

# WASHINGTON STATE MINORITY AND JUSTICE COMMISSION



ANNUAL REPORT 2001

# MINORITY AND JUSTICE COMMISSION MEMBERS

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Washington State Supreme Court

JUSTICE CHARLES W. JOHNSON  
Co-Chairperson  
Washington State Supreme Court

JUDGE WILLIAM W. BAKER  
Court of Appeals, Division I

JUDGE MONICA J. BENTON  
United States Magistrate

JUDGE RONALD E. COX  
Education Sub-Committee Chairperson  
Court of Appeals, Division I

JUDGE ANNE L. ELLINGTON  
Court of Appeals, Division I

JUDGE DEBORAH D. FLECK  
Workforce Diversity Sub-Committee Chairperson  
King County Superior Court

JUDGE KENNETH H. KATO  
Research Sub-Committee Chairperson  
Court of Appeals, Division III

JUDGE RICHARD A. JONES  
King County Superior Court

JUDGE RON A. MAMIYA  
Seattle Municipal Court

JUDGE RICARDO S. MARTINEZ  
United States Magistrate

JUDGE LEROY McCULLOUGH  
King County Superior Court

JUDGE JAMES M. MURPHY  
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MS. ERICA S. CHUNG  
Executive Director  
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# WASHINGTON STATE



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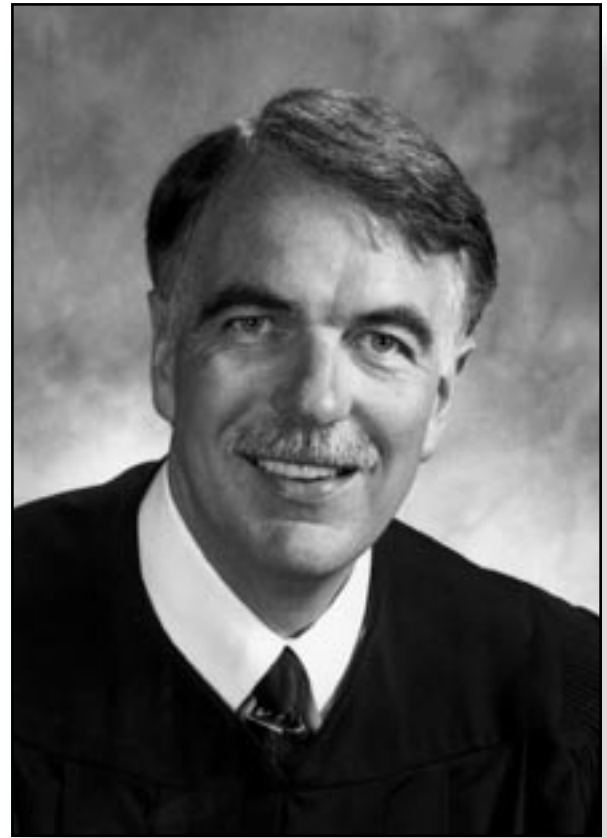
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**CHARLES Z. SMITH**  
Co-Chairperson  
Washington State Minority and  
Justice Commission  
  
Justice  
Washington State Supreme Court



**CHARLES W. JOHNSON**  
Co-Chairperson  
Washington State Minority and  
Justice Commission  
  
Justice  
Washington State Supreme Court

# ACKNOWLEDGEMENT

The Minority and Justice Commission sincerely thanks and acknowledges the following persons for their contribution, preparation, and layout of this report: Justice Charles Z. Smith, Justice Charles W. Johnson, Judge Ronald E. Cox, Judge Kenneth H. Kato, Judge James M. Murphy, Judge Deborah D. Fleck, Ms. Myrna I. Contreras, Ms. Mary Alice Theiler, Ms. Benita Horn, Ms. Peggy Nagae, Ms. Stella Agricola, Ms. Pam Miller, and Ms. Erica S. Chung.

The Commission is grateful to Justice Charles Z. Smith and Justice Charles W. Johnson, Commission Co-chairpersons, for their leadership, inspiration, and support in advancing the Commission and their commitment to eliminating racial, ethnic, and cultural bias in our state court system. We are also grateful to Minority and Justice Commission members and Technical Support members for their continued support and assistance in advancing the Commission's mission and goals.

A special appreciation is extended to justices of the Washington State Supreme Court for their continued support of the Commission and commitment to diversity by their Orders of Renewal, the Washington State Legislature for its continued support of important education programs, research activities, and other projects through budget allocations, and Ms. Mary Campbell McQueen, Administrator for the Courts, for her participation in and support of the Commission.



# DEDICATION



**CHARLES H. SHELDON, PH.D.**  
(1929-1999)

The Washington State Minority and Justice Commission dedicates this Annual Report to our distinguished friend Dr. Charles H. Sheldon, Professor Emeritus of Political Science, Washington State University, and former member of the Minority and Justice Commission. Born August 2, 1929 in Jerome, Idaho, he died in Pullman, Washington on September 8, 1999.

It is with great reverence and appreciation that we express our gratitude to Dr. Charles H. Sheldon for the inspiration he provided our Commission, the people of the State of Washington, and the countless students and scholars who benefited from his personal touch, his academic expertise, and his life of service.

From its initial creation as the Washington State Minority and Justice Task Force in 1987, the Minority and Justice Commission (created by the Supreme Court in 1990) had the active support, advice and participation of the distinguished political scientist, Dr. Charles H. Sheldon. He served as a member of the Commission until his resignation for health reasons.

With his background and established reputation as a political scientist, Dr. Sheldon provided strong guidance to the Task Force and the Commission in the development of our programs. He served as chairperson of our Research Subcommittee and helped us devise standards for selecting subjects and retaining social scientists to conduct empirical studies.

Since 1970 he was Professor of Political Science at Washington State University. He previously served on the faculties of the University of Oregon, Boise State University, University of Nevada (Las Vegas) and Southampton College (Long Island).

As department chairman at Washington State, Dr. Sheldon taught courses, directed graduate students, and conducted research in the field of public law. He was a nationally recognized scholar in the areas of judicial behavior and state judicial politics. In addition to his pioneering work on judicial selection, he was the foremost authority on the history of the Washington State judicial system. He authored or edited eleven books on these subjects. He authored significant scholarly treatises on the history of the Washington Supreme Court: *A Century of Judging* (1988) and *The Washington High Bench* (1992).

In 1988, Dr. Sheldon was named Washington State University Centennial Scholar. In 1994, the College of Liberal Arts named him the first Claudius O. and Mary W. Johnson Distinguished Professor of Political Science.

A nationally ranked master swimmer from 1975 to 1980, Dr. Sheldon's academic background included bachelor's and master's degrees from the University of Washington and a doctor of philosophy degree from the University of Oregon (1965) with an emphasis in public law.

Surviving Dr. Sheldon are his wife, Patricia; his children Lee Ann, Christopher, Ross and Thomas; and seven grandchildren.



# COVER PAINTING

## **“WE CREATE BALANCE”**

The cover painting, “We Create Balance,” is an original work by Michelle Kumata, a Seattle graphic artist, who was commissioned by the Washington State Minority and Justice Commission to create an appropriate expression of the overall purposes of the Commission with its emphasis on inclusiveness.

In commenting on her painting, Ms. Kumata stated “We, as a very diverse community, can all contribute to creating balance and equality in our courts and in our society.” She thus created a visually emphatic work of art which reflects this diversity and titled it “We Create Balance.”

A graphic artist at The Seattle Times for the past five years, Ms. Kumata further stated that, “in many ways, I try to give people of color a voice in my illustration.” She began her career with an illustration of Vincent Chin (an Asian American victim of a senseless killing in Detroit) for Seattle’s International Examiner. She remarked that “that first illustration helped me understand not only the role of community newspapers, but also my role as part of the ‘voice’ for the community. Through experiences like this, I’ve learned the importance of my own identity in my work.”

The artist, Michelle Kumata, was among The Seattle Times design staff members who received 16 awards, including five medals, in the Society of Newspaper Design (SND) 1998 competition sponsored by the National Press Photographers Association and the University of Missouri School of Journalism. The worldwide competition drew more than 13,000 entries. Ms. Kumata was cited for her work as infographic artist with fellow design staff members for “Affirmative Action,” a four-day series plus follow-up coverage, published in The Seattle Times.

# ESSENTIALS OF THE AMERICAN CONSTITUTION

As indication of the eminence of Dr. Charles H. Sheldon in the political science field, Westview Press, Boulder, Colorado, in 2001 posthumously published his final treatise, *Essentials of the American Constitution: The Supreme Court and the Fundamental Law*, which examines the five closely integrated components of fundamental law: the Compact, separation of powers, federalism, representation, and the Bill of Rights.

Associate Dean Elliot Slotnick, Graduate School of Ohio State University, wrote concerning the book:

“Charles Sheldon’s *Essentials of the American Constitution* offers a fitting legacy to its author’s career of teaching and scholarship. For not only does it inform its readers but it instructs them as well, while guiding us on a journey of self-exploration and self-discovery about the American Constitution’s past, present, and future. In explicating the Constitution as both instrument and symbol, Sheldon reveals a multifaceted, complex document that can serve, simultaneously, as our nation’s fundamental ‘religious’ text and, also, as our working blueprint for governance. Not content, like most analysts, to dissect the Constitution’s disparate parts in sterile isolation, Sheldon succeeds in portraying a holistic, integrated document whose many parts work together, not at cross-purposes, to weave a fabric that has sustained American democracy. This a book that has something important to say to all students of our constitutional system from the most senior scholars to those approaching the subject for the very first time.”

# INTRODUCTION

The 2001 Annual Report is a compilation of activities and events of the Minority and Justice Commission since publication of its last annual report in 1998. The Commission continues to play a pivotal role in educating our state on the dynamics of cultural diversity and the impact racial influences make on the criminal justice system.

The Commission accomplishes much of its work through its five Sub-committees: Education, Evaluation and Implementation, Outreach, Research, and Workforce Diversity. A report of each Sub-committee's activities begins on page 13. The Education Sub-committee, for instance, continues to develop acclaimed cultural diversity education programs. These education programs have been regular components of the Judicial College, an annual weeklong program for judicial officers. The Evaluation and Implementation Sub-committee has recently submitted to the Supreme Court Rules Committee its proposed changes to CrR 3.2, a superior court criminal rule concerning pretrial release determinations. The proposed court rule changes are the result of the findings from a 1997 Commission report by Dr. George S. Bridges on racial and ethnic disparities in superior court bail and pretrial detention practices. In 1999, the Research Sub-committee commissioned two research studies on racial and ethnic disparities in sentencing outcomes for drug offenders that analyzed the impact of race and ethnicity in sentencing severity and sentencing alternatives. The Workforce Diversity Sub-committee has also made a presence in judicial education by developing a series of successful programs on employee recruitment and retention.

