

Racial Disparities Panel Minutes:

6 – 8 PM, Tuesday 9 October

Kimball Public Library, 67 North Main Street, Randolph, VT

Welcome – Introductions

Attendance: Heather Simons, Karen Vastine, David Scherr, James Pepper, Don Stevens, Jessica Brown, Brian Grearson, Rick Gauthier, Lt. Gary Scott

Approval of Minutes – 11 September 2018 meeting

Gary motion to approve. Grearson seconds. Motion carries. No changes.

Announcements

Etan relates that Major Jonas sends her regrets.

Discussion of proposed drafts for Panel's report:

James: As Shela was pointing out there is frustration about a lack of responsiveness from the HRC. Including that feedback will help explain why we are asking for more investigators.

Karen: making sure we include idea about Restorative Justice options is important.

David: make sure we have clearinghouse concept for all racial bias complaints included in the final draft.

Don: be careful about race-related language.

Etan: we think as Karen rewrote it it's ok—the panel can consider race-based complaints. Can't hire on the basis of race. Also Karen added clearinghouse language.

David: using language specifying race is ok when talking about complaints. It's only potentially a problem when talking about hiring to fill a quota.

Etan: which one will we base our work on. Karen has a slight preference for second one but it's up to panel.

Action item: Pepper will produce a new draft with a couple added lines and taking into account Karen's changes.

Gary: do we need to specify exactly which agencies will be reporting? We don't know exactly how different agencies do the complaint process. There are many agencies who may be affected, this is a big potential system.

Etan: I don't think we need to get that detailed, that may be beyond our necessary purview.

Grearson: HRC can write rules to accomplish this overall mission. Can also decide when to hold or pass along complaints.

Don: clearinghouse useful as a data-building issue. We can identify which agencies and entities seem to attract the most problems.

Discussion of the article: *Reducing Racial Disparity in the Criminal Justice System*.

James: prosecutors have a lot of power in the courtroom, a lot of high-impact/high discretion. It's important to have decision making be transparent, even though not all decisions will be the same. SAs are individually elected so hard for a centralized standard. But central office has been clear that the more there is a perceived unfairness and inconsistency the legislature will take away discretion. Important for prosecutors to understand this. For example: changes to diversion system: pushing more cases into diversion. Those changes are also a potential solution.

David: as we're talking about needing data: diversion programs don't get race data. We should. But the data does show a big increase due to the new presumption James referenced, and the new program called Tamarack.

James: bail is a big part of this—high impact high discretion area. For misdemeanants not a huge number of people are being held for lack of pay. Data showed some positive signs in terms of not too many people being held purely for lack of ability to pay in general.

Grearson: judges now hear all after-hours bail requests. True that relatively few low-level misdemeanors are being held. 400 is a steady number of pretrial detainees. Has remained this way for at least a decade. Hard to say why for sure, there have been changes, including judges hearing bail requests from police as well as lower bail limits.

James: report on racial disparity in sentencing isn't that high according to an upcoming report. Also expungements are another way to hopefully reduce disparity and one that prosecutors support.

Gary: a financial cost to expungement?

James: approx. 90 dollars

Etan: Channing Shela's concerns about accessibility: are these forms easy to find? Both expungement form and IFP? Are they really something people can get?

Grearson: in truth, probably not. The idea and use of expungements is relatively new so it hasn't been baked into our processes.

James: we are working on having a more automated way to allow for expungements. One idea: having case management software automatically generate petitions when someone becomes eligible and then it can move forward.

David: we agree with Pepper on a lot. We do agree that there is a lot of issues around changing how prosecutors/judges behave in terms of implicit bias. But we also need to think about systems change, cabinining that discretion, making it less broad. We also have our AGO programs. We don't have data showing whether people are being treated unfairly in diversion. Our workers decide success or failure. Are they deciding success for people of color at lower rates? Unknown, but we should know this.

Don: can we reduce the times when implicit bias have an affect? It's a tough question.

Jessica: there are things you can do but some of them might be problematic. Federal sentencing guidelines tried to reduce discretion but they also had other problems baked in: crack v. powder cocaine. Our system does do some things well already. Give lawyers from beginning of case. Defgen has done some trainings and discussion around implicit bias. We do file motions when there is evidence of unconstitutional motivation. But it's hard to know how to do systemic change

Rebecca: there are specific responses I would like to give to a number of the points that have been made. There are also areas we need to consider where there are ostensibly race-neutral reasons, e.g. in bail, that get used to hold people of color more. For example, inquiring about ties to the community. Question to James: you said something about more transparency in charging decisions. Discuss more?

James: that is what the report spoke about. Not sure about what specific suggestions would look like but happy to discuss.

Don: at every stage there are issues. For example: someone can't afford public defender, PD is overworked, plead out. Now someone is on the road to stacking up convictions. We need to look at the system and how these inequities build on themselves over time.

James: we do generally always look at criminal history when looking at charging.

Grearson: when trying to understand somebody's criminal record there are some things we simply can never know. The specific reasons why someone took a plea may be unknowable. There are many reasons: someone is in jail and wants out, the evidence was weak for original charge but good for final plea, contested sentencing, victim doesn't want to go forward, etc.

Jessica: was there a bail study about disparity?

Grearson: not sure.

Rebecca: even if sentencing is not showing racial disparities (not convinced that's true) presence of greater law enforcement around people of color can also lead to uneven outcomes, as an example. Also, we see as a matter of practical reality that charging decisions seem to be different on the basis of color. This leads to uneven outcomes as well—even if a crime by crime sentencing analysis does not show bias. People of color may be charged for a worse crime than a white person, even if the underlying behavior was similar. Individual bias is real and needs to be addressed the best way possible.

Etan: shifting gears: how do we take all these ideas and translate them into a report? Subcommittees not always popular but perhaps we can use that.

David: we could also look at earlier sections of charge to see where our discussion fits.

Don: send out surveys to decide what we should focus on.

Karen: is there something like an inventory that would assess areas of potential change? Can see where we are and where we want to move to. Would give us a baseline and a guide.

Grearson: may be looking at the sentencing study would be a good place to start.

James: we will take a look at the study and present it. It will be ready by the next meeting.

Public Commentary:

Anne Schroeder: Supporting H728, defelonization. Also pointing out that NJ got rid of bail virtually entirely. Also looking at FIP issues. We need to train to that. We should also look at consent decrees as a model for potentially forcing action. Cleveland consent decree is a good document.

Windham Sheriff has changed FIP policy in ways we do not find acceptable.

Next Meeting:

For now we will keep the next two meetings as the second Tuesday of the month. Through December.

New Business – upcoming tasks

6B will be challenging but we'll start tackling it.

Adjournment