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

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

MUHAMMAD S.
FARRAKHAN, (aka ERNEST S.
WALKER), et al.,

NO. CS-96-076-RHW

DEFENDANTS'
SUPPLEMENTAL SJ
EXHIBIT LIST

Plaintiffs,

v.

GARY LOCKE, et al.,

Defendants.

Defendants, by and through their attorneys, CHRISTINE O. GREGOIRE, Attorney General, and DANIEL J. JUDGE and JEFFREY T. EVEN, Assistant Attorneys General, submit the following list of supplemental exhibits in support of Defendants' Counterstatement of Material Facts.

Exhibit 64: Excerpts from Deposition of George Bridges, Ph.D.

Exhibit 65: Excerpts from Deposition of Marc Mauer.

DEFENDANTS'
SUPPLEMENTAL SJ
EXHIBIT LIST

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Exhibit 66: Excerpts from Deposition of Dave Elliott.

Exhibit 67: Supplemental Declaration of Virgil Wallace.

RESPECTFULLY SUBMITTED this 10 day of August, 2000.

CHRISTINE O. GREGOIRE
Attorney General



DANIEL J. JUDGE, WSBA #17392
Assistant Attorney General
JEFFREY T. EVEN, WSBA #20367
Assistant Attorney General

EXHIBIT 64

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MUHAMMAD SHABAZZ FARRAKHAN,)
(aka Ernest S. Walker), et al.)
Plaintiffs,)
vs.) No. CS-96-076-RHW
GARY LOCKE, et al.,)
Defendants.)

DEPOSITION UPON ORAL EXAMINATION OF
GEORGE S. BRIDGES, Ph.D.

November 8, 1999

2:00 p.m.

101 Gerberding Hall

University of Washington

Seattle, Washington

COPY

J. Kay Corbett, C.C.R.

Court Reporter

EXHIBIT 64

1 THE WITNESS: You're welcome.

2 MR. GOSAL: Can we just reserve fifteen
3 minutes?

4 MR. JUDGE: What I show right now is 3:26,
5 which would be an hour and twelve minutes after
6 you started, so that sounds about right.

7 Does that sound about right? We'll account
8 for break time, too, and probably give -- would
9 you like to take a break now, or are you okay.

10 THE WITNESS: I'm okay?

11 MR. WEISER: It's up to you. We're here.

12

13 E X A M I N A T I O N

14 BY MR. JUDGE:

15 Q. Dr. Bridges, returning to one of the other questions
16 that were asked, as a sociologist and a criminologist,
17 you had indicated yourself as being both?

18 A. Right.

19 Q. Do you practice a particular field of expertise in
20 sociology? And if so, what is it?

21 A. Among sociologists I am referred to as a criminologist.
22 My particular field of expertise is crime and society's
23 reaction to crime with an emphasis on courts and legal
24 institutions.

25 Q. Would you consider criminology to be a subbranch of

1 sociology?

2 A. Actually, criminology is not a subbranch of sociology.
3 It is a broader discipline that is studied by
4 sociologists, psychologists and other individuals in the
5 social sciences, and actually in the physical sciences.

6 Q. What physical sciences?

7 A. There are groups of individuals in chemistry, for
8 example, who study forensics. And as much as I, as a
9 social scientist, would prefer not to consider myself
10 part of that group, because social scientists are
11 elitists, they are a part of it.

12 And so what they offer is two kinds of
13 information. First, the information of forensics, the
14 causes of crimes and how to discover it; but also
15 there's a growing interest in the chromosomal and
16 biological causes of crime that are linked to chemical
17 patterns in the individual as well as genetic traits.
18 And I know nothing more about it than that.

19 Q. With respect to criminology, how does it compare to the
20 criminal practice of law? Are the two the same thing?

21 A. No. They are not the same thing. Criminology is the
22 scientific study of crime and society's reaction to
23 crime. It is not anything like the practice of law.

24 We study how law works or doesn't work in
25 relation to crime and how courts use law as a social

1 institution.

2 Q. Do you study whether or not laws are appropriate from a
3 sociological standpoint? Does sociology pertain to
4 that?

5 A. Oh, that's a tough question. I guess it depends on how
6 you define the word "appropriate," what you mean by
7 that, so I would ask you to clarify what you mean by
8 "appropriate."

9 Q. Whether or not sociology questions legal principles
10 applied by jurists in cases.

11 A. I don't -- I'm not sure what you mean, Dan. Help me
12 with that.

13 Q. As a sociologist, does part of your work call upon you
14 to disagree or agree with legal rules applied by jurists
15 in cases?

16 A. No.

17 Q. Why not.

18 MR. WEISER: Dan, this is Larry Weiser. Can
19 you talk a little bit louder into the
20 microphone --

21 MR. JUDGE: Sure.

22 MR. WEISER: -- because it's increasingly
23 hard for me to hear, also due to my age.

24 MR. JUDGE: Could I have you read back that
25 last question, please?

1 THE REPORTER: "As a sociologist, does part
2 of your work call upon you to disagree or agree
3 with legal rules applied by jurists in cases?"

4 THE WITNESS: Did you hear that, Mr. --
5 Larry?

6 MR. WEISER: No, we didn't.

7 MR. JUDGE: I'll try again.

8 Q. [By Mr. Judge] As a sociologist, does your practice as
9 a sociologist call upon you to agree or disagree with
10 legal rules applied by jurists to cases?

11 MR. GOSAL: Thank you.

12 A. It does not necessarily do that, but I am often asked to
13 comment on the application of rules and their fairness
14 to affected parties.

15 Q. [By Mr. Judge] Are you a lawyer yourself, Dr. Bridges?

16 A. No. I have studied law at the University of
17 Pennsylvania Law School, but I'm not a lawyer.

18 Q. Do you have a jurist doctorate?

19 A. No.

20 Q. In your work as a sociologist -- for example, referring
21 to what was marked as Exhibit 2, which was the bail
22 study having to do with King County --

23 A. Right.

24 Q. And you have it in front of you over there. Of the 1658
25 cases that were involved, did you look at the Superior

1 Court files of each of those individuals?

2 A. We looked at the Superior Court court files for as many
3 of those individuals as we could. I do not have a
4 precise number, because files were missing in some
5 cases. But I would say for most of them, we did, yes.

6 Q. Did your study include the review of any Court of
7 Appeals' files or Washington Supreme Court case files
8 stemming from those same cases?

9 A. No, it did not.

10 Q. Do you know if any of those cases had any sort of
11 appellant review following what you reviewed in the
12 Superior Court files?

13 A. I do not know whether they did or not. No, I do not
14 know that.

15 Q. Could I ask you, please, to generally describe what was
16 the source or resource of information you called upon to
17 formulate the report that is marked Exhibit 2?

18 A. The Bail Study?

19 Q. Yes.

20 A. In that study we collected information from three or
21 four sources, depending upon how you count. Let me
22 enumerate those sources.

23 The first source is the information we retained
24 by the King County Jail in its computerized files on
25 persons booked into jail between 1994 and 1996. Those

1 files include the interviews conducted by the pre-trial
2 screeners as well as any additional information the jail
3 may have online from previous arrests of a particular
4 defendant.

5 The second source of information is the
6 prosecutor's management information system, acronym
7 PROMIS, that is utilized by the King County prosecutor
8 to track cases from charging to disposition. It is an
9 automated information system designed in the 1970s with
10 all of its advantages and disadvantages.

11 The third source of information were the King
12 County records, court records, for the cases that we
13 could obtain files from, the jackets that we pulled and
14 photocopied, including the probable cause statements by
15 the prosecutors, the charging documents, if you will.

16 And I guess the last piece of information is
17 really a composite: Interviews conducted with court
18 personnel and staff, qualitative information asked about
19 the bail process for the period of the study.

20 Q. Did part of your study of these cases include any
21 attending or observation of any court hearings?

22 A. Yes.

23 Q. How many of them did you sit and observe?

24 A. I don't know. The question is how many of them did I --
25 I sent my staff to observe bail hearings, and they

1 probably observed a few days' worth, which could be
2 quite a few bail hearings.

