Approaching Consumer Law with a Racial Justice Lens

Session 1: Kimberly Merchant, Odette Williamson, Ben Carter, and Nolan Downey

July, 13, 2021
Zoom Menu

- Mute/Unmute Mic
- Turn Camera On/Off
- View Participants
- View Chat Pod

Icons:
- Mute
- Stop Video
- Invite
- Participants
- Share Screen
- Chat
- Record
- Reactions

For economic and racial justice
OBJECTIVES FOR THE SERIES

1. Introduce consumer advocates to concepts that will assist them in centering race in their practice

2. Uplift case studies that illustrate how consumer advocates are using a race equity lens

3. Provide opportunities to ask questions of advocates centering race in their consumer work.
LOOKING AHEAD

Download Report: Race Equity at the Core of Consumer Law

Session 1: Today, July 13th @ 2PM ET

Session 2: Tuesday, July 20th @ 2PM ET

Session 3: Tuesday, July 27th @ 2PM ET
AGENDA

Importance of Applying Race in Advocacy – Kim Merchant, Shriver Center on Poverty Law

Applying a Racial Justice Lens in Consumer Advocacy – Odette Williamson, NCLC

Pushing for Equity in the Courts – Ben Carter, KEJC
Poll #1

Which option best describes your practice?
Poll #2

In which geographic region do you practice?
SPEAKERS

Kimberly Merchant
Shriver Center on Poverty Law

Odette Williamson
National Consumer Law Center

Ben Carter
Kentucky Equal Justice Center
LOOKING AHEAD

Session 2: Tuesday, July 20th @ 2PM ET

Session 3: Tuesday, July 27th @ 2PM ET

Download Report: *Race Equity at the Core of Consumer Law*
Building a future free from poverty and racism

Join Us
The Racial Justice Institute is a national leadership program grounded in a commitment to race equity as an integral and essential part of anti-poverty advocacy in the belief that legal aid and public interest advocates are key to achieving real change.
<table>
<thead>
<tr>
<th>Common Myths About Racial Equity Advocacy</th>
<th>Agree/Disagree</th>
</tr>
</thead>
<tbody>
<tr>
<td>If you address poverty, you will address also racism.</td>
<td></td>
</tr>
<tr>
<td>My organization does racial justice work when we serve people of color.</td>
<td></td>
</tr>
<tr>
<td>Race equity advocacy ignores the needs of poor white communities.</td>
<td></td>
</tr>
<tr>
<td>My organization has a role to play in addressing systemic racism.</td>
<td></td>
</tr>
</tbody>
</table>
"We are in the midst of the most intense expression of anti-racist collective sentiment this country has ever seen. We've seen 11 days of massive demonstrations & marches of all kinds."

Angela Davis, author, feminist, abolitionist scholar, long-time activist.
June 6, 2020
Resistance and Pushback

For economic and racial justice
Where we are

Criminal Justice Outcomes → Income Disparities → Health Outcomes → Safe & Affordable Housing → Wealth Gap & Home Ownership → Education Gap → Violence → Policing → Life Expectancy

RACIAL DISPARITIES & POVERTY

For economic and racial justice
Economic Security – Wealth Gap


Source: Edward N. Wolff, "Household Wealth"

TABLE 3: Home Ownership Rates and Median Equity in Own Home

<table>
<thead>
<tr>
<th>Own Home (%)</th>
<th>Year</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2005</td>
</tr>
<tr>
<td>Total</td>
<td>62.8%</td>
</tr>
<tr>
<td>White</td>
<td>69.0%</td>
</tr>
<tr>
<td>Black</td>
<td>44.1%</td>
</tr>
<tr>
<td>Asian</td>
<td>59.5%</td>
</tr>
<tr>
<td>Hispanic</td>
<td>47.1%</td>
</tr>
</tbody>
</table>

Institute for Policy Studies. Prosperity Now.
Housing – Residential Segregation

Redlining (1934 - 1968) – Began with the creation of the Federal Housing Administration, now HUD (U.S. Dept. of Housing and Urban Development).
  - involved marking maps with “red lines” to indicate neighborhoods where mortgages and home purchases were denied to communities of color to keep them out of white neighborhoods.

