

Combating Racial Injustice Workshop

May 18, 2012

On May 18, 2012, the Race and Social Policy Research Center, in collaboration with the Montgomery County--Radford City--Floyd County Branch of the NAACP, held its first "Combating Racial Injustice" Workshop at the Inn at Virginia Tech. There were 55 attendees, some coming from as far away as Charlotte, North Carolina. The workshop, addressing injustice issues in the Criminal Justice System, was organized around two objectives: (1) to establish for discussion some of the facts of current racial injustice in the criminal justice system, and (2) to begin a discussion of what to do about these injustices. After presentations by Dr. Wornie Reed on the nature and extent of racial injustices in the criminal justice system and attorney Phil Carey, Jr., on the Trayvon Martin case in the context of the "Stand Your Ground" laws, participants in the workshop were divided into four discussion circles, discussing (1) legal issues and approaches, (2) legislative approaches, (3) community approaches, and (4) Hispanic/Latino issues.

Following are summaries of the deliberations in the discussion circles.

I. Legislation Discussion Circle (Led by Dr. Ellington Graves)

The session began by considering the impact of three key factors on the consideration of legislative efforts to redress racial disparities in criminal justice: the substance of the legislation; the framing of the legislation; and the political context of legislation. An example is the Justice Integrity Act, which seeks to require the formation of advisory panels to the US Attorney's office in 10 US federal court districts. These panels would be tasked with gathering information on the performance of prosecutors in a range of areas, with an eye towards identifying potential areas of racial disparity. While some data are available on arrest and incarceration, little information is known about the impact of race within the prosecutorial process. Little data applicable to racial disparities in criminal justice process is known in Virginia at all, other than disparate rates of conviction and incarceration.

In considering the substance of the legislation, one participant wondered why legislation was important in such a matter – why not simply have the US Attorney General mandate that such steps be taken? The point was raised that such an approach relied completely upon the willingness of the AG to support such steps; such reliance upon the inclinations of an individual fails to provide for a consistent effort to pursue the steps desired, whereas legislation presents a more stable prospect for seeing the efforts realized. It was also pointed out that much of the existing legislative effort to deal with racial disparities in the criminal justice system are similar in nature to this bill – it is mainly concerned with mandating data collection. While the bill mandates that the US attorneys draft a plan in response to a report issued by the advisory board, the nature of such a plan and the accountability for following it are unspecified. The bill also only applies to federal prosecutors. Participants seemed to agree that the most likely benefit of legislation requiring data collection was dependent upon public access to the information and subsequent efforts to use it to pressure officials to change practices. Usually, any accountability measures connected to legislation are watered down – if any exist at all.

A notable exception to the information focus of legislation was introduced – the Racial Justice Act (RJA) currently in force in North Carolina. Unlike the Justice Integrity Act, the RJA requires appellate judges to consider evidence that race played a role in conviction and sentencing. In some instances, this has resulted in judges reducing sentences and even ordering

entirely new trials. Participants seemed to think that the RJA represented a model legislative approach. Other legislative efforts discussed included strict liability laws, which would strip prosecutors of immunity from litigation when evidence of racial bias was found, laws referring prosecutors and judges to disciplinary action in instances of racial bias, and the formation of “blue ribbon commissions” to assess the extent of racial inequality within policing and criminal justice.

The discussion of framing reflected a consideration of the ways in which legislators present the purpose and value of the legislation. The express goal of the Justice Integrity Act is to insure that American citizens have faith in the criminal justice system. Participants recognized that such language is intended to avoid any sense that legislators accept criticisms of the criminal justice system as racially biased and flawed; rather, legislation like this seems to see gathering data as a means to refute claims of racism rather than to prove them. Positive and negative points were raised about such framing. Legislation like this is already subject to scrutiny and opposition from legislators and lobbies against changing racially disparate practices – “spinning” legislation in this manner may minimize the likelihood that more moderate officials will see bills as radical or threatening. On the other hand, framing like this also continues a practice of discussions of racial injustice that lack transparency and which continue to allow Americans to believe that racism in criminal justice is not an issue.

