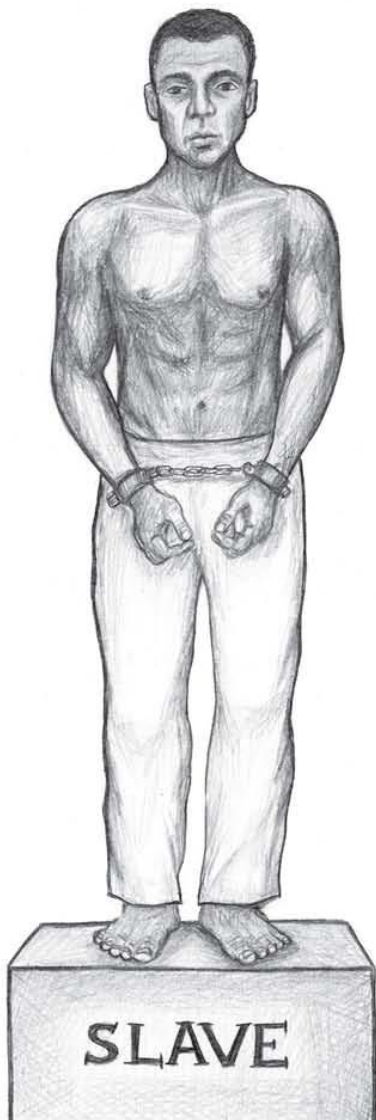


LITIGATING RACIAL JUSTICE ISSUES

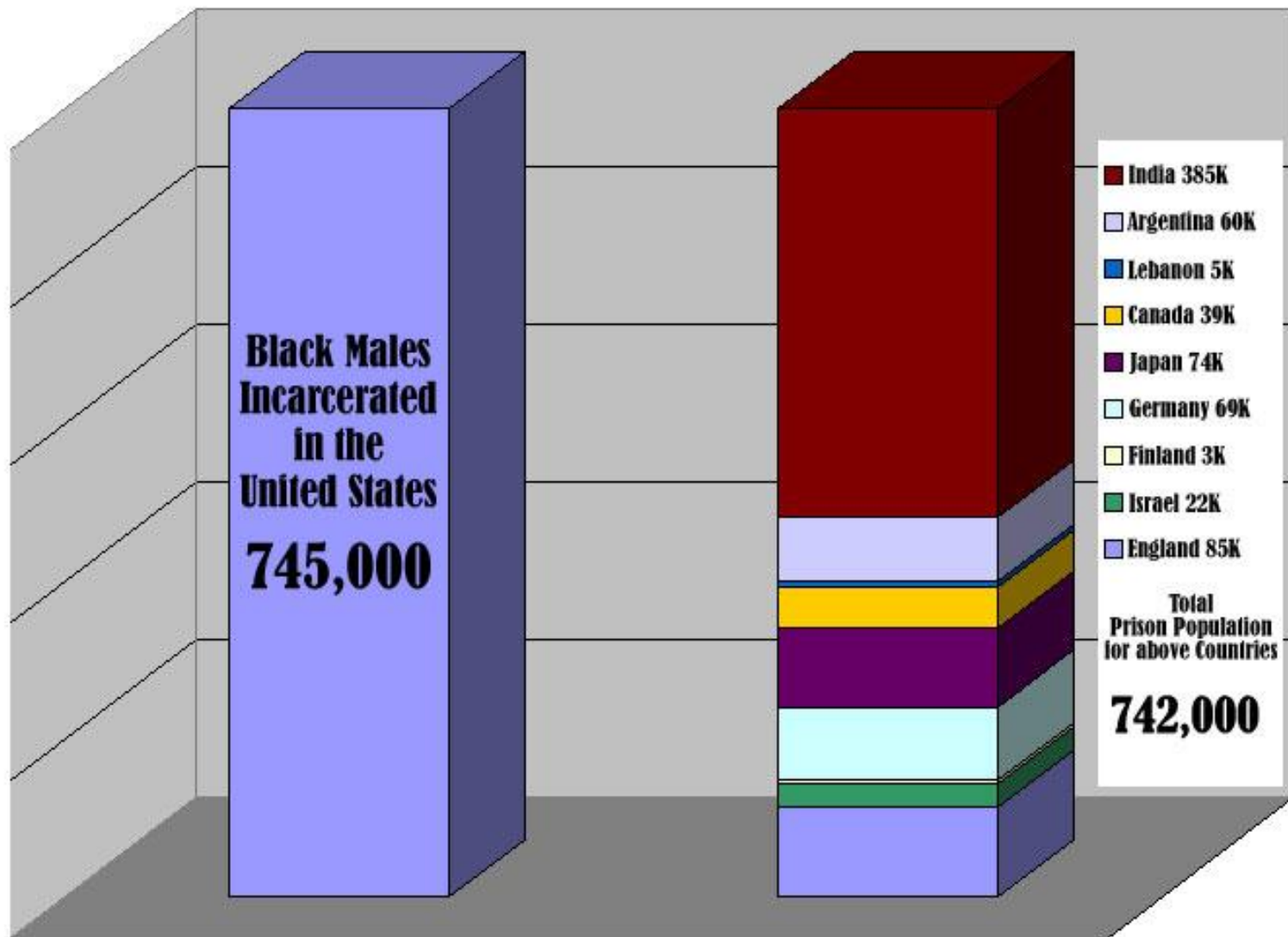


JEFF ADACHI, SF PUBLIC DEFENDER



The Prison Industrial Complex
imprisons more black men today
than were slaves in 1850.





Source: International Centre for Prison Studies &
Bureau of Justice National Prisoner Statistics

