



Washington State Minority and Justice Commission (WSMJC)

Friday, February 13, 2015
8:45 a.m. – 12:00 p.m.
AOC SeaTac Office, SeaTac, WA



MEETING NOTES

Commission Members Present

- Justice Mary Yu, Co-Chair
- Justice Charles Johnson, Co-Chair
- Judge Veronica Alicea-Galvan
- Judge Lisa Atkinson (via teleconference)
- Prof. Lori Bannai
- Ann Benson
- Prof. Robert Boruchowitz (via teleconference)
- Steve Clem
- Sgt. Adrian Diaz
- Judge Lisa Dickinson
- Judge Theresa Doyle
- Marie Eggart
- Judge Deborah Fleck
- Bonnie Glenn
- Russell Hauge
- Yemi Jackson
- Karen Murray
- P. Diane Schneider
- Judge Lori Smith
- Travis Stearns
- Justice Debra Stephens (via teleconference)
- John Yasutake
- Judge Dennis Yule, Ret. (via teleconference)

Members Not Present

- Jeffrey Beaver
- Prof. William Covington
- Prof. Jason Gillmer
- Uriel Iñiguez
- Carla Lee
- Commissioner Joyce McCown
- Judge LeRoy McCullough
- Judge Gregory Sypolt

AOC Staff Present

- Cynthia Delostrinos
- Danielle Pugh-Markie

Guests

- Erin Apte
- Lucas Bernardo
- Tamara Gaffney
- Hillary Madsen

APPROVAL OF MINUTES

The meeting minutes from the November 14, 2014, meeting were approved.

CO-CHAIRS REPORT

MEMBERSHIP

New Commission Member – Steve Clem

Steve Clem is the Commission’s new representative for the Washington Association of Prosecuting Attorneys (WAPA). Mr. Clem worked as an attorney in legal services and private practice before he was elected as the Douglas County Prosecuting Attorney in 1995, where he has been for the past 20 years.

SUPREME COURT SYMPOSIUM

Mark your calendars for the next Symposium at the Supreme Court, which will take place on May 28, 2015, from 8:30 a.m. – 12:30 p.m. at the Temple of Justice. Justice Yu and Cynthia had a meeting to come up with ideas for possible speakers and topics. Justice Yu will be calling

upon a subcommittee of Commission members who expressed their interest in helping put this event together. We plan to approach MacArthur about possibly providing assistance, as they were key in helping bring out a speaker for last year's forum and also provide books for the justices. We would like the topic of this year's forum to be on reentry and the barriers that people face when trying to reenter society after incarceration.

Commission Speaking Engagements – Bellingham City Club

The Commission has recently received a number of speaking requests, and Justice Johnson and Justice Yu would like to invite other Commission members who are interested to volunteer to be "on-call" to maybe do some of these speaking engagements in the future. The requests are from groups and organizations that are interested in the topic of racial justice, juvenile justice, and are sometimes looking for a neutral voice to help facilitate a discussion on some of these issues.

Justice Johnson was recently in Bellingham doing a luncheon talk with the Bellingham City Club. The Bellingham City Club is an active group of community leaders that puts together monthly luncheons where they invite speakers on a number of different topics. For the month of January, they were interested in the issue of race in the justice system. The program was well received. After the presentation there were people who were interested in the work of the Commission and how to get involved. We are a statewide commission so it is important for us to participate in all parts of the state. As the Commission gets more exposure it is likely that we will be invited to have more of these discussions to address racial bias on a larger scale. Contact Cynthia at cynthia.delostrinos@courts.wa.gov if any members on the Commission are interested in being included on a list when there is a request for a speaker.

Judge Alicea-Galvan is scheduled to speak on March 4, 2015, at Bellingham City Hall. The title of the event is, "Examining Race: Civic Engagement Post-Ferguson, Where Do We Go From Here?"

It was recommended that staff create a hand-out on the Commission. The Outreach Committee would be the appropriate Committee to work on this.

