

THE COLOR OF INJUSTICE

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NAACP LEGAL DEFENSE AND
EDUCATIONAL FUND, INC.



Outline



- Disproportionate Minority Contact (DMC)
- Inadequate Provision of Counsel and DMC
- Impact on African American Community

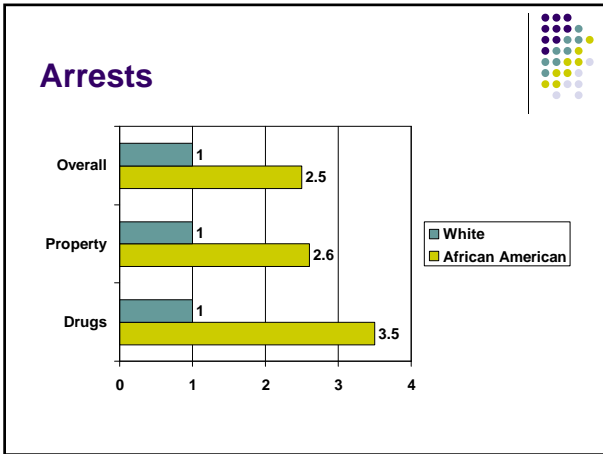
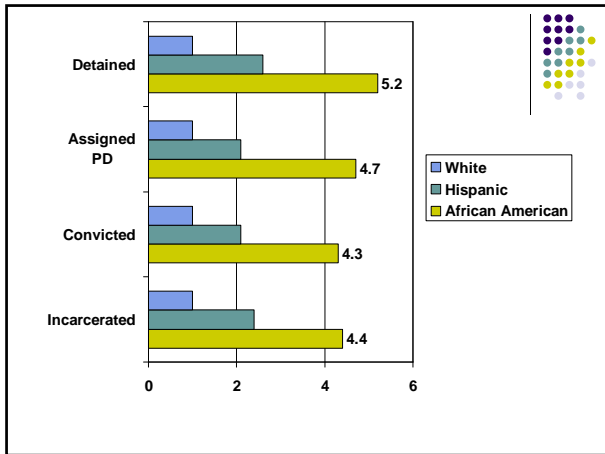
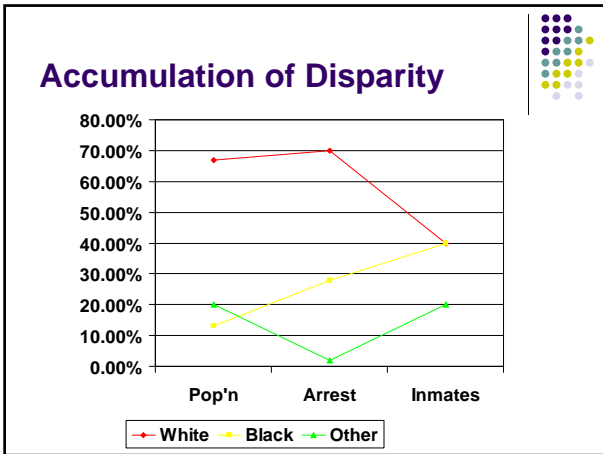
Disproportionate Minority Contact



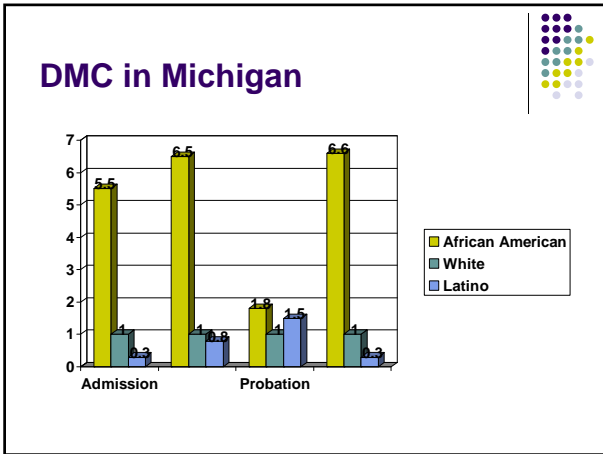
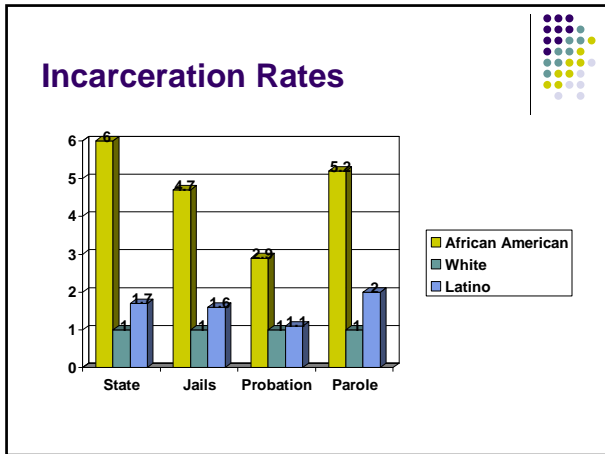
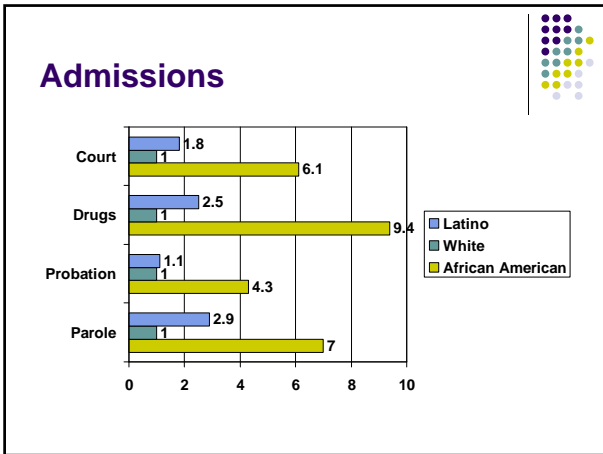
1 in 100 adults is behind bars.

