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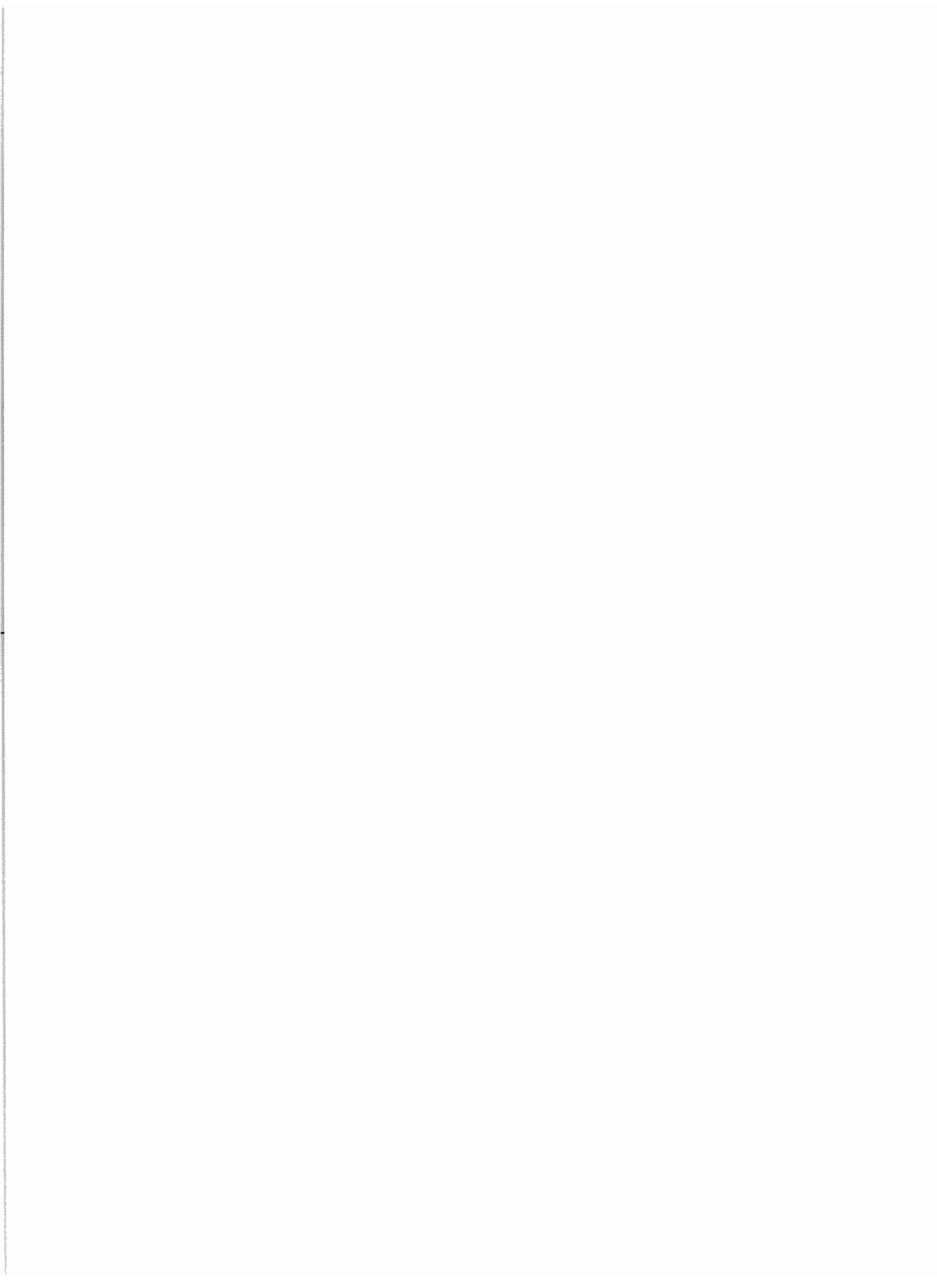
# Washington State Minority and Justice Commission

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*Sekio Matsumoto*

1994



WASHINGTON STATE MINORITY AND JUSTICE COMMISSION

1994 ANNUAL REPORT

Washington State Minority and Justice Commission  
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*DEDICATION*

We dedicate this 1994 Report of the Washington State Minority and Justice Commission to a justice of the Washington State Supreme Court who serves as co-chairman of the Commission, Justice James M. Dolliver.

