

MADISON OFFICE

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Date: 11 April 2013

To: CDA.
215 Martin Luther King, Jr. Blvd, Ste. 120
Madison, WI 53703
VIA Hand delivery

From: Heidi M. Wegleitner
Staff Attorney, Legal Action of Wisconsin, Inc.

RE: Reply to CDA's Response to LAW Comments on CDA Draft ACOP

Dear Honorable Committee Members:

Please see Legal Action's reply to the CDA's Comments on CDA's Draft ACOP below. Legal Action restates all positions set forth in its February, 2013 comments unless specifically modified herein.

2-I.B. NON-DISCRIMINATION (2-4) (discussed on page 1 of CDA's Response)

LAW Reply:

There are at least eleven (11) protected classes not cited in CDA's response covered by local law. Add language that states that "MGO Ch. 39 applies unless specifically prohibited by federal law."

2-II.C. REQUEST FOR AN ACCOMMODATION (2-9) (discussed on page 2 of CDA's Response)

LAW Reply

What is the harm in adding language from the Joint Restatement with respect to the interactive process? Based on our experience, I think it would be useful for staff and residents alike to be reminded of the obligation to engage in the interactive process.

3-I.I. GUESTS [24 CFR 5.100] (discussed on page 3 of CDA's Response)

Serving Columbia, Dane, Dodge, Green, Iowa, Jefferson, Lafayette, Rock and Sauk Counties

LAW Reply:

This number of days proposed by CDA is too restrictive and inconsistent with the industry standard of 14 consecutive days or 45 cumulative days per year. DCHA Section 8 Admin Plan policy is 30 consecutive days and 90 cumulative days per year.

LAW's suggestion was not to offer guests grievance rights, but the resident whose guest was banned. A written notice of the no-trespass order is a good practice for the CDA so there is a clear record of the decision and both parties understand the expectations. As a decision adversely affecting the tenant's rights, this should be subject to the grievance process

3.III.B. REQUIRED DENIAL OF ADMISSION [24 CFR 960.204] (3-20) (discussed on page 4 and 5m of CDA's Response)

LAW Reply:

The proposed definition for "*currently engaged in*" any use of illegal drugs during the previous 12 months is too expansive. We modify our recommendation that the definition be limited to the use of illegal drugs within the past ninety (90) days, instead of thirty (30) days. I spoke with an AODA professional who operates Dane County's detox program last week and he said that 90 days of sobriety was a critical threshold.

CDA Policy (as drafted)

The PHA has reasonable cause to believe that any household member's current use or pattern of use of illegal drugs, or current abuse or pattern of abuse of alcohol, may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.

Pattern of use of drugs or abuse of alcohol is defined as more than one incident on or off the premises during the previous 24 months.

LAW Reply:

Restating our previous recommendation. Define pattern to include more than two incidents threatening the health, safety, or right to peaceful enjoyment of the premises by other residents on the premises within 12 months. CDA may not make a determination that there is a pattern of use of drugs or abuse of alcohol based solely on hearsay. CDA's determinations under this section are subject to applicable fair housing law and the right of an applicant to a reasonable accommodation.

3-III.C. OTHER PERMITTED REASONS FOR DENIAL OF ADMISSION

Criminal Activity [24 CFR 960.203(c)] (discussed on page 5 and 6 of CDA's Response)

LAW Reply:

The CDA should not be denying for criminal activity that did not result in a conviction. Housing Authority of New Orleans just adopted such a policy which I have attached hereto. The CDA needs to be mitigate the effect of racial disparities in our criminal justice system, not exacerbate them. See attached excerpts from Dane County Task Force on Racial Disparities in the Criminal Justice System.

Decisions to deny may not be based solely on disputed hearsay.

LAW Reply:

Drug paraphernalia charges are not drug related criminal activity and should not used as a basis for denial.

LAW also restates its previous position with respect to only considering convictions as evidence of criminal activity.