3 I sat through a half dozen or a dozen myself, now
4 that I recall. We also sat through a period of
5 screeners, interviews with clients, persons booked in
6 jail, but that was relatively few.

7 Q. Of the hearings that were observed, did it include the
8 1658? Was it for those particular individuals being
9 reviewed, or was it a --

10 A. No, it was a retrospect -- I mean, we looked after the
11 data were collected. These were cases that were
12 observed between '96 and '97, so they were not the cases
13 included in the study.

14 Q. And to clarify under the record, the data that you were
15 collecting on paper was from what year to what year?

16 A. '94 to '96, and then we witnessed and observed cases in
17 the summer, the spring and summer -- the spring of 1997.

18 Q. Did your data pool involve anything else?

19 A. I don't recall it involving anything else, Dan, but
20 there may have been other sources of information that we
21 included. Those are the major sources.

22 Q. If I can turn your attention for a moment to what has
23 been marked for identification as Exhibit No. 3, which
24 is the October 1987 study --

25 A. [Referring to document] Right.

1 into the record, so the Bail Study being Exhibit
2 No. 2, I was correct about that. The March 1988
3 report is Exhibit No. 3. The October 1987
4 report, Exhibit No. 4.

5 Q. [By Mr. Judge] Turning to the October 1987 report,
6 which is marked Exhibit No. 4, what was the basis of
7 your data? Where did your data come from?

8 A. These are data collected on state prisons from annual
9 records maintained by the U.S. Bureau of Census, by the
10 FBI on crime, and follow-up interviews with law
11 enforcement officials and judges and public leaders in
12 five of the states' 39 counties.

13 So it was a variety of sources, remembering that
14 most of the information in that study, with the
15 exception of the imprisonment data, are data provided by
16 the U.S. Census on characteristics of counties.

17 Q. Did your database include any review of court files,
18 either District or Superior Court, trial court level
19 files, appellate files, or State Supreme Court files?

20 A. No, it did not.

21 Q. Did your database for the October 1987 report include
22 anything else?

23 A. No.

24 Q. To turn for a moment to Exhibit No. 2, which was the
25 Bail Study --

1 A. Right.

2 Q. I think you had indicated what the source of your
3 information was for that.

4 A. Yes.

5 Q. Turning to No. 3, which would be the March 1988 report,
6 "Law, Social Standing and Racial Disparities in
7 Imprisonment" what was your database for that report.

8 A. That report was based on records maintained by the U.S.
9 Department of Justice on state rates of imprisonment,
10 state laws, and the U.S. Bureau of Census, and the FBI
11 provided information on counties -- excuse me, states,
12 state characteristics, levels of crime within states.

13 Q. So this was the report that you were referring to
14 earlier in my question; is that correct?

15 A. I'm sorry, which one, Dan?

16 Q. In compiling Exhibit No. 3, the data you just mentioned,
17 did you rely upon the same database in assembling
18 Exhibit 3 and Exhibit 4?

19 A. No, different sets. This is counties in Washington
20 State --

21 Q. You're referring to Exhibit 4?

22 A. Exhibit -- yes. I'm getting my exhibits mixed up here.
23 Counties in Washington State, information obtained from
24 Census, state prisons, information on rates of
25 imprisonment, the number of people in prison.

1 Actually, that information did not come -- excuse
2 me, I made a mistake. It did not come from the state
3 prisons. It came from the Census Bureau, Dan, since
4 they retain that information. And local FBI sources,
5 the Washington Association of Sheriffs and Chiefs of
6 Police, maintain all data on crimes and arrests in
7 Washington State that we used for this. This is
8 national level data, so we obtained it from federal
9 agencies.

10 Q. And just to clarify for the record, did either Exhibit 3
11 or Exhibit 4 include the review of trial court level
12 case files or appellate or Superior Court level
13 appellate case files?

14 A. No. In the studies that we've talked about, the only
15 one is the Bail Study, of the files we talked -- of the
16 studies we've talked about, the Bail Study looked at
17 those court files.

18 MR. WEISER: Dan, if I could just interject
19 here --

20 MR. JUDGE: Yes.

21 MR. WEISER: I have Exhibits 2 and 3 marked
22 for identification. What is No. 4? Which one is
23 No. 4?

24 MR. JUDGE: The one marked Exhibit No. 4 is
25 the Bridges and Crutchfield report dated October

1 1987.

2 MR. WEISER: Okay. No, no. I thought --

3 MR. JUDGE: Do you want me to run through
4 the list again, just to clarify the exhibits?

5 MR. WEISER: No, I'm okay on that one. And
6 what is Exhibit No. 1?

7 MR. JUDGE: Exhibit No. 1 is Dr. Bridges'
8 curriculum vitae.

9 MR. WEISER: Okay, perfect. Thank you.

10 Q. [By Mr. Judge] Did any of the studies contained in
11 Exhibits 3 and 4 review whether or not arguments were
12 made or heard regarding racial issues pertaining to the
13 cases that comprised the data in each study?

14 A. Try again. Sorry.

15 Q. Did any of your studies, whether it be in Exhibits -- in
16 the studies marked Exhibit 2, 3, or 4 involve a study of
17 legal arguments by counsel in those cases regarding the
18 involvement -- for that matter, did it involve at all a
19 review of any arguments made by counsel in any way
20 having to do with the case?

21 A. There was no review of arguments by counsel per se, but
22 let me state that in the Bail Study, we did look at
23 court documents and documents presented by the
24 prosecution and compared those documents between cases
25 involving blacks and whites, but there were no arguments

1 about -- legal arguments -- about race included in our
2 analysis.

3 Q. In any of the studies marked 2, 3, or 4?

4 A. No.

5 Q. Are you familiar with the Washington State Minority and
6 Justice Commission?

7 A. Yes, I am.

8 Q. What is that?

9 A. The Washington State Minority and Justice Commission is
10 a state commission under the umbrella of the Washington
11 State Supreme Court chaired by Justice Charles Z. Smith.
12 It was established in the early 1990s -- I suspect it
13 was 1990 or 1991 -- to study and address through
14 remedies the challenges that minorities have in our
15 court system, in Washington State courts.

16 Q. Are you member of this commission?

17 A. I'm not a member of this commission. I was a member of
18 the commission at its inception, and then I withdrew
19 from the commission in 1996.

20 Q. So you were a member of the commission from its
21 inception until 1996?

22 A. In one form or another, yes.

23 Q. Did you prepare reports for the benefit of the Minority
24 and Justice Commission, either as a member or since
25 being a member?

1 A. Yes.

2 Q. What reports have you prepared for the Minority and
3 Justice Commission?

4 A. In the early years in the Minority and Justice
5 Commission, I was the chair of their research
6 subcommittee that designed and funded projects to study
7 whether -- excuse me, to study the problems that
8 minorities have in courts in Washington State.

9 In that capacity I prepared memoranda to the
10 commission members on studies that would be needed,
11 studies that would benefit general knowledge about
12 minorities in the court system.

13 I also produced a report. Having left the
14 committee, I was among a number of bidders who bided
15 for the bail project, and I was the successful bidder on
16 that project and wrote a report, Exhibit 2, which is the
17 final report from our study of bail practices in King
18 County.

19 Q. Just to back up a little bit regarding the other members
20 of the committee, who else sits on the Minority and
21 Justice Commission? Do you know?

22 A. I don't know the present membership, but there are
23 numerous lawyers, judges, relatively few academic
24 scholars, but a broad base of legal -- primarily legal
25 officials who serve in that capacity.

1 MR. GOSAL: Dan, for the record, this is Dil
2 again. I have a current membership of July '99
3 that I can fax over if that helps you.