The framing discussion led participants to consider the overall political environment within which the effort to address racial injustice in criminal justice occurs. The political will to move forward with legislative efforts that can have real impacts is virtually nonexistent. While entities such as ALEC maintain their influence on the drafting of legislation and other policies in the US, alongside massive lobbying efforts from the for-profit corrections industry, it is an uphill battle to get legislation sponsored, much less passed, that would really make a dent in racial bias directly. However, the astronomical costs associated with mass incarceration seems to represent a possible point of leverage – as politicians respond to pressures to reduce government spending, the practice of incarcerating massive numbers of non-violent offenders is coming under increasing scrutiny. States such as Mississippi and South Carolina are reviewing their treatment of drug offenders as they seek to cut state expenditures in the face of economic hard times. Leveraging such sentiment to shift the emphasis on incarceration may be one avenue for reducing the numbers of poor and nonwhite Americans serving jail and prison sentences, especially in light of their disproportionate likelihood of incarceration on drug-related charges.

II. Legal Discussion Circle (Led by Dr. Tonya Smith-Jackson)

The Legal Discussion Circle took a problem/solution approach. The morning session was spent defining the problem(s) with the legal system, and the afternoon session was devoted to discussions of solutions. These two sets of discussions are summarized below.

A. Defining the Problem with the Legal System

1. Imbalance in quality of legal representation

- a. Resources, legal assistance
Need equality between resources for prosecution and defense, especially the public defender
- b. Attorneys are not broadly educated or experienced
- c. Limited contextual/localized experience among attorneys

- d. No public defender's office in this area
- e. Many cases are tried in the media

2. *Judicial Misconduct*

Judges get immunity, but they bring racial bias to the bench.

3. *Law enforcement and "first encounters"*

- a. Varies from place to place
- b. Impacted by film/media
- c. Many do not know how to react to law enforcement
- d. Many do not know or are unaware of their rights/civil liberties

4. *Utility/benefits of having racial injustice in system*

- a. Tickets – (i.e. revenue)
- b. Free/low cost labor (inmates)
- c. Conviction rates
- d. Multiple charges to increase rates

5. *Complex Procedures such as plea-bargaining, expunging records*

- a. Public Defenders do not negotiate as much as private lawyers
- b. Extra-legal negotiations
- c. Public defenders don't have time. Look for fastest solutions but not long term consequences
- d. Attorney's do not know "context" of accused

6. *Lack of knowledge in the community*

- a. Understanding the race and class issues
- b. Myths regarding expunging records

7. *Criminalization of Children*

- a. Need to focus of early behaviors
- b. Attitudes of school administrators – more arrests coming out of some schools
- c. Law enforcement, teachers and administrators need training
 - i. Often have low cultural competence
 - ii. Do not understand laws

B. Resolving Problem(s) within the Legal System

1. *Imbalance in quality of legal representation*

- a. Use "medical model" hierarchy so lawyers gain increasing levels of experience (e.g., internships, etc.)
- b. Lawyers need better training and preparation
- c. Restore ethics and integrity in legal system
- d. Hold judges and lawyers accountable
- e. Implement restorative justice system between legal system and community, thereby avoiding some legal prosecutions

- f. Public Defender's offices need human and financial resources

2. *Judicial Prosecutorial Misconduct*

- a. Consistency and fairness in judge appointments or elections
- b. Keep records of "bias" patterns among judges and make them public
- c. Holding judges accountable for these patterns could lead to removal or disqualification
- d. Eliminate "immunity" clauses from judicial protections
- e. Empower legal advocacy
- f. Enforce equal access to justice through mechanisms such as Racial Injustice Act

3. *Law enforcement and "first encounters"*

- a. Provide people with information related to behaviors—helpful and harmful—when confronted by law enforcement
 - Include behaviors related to what parents should tell their children.
- b. Citizen's Police Academies
- c. Implement legal education inside the schools; Integrate with existing programs.
- d. Provide cultural competency training to police officers

