

It Starts with a Single Step: One Organization's Efforts to Address Racial Disparity

presentation by the

Wisconsin State Public Defender's Office

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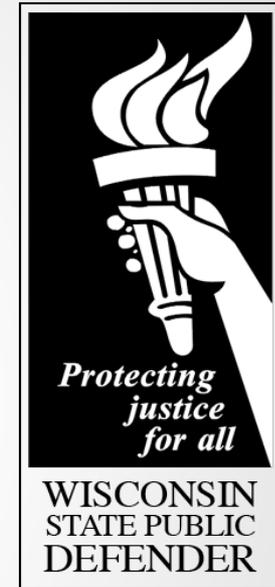
National Legal Aid and Defender Association Annual Conference

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Wisconsin State Public Defender's Office (SPD)

Kelli Thompson, State Public Defender

Mike Tobin, Deputy State Public Defender



- **Independent state agency**
- **Report to 9-member State Public Defender Board**
- **Mix of staff attorneys and certified private bar attorneys**
- **FY12 case openings = 138,813**

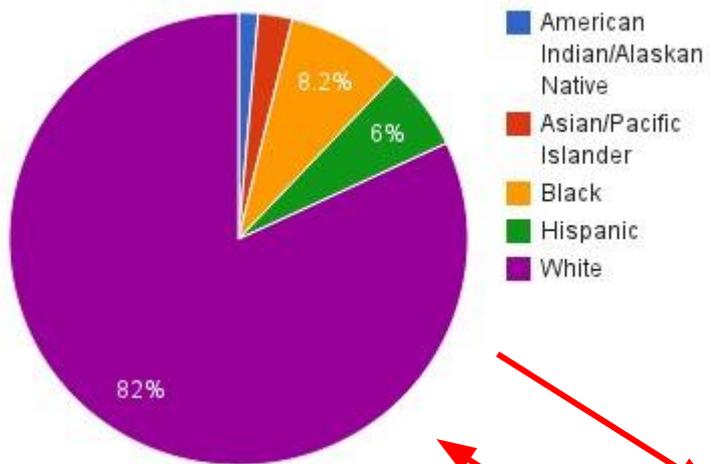
SPD MISSION

To promote justice throughout Wisconsin by providing high-quality legal services, protecting individual rights, and advocating as a criminal justice partner for effective defender services and a fair and rational criminal justice system.

