

North



Carolina Task Force for Racial Equity in Criminal Justice
Working Group #4 -
Addressing Racial Equity in Trials and Post-Conviction
Meeting #1

Date: 4 August 2020

Time: 8:05 AM EST

Chairperson: Henderson Hill

Members In Attendance: Hill, Henderson; Stein, Josh; Dyer, Karen; Pollard, Mary; Earls, Anita; Restucha-Klem, Mercedes; Cooper, Ameshia; Clark, Brooke; Jacquet, Jean-Paul; McGhee, Jasmine; Robinson, Michael; Hawkins, Mike; Spolar, Ellen; Thornburg, Alan

Members Not In Attendance:

[Link to Recorded Live Stream](#)

MEETING MINUTES

I. Welcome

General welcome and introductions from all group members

II. Setting of Group Norms

Michael Robinson: Introductions and asks everyone to state what they need from the group in order to seamlessly move forward

III. Review Meeting Goal(s)

Hill Henderson: Emphasis on listening, hearing, and processing issues respectfully

- May have a proposal to eliminate racial discrimination in jury selection (modeled after Washington Supreme Court General Rule 37, and I suggest is appropriate for expedited consideration by Task Force).
- The modern NC death penalty administration has been subject of intensive litigation and academic study for the forty years. Persistence of racial disparities is a consistent finding.
- I've recently seen data showing thousands of people serving disproportionate life sentences
- Looking forward to our NCCJ-facilitated conversation about how we as a working group identify, organize and prepare issues for review, consideration and ultimately add to our slate of proposals (efficient internal management).

IV. Working Group Introductions & Opening Brainstorm Session

Karen Dyer: name 3 things that you want to be accomplished through this working group

- Brooke Clark:
 - (1) Discussion of Judge's discretion on whether a defendant walks with jail/prison time or fines;
 - (2) Defendants who are released from jail, and then re-jailed for not paying monies upon immediate release from jail
- Mike Hawkins:
 - (1) Philosophically thinking as a working group, are we trying to rehabilitate or punish? Would this drive the conversation in how fees are structured unto vulnerable parties who cannot afford to pay them?
- Mary Pollard:
 - (1) How to utilize the robust data team at NCDOJ to see how we are sentencing, incarcerating, and using Judge's discretion?
 - (2) Juries do not reflect our demographics – do we need preemptory challenges? Do we have the (monetary) resources to incentive persons to attend jury duty with respect to persons who cannot afford to spend the day as a juror?
- Henderson Hill:
 - (1) Looking at the idea bank to address our questions on the fees system – how do we increase Court resources?
 - (2) Is prison the best place to encourage rehabilitation? Do we have other community resources that would make this possible instead of sending persons to prison?
 - (3) Defining justice and the goals of sentencing. Looking at a larger process to review a sentencing's fairness and duration.
 - (4) Death penalty should be reconsidered in NC. In an important 2015 SCOTUS dissent, justices catalogued death penalty's legacy of racial disparities, examining who gets prosecuted and who sits as jurors and extreme costs of the system relative to other public safety policies. Let's review how NC's administration of the death penalty acts as the tip of the spear for racial disparities in the criminal justice system.

V. Explanation of Sharepoint Page

Ellen Spolar: brief introduction on how to use Sharepoint

- *Karen Dyer* requests information how to find our video recordings
- *Henderson Hill* confirms that Ellen Spolar, Malia Benison, and Mercedes Restucha-Klem

VI. Review Idea Bank

Mercedes Restucha-Klem: confirms that Malia Benison and herself are the points of contact if group members would like to add an idea to the “Idea Bank”

- Provided quick crash course on the “Idea Bank” within Sharepoint

VII. Co-Create and Define Our Processes

Michael Robinson: Encourages members to touch on topics that we should consider moving forward with; places main emphasis on defining the action process of our tasks

- Henderson Hill:
 - (1) Community concerns about prisoners dying of the COVID-19 pandemic while incarcerated – does this working group have recommendations on this?
 - (2) This working group is largely lawyers, but much of our work is about policy. The technical legal aspect is less important when compared to the urgency and need to transform a justice system that has maintained and supported racially discriminatory practices and outcomes. This working group needs to task staff support and research assets to address questions about how best to transform criminal justice and to make racial equity an organizing principle.
 - Does the current justice system meet the norms and values of North Carolina circa 2020?
- Mike Hawkins:
 - (1) Echoes Henderson in the need for community leaders’ involvement in this process
- Mary Pollard:
 - (1) Everything seems urgent – is there anything that we can tackle more readily versus other ideas that may require more review and even a slow legislative process?