PRESENTATION

YEAR Act HB 1481 / SB 5564

Hillary Madsen with Columbia Legal Services gave a presentation to the Commission on HB 1481, referred to as the YEAR Act. Ms. Madsen has been working on the YEAR Act with students from the University of Washington School of Law. The Minority and Justice Commission was active in supporting last year's Youth Opportunities Act, which passed and became law. The Legislature expressly stated that open juvenile records were a barrier to one's rehabilitation and reintegration, recognizing that people with juvenile records were being barred or experiencing real challenges in securing jobs, education, and employment. It is also important to think about racial disproportionality in records sealing. In 2013, there was a Washington study done that found that of the records eligible to be sealed, out of 70 percent that were white, 78 percent were sealed. In contrast, out of the 12 percent of African American records that were eligible, only 6-7 percent were sealed. For Native Americans it was even worse, out of the 5 percent that were eligible, only 2 percent were sealed. The same study looked at job applications and found that white kids who had an open criminal record were more likely to get a job than a black kid who had no criminal record.

The Youth Opportunities Act that passed last year created a routine record sealing process where when kids turn 18 and have been released from confinement, completed supervision, and have paid all legal financial obligations, there will be an administrative hearing on their 18th birthday where a judge will order their records to be sealed. There is no requirement for that individual to have to appear and no requirement for the person to have to notify anyone.

One of the problems with the Youth Opportunities Act that has arisen is the LFO and restitution component. The kids who do not have the ability to pay their LFOs or restitution in full will not be eligible to get their records sealed, which creates an economic disparity in who is and is not able to benefit from the recently enacted law.

The YEAR Act attempts to address the economic disparity by eliminating LFOs assessed to juveniles. It would give judges the authority at disposition to allow youth to work off restitution with community service and the discretion to decide whether the debt should be paid joint and severally when a juvenile turns 18 and the routine record sealing administrative hearing takes place. In the past, a judge could not seal a record if a juvenile had any outstanding LFOs. Under the YEAR Act, a judge can still seal a record if the juvenile has been making a good faith effort to pay. However, once sealed, the person still has the obligation to pay the LFO in full and if payments are stopped, the record becomes public again.

Ms. Madsen is always looking for superior court judges to testify in favor of the bill. She has been working with Judge Kitty-Ann van Doorninck and Judge Steve Warning who have been very supportive. Juvenile Court Administrators also testified in favor of the bill, and are excited about the provision that would allow research on the subject because there currently is not a lot known about juvenile LFOs.

Questions

Has there been any discussion about changing the 12 percent interest rate in Washington?

Yes—There is a bill that was introduced by Representative Roger Goodman that reforms the laws around LFOs, including changes to the current interest rate. The bill would also include a provision that would require that the DNA collection fee only be collected once per person.

What is the position of some of the other stakeholders?

There has been negative testimony from the County Clerks' Association. There is a philosophical difference of opinions as well as technical and operational problems that have been expressed. There is concern about juveniles paying restitution in full before their records are eligible to be sealed, as they believe that sealing is an incentive to pay outstanding LFOs. One of the main concerns that the Clerks have is the loss of revenue for counties. The Clerks have to comply with mandates, often times with no financial support. For most counties the collection of LFOs is a revenue source that they are using to maintain mandated programs. One of the biggest concerns for individual counties is the financial impact this bill will have on them. When a county loses revenue, the question becomes how do you continue to support the court system? Counties cannot ask for additional staff if this law comes into play, yet there is no way to perform what this bill asks without additional staff, without additional revenue. The Clerks are doing the best they can with collection of LFOs, which at one time didn't use to be the job of the Clerks. While there is agreement that some of the policies and practices around juveniles needs to change, they don't know if the answer is doing completely away with LFOs. They agree that there is a problem especially when a defendant does not have the ability to pay,

but the concern is where Clerks will receive the revenue they will likely be losing from no longer collecting LFOs.

The sheriffs testified with concerns about the bill noting that they don't have access to sealed records, and only prosecutors and courts do. The sheriffs would like access for making employment decisions and officer safety. Landlord groups are in opposition because they think LFOs should be paid or worked off in community service because it shows that the individual is being held accountable. Newspaper advocates generally think sealed records are a problem.

What happens when a record has been sold to commercial agencies and disseminated—wouldn't that defeat the purpose of sealed records if the information still exists and can be uncovered with these agencies?

Right now this is still an issue. However, in the consumer protection act people can challenge the inclusion of criminal records that have been sealed by going through a dispute process. This is an issue that may be brought back to the Legislature at a later time after this bill has been passed. There is also another bill going through the Legislature around banning the box that requires people to disclose certain criminal histories.