In addition to these and other activities, the Minority and Justice Commission publishes Equal Justice, a quarterly newsletter devoted to Commission activities. First published in July 1995, the newsletter is distributed to members of the legal and general community. The Commission also maintains a first-rate internet website that can be found at <http://www.courts.wa.gov/mjc/home.cfm>.

This 2001 Report of the Washington State Minority and Justice Commission

# EXECUTIVE SUMMARY

The Washington State Minority and Justice Commission was created by the Washington State Supreme Court in 1990 as successor to the Washington State Minority and Justice Task Force created by the court in 1987 at the request of the Washington State Legislature. By order of the Supreme Court on December 2, 1999, the Commission was renewed for an additional period of five years until the year 2005. In creating the Commission and subsequent Orders of Renewal, the Supreme Court acknowledges there is a continuing need to identify and to eradicate all racial, ethnic, and cultural bias in our state court system.

The purpose of the Minority and Justice Commission is to determine whether racial and ethnic bias exists in the courts of the State of Washington. To the extent that it exists, the Commission is charged with taking creative steps to overcome it. To the extent that such bias does not exist, the Commission is charged with taking creative steps to prevent it.

The primary function of the Minority and Justice Commission in pursuit of its mandate is first, to eliminate racial and ethnic bias from the state court system through identification of problems and through implementation of recommendations ensuring fair and equal treatment in the courts for all parties, attorneys, court employees and other persons; second, to examine all levels of the state judicial system and promote judicial awareness of persons of color in order to achieve a better quality of justice and make recommendations for improvement to the extent needed; third, to engage in empirical research studies examining whether racial and ethnic disparities exist in the criminal justice system; fourth, to increase cultural awareness through development and presentation of cultural diversity education programs for judges and other court personnel; fifth, to increase racial and ethnic diversity in the court workforce through development and implementation of recruitment and workforce diversity education programs; and sixth, to prepare, publish, and distribute an annual report and quarterly newsletter, Equal Justice.

The Washington State Minority and Justice Commission is co-chaired by Justices Charles Z. Smith and Charles W. Johnson. The work of the Commission is carried out through its five Sub-committees:

**Education**, chaired by Judge Ronald E. Cox, Court of Appeals, Division I;

**Evaluation and Implementation**, chaired by Judge James M. Murphy, Spokane County Superior Court;

**Outreach**, chaired by Ms. Myrna I. Contreras, Attorney at Law, Contreras Law Offices;

**Research**, chaired by Judge Kenneth H. Kato, Court of Appeals, Division III

**Workforce Diversity**, chaired by Judge Deborah D. Fleck, King County Superior Court.

The Commission currently consists of twenty-one members appointed by the Supreme Court and thirty-six “technical support members” appointed by the Commission.

# SUPREME COURT OF WASHINGTON

)  
ORDER RENEWING WASHINGTON STATE )  
MINORITY AND JUSTICE COMMISSION )  
)

Number 25700 B-374

## PREAMBLE

1.0 Equal Justice Before the Courts The Washington State Supreme Court recognizes the need for all persons to be treated equally before the courts of this State. The Court recognizes that for any system of justice to be responsible, it must be examined continuously to ensure it is meeting the needs of all persons who constitute the diverse populations we serve, with particular concern for the needs of persons of color who represent various racial, ethnic, cultural and language groups.

2.0 Establishment of Minority and Justice Commission The Court on October 4, 1990 established the Washington State Minority and Justice Commission to identify problems and make recommendations to ensure fair and equal treatment in the state courts for all parties, attorneys, court employees and other persons. The Commission was created to examine all levels of the State judicial system to particularly ensure judicial awareness of persons of color to achieve a better quality of justice and to make recommendations for improvement to the extent it is needed.

3.0 Renewal of Minority and Justice Commission. The Minority and Justice Commission was established in 1990 for a period of five (5) years, subject to renewal for additional years as may be determined by the Court. It was renewed for an additional period of five (5) years by order of this Court on July 15, 1995. Upon review of the activities of the Commission since its creation, the Court now determines that the Commission should be renewed for an additional period of five (5) years, subject to further renewal as may be determined by this Court.

## ORDER

4.0 Order Renewing Minority and Justice Commission. By this order the Washington State Supreme Court now renews and continues the Washington State Minority and Justice Commission for an additional period of five (5) years, subject to further renewal for additional years as may be determined by this Court. The Commission shall continue its operation without interruption and shall proceed according to its established organization and program.

5.0 Membership of Commission. The Washington State Minority and Justice Commission shall continue with twenty-one (21) members and shall include an appropriate mix of judges at all levels of court, members of the Washington State Bar Association, the Administrator for the Courts, trial court administrators, college or university professors, and private citizens. Appointments to the Commission shall be made to assure racial, ethnic, gender, cultural and geographic diversity from the population of the State of Washington.

6.0 Terms of Appointment to Commission. All appointments to the Commission shall be for terms of four (4) years, staggered according to the tenure established under the October 4, 1990 Order, except that the chairperson or co-chairpersons may serve for an unlimited term at the pleasure of the Supreme Court. Vacancies on the Commission shall be filled by the Supreme Court upon recommendation of the Commission.

7.0 Technical Support Members. The chairperson or co-chairpersons may augment the Commission by appointing Technical Support members, to serve without vote, when broader representation or specific expertise is needed. The terms of Technical Support members shall be for one (1) year, renewable for additional periods of one (1) year at the pleasure of the chairperson or co-chairpersons.




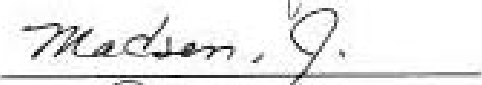

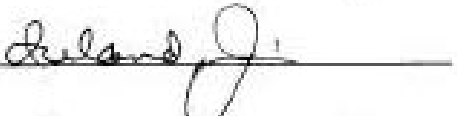
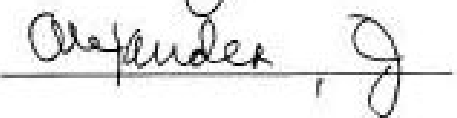
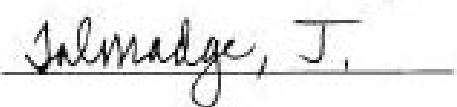
8.0 Budget of Commission The budget of the Commission shall be provided in the Budget of the Supreme Court or in the Budget of the Administrator for the Courts.

9.0 Administrator for the Courts. The Administrator for the Courts, with the advice of the Commission and subject to budget considerations, shall provide staff and other resources for ongoing activities of the Commission. But the Executive Director of the Commission shall be employed by, and be directly responsible to, the Commission acting through its chairperson or



10.0 Annual Report. The Commission shall prepare and file an annual report with the Governor, Legislature, Supreme Court and the Administrator for the Courts concerning its activities and shall recommend appropriate action for further promotion of equal justice for racial, ethnic, cultural and language minorities in the state judicial system. This shall include continuing education on cultural diversity for judges and other court personnel.

11.0 Authorization to Seek Funds. The Commission is authorized to seek funding from the private and public sectors and is authorized to receive funds in its own name.

# “EQUAL JUSTICE” LOGO

The cover of the 1994 Report of the Washington State Minority and Justice Commission contains in full color the “Equal Justice” logo created especially for the Commission by Sekio Matsumoto, a Seattle graphic artist. It shows peoples with raised arms symbolically represented as white, black, yellow and brown. The image is enhanced by the shading and gradation of color which represents a fusion into an indivisible whole—all the while maintaining individual identity. The words “Equal Justice” are repeated in English, Spanish, Japanese, Chinese, Korean and Vietnamese. In the center of the circle is the scales of justice.

The “Equal Justice” logo has become a universal symbol with a life of its own. Not only is it a standard symbol for our Commission, but it has been used in publications by the National Center for State Courts in Williamsburg, Virginia and by the National Consortium of Task Forces and Commissions on Racial and Ethnic Bias in the Courts.

The Minority and Justice Commission has published the “Equal Justice” logo in its original full color in a poster which is available for purchase (see page 60).

# MINORITY AND JUSTICE COMMISSION SUB-COMMITTEES

EDUCATION

EVALUATION AND IMPLEMENTATION

OUTREACH

RESEARCH

WORKFORCE DIVERSITY



# SUB-COMMITTEE REPORTS

The Washington State Minority and Justice Task Force, precursor to the Minority and Justice Commission, in its preliminary work discovered 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 illuminated the need for continuing objective research in the treatment of people 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 in 1989 recommended creation of the Washington State Minority and Justice Commission with a specific mandate. The Supreme Court issued orders creating the Commission and renewing it for future years. The Commission has established five Sub-committees to accomplish its mission:

- The Education Sub-committee focuses on development and implementation of cultural diversity educational seminars, panels, and workshops that imbue judges and court personnel with greater awareness and appreciation of cultural diversity.
- The Outreach Sub-committee has expanded its objectives to reach the general public, in addition to state, local and ethnic bar associations, in disseminating information about Commission activities and reports.
- The Research Sub-committee conducts research projects to examine whether race and ethnicity of participants in the justice system affects their treatment in the courts.
- The Workforce Diversity Sub-committee strives to promote diversity in the workforce and to increase the number of qualified persons of color in non-judicial and quasi-judicial positions within the Washington State court system.
- The Evaluation and Implementation Sub-committee reviews Commission-





RONALD E. COX  
Chairperson  
Education Sub-Committee

Judge  
Washington Court of Appeals  
Division I



LONNIE DAVIS



WILLIAM W. BAKER

The mission of the Education Sub-committee is to improve the administration of justice by developing and presenting educational programs designed to eliminate racial, ethnic, and cultural bias in the judicial system. This Sub-committee primarily focuses on promoting cultural awareness among those who administer justice in our judicial system and who deliver court services to the public.

