

widespread racial disparities, with blacks being six times as likely to end up in jail as whites.

Now commonly referred to as the RED Report (Racial and Ethnic Disparities Report), it analyzed the outcome of different racial groups at every decision point in the county's criminal justice system, from initial police interaction to post-conviction probation, finding inequities throughout.

On March 4, City Club of Portland held a forum to address the findings of the RED Report at downtown's Sentinel hotel.

"When I read the report," Underhill said to the room full of City Club members, "it's accurate to say that as the district attorney in Multnomah County, I have touch points in essentially every decision point. It's also more accurate to say my office is more primarily responsible on some of those points. One of those points is sentencing."

Underhill continued by saying that while he recognizes his office does not add to disparities in some decision points examined, "I also need to remind myself that we do not make it better, we do not reduce that disparity that initially comes to us."

Singh said Underhill's talking points that day underplay his role in the criminal justice system.

"The district attorney should be aggressively leading the charge to reduce racial and ethnic disparities in our criminal justice system. He is in the position and has the power to be a transformative figure on racial and criminal justice issues. Remarkably, though, it appears that he is shifting and pivoting away from the problem and not directly confronting the issue."

What Underhill was referring to at the City Club forum was a section of the report that showed his prosecutors don't move forward in prosecuting defendants of any particular race or ethnicity substantially more than another.

This means the cases are already disproportionately stacked against people of color before his prosecutors file charges, locking in those disparities.

The RED Report determined blacks, Hispanics and Native Americans are more likely to be sentenced to prison than whites.

With more than 90 percent of criminal cases ending in plea agreements nationwide, sentencing decisions

have largely shifted away from judges and into the hands of prosecutors.

Oregon Supreme Court Justice Richard Baldwin said mandatory minimum sentences and other laws passed by voters and Oregon legislature have "cut into the discretion of judges with respect to sentencing."

He said many judges make themselves available to be a neutral facilitator during the plea bargaining phase, but whether or not a judge is involved in the process, most of the time they simply enforce whatever plea agreement is reached, although they do have authority to deny it.

"Typically there's a strong interest in encouraging settlement and so trial judges generally will follow the agreement the parties have agreed to on their own," he

said.

According to Lisa Graybill, a legal director at Southern Poverty Law Center, plea bargaining can be efficient, "but can also be a real tool to encourage prosecutors to overcharge so that they can get a plea to the charge that they actually wanted to bring."

She said over-charging also gives prosecutors more leverage over a defendant

to plead guilty to crimes that are more serious than crimes they would have likely been convicted of should they have gone to trial.

"It's a system that's vulnerable to abuse," said Graybill. "My job is work on issues related to criminal justice reform and mass incarceration. One of

the biggest pieces, that is the hardest to get at, with litigation or policy change, is prosecutorial misconduct and the abuse of discretion."

Singh agrees. "Currently, the system we have makes it very difficult and rare for prosecutors to be held accountable," he said.

This is especially true when it comes to Oregon's secretive and unrecorded grand jury indictment process.

During the past two legislative sessions – and intermittently since 1981 – Oregon District Attorneys Association has blocked bills that would make grand jury indictments more transparent by recording the proceedings.

Gail Meyer, legislative representative for

**"Oregon is the only state in the union that relies on grand jury to indict all felonies and still does not record the grand jury."**

**GAIL MEYER**  
OREGON CRIMINAL DEFENSE  
LAWYERS ASSOCIATION

Oregon Criminal Defense Lawyers Association, said by repeatedly blocking these bills, prosecutors made it so "Oregon is the only state in the union that relies on grand jury to indict all felonies and still does not record the grand jury."

There are two ways an Oregon prosecutor can bring felony charges against a defendant:

They can file a complaint that's heard before a judge who weighs the evidence and the cases made by both the prosecutor and defense attorney before deciding whether or not to move forward with an indictment. This is a process that's rarely used, said Meyer.

The other way to bring charges is through grand jury indictment, and it's easy to see why this method is so popular with Oregon prosecutors.

In a grand jury indictment, the prosecutor presents his or her case to a grand jury made up of seven randomly selected citizens, and asks the citizens to indict the accused party.

There is no judge or defense attorney present. The prosecutor decides which witnesses to call, what questions to ask and what evidence to present.

The grand jury can also ask questions before making its decision. Because these indictments are not recorded, aside from the hand-written and often illegible and conflicting notes of jurors, the defense is not privy to the circumstances under which their client was indicted and there is no judicial oversight.

"No one really oversees it," said retired

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