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## PURSUITING RACIAL JUSTICE

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21ST CENTURY

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Sargent Shriver National Center on Poverty Law



By William Kennedy, Gillian Sonnad, and Sharon Hing

In order to get beyond racism, we must first take account of race. There is no other way. And in order to treat some persons equally, we must treat them differently.

—*Regents of University of California v. Bakke*, 438 U.S. 265, 407 (1978) (Blackmun, J. (separate opinion))

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**W**e explore here a clear and convincing way to take account of race: the racial impact statement. Plaintiffs who challenge racial discrimination carry the burden of proving that the discrimination is the result of a public entity's specific racially discriminatory intent.<sup>1</sup> With the election of the first nonwhite president and seemingly increased racial tolerance, the mainstream "postracial" narrative has only strengthened public officials' defense that they are "color-blind" and thus race was not a part of their decision making.<sup>2</sup> A racial impact statement can present a strong refutation of the "color-blind" defense by its documentation of the disproportionate impact of public policies.

Racial impact statements explicitly consider a policy's impact on communities of color. The process we propose for creating a racial impact statement engages community stakeholders to put officials on formal notice that the community has documented the disproportionate impact of the policies. The officials will be forced to make a choice: ratify the statement's outcomes as their own and face possible litigation or pursue alternative policies that reduce adverse effects on racial and ethnic populations.

Racial impact statements come in many forms and may be used by communities to challenge or influence public policy, procedure, or practice. We focus here on using

<sup>1</sup>The intent doctrine was introduced by the U.S. Supreme Court in *Washington v. Davis*, 426 U.S. 229, 245 (1976), and applies to most claims of discrimination. However, a showing of disparate impact only is sufficient for some types of federal and state claims of racial discrimination. E.g., federal and California fair housing claims do not technically require intent, although some courts can be reluctant to grant relief based on impact alone.

<sup>2</sup>See generally Dom Apollon, *Don't Call Them "Post-Racial": Millennials Say Race Matters to Them*, COLORLINES, June 7, 2011, <http://bit.ly/G3Vt2>.

racial impact statements to lay the foundation for a finding of specific intent. We believe that a body continuing a policy in the face of a well-researched showing of disparate outcomes ratifies those outcomes and that ratification is evidence of “intent” required by prevailing federal law.

After reviewing the limitations of equal protection law, we discuss a new approach to thinking about racial discrimination. We discuss different types of racial impact statements and how they have been used by local and state governments. We discuss how Legal Services of Northern California has used racial impact statements in its advocacy. We offer advocates a template for developing a community-driven racial impact statement that will allow communities to put race back on the table in an effective way and begin to reform racialized structures.<sup>3</sup>

### The Failures of Antidiscrimination Law and New Approaches

Practitioners face significant hurdles when trying racial discrimination cases due to failures in the current legal framework. We propose a new way of thinking about racial discrimination and racial disparities.

**The Legal Framework and Its Failures: the Intent Doctrine.** For the past fifty years, advocates litigating racial discrimination claims have seen the likelihood of prevailing on these claims decrease substantially. The 1974 U.S. Supreme Court case *Washington v. Davis* and its progeny set forth the “intent doctrine,” which uses an analytical framework lim-

iting claims to an intentional animus-driven “perpetrator-victim” model.<sup>4</sup> This model severely constrains relief for those seeking to enforce the promise of equal protection under our federal and state laws.<sup>5</sup> Civil rights advocates recognize that the assumptions about “intent” and “animus” embedded in this theory are objectively incorrect.<sup>6</sup>

Advocates must also contend with the deeply embedded code of color blindness. This code contains two components: (1) that choosing to see race or take it into account can only encourage discrimination and (2) that in assuring that our policies and institutions do not consider race, we are somehow stopping discrimination.<sup>7</sup> Public officials and decision makers are quick to hide behind this code; they use it as a defense when accused of discrimination. The widespread prevalence of this defense and its acceptance by some courts and scholars have led decision makers to subjugate even further the necessary discussions and considerations of race and racial disparities.<sup>8</sup>

The “intent doctrine” requirement that those alleging discrimination show that the decision makers intended to discriminate against them arose early in the civil rights movement when the focus of advocates was on dismantling Jim Crow laws. The intent doctrine is simply outdated. It presumes that racial prejudice is an aberration perpetrated by those who possess an animus and intend to visit it upon others. This view implies that bias is not normal and by eliminating the aberrational behavior of the few, we are eliminating bias.