10 Worst States for Incarceration of Black Men

18 AND 64 YEARS OLD IN THE US

>> U.S. AVERAGE 6.7%

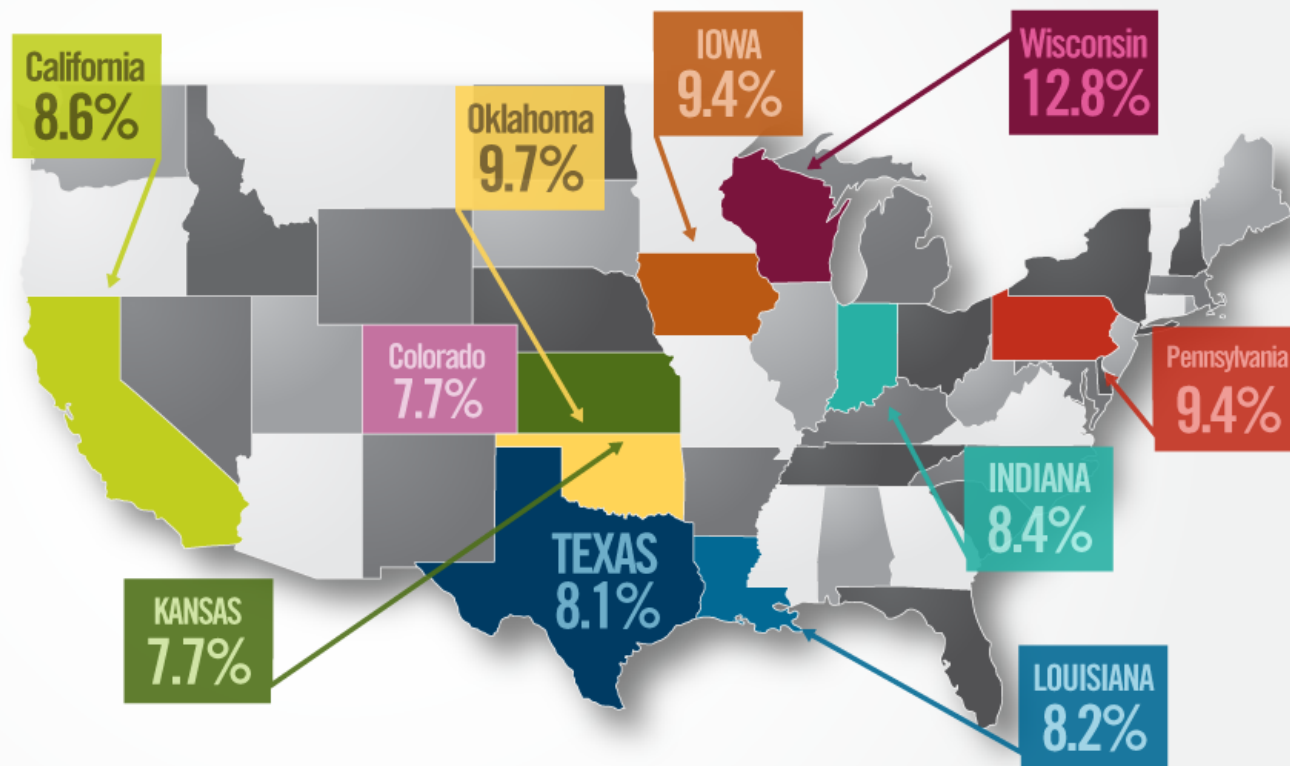


Chart by: The NorthStar News 4/30/2013 • Source: University of Wisconsin—Milwaukee (2010 Decennial Census)

The percentages are based on the number of working age black men

PHOTO: AP



If incarceration rates continue to grow at the pace they have since the 1970s, **1 of every 3 black American males born today can expect to go to prison in his lifetime**, as can 1 of every 6 Latino males and 1 of every 17 white males.

SOURCE: THE SENTENCING PROJECT



"Race matters. Race matters in part because of the long history of racial minorities' being denied access to the political process...Race matters to a young man's view of society when he spends his teenage years watching others tense up as he passes, no matter what neighborhood he grew up.

Race matters to a young woman's sense of self when she states her hometown, and then is pressed, 'No, where are you really from?'"

Sotomayor concluded in that dissent, "The way to stop discrimination on the basis of race is to speak openly and candidly on the subject of race, and to apply the Constitution with eyes open to the unfortunate effects of centuries of racial discrimination."



The fate of millions of people—indeed the future of the black community itself—may depend on the willingness of those who care about racial justice to re-examine their basic assumptions about the role of the criminal justice system in our society.

— *Michelle Alexander* —

AZ QUOTES

What?

How?

Why?

RACIAL JUSTICE LITIGATION

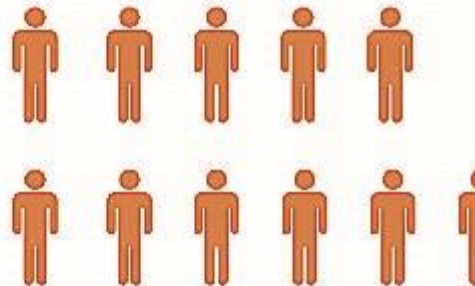
- **GET THE FACTS – RACIAL JUSTICE STUDY**
- **DE-BIASING YOURSELF & YOUR CASE**
- **JURY SELECTION & VOIR DIRE**
- **BAIL**
- **RACIAL/CULTURAL CONTEXT EXPERT**
- **CHARGING & SELECTIVE PROSECUTION**
- **RACIAL PROFILING**
- **SENTENCING**
- **EXPOSING RACISM**

DISPARITY GAP FOR CONVICTIONS (2013)

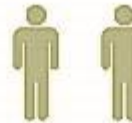
White
1



Black
10.3



Latino
1.7



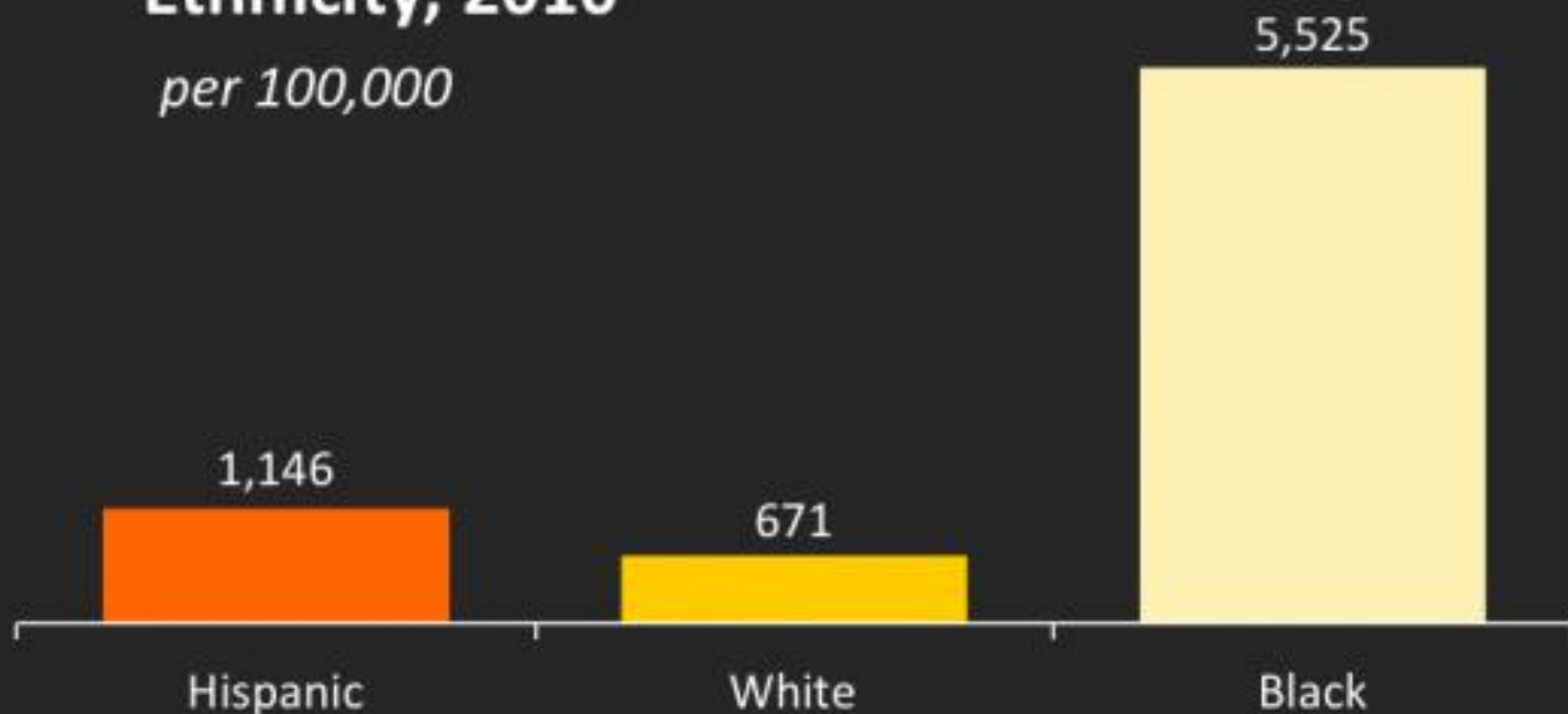
API
0.4



For every 1 White adult convicted of a crime in San Francisco, there were more than 10 Black adults and nearly 2 Latino adults convicted.

