

# Blueprint for Racial Justice

A proposal to achieve racial justice through enhancing the work of public defense organizations throughout the country



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## Introduction

Public Defenders have always played a critical role in fighting against racial injustice in the criminal justice system. The American criminal justice system was founded on racist principles, and has traditionally and modernly been used as a means to oppress, harass and incarcerate people of color. From the annihilation of Native Americans, to the enslavement of African Americans, the exclusion of Chinese Americans, forced incarceration of Japanese Americans during WWII, and the exploitation of Latino workers, this country has had a long history of racism and discrimination. From the Jim Crow laws, racial profiling, selective enforcement, exclusion of minorities from testifying in criminal cases or serving on juries or serving as judges or government lawyers, racism continues to affect every aspect of our system, from arrest, to bail, plea bargaining and sentencing.

Today, there are over 1,500 federal, state and county public defender and legal aid offices that provide representation to 8 million Americans each year; most public defender clients are people of color. Of the 2.2 million people in prison or jail, nearly half are African-American. Every day, public defenders see the impact that racism and disparate treatment by police, prosecutors and judges has on communities of color.

Legal scholar Michelle Alexander, in her book *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, writes that many of the gains of the civil rights movement have been undermined by the mass incarceration of black Americans in the war on drugs. Alexander has said that “Mass incarceration is a massive system of racial and social control. It is the process by which people are swept into the criminal justice system, branded criminals and felons, locked up for longer periods of time than most other countries in the world who incarcerate people who have been convicted of crimes, and then released into a permanent second-class status in which they are stripped of basic civil and human rights, like

the right to vote, the right to serve on juries, and the right to be free of legal discrimination in employment, housing, access to public benefits.”

With the national Black Lives Matter movement continuing to push greater activism and public awareness and criminal justice and police reforms, public defenders are uniquely positioned to provide leadership to combating racial justice in the courts. When the National Association for Public Defense recently decided to create a Racial Justice initiative, over 80 members responded, volunteering to assist in the effort.

This is an effort to chronicle some of the initiatives that NAPD’s Racial Justice Committee may begin proposing and implementing.

### 1. Formation of an In-House Racial Justice Committees

One strategy that has been employed successfully is the formation of Racial Justice Committee embedded in each Public Defender’s office. The Racial Justice Committee is staffed by volunteers – attorneys and support staff --- who are interested in designing and implementing racial justice strategies and litigation in their practice. The advantage of developing a committee in-house is that there is an institutional organization which is charged with working on racial justice issues, made up of staff that can decide which strategies are best for their office and locality.

This utilizes the model of participatory leadership, where the leader, in San Francisco the Chief Defender, designates a committee and gives them the ability to formulate, design and execute a plan of action. The Chief can make the plan of action subject to his or her ultimate approval, so he or she can make sure that the plan is consistent with the mission, values and culture of the office.

In San Francisco, the office formed a Racial Justice Committee (RJC) in 2013. The RJC meets once or twice a month, usually on Fridays at noon, and there are two co-chairs who plan the agenda, take minutes and keep track of commitments and projects undertaken by the group. Consistently about a dozen staff members attend. Managers and leadership sometimes attend, but the committee is chaired by line-attorneys. In the three years the group has been meeting, they have sponsored and supported local and statewide legislation (i.e. a state bill that eliminated the use of grand juries by prosecutors in police shooting cases and a local ordinance that requires police to keep and report on racial statistics regarding police contact with citizens), they have sat on police reform committees and helped formulate new policies regarding police use of force and body cameras, they have weighed on

policy issues and testified before commissions, and they have participated in community rallies and support efforts. The RJC also sponsors a regular Court Watch day every other month where students are allowed to visit the office and the courtroom to observe the criminal justice system in action.

The RJC also helps develop litigation strategies such as selective enforcement motions and encourages attorneys and staff to aggressively litigate racial justice issues. For example, the RJC helped develop a bail motion that contains a section on disparate confinement of people of color.

## 2. Formation of a Regional or Statewide Racial Justice Group

Following the no-indictment decision in Michael Brown's case, five Bay Area public defenders held rallies in front of the courthouses they practice in. This led to the formation of a regional organization titled "Public Defenders for Racial Justice." The regional organization combines defenders from seven Bay Area counties, who are united around litigating racial justice issues in the court. The organization also participates in rallies. There are four committees: Community Bridge Building, Statistics, Education and Training and Advocacy.