<sup>3</sup>John A. Powell began using the term “racialized” because the term “racist” is so closely connected with the outdated Supreme Court perpetrator-victim model of intent. The term “racialized” focuses more on policy outcomes than on intent in creating the policy.

<sup>4</sup>*Washington v. Davis*, 426 U.S. at 245.

<sup>5</sup>Sarah Martinez, *Expanding the Intent Doctrine: The Viability of the Arlington Heights Equal Protection Standard in Race Discrimination Causes of Action* (2006) (unpublished paper, University of California, Davis, School of Law, for a seminar taught by staff attorneys of Legal Services of Northern California’s Race Equity Project), <http://bit.ly/18jIPR3>.

<sup>6</sup>Margaret Richardson & Todd L. Pittinsky, *The Mistaken Assumption of Intentionality in Equal Protection Law: Psychological Science and the Interpretation of the Fourteenth Amendment* (John F. Kennedy School of Government, Harvard University, Working Paper No. RWP05-011, 2005), <http://bit.ly/12t007p>.

<sup>7</sup>See John A. Powell, *The Colorblind Multiracial Dilemma: Racial Categories Reconsidered*, 31 UNIVERSITY OF SAN FRANCISCO LAW REVIEW 790 (1996).

<sup>8</sup>Martinez, *supra* note 5.

Cognitive scientists who study how bias is formed in the brain have a different view.<sup>9</sup> They tell us that the implicit bias of “in-group” preference is often the cause of disparate racial outcomes and that it can exist without the intentional animus the law requires.<sup>10</sup> Thus we must expand our thinking about discrimination beyond the traditional analytical dichotomy of a perpetrator and a victim.

The “intent doctrine” as it has been applied simply does not account for the lessons of cognitive science. Moreover, it does not take into account the possibility that structures interact in a way to foster racialized outcomes without the existence of a racist in control. The focus on the “intent” of decision makers only masks the larger inquiry of what our institutions are doing to the communities we serve.

**Understanding How Racial Disparities Persist.** We must change our thinking to understand how racial disparities come to be. Only then can we tackle the root causes of the disparities that separate people from opportunity along racial or ethnic lines. The first step is to understand that policies that are neutral in language can produce disparate outcomes. As John A. Powell suggests, we must begin by moving our focus from the intent or language of specific policies or decisions to analyzing the outcomes of those policies and decisions. Racialized structural analysis is a lens through which to view the institutional interactions that produce racialized outcomes. Powell defines racialized structures as “the set of practices, cultural norms, and institutional arrangements that both reflect and help to create and maintain race-based outcomes in society” as well as the “process

and practices of inter-institutional arrangements that continue to distribute racial outcomes in part because of differences in how groups are situated.”<sup>11</sup>

Structural racialization analysis relies on systems thinking, which focuses on relationships, process, and interrelatedness, and not on singular, linear causation.<sup>12</sup> An important component of systems thinking is the direct consideration of situatedness. Understanding that people are differently situated can lead us to develop policies and institutions that can appropriately target the challenges faced by our different communities. Once again, here is Powell with a compelling example of the concept of situatedness.

Although a policy that is neutral in design is not necessarily neutral in effect, the courts and the public seem all but obsessed with the design and, even more narrowly, with the intent of the design, rather than the results. Fairness is not advanced by treating those who are situated differently as if they were the same, however. For example, it would make little sense to provide the same protections against hurricanes to mid-western communities as to coastal communities.<sup>13</sup>

A racial impact statement can help reveal the situatedness of different communities and help in identifying targeted strategies which could be used to alleviate the disparities.

