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Introduction

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I am honored to introduce Volume 11, Issue 2 of the *Seattle Journal for Social Justice* (*SJSJ*). As a state trial court judge in the jurisdiction in which Seattle University School of Law is located, I remain impressed with the law school's ongoing invitation to the wider legal community to join in building a more humane and just society. Dedicated to achieving academic excellence while educating students to seek social justice, the law school's sponsorship of the *SJSJ* is a concrete manifestation of its commitment to fostering an interdisciplinary discussion of the issues of our day that prevent *true* justice from being realized.

Poverty, race, and discrimination based on physical characteristics are among the issues that prevent the full realization of justice and, unfortunately, they continue to pervade our system of justice. Despite a raised consciousness on racial equality, new civil rights laws, and interventions at every point in the criminal justice system, the problem of minority disproportionality continues unabated in Washington's courts, jails, and prisons.

Over the last twenty-four months—upon the prompting by the Task Force on Race and the Criminal Justice System, along with the leadership of Chief Justice Barbara Madsen—the Washington Supreme Court (the Court) has embraced the opportunity to probe deeper into the problem of racial disproportionality. As host of two symposiums on this topic, with a third scheduled in the fall of 2013, the Court has invited various stakeholders in the criminal justice system to undertake an examination of institutional practices and policies that may contribute to the problem of racial disproportionality, with an eye towards reversing the trend.

As co-chair of the Washington Supreme Court's Minority and Justice Commission, which has been delegated with the task of reporting on the steps being undertaken to reverse racial disproportionality, I recognize that the problem is complex and the solutions are multi-faceted. Schools, social service agencies, and the criminal justice system have all struggled with the challenge of creating programs to address these issues, while also dealing with constantly shrinking budgets. And with no end in sight to the fiscal constraints, moving beyond where we are now will require innovation and deeper levels of collaboration between all of the stakeholders.

The first set of articles in this volume invite such collaboration by presenting thought-provoking questions about the treatment of the mentally ill in our jails and prisons, the inadequate education of homeless youth, and the risk of unfavorable treatment in court because of weight bias. The second set of articles looks at strengthening the protections for employees who report institutional wrongdoing or misconduct that may jeopardize the public good. Each of the authors takes a fresh look at the barriers and offers solutions for discussion and adoption.

The issue begins with Bette Michelle Fleishman's article, *Invisible Minority: People Incarcerated with Mental Illness, Developmental Disabilities, and Traumatic Brain Injury in Washington's Jails and Prisons*.[1] Ms. Fleishman documents a familiar problem in the criminal justice system: the large percentage of our prison and jail population that suffers from some form of mental illness or disability. She aptly points out those with mental illness or disability are quickly becoming a majority of the prison population and, while incarcerated, they remain untreated or undiagnosed. Based on actual interviews with both inmates and professionals within the correctional system, Ms. Fleishman captures the problem in a very human fashion, without losing sight of the complexities

[1] Bette Michelle Fleishman, *Invisible Minority: People Incarcerated with Mental Illness, Developmental Disabilities, and Traumatic Brain Injury in Washington's Jails and Prisons*, 11 SEATTLE J. FOR SOC. JUST. 401.

involved in medical diagnosis and the challenges involved in transferring medical information across various agencies and systems.

Recognizing the cost of recidivism and the cyclical patterns common to this particular population, she outlines an existing legal framework that allows for the development of policies and practices to improve screening and treatment of inmates with developmental disabilities, traumatic brain injury, or mental illness. Two specific policy changes she suggests are as simple as improving communication between jails and prisons regarding the mental health condition or needs of a particular inmate, and improving the reentry of these inmates into society by developing a seamless process for ensuring that medical benefits are either not lost upon detention or immediately reinstated upon release.

Ms. Fleishman sets forth a compelling argument for comparing the cost effectiveness of the current policies involving incarceration (including solitary confinement) with the cost effectiveness of hospitalization/treatment or community programs. And while approving the recommendations of a work group established by the legislature to address this particular population, she notes the failure of full implementation. As a result, one of her bold recommendations is to implement correctional oversight by an independent entity to enhance the operational transparency of jails and prisons.

Second in this series of articles, Ms. Courtney Lauren Anderson, in *Opening Doors: Preventing Youth Homelessness Through Housing and Education Collaboration*, tackles the problem of identifying and educating homeless youth.[2] Seizing upon the release of the first federal plan to end homelessness, Ms. Anderson calls for increased collaboration and innovation between housing and education agencies as a concrete strategy for providing education to homeless youth. Her underlying premise is that

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[2] Courtney Lauren Anderson, *Opening Doors: Preventing Youth Homelessness Through Housing and Education Collaboration*, 11 SEATTLE J. FOR SOC. JUST. 457.

delivery of educational resources to homeless youth is a positive step towards reducing future homelessness and that improved access to education will actually strengthen the success of various housing policies designed to end homelessness. Modeling early intervention strategies that seek to address the underlying causal factors of homelessness (i.e., family conflict, substance abuse, and mental illness) she invites the construction of a similar method with regard to the provision of educational services. Ms. Anderson makes a compelling case for structuring interagency collaboration so that educational programs are actually included in housing services. She confidently invites agencies to remove the turf boundaries and to rethink the delivery of educational services.

