WASHINGTON
COURTS
ADMINISTRATIVE OFFICE OF THE COURTS

WASHINGTON STATE SUPREME COURT

GENDER AND JUSTICE COMMISSION

MEETING

FRIDAY, MAY 9, 2014

AOC SEATAC OFFICE
SEATAC, WASHINGTON

WASHINGTON STATE SUPREME COURT
GENDER AND JUSTICE COMMISSION

2013-2014

CHAIR
Honorable Barbara A. Madsen
Washington State Supreme Court

VICE-CHAIR
Honorable Ruth Gordon
Jefferson County Clerk

MEMBERS

Ms. Sara L. Ainsworth
University of Washington School of Law

Ms. CaroLea Casas
Student Liaison
University of Puget Sound

Ms. Mirta Laura Contreras
NW Immigrant Rights Project

Honorable Michael H. Evans
Cowlitz County Superior Court

Dr. Margaret Hobart
The Northwest Network

Honorable Judy Rae Jasprica
Pierce County District Court

Ms. LaTricia Kinlow
Tukwila Municipal Court

Professor Taryn Lindhorst
University of Washington

Ms. Judith A. Lonnquist, P.S.
Attorney at Law

Honorable Eric Z. Lucas
Snohomish County Superior Court

Honorable Rich Melnick
Clark County Superior Court

Mr. Ronald E. Miles
Spokane County Superior Court

Honorable Marilyn G. Paja
Kitsap County District Court

Honorable Mark W. Pouley
Swinomish Tribal Court

Ms. Leslie J. Savina
Northwest Justice Project

Honorable Ann Schindler
Court of Appeals Division I

Ms. Gail Stone
King County Executive's Office

Honorable Tom Tremaine
Kalispel Tribal Court

Mr. David Ward
Legal Voice

Staff
Ms. Danielle Pugh-Markie
Supreme Court Commissions Manager

Ms. Pam Dittman
Program Coordinator

WASHINGTON COURTS

GENDER AND JUSTICE COMMISSION

AOC SEATAC OFFICE – SUITE 1106
18000 INTERNATIONAL BLVD, SEATAC WA
FRIDAY, MAY 9, 2014 (8:45 A.M. – 12:00 P.M.)
CHIEF JUSTICE BARBARA MADSEN, CHAIR
HONORABLE RUTH GORDON, VICE CHAIR

Gender and Justice Commission (GJCOM)

Friday, March 14, 2014, (9:30 a.m. – 12:00 p.m.)
Temple of Justice
Olympia, Washington

MEETING NOTES

Members Present: Chief Justice Barbara A. Madsen, Chair; Ms. Ruth Gordon, Vice-Chair; Judge Michael Evans, Judge Judy Jasprica, Professor Taryn Lindhorst, Judge Eric Lucas, Judge Richard Melnick, Judge Mark Pouley, Ms. Leslie Savina, Judge Ann Schindler Ms. Gail Stone, Judge Tom Tremaine, Mr. David Ward, Ms. Danielle Pugh-Markie (AOC staff), and Ms. Pam Dittman (AOC staff)

Guests: Justice Bobbe Bridge, Retired, Ms. Jessica Birklid, Ms. CaroLea Casas, Ms. Claire Czajkowski, Ms. Callie Dietz, Ms. Trish Kinlow (via phone), Justice Sheryl Gordon McCloud, Justice Susan Owens

Members Absent: Ms. Sara Ainsworth, Ms. Laura Contreras, Dr. Margaret Hobart, Ms. Judith A. Lonnquist, Mr. Ron Miles, Judge Marilyn Paja,

CALL TO ORDER

The meeting was called to order at approximately 9:55 a.m. Introductions were made. The January 10, 2014 meeting notes were approved.

COMMISSION BUSINESS

CHAIR REPORT

New Member

Ms. Trish Kinlow, Court Administrator, Tukwila Municipal Court, will be joining the Commission as a new member.

Informed Voter Project – Video

The National Association of Women Judges launched its Informed Voter Project (IVP) in 2013. The IVP is a "non-partisan voter education project developed to increase public awareness about the judicial system, to inform voters that politics and special interest attacks have no place in the courts, and to give voters the tools they need to exercise an informed vote in favor of fair and impartial courts." As part of the project, the short film "Fair & Free" featuring former United States Supreme Court Justice Sandra Day O'Connor was developed and released. News clips are being developed with Justice O'Connor. Additionally, Washington State is one of eight states who signed on to be part of a pilot project promoting the Project. A link to the video will be added to the Commission's webpage or can be found on the National Association of Women Judges Web site at www.nawj.org.

Action

AOC Staff – Lorrie Thompson will repost the video link on the Washington Courts Facebook page and also send via Twitter.
Commission Staff – Have link posted to Commission website.
Several Commission members indicated they would send the link out via Twitter.

Board for Judicial Administration (BJA) Letter to Commissions
In 2012, the BJA formed the Committee Unification Workgroup which was to look at all committees across the Administrative Office of the Courts (AOC), the Associations, and the Commissions. The Workgroups purpose was to make recommendations to reduce confusion and duplication of efforts associated with the myriad of committees, boards, and commissions. The Workgroup released its findings in October 2013, and noted there were approximately 205 committees supported and managed by AOC and its staff.

In 2014, the BJA released a letter to the Commissions asking for their assistance. Recognizing limited AOC staff and resources, the letter outlines a process to help identify and review committees which may include consolidating or eliminating duplicative committees.

Action
Commission staff will compile the information and work requested and remit to the BJA by June 2014.

2011-2013 Annual Report
The 2011-2013 Gender & Justice Commission Annual Report has been completed. Thanks to Ruth, Pam, and Danielle for writing and designing the report. The reports showcase the important work the Commission and its members accomplish. Copies will be printed and sent to legislators, past and present Commission members, and other interested parties.

Action
Commission Staff – Review again. Post to Commission webpage.
Commission Members – Provide any names and addresses of interested parties to AOC staff that you believe should receive a copy of the report.

Representative Roger Goodman – Domestic Violence Prevention Commission
During the last session, Representative Goodman discussed the possibility of introducing a bill that would create a new domestic violence prevention commission. The Chief met with Representative Goodman to discuss the work the Gender & Justice Commission does and how it may be able to fill the role or expand its role to include prevention issues. The Chief was able to meet with First Lady Trudi Inslee to discuss her interest in domestic violence and prevention issues. Representative Goodman chose to not introduce the bill this session and agreed to continue the discussion with the Chief.

Luncheon Agenda
As part of National Women's History Month, the Commission is hosting a luncheon beginning at 12:30 p.m. in the Chief's Reception Room. We need to adjourn the Commission meeting no later than noon to set-up for the Legislative Luncheon. We have provided a copy of the luncheon agenda and encourage you to speak with the legislators assigned to your table. We will take the opportunity to showcase the work the Commission has done on legislative issues and where continued assistance is needed such as funding for an update to the 1989 Gender Bias Study.

STAFF REPORT

Activities
Danielle Pugh-Markie reported that all Commissions (Interpreter, Minority & Justice, and Gender & Justice) are now back to full staff since Cynthia Delostrinos has returned from maternity leave. Staff include: Danielle as manager over all three Commissions; Cynthia Delostrinos as main support for the Minority & Justice Commission; Bob Lichtenburg and Tina Williamson as support for the Interpreter Commission; Pam Dittman continuing as support of the Gender & Justice Commission and all STOP grant related activities, and Paula Malleck-Odegaard, AOC support staff to all three commissions.

In January, Danielle and Pam travelled to Texas for New Grantee Orientation as a requirement of the Office on Violence Against Women Courts Training and Improvement grant received to create a sexual assault curriculum for judicial officers and implement training on both sides of the state. Upon return, staff attended the 2014 Judicial College as each Commission sponsored sessions relevant to their Commission and mission.

Action
Commission staff will be meeting with AOC education staff to discuss the continued involvement and possible expansion of the sessions. Staff will also meet with faculty later in the year to discuss the sessions.

GJC and STOP Grant Budgets
STOP is a grant program from the Office of Violence Against Women. STOP stands for Services, Training Officers, and Prosecutors. The AOC works with the state Department of Commerce who receives and manages the statewide STOP grant. The AOC receives the five-percent set-aside for courts and manages the funds through the Commission. Yearly, we receive between $100,000 to $125,000 to support domestic violence, sexual assault, teen dating violence, and stalking efforts, and project including paying for staff support. These grants run on a federal fiscal year (FFY). Presently, we have grants for FFY11, FFY12, and FFY13 running consecutively. The FFY11 and FFY12 grants expire on May 31, 2014, and the FFY13 grant expires on December 31, 2014.

FFY11 has been spent and the grant closed leaving funds to be expended from FFY12 and FFY13 grants.

Commission members approved to fund:

- Judicial Training – Provide scholarships to judicial officers to attend Enhancing Judicial Skills in DV Cases. Ten judicial officers have requested to attend the training and we will support their travel and pro tem costs.
- Safe Havens Training – Provide scholarships to court teams to attend this training on supervised visitation. A team from Thurston County Family Court is attending. Scholarships will cover travel-related and pro tem costs.
- Support Professor Franks to: 1) present at SCJA conference, 2) meet with legislators regarding revenge porn legislation, and 3) present at a community meeting. Funds will support travel-related costs and meeting space. *(David Ward and Judge Melnick are interested in assisting with these three items.)*
- Support a stakeholders meeting to bring together judicial officers and national experts to develop the judicial officer sexual assault training curriculum. Funds will support facilities and travel-related and pro tem costs. *(Judges Melnick and Lucas are interested in participating in this meeting.)*
- Support three, one-day trainings for interpreters on how to interpret in domestic violence and sexual assault cases. Funds will support facilities and travel-related costs.
- Courthouse Facilitator Training – We received a proposal from Janet Skreen and Cindy Bricker, AOC, to support sending courthouse facilitators to the May 12-13 Children's Justice Conference in Spokane. This program is sponsored and developed by Department of Social and Health Services (DSHS). The proposal indicates the sessions that link directly to the purpose of STOP grant funds. Funds will support travel-related costs.
- Support judicial officers to attend the National Council of Juvenile and Family Court Judges' Annual Conference which is being held in July in Chicago. There is a track devoted to domestic violence. Funds would support travel-related and pro tem costs.

- Judicial Training – Provide scholarships to judicial officers to attend Continuing Judicial Skills in DV Cases. The training is in June in Chicago.
- Other ideas:
  - Presenters at Superior Court Judges' Association (SCJA) Spring Conference, District and Municipal Court Judges' Association (DMCJA) Spring Conference, and Fall Conference – To be determined when/if proposals are accepted.
  - Continued Legal Education (CLE) for attorneys if allowed under the grant
  - Regional training focusing on the curriculum the Commission and the National Council of Juvenile and Family Court Judges developed addressing domestic violence and family court issues.
  - Support the King County Annual DV Symposium. Funds to be used for covering pro tem costs for judicial officers who attend.
  - Update the Sexual Orientation bench guide. Staff have been in contact with QLaw who is interested in updating this bench guide.

Action
Commission Staff:
- Provide guiding principles on Safe Havens program to Commission members.
- Check into restrictions on whether we can use STOP grant funds to train attorneys.
- Follow-up with Judge Berns, King County Superior Court, on the DV Symposium and funds for pro tem costs.

Commission Members – Please continue to provide ideas or proposals for use of funding.

GUEST SPEAKER

Commercially Sexually Exploited Children (CSEC) Collaboration

Justice Bobbe Bridge (Retired), Chair, Supreme Court Commission on Children in Foster Care, and intern Jessica Birklid provided an overview of a collaborative proposal.

A protocol was developed for dealing with cases where the child welfare system intersects with cases that present as domestic violence. Additionally, data indicates that many children being trafficked are coming from the foster care system. The proposal is to cohost a half-day training for judicial officers covering how to identify CSEC, how trafficking may present, best and promising practices, and identify and provide tools for judicial officers and communities to respond. Jessica provided a curriculum modelled from Montana.

Next steps are to gather input from the Commission on the proposed curriculum and facilitators. It was proposed to hold a small group training to see how it goes and change as necessary. We also propose to collaborate on proposals for judicial conferences.

The Commission agreed to the collaboration.

Action
Commission Staff – Continue the conversation with Justice Bridge and Jessica.
Commission Members – Please let staff know if you are interested. Judge Melnick indicated his interest during the meeting.

COMMITTEE REPORTS

- **Communications – Ruth Gordon, Chair**
  We will strive to complete annual reports yearly. The Washington Courts website has been updated. It is time to review the Commission's website and update.

> **Action**
> Commission Members – Please take a look at the Commission website by May 1, and provide Ruth and staff suggestions on what to remove and/or update.

- **Domestic Violence – Judge Judy Jasprica, Chair**
  We are continuing our work with the Center for Court Innovation (CCI) on the sentencing and monitoring project. CCI is currently looking at the survey results and data from AOC to inform us on where to conduct three site visits, which is the next phase of the project.

- **Education – Judge Rich Melnick, Chair**
  - Professor Franks will be presenting at the SCJA Spring Conference. The session is entitled "Internet Rights and Wrongs."
  - "Adverse Childhood Experiences" proposal has been accepted for Fall Conference.
  - "How Far Would You Go – Woulda, Shoulda, Coulda" was accepted for the District and Municipal Court Managers' Association (DMCMA) Conference.

  It was discussed that we should keep a "bank" of proposals that we can submit as needed. This would allow for staff and members to submit more complete proposals with learning objectives, faculty suggestions, and budget proposals. Several ideas that were put forth were abusive litigation, legal limited technicians, and family law. We need to continue to expand our training to include court staff, courthouse facilitators, pro tem judges, and commissioners.

  Proposals should include: Topic/Title; Audience; Potential Faculty; Description; Issues to be Presented; Learning Objectives; Anticipated Costs.

> **Action**
> Commission Members – If you have an idea for a proposal, please contact staff.

- **Incarcerated Women & Girls – Sara Ainsworth, Chair. Judge Evans Reported.**
  A public records request was sent to see how people were complying with the shackling requirement. The feedback was relatively positive with most county and city jails in compliance. The Committee will be submitting a more formal write-up to the Commission. Additionally, we are looking at forming a subcommittee to discuss this and other issues with some of the jails that appeared to be using shackling more often than others.

- **Legislative Report – David Ward, Chair**
  Legislature adjourned on March 13. There were 240 bills passed during the session. One of the most significant bills to pass was HB 1830 that will make fire arm restrictions mandatory when a protection order is issued. This has been true under federal law for 20 years and brings Washington State in line. Additionally, three human trafficking bills passed.

> **Action**
> Commission Staff - Follow up on HB 2196 re: concerning the use of the Judicial Information System by courts before granting certain orders. This bill did not pass. Work with the SCJA

- **Tribal State Court Consortium – Judge Tremaine and Judge Pouley**
  The Consortium will be hosting an evening session at the 2014 Fall Conference. The session will be discussing the Indian Child Welfare Act (ICWA) and the 2013 Reauthorization of VAWA and implications for tribal courts. Additionally, Judge Tremaine will be presenting at the Washington Association of County Clerks Conference in May. Judge Tremaine is currently the active President of the NW Tribal Court Judges' Association.

Action
Commission Staff – Send the meeting notes from the 2013 Fall Conference session to Commission members. Commission Members – Judge Tremaine will be sending an e-mail to tribal court judges in Washington inviting them to the evening session at Fall Conference.

- **Women in the Profession – Judith Lonnquist, Chair, Judge Schindler & Gail Stone reported.**
  The Committee has two projects. The first project is to look at gender bias in judicial evaluations. The King County Bar Association has spent years refining their judicial evaluation process and survey. The goal is to bring a judicial evaluation to the Commission and propose to use as a state-wide model. The second project is to update the 2001 Glass Ceiling Survey. We will work on this project after the judicial evaluation project has been completed.

  Members discussed that the Pierce County Bar Association will be doing the judicial evaluations for district and municipal court judges for the upcoming election, so we may want to see what tool they are using. Also, Chief Justice Faab from Alaska has a retention system and a performance evaluation with an assessment tool for judicial performance.

Commission Members – Contact Pierce County Bar Association and Justice Faab to see if they can provide a copy of judicial evaluation using.

ADJOURNED

The meeting adjourned at approximately 11:55 a.m.