Are there certain crimes that are excluded from this bill?

Yes—the same crimes that were excluded from last year's Youth Opportunities Act are still excluded in this bill.

STAFF REPORTS

MJC LEGISLATIVE WATCH LIST

There are a few pieces of legislation introduced this session that are within the scope of the Commission's mission and that staff have been watching through the legislative process. The co-chairs are looking for leadership of Commission members, particularly superior court judges, to take the lead on some of these pieces of legislation given the need for the co-chairs to remain neutral on matters that may come before them in the future. Commission members can expect to see letters of support sent out on behalf of the Commission with Judge Doyle's name or another Commission members' name and signature. We are working on a way to be able to participate in this process but are still trying to figure out the best way to navigate without compromising positions. It is important that we are involved in this process and we are working on a way to continue to do so. Cynthia will continue to provide updates on the legislation that the Commission is "watching" to those Commission members who indicate they are interested in receiving updates.

Legal Financial Obligations (LFOs)

Judge Doyle and Cynthia participated in planning meetings with Representative Goodman weighing in on the draft of his bill. The goal of the bill is to reform current laws around LFOs in order to set the stage for more restitution to be paid to victims. The bill would require that restitution be paid before all other LFOs. It would eliminate interest on all non-restitution LFOs and would require judges to eliminate accrued interest when restitution has been fully paid. It requires that only one DNA fee be collected per person, and eliminate any fees for those who already have DNA on file. For purposes of "costs" (as opposed to "fees") the bill makes clear that courts can only apply "costs" if there is a finding of ability to pay. The bill defines "ability to pay" as non-indigent, using the definition of "indigent" under RCW 10.101.010. "Ability to pay" will be determined at the time of sentencing, not one's ability to pay in the future. Advocates

have told us about actual incidents when judges have said things like “the defendant may win the lottery” and make a determination on an individual’s future ability to pay based off of that belief. The provisions in this bill would eliminate that sort of abuse.

The current LFO statutes do not incorporate a due process requirement before a judge can hold an individual in contempt for non-payment of their LFOs, and that individual could face jail time. This bill would require a hearing on whether non-payment was willful before an individual is jailed for non-payment. There is a section added to the bill that would require the court to make a finding of willfulness and then issue a summons before issuing a bench warrant. When determining willfulness, the court will look at the individual’s ability to pay. The hope is that with clearer requirements it will become easier for courts to enforce LFOs properly and uniformly.

Questions

Does use of RCW 10.101.010 mean that anyone who comes before the court with a public defender will be released of LFO obligations?

Yes—but only of those LFOs that are defined as “costs” under the statute, not “fees” or “fines,” not the victim penalty assessment or restitution obligations. There was concern raised that a very high majority of defendants are appointed with a public defender, and while a majority of them do not have the ability to pay, there are some that do. Judges will appoint counsel if the individual comes to court without a lawyer without making the determination on ability to pay. It was also raised that one can still qualify for a public defender, but be required to give a promissory note to pay later for the services. Judge Doyle will raise these concerns with Representative Goodman.

Certificates of Restoration of Opportunity (CROP) – HB 1553

Last year, Columbia Legal Services (CLS) presented this bill to the Commission concerning certificates of restoration of opportunity (CROP). The bill was introduced in the legislature last year but was pulled. Judges and the Department of Social and Health Services wanted to know more about the bill and how it would be carried out. One of the big concerns was whether it was a certification of rehabilitation of the applicant. After the bill was pulled, the advocates at CLS did a lot of work to follow up with all of the groups that had expressed concerns. They worked with superior court judges and had a lot of their concerns addressed with this new bill. Currently, the superior court judges are in support of the new CROP bill, which is a fairly dramatic redraft from last year’s bill, as it addresses many of the concerns from the different stakeholder groups. There are over 90 different professions that are categorically barred to individuals with criminal records. This bill is intended for an individual with a criminal record to present to prospective employers or housing providers a certificate showing proof that they have remained crime free and have taken steps towards improving their lives. The certificates don’t require sealing or vacating a criminal record and acknowledges criminal history with an opportunity to show progress and positive steps taken to move beyond.

