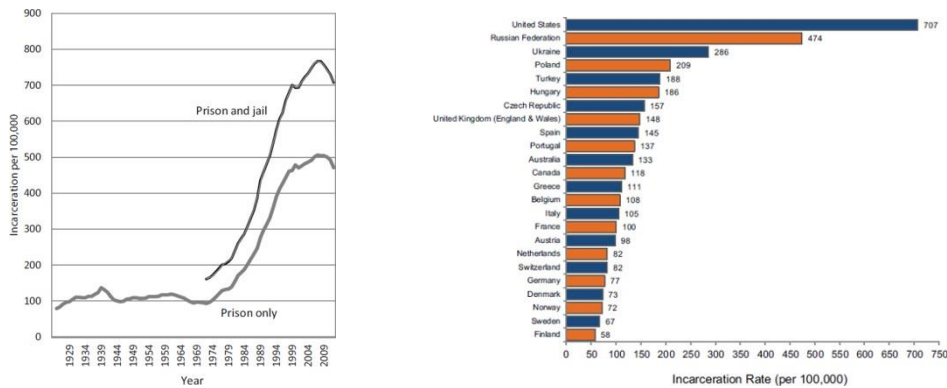


PROSECUTION AND RACE IN THE CRIMINAL JUSTICE SYSTEM— MILWAUKEE’S EXPERIENCE

In 2005 the Vera Institute of Justice approached Milwaukee County District Attorney E. Michael McCann with a proposal to examine charging decisions within the office to determine if patterns of racial disparity could be discerned in the issuance or declination of criminal cases. This was a daunting challenge. At the time, the District Attorney’s Office did not have an electronic case management system and did not have data systems designed to accurately capture the racial demographics of victims and offenders.

Milwaukee agreed to participate, along with two other offices, San Diego CA and Mecklenburg County NC.

I. The Scope of the Problem



Since the mid-1970’s the incarceration rate in the United States has grown exponentially. The two charts above illustrate the problem, which has been closely examined by the recently released report from the National Research Council *The Growth of Incarceration in The United States* (April 2014, The National Academies).

The purpose of this discussion is not to deeply explore the many factors that led to current state of imprisonment in the United States, but to illustrate that this is a dynamic that is wide-spread and affects communities across the nation. As prosecutors, we are entrusted with a significant discretionary authority to act as gatekeepers to the justice system, and our role is increasingly being examined in this context.

In 2006, the year that we began work with the Vera Institute on the project known as *Prosecution and Racial Justice*, Marc Mauer was preparing a report for the Sentencing Project titled *Uneven Justice: State Rates of Incarceration by Race and Ethnicity* (2007 The Sentencing Project).

His conclusions, shown in the chart below, were startling and disturbing to criminal justice and elected leaders in Wisconsin. The finding? Wisconsin led the nation in the disparate incarceration of African Americans, behind only South Dakota.

**TABLE 3 – Prison & Jail Incarceration Rates, 2005, By BLACK Incarceration Rate
Rate of Incarceration per 100,000 Population**

State	White	BLACK	Hispanic
South Dakota	470	4710	/
Wisconsin	415	4416	/
Iowa	309	4200	764
Vermont	304	3797	/
Utah	392	3588	838
Montana	433	3569	846
Colorado	525	3491	1042
Arizona	590	3294	1075
Oklahoma	740	3252	832
Texas	667	3162	830
Kansas	443	3096	/
California	460	2992	782
Oregon	502	2930	573
Nevada	627	2916	621
Idaho	675	2869	1654
Kentucky	561	2793	757
Pennsylvania	305	2792	1714
North Dakota	267	2683	848
New Hampshire	289	2666	1063
Florida	588	2615	382
Missouri	487	2556	587
Connecticut	211	2532	1401
Indiana	463	2526	579
Washington	393	2522	527
Delaware	396	2517	683
Louisiana	523	2452	244
Nebraska	290	2418	739
New Jersey	190	2352	630
Virginia	396	2331	487
NATIONAL	412	2290	742
Michigan	412	2262	397
Ohio	344	2196	613
West Virginia	392	2188	211
Alaska	500	2163	380
Georgia	623	2068	576
Illinois	223	2020	415
Tennessee	487	2006	561
Maine	262	1992	/
Minnesota	212	1937	/
Alabama	542	1916	/
South Carolina	415	1856	476
Arkansas	478	1846	288
Rhode Island	191	1838	631
Mississippi	503	1742	611
North Carolina	320	1727	/
Massachusetts	201	1635	1229
New York	174	1627	778
Maryland	288	1579	/
District of Columbia	56	1065	267
Hawaii	453	851	185