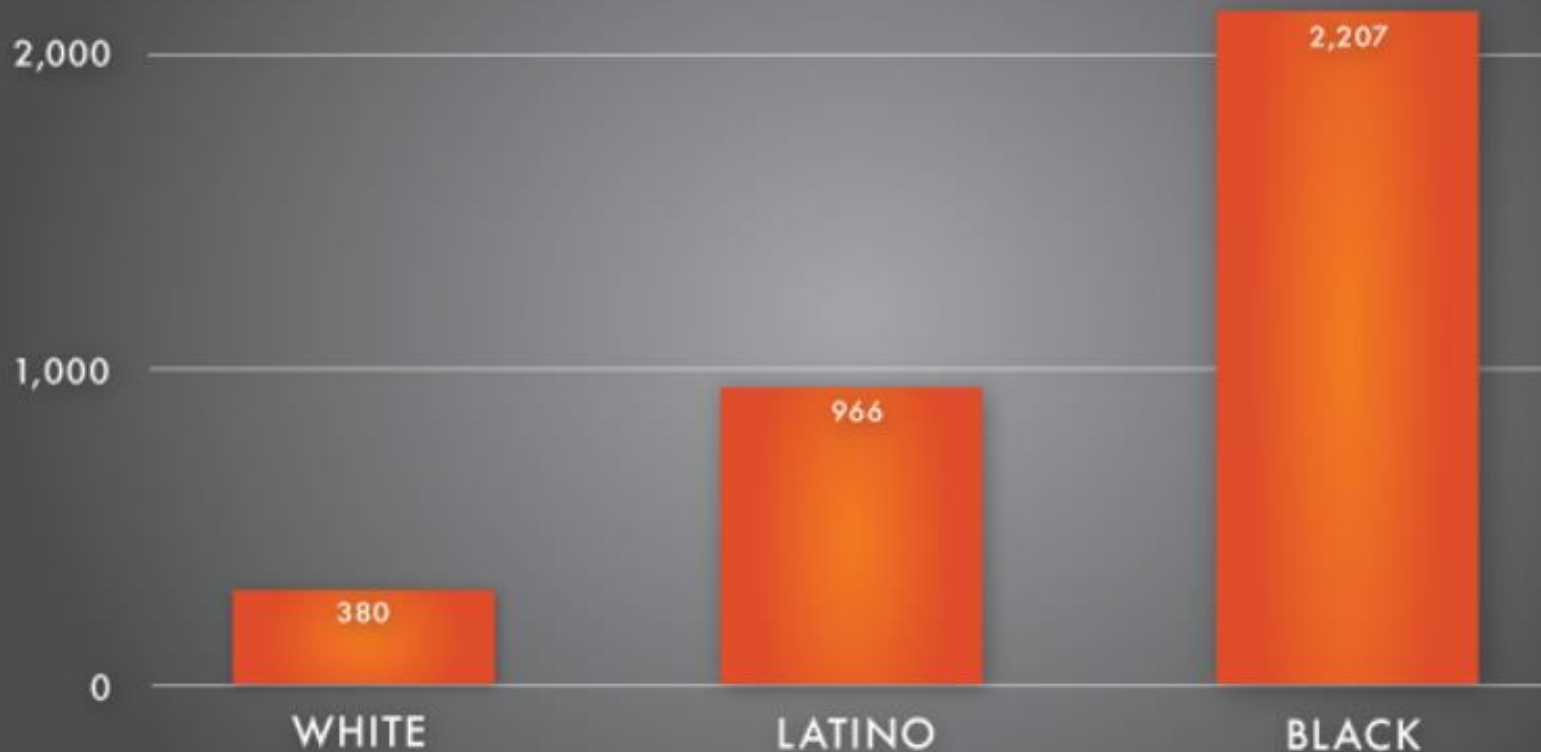
Figure 1: **California Adult Male
Incarceration Rate by Race and
Ethnicity, 2010**

per 100,000



INCARCERATION RATES BY RACE & ETHNICITY, 2010

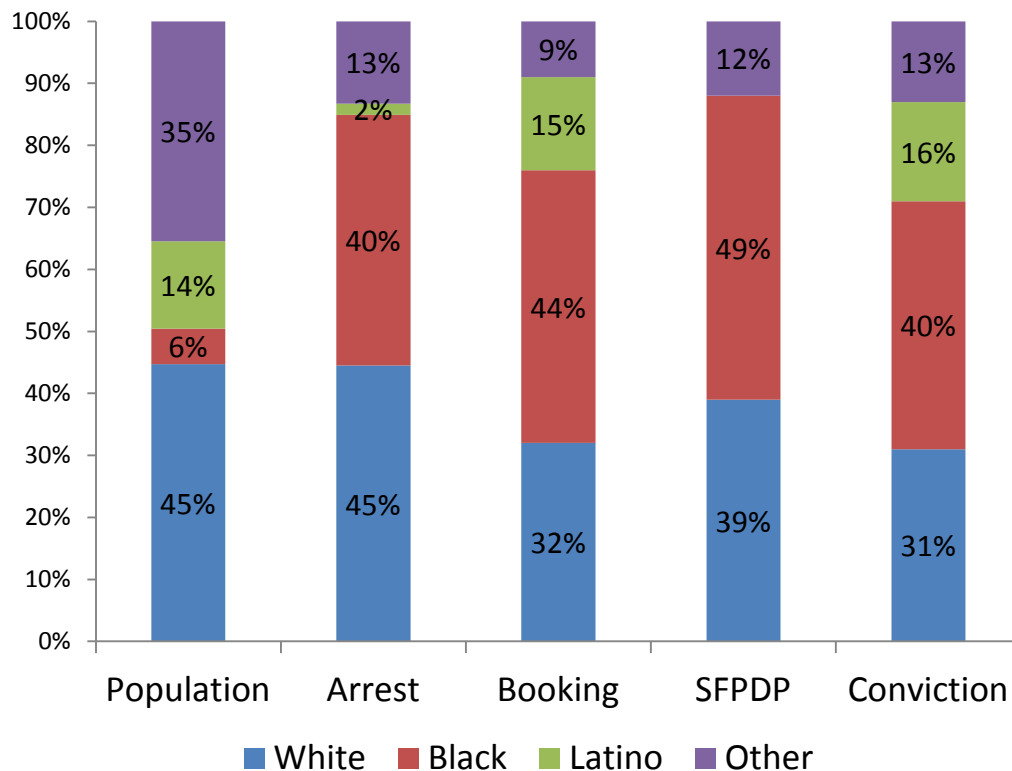
(Number of people incarcerated per 100,000 people in that group)



Source: Calculated by the Prison Policy Initiative from Bureau of Justice Statistics, Correctional Population in the United States, 2010 & U.S. Census 2010 Summary File 1.

Overrepresentation of People of Color in San Francisco Criminal Justice System

2013 Data: San Francisco



Black adults: Overrepresented at each stage:

- 6% of adults in the population
- 40% of arrests
- 44% of bookings to jail (pretrial)
- 49% of adults eligible for SFPDP
- 40% of convictions

Latino adults: appear to be undercounted at various points in the criminal justice process, but data vary across decision points. **This is likely caused by misidentification of some Latinos as White.**

Asian Pacific Islander and “other” adults: This analysis did not focus on API or “other” adults. Future disparities analysis should do so and must account for differences between subgroups within the larger API population.