Previous Behavior [960.203(c) and (d) and PH Occ GB, p. 48] (3-25) (discussed on page 7 of CDA's Response)

LAW Reply:

The CDA's response is vague and unpersuasive.

CDA has previously recognized negative rental history at the time of a high rent burden as an unfair practice and excluded it from consideration.

******Existing policy (ACOP at 2-14)** states "Applicants will not be considered to have a poor credit history if they were late paying rent because they were withholding rent due to substandard housing conditions in a manner consistent with a local ordinance; or had a poor rent paying history clearly related to an excessive rent relative to their income (using 50% of their gross income as a guide,) and responsible efforts were made by the family to resolve the nonpayment problem.

DCHA has requested its public housing management company allow admission despite adverse credit history if an applicant completes the YWCA's Second Chance Program.

Resources Used to Check Applicant Suitability [PH Occ GB, pp. 47-56] (3-30)

LAW Reply:

Applicants will not be denied for a failure to meet a financial obligation, including rent, during a time when their housing burden was more than 50% of their monthly income.

(3-31)

LAW Reply:

Add: A decision to deny will not be based solely on disputed hearsay.

3-III.E. CRITERIA FOR DECIDING TO DENY ADMISSION

Evidence: CDA Policy (3-33) (discussed on page 8 of CDA's Response)

LAW Reply:

CDA admissions staff will make admissions decisions based on the preponderance of the evidence standard.

Removal of a Family Member's Name from the Application [24 CFR 960.203(c)(3)(i)] (3-34)

LAW Reply:

The CDA proposal is anti-family. If the person misbehaves as a guest, they can take steps to issue them a no-trespass order.

3-III.G. NOTICE OF ELIGIBILITY OR DENIAL (3-38) (discussed on page 9 of CDA's Response)

LAW Reply:

Notices of denial "based on derogatory credit information from credit reporting agencies" should include the account number and problem with the account that CDA is using to determine the basis for denial. Due process requires more information in order to prepare a defense. Applicants might have pages and pages of collection accounts for medical records, unpaid municipal fines, and consumer debt and if the particular account is not identified, it is very difficult for the applicant to prepare for their grievance hearing.

As to providing information on Legal Action in notices, Legal Action is the only Legal Services Corporation (corporation set up by Congress to appropriate legal services fund) funded provider in Dane County (and thirty-eight (38) other counties in the southern half of Wisconsin). The only other program that may take these types of cases is the UW Law School's Neighborhood Law Clinic. Legal Action supports them being added as a place to contact for help, as well.

7-II.D. FAMILY RELATIONSHIPS

Absence of Adult Member (7-17) (discussed on pages 10-11 of CDA's Response)

LAW Reply:

These verifications can be very difficult for families to obtain, especially if the person is homeless, the family has lost contact with the person and/or there is a history of domestic violence.

Excess Utility Charges (8-9)

Maintenance and Damage charges (8-10)

An opportunity to ask for a payment plan is not the same as a right to an affordable repayment plan prior to termination of tenancy and eviction.

12-III.C. ELIGIBILITY FOR TRANSFER (12-10) (discussed on page 12 of CDA's Response)

LAW Reply:

LAW suggestion doesn't require a transfer, but gives the CDA the option to consider.

13-III.B. MANDATORY LEASE PROVISIONS [24 CFR 966.4(l)(5)] (discussed on pages 12-13 of CDA's Response)

Drug Crime On or Off the Premises [24 CFR 966.4(l)(5)(i)(B)] (13-9), Illegal Use of a Drug [24 CFR 966.4(l)(5)(i)(B)] (13-10), Threat to Other Residents [24 CFR 966.4(l)(5)(ii)(A)] (13-10), Alcohol Abuse [24 CFR 966.4(l)(5)(vi)(A)] (13-11), Furnishing False or Misleading Information Concerning Illegal Drug Use or Alcohol Abuse or Rehabilitation [24 CFR 966.4(l)(5)(vi)(B)] (13-11), Other Serious or Repeated Violations of Material Terms of the Lease – Mandatory Lease Provisions [24 CFR 966.4(l)(2)(i) and 24 CFR 966.4(f)] (13-12, 13)

LAW Reply:

CDA is not required to terminate and it is allowed to consider all circumstances. See HUD guidance from Secretaries Donovan and Martinez.

