

WASHINGTON STATE
MINORITY AND JUSTICE COMMISSION

COMMISSION MEETING



ADMINISTRATIVE OFFICE OF THE COURTS - SEATAC OFFICE
18000 INTERNATIONAL BLVD, SUITE 1106
SEATAC, WA
FRIDAY, SEPTEMBER 13, 2019
9:00 A.M.— 12:00 P.M.



MINORITY AND JUSTICE COMMISSION

AOC SEATAC OFFICE

18000 INTERNATIONAL BLVD, SUITE 1106, SEATAC, WA

FRIDAY, SEPTEMBER 13, 2019

9:00 A.M. – 12:00 P.M.

JUSTICE MARY YU, CO-CHAIR

JUDGE G. HELEN WHITENER, CO-CHAIR

Teleconference: 1-877-820-7831

Passcode: 358515#

AGENDA

CALL TO ORDER 9:00 – 9:05 a.m. (5 minutes)

- Welcome and Introductions
- Approval of April 5th Meeting Minutes

CO-CHAIRS' REPORT 9:05 – 9:25 a.m. (20 minutes)

- **Personnel Update**
- **New Commission Members** – Christopher Sanders & Re-appointment of P. Diane Schneider
- **Symposium Debrief** – Mark your calendars for next year's symposium, June 3, 2020
- **Office of Equity Task Force** – Seeking MJC Representative to serve on Task Force to create Washington State Office of Equity

PRESENTATIONS 9:25 – 9:55 a.m. (30 minutes)

- **Immigration Enforcement at Courthouses** – Annie Benson, Judge Michael Diaz & the Washington Immigrant Solidarity Network

STAFF REPORT 9:55 – 10:15 a.m. (20 minutes)

- **Staff Report** – Cynthia Delostrinos
- **MJC Summer Intern** – Roberto White
- **LFO Grant Update**
- **2020 Meeting Schedule**
- **Shout Outs**

BREAK 10:15 – 10:25 a.m. (10 minutes)

LAW STUDENT LIAISONS 10:25 – 10:40 a.m. (15 minutes)

- **Introductions to New Law Student Liaisons**
 - Gonzaga University**
 - Hisrael Medina Carranza (2L), Francis Dela Cruz (3L), Rigoberto Garcia (2L), Dalia Trujillo
 - University of Washington**
 - Sydney Bay (3L), Mary Ruffin (2L), Furhad Sultani (2L), Casey Yamasaki (3L)
 - Seattle University**
 - Beverly Tsai (3L), Cloie Chapman (3L) & Denise Chen (1L)

COMMISSION MEMBER, COMMITTEE REPORTS &

WORKING LUNCH 10:40 – 12:00 p.m. (80 minutes)

- **Tribal State Court Consortium – Judge Lori K. Smith**
 - New Staff to TSCC – Kathryn Akeah
 - Annual TSCC Meeting – September 22, 2019 @ 12pm, Vancouver, WA
 - Fall Conference Session on Missing and Murdered Indigenous Women

- **Workforce Diversity Committee – Judge Veronica Alicea-Galván & Judge Bonnie Glenn**
 - National Consortium on Race and Ethnic Fairness in the Courts Annual Conference
 - Ideas for MJC Meeting Locations for 2020 – Judge Bonnie Glenn

- **Education Committee – Justice Debra Stephens and Judge Lori K. Smith**
 - 2019: Annual Judicial Conference: September 22 – 25, 2019, Vancouver, WA
 - *Keynote Address: Judge Xiomara Torres, Multnomah County Circuit Court*
 - *Crisis of Missing and Murdered Indigenous Women*
 - *Surviving the Big Waive: A look at how courts can and must respond to defendants' legal right to readdress legal financial obligations (LFOs)*
 - *Cruel and Unusual Punishment: Youth, Race and the Law*
 - *Pre-Trial Justice: Bail, Risk Assessments, and Reforms*
 - 2019: District and Municipal Court Line Staff Regional Trainings on Implicit Bias, October 4-18
 - 2019: Washington State Coalition for Language Access Conference, October 25 - Tacoma
 - 2020: Judicial College, January – *Judge Whitener & Judge Galvan*
 - 2020: Conference Proposals
 - *Superior Court Judges' Association Spring Program, April 26-29 – Immigrant Families & Juvenile Justice*
 - *District and Municipal Court Managers' Annual Conference, May 17-20 - LFOs*
 - *District and Municipal Court Judges' Spring Program, May 31-June 3 – Poverty Simulation*
 - *Judicial Conference – TBD*
 - MJC Bookclub

- **Juvenile Justice Committee – Annie Lee and Asst. Chief Adrian Diaz**
 - Fall Judicial Conference – Equal Justice Overview: Youth, the Eight Amendment & the Law

- **Outreach Committee – Lisa Castilleja and Judge Michael Diaz**
 - The Dignity, Fairness, and Respect PSA Update
 - Annual Tri-Cities Youth and Justice Forum – November 1

- **Update: LGBTQ Judicial Officer Directory – Judge Johanna Bender**

- **Jury Diversity Task Force – Judge Steve Rosen, Judge Johanna Bender & Judge Mike Diaz**

Next MJC meeting: Friday, November 8, 2019, at the AOC SeaTac Office

Please complete, sign, and mail your travel reimbursement forms to Commission staff.



**MINORITY AND JUSTICE
COMMISSION**
AOC SEATAC OFFICE
18000 INTERNATIONAL BLVD, SUITE 1106, SEATAC, WA
FRIDAY, APRIL 5, 2019
9:00 A.M. – 2:00 P.M.
JUSTICE MARY YU, CO-CHAIR
JUDGE G. HELEN WHITENER, CO-CHAIR

Teleconference: 1-877-820-7831
Passcode: 358515#



MEETING NOTES

Commission Members Present

Justice Mary Yu, Co-Chair
Judge Helen Whitener, Co-Chair
Judge Veronica Alicea-Galvan
Mr. Jeffrey Beaver
Judge Johanna Bender
Ms. Ann Benson
Ms. Elizabeth Castilleja
Judge Faye R. Chess
Judge Linda Coburn
Ms. Grace Cross (phone)
Ms. Theresa Cronin
Judge Mike Diaz
Assistant Chief Adrian Diaz (phone)
Judge Theresa Doyle (phone)
Professor Jason Gillmer
Judge Bonnie Glenn
Ms. Kitara Johnson
Ms. Annie Lee
Judge LeRoy McCullough
Ms. Karen Murray
Ms. P. Diane Schneider
Judge Lori K. Smith
Mr. Travis Stearns
Justice Debra Stephens (phone)
Ms. Katherine Svoboda (phone)
Ms. Leah Taguba

Guests

Ms. Esperanza Barboa, *ATJ Board Liaison*
Mr. Jordan Butler
Ms. Cecile Garner
Ms. Elly Krumwiede, *Embedded Law Librarian*
Ms. Chanel Rhymes

Student Liaisons Present

Ms. Lia Baligod
Ms. Alyssa Garcia
Ms. Ester Garcia
Ms. Briana Ortega
Ms. Beverly Tsai

AOC Staff Present

Ms. Michelle Bellmer
Ms. Cynthia Delostrinos

CALL TO ORDER

The meeting was called to order at 9:00 a.m.

The November 30, 2018 and February 8, 2019 meeting minutes were approved.

CO-CHAIRS REPORT

2019 Symposium Update – Justice Mary Yu

The 2019 Supreme Court Symposium will be held on May 10, at the Temple of Justice. This year's topic will be on the use of Artificial Intelligence in the public arena. The Commission has been engaging in issues related to the use of AI, such as in the context of pretrial risk assessment tools, and how racial bias can be perpetuated through the use of these tools if we aren't asking the right questions and paying attention.

TVW will be streaming the symposium live and also providing a link of the recording so it can be watched later. Justice Yu is currently reviewing several articles related to AI, and if any commission member has come across articles that may be good to incorporate, please send them to Justice Yu.

ACTION:

- Coordinate with Commission members in Spokane to host a live streaming of the Symposium, possibly at Gonzaga School of Law. Professor Gillmer and Theresa Cronin will help organize.
- Coordinate with Commission members at UW to also host a live streaming. Connect with Lisa Castilleja.
- Create a Facebook event for the Symposium

Personnel Update

Justice Stephens and Judge Whitener excused themselves from participation in the discussion due to possible conflicts.

The Administrative Office of the Courts made the decision to terminate Chanel Rhymes, staff to the Minority and Justice Commission. Many Commission members felt that the termination went against the mission and the work of the Minority and Justice Commission, and expressed their concerns at the meeting.

Commission members wanted to better understand how they could voice their concerns to AOC leadership, and whether there was an opportunity to have Chanel reinstated. They asked about the AOC's policies around hiring people with criminal histories. They inquired into whether the issue was a systemic issue related to policies and practices dealing with people with criminal histories. Commission members were concerned about future staff and whether something like this could happen to the Commission again. Many projects were in progress and there was a concern about who would help move the projects forward in Chanel's absence.

Commission members asked questions about the Commission's role, and whether we still fit within the Administrative Office of the Courts. What happens when the work of the Minority and Justice Commission outgrows the AOC – when the Commission wants to progress but the rest of the system does not?

What is the role of the Commission's Workforce Diversity Committee as it relates to personnel issues? How can the WFD Committee have an influence around policies related to individuals who have criminal histories?

ACTION - The WFD Committee will coordinate the drafting of a letter to the State Court Administrator. They will also discuss systemic issues related to individuals with criminal histories working in/for the justice system.

June 14 Commission Meeting

The Commission meeting scheduled for June 14 will be held in Spokane in conjunction with the 20th Annual Access to Justice Conference: *Amplifying the Power of Community*, at the Spokane Convention Center. We will be meeting jointly with the Access to Justice Board from 10:00 am – 12:00 pm. Members are encouraged to sign up for the conference, however, the Commission cannot pay for conference registration. We can only cover the flight/travel costs to attend the meeting on Friday. Cost of registration for the conference is \$250.

ACTION - Cynthia will send out registration information and the flight request form.

STAFF REPORT

Jury Diversity Grant Update – Cynthia Delostrinos

The Commission submitted a grant application to the National Center for State Courts back in the Summer of 2018. The grants were meant to encourage states to engage with communities, particularly communities of color, to improve the perceptions of justice and the courts. The proposal made by the MJC focused on increasing diversity in juror turnout in Pierce County using community engagement strategies.

When receiving notice that the MJC's project was not accepted, Cynthia and Chris Gaddis pursued a different source of funding through the Washington Pattern Jury Instructions Committee. Cynthia and Chris will be presenting to the WPIC Committee on April 6, to discuss possible funding from their committee for this project.

LFO Grant Update – Michelle Bellmer

The LFO Stakeholder Consortium is working on surveys that will look at LFO practices across the state, from the perspectives of judges, legal aid attorneys, prosecutors, and defense attorneys. They are also looking at surveying a select number of courts to map out the cost to courts when collecting LFOs. Staff are also looking into possible future funding sources, as the grant we received from the Department of Justice will be ending this year in September 2019.

Shout Outs

- **Judge Helen Whitener** – SU Law Woman of the Year Award
- **Judge Veronica Alicea-Galvan** – SU Latinx Law Student Association's Joaquin Avila Award
- **Jeffrey Beaver** – University of Oregon School of Law's Frohnmayer Award for Public Service
- **Kitara Johnson** – Top 20 Women in Business

LAW STUDENT LIAISON PROJECT UPDATE

Gonzaga University - *Filling the Gap – Getting to Law School as a Minority Student*

The Gonzaga Law Student Liaisons have been organizing a 4 part series called "Bridging the Gavel Gap," which is aimed at encouraging undergrads, particularly those who come from groups that are historically underrepresented in the legal profession, to go to law school.

So far, they have held 3 events, with their last event taking place on April 25. The last event will focus on the law school admissions process and applying for scholarships and grants.

University of Washington - *Amplifying Stories: Community Perceptions of the Judicial System/Process*

The UW Law Student Liaisons produced a graphic recording that shows a community perspective of the justice system. Stacy Nguyen is the graphic reporting artist they are contracting with. Initially they had planned to host two focus groups, but because of an unexpected challenge in participation, they were only able to host one discussion group on March 14. During the outreach/recruitment process, the students learned that while many were willing to share their views of the justice system in a more informal setting (talking with the students about the event), they were not interested in having their views reported or recorded.

The students will be presenting the graphic recording at an unveiling event on May 15 at the UW Othello Commons from 6pm-7:30pm. They are currently working on producing a digital copy of the graphic recording.

