# WASHINGTON STATE MINORITY AND JUSTICE COMMISSION

"I Am the Trail of My Ancestors"



## 2007-2008 Report

# COMMISSION MEMBERS
# 2007 - 2008

Justice Charles W. Johnson
Washington State Supreme Court
Co-chairperson

Jeffrey A. Beaver
Attorney at Law

Robert C. Boruchowitz
Seattle University School of Law

Ms. Myrna I. Contreras
Attorney at Law

Chief Judge Ronald E. Cox[1]
Court of Appeals, Division I

Judge Deborah D. Fleck
King County Superior Court

Ms. Bonnie J. Glenn
Deputy Chief of Staff
King County Prosecutor's Office

Judge Richard A. Jones
United States District Court
Western District of Washington

Judge Kenneth H. Kato (Retired)
Court of Appeals, Division III

Dean Sandra E. Madrid, Ph.D.
University of Washington
School of Law

Judge Ron A. Mamiya[1]
Seattle Municipal Court

Judge LeRoy McCullough
King County Superior Court

Jeff E. Hall
Administrator
Administrative Office of the Courts

Justice Charles Z. Smith (Retired)
Washington State Supreme Court
Co-chairperson

Judge Richard F. McDermott, Jr.
King County Superior Court

Judge James M. Murphy (Retired)
Spokane County Superior Court.

Judge Vance W. Peterson
Spokane County District Court

Ms. Ada Shen-Jaffe
Seattle University School of Law

N. A. "Butch" Stussy[1]
Administrator
Administrative Office of the Courts

Jeffrey C. Sullivan
United States Attorney
Western District of Washington

Judge Greg D. Sypolt
Spokane County Superior Court

Judge Mary Alice Theiler[1]
United States Magistrate Judge
Western District of Washington

Ms. Brenda E. Williams
Supervising Attorney
Tribal Court Public Defense Clinic

Judge Mary I. Yu
King County Superior Court

Judge Dennis D. Yule (Retired)
Superior Court of Benton-Franklin
Counties

[1] Term ended 2007

# WASHINGTON STATE MINORITY AND JUSTICE COMMISSION




WASHINGTON STATE MINORITY AND JUSTICE COMMISSION
Washington State Supreme Court
Temple of Justice
Post Office Box 41174
Olympia, Washington 98504-1174

Telephone: (360) 357-2109 • Telefacsimile: (360) 357-2111
Website: www.courts.wa.gov • minority.justice@courts.wa.gov

# 2007-2008 Report

## Co-chairpersons

Charles W. Johnson

Charles Z. Smith

## Editors

Charles Z. Smith

Monto Shan Morton

2007-2008 Report published February 1, 2009 at Olympia, Washington

# TABLE OF CONTENTS

# ACKNOWLEDGMENT

For this report on the interrelationship between tribal courts and Washington State courts, we have drawn upon the informed intelligence and resources of experts who can knowledgeably relate to the issue of "full faith and credit" of tribal court decisions.

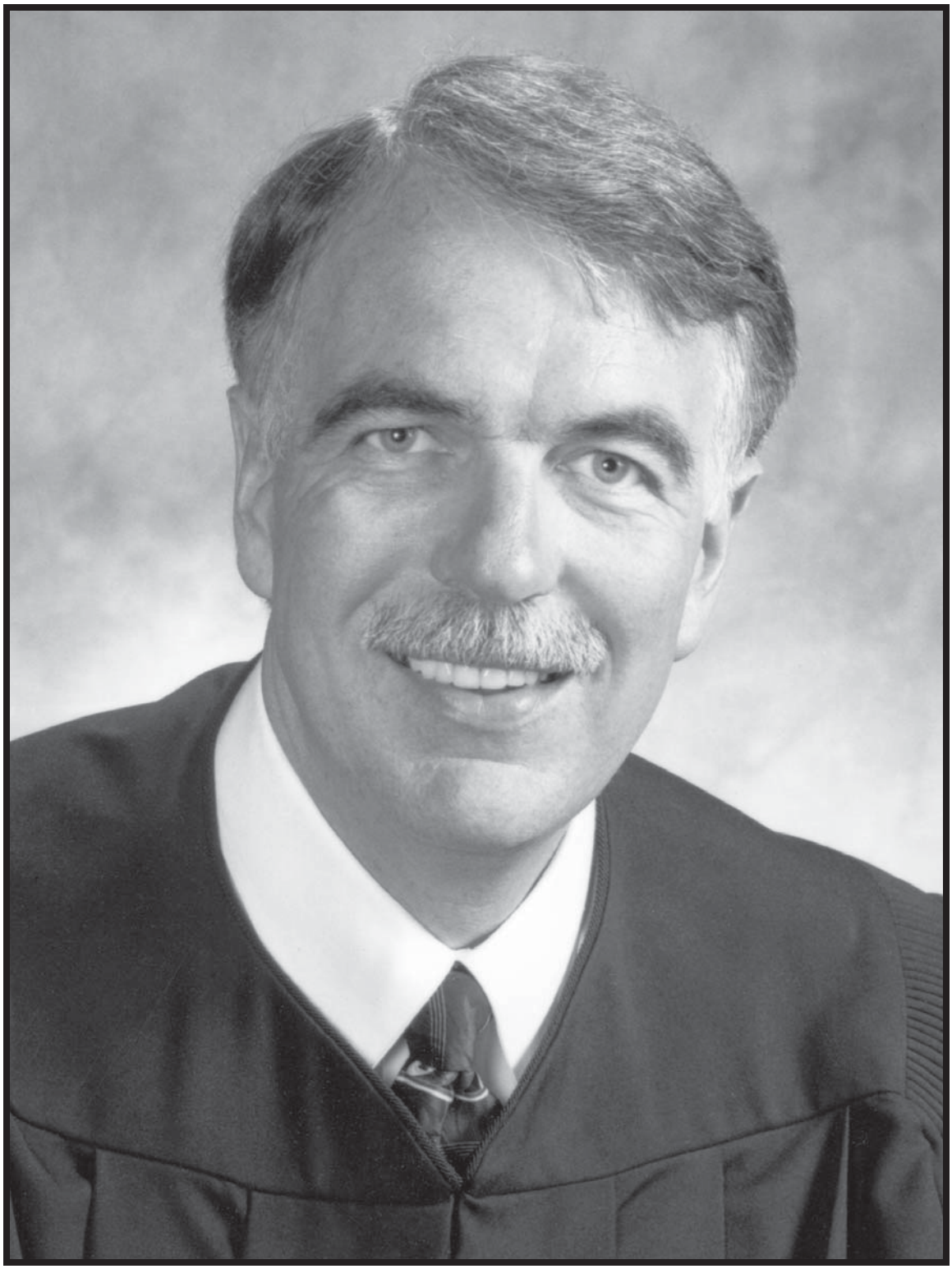
We acknowledge the works of these authors who have generously given us permission to publish their articles in whole or in part: Edmund Clay Goodman, Hobbs, Straus, Dean and Walker, LLP, Portland, Oregon; Randy A. Doucet, General Manager, Upper Skagit Tribe (former Chief Judge, Lummi Tribal Court), Lynden, Washington; and Robert O. Saunooke, Saunooke Law Firm, PA, Miramar, Florida.

We also acknowledge the capable assistance provided by Ms. Nanette B. Sullins, Legal Services Manager, Administrative Office of the Courts, Olympia, Washington.

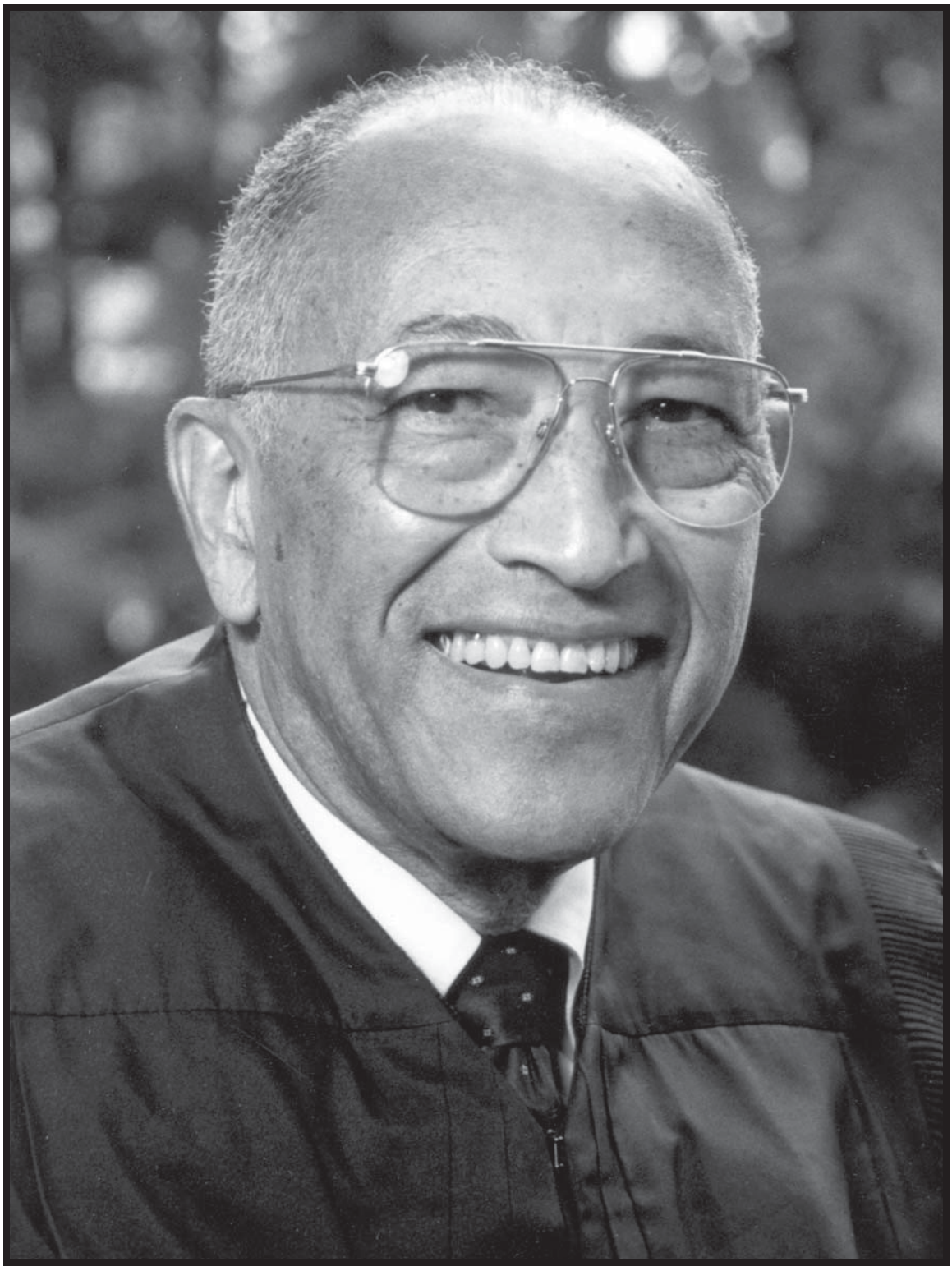
# WASHINGTON STATE MINORITY AND JUSTICE COMMISSION

The Washington State Minority and Justice Task Force, precursor to the Minority and Justice Commission, in its final report in 1990 concluded there were significant needs for cultural diversity education and for increasing diversity in the workforce within the court system of Washington State. The Task Force also addressed the need for continuing objective research in the treatment of persons of color who enter the justice system, as well as those in the legal profession, and the need for developing liaisons with mainstream and ethnic bar organizations.

The Task Force, therefore, recommended creation of the Washington State Minority and Justice Commission with specific mandates. The Washington State Supreme Court on October 4, 1990 issued an Order creating the Commission, followed by three subsequent Orders of Renewal through the year 2010. The Commission was directed by the Supreme Court to determine whether racial and ethnic bias exists in the courts of the State. To the extent it exists, the Commission is charged with taking creative steps to overcome it. To the extent such bias does not exist, the Commission is charged with taking creative steps to prevent it. The Commission established five subcommittees to accomplish its mission. In 2007 the sub-committees revised their mission statements to reflect essential changes in their activities and goals.



*Justice Charles W. Johnson*
Associate Chief Justice
Co-chairperson
Minority and Justice Commission



*Justice Charles Z. Smith (Retired)*
Co-chairperson
Minority and Justice Commission

# INTRODUCTION

The Washington State Minority and Justice Commission, created by our Supreme Court initially as a task force in 1987, has published annual reports since 1994. This year we are combining two years and publishing this 2007-2008 Report.

The primary purpose of our Commission is to assist judges at all levels of our State courts to understand the dynamics of race, ethnicity, culture and language in fulfilling their obligation to administer justice fairly and impartially in all matters coming before them.

We are fortunate to have in the State of Washington a complex, elaborate and efficient system of tribal courts whose jurisdiction is independent of our Washington State court system.