It will take time for the law to catch up with cognitive science, systems thinking, and situatedness. In the meantime, ad-

<sup>9</sup>*Id.* See also Eva Paterson, *Litigating Implicit Bias*, POVERTY AND RACE, Sept.–Oct. 2011, <http://bit.ly/1ajHide>.

<sup>10</sup>For a more in-depth explanation of implicit bias, we recommend *IMPLICIT RACIAL BIAS ACROSS THE LAW* (Justin Levinson & Robert Smith eds., 2012) and Mahzarin R. Banaji & Anthony G. Greenwald, *BLIND SPOT: HIDDEN BIASES OF GOOD PEOPLE* 158–61 (2013).

<sup>11</sup>JOHN A. POWELL, *RACING TO JUSTICE, TRANSFORMING OUR CONCEPTIONS OF SELF AND OTHER TO BUILD AN INCLUSIVE SOCIETY* 27–79, 230 (2012).

<sup>12</sup>Powell illustrates systems thinking through metaphor. To understand why a bird is caged and cannot fly, you must look to the whole structure of the cage, and not just one bar. The consideration of just one bar of the cage does not explain why the bird cannot escape. Only consideration of the totality and intent to address the whole can ultimately lead to a solution for freeing the bird (John A. Powell, *Structural Racialization and Opportunity Mapping*, presented at the California Endowment’s Racial Justice Training Institute (May 27–28, 2012), <http://slidesha.re/127gXak>).

<sup>13</sup>POWELL, *RACING TO JUSTICE*, *supra* note 11, at 9.



vocates can use racial impact statements to secure prospective relief under existing law

### What a Racial Impact Statement Is

Racial impact statements systematically analyze how racial and ethnic groups are affected by an existing or proposed action, policy, or practice.<sup>14</sup> The Applied Research Center notes that this tool can help communities reduce racial discrimination through the conscious consideration of the “often invisible and unintentional[] production of inequitable social opportunities.”<sup>15</sup> The racial impact statement is a relatively new strategy that has had limited use within the United States. Racial impact statements may take many forms; there is no one “right” model.

The use of impact statements in other areas of the law is widely recognized. Most readers will be familiar with environmental impact statements, which require decision makers to take into account the environmental impact of decisions they make. More recently, policymakers are considering racial impact as the first step in tackling racial inequities in our criminal justice system. We propose using racial impact statements in a similar fashion. Racial impact statements can lay the foundation to establish that decision makers intend to discriminate. When policy makers affirm the disparate racial outcomes presented in the racial impact statement, they are admitting that they are aware that racially discriminatory outcomes flow from their decisions. This is enough for advocates to argue that the outcomes are intended.

In the civil arena various entities have adopted different names and approaches to this general class of tools known as the racial impact statement. Three types of racial impact statements, broadly cat-

egorized, are (1) policy development and decision making, (2) postimplementation review and analysis, and (3) general duty to eliminate unlawful racial discrimination. One-half of the racial impact statements we surveyed were part of a local ordinance or statewide legislative mandate to collect data and assess the impact of a project on racial and ethnic communities.

The “policy development and decision making” racial impact statement has been used by both think tanks and local governments. The Applied Research Center has developed a “racial equity impact assessment.” This assessment seeks to identify ways to “maximize equitable opportunities and impact” and “minimize adverse and unanticipated consequences” of policies on different racial and ethnic groups.<sup>16</sup> At the urging of a community-based alliance, the Minneapolis Board of Education used the “racial equity impact assessment” in formulating its districtwide school reorganization plan.<sup>17</sup>

By contrast, the Opportunity Agenda’s “opportunity impact statement” is an evaluation tool designed specifically for federal agency programs that must ensure that grantees comply with federal antidiscrimination laws. These federal programs themselves may support and sometimes require the collection of impact data based on race, ethnicity, gender, disability, and language status.<sup>18</sup> Under the Opportunity Agenda’s model, federal agencies themselves are charged with the implementation of either a brief “opportunity assessment” or a complete “opportunity impact statement.”