Seattle University – *LFOS: Tackling the Modern Day Debtor’s Prison*

The SU Law Student Liaisons produced an informational video series on LFOs. They found that not a lot of classmates knew what LFOs were, and the liaisons wanted to take an opportunity to educate. The students completed the first video, which was an interview with Judge Linda Coburn. The video was shown at the meeting. They are hoping to do their next video with Nick Allen about filing motions for LFO relief, as well as featuring students who recently went through the new LFO Clinic at SU Law. They hope to have their project completed in June.

COMMITTEE REPORTS

LGBTQ Judicial Officer Directory – Judge Johanna Bender

Judge Bender presented a proposal from QLaw asking for the Minority and Justice Commission's help with sending out the LGBTQ Judicial Officer Directory survey. The survey and Directory are similar to the Commission's efforts in putting together the Judges of Color Directory back in 2017. The survey invites Judicial Officers to identify their sexual orientation and gender identity. They can also identify whether they want their information shared publicly in the Directory or if they'd prefer to keep it confidential and just housed with QLaw.

The co-chairs and Commission were unanimously supportive of the creation of the Directory and asked whether the Commission could be listed as a co-sponsor. QLaw welcomed the co-sponsorship.

Jury Diversity Task Force – Judge Johanna Bender

The Jury Diversity Task Force recently shared the Preliminary Report of findings after 12 months of meeting as a Task Force to look at ways that the state courts can improve diversity on juries. The Commission members were encouraged to take a look at the Preliminary Report and share it with their networks. The Task Force was chaired by Judge Steve Rosen, and now that the Preliminary Report is completed, the findings are in the Commission's hands to develop next steps.

➤ *Update on SB 5162 – Clarifying qualifications for jury service*

Senator Manka Dinghra helped spearhead the passage of SB 5162, which clarifies the circumstances of when someone with a felony on their record can serve on a jury. Before this bill, the language was unclear. The bill made it more clear that a person who has a felony record can serve on a jury unless they are still under DOC custody. They do not need to have paid off their LFOs in full in order to be eligible to serve on a jury.

ACTION – Judge Diaz and Judge Bender will spearhead efforts on behalf of the Commission to determine next steps on what to do with the Jury Diversity Task Force recommendations. Theresa Cronin volunteered to help mobilize efforts in Spokane when needed. At some point we should produce a press release about the Preliminary Report findings.

Outreach Committee – Lisa Castilleja and Judge Michael Diaz

➤ ***Annual Poster and Report***

Each year, the Commission selects artwork that represents the mission of the Commission and is created by an artist that who is from a minority background. The artwork is used as the Commission’s annual poster and is also used as the cover of the Commission’s Annual Report. This year, the Outreach Committee recommended Anthony Gipe’s “Diversity” artwork. The Commission members approved.

➤ ***Dignity, Fairness, and Respect PSA***

Judge Diaz gave an update on the PSA that was a partnership project between the Commissions, TVW, and the BJA Public Trust and Confidence Committee. The Commission recommended that the PSA include two judges, Justice Gonzalez (who was already confirmed), and Judge Whitener.

Juvenile Justice Committee – Annie Lee and Asst. Chief Adrian Diaz

➤ ***SB 5290 – Concerning Valid Court Orders***

SB 5290 passed. Washington State was an outlier in the U.S. with its use of detention for youth accused of non-criminal status offenses (i.e. truancy, ARY, etc.), this bill phases out the use of detention for status offenses. The Commission took a stance of support for SB 5290, and was active in the efforts to help get the bill passed. This position was contrary to that of the Superior Court Judges’ Association. The Commission has been on the forefront of issues related to juvenile justice, advocating for alternatives to incarceration and detention for youth, recognizing that contact with the justice system and especially detention is a traumatic experience for young people, and recognizing the racial disproportionality that exists within the juvenile courts. The Commission will be working on better coordination around legislative efforts and bills that would have a substantial impact on people of color in the justice system. The Co-chairs urged Commission members to weigh in (even if they are not in agreement with one another) when there is an ask for votes on whether to support a bill, or not, during the legislature.

➤ ***Fall Judicial Conference – Equal Justice Overview: Youth, the Eight Amendment & the Law***

The Juvenile Justice Committee’s proposal for a training at the Fall Conference was accepted. The training will be on the 8th amendment and talk about when should judges consider youth and youthfulness in decision making. The session will provide an essential foundation to help judges understand and apply relevant constitutional legal standards. Jeff Robinson from the ACLU will be the keynote speaker.

Education Committee – Justice Debra Stephens and Judge Lori K. Smith

➤ The following are programs that the Commission has/will be sponsoring:

- **Appellate Judges’ Spring Program:** March 24 – 27, 2019, Alberbrook, Union, WA
 - *Judicial Writing in the 21st Century: Culturally Informed Opinions in an Increasingly Diverse Society*
- **County Clerk’s Spring Program:** March 17th – 19th, Leavenworth, WA
 - *Poverty Simulation*

- **Annual Judicial Conference:** September 22 – 25, 2019, The Heathman Lodge, Vancouver, WA
 - *Surviving the Big Waive: a look at how courts can and must respond to defendants' legal right to readdress legal financial obligations (LFOs) – MJC*
 - *Equal Justice Overview: Youth, the Eighth Amendment & the Law – MJC and GJC*
 - *Pre-Trial Justice: Bail, Risk Assessments, and Reforms – MJC and GJC*
 - *Crisis of Missing and Murdered Indigenous Women – MJC, GJC, and TSCC*

Workforce Diversity Committee – Judge Veronica Alicea-Galván & Judge Bonnie Glenn

- Judge Galvan and Judge Glenn will be the representatives from Washington to attend the National Consortium on Race and Ethnic Fairness in the Courts Conference. The Conference will be held in Miami, FL.
- The Committee is still considering the possibility of hosting the National Consortium on Race and Ethnic Fairness in the Courts conference next year.

Tribal State Court Consortium – Judge Lori K. Smith

The Tribal State Court Consortium recently hired a new staff person to TSCC, Kathryn Akeah. Kathryn comes to us from the Office of Minority and Women Owned Businesses. She has also worked at the Department of Health and currently works as a part-time health policy consultant with various tribes across Washington.

There will be no Regional Meeting of the TSCC this year. The TSCC will have its annual meeting at the Fall Judicial Conference. They are also planning an education session for Fall Conference that will be focusing on the epidemic of Missing and Murdered Indigenous Women. There was a request to bring the “Tribal Justice” movie screening to Spokane.



STATE OF WASHINGTON
GOVERNOR'S INTERAGENCY COUNCIL ON HEALTH DISPARITIES

Washington State Board of Health

PO Box 47990 • Olympia, Washington 98504-7990

Hon. Mary Fairhurst, Chief Justice
Washington State Supreme Court
PO Box 40929
Olympia WA 98504-0929

Hon. Mary Yu, Co-Chair
Hon. G. Helen Whitener, Co-Chair
Washington State Minority and Justice Commission
PO Box 41170
Olympia WA 98504-1170

Dear Chief Justice Fairhurst, Justice Yu, and Judge Whitener:

I write in my capacity as Chair of the Governor's Interagency Council on Health Disparities (Council). I am the Senior Medical Director at the Odessa Brown Children's Clinic and co-founder of the Washington Medical-Legal Partnership, which is a collaborative of four healthcare sites and the Northwest Justice Project. The Partnership's mission is to promote better health outcomes by addressing the legal and social needs of patients and families.

The Council works to promote equity in state government and convenes an Interagency Equity Workgroup to facilitate the sharing of equity-related best practices across executive branch agencies. In recent years, the Workgroup has benefitted from voluntary judicial branch participation from the Office of Civil Legal Aid and representatives associated with the Race Equity and Justice Initiative hosted and supported at the non-profit organization, JustLead Washington. Through these efforts, we've come to realize there is much room for collaboration across the executive and judicial branches to help promote equity in state government.

The 2019-2021 operating budget included funding for the Council to convene and staff an Office of Equity Task Force. The Task Force is charged with developing a proposal for creating a Washington State Office of Equity, with the goal of promoting access to equitable opportunities and resources to reduce disparities and improve outcomes across all sectors of government. While the work will focus primarily around executive branch efforts, we recognize that issues of equity transcend governmental structures and relationships. We appreciate that our judicial branch colleagues are equally committed and are actively working to identify and develop strategies to achieve fair and equitable administration of justice in our state.

We think that the Task Force offers an opportunity to share our collective wisdom around these issues and move away from traditional siloed approaches which can drive uncoordinated, duplicative, and often inconsistent strategies and outcomes. For these reasons, we respectfully invite the Supreme Court and the Minority and Justice Commission, and other judicial branch entities to participate in the Task Force discussions.

The Task Force, which held its first meeting on August 19, 2019 at The Evergreen State College Tacoma campus, has a preliminary report due December 15, 2019, and a final report due on July 1, 2020. The final report must include a proposal for a Washington State Office of Equity, including a mission and vision for the office, a definition of equity, an organizational structure, responsibilities for the office, mechanisms for engagement and accountability, and a proposal for staffing and budget.

Members of the Task Force are outlined in the budget proviso and include representatives from nine agencies, boards, and commissions that work with specific communities—the Office of Minority and Women’s Business Enterprises; Commissions on Hispanic, African American, and Asian Pacific American Affairs; Women’s Commission; Human Rights Commission; Governor’s Office of Indian Affairs; Governor’s Committee on Disability Issues and Employment; and the Governor’s Interagency Council on Health Disparities. The Governor also appointed representatives from his office, the LGBTQ+ community, and the State DEI Council. Four legislators also serve on the Task Force.

All meetings are open to the public and we encourage active participation from community members and other interested parties. We would very much appreciate having judicial branch representatives attend and participate in our meetings to hear thoughts on how the executive and judicial branch can better coordinate and learn from each other as we move forward with this work.

You can find more information about the Task Force on the [Council’s website](#) and a recording of the August 19, 2019 Task Force meeting is available on TVW ([Part 1](#), [Part 2](#), [Part 3](#)). The next meeting will be on September 16 in Clark County. More information will be posted on the Council’s website as it becomes available. If you have any questions or would like to discuss this further, please reach out to Christy Hoff, Council Manager, at 360-688-4699 or Christy.Hoff@sboh.wa.gov.

I look forward to continuing to explore potential partnership in ways that will result in more fair and equitable outcomes for all of Washington’s diverse communities.

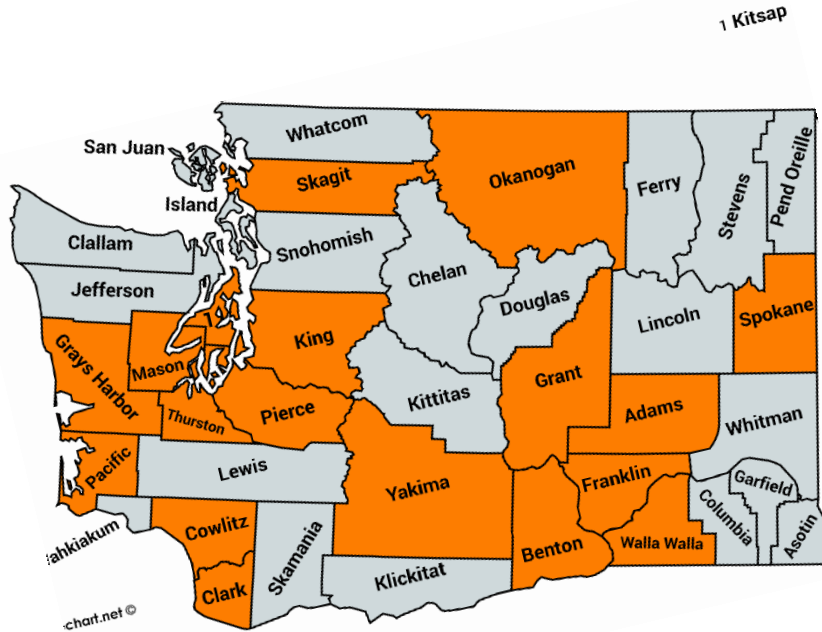
Sincerely,



Benjamin Danielson
Chair



Immigration Enforcement at Washington State Courthouses



Summary of Preliminary Dataⁱ

Key: Incidents of ICE or CBP activity in and around courthouses, as reported to the authors. Preliminary data indicates that the highest level of activity is concentrated in Grant, Adams and Clark counties.