Since forming in 2015, the group has held two county-wide trainings, focusing litigating racial justice issues in the context of voir dire, police misconduct and search and seizure. The first training was attended by over 150 defenders, and the second by over 200. Each of the counties has their own in-house Racial Justice Committees.

The existence of a regional group has allowed members of sister public defender organizations to combine their experience and knowledge, compare stories and share resources in litigating racial justice issues in the court.

An extension of the regional racial justice group can also occur statewide. In North Carolina, in addition to efforts by some individual public defender offices regarding racial inequities, the North Carolina Public Defender Association has engaged in a more systemic approach. Therefore, on October 26<sup>th</sup> of 2011, a group of Chief and assistant public defenders from across the state met to discuss how our community could help undo racism and inequities in our criminal justice system. From this initial meeting in October steps were taken which led to the formation of what soon became the North Carolina Committee on Racial Equity or NC PDCORE. The mission of NC PDCORE is to reduce and ultimately eliminate racial disparity in the criminal

justice system through education, collaboration and litigation. In order to facilitate achievement of our mission, we created a website in early 2014. The website, located here, <http://ncids.com/pd-core/>, is designed to be an ongoing resource for race and criminal justice issues for the public defender community and legal community at large. In April 2014 a monthly E-Blast called Race Judicata was launched by PDCORE. The E-Blasts, written by members of a sub-committee of PDCORE, are sent out on a public defender listserv and read by public defenders across the state. Some other things PDCORE has done is to ensure training on race related issues at public defender conferences and sponsoring forums and relevant documentary screenings on these issues. We also assist individual offices in identifying areas or issues that might be ripe for engagement.

### **3. Implicit or Unconscious Bias Training**

Implicit bias training provides defenders with a greater consciousness on how biases affect other players in the system, such as police, prosecutors and judges as well as defenders themselves. Implicit bias refers to the attitudes or stereotypes which affect our understanding, actions and decisions in an unconscious matter, and are activated involuntarily without an individual's awareness.

Nearly six decades of neuroscience and experimental research has shown that implicit biases deeply affect decision-making in the criminal justice arena. Blind-sentencing exercises have shown that judges sentence individuals to more severe sentences based on the darkness of their skin, and that prosecutors may offer more severe sentences to people of color. Several studies have shown that defense attorneys are not immune to implicit bias, and may make decisions based on their client's race or even their own fears about how a judge or jury may sentence a client more harshly because of their race.

Providing regular training to defender staff on implicit bias is critical to ensuring that defenders are aware of their own biases and how they may affect the handling or outcome of a case. Bias training can also help defenders "de-bias" judges and prosecutors who have power or control over the outcome of a case.

NAPD can develop a list of certified or qualified trainers to provide implicit bias training, and can also arrange for such training, as it has already done, through its webcast trainings.

### **4. MyGideon: Racial Justice Clearing House**

NAPD can provide through its public defender library a clearing house for articles, op-eds, motions and other materials on racial justice issues that have a direct bearing on public defense. Because NAPD has a national network of defenders, we can begin collecting materials that could be shared among NAPD's cadre. MyGideon already has a racial justice page, which can be the place for such materials to be shared.

## 5. [Racial Justice Training](#)

Public defenders can and should raise issues relating to racial justice in litigating their cases. Race may be relevant to the facts of the case, and certainly may be a factor in selecting a jury. Race may be explored on voir dire, and may result in jurors being excused for cause. Public defenders must also be trained on how to properly handle a Batson-Wheeler objection, when the prosecutor exercises a peremptory challenge based on the juror's race.

Pretrial motions can also raise racial issues, particularly selective enforcement motions, motions to suppress evidence where racial profiling has occurred, using evidence of disparate treatment by law enforcement in evidentiary hearings and the like. Cultural experts can also be called to explain how implicit bias may affect how we judge other's decisions and specific experiences unique to the client's background or community.

Race may also be raised in bail hearings, plea bargaining discussions, sentencing hearings, and whenever race is presented as an issue that may be impacting the outcome of a case.

It often takes great courage for public defenders to raise these issues. In a recent case, a judge agreed to release a defendant from custody in chambers, but then reversed his ruling after seeing that the client was a 6' 3" large black man. When the public defender said "Judge, you had agreed to release him. The only thing that has changed is that you see that he is a large black man." The judge retorted, "Are you calling me racist?" When the defender answered that question in the affirmative, she was held in contempt of court.

When these issues arise, public defenders are sometimes not prepared to deal with them in a way that will further their client's case and the cause of achieving racial justice. NAPD can provide critical training to defenders on these issues, and can help organize trainers, speakers and materials.

