Task Force on Race and the Criminal Justice System

# Preliminary Report on Race and Washington's Criminal Justice System

Research Working Group

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Task Force on Race and the
Criminal Justice System
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# Message from the Task Force Co-Chairs

Chief Justice Madsen, Justices of the Washington Supreme Court, Governors of the Washington State Bar Association and the Access to Justice Board, leaders of Washington's Specialty Bar Associations, and the people of the great state of Washington:

We are pleased to present the *Preliminary Report on Race and Washington's Criminal Justice System*, authored by the Research Working Group of the Task Force on Race and the Criminal Justice System. The Research Working Group's mandate was to investigate disproportionalities in the criminal justice system and, where disproportionalities existed, to investigate possible causes. This fact-based inquiry was designed to serve as a basis for making recommendations for changes to promote fairness, reduce disparity, ensure legitimate public safety objectives, and instill public confidence in our criminal justice system.

The Task Force came into being after a group of us met to discuss remarks on race and crime reportedly made by two sitting justices on the Washington Supreme Court. This first meeting was attended by representatives from the Washington State Bar Association, the Washington State Access to Justice Board, the commissions on Minority and Justice and Gender and Justice, and all three Washington law schools, as well as leaders from nearly all of the state's specialty bar associations, and other leaders from the community and the bar.

We agreed that we shared a commitment to ensure fairness in the criminal justice system. We developed working groups, including the Research Working Group, whose *Preliminary Report* finds that race and racial bias affect outcomes in the criminal justice system and matter in ways that are not fair, that do not advance legitimate public safety objectives, and that undermine public confidence in our criminal justice system.

All of our working groups – Oversight, Community Engagement, Research, Recommendations/Implementation, and Education – are working together to develop solutions. We are fortunate to have the formal participation of a broad range of organizations and institutions, with each week bringing in new participants. A full list of the organizations and institutions on the Task Force appears on the next page. We also have many people who are contributing in an individual capacity, including many judges.

We have come together to offer our time, our energy, our expertise, and our dedication to achieve fairness in our criminal justice system.

Sincerely,

Judge Steven C. González, Chair of the Washington State Access to Justice Board

Professor Robert S. Chang, Director, Fred T. Korematsu Center for Law and Equality

Co-Chairs, Task Force on Race and the Criminal Justice System

# Participating Organizations and Institutions

Administrative Office of the Courts

American Civil Liberties Union of Washington

The Asian Bar Association of Washington

Central Washington University, Department of Law and Justice

The Defender Association/Racial Disparity Project

Filipino Lawyers of Washington

Fred T. Korematsu Center for Law and Equality, SU Law

Gonzaga University School of Law

The Korean American Bar Association of Washington

Latina/o Bar Association of Washington

Loren Miller Bar Association

Middle Eastern Legal Association of Washington

Mother Attorneys Mentoring Association of Seattle

QLaw: The GLBT Bar Association of Washington

Seattle City Attorney's Office

Seattle University School of Law

University of Washington, College of Arts and Sciences

University of Washington School of Law

Vietnamese American Bar Association of Washington

Washington Association of Prosecuting Attorneys

Washington Defender Association

Washington State Access to Justice Board

Washington State Bar Association

Washington State Commission on Asian Pacific American Affairs

Washington State Commission on Hispanic Affairs

Washington State Criminal Justice Training Commission

Washington State Gender and Justice Commission

Washington State Minority and Justice Commission

# Acknowledgments

We would like to thank the members of the Research Working Group for their work in researching and drafting this report. The team included:

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# Table of Contents

Message from the Task Force Co-Chairs ..... i
List of Participating Organizations and Institutions ..... ii
Acknowledgments ..... iii
Executive Summary ..... 1
Definitions ..... 3
I. Introduction ..... 5
II. Racial Disproportionality within Washington State's Criminal Justice System ..... 9
III. Proffered Causes for Racial Disproportionality ..... 11
  A. Crime Commission Rates ..... 11
  B. Structural Racism: Neutral Policies with Disparate Outcomes ..... 13
  C. Bias ..... 17
IV. Conclusion ..... 21
Closing Remarks from the Task Force Co-Chairs ..... 23
References ..... 24
Appendices ..... A-1
  A. Detailed Research Reports ..... A-2
    1. Juvenile Justice ..... A-2
    2. Legal Financial Obligations (LFO) ..... A-4
    3. Pretrial Release ..... A-6
    4. Drug Enforcement ..... A-8
    5. Asset Forfeiture ..... A-10
    6. Traffic Stops ..... A-12
    7. Driving While License Suspended (DWLS) ..... A-15
    8. Implicit Bias ..... A-18
  B. Select Recent News Coverage of Criminal Justice System Issues ..... B-1
    1. News and Commentary on Comments by Justices ..... B-1
    2. Police Conduct and Community Distrust ..... B-16
    3. Danger to Police ..... B-24

# Executive Summary

In 1980, of all states, Washington had the highest rate of disproportionate minority representation in its prisons. Today, minority racial and ethnic groups remain disproportionately represented in Washington State's court, prison, and jail populations, relative to their share of the state's general population. The fact of racial and ethnic disproportionality in our criminal justice system is indisputable.

Our research focused on trying to answer why these disproportionalities exist. We examined differential commission rates, facially neutral policies, and bias as possible contributing causes.

We found that the assertion attributed to then-Justice Sanders, that "African Americans are overrepresented in the prison population because they commit a disproportionate number of crimes,"[1] is a gross oversimplification. Many studies of particular Washington State criminal justice practices and institutions find that race and ethnicity influence criminal justice outcomes over and above commission rates. Moreover, global assertions about differential crime commission rates are difficult to substantiate. Most crime victims do not report crimes and most criminal offenders are never arrested. We never truly know exact commission rates. If problematic arrest rates are used as a proxy for underlying commission rates, 2009 data shows that 36% of Washington's imprisonment disproportionality cannot be accounted for by disproportionality at arrest.

We reviewed research that focused on particular areas of Washington's criminal justice system, and conclude that much of the disproportionality is explained by facially neutral policies that have racially disparate effects. For the areas, agencies, and time periods that were studied, the following disparities were found:

- In Washington's juvenile justice system, it has been found that similarly situated minority juveniles face harsher sentencing outcomes and disparate treatment by probation officers.
- Defendants of color were significantly less likely than similarly situated White defendants to receive sentences that fell below the standard range.
- Among felony drug offenders, Black defendants were 62% more likely to be sentenced to prison than similarly situated White defendants.
- With regard to legal financial obligations, which are now a common though largely discretionary supplement to prison, jail, and probation sentences for people convicted of crimes, similarly situated Latino defendants receive significantly greater legal financial obligations than their White counterparts.

1. Steve Miletich, *Two State Supreme Court Justices Stun Some Listeners with Race Comments*, SEATTLE TIMES, Oct. 21, 2010, *available at* http://seattletimes.nwsource.com/html/localnews/2013226310_justices22m.html (last visited Feb. 22, 2011).

- Disparate treatment has been discovered in the context of pretrial release decisions, which systematically disfavor minority defendants.

- Regarding the enforcement of drug laws, researchers have discovered a focus on crack cocaine – a drug associated with Blacks stereotypically and in practice – at the expense of other drugs, and the focus on crack cocaine results in greater disproportionality, without a legitimate policy justification.

- This disparity in drug law enforcement informs related asset forfeitures, which involve distorted financial incentives for seizing agencies and facilitate further disparity.

- With regard to the Washington State Patrol, researchers have found that although racial groups are subject to traffic stops at equitable rates, minorities are more likely to be subjected to searches, while the rate at which searches result in seizures is lower for minorities.

- This disparity in traffic law enforcement informs the disproportionate imposition of "Driving While License Suspended" charges, which inflicts disparate financial costs.

In all of these areas, facially neutral policies resulted in disparate treatment of minorities over time.

Disproportionality also is explained in part by the prevalence of racial bias – whether explicit or implicit – and the influence of bias on decision-making within the criminal justice system. Race (and in particular racial stereotypes) plays a role in the judgments and decision-making of human actors within the criminal justice system. The influence of such bias is subtle and often undetectable in any given case, but its effects are significant and observable over time. When policymakers determine policy, when official actors exercise discretion, and when citizens proffer testimony or jury-service, bias often plays a role.

To sum up:

- We find the assertion that Black disproportionality in incarceration is due solely to differential crime commission rates is inaccurate.

- We find that facially neutral policies that have a disparate impact on people of color contribute significantly to disproportionalities in the criminal justice system.

- We find that racial and ethnic bias distorts decision-making at various stages in the criminal justice system, thus contributing to disproportionalities in the criminal justice system.

- We find that race and racial bias matter in ways that are not fair, that do not advance legitimate public safety objectives, that produce disparities in the criminal justice system, and that undermine public confidence in our legal system.

# Definitions

### WHAT WE MEAN BY "DISPROPORTIONALITY" AND "DISPARITY"

Although the terms disproportionality and disparity often are used interchangeably, there is an important distinction between these two concepts. Researchers have found it useful to distinguish between racial inequities that result from differential crime commission rates and racial inequities that result from practices or policies. In this report, we use disproportionality to refer to a discrepancy between reference groups' representation in the general population and in criminal justice institutions. In contrast, we use disparity when similarly situated groups of individuals are treated differently within those institutions or to refer to overrepresentation of particular groups in the criminal justice system that stems from criminal justice practices or policies.

### WHAT WE MEAN BY "IMPRISONMENT" AND "INCARCERATION"

Imprisonment refers to being held in state prisons. Incarceration refers to being held in state prisons or local jails. Many local jails do not collect and report on ethnicity.

### WHAT WE MEAN BY "RATE" AND "RATIO"

When discussing incarceration or imprisonment (as well as other aspects of the criminal justice system), we often discuss the rate of incarceration or imprisonment in comparison to a particular population. Thus, the White incarceration rate is measured by taking the number of Whites incarcerated, dividing it by the number of Whites in the general population, and then multiplying by 100,000 to determine the number of Whites incarcerated per 100,000 Whites in the general population. To compare Black and White incarceration, we take the Black incarceration rate and divide it by the White incarceration rate – a ratio that provides a useful measure of comparison.

### WHAT WE MEAN BY "RACE" AND "ETHNICITY"

One of the most perplexing problems with race is that few people seem to know what "race" means. Widely accepted understandings of race focus on biology, invariably pointing to physical differences amongst humans that are used to define, in genetic terms, different racial groups.[2] The distinctions that we employ today to categorize humans, such as Black, White, and Latino, date back only a few centuries or less.[3] These labels do not signal genetically separate branches of humankind, for there is only one *human* race; no other biological race of humanity exists. Racial distinctions are largely social constructs based upon perception and history.

Not only are these distinctions socially constructed, they are also in constant flux, and under perpetual siege by those who dispute the arbitrary lines that they draw. The problem is compounded by the fact that different institutions use the terms differently. This lack of

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2. Ian Haney Lopez, *The Social Construction of Race: Some Observations on Illusion, Fabrication, and Choice*, 29 HARV. C.R.-C.L. L. REV. 1, 6 (1994).
3. *Id.* at 7-8.

common nomenclature makes some comparisons difficult. When a term like "Asian" may encompass over two billion individuals, its ability to precisely and accurately describe an individual, much less a group of individuals, becomes challenging. Similar difficulties imperil the classifications of "Hispanic" and "Latino," which are used to describe not only Dominicans whose descendants may be from Africa, but also Argentines whose ancestry may be traced to Italy, and Peruvians whose forefathers may have emigrated from Japan. Additionally, these traditional categories have come under increasing strain because one in seven marriages within the United States is now "interracial" or "interethnic," rendering single labels less accurate.[4]

In this report, we use "race" to refer to groups of people loosely bound together by history, ancestry, and socially significant elements of their physical appearance. For instance, when using the term "Latina/o" – which we will use where possible rather than "Hispanic" – we mean to describe those individuals whose ancestry is traced back to Latin America, Spain, and Portugal. This definition contemplates race and ethnicity as social phenomena, wherein certain characteristics (i.e., history and morphology) are given meanings by society. In this way, race and ethnicity are not objective observations rooted in biology, but rather self-reinforcing processes rooted in the daily decisions we make as individuals and as institutions. Although socially constructed and enacted, race and ethnicity have important consequences for people's lived experiences.

## WHAT WE MEAN BY "STRUCTURAL RACISM"

A structurally racist system can be understood best as a system in which a society and its institutions are embedded, and from which racial disparity results. Within such systems, notions and stereotypes about race and ethnicity shape actors' identities, beliefs, attitudes and value orientations. In turn, individuals interact and behave in ways that reinforce these stereotypes. Thus, even with facially race-neutral policies, processing decisions are informed by actors' understandings (or lack thereof) about race and ethnicity, often leading to disparities in treatment of people of color. As a consequence, structural racism produces cumulative and persistent racial and ethnic inequalities.

Racism should not be viewed as an ideology or an orientation towards a certain group, but instead as a system: "after a society becomes racialized, racialization develops a life of its own. Although it interacts with class and gender structurations in the social system, it becomes an organizing principle of social relations itself."[5] The persistent inequality experienced by Blacks and other people of color in America is the result of this racial structure. The contemporary racial structure is distinct from the past in that it is covert, is embedded within the regular practices of institutions, does not rely on a racial vocabulary, and is invisible to most Whites.[6]

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4. Susan Saulny, *Counting by Race Can Throw Off Some Numbers*, N.Y. TIMES, Feb. 10, 2011, at A1, *available at* http://www.nytimes.com/2011/02/10/us/10count.html?scp=1&sq=race%20counting&st=cse.

5. Eduardo Bonilla-Silva, *Rethinking Racism: Toward a Structural Interpretation*, 62 AM. SOC. REV. 465, 475 (1997).

6. *Id.* at 467.

# I
## INTRODUCTION

Washington State has had a mixed history when it comes to its treatment of racial and ethnic minorities. It was founded through the displacement of its native peoples by legal and extralegal means.[7] Washington's early history included severe anti-immigrant sentiment expressed first toward Chinese immigrants[8] and then Japanese immigrants, who were the target of the state's Alien Land Laws.[9] Yet unlike other states that instituted de jure segregation of schools and severely limited participation in the legal system,[10] Washington did not mandate by state law that schools be segregated and was the only western state to not ban interracial marriage.[11] In fact, Washington became so well-known for its openness that interracial couples would travel from far and wide to get married in the state.[12] A ready coalition of four distinct racial minorities – Blacks, Chinese, Filipinos, and Japanese – worked together during the 1930s to defeat various policies that targeted racial minorities.[13] These initial campaigns laid the groundwork for future collaboration that would cut across racial lines.

Despite this coalition, troubling manifestations of racial discrimination in the public and private spheres continued, demonstrating that Washington State was hardly immune to racial bias. For instance, in March 1942, 14,400 persons of Japanese descent lived in Washington State, including 9,600 in King County alone. Of these, nearly 13,000 were incarcerated and placed into internment camps.[14] Over 30% of those forcibly removed from Seattle never returned to their homes.[15] After the war, Seattle's Black population experienced its own backlash, as restrictive covenants and other forms of housing discrimination proliferated throughout Washington State between 1940 and 1960.[16] These covenants were so effective in

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7. *See generally* HUBERT H. BANCROFT, HISTORY OF WASHINGTON, IDAHO, AND MONTANA 1845-1889 (1890).

8. *See, e.g.*, ROGER DANIELS, ASIAN AMERICA: CHINESE AND JAPANESE IN THE UNITED STATES SINCE 1850, at 59 (1988) (forcible removal of Chinese from Tacoma in 1885); DOUG CHIN, SEATTLE'S INTERNATIONAL DISTRICT: THE MAKING OF A PAN-ASIAN AMERICAN COMMUNITY 22 (2001) (attempted forcible removal in 1886 of 350 Chinese immigrants from Seattle).

9. *See* Mark L. Lazarus III, *An Historical Analysis of Alien Land Law: Washington Territory & State 1853-1889*, 12 SEATTLE U. L. REV. 197, 235-36 (1989).

10. *See, e.g.*, CAL. EDUC. CODE §§ 8003, 8004 (Deering 1944) (authorizing the segregation of children of Chinese, Japanese, or Mongolian parentage, and Indians under certain circumstances) (repealed 1947); *People v. Hall*, 4 Cal. 399 (1854) (statute excluded "Blacks" and "Indians" from testifying against White defendants; court classified Chinese as either "Indian" or "Black" in order to exclude testimony of Chinese witness against White defendant).

11. Stefanie Johnson, *Blocking Racial Intermarriage Laws in 1935 and 1937: Seattle's First Civil Rights Coalition*, Seattle Civil Rights & Labor History Project (2005), *available at* http://depts.washington.edu/civilr/antimiscegenation.htm (last visited Feb. 22, 2011).

12. RONALD TAKAKI, STRANGERS FROM A DIFFERENT SHORE: A HISTORY OF ASIAN AMERICANS 342 (1990).

13. Johnson, *supra* note 11 ("Four distinct racial minorities—blacks, Filipinos, Japanese, and Chinese—dominated the Seattle's civil rights politics over the 1930s, and each group brought something different to the political table . . . .").

14. *See* DAVID A. TAKAMI, DIVIDED DESTINY: A HISTORY OF JAPANESE AMERICANS IN SEATTLE (1998).

15. Robert S. Chang & Catherine E. Smith, *John Calmore's America*, 86 N.C. L. REV. 739, 748 (2008).

16. CALVIN F. SCHMID ET AL., NONWHITE RACES: STATE OF WASHINGTON 18, fig. 2.1 (1968).

Seattle that they functionally concentrated 78% of the Black community into the area known as the "Central District."[17] While residential discrimination is no longer sanctioned by the law, its effects continue to reverberate even today.[18]

Even after Japanese American incarceration ended, and residential discrimination became less overt, one area continued to produce racialized outcomes: the criminal justice system. In 1980 Scott Christianson published findings showing that Washington State led the nation in its disproportionate imprisonment of Blacks.[19] Christianson compared the racial composition of state populations to the racial composition of state prison populations. While every state disproportionately imprisoned Blacks, the over-representation of Blacks relative to the size of the Black population was greatest in Washington. Christianson found that while Blacks constituted approximately 28% of the prison population, they constituted approximately 3% of the general population. The Black share of the prison population was more than nine times greater than the Black share of the general population. Nationally, the Black share of the prison population was four times greater than the Black share of the general population.[20]

Christianson's findings sparked a firestorm of concern amongst policymakers, researchers, and citizens in Washington State. The State Legislature responded by commissioning a study to determine whether racial disparity existed in Washington's criminal justice system. The Crutchfield and Bridges (1986) study was the first in a series of studies over the last 25 years to find that racial bias exists along various points in Washington's criminal justice system. In particular, this first study found that race affects the processing of felony cases in Washington State, even after controlling for legally relevant factors.[21]

In the wake of the 1986 Crutchfield and Bridges report, the state legislature established the Washington State Minority and Justice Task Force to study "the treatment of minorities in the state court system, to recommend reforms and to provide an education program for the judiciary."[22] Among the findings included in the inaugural 1990 report was that there exists a perception amongst minorities "that bias pervades the entire legal system in general and hence [minorities] do not trust the court system to resolve their disputes or administer justice even-handedly."[23] In particular, this perception of bias extended to criminal proceedings, where minorities reported that they received disparate treatment from prosecutors, law enforcement authorities, and the public defender system.[24] The report concluded that more research was needed to determine whether race affects various points of Washington's

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17. Henry W. McGee, Jr., *Seattle's Central District, 1996-2006: Integration or Displacement?*, 39 URB. LAW. 167, 167 (2007).

18. *Id.* at 214-16.

19. Scott Christianson, *Legal Implications of Racially Disproportionate Incarceration Rates*, 16 CRIM. L. BULLETIN 1, 59-63 (1980).

20. *Id.*

21. ROBERT D. CRUTCHFIELD & GEORGE S. BRIDGES, RACIAL AND ETHNIC DISPARITIES IN IMPRISONMENT: FINAL REPORT (Inst. for Pub. Pol'y & Mgmt., Grad. Sch. of Pub. Aff., Univ. of Wash. 1986).

22. WASH. ST. MINORITY & JUSTICE COMM'N, 1990 FINAL REPORT xxi (1990), *available at* http://www.courts.wa.gov/committee/pdf/TaskForce.pdf (last visited: Feb. 20, 2011) [hereinafter 1990 Report].

23. *Id.* at 10, 25-33.

24. *Id.*

criminal justice system, such as pretrial release, bail setting, prosecutorial discretion, and quality of counsel.[25]

Decades later, the perception that racial bias permeates the criminal justice system persists. But now there is substantial evidence to support the notion that racial iniquities do permeate the criminal justice system. Indeed, subsequent studies commissioned since 1986 have confirmed that Washington cannot justify its disproportionate minority incarceration rates on the sole basis that minorities commit more crimes.[26] For instance, the extant research concerning the Washington State Patrol suggests that race does not affect police discretion with regard to stops, but does affect searches.[27] Other research involving Washington police seems to indicate that race affects decisions to arrest.[28] Another study found that even after controlling for legally relevant factors, racial differences affect how cases are processed: Whites are less likely to have charges filed against them, bail is recommended for Blacks more often than for Whites, and Blacks are more likely to receive higher rates of confinement and longer sentences.[29] While these and other studies have focused on different decision-points in the criminal justice system, one troubling conclusion in particular underlies each study's findings: when it comes to Washington State's criminal justice system, race matters.

Given this state's history and the evidence demonstrating the importance of race in the criminal justice system, members of the community were understandably concerned when two sitting Washington State Supreme Court Justices, on October 7, 2010, opined that racial minorities are overrepresented in the prison population solely because they commit more crimes and not because any bias exists in the criminal justice system.[30] The comments themselves betrayed a common misunderstanding about whether this issue is more complex than a cursory review of certain crime commission rates might imply. Conviction rates are not a valid proxy for commission rates.

In the wake of these comments by Supreme Court Justices, concerned community members came together to form the Task Force on Race and the Criminal Justice System. We met

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25. *Id.* at 22.

26. Robert D. Crutchfield, *Racial Disparity in the Washington State Criminal Justice System*, "Exhibit 2," *2, Oct. 25, 2005, *available at* http://moritzlaw.osu.edu/electionlaw/litigation/documents/exhibitsstatementofmaterialfactspart3.pdf.

27. *See, e.g.*, CLAYTON MOSHER, VANCOUVER POLICE DEPARTMENT – CITIZEN CONTACT DATA ANALYSIS PROJECT: PRELIMINARY REPORT (Vancouver Police Dep't, Washington 2003) (finding that police stops involving Blacks, Native Americans, and Hispanics are more likely to result in searches); NICHOLAS LOVRICH ET AL., ANALYSIS OF TRAFFIC STOP DATA COLLECTED BY THE WASHINGTON STATE PATROL: ASSESSMENT OF RACIAL AND ETHNIC EQUITY AND BIAS IN STOPS, CITATIONS, AND SEARCHES USING MULTIVARIATE QUANTITATIVE AND MULTI-METHOD QUALITATIVE RESEARCH TECHNIQUES: PROJECT FINAL REPORT (Div. of Governmental Studies & Servs., Dep't of Political Science & Crim. Just., Wash. St. Univ. 2005) (same).

28. Katherine Beckett, Kris Nyrop & Lori Pfingst, *Race, Drugs and Policing: Understanding Disparities in Drug Delivery Arrests*, 44 CRIMINOLOGY 1, 105-138 (2006) (concluding that racially disproportionate drug arrest rates in Seattle cannot be explained by comparing commission rates, but rather are the result of police practices that have a racially disparate impact); Katherine Beckett, Kris Nyrop, Lori Pfingst & Melissa Bowen, *Drug Use, Drug Possession Arrests, and the Question of Race: Lessons from Seattle*, 52 SOCIAL PROBLEMS 3, 419-41 (2005) (same).

