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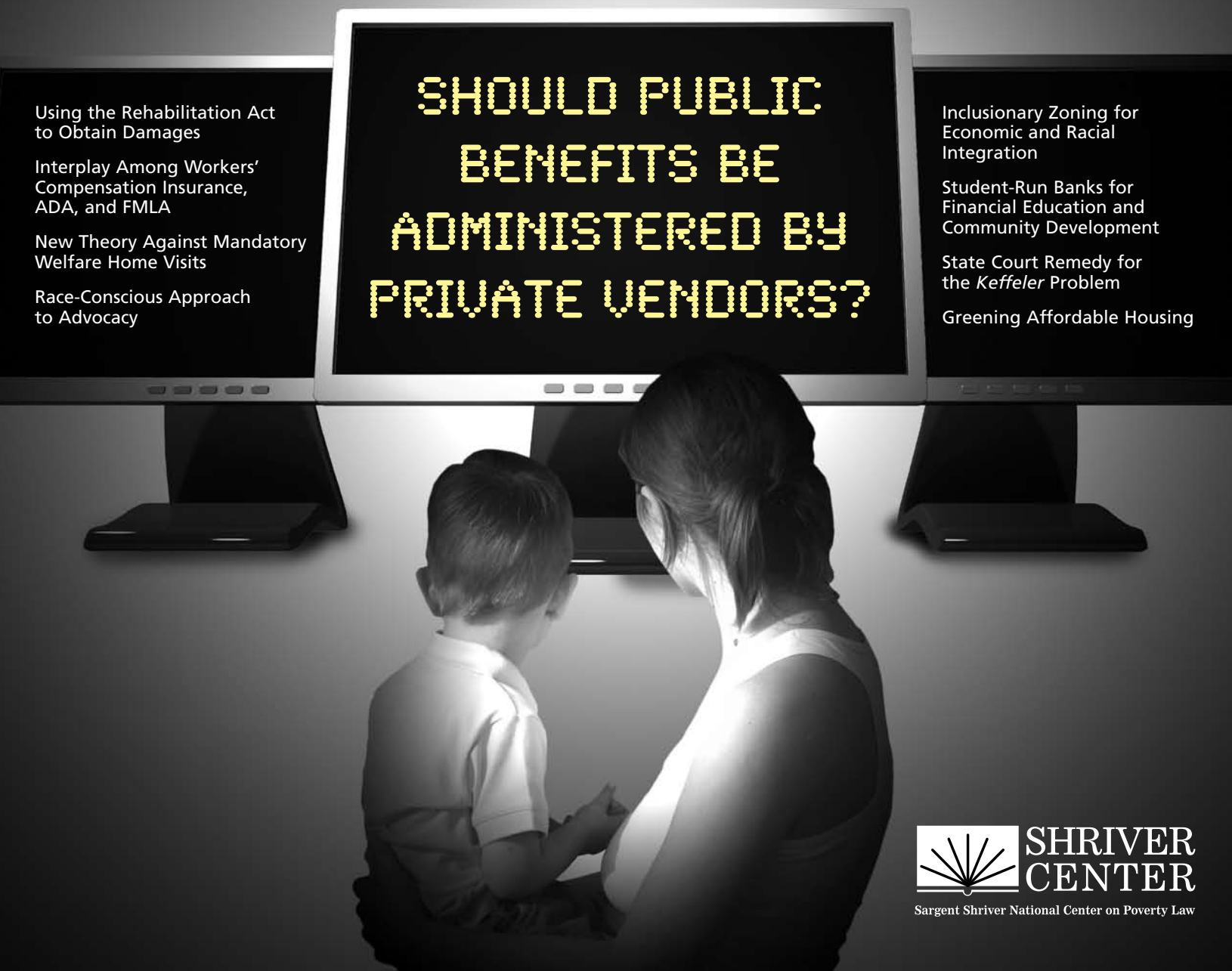

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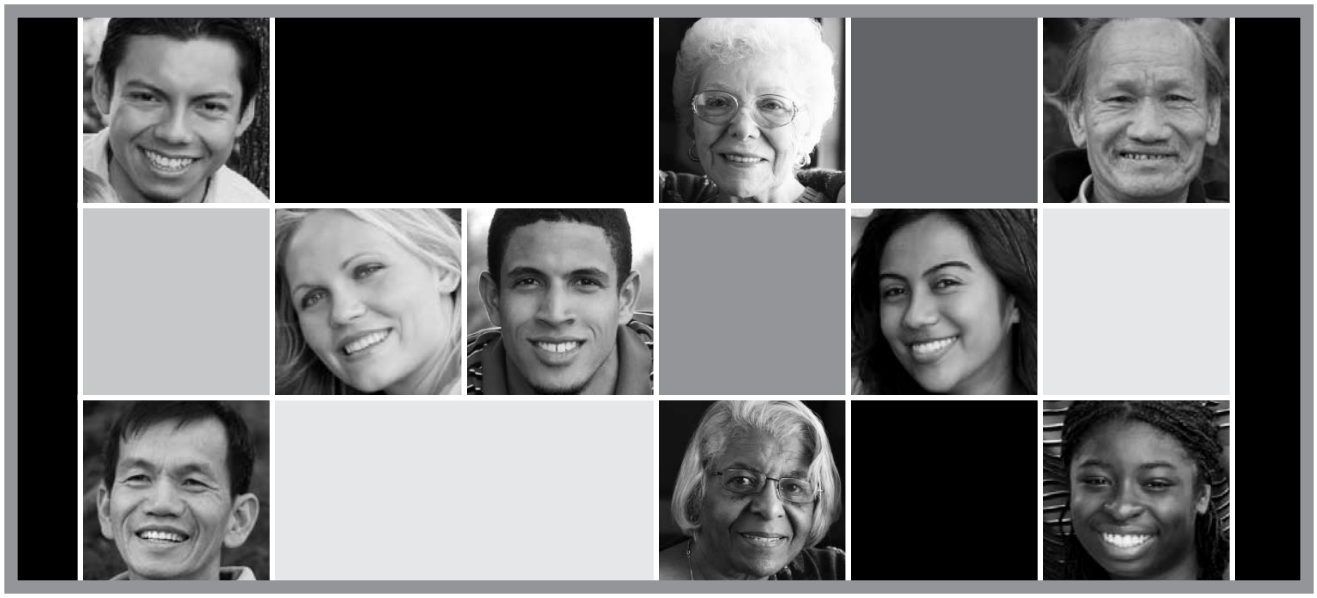

