

Racial Equity in Your Treatment Court: Why and How to Achieve It

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Disclaimer

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Disclosure

The authors have no conflicts of interest to disclose.

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The Wars on Drugs Began As Wars on Minorities

The Beginnings of the War

- The first anti-drug law against the smoking of opium was passed by the city of San Francisco in 1875 (Block, 2013)
 - It was aimed at Chinese immigrants who smoked opium
- In 1909, Congress made smoking opium a federal offense
 - Other forms of using opium favored by Whites, such as drinking and injecting tinctures of opium, were not outlawed
- The first anti-marijuana laws starting in the 1910s were aimed at Mexican immigrants and Mexican-Americans (Drug Policy Alliance, n.d.)
- In 1914, Congress passed the Harrison Tax Act, which outlawed opium and cocaine, which were associated with Chinese and Blacks

Harry Anslinger's War



- Anslinger took over the U.S. Department of Prohibition as alcohol prohibition was ending in 1929
- He was not originally interested in cannabis, until he was about to be out of a job (*Timeline*, 2018)
- He founded and built the Dept. into the Federal Bureau of Narcotics by criminalizing addiction and going after minorities (Hari, 2015)
- He targeted Billie Holiday for singing "Strange Fruit" and her heroin addiction, and was said to have hounded her to her death
 - He didn't go after Judy Garland

Harry Anslinger's Views



Reefer makes
darkies think
they're as
good as
white men

- Harry J. Anslinger

Anslinger died as a morphine
addict in 1975 (Hari, 2015)

Conservative politicians called for him
to resign because of his openly racist
statements (*Throughline*, NPR, 8/22/19)



There are 100,000 total marijuana smokers
in the US, and most are Negroes, Hispanics,
Filipinos and entertainers. Their Satanic
music, jazz and swing, result from
marijuana usage. This marijuana causes
white women to seek sexual relations with
Negroes, entertainers and any others.

— Harry J. Anslinger —

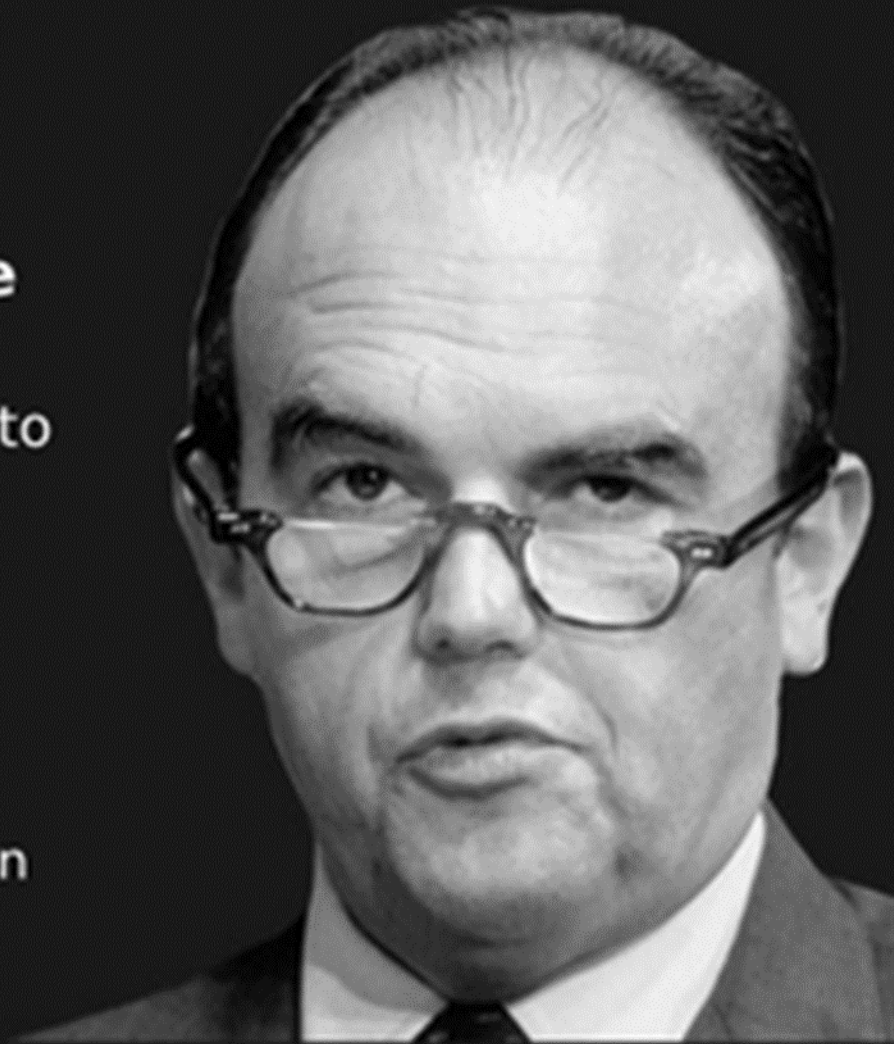
AZ QUOTES

WHY THE WAR ON DRUG USERS?

"You want to know what this was really all about? Nixon had two enemies: the antiwar Left, and black people. **We knew we couldn't make it illegal to be either against the war or black.** But by getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalizing both heavily, we could disrupt those communities. **Did we know we were lying about the drugs? Of course we did.**"

-- John Ehrlichman, Counsel and Assistant to US President Nixon

Interviewed in 1992. Full quote in "Truth, Lies, and Audiotape" (2012) by Dan Baum, journalist and author of *Smoke and Mirrors: The War on Drugs and the Politics of Failure*.