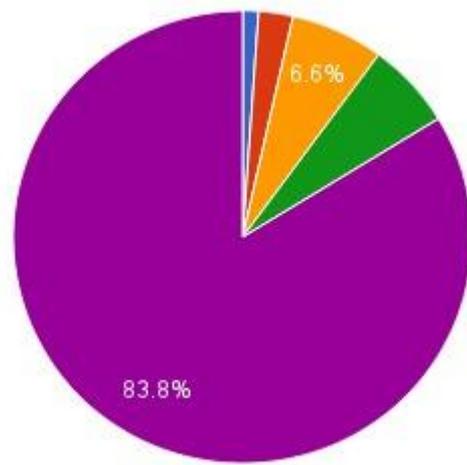


Who we are

SPD Staff



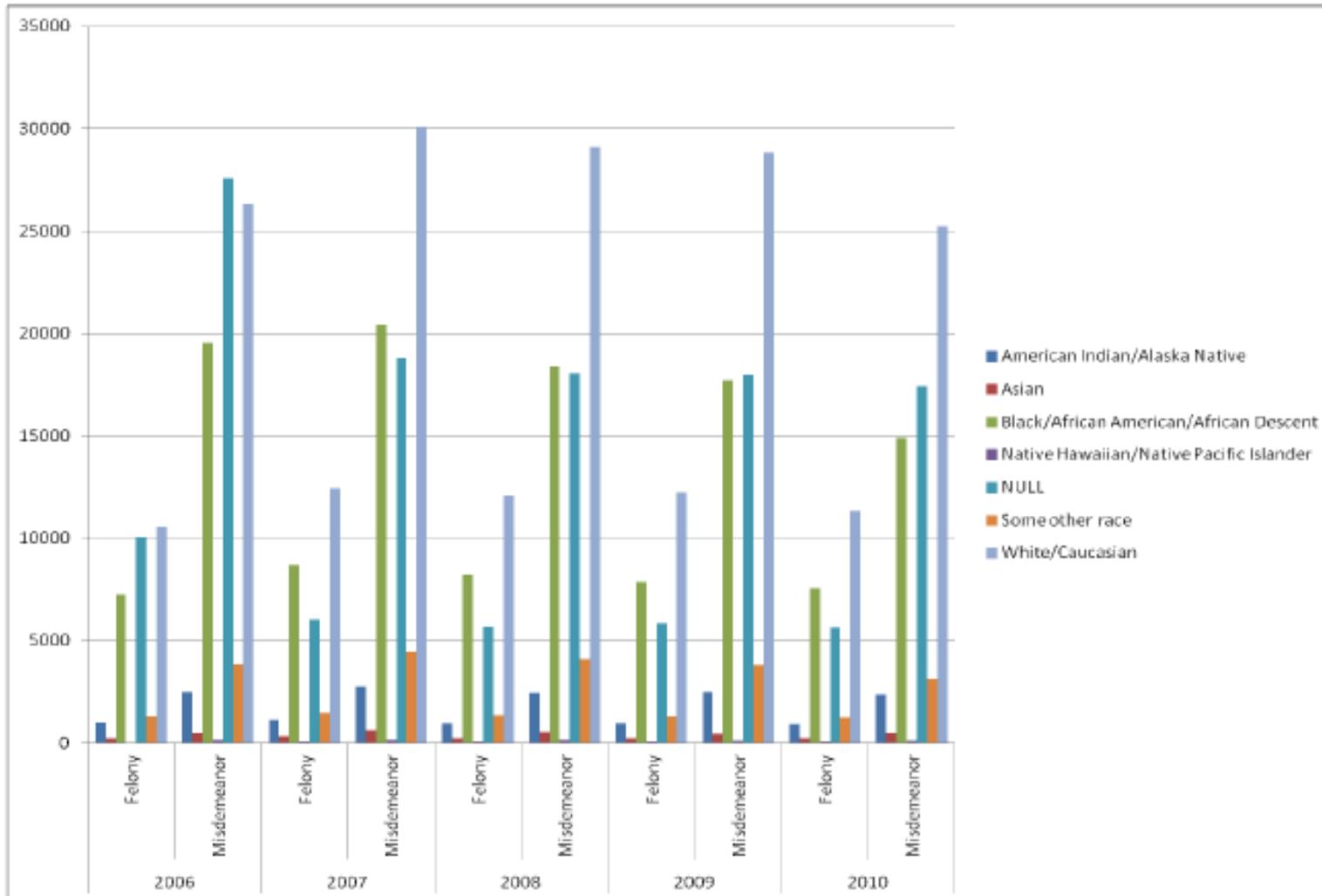
Wisconsin Population

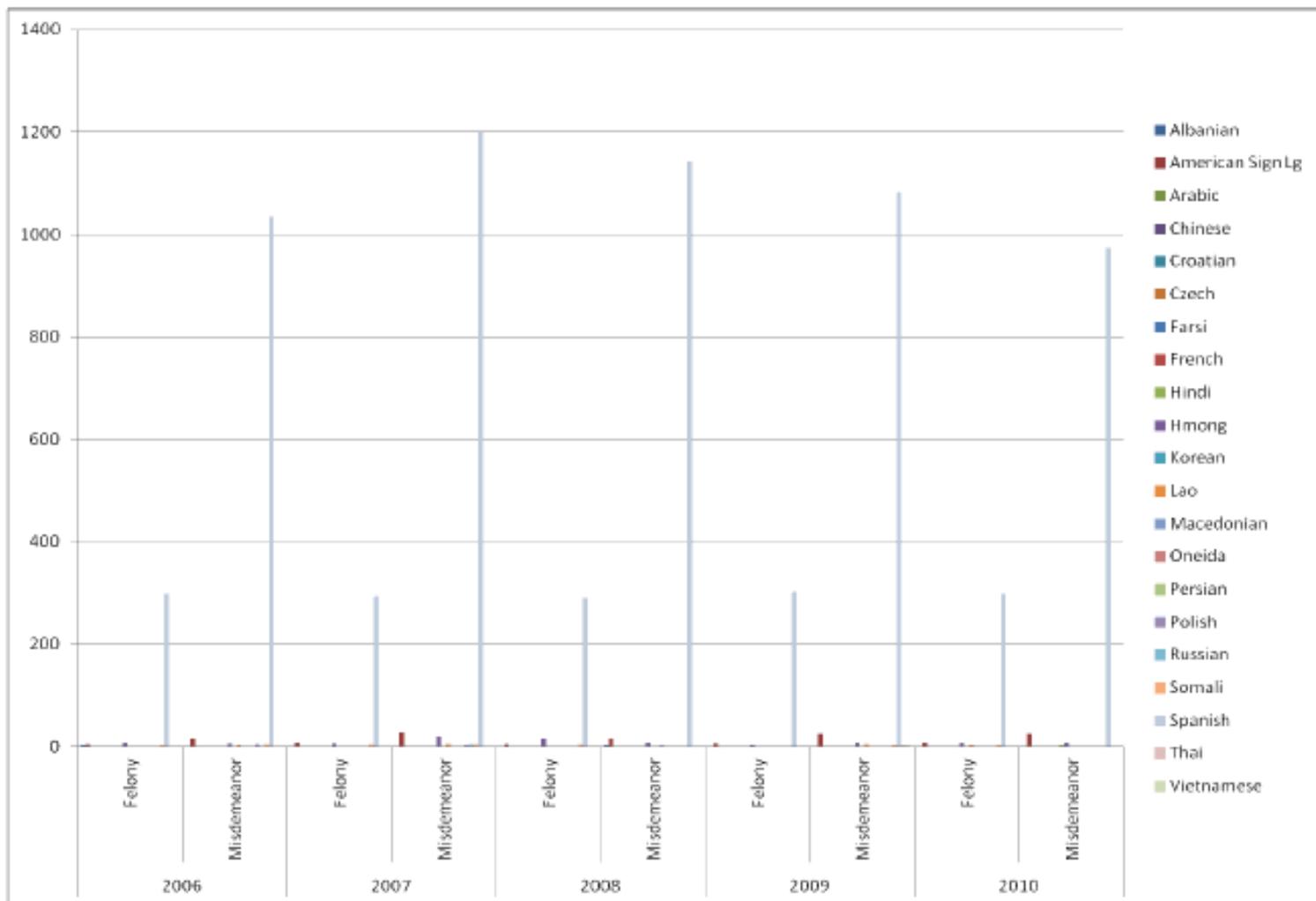


The Situation In Wisconsin

Wisconsin lead the nation with an estimated 4,058 black prison and jail inmates per 100,000 black state residents followed by Iowa with 3,302 and Texas 3,287. Prison and Jail inmates at Midyear 2001.

(USDOJ/Office of Justice Programs - BJA, April 2002)





Pam Oliver

University of WI Sociology Professor

Author

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Early Involvement of the SPD

- SPD was a part of the 1999 Racial Profiling Commission convened by Governor Tommy Thompson.
- Governor Tommy Thompson's 1990's Juvenile Justice Commission and Disproportionate Minority Confinement (DMC).
- Governor Scott McCallum Executive Order #1 - accepted the Racial Profiling Commission report and findings and adopted profiling definition.

