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PURSUING RACIAL JUSTICE IN THE 21ST CENTURY

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The Great Recession has swelled the poverty population in the United States to 46.5 million—more than at any time since official poverty estimates were first published fifty-four years ago. More than half of those in poverty, 57.6 percent or 26.6 million, are “people of color,” who make up only about a third of the population. Although legal services programs have fought poverty valiantly over five decades through strategies such as civil rights frameworks, racial disparities and poverty persist.

Legal aid intervention alone cannot eviscerate racial disparities or poverty or unravel retrogressive legal decisions that undermine racism-conscious strategies, yet the legal services community’s heightened understanding of the intersections of race, racism, and poverty is critical to dismantling racial inequities. Here, relying principally on a May–June 2013 survey to which 330 legal aid advocates responded, we examine...
Advancing Racial Equity—a Legal Services Imperative

Getting Our Terminology Right

Racism, a complex and challenging topic, is essential for antipoverty advocates to engage if we are to have a lasting impact on poverty and social justice. We offer definitions of some expansive and complex concepts and invite further study and dialogue as we work together for justice.5

Race is not a biological reality.6 It is, rather, a social, ideological, and political construction whose meaning differs across contexts and over time.7 In fact, “the idea of ‘race’ has never existed outside a framework of group interest.”8 To the contrary, race in the United States has been used to apportion privileges throughout the nation’s history.

Racism “must be understood as ideology, structure, and process in which inequalities inherent in the wider social system are related in a deterministic way to [phenotypic] differences and cultural factors attributed to those who are seen as a different ‘race’ or ‘ethnic’ group.”9 At multiple levels, racism creates and entrenches patterns of privilege and oppression between whites and nonwhites at all income and wealth strata.10 We internalize concepts of inferiority or superiority of self or others. Interpersonally our conscious and unconscious beliefs influence the way we treat those who are different from us.11 Institutional policies and practices reinforce the privileges and disadvantages of “in” and “out” groups. Seemingly independent institutional policies and procedures structurally intersect with media and cultural messages about, for example, who deserves privilege or what an oppressed person looks like, to maintain the current system of inequities and disparities. Racism is so deeply embedded in the American social fabric that it recreates patterns of inequality through interpersonal, institutional, and structural interactions with-

1See, e.g., Peter Edelman, Poverty in America: Why Can’t We End It?, NEW YORK TIMES (July 28, 2012), http://nyt.mns/MU5H4H. For in-depth coverage on race, racism, and racial equity, see, e.g., Keith Lawrence et al., Aspen Institute Roundtable on Community Change, Structural Racism and Community Building (June 2004), http://bit.ly/12MslJg. Understanding sexism, classism, bias (on the basis of ethnicity, language, sexual orientation, disability, and immigration status), and intersectionality is also essential to effective work for social and economic justice.


5See Trickey, supra note 8.


out the trigger of individual “racists.” Each of us can take responsibility for changing this system if we can transform guilt, blame, and anger into action.12

**Color blindness** is the conscious disregard of race in the belief that because race is not a biological category it has no social, ideological, or political meaning or impact and that acknowledging race leads to or is equivalent to discrimination.13

Ostensibly invoking the spirit of Martin Luther King Jr.’s vision that people be judged by the “content of their character,” color-blindness advocates urge us to see “people as people” by not seeing race. This approach is deeply flawed.14

First, seeing race and color is not the problem—not seeing racism is.15 Color blindness encourages us to close our eyes to the reality of deep-seated structures of oppression and their effects. Second, seeing “people as people” really means seeing all people as “normal” (i.e., “white”), thus devaluing the social and cultural resonance that people of color derive from racial identity and ignoring the impact of racism on their lived experience.16 Color blindness deflects the race conversation from impact to guilt and blame. Because racism continues to produce racially determined outcomes—positively and negatively—color blindness is at best naïve and at worst a form of racism perpetuating current levels of inequality.