4 MR. JUDGE: A current list of the members of
5 the Minority and Justice Commission?

6 MR. GOSAL: Yes, you bet.

7 MR. JUDGE: All right.

8 Q. [By Mr. Judge] Regarding the recommendations, first of
9 all, with respect to bail, the study of it, it says, "A
10 Study on Racial and Ethnic Disparities in Superior Court
11 Bail and Pre-Trial Detention Practices in Washington."
12 Could you define what you mean by "Superior Court Bail
13 and Pre-Trial Detention Practices" in terms of the focus
14 area of your study?

15 A. The purpose of this study was to examine bail practices,
16 including pre-trial release for felony defendants in
17 criminal cases. It is a misnomer to say that we
18 addressed those in Washington. In fact, it is only in
19 King County, although one could reasonably argue that
20 many of the practices that occur in King County occur in
21 other counties.

22 Q. But were the 1658 cases that you reviewed all in King
23 County?

24 A. Yeah.

25 Q. In the King County Superior Court?

1 not a formal set of recommendations, whereby we have a
2 series of bulleted points that say the courts must do
3 this or the courts must do that.

4 There are clear implications from the study that
5 I discussed -- if I'm moving away from your question,
6 stop me.

7 Q. Please proceed. Go ahead.

8 A. There's clear implications from the study that
9 suggested -- came out of conversations, and certainly
10 one of those is revisions of Rule 32(b), the Court Rules
11 governing bail in Washington State. I guess these are
12 Supreme Court Rules for bail decisions.

13 And in my meetings with judges from the
14 Commission and other members, we discussed those in
15 length.

16 Q. And what, could you say, would be the nature of your
17 recommendations? If you could generally describe what
18 recommendation were you making regarding the
19 modification, if any, regarding Rule 32(b)?

20 A. Rule 32(b) specifies the factors that judges must
21 consider in making bail decisions. Included among the
22 set of factors that judges must weigh are the
23 defendant's employment, the defendant's -- in essence,
24 the family ties, and a variety of factors that seem, at
25 least ostensibly, unrelated to the likelihood of flight

1 or the risk of reoffending.

2 My recommendation to the court has been that it
3 should revise this rule to make it more behavior-based,
4 rather than status-based, for, as we know, levels of
5 employment and what some would define as family and
6 community ties, may be higher in some groups of the
7 population than others. It's certainly higher among the
8 upper income segments of the population, which could
9 work to the disadvantage of people of color in
10 Washington State.

11 So my recommendation has been to modify the rule,
12 giving judges two things: A set of criteria that are
13 predictive of flight and risk of reoffense, and at the
14 same time, give them some tool for deciding how to
15 weigh, among different factors in making decisions
16 regarding release.

17 The rule currently simply lists factors that
18 judges must consider and does not specify how they are
19 to weigh them or evaluate them in making bail and
20 pre-trial release decisions.

21 Q. Have you drafted proposed language --

22 A. No.

23 Q. -- for modifications of Rule 32(b)?

24 A. I have not.

25 Q. Would these modifications suggested by you to the rule,

1 would it change the ultimate things to be decided at the
2 bail hearing? Would it change the factors that are
3 going into the final decision regarding the bail
4 hearing, or would it speak to both?

5 MR. GOSAL: Objection -- this is Dil --
6 calls for speculation.

7 MR. JUDGE: I'm asking him about what his
8 understanding is about what suggestions would
9 result in changes to Rule 32(b)?

10 Q. [By Mr. Judge] Go ahead and answer the question.

11 A. It would be a -- what was the first choice? I'm sorry.

12 Q. The ultimate issue to be decided at the bail hearing or
13 the factors decided in reaching the ultimate decision,
14 being the second one?

15 A. I'm sorry, the second, factors to be reached in the
16 bail-decision hearing?

17 Q. Would your proposed amendments or modifications -- I
18 should say your suggestions to modify the rule in any
19 way speak to the ultimate decision to be made at the
20 bail hearing regarding whether or not bail should be
21 granted?

22 A. I don't know. I would have to think about that.

23 Q. Were any other recommendations made by you as a result
24 of the Bail Study made October 1997, marked as Exhibit
25 2?

1 A. Well, there are no recommendations in the report, to the
2 great frustration of some of the readers, so I guess the
3 correct answer to your question is "no." In subsequent
4 conversations, we have talked about doing more research
5 on bail, to better understand these bail practices and
6 processes, but I'm not sure that goes to anything other
7 than a suggestion for more research.

8 Q. Have you told judges or recommended to judges personally
9 or in subsequent writings any different manner in which
10 they should conduct the bail hearing than the manner
11 that you observed as part of your October 1997 study?

12 A. No, I don't think I have. I don't think I have. I
13 think that would be something that I would be reluctant
14 to do.

15 My position on this has been: Change the system
16 of rules, and the outcomes will change, but that the
17 judges would need to take ownership of the system of
18 rules.

19 Q. What does that mean, in terms of taking ownership of the
20 system of rules?

21 A. It's theirs to change. It's not mine to change.

22 Q. And by "theirs," are you referring to the judges?

23 A. Yes.

24 Q. Are other states taking a look at the study like the one
25 marked Exhibit No. 2 or the study marked Exhibit No. 4,

1 MR. GOSAL: I can't hear the question.

2 MR. JUDGE: Sure, I'll try again.

3 MR. WEISER: Dan, you have to go closer to
4 the -- it seems like as the day goes on,
5 everybody is sort of leaning back from the
6 speakerphone, and I can understand that, but if
7 you could get a little bit closer, it would
8 really help us out.

9 Q. [By Mr. Judge] Going back to the report that was marked
10 Exhibit No. 2, you indicated in your earlier testimony
11 that you had met subsequently with members of the
12 Minority and Justice Commission. Who specifically did
13 you meet with?

14 A. There were a sequence of meetings. Most of the meetings
15 occurred with judges in the Superior Court: Judge
16 Deborah Fleck, F-l-e-c-k, and other judges, and then
17 another judge who was on the Commission, who I've had
18 numerous conversations with about this, is Judge Elaine
19 Houghton. She's an appeals court judge in Pierce
20 County, whatever circuit that is.

21 Q. Just to name a few other members, did the Commission
22 also include Judge Cox of the Court of Appeals?

23 A. Judge Ron Cox, thank you. Judge Ron Cox.

24 Q. Judge Murphy from the Spokane County Superior Court?

25 A. Judge Murphy. Judge Cozzo of Spokane also participated

1 via telephone.

2 Q. And from your experience in working with the Minority
3 and Justice Commission, have you formed an opinion as to
4 how judges in the state of Washington are receiving
5 information from the sociological field, compared with
6 the reception of similar information in other states?

7 A. Well, I think the key statement that you made is
8 compared with those in other states. If you did not add
9 that clause to the end of your sentence, I would say not
10 very well. Some of them get quite angry at my research.

11 On the other hand, if you do add that clause,
12 compared with other judges in other states, I would say
13 that Washington State is progressive and at least a
14 number of judicial leaders listen to scientific --
15 social scientific evidence and try to use that
16 information to improve the quality of courts and justice
17 in the state.

18 Q. Do you have an opinion as to, other than what you have
19 mentioned earlier today, in which way judges should
20 improve the quality of justice administered in court?

21 A. Do I have an opinion about --

22 Q. Other than suggestions or recommendations that you have
23 already made, for example, with respect to Rule 32(b),
24 do you have any other opinions regarding other steps or
25 other actions judges may take to make the judicial

1 process a fairer process?

2 A. Well, I do, and let me just be brief though. I mean,
3 I -- all of the evidence that I've collected over the
4 last ten years or so, decade, suggests that by removing
5 discretion from judges and other officials, you are
6 likely to diminish the effects that factors like race
7 have on the outcomes of legal proceedings.

8 So were I to make a recommendation -- I don't
9 want you to think that they're asking a lot, though --
10 were I to make a recommendation, I would argue for
11 structuring discretion by all court officials and all
12 legal officials in a manner that reduces the likelihood
13 that race and gender and other factors related to the
14 socio-economic standing of selected groups influence the
15 process and outcomes of legal decisions.

