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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

AUG 18 2000

JAMES R. LARSEN, CLERK
DEPUTY
SPOKANE, WASHINGTON

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

MUHAMMAD SHABBAZ FARRAKHAN,
et. al.,

Plaintiffs,

v.

GARY LOCKE, et. al.,

Defendants.

CASE NO. CS-96-76-RHW

**PLAINTIFFS'
MEMORANDUM OF
POINTS AND AUTHORITIES
IN REPLY TO
DEFENDANTS'
RESPONSIVE
MEMORANDUM
(ORAL ARGUMENT
REQUESTED)**

I. PRELIMINARY STATEMENT

Plaintiffs have effectively demonstrated, both in their Memorandum in Support of Summary Judgment and Responsive Memorandum in Opposition to Defendants' Motion for Summary Judgment, Article 6 § 3 of the Washington State Constitution violates Section 2 of the Voting Rights Act. However, Defendants' Responsive Memorandum in Opposition to Plaintiffs' Motion for Summary Judgment [hereinafter Defs.' Opp'n Mem.] amply illustrates Defendants' fundamental misunderstanding of Plaintiffs' legal argument under VRA § 2. Therefore, Plaintiffs present this Reply Memorandum to clarify two important issues as a means of preventing Defendants' misinterpretation from clouding this court's perception of Plaintiffs' clear position.

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1 **II. QUESTIONS PRESENTED**

2 **A. Is Washington Constitutional Article 6 § 3 a “Qualification or Prerequisite” To**
3 **Voting Within the Meaning of VRA § 2?**

4 **B. Did Plaintiffs Correctly Rely Upon Objective, Rather Than Subjective, Factors In**
5 **Fashioning Their “Totality of Circumstances” Analysis?**

6 **III. ARGUMENT**

7 **A. Article 6 § 3 Falls Squarely Within Those Voting “Qualifications or Prerequisites”**
8 **Prohibited Under VRA § 2.**

9 Defendants claim that Article 6 § 3 does not fit the VRA § 2 definition of voting
10 qualifications, prerequisites, standards, practices, or procedures prohibited by the Act. 42
11 U.S.C. § 1973 (a) (1994); see Defs.’ Opp’n Mem. n. 1 & 4. A careful reading of Plaintiffs’
12 Memorandum in Support of Summary Judgment [hereinafter Pls.’ Mem.] shows Plaintiffs
13 claim that Article 6 § 3 constitutes a “voting qualification or prerequisite” under the Act.
14 See Pls.’ Mem. at 6, § IV (A). Nevertheless, an understanding of Congress’ intention when
15 enacting VRA § 2 to prevent qualifications or prerequisites to voting leads to the logical
16 conclusion that Article 6 § 3 fits this definition perfectly. As stated by Justice Thomas:

17 Here, the specific items described in § 2(a) (“voting qualification[s]” and
18 “prerequisite[s] to voting”) indicate that Congress was concerned in this
19 section **with any procedure, however it might be denominated**, that
20 regulates citizens’ access to the ballot – that is, any procedure that might erect
21 a barrier to prevent the potential voter from casting his vote. In describing the
22 laws that would be subject to § 2, Congress focused attention upon provisions
23 regulating the interaction between the individual voter and the voting process
24 – on hurdles the citizen might have to cross in the form of “prerequisites” or
25 “qualifications.”

26 Holder v. Hall, 512 U.S. 874, 917 (1994) (Thomas, J. concurring) (emphasis added).

27 There can be no question Article 6 § 3, which denies the class of citizens convicted
28 of “infamous crimes” the right to register and vote, constitutes a voting qualification within
the meaning of the Act. In fact, the heading to § 3 is “Who Disqualified,” implying a
qualification. See Wash. Const. Art. VI, § 3. Both Plaintiffs and Defendants agree on
statistics issued by the Washington State Department of Corrections (DOC) that clearly
demonstrate minorities are convicted and incarcerated at rates dramatically out of proportion
with their representation in the statewide population. See Pls.’ LR 56.1 Statement of

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1 Material Facts # 27, 29; Defs.' Statement of Material Fact #72, 74. Thus, persons with the
2 status of "convicted felon" are more likely to be minority than the general state population.
3 Article 6 § 3 implies that, to be qualified to register and vote in Washington, one must not
4 be classified as a "convicted felon." Therefore, Article 6 § 3 is a voting qualification that
5 erects a barrier to voting that disproportionately impacts minorities, analogous to the literacy
6 tests and poll taxes employed by Southern states to radically reduce the number of African
7 Americans registered to vote. To claim Article 6 § 3 is not a voting qualification and that
8 Plaintiffs, who are all minorities, are not harmed or injured by this voting qualification,
9 flouts the entire purpose and basis for the enactment of the VRA thirty-five years ago.

10 Similarly, the process convicted offenders must follow to ultimately restore their
11 ability to vote pursuant to RCW § 9.94A.220 can be characterized as a "standard, practice,
12 or procedure" within the meaning of VRA § 2. "Standard, practice, or procedure" is
13 understood to relate to "all manner of registration requirements . . . that might be
14 manipulated to deny any citizen the right to cast a ballot and have it properly counted."
15 Holder, 512 U.S. at 922 (Thomas, J. concurring). Further, the Court has understood
16 "standard, practice, or procedure" to extend to formal state actions with respect to voting.
17 See Growe v. Emison, 507 U.S. 25, 40-41 (1993) (a VRA challenge to a districting plan);
18 Thornburg v. Gingles, 478 U.S. 30, 46-51 (1986) (a VRA challenge to the use of
19 multimember districts, as opposed to single-member districts). Plaintiffs, relying on the
20 record, have demonstrated the process for reinstatement of voting rights through the
21 issuance of a certificate of discharge is subject to the discretion (i.e., "manipulation") of
22 prosecutors and sentencing courts. Pls.' Mem. at 36.