* Incarceration rates based on data from the Bureau of Justice Statistics, *Prison and Jail Inmates at Midyear 2005*. New Mexico and Wyoming have been excluded due to lack of data on race and ethnicity.

II. What To Do About the Problem, and is it Really a Prosecutor's Problem?

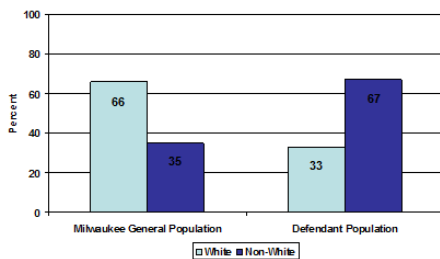
The engagement with the Vera Institute of Justice came at an opportune time, because the question that arises anytime you see data that suggest that you are an outlier in some particular area is “why”? There is an instinctive reflex to become defensive and point to the many (legitimate) reasons that are beyond your control. The City of Milwaukee, like many densely populated urban areas, has pockets of deeply entrenched negative indices in relation to poverty, segregation, poor health outcomes, unemployment and poor educational outcomes. The response from Vera was one of constructive engagement. They did not approach us as experts with a pre-conditioned answer to the concerns raised by the data, but instead offered to engage in a collaborative effort to understand our system, our laws, and the community we served in an attempt to draw meaningful insights from existing information systems. It was no small undertaking. The Milwaukee County District Attorney's Office at that time, like many offices around the country, was still primarily a paper based records system. Vera repeated many times the phrase “You can't effectively change what you don't effectively measure”. So they began by measuring data that could be measured. The first iteration focused on charging and declination rates by offense in relation to the race of the offender, as demonstrated below.

Milwaukee: Overview

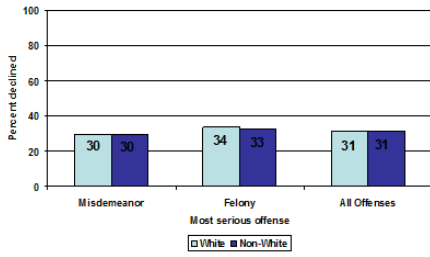
- Examination of case outcomes from declination through final disposition
- Includes all felony and misdemeanor non-DV cases initiated between 1/1/2006 and 11/30/2007
- Total of 48,971 individuals
 - 16,160 White Defendants (33% of all defendants)
 - 32,811 Non-White Defendants (67% of all defendants)



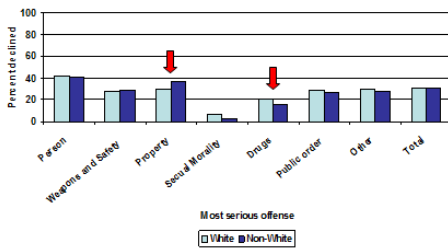
Milwaukee: County population and defendant population by race, 2006-2007



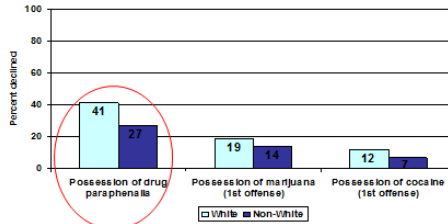
Milwaukee: Percent of cases declined by offense level and race, 2006-2007



