# BOARD FOR JUDICIAL ADMINISTRATION

WASHINGTON
COURTS

# MEETING PACKET

FRIDAY, MARCH 18, 2011
9:30 A.M.

RECEPTION ROOM
TEMPLE OF JUSTICE
OLYMPIA, WASHINGTON

# Board for Judicial Administration Membership

**VOTING MEMBERS:**

**Chief Justice Barbara Madsen**, Chair
Supreme Court

**Judge Michael Lambo**, Member Chair
District and Municipal Court Judges' Association
Kirkland Municipal Court

**Judge Marlin J. Appelwick**
Court of Appeals, Division I

**Judge Rebecca M. Baker**
Superior Court Judges' Association
Ferry/Stevens/Pend Oreille Superior Courts

**Judge Stephen Brown**, President
District and Municipal Court Judges' Association
Grays Harbor County District Court

**Judge Ronald Culpepper**
Superior Court Judges' Association
Pierce County Superior Court

**Judge Deborah Fleck**
Superior Court Judges' Association
King County Superior Court

**Judge Janet Garrow**
District and Municipal Court Judges' Association
King County District Court

**Judge Jack Nevin**
District and Municipal Court Judges' Association
Pierce County District Court

**Justice Susan Owens**
Supreme Court

**Judge Christine Quinn-Brintnall**
Court of Appeals, Division II

**Judge Kevin Ringus**
District and Municipal Court Judges' Association
Fife Municipal Court

**Judge Dennis Sweeney**, Presiding Chief Judge
Court of Appeals, Division III

**Judge Stephen Warning**, President
Superior Court Judges' Association
Cowlitz County Superior Court

**Judge Chris Wickham**
Superior Court Judges' Association
Thurston County Superior Court

**NON-VOTING MEMBERS:**

**Mr. Steven Crossland, President-Elect**
Washington State Bar Association

**Mr. Jeff Hall**
State Court Administrator

**Judge Laura Inveen**, President-Elect
Superior Court Judges' Association
King County Superior Court

**Ms. Paula Littlewood,** Executive Director
Washington State Bar Association

**Mr. Steven Toole**, President
Washington State Bar Association

**Judge Gregory Tripp**, President-Elect
District and Municipal Court Judges' Association
Spokane County District Court

# Board for Judicial Administration

**March 18, 2011**
**9:30 a.m. – Noon**
**Temple of Justice**
**Olympia, Washington**

## Agenda

| | | |
|---|---|---|
| 1. Call to Order | Chief Justice Barbara Madsen<br>Judge Michael Lambo | |
| 2. Welcome and Introductions | Chief Justice Barbara Madsen<br>Judge Michael Lambo | |
| **Action Items** | | |
| 3. February 18, 2011 Meeting Minutes<br>**Action: Motion to approve the minutes of the February 18 BJA meeting** | Chief Justice Barbara Madsen<br>Judge Michael Lambo | Tab 1 |
| **Reports and Information** | | |
| 4. Legislative Update | Ms. Mellani McAleenan | Tab 2 |
| 5. BJA Courthouse Security Committee | Mr. Dirk Marler | Tab 3 |
| 6. State Budget Report | Mr. Ramsey Radwan | Handout |
| 7. 2012 Supplemental Budget Process | Mr. Ramsey Radwan | Tab 4 |
| 8. Regional Courts | Mr. Dirk Marler | Tab 5 |
| 9. SCJA Resolution Regarding Disproportionality and Disparity in the Justice System | Judge Deborah Fleck | Tab 6 |
| 10. Access to Justice Board | Judge Steven González | |
| 11. Reports from the Courts<br>Supreme Court<br>Court of Appeals<br>Superior Courts<br>Courts of Limited Jurisdiction | <br>Justice Susan Owens<br>Judge Dennis Sweeney<br>Judge Stephen Warning<br>Judge Stephen Brown | |
| 12. Association Reports<br>Superior Court Administrators<br>County Clerks<br>District and Municipal Court Administrators<br>Juvenile Court Administrators | <br>Mr. Frank Maiocco<br>Mr. Kevin Stock<br>Ms. Peggy Bednared<br><br>Ms. Shelly Maluo | |
| 13. Administrative Office of the Courts | Mr. Dirk Marler | |
| 14. Other Business<br>Next meeting: April 15<br>Beginning at 9:30 a.m. at the Temple of Justice, Olympia | Chief Justice Barbara Madsen<br>Judge Michael Lambo | |

TAB 1

**Board for Judicial Administration**
**Meeting Minutes**

**February 18, 2011**
**Temple of Justice**
**Olympia, Washington**

**Members Present:** Chief Justice Barbara Madsen, Chair; Judge Michael Lambo, Member Chair; Judge Marlin Appelwick; Judge Rebecca Baker; Judge Stephen Brown; Judge Ronald Culpepper; Judge Deborah Fleck; Judge Janet Garrow; Ms. Paula Littlewood; Justice Susan Owens; Judge Christine Quinn-Brintnall; Judge Kevin Ringus; Judge Dennis Sweeney; Mr. Steven Toole; Judge Gregory Tripp; Judge Stephen Warning; and Judge Christopher Wickham

**Guests Present:** Ms. Delilah George (by phone), Judge Steven Gonzalez (by phone), Mr. Doug Klunder, Ms. Shelly Maluo, Mr. Joe McGuire, Mr. Kevin Stock (by phone), Mr. Rowland Thompson, and Ms. Kristal Wiitala

**Staff Present:** Mr. Charley Bates, Ms. Beth Flynn, Mr. Steve Henley, Ms. Mellani McAleenan, Mr. Rick Neidhardt, and Mr. Chris Ruhl

The meeting was called to order by Judge Lambo.

January 12, 2011 Meeting Minutes

> **It was moved by Judge Garrow and seconded by Judge Wickham to approve the January 12, 2011 Board for Judicial Administration (BJA) meeting minutes. The motion carried.**

Proposed GR 31A

Judge Appelwick gave a brief overview of the remaining outstanding issues regarding proposed GR 31A. The issues to be decided during the meeting fell into three categories: 1) issues that were held over from the January meeting, 2) questions that came up after the January meeting and need clarification, and 3) issues that were voted on during the January meeting and the Superior Court Judges' Association (SCJA) has requested reconsideration.

*Regarding records on a judge's personal computer and cell phone:*

> **Judge Fleck moved and Judge Baker seconded to add the following wording in the comment regarding some records on laptops being chambers records: "For example, records relating to chambers activities that are stored on a judge's personally owned or workplace-assigned computer, laptop computer, cell phone, and similar electronic devices**

**would still be chambers records." The motion carried with Chief Justice Madsen and Justice Owens abstaining.**

*Regarding shared chambers records:*

**It was moved by Judge Fleck and seconded by Judge Baker to add the following language regarding shared chambers records in the comment: "Chambers records do not change in character by virtue of being accessible to another chambers. For example, a database that is shared by multiple judges and their chambers staff is a 'chambers record' for purposes of this rule, as long as the database is only being used by judges and their chamber staff." The motion carried with Chief Justice Madsen and Justice Owens abstaining.**

*Regarding monetary sanctions:*

**Judge Warning moved and Judge Fleck seconded that proposed GR 31A, section (B)(6) on page 13 be expanded to include a new subsection (iv), to state: "No individual judicial officers or judicial agency employees may be assessed a monetary sanction under this section (6)." The comment should be expanded to indicate that "Only a court or judicial agency may be assessed monetary sanctions. This is consistent with the approach of the Public Records Act. The monetary sanctions would be payable from state/city/county funds, absent some insurance or risk pool availability." The motion carried with Chief Justice Madsen and Justice Owens abstaining.**

*Regarding the following exemptions: family court evaluation and domestic violence files when no legal action is pending, family court mediation files, and juvenile court probation's social files:*

**It was moved by Judge Fleck and seconded by Judge Wickham to list the following exemptions under section (e)(1)(B) of GR 31A: family court evaluation and domestic violence files when no action is legally pending, family court mediation files, and juvenile court probation's social files. A comment will be added stating "it is not to be construed that other files may not also satisfy requirements for exclusion." The motion carried with Chief Justice Madsen and Justice Owens abstaining.**

*Regarding limitations on inmate requests:*

**It was moved by Judge Baker and seconded to include the amendments suggested on pages 9 and 10 of the draft rule in section (e)(3)(7) regarding**

**limitations on inmate requests. The motion carried with one member opposed and Chief Justice Madsen and Justice Owens abstaining.**

*Regarding research and production costs:*

**Judge Fleck moved and Judge Garrow seconded that the following language be added to GR 31A: "A fee not to exceed $30 per hour may be charged for research services required to fulfill a request taking longer than one hour. The fee shall be assessed from the second hour onward." A comment will be added stating the fee can be waived. The motion carried with 12 voting in favor, 2 opposed, and Chief Justice Madsen and Justice Owens abstaining.**

*Regarding a deposit for requests:*

**Judge Wickham moved and Judge Baker seconded that Section (g)(3) be amended to delete "ten percent of the estimated" and add "the" in place of the deleted language which would allow a deposit in an amount not to exceed the estimated cost of providing copies for a request. The motion failed with 3 in favor, 10 opposed, and Chief Justice Madsen and Justice Owens abstaining.**

*Regarding minutes of meetings held by judges within a court:*

**Judge Fleck moved and Judge Baker seconded adding the language "and staff products prepared for judicial discussion or decision making during the meeting." to the end of section (e)(1)(B)(3). The motion carried with Chief Justice Madsen and Justice Owens abstaining**

*Regarding the deliberative process exemption:*

There was a request to bring this back for reconsideration. The SCJA would like the exemption to apply both before and after a final decision has been made on an opinion or policy at issue.