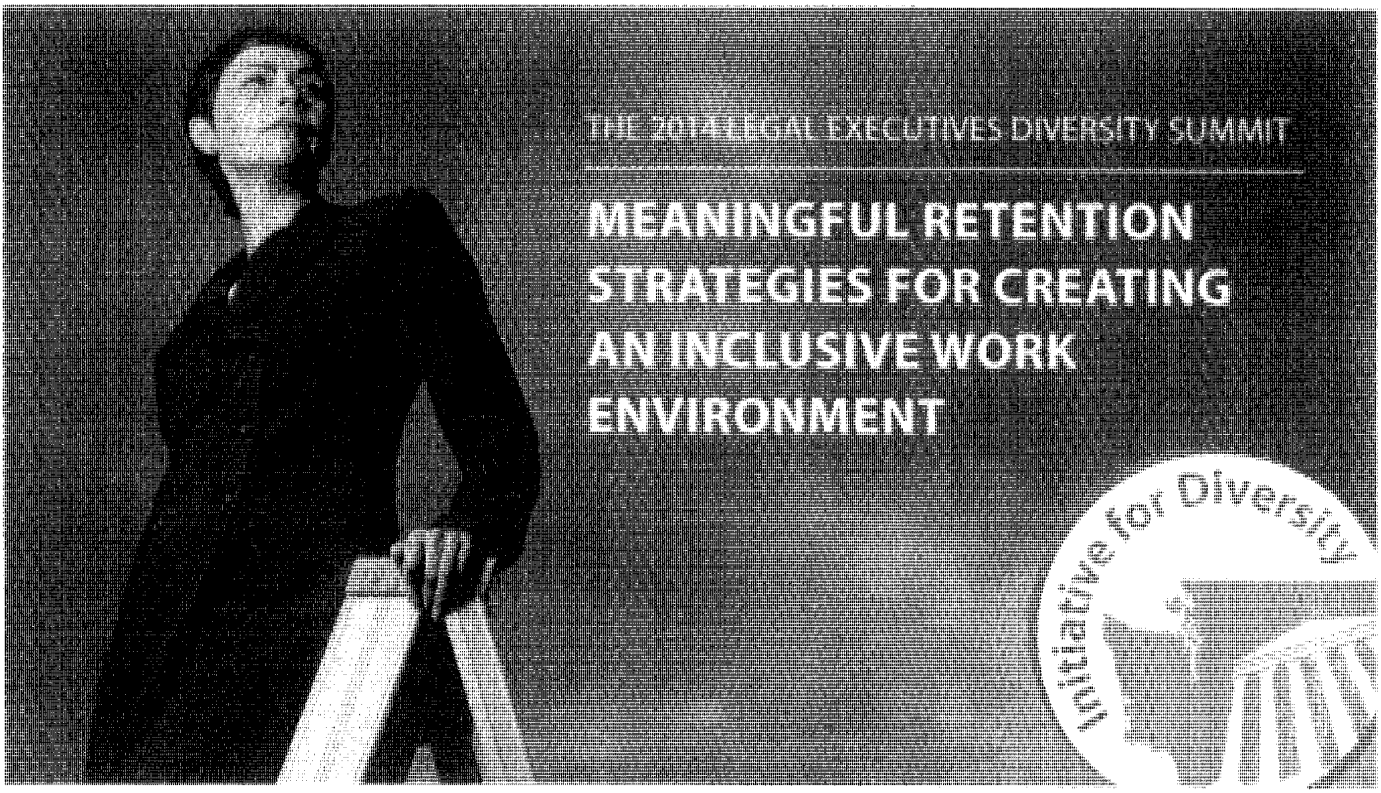
Member Term Limits

Category: Term Year is July 1 - June 30	09-10	10-11	11-12	12-13	13-14	14-15	15-16	16-17
Supreme Court								
Hon. Barbara Madsen, Chair								
Court of Appeals								
Hon. Ann Schindler	09-12			12-15				
Hon. Rich Melnick						12-15		
Trial Court Judges								
Hon. Michael Evans					13-16			
Hon. Judy Rae Jasprica				12-15				
Hon. Eric Lucas					13-16			
VACANT MUNICIPAL / Eastern WA								14-17
Hon. Marilyn Paja					13-16			
Tribal Court								
Hon. Mark Pouley				12-15				
Hon. Tom Tremaine					13-16			
Bar Associations/Attorneys								
Ms. Sara Ainsworth				12-15				
Ms. Mirta "Laura" Contrereas	09-12			12-15				
Ms. Judith A. Lonnquist, P.S.	09-12			12-15				
Ms. Leslie Savina				12-15				
Mr. David Ward			11-14					14-17
Clerk of the Courts								
Ruth Gordon	09-12			12-15				
Trial Court Administrator								
Mr. Ronald Miles**			11-14					14-17
Ms. LaTricia (Trish) Kinlow								14-17
College or University Professor								
Dr. Taryn Lindhorst					13-16			
Citizen								
Dr. Margaret Hobart			11-14					
Ms. Gail Stone				12-15				
Student Representative								
CaroLea Casas (UPS)								14-17

Updated 5.7.2014

2014 & 2015 Commission Member Recommendations

Vacant Position	Possible Appointee	Person's job	Who will follow up
2014 Vacancies			
Trial Court (1)			
	Judge Scott Ahlf	Olympia Municipal Court	
	Judge Marybeth Dingledy	Snohomish Co. Superior Court	
	Judge Michelle Gehlsen	Bothell Muni Court	
	Judge Anne Hirsch	Thurston County Superior Court	
	Judge Cameron Mitchell	Benton Franklin Superior Court	
	Judge Wesley St. Clair	King County Superior Court	
	Judge Kimberly Walden	Tukwila Municipal Court	
Clerk (1)			
2015 Upcoming Vacancies			
Trial Court (1)			
Attorney (2)			



Wednesday, May 14, 2014
8:30 a.m. to 12:00 p.m.
Cost: $150 per attendee
Ethics CLE credits pending

Davis Wright Tremaine LLP's Seattle Office
1201 Third Avenue, Suite 2200
Seattle, Washington 98101

Visit www.InitiativeForDiversityWA.org, to register for this event.

SAVE THE DATE

Join our Host Committee and other leaders from the legal community at our next Legal Executives Diversity Summit (formerly known as the Managing Partners Summit) hosted by the Washington Initiative for Diversity.

The 2014 Legal Executives Diversity Summit will focus on meaningful retention strategies that support your diverse staff, as well as strengthening their career development within your organization.

FOR QUESTIONS OR TO BECOME A SPONSOR, CONTACT

Erica Chung, Executive Director
Washington Initiative for Diversity
(206) 720-4996
director@initiativefordiversitywa.org

HOST COMMITTEE IN FORMATION

JUSTICES

Barbara Madsen
Chief Justice, Wash. State Supreme Court and Vice Chair, Wash. Initiative for Diversity

Steven González
Justice, Wash. State Supreme Court

IN-HOUSE COUNSEL

Kelly W. Clark, Vice President, General Counsel and Chief Ethics Officer, Holland America Line

James Deaile, Costco Wholesale Corporation and Chair, WSBA Corporate Counsel Section

Lucy Lee Helm, Executive Vice President, General Counsel and Secretary for Starbucks Corporation

Karen Jones, Vice President and Deputy General Counsel for HR Law, Microsoft

Bradley Tonev, United Online/Classmates Media Corp and President, Wash. Chapter, Association of Corporate Counsel

LAW FIRM PARTNERS

Robert A. Stackstone, Partner-in-Charge, Davis Wright Tremaine LLP

Melanie K Curtice, Managing Partner Stoel Rives LLP

Phillip Guess, Managing Partner K&L Gates LLP

Portia Moore, Partner and Diversity Chair, Davis Wright Tremaine LLP

Kelly Twiss Noonan, Managing Shareholder Stokes Lawrence LLP

Staff activities & Collaborations
March 14, 2014 – May 9, 2014

- GJCOM
    - Hosted April 25th Sexual Assault Judicial Curriculum Planning Meeting – about 40 people representing state and tribal judiciary, law enforcement, defense bar, prosecutor, advocacy, and military were in attendance.
    - Sponsored Professor Mary Anne Franks at the Superior Court Judges Conference on April 28th
    - Hosted April 30th community event with presenter Professor Franks in Red Lion Hotel in Olympia. Followed by a meeting on improving nonconsensual pornography legislation
    - Planned May 15-17, 2014 Interpreting for Victims of Domestic Violence and Sexual Assault Cases
    - Worked with Women Spirit re: October 23-24, 2014 conference
    - Developed and disseminated pro tem needs assessment survey for upcoming training in September for the DMCJA Diversity Committee
    - Worked on educational session for upcoming DMCMA conference
    - Collaborated with HR on Workplace Violence Training for the Temple staff on June 2nd

- MJCOM
    - May 20th Supreme Court Symposium
    - June 16th Press release for Perception of Justice Study
    - October 10th Courts Igniting Change Conference
    - Began to plan for Plenary at Fall conference – Race the Power of Illusion

- Interpreter Commission
    - May 15-17, 2014 Interpreting for Victims of DV and SA Cases (Seattle, SeaTac, Spokane)
    - Discussion on sharing resources for interpreters in tribal courts
    - Worked on the budget for next biennium
    - Exploring video remote interpreting for the courts

Paula will be out of the office on medical leave from May 19, 2104 – June 23, 2014

Gender & Justice Commission Budget
July 1, 2013 thru June 30, 2014

		Spent as of March 31, 2014	Projected**	
Beginning Balance	**$150,000**			
Salaries & Wages		$41,563	$76,210	
Benefits		$11,234	$24,250	
Other Professional Services*		$0	$12,500	
Goods & Services		$2,013	$18,000	
Travel		$10,416	$15,000	
Totals	**$150,000**	**$65,226**	**$145,960**	
Non-allocated funds				**$4,040**

****Projected** The projected amounts include projections for normal day-to-day business operations such as printing, communications, staff-related activities AND other Commission approved set-asides

Salaries & Wages, Benefits The salaries/wages/benefits are projected through Finance based upon the positions, any upcoming salary or COLA increases, and current benefit rates.

Covers 1.0 FTE - Supreme Court Commissions Coordinator and .3 FTE Program Coordinator

Professional Services Covers contracts for items such as honorariums, etc.

Sponsorship - OCLA Civil Legal Needs Study	$12,500

Goods & Services Covers supplies & materials, communications ((including conference calls & postage), printing, registration fees for conferences, meeting room rentals, pro tem charges, etc.)

Other Commission approved set-asides included in "Projected".	
Contract - TVW Myths Video	$1,500
April 25 - SA Judicial Curriculum Planning Meeting	$1,350
April 30 - Protecting Sexual Privacy Event & Discussion	$1,100
May 15-17 - Interpreting in DV & SA Cases	$2,000
May 22-23 - Juvenile Justice Reform Summit	$5,850
June 2 - Workplace Violence Training at the Temple	$1,500
Printing & Mailing of Annual Report	$4,000

Travel Covers costs of travel for staff and Commission members: meals, lodging, mileage, airfare, coffee/light refreshments

Other Commission approved set-asides included in "Projected".	
June 8-10 - DMCJA Spring Conference	$750
June 25-27 - National Consortium Racial & Ethnic Fairness in the	$3,500

Updated 5.6.14

STOP Grant Projects
FFY11-FFY13

FFY11 GRT1244 - Expires 5.31.14

Category	Budgeted	Spent
Salaries	$25,787	$35,654
Belenefits	$9,213	$9,542
Contracted Svcs	$60,724	$48,369
Goods & Services	$30,000	$27,661
Admin Costs	$0	$0
Total Grant Award	**$125,724**	**$121,226**
Match	$41,908	$41,908
Grant Total	**$167,632**	**$163,134**

Salaries - Funds have been expended
Benefits - Funds have been expended
Contracts - Funds have been expended

Goods & Services	
April 25 - SA Judicial Curriculum	$2,290
April 27-29 - SCJA Conf - Franks	$1,458
April 30 - Professor Franks Event	$750
	$4,498

FFY12 GRT13501 - Expires 12.31.14

Category	Projected	Spent
Salaries	$13,750	$300
Benefits	$3,500	$50
Contracted Svcs	$59,400	$0
Goods & Services	$46,769	$0
Admin Costs	$0	$0
	$123,419	**$350**
Match	$41,140	$41,140
Grant Total	**$164,559**	**$41,490**

PROJECTED - Requests & Expected to Spend	
Salaries	**$13,750**
Benefits	**$3,500**
Contracts	
DV Benchguide Update (Balance)	$5,500
DV Benchguide Editing (Balance)	$3,900
Sentencing & Monitoring (Balance)	$50,000
	$59,400
Goods & Services	
Court Facilitators Training	$15,000
Interpreter Training	$10,000
EJS Training (April)	$7,500
CJS Training (June)	$5,500
NCJFCJ (July)	$22,500
King County DV Syposium (Sept)	$10,000
Statewide Tribal DV/SA Conf (Oct)	$5,000
Workplace Violence Tng (Temple Staff)	$2,500
Total Requests/Projected Goods & Svcs	**$78,000**

FFY13 GRT14241 - Expires 12.31.14 (Poss ext. 5.31.15)

Category	Projected	Spent
Salaries	$42,548	$0
Benefits	$15,161	$0
Contracted Svcs	$44,862	$0
Goods & Services	$14,750	$0
Admin Costs	$0	$0
	$117,321	**$0**
Match	$39,107	$22,042
Grant Total	**$156,428**	**$22,042**

PROJECTED - Requests & Expected to Spend	
Salaries	**$42,548**
Benefits	**$15,161**
Contracts	**$44,862**

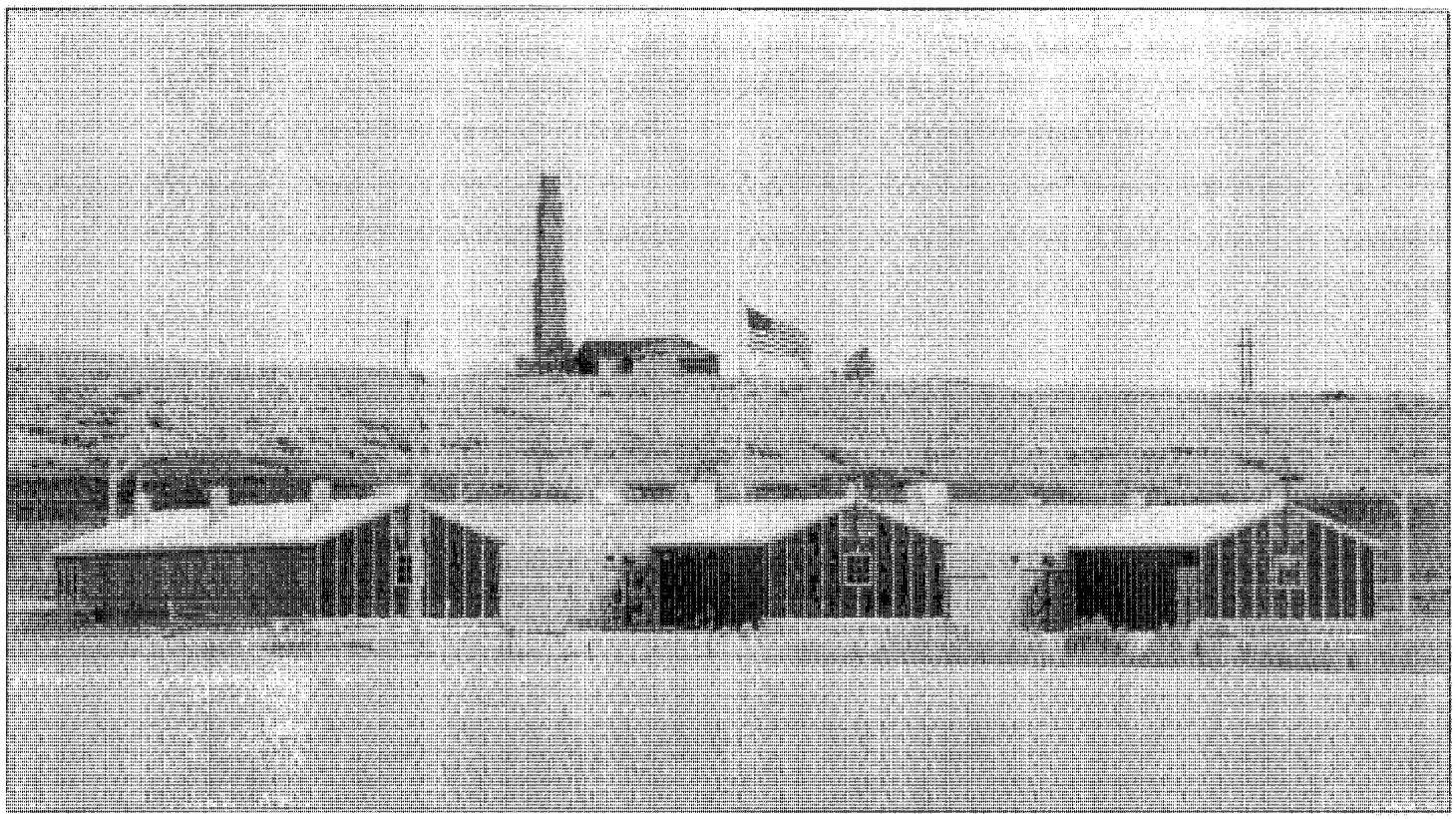
Goods & Services	**$14,750**
Carry Over from FFY12	$31,231
EJS Training (October)	$7,500

Updated 5.7.2014

NATIONAL CONSORTIUM ON RACIAL AND ETHNIC FAIRNESS IN THE COURTS

26th Annual Meeting

June 25–28, 2014
Cody & Heart Mountain, Wyoming



HEART MOUNTAIN WYOMING FOUNDATION

Hosted by the Heart Mountain Wyoming Foundation
1539 Road 19
Powell, WY 82435

heartmountain.org
info@heartmountain.org

Registration Form

If you have any questions, please call us at: (307) 754-8000

To mail in your form and payment, please send to:
The Heart Mountain Wyoming Foundation
1539 Road 19
Powell, WY 82435

To submit via email, send to:
sbroussard-ext@heartmountain.org

To make your reservation via phone, call:
(307) 754-8000

Prefix: _____ First: _____ MI: _____ Last: _____

Badge Name (*if different from above*): _____

Court/Company: _____

Email: _____ Zip Code: _____

Work Phone: _____ Cell phone: _____

Special Needs: _____

Dietary Restrictions: ☐ Vegetarian ☐ Other (please specify): _____

Registration: *Registration includes admission to the entire conference, i.e., educational sessions, receptions, and meals. Lawyers are eligible for CLE credit. Not included in the registration fee is the trip to Yellowstone National Park.*

☐ $425.00 Early Bird (before **March 17, 2014**) ☐ $475.00 Regular (after **March 17, 2014**)

☐ $80.00 Yellowstone Tour on Saturday, June 28, 7:30 a.m. – 6:00 p.m., with a box lunch and roundtrip bus ride

Guests: *Guests may register for events. Please provide guest names and list initials for each event they will attend.*

1) _____ 2) _____

3) _____ 4) _____

Welcome Reception ($65.00) _____ Interpretive Center Tour & Seminar ($25.00) _____

Thursday Keynote Address ($25.00) _____ Draft Resister Trial Reenactment ($12.00) _____

Friday Keynote Address ($25.00) _____ Closing Reception ($75.00) _____

Thursday Box Lunch ($12.00) _____ Yellowstone Tour ($80.00) _____

Friday Box Lunch ($12.00) _____

Payment Method: ☐ Check ☐ Cash ☐ Credit/Debit

Make payable to "HMWF – Consortium". *Fill in additional information below.*

Card number: _____ CCV #: _____ Expiration Date: _____ / _____ / _____

Name as it appears on Card: _____

Signature of Cardholder: _____

Attendees may type their signatures should they wish to complete the form electronically.

Cancellation policy: Cancellations received by 5:00 p.m. MT on June 1, 2014 will be refunded, minus a $100 processing fee. Cancellations received after that date will be refunded minus a $200 processing fee. Cancellation of registration must be made in writing and emailed to sbroussard-ext@heartmountain.org.