29. Robert D. Crutchfield, *Ethnicity, Labor Markets, and Crime*, *in* ETHNICITY, RACE, AND CRIME: PERSPECTIVES ACROSS TIME AND SPACE (Darnell Hawkins ed., 1995).

30. Miletich, *supra* note 1.

because the simplistic notion that Black overrepresentation in our prisons occurs because Blacks commit more crimes did not fit with our sense of how racial and ethnic minorities are treated in today's society and in our criminal justice system. We realized quickly, though, that it was important not to proceed on assumptions that unfair treatment existed.

The task force divided into five working groups: Oversight, Community Engagement, Research, Recommendations/Implementation, and Education. The Research Working Group's mandate was to investigate disproportionalities in the criminal justice system and, where disproportionalities existed, to investigate possible causes. This fact-based inquiry was designed to serve as a basis for making recommendations for changes that would promote fairness, reduce disparity, ensure legitimate public safety objectives, and instill public confidence in our criminal justice system. As we engaged in this work, the Research Working Group reported back to the broader Task Force. Our membership grew as more and more organizations and institutions recognized the importance of this issue, not just to the affected racial and ethnic groups, but how it relates to the best aspirations we have as a state. One measure of the goodwill of the people of the State of Washington can be seen in the broad range of organizations and individuals who have joined the Task Force, for what all of us have come to realize is a multi-year project.

For this report, the Research Working Group reviewed evidence on disproportionality in Washington's criminal justice system and reviewed whether crime commission rates accounted for this disproportionality. We found that crime commission rates by race and ethnicity are largely unknown and perhaps unknowable, but that many researchers simply take arrest rates as good proxies for underlying commission rates for all crimes. We found that use of arrest rates likely overstates Black crime commission rates for several reasons unrelated to actual commission rates. Even if arrest rates are used as a proxy for underlying crime commission rates, the extent of racial disproportionality is not explained by commission rates. In 1982, 80% of Black imprisonment in Washington for serious crimes could not be accounted for based on arrest rates, though by 2009, this had dropped to 36%.[31]

We then identified and synthesized research on nine issues for which evidence exists regarding the causes of Washington's disproportionality: (1) Juvenile Justice; (2) Prosecutorial Decision-Making; (3) Confinement Sentencing Outcomes; (4) Legal Financial Obligations (LFO); (5) Pretrial Release; (6) Drug Enforcement; (7) Asset Forfeiture; (8) Traffic Stops; and (9) Driving While License Suspended (DWLS). In each of these areas, the research, data, and findings pertain specifically to Washington State.[32]

We also reviewed evidence regarding bias, especially research on unconscious or implicit bias. We found that cognitive neuroscience and social psychology help us to understand better the existence and behavioral consequences of unconscious or implicit racism.

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31. *See infra* Part III.A.

32. The informational resources and preliminary findings were made available to the Recommendations and Implementation Working Group to help inform their policy recommendations.

The evidence we gathered demonstrates that within Washington State's criminal justice system, race and ethnicity matter in ways that are inconsistent with fairness, that do not advance legitimate public safety objectives, and that undermine public confidence.

Part II presents the working group's findings and data regarding racial disproportionality within Washington State's criminal justice system. Part III discusses three possible causes for this disproportionality. Part III.A discusses differential commission rates, concluding that this factor alone cannot account for the disproportionality observed in the criminal justice system. Part III.B discusses seven racially neutral policies that have racially disparate effects, and thus help explain racial disproportionality. Finally, Part III.C discusses another factor that produces racial disparity: bias, whether explicit or implicit. Appendix A provides a more detailed discussion of each of the seven policies and practices that we examined, as well as further discussion of research on bias. Appendix B includes select recent news articles and commentary that relate to the comments of the Justices, police conduct and community distrust, and the danger that police face.

## II
## RACIAL DISPROPORTIONALITY WITHIN WASHINGTON STATE'S CRIMINAL JUSTICE SYSTEM

For context, we note that the United States has the highest incarceration rate of any industrialized country, more than twice as great as the two OECD countries with the next highest rates (Chile and Israel), more than six times that of Canada, nearly four times that of Mexico, and nearly five times as great as the United Kingdom.[33] Within the United States, the high incarceration rate is disproportionately experienced by certain racial and ethnic groups, with Whites incarcerated at a rate of 412 per 100,000 White residents, Blacks incarcerated at a rate of 2,290 per 100,000 Black residents, and Latinos incarcerated at a rate of 742 per 100,000 Latino residents.[34] In the United States, drawing from 2005 data, Blacks are incarcerated at 5.6 times and Latinos at 1.8 times the rate of Whites.[35]

Table 1 – Prison & Jail Incarceration Rates and Ratios, 2005, United States

| | Incarceration rate (per 100,000) | Disproportionality ratio (in comparison to White) |
|---|---|---|
| White | 412 | n/a |
| Black | 2,290 | 5.6 |
| Latino | 742 | 1.8 |

Source: The Sentencing Project, Uneven Justice: State Rates of Incarceration By Race and Ethnicity

33. Int'l Centre for Prison Studies at King's College, London, *Prison Brief – Highest to Lowest Rates, Entire World – Prison Population Rates per 100,000 of the National Population* (last modified Mar. 18, 2010), http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/wpb_stats.php?area=all&category=wb_poprate (last visited Feb. 27, 2011). An OECD country is one that participates in the Organization for Economic Cooperation and Development whose purpose is to coordinate policy among certain developed countries.

34. MARC MAUER & RYAN S. KING, UNEVEN JUSTICE: STATE RATES OF INCARCERATION BY RACE AND ETHNICITY 4 (The Sentencing Project 2007), *available at* http://sentencingproject.org/doc/publications/rd_stateratesofincbyraceandethnicity.pdf (last visited Feb. 27, 2011).

35. *Id.* at 3.

In Washington in 2005, the Black incarceration rate, 2,522 per 100,000 Black residents, is greater than the national average.[36] The Latino incarceration rate, as reported at 527 per 100,000 Latino residents, is lower than the national average, but we include this figure with caution because many local jails, including King County's, do not collect ethnic demographic information. In 2005 in Washington, Blacks are incarcerated at 6.4 times and Latinos at 1.3 times the rate of Whites, with the caveat that the Latino figure likely reflects both an undercount of Latinos and an overcount of Whites.[37]

Table 2. Prison & Jail Incarceration Rates and Ratios, 2005, Washington

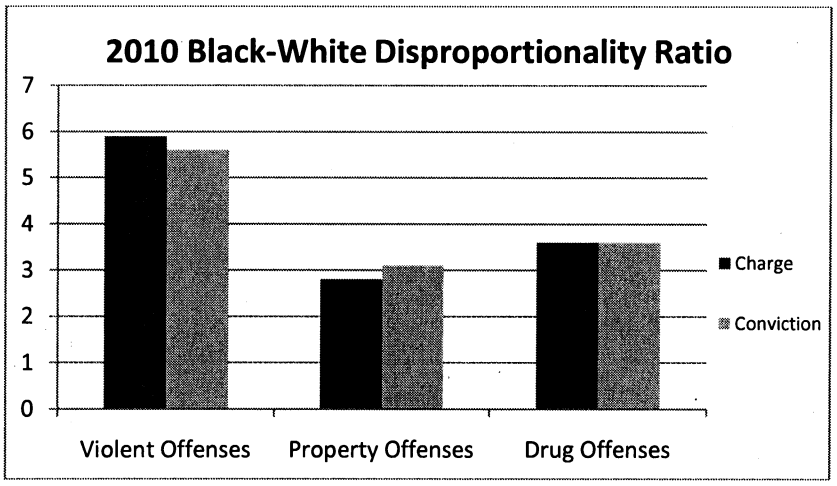
| | Incarceration rate (per 100,000) | Disproportionality ratio (in comparison to White) |
|---|---|---|
| White | 393 | n/a |
| Black | 2522 | 6.4 |
| Latino | 527 | 1.3 |

Source: The Sentencing Project, Uneven Justice: State Rates of Incarceration By Race and Ethnicity

The fact of racial and ethnic disproportionality in Washington's incarcerated population is indisputable.

Our review of more recent data reveals that racial and ethnic disproportionalities exist at many different stages of the criminal justice system, including at arrest, charging, conviction, and imprisonment. The figures below show 2010 Black-White and Native-White disproportionality ratios at charge and conviction for serious felonies by offense categories. We do not offer information about Latinos because of incomplete reporting by different agencies in the criminal justice system. The figures show that the disproportionalities are not consistent for different offense categories.

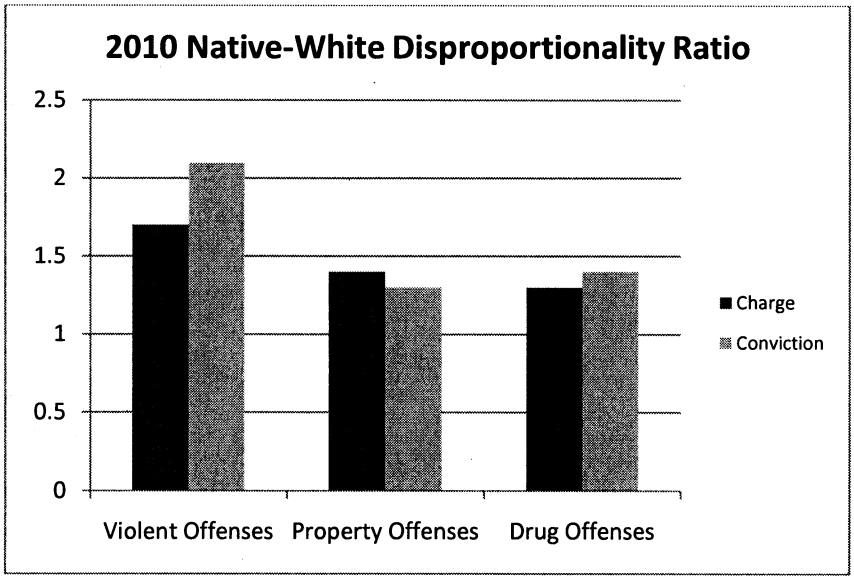
Figure 1 - Black-White Disproportionality Ratios at Charge and Conviction for Serious Felonies by Offense Categories




36. *Id.* at 6, 11, 13.

37. The result is that the Latino-White ratio is likely significantly greater than 1.3 to 1 and the Black-White ratio is probably slightly higher than 6.4 to 1.

Figure 2 - Native-White Disproportionality Ratios at Charge and Conviction for Serious Felonies by Offense Categories




Our review of the most recent data provided to us by the Office of Financial Management, the Washington State Center for Court Research, and the Washington Association of Sheriffs and Police Chiefs on arrests, charges, conviction, and imprisonment shows that racial and ethnic disproportionalities still exist at these different points in Washington's criminal justice system.

We turn now to examine possible causes of these disproportionalities.

## III.
## PROFFERED CAUSES FOR RACIAL DISPROPORTIONALITY

### A. CRIME COMMISSION RATES

The best available evidence suggests that the disproportionalities discussed in Part II above are only partly attributable to differences in crime commission rates. It is important to note that crime commission rates are difficult to approximate. Generally, two methods are used to estimate the level of crime commission among different racial and ethnic groups. Some criminologists use household crime victimization survey data in which victims identify the race of their assailant as proxies for differential commission rates by race.[38] These data reflect victim perceptions of racial identity of their assailant, and include only non-fatal crimes where there is direct contact between the victim and the perpetrator (e.g., robbery, rape, and assault). Because information about victim perceptions of perpetrators' race is only

38. *See, e.g.*, Patrick A. Langan, *Racism on Trial: New Evidence to Explain the Racial Composition of Prisons in the United States*, 76 J. CRIM. L. & CRIMINOLOGY 666 (1985).

available for a few violent offenses, crime victimization survey data presents an incomplete picture of crime commission rates by race.

Other criminologists use arrests as a proxy for crime commission.[39] However, this likely presents a distorted picture. First, over half of violent crimes and over 60% of property crimes are not reported by their victims.[40] Second, most White victims identify their assailants as White, and most Black victims identify their assailants as Black.[41] Third, Black victims are more likely than White victims to report their victimization to the police.[42] Higher reporting rates among Blacks means that crimes involving Black suspects are more likely to come to the attention of the police. Use of arrest data also seems problematic when clearance rates (the percentage of crimes that comes to the attention of the police that lead to arrest) are as low as they are. In the Pacific region, encompassing Alaska, California, Hawaii, Oregon, and Washington, 44.9% of violent crimes and 15.2% of property crimes are "cleared" by arrest.

Further, there is strong evidence that the share of arrestees who are Black is significantly greater than the share of perpetrators identified as Black by crime victims. For example, in the 2005 crime victim survey, victims of non-fatal violent crimes (e.g., rape, robbery, assault) identified their assailants as Black 24.7% of the time. By contrast, 40% of those arrested for non-fatal violent crimes in 2005 were Black.[43] All of this leads to the conclusion that arrests are a poor proxy for crime commission. Studies that treat arrests as a measure of crime commission will likely overstate the rate of crime commission by Blacks and therefore underestimate racial disparity in criminal justice processing.

Even if we use arrest rates as a proxy for crime commission, there remains a very significant disproportionality at imprisonment that is not accounted for by disproportionate arrest rates. Crutchfield *et al.* compared Black-White disproportionality in 1982 index crime arrests and incarceration rates, and found that differential rates of crime commission (as measured by arrest) explained only 20% of the Black-White disproportionality in Washington State prisons.[44] Using data from 2009, we found that 64% of the Black-White disproportionality in

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39. *See, e.g.*, Albert Blumstein, *On the Disproportionality of the U.S. States' Prison Population,* 73 J. CRIM. L. & CRIMINOLOGY 1259 (1982).

40. JENNIFER L. TRUMAN & MICHAEL R. RAND, BUREAU OF JUSTICE STATISTICS BULLETIN, NATIONAL CRIME VICTIMIZATION SURVEY, CRIMINAL VICTIMIZATION, 2009 9 (2010) (Table 12: Percentage of crimes reported to the police, by gender, race, and Hispanic origin, 2009), *available at* http://bjs.ojp.usdoj.gov/content/pub/pdf/cv09.pdf (last visited Feb. 27, 2011).

41. ERIKA HARRELL, BLACK VICTIMS OF VIOLENT CRIME, BUREAU OF JUSTICE STATISTICS SPECIAL REPORT 5, Table 5 (2007) (percent of violent victimization, by victim race/Hispanic origin and offender race, 2001-2005), *available at* http://bjs.ojp.usdoj.gov/content/pub/pdf/bvvc.pdf (last visited Feb. 27, 2011).

42. *Id.*

43. Victimization survey data is drawn from SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS ONLINE Tables 3.29 and 3.31, *available at* http://www.albany.edu/sourcebook/pdf/t3292005.pdf and http://www.albany.edu/sourcebook/pdf/t3312005.pdf (last visited Feb. 27, 2011). Arrest data is drawn from CRIME IN THE UNITED STATES, 2005 Table 43 (2006), *available at* http://www2.fbi.gov/ucr/05cius/data/table_43.html (last visited Feb. 27, 2011).

44. Robert Crutchfield, George Bridges & Susan Pitchford, *Analytical and Aggregation Biases in Analyses of Imprisonment: Reconciling Discrepancies in Studies of Racial Disparity*, 31 J. RES. CRIME & DELINQUENCY 166 (1994).

imprisonment rates is attributable to index crime arrest rates. Thus, it appears that racial disproportionality in Washington State prisons has diminished somewhat, and that a larger portion of this disproportionality reflects the racial distribution of arrest rates.

However, the 64% figure likely overestimates the extent to which racial disproportionality in imprisonment is a function of differential crime rates, for several reasons. First, this method assumes arrests are an accurate measure of crime, but it is likely that they over-represent people of color for the reasons stated above. In particular, arrest data probably over-represent Black suspects. In addition, Latinos are not identified as such in the data from which the 64% figure is derived. Because most Latinos in Washington State are identified racially as White in these data, the White arrest and incarceration rates used in these calculations are inflated, and the results therefore underestimate the extent to which racial disproportionality exists. Finally, this method assesses disproportionality in state prisons, but does not tell us anything about racial disproportionalities in jails, community supervision, and misdemeanor courts. Indeed, it is likely that discretion and disproportionality are greater in these parts of the criminal justice system. Thus it appears that the 64% figure overestimates the extent to which racial disproportionality in imprisonment (and criminal justice institutions more generally) is a function of differential rates of crime commission.

Whatever the precise figure, it is clear that differential crime commission rates can explain only a part of the racial disproportionalities that characterize Washington State courts, jails and prisons.

### B. Facially Neutral Policies with Racially Disparate Effects

The Research Working Group focused its efforts on nine issues covered by existing research and data, and in each area we found that observed racial disproportionalities are caused, in part, by practices and policies that produce racially disparate outcomes.

In this section, we are not arguing that particular individuals, actors, or agencies are intentionally discriminating. The studies described below do not prove that any one actor or group of actors is racist. Rather, the research as a whole suggests that Washington State's criminal justice system facilitates racially disparate outcomes in two more subtle ways. First, in some instances, facially neutral policies have racially disparate outcomes. For instance, judicial consideration of ostensibly race-neutral factors such as employment status, when making pre-trial release decisions, disadvantages defendants of color because they are less likely than White defendants to be employed.

Second, the research suggests that the race/ethnicity of suspects and defendants affects how those individuals are perceived, and that this perception impacts how they are treated within the criminal justice system. The literature on implicit bias, discussed in Part III.C below, shows that these race-effects are likely to be unconscious and unintended rather than conscious and purposeful. While traditional models of racism emphasize individual acts of discrimination or racially charged policies, structural racism describes the interaction

between various institutions and practices that are neutral on face, but nevertheless produce racialized outcomes.[45]

Put differently, structures matter and a system's structure has a tremendous influence over the results a system produces. Policies can produce foreseeable, if unintended, harms that run along racial lines.[46] Moreover, bias may be unconscious or conscious. This suggests that we should not concentrate on individual motives, but instead should focus on those practices and procedures whose cumulative effect is to facilitate racialized outcomes. By identifying and then reforming these structures and processes, we can begin to address racial disproportionality within Washington's criminal justice system.

The Research Working Group's findings are discussed below regarding each studied context of disproportionality in Washington State's criminal justice system. More detailed discussions and references related to each topic are provided in the Appendices.

### 1. JUVENILE JUSTICE.[47]

Our research found troubling practices within Washington State's juvenile justice system. Disproportionate minority contact (DMC) has persisted for decades, and in some areas has worsened. For instance, while Black youth comprise only four percent of the youth population, they receive 15% of the juvenile dispositions. This disproportionality is even greater for youth committed to the Juvenile Rehabilitation Administration (JRA). Native American and Latino youth reside in JRA facilities at rates almost five and two times the proportion of their respective populations in Washington State, while the proportion of Black youth in residential care is seven times the proportion of their population in the state. The evidence also shows that minority juveniles are more likely to receive harsher sentences than similarly situated White juveniles. More research is needed to uncover the precise mechanisms that help to produce these outcomes, especially since early contact with the criminal justice system can be an important indicator of additional contact later in life.

### 2. PROSECUTORIAL DECISION-MAKING

Prosecutors' charging decisions and sentencing recommendations have an important impact on criminal justice outcomes. Crutchfield, Weis, Engen and Gainey (1995) found that prosecutors were significantly less likely to file charges against white defendants than they were against defendants of color. This difference persisted even after legally relevant factors – offense seriousness, criminal history, and weapons charges – were taken into account. Crutchfield et al. also found that King County prosecutors recommended longer confinement sentences for black defendants (after legal factors were held constant), and that prosecutors were 75% less likely to recommend alternative sentences for black defendants than for similarly situated white defendants.[48]

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45. *See generally* john a. powell, *Structural Racism: Building Upon the Insights on John Calmore*, 86 N.C. L. REV. 791 (2008).

46. *Id.* at 794.

47. *See* Appendix A.1: Juvenile Justice.

48. Robert D. Crutchfield et al., *A Study on Racial and Ethnic Disparities in the Prosecution of Criminal Cases in King County Washington: Final Report*, Washington State Minority and Justice Commission (1995).

### 3. CONFINEMENT SENTENCING OUTCOMES

Several studies of post-Sentencing Reform Act confinement sentence data find that race shapes confinement sentence outcomes in Washington State. Engen, Gainey, Crutchfield and Weis (2003) found that defendants of color are significantly less likely than similarly situated white defendants to receive sentences that fell below the standard range.[49] Fernandez and Bowman found that Latino defendants sentenced in conservative counties with comparatively large Latino populations are less likely to receive the statutorily established drug offender sentencing alternative than other defendants.[50] And most recently, Steen, Engen and Gainey (2005) found that among felony drug offenders, the odds that a black defendant would be sentenced to prison were 62% greater than among similarly situated white defendants.[51] These studies clearly indicate that race and ethnicity matter for confinement sentencing outcomes.

### 4. LEGAL FINANCIAL OBLIGATIONS (LFOs).[52]

LFOs are now a common, though largely discretionary, supplement to prison, jail and probation sentences for people convicted of crimes in Washington State courts. Judges have wide discretion when deciding whether and how to impose an LFO. Enormous variability exists in the assessment of LFOs, even when comparing exact charges and similarly situated defendants. Research suggests that extra-legal factors, such as race and ethnicity, affect this variability, and significantly impacts how LFOs are assessed. In particular, the evidence demonstrates that Latino defendants receive significantly greater LFOs than similarly situated non-Latino defendants. Additionally, the debt that accrues from the assessment of fees and fines is substantial relative to ex-defendants' expected earnings and often take many years to pay, exposing defendants to an increased likelihood of arrest and reincarceration.

### 5. PRETRIAL RELEASE.[53]

Whether an individual is released pending trial has a significant influence on the outcome of a case, and can have cascading effects on a defendant's family, ability to maintain a job, and ability to pay for representation. For instance, the Bureau of Justice Statistics found that 78% of defendants held on bail while awaiting trial were convicted, but just 60% of defendants who were released pending trial were convicted. In addition, defendants held on bail receive more severe sentences, are offered less attractive plea bargains, and are more likely to become "reentry" clients for no other reason than their pretrial detention. Judges enjoy significant discretion when determining whether to release defendants on their own recognizance or whether to impose bail. Although court rules specify what factors judges

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49. Robert D. Crutchfield et al., *Racial/Ethnic Disparities and Exceptional Sentences in Washington State: Final Report,* Washington State Minority and Justice Commission (1993).

50. Kenneth E. Fernandez & Timothy Bowman, *Race, Political Institutions, and Criminal Justice: An Examination of the Sentencing of Latino Offenders*, COLUMB. HUM. R. L. REV. 42 (2004).

51. Sara Steen, Rodney L. Gainey & Randy R. Gainey, *Images of Danger and Culpability: Racial Stereotyping, Case Processing, and Criminal Sentencing*, 43 CRIMINOLOGY 435 (2005).

52. *See* Appendix A.2: Legal Financial Obligations.

53. *See* Appendix A.3: Pretrial Release.

should consider when making this determination, studies show that extra-legal factors, such as race and ethnicity, affect this determination. In particular, Blacks and Latinos are detained pretrial at higher rates than White defendants, even when they face similar charges. The evidence suggests the factors judges use when making this determination facilitate racially disparate outcomes.

### 6. DRUG ENFORCEMENT.[54]

Seattle has one of the highest rates of racial disparity in drug arrests in the United States. For instance, even though only 8% of Seattle's population is Black, 67% of those arrested for delivery of a serious drug are Black. Research demonstrates that the Seattle Police Department's focus on crack cocaine is the primary cause for this disproportionality in drug arrests. Yet the focus on crack cocaine is not attributable to public health concerns, safety concerns, or citizen complaints, and thus does not appear to be a race-neutral practice. A more equitable enforcement of drug laws would begin immediately to address racial disproportionality, especially when illicit drug use is roughly equal for each racial or ethnic group.

