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9  
10 **UNITED STATES DISTRICT COURT**  
11 **EASTERN DISTRICT OF WASHINGTON**

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

14 Plaintiffs,

15 v.

16 CHRISTINE O. GREGOIRE, et  
al.,

17 Defendants.  
18

NO. CS-96-076-RHW

SUPPLEMENTAL STATEMENT  
OF MATERIAL FACTS

19 1. The Defendants provide the following clarifications regarding the  
20 statements offered by Plaintiffs' witnesses. Because the clarifications indicated  
21 here limit the applicability of the statements to this case, the helpfulness of the  
22 statements to the trier of fact is subject to dispute.

23 **Crutchfield Report and Testimony**

24 2. For this case, Prof. Crutchfield was asked to review and comment on  
25 race and ethnicity studies in the United States. Ex. 1, Murphy Decl., Attach. A  
26 (Crutchfield Dep. at p. 12, ll. 13-20; p. 13, ll. 14-19).

1           3. Prof. Crutchfield was not asked to, and did not look into an aspect of  
2 the criminal proceedings against any of the Plaintiffs in this matter. *Id.*, Murphy  
3 Decl., Attach. A (Crutchfield Dep. at p. 12, l. 21 – p. 13, l. 13).

4           4. Prof. Crutchfield testified that he has never done any studies regarding  
5 voting in the state of Washington. Murphy Decl., Attach. A (Crutchfield Dep. at  
6 p. 24, l. 8-10). He also testified that he has not studied the number of people taken  
7 off the voting rolls as a result of felon disenfranchisement. *Id.*, Attach. A  
8 (Crutchfield Dep. at p. 24, ll. 11-14).

9           5. Prof. Crutchfield's report begins by addressing national studies. Pls.'  
10 Summ. J. Ex. 2 (Crutchfield Report at 3-4). These studies, which only included  
11 comparisons between African-Americans and the rest of the population, and did not  
12 track felon status. *Id.*, Crutchfield Report at 3-8. In some cases, the studies were  
13 limited to arrests or only a certain type of criminal offense. Murphy Decl.,  
14 Attach. A (Crutchfield Dep. at p. 93, ll. 17-21). In Prof. Crutchfield's Report, he  
15 contests one expert's publication concluding that the national criminal justice  
16 system is not racist. Pls.' Summ. J. Ex. 2 (Crutchfield Report at 10-13).

17           6. The bases of Prof. Crutchfield's conclusions are statistics drawn from  
18 selected studies with some notable exclusions. For instance, he did not review  
19 appellate decisions (Murphy Decl., Attach. A (Crutchfield Dep. at p. 22, ll. 16-17;  
20 p. 30, ll. 21-24; p. 35, ll. 16-24; p. 45, ll. 8-11)); he did not study the competency of  
21 defense counsel in connection with his work (*id.* at p. 23, ll. 8-10); he did not  
22 review superior court files (*id.* at p. 35, ll. 11-13; p. 45, ll. 4-7); his studies did not  
23 involve judgments as to whether the individual was guilty of the charged crime or  
24 not (*id.* at p. 41, l. 11 – p. 42, l. 6).

1 7. Prof. Crutchfield's report acknowledges and comments on studies  
2 which have found conclusions opposite to his. Pls.' Summ. J. Ex. 2 (Crutchfield  
3 Report at 17-22). Although he found their conclusions curious, he has not  
4 undertaken a study to challenge those conclusions. Murphy Decl., Attach. A  
5 (Crutchfield Dep. at p. 66, ll. 22 – p. 67, l. 6).

6 8. Prof. Crutchfield testified that he has not studied police behavior.  
7 However, other researchers have studied police use of discretion and found a  
8 number of factors explain whether a person is arrested or not. *Id.*, Attach. A  
9 (Crutchfield Dep. at p. 73, ll. 4-11).

10 9. Prof. Crutchfield's Report in this case did not involve any original  
11 research, but referred to research done previously by Prof. Crutchfield and others.  
12 *Id.*, Attach. A (Crutchfield Dep. at p. 122, ll. 8-12).

13 10. Prof. Crutchfield's Report relied mainly on studies that were referred  
14 to in the first motion for summary judgment in this case. He testified that he has  
15 not attempted to undertake any studies in this area since 1999. *Id.*, Attach. A  
16 (Crutchfield Dep. at p. 115, ll. 21-23; p. 120, ll. 11-16).