- 2003 - Governor Jim Doyle convenes Juvenile Justice Commission.
- Commission to Reduce Racial Disparities in the Criminal Justice System (CRRD) by Governor Jim Doyle.
- Stakeholders from the entire criminal justice system.
- Interviewed and heard presentations from many citizens and others interested in the issue.
- Produced a report February 2008 with findings and recommendations

- Governor Doyle: implements SOME of the recommendations of CRRD and creates another Commission.
- MEMBERS OF THE COMMISSION
CHIEF NOBLE WRAY, Madison Police Department
ATTORNEY JENNIFER BIAS, Wisconsin State Public Defender (Racine)
DISTRICT ATTORNEY JOHN CHISHOLM, Milwaukee County
HON. JAMES MARTIN, Dane County

- **EXECUTIVE ORDER 251**

On May 13, 2008, Governor Doyle created the Racial Disparities Oversight Commission (RDOC) with a mandate to...

- Exercise oversight and advocacy concerning programs and policies to reduce disparate treatment of people of color across the spectrum of the criminal justice system
- Took activist view of the Governor's mandate to "exercise oversight and advocacy", meeting four times in its first six months.

- After organization meetings designed to plot the directions of the Commission, Commissioners requested reports regarding steps to comply with the mandates of the Oversight Commission from
- The Department of Corrections
- The Department of Transportation

- The Department of Corrections presented its action plan for the implementation of the mandates of Executive Order 251, including programs and processes that were already in place as well as a timeline and initiatives relating to
- Providing identification cards/driver's licenses
- Noting re-entry initiatives (citing Madison Area Urban Ministries)
- Conducting a study of revocation practices via a contract with the University of Wisconsin School of Medicine and Public Health, Population Health Institute

- The Department of Transportation reported at the November 13, 2008 meeting of the Commission and
- Notified the Commission of a \$500,000 grant obtained, in part using as a basis the mandates of Executive Order #251, to help work with state agencies to document who is being stopped and why
- Noted possible “system policy changes” that could be made with little practical cost (such as leaving the DL for use as an ID with someone stopped instead of confiscation)

- Reported on collaboration with DOC with projected rollout of DL/ID card programs for Stanley; New Lisbon; and Lincoln Hills facilities
- Discussed impact of diverse staffing patterns on reports of racial profiling
- Reviewed connection of mandatory seat belt laws and ability to stop for violations with saving lives; racial profiling; and federal funds
- Raised questions of funding responsibility in collection and analyzing data

DATA COLLECTION

Agencies with relevant information and capability are directed to develop mechanisms to track patterns, by jurisdiction and race as to

- Traffic citations
- Arrests
- Charging
- Sentencing
- Revocations

The Office of Justice Assistance shall collaborate to develop curricula for professional training in each discipline that addresses factors contributing to racial disparity with

- The judiciary
- The Department of Justice
- Appropriate law enforcement personnel
- Human services
- Educational personnel (including technical colleges)

- Conduct a study on prosecutorial discretion, similar to the Race and Sentencing study, giving particular attention to the role of criminal history.
- Identified as responsible for such data delivery and collection were the
 - Office of Justice Assistance
 - Department of Transportation
 - Department of Corrections

DEPARTMENT OF CORRECTIONS

Shall maintain and expand reentry programs to assist inmates in successfully return to their communities which shall include

- Ensuring inmates eligible for driver's licenses be given the opportunity to work towards obtaining or reinstating a license
- Where a license is not available, ensuring a valid state ID card is made available
- Developing a protocol for the provision of court ordered and inmate specific treatment needs

- Shall maintain and expand measures with regards to probation and parole that
- Establish a process of review and reporting on the level of discretion probation and parole agents have in initiating revocation proceedings ; and

SPD Board Resolution

- **WHEREAS:** The State public Defender Board of Directors recognizes that people of color receive disparate treatment in the Wisconsin criminal Justice system and that African Americans and Hispanics constitute a disproportionate percentage of incarcerated population in Wisconsin.
- **WHEREAS:** People of color do not commit more crimes, yet, in Wisconsin, people of color have more contact with law enforcement, are arrested more often, are prosecuted more often, are found guilty more often, and are sentenced to longer sentences.
- **WHEREAS:** We believe that there is substantial evidence of racial disparity in Wisconsin's justice system.
- **WHEREAS:** We believe that action is necessary to address this injustice. The SPD is uniquely situated to shed a bright light on the issues that the criminal justice system needs to address. Through litigation, community work and other efforts, the SPD can point to instances of injustice and unfairness and advocate for race neutral treatment.