**Judge Fleck moved and Judge Baker seconded that the language "This exemption applies both before and after a final decision is made on the opinion or policy." be added to section (e)(1)(B)(4). The motion carried with 9 in favor, 1 opposed, and Chief Justice Madsen and Justice Owens abstaining.**

*Regarding the definition of "chambers record":*

The SCJA requested that this issue be reconsidered. There was discussion about whether the definition of "chambers record" should be revised to include: "Chambers records include all writing between judicial officers, between judicial officers and chambers staff, and between judicial officers and court administration."

After discussion, the decision was made to keep the definition as is.

*Regarding Prospective Application:*

The work group's intention was that the rule apply to records retroactively. The SCJA is requesting that the rule be applied prospectively only.

Judge Fleck commented that the SCJA believes it is a cleaner approach to state the rule applies prospectively. Courts have a demonstrated history of responding to records requests and that will not change.

Judge Brown stated that the few comments he received about this from the District and Municipal Court Judges' Association (DMCJA) membership were that it be prospective only. Even if it starts out as prospective only, it can be amended later to apply to all judicial administrative records.

Judge Appelwick responded that if the rule applies to prospective records, every court will need to document how records requests are currently handled because they will be applying one set of rules for records created from the effective date of the rule forward and another set of rules for records created prior to the effective date of the rule.

> **It was moved by Judge Culpepper and seconded by Judge Brown to adopt Alternative 2 on page 14 of the draft GR 31A which states the rule "goes into effect on July 1, 2012, and applies to records that are created on or after that date." Records created before the effective date of the rule are to be analyzed according to "other court rules, applicable statutes, and the common law balancing test." The motion carried with 8 in favor, 3 opposed and Chief Justice Madsen and Justice Owens abstaining.**

Judge Appelwick thanked the following for their service to the Work Group: Judge Culpepper, Ms. Wiitala, Mr. Klunder, Mr. Thompson, Mr. Bates, Mr. Neidhardt and Ms. Flynn.

Judge Culpepper commented that he was impressed with Judge Appelwick's leadership of the Work Group. Judge Appelwick responded that he really appreciated the fact that everyone was able to handle the issues with such civility and great exchange.

Judge Appelwick stated that the Work Group submits to the BJA proposed GR 31A for recommendation to the Supreme Court Rules Committee.

**It was moved by Judge Appelwick and seconded by Judge Garrow to recommend GR 31A to the Supreme Court Rules Committee. The motion carried with Chief Justice Madsen and Justice Owens abstaining.**

BJA Resolution Guidelines

Ms. McAleenan created the "Process and Guidelines for Resolution Requests" along with the "Resolution Request Cover Sheet" for the BJA's review. The process includes vetting by the BJA Executive Committee prior to the resolution being brought to the full BJA.

**Judge Ringus moved and Judge Baker seconded that the BJA approve the guidelines and process as submitted. The motion carried.**

Diversifying the Bench Guidebook

Judge Fleck reported that she has sought and received co-sponsorship of the Diversifying the Bench Guidebook from virtually every bar association, judicial branch association and law school with very heartfelt interests in the guidebook. She would like the BJA to co-sponsor the guidebook.

**It was moved by Judge Fleck and seconded by Judge Wickham that the BJA co-sponsor the Diversifying the Bench Guidebook. The motion carried.**

Legislative Update

Ms. McAleenan distributed a list of the positions the BJA has taken on bills during the legislative session. She also distributed information about the legislative dinners. The costs were lower this year than in previous years and the dinners were well attended. Ten more legislators attended this year compared to the previous time dinners were held. During the dinners they had a great opportunity to discuss the BJA's legislative agenda.

Yesterday was the cutoff for policy bills in the House and Monday is cutoff for the Senate. Bills not making it out of policy committees are dead. Some bills with substantial fiscal notes are now in fiscal committees.

Ms. McAleenan gave an update on the BJA request legislation and the budget negotiations.

Proposed Salary Schedule

Chief Justice Madsen reported that Tab 5 contains the 2011-12 Salary Proposal from the Washington Citizens' Commission on Salaries for Elected Officials. This is the proposal they will go forward with across the state for their public hearings. There is no change in the salaries from the current salaries.

Chief Justice Madsen, Judge Sweeney, Judge Warning, and Judge Brown made a presentation to the Salary Commission a few weeks ago which was well received.

Washington State Bar Association

Mr. Toole reported that the Washington State Bar Association (WSBA) is working on the GR 12.4 issue and discussed it at the Board of Governors (BOG) meeting in Olympia. They suggested a few revisions and Mr. Toole is hoping it will be on the March 18 BOG meeting agenda.

Ms. Littlewood said the WSBA has close to 200 lawyers signed up for the Moderate Means Program and they are still recruiting. The Seattle University School of Law is gearing up for client intake. They will most likely start out handling CLEAR referrals to get their feet wet and then go for a big launch.

Reports from the Courts

**Supreme Court:** Justice Owens reported that the Supreme Court made a seamless transition with Justice Charlie Wiggins.

**Court of Appeals:** Judge Quinn-Brintnall said the appellate court judges are having a one-day education session in place of their spring conference.

**Superior Courts:** Judge Warning stated that the SCJA approved, and the DMCJA reviewed, a rule for pro se defendants. It is now in the hands of the Supreme Court. Legislators are interested in it and the rule has been distributed to them.

**Courts of Limited Jurisdiction:** Judge Brown reported that the DMCJA is trying to deal with legislative issues that keep popping up. The Education Committee is asking for assistance to put on their spring conference due to budget cuts to the Board for Court Education.

Association Reports

**District and Municipal Court Administrators:** Mr. McGuire reported that there will be a line staff conference in Yakima next month. They have half as many attendees as

their last conference. The money is not out there and it is a disappointment that courts are not able to send staff to the training.

**Juvenile Court Administrators:** Ms. Maluo thanked Judge Warning and Judge Fleck for being champions of the Washington Association of Juvenile Court Administrators (WAJCA). The WAJCA is trying to educate legislators regarding Becca funding. The achievement gap will probably widen if Becca funding is eliminated.

Other Business

**BJA Account Update:** Ms. McAleenan reported that the BJA account was closed out for 2010 with a balance of about $16,000 and the biggest expense in 2010 was the legislative dinners.

There being no further business, the meeting was adjourned.

TAB 2

**Board for Judicial Administration**
**Legislative Report**
**March 9, 2011**

## House of Origin Cut-off

We are now 59 days through the 105-day regular session. Monday was the last day for most bills to pass their chamber of origin or "die" for this session. A summary status update of some of the bills of interest to the BJA follows below. A complete tracking list is attached.

Bills "necessary to implement the budget" are exempt from the deadline, so some bills that missed a floor vote could come back later when the Legislature begins work on the biennial budget. Rep. Ross Hunter, D-Medina, House Ways and Means Committee chair, announced on Monday that the budget chairs will roll out their proposals on March 21 or 22, after the March 17th revenue forecast. Rep. Hunter said he's expecting a $500 million to $1.5 billion drop in revenue projections.

### BJA Request Legislation

**HB 1236/SB 5170 - Increasing the number of judges to be elected in Grant County.**
HB 1236 passed the House with one "no" vote. It has not yet been scheduled for a hearing in the Senate Judiciary Committee. SB 5171 passed the Senate unanimously, has been heard in House Judiciary, and is scheduled for executive action on March 10th.