13-III.D. ALTERNATIVES TO TERMINATION OF TENANCY

Exclusion of Culpable Household Member [24 CFR 966.4(l)(5)(vii)(C)] (13-16)

LAW Reply:

HUD directives permit self-certification if 3rd party verification cannot be obtained.

13-III.D ALTERNATIVES TO TERMINATION OF ASSISTANCE

Change in Household Composition (13-16)

LAW Reply:

We recommend removing the complete prohibition of the excluded family member visiting in the unit. We believe this may be problematic for the family, particularly in cases where there are children involved. The excluded member could be behaving better now. They should not be able to attend a family holiday? They should be subject to a permanent ban?

13-IV.D. LEASE TERMINATION NOTICE [24 CFR 966.4(l)(3)] (discussed on page 14 of CDA's Response)

Form, Delivery, and Content of the Notice (13-27)

LAW Reply:

See above argument re Legal Action as sole federally funded legal services provider for indigent housing law clients.

14-1.B. INFORMAL HEARING PROCESS [24 CFR 960.208(a) and PH Occ GB, p. 58] (14-3) (discussed on page 14-15 of CDA's Response)

LAW Reply:

Restate the position that proceedings be conducted in accordance with hearing procedures laid out in Wisconsin Chapter 68 and Madison General Ordinances § 9.49.

Notice of Denial [24 CFR 960.208(a)] (14-3)

LAW Reply:

Not all CDA notices are the same and there is no reported Court of Appeals decision upholding the legitimacy of their notices.

Conducting an Informal Hearing [PH Occ GB, p. 58] (14-4)

LAW Reply:

What is the objection to taping the proceedings? I thought the CDA was going to change this policy? CDA tapes its termination hearings. Under Wis. Stat. Ch. 68 and MGO § 9.49, a recording must be provided upon request. Creating a contemporaneous record provides a much better record for the court on review.

DRAFT HANO Criminal Background Policy Statement

PREAMBLE

In mid-December 2012, columnist Michael Gerson of the Washington Post wrote about the ignored plight of black males in America. Among many social and economic issues that could fill a list of critical priorities, he wrote, "One issue in particular cries out for attention while receiving almost none. Our politics moves from budget showdown to cultural conflict to trivial controversy while carefully avoiding the greatest single threat to the unity of America: the vast increasing segregation of young, African American men and boys from the promise of their country."

Citing the increasing rates at which young inner city black males drop out of school (now more than 50%) and the disproportionately high rates of incarceration and disproportionately low rates of participation in the workforce, Gerson writes, "The problem has gotten worse for decades, in good economic times and bad. Others benefitted from the tight labor markets of the 1990s. African American men did not. By 2004, more than half of all black men in their 20s were unemployed. And the size of this problem gets consistently underestimated, since unemployment figures exclude the incarcerated. A problem that seems insoluble is thus rendered invisible."

The societal problems attendant to this phenomenon are obvious. What is also quite evident is that once black males enter the criminal justice system for whatever reason, they begin a journey on a treadmill that, for many, lasts a lifetime. Lacking the skills and education that are prerequisites for employment, they are now saddled for life with a label "felon"—an almost automatic bar to gainful work. In addition, their criminal history is also a likely bar to admission to most affordable housing opportunities, making post-incarceration reunification of families a near impossible dream. Research has shown that access to decent, stable, and affordable housing substantially increases the likelihood that a person returning home from prison or jail will be able to find and retain employment and refrain from committing additional crimes.¹

The Housing Authority of New Orleans (HANO) recognizes that rather than perpetuate the problem, we can be part of the solution. As the city's major provider of affordable housing and a steward of safe and healthy communities, HANO has a responsibility to give men and women with criminal histories the opportunity to rejoin their families and communities as productive members.