There are twenty-nine Federally recognized tribal nations in Washington State which have trial courts (some of which are affiliated with the Northwest Intertribal Court System) and three appellate courts. Tribal judges (Indian and a few non-Indian judges) serve on the courts. They follow judicial qualification requirements, rules of procedure, and professional conduct rules similar to those requirements and procedures in the Washington State courts.

On occasion judges in Washington State courts may be confronted with questions of "full faith and credit" of decisions of tribal courts. This is an elusive subject, but one which has been explored extensively in this State for over twenty years.

Indeed there is extensive scholarly discussion and debate on the question whether "full faith and credit" should be applied to tribal court decisions. We do not engage in the debate.

In this report we focus primary attention on Washington Court Rules for Superior Court, Civil Rule 82.5, adopted by our Supreme Court in 1995, which implicitly provides for full faith and credit of certain tribal court orders and judgments. The actual text of that rule, its origins and context are addressed in several articles in this report.

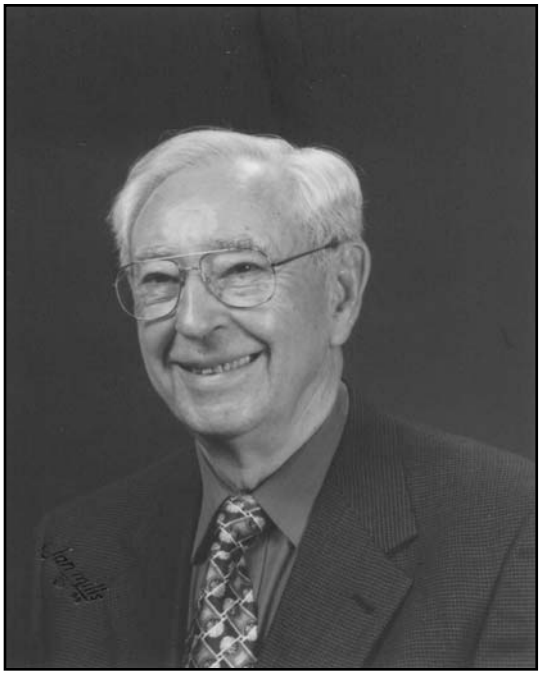
# DEDICATION

*Chief Justice Anita B. Dupris*

The Washington State Minority and Justice Commission, in recognition of their significant role in improving respectful relationships between tribal courts and Washington State courts, dedicates this 2007-2008 Report to Colville Tribal Court of Appeals Chief Justice Anita B. Dupris and retired Washington State Supreme Court Chief Justice Vernon R. Pearson.

Chief Justice Dupris and Chief Justice Pearson in 1991 co-chaired one of three state programs (Washington, Arizona and Oklahoma) funded by the State Justice Institute and directed by the National Center for State Courts. The program was formally identified as the Washington State Forum to Seek Solutions to Jurisdictional Conflicts Between Tribal and State Courts (Washington Forum). The Conference of Chief Justices and the Washington Supreme Court provided assistance to the activity.

The Washington Forum in 1992 issued its report in the form of a *Tribal Court Handbook for the 26 Federally Recognized Tribes in Washington State*. The handbook was edited by consultant Professor Ralph W. Johnson (now deceased), University of Washington School of Law, and Ms.



*Chief Justice*
*Vernon R. Pearson (retired)*

Rachael Paschal, a law student intern (now a practicing attorney).

The one-year Washington Forum project recommended increased awareness of the status of tribal courts and a respectful interrelationship between tribal and State courts. The Forum recommended to the Washington Supreme Court approval of a "full faith and credit" rule which ultimately was approved in its present form as Superior Court Civil Rule 82.5.

When she served on the Washington Forum, Justice Dupris was Chief Judge of the Colville Tribal Court. Since that time she has been elevated to Chief Justice of the Colville Tribal Court of Appeals. Justice Pearson served on the Washington Supreme Court from his appointment in 1982 until his retirement in 1989.

Both Chief Justice Anita B. Dupris and retired Chief Justice Vernon R. Pearson have manifestly over the years been strong advocates for recognition of Indian Tribal Courts as an integral part of our judicial system and have taken a significant national leadership role in that effort. It is for that reason that we honor and recognize them by dedication of this

2007-2008 Report.

Chief Justice Vernon R. Pearson served on the Washington State Supreme Court from 1982 to 1989, retiring as Chief Justice. According to Dr. Charles H. Sheldon, writing in *The Washington High Bench* (1992), "(w)hen one meets Justice . . . Pearson, he appears unassuming, soft-spoken, hesitantly thoughtful, gregarious yet shy. These traits do reflect the man, but what is often missed is a sharp, decisive, competitive, but open legal mind. All these characteristics reflect the justice's background."

Born in North Dakota in 1923, the son of a Methodist minister, Justice Pearson graduated from high school in that state in 1941 and entered Jamestown College on an academic scholarship. World War II interrupted his studies after two years when he enlisted in the United States Navy. He was commissioned and served as an officer in various capacities in the Philippines, Japan, and Bikini Atoll. He was honorably discharged as a Lieutenant (j.g.) in 1946.

Justice Pearson returned to Jamestown College and earned a B.S. degree in political science and social studies in 1947. He entered the University of Michigan Law School, graduating with his law degree in 1950. That year he moved with his wife and young son to the Pacific Northwest where he served as a legal research and writing instructor at the University of Washington. He shortly afterwards joined his brother in the practice of law in Tacoma.

Following a distinguished career as a practicing attorney, Justice Pearson was appointed to the newly-created

Washington Court of Appeals where he served for 12 years. He was appointed to the Supreme Court in 1982 where he served through two elections without opposition.

During his active service on the Supreme Court, Justice Pearson instituted numerous programs of court reform and the administration of justice. As Chief Justice, he instituted the Supreme Court's Minority and Justice Commission (and its predecessor Task Force) in 1987. In 1989 he received the Herbert Harley Award from the American Judicature Society and the Law Medal from Gonzaga University.

Following his retirement, Justice Pearson continued in national and local activities for the improvement of justice. Notable among them—and pertinent to this Dedication—the Conference of Chief Justice's coordinating committee on Jurisdictional Disputes Between State Courts and Indian Tribes. In that role he was instrumental in organizing a national conference of State Supreme Court justices and court officials from around the United States and representatives of some of the nation's 150 tribal courts.

Chief Justice Pearson served as a co-chairperson with Chief Justice Anita B. Dupris on the Washington Forum which emphasized mutual problems, understanding differences, and Native American sovereignty. The Minority and Justice Commission recognizes the significance of their pioneering efforts in dedicating this 2007-2008 Report to them.

Chief Justice Dupris, a Colville Tribal member, is the Chief Justice of the Colville Tribal Court of Appeals, a position she has held since 1995. She is a 1981 graduate of Gonzaga

Law School with an undergraduate degree from Western Washington University. She has completed course work for a Master of Education degree at Eastern Washington University.

In addition to her service as co-chairperson of the Washington Forum, Justice Dupris has served on the National Center for State Courts' Task Force on Adoption Data Collection Systems. She has served as a claims officer with the Washington State Division of Child Support working with the State and Tribes of Washington in developing inter-governmental agreements for child support. She serves as a lecturer on the Indian Child Welfare Act of 1978 at Gonzaga University School of Law.

In 1999 Justice Dupris received the Distinguished Judicial Service Award from Gonzaga School of Law—the first woman and the first tribal judge to receive the award. In 1988 she was awarded the Judge of the Year award from the National Child Support Enforcement Association.

Justice Dupris is past president and current Board member of the Northwest Tribal Court Judges' Association; past secretary of the Eastern Tribal Judges Association; a member of the National American Indian Court Judges Association; and a member of the American Judicature Society. Over the past 24 years she has made presentions nationally, regionally and locially to both lay and legal communities on numerous legal topics affecting Indian people.

# COVER ARTWORK

Lately I have been reflecting on my life. How all our experiences spiritual, social, inner Sacred and our Ancestors fill up the matrix we call the "Self."

This painting, "I Am the Trail of My Ancestors," shares the inner search, acknowledging the importance of "where we arise from, our Homeland." As a Cree/Iroquois/French Native Woman born in 1948, I have often wondered where particular talents and inner visions began.

This painting illustrates this quest and acknowledgement of those who walked before us. In the sky the Heavenly Canoes that carry the People to and from this life on Earth. Other symbols are the North Star, Thunderbird, Birth, and other teaching metaphors intended to guide the new populous to live in Peace and Harmony. Metaphors that reflect the wisdom and warnings left behind by our Elders, as nothing is ever wasted, even the most difficult of times has treasure within the experience.

I often felt my own life was an odd mystery, like most People. I was part of an assimilation effort long ago. When I was about 3½ years of age I was removed and placed with a non-Native family in New York. Though I was raised by a German family, my ancestral heritage always lived in my heart and through the decades I held fast to the few childhood memories of the bush country in Canada. Through this genetic lens I began my quest to re-embrace my heritage and create the artworks you see today.

Chholing Taha

# THE ARTIST

*Chholing Taha*

The cover artwork entitled *"I Am the Trail of My Ancestors"* is an original painting by the talented and prolific Pacific Northwest artist Chholing Taha. The result of months of painstaking work, it is painted on 400 pound Arches watercolor paper with high density acrylic paints with gold and silver powdered/sealed metal accents.

Born in 1948, the Cree/ Iroquois/French Native Woman, who grew up in the Northeastern woodlands of the United States and Canada, experienced a rich and varied environment which influences her work today. Although formally trained in art, even without that training, she has during her lifetime manifested an innate talent which transcends formal training and which contemplates spirituality, vivid colors, historic references and visual imagery, making her one of the most notable and admired artists of her generation. She has been an active professional artist since 1972.

A graduate of Boise State University with a Bachelor of Fine Arts degree in Drawing and Painting, Ms. Taha also graduated from the University of Washington with a Masters in Library Information Service degree. She maintains her studio in Tacoma, Washington.

The extensive catalogue of Ms. Taha's art, available on her website, www.shawlLady.com, reveals a massive and impressive array of paintings, shawls, moccasins and jewelry. Her paintings are exhibited in galleries and corporate offices

throughout the Northwest.

The Washington State Minority and Justice Commission selected the painting *"I Am the Trail of My Ancestors"* not only for its visual beauty, but also because it is the intensely serious work of a talented American Indian artist and dramatically focuses attention on our American indian culture. In a large sense it is relevant to the underlying theme of this report which focuses on the interrelationship between tribal courts in this State and Washington State courts.

According to Ms. Taha, each of her paintings depicts an inner transformation. The stories they tell are from dialogues with her aunts, other relatives and friends who braved the journey to discover their true "self." Often they were a healing of sorts, a confrontation with spirits and self-realization, or the peace of collecting medicine.

Perhaps her own words can provide a unique insight into the art of Ms. Chholing Taha:

"I invite you to come along with me and walk slowly together along the road towards home. The intimate experience of an internal dialogue will bridge time and space for human beings and all living matter and invoke a universal living experience to encourage, bring hope, inspire and touch the child sleeping within all of us...and share an experience of symbols, emotions, confrontations, life and death, and beyond.

"It is my wish to bring a sense of wonder, common bonds and excitement between the audience and myself through narrative and the experience we share—an experience of symbols, emotions, confrontations, life and death, and beyond."


*Celebrating the courts in an inclusive society*

# WASHINGTON STATE SUPERIOR COURT RULE, CR 82.5

Washington State Superior Court Rule, CR 82.5, Tribal Court Jurisdiction, was drafted by The Washington Forum, which was created in January 1990. The Washington Forum was an outgrowth of the Civil Jurisdiction of Tribal Courts and State Courts Research and Leadership Consensus Building Project.

Because of concern over the lack of effective resolution of civil disputes between State and tribal courts, the Conference of Chief Justices established a Committee on Civil Jurisdiction in Indian Country. Following this, the Conference of Chief Justices endorsed a project, designed by the National Center for State Courts and later funded by the State Justice Institute, that would provide a research model to approach dispute resolution between State and tribal courts to cooperatively resolve disputes in constructive ways.

Washington State was selected as a forum state, based on diversity of tribal courts and the extent of jurisdictional conflicts and a history of cooperative working relationships between tribal and State courts. The forum's one-year charge was to clarify civil jurisdiction problem areas in the State and to develop and initiate proposals to resolve those problems. Arizona and Oklahoma undertook similar studies.

The Washington Forum was co-chaired by retired Chief Justice Vernon R. Pearson and Chief Judge Anita B. Dupris, Colville Tribal Court (now Chief Justice, Colville Tribal Court of Appeals) with tribal court judges from several tribes and State judicial system representatives. The Forum met during 1990 and heard testimony from the Northwest Intertribal Court System, the Yakama Indian Nation, and a youth/family advocate

director of the American Indian Community Center in Spokane.

The Washington Forum published a *Tribal Court Handbook for the 26 Federally Recognized Tribes in Washington State*, which was edited by University of Washington Professor Ralph W. Johnson (now deceased) and Ms. Rachael Paschal. The first edition was published by the Administrative Office of the Courts and the revised second edition was published in 1992 by the Indian Law Section of the Washington State Bar Association.