The Education Sub-committee has the following goals:

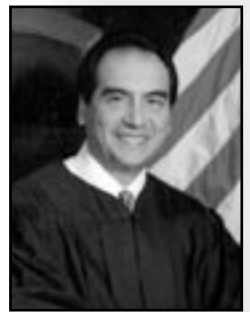
- To provide leadership to all components of the state justice system in order to eliminate racial, cultural, and ethnic bias and disparate treatment;
- To ensure that cultural diversity training becomes a normal and continuous aspect of employment within the state justice system;
- To provide cultural diversity training skills to those within the justice system; and
- To provide the best educational ser-



SERGIO ARMIJO



LORRAINE LEE



RICARDO S. MARTI-NEZ



ANNE L.  
ELLINGTON

The Education Sub-committee, in accordance with its mission and goals, has devoted significant effort towards developing and implementing Commission-sponsored cultural diversity education workshops. Since the last report, the Sub-committee has sponsored several cultural diversity workshops at conferences, at the Judicial College and at the Institute for New Court Employees and Bailiffs. The Judicial College and the Institute for New Employees and Bailiffs are annual instructional programs designed to inform newly appointed or elected judges and new court personnel at all levels concerning our judicial system. Thereby, cultural diversity education programs endow judges, court commissioners, administrators, clerks, and line staff with tools and strategies for increasing their cultural awareness to better serve the public and to work effectively with greater mutual respect for each other.

Since our last report, the Sub-committee has sponsored the following cultural diversity education workshops:

- Cultural Diversity Education Workshop, 1999 Judicial College, January 1999
- Diversity and Cultural Awareness, King County Court Clerks Conference, Des Moines, May 1999
- Bridging Cultural Differences for the Courts in an Inclusive Society, 1999 Institute for New Court Employees and Bailiffs, November 1999
- Diversity in the Courts, 2000 Judicial College, January 2000
- Cultural Diversity Education Workshop, 2000 Institute for New Court Employees and Bailiffs, March 2000
- Diversity in the Courts, 2001 Judicial College, January 2001



JAMES M.  
MURPHY



ADA KO



MARY CAMPBELL  
MCQUEEN



The Judicial College is an annual period of instruction that is designed to inform newly appointed or elected judges at all levels concerning our judicial system. The Education Sub-committee presented programs during the 1999 and 2000 sessions of the college. The agenda for the presentations included an introduction to the topics of cultural misunderstandings, active listening, and speaking skills. During a presentation at the 2000 Judicial College a video, titled Cultural Competency: Rising to the Challenge, was integrated into the program. A small representative of comments received on our presentation and video were: "The program was both enlightening and educational. Thank you!" "The presenters did an excellent job." "I found the information presented in this program to be substantive and informative. I would recommend it to my colleagues".



ANNE LEVINSON

In an effort to enhance cultural diversity education programs, the Sub-committee commissioned a survey of past participants in the educational programs of the Judicial College to assess its strengths and weaknesses. The results of that survey conducted by the Social and Economic Sciences Research Center at Washington State University will assist the Sub-committee in making enhancements to its educational programs, as needed. The Education Sub-committee plans to continue its presentations to the future annual Judicial Colleges, new court staff and others working in the judicial system.



RON A. MAMIYA

The Commission gratefully acknowledges the Board for Trial Education and its members for a grant of funds and for its extraordinary support for Commission-sponsored cultural awareness and conscious-raising workshops. In particular, we acknowledge the efforts of Ms. Mary Campbell McQueen, Administrator for the Courts.

The Commission also gratefully acknowledges the excellent work of Ms. Patricia Chandler and Ms. Doreen Mitchum in preparing the video titled Cultural Competency: Rising to the Challenge.



P. DIANE  
SCHNEIDER



MANUEL ROMERO



DENISE C. MARTI





JAMES M. MURPHY  
Chairperson  
Evaluation & Implementation  
Sub-committee  
  
Judge  
Spokane County Superior Court

The Evaluation and Implementation Sub-committee, in contrast to other Sub-committees, was created much later, in 1998. The genesis of its creation stems from the Commission members' desire to connect reports generated with a vehicle to implement recommendations put forth by Commission-sponsored reports, a vehicle for curing ills noted by the study.

One of the most common criticisms regarding government generated studies is that often reports or studies are the subject of reference in subsequent reports and infrequently result in substantive positive action. Therefore, Commission members desirous of producing reports with usefulness, created the Evaluation and Implementation Sub-committee to review and to implement recommendations from extremely illuminating reports that would benefit and enhance the State of Washington justice system in an attempt to make justice equal for all.



RONALD E. COX



DEBORAH D.  
FLECK

In October 1997, Dr. George S. Bridges, University of Washington, authored *A Study on Racial and Ethnic Disparities in Superior Court Bail and Pre-Trial Detention Practices in Washington*, a Minority and Justice Commission report. The report examined the effect of ethnicity on bail hearings in the King County Superior Court. The report discovered three important findings and made recommendations to remedy disparities:

First, substantial racial and ethnic disparities exist in pre-trial release and bail setting in felony cases in King County.

Second, the disparities occur primarily because minority defendants may be charged with more serious offenses, have more extensive criminal histories than white defendants, and may be less likely to have established ties to the local community in the form of steady employment, stable residential addresses and ready references.

Third, disparities also occur because race and ethnicity seem to matter in the disposition of criminal cases, above and beyond the influence of case-related characteristics.

The remedies must seek to alter policies and rules that militate against fairness in pre-trial release and bail outcomes... Equally important is how courts and court officials respond to the increasing cultural diversity among defendants in criminal cases. It must address fundamental problems of communication and language that continue to complicate assessments of defendants and their cases.



KENNETH H. KATO



LEANA D. LAMB

Based on report findings and recommendations, the Sub-committee commenced discussion with affected parties regarding revision of Washington State Superior Court Criminal Rule 3.2 dealing with pretrial release of those accused of the commission of crimes. Members recruited to undertake this project were prosecuting attorneys, public defenders, judges, and other members of the bar from King, Spokane, and Yakima Counties.

The proposed revisions to the Criminal Rule 3.2 preserves the intent and the spirit of the rule, which states that judicial officers shall essentially honor a presumption that one accused of a crime should be released pending further proceedings unless certain conditions exist that justify imposition of conditions of release, delay of release, or continued detention.

The proposed revision, which addressed and incorporated concerns of all committee members, was forwarded to the Washington State Supreme Court Rules Committee for action. Justice Charles W. Johnson, Chairperson of the Rules Committee, directed the proposed revision to Criminal Rule 3.2 to the Superior Court Criminal Law and Rules Committee for comment. Upon receipt of comments by the Superior Court Criminal Law and Rules Committee, the proposed revision was directed to the Board for Judicial Administration (BJA) for action.

Presently, the BJA is scheduling a conference among Superior and District Court Judicial Committees, the Minority and Justice Evaluation and Implementation Sub-committee, and the Board for Judicial Administration to resolve any issues necessary for further action by the Supreme Court Rules Committee.

Currently this project remains the major endeavor of the Evaluation and Implementation Sub-committee.



ROBERT C.  
BORUCHOWITZ



# OUTREACH SUB-COMMITTEE



MYRNA I. CONTRERAS  
Chairperson  
Outreach Sub-committee

Attorney at Law  
Contreras Law Offices

The primary mission of the Outreach Sub-committee is to facilitate communication between the Washington State Minority and Justice Commission and the legal community and the general public in order to share information, create awareness, and generate understanding of issues related to diversity. An integral aspect of our mission is the publication of the Minority and Justice Commission newsletter, Equal Justice.

Since our last Annual Report, the Outreach Sub-committee has produced and distributed four issues of Equal Justice, featuring the following themes:

- Justice and Women of Color, March 2000
- Tribal Courts and Our Citizens of Native American Heritage, August 1999
- Minority Bar Associations and Lawyers, April 1999
- The Japanese American Experience, January 1999

The Outreach Sub-committee endeavors to present themes that are timely, current, interesting, and, most importantly, informative.



M. KARLYNN HABERLY



DENNIS D. YULE



PHILIP J. THOMPSON



BRIAN A. TSUCHIDA

The newsletter's format has evolved with time; however, the goal of Equal Justice has remained constant to inform and educate readers concerning issues and people that are at the forefront of diversity within the justice system. A few of the issues highlighted in the past issues of Equal Justice were "Barriers Immigrant Women Face In The Justice System", "Tribal Traditional Law" in relations to the justice system, "Impact Of Incarceration On Children And Families" of Asian Americans, and "Trials And Triumph Of The Nikkei". Also, experiences of notable individuals featured were Justice James M. Dolliver (retired), Justice Charles Z. Smith, Ms. Sherri Lynn Jefferson, Judge Veronica Simmons McBeth, Louis Frederick Paul, Judge Ellen Kalama Clark, Judge Ida Leggett, Philip L. Burton, Ms. Mary Alice Theiler, Judge Gina Hale, Ms. Sheryl J. Willert, Henry Nguyen, and Carl Maxey.



RICHARD F.  
MCDERMOTT, JR.



DOUGLAS W. LUNA

Members of the Commission and the legal community write the articles featured in our newsletter. Readership has grown significantly.

Equal Justice newsletter is currently distributed to more than 1700 persons and organizations nationally and internationally. It is also one of the most frequently visited links within the Commission's web site, located at [www.courts.wa.gov/mjc/newslet.cfm](http://www.courts.wa.gov/mjc/newslet.cfm).

The Outreach Sub-committee continues its outreach efforts to the legal community and the general public. Currently, the main focus of the Sub-committee is publication of the Commission's Equal Justice newsletter. The next issue of Equal Justice, to be published in June 2001, features the theme Diversity in the Courts. The subsequent issue scheduled for November 2001 will feature Minority Specialty Bar Associations in the State of Washington, with issues and goals related to each ethnic population.



BARBARA J.  
SELBERG



MARY ALICE  
THEILER





KENNETH H. KATO  
Chairperson  
Research Sub-committee

Judge  
Washington Court of Appeals  
Division III

The Research Sub-committee commissioned two related research projects in 1999. Both were authored by Drs. Rodney L. Engen, Randy R. Gainey, and Sara Steen.

The first study, Racial and Ethnic Disparities in Sentencing Outcomes for Drug Offenders in Washington State: FY 1996-FY 1999, was based on data collected by the Sentencing Guidelines Commission. Using that information, the study analyzed the extent of racial and/or ethnic disparities in sentence severity, and in the use of sentence alternatives, for drug offenders in Washington between July 1995 and December 1998:

The study found that, on average, minority offenders do receive longer sentences than white offenders, but that those differences are mostly due to legally relevant case characteristics. Analyses of the type of sentence ordered (incarceration versus supervision; WEC; DOSA; FTOW) showed larger differences by race and ethnicity, differences that remain statistically significant even after other extra-legal and legal



JAMES D. CAYCE



LARRY M. FEHR



DONNA CLAXTON  
DEMING

The authors noted that “[t]he study lends support to the concerns of many that racial and ethnic minorities are disadvantaged even in a state that has attempted to minimize disparities through sentencing guidelines, while at the same time confirming that sentencing outcomes are principally determined by legal factors.”

