

Minutes

Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel

6 – 8 PM, Tuesday 12 March 2019

Kimball Public Library, 67 N Main St, Randolph, VT

Attendance: Panel Members: Etan Nasreddin-Longo, Ingrid Jonas, Chief Don Stevens, David Scherr, Rebecca Turner, Shela Linton, Geoffrey Jones, Jessica Brown, James Pepper

Members of the public: Gary Scott

Welcome – Introductions

Approval of Minutes

Minutes from February 26, 2019 meeting had not been disseminated prior to this meeting.

Announcements

Ingrid Jonas announced that the Vermont State Police's Fair and Impartial Policing quarterly meeting is coming up at Vermont Law School on March 18, 2019.

Discussion of legislation related to racial bias

Etan passed around a current legislative proposal, H.381 – an act relating to racial impact statements, and asked the members for their initial reactions to the bill.

With respect to H. 381, Chief Don Stevens asked who would determine the racial impact of any particular bill and how they would make that determination. He also raised specific concerns about definition of "Native American" in Section 1 of the proposal.

More broadly, Chief Don Stevens noted the flurry of bills introduced this session related to racial bias and asked if anyone in the legislature was coordinating with the minority communities that would be impacted. He wondered if the sponsors of the legislation were intentionally circumventing the Advisory Panel's work.

Shela Linton shared some of these concerns related to H.381 specifically and the seeming lack of coordination and stakeholder engagement with racial bias proposals generally.

James Pepper indicated his belief that when the Panel submits its report, the recommendations contained therein will likely take priority over some of the other proposals currently under consideration.

Chief Don Stevens suggested one recommendation for the Panel's report could be that prior to introduction, all legislative proposals that might impact minority communities should be vetted by some combination of the Chief Racial Equity and Diversity Officer; the Racial, Ethnic and Cultural Equity Advisory Panel; and the Racial Disparities panel.

Shela Linton and Jessica Brown agreed with the sentiment of this recommendation but believed that impacted stakeholders should be consulted even sooner, and, more fundamentally, should be driving the formulation of legislative proposals.

James Pepper and Ingrid Jonas described their respective Department's processes for reviewing and tracking bills. Both discussed the difficulty in keeping up with the amount of bills being introduced and the pace at which they pass through the legislative process.

Etan suggested that a recommendation could be that the job description of the Chief Racial Equity and Diversity Officer be expanded to include tracking legislation, identifying impacted communities, and coordinating with them to ensure that their voices are involved in the legislative process.

Discussion of bullet points

Etan suggested that each member discuss the broad themes or areas of overlap among their respective bullet points.

Rebecca Turner suggested that two themes emerged as she reviewed the bullet points. The first theme was the need for more training. This training is necessary for law enforcement, judges, prosecutors, etc., but also for citizens who might be exposed to law enforcement or interact with the criminal justice system. This second type of training has been described in other jurisdictions as a "Know Your Rights" campaign and would include informing people of their right to an attorney, right to remain silent, etc.

The second theme identified by Rebecca Turner is the need for more and better data collection. In recounting some of the testimony from the Department of Corrections at a prior Racial Disparities Panel meeting, Rebecca Turner noted the lack of standardization across the State in the data points being collected, who is collecting data, and how categories of data are defined.

Rebecca Turner suggested two recommendations related to these themes. The first recommendation is to invest money in Know Your Rights-style trainings. The second recommendation is to standardize data collection across all State agencies.

Chief Don Stevens indicated that a theme of the bullet points is to minimize continual punishment for people once they have served their sentence. He discussed some of the collateral consequences

of criminal records, including their impact on employment opportunities and subsequent interactions with the criminal justice system, such as bail decisions, habitual offender charges, and sentencing determinations. **He suggested a recommendation could be that people have greater access to expungement and/or sealing of criminal records.**

Chief Don Stevens also suggested that members of a community should be more involved in the supervision aspect of individuals from those communities who are released on conditions pre-trial or on parole. People that make up a community likely have a better knowledge of and are more able to respond to the specific needs of an individual from their own community. **He also recommended that greater utilization of electronic monitoring for non-violent offenders could both save the State money and allow offenders to be productive members of society.**

James Pepper discussed his bullet points related to the high-impact, high-discretion decision points in the lifespan of a criminal prosecution, including the initial charging decision, utilization of alternative justice, plea offers, sentencing recommendations, and expungement. **He suggested that if the Panel makes a recommendation regarding data collection that the recommendation also include a specific request for resources to assist in collecting the data.**