**HB 1245/SB 5630 - Changing the election and appointment provisions for municipal court judges.**
HB 1245 failed to receive a hearing in House Judiciary and is dead. SB 5630 made it out of committee and into Senate Rules but did not receive a vote on the Senate floor and is also dead.

**HB 1794/SB 5046 - Adding court-related employees to the assault in the third degree statute.**
HB 1794 passed the House unanimously. It has not yet been scheduled for a hearing in Senate Judiciary. SB 5046 passed the Senate with a 41-4 vote. It has not yet been scheduled for a hearing in House Public Safety.

**SB 5823 - Concerning the disposition and collection of court income.**
This bill is "necessary to implement the budget" and is not subject to cut-off rules.

### Bills Reviewed by BJA

**SHB 1001 - Placing restrictions on pro se defendants when questioning witnesses.**
BJA opposed in favor of a court rule.
SHB 1001 passed the House unanimously but has not been scheduled for hearing in the Senate.

**SHB 1053 - Implementing recommendations from the Washington State Bar Association Elder Law Section's executive committee report of the Guardianship Task Force.**
BJA opposed fee provision.
SHB 1053 passed the House with a 56-40 vote. It currently contains the fee provision BJA opposes.

**HB 1126 - Concerning criminal street gangs.**
BJA opposed use of parking and traffic infraction increases as the funding source.
While this bill did not make it out of committee, it has been deemed "necessary to implement the budget" and has been exempted from the cut-off rules. The current proposed substitute includes traffic infraction increases but not parking infraction increases.

**HB 1201 and others – Eliminating or changing the retirement age for judges.**
BJA supported.
None of these bills was heard in committee, and they are all dead.

**HB 1235 and SB 5019 - Concerning the privacy of nonconviction records.**
BJA opposed.
HB 1235 died in House Public Safety. SB 5019 passed out of Senate Human Services but died in Ways and Means.

**HB 1276/SB 5533 - Addressing court-ordered legal financial obligations collected by the county clerks.**
BJA opposed the section preventing AOC from reducing funding.
Both bills were heard in committee but neither was moved out of the committee in which it was heard.

**SHB 1793 - Restricting access to juvenile records.**
BJA took no position.
The current version of this bill applies the Consumer Protection Act to dissemination of juvenile records and requires AOC to lead a work group regarding the "automatic" sealing of juvenile records. It passed the House with a 56-41 vote. It has not yet been scheduled for hearing in the Senate.

**HB 1898 and SB 5010 - Establishing a public funding program for supreme court campaigns.**
BJA opposed the funding source.
Both bills died in committee.

**SSB 5056 - Concerning bail and pretrial release practices.**
BJA supported.
The bill resulting from this summer's work group died in Senate Ways and Means.

**SB 5597 - Providing for an automatic stay of any order terminating parental rights.**
BJA opposed.
This bill originally infringed on the court's ability to manage process and procedure. Attempts to amend the bill slowed it down, and it did not pass the Senate.

**ESSB 5740 - Preventing predatory guardianships of incapacitated adults.**
BJA opposed the section regarding the posting of complaints.
The section BJA opposed was removed, but the bill was changed by a floor striking amendment. The bill has not yet been scheduled for a hearing in the House.

**SJR 8202 and others - Authorizing the reduction of certain public officials' salaries.**
BJA concerns.
SSJR 8202 removed judges from the potential salary reduction, but the bill died in Senate Rules. None of the other bills moved from committee in the House or Senate.

# Positions taken by the BJA Legislative Executive Committee

~~Strike~~ =indicates Dead Bill

| Bill | Bill Title | Leg Status Date | Position | Review Date |
|---|---|---|---|---|
| SHB 1001 | Pro se defendant/sex offense<br>S Judiciary | 02/23/2011 | ------<br>Under Review<br>Watch | 01/31/2011<br>02/07/2011<br>02/14/2011 |
| HB 1001 | Pro se defendant/sex offense<br>H subst for | 02/22/2011 | ------<br>Under Review<br>Under Review<br>Under Review | 01/10/2011<br>01/12/2011<br>01/18/2011<br>01/24/2011 |
| HB 1030 | ~~Felons' voting rights~~<br>H SGTribalAff | 01/10/2011 | ------<br>No Position<br>------<br>Watch | 01/18/2011<br>01/18/2011<br>01/24/2011<br>01/25/2011 |
| HB 1034 | ~~Inmate public record request~~<br>H SGTribalAff | 01/10/2011 | ------<br>Under Review<br>------<br>No Position | 01/10/2011<br>01/12/2011<br>01/18/2011<br>01/18/2011 |
| SHB 1053 | Guardianship task force<br>S Judiciary | 03/09/2011 | Oppose | 02/14/2011 |
| HB 1115 | ~~State officials' salaries~~<br>H SGTribalAff | 01/12/2011 | ------<br>Concerns<br>Concerns | 01/18/2011<br>01/18/2011<br>01/24/2011 |
| HB 1126 | Criminal street gangs<br>H Pub Safety | 01/12/2011 | Oppose | 02/15/2011 |
| HB 1153 | DNA sample collection costs<br>H subst for | 03/01/2011 | ------<br>Support | 01/18/2011<br>01/18/2011 |
| HB 1159 | ~~Crime victims' rights~~<br>H Judiciary | 01/13/2011 | Oppose<br>Oppose | 01/18/2011<br>01/18/2011 |
| HB 1194 | Bail for felony offenses<br>H subst for | 02/26/2011 | ------<br>Under Review | 01/18/2011<br>01/18/2011 |
| HB 1201 | ~~Retirement age for judges~~<br>H Judiciary | 01/14/2011 | ------<br>Under Review<br>Support | 01/18/2011<br>01/18/2011<br>01/21/2011 |
| HB 1206 | Criminal justice participants<br>H subst for | 03/03/2011 | ------<br>No Position | 01/18/2011<br>01/18/2011 |
| HB 1235 | ~~Nonconviction records~~<br>H Pub Safety | 01/17/2011 | Oppose | 01/24/2011 |
| HB 1236 | Judges in Grant county<br>S Judiciary | 03/01/2011 | Sponsor | 01/18/2011 |
| HB 1245 | ~~Municipal court judges~~<br>H Judiciary | 01/18/2011 | Sponsor<br>------ | 01/26/2011<br>02/14/2011 |
| HB 1276 | ~~Legal financial obligations~~<br>H Judiciary | 01/18/2011 | ------<br>Under Review<br>Oppose<br>Oppose | 01/18/2011<br>01/18/2011<br>01/26/2011<br>01/29/2011 |

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|---|---|---|---|---|
| HB 1664 | ~~State supreme court~~<br>H Judiciary | 01/28/2011 | ------<br>------<br>Under Review<br>Oppose | 01/29/2011<br>01/31/2011<br>02/07/2011<br>02/14/2011 |
| SHB 1793 | Access to juvenile records<br>S HumServ/Corr | 03/08/2011 | No Position | 02/22/2011 |
| HB 1793 | Access to juvenile records<br>H subst for | 03/05/2011 | No Position | 02/07/2011 |
| HB 1794 | Assault/court-related empl.<br>S Judiciary | 03/05/2011 | Sponsor | 02/01/2011 |
| HB 1898 | ~~Supreme court campaigns~~<br>H SGTribalAff | 02/08/2011 | Oppose | 02/14/2011 |
| HB 1945 | ~~Judges' free speech rights~~<br>H Judiciary | 02/11/2011 | Watch | 02/14/2011 |
| HJR 4201 | ~~State officials' salaries~~<br>H SGTribalAff | 01/12/2011 | ------<br>Concerns<br>Concerns | 01/18/2011<br>01/18/2011<br>01/24/2011 |
| HJR 4203 | ~~Retirement age for judges~~<br>H Judiciary | 01/14/2011 | Under Review<br>------<br>Under Review<br>Support | 01/18/2011<br>01/18/2011<br>01/18/2011<br>01/21/2011 |
| HJR 4204 | ~~Salary reductions/officials~~<br>H SGTribalAff | 01/18/2011 | Concerns<br>Concerns<br>Concerns | 01/18/2011<br>01/21/2011<br>01/24/2011 |
| HJR 4216 | ~~State supreme court~~<br>H Judiciary | 01/28/2011 | ------<br>------<br>Under Review<br>Oppose | 01/29/2011<br>01/31/2011<br>02/07/2011<br>02/14/2011 |
| SB 5007 | ~~Criminal justice agencies~~<br>S GovtOp & Elect | 01/10/2011 | ------<br>Support | 01/10/2011<br>01/12/2011 |
| SB 5010 | ~~Supreme court campaigns~~<br>S GovtOp & Elect | 01/10/2011 | ------<br>Oppose<br>Oppose | 01/10/2011<br>01/12/2011<br>01/26/2011 |
| SB 5014 | ~~Pro se defendants & victims~~<br>S Judiciary | 01/10/2011 | ------<br>Under Review | 01/10/2011<br>01/12/2011 |
| SSB 5019 | ~~Nonconviction records~~<br>S Ways & Means | 02/21/2011 | Oppose | 02/22/2011 |
| SB 5019 | ~~Nonconviction records~~<br>S Ways & Means | 02/21/2011 | ------<br>Concerns<br>Oppose | 01/10/2011<br>01/12/2011<br>01/24/2011 |
| SB 5024 | ~~Correctional inmate claims~~<br>S Rules 2G | 03/02/2011 | ------<br>Concerns | 01/10/2011<br>01/12/2011 |
| SB 5025 | Inmate public record request<br>S subst for | 03/02/2011 | ------<br>Under Review<br>------<br>No Position | 01/10/2011<br>01/12/2011<br>01/18/2011<br>01/18/2011 |
| SB 5046 | Assault/court-related empl.<br>H Pub Safety | 03/03/2011 | Sponsor<br>Sponsor | 01/12/2011<br>02/01/2011 |