4. *Utility/benefits of having racial injustice in system*

- a. Fund community health and well-being programs
- b. Remove incentives for law enforcement, lawyers, and judges for penalty/punishment outcomes
- c. Have dialogues about the "Negro" problem to address relationships between injustice and benefits
- d. Confront the prison privatization problem; and institute industrial training programs

5. *Complexity of Legal Procedures*

- a. Establish legal advocacy offices in communities. Consider a Hotline.
- b. Utilize university law clinics (for law students) for advising, education similar to the Innocence Project

6. *Lack of education in the Community*

- a. Examine reasons for unfair sentencing especially in drug use and trafficking
- b. More education about long-term consequences (jobs, voting, etc.)
- c. Probation and/or parole education
- d. Education regarding sex laws

7. *Criminalization of Children*

- a. Need to examine laws about whether or how children are arrested
- b. Schools need more appropriate and sensitive disciplinary procedures
- c. Cultural sensitivity training
- d. Behavioral training/mediation training for parents

III. Community Discussion Circle (Led by Ms. Linda Means)

The Community Discussion Circle took an issues/solution approach within a set of six priority areas.

1. Schools

- a. Challenge schools directly
- b. Address discipline at Montgomery County Public Schools (MCPS)
 - Publicize and pressure the MCPS on discipline disparities

2. Prisons—prevention/incarceration/re-entry/intervention

- a. Match trades training with local labor market needs
- b. Redefine what it means to “rehabilitate”
 - i. Find models that work
 - ii. Find causes of recidivism
- c. Disrupt the “norm”alizing of prison life

3. Review of Local Policies

- a. What are the policies currently in place (locally)?
- b. How can we create/have ownership of local policies
- c. Policies that affect us (locally) are not always local policies. Could be State or national policies.
- d. Need to understand the difference between policies and actual practice.

4. Forums—organizing spaces for ongoing discussion

- a. How do we set up forums to educate the community that we have a problem?
- b. Create actual spaces in the community (to have conversations)
- c. Develop a conversation-based forum format
- d. How can we create conversations about hidden issues?

5. Data Collection and Education

- a. Track discrepancies by race, class
- b. Need local community studies of racial issues
- c. Use Title I statistics as a source
- d. Collect data to challenge colorblind ideology

6. Political Action, and Advocacy

- a. Raise awareness in community regarding statistics through writing letters to the editor
- b. Engage the Montgomery County Prevention planning team, and pressure them to examine racial issues.
- c. Pick an issue—prioritize
- d. Get heavily involved in the Human Relations Committee
- e. Create meaningful partnerships on a variety of issues.
- f. Identify key groups; develop coalitions, conversations.

IV. Hispanic/Latino Discussion Circle (Led by Dr. Dennis Hidalgo)

The Hispanic/Latino Discussion Circle addressed Hispanic issues in general, and proposed some action steps:

A. Issues

1. Language

- a. When there is a language barrier, discriminators may feel safe to engage in such behavior without repercussions
- b. Victim may not understand what is happening, or they may be afraid to say anything.

2. Role Models

-A general lack of role models (for influences outside as well as inside Hispanic communities).

3. Immigrant role/status

- a. Why the assumption that if someone speaks Spanish they are not citizens.
- b. Laws are being passed that specifically target Hispanic communities.
- c. Hispanic/Latinos are not the only immigrants coming to the United States.

4. Awareness of Resources

-Many Hispanics are not aware of resources available to them.

B. Action Steps

1. Education/Empowerment

- a. Find ways to go beyond helping an individual to helping many
- b. Provide encouragement/motivation

2. Advocacy

- a. Respond to situations of discrimination and bias
- b. Report complaints to Better Business Bureau for negative experiences in business settings
- c. Write letters, seeking accountability for actions

3. Education about Resources

- a. Provide better education about resources that are available to help the community as well as others.
- b. Educate service providers about tools that can be used to help Hispanic communities.