The Prison Industrial Complex imprisons more black men today than were slaves in 1850.
Black Males Incarcerated in the United States

745,000

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%

California 8.6%
Oklahoma 9.7%
Colorado 7.7%
Texas 8.1%
Kansas 7.7%
Iowa 9.4%
Wisconsin 12.8%
Pennsylvania 9.4%
Indiana 8.4%
Louisiana 8.2%


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

<table>
<thead>
<tr>
<th>Race</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>White</td>
<td>1</td>
</tr>
<tr>
<td>Black</td>
<td>10.3</td>
</tr>
<tr>
<td>Latino</td>
<td>1.7</td>
</tr>
<tr>
<td>API</td>
<td>0.4</td>
</tr>
</tbody>
</table>

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

- Hispanic: 1,146
- White: 671
- Black: 5,525
INCARCERATION RATES BY RACE & ETHNICITY, 2010
(Number of people incarcerated per 100,000 people in that group)

Overrepresentation of People of Color in San Francisco Criminal Justice System

<table>
<thead>
<tr>
<th>Category</th>
<th>Population</th>
<th>Arrest</th>
<th>Booking</th>
<th>SFPDP</th>
<th>Conviction</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>White</td>
<td>Black</td>
<td>Latino</td>
<td>Other</td>
<td></td>
</tr>
<tr>
<td>2013 Data: San Francisco</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Population</td>
<td>35%</td>
<td>13%</td>
<td>9%</td>
<td>12%</td>
<td>13%</td>
</tr>
<tr>
<td>Arrest</td>
<td>40%</td>
<td>2%</td>
<td>15%</td>
<td>49%</td>
<td>16%</td>
</tr>
<tr>
<td>Booking</td>
<td>44%</td>
<td>44%</td>
<td>49%</td>
<td></td>
<td>40%</td>
</tr>
<tr>
<td>SFPDP</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Conviction</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**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.

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.”
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
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-
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

Key findings:

**POTENTIAL JURORS**

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.

81% CONVICTION

66% CONVICTION

**POTENTIAL JURORS**

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

71% CONVICTION

73% CONVICTION

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

http://today.duke.edu/2012/04/jurystudy

Design by Tamberly Ferguson
• 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)

“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 different 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.

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.
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.
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.

### Percent of Booked Adults who are Eligible for Pretrial Release

<table>
<thead>
<tr>
<th></th>
<th>White</th>
<th>Black</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bookings</td>
<td>5,940</td>
<td>7,947</td>
</tr>
<tr>
<td>Pretrial Release Eligible</td>
<td>3,118</td>
<td>3,683</td>
</tr>
<tr>
<td>Percent of Booked Adults who are Eligible for Pretrial Release</td>
<td>35%</td>
<td>46%</td>
</tr>
</tbody>
</table>

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

Disparity Gap for Black Adults at Key Decision Points (2013)

Times More Likely Than White

Arrests 7.1
Bookings 11
Convictions 10.3

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

- Black Defendants: 0.18
- Other Defendants: 0.13

38% higher rate

Rate of Death Sentencing from Eligible Cases of the Same Race
Being Black Can Act As An "Aggravating Factor"

- Murder with torture: 1.9
- Grave risk of death to others: 1.5
- BLACK DEFENDANT: 1.4
- Caused great harm, fear or pain: 1.0
- Murder with multiple stab wounds: 0.9
- Murder with another felony: 0.8

Relative Value in Predicting a Death Sentence by Jury

Fig. 3
EXPOSING RACISM
"Do you celebrate qaunza [sic] at your school?"

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

KPIX
<table>
<thead>
<tr>
<th>Time</th>
<th>Text</th>
</tr>
</thead>
<tbody>
<tr>
<td>:04</td>
<td>[ 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? ]</td>
</tr>
<tr>
<td>:04</td>
<td>[ 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 ]</td>
</tr>
<tr>
<td>:41</td>
<td>[ Well said! ]</td>
</tr>
<tr>
<td>:32</td>
<td>[ U may have to kill the half breed kids too. Don't worry. Their an abomination of nature anyway. ]</td>
</tr>
<tr>
<td>:13</td>
<td>[ Dude. Your boy made Q50. Sgt. Aj Holder ]</td>
</tr>
<tr>
<td>:00</td>
<td>[ Fuckin ]</td>
</tr>
<tr>
<td>:16</td>
<td>[ LoL and Yolanda Williams ]</td>
</tr>
<tr>
<td>:07</td>
<td>[ Or my ]</td>
</tr>
</tbody>
</table>
| :12  | [ ]
San Francisco prison guards force inmates into Game of Thrones-style fight club
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.

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
San Francisco Public Defender’s Justice Summit
Wednesday, May 25, 2016
9 a.m. – 2:30 p.m.
Koret Auditorium
San Francisco Main Library
100 Larkin Street
Lower Level
Enter at 30 Grove Street
Register: sfjusticesummit.com

Keynote Speaker:
Melissa Harris-Perry

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

MCE 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 Ramírez and the Young Kings

Public Defender
Jeff Adachi
Ken E. Williams
former veteran
homicide detective
and use of force/
police reform expert
Steve Tuttle
Taser International
SFPD Published Officer Reports – This Officer didn’t have a firearm, but his asp baton in hand. He therefore didn’t see Mario as a threat similar to other officers.
BLUEPRINT FOR RACIAL JUSTICE