However, the study was limited in three important ways: first, it was limited to analyzing official records of convictions and sentences; second, the data analyzed were from recorded judgment and sentence forms submitted by the county superior courts; and third, the study was limited to official records. Hence, the study was unable to examine other factors that may impact sentencing outcomes. Such factors include: decisions made at earlier stages; limited information availability for review because judgment and sentence forms do not reflect characteristics of the crimes or offenders other than factors determining available sentencing options; the actual sentence ordered; offenders’ demographics; and lack of explanations or rationale for the sentencing patterns that exist in the official records.

Thus, a second study by Drs. Engen, Gainey, and Steen, *The Impact of Race and Ethnicity on Charging and Sentencing Processes for Drug Offenders in Three Counties of Washington State*, extended the previous research “by examining the case processing and sentencing of felony drug offenders in greater depth in three counties in Washington State.” This second study employed a qualitative approach to determine how charging and sentencing decisions produced the quantitative data in the first report. The researchers conducted in-depth interviews with court officials, judges, prosecutors, and public defenders, those involved in the case processing of felony drug offenders. The researchers also gathered information from prosecutors’ case files on offenders’ characteristics, their actual offending behavior, and processing decisions from arrest through sentencing for a random sample of convicted drug offenders. The



JOSÉ J. QUINTANA



JOSÉ E. GAITÁN

primary question examined was whether racial and ethnic minorities receive different treatment at various stages in case processing prior to sentencing. Two central findings emerged: first, charges are routinely changed between initial filing and conviction; and second, these changes are, for the most part, not related to race or ethnicity.

The authors concluded:

Overall, the findings of this study present little evidence that race or ethnicity play an important role in the case processing of drug offenders in Washington State. There are, however, at least two limitations of the current research that should be noted. First and foremost, the case file data consisted of a sample of cases that ultimately resulted in felony convictions. Arrests that were not filed or convicted, or that were filed as misdemeanor offenses, were not included in the sample. Thus we do not know whether those kinds of charging decisions are related to race and/or ethnicity. Second, because of the small sample size, we could not conduct rigorous analyses concerning the use of alternative sanctions where relatively strong race and ethnic differences were found in the previous study. In part, this is because relatively few of the 300 cases that we examined resulted in a conviction and standard range sentence where those alternatives would apply. Additional analyses with a larger sample of cases convicted of more serious crimes may shed some light on the reasons for the differences observed in the earlier statewide analyses.

The results of these two studies will prompt further research to determine whether there is a ready explanation for the racial and ethnic differences in sentencing that may exist at the state level.



MARY ELIZABETH  
MCKNEW





DEBORAH D. FLECK  
Chairperson  
Workforce Diversity  
Sub-committee

Judge  
King County Superior Court



DAVID J. DELLA



MARY I. YU

The Workforce Diversity Sub-committee has many accomplishments to report since our last report, thanks to the dedication, commitment, and work of sub-committee members. The Sub-committee presented a series of successful programs on recruitment and retention of employees at the Superior Court Judges' Association Spring Conference, the annual conferences of the District and Municipal Court Judges, the Juvenile Court Administrators and the District and Municipal Court Administrators.

The Sub-committee completed an on-line computerization of the Workforce Diversity Resource Directory for Washington Courts, last published in 1997, which identifies organizations interested in the employment and advancement of persons of color. A link to the Directory is located on the Minority and Justice Commission website [www.courts.wa.gov/mjc](http://www.courts.wa.gov/mjc). This link will assist the courts as employers in the recruitment of people of color and in furthering the goal to have the courts reflect the communities we serve. It is particularly helpful in distribution of job announcements to diverse populations and general information exchange.

Judges LeRoy McCullough and Richard A. Jones head a committee for student education. Members of the Commission,



JEFFREY C. SULLIVAN



LOURDES FUENTES



JEFFREY A. BEAVER



KAZZIE KATAYAMA

along with other judges and employees throughout the justice system visit schools and talk to students about the opportunity for employment in the courts and in related fields including, for example, those of civil and criminal lawyers and probation and police officers. The goal of this ongoing project is to reach out to young people still developing their career plans to make them aware of employment opportunities in the courts and the judicial system. The project also invites students to visit the courts to observe various employment opportunities at first hand.



TONY ORANGE



RICHARD A. JONES

The Sub-committee joined the Gender and Justice Commission in presenting a program on judicial careers for lawyers interested in appointment or election to the judiciary.

The Workforce Diversity Sub-committee sponsored the appearance of Chief Justice Robert Benham, Georgia Supreme Court, as the keynote speaker for the judicial luncheon at the Fall Judicial Conference in Spokane in connection with CELEBRATION 2000. Chief Justice Benham was invited by our then Chief Justice Richard P. Guy, other justices of the Washington State Supreme Court, and our Minority and Justice Commission.



MADelyn BOTTA



LEROY MC-CULLOUGH

The judiciary of the State of Washington is committed to the principle that our judiciary itself and our court staff should reflect the population of our State and the communities we serve. As judges, we have a unique opportunity in our role as employers to improve the administration of justice by valuing and increasing diversity in employment within the courts. Through our hiring decisions, we can provide role models for persons of all colors to seek employment in our branch of government.



ROBERT C. BORUCHOWITZ



PAM L. DANIELS

A major undertaking of the Workforce Diversity Sub-committee in the future, therefore, will be the development and publication of a manual outlining steps the courts may take to recruit and retain a diverse workforce. To be developed under contract with a nationally-recognized expert in the field, the manual will be distributed to every court in the State, because a diverse workforce provides a greater sense to all entering the courthouse that justice, fairness and impartiality are at work in our courts.



KENNETH E. PAYSON

# PRESENTATIONS



Celebrating the Courts in an Inclusive Society





# THE VOICE OF A DEDICATED COMMISSION MEMBER



**MARY ALICE THEILER**  
Attorney at Law  
Theiler Douglas Drachler & McKee

The Washington State Minority and Justice Commission is fortunate in having among its members lawyers, judges and laypersons who are seriously dedicated to achieving the goals of the Commission. We frequently call upon our members to make public presentations on behalf of the Commission.

One of our long-time members, Ms. Mary Alice Theiler, a Seattle lawyer, enthusiastically responded to our request that she represent the Commission at the First Annual Law and Justice Banquet at Central Washington University in Ellensburg on May 13, 2000. She has generously given us permission to reproduce her speech in this 2001 Annual Report.

# ELIMINATING RACIAL BIAS AND EMBRACING RACIAL FAIRNESS IN OUR COURTS AND IN OUR COMMUNITIES

**MARY ALICE THEILER**

The mission of the nation's courts is concisely expressed on the façade of the United State Supreme Court building – equal justice under law. “Although the last several decades have seen increasing numbers of women and non-white males become lawyers, judges, managers, and even justices of the highest courts in the land, it continues to be a rocky transition to a justice system in which all who use or work in the courts are treated with fairness, respect, and equality based on merit—without regard to gender, race, or ethnicity.” (Judicature, Oct. 1993) Many states, such as Washington, have created commissions to assess racial and ethnic minorities’ full and fair participation in the court systems. The studies clearly document that, despite considerable progress, disparate treatment persists in the justice system. This is particularly insidious when one considers how the provision of equal justice under law for all people is affected. The overall legitimacy of the courts is influenced in part on actual and perceived unfairness in the system. All people must be concerned about the courts’ ability to provide equal justice, for confidence in our legal system and its legitimacy is the cornerstone of the survival of our system of laws and of our democracy.

The need for our courts to embrace racial fairness—and to eliminate bias—has never been greater.

The racial and ethnic composition of the United States and our state is changing. While Whites composed 76% of the population in 1990, they are projected to comprise 68% in 2010. Demographers predict that by the year 2070, Hispanics will be the majority –Washington is now eighth in Hispanic population, and there are now more Hispanics in Western Washington than in the rest of the state. As our population changes, its satisfaction with the courts and genuine access to justice becomes truly a matter of the legitimacy of the system itself.

When analyzing the racial fairness of our justice system, we should look at those studies that provide information about the treatment of people of color, but also about the perceptions of that treatment, for in so many ways, that perception becomes the reality and that perception is the most difficult and challenging to understand and to change.

In early 1999, the National Center for State Courts conducted a telephone survey of 1825 adults randomly selected from the population to establish what the American public thinks about the performance of state and local courts in key areas such as access to justice, fairness and equality, and independence. The Washington State Office of the Administrator for the Courts conducted a similar study in June 1999. 500 adults randomly selected from the statewide population were surveyed and augmented samples of 150 each for Hispanics, African Americans, and Asian Americans were included within the study framework. The Washington State survey was comparable to the national survey in showing that 70% or

also seen in the national survey, confidence among African Americans is far less—only 14% in Washington say they have a great deal of confidence, 42% say they have some confidence, 30% have little confidence, and 15% say they have no confidence. With Hispanics, 29% say they have little or no confidence in the local courts. Those polled were also questioned on how they perceive the equality to be in the court system for various groups. When the groups were broken down by racial composition, each group felt it was treated worse than the population as a whole—56% of African Americans felt that way, 56% of Hispanics, and 59% of non-English speaking people. They also felt in large numbers that most juries are not representative of the community. Very significantly, the responses demonstrated that people were not looking for special treatment when they went to court, but wanted the judge to follow the law fairly and impartially. Instead, the public's perceptions of court fairness, objectivity, and functioning were that 81% felt that judges' decisions are influenced by political considerations, that elected judges are influenced by having to raise campaign funds, that cases are not resolved in a timely manner, that information needed to proceed with a case is not readily available to the public, and that court rules and procedures are not easy to understand. The full survey report is available at the Washington Court Homepage at [www.courts.wa.gov](http://www.courts.wa.gov).

These attitudes are not limited to people of color from the community, but extend to the legal profession.

In 1999, the American Bar Association (ABA) conducted a survey of White and Black lawyers. The survey revealed that Black lawyers and White lawyers see matters very differently when race is involved and have very different views of how the system works. Nearly all the Black lawyers, about 92 percent, said that, compared to other segments of society, the justice system has at least the same amount of racial bias or more. Nearly half the White lawyers think there is less, although more than half agree there is some. Two thirds of Black lawyers said they had personally witnessed an example of racial bias in the justice system in the past three years. More than 80 percent of White lawyers said they had not. Black lawyers were also more pessimistic than White lawyers about the ability of the justice system to eliminate racial bias in the future. As the ABA commented in its press release accompanying the release of the survey, though they have made the justice system their life's work, many Black lawyers believe the word "justice" has a White spin that says "just us". This is tragic, considering it is in the justice system that Blacks have turned to over the years to right wrongs and claim rights. The justice system too often seems like two different worlds from the perspectives of Black and White lawyers.