The Impact of Racial Bias in the Criminal Justice System



Black People Do Not Commit Drug Crimes at Higher Rates Than White People

People of all races use and sell drugs at similar rates
(NSDUH, 2007)

Where there are differences, whites are more likely to engage in illegal drug dealing than BIPOC (Snyder & Sickman, OJJDP, 2006)

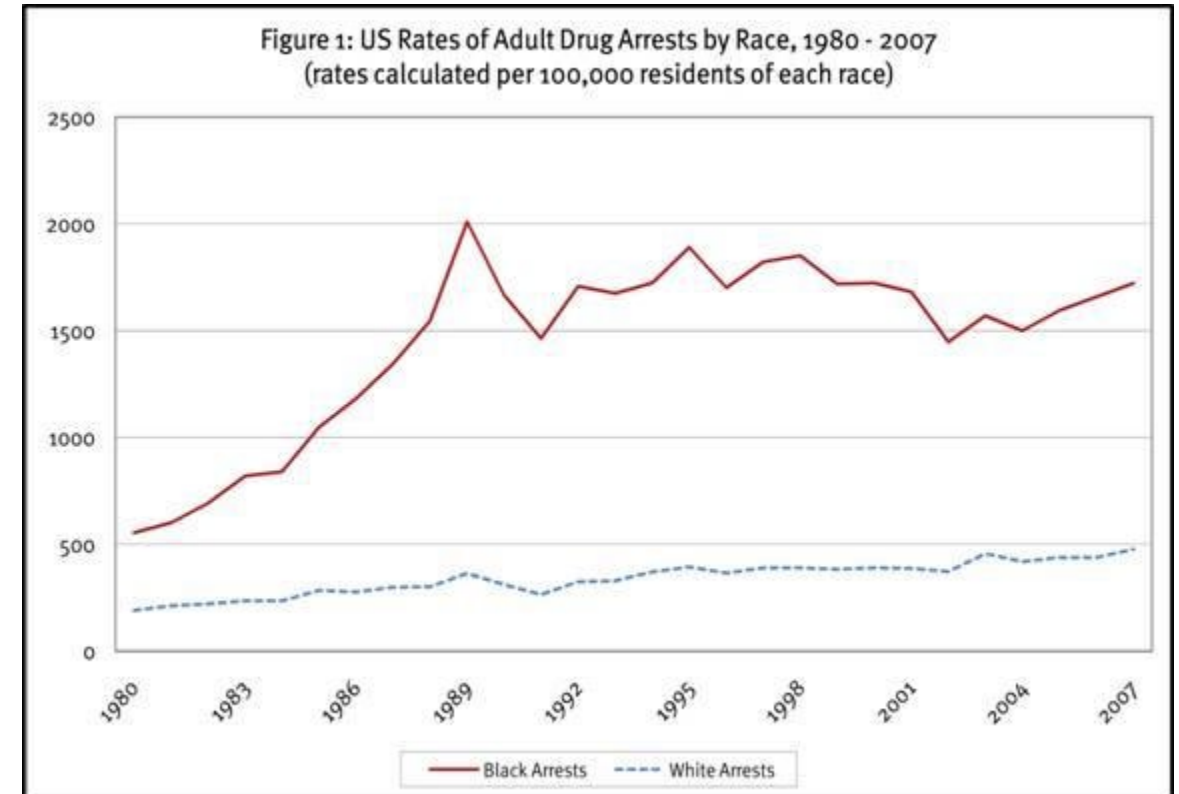
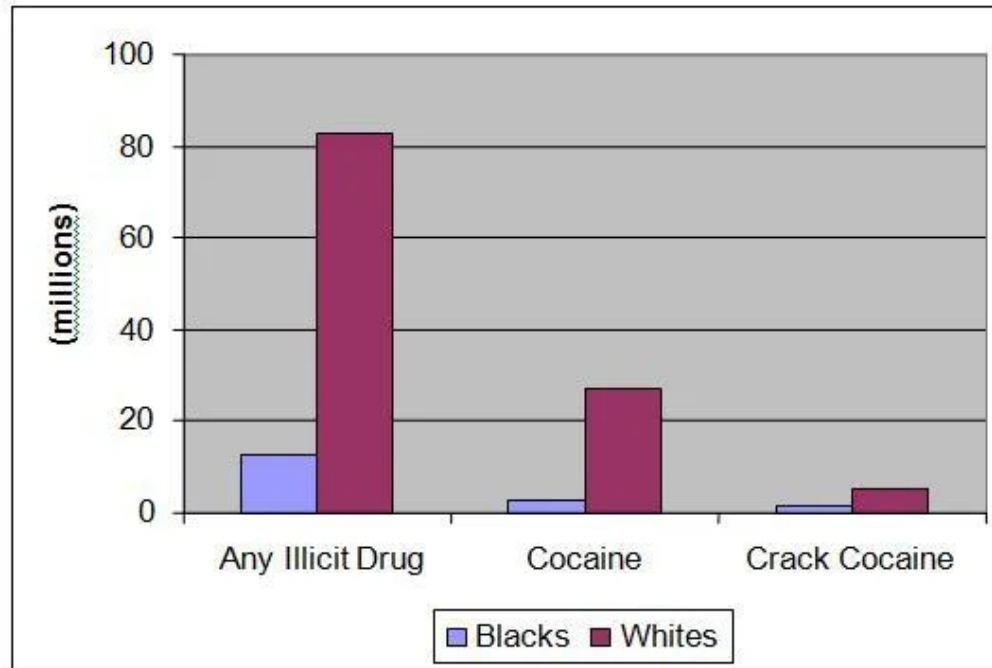
The 2000 Monitoring the Future study found that white students used cocaine at 7X the rate of black students, crack cocaine at 8 X the rate, and heroin at 7X the rate

White youth aged 12-17 were 1/3 more likely to sell illegal drugs than Black youth (NSDUH, 2000)