In Charlottesville, Virginia, a work group that included Abigail Turner, litigation director of the Legal Aid Justice Center, authored a proposed ordinance

<sup>14</sup>The racial impact statement is systematic in that it proceeds step-by-step. But, as we have seen, it also identifies systemic issues, such as the interaction of structures.

<sup>15</sup>Terry Keleher, Applied Research Center, *Racial Equity Impact Assessments: An Overview 2* (2009), <http://bit.ly/19GnVIC>.

<sup>16</sup>*Id.* at 1.

<sup>17</sup>For a case study, see Jermaine Toney & Terry Keleher, *Using a Racial Equity Impact Analysis in the Minneapolis Public Schools*, in this issue.

<sup>18</sup>Opportunity Agenda, *The Opportunity Impact Statement: Expanding the American Dream 3* (n.d.), <http://bit.ly/14yhLa2>.

that would require a community impact statement for new and significant development projects.<sup>19</sup> The goal of the ordinance is to prevent and identify longstanding inequalities, advance fairness, and create the legal infrastructure necessary to “withstand or challenge issues of racial inequality.”<sup>20</sup>

King County, Washington, passed an ordinance requiring the county to “consider equity and social justice impacts in all decision-making” in order to “increase fairness and opportunity for all people, particularly for people of color, low-income communities and people with limited English proficiency.”<sup>21</sup> An “equity impact review” is one method of fulfilling the ordinance. An Oregon statute allows any lawmaker to request a study analyzing the impact of child welfare and criminal justice laws on racial and ethnic communities.<sup>22</sup> The Oregon Department of Human Services is required to develop a standardized protocol for the preparation of a minority racial and ethnic impact statement.<sup>23</sup> The statement must estimate how the legislation would affect the need for and availability of services to communities of color and identify community representatives consulted during the preparation of the statement.<sup>24</sup>

The “equity impact statement” developed by the Praxis Project is a policy strategy tool that can be used to help ensure that legislative bodies assess whether a policy’s “intent and impact are consistent with a jurisdiction’s expressed values.”<sup>25</sup> A jurisdiction would contract with an “appropriate research entity” to conduct the statement and analyze both disparate impact and historic patterns of institutional bias and discrimination.<sup>26</sup>

The “postimplementation review and analysis” racial impact statement comes into play after a policy becomes law or has been put into practice. One example is the legislative report card on racial equity, developed by the Organizing Apprenticeship Project and released annually since 2006.<sup>27</sup> The report card analyzes the impact of policies enacted by the Minnesota governor and legislature on racial disparities in education, health, economic well-being, the criminal justice system, public investment, and American Indian tribal sovereignty.<sup>28</sup>

The “general duty to eliminate unlawful racial discrimination” racial impact statement creates a general duty for public authorities to combat racial and ethnic discrimination explicitly. This format integrates a conscious effort to take up racial

<sup>19</sup>In 2010 Charlottesville, Virginia, underwent a citywide examination of the history of race discrimination in the region and developed recommendations for how to handle racial attitudes. Over 350 people participated in various work groups for eight weeks. The government work group proposed that the city develop racial impact statements similar to environmental impact statements. Abigail Turner, coauthor of the proposal and participant in the group, insisted that the proposal for the racial impact statement ordinance be explicitly linked to a summary of Charlottesville’s history of racial discrimination and resistance to integration (Notes from Gillian Sonnad and Sharon Hing’s discussion with Abigail Turner (June 15, 2011) (on file with William Kennedy).

<sup>20</sup>Abigail Turner & Robert Monoso, A Proposal to Require a Racial (or Community) Impact Statement for Major New Initiatives in Charlottesville: Prepared for the Government Work Group on the Dialogue on Race (April 18, 2011) (unpublished paper) (on file with William Kennedy).