Welcome to Cody, Wyoming!

The Heart Mountain Wyoming Foundation and the National Consortium on Racial and Ethnic Fairness in the Courts are pleased to present the 26th Annual Meeting of the National Consortium on Racial and Ethnic Fairness in the Courts. The Heart Mountain Interpretive Center is located on the site where 14,000 people of Japanese ancestry, two-thirds of whom were American citizens, were wrongly incarcerated during World War II. The area is a compelling venue for this conference, which seeks to examine the treatment of minorities in the courts.

Tourism

Founded by Buffalo Bill, Cody is a town that has an abundance of beautiful sights and fun activities. At Yellowstone National Park's East Entrance, just 52 miles from Cody, you can see the rugged and wondrous Rocky Mountain West at its best. Observe big horn sheep, bison, eagles, antelope, and more in their natural habitats on a tour of the area. Float down the Shoshone River with one of Cody's white water rafting companies.

Cheer on the cowboys and cowgirls at the Cody Nite Rodeo. Watch the Cody Gun Fight Reenactment outside of the historic Irma Hotel. Listen to some cowboy music at Dan Miller's Cowboy Revue or enjoy a chuck wagon buffet and musical entertainment with the Cody Cattle Company. Shops offer local crafts and gear—maybe it's time to invest in a pair of authentic cowboy (and cowgirl) boots.

Flights

Attendees have two airport options: Yellowstone Regional Airport, which is a 5-minute drive from the Holiday Inn; and the Billings Logan International Airport, which is a 2-hour drive from Cody (110 miles of beautiful scenery). The key to getting good rates for flights into Cody is to book early. Delta and United Airlines service Cody's Yellowstone Regional Airport. When booking your flight, please avoid tight connections, as it can be difficult to find another flight into Cody on the same day if you miss a connecting flight.

Car Rentals

The Heart Mountain Wyoming Foundation will be providing bus service between the various lodging options, the Interpretive Center, and other conference events. Should you wish to rent a car for more flexibility, you have a variety of local options:

Budget Rent A Car
Phone: (800)-527-7000 or (307)-587-6066
Website: www.budgetrentacar.com

Hertz Car Rental
Phone: (800)-654-3131 or (307)-587-2914
Website: www.hertz.com

Thrifty Car Rental
Phone: (800)-THRIFTY or (307)-587-8855
Website: www.thrifty.com

Taxi & Shuttle Services

Marquis Sedan Service and Cody Shuttle Service provide service from the Billings Airport to Cody. You must book shuttles in advance. Some hotels may offer a shuttle to and from the Cody airport. If not, there are taxi services available:

Cody Shuttle Service
Phone: (307)-527-6789

Marquis Sedan Service
Phone: (307)-254-2357

Cody Cab
Phone: (307)-272-8364

Lodging

The following lodging venues are providing discounted rates for the 26th Annual Meeting of the National Consortium on Racial and Ethnic Fairness in the Courts. The plenary breakfasts and breakout sessions will be held at the Holiday Inn. Mention the discount code "NCREFC," when booking.

Hotel	Phone Number	Price (does not include 8% tax)
Holiday Inn	(307)-587-5555	Room: $144.00
Buffalo Bill Village Cabins	(307)-587-5544	One Bed: $109.00 Two Beds: $144.00
Cody Cowboy Village	(307)-587-7555	King Bed: $155.00 Double Queen Beds: $165.00
Big Bear Motel	(307)-587-3117	Room: $69.00
Best Western Sunset Motor Inn	(307)-587-4265	Double Queen Beds: $139.50 King Bed: $139.50

Current Program (Subject to Revision)

Wednesday, June 25, 2014

6:00 p.m. – 9:00 p.m. Opening Reception
Buffalo Bill Center of the West

Thursday, June 26, 2014

8:30 a.m. – 10:00 a.m. Keynote Address
Holiday Inn

Secretary Norman Y. Mineta
Former Secretary of Commerce and Transportation

Senator Alan K. Simpson
U.S. Senator from 1979 to 1997

10:15 a.m. – 12:00 p.m. Breakout Sessions
Holiday Inn

Beyond Padilla v. Kentucky: Non-Citizens in the Criminal Justice System

Gabriel "Jack" Chin, J.D., LL.M.
Professor of Law, University of California, Davis, School of Law

Tribal Courts: History, Current Issues, and the Relationship with State Courts

The Honorable John St. Clair
Chief Judge, Shoshone & Arapaho Tribal Court

The Honorable Winona Tanner
Chief Judge, Confederated Salish & Kootenia Tribal Court

The Honorable B.J. Jones
Chief Justice, Turtle Mountain Tribal Court of Appeals
Director, Tribal Judicial Institute at the University of North Dakota School of Law

Heart Mountain Interpretive Center

Museum Tour and Seminar: Legal Perspectives on the Heart Mountain Story

Eric Muller, J.D.
Dan K. Moore Distinguished Professor of Law in Jurisprudence and Ethics, University of North Carolina School of Law
Director, Center for Faculty Excellence, University of North Carolina at Chapel Hill

12:30 p.m. – 3:15 p.m. Training Workshop on Implicit Bias in the Courtroom
Holiday Inn

Kimberly Papillon, J.D.
Attorney and Special Education Specialist, Education Division of the California Judicial Council's Administrative Office of the Courts

1:00 p.m. – 2:30 p.m.
Heart Mountain Interpretive Center

Museum Tour and Seminar: Legal Perspectives on the Heart Mountain Story (Repeat Session)

3:45 p.m. – 5:15 p.m. Breakout Sessions
Holiday Inn

Language Access in the Courts

Hiroshi Motomura, J.D.
Susan Westerberg Prager Professor of Law, University of California, Los Angeles, School of Law

Youth Involvement in the Criminal Justice System: The Way In and the Way Out

Robert L. Listenbee, Jr., J.D.
Administrator of the Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice

Erica Nelson, J.D.
Project Director, Race to Equity Project of the Wisconsin Council on Children and Families

(Additional speakers to be confirmed)

3:45 p.m. – 5:15 p.m.
Heart Mountain Interpretive Center

Museum Tour and Seminar: Legal Perspectives on the Heart Mountain Story (Repeat Session)

7:30 p.m. – 9:00 p.m. Heart Mountain Draft Resister Trial Reenactment and Panel Discussion
Cody Auditorium

"Heart Mountain: Conscience, Loyalty, and the Constitution"

The Honorable Denny Chin
Judge, U.S. Court of Appeals for the Second Circuit

Kathy Hirata-Chin
Partner, Cadwalader, Wickersham and Taft LLP

(Full cast TBA)

Friday, June 27, 2014

8:30 a.m. – 10:00 a.m. Keynote Address
Holiday Inn

The Honorable Lance Ito
Judge, L.A. Superior Court

10:15 a.m. – 11:45 a.m. Breakout Sessions
Holiday Inn

Immigration Status and Collateral Consequences in Divorce, Child Protective, and Delinquency Proceedings

David B. Thronson, J.D.
Associate Dean for Academic Affairs and Professor of Law, Michigan State University College of Law

Giselle Hass, Psy.D.
Contract Psychologist, D.C. Commission on Mental Health Services' Youth Forensics Services Division

Challenges for Low-Income Populations

Diane E. Courselle, J.D.
Director, Defender Aid Program
Winston S. Howard Distinguished Professor of Law, University of Wyoming College of Law

(Additional speakers to be confirmed)

10:30 a.m. – 12:00 p.m.
Heart Mountain Interpretive Center

Museum Tour and Seminar: Legal Perspectives on the Heart Mountain Story (Repeat Session)

12:30 – 1:00 p.m. General Business Meeting
Holiday Inn

12:30 p.m. – 2:00 p.m.
Heart Mountain Interpretive Center

Museum Tour and Seminar: Legal Perspectives on the Heart Mountain Story (Repeat Session)

1:15 p.m. – 2:45 p.m. Breakout Session
Holiday Inn

Immigrant Rights in the Courts

Hiroshi Motomura, J.D.
Susan Westerberg Prager Professor of Law, University of California, Los Angeles, School of Law

Gabriel "Jack" Chin, J.D, LL.M.
Professor of Law, University of California, Davis, School of Law

David B. Thronson, J.D.
Associate Dean for Academic Affairs and Professor of Law, Michigan State University College of Law

Melba Vasquez, Ph.D.
Past President (2011), American Psychological Association

Heart Mountain Interpretive Center

Museum Tour and Seminar: Legal Perspectives on the Heart Mountain Story (Repeat Session)

3:00 p.m. – 4:45 p.m. Annual Report of the States
Holiday Inn

The Honorable Edward C. Clifton
Judge, Superior Court of Rhode Island

6:15 p.m. – 8:30 p.m. Closing Reception
Heart Mountain Interpretive Center

Dittman, Pam

From: Berns, Elizabeth <Elizabeth.Berns@kingcounty.gov>
Sent: Thursday, April 17, 2014 2:40 PM
To: Pugh-Markie, Danielle
Cc: Greenleaf, Deborah
Subject: DV Symposium in Sept 2014

Good afternoon, Danielle:

I wanted to follow up with you on the Commission's support for the upcoming DV Symposium on September 11th and 12th. One of our goals is to make it possible for as many judicial officers to attend as possible. We feel very fortunate to have the Commission's interest is supporting this goal.

For the Commission's consideration, I respectfully submit the following request:

- $2,550 to cover costs of registration fees for 20 judicial participants from participating courts outside of King County Superior Court– 20x90=$1800)
- $3,400 ($344 each participant on federal per diem rate) to cover two-night lodging for 10 judicial participants traveling across Washington State
- $1,420 (up to $144 per each participant) to cover two days per diem meals and expenses for 10 judicial participants traveling across Washington State
- Backfill costs for traveling judicial officers as needed (not all will need backfill) - I do not know what the current backfill rate is at the state level – is this something that the Gender and Justice Commission could manage through their funding?

If you need any additional information, please do not hesitate to contact me.

Thank you very much.

Kindest regards,

Elizabeth J. Berns

Judge Elizabeth J. Berns
King County Superior Court
Maleng Regional Justice Center
401 Fourth Avenue North
Kent, WA 98032

Phone 206-477-1477

2014 DV Symposium Sessions - DRAFT	SPEAKER	Intended Audience
Opening KEYNOTE: Coercive Control	Evan Stark	General
Friday KEYNOTE: Partner Stalking as Coercive Control	TK Logan	General
Abusive Use Of Coercive Control: Perspectives from the bench	**Judge Berns and TBA**	**Judicial Officers**
AOC DV Bench Guide for Judges	**TBA**	**Judicial Officers**
Abusive Use of Litigation	David Ward	Family Law
You Be the Judge	Kris, Sara, Judge Berns moderates	Family Law
Recognizing and Reporting Coercive Control on Parenting Evaluations	King County Superior Court Family Court Services	Family Law
Abusive Use of Coercive Control in Dependency Cases	Rob Wyman facilitates	Dependency/CA
Perpetrators in Probation/Corrections and abusive use of control	Cindi Williams - City Attorney and Margaret Alquist DOC	Probation/Corrections
Addressing Coercive Control in the Courts: Applications	Evan Stark	Criminal, Family Law, Dependency
Abusive Use of Coercive Control in CPS investigation and Family Volunary Services Cases	Maureen Walum and Laila Daud - CA and Kellie Rogers	Children's Admin (CA)
Use of Children as Coercive Control	Evan Stark	General
Tools and Techniques for Strong Stalking Victim Advocacy	TK Logan	General (Advocates, MH Therapists)
Sexual Coercion	TK Logan	General
Reproductive Coercion	Sara Ainsworth	General
Misuse of Faith and Religion to Legitimize Coercive Control Behaviors	Faithtrust Institute	General
Use of Technology as Coercive Control Tactic/Youth (repeat session)	Linda Criddle	General
In Her Shoes for Teens (repeat session)	Kiana Swearingen	General
Coercive Control through the Eyes of a Child (impact, managing)	Sound Mental Health Children's DV Response Team	General
Exploiting chemical dependency/mental health as coercive control	TBA	General
Addressing coercive control in immigrant/refugee communites using case examples	NWIRP -- awaiting response from Jorge Baron	General
Assessing Patterns of Coercive Control (need to differentiate somehow from past presentations -- how we can apply lessons from assessing for cc in LGBTQ relationships)	NW Network	General
Coercive Control with Commercial Sexual Exploitation and Trafficking	TBA	General
A survivor's (or adult child survivor's) account of living amidst coercive control dynamics	Yasmin Christopher SU law student	General
Addressing coercive control in therapy	Invite Danika Bornstein of Jewish Family Services	MH Therapists

Pam Dittman, Program Coordinator
Administrative Office of the Courts
Gender and Justice Commission
1206 Quince Street SE
PO Box 41170
Olympia WA 98504-1170

April 22, 2014

Dear Ms. Dittman,

WomenSpirit Coalition is requesting the sponsorship of the 2014 Statewide Tribal Domestic Violence and Sexual Assault Conference to be held on October 23 and 24th at the Northern Quest Resort and Hotel in Spokane, WA.

The two -day conference will cover topics related to local, state, tribal, and federal response to:
1) Criminal Justice, Law Enforcement & Courts: Investigation and Prosecution of Crimes related to violence against Native women;
2) Community and Advocacy Services Best Practices;
3) Tribal Leadership & Policy Development;
4) Coordinating Response Between Jurisdictions.

We appreciated your support and sponsorship of our Sexual Assault Summits held in 2008, 2010, and 2012.

We are asking for monetary support and in kind services for the 2014 Tribal Conference:

- $1000 travel, hotel, and per diem for three (3) WomenSpirit Coalition Staff for three (3) days.
- $1500 Printed materials and/or Jump Drives with conference materials for each Conference attendee (approximately 150-200).
- 3 Meeting Room/Break Out Room Rental for $2500.

Other Sponsors such as the U.S. Attorneys Office, Office on Violence Against Women- WomenSpirit Coalition Grant # 2012-IW-AX-0002 are offering in kind services by participating in the Conference Planning Committee and providing Speakers at the event. ***The Muckleshoot and Lummi Tribes are sponsoring The Envision Awards- Forget Me Not Luncheon***. This luncheon is sponsored during the Conference and honors noted Tribal activists. One of our honorees this year is Judge Theresa Pouley.

Thank you for your continued support of our organization and event.

Sincerely,

Dee Koester M.S.
Founder and Executive Director

Dittman, Pam

From: Dittman, Pam
Sent: Tuesday, May 06, 2014 4:18 PM
To: Sara Ainsworth
Cc: Dittman, Pam
Subject: Budget for Exploratory Discussion re: Incarcerated Women & Girls

Sara – For the budget pieces, it's a lot of guesstimation. My suggestion is that we put the request on the Commission's radar and that we may have a follow-up meeting. Since STOP grant funds can't support this unless we tie it into DV somehow, we would use GJCOM monies. However, since we do so much with our STOP funds, it frees of GJCOM funds for things like this.

Purpose: Addressing access to counsel/courts/court documents for incarcerated women (and girls).
Date: July 31, 2014
Attendees: Invited guests
Budget: Gender & Justice Commission Budget, Code 16302
Estimated Costs: (travel, lodging, subsistence and/or meals or refreshments)

I have a tendency to estimate high. It really depends on where people are coming in from and the number of attendees. (For example, we held a 40 person meeting at the Red Lion – SeaTac and the cost was approximately $3,000, which included room rental, av equipment, lodging, airfare, and mileage.)

- $0 - Meeting Room – SeaTac office space is free of charge
- $750 - Lunch – I use the per diem rate for lunch of $21 pp as a cap. 30 people
- $900 - Airfare - Hard to anticipate who would need to fly. Suggest 3 people at $300 each.
- $1,000 - Mileage – Again hard to anticipate. I usually just put in a flat amount of $1,000.
- $800 - Hotel – If people do need to come in overnight, lodging is $152 pp. Suggest 3 people.
- $100 - Materials – We can have materials printed and collated in-house. We have supplies on-hand, so no out-of-pocket expenses.
- **$3,550 - Total**

Pam Dittman, Program Coordinator
Administrative Office of the Courts
Office of Court Innovation
Gender & Justice Commission
360.704.4031 | pam.dittman@courts.wa.gov

Gender and Justice Commission
Proposed
Meeting Schedule
2014 – 2015

Date	Time	Location
Friday, May 9, 2014	8:45 a.m. – 12:00 p.m.	AOC SeaTac Office
Friday, July 11, 2014	8:45 a.m. – 12:30 p.m.	AOC SeaTac Office
Friday, September 5, 2014	8:45 a.m. – 12:00 p.m.	AOC SeaTac Office Lower Level
Friday, November 14, 2014	8:45 a.m. – 12:00 p.m.	AOC SeaTac Office
Friday, January 9, 2015	8:45 a.m. – 12:00 p.m.	AOC SeaTac Office
Friday, March 13, 2015	TBD	Temple of Justice, Chief Justice Reception Room
Friday, May 8, 2015	8:45 a.m. – 12:00 p.m.	AOC SeaTac Office
Friday, July 10, 2015	8:45 a.m. – 12:00 p.m.	AOC SeaTac Office
Friday, September 11, 2015	8:45 a.m. – 12:00 p.m.	AOC SeaTac Office
Friday, November 13, 2015	8:45 a.m. – 12:00 p.m.	AOC SeaTac Office

AOC Staff: Danielle Pugh-Markie, Supreme Court Commissions Manager

N:\Programs & Organizations\COMMISSIONS\GJCOM\Commission\Meetings\2015\2014-15 Meeting Schedule.doc

FINAL BILL REPORT
ESHB 1840

C 111 L 14
Synopsis as Enacted

Brief Description: Concerning firearms laws for persons subject to no-contact orders, protection orders, and restraining orders.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Goodman, Hope, Hunter, Pedersen, Bergquist, Habib, Fey, Ryu, Jinkins, Pollet and Tharinger).