### 7. ASSET FORFEITURE.[55]

Washington State allows its law enforcement agencies to retain 90% of the proceeds from all assets it recovers from drug-related activity. Additionally, the evidentiary burden that a seizing agency must meet is very deferential to law enforcement. The evidence suggests that the combination of tremendous financial incentives and limited property rights distorts drug-related priorities, and pressures police to make operational decisions to maximize perceived financial rewards. The result is a financial incentive to continue drug-related practices that have a disparate impact on racial minorities. Diverting asset forfeiture funds into a neutral account, such as the state's general treasury, would correct most of the distorting effects of Washington's asset forfeiture system.

### 8. TRAFFIC STOPS.[56]

Since 2000, the Washington State Patrol ("WSP") has collected data on its traffic stops. WSP requires its troopers to maintain data for every contact they have with a motorist, including whether the motorist is stopped, searched, and cited, and the driver's race/ethnicity. Studies based on this data have found no evidence of racial profiling or any observable racial disparity in traffic stops. However, there is a substantial racial disparity in the outcomes of these stops. The data shows that minorities are cited more often, and that when they are cited, their citations are for more serious offenses. Additionally, after a stop, police are more likely to search minority motorists. For instance, one study found that, compared to White drivers, Latino drivers were twice as likely to be searched, Black drivers were 2.5 times more likely, and Native American drivers were nearly five times more likely. However, the "hit rate" – that is, the percentage of searches that result in seizures – is substantially higher for Whites.

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54. *See* Appendix A.4: Drug Enforcement.
55. *See* Appendix A.5: Asset Forfeiture.
56. *See* Appendix A.6: Traffic Stops.

This suggests that the higher search rate is not warranted by any legitimate policing purpose. The data and evidence demonstrate that, after police stop a motorist, race is an important factor influencing the likelihood of a search, and the seriousness of the offense charged.

#### 9. DRIVING WHILE LICENSE SUSPENDED (DWLS).[57]

Washington courts adjudicate approximately 100,000 cases of DWLS each year, and for some misdemeanor courts the offense is one-third of the typical caseload. The evidence shows that this facially-neutral policy – e.g. treating driving while license suspended as a misdemeanor offense – has racially disparate effects. This is the case because poverty rates are higher among Blacks, Latinos, and Native Americans, than among Whites. It is likely that racially disparate enforcement practices also contribute to racial disparity in DWLS 3 charges. For instance, one study found that Black drivers in Seattle are stopped more frequently and are far more likely to receive tickets and be cited for defective headlights and other minor infractions, than White drivers. Because the failure to pay fines stemming from traffic tickets can lead to a license suspension, the DWLS law disproportionately affects minority drivers.

In conclusion, the evidence thus shows a wide variety of policies and practices that facilitate racial disparity in Washington's criminal justice system. In the nine aforementioned areas – juvenile justice, prosecutorial discretion, confinement sentencing outcomes, LFOs, pretrial release, drug law enforcement, asset forfeiture, traffic stops, and DWLS – research actually has been undertaken to evaluate the underlying causes of racial disproportionality in Washington State's criminal justice system, and the research has revealed that race matters at various stages in the disposition of criminal cases. Similarly situated persons are treated differently, along racial lines, in the studied contexts. These findings raise serious concerns regarding other criminal justice contexts yet to be examined, and show how structural racism can and does affect outcomes in Washington's criminal justice system. At different stages in the system, small differences in the ways that individuals are treated can lead to significant differences in group outcomes over time. These effects may be undetectable in any given case, but the effects certainly are observable at a systemic level. These are the effects that have been discovered within Washington's criminal justice system.

### C. BIAS

Nobody wants to be called a racist. Most people do not want to be racist. Yet many of us harbor explicit and implicit racial biases, regardless of our professed commitments to racial equality. Though he later claimed to be taken out of context, Jesse Jackson once remarked, "There is nothing more painful for me at this stage in my life . . .than to walk down the street and hear footsteps and start thinking about robbery—and then look around and see somebody white and feel relieved."[58] If one of our most prominent civil rights leaders felt this way, what hope do the rest of us have of being immune from these feelings? And if we have these

57. *See* Appendix A.7: Driving While License Suspended.

58. Jeffrey Goldberg, *The Color of Suspicion*, N.Y. TIMES MAG., June 20, 1999. Jesse Jackson later said that "his quotation was 'taken out of context'" and that the context was "that violence is the inevitable byproduct of poor education and healthcare." *Id.*

feelings, how many of us will admit them to ourselves, let alone to others? Then, how do we know if these feelings in fact affect our behavior? Finally, if we admit that these feelings can affect our behaviors, are there ways to prevent racialized outcomes that are inconsistent with our shared commitment to equality? This part explores evidence regarding bias, the relationship between bias and behavior, and the potential for solutions to prevent racially disparate outcomes.

### 1. EXPLICIT BIAS AS REFLECTED IN SURVEY DATA

One of the best sources of survey data on racial attitudes comes from the General Social Survey conducted by the National Opinion Research Center at the University of Chicago, which has collected data from face-to-face surveys since 1942.[59] It has revealed, over time, that White attitudes toward Blacks, as measured by expressed principles, have shifted dramatically. For example, in 1964, 60% of White respondents were in favor of laws against intermarriage between Blacks and Whites.[60] By 2002, the number had dropped to 10% in favor of such laws, though 24% still opposed intermarriage between Whites and Blacks.[61] Similar trend data show that when White respondents were asked about Black inequality and its causes, in 1977, 27% of White respondents reported that it was due to Blacks having less ability. By 2006, this number had dropped to 7%.[62] Interestingly, in 1977, 66% of White respondents, when asked questions about Black inequality, expressed that Blacks had no motivation. In 2006, 52% of White respondents said that Blacks had no motivation, and 58% agreed somewhat or strongly that Blacks should try harder.[63] Some negative views, attribution of no motivation, seem to persist at a very high rate. It is also worth noting that a large percentage of White respondents believe that Blacks are treated unfairly by police, with 36% holding this view in 1997 and 35% holding this view in 2004.[64]

The survey data show a significant diminishment in White negative racial attitudes toward Blacks in many areas, but even this should be taken with a grain of salt. Any survey is subject to the problem of response bias.[65] Indeed, the authors of the best work looking at

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59. SCHUMAN ET AL., RACIAL ATTITUDES IN AMERICA: TRENDS AND INTERPRETATIONS 59 (rev. ed. 1997).

60. *Id.* at 106-7 (Table 3.1B, Questions concerning principles, 1958-1997 (white respondents)).

61. Racial Attitudes: Updated data (Table 3.1B, Questions concerning principles, 1958-1997 (white respondents)), available at http://igpa.uillinois.edu/programs/racial-attitudes/data/white/t31b (last visited Feb. 28, 2011).

62. SCHUMAN, *supra note* 59 at 156-57 (Table 3.4A, Explanations for inequality (white respondents)).

63. Racial Attitudes: Updated data (Table 3.4A, Explanations for inequality (white respondents)), *available at* http://igpa.uillinois.edu/programs/racial-attitudes/data/white/t34a (last visited Feb. 28, 2011)

64. Racial Attititudes: Updated data (Table 3.4B, Supplement, New data on perceptions of discrimination (whites), *available at* http://igpa.uillinois.edu/programs/racial-attitudes/data/white/t34asupp (last visited Feb. 28, 2011)

65. This can be produced by such things as question wording, question context, race of the interviewer, and privacy. *See* SCHUMAN, *supra* note 59, at 78-79 (question wording); Cynthia Webster, *Hispanic and Anglo Interviewer and Respondent Ethnicity and Gender: The Impact on Survey Response Quality*, 33 J. MARKETING RES. 62 (February 1996) (race and ethnicity of interviewer and respondent); Maria Krysan, *Privacy and the Expression of White Racial Attitudes: A Comparison across Three Contexts*, 62 PUB. OPINION Q. 506 (1998) (privacy effect).

racial attitudes based on survey data, including the GSS, note that their book, *Racial Attitudes in America*, might better be called *Racial Norms in America*.[66]

### 2. IMPLICIT BIAS[67]

What tends to be expressed may not provide good data about "true" attitudes, especially when people wish to conceal their motives or if they have unconscious biases.

Consider the following example:

> [W]e think that most people wish to avoid contact with the physically handicapped but do not want to admit it. If we give a person a choice between sitting next to a handicapped person or sitting beside a normal [sic] one, he may choose the handicapped so as to conceal his desire to avoid. However, if we ask a person to choose between two movies, one of which apparently by accident happens to entail sitting next to a handicapped person, the other next to a normal [sic], he can avoid the handicapped while appearing to exercise a preference for a movie.[68]

In a carefully designed experiment, researchers found that when offered a choice of two rooms in which movies were playing, people avoided the room with a handicapped person, but only when doing so could masquerade as movie preference.[69] This experiment, and others like it,[70] suggest that if reasons exist that provide plausible deniability that one is acting from bias, that people will in fact act on biases.

The gap between "true attitudes" and what is expressed is exacerbated by the problem of unconscious or implicit bias. Much of this research is done in connection with the Implicit Association Test (IAT), which measures reaction times in response to certain visual stimuli.[71] Other methodologies include testing subjects while "measuring cardiovascular response, micro-facial movements, or neurological activity."[72]

The general findings, confirmed by hundreds of articles in peer-reviewed scientific journals are that "[i]mplicit biases—by which we mean implicit attitudes and stereotypes—are both pervasive (most individuals show evidence of some biases), and large in magnitude, statistically speaking. In other words, we are not, on average or generally, cognitively colorblind."[73]

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66. SCHUMAN, *supra* note 59, at 3.
67. *See* Appendix A.8: Implicit Bias.
68. Melvin L. Snyder, Robert E. Kleck, Angelo Strenta & Steven J. Mentzer, *Avoidance of the Handicapped: An Attributional Ambiguity Analysis*, 37 J. PERSONALITY & SOC. PSYCHOL. 2297, 2297 (1979).
69. *Id.* at 2304.
70. *Id.* (discussing bystander intervention experiments varying race of victim).
71. For a more full discussion, see *id.*
72. Jerry Kang & Kristin Lane, *Seeing Through Colorblindness: Implicit Bias and the Law*, 58 UCLA L. REV. 465, 471 (2010) (citations omitted).
73. *Id.* at 473.

### 3. BIAS AND OUTCOMES

Research also demonstrates that bias, whether held consciously or unconsciously, affects behaviors. But how do we take the insights that are learned in experimental settings and apply them to real life? In one study, résumés were sent to 1,250 employers who had advertised that they were hiring. Each received four résumés from the researchers, altered so that some had stereotypically White-sounding names while others had stereotypically Black-sounding names. Each prospective employer received four résumés from the researchers: "an average white applicant, an average black applicant, a highly skilled white applicant and a highly skilled black applicant."[74] Much to the surprise of the researchers,

> the résumés with white-sounding names triggered 50 percent more callbacks than résumés with black-sounding names. Furthermore, the researchers found that the high-quality black résumés drew no more calls than the average black résumés. Highly skilled candidates with white names got more calls than average white candidates, but lower-skilled candidates with white names got many more callbacks than even highly skilled black applicants.[75]

While this study involved fictitious Black and White applicants in an employment setting, a significant body of research has been done to test bias and outcomes in the criminal justice system as well.

The criminal justice system involves numerous actors—such as police officers, prosecutors, judges, jurors, and eyewitnesses—whose decisions and judgments have a significant impact on the conviction and punishment of criminal defendants. A great deal of research has shown that race significantly affects the decisions and judgments of most people, and some of this research has been conducted on particular actors (or tasks) within the criminal justice system. For example, the research on bias tends to show that a juror who associates Blacks (as opposed to Whites) with a particular crime will be more likely to convict Blacks (as opposed to Whites) of that crime on the *same* evidence. As another example, police officers in one experiment exhibited a tendency to associate Black (as opposed to White) faces with criminality. In yet another experiment, both police and probation officers exhibited a significant influence of race on their judgments of culpability and decisions to arrest and to charge.[76] These and other biases are subtle phenomena that have some influence in any given case, but which have their most substantial effects over time. The research suggests that biased decision-making artificially inflates the proportion of minorities in the criminal justice system, which likely creates more stereotypes and associations, and thus results in a negative feedback loop.

A difficulty remains, though, with connecting bias to behavior to particular outcomes. It is very difficult in any particular instance to prove these connections, at least within the confines of traditional antidiscrimination law. With regard to the person who chooses not to

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74. Shankar Vedantam, *See No Bias*, WASH. POST., Jan. 23, 2005, at W12, available at http://www.washingtonpost.com/wp-dyn/articles/A27067-2005Jan21.html (last visited Feb. 28, 2011).

75. *Id.*

76. These experiments are discussed in more detail in Appendix A.8. Implicit Bias.

sit with the handicapped person, absent an admission by the person that she or he was acting based on bias, we would never be able to prove discrimination. Yet at the end of the day, the handicapped person, more often than not, finds himself or herself watching the movie alone.

With regard to Blacks, Latinos, and Native Americans who are stopped while driving their cars and searched, absent an admission from officers that they were acting based on bias, intentional discrimination cannot be proven. Yet at the end of each day, more Blacks, Latinos, and Native Americans will be searched, even though, statistically, those individuals are less likely to be in possession of narcotics.

At the end of each day, because of the cumulative effect of facially neutral policies that have disproportionate impacts and because of the subtle operation of bias at various decision points, a disproportionate number of people of color in Washington State find themselves incarcerated or otherwise involved with the criminal justice system, a disproportion that cannot be accounted for fully by involvement in crime.

Because of the difficulties in proving intent and the limits of current antidiscrimination law, many of the solutions to the problem of bias in the criminal justice system will have to come from outside of the courtroom. The research shows that implicit racial bias is not an unavoidable component of human decision-making. Substantial research has begun to determine the most effective methods of minimizing such bias.[77] Implicit bias research should inform policymaking and training within the criminal justice system, albeit with great care and consideration.[78]

## IV.
## CONCLUSION

We have presented evidence of disproportionality in the criminal justice system. Arrest and conviction rates do not correlate precisely with criminal behavior rates and cannot serve as a proxy for criminality. While commission rates may be higher for some categories of crimes, they are lower in others. A very large portion of disproportionality cannot be explained by legitimate race neutral factors, leading us to conclude that race matters in ways that are not fair, that do not advance legitimate public safety objectives, that produce racial disparities in the criminal justice system, and that undermine public confidence in our legal system.

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77. *See, e.g.*, Sophie Lebrecht et al., *Perceptual Other-Race Training Reduces Implicit Racial Bias*, 4 PLOS ONE e4215 (2009) (training in distinguishing other-race faces decreases bias shown in IAT); Nilanjana Dasgupta & Anthony G. Greenwald, *On the Malleability of Automatic Attitudes: Combating Automatic Prejudice With Images of Admired and Disliked Individuals*, 81 J. PERSONALITY AND SOC. PSYCHOL. 800 (2001) (exposure to images of liked/disliked members of racial groups affects performance on IAT).

78. *See, e.g.*, Dale Larson, *A Fair and Implicitly Impartial Jury: An Argument for Administering the Implicit Association Test During Voir Dire*, 3 DEPAUL J. SOC. JUST. 139, 169 (2010) (recommending "mak[ing] the IAT universal in jury assembly rooms . . . and test[ing] jurors for the categories most likely to generate bias that could playa role in the cases scheduled for the day"); Gary L. Wells & Elizabeth A. Olson, *The Other-Race Effect in Eyewitness Identification: What Do We Do About It?*, 7 PSYCHOL., PUB. POL'Y, AND LAW 230, 241-43 (2001) (suggesting more lineup foils and own-race lineup construction in cases of other-race eyewitness identification).

Our democracy is based on the rule of law and faith in the fairness of the justice system. This faith is undermined by disparity and by high profile incidents of violence toward people of color by law enforcement. The problem is not a "people of color" problem. It is our problem as a society to address.

# Closing Remarks from the Task Force Co-Chairs

"A time comes when silence is betrayal."
--Martin Luther King, Jr.

There is a problem in our justice system. We have found disparity and mistrust. Together, we must fix it for the sake of our democracy.

In this report, we find that race and racial bias affect outcomes in the criminal justice system and matter in ways that are not fair, that increase disparity in incarceration rates, that do not advance legitimate public safety objectives, and that undermine public confidence in our criminal justice system.

Now, with these facts before us, the question for all of us is what we will do with this knowledge. We ask this of everyone who has joined us on March 2, 2011, at the Temple of Justice in Olympia, Washington. We ask this of everyone who will read this report.

We, the Task Force on Race and the Criminal Justice System, are devoted to reducing racial disparity in the justice system. Existence would be intolerable were we never to dream. We dream of completely eliminating bias in criminal, civil, juvenile and family law matters. But there is a long history of over-promising and under-delivering. We ask that you join us with energy and good will so we are not added to this list of failures. We prefer the folly of enthusiasm to the indifference of wisdom from those who purport to know better.

We ask that you trust only action because progress happens at the level of events, not of words. Please join our effort to address bias in the justice system at every level. We have hope because we are united and committed to working collaboratively despite our differences. We celebrate the efforts of this Task Force to work together to build a community based on trust, equality, and respect.

Sincerely,

Judge Steven C. González, Chair of the Washington State Access to Justice Board

Professor Robert S. Chang, Director, Fred T. Korematsu Center for Law and Equality

Co-Chairs, Task Force on Race and the Criminal Justice System

# References

## Primary Sources

CAL. EDUC. CODE, §§ 8003, 8004 (Deering 1944) (repealed 1947).

RCW § 43.43.690

RCW § 7.68.035

RCW §§ 69.50.505(9) – (10).

People v. Hall, 4 Cal. 399 (1854).

## Secondary Sources

CRIME IN THE UNITED STATES, 2005 Table 43 (2006), *available at* http://www2.fbi.gov/ucr/05cius/data/table_43.html (last visited Feb. 27, 2011).

EVALUATION OF SEATTLE RE-LICENSING PROGRAM (2002), *available at* http://www.cityofseattle.net/courts/PDF/RelicensingEval.pdf.

RE-LICENSING, KING CTNY. DIST. COURT SERVS., *available at* http://www.kingcounty.gov/courts/DistrictCourt/CitationsOrTickets/RelicensingProgram.aspx (last visited Nov. 9, 2010).

SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS ONLINE Tables 3.29 and 3.31, *available at* http://www.albany.edu/sourcebook/pdf/t3292005.pdf and http://www.albany.edu/sourcebook/pdf/t3312005.pdf (last visited Feb. 27, 2011)

BANCROFT, HUBERT H., HISTORY OF WASHINGTON, IDAHO, AND MONTANA 1845-1889 (1890).

Beckett, Katherine et al., *Drug Use, Drug Possession Arrests, and the Question of Race: Lessons from Seattle*, 52 SOCIAL PROBLEMS 3 (2005).

Beckett, Katherine et al., *Race, Drugs and Policing: Understanding Disparities in Drug Delivery Arrests*, 44 CRIMINOLOGY 1 (2006).

Blumstein, Albert, *On the Disproportionality of the U.S. States' Prison Population,* 73 J. CRIM. L. & CRIMINOLOGY 1259 (1982).

Bonilla-Silva, Eduardo, *Rethinking Racism: Toward a Structural Interpretation*, 62 AM. SOC. REV. 465 (1997).

Boruchowitz, Robert C., *Diverting and Reclassifying Misdemeanors Could Save $1 Billion per Year: Reducing the Need For and Cost of Appointed Counsel*, AMERICAN CONSTITUTION SOCIETY (2010), *available at* http://www.acslaw.org/files/Boruchowitz%20-%20Misdemeanors.pdf.

Bridges, George & Sara Steen, *Racial Disparities in Official Assessments of Juvenile Offenders: Attributional Stereotypes as Mediating Mechanisms*, AM. SOCIOLOGICAL REV. 63 (1998).

Brigham, John C. & David J. Ready, *Own-Race Bias in Lineup Construction*,9 LAW & HUM. BEHAV. 415 (1985).

Chang, Robert S. & Catherine E. Smith, *John Calmore's America*, 86 N.C. L. Rev. 739 (2008).

CHIN, DOUG, SEATTLE'S INTERNATIONAL DISTRICT: THE MAKING OF A PAN-ASIAN AMERICAN COMMUNITY (2001).

Christianson, Scott, *Legal Implications of Racially Disproportionate Incarceration Rates*, 16 CRIM. L. BULLETIN 1 (1980).

Cohen, Thomas H. and Brian A. Reaves, *Pretrial Release of Felony Defendants in State Courts. Washington D.C.: Bureau of Justice Statistics,* NCJ 214994. November 2007.

Correll, Joshua et al., *The Police Officer's Dilemma: Using Ethnicity to Disambiguate Potentially Threatening Individuals*, 83 J. OF PERSONALITY & SOC. PSYCHOL. 1314 (2002).

Crutchfield, Robert D., "Ethnicity, Labor Markets, and Crime," *in* ETHNICITY, RACE, AND CRIME: PERSPECTIVES ACROSS TIME AND SPACE (1995) (Darnell Hawkins, ed.).

-----, et al., *Racial/Ethnic Disparities and Exceptional Sentences in Washington State: Final Report,* Washington State Minority and Justice Commission (1993).

-----, et al., *A Study on Racial and Ethnic Disparities in the Prosecution of Criminal Cases in King County Washington: Final Report*, Washington State Minority and Justice Commission (1995).

-----, *Racial Disparity in the Washington State Criminal Justice System*, "Exhibit 2," *2, Oct. 25, 2005, *available at* http://moritzlaw.osu.edu/electionlaw/litigation/documents/exhibitsstatementofmaterialfactspart3.pdf.

----- & George S. Bridges, *Racial and Ethnic Disparities in Imprisonment: Final Report*, INST. FOR PUB. POL'Y & MGMT, GRAD. SCH. OF PUB. AFF., UNIV. OF WASH. (1986).

-----, George Bridges & Susan Pitchford, *Analytical and Aggregation Biases in Analyses of Imprisonment: Reconciling Discrepancies in Studies of Racial Disparity*, 31 J. RES. CRIME & DELINQUENCY 166 (1994)

DANIELS, ROGER, ASIAN AMERICA: CHINESE AND JAPANESE IN THE UNITED STATES SINCE 1850 (1988).

Dasgupta, Nilanjana & Anthony G. Greenwald, *On the Malleability of Automatic Attitudes: Combating Automatic Prejudice With Images of Admired and Disliked Individuals*,81 J. OF PERSONALITY & SOC. PSYCHOL.800 (2001).

Eberhardt, Jennifer L. et al., *Seeing Black: Race, Crime, and Visual Processing*, 87 J. OF PERSONALITY & SOC. PSYCHOL. 876 (2004).

Engel, Robin S. & Richard Johnson, *Toward a better understanding of racial and ethnic disparities in search and seizure rates*, 34 J. OF CRIM. JUST. 605 (2006).

Espinoza, Russ K. E. & Cynthia Willis-Esqueda, *Defendant and Defense Attorney Characteristics and Their Effects on Juror Decision Making and Prejudice Against Mexican Americans*, 14 CULTURAL DIVERSITY & ETHNIC MINORITY PSYCHOL. 364 (2008).

Fernandez, Kenneth E. & Timothy Bowman, *Race, Political Institutions, and Criminal Justice: An Examination of the Sentencing of Latino Offenders*, COLUMB. HUM. R. L. REV. 42 (2004).

Garber, Andrew, "Seattle Blacks Twice as Likely to Get Tickets," THE SEATTLE TIMES, Jun. 14, 2000 (corrected August 3, 2001).

Goldberg, Jeffrey, *The Color of Suspicion*, N.Y. TIMES MAG., June 20, 1999

Goldkamp, John S., TWO CLASSES OF THE ACCUSED: A STUDY OF BAIL AND DETENTION IN AMERICAN JUSTICE . Cambridge, Massachusetts: Ballinger Publishing Co, 1979.