One of the recommendations that came out of the Forum's final report was a proposed new CR 82.5, which was drafted to provide State and tribal courts clear standards for transferring cases between State and tribal courts when jurisdiction is not clear. The Forum presented its proposed new rule to the Supreme Court.

Pursuant to its rulemaking procedure, the Supreme Court sent the proposed new CR 82.5 to the Washington State Bar Association for its review. The Bar Association's Court Rules and Procedures Committee created a subcommittee which requested input from the Association's Indian Law and Family Law Sections. The Bar Association made modifications to the proposed rule which were part of the rule when it was returned to the Supreme Court.

Final modifications were made to proposed Rule 82.5 before it was published for comment in January 1995. The Superior Court Judges' Association was opposed to the language in the new rule giving "full faith and credit" to tribal court decisions. Those words were stricken from the rule before publication.

The new rule, CR 82.5, received little comment when it

was published for comment, perhaps because of the thorough vetting it received from affected parties prior to publication for comment.

The new CR 82.5, which became effective September 1, 1995, reads as follows:

Rule 82.5
Tribal Court Jurisdiction

(a) Indian Tribal Court; Exclusive Jurisdiction. Where an action is brought in the superior court of any county of this state, and where, under the Laws of the United States, exclusive jurisdiction over the matter in controversy has been granted or reserved to an Indian tribal court of a federally recognized Indian tribe, the superior court shall, upon motion of a party or upon its own motion, dismiss such action pursuant to CR 12 (b) (1), unless transfer is required under federal law.

(b) Indian Tribal Court; Concurrent Jurisdiction. Where an action is brought in the superior court of any county of this state, and where, under the Laws of the United States, concurrent jurisdiction over the matter in controversy has been granted or reserved to an Indian tribal court of a federally recognized Indian tribe, the superior court may, if the interests of justice require, cause such action to be transferred to the appropriate Indian tribal court. In making such determination, the superior court shall consider, among other things, the nature of the action, the interests and identities of the parties, the convenience of the parties and witnesses, whether state or tribal law will apply to the matter in controversy, and the remedy available in such Indian tribal court.

(c) Enforcement of Indian Tribal Court Orders, Judgments or Decrees. The superior courts of the State of Washington shall recognize, implement and enforce the orders, judgments and decrees of Indian tribal courts in matters in which either the exclusive or concurrent jurisdiction has been granted or reserved to an Indian tribal court of a federally recognized tribe under the Laws of the United States, unless the superior court finds the tribal court that rendered the order, judgment or decree (1) lacked jurisdiction over a party or the subject matter, (2) denied due process as provided by the Indian Civil Rights Act of 1968, or (3) does not reciprocally provide for recognition and implementation of orders, judgments and decrees of the superior courts of the State of Washington.

Although the words "full faith and credit" are not specifically used in CR 82.5, the reality is that the rule, especially subsection (c), is indeed a full faith and credit rule.


This article is based substantially upon one written by Ms. Nanette B. Sullins, Legal Services Manager, Office of the Administrator for the Courts, Olympia, Washington. She provides staff support for the Supreme Court Rules Committee.

# WASHINGTON STATE TRIBAL DIRECTORY

The Washington State Tribal Directory (Spring 2008) is published by the Governor's Office of Indian Affairs (www.goia.wa.gov) and contains current comprehensive information on Washington State Federally Recognized Indian Tribes and Non-Federally Recognized Indian Tribes. The directory additionally contains other information, including tribal schools and colleges, tribal publications, tribal courts, tribal museums and Indian organizations.

The Governor's Office of Indian Affairs, recognizing the importance of sovereignty, affirms the government-to-government relationship and principles identified in the Centennial Accord to promote and enhance tribal self-sufficiency and serves to assist the State in developing policies consistent with those principles.

In 1969 the office was established to function as an Advisory Council to the Governor. After ten years, the Council was abolished and replaced by a gubernatorially appointed Assistant for Indian Affairs. Renamed the Governor's Office of Indian Affairs, it has continued to serve as liaison between state and tribal governments in an advisory resource, consultation, and educational capacity.

# WASHINGTON STATE BAR EXAMINATION

In 2005 the Board of Governors of the Washington State Bar Association adopted a policy requiring inclusion of Federal Indian law on the bar examination.

A past president of the Northwest Indian Bar Association and past chair of the Bar's Indian Law Section, Gabriel S. Galanda, writing in the November 2005 issue of *Equal Justice*, stated that the new bar examination policy "has sent and will continue to send, a loud and clear message to Indian Country that the practice of law is relevant to life on the reservation. As a result, Indian youth in Washington will increasingly consider the legal profession as a career option and the 160,000 Indian citizens of our state will some day see their faces reflected in the WSBA." He further commended our legal community "for supporting and enacting policy that will heighten the standard for legal professionalism, lawyer diversity and tribal-state relations in our state, while lowering the hurdle low-income people must clear to secure access to justice in Washington."

In adopting the new bar examination policy, the Board of Governors reasoned that Washington lawyers likely will encounter questions of federal Indian jurisdiction which fundamentally ask whether a tribal, state and/or federal court, if any, has authority to adjudicate a dispute arising out of Indian Country. The Governors reasoned further that new lawyers must learn four tribal jurisdictional principles to properly represent and protect the Washington citizenry: (1) Indian self-governance; (2) tribal civil and criminal jurisdiction; (3) sovereign immunity; and (4) the Indian Child Welfare Act.

The Minority and Justice Commission is in full agreement with the Washington State Bar Association and commends it for this forward step.

# TRIBAL COURT HANDBOOK

We selectively quote extensively from the Tribal Handbook produced by the Washington Forum in 1992 (edited by Professor Ralph W. Johnson (now deceased) and Ms. Rachael Paschal and published by the Washington State Bar Association) because of its historical relevance to our subject: the interrelationship between tribal courts and Washington State courts.

> In 1988, the Coordinating Council of . . . (the Conference of) Chief Justices initiated a project to identify and resolve jurisdictional conflicts between tribal and state courts.
>
> In 1990, the Civil Jurisdiction in Indian Country Project created demonstration forums in three states. These forums designed action agendas to address disputed jurisdiction problems, including plans for developing educational programs, informal meetings and working agreements, cross-visitations, exchanges of legal materials, agreements between tribal governments and state executive agencies, state legislation and other approaches resulting from mutual cooperation and and understanding and communication. The forum studies are expected to provide model approaches to enhance cooperation and reduce conflict between tribal and state courts." (p. 3)

Twenty-six federally recognized Indian tribes are located within the boundaries of Washington state. Each of these tribes operates a tribal court or participates in the Northwest Intertribal Court System, a judicial services consortium. These courts vary widely in size, jurisdiction, and procedure.

The federal policy of self-determination toward Indian tribes has led to an overall increase in the numbers, size and scope of tribal courts. These courts exert general jurisdiction over their tribal membership, as limited by the tribal code and constitution, and federal law. Criminal jurisdiction is limited to tribal members and non-member Indians, and in some cases is exercised concurrently with federal or state courts. Recent federal . . . (cases) have established that tribal courts also have jurisdiction over disputes arising out of voluntary economic activity by non-Indians on reservations. However, the scope of civil jurisdiction over non-Indians for activities on their own lands is generally subject to a tribal interest test. As tribes continue efforts toward economic development and self-determination, increasing resort will be had to tribal courts for dispute resolution.

While tribal courts are similar to state and municipal courts, fundamental differences are evident. First, there is no consistency between the courts from tribe to tribe. Each tribe operates its own courts using its own code and procedures. Thus a practitioner must be familiar with the unique scope

> and procedures of each tribal court in which . . . (that person) practices. Second, Washington state exerts partial jurisdiction over tribes under authority of federal law. That jurisdiction affects specific subject matters, such as divorce and mental illness, but has been preempted in some areas and partially retroceded for several tribes. Understanding the complexities of jurisdiction in Indian country is essential for the tribal court attorney." (p. 4)

The jurisdiction of tribal courts is based on tribal codes, and ranges from enforcement of the tribal fishery regulations to full substantive civil and criminal authority as limited only by federal law. Rules of evidence, when promulgated, are also based on tribal codes. Some are very general, for example, requiring only that the court 'carry out the intent of the law.' Others are based on federal rules of evidence or are otherwise more specific.

Court procedures also vary. Each tribal court uses its own rules for admission to practice, and many admit qualified lay advocates to the tribal bar. Typically, an advocate must be familiar with the tribal code, take an oath, and pay a fee in order to be admitted to the tribal bar. Some tribal judges have obtained a law degree, others are trained through the National American Indian Court Judges Association. Some tribes have entered into agreements with adjacent county and city governments to minimize jurisdictional conflicts and facilitate law enforcement activity. . . . (p. 6).

# NORTHWEST INTERTRIBAL COURT SYSTEM

In 1854 the first tribal reservations were created in Washington Territory. Tribes were removed from traditionally held lands and fishing areas and were placed on sites selected by the United States government. Certain rights were reserved by Indians through treaties. Important among these was "the right of taking fish at all and usual and accustomed grounds and stations . . . in common with all citizens of the territory."

The tribes have vigorously asserted their treaty-reserved fishing rights in recent years. In the *United States* v. *Washington* court decision of 1979, commonly known as the "Boldt" decision, Indian treaty rights were affirmed and upheld by the United States Supreme Court. This was a major victory for Indian tribes in their efforts to exercise control over their resources. The case also affirmed the right of the Native Nations to regulate their own members in the exercise of their fishing rights. This power to regulate extends to both off and on reservation fishing sites. The Supreme Court's recognition of the tribal right of extra-territorial jurisdiction over fishing areas helped clarify the need in Western Washington for strong tribal courts capable of exercising sovereign powers.

The expanding exercise of jurisdiction by Indian tribes in Western Washington is not a result of the Boldt decision alone. With the advent of the Indian Child Welfare Act, Congress also recognized the need for tribes and tribal courts to have exclusive jurisdiction over the welfare of tribal member children. A greater awareness of the need for tribal self-governance also fueled the expanding exercise of tribal

jurisdiction. Tribal recognition that reservation resources should be developed for the benefit of tribal members rather than non-Indians has led tribal governments to develop proactive ordinances, regulatory plans, criminal ordinances, juvenile codes, and business regulations.

The Northwest Intertribal Court System, organized in 1979 as a result of *United States* v. *Washington*, is a federally-funded non-profit organization incorporated under Washington state law. It is a consortium of several small Western Washington Indian tribes and is headquartered in Lynnwood, Washington.

Currently the Intertribal Court System comprises both full-time and contract judges, two prosecutors, a code-writer, and appellate court personnel who travel throughout Western Washington to the respective reservations of its member tribes. It also provides clerical support staff based at the Lynnwood office.

The current Northwest Intertribal Court System membership includes the following tribes: Confederated Tribes of the Chehalis Reservation (the Chehalis Tribe), *Oakville*; Muckleshoot Indian Tribe, *Auburn*; Port Gamble S'Klallam Indian Tribe, *Kingston*; Sauk-Suiattle Indian Tribe, *Darrington*; Shoalwater Bay Indian Tribe, *Tokeland*; Skokomish Indian Tribe, *Shelton*; and Tulalip Indian Tribe, *Marysville*.

# TRIBAL COURTS IN WASHINGTON STATE

Tribal courts are listed here only by nominal designation. Specific details (judges, staff, addresses, telephone and FAX numbers, E-mail addresses) are listed in detail in the Washington State Court Directory (2008) published by the Washington State Administrative Office of the Courts.

Colville Tribal Court of Appeals, *Nespelem*
Tulalip Tribal Court of Appeals, *Marysville*
Chehalis Tribal Court (NICS), *Oakville*
Colville Confederated Tribal Court, *Nespelem*
Hoh Tribal Court, *Forks*
Jamestown S'Klallam Tribal Court (NICS), *Sequim*
Kalispel Tribal Court, *Usk*
Lower Elwha Tribal Court, *Port Angeles*
Lummi Tribal Court, *Bellingham*
Makah Tribal Court, *Neah Bay*
Muckleshoot Tribal Court (NICS), *Auburn*
Nisqually Tribal Court, *Olympia*
Nooksack Tribal Court, *Deming*
Northwest Intertribal Court System (NICS), *Lynnwood*
Port Gamble S'Kallam Tribal Court (NICS), *Kingston*
Puyallup Tribal Court, *Tacoma*
Quileute Tribal Court, *La Push*
Quinault Tribal Court, *Taholah*
Sauk-Suiattle Tribal Court (NICS), *Darrington*
Shoalwater Bay Tribal Court (NICS), *Tokeland*
Skokomish Tribal Court (NICS), *Shelton*
Spokane Tribal Court, *Wellpinit*
Squaxin Island Tribal Court, *Shelton*
Stillaguamish Tribal Court, *Arlington*
Suquamish Tribal Court, *Suquamish*
Swinomish Tribal Court, *LaConner*
Tulalip Tribal Court (NICS), *Tulalip*
Upper Skagit Tribal Court, *Sedro Woolley*
Yakama Tribal Court, *Toppenish*

# INDIAN CIVIL RIGHTS ACT OF 1968

The Indian Civil Rights Act of 1968, at 25 U.S.C. Section 1302, establishes requirements for Indian tribes not unlike constitutional requirements applicable to State Courts:

No Indian tribe in exercising powers of self-government shall—

(1) make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;

(2) violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;

(3) subject any person for the same offense to be twice put in jeopardy;

(4) compel any person in any criminal case to be a witness against himself;

(5) take any private property for a public use without just compensation;

(6) deny to any person in a criminal proceeding the right to

a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense;

(7) require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of one year and a fine of $5,000 or both;

(8) deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;

(9) pass any bill of attainder or ex post facto law; or

(10) deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons.