House Committee on Judiciary
Senate Committee on Law & Justice

Background:

Protection Orders, No-Contact Orders, and Restraining Orders.
There are various types of civil protection orders a court may impose to restrict a person's ability to have contact with another person. A court may enter an ex parte temporary protection order and, upon a full hearing, a final order that lasts for a fixed term or, in some cases, is permanent. Additionally, courts may issue no-contact orders to protect victims during the pendency of criminal proceedings, and these orders may also be imposed or extended as a condition of release or sentence. A court may impose a restraining order in a variety of contexts, but they are commonly entered in family law proceedings to keep the parties from coming into contact with one another or to prevent removal of, or injury to, a child.

Unlawful Possession of a Firearm.
State Law.
A person is guilty of Unlawful Possession of a Firearm in the first degree if the person owns, possesses, or has in his or her control any firearm after having previously been convicted of a serious offense. A "serious offense" includes, among other things, any crime of violence, various class B felonies, any felony with a deadly weapon verdict, and certain vehicular related crimes when committed while under the influence of alcohol or drugs or while driving recklessly. Unlawful Possession of a Firearm in the first degree is a class B felony.

A person is guilty of Unlawful Possession of a Firearm in the second degree, a class C felony, if the person owns, possesses, or has in his or her control any firearm and the person:

- has previously been convicted of any felony (other than a serious offense);

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

- has previously been convicted of certain gross misdemeanors committed by one family or household member against another;
- has previously been involuntarily committed for mental health treatment;
- is under the age of 18 (with some exceptions); or
- is free on bond or personal recognizance pending trial, appeal, or sentencing for a serious offense.

Federal Law.
Certain categories of people are disqualified from possessing firearms under federal law, including persons who have been convicted of a domestic violence offense and persons subject to certain restraining orders. The order must have been issued after notice and an opportunity for the person to participate; restrain the person from harassing, stalking, or threatening an intimate partner or the person's or intimate partner's child; and include a finding that the restrained person is a credible threat to the physical safety of an intimate partner or child, or terms restraining the person from using or threatening physical force against an intimate partner or child. The term "intimate partner" includes a person's spouse or former spouse, a parent of the person's child, and a person's current or former cohabitant.

Surrender of Firearms and Dangerous Weapons.
Under state law, a person subject to most types of protection orders, no-contact orders, or restraining orders may, under some circumstances, be required to surrender their firearms, dangerous weapons, and concealed pistol license while the order is in place. In entering an order, if the person to be restrained has used or threatened to use a firearm in the commission of a felony, or is otherwise disqualified from having a firearm, the court either may or must require the person to surrender their firearms, dangerous weapons, and concealed pistol license, depending on the evidence presented.

Sexual assault protection orders are not included in the statutory provisions allowing or requiring a court to order weapons surrender. Sexual assault protection orders are available to victims of nonconsensual sexual conduct or penetration that gives rise to a reasonable fear of future dangerous acts. These orders provide a remedy for victims of sexual assault who do not qualify for a domestic violence protection order.

Summary:

Sexual assault protection orders are included in the provisions of current law that require or allow a court to order a restrained party to surrender his or her firearms, dangerous weapons, and concealed pistol license when there is evidence that the party has used or threatened to use a firearm in the commission of a felony or is otherwise ineligible to possess a firearm.

Provisions are added prohibiting any person restrained under certain protection, no-contact, and restraining orders from possessing a firearm, dangerous weapon, or concealed pistol license while the order is in place. For the restrictions to apply the order must: (1) have been issued after notice and an opportunity of the person to participate; (2) restrain the person from harassing, stalking, or threatening an intimate partner or the person's or intimate partner's child; (3) include a finding that the restrained person is a credible threat to the physical safety of an intimate partner or the child of an intimate partner or the person; and (4) by its terms, restrain the person from using or threatening physical force against an intimate

partner or child. An intimate partner includes a current or former spouse or domestic partner, a person with whom the restrained person has a child in common, or a person with whom the restrained person has cohabitated or is cohabitating as part of a dating relationship.

Possession of a firearm while subject to a qualifying protection, no-contact, or restraining order constitutes Unlawful Possession of a Firearm in the second degree. When entering a qualifying order the court must:

- require the respondent to surrender any firearm or other dangerous weapon;
- prohibit the respondent from obtaining or possessing a firearm or other dangerous weapon;
- require the party to surrender their concealed pistol license; and
- prohibit the party from obtaining or possessing a concealed pistol license.

The Administrative Office of the Courts is required to develop pattern forms for use in documenting a restrained person's compliance with an order to surrender firearms, dangerous weapons, and the person's concealed pistol license. When surrender of these items is ordered, the restrained person must file the appropriate form with the court within five judicial days.

All law enforcement agencies must develop policies and procedures regarding acceptance, storage, and return of weapons required to be surrendered.

Votes on Final Passage:

House	61	37
House	97	0
Senate	49	0

Effective: June 12, 2014
December 1, 2014 (Section 5)

CERTIFICATION OF ENROLLMENT

ENGROSSED SUBSTITUTE HOUSE BILL 1840

Chapter 111, Laws of 2014

63rd Legislature
2014 Regular Session

FIREARM POSSESSION--SURRENDER--PROTECTION, NO-CONTACT, AND RESTRAINING ORDERS

EFFECTIVE DATE: 06/12/14 - Except for Section 5, which becomes effective 12/01/14.

Passed by the House February 12, 2014
Yeas 97 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate March 6, 2014
Yeas 49 Nays 0

BRAD OWEN

President of the Senate

Approved March 28, 2014, 2:12 p.m.

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 1840** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

March 31, 2014

Secretary of State
State of Washington

ENGROSSED SUBSTITUTE HOUSE BILL 1840

Passed Legislature - 2014 Regular Session

State of Washington 63rd Legislature 2014 Regular Session

By House Judiciary (originally sponsored by Representatives Goodman, Hope, Hunter, Pedersen, Bergquist, Habib, Fey, Ryu, Jinkins, Pollet, and Tharinger)

READ FIRST TIME 02/22/13.

AN ACT Relating to firearms laws concerning persons subject to no-contact orders, protection orders, and restraining orders; amending RCW 9.41.040 and 9.41.800; adding new sections to chapter 9.41 RCW; prescribing penalties; and providing an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Sec. 1. RCW 9.41.040 and 2011 c 193 s 1 are each amended to read as follows:

(1)(a) A person, whether an adult or juvenile, is guilty of the crime of unlawful possession of a firearm in the first degree, if the person owns, has in his or her possession, or has in his or her control any firearm after having previously been convicted or found not guilty by reason of insanity in this state or elsewhere of any serious offense as defined in this chapter.

(b) Unlawful possession of a firearm in the first degree is a class B felony punishable according to chapter 9A.20 RCW.

(2)(a) A person, whether an adult or juvenile, is guilty of the crime of unlawful possession of a firearm in the second degree, if the person does not qualify under subsection (1) of this section for the

crime of unlawful possession of a firearm in the first degree and the person owns, has in his or her possession, or has in his or her control any firearm:

(i) After having previously been convicted or found not guilty by reason of insanity in this state or elsewhere of any felony not specifically listed as prohibiting firearm possession under subsection (1) of this section, or any of the following crimes when committed by one family or household member against another, committed on or after July 1, 1993: Assault in the fourth degree, coercion, stalking, reckless endangerment, criminal trespass in the first degree, or violation of the provisions of a protection order or no-contact order restraining the person or excluding the person from a residence (RCW 26.50.060, 26.50.070, 26.50.130, or 10.99.040);

(ii) During any period of time that the person is subject to a court order issued under chapter 7.90, 7.92, 9A.46, 10.14, 10.99, 26.09, 26.10, 26.26, or 26.50 RCW that:

(A) Was issued after a hearing of which the person received actual notice, and at which the person had an opportunity to participate;

(B) Restrains the person from harassing, stalking, or threatening an intimate partner of the person or child of the intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C)(I) Includes a finding that the person represents a credible threat to the physical safety of the intimate partner or child; and

(II) By its terms, explicitly prohibits the use, attempted use, or threatened use of physical force against the intimate partner or child that would reasonably be expected to cause bodily injury;

(iii) After having previously been involuntarily committed for mental health treatment under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, chapter 10.77 RCW, or equivalent statutes of another jurisdiction, unless his or her right to possess a firearm has been restored as provided in RCW 9.41.047;

((~~(iii)~~)) (iv) If the person is under eighteen years of age, except as provided in RCW 9.41.042; and/or

((~~(iv)~~)) (v) If the person is free on bond or personal recognizance pending trial, appeal, or sentencing for a serious offense as defined in RCW 9.41.010.

(b) Unlawful possession of a firearm in the second degree is a class C felony punishable according to chapter 9A.20 RCW.

(3) Notwithstanding RCW 9.41.047 or any other provisions of law, as used in this chapter, a person has been "convicted", whether in an adult court or adjudicated in a juvenile court, at such time as a plea of guilty has been accepted, or a verdict of guilty has been filed, notwithstanding the pendency of any future proceedings including but not limited to sentencing or disposition, post-trial or post-fact-finding motions, and appeals. Conviction includes a dismissal entered after a period of probation, suspension or deferral of sentence, and also includes equivalent dispositions by courts in jurisdictions other than Washington state. A person shall not be precluded from possession of a firearm if the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted or the conviction or disposition has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence. Where no record of the court's disposition of the charges can be found, there shall be a rebuttable presumption that the person was not convicted of the charge.

(4)(a) Notwithstanding subsection (1) or (2) of this section, a person convicted or found not guilty by reason of insanity of an offense prohibiting the possession of a firearm under this section other than murder, manslaughter, robbery, rape, indecent liberties, arson, assault, kidnapping, extortion, burglary, or violations with respect to controlled substances under RCW 69.50.401 and 69.50.410, who received a probationary sentence under RCW 9.95.200, and who received a dismissal of the charge under RCW 9.95.240, shall not be precluded from possession of a firearm as a result of the conviction or finding of not guilty by reason of insanity. Notwithstanding any other provisions of this section, if a person is prohibited from possession of a firearm under subsection (1) or (2) of this section and has not previously been convicted or found not guilty by reason of insanity of a sex offense prohibiting firearm ownership under subsection (1) or (2) of this section and/or any felony defined under any law as a class A felony or with a maximum sentence of at least twenty years, or both, the individual may petition a court of record to have his or her right to possess a firearm restored:

(i) Under RCW 9.41.047; and/or

(ii)(A) If the conviction or finding of not guilty by reason of insanity was for a felony offense, after five or more consecutive years in the community without being convicted or found not guilty by reason of insanity or currently charged with any felony, gross misdemeanor, or misdemeanor crimes, if the individual has no prior felony convictions that prohibit the possession of a firearm counted as part of the offender score under RCW 9.94A.525; or

(B) If the conviction or finding of not guilty by reason of insanity was for a nonfelony offense, after three or more consecutive years in the community without being convicted or found not guilty by reason of insanity or currently charged with any felony, gross misdemeanor, or misdemeanor crimes, if the individual has no prior felony convictions that prohibit the possession of a firearm counted as part of the offender score under RCW 9.94A.525 and the individual has completed all conditions of the sentence.

(b) An individual may petition a court of record to have his or her right to possess a firearm restored under (a) of this subsection (4) only at:

(i) The court of record that ordered the petitioner's prohibition on possession of a firearm; or

(ii) The superior court in the county in which the petitioner resides.

(5) In addition to any other penalty provided for by law, if a person under the age of eighteen years is found by a court to have possessed a firearm in a vehicle in violation of subsection (1) or (2) of this section or to have committed an offense while armed with a firearm during which offense a motor vehicle served an integral function, the court shall notify the department of licensing within twenty-four hours and the person's privilege to drive shall be revoked under RCW 46.20.265.

(6) Nothing in chapter 129, Laws of 1995 shall ever be construed or interpreted as preventing an offender from being charged and subsequently convicted for the separate felony crimes of theft of a firearm or possession of a stolen firearm, or both, in addition to being charged and subsequently convicted under this section for unlawful possession of a firearm in the first or second degree. Notwithstanding any other law, if the offender is convicted under this

section for unlawful possession of a firearm in the first or second degree and for the felony crimes of theft of a firearm or possession of a stolen firearm, or both, then the offender shall serve consecutive sentences for each of the felony crimes of conviction listed in this subsection.

(7) Each firearm unlawfully possessed under this section shall be a separate offense.

(8) For purposes of this section, "intimate partner" includes: A spouse, a domestic partner, a former spouse, a former domestic partner, a person with whom the restrained person has a child in common, or a person with whom the restrained person has cohabitated or is cohabitating as part of a dating relationship.

Sec. 2. RCW 9.41.800 and 2013 c 84 s 25 are each amended to read as follows:

(1) Any court when entering an order authorized under chapter 7.92 RCW, RCW 7.90.090, 9A.46.080, 10.14.080, 10.99.040, 10.99.045, 26.09.050, 26.09.060, 26.10.040, 26.10.115, 26.26.130, 26.50.060, 26.50.070, or 26.26.590 shall, upon a showing by clear and convincing evidence, that a party has: Used, displayed, or threatened to use a firearm or other dangerous weapon in a felony, or previously committed any offense that makes him or her ineligible to possess a firearm under the provisions of RCW 9.41.040:

(a) Require the party to surrender any firearm or other dangerous weapon;

(b) Require the party to surrender any concealed pistol license issued under RCW 9.41.070;

(c) Prohibit the party from obtaining or possessing a firearm or other dangerous weapon;

(d) Prohibit the party from obtaining or possessing a concealed pistol license.

(2) Any court when entering an order authorized under chapter 7.92 RCW, RCW 7.90.090, 9A.46.080, 10.14.080, 10.99.040, 10.99.045, 26.09.050, 26.09.060, 26.10.040, 26.10.115, 26.26.130, 26.50.060, 26.50.070, or 26.26.590 may, upon a showing by a preponderance of the evidence but not by clear and convincing evidence, that a party has: Used, displayed, or threatened to use a firearm or other dangerous

weapon in a felony, or previously committed any offense that makes him or her ineligible to possess a ((~~pistol~~)) firearm under the provisions of RCW 9.41.040:

(a) Require the party to surrender any firearm or other dangerous weapon;

(b) Require the party to surrender a concealed pistol license issued under RCW 9.41.070;

(c) Prohibit the party from obtaining or possessing a firearm or other dangerous weapon;

(d) Prohibit the party from obtaining or possessing a concealed pistol license.

(3) During any period of time that the person is subject to a court order issued under chapter 7.90, 7.92, 9A.46, 10.14, 10.99, 26.09, 26.10, 26.26, or 26.50 RCW that:

(a) Was issued after a hearing of which the person received actual notice, and at which the person had an opportunity to participate;

(b) Restrains the person from harassing, stalking, or threatening an intimate partner of the person or child of the intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(c)(i) Includes a finding that the person represents a credible threat to the physical safety of the intimate partner or child; and

(ii) By its terms, explicitly prohibits the use, attempted use, or threatened use of physical force against the intimate partner or child that would reasonably be expected to cause bodily injury, the court shall:

(A) Require the party to surrender any firearm or other dangerous weapon;

(B) Require the party to surrender a concealed pistol license issued under RCW 9.41.070;

(C) Prohibit the party from obtaining or possessing a firearm or other dangerous weapon; and

(D) Prohibit the party from obtaining or possessing a concealed pistol license.

(4) The court may order temporary surrender of a firearm or other dangerous weapon without notice to the other party if it finds, on the

basis of the moving affidavit or other evidence, that irreparable injury could result if an order is not issued until the time for response has elapsed.

((~~(4)~~)) (5) In addition to the provisions of subsections (1), (2), and ((~~(3)~~)) (4) of this section, the court may enter an order requiring a party to comply with the provisions in subsection (1) of this section if it finds that the possession of a firearm or other dangerous weapon by any party presents a serious and imminent threat to public health or safety, or to the health or safety of any individual.

((~~(5)~~)) (6) The requirements of subsections (1), (2), and ((~~(4)~~)) (5) of this section may be for a period of time less than the duration of the order.

((~~(6)~~)) (7) The court may require the party to surrender any firearm or other dangerous weapon in his or her immediate possession or control or subject to his or her immediate possession or control to the sheriff of the county having jurisdiction of the proceeding, the chief of police of the municipality having jurisdiction, or to the restrained or enjoined party's counsel or to any person designated by the court.

NEW SECTION. **Sec. 3.** A new section is added to chapter 9.41 RCW to read as follows:

All law enforcement agencies must develop policies and procedures by January 1, 2015, regarding the acceptance, storage, and return of weapons required to be surrendered under RCW 9.41.800.

NEW SECTION. **Sec. 4.** A new section is added to chapter 9.41 RCW to read as follows:

By December 1, 2014, the administrative office of the courts shall develop a proof of surrender and receipt pattern form to be used to document that a respondent has complied with a requirement to surrender firearms, dangerous weapons, and his or her concealed pistol license, as ordered by a court under RCW 9.41.800. The administrative office of the courts must also develop a declaration of nonsurrender pattern form to document compliance when the respondent has no firearms, dangerous weapons, or concealed pistol license.

NEW SECTION. **Sec. 5.** A new section is added to chapter 9.41 RCW to read as follows:

A party ordered to surrender firearms, dangerous weapons, and his or her concealed pistol license under RCW 9.41.800 must file with the clerk of the court a proof of surrender and receipt form or a declaration of nonsurrender form within five judicial days of the entry of the order.

NEW SECTION. **Sec. 6.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 7.** Section 5 of this act takes effect December 1, 2014.

Passed by the House February 12, 2014.
Passed by the Senate March 6, 2014.
Approved by the Governor March 28, 2014.
Filed in Office of Secretary of State March 31, 2014.

May 6, 2014

Pam Dittman
Program Coordinator
Gender & Justice and Minority & Justice Commissions
Administrative Office of the Court

RE: Gender and Justice Commission Summary on "Continuing Judicial Skills in Domestic Violence Cases" training

Dear Commission Members,

Attending the April 2014 "Continuing Judicial Skills in Domestic Violence Cases" training has better prepared me for my rotation to the Domestic Violence Court in July of 2014. It allowed me to assess my current knowledge about domestic violence issues, take a look at controversial issues in domestic violence cases and provided tools to use in evaluating cases. I found the entire program very useful but will discuss those that I found particularly enlightening.