<sup>21</sup>King County Equity Impact Review Tool 2 (Oct. 2010), <http://1.usa.gov/XfyVU>; see King County, Wash., Ordinance 16948, King County Code 2.10.200–230 (2010), <http://1.usa.gov/14EjwCB>.

<sup>22</sup>S.B. 463B, 77th Leg. Assemb., Reg. Sess. (Or. 2013), <http://bit.ly/13PjGvP>; see Press Release, State Sen. Chip Shields, On Broad Bipartisan Vote, Oregon House Passes Bill to Assess Racial Impact of Proposed Legislation (June 14, 2013), <http://bit.ly/11UlgBT>.

<sup>23</sup>S.B. 463B.

<sup>24</sup>*Id.*

<sup>25</sup>Praxis Project, Developing an Equity Impact Statement: A Tool for Policymaking 2 (n.d.), <http://bit.ly/12rYClc>.

<sup>26</sup>*Id.* at 2.

<sup>27</sup>Organizing Apprenticeship Project, Minnesota Legislative Report Card on Racial Equity 2005–2010 (2010), <http://bit.ly/19E9aJS>.

<sup>28</sup>*Id.*

inequity throughout government services and programs and often includes mandatory reports and analyses of progress. Seattle's race and social justice initiative is an example of the general duty type of racial impact statement. Overseen by Seattle's Office for Civil Rights, the initiative's mission is to end institutionalized racism in city government and promote multiculturalism and full participation in the community by all residents.<sup>29</sup> Its three goals are (1) racial equity in city operations, (2) racial equity in city engagement and services, and (3) racial equity in the community. Since 2005, Seattle's mayor has required city departments to implement racial justice work plans using a racial equity analysis as a filter for policy development and budgeting.

### **Our Proposal for Community-Owned and -Developed Racial Impact Statements**

The racial impact statement is intended to build a record which will result in a change in the policy, procedure, or program or lay the foundation for a legal challenge based upon intentional discrimination. While we understand and appreciate the motivation for and potential efficacy of seeking to enact legislation requiring that governments perform racial impact statements, we are wary of such a top-down approach which may exclude local communities. We believe in a collaborative community-based approach that empowers clients directly affected by racial disparities to seek affirmative change in law and policy. Because of this, community collaboration and engagement drive our model racial impact statement.

**Examples.** Legal Services of Northern California has used various forms of a racial impact statement in its advocacy for the past seven years. In each case our goal

has been to use the instrument to create an actionable complaint. We have been so successful that litigating the claims has not been necessary. Below are four examples.

*County Health Care Disparities.* Under the aegis of Legal Services of Northern California's Race Equity Project, an advocate conducted a survey of Medicaid fee-for-services benefits paid out for psychiatric illnesses. The survey, a review of data in a rural county, showed that white families received benefits at a rate double that paid to families of color.<sup>30</sup> When confronted with the disparity, the county could not defend the outcomes and blamed budget cuts that limited outreach and bilingual services. Despite county officials' fiscal blame game, not too long after being confronted with the disparities, the county hired outreach and bilingual staff under a "new program."

*Environmental Impact Disparities.* A natural gas company sought a permit to pump 7.5 billion cubic feet of natural gas into a geological structure beneath the homes in a historic African American community. In response, our advocates outlined a racial impact statement to be authored by prominent academics from Stanford University and the University of California, Davis. The statement was to demonstrate the historic burdens that were placed upon the community and that were linked to the concept of "degraded space," a subconscious pattern of neglect on the part of elected officials.<sup>31</sup> At administrative hearings held in the community our client, the Avondale Glen Elder Neighborhood Association, testified to the history of disparate treatment and made clear their intent to file the racial impact statement. Our client secured an unexpected but welcome victory before the administrative body, and there was no need to complete and file the racial impact statement.<sup>32</sup>

<sup>29</sup>Seattle Office for Civil Rights, Race and Social Justice Initiative (Dec. 2008), [bit.ly/14fnVND](http://bit.ly/14fnVND).