Population Source: Puzzanchera, C., Sladky, A. and Kang, W. (2014). "Easy Access to Juvenile Populations: 1990-2013." Online.

Arrest Source: "Monthly Arrest and Citation Register", State of California Department of Justice (October 2014). Online

Booking, SFPDP and Conviction Data provided to Burns Institute by Adult Probation as part of JRI data analysis agreement. Sources: CMS, JMS, SFPDP Databases.

THE SCIENCE OF IMPLICIT BIAS





- One study showed that defense attorneys in death penalty cases paired pictures of white-skinned faces with stereotypically good words; they paired “bad” words with black faces.
- The study also found that 88 percent of U.S. attorneys are Caucasian and the vast majority of attorneys have “automatic reactions that make associating white with good easier than associating white with bad.”

African American

or

Good

European American

or

Bad



DE-BIASING YOURSELF

- Examine the assumptions you may be making about your case and your client
- Conduct full social history
- Visit your client's home and get to know his/her family
- Talk with others in your client's community and neighborhood to get a sense of his/her history there

JURY COMPOSITION



Win
oly

.....5,578
...4,576

....11,443
....14,209
.... 3,862

All-White Jury Uses 21 Minutes To Convict Man

RALEIGH, Miss. (ANP)—Johnny Craft, a former marine, was the first of five defendants to be con-

charge of
intent to
night gu
last Aug

Twenty
time for
cide, the
volved in
woundin

The c

IS JUSTICE COLOR BLIND?

A Duke University-led study on the impact of race on conviction rates raises questions about the criminal justice system.

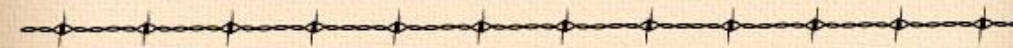
"Simply put, the luck of the draw on the racial composition of the jury pool has a lot to do with whether someone is convicted..." -- senior author Pat Bayer, chairman of Duke University's Economics Department

RESEARCHERS
EXAMINED MORE THAN
700 FELONY
TRIALS
IN SARASOTA AND LAKE COUNTIES
IN FLORIDA FROM 2000-2010.

Key findings:



In cases with no black people in the jury pool (typically consisting of around 27 people) blacks were convicted 81 percent of the time, and whites were convicted 66 percent of the time.



When the jury pool included at least one black person, the conviction rates were nearly identical.



VOIR DIRE

- *A New Approach to Voir Dire on Racial Bias*, by Cynthia Lee, UC Davis
- Trial judge's refusal to question jurors on racial prejudice violated D's constitutional rights.
Aldridge v. US (1931) 283 US 308; *Ham v. SC* 409 US 524 (1973)
- Trial judge's refusal to question jurors on racial prejudice violated D's constitutional rights.
Rosales-Lopez v. US 451 US 182 (1981)

Turner v. Murray 476 US 28 (1986)

- “A juror who believes that Blacks are violence prone or morally inferior might well be influenced by that belief in deciding whether petitioner’s crime involved the aggravating factors specified under Virginia law.

Such a juror might also be less favorably inclined towards petitioner’s evidence of mental disturbance as a mitigating circumstance. More subtle, less consciously held racial attitudes could also influence a juror’s decision in this case. Fear of Blacks, which could easily be stirred up by the violent facts of petitioner’s crime, might incline a juror to favor the death penalty.”

SETTING UP YOUR VOIR DIRE ON RACE

- File motion with the court asking for more time
- Introduce issue
- Explain about bias, race and racism
- Prepare group voir dire questions
- Link questions re: race and racism as to how your client was treated

Probing questions on race

- How serious a problem do you think racial discrimination is against blacks?
- In general, do you favor or oppose affirmative action?
- How often does it happen that a less qualified black person gets a job or promotion because of affirmative action?
- Do you think our society treats people of all races equally?
- What affects do you think racial discrimination has on people who are the targets of discrimination?
- Have you ever been afraid of someone of another race?
- Do you think some people use racial discrimination as an excuse for their own shortcomings?
- How would you feel if a family member or relative married someone of a difference race?
- Have you been exposed to people who have exhibited racial prejudice?

Probing questions on bias

- What specific experiences have you personally had with racism? Friend experienced it? What have you read about it?
- How multi-cultural/multi-racial is your circle of friends?
- What biases do you have against people of different races and religions?
- What do you think are the basic causes of racism and prejudices in the US?
- What are your biases against people who are different than you? How do you deal with those biases?
- Do you think that police officer witnesses may be biased against: people charged with crime, poor people, black people, people who don't speak English well?
- At what point would a police witness become biased/decide whether she thought person was guilty or not?

Probing questions on stereotypes

- Explain stereotyping: when someone makes an assumption about you based on a group they associate you with.
- Different national/racial/cultural groups have different generalizations about each other. (Give a few examples.) What are the generalizations we might have about each other?
 - Poor people?
 - Black people?
 - White people?
 - Police officers?
 - Defense lawyers?
- How can you make sure you are not making decisions based on stereotypes when you listen to this case?
- Have you ever been stereotyped? Tell us about that?

CHALLENGES FOR CAUSE

(Based on racial bias)

- The individual has enmity or bias toward a party.
---- Code Civ. Proc., § 229.
- Enmity and bias is established if prospective jurors confirm that they will not follow jury instructions if the law went against their conscience.
- Prospective jurors are disqualified from a trial if they cannot act with *entire* impartiality. *People v. Merced* (2001) 94 Cal.App. 4th 1024, 1027-1028; *Merced v. McGrath* (2005) 426 F. 3d 1076, 1078-1082.

PEREMPTORY CHALLENGES



BATSON WHEELER CHALLENGE

- THREE STEPS:

1. Party objective to the challenge has burden of showing PRIMA FACIE CASE OF DISCRIMINATION. Test: Totality of the relevant facts gives rise to an inference of discriminatory purpose.
2. If court makes a finding, burden shifts to the party who challenged the juror to explain adequately the racial exclusion by offering permissible neutral justifications for the strikes.
3. Court then decides if opponent has proved purposeful racial discrimination.