17 11. Throughout Prof. Crutchfield's Report and in his testimony, he  
18 indicates that studies attempting to explain racial differences in the criminal justice  
19 system are limited and require further study. Pls.' Summ. J. Ex. 2 (Crutchfield  
20 Report at 25-26); Murphy Decl., Attach. A (Crutchfield Dep. at p. 47, l. 25 – p. 50,  
21 l. 16). In some cases, variables other than race may explain the variation. *Id.*,  
22 Attach. A (Crutchfield Dep. at p. 106, ll. 7-22).

### 23 **Beckett Report and Testimony**

24 12. Katherine Beckett is an associate professor in the Department of  
25 Sociology and the Law, Societies & Justice Program at the University of  
26 Washington. Pls.' Summ. J. Ex. 3 (Beckett Report at 1).

1 13. Prof. Beckett's report cites to studies, but she did not conduct any  
2 studies or research for this case. Murphy Decl., Attach. B (Beckett Dep. at p. 7, ll.  
3 5-22; p.10, ll. 22 – p. 12, l. 12).

4 14. References in Prof. Beckett's report are limited to findings of prior  
5 studies conducted only in Seattle. Pls.' Summ. J. Ex. 3 (Beckett Report at 2-3).  
6 The findings referenced in Prof. Beckett's Report are limited to drug offenses. *Id.*  
7 (Beckett Report at 2-3).

8 15. Prof. Beckett's report begins by citing to studies that have found  
9 reasons other than race to support disparities in numbers of drug arrests in Seattle.  
10 She then attempts to rebut the findings of those studies. *Id.* at 4.

11 16. Prof. Beckett did not study the facts related to the criminal matters of  
12 any of the plaintiffs in this case. Murphy Decl., Attach. B (Beckett Dep. at p. 41, l.  
13 8 – p. 42, l. 11).

14 17. Prof. Beckett served as an expert witness in a consolidated criminal  
15 case in King County (referred to as *Johnson v. Washington*) in which she was hired  
16 by the Public Defender to analyze data to show racial disproportionality [sic] in drug  
17 arrests in Seattle. Murphy Decl., Attach. B (Beckett Dep. at p. 34, ll. 18-23). Her  
18 final report in that case was done in 2004. *Id.*, Attach. B (Beckett Dep. at p. 21,  
19 ll. 12-13). It was Prof. Beckett's understanding that the defense attorneys intended  
20 to show, through her testimony, that their clients' arrests occurred as a product of  
21 either implicit or explicit bias. *Id.*, Attach. B (Beckett Dep. at p. 35, ll. 5-9).

22 18. Prof. Beckett's findings are limited to the arrest stage, and she did not  
23 inquire as to convictions or any effect on voting status. Beckett Dep. at p. 56, l. 16  
24 – p. 57, l. 25.

1 19. The data referred as ethnographic observations in Prof. Beckett's  
2 Report were the observations by another witness in the *Johnson v. Washington*  
3 case. Murphy Decl., Attach. B (Beckett Dep. at p. 63, ll. 15-25). The data  
4 collection occurred at two intersections in Seattle. *Id.*, Attach. B (Beckett Dep. at  
5 p. 64, l. 22 – p. 66, l. 16; p. 68, ll. 12-20). These ethnographic observations are the  
6 basis for Prof. Beckett's opinion that the concentration of police resources and  
7 proactive drug operations aimed at drug deliverers in the downtown area is an  
8 important cause of racial disparity in drug delivery arrests. Murphy Decl.,  
9 Attach. B (Beckett Dep. at p. 147, l. 20 – p. 149, l. 20).

10 20. Information in Table I of Prof. Beckett's Report refers to drug arrests  
11 for marijuana possession, but does not distinguish between misdemeanor crimes  
12 and felonies. Murphy Decl., Attach. B (Beckett Dep. at p. 95, ll. 1-11).

13 21. Prof. Beckett testified that every data source she refers to has  
14 limitations and biases. Murphy Decl., Attach. B (Beckett Dep. at p. 107, l. 18 –  
15 p. 108, l. 4).

16 22. Prof. Beckett testified that the sole basis of her opinion that the focus  
17 on crack is the leading cause of racial disparity in drug possession arrests is  
18 comparing the numbers of crack arrests in Seattle Police Department reports against  
19 other types of drugs. Murphy Decl., Attach. B (Beckett Dep. at p. 114, ll. 5-20).