White youth make drug-related emergency room visits almost 3X more than Black youth (Western, 2006)

An Example of Implicit Bias: US Drug Possession Arrest Rates

FIGURE 1: Lifetime Drug Use by Race, Ages 12 and Older
(Estimates for drug use by persons age twelve and older from SAMHSA)



Procedural Unfairness

- There is a long history of inequity in the criminal justice system for minorities (Alexander, 2010; Duvernay, 2016)
- This occurs at every step, including being stopped, arrested, jailed, charged, convicted, and sentenced (cf., Alexander, 2010; Nicosia et al., 2013)
- As a result, Black, Indigenous, Hispanic, and other people of color are highly distrustful of the criminal justice system



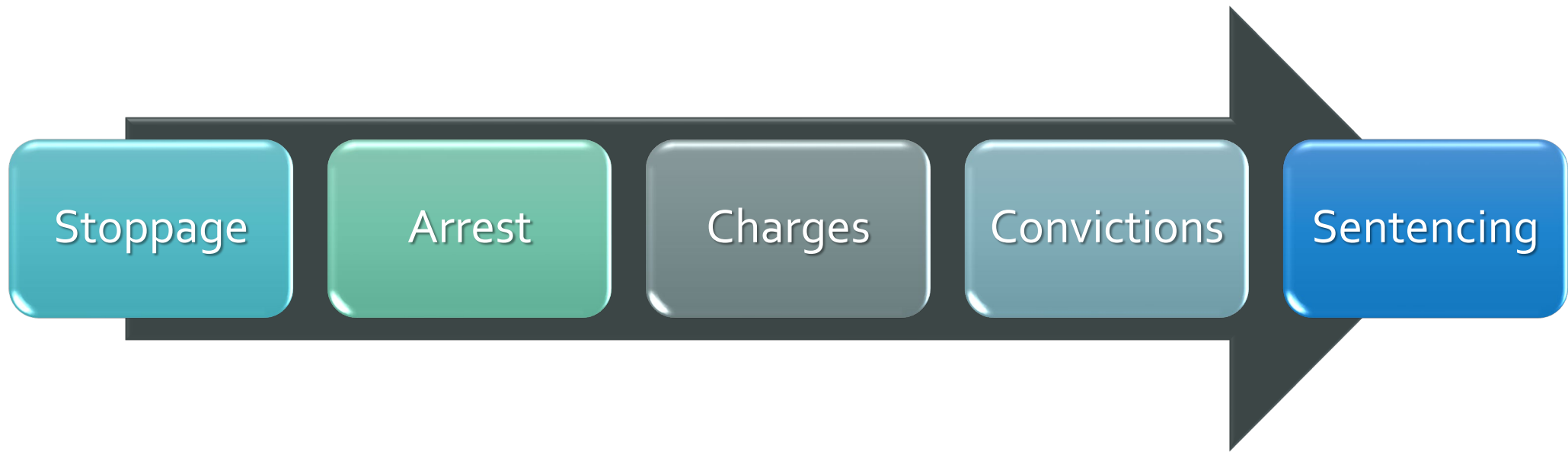


Racial Disparities in Drug-Related Criminal Justice

- Black and Hispanic adults are:
 - More likely than their White peers to be jailed pending trial for comparable charges
 - Less likely to receive a community sentence of probation or diversion to treatment for the same offenses
 - Sentenced to longer terms of probation or incarceration for the same offenses

Marlowe & Cheeseman, 2021

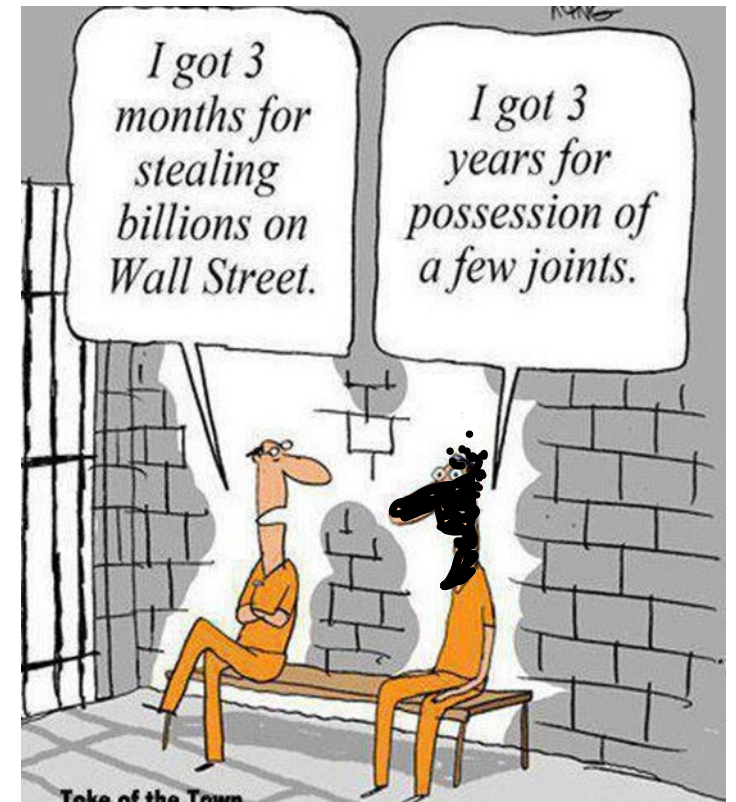
At Every Step in the Criminal Justice System Involving Drugs, People of Color Are Disproportionately Negatively Affected



People of color, especially Black people, usually experience 2-7 X the rates of White people at each step (Alexander, 2010)