Racial Covenants (1920 - 1948) – Used “white-only” clauses on house deeds to ensure people of color did not own/live property

= Affects the social determinants of health and well-being
$23 billion more funding goes to school districts that serve predominantly white students compared with districts that serve mostly students of color (EdBuild, 2019).
Understanding the Impact of COVID-19

COVID-19's Devastating Impact On African Americans

African American share of state/city populations and COVID-19 deaths (as of Apr 06, 2020)

- Share of state/city's population
- Share of COVID-19 deaths

<table>
<thead>
<tr>
<th>Location</th>
<th>Population %</th>
<th>COVID-19 Deaths %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Louisiana</td>
<td>32%</td>
<td>70%</td>
</tr>
<tr>
<td>Illinois</td>
<td>15%</td>
<td>42%</td>
</tr>
<tr>
<td>Michigan</td>
<td>14%</td>
<td>41%</td>
</tr>
<tr>
<td>North Carolina</td>
<td>22%</td>
<td>22%</td>
</tr>
<tr>
<td>Chicago</td>
<td>30%</td>
<td>69%</td>
</tr>
</tbody>
</table>

More Latinos than U.S. adults overall say someone in their household has had pay cut or lost a job due to COVID-19

% who say they, or someone in their household, have ____ because of the coronavirus outbreak

<table>
<thead>
<tr>
<th></th>
<th>Had to take a pay cut</th>
<th>Been laid off or lost job</th>
<th>NET either/both</th>
</tr>
</thead>
<tbody>
<tr>
<td>Latinos</td>
<td>40</td>
<td>29</td>
<td>49</td>
</tr>
<tr>
<td>All U.S.</td>
<td>27</td>
<td>20</td>
<td>33</td>
</tr>
</tbody>
</table>

Notes: Hispanics are of any race. Share of respondents who didn’t provide an answer not shown.

Source: Survey of U.S. adults conducted March 19-24, 2020

PEW RESEARCH CENTER
We define opportunity through **access** to...

**Access to Opportunity**

Source: Professor John Powell, RJI presentation 2014
Defining Our Terms

Race is...

- a social construct or idea that
  - has been built over time
  - continues to evolve and change
  - has concrete ramifications for people’s lives, and
  - has many interconnecting sides or facets

The process of racialization is one way that our society sorts communities and people to allocate resources and access to resources.

It is helpful to shine light on it
Defining Our Terms

Race as we know it has no deterministic, biological basis: all the same, race is so powerful that it can have life-or-death consequences.
Defining Our Terms
Defining Our Terms

- Diversity
- Inclusion
- Equality
- Equity
“The only way to undo racism is to constantly identify it and describe it—and then dismantle it.”

- The opposite of “Racist” is not “Not Racist”.

- A racist is supporting racist policy or expressing a racist idea.

- An antiracist is supporting antiracist policy or expressing an antiracist idea.

- A racist or antiracist is not who we are, but what we are doing in the moment.
Racism as Hate

Unite the Right: Charlottesville, 2018

Strategic Racism

DOG WHIS’TLE POL’ITICS, noun:
The use of racist appeals to white voters intended to provoke resentment against people of color and government, but using language that is not directly about race.

Structural Racism

“What’s the matter? It’s the same distance!”

Structural Racism: a framework for understanding the institutional and public policies that, whether intentionally or not:

- create & perpetuate
- fundamental barriers to economic and social equality for persons and communities of color and
- opportunities to white individuals and communities.

