

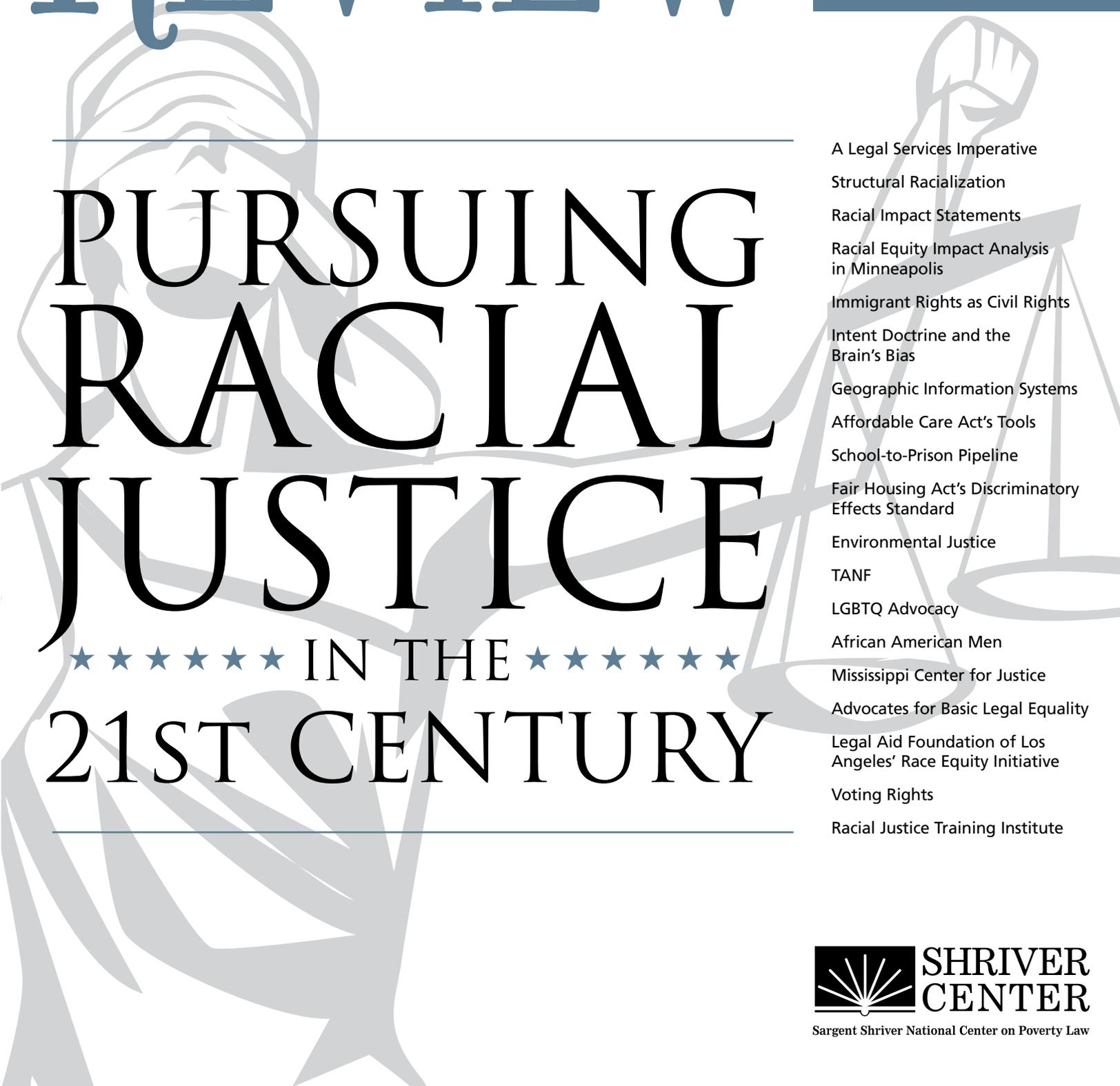
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PURSUING RACIAL JUSTICE