¹ Christopher Uggen and Jeremy Staff, "Work as a turning point for criminal offenders." *Corrections Management Quarterly* 5 (2001):1-16; Nancy LaVigne, Vera Kachnowski, Jeremy Travis, Rebecca Naser, and Christy Visser, *A Portrait of Prisoner Reentry in Maryland* (Washington, DC: The Urban Institute, 2003); Jocelyn Fontaine and Jennifer Biess, *Housing as a Platform for Formerly Incarcerated Persons*, (Washington DC: Urban Institute, 2012) 3.

STATEMENT of POLICY

It will be the policy of HANO that all individuals, regardless of their criminal history, shall have access to employment and housing opportunities at HANO.

Employment

No applicant for employment will be automatically barred from employment at HANO because of his or her criminal background.

There will be no inquiry into an applicant's criminal background at the time of application or during the interview process. HANO will conduct a criminal record check only after an applicant has received a conditional offer of employment. A final offer of employment shall be subject to the results of a full background check, which includes a criminal record check. In determining whether an applicant's criminal conviction(s) will be a bar to employment, HANO will only consider a conviction when the conviction is for conduct directly related to the particular position sought, or indicates a danger to fellow employees or residents. The conviction will be reviewed as part of an individualized assessment, which will include a consideration of the nature and gravity of the conviction, the amount of time that has elapsed since the conviction, and the nature of the job sought, among other factors; or when Louisiana or federal law specifically prohibits hiring a person with a particular conviction for a particular kind of work.

Housing

No applicant for HANO-assisted housing will be automatically barred from receiving housing because of his or her criminal background, except as mandated by federal law.

HANO will conduct a criminal record check for all applicants before admission into HANO-assisted housing. For applicants not barred by federal law, the applicant's criminal conviction(s) will be assessed to determine the risk the applicant poses to the safety and well being of the community using an objective set of valid criteria. Applicants whose conviction(s) do not suggest a significant level of risk will be deemed admissible to housing if otherwise eligible. Applicants whose conviction(s) suggest a significant level of risk will be reviewed by a panel of senior HANO officials to assess, based on the totality of the circumstances including any information the applicant wishes to provide, whether the applicant should be admitted to housing or denied. If the panel recommends denial of an applicant, the HANO chief executive officer will review the recommendation and make the final decision on admission. HANO will make public the risk assessment criteria it uses and details of the review process.

To implement this policy, HANO will revise its housing and employment procedures, including procedures that will apply to those who do business with HANO.



Community Development Authority

Madison Municipal Building, Suite 120

215 Martin Luther King, Jr. Boulevard

Madison, Wisconsin 53703

ph (608)266.4675 fx (608)264.9291

email housing@cityofmadison.com

mail P.O. Box 1785, Madison, WI 53701-1785

[REDACTED]

[REDACTED]

Re: Low-Rent Housing Application

Dear Applicant:

After careful consideration it has been determined that you are ineligible to receive Low-Rent Housing because you have engaged in the following:

1.) Negative rental history – Past performance of not adhering to lease obligations or non-compliance with conditions of tenancy [24 CFR 960.203(c)]:

- [REDACTED]
 - Per landlord verification

2.) Pattern of negative behavior and unfavorable information related to future conduct and expected to have a negative effect on the operations of the development, neighborhood, or quality of life for CDA residents or staff [CDA A.C.O.P. Section 2G - Screening for Suitability]:

- Police Contact
 - Madison Police Case No. [REDACTED]
 - Madison Police Case No. [REDACTED]
 - Madison Police Case No. [REDACTED]
 - Madison Police Case No. [REDACTED]