## COMMENTARY

# FULL FAITH AND CREDIT

# FULL FAITH AND CREDIT

In focusing attention on "full faith and credit" of decisions and orders of tribal courts in the State of Washington implicit in Superior Court Civil Rule 82.5, we necessarily must explore general information concerning tribal sovereignty and tribal courts.

Recognized scholars no longer debate whether Indian tribes in the United States are sovereign nations—thanks to recent decisions of the United States Supreme Court. But the issue of "full faith and credit" of tribal court decisions is still subject to scholarly questioning with some responsible scholars concluding that the concept should not be applied to decisions of tribal courts.

The Washington State Minority and Justice Commission chooses to join ranks with those who believe that "full faith and credit" for decisions and orders of tribal courts is entirely appropriate in qualifying cases.

From many treatises on the subject, we have selected three which address the subject and whose authors have generously given us permission to publish, in whole or in part, their articles in this report. We refer liberally to writings of the following authors:

Robert O. Saunooke, "Tribal Justice: the Case for Strengthening Inherent Sovereignty," *Judges' Journal* (Fall 2008), Vol. 47, No. 4, American Bar Association (pp. 16-23). He is an enrolled member of the Eastern Band of Cherokee Indians. He represents Indian tribes and Native peoples and also practices general litigation and sports law. His law firm has offices in Miramar, Florida, and on the reservation of the Eastern Band of Cherokee Indians in Cherokee, North Carolina.

He is chair of the American Bar Association Judicial Division's Tribal Court Council.

Randy A. Doucet, General Manager, Upper Skagit Tribe, former Chief Judge, Lummi Nation Tribal Court, "Domestic Violence and Tribal Courts," *Domestic Violence Manual for Judges*, Washington State Administrative Office of the Courts (2006), Chapter 14, pp. 1-20.

Edmund Clay Goodman, Hobbs, Straus, Dean and Walker, LLP, Portland, Oregon, Unpublished Outline, "Violence Against Women Act: Enforcement and Full Faith and Credit Issues in Indian Country," (2008) (pp. 1-12).

In his informative presentation on enforcement and full faith and credit issues in Indian Country under the Violence Against Women Act, Goodman states:

> In order to understand the benefits, as well as the limitations, of VAWA's full faith and credit provision when it comes to protecting Indian victims of domestic violence, we must first look at the complicated set of rules and understandings governing Tribal Court jurisdiction.
>
> Tribal Courts exercise jurisdiction within a tribe's "Indian country." Indian country includes reservation lands, "informal reservations," lands held in trust by the United States for the tribe, lands held in trust by the U. S. for individual Indians, lands specially set aside as Indian country by Congress, and lands that comprise "dependent Indian communities." See 18 U.S.C. Section 1151 (defining "Indian country" for criminal jurisdictional purposes).
>
> Yet Indian country is a jurisdictional maze. The government with jurisdiction over a particular act will vary depending on whether the victim and/or offender is Indian or non-Indian, whether the issue is a civil or criminal matter,

if criminal, the nature of the crime, and whether the State where the Indian country is located is covered by Public Law 280.

Indian tribes have criminal jurisdiction over criminal acts committed by Tribal members, as well as by Indians who are members of other federally-recognized tribes. 25 USC Section 1301(2). See *United States* v. *Lara*, 541 U. S. C. 193 (2004).

Indian tribes' authority to punish such criminal behavior is limited by the Indian Civil Rights Act to a maximum $5000 fine and/or one year imprisonment, 25 U.S. Section 1302(7).

The United States has jurisdiction over 14 "major crimes" in Indian country where the offender is Indian (in non-P.L. 280 States)(including assault, sexual assault, rape, murder, and kidnapping) 18 U.S.C. Section 1153. However, tribes can prosecute the same offenders for lesser offenses arising out of the same acts without double jeopardy. *United States* v. *Wheeler*, 435 U.S. 313, 325-26 (1978).

Indian tribes lack criminal jurisdiction over non-Indians. *Oliphant* v. *Suquamish Indian Tribe*, 435 U.S. 191 (1978).

The Supreme Court, however, has continually recognized that tribal police may arrest and detain offenders for purposes of turning them over to the appropriate jurisdiction for prosecution, even if the tribe itself lacks criminal jurisdiction. *Duro* v. *Reina*, 495 U.S. 676, 697 (1990) (declaring that tribal law enforcement possessed authority "to restrain those who disturb public order on the reservation, and if necessary, to eject them"; if the tribe itself does not possess jurisdiction to try and punish an offender, "tribal officers may exercise their

power to detain the offender and transport him to the proper authorities (for prosecution)").

States have criminal jurisdiction where both the victim and the offender are non-Indian. In certain States (not covered by Public Law 280), the United States has jurisdiction where the offender is non-Indian but the victim is Indian. In Public Law 280 states, the State has jurisdiction over all crimes in Indian country, but that jurisdiction is concurrent with the tribes where the offender is Indian. Act of Aug. 15, 1953, Public Law 53-280, ch. 505, 67 Stat. 588.

Indian tribes have some degree of civil jurisdiction over non-Indians in Indian country, although there are variables that impact that jurisdiction in certain instances: the status of the land (whether it is privately-owned fee land or land held in trust by the United States), the nature of the activity at issue, and the relationship of the non-Indian to the tribe and its members.

(1) *Williams* v. *Lee*, 358 U.S. 217 (1959) (Tribal courts have exclusive jurisdiction over civil cases on Indian lands where non-Indian sues an Indian, noting that resolution of conflicts between the jurisdiction of State and Tribal courts has depended, absent a governing Act of Congress, on "whether the state action infringed on the right of reservation Indians to make their own laws and be ruled by them");

(2) *Montana* v. *United States*, 450 U.S. 544 (1981) (Indian tribes do not have jurisdiction over on-reservation activities of non-Indians on "fee" lands owned by non-Indians, unless (1) non-Indian has entered into "consensual relationships with the tribe or its members" or (2) activity "threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of

the tribe");

(3) *Nevada* v. *Hicks*, 533 U.S. 353 (2001) (Tribal Court does not have jurisdiction in a civil rights lawsuit brought by a Tribal member against two state law enforcement officers who conducted a search on plaintiff's trust property on-reservation, with an analysis suggesting that Montana's general rule preempting tribal civil jurisdiction over non-members applies throughout Indian Country, with land status used as a factor in determining whether one of the Montana exceptions has been met).

A report of the Executive Committee for Indian Country Law Enforcement Improvements of the United States Department of Justice submitted in October 1997 concluded that one of the major problems of law enforcement in Indian Country is the poor coordination between law enforcement bodies caused by the fragmentation of the criminal justice system.

(F)unding limitations often restrict Tribes from establishing and operating Tribal Courts. Those Tribes that do have the funding to operate a court system still may not have the resources to have a court with general subject matter jurisdiction. Many Tribal Courts are courts of limited jurisdiction and one needs to examine the Tribal Code for a particular Tribe to determine whether the Tribe itself has granted its court jurisdiction over a particular subject matter (such as domestic violence, or criminal activity).

....

Indian country jurisdiction turns on a complex calculus of determining the identity of the victim (Indian or non-Indian), the identity of the alleged perpetrator (Indian or non-Indian), and the nature of the crime (i. e., its seriousness). Due to the jurisdictional complexity of the

matter, each incident of violence against women occurring in Indian country involves a cumbersome procedure to establish who has jurisdiction over the case according to the nature of the offense committed, the identity of the attacker, the identity of the victim and the exact legal status of the land where the crime took place.

Regardless of who possesses actual jurisdiction, however, tribes repeatedly report difficulty getting federal or state prosecutors to act on the crimes in Indian Country over which they possess jurisdiction. See Allison M. Dissias, 55 U. Pitt. L. Rev. 1, 38-43 (1993). The result has been many instances of lawless behavior, with the tribal police and prosecutors unable to directly prosecute offenders and unable to obtain enforcement from those with authority. These problems are particularly acute in domestic violence situations which often involve both an Indian and a non-Indian.

*Cases Initiated in Tribal Court—Due Process and Enforcement*

Many tribes have developed and enforce domestic violence codes, particularly since the enactment of VAWA and with the funds provided by the Act. However, as noted previously, you must look to each Tribe's Constitution and Code to determine whether the Tribe has granted jurisdiction to its Tribal Court to hear such matters.

Tribal Courts have criminal jurisdiction over Indians (whether members or non-members of the Tribe) and can criminally prosecute and punish batterers under the Tribe's criminal code. ....(H)owever, the Tribe's authority to issue penalties is capped at $5000 and/or one year's incarceration. This criminal prosecution authority is—at least in Public Law 280 States—concurrent with the State. In other words, both the State and the Tribe can

prosecute a batterer for the same activity, since there is no double jeopardy. Thus, where the batterer (the defendant) is an Indian, the Tribal Court has the full range of jurisdictional authority to prosecute and enforce (with limits on the penalty).

Where the batterer is a non-Indian, the Tribal Court does not have criminal jurisdiction but still has criminal jurisdiction if the defendant resides in Indian country. Even if the non-Indian defendant lives on non-Indian fee land, if he is in a consensual relationship with a member of the Tribe, under the *Montana* v. *United States* test, the Tribal Court would have civil jurisdiction.

The Tribal Court can exercise its civil jurisdiction by issuing (temporary restraining orders), injunctions, or protective orders against the non-Indian defendant. However, enforcement of those orders is limited to "civil contempt" (since the Tribal Court lacks criminal jurisdiction). The Court can assess fines and issue exclusion orders. The plaintiff in such cases, under the VAWA full faith and credit clause, could also seek to have a protective order enforced in State court which would have "criminal contempt" sanctions available. In more and more instances, tribes and states are working out cross-deputization agreements among their respective law enforcement departments, which would enable Tribal police on-reservation to enforce a state criminal contempt order by arresting and transporting a non-Indian to a state facility for incarceration.

State and local courts have been slow to recognize protective orders issued by Tribal Courts, since there is a lack of familiarity with such courts and a lack of understanding of their jurisdiction and authority. This situation has been improving over time.

Recognition of a Tribal Court order under the

VAWA full faith and credit provisions requires that the Tribal Court provide "due process" to the defendant. While Indian tribes are not subject to the United States Constitution Bill of Rights provisions, see *Talton* v. *Mayes*, 163 U. S. 376 (1896), Congress enacted the Indian Civil Rights Act in 1968, which requires, among other things, that Indian tribes provide essentially the same protections found in the Bill of Rights. 25 U.S.C. Section 1302. More over, "the privilege of the writ of habeas corpus shall be available to any person, in a court of the United States, to test the legality of his detention by order of an Indian tribe." 25 U.S.C. Section 1303.

Recognition and enforcement of Tribal Court protective orders in State courts thus should not present any legal problems, as the requisite components for due process are in place in Tribal Courts, and the mechanism for full enforcement should be available in the non-Indian forums. Unfortunately, despite the mandate of federal law, a number of State courts throughout the country simply refuse to enforce Tribal Court orders. See Stacy L. Leeds, 76 N. D. L. Rev. 311, 347-62 (2000).

*Cases Initiated in State Court—Enforcement in Tribal Courts*

Under VAWA, Tribal Courts must give full faith and credit to protective orders issued by State courts. The Tribe as enforcing jurisdiction cannot refuse to enforce on the grounds that its own laws would not have allowed the petitioner to obtain the order or that its own laws do not provide for a certain type of provision present in the protection order. In other words, the Tribe (as with any other enforcing jurisdiction) cannot refuse to act because the protection order is invalid under its own law. The only question that the Tribal Court can ask is whether the issuing court possessed the jurisdiction to issue the order

and provided respondent with the necessary due process.

VAWA does not, however, excuse the enforcing jurisdiction from standard jurisdictional requirements. In other words, the Tribe must possess jurisdiction over an alleged violator before the Tribal Court can punish a violation of a foreign protection order. ....VAWA expressly recognizes and authorizes Tribal Courts to exercise their civil contempt and exclusion jurisdiction to enforce such orders. It is far from clear whether VAWA expands Tribal Court authority beyond the limitations and complexities spelled out by the United States Supreme Court over the years.

If VAWA does not expand Tribal Court jurisdiction, despite VAWA's full faith and credit aspirations, there are still significant limitations in a Tribal Court's ability to enforce such orders, particularly where there is a non-Indian involved.

. . . .

