

Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel

6 – 8 PM on Tuesday, September 13, 2022

Location: Microsoft Teams

ORCA Media recording of the live meeting:

- <https://www.orcamedia.net/show/september-13-2022-rdap>
- <https://youtube.com/watch?v=Uf9pGSm3diM&feature=share&si=EMSIkaIECMiOmarE6JChQQ>

Attendance List –

1. Superior Judge Mary Morrissey
2. Etan Nasreddin-Longo – Chair of the Racial Disparities Advisory Panel
3. Xusana Davis – Executive Director of Racial Equity for Vermont
4. Erin Jacobsen – Codirector of the Community Justice Division at the Attorney General’s Office
5. Tyler Allen – Adolescent Services Director, Vermont Department for Children and Families
6. Monica Weeber – Department of Corrections
7. Rebecca Turner – Head of the Public Division of the Office of the Defender General
8. Jessica Brown – Assistant Professor at the Vermont Law and Graduate School
9. Evan Meenan – Deputy State’s Attorney, Department of State’s Attorneys and Sheriffs
10. Qing (Tsing) Ren – Evaluation and Program Analyst at Shelburne Farms
11. Christopher Louras – Research Associate with Crime Research Group
12. Shela Linton – Cofounder and Executive Director of the ROOT Social Justice Center
13. Wichie Artu – Data Warehouse Consultant and Social Justice Advocate
14. Jennifer Poehlmann – Director of the Vermont Center for Crime Victim Services
15. Grant Taylor – Minutes Recorder
16. ORCA Media

**Announcements** - A reminder on chat etiquette during meetings.

Etan: Concerns about information from the chat getting to everyone. Maybe a chat monitor is needed.

Xusana: People watching the recording of the meeting will not be able to see the chat. Vocalize what’s being said in the chat for the record.

Etan: There will likely be people who do not look at the minutes but do watch the ORCA Media recording.

**Discussion of the approval of the minutes from the July meeting**

Add Wichie Artu to the July minutes.

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**Continuation of the discussion of Racial Disparities Advisory Panel's (RDAP) future directions, and the report required from the Panel in December 2023. Several subcommittees have been proposed and have met. They will lead discussions into their work, which will help describe these future directions for the Panel.**

- **Review a summary of ORE's (Office of Racial Equity) draft Language Access proposal and discuss** ways to support its implementation across State government, particularly in the spaces that constitute the criminal and juvenile justice systems.

*Xusana Davis*, Executive Director of Racial Equity

Xusana: Putting together a statewide language access plan proposal, so that language access can be expanded and better streamlined across state government. Including the Executive, Legislative, and Judiciary branches as well as independent agencies as much as possible. Looking for some level of uniformity and consistency with the way members of the public can interact with state government. It shouldn't matter which branch of government you go to in terms of what level of access is available in an individual's language. There are some federal minimum requirements as well, so to an extent this is not optional. Part of it is making sure state government is in compliance, and part is making sure we are going above and beyond compliance. The judiciary has been working on language access for years now, so this isn't a new project. There is now a set of recommendations that are statewide and broad, thinking about how that can be tailored to the judiciary and any others branches that touch on criminal and juvenile justice systems, in ways that don't conflict with good practices. Looking to this Panel to help think through what that would mean for language access in the criminal and juvenile justice systems.

Jennifer: Would like to share a recent communication access project with the group. It included a survey to find what language access issues currently exist. Will forward that report to Etan for dissemination.

Wichie: Recently a refugee in the community went through the criminal justice system, initially with law enforcement. During the arrest there was no interpretation services provided. We should be using real world experiences, what's happening day to day. Cultural relevance, direct words translated may not mean the same thing. A reminder that not everyone can read and write. Alternative media is needed when thinking about language access and communication access.

Xusana: The communication access project was recently presented at a meeting.

Jennifer: It provided a good baseline for what people think about the justice issues are for people with communication and language issues. Unlike other states, we don't have that dominant secondary language in how we present those pieces to stakeholders.