Background on Immigration Enforcement Activities at Washington State Courthouses

Over the past two years, advocates and community members in Washington State and throughout the country have seen a sharp increase in incidents in which federal immigration officials conduct arrests for alleged civil immigration violations at state or local courthouses. While this tactic is not new, its use has reached levels not seen prior to 2017, when the Trump Administration issued new enforcement policies.

In 2018, Immigration and Customs Enforcement (ICE) also issued a formal policyⁱⁱ in which it makes clear that it plans to continue to conduct arrests at courthouses, which it has refused to designate as “sensitive locations.” Agents with ICE and Customs and Border Protection (CBP) are now regularly conducting arrests for alleged immigration violations in and around numerous Washington courthouses, significantly interfering with people’s ability to access justice in our courts.

Contrary to statements by some elected officials, these arrests are not limited to individuals who have previously been deported or who have been convicted of felony offenses. Rather, it is now a reality in many areas of our state that community members, many of whom have no or minor criminal history, who

need to attend state court proceedings or conduct business at the courthouse expect that they may be questioned or arrested by immigration officials as a consequence of seeking justice.

Typical arrests by ICE and CBP involve:

- Targeting Latino community members based on appearance or use of Spanish language;
- Targeting people with no prior deportations or criminal history, or only pending charges or civil traffic or vehicle infractions;
- Surveillance of court hearings, then either pursuit of community members or communication with other officers outside who apprehend people after they leave the courtroom or courthouse;
- Kidnapping-style tactics, including use of plainclothes officers who refuse to identify themselves and drag community members into unmarked vehicles outside the courthouse;
- Excessive force, verbal harassment and or intimidation;
- Failure to display a warrant showing probable cause of deportability or criminal activity;
- Collaboration with local officials, including prosecutors, law enforcement & court security staff.

Negative Impacts: Civil arrests of this type are gravely problematic because they:

- **Violate the constitutional right of access to the courts** and the well-established **common law privilege against civil arrests** when attending court proceedings;
- Create **unequal access to justice** for anyone who “appears” to be a non-U.S. citizen, **which disproportionately affects Latino community members**;
- **Violate the right of accused persons to contest criminal charges** by effectively preventing them from appearing in court;
- **Make community members afraid to come to the courthouse**, and their fear is exacerbated by reports that **immigration officials are using excessive force** during their arrests;
- **Undermine public trust in law enforcement** and thus **compromise public safety**, including protection from and redress for gender-based violence and other crimes;
- **Discourage civil court claimants** seeking protection from eviction, discrimination & consumer abuses
- **Separate families** and create additional **financial strain** on working families;
- **Disrupt** the work and mission of **public defender offices**;
- **Complicate** and frustrate the work of **prosecuting attorney offices**;
- **Complicate** the protocol and duties of **courthouse staff**;
- Ultimately **undermine the mission, administration and integrity of the entire criminal and civil justice system by preventing parties and witnesses from appearing in court.**

ⁱ The information provided is based on government records and eye-witness accounts of community members, their families, advocates and attorneys, as reported to the contributing organizations from 2017 to 2019. Contributors include: Washington Immigrant Solidarity Network, Northwest Immigrant Rights Project, Washington Defender Association, Central Washington Justice for Our Neighbors, Northwest Justice Project, ACLU of Washington, Asian Pacific Institute on Gender-Based Violence. Information-gathering is ongoing, but the information in this report can serve as an initial sketch of the problem. It is important to note that the actual level of enforcement activity is likely higher than has been reported.

ⁱⁱ See Directive Number 11072.1: Civil Immigration Enforcement Actions Inside Courthouses (Jan. 10, 2018), at <https://www.ice.gov/sites/default/files/documents/Document/2018/ciEnforcementActionsCourthouses.pdf>.

Proposed comment to RPC 8.4

RPC 8.4 – MISCONDUCT

It is professional misconduct for a lawyer to: ...

(d) engage in conduct that is prejudicial to the administration of justice...

Proposed comment:

Paragraph (d) of this Rule includes a lawyer's effort to report an individual to immigration authorities and to assist in civil immigration enforcement. Issues involving immigration and citizenship status carry a significant danger of interfering with the proper functioning of the justice system. *See Salas v. Hi-tech Erectors*, 168 Wn.2d 664, 230 P.3d 583 (2010).

Beginning in 2017, there has been an increase in civil immigration arrests in and around courthouses across Washington. These arrests impede the fundamental mission of courts, which is to ensure due process and access to justice for everyone, regardless of immigration status. The ability of courts to function relies on individuals who voluntarily appear to participate and cooperate in the process of justice. Immigration enforcement operations impact court proceedings by deterring individuals, with and without lawful status, from seeking court services and erodes trust in our justice system.

Therefore, assisting in civil immigration enforcement operations by reporting individuals to immigration authorities, or by sharing personal information, including but not limited to, home address, court hearing dates, citizenship or immigration status or place of birth, absent a court order, to facilitate civil immigration arrests is improper conduct that is prejudicial to the administration of justice and is thus in violation of this Rule.

DRAFT – September 3, 2019

PROPOSED WASHINGTON COURT RULE

1. No person shall be subject to civil arrest without a judicial arrest warrant or judicial order for arrest while the person is inside a courthouse of this state in connection with a judicial proceeding or other business with the court.
2. No person shall be subject to civil arrest without a judicial arrest warrant or judicial order for arrest while the traveling to a courthouse of this state for the purpose of participating in any judicial proceeding or other business with the court, or while traveling to return home or to employment after participating in any judicial proceeding or business with the court. Participating in a judicial proceeding includes, but is not limited to, participating as a party, witness, interpreter, attorney or lay advocate. Business with the court includes, but is not limited to, doing business with, responding to, or seeking information from the office of the court clerk, financial/collections clerk, judicial administrator, courthouse facilitator, family law facilitator, court interpreter, and other court and clerk employees.
3. Washington courts may issue writs or other court orders necessary to enforce this court rule.

PROPOSED PROTOCOLS CONCERNING CIVIL ARRESTS IN AND AROUND WASHINGTON COURTHOUSES¹

Section 1: Purpose of the Proposed Protocols

Beginning in early 2017, courthouses across Washington began to see an increase in immigration enforcement actions by Federal Immigration Authorities (Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP)). 2019 has seen a significant upsurge in these activities. Arrests of individuals accessing or attempting to access courts, or accompanying someone trying to do so, has now been documented in 18 Washington counties. These actions target people appearing for scheduled hearings in criminal and civil cases, as well as people coming to pay traffic fines.²

Federal immigration enforcement operations at courthouses have consequences for all community members. It interferes with the ability of noncitizens and their families to access justice, undermines the mission of Washington courts and compromises public safety. Victims of crime are afraid to seek protection, report crime, cooperate with prosecutions or file family law cases for fear of being arrested or having family members detained. Defendants must decide whether to risk arrest and deportation by Federal Immigration Authorities when coming to court to answer and defend against state or local criminal charges. **The accompanying fact sheet provides additional details of immigration enforcement activity at Washington courthouses and its impacts.**³

The Keep Washington Working Act (Senate Bill 5497) became law May 21, 2019. It requires the Attorney General's Office (AGO) to develop model policies limiting immigration enforcement in courthouses to ensure safe access for all Washington residents regardless of immigration or citizenship status. Courts will be required to adopt the AGO's policies or provide their own alternative policies. The AGO must publish model policies by May 21, 2020.⁴ The new law also prohibits local law enforcement agencies from collaborating with federal immigration

¹ These protocols are proposed by a statewide coalition of community advocates and legal services organizations. The list of organizational proponents include: Washington Immigrant Solidarity Network, Central Washington Justice for Our Neighbors, Northwest Justice Project, Northwest Immigrant Rights Project, Asian Pacific Institute on Gender-Based Violence, ACLU of Washington, Colectiva Legal del Pueblo, Washington State Coalition Against Domestic Violence and Washington Defender Association. To contact the coalition of proponents please email Ann Benson at abenson@defensenet.org.

² See <https://crosscut.com/2019/04/more-immigrants-report-arrests-wa-courthouses-despite-outcry/>; <https://www.spokesman.com/stories/2019/apr/28/an-immigrants-story-music-teacher-detained-by-bord/>; <https://www.theolympian.com/news/local/article232346022.html>.

³ Fact sheet available at: <https://defensenet.org/wp-content/uploads/2019/08/Summary-2-pgr-Immig-Enforement-@-WA-Ct-Houses-AB-FINAL-0829019.pdf>

⁴ See Section 4, Keep Washington Working, SB 5497 (2019).

authorities on civil immigration enforcement actions such as apprehending and removing people for civil immigration violations.⁵

Numerous jurisdictions are seeking to take action sooner by putting interim policies in place to ensure that their courts are currently open and accessible to the public, free of restrictions that would otherwise impede the proper administration of justice, and to enforce order over the conduct of judicial proceedings. Jurisdictions that adopt interim policies now, can review and amend those policies as needed once the AGO's model policies are issued. These proposed protocols are consistent with the provisions of Keep Washington Working.

These proposed protocols are intended to assist Washington courts in their efforts to ensure they are open and accessible to the public, free of restrictions that would otherwise impede the proper administration of justice, and to enforce order over the conduct of judicial proceedings. The protocols seek to make Washington courts open, safe and neutral places where litigants, witnesses, jurors, staff and others can participate in court proceedings and conduct other business in the courthouse free from threats to their security or freedom.

Courts are encouraged to engage with justice system stakeholders, community members and advocates in drafting policies to make their courts open, safe and neutral places where litigants, witnesses, jurors, staff and others can participate in court proceedings and conduct other business in our state's courthouses free from threats to their security or freedom. Courts are also encouraged to make their policies available to the public and provide them to federal immigration authorities.

Section 2: Scope

These guidelines shall apply to all Courthouse Facilities.

Section 3: Definitions

1. "Courthouse Facilities" means the courthouse and adjacent property, including but not limited to adjacent sidewalks, parking areas, grassy areas, plazas, and commercial spaces within courthouse property.
2. "Court Order" and "Judicial Warrant" include only those orders and warrants for arrest signed by a judge or magistrate authorized under Article III of the United States Constitution or Article IV of the Washington Constitution or otherwise authorized under the Revised Code of Washington.⁶ Such orders and warrants do not include civil immigration warrants or other administrative orders, warrants or subpoenas that are not signed by a judge or magistrate as defined in this section. Civil immigration warrant means any warrant for a violation of federal civil immigration law issued by a federal immigration authority and includes, but is not limited to, administrative warrants issued on forms I-200 or I-203, or their

⁵ See Sec. 6 for a full list of law enforcement prohibitions under Keep Washington Working, SB 5497 (2019).

⁶ This definition is consistent with Sec. 2(2) of the Keep Washington Working Act, SB 5497 (2019).

successors, and civil immigration warrants entered in the national crime information center database.⁷

3. "Courthouse Security Personnel" means law enforcement agencies and officers assigned to protect Courthouse Facilities or to transport in-custody individuals to and from court proceedings and private agents contracted to provide security at Courthouse Facilities. All other law enforcement are referred to here as "outside law enforcement."
4. "Courthouse Staff" means any city or county employees assigned to perform duties in Courthouse Facilities, and Courthouse Security Personnel.
5. "Federal Immigration Authority" means any officer, employee, or person otherwise paid by or acting as an agent of the United States department of homeland security including but not limited to its sub-agencies, immigration and customs enforcement (ICE) and customs and border protection (CBP), and any present or future divisions thereof, charged with immigration enforcement.⁸
6. "Law Enforcement Action" includes but is not limited to observation of court proceedings by Federal Immigration Authorities in their official capacity.
7. "Restrict" and "Hinder" shall include, but not be limited to stop, detain, hold, question, interrogate, arrest, or delay individuals in or on Courthouse Facilities.

Section 4: Arrests of Individuals on or in Courthouse Facilities

OPTION A	OPTION B
<ol style="list-style-type: none"> 1. All on-duty local, state and federal law enforcement agents and officials who come to the courthouse shall, upon entering the courthouse, present and display appropriate badge/credentials or other identifying documents to designated Courthouse Security Personnel. 2. No person shall be subject to arrest, nor have his or her freedom restricted or in any way hindered while present in or on Courthouse Facilities, except (a) by lawful court order or judicial warrant, (b) when it is necessary to secure the immediate safety of judges, courthouse staff or the public, or (c) where circumstances otherwise permit warrantless arrest in accordance with RCW 10.31. 3. Any outside law enforcement officer who comes to the Courthouse Facilities to 	<ol style="list-style-type: none"> 1. Federal Immigration Authorities who come to the courthouse shall, upon entering Courthouse Facilities, present and display appropriate badge/credentials or other identifying documents to designated Courthouse Security Personnel. 2. Federal Immigration Authorities shall not arrest or in any way restrict or hinder the freedom of any individual in or on Courthouse Facilities, except (a) by court order or judicial warrant as defined in this policy, (b) when it is necessary to secure the immediate safety of judges, Courthouse Staff or the public. 3. Federal Immigration Authorities who come to Courthouse Facilities to make an arrest must, prior to making the arrest, present courthouse security personnel with

⁷ This definition is consistent with Sec. 2(1) of the Keep Washington Working Act, SB 5497 (2019).