Once an alleged violator has been brought before a Tribal Court, the first step the Court must take is to determine whether it has jurisdiction over the person alleged to have violated the protective order. It must consider the questions set out by the Supreme Court's complicated analysis, for example: Is the offender Indian or non-Indian? If the offender is non-Indian, where did the alleged violation take place (trust or fee land)? Did the offender enter into a consensual relationship with the Tribe or a Tribal member?

. . . .

In the 2000 VAWA amendments, Congress explicitly stated that once the Tribal Court determines that

it has jurisdiction it may exercise the full range of civil penalties, including civil contempt powers, exclusion from tribal lands, and other civil penalties authorized by the tribe. This power exists regardless of the identity of the offender as a member or non-member.

A significant question is whether the Tribal Court can order incarceration of a non-Indian offender under its civil contempt powers. Generally speaking, civil contempt sanctions include both fines and imprisonment (although imprisonment is less common for civil contempt than for criminal contempt).

A tribe that chooses to impose imprisonment upon a non-Indian for civil contempt may run the risk of having that action overturned by the federal courts under the habeas corpus provision of the Indian Civil Rights Act. While the Supreme Court has expressed great reservations at the prospect of tribes putting non-Indians in jail, it is also true that incarceration is an accepted penalty in State courts for civil contempt.

These complicated issues have yet to be judicially resolved, and until they are the ambiguity will limit the effectiveness of VAWA in Indian Country. . . . Moreover, due to a lack of resources, not all Tribes have Tribal Courts, and those that do may not have granted the Tribal Court jurisdiction to hear and/or enforce such orders.


*Celebrating the courts in an inclusive society*

COMMENTARY

# TRIBAL SOVEREIGNTY, TRIBAL COURTS AND FULL FAITH AND CREDIT

# TRIBAL SOVEREIGNTY, TRIBAL COURTS AND FULL FAITH AND CREDIT

In his article, Robert O. Saunooke, after discussing at length the fact of sovereign tribal governments within the North American continent, raises the subject "Limitations on Actions Against Tribal Government, or What Price Sovereignty?" He states (at p. 20):

> Many are unaware that the United States Constitution does not apply to members of federally recognized tribes residing within their reservations. The basic provisions contained in the Bill of Rights have little, if any, application in Indian Country. The U.S. Supreme Court has long made clear that although Indian tribes were subject to the dominant plenary power of Congress and the general provisions of the Constitution, tribes were nonetheless not bound by the guarantee of individual rights found in the Fifth Amendment. This dubious principle began in 1896 with *Talton* v. *Mayes,* 163 U.S. 376 (1896). Subsequent Supreme Court decisions have affirmed: (a) that tribes are not acting as arms of the federal government when they punish tribal members for criminal acts, and (b) Indian tribes are exempt from the requirement that they extend many of the constitutional protections governing the action of state and federal governments.

After an extensive discussion on the need for increased responsibility by the Federal government towards tribal courts in Indian Country, Saunooke stated (at p.22):

> Since *Martinez (Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978))* it has been clear that, absent

> consultation with Indian tribes prior to enacting congressional legislation, the ability of courts, members of tribes, or any other party to take any action against a tribe for abuses of basic human rights or to hope for access to any system of justice in Indian Country will fail. The idea of "sovereignty" in Indian Country has prevented, or better yet impeded, congressional attempt to set out basic provisions of law that would clarify much of the confusion and foster further development of dispute resolution within Indian Country.
>
> It is clear that justice for all tribal members will require an act of Congress that clarifies the Indian Civil Rights Act (IRCA) and its progeny. Additionally, Congress needs to once and for all take steps to overrule the Court's holding in *Oliphant* and to increase the current sentencing constraints that tribes may impose on persons who commit violent acts in Indian Country. Who is better suited to provide for their needs, investigate crimes occurring within their boundaries, and punish the perpetrators than the tribes themselves?

After expressing the need for appointing Native American judges to the Federal bench, Saunooke addressed the need for education (at pp. 22-23):

> Education of attorneys and judges as to the unique and diverse status of Native Americans in criminal and civil matters would further increase awareness and confidence in the judicial process. Although almost every state in the union has a connection to a tribe and its members, only two states pose any questions on their bar exam regarding Native American issues. Few law schools offer classes regarding Native American legal process or legal history. Those who do are usually focused on legislative policy

making or representation of Indian tribes and not on individual members.

The result of this lack of knowledge is that Native American issues fall through the cracks. Additionally, attorneys handling cases involving Native Americans miss unique legal issues and nuances of law that could strengthen their cases in important ways.

Education in the culturally sensitive areas of particular tribes is also a necessary component of law enforcement's ability to carry out its obligations and duties. Too often stories are told of the insensitivity and lack of understanding by federal and state investigators when investigating crimes occurring in Indian country.

"Indian Country" is a term applied informally to all Indian reservations. It is a phrase which connotes tribal lands, culture, traditions, practices, concepts, ideas, and peoples (See Saunooke at p. 16).

Writing in the *Domestic Violence Manual for Judges* (2006), Washington State Administrative Office of the Courts, former Chief Judge Randy A. Doucet, Lummi Nation Tribal Court, in chapter 14, provides significant instruction concerning Native American communities and tribal courts in Washington State which we liberally recite in this article (footnotes omitted):

*Native Americans in Washington State*

There are twenty-nine (29) federally recognized Indian tribes located in Washington. Each tribe is a sovereign entity with a governing body that is responsible for the administration of justice, promulgation of laws and

law enforcement for the tribe. The twenty-nine tribal communities vary in geographic size, economic resources, customs and traditions, population, and natural resources.

Indian tribes are defined by 25 U.S.C. Sec. 1301, as any tribe, band, or other group of Indians subject to the jurisdiction of the United States and recognized as possessing powers of self-government. Powers of self-government include executive, legislative, and judicial functions.

In 2000, the U.S. Census Bureau counted over half of Native Americans and Alaska Natives as living in 10 states. Washington State ranked seventh with a population of 93,300 Native Americans and Alaska Natives. In 2000, the U.S. Census Bureau reported 2,475,956 Native Americans and Alaska Natives residing in the United States.

### *Tribal Governments*

Generally, modern tribal governments are structured in such a way that the voting membership of each tribe, known as the general council, elects a tribal council that then represents the interests of the general council. The tribal council elects from its membership an executive committee, which usually consists of a chairperson, vice-chairperson, secretary and treasurer. The executive committee has the power to act on behalf of the tribal council in certain matters and possesses important appointive powers.

An example of a tribe that has combined traditional and modern organizational practices in governing is the Yakama Nation located in Toppenish, Washington. The

Yakama government is divided into three levels, each with its own functions. The tribal council establishes policy and preserves treaty rights. The administrative level supervises the administration and planning of the government. The operations level directs programs designed to meet the needs of the community. Finally, the general council oversees the entire government structure through regular meetings.

*Tribal Law*

Tribal governments have the authority to adopt laws to govern activity within the jurisdiction of the tribe. This authority includes establishing legal structures and judicial forums for administration of justice. Tribes exercise personal jurisdiction over member and non-member Indians. Tribes may exercise subject matter jurisdiction over areas such as criminal, juvenile, and civil actions.

It is not uncommon for tribes to adopt legal codes from other tribes and jurisdictions. Some tribes hire legal professionals as code writers to assist in drafting codes that better suit the particular needs and circumstances of each tribal community. Each tribe may have different areas of law over which it exercises jurisdiction. However, most tribes have adopted codes for criminal and civil procedure, natural resources protection, juvenile delinquency and dependency actions, and domestic relations. Some tribes may allow for the use of federal law, state law, or common law when there are gaps in their own tribal codes. In complex cases, some tribal courts may allow parties to stipulate to the use of state or federal rules of evidence or civil procedure.

Usually, tribal criminal laws are similar to criminal

laws adopted by the state, although there may be differences in the penalties due to the limitations placed on tribes by the Indian Civil Rights Act. In criminal matters tribes tend to place an emphasis on rehabilitation over punishment. Tribal court procedures tend to be streamlined to provide easy access to justice for *pro se* litigants. Finally, parties are encouraged to resolve civil disputes in a non-adversarial manner whenever possible.

The majority of tribes have constitutions, which establishes the basic framework of the tribal government. In some instances, the constitutions contain the provisions for membership in the tribe. Generally, the Indian Civil Rights Act provides civil rights, which is sometimes incorporated into tribal constitutions. The Confederated Tribes of the Colville Reservation located in Nespelem, Washington have their own civil rights code.

### *Tribal Courts*

Twenty-five of the twenty-nine tribes have established tribal court systems. Tribal judges are generally appointed to serve a specific term, although some tribes elect tribal judges. Although most tribal judges are attorneys, some tribes allow for non-lawyers to serve as judges. There are tribal judges who speak both their tribal language and English. Not all tribes require tribal judges to be members of the tribe, although there is a preference to have tribal members or Native Americans from other tribes serve as judges.

Appeals from tribal trial courts are brought before each tribe's own appellate court. Some tribes have standing appellate courts, while others convene appellate courts as necessary. Appellate panels might be made up

of appointed appellate judges, or tribal judges from other tribes, or in some cases tribes may appoint attorneys familiar with Indian law to serve as appellate judges.

For criminal matters, most tribes employ both prosecutors and public defenders. However, smaller court systems may have neither, because of insufficient funding. Legal representation may be provided by attorneys licensed in Washington, or persons familiar with the laws, customs, and traditions of the tribe.

Tribal courts use court procedures similar to those found in state and federal courts. Tribal courts do have limitations on their authority over certain acts and persons based on United States Supreme Court decisions and by federal law. Tribal courts do handle a variety of cases ranging from civil infractions, domestic relations, natural resource violations, dependency and juvenile delinquency actions, criminal, and general civil litigation. There is not a separation between levels of tribal courts as found in the state judicial system, such as the district and superior courts. However, some tribes have established separate juvenile and administrative courts.

Few tribes have their own jails or juvenile detention facilities. Therefore, many tribes contract to use local county jail facilities, or they contract with other tribes that have jail facilities.

In Chapter 13, Doucet discusses the Violence Against Women Act, 18 U.S.C. 2265, and the requirements for full faith and credit of specified tribal decisions and orders in domestic violence cases.

*Violence Against Women Act*

The Violence Against Women Act (VAWA) has encouraged cooperation between tribal and state law enforcement agencies and courts to improve criminal justice and community responses to domestic violence, dating violence, sexual assault, and stalking. VAWA was reauthorized and expanded in 2005.

VAWA, 18. U.S.C. 2265, directs that states, U.S. territories, and Indian tribes enforce valid civil and criminal protection orders issued by sister states, territories, and tribes as though they had been issued by the non-issuing, enforcing state or tribal court. VAWA does not require prior registration or pre-certification of an order of protection in an enforcing state in order to receive full faith and credit. The only requirement for interstate or inter-jurisdictional enforcement of a protection order is that the foreign order be valid as defined by VAWA.

The purpose and rationale is simple: Women who receive protection from any court, be it tribal or state, ought to be entitled to protection throughout the United States and Indian country. Whether a victim of domestic violence is crossing state or reservation lines for business, pleasure, or fleeing from her batterer, she is entitled to the protection afforded by the original state or tribal protective order.

VAWA did not provide for enforcement procedures. Establishing procedures for enforcement of foreign orders of protection has been left to the states and tribes. Since Section 2265 was enacted, a majority of states have addressed the issue of enforcement of out-of-state protection orders by amending their state domestic violence codes or statutes. Washington adopted such a statute in 1999.

*Foreign Protection Order of Full Faith and Credit Act*
*Washington State RCW 26.52*

Washington's Foreign Protection Order of Full Faith and Credit Act removes barriers faced by persons entitled to protection under foreign protection orders. The Act also provides for criminal prosecution of violators of foreign protection orders.

The Act provides that protection orders issued by tribal courts are to be given full faith and credit by Washington courts. The Act defines foreign protection orders as injunctions or other orders related to domestic or family violence, harassment, sexual abuse, or stalking for the purpose of preventing violent or threatening acts of harassment against another person issued by a court of another state, territory, or possession of the United States, Puerto Rico, or the District of Columbia, or any United States military tribunal, or a tribal court, in a civil or criminal action.

To be enforced, a foreign protection order must be valid. The Act prescribes that a foreign order is valid it if meets the following criteria:

- If the issuing court had jurisdiction over the parties and subject matter under the law of the state, territory, possession, tribe, or United States military tribunal.

- There is presumption in favor of validity where an order appears authentic on its face.

- A person under restraint must be given reasonable notice and the opportunity to be

> heard before the order of the foreign state, territory, possession, tribe, or United States military tribunal was issued; provided, in the case of ex parte orders, notice and opportunity to be heard was given as soon as possible after the order was issued, consistent with due process.

RCW 26.52.050 provides for peace officer immunity. A peace officer or a peace officer's legal advisor may not be held criminally or civilly liable for making an arrest under this chapter if the peace officer or the peace officer's legal advisor acted in good faith and without malice.