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15 minutes

Xusana: Will send draft recommendations that were put together to this Panel. They speak to selecting from an interpreter pool in Vermont who may be able to have a better understanding of the geographically local or Vermont specific terminology or concepts. Speaking of cultural relevance, a direct translation may not be accurate. Will forward the draft to Etan.

Rebecca: Primary concern is addressing accurate translations in the legal realm. This includes hiring competent people who are both proficient in the casual use of the language as well as the legalese of this specialized world. Different executive agencies have different needs in providing accurate interpretation for defendants, for witnesses, for all who require it. Hears the concern of refugees, or any person of limited English proficiency, who is under custody of law enforcement before they've been assigned a defense attorney. The legislature has previously enacted legislation regarding the requirement to provide competent interpreters for the hearing impaired by law enforcement. In this Panel's 2019 report it was recommended that should be expanded to include limited English proficient individuals.

Xusana: To the first point that a statewide policy would lower a standard, the idea is to encourage a strong floor and build up from there. Will support the judiciary and any other ancillary entities in going above and beyond. To the second point of securing competent and independent interpreters as early as possible in the process, that will be added to the proposal. If it comes down to one translated word that makes the difference, the goal is to make sure we have people who can interpret the necessary nuance. Just because someone is multilingual doesn't mean they can interpret, and that has been the default for a long time.

Wichie: Different professions have different jargon, and it's complicated to understand jargon as is. These act as general barriers for people. Is there a longer vision and timeline for the type of interpreters you're going to want? Or types of services their going to provide within specific industries?

Xusana: The bare minimum is getting into federal compliance, which is not the end goal to strive for. The first thing is whatever timeline is the shortest to get us there. After that there will be a requirement for every agency/department/branch to have a language access plan specific to its own needs. There will be a requirement for revision and resubmission every year for the first 5 years, and once every 5 years afterwards. Some obvious plans that need to be worked out include all emergency communication, public service announcements, anything having to do with health, anything to do with justice or the courts, educational interpreting, those will be high priority.

30 minutes

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Erin: Put this issue on the agenda again for next month, after reading the draft proposal. Is there some other way you'd like feedback?

Xusana: The draft that was sent out is a numbered list of recommendations with findings, so it's not comprehensive and may not answer all questions. There is a form to fill out with feedback after looking. There were two rounds of community engagement, and they had a deadline of September 9<sup>th</sup> to respond. This is just a draft of a proposal, please do not share right now.

Etan: Will add feedback on this topic to next month's agenda. There were only a couple of lines in the 2019 report that dealt with language access. Some things within the report have been addressed, while many have not. Financial constraints may create a need to prioritize efforts to respond to the upcoming report in 2023.

Rebecca: Maybe talk about this next month after reviewing the 2019 report.

Xusana: Linked to this conversation is one about accessibility, so the proposal includes discussion about American sign language and technology. General technological communication issues are part of language access. Please send along feedback about accessibility even if you don't think it fits.

Etan: Moving along to reports from the subcommittees.

- **"Second Look" subcommittee**

*Rebecca Turner, Appellate Defender, Office of the Defender General*

Rebecca: The Second Look Subcommittee met for a second time. In attendance were Wichie, Qing, Etan, Jennifer, Evan, Erin, and Jessica. They started by acknowledging the similar effort by the Sentencing Commission, which shares some members with this Panel. Spent some time discussing whether it would be worth it to go forward. The Sentencing Commission had met before the Subcommittee meeting and had acknowledged that this Panel is focussing on a "second look". They concluded that it's worth continuing efforts and that it's not seen as duplicative. The Sentencing Commission is focused on a much narrower application of a second look, not anchored my racial or ethnic disparities. The Subcommittee also decided to continue its work focussing on a second look.

Mary: Please explain "second look".