## 6. Community Bridge Building

Defenders often provide support to the communities they serve; this support can take many forms.

Some offices have full-time community organizers dedicated to building trust in communities; the concept of “holistic” representation is a client-centered, community-oriented approach to criminal defense where lawyers and staff take an interdisciplinary approach --- beyond the courtroom – to best represent clients and address underlying issues affecting contact with the criminal justice system. Among the principles of holistic representation are partnering with the community and educating the public.

Many offices offer “Know Your Rights” town halls or presentations, some have implemented “Court Watch” programs, where members of the public are invited to observe court proceedings and write about what they see. The Alameda County Public Defender’s project, L.Y.R.I.C. (Learn Your Rights In California) educates 800 students a year about their constitutional rights and how to interact with police safely while maintaining those rights. Other offices have created innovative programs, such as “Defend Nashville Speaking Tour,” where public defenders humanize their clients through a storytelling series performed at community spaces. The performance is followed by a presentation by the chief public defender detailing the importance of participatory defense. In Tucson, public defenders have organized “Art with Conviction,” a community project that highlights the creativity and artistic contributions of clients who have been convicted of felonies. The goal is to show that people are more and better than the worst thing they’ve done. That understanding and respect fights the stigma of the “convicted felon” label, and enhances criminal justice reform both in the community and the Legislature.

NAPD’s Racial Justice Committee can collect information about the many community programs that are being sponsored by public defenders across the country, and offer them as examples of programs and best practices that other offices may choose to adopt.

## 7. Ideas generated by the committee members

**Bob Boruchowitz** (Seattle University Professor of Law, former Seattle Public Defender): I wanted to mention our establishment of a Racial Disparity Project at

The Defender Association some years ago and its continuation in the spinoff nonprofit from my former office that is now taken over by the county. The RDP worked among other things on suspended driver license cases and disparity in drug prosecutions. The Public Defender Association today still houses the RDP which was the key developer of the LEAD project.

**Jose Varela** (Marin County Public Defender): Creating Sustainable Change Subcommittee. The focus of the committee would be on methods to initiate change within and outside of your office on issues of race and poverty. The goal of the committee would be to create as many options as possible as opposed to a one size fits all approach. We have allies in the community. They know the message that resonates. We need to allow the space for leaders to listen to their communities and work to begin the organic process of sustainable change.

**Lisa Schreibersdorf** (Executive Director of the Brooklyn Defender's Service): I would very much like NAPD to consider allowing me to chair a committee that will consider class action or local litigation to attack huge portions of the criminal justice system based on racism. In my vision for this type of project, we would lead a partnership of national organizations to recruit law firms from around the country to work on this. I imagine connecting with NACDL, NAACP, ACLU, etc.

We would try to articulate claims we think would at least survive a summary judgment motion—equal protection? Cruel and unusual? I imagine recruiting academics. Some great legal minds who want to be part of blowing up the whole system, casting doubt on the entire structure that we now take for granted, people who well-known and add to the credibility of what we are trying to do.

The way I see the argument is something like this: Because today the vast majority of the people who are arrested are black and Hispanic, the legal procedures that have been put into place for all criminal defendants are, in fact, actually a violation of the equal protection clause, as applied.

Some examples/specific procedures are cash bail, mandatory minimums/sentencing ranges, criminal convictions for low level misdemeanors, jail for failure to pay fines or court fees, enhancements for “gangs” or prior convictions, definitions of “violent” felonies, plea bargaining restrictions, requirement of DA consent for plea bargains, including treatment alternatives.



And although I don't have a legal basis for this in mind, how about declaring that a system that puts so much power in the prosecutor does not meet constitutional standards. There's a way to do this, I just need a bunch of creative and brilliant attorneys to come up with an argument. It's like a Roe vs. Wade or other groundbreaking legal case that pushes the Supreme Court to blow up the whole thing. Or scares everyone that it might blow up.

We would have to decide the basis for the argument, where to bring the claim(s) (fed vs. state, which jurisdiction), how to frame it, how to publicize it, how to find plaintiffs, etc.

Frankly, I believe we can make a difference by shedding light on the parts of the system that take place every day in courtrooms with no audience and putting the whole system on trial. That's my goal.

**Alison Bloomquist**, (Training Director CT Public Defender Service): We now have a standing racial justice committee, which is just starting and wants to put on implicit bias workshops, as well as cultural sensitivity workshops. We are MacArthur partners, so we are working jointly on projects such as reducing incarceration rates for young people of color. Our annual meeting next year (this fiscal year) will center around racial justice issues and advocacy, and our keynote is Jeff Robinson.