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|---|---|---|---|---|
| SSB 5056 | ~~Bail and pretrial release~~<br>S Ways & Means | 02/14/2011 | Support<br>Support | 02/14/2011<br>02/22/2011 |
| SB 5126 | ~~Govt officials' compensation~~<br>S 2nd Reading | 03/07/2011 | Concerns | 01/24/2011 |
| SB 5147 | ~~Retirement age for judges~~<br>S Judiciary | 01/17/2011 | ------<br>Under Review<br>Support | 01/18/2011<br>01/18/2011<br>01/21/2011 |
| SB 5170 | Judges in Grant county<br>H JUDIDP | 03/10/2011 | Sponsor | 01/18/2011 |
| SB 5195 | Driving w/ suspended license<br>S subst for | 02/09/2011 | No Position | 01/18/2011 |
| SB 5533 | Legal financial obligations<br>S HumServ/Corr | 01/28/2011 | Oppose | 01/29/2011 |
| SSB 5558 | ~~Juvenile records~~<br>S 2nd Reading | 03/04/2011 | Oppose<br>------ | 02/22/2011<br>02/28/2011 |
| SB 5558 | ~~Juvenile records~~<br>S 2nd Reading | 03/04/2011 | No Position<br>Refer to Com. | 02/07/2011<br>02/01/2011 |
| SB 5597 | ~~Terminating parental rights~~<br>S 2nd Reading | 02/25/2011 | Oppose | 02/22/2011 |
| SB 5630 | ~~Municipal court judges~~<br>S Rules 2G | 02/28/2011 | ------ | 02/14/2011 |
| SB 5668 | ~~Public agency attorney dues~~<br>S Judiciary | 02/04/2011 | Oppose | 02/14/2011 |
| SSB 5740 | Predatory guardianships<br>S 2nd Reading | 03/03/2011 | No Position | 02/22/2011 |
| SB 5740 | Predatory guardianships<br>S subst for | 03/05/2011 | Oppose | 02/15/2011 |
| SB 5823 | Court income<br>S Judiciary | 02/17/2011 | Sponsor | 02/22/2011 |
| SB 5826 | ~~Prospective tenants~~<br>S FI/Hous/Ins | 02/17/2011 | Under Review<br>------ | 02/22/2011<br>02/28/2011 |
| SJR 8200 | ~~Retirement of judges~~<br>S Judiciary | 01/14/2011 | Support<br>Support | 01/18/2011<br>01/21/2011 |
| SJR 8202 | ~~Public officials' salaries~~<br>S 2nd Reading | 03/07/2011 | ------<br>Concerns<br>Concerns | 01/18/2011<br>01/18/2011<br>01/24/2011 |
| SJR 8203 | ~~Public officials' salaries~~<br>S Ways & Means | 01/14/2011 | ------<br>Concerns<br>Concerns | 01/18/2011<br>01/18/2011<br>01/24/2011 |
| SJR 8204 | ~~Retirement age for judges~~<br>S Judiciary | 01/17/2011 | ------<br>Under Review<br>Support | 01/18/2011<br>01/18/2011<br>01/21/2011 |
| SJR 8209 | ~~Salary reductions/officials~~<br>S Ways & Means | 01/21/2011 | Concerns<br>Concerns | 01/21/2011<br>01/24/2011 |

TAB 3

# BJA Courthouse Security Committee
# March 18, 2011

**Motion: I move that BJA sunset the Courthouse Security Committee as a standing committee.**

| | **BJA Courthouse Security Committee** |
|---|---|
| **AOC Staff Contact** | Judicial Services Division<br>• Rick Coplen, ~~Karen Castillo~~ |
| **Created** | October 21, 2005 as a standing committee of BJA |
| **Mission/ Purpose** | • To advise the BJA on the status of courthouse security efforts in Washington State.<br>• Review and recommend revisions to Washington's court security guidelines.<br>• Recommend minimum security standards that should be met by all courts.<br>• Create a model protocol for court safety planning.<br>• Investigate funding sources for improving court security.<br>• Regularly review security guidelines, local court security measures, and evaluate the evolving security risks. |
| **Projects and Activities** | • Produced and updated security guidelines<br>• Maintain security log of reported incidents<br>• Quarterly electronic newsletters |
| **Membership** | • Judge John Lohrmann (co-chair), SCJA<br>• Judge Debra Hayes (co-chair), DMCJA<br>• Judge Elizabeth Cordi-Bejarano, DMCJA<br>• Justice Jim Johnson, Appellate Courts<br>• Judge Philip Hubbard, SCJA<br>• Ms. Sonya Kraski, WSACC<br>• Mr. Jeffrey Beaver, WSBA<br>• Mr. Craig Daly, WAJCA<br>• Ms. Suzanne Elsner, DMCMA<br>• Mr. Ron Miles, AWSCA<br>• Cpt. Rick Rochleau, WASPC |
| **Staffing requirement** | • .22-.25 FTE |
| **Cost** | • $30,000/ biennium<br>  o Salaries and benefits<br>  o Meeting expenses |
| **Additional information** | http://www.courts.wa.gov/programs_orgs/pos_bja/?fa=pos_bja.courtSecurity |

TAB 4

Washington State Judicial Branch

# 2012 Supplemental Budget Request Process Overview

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The Washington State Supreme Court officially adopted the first budget development and approval process for the judicial branch in December 2007. The purpose of the process is to ensure that the budget development, review and submittal procedure is consistent and objective, providing several opportunities for review and discussion. The sequence of steps was first used during the development of the 2009-2011 biennial budget request and subsequently refined for use in the 2011-2013 biennial budget request.

We will again follow this course of action for any budget requests to be included in the budget for the Supreme Court and its departments as well as for the budget for the Administrative Office of the Courts. We ask that independent judicial branch agencies follow this process both in form and schedule.

As in the past, these procedures are intended to strengthen and further a transparent budget process by which only those funding requests targeted to the highest priorities of the branch and aligned with judicial branch policy objectives are sent forward.

Essentially, the 2012 Supplemental Budget development process will mirror past practices. Whether a proposed budget request is submitted by a judicial branch agency, an association, a board, a committee, or an external entity, progression of the request through each step is key and mandatory. Preliminary budget requests will be reviewed by AOC and compiled and submitted to the Supreme Court Budget Committee (SCBC) for review. Requesting entities will then be invited to a budget committee meeting to present their request(s) and provide additional information.

The SCBC will then make recommendations to the full Court regarding whether or not preliminary requests should proceed to the detailed decision package development stage.

The Supreme Court Budget Committee will use, among other factors, current and projected economic conditions, principle policy objectives and the strategic direction of the Judicial Branch as the context for evaluating each individual request as well as evaluating the proposed budget submittal in its entirety.

The full Court will accept, reject or modify the Budget Committee's recommendations. Upon receipt of the final decision, the AOC will send status notification and further instructions to each requesting entity.

Once notified, entities will have approximately 45 days to develop and submit full decision packages. The SCBC will again review and make recommendations to the full Court. The full Court will make the final decision regarding the 2012 supplemental budget request in October.