23 The process leading to the ultimate restoration of voting rights in Washington is a
24 state-imposed "standard, practice, or procedure." This process only applies to convicted
25 felons. Convicted felons are more likely to be minority than the general population, and
26 therefore any deficiencies in the process are more likely to impact minorities than a
27 standard, practice, or procedure applied to the population as a whole. Plaintiffs are all
28

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1 minorities. Therefore, Plaintiffs have standing to challenge a process that results in the
2 denial of the vote by minorities, irrespective of their status within the process itself.

3 **B. Plaintiffs Have Appropriately Presented Objective Factors In Establishing the**
4 **Totality of Circumstances Analysis**

5 Defendants extensively criticize Plaintiffs' presentation of the salient social and
6 historical factors that comprise the totality of circumstances required to meet the results test
7 of VRA § 2. See 42 U.S.C. § 1973. However, the basis of their criticism demonstrates a
8 misunderstanding of the function of the inquiry into social and historical conditions through
9 a totality of circumstances analysis. Therefore, Plaintiffs present the following elaboration
10 on the totality of circumstances approach used to affirmatively establish a violation of VRA
11 § 2 by Washington's felon disenfranchisement law.

12 To be clear at the outset, the argument presented by Plaintiffs is both unique and
13 novel. No challenge to the effects of felon disenfranchisement on minorities has ever been
14 decided on its merits. See Wesley v. Collins, 791 F.2d 1255 (6th Cir. 1986); Baker v. Pataki,
15 85 F.3d 919 (2nd Cir. 1996). Consequently, there is no on-point case law to guide Plaintiffs
16 in crafting a totality of circumstances inquiry mandated by VRA § 2 with respect to felon
17 disenfranchisement. Though Congress developed a list of seven factors that may be relied
18 upon by a plaintiff in a VRA § 2 action, case law shows these factors to be primarily
19 relevant in vote dilution, not vote denial, claims. See Thornburg v. Gingles, 478 U.S. 30, 44-
20 45 (1986); Farrakhan v. Locke, 987 F.Supp. 1304, 1311 (E.D. Wash. 1997). Congress
21 further undermined any helpfulness provided by these factors by stating its intent "that there
22 is no requirement that any particular number of factors be proved, or that a majority of them
23 point one way the other." S. Rep. No. 417, 97th Cong., 2d Sess., 9, 29 (1982), reprinted in
24 1982 U.S.C.C.A.N. 177, 207 [Pls.' Reply Mem. Ex. A]. Thus, with little legislative or
25 precedential guidance, Plaintiffs have endeavored to show felon disenfranchisement results
26 in political processes not equally open to minorities. In doing so, Plaintiffs have
27 demonstrated a "searching practical evaluation of the 'past and present reality,'" Id. at 30,
28 as required by the Act.

1 In doing so, Plaintiffs have explored historical discrimination, both in the use of
2 criminal disenfranchisement in the South to specifically target blacks for vote denial, and
3 Washington State's treatment of minorities in voting and society as a whole. Pls. Mem. at
4 10-16. Defendants point out that felon disenfranchisement laws existed prior to
5 Reconstruction. Defs.' Mem. at 6. This is true. But it was during the post-Reconstruction
6 period that Southern lawmakers twisted otherwise valid, neutral voting laws to meet their
7 aim of denying blacks the vote. Pls.' Mem. at 10-11. It is upon this fact Congress has sought
8 to overturn voting restrictions used for discriminatory purposes, even though such laws may
9 have existed before being used to discriminate on the basis of race. See e.g. 42 U.S.C. §
10 1973h (abolishing poll taxes nationally). Even though there is no evidence, and Plaintiffs
11 do not allege, criminal disenfranchisement in Washington was adopted with the express
12 purpose of denying the vote to minorities, this fact is not necessarily relevant in a VRA
13 action. First, case law clearly shows a heavy reliance on historical discrimination would be
14 contrary to Congressional intent. Pls.' Mem. at 8-9. Second, Congress has used the VRA to
15 ban qualifications and prerequisites on a nationwide basis, even though their use to
16 discriminate was primarily limited to the South. As the Court stated in upholding this
17 approach applied to literacy tests:

18 In imposing a nationwide ban on literacy tests, Congress has recognized a
19 national problem for what it is – a serious national dilemma that touches every
20 corner of our land. In [the 1970 amendments to the VRA] Congress has
21 recognized that discrimination on account of color and racial origin is not
22 confined to the South, but exists in various parts of the country. Congress has
23 decided that the way to solve the problems of racial discrimination is to deal
24 with nationwide discrimination with nationwide legislation.

25 Oregon v. Mitchell, 400 U.S. 112, 133-134 (1970). This reading of the purpose of the VRA
26 clearly demonstrates Washington's felon disenfranchisement law may be invalidated even
27 though it was not expressly used to discriminate on the basis of race in Washington.

28 Notwithstanding Dr. Taylor's "overall conclusions" about race and voting in
Washington, the fact remains: discrimination against minorities is evident in Washington

1 State history. "Indians not taxed" were denied the vote until 1974.¹ Native Americans have
2 faced ongoing negative stereotypes and discrimination throughout state history. Pls.' Mem.
3 at 16. Case law throughout the state's history reflects white animus directed at African
4 Americans. Pls.' Mem. at 15. Dr. Taylor even provides examples. Pls.' Mem. at 15. In short,
5 Plaintiffs' historical inquiry is both accurate and appropriate within the totality of
6 circumstances inquiry.