Gordon, Randall A. et al., *Perceptions of Blue-Collar and White-Collar Crime: The Effect of Defendant Race on Simulated Juror Decisions*, 128 J. OF SOC. PSYCHOL. 191 (2001).

Graham, Sandra & Brian S. Lowery, *Priming Unconscious Racial Stereotypes About Adolescent Offenders*, 28 LAW & HUM. BEHAV. 483 (2004).

Greenwald, Anthony G. et al., *Targets of Discrimination: Effects of Race on Responses to Weapons Holders*, 39 J. OF EXPERIMENTAL SOC. PSYCHOL. 399 (2003).

HARRELL, ERIKA, BLACK VICTIMS OF VIOLENT CRIME, BUREAU OF JUSTICE STATISTICS SPECIAL REPORT 5, Table 5 (2007) (percent of violent victimization, by victim race/Hispanic origin and offender race, 2001-2005), *available at* http://bjs.ojp.usdoj.gov/content/pub/pdf/bvvc.pdf (last visited Feb. 27, 2011).

Heider, Jeremy D. & John J. Skowronski, *Improving the Predictive Validity of the Implicit Association Test*, 9 N. AM. J. OF PSYCHOL. 53 (2007).

INTERNATIONAL CENTRE FOR PRISON STUDIES AT KING'S COLLEGE, LONDON, PRISON BRIEF – HIGHEST TO

LOWEST RATES, ENTIRE WORLD – PRISON POPULATION RATES PER 100,000 OF THE NATIONAL POPULATION, *available at* http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/wpb_stats.php?area=all&category=wb_poprate (last visited Feb. 27, 2011).

James, Lois, *Simulated Deadly Force Scenarios: A New Experimental Tool for Measuring Racial and Gender Bias in Policing*, unpublished manuscript.

Johnson, Richard R., *Race and police reliance on suspicious non-verbal cues*, 30 POLICING: AN INT'L J. OF POLICE STRATEGIES & MGMT. 277 (2007).

JOHNSON, STEPHANIE, BLOCKING RACIAL INTERMARRIAGE LAWS IN 1935 AND 1937: SEATTLE'S FIRST CIVIL RIGHTS COALITION, SEATTLE CIVIL RIGHTS & LABOR HISTORY PROJECT (2005), *available at* http://depts.washington.edu/civilr/antimiscegenation.htm (last visited Feb. 22, 2011).

Jones, Christopher S. & Martin F. Kaplan, *The Effects of Racially Stereotypical Crimes on Juror Decision-Making and Information-Processing Strategies*, 25 BASIC & APPLIED SOC. PSYCHOL. 1 (2003)

Kang, Jerry, & Kristin Lane, *Seeing Through Colorblindness: Implicit Bias and the Law*, 58 UCLA L. REV. 465 (2010)

Kassin, Saul M. et al., *On the "General Acceptance" of Eyewitness Testimony Research*, 56 AM. PSYCHOL. 405 2001).

Krysan, Maria, *Privacy and the Expression of White Racial Attitudes: A Comparison across Three Contexts*, 62 PUB. OPINION Q. 506 (1998)

Lane, Kristin A., Jerry Kang & Mahzarin R. Banaji, *Implicit Social Cognition and Law*, 3 ANN. REV. LAW & SOC. SCI. 427 (2007).

Langan, Patrick A., *Racism on Trial: New Evidence to Explain the Racial Composition of Prisons in the United States*, 76 J. CRIM. L. & CRIMINOLOGY 666 (1985).

Larson, Dale, *A Fair and Implicitly Impartial Jury: An Argument for Administering the Implicit Association Test During Voir Dire*, 3 DEPAUL J. FOR SOC. JUST. 139 (2010).

Lazarus III, Mark L., *An Historical Analysis of Alien Land Law: Washington Territory & State 1853-1889*, 12 SEATTLE U. L. REV. 197 (1989).

Lebrecht, Sophie et al., *Perceptual Other-Race Training Reduces Implicit Racial Bias*, PLoS ONE e4215 (2009).

Lopez, Ian Haney, *The Social Construction of Race: Some Observations on Illusion, Fabrication, and Choice*, 29 HARV. C.R.-C.L. L. REV. 1 (1994).

LOVRICH, NICHOLAS ET AL., ANALYSIS OF TRAFFIC STOP DATA COLLECTED BY THE WASHINGTON STATE PATROL: ASSESSMENT OF RACIAL AND ETHNIC EQUITY AND BIAS IN STOPS, CITATIONS, AND SEARCHES USING MULTIVARIATE QUANTITATIVE AND MULTI-METHOD QUALITATIVE RESEARCH TECHNIQUES: PROJECT FINAL REPORT, DIV. OF GOV'T STUDIES & SERV., DEP'T OF POLITICAL SCIENCE & CRIM. JUST., WASH. ST. UNIV. (2005).

LOVRICH, NICHOLAS ET AL., DATA ANALYSIS PROJECT REPORT, WSP STOP DATA ANALYSIS PROJECT, *41 (Jun. 1, 2003), *available at* http://www.wsp.wa.gov/publications/reports/wsu_2003_report.pdf.

McConnell, Allen R. & Jill M. Leibold, *Relations among the Implicit Association Test, Discriminatory Behavior, and Explicit Measures of Racial Attitudes*, 37 J. OF EXPERIMENTAL SOC. PSYCHOL. 435 (2001).

McGee, Jr., Henry W., *Seattle's Central District, 1996-2006: Integration or Displacement?*, 39 URB. LAW. 167 (2007).

Mauer, Mark, & Ryan S. King, Uneven Justice: State Rates of Incarceration by Race and Ethnicity 4 (2007), available at http://sentencingproject.org/doc/publications/rd_staterates ofincbyraceandethnicity.pdf (last visited Feb. 27, 2011).

Meissner, Christian A. & John C. Brigham, *Thirty Years of Investigating the Own-Race Bias in Memory for*

*Faces*, 7 PSYCHOL. PUB. POL'Y & LAW 3 (2001).

Miletich, Steve, *Two State Supreme Court Justices Stun Some Listeners with Race Comments*, SEATTLE TIMES, Oct. 21, 2010, *available at* http://seattletimes.nwsource.com/html/localnews/2013226310_justices22m.html (last visited Feb. 22, 2011).

Mitchell, John B. & Kelly Kunsch, *Of Driver's Licenses and Debtor's Prison*, 4 SEATTLE J. FOR SOC. JUST. 439 (2005).

Mitchell, Tara L. et al., *Racial Bias in Mock Juror Decision-Making: A Meta-Analytic Review of Defendant Treatment*, 29 LAW & HUM. BEHAV. 621 (2005).

MOSHER, CLAYTON, VANCOUVER POLICE DEPARTMENT – CITIZEN CONTACT DATA ANALYSIS PROJECT: PRELIMINARY REPORT," VANCOUVER POLICE DEP'T, WASHINGTON (2003).

MURRAY, CHRISTOPHER & ASSOCIATES, COSTS & BENEFITS OF THE KING COUNTY DISTRICT COURT RELICENSING PROGRAM, 2004.

Offenbecher, Cooper, *DWS: A Ticket to Debtor's Prison?*, KING COUNTY BAR BULLETIN, April 2008, *available at* http://www.kcba.org/newsevents/barbulletin/archive/2008/08-04/article1.aspx.

Phelps, Elizabeth A. et al., *Performance on Indirect Measures of Race Evaluation Predicts Amygdala Activation*, 12 J. OF COGNITIVE NEUROSCIENCE 729 (2000).

Phillips, Mary T. *Bail, Detention and Non-Felony Case Outcomes*, *in* RESEARCH BRIEFS SERIES NO. 14, May 2007 (New York: NEW YORK CITY CRIMINAL JUSTICE AGENCY, INC.).

-----, *Bail, Detention and Felony Case Outcomes*, *in* RESEARCH BRIEFS SERIES NO. 18, Sept. 2008 (New York: NEW YORK CITY CRIMINAL JUSTICE AGENCY, INC.).

Pickerill, J. Mitchell, Clayton Mosher, & Travis Pratt, *Search and Seizure, Racial Profiling, and Traffic Stops: A Disparate Impact Framework*, 31 LAW & POL'Y 1 (2009).

Powell, John A., *Structural Racism: Building Upon the Insights on John Calmore*, 86 N.C. L. REV. 791 (2008).

Saulny, Susan, "Counting by Race Can Throw Off Some Numbers," N.Y. TIMES, at A1, Feb. 10, 2011, *available at* http://www.nytimes.com/2011/02/10/us/10count.html?scp=1&sq=race%20counting&st=cse.

SCHMID, CALVIN F. ET AL., NONWHITE RACES: STATE OF WASHINGTON 18, fig. 2.1 (1968).

Schreer, George E. et al., *"Shopping While Black": Examining Racial Discrimination in a Retail Setting*, 39 J. OF APPLIED SOC. PSYCHOL. 1432 (2009).

SCHUMAN ET AL., RACIAL ATTITUDES IN AMERICA: TRENDS AND INTERPRETATIONS (rev. ed. 1997).

Steen, Sara, Rodney L. Gainey & Randy R. Gainey, *Images of Danger and Culpability: Racial Stereotyping, Case Processing, and Criminal Sentencing*, 43 CRIMINOLOGY 435 (2005).

Snyder, Melvin L., Robert E. Kleck, Angelo Strenta & Steven J. Mentzer, *Avoidance of the Handicapped: An Attributional Ambiguity Analysis*, 37 J. PERSONALITY & SOC. PSYCHOL. 2297, 2297 (1979).

TAKAKI, RONALD, STRANGERS FROM A DIFFERENT SHORE: A HISTORY OF ASIAN AMERICANS 342 (1990).

TAKAMI, DAVID A., DIVIDED DESTINY: A HISTORY OF JAPANESE AMERICANS IN SEATTLE (1998).

TRUMAN, JENNIFER L., & MICHAEL R. RAND, BUREAU OF JUSTICE STATISTICS BULLETIN, NATIONAL CRIME VICTIMIZATION SURVEY, CRIMINAL VICTIMIZATION, 2009 9 (2010) (Table 12: Percentage of crimes reported to the police, by gender, race, and Hispanic origin, 2009), *available at* http://bjs.ojp.usdoj.gov/content/pub/pdf/cv09.pdf (last visited Feb. 27, 2011).

Wells, Gary L. & Elizabeth A. Olson, *The Other-Race Effect in Eyewitness Identification: What Do We Do About It?*, 7 PSYCHOL. PUB. POL'Y & LAW 230, 241-43 (2001).

WASHINGTON OFFICE OF PUBLIC DEFENSE, DRIVING WHILE LICENSE SUSPENDED 3RD DEGREE SURVEY OF COURTS OF LIMITED JURISDICTION, (2008).

WASH. ST. INST. FOR PUBLIC POLICY, EVIDENCE-BASED PUBLIC POLICY OPTIONS TO REDUCE FUTURE PRISON

CONSTRUCTION, CRIMINAL JUSTICE COSTS, AND CRIME RATES at 41, Exhibit B.2 (2006), *available at* http://www.wsipp.wa.gov/rptfiles/06-10-1201.pdf. Figures are adjusted for 2007 dollars utilizing the Implicit Price Deflator (GDP) rate and computations performed at http://www.measuringworth.com/uscompare.

WASH. ST. MINORITY & JUSTICE COMM., 1990 FINAL REPORT xxi, *available at* http://www.courts.wa.gov/committee/pdf/TaskForce.pdf (last visited: Feb. 20, 2011).

Webster, Cynthia, *Hispanic and Anglo Interviewer and Respondent Ethnicity and Gender: The Impact on Survey Response Quality*, 33 J. MARKETING RES. 62 (February 1996).

## Internet Resources

http://www.projectimplicit.org.

Legacy of Equal., Leadership & Org., http://www.lelo.org.

## RACIAL DISPARITY IN JUVENILE JUSTICE

### PROBLEM

Youth of color in Washington State are disproportionately overrepresented in juvenile sentencing. This disproportionate minority contact (DMC) has been the focus of policy makers, practitioners, and researchers in Washington for the past twenty years. However, DMC has continued, and in some areas, has increased. For example, in 2009, African American youth comprised just over four percent of the State's population, but received over *fifteen* percent of juvenile dispositions in Washington State. There was a similar pattern of overrepresentation for Latino youth (eleven percent of the State population, yet received fourteen percent of the juvenile dispositions)[79] and for Native American youth (two percent of the State population and received over four percent of the juvenile dispositions). This disproportionality is even greater for youth committed to the Juvenile Rehabilitation Administration (JRA). The proportion of African American youth in residential care is seven times the proportion of their population in the state; Native American and Latino youth reside in JRA facilities at rates almost five and two times the proportion of their respective populations in Washington State.

Furthermore, it appears that youth of color may receive disparate sentencing decisions. In 2005 African American and Asian/Pacific Islander youth were sentenced to the longest average terms in county detention. African American youth also received the longest terms of dispositions involving electronic home monitoring and work crew.

### KEY POINTS

a. **While Washington State has been the leader in the nation in its efforts to study and decrease DMC, disproportionality still remains.** Between 1990 and 1999 the proportion of youth of color receiving adjudications remained relatively stable at 32%, however in the same time the percentage of minority youth sentenced to correctional supervision rose from 38% to 43%.

b. **A study of probation officers' assessments of youth in Washington State has found that African American youth receive more negative attribution assessments about the causes of their offenses than White youth and these characterizations lead to more punitive sentence recommendations.**[80] Probation officers consistently portrayed Black youth differently than White youth in descriptions about the nature of their criminal offending. Causes of the Black youths' crimes were commonly attributed to internal traits (attitudes and personalities) while causes of White youths' crimes were attributed to their social environment (peers and family). These characterizations shape probation officers' assessments about the threat of future offending and sentencing recommendations and lead to more severe sanctioning for Black youth.

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79. The Hispanic numbers are based on 2005 data.
80. Bridges and Steen 1998.

c. **Further policy changes are needed to both assess and address rates of DMC and to investigate the mechanisms that produce the disproportionate and disparate outcomes.** Increasing the quality and access to data management systems that can generate case characteristics is key to investigating the extent of DMC and the processes that lead to the overrepresentation. Decision-making environments need to be explored for points of discretion that can lead to youth of color being over selected for more severe sanctioning decisions (such as policies leading to detention decisions and practices of case assessments and recommendations). Organizational climates should recognize the ways in which subtle biases can enter into decision-making and decision-makers should openly discuss how differences in culture can influence processing decisions.

## FURTHER READINGS FOR JUVENILE JUSTICE


- Bridges, George and Sara Steen. 1998. "Racial Disparities in Official Assessments of Juvenile Offenders: Attributional Stereotypes as Mediating Mechanisms." *American Sociological Review* 63:554–70.

- Chapin Hall Center for Children. 2008. *Understanding Racial and Ethnic Disparity in Child Welfare and Juvenile Justice.* Chicago: Chapin Hall Center for Children at the University of Chicago. Chicago, Illinois.

- Hsia, H. M., Bridges, G. S., & McHale, R. 2004. *Disproportionate minority confinement: 2002 update*. Washington, DC: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.

- Juvenile Rehabilitation Administration, Division of Treatment and Intergovernmental Programs. December 2009. *Racial Disproportionately in the Juvenile Justice System.* Report to the Legislature. Olympia, Washington.

- Sentencing Guidelines Commission, State of Washington. December 2005. *Disproportionality and Disparity in Juvenile Sentencing, Fiscal Year 2005.* Olympia, Washington.

## VARIABILITY AND ETHNIC DISPARITY IN THE ASSESSMENT OF "LEGAL FINANCIAL OBLIGATIONS" IN WASHINGTON STATE COURTS

### PROBLEM

Legal financial obligations (LFO) are now a common, though largely discretionary, supplement to prison, jail and probation sentences for people convicted of crimes in Washington State courts. Although fine and fee amounts are specified statutorily, judges have significant discretion in determining whether to impose many authorized fees and fines.[81] The evidence suggests that extra-legal factors, including ethnicity, significantly impact the assessment of fees and fines.

### KEY POINTS

a. **The assessment of fees and fines is highly variable even across cases involving identical charges and similarly situated defendants.** In 2004, the dollar value of assessed fees and fines ranged from a low of $500 to a high of $21,110 per felony conviction. Significant variation exists even among similar cases and similarly-situated offenders. For example, one first-time defendant convicted of delivery of methamphetamine in the first two months of 2004 was assessed $610 in fees and fines; in a different county, another first-time defendant convicted of the same crime during the same time period was assessed $6,710 in fees and fines.

b. **Statistical analysis (including Ordinary Logistic Regression and Hierarchical Linear Modeling techniques) indicates that a number of extra-legal factors influence the assessment of fees and fines after controlling for offender and Sentencing Reform Act (SRA) offense score. In particular, Latino defendants receive significantly greater fees and fines than similarly situated non-Latino defendants.** In addition, drug offenders receive significantly greater fees and fines than non-drug offenders, and defendants convicted at trial receive significantly greater fees and fines than others.

c. **The debt that accrues from the assessment of fees and fines is substantial relative to ex-offenders' expected earnings and often consequential.** Defendants sentenced in the first two months of 2004 had been assessed an average of $11,471 by the courts over their lifetime. Washington State currently charges 12% interest on unpaid LFOs. By 2008, these individuals still owed an average of $10,840 in court debt. Ex-offenders who consistently pay $50 a month will still possess legal debt after thirty years of regular monthly payments. Legal debt – and poor credit ratings – constrains opportunities and limits access to housing, education, and economic markets. Non-payment of legal debt may also trigger arrest and re-incarceration

81. The DNA Collection Fee is mandatory for first-time offenders (RCW 43.43.690), and the Victim Penalty Assessment penalty is mandatory for all offenders for each conviction (RCW 7.68.035). Judges possess significant discretion in deciding whether to impose the remaining twenty-two fees and fines. Although some fees and fines may only be assessed in some kinds of cases, judges may or may not assess those fees and fines in eligible cases.

**d. The fairness and wisdom of the laws authorizing the discretionary assessment of legal financial obligations need to be re-evaluated.**

### FURTHER READINGS FOR LEGAL FINANCIAL OBLIGATIONS


- Beckett, Katherine, Alexes Harris and Heather Evans. 2008. *The Assessment and Consequences of Legal Financial Obligations in Washington State*. Report commissioned by the Washington State Minority & Justice Commission.

- Harris, Alexes, Heather Evans and Katherine Beckett. 2010. "Drawing Blood from Stones: Monetary Sanctions, Punishment and Inequality in the Contemporary United States." *American Journal of Sociology* 115, 6: 1753-99.

- Harris, Alexes, Heather Evans and Katherine Beckett. In press. "Courtesy Stigma and Monetary Sanctions: Toward a Socio-Cultural Theory of Punishment." *American Sociological Review*.

## ETHNIC/RACIAL DISPARITY IN PRETRIAL RELEASE DECISIONS IN WASHINGTON STATE COURTS

### PROBLEM

Whether an individual who is charged with a crime will be released pending trial has a significant influence on the outcome of the case. Although court rules specify factors courts must consider when determining whether to release a defendant, judges have significant discretion in making this determination. Research suggests that extra-legal factors, including race and ethnicity, significantly impact pre-trial release decisions. In particular, Blacks and Latinos are detained pretrial at higher rates than White defendants.

### KEY POINTS

a. **Pretrial release significantly impacts the outcome of a case.** The Bureau of Justice Statistics found that 78% of defendants held on bail while awaiting trial were convicted, but just 60% of defendants who were released pending trial were convicted. In addition, defendants held on bail receive more severe sentences, are offered less attractive plea bargains and are more likely to become "reentry" clients for no other reason than their pretrial detention.[82] According to one scholar, "There is no more powerful predictor of post-conviction incarceration than pretrial detention."[83] Studies suggest that this correlation is not solely a function of case characteristics. Rather, detention itself affects case outcomes.[84]

b. **Statistical analysis indicates that a number of extra-legal factors influence the imposition of bail after controlling for criminal history. In particular, defendants of color are held on bail at higher rates than other defendants.** A 1997 University of Washington study found that "minority defendants and men were less likely to be released on their own recognizance than others even after controlling for differences among defendants in the severity of their crimes, prior criminal records, ties to the community and the prosecuting attorney's recommendation" (Bridges, 1997).

c. **Judges' consideration of seemingly race-neutral factors may result in disparate pre-trial detention of defendants of color.** Judges often consider the defendant's employment status, length and character of the defendant's residence in the community, and the defendant's family ties and relationships when determining whether to release a defendant or to impose bail. Though presumably not designed to disadvantage people of color, consideration of these factors has that consequence.

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82. Cohen, Thomas H. and Brian A. Reaves, *Pretrial Release of Felony Defendants in State Courts. Washington D.C.: Bureau of Justice Statistics,* NCJ 214994. November 2007.

83. John S. Goldkamp. *Two Classes of the Accused: A Study of Bail and Detention in American Justice*. Cambridge, Massachusetts: Ballinger Publishing Co, 1979.

84. Phillips, Mary T. *Bail, Detention and Non-Felony Case Outcomes*, Research Briefs Series No. 14, May 2007 (New York: New York City Criminal Justice Agency, Inc.); Phillips, Mary T., *Bail, Detention and Felony Case Outcomes*, Research Briefs Series No. 18, September 2008 (New York City Criminal Justice Agency, Inc.).

African Americans, Native Americans, and Latinos are more likely to be economically disadvantaged, have unstable employment, experience more family disruptions, and have more residential mobility. Judicial focus on such factors means that people from these ethnic groups are less likely to be released on their own recognizance than Whites.

**d. When making pretrial detention decisions, including whether to set bail and the amount of bail, courts should consider factors that are not only race-neutral on face, but also race-neutral in practice and effects.**

### FURTHER READINGS FOR PRETRIAL RELEASE


- Bridges, George S. 1997. *A Study on Racial and Ethnic Disparities in Superior Court Bail and Pre-Trial Detention Practices in Washington*. Washington State Minority and Justice Commission, Olympia WA.

## RACIAL DISPARITY IN DRUG LAW ENFORCEMENT

### PROBLEM

Despite the fact that only 8% of the general Seattle population is Black, two-thirds (67%) of those who are arrested for delivery of a serious drug (narcotics other than marijuana) in Seattle are Black. Yet, a rigorous, data-driven analysis of drug use, delivery, and law enforcement patterns in Seattle, conducted in 2008, indicates that this tremendous racial disparity in arrest rates does not reflect the reality of the local drug economy, nor it is a function of public health, public safety, or civilian concerns.

### KEY POINTS

a. **Seattle has one of the highest rates of racial disparity in drug arrests in the United States.** According to Seattle Police Department (SPD) arrest figures, the total Black drug arrest rate was more than 13 times higher than the White drug arrest rate in 2006. Blacks were more than 21 times more likely to be arrested for selling serious drugs than Whites in 2005-2006, despite the fact that multiple data sources suggest that Whites are the majority of sellers and users of serious drugs in Seattle. This rate of disparity is surpassed by only one of the other 38 comparably-sized cities in the nation for which data are available.

b. **Law enforcement's focus on crack cocaine – despite the presence of other serious drugs in the City – drives the extreme racial disparity in Seattle arrest rates.** The data suggest that the primary cause of racial disparity in Seattle's drug law enforcement is SPD's focus on crack cocaine – to the virtual exclusion of other serious drugs like heroin, powder cocaine, Ecstasy, and methamphetamine. In 2005-2006, *nearly three-quarters (74.1%) of all planned arrests for delivery of a serious drug involved crack cocaine*, a pattern that has remained consistent over time. Of those individuals arrested for crack cocaine delivery, 73.4% were Black. By contrast, fewer than 20% of those arrested for delivering any other serious drug were Black.

c. **The over-representation of crack-cocaine offenders among drug arrestees does not appear to be a function of public health and safety concerns, nor of resident complaints.** Powder cocaine and Ecstasy – not crack cocaine – are the most widely used serious drugs in Seattle. Although crack cocaine use poses health risks, it is less likely than other serious drugs, such as heroin and other opiates, to be associated with infectious disease and drug-related mortality. Moreover, those arrested for crack cocaine offenses were *least* likely to possess a dangerous weapon at the time of arrest. Lastly, there is little geographic correspondence between the areas identified by civilian complainants and the places where planned drug delivery arrests occur.

d. **A less harmful approach to drug law enforcement is necessary.** Community-based diversion programs provide a viable alternative to traditional drug law enforcement methods.