⁸ This definition is consistent with Sec. 2(3) of the Keep Washington Working Act, SB 5497 (2019).

<p>make an arrest must, prior to making the arrest, present courthouse security personnel with a copy of a court order or judicial warrant authorizing the arrest.</p> <p>4. Courthouse Security Personnel must present the Presiding Judicial Officer with the court order or judicial warrant authorizing the arrest and the judicial officer shall review the order or warrant to confirm compliance with these protocols prior to any arrest taking place.</p> <p>5. No firearms or other weapons shall be brought into Courthouse Facilities, except weapons used by Courthouse Security Personnel. The Court shall provide storage lockers for outside law enforcement officers' weapons. With prior approval of courthouse security personnel and in concurrence with the Court, outside law enforcement officers may be permitted to carry firearms into Courthouse Facilities when circumstances warrant.</p>	<p>a copy of a court order or judicial warrant authorizing the arrest.</p> <p>4. Designated Courthouse Security Personnel shall present the Presiding Judicial Officer with the court order or judicial warrant and the judicial officer shall review the order or warrant to confirm compliance with these protocols prior to any arrest taking place.</p> <p>5. Designated Courthouse Security Personnel shall not allow Federal Immigration Authorities to bring firearms into or onto the Courthouse Facilities unless the officers are entering the Courthouse Facilities to make an arrest pursuant to a court order for arrest or judicial arrest warrant. The Court shall provide lockers for Federal Immigration Authorities' weapons.</p>
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Section 5: Alternatives to Court Appearances

Where feasible and permitted by court rule or law, at the request of a party, the Court shall minimize nonessential in-person court appearances, and shall reduce the frequency with which parties are required to appear. The Court shall minimize appearances by:

- a. Using technology to allow for remote appearances by phone or, if available, video or other electronic media;
- b. Promoting the use of remote audio and video services for hearings, without inquiring as to whether the request for remote appearance is related to immigration status; and
- c. Permitting appearances through an attorney in lieu of requiring a party's presence.

Section 6: Information Sharing and Collecting

1. Information regarding an individual's citizenship or immigration status and place of birth is personal, non-public information.
2. Unless necessary to perform their official duties or required by law, Court Staff shall not inquire into the citizenship or immigration status or place of birth of individuals, and shall not collect or maintain such personal, non-public information.

3. Unless necessary to perform their official duties or required by law, Court Staff shall not provide requestors with such personal, non-public information about an individual.
4. The Court clerk shall make available and post in conspicuous locations know-your-rights materials provided by the Washington Immigrant Solidarity Network, the Northwest Immigrant Rights Project (NWIRP) and/or other immigrant rights organizations, regarding immigration enforcement that lists immigration resources, including but not limited to legal resources.

Section 7: Reporting Law Enforcement Actions at Courthouse Facilities by Immigration Enforcement Officers

The public may, and Court Staff shall, make a report to the Court Clerk for each law enforcement action taken by Federal Immigration Authorities to restrict or hinder individuals in or on Courthouse Facilities.⁹ Reports by Court Staff shall, to the extent possible, include the date, time and location of the action, the identity of the Federal Immigration Authorities and their associated agency (ICE or CBP), and a description of the event. Reports by Court Staff shall not include personal identifying information concerning the individuals who are the target of the law enforcement action, and to the extent such individuals are identified, they shall be identified only by the initials of their first and last names. The Court Clerk shall maintain a record of all such reports.

⁹ Please contact the Ann Benson of the Washington Defender Association for sample reporting forms: abenson@defensenet.org.



Minority and Justice Commission

Memorandum on State Action Concerning ICE Enforcement at or Around Courthouses

Roberto White
8/30/2019

Introduction:

ICE policy designates “sensitive locations” where ICE agents are prohibited from undertaking law enforcement actions unless extreme circumstances exist. Sensitive locations include: schools, hospitals, places of worship, weddings, funerals, and public demonstrations.¹ Courthouses are notably absent from the list of sensitive locations. ICE contends that with the increasing prominence of sanctuary city laws and the refusal of local law enforcement to detain undocumented individuals for the purpose of transferring them to ICE custody, courthouses are the only place where ICE enforcement can take place safely. This is due to the existing security apparatus in courthouses that ensure detainees will be unarmed and unlikely to threaten agents.

However, the threat of ICE enforcement at or around courthouses raises significant access to justice concerns. Knowing that an appearance in court risks detention and deportation proceedings, immigration attorneys have observed undocumented immigrants avoiding appearances in criminal and civil courts. According to the U.S. Census Bureau American Community Survey, 986,515 (13.8%) people in Washington State are foreign born.² Of the foreign born population, 521,887 (52.9%) are not naturalized citizens. Regardless of immigration status, all people are entitled access to the criminal justice system – for example, common interactions at courthouses for undocumented people include paying tickets, receiving protection orders, and responding to criminal matters. However, on June 20, 2019, a Thurston County man appeared in court to address a DUI charge, and ICE officers detained him on the steps of the Thurston County Superior Courthouse and initiated deportation proceedings.³

¹ “FAQ on Sensitive Locations and Courthouse Arrests.” ICE, n.d. <https://www.ice.gov/ero/enforcement/sensitive-loc>.

² “U.S. Census Bureau, 2013-2017 American Community Survey 5-Year Estimates.” American FactFinder - Results, October 5, 2010. <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>.

³ Gentzler, Sara. “ICE Arrest at Thurston County Courthouse Begs the Question: What Does Sanctuary Mean?” theolympian. The Olympian, n.d. <https://www.theolympian.com/news/local/article232346022.html>.

From a legal perspective, undocumented people in Washington State should enjoy most of the same rights in state and federal courts as citizens. In practice, ICE enforcement at courthouses significantly compromises these rights. A common example arises in workers' rights lawsuits. Under the law, undocumented people can bring civil lawsuits against employers for wage theft, unsafe working conditions, or any other workers' rights violations. However, employers have been known to use the threat of ICE enforcement as a negotiating tool and as a means of protection from lawsuits, and the threat of immigration enforcement makes it prohibitively risky for many undocumented people to bring lawsuits.

In 2017, Chief Justice Fairhurst of the Washington Supreme Court joined other Chief Justices in petitioning then-ICE Chief John Kelly to designate courthouses as a sensitive location. In her letter, she wrote the following:⁴

“We have to be sure that people can come to court to be witnesses, to get protection orders, to appear. If they fail to appear and it's a criminal matter, then they have an additional problem. They need to know that the courts are safe and that they can access justice and receive due process.”

ICE officials did not directly respond to Chief Fairhurst's petition, but they did respond to a similar letter from the California Supreme Court, indicating that there would be no change in ICE policy regarding sensitive locations.

In response to ongoing immigration enforcement action at courthouses, multiple states have begun exploring avenues of reform. There are three general strategies that have been tried: (1) *judicial reform*, (2) *litigation*, and (3) *negotiation*.

⁴ Jones, Liz. “Should Courthouses Be Off Limits for Immigration Arrests in WA?” KUOW, October 25, 2018. <https://www.kuow.org/stories/should-courthouses-be-limits-immigration-arrests-wa>.

(1) Judicial Reform:

The primary case study for judicial reform involves the state of New York. According to the New York-based Immigrant Defense Project, there were 11 arrests at courthouses in 2016, and 178 arrests in 2018.⁵ This order-of-magnitude increase in courthouse enforcement is due to changes in internal ICE policy and an emboldened attitude from immigration enforcement agents. In response, the New York Office of Court Administration issued new rules in April of 2019 that significantly restricted ICE enforcement at all courthouses in the state (Attachment A).⁶ In particular, the new court rules prevent the enforcement of all administrative ICE warrants in New York courthouses. ICE typically uses administrative warrants to detain individuals, but unlike criminal warrants, an administrative warrant is not signed by a judge or any other independent factfinder – instead, administrative warrants are issued and reviewed internally by senior ICE agents. Enforcement of the new court rules restricts ICE from using one of their favored tools for avoiding judicial review.

To conduct immigration enforcement at a courthouse under the new court rules, ICE must now appear at New York courthouses in uniform with a criminal warrant for a specific individual. This specific aspect of the rule changes addresses two common concerns: plainclothes agents appearing in courtrooms and ICE detaining large groups of suspected undocumented individuals while knowing that the majority of those detained actually have legal status. In order to address the problem of court officers being unable to discern the legitimacy of a warrant or to make the distinction between an administrative and criminal warrant, the court rules call for the training of a designated court official to address all immigration enforcement

⁵ Gonzales, Richard. “No ICE Arrests In Courthouses Without Judicial Warrants, N.Y. Court Directive Says.” NPR. NPR, April 18, 2019. <https://www.npr.org/2019/04/17/714496186/new-york-courts-tell-ice-not-to-arrest-immigrants-in-courthouses-without-warrant>.

⁶ Unified Court System. “Protocol Governing Activities in Courthouses by Law Enforcement Agencies,” April 17, 2019. <https://www.immigrantdefenseproject.org/wp-content/uploads/OCA-ICE-Directive.pdf>.

warrants. Additionally, they created an assignment system for a rotating on-call judge that reviews all enforcement requests.

While the final action in New York ultimately came from the judicial branch, the push for judicial reform came in part from an earlier report commissioned by a coalition of more than 100 organizations.⁷ In addition, the New York legislature considered a bill in early 2019 that would have taken many of the same steps as the new court rules, but the bill stalled on the last day of the legislative session.⁸

(2) Litigation:

In Massachusetts, immigration advocacy groups and local district attorneys filed suit in 2019 in federal district court (*Ryan v ICE*) to block ICE enforcement at courthouses or in transit to or from a courthouse.⁹ This civil suit was brought under the Administrative Procedure Act, seeking to assert a common law privilege against civil arrests in courthouses – in particular, the suit seeks to invalidate a 2018 ICE policy directive on immigration enforcement in courthouses that outlines how agents should use courthouses as a venue for arrests.¹⁰ On June 20, 2019, the litigants were successful in securing a preliminary injunction against the objected-to ICE enforcement activities (Attachment B).¹¹ Judge Indira Talwani found that:

“Plaintiffs have standing to bring this suit, are likely to succeed on the merits of their APA claim as to those not in federal or state custody when they arrive, and are likely to suffer irreparable harm in the absence of preliminary relief, that the

⁷ “Safeguarding the Integrity of Our Courts” January 20, 2019. <https://www.immigrantdefenseproject.org/wp-content/uploads/Safeguarding-the-Integrity-of-Our-Courts-Final-Report.pdf>

⁸ Immigrant Defense Project. “New York State Legislature Fails to Deliver Justice for Immigrants In the Face of Escalating Threats from Immigration and Customs Enforcement (ICE),” June 20, 2019. <https://www.immigrantdefenseproject.org/wp-content/uploads/JOINT-STATEMENT-POCA.pdf>.

⁹ *Ryan vs. US Immigration and Customs Enforcement* (D. Mass. 2019, Civil Action No. 19-11003-IT)

¹⁰ Homan, Thomas. “Civil Immigration Enforcement Actions Inside Courthouses.” ICE, January 10, 2018. <https://www.ice.gov/sites/default/files/documents/Document/2018/ciEnforcementActionsCourthouses.pdf>.

¹¹ “*Ryan v ICE*,” June 20, 2019. <https://assets.documentcloud.org/documents/6163304/6-20-19-Ryan-v-ICE-Opinion.pdf>.

balance of equities tips in Plaintiffs' favor, and that an injunction is in the public interest, Plaintiffs' Motion for a Preliminary Injunction is ALLOWED."

The injunction made a distinction between civil and criminal arrests; it only applies to criminal warrants. The injunction covers parties, witness, and others on official business while they are going to, attending, or leaving courthouses. The case is ongoing and no final decision has been reached.

(3) Negotiation:

In April of 2019, the city of Philadelphia reached an agreement with local ICE to restrict immigration enforcement at courthouses. The agreement does not go as far as the Massachusetts or New York actions, which is perhaps why local ICE made a compromise from their national position on courthouse enforcement. The agreement requires plainclothes agents to present themselves to sheriffs at courthouses and indicate which building is their intended destination.¹² However, the agreement does not prevent the enforcement of administrative warrants, and it is constrained to the boundaries of the courthouse. Undocumented people in transit to or around courthouses are not protected under the agreement.