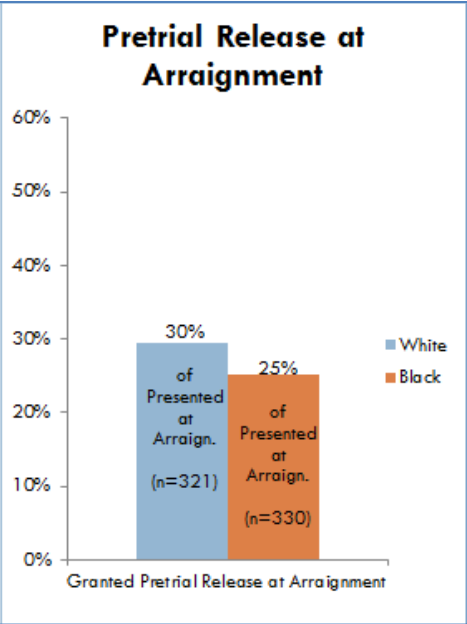
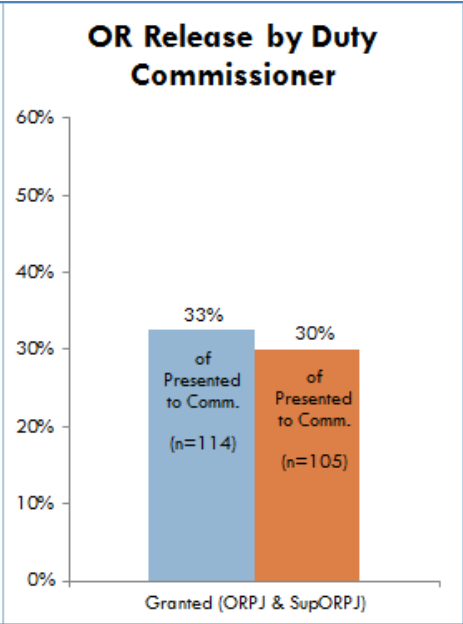
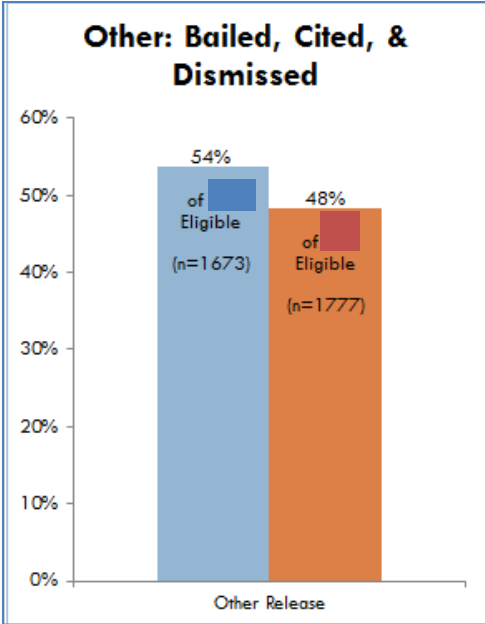
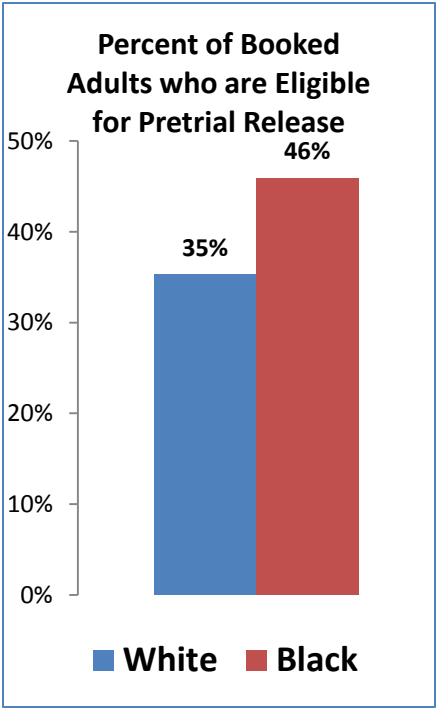
REPORT NO JUR100-01
REPORT DATE: 01/21/87
JUDGE: ROBERT G WALTHER

FLOYD COUNTY SUPERIOR COURT
TRAVERSE JURY
JURORS REQUESTED: 130
SD NO: 53
PAGE
APRIL 20, 1987
TIME: 9:30 A.M.

001. DEMPSEY NEAL BARRY
ROME GA 30161
002. HARPER BONNIE *oper. Deseta Beauty Shop*
ROME GA 30161 *she is Ronnie Duck's Great Aunt*
003. LANIER SARAH Elaine *OK. Dr. K's*
ROME GA 30161
004. RATLIFF WILEY KELVIN *works at Rexco Pharmacist*
ROME GA 30161
005. HACKETT MARY *husb. V. Pres. Valley Vond*
ROME GA 30161 *see attached sheet*
- ~~006. CECIL KIP ALAN WM~~
~~SILVER CREEK GA 30173~~
007. BEYSIEGEL MARY ELLEN *Co. Dept. Family & Child Services*
ROME GA 30161
008. CAGLE RICKEY *Fireman City of Rome*
ROME GA 30161 *see attached sheet*
009. HOOD EDDIE *Age 47 hlsn. Ga. Kraft*
ROME GA 30161 *see attached sheet*
010. NICHOLSON JOYCE M *techr. Elm. St. Elem. Sch.*
ROME GA 30161
011. MCGINNIS NONA ADLINE *Retired*
ROME GA 30161
- ~~012. CLEMENTS J TERRY~~
~~ROME GA 30161~~
013. HOELZER MARGARET *husb. Podiatrist on Bud. St.*
ROME GA 30161
014. STANSELL MARY H *husb. works for Power Co.*
ROME GA 30161
015. WILSON LOUISE *B. Age 64 Retired owns her home*
ROME GA 30161 *see attached sheet*
016. BARBOGELLO MAUREEN B *husb. is Super. Tripl. H. Sales Inc.*
ROME GA 30161
017. CARR ANNA W *Retired*
ROME GA 30161
018. BING PATRICIA A *OK*
CAVE SPRINGS GA 30124
019. HINES CURRIE LEE *B. Age 65 Retired owns his home*
ROME GA 30161 *see attached sheet*
020. EVANS MYRTLE FRANCES
ARMUCHEE GA 30105
021. BLACK DOROTHY M
ROME GA 30161
022. HARDGE EVELYN *B. Age 64 Retired hlsn. then husb. owns this home*
ROME GA 30161
023. COULTAS ANNE B *Works for Security Berry College*
ROME GA 30161
024. HOBGOOD LOU ELLA *husband is officer w/ Ga. State Bank*
ROME GA 30161
025. DEDEURWAERDER VICTOR *Retired owns his*
ROME GA 30161
- ~~026. STANLEY RUBY BARNES~~
~~ROME GA 30161~~
027. HOUSE CHARLOTTE *she is related to Mrs Hubbard neighbor of Mrs White*
ROME GA 30161 *husb. w/ Ga. Power*
028. JOHNSON BOBBIE JEAN *B. Age 56*
ROME GA 30161

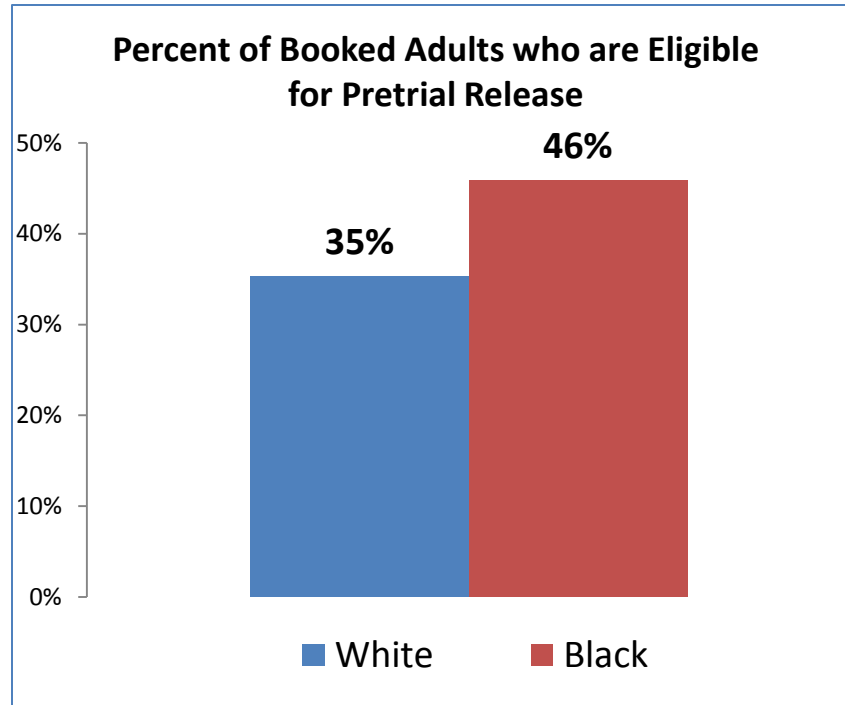
BAIL - Outcomes at Key Points

Booked Black adults are more likely than booked White adults to be eligible for Pretrial Release, but White adults are more likely to be released throughout the process.