Detailed instructions and forms can be found at http://www.courts.wa.gov/.

Prepared by the Administrative Office of the Courts
March 2011

# 2012 Supplemental Budget Request
# Development Milestones

| MONTH | TASK | DUE DATE |
|---|---|---|
| March | AOC Distribute 2012 Supplemental Instructions | March 18, 2011 |
| April | Preliminary Budget Submission Due to AOC<br>• Brief description<br>• Brief description of benefit/improvements to be gained by request<br>• Dollar amount | April 22, 2011 |
| May | Supreme Court Budget Committee Review<br>• Process and approach discussion; first review of preliminary requests<br>• Presentation by requesting parties<br>• Initial recommendation to En Banc | May 2-6, 2011<br><br>May 9-20, 2011 |
| June | Supreme Court En Banc Review<br>• Review, modify, reject and/or approve preliminary recommendations | June 8, 2011 |
| July | Detailed Decision Packages due to AOC | July 22, 2011 |
| August | Supreme Court Budget Committee<br>• Review Detailed Decision Packages<br>• Presentation by requesting parties<br>• Final recommendations for En Banc | Aug. 8-12, 2011<br><br>Aug. 22-26, 2011 |
| September | Supreme Court En Banc Review<br>• Review, modify, reject and/or approve preliminary recommendations<br>Supreme Court En Banc Review (if needed)<br>• Review, modify, reject and/or approve preliminary recommendations | Sept. 7, 2011<br><br>Sept. 27, 2011 |
| October | Submit judicial branch 2012 supplemental | October 2011 |

Prepared by the Administrative Office of the Courts
March 2011

TAB 5

# BOARD FOR JUDICIAL ADMINISTRATION
# REGIONAL COURTS OF LIMITED JURISDICTION
## Status Report March 2011

## HISTORY

Washington's judicial reform efforts can be traced as far back as the 1920's. The concept of creating regional courts of limited jurisdiction has existed for decades in Washington, dating back to 1959 when the legislature considered legislation to replace the patchwork of justice of the peace courts with a single court of limited jurisdiction. That legislation failed to come to a vote on the floor on the last day of the 1959 legislative session and two years later, the 1961 Justice Court Act was passed establishing the basic structure we have today. Efforts to revisit the two court structure continued with the 1969 Magistrates' Association Task Force Committee on Court Improvement. Numerous reviews since that time, including the District and Municipal Court Judges' Association Court Consolidation Committee of 1988 and the Court Funding Task Force of 2004 have all arrived at the same result: an aspiration to create a single court of limited jurisdiction, or what has been recently termed "regional courts."

## REASONING

The 1961 Justice Court Act was proposed to "establish a system of courts providing uniform justice to all parts of the state." More than fifty years later, the same reasoning holds true. In 2005, the Board for Judicial Administration adopted the following policy statement and goal for the courts of limited jurisdiction in Washington State:

> Long term, the courts of limited jurisdiction in Washington State should be restructured as regional courts having a full range of judicial functions including jurisdiction over all applicable state laws, county and city ordinances, civil cases and small claims. Regional courts would be located in convenient location serving both the public and other users such as law enforcement agencies, lawyers, and court personnel. Regional courts would operate full-time, with elected judges, and offer predictable recognized levels of service, including probation departments and be appropriately funded by state and local government. A regional structure for courts of limited jurisdiction will offer convenience by making courts open and accessible to the public, and coordinate services, staff, and administration and achieve economies of scale for all participating jurisdictions.

## PROCESS

In April 2008 the BJA reaffirmed its position and established an ad hoc work group to draft legislation that would achieve these goals to be introduced in the 2009 legislative session. The goal for the 2009 legislative session was to introduce the

concept to the legislature and begin the discussion, expecting that constructive modifications of the proposal would take place during the interim and that legislative approval would likely require two or three legislative sessions.

The ad hoc work group was chaired by Benton-Franklin Superior Court Judge Craig Matheson, a former limited jurisdiction court judge. The work group also included district and municipal court judges and a district court administrator, and was supported by AOC policy staff. The group met several times and developed a twelve page document that could serve as the basis for drafting proposed legislation. The committee expected that this draft would be reviewed by the BJA and subjected to additional stakeholder input, including the District and Municipal Court Judges Association among others. The draft was intended to be the basis on which to begin a series of concerted negotiations with the courts of limited jurisdiction, cities, counties and the state in an effort to create a court structure that will best serve the needs of Washington's citizens.

The work group preferred to encourage cities and counties to opt into a new Regional Court model through considerable financial incentives rather than legislative mandates. The work group formulated this strategy during its summer 2008 meetings. But, in September 2008, BJA began serious discussion about the effects of the state's budget deficit on Justice in Jeopardy funding requests for interpreters, judicial salaries, and juror pay. By the time the work group completed its review in late November 2008, it was apparent the work group's model would either need to await a better fiscal climate or be substantially refined.

WORK GROUP PROPOSAL

The ad hoc work group's initial draft proposal, which will and should change with stakeholder input, includes the following concepts:

- District and municipal courts have the option to form a regional court of limited jurisdiction.

- Incentives to form a regional court:
    - Salaries and benefits for regional court judges shall be shared by the state in the same manner as superior court judges.
    - Jury costs shall be paid by the state at a level similar to the state's minimum wage.
    - The State shall pay for and manage constitutionally obligated defense costs through the Office of Public Defense.
    - Priority status shall be given to regional courts over district and municipal courts when applying for new program money.
    - In order to receive state funding, regional courts must meet minimum standards.

- All regional courts will be served by full-time, elected judicial officers who are state employees.
    - Existing judicial officers will be "grandfathered."
    - Judicial elections shall be held every 6 years rather than quadrennially.
    - Vacancies shall be filled in the same manner as superior court judges.

- Regional courts shall have exclusive original jurisdiction over matters arising from ordinances of cities and towns that have agreed to operate as part of the regional court. A regional court shall also have the same civil and criminal jurisdiction as a district court for any matters arising out of a county that has agreed to operate as part of the regional court.
    - There shall be a small claims department.
    - A violations bureau may be authorized to process traffic infractions but not hold hearings.

- A municipality may create a satellite location of the regional court at their option and expense.
    - Every location must be equipped to accept and decide domestic violence and antiharrassment protection orders.
    - Every location must have at least one full-time staff position and adequate security.
    - There shall be reasonable access to the services of a judicial officer during regular work day hours.
    - The satellite location shall be part of the regional court and subject to the presiding judge role of the regional court.

- Costs shall be apportioned between municipalities and counties that have entered into an agreement to form or join a regional court based on a proportionality formula to be determined locally.

- Revenue from fees, fines, forfeitures and penalties from cases that originate within a certain jurisdiction (city or county) will be retained by that jurisdiction according to current law.

- Local districting committees shall be restructured when a regional court is formed. A new statewide committee shall also be established to ensure that all cities and counties joining a regional court shall have an appropriate avenue to address grievances not resolvable at the local level.

TAB 6

# BOARD FOR JUDICIAL ADMINISTRATION

## RESOLUTION REQUEST COVER SHEET

Efforts to Eliminate Racial Disproportionality and Disparity in Washington Courts and Justice System

**SUBMITTED BY: Judge Deborah Fleck**

---

**(1) Name(s) of Proponent(s): Judge Deborah Fleck, modeled after the Resolution of the Superior Court Judges' Association adopted in November 2010 and forwarded to the BJA for its consideration.**

**(2) Spokesperson(s):** Judge Deborah Fleck, Deborah.fleck@kingcounty.gov

**(3) Purpose:**

The purpose of the resolution is for the Board for Judicial Administration to make a public resolution and commitment to support education of judicial officers in the area of racial disproportionality and disparity in the Washington Court system and to identify corrective measures and pursue necessary changes to achieve the fair and impartial administration of justice.

The requested language of the resolution is below:

"The Board for Judicial Administration strongly advocates a well-coordinated short and long term effort by the judicial branch, the Washington State Bar Association, minority bar associations and court related stakeholders to educate the public and those involved in the justice system on racial disproportionality and disparity occurring in the justice system, to identify corrective measures and pursue necessary changes and to measure progress in addressing these issues that are critical to a fair and impartial system of justice in Washington."

**(4) Desired Result:** (Please state what action(s) would be taken as a result of this resolution and which party/ies would be taking action.)