7 Plaintiffs also provided an extensive look at disparities within the criminal justice
8 system, as this is a relevant factor in the overall totality of circumstances analysis as applied
9 to felon disenfranchisement. Pls.' Mem. 17-27. This analysis focuses on the objective results
10 of a variety of studies and articles that affirmatively show resultant disparities with respect
11 to minorities in the criminal justice system. Plaintiffs do not focus on the subjective intents
12 behind the imposition of their individual judgments and sentences, as Congress explicitly
13 amended the VRA in 1982 to focus all totality of circumstances inquiries on objective,
14 rather than subjective, factors. See Pls.' Mem. at 7.

15 An example of this objective approach may be derived from Plaintiffs' examination
16 of the effects of the "War on Drugs." Defendants dismiss this analysis as an extensive
17 critique and inappropriate because Plaintiffs do not delve into specific details of their own
18 proceedings. Defs.' Mem. at 10, 12. However, an argument Plaintiffs were victims of
19 subjective discrimination throughout their adjudications is barred, as the analysis must be
20 premised on objective factors. Instead, Plaintiffs present the "War on Drugs" as a factor that

21
22 ¹ Defendants dismiss this by comparing Wash. Const. Art. VI, § 1 with
23 U.S. Const. amend. XIV, § 2. The distinction between the two is obvious.
24 The Washington Constitutional Article is a voting qualification that
25 restricted Native American voting rights until 1974. The Fourteenth
26 Amendment § 2 relates to apportionment of Congressional representatives
27 on the basis of population and imposes no qualifications that would deny
28 the vote to any group. See U.S. Const. amend. XIV, § 2.

1 has contributed to the circumstances leading to the claim that felon disenfranchisement
2 results in the denial of the vote to minorities. Pls.' Mem. 17-19, 21.

3 Plaintiffs' objective argument is best summarized by relying on the attached graphs
4 and tables at Exhibit B [Pls.' Reply Mem. Ex. B]. The national prison population has
5 skyrocketed over the last twenty years. Ex. B-1. The largest increase in new sentences has
6 been for drug crimes. Ex. B-2. State and Federal prisons have seen corresponding increases
7 in inmate populations, with the largest proportion attributed to drug crimes. Ex. B-3, B-4.
8 These increases are driven by skyrocketing rates in drug arrests nationally. Ex. B-5.
9 Between 1985 and 1995, 42% of the total increase in state prison populations is attributed
10 to the arresting of African Americans for drug crimes, reflecting a 707% increase during the
11 ten year period. Ex. B-6. The overall African American proportion of arrests for drug
12 possession has climbed substantially since 1980. Ex. B-7. This objective data is therefore
13 presented as a part of the totality of circumstances to supplement data showing minorities
14 are disproportionately impacted by felon disenfranchisement laws.² This is the form of
15 analysis prescribed by Congress in requiring a showing under the totality of circumstances
16 to establish a violation of VRA § 2.³

18 ² The results of the "War on Drugs" from the last twenty years is one of
19 the primary reasons felon disenfranchisement has only recently been
20 perceived as a violation of the Act. See Defs.' Opp'n Mem. at 11.

21 ³ Defendants raise the issue of the low numbers of felons removed from
22 voting roles upon conviction. Defs.' Opp'n Mem. at 11. An objective
23 answer to this is illustrated by Exhibit B-8. The largest number of arrests
24 are for offenders either too young to register or fall within the
25 demographic typically demonstrating the lowest rate of political
26 participation (i.e., 21-34 year-olds).

1 In summary, Plaintiffs have presented a wide range of objective factors to establish
2 the totality of circumstances inquiry. Consistent with Congress' mandate through VRA §
3 2, Plaintiffs have neither presented subjective circumstances relating to their own cases, nor
4 have they argued that any factor presented provides them with an individual cause of action
5 under that factor.⁴ Despite the fact this claim presents a legal question not yet explored,
6 Plaintiffs have carefully tailored their analysis under totality of the circumstances to fall
7 within the parameters set by Congress and other courts when examining similar, but
8 distinguishable, situations.

9 **IV. CONCLUSION**

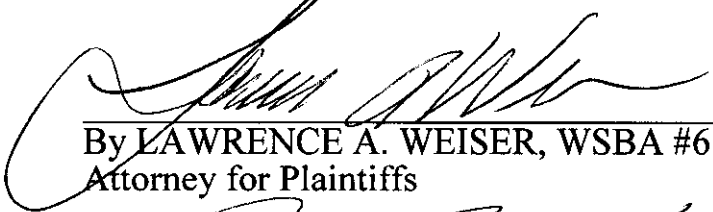
10 Plaintiffs have correctly characterized Article 6 § 3 as a voting qualification or
11 prerequisite under VRA § 2. Plaintiffs have appropriately utilized objective factors in
12 formulating their totality of circumstances inquiry under VRA § 2. For all of the foregoing
13 reasons, and for the reasons set forth both in their Memorandum in Support of Summary
14 Judgment and Responsive Memorandum in Opposition to Defendants' Motion for Summary
15 Judgment, Plaintiffs respectfully request this court grant their Motion for Summary
16 Judgment.