20 23. Prof. Beckett's race neutral hypothesis to explain disparities were  
21 limited to two theories. Murphy Decl., Attach. B (Beckett Dep. at p. 150, l. 20 –  
22 p. 151, l. 9).

### 23 **Kousser Report and Testimony**

24 24. J. Morgan Kousser is a professor of history and social science at the  
25 California Institute of Technology. Pls.' Summ. J. Ex. 4 (Kousser Report at 1).

1 25. Prof. Kousser's first assignment by Plaintiffs' counsel, which does not  
2 appear in his Expert Report, was to determine whether there had been explicit  
3 discrimination in the electoral system in voting rights by the state of Washington.  
4 Murphy Decl., Attach. C (Kousser Dep. at p .24, ll. 1-7). Prof. Kousser found no  
5 evidence of explicit voting discrimination in Washington. *Id.*, Attach. C (Kousser  
6 Dep. at p. 25, ll. 11-22).

7 26. Following Prof. Kousser's unproductive search for evidence of voting  
8 discrimination in Washington, he was asked by Plaintiff's counsel to inquire into  
9 application of the fifth Senate Factor to felon disenfranchisement in Washington.  
10 Murphy Decl., Attach. C (Kousser Dep. at p. 30, ll. 18-22). In so doing, Prof.  
11 Kousser asked how general discrimination in the community could be made  
12 relevant to felon disenfranchisement. Murphy Decl., Attach. C (Kousser Dep. at  
13 p. 30, ll. 2-5).

14 27. Prof. Kousser's understanding of the process of "re-enfranchisement"  
15 in Washington was based in large part of an amicus brief filed by an amicus brief  
16 by an advocacy group. Pls.' Summ. J. Ex. 4 (Kousser Report at 4-5). He did no  
17 research regarding the vote restoration process. Murphy Decl., Attach. C (Kousser  
18 Dep. at p. 41, ll. 3-8).

19 28. Prof. Kousser never spoke with anyone who had been through the  
20 process. Murphy Decl., Attach. C (Kousser Dep. at 41). The sole basis for  
21 Dr. Kousser's conclusion that one would have to hire an attorney to have the right  
22 to vote restored was based his understanding of the complexity of the process.  
23 Murphy Decl., Attach. C (Kousser Dep. at p. 44). All of the information Prof.  
24 Kousser reviewed regarding the vote restoration process in Washington, which was  
25 the focus of his report, was obtained from Plaintiffs' counsel. *Id.*, Attach. C  
26

1 (Kousser Dep. at p. 50, ll. 24-25). He made no attempt to determine how many  
2 felons get “re-enfranchised”. *Id.*, Attach. C. (Kousser Dep. at p. 61, ll. 2-4).

3 29. Prof. Kousser has no opinion as to whether the criminal justice system  
4 in the state of Washington is discriminatory. *Id.*, Attach. C (Kousser Dep. at p. 50,  
5 ll. 18-20).

6 30. Although Prof. Kousser’s report states that, for a number of years, the  
7 Washington Department of Corrections had no procedure for informing a local  
8 sentencing court that an individual’s sentence had been completed, he simply  
9 copied that statement from an advocacy group’s amicus brief in another case. *Pls.’*  
10 *Summ. J. Ex. 4* (Kousser Report at 4). Prof. Kousser does not explain that the  
11 Department of Corrections had any duty to inform the sentencing court or whether  
12 any other procedure was established during that timeframe

13 31. Prof. Kousser testified that his research regarding this historical  
14 background of racial disparities in the state of Washington is based primarily on the  
15 books and articles of Dr. Quintard Taylor. *Murphy Decl.*, Attach. C (Kousser Dep.  
16 at p. 61). Prof. Kousser agrees that Dr. Taylor is perhaps the best expert in the area  
17 of African-American Northwest history. *Id.*, Attach. C (Kousser Dep. at p. 55, ll.  
18 4-7; p. 24, ll. 16-18).

19 32. Prof. Kousser did not obtain any statistics on housing discrimination  
20 based upon felony conviction. He did not correlate housing discrimination with  
21 felon status. *Murphy Decl.*, Attach. C (Kousser Dep. at p. 72, ll. 13-20). Prof.  
22 Kousser also made no attempt to collect statistics on the education attainments of  
23 felons in Washington. *Id.*, Attach. C (Kousser Dep. at p. 62, l. 3 – p. 64, l. 2).  
24 Thus, he relies on national statistics with no reason to show a correlation. *Pls.’*  
25 *Summ. J. Ex. 4* (Kousser Report at 7).