VIII. Next Steps

Michael Robinson: reiterates that persons are being affected right now by this. If you could change it tomorrow, what would that be and how would you do it? Thinking cheapest/cost effective plans for the State and alternative avenues for resources/relief

- Henderson Hill: *How do we access research and data persons to look at our proposals and ideas?*
 - (1**) Without getting mired in legal arguments, can we glean important factual findings and judicial observations found in important SCOTUS and NC Supreme Court cases that importantly inform the investigations and processes of the Working Group?
 - Referencing the range of issues addressed to SCOTUS in 2015 – how do the racial disparities interact with NC death penalty? Who are the other persons that we should intersect with and have as a liaison in the process?
 - (2) Sentencings from Judges, prosecutors – the tax placed on the right to a trial (still brainstorming and refining the question/topic for researching purposes)

- (3) **Will it be okay to have 75 minute meetings rather than 90 minute weekly meetings?**
 - ****Brooke Clark, Mary Pollard vote yes**
- (4) Are we still on formal titles or a first name basis?
 - First name basis
- Mike Hawkins:
 - (1) Reach out to the rest of the task force to identify specific items and see if they have any resources that will push us and connect us in the right directions (data, networks, processes, etc.)
- Brooke Clark:
 - (1) Would like to focus on most immediate action items such as addressing the fees system.
 - Notes that the ACLU came to NC to review/audit four counties on the issue; At All Cost: The Consequences of Rising Court Fines and Fees in North Carolina ([Link to Report](#)).
 - (2) Again, judicial discretion and the resulting disparities in sentencings
- Jasmine McGhee:
 - Confirms that we have resources and we only need to submit our ideas
- Mary Pollard:
 - Will set up a meeting a week from today on Tuesday, August 11 8:00am-9:15am EST
- Justice Anita Earls:
 - (1) Structurally what do we do if we do not have another working group's liaison attending our meetings? How do we stay interconnected?
 - (2) The public generally does not know about the fees system – can we use the data team to break down by racial demographics all persons who were jailed because of a failure to pay fees?

Next meeting: Tuesday, August 11, 2020 from 8:00-9:15am

Assignment: Review the [Working Group #4 Idea Bank](#) and, by 12pm, Monday 8/10, email Mercedes (and others in the work group, as you feel comfortable):

1) Ideas that need to be added (note: this is a “living” document – ideas can always be added; you can include comments directly in the document as you see fit);

2) 1-3 ideas you believe to be “low hanging fruit,” which can be discussed for recommendation(s) at the next full Task Force meeting (on Friday, 8/28).

DATA TEAM REQUESTS/QUESTIONS

1. Identify any racial disparities in the number of prisoners serving extreme sentences:
 - a. sentences of LWOP
 - b. traditional life sentences

- c. virtual life sentences (sentences that essentially guarantee that the prisoner will die in prison.)
- 2. Data on persons who receive jail/prison time versus fines – preferably broken down by NC racial ethnic demographics
- 3. How have North Carolina attitudes on the death penalty changed over the last twenty years?
Several different ways to assess:
 - a. public opinion polling
 - b. statistics on the number of death sentences NC jurors return
 - c. The number of counties that have effectively abandoned the use of the death penalty
- 4. Transparent communication regarding COVID-19 outbreak in our prisons and jails, to include:
 - a. the number of prisoners and jails who have been infected.]
 - b. the number prison and jail staff who have been infected
 - c. the number of fatalities (prisoners and staff)
 - d. what effective measures to enforce social distancing in the difficult environments of jails and prisons:
 - i. alteration in housing units and dormitory and bunk constellations
 - ii. alterations in common space, meal procedures and medical services
 - iii. effective efforts of population reduction consistent with transparent and data supported public safety concerns
- 5. Racial demographics of persons who are jailed and/or re-jailed solely due to a failure to pay fees and other monies

RESEARCH QUESTIONS

1. NC Judges' use of discretion when determining whether a Defendant receives jail/prison time or fines
2. Does NC have the resources to provide monetary incentives to jurors who otherwise are unable/unwilling to attend jury duty?
3. Is GR 37 a good fit to address persistent exclusion of African American jurors in NC? Is it "low hanging fruit" and appropriate for expedited review?
4. The preemptory challenge is the portal through which much racial discrimination infects the jury selection process. What are the necessary purposes peremptory challenges provide? Do they come at too high a price?
5. Has NC's administration of the death penalty served to worsen racism in the criminal justice system?
 - a. Is there a disparity in the number of innocent African Americans wrongfully convicted and sentenced to death?
 - b. Does the current system result in disproportionately large budgetary expenditures on relatively few murder investigations/prosecutions in white-victim cases, while leaving inadequate public safety dollars available to improve the homicide closure rates in Black-victim cases?
 - c. Has the availability of the racially disparate death penalty contributed to the explosion of extreme sentences?

SPEAKER SUGGESTIONS