THEREFORE, BE IT RESOLVED: The State Public Defender Board of Directors supports the staff as they engage in the following activities in an effort to eradicate racial disparity in the Wisconsin criminal justice system that is wholly consistent with the State Public Defender MISSION STATEMENT:

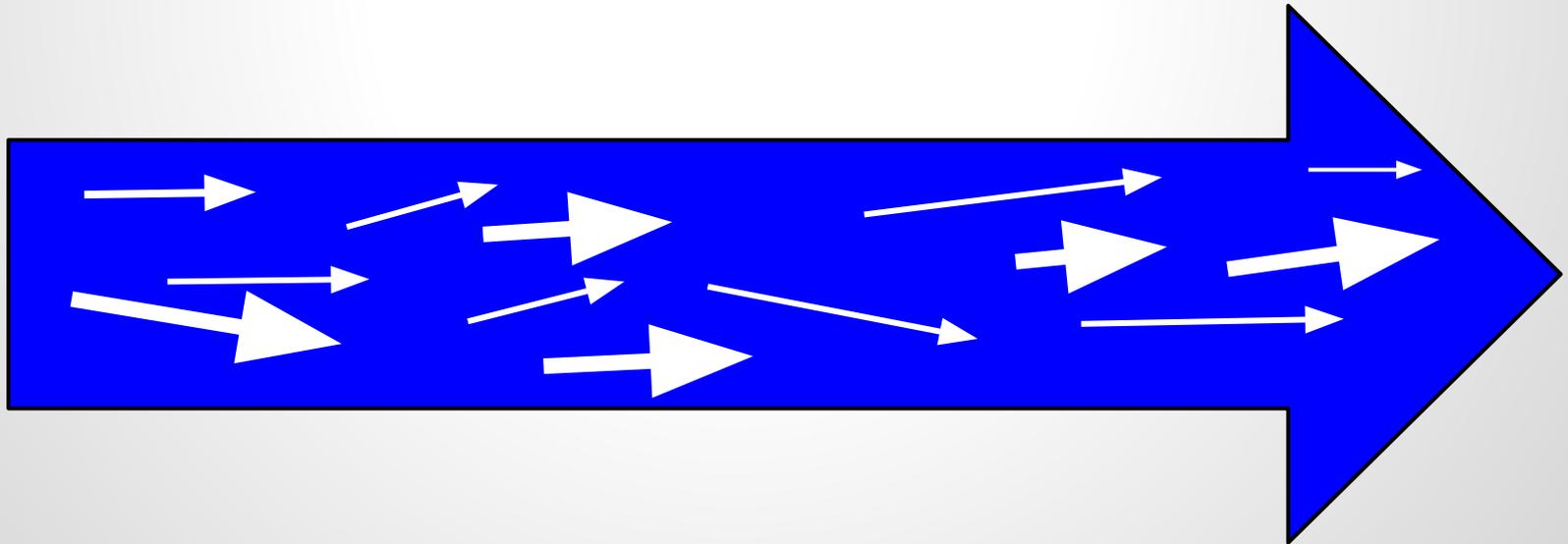
- August, 2008 Wisconsin State Public Defender Board passed a resolution supporting staff members as they
- Localize the racial disparity issue in their communities by sharing information about disparity with judges, prosecutors and law enforcement
- Educate the public and stakeholders on the prevalence and effect of racial disparity in our justice system

- Create opportunities for the public to participate in efforts to eradicate racial disparity in our justice system
- Position the issue so that it is a topic of discussion until racial disparity in our justice system is eradicated
- Partner with individuals, associations, groups, etc. to work on this issue and accomplish the above listed goals

SPD - Board

- Localize the racial disparity issue in their communities by sharing information about disparity with judges, prosecutors and law enforcement;
- Educate the public and stakeholders on the prevalence and effect of racial disparity in their local communities;
- Create opportunities for the public to participate in efforts to eradicate racial disparity in our justice system;
- Position the issue so that it is a topic of discussion until racial disparity in our justice system is eradicated;
- Partner with individuals, associations, groups, etc. to work on this issue and accomplish the above listed goals.