Racial Impact Statements

Racial impact statements are a tool for legislators to assess the racial impact of a particular piece of proposed legislation. Implementing racial impact statements in Washington was a topic of the past two Minority and Justice Commission and Sentencing Guidelines Commission joint meetings. Senator Bob Hasegawa was present in the audience at the last joint meeting that was held at the Tukwila Community Center on November 11, 2014. After the meeting, Cynthia and others who were present at the meeting were invited to participate in working sessions to help Senator Hasegawa create a draft of the racial impact statement bill that he wanted to propose during the upcoming legislative session.

Cynthia testified at the Senate policy committee hearing on behalf of the Commission, alongside Dave Boerner from the Sentencing Guidelines Commission, and Lilian Hewko on behalf of the Washington Defender Association. Many organizations signed on in support of the bill, and none signed on in opposition.

A companion bill has also been brought by Representative Sawyer in the House. Also, the Justice Reinvestment bill has explicit language authorizing and mandating racial impact statements.

Fair Chance Act – HB 1701

This bill addresses another aspect of reentry. The Commission was approached about supporting. Information on the bill is included in the packet.

ACCESS TO JUSTICE CONFERENCE

The Access to Justice Conference will be held in Wenatchee on June 12-14. The Commission will be having its June 12, meeting in Wenatchee at the same location in order to encourage Commission members to attend the ATJ Conference. The Commission will cover the cost of travel and lodging. Commission members will be responsible for covering their own registration fee for the conference which is \$250. The Conference is critical, and this year's theme focuses on racial equity.

The Commission meeting on June 12 will be from 10:00 a.m. – 2:00 p.m.. On the evening of the 12th there will be a reception. Saturday June 13 will be a full day of workshops. Cynthia will provide more details at next Commission meeting.

The Commission submitted two Conference proposals for programming. One of the proposals was put together and submitted in partnership with Access to Justice Leadership Cohort III, around the issues surrounding Ferguson and gaining a deeper understanding of racial equity. The other proposal was submitted by the Juvenile Justice Subcommittee and is a follow up to the Courts Igniting Change Conference looking at the school-to-prison pipeline, disproportionate practice of school discipline, looking at the issue from a community perspective.

TRIBAL STATE COURT CONSORTIUM

The first regional meeting of the Tribal State Consortium will be held at the Suquamish Tribal Court on February 25, 2015. Danielle Pugh-Markie has been working with Judge Cindy Smith of the Suquamish Tribal Court on putting together the agenda for the regional meeting. Invitations have been sent out to all levels of judges in Clallam, Jefferson, and Kitsap counties, and all of the tribal courts in that region. Heather Singleton from the Tribal Law and Policy Institute and Judge Thorne are going to help facilitate the dialogue.

Washington has an amazing resource on these issues in Judge Raquel Montoya-Lewis, one of four Native American judges at the state court level nationally. Her experience as tribal court judge, combined with her work as a professor on issues of racial disparity, make her particularly knowledgeable about the issues that our Commission deals with. We need to reach out to her about these meetings.

The purpose of having regional meetings is to bring together judges from tribal courts and state courts that sit in close proximity to one another, and help them build relationships with one another, talk about areas of overlap between the two courts, and try to identify areas where

practices and communication can improve between them. One of the most critical parts of the meetings is to gain a better understanding of the tribal court judicial operations, therefore all of the regional meetings will be hosted by tribal courts.

Given that we have Judge Atkinson on the Commission appointed as our tribal court representative, she should be our liaison to the Consortium on behalf of the Commission. We need to make sure that she gets all of the information about the Consortium meetings.

UPCOMING YOUTH AND JUSTICE FORUMS

The UW Law Academy is going to be held on March 13, 2015, at the University of Washington School of Law, and is working in partnership with the Commission and the MLK Youth and Law Forum. The MLK Youth and Law Forum will be celebrating its 25th anniversary and they are planning on doing three events this year. The first is a youth and law forum one-day event, which is in partnership with the UW Law Academy on March 13. The second event will be their traditional community event on Saturday, April 25, 2015, and the last event will be a dinner for volunteers and community partners in celebration of the 25th year of the MLK Youth and Law Forum.

