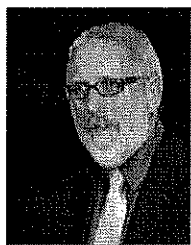


## Launching and Managing a Race Equity Project in Legal Services — The Nuts and Bolts

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Legal Services of Northern California

Poverty and Race are inextricably linked. One cannot be addressed without the other or we risk contributing to the vast chasms that separate people from opportunity along racial/ethnic lines. A colorblind analysis of poverty simply has no place in civil legal services.<sup>2</sup> Ten years ago, Legal Services of Northern California (“LSNC”) launched the Race Equity Project to put the tools of race conscious advocacy in the hands of our advocates and put race back on the table in our advocacy. We have written about the tools and several aspects of this project in a series of articles in the *Clearinghouse Review*.<sup>3</sup> In this article we will address the challenges and opportunities presented when a program decides to implement a race conscious approach to advocacy.



I am privileged to work in a program where introspection and “taking stock” are part of the social fabric. Through periodic retreats and task force meetings we try to measure our effort in light of the ever changing landscape upon which our clients’ lives unfold. Indeed, we try to constantly monitor those changes through mapping and data scans so that we can better understand the demographic, economic, social and political landscape of the areas we serve.

The idea for a Race Equity Project was born in 2003 almost by chance when three individuals were having lunch to share thoughts on the theme of the next “all staff” meeting. Nearly at once, we suggested that “race” had to be placed back on the table in our advocacy. We had not had any discussion prior to the meeting so it was surprising to us that we had all simultaneously reached the same conclusion.

Over the years we watched the strong pushback on race claims by the defense bar that made these cases

costly and difficult to pursue. Elected officials argued that even a discussion of race was divisive to a community. We had inadvertently become colorblind in our assessment of cases not allowing for the proper allocation of resources that race claims require. Some advocates argued that we could reach the same outcomes by addressing poverty rather than race. Others argued that offering representation to people of color was racial justice advocacy. These responses obscured the fact that we had retreated from racial justice work in a shameful way.

At the time, we also knew there would be reluctance by some in the program who attended a failed effort to raise consciousness about race issues within the program five years earlier. That conference focused on internal program dynamics using a “cultural competency” model. Trainers focused exclusively on the need to change as individuals without connecting that change to advocacy unfolding outside the office. This singular internal focus turned out to be damaging. The conference was poorly handled and opened up wounds that lingered for many years. Thus, we anticipated resistance to a renewed effort. Any new effort had to focus on the work that was to be done for our client communities and specifically on the tools needed to do this work.

After attending a conference on Colorblind Racism at Stanford University sponsored by our colleague Eva Paterson and the Equal Justice Society, we understood the pernicious nature of *Colorblindness* and its partner the *Personal Responsibility* frame. They were part of an orchestrated assault on diversity that had become embedded in America’s dominant discourse. We were also moved by the article written by Camille Holmes, Linda Perle and Alan Houseman a year earlier in the *Clearinghouse Review*.<sup>4</sup>

Together we began planning for the launch of the Race Equity Project (REP), now in its tenth year.

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### Impediments to Race Equity Work at LSNC

We had to address many challenges when launching the Race Equity Project. They were:

- Lack of clear vision
- Lack of program infrastructure to identify, evaluate and support race based claims
- Staff skepticism
- Resistance to complex systems analysis.
- Comfort with status quo — Our mantra became Comfort is Our Enemy as the project unfolded.
- A sense that it was important but someone else should do it

LSNC has a history of launching new program wide initiatives at three day retreats that are held semi annually.<sup>5</sup> A team spends months planning the retreat recognizing that it is not enough to fill the three days with information but it is also necessary to plan at least six months of activities following the conference so that the initiative takes root in our nine field offices. We had to plan the launch with these impediments in mind.

### Prelaunch Work and Conference Planning

Before a new project is launched one must create a clear road map of the start up. First, we required a vision that was fact based and resonated locally. We had to abandon our assumptions rooted in decades past to come up with a current vision of racial inequities. The new vision would be incorporated into every decision point in the delivery of service model.

To do so, we examined the latest data on disparities in housing, health care, education, consumer law, wealth, land use, and public benefits. We looked at segregation and marginalization in the poverty population. In all areas, we learned that racial disparities not only existed but were growing. This data helped make a case to the program and provide a vision of our future challenges.