Instituting a Race-Conscious Practice in Legal Aid: One Program's Effort

By Mona Tawatao, Colin Bailey, Gary Smith, and Bill Kennedy

> In order to get beyond racism, we must first take account of race. There is no other way. And in order to treat some persons equally, we must treat them differently.—Justice Harry Blackmunn, *University of California v. Bakke*, 438 U.S. 265, 407 (1978)

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Here are but a few examples of the racial and ethnic disparities in the institutions and systems vital to our clients' lives and well-being:

- "In a study of 139 patients at UCLA Medical Center's emergency room, 55 [percent] of Hispanic patients received no pain medication for long bone fractures compared to 26 [percent] of white patients."[1]
- "In 1865, African Americans owned 0.5 [percent] of the nation's net worth. By 1990, their net worth totaled 1 percent."[2]
- "In 2004 in California, only 78 [percent] of Asian Pacific Islander women age 18 and older reported having a Pap test in the last 3 years. This is compared to 94, 86 and 84 percent of Blacks, Whites and Hispanics, respectively."[3]

[1]K.H. Todd et al., *Ethnicity as a Risk Factor for Inadequate Emergency Department Analgesia*, 269 Journal of the American Medical Association 1537–39 (1993); see also Vence L. Bonham, *Race, Ethnicity, and Pain Treatment: Striving to Understand the Causes and Solutions to the Disparities in Pain Treatment*, 29 Journal of Law, Medicine, and Ethics 52 (2001), www.aslme.org/research/mayday/29.1_pdf/bonham.pdf.

[2]Dalton Conley, Being Black, Living in the Red: Race, Wealth and Social Policy in America 31, 32 (1999).

[3]California Department of Public Health, Cervical Cancer Statistics, www.dhs.ca.gov/cancerdetection/cervicalcancer/ccstats.htm (last visited March 24, 2008).

- "People of color are disproportionately represented in neighborhoods in which 40 percent or more of residents live in poverty—"concentrated poverty" is racialized."[4]

Legal Services of Northern California in October 2003 looked at these and other statistics and concluded that we, as a program, could no longer continue a poverty law practice that did not consciously confront these disparities. Here we describe our efforts to adopt a programwide, race-conscious approach to our advocacy through our Race Equity Project. We hope to encourage other programs that have incorporated similar race-conscious approaches to their work to share what they have learned with the broader public interest community. We also hope that programs that have not yet taken up this type of approach to advocacy work will consider doing so.

I. Background

Founded in 1956, Legal Services of Northern California is a Legal Services Corporation–funded legal aid program based in Sacramento, California. Our service area is the size of Ohio, covering twenty-three counties in northern California, from the City of Vallejo at the edge of the San Francisco Bay north to the Oregon border. We serve clients through nine field offices and five special advocacy programs with a total staff of 130, including about 50 attorneys and 25 paralegals.

While the overall racial makeup of our service area mirrors that of the United States, there are racial and ethnic differences within our communities.[5] The area is home to the second largest Hmong and Mien populations in the nation, and we recently welcomed 36,000 refugees from Eastern Europe and the former Soviet bloc states. We also serve areas that are "diversity challenged": the north part of the state is predominantly white, isolating the not-insignificant racial and ethnic minority population groups residing there. In 2004, *Time* magazine called the Sacramento region the most diverse in the nation, but, as our efforts at mapping our service area show, aggregate diversity does not translate into integration or equal opportunity for all racial and ethnic groups or all income levels.[6]

To implement any programwide project, let alone one that focuses on race and ethnicity, is challenging for an organization of our size. At the same time, our race-equity initiative enriches our practice to the benefit of our clients and our staff. We share our story in order to stimulate a discussion of the role that race plays in our poverty law work and to encourage communitywide consideration of both the benefits and challenges of a race-conscious practice.

A. Goals

The Race Equity Project was established to achieve four specific goals:

- Program advocates are trained to use a race- and ethnicity-conscious lens in analyzing and pursuing each of their potential and ongoing cases and projects.
- Program advocates are given what we have determined are the four basic race-based advocacy tools (described in detail below) so that the tools are readily accessible for case and project analysis, community outreach and education, litigation, and administrative, legislative, and policy advocacy.
- Our clients are empowered to "put race back on the table" in their community meetings, strategy discussions, and in pursuing their advocacy and projects, as a direct counterpoint to the "color-

[4]Institute on Race and Poverty, Racism and Metropolitan Dynamics: The Civil Rights Challenge of the 21st Century 6 (2002), www1.umn.edu/irp/publications/racismandmetrodynamics.pdf.

[5]See Opinions of Sacramento, Why Sacramento?, www.opinionsofsac.com/whysac/whysac.html (last visited March 28, 2008).

[6]Ron Stodghill & Amanda Bower, *Welcome to America's Most Diverse City*, Time, Aug. 25, 2002, www.time.com/time/nation/article/0,8599,340694-1,00.html.

blind paradigm" and the philosophy of personal responsibility.[7]

- Through the application of the Intent Doctrine we will utilize our advocacy, wherever possible and appropriate, as a catalyst for change in the way the law currently perpetuates inequities.[8]

B. Why a Race Equity Project?

While a community lawyering approach and community-driven advocacy model are core components of our Race Equity Project, the project was not created as a response to a specific demand from the client community, any funder, outside group, or agency, nor did the project begin as a conscious effort at institutional change. Rather, the idea came from within, influenced by many events, campaigns, and circumstances that converged in 2003 to refocus our attention on issues of race and ethnicity.

A critical event was the two-part "Pursuing Racial Justice" Clearinghouse Review May–June and July–August 2002 special issue. The articles in the special issue covered perspectives on the implications of race-conscious advocacy for legal services programs with examples of race-conscious work, both within and outside traditional programs.[9] In late summer 2003, a small group of Legal Services of Northern California staff members gathered to select a theme for our biannual all-staff conference and retreat. Three of those in attendance, each of whom had read and been greatly inspired by the Review special issue, simultaneously came up with the same idea: to dedicate the next conference and retreat to exploring a race-conscious practice. The design team adopted the proposal.