Through the Board for Court Education and the committees designed to staff judicial conferences, the trial court associations and BJA could request standard education sessions related to the topics of racial disparity and disproportionality in the judicial system. While all trial courts and appellate courts who participate in judicial

conferences currently have the ability to submit education ideas, the resolution would be a policy statement from the administrative oversight of the judicial branch that could provide a clear focus for upcoming education conferences. Through the judicial branch associations and relationships with law-related organizations, schools and associations, the Board for Judicial Administration and judicial associations could support proposed improvements that serve the fair and impartial administration of justice.

**(5) Expedited Consideration**: (Please state whether expedited consideration is requested and, if so, please explain the need to expedite consideration.)

This proposed resolution should be on the discussion calendar, followed by presentation on the action calendar in the following month.

**(6) Supporting Material:** (Please list and attach all supporting documents.)

Please find attached the materials presented by the Task Force on Race and the Criminal Justice System at an historical gathering at the Temple of Justice on March 2, 2011.

# *RESOLUTION*

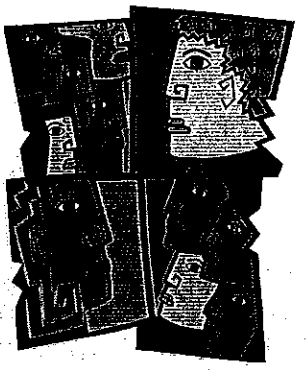
## by the

## BOARD FOR JUDICIAL ADMINISTRATION

The Board for Judicial Administration strongly advocates a well-coordinated short and long term effort by the judicial branch, the Washington State Bar Association, minority bar associations and court related stakeholders to educate the public and those involved in the justice system on disproportionality and disparity occurring in the justice system, to identify corrective measures and pursue necessary changes and to measure progress in addressing these issues that are critical to a fair and impartial system of justice in Washington.

# Proposed Recommendations

Task Force on Race
in the Criminal Justice System



# Recommendations

1. Participate and exercise leadership in the public dialogue on race within our justice system. Institutionally create and/or empower an entity to address these concerns publicly and to play a leadership role in oversight.

## Recommendations

2. Commit to a series of forums on specific issues related to race in the criminal justice system so that specific and detailed recommendations for real change might be achieved;

## Recommendations

3. Commit to the ongoing education of judges at all levels and direct the staff at AOC to actively support the judicial conferences in funding and supporting fact based quality presentations on the problems of bias and racial disparity. Encourage judges to undergo training on pre-trial and bail screening instruments to reduce racial disparity among the detained/incarcerated population;

## Recommendations

4. Direct the new center for court research to study and publish data regarding the incarceration of minority populations and undertake a review of race neutral policies, practices, and laws that may contribute to racial disproportionality with the goal of publishing such information and keeping the data fresh and updated;

## Recommendations

5. Undertake a critical review of each stage of our criminal proceedings in all of our trial courts to examine whether there might be practices that might have developed over time that contribute to racial disparity and commit to addressing these practices either by training or court rule;

## Recommendations

6. Support the expansion of alternative sentencing policies (other than incarceration) and have a serious dialogue regarding the status of felons post-release from prison and the obstacles to successful re-entry into society;

## Recommendations

7. Encourage and advocate for an increase in pre-trial diversion programs, alternatives to arrest, and the expansion of therapeutic courts; and

# Recommendations

8. Develop and implement through the center for court research a rigorous method for evaluating whether any initiative undertaken to reduce racial disparity in the criminal justice system does in fact reduce racial disparity.

# Racial Disparities in Criminal Justice

ALEXES HARRIS, ASSISTANT PROFESSOR
UNIVERSITY OF WASHINGTON
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AND

KATHERINE BECKETT, PROFESSOR
UNIVERSITY OF WASHINGTON
kbeckett@uw.edu

# Outline of Presentation



I. Definitions and context

II. Causes of racial disproportionalities

III. Research findings and examples

IV. Consequences and conclusions

# Disproportionality vs. Disparity



## Disproportionality

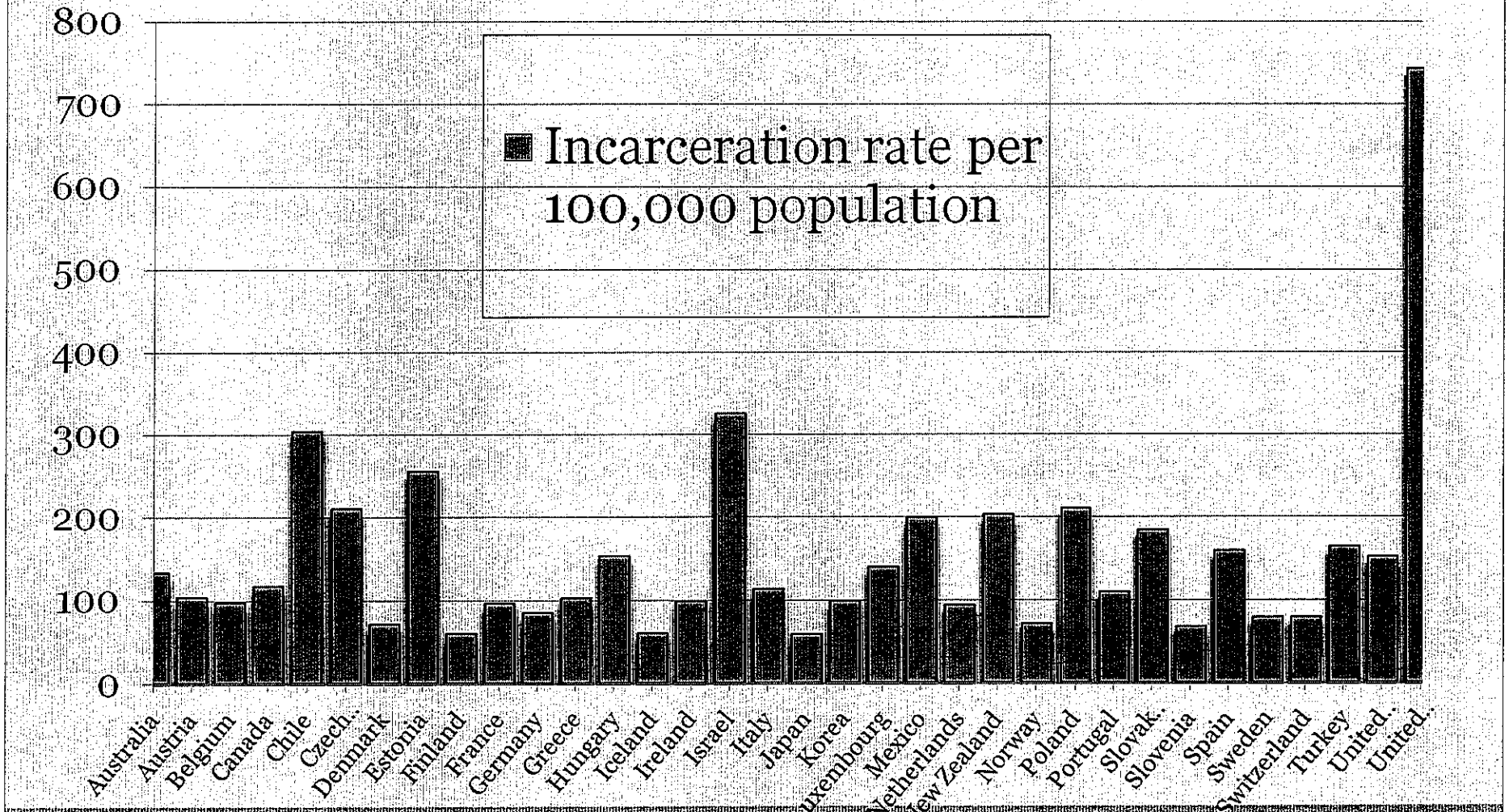
- The over-representation of a particular group relative to the numbers of that group in the general population