3.) Unsuitable past performance in meeting financial obligations, especially rent [24 CFR 960.203 (c)(1)]:

- Based on derogatory credit information from credit reporting agencies listed below:

Under the Fair Credit Reporting Act (FCRA), you have the right to obtain a free disclosure of your credit report from the credit reporting agency, if you make a request within 60 days. The CDA used the following credit reporting agency:

TransUnion
2 Baldwin Place
P.O. Box 1000
Chester PA 19022
800-888-4213

TransUnion did not make the decision to deny CDA housing and is not able to explain why this decision was made. Under the Fair Credit Reporting Act (FCRA), you have the right to dispute directly with *TransUnion* the accuracy or completeness of any information provided by *TransUnion*.

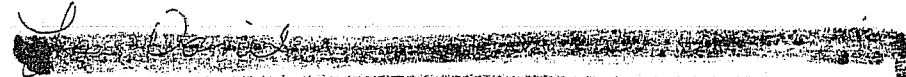
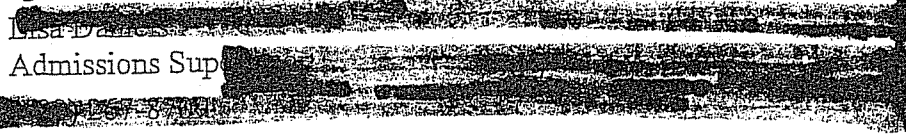
If you do not agree or wish to dispute the CDA's decision, you may request an Informal Hearing with the CDA to object to the accuracy and relevancy of the records used in this decision. You must make this request in writing. *Phone requests will not be considered.* This written request must be received by the CDA, within 14 days of the date of this letter. Your deadline to request an Informal Hearing is April 10, 2012. Requests will not be considered, if they are received after this specified deadline OR if the request is submitted by anyone other than the applicant. A written request for an Informal Hearing should be sent to:

Community Development Authority - Housing Operations Division
ATTN: Program Eligibility Coordinator
P.O. Box 1785
Madison, WI 53701

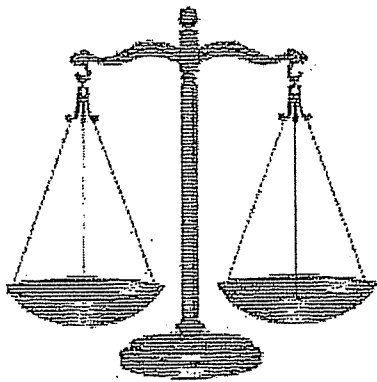
You may bring witnesses to your Informal Hearing and/or have someone represent you. You may also review the CDA documents that are directly relevant to this initial determination. If you plan to have someone represent you, you will need to provide this information to the CDA at the time you submit your request for an Informal Hearing. Information regarding the Violence Against Women Reauthorization Act of 2005 (VAWA) is enclosed.

If you fail to request an Informal Hearing, as instructed in this letter, you will forfeit your right to an Informal Hearing and your application will be denied. Denied applicants are not eligible to re-apply until 12 months years after the last disposition of any negative activity. Disposition date includes the date of police contact, arrest, placed on probation, paroled, released from incarceration, or fines paid, whichever is later. Applicants who owe money to a housing authority are not allowed to re-apply until the debt has been satisfied.