1 33. Prof. Kousser testified that there are arguments on each side of the  
2 policy question of felon disenfranchisement. Murphy Decl., Attach. C (Kousser  
3 Dep. at p. 56, l. 24 – p. 57, l. 9).

#### 4 **Greenwald Report and Testimony**

5 34. Anthony G. Greenwald is a professor of psychology at the University  
6 of Washington. Murphy Decl., Attach. D (Greenwald Dep. at p. 5, ll. 19-21).

7 35. Prof. Greenwald did not perform any original research for the purpose  
8 of this case, nor did he formally analyze any prior research. Murphy Decl., Attach.  
9 D (Greenwald Dep. at p. 8, ll. 4-12).

10 36. Prof. Greenwald did not research into causes of felon  
11 disenfranchisement or the criminal justice system. Murphy Decl., Attach. D  
12 (Greenwald Dep. at p. 9, ll. 16-22).

13 37. The apparent basis for Prof. Greenwald's testimony in this matter is  
14 his creation of the Implicit Association Test, and to explain its relevance to this  
15 case. Murphy Decl., Attach. D (Greenwald Dep. at p. 11, ll. 1-5; p. 16, ll. 11-15).  
16 However, Prof. Greenwald testified that he was not asked to provide any opinions  
17 and has not offered any. *Id.*, Attach. D (Greenwald Dep. at p. 17, ll. 7-12).

18 38. Prof. Greenwald did not prepare a report for this case, but attached as  
19 his report a draft article that he hopes to publish in the California Law Review. *See*  
20 *Pls.' Summ. J. Ex. 5* (Greenwald Report). The three-page introduction to the article  
21 (including the section entitled "Postscript") was the only document prepared for the  
22 purpose of this case, and Prof. Greenwald testified that he does not expect that  
23 introduction to appear in the published article. Murphy Decl., Attach. D  
24 (Greenwald Dep. at p. 18, l. 14 – p. 19, l. 5; p. 30, l. 8 – p. 31. l. 3).

1 39. Prof. Greenwald testified that he has never done a study on the  
2 application of the Implicit Association Test on any component of the criminal  
3 justice system. Murphy Decl., Attach. D (Greenwald Dep. at p. 23, ll. 2-14).

4 40. Prof. Greenwald testified that he is not aware of studies using implicit  
5 bias to relate who is more likely to be arrested for crime, who gets charged for a  
6 crime, and who is convicted of a crime. Murphy Decl., Attach. D (Greenwald Dep.  
7 at p. 29, l. 17 – p. 30, l. 7).

8 41. Prof. Greenwald testified that Section 12 of the article referred to as  
9 his Report addressed disparate outcomes in the employment context, not criminal  
10 justice. Murphy Decl., Attach. D (Greenwald Dep. at p. 31, ll. 9-15). However, he  
11 further testified that his characterization of the Beckett study on page iii of his  
12 report was to show an example of a research strategy to rule out alternatives, not to  
13 show agreement with her conclusions. *Id.*, Attach. D (Greenwald Dep. at p. 31, l. 4  
14 – p. 32, l. 19).

15 42. Prof. Greenwald testified that, although the Implicit Association Test  
16 has been taken by several hundred thousand people in academic settings, there has  
17 not been a study done using a sample deliberately selected to be representative of  
18 the larger population. Murphy Decl., Attach. D (Greenwald Dep. at p. 33, l. 17 –  
19 p. 34, l. 13). In fact, Prof. Greenwald has taken the test at least 20 times, and those  
20 results are added to the data points upon which his research is based each time. *Id.*,  
21 Attach. D (Greenwald Dep. at p. 42, l. 4 – p. 43, l. 11).

22 43. The draft article which consists of Prof. Greenwald's Report has not  
23 been and apparently will not be subject to peer review among psychologists.  
24 Murphy Decl., Attach. D (Greenwald Dep. at p. 45, ll. 5-10).

1 44. Prof. Greenwald testified that there are scholars who have suggested  
2 alternative interpretations of the Implicit Associational Test, for example, that the  
3 results can be explained by reasons other than racial bias. Greenwald Dep. at p. 46,  
4 1. 9 – p. 47, 1. 9.

#### 5 **Ewald Report and Testimony**

6 45. Alec C. Ewald is a professor of political science. Murphy Decl.,  
7 Attach. E (Ewald Dep. at p. 6, 1. 1).