Throughout the country, there have been many other attempts to negotiate with ICE by senior court officials and judges. It is unclear why Philadelphia is the only place that ICE has been willing to compromise their hardline position. Perhaps it is a response to an incident that occurred about a week prior to the agreement, in which there was a highly publicized arrest in a Philadelphia courthouse. It is possible that ICE officials agreed to these regulations in order to

¹² Gammage, Jeff. "ICE to Cease Arrests in Philly Courthouses, Agree to New Rules of Conduct, Says Sheriff's Department." <https://www.inquirer.com>. The Philadelphia Inquirer, April 5, 2019. <https://www.inquirer.com/news/ice-immigration-immigrants-courts-arrests-sheriffs-department-20190405.html>.

avoid the type of litigation seen in Massachusetts, with the possibility of greater restrictions on their enforcement capabilities.

Washington State Activities:

In Washington State, Thurston County has taken recent steps to address ICE enforcement activities - in particular, in response to the arrest earlier this year of an undocumented immigrant on the steps of the Thurston County Superior Courthouse, a public meeting has been scheduled for September 5, 2019. Expected in attendance are prosecuting attorney Jon Tunheim, Sheriff John Snaza, presiding judge of the Superior Court Christine Schaller, presiding judge of the District Court Brett Buckley, director of public defense Patrick O'Connor, and all three county commissioners.¹³ The county is looking at two avenues of reform: a lawsuit similar to that of the Massachusetts case, and the recently passed Keep Washington Working Act. While the Keep Washington Working Act will prevent local law enforcement from cooperating with federal immigration enforcement, the effects of the bill on courthouse immigration enforcement are unclear.

Summary:

Of the three avenues of reform, negotiation seems to be the least viable model for other states. State officials and judges, including our own Chief Fairhurst, have unsuccessfully petitioned ICE to designate courthouses as sensitive locations. The Thurston County case study indicates that litigation may be an avenue of reform, but there is always the risk that courts will rule unfavorably. The preliminary injunction in Massachusetts' *Ryan vs. US Immigration and Customs Enforcement* case is promising, but the final result is yet to be determined. The judicial

¹³ Gentzler, Sara. "Thurston County and Courts Grapple with Issues Raised by ICE Arrest Outside Courthouse." theolympian. The Olympian, n.d. <https://www.theolympian.com/news/local/article233454737.html>.

reform path seems to be the most stable, and to my knowledge, no action has been taken by ICE to attempt to reverse the court rules. However, there are obviously difficulties from a political and administrative perspective that would need to be addressed for this type of action to take place in Washington State.

Regardless of the avenue of reform, it is worth reiterating that this is an important issue. The Thurston County arrest was not an anomaly, and thousands of people across the nation and in Washington State are unable to access court services. The climate of fear in immigrant communities is exacerbated by ICE enforcement at courthouses. Every day in America, undocumented people forego protection orders, refuse to testify as witnesses, and receive failure-to-appear warrants. The law can serve as both sword and shield, and now more than ever, our undocumented neighbors need a shield. Courthouses must be a place where everyone is entitled to justice, regardless of immigration status.

References:

- ¹ “FAQ on Sensitive Locations and Courthouse Arrests.” ICE, n.d. <https://www.ice.gov/ero/enforcement/sensitive-loc>.
- ² “U.S. Census Bureau, 2013-2017 American Community Survey 5-Year Estimates.” American FactFinder - Results, October 5, 2010. <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>.
- ³ Gentzler, Sara. “ICE Arrest at Thurston County Courthouse Begg the Question: What Does Sanctuary Mean?” theolympian. The Olympian, n.d. <https://www.theolympian.com/news/local/article232346022.html>.
- ⁴ Jones, Liz. “Should Courthouses Be Off Limits for Immigration Arrests in WA?” KUOW, October 25, 2018. <https://www.kuow.org/stories/should-courthouses-be-limits-immigration-arrests-wa>.
- ⁵ Gonzales, Richard. “No ICE Arrests In Courthouses Without Judicial Warrants, N.Y. Court Directive Says.” NPR. NPR, April 18, 2019. <https://www.npr.org/2019/04/17/714496186/new-york-courts-tell-ice-not-to-arrest-immigrants-in-courthouses-without-warrant>.
- ⁶ Unified Court System. “Protocol Governing Activities in Courthouses by Law Enforcement Agencies,” April 17, 2019. <https://www.immigrantdefenseproject.org/wp-content/uploads/OCA-ICE-Directive.pdf>.
- ⁷ “Safeguarding the Integrity of Our Courts” January 20, 2019. <https://www.immigrantdefenseproject.org/wp-content/uploads/Safeguarding-the-Integrity-of-Our-Courts-Final-Report.pdf>
- ⁸ Immigrant Defense Project. “New York State Legislature Fails to Deliver Justice for Immigrants In the Face of Escalating Threats from Immigration and Customs Enforcement (ICE),” June 20, 2019. <https://www.immigrantdefenseproject.org/wp-content/uploads/JOINT-STATEMENT-POCA.pdf>.
- ⁹ *Ryan vs. US Immigration and Customs Enforcement* (D. Mass. 2019, Civil Action No. 19-11003-IT)
- ¹⁰ Homan, Thomas. “Civil Immigration Enforcement Actions Inside Courthouses.” ICE, January 10, 2018. <https://www.ice.gov/sites/default/files/documents/Document/2018/ciEnforcementActionsCourthouses.pdf>.
- ¹¹ “Ryan v ICE,” June 20, 2019. <https://assets.documentcloud.org/documents/6163304/6-20-19-Ryan-v-ICE-Opinion.pdf>.
- ¹² Gammage, Jeff. “ICE to Cease Arrests in Philly Courthouses, Agree to New Rules of Conduct, Says Sheriff’s Department.” <https://www.inquirer.com>. The Philadelphia Inquirer, April 5, 2019. <https://www.inquirer.com/news/ice-immigration-immigrants-courts-arrests-sheriffs-department-20190405.html>.
- ¹³ Gentzler, Sara. “Thurston County and Courts Grapple with Issues Raised by ICE Arrest Outside Courthouse.” theolympian. The Olympian, n.d. <https://www.theolympian.com/news/local/article233454737.html>.

Attachment A - New York State Court Rule

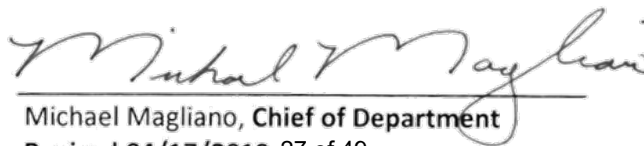


State of New York Unified Court System Office of the Chief Administrative Judge

DIRECTIVE

To: All Uniformed Personnel	Number: 1-2019 (Rev. from Memo issued 04/03/2019)
Subject: Protocol Governing Activities in Courthouses by Law Enforcement Agencies	Effective Date: April 17, 2019

1. It continues to be the policy of the Unified Court System (UCS) to permit law enforcement agencies to act in the pursuit of their official legal duties in New York State courthouses, provided that the conduct in no way disrupts or delays court operations or compromises public safety or court decorum.
2. The following protocol shall apply to representatives of law enforcement agencies who, while acting in their official capacity, enter a New York State courthouse to observe an individual or take an individual into custody but do not have a warrant issued by a judge of the Unified Court System authorizing them to do so:
 - Upon entry to a courthouse, law enforcement officials covered by this protocol shall identify themselves to uniformed UCS uniformed personnel and state their specific law enforcement purpose and the proposed enforcement action to be taken. Uniformed UCS personnel shall immediately transmit this information to an appropriate supervisor.
 - The uniformed supervisor shall inform the judge if a law enforcement agent covered by this protocol is present in the courthouse with the intent of arresting or otherwise taking into custody a party or other participant in a case before the judge. Email notification to the Department of Public Safety should be made as soon as possible.
 - Arrests by agents of U.S. Immigration and Customs Enforcement may be executed inside a New York State courthouse only pursuant to a judicial warrant or judicial order authorizing the arrest. A "judicial warrant" or "judicial order" is a warrant or order issued by a federal judge or federal magistrate judge. A UCS judge or court attorney shall review the warrant or order to confirm compliance with this requirement prior to any such arrest.
 - Absent leave of the court under extraordinary circumstances (e.g., extradition orders), no law enforcement action may be taken by a law enforcement agency in a courtroom.
 - UCS court security personnel shall file an Unusual Occurrence Report for each law enforcement action taken in a New York State courthouse by a law enforcement agency covered by this protocol. For purposes of this protocol, "law enforcement action" shall include observation of court proceedings by law enforcement agents acting in their official capacity.
 - UCS court security personnel remain responsible for ensuring public safety and decorum in the courthouse at all times. This policy and protocol is subject to modification based on changed circumstances.


Michael Magliano, Chief of Department

Revised 04/17/2019 27 of 49

Attachment B – Ryan v ICE Injunction

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

**MARIAN RYAN, in her official capacity as *
Middlesex County District Attorney; *
RACHAEL ROLLINS, in her official capacity *
as Suffolk County District Attorney; *
COMMITTEE FOR PUBLIC COUNSEL *
SERVICES; and the CHELSEA *
COLLABORATIVE, INC., ***

Plaintiffs, *

v. *

Civil Action No. 19-11003-IT

**U.S. IMMIGRATION AND CUSTOMS *
ENFORCEMENT; MATTHEW T. *
ALBENCE, in his official capacity as Acting *
Deputy Director of U.S. Immigration and *
Customs Enforcement and Senior Official *
Performing the Duties of the Director; TODD *
M. LYONS, in his official capacity as *
Immigration and Customs Enforcement, *
Enforcement and Removal Operations, Acting *
Field Office Director; U.S. DEPARTMENT *
OF HOMELAND SECURITY; and KEVIN *
McALEENAN, in his official capacity as *
Acting Secretary of United States Department *
of Homeland Security, ***

Defendants. *

**MEMORANDUM & ORDER
GRANTING PLAINTIFFS’ MOTION FOR
PRELIMINARY INJUNCTION**

June 20, 2019

TALWANI, D.J.

Middlesex County District Attorney Marian Ryan, Suffolk County District Attorney

Rachael Rollins, the Committee for Public Counsel Services (“CPCS”), and the Chelsea

Collaborative, Inc. (collectively “Plaintiffs”) bring this lawsuit against U.S. Immigration and Customs Enforcement (“ICE”), U.S. Department of Homeland Security (“DHS”), and several officials in their official capacity (collectively “Defendants”), challenging ICE’s policy and practice of conducting civil immigration arrests inside of state courthouses in Massachusetts. In Count 1 of the Complaint [1], Plaintiffs challenge ICE Directive No. 11072.1, entitled “Civil Immigration Actions Inside Courthouses” (the “Courthouse Civil Arrest Directive”), dated January 10, 2018, under the Administrative Procedure Act, 5 U.S.C. § 706(2)(C). The APA commands a reviewing court to “hold unlawful and set aside agency action . . . found to be . . . in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.” Plaintiffs contend that at the time the Immigration and Naturalization Act (“INA”) was enacted, all those appearing in court on official court business enjoyed a common law privilege against civil arrest. They argue that the INA does not explicitly extinguish this common law privilege and therefore must be interpreted to be constrained by it. Therefore, Plaintiffs contend, any ICE policies which permit civil courthouse arrests are in excess of the power granted by the INA and must be set aside by the court.

Defendants dispute the existence of a common law privilege against civil arrest in courthouses, and, alternatively, argue that any such privilege was superseded long before the codification of the current immigration scheme. Further, Defendants argue, if such a privilege existed in the past, Plaintiffs nonetheless lack both constitutional and prudential standing to bring this claim. Finally, the government contends that if Plaintiffs do have standing and the common law privilege exists, Congress nonetheless extinguished the privilege when it passed the INA.

Pending before the court is Plaintiffs’ Motion for a Preliminary Injunction [5], which seeks to preliminarily enjoin Defendants from implementing the Courthouse Civil Arrest Directive and from civilly arresting parties, witnesses, and others attending Massachusetts courthouses on official business while they are going to, attending, or leaving the courthouse. Finding that Plaintiffs have standing to bring this suit, are likely to succeed on the merits of their APA claim as to those not in federal or state custody when they arrive, and are likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in Plaintiffs’ favor, and that an injunction is in the public interest, Plaintiffs’ Motion for a Preliminary Injunction [5] is ALLOWED. Defendants are enjoined from implementing the Courthouse Civil Arrest Directive and from civilly arresting parties, witnesses, and others attending Massachusetts courthouses on official business while they are going to, attending, or leaving the courthouse. The court’s order does not limit ICE’s criminal arrests of such individuals or its civil arrests of individuals who are brought to Massachusetts courthouses while in state or federal custody.