Around the same time, a broad-based, statewide coalition of race-conscious civil rights advocates, students, and public health professionals headed by the Equal Justice Society and its director, the renowned civil rights leader Eva Paterson, was developing an innovative strategy to expose and eradicate (or mitigate) the effects of "unconscious bias" and "structural racism."[10]

Some of our advocates saw in this emerging movement an opportunity to apply these concepts in our own program and to reexamine our traditional advocacy strategies that often overlooked race-conscious analysis, claims, and remedies.

As the fiftieth anniversary of *Brown v. Board of Education* approached, a chorus from the national civil rights and social justice community decried the irrefutable truth that American society was resegregating to the levels of the early 1950s. We knew the time was ripe for self-reflection and change.

II. Launching the Project

Every other year Legal Services of Northern California convenes its all-staff conference and retreat in the foothills of the

[7]See Michael K. Brown et al., White-Washing Race: The Myth of a Color-Blind Society 5–9 (2003) (describing the color-blind paradigm as the prevailing world view that race no longer has any bearing on social constructs and institutions and that we can overcome the insidious effects of racial stereotyping by consciously ignoring its mention); Shelby Steele, White Guilt: How Blacks and Whites Together Destroyed the Promise of the Civil Rights Era 72, 82, 109 (2006) (discussing personal responsibility as the belief that a person's quality of life and life circumstances are determined by the choices that the person makes).

[8]See *Washington v. Davis*, 426 U.S. 229 (1976) (describing the intent doctrine, where the plaintiff must prove the decision maker's specific, conscious intent to discriminate on account of the plaintiff's race). The doctrine is based on the assumption that discrimination operates as a discrete phenomenon "resulting from the specific and identifiable 'intent' or bias of a sole actor or set of actors." Susan Kiyomo Serrano, Dismantling the Intent Doctrine and Healing Racial Wounds (2005), www.equaljusticesociety.org/research_intent_serrano.html. Indeed, to prove race discrimination under the equal protection clause, a plaintiff must show that the defendant "selected or reaffirmed a particular course of action at least in part *'because of,' not merely 'in spite of,'* its adverse effects upon an identifiable group." *Id*. (citing *Personnel Administrator of Massachusetts v. Feeney*, 442 U.S. 256, 279 (1979)).

[9]The articles in these two issues covered both broad and narrow questions of racial justice. See, e.g., Alan W. Houseman, *Racial Justice: The Role of Civil Legal Assistance*, 36 Clearinghouse Review 5 (May–June 2002); Erica J. Teasley, *The Long, Long Winding Road to Better Bus Service in Los Angeles*, 36 *id.* 162.

[10]This initiative coincided with the Equal Justice Society coalition's ultimately successful effort to defeat a California ballot proposition, which would have forbidden state or local governments in California to collect any data concerning racial differences. See Lisa Trei, *Proposition 54 Fuels Three Days of Race Relations Debates on Campus,* Stanford Report, Oct. 8, 2003, http://news-service.stanford.edu/news/2003/october8/raceconfstory-108.html; Stephen Magagnini, *Prop. 54 Soundly Beaten,* Sacramento Bee, Oct. 8, 2003, http://dwb.sacbee.com/content/politics/ca/election/story/7560250p-8501617c.html.

Santa Cruz Mountains. The event brings together the managers, attorneys, paralegals, and support staff from our far-flung field offices and special programs for an opportunity to train, network, and reconnect. Historically the conference and retreat has been the place for refocusing program priorities or launching programwide initiatives.[11]

We had three goals at the 2003 conference and retreat. The first was to present, through new, hard data, an accurate and up-to-date picture of the true racial divide. Those who planned the retreat wallpapered the conference center with data sets illustrating vast racial disparities in education, benefit programs, health care, housing, incarceration and juvenile detention rates, wealth distribution, and employment.[12] The charts remained on the walls for the full three days of the retreat so that staff could read at their own pace and immerse themselves in the information.

The second goal was to foster a culture of support for race-conscious advocacy and to make clear that such work is highly valued for our clients and for the fulfillment of our mission.[13] We achieved this through an inspirational address (by our keynote speaker, Kevin R. Johnson), explicit management support for the initiative, and training from many well-known and well-respected advocates from within our program and from the greater legal services and civil rights communities.[14] We also highlighted the successful race-conscious advocacy already undertaken by our program advocates.

The third goal of the conference and retreat was to provide each advocate with what we saw as the essential tools to a race-conscious practice, described below. Several presenters introduced advocates and staff to the frames of color blindness and personal responsibility that permeate the public discourse in the media and in our client communities, obscuring institutional causes as well as potential solutions to racial disparities. Advocates underwent cultural training—in particular, in how to serve clients from backgrounds with which they were unfamiliar.

The geographic information system (GIS) mapping sessions were a highlight and turning point of the conference and retreat. We had been mapping the poverty population of our entire service area by race, ethnicity, language, and other demographic characteristics, and the data and maps we created exploded long-held myths about poverty and race in our service area. We discovered, for example, that the poverty population of our rural service areas had much higher percentages of people of color than our staff realized. These visual representations clarified our clients' separation from opportunity along racial and ethnic lines. The staff quickly embraced the need to dedicate significant resources to a programwide, race-based advocacy campaign.[15]

The initiative progressed slowly through 2004 and 2005 but continued to gather momentum and support. The consensus was to devote the 2005 conference and retreat to checking on our progress. Eva Patterson's keynote address at the 2005 conference and retreat exhorted us to pursue the vision we created in 2003.

III. Core Operational Principles

Implementation of the Race Equity Project has not been a straight path with clearly defined direction. Along the way,

[11]One example of this is the community economic development initiative from the 1998 conference and retreat, where staff was trained in the tools (such as transactional legal work and capacity building in local nonprofit entities run by client leaders) of economic development.

[12]See Legal Services of Northern California, Factsheet on Racial Disparities, www.lsnc.net/equity/Disparity%20Facts.doc.

[13]We long ago adopted an explicit, antipoverty mission: to assist and empower our clients to identify and defeat the causes and effects of poverty by using all available resources. See Legal Services of Northern California, www.lsnc.info/Mission%20Statement (last visited March 28, 2008).