When the Commission was created by our Supreme Court in October 1990, it represented an acknowledgment by the Court of the importance of our continuing need to determine whether racial, ethnic and cultural bias exists in our state court system and, when it exists, to recommend appropriate action to overcome it. This follows recommendations from the Minority and Justice Task Force.

It was not surprising that a senior justice of our court, Justice Dolliver, enthusiastically agreed to serve as co-chairman of the Commission. His full participation in the activities of the Commission is symbolic evidence of the commitment of the Washington State Supreme Court to the purposes of the Commission whose primary goal is elimination of racial and ethnic bias, to the extent it exists, in our courts.

In dedicating this 1994 Annual Report to Justice Dolliver, we quote from Dr. Charles H. Sheldon's 1992 treatise, *The Washington High Bench*, at p. 120:

[Justice Dolliver's] constant exposure to the world outside the cloistered walls of the temple of justice—the astonishing range of his affiliation in educational, civic, religious, and charitable organizations and his interest in politics and society—tests and renews his values.

Through his extraordinary intelligence, perseverance, thoughtfulness, example, counsel, encouragement and advice, Justice James M. Dolliver has been a source of inspiration to all of us who believe, as he does, that our American system of justice is an example for all the world and that the courts in the State of Washington will continue to work towards "Equal Justice for All."

Charles Z. Smith  
Co-Chairman



The Minority and Justice Commission is co-chaired by Supreme Court Justices James M. Dolliver and Charles Z. Smith. Its membership consists of Supreme Court Justice Charles W. Johnson; Court of Appeals Judges William W. Baker and Elaine Houghton; Superior Court

MEMBERSHIP OF COMMISSION

This 1994 Annual Report of the Minority and Justice Commission, while the first full report since the 1990 Task Force Report, is designed to bridge the gap between the two reports. Other reports from research studies have been issued. The Commission, however, has not issued a full report before now because of budget limitations and our recognition of the need for fiscal restraint.

The activities of the predecessor Minority and Justice Task Force have been related in the Final Report: Washington State Minority and Justice Task Force (December 1990).

Since its creation by the Washington State Supreme Court in October 1990, the Washington State Minority and Justice Commission has continued to work towards implementation of the recommendations of its predecessor, the Washington State Minority and Justice Task Force, created in 1987 pursuant to a legislative mandate to determine the existence of bias in the courts and to recommend appropriate action for overcoming it.

INTRODUCTION

## Washington State Minority and Justice Commission

Judges James M. Murphy, Ricardo S. Martinez, LeRoy McCullough and Richard A. Jones; Municipal Court Judge Ron A. Mamiya, Dr. George S. Bridges, University of Washington; Dr. Charles H. Sheldon, Washington State University; Ms. Donna Claxton Deming, University of Puget Sound Law School; Attorneys Myma Contreras-Trejo, Guadalupe Gamboa, Sandra Fancher Garcia, Jeffrey C. Sullivan (Prosecuting Attorney of Yakima County), Mary Campbell McQueen (Administrator for the Courts), Mary Alice Theiler, Charles Edward Siljeg and David C. Ward (Yakama Nation); and Ms. Kazzie Katayama (METRO). Ms. Vicki J. Toyohara, an attorney, serves as Executive Director