The Commission is also sponsoring the Chelan Diversity Justice Day for Youth on March 25, 2015. There is money set aside in the budget for Commission members who want to attend the forums. The expectation is that you will be engaged, volunteer, and will talk to students. These forums are a real and active way that the Commission can reach out to youth. They present an amazing opportunity to share your love of the work that you do. They also present an opportunity to remove barriers between the community and the justice system.

We are always looking for giveaways for the students. A special thank you to Commission member Yemi Fleming-Jackson for donating Xboxes for the Tri-Cities Youth and Justice forum for the past two years. If you have anything we could provide to the youth as giveaways at the forums, please let staff know. It could not be stressed enough how impactful these youth and law events are for both the youth and the volunteers that participate.

REVITALIZING COMMITTEES

We would like to have all of the committees reestablished so that Cynthia can reach out to the committees when projects come up. Cynthia will follow-up via email with Commission members about which committee they would like to join. Everyone should join at least one committee. The committees will try to meet monthly unless it does not make sense to meet monthly.

Outreach Committee

The first and time-sensitive project of the Outreach Committee is to look at a draft of the Annual Report and provide edits. The last annual report from the Commission was in 2011. We need to get a report put together and make a decision on whether the report should cover 2012-2014. Cynthia has a draft of the Annual Report ready to be edited. The mission statement for the Outreach Committee has been to produce an Annual Report and to obtain and coordinate a program of acquiring artwork for use in Commission posters. Judge Yule has been in contact with the Onyx Fine Arts Cooperative, which is an organization in Seattle that is a collection of artists of African descent. A link to their website can be found at www.onyxarts.org. Judge Yule will connect with artist Ashby Reed about submitting artwork to the Commission. The ATJ Conference might be a good time to reveal a new poster for this year. The Committee will look into that possibility.

Workforce Diversity Committee

A possible new project for the Workforce Diversity Committee is to update the Judicial Officers of Color Directory. The Commission has been approached several times about providing the demographics for the Washington judiciary, and we don't have updated numbers. Approximately 25 percent of the new judges attending this year's Judicial College were judges of color. It would be nice if the Commission organized or hosted a meeting or reception for judges of color to meet. Often times the job can feel isolating and this meeting would provide an opportunity to talk about unique issues impacting judges of color who often times feel isolated. It would be a great effort of the Commission to support an event or ongoing meeting if someone wants to try to organize and host it. Ultimately, we want to create something ongoing. Maybe the Minority and Justice Commission could try to host something at the ATJ Conference or Fall Conference. It was mentioned that once judges of color are able to have a separate convening, other judges need to be educated about what the unique issues are.

Cynthia will follow-up via email with all Commission members asking them which committee they would like to join.

Civil Legal Needs Study

David Kennan provided a written summary updating the Commission on the status of the Civil Legal Needs Study. The Study is scheduled to be completed this spring or summer. If you have any thoughts or questions feel free to contact David Keenan directly. It is a really important study that will be the foundation of a discussion that everyone will use because it will address how poverty effects access and how legal aid is responding.

DISCUSSION

What is the Commission's Response to Ferguson, NY, and now Pasco?

A lot of people have asked what the Commission is doing in response to issues raised by Ferguson. The co-chairs wanted to open up the discussion to the Commission membership. What should we do? Is what we are doing now enough? We recognize the great work that the universities and law schools are doing and we don't want to duplicate efforts, but is there something that we can do that would be both timely and appropriate given our role as the Commission?

One of the things we could do is facilitate a dialogue between youth and law enforcement around issues involving use of force. In preparation of the Courts Igniting Change Conference, Commission member Bonnie Glenn was working with a group of young people who shared their stories about negative experiences they, their family, or their close friends had with police officers. It began a dialogue around some of those issues which sparked the youths' interest in participating in more dialogues and opportunities to talk about issues like these. Youth have an important perspective on these issues and we should pay attention to that and take the opportunity to provide education and a space to dialogue.

The recent events in Pasco, Washington, were brought up at the meeting. It was mentioned that one of the things that was different about the response in Pasco and the response in Ferguson was the transparency of law enforcement. In Pasco, immediately following the incident, the officers involved were named and the Chief was available to the media. Unlike in Ferguson where there was no willingness of law enforcement to identify the officer.