The final article in this trilogy is *Criminality and Corpulence: Weight Bias in the Courtroom*, by Valena Elizabeth Beety.[3] Ms. Beety confronts the issue of "fat" and the negative assumptions that associate obese people with being untrustworthy and nonconforming. We live in a society that remains obsessed with being thin and beautiful, and Beety is courageous enough to ask questions about whether we are failing to address the issue of weight bias or the role of the body in the courtroom. She dares to ask if size is a factor in how a defendant or victim might be treated by a fact-finder.

Grounded in studies that examine weight norms and body-shaping practices, she easily makes the connection between the "desirable" and "undesirable" when it comes to value judgments about weight, beauty, and goodness in our culture. Her point is visibly reinforced by advertisements of every sort. The problem, as Beety points out, is that the negative stereotyping and flaws that are projected upon fat people affect not only the way these individuals view themselves, but how the rest of society may actually treat them. Like many other forms of bias based on a person's physical characteristics, irrational assumptions about weight can deprive an

[3] Valena Elizabeth Beety, *Criminality and Corpulence: Weight Bias in the Courtroom*, 11 SEATTLE J. FOR SOC. JUST. 523.

individual of some of the most basic rights involving due process in court proceedings.

Beety invites those involved in the criminal justice system to stop and take note of how weight, or stereotypes about being fat, may harm victims or defendants. She provides concrete examples of situations where an appeal to such stereotypes has been used to either dismiss the claims of a victim or to convict a defendant. Borrowing the same toolbox that courts use to inoculate against the use of other irrelevant information, Beety recommends three specific steps that can be immediately implemented: 1) raise awareness about implicit bias in the courtroom; 2) set the standard of practice so that defense counsel must address weight bias; and 3) include weight bias in jury instructions.

All three authors invite readers to probe deeper into the practices, policies, and attitudes that might move us one step closer to removing barriers that keep us from creating a more just system. Some solutions require the expenditure of funds and others simply involve a change in attitude.

The next cluster of articles addresses whistleblower protection and improvements to those systems that protect employees who have the audacity to speak up. Like the first trilogy of articles, the fundamental goal underlying all of the whistleblowing articles is to ensure that the powerless have access to process and protection, and have the opportunity to be heard. Whistleblowers are individuals who have the conscience and the courage to bring misconduct to the light of day so that the public interest can be protected. The introduction to this cluster, by Dana Gold,[4] is an eloquent summary of each article and a clear roadmap for protecting the whistleblower and replicating the methods that work. The articles include, *Filling the Holes in Whistleblower Protection Systems: Lessons from the*

[4] Dana Gold, *Introduction: Speaking Up for Justice, Suffering Injustice: Whistleblower Protection and the Need for Reform*, 11 SEATTLE J. FOR SOC. JUST. 555.

Hanford Council Experience, by Jonathan Brock,[5] Associate Professor Emeritus, University of Washington; *To Mediate or Adjudicate? When and Why Disputing Parties Seek Resolution Through Alternative Forums or the Courts*, by Angela Day, PhD candidate in the Department of Political Science, University of Washington[6]; and *The Money or the Media? Lessons from Contrasting Developments in US and Australian Whistleblowing Laws* by Terry Morehead Dworkin, Indiana University Maurer School of Law and Seattle University School of Law, and A. J. Brown, Griffith University Law School, Australia.[7]

Finally, the last series of submissions are from student scholars. Two of the articles raise procedural issues that arise every day in courtrooms around the country and drive to the core of due process. Laura Baird discusses the lack of party status afforded to children in dependency and termination hearings,[8] while Jessica Dwyer-Moss raises the troubling issue of flawed forensic science and wrongful executions.[9] Both submissions make a compelling argument for reform and serve as outstanding resources for discussion. The third submission, by Nafees Uddin, is an excellent primer on the issues surrounding the structure and governance of the Internet.[10] Any user of various search engines and Internet tools will appreciate

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[5] Jonathan Brock, *Filling the Holes in Whistleblower Protection Systems: Lessons from the Hanford Council Experience*, 11 SEATTLE J. FOR SOC. JUST. 573.

[6] Angela Day, *To Mediate or Adjudicate? When and Why Disputing Parties Seek Resolution Through Alternative Forums or the Courts*, 11 SEATTLE J. FOR SOC. JUST. 617.

[7] Terry M. Dworkin & A.J. Brown, *The Money or the Media? Lessons from Contrasting Developments in US and Australian Whistleblowing Laws*, 11 SEATTLE J. FOR SOC. JUST. 653.

[8] *See* Laura Baird, *An Inconsistent Invitation: Am I Invited to Be a Party? How Not Affording Party Status to Youth in Washington Dependency Hearings Can Be a Violation of Due Process*, 11 SEATTLE J. FOR SOC. JUST. 715.

[9] *See* Jessica Dwyer-Moss, *Flawed Forensics and the Death Penalty: Junk Science and Potentially Wrongful Executions*, 11 SEATTLE J. FOR SOC. JUST. 757.

[10] *See* Nafees Uddin, *Stymieing Controversy Over Generic Top-Level Domains (gTLDs) and Other Internet Governance Decisions with Content Neutrality*, 11 SEATTLE J. FOR SOC. JUST. 813.

learning about basic domain structures and policies that impact global diversity and accommodation. It is a must read for any lawyer interested in social media and governmental control or regulation.

I invite readers to give serious consideration to the thoughtful policy issues raised by this volume of articles. Each author makes a positive contribution by exposing the missing links or weaknesses in our system of justice and offering concrete solutions. However, the advancement of justice and the eradication of bias will not occur without leadership from legal practitioners and those working within our social and criminal justice agencies. I commend this volume to you to use as a blueprint for action.