RCW 26.52.030 provides that out-of-state courts may send a facsimile or electronic transmission to the clerk of the court of Washington as long as it contains a facsimile or digital signature by any person authorized to make such transmission. Because some tribal courts are located at great distances from county superior courts, procedures for registration of foreign protection orders should include a provision for filing of a faxed copy or E-mail of the original protection order from tribal courts. These provisions will prevent delays due to transportation problems or inclement weather.

### *Washington's Civil Rule 82.5*

In 1990, the Washington State Forum to Seek Solutions to Jurisdictional Conflicts Between Tribal and State Courts recommended the adoption of Civil Rule 82.5. Retired Chief Justice Vernon R. Pearson, serving as a co-chairperson of the Forum, (along with Colville Tribal Court Judge Anita B. Dupris), submitted the proposed rule. In

1995, the Washington Supreme Court adopted the rule, with minor modifications, which provides for full faith and credit for tribal court orders and judgments.

Rule 82.5 provides that superior courts shall recognize, implement and enforce the orders, judgments, and decrees of Indian tribal courts in matters in which either the exclusive or concurrent jurisdiction has been granted or reserved to an Indian tribal court of a federally recognized tribe under the laws of the United States, unless the superior court finds that the tribal court that rendered the order, judgment, or decree: (a) lacked jurisdiction over a party or the subject matter, and (b) does not reciprocally provide for recognition and implementation of orders, judgments, and decrees of the superior court of Washington State.

### *Indian Civil Rights Act of 1968*

In 1968, Congress passed the Indian Civil Rights Act (ICRA). The ICRA provided for civil rights for all persons who are subject to the jurisdiction of tribal governments. The ICRA also placed limits on the maximum penalties that tribal courts could impose for each criminal offense. The maximum penalty for any one offense is limited to one (1) year in jail, and/or a fine of $5000.

### *Major Crimes Act*

The Major Crimes Act (18 U.S.C. Section 1153) provides that any Indian committing a felony against the person or property of another Indian or other person, namely, murder, manslaughter, kidnapping, maiming, a felony under Chapter 109A, incest, assault with intent to

commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury (as defined in Section 1365 of Title 18), assault against an individual who has not attained the age of 16 years, arson, burglary, robbery, and a felony under Section 661 of Title 18 within Indian country, shall be subject to the same law and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States. These crimes may be investigated by the FBI and referred to the U.S. Attorney's Office for prosecution in federal district court. Tribes may prosecute cases when the U.S. Attorney declines to prosecute, with the penalty limitations imposed by the ICRA.

### *Non-Native Americans*

Tribes do not have general criminal jurisdiction over non-Native Americans. However, tribal police have been held to have authority to stop and detain non-Native American law violators within the boundaries of the reservation until state authorities arrive.

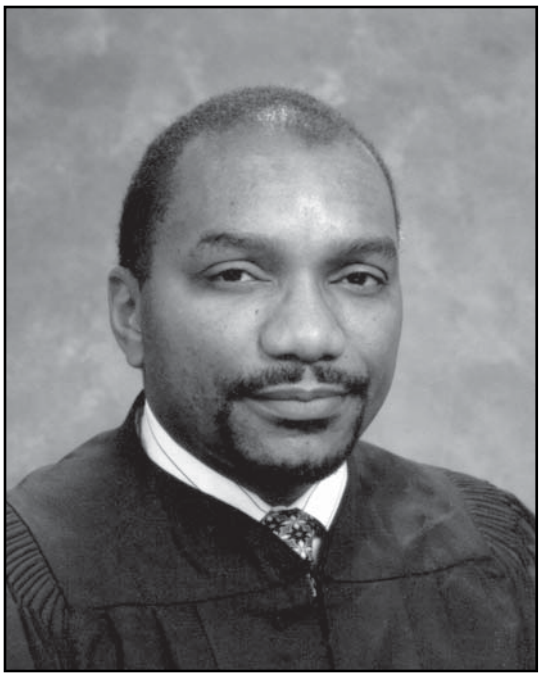
### *Tribal Exclusion*

Tribes have a unique remedy they may exercise against non-members of the tribe known as "exclusion". This remedy, often guaranteed by treaty, permits tribes to exclude unwanted persons from their reservations. The power of exclusion might be viewed as quasi-criminal, and can be exercised against non-Indians. Tribes do not have authority to exclude from their reservations federal officials engaged in carrying out their duties. Non-members may be excluded from within the exterior boundaries of reservations for violating tribal law or for felony convictions in state or federal court. However, owners of non-trust land

may not be excluded from the land they own. Persons to be excluded are given notice and the opportunity for a hearing before the tribal court. The person to be excluded may appeal an unfavorable decision to the Tribal Court of Appeals. Those persons excluded who refuse to obey the order, may be referred to the United States Attorney.

# WASHINGTON STATE MINORITY AND JUSTICE COMMISSION SUB-COMMITTEE REPORTS

# EDUCATION SUB-COMMITTEE



*Judge LeRoy McCullough*
Sub-committee Chairperson

The Education Sub-Committee seeks to improve the administration of justice by eliminating racism and its effects through offer and support of a variety of innovative, high quality education programs designed to improve the cultural and professional competence of judges, court employees and other representatives of the Washington State justice system.

The Education Sub-committee revised and adopted its guiding principles on June 4, 2007:

- To provide and foster leadership for all components of the state justice system with the goal of eliminating racial, cultural, and ethnic bias and disparate treatment and fostering systemic change.

- To ensure that cultural diversity and cultural competency training becomes a normal and continuous aspect of employment or service within the state justice system.

- To increase cultural awareness, foster greater appreciation of racial and cultural diversity, and engender mutual respect in persons who deliver court services and represent our justice system.

- To provide and/or collaborate with others in recommending resources and education programs consistent with the mission of the Sub-committee.

- To be flexible and creative in developing high quality education programs tied to learning outcomes/ objectives.

The Education Sub-committee has regularly presented cultural diversity education programs at the Washington Judicial College for newly elected or appointed judicial officers and the annual Fall Judicial Conference. In addition, the Education Sub-committee has accepted invitations to present sessions on cultural inclusiveness to the March and November Institute for New Court Employees and Bailiffs Conferences, Superior Court Judges' Association Conference, District and Municipal Court Management Association Conference, and Martin Luther King, Jr. County District Court Education Conference.

The Judicial College session, "Navigating the Minefield of Cultural Competence," was presented on January 31, 2007. Achievement Architects North was contracted. Ms. Benita R. Horn and Ms. Peggy Nagae, Retired Judge James M. Murphy and Judge Vicki J. Toyohara led the session. This session covered cultural diversity, issues pertaining to collateral consequences and foster care. Judges Murphy and Toyohara completed their assignment at the end of January 2008. Judges LeRoy McCullough and Gregory D. Sypolt have volunteered to become the new faculty for a three-year term, adhering to guidelines established by the Deans of the Judicial College to rotate faculty every three years.

The Institute for New Court Employees and Bailiffs session, "Cultural Competence and Inclusion in the Courts:

What You Can Do," was presented on March 13, 2007. PeggyNagae Consulting was contracted. Ms. Peggy Nagae facilitated the training session.

The Superior Court Judges' Association Conference (SCJA) session, "Disproportionality in Juvenile Justice," was held April 23, 2007. The session was co-sponsored with the SCJA Fairness and Equity Committee. Judge LeRoy McCullough facilitated the panel consisting of Bart Lubow, Annie Casey Foundation; Michael Harris, Director of the W. Hayward Burns Institute and the Community Justice Network for Youth; Judge Patricia Hall Clark, King County Superior Court; and Judge Thomas P. Larkin, Pierce County Superior Court.

The Fall Judicial Conference session, "Do We Know Our Arab, Muslim, and Sikh American Neighbors?", was presented on September 17, 2007. Judge Ronald E. Cox moderated presentations and panel consisting of Ibrahim Hamide, S. S. Krishna Singh Khalsa, and S. S. Sathanuman Singh Khalsa.

The Martin Luther King, Jr. County District Court Education Conference session, "Cross-Cultural Communication in the Courts Environment," was held September 18 and 19, 2007. Achievement Architects North was contracted. Ms. Benita R. Horn and Ms. Mary Bogan facilitated the session.

The Institute for New Court Employees and Bailiffs session, "Cultural Competency and Inclusion in the Courts" was presented on November 7, 2007. PeggyNagae Consulting was contracted. Ms. Peggy Nagae and Ms. Benita R. Horn co-facilitated the training session.

The District and Municipal Court Management Association session, "Improving Court Services to People Who Live in Poverty," was held March 19, 2008. Dr. Donna M.

Beegle was contracted. The session trained front line court staff on poverty consciousness and communication skills.

The Fall Judicial Conference session, "Cultural Competency: Ensuring Justice for Arab, Muslim, and Sikh Cultures", was presented on October 7, 2008. Judge Steven C. González moderated the presentations and panel consisting of Judge Carol Schapira, Hisham Farajallah, Ms. Pramila Jayapal, and Viriam Singh Khalsa. The session covered those topics that were broached at the 2007 Fall Judicial Conference regarding Arab, Islam, Muslim, and Sikh cultures and communities. Greater detail in addressing core religious and cultural beliefs that affect family law, collateral immigration issues, language access, marriage contracts, gender based discrimination, child custody, domestic violence, division of property, descent and distribution, criminal law, comparative judicial systems, and important religious and cultural holidays.

The Virtual Institute for New Court Employees (VINCE) is a website established for training court staff. The Minority and Justice Commission established an on-line course, "Cultivating Cultural Competency." The purpose of the course is to provide court staff the essential tools and skills to enhance their understanding of culture, cultural diversity and improve their cultural competence; to develop a judicial system that is inclusive, accessible, and respectful to court users and co-workers, and to increase the public's trust of the Washington Court system as a result of enhanced cultural competence of court staff.

The Annotated Bibliography Project established a website where literary resources with other details could be posted. It was created by the Minority and Justice Commission, with assistance of the University of Washington Law Library and Computing Services, the Law Librarianship Program at the University of Washington and an attorney

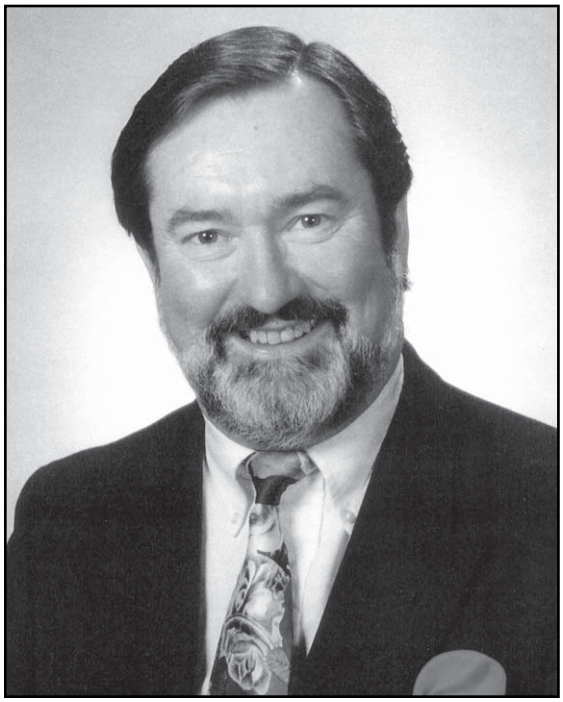
volunteer, to help judges enhance their knowledge of racial and ethnic cultures as they exercise judicial discretion and to promote cultural awareness among judges, court personnel, lawyers, and persons who work in the Washington Court system.

### *2008 Education Sub-committee*

LeRoy McCullough, Chairperson
Greg D. Sypolt, Vice Chairperson
Ann E. Benson
Ronald E. Cox[1]
Jeff E. Hall
Donald J. Horowitz
Richard A. Jones
Ron A. Mamiya[1]
Denise C. Marti
Richard F. McDermott, Jr.
P. Diane Schneider
N. A. "Butch" Stussy
Vicki J. Toyohara

[1] Term ended 2007

# EVALUATION AND IMPLEMENTATION SUB-COMMITTEE



*Judge James M. Murphy (Retired)*
Sub-committee Chairperson

The Evaluation and Implementation Sub-Committee reviews Commission-sponsored research reports and develops action plans to report findings. In the absence of Commission-sponsored research reports, the sub-committee provides assistance to other sub-committees, as requested, reviews justice related rules and processes and recommends implementation of changes that will reduce or prevent the effects of racial and ethnic bias in the administration of justice.

The Evaluation and Implementation Sub-committee revised and adopted its long range goal on June 25, 2007:

- Develop partnerships with legal organizations with similar interests so that we may collaborate on projects or generate ideas for future projects.