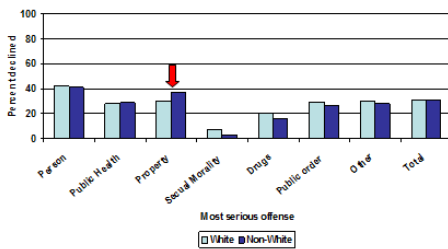
Milwaukee: Percent of cases declined by offense type and race, 2006-2007



Milwaukee: Percent of misdemeanor drug cases declined by race, 2006-2007



Milwaukee: Percent of cases declined by offense type and race, 2006-2007



What stands out in the data is that overall, there was no significant disparity in the Milwaukee County charge rate. But when you drilled into the specific offense categories, you see significant disparity in certain types of offense categories, in our case, particularly in the low-serious drug offenses. *Reverse* disparity should also raise questions. Why do we charge more white defendants with burglary? Are we depreciating victims of property crime?

III. Operationalize the Response—The Milwaukee County Criminal Justice Council

Once patterns are developed from your office it provides an opportunity to objectively address the areas of concern. In 2007 Milwaukee County started a Community Justice Council that allowed system decision makers to meet and discuss in an informed way concerns about the CJ process and develop strategies to fix those issue. Prior to the Vera study, there was no drug treatment or formalized diversion program in Milwaukee County. Using the data, we began the process of examining our system and trying to improve it in measured ways. As a consequence, Milwaukee County applied for and received technical assistance from the National Institute of Corrections. The Evidence Based Decision Making Framework was critical in helping us identify major decision points across the system spectrum and determine where we could most effectively improve the system response. The work with NIC was guided by certain principles summarized below:



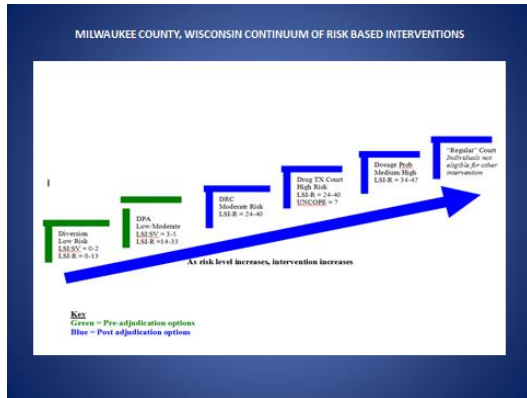
Research has demonstrated that:

- The delivery of swift services and interventions , commensurate with the possibility that an individual will continue criminal behavior ("level of re-offense risk") and the presence of risk factors that are indicators of criminal behavior ("criminogenic needs"), offers the greatest opportunity for improving public safety.
- These strategies also provide for the best use of criminal justice dollars and resources, by reducing the costs of processing cases for those at lower risk to reoffend and instead investing those resources in those who pose the greatest risk to the community

Milwaukee County's early intervention programs are based upon these important research findings.



It also started a process that required us to dramatically increase the capacity of pre-trial services and resources in the community with the goal of reducing the number of individuals who were in jail or prison if they could be safely and effectively accounted for locally. The progression of response follows the scale below:



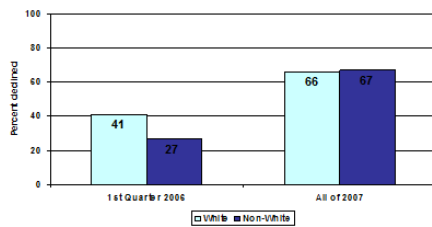
In the context of racial disparity, the hope was that by applying objective criteria to all case assessments, and increasing the options at the time of arrest and prosecution, we would see a reduction in the disparity numbers in the areas identified for improvement.

IV. Results Since Implementation of EBDM and the Vera Study

In the short term, could policy decisions within a DA's office change disparity outcomes? My qualified answer is, in some areas, yes. In other areas, while we have seen dramatic reductions in overall jail and prison admissions while maintaining decreases in crime, it has not been so easy.

