

# Diversity Gazette

## Public Defense and DEI

by Phil Dixon

When you work in public defense, race and equity concerns are a fact of daily life. Public defense attorneys work with a diverse client group, a group united primarily by poverty. Effective defenders develop relationships with clients from all backgrounds, beliefs, and abilities. As they guide clients through the judicial system, they must explain and confront the racial dynamics at play in any given case. Sometimes race is an explicit feature of the case, like with a cross-racial eyewitness identification or an allegation of a racially motivated crime. Race may surface in a more subtle way as well, like when the jury pool does not appear to represent a fair cross section of the community. Even when race isn't a visible or obvious feature of a case, defenders still must consider potential biases of the various system actors in the community—judges, prosecutors, witnesses, potential jurors, and others—when preparing to defend against a criminal accusation.

It is a mistake, however, to assume that people working in public defense are somehow immune from biases of their own, merely because they may recognize and grapple with these issues in their work. Bias can unconsciously infect even the best-intentioned defender in any variety of ways, from which clients are visited in jail (and how frequently), to which cases are investigated and properly litigated, to how juries are selected, to how hiring decisions are made. Left unexamined and unchecked, implicit bias can creep into these types of discretionary decisions,

particularly in the fast-paced and overworked world of public defense.<sup>1</sup>

In recognition of this fact, there is a growing movement among public defender organizations and offices to address implicit biases within the defense community and to adopt policies advancing diversity, equity, and inclusion (“DEI”) within the field. The Office of Indigent Defense Services, our state’s public defense agency, adopted a “Diversity and Racial Equity Statement” in 2021.<sup>2</sup> The document lays out the agency’s commitment to DEI principles, identifies concrete goals, and proposes strategies to meet those goals. Other defender organizations have begun staffing a Diversity, Equity, and Inclusion Attorney position. The work typically involves evaluating the organization, helping to structure it more fairly, ensuring diverse hiring, and providing training to individual offices and attorneys on inclusive practices. By working to eliminate implicit bias and to advance DEI principles, defenders ensure more equitable outcomes for their clients, and produce stronger, more diverse offices. They also become more likely to identify and address other instances of bias and inequity within the judicial system and beyond.

Diversity and equity issues are central to public defense work, and defense lawyers have a heightened obligation to ensure that their work is free from racial discrimination and other forms of prejudice. The recent focus on and commitment to DEI principles by public defender organizations and individual lawyers is a welcome step towards making that aspiration a reality.

Whether or not your work involves the court system, that is something we can all strive for in our respective fields and communities—a more equitable, diverse, and inclusive world.

<sup>1</sup> L. Song Richardson & Phillip Atiba Goff, *Implicit Racial Bias in Public Defender Triage*, 122 Yale L.J. 2626, 2628 (2013).

<sup>2</sup> *IDS Comm’n Diversity and Racial Equity Statement*, Office of Indigent Defense Services, <https://www.ncids.org/ids-commission-diversity-and-racial-equity-statement/> (last visited Dec. 21, 2021).