Strategic Approach



Internal team

Key Strategies

- localize issue
- educate stakeholders
- keep topic "alive"
- partner with others
- opps for public
- educate SPD staff

Internal team

Subcommittees

- talking points
- data
- partnerships
- internal survey
- litigation

e-mail group



Putting It All In Practice

Moving the Resolution Forward

Players

Agency

- Practice Coordinator
- Practice Teams
- Training Division
- IT
- Media Coordinator
- Attorneys
- Support Staff
- Interns

External

- University Professors
- Human Services Department
- Judges
- District Attorneys
- Law Enforcement
- Probation and Parole
- Department of Corrections
- Public
- Media

Agency Practice Tools

- Racial Disparity Practice Coordinator
- Practice Groups
- Inner office website for sharing materials, including articles and studies on racial disparity
- Google group listserve for easy discussions

Our Projects

So Far...

Racial Bias Discussion Circles

- what is it: opportunity for agency members to step out of their normal work roles for an hour and have a personal discussion with co-workers about feelings, fears, hopes and biases relating to race
- resolution goal: Position the issue so that it is a topic of discussion until racial disparity in our justice system is eradicated

Racial Bias Discussion Circles: Our Efforts

- traveled to 15 different counties to conduct circles with over 250 participants
- conducted all management level circles with middle managers and the agency leadership team
- trained 16 agency facilitators through a specialized facilitators' training, in addition to YWCA Certification

Racial Bias Discussion Circles

Circles are completed in 90 minutes but have lasting effects.

Program Structure:

- Prior to the Circles, participants are emailed Racial Injustice Self Reflection pieces to be read and spark reflection at the participant's convenience.
- The day of the Circles, participants divide into small groups lead by both a facilitator of color and a white facilitator. The circle begins with ground rules and an exercise to set the discussion's tone. Next, participants answer questions delving increasingly deeper into one's thoughts and feelings on race. At the Circle's close, participants complete an evaluation.
- After the Circles, participants receive an email with additional resources about the topics that were raised.

Benefits of Racial Bias Discussion Circles

- According to program participant evaluations, after the training:
 - "felt more comfortable talking about race"
 - "need to seek ways...to combat racism and to stay energized and passionate about the issue"
 - "left believing it was a significant value both for law practice and my life"
 - "talking about this topic does not have to be 'bad' or 'uncomfortable'"
 - "allowed me to reflect on my own biases that I need to address"
- opportunity to offer our facilitation services to other organizations

Criminal Justice Coordinating Councils

- what is it: a collaboration between players to work on systemic criminal justice issues
- resolution goal: to localize the racial disparity issue in communities by sharing information about disparity with judges, prosecutors, and law enforcement

Criminal Justice Coordinating Councils: Our Efforts

- positioned on county level councils and the state level council
- staff has received training on facilitation skills for dealing with groups
- in house meeting of council participants to discuss opportunities and challenges in the local councils
- staff training has occurred within the particular counsels

Benefits of Criminal Justice Coordinating Councils

- opportunity to question the access people of color have to existing programs
- opportunity to present statistical information in a non-adversarial context
- opportunity for media coverage, if attending
- opportunity to look at what other criminal justice systems are doing

Annie E. Casey Foundation's Juvenile Detention Alternative Initiative

- what is it: promotes changes to policies, practices, and programs to: reduce reliance on secure confinement; improve public safety; reduce racial disparities and bias; save taxpayers' dollars; and stimulate overall juvenile justice reforms
- resolution goal: to localize the racial disparity issue in communities by sharing information about disparity with judges, prosecutors, and law enforcement

Annie E. Casey Foundation's Juvenile Detention Alternative Initiative Efforts

- agency attorneys assisted in effort to bring the foundation to Wisconsin
- agency attorneys are positioned on the three Juvenile Detention Alternative Initiative teams across the state