Second, it was important to test the waters in the prelaunch phase and to find a cadre of persons who share the passion for the goals of the project. This required several one-on-one meetings with staff at all locations and levels of the program to recruit at least one third of the program who were on board with the broad change we proposed.<sup>6</sup> We shared with them our data and asked whether it resonated with their own practice. Their responses helped us to test and refine a vision of change that was compatible to our very large

program. We found that many shared our discomfort with a practice that was not explicitly race conscious. They supported the goal but wondered how such a project would be implemented. We asked for their help as we turned our focus on tools of advocacy.

### The Tools of Race Conscious Advocacy

The tools were developed and guided by our introduction to cognitive science.<sup>7</sup> The 21st century required a new approach to racial justice advocacy. Many of our advocates had experience litigating civil rights claims early in their careers. These claims were rooted in the perpetrator/victim model as required by the current jurisprudence. The Supreme Court through *Washington v. Davis*<sup>8</sup> and its progeny had narrowed remedies for racial disparities that rendered their pursuit economically unfeasible. A new approach was required.

The new frame for pursuing race claims came from cognitive scientists who are able now to document how bias is created in our brains and manifested in society. We learned that disparate racial outcomes often manifest in societal structures and outside the perpetrator/victim model. Thus we set out to develop tools that are based upon this new science each of which has been the subject of a *Clearinghouse Review* article in the past decade. It was hoped that each of these tools could be applied in any substantive area of practice. The tools are:

- Understanding Social Cognition/Debiasing<sup>9</sup>
- Understanding Structural Racialization/Racial Impact Statements<sup>10</sup>
- Mapping and Graphic Presentations of Data<sup>11</sup>
- Framing for Advocates<sup>12</sup>
- Community Lawyering<sup>13</sup>

Our initial hopes of universal applicability have come to fruition in our program as advocates have made significant strides toward examining issues of racial equity in every substantive practice area in which we practice.

### Conference Planning — Creating a Conscious Line of Demarcation

A conference that serves to launch a new program must present a conscious line of demarcation. One that says this is who we were and this is who we will together become. Crafting a message that will not only provide tools but would capture the hearts and minds of staff is a daunting goal and must be carefully planned. Selection of the keynote speaker to set the vision and tone of the conference was an essential first

step. The speaker would set the introduce the vision and set the tone of the conference. In our case, we selected Kevin Johnson, LSNC's Board Chair and Dean of the University of California, Davis, Martin Luther King Hall School of Law and noted author on Latino/Chicano legal issues. Conference planners worked closely with Dean Johnson to tailor his address to support the launch. The address respected the history of our program and rooted the challenge of retooling to achieve racial justice in our historic mission.

The conference was planned to involve staff at every position from the executive director to office support staff. We wanted to recognize the essential contributions of staff at all levels of our program. Any effort at retooling would require introspection at every decision point in the service delivery model. Plenary sessions would provide the larger vision of change while breakout sessions would provide the detail in the context of each staff function in the delivery of services. One clear message that was essential to the launch was to tell staff that *we are not asking you to do more, we are asking you to do things differently* and will provide the tools to do just that.

Finally, it was important to link the required "internal change" to an "external vision" of beneficial change in the communities we serve. Here data and mapping became important. We gathered hundreds of data sets linking race, poverty and opportunity. We reduced them to single data set posters which we attached to the walls of the retreat site so that any time staff was not actively involved in the conference sessions they were surrounded with the data that framed our new initiative. This was very effective at guiding conversation over the three days as staff responded with shock or recognition at all of the evidence that racial disparities were growing in America. Since the data sets were linked to specific substantive issues, individual advocates began to see their role in the future direction of the program. We also posted data maps of our service area to reorient staff to the new paradigm we hoped to address.

Staff planners worked with presenters of all of the breakout sessions to insure consistency with the vision. In this way knew we had the best chance of setting the tone and creating a culture that would support this change in approach to our work well beyond the conference.

### Post Conference Assignments to Staff

An essential part of preconference planning is setting tasks for the six months that follow. Once the

program focus was established it had to be implemented in the day to day practice of each of our offices. If seeds are planted at the conference, the next phase is nurturing those seeds to take root. Geographically, our program is vast. Its' 44,000 square miles make it larger than sixteen states.<sup>14</sup> It comprises four separate economic regions with vastly different imperatives from the lumber and fishing sectors of the north coast, the agriculture economy of the northern central valley, the government dominated sector of the State Capitol to the high tech sectors of the Bay Area. We had gardens to tend that required a diverse approach to husbandry.