### *MEMBERSHIP OF TECHNICAL SUPPORT GROUP*

Through the Technical Support group, we additionally have participation by Court of Appeals Judge Philip J. Thompson; Superior Court Judges Karen B. Conoley and Norma Smith Huggins; Municipal Court Judge Sergio Amijo; Court of Appeals Commissioner Kenneth H. Kato; Hearing Examiner Ruperta Alexis; Attorneys Jeffrey A. Beaver, Robert C. Boruchowitz, S. Nia Cottrell, Ronald E. Cox, Lonnie Davis, Debora G. Juarez, Ada Ko, Richard E. McDermott, Jr., Marilee Scarbrough, Brian A. Tsuchida and Artee F. Young; Ms. Terry Mark, Vincent K. Sewell, David J. Della, Ms. Irene Gutierrez, Robert Lamb, Jr., Ms. P. Diane Schneider, Ms. Esther L. Patrick, James Kelly, Marvin G. (Jerry) Martinez and Larry M. Fehr.

*FUNDING OF COMMISSION*

As a state agency, we are dependent upon legislative funding for our budget. The Commission is a "line item" in the Supreme Court budget, but we must follow strict procedures and guidelines for justification of our budget somewhat independently. While austerity is desirable, it has resulted in postponement or curtailment of some Commission activities and projects. With the active participation of volunteers, we have managed to survive. Thus we present our 1994 Report.

*COMMISSION ACTIVITIES*

The work of the Minority and Justice Commission between regular meetings is accomplished through its Executive Committee (Justices James M. Dolliver and Charles Z. Smith, Judge William W. Baker, Judge LeRoy McCullough, Ms. Mary Alice Theiler and Dr. George S. Bridges) and through its sub-committees: Work Force Diversity Sub-committee (McCullough), Education Sub-committee (Baker and Juarez), Bar Liaison Sub-Committee (Theiler), and Research Sub-committee (Bridges and Alexis).

Each sub-committee constitutes a working group consisting of a chairperson or co-chairpersons and designated members of the Commission and of the Technical Support group. The sub-committees report to the Executive Committee (through their chairpersons, who are members of the Executive Committee) and to the Commission. Commission members and Technical Support members attend and participate in general Commission meetings.

## Washington State Minority and Justice Commission

This *1994 Annual Report of the Washington State Minority and Justice Commission* represents a summary report of our activities since 1990 and provides an indication of our activities in the future. The Commission is scheduled for review by the Supreme Court in 1995. It is our hope that it will be renewed for another period of five years at that time. While we are making progress in our efforts, there is still a great deal more to be accomplished in creating a better awareness of the need for improving the quality of justice in our courts, with particular reference to racial and ethnic bias.

### *NATIONAL CONSORTIUM OF TASK FORCES AND COMMISSIONS ON RACIAL AND ETHNIC BIAS IN THE COURTS*

The Washington State Minority and Justice Commission is a charter participant in the National Consortium of Task Forces and Commissions on Racial and Ethnic Bias in the Courts. That group was established in 1987 by the four commissions or task forces then in existence in New Jersey, Michigan, New York and Washington. Since that time, the Consortium, which held its sixth annual meeting in Arlington, Virginia on May 14, 1994, now includes in its membership task forces or commissions established by the highest courts of the states of Alabama, Arizona, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Idaho, Iowa, Louisiana, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New York, North Dakota, Ohio, Oregon, Virginia and Washington, as well as the District of Columbia and three Canadian provinces. The members of the Consortium exchange ideas, research, reports and experience in working toward our common goals. Justice

Charles W. Johnson was the keynote speaker for the fifth annual meeting in Williamsburg, Virginia on May 22, 1993.

*COVER DESIGN LOGO FOR 1994 ANNUAL REPORT*

For the cover of this 1994 Report, we have utilized the talents of Sekio Matsumoto, a graphic artist in Seattle, who has created a logo showing 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. We are proud of this logo which conveys more than words the significance of cultural diversity in the achievement of equality before the courts.

