

Presentation to Governor's Task Force July 23rd, 2020

Good evening. My name is Leslie Cushman. I am the citizen sponsor of I-940, which means I filed the legal documents with the secretary of state. I was one of the co-chairs of the I-940 campaign along with a team of incredible people. We had hard working campaign staff, 100s of volunteers, thousands of people who signed the initiative, and thousands more who voted yes to make 940 State law.

I am going to talk about the basic history around 940, implementation, and I will close with some accomplishments and one gap.

I am in Olympia right now and I want to acknowledge the Native people and their lands.

I am here today
on the traditional territories
of the Nisqually and Squaxin Island peoples.

And, while I am in Olympia, others of you are in the territory of Puyallup, Tulalip, Yakama, Kalispel, Colville, Duwamish, Stillaguamish, Swinomish, Lummi, Muckleshoot, Suquamish, and other tribal territories.

By this acknowledgement,
we affirm our obligation
to earn the trust of Tribal Nations,
strengthen our relationships,
uphold Tribal sovereignty,
and enable us to work together
as Tribal and State governments
so that we may protect and serve our communities.

Next, I want to recognize the people on this task force who worked on issues related to 940.

Many of us have been working together since 2015 when the most recent legislative efforts began. My first contact was with Nina Martinez with Latino Civic Alliance in the fall of 2015. This came about when Dr. Karen Johnson with the Black Alliance of Thurston County was doing coalition building. Many of the people I am going to name have served in multiple phases of this work. The

following people on this task force have been involved in the 873 campaign, the task force, the 940 campaign, or implementation.

Monisha Harrell, Kim Mosolf, Tim Reynon, Emma Catague, Jay Hollingsworth, Andre Taylor, Katrina Johnson, Livo de la Cruz, Teri Rogers Kemp, Nina Martinez, Toshiko Hasegawa, Maria Siguenza, Deborah Jacobs Yasmin Trudeau, and our law enforcement partners Monica Alexander, James Schrimpsher, Teresa Taylor, and Spike Unruh.

It is the lost lives and the threats to the living that motivate this work.

There are three names around which we started our work and they reflect the data that people of color are disproportionately impacted by police use of force, and 1/3 of people killed by police in Washington state are experiencing a mental health crisis. Before 940, Washington was an outlier with our “[malice and good faith](#)” clause and in 2018 we had the [fifth highest number of deaths](#) of any of the 50 states.

[Otto Zehm](#) was killed in Spokane in 2006. Mr. Zehm had a psychiatric disability. He was unarmed.

[John T Williams](#) was killed in Seattle in 2010. Mr. Williams was Native American and had a hearing impairment. He was armed with his carving knife.

[Antonio Zambrano-Montes](#) was killed in Pasco in 2015. Mr. Zambrano-Montes was erratic and in a mental health crisis. He was an undocumented farmworker who didn’t speak or understand English. He was throwing rocks at the officers who killed him.

All three of these incidents brought the DOJ into the cities in which they occurred.

It was a [shooting](#) in Olympia in May of 2015 that ushered in the recent legislative work in 2016. And just a few days before the first legislative hearing in 2016 a Puyallup Tribal member Jackie Salyers, was killed by Tacoma Police, and two weeks later Che Taylor was killed by Seattle Police. Tragic deaths would continue throughout the campaign, and continue today.

The substantive legislation in 2016 was not successful and the legislature created a joint task force to examine police use of deadly force.

The [Joint Task Force](#) developed numerous recommendations. It is worthwhile to note that in the fall of 2016 there was just a one vote majority recommending getting rid of the “malice and good faith clause” in RCW 9A.16.040. There was much greater consensus around training, investigations, and other topics. No law enforcement or prosecutor members of the 2016 task force voted in favor of revising RCW 9A.16.040.

Legislation was prepared, and house and senate bills were introduced at the start of the 2017 legislative session. This was comprehensive legislation that addressed the good faith clause, but also required violence de-escalation training, provided grants for tasers, addressed field training, among other things. As I indicated law enforcement did not make any movement towards a position of changing the accountability provision in RCW 9A.16.040. After the bills were introduced, the community was soon asked to compromise on the legislation.

The community response took legislative leadership by surprise. We did sit down to negotiate, but we refused the compromise that was offered, and this essentially killed the bill. Behind the scenes we had begun to work on a draft, which would become I-940. The De-Escalate Washington Campaign kicked off in July 2017. This was a few weeks after the killing by law enforcement of Isaiah Obet, Charleena Lyles, Tommy Le, and Giovonn Joseph McDade.