**Equity**—i.e., fairness of outcomes—requires sometimes treating people differently.17 In a racially just and equitable society, one’s race or color, regardless of socioeconomic status, would not determine one’s chances in life—positively or negatively. Achieving racial equity requires proactive dismantling of the unfair advantages and disadvantages that are built into our institutions and laws and that perpetuate racial inequities.

**Poverty,** a well-studied concept that is all too familiar to the legal services community, is ultimately the state of having insufficient resources to meet life needs.18 Poverty, however, has been racialized such that we often unconsciously conflate being poor with being a person of color. Addressing white poverty therefore requires active awareness of and strategies to combat the portrayal of poor people as dark others.19 Addressing poverty for poor people of color also requires awareness and targeted strategies.20

**Understanding Our Terrain: Demographic, Economic, and Social Landscape**

One year after Pres. Lyndon B. Johnson launched the metaphorical “war on poverty” in 1964, in a commencement address at Howard University he spoke of “seek[ing] not just legal equity [or] equality as a right or theory, but equality as a fact and as a result.”21 At the time, the poverty rate for African Americans...
was 55 percent and for whites, 18 percent.22 In 2013, nearly half a century later, people of color remain mired in unequal outcomes and opportunities. Admittedly, much progress has been made, most notably the election for two terms of President Obama. Yet racial disparities persist. While the African American poverty rate has sharply fallen from 55 percent in the 1960s to 27.2 percent in 2012, it is still nearly three times higher than the 9.7 percent for non–Hispanic whites.23 The Latino poverty rate stands at 25.6 percent, and the Asian rate is 11.7 percent.24

A quarter of children live in poverty, although children of color are disproportionately poor: 37.4 percent of African American and 34.1 percent of Latino children versus 12.5 percent of white children.25 An analysis of the relationship between poverty status at birth and subsequent adult outcomes found that 69 percent of black children who were born poor were persistently poor as adults, compared to 31 percent of white children.26

Poor children and their families are often clustered in neighborhoods with high concentrations of poverty, and this compounds the burdens they face. Communities where poverty is 20 percent or higher typically have underperforming public schools, high unemployment, poor housing stock, and disparate health outcomes.27 Nearly two-thirds of African Americans and American Indian and Alaska Natives, regardless of income, live in such neighborhoods.28 Given the segregation of people of color in low-opportunity communities and the current foreclosure crisis, minority wealth accumulation is dismal.29 For every $6.00 in wealth possessed by a white person, each black or Hispanic individual has $1.00.30 Similarly the black homeownership rate trails the white rate by 28 percentage points, while the Latino rate lags behind by 25 points.31

While varying rationales are proffered for these disparities, government actions have been central in perpetuating them. The Social Security Act, the centerpiece of the New Deal, for example, excluded domestic and agricultural workers—jobs occupied by 85 percent of black women in the South—until 1957.32 Between 1930 and 1960, of mortgages insured by the Federal Housing Administration, which spurred homeownership and massive transfer of wealth, 99 percent went to whites.33 Between 1930 and 1960, of mortgages insured by the Federal Housing Administration, which spurred homeownership and massive transfer of wealth, 99 percent went to whites.33 Of the nearly 400 years that African Americans have lived in the United States, their average wealth remains a small fraction of that of whites.34

22The first official poverty rates were published in 1959. No poverty data were recorded for Latinos until 1972 and for Asians until 1987. None is reported for Native Americans (see U.S. Census Bureau, Historical Poverty Tables—People, tbl.2 (Sept. 12, 2012), http://1.usa.gov/aHuUhp.

23See DeNavas-Walt et al., supra note 1, at 17.


26Caroline Ratcliffe & Signe-Mary McKernan, Urban Institute, Childhood Poverty Persistence: Facts and Consequences 5 (June 30, 2010), http://urbn.is/9QXeXi.


28Id. at 7. Among other racial groups, 58.3 percent of Latinos, 33 percent of whites, and 28.6 percent of Asians live in census tracts where the poverty rate is 20 percent or higher (id.).

