Brighton, Colo.  
Ms. Rebecca Jones Gaston, CFP  
Dr. Sophia Gatowski, NCJFCJ  
Judge Ernestine Gray, New Orleans, La.  
Judge Anita Josey-Herring, Washington, D.C.  
Judge Katherine Lucero, San Jose, Calif.  
Judge Patricia Macias, El Paso, Texas  
Dr. Shawn Marsh, NCJFCJ  
Judge Patricia Martin, Chicago, Ill.  
Ms. Candice Maze, Miami, Fla.  
Ms. Nancy Miller, NCJFCJ  
Mr. Oronde Miller, CFP  
Judge Joe Smith, Des Moines, Iowa  
Judge Wadie Thomas, Omaha, Neb.  
Judge William Thorne, Salt Lake City, Utah  
Judge Louis Trosch, Charlotte, N.C.  
Mr. Khatib Waheed, Center for the Study of Social Policy  
Ms. Susan Weiss, CFP  
Ms. Elizabeth Whitney Barnes, NCJFCJ  
Dr. Carol Wilson Spigner, Univ. of Penn.

## NATIONAL CALL TO ACTION WORK GROUP

**All CCC Steering Committee Members**  
Judge Abby Abinante, San Francisco, Calif.  
Mr. Shay Bilchik, Georgetown University  
Judge Dolores Cadiente, Juneau, Alaska  
Judge Susan Carbon, Concord, N.H.  
Dr. Sandra Chipungu, Morgan State Univ.  
Judge Patricia Clark, Seattle, Wash.  
Ms. Rosalyn Frierson, Columbia, S.C.  
Judge William Hitchcock, Anchorage, Alaska  
Judge Douglas Johnson, Omaha, Neb.  
Judge William Johnson, Pendleton, Ore.  
Ms. Susan Kelly, Ypsilanti, Mich.  
Judge Sharon McCully, Salt Lake City, Utah  
Ms. Leola McKenzie, Salem, Ore.  
Ms. Mary Mentaberry, NCJFCJ  
Judge Michael Nash, Los Angeles, Calif.  
Mr. Michael Piraino, National CASA  
Ms. Maureen Sheeran, NCJFCJ  
Mr. David Simmons, NICWA  
Judge Teresa Vincent, Greensboro, N.C.  
Judge Nan Waller, Portland, Ore.  
Mr. Zeyen Wu, Coalition for Asian American Children and Families

## Steering Committee and Call to Action Work Group Meeting participant comments demonstrate the depth of the issue and the challenges that judges and other professionals face when the conversation turns to racism in our society and its institutions.

- “The challenge is how to maximize this opportunity to do something that will reduce disparity without getting mired down in the feelings and emotions you have when you think about how this affects one personally. The challenge is to stay focused and the question is: How do I communicate this in my jurisdiction in a way that will not create barriers.”
- “This is one of the few issues about which we as judges of color (and those who are not) have to get personal. We have to understand our own experiences, views, and perspectives because this is the binding force that connects us to the children and families we serve—we don’t need to shy away from the personal—that is who we are.”
- “This effort challenges us to move to a different plane of leadership. It challenges us to come off the bench and start partnering with other national organizations and get the message out there that this is multidisciplinary work. It is in the courtroom, yes, but it is beyond that as well.”

system and opportunities to reduce this trend through training, decision-making, and policy advocacy.

### ■ Impact Service Array and Delivery.

*NCJFCJ and Casey Family Programs Leadership will ...*

- Collect and disseminate literature and information on promising practices and services that effectively reduce racial disproportionality and disparities in the child welfare system.
- Examine the impact of specific systems on outcomes for children and families of color.

*NCJFCJ Model Court Lead Judges will ...*

- Promote early intervention and prevention approaches to service delivery in order to reduce removals and support speedy reunification.
- Require culturally competent and linguistically appropriate services for children and families of color involved in the child welfare system.
- Encourage minority communities in their jurisdiction to develop community-based resources and information that are specific to their cultural and community needs.
- Convene community forums of community members, leaders, and service providers to assess and address service goals.
- Ensure that quality and effectiveness of services are addressed.
- Recommend termination of contracts that are not effective or are adding to the problem of racial disproportionality and disparate treatment in the child welfare system.

## Courts Catalyzing Change: Next Steps

At an NCJFCJ Model Court Lead Judges and CCC Steering Committee members meeting in Palm Springs, Calif., in May 2008, the National Agenda was refined and work began to identify tools necessary to implement the Key Strategies. The Steering Committee worked to elaborate on a toolkit for implementation of the National Agenda, to prioritize the development of specific tools in that toolkit and to identify a national dissemination, implementation, and technical assistance approach. In the months ahead, these tools will be developed and vetted through the CCC Steering Committee and Call to Action Work Group. At the September 2008 All-Sites Model Court meeting, the National Agenda will officially be launched with the meeting dedicated primarily to the CCC Initiative.

## ABOUT THE AUTHORS:

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## **NCJFCJ Victims Act Model Courts (VAMC) and Casey Breakthrough Series Collaborative (BSC) —Leading the Way\***

Following are some examples of work to reduce racial disproportionality and disparities in the child welfare system currently underway in VAMC and BSC jurisdictions. (For more information about any of these Model Court efforts, please contact the PPCD at [www.caninfo.org](http://www.caninfo.org); for information about the BSC, please contact Casey Family Programs at [www.casey.org](http://www.casey.org)).