Sincerely,


Lisa Daniels
Admissions Supervisor


Cc: Sharron Hubbard-Moyer



Dane County Office of Equal Opportunity

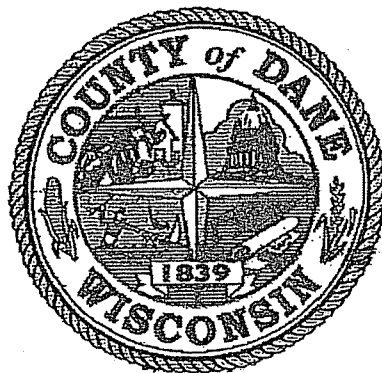
DANE COUNTY TASK FORCE ON RACIAL DISPARITIES IN THE CRIMINAL JUSTICE SYSTEM

Final Report

September 2009

Celia M. Jackson and Laurie Mlatawou

Co-Chairs



Racial Disparity

Several recommendations did not have complete agreement, but were approved by a majority of Task Force members, and the Dane County judges on the Task Force abstained from voting on several issues that may come up before them in future litigation.

Dane County prides itself on being an exceptional place to live. It has a rich history of progressiveness and creating an environment that welcomes people of different backgrounds and lifestyles. This high level of racial disparity is inconsistent with that image. It is with great urgency that we submit these comprehensive recommendations to Dane County leadership to continue to break down those barriers and create communities of opportunity for everyone.

"Issues of race and justice permeate American society, but nowhere are they as profound as in the criminal justice system. Racial and ethnic disparities result from a complex set of factors, many beyond the purview of the criminal justice system. But criminal justice leaders have an opportunity, and an obligation, to ensure that their policies and practices at the very least do not exacerbate any unwarranted disparities."

— Marc Mauer, The Sentencing Project

II. Basic Concepts About Racial Disparity

A. The History of Racial Disparity in Dane County

In the late 1990s and early 2000s (the last period for which there is good comparative

data)³, Dane County had an extraordinary Black/White disparity in arrests and imprisonment, and was among the nation's top five communities with the highest racial disparity – and frequently had the highest disparity in the nation, depending on exactly which measure was used. Blacks in Dane County were roughly 100 times more likely to be imprisoned on a drug sentence than Whites in 1999-2002 – the second highest disparity in the nation (down from 150 earlier in the 1990s when Dane County was the highest); and about 23 times more likely to be sentenced for a non-drug offense, the nation's highest.⁴

For example, a Black/White incarceration disparity of 25 means that Blacks are 25 times more likely to be incarcerated than whites.

Dane County's arrest disparities between 1999 and 2002 ranged from 10 to 30, depending on offense, and were also the nation's highest for violent offenses, theft, robbery and burglary – and ranked fifth for drug offenses. While Dane County did not generally have the highest Black rate of arrest or imprisonment, its black arrest rates have been consistently among the nation's highest. Other Wisconsin counties often have higher Black arrest rates than Dane. Black imprisonment rates are high in Dane

³ All statistics not otherwise cited in this report have been provided by Task Force member Dr. Pamela Oliver, Conway-Bascom Professor of Sociology at the University of Wisconsin-Madison, and are available at:

<http://www.ssc.wisc.edu/~oliver/RACIAL/RacialDisparities.htm>

⁴ Based on 2002 data, a 2007 article with links to the study is available on the Justice Policy Institute web site at:

http://www.justicepolicy.org/newsitem_show-Item=74.htm

Racial Disparity

County, but not as high as those in some other areas.

The Black/White disparity for new prison sentences declined markedly in Dane County after the mid-1990s, but leveled off to about 23 in 2002-2006 (the last year for which we have data). The disparity in prison admissions from revocations also came down from its high in the 1990s but then stabilized at around 40 in recent years. These trends have reduced the disparity gap between Dane and other Wisconsin counties, but Dane still generally has a higher racial disparity than other Wisconsin counties with significant Black non-incarcerated populations (Milwaukee, Rock, Kenosha, Racine, Waukesha and Brown). Arrest trends in Dane County have similarly been relatively stable in the 2000s, except for a steep decline in Black arrests for cocaine sales since 2000. The decline in the extraordinarily high number of arrests and prison sentences for drug dealing since the mid-1990s accounts for most of the decline in the Black/White disparity between the 1990s and the 2000s.