[14]Kevin R. Johnson is associate dean and professor of civil rights and immigration law at the King Hall School of Law of the University of California, Davis, and board president of Legal Services of Northern California.

[15]Following the conference, staff members committed to a nine-month project that mapped our entire service area for race, poverty, case service reports, and some indices of opportunity. Developing this in-house capacity in each office was a required element of the implementation.

we have developed some guiding principles to help us regroup and refocus if and when we feel we are losing our way.

Guiding Principle 1: The project seeks to reframe our approach to the selection, analysis, and handling of our cases in a race-conscious manner, not to force a fundamental change in the types of cases and projects we take and pursue. The project's goal was never to force program advocates to change the focus of their day-to-day work. Rather, they were charged with examining both their day-to-day service work as well as their impact advocacy through the prism of race and ethnicity. For example, in analyzing the claims of individual clients of color with code enforcement problems in their apartment complex, an advocate should consider the viability and benefit of making race-conscious claims by using race-conscious factual and data presentations in addition to raising race-neutral claims, such as the failure of local code enforcement authorities to carry out their duties under state and local laws. With respect to impact work, the project is designed to encourage and support new types of advocacy, such as an analysis of potential racial discrimination (which may harm whole communities of clients) in the provision of municipal services.

Guiding Principle 2: The Race Equity Project is a programwide project and not the province of a specialty unit. For many reasons, among them a desire to remain consistent with our program not having a specialty unit structure, we decided to avoid concentrating specialized skills or knowledge relevant to a race-conscious practice in the hands of a few advocates who would operate an elite advocacy unit. Rather, the goal was to create widespread competence among all program advocates. However, this approach is specific to our organizational culture, and it does not mean that a specialty unit structure would not succeed in other programs.

However, implementation of the project certainly required the work of a core group of managing and staff attorneys and ultimately the hiring of a Race Equity Project Fellow, described below, to develop and disseminate tools, materials, and training to help attain the programwide competency we desired. We anticipate that a centralized source of support for project work will remain necessary even as more advocates throughout the program develop competency.

Guiding Principle 3: We must engage client communities in the discussion of race. Although we have had the opportunity to examine these issues among ourselves, the same is often not the case for our client individuals and communities of color. Our experience is that the greatest impediments to a public discussion of systemic racism are the twin frames of color blindness and personal responsibility. The first turns a blind eye to the problem of race, and the second creates a "blame frame" that ignores the role of opportunity, environment, and chance in contributing to one's circumstances. In many cases, these frames have been internalized and have taken root within the very communities of color that we serve.[16] And, frankly, legal services attorneys have been complicit in allowing this to happen by too often sanitizing or discounting client-reported experiences of racism. No doubt this reluctance is due in part to the increasing difficulty of proving race discrimination in court or the limitations on the remedies available. Nevertheless, with compelling, data-driven presentations, we enable our clients to make the connection between what is happening in their lives and neighborhoods and the social and legal theories that might help them confront disparities by listening to our clients and validating their experiences with racism. Efforts to remedy racially discriminatory institutions and structures cannot succeed without this type of mutual understanding.

IV. The Tools for a Race-Conscious Practice

No doubt there are many tools that legal aid and public interest organizations might develop and use in a race-conscious practice. What follows are those that have been central to our Race Equity Project.

[16]See generally Jon Hanson & Kathleen Hanson, *The Blame Frame: Justifying (Racial) Injustice in America*, 41 Harvard Civil Rights–Civil Liberties Law Review 413 (2006), www.law.harvard.edu/students/orgs/crcl/vol41_2/hanson.pdf.

A. Social Cognition Theory and Implicit Bias

Social cognition theory refers to the ways in which the brain takes the things it perceives, maps those perceptions against mental schemas (or shortcuts), which in turn affect attitudes (normative evaluations, such as *like* and *dislike*) and beliefs.[17] Attitudes and beliefs, both conscious and unconscious, affect behavior. Social cognition theory establishes that beliefs and stereotypes change what we perceive and the very character of those perceptions.

When a car approaches, we do not separately process the image of the wheels and sound of the engine to identify "car." Based on its stored knowledge and experiences regarding a car's characteristics, the brain efficiently sorts the information via the car "schema" to enable us to perceive "car" instantaneously, without necessarily being aware of the car's many separate components. Social cognition theory says that our brain does the same thing with respect to perceiving and "sorting" people. The information and data we have stored from the sum of our experiences create our schematic baseline—a cluster of associations—which determines how we perceive people.

When applied to the concept of race, this undermines the central assumption of the color-blind paradigm: that racial discrimination, if it exists, must be the result of a conscious act. Similarly the social cognition theory demonstrates the failure of the intent doctrine—the current model for establishing actionable discrimination within the U.S. legal system that, in most cases, requires evidence of racial animus leading to intentional and conscious discriminatory actions—to account for the way our mind actually perceives, processes, and acts on information about race.[18] Social cognition theory holds great promise to expand the definition of "intent" in civil rights actions.

Applied to our practice, social cognition theory helps us become aware of how we might be assessing a client's statements and claims. Have we internalized the "personal responsibility" frame so completely that we refuse to credit the African American client who believes his termination-of-tenancy notice was racially motivated? Do we assume that he must have done something wrong to cause his eviction? Does our schema for Asian Americans, with whom we may associate "foreigner/outsider" and "passivity," come into play when assessing our Asian American client's Supplemental Security Income disability claim? We have learned that an awareness of the brain's natural tendency to sort everything and everyone, otherwise causing both helpful and harmful unconscious bias, actually helps one mitigate one's own discriminatory conduct.[19]

Social cognition theory also suggests the importance of making policy makers' decisions race-conscious by carefully measuring the actual racial impact of the supposedly "race-neutral" policies they have adopted. How is social cognition theory useful to legal aid advocates? Armed with this diagnostic tool, advocates can point out the existence and effect of discriminatory actions that result from unconscious biases.

B. Structural and Institutional Racism

Structural and institutional racism are analytical concepts descended from systems theory analysis—that broad, interdisciplinary body of science which studies complex systems in nature and society to analyze the ways in which individual actors work in concert, more often unconsciously than consciously, to create

[17]See Jon Hanson & David Yosifon, *The Situation: An Introduction to the Situational Character, Critical Realism, Power Economics, and Deep Capture*, 152 University of Pennsylvania Law Review 129, 149–77 (2003); Gary Blasi & John T. Jost, *System Justification Theory and Research: Implications for Law, Legal Advocacy, and Social Justice* 94 California Law Review 1119 (2006), www.psych.nyu.edu/jost/Blasi%20&%20Jost%20(2006)%20System%20justification%20theory%20and%20research.pdf; Hanson & Hanson, *supra* note 16.