We expect to reproduce the Matsumoto logo in poster form if anticipated private funding becomes a reality. The artist has been recognized for his 1977 conceptual rendering of cultural diversity for the American Baptist Churches, USA. A glass reproduction of that logo is on permanent display at the Japanese Baptist Church in Seattle. He has been retained by the National Center for State Courts in Williamsburg, Virginia to design a similar logo for the First National Conference on Eliminating Racial and Ethnic Bias in the Courts scheduled for March 2-5, 1995 in Albuquerque, New Mexico.

It is our hope that the *1994 Annual Report of the Washington State Minority and Justice Commission* will serve to increase public awareness of the need for continuing inquiry into the existence of bias in our courts and the development of appropriate action to overcome it.

James M. Dolliver  
Co-Chairman

Charles Z. Smith  
Co-Chairman

### *ACKNOWLEDGMENTS*

The Washington State Minority and Justice Commission gratefully acknowledges assistance from the following persons in preparation of this report: Justice Charles Z. Smith, Judge William W. Baker, Judge Elaine Houghton, Judge LeRoy McCullough, Dr. George S. Bridges, Ms. Vicki J. Toyohara, Ms. Stella Agricola, Ms. Riza De Jesus, Matthew D. Latimer, and Ms. Ellen D. Williamson.

We particularly thank Ms. Mary Campbell McQueen, Administrator for the Courts, for her participation with and support of the Commission. We are especially grateful to our Commission co-chairmen, Justice James M. Dolliver and Justice Charles Z. Smith, for their leadership and inspiration and to all members of our Supreme Court who had the foresight to create the Minority and Justice Commission. We give special acknowledgment and thanks to members of our Legislature who believe in the importance of our work and who continue to provide us with needed funds for our education programs, research activities and other projects.

The Commission expresses its appreciation to Seattle artist Sekio Matsumoto for creating our inspirational logo which appears on the cover of this report.

# Washington State Minority and Justice Commission

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*EXECUTIVE SUMMARY*

*MINORITY AND JUSTICE TASK FORCE*

The Minority and Justice Task Force was established by the Washington State Supreme Court in 1987 pursuant to legislation which sought to improve the treatment of racial and ethnic minorities in our courts. To better understand the concerns of minority communities about the legal system, the Task Force held public forums around the state in 1988. Responding to concerns raised in these forums, the Task Force undertook two studies designed to collect demographic information on the legal community. The Task Force also conducted research projects, which found that minorities, or persons of color, believe that bias pervades the entire legal system and that disparate treatment exists in the adjudication of civil and criminal cases. The research findings also reflected the underrepresentation of minorities in the legal profession and suggested a need for ongoing cultural awareness education.

As a result of these findings, the Task Force recommended measures to ameliorate individual and institutional biases.

*Minority and Justice Commission*

The Minority and Justice Commission was created by the Washington State Supreme Court by court order in October 1990. The purpose of the Commission is to continue the work of its predecessor, the Minority and Justice Task Force, by implementing the Task Force recommendations. The Commission is comprised of four sub-committees: Work Force Diversity, Education, Bar Liaison, and Research.

*WORK FORCE DIVERSITY SUB-COMMITTEE*

*Mission*

The mission of the Work Force Diversity Sub-committee is to promote equal employment opportunities and to increase the number of racial and ethnic minorities employed at all levels of the judiciary.

*Scope*

The scope of the activities of the Work Force Diversity Sub-committee has its origins in the initial efforts of the Minority and Justice Task Force. Based on the findings of the 1990 Annual Report concerning the underrepresentation of minorities or persons of color in the court system, the Task Force recommended that a work force diversity program be developed and implemented immediately. The Work Force Diversity Sub-

committee seeks to resolve issues raised by the Task Force Report and to identify new ways for increasing work force diversity in our court system.

#### *Work of the Sub-committee*

In June 1991, the Work Force Diversity Sub-committee identified issues concerning the education of existing court staffs and formulated several courses of action. In 1993, the sub-committee published the *Work Force Diversity Resource Directory for Washington State Courts*, which lists organizations interested in the employment and advancement of persons of color. The sub-committee's ultimate aim is to use the directory to target recruiting efforts.