16 Q. So how do you know that, in terms of how does one reduce
17 the amount of discretion involved in such proceedings?
18 For example, does it involve sentencing tables? Does it
19 involve determinant sentencing guidelines? I throw
20 those out as an example of what I'm asking.

21 A. And, in fact, what we see in studies of sentencing in
22 Washington State relative to other states, is that
23 sentencing rates does not have an independent effect,
24 whereas in other states, it does.

25 So what I would -- were one to ask --

1 Q. You're saying that's true of Washington?

2 A. That's true of Washington, in the sense that you have to
3 adjust for things. So race makes its way into
4 sentencing decisions, but it's indirect. It is through
5 other factors, whereas in other states it has a
6 profoundly visible and direct effect on sentence.

7 So it's a question of whether the effect is
8 direct or indirect. Do you want me to go into that in
9 greater depth or not?

10 Q. Please continue.

11 A. Well, I don't need to.

12 Q. Well, if you feel you've answered the question, I can
13 follow up with one, I guess.

14 Are you familiar with Washington's current
15 sentencing structure under the Sentencing Reform Act?

16 A. Yes, I am.

17 Q. Would you say the enactment of the Sentencing Reform Act
18 was an action that would have limited the discretion of
19 judges as opposed to increasing the discretion used by
20 judges in sentencing?

21 A. It limited the discretion of judges, and what we have
22 found is that it has moved discretion to earlier stages
23 in the legal process. So judges at sentencing have
24 lost -- not lost, but have had discretion restricted.
25 And so there has been a change, and it has displaced

1 discretion, so. . .

2 Q. So in other words, is it your opinion that by limiting
3 judicial discretion in sentencing decisions through the
4 SRA, it's likely that one would still find discretion
5 exercised in areas of bail --

6 A. Yes.

7 Q. -- that you would still think need further correction?

8 A. Yes, indeed.

9 Q. Do you have any current recommendations to change
10 Washington's current sentencing structure that you have
11 ever communicated to any members of the federal bench or
12 members of the legislature? And by changes, I'm saying
13 proposed modifications to the current Sentencing Reform
14 Act.

15 A. No.

16 MR. WILLIAMS: We can't hear you.

17 A. No.

18 MR. JUDGE: Did you hear my question?

19 MR. WILLIAMS: No, I didn't.

20 MR. JUDGE: The question I've asked is
21 whether or not Dr. Bridges has formulated any
22 recommendations that he has communicated to
23 modify the current Sentencing Reform Act of the
24 State of Washington. Is that a fair statement?

25 THE WITNESS: Yes.

1 MR. WILLIAMS: Thank you.

2 A. And the answer is no, I have not.

3 Q. [By Mr. Judge] Regarding the plaintiffs that we have in
4 the case -- regarding the plaintiffs that we have in
5 this case, Dr. Bridges, are you familiar at all with
6 Muhammad Shabazz Farrakhan?

7 A. I'm only familiar through the documents that I have been
8 provided with that were submitted as briefs or motions
9 in the case.

10 Q. Apart from that, do you have any familiarity with
11 Mr. Farrakhan's case?

12 A. I do not.

13 Q. And is the same true of the other five plaintiffs named
14 in this case?

15 A. I do not.

16 MR. EVEN: Are you familiar with this case
17 or --

18 Q. [By Mr. Judge] Excuse me, to specify for my question,
19 let me just run through -- did your studies at all
20 involve the criminal prosecution of Muhammad Shabazz
21 Farrakhan --

22 A. No.

23 Q. -- also known as Ernest Walker? Did your studies at all
24 involve anybody by that name?

25 A. No.

1 Q. Did your studies at all involve Al-Kareem Shadeed?

2 A. No.

3 Q. Did your studies in any way involve Marcus X. Price?

4 A. No.

5 Q. Did your studies involve in any way Clifton Birceno?

6 A. No.

7 Q. Did your studies at all involve Ramon Barrientes?

8 A. No.

9 Q. Did your studies at all involve Timothy Schaaf?

10 A. No, but let me qualify my answers. Those names are not
11 familiar to me. I do not know whether they were
12 subjects included in my studies or not, because I do not
13 know when their crimes were alleged to have been
14 committed or when they were processed through the
15 courts.

16 So I think the correct answer to your question
17 is: I don't recognize the names. I don't know if they
18 were part of the study. I did not keep track of the
19 names of the defendants in the study. We only assigned
20 them identifying numbers.

21 Q. So based on the records that you had from the study, and
22 I'm referring to the Bail Study, compiled between 1994
23 and 1996, would there be any way to tell by documents
24 whether or not that study involved any of those six
25 individuals whose names I mentioned?

1 A. I probably could find out.

2 Q. If you found out that it did, could you provide that
3 information?

4 A. Sure.

5 Q. Dr. Bridges, is it fair to say that the testimony that
6 you have provided thus far in this matter has been based
7 on the studies which include the documents referred to
8 and marked as exhibits?

9 A. Yes.

10 Q. Have you been asked by either the defendants or the
11 plaintiffs to conduct any unique studies, apart from
12 prior research, specifically for this case?

13 A. No, I have not.

14 Q. Did you study any of these particular cases in
15 preparation for your testimony today?

16 A. No, I did not.

17 MR. JUDGE: Bear with me folks.

18 [Discussion off the record.]

19 Q. [By Mr. Judge] Dr. Bridges, I'd like to take you back
20 to Exhibit 2 if I might, and I'm going to find the page
21 I'll ask you to take a look at first.

22 If I can have you take a look at Page 98 of
23 Exhibit 2, which is the October '97 report, going to the
24 middle paragraph in the page --

25 A. I'm sorry, 92?

1 studies? In other words, they look at the cases
2 individually, case by case by case, and don't have a
3 sense of a bigger picture that a study like yours would
4 give?

5 A. Right.

6 Q. Is that a fair statement?

7 A. Very fair.

8 Q. Do you factor that in as part of your analysis?

9 A. Well, it depends upon what you mean by "factor in." I
10 think we recognize that judges take cases one at a time.
11 They don't have the benefit of looking at patterns or
12 trends. Some may, but most don't. It sort of runs
13 against legal thought that you evaluate each case on its
14 merits.

15 So, yes, judges don't have the benefit of that
16 knowledge, and in a way it's unfortunate. I think the
17 advantage of this kind of study is that it shows broad
18 patterns and trends that suggest courts are engaged in
19 public policy, and this tells us something about the
20 outcomes of those policies.

21 Q. One of the things that you -- let me try thing. Strike
22 that. I will try again.

23 First of all, with respect to the issue of voting
24 rights, have any of your studies addressed voting rights
25 in your experience as a sociologist?

1 A. No. No.

2 Q. Have any of your studies addressed any correlation
3 between the areas of your study and any consequences
4 relative to voting rights?

5 A. No, they have not.

6 Q. Do you have an opinion as to whether or not that is a
7 new field or an old field of study in the area of
8 sociology?

9 A. It's an emerging field.

10 Q. And what do you mean by that?

11 A. Well, I think it's something people interested in social
12 problems are interested in. I was asked about the
13 subject a few months ago, and whether I would be
14 interested in pursuing a study along those lines, but I
15 have not done that.

16 So it's an area that I think there will be
17 growing interest in over the next decade.

18 Q. Emerging, is that fair to refer to that as a new field
19 of study?

20 A. New, right.

21 Q. Who asked you to do the study?

22 A. Another sociologist, who I cannot remember, at a
23 professional meeting.

24 Q. Did you agree to assist in that?

25 A. No.

EXHIBIT 65

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MUHAMMAD SHABAZZ FARRAKHAN,)	
(aka Ernest S. Walker), et al.,)	
)	
Plaintiffs,)	
)	
vs.)	No. CS-96-076-RHW
)	
GARY LOCKE, et al.,)	
)	
Defendants.)	

