Greetings, APDs, PD CORE, & NC REN!

First, a few news updates:

* Today, in [*Pena-Rodriguez v. Colorado*](https://www.supremecourt.gov/opinions/16pdf/15-606_886b.pdf), the U.S. Supreme Court carved out an exception to jury secrecy (or the “no impeachment” rule) for cases in which a juror makes a clear statement that he or she relied on racial stereotypes or animus to convict a criminal defendant. In such cases, the court held, the secrecy of jury deliberations must yield to the Sixth Amendment guarantee of the right to trial by an impartial jury. The case involved a 2010 sexual assault trial. According to sworn statements from two other jurors, during deliberations, a juror in the case stated that “I think [the defendant] did it because he’s Mexican, and Mexican men take whatever they want.” Writing for a 5-3 majority, Justice Kennedy placed this case in historical context, [noting](https://www.nytimes.com/2017/03/06/us/politics/supreme-court-jury-bias-secrecy.html?hp&action=click&pgtype=Homepage&clickSource=story-heading&module=first-column-region&region=top-news&WT.nav=top-news) that “[t]he nation must continue to make strides to overcome race-based discrimination.”
* In late February, the U.S. Supreme Court [granted a new sentencing hearing](https://www.nytimes.com/2017/02/22/us/politics/duane-buck-texas-death-penalty-case-supreme-court.html?_r=0) to Texas death row inmate Duane Buck in an opinion condemning the use of racist testimony in sentencing. The Court held that Buck received ineffective assistance of counsel when his defense attorney (who has been described as the [worst capital defense lawyer in the country](http://www.dallasnews.com/news/crime/2016/08/13/texas-lawyer-never-won-capital-murder-case-calls-quits-defending-worst-clients)) presented testimony from psychologist Walter Quijano asserting that Buck was more likely to pose a danger in the future because he is Black. Unfortunately, Buck’s case was not the only one in which Quijano made race-based assertions of future dangerousness. In fact, former Texas Attorney General John Cornyn consented to the resentencing of five other death row inmates whose death sentences were tainted by similar testimony from Quijano, but refused to do so in Buck’s case as his was the only one in which Quijano’s testimony was elicited by the defense. Writing for the six justice majority, Chief Justice Roberts wrote that the testimony contained “a particularly noxious strain of racial prejudice” and was especially damaging because it was given by a defense witness.
* Many questions have been raised about what impact the President’s Feb. 9, 2017 Executive Order on Policing will have on communities of color. Chicago attorney Flint Taylor [argues](http://www.truth-out.org/opinion/item/39445-with-executive-order-on-policing-trump-declares-racialized-war-on-dissent) that “with [his] executive order on policing, Trump declares racialized war on dissent.” Casey Harden [expressed concern](http://time.com/4679727/donald-trump-executive-orders-police/) that this order will “only worsen the continued criminalization of communities of color,” and Jonathan Blanks of the conservative Cato Institute [argued](https://www.cato.org/blog/police-executive-order-invites-overfederalization) that the executive order “invites overfederalization.”
* In the run up to Attorney General Sessions’s confirmation, the Marshall Project [identified](https://www.themarshallproject.org/2016/11/18/8-ways-jeff-sessions-could-change-criminal-justice#.bCTZZzxMw) eight ways in which the new AG could change criminal justice. Last week, one stark difference between Attorney General Sessions and his immediate predecessors became very clear. On Monday, Sessions [made remarks](http://www.motherjones.com/politics/2017/02/sessions-comments-chicago-ferguson-reports-doj) critical of the recent DOJ reports on policing in Ferguson and Chicago, while at the same time acknowledging that he hasn’t read the reports.