8 46. Prof. Ewald was asked “whether this policy [felon  
9 disenfranchisement] and its justifications are tenuous.” Murphy Decl., Attach. E  
10 (Ewald Dep. at p. 10, 1. 25 – p. 11, 1. 1; p. 15, ll. 5-9).

11 47. Prof. Ewald conducted no scholarly research of Washington’s  
12 criminal justice system. Murphy Decl., Attach. E (Ewald Dep. at p. 13). He  
13 conducted no original research regarding racial bias. *Id.*, Attach. E (Ewald Dep. at  
14 p. 16, 1. 25 – p. 17, 1. 2).

15 48. Prof. Ewald conducted survey and interview research in a number of  
16 other states regarding the implementation and administration of felon  
17 disenfranchisement, but did not conduct such research in the state of Washington.  
18 Murphy Decl., Attach. E (Ewald Dep. at p. 14, ll. 1-4).

19 49. Prior to his work on this case, Prof. Ewald had done no original  
20 research regarding Washington’s law of felon disenfranchisement. Murphy Decl.,  
21 Attach. E (Ewald Dep. at p. 24, ll. 19-22).

22 50. Prof. Ewald’s understanding of state law related to regaining the right  
23 to vote was based in part on newspaper accounts of unrelated litigation and other  
24 materials that Prof. Ewald could not identify. Murphy Decl., Attach. E (Ewald  
25 Dep. at p. 33, 1. 22 – p. 35, 1. 10).

26

1 51. Prof. Ewald agreed in his deposition that his opinion that “U.S. Courts  
2 have looked at disenfranchisement law from various perspectives, but no court has  
3 answered this question directly before” is solely based upon published case law.  
4 Murphy Decl., Attach. E (Ewald Dep. at p. 40, l. 25 – p. 41, l. 11). Prof. Ewald is  
5 not a lawyer, nor is he an expert in interpreting case law.

6 52. Prof. Ewald agreed in his deposition that there are academic  
7 professionals in his field who would agree with his conclusion that there is a lack of  
8 policy justification for felon disenfranchisement and there are those that would  
9 disagree with his conclusion. Murphy Decl., Attach. E (Ewald Dep. at p. 44, l. 15 –  
10 p. 45, l. 7).

11 53. Prof. Ewald testified that felon disenfranchisement was a valid policy  
12 in a prior time in history. Murphy Decl., Attach. E (Ewald Dep. at p. 45, ll. 9-13).

13 54. The definition of the word “tenuous” as used in Prof. Ewald’s report  
14 was one that he came up with utilizing unidentified cases and articles. Murphy  
15 Decl., Attach. E (Ewald Dep. at p. 46, l. 19 – p. 48, l. 17; p. 67, l. 17 – p. 69, l. 1).  
16 Prof. Ewald testified that his theory regarding the elements of a tenuous policy is  
17 not a tested theory that all of his contemporaries would agree with. *Id.*, Attach. E  
18 (Ewald Dep. at p. 69, ll. 2-4). In fact, he did not distribute the report to any others  
19 in his field. *Id.*, Attach. E (Ewald Dep. at p. 69, l. 25 – p. 70, l. 2).

20 55. Prof. Ewald’s reference to administrative difficulties in the state’s  
21 disenfranchisement policy is not based on any research in Washington. Murphy  
22 Decl., Attach. E (Ewald Dep. at p. 62, ll. 18-23; p. 64, l. 22 – p. 65, l. 1).

### 23 **Spitzer Report**

24 56. Hugh Spitzer is a professor of law and an expert on the Washington  
25 Constitution and the history concerning its enactment. Ex. 1, Murphy Decl.,  
26

1 Attach. F (Spitzer's Report Concerning Voting Rights of Felons in Washington's  
2 1889 Constitution).

3 57. Prof. Spitzer researched the history of the felon disenfranchisement  
4 provision in article II, section 3 of the Washington Constitution, and found no  
5 indication of any racially discriminatory intent associated with felon  
6 disenfranchisement in Washington. *Id.* The Plaintiffs apparently do not disagree  
7 with this finding. Pls.' Mem. Points & Authorities in Support of Pls.' Mot. Summ.  
8 J. and in Opp'n to Defs.' Mot. Summ. J. at 14.

9 RESPECTFULLY SUBMITTED this 1st day of March, 2006.

10 ROB MCKENNA  
11 Attorney General

12  
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