17 * * *
18 * * *
19 * * *
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21 ⁴ For example, Plaintiffs present international treaties entered into by the
22 United States as a means of illustrating the views taken by the
23 International Community on voting rights. Plaintiffs do not argue any
24 cause of action under those treaties against Article 6 § 3. See Defs.' Opp'n
25 Mem. at 14-15. The treaties and attendant examples derived from other
26 democratic nations merely provide substance to the overall totality of
27 circumstances analysis.
28


DATED this 18th day of August, 2000

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EXHIBIT A

S. Rep. No. 417, 97th Cong., 2d Sess., 29-31 (1982), reprinted in 1982
U.S.C.C.A.N. 177, 207-208.

VOTING RIGHTS ACT AMENDMENTS

P.L. 97-205

7. the extent to which members of the minority group have been elected to public office in the jurisdiction.¹¹⁵
Additional factors that in some cases have had probative value as part of plaintiffs' evidence to establish a violation are:

whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group.¹¹⁶

whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous.¹¹⁷

While these enumerated factors will often be the most relevant ones, in some cases other factors will be indicative of the alleged dilution.

The cases demonstrate, and the Committee intends that there is no requirement that any particular number of factors be proved, or that a majority of them point one way or the other.¹¹⁸

¹¹⁵ The courts have recognized that disproportionate educational employment, income level and living conditions arising from past discrimination tend to depress minority political participation, e.g., *White* 412 U.S. at 768; *Kirksey v. Board of Supervisors*, 534 F.2d 139, 145. Where these conditions are shown, and where the level of black participation in politics is depressed, plaintiffs need not prove any further causal nexus between their disparate socio-economic status and the depressed level of political participation.

¹¹⁶ The fact that no members of a minority group have been elected to office over an extended period of time is probative. However, the election of a few minority candidates does not "necessarily foreclose the possibility of dilution of the black vote", in violation of this section. *Zimmer* 485 F.2d at 1307. If it did, the possibility exists that the majority citizens might evade the section e.g., by manipulating the election of a "safe" minority candidate. "Were we to hold that a minority candidate's success at the polls is conclusive proof of a minority group's access to the political process, we would merely be inviting attempts to circumvent the Constitution . . . Instead we shall continue to require an independent consideration of the record." *Ibid.*

¹¹⁷ Unresponsiveness is not an essential part of plaintiff's case. *Zimmer; White* (as to Dallas.) Therefore, defendants' proof of some responsiveness would not negate plaintiff's showing by other, more objective factors enumerated here that minority voters nevertheless were shut out of equal access to the political process. The amendment rejects the ruling in *Lodge v. Buxton* and companion cases that unresponsiveness is a requisite element, 639 F.2d 1358, 1375 (5th Cir. 1981), (an approach apparently taken in order to comply with the intent requirement which the Supreme Court's plurality opinion in *Bolden* imposed on the former language of Section 2.) However, should plaintiff choose to offer evidence of unresponsiveness, then the defendant could offer rebuttal evidence of its responsiveness.

¹¹⁸ If the procedure markedly departs from past practices or from practices elsewhere in the jurisdiction, that bears on the fairness of its impact. But even a consistently applied practice premised on a racially neutral policy would not negate a plaintiff's showing through other factors that the challenged practice denies minorities fair access to the process.

¹¹⁹ The courts ordinarily have not used these factors, nor does the Committee intend them to be used, as a mechanical "point counting" device. The failure of plaintiff to establish any particular factor, is not rebuttal evidence of non-dilution. Rather, the provision requires the court's overall judgment, based on the totality of circumstances and guided by those relevant factors in the particular case, of whether the voting strength of minority voters is, in the language of *Fortson and Burns*, "minimized or canceled out."

[page 30]

Whitcomb, White, Zimmer, and their progeny dealt with electoral system features such as at-large elections, majority vote requirements and districting plans. However, Section 2 remains the major statutory prohibition of all voting rights discrimination. It also prohibits practices which, while episodic and not involving permanent structural barriers, result in the denial of equal access to any phase of the electoral process for minority group members.

If the challenged practice relates to such a series of events or episodes, the proof sufficient to establish a violation would not necessarily involve the same factors as the courts have utilized when dealing with permanent structural barriers. Of course, the ultimate test would be the *White* standard codified by this amendment of Section 2: whether, in the particular situation, the practice operated to deny the minority plaintiff an equal opportunity to participate and to elect candidates of their choice.¹¹⁹

LEGISLATIVE HISTORY

P.L. 97-205

The requirement that the political processes leading to nomination and election be "equally open to participation by the group in question" extends beyond formal or official bars to registering and voting, or to maintaining a candidacy.

As the Court said in *White*, the question whether the political processes are "equally open" depends upon a searching practical evaluation of the "past and present reality."¹²⁰

Finally, the Committee reiterates the existence of the private right of action under Section 2, as has been clearly intended by Congress since 1965. See *Allen v. Board of Elections*, 393 U.S. 544 (1969).

DISCLAIMER

When a federal judge is called upon to determine the validity of a practice challenged under Section 2, as amended, he or she is required to act in full accordance with the disclaimer in Section 2 which reads as follows:

The extent to which members of a protected class have been elected to office in the State or political subdivision is one "circumstance" which may be considered, provided that nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

Contrary to assertions made during the full Committee mark-up of the legislation, this provision is both clear and straightforward.

¹²⁰ This aspect of the statute's scope is illustrated by a variety of Section 2 cases involving such episodic discrimination. For example, a violation could be proved by showing that the election officials made absentee ballots available to white citizens without a corresponding opportunity being given to minority citizens. See *Brown v. Post*, 279 F. Supp. 60, 63-64 (W.D.La. 1968). Likewise, purging of voters could produce a discriminatory result if fair procedures were not followed. *Toney v. White*, 488 F.2d 310 (5th Cir. 1973), or if the need for a purge were not shown or if opportunities for re-registration were unduly limited. Administration of an election could likewise have a discriminatory result if, for example, the information provided to voters substantially misled them in a discriminatory way. *United States v. Post*, 297 F. Supp. 46, 50-51 (W. D. La. 1969).