“What’s the matter? It’s the same distance!”
4 Levels of Racialization

**INDIVIDUAL LEVEL**
- Internalized
- Interpersonal

**SYSTEMIC LEVEL**
- Institutional
- Structural
Structural Institutional Interpersonal Personal

Spheres of Systemic Racialization

Affects us at the unconscious level
Antiracism: the creation and proactive reinforcement of policies, practices, attitudes and actions that produce equitable power, access, opportunities, treatment and outcomes for all

Racial equity: the state that occurs when we cannot predict group advantage or disadvantage by race/ethnicity.
Expanding our Approach to Equity: Mind Science

Understanding Social Cognition & Implicit Bias

Unconscious Actions & Associations

Bias & Compromised Outcomes

For economic and racial justice
Expanding our Approach to Equity

Complex Systems Thinking

Responsive

Proactive

For economic and racial justice
Expanding our Approach to Equity

Community Lawyering

Clients

Position of Opportunity

For economic and racial justice
Internal Alignment for Racial Justice

- Diversity & Inclusion
- Culture
- Capacity
- Structure
Diversity & Inclusion

• **Diversity** – by race across all roles & positional levels.
• **Inclusion** – when all can be & feel welcomed, respected, supported, valued and included in decision-making that affects them.

For economic and racial justice
Racial Equity Knowledge & Skills:

- Understanding structural racialization
- Implicit Bias & Debiasing
- Courageous Conversations about Race
- Systems Thinking
- Community Lawyering
- Mapping skills
- Racial Impact Assessments
- Racial Impact Statements
- Framing & Communication
Structure

- Organizational values, vision & mission
- Strategic planning
- Priority setting
- Client intake
- Case/campaign selection
- Litigation
- Communications
- Decision-making
- Recruitment, hiring & promotion
- Staff training and development
- Accountability

For economic and racial justice
• How we think about and do our work
• What we say we value and believe v. how what we do reflects our actual values & beliefs
• What/who is or feels most valued & safe speaking up
• Extent to which we are comfortable talking about race, privilege, power & oppression and willing to stay with the discomfort that can naturally come out of such discussions.
• What else?
Advancing Race Equity

COMPETENCY  CAPACITY  COMMITMENT
When something can't be fixed then the question is what can we build instead?

— Mariame Kaba

@micahbazant

For economic and racial justice
In Summary: The Path Ahead Requires

- A New Way of Thinking
- A New Way of Speaking
- A New Way of Framing
- A New Way of Engagement
- New Advocacy Tools
- A New Form of Militancy
Racial Justice and Equal Economic Opportunity Project

- Address the exploitive and discriminatory practices in the marketplace aimed at individuals and communities of color
Racial Justice and Equal Economic Opportunity Project

- Advocacy
- Litigation
- Reports
- Training
- Technical advice and assistance
- Working with civil rights & grassroots advocates

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**Discrimination in the Manufactured Housing Industry: An Inside Look at Abusive Lending and Collection Practices by the Nation’s Largest Mobile Home Company**

A recent article by the Seattle Times and BuzzFeed News has exposed discriminatory practices by the nation’s largest manufactured housing company, Clayton Homes and its lending subsidiaries Vanderbilt Mortgage and 21st Mortgage. The article alleges that borrowers of color were steered into higher-rate loans, rushed at loan closing, charged substantially higher rates, on average, than white borrowers, and subject to abusive collection practices when the loans defaulted. Customers lost their homes, thousands of dollars in down payments, and ancestral homeland put up as collateral to back the loans.

Speakers: Congressman Keith Ellison, Minnesota’s 5th District, and the authors of the report. Daniel Wagner of BuzzFeed News and Mike Baker of the Seattle Times for a

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**Debt and Democracy: How the Collection of Civil Fees and Fines Contributed to the Unrest in Ferguson**

This webinar will discuss the levying and collection of unfair fees and fines by municipalities and their courts. According to The New York Times, unjust municipal fee and fine practices were one of the “smoldering” issues underlying tensions in Ferguson, Missouri following the killing of unarmed black teenager Michael Brown by a Ferguson police officer. According to The Times, “Young black men in Ferguson and surrounding cities routinely find themselves passed from jail to jail as they are picked up on warrants for unpaid fines.” The webinar will present an overview of the causes and pervasiveness of the problem, and impact on the community, both in Missouri and around the nation. The webinar will also discuss steps to address the problem, including policy advocacy and litigation.
History of housing & credit discrimination