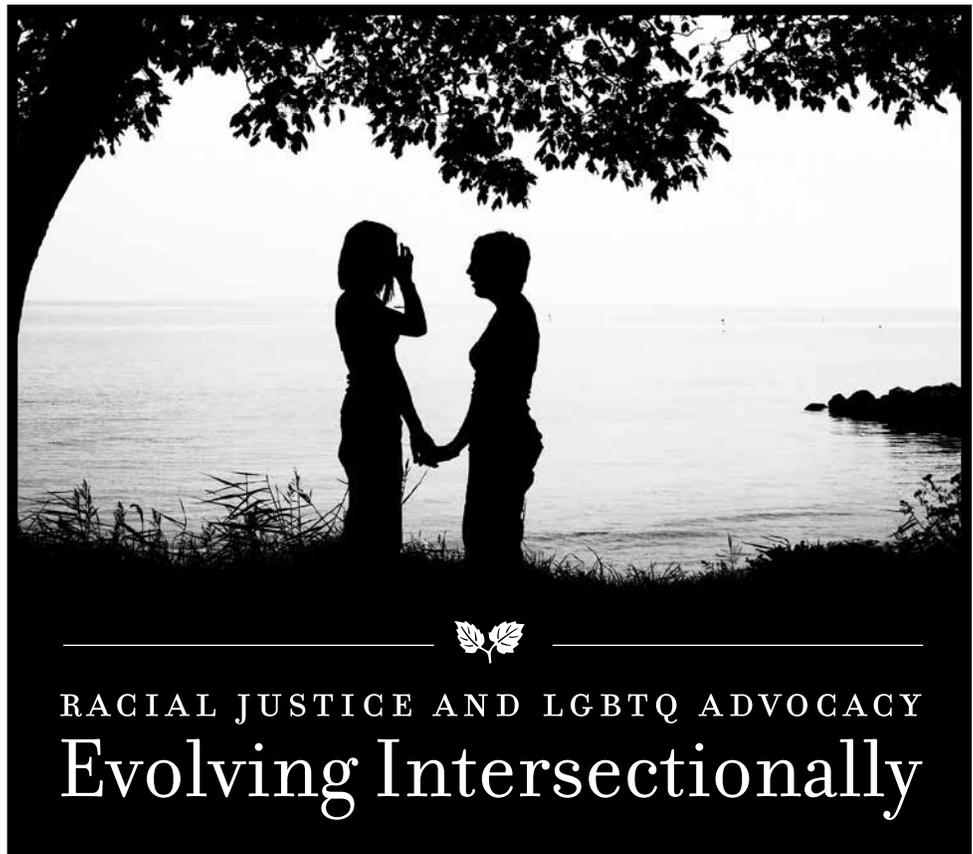
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21ST CENTURY



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Sargent Shriver National Center on Poverty Law



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Nando, 15, is staring out the window as he sits in the back of a police car for the first time.¹ On his way to juvenile detention he is overwhelmed by a flurry of emotions. He feels demoralized by the dismissive and abusive language that the arresting officer is hurling at him. He resents the situation that forced him to seek shelter in an abandoned home, and, although his face may not show it, he is terrified of what juvenile detention will be like. Nando knows his parents are not likely to care. Before Nando's father kicked him out of their home, Nando's father said:

Te lo dije. Por qué tienes que ser así? Tu mamá no quiere tener nada que ver contigo. Tu eres la única persona en esta familia que es gay (I told you. Why do you have to be like this? Your mom does not want anything to do with you. You are the only person in this family who is gay).

As for so many other young people of color involved with the juvenile justice system, Nando's story is not how it appears on the surface. He is confronting barriers unique not only to young people of color but also to young lesbian, gay, bisexual, transgender, and queer (LGBTQ) people. Too often, the police and other figures in the juvenile justice system are unaware of or insensitive to LGBTQ young people of color being homeless due to family conflict. They are truant for lack of stable housing, and this puts them at higher risk for juvenile justice involvement.² Nando and his cohorts need and deserve services and treatment that take into account that they live at the complex intersection of race, ethnicity, and sexual and gender identities.

Racial justice as a scholarly concept, societal practice, and aspiration has evolved and continues to evolve along with the nation's demographic complexion. This has meant a shift from the need for diversity—understood in terms of racial and ethnic representa-

¹Nando is a fictional character based on stories derived from our lesbian, gay, bisexual, transgender, and queer (LGBTQ) research. Nando's story does not depict real people or events.

²FERCE, *Coming Out, Stepping Up: Organizing to Build the Power of LGBTQ Youth* (Jan. 2010), <http://bit.ly/14a2gXj>.

tion—to an increasing call for racial equity or a just outcome for all. For racial justice proponents, incremental increases in representation across race and ethnicity are not the same as institutional policies and practices that ensure fair treatment across race and ethnicity.