29For an exposition on opportunity communities, see john a. powell, Understanding Structural Racialization, in this issue.


33Id. at 98.
States, 345 have been spent under state-sanctioned oppression justified through virulent racist ideology that, arguably, became less publicly acceptable only with the passage of the Civil Rights Act of 1964. Although not causally connected to poverty, U.S. Supreme Court decisions that are hostile to racism-conscious remedies have also contributed to the maintenance of racial disparities. Social attitudes, some of which are reflected in legal services programs, also impede re-dressing of differential racial outcomes.

Probing Legal Aid Racial Justice Perspectives: Survey Findings

Space limitations preclude a full report on the findings of our May–June survey, which we undertook to gauge legal aid practices, competencies, and attitudes on racial justice advocacy. Our methodology and detailed survey results will be posted on the website of the National Legal Aid and Defender Association (www.nlada.org). The 330 respondents who completed the survey are predominantly from legal services organizations but also from pro bono programs, the judiciary, and law school faculty and clinics.

Of the survey’s forty-two queries we report here on six that illustrate legal aid perspectives on racial justice advocacy. The first five are statements with which respondents were asked about the degree of their agreement or disagreement; the sixth is a question.

(1) Legal services organizations have a role to play in addressing systemic racial bias.

Agreement or strong agreement was expressed by 88 percent; 4 percent neither agreed nor disagreed while 8 percent disagreed or strongly disagreed. This was true across racial and ethnic groups as 89 percent of whites, 85 percent of African Americans and Asians, 83 percent of multiple-race respondents, 80 percent of Native Hawaiian and other Pacific Islanders, and 79 percent of Latinos concurred.

(2) I believe people should be color-blind.

Here 55 percent of respondents disagreed or strongly disagreed. However, higher percentages of black, Asian, multiple-race, and Hispanic respondents disagreed or strongly disagreed compared to white and American Indian/Alaskan Native respondents (62 percent, 60 percent, 75 percent, and 57 percent, respectively, versus 53 percent and 50 percent, respectively).

(3) Addressing poverty will address racism.

This item produced responses that perhaps demonstrated most clearly the tension in legal services between explicitly confronting racism and using poverty as a proxy for attacking racial disparities. Nearly half of respondents, 42 percent, agreed or strongly agreed, while 24 percent neither agreed nor disagreed, and 34 percent disagreed or strongly disagreed (see fig. 1). Black and Latino respondents were much more likely than other racial groups to disagree strongly (24 percent and 14 percent, respectively), compared to white, Asian, and multiple-race respondents (5 percent, 5 percent, and 8 percent, respectively) (see fig. 2). Interestingly, people in their 40s were most likely to disagree or strongly disagree (47 percent), while people in their 20s were most likely to have the opposite view—75 percent of them agreed or strongly agreed.

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34Scott Plous, Understanding Prejudice and Discrimination 206–12 (2002). While the Thirteenth, Fourteenth, and Fifteenth Amendments ended slavery and granted blacks equal citizenship and the franchise, respectively, the U.S. Supreme Court’s interpretation of those Amendments hollowed out their efficacy (see Loren Miller, Race, Poverty and the Law, 54 CALIFORNIA LAW REVIEW 386, 391, 393 (1966)). For Latinos, a legacy of conquest, racial and ethnic hostilities, and language and immigration status discrimination all contribute to disparate outcomes (see LUI ET AL., supra note 32, at 156, 158–59). Regarding historical exclusion of Native Americans and Asians, see id. at 43–46, 178, 180.

35The survey instrument and interpretation did not use sophisticated regression analysis; its findings are intended as a springboard for dialogue, reflection, and further inquiry. Note that the sample sizes for American Indian/Alaskan Native and Native Hawaiian/Pacific Islander respondents were particularly small.
(4) Legal services organizations are doing racial justice work when they serve people of color.

This statement, too, revealed discernible differences by racial groups and, equally important, underscored the complexity of building shared understanding about racial justice advocacy and identifying viable strategies. Of respondents 42 percent strongly agreed or agreed, while 32 percent did not proffer an opinion, and only 24 percent disagreed or strongly disagreed.