So what are those perceptions based on? What is the reality that people see—and remember so often that perception becomes reality—when they look at minorities in our justice system?

The fact is that they see tremendous disparity, disparity which has been frustratingly difficult for our society to change, despite very significant time and resources that have been spent in an attempt to analyze this disparity and to change it.

Perhaps the foremost example of this disparity is in our prisons. The national prison population has risen nearly 500 percent since 1972, far greater than the 28 percent rise in the national population during that time. In the ten-year period beginning in 1985, federal and state governments had opened a new prison a week to cope with the flood of prisoners. More than half the prisons in use today have been constructed in the last 20 years. In 1982, there was a national prison population of 200,000. Now, including more than one-half million inmates in local jails either awaiting trial or serving short sentences, 1.7 million Americans are behind bars.

In the African American community, three out of ten young men growing up will spend some time in prison, compared to 16 percent for a Hispanic boy and a four percent chance for a White boy. In some states, one quarter of Black men cannot vote as a result of a felony conviction. Nearly one in four Black males in the age group 20-29 is under some form of criminal justice supervision on any given day—either in prison or jail or on probation or parole. Half of all prison inmates are now African American and another 17 percent are Hispanic—percentages far out of proportion to their numbers in the general population. For Black women, the absolute numbers were not quite as overwhelming, but the trends were at least as disturbing. From 1985 to 1995, there was a 204 percent growth in the number of Black women in federal and state prisons, considerably greater even than the 143 percent increase for Black males or the 126 percent increase in the overall inmate population.

Since Whites are “underrepresented” in the prison population—that is, in a smaller proportion than in the population as a whole—the Black/White differential is a ratio of more than seven to one. African Americans, therefore, have a seven times greater chance of being incarcerated than do Whites.

We have become so inured to these gross disparities that they seem almost inevitable. However, early twentieth century prison admission records show a very different picture from what we see today. Records that have been kept since 1926 indicate that African Americans made up a smaller proportion of those sentenced to prison during the early part of this century than is now the case. Black offenders represented 21 percent of those admitted to prison in 1926, compared to half of all prison admissions today.

In some areas of the criminal justice system, the influence of race can be seen very clearly. Death penalty sentences provide the most compelling evidence. A series of studies demonstrates that, controlling for a wide range of variables, the race of both victim and offender has a significant impact on the determination of a death sentence as opposed to life in prison. One study found that Black murder defendants charged with killing Whites faced a 4.3 times greater chance of receiving a death sentence than those charged with killing Blacks. Several studies show that, particularly for drug offenses, there is strong evidence that Blacks are arrested far out of proportion to their actual use or sale of drugs. Therefore, as drug offenders represent a greater share of the prison population, the increased likelihood that Blacks will be arrested and incarcerated for a drug offense means that a declining proportion of the prison population can be explained by higher rates of crime.

The Sentencing Project conducted a study on societal responses to different forms of substance abuse, examining the harm to society and the criminal justice response to two forms of substance abuse—drunk driving and drug possession. Both forms of substance abuse resulted in substantial numbers of arrests (1.8 million for drunk driving in 1990, and 700,000 for drug possession), as well as significant societal harm, which can be approximated by examining the number of deaths caused by each. As of 1990, drunk drivers were responsible for approximately 22,000 deaths annually, while overall alcohol-related deaths approached 100,000 a year. Drug-related deaths, through overdose, AIDS, or the violence associated with the drug trade, were estimated at 21,000 annually. Many states have adopted stiffer laws to punish drunk driving with some form of mandatory sentencing, although this typically involves just a few days in jail. The “war on drugs”, however, has dramatically increased the number of drug arrests and made sentencing provisions harsher in most states. Typical state penalties for drug possession are up to five years for a first offense and one to ten years for a second offense. Drunk drivers are predominantly White males—78 percent of the arrests for this offense nationally as of 1990. Often, they are charged as misdemeanants, receiving license suspensions or community service and fines. Persons convicted of drug possession, though, are disproportionately low income, Black or Hispanic, and usually charged with felonies and frequently sentenced to incarceration. Overall, the societal response to drunk drivers has generally emphasized keeping the person functional and in society, while attempting to respond to the dangerous behavior through treatment. For drug offenders, though, the response has primarily involved greater use of law enforcement and incarceration. At the same time, while drug treatment remains popular and available for middle-class drug users, it is in short supply for low-income persons. Many feel that the “war on drugs” has contributed more to the incarceration of African Americans than any other policy, exacerbating racial disparities while failing to have any sustained impact on the drug problem, which has taken a very real toll on African American and other communities.

What is some of the information we have about how minorities in the Washington State justice system are faring? The Washington State Minority and Justice Commission has conducted a number of studies over the last decade, perhaps following the adage that “knowledge is power”.

In October 1993, the Minority and Justice Commission conducted a study to determine whether adult racial and ethnic minority criminal defendants are disproportionately subject to exceptional sentences in Washington State courts.

The study showed that exceptional sentences were imposed in less than four percent of all convictions in Washington during 1990-1992, and that, on a statewide basis, Hispanic, White, and Native American offenders are more likely to receive aggravated sentences than either African American or Asian American offenders. Hispanic offenders are least likely to receive mitigated sentences and, in many instances, most likely to receive aggravated exceptional sentences than any other offender group. The study also noted that studying racial and ethnic disparities in exceptional sentencing is complicated by the concentration of the state’s minority populations in a few counties. It found that offenders sentenced in smaller counties are more likely to receive exceptional sentences than those in larger counties.

Another study conducted by the Minority and Justice Commission was on racial and ethnic disparities in Superior Court bail and pre-trial detention practices in Washington State in October 1997, studying 1,658 felony cases processed in King County between 1994 and 1996.

It found that the prosecuting attorney's recommendation and the severity of the offense consistently were associated with the court's pre-trial release and bail decisions. The court typically released defendants, in the sample, on personal recognizance when the prosecuting attorney favored release and granted bail in amounts quite similar to that recommended by the prosecutor.

The study also found that race and gender influenced the likelihood of pre-trial release and amounts of bail required, above and beyond the prosecuting attorney's recommendations, whether the case involved a serious crime and other factors. Thus, minority defendants and men were less likely to be released on their own recognizance than others even after adjusting for differences among defendants in the severity of their crimes, prior criminal records, ties to the community and the prosecuting attorney's recommendation.

The study specifically stated that it would be inappropriate to conclude that racial and ethnic differences in pre-trial release necessarily reflect overt racial bias or discrimination in the decisions of Superior Court judges or staff, since disparities have complex causes and among them are important qualitative differences among defendants in the types of crimes they have committed.

A number of potential factors were cited as contributing to racial and ethnic disparities in pre-trial detention and bail practices. Many felt that the greatest impact of intensified drug enforcement and prosecution is on minority defendants. The consequences of pre-trial release extend beyond the immediate denial of freedom of movement. As one responding prosecutor described, a defendant who successfully appears at future court proceedings after being initially granted personal recognizance, the court will tend to look favorably on that defendant. Ultimately, this may translate into more lenient disposition of their cases, perhaps acquittal at trial or less severe punishment at sentencing.

A recent study was conducted by the Minority and Justice Commission on bias in sentencing, which was released in April 2000.

This was a study of 300 case files in King, Pierce and Yakima Counties, which found that, on average, minority offenders do receive longer sentences than White offenders. But, researchers found that it is mostly due to legally relevant case characteristics. The study looked at the treatment of drug offenders because the percentage of the state's prison population who were drug offenders had more than doubled from 1987 to 1997. It did find that among that population, one-half of the prisoners were racial or ethnic minorities, while roughly 12 percent of the state's total population is non-White. The researchers also noted that charges are routinely changed between the initial filing and conviction, suggesting that the decision-making that occurs prior to sentencing often has a greater impact on the punishment that offenders receive than does the exercise of discretion in sentencing. If there are differences in the way these decisions are made for different racial and ethnic groups, such differences could contribute to sentencing disparities that would be masked by "legal factors" (i.e., attributed to differences in offending behavior) at the sentencing stage.

Women of color, and particularly immigrant women, face special barriers in accessing our justice system. Battered women of color report encountering judges and court personnel who seem to believe that minority communities are “naturally” violent, so nothing can or should be done. When battered immigrant women approach the legal system for help, the courts and law enforcement agencies—and even shelters—have often not implemented policies to ensure that domestic violence victims who do not speak English can communicate their complaints effectively and can learn about their rights as domestic violence victims. Lack of ability to read or understand English impacts every part of the immigrant woman’s encounter with the legal system: forms must be translated; hearings are meaningless unless an interpreter is present; and the woman may not understand court orders or when a violation has occurred unless an adequate, translated explanation is provided. A disproportionate number of poor women are women of color; thus, a disproportionate number of welfare recipients are women of color. These women face overt bias in their interactions with the courts. The perception that women of color are not credible, intelligent, or competent affects the weight of their testimony as witnesses in their own and others’ cases, their testimony as expert witnesses, and their arguments as attorneys. Women of color in court are often addressed by their first names or by terms such as “honey”, “dear”, “girl” or “little lady”. Attorneys’ perceptions about women of color affect whether these women are chosen to sit on juries based on stereotypes, which, for example, depict African Americans as poor, criminal, promiscuous, and living in the ghetto. Women of color attorneys and judges often experience non-recognition of their status, facing the assumption that they are the court reporter, the witness, the client, or even the janitor in one reported instance. A study conducted in the Second Circuit reported that women minority attorneys are 51% more likely to have their competence challenged and 62% more likely to be mistaken for a non-attorney than their male counterparts. Women of color—and persons of color generally—are not hired in court administration or by judges in representative numbers when compared to their numbers in the general population.

Of particular concern is the question of how minority youth are faring in our system. To what extent are minority youth coming into contact with the criminal justice system as compared to their white counterparts? Once involved in the system, is there disparity in how they are treated?