[18]See Serrano, *supra* note 8.

[19]See Christine Jolls & Cass R. Sunstein, Debiasing through Law (2005), www.law.uchicago.edu/Lawecon/WkngPprs_201-25/225-crs-debiasing-new.pdf; see generally Jerry Kang, *Trojan Horses of Race*, 118 Harvard Law Review 1489, 1508 (2005).

the outcome being examined.[20] "Structural racism" describes the ways in which existing, ostensibly race-neutral systems of resource distribution, policy, history, law, and culture generate, for people of color, disparate results often amplifying preexisting advantage for whites and disadvantage for people of color.[21] "Institutional racism" describes the ways in which ostensibly race-neutral practices and organizational structures of institutions lead to disparate results for people of color *within* those institutions.[22]

Together the analytical concepts of structural and institutional racism can help trace the invidious racial impact of purportedly race-neutral systems and institutions. Structural and institutional racism theory shows how ostensibly race-neutral actors, working in racially ignorant bliss (the color-blind paradigm), recreate and perpetuate the same kinds of social, economic, and racial segregation that existed during the preceding century's system of *de jure* segregation. Once structural or institutional racial disparities within institutions are revealed, such as through maps and other data often obtained from the very institutions being challenged, advocates and clients are in a much better position to demand redress.[23]

Suppose a city council in a locale highly dependent upon the tourism industry repeatedly fails to approve affordable housing developments in neighborhoods of lower-income, predominantly Latino workers who fuel its main industry. Officials may claim—perhaps truthfully—that they held no conscious racial animus in making such decisions. However, data obtained and presented within an institutional racism framework, such as that no housing development proposal affordable for the (85 percent Latino) resort worker community had been approved for fifteen years, while similar proposals were unopposed in non-Latino areas, shift the paradigm and can be used to force decision makers to ratify the outcome as their own or confront the problem cooperatively through remedial action.

C. Graphical Representations of Data: GIS Mapping

Geographic information system mapping has at least two uses in our work: a tool for identifying target areas for advocacy and a fact-finding tool in the advocacy itself.

Decision makers' claims of race-neutral analysis can be overwhelmed by data presented in a graph or map. A well-crafted map, preferably based on data from the institution being challenged, can depict an indisputable pattern of racial discrimination. Maps are *diagnostic* when illustrating via graphic presentation the current realities of racial inequity, or *prognostic* when extrapolating and demonstrating what could be, if certain decisions were made and actions taken. A map can preempt the rhetorical devices that decision makers deploy to end the discussion before it has even begun. To accuse a factually accurate map and graph presenter of "race baiting" is difficult since a map is not likely to get shouted down.

We have used maps diagnostically to show, in Sacramento, high concentrations of Hmong families with limited English proficiency. We have also used the same maps prognostically to secure continued funding for after-school tutoring and acculturation programs for Hmong students when the school district proposed to discontinue the programs.[24]

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[20]For a discussion of the differences between structural and institutional racism, see Anne C. Kubisch, *Why Structural Racism? Why a Structural Racism Caucus?*, Poverty & Race, Nov.–Dec. 2006, www.prrac.org/newsletters/novdec2006.pdf.

[21]See Andrew Grant-Thomas & john a. powell, *Toward a Structural Racism Framework*, Poverty & Race, Nov.–Dec. 2006, www.prrac.org/full_text.php?text_id=1095&item_id=10188&newsletter_id=90&header=Symposium:%20Structural%20Racism.

[22]See generally Gary Blasi & John T. Jost, *System Justification Theory and Research: Implications for Law, Legal Advocacy, and Social Justice*, 94 California Law Review 1119 (2006), www.psych.nyu.edu/jost/Blasi%20&%20Jost%20(2006)%20System%20justification%20theory%20and%20research.pdf.

[23]See Grant-Thomas & powell, *supra* note 21.

[24]See Legal Services of Northern California, Race Equity Project, Mapping, http://lsnc.net/equity/category/mapping/ (last visited March 24, 2008).

D. Community Lawyering and Outreach

Community lawyering, perhaps the most critical tool in achieving long-lasting racial equity, has been defined differently.[25] From our perspective, the essence of community lawyering is that the client (often a group or organization), rather than the lawyer, defines the problem and solution, drives the advocacy, and serves as spokesperson for negotiations and public testimony and appearances. The attorney functions in the background as legal and technical advisor and leaves the decisions as to what to do and when to do it with the client. This approach increases the likelihood that the client and community members will "own" the project and its outcome and fosters trust between attorney and client—essential in advocacy, particularly if honest, thoughtful discussions about race are part of the advocacy plan.

For example, we adopted the community lawyering approach in our work on the Sacramento Hmong Mediation Project to create a culturally appropriate alternative dispute resolution program and a pathway for the Hmong community to gain access to justice through the courts. The idea for the project came from Hmong community members and leaders who felt frustrated by their experiences in the American court system, particularly in family court. The core community group decided to form a corporation, an organization to train Hmong mediators and to assist the court in hearing their cases through the prism of their cultural imperatives. Rather than simply completing the documents for them, our staff attorney advised and educated them about incorporation and its implications. She built capacity in the organization and brokered relationships with the court. Although laying the bases took a long time, members now have a thorough understanding of their roles and obligations and have community leaders who can move the project from concept to reality. With our help, project members are working with judges and court personnel to set up a system for those members with cultural expertise and dispute-resolution experience to work within the family court mediation system to enable it to serve the Hmong community better.

E. Litigation

Many decisions of the Rehnquist and Roberts courts have further hamstrung potential race discrimination litigants already constrained by *Washington v. Davis* and its progeny.[26] Indeed, respected contingents within both the legal aid and greater legal community question the efficacy of a purely litigation-centered strategy or litigation as the ultimate tool for achieving lasting race equity.[27] Nevertheless, selective race-based litigation remains a powerful tool for remedying race discrimination. Recent groundbreaking race equity litigation brought on behalf of clients of color (or entities acting in their interest) by legal services and civil rights attorneys around the country underscores this.[28] Amicus

[25]The Center for Legal Aid Education offers training programs on community lawyering. See Center for Legal Aid Education, Community Lawyering (last visited March 17, 2008), www.legalaideducation.org/courses/community_lawyering.

