

## Helping the Client and Changing the System

### The Racial Disparities Project

#### Seattle, Washington

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Picture this: a Seattle jail, where a man sits infuriated by the racial injustice of the criminal justice system; a beautiful island, where public defenders discuss their plans for the upcoming year. Although the settings seem radically different, the Racial Disparities Project's attack on the drug war began in both of these places.

Alfred "Keith" Johnson was charged with drug trafficking again and was facing 12 years in prison. He had successfully rejected two public

defenders and was about to meet the third appointed counsel. Keith wanted something fundamentally different from the usual defense. He

wanted a counsel who was not afraid to help him challenge the racism of the criminal justice system. His two prior court-appointed attorneys refused. Kay-C Lee was appointed as his conflict defender, and the first thing Keith said to Kay-C was, "If you don't want to discuss racial injustice, go away. I don't want to talk to you."

Kay-C did want to discuss racial injustice, due to her own experiences. She was a public defender who was working solely on felony drug cases. Except for the rare, minor cases involving ecstasy or methamphetamine, Kay-C's client were also solely African-American and Latino. Most were in cases involving less than 0.2 gram of

drugs and seven to fourteen years of jail time.

Kay-C was intrigued by Keith's personal research about who was being arrested on drug charges. Despite her full caseload, she started to conduct some research of her own in her spare time. She talked to reporters, university students and researchers and compiled court records and defender agency statistics on drug offenders.

Earlier, the members of the Racial Disparities Project (RDP) of the Seattle-

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King County Defender Association were on their annual retreat, on Decatur Island in the San Juan island group.

Decatur Island is a private property

owned by a consortium of residents who share the island's waters, beaches, lakes, madrona forests, and a handful of vehicles for communal use, as no privately owned motor vehicle is allowed. In this relaxed setting, the defenders could throw out any idea, preposterous or not, about how to use the resources of the project to attack the criminal justice system's racial disparities. At the retreat, the RDP decided they needed to study the Seattle Police Department's drug enforcement practices.

Shortly afterwards, Kay-C called Lisa Dugaard, one of the RDP's founding members, to try to get some data on race bias for Keith. Lisa didn't call back.

Instead, Lisa went to the courtroom and approached Kay-C after one of her trials. Lisa offered Kay-C an opportunity to have a smaller caseload and devote most of her time to challenge the unfairness of the system. Lisa could make this rare offer only because of the funding and commitment provided through the Racial Disparities Project.

### **The History of The Racial Disparities Project**

The Racial Disparities Project began in 1999 by challenging the vehicle impoundment of drivers charged with driving with a suspended license. The police had a policy to impound a vehicle if the driver of the car had a suspended license, which often resulted from an inability to pay traffic fines. This policy disproportionately affected the poor and minorities, and African-Americans were 40% of those charged with driving with a suspended license. The RDP attorneys won a decision holding that police officers must attempt to find a licensed driver to drive the car away before impounding the vehicle. The lawsuit also succeeded in starting a public debate about the practice.

The RDP started with private grants from the Arthur Liman Foundation at Yale Law School and the Unitarian Universalist Funding Program. Later, the project received a federal grant. Although the federal grant allowed for a reduced caseload for some attorneys, Lisa stresses that federal money is not necessary for a project like this.

"Some degree of caseload reduction for key staff is important to be able to focus on proactive collaboration with clients and community partners to pursue structural change. However,

there may be ways other than securing grant funding to arrange for caseload relief," says Lisa. For example, attorneys may be willing to assume slightly higher case assignments if they are involved in selecting the applicant and project. Lisa adds that an organization is more likely to receive grant funding if the project has connections to issues broader than just the criminal justice system.

Three attorneys, Lisa, Kay-C (who replaced Song Richardson) and Leo Hamaji, work part-time on the Racial Disparities Project, equaling the caseload of one full time employee. The flexibility of the project has allowed the attorney who has a special interest in the project to take a larger role in that project. Lisa worked almost full-time on the license suspension project, while Kay-C is the primary attorney challenging the Seattle Police Department's drug enforcement policies.

Although one attorney usually takes a primary role, each member works closely together, consulting several times a day. The attorneys and interns meet weekly to assess progress and make assignments. Once a month, the attorneys meet with Defender Association Director, Bob Boruchowitz, to review priorities and establish timelines.