We considered the importance of looking at the context of the criminal act; the intent, meaning and effect. It is important to distinguish one kind of domestic abuser from another. Failing to do so can endanger victims of ongoing violence and embolden perpetrators of ongoing violence. Looking at the context is not to excuse criminal behavior but to determine appropriate interventions. An example given was where the batterer is the victim in the case in front of the court and the victim of the batterer is charged with assault on an occasion he or she decided to fight back. While it is a DV assault, we discussed how it is important to look at the context in determining the appropriate sentence and interventions.

The "Comings and Goings" exercise was an eye-opener. I was determined not to go back home to the batterer; I would be better off homeless with my children than subject them to the violence. I held out as long as I could with the resources I had. When I was out of resources I chose homelessness rather than go back to the batterer. Although it was not a great choice, I had a choice so I didn't feel too bad. Then the following scenario was given: the batterer picked the children up from school and said if I ever wanted to see the kids again I better go home. They asked "What do you do?" Even though this was not a real situation , a chill went up my spine and tears came to my eyes because at that point, no matter how determined I was to not return, I found

myself returning out of love for my kids. It really hit me - you **cannot** judge anyone for the decisions they make in returning to the batterer. No one know what choices the victim is facing, the hardships etc. This exercise had a tremendous impact on me.

I also learned how to better assess lethality. The leading risk factors for intimate partner homicide with a prior DV are: access to guns, estrangement, stepchild in home (women victims only), forced sex, threats to kill and nonfatal strangulation. Judges decisions regarding release decisions are only as good as the information given- if we need certain information to make a good decision we need to demand we have the information available to us so we can do our job to the best of our abilities.

The segment on Fairness and cultural considerations in Domestic Violence cases was a good reminder to always be aware of one's implicit biases and to continually challenge them.

In considering the requests of Domestic Violence victims to have the protection order dropped we have to balance the autonomy of the victim and what justice demands. As demonstrated in the "comings and goings" exercise, leaving is only one of the strategies to stay safe. If a victim wants a protection order dropped we must ask ourselves is there a way we can modify the order to address the actual need of the victim; address the victim's real concerns. We need to ask ourselves if the victim has the information he or she needs to make an informed decision regarding the protection order. I am going to explore setting up a system of cooperation with the advocates to make sure people have the information to make a good decision regarding the protection order before I consider lifting the order.

I was reminded to always keep the big picture in mind; how can the system as a whole give justice to those who ask for it?

Thank you for providing the scholarship to allow me to attend this workshop. It was money and time well spent!

Sincerely,

Sonya Langsdorf

Clark County District Court Judge

Thank you very much for the opportunity to attend the SafeHaven Conference in San Diego

The workshops, panels, and speeches were very well done and informative. I particularly enjoyed the workshop where we were placed in small groups to discuss various scenarios of supervised visits and their safety. Hearing the input of others in the same capacity as I, was very enlightening.

I'm looking forward to employing some of the ideas learned!

Lynne L Henderson, Ph.D.
4/13/14

Safe Haven,

Thank you so much for providing an opportunity for me to attend the Supervised Visitation Conference in San Diego. It was great to connect with other agencies involved in supervised visits, whether they were courts, DV centers or Visitation centers. It was interesting to see the different points of view.

The training was great and to hear from the different presenters along with the panel of women who shared their experience in domestic violence and the impact that visitation centers played was very interesting.

I attended the Effects of Domestic Violence and Trauma on Children. The presenters were great and did a nice review of how children are impacted by the violence around them. I am always mindful of how a child is in the middle of this chaos and I would like to make sure that the visitation is a safe place that a child can enjoy and feel safe while visiting a parent. I also attended the Intervening for Safety, Accountability and Connection with Men Who Use Violence, and Transforming Batterer Intervention Programs into Domestic Violence Solution Centers. They were all good sessions with great information, along with sharing from people providing services from different areas.

The highlight for me was the Closing Plenary. The feedback from the research that was done with families who have gone through these experiences and the impact, good or bad, from the visitation centers was so important to hear. What I came away from this conference was not only to provide a safe place for children to visit with a parent, but to make the process easier for children and parents and to provide a place where children can enjoy their time with a parent.

Thank you so much for the privilege of attending this conference.

Diane Zumwalt
South Sound Parenting
staff@southsoundparenting.com
360.349.5623

The American Judges Association proudly announces the newly developed and free online domestic violence education program for judges. This innovative learning tool was developed with the assistance of Futures Without Violence and the National Center for State Courts.

Using interactive web-based delivery methods, "Effective Adjudication of Domestic Abuse Cases" explores the unique dynamics of domestic violence, including assessing lethality and dangerousness, custody and protective orders, special evidentiary issues, and effective sentencing.

Participants can learn at their own pace and at their own convenience from leading national domestic violence experts they may not otherwise have the time, opportunity or funding to see. All educational modules are accessible on any device including PCs, laptops, smartphones, tablets, or any other mobile device.

The AJA offers this timely, engaging and convenient resource at no cost to judges who want to apply this state-of-the-art learning in an effort to make all of our communities safer.

Check it out at education.amjudges.org.

For a 90-second preview, click on the AJA home page: www.amjudges.org, "Announcement".

Neutral advocates could help ease victims' concerns

Written by Peter Korn

April 24, 2014

http://pamplinmedia.com/pt/9-news/218050-77914-rape-puzzling-out-declining-convictions

by: - Erin Ellis, executive director of Washington County's Sexual Assault Resource Center, says Portland might get more rape convictions if its victim support model were not so fragmented.

Sgt. Pete Mahuna knows that time is definitely not on his side.

Mahuna heads the Portland Police Bureau's sex crime unit, which means he sits on the hot seat when people start asking why the city's solve rate for sexual assault crimes has been dropping for the last six years. The city as a whole has made major improvements in its response to rapes, according to a recent city audit. And yet the clearance rate, basically the percentage of cases in which the police identify an abuser regardless of whether the victim prosecutes or not, continues to fall from a high of 55 percent in 2008 to somewhere around 30 percent today.

Portland police's clearance rate isn't the only alarming statistic relating to sexual abuse. Nationally, despite efforts like those undertaken in Portland to enact a victim-focused approach to rape investigations, the number of women willing to report their attacks has plummeted in the last two years, though some say it might represent a statistical aberration.

Portland police have hired two civilian advocates to help victims, and Mahuna is convinced a greater percentage of women who receive the support of advocates end up testifying. But, he says, because advocates are sometimes involved in helping vulnerable women get access to medical care, mental health counseling, even finding housing for homeless victims, cases can take longer to complete.

"Detectives before would have been, 'Are you in or are you out?' And if (victims) said, 'I don't know what I'm doing,' the detective would suspend the case and say, 'Get a hold of us if you want to move forward,' " Mahuna says.

So maybe, Mahuna posits, the cases the sex crimes unit took on previous to hiring victim advocates were those that could be investigated more quickly and decisively. That might have skewed the closure rate somewhat.

Mahuna says that budget cuts in the district attorney's office have resulted in prosecutors asking for more thorough investigations before they are willing to take rape cases to court. "They're trying to head off any potential problems at trial," Mahuna says. So detectives are taking longer in their investigations. But time is the enemy of a successful rape prosecution, according to Mahuna.

"Every time a case takes longer, sometimes you lose cooperation," he says.

Mahuna says the falling clearance rate on sex crimes might at least partially be attributable to inaccurate record-keeping at the bureau, where an internal review has found some old cases considered cleared that should not have been classified that way. The Portland City Auditor says the police bureau needs to undertake an internal review to figure out why the clearance rate on sex crimes is going down.

Portland system falls short

Erin Ellis has some major suggestions. The executive director of Washington County's Sexual Assault Resource Center thinks Portland's approach to dealing with victims of sexual assault is misguided. She says what the city sees as a victim-focused approach actually falls far short of that, and is one of the reasons behind low rates of reporting and prosecuting rapes.

Hiring victim advocates, as Portland police have done, is not going to significantly increase Portland's closure or conviction rate, according to Ellis. She calls Portland's system for dealing with victims "fragmented," and says a different model, something closer to that is used in Washington County, is needed.

In Multnomah County, Ellis says, a woman who chooses to report sexual abuse sometimes has to deal with three different advocates. First, she might be seen by a district attorney's advocate, usually at a hospital. But that advocate does not accompany the victim who goes to the police station to talk to detectives. The Portland Women's Crisis Line provides advocates to those women who choose not to report. The police advocates help those who report — but the police bureau employs only two advocates, so they are not present every time a detective interviews a victim.

In Washington County, the nonprofit Sexual Assault Resource Center provides all of the advocacy services, and its advocates are not connected with the district attorney or the police. So anything a victim tells a SARC advocate can be kept confidential. And that means more victims find a comfort level that makes them willing to report and later testify, according to Ellis.

"They're more likely to be interested in participating in the criminal justice system because they've been working with somebody who doesn't have an agenda," Ellis says.

Women with criminal histories, addictions, or gang tattoos, or who are undocumented aliens, are not going to report rapes to police, according to Ellis, unless a neutral agency such as hers gets involved first and builds trust.

Currently, Ellis says, when Portland police work with a victim of underage sex trafficking they call her agency for victim support. Domestic violence cases also are getting more attention through a dedicated county domestic violence advocate and an eastside Domestic Violence Resource Center, she says. But rape, according to Ellis, is still stigmatized.

"They've taken on domestic violence and they've taken on human trafficking," she says. "Why is sexual assault left behind? It's the perception of culpability. People still have a hard time wrapping their heads around that."

Mandy Davis, clinical director of PSU's Trauma Informed Care Project, says social media pressure might explain why fewer women are reporting sexual assaults to police.

SARC streamlines services

SARC is funded through federal, state and private grants. It offers all the advocacy services the district attorney, police and the Portland Women's Crisis Line provide under one roof. Multnomah County needs its own rape crisis center if it wants more victims to report and participate in prosecuting more rapes, Ellis says.

Victims' decisions

PSU social worker Mandy Davis is interviewing victims of sexual assault about their experiences with law enforcement, advocates, attorneys, counselors and physicians. She is studying how those experiences influenced decisions to report and participate in prosecuting abuse. Victims willing to be interviewed should contact Davis at 503-725-9636 or at madavis@pdx.edu.

The SARC model has advantages, says Mandy Davis, a one-time SARC board member who is the clinical director of the Trauma Informed Care Project in the Portland State University School of Social Work. Davis has been interviewing Portland-area rape victims to evaluate the benefits of support services such as victim advocates for women who have been raped.

"My big question was, are victims really unwilling to participate (in prosecution) or are there other reasons?" she says.

Davis says she interviewed one rape victim at a Portland hospital where the victim saw an advocate from the Portland Women's Crisis Line. Later, the victim decided to report the crime and went to the police station for an interview, where she worked with a police victim advocate. The day she testified against her attacker before a grand jury, an advocate from the district attorney's office took over. Each advocate needed to hear her story.

"For a survivor, that's too much," Davis says.

Many victims don't report rapes, Davis says, because they don't even realize they have been raped. Many suffer from what she calls a rape-induced paralysis, which leads to thinking Davis describes as, "I didn't scream, and I didn't run,' I come out of this and my cognitive brain comes back online and I'm, 'Wait, why didn't I scream?' "

That's why there's an advantage to having an advocate who can be with the victim from the very start of her thought process, rather than just when a police officer or a district attorney arrives, Davis says.

Social media hurting victims

The rise of social media might also be a factor behind the declining number of women reporting rapes, according to Davis. "The survivors are getting nailed publicly left and right," she says.

Davis says in a number of high-profile, nationallly publicized cases, women who reported rapes were vilified in social media. Years ago such women were exposed to public humiliation only in the courtroom, but now it continues for months on end through the social network community.

"Is the message ... don't bother reporting?" Davis asks.

Davis says Portland authorities have a great deal of work to do if they want to make women feel safe in reporting sexual abuse. She has been in Portland hospitals and seen women complete the swabbing and photographs that constitute an initial rape evidence collection. She's seen them have their clothes taken away to be used as evidence, only to discover the hospital had no clothes for them to wear home. Consider, she says, the effect on the victim.

"If all of a sudden I'm leaving the hospital in a gown, I'm not coming back (to testify)," she says.

Rebecca Peatow Nickels, executive director of the Portland Women's Crisis Line, says both the Portland and Washington County models of victim advocacy have their advantages. The Portland model, with advocates working alongside police, might be best in cases where a victim is certain she wants to press charges, because police advocates are more familiar with the criminal justice process. But for women who are uncertain or don't want to report, a community-based advocate might be preferable. In either case, Nickels thinks, it is hard for advocates of any sort to convince victims that prosecuting a case will do them good.

"When survivors go through the criminal justice system, they have higher endpoint trauma," she says.

Stranger rape may get too much focus

If police want to put more rapists behind bars, says Erin Ellis, executive director of the Sexual Assault Resource Center in Washington County, they may need to readjust their priorities.

Most police bureaus prioritize rapes by strangers because they are the ones that most concern the public, Ellis says.

But in reality, stranger-on-stranger rapes make up a small percentage of sexual assaults. Some years there are as few as 15 forcible stranger rapes in Portland, according to police bureau records. The far greater number of sexual assaults are committed by men who know their victims, including family members and assaults among members of homeless communities.

The majority of acquaintance rapists are serial rapists, according to Ellis, which makes it all the more important that they be prosecuted before they assault again. "That's who we need to be going after," she says.

But acquaintance rapes pose special problems for detectives and prosecutors. More often than not, such cases come down to he said/she said testimonies with less hard forensic evidence of a crime having been committed. It takes more investigative time to attack the credibility of the rapist, Ellis says, but it can be done.

Portland police Sgt. Peter Mahuna, who heads the sex crime division, says he assigns all rape cases to a detective regardless of whether they involve a stranger or an acquaintance. "The detectives work every case that is assigned to them," Mahuna says.

Portland police victim advocate Susan Lehman says she confronts the difficulty in prosecuting acquaintance rapes all the time. She recalls a local case of a college student who had been sexually abused by her father. The student reported the abuse to police, only to be kicked out of her house by her parents. The father, Lehman says, was the family breadwinner. The victim changed her mind and decided not to testify.

Lewis & Clark Law School professor Meg Garvin says the military is moving ahead of the public sector in providing critical support for rape victims.

Expanding rape shield law an option

Rape-victim advocates in Multnomah and Washington counties follow very different models, but Meg Garvin, executive director of Portland's National Crime Victim Law Institute, has a third model she thinks would represent a true victim-focused approach.

Garvin, a Lewis & Clark Law School professor, has spearheaded the institution of victims' rights attorneys in the military. Military sex abuse has received a great deal of attention in recent years, but those cases come with an added burden for victims, according to Garvin. A soldier raped by a superior officer faces a potential career dead-end if she prosecutes.

The use of victims' rights attorneys places the military a step ahead of the public sector, according to Garvin. In a public sector courtroom, two attorneys are present — the prosecutor trying to get a conviction and the defense lawyer representing the alleged rapist. Neither, Garvin says, has the best interests of the victim at heart.

Garvin says victims' rights attorneys often have to stand up to prosecutors and police detectives. For instance, she knows of a current case where a victim's attorney is attempting to keep police from getting a victim's counseling records because they may end up publicly disclosed.

A classic example, according to Garvin, has a detective telling a victim to hand over her phone so he can corroborate her claim that the rapist sent her incriminating texts after the assault. Most victims hand over the phone. But that phone also might contain suggestive pictures or other texts from her private life that might help a defense attorney trying to prove the victim was promiscuous. They might even convince the prosecutor that the case would be too hard to win — even though they might have no connection to the rape itself.

A victims' attorney, if on hand, could tell the prosecutor he can't have the phone, but the texts from the rapist will be retrieved and delivered.

In addition, a victims' attorney retains attorney/client confidentiality. A crafty defense lawyer, Garvin says, might get the notes of a trusted police advocate turned over to him or her. An example she uses is a victim talking about the pros and cons of going ahead with a prosecution. With a police advocate, those initial doubts might end up in her police file and used by defense attorneys. If those conversations took place with a victim's lawyer or advocate, they would stay confidential.

"The ideal process is to have the attorney/client privilege," says Garvin, who would have victims' attorneys working with advocates to provide emotional support and social service skills.

Garvin is far from making the claim that providing rape victims with their own attorneys will increase the chances that victims will more often report and prosecute. She says that type of thinking is wrongheaded.

"Everyone assumes that the right outcome is prosecuting, so we set up systems and try to fix the problem of nonreporting," she says. "Reporting may not be in the best interests of the victim, and the only way to fix that is to fix the whole system."

For Garvin, that starts with expanding rape shield laws which limit a defense attorney's ability to question a victim about her sexual history. It might include shielding whether the victim had a prior sexual history with the defendant. In Garvin's view, strengthening rape shield laws is the best way to get more women to report and prosecute.

"The whole system continues to be laden with a legacy of disbelief that sexual assaults happen, and a fundamental belief that you lose privacy in the system," she says. "Those two premises need to be changed, and then it might be good for a victim to report."

Retired judge reprimanded, told remarks were sexist

A recently retired Superior Court judge has been reprimanded after reportedly making sexist remarks, such as blaming the increased number of female lawyers for the public's disrespect of the legal system.

By MARK HAYWARD
New Hampshire Union Leader

A recently retired Superior Court judge has been reprimanded after reportedly making sexist remarks, such as blaming the increased number of female lawyers for the public's disrespect of the legal system.

The New Hampshire Judicial Conduct Committee said John M. Lewis, who quietly retired last summer as superiors started investigating complaints, was responsible for making remarks that could be interpreted as showing gender bias.

But while Lewis said he may have made the remarks, he said they were off-the-cuff musings that were misinterpreted.

"I was clearly misunderstood. I take responsibility for this; I'm a judge, I should be clear," Lewis said Monday.

Lewis said he's not a sexist. He said his wife is an artist and a feminist; his daughter is a lawyer. His mother, an escapee from Nazi Germany, ran the family business after his father died at a young age, he said. And at Columbia Law School, he worked alongside then-professor Ruth Bader Ginsburg on a Supreme Court legal brief challenging sexual discrimination.

Lewis, a nominee of former Gov. Jeanne Shaheen, is the former chairman of the state Board of Education and had been a judge for more than 12 years.

He is 67 and retired as supervisory judge of Strafford County Superior Court, where he earned $137,800 a year.