Note: Data for both Bookings and Pretrial eligible include the most recent year available (Q3 2013-Q2 2014). The data come from two distinct databases.

Pretrial Release Eligible Compared to Bookings



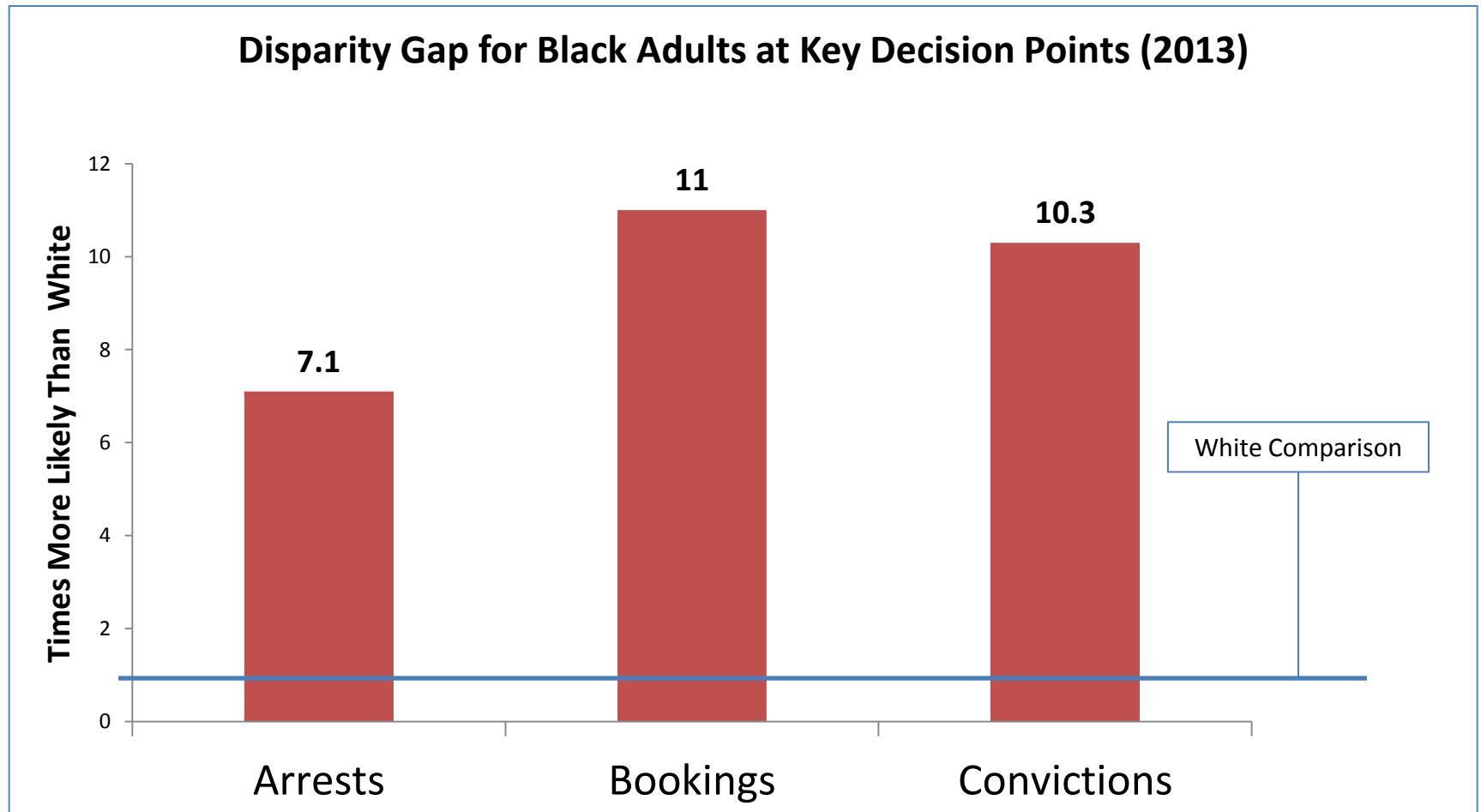
Black adults booked into San Francisco County Jail are more likely than White adults to be eligible for Pretrial Release.

Whereas 35% of White adults booked were eligible for Pretrial Release, 46% of booked Black adults were eligible.

	White	Black
Bookings	5,940	7,947
Pretrial Release Eligible	3,118	3,683
Percent of Booked Adults who are Eligible for Pretrial Release	35%	46%

Note: Data for both Bookings and Pretrial eligible include the most recent year available (Q3 2013-Q2 2014). The data come from two distinct databases. Further analysis is needed to better understand this finding. For example, White adults may be more likely to be cited out and are therefore not included within "eligible" for pretrial release, and protocol for identifying "ethnicity" in the two information systems may not be consistent.