## Disparity

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

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

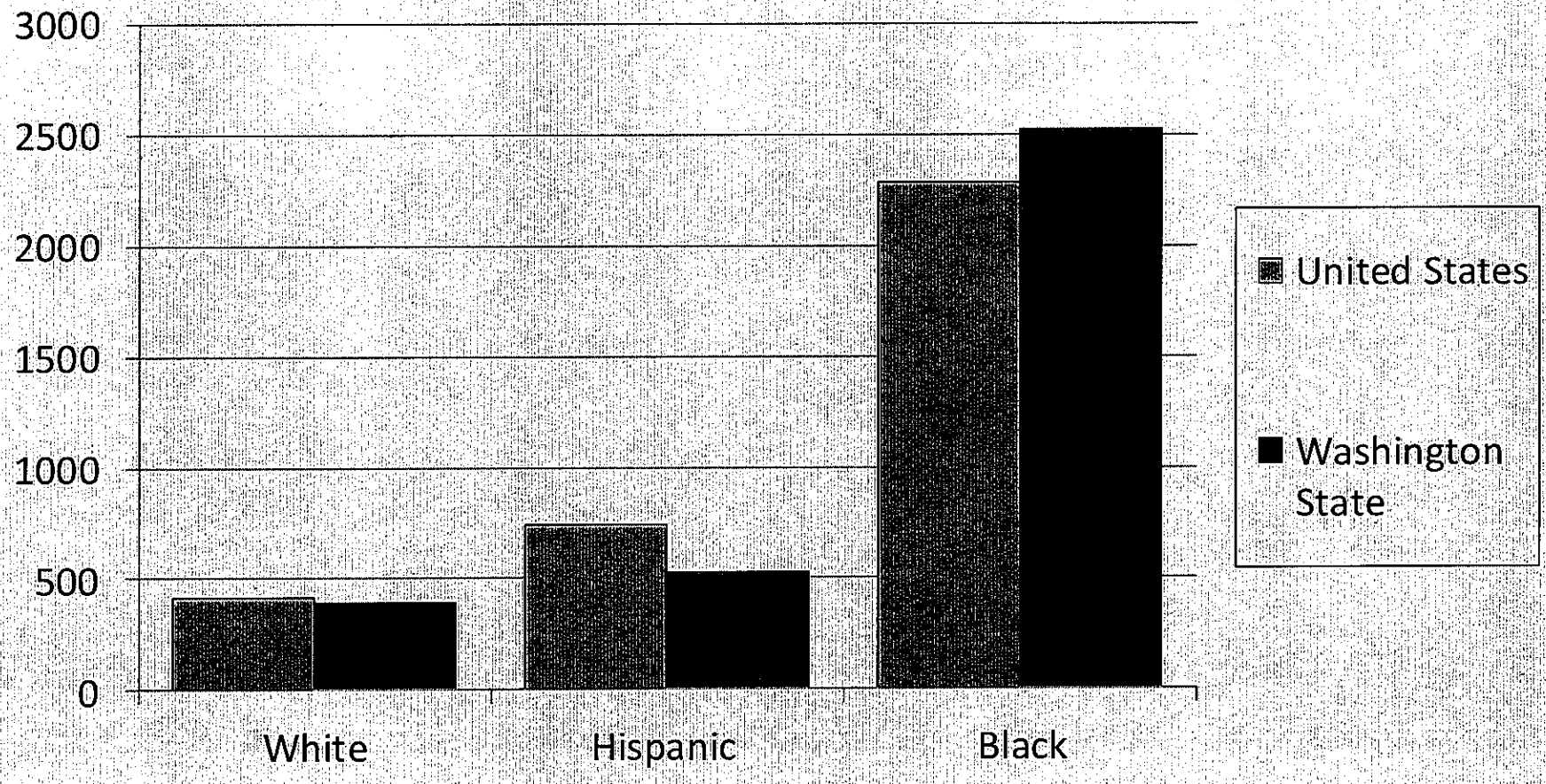





Source: International Centre for Prison Studies at King's College, London, "World Prison Brief"

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

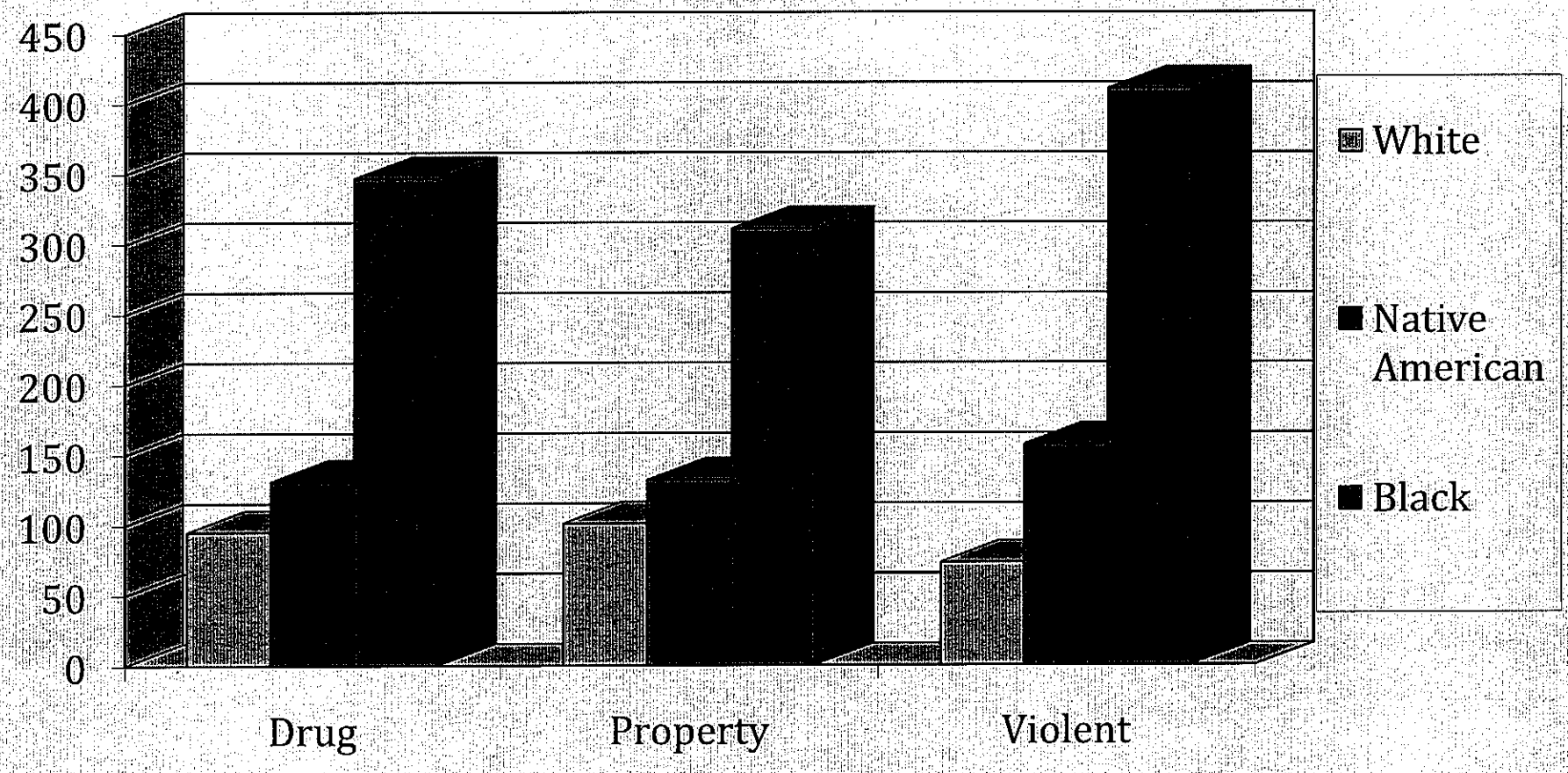





Source: The Sentencing Project, "Uneven Justice," 2005. Note: Rates are calculated per 100,000 population.

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





# Proffered Causes of Racial and Ethnic Disproportionality



1. Differential crime commission rates

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

3. Bias
   - Explicit/conscious
   - Implicit/unconscious

# Cause #1: Differential Involvement



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

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



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

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



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

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



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

# Cause #3: Racial and Ethnic Bias



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

# Consequences



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

# Conclusions



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

# List of References

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**Introduction**

- Justices of the Supreme Court, distinguished members of bar, Judge Gonzales and Professor Chang, and other members of the local bar and community.

- My name is Jason Gillmer, and I am a professor of law at Gonzaga University School of Law, and a member of the Task Force on Race and Criminal Justice.

    - I want to echo the words of Judge Gonzales and the others and start by thanking you for the opportunity to present some of our preliminary research and recommendations on this very important topic.

- Although I'll be touching on some of these issues, after me, you are going to be hearing from my friends and colleagues in much more detail about current racial disparities in our criminal justice system.
    - My role is different: I'm here to provide you with some historical background and some context.

- Indeed, this is my training – I am not an empiricist or a sociologist but a legal historian.
    - But if you believe – as I do, and as the Task Force does – that it is difficult to understand where we are today on these issues without some understanding of what came before, then you'll agree that history and tradition are important aspects of addressing current racial bias and barriers in our criminal justice system today.