During 2007 and 2008, the Evaluation and Implementation Sub-committee completed a Judicial Demographic Study Project and continues to obtain

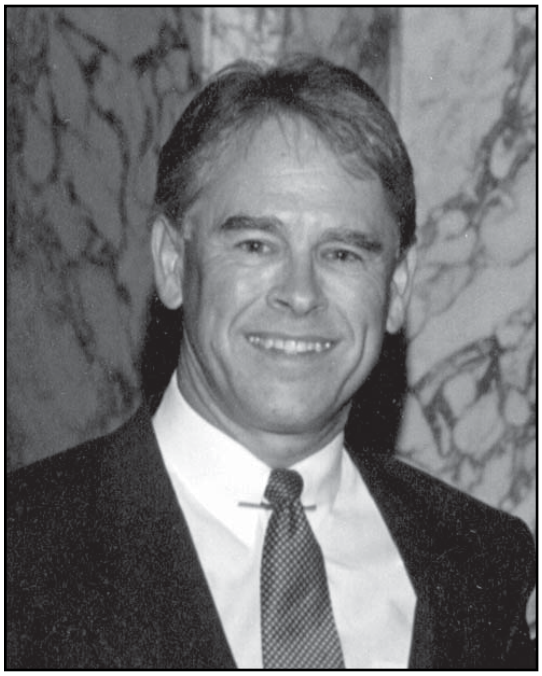
information identifying issues relating to persons of color in the judicial system and relevant subjects in order to generate future research projects. Some of the topics discussed were: racial disparity in truancy contempt cases; Offender Accountability Act related to Legal Financial Obligation impact; the right to counsel in prison administrative hearings; and racial disparity of third degree misdemeanor Driving While License Suspended or Revoked (DWLS/R) cases.

The Judicial Demographic Study Project collected demographic data on the trial courts (Superior, District, and Municipal) relating to race and ethnicity of persons of color in Washington Courts. Judge James M. Murphy coordinated with Justice Charles Z. Smith in assembling data and creating documents identifying persons of color in trial and appellate courts in Washington, both past and current. One of our reports was shared with the American Bar Association for its demographic study.

*2008 Evaluation and Implementation Sub-committee*

James M. Murphy, Chairperson
Bryan L. Adamson
Deborah D. Fleck
Robert C. Boruchowitz
Jeffrey C. Sullivan

# OUTREACH SUB-COMMITTEE



*Judge Dennis D. Yule (Retired)*
Sub-committee Chairperson

The Outreach Sub-committee facilitates communication between the Minority and Justice Commission and the public and, specifically, the legal and court communities of Washington State, concerning interaction with and participation in the justice system by minorities or persons of color.

The Outreach Sub-committee revised and adopted its long range goal on August 3, 2007:

- Publish two newsletters per year: Spring and Fall issues.
- Conduct at least two outreach activities per year in connection with bar associations, minority communities and ethnic commissions to learn/share/gauge emerging issues impacting people of color as it relates to the justice system.

The Outreach Sub-committee completed four newsletters and co-sponsored two Youth and Justice Forums in the Tri-Cities.

*The Equal Justice Newsletter*

Over the past several years much of the work of the Outreach Sub-committee has focused upon production,

publication and distribution of the Commission's newsletter, *Equal Justice*. The purpose of the newsletter is to expand awareness and encourage greater understanding of issues relating to diversity and elimination of bias in our State's justice system. The Sub-committee for the 2009 year will change its format to a more contemporary design to be distributed exclusively on-line to conform with environmental and economic concerns. It was also decided that the content of the newsletter will more reflect the collective endeavors of organizations and agencies in the judicial community toward issues impacting people of color. Issues of the newsletter are available on the Commission's website at: http://www.courts.wa.gov, under Boards and Commissions, then under the Minority and Justice Commission.

The May 2007 issue of *Equal Justice* addressed issues involving people of color and their families in the courts. The issue contained these articles: "Addressing the Best Interests of Immigrant Children: Focus on Special Immigrant Juvenile Status" by Ms. Ann E. Benson and Ms. Diana E. Moller; "Disproportionality in Child Welfare Systems" by Judge Patricia Hall Clark; "Battered Immigrant Women in Family Law Proceedings" by Ms. Leticia Camacho; Guardianship and the Need for Culturally Competent Certified Professional Guardians" by Judge Kimberley D. Prochnau and Ms. Karen A. Clark.

The November 2007 issue of *Equal Justice* addressed issues facing Arab, Muslim, and Sikh cultures in the courts. The newsletter contained these articles: "From Over Your Neighbor's Fence" by Ibrahim Hamide; "Court Policies and Procedures Involving Culture and Religion" by Ms. Reiko Callner; "A revised excerpt from "An Introduction to Muslim Women's Rights" by Dr. Azizah Y. Al-Hibri.

The June 2008 issue of *Equal Justice* addressed language access in the courts featuring these articles: "A Brief History of the Washington State Coalition for Language Access" by Ms. Gillian Dutton; "A Collaborative Approach to Language

Access: The Work of WASLA Summits" by Ms. Kristi Cruz; and "WASCLA Plans Launch of Statewide Interpreter and Translator Directory" by Ms. Leticia Camacho.

*The Tri-Cities Youth and Justice Forum*

The Outreach Sub-committee continued to engage in other activities and programs, as well, in the discharge of its mission to promote and facilitate the Minority and Justice Commission's communication with the community by co-sponsoring the fifth and sixth annual Youth and Justice Forums held in the Tri-Cities. The purpose of the forums, which have attracted each year more than 150 middle and high school students, is to encourage students, particularly those from communities or demographic groups historically under-represented in the justice system workforce, to explore employment opportunities in the justice system, to build trust between students and local leaders, including law enforcement, and to enhance students' understanding of their rights and responsibilities as members of the community. One of the objectives of co-sponsoring this event is to develop and refine a format that can be utilized in other areas of the State to educate not only students but also members of the bench and bar about the diversification of the justice system workforce. The anecdotal comments were exceptionally positive from students, chaperones, and professional volunteers.

*2008 Outreach Sub-committee*

Dennis D. Yule, Chairperson
Myrna I. Contreras
Donald J. Horowitz
Eric A. Jones
Douglas W. Luna
Amalia C. Maestas
Rosa M. Melendez
Mary Alice Theiler[1]

[1] Term ended 2007

# RESEARCH SUB-COMMITTEE

*Judge Kenneth H. Kato (Retired)*
Sub-committee Chairperson

The Research Sub-committee designs, funds, and conducts research projects relating to problems experienced by racial and ethnic minorities in our justice system.

The Research Sub-committee's long range goal was adopted on August 13, 2003:

- Maintain and build relationships with university law schools and minority bar associations and gather ideas and subjects for empirical research.

- Continue to maintain a solid membership base and recruit professionals from the legal and academic community.

The Research Sub-committee in August 2008 accepted a report based upon an empirical study on "The Assessment and Consequences of Legal Financial Obligations in Washington State" conducted by Associate Professor Katherine A. Beckett, Ph. D., Assistant Professor Alexes M. Harris, Ph. D., and Research Assistant Ms. Heather Evans, University of

Washignton Department of Sociology. The Sub-committee is charged with commissioning research studies publishing reports, the publication layout, printing, and assessing further applications of Commission projects related studies.

The researchers in their report state:

> This study was commissioned by the Washington State Minority and Justice Commission and explores the nature and consequences of Legal Financial Obligations (LFOs) assessed by Washington State Superior Courts. LFOs include the fees, fines and restitution orders that may be assessed upon criminal conviction.
>
> Under Washington State law, 'Whenever a person is convicted in superior court, the court may order the payment of a legal financial obligation as part of the sentence.' The assessment of only one of these fees and fines—the $500 Victim Penalty Assessment—is mandatory for all felony convictions. Costs (fees) are to be assessed if the court determines that the defendant is or will be able to pay them, although the statute does not specify how the courts should assess defendants' present or future ability to pay. Fines may be imposed at the courts' discretion within certain guidelines.
>
> Under statute, courts also require those whose criminal offense had monetary consequences for victims to pay restitution to victims unless extraordinary circumstances exist. In short, although

particular fees and fines may be assessed only for specific types of cases, statutory law allows courts to exercise significant discretion when determining whether to assess most fees and fines.

Persons assessed LFOs for offenses committed after July 1, 2000 may remain under the court's jurisdiction 'until the (financial) obligation is completely satisfied, regardless of the statutory maximum for the crime.'

This report draws on a number of data sources to analyze patterns and variation in the assessment of LFOs across Washington State Superior Courts. It also explores the consequences of LFOs for those who possess them and for the re-entry process more generally. Finally, it considers whether assessment of LFOs promotes or hinders the achievement of a number of policy goals, including reimbursing victims, counties and the state for the costs associated with criminal conviction. It begins, however, with a brief discussion of the larger context in which this study is situated.

*2008 Research Sub-committee*

Kenneth H. Kato, Chairperson
Bryan L. Adamson
Donald J. Horowitz
Uriel Iñiguez
Vance W. Peterson
Ada Shen-Jaffe
Mary I. Yu

# WORKFORCE DIVERSITY SUB-COMMITTEE

*Judge Deborah D. Fleck*
Sub-committee Chairperson

The Workforce Diversity Sub-committee promotes equal employment opportunities and seeks to increase the number of racial and ethnic minorities employed at all levels of the judiciary.

The Workforce Diversity Sub-committee revised and adopted its long range goal on July 18, 2007:

- Promote the importance and benefits of a diverse workforce in the courts and in state administrative agencies.

- Ensure that workforce diversity is a continuous and regular part of court education.

- Develop resource materials that can be used to enhance diversity in the workforce of the courts and state administrative agencies.

- Increase racial and ethnic workforce diversity in the court system, including judicial and non-judicial leadership positions.

### *Keynote Speaker for the 50th Annual Fall Judicial Conference*

The Workforce Diversity Sub-committee sponsors a keynote speaker for the Fall Judicial Conference every other year. At the 50th Annual Fall Judicial Conference held on September 16, 2007 in Vancouver, Washington, the Sub-committee sponsored the Honorable Robert M. Bell, Chief Judge of the Maryland Court of Appeals, the highest court in that state, and who also served as President of the Conference of Chief Justices. Chief Judge Bell addressed judicial officers from all levels of the court on the theme, "Inclusiveness of the Judiciary."

### *Diversifying the Bench Guide*

The Washington State Bar Association Committee for Diversity, Minority Bar Associations, Seattle University School of Law and the University of Washington School of Law, with participation by our Workforce Diversity Sub-committee, are finalizing a guide tentatively titled, "Diversifying the Bench." Members of the Sub-committee and students from the Black Law Students Association and the Latino Law Students Association from Seattle University and the University of Washington Law Schools have committed their time and energy to developing a guide providing critical information to persons interested in becoming judges. The guide will include information concerning the election and appointment processes at all court levels, including court commissioners and administrative law judges. This guide is expected to be completed by the spring of 2009.

### *Resource Directory*

In 1997, a resource directory, containing contact information of government and community based organizations catering to the needs of ethnic minority communities, was published for use by the legal community. It was again updated and presented as an on-line search tool in 1999. Because of the increasing population and diversity of racial and ethnic communities, it was decided to publish a new edition of the resource directory. It is hoped that the legal community will utilize this reference source to overcome the underrepresentation and underutilization of persons of color in the workforce. The Workforce Diversity Sub-committee plans to publish a revised reference manual no later than spring 2009.

### *Building a Diverse Court: Recruitment and Retention Manual (Second Edition)*

The Workforce Diversity Sub-committee contracted with Ms. Sheryl J. Willert and Ms. Antoinette M. Davis to produce a recruitment and retention guidebook. The manual was titled "Building a Diverse Court: A Guide to Recruitment and Retention," and was published in September 2002. Because of its popularity and usefulness, an updated edition will be produced and published by the sub-committee sometime in spring 2009.

### *Externship Programs*

The Workforce Diversity Sub-committee has since its beginning supported and publicized the importance and

effectiveness of judicial officers mentoring law students through externship programs. The Sub-committee will continue to work with law schools in promoting externship programs by providing a connection through Commission activities and publications.