<sup>30</sup>Stephen Goldberg, a lawyer, learned that the average annual payment for white families was \$4,400 per year, for African Americans \$2,200 a year, and for Latino families \$1,800 per year. The data were available from the reports made to the state by county providers. Until Goldberg's request, no advocate had ever asked to see the data.

<sup>31</sup>For this racial impact statement, we had the time to engage the academic community in considering the disparate racial outcomes that the proposed project would have on our clients. We were fortunate enough to have Bruce Haynes, Jesus Hernandez, and Jennifer Eberhardt on our racial impact statement team.

<sup>32</sup>Colin Bailey, *Winning Against the Odds: Race-Conscious Community Lawyering and Organizing for Environmental Justice*, 46 *CLEARINGHOUSE REVIEW* 456 (Jan.-Feb. 2013).

*Federal Property Compensation Disparities*

A federal dam built forty years ago in rural California had resulted in the loss of property in the surrounding communities. A \$50 million community benefits agreement was set up to stimulate economic growth in the neighboring communities. Many communities had applied for and received compensation. The largest neighborhood of color had never received compensation. When confronted with this history, the fund managers agreed to conduct a blind reading of the applications for compensation. After our client's application received the highest score, an attempt to override the rankings was defeated with the promise of a suit based upon the history of racial bias. Thereafter our clients received their first allocation under the community benefits agreement

*County General Assistance Cuts* A county proposed cutting its general assistance benefits and mandating that recipients participate in a work program in order to continue to receive benefits. Legal Services of Northern California's Race Equity Project consulted with advocates to prepare a racial impact statement, based upon the county's own information. The racial impact statement showed that the policy would disparately have an impact on African American men who, because of their situation, would have no way to comply with the new rules. As a result, the county revised its general assistance program to exempt those who could not comply with the work rules.

**Template.** We believe that a racial impact statement is most effective when it is developed and owned by the community affected by the law or policy. We also believe that legal services advocates can facilitate and aid communities in developing racial impact statements. We utilized elements from the approaches of both the Applied Research Center and the Opportunity Agenda to create a template.

*Defining Your Legal Services Organization's Role.* Initially we recommend that advocacy organizations develop resources and procedures to identify and engage in race

equity work. Advocates and frontline staff educated on issues of race equity would gain the knowledge to recognize case or client narrative patterns of disparate racial impact. Your organization can then target the policy or procedure having disparate racial effects<sup>33</sup>

Tasking advocates who have received race-equity training to keep abreast of local issues can also lead to identification of disparities. Indeed, this was the basis for the examples listed above. Advocates should monitor the activities of planning commission, boards of supervisors, and other decision-making bodies. Similarly we encourage programs to make space for advocates to go out into the local communities that they serve. Only through continued presence in and dialogue with local communities can we truly understand the situatedness of those communities and develop the mutually beneficial and trusting relationships necessary to take up the fight against racial inequalities.

*Engaging the Community and Proving the Disparity* When a potential disparity is revealed to us, as advocates we must move quickly to contact leaders in the affected local community. By doing so, we can begin gathering data to prove the dimension of the disparity. We must also demonstrate to policymakers and decision makers that the disparity will continue to occur unless the policy is changed.

Information gathering for the racial impact statement should proceed on two tracks. While community members research and develop a narrative history of the neighborhood or region, academics can begin gathering hard data that document the disparities. Client stories and experiences are valuable and can inform any targeted solutions that are developed. The "community narrative" must not only be consistent with the objective facts but also resonate with the community members. Data gathered directly from the decision-making body or agency are very persuasive. We strongly recommend utilizing the expertise of local college and university students and faculty to gather accurate data and per-

<sup>33</sup>See generally Mona Tawatao, Colin Bailey, Gary Smith & Bill Kennedy, *Instituting a Race-Conscious Practice in Legal Aid: One Program's Effort*, 42 CLEARINGHOUSE REVIEW 48 (May-June 2008).



form statistical analysis with the proper methodologies. Legal services staff can be helpful at this stage by connecting community members and groups to the resources necessary to develop evidence of the disparity.

