

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
UNITED STATES COURTHOUSE
450 GOLDEN GATE AVENUE
SAN FRANCISCO, CA 94102
(415) 522-4100



CHAMBERS OF
PHYLLIS J. HAMILTON
CHIEF JUDGE

July 20, 2020

SENT VIA EMAIL: shaffymoel@gmail.com

Dear Ms. Moeel,

I have received your email transmitting two letters from your newly formed Racial Justice Working Group; one to me and Chief Magistrate Judge Spero and one to US Attorney Dave Anderson. I have distributed your letters, as you requested, to the judges in this district and I write to you as the designated point of contact. In your letter you request that the court form a working group to address systemic racism and implicit bias in a comprehensive way and you identify four focus areas as a point of departure for dialog. I think it might assist any future discussions for you to know what the court has done and is doing to address equal justice and access to the court.

First, all of the judges of this court attempt on a daily basis to fulfill their oaths of office to render equal justice to all without respect to race. As early as 1995, this court expressed its commitment to eliminating all forms of bias and prejudice in litigation in our courtrooms in General Order 40, which imposes this duty on "all attorneys, judges, judicial officers and court personnel in connection with cases pending before the district court." Over the years we have taken a number of steps to ensure fairness and equal access to our court.

With regard to ensuring that juries reflect a fair cross section of the communities of the defendants prosecuted in this district, our standing Jury Committee has been very active. Just within the last five years, in order to diversify the jury pool we went from a two-step summoning process (first qualifying jurors and then summoning them) to a one-step process to make the process less onerous and we started accepting responses from mobile devices in addition to computers. We have long used DMV records in addition to voter rolls but ran into hurdles preventing us from using utility records and public benefits information. We also implemented a zip code replacement practice so that those prospective jurors who do not respond, are replaced with prospective jurors from the same zip code to make up for those zip codes that tend to be underrepresented. At one point when we discovered that minority neighborhoods in Pittsburg and Antioch had higher response rates than Oakland, the chair of the Jury Committee took it upon himself to hold several meetings with community leaders from Oakland to explore ways to generate more interest in jury service in their communities. We

would be happy to hear any new ideas that you might have on how to improve minority response rates for jury service.

With regard to your concerns about equal access to the court for your clients and members of all communities, our standing Pro Bono Projects Committee has developed a program and resources that are the envy of district courts everywhere. Years ago, the committee prepared and published a Pro Se Handbook that provides the information an unrepresented person needs to navigate through federal litigation. It is available as a handout and on the court's website. The committee is also responsible for overseeing our three Legal Help Desk Offices, one in each Bay Area division. These offices were established many years ago and are funded by the court. We work in collaboration with the Justice and Diversity Center of the Bar Association of San Francisco (for SF/Oak) and previously with the Silicon Valley Law Foundation and now the Asian Law Alliance (for SJ), to provide lawyers who are available to provide free advice to unrepresented litigants on their legal matters pending or contemplated for filing in this district. These lawyers not only provide free legal advice, but they assist the court in placing these cases with volunteer lawyers willing to provide representation on a pro bono basis. Even during the pandemic, these lawyers are assisting pro se litigants and we plan to continue to offer this service indefinitely. We would be happy to hear any new ideas you might have for improving access to our court for all members of the communities which we serve.

With regard to the issue of disparate policing of communities of color, we have no direct involvement in policing decisions, nor would it be proper for us to be involved. What we can do is simply rule on the legal matters that are presented to us as fairly and as equitably as we can.

With regard to addressing the effects of systemic racism and implicit bias on pretrial release, charging and sentencing, we, of course, have no involvement in the charging decisions as a matter of separation of powers. However, we scrutinize our bail/pretrial release and sentencing decisions on a fairly regular basis and in a number of different ways. Both bail and sentencing are regular topics at our annual judges' retreat, where we have held trainings and discussion groups to study our district's statistical record on racial equity. Our discussions have been informed by data collected by the US Sentencing Commission, on which one of our colleagues sits, as well as by our Probation and Pretrial Services Offices which have assisted us in identifying issues of concern. Additionally, the Federal Judicial Center, the judiciary's educational arm, which until recently was headed by one of our former colleagues, has provided us with education on multiple occasions on sentencing equity and unconscious bias.

One forum on which we have relied in the past, and hope to again, is the District Conference, which provides an opportunity for our lawyer representatives to bring issues to our attention and to present robust panel discussions and breakout sessions about the kind of issues that you have raised. Over just the past four years, we have had sessions with some of the country's leading experts on the following topics: Predicting Recidivism: Use of Risk Assessments in Bail & Sentencing Determinations and Voir Dire: Judge v. Attorney (2016), Race, Justice and the Federal Bail System (2017), Detecting and Understanding Jury Bias: Implicit Bias

(2018), Erosion of the 6th Amendment Right to Trial and the Trial Penalty (2019). Following the 2018 conference we introduced the implicit/unconscious bias video which we use for jury orientation and many of us are now using an unconscious bias jury instruction. We would be happy to hear about any additional ideas you might have regarding how we can educate the bench and bar about unconscious bias and how we can eliminate all bias in the way in which criminal cases are litigated in our district.

Your last focus area is on how mass incarceration can be eliminated through available mechanisms including conviction alternatives. This district has been very supportive of alternative mechanisms. We have offered and supported a post-sentencing re-entry court for many years. While this program doesn't necessarily reduce the prison population in the first instance, it does provide an alternative to re-incarceration for supervised release violations. We also started a Convictions Alternative Program (CAP) in 2015 through which we hoped that some defendants could avoid felony convictions in favor of diversion programs. Many of our judges advocated strenuously to maintain this program, but unfortunately, we were unable to reach agreement with the new US Attorney and are no longer able to continue it on its original terms and diversion is no longer a feature of the program. However, our newly named Alternatives to Incarceration Program (ATIP) does offer the opportunity for deferred sentencing and a potentially lower sentence upon successful completion of the requirements that are similar to those offered by CAP. We would be happy to engage in renewed discussions with all stakeholders about a CAP-type program and any support that you might provide.

Notwithstanding the work that we have done to try to achieve racial equity in this district, we recognize the need to continue to strive for improvement. We are willing to engage with the criminal bar to explore new ideas. To that end, I have requested that Judges Beeler and Gilliam lead the Criminal Rules and Practices Committee to work with you on these issues. All stakeholders are represented on that committee: Court, CJA, FPD, USAO, and I understand that Tony Castellano and Silvio Lugo routinely attend the meetings. By copy of this letter I am requesting that they continue to do so. I also understand that the topic of racial justice is on the agenda for the committee's August meeting. I have taken the time to describe our prior efforts in some detail. Future discussions will take place with the committee and Judges Beeler and Gilliam will keep the court informed.

Best Regards,



Phyllis J. Hamilton
Chief Judge

cc: Judges of CAND
Dave Anderson
Anthony Castellano
Silvio Lugo
Diana Weiss