A number of studies, including the National Youth Study, have attempted to compare statistics between White and Black youths in considering offending behavior versus rates of arrest. The study shows that engaging in violent behavior is actually quite prevalent across all demographic groups—among males, 42 percent have engaged in some types of serious violent offending by age 27; 16 percent of females have done so as well. The good news is that for most youth these experiences are relatively brief in duration. However, there are in fact substantial differences between Black and White arrest rates as measured by the FBI’s Uniform Crime Reports—four to one. Also, there are significant differences in how long these violent behaviors persist—the National Youth Survey study showed Black males are nearly twice as likely as White males to continue committing violent offenses into their twenties and nearly four times as likely to be involved in their late twenties. As a consequence, offenses by African American males are more likely to result in imprisonment, since the risk of incarceration is greater for adult offenders than for juveniles. But the National Youth Study data finds that

among 18-20 year old Black youths who are employed or living in a stable relationship with a spouse or partner, there are no significant differences in the persistence of offending by race, while among Black males who fail to attain this status, violent offending is more likely to continue. Thus, a key question becomes the degree of access to legitimate employment among males in their late teens and early twenties.

Solutions are all the more critical because once in the system a recent national study confirms the finding that minority youth are treated more harshly throughout the process.

A report released in April 2000 by the United States Department of Justice and six of the nation's leading foundations found that Black and Hispanic youths are treated more severely than White teenagers charged with comparable crimes at every step of the juvenile justice system. The report, "And Justice for Some", found that minority youths are more likely than their White counterparts to be arrested, held in jail, sent to juvenile or adult court for trial, convicted and given longer prison terms, leading to a situation in which the impact is magnified with each additional step into the juvenile justice system.

This study is particularly troubling because the University of Washington released a report on the same day that dispels a number of racial myths about minority youths and shows that popular images are often the opposite of reality. The report, "The Real Facts of Life for Children of Color in Washington State", released by the University of Washington's public policy project, Washington Kids Count, shows facts such as substance use by high school students in Washington State is lower among youths of color than among Whites. Ninety percent of minority youths have never taken a weapon to school—a figure comparable to White youth. A large majority of all United States born persons showed that the percentage of adults working full time is greater for people of color than for Whites, but that differences in wages, benefits and business opportunities produce great disparities of income and wealth between the two groups such that the average income for people of color is one-third lower than the average for Whites.

The national study, however, shows disparities in the treatment of minority and White youths that the New York Times calls "stunning". Among young people who have not been sent to a juvenile prison before, Blacks are more than six times as likely than Whites to be sentenced by juvenile courts to prison. For those young people charged with a violent crime who have not been in juvenile prison previously, Black teenagers are nine times more likely than Whites to be sentenced to juvenile prison. For those charged with drug offenses, Black youths are 48 times more likely than Whites to be sentenced to juvenile prison.

White youths charged with violent offenses are incarcerated for an average of 193 days after trial, but Blacks are incarcerated an average of 254 days and Hispanics are incarcerated an average of 305 days. The report found that in every offense category—person, property, drug, public order—a substantially greater percentage of African American youths were detained than White youths and that African American youths are more likely to be formally charged in juvenile court than White youth, even when referred for the same offense.



Addressing the reasons for these sharp racial imbalances exist is a challenge. It is very likely that the cause may not lay so much in overt discrimination as in the stereotypes that the decision makers at each point of the system rely on—a judge looking at a young person may be influenced by the defendant’s baggy jeans or the fact that he does not have a father. The conclusion that many members of the minority community have drawn is that race is undeniably a factor and that the justice system is not dispensing justice or certainly is failing at maintaining the appearance of justice. But, what is the fact of that justice system?

The faces of judges are overwhelmingly white and overwhelmingly male, although this is an area where progress is being made. In many counties in Washington, however, there are still no judges of color despite significant minority populations. Even in states like California where the population is changing rapidly, the majority of judges and visible positions of power in the courts is predominantly white and male.

Is this situation likely to change?

Law school officials report that Initiative 200 (I-200) has crippled recruitment efforts at the University of Washington Law School. Recall that at the height of its efforts to increase minority enrollment, law enrollment was 44% persons of color, with the average being 32-38%. Last year was the first year admitting law students post I-200. 22% are minorities of which most are Asian Americans. Two Blacks, Four Latinos, and Six Native Americans. For next year, it is likely the law school will admit no Blacks and no Native Americans. The school is at a disadvantage because it recruits nationally and a number of individuals pulled their applications because they did not want to come to a state that was inhospitable to the color of their skin. Numbers are down not only at graduate schools but undergraduate, where Black admissions are down 40%, Latinos are down 30% and Native Americans 30%. This is significant because this is where the school draws its pool of applicants from.

We tend to think that this disparity is inevitable. We should remember that the first law school class 100 years ago had one woman, one African American, and one Asian American, in a very small total class size. Perhaps we have more to learn from the past than we realize.

To change this situation, what can we do? As I stated when I began, tremendous time and effort has been focused on the issue of minorities in our justice system. I would like to focus our attention on several points—the need to train people in our justice system how to overcome stereotypes, the need to train our children as citizens, and the absolute requirement that we embrace racial fairness in our justice system.

Many courts, and other agencies, have adopted diversity training programs, while wondering if they are really effective. The Minority and Justice Commission has developed a number of such programs over the last decade directed at judges and other court personnel.

Almost no one can grow up in our society without learning the prevailing attitudes concerning major ethnic groups, whether or not one consciously endorses those attitudes.

played, and continues to play, a dominant role. However, many recent studies show that prejudice has actually been steadily declining over the past 40 years. At the same time, while many people now accept the idea that cultural stereotypes about ethnic groups are inappropriate, common socialization experiences have firmly entrenched those stereotypes in our memories. There is strong empirical evidence that the vast majority of people realize that their actual reactions sometimes conflict with their personal standards for how they should respond. Well-learned sets of associations like stereotypes can be activated automatically and can affect subsequent social judgments. Reminding decision-makers of their personal beliefs, therefore, may help them to resist falling into the discrimination habit.

Next, we need to train our children, especially, how to be citizens.

A study by the American Bar Association in 1998 showed that people's knowledge about the justice system is quite uneven. On the one hand, there is some information that virtually all people know. For example, 99% know one of the basic tenets of our system—that anyone accused of a crime has the right to be represented in court by a lawyer. On the other hand, fewer people—two thirds—know another of our system's most basic tenets, that a criminal defendant is innocent until proven guilty. This means, astonishingly, a third of the respondents believe that the defendant must prove innocence rather than that the prosecutor must prove guilt. Only 39% could identify all three branches of government and a quarter of the respondents could not identify any of the branches of government. Most people knew that the legislature makes laws, but only half could correctly identify the functions of the judicial and executive branches. Very few—17%—could identify the current Chief Justice. Other surveys have shown that only 33% can correctly identify the Bill of Rights.

The survey also found that people who are the most knowledgeable are those who have the most confidence in the justice system. They tend to be White, middle-aged, male, more educated, and with higher incomes.

Even more alarming are statistics about the lack of knowledge of our students. The most recent National Assessment of Educational Progress revealed that students only have a superficial knowledge of civics and lack depth of understanding. For example, only 38% of eighth graders knew that Congress makes law and nearly half of high school seniors did not recognize typical examples of the federal system of checks and balances. The same assessment showed that during the period of its study, the performance of 17-year-olds actually declined, regardless of the type of community—advantaged or disadvantaged, urban or other. It was particularly disturbing that the percentages of Black and Hispanic students who reached the uppermost levels of proficiency were far smaller than the percentage of White students and that female students were less likely to reach the highest level of civic proficiency as compared to their male peers.

This lack of civics education has serious repercussions. Empirical data shows that a large segment of the population, including youth, is ill informed about and disaffected from politics and government. There is, however, also cause for hope because the public clearly believes this situation should be corrected—according to national polls and the time is ripe for a renewal of civic education. And national studies show that civics education, when

taught, can reduce delinquent behavior and improve students' attitudes related to responsible citizenship. A program in the District of Columbia, working with youth charged with gun offenses shows over 90% reduction in re-offenses with guns for the students who completed the class versus students who did not. Students who participate in law-related curricula have been shown in six national studies to have reduced their own delinquency and associate less with delinquent peers. Such students gain insight into their own risk of becoming involved in criminal behavior and learning how to avoid being victimized by crime. Such students increase their own self-esteem and expectations for their futures.

Finally, we truly need to embrace racial fairness as a goal of our justice system.

This is a society founded upon the rule of law. In this society, people bring their disputes to the courts. We take it as proof that we are a civilized society when people do not take their disputes to the streets. Our courts are literally entrusted with life and death decisions in all types of situations. To be part of the justice system, an attorney, a judge, a court staff person, or law enforcement officers, is a very special privilege. We are the gatekeepers to the justice system and our justice system is basic to the continuation of our democracy. Bias has no place in the court or anywhere in the justice system. Eliminating such bias and ensuring its absence is the keystone of trial justice. It is critical because the rights and obligations of all who live here are defined by it. If bias exists in the only structures that provide for access to justice, then the very foundation of this nation is undermined.

The perception held by some that discrimination no longer exists or that simple legal prohibitions will suffice is inaccurate. Notwithstanding the substantial gains made by people of color to date, discrimination remains a stark reality in most spheres of American life.

The mission of the Central Washington University Law and Justice Department is indeed ambitious—to provide students with a broad background in the history, philosophy and current trends in law and society and to emphasize the importance of diversity. The challenge to those of you who have recognized a calling to a career in law and justice is indeed daunting. Your challenge is significant, yet critical to the future of our children and to our existence as a democracy. It is a privilege to have been invited to your first annual awards banquet and I wish you many successes in the future.

# A CURRICULUM ON WOMEN OF COLOR

In presenting educational programs and seminars for judges and other court personnel, pursuant to our mandate, the Washington State Minority and Justice Commission retains the services of nationally-recognized professional presenters. Among these are Ms. Peggy A. Nagae (Total Diversity Management Consultants, Eugene, Oregon) and Ms. Benita R. Horn (Achievement Architects North, Renton, Washington).

On February 26, 2000, the Minority and Justice Commission joined with the Washington State Gender and Justice Commission in presenting a pilot program in Seattle, under a grant from the State Justice Institute, on the subject *When Bias Compounds: Insuring Equal Justice for Women of Color in the Courts*. The program was based on a Model Curriculum developed by Ms. Lynn Hecht Schafran, the National Judicial Education Program to promote Equality for Women and Men in the Courts, with funding from the State Justice Institute. Ms. Nagae and Ms. Horn were retained as facilitators to present the program.

After evaluating and revising the pilot program, the Gender and Justice Commission and the Minority and Justice Commission presented the program in its final form on September 15, 2000 at CELEBRATION 2000, a statewide conference of judges and lawyers, in Spokane. The program, funded by the State Justice Institute, the Gender and Justice Commission, and the Minority and Justice Commission, was presented by Ms. Nagae and Ms. Horn. It was enthusiastically received. Although written materials are not of themselves adequate to convey the real impact of a professional presentation by skilled facilitators, we nevertheless include in this 2001 Annual Report, through the courtesy of Ms. Nagae and Ms. Horn, a portion of the curriculum outline and PowerPoint graphics from the September 15, 2000 program.