Rebecca: "Second look" is an informal reference to legislation that has been enacted around the country which allows for a second look at previously imposed sentences beyond the means currently available. Not direct appeal, not a habeas petition. We acknowledge in Vermont that our second look abilities are limited to Rule 35 and sentence reconsideration which is limited to

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90 days. We are looking at reconsidering a proposal to expand sentence reconsideration laws in Vermont right now. Some other states focus on serious convictions with lengthy terms of imprisonment for a second look, and others focus on juvenile or youth sentences. For this Panel, the concern is for what second look legislation can do to address and correct racial disparities.

Etan: Speaking of the Second Look Subcommittee and the group formed by the Sentencing Commission, will the two groups meet?

Rebecca: The two groups will continue to meet separately, welcoming either members to sit in. The idea is to let both groups continue along their own paths, and not let any one lose the focus. Not trying to silo the two, but make sure that what is brought to the table isn't lost.

Erin: Both second look subcommittees are just getting started on their work. This Panel's Second Look Subcommittee already has their own research questions. What does "second look" look like in other jurisdictions? What are the data gaps in Vermont regarding disparities? What about data from other jurisdictions regarding disparities? What other questions might we want to ask as it pertains to a second look in Vermont? What are the metrics for success? Including a question about where the gaps are in the racial data throughout the state. The two groups will inform each other, even while they may have different focuses starting out. There may be shared meetings down the road at some point.

45 minutes

Wichie: Reminder that at the end of the day we're asking the legislature to pick up these recommendations and put them through. Being able to do that in coalition with the Sentencing Commission will go a long way when it comes to testimony and getting legislators to act.

Evan: A high level of coordination including mutual meetings with the Sentencing Commission subcommittee will add value. The Sentencing Commission may very well be interested in some of the issues regarding racial disparities. There are a lot of people who sit on both subcommittees, meeting together would be beneficial. Which offenses should be eligible? Which types of sentences should be eligible? What length of sentence should be eligible? How many times should someone be allowed to request a second look? How many times may a sentence be reduced through a second look? What is the role of victims going to be in this process?

Xusana: A link was shared in the Microsoft Teams meeting chat to the Second Look Subcommittee shared folder in SharePoint.

Etan: Evan's questions are listed there.

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Erin: Those important questions and others are listed in the Second Look Subcommittee's shared folder. Anyone is welcome to look at the shared folder. Please feel free to add to our research. Also, not in opposition to the two Second Look Subcommittees meeting together. Thinks it's important for the two to get started on their own, then important to come together at some point.

Shela: Cannot access the chat, hasn't been able to for the whole meeting.

Qing: Has no access to the chat. Assuming that's due to not being affiliated with the institution providing the Teams meeting. Something that came up in a subcommittee meeting is technology access. That poses a barrier to participants who don't have access to the chat.

Etan: Something needs to be done to solve this issue. Many people can't gain access to the chat.

Erin: Has checked with IT about this issue previously. They suggested a solution that wasn't working. Has checked specifically about sharing in a group including members of the public. Due to security issues, no. This is unacceptable when focusing on accessibility and transparency. It's a combination of Microsoft and state government rules about security measures when using those tools.

Grant: Mentioned that the person taking the minutes and the group recording the meeting have no access to the chat, so it can't be recorded for public record.

Evan: Suggested providing partner emails for those members not employed by Vermont state government. Everything we do, including the chat, is subject to the Vermont Public Records Act. If people are using their private email addresses, then they may be subject to a public records inquiry.

Qing: If that solves the problem, would like to have access to that. Teams isn't the main issue; SharePoint is more difficult. Okay with not seeing the chat but would like to collaborate on SharePoint. Probably not the last cohort of people to have this issue. Having an alternative for the long run would be nice.

Shela: If we're talking about transparency and accessibility for everyone, that doesn't solve the issue. How do we solve the overall concern of having community members chime in? Partner emails wouldn't solve that problem.

Evan: That is right, it wouldn't help members of the public who might want to view the chat. It might help people access SharePoint though. It wouldn't do any good for members of the public.