"Our ability to move forward on numerous issues at once is largely due to the involvement of several remarkable legal interns at any one time," adds Lisa. The newest project of the RDP will be challenging mandatory fines to indigent defendants in felony cases. Two RDP legal interns, Paul Marvy and Jill Simmons of University of Washington Law School, will argue the motions.

The RDP also benefits other public defenders both inside and outside the

Seattle-King County Defender Association. They develop pleadings and strategies that are available for use by other lawyers. They spread the information first to other organizations in Seattle, then throughout King County, and finally state-wide. The RDP also has assumed primary responsibility for raising & litigating certain issues in cases handled by other lawyers in the Defender Association.

Lisa says working for the RDP has been an invigorating experience. "The regular work of the defender is our core mission, and keeps the RDP grounded in what is actually happening to our clients. While the RDP allows us to do more than simply react to structural bias one case at a time, getting to use both approaches at once makes it a joy to come to work each day."

### Challenging In The Courts

Kay- C and the Racial Disparities Project collaborated with other area public defenders and private counsel in order to create a city-wide issue. They won the right to consolidate their clients' cases, and brought together nineteen people who were facing a combined 177 years in prison for an alleged amount of six grams of drug with a total dollar amount of 600 dollars. For comparison, one plain M&M weighs one gram.

Knowing that it was difficult to bring a discrimination claim under court rules, and knowing that there was a lack of quantitative and qualitative data on the issue, the RDP spent hundreds of hours

preparing their brief requesting discovery. Researchers at the Kennedy School of Government at Harvard agreed to conduct a study of whether discretionary decisions by the Seattle Police Department might be contributing to the racial disparity in arrest rates. The graduate student researchers spent most of an academic year interviewing officers on the police force and comparing statistics from the department's narcotic operations with drug use data.

In the discovery brief, the RDP argued that the police's actions were illegal under both the federal and Washington constitutions. The Kennedy School report demonstrates that 57% of drug-use arrests are African-American, while only 5-7% of drug users are African-American. The brief argues that this disparity is evidence of discrimination.

The brief details how the police department's buy-bust operations cause this disparity. The undercover officers have discretion in whom they choose to attempt to persuade into selling drugs. The police target certain neighborhoods

where the police they know that the buyers and sellers of drugs will be predominantly poor African-American and Latino addicts. Because of these reasons and others, African-Americans

constituted 73% of those arrested in buy-bust operations in one downtown area, where, according to police officers, undercover "buy-and-bust" arrests were like "shooting fish in a barrel." The interviews conducted by the Kennedy School researchers show that many of

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the officers were aware of the disparate effect, but ignored it and continued their practices.

The harshness of this disparity is increased by the broad interpretation of "dealing" and "trafficking" offenses. Simply telling an undercover officer where he can buy drugs can label a person as a dealer. If a person is arrested as a dealer, then that person is not eligible for treatment, regardless of the amount of drugs in question. Keith, like many others charged with drug dealing in a buy-bust sting, has never had any treatment for his addiction problems.

In earlier cases, defendants were unable to show intentional discrimination and were denied discovery. Because of the extensive research and dedication of the RDP, the court granted discovery and forced the Seattle Police Department to produce thousands of documents.

### **Working Outside The Court**

Collaborating with the community is also one of the main strengths of the RDP. The RDP is working with Justice Passage and People's Coalition for Justice to advocate for fair drug laws and enforcement practices. Kay-C

communicates with the public through a weekly cable access program, which will continue throughout the litigation process. An intern is also working with Kay-C to create a documentary about the project and the lives of some of the consolidated clients.

Kay-C frequently meets with the clients who are not in custody to maintain contact and help provide any needed services. "All of these people are emblems of a lack of rehabilitation and social services," says Kay-C.

Keith, like the twelve other defendants still involved in the case, is waiting out the ruling of the case. Kay-C worked with the judge to have him released on the condition that Alfred would find work and a clean house. Keith is a carpenter. He has relocated to Michigan under the court's supervision in order to find work and be closer to his family's support. Keith lives in a modest but squeaky clean suburban home, drives a used Ford, works, and regularly visits with his mother, daughter, and grandchildren. Now it is the court's decision whether he will continue to be a working, recovering member of society or spend 12 years behind bars because he was an addict with the wrong color of skin.

*For more information, see:  
The Defender Association Website  
[www.defender.org](http://www.defender.org)*

*Also, if you have information or comments that could help the Racial Disparity Project, please contact Kay-C Lee at [kcatcanal@hotmail.com](mailto:kcatcanal@hotmail.com)*