**PEGGY A. NAGAE**

Total Diversity Management Consultants



**BENITA R. HORN**

Achievement Architects North

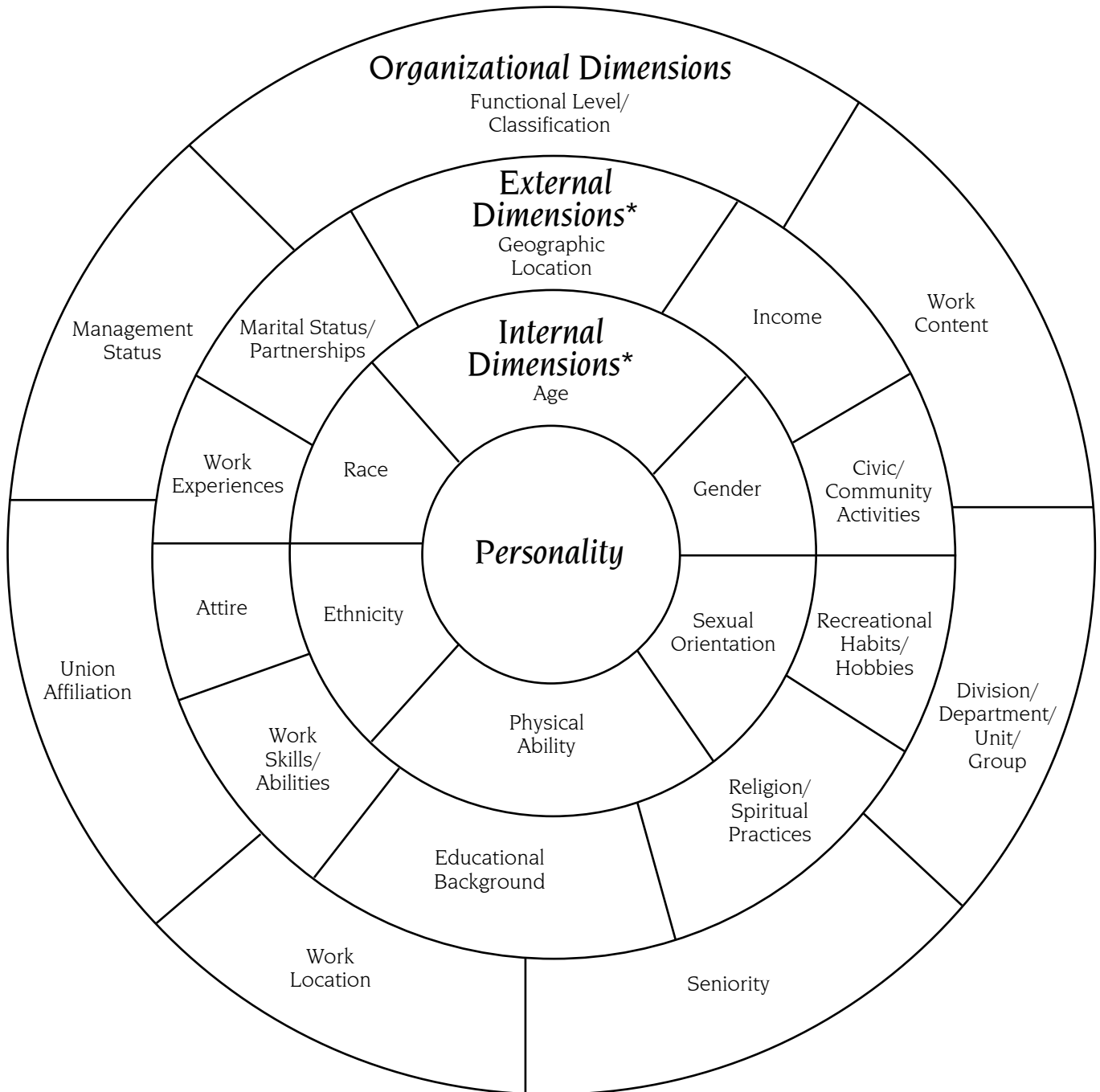
# When Bias Compounds: Insuring Equal Justice for Women of Color in the Courts and the Legal Profession

Peggy A. Nagae  
Benita R. Horn



# DIVERSITY WHEEL

"All the ways we are different from and similar to each other"  
"Differences and similarities"



Adapted from Marilyn Loden and Judy Rosener, *Workforce America!* and from *Diverse Teams at Work*, Gardenswartz and Rowe (Irwin, 1995), p. 33.

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# Objectives



- Learn and understand intersectionality
- Recognize how stereotypes influence judicial conduct and decision making
- Understand stereotypes can be overcome
- Identify specific women of color issues
- Commit to effective action to insure equal access

# Agenda



- Introductions
- Key Terms and Concepts
- What Would You Do?
- Identifying and Resolving Issues
- Personal Leadership Commitment
- Closing



# Ground Rules



- Seek to understand before being understood
- Take responsibility for your own learning
- Respect yourself and others
- Enjoy each other and the process - Have fun!

# DEFINITION OF WOMEN OF COLOR-RELATED BARRIER

- ▲ When it has a different impact on women of color than on women not of color or men of color
  
- ▲ When it happens more frequently to or is more difficult for women of color to overcome than it is for either women not of color or men of color.

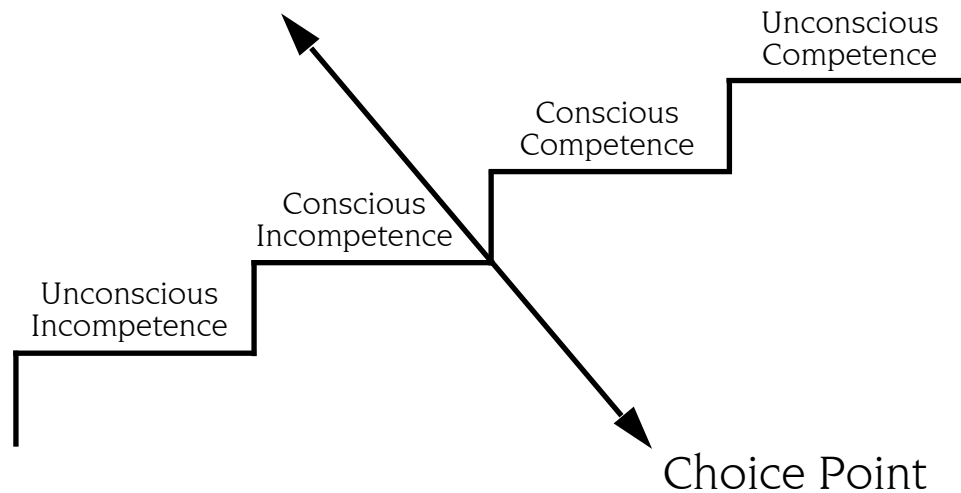


# EXAMPLES OF WOMEN OF COLOR-RELATED BARRIERS

- ▲ One-third of minority women attorneys in D.C. experience nonrecognition of their attorney status by federal judges, but only small percentages of other groups had the same experience. Report of the Special Committee on Gender to the D.C. Circuit Task Force on Gender, Race, and Ethnic Bias, 84 Geo.L.J. 1651, 1743 (1996).
- ▲ Fifty-one percent (51%) of minority women attorneys in private practice had their competence challenged, compared with four percent (4%) of their male counterparts. Report of the Working Committee to the Second Circuit Task Force on Gender, Racial and Ethnic Fairness in the Courts, 62 (1997).
- ▲ Multicultural female attorneys are more likely than white women to be subjected to inappropriate sexual comments or touching by court employees. American Bar Ass'n: A Report on the Multicultural Women Attorneys, Network, The Burdens of Both, The Privileges of Neither, 26 (1994) (hereinafter ABA MWAN Report).
- ▲ The perception that communities of color are poor often means that women of color are not granted alimony in divorce cases. Twila L. Perry, Alimony: Race, Privilege, and Dependency in the Search for Theory, 8L Geo.L.J. 2481 (1994) or restitution in domestic violence situations. Interview with Jenny Mulgrav, New York Victims' Services Agency, New York, NY (Apr. 11, 1997).
- ▲ A California study found that "an estimated forty percent (40%) of all prostitutes are women of color, but fifty-five percent (55%) of those arrested and eighty-five percent (85%) of those who serve time in jail are women of color." California Judicial Council Advisory Comm., Final Report of the California Judicial Council Advisory Committee on Racial & Ethnic Bias in the Courts, 146 (1997).
- ▲ A New England Journal of Medicine study of pregnant women in Pinellas County, Florida, found that only twenty-six percent (26%) of those who used drugs were African American. Yet over ninety percent (90%) of Florida prosecutions for drug abuse during pregnancy have been brought against African American women. Dorothy E. Roberts, Punishing Drug Addicts Who Have Babies: Women of Color, Equality and the Right of Privacy, in Critical Race Feminism, 127, 131 (Adrien K. Wing ed., 1997).

(All examples taken from articles by Lynn Hecht Schafran, "Women of Color in the Courts," Trial • Sex and the Law" August 1999, pp 21-24.)