## FURTHER READINGS FOR DRUG ARRESTS


- Beckett, Katherine. "Executive Summary." *Race and Drug Law Enforcement in Seattle: Report Prepared for the ACLU Drug Law Reform Project and The Defender Association.* September, 2008.

- Beckett, Katherine. *Race and Drug Law Enforcement in Seattle: Report Prepared for the ACLU Drug Law Reform Project and The Defender Association.* September, 2008.

- Beckett, Katherine, Kris Nyrop and Lori Pfingst. 2006. "Race, Drugs and Policing: Understanding Disparities in Drug Delivery Arrests." *Criminology* 44, 1: 105-138.

- Beckett, Katherine, Kris Nyrop, Lori Pfingst and Melissa Bowen. 2005. "Drug Use, Drug Possession Arrests, and the Question of Race: Lessons from Seattle" *Social Problems* 52, 3: 419-41.

## DRUG-RELATED ASSET FORFEITURE DISTORTS LAW ENFORCEMENT PRIORITIES IN WASHINGTON STATE

### PROBLEM

Washington State allows law enforcement agencies to retain 90% of the net proceeds from drug-related assets seized, and requires that these funds be used "exclusively for the expansion and improvement of controlled substances related law enforcement activity."[85] Additionally, the evidentiary burden that a seizing agency must meet is very deferential to law enforcement. Evidence suggests that the combination of tremendous financial incentives and limited property rights distorts drug-related priorities, and pressures police to make operational decisions to maximize perceived financial rewards. The result is a financial incentive to continue drug-related practices that have a disparate impact on racial minorities.

### KEY POINTS

a. **Drug-related asset forfeiture is an important tool for law enforcement.** Forfeiture laws reduce the incentive for financially-motivated crimes, such as drug trafficking, by removing the assets that help make such activities profitable.

b. **However, allocating 90% of the net proceeds from drug-related asset forfeitures to the seizing agency creates a conflict between an agency's economic self-interest and traditional law enforcement objectives.** RCW 69.50.505 creates a perverse dependence whereby law enforcement agencies rely upon assets seized during drug investigations to fund their operations. This dependence inevitably skews how law enforcement agencies allocate their resources, and affects operational decisions regarding whether to target particular crimes and how to exercise discretion when making arrests. Legitimate goals of crime prevention are compromised when salaries, equipment, and departmental budgets depend on how many assets are seized. Eight states have enacted reforms **to** end the direct profit incentive under Washington's drug-related asset forfeiture laws by placing forfeiture revenue into a neutral account, such as education, drug treatment, or, ideally, in the general treasury of the city, county, or state government that oversees the seizing agency.[86] The evidence suggests that this single measure would cure the forfeiture law of its most corrupting effects. So long as police agencies can expect a financial reward for asset seizures, they will remain dependent on current tactics that have a disparate impact on racial minorities.

c. **The standard of proof in Washington State for the government to successfully claim property through asset forfeiture is one of the lowest in the country.** RCW 69.50.505 only requires that a law enforcement officer have "probable cause" to believe the property is linked to criminal activity. If a property owner challenges the

85. RCW §§ 69.50.505(9) – (10). The remaining 10% of the net proceeds are deposited into the state general fund.

86. Indiana, Maine, Maryland, Missouri, North Carolina, North Dakota, Ohio, and Vermont, distribute 0% of the proceeds to law enforcement.

seizure, the burden is only slightly increased to "preponderance of the evidence." Requiring seizing agencies to demonstrate with "clear and convincing" evidence that the assets seized were linked to criminal activity would help protect property owners from arbitrary seizures.

d. **Despite the substantial property interests involved, indigent defendants do not have a right to appointed counsel when challenging an asset seizure.** Because indigent defendants tend to be people of color, minority property owners are at a distinct disadvantage, and bear greater risks that their assets will be liquidated. Providing counsel for indigent defendants would help protect property interests that are often key to their livelihood.

e. **Asset forfeiture has a disparate impact on racial minorities.** The combination of financial dependence and limited procedural safeguards reinforces drug-related law enforcement tactics that University of Washington researchers have found to have a disparate impact on racial minorities. Two-thirds of those arrested for delivery of a serious narcotics offense in Seattle are Black. Consequently, because a drug arrest automatically renders much of a defendant's property seizable, RCW 69.50.505 has a disparate impact on defendants of color.

f. **Many property owners whose assets are seized are never charged with a crime, or are never convicted.** Investigators at the *Seattle Post-Intelligencer* found that 20% of people whose property was seized were never charged with a crime, and that 40% of the time there is no conviction.

### FURTHER READINGS FOR ASSET FORFEITURE


- Marian R. Williams, et. al., *Policing for Profit: The Abuse of Civil Asset Forfeiture*, INSTITUTE FOR JUSTICE (March 2010), *available at* http://www.ij.org/index.php?option=com_content&task=view&id=3114&Itemid=165

- Eric D. Blumenson & Eva Nilsen, *The Next Stage of Forfeiture Reform*, 14 Fed. Sent. R. 76 (2001).

- Eric Blumenson & Eva Nilsen, *Policing for Profit: The Drug War's Hidden Economic Agenda*, 65 U. Chi. L. Rev. 35 (1998).

## RACIAL DISPARITY IN TRAFFIC STOPS

### PROBLEM

Since 2000, the Washington State Patrol ("WSP") has collected data on its traffic stops. WSP requires its troopers to maintain data for every contact they have with a motorist, including whether the motorist is stopped, searched, and cited. The data also includes the motorist's race and ethnicity. Multiple studies have been conducted based on this data. There is no evidence of racial profiling or any observable racial disparity in traffic stops. However, there is a substantial racial disparity in the outcomes of these stops. The data shows that minorities are cited more often, and that when they are cited, their citations are for more serious offenses. Additionally, after a stop, police are more likely to search minority motorists, even though searches of White drivers more often lead to seizures. This suggests that the higher search rate is not warranted by any legitimate policing purpose.

### KEY POINTS

a. **The Washington State Patrol is one of a few agencies studied that does not exhibit a pattern of disproportionate minority contact at the "stop level."**[87] In particular, Blacks are overrepresented in two of the 40 distinct patrol areas (Tacoma Freeway and Seattle South); Native Americans and Asians are not over-represented in any of the 40 areas; and Latinos are over-represented in one area (Sunnyside), but substantially underrepresented in five areas (Yakima, Ephrata, Moses Lake, Everett Central, and Everett East).[88]

b. **However, the evidence also suggests racially disparate rates of citations and vehicle searches.** At the statewide level, Blacks, Latinos, and Native Americans received substantially more violations per stop than White and Asian drivers, and these disproportionalities were even higher for every patrol area in King County.[89]

c. **Even after controlling for legally relevant factors, the evidence shows that minority drivers are more likely to be searched once stopped than White drivers. Race is clearly an important factor influencing the likelihood of a search.** One study found that, compared to White drivers, Native American drivers are twice as likely to be searched, Black drivers are 20% more likely to be searched, and Latino drivers are 10% more likely to be searched.[90] Another study compared low discretion

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87. Clayton Mosher, "Vancouver Police Department – Citizen Contact Data Analysis Project: Preliminary Report," Vancouver Police Dep't, Washington State (2003) [hereinafter: Mosher 2003].

88. *See* Nicholas Lovrich, et al., "Data Analysis Project Report," WSP Stop Data Analysis Project, *41 (Jun. 1, 2003), *available at* http://www.wsp.wa.gov/publications/reports/wsu_2003_report.pdf [hereinafter: Lovrich 2003].

89. *Id.* at 52.

90. Lovrich, et al., "Analysis of Traffic Stop Data Collected by the Ashington State Patrol: Assessment of Racial and Ethnic Equity and Bias in Stops, Citations, and Searches Using Multivariate Quantitative and Multi-Method Qualitative Research Techniques: Project Final Report," Div. of Gov't Stud., Wash. St. Univ. (2005) [hereinafter: Lovrich 2005].

searches and high discretion searches.[91] For both low and high discretion searches, compared to White drivers, Latino drivers were twice as likely to be searched, Black drivers were 2.5 times more likely, and Native American drivers were nearly five times more likely.[92]

However, the "hit rate" – that is, the percentage of searches that result in seizures – is substantially higher for Whites. Searches of Whites led to seizures 24.9% of the time. The hit rates for minorities were all lower: 16.5% for Latinos, 18.4% for Blacks, and 22% for Native Americans.[93]

These two findings suggest that minorities are subject to a higher rate of searches, compared to White drivers, but that this higher rate is not warranted by any policing purpose because Whites are more likely to have items worth seizing.

d. **Additionally, an important predictor of law enforcement and criminal justice outcomes is the *seriousness of the offense charged.* The evidence shows that Native American, Black, and Latino drivers were charged with more serious offenses on average compared to White drivers.** The WSP data calculated a "seriousness score" per stop. Statewide, Asian drivers had the lowest seriousness score at .14, while White drivers had a seriousness score of .19. Black drivers, however, scored .31, Latino drivers scored .33, and Native Americans scored .45. The disproportionalities are particularly extreme in King County. For instance, in the Seattle South patrol area, Black and Latino, seriousness scores were almost double the White score, while the Native American score was more than double.[94] One possible explanation, however, is that minority drivers are more likely to have prior records of commission of traffic violations than White drivers.

***The data and evidence demonstrate that, after police stop a motorist, race is an important factor influencing the likelihood of a search, and the seriousness of the offense charged.***

### FURTHER READINGS FOR TRAFFIC STOPS

- Clayton Mosher, "Vancouver Police Department – Citizen Contact Data Analysis Project: Preliminary Report," Vancouver Police Dep't, Washington State (2003).

- Nicholas Lovrich, et al., "Data Analysis Project Report," WSP Stop Data Analysis Project, (Jun. 1, 2003), *available at* http://www.wsp.wa.gov/publications/reports/wsu_2003_report.pdf.

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91. Low discretion searches include searches incident to arrest, impound search, and warrant search. High discretion searches include consent searches, K9 searches, and Terry stops.

92. J. Mitchell Pickerill, Clayton Mosher, & Travis Pratt, *Search and Seizure, Racial Profiling, and Traffic Stops: A Disparate Impact Framework*, 31 Law & Pol'y 1, 12 (2009) [hereinafter: Pickerill, *Search and Seizure*].

93. *Id.* at 13.

94. Lovrich 2003, *supra* note 83, at 53-55.

- Lovrich, et al., "Analysis of Traffic Stop Data Collected by the Ashington State Patrol: Assessment of Racial and Ethnic Equity and Bias in Stops, Citations, and Searches Using Multivariate Quantitative and Multi-Method Qualitative Research Techniques: Project Final Report," Div. of Gov't Stud., Wash. St. Univ. (2005).

- J. Mitchell Pickerill, Clayton Mosher, & Travis Pratt, *Search and Seizure, Racial Profiling, and Traffic Stops: A Disparate Impact Framework*, 31 Law & Pol'y 1, 12 (2009).

## RACIAL DISPARITY IN DRIVING WHILE LICENSE SUSPENDED THIRD DEGREE CASES

### PROBLEM

In many misdemeanor courts, driving while license suspended in the third degree (DWLS 3) cases constitute at least one-third of the caseload. There are an estimated 100,000 cases in Washington per year.[95] The great majority of these cases result from failure to pay a traffic ticket or to appear in court for the ticket. RCW 46.20.342(1)(c)(iv).[96]

Because of a combination of economic status and police deployment decisions, and possibly in some situations because of racial profiling, people of color are more likely to have suspended licenses for failure to pay a ticket. In 2000, a *Seattle Times* investigation found that Black drivers in Seattle receive more tickets and are more likely to be cited for defective headlights than are White drivers.[97] As a result, people of color are more likely to be charged with DWLS 3.

In some misdemeanor courts, there is no counsel available for indigent persons at first appearance or arraignment hearings. And in some misdemeanor courts, public defense counsel are overwhelmed with cases. Some prosecutors have established diversion programs and some courts have re-licensing programs, both of which have demonstrated the ability to reduce costs and in some cases to gain revenue for local governments while avoiding criminal convictions for drivers.

### KEY POINTS

a. **DWLS 3 is a crime, and most of the people charged with this offense are poor.** A Seattle study in 1999 found that of 184 people with suspended licenses, the average person had $2,095 in unpaid fines and a monthly income of $810.6.[98]

b. **Because of economic factors and possibly the deployment of police and their vehicle stop practices, the people charged with DWLS 3 are disproportionately of color.**

c. **Most people charged with DWLS 3 had their licenses suspended for not paying a fine or for missing a court hearing and if they had means and the knowledge on how to negotiate the court system, they could get their licenses reinstated.** Local

95. Driving While License Suspended 3rd Degree Survey of Courts of Limited Jurisdiction, Washington Office of Public Defense (2008).

96. John B. Mitchell & Kelly Kunsch, *Of Driver's Licenses and Debtor's Prison*, 4 SEATTLE J. FOR SOC. JUST. 439, 443 (2005).

97. "A Seattle Times analysis of more than 324,000 citations issued in the past five years also found blacks get more tickets per stop than whites and are more likely to be cited for certain offenses, such as defective headlights. For example, the number of tickets issued to blacks for blocking traffic is four times the proportion of blacks in the driving population." Andrew Garber, "Seattle Blacks Twice as Likely to Get Tickets," THE SEATTLE TIMES, Jun. 14, 2000 (corrected August 3, 2001).

98. Evaluation of Seattle Re-Licensing Program (2002), *available at* http://www.cityofseattle.net/courts/PDF/RelicensingEval.pdf.

prosecutors and courts should work with defenders and community groups to establish pre-charging diversion and re-licensing programs where they do not now exist.

d. **DLWS 3 prosecutions consume a dramatic percentage of misdemeanor court, prosecution, and public defense resources in a time of severe budget challenges.**

e. **The costs of prosecuting DWLS 3 cases are staggering.** It is estimated that Washington's statewide average cost of arrest is $334, cost of conviction is $757, and cost per jail day $60.71.[99] Even though most first-time DWLS 3 convictions do not result in jail, many people do go to jail on the second or third offense or for failing to complete probationary requirements. Not counting the cost of any jail time, 100,000 arrests and convictions cost more than $100 million per year. Even if the DWLS 3 cases proceed on the basis of tickets with no arrests, the cost still exceeds $75 million. This cost does not take into account the impact on the individual defendant or his or her family.

## EXISTING ALTERNATIVES TO DWLS

Some courts have created relicensing programs to help low-income people get their licenses back while still making payments toward tickets.[100] King County District Court has a relicensing calendar twice a month during which individuals may enroll in the program rather than face a DWLS 3 charge.[101] There is a community service option that allows participants to perform community service at the rate of $10 for each hour worked. The District Court holds are released once the court receives written proof of community service hours performed.

In addition, the program offers participation in work crew and credit towards King County District Court fines at the rate of $150 for every eight-hour day worked. And another option is to make a 10% down payment on fines and monthly payments for the remaining balance. A community-based organization, Legacy of Equality, Leadership and Organizing (LELO), assists individuals with the process and refers individuals to the Relicensing Program.[102] The relicensing program generates revenue as people pay their fines and avoids prosecution, public defense, and jail costs for cases diverted from prosecution.[103] A 2004 study estimated

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99. WASH. ST. INST. FOR PUBLIC POLICY, *Evidence-Based Public Policy Options to Reduce Future Prison Construction, Criminal Justice Costs, and Crime Rates* at 41, Exhibit B.2 (2006), *available at* http://www.wsipp.wa.gov/rptfiles/06-10-1201.pdf. Figures are adjusted for 2007 dollars utilizing the Implicit Price Deflator (GDP) rate and computations performed at http://www.measuringworth.com/uscompare.

100. Cooper Offenbecher, *DWS: A Ticket to Debtor's Prison?*, KING COUNTY BAR BULLETIN, April 2008, *available at* http://www.kcba.org/newsevents/barbulletin/archive/2008/08-04/article1.aspx. *See also*, Mitchell & Kunsch, *supra* note 2.

101. *Re-Licensing*, King Ctny. Dist. Court Servs., *available at* http://www.kingcounty.gov/courts/DistrictCourt/CitationsOrTickets/RelicensingProgram.aspx (last visited Nov. 9, 2010).

102. LELO also conducts its own DWLS education programs. *See* Legacy of Equal., Leadership & Org., http://www.lelo.org.

103. Offenbecher, *supra* note 100.

that for every dollar spent on the King County District Court relicensing program, the court either earned or saved two dollars.[104]

The City of Spokane Prosecutor's office recently established a diversion program for DWLS 3 cases that it believes will reduce the municipal court caseload by 35 per cent.[105] The Legislature should amend the statute so that driver's licenses are not suspended for failure to pay a ticket or attend a court hearing.

104.Costs & Benefits of the King County District Court Relicensing Program, Christopher Murray & Associates, 2004, cited in Offenbecher, *supra* note 100.

105.Robert C. Boruchowitz, *Diverting and Reclassifying Misdemeanors Could Save $1 Billion per Year: Reducing the Need For and Cost of Appointed Counsel*, AMERICAN CONSTITUTION SOCIETY (2010), at 9, *available at* http://www.acslaw.org/files/Boruchowitz%20-%20Misdemeanors.pdf.

## IMPLICIT BIAS DISTORT DECISION MAKERS THROUGHOUT THE CRIMINAL JUSTICE SYSTEM

### PROBLEM

The criminal justice system involves numerous actors—such as police officers, prosecutors, judges, jurors, and eyewitnesses—whose decisions and judgments have a significant impact on the conviction and punishment of criminal defendants. A great deal of research has shown that race significantly affects the decisions and judgments of most people. Some of this research has been conducted on particular actors (or tasks) within the criminal justice system. For example, the research on bias tends to show that a juror who associates Blacks (as opposed to Whites) with a particular crime will be more likely to convict Blacks (as opposed to Whites) of that crime on the *same* evidence. These biases are subtle phenomena that have some influence in any given case, but which have their most substantial effects over time. The research suggests that biased decision-making artificially inflates the proportion of minorities in the criminal justice system, which likely creates more stereotypes and associations, and thus results in a negative feedback loop.

The research and studies discussed below are either well-recognized meta-analyses (that is, evaluations of large collections of similar studies, used to determine the general state of knowledge regarding a particular issue), or particular studies selected for their relevance, elegance, clarity, and methodological rigor. Unfortunately, the vast majority of research to date has evaluated race as a White-Black dichotomy. Nevertheless, the studies that have expanded the race evaluation to other minority groups have tended to show similar results. Thus, no distinction between minority groups is drawn here, and further treatment of that issue is beyond the scope of this summary.

### KEY POINTS

a. **Individuals in our society generally associate minorities with criminality; exhibit implicit bias against minorities; and also exhibit divergent behavior in experimental conditions based on the manipulation of race.** Researchers have shown that Whites tend to exhibit relatively increased levels of activation in the amygdala—an area of the brain that is associated with emotional stimulation and most notably fear—when presented with Black as opposed to White faces.[106] This effect has been correlated with performance on the Implicit Association Test (IAT), which measures implicit conceptual associations, and which has been used by researchers to measure implicit bias in individuals.[107] Whites generally exhibit implicit bias against Blacks under the IAT. Namely, Whites tend to find it more difficult to associate positive concepts with Black (as opposed to White) faces or names (and the reverse is true with negative concepts). In particular studies, the IAT

106. Elizabeth A. Phelps et al, *Performance on Indirect Measures of Race Evaluation Predicts Amygdala Activation*, 12 J. COGNITIVE NEUROSCIENCE 729 (2000).

107. *Id.*

also has been correlated with biased behavior and decision-making (although these studies are less rigorous and methodologically clean).[108]

Other findings have been made regarding mental associations of Blacks with criminality. In one study, individuals primed[109] with crime-related concepts attended relatively more to Black faces as opposed to White faces—and this effect was replicated in a group of police officers.[110] Further, when asked whether faces "looked criminal," a group of police officers judged Black faces to be much more criminal-looking.[111] And these studies involved officers of many races, not only Whites.

b. **Criminal investigations and arrests are influenced by the race of potential/actual suspects, and often are based on a faulty application of majoritarian cultural norms.** The racial component of a given case may influence judgments of character and guilt, expectations of recidivism, and decisions to arrest and charge. In one study, priming police and probation officers with Black-related concepts significantly influenced responses to race-neutral vignettes of juveniles committing theft and assault.[112] Specifically, the officers were more likely to rate the juveniles negatively, to expect recidivism, and to recommend arresting the juveniles, if primed with Black-related concepts (such as "homeboy" or "minority"). Another study, of general import, observed that White store employees were more likely to monitor and follow Black (as opposed to White) customers who asked to try on sunglasses with a security sensor removed.[113]

Next, a good deal of work has been conducted on deadly force simulations, in which subjects must decide quickly whether to shoot or not-shoot figures appearing on a screen who are carrying either a gun or an innocuous object (such as a wallet). Whites have been shown to commit substantially more errors regarding Black (as opposed to White) target figures.[114] Further, this biased effect was increased in one study when subjects read newspaper articles involving Black (as opposed to White) criminals prior to testing—once again showing the power of underlying

108. Jeremy D. Heider & John J. Skowronski, *Improving the Predictive Validity of the Implicit Association Test*, 9 N. AM. J. PSYCHOL. 53 (2007); Allen R. McConnell & Jill M. Leibold, *Relations among the Implicit Association Test, Discriminatory Behavior, and Explicit Measures of Racial Attitudes*, 37 J. EXPERIMENTAL SOC. PSYCHOL. 435 (2001).

109. "Priming" occurs when a subject is shown an image or word so quickly that the image or word is not registered in consciousness, but nevertheless has a subconscious impact and affects behavior. This is a common and accepted method of investigating underlying mental processes in the field of social psychology.

110. Jennifer L. Eberhardt et al, *Seeing Black: Race, Crime, and Visual Processing*, 87 J. PERSONALITY & SOC. PSYCHOL. 876 (2004).

111. *Id.*

112. Sandra Graham & Brian S. Lowery, *Priming Unconscious Racial Stereotypes About Adolescent Offenders*, 28 L. & HUMAN BEHAV. 483 (2004).

113. George E. Schreer et al, *"Shopping While Black": Examining Racial Discrimination in a Retail Setting*, 39 J. APPLIED SOC. PSYCHOL. 1432 (2009).