* Another hot topic in the wake of Sessions’s confirmation is the future of marijuana enforcement. In certain localities, deprioritization of marijuana enforcement is gaining steam. For example, in Harris County, Texas, a new [diversion program](http://fairpunishment.org/harris-countys-marijuana-diversion-program-an-important-first-step-towards-community-centered-justice-reform/) will divert individuals charged with marijuana possession out of the criminal justice system. Meanwhile the federal government [suggests](http://www.huffingtonpost.com/entry/jeff-sessions-marijuana-comments_us_58b4b189e4b0780bac2c9fd8) a crackdown on recreational marijuana use may be forthcoming. Marijuana enforcement consistently ranks as one of the most racially disparate law enforcement patterns. For example, a [nationwide study](https://www.aclu.org/report/report-war-marijuana-black-and-white) by the ACLU concluded that marijuana use is roughly equal among Blacks and Whites, yet Blacks are 3.73 times as likely to be arrested for marijuana.
* The Sentencing Project recently published an [update](http://www.sentencingproject.org/news/state-advocacy-update-continuing-effort-advance-criminal-justice-reform/) on state efforts to advance criminal justice reform, including efforts to address racial disparities in criminal prosecutions. For example, the update notes that in Arkansas, state legislators introduced a bill that would require legislation that creates or changes criminal offenses to include a racial impact statement.
* Former UNC Assistant Professor of Law Rob Smith is now the Executive Director of the [Fair Punishment Project](http://fairpunishment.org/category/racial-exclusion/) out of Harvard Law School. Some of you may have heard him speak with Professor Song Richardson at the Spring Public Defender Attorney and Investigator Conference a few years back. He is a leading expert on implicit bias and co-author of [Implicit White Favoritism in the Criminal Justice System](https://www.law.ua.edu/pubs/lrarticles/Volume%2066/Issue%204/Smith%20Online.pdf), [The Impact of Implicit Racial Bias on the Exercise of Prosecutorial Discretion](https://www.law.hawaii.edu/sites/www.law.hawaii.edu/files/content/levinson.pdf), and [Implicit Racial Bias Across the Law](https://www.amazon.com/Implicit-Racial-Bias-across-Law/dp/1107648181), among other publications. Jake Sussman, formerly of North Carolina firms Ferguson, Stein, Chambers and Tin, Fulton, Walker & Owen is the project’s new Managing Director. The Fair Punishment Project aims to help “create a fair and accountable justice system through legal action, public discourse, and educational initiatives.” It focuses on addressing problems such as racial exclusion and bias, overzealous prosecution, ineffective defense representation, and wrongful convictions and executions. Several prominent North Carolina legal academics serve on Project’s Legal Advisory Council, including Duke Law Professor Joseph Blocher, UNC Law Professor Tamar Birckhead, and UNC Law Professor Carissa Hessick. As of last week, “the Fair Punishment Project will be teaming up with the online news magazine Slate to create a series called Trials and Error … aimed at illustrating the reality of the justice system, and how to fix it.”
* The Yale Law Review Forum recently published three responses to Professor Song Richardson’s article [Systemic Triage: Implicit Racial Bias in the Criminal Courtroom](http://www.yalelawjournal.org/article/systemic-triage-implicit-racial-bias-in-the-criminal-courtroom), itself a book review of [Crook County: Racism and Injustice in America’s Largest Criminal Court](http://www.sup.org/books/title/?id=23968) by Nicole Gonzalez Van Cleve. The responses include reflections on implicit bias from DeKalb County Director of Public Safety Dr. Cedric Alexander, federal Judge Mark Bennett, and implicit bias scholars Justin Levinson and Rob Smith. Dr. Alexander [argues](http://www.yalelawjournal.org/forum/community-policing-as-a-counter-to-bias-in-policing) that community policing can help counter bias in policing, Judge Mark Bennett [discusses](http://www.yalelawjournal.org/forum/the-implicit-racial-bias-in-sentencing) implications from research into implicit racial bias in criminal sentencing, and Levinson and Smith [argue](http://www.yalelawjournal.org/forum/systemic-implicit-bias) that “a comprehensive understanding of implicit bias in the criminal justice system requires acknowledging that the theoretical underpinnings of the entire system may now be culturally and cognitively inseparable from implicit bias.” Levinson and Smith assert that “controversial criminal justice practices, such as capital punishment and juvenile life without parole, may now be resting on shaky legal ground.”