¹²¹ 412 U.S. at 769-770. Therefore, for purposes of Section 2, the conclusion in the *Mobile* plurality opinion that "there were no inhibitions against Negroes becoming candidates, and that in fact Negroes had registered and voted without hindrance", would not be dispositive. Section 2, as amended, adopts the functional view of "political process", used in *White* rather than the formalistic view espoused by the plurality in *Mobile*. Likewise, although the plurality suggested that the Fifteenth Amendment may be limited to the right to cast a ballot and may not extend to claims of voting dilution (without explaining how, in that case, one's vote could be "abridged"), this section without question is aimed at discrimination which takes the form of dilution, as well as outright denial of the right to register or to vote.

[page 31]

This disclaimer is entirely consistent with the above mentioned Supreme Court and Court of Appeals precedents, which contain similar statements regarding the absence of any right to proportional representation. It puts to rest any concerns that have been voiced about racial quotas.

The basic principle of equity that the remedy fashioned must be commensurate with the right that has been violated provides adequate assurance, without disturbing the prior case law or prescribing in the statute mechanistic rules for formulating remedies in cases which necessarily depend upon widely varied proof and local circumstances. The court should exercise its traditional equitable powers to fashion the relief so that it completely remedies the prior dilution of minority voting strength and fully provides equal opportunity for minority citizens to participate and to elect candidates of their choice.¹²¹

EXHIBIT B

Excerpts from Marc Mauer, Race To Incarcerate (1999).

20 — RACE TO INCARCERATE

**U.S. PRISON INMATES
1972 - 1997**

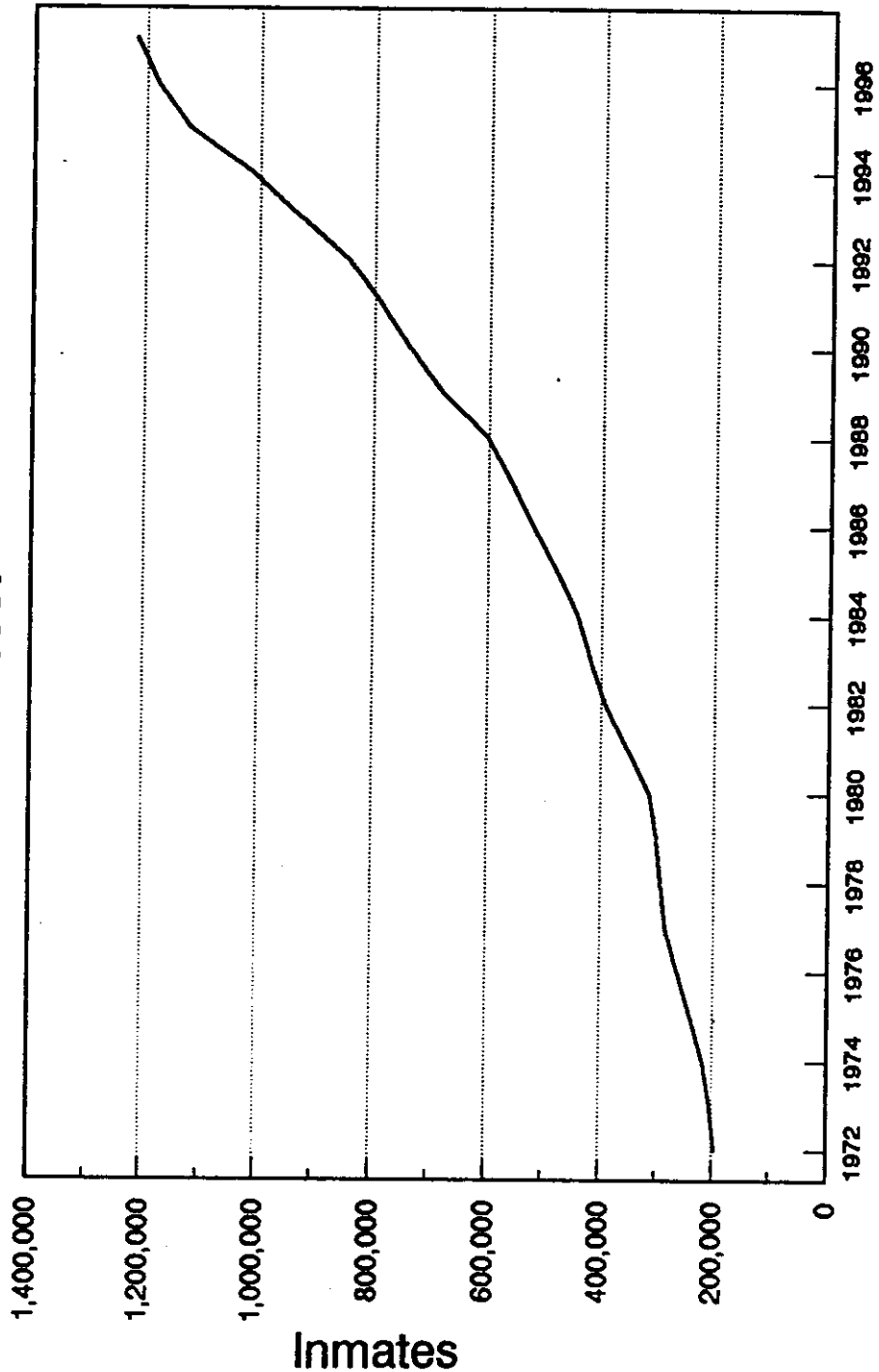


Figure 2-2
U.S. Prison Inmates, 1972-1997

Sources: Bureau of Justice Statistics, *Sourcebook of Criminal Justice Statistics 1996*, Department of Justice, Washington, D.C., 1997, and Bureau of Justice Statistics, "Prison and Jail Inmates at Midyear 1997," 1998

*Note: Data prior to 1977 include only those prisoners held in the custody of state or federal prisons, while remaining years include prisoners under the jurisdiction of state or federal corrections systems, including offenders held in local jails or other institutions.