Disparity Gap at Key Decision Points

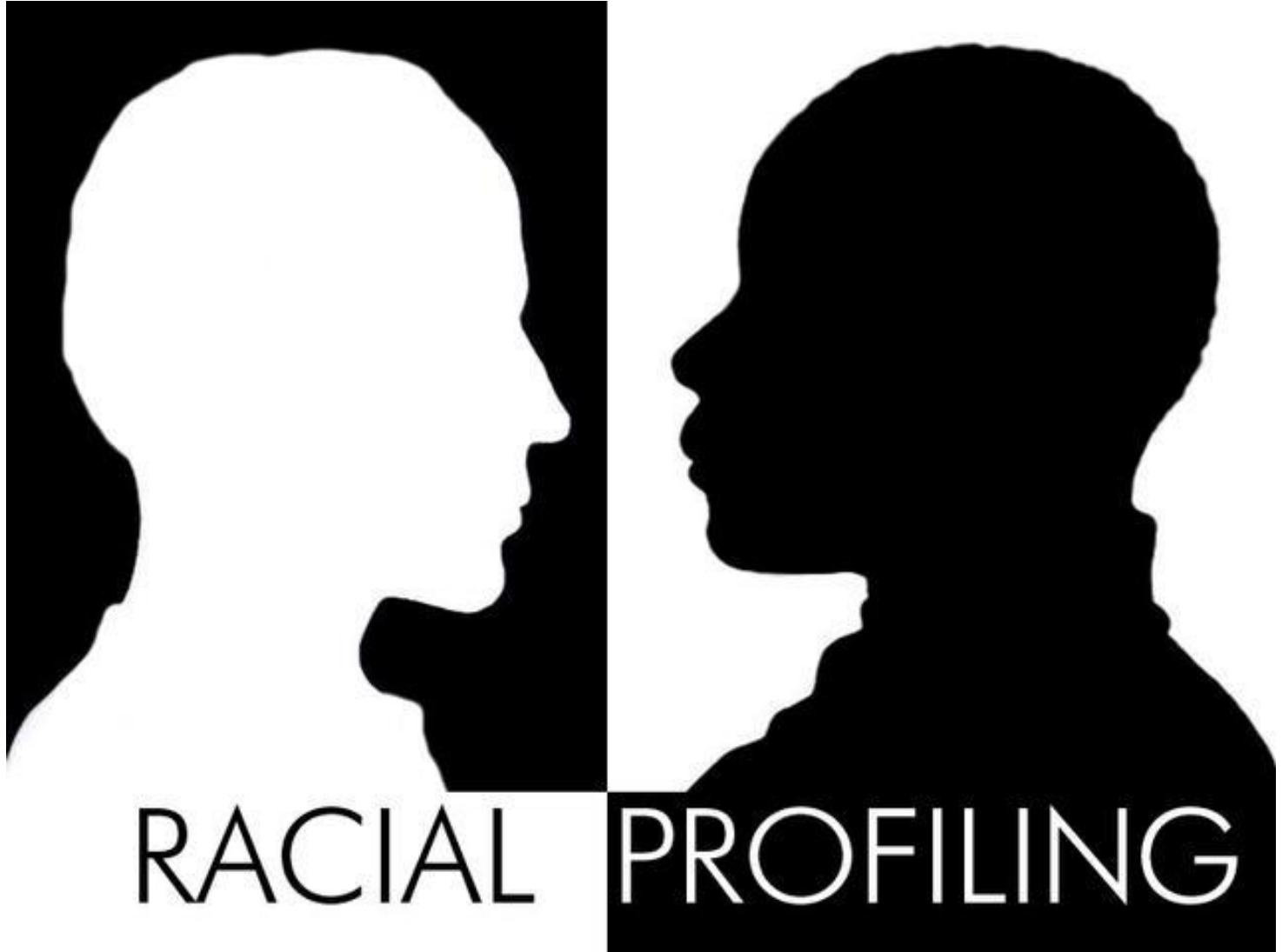


SELECTIVE PROSECUTION



SELECTIVE PROSECUTION

- Client's guilt or innocence is irrelevant.
- Motion to obtain statistics from government.
- Collect any evidence that shows an inference of bias or selective prosecution.
- Dismissal is the remedy.
- *Mumphrey* decision: "Racially selective action by law enforcement inflicts harm whether it is perpetrated by law enforcement in the streets or by a prosecutor in office."



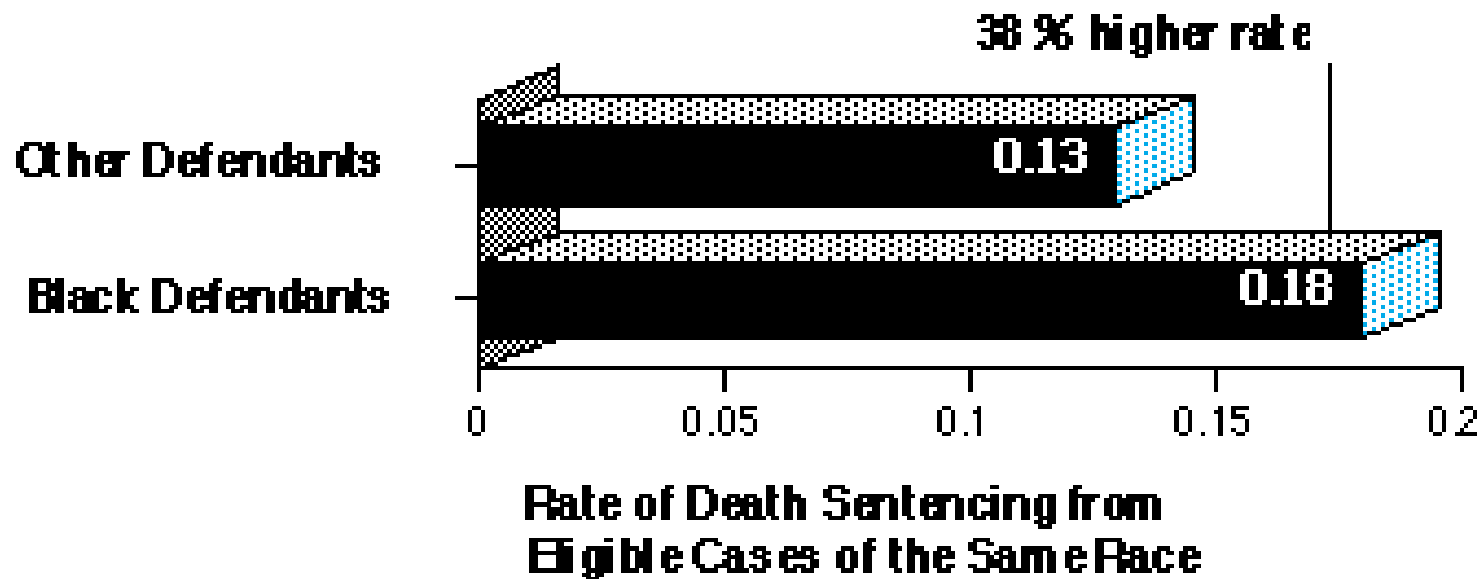
CALIFORNIA'S RACIAL PROFILING LAW

(Penal Code 13519.4)

- (e) “Racial or identity profiling,” for purposes of this section, is the consideration of, or reliance on, to any degree, actual or perceived race, color, ethnicity, national origin, age, religion, gender identity or expression, sexual orientation, or mental or physical disability in deciding which persons to subject to a stop or in deciding upon the scope or substance of law enforcement activities following a stop, except that an officer may consider or rely on characteristics listed in a specific suspect description. The activities include, but are not limited to, traffic or pedestrian stops, or actions during a stop, such as asking questions, frisks, consensual and nonconsensual searches of a person or any property, seizing any property, removing vehicle occupants during a traffic stop, issuing a citation, and making an arrest.
- (f) A peace officer shall not engage in racial or identity profiling.

SENTENCING

Fig. 2 Comparison of Jury Death Sentencing Rates for Black Defendants and Other Defendants (unadjusted)



Being Black Can Act As An 'Aggravating Factor'