TELEPHONIC DEPOSITION UPON ORAL EXAMINATION OF
MARC MAUER

March 28, 2000
1:15 p.m.
2411 Chandler Court
Olympia, Washington

COPY

J. Kay Corbett, C.C.R.
Court Reporter

EXHIBIT 65

1 A. Okay, good.

2 Q. We have a -- what we can do is disconnect the phone
3 lines and take a 10 or 15-minute break, and I would
4 imagine that we will probably do that and get everybody
5 else on the line if we do.

6 A. Okay.

7 Q. It's also possible that, you know, we can start and
8 complete it within that two-hour period and not have to,
9 but please feel free, if you need one, to let us know.

10 A. Okay. I appreciate it.

11 Q. I will go back to the question I asked before. Could
12 you briefly indicate, please, your educational
13 background.

14 A. Sure. My bachelor's degree is from the State University
15 of New York at Stony Brook, with a major in liberal
16 arts. I have a master's degree of social work from the
17 University of Michigan.

18 Q. Do you have any other degrees?

19 A. No. That's all I have postgraduate.

20 Q. Are you a lawyer?

21 A. No, I'm not.

22 Q. You indicated that your business address is with the
23 Sentencing Project?

24 A. Uh-huh.

25 Q. Could you please explain what that is?

1 A. The Sentencing Project is a national nonprofit
2 organization that is engaged in the development of
3 alternative sentencing programs and conducts research
4 and advocacy on criminal justice policy.

5 Q. When you say "research," what do you mean by that?

6 A. Much of my work with the Sentencing Project involves
7 analyzing data on issues of crime, incarceration,
8 questions of racial disparity in the criminal justice
9 system, and producing public policy reports that try to
10 analyze trends in criminal justice policy that raise
11 questions about criminal justice policy in terms of what
12 we view as being effective or not effective. And we
13 often make recommendations to policy makers about what
14 we believe would be -- represent an effective criminal
15 justice policy.

16 Q. When you say recommendations to the policy makers, what
17 do you mean by that?

18 A. We look particularly in the area of sentencing and the
19 use of incarceration and where we believe that current
20 policy, either at the national level or at a state
21 level, is -- is or is not producing effective outcomes
22 in terms of public safety, an efficient use of
23 resources, meeting the needs of victims and offenders.
24 We comment on that and issue recommendations that we
25 hope that policy makers will consider either in the

1 legislative arena or as a matter of practical change
2 within the criminal justice system.

3 Q. In terms of the form of your recommendations, what forms
4 do they come in? In other words, I asked you earlier if
5 you had testified in a deposition before, but with
6 respect to testimony in legislative bodies, be they
7 committee hearings in state legislatures or in Congress,
8 do you issue reports? What form do your recommendations
9 take?

10 A. Yeah. Well, I -- on average over the last half dozen
11 years, I have been asked to testify before Congressional
12 committees about once a year on matters -- on pending
13 legislation in the area of criminal justice policy.

14 On occasion I have been asked to testify in state
15 legislatures. I would estimate I've testified in eight
16 or nine different states over the last fifteen years,
17 upon request of the committee, regarding specific
18 legislation.

19 And we -- at the Sentencing Project, we produce
20 public policy reports, and frequently one section of our
21 report will include a series of written recommendations
22 based on the data and the analysis that we have
23 produced, recommendations to policy makers, again for
24 what we would consider to be improvements in more
25 effective criminal justice policy.

1 Q. So is it fair to say that your recommendations come by
2 way of published reports and testimony in front of
3 legislative bodies, either in Congress or in the state
4 legislatures?

5 A. Yes. Generally, that's the main avenue that takes.

6 Q. You mentioned, I believe, eight or nine different
7 states. Has Washington ever been included as one of
8 those states?

9 A. No, it has not.

10 Q. Could you indicate, please, which states you have
11 testified before?

12 A. Sure. Not necessarily in chronological order, but
13 Michigan, Pennsylvania, Kentucky, Maryland, Ohio -- let
14 me think for a moment.

15 Connecticut. Those are the ones that come to
16 mind right now. It's possible those are all there are,
17 and it's possible that I am forgetting one or two.

18 Q. Have you been asked to attend other state legislative
19 sessions to provide testimony in which you have not
20 appeared?

21 A. Do you mean, have I declined a request to appear? Is
22 that what you're saying?

23 Q. Yes.

24 A. Not that I recall, no.

25 Q. But what I wrote down here was Michigan, Pennsylvania,

1 Kentucky, Maryland, Ohio, and Connecticut. Did I get
2 them all?

3 A. Did you say Kentucky?

4 Q. Yes.

5 A. Yes. Those are the ones that I can recall right now.

6 Q. In each of those states --

7 A. Actually --

8 Q. Go ahead.

9 A. New Jersey is one that I just remembered, actually, in
10 addition.

11 Q. In each of those states, would it be fair to say that
12 you've appeared one time? Two times? Could you give us
13 a sense of how many times you have appeared --

14 A. Sure. Most of those, one time. Michigan, I would guess
15 it was three or four times. I worked in Michigan on
16 criminal justice issues for a number of years before
17 coming to Washington, so I was active on policy issues
18 there over a period of years.

19 Q. So your work at the Sentencing Project dates back how
20 far, Mr. Mauer?

21 A. Since 1987.

22 Q. And the current title -- is your current title assistant
23 director?

24 A. That's correct.

25 Q. How long have you held that title?

1 A. Since 1987 when I came here.

2 Q. Prior to 1987 could you briefly describe, please, the
3 extent of your professional background, prior to coming
4 to the Sentencing Project?

5 A. Sure. Immediately prior to that, for eleven years, I
6 had worked for the American Friends Service Committee, a
7 Quaker organization. I worked in Michigan, also on
8 criminal justice issues. That work involved a good deal
9 of public education focused on alternatives to
10 incarceration. I did a fair amount of work with
11 prisoner organizations in the state and did some work on
12 the issue of the death penalty as well.

13 Q. When you say work on the issue of the death penalty,
14 could you describe whether or not you took a position
15 with respect to the death penalty?

16 A. Sure. I was opposed to the death penalty, and that
17 was -- my work involved public education around the
18 increasing opposition to the death penalty.

19 Q. How did your work for American Friends differ, if it
20 did, from the work that you're currently doing now at
21 the Sentencing Project?

22 A. The work I'm doing now primarily has a national focus.
23 Some of my work now is national in scope, in that we're
24 consulted upon by members of Congress and their staff.

25 And I have more of an emphasis on research now.

1 While I did some of that in Michigan, I was more
2 involved in program development around alternatives to
3 prisons, and also involved, as I mentioned, working with
4 prisoners, much of which involved developing some
5 visitation programs, bringing in outside community
6 groups or church groups into the prison system for
7 dialogue and discussion, education about prison issues.

8 Q. And you're describing your work with American Friends;
9 is that right?

10 A. That's correct.

11 Q. And prior -- now, American Friends, I believe you
12 mentioned, was eleven years?

13 A. That's right.

14 Q. So that would take you back to 1976?

15 A. '75, basically, yeah.

16 Q. And prior to 1975?

17 A. None of my work before that was criminal justice
18 related, but I can give you a brief summary. I worked
19 for about a year as a caseworker at the Department of
20 Social Services in New York State.

21 I worked for about a half a year in a daycare
22 center in New York City. I worked for several months
23 with a farmworker center, all in New York State,
24 providing services to migrant farmworkers. Those are
25 the main jobs I've had postcollege.

1 Q. In describing the work that you were doing with respect
2 to the Sentencing Project, if I take you ahead in time
3 to post 1987, Mr. Mauer, you mentioned advocacy in
4 addition to research. Do you recall using that word?

5 A. Yes, I do.

6 Q. What do you mean by that?

7 A. We have a perspective here that the -- incarceration is
8 overused in the United States, generally speaking, and
9 we generally advocate for less use of incarceration, and
10 at the same time for an increased use of alternatives to
11 incarceration and an increased use of community-based
12 programs that can address crime problems.