Table 2-2
Increase in New Sentences to State Prison by Crime Type, 1985-95

Offense	Prison Sentences		Increase 1985-95	% Increase	% of Total Increase
	1985	1995			
Total	183,131	337,492	154,361	84%	100%
Violent	64,300	99,400	35,100	55%	23%
Property	77,600	97,600	20,000	26%	13%
Drug	24,200	104,400	80,200	331%	52%
Public order, other	17,100	36,100	19,000	111%	12%

Note: Due to rounding, columns do not add up to 100%. Data calculated from Bureau of Justice Statistics reports.

Table 2-3
State Prison Inmates by Offense, 1985-95

Offense	Inmates 1985	Inmates 1995	Increase	% Increase	% of Total Increase
Total	451,812	989,007	537,195	119%	100%
Violent	246,200	457,600	211,400	86%	39%
Property	140,100	237,400	97,300	69%	18%
Drug	38,900	224,900	186,000	478%	35%
Public order, other	26,200	69,100	42,900	164%	8%

Note: Due to rounding, columns do not add up to 100%. Data calculated from Bureau of Justice Statistics reports.

Table 2-4
Federal Prison Inmates by Offense, 1985-95

Offense	1985	1995	Increase	% Increase	% of Total Increase
Total	31,364	88,101	56,737	181%	100%
Violent	7,768	11,321	3,553	46%	6%
Property	5,289	7,524	2,235	42%	4%
Drug	9,482	51,737	42,255	446%	74%
Public order, other	8,825	17,519	8,694	99%	15%

Note: Due to rounding, columns do not add up to 100%. Data calculated from Bureau of Justice Statistics reports.

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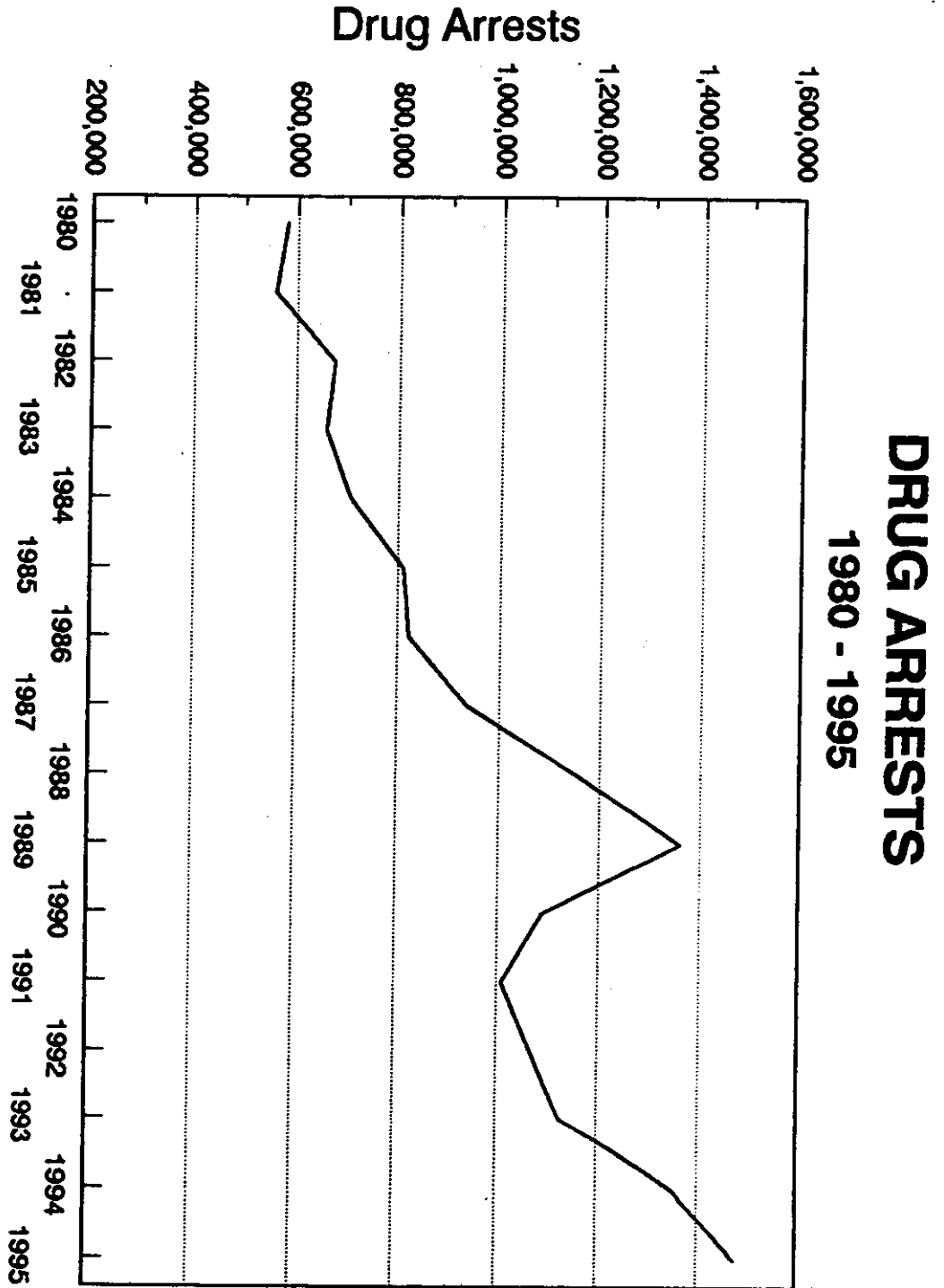