In 1993, the sub-committee began a collaborative effort to organize a one-day education program for court personnel concerning recruitment, hiring, retention, and promotion practices, as well as strategies and tools available to increase the number of minority employees in our courts. The final program, presented at the 1994 Spring Judicial Conference of the Superior Court Judges' Association and at the 1994 Spring Judicial Conference of the District and Municipal Court Judges' Association, received enthusiastic response.

#### *Additional Projects*

Programs proposed by the Work Force Diversity Sub-committee include promotion of a Law Day session to open court houses to

the public; review of employment application forms to ensure cultural sensitivity; completion of court surveys covering affirmative action hiring goals; continual fostering of diversity training; ongoing presentation of its recruitment/work force diversity education program; and development and presentation of an advanced workshop for court personnel concerning recruitment, hiring, retention and promotion practices.

#### *EDUCATION SUB-COMMITTEE:*

##### *Mission*

The Education Sub-committee seeks to improve the administration of justice by eliminating racism through education. It focuses on the need to increase cultural awareness and engender mutual respect in persons who deliver court services and represent our court system.

##### *Scope*

The Education Sub-committee was formed in response to public forum speakers who strongly recommended development and implementation of a comprehensive cultural awareness program for court personnel. The scope of the sub-committee's responsibilities extends to addressing issues such as the ever-changing demographics that reflect a continued growth in minority populations; the increasing demand for language interpreting for litigants; the necessity for improving communication between court personnel and clientele; the importance of resolving acts of bias; and the responsibility of the court system for uniform application of institutional practices and procedures.

*Work of the Sub-committee*

The primary project of the sub-committee has been development of a curriculum for cultural diversity education for court personnel. The program seeks to provide training that would engender cultural awareness in persons who deliver court services and help eliminate racism and insensitivity in the court system.

The Education Sub-committee prepared a curriculum based upon court personnel interviews and a needs assessment analysis conducted by a Seattle consulting firm, Achievement Architects North. The first pilot program, held in June 1994, focused on Seattle Municipal Court and King County District Court personnel. A second pilot session involving Superior Court personnel will take place in September 1994 in Yakima County.

*Additional Projects*

The Education Sub-committee will present its cultural diversity training program on October 26 and 27, 1994 in Ephrata. As funds become available, the sub-committee intends to provide ongoing cultural awareness programs to court personnel at various levels and in geographically diverse locations throughout the state.

*BAR LIAISON SUB-COMMITTEE*

*Mission*

The mission of the Bar Liaison Sub-committee is to facilitate communication between the Commission and the legal community in order to share information, address concerns of minorities or persons of color in the legal profession, and implement programs to improve the status of minority members of the state bar.

*Scope*

A survey conducted by the Minority and Justice Task Force raised serious concerns over underrepresentation of minorities in the legal system. The Bar Liaison Sub-committee's responsibility is to inform, educate and assist bar associations in resolving this apparent disparity.

*Work of the Sub-committee*

The Bar Liaison Sub-committee conducted a survey which disclosed that most bar associations in the state do not have specific information about the racial and ethnic composition of their membership. The sub-committee also sponsored a presentation at the Local Bar Leaders Conference of the Washington State Bar Association in May 1993 to discuss ways in which the legal community can improve diversity in the legal profession.

In 1993, the sub-committee made several recommendations to the Code of Judicial Conduct Task Force concerning certain sections of the proposed Code of Judicial Conduct pertaining to discrimination and bias. Currently, the sub-committee is developing a quarterly Commission newsletter that will address the work of the Commission.

#### *Additional Projects*

Future projects of the Bar Liaison Sub-committee include development of a Commission newsletter, ongoing involvement in the annual WSBA Local Bar Leaders Conference, and continuing liaison with state bar associations.

