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The North Carolina Public Defender Committee on Racial Equity (NC PDCORE) The Founding of the Committee, its Mission and its Work Since 2011

by Caitlin Fenhagen

On October 26, 2011, a group of Chief and assistant public defenders from across the state met in the conference room of the Greensboro Public Defender's Office to start a conversation about racial and ethnic bias in the criminal justice system. The meeting was initiated by an email to public defenders across the state from Durham County Chief Public Defender Lawrence M. Campbell on behalf of the North Carolina Association of Public Defenders, following a meeting of the Chief Public Defenders during which the creation of a subcommittee on race and criminal justice was authorized. From this initial meeting on October 26th, steps were taken which led to the formation of what soon became the North Carolina Public Defender Committee on Racial Equity, or NC PDCORE.

However, the planning for a committee of public defenders to discuss and address issues of racial and ethnic bias was well underway prior to that first NC PDCORE meeting. In fact, James E. Williams, Jr., Chief Public Defender for Orange and Chatham Counties, had been discussing the need to address racial disparities in the North Carolina criminal justice system since 2010 with a variety of criminal justice and legislative stakeholders, in addition to the N.C. Association of Public Defenders. In July 2010, James Williams represented an African

American client in an Orange County homicide case whose fate was decided by a jury that included eleven White individuals and one African American female. The venire from which the trial jury was chosen contained only three African Americans out of approximately one hundred jurors. The failure to secure a jury venire or seated jury that included a fair cross-section of the community in this case was another stark reminder to Williams that there was much work to be done to reduce and eliminate racial disparities in our legal system and ensure equal justice for people of color.

The data is clear that race plays a profound role in the operation of criminal justice in North Carolina. The statistics regarding rates of law enforcement stops, arrests, convictions, incarceration, and sentences of death for African Americans demonstrate that race impacts all phases of criminal investigations and proceedings.¹ Armed with data, Public Defender Williams began engaging a wide array of stakeholders about the importance of working collaboratively on this issue. As a result, progress has been made on a variety of fronts in North Carolina since 2010. Some of the most notable efforts include an annual NCAJ CLE on Race and Criminal Justice issues, the formation of the NCAJ Task Force on Racial and Ethnic Bias and eventual creation of the statewide Commission on Racial



NC Public Defenders rally against racial disparities in the justice system on January 16, 2015 at Marshal Park, Charlotte. Photograph courtesy of David E. Clark

and Ethnic Disparities in the Criminal Justice System and the publication in late 2014 of the UNC School of Government reference manual, *Raising Issues of Race in North Carolina Criminal Cases*.

James Williams knew it was critical for public defenders to play a significant role in the effort to address racial disparities in the justice system in North Carolina. On May 12, 2011, he spoke at the annual N.C. Public Defender Conference and noted that lawyers are obligated to speak up when equality of justice is imperiled and to address deficiencies in the administration of justice. He added that as indigent defense lawyers, public defenders are uniquely situated on the frontlines representing clients as they enter the criminal justice system. Public defender clients are poor and the majority are African American and Latino, Williams stated, and they bear the pri-

mary impact of the inequities that persist. Williams ended his talk by imploring public defenders to recognize and address issues of racial bias on behalf of their individual clients and as a legal community.

James Williams assumed the role of Chair of NC PD-CORE at one of the earliest meetings. One of the first issues discussed by the public defenders at these early meetings was the need to develop a mission statement and clear objectives for PDCORE. The following mission statement and objectives were ultimately adopted by the Committee after discussion and debate:

The mission of NC PDCORE is to reduce and ultimately eliminate racial disparity in the criminal justice system through education, collaboration, and litigation.

The objectives of NC PDCORE are:

1. Initiating an ongoing dialogue within the defender community regarding race and justice;
2. Facilitating alliances and collaborations with criminal justice stakeholders and organizations within our districts on issues of race and justice;
3. Ensuring that addressing racial inequities is a priority within our offices and within the defender community and Indigent Defense Services (IDS);
4. Encouraging the UNC School of Government, IDS, NCAJ, local bar associations and other legal training agencies to include combating racial inequities as part of their legal education programs;
5. Assisting the UNC School of Government in the development of a race litigation manual by encouraging our members to contribute motions, strategies and help;
6. Encouraging our defenders to offer culturally competent services by working harder to understand our clients' backgrounds, communities and lives;
7. Encouraging defenders to recognize and litigate issues of race more often and;
8. Collecting and tracking data and anecdotal evidence to assist in our objectives.

The current membership of NC PDCORE includes five Chief Public Defenders as well as assistant public defenders, assistant capital defenders, investigators, and IDS employees from all over the state. The meetings are typically held every other month with members attending in-person and by phone. These meetings are an opportunity for members to discuss issues of race and to learn about work that is being done in North Carolina and nationally to address inequities in the criminal justice system. Members frequently raise issues from their own experiences in their jurisdictions, the Committee often lends support to initiatives throughout the state and PDCORE regularly hosts guest speakers. Speakers at NC PDCORE meetings have included Ian Mance from the Southern Coalition for Social Justice; Margaret Johnson, the Wisconsin Public Defender Racial Disparity Practice Coordinator; and Emily Coward, one of the authors of the School of Government's manual on litigating issues of race.