Figure 8-1
Drug Arrests, 1980-1995

Source: FBI data provided to the author

Exhibit B-5

Table 8-1
State Prison Inmates by Race and Offense

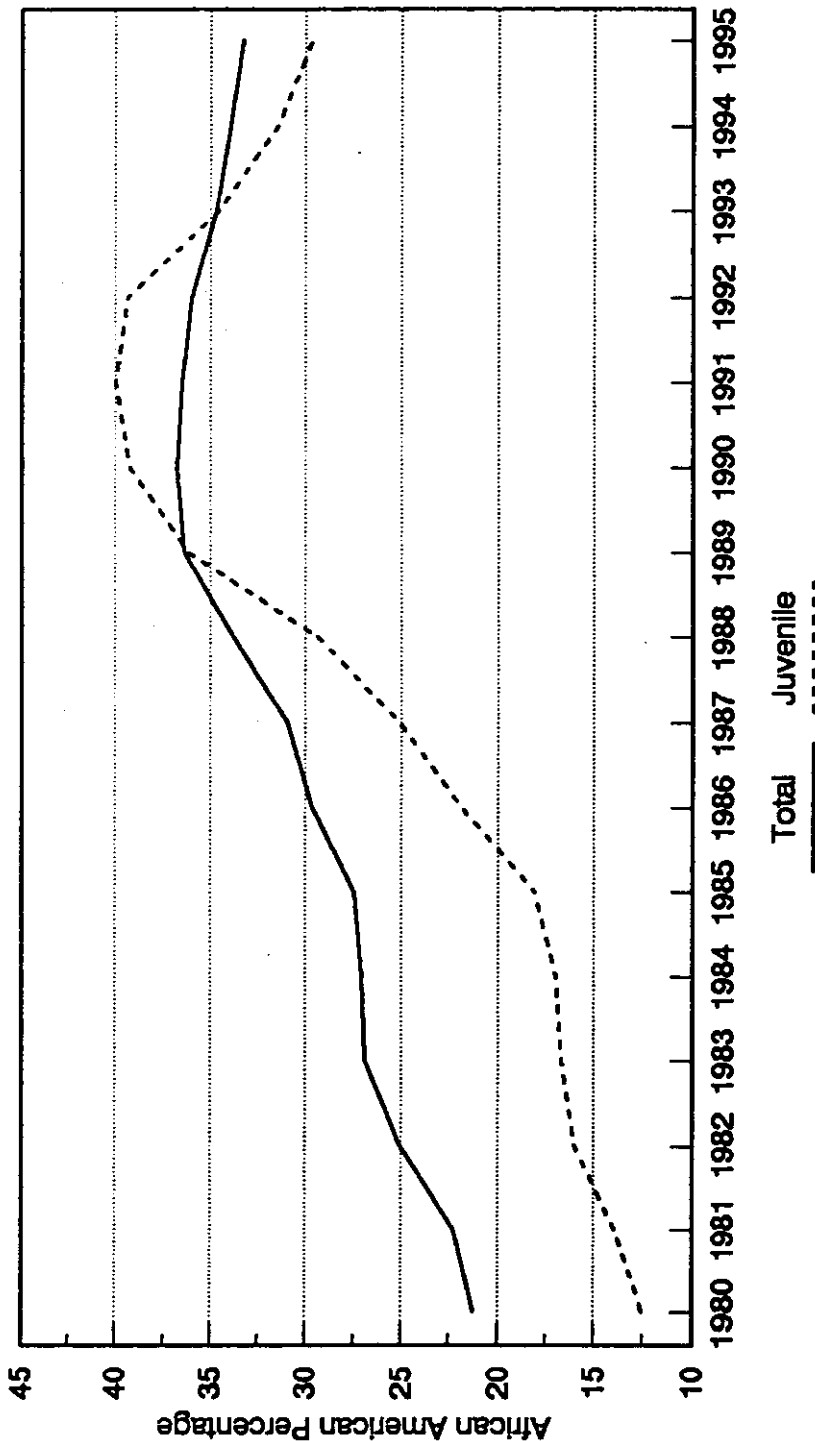
Offense	White			Black		
	1985	1995	% Increase	1985	1995	% Increase
Total	224,900	471,100	109 %	211,100	490,100	132 %
Violent	111,900	214,800	92 %	124,800	228,600	83 %
Drug	21,200	86,100	306 %	16,600	134,000	707 %
Property	75,100	130,700	74 %	60,600	100,200	65 %
Public Order	14,900	39,000	162 %	7,600	25,000	229 %
Other	1,800	500	-72 %	1,400	2,300	64 %
			% Total Increase			% Total Increase
			100 %			100 %
			42 %			37 %
			26 %			42 %
			23 %			14 %
			10 %			6 %
			-1 %			0 %

Source: Christopher J. Mumola and Allen J. Beck, "Prisoners in 1996," Bureau of Justice Statistics, June 1997