Where can I take an implicit bias test?

At this point, most of you have probably read articles or heard presentations on the topic of implicit bias. But have you ever taken an implicit association test yourself? The Southern Poverty Law Center’s [Teaching Tolerance](http://www.tolerance.org/Hidden-bias) encourages readers to take implicit bias tests, explaining that our “willingness to examine [our] own possible biases is an important step in understanding the roots of stereotypes and prejudice in our society.” Similarly, in his recent article on implicit racial bias and sentencing, Judge Mark Bennett [argues](http://www.yalelawjournal.org/forum/the-implicit-racial-bias-in-sentencing) that “without [] self-examination, including taking IAT tests, judges, prosecutors, defense lawyers, probation officers and other court personnel are highly unlikely to accept any personal responsibility for their own complicity in sustaining a racialized system.” After our last Race Judicata discussion of implicit bias, a reader contacted me to ask where she could take an implicit bias test. You can take a number of different implicit association tests for free on the [Project Implicit](https://implicit.harvard.edu/implicit/selectatest.html) website, hosted by Harvard University. Most test take only 5-10 minutes to complete!

Recent and upcoming NC programs addressing race and the criminal justice system:

* A few months back, the Mecklenburg County Bar hosted a day-long event entitled “[The Science of Fairness: Exploring Implicit Bias](https://meckbar.org/calendar.aspx?id=3615).” The agenda for this event identifies a number of local implicit bias experts that may be available to other local bar associations interested in hosting similar events.
* In January 2017, the Conference of District Attorneys held a training on implicit bias entitled “Implicit Bias: Prosecuting Fairly.” This training, attended by over 100 prosecutors from around the state, was led by national implicit bias experts Professors Rachel Godsil and Song Richardson of the [Perception Institute](https://perception.org/), and included discussions on implicit bias, stereotype threat, and racial anxiety. Experts with the Perception Institute have authored a number of publications explaining how these three phenomena intersect to produce unintended racialized behavior. An introductory PowerPoint on this subject can be viewed [here](http://www.ywcamadison.org/atf/cf/%7B2487BD0F-90C7-49BC-858D-CC50637ECE23%7D/YWCA-Summit_Perception-Institute-PPT.pdf).
* In January 2017, the School of Government’s Indigent Defense Education Group hosted the final NC Racial Equity Network (NC REN) training for the first statewide cohort of indigent defense attorneys. We will be accepting applications to our next NC REN program later this spring. Please help us spread the word about this opportunity to received free training and litigation support on issues of racial bias!
* This Sunday March 12th, from 7-8pm, [WNCU 90.7 fm](http://www.wncu.org/) will broadcast Legal Eagle, a radio program hosted by North Carolina Central University of Law Professors Irv Joyner and April Dawson. Professors Joyner and Dawson will be talking about race and the North Carolina criminal justice system with Alyson Grine, Clinical Professor of Law at NCCU and Emily Coward, NC Racial Equity Network Project Attorney at the UNC School of Government. You can listen at 90.7 fm if you’re in the Triangle, or you can live stream the program over the station’s [website](http://www.wncu.org/).
* For those of you in the Triangle, the Office of the Capital Defender, Center for Death Penalty Litigation, and ACLU of North Carolina will be hosting a free screening of Ava DuVernay’s acclaimed documentary on mass incarceration and racial inequality, 13th at Motorco Music Hall in Durham on March 14th at 7pm. The event will include music from Makin’ Ends Meet, poetry by Danny Spiegel, and a Q&A session with Miea Walker from the NC Justice Center and Umar Muhammed from the Southern Coalition for Social Justice.
* Finally, many indigent defense attorneys have questions about how the President’s recent Executive Orders relating to immigration will impact clients charged with criminal offenses. This Thursday, March 9th, the NCAJ will present a Live Webinar on this topic. More information can be found [here](https://www.ncaj.com/index.cfm?pg=semwebCatalog&panel=showLive&seminarid=7625).

Emily Coward

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*We would love for you to join our committee! You will find the link to do so on the bottom right portion of the* [*webpage*](http://ncids.com/pd-core/)*. If you have feedback about Race Judicata, we’d love to hear from you; feel free to reply to the original poster.*