13 We are also concerned about racial disparities in
14 the criminal justice system and think that those
15 disparities are disturbing and very high. And so on
16 that whole set of issues, we generally advocate for
17 policies and programs that we believe could effectively
18 reduce the use of incarceration and could reduce some of
19 the racial disparities that we see in the criminal
20 justice system.

21 And so our advocacy work involves public
22 education, communicating ideas and issues to policy
23 makers, to practitioners in the field of criminal
24 justice, and to the general public, either through the
25 media or public conferences and things of that nature.

1 Q. So I guess to zero in on it a little more, in terms of
2 what you mean by advocacy, to be an advocate in these
3 areas, how would you describe that term, for example, as
4 opposed to a neutral observer? What does the word
5 "advocate" or "advocacy" mean to you in these areas?

6 A. Well, for myself and for the organization, based on our
7 analysis of the criminal justice system, we have drawn
8 certain conclusions about what we think is appropriate
9 or inappropriate about the criminal justice system.

10 And so rather than just present our findings, we
11 are involved in actively promoting a different set of
12 public policy responses that we feel would be more
13 appropriate. So I suppose the main difference is that,
14 while we are engaged in research, based on the results
15 of our research, we are often actively engaged in
16 advocating for a change in those public policies where
17 we think that is warranted.

18 Q. So in terms of what you mean by being actively engaged,
19 I asked you to go through your experience in testifying
20 before Congress and in front of legislative bodies in, I
21 believe, seven different states, and you've also
22 indicated the publication of reports.

23 When you say you are "actively engaged," does it
24 take any other forms? For example, participation in
25 rallies, participation in protests or demonstrations,

1 things of that sort?

2 A. Rarely anything like that.

3 Q. Does it involve any other forms of active engagement we
4 haven't already discussed?

5 A. Well, I don't know how you define it. I'm frequently
6 asked to speak at professional conferences about a range
7 of criminal justice issues. These are frequently people
8 who work in the corrections area -- probation, parole,
9 or other parts of the criminal justice system.

10 And I'm asked to share my research and
11 perspectives with them. And I will often, as part of my
12 talk with them, describe what I think would be more
13 effective policy. So I think that probably qualifies as
14 advocacy as well.

15 Q. So appearing as guest speakers at seminars or
16 gatherings?

17 A. Right, seminars, gatherings, law schools, a variety of
18 settings like that.

19 Q. Have your travels in that regard taken you to Washington
20 State?

21 A. No, they have not.

22 Q. Have they taken you to other states?

23 A. Yes, many states.

24 Q. How many? I won't ask you to list them all, but if you
25 could tell me how many states you have appeared in.

1 A. Including journal articles and op-ed articles, and
2 reports, I would say 25 or 30, in that range.

3 Q. Are you familiar with the Yale Law Journal article
4 written by Andrew Shapiro?

5 A. Yes, I am.

6 Q. Have you read that?

7 A. Yes, I have.

8 Q. Your work dated January 1997, did that come before or
9 after the Yale Law Journal article on --

10 A. That was after the Yale article.

11 Q. Having indicated that the article that the Sentencing
12 Project wrote occurred in 1997 regarding felon
13 disenfranchisement, how is it or why is it that the
14 Sentencing Project looked at the issue of felon
15 disenfranchisement at that time?

16 A. We have been concerned about a variety of consequences
17 that incarceration results in in society. You know, the
18 objective of incarceration is crime control, but I
19 believe there was a variety of other consequences that
20 take place as well.

21 And so I have done some investigation along with
22 other colleagues in the field as to what some of those
23 consequences look like. And being aware of the Yale
24 article and through other colleagues in the field, I
25 have become aware that the number of the people affected

1 by felony disenfranchisement was probably a fairly
2 significant number by the late 1990s because of the
3 increase in the size of the criminal justice population.

4 And so we were interested in doing some research
5 into what that looked like and to consider what the
6 implications might be.

7 Q. So for the article that was written January 1997, when
8 did your work in that area start?

9 A. As I recall, it was probably the spring or summer of
10 1996.

11 Q. Would you consider -- would it be fair to say,
12 Mr. Mauer, that the consideration of felon
13 disenfranchisement is a fairly novel area of study?

14 A. Relatively so, yes.

15 Q. And why do you say that?

16 A. To the best of my knowledge, there's been relatively
17 little scholarly discussion and debate about this. It's
18 an issue in some regards has been in existence for 200
19 years, but I think not only most of the public, but most
20 of the professionals in the field of criminal justice,
21 most policy makers, are often either unaware of the
22 issue or often misinformed about the issues. That's
23 been my experience.

24 Q. After you were contacted by plaintiffs to testify in
25 this matter, after the article that you issued was

1 that would summarize your testimony? And by reports,
2 I'm not talking about published materials that have been
3 issued by the Sentencing Project, but reports by you
4 specific to this case.

5 A. No, nothing at all.

6 Q. Mr. Mauer, is there anything that you intend to address
7 in your testimony, either in court or by affidavit, that
8 has not already been presented by way of a report by the
9 Sentencing Project?

10 A. I don't believe there would be anything separate, no.

11 Q. In other words, if I read the articles of which I spoke
12 earlier, and I looked up on the internet the list of
13 publications from the Sentencing Project, would there be
14 any opinions that you intend to testify about in this
15 proceeding that are not covered in any of those
16 publications?

17 A. Nothing significantly different. I mean, certainly I
18 might go into greater depth on a particular issue, but I
19 think in terms of the range of issues and perspective,
20 it would be consistent with the documents that you've
21 described.

22 Q. Have you been asked to conduct any sort of study that is
23 unique to this case, separate and apart from the work
24 that you've done at the Sentencing Project?

25 A. No, I have not.

1 A. Well, I didn't. Technically I was contacted by the
2 attorney in the case. He suggested that I could submit
3 the 1998 report that we've discussed, in effect, as my
4 amicus.

5 And so I submitted that report with a cover
6 letter, and so it's not a legal document, per se.

7 Q. So what was submitted by you was a cover letter plus
8 your October 1998 report from the Sentencing Project?

9 A. Yes, that's correct.

10 Q. Was anything else submitted?

11 A. No, nothing.

12 Q. Backing up a little bit to the discussion that we've had
13 about your training and background as that of a social
14 worker --

15 A. Uh-huh.

16 Q. -- or that your master's degree is in social work --

17 A. Uh-huh.

18 Q. Previously you indicated that you had seen the testimony
19 provided by Dr. Bridges, who is a sociologist.

20 A. Right.

21 Q. How would the nature of your work, from a social work
22 background, be similar to or contrary to work done by a
23 sociologist?

24 A. Well, the similarities would be, my degree of
25 concentration in social work in graduate school was in

1 community organization. So many of the courses that I
2 took were similar in many regards to what a sociologist
3 might study, looking at social institutions and
4 political institutions and mechanisms of change in
5 society, and at a community level.

6 The main reason in which it would differ, I
7 don't -- I certainly do not have a Ph.D. in sociology or
8 not -- my statistical skills, while I am confident and
9 have been well regarded in the field, are none the less
10 than would often be required of a Ph.D. sociologist.

11 And so I am concerned about many of the same
12 issues a sociologist would be concerned about, and I use
13 many of the same techniques, but I suppose in many ways,
14 a truly -- with a -- again, statistically speaking,
15 don't -- I am not able to employ all of the same
16 techniques that many sociologists would.

17 Q. So apart from statistical tools that are used, would
18 there be any other differences between the approach you
19 take with a social work, education background, versus
20 that of a sociologist?

21 A. Well, I don't -- I don't pretend to have the breadth of
22 reading and sociological theory that a sociologist would
23 have, although I have taken many sociology courses
24 myself, academically.

25 So I don't -- I suppose I'm less oriented to

Telephonic Deposition of MARC JER, 3/28/00

34

1 integrating my research into a broad sociological
2 theory. My orientation is more towards practical
3 impacts of social policy, analyzing trends, analyzing
4 the consequences of current policies, in particular with
5 less concern about theoretical models.