James Pepper also indicated that one theme of the bullet points was for judges, prosecutors, and defense attorneys to take a more individualized approach to their cases and craft responses that are outcome-based and address the specific needs of each person in the criminal justice system. However, given the current caseload pressures, such an approach is challenging. **He argued that a recommendation to decrease caseloads by adding additional prosecutors, defense attorneys, and judges might actually increase non-incarcerative, restorative outcomes.**

Jessica Brown indicated a theme of the bullet points was to ensure that the policies being adopted in the State are not having a disproportionate impact on people of color. She reminded the Panel that often laws can be neutral on their face but have a disproportionate impact when applied. She pointed to the disproportionate number of people of color being detained pre-trial for lack of bail as an example. She suggested that the Panel should think of strategies to track and document the racial impacts of policies and decisions being made in the State.

Jessica Brown reiterated the need for community stakeholders to be involved in the decision-making for policies that impact their community. She spoke of a community-based, community-run Know Your Rights-style program in Philadelphia that is on-going, regular, and offers real-time answers to people enmeshed in the criminal justice system. More broadly, Jessica Brown indicated that while the Panel should work on more uniformity and fairness in the application of the law, that the criminal justice system really is at the end of problem not the beginning.

Shela Linton indicated that the problem Jessica Brown was referring to is white supremacy, and that until we as a Panel and a society are willing to acknowledge that as the problem, we can't begin to address the solution. She indicated a belief that collecting more data will only confirm what we already know, that racial bias and racism exists throughout the system. Shela Linton was deeply concerned over the huge amount of discretion that law enforcement officers, prosecutors, and judges exert. **She suggested a recommendation could be to establish an external accountability system to oversee this discretion.**

Shela Linton also indicated that sovereign immunity for police officers makes it impossible for citizens to hold law enforcement accountable or get justice for misconduct. Fundamentally, we as a State need to put our money where our mouth is and morally and financially commit to addressing racial disparity. One source of revenue could be in the form of savings in the Corrections budget from not incarcerating so many people. **Jessica Brown specifically suggested that a recommendation could be to reinvest any money saved in the Department of Corrections budget from a decrease in the incarceration rate into addressing racial disparities in the criminal justice system.**

Chief Don Stevens noted the difficulty in being a law enforcement officer right now, considering the dangerousness of their jobs and the increasing scrutiny of every decision they make. He suggested that law enforcement agencies need more diversity in their ranks and need to recruit from areas where people are most impacted by law enforcement.

Ingrid Jonas echoed a comment by Rebecca Turner that data can be important in informing agencies and the public about improper practices, but that data collected must be standardized throughout the system. She also agreed that training, particularly around how implicit or unconscious bias impacts decision making, is essential. She reiterated the need for more accountability mechanisms so that the public doesn't lose faith in the legitimacy of law enforcement. Finally, she agreed with the sentiment that fixing the problem of racial disparities is not something that a single Panel comprised of people with full time jobs is going to accomplish. The scope of the problem is going to take dedicated personnel and resources to correct.

Geoffrey Jones agreed with Shela Linton and Ingrid Jonas that dealing with racial disparities will need serious investment and dedicated personnel to address. With respect to the value of data collection, he noted the impact the UVM study on traffic stops had on focusing public advocacy on racial disparities. Fundamentally, Geoffrey Jones argued that we should be making recommendations around ensuring that entry into the criminal justice pipeline is less disparate and recommendations around avoiding the pipeline all together. One recommendation could be to redefine what constitutes a felony. For instance, he suggested that the felony-misdemeanor distinction could be based on whether the crime is against a person versus a property crime.

With respect to police accountability, Geoffrey Jones indicated he was more concerned about transparency and the unequal treatment between alleged perpetrators of crimes and police officers who might be engaged in misconduct. For instance, a person arrested for a crime will be shown on the local news that same day but getting body camera footage of an officer accused of misconduct is difficult. Geoffrey Jones also touched on the issue of bail and how that system, combined with the ease of charging a crime like resisting arrest, is a major entry point into the criminal justice system. He argued that cash bail disproportionately impacts the poor and that people of color are overrepresented among the poor. He suggested that a shift in the discussion away from race only towards poverty might be a better way of addressing racial disparities in the entry into the criminal pipeline.

Chief Don Stevens suggested that one recommendation could be for every State department repurpose one existing position to address racial disparities in their departments.

Public Comments

None

New Business

None

Adjournment

Rebecca Turner moved to adjourn. Don Stevens seconded. Motion passed unanimously.