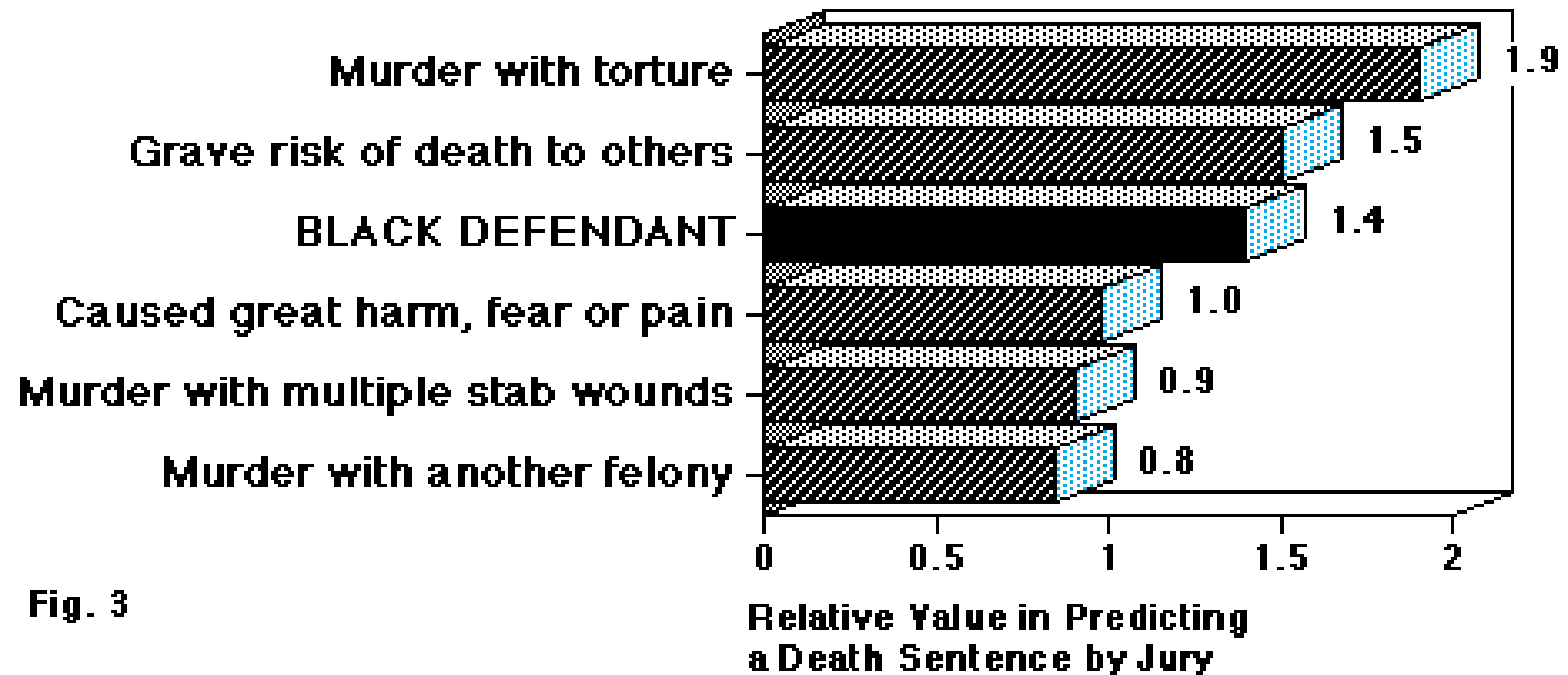


Fig. 3

EXPOSING *RACISM*





sfpublicdefender's Channel

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Playlis



1/5/2011 18:34:48



0:16 / 6:51

240p





TEXT INVESTIGATION

NOVEMBER 9, 2011

"Do you celebrate qaunza [sic] at your school?"

"Yeah we burn the cross on the field! Then we celebrate Whitemas."



6:04 65°

Racist Texts



"We got two blacks at my boys [sic] school and they are brother and sister! There cause dad works for the school district and I am watching them like hawks."

U.S. DISTRICT COURT DOCUMENTS

5:30 PM
5
KPIX

:04			[I hate to tell you this but my wife friend is over with their kids and her husband is black! If is an Attorney but should I be worried?]
:04			[Get ur pocket gun. Keep it available in case the monkey returns to his roots. Its not against the law to put an animal down]
:41			[Well said!]
:32			[U may have to kill the half breed kids too. Don't worry. Their an abomination of nature anyway.]
:3			[Dude. Your boy made Q50 . Sgt. Aj Holder]
:0			[Fuckin [REDACTED]]
:6			[LoL and Yolanda Williams]
:7			[Or my]
:2			[[REDACTED] bitch]

CITY

San Francisco prison guards force inmates into Game of Thrones-style fight club



H&F

Audio:
Ricardo Garcia







Race & Reform



Go beyond scandals and toward solutions

San Francisco Public Defender's Justice Summit

Wednesday,
April 29, 2015
9:00 a.m. — 12:30 p.m.

*Join city leaders,
attorneys and citizens
as we debate and
discuss San Francisco's
most pressing racial
justice issues.*

Koret Auditorium
San Francisco Main Library
100 Larkin Street
Lower Level
Enter at 30 Grove Street

Register: sfjusticesummit.com

left: graphic includes images from tests of implicit bias



The Jury Is Out

**San Francisco
Public Defender's
Justice Summit**

**Wednesday,
April 23, 2014
9 am – 3 pm**

**Koret Auditorium
San Francisco Main Library
100 Larkin Street
Lower Level
Enter at 30 Grove Street**

Register: sfpublicdefender.org

USE OF FORCE



Keynote Speaker:
Melissa Harris-Perry

San Francisco Public Defender's Justice Summit

**Wednesday,
May 25, 2016
9 a.m. – 2:30 p.m.**

*Join experts
and citizens in
dialogue about
San Francisco's
law enforcement
and justice system.*

**Koret Auditorium
San Francisco Main Library
100 Larkin Street
Lower Level
Enter at 30 Grove Street**

Register:
sfjusticesummit.com



Keynote: Melissa Harris-Perry
Author, professor, and
political commentator



**Public Defender
Jeff Adachi**



Ken E. Williams
former veteran
homicide detective
and use of force/
police reform expert



Steve Tuttle
Taser International



San Francisco Public Defender's 2016 Justice Summit USE OF FORCE

Schedule: Wednesday, May 25:

9 a.m.: Registration
9:30 a.m.: Opening Remarks: Jeff Adachi
9:45 a.m.: Performance
10 a.m.: Keynote Speaker: Melissa Harris-Perry
11 a.m.: Expert Analysis of SFPD Shootings
Noon: Lunch provided to RSVPed attendees
1 p.m.: Performance
1:15 p.m.: Panel: Should San Francisco Adopt Tasers?
2:15 p.m.: Closing Remarks

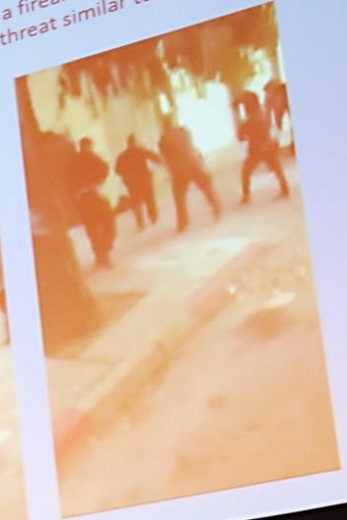
This event is free, but registration is required.
Register at sfjusticesummit.com

MCLE credits available.
Co-sponsored by Morgan, Lewis & Bockius, Farella, Braun + Martel,
Doug Young, Craig Peters, and Bar Association of San Francisco



**Performances by
Marcus Shelby,
Jackie Ramos and
the Young Kings**

SFPD Published Officer Reports – This Officer didn't have a firearm
his asp baton in hand. He therefore didn't see Mario as a threat similar to
other officers.















The background is a dark blue field with a light blue dashed grid. Overlaid on this are numerous white line-art gears of various sizes and shapes, some with internal patterns like a five-pointed star or a circle with a cross. The text "BLUEPRINT FOR RACIAL JUSTICE" is centered in the lower half of the image in a large, white, sans-serif font.

BLUEPRINT FOR RACIAL JUSTICE

FROM SLAVE TO CRIMINAL WITH ONE AMENDMENT



FROM **AVA DUVERNAY**
DIRECTOR OF SELMA

13TH

A NETFLIX ORIGINAL DOCUMENTARY

NETFLIX | NOW STREAMING