Among people of color, African Americans and Latinos (46 percent and 38 percent, respectively) were more likely to disagree or strongly disagree compared to 30 percent of Asians, 20 percent of Native Hawaiians or other Pacific Islanders, and 18 percent of white respondents. However, 50 percent of American Indian or Alaska Native, 55 percent of Asian, and 80 percent of Native Hawaiian or other Pacific Islander respondents agreed or strongly agreed, compared to 29 percent of black and 33 percent of Latino respondents.

Perhaps the differences in perceptions among people of color can be explained by one respondent who astutely observed that “whether serving a minority group means engaging in racial justice work is not [easily] answered with a yes or no [response:] it depends on the analysis leading into the work and the goal of doing the work.” Indeed, providing language access, for example, to a particular community may be part of an overall strategy to address systemic disparities in that community or may just be providing access to service. This comment and other responses to this statement show the need for clarity in defining racial equity advocacy.

(5) Legal services organizations do not have the resources to address systemic racial bias.

Agreement or strong agreement was expressed by 47 percent of respondents; 20 percent expressed no opinion; and 33 percent disagreed or strongly disagreed.

(6) Are you/Is your organization currently pursuing activities that you would classify as racial justice advocacy?

Despite the previous response regarding resources, over 50 percent of respondents answered yes. Among nonmanagement staff, 51 percent replied yes, 32 percent no, and 17 percent not sure. Responses from executive directors and management staff were consistent, with 52 percent answering yes, 30 percent no, and 18 percent not sure. As a whole, these responses raise questions about the nature of racial justice advocacy as currently perceived and what conditions are required for legal services organizations to address systemic racial bias.

Moving to Racial Justice Advocacy

In the 2002 Clearinghouse Review special issue on pursuing racial justice Alan W. Houseman wrote: “In effect, the architects of the Office of Legal Services assumed that, by addressing the problems of poverty, the legal services program
would also address the problem of racial inequality.\textsuperscript{36}

Our survey results show that this assumption is alive and well. We challenge its validity. The notion that addressing poverty will address racism conflicts with recent racial justice scholarship and major foundation initiatives.\textsuperscript{37} Recent racial justice scholarship urges advocates to examine racism explicitly in the development of advocacy strategy. Without discerning the complexities that racism brings to antipoverty strategy, we risk unintentionally reinforcing racial inequities and neglecting opportunities to build economic opportunity for all.

To further racial equity, we offer four suggestions. First, we urge legal services programs to undertake constructive dialogue and study that deepen our collective understanding of racism, reexamine the belief that addressing poverty will mitigate racism, and unpack the notion that serving people of color, in and of itself, furthers racial equity.\textsuperscript{38}

Second, we propose that programs investigate innovative antiracism and antipoverty strategies, such as those discussed in this special issue. Third, given the concentration of people of color in high-poverty and low-opportunity communities, we urge programs to consider place-based strategies to dismantle racially inequitable outcomes.\textsuperscript{39}

Fourth, we recommend that, at an individual level, everyone consider taking the implicit association tests offered by Project Implicit and commit to a personal study of racism and racial equity.\textsuperscript{40}

With patience, optimism, and hard work, we can move together to build an inclusive society that produces racial and economic justice for all.

\textsuperscript{36}Alan W. Houseman, \textit{Racial Justice: The Role of Civil Legal Assistance}, 36 CLEARINGHOUSE REVIEW 5, 8 (May–June 2002).


\textsuperscript{38}Of survey respondents, 55 percent reported that their programs provided training on poverty, 52 percent on cultural competence, 44 percent on diversity, 31 percent on community education, but only 20 percent on structural racism or racism, 18 percent on implicit bias, 16 percent on inclusion, and 9 percent on antipression.


\textsuperscript{40}See Project Implicit (2011), http://hvrd.me/9ebeXR.
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Chicago, IL 60602