**For African American men
between ages of 20-34, the
number is 1 in 9.**





- ### Court Processing
- Disparity increases as you move through the system.
 - About same percentage of whites and African Americans were convicted of violent crimes
 - African Americans are more often sentenced to prison
 - African Americans have longer sentence lengths than whites
 - Violent offense – 108 mos. vs. 95 mos.
 - African Americans less likely to be sentenced to probation



- ### Changes in Drug Arrests
- Between 1980-2003 in Detroit
 - Drug arrests for whites: -7%
 - Drug arrests for Blacks: up 62%

Causes of DMC



- Differential policing policies and practices (e.g. racial profiling, “War on Drugs”)
- Improper exercise of discretion by prosecutors, judges, and probation/parole officers
- Sentencing laws
- Overt racial bias
- ***Inadequate representation***

Inadequate Indigent Defense Systems



LDF Studies



- Studies in indigent defense in Mississippi and Schuyler County, New York
 - Both burdened with excessive caseloads
 - Difficulty communicating with counsel
 - Lawyers fail to explain adequately sentencing or plea options
 - Inadequate investigation
 - Inappropriately small number of motions
 - Lack of trial preparation, Appeals
- Observations – NOLA

A Constitutional Crisis in Michigan



- Judges handpicking defense attorneys
 - Lawyers appointed to cases or which they are unqualified
 - Defenders meeting clients on eve of trial and holding non-confidential discussions
 - Failure to identify obvious conflicts of interest
 - Failure to prepare properly for trials or sentencings
 - Inadequate compensation
 - Lack of sufficient time, training, investigators, experts and resources to prepare properly a case.
- NLADA Report*

Michigan, cont'd



- Michigan ranks 44th out of 50 states for per capita spending on public defense
 - Michigan \$7.35 per capita
 - National Avg. \$11.86 per capita
- Michigan is one of only seven states that provide no state money for trial-level public defenders.

Representation Matters



- Only 37% of state inmates with appointed counsel spoke with their attorneys in the first week; 60% of retained counsel met with their clients.
- 54% of federal inmates with appointed counsel met with their lawyers, whereas 75% of federal inmates with retained counsel had contact with their lawyers
- Clients of appointed counsel are less likely to go to trial and more likely to be convicted at trial

Disproportionate Impact on African Americans



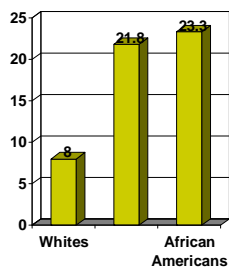
Disproportionate Impact of a Failed System



- Disproportionately represented in criminal justice system
- More likely to depend on indigent defense services

Reliance on Appointed Counsel

- African Americans are more likely to require indigent defense services because they are more likely to live in poverty.
- 2005 Sentencing Project study found whites are more likely to retain counsel



Examples

- Alabama (2001): African Americans were 26% of population, but 60% of defendants using indigent defense system
- Federal: 65% of African Americans depend on appointed counsel whereas only 57% of whites were unable to retain counsel.

Exonerations

- 2004 study: 328 exonerations nationwide between 1989 and 2004
- 55% were African American and 13% were Latino
- 64% of those wrongfully convicted of rape were African American
- Many of the wrongful convictions are directly attributable to failures of indigent defense systems

Community Consequences

- When citizens perceive the state to be furthering injustice, they are less likely to obey the law, assist law enforcement, or enforce the law themselves
 - Cooperation with law enforcement
 - Jury nullification

Community Consequences



“If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy.”

Justice Brandeis, *Olmstead v. United States*

Community Consequences



Studies in procedural justice have shown that when a person has a positive experience with the police or in court, that person is more likely to feel satisfied with the process and is ultimately more willing to accept the police officer's or court's decision.

The Meaning of Race



Incarceration plays a role in constructing the meaning of race by defining race and crime in terms of each other – the disproportionate rates of incarceration have made the image of black criminality a social reality.