[26]See, e.g., *Village of Arlington Heights v. Metropolitan Housing Development Corporation,* 429 U.S. 252 (1977). For examples of cases from the Rehnquist and Roberts courts in a similar vein, see, e.g., *Alexander v. Sandoval,* 532 U.S. 275 (2001) (no private right of action to enforce disparate impact regulations promulgated under Title VI of the Civil Rights Act of 1964); *Parents Involved in Community Schools v. Seattle School District No. 1*, 127 S. Ct. 574 (2006) (school districts in Seattle, Washington, and Jefferson County, Kentucky, did not meet their burden of showing that their respective race-conscious school admissions plans were narrowly tailored to meeting a compelling governmental interest and were thus unconstitutional under the equal protection clause of the Fourteenth Amendment).

[27]See Luke Cole, *Empowerment as the Key to Environmental Protection: The Need for Environmental Poverty Law*, 19 Ecology Law Quarterly 619, 647 (1992); Gerald N. Rosenberg, The Hollow Hope: Can Courts Bring About Social Change? (1991).

[28]See *Langlois v. Abington Housing Authority,* 207 F.3d 43 (1st Cir. 2000) (preliminary injunction enjoining application of public housing authorities' residency preferences upheld in case alleging that such preference worked a discriminatory impact under Title VIII of the Civil Rights Act of 1968 on African American applicants for federal housing assistance); *Mayor and City Council of Baltimore v. Wells Fargo Bank N.A.*, No. LO8-CV062 (D. Md. filed Jan. 8, 2008) (City of Baltimore sues Wells Fargo for alleged racially discriminatory lending practices that cause rampant foreclosures, thereby exacerbating blight and harming the city financially); *Dews v. Town of Sunnyvale*, 109 F. Supp. 2d 526 (N.D. Tex. 2000) (Dallas-area nonprofit entity and others successfully challenge neighboring suburb's intentionally racially discriminatory exclusionary land-use policies and practices that exclude affordable housing development)

curiae, whose unexpected interest in racial diversity was thought to be more compelling to moderate members of the Rehnquist court, as compared to the predictable interest of the civil rights amici "usual suspects," significantly contributed, in *Grutter v. Bolinger*, to an improbable victory in the legal struggle for race equity in higher education.[29]

The constraints placed on federal court race discrimination and civil rights litigation make strategic state-court litigation all the more needed, particularly if pursued with race-consciousness. Like other California legal aid programs, we pursue land-use litigation in state court to enforce state planning and zoning obligations that require affordable housing planning for all incomes. Our Race Equity Project advocates no longer rely solely or principally on the race-neutral land-use claims but ensure that race-based claims under state fair housing laws are referred to in both legal and public discourse with equal or, if strategically or legally appropriate, greater force.

Notwithstanding the intent doctrine, courts may be inclined to acknowledge that unconscious bias, as opposed to overt racial animus, is a more realistic model, if presented with persuasive scholarship, for understanding the way in which much race discrimination operates today. Citing scholarship on social cognition and unconscious racial and ethnic bias and authorities referring to or considering the existence of unconscious bias, the court in *Chin v. Runnels*, a habeas corpus case, noted in dicta that "[a] growing body of social science recognizes the pervasiveness of unconscious racial and ethnic stereotyping and group bias."[30] The petitioner's challenge was largely based on the uncontroverted fact that no Filipino American, Chinese American, or Latino American had served as a grand jury foreman in San Francisco superior court in thirty-six years. Although the court denied the petition based on the narrow scope of review afforded, the court acknowledged that a "sizeable risk that perceptions and decisions made here may have been affected by unconscious bias" against Asian Americans and that, under better procedural circumstances, further scrutiny of the facially race-neutral selection criteria would be appropriate.[31] This language suggests that introducing relevant scholarship to the judiciary, as has been done so effectively by advocacy groups opposed to affirmative action, is key to increasing the effectiveness of race-equity litigation in the long term.[32]

V. Implementation

Since its launch in October 2003, implementation of the Race Equity Project has involved a lot of trial and error but has resulted in some successes. Here we describe some of the systems and components that we have put in place to ensure that our vision—to have advocates throughout the program analyzing and pursuing cases and projects with a race-conscious approach—is realized.

A. The Race Equity Project Fellow

Although we are committed to a project that is neither centralized nor operated through a specialty unit, we realized that the task of developing and operating the mechanisms for ensuring that

[29]Two amicus curiae on behalf of respondents were a group of sixty-five American businesses and a group of former high-ranking officers and civilians of the U.S. Army, Navy, Air Force, and Marine Corps. See Brief for 3M et al. as Amici Curiae Supporting Respondents, *Grutter v. Bolinger,* 539 U.S. 306 (2003) (Nos. 02-241, 02-516), http://supreme.lp.findlaw.com/supreme_court/briefs/02-241/02-241.mer.ami.sixtyfive.pdf; Brief for Lt. Gen. Julius W. Becton Jr. et al. as Amici Curiae Supporting Respondents, *id.*, http://supreme.lp.findlaw.com/supreme_court/briefs/02-241/02-241.mer.ami.military.pdf.

[30]*Chin v. Runnels*, 343 F. Supp. 2d 891, 906 (N.D. Cal. 2004). For a discussion of the social science dealing with stereotyping and bias, see Charles Lawrence, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 Stanford Law Review 317 (1987); Mari Matsuda, *Voices of America: Accent, Antidiscrimination Law and a Jurisprudence for the Last Reconstruction*, 100 Yale Law Journal 1329 (1991); Edward M. Chen, *The Judiciary, Diversity and Justice for All*, 91 California Law Review 1109, 110 n.51 (2003); Eric K. Yamamoto et al., *Dismantling Civil Rights: Multiracial Resistance and Reconstruction*, 31 Cumberland Law Review 523, 562–65 (2000); Linda Krieger, *The Content of Our Categories: A Cognitive Bias Approach to Discrimination and Equal Employment Opportunity*, 47 Stanford Law Review 1161 (1995); John Barth, Conditional Automaticity: Varieties of Automatic Influence in Social Perception and Cognition, in Unintended Thought 3 (James S. Uleman & John A. Bargh eds., 1989).