114. Joshua Correll et al, *The Police Officer's Dilemma: Using Ethnicity to Disambiguate Potentially Threatening Individuals*, 83 J. PERSONALITY & SOC. PSYCHOL. 1314 (2002).

stereotyping.[115] Another such deadly force study was conducted at the University of Washington with similar results.[116] Further, a similar study recently was conducted with Washington police officers, with reportedly similar results, although that study has not yet been published (or peer-reviewed).[117]

Some work also has been done to determine whether non-verbal cues used by police officers to identify likely suspects are accurate across races.[118] Research has shown that minorities—including specifically minorities who have not been engaging in criminal activity—disproportionately exhibit many of these non-verbal cues (such as pauses in speech or avoidance of eye contact). These same behaviors also have been shown in foreign language speakers.

c. **Determinations of guilt and sentencing likely are influenced by the race of defendants, in conjunction with other extra-legal factors.** A few substantial meta-analyses have been done regarding mock juror studies involving race (namely, studies in which subjects are provided with trial materials and asked for judgments of guilt and sentencing, and defendant race is manipulated). These studies are limited in various ways (e.g., generally these studies evaluate individual mock jurors as opposed to mock juries engaged in group decision-making), but they appear useful nonetheless. One meta-analysis focused on sentencing decisions made by White mock jurors, and found a small but significant effect of racial bias.[119] Another meta-analysis evaluated verdict and sentencing decisions made by mock jurors (including Black mock jurors) in mock cases involving minority defendants, and that meta-analysis found no significant effect of racial bias (although there were apparent effects within particular types of crime).[120] A subsequent meta-analysis collected more studies and evaluated the effect of out-group bias (including bias by Black mock jurors against White mock defendants).[121] That meta-analysis found a small but significant and reliable effect of race on mock juror verdict and sentencing decisions, which was substantially tempered by jury instructions, or use of binary responses regarding guilt (guilty/not-guilty as opposed to a scale measuring likelihood of guilt). These tempering conditions are more realistic and reflective of

115. Joshua Correll et al, *The influence of stereotypes on decisions to shoot*, 37 EUR. J. SOC. PSYCHOL. 1102 (2007).

116. Anthony G. Greenwald et al, *Targets of discrimination: Effects of race on responses to weapons holders*, 39 J. EXPERIMENTAL SOC. PSYCHOL. 399 (2003).

117. Lois James, *Simulated Deadly Force Scenarios: A New Experimental Tool for Measuring Racial and Gender Bias in Policing*, unpublished manuscript.

118. Robin S. Engel & Richard Johnson, *Toward a better understanding of racial and ethnic disparities in search and seizure rates*, 34 J. CRIM. JUST. 605 (2006); Richard R. Johnson, *Race and police reliance on suspicious non-verbal cues*, 30 Policing: An International Journal of Police Strategies & Management 277 (2007).

119. Laura T. Sweeney & Craig Haney, *The Influence of Race on Sentencing: A Meta-Analytic Review of Experimental Studies*, 10 BEHAV. SCI. & L. 179 (1992).

120. R. Mazzella & A. Feingold, *The effects of physical attractiveness, race, socioeconomic status, and gender of defendant and victims as influenced by race, political orientation, and peer group*, 46 AM. BEHAV. SCIENTIST 108 (2002).

121. Tara L. Mitchell et al, *Racial Bias in Mock Juror Decision-Making: A Meta-Analytic Review of Defendant Treatment*, 29 L. & HUMAN BEHAV. 621 (2005).

actual courtroom processes, and thus, based on mock juror research to date, the effect of racial bias on jury decisions in general appears to be fairly insignificant.

However, subsequent research has shown that race may play a significant role in particular types of criminal cases, or in combination with other factors. For example, some studies have found a substantial effect of racial bias for crimes stereotypically associated with a particular race (for example, relatively higher guilty ratings for Whites charged with embezzlement or Blacks charged with grand theft auto).[122] Another study evaluated the interaction of defendant race, socioeconomic status, and attorney race, on mock juror evaluations, and while no factor was individually significant, the three factors combined were very significant (i.e., all else being equal, Mexican poor defendant with Mexican attorney judged guilty by 55% of jurors, while White rich defendant with White attorney judged guilty by 32% of jurors).[123]

d. **Cross-racial eyewitness identification is substantially less accurate, and cross-racial lineup construction is less fair.** The "cross-race bias" eyewitness phenomenon is the finding that "[e]yewitnesses are more accurate when identifying members of their own race than members of other races."[124] In a survey of 64 eminent experts on eyewitness research, 90% agreed that the cross-race bias phenomenon is reliable enough to be presented in court.[125] Further, a comprehensive and well-regarded meta-analysis of studies regarding cross-racial eyewitness identification found that cross-racial identifications are 1.56 times more likely to be erroneous.[126] Considering the important role that eyewitness testimony plays in criminal trials, this is disturbing. Similarly, another study found that cross-racial lineup constructions (lineups constructed by individuals of a different race than the suspect) are likely to be done with less time and attention to detail in selecting foils, and thus, less fairness.[127] Due to the fact that, as a general matter, minorities are more likely to be identified by White witnesses, and that lineups are more likely to be constructed by Whites, minorities are at a distinct disadvantage regarding the use of eyewitness testimony in the criminal justice system.

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122. Christopher S. Jones & Martin F. Kaplan, *The Effects of Racially Stereotypical Crimes on Juror Decision-Making and Information-Processing Strategies*, 25 BASIC & APPLIED SOC. PSYCHOL. 1 (2003); Randall A. Gordon et al, *Perceptions of Blue-Collar and White-Collar Crime: The Effect of Defendant Race on Simulated Juror Decisions*, 128 J. SOC. PSYCHOL. 191 (2001).

123. Russ K. E. Espinoza & Cynthia Willis-Esqueda, *Defendant and Defense Attorney Characteristics and Their Effects on Juror Decision Making and Prejudice Against Mexican Americans*, 14 CULTURAL DIVERSITY & ETHNIC MINORITY PSYCHOL. 364 (2008).

124. Saul M. Kassin et al, *On the "General Acceptance" of Eyewitness Testimony Research*, 56 AM. PSYCHOL. 405 (2001).

125. *Id.*

126. Christian A. Meissner & John C. Brigham, *Thirty Years of Investigating the Own-Race Bias in Memory for Faces*, 7 PSYCHOL., PUBLIC POL'Y & L. 3 (2001).

127. John C. Brigham & David J. Ready, *Own-Race Bias in Lineup Construction*, 9 L. & HUMAN BEHAV. 415 (1985).

The Seattle Times Winner of a 2010 Pulitzer Prize

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# Two state Supreme Court justices stun some listeners with race comments

State Supreme Court justices Richard Sanders and James Johnson stunned some participants at a recent court meeting when they said African Americans are overrepresented in the prison population because they commit a disproportionate number of crimes and not because of racial discrimination.

**By Steve Miletich**
*Seattle Times staff reporter*

State Supreme Court justices Richard Sanders and James Johnson stunned some participants at a recent court meeting when they said African Americans are overrepresented in the prison population because they commit a disproportionate number of crimes.

Both justices disputed the view held by some that racial discrimination plays a significant role in the disparity.

Johnson also used the term "poverty pimp," an apparent reference to people who purportedly exploit the poor in the legal system, say those who attended the meeting.

Sanders later confirmed his remarks about imprisoned African Americans, saying "certain minority groups" are "disproportionally represented in prison because they have a crime problem."

"That's right," he told The Seattle Times this week. "I think that's obvious."

Johnson did not respond to several messages left Wednesday and Thursday with three staffers in Olympia. He also did not respond to messages left Thursday at his home and with Sanders. Johnson's staff said he was with the court in Spokane to hear cases at the Gonzaga University law school.

African Americans represent about 4 percent of Washington's population but nearly 20 percent of the state prison population. Similar disparities nationwide have been attributed by some researchers to sentencing practices, inadequate legal representation, drug-enforcement policies and criminal-enforcement procedures that unfairly affect African Americans.

Some who attended the meeting say they were offended by the justices' remarks, saying the comments showed a lack of knowledge and sensitivity.

Kitsap County District Court Judge James Riehl, who attended the meeting, said he was "stunned" because, as a trial judge for 28 years, he was "acutely aware" of barriers to equal treatment in the legal system.

Sanders, who is seeking a fourth term in the Nov. 2 general election, and Johnson, who was elected to a second term in the August primary, offered their opinions during an Oct. 7 presentation at the Temple of Justice in Olympia.

Staff from the state Administrative Office of the Courts (AOC), as well as Riehl and a social-justice advocate from the Seattle University School of Law, presented a report on improving the effectiveness of boards and commissions set up by the Supreme Court to ensure fair treatment in the courts for minorities and other groups.

Shirley Bondon, an AOC manager who oversees programs to remove barriers in the legal system, said that during the discussion she told the justices that she believed there was racial "bias in the criminal-justice system, from the bottom up."

Bondon, 50, who is African American, said Sanders told others to turn to a page in the report that listed barriers to the justice system, including age, race, disability and other factors.

Sanders asked for the name of anyone who was in prison because of one of the barriers, according to Bondon and others who attended the meeting.

Sanders also stated that he didn't believe the barriers existed, except for poverty because it might restrict the ability to afford an attorney, Bondon said.

Ada Shen-Jaffe, the Seattle University participant, responded that she didn't have names but could provide research, Bondon and Riehl said.

Shen-Jaffe, said to be traveling, couldn't be reached for comment.

Bondon said she told the group that African Americans comprise a small percentage of Washington's population but comprise a much larger percentage of the prison population.

Sanders replied that African Americans commit more crimes, Bondon and others at the meeting said.

Sanders, in an interview, said he replied with words to the effect that maybe prison statistics reflect crimes that were committed.

After Sanders' remark, Johnson said he agreed, noting that African Americans commit them against their own communities, Bondon said.

Bondon said she told Johnson that was unacceptable and that she didn't believe that to be true.

Johnson then remarked that he believed some people are taken advantage of, and in connection with that, used the term "poverty pimp," Bondon said.

Bondon said she didn't know what Johnson meant by that comment but later concluded he likely was referring to legal-service workers who provide services to the poor, particularly since Shen-Jaffe has a background in that field.

Shen-Jaffe objected to Johnson's remarks and invited Johnson to later talk informally with her about them, Bondon and others at the meeting recalled.

Johnson explained during the meeting that he had heard the term "poverty pimp" from someone else, Bondon said.

The pejorative label has generally been used to describe individuals who represent the poor for their own gain.

Justice Debra Stephens said she heard Sanders and Johnson make the comments, including Johnson using the words "you all" or "you people" when he stated that African Americans commit crimes in their own communities.

Stephens said she was surprised by the "poverty pimp" remark.

"If that were directed at me, I would have felt accused," Stephens said, adding that she doesn't believe that was Johnson's intent, but instead that he chose an unfortunate phrase.

Justice Susan Owens said she heard the comments but didn't understand what Johnson meant by "poverty pimp," though she added that she didn't believe he was directing the term at anyone in particular.

Chief Justice Barbara Madsen said she recalled that Sanders disagreed with the premise that anyone was in prison because of race and asked for a name of someone there because of race.

She also recalled Johnson said something about African Americans committing crimes in their own communities, but that she only heard later that he used the term "poverty pimp."

Madsen said she stopped the conversation because she didn't think it was productive.

Some justices said they didn't hear the comments, in part because of overlapping conversations taking place along a long table.

Riehl, the Kitsap County judge, said he was stunned that the term "poverty pimp" would be used in a meeting where the comment didn't relate to the presentation, and that it was made in front of staff and the Seattle University representative.

Johnson made clear that he didn't think the court's boards and commissions should be funded and said the meeting was costing $25,000 in people's time that could be used for better purposes, Riehl said.

"That obviously took me back a little," Riehl said.

Johnson is widely considered to be the court's most conservative justice.

Bondon, the AOC manager, in a written statement to The Seattle Times, said she was stunned by Sanders' remarks.

"I know that people in all walks of life hold biases, but it was stunning to hear a Justice of the Supreme Court make these outrageous comments in my presence," Bondon wrote.

Bondon said she took the "comments personally, as though he were saying that I and all African Americans had a predisposition for criminality and I was offended."

Bondon said she remembered thinking that she didn't need data or statistics to prove that she and other African Americans don't have a predisposition for criminality.

"Just the idea that it was necessary to disprove the assertion was sickening," Bondon said.

Johnson's pimp comment inferred that "poor people have no right to legal representation. Where's the justice in that?" Bondon wrote.

Sanders, in an interview, said he has a reputation for standing up for those accused of crimes but that he hasn't seen evidence that African Americans are disproportionately imprisoned because of race.

He said his concern was for "individuals," and that if someone is in prison for any reason other than committing the crime, "I want to hear about it."

But statistics aren't proof, he said.

Sanders, a self-described civil libertarian, said he had written court opinions making it clear that prosecutors can't dismiss prospective jurors because of race.

*Seattle Times news researcher David Turim contributed to this story.*

*Steve Miletich: 206-464-3302 or smiletich@seattletimes.com*

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The Seattle Times Winner of a 2010 Pulitzer Prize

# Editorials / Opinion

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## Don't re-elect Justice Richard Sanders for state Supreme Court

State Supreme Court justices Richard Sanders and James Johnson disappoint with their remarks that seem to suggest African Americans have a predisposition for crime. Voters should reject Justice Sanders' bid for another term.

STATE Supreme Court justices Richard Sanders and James Johnson inflamed racial tensions with their remarks that African Americans are overrepresented in the state prison system because they commit more crimes.

How disappointing these two legal minds were unable to offer more thoughtful, nuanced views about racial disparities in the criminal-justice system.

African Americans make up 4 percent of the state population and 20 percent of state prisoners. An impressive body of evidence links the disproportionate numbers to drug-enforcement policies, poverty and racial biases throughout society.

Sanders and Johnson have worked in the judicial system long enough to be informed by these disparities and to know better. They missed by a wide mark an opportunity to lead a broader and smarter discussion.

This page takes the unusual step of withdrawing its endorsement of Sanders. The Seattle Times now supports lawyer **Charlie Wiggins**, who was a close call in our primary endorsement. We said then that Wiggins was fully qualified to serve on the bench and be a strong voice pushing back against government. At the time, Sanders' support for state public-disclosure laws cinched his endorsement.

But Sanders' latest remarks fall upon a trash heap of cringe-worthy conduct — the latest for ruling in a public-records case that could have affected a case of his own. In 2008, he called U.S. attorney general Michael Mukasey a "tyrant" to his face. Decades ago, Sanders dressed as a Nazi as a Halloween prank.

Johnson has no challenger and thus is assured another term in next month's election. That does not mean he should escape public censure, it just means there is no one else to vote for.

Sanders's and Johnson's remarks stand out for the starkness of their views after lengthy careers in the justice system. The most damaging assessment that can be made is that the people who know the system best were shocked and dismayed by the two justices' comments.

Kitsap County District Court Judge James Riehl, who was present when the justices made their remarks, says his own 28 years as a judge has provided him with an acute awareness

of the barriers to equal treatment in the legal system. Justice Debra Stephens told The Times that Johnson used the phrases "you all" or "you people" when he talked about African Americans and crimes, noting the unfortunate phrase may have made blacks in the audience feel accused.

Bottom line, Sanders and Johnson were insensitive, uninformed and way too casual about an important societal issue. Voters should reject Sanders and vote for Wiggins.

Source: http://seattletimes.nwsource.com/html/editorials/2013234733_edit25sanders.html

The Seattle Times Winner of a 2010 Pulitzer Prize

## Editorials / Opinion

Originally published Friday, October 29, 2010 at 3:32 PM

**Guest columnist**

# Discrimination is the well-documented cause of race disparity in prison

Two Washington Supreme Court justices suggested recently that more African Americans are in prison because they commit more crimes. Guest columnist Nicole A. Gaines lays out the documented evidence that racial discrimination accounts for the disparity.

By Nicole A. Gaines
*Special to The Times*

THE Seattle Times recently reported that "State Supreme Court justices Richard Sanders and James Johnson ... said African-American people are overrepresented in the prison population because they commit a disproportionate number of crimes."

These justices dismissed any role that racial discrimination plays in the disparity.

The Loren Miller Bar Association, a civil-rights-based organization which in part focuses on disparities that affect the African-American community, condemns these uninformed and misleading statements. Recent studies overwhelmingly prove that racism is pervasive throughout the U.S. justice system.

African Americans make up about 4 percent of Washington's population but approximately 20 percent of the state's prison population. Why? It is not because African Americans are predisposed to commit crimes. In fact, the National Survey on Drug Use and Health found young white Americans, not African Americans, consistently report a higher use of marijuana.

A May 2008 report by the Human Rights Commission found that although whites and blacks engage in drug offenses, including sales, at comparable rates, blacks make up 37 percent of the people arrested for drug offenses even though they only make up 12.4 percent of the American population."

New York Police Department statistics from 2008 show that African Americans were arrested for marijuana possession at seven times the rate of whites. Here in Washington, whites are more involved in drug sales and possession than African Americans, but African Americans are more often arrested and charged in drug cases.

A 2007 study by the Washington State Patrol revealed that during routine traffic stops, "[t]here remains a correlation between the race of the driver and the likelihood of a search."

African Americans are 70 percent and Hispanics are 50 percent more likely to be searched than white drivers.

This difference in how people of different races are treated is directly related to the disproportionate representation of the races in the criminal-justice system.

The inequities continue at the prosecution stage. According to a 1995 report in King County, "whites [were] less likely to have charges filed against them than minorities."

When charged, whites [were] more likely to be released on personal recognizance. The same report indicates in King County, "If the police [recommend] not to release a defendant" then more often than not, "bail rather than release is often recommended by the prosecutor's office for African Americans." In turn, "judges usually always follow" the prosecutor's recommendation.

Racial disparities are also apparent at the sentencing phase, particularly in the federal courts. According to a March 2010 U.S. Sentencing Commission report, blacks in the federal system receive 10 percent longer sentences than similarly situated whites charged with the same crime. When it comes to mandatory sentences, "African-Americans are 21 percent more likely to receive mandatory minimum sentences than white defendants and 20 percent more [likely] to be sentenced to prison than white drug defendants."

Racial disparities are also prevalent in Washington state. According to Crutchfield's report, "... [B]lack defendants, who are in custody, and Hispanics charged with less serious types of violent offenses were less likely to plead guilty to crimes than other defendants."

This is significant. In King County, the prosecuting attorney's sentencing recommendation for defendants who plea prior to trial is often less than those who take the case to trial. In essence, this means people of color are more likely to receive higher sentences because they chose to exercise their constitutional right to trial.

These are just a few examples of the impact of racial disparities within the criminal-justice system. There are other examples, including but not limited to poverty and disproportionate educational opportunities. Thus, until we, as society, acknowledge the impact of race within our legal system, our criminal-justice system will continue disregarding the content of one's character and continue judging people based on the color of their skin.

*Nicole A. Gaines is president of the Loren Miller Bar Association.*

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The Seattle Times Winner of a 2010 Pulitzer Prize

# Editorials / Opinion

Originally published Friday, October 29, 2010 at 3:32 PM

Guest columnist

## Justice Sanders got a bum rap over comments about incarcerated African Americans

Washington Supreme Court Justice Richard Sanders was unfairly targeted for comments he made about the incidence of African Americans incarcerated, argues civil-rights attorney Lem Howell: Sanders has done more to defend the rights of the accused, regardless of race, than anyone on the state high court.

**By Lem Howell**
*Special to The Times*

IRONICALLY, Washington Supreme Court Justice Richard Sanders has been unfairly targeted for simply stating the fact that a disproportionate representation of African Americans in our prison population is (obviously) the result of a disproportionate rate of criminal convictions.

I say "ironically" because Justice Sanders has done more than any sitting justice to bring fairness to our criminal-justice system, and he has done more to defend the rights of the accused regardless of race than any of his colleagues.

As a practicing lawyer acutely concerned by such matters, I was personally inspired by Sanders' stirring dissent in a case involving an African-American motorist who was pulled over and arrested by Spokane police for an illegal lane change. By the time the police were done with him, he was sent to the hospital rather than jail because he was so badly beaten. Then he was charged with assaulting an officer.

His defense was that he was entitled to use reasonable force to resist an illegal arrest since an improper lane change is a civil infraction, not an arrestable crime. Nevertheless the trial court refused to instruct the jury as requested. Sanders wrote a wonderful dissent (*State v. Valentine*) pointing out that this instruction was required by hundreds of years of common law as adopted by this jurisdiction.

Nevertheless the majority overruled all these cases, and left Sanders standing nearly alone for the rights of this African American.

In another case he stood alone for the rights of an African American who was sentenced to life without possibility of parole for stealing $300 from an espresso stand armed with a finger in his pocket. (*State v. Rivers*) Sanders pointed out that such a sentence was unconstitutionally cruel because it was so disproportional.

And yes, African Americans are disproportionally represented in the ranks of those serving a similar sentence. Sanders took a lot of heat for this dissent. Later he visited the man three times in prison because he felt this was such a grave injustice. The man is still in prison. Sanders says he thinks of him often and hopes for clemency.

Sanders signed a dissent that would have reversed a conviction obtained by a prosecutor who excused the only African American from the jury in a case where the defendant was also African American. He would have put the burden on the prosecution to justify this decision for nonracial reasons. He did what he could, but he didn't have the votes.

Responding to a rash of malpractice judgments against public defenders for not properly representing their clients, Sanders fought for three years, sometimes alone, to persuade the court to adopt a rule that would require trial court judges to only appoint lawyers for indigent criminal defendants (many of whom are African Americans) who meet minimum qualifications of experience and have adequate financial resources to get the job done. Ultimately he was successful, notwithstanding opposition from many prosecutors.

Justice Sanders is not afraid to tell the truth even when the truth is not popular or may be politically incorrect. He is deeply committed to our justice system and deeply cares about the legal rights of those who come to court.

As far as I'm concerned, he is an asset to the African-American community, and everyone else. Let's be fair to this man who courageously fights for the rights of the unpopular and powerless.

*Lem Howell is a civil-rights and personal-injury attorney in Seattle.*

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The Seattle Times Winner of a 2010 Pulitzer Prize

# Editorials / Opinion

Originally published Friday, November 5, 2010 at 2:51 PM

**Guest columnist**

## Dissecting and healing biases in Washington's courts

Washington state Supreme Court Chief Justice Barbara Madsen talks about what is — and isn't — true about bias in the state courts. She also lays out the work the courts have done to remedy ethnic and gender biases and to break down barriers to justice.

**By Barbara Madsen**
*Special to The Times*

IN 1999, Washington Court of Appeals Judge Ronald Cox observed in a newsletter of the Washington State Minority and Justice Commission, that "... A basic problem in dealing with the racial divisions in this country is that there are few ways of engaging in meaningful discussion about those divisions and how to address them. The subject is emotionally charged. Thus, attempts to discuss racial divisions often become opportunities for venting emotions rather than solving the problem."

This is as true today as it was in 1999.

Recent coverage of comments made during the Oct. 7 Supreme Court meeting provides an important opportunity for a constructive discussion about the issue of bias in the justice system.

As chief justice, I want to reaffirm the judiciary's commitment to improving access to justice and eliminating bias.

First, it must be recognized that bias exists. We know this because we have spent 23 years asking, studying, surveying, researching, crafting solutions, monitoring results and working to understand the barriers to justice created by the complex nuances of bias.

For instance, only 36 percent of Washington residents, regardless of their race or ethnicity, believe that African Americans receive the same treatment in courts that others do.

How do we know this? We asked, during an extensive 1999 survey of state residents about public perceptions of the courts.

Is it true? A sentencing study we conducted in 1993 showed that African Americans who commit serious violent crimes were more likely to receive aggravated exceptional sentences than Caucasians who committed serious crimes, and less likely to receive diversion sentencing. However, the same study showed Caucasians were actually more likely to receive extended sentences than African Americans for crimes in general, and that Hispanics were the most likely of all races in Washington to receive aggravated extended sentences.

Our study on public perception showed that 82 percent of Washington residents believe that wealthy residents receive better treatment from the court system.

Is it true? Our groundbreaking 2004 study on Civil Legal Needs found the barriers for low-income residents so pervasive that very few even seek help from the legal system for serious legal matters such as family safety, access to health care, housing and employment.

Only 20 percent of Washington residents believed that women receive worse treatment in courts than men.

Is that true? Our research showed serious systemic problems in the understanding and treatment of domestic violence and rape victims in court. It also found that men were less likely to be awarded primary residential placement than women.

Our 1988 study on gender bias showed how subtle and unwitting bias can be. While 74 percent of the state's judges felt they understood the dynamics and impact of sexual assault on victims, only 12.5 percent of treatment providers felt our judges had that understanding.

Bias often is not overt. Bias is any action or attitude that interferes with impartial judgment. It occurs when decisions are made or actions taken based on preconceived notions about the nature, roles and abilities of persons rather than evaluating each individual situation.