6 Q. Are you aware of other professionals like yourself, who
7 with a social work background, have engaged in similar
8 courses of study as you have regarding the criminal
9 justice system?

10 A. When you say "course of study," do you mean the kind of
11 work that I do?

12 Q. Yes.

13 A. I know of a couple of people with a social background
14 that do this, but not very many.

15 Q. Turning to the Farrakhan case specifically, have you
16 ever had occasion to meet any of the six named
17 plaintiffs in this case?

18 A. No, I have not.

19 Q. Have you ever studied any of the files gathered in the
20 Washington courts pertaining to any of their convictions
21 or appeals from their convictions or collateral
22 challenges to their convictions?

23 A. No, nothing at all.

24 Q. Have you spoken to any judges or prosecutors or defense
25 attorneys in any of those cases?

1 A. No, nothing.

2 Q. Have you reviewed any briefs or legal arguments
3 presented in any of those matters?

4 A. Relating to their convictions?

5 Q. Yes.

6 A. No, I have not.

7 Q. And for the record, I'm speaking of the six named
8 plaintiffs: Muhammad Shabazz Farrakhan, Al-Kareem
9 Shadeed, Marcus Price, Clifton Birceno, Timothy Schaaf,
10 and Ramon Barrientes. Have you followed up or have you
11 studied either -- any of the legal files in any of those
12 cases?

13 A. No, I have not.

14 Q. In your work in the Sentencing Project, Mr. Mauer, are
15 you familiar with current proposed legislation in
16 Congress having to do with felon disenfranchisement
17 pertaining to individuals released from incarceration
18 having the right to vote after release from prison for
19 federal election purposes? Are you familiar with
20 proposed legislation of that sort?

21 A. Yes, I am. And I was asked to testify before a
22 Congressional committee in October of 1999 on that
23 legislation.

24 Q. Could you indicate -- did I describe the legislation
25 accurately?

1 A. That's correct.

2 Q. What do you understand about Washington's felon
3 disenfranchisement law?

4 A. My understanding is that felons are disenfranchised when
5 they are incarcerated in prison or on probation or
6 parole, and that felons convicted prior to 1984 are
7 disenfranchised after they complete supervision as well.

8 Q. First of all, with respect to individuals convicted
9 prior to 1984, I had read in your articles that you
10 referred to pre-1984 or pre-1986. Do you recall
11 indicating that in your --

12 A. That was because the state of Tennessee has a similar
13 statute, and so I would have to look, but I believe the
14 reference probably said Washington and Tennessee, and
15 the '84 referred to Washington and the '86 to Tennessee.

16 Q. So are you referring to individuals who are convicted
17 under the indeterminate sentencing laws that existed
18 prior to 1984?

19 A. That's right.

20 Q. Is it your understanding that individuals who are
21 subject to the indeterminate sentencing laws cannot get
22 their voting rights back?

23 A. No, my understanding is that they can get it back, but
24 they need to go through a process to do that.

25 Q. What --

1 A. People who have been convicted since 1984 who had their
2 rights -- can get their rights restored more readily.

3 Q. Okay, but let's stick with the pre-1984 individuals.
4 What's the process that you understand they must go
5 through to get their rights back?

6 A. I'm not very familiar with the process itself.

7 Q. And with respect to individuals convicted of crimes
8 occurring after 1984, you indicated that they can get
9 their rights restored more readily; is that right?

10 A. That's my understanding.

11 Q. What do you mean by that?

12 A. My understanding is that there's no similar lifetime
13 prohibition, as there is with the pre-1984 felons, but
14 that it does involve demonstrated -- a demonstration
15 that any fines or community service obligations that
16 have been incurred as a result of criminal conviction
17 need to be completed. And I'm not sure of the rest of
18 the process, how that works.

19 Q. Going back to individuals convicted of crimes before
20 1984, do you understand whether or not there is or are
21 particular individual or individuals who may reinstate
22 civil rights for such crimes?

23 A. I don't know the specifics. My guess would be that it
24 requires a pardon from the governor, which is a process
25 in many states with similar policies, but I don't know

1 that for a fact.

2 Q. For post-1984, who do you understand the entity to be
3 who restores civil rights?

4 A. I don't know that.

5 Q. To what extent have your studies -- and I'm speaking of
6 the October 1998 study -- involved Washington State?

7 A. Washington State, we developed an estimate for the
8 number of the felons and ex-felons who were
9 disenfranchised in Washington State. And we did that
10 with every state, so we did no more or less work for
11 that state than others.

12 Q. So you studied Washington like you did every other
13 state?

14 A. That's correct.

15 Q. So please describe what your study was in each state and
16 what it consisted of.

17 A. In the study we attempted to develop an estimate of the
18 number of individuals that were disenfranchised as a
19 result of state policies, and we developed a separate
20 estimate for the number of black males who were
21 disenfranchised as well.

22 In general, for each of the states, we relied on
23 data from the Department of Justice to determine the
24 number of felons currently incarcerated or on probation
25 or parole.

1 Do you refer to the incarceration rate being the
2 numbers -- for example, if you're talking about the
3 incarceration of blacks, the incarceration of whites, do
4 you understand the incarceration rate to be the numbers
5 of, for example, white inmates contrasted with every
6 100,000 of their population in the general public? Is
7 that a fair statement of what the incarceration rate
8 means?

9 A. Yes, that's correct.

10 Q. In your study dated January 1997, you indicated for the
11 state of Washington incarceration rates for what I
12 believe was 1998 contrasted to 1994?

13 A. That's right.

14 Q. And in that, if I understand the data correctly, you
15 indicated that for every 100,000 blacks in the state of
16 Washington, there were 856 individuals incarcerated who
17 were black --

18 A. Uh-huh.

19 Q. -- contrasted with for every 100,000 whites in the
20 general public, that there were 88 incarcerated. And
21 I'm talking about 1988.

22 A. Right, uh-huh.

23 Q. And then you had a ratio of 9.97, meaning -- well, I
24 guess -- does that make sense? Is what I'm reading to
25 you --

1 A. Yes, that all makes sense, right.

2 Q. And you had a ratio figure of 9.97 --

3 A. Correct.

4 Q. -- for Washington State in 1988.

5 A. Uh-huh.

6 Q. What does that ratio figure represent?

7 A. Essentially the odds -- the comparative odds that a
8 black person will be incarcerated compared to a white
9 person in Washington State. So an individual black in
10 Washington is 9.97 times as likely to be incarcerated as
11 a white in Washington.

12 Q. And that figure is based upon the fact that there are
13 856 blacks incarcerated for every 100,000 versus 86
14 whites incarcerated for every 100,000?

15 A. That's right.

16 Q. Now, that same table indicates that for 1994 a figure
17 that indicates 1,392 of black individuals incarcerated
18 for every 100,000 to 161 for every 100,000 whites in the
19 general public --

20 A. That's right.

21 Q. -- for a ratio of 8.65?

22 A. Correct.

23 Q. What does that mean in terms of 9.97 versus 8.65?

24 A. Well, it -- looking at the figures, both whites and
25 blacks in Washington State were considerably more likely

1 to be incarcerated in 1994 compared to 1998, but the
2 ratio had declined somewhat; so that while blacks were
3 still very much overrepresented compared to whites, it
4 was less so than 1988.

5 Q. So you indicate on the column over on the far right a
6 plus or minus, and for Washington you indicated a minus,
7 indicating that that ratio had decreased over that
8 six-year period?

9 A. That's correct.

10 Q. I asked you questions relative to the specific cases of
11 the six individually named plaintiffs in this matter
12 that I would like to rerun again for purposes of your
13 study in 1997 or 1998.

14 A. Sure.

15 Q. As part of your study, apart from the six individually
16 named plaintiffs, did your study, as far as the state of
17 Washington is concerned, involve the interviewing of
18 judges?