Despite this decline, however, Dane County's disparity in arrest and imprisonment remains very high, generally higher even than in other Wisconsin counties. That is, even though the disparity in the "drug war" has abated, there are still substantial disparities in arrest and incarceration.

B. The Statistics: Disparities, Rates and the Relative Rate Index

Calculating rates: in 2006, there were 201 Whites and 301 Blacks admitted to prison from Dane County. Dividing the white number by the total number of White adults in Dane County (228,683), and then multiplying by 100,000 yields the White prison admission rate, which was 88 per 100,000. The same calculation for Blacks (estimated Black adult population was 13,368) yields a rate of 2,252 per 100,000 in Dane County. The Black rate is the equivalent of

2.25%, i.e. 2.25% of the Black adult population of Dane County was admitted to prison that year. The White rate is the equivalent of 0.08%, less than one tenth of one percent. This was prison admissions: the rates of being in prison in 2006 for people who were sentenced in or expected to be released to Dane County were 7,069 (about 7%) for Blacks and 400 (0.4%) for Whites.

Calculating disparities: The disparity ratio is also called the "relative rate index," and is a calculation used to identify potential differential treatment inside the various stages of the criminal justice system. The Black/White disparity is calculated by dividing the Black rate by the White rate. Using the above example's incarceration rates, dividing 2,252 by 88 yields a disparity of 25.6. This means that, relative to population, Blacks were 25.6 times more likely to enter prison from Dane County than Whites.

While the systemic harm to communities of color comes from the high *rates* of arrest and incarceration, racial *disparities* arise from many factors including potential discrimination within the criminal justice system. A racial disparity measure focuses on equality of treatment, and is especially appropriate for assessing what happens to people after arrest, where it is possible to control for offender conduct.

C. What is Different About Dane County?

What makes Dane County's disparity ratios so high is the combination of high arrest and imprisonment rates for Blacks coupled with low arrest and imprisonment rates for Whites. In addition, Dane County, and Madison in particular, has great income and educational disparities between its white and non-white residents. Madison Police Chief Noble Wray, who chairs the Governor's Racial Disparities Oversight Commission, calls this "the tale of two cities." That is, Dane County's White residents are, on average, highly educated and relatively affluent, while a large proportion of

Racial Disparity

its Black and Latino residents live in poverty, and nearly half of Black and Latino teens do not graduate from high school.⁵

According to Wray, other reasons Dane County's disparities are so much higher than that of other communities include the fact that the non-white population of Dane County is so small that people of color tend to stand out more. In addition, Dane County has become home to people migrating from large urban centers such as Chicago and Milwaukee, and migrations happen between neighborhoods in Dane County as well. This mobile population causes demographic changes in neighborhoods that previously have had few residents of color, which may lead to increased police calls in some areas. Finally, according to Wray, unconscious bias, and to a lesser extent, conscious bias, play a role in the high racial disparities in Dane County's criminal justice system.

According to Black Commentator's "2008's Ten Worst Places to be Black" report,⁶ Wisconsin ranked first, with the highest racial disparities in incarceration in the nation. Significantly, the report explains that the states with the highest Black/White disparities in incarceration have three things in common:

- None are in the South.
- Blacks make up a very small percentage of the population (as in Wisconsin, 6% or less).
- All are adjacent to three of the five largest concentrations of African-

⁵ "The State of Black Madison 2008: Before the Tipping Point," (April 2008). Available at www.ulgm.org.

⁶ Dixon, Bruce. "2008's Ten Worst Places to be Black," Black Agenda Report, (Feb. 2008). Available at: <http://www.alternet.org/story/76843/>

American population in the U.S. –

Chicago, New York, and Philadelphia.