#### *RESEARCH SUB-COMMITTEE*

##### *Mission*

The mission of the Research Sub-committee is to design, fund and conduct research projects pertaining to the problems of racial and ethnic minorities in our state justice system.

##### *Scope*

The Research Sub-committee was formed after recommendation by the Minority and Justice Task Force that additional research be undertaken to determine the extent of racial/ethnic disparity within the state justice system and to isolate specific areas of concern. To date, two research studies have been undertaken.

*Work of the Sub-committee*

During 1993, the Research Sub-committee designed, funded and completed two studies which examined the role of race in criminal prosecution and in imposition of exceptional sentences under the Sentencing Reform Act of 1981.

The goal of the first study was to assess the role of race in decisions to prosecute and to determine whether there exist substantial county differences in the effects of race and ethnicity of the accused on the prosecution of criminal cases in Washington. The project made the following findings:

- (1) Offender and case characteristics were relatively consistent across the Washington counties. Offender race and charge types were the two areas with substantively interesting variation across counties.
- (2) Proportions of cases that went to trial tended to be fairly comparable between cases involving whites and minorities. While being a minority person or person of color generally increased one's likelihood of going to trial, that likelihood tended to be fairly low.



The second research study sought to determine whether there exist significant racial and ethnic disparities in the use of exceptional and alternative sentences in Washington and to identify characteristics of cases and offenders that may contribute to such disparities. The project made the following findings.

- (1) Exceptional sentences are used infrequently—less than four percent of all convictions in the state.
- (2) Disparities in the imposition of exceptional sentences seem to reflect disparities in some minority groups receiving mitigated exceptional sentences less frequently than other racial/ethnic groups rather than to reflect one minority group receiving more aggravated exceptional sentences.
- (3) Hispanic (Latino) offenders are less likely to receive mitigated exceptional sentences than offenders from other racial or ethnic groups.
- (4) The relationship between race and the imposition of exceptional sentences is far more complex than anticipated.

*Additional Projects*

A "Study of Racial and Ethnic Differences in Criminal Prosecution in King County" is in progress during the period from July 1994 through June 1995. The purpose of the study is to determine whether the race or ethnicity of persons accused of crimes in Washington influences the outcome of criminal prosecution. This project will be released for bid by research contractors in the fall of 1994.

A "Review of State Reforms to Address Problems of Racial and Ethnic Minorities in the Administration of Justice" is in progress from July 1994 through June 1995. Its main task is to compile information on measures taken by states and the federal government to remedy problems of racial and ethnic minorities in the administration of justice.

*CONCLUSION*

The Washington State Minority and Justice Commission has accomplished much in a relatively short period. Education, training and research are ongoing as the various sub-committees continue their efforts to ensure adequate minority participation in the state justice system and to improve the fairness and equity of the judicial process.

### *MINORITY AND JUSTICE TASK FORCE*

Pursuant to legislation in 1987, the Washington State Supreme Court established the Washington State Minority and Justice Task Force to determine the existence of bias and recommend action to eliminate bias against racial and ethnic minorities in our courts. The term "minority" or "minorities" as used throughout this report refers to persons of color, who generally classify themselves as Native American (Indian), African American (Black), Hispanic (Latino) and Asian/Pacific American (Chinese, Japanese, Korean, Filipino, Vietnamese, Laotian, Cambodian, East Indian and Pakistani). Charles Z. Smith, then a Seattle attorney and a former superior court judge, was appointed Chairperson. The Task Force, predecessor to the present Minority and Justice Commission, focused on several issues, including:

- o The perceptions and treatment of minority litigants in the courts;
- o The perceptions and treatment of minority lawyers in the courts;
- o The underrepresentation and treatment of minority judges, court officials and minority employees in the courts; and
- o The design and implementation of an educational program to increase cultural awareness and to prevent bias against minority persons in the courts.

In order to better understand the concerns of minority communities about the legal profession and our judicial system, the Task Force held public forums around the state near the end of 1988. The Task Force heard testimony from legal professionals and members of various ethnic communities and received written comments from the public. There were serious concerns expressed by forum participants about the poor representation of minorities in the legal profession and minority employees in our court system.