I. Statutory and Regulatory Background

In 1952, Congress enacted the INA, governing, among other things, the presence of non-citizens (deemed “aliens” in the INA, 8 U.S.C. § 1101(a)(3)) in the United States and the associated procedures for removing those present in the United States without federal authorization. See INA, Pub. L. No. 82-414, 66 Stat. 163 (1952). “Aliens may be removed if they were inadmissible at the time of entry, have been convicted of certain crimes, or meet other criteria set by federal law.” Arizona v. United States, 567 U.S. 387, 396 (2012) (citing 8 U.S.C.

§ 1227); 8 U.S.C. § 1227 (a)(1)(B) (an alien present in the United States whose nonimmigrant visa has been revoked is deportable). “As a general rule, it is not a crime for a removable alien to remain present in the United States[.]” Arizona v. United States, 567 U.S. at 407, and removal proceedings are civil, not criminal, even where criminal activity underlies the reason for ... (see references for full text)

Minority and Justice Commission

2020 Meeting Dates

Teleconference Number: 1-877-820-7831

Passcode: 358515#

Date	Time	Location
Friday 01/31/20	9:00 AM – 12:00 PM	Location TBD
Friday 03/13/20	9:00 AM – 12:00 PM	AOC SeaTac Office 18000 International Blvd. Suite 1106 SeaTac, WA 98188
Friday 05/29/20	9:00 AM – 12:00 PM	Location TBD
Friday 07/31/20	9:00 AM – 12:00 PM	AOC SeaTac Office 18000 International Blvd. Suite 1106 SeaTac, WA 98188
Friday 09/18/20	9:00 AM – 12:00 PM	Location TBD
Friday 11/13/20	9:00 AM – 12:00 PM	AOC SeaTac Office 18000 International Blvd. Suite 1106 SeaTac, WA 98188

Please contact Cynthia Delostrinos at Cynthia.Delostrinos@Courts.wa.gov or

360-705-5327 if you have any questions.

Minority and Justice Commission

Law Student Liaisons

Seattle University School of Law

Denise Chen

Denise Chen graduated from the University of Washington in June 2019 with degrees in Law, Societies and Justice (LSJ) and Philosophy. She is currently a 1L at Seattle University School of Law, where she was admitted as one of two Scholars for Justice in the present entering class. She is interested in being a part of the Washington State Minority and Justice Commission, because her background as a Chinese first-generation law student, her experiences working with various community organizations, and her dedication to social justice in the community have primed her to identify unfair biases in the justice system and to engage in creative thinking to address those problems. From her education, she has learned about racial and ethnic groups who are ostracized or unfairly targeted by the justice system and who have no meaningful access to recourse. She is in a privileged position, as a law student, to amplify their voices and to bring their perspectives to the forums where those concerns can be addressed. She is passionate about addressing the racial disparities in the charging and sentencing of criminal cases, the inaccessibility of the courts to Non-English speakers, immigrants, non-citizens, or those who distrust the system, and the intergenerational effects that mass-incarceration and systemic injustice have on communities of color.

Beverly Tsai

Beverly Tsai is currently a 4L part-time student at SeattleU and will graduate December 2019. Originally from the midwest, she moved to Seattle after falling in love with the beautiful PNW landscape. She worked in the private sector for the first two years of law school, but left her position to pursue other opportunities. She is currently a Rule 9 intern at the Washington Appellate Project and also interns at the SeattleU law library. She is thrilled to serve as a student liaison and hopes to continue to find ways to participate after she graduates. In her free time, she likes to run, hike, and spend as much time outdoors as possible.

Cloie Chapman 3L

Gonzaga University School of Law

Dalia Pedro Trujillo

Dalia Pedro Trujillo is a second year law student at Gonzaga University School of Law. She grew up in Burien, Washington, which is in King County. Dalia attended Saint Martin's University, where she majored in history and political science. Before attending law school, she lived in Casper Wyoming where she was an admissions counselor. During her time in Wyoming, Dalia co-founded the Immigration Alliance of Casper, which engaged in advocacy work for the immigrant communities of Wyoming.

Hisrael Medina Carranza

I am a second year law student attending Gonzaga University School of Law. Although I was born in Southern California I now call a growing area of Northern Utah home. I am happily married and have

four beautiful children. My goal after law school is to help the voiceless and most vulnerable people in our communities.

Francis dela Cruz

Francis dela Cruz is a 3L at Gonzaga University School of Law. He received a B.A. from UC Santa Barbara in History and an M.A. in Asian Studies from Cal State University, Long Beach. As a graduate student, his research focused on post-colonial history, immigration, and diasporic communities. He has presented his work at various academic conferences and aims to eventually teach history or ethnic studies. As a law student, he is interested in practicing in civil rights and immigration. He interned at the United States District Court of Eastern Washington under Chief District Judge Rice in the summer of 2018. He is currently an intern at the City of Spokane Prosecutor's Office.

Rigo Garcia

I am a first generation college student and the first in my family to attend law school. I majored in criminal justice and graduated from Gonzaga University in 2008. I returned to school after spending a decade working with at-risk students at a non-profit in Wenatchee and at Wenatchee Valley College. I am the proud father to an awesome young lady named Ruby. In my free time, I enjoy watching movies, comedy shows, and sports. I am honored to be a part of the Washington State Minority and Justice Commission and hope my experiences and contributions help the Commission in positive ways.

University of Washington School of Law

Classes have not yet started for UW School of Law

Casey Yamasaki 3L

Sydney Bay 3L

Mary Ruffin 2L

Furhad Sultani 2L



The Washington State Supreme Court
cordially invites you to attend the

61st Washington Judicial Conference

September 22 - 25, 2019
Heathman Lodge - Vancouver, Washington



WASHINGTON
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61st Washington Judicial Conference **Education Planning Committee**

Justice Debra L. Stephens, (Chair), Supreme Court
Judge John O. Cooney, Superior Court Judges' Association
Judge Theresa B. Doyle, Superior Court Judges' Association
Chief Justice Mary E. Fairhurst, Supreme Court
Judge Gregory M. Gonzales, Court Education Committee
Judge Nathaniel B. Green, District and Municipal Court Judges' Association
Judge Robert E. Lawrence-Berrey, Court of Appeals
Mr. Dirk A. Marler, Administrative Office of the Courts
Ms. Dawn Marie Rubio, Administrative Office of the Courts
Chief Judge Cindy Smith, Tribal Courts
Judge N. Scott Stewart, District and Municipal Court Judges' Association
Judge Lisa Worswick, Court of Appeals

61st Washington Judicial Conference

September 22 - 25, 2019 ♦ Vancouver, Washington

Sunday, September 22

12:00 p.m.

Registration

12:00 p.m. – 1:30 p.m.

Tribal State Court Consortium Meeting and Lunch

Sponsored by the Tribal State Court Consortium (TSCC), the Gender and Justice and Minority and Justice Commissions, and the Court Improvement Program

1:45 p.m. – 2:00 p.m.

Welcome and Opening Comments

Chief Justice Mary E. Fairhurst, Washington State Supreme Court
Justice Debra L. Stephens, Washington State Supreme Court and Washington Judicial Conference Committee Chair
Mayor Anne McEnery-Ogle, City of Vancouver

2:00 p.m. – 5:30 p.m.

PLENARY: Writing in the 21st Century: Giving Voice to Law

Mr. Jonathan Shapiro, *Art of Telling Stories*

Judges write the narrative that reaffirms the Rule of Law in a free society – a society that is increasingly diverse and receives information in a variety of ways. Using video clips, interactive exercises, and legal opinions, this presentation explores how judges can deliver more readable, relevant, and culturally informed opinions to an increasingly diverse and technologically sophisticated society.

6:00 p.m.

No Host Bar and Hors d'Oeuvres

6:30 p.m.

Hosted Banquet

Keynote Speaker—Judge Xiomara Y. Torres, Multnomah County Circuit Court, Oregon

Sponsored by the Gender and Justice and Minority and Justice Commissions

Judge Torres will tell her story of escaping a 12-year civil war in El Salvador, crossing into the U.S., time spent in foster care, coming forward about being a victim of child abuse, becoming a U.S. citizen, her perseverance in obtaining a sociology degree and then her law degree, and ultimately becoming a judge.

Monday, September 23

8:30 a.m. – 10:00 a.m.

CHOICE SESSIONS:

The Crisis of Missing and Murdered Indigenous Women and Girls (MMIWG)

Ms. Annita Lucchesi, Executive Director, Sovereign Bodies Institute

Sponsored by the Gender and Justice and Minority and Justice Commissions, and the Tribal State Court Consortium

Learn about the crisis of missing and murdered indigenous women and girls in Washington State and what courts can do to be a part of the solution. Washington State is home to 29 different federally recognized Tribes, each with their own robust culture, tradition, and history. Additionally, urban areas are also home to people from hundreds of Tribes. Washington data has consistently shown that Native American people are disproportionately represented in the criminal justice system, juvenile justice system, and child welfare system. Native American women are disproportionately affected by domestic violence and sexual assault, and a recent report showed that Washington was one of the worst in the nation at solving cases of missing and murdered Native American women – a responsibility that falls within the justice system. Participants will look into what is currently being done, projects occurring across tribal nations, and the judicial practice of tribal courts.

Signed Language Interpreters in Washington: Preventing Illusory Justice for Deaf Parties

Judge Ida Chen, Court of Common Pleas, Philadelphia

Mr. Robert Lichtenberg, Administrative Office of the Courts

Ms. Carla Mathers, Esq.

Sponsored by the Interpreter Commission

The Deaf community is a linguistic and cultural minority group that experiences the legal system very differently. They often face barriers and challenges that frequently go unrecognized and unaddressed. Through lecture and small group discussions, this presentation will equip judicial officers with background on cultural and linguistic attributes of our Deaf communities, legal principles regarding communication accommodations, practical strategies to ensure equal access to justice for Deaf parties and participants, and reference materials for common courtroom challenges.

61st Washington Judicial Conference

September 22 - 25, 2019 ♦ Vancouver, Washington

TENTATIVE SCHEDULE OF EVENTS

Monday, September 23 (Continued)

CHOICE SESSIONS: (Continued)

Fast, Free, or Fabulous—Pick Two: Updating Your Legal Research Toolbox

Mr. Rob Mead, State Law Librarian

Legal research has changed dramatically over the past twenty years. The advent of the Internet has led to both more options and more chaos with a growing division in access to legal information between the Haves and Have Nots. This seminar will help bridge that gap by introducing new information sources and legal research techniques and reintroducing a few old sources and strategies that you may have forgotten. This will help increase your research speed, accuracy, and confidence without increasing your budget.

10:15 a.m. – 11:45 a.m.

PLENARY: Surviving the Big Waive: A Look at How Courts Can and Must Respond to Defendants' Rights to Readdress LFOs

Judge Linda W.Y. Coburn, Edmonds Municipal Court

Dr. Alexes Harris, University of Washington

Judge Kevin Hull, Kitsap County Superior Court

Judge Jeffrey Jahns, Kitsap County District Court

Judge David Keenan, King County Superior Court

Sponsored by the Minority and Justice Commission

How do we respond to an increasing number of requests to readdress LFOs? Learn what is required under the law and hear examples of how it can be done. Find out how the Kitsap bench managed hundreds of defendants on its Remittance and Reconsideration Day. Gain insights from individuals who have tried to exercise their legal rights but faced systemic challenges. Dr. Alexes Harris, author of "A Pound of Flesh: Monetary Sanctions as Punishment," will share her most recent research on LFOs across our state that could be hitting us in *waives*. Also learn about Seattle University School of Law's LFO Clinic and findings from an analysis of collection agency contracts with district courts.

12:00 noon – 1:15 p.m. Hosted Lunch

WSBA President & Nevin Award

Mr. William D. Pickett, WSBA President

Justice Gerry Alexander, Washington Supreme Court (retired)

Monday, September 23 (Continued)

1:30 p.m. – 4:15 p.m.