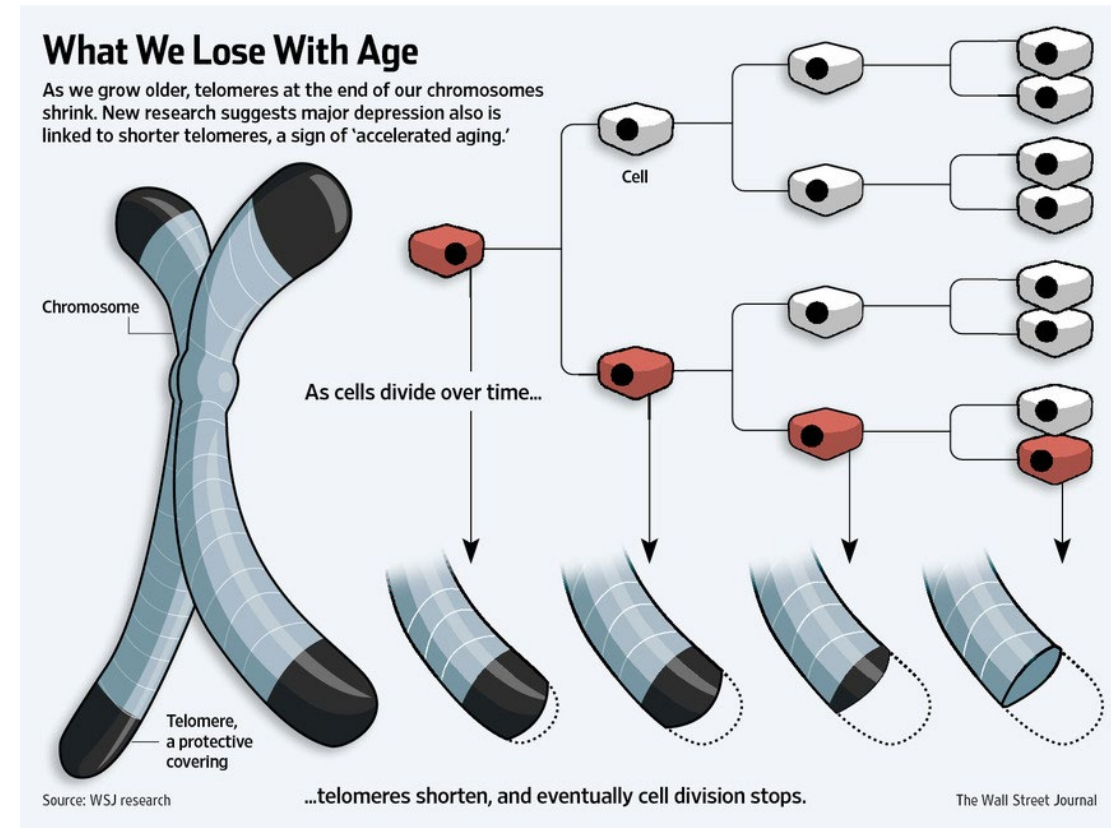
Dominant Racial Narratives

- Dominant racial narratives associating criminality with Blacks date back to slavery (Alexander, 2010)
- Black people are 12 X more likely than Whites to be wrongly convicted of drug crimes (Gross et al., 2017)



The Impact of Racial Trauma on the Mind and Body

- The cumulative impact of trauma can undermine decision-making and lead to a chronically activated stress response.
- Triggers/reminders, early warning signs, and traumatic stress reactions connected with traumatic event(s) may disrupt important relationships with individuals and systems positioned to support the individual.
- Weathering of the body, including shortening of telomeres (Geronimus, 2023)



O'Neill, L., Fraser, T., Kitchenham, A., & McDonald, V. (2018). Hidden burdens: A review of intergenerational, historical and complex trauma, implications for indigenous families. *Journal of Child & Adolescent Trauma*.

Racial Trauma and Justice Involvement



- Self-protective behaviors in response to trauma can be misunderstood by societal systems and punished.
- The rehabilitation experience is often disconnected from context and culturally responsive practices recognizing lived experiences and values.

Baumle, D. (2018). Creating the Trauma-to-Prison Pipeline: How the US Justice System Criminalizes Structural and Interpersonal Trauma Experienced by Girls of Color. *Family Court Review*.