[31]*Chin,* 343 F. Supp. at 908.

[32]Lee Cokorinos, The Assault of Diversity (2003).

all advocates have access to the project tools described above and accompanying technical advice had to be centrally coordinated, particularly in the beginning stages of implementation.

Staff Attorney Eric Schultheis joined us in September 2006 through a University of Southern California School of Law fellowship. His job is to ensure that the project materials and tools are available to all advocates in the program. Schultheis cocounsels, trains, creates GIS maps, and provides other technical support to advocates working on Race Equity Project matters. He launched, among other accomplishments, two online components of our larger race-based advocacy plan: the Race Equity Project website and e-newsletter.

1. The Race Equity Project Website

The project website, www.lsnc.net/equity, is a clearinghouse of race-based advocacy resources for legal aid practitioners and community advocates. The site now receives nearly a thousand unique hits per month and hosts lively commentary by advocates from around the nation and, recently, from other countries. Resources are continually added as users volunteer their experiences, research, cases, and briefs. The website's major components are (1) a reading list of seminal works in the field of critical race and social cognition theory; (2) demographic and other data; and (3) links to education, health, housing, civil rights, benefits, employment, language access, media, outreach, scholarship, and mapping materials and an online GIS mapping tutorial.

The website includes a blog. Postings are typically followed by helpful comments with case citations and additional resources offered by subscribers to the site's RSS (Really Simple Syndication) feed.[33] All blog entries are archived, categorized for easy access, and searchable.

2. The Race Equity Project e-Newsletter

The project newsletter is a theme-based, periodic electronic publication. Two recent issues focused on race-conscious approaches to language access and land use. Each article contains links to resources, some of which become permanent links on the project website. The e-newsletter is now a publication with contributors from around the country. It has hundreds of subscribers from fifty different organizations, including legal aid programs and other nonprofit advocacy organizations, across the country.

The goal of the website and e-newsletter is to pull user-created content together in one forum to allow advocates practicing race-based advocacy or anti-race-discrimination law from across the nation to share their resources, challenges, and successes with one another. In this way the e-newsletter provides varied content that advocates can apply in their own communities; leads to the development of best practices in race-based advocacy; and creates a dynamic community and shared mission among advocates working with low-income communities of color.[34]

B. Task Force

We convene periodic substantive task force meetings, to which all advocates in our program and colleagues from other programs are invited. Through task force meetings we train advocates in particular areas of substantive law, strategize about potential and ongoing cases, and discuss new legal developments in our priority areas.

On December 7, 2007, we held our first Race Equity Project Task Force meeting, thereby establishing race equity firmly within our core priorities and competencies. This meeting was unique in that it dealt little, if at all, with the substance of the law and focused instead on the practice of law connecting the philosophy of a race-conscious approach to actual practice. We began with exercises that enabled advocates to reexamine their own practice with race-consciousness and to show how the unconscious biases in all of us potentially affect each stage of a case or advocacy project. In a case roundtable, advocates discussed all of their current

[33]See eJustice, Really Simple Ways to Keep Up with News and Information, www.ejustice.org/articles/2006/10/really-simple-ways-to-keep-up-with-news-and-information/ (last visited April 10, 2008).

[34]To subscribe to the e-newsletter, e-mail rep@lsnc.net; type "Subscribe to REP Newsletter" on the subject line.

race equity cases and projects (see below). The conversation was dynamic, and everyone agreed that the race-based advocacy campaign we launched over four years ago had finally taken hold.

C. Working with the National Legal Aid and Civil Justice Community

The volume and complexity of the work being done by our program suggest that, while we certainly do not have all the answers (or even all the questions), we are making progress toward translating theory into practice. Here, and in future issues of Clearinghouse Review, we hope to share our race-based advocacy, and we hope that you will share yours, too, so that others may learn and cooperate with still others about race-based advocacy strategies and create and implement their own.

As we began the project, in order to learn about current scholarship, policy, and law, we contacted and formed relationships with the Equal Justice Society and the Kirwan Institute for the Study of Race and Ethnicity at Ohio State University. These relationships led to invitations to participate in national civil rights conferences.

Since the project's beginning, we have presented the project in different forums. In July 2007, at the National Legal Aid and Defender Association (NLADA) Substantive Law Conference in San Jose, California, we helped put together a national training curriculum on a race-conscious practice to legal aid and public interest practitioners. With funding from foundations, law firms, and the California Legal Services Project Directors, we brought together some of the best trainers in social cognition, GIS mapping, message framing, community lawyering, and in such substantive areas as race and health, housing, land use, language access, public benefits, and environmental justice. The curriculum attracted 300 advocates (most within their first seven years of practice), and received an overwhelmingly positive evaluation.

The contacts we have made has given our staff access to the top thinkers, researchers, litigators, and other advocates in the nation, both inside and outside the legal services community.[35]

Capitalizing on the personal connections of Legal Services of Northern California's newer attorneys, we have been able to reach out to students and faculty at the University of California at Davis, Berkeley, and Los Angeles schools of law, each of which is tackling the problem of growing racial inequality from an ever-evolving and innovative perspective. We hope to influence students and scholars on keeping practical application in mind as they develop new theories and scholarship on how unconscious and institutional racism operates and how it may be remedied.

By no means do we suggest that we have "occupied the field" of race-based advocacy. We are simply spreading the word on the tools that we have found effective and hoping to receive feedback on how to improve and expand our work.

D. Cases, Projects, and Programs

The following is a list of some of the other cases and projects to which we have applied the Race Equity Project.

- Advocates in a rural community are investigating the conduct of a community benefits trust committee that has historically denied funds for community improvement proposals from African American community groups. At the behest of the affected community group, staff attorneys are investigating long-standing racial disparities in the provision of municipal services, such as sewer service and sidewalks.
- Advocates in a county with a significant Latino population are amassing data to be used in a potential challenge to a health care system in which white recipients of Medi-Cal managed care

[35]For example, Brian Nosek, assistant professor at the University of Virginia's Department of Psychology, introduced us to a CD-ROM which allows one to experience bias in a very personal way; videos demonstrate the way in which our brain often fails to "see" otherwise obvious things when it is looking for something else or when change occurs slowly; or the way in which your brain orders the things it perceives according to what it expects to see based on previous experience, beliefs about how the world works, and stereotypes. This is an invaluable tool when introducing advocates, community groups, or decision makers to the concept of unconscious/implicit bias.

benefits receive, per capita, more than twice the dollar amount of benefits received by recipients of color, with particularly gross disparities in mental health care.