- Laws and policies that segregated public & private housing
  - Redlining
  - Financing
  - Exclusionary zoning
- Government inaction in the face of violent resistance to racial integration
- Fueled private credit discrimination
Baltimore Opportunity Scorecard

Legend:
- Counties
- Water
- African American Population (1 dot = 500 African American Persons)
- Opportunity Index Scores Represent Quintile Distribution of the 615 Census Tracts (Ranked by Opportunity Index Z Scores) (With each category containing 123 Census Tracts)
- Opportunity Index Results
  - Very Low Opportunity
  - Low Opportunity
  - Moderate Opportunity
  - High Opportunity
  - Very High Opportunity
Baltimore: African American and White persons in poverty

Legend:
- Water
- Counties

Dot Distribution of Persons in Poverty by Race in 2000 by Census Tract
- 5 African American persons in poverty
- 5 White persons in poverty

Prepared by: Kirwan Institute for the Study of Race & Ethnicity

Racial Justice and Equal Economic Opportunity
National Consumer Law Center
Residential Segregation

- According to the 2020 State of the Nation’s Housing report, Joint Center for Housing Studies, Harvard
- Nearly two-thirds of poor Black, Latino and Indigenous people live in high poverty neighborhoods, twice the rate of white people living in poverty
High-Cost/ Fringe Lenders

- Payday Lenders
- Auto Title Lenders
- Check Cashers
- Rent-to-Own
Payday Loans

- Also called deferred presentment, cash advance, deferred deposit or a check loan
- Short term loan supported by a check or authorization to automatically withdraw proceeds from a bank account
- Marketed as a quick and easy way to get cash by the next payday or check
- Average APR 200% - 500%

APR for Short-term Payday Loans

- CashNetUSA, 28 days, $300: 228%
- Ace Cash Express, title loan, 30 days, $500: 204%
- Check n' Go, 14 days, $375: 295%
- Ace Cash Express, 14 days, $350: 219%
- Advance America, 14 days, $550: 393%
Discrimination in Auto Lending

The Data Is Clear: Auto Lenders Discriminate

We can’t let Congress weaken the ability of the CFPB to address discrimination in auto financing.

By Stuart Rossman, Contributor | Nov. 17, 2015, at 2:45 p.m.

Dealers are twice as likely to add a markup to the loans of African-Americans. (ISTOCKPHOTO)

The House of Representatives is about to vote on H.R. 1737, the Reforming CFPB Indirect Auto Financing Guidance Act, which would weaken the ability of the Consumer Financial Protection Bureau to address discrimination in auto financing. That would be a mistake.

Time to Stop Racing Cars: The Role of Race and Ethnicity in Buying and Using a Car

April 2019

AUTO ADD-ONS ADD UP
HOW DEALER DISCRETION DRIVES EXCESSIVE, ARBITRARY, AND DISCRIMINATORY PRICING
Police and the Black Community

- Ferguson Police Department
  - 2012-2014 Data
- 85% of vehicle stops
- 90% of citations
- 93% of arrests
- 94% of Failure to Comply
- 95% of Manner of Walking in the Roadway
Mortgage Lending Discrimination

- Subprime lending crisis was also a fair housing crisis
- Disproportionately devastating impact on communities of color
- History of discriminatory lending reverse redlining
Paying More for the American Dream

- Rate of foreclosure highest in neighborhoods targeted by high-cost subprime lenders
Discriminatory Lending

- **Reverse redlining** – the targeting of higher risk, more expensive loans to people of color and other vulnerable groups, regardless of their ability to qualify for better loans
- This is recognized as a discriminatory practice under federal law
Land Installment Contracts

- Agreement for deed, Contract for deed
- Alternative path to homeownership
- Built to fail
- Wall Street involved
Land Installment Contracts

- Racist roots
- Credit starved-communities
- Communities that bore the brunt of foreclosure crisis
- Targeting of African-Americans, Latino, LEP, immigrants
Land Installment Contracts

- No appraisal
- No home inspection
- No notice and cure period
- No title
- No rights associated with foreclosure process
Land Installment Contracts