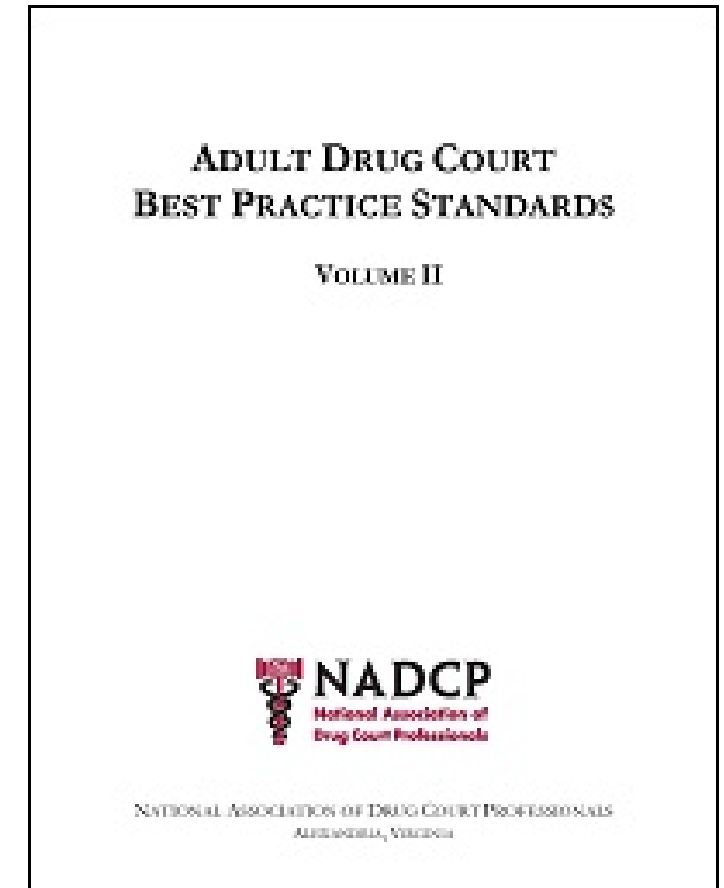


Racial Representation in Treatment Courts

- Black people are underrepresented in treatment courts by 15-20%, and Hispanics by 10-15% compared to arrestees (Marlowe, Hardin, & Fox, 2016)
- A more recent study of 142 treatment courts and nearly 21,000 participants found that Blacks were mostly represented proportionally in treatment courts, although they had lower graduation rates than Whites and Hispanics (Ho, Carey, and Malsch, 2018)

NADCP Response to Racial Disparities in Treatment Courts

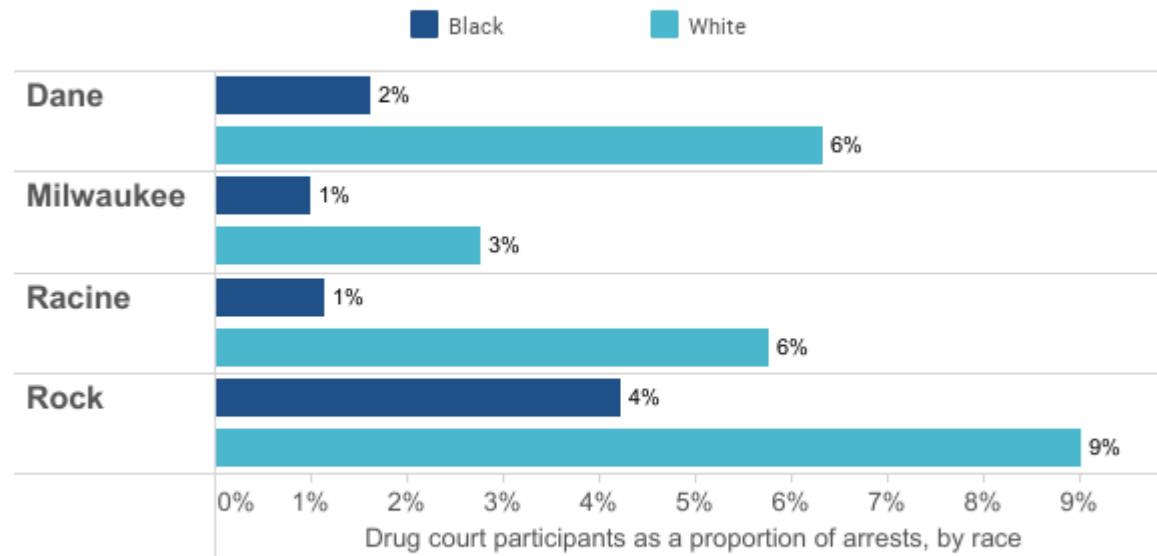
- The NADCP *Adult Drug Court Best Practice Standards (2013, 2015)* state that drug courts must monitor their programs at least annually for evidence of racial and ethnic disparities
 - Does yours?
- If disparities are found, courts are supposed to adjust eligibility criteria, assessment procedures, and treatment services to eliminate disparities
 - Does yours?
- Many courts don't (Marlowe et al., 2016)



An Example of Racial Disparities in Treatment Courts in Wisconsin in 2012

Racial disparity in drug courts

Blacks go to drug court much less often than whites



Source: 2012 arrests, Wisconsin Office of Justice Assistance; 2012 participation data from individual drug courts. Reporting: Taylor Chase; Graphic: Kate Golden, WisconsinWatch.org

