

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

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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

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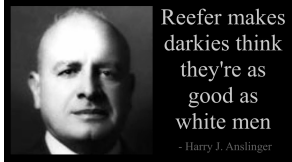
Harry Anslinger's War



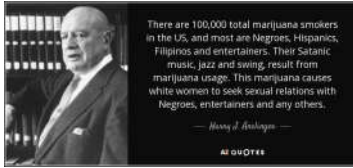
- Anslinger took over the U.S. Department of Prohibition as alcohol prohibition was ending in 1929
- He was not originally interested in cannabis, until he was about to be out of a job (*Timeline*, 2018)
- He founded and built the Dept. into the Federal Bureau of Narcotics by criminalizing addiction 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

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Harry Anslinger's Views



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



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

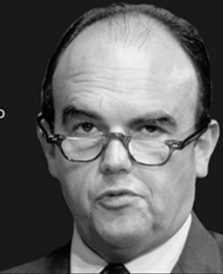
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WHY THE WAR ON DRUG USERS?

"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*.



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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)

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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)


Figure 1. US Rates of Adult Drug Arrests by Race, 1980 - 2007
(Data calculated per 100,000 residents of each race)

Human Rights Watch, 2009

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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



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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

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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)

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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)



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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.



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

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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*.

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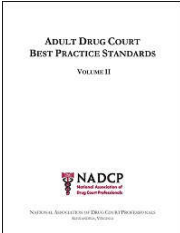
Racial Representation in Treatment Courts

- 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)

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NADCP Response to Racial Disparities in Treatment Courts

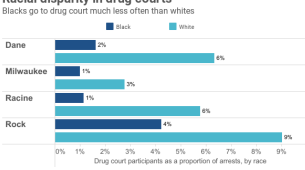
- The NADCP *Adult Drug Court Best Practice Standards (2013, 2015)* state that drug courts must monitor their programs at least annually for evidence of racial and ethnic disparities
 - Does yours?
- If disparities are found, courts are supposed to adjust eligibility criteria, assessment procedures,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



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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



County	Black (%)	White (%)
Dane	2%	4%
Milwaukee	1%	2%
Racine	1%	8%
Rock	4%	9%

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

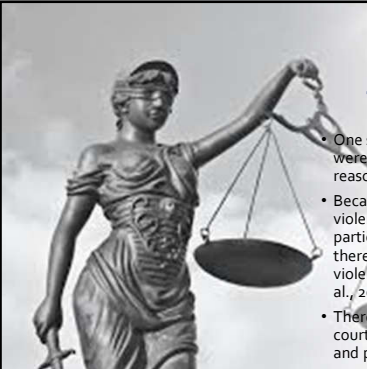
- In Dane County, 1/3 of those arrested for drug crimes were Black, but only 10% of participants in drug courts were
- In Racine County, 1/3 of those arrested were Black, but only 11% in drug courts were

Wisconsin Watch, 8/17/2014

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There is no therapeutic jurisprudence without equity and inclusion.

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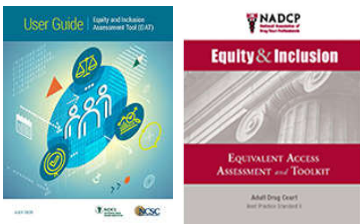


Procedural Unfairness in Treatment Courts

- 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)

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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

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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

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Evidence-Based Risk Assessment Tools

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

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EVIDENCE- BASED ASSESSMENTS FOR SUBSTANCE USE

EXAMPLE: Addiction Severity Index (ASI)

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

Low Need (0-5) | High Need (6-9)

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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



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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)



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How to Increase BIPOC Graduation Rates