- Limit forfeiture
- Recordation
- Imposing habitability standards
- Litigation
- Legislation
- Ordinances
- Media
- Grassroots activists
EMERGING FROM THE PANDEMIC
Features :: Where Low-Income Jobs Are Being Lost to COVID-19

Overall

US 12,643,034

Estimated low-income jobs lost

- Accommodation and Food Services
- Retail Trade
- Health Care and Social Assistance
- Arts, Entertainment, and Recreation
- Other Services
- Administrative and Support and Waste Management and Remediation Services
- Educational Services
- Manufacturing
- Transportation and Warehousing

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Financially Impacted by COVID-19 Pandemic

Figure 2. Segment perceived financial impact (by ethnicity).

Past Due Mortgage by Race & Ethnicity

Past Due Mortgage Payment by Race and Latinx Ethnicity: December 21, 2020

- White alone, not Hispanic, 8.3%
- Asian alone, not Hispanic, 14.2%
- Two or more races + Other races, not Hispanic, 14.5%
- Hispanic or Latino (may be of any race), 19.9%
- Black alone, not Hispanic, 24.4%

Source: U.S. Census Bureau Household Pulse Survey
Housing Instability

FIGURE 3
Across Income Groups, Homeowners of Color Are More Likely than White Homeowners to Have Fallen Behind on Housing Payments During the Pandemic

A Looming Crisis: Black Communities at Greatest Risk of COVID-19 Foreclosure
July 2020

Foreclosure prevention measures, data collection, and reporting must be prioritized to stave off preventable foreclosures

Communities of color in the United States, especially Black and Latinx communities, are particularly hard hit by the COVID-19 pandemic, from higher rates of illness and death to greater rates of unemployment, mortgage default, and eviction risk. These challenges have exacerbated the loss of wealth due to predatory lending, foreclosure, and the economic crisis of the Great Recession a decade ago.

Early data indicate that disproportionately high percentages of African American and Latinx homeowners have faced economic hardship and sought assistance from their mortgage companies. Consistent with these developments and even more concerning, the U.S. Census Bureau’s Household Pulse Survey, as discussed in the next section, shows that among households who have fallen behind on their mortgage payments, Black and Latinx households are much less likely than white homeowners in the same position to access potentially home-saving relief.

This disparity is greatest for Black families. Black communities have yet to recover from the rampant foreclosure of the Great Recession. As of the first quarter of 2020, the Black homeownership rate is...
Behind on a Bill

Had difficulty paying a bill or expense (percent)

- Overall: 40.4%
- Non-Hispanic White: 35%
- Black or African American: 64.9%
- Hispanic: 47.4%
- Other: 33%

Source: CFPB, Insights from the Making Ends Meet Survey (2020)
Contacted by a Collector

African Americans are more likely to be called by bill collectors

Yes responses to ‘Have you ever been called by bill collectors when dealing with debt?’

Source: Demos, The Challenge of Credit Card Debt for the African American Middle Class (2013)
Conclusion: In Chicago, St. Louis, and Newark the risk of judgment was twice as high in majority black census tracts as majority white census tracts.
Medical Debt Collection

A strong rule from the Consumer Financial Protection Bureau (CFPB) is needed to protect consumers from abusive debt collection tactics, especially those carried out by collectors of medical debt—the leading source of debt borne by most consumers.

Reasons Collectors Contact Consumers

- Medical Bills: 59%
- Telecom Bills: 37%
- Utility Bills: 28%
- Taxes: 21%
- Legal Fees: 14%
- Rent: 11%

More Americans fear medical debt than serious illness. A survey by the West Health Institute and NORC at the University of Chicago found that 4 in 10 respondents fear the costs associated with a serious illness, more than those who say they fear a serious illness itself.

Medical debt collection blemishes the credit reports of one in five consumers.
Debt Collection

The Color of Debt: Racial Disparity in Debt Collection Lawsuits

Recently, ProPublica published "The Color of Debt", a first-of-its-kind analysis that showed that debt collection lawsuits are far more common in black communities than white ones. This webinar will cover the details of ProPublica's analysis of court data, explore what trends emerged among the different types of companies filing suits over consumer debt, and discuss possible causes for the racial disparity in lawsuits.