As with racial justice, LGBTQ advocacy has evolved from the need for tolerance—embodied by the Clinton-era federal military policy of “Don’t ask, don’t tell”—to an increasing demand for acceptance. Full acceptance does not begin or end with legislation or advocacy for marriage equality. In fact, for most LGBTQ people of color, marriage equality is not an issue that they have the opportunity to consider. LGBTQ advocacy must encompass institutions, policies, and practices to ensure just treatment around sexual orientation, gender identity, and gender expression.

Intersectionality, coined by Kimberlé Crenshaw, states that people experience multiple forms of oppression based upon their multiple identities—such as race, sexual orientation, gender identity, gender expression, age, ability, immigration status, and geographic location—as well as their multiple experiences with the juvenile and criminal justice systems, the child welfare system, unemployment, homelessness, and violence.³ LGBTQ people of color and their advocacy work are gaining visibility every day through grassroots organizing, collaborations among stakeholders, and lobbying in state and federal legislatures.⁴ Young people of color are identifying themselves as LGBTQ at higher rates.⁵ Thus the increased demand for services and for advocacy and policy changes to meet their needs. The need for an intersectional

approach, which understands that they—however visible or invisible—exist and face barriers beyond race and have unique needs, is clear.⁶ To reduce racial disparities and promote equal justice for them, we must centralize LGBTQ advocacy within racial justice, and vice versa.

Such an approach could be applied at numerous points from arrest, to adjudication, to reentry. For example, when Nando begins to fill out paperwork at intake—including contact information—he is asked to answer a series of demographic questions that do not mention his sexual orientation. Research data on LGBTQ people of color involved with the juvenile justice system are limited because demographic questions on sexual orientation, gender identity, and gender expression are not asked. Measuring impact is nearly impossible and developing appropriate solutions extremely challenging without such data. However, we can build upon certain foundations.

The 1974 Juvenile Justice Delinquency and Prevention Act, which provided standards for state and local juvenile justice systems, was amended in 1992 to include a clause requiring states to correct the disproportionate representation of youth of color in the juvenile justice system.⁷ However, this clause does not mention the disproportionate representation of LGBTQ youth of color in the juvenile justice system.

In the first national study to ask demographic questions about sexual orientation, gender identity, and gender expression of youth in juvenile detention, 15 percent of youths surveyed disclosed a lesbian, gay, bisexual, or gender nonconforming (GNC) identity.⁸ LGB and GNC

³Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 *STANFORD LAW REVIEW* 1245 (1991).

⁴Darren Arquero et al., Applied Research Center, *Better Together in the South: Building Movements Across Race, Gender, and Sexual Orientation* (June 2013), <http://bit.ly/1bFB7PR>.

⁵Jorge Rivas, *New Poll Shows More Young, Poor People of Color Identify as LGBT*, *COLORLINES* (Oct. 19, 2012), <http://bit.ly/147YrSd>.

⁶Southerners on New Ground, *Building a Political Home Across Race, Class, Culture, Gender, and Sexuality: Virginia Key Findings Report* (2012), <http://bit.ly/14XBimB>.

⁷Juvenile Justice and Delinquency Prevention Act of 1974 § 5633(a)(22), 42 U.S.C. §§ 5601–5785; Campaign for Youth Justice, *Juvenile Justice and Delinquency Prevention Act (JJPA) Background Information* (n.d.), <http://bit.ly/1cjceql>.

⁸Angela Irvine, *We’ve Had Three of Them: Addressing the Invisibility of Lesbian, Gay, Bisexual, and Gender Non-Conforming Youth in the Juvenile Justice System*, 19 *COLUMBIA JOURNAL OF GENDER AND LAW* 676–77 (2010).

youths are twice as likely as straight and gender conforming youths to be held in juvenile detention for (1) running away from home or placements due to rejection and lack of emotional and physical safety, (2) prostitution, often engaged in as a survival strategy, and (3) status offenses (including truancy) due to bias they endure at school and violations of probation for lack of an affirming environment from probation staffers who display biased attitude and behavior.