These are not just names, they are mothers, sons, daughters, grandsons, cousins, sisters, someone’s class mate and neighbor.

At the beginning of 2018, after the initiative was certified, legislators asked the 940 campaign to sit down with law enforcement to work on some amendments. The campaign agreed to sit down, and after weeks of discussions revised language on an objective good faith standard and the first aid requirements, among others were agreed to. The legislature [amended](#) and then passed the [initiative](#), we all went to court and it was a mess, and I-940 went on the November 2018 ballot. This process did help build relationships between the campaign and law enforcement, but it caused tension with some people in the community.

In King County, I-940 passed with over 70% yes votes, while across the state the results were just under 60%. We received yes votes in all 39 counties, and majority votes in most western Washington counties and in Spokane, Yakima, Chelan, Walla Walla, Whitman, and Asotin Counties.

The law included 7 components – it removed the malice and good faith clause, required violence de-escalation and mental health training, required that first aid be rendered at the scene and training on first aid, required notification of tribes when a tribal member was killed, required investigations independent of the involved agency, directed the [CJTC](#) to adopt rules, and mandated the inclusion of community stakeholders at the table, representing persons with disabilities, members of the lesbian, gay, bisexual, transgender, and queer community; persons of color; immigrants; noncitizens; native Americans; youth; and formerly incarcerated persons.

The executive director of the Criminal Justice Training Commission, Sue Rahr, established a rulemaking schedule, and for 3 months in the spring of 2019 rulemaking focused on violence de-escalation and mental health training, and then for 4 months rulemaking focused on criteria for what qualified as an independent investigation. This work involved law enforcement leadership, law enforcement unions, prosecutors, and representatives from the communities mentioned earlier. You can find the training curriculum at WAC [139-11](#) and the independent investigation criteria at WAC [139-12](#).

RCW [10.114.011](#) requires that when the use of deadly force results in death, substantial bodily harm, or great bodily harm, an independent investigation be done to inform the decision of whether to file charges. The statute states that the investigation must be completely independent of the involved agency.

The CJTC task was to define what “independent” meant in this context.

What the community had learned leading up to implementation and during implementation was that police agencies and prosecutors had not really viewed the police involved shooting as a true homicide and had not adopted criminal investigation protocols as a result. Evidence was not handled consistently with other homicides. This required a paradigm shift. And remember it has always been against the law for an officer to use excessive force to kill a person, so we were working on a huge change in police culture.

Our goal throughout the work was to assure that the involved agency had a bright line and fire wall around involvement, that conflict of interest and bias of members of the investigation team were addressed, that the family of the injured or deceased person was treated with respect, and that it was a forensic criminal investigation. While we had wanted to totally exclude law enforcement from the investigation, the language of 940 did not go that far, and thus our objective was to address the continued involvement of law enforcement by mechanisms to mitigate and inoculate against this.

Here are some of the accomplishments of the current system:

- Explicitly identifies that this is a criminal investigation, and that the officer is the suspect and the family or injured person is the victim. This actually was a controversial part of the rulemaking and law enforcement pushed back against this.
- Recognition that conflict of interest interferes with an impartial investigation.
- Recognition that investigators must be credible and professional, without misconduct or bias. We wanted white supremacy and the Klan to be called out and instead got a general nod for this notion, specifically that the investigators must have a personal history free of demonstrable bias or prejudice.
- Inclusion of at least two community members on the investigation team and requiring that the names be solicited from the community.
- Requirements for communication and media protocols. This was to address the police narrative and to keep the public and family regularly updated.
- Requirement for a family liaison.
- A firewall between the criminal investigation and the administrative investigation. This is important to preserve and protect the criminal evidence and process.
- Requiring first aid be provided as soon as is safe, before anything else happens at the scene.

Now, one gap. With the adoption of the rules, the community formed some ad hoc teams to go talk to prosecutors, write letters or call sheriffs and police chiefs, talk with investigators, hold meetings in communities, meet with mayors, contact city councilmembers, etc. We learned quite a bit from this monitoring effort.

The one “gap” in my view:

1. The independent investigations done by neighboring law enforcement or done by any law enforcement, is not satisfactory. It is not independent. There are too many inherent conflicts of interest. The Manny Ellis death in Tacoma is emblematic of that conflict. But that is not a unique situation and digging into any investigation where police have investigated police is going to reveal irregularities and a half-hearted investigation. The community is working now on a legislative proposal for an independent state-wide office that will manage these criminal investigations.

That’s all I have, and it is time to hear from Steve Strachan.