To decentralize the implementation, our executive director assigned each office the task of creating data maps of the geographic area each office served.<sup>15</sup> The assignment was to make simple maps of their service area that examined poverty and race/ethnicity and used case service reports which showed the approximate address of the clients that we served. Staff could choose to map a county or a city or some other geographic component but the office must agree collectively to map every inch of the geographic area that they served. Our purpose was two-fold. First, we wanted to reorient the staff to the issue of race and poverty in their own communities. Second, we wanted each office to become adept at mapping as an advocacy tool. It worked.<sup>16</sup> Staff was encouraged to map issues more broadly than the basic mapping assignment and most offices did that. The maps were revelatory and allowed staff in each office to:

- Create a visual picture of inequity
- Reorient staff and inform community outreach
- Target community lawyering projects
- Created vulnerability/opportunity assessment
- Disseminated a new skill to staff. Many were so taken by mapping that they moved on voluntarily to more complex mapping projects.

Though much of the data work had been done prior to the conference, each office was assigned the task of updating local data on poverty and race using local sources. In addition, through a series of interviews with community leaders, staff was asked to create a community narrative. Both were reduced to reports that were sent to the executive director and shared at task force meetings.

Finally, staff were encouraged to take one or more of the Implicit Association Tests and to talk about the results. These discussions became confessional in nature as staff were often surprised by the implicit

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associations they held and were not aware of. It was helpful for managers to lead the discussions by sharing their own experience with the test.

### Post Conference Implementation by Managers

Since demand always greatly exceeds our ability to serve, programs strive for efficient service delivery. Yet race claims are not always “efficient” to process. It was important to get buy in from the management team. It was their job to see that the guiding principle that this was everyone’s work and not the work of a specialized unit was implemented. The first task was to review intake procedures. The colorblind approach to outreach, reception, case selection, case assignment and resource allocation were all points where implicit bias could manifest and affect the substantive caseload of the program.<sup>17</sup> Managers were asked to examine decision points in the intake process to see whether existing procedures acted as filters for race based claims. Inserting just a few questions in the review of new cases opened the door to broader considerations of race claims in our day to day casework.<sup>18</sup> Targeted community lawyering addressed broader issues of racial/ethnic exclusion.

LSNC had already adopted a community lawyering model so our managers were managing parallel intake pathways. Understanding the challenges of consciously managing dual intake systems is essential to success of a race equity project and should be considered by any program considering implementing a race equity project. Managers must understand that race claims may take more resources requiring adjusting an advocates’ caseload or shifting resources to address the increased demand. If a program is not committed to providing the necessary resources to race claims, an advocate taking on these claims bears an undue burden in carrying these cases which may result in resentment or burn out. This burden can unintentionally kill the effort.

### Post Conference Structures To Support A Race Equity Practice

Structures in our program needed to change to accommodate communications, training and resource allocation.

*Regional counsel/project facilitator:* We knew that we wanted a person to be at the center of the project, to help to coordinate the activities in a large program. In our program this task would fall to a “regional

counsel” — an advocate assigned to develop an advocacy agenda and provide support to the field offices.<sup>19</sup> We had no funds with which to hire a regional counsel for race equity so we improvised. What we needed was a person with a global understanding of race equity work. For five years we used new law graduates funded through fellowships as the “hub” of the REP work. The concept of a facilitator rather than leader fit in well with our decentralized approach to the project. The fellow helped to refine the tools and assisted front line advocates in their application to specific cases.

*Race Equity Task Force:* Quarterly task force meetings attended by representatives from each office served as the place to extend our training and implementation of the project goals. These full day meetings included ½ day training and ½ day reviewing developing cases. Many times the task force discussions lead to cross office teams that would further develop approaches to common issues. We make a conscious effort at these meetings to raise examples from every office to demonstrate the pervasiveness of race and ethnicity as an issue.

*Monthly working group calls:* A working group of volunteers engage in monthly call to plan and guide the next steps in the REP’s implementation. This group plans the agenda for each task force meeting, schedules outreach and training for new advocates. We sometimes use this time to share our personal reactions to the various implicit association tests that we have taken.

*Creating Space to Discuss Race.* At LSNC staff are encouraged to discuss issues of race that present themselves in the community, the state and the nation. The goal of these discussions is not necessarily to move to solutions but, instead to deepen the conversation about race and the myriad ways it manifests in our culture both positively and negatively. We have, for example, set aside time to react to the Travon Martin shooting and trial, the Fruitvale Station movie, and the events unfolding in Ferguson, Missouri. Participation in such structured conversations is, of course, voluntary and is not done on LSNV “work time.”

*Training the Trainers:* Periodically we train our staff to become trainers on all REP tools. This creates disciples to the practice and gives us the capacity to spread the tools within and beyond our program.

*Taking It to the Streets:* The tools are not meant for advocates alone. Each of our tools has been adapted for training to our client communities. This is probably the most rewarding part of the project.