In the 1980s, the Legislature and judiciary became national leaders in examining and responding to bias in the judicial system and continue an aggressive and research-based focus on eliminating bias and barriers to justice.

In 1987, Washington was one of four states to establish a Minority and Justice Task Force (now commission), and the next year became a founding member of the National Consortium on Racial and Ethnic Fairness in the Courts. The 20th annual Consortium conference was held in Seattle in 2008, commemorating Washington's leadership.

Also in 1987, Washington was among the first to establish a Gender and Justice Task Force (now commission) to study gender bias in the courts and develop recommendations for its elimination.

In 1994, the state Supreme Court established the Access to Justice Board to examine impediments to equal treatment, such as income, disability, rural location, language, access to technology and more.

We have continued to renew these commissions and demand more and better information and solutions.

A list of all the steps we have taken over the past 23 years is too long. However, I want to mention a few:

• *Racial and ethnic bias* — Research into disparities in sentencing, in prosecution of felony cases in King County, in bail and pretrial sentence practices, in charging and sentencing for drug offenses and the assessment and impact of court fines; ongoing and varied training of judges and court staff; ongoing recruitment of minority judges and attorneys.

• *Gender bias* — Researching issues of domestic violence and court processes, spousal maintenance decisions, parenting arrangements after divorce, barriers for immigrant women and families, and professional barriers for women attorneys and judges; creating a Domestic Violence Manual for judges; ongoing training for judges, including rural and tribal courts.

• *Barriers* — Developed a comprehensive plan addressing access to the civil justice system for low-income residents; multiple efforts to expand funding for civil legal aid; emphasizing technology to open courts and justice services to people with barriers; increasing legal aid and technology in rural areas; development of programs to help self-represented litigants.

Our courts have spent enormous energy addressing bias and access to meaningful justice, but we recognize the need to reassess our progress. As the new chief justice, I convened the Supreme Court Commissions, Boards and Task Forces Assessment Work Group to take a hard look at existing efforts and make recommendations for modernizing and strengthening the justice system's ability to ensure fair treatment for all.

The work group's report, presented at the Oct. 7 meeting, called for a clearer articulation of diversity goals and accountability to them. It also called for more effective coordination and integration of diversity efforts.

We have learned a great deal during our years of work on bias in the courts. We have learned that it's an extremely complex and nuanced issue, and each new step we take toward understanding those issues brings us closer to our goals. Washington judges and courts remain profoundly committed to discovering and eliminating all barriers to equal justice.

*Barbara Madsen is chief justice of the Washington Supreme Court.*

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The Seattle Times

Editorials / Opinion

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Guest columnist

# Ensuring the promise of "Equal Justice Under Law"

Washington state's three law schools are collaborating through a new "Race and the Criminal Justice System Task Force" that incorporates members of the justice system and the community. The deans of the three schools discuss the challenges and importance of ensuring equal justice under the law.

**By George Critchlow, Mark Niles and Kellye Y. Testy**
*Special to The Times*

DISPROPORTIONATE prosecution and imprisonment of minorities haunts our criminal-justice system. Too often we see confusion over why minorities are overrepresented among criminal defendants. Studies by University of Washington researchers, which were vigorously debated this year by the 9th Circuit Court of Appeals in a lawsuit alleging racial bias in the state's criminal-justice system, are shedding light on the contentious question.

Research shows that disparate minority imprisonment in Washington is mainly due to problems in how justice-system actors exercise discretion rather than higher minority involvement in crime. The problems of discretion occur at numerous junctures, leading to racial disparities in discretionary decisions, from whose car to search during the investigation stage to what sentences defendants receive.

Racial disparities in discretionary decision-making have gripped national as well as state attention, spotlighting such practices as disproportionate targeting of minorities for investigative stops. A new generation of research has shown how unconscious, "implicit" racial biases shape who are viewed as more suspicious and more dangerous. This leads to a disproportionate targeting of young black and Hispanic men.

Which laws we choose to enforce as priorities — and how stringently — can also lead to racial disparities. An infamous example is the disparity in how we enforce, and sentence for, possession of crack compared to powder cocaine. Both are dangerous drugs. In terms of how these drugs have plagued our communities, however, the crude sense on the streets is that cocaine is the white drug and crack is the scourge in communities of color.

Infamously, federal sentences for crack were dramatically more severe than sentences for powder cocaine, leading to sharp and severe racial disparities. This notorious disparity was not remedied until this autumn when President Obama signed the bipartisan Fair Sentencing Act aimed at lessening some of the disparity.

In Seattle, research has also found racial disparities due to decisions about which laws to enforce. UW researchers found that Seattle police disproportionately arrest blacks and Latinos for drug offenses. The racial disparities stem from organizational practices, including a focus on targeting drug-enforcement discretion on crack cocaine.

Our three law schools are engaged in a newly established "Race and the Criminal Justice System Task Force" in partnership with Washington State Access to Justice Board Chair

and King County Superior Court Judge Steve Gonzalez. We are building a broad-based coalition with partners from the community at large, legal profession, minority bar associations and justice system to examine the issue of race and the criminal-justice system. The task force's objectives will include deepening research and education in this important area and making recommendations for structural reform of our state's and our nation's criminal justice systems.

As a nation, we hold ourselves to the promise of "Equal Justice under Law." We take pride in the fact that our legal system is committed to the fair and impartial treatment of all who seek its protection. The same rules and procedures should apply regardless of an individual's color, ethnicity, social or economic status, gender, disability status or other personal or social characteristics. But both experience and research show that, in many ways, the rules are applied differently based on these characteristics.

We know that controversy can crystallize into constructive, continued research and education so people better understand the realities of the system — and how to fix it.

*George Critchlow is interim dean of the Gonzaga University School of Law; Mark Niles is dean of Seattle University School of Law and Dean Kellye Y. Testy is dean of the University of Washington School of Law.*

Source: http://seattletimes.nwsource.com/html/opinion/2013611965_guest07critchlow.html

The Seattle Times

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# Video shows cop kicking teen during arrest, police say

The Seattle Police Department learned Wednesday that a plainclothes police officer kicked a 17-year-old male in the groin during an arrest in October.

**By The Seattle Times staff**

The Seattle Police Department learned Wednesday that a plainclothes police officer kicked a 17-year-old male in the groin during an arrest in October.

Police reviewed a convenience-store surveillance video showing the arrest Wednesday afternoon and reassigned the officer, a 10-year veteran, to "administrative assignment to home," according to the department's blog.

Police say the Office of Professional Accountability will launch a full investigation.

The incident occurred Oct. 18, when police were downtown conducting a narcotics buy-bust.

An undercover officer attempting to buy drugs was taken to a parking lot, where, according to police, he was surrounded and attacked.

During the operation, two officers were injured and later taken to Harborview Medical Center.

The 17-year-old male fled the parking lot. The plainclothes officer later found him in a convenience store. The arrest and the kicking were captured on the store's surveillance camera, according to the department blog.

In response to a question from The Seattle Times, Seattle City Councilmember Tim Burgess, who chairs the council's public-safety committee, said Wednesday night in an e-mail that he had been briefed on the matter earlier in the evening by Police Chief John Diaz.

"I have full confidence" in the chief and the department's Office of Professional Accountability "to review the facts and reach an appropriate conclusion" about the officer's conduct, Burgess wrote.

News of this incident comes in the wake of several recent incidents of police violence.

On Aug. 30, a Seattle police officer fatally shot a man who failed to follow orders to drop a knife he was carrying.

On June 14, an officer was videotaped punching a 17-year-old in the face following a jaywalking incident during which the officer was shoved.

And in April, an officer stomped on a Latino man prone on the sidewalk and threatened to beat the "Mexican piss" out of him as other officers looked on.

Source: http://seattletimes.nwsource.com/html/localnews/2013461623_video17.html

The Seattle Times

Originally published Wednesday, September 1, 2010 at 12:42 PM

# Seattle cop won't face hate-crime charge for kicking Latino man

A Seattle police officer who sparked a public outcry after he stomped a prone Latino man in April and used ethnically inflammatory language will not be charged with the felony of malicious harassment, the King County Prosecuting Attorney's Office announced Wednesday.

**By Steve Miletich**
*Seattle Times staff reporter*

A Seattle police detective who sparked a public outcry after he stomped a prone Latino man and used ethnically inflammatory language in April will not be charged with the felony of malicious harassment, the King County Prosecuting Attorney's Office announced Wednesday.

But the Seattle City Attorney's Office plans to review the Police Department's investigative file on the case to determine if any misdemeanor charges are warranted against Detective Shandy Cobane, spokeswoman Kimberly Mills said shortly after the announcement.

The county Prosecutor's Office, in a written statement, said Cobane used "patently offensive language" but will not be charged with malicious harassment under the state's so-called "hate crime" law because prosecutors found he did not intentionally target or threaten the man because of his race or national origin.

Prosecutors reached their decision after reviewing the Seattle police investigation of Cobane.

Seattle Police Chief John Diaz, in a written statement, said he had read the decision and contacted Seattle City Attorney Peter Holmes to ask him to review the case.

Diaz said an internal investigation by the department's Office of Professional Accountability has yet to be completed and remains a "very high priority."

But that investigation will remain on routine hold while Cobane's conduct is reviewed by the city attorney, a department spokesman said.

Cobane, 45, who was working as a gang detective, drew condemnation from civil-rights and minority organizations after he was captured on videotape telling the Latino man he was going to "beat the [expletive] Mexican piss out of you, homey. You feel me?"

In May, the Seattle chapter of the NAACP and other civil-rights groups urged county prosecutors to prosecute Cobane, and a coalition of minority organizations formed after the incident pressed for the firing of both officers.

Estela Ortega, the coalition's chairwoman and the executive director of El Centro de la Raza, a Seattle social-justice organization, labeled the decision of the Prosecutor's Office "disappointing and disturbing."

"As we see it," Ortega said in a written statement, "the prosecutor's office is using nuanced language in the law to help protect a police officer who maliciously used physical force on a young man who posed no threat to the officer or anyone nearby. Further, the vile language used by Officer Cobane spells hatred."

She called on Diaz and Mayor Mike McGinn to hold Cobane accountable, so all officers know "hatred, undue force, and maliciousness" are not acceptable.

The case prompted the Police Department to open internal investigations into the conduct of every officerwho was present but didn't intervene during the April 17 incident, as well as into an allegation that other department members sought to discourage a media outlet from airing the video.

The Police Department didn't identify the media outlet, but Seattle police earlier said they were contacted April 17 by someone at KCPQ-TV hours after the incident was captured by a freelance videographer.

The video eventually was broadcast May 6 by KIRO-TV, prompting McGinn to call the footage disturbing and the Seattle City Council to label it "extremely troubling."

Cobane, who joined the Police Department in 1993, issued a tearful public apology the night of May 7, saying, "I know my words cut deep and were very hurtful. I am truly, truly sorry."

The video showed police detaining three men suspected in what prosecutors have now determined to be two armed robberies.

In the video, Cobane directed his ethnically inflamed remarks to a Latino man, identified as Martin Monetti, 21, of Seattle, who was lying on a sidewalk in the area of Westlake Avenue North.

After the man moved a hand to his face, Cobane is seen apparently trying to stop the movement with his boot but appears to strike the man's head. The man's head flinched upward.

But King County prosecutors, in Wednesday's statement, said Cobane used his foot to stomp down on the man's hand and drag it away from his body.

"Although forceful, the stomp to move Mr. Monetti's hand away from his body was not unreasonable considering the totality of the circumstances that evening," according to the statement.

Moments after Cobane's stomp, patrol Officer Mary Lynne Woollum is seen stomping on the back of the man's leg or knee.

Two of the three men, including Monetti, were later freed. The third man and another suspect identified nearby were arrested and are facing armed robbery charges.

Monetti was present during the alleged robberies but didn't actively participate, according to the prosecutor's statement.

Prosecutors said that although Cobane used offensive language about Monetti's ethnicity, "such language is not in and of itself a crime."

The statement said a threat or assault must be directed toward a person because of the person's race, while Cobane's "command to stay still was directed at Mr. Monetti due to Mr. Monetti's actions and his lack of compliance, not his ethnicity."

Cobane and Woollum were assigned new duties when internal investigations were initially launched.

Woollum's conduct wasn't included in the Prosecutor's Office statement, and it wasn't clear if the City Attorney will examine her actions.

*Information from Seattle Times archives is included in this story.*

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The Seattle Times

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# No charges against Seattle officer who shot woodcarver

King County prosecutors have decided not to file criminal charges against Seattle police Officer Ian Birk in the fatal shooting of woodcarver John T. Williams, according to sources familiar with the decision. Meanwhile, the Police Department has found the shooting unjustified, which could lead to Birk's firing.

**By Steve Miletich**
*Seattle Times staff reporter*

King County prosecutors have decided not to file criminal charges against Seattle police Officer Ian Birk in the fatal shooting of woodcarver John T. Williams, sources familiar with the decision say.

The Prosecutor's Office is expected to announce the decision in a news conference, scheduled for 10 a.m. Wednesday, the sources say.

Shortly after, Seattle Police Chief John Diaz is expected to disclose at a news conference that the department's Firearms Review Board has reached a final decision that the Aug. 30 shooting was not justified, say sources briefed on the finding.

The board's conclusion, reached in private deliberations a few days ago, allows the Police Department to begin internal proceedings that could lead to Birk's firing or other discipline, the sources said. In October, the board reached a preliminary decision that the shooting was unjustified, sources said then.

Deputy Police Chief Nick Metz said Tuesday he couldn't comment in detail on the department's plans but said police officials were working on a statement on the course of the case.

Metz said the department was aware that the outcome is a "very sensitive issue" and that the "community is watching closely."

Birk has been on paid leave since the shooting.

The Prosecutor's Office declined Tuesday to discuss its decision.

"Our decision has not been finalized and we will make an official announcement in the near future," said Ian Goodhew, deputy chief of staff for King County Prosecutor Dan Satterberg.

Prosecutors have been confronted with a steep legal hurdle in deciding whether to charge Birk with murder or manslaughter. State law shields police officers from criminal prosecution

when they claim they used deadly force in self-defense, unless it can be shown they acted with malice and a lack of good faith.

A spokesman for Mayor Mike McGinn said Tuesday night that Satterberg and Diaz will make statements on the case on Wednesday.

Spokesman Mark Matassa did not reveal what would be said. He said McGinn will hold his own news conference Wednesday.

The decision not to file criminal charges comes about a month after a King County inquest jury reached mixed findings on the shooting. Four of eight jurors found that Birk wasn't facing an imminent threat when he fatally shot Williams, and that he didn't give Williams sufficient time to put down a knife he was carrying during their confrontation on a Seattle sidewalk.

One juror found that Birk faced a threat and gave Williams sufficient time; three others answered "unknown."

Four jurors determined Birk believed he was in danger when he encountered Williams, while four others answered "unknown."

The findings regarding the actual threat to Birk stand in contrast to previous King County inquest decisions, in which jurors have almost always upheld the actions of police officers involved in deadly shootings.

Inquest jurors weren't asked to weigh whether Birk was guilty or innocent of wrongdoing in the shooting.

The results were reviewed by the Prosecutor's Office to help determine whether to file criminal charges.

Even before the inquest, Birk, 27, who joined the department in July 2008, had been stripped of his gun and badge as a result of the preliminary finding by the Firearms Review Board and Diaz, the police chief, that the shooting was unjustified, sources said. The board waited to make a final decision until after the inquest.

The board, made up of Deputy Chief Clark Kimerer, two captains and a lieutenant, heard testimony in October from civilian witnesses and police investigators. One board member sat in on the inquest. The board determines if officer shootings fall within department policies and procedures. The inquest jury sifted through conflicting testimony and two patrol-car videos and audio that captured some of the confrontation at Boren Avenue and Howell Street but not the shooting itself. Their answers did not have to be unanimous.

Evidence presented during the inquest showed about four seconds elapsed between Birk's first order to Williams to put down the knife and when he fired.

The shooting occurred after Birk saw Williams cross the street holding a flat piece of wood and a knife with a 3-inch blade. Williams, a member of Canada's First Nations people, used the knife for carving, his family says.

Birk got out of his patrol car and followed Williams onto the sidewalk. Birk shouted at Williams to get his attention and ordered him three times to put down the knife. Birk fired when Williams didn't respond, hitting him four times.

Birk testified during the inquest that he was initially concerned because Williams showed signs of impairment while carrying a knife. He said when he sought to question Williams, Williams turned toward him with a "very stern, very serious, very confrontational look on his face."

Birk told jurors Williams "still had the knife out and [was in] a very confrontational posture" when he opened fire.

Williams, a chronic inebriate, had a blood-alcohol level measured during his autopsy at 0.18 percent, above the 0.08 percent at which a driver is deemed legally drunk.

During the inquest, two witnesses contradicted Birk, saying they didn't see Williams do anything threatening before he was shot.

Birk testified that shortly after the shooting he told a witness, a responding officer and a detective that Williams had not complied with his order to put down the knife. He acknowledged that, at that time, he did not tell them that Williams had threatened him.

It wasn't until hours later, Birk testified, that he provided a detailed written statement alleging that Williams had menacingly displayed the knife and "pre-attack indicators."

Williams' knife was found folded in the closed position after the shooting.

Jurors unanimously found that Williams was carrying an open knife when first seen by Birk. But four answered "no" and four "unknown" when asked if the blade was open when Birk fired.

In reviewing the case, prosecutors had various options: charging Birk with second-degree murder, first-degree reckless manslaughter, second-degree negligent manslaughter, or declining to bring a charge.

A second-degree-murder charge would require prosecutors to show beyond a reasonable doubt that Birk intended to unlawfully kill Williams, or that Birk intentionally and unlawfully assaulted Williams, causing his death.

Manslaughter requires less proof. Prosecutors must show only that reckless or negligent conduct caused a death, though they still must do so beyond a reasonable doubt.

Federal prosecutors have been monitoring the case and could consider bringing a criminal civil-rights case against Birk. But they must show willful criminal conduct to obtain a conviction.

The shooting of Williams and other incidents have prompted the American Civil Liberties Union of Washington and 34 community groups to call on the U.S. Justice Department to investigate Police Department practices. Seattle officers have been under scrutiny over use

of force in several incidents in the past year, particularly in dealings with minorities. Justice has opened a preliminary review of the department.

At least two protests are planned for Wednesday over the decision not to file criminal charges against Birk.

The Capitol Hill Blog said there would be a protest at City Hall at 4 p.m., and a Facebook event page announced a protest at 6 p.m. at Westlake Park in Seattle.

*Information from staff reporter Jennifer Sullivan and Times archives is included in this story.*

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seattlepi

Local
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**Sheriff wants task force to focus on threats against police**

By SCOTT GUTIERREZ
SEATTLEPI.COM STAFF

After six police officers were slain in the Puget Sound region last year, the King County Sheriff's Office wants to create a specialized task force to investigate threats against police and court officials.

The goal would be to identify people who show aggressive behavior toward authorities, including those who have been violent with police or made threats to judges, prosecutors or public defenders. The unit would track those individuals and develop strategies for officers who might frequently deal with them, or even develop a plan for getting those who act out due to mental health issues into treatment.

Sheriff Sue Rahr said Tuesday she'd like to involve detectives from multiple agencies, plus mental health workers and a criminal psychologist to work with police in evaluating the danger posed by certain offenders.

"We're proposing to bring this information together so everyone in the region is aware and there is planning available to decrease the risk," sheriff's Capt. Scott Strathy said during a meeting of the King County Council's Committee on Law, Justice, Health and Human Services.

"We're looking to determine who are the barkers and who are the biters."

It will never be known whether such a task force would have saved four Lakewood police officers ambushed last December while having coffee before their shifts, or whether it would have prevented the slaying of a Seattle police officer in his patrol car on Oct. 31.

Sheriff's officials say they think it would have made a difference.

Maurice Clemmons, who barged into a coffee shop and killed the Lakewood officers, left plenty of hints before his rampage. A felon, he faced life imprisonment on a pending charge and had uttered comments to family members about wanting to shoot police officers. Clemmons would have scored an 8.5 out of a 9-point analytical tool the task force is proposing to use, Strathy said.

A big question is how to pay for the task force. The cash-strapped Sheriff's Office can't afford it. The Sheriff's Office is seeking a federal grant to launch what could be a national pilot program, Strathy said.

The unit's codename would be "RADAR," an acronym for "Risk Assessement, Deterence and Referral," and it would use police work and behavioral analysis. Officers recruited for the program would be specially trained and experts in de-escalating volatile situations -- "part General Patton, part Dr. Phil," Strathy said.

Last year was not just a deadly year for Washington police officers. The number of officers fatally shot nationwide jumped 23 percent in 2009, although on-duty deaths declined overall. The rise in shootings deaths was partly due to five cases involving multiple victims, according to the National Law Enforcement Officers Memorial Fund.

Councilman Reagan Dunn, a former federal prosecutor, praised the task-force idea. "This type of intelligence sharing is the kind of thing we're trying to do at the federal level and international level," he said, noting that he once was threatened while working in the U.S. Attorney's Office.

The Sheriff's Office would develop strict rules to ensure the unit's work doesn't intrude on civil liberties. It would set policy for when to purge information, Strathy said.

The task force's investigative work may be useful to judges deciding whether to withhold bail from serious offenders in custody, Rahr said. As a result of the Clemmons case, voters will decide in November whether to amend the state constitution to give judges the authority to deny bail to offenders who face life imprisonment if convicted and pose a higher risk to society.

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The Seattle Times

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# Bombs, guns found at home of suspect in Officer Brenton's slaying

Seattle police detectives are trying to determine why Christopher John Monfort, 41, suspected of arson and deadly shooting, held a grudge against officers that apparently spiraled from destructive to deadly in so little time. Police on Saturday labeled him a "domestic terrorist" who was apparently acting alone and whose motives remain under investigation.

**By Mike Carter, Steve Miletich and Jennifer Sullivan**
*Seattle Times staff reporters*

Amid the carnage and confusion of the Halloween night ambush-slaying of Seattle police Officer Timothy Brenton was one seemingly incongruous clue that soon took on an ominous meaning.

A bandanna printed with the American flag, found near the patrol car where Brenton was gunned down, provided a chilling connection to a second crime, just nine days earlier, that also targeted Seattle police.

The link — to the bombing of Seattle police vehicles on Oct. 22, where a small flag was found — allowed investigators to quickly determine Brenton almost certainly had been targeted simply because he was an officer. And it helps explain why police officials quickly labeled the killing an assassination.

Detectives are trying to determine why the man suspected of both crimes, Christopher John Monfort, 41, apparently held a grudge against officers that spiraled from destructive to deadly in so little time. Police on Saturday labeled him a "domestic terrorist" who was apparently acting alone and whose motives remain under investigation.

Monfort was in serious condition at Harborview Medical Center on Sunday, recovering from being shot Friday after, according to police, he pulled a handgun on detectives who approached him in the parking lot of his Tukwila apartment complex.

Assistant Police Chief Jim Pugel said a search Saturday of Monfort's apartment turned up bomb-making materials, improvised explosive devices and two rifles, including a "military-style assault rifle" similar to the type of weapon police believe was used to kill Brenton and wound his rookie partner, Officer Britt Sweeney.

Potential bomb-making materials were found inside a storage shed on the patio of Monfort's apartment late Saturday, police said. At around 8 p.m., residents in Monfort's building were evacuated for about an hour, police said.

This morning, police and crime-scene investigators are still searching Monfort's apartment, said Seattle police Sgt. Sean Whitcomb. Police do not plan to release any new details on the investigation today.

In the apartment, detectives also found news clippings about the firebombing of three police cruisers and a mobile command-post RV at the city's maintenance yard at 714 S. Charles St. That's where the first flag was left — along with a note threatening to kill officers and a flier announcing a rally later that day protesting the videotaped jail-cell beating of a 15-year-old girl by a King County sheriff's deputy last year in SeaTac.