Example One shows that by changing policy related to low level drug offenses and expanding treatment and diversion options, the disparity disappeared:

Milwaukee: Percent of misdemeanor drug paraphernalia cases declined by race, 1st Quarter 2006 and 2007



Example Two, prepared by the Public Policy Forum, demonstrates during the implementation of EBDM we dramatically reduced admissions to our County jail facility:

Public Policy Forum
moving the region forward

Research Brief

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Milwaukee County Detainee Populations at Historic Lows: Why is it happening and what does it mean?

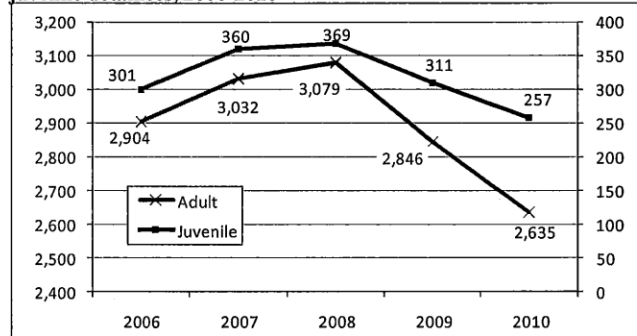
Throughout the country, governments struggling to address difficult fiscal problems are turning to corrections budgets as a potential source of relief. In fact, as recently reported by the Pew Center for the States, “with states facing the worst fiscal crisis in a generation and corrections costs consuming one in every 15 state discretionary dollars, the need to find cost-effective ways to protect public safety is more critical than ever.”

The imperative to re-examine corrections costs is not limited to state governments. Jails and juvenile detention facilities often are administered by county governments, which are facing similar fiscal challenges. In fact, Milwaukee County spent \$135 million on adult and juvenile detention in 2010, comprising about 11% of its total operating budget.

A potential piece of good news for the county is that the number of people detained in county facilities and/or supported in state facilities with county dollars has decreased substantially. In fact, the average daily number of adult and juvenile detainees stood at 2,892 at the end of 2010, by far the lowest total in the past five years, and 16% lower than the 3,448 detainees held in 2008 (see

Chart 1).

Chart 1: Average daily populations of Milwaukee County adult and juvenile detainees, 2006-2010



Source: Milwaukee County Sheriff's Office and Delinquency and Court Services Division

This Research Brief illustrates recent detention trends at Milwaukee County and the associated budgetary impacts, discusses some of the potential causes for the historic decline in detention totals, and assesses what this development may mean for county fiscal officials and policymakers.

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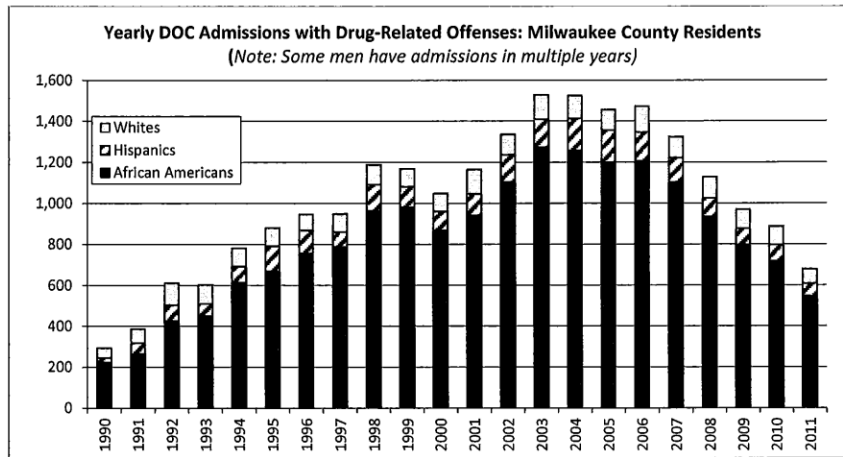
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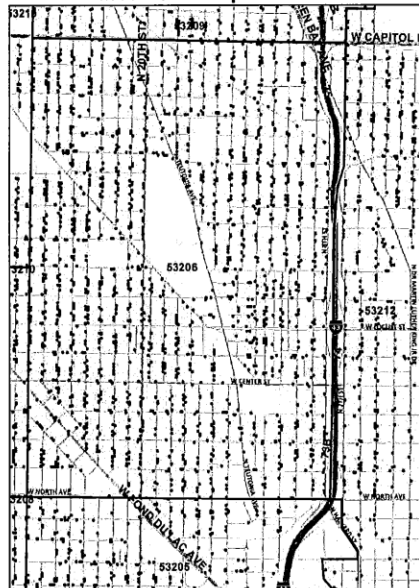
Example Three, research conducted by the University of Wisconsin Milwaukee in a report titled *Wisconsin's Mass Incarceration of African American Males: Workforce Challenges of 2013* (UWM 2013), highlights the reduction of Department of Correction admissions that accelerated after the implementation of our early intervention program:

- Forty percent (N=10,497) of the African American males from Milwaukee County incarcerated since 1990 were drug offenders. In the early 1990s African Americans had 4 times as many annual admissions for drug-related offenses as white men. As drug offenses soared in the 2002 to 2005 years African American men had 11 to 12 times as many drug-related prison admissions as white men.



- Given the high levels of racial and economic segregation in Milwaukee County, two-thirds of the county's incarcerated African American men came from 6 zip codes in the poorest neighborhoods of Milwaukee. The ability of ex-offenders to help support their families is very limited for many released inmates. Most ex-offenders return from prison into inner city neighborhoods that have extremely large gaps (i.e., 25 to 1 in May 2009) between the number of active job seekers compared to available full-time work.

Concentration of Released and Incarcerated Ex-Offenders in Milwaukee Zipcode 53206



V. What Else Has To Be Done?

It would be a mistake to believe that this approach alone will solve disparity issues within the criminal justice system. Policing practices, system resource issues and capacity in the community are constant challenges that prosecutors often have little control over.

I strongly believe that one way to further address the issue starts with a different relationship between the District Attorney's Office and the community we serve. Community Based Prosecution offers one approach. In Milwaukee we have experienced attorneys assigned to the major police districts who function as part of a multi-disciplinary team that consists of prosecutors, police, corrections officials, neighborhood based community organizations, the Department of Neighborhood Services, LISC and Community Partners from Milwaukee's Safe& Sound non-profit organization. The mandate to the teams is to work with the people in our most crime impacted communities to help them develop the capacity to self-regulate and prevent problems from arising when possible, and to effectively intervene when problems occur. The relationship between the Community Prosecution Unit (CPU) and our early intervention specialist is close. The CPU's provide the real-time human intelligence about the individuals coming into contact with the system and can play a vital role in assessing the risk and needs of those individuals with community buy-in.

This year, Milwaukee is opening the doors to one of the largest domestic violence shelters in the country, collocating Children's Hospital and family services with domestic violence intervention resources. The concept is predicated on our analysis and understanding of the close relationship between exposure to violence and trauma and future system involvement either as a victim or offender. As part of an application for the MacArthur Foundations *Safety Justice Challenge*, Milwaukee hopes to add a trauma screening tool to the universal screening protocol explained above. Just as a better understanding of the risks and needs of offenders equips prosecutors with more options in addressing crime in the community, a close examination of the role of trauma in the lives of offenders and victims (often the same) will better inform the decision we make at the front end of the system, in the hopes of reducing reliance on police prosecutors and courts to intervene.

In addition, we have a long relationship with a public health epidemiologist, who convenes the Milwaukee Homicide Review Commission and is currently developing a cross systems data-hub that will allow us to focus our prevention/intervention strategies on the populations most at risk.

In conclusion, I do not have any magic bullets to offer with respect to addressing disparities in our system. Milwaukee has a long way to go. But by opening ourselves up to outside examination and assistance, we have the foundation to move our system in a more productive and effective way in the future,