Following these forums, the Task Force undertook two studies designed to collect demographic information on lawyers, judicial officers and court personnel. The Task Force also conducted other research, including a review of prosecutors' and public defenders' guidelines and their perceptions of racial and ethnic bias; a comparable study of community corrections officials; and development of two questionnaires to collect data on selected civil cases involving minority persons, as well as settlement amounts awarded minority litigants in asbestos cases. These research projects were designed to assess current attitudes and treatment of minorities as participants in and components of the judicial system. Specifically, the conclusions of these research projects focused on five broad areas of concern:

- o The perceptions about the treatment of minority litigants in the courts;
- o The treatment of minority litigants in civil and criminal matters in the courts;

- o The number and underrepresentation of minority persons as lawyers and judges in the courts;
- o The number and underrepresentation of minority persons as non-judicial employees in the courts; and
- o The education of legal professionals and court staff concerning the existence of bias in the courts.

Research by the Task Force determined, among other things, that many minority persons believe bias pervades the entire legal system and is reflected in the way minority litigants are treated by law enforcement officials, court officers and judges; and that minorities received disparate treatment in adjudication of civil claims and imposition of criminal sentences. The research further revealed that minority persons were underrepresented in the legal community at large and were particularly scarce in the current ranks of court employees and judicial personnel. The research suggested there was a need for ongoing cultural awareness education to overcome individual and institutional biases.

As a result of these findings, the Task Force made several recommendations to the Legislature, the courts, bar associations and law schools outlining measures that could be implemented to ameliorate some of the disparate effects revealed by the research. The Task Force further recommended establishment by the Supreme Court of a permanent Minority and Justice Commission, with provision for funding to (a) conduct additional research as recommended by the Minority and

## Washington State Minority and Justice Commission

Justice Task Force; (b) oversee implementation of the Task Force's recommendations; (c) develop ongoing awareness training for judges, legal professionals and court staff; (d) recommend measures to prevent bias in our state court system; and (e) retain the staff necessary to carry out the work of the Commission.

The final report of the Washington State Minority and Justice Task Force was issued in December 1990.

### MINORITY AND JUSTICE COMMISSION

The Washington State Minority and Justice Commission was created by the Washington State Supreme Court by court order in October 1990. The purpose of the Commission is to continue the work of its predecessor, the Minority and Justice Task Force, by implementing the Task Force recommendations, such as conducting cultural diversity programs, developing programs to increase diversity in the work force, acting as a liaison for bar organizations throughout the state, and continuing research into areas such as prosecutorial discretion and exceptional sentences involving minorities in Washington State. Justice James M. Dolliver and Justice Charles Z. Smith are co-chairmen of the Commission. Ms. Vicki J. Toyohara, a member of the Washington bar, serves as full-time Executive Director of the Commission.

The Commission has established four sub-committees to carry out its work: the *Bar Liaison Sub-committee*, the *Work Force Diversity Sub-committee*, the *Research Sub-committee*, and the *Education Sub-committee*. These sub-committees are chaired and staffed by legal practitioners, judges, researchers and other distinguished members of the professional, legal and general community. All the work accomplished by the Commission is generated within these sub-committees. The central purpose of each sub-committee is indicated below:

- o The focus of the *Bar Liaison Sub-committee* is establishing relationships with state and local bar associations in order to disseminate information about the work and

activities of the Commission. This sub-committee also works with the associations on common minority issues and concerns.