Police also found what one law-enforcement source called a lengthy "manifesto" railing against police brutality and specifically naming the former deputy accused of assaulting the girl in the jail cell, Paul Schene, and Travis Brunner, a rookie deputy who was training with Schene.

Schene was fired; his trial is scheduled to begin this week.

The manifesto said that if police brutality didn't stop, there would be police funerals, according to the source.

"From everything we can tell, this appears to be a case of domestic terrorism," Pugel said of the two crimes.

But Pugel said the motives aren't clear, and the picture of Monfort that is emerging is filled with contradictions.

While he allegedly targeted police, he was clearly interested in law enforcement. He graduated from the University of Washington in March 2008 with a degree in Law, Society and Justice. He had been working as a security guard — but recently had lost his job — and owned a number of firearms.

He also drove a dark-colored Ford Crown Victoria — a model often used by police — equipped with a spotlight.

"That was the only car I ever saw him drive," said neighbor Leon Morgan.

It was Monfort's other car — an early 1980s Datsun 210 — that led police to his apartment Friday morning, Pugel said.

Police had been searching for similar cars since one had been seen on police-cruiser videos several times in the area where Brenton and Sweeney were ambushed, just minutes before and after the attack.

Brenton, 39, a field training officer, and Sweeney, 33, were parked on 29th Avenue north of East Yesler Way in the Leschi neighborhood just after 10 p.m. Halloween night when someone pulled up next to their patrol car and opened fire. Brenton was killed instantly and Sweeney suffered minor wounds.

She was able to get out of the car and fire at the vehicle, which backed up and sped away.

On Friday morning, about the time a solemn police procession made its way to KeyArena for Brenton's memorial, a tipster reported that a Datsun in the parking lot of Monfort's Tukwila apartment complex had been covered with a tarp.

A team of investigators talked to neighbors and Monfort's apartment manager and confirmed he owned a Datsun 210. They contacted prosecutors to obtain a warrant, and then watched the car until a trio of homicide investigators arrived.

Those detectives had just gotten out of their car when Monfort came out of a staircase and walked into the parking lot, Pugel said.

As soon as the detectives identified themselves, Pugel said, Monfort pulled a handgun, pointed it at the officers and pulled the trigger, but the gun didn't go off. He then ran back toward the stairs, with the officers in pursuit.

When Monfort turned again, Pugel said, all three detectives fired at him. He was hit in the cheek and stomach.

Pugel said police questioned and released two others who had been seen with Monfort during the day.

**Police profile**

What has also emerged from the investigation are similarities between the Police Department's psychological profile of the killer, released last week, and the information coming out about Monfort. Even so, Pugel said Saturday that detectives "had almost nothing" until the Friday tip panned out.

The tipster, whom police have not identified, may be eligible for a $105,000 reward.

The police profile said the shooter might act unusually in the days after the ambush. Police said Monfort's neighbors described his behavior in recent weeks as "bizarre."

The profile also said the shooter "likely has experienced a significant personal crisis in the recent past," including possibly losing his job. Other stressors may have been building in his life as well.

According to police sources, Monfort recently lost his job as a security guard, and Seattle Municipal Court records show he had received a $550 citation for driving without insurance. That ticket was issued Oct. 16, a week before the Charles Street arson.

Pugel said the department is looking into who issued him the ticket.

Virgil Williams, a 52-year-old electrician who lives in the same apartment complex as Monfort, said he spoke with him about a month ago.

"He said his job as a security guard just wasn't going well," Williams said. "He asked me what it took to be an electrician. He seemed like he was just unhappy."

About two weeks later, Williams said, he was in the laundry room of the building and found two security-guard shirts wadded up in the trash can.

Williams didn't know if they belonged to Monfort or not, but he took them upstairs to his own apartment. "They were perfectly good shirts," he said.

After the shooting Friday, Williams said, the shirts were taken by Seattle police detectives as evidence.

Pugel said the three police detectives who shot Monfort have been placed on administrative leave, which is routine after an officer-involved shooting. The detectives fired four to six times, although Pugel did not know how many times Monfort was hit.

Monfort, who has lived in Alaska, California and Washington, has an enigmatic history.

He has no serious criminal history. Besides the recent ticket, he was twice ticketed in Snohomish County.

Those tickets were for a defective turn signal in 2007 and for speeding in 2009. Monfort challenged the 2009 ticket and represented himself in court. The case was dropped after the officer failed to appear at the trial.

It's unclear what happened with the 2007 ticket.

In recent years he has been a student — first at Highline Community College in Des Moines, then at the UW, where he was enrolled in a program aimed at helping minority students go on to graduate work. He obtained his bachelor's degree in March 2008.

He also had worked as a volunteer at the American Civil Liberties Union. ACLU spokesman Doug Honig confirmed that he had been a volunteer.

"He wasn't very involved, and no one remembers him," Honig said Saturday.

According to friends and acquaintances, Monfort was politically active, and it's clear from his studies and his volunteer work that he was concerned about abuse of power and injustice.

He also ran for the student Senate while he was at Highline Community College.

A mentor, Garry Wegner, who was program coordinator for Highline's Administration of Justice program, was close to Monfort and said his former student had recently been a volunteer at the Youth Services Center, teaching incarcerated youth about the criminal-justice system.

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# Bias

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# So far . . .

- History/context
- Disproportionalities throughout CJS
- Proffered causes
  - Crime commission
  - Neutral policies with disparate outcomes
  - Bias

# Attitudes and Stereotypes

**Conscious/explicit**

- Admission
- Survey

**Unconscious/implicit**

- Linguistic
- Micro-facial movements
- fMRI
- Cardiovascular
- IAT
- Decisions/behaviors

# Attitudes and Stereotypes (cont.)

## Expressed racial attitudes (white respondents)

| | Support law against Black/White intermarriage |
|---|---|
| 1964 | 60% |
| 2002 | 10% |

But in 2002, 24% still opposed intermarriage between Blacks and Whites

## Implicit racial biases (all respondents)

- Pervasive
- Large in magnitude

"[W]e are not, on average or generally, cognitively colorblind"

# Attitudes and Stereotypes (cont.)

## Expressed racial attitudes (white respondents)

Causes of Black inequality

| | Blacks lack ability | Blacks have no motivation |
|---|---|---|
| 1977 | 27% | 66% |
| 2006 | 7% | 52% |

| | Blacks are treated unfairly by police |
|---|---|
| 1997 | 36% |
| 2004 | 35% |

## IAT stereotypes (all respondents)

72% associated MALE with SCIENCE and FEMALE with HUMANITIES

---

American = White
Undocumented = Latino
Foreign = Asian

# Connecting bias to behaviors and outcomes

**Conscious/explicit**

- Bias
  - Problem of proof
  - Concealed motives
- Behavior
- Outcome

**Unconscious/implicit**

- Bias
  - Problem of proof
- Behavior
- Outcome

# Outcomes and Problems of Proof

## Med-mal case, Eastern WA

- Bias
- Behavior
  - "Mr. Miyagi"; "Mr. Kamikaze"; "Pearl Harbor Day"
- Outcome?

Turner v. Stime, 153 Wash. App. 581 (Wash. App. Div. 3 2009)

## Experiment involving Disabled Person

- Bias
- Behavior
  - Seating choice
- Outcome
  - Disabled person watching movie alone, more often than not, if movie choice given

# Price Waterhouse v. Hopkins
## (specific)

### Conscious/explicit

- gendered comments

### Unconscious/implicit

- "unwitting or ingrained bias is no less injurious or worthy of eradication than blatant or calculated discrimination . . . the fact that some or all of the partners at Price Waterhouse may have been unaware of that motivation, even within themselves, neither alters the fact of its existence nor excuses it"
- 825 F.2d 458 (D.C. Cir. 1987)

# White- and Black-sounding Names (aggregate)

**Conscious/explicit**

- Bias
  - Proof?
- Behavior
  - Callback decision

**Unconscious/implicit**

- Bias
  - Proof?
- Behavior
  - Callback decision

- "White" candidates received 50% more callbacks than "Black" candidates
- Lower-skilled "White" candidates got many more callbacks than highly skilled "Black" candidates
- High quality "Blacks" received same calls as average "Blacks"

# Traffic Stops

**Conscious/explicit**

- Bias?
- Behavior
  - Decision to search/citation

**Unconscious/implicit**

- Bias?
- Behavior
  - Decision to search/citation

# Traffic stops, WSP
# Nov. 1, 2005-Sept. 30, 2006

18 year old male, daytime, interstate, non-Latino White male officer, one non-serious violation

**Predicted search rate**

| | Low discretion | High discretion |
|---|---|---|
| Native American | 3.1% | 1.6% |
| Latino | 1.1% | .7% |
| Black | 1.2% | .6% |
| Non-Latino White | .8% | .4% |
| Asian/PI | .6% | .25% |
| East Indian | .1% | .1% |

All stops

| DUI, search |
|---|
| 91% |
| 85.9% |
| 84.9% |
| 81.7% |
| 77.7% |
| 82.4% |

Loveritch et al., No evidence of intentional discrimination

# Effects of Bias
## (explicit, implicit, or in combination)

- Initial Stereotypes and Associations
- Suspicion, Investigation and Interrogation
- Arresting and Charging
- Pretrial detention/bail
- Eyewitness Testimony
- Conviction and Sentencing

# Limits of Current Antidiscrimination Law

| Intentional discrimination | Disparate impact |
| --- | --- |
| Perpetrator who has | Actor |
| Discriminatory intent which brings about | Disparate impact on a protected group |
| Action that causes | Insufficiently justified policy/practice |
| Discriminatory outcome | |
| | Limited applicability |

# Interventions

**Conscious/explicit**

- Accountability
- Education
- Exposure
- Other

**Unconscious/implicit**

- Accountability
- Education
- Exposure
- Other

# At the end of the day

- Disproportionalities throughout CJS
- Crime commission rates do not account fully for these disproportionalities
- Facially neutral policies + bias at work
- Race matters in ways that are not fair, that produce racial disparities, that do not advance legitimate public safety objectives, and which undermines confidence in our legal system

# Racial Disparities in Criminal Justice

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# Outline of Presentation



I. Definitions and context

II. Causes of racial disproportionalities

III. Research findings and examples

IV. Consequences and conclusions

# Disproportionality vs. Disparity



## Disproportionality

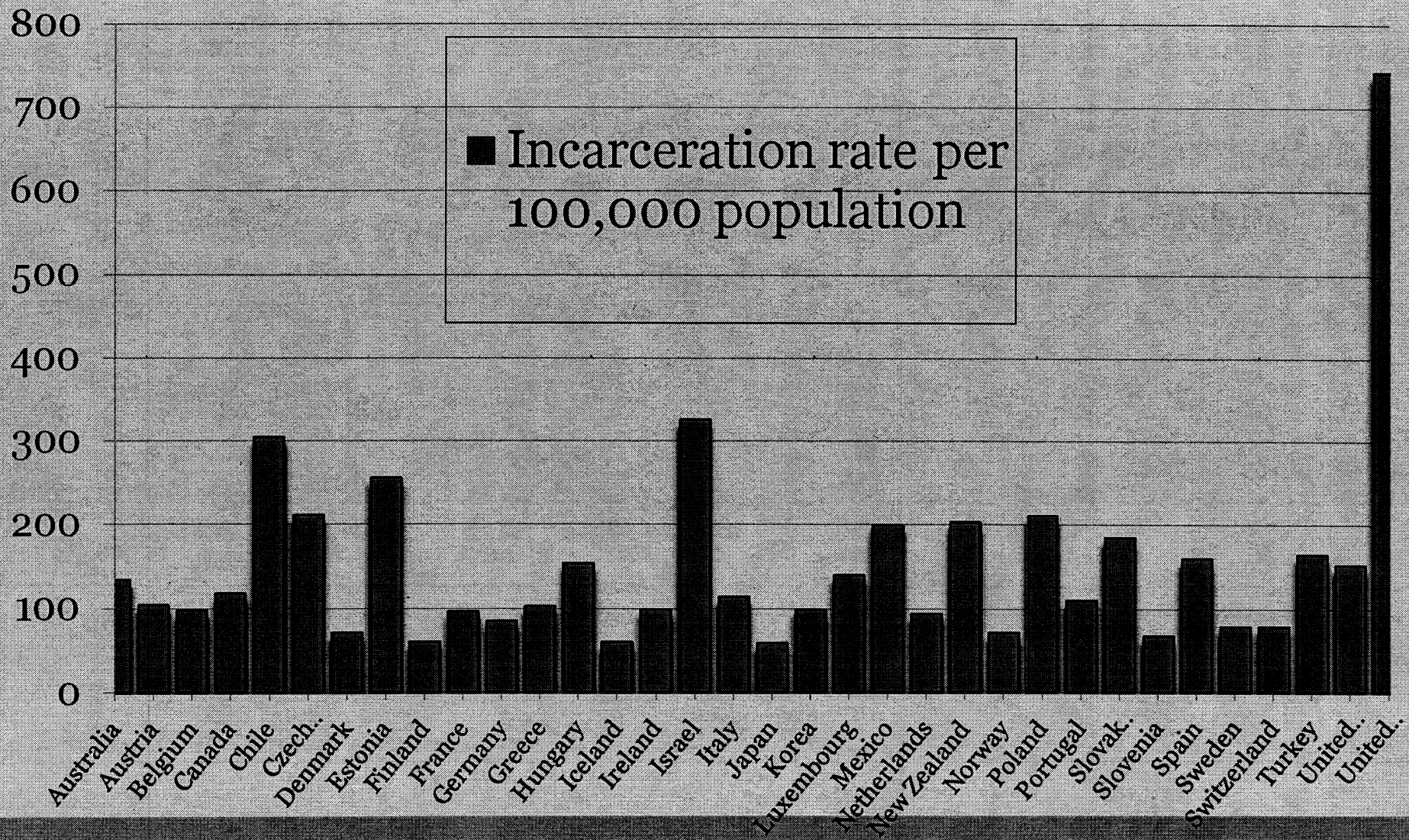
- The over-representation of a particular group relative to the numbers of that group in the general population

## Disparity

- Racial or ethnic inequality that results from criminal justice practices or policies

# Figure 1: U.S. Incarceration Rates: OECD Countries, 2006-2010

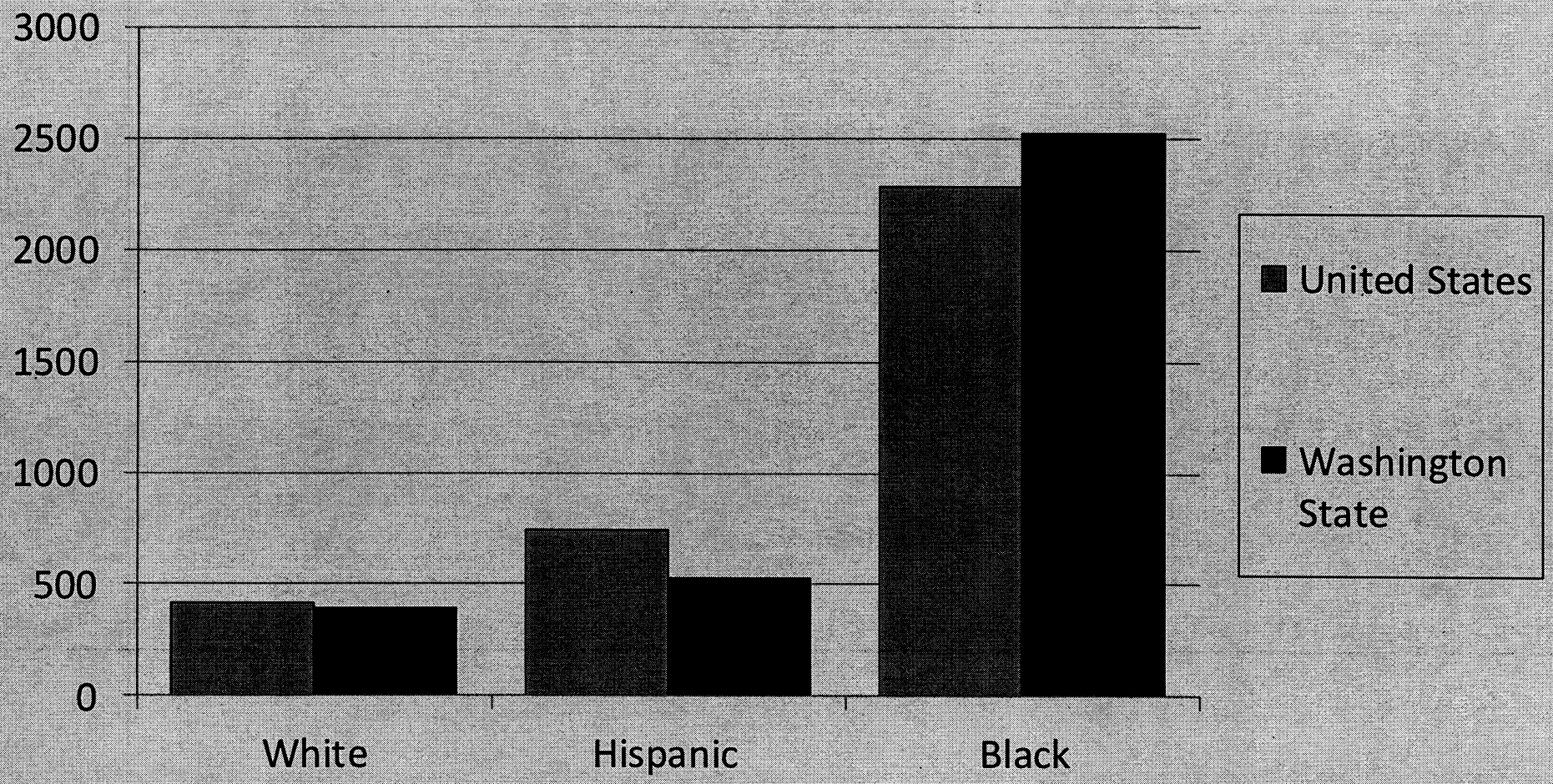





Source: International Centre for Prison Studies at King's College, London, "World Prison Brief"

# Figure 2: Incarceration Rates in the United States and Washington State, 2005






Source: The Sentencing Project, "Uneven Justice," 2005. Note: Rates are calculated per 100,000 population.

# Figure 3: Criminal Conviction Rates, Washington State Courts, 2010

# Proffered Causes of Racial and Ethnic Disproportionality



1. Differential crime commission rates

2. Structural racism
   - (Facially) race neutral practices and policies that have racially disparate consequences

3. Bias
   - Explicit/conscious
   - Implicit/unconscious

# Cause #1: Differential Involvement



- 1982: 80% of the Black/White imprisonment difference in WA is <u>not</u> explained by differential involvement as measured by arrests
- 2009: 36% of the Black/White imprisonment difference in WA is <u>not</u> explained by differential involvement as measured by arrests
- A large portion of disproportionality is not attributable to arrest rates

# Racial/Ethnic Disparities Exists in Many Parts of the Washington State Criminal Justice System



- Law enforcement
  - Drug arrests
  - Juvenile court referrals
  - Washington State Highway Patrol searches
- Case processing
  - Pre-trial release decisions
  - Prosecutorial charging decisions and sentencing recommendations
- Sentencing
  - Incarceration vs. community supervision sentences
  - Downward departures from sentencing guidelines
  - Legal financial obligations – fees & fines

# Cause #2: Facially Neutral Policies: Pre-Trial Release Decisions



- Bridges (1997) - defendants of color are significantly less likely to be released on their own recognizance
- Consideration of seemingly race-neutral, social factors may contribute to racial disparity in pre-trial release decisions
  - Employment history
  - Residential stability
  - "Reputation"
- It is not clear whether these social factors are valid predictors of failure to appear or public safety risk

# Cause #2: Facially Neutral Policies: Seattle Drug Arrests



- Seattle drug arrests are racially disproportionate:
  - In 2006, the black drug arrest rate was 13 times higher than the white drug arrest rate
  - In 2006, the black drug delivery arrest rate was 21 times higher than the white drug arrest rate
- Rates of drug use and delivery explain little of this racial disparity
- The focus on crack cocaine is the primary cause of racial disparity in Seattle drug arrests

# Cause #3: Racial and Ethnic Bias



- Bias is difficult to measure/document
- Bias is sometimes inferred from multivariate regression results after legal factors are taken into account
- Studies using other methods document widespread "implicit bias"
  - Juvenile probation officer assessments
  - Experimental studies

# Consequences



- Criminal conviction and incarceration have a host of adverse consequences for individuals and families
  - Reduced employment
  - Reduced and lost income
  - Housing instability
  - Debt & impaired credit ratings
  - Impaired mental and physical health
  - Familial separation
  - Negative consequences for children
  - Disenfranchisement
  - Heightened surveillance by state authorities
- Racially disparate practices and policies also erode faith in legal institutions

# Conclusions



- Racial disproportionalities remain significant in Washington State
- These stem in significant part from criminal justice practices and policies
  - Both structural racism and bias affect criminal justice processes and outcomes
- Racial disparities are highly consequential for individuals, families and communities

# List of References




- Beckett, Katherine , Kris Nyrop and Lori Pfingst. 2006. "Race, Drugs and Policing: Understanding Disparities in Drug Delivery Arrests." *Criminology 44, 1: 105-138.*
- Beckett, Katherine , Kris Nyrop , Lori Pfingst and Melissa Bowen. 2005. "Drug Use, Drug Possession Arrests, and the Question of Race: Lessons from Seattle." *Social Problems 52, 3: 419-41.*
- Beckett, Katherine, Alexes Harris and Heather Evans. 2008. *The Assessment and Consequences of Legal Financial Obligations in Washington State*. The Washington State Minority and Justice Commission.
- Bridges, George and Sara Steen. 1998. "Racial Disparities in Official Assessments of Juvenile Offenders: Attributional Stereotypes as Mediating Mechanisms." *American Sociological Review* 63:554–70.
- Crutchfield, Robert, George Bridges and Susan Pitchford. 1994. "Analytical and Aggregation Biases in Analyses of Imprisonment: Reconciling Discrepancies in Studies of Racial Disparity." *Journal of Research in Crime and Delinquency*, 31(2): 166-182.
- Engen, Rodney, Randy Gainey, Robert Crutchfield, Joseph Weis. 2003. "Discretion and Disparity under Sentencing Guidelines: The Role of Departures and Structured Sentencing Alternatives." *Criminology* 41: 99-130.
- Graham, Sandra and Brian S. Lowery. 2004. "Priming Unconscious Racial Stereotypes About Adolescent Offenders." *Law and Human Behavior* 28(5): 483-504.
- Harris, Alexes, Heather Evans, and Katherine Beckett. 2011. "Courtesy Stigma and Monetary Sanctions: Toward a Socio-Cultural Theory of Punishment." *American Sociological Review* 76(2): 1-31.
- Huizinga, David, Terence P. Thornberry, Kelly E. Knight, Peter J. Lovegrove, Rolf Loeber, Karl Hill, and David P. Farrington. 2007. Disproportionate Minority Contact in the Juvenile Justice System:: A Study of Differential Minority Arrest/Referral to Court in Three Cities. A Report to the Office of Juvenile Justice and Delinquency Prevention.
- Lovrich, Nicholas, Michael J. Gaffney, Clayton Mosher, Mitchell Pickerill, and Travis C. Pratt. 2005. *Analysis of Traffic Stop Data Collected by the Washington State Patrol: Assessment of Racial and Ethnic Equity and Bias in Stops, Citations, and Searches Using Multivariate Quantitative and Multi-Method Qualitative Research Techniques: Project Final Report*. Division of Governmental Studies and Services, Department of Political Science and Criminal Justice Program, Washington State University.
- Steen, Sara, Rodney Engen and Randy R. Gainey. 2005. "Images of Danger and Culpability: Racial Stereotyping, Case Processing and Criminal Sentencing." *Criminology* 43: 435-461.