According to the seven-page reprimand, Lewis made the questionable statements when meeting with Strafford County public defenders last July. (See more on report at UnionLeader.com)The reprimand paraphrased the public defenders. Each said Lewis told them that the legal profession risks losing the respect of society because so many women are becoming lawyers.

He compared that to Russia, where he said no one respects the medical profession because it is dominated by females. He said people respect the business world because it is male-dominated. And he said the teaching profession is harmed because women are becoming lawyers rather than teachers.

Also, when meeting with Strafford County prosecutors, Lewis said aggressive prosecution of child abuse cases may hurt families and society, the reprimand said. Lewis told the New Hampshire Union Leader that the remarks dealt with a specific, difficult case.

According to the reprimand, Lewis told prosecutors he would apply procedures differently to defense lawyers than he would to prosecutors. Lewis reportedly said he would give a higher level of scrutiny to cases involving child abuse.

Strafford County Attorney Thomas Velardi said the statements were out of character for Lewis, and he never saw evidence of Lewis acting on them from the bench.

"I never felt as though Judge Lewis made a ruling against us because of these thoughts, or beliefs, or musings," Velardi said.

Velardi said Lewis had started questioning victims who attended the bail hearings of their alleged abusers, and the questioning had damaged the victims' psyches.

Under the terms of the reprimand agreed to by Lewis, he retired without senior status, meaning he won't take judicial work on a limited basis. Nor will he serve in any other judicial capacity.
Lewis agreed that he created an appearance of impropriety by making statements that could be reasonably interpreted to show gender bias and prejudice.

But Lewis disputed any other violations of the judicial code.
Lewis said he retired given his age and the difficulty of fighting such allegations.

He said he continues to practice law in a limited capacity.

mhayward@unionleader.com

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

UNITED STATES *v.* CASTLEMAN

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 12–1371. Argued January 15, 2014—Decided March 26, 2014

Respondent Castleman moved to dismiss his indictment under 18 U. S. C. §922(g)(9), which forbids the possession of firearms by anyone convicted of a "misdemeanor crime of domestic violence." He argued that his previous conviction for "intentionally or knowingly caus[ing] bodily injury to" the mother of his child, App. 27, did not qualify as a "misdemeanor crime of domestic violence" because it did not involve "the use or attempted use of physical force," 18 U. S. C. §921(a)(33)(A)(ii). The District Court agreed, reasoning that "physical force" must entail violent contact and that one can cause bodily injury without violent contact, *e.g.*, by poisoning. The Sixth Circuit affirmed on a different rationale. It held that the degree of physical force required for a conviction to constitute a "misdemeanor crime of domestic violence" is the same as that required for a "violent felony" under the Armed Career Criminal Act (ACCA), §924(e)(2)(B)(i)—namely, violent force—and that Castleman could have been convicted for causing slight injury by nonviolent conduct.

Held: Castleman's conviction qualifies as a "misdemeanor crime of domestic violence." Pp. 4–16.

(a) Section 922(g)(9)'s "physical force" requirement is satisfied by the degree of force that supports a common-law battery conviction—namely, offensive touching. Congress presumably intends to incorporate the common-law meaning of terms that it uses, and nothing suggests Congress intended otherwise here. The Sixth Circuit relied upon *Johnson* v. *United States*, 559 U. S. 133, in which the common-law meaning of "force" was found to be a "comical misfit," *id.*, at 145, when read into ACCA's "violent felony" definition. But *Johnson* resolves this case in the Government's favor: The very reasons for rejecting the common-law meaning in *Johnson* are reasons to embrace

Syllabus

it here. First, whereas it was "unlikely" that Congress meant to incorporate in ACCA's "violent felony" definition "a phrase that the common law gave peculiar meaning only in its definition of a misdemeanor," *id.*, at 141, it is likely that Congress meant to incorporate the misdemeanor-specific meaning of "force" in defining a "misdemeanor crime of domestic violence." Second, whereas the word "violent" or "violence" standing alone "connotes a substantial degree of force," *id.*, at 140, that is not true of "domestic violence," which is a term of art encompassing acts that one might not characterize as "violent" in a nondomestic context. Third, whereas this Court has hesitated to apply ACCA to "crimes which, though dangerous, are not typically committed by those whom one normally labels 'armed career criminals,'" *Begay* v. *United States*, 553 U. S. 137, 146, there is no anomaly in grouping domestic abusers convicted of generic assault or battery offenses together with others whom §922(g) disqualifies from gun ownership. In addition, a contrary reading would have made §922(g)(9) inoperative in at least ten States when it was enacted. Pp. 4–10.

(b) Under this definition of "physical force," Castleman's conviction qualifies as a "misdemeanor crime of domestic violence." The application of the modified categorical approach—consulting Castleman's state indictment to determine whether his conviction entailed the elements necessary to constitute the generic federal offense—is straightforward. Castleman pleaded guilty to "intentionally or knowingly caus[ing] bodily injury to" the mother of his child, and the knowing or intentional causation of bodily injury necessarily involves the use of physical force. First, a "bodily injury" must result from "physical force." The common-law concept of "force" encompasses even its indirect application, making it impossible to cause bodily injury without applying force in the common-law sense. Second, the knowing or intentional application of force is a "use" of force. *Leocal* v. *Ashcroft*, 543 U. S. 1, distinguished. Pp. 10–13.

(c) Castleman claims that legislative history, the rule of lenity, and the canon of constitutional avoidance weigh against this Court's interpretation of §922(g)(9), but his arguments are unpersuasive. Pp. 14–15.

695 F. 3d 582, reversed and remanded.

SOTOMAYOR, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, GINSBURG, BREYER, and KAGAN, JJ., joined. SCALIA, J., filed an opinion concurring in part and concurring in the judgment. ALITO, J., filed an opinion concurring in the judgment, in which THOMAS, J., joined.

SUPREME COURT OF THE UNITED STATES

No. 12–1371

UNITED STATES, PETITIONER *v.* JAMES ALVIN CASTLEMAN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

[March 26, 2013]

JUSTICE SOTOMAYOR delivered the opinion of the Court.

Recognizing that "[f]irearms and domestic strife are a potentially deadly combination," *United States* v. *Hayes*, 555 U. S. 415, 427 (2009), Congress forbade the possession of firearms by anyone convicted of "a misdemeanor crime of domestic violence." 18 U. S. C. §922(g)(9). The respondent, James Alvin Castleman, pleaded guilty to the misdemeanor offense of having "intentionally or knowingly cause[d] bodily injury to" the mother of his child. App. 27. The question before us is whether this conviction qualifies as "a misdemeanor crime of domestic violence." We hold that it does.

I

A

This country witnesses more than a million acts of domestic violence, and hundreds of deaths from domestic violence, each year.[1] See *Georgia* v. *Randolph*, 547 U. S.

[1] See Dept. of Justice (DOJ), Bureau of Justice Statistics (BJS), J. Truman, L. Langton, & M. Planty, Criminal Victimization 2012 (Oct. 2013) (Table 1) (1,259,390 incidents of domestic violence in 2012),

103, 117–118 (2006). Domestic violence often escalates in severity over time, see Brief for Major Cities Chiefs Association et al. as *Amici Curiae* 13–15; Brief for National Network to End Domestic Violence et al. as *Amici Curiae* 9–12, and the presence of a firearm increases the likelihood that it will escalate to homicide, see *id.*, at 14–15; Campbell et al., Assessing Risk Factors for Intimate Partner Homicide, DOJ, Nat. Institute of Justice J., No. 250, p. 16 (Nov. 2003) ("When a gun was in the house, an abused woman was 6 times more likely than other abused women to be killed"). "[A]ll too often," as one Senator noted during the debate over §922(g)(9), "the only difference between a battered woman and a dead woman is the presence of a gun." 142 Cong. Rec. 22986 (1996) (statement of Sen. Wellstone).

Congress enacted §922(g)(9), in light of these sobering facts, to "'close [a] dangerous loophole'" in the gun control laws: While felons had long been barred from possessing guns, many perpetrators of domestic violence are convicted only of misdemeanors. *Hayes*, 555 U. S., at 418, 426. Section 922(g)(9) provides, as relevant, that any person "who has been convicted . . . of a misdemeanor crime of domestic violence" may not "possess in or affecting commerc[e] any firearm or ammunition." With exceptions that do not apply here, the statute defines a "misdemeanor crime of domestic violence" as

> "an offense that . . . (i) is a misdemeanor under Federal, State, or Tribal law; and (ii) has, as an element, the use or attempted use of physical force, or the

---

online at http://www.bjs.gov/content/pub/pdf/cv12.pdf (all Internet materials as visited Mar. 19, 2014, and available in Clerk of Court's case file); DOJ, BJS, C. Rennison, Crime Data Brief, Intimate Partner Violence, 1993–2001, p. 1 (Feb. 2003) (violence among intimate partners caused deaths of 1,247 women and 440 men in 2000), online at http://www.bjs.gov/content/pub/pdf/ipv01.pdf.

> threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim." §921(a)(33)(A).

This case concerns the meaning of one phrase in this definition: "the use . . . of physical force."

B

In 2001, Castleman was charged in a Tennessee court with having "intentionally or knowingly cause[d] bodily injury to" the mother of his child, in violation of Tenn. Code Ann. §39–13–111(b) (Supp. 2002). App. 27. He pleaded guilty. *Id.*, at 29.

In 2008, federal authorities learned that Castleman was selling firearms on the black market. A grand jury in the Western District of Tennessee indicted him on two counts of violating §922(g)(9) and on other charges not relevant here. *Id.*, at 13–16.

Castleman moved to dismiss the §922(g)(9) charges, arguing that his Tennessee conviction did not qualify as a "misdemeanor crime of domestic violence" because it did not "ha[ve], as an element, the use . . . of physical force," §921(a)(33)(A)(ii). The District Court agreed, on the theory that "the 'use of physical force' for §922(g)(9) purposes" must entail "violent contact with the victim." App. to Pet. for Cert. 40a. The court held that a conviction under the relevant Tennessee statute cannot qualify as a "misdemeanor crime of domestic violence" because one can cause bodily injury without "violent contact"—for example, by "deceiving [the victim] into drinking a poisoned beverage." *Id.*, at 41a.

A divided panel of the U. S. Court of Appeals for the

Sixth Circuit affirmed, by different reasoning. 695 F. 3d 582 (2012). The majority held that the degree of physical force required by §921(a)(33)(A)(ii) is the same as required by §924(e)(2)(B)(i), which defines "violent felony." *Id.*, at 587. Applying our decision in *Johnson* v. *United States*, 559 U. S. 133 (2010), which held that §924(e)(2)(B)(i) requires "*violent* force," *id.*, at 140, the majority held that Castleman's conviction did not qualify as a "misdemeanor crime of domestic violence" because Castleman could have been convicted for "caus[ing] a slight, nonserious physical injury with conduct that cannot be described as violent." 695 F. 3d, at 590. Judge McKeague dissented, arguing both that the majority erred in extending *Johnson*'s definition of a "violent felony" to the context of a "misdemeanor crime of domestic violence" and that, in any event, Castleman's conviction satisfied the *Johnson* standard. *Id.*, at 593–597.

The Sixth Circuit's decision deepened a split of authority among the Courts of Appeals. Compare, *e.g.*, *United States* v. *Nason*, 269 F. 3d 10, 18 (CA1 2001) (§922(g)(9) "encompass[es] crimes characterized by the application of *any* physical force"), with *United States* v. *Belless*, 338 F. 3d 1063, 1068 (CA9 2003) (§922(g)(9) covers only "the violent use of force"). We granted certiorari to resolve this split, 570 U. S. ___ (2013), and now reverse the Sixth Circuit's judgment.

II

A

"It is a settled principle of interpretation that, absent other indication, 'Congress intends to incorporate the well-settled meaning of the common-law terms it uses.'" *Sekhar* v. *United States*, 570 U. S. ___, ___ (2013) (slip op., at 3). Seeing no "other indication" here, we hold that Congress incorporated the common-law meaning of "force"—namely, offensive touching—in §921(a)(33)(A)'s definition of a "mis-

demeanor crime of domestic violence."

Johnson resolves this case in the Government's favor—not, as the Sixth Circuit held, in Castleman's. In *Johnson*, we considered whether a battery conviction was a "violent felony" under the Armed Career Criminal Act (ACCA), §924(e)(1). As here, ACCA defines such a crime as one that "has as an element the use . . . of physical force," §924(e)(2)(B)(i). We began by observing that at common law, the element of force in the crime of battery was "satisfied by even the slightest offensive touching." 559 U. S., at 139 (citing 3 W. Blackstone, Commentaries on the Laws of England 120 (1768)).[2] And we recognized the general rule that "a common-law term of art should be given its established common-law meaning," except "where that meaning does not fit." 559 U. S., at 139. We declined to read the common-law meaning of "force" into ACCA's definition of a "violent felony," because we found it a "comical misfit with the defined term." *Id.*, at 145; see *United States* v. *Stevens*, 559 U. S. 460, 474 (2010) ("[A]n unclear definitional phrase may take meaning from the term to be defined"). In defining a "'*violent* felony,'" we held, "the phrase 'physical force'" must "mea[n] *violent* force." *Johnson*, 559 U. S., at 140. But here, the common-law meaning of "force" fits perfectly: The very reasons we gave for rejecting that meaning in defining a "violent felony" are reasons to embrace it in defining a "misdemeanor crime of domestic violence."[3]

---

[2] We explained that the word "physical" did not add much to the word "force," except to distinguish "force exerted by and through concrete bodies . . . from, for example, intellectual force or emotional force." *Johnson*, 559 U. S., at 138.

[3] *Johnson* specifically reserved the question whether our definition of "physical force" would extend to 18 U. S. C. §922(g)(9). 559 U. S., at 143–144. And these reasons for declining to extend *Johnson*'s definition to §922(g)(9) serve equally to rebut the "presumption of consistent usage" on which JUSTICE SCALIA's concurrence heavily relies, *post*, at 1–2, 4.

First, because perpetrators of domestic violence are "routinely prosecuted under generally applicable assault or battery laws," *Hayes*, 555 U. S., at 427, it makes sense for Congress to have classified as a "misdemeanor crime of domestic violence" the type of conduct that supports a common-law battery conviction. Whereas it was "unlikely" that Congress meant to incorporate in the definition of a "'violent felony' a phrase that the common law gave peculiar meaning only in its definition of a misdemeanor," *Johnson*, 559 U. S., at 141, it is likely that Congress meant to incorporate that misdemeanor-specific meaning of "force" in defining a "misdemeanor crime of domestic violence."

Second, whereas the word "violent" or "violence" standing alone "connotes a substantial degree of force," *id.*, at 140,[4] that is not true of "domestic violence." "Domestic

---

[4]This portion of *Johnson*'s analysis relied heavily on *Leocal* v. *Ashcroft*, 543 U. S. 1 (2004), in which we interpreted the meaning of a "crime of violence" under 18 U. S. C. §16. As in *Johnson* and here, the statute defines a "crime of violence" in part as one "that has as an element the use . . . of physical force," §16(a). In support of our holding in *Johnson*, we quoted *Leocal*'s observation that "'[t]he ordinary meaning of [a "crime of violence"] . . . suggests a category of violent, active crimes.'" 559 U. S., at 140 (quoting 543 U. S., at 11).

The Courts of Appeals have generally held that mere offensive touching cannot constitute the "physical force" necessary to a "crime of violence," just as we held in *Johnson* that it could not constitute the "physical force" necessary to a "violent felony." See *Karimi* v. *Holder*, 715 F. 3d 561, 566–568 (CA4 2013); *Singh* v. *Ashcroft*, 386 F. 3d 1228, 1233 (CA9 2004); *Flores* v. *Ashcroft*, 350 F. 3d 666, 672 (CA7 2003); *United States* v. *Venegas-Ornelas*, 348 F. 3d 1273, 1275 (CA10 2003); *United States* v. *Landeros-Gonzales*, 262 F. 3d 424, 426 (CA5 2001); see also *United States* v. *Rede-Mendez*, 680 F. 3d 552, 558 (CA6 2012) (commenting generally that "[i]n the crime of violence context, 'the phrase "physical force" means *violent* force'"); *United States* v. *Haileselassie*, 668 F. 3d 1033, 1035 (CA8 2012) (dicta). But see *Hernandez* v. *U. S. Attorney General*, 513 F. 3d 1336, 1340, n. 3 (CA11 2008) (*per curiam*). The Board of Immigration Appeals has similarly extended *Johnson*'s requirement of violent force to the context of a "crime of

violence" is not merely a type of "violence"; it is a term of art encompassing acts that one might not characterize as "violent" in a nondomestic context. See Brief for National Network to End Domestic Violence et al. as *Amici Curiae* 4–9; DOJ, Office on Violence Against Women, Domestic Violence (defining physical forms of domestic violence to include "[h]itting, slapping, shoving, grabbing, pinching, biting, [and] hair pulling"), online at http://www.ovw.usdoj.gov/domviolence.htm.[5] Indeed, "most physical assaults committed against women and men by intimates are relatively minor and consist of pushing, grabbing, shoving, slapping, and hitting." DOJ, P. Tjaden & N. Thoennes, Extent, Nature and Consequences of Intimate Partner Violence 11 (2000).

Minor uses of force may not constitute "violence" in the generic sense. For example, in an opinion that we cited

---

violence" under §16. *Matter of Velasquez*, 25 I. & N. Dec. 278, 282 (2010). Nothing in today's opinion casts doubt on these holdings, because—as we explain—"domestic violence" encompasses a range of force broader than that which constitutes "violence" *simpliciter*.

We note, as does JUSTICE SCALIA's concurrence, *post,* at 8, and n. 7, that federal law elsewhere defines "domestic violence" in more limited terms: For example, a provision of the Immigration and Nationality Act defines a "'crime of domestic violence'" as "any crime of violence (as defined by [18 U. S. C. §16])" committed against a qualifying relation. 8 U. S. C. §1227(a)(2)(E)(i). Our view that "domestic violence" encompasses acts that might not constitute "violence" in a nondomestic context does not extend to a provision like this, which specifically defines "domestic violence" by reference to a generic "crime of violence."

