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Washington State Court of Appeals Division III  
500 North Cedar Street  
Spokane, WA 99201  
Re: Judge Fearing Recusal Request

To the Honorable Judges of the Division III Court of Appeals,

The NAACP Spokane Branch #1137 has been protecting and expanding the rights of marginalized people for over 100 years. In our role we regularly receive complaints and requests for support from people experiencing race based discrimination, and the data is inarguable in pointing to racial disproportionality in the criminal justice system as is detailed below. You cannot fight what you cannot name, and we applaud Judge Fearing's bravery and honesty in accurately identifying and detailing the systemic racism present in the *Vaile* case – a painful fact that we and our community are all too familiar with.

Decisions like the dissenting opinion from Division III Court of Appeals Judge George Fearing in *State v. Vaile* are of critical relevance to our clients and mission. We are acutely aware of the racial disproportionality that exists at all phases in the criminal legal system, and we have worked tirelessly to participate in efforts to address and change this disproportionality. Unfortunately, our efforts have been opposed or ignored by the Spokane County Prosecuting Attorney's Office and the Spokane regional law enforcement agencies. We participated in Spokane's Regional Law and Justice Council and were dismayed at the lack of progress towards racial equity given the millions of dollars Spokane received from the McArthur Foundation to address the well-documented racial disproportionality in all phases of the criminal legal system.

We oppose the request of the Spokane County Prosecuting Attorney Office's for Judge Fearing to recuse himself from all of their criminal cases moving forward. We are well aware that the Washington Supreme Court urged all judges in the state of Washington to consider the harmful effects of systemic racism in all of their cases following the death of George Floyd in 2020. The Spokane County Prosecuting Attorney's Office's actions here demonstrate that they do not understand the directive from the Washington Supreme Court. Even worse, they have chosen to attack a brave jurist who boldly identified and eloquently enumerated the ways in which racism affected the *Vaile* case in Spokane County.

As a reminder of the well-documented disproportionality in the Washington criminal legal system, I encourage you all to review the *Task Force 2.0: Race and Washington's Criminal Justice System: 2021 Report to the Washington Supreme Court*, submitted by the Research Working Group, including the Fred Korematsu Center for Law and Equality at Seattle University School of Law. We would like to summarize a few findings in the Task Force 2.0 Report that are particularly poignant reminders of the racism still present in our criminal legal system:



- **Stops.** In the jurisdictions examined, racial minorities tend to be stopped disproportionately. Studies of select jurisdictions in Washington have found that certain racial minorities are stopped more frequently than similarly situated White people.
- **Searches.** In the jurisdictions examined, racial minorities tended to be searched disproportionately, even though research shows that racial minorities who are searched are less likely to possess narcotics or weapons than White people who are searched. Because discretionary searches ought to be driven by legitimate criminal justice reasons (likelihood of finding contraband, whether narcotics for drug violations or weapons for officer safety), the fact that disproportionality persists in the face of what is known about “hit rates” suggests strongly that race is a factor in searches.
- **Use of Force.** In the jurisdictions examined, racial minorities, with the exception of Asian Americans, are more likely to be the victim of police use of force. It is very important to note that with regard to the lethal use of force by police, because disaggregated ethnic information is available, individuals who are Native Hawaiians and Other Pacific Islanders are 3.3 times more likely than a White person to be killed by police.
- **Arrests.** Black and Indigenous persons are consistently arrested disproportionately, whether measured by relative or comparative ratios. This might be expected given the upstream disproportionalities of stops and searches. Observed disproportionality varies in significant ways for different crimes, with disproportionality for Black persons being greatest for robbery and the lowest for drug crimes. Though disproportionality for drug offenses may be lower than for other offenses, it remains high, with Black people arrested for drug offenses at a comparative ratio more than 2x that of White people, despite consistent findings that Black and White people use and sell drugs at similar rates.
- **Convictions.** As measured by all felony sentences in 2018, 2019, and 2020, Black people were 2.7x more likely to be convicted than White people in each of those years. Indigenous people in those same years ranged from being 1.5x to 1.7x more likely to be convicted than White people. There also appears to be additional disproportionality in the punishment given for felony sentences for certain kinds of offenses, where White people are slightly more likely than others to be sent to jail or receive an alternative punishment instead of being sent to prison. More complete and more accurate information on the demographic profile of those killed by law enforcement is available because there are many fewer people killed by police than are stopped by police, and media usually investigate and report on each police killing.
- **Legal Financial Obligations (LFOs).** Black persons, Indigenous persons, and Latina/os are sentenced to LFOs more frequently and at higher rates than White persons and Asian Americans/NHOPIs. Even after controlling for relevant legal factors, Latina/os are sentenced to significantly higher LFOs than similarly situated White defendants.
- **Incarceration Sentences.** An examination of all fiscal year 2019 felony sentences for non-drug offenses revealed that BIPOC defendants on average received longer



sentences than White defendants as measured at different offense seriousness levels. For the two most serious offense levels, BIPOC defendants received significantly longer sentences than White defendants. In addition, disproportionality was pronounced for BIPOC defendants with lower criminal history scores who received longer sentences than White defendants for the same offense levels. Stated differently, Black people who commit very serious crimes are treated more harshly than White people who commit very serious crimes; Black people with low criminal history scores are treated more harshly than White people with low criminal history scores.

• **Disproportionate incarceration.** When viewed over time, it appears that Black/White comparative disproportionality has improved since 1980 when a Black person was 14.1 times more likely to be incarcerated than a White person. In 2005, this had dropped to 6.4, and in 2020, to 4.7. This looks like great progress. However, it is important to understand how this “improvement” was achieved. From 1980 to 2005, the Black rate of incarceration nearly doubled, from 1,342 Black people incarcerated per 100,000 Black people to 2,522 per 100,000. But the comparative disproportionality ratio dropped because the rate of White incarceration more than quadrupled, going from 95 White people incarcerated per 100,000 White people to 393. Then, from 2005, the drop from 6.4 to 4.7 comparative ratio came about because the Black rate of incarceration dropped from 2,522 to 1,267 per 100,000 Black people, while the White rate dropped from 393 to 269. Because the Black rate dropped more than the White rate, the comparative disproportionality ratio decreased. But this figure, 4.7x, remains substantially greater than the recent comparative Black/White disproportionality ratios for felony convictions the last few years, 2.7x.

Task Force Report, pages 2-4.

The Task Force Report 2.0 also recognized a fundamental element for addressing racial disparities: “To understand the disparities that exist for communities of color in the criminal justice system, it is essential to not simply rely on data; it is essential to hear those communities speak about their experiences with the system.”

Task Force Report 2.0, page 27.

This concept is one that the Spokane County Prosecuting Attorney’s Office has refused to acknowledge and implement. When Judge Fearing dared to raise the issue in *Vaile*, he was met with attacks and distortions of his words. Again, Judge Fearing should not recuse himself. Instead, he and his colleagues should be implored to continue to identify and call out the painful truths involving racism in Spokane County’s criminal legal system.

We appreciate our partners at The Way To Justice for coordinating advocacy around this case. Thank you for your attention to this critical issue of fairness and equity.

In solidarity,

*Kurtis Robinson*



Kurtis Robinson

President Spokane NAACP #1137