



# Race and the Law: Improving Equity in the Criminal Justice System

Pretrial and Trial Issues and Race  
District Court Judge Tanya Bransford

# Session Objective

- ▶ To discuss efforts the Courts have used to address racial inequities in the criminal justice system



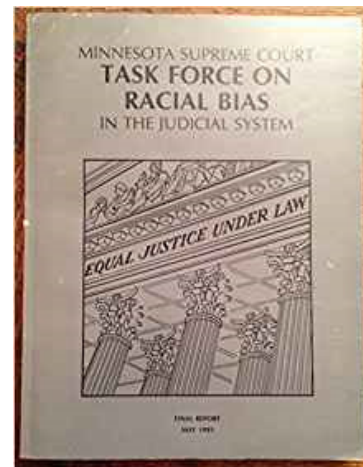
# Mission

- ▶ To provide justice through a system that assures equal access for the fair and timely resolution of cases and controversies



# Minnesota Supreme Court's Race Bias Task Force

- ▶ Created in 1989 with legislators, judges, prosecutors, law enforcements, defense attorneys, victim advocates and community members serving on the task force
- ▶ Task force created by legislation
- ▶ Comprehensive study included 9 public hearings, interviews, questionnaires
- ▶ Final Report issued in 1993





“This we vow: that we will not cease our efforts until this court system, of which we are so proudly a part, treats every person equally before the law — and with dignity and respect — regardless of such irrelevancies as race or gender or class.”  
Supreme Court Justice Rosalie Wahl



## Task Force Findings:

- Racial Bias was found at all levels of the criminal justice system
- People of color more likely to get bail ordered
- Whites were more likely charged by summons rather than a warrant
- People of color were 6% of the population in 1990, but 45% of the prison population
- Inconsistent interpretation services available

# Race Bias Task Force Recommendations

- ▶ Every court should use objective pre-trial release instruments to set bail
- ▶ Race and Ethnic data should be collected for every criminal and juvenile case
- ▶ Judges, Probation Officers, Prosecutors and Defense Attorneys should all receive training in bias reduction
- ▶ Judges, Probation Officers, Prosecutors, Defense Attorneys, Court staff should be more diverse
- ▶ Juries should include more people of color

# Progress

- ▶ Statewide collection of Race Data for all criminal and juvenile cases
- ▶ Began in 2002
- ▶ Self-reported data
- ▶ Required 80% collection rate





# Statewide Use of Objective Risk Instruments to Determine Bail

- ▶ Minnesota Statutes § 629.74
  - ▶ Local corrections department or designee
  - ▶ Each defendant arrested and detained for committing a crime of violence, 5th degree assault, domestic assault, domestic abuse, 4th degree assault, 5th degree criminal sexual conduct, harassment

## Purpose:

1. Objective reasons for ordering pre-trial release or setting bail.
2. Reduce implicit bias
3. Statewide report on pretrial evaluation tools was completed in July 2016.

# Pretrial Risk Assessment Tools History in Minnesota

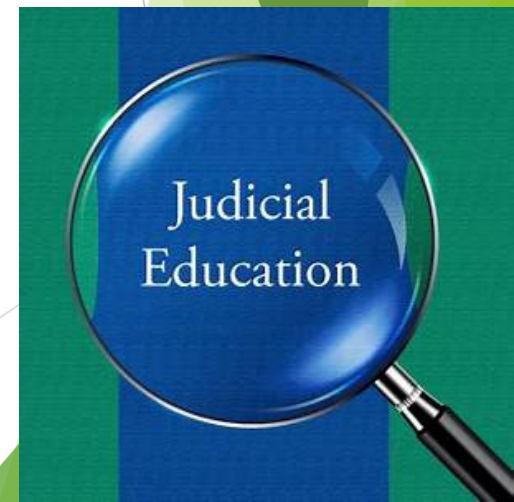
- 1993 - Race Bias Task Force Report recommended use of validated risk assessment tools to reduce bias
- 2014 - Justice (CEJ) recommended study of pretrial risk assessments
  - 14 counties were not using any objective risk instrument to set bail
- 2016 - Recommendations from Pretrial Release Initiative adopted by Judicial Council
  - Implement statewide validated tool
  - Eliminate the use of bail schedules by judges
  - Direct State Court Administrator to Review & Implement Other Recommendations

# Validation of Pre-Trial Release Instruments

- ▶ Validation study of bail tools removed factors that had an adverse effect on people of color that were not predictive of pretrial failure
- ▶ Age under 21 at time of offense was removed from the scale as being racially biased

# Judicial Education

- All judges must complete at least 3 hours of Diversity and Inclusion credit
- Judges, Senior Judges and Court Administration completed Implicit Bias Training
- Implicit Bias Bench Card
- Criminal and Civil Jury Instructions on Implicit Bias is in progress
- All New Judges receive training in the use of objective pre-trial tools for bail



# Interpreters

- ▶ Certified Interpreters used in the most common languages (Spanish, Somali, Hmong, Russian, ASL)
- ▶ All interpreters trained and on a statewide roster
- ▶ Improvements made to better manage interpreters in response to a survey of the users
- ▶ Court forms translated and available on the MN Judicial Branch website for Limited English Proficient Court users



## Diverse Bench

- ▶ In 1992, only 5% of the judges in the state were people of color
- ▶ Since 2011, the diversity of Minnesota judges has increased by almost 100%
- ▶ In Hennepin County diversity in the bench has increased by 157% since 2011
- ▶ First Native American and African American appointed to the Minnesota Supreme Court, which is majority women
- ▶ 82% of all Hispanic judges have been appointed since 2011





Minority Judges Reception March 2018



## Equality



The assumption is that **everyone benefits from the same supports**. This is equal treatment.

## Equity



**Everyone gets the supports they need** (this is the concept of "affirmative action"), thus producing equity.

## Justice



All 3 can see the game without supports or accommodations because **the cause(s) of the inequity was addressed**. The systemic barrier has been removed.





"I wish I could say that racism and prejudice were only distant memories . . . and that liberty and equality were just around the bend. I wish I could say that America has come to appreciate diversity and to see and accept similarity. But as I look around, I see not a nation of unity but of division -- Afro and white, indigenous and immigrant, rich and poor, educated and illiterate.

Supreme Court Justice Thurgood Marshall