

May 30, 2017

Greetings, APDs, PD CORE, & NC REN!

First, a few questions for you:

- **Have you submitted your application to the UNC School of Government's NC Racial Equity Network (NC REN)?** Applications must be submitted no later than 5:00 p.m. on JUNE 1, 2017. Check out the [Racial Equity Network Application](#) to find out more about the program and submit your application. Questions about the program and application process should be directed to [escoward@email.unc.edu](mailto:escoward@email.unc.edu). On the fence about applying? Consider this testimonial from an NC REN attorney in our inaugural 2015-2017 cohort: "*I was fortunate to be able to attend the NC REN trainings over the last two years and found them extremely beneficial and rewarding. Assistant Public Defender Yolanda Fair in the Buncombe office also attended the training. [NC REN] provided invaluable information about jury selection issues, motions to suppress, money bail, cross racial identification, open police data, sentencing issues, plus much more. The program has helped me broaden my toolbox in regards to raising important issues of race in the courtroom and helped me to become more comfortable raising issues of race. Participating in NC REN has helped me be a better advocate for my clients. It also empowered Yolanda and I to help gather the support of stakeholders in Buncombe County to come together for a great implicit bias training that was recently held here in Buncombe County with the help of the UNC School of Government and the Z Smith Reynolds Foundation. I highly recommend the training[.]*" – LeAnn Melton, Buncombe County Chief Public Defender
- **Have you completed the Center for Death Penalty Litigation's Batson survey?** The Center for Death Penalty Litigation (CDPL) is initiating a program to offer training and support to criminal defense attorneys who want to improve their capacity to litigate claims under *Batson v. Kentucky*. In order to gauge the needs of public defenders, CDPL created a brief survey that should take you less than 5 minutes to complete. For more information about the program and the survey, and to take the survey, click [here](#). If you have any questions about the survey or the program, please contact Elizabeth Hambourger at [elizabeth@cdpl.org](mailto:elizabeth@cdpl.org) or 919-956-9545.
- **Have you subscribed to the new Race & Justice weekly email update produced by the NC Commission on Racial and Ethnic Disparities in the Criminal Justice System?** The update is intended to promote productive, data-informed discourse on race & justice issues in NC. [Here](#) is a link to view the latest update and subscribe.

In case you were not able to attend Spring Conference, here are a few highlights pertaining to the intersection of public defense and racial justice:

- The 2017 NC PDCORE James E. Williams Jr. awards were announced. The first award recognized LeAnn Melton (Buncombe County Chief Public Defender) and Yolanda Fair (Buncombe County Assistant Public Defender) for their leadership on the [Buncombe](#)

[County Implicit Bias Training](#). The second award recognized Ricky Watson and Peggy Nicholson of the Youth Justice Project (YJP) of the Southern Coalition for Social Justice for their work on the Raise the Age campaign and other projects seeking to “keep youth in school by ensuring fair and effective school safety and discipline practices,” “improve the juvenile justice system and ensure that it is only used as a last resort, and minimize involvement of youth in the adult criminal justice system.” Congratulations to all four recipients!

- San Francisco Public Defender and NAPD Racial Justice Task Force Co-Chair Jeff Adachi delivered a key note address on racial justice litigation. His packet of racial justice litigation materials, including sample motions and transcripts, will soon be available [here](#).
- Sejal Zota, Legal Director of the National Immigration Project of the National Lawyers Guild, presented on “crimmigration” – the intersection of criminal and immigration enforcement. Materials from her presentation will soon be available [here](#).
- The retirement of NC PDCORE cofounder and longtime racial justice champion James E. Williams from his position as Chief Public Defender for District 15B is just around the corner. All are invited to his retirement ceremony in the Orange County Courthouse’s Mural Courtroom on May 31 from 2:30pm – 4:30pm. He assures us that he will remain deeply involved in efforts to advance racial justice even in his retirement, so stay tuned for his next act!

Next, a sampling of recent news and publications relating to race and criminal justice:

- Former UNC Law Professor Tamar Birkhead recently published a new article titled [The Racialization of Juvenile Justice and the Role of the Defense Attorney](#). The article is full of useful insights relevant not only to juvenile defenders but all criminal defense attorneys. For example,, Birkhead explores the tension between a defense attorney’s duty of zealous advocacy and the danger that some zealous advocacy strategies may at times reinforce harmful racialized narratives.
- Last Friday, Nashville Public Defender Dawn Deaner published an [op-ed](#) in the Tennessean critiquing the characterization of African American distrust in the criminal legal system as a problem of perception. Such a characterization, Deaner argues, “belies the truth which is that those who do not see the injustice are the ones with the perception problem.”
- Last week saw the launch of Marc Zuckerberg-supported [Measures for Justice](#), a “Data Portal that tracks how criminal cases are being handled at the county level from arrest to post-conviction...offering unprecedented transparency into local justice systems.” North Carolina is one of the six states included in the portal’s initial launch. Data reflecting jail capacity utilization, cases dismissed, charge reductions, felony cases resolved at trial, felony cases resolved in one year, and misdemeanor cases resolved within six months can be searched by county.