It became clear in 2013 that PDCORE's mission would be enhanced by creating an online presence rather than simply being a Committee that met and communicated by email. IDS agreed to host the site assuming PDCORE could create a website. Erik Olson, a talented web developer who also happens to be the husband of IDS Forensic Resource Counsel

Sarah Olson, volunteered his time to help PDCORE design and create the website, which after many meetings to discuss organization and content, went live in early 2014.

The website, www.ncids.org/pd-core, is designed to be an ongoing resource for race and criminal justice issues for the public defender community and the legal community at-large. In addition to providing information about the work of PDCORE and enabling new public defender members to join, the site is constantly being updated with relevant news, events, trainings, information, research, data, litigation tools, publications, and helpful links. As PDCORE member and Guilford County assistant public defender Johanna Jennings stated in an email to public defenders about the PDCORE site, "The website is designed to inspire you in the daily fight against racial injustice and to help you effectively litigate issues of race."

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. The E-Blasts are typically short blog entries that feature timely commentary on issues of racial justice and highlight recent additions to the PDCORE website. Topics have included racial profiling, the criminalization of poverty in the criminal justice system, racial disparities in drug arrests and prosecutions, mass incarceration, and recommendations for documentaries and films of interest.

In the three years that PDCORE has been working together to address issues of race, the Committee has tried to reach out beyond its membership to host or publicize public events and collaborate with outside partners working on issues of racial justice. On November 8, 2012, PDCORE hosted "Broken on all Sides: Race, Mass Incarceration and New Visions for Criminal Justice in the U.S." The event, held at UNC's School of Government in Chapel Hill, included a viewing of the documentary "Broken On All Sides" followed by a lively panel discussion moderated by UNC Law Professor Emeritus, Richard Rosen. The film, directed by Matthew Pillischer, explores the notion that mass incarceration has become "the New Jim Crow" and discusses the intersection of race and poverty in the criminal justice system. The audience included public defenders, private attorneys, law students, district attorneys, and judges.

In the wake of the highly publicized acquittal of George Zimmerman in Florida following the shooting death of unarmed teenager Trayvon Martin, PDCORE drafted materials to facilitate a dialogue within public defender offices about the case. While the decision to hold a meeting or conversation was entirely voluntary, one of PDCORE's stated objectives is to initiate and encourage ongoing dialogue within the defender community regarding race and justice issues. The materials provided to offices included information about the

case, suggestions for conducting a productive dialogue and a list of possible discussion topics and questions.

Since its inception, PDCORE has consistently pressed that issues of race and inequality in the criminal justice system be on the agenda for new or existing defense trainings, such as the annual Public Defender Conference. In May of 2013, the Committee voted to recommend to IDS that every Chief Public Defender in the state attend two-day workshops presented by the Racial Equity Institute, based in Greensboro. The Institute has successfully partnered with other groups that focus on the criminal justice system, such as the Center for Death Penalty Litigation and the Charlotte/Mecklenburg Race Matters for Juvenile Justice Initiative, to create awareness of racism at the personal, structural and institutional levels. Recognizing and challenging institutionalized discrimination, with the goal of eliminating racial and ethnic disparities and producing equitable outcomes, is the primary focus of the Institute's workshops and is an important part of PDCORE's mission.

IDS Director Thomas K. Maher supported PDCORE's recommendation for the Racial Equity Institute training for the Chief Public Defenders or a designee of their choice, but IDS could not provide funding. PDCORE members worked to seek grant money and in 2014, the Fund for Southern Communities in Atlanta, Georgia and the Florence Rogers Charitable Trust based in Fayetteville, North Carolina, awarded grant money for registration fees and travel expenses for these voluntary trainings. At least twelve Chief Public Defenders or their designees have attended or signed up for the Institute's training and these workshops will continue until the end of the fiscal year.

The tragic deaths of Michael Brown in Ferguson, Tamir Rice in Cleveland, and Eric Garner in Staten Island, following interactions with police officers in 2014, placed a national spotlight on the issues which PDCORE has been working to address. Discussions and protests about racialized policing and unequal treatment for people of color in the criminal justice system became national news. In December of 2014, a small group of PDCORE members began discussing the need to address these deaths in a way that brought attention to the issue of racial disparities in the North Carolina criminal justice system but with a goal to work collaboratively for meaningful change. The decision was made by Chair James Williams to draft a statement on behalf of NC PDCORE and the North Carolina Public Defender Association that would be released at an event at the Mecklenburg County courthouse on January 16, 2015, the Friday before the Martin Luther King, Jr. holiday.