Past Imperfect: How Credit Scores and Other Analytics "Bake In" and Perpetuate Past Discrimination

May 2016

Credit reports and scores reflect stunning racial disparities. Credit reporting and credit scoring are supposed to be entirely objective, with no room for flawed tools such as human judgment (and the biases built into human minds). Yet for the past two decades, study after study has found that African American and Latino communities have lower credit scores as a group than whites (and Asians, when the data is available). For a list of studies, see page 5.
Energy, Utilities & Telecommunications

Helping Communities of Color Access Opportunity: An overview of the Lifeline program and current threats to its scope and purpose

Communities of color often face challenges connecting to and maintaining affordable broadband and voice service. The federal Lifeline program has been around since the mid-1980s. While it started as a low-income program to help households afford voice service, it has been expanded to include wireless voice and broadband Internet support. The program is available in every state and territory and has helped over 35 million households in 2020 with low-cost, and in some cases free service (50 minutes a month of voice and data services for example 2G and 4G/5G/data in a wireless voice and data bundle). Now some of the most popular Lifeline products are under attack, particularly the universal availability of these low-cost/no-cost products. Here from our panel of experts about the Lifeline program and how it works and what potential changes could emerge in the near future and what steps you can take to defend affordable access for low-income people.

Presenters:
Khon Mixus, Associate Director of Policy and Advocacy (OCA - Asian Pacific American Advocates)
Carmen Scordato, VP, Policy and General Counsel (National Hispanic Media Coalition)
Cheryl Larraca, Policy Advisor (United Church of Christ DC Inc.) and President (A Learned Hand, LLC)
Moderator: Olivia Weir, Staff Attorney (National Consumer Law Center)

The Role of Broadband in Rebuilding Wealth and Economic Opportunity in Communities of Color

Event
Date
09-13-2014 2:00 pm

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CONSUMER LAWS
Legal Tool Kit to Fight Predatory & Discriminatory Lending

- Equal Credit Opportunity Act
- Fair Housing Act
- Truth in Lending Act
- Unfair and Deceptive Acts and Practices (UDAP)
- Fair Debt Collections Practices Act
Equal Credit Opportunity Act

- ECOA prohibits discrimination on the basis of race, color, religion, national origin, sex, marital status, age, receipt of income from public benefits, or exercise of rights under consumer credit protection statutes
- All aspects of the credit transaction from application to underwriting to servicing
Fair Housing Act

- FHA prohibits discrimination on the basis of race, color, religion, national origin, sex, familial status, or disability in residential real-estate related loans
  - 42 U.S.C. §§ 3601 et seq.
- Bans discrimination in advertising regarding the sale or rental of a dwelling, including related to mortgage lending

7/13/2021 ©National Consumer Law Center
Credit Discrimination Statutes

- ECOA and FHA prohibit discrimination that is intentional and overt
- Disparate treatment occurs when the creditor treats a consumer differently because of a protected characteristic
- Practice need not be motivated by prejudice or specific intent to harm a member of a protected group
Credit Discrimination Statutes

- Also prohibit discrimination based upon disparate impact, which occurs when a lender’s policy or practice is neutral on its face but adversely impacts a protected class.
- Challenge a wide range of discriminatory practices.
- Redlining, reverse redlining, predatory lenders, etc.
- Lenders, brokers, car dealers, etc.
Harbour Properties as of June 2016 in Six-County Atlanta Metro Area and Percent African American by Census Tract
Credit Discrimination Statutes

Read a PDF of our statement here.