- Law Professors Kristin Henning (Georgetown) and Angela J. Davis (American) [argue](#) that, “as criminal defense attorneys, we can attest to the fact that as harshly and as unfairly as black men have been treated in the criminal justice system, the fate of black boys has been worse.” They argue that the racial disparities we see in the legal system trace back to disparate treatment that begins at a very early age.
- Late last month, a federal judge in Texas ruled that it is unconstitutional to “detain[] indigent misdemeanor defendants who are otherwise eligible for release but are unable because of their poverty to pay a secured money bail.” Slip op. at 181. Professor John Rubin writes about the case on the [NC Criminal Law Blog](#).
- William Snowden, a Staff Attorney at the Orleans Public Defender in New Orleans, has launched [The Juror Project](#), “an initiative aiming to increase the diversity of jury panels while changing and challenging people’s perspective of jury duty. Snowden presents at high schools, colleges, churches, neighborhood associations and any other community gatherings to discuss the importance of jury service, the discriminatory practices of some prosecutors, as well as what members can do to actually get on a jury.”
- On May 17<sup>th</sup>, the North Carolina House of Representatives overwhelmingly [passed](#) Raise the Age Legislation, a policy change long sought by advocates in North Carolina. North Carolina is currently the only state in the nation where the age of majority for criminal offenses is set at sixteen. The bill now heads to the NC Senate,
- The Brennan Center issued a report on [Criminal Justice in Trump’s First 100 Days](#), concluding that so far the Trump Administration’s actions “evidence a clear return to the discredited ‘tough on crime’ rhetoric of the 1990s, and suggest a significant departure from the Obama administration’s approach to criminal justice.” Attorney General Sessions recently issued a [memo](#) to federal prosecutors signaling a return to tough-on-crime approach. In Newsweek, mass incarceration scholar Heather Ann Thompson [responds](#) to the Sessions memo, arguing that “[v]irtually every principle in the Sessions Memo is deemed incorrect by countless research studies, including the [two-year study](#) conducted by a blue ribbon panel of experts and the National Academy of Sciences.”
- At fivethirtyeight.com, Kathryn Casteel explores the tension between the Sessions memo and the emerging state trends of decarceration, observing that [Jeff Sessions May be Tough on Crime, But States Want Fewer Prisoners](#). Data reflecting this trend is analyzed in a new [report](#) from the Sentencing Project on state and federal prison populations, concluding that a dramatic nationwide decrease in crime between 1999-2015 has been accompanied by a modest and varied decrease in prison populations. In North Carolina, according to the report, the state and federal prison population peaked in 2014 and decreased .7% from 2014-2015.
- The Oxford University Press blog published a [post](#) about criminal justice reform co-authored by sociology professors Michelle Phelps, Joshua Page, and Philip Goodman, arguing that “together, citizens, advocacy groups, and policy-makers can resist the second coming of retributive ‘law and order’ and push for a safer and saner system. We always have.”

Finally, today's deep dive:

**New Concerns about Cross-Racial Eyewitness Identifications.** Most of you have probably heard of a phenomenon referred to as the “other race effect,” “own-race bias,” or the “cross-race effect.” Numerous studies conducted over the last forty years have concluded that eyewitnesses are less likely to misidentify a person of their own race than a person of another race. *See* Christian A. Meissner & John C. Brigham, *Thirty Years of Investigating the Own-Race Bias in Memory for Faces: A Meta-Analytic Review*, 7 PSYCHOL.PUB.POL'Y & L. 3, 4 (2001); Radha Natarajan, *Racialized Memory and Reliability: Due Process Applied to Cross-Racial Eyewitness Identifications*, 78 N.Y.U.L.REV. 1821, 1822–23 (2003). The Innocence Project [reports](#) that, nationwide, 41% of cases in which a defendant was exonerated as a result of DNA evidence involved cross-racial eyewitness identifications.

A new study [suggests](#) that not only are people generally better at identifying people of their own race, some people are actually functionally blind when it comes to identifying people of other races. This study, conducted in Australia, concluded that 8% of the collective study population was “completely blind to features that make other-race faces distinct.” Those individuals “would be completely useless in terms of their legal value as an eyewitness,” says study co-author Elinor McKone, a professor of psychology at the Australian National University. “The world's legal systems do not, however, take into account individual differences in other-race face recognition,” she notes.

You can read more about cross-racial eyewitness identifications and strategies for addressing this phenomenon as a defense attorney [here](#). The NC REN training program will devote a day-long session to challenging cross-racial eyewitness identifications in North Carolina criminal cases.

Emily Coward

*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](#). If you have feedback about Race Judicata, we'd love to hear from you; feel free to reply to the original poster.*