Source: Federal Bureau of Investigation, Drug Abuse Statistics, 1980-1995

Figure 8-2 African American Proportion of Arrests for Drug Possession, 1980-1995

AFRICAN AMERICAN PROPORTION OF ARRESTS FOR DRUG POSSESSION 1980-1995



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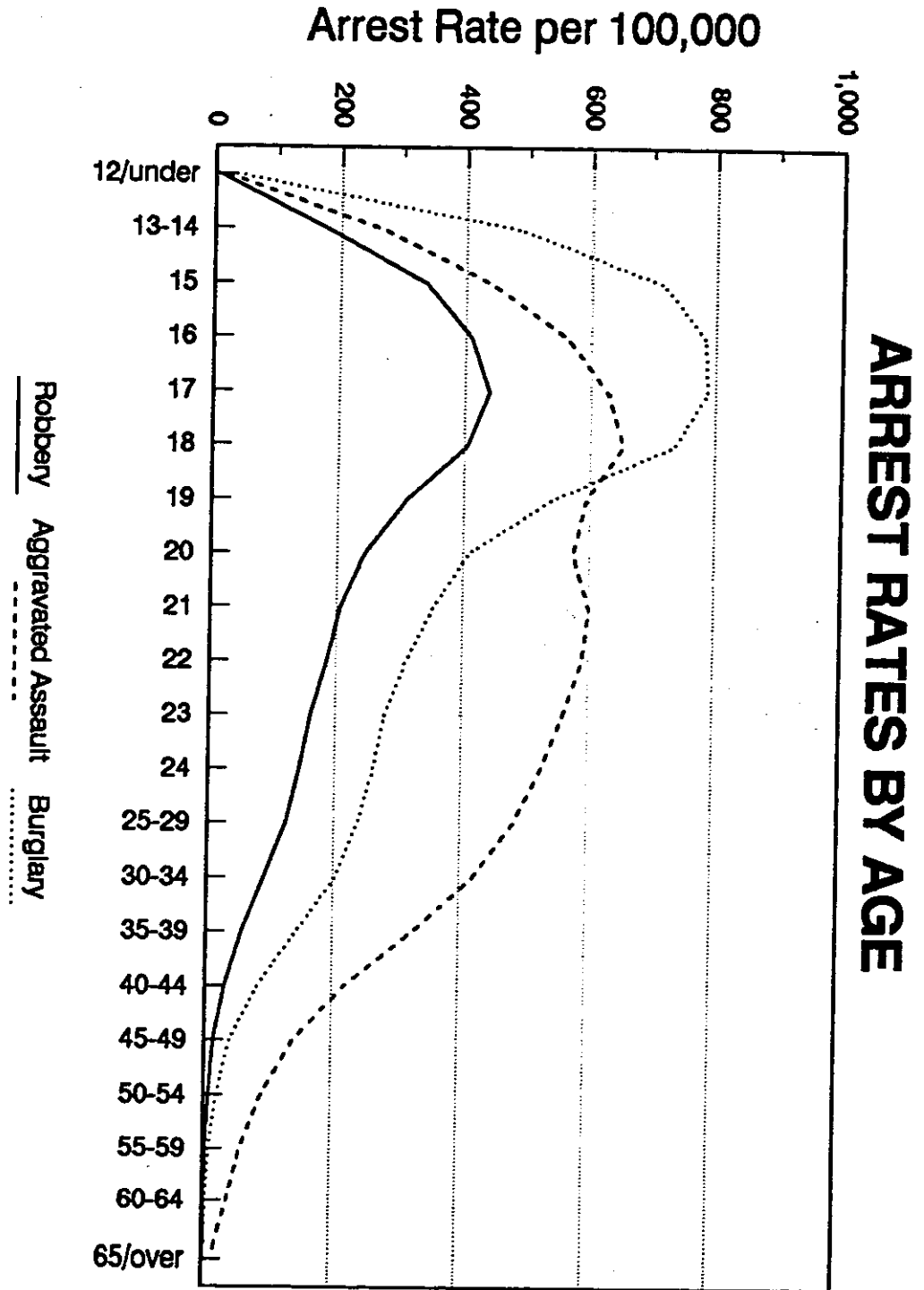


Figure 6-2
Arrest Rates by Age

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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

AUG 18 2000

JAMES R. LARSEN, CLERK
DEPUTY
SPOKANE, WASHINGTON

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MUHAMMAD SHABBAZ FARRAKHAN,
et. al.,

Plaintiffs,

v.

GARY LOCKE, et. al.,

Defendants.

CASE NO. CS-96-76-RHW

AFFIDAVIT OF
SERVICE BY MAIL

STATE OF WASHINGTON)
County of Spokane) ss.

JASON T. VAIL, being first duly sworn upon oath, depose and say:

That I am a citizen of the United States over the age of eighteen and competent to be a witness herein.

That on the 18th day of August, 2000, I deposited in United States Postal Service, postage prepaid, and addressed as follows:

DANIEL J. JUDGE
ATTORNEY GENERAL'S OFFICE
CRIMINAL JUSTICE DIVISION
P.O. BOX 40116
OLYMPIA, WA 98504-0116

JEFFREY T. EVEN
ATTORNEY GENERAL'S OFFICE
GENERAL COUNSEL DIVISION
P.O. BOX 40100
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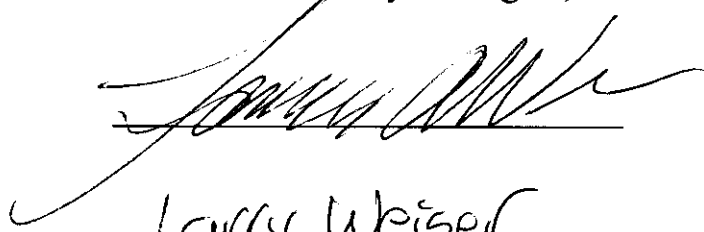
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a copy of the following documents in the above-referenced cause: PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN REPLY TO DEFENDANTS' RESPONSIVE MEMORANDUM, ATTACHED EXHIBITS, and AFFIDAVIT OF MAILING.



JASON T. VAIL

SUBSCRIBED AND SWORN to before me this 18th day of August, 2000.



Larry Weiser



NOTARY PUBLIC in and for the State of Washington.
Commission expires: 12/5/2001