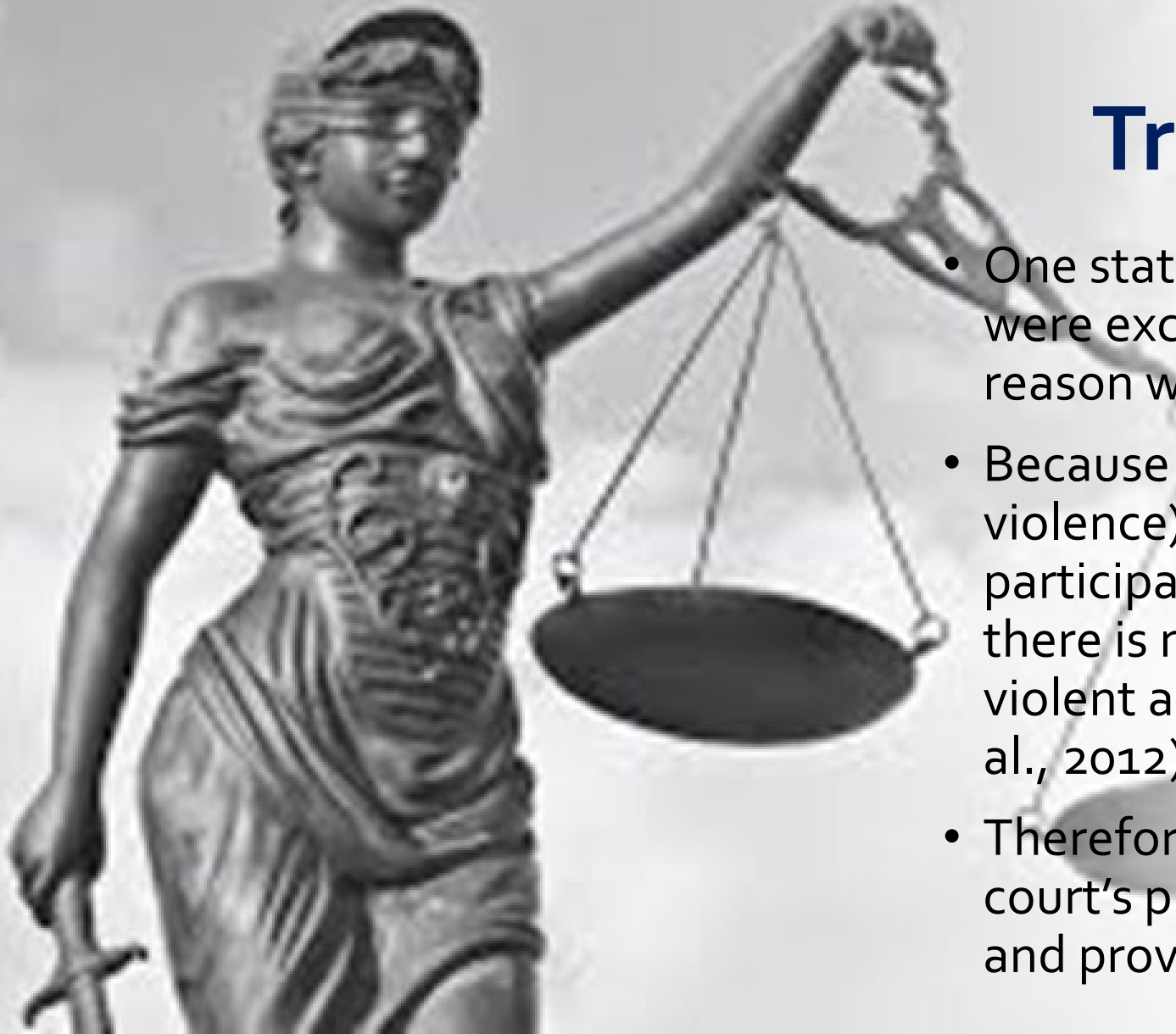
- In Dane County, 1/3 of those arrested for drug crimes were Black, but only 10% of participants in drug courts were
- In Racine County, 1/3 of those arrested were Black, but only 11% in drug courts were

Wisconsin Watch, 8/17/2014

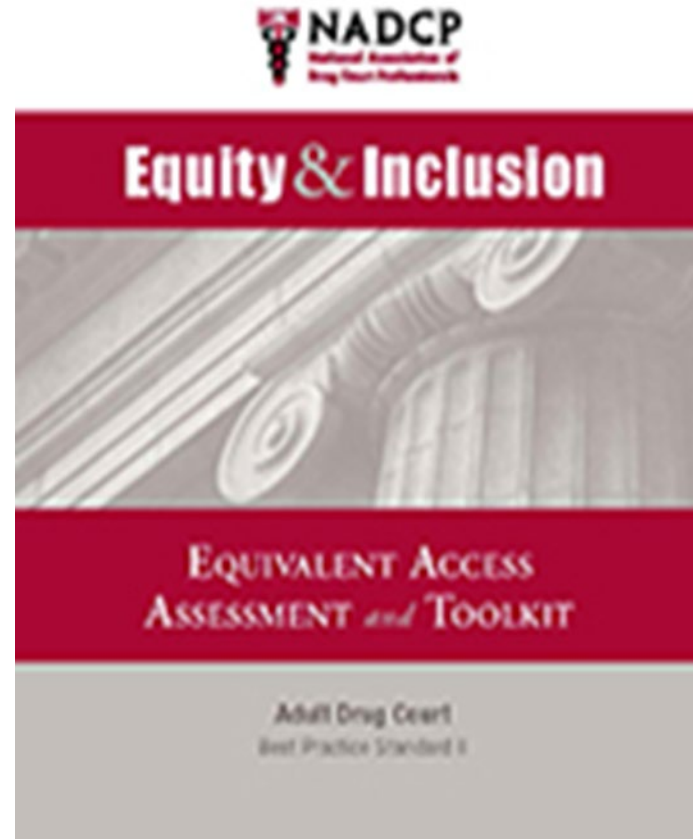
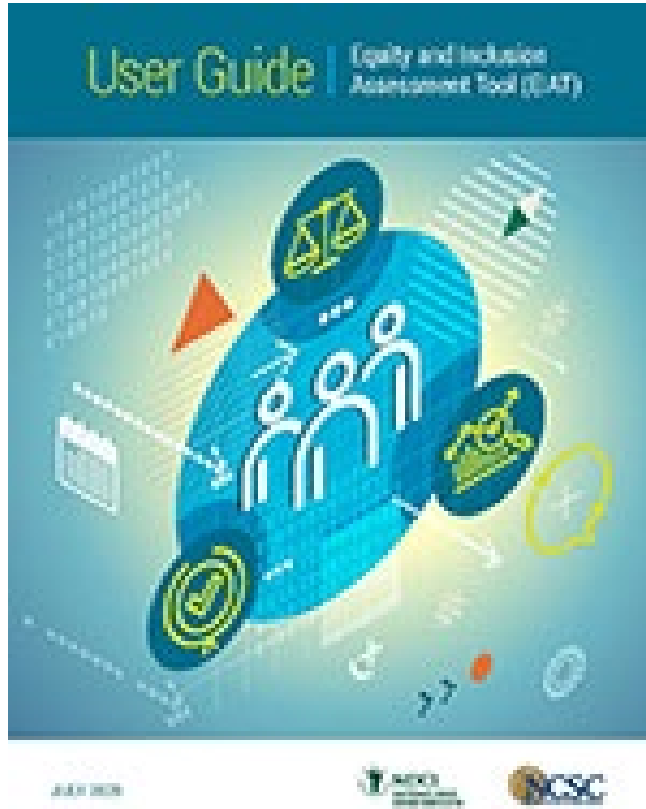
**There is no therapeutic
jurisprudence without equity
and inclusion.**