*Identifying Stakeholders and Alternative Solutions.* If the data show a significant disparity, community leaders must reach out to the necessary stakeholders and engage them in formulating the racial impact statement. Stakeholders are largely identified by the community and affected populations. Leaders should convene the stakeholders to discuss the identified disparity that results from the proposed policy, procedure, or practice and look for alternatives that will not result in a disparity. Alternatives can come in many forms, and the stakeholders should rely on their creativity and knowledge of the community to develop these options.

Consider, for example, a proposed change in the local health care program that would require applicants to produce their birth certificate in order to get health coverage. Such a policy would have a disparate effect on citizens of color born in areas where Jim Crow laws prevented access to hospitals that would register births and rural residents who could not reach a hospital or county institution at all. A possible alternative to this requirement is to allow declarations from parents or other people who have information on the applicant's birthplace. This alternative recognizes the situation for people of color born before the civil rights movement began to examine the impact of de jure segregation. Other alternatives that the community may want to suggest are proof of identity through baptismal certificates, census records, early school records, family bible records, or none at all.

Legal services staff can be a part of this process but should focus on facilitation; we should not dictate what solution will work for a community.

*Reporting to Decision Makers.* Once alternative solutions have been agreed upon

by the stakeholder group, the evidence of the disparity, offending policy, procedure, or practice and proposed alternatives should be condensed into a racial impact statement that can be submitted to the decision makers. The more data included, and the more community support and involvement, the more likely the decision makers will heed the warnings and accept the suggestions in the report. Data and the community narrative should be used to establish (1) the historic patterns of exclusion, (2) the unique situatedness of the client group, (3) clear evidence of the law or policy's disparate outcome, and (4) inclusive alternatives to the policy. In the case of a new policy, the report should focus on including information on 2, 3, and 4. Legal services staff can assist the community in translating their comments and suggestions into a framework with which the decision makers are familiar. In doing so, advocates can advise on implicitly adding to the statement a warning that should decision makers choose to follow the same path in the face of the documentation of the disparities that have resulted and would continue to result from their policies, litigation would follow.

*Form.* In most cases the time and resources of advocates, community leaders, and stakeholders dictate the form of the racial impact statement: a letter, a community narrative, or an academic research paper. In two of our examples above, the statement itself took the form of a letter. The letter should still have all the elements of our template above, but it may be used at key advocacy points, during public comment in the early formation of a policy, during stakeholder meetings, or as an essential part of a demand used as a precursor to litigation.

The racial impact statement may be a community narrative report based on community participatory research. Maps and graphic presentation of data showing disparate outcomes over time and space will enhance the narrative.<sup>34</sup>

<sup>34</sup>See Ann Moss Joyner & Allan M. Parnell, *Maximizing the Power of Geographic Information Systems in Racial Justice*, and Jason Reece, *The Geography of Justice*, in this issue.

Communities with access to researchers at academic institutions might consider the value of a racial impact statement that is an academic research paper. Such a document, if it reflects the community's narrative, has the added weight of academic integrity and objectiveness. If this is the strategy, the academics should be engaged at the earliest possible moment since coordination of the advocacy with the publication of the report is essential. In a perfect world the community would seek and get foundation funding for the report and the community would direct the development of the statement.

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Writing for this CLEARINGHOUSE REVIEW special issue on racial justice has given us a chance to reflect on the journey we started nearly nine years ago, a journey aimed at bringing race back to the table. In our first article on this topic we discussed our own struggles to overcome the legal and social mores that had almost neutralized claims of discrimination, and we encouraged other programs to struggle with us.<sup>35</sup> Continuing on this journey, we have explored an invaluable tool that advocates can use to overcome hurdles in proving racial discrimination. We believe that each legal aid or public interest organization can identify and fight racial disparities in its community, and we hope that the racial impact statement proves to be such a tool.

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<sup>35</sup>Tawatao et al., *supra* note 33.