On January 16, 2015, over one hundred people, including a large number of assistant public defenders from Charlotte and several from other parts of the state, local defense attorneys and Chief Public Defenders Kevin Tully of Mecklen-

burg, Lawrence Campbell of Durham, Fred Lind of Guilford, Angus Thompson of Robeson and Kellum Morris of Gaston, gathered in Marshall Park across from the courthouse in Charlotte. Circled around a statue of Martin Luther King, Jr, and in front of the assembled media, Chief Public Defender and PDCORE Chair James Williams opened the rally with a quote from Dr. King, "Injustice anywhere is a threat to justice everywhere." He then read the following statement:

Recognizing and challenging institutionalized discrimination . . . is an important part of PDCORE's mission.

The recent deaths of several African American men following interactions with the police, and the challenge of holding the officers who killed them responsible, have compelled us to express our concerns regarding the criminal justice system nationally and within the state of North Carolina. While we are encouraged by the outcry and conversation that has resulted from these tragedies and the efforts being made by many to advocate for necessary reforms, the reality is that people of color continue to be disproportionately impacted by our criminal justice system. In fact, the most compelling and disturbing feature of this country's criminal and juvenile justice system is its disparate impact on people of color. While multiple factors contribute to this disparity, a significant factor is implicit and explicit racial bias.

As public defenders in North Carolina, we are on the frontlines of our criminal justice system, representing indigent defendants in criminal court every day. While disparate policing practices certainly impact the arrests of our clients, we cannot ignore the effects of race at every stage of the criminal justice process, including charging determinations, grand jury procedures, bond determinations, plea negotiations, jury selection and finally, in the sentencing of our clients.

Men, women and children of color are treated differently, and often more harshly, by the criminal justice system in North Carolina and across the country. Statistics regarding the racially disparate outcomes emanating from our criminal justice system are compelling and have contributed to the current lack of public confidence in our system.

As public defenders, we have great respect for law enforcement officers, prosecutors, judges and all the court officials we interact with on a daily basis. However, our regard for these professionals does not deter us from seeking to hold all criminal justice system stakeholders to the highest of standards. We expect nothing less of ourselves. Equity and fairness must be the hallmark of our criminal and juvenile justice systems. The time is now for us to come together and turn our concerns into meaningful and lasting reform.

Our statement today represents our desire and commitment to join with other stakeholders to recognize, discuss, and address the racial disparities and racial biases that plague our criminal justice system. We stand committed as public defenders to working in furtherance of a fair and equitable criminal justice system in North Carolina and beyond.

As Supreme Court Justice Sonia Sotomayor eloquently stated in her 2014 dissent in *Schuetz v. Coalition to Defend Affirmative Action*:

The way to stop discrimination on the basis of race is to speak openly and candidly on the subject of race, and to apply the Constitution with eyes open to the unfortunate effects of centuries of racial discrimination. As members of the judiciary tasked with intervening to carry out the guarantee of equal protection, we ought not sit back and wish away, rather than confront, the racial inequality that exists in our society. It is this view that works harm, by perpetuating the facile notion that what makes race matter is acknowledging the simple truth that race *does* matter.²

Since 2011, the leadership and members of NC PDCORE have worked to bring racial equity issues to the attention of North Carolina public defenders and to the larger criminal justice community. While strides have been made in awareness, training opportunities, advocacy for reform and litigation resources, the efforts will continue by this Committee of public defenders and the valuable partner organizations and people in North Carolina seeking to reduce and eliminate racial disparities in the criminal justice system. The conversation and the work is not always easy, but it continues to be necessary. ♦

1. According to a study of all North Carolina traffic stops between January 2000 and June 2011, African Americans are 77 percent more likely to be searched following a traffic stop than White people. The study also reported that minorities are more likely to be arrested after a stop, while White people are more likely to receive a warning. Frank R. Baumgartner & Derek Epp, *North Carolina Traffic Stop Statistics Analysis 5* (2012). A recent analysis of data from the North Carolina Department of Correction's Research and Planning Division showed that, while African Americans represent 22 percent of North Carolina's overall population, they account for 57 percent of the state's prison population. North Carolina Advocates for Justice: Task Force on Racial and Ethnic Bias Executive Summary. Studies focused on North Carolina capital cases found racial disparities in jury selection, charging decisions, and sentencing. According to one study, from 1990 through 2009 qualified racial minority citizens were kept from serving on juries at more than twice the rate of White citizens. Barbara O'Brien & Catherine Grosso, *Report on Jury Selection Study* (2011). A second study found that from 1990 through 2007, cases with at least one White victim were 2.96 times more likely to result in the imposition of a death sentence, leading researchers to conclude that the "victim's race remains a powerful predictor of who is and who is not sentenced to death." Michael L. Radelet and Glenn L. Pierce, *Race and Death Sentencing in North Carolina 1980-2007*, 89 N.C. L. Rev. 2119, 2145 (2011).

2. *Schuetz v. Coal. to Defend Affirmative Action*, 134 S. Ct. 1623, 1676 (2014) (Sotomayor, J., dissenting).

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