[5] See also A. Ganley, Understanding Domestic Violence, in Improving the Health Care Response to Domestic Violence: A Resource Manual for Health Care Providers 18 (2d ed. 1996), online at http://www.futureswithoutviolence.org/userfiles/file/HealthCare/improving_healthcare_manual_1.pdf (physical forms of domestic violence "may include spitting, scratching, biting, grabbing, shaking, shoving, pushing, restraining, throwing, twisting, [or] slapping"); M. McCue, Domestic Violence: A Reference Handbook 6 (1995) (noting that physical forms of domestic violence "may begin with relatively minor assaults such as painful pinching or squeezing").

with approval in *Johnson*, the Seventh Circuit noted that it was "hard to describe . . . as 'violence'" "a squeeze of the arm [that] causes a bruise." *Flores* v. *Ashcroft*, 350 F. 3d 666, 670 (2003). But an act of this nature is easy to describe as "domestic violence," when the accumulation of such acts over time can subject one intimate partner to the other's control. If a seemingly minor act like this draws the attention of authorities and leads to a successful prosecution for a misdemeanor offense, it does not offend common sense or the English language to characterize the resulting conviction as a "misdemeanor crime of domestic violence."

JUSTICE SCALIA's concurrence discounts our reference to social-science definitions of "domestic violence," including those used by the organizations most directly engaged with the problem and thus most aware of its dimensions. See *post,* at 8–11. It is important to keep in mind, however, that the operative phrase we are construing is not "domestic violence"; it is "physical force." §921(a)(33)(A). "Physical force" has a presumptive common-law meaning, and the question is simply whether that presumptive meaning makes sense in defining a "misdemeanor crime of domestic violence."[6]

A third reason for distinguishing *Johnson*'s definition of "physical force" is that unlike in *Johnson*—where a determination that the defendant's crime was a "violent felony" would have classified him as an "armed career criminal"—

---

[6]The concurrence's reliance on definitions of "domestic violence" in other statutory provisions, see *post,* at 8, and n. 7, is similarly unpersuasive. These other provisions show that when Congress wished to define "domestic violence" as a type of "violence" *simpliciter*, it knew how to do so. That it did not do so here suggests, if anything, that it did not mean to. See, *e.g., Custis* v. *United States*, 511 U. S. 485, 492 (1994). This also answers the concurrence's suggestion, *post,* at 10, that our holding will somehow make it difficult for Congress to define "domestic violence"—where it wants to—as requiring violent force.

the statute here groups those convicted of "misdemeanor crimes of domestic violence" with others whose conduct does not warrant such a designation. Section 922(g) bars gun possession by anyone "addicted to any controlled substance," §922(g)(3); by most people who have "been admitted to the United States under a nonimmigrant visa," §922(g)(5)(B); by anyone who has renounced United States citizenship, §922(g)(7); and by anyone subject to a domestic restraining order, §922(g)(8). Whereas we have hesitated (as in *Johnson*) to apply the Armed Career Criminal Act to "crimes which, though dangerous, are not typically committed by those whom one normally labels 'armed career criminals,'" *Begay* v. *United States*, 553 U. S. 137, 146 (2008), we see no anomaly in grouping domestic abusers convicted of generic assault or battery offenses together with the others whom §922(g) disqualifies from gun ownership.

An additional reason to read the statute as we do is that a contrary reading would have rendered §922(g)(9) inoperative in many States at the time of its enactment. The "assault or battery laws" under which "domestic abusers were . . . routinely prosecuted" when Congress enacted §922(g)(9), and under which many are still prosecuted today, *Hayes*, 555 U. S., at 427, fall generally into two categories: those that prohibit both offensive touching and the causation of bodily injury, and those that prohibit only the latter. See Brief for United States 36–38. Whether or not the causation of bodily injury necessarily entails violent force—a question we do not reach—mere offensive touching does not. See *Johnson*, 559 U. S., at 139–140. So if offensive touching did not constitute "force" under §921(a)(33)(A), then §922(g)(9) would have been ineffectual in at least 10 States—home to nearly thirty percent of the Nation's population[7]—at the time of its enactment.

[7]See U. S. Census Bureau, Time Series of Intercensal State Popula-

See *post*, at 6, and n. 5 (SCALIA, J., concurring in part and concurring in judgment) (acknowledging that §922(g)(9) would have been inapplicable in California and nine other States if it did not encompass offensive touching); App. to Brief for United States 10a–16a (listing statutes prohibiting both offensive touching and the causation of bodily injury, only some of which are divisible); cf. *Hayes*, 555 U. S., at 427 (rejecting an interpretation under which "§922(g)(9) would have been 'a dead letter' in some two-thirds of the States from the very moment of its enactment").

In sum, *Johnson* requires that we attribute the common-law meaning of "force" to §921(a)(33)(A)'s definition of a "misdemeanor crime of domestic violence" as an offense that "has, as an element, the use or attempted use of physical force." We therefore hold that the requirement of "physical force" is satisfied, for purposes of §922(g)(9), by the degree of force that supports a common-law battery conviction.

B

Applying this definition of "physical force," we conclude that Castleman's conviction qualifies as a "misdemeanor crime of domestic violence." In doing so, we follow the analytic approach of *Taylor* v. *United States*, 495 U. S. 575 (1990), and *Shepard* v. *United States*, 544 U. S. 13 (2005). We begin with *Taylor*'s categorical approach, under which we look to the statute of Castleman's conviction to determine whether that conviction necessarily "ha[d], as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon," §921(a)(33)(A).

The Tennessee statute under which Castleman was convicted made it a crime to "commi[t] an assault . . .

---

tion Estimates: April 1, 1990 to April 1, 2000, online at http://www.census.gov/popest/data/intercensal/st-co/files/CO-EST2001-12-00.pdf (estimating state and national populations as of July 1, 1996).

against" a "family or household member"—in Castleman's case, the mother of his child. Tenn. Code Ann. §39–13–111(b). A provision incorporated by reference, §39–13–101, defined three types of assault: "(1) [i]ntentionally, knowingly or recklessly caus[ing] bodily injury to another; (2) [i]ntentionally or knowingly caus[ing] another to reasonably fear imminent bodily injury; or (3) [i]ntentionally or knowingly caus[ing] physical contact with another" in a manner that a "reasonable person would regard . . . as extremely offensive or provocative." §39–13–101(a).

It does not appear that every type of assault defined by §39–13–101 necessarily involves "the use or attempted use of physical force, or the threatened use of a deadly weapon," §921(a)(33)(A). A threat under §39–13–101(2) may not necessarily involve a deadly weapon, and the merely reckless causation of bodily injury under §39–13–101(1) may not be a "use" of force.[8]

But we need not decide whether a domestic assault conviction in Tennessee categorically constitutes a "misdemeanor crime of domestic violence," because the parties

---

[8]We held in *Leocal* that "'use' requires active employment," rather "than negligent or merely accidental conduct." 543 U. S., at 9. Although *Leocal* reserved the question whether a reckless application of force could constitute a "use" of force, *id.*, at 13, the Courts of Appeals have almost uniformly held that recklessness is not sufficient. See *United States* v. *Palomino Garcia*, 606 F. 3d 1317, 1335–1336 (CA11 2010); *Jimenez-Gonzalez* v. *Mukasey*, 548 F. 3d 557, 560 (CA7 2008); *United States* v. *Zuniga-Soto*, 527 F. 3d 1110, 1124 (CA10 2008); *United States* v. *Torres-Villalobos*, 487 F. 3d 607, 615–616 (CA8 2007); *United States* v. *Portela*, 469 F. 3d 496, 499 (CA6 2006); *Fernandez-Ruiz* v. *Gonzales*, 466 F. 3d 1121, 1127–1132 (CA9 2006) (en banc); *Garcia* v. *Gonzales*, 455 F. 3d 465, 468–469 (CA4 2006); *Oyebanji* v. *Gonzales*, 418 F. 3d 260, 263–265 (CA3 2005) (Alito, J.); *Jobson* v. *Ashcroft*, 326 F. 3d 367, 373 (CA2 2003); *United States* v. *Chapa-Garza*, 243 F. 3d 921, 926 (CA5 2001). But see *United States* v. *Booker*, 644 F. 3d 12, 19–20 (CA1 2011) (noting that the First Circuit had not resolved the recklessness issue under *Leocal*, but declining to extend *Leocal*'s analysis to §922(g)(9)).

do not contest that §39–13–101 is a "'divisible statute,'" *Descamps* v. *United States*, 570 U. S. ___, ___ (2013) (slip op., at 1). We may accordingly apply the modified categorical approach, consulting the indictment to which Castleman pleaded guilty in order to determine whether his conviction did entail the elements necessary to constitute the generic federal offense. *Id.*, at ___ (slip op., at 1–2); see *Shepard*, 544 U. S., at 26. Here, that analysis is straightforward: Castleman pleaded guilty to having "intentionally or knowingly cause[d] bodily injury" to the mother of his child, App. 27, and the knowing or intentional causation of bodily injury necessarily involves the use of physical force.

First, a "bodily injury" must result from "physical force." Under Tennessee law, "bodily injury" is a broad term: It "includes a cut, abrasion, bruise, burn or disfigurement; physical pain or temporary illness or impairment of the function of a bodily member, organ, or mental faculty." Tenn. Code Ann. §39–11–106(a)(2) (1997). JUSTICE SCALIA's concurrence suggests that these forms of injury necessitate violent force, under *Johnson*'s definition of that phrase. *Post,* at 3. But whether or not that is so—a question we do not decide—these forms of injury do necessitate force in the common-law sense.

The District Court thought otherwise, reasoning that one can cause bodily injury "without the 'use of physical force'"—for example, by "deceiving [the victim] into drinking a poisoned beverage, without making contact of any kind." App. to Pet. for Cert. 41a. But as we explained in *Johnson*, "physical force" is simply "force exerted by and through concrete bodies," as opposed to "intellectual force or emotional force." 559 U. S., at 138. And the common-law concept of "force" encompasses even its indirect application. "Force" in this sense "describ[es] one of the elements of the common-law crime of battery," *id.*, at 139, and "[t]he force used" in battery "need not be applied directly to the body of the victim." 2 W. LaFave, Substan-

tive Criminal Law §16.2(b) (2d ed. 2003). "[A] battery may be committed by administering a poison or by infecting with a disease, or even by resort to some intangible substance," such as a laser beam. *Ibid.* (footnote omitted) (citing *State* v. *Monroe*, 121 N. C. 677, 28 S. E. 547 (1897) (poison); *State* v. *Lankford*, 29 Del. 594, 102 A. 63 (1917) (disease); *Adams* v. *Commonwealth*, 33 Va. App. 463, 534 S. E. 2d 347 (2000) (laser beam)). It is impossible to cause bodily injury without applying force in the common-law sense.

Second, the knowing or intentional application of force is a "use" of force. Castleman is correct that under *Leocal* v. *Ashcroft*, 543 U. S. 1 (2004), the word "use" "conveys the idea that the thing used (here, 'physical force') has been made the user's instrument." Brief for Respondent 37. But he errs in arguing that although "[p]oison may have 'forceful physical properties' as a matter of organic chemistry, . . . no one would say that a poisoner 'employs' force or 'carries out a purpose by means of force' when he or she sprinkles poison in a victim's drink," *ibid.* The "use of force" in Castleman's example is not the act of "sprinkl[ing]" the poison; it is the act of employing poison knowingly as a device to cause physical harm. That the harm occurs indirectly, rather than directly (as with a kick or punch), does not matter. Under Castleman's logic, after all, one could say that pulling the trigger on a gun is not a "use of force" because it is the bullet, not the trigger, that actually strikes the victim. *Leocal* held that the "use" of force must entail "a higher degree of intent than negligent or merely accidental conduct," 543 U. S., at 9; it did not hold that the word "use" somehow alters the meaning of "force."

Because Castleman's indictment makes clear that the use of physical force was an element of his conviction, that conviction qualifies as a "misdemeanor crime of domestic violence."

III

We are not persuaded by Castleman's nontextual arguments against our interpretation of §922(g)(9).

A

First, Castleman invokes §922(g)(9)'s legislative history to suggest that Congress could not have intended for the provision to apply to acts involving minimal force. But to the extent that legislative history can aid in the interpretation of this statute, Castleman's reliance on it is unpersuasive.

Castleman begins by observing that during the debate over §922(g)(9), several Senators argued that the provision would help to prevent gun violence by perpetrators of severe domestic abuse. Senator Lautenberg referred to "serious spousal or child abuse" and to "violent individuals"; Senator Hutchison to "'people who batter their wives'"; Senator Wellstone to people who "brutalize" their wives or children; and Senator Feinstein to "severe and recurring domestic violence." 142 Cong. Rec. 22985–22986, 22988. But as we noted above, see *supra*, at 2, the impetus of §922(g)(9) was that even perpetrators of severe domestic violence are often convicted "under generally applicable assault or battery laws." *Hayes*, 555 U. S., at 427. So nothing about these Senators' isolated references to severe domestic violence suggests that they would not have wanted §922(g)(9) to apply to a misdemeanor assault conviction like Castleman's.

Castleman next observes that §922(g)(9) is the product of a legislative compromise. The provision originally barred gun possession for any "crime of domestic violence," defined as any "felony or misdemeanor crime of violence, regardless of length, term, or manner of punishment." 142 Cong. Rec. 5840. Congress rewrote the provision to require the use of physical force in response to the concern "that the term crime of violence was too broad, and could

be interpreted to include an act such as cutting up a credit card with a pair of scissors," *id.*, at 26675. See *Hayes*, 555 U. S., at 428. Castleman would have us conclude that Congress thus meant "to narrow the scope of the statute to convictions based on especially severe conduct." Brief for Respondent 24. But all Congress meant to do was address the fear that §922(g)(9) might be triggered by offenses in which no force at all was directed at a person. As Senator Lautenberg noted, the revised text was not only "more precise" than the original but also "probably broader." 142 Cong. Rec. 26675.

B

We are similarly unmoved by Castleman's invocation of the rule of lenity. Castleman is correct that our "construction of a criminal statute must be guided by the need for fair warning." *Crandon* v. *United States*, 494 U. S. 152, 160 (1990). But "the rule of lenity only applies if, after considering text, structure, history, and purpose, there remains a grievous ambiguity or uncertainty in the statute, such that the Court must simply guess as to what Congress intended." *Barber* v. *Thomas*, 560 U. S. 474, 488 (2010) (citation and internal quotation marks omitted). That is not the case here.

C

Finally, Castleman suggests—in a single paragraph—that we should read §922(g)(9) narrowly because it implicates his constitutional right to keep and bear arms. But Castleman has not challenged the constitutionality of §922(g)(9), either on its face or as applied to him, and the meaning of the statute is sufficiently clear that we need not indulge Castleman's cursory nod to constitutional avoidance concerns.

* * *

Castleman's conviction for having "intentionally or

knowingly cause[d] bodily injury to" the mother of his child qualifies as a "misdemeanor crime of domestic violence." The judgment of the United States Court of Appeals for the Sixth Circuit is therefore reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 12–1371

UNITED STATES, PETITIONER *v.* JAMES ALVIN CASTLEMAN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

[March 26, 2014]

JUSTICE SCALIA, concurring in part and concurring in the judgment.

I agree with the Court that intentionally or knowingly causing bodily injury to a family member "has, as an element, the use . . . of physical force," 18 U. S. C. § §921(a)(33)(A)(ii), and thus constitutes a "misdemeanor crime of domestic violence," §922(g)(9). I write separately, however, because I reach that conclusion on narrower grounds.

I

Our decision in *Johnson* v. *United States*, 559 U. S. 133 (2010), is the natural place to begin. *Johnson* is significant here because it concluded that "the phrase 'physical force' means *violent* force—that is, *force capable of causing physical pain or injury to another person*." *Id.*, at 140 (second emphasis added). This is an easy case if the phrase "physical force" has the same meaning in §921(a)(33)(A)(ii), the provision that defines "misdemeanor crime of domestic violence" for purposes of §922(g)(9), as it does in §924(e)(2)(B)(ii), the provision interpreted in *Johnson*, since it is impossible to cause bodily injury without using force "capable of" producing that result.

There are good reasons to give the phrase *Johnson*'s interpretation. One is the presumption of consistent

usage—the rule of thumb that a term generally means the same thing each time it is used. Although the presumption is most commonly applied to terms appearing in the same enactment, *e.g.*, *IBP, Inc.* v. *Alvarez*, 546 U. S. 21, 33–34 (2005), it is equally relevant "when Congress uses the same language in two statutes having similar purposes," *Smith* v. *City of Jackson*, 544 U. S. 228, 233 (2005) (plurality opinion); see also *Northcross* v. *Board of Ed. of Memphis City Schools*, 412 U. S. 427, 428 (1973) (*per curiam*). This case is a textbook candidate for application of the *Smith-Northcross* branch of the rule. The "physical force" clauses at issue here and in *Johnson* are worded in nearly identical fashion: The former defines a "misdemeanor crime of domestic violence" as an offense that "has, as an element, the use or attempted use of physical force," §921(a)(33)(A)(ii), while the latter defines a "violent felony" as an offense that "has as an element the use, attempted use, or threatened use of physical force against the person of another," §924(e)(2)(B)(i). And both statutes are designed to promote public safety by deterring a class of criminals from possessing firearms.

Respondent's arguments fail to overcome the presumption of consistent usage. In respondent's view, "physical force" cannot mean "*any* force that produces *any* pain or bodily injury," Brief for Respondent 25, because §921(a)(33)(A)(ii) defines a *violent* crime and one can inflict all sorts of minor injuries—bruises, paper cuts, etc.—by engaging in *nonviolent* behavior. Respondent therefore reasons that §921(a)(33)(A)(ii) requires force capable of inflicting "serious" bodily injury. That requirement is more demanding than both of the plausible meanings of "physical force" we identified in *Johnson*: common-law offensive touching (which *Johnson* rejected) and force capable of causing physical pain or injury, serious or otherwise. See 559 U. S., at 138–140. It would be surpassing strange to read a statute defining a "*misdemeanor*

crime of domestic violence" as requiring greater force than the similarly worded statute in *Johnson*, which defined a "violent *felony*," and respondent does not make a convincing case for taking that extraordinary step.