Procedural Unfairness in Treatment Courts

- One state found that for 50% of Blacks who were excluded from treatment courts, the reason was “unsuitability” (NADCP, 2020)
- Because of certain characteristics (e.g., violence), Blacks may be excluded more from participation in treatment courts, even though there is no difference in recidivism between violent and non-violent participants (Carey et al., 2012)
- Therefore, there is reason to examine your court’s procedural fairness to enhance equity and provide inclusion (NADCP, 2020)



How to Decrease Racial Inequity in Court Access



- Use the NADCP Equity and Inclusion Assessment Tool to gather data to assess access to your Court
- The NADCP Equity and Inclusion Toolkit provides detailed lists of ways to improve your performance
- Report your data nationally

How to Decrease Racial Inequity in Your Court

- Make your acceptance criteria more stringent, focusing on the high-risk, high-need population
- Change your assessments to evidence-based instruments that identify risk and need levels
 - Assess risk using the RANT, the ORAS, and/or the LS/CMI
 - Assess substance abuse needs with the GAIN or the ASI
- Adjust your treatment services
 - Make sure they use evidence-based treatments
 - Make sure they treat trauma with trauma-centric treatments

Evidence- Based Risk Assessment Tools

- RISK AND NEEDS TRIAGE (RANT)
- OHIO RISK ASSESSMENT SYSTEM (ORAS)
- Level of Service Case/ Management Inventory (LS/CMI)

EVIDENCE- BASED ASSESSMENTS FOR SUBSTANCE USE

EXAMPLE: Addiction Severity Index (ASI)

Low Need

Severity ratings based on a 10 point scale (0-9):

- * **0-1** No real problem, treatment not indicated
- * **2-3** Slight problem, treatment probably not necessary
- * **4-5** Moderate problem, some treatment indicated
- * **6-7** Considerable problem, treatment necessary
- * **8-9** Extreme problem, treatment absolutely necessary

High Need

Offer Treatment for Race-Based Trauma and Stress

- The Race-Based Trauma and Stress group (Carlson et al., 2018)
- Ten 90 minute sessions
- Aims include:
 - Psychoeducation about race-based stress, its mechanisms (e.g., microaggressions, discrimination, etc.), and its relationship to Post-Traumatic Stress
 - Develop skills to cope with race-based stress, including assertiveness and mindfulness meditation
 - Sharing pride in one's culture
 - Discuss racial traumas in the news
 - Engage in a racial empowerment project
- Currently available for Veterans in 25 VA Medical Centers



Racial Disparity in Court Graduation Rates

- White males are more likely than Black, Hispanic, and female participants to successfully graduate from treatment courts (Finigan, 2009; Marlowe, 2013; Marlowe et al., 2016)
- Graduation rates vary as much as 25-40% (Belenko, Dannerback et al., 2006; Shaffer, 2006)





How to Increase BIPOC Graduation Rates

- Providing family/marital counseling increases graduation rates (Ho et al, 2018)
- Offer more culturally specific treatment services (Gallagher & Nordberg, 2018), such as HEAT (Marlowe et al., 2018)
- Offer vocational and educational training (Shannon et al., 2018)
- Utilize treatment services that focus on the specific drug(s) being used (Marlowe, 2013)



Improving Access and Outcomes for High Risk Participants in Your Courts



Six Steps to Enhancing and Improving Outcomes

1. Know Your Data
2. Multi Track
3. Meet with Stakeholders
4. Eligibility Criteria
5. Culture of Honesty
6. Culturally Competent Treatment

A collage of business-related items including a calculator, a pie chart, a line graph, a compass, and a pen. The background is a dark, semi-transparent overlay of these items. The text "Know Your Data" is written in a bright blue, sans-serif font, and "9%" is written in a bright red, sans-serif font. A thin white vertical line is positioned between the two text elements.

Know Your Data

9%



EQUALITY

EQUITY

Multi Track

- 2014: Boone County Implemented the RANT screening tool and separated participants into 4 quadrants based on risk and need; special consideration for DWI cases
- Struggled with High Risk / Low Need population
- High Risk / Low Need Quadrant was mostly people of color
- White men and women were graduating at a higher rate than people of color
- Disparities on % of Defendants in the criminal justice system compared to TC

Meet with Stakeholders

- Met with decision makers in the Prosecuting Attorneys Office regarding access and graduation rate
- Met with public defenders regarding data
- Educate team members on disparities
- NADCP justification tool kit
- Missouri Best Practice Standards
- Expanded treatment partners



Eligibility Criteria



- Subjective vs Objective
- Any party may refer for eligibility determination
- Eligibility checklist
- Filed in criminal case and available to all parties
- Prosecuting Attorney can still make argument at sentencing, but conditions of probation are a judicial decision
- 2017: 21%; 2018: 22%; 2019: 30%

Eligibility Criteria

ELIGIBLE _____ NOT ELIGIBLE _____ TC # _____

Name _____ Date _____ TC _____

Case(s) Referred: _____

ELIGIBILITY CRITERIA for TREATMENT COURT

Place a checkmark in the box if defendant's circumstances are COMPLIANT with requirements for eligibility. If all boxes are checked, the defendant is eligible for TC.