- o The goal of the *Work Force Diversity Sub-committee* is to increase the number of ethnic minority employees in non-judicial positions, including bailiffs and clerks, as well as in quasi-judicial positions such as commissioners and magistrates.
- o The task of the *Research Sub-committee* is to conduct research projects examining whether the race and ethnicity of participants in the justice system affects the treatment they receive. This sub-committee has already examined whether the race and ethnicity of a criminal defendant is a factor in the prosecution of criminal defendants and imposition of exceptional sentences.
- o The *Education Sub-committee* is working on the highly significant project of cultural diversity education. Its focus is promotion and development of seminars for court personnel and judges to develop greater cultural awareness and sensitivity. One target group is court employees who have daily contact with the public, victims, witnesses and defendants.



*SUB-COMMITTEE REPORTS*

*WORK FORCE DIVERSITY SUB-COMMITTEE*

*Membership*

The Work Force Diversity Sub-committee is chaired by Judge LeRoy McCullough of the King County Superior Court and co-chaired by Ms. Sandra Fancher Garcia, a Bellingham attorney. Other members are Judge Elaine Houghton, Washington State Court of Appeals; Judge Karen B. Conoley, Kitsap County Superior Court; Yakima County Prosecuting Attorney Jeffrey C. Sullivan; Jeffrey A. Beaver, a Seattle attorney; Robert C. Boruchowitz, Director of the Office of the Public Defender; David J. Della, Executive Director of the Commission on Asian American Affairs; Guadalupe Gamboa, attorney for Evergreen Legal Services; Ms. Kazzie Katayama, Seattle Metro; Vincent K. Sewell, a graduate student; and Ms. Terry Mark, Assistant Director for King County Department of Human Services.

*Mission Statement and Goals*

The mission of the Work Force Diversity Sub-committee is to promote equal employment opportunities and to increase the number of racial and ethnic minority staff members at all levels of the courts. During 1991 and 1992, the sub-committee formulated goals, areas of inquiry and recommendations in four primary areas: (1) providing work force diversity education for existing court personnel; (2) recruiting, hiring, retaining

and promoting minority court personnel; (3) creating resource lists for each county court system; and (4) obtaining adequate funding to continue these tasks. The sub-committee has worked steadily toward achievement of all these goals.

### *Scope*

The scope of the activities of the Work Force Diversity Subcommittee has its origins in the initial work of the Minority and Justice Task Force. In 1988, pursuant to legislative mandate and establishment by the Washington State Supreme Court, the Minority and Justice Task Force held public forums across the state to assess the scope of underrepresentation and discriminatory treatment of minority persons as judges, court officials and court employees in our state judicial system. Comments received during these forums revealed that underrepresentation of minorities as legal professionals and as court employees was a principal concern. The Task Force Interim Report dated March 1989 stated:

Considering the substantial amount of testimony given on the disproportionately low representation of minorities in the court system, the Task Force expects to develop some recruitment procedures which should enhance employee diversity in the courts.

In addition to hosting the forums, the Task Force also conducted a demographic survey of the courts to determine the racial, ethnic and gender composition of the court work force. The January 1990 Task

Force Progress Report noted that few minorities were serving as professionals or administrators. The survey also disclosed that few persons of color were represented as judges, magistrates, commissioners or judges *pro tempore*, even though some positions were filled by appointment. The Executive Summary of the Task Force Progress Report of January 1990 notes that:

The Task Force has also found that many of the courts lack *specific* equal employment opportunity procedures. The majority of courts surveyed indicated that they adhere to county policies or include an equal employment opportunity statement in their personnel policies. Few courts have adopted comprehensive affirmative action programs. . . . It, therefore, appears that few courts have adopted specific or effective guidelines and practices for the *active* recruitment, hiring, and retention of minorities.

The Minority and Justice Task Force Final Report was issued in December 1990. Chapter 8 of that report, prepared by consultant Ms. Joann Francis, addressed the "Representation of Minorities in Non-Judicial Court Positions." As part of her study of selected county court systems in Washington, the author considered the demographic information collected in 1989, the census, availability of data by county, and an examination of the Equal Employment Opportunity and Affirmative Action policies or procedures provided to the Task Force by county courts. The report found that:

[A]ccording to the 1989 demographic data, minorities represent about 12% of the non-judicial court