### *2008 Workforce Diversity Sub-committee*

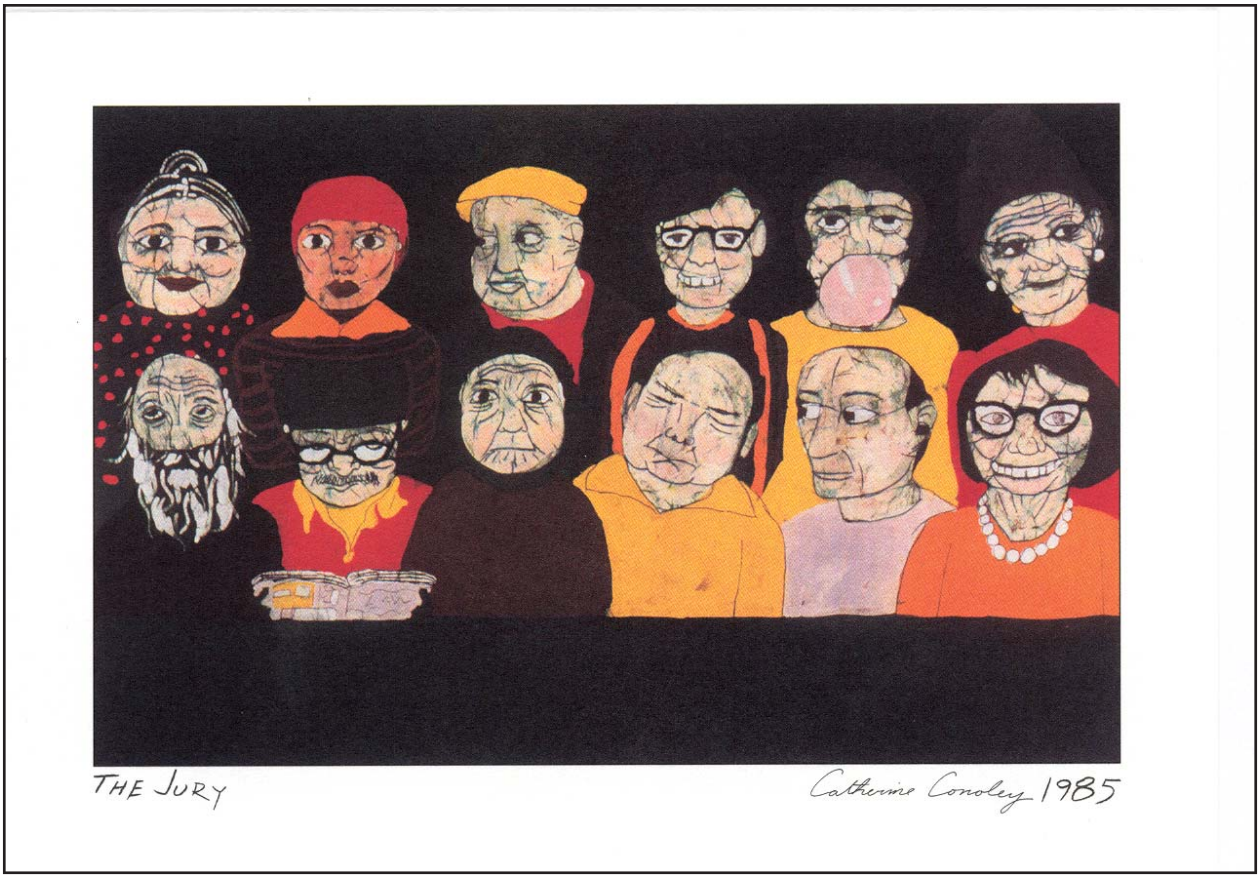
Deborah D. Fleck, Chairperson
Bonnie J. Glenn, Vice Chairperson
Alexander A. Baehr
Jeffrey A. Beaver
Patty A. Chester[1]
Uriel Iñiguez
Yemi Fleming Jackson
Sandra E. Madrid
James M. Murphy
Karen W. Murray
Carllene M. Placide
Nancy K. Scott
Sudha Shetty[1]
Jeffrey C. Sullivan
Brenda E. Williams

[1] Term ended 2007

# COMMISSION ARTWORK

## *"THE JURY"*

Catherine Conoley



## *"IN MY FATHER'S HOUSE THERE ARE MANY ROOMERS"*

Barbara Earl Thomas

*"EQUAL JUSTICE"*

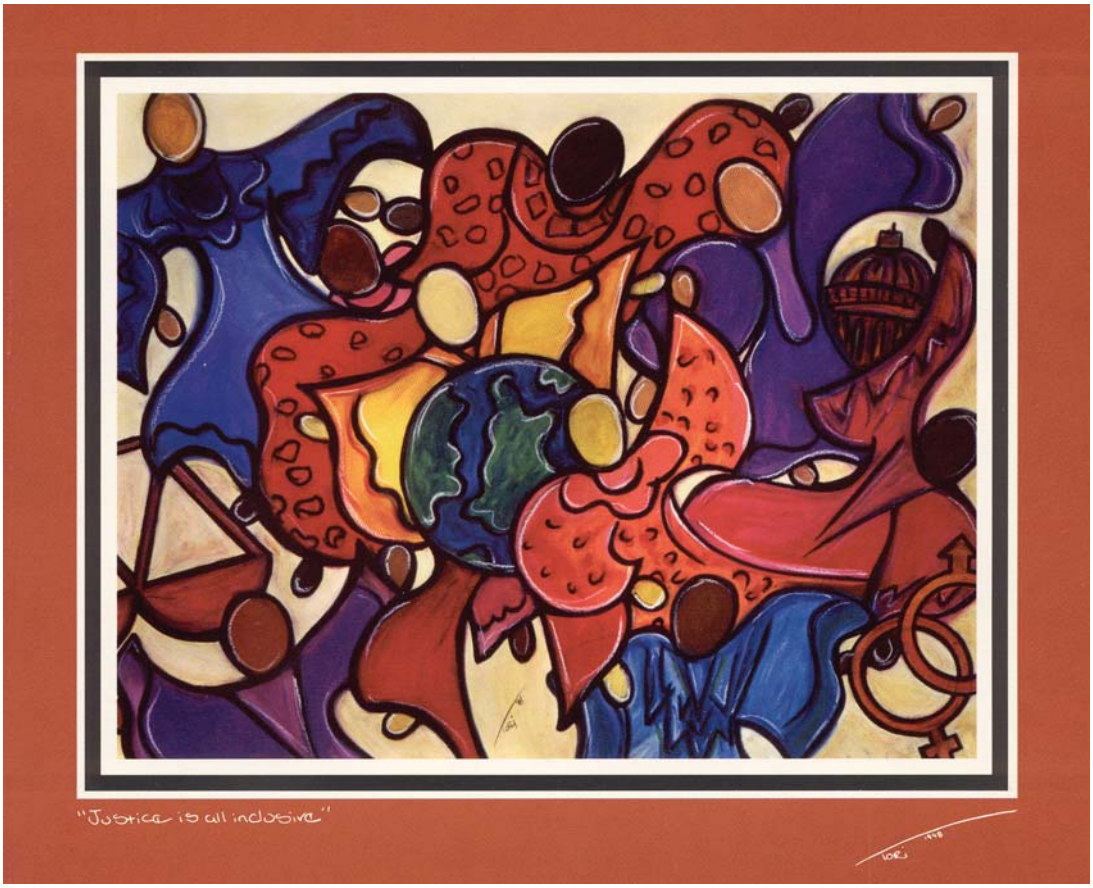
Sekio Matsumoto

## "JUSTICE AND WOMEN OF COLOR"

Nubia W. Owens

## *"JUSTICE IS ALL INCLUSIVE"*

Tori Cole



*"WE CREATE BALANCE"*

Michelle Kumata

## *"EQUAL JUSTICE FOR ALL PEOPLE"*

Edward Kiloh

## *"ASÍ LO SOÑÓ SANDINO"*

Alejandro Canales

*"THE MESSENGERS"*
Yadesa Bojia

*"I AM THE TRAIL OF MY ANCESTORS"*
Chholing Taha


*Celebrating the courts in an inclusive society*

# ORDER FORM

Date _____

## Video Tapes

*"Cultural Competency: Rising to the Challenge"*
Revised April 2000, DVD (2005) _____ @ $5.00 each $ _____

"

## Note-cards (with envelopes)

| | | |
|---|---|---|
| *"I am the Trail of My Ancestors"* | _____ @ $2.00 (set of 3) | $ _____ |
| *"The Messengers"* | _____ @ $2.00 (set of 3) | $ _____ |
| *"In My Father's House..."* | _____ @ $2.00 (set of 3) | $ _____ |
| *"Así lo sonó Sandino"* | _____ @ $2.00 (set of 3) | $ _____ |
| *"Equal Justice for All People"* | _____ @ $2.00 (set of 3) | $ _____ |
| *"We create balance"* | _____ @ $2.00 (set of 3) | $ _____ |
| *"Justice is all inclusive"* | _____ @ $2.00 (set of 3) | $ _____ |
| *"Justice and Women of Color"* | _____ @ $2.00 (set of 3) | $ _____ |

## Posters

| | |
|---|---|
| *"I am the Trail of My Ancestors"* | _____ No Charge |
| *"The Messengers"* | _____ No Charge |
| *"In My Father's House..."* | _____ No Charge |
| *"Así lo sonó Sandino"* | _____ No Charge |
| *"Equal Justice for All People"* | _____ No Charge |
| *"We create balance"* | _____ No Charge |
| *"Justice is all inclusive"* | _____ No Charge |
| *"Justice and Women of Color"* | _____ No Charge |
| *"The Jury"* | _____ No Charge |
| *"Equal Justice"* | _____ No Charge |

## Annual Reports

| | |
|---|---|
| 2007-2008 Report | _____ No Charge |
| 2006 Annual Report | _____ No Charge |
| 2005 Annual Report | _____ No Charge |
| 2003-2004 Biennial Report | _____ No Charge |
| 2002 Annual Report | _____ No Charge |
| 2001 Annual Report | _____ No Charge |
| 1998 Annual Report[1] | _____ No Charge |
| 1995-96 Report[1] | _____ No Charge |
| 1994 Annual Report[1] | _____ No Charge |

## Transcripts

| | |
|---|---|
| Transcript from July 2004 Community Forum, Spokane[1] | _____ No Charge |
| Transcript from January 2004 Community Forum, Seattle[1] | _____ No Charge |
| Keynote Address by Justice Xavier Rodriguez<br>Fall 2002 Judicial Conference, Spokane[1] | _____ No Charge |

## Research Reports

| | |
|---|---|
| December 1999 *"The Impact of Race and Ethnicity on Charging and Sentencing Processes for Drug Offenders in Three Counties of Washington State* | _____ No Charge |

[1] Out of Print. Available digitally on our website: www.courts.wa.gov, under "Boards and Commissions"

July 1999 *"Racial and Ethnic Disparities in Sentencing Outcomes for Drug Offenders in Washington State: FY 1996-1999"* _____ No Charge

October 1997 *"A Study on Racial and Ethnic Disparities In Superior Court Bail and Pre-Trial Detention Practices in Washington"* _____ No Charge

November 1995 *"A Study on Racial and Ethnic Disparities in the Prosecution of Felony Cases in King County"*[1] _____ No Charge

November 1993 *"Racial/Ethnic Disparities and Exceptional Sentences in Washington State"*[1] _____ No Charge

December 1990 *"Washington State Minority and Justice Task Force Final Report"*[1] _____ *No Charge*

April 1988 *"Bar Membership Survey Data[1]"* _____ No Charge

Workforce Diversity Material

September 2002 *"Building a Diverse Court: A Guide to Recruitment and Retention"* _____ No Charge

May 1997 *"Workforce Diversity Resource Directory For Washington State Courts"*[1] _____ No Charge

Postage and Packaging Fees

Postage fee for reports and material, DVD, etc.

| | |
|---|---|
| 1-5 | $6.00 |
| 6-10 | $10.00 |
| 11-25 | $12.00 |
| 25+ | $15.00 |

Postage fee for posters and sets of note cards.

| | |
|---|---|
| 1-5 | $2.00 |
| 6-10 | $4.00 |
| 11-25 | $6.00 |
| 25+ | $9.00 |

Postage fee for reports and material, DVD, etc: $_____
Postage fee for posters and note cards: $_____
Total cost of DVD(s) or sets of note cards: $_____

TOTAL ENCLOSED: $_____

*Please ship to:*

*Name* _____
*Organization/Court* _____
*Address* _____
*City, State and Zip Code* _____

*Please make checks payable to "Minority and Justice Commission" and send to:*

*Washington State Minority and Justice Commission*
*Temple of Justice*
*Post Office Box 41174*
*Olympia, Washington 98504-1174*

*Contact Information:*

*Telephone: (360) 357-2109 Fax (360) 357-2111*
*E-Mail Address: Minority.Justice@courts.wa.gov*

*Downloadable Publications:*

*www.courts.wa.gov - under "Boards and Commissions"*

[1] Out of Print. Available digitally on our website: www.courts.wa.gov - under "Boards and Commissions"

# TECHNICAL SUPPORT MEMBERS
# 2007 - 2008

Bryan L. Adamson
Seattle University School of Law

Alexander A. Baehr
Attorney at Law

Ms. Ann E. Benson
Washington Defender Association

Ms. Patty A. Chester[1]
Stevens County Clerk

Judge Donald J. Horowitz (Retired)
Washington State Access to
Justice Board

Uriel Iñiguez
State of Washington Commission on
Hispanic Affairs

Ms. Yemi Fleming Jackson
Attorney at Law

Eric A. Jones
Attorney at Law

Judge Douglas W. Luna
Central Council Tlingit and
Haida Indian Tribes of Alaska

Ms. Amalia C. Maestas
Office of Legal Counsel
Muckleshoot Indian Tribe

Ms. Denise C. Marti
Attorney at Law

Judge Richard F. McDermott, Jr. [1]
King County Superior Court

Ms. Rosa M. Melendez
Community Relations Service
United States Department of Justice

Ms. Karen W. Murray
Attorney at Law

Ms. Carllene M. Placide
Attorney at Law

Ms. P. Diane Schneider
Community Relations Service
United States Department of Justice

Ms. Nancy K. Scott
Skagit County Clerk

Ms. Sudah Shetty[1]
Dorsey & Whitney LLP

Judge Vicki J. Toyohara
Office of Administrative Hearings
Employment Securities Subdivision

[1] Term ended 2007