Pre-trial incarceration and sentencing disparity among clients of color is number one for me. Also, race and juror decision-making (my clients of color tried by all white juries, how do we talk about and engage discussion in jury selection and at trial on race without being perceived as "playing the race card.")

**Mark Hosken**, (Rochester, NY, Federal Defender) I am involved in limited racial justice efforts within my office at this time. I continue to discuss with another member and friend in my office how he & I see things differently and react differently to everyday events in our office, in our jails and in our courthouse. He is black as I am white. I am trying to learn daily how I might better recognize those matters that I am blind to or biased against but unaware of because of my bias.

I would like to work on how I can push back in the courtroom against the bias that pervades bail hearings, suppression hearings, plea bargaining, trials and sentencing hearings. I am encouraged by Professor Anna Roberts'

recent article in the U/Chicago Law Review, Reclaiming The Importance of the Defendant's Testimony - Prior Conviction Impeachment and the Fight Against Implicit Stereotyping. That article has started my wheels spinning as to how the Right to Defense recognized by SCOTUS in *Washington v. Texas*, & *Davis v. Alaska*, might be revisited & extended by new information regarding Implicit Bias. Simply put, I want to push the envelope for my clients throughout the courtroom based on the recognition of Implicit Bias.

**Andre Vitale** (Training Director, Monroe County Public Defender's Office, NY): We should have a Training Committee and a Community Outreach Committee. We should work on disparities in arrest, bail and plea offers between white defendants and defendants who are people of color. cultural sensitivity training for defense counsel. revisiting and challenging the lawfulness of pretext stops. recognizing and developing responses to disrespectful treatment by judges and prosecutors of our clients and our attorneys.

**Jill Paperno** (Monroe County Public Defender's Office, NY): There is a TED talk on this that was presented at the New York State Defenders Association trial training - contact Charlie O'Brien at NYSDA.

**Nikki Baszynski** (Ohio Public Defender's Office): I am the co-chair of our Racial Justice Initiative at the Ohio Public Defender. We collaborate with local organizers, attorneys, and organizations throughout the state, but primarily in the Columbus area. We have prioritized the following issues and actions: - Build relationships with our community and support their work toward change - Fight the criminalization of poverty - Expose charging and sentencing disparities - Improve Ohio's pretrial release/bail system - Provide a forum for the exchange of ideas and concerns regarding race and the justice system that include police brutality and systemic issues that affect our clients - Provide a forum to disseminate information about community activities, protests, and vigils that relate to racial-justice issues - Provide training to attorneys to support the efforts above.

**Francis Adewale** (Spokane Public Defender's Office): Spokane County Racial Equity Disparity Committee, using the RED Training Toolkit.

**Amy Wilson** (Maryland Office of the Public Defender): She sent a document that has been sent to MyGideon. Here's a summary: The office has a Diversity and Inclusion Committee. They have agreed to work on the following: Incorporate members of the committee in the recruiting and hiring process, including at colleges and

universities; Increase diversity in leadership positions; Mentor future minority leaders; Create partnerships with law firms in order to support and mentor the committee. The committee has decided that there should be mandatory implicit bias and cultural competency training for all leaders in the organization. The committee is also working on the following activities: Coffee Can Conversations; Cultural Mini-Museum; Celebrate the seven History and Heritage Months; Global Potluck; Celebrate an Ethnic Holiday.

**Toussaint C. Romain**, (Mecklenburg County public defender): 1. (i) [Racial Equity Network](#) member. We are learning how to raise issues of race in every level of the criminal justice system (pre-trial release to sentencing). It is then our duty to train other lawyers across the state.

(ii) [Race for Juvenile Matters - Implicit Bias training](#) at all levels of our court system from the Clerk, judges, prosecutors, police and public defenders.

(iii) Know Your Rights Seminars: I lead a group of co-workers and we go into high-policed areas and teach community members about exercising their rights. We've provided seminars across North and South Carolina.

(iv) North Carolina Advocates for Justice – [Mass Incarceration Taskforce](#) Member – working with lawyers across the State to end Mass Incarceration and other race related issues.

(v) Developing implicit bias trainings (a) self-awareness; and (b) how to raise issues in our criminal cases/representation.

2. (i) Motions Practice: Developing motions to bring up race and unfair treatment as violations of Constitutional Rights (i.e 14<sup>th</sup> Due Process, 4<sup>th</sup>, etc.)