### Hiring into the Culture

Though you may launch with that crucial third of

“first followers” that allow one to steer the ship in a new direction, you can explicitly hire into the culture. We have found over the past ten years that the Race Equity Project has been an important recruiting component for attracting new attorneys to our program including many new attorneys of color. We have had the opportunity to hire people already skilled in all of the tools of the REP enhancing our efforts and our program’s commitment to racial equity. It is also clear that nothing has helped us more to achieve a goal of affirmatively hiring into our program.

I must also acknowledge that our efforts are imperfect. We struggle and make many mistakes, but the heart of the program is committed to work towards an ideal of racial equity.

### Accomplishments of LSNC’s Race Equity Project

Once race was placed back on the table, our advocates began to raise questions that would not have been raised in a colorblind practice. We have learned, as we initially thought, that race permeates nearly every substantive area of practice and when the examination focuses on structures rather than actors, opportunities for new and effective advocacy are revealed. As an example, the tools have been used in the following areas of practice:

- An advocate in one of our rural counties asked what the average spending was in “fee for services” Medicaid payments by race. He learned that the annual payment for Whites was \$4400, \$2200 for African Americans, \$1800 for Latino’s and if the Asian population was disaggregated even less for new Asian immigrants. The data was kept for years but no one asked the question.
- When a proposal to pump 7.5 billion cubic feet of gas into a geological formation beneath 700 homes was proposed and permits were nearly complete, staff determined that the site selected was a historical African American community which was chosen over less populated areas with an overwhelmingly White population.
- An examination of sales tax revenues revealed that children in wealthy suburbs receive sales tax allocation at a rate ten times that of minority children in the same county.
- Project mapping demonstrated that segregation placed people of color into areas without jobs or transportation leading to disparate outcomes when a work program was instituted for welfare recipients.
- Policies on land use were objectively demonstrated

to create barriers to integration and furthered segregation.

- Differential utility charges unfairly targeted people of color.
- Preserved bilingual education programs in a predominantly Latino school district.

These cases would not likely have happened if a racial lens had not been used to evaluate the case or the tools of a race equity practice were not readily available to our advocates.

### Finally, It Is Important to Remember Lao Tzu

Lao Tzu described the various forms of leadership by their primary virtues concluding that the best leadership comes when the followers believe they have chosen the path themselves, of their own free will. I agree, but to achieve this end the pursuit of credit must be subordinated in all cases to the pursuit of the ends themselves: of racial equity. Success falls upon the many blame upon the few. This is what Lao Tzu had to say:

*Preeminent is one whose subjects barely know he exists; the next is one to whom they feel close and praise; the next is one whom they fear; the lowest is one whom they despise. When the ruler’s trust is wanting, there will be no trust in him. Cautious, the sage ruler values his words. When his work is completed and his affairs finished, the common people say, ‘we are like this by ourselves.’*

—Lao Tzu

- 1 William C. Kennedy began his practice in 1974. He is currently the Managing Attorney of the Sacramento office of Legal Services of Northern California and director of the Race Equity Project. His legal work has focused primarily on housing and civil rights. In 1978, Bill was part of the defense team that represented the Camp Pendleton 14, African-American marines facing criminal charges for attacking the Ku Klux Klansmen on the base. He then spent several years doing anti-Klan and anti-poverty work in California’s central valley with California Rural Legal Assistance.

In the 1980s, Bill was lead counsel on three successful civil rights challenges to the police practices of the Border Patrol which limited raids in communities, workplaces and businesses without warrants based upon “articulable suspicion of alienage.” He was trial counsel on the Rancho de Cuevas case which defended the civil rights of farm workers recruited from Mexico to live in caves in Monterey County.

In recent years he has worked on several actions that focus on the nexus between land use decisions and

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civil rights including the most recent victory on behalf of the Avondale Glen Elder Neighborhood Association wherein a historical African-American community was able to defeat a proposal to pump 7.5 billion cubic feet of natural gas into a geological formation under their homes.

As Director of the Race Equity Project (REP), Bill and his former colleague Mona Tawatao developed a training curriculum for legal services attorney that provides the essential tools of a race equity practice. For the past ten years the REP has provided free training to attorneys and neighborhood activists on 1. Social Cognition and the law; 2. Understanding structural racialization and the use of Racial Impact Statements; 3. Mapping and Graphic Presentations of Data; 4. Cognitive Framing; and, 5. Community Lawyering. The curriculum insures that race as an issue is squarely on the table in all of the program's anti-poverty advocacy.