For these reasons, I would give "physical force" the same meaning in §921(a)(33)(A)(ii) as in *Johnson*. The rest of the analysis is straightforward. Because "intentionally or knowingly caus[ing] bodily injury," App. 27, categorically involves the use of "force capable of causing physical pain or injury to another person," 559 U. S., at 140, respondent's 2001 domestic-assault conviction qualifies as a "misdemeanor crime of domestic violence" under §922(g)(9).[1] I would reverse the judgment below on that basis and remand for further proceedings.

II

Unfortunately, the Court bypasses that narrower interpretation of §921(a)(33)(A)(ii) in favor of a much broader one that treats any offensive touching, no matter how slight, as sufficient. That expansive common-law definition cannot be squared with relevant precedent or statutory text.

We have twice addressed the meaning of "physical force" in the context of provisions that define a class of violent crimes. Both times, we concluded that "physical force" means violent force. In *Johnson*, we thought it "clear that in the context of a statutory definition of '*violent* felony,' the phrase 'physical force' means *violent* force." *Id.*, at 140. And we held that common-law offensive touching—the same type of force the Court today holds *does* constitute "physical force"—is *not* sufficiently violent to satisfy

---

[1] Respondent argues at length that Tenn. Code Ann. §39–13–111(b) (2013 Supp.) does not require the "use" of physical force, since it is possible to cause bodily injury through deceit or other nonviolent means. Brief for Respondent 30–42. The argument fails for the reasons given by the Court. See *ante*, at 13.

the Armed Career Criminal Act's "physical force" requirement. See *id.*, at 140–144. Our analysis in *Johnson* was premised in large part on our earlier interpretation of the generic federal "crime of violence" statute, 18 U. S. C. §16. In *Leocal* v. *Ashcroft*, 543 U. S. 1, 11 (2004), we observed that §16(a)—which defines a "crime of violence" as "an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another"—comprehends "a category of violent, active crimes." The textual similarity between §921(a)(33)(A)(ii)'s "physical force" clause and the clauses at issue in *Johnson* and *Leocal* thus raises the question: Why should the same meaning not apply here?

The Court gives four responses that merit discussion, none of which withstands scrutiny. First, the Court invokes the "'settled principle of interpretation that, absent other indication, "Congress intends to incorporate the well-settled meaning of the common-law terms it uses."'" *Ante*, at 4 (quoting *Sekhar* v. *United States*, 570 U. S. ___, ___ (2013) (slip op., at 3)). That principle is of limited relevance, since the presumption of consistent statutory meaning is precisely "other indication" that §921(a)(33)(A)(ii) does not incorporate the common-law meaning. Anyway, a more accurate formulation of the principle cited by the Court is that when "'a word is obviously transplanted from another legal source, whether the common law *or other legislation*, it brings the old soil with it.'" *Sekhar*, *supra*, at ___ (slip op., at 3–4) (quoting Frankfurter, Some Reflections on the Reading of Statutes, 47 Colum. L. Rev. 527, 537 (1947); emphasis added). Section 921(a)(33)(A)(ii) was enacted after the statutes involved in *Johnson* and *Leocal*,[2] and its "physical force"

[2]Section §921(a)(33)(A)(ii) was enacted in 1996. See §658, 110 Stat. 3009–371. The Armed Career Criminal Act provision interpreted in *Johnson* was enacted in 1986, see §1402, 100 Stat. 3207–39, and the

clause is quite obviously modeled on theirs.

Second, the Court asserts that any interpretation of "physical force" that excludes offensive touching "would have rendered §922(g)(9) inoperative in many States at the time of its enactment." *Ante*, at 9. But there is no interpretive principle to the effect that statutes must be given their broadest possible application, and §922(g)(9) without offensive touching would have had application in four-fifths of the States. Although domestic violence was "routinely prosecuted" under misdemeanor assault or battery statutes when Congress enacted §922(g)(9), *United States* v. *Hayes*, 555 U. S. 415, 427 (2009), and such statutes generally prohibited "both offensive touching and the causation of bodily injury" or "only the latter," *ante*, at 9, it does not follow that interpreting "physical force" to mean violent force would have rendered §922(g)(9) a practical nullity. To the contrary, §922(g)(9) would have worked perfectly well in 38 of the 48 States that had misdemeanor assault or battery statutes at the time of §922(g)(9)'s enactment. At that point, 19 States had statutes that covered infliction of bodily injury but not offensive touching,[3] and 19 more had statutes that prohibited both of types of conduct, but did so in a divisible manner—thus

---

"crime of violence" statute discussed in *Leocal* was enacted in 1984, see §1001, 98 Stat. 2136.

[3]See Ala. Code §13A–6–22 (1995); Alaska Stat. §11.41.230 (1996); Ark. Code Ann. §5–13–203 (1993); Colo. Rev. Stat. Ann. §18–3–204 (Westlaw 1996); Conn. Gen. Stat. §53a–61 (1996); Haw. Rev. Stat. Ann. §707–712 (1994); Ky. Rev. Stat. Ann. §508.030 (Michie 1990); Minn. Stat. §609.224 (Westlaw 1995); Miss. Code Ann. §97–3–7 (Westlaw 1995); Neb. Rev. Stat. §28–310 (1995); N. J. Stat. Ann. §2C:12–1 (West 1995); N. Y. Penal Law Ann. §120.00 (Westlaw 1995); N. D. Cent. Code Ann. §12.1–17–01 (Westlaw 1995); Ohio Rev. Code Ann. §2903.13 (Lexis 1993); Ore. Rev. Stat. §163.160 (1991); 18 Pa. Cons. Stat. Ann. §2701 (Westlaw 1995); S. D. Codified Laws §22–18–1 (1988); Vt. Stat. Ann., Tit. 13, §1023 (1995); Wis. Stat. Ann. §940.19 (West Cum. Supp. 1995).

making it possible to identify the basis for a conviction by inspecting charging documents and similar materials, see *Descamps* v. *United States*, 570 U. S. ___, ___ (2013) (slip op., at 5–8).[4] That leaves only 10 States whose misdemeanor assault or battery statutes (1) prohibited offensive touching, and (2) were framed in such a way that offensive touching was indivisible from physical violence.[5] The fact that §922(g)(9) would not have applied immediately in 10 States is hardly enough to trigger the presumption against ineffectiveness—the idea that Congress presumably does not enact useless laws. Compare *Hayes*, *supra*, at 427 (rejecting an interpretation that supposedly would have rendered §922(g)(9) "'a dead letter' in some two-thirds of the States"). I think it far more plausible that Congress enacted a statute that covered domestic-violence convictions in four-fifths of the States, and left it to the handful of nonconforming States to change their laws (as some have), than that Congress adopted a meaning of "domestic violence" that included the slightest unwanted touching.

---

[4] See Ariz. Rev. Stat. Ann. §13–1203 (Westlaw 1995); Del. Code Ann., Tit. 11, §§601, 611 (1995); Fla. Stat. §784.03 (Westlaw 1995); Ga. Code Ann. §16–5–23 (1996); Idaho Code §18–903 (Westlaw 1996); Ill. Comp. Stat., ch. 720, §5/12–3 (West 1994); Ind. Code §35–42–2–1 (Michie 1994); Iowa Code §708.1 (Westlaw 1996); Kan. Stat. Ann. §21–3142 (1995); Me. Rev. Stat. Ann., Tit. 17–A, §207 (Westlaw 1996); Mo. Rev. Stat. §565.070 (Westlaw 1996); Mont. Code Ann. §45–5–201 (1995); N. H. Rev. Stat. Ann. §631:2–a (West 1996); N. M. Stat. Ann. §§30–3–4, 30–3–5 (Westlaw 1996); Tenn. Code Ann. §39–13–101 (1991); Tex. Penal Code Ann. §22.01 (Westlaw 1996); Utah Code Ann. §76–5–102 (Lexis 1995); W. Va. Code Ann. §61–2–9 (Lexis 1992); Wyo. Stat. Ann. §6–2–501 (1996).

[5] See Cal. Penal Code Ann. §242 (Westlaw 1996); La. Rev. Stat. Ann. §14:33 (Westlaw 1996); Mass. Gen. Laws, ch. 265, §13A (West 1994); Mich. Comp. Laws §750.81 (1991); Nev. Rev. Stat. Ann. §200.481 (West Cum. Supp. 1995); N. C. Gen. Stat. Ann. §14–33 (Lexis 1993); Okla. Stat., Tit. 21, §642 (West 1991); R. I. Gen. Laws §11–5–3 (Michie 1994); Va. Code Ann. §18.2–57 (Michie 1996); Wash. Rev. Code Ann. §9A.36.041 (Michie 1994).

Third, the Court seizes on the one and only meaningful distinction between §921(a)(33)(A)(ii) and the other provisions referred to above: that it defines a violent "misdemeanor" rather than a "violent felony" or an undifferentiated "crime of violence." *Ante*, at 5–6. We properly take account of the term being defined when interpreting "an unclear definitional phrase." *United States* v. *Stevens*, 559 U. S. 460, 474 (2010); but see *Babbitt* v. *Sweet Home Chapter, Communities for Great Ore.*, 515 U. S. 687, 717–719 (1995) (SCALIA, J., dissenting). But when we do so, we consider *the entire* term being defined, not just part of it. Here, the term being defined is "*misdemeanor* crime of domestic *violence*." Applying the term-to-be-defined canon thus yields the unremarkable conclusion that "physical force" in §921(a)(33)(A)(ii) refers to the type of force involved in violent misdemeanors (such as bodily-injury offenses) rather than nonviolent ones (such as offensive touching).

Fourth, and finally, the Court seeks to evade *Johnson* and *Leocal* on the ground that "'domestic violence' encompasses a range of force broader than that which constitutes 'violence' *simpliciter*." *Ante*, at 6, n. 4. That is to say, an act need not be violent to qualify as "domestic violence." That absurdity is not only at war with the English language, it is flatly inconsistent with definitions of "domestic violence" from the period surrounding §921(a)(33)(A)(ii)'s enactment. At the time, dictionaries defined "domestic violence" as, for instance, "[v]iolence between members of a household, usu. spouses; an assault or other violent act committed by one member of a household against another," Black's Law Dictionary 1564 (7th ed. 1999), and "[v]iolence toward or physical abuse of one's spouse or domestic partner," American Heritage Dictionary 534 (4th ed. 2000).[6] Those definitions, combined with

[6] Definitions of "physical force" from the same period are also at odds

the absence of "domestic violence" entries in earlier dictionaries, see, *e.g.*, Black's Law Dictionary 484 (6th ed. 1990); American Heritage Dictionary 550 (3d ed. 1992), make it utterly implausible that Congress adopted a "term of art" definition "encompassing acts that one might not characterize as 'violent' in a nondomestic context," *ante*, at 7.

The Court's inventive, nonviolent definition fares no better when judged against other accepted sources of meaning. Current dictionaries give "domestic violence" the same meaning as above: ordinary violence that occurs in a domestic context. See, *e.g.*, American Heritage Dictionary 533 (5th ed. 2011) ("[p]hysical abuse of a household member, especially one's spouse or domestic partner"). The same goes for definitions of "domestic violence" found in other federal statutes.[7] Indeed, Congress defined "crime of domestic violence" as a "crime of violence" in another section of the same bill that enacted §921(a)(33)(A)(ii). See §350(a), 110 Stat. 3009–639, codified at 8 U. S. C. §1227(a)(2)(E)(i).

The Court ignores these authorities and instead bases its definition on an *amicus* brief filed by the National Network to End Domestic Violence and other private

---

with the Court's nonviolent interpretation of that phrase. See Black's Law Dictionary 656 (7th ed. 1999) ("[f]orce consisting in a physical act, esp. a violent act directed against a robbery victim"); *id.*, at 1147 (6th ed. 1990) ("[f]orce applied to the body; actual violence").

[7]See, *e.g.*, 18 U. S. C. §2261(a)(1) (defining as "[i]nterstate domestic violence" certain "crime[s] of violence"); §3561(b) ("The term 'domestic violence crime' means a crime of violence . . . in which the victim or intended victim is the [defendant's] spouse" or other qualifying relation); 25 U. S. C. A. §1304(a)(2) ("The term 'domestic violence' means violence committed by a current or former spouse or" other qualifying relation); 42 U. S. C. A. §13925(a)(8) (Sept. 2013 Supp.) ("The term 'domestic violence' includes felony or misdemeanor crimes of violence committed by a current or former spouse" or other qualifying relation).

organizations,[8] and two publications issued by the Department of Justice's Office on Violence Against Women. The *amicus* brief provides a series of definitions—drawn from law-review articles, foreign-government bureaus, and similar sources—that include such a wide range of nonviolent and even *nonphysical* conduct that they cannot possibly be relevant to the meaning of a statute requiring "physical force," or to the legal meaning of "domestic violence" (as opposed to the meaning desired by private and governmental advocacy groups). For example, *amici*'s definitions describe as "domestic violence" acts that "humiliate, isolate, frighten, . . . [and] blame . . . someone"; "acts of omission"; "excessive monitoring of a woman's behavior, repeated accusations of infidelity, and controlling with whom she has contact." Brief for National Network to End Domestic Violence et al. as *Amici Curiae* 5–8, and nn. 7, 11. The offerings of the Department of Justice's Office on Violence Against Women are equally capacious and (to put it mildly) unconventional. Its publications define "domestic violence" as "a pattern of abusive behavior . . . used by one partner to gain or maintain power and control over another," including "[u]ndermining an individual's sense of self-worth," "name-calling," and "damaging one's relationship with his or her children." See, *e.g.*, Domestic Violence, online at http://www.ovw.usdoj.gov/domviolence.htm (all Internet materials as visited Mar. 21, 2014, and available in the Clerk of Court's case file).[9]

---

[8]The other organizations on the brief are the National Domestic Violence Hotline, the Domestic Violence Legal Empowerment and Appeals Project, Legal Momentum, and innumerable state organizations against domestic violence.

[9]The Court refers in a footnote to two additional social-science definitions, neither of which aids the Court's cause. See *ante*, at 7, n. 5. The first is drawn from a health-care manual that provides "a behavioral definition of domestic violence . . . *rather than a legal definition*, since a

Of course these private organizations and the Department of Justice's (nonprosecuting) Office are entitled to define "domestic violence" any way they want for their own purposes—purposes that can include (quite literally) giving all domestic behavior harmful to women a bad name. (What is more abhorrent than *violence* against women?) But when they (and the Court) impose their all-embracing definition on the rest of us, they not only distort the law, they impoverish the language. When everything is domestic violence, nothing is. Congress will have to come up with a new word (I cannot imagine what it would be) to denote actual domestic *violence*.

Although the Justice Department's definitions ought to be deemed unreliable *in toto* on the basis of their extravagant extensions alone (*falsus in uno, falsus in omnibus*), the Court chooses to focus only upon the physical actions that they include, viz., "[h]itting, slapping, shoving, grabbing, pinching, biting, [and] hair pulling." *Ibid.* None of those actions bears any real resemblance to mere offensive touching, and all of them are capable of causing physical pain or injury. Cf. *Johnson*, 559 U. S., at 143 (identifying "a slap in the face" as conduct that might rise to the level of violent force). And in any event, the Department of Justice thankfully receives no deference in our interpreta-

---

behavioral definition is more comprehensive and more relevant to the health care setting." A. Ganley, Understanding Domestic Violence, in Improving the Health Care Response to Domestic Violence: A Resource Manual for Health Care Providers 18 (2d ed. 1996) (emphasis added), online at http://www.futureswithoutviolence.org/userfiles/file/HealthCare/improving_healthcare_manual_1.pdf. Here, of course, we are concerned with the *less* comprehensive legal definition. The second definition referred to in the footnote equates domestic violence with "overt violence," which in its least serious form consists of "*painful* pinching or squeezing." M. McCue, Domestic Violence: A Reference Handbook 6 (1995) (emphasis added). That meaning is consistent with *Johnson*'s definition of "physical force," but it plainly does not include harmless offensive touching.

tion of the criminal laws whose claimed violation the Department of Justice prosecutes. See *Gonzales* v. *Oregon*, 546 U. S. 243, 264 (2006) (citing *Crandon* v. *United States*, 494 U. S. 152, 177 (1990) (SCALIA, J., concurring in judgment)). The same ought to be said of advocacy organizations, such as *amici*, that (unlike dictionary publishers) have a vested interest in expanding the definition of "domestic violence" in order to broaden the base of individuals eligible for support services.[10]

* * *

This is a straightforward statutory-interpretation case that the parties and the Court have needlessly complicated. Precedent, text, and common sense all dictate that the term "physical force," when used to define a "misdemeanor crime of domestic violence," requires force capable of causing physical pain or bodily injury.

---

[10] See, *e.g.*, National Network to End Domestic Violence, Reauthorize The Family Violence Prevention and Services Act 1 (Sept. 22, 2010) (advocating the expansion of a program assisting victims of domestic violence to include victims of "dating violence" and thereby "ensure that all victims in danger can access services"), online at http://nnedv.org/downloads/Policy/FVPSA_fact_sheet_9-22-10.pdf.

SUPREME COURT OF THE UNITED STATES

No. 12–1371

UNITED STATES, PETITIONER *v.* JAMES ALVIN CASTLEMAN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

[March 26, 2014]

JUSTICE ALITO, with whom JUSTICE THOMAS joins, concurring in the judgment.

The decision in this case turns on the meaning of the phrase "has, as an element, the use . . . of physical force." 18 U. S. C. §921(a)(33)(A)(ii). In *Johnson* v. *United States*, 559 U. S. 133 (2010), the Court interpreted the very same language and held that "physical force" means "violent force." *Id.*, at 140. I disagreed and concluded that the phrase incorporated the well-established meaning of "force" under the common law of battery, which did not require violent force. See *id.*, at 146 (dissenting opinion).

The Court of Appeals in the present case understandably followed the reasoning of *Johnson*, but now this Court holds that *Johnson* actually dictates that the identical statutory language be interpreted in exactly the same way that the *Johnson* majority rejected. See *ante*, at 5.

In my view, the meaning of the contested statutory language is the same now as it was four years ago in *Johnson*, and therefore, for the reasons set out in my *Johnson* dissent, I would not extend the reasoning of *Johnson* to the question presented here, on which the *Johnson* Court specifically reserved judgment. 559 U. S., at 143–144.