The Department of Justice is currently working with different community groups on these issues. They currently offer young people workshops on what to do when stopped by police. One observation of Ferguson is that it is a place where people who live together in the same community are so ignorant and detached from one another. This is a phenomenon that is happening in many urban areas throughout the country. Whatever the response is, it will have to be comprehensive and is going to take many years to address.

There must be an acknowledgment of the role of the judicial system in continuing to perpetuate a system that is inherently biased. As judges of color, it is very difficult to address institutional racism on a personal level. There exists a tension professionally, when you have the philosophy of service to the public and ideals of justice, but also an acknowledgement that we have a part in continuing to perpetuate an unjust system and not speak out against it. We cannot take the high ground and be in places of privilege and power within the structure. What does it mean to hold a position in a system that we know has bias? We work within structures that have been created to carry out institutionalized and structural racism. Justice is the best path to equality. The practice of principles is what we need to address. We need to review principals of justice and look into where they have been warped and where inequitable practices have been normalized. We also need to bring in our justice partners to address larger systemic issues, but we first have to acknowledge that the systemic and institutional bias exists.

Because of all the structures that have broken down in a system, do you hold the one police officer or the one prosecutor accountable, like what happened in Ferguson? There are a lot of areas that law enforcement can begin to look into and change such as hiring practices, leadership, policing practices, and helping officers cope with trauma. How do we look at some of these issues in a broader sense so that we can begin to make meaningful changes in the justice system? Sometimes for large structural changes it can take ten years. These are questions that we continually have to ask.

The justice system is much broader than just policing and implicit bias. If we are to be a leader in our state we need to consider holding a summit that is well planned, that takes on the whole justice system. We could invite the current FBI director to be the keynote speaker. We could invite prosecutors, defenders, law enforcement, community members, youth, and court personnel and plan something large. We could seek funding from other resources to decide the scope of the summit.

We could use Ferguson and Pasco as a microcosm and ask the question: what can we learn from these events? With those events as a backdrop, we can discuss cultural problems within law enforcement, implicit bias, LFOs, and the role of judges.

What we have learned from the current opposition to the King County Children and Family Justice Center protests is that the community's perception of how involved they are in the process and their view about what is going on in their community, is more informed than what judges and those within the system think they know about it. Only by joining them in an end of the prison industrial complex do you really understand the issues involved in Ferguson. While it would be great to have a professional and educational forum, these issues are really about the community interacting with those who work within the justice system. It is NOT just a justice system issue. There needs to be some way to include community or it doesn't matter what we all do, all they will see is that we don't care about them and that we don't and cannot see from their perspective. If we say we want a true dialogue, we have to be willing to change.

Jeff Beaver and Russ Hauge had been in discussions with the Washington Association of Sheriffs and Police Chiefs and the Criminal Justice Training Commission, all pre-Ferguson but still really talked about the issues later illustrated by Ferguson. There is a foundation in this arena that we can really build off of and it needs to be hand-in-hand with those organizations at a minimum.

Two prong approach—as we reach out to communities to have a dialogue with us, we also need to reach internally within administrations. Ask ourselves are we in our own structures representing what we want to represent? We need to assess what the community's expectations of us are and what do we expect of ourselves.

We would like to bring this topic back at the next meeting. If we have a forum it will not be an open forum for everyone because those forums are not productive. It is important to have community involvement but if it is not structured it won't go anywhere. Everyone should give some thought on a summit. We will talk about it more at the next meeting.

National Consortium

This year's National Consortium on Race and Ethnic Bias in the Courts is June 10-13, 2015. Justice Yu and Justice Johnson cannot attend, and it is at the same time as the ATJ Conference, so staff cannot attend either. This year it will be held in Buffalo, NY. We want to support the National Consortium and would like to know if anyone else is interested in attending on behalf of the Commission. Contact Cynthia if you are interested.

Civil Rights Resources

Judge Fleck will send an email to the Commission that includes links to the Bryan Stevenson extended interview by John Stewart, PBS documentary on Thurgood Marshall, a lecture series on Civil Rights, and also information about a Civil Rights pilgrimage. It was recommended that these links be put up on the Commission's website so that others can enjoy them too.

NEXT COMMISSION MEETING: April 10, 2015

It was recommended that the Commission continue to reach out to and invite the community to our meetings and make a conscious effort to engage the community in our work.

The next meeting is scheduled for April 10, 2015, at Seattle University School of Law.