Bill brings a practitioners perspective to the discussion of cognitive science and the law. Bill may be reached at [bkennedy@lsnc.net](mailto:bkennedy@lsnc.net).

- 2 See NLADA Principles for Race Equity Practice, <http://www.nlada100years.org/member-resources/civil-resources/race-equity-leadership/racial-justice-initiative>
- 3 *Instituting a Race Conscious Practice in Legal Aid, One Programs Effort*, by Bill Kennedy, Mona Tawatao and Colin Bailey, *The National Clearinghouse Review Journal of Poverty Law*, Volume 42, Number 1–2, May–June 2008; *Poverty's Place, The Use of Geographic Information Systems in Poverty Advocacy* by Eric Schultheis and Jason Reece, *The National Clearinghouse Review Journal of Poverty Law*, Volume 42, Numbers 9–10, January – February 2009; *Framing in Race Conscious Antipoverty Advocacy, A Science-based Guide to Delivering Your Most Persuasive Message*, by Bill Kennedy, Colin Bailey and Emily Fisher, *The National Clearinghouse Review Journal of Poverty Law*, Volume 43, Numbers 9–10, January, 2010; *Putting Race Back on the Table: Racial Impact Statements* by William Kennedy, Gillian Sonnad, and Sharon Hing, *The National Clearinghouse Review Journal of Poverty Law*, Volume 47, Numbers 5–6 , Sept/Oct, 2013; *Race Conscious Community Lawyering: Practicing Outside the Box* by Tammi Wong, *The National Clearinghouse Review, Journal of Poverty Law*, Volume 42, Numbers 3–4, July/August 2008.
- 4 Race-Based Advocacy: The Role and Responsibility of LSC-Funded Programs, [http://www.nlada.org/DMS/Documents/1029266444.92/Race-Based\\_Advocacy.pdf](http://www.nlada.org/DMS/Documents/1029266444.92/Race-Based_Advocacy.pdf)
- 5 LSNC used the same model to launch practice initiatives in community economic development, child support enforcement, community lawyering, land use.
- 6 Those who understand institutional change better than I document that it is the “first followers” that are the key to success in any movement. First followers must be cultivated and greeted as “equals in the effort as we tried to do at LSNC.
- 7 We acknowledge here and thank Eva Paterson and the Equal Justice Society for assisting with the development of the tools by sponsoring conferences with the leading cognitive scientists who continue to guide our efforts.
- 8 *Washington v. Davis*, 426 U.S. 229 (1976)
- 9 *Instituting a Race Conscious Practice in Legal Aid, One Programs Effort*, by Bill Kennedy, Mona Tawatao and Colin Bailey, *The National Clearinghouse Review Journal of Poverty Law*, Volume 42, Number 1–2, May–June , 2008.
- 10 *Putting Race Back on the Table: Racial Impact Statements* by William Kennedy, Gillian Sonnad, and Sharon Hing, *The National Clearinghouse Review Journal of Poverty Law*, Volume 47, Numbers 5–6 , Sept/Oct, 2013.
- 11 *Geographic Information Systems in Poverty Advocacy* by Eric Schultheis and Jason Reece, *The National Clearinghouse Review Journal of Poverty Law*, Volume 42, Numbers 9–10, January–February 2009.
- 12 *Framing in Race Conscious Antipoverty Advocacy, A Science-based Guide to Delivering Your Most Persuasive Message*, By Bill Kennedy, Colin Bailey and Emily Fisher, *The National Clearinghouse Review Journal of Poverty Law*, Volume 43, Numbers 9–10, January, 2010.
- 13 *Race Conscious Community Lawyering: Practicing Outside the Box* by Tammi Wong, *The National Clearinghouse Review, Journal of Poverty Law*, Volume 42, Numbers 3–4, July/August 2008.
- 14 Rhode Island, Delaware, Connecticut, New Jersey, New Hampshire, Vermont, Massachusetts, Hawaii, Maryland, West Virginia, South Carolina, Maine, Indiana, Kentucky, Tennessee and Virginia.
- 15 This type of mapping has become a routine practice in our program. In June 2014, our executive director asked the offices to launch a new mapping effort of Northern California on a new on line platform Google Maps engine.
- 16 Mapping tutorials were posted on our website with common sources of data for the maps.
- 17 My colleague Jenni Gomez and I are working on an article/manual providing specific suggestions to address implicit bias in legal services delivery.
- 18 The questions were *How does race play a role in this case?* and borrowing a debiasing technique from the medical field, advocates are asked from time to time to present what is happening from the client's perspective.
- 19 In LSNC, regional counsel have no caseloads of their own but are available to work on cases of front line advocates in their substantive area of law.