The NAACP Legal Defense and Educational Fund, Inc. (LDF) has filed a class action lawsuit today in the Northern District of Ohio against the City of Cleveland on behalf of the city’s Black residents who are disproportionately affected by the city water department’s practices. The lawsuit, which brings claims under the Fair Housing Act, the Due Process and Equal Protection Clauses of the 14th Amendment, the Ohio Constitution, and the Ohio Civil Rights Act, challenges Cleveland Water’s racially discriminatory and unfair policies that not only leave Black residents without the basic necessity of water, but can also lead to the loss of their homes. This is the first Fair Housing Act lawsuit to challenge a city’s practice of placing liens on residents’ properties due to overdue water bills.
Resources
Using Equity to Confront and Correct Individual and Systemic Racism

To do justice, judges must do what is fair, not what is merely legal

Ben Carter
Kentucky Equal Justice Center
ben@kyequaljustice.org
kyequaljustice.org
@notbencarter on Twitter
“If something can’t be fixed, what can we build instead?”
"If something can’t be fixed, what can we build instead?"

In Ohio, Republican gerrymanders won Republicans 75 percent of the state’s 16 seats in Congress in November while Republicans won just 52 percent of the popular vote.

In Wisconsin, Republicans won only 46 percent of the statewide vote. But — incredibly — the effectiveness of their gerrymanders translated 46 percent of the statewide vote into 63 percent of the seats in the Wisconsin Assembly. That’s how powerful gerrymandering can be. Now, after losing every major statewide race this
“If something can’t be fixed, what can we build instead?”

In Ohio, Republican gerrymanders won Republicans 75 percent of the state’s 16 Senate seats, despite the fact that Democrats won a majority of the vote. But in the House, where the majority is based on raw vote totals, Democrats won a majority of seats, even though Republicans won a majority of the vote. This is how the state’s electoral system works. It is designed to produce results that are not reflective of the popular vote. But it is not the only way to do it. There are other ways to design electoral systems that are more representative of the will of the people. One way is to use a system of proportional representation, where each candidate is awarded a seat in proportion to the number of votes they receive. Another way is to use a system of ranked-choice voting, where voters rank the candidates in order of preference and the candidate with the fewest votes is eliminated until a winner is found. Both of these systems are more likely to produce results that are reflective of the will of the people, and they are used in many countries around the world. But in the United States, we continue to use a system that is designed to produce results that are not reflective of the will of the people.
“If something can’t be fixed, what can we build instead?”

In Ohio, Republican gerrymanders won Republicans 75 percent of the state’s 16 seats, but the Senate is split 50-50.

Currently, Democratic senators represent 42 million more people than Republican senators — but the senate is split 50-50.

How many people each US senators represented in 2021

<table>
<thead>
<tr>
<th>Senators</th>
<th>People Represented</th>
</tr>
</thead>
<tbody>
<tr>
<td>Republican</td>
<td>42 million</td>
</tr>
<tr>
<td>Democratic</td>
<td>1 million</td>
</tr>
</tbody>
</table>

Of these Black applicants having no reason listed for their denial. In Kentucky, only 36.5% of Black households own their homes compared to 70.7% of white households.
“If something can't be fixed, what can we build instead?”

In Ohio, currently Democratic senators represent 42m more people than Republican senators - but the senate is split 50-50.

Texas House Democrats departing a bus at Dulles International Airport outside Washington after fleeing Texas in an effort to block the voting restrictions bill. Kenny Holston for The New York Times

of these Black applicants having no reason listed for their denial. In Kentucky, only 36.5% of Black households own their homes compared to 70.7% of white households.
“If something can’t be fixed, what can we build instead?”
“If something can’t be fixed, what can we build instead?”
2 extremely obvious insights after 15 years of practicing law
2 extremely obvious insights after 15 years of practicing law (through two housing crises)
2 extremely obvious insights after 15 years of practicing law (through two housing crises)

1) If someone is likely to need help with a legal problem, we should provide them the information they need to find that help and, ideally, knock on their door (literally and metaphorically)

2)
2 extremely obvious insights after 15 years of practicing law (through two housing crises)

1) If someone is likely to need help with a legal problem, we should provide them the information they need to find that help and, ideally, knock on their door (literally and metaphorically)

2)
2 extremely obvious insights after 15 years of practicing law (through two housing crises)

1) If someone is likely to need help with a legal problem, we should provide them the information they need to find that help and, ideally, knock on their door (literally and metaphorically).