In addressing these issues, it is important to stress several key points. The first is the difference between racial disparity and racial discrimination. As used in this report, a racial disparity is a statistical pattern of racial or ethnic difference at a particular point in the criminal justice system. A racial disparity says there is a problem somewhere, and more detailed statistical analysis can more clearly specify the problem. By itself, the statistical pattern of racial disparity does not prove racial discrimination, which is an illegal act that involves intentionally treating people who are otherwise similarly situated differently on the basis of race. Conscious racial discrimination does happen and it is important to be willing to look for evidence of such discrimination and respond to it. Yet it is just as important to look for evidence of unconscious bias at every point in the criminal justice system.

D. Unconscious Bias

There has been a great deal of psychological research on the brain processes involved in bias. (See bibliography.) Research has shown that there are two different brain systems that can contribute to biased decision-making. One is the thoughts that can be controlled by conscious choice. The other involves the unconscious autonomic brain functioning that works with associations a person has learned from past experience and exposure to media images and other cultural sources. People cannot consciously control this second source of bias and are usually completely unaware of it.

Unconscious bias is more likely when decisions are made rapidly in ambiguous situations on the basis of relatively little information.

Unconscious bias is less likely when decision criteria are clear-cut, when decisions are made more slowly and carefully, and when there is more information. Although people cannot consciously control their autonomic responses,

Public Hearings

they can reduce the impact of unconscious bias by consciously slowing down decisions, drawing their attention to explicit criteria for decisions, and being aware of the possibility of unconscious bias. That is, unconscious bias can to some extent be overridden by conscious thought, but only with effort. Researchers believe it is possible to reduce the effect of unconscious bias through training specifically directed towards it.

All people, regardless of race, have unconscious racial and other biases that arise from their life experience. Members of the White majority are no more likely to have conscious or unconscious biases against those who are culturally different from them than any other group. However, the unconscious biases of the White majority matter more for educational and employment opportunities and criminal justice outcomes because most of the positions of power and authority are held by Whites. These same often-unconscious processes also affect the way that citizens of different racial groups respond to law enforcement and other officials in the criminal justice system.

E. The Big Picture

In the United States as a whole, non-Hispanic whites have an unusually high incarceration rate by world standards, a rate that is three to five times higher than that of any European nation, and higher than all but 16 of the world's nations. Part of the devastatingly high incarceration rate for African Americans is attributable to the overall trend of greater punitiveness toward all racial groups in our criminal justice system. Policies that reduce arrests or incarceration across the board if applied even-handedly will help to reduce the high African American rates of incarceration and arrest in Dane County.

It is entirely appropriate to focus on racial disparities in looking for evidence of conscious or unconscious discrimination. However, the racial disparity measure is not just a function of the minority rate of arrest or incarceration, it is

also a function of the majority White rate. This has two implications. First, when considering whether a racial disparity is just or unjust, it is important to ask not only whether the people of color who are arrested, convicted or incarcerated are guilty of the charged offenses, but whether Whites who have committed the same offenses are just as likely to be arrested, convicted or incarcerated.

Second, programs that reduce the disparity in arrest or incarceration will not necessarily reduce the minority arrest or incarceration rates, and vice versa. Dane County has particularly high disparity primarily because its White population is above average in education and income and has very low rates of arrest and incarceration for most crimes (except disorderly conduct and underage drinking). One direct way of reducing the racial disparity would be to arrest and incarcerate more White people, but this would not reduce the problems associated with high arrest and incarceration rates for Blacks and Hispanics.

*Each generation must decide
whether to dig defensive
trenches or to build bridges,
and each of us must choose
whether to participate in that
decision or just let others
decide for us and our children.*

—Christopher Edley, Jr., 1996

III. Public Hearings

The Task Force held four public hearings — designed as listening sessions — in March, April and May of 2009. They were very well attended, with between 50 and 60 participants at all but one of the hearings. In all, over 200 members of the community attended the hearings, and many more submitted written comments to the Task Force. The Task Force held hearings at the Sun Prairie Public Library, The Catholic Multicultural Center/Centro Guadalupe on Madison's south side, the Dane County Parent Council in the Allied Drive