### ***San Jose, Calif.—Lead Judge Katherine Lucero***

A work group from the Children of Color Task Force conducted court file reviews on a random sample of 25 substantiated referrals from April 2006, to determine whether any patterns emerged suggesting bias in decision-making that resulted in substantiation. Data obtained from that review informed the development of the Department of Families and Children Services operating plan to address the issues involved in racial disproportionality and disparate treatment. The plan involves all stakeholders in the child welfare system, including the juvenile court.

### ***Washington, D.C.—Lead Judge Anita Josey-Herring***

The Washington, D.C. Family Court convened a Leadership Summit on Disproportionate Representation in October 2007. The D.C. Model Court set forth and is requiring of its stakeholders to commit to the following aims: 1) Collect baseline data on the racial makeup of the individuals each agency comes into contact with. Implement data collection tools to further the D.C. Model Court Collaborative initiative to address the disparate treatment of minorities in the system. 2) Establish training goals for staff and managers focusing on cultural competency. Engage frontline workers in goal setting for the next year. 3) Examine and develop agency policies and set three goals to be accomplished to address the disparate treatment of minorities in the system. Develop an action plan to address the disproportionate representation of minorities within agencies.

### ***Chicago, Illinois—Lead Judge Patricia Martin***

The Chicago Model Court held a collaborative meeting to address the disproportionate representation of minorities in the system and invited several other Model Court jurisdictions that were interested in addressing this issue to participate. The findings were memorialized in specific action steps which were created and committed to on that date. Since that meeting, several of those jurisdictions have taken charge of the issue and have implemented procedures based on the foundation they built in Chicago. A “year in review meeting” will be held to follow-up on action plans, and to discuss the challenges, progress, and future work to be done in this area.

### ***Des Moines, Iowa—Model Court Lead Judge Constance Cohen and Breakthrough Series Collaborative Judge Joe Smith***

The Polk County Juvenile Court shares data and engages in discussions on an ongoing basis of the factors contributing to the over-representation of children of color in the child welfare system. All discussions and work on this issue include at least one parent and youth who have received child welfare services. Six “Undoing Racism” trainings, which have included department workers, department supervisors, all juvenile court judges, court clerks, county attorneys, providers, and community partners, have been provided. Discussions are beginning with the Des Moines Public Schools, with a goal of determining joint strategies to improve outcomes for children of color in both systems.

\*The authors wish to thank NCJFCJ’s VAMC Liaison team for providing this information.

#### **END NOTES**

<sup>1</sup> Hill, R. B. (2006). *Synthesis of Research on Disproportionality in Child Welfare: An Update*. Casey Family Programs. See also Government Accounting Office. (2007). *African American Children in Foster Care: Additional HHS Assistance Needed to Help States Reduce the Proportion in Care*. GAO-07-816.

<sup>2</sup> Anderson, G. R. (1997). Introduction: Achieving permanency for all children in the child welfare system. In G. R. Anderson, A. Ryan, & B. Leashore (Eds.), *The challenge of permanency planning in a multicultural society* (pp. 1-8). New York: Haworth Press, Inc. See also U.S. Department of Health and Human Services. (2005). *Data Report*.

<sup>3</sup> Casey Family Programs. (April 2005). *Framework for Change*.

<sup>4</sup> Congressional Research Service. (August 2005). *Race, Ethnicity and Child Welfare*.

<sup>5</sup> Yaun, J., Hedderon, J., and Curtis, P. (2003). Disproportionate representation of race and ethnicity in child maltreatment: Investigation and victimization, *Children and Youth Services Review*, 25, 359-373.

<sup>6</sup> U.S. Department of Health and Human Services. (2005). *Data Report*.

<sup>7</sup> National Child Welfare Resource Center. (2006). *Data Report*.

<sup>8</sup> Lu, Y. E., Landsverk, J., Ellis-MacLeod, E., Newton, R., Ganger, W., & Johnson, I. (2004). Race, ethnicity and case outcomes in child protective services. *Children and Youth Services Review*, 26(5), 447-461.

<sup>9</sup> Courtney, M., Barth, R., Berrick, J., Brooks, D., Nedell, B., & Park, L. (1996). Race and child welfare services: Past research and future directions. *Child Welfare*, 75(2), 99-137.

<sup>10</sup> Casey Family Programs *Breakthrough Series Collaborative on Reducing Disproportionality and Disparate Outcomes for Children and Families of Color in the Child Welfare System* brought together court and child welfare teams to identify the key components of the child welfare system that must change to reduce and ultimately eliminate racial disparities. See [www.casey.org](http://www.casey.org) for more information.

<sup>11</sup> Casey Family Programs. (2008). *Knowing Who You Are*.

<sup>12</sup> California Newsreel. (2003). *Race – The Power of an Illusion*.

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Sedlak, A., & Schultz, D. (2001). Race differences in risk of maltreatment in the general child population. Paper presented at the *Race Matters Forum*, Jan. 8-9, 2001, Chevy Chase, MD.