2) We should ask people who want to be judges better questions before they become judges.
Get curious about Equity
Get curious (real curious) about Equity
equitable standing

equitable waste

unclean hands

Equity
Equity requires a court to “balance hardships that the parties, other affected persons, and the public would face under various possible outcomes.”

*Handbook of Modern Equity*, de Funiak, William Q., 42–46 (2d ed. 1956)
“Foreclosure is peculiarly an equitable action, and the court may entertain such questions as are necessary to be determined in order that complete justice may be done.” Morgera v. Chiappardi, 813 A.2d 89, 98 (Conn. App. 2003).
“Where the Plaintiff’s conduct is inequitable, a court may withhold foreclosure on equitable considerations and principles.”

equitable waste

“...wanton and unconscientious abuse of his rights, ruinous to the interests of other parties.”

Landers v. Landers, 151 S.W. 386, 391 (Ky.App. 1912).
Equity is the full story.
Equity allows us to bring into many types of cases—eviction, foreclosure, debt collection, auto fraud, etc.—all of the sociological, psychological, economic data that supports what we know, qualitatively and quantitatively, to be true. Powerful people and corporations target people of color, particularly Black people, for unequal and unfair treatment. This unfair treatment, predictably leads to results like evictions and foreclosures at grossly disproportionate rates, due in part to a disturbing history of segregation, redlining, restrictive covenants, and starving Black communities of opportunity to build wealth.

Equity is the full story.
Who are the parties? What have they done to resolve this matter? What are the parties’ incentives in this case?

Will we inflict damage on innocent third parties? Does the benefit to the winning party impose an outsized burden on the losing party?

What is the business model of the business? Does the business have clean hands?

Who has more money? Sophistication? Privilege? What historical or cultural facts have created the power dynamic between the parties?

Equity is the full story.
Lawyers
Lawyers

Equityers
Get curious about Equity
Get curious (real curious) about Equity
Our clients need you to create a place for fairness in our legal system.
Our clients need you to create a place for fairness in our legal system.

Courts need you to create a place for fairness in our legal system.
Our clients need you to create a place for fairness in our legal system.

Courts need you to create a place for fairness in our legal system.

**POLL**

Can you trust these institutions to do what is right for you or your community all or almost all of the time?

- **Doctors**: 59%
- **Local Hospitals**: 56%
- **Local Schools**: 46%
- **The Health Care System**: 44%
- **The Police**: 30%
- **The Courts**: 25%
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Courts need you to create a place for fairness in our legal system.
Our clients need you to create a place for fairness in our legal system.

Courts need you to create a place for fairness in our legal system.

**POLL**
Can you trust these institutions to do what is right for you or your community all or almost all of the time?

- Doctors: 78%
- Local hospitals: 70%
- Local schools: 57%
- The health care system: 55%
- The police: 72%
- The courts: 46%
Our clients need you to create a place for fairness in our legal system.

Courts need you to create a place for fairness in our legal system.
equitable standing

equitable waste

unclean hands

*Equity*
Let’s ask people who want to be judges better questions.
Let’s ask people who want to be judges better questions.

We should insist that individuals aspiring to be judges answer questions about their approaches to, for example:

- incorporating equitable principles into their jurisprudence;
- explaining their understanding and experience of systemic racism;
- articulating how equitable principles and their understanding of systemic racism might affect the way they run their courtrooms, award default judgments (including post-judgment interest), expunge (either upon motion or sua sponte) an eviction from a homereenter’s record, or allow landlords to evict people who cannot pay rent.
Let’s ask people who want to be judges better questions.
Let’s ask people who want to be judges better questions.

Local judicial races are:
- 🔑 important
- 🎉 local (winnable)
- 🤷 low-information
- 😵 no longer constrained by “judicial ethics”
Let’s ask people who want to be judges better questions.

A judicial survey about equity and racism and their effects on a candidate’s worldview and court administration would serve two purposes:

- provide information in low-information races
- educate candidates about equity and the community’s expectation that they will incorporate equitable principles into all aspects of their work