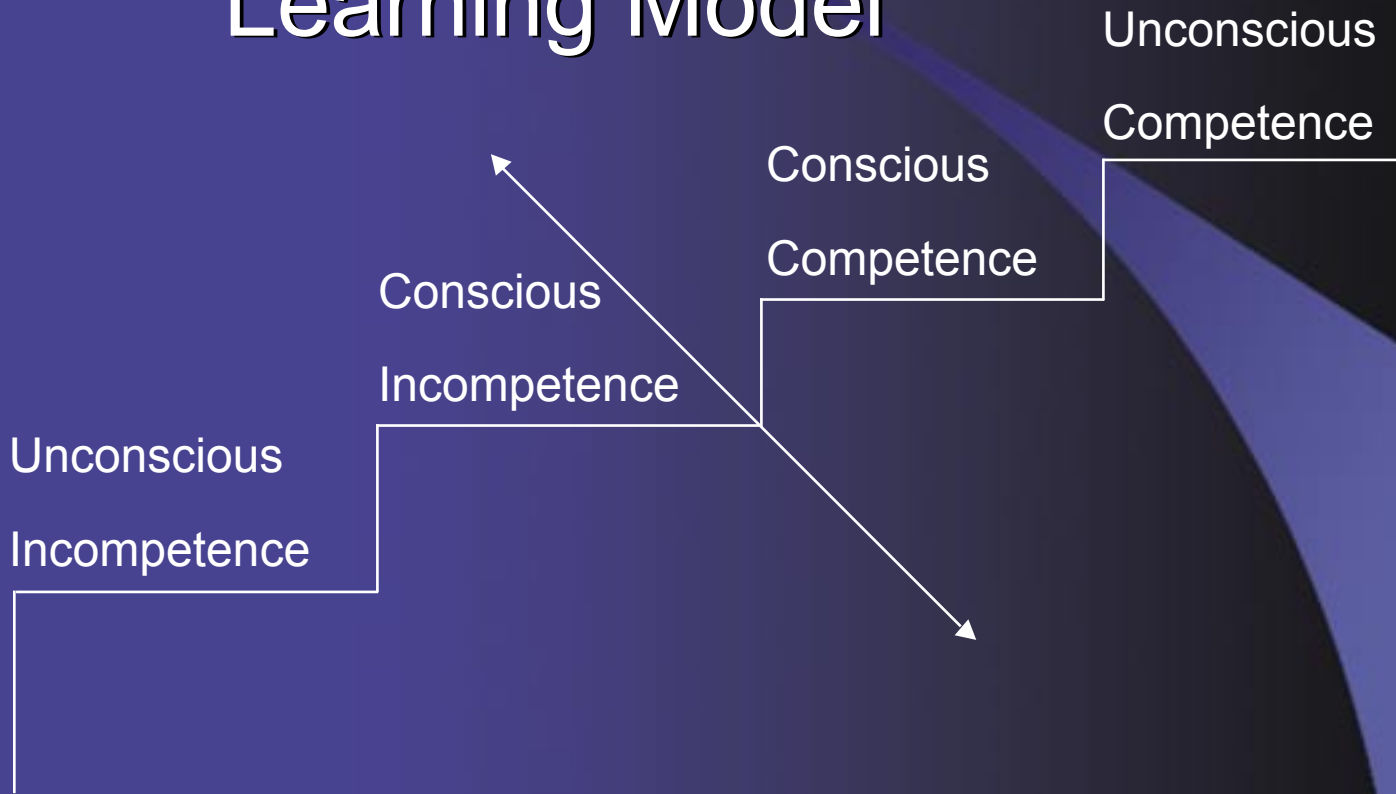
# LEARNING MODEL



- ★ Unconscious Incompetence: We might make comments or jokes or remarks that are assumptions or stereotypes about others who are different from ourselves without being aware of the possible negative or hurtful impact of our words. “Clueless.”
- ★ Conscious Incompetence: Someone (or something) has made us aware of our words or deeds and we begin to realize the impact. We become conscious that what we said may not have a positive effect. “Given the gift of feedback.”
- ★ Conscious Competence: At this stage we are changing our own behavior by being intentional and mindful. We made a choice and we practice our new behavior by changes in words or actions. “Practice, practice, practice.”
- ★ Unconscious Competence: We have fully integrated the new behavior and don’t have to think about it; it simply has become a part of us. “A new habit is born.”

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# Learning Model



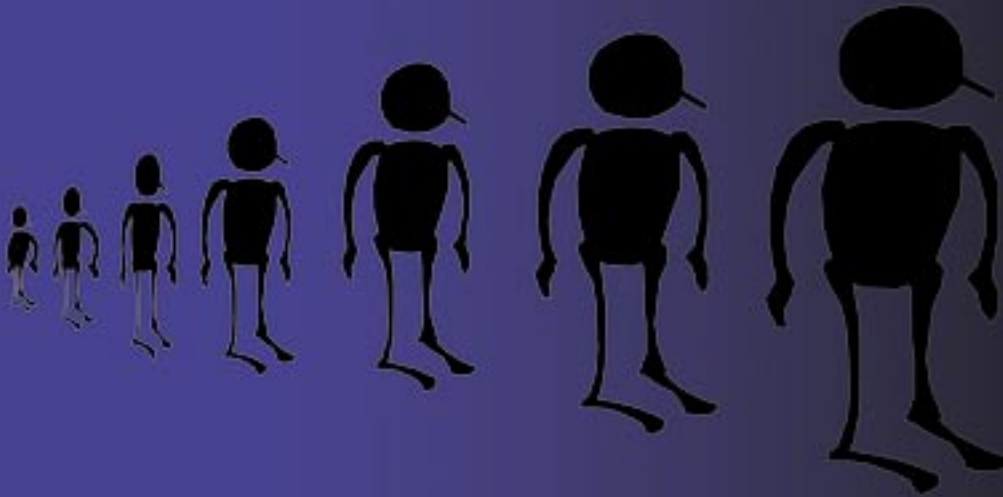
# Intersectionality



The way in which the confluence of race and gender creates an individual identity that shapes the lives of women of color, resulting in a type of bias that is more than race or sex bias alone, and more than race plus sex.

# Stereotypes

A set of attributes ascribed to a group and imputed to its individual members simply because they belong to that group.



# Reducing Stereotyping

- Reduce stereotypic thought and action by:
  - Additional information;
  - Increased attention to that information;
  - Motivational incentives that support increased attention and indicate consensual disapproval.







# Discussion Topics

- What did you learn from the self assessment and pre-reading?
- Select two groups as directed by facilitators, discuss similarities and differences.
- Why is it important for those in the judicial system to address issues related to women of color?

# Washington State Racial and Ethnic Composition

| 1990  |                   | 2025  |
|-------|-------------------|-------|
| 86.8% | European American | 76.1% |
| 3.01% | African American  | 3.1%  |
| 1.57% | Native American   | 1.8%  |
| 4.19% | Asian American    | 8.8%  |
| 4.41% | Hispanic American | 10.2% |

# Washington State Racial and Ethnic Composition - Women

| 1995  |                   | 2025  |
|-------|-------------------|-------|
| 42.8% | European American | 38.8% |
| 1.5%  | African American  | 1.6%  |
| 0.9%  | Native American   | 0.9%  |
| 2.7%  | Asian American    | 4.4%  |
| 2.3%  | Hispanic American | 4.6%  |

# Women of Color: Cross Cultural Definition

- Different Impact
- Happens More Frequently
- When it is More Difficult for Women of Color to Overcome



**KEY CONCEPTS  
&  
JUDICIAL/LAWYER  
RESPONSIBILITIES**

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# DEFINITIONS

- **CULTURE**

The norms, values and patterns of behavior, which prescribe the handling of time, spatial relationships, attitudes toward work, play, learning, traditions, etc. The short-hand definition is, “It’s just the way we do things around here.” Our culture shapes what we pay attention to and how we act. We learn culture more from watching others than from being formally taught.

- **CULTURAL LENS**

Rooted in core values, which were formed by the age of 10 and with which you interpret yourself and others.

Life events are filtered through your lens, which include your “shoulds,” “oughts,” and “musts.” In short, your beliefs, assumptions, and stereotypes.

When there is something you don’t know or understand, you “fill-in-the-gap” from your cultural lens and make assumptions.

- **STEREOTYPES**

A set of attributes ascribed to a group and imputed to its individual members simply because they belong to that group.

Stereotypic thought and action can be reduced by the following three conditions, if present in concert:

- (1) additional information;
- (2) increased attention to that information; and
- (3) motivational incentives that support increased attention and indicate

# CODE OF JUDICIAL CONDUCT & RULES OF PROFESSIONAL CONDUCT

## CANONS 3(A)(5), 3(B)(2)

Judges Shall Perform the Duties of Their Office Impartially and Diligently

The judicial duties of judges should take precedence over all other activities. Their judicial duties include all the duties of the office prescribed by law. In the performance of these duties, the following standards apply:

(A) Adjudicative Responsibilities.

\* \* \* \* \*

(5) Judges shall perform judicial duties without bias or prejudice.

\* \* \* \* \*

(B) Administrative Responsibilities

\* \* \* \* \*

(2) Judges should require their staff and court officials subject to their discretion and control to observe the standards of fidelity and diligence that apply to them.

## RULE 8.4 MISCONDUCT

It is professional misconduct for a lawyer to:

\* \* \* \* \*

(g) Commit a discriminatory act prohibited by law on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, or marital status, where the act of discrimination is committed in connection with the lawyer's professional activities.





# ORDER FORM

## WASHINGTON STATE MINORITY AND JUSTICE COMMISSION

DATE: \_\_\_\_\_

|   |                 |          |
|---|-----------------|----------|
| <b>“CULTURAL COMPETENCY:<br/>RISING TO THE CHALLENGE”</b><br>videotape, (Expanded), produced April 2000 | _____ @ \$20.00 | \$ _____ |
| <b>“CULTURAL COMPETENCY:<br/>RISING TO THE CHALLENGE”</b><br>videotape, produced July 1999              | _____ @ \$10.00 | \$ _____ |
| <b>“EQUAL JUSTICE”</b><br>Poster - 18" x 24"  | _____ @ \$2.00  | \$ _____ |
| <b>“THE JURY”</b><br>Poster - 18" x 24"   | _____ @ \$2.00  | \$ _____ |
| <b>“THE JURY”</b><br>Notecards with envelopes<br>(sets of 3)  | _____ @ \$5.00  | \$ _____ |
| <b>“JUSTICE AND WOMEN OF COLOR”</b><br>Poster - 18" x 24"   | _____ @ \$2.00  | \$ _____ |
| <b>“JUSTICE AND WOMEN OF COLOR”</b><br>Notecards with envelopes<br>(sets of 3)                          | _____ @ \$5.00  | \$ _____ |
| <b>“JUSTICE IS ALL INCLUSIVE”</b><br>Poster - 18" x 24"   | _____ @ \$2.00  | \$ _____ |
| <b>“JUSTICE IS ALL INCLUSIVE”</b><br>Notecards with envelopes<br>(set of 3)                             | _____ @ \$5.00  | \$ _____ |

**TOTAL:** \$ \_\_\_\_\_

### POSTAGE AND HANDLING

1-4 posters \$1.50  
4-10 posters \$3.00

cost per video \$2.00

### PLEASE SHIP TO:

**TOTAL ENCLOSED FOR ORDER:** \$ \_\_\_\_\_

Name: \_\_\_\_\_

Organization/Court: \_\_\_\_\_

Address: \_\_\_\_\_

City, State and Zip Code: \_\_\_\_\_

Please make checks payable to "Minority and Justice Commission Special Project Fund" and return to:

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

Telephone: (360) 705-5327



Annual Report layout and design by Jessica Amoateng

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Graham and Dunn

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Kitsap County Superior Court

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University of Washington

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