Joint Business Meeting and Presentations

Chief Justice Mary E. Fairhurst, Washington State Supreme Court

Rethinking How We Deliver Justice: Adjusting to the Expectations Of a Self-Service Society

Mr. Michael Buenger, National Center for State Courts

PLENARY: Emotion, Judges & Justice: Ethically Navigating Your Passions & the Law

Judge Todd Taylor, Colorado State, 19th Judicial District

Is it ever appropriate for emotions such as anger, hatred, sadness, disgust, fear, or joy to affect judicial decision-making? Typically there has been only one accepted answer: No.

Using examples of actual judges struggling to find the right balance, together with examples from literature and popular culture, this session is designed to prompt a vigorous discussion about when it is proper and when it is not for a judge to draw on his or her emotions in dispensing justice.

4:30 p.m. Adjourn, Dinner on Your Own

4:30 p.m. Court of Appeals Business Meeting

Tuesday, September 24

8:30 a.m. – 5:00 p.m.

Judicial Colloquium: *The President and the Assassin* (pre-registration is required – limit 25)

Judge Stephen E. Moore, Lynnwood Municipal Court

President William McKinley and anarchist Leon Czolgosz collided in violence at the 1901 Pan-American Exposition in Buffalo, New York. These compelling figures, each pursuing what he considered the right and honorable path, seemed to live in eerily parallel Americas. Join Judge Moore as he uses this story to discuss ethical issues that arise in the story and on the bench.

61st Washington Judicial Conference

September 22 - 25, 2019 ♦ Vancouver, Washington

TENTATIVE SCHEDULE OF EVENTS

Tuesday, September 24 (Continued)

8:30 a.m. – 10:00 a.m.
CHOICE SESSIONS

Cruel and Unusual Punishment: Youth, Race, and the Law

Professor Kimberly Ambrose, University of Washington School of Law
Judge Leroy McCullough, King County Superior Court
Mr. Jeffery Robinson, Deputy Legal Director, ACLU, Director of the Trone Center for Justice and Equality

Sponsored by the Gender and Justice and Minority and Justice Commissions

This session will provide judicial officers information on the youth brain and physical development; the origin and impact of youth trauma; of the role that implicit and explicit bias plays in justice system encounters; and of the collateral consequences of judicial decisions on the youth, his/her community, and on society. This session will also provide judicial officers a road map to an improved and enhanced understanding of these issues. The session will provide critical information on restorative justice, diversion, and other alternatives that better meet the needs of youth, their families, and the community.

Access to Justice – Barriers Facing Elderly and Disabled Litigants and How to Help Them “Break Through”

Judge Rachelle Anderson, Spokane County Superior Court
Commissioner Diana Kiesel, Pierce County Superior Court

This course is designed to help judicial officers understand the varied obstacles our elderly and disabled face when coming to court, and gives guidance and suggestions on accommodations to help them succeed in getting their matters heard.

Tuesday, September 24 (Continued)

10:15 a.m. – 11:45 a.m.

PLENARY: Bail Reform: Why It’s Needed, How to Do It

Mr. Brandon Buskey, ACLU, Criminal Law Reform Project
Judge Theresa B. Doyle, King County Superior Court
Mr. Michael Huynh, Washington State Auditor’s Office
Judge Mary Logan, Spokane Municipal Court
Judge Sean Patrick O’Donnell, King County Superior Court
Mr. Jeffery Robinson, Deputy Legal Director, ACLU, Director of the Trone Center for Justice and Equality

Sponsored by the Gender and Justice and the Minority and Justice Commissions

Most people in jail across the country, including in Washington, are awaiting trial. Yet, pretrial incarceration is contrary to the constitutional presumption of release. Studies show pretrial detention threatens jobs, housing, and family support, and makes recidivism more likely. This session will address: the harms of pretrial detention; federal constitutional and Washington bail law; interactive application of Washington Criminal Rule 3.2; reforms from other jurisdictions that have reduced their pretrial population without affecting public safety; and the cost savings of pretrial services over jail as outlined in the recent report of the Washington State Auditor’s Office.

12:00 noon – 1:25 p.m. Box Lunch and Committee Meetings

1:30 p.m. – 5:00 p.m.

PLENARY: Highlights of the October 2018 United States Supreme Court Term

Professor Neil Siegel, Duke University School of Law

Professor Siegel will review the most important U.S. Supreme Court decisions during the Court’s October 2018 term.



61st Washington Judicial Conference

September 22 - 25, 2019 ♦ Vancouver, Washington

TENTATIVE SCHEDULE OF EVENTS

Wednesday, September 25

8:30 a.m. – 12:00 p.m.

PLENARY: Search and Seizure

Judge Robert McBeth, retired

Judge Jack Nevin, Pierce County Superior Court

Judge Matthew Williams, King County Superior Court

Students will receive a “Nuts & Bolts” survey of significant Search & Seizure cases from the Washington Appellate Courts and the U.S. Supreme Court, specifically addressing Fourth Amendment and Art. 1, sec. 7, application to law enforcement use of digital evidence. We will address digital tracking and surveillance devices involving stored data (computer searches and browser data), passive surveillance (cell tower tracking), and active surveillance (“facial recognition” and “ping” usages).

12:00 p.m.

Conference Adjourns

12:30 p.m.

Annual Conference Education Committee Meeting

Social Events

Sunday Golf – See Registration Form

Sunday Banquet and Keynote Speaker

Monday Hike – See Registration Form

Tuesday Run – See Registration Form

Tuesday Banquet and Trivia Game

Networking Suite – See Form



DMCMA 2019 Fall Regional Training

*Sponsored by Washington State Supreme Court
Minority & Justice Commission*

Implicit Bias, Privilege, and Customer Service: How to Make Everyone Feel Welcome

This workshop will explore the concepts of implicit bias and privilege and how they intersect with providing service to the people using the court system. Participants will explore creating systems to reduce the application of implicit bias and privilege. They will learn about trauma informed responses and how to develop systems that meet the needs of all court consumers.

Presented by Jonathon Lack, Family Court Commissioner,
King County Superior Court

Dates & Locations:

October 4 Poulsbo

October 7 Des Moines

October 11 Burlington

October 18 Shelton

October 24 Cheney

October 25 Pasco

Registration \$50 includes lunch

Registration Deadline: Sept 27th

2019 FALL REGIONAL LOCATIONS AND DATES

9:00 a.m. – 9:30 a.m. **Registration**
9:30 a.m. – 3:00 p.m. **Implicit Bias, Privilege, and Customer Service**

Poulsbo - October 4

200 NE Moe Street
Poulsbo, WA 98370
Host: Amy Knutsen 360-394-9760
aknutsen@cityofpoulsbo.com

Shelton - October 18

Mason County Public Works Facility
100 W Public Works Drive
Shelton, WA 98584
Host: Maryam Olson 360-709-2783
molson@ci.olympia.wa.us

Des Moines - October 7

22030 Cliff Ave South, Bldg B
Des Moines, WA 98198
Host: Patti Kohler 206-255-6068
Patricia.kohler@kingcounty.gov

Cheney - October 24

Washington State Archives Building
960 Washington Street
Cheney, WA 99004
Host: Terri Cooper 509-498-9232
tcooper@cityofcheney.org

Burlington - October 11

Burlington Municipal Court
311 Cedar Street
Burlington, WA 98233
Host: Mickey Zitkovich 360-755-0492
mickeyz@burlingtonwa.gov

Pasco - October 25

1016 North 4th Ave
Pasco, WA 99301
Host: Krissy Chapman 509-382-3920
kriston_chapman@co.columbia.wa.us

Registration Fee: \$50 non-refundable per person. Registration Deadline is September 27, 2019.

Court Name: _____

Attendee Name: _____

Location you will be attending: _____

Email: _____

Phone: _____

Mail payment to:

Judy Ly, DMCMA Treasurer

Pierce County District Court - 930 Tacoma Ave S, Rm 239 Tacoma, WA 98402

Phone: (253) 798-2974 FAX (253) 798-7603

Send registration to Judy Ly via mail, FAX or email: judy.ly@piercecountywa.gov



VOLUNTEERS

SAVE THE DATE!!!!!!

THE 16th ANNUAL TRI-CITIES YOUTH AND JUSTICE FORUM

FRIDAY, NOVEMBER 1, 2019

Columbia Basin College
Byron Gjerde Multipurpose Facility (Building H)
2600 North 20th Avenue
Pasco, WA 99301

We are again looking for volunteers to interact with students grades 8-12. This is a great opportunity for these students to understand the possibility of higher education and expose them to careers in the justice system. They will meet with judges, lawyers, law enforcement officers, probation officers, US Marshals, court reporters, court interpreters, college recruiters and more.

41 of 49

If you are interest please RSVP to Monica Villanueva at
Monica_Villanueva@waed.uscourts.gov

Minority and Justice Commission Jury Diversity Task Force 2019 Interim Report

BACKGROUND

On May 24, 2017, the Washington State Minority and Justice Commission (“MJC”) and Washington Appleseed co-hosted the annual Supreme Court Symposium (“Symposium”) on the topic of jury diversity. Following the Symposium, Chief Justice Mary Fairhurst requested, on behalf of the Court, that MJC further explore the recommendations put forward at the Symposium. MJC created the Jury Diversity Task Force (“Task Force”) as a Commission subcommittee and appointed Judge Steve Rosen as chair. The Task Force consisted of the following individuals representing the identified groups:

Ms. Aimee Sutton	Latino/a Bar Association of Washington President; The Marshall Defense Firm
Ms. Angeline Thomas	Washington Appleseed
Ms. Anita Khandelwal	King County Department of Public Defense
Ms. Barbara Serrano	Washington Women Lawyers
Ms. Blanca Rodriguez	Northwest Justice Project
Mr. Chris Gaddis	Pierce County Superior Court Administrator; AWSCA
Mr. Darrell Cochran	Washington State Association for Justice (Civil Plaintiff's Bar)
Mr. David Morales	Northwest Justice Project
Ms. Heidi Percy	Judicial Operations Mngr. Snohomish County Clerk's Office
Ms. Jennifer Creighton	Court Administrator, Thurston County District Court
Judge Linda Coburn	Edmonds Municipal Court; DMCJA; Washington State Minority & Justice Commission
Judge Steve Rosen (Chair)	King County Superior Court
Mr. Justin Bingham	Spokane City Prosecutor
Mr. Michael E. Chait	Washington Defense Trial Lawyers (Civil Defense Bar)
Mr. Morgann Halencak	Jury Manager, Clallam County Superior Court
Ms. Pam Loginsky	Washington Association of Prosecuting Attorneys
Mr. Peter Collins	Seattle University
Representative Javier Valdez	Washington State Legislature
Mr. Sean McAvoy	District Court Executive/Clerk of the Court US. District Court Eastern District of Washington
Senator Manka Dhingra	Washington State Legislature
Mr. Tim Johnson	King County Department of Public Defense
Mr. Todd Bowers	Attorney General's Office
Mr. Tom McBride	Washington Association of Prosecuting Attorneys
Mr. Travis Stearns	Washington Appellate Project
Ms. Vonda Sargent	American Civil Liberties Union

TASK FORCE OBJECTIVE

Examine a range of policy proposals that might have the effect of increasing minority representation on Washington State juries, and make recommendations to MJC about which approaches, if any, to pursue.

TASK FORCE PROCESS

The first full Task Force meeting was held on January 31, 2018. Prior to that meeting, Washington Appleseed circulated a detailed policy memorandum entitled *Tactics to Increase Jury Diversity* (“WA Appleseed memo,” attached as Exhibit A). The WA Appleseed memo identified six major factors that resulted in minority underrepresentation on juries:

- **Factor 1—Source Lists:** Whether minorities receive a summons depends on what source lists are used and how frequently those lists are updated.
- **Factor 2—Economic Hardship:** Given the correlation between race and poverty, minorities are disproportionately likely to seek economic hardship excusals and few jurisdictions have programs to alleviate this burden.
- **Factor 3—Eligibility:** Minorities may not meet eligibility requirements to serve.
- **Factor 4—Felon Disenfranchisement:** Felon disenfranchisement disproportionately affects minority jurors.
- **Factor 5—Summons Processes:** Inefficiencies in the summons process could be having a negative effect on minority representation.
- **Factor 6—Data Collection:** Though data collection does not have a direct impact on whether diverse jurors make it through courthouse doors, it is crucial that we are able to monitor the nature and extent of the problem in order to determine which solutions have the most promise.