Annie E. Casey Foundation's Juvenile Detention Alternative Initiative Benefits

- opportunity to partner with system members in a non-adversarial way
- looking at juvenile data in reducing racial disparity
- opportunity to gain assistance from an outside agency with national experience

Treatment Court Board Participation

- what is it: agency presence on specialty court treatment boards, including drug and Veteran courts
- resolution goal: to localize the racial disparity issue in communities by sharing information about disparity with judges, prosecutors, and law enforcement

Treatment Court Board Participation: Our Efforts

- encouraging the need for data collection, specifically as to whether people of color are gaining access to and successfully completing these courts
- when necessary, explore reasons for the exclusion of people of color and work to increase access and successful completion
- work towards ensuring the cultural competence of the treatment team

Benefits of Treatment Court Board Participation

- look at if and why people of color are underrepresented in these diversion programs
- look at if and why people of color are not successfully completing in these diversion programs
- address any policy concerns that may limit participation or success for people of color

Voir Dire Training: Community Jurors

- what is it: recruited community members to serve as practice jurors during Trial Skills Academy. Jurors were put through voir dire with race as an issue.
- resolution goal: Create opportunities for the public to participate in efforts to eradicate racial disparity in our justice system

Benefits of Voir Dire Training: Community Jurors

- opportunity for attorney to practice voir dire skills in a safe setting
- ability for potential jurors and members of the community to reflect and discuss how race may play a part in the way a case is perceived
- opportunity for attorney to dialog with jurors about their feelings on the being questioned on their racial beliefs

YWCA: Racial Justice Workshops

- what is it: community workshops exploring cross-cultural communication, structural racism, and race based privilege
- resolution goal: Create opportunities for the public to participate in efforts to eradicate racial disparity in our justice system

YWCA: Racial Justice Workshops

Our Efforts

- since April 2012 the agency has sent 16 staff members to complete 24 hours each of the YWCA: Racial Justice Workshops

Benefits of YWCA: Racial Justice Workshops

- opportunity to share our concerns about systemic racism particular to the criminal justice system
- opportunity to correct misconceptions held by community participants
- opportunity to share our experience in the criminal justice system
- received certificates for specialized Racial Justice Education

4th Amendment: Racial Profiling Training Supplement

- what is it: training on the law of pretextual stops and other stops under the 4th Amendment and the Equal Protection Clause
- resolutions:
 - Educate the public and stakeholders on the prevalence and effect of racial disparity in our justice system
 - Create opportunities for the public to participate in efforts to eradicate racial disparity in our justice system

4th Amendment: Racial Profiling Training Supplement Our Efforts

- traveled to seven different counties to conduct training
- videotaped presentation for additional viewership through on demand training program
- written materials placed on agency website for future use

4th Amendment: Racial Profiling Training Supplement Benefits

- opportunity to educate attorneys on the relevant caselaw
- opportunity to brainstorm best practices in filing motions based on race
- opportunity to discuss what attorneys in different counties were observing in terms of racial profiling

Litigation

- what is it: the meat and potatoes of the law
- resolution goal: to localize the racial disparity issue in communities by sharing information about disparity with judges, prosecutors, and law enforcement

Litigation: Our Efforts

- The litigation team provided assistance to an attorney in filing a motion to dismiss as unconstitutional in a felony disenfranchisement case. The team worked with local experts including university professors and civil attorneys to prepare the motion.
- Attorneys are challenging and having suppressed the fruits of illegal stops as racially motivated and lacking specific and articulable facts

Benefits of Litigation

- raising judicial, prosecutorial and law enforcement awareness of the issue
- opportunity to work with community partners on efforts
- better resolution for clients
- opportunity to create beneficial case law on the issue

Our Next Steps

- Studying all decision points in the system for Racial Disparity
- Continuing interoffice discussions
- Updating and dispersing Talking Points on Racial Disparity
- Continue to seek out partnering organizations to further eradicate racial disparity
- Continue to seek out and confront racial disparity through litigation

Thank You!