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Shela: For various reasons the chat is helpful in some moments, but it is supposed to align with the Vermont Public Meeting Law. In Zoom it is possible to download a recording of the chat, maybe that's possible in Teams also. Maybe then it can be added to our minutes as documentation of our meeting. The chat creates accessibility for those who use it.

Jennifer: Is this Panel subject to the Open Meeting Law? Shouldn't we be posting this and providing link options for community members?

Erin: Meetings are posted on the Attorney General's website, and so is the Teams link to access the meeting. The trouble is with document access and the chat. That is an access issue and a logistics issue for trying to get our shared work done. The minutes are also posted to the Attorney General's website for this Panel.

1 hour

Monica: We have used OneDrive in the past, and people were able to make edits to the documents. Maybe it is a settings issue in Teams that needs to be adjusted.

Erin: Will check on that as well as the partner email addresses. We cannot be alone in this issue of trying to collaborate with folks who are outside of state government employment.

Xusana: Is experiencing trouble with Teams and a staff member who is locked out of the chat. Happy to help troubleshoot this or be a tester.

Erin: Will continue to work on this.

Etan: Speaking for Wichie: Questions for the Second Look Subcommittee – Have we considered hearing from people who have experienced a second look proceeding on all sides? Do we have an approved definition of “racial disparities” in the criminal justice system? What does accountability mean when someone has been a victim of racial disparities?

Shela: When this Panel first began meeting, there was a struggle to name “white supremacy” in language. It matters what base we talk from, what language we use, and what laws we can create from that. Likes the idea of trying to understand what does that racial harm look like, and what does that mean. Should this committee be making recommendations to support that work? If we have varying definitions without strong enough legal base to them, then what we say and do can only be as strong as the words we put to it. Is curious to explore what that means for the Panel.

Rebecca: All the work the Panel did to finally include “white supremacy” in their 2019 report was a big strain on the members. There was a result from that effort and the Panel could benefit again from revisiting again what these terms mean. Are we still on the same page when

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we say “white supremacy” on this Panel in the context of the work we’re doing? There should be an anchoring of what we mean by “racial disparities”.

Etan: Is in contact with people from Council of State Governments. Can ask if they have a working definition, that we could build off. What do they use? Do they have a definition?

Monica: Agrees that Council of State Governments would be a good resource for a working definition of “racial disparities”.

Etan: Will speak to them about these questions. Will add this to next months agenda.

- **Community Safety Reviews-Statewide Implications**

*Wichie Artu, Data Warehouse Expert*

Etan: Speaking for Wichie: Is putting a subcommittee together around the Community Safety Review topic, largely based off a similar review completed in Brattleboro. Is looking around for other reports in the state, there may be issues that are broader that came out of the 2019 report. The next step will be to divide the work that needs to be done.

Etan: Isn’t sure which Community Safety Reviews Wichie has already secured. Wichie is planning on creating the Community Safety Review Subcommittee soon.

Etan: This Panel is not bound to its 2019 Report, but there is a need to protect that product.

Jennifer: The Criminal Justice Research Group is releasing a study of the disparate impact on victims who are black.

Evan: When the final report is issued it’s something this Panel should look at. Recalls some reference to racial disparities among victims of violent crimes specifically.

Etan: The last thing has to do with concern with the Division of racial justice statistics, and responsibilities toward the Criminal Justice Council, formerly known as the Criminal Justice Training Council. There are a lot of people on that council right now and they are still figuring out what they need to do. Right now, they are particularly focused on curricular practices at the police academy, though definitely not their sole focus.

Etan: Is there any other business? Our next meeting is on the 11<sup>th</sup> of October. We know what some of the agenda will be already. Erin will work on trying to get everyone access to SharePoint. Will notify everyone when new documents come in, please review them at those times.



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Evan: Motion to adjourn.

Tyler: Seconded.

Qing: Thirded.

- **Adjournment**