**Theme – Associating Race and Criminality**

- With that, let me turn to an unfortunate theme that emerges from our history on this issue.
    - This is a theme which posits that, over our nation's history, we have regularly and routinely associated race with criminality.

- We have done so through two primary methods:
    - first, we have a tradition in this country of enhancing criminal penalties when non-whites are involved.
    - second, we have a tradition in this country of making non-criminal activity criminal when engaged in by non-whites.

**The First Era – Racially Explicit Laws**

- There was a time when these methods were explicit.

- 160 years ago in the South, laws on their face explicitly enhanced the penalties for blacks committing the same crime as whites.
  - In fact, Southern legislatures routinely described a host of criminal activity – from rape to assault to all types of homicide – which merited the death penalty, for example, when committed by blacks, while whites generally received the ultimate sentence for just one – murder.

- During this era, legislatures also explicitly criminalized non-criminal activity when engaged in by non-whites.
  - In many places, non-criminal activity like possessing guns, gathering in groups larger than 3, or even learning how to read and was made criminal when blacks were involved.

**The Second Era – Racially Neutral Laws with a Discriminatory Purpose**

- The enforceability of these racially explicit laws was thrown into serious doubt with the Reconstruction Amendments and related civil rights laws, causing many state legislatures to redraw their laws in race neutral terms.
  - But that does not mean that some of these laws did not survive, and it does not mean that local sheriffs, prosecutors, and judges did not implement the new race-neutral versions with a discriminatory purpose.

- Again, we see our same two themes emerge.

- First, enhancement.
  - We needn't look any further than infamous case of the Scottsboro Boys – the case that reportedly served as the basis for Harper Lee's novel, *To Kill a Mockingbird*.

  - In the middle of the century in many areas, including Alabama, race often served as a proxy for guilt, and nine black teenagers were given the punishment of death based on an accusation of rape so filled with holes that it defies modern sensibilities.

- Second, non-criminal activity made criminal because of race.
  - Perhaps the best illustration of this method is the bans on interracial marriages – bans which lasted until 1967.

  - As you might remember from reading Loving v. Virginia, during the middle of the 20th century, more than half the states criminalized the non-criminal activity of marriage based solely and exclusively on the race of the participants.

**The Notion of Washington Exceptionalism**

- I'm new to Washington; but I'm learning quickly that many here pride themselves on a notion of Washington exceptionalism – the idea that what happened in the South and other parts of the West did not happen here.

- It may be true that some of these more egregious laws did not reach all the way to Washington.
  - Unlike the South, we didn't segregate our schools by law.
  - Unlike Oregon and Idaho and California, we didn't outlaw interracial marriages.

- But we do see evidence of associating race with crime, and we certainly see evidence of discrimination.

- One of the most egregious examples is Japanese internment during WWII.
  - In Washington State, close to 13,000 people of Japanese descent were interned in camps.
  - These were children, these were the elderly, these were men and women – most of whom were American citizens or legal resident aliens – whose only crime was their color and their ancestry.

- Professor Quintard Taylor, a leading historian on the question of race and race relations in the State of Washington, also documents numerous examples of discrimination against Af-Am in such areas housing, employment, and education.
  - This discrimination, of course, indirectly but inevitably affected crime and punishment.

**The Current Era – Racially Neutral Laws with a Disparate Impact**

- This brings us to the present.
  - Today, we are dealing with racially neutral laws that many people would say were not enacted, and are not being enforced, with a ***conscious*** discriminatory purpose.

  - But, nonetheless, the evidence detailed in our report shows that some of these laws and policies – from juvenile justice, to drug enforcement, to traffic stops – are having a devastating impact on minority communities.

**The Studies**

- As you know, the State of Washington in general and leaders in the bench and bar in particular have taken the problem of racial bias and barriers in the criminal justice system seriously since the early 1980s.

- My understanding is that the catalyst for this involvement came after a study in 1980 by Scott Christianson which indicated that Washington led the nation in the over imprisonment of blacks.
  - Comparing the state's prison population to the racial composition of the state, he found blacks made up 28% of the prison population but only 3% of the state's population.
  - This was a ratio of 9.33 to 1, the worst in the nation. (nation was 4 to 1.)

- This prompted the State Legislature to commission a study to evaluate if in fact Washington had high rates of racial disparities in imprisonment, and if so why, and to later request the Supreme Court to create the Minority and Justice Task Force (1987), which became the Minority and Justice Commission (1990).

- Over the years we have seen a number of different studies, reports, and evaluations.
  - My colleagues after me will be discussing some of these, together with their own work.

  - But, at the end of the day, one thing seems clear (to me at least) – that is, race matters; race still matters today.

  - Dr. Robert Crutchfield (UW) put it this way: ***race and ethnicity of individuals continues to matter when people face the risk of arrest and throughout the processing of the criminal cases that follows these arrests***.

- Our experts will probably tell you that, today, unlike the past, this is not necessarily the result of any one individual's conscious attempt to discriminate.
  - That happens, surely, but much more likely the cause for the disparities is institutional or structural arrangements.

  - This is a conclusion that I believe Professors Beckett and Harris will be commenting upon in a moment, and appears to be borne out by their research.

**Perceptions Regarding Treatment of Minorities**

- But I'd like to close my remarks from a different angle, by focusing on what this history and our current practices mean for regular people.

- In 1990, after holding a series of public forums, the Minority and Justice Task Force concluded in their final report that there is a ***perception***, among minority groups here in Washington, that "bias pervades the entire legal system in general," and the criminal justice system in particular.

- Some of their findings:
  - "There is a perception that in criminal proceedings, minorities receive disparate treatment and harsher sentences despite the guidelines set out in the Sentencing Reform Act . . . ."
  - "There is a perception that a lack of uniformity exists in prosecutorial decision-making regarding criminal cases involving minority persons."
  - "There is a perception that some judges, lawyers, other officers of the court, and court staff [have demonstrated] biased attitudes toward minorities appearing in court."

- After hearing of the history of associating race with crime that I have detailed, and after we are done hearing from my colleagues about some of the empirical research, it hardly seems surprising that this perception exists.
  - And, in my view, this perception is not aided when high-ranking officials, whether members of the judiciary or other branches, dismiss concerns about the high prosecution rates and the high incarceration rates among certain racial groups as simply the natural outgrowth of a high rate of criminality.

  - Such comments undermine the public's confidence in our judicial system; they tend to perpetuate the belief – rightly or wrongly held – that if you are of one color you will be treated differently than if you are of another color.

  - I would hope that we could come together with some common sense ideas about how we should address this problem, and about how we can eradicate this problem.

- Thank you.

# Bias

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# So far . . .

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

# Attitudes and Stereotypes

**Conscious/explicit**

- Admission
- Survey

**Unconscious/implicit**

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

# Attitudes and Stereotypes (cont.)

## Expressed racial attitudes (white respondents)

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

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

## Implicit racial biases (all respondents)

- Pervasive
- Large in magnitude

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

# Attitudes and Stereotypes (cont.)

## Expressed racial attitudes (white respondents)

Causes of Black inequality

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

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

## IAT stereotypes (all respondents)

72% associated MALE with SCIENCE and FEMALE with HUMANITIES

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American = White
Undocumented = Latino
Foreign = Asian

# Connecting bias to behaviors and outcomes

**Conscious/explicit**

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

**Unconscious/implicit**

- Bias
  - Problem of proof
- Behavior
- Outcome

# Outcomes and Problems of Proof

## Med-mal case, Eastern WA

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

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

## Experiment involving Disabled Person

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

# Price Waterhouse v. Hopkins
## (specific)

### Conscious/explicit

- gendered comments

### Unconscious/implicit

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

# White- and Black-sounding Names
## (aggregate)

**Conscious/explicit**

- Bias
  - Proof?
- Behavior
  - Callback decision

**Unconscious/implicit**

- Bias
  - Proof?
- Behavior
  - Callback decision

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

# Traffic Stops

**Conscious/explicit**

- Bias?
- Behavior
  - Decision to search/citation

**Unconscious/implicit**

- Bias?
- Behavior
  - Decision to search/citation

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

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

**Predicted search rate**

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

All stops

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

Loveritch et al., No evidence of intentional discrimination

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

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

# Limits of Current Antidiscrimination Law

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

# Interventions

**Conscious/explicit**

- Accountability
- Education
- Exposure
- Other

**Unconscious/implicit**

- Accountability
- Education
- Exposure
- Other

# At the end of the day

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