An increasing number of jurisdictions nationally are implementing nondiscrimination policies at their juvenile detention facilities.⁹ These policies are intended to ensure an environment that is free of harassment and discrimination; the policies recommend that juvenile justice professionals (judges, defense attorneys, prosecutors, probation officers, and detention staffers) receive culturally responsive training on the intersection of identities and experiences. The policies cover appropriate youth placements, preferred names and preferred gender pronouns, and medical and mental health care.¹⁰

Through an intersectional lens and a shift in awareness of the experiences of LGBTQ youths of color, who are disproportionately represented in the juvenile justice system, we can begin to adjust our behavior and meet their needs. Nando's public defender should recommend a program that serves him and his cohorts more effectively than such traditional detention alternatives as day and evening reporting centers. Ideal programs should offer culturally responsive services that are institutionally supported.

Securing employment, which will probably be another term of Nando's probation, comes with its own barriers. Title VII of the Civil Rights Act prohibits discrimination based on race, color, religion, sex, and national origin, but it does not prohibit discrimination based on sexual orientation, gender identity, and gender expression.¹¹ The Employment Non-Discrimination Act of 2013 would prohibit discrimination based on sexual orientation and gender identity.¹² The Employment Non-Discrimination Act is necessary legislation to help LGBTQ people of color obtain and retain just employment opportunities.¹³

Nando will likely encounter discrimination based on his race and sexual orientation as he seeks employment, and his transgender peers will encounter up to two to three times the rates of discrimination in the workplace—discrimination in hiring practices, job losses, denial of promotions, unemployment and underemployment as well as direct mistreatment, harassment, and physical and sexual assaults.¹⁴ LGBTQ people of color face discrimination and bias during hiring and recruitment if they disclose their sexual orientation or gender identity, face an unfair and unequal workplace environment where hate speech is condoned and not prohibited, and face wage disparities that put them at higher risk of poverty.¹⁵ Economic security remains out of reach for LGBTQ people of color without access to just employment; recidivism edges ever closer.

Involvement in the juvenile justice system and employment discrimination are only two of the myriad problems

⁹KATAYOON MAID ET AL., HIDDEN INJUSTICE: LESBIAN, GAY, BISEXUAL, AND TRANSGENDER YOUTH IN JUVENILE COURTS 137–38 (Fall 2009), <http://bit.ly/14xll4u>.

¹⁰*Id.* at 159–64.

¹¹Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq.; U.S. Equal Employment Opportunity Commission, Title VII of the Civil Rights Act of 1964 (n.d.), <http://1.usa.gov/1aelTBa>.

¹²Employment Non-Discrimination Act of 2013, H.R. 1755, 113th Congress (2013), <http://bit.ly/12kh19T>.

¹³Imara Jones, *Marriage Is Great, but Many LGBTQ People of Color Need Job Safety*, COLORLINES (April 11, 2013), <http://bit.ly/138wYTS>.

¹⁴JAIME M. GRANT ET AL., NATIONAL CENTER FOR TRANSGENDER EQUALITY & NATIONAL GAY AND LESBIAN TASKFORCE, INJUSTICE AT EVERY TURN: A REPORT OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY 50–69 (2011), http://bit.ly/ncte_discrim.

¹⁵MOVEMENT ADVANCEMENT PROJECT ET AL., A BROKEN BARGAIN: DISCRIMINATION, FEWER BENEFITS AND MORE TAXES FOR LGBT WORKERS (June 2013), <http://bit.ly/14xq5an>.

assailing LGBTQ people of color, and even these two are obscured by our current narrow preoccupation with marriage equality. Important as they are, the 2013 U.S. Supreme Court decisions declaring key portions of the Defense of Marriage Act unconstitutional and dismissing a state supreme court appeal of California's same-sex marriage-banning

Proposition 8 provide little relief to millions of youth, in particular. Nando and his cohorts deserve equitable treatment and full acceptance.¹⁶ Racial justice and LGBTQ advocacy begin with the radical recognition that LGBTQ people of color exist. Their identity must be made visible through policy and advocacy that consider their intersectional circumstances.

¹⁶*United States v. Windsor*, No. 12-63, 2013 U.S. LEXIS 4935 (U.S. June 26, 2013), <http://1.usa.gov/12DjAVn>; *Hollingsworth v. Perry*, No. 12-144, 2013 U.S. LEXIS 4919 (U.S. June 26, 2013), <http://1.usa.gov/10Yjkiq>.



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