(ii) "Race" Help Desk: A telephone service for Public Def.'s where our attorneys can call in and get support/coaching in how to raise race in their individual case.

(iii) Practical Lessons Incubator: Creating tutorials on "how to raise issues of race" and then using Mock Trial settings to allow folks to practice.

(iv) Courage the Cowardly Public Defender: Teaching public defenders how to have courage to address and bring up issues of race;

**Twyla Carter**, (King County Public Defender): 1. What racial justice efforts are you engaging in now in your organization? We are currently engaged in the following racial justice efforts in Martin Luther King, Jr. County:

a. The King County Council formed a Juvenile Justice Equity Steering Committee (JJESC). I was appointed to the Committee to represent the Department of Public Defense (DPD). The Committee examines school, police, court and detention policies. We are tasked with establishing short- and long-term actions to help end racial disproportionality in King County's juvenile justice system; defining metrics and creating partnerships to improve the juvenile justice system; identifying root causes of racial disproportionality and specific solutions needed to address them in individual communities; and engaging communities by sharing information, then collecting and incorporating feedback.

b. DPD initiated a policy change in juvenile court to divert youth away from detention by expanding the two-tier warrant system for youth charged with crimes (predominately youth of color). Basically, the expansion allows law enforcement to call the court's screening unit to get a new court date for youth versus booking them into detention.

i. <https://kcyouthjustice.com/2016/03/14/king-county-juvenile-court-changes-to-cut-detention-bookings-by-as-much-as-250-a-year/>

c. DPD recently made a systemic challenge to our jury system. We were not successful, but it started the conversation.

i. <http://www.thestranger.com/seattle/when-a-jury-with-no-black-people-on-it-puts-a-black-man-away-for-the-rest-of-his-life/Content?oid=21628904>

ii. <https://www.wacdl.org/files/jury-diversity-article>

d. DPD has been heavily involved in pretrial bail reform.

i. <http://www.tvw.org/watch/?eventID=2016051095>

ii. <http://www.seattletimes.com/opinion/pleading-guilty-for-lack-of-money/>

iii. <https://www.courts.wa.gov/subsite/mjc/docs/FixingtheMoneyBailSystem.pdf>

iv. <http://www.seattleweekly.com/news/when-bail-is-set-the-rich-walk-and-the-poor-go-to-jail/>

e. DPD is challenging the validity of risk assessment tools due to the use of racially inflected variables.

f. DPD offers regular ongoing training on implicit bias and race-based challenges during jury selection (ie: “Colorado Method” of voir dire).

g. DPD is actively involved in the community. DPD attorneys speak to community members about how to exercise their rights, interact with law enforcement, etc... .

h. DPD provides input to elected officials about potential judicial appointments.

2. What subcommittees should the Racial Justice Committee have? Another way to think about this is what would YOU like to work on?

a. Risk assessments and other tools

b. Finding ways to summons jurors that will yield more jurors of color

c. Working to eliminate bail bondsmen, which have disproportionate impact on defendants and families of color

d. Creating youth-appropriate Miranda warnings and getting law enforcement to use them (since youth of color are disproportionately represented in the CJ system

[Racial Justice Trainers.](#) The following were suggested by members of the committee.

1. Jeff Robinson (suggested by Bob Boruchowitz)
2. Song Richardson (Bob Boruchowitz)
3. Barbara Diamond <http://diamondlaw.org/> (Kate Dunn)
4. Jerry Kang (Alison Bloomquist)
5. Justin Levenson (Alison Bloomquist)
6. Michelle Papillon (Alison Bloomquist)

7. David A. Harris, Law Professor at U/Pitt (Mark Hosken)
8. AFPD George Chaney, Jr., SDOH (Mark Hosken)
9. Kitara McClure - [kitaramcclure@gmail.com](mailto:kitaramcclure@gmail.com)
10. Destiny Peery, Assistant Professor, Northwestern University Pritzker School of Law, Institute for Policy Research Faculty Associate, Department of Psychology (courtesy), Recommended by Amy Campanelli
11. Toussaint Romain, Mecklenberg County public defender

[toussaint.romain@mecklenburgcountync.gov](mailto:toussaint.romain@mecklenburgcountync.gov)

### Conclusion

These are only a handful of ideas and programs. As NAPD's Racial Justice Committee grows, more ideas will be added and we will be able to draw on programs, ideas, initiatives, litigation strategies and reforms that represent the commitment, dedication and passion to eradicate racism from the criminal justice system and society at large.