19 A. No, it did not.

20 Q. Did you interview defense attorneys or prosecuting
21 attorneys as part of your study for Washington state?

22 A. We only relied on data from the Justice Department. We
23 didn't conduct any interviews with any officials in
24 Washington.

25 Q. And in addition to officials, other participants in the

1 criminal justice process? That would include jurors,
2 witnesses, court clerks, defendants themselves?

3 A. Right. No, none of those groups did we interview.

4 Q. Would it be fair to say that it didn't involve reviews
5 of criminal records, such as appellate files or
6 collateral challenge files or habeas corpus files as
7 part of that study, either in 1997 or 1998?

8 A. That's correct. No review of any of those.

9 Q. Turning back to the table that I mentioned earlier, I
10 was looking at this table. And I'm referring to Table 1
11 of the January 1997 study by you --

12 A. Yes.

13 Q. -- in which you indicate -- and I'm speaking to 1994 --

14 A. Uh-huh.

15 Q. -- where the ratio, for example, the state of Idaho, was
16 3.43 --

17 A. Uh-huh.

18 Q. -- versus the state of Minnesota was 22.77.

19 A. Right.

20 Q. Would Idaho indicate the low end of the spectrum versus
21 Minnesota, the high end of the spectrum?

22 A. This is racial disparity between blacks and whites, yes.

23 Q. And I neglected to mention the District of Columbia,
24 which was the highest at 35.31?

25 A. Correct.

1 Q. So Idaho was the lowest at 3.43, and the District of
2 Columbia was 35.31?

3 A. That's right.

4 Q. And in the middle, Washington came in at 8.65?

5 A. Right. Washington is slightly above the national
6 average in that regard.

7 Q. In terms of ratios?

8 A. The ratio, correct.

9 Q. Would it be fair to say that of that study conducted in
10 1994 which contrasted 1988 to 1994, that Washington was
11 one of a few states listed in your survey where it was
12 indicated that the ratio had declined during that
13 six-year period? Is that a fair statement?

14 A. Yes, that is.

15 Q. Most of those states had increased?

16 A. That's correct.

17 Q. Are you familiar with the Washington State Minority and
18 Justice Commission?

19 A. I've heard of it, but I know very little about it.

20 Q. Have you ever contacted any of the members of that
21 commission?

22 A. Not that I am aware of, no.

23 Q. Have you ever been asked to speak at any gatherings of
24 the Minority and Justice Commission?

25 A. No, I have not.

EXHIBIT 66

1 in any of those bills, although some of them are quite
2 far reaching. I can say pretty readily that no bill
3 that has had a real chance of succeeding in the
4 legislature has had any relation to that, if you can
5 follow that logic.

6 Q. I understand. What is your understanding of the policy
7 considerations which support the present system within
8 the state of Washington for the restoration of the
9 release of an offender's civil rights?

10 A. Can you ask me that question again?

11 Q. What is your understanding of the policy considerations
12 that support the present process within the state of
13 Washington for the restoration of a released offender's
14 civil rights?

15 A. Jeff looks like he is going to say something, so I'm
16 going to pause. Jeff?

17 MR. EVEN: Yes, I'm actually thinking of
18 whether to interpose an objection here. I don't
19 know that this is a question that would have any
20 relevance to this witness's functions with the
21 state.

22 MR. VARLJEN: Okay, let me rephrase that a
23 little bit. Let's go back to the beginning.

24 Q. [By Mr. Varljen] Mr. Elliott, what is your
25 understanding of the process by which individuals who

EXHIBIT 66

1 have been convicted of a felony, either in the state of
2 Washington or from outside the state, can have their
3 civil rights restored, or, if you will, be eligible to
4 vote again?

5 A. Well, I understand that there are many different answers
6 to that question, if you're the convicted felon,
7 depending on which court you were convicted in and also
8 the timing of that conviction or the timing of the
9 completion of your sentence.

10 In Washington State courts, there's a dividing
11 line of July 1, 1984. A person who has a conviction
12 prior to that time, prior to the Reform Act, would need
13 to go and see the Indeterminant Sentence Review Board.

14 Someone who is convicted after that time would be
15 more likely to need to see the court that did their
16 sentencing. I know there are some other ways -- pardons
17 by the governor, that sort of thing -- that a person
18 can, you know, apply for.

19 And then, of course, the federal courts are a
20 little different matter. You know, there's a clemency
21 board there. There's also the courts.

22 And then there's -- I guess the third category
23 would be other states, and of course we have state
24 methods for dealing with other states, or they can go
25 back to their original state and ask for restoration.

1 Q. Mr. Elliott, to what extent does the Office of the
2 Secretary of State provide any counsel or guidance to
3 released offenders with respect to the steps necessary
4 to obtain a certificate of discharge or whatever else is
5 needed to regain their voting rights?

6 A. I would say that -- first, I would say there is no
7 program or specific method that's been laid out. That
8 would be important to point out.

9 Secondly, we tend to stay away from providing
10 legal advice to anyone, whether they are in this
11 circumstance or any other, because we are not attorneys,
12 and each person, whether it's trying to determine their
13 eligibility to file for office or, you know, things more
14 germane to this situation, each person has a
15 responsibility to find legal advice, and so on, of their
16 own.

17 We will do our very best to steer persons who ask
18 those questions in the direction of help. We will try
19 our best to educate the caller -- usually what we get is
20 a phone call -- and somebody says, you know, my cousin
21 is in this circumstance, or, you know, this is me,
22 either one. We will do our best to try and steer them
23 into, you know, an avenue where they can get some help.

24 If they were convicted prior to July of '84, we
25 tell them about the Indeterminant Sentence Review Board.

1 If we find out it's afterwards, we tell them that they
2 may find assistance if they talk to the Department of
3 Corrections or their parole officer. We tell them that
4 they need to go back to the court of their conviction.
5 You know, that's sort of generalist information is what
6 we provide.

7 Q. Mr. Elliott, is the Office of the Secretary of State
8 responsible for the design of voter registration forms?

9 A. Yes.

10 Q. Why does the Secretary of State -- this is an
11 organizational, administrative question, I guess. Why
12 does the Secretary of State do this, as opposed to the
13 individual county auditors?

14 A. I suppose it's historical, but I'm sure it has to do
15 with two things. One is centralizing the budget
16 function on that, and the second would be uniformity in
17 the forms.

18 You know, this is one of those "as it ever was"
19 sort of circumstances. I think we have printed those
20 forms for -- as long as I have been aware, which is only
21 twenty years, but I'm sure it goes much further back
22 than that.

23 The current situation is that this is a place
24 where the state can afford to do this printing. We
25 print on the order of between 700,000 and 1,000,000 of

EXHIBIT 67

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8
9 **UNITED STATES DISTRICT COURT**
EASTERN DISTRICT OF WASHINGTON

10 MUHAMMAD SHABAZZ
11 FARRAKHAN (aka ERNEST S.
WALKER), et al.,

12 Plaintiffs,

13 v.

14 GARY LOCKE, et al.,

15 Defendants.

NO. CS-96-076-RHW

SUPPLEMENTAL
DECLARATION OF
VIRGIL WALLACE

16
17 VIRGIL WALLACE declares and states the following:

18 1. My name is Virgil Wallace. I am a Community Corrections
Officer employed by the Department of Corrections (DOC).

19 2. I submit this declaration to clarify my testimony in my deposition
20 that in monetary cases where I supervise offenders, I contact them at least once
21 each year when I conduct my annual review. I do annual reviews on all of my
22

SUPPLEMENTAL
DECLARATION OF
VIRGIL WALLACE

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cases per Department policy. If they are not in compliance with the payment schedule, I will contact them more frequently.

3. Regarding payment of financial obligations, under Department policy, I do not consider them in violation if they have made at least 50 percent of the payments in a given year.

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 10 day of August, 2000, at SEATTLE WA 12:15 p.m.
Washington.


VIRGIL WALLACE