- An outreach and education effort to African American and Asian and Pacific Islander community groups on affordable housing issues in Sacramento included a culturally competent graphic presentation of how ostensibly "color-blind" market-driven development creates new housing which is disproportionately unaffordable and thus inaccessible to people of color.
- An environmental justice case in which a multimillion dollar gas corporation proposes to pump and store under high pressure over seven billion cubic feet of explosive natural gas in a preexisting geological formation beneath 700 homes in a low-income community of color. The project threatens to pollute soil, water, and air and introduces the risk of fire or explosion from gas migration and leakage. After being contacted by neighborhood groups, we have used GIS maps to depict for decision makers the disproportionate environmental hazards imposed by the proposal upon low-income communities of color, and our staff has provided a voice for these communities in the ongoing debate over this proposal.
- Our staff created extensive Lake Tahoe–Truckee area GIS maps showing the growing inequities in housing and other opportunities for many communities of color. We have developed relationships with family resource agencies serving the low-income Latinos, who are the backbone of the tourism industry. We are prepared to work with these agencies in having state and local law enforced to remedy racial disparities in housing availability, affordability, and conditions.
- After a survey affirmed our clients' suspicions that most new public housing projects were being sited in neighborhoods with low-performing schools, advocates convinced the local housing authority to change its siting criteria to build housing in new neighborhoods with more opportunity available to the residents.
- Staff members have found solid evidence of implicit and, in some instances, explicit bias among administrative law judges deciding claims for disability benefits vis-à-vis Southeast Asian and African American applicants.
- Staff members are advocating with local government to prepare an annual race-impact statement to evaluate housing policy.

Many other cases arising out of the project did not proceed past the analysis stage, and many more are under investigation and awaiting development. The project gives advocates the license, time, and tools to pursue them.

VI. Next Steps

After presenting the race-equity training track at the 2007 NLADA Substantive Law Conference and at other program-sponsored occasions, we have received many more requests for presentations from groups in California and around the country. At our next Race Equity Project Task Force meeting, we will focus on training more staff members to deliver the project presentation in order to meet the demand. Again, such training and outreach are a vital part of the project; we believe that broad-based race equity can be achieved through the legal services program network since its programs and their partners are in practically every county in the country.

Among the most energized by the prospect of a national revival of strategic race equity work in poverty law and social justice practice are new advocates within their first five years of practice. Many of them are well versed in critical race theory and have already begun coalescing.[36] In December 2007 we cohosted with the

[36]See Richard Delgado & Jean Stefancic, Critical Race Theory: An Introduction 2–3 (2001) (defining critical race theory as a movement of scholars and activists, which, unlike the incremental, step-by-step approach of the traditional civil rights movement, "questions the very foundations of the liberal order, including equality theory, legal reasoning, Enlightenment rationalism, and neutral principles of constitutional law" and seeks to undermine all forms of subordination).

Equal Justice Society a meeting and conference call in San Francisco for a dozen new advocates from legal aid and civil rights organizations throughout California to begin the dialogue. This group has already committed to holding a young advocates' gathering on race-based advocacy in the next year and seeks to create an ongoing forum for networking, training, leadership development, ongoing and ever-expanding collaboration, and creating generational identity and a shared vision for racial justice advocacy for the near term and for as long as necessary.

VII. What We Have Learned

The following factors are critical to the pursuit of a race-conscious poverty law practice:

1. *Get out of the office and into the community*. Advocates must get out of the office. A program cannot define its client population as those lucky few who happen to find the program's phone number and address. Map your service area for race, ethnicity, language, and income, and you will likely find many unserved or underserved neighborhoods and communities. Following this analysis, reach out to them and find out what their concerns are.

2. *Take the journey with your client*. Poverty lawyers' race-conscious advocacy cannot move ahead of clients. Respect for clients' views and validation of their experiences is paramount. Recognize that the frames of color blindness and personal responsibility have been internalized and institutionalized in communities of color as well as in the larger society.

3. *Make the tools available and let advocates apply them.* You must teach the tool and its application and leave it to the advocates to determine the application in their substantive areas of practice. There are no silver-bullet cases in race-based advocacy. While strong leadership and a showing of support are absolutely necessary from management, the top-down approach is not effective. You have to be out in the community and engage with your clients to understand the problems that may eventually lead to specific casework. Once your frontline advocates have learned the tools of race-based advocacy, they need the freedom, time, and resources to be creative. Follow their lead.

4. *Train periodically and by example*. We learned from our inaugural task force meeting that race-based advocacy tools are more tangible and accessible when people share how they are actually putting the tools to use or contemplating how they might be used. Publicize advocacy with an explanation of how the tools are being applied.

5. *Use mechanisms for change and training that are consistent with your program's culture*. We launched the project at our semiannual all-staff meeting and used the familiar task-force model to help implement the project. Moreover, a program-wide approach, as opposed to a specialty unit, is consistent with the "generalist" nature of our service delivery system.

The foregoing is what has worked for us thus far. Every program must decide what would work best given its own structure, culture, and history.

■ ■ ■

Legal aid organizations are well positioned to engage in a national discussion surrounding race and poverty. They touch every county in the United States. They have a network in NLADA and the Sargent Shriver National Center on Poverty Law, and both organizations are linked to almost every local program in the nation.

In light of the racial disparities that keep poor people of color from opportunity, we have an obligation to our clients of color to learn the tools of race-based advocacy and use them to help our client communities achieve racial and social justice. The principles of a strong race-conscious practice reverberate throughout the corridors of power: that race matters, race-based inequities are unacceptable, and advocates provide a strong voice for those whose own voices have been silenced.

Consistent with our obligation to put the best possible advocacy tools in the hands of our frontline advocates, such a broad-based effort is also consistent with our historical mission to empower clients and communities to attack the root causes of poverty and racial inequity.

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