At the meeting, Task Force members were divided into three working groups to explore the issues identified under each factor:

- **Summons** (Factors 1, 5, and 6)
- **Economic Hardships** (Factor 2)
- **Jury Service Eligibility** (Factors 3 and 4)

During the spring and summer, the three working groups met independently to discuss their assigned factors and prepare recommendations for the Task Force. At meetings on August 22, 2018, and October 24, 2018, the Task Force heard final reports and recommendations from all of the working groups and voted on whether each proposed recommendation should be considered high, medium, or low priority. The list of recommendations receiving at least 50% high-priority votes is presented below. The next step is for the Minority and Justice Commission to decide which recommendations will move forward to the Board for Judicial Administration (BJA) for approval or other further action.

TASK FORCE RECOMMENDATIONS—HIGH PRIORITY

These recommendations were voted **high priority** by Task Force members in attendance at the meetings where votes were casted.

1. Source List Expansion and Frequency (Factor 1)

Expanding source lists beyond the traditional “motor/voter” list is expected to result in more minority and low income populations being summoned for jury duty. According to a research project conducted by Washington Appleseed at the Task Force’s request, a few other states have expanded source lists beyond the traditional lists. These other states include property owners, social service recipients, and information from tax rolls. However, none of those states track juror diversity or demographics, so it is impossible to tell how these changes have affected juror diversity, or exactly how they will change Washington’s juror diversity if enacted.

Currently, Washington court jurisdictions receive updated source lists annually. Approximately 10-15% of the US population moves annually,¹ change of address databases are not always updated, and approximately 40-50% of summons are returned as undeliverable or never receive a response. Data shows that the most mobile populations are minority groups,² and the committee believes that updating source lists more often is likely to be effective in increasing minority juror turnout.

Task Force Recommendations:

- a. Increase the number of source lists in Washington beyond lists of registered voters and driver’s license & state ID card holders. (High=11, Medium=4, Low=1)³
 - i. Determine resources needed to expand source lists.
 - ii. Analyze and research any obstacles to including additional source list information (e.g. privacy statutes, multiple addresses for utilities).
- b. Update source lists more often than annually. (High=8, Medium=5, Low=3)
 - i. Research costs (state and local) of creating source list two or four times per year.

2. Ensuring Adequate Juror Compensation and Job Security (Factor 2)

The Task Force recognized that juror compensation in Washington is inadequate. Data shows that financial hardship is the second highest reason to excuse a potential juror, behind undeliverable summonses. The Task Force believes that lower income and minority populations are disproportionately affected by the financial hardships of jury service. There was a robust discussion within the Task Force

¹ <https://www.census.gov/newsroom/blogs/random-samplings/2017/01/mover-rate.html>

² For example, “The highest mover rates by race were for the black or African-American alone population...”
<https://www.census.gov/newsroom/press-releases/2016/cb16-189.html>

³ The reader of this paper may note that there were 17 voting members of the committee, but that the total number of votes for many of the recommendations do not equal 17. This is due to absences and abstentions.

about initiating a pilot project, in select jurisdictions, to study the effect of increasing juror compensation, provided that potential jurors are made aware of the increase. However, the idea of instituting a pilot project was almost unanimously rejected by the Task Force. Instead, the Task Force recommended pursuing a statewide juror pay increase, as well as exploring the feasibility of tax credits or deductions for jury service.

Task Force Recommendations:

- a. Increase juror compensation statewide. (High=unanimous)
- b. Research the feasibility of tax credits or deductions for jury service. (High=unanimous)

3. Providing Childcare for Potential Jurors (Factor 2)

Ensuring adequate childcare for jurors, and making that information known to potential jurors, was identified as a high priority. Providing childcare would alleviate economic burdens and barriers to juror participation, particularly for minority and low income populations. The working group noted that King County currently offers childcare at the Regional Justice Center in Kent, although it was not known whether juror summonses let potential jurors know about the existence of this service.

Task Force Recommendations:

- a. The Task Force supported the concept of all courts providing childcare for jurors. However, it recommended first looking into how childcare is set up at the King County Regional Justice Center (i.e. operational costs and where the funding comes from), and determine whether it is a model that other courts across Washington could implement. Also look into whether jurors receive notice that childcare is available at the time they receive their summons. (High=13, Medium=1, Low=0)

4. Felon Disenfranchisement (Factor 4)

The Task Force recognized that minority populations, specifically African American males, were more likely than any other group to have a felony conviction. RCW 2.36.070 states that a person is eligible for jury service unless they are a felon and have not had their “civil rights restored.” This phrase is not defined, but the Washington Association of Prosecuting Attorneys and caselaw strongly suggest that it refers to voting rights. In their juror qualification questionnaires, many courts ask whether a potential juror is a felon and has had his/her civil rights restored. This question, while legally accurate, has created a lot of confusion for individuals who have felony convictions, as many do not know if their civil rights were restored, if they are eligible to vote, or if they have a certificate of discharge from their felony case. Adding to the confusion, RCW 2.36.070 is not clear that an individual with a felony conviction who may still have outstanding legal financial obligations (LFOs), but who is not under DOC supervision, is eligible for jury service.⁴

⁴ All Task Force members agreed that the statute allows felons who are not actively being supervised to be jurors regardless of outstanding LFO obligations. However, the Task Force strongly believes that this section, and the lack

Task Force Recommendations:

- a. Pursue a statutory amendment to define the phrase “civil rights restored” in RCW 2.36.070. (High = unanimous). The statutory change has already been drafted, and Sen. Dhingra has introduced the change as SB 5162. The bill adds a new section 13 to RCW 2.36.010 which states, “(13) "Civil rights restored" means a person's right to vote has been provisionally or permanently restored prior to reporting for jury service.”

- b. Regardless of whether this statute passes, the AOC or Minority and Justice Commission should pursue an educational campaign to courts asking them to change the wording of their juror qualification questionnaire to make it clear that individuals who have felony convictions can serve as jurors, unless they are still under DOC supervision. For example, the question could be worded as, “Do you have a felony conviction and are currently being supervised by the DOC? (If your only obligation is monetary, you should answer NO.) ___ Yes ___ No” (High=unanimous)

5. Summons Streamlining and Follow-up (Factor 5)

Currently, there are different practices around the state for juror summoning, how jurors are qualified, and what type of procedure is used when a juror fails to appear. Each court drafts its own summons, and these forms vary dramatically from court to court. Some courts qualify jurors in one step (where a summons and questionnaire are sent together), and other courts summon in two steps (where the court first sends out questionnaires, and then, if the juror is qualified, later sends a summons). When a summoned juror does not appear for service, some courts do nothing, others send a second summons, and others send a notice to appear in front of a judge to explain the absence.

The Task Force ultimately determined that the best practice would be a one step process and using follow up mailings to non-responders to encourage a response. The Task Force believes that these steps are likely to increase responses in general, and particularly among minority populations.

In Washington, all summons must be sent via US mail or personal service. RCW 2.36.095. The Task Force considered whether summoning could be done via other means. Many business and service providers provide notices via email, through mobile device applications, and text message based notifications, reminders, bills, and even payments. The Task Force discussed using automated messaging (text, email, phone calls)⁵ to remind jurors of their service and increase response rates. We know that Asian and African American populations appear for jury service at approximately 50% of what would be expected

of a definition of “civil rights restored,” is creating unnecessary confusion that disproportionately affects communities of color.

⁵ Many doctors and dentists use reminder services: <https://simpletexting.com/industry-guide/text-appointment-reminders-for-doctors-and-dental-offices/>, and courts are starting to adopt these reminders and are finding that they save money: <http://www.spokesman.com/stories/2018/sep/14/with-automated-warning-system-public-defenders-off/>

based on census data.⁶ So, increasing juror response rates through reminders or more effective summoning is likely to increase the participation rates for minority jurors more than any other group.

Task Force Recommendations:

- a. Recommend courts use a one step process, which is now a national best practice. (High=16, Low=1)
- b. Create a system for reminder calls, texts and emails for jurors. (High=14, Medium=1, Low=2)
- c. Research whether statutes should be changed to allow summons via methods other than paper. (High=11, Medium=5, Low=1)
- d. Task appropriate AOC staff with working with local courts and court associations to develop statewide summoning best practices, provide education to the courts on best practices, assist courts with data collection, and act as a subject matter expert on juror issues. (High=7, Medium=2, Low=3)

6. Data Collection (Factor 6)

The Task Force unanimously agreed on the importance of collecting jury demographic data and recommends the permanent statewide implementation of a system to collect juror demographics.⁷ The Minority and Justice Commission conducted the juror demographic survey in 2016-17, and could provide assistance in helping to develop a more streamlined process for data collection. Continuing to track demographics will help the state monitor whether and to what extent each proposed change affects minority juror participation.

The Task Force also believes that tracking the demographics of each juror at each phase of jury selection (sent to courtrooms for voir dire, excusals for hardships, challenges for cause, and peremptory challenges) will provide never before seen transparency in the demographics of how jurors are empaneled. Race based discrepancies in challenges for cause, hardship, and peremptory challenges are well documented and should be tracked.⁸ Such transparency may increase minority juror participation due to a renewed belief that the justice system is fair.

Task Force Recommendations:

- a. Begin collecting juror demographic data on a permanent, statewide basis. (High=unanimous)

⁶ See, <https://q13fox.com/2017/05/24/jury-of-your-peers-not-if-youre-a-minority-in-washington-study-shows/>

⁷ The Task Force is aware of only one state, New York that currently collects juror demographic information. See New York Judiciary Law Sec. 528: <https://codes.findlaw.com/ny/judiciary-law/jud-sect-528.html>

⁸ See part IV and VI, as well as the full law review article at: <https://illinoislawreview.org/print/vol-2018-no-4/the-jury-sunshine-project/>

- b. Begin collecting all juror demographic information at each stage of the jury selection process, tracking all hardships, challenges for cause, and peremptory challenges by demographic factor. (High=unanimous)

TASK FORCE IDEAS — NOT RANKED AS HIGH PRIORITY

The Task Force considered a number of ideas for which it did not recommend any action. The following ideas were considered but did not receive a majority of high priority votes:

1. Creating a mechanism (legal and actual) for citizens who are not on the source list to volunteer to be on the master jury list. (High=8, Medium=5, Low=3)
2. Target summons to zip codes with low return rates⁹. (High=7, Medium=8, Low=2)
3. Increase public outreach to minority communities (No one moved this to a vote after discussion – the committee believed other organizations were working on outreach).
4. Improve the movement of juror data between different state agencies and private contractors (No one moved this to a vote after discussion).
5. Improve the readability of summons statewide (No one moved this to a vote after discussion).
6. Allow the use of a modified trial schedule, such as trials from 8 am – 1 pm, to ease the burden on working jurors (No one moved this to a vote after discussion).
7. Move to a one day/on trial system statewide (No one moved this to a vote after discussion).
8. Change state law so that once a person reports for jury service anywhere in Washington, they will not be re-summoned for a set period of time, such as five years (No one moved this to a vote after discussion).
9. Clarify the statutory requirement of being able to communicate in English to be more inclusive or use interpreters. The committee considered a proposed statutory change requiring an in-person review of a juror’s English proficiency as it related to the requirements of a specific case. The proposal would have requested AOC to run a pilot project in 4 jurisdictions for 1 year. (High=7, Medium=5, Low=3)
10. Production of a best practices bench card explaining how to interpret and apply current law relating to English proficiency (No one moved this to a vote after discussion).
11. Ask MJC or AOC to create educational materials for court administrators on best practices and practical options relating to English proficiency. (High=2, Medium=4, Low=7)
12. Change state law to allow summonses in multiple languages (No one moved this to a vote after discussion).
13. Production of a bench card and educational materials discussing best practices for following up with non-responders. (High=6, Medium=6, Low=1)

⁹ The committee had a robust discussion related to the legality of this proposal. Proponents of this option supported their position with fair cross section and affirmative action cases. Opponents of this option supported their position with equal protection/equal opportunity cases and Washington Constitution article I, section 21. The MJC and the reader should be aware of this debate as this interim report is considered.

TASK FORCE IDEAS STILL UNDER CONSIDERATION

The Task Force also considered one issue and one idea that are still under consideration but could not be ready in time for this report.

1. Washington's two largest counties, King and Pierce, have both discovered that the number of people on the source list appears to be significantly higher than the number of adults living in each jurisdiction. The overages are between 10-15%. It is unknown why this overage exists, or how it affects minority or any specific demographics' representation. When more information is available, the committee will supplement this report.
2. The committee considered a proposal to change the way jurors are sent to courtrooms so that they are more geographically representative of the jurisdiction. At the committee's request, a University of Washington School of Law professor, as well as a research assistant, are currently reviewing past summoning and distribution patterns to see if and how this idea would change things. This research is in its infancy, and when more information is available, the committee will supplement this report.