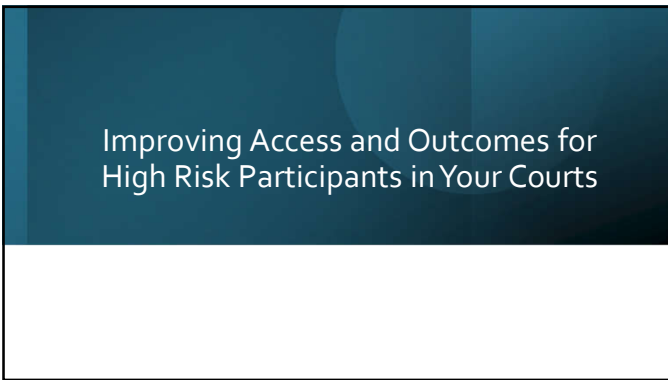


- Providing family/marital counseling increases graduation rates (Ho et al., 2018)
- Offer more culturally specific treatment services (Gallagher & Nordberg, 2018), such as HEAT (Marlowe et al., 2018)
- Offer vocational and educational training (Shannon et al., 2018)
- Utilize treatment services that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

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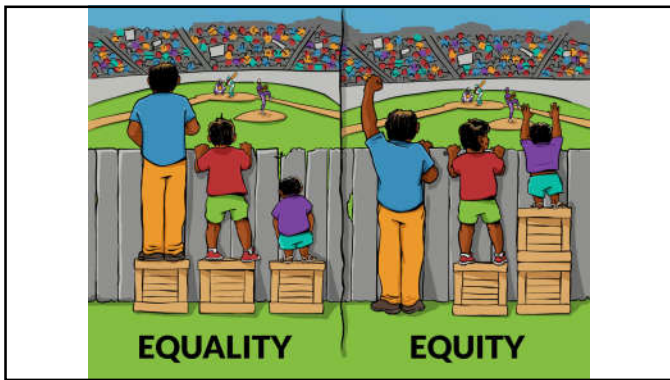
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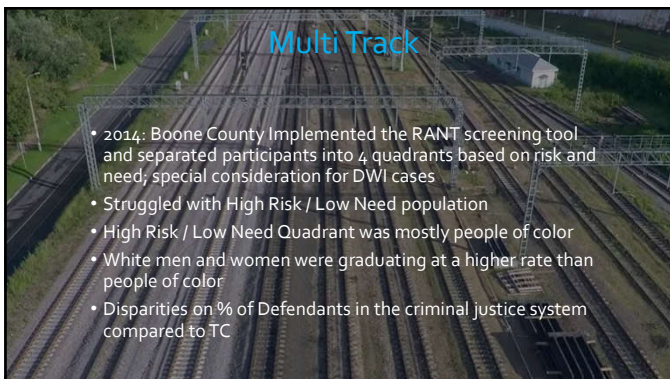
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Meet with Stakeholders

- 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



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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%

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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 I must reside in Boone County; TC III must live in Truman VA catchment.)
<input type="checkbox"/>	Must not be Designated Sex Offender requiring sex offender supervision, as determined by the Missouri Board of Probation and Parole.
<input type="checkbox"/>	Current charge must not be Dangerous Felony as defined by 556.061, RSMo.
<input type="checkbox"/>	Must be eligible for supervised probation as charged.
<input type="checkbox"/>	TC I and TC IV: Must have Probey charge eligible for supervised probation.
<input type="checkbox"/>	TC II: Must be able to supervise and provide UA collection from county of residence.
<input type="checkbox"/>	Must have treatment need.
<input type="checkbox"/>	TC I, II must be eligible for CPBC services from a designated MH provider.
<input type="checkbox"/>	TC III must be eligible for VA services.
<input type="checkbox"/>	Must not be terminated from TC without 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.

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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



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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

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HEAT Facilitator Training



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Improving Outcomes

- 77% 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%

125,058	154,568	95,054	124,500
125,487	56,845	97,511	125,000
124,000	110,000	99,011	154,000
	150,000	99,216	110,000
	35,000	101,090	89,000
		101,684	50,000

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How to Support Your Colleagues of Color

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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*.

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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

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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



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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

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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



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



Thomas Jefferson
3rd U.S. President
(1743-1826)

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Resources

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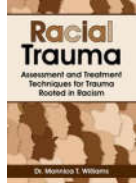
Racial Trauma and Criminal Justice

- *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)

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Resources

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



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