<input type="checkbox"/>	Must be 18 years of age or older.
<input type="checkbox"/>	Must be resident of Boone or Callaway County. (TC II must reside in Boone County; TCIII must live in Truman VA catchment.)
<input type="checkbox"/>	Must <u>not</u> be Designated Sex Offender requiring sex offender supervision, as determined by the Missouri Board of Probation and Parole.
<input type="checkbox"/>	Current charge must <u>not</u> be Dangerous Felony as defined by 556.061, RSMo.
<input type="checkbox"/>	Must be eligible for supervised probation <i>as charged</i> . TCI and TCIV: Must have Felony charge eligible for supervised probation. TCIII: Must be able to supervise and provide UA collection from county of residence.
<input type="checkbox"/>	Must have treatment need. If TC II: must be eligible for CPRC services from a designated MH provider. If TC III: must be eligible for VA services.
<input type="checkbox"/>	Must not be terminated from TC <u>without</u> a change in circumstances which would include: 1) successful completion of institutional treatment or court-ordered detention sanction; 2) successful completion of community treatment program; 3) change in probation status; 4) change in home plan and support network; or 5) other significant change deemed appropriate by TC Team.

Culture of Honesty

- Reviewed NADCP Equity and Inclusion Tool Kit and participated in Equity and Inclusion technical assistance with NADCP
- Modified responses to use in the program

HONESTY
IS THE
BEST
POLICY

Culturally Competent Treatment



- Peer Support
- No clinical assessment for High Risk / Low Need unless a need arises
- Focus on Cognitive Behavioral Therapy
- BJA Equity and Inclusion pilot with OSCA
- HEAT
- HEAT Facilitator training

HEAT Facilitator Training



Improving Outcomes

- 89% of Black males referred to HEAT have graduated from that program
- Court fees waived for HEAT graduates
- Black males are staying engaged in treatment court longer
- Countless Testimonials including the Story of “BO” in Highway to Justice
- Research is ongoing on recidivism, Treatment Court graduation, etc.



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Know Your Data

89%

How to Support Your Colleagues of Color

Supporting Colleagues of Color in Treatment Courts



- Recognize the unique experience of secondary traumatic stress when trauma occurs for members connected to historically oppressed groups.
- Find opportunities to share power instead of focusing on sharing responsibility.

Shell, Teodorescu, & Williams (2021).
Investigating Race-related Stress, Burnout, and
Secondary Traumatic Stress for Black Mental
Health Therapists. *Journal of Black Psychology*.

Supporting Persons of Color When You Are from a Different Racial Background



- Seek training to identify, assess, and treat racial trauma
- Openly acknowledge the difference and ask what that brings up for the client
- Ask them what would help them deal with the difference
- *They are the expert in racial matters*
- Validate experiences and feelings
- Teach coping skills for traumatic stress
- Facilitate empowerment activities

Supporting Persons of Color on Court Treatment Teams When You Are Not a POC

- Be deliberate and intentional about hiring staff to match the diversity of your participants
- Elevate POC voices in the room
 - Don't interrupt them or whitesplain
 - Support diverse points of view
- Don't expect them to be the diversity educator(s); do the work
- Acknowledge your limitations
- Don't claim that you understand



#itc

Supporting Persons of Color on Court Treatment Teams When You Are Not a POC

- Listen more, talk less
- Engage and be responsive when issues of race are raised
- Be willing to call out microaggressions of your peers
- Be willing to sit in racial tension
- Don't claim that you are "colorblind"
- Don't claim that having a friend who is a POC means you cannot engage in insensitive, prejudicial, or discriminatory behavior

"I don't see
COLOR."
... Does that mean
you don't see Me?"

Supporting Persons of Color on Court Treatment Teams When You Are Not a POC

- Remember that not having to think about race is not something that POC people have the opportunity to do
- Apologize for microaggressions and ask what can you do to heal the wound you created
 - But don't make the apology about you
- Openly acknowledge your privilege
- Engage in self-examination
- Don't expect to be treated as special for trying to work on yourself



**All tyranny needs to gain
a foothold is for people
of good conscience to
remain silent.**



Thomas Jefferson

3rd U.S. President

(1743-1826)

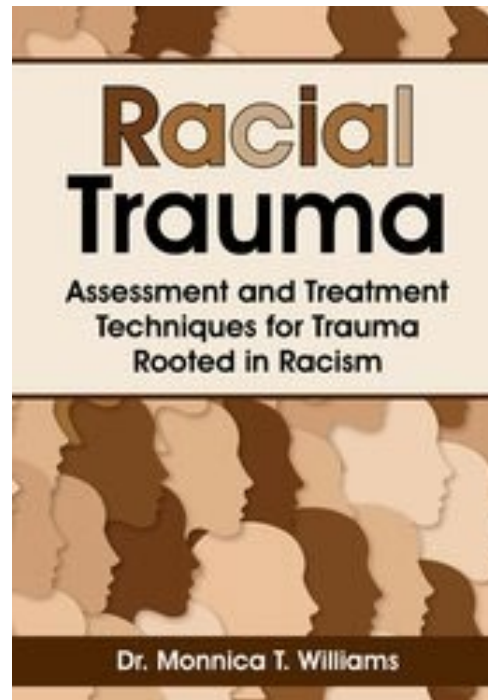
Resources

Racial Trauma and Criminal Justice

- *The New Jim Crow* (2010) by Michelle Alexander
- *Just Mercy* (2014) by Bryan Stevenson
- *The Condemnation of Blackness* (2010) by Kahlil Gibran Muhammed
- *13th* (2016), a documentary directed by Ava Duvernay
- *How to Be an Anti-Racist* (2019) by Ibram X. Kendi
- *Journal for Advancing Justice, Vol. I* (2018)

Resources

- Take the Implicit Association Test at <https://implicit.harvard.edu/implicit/takeatest.html>
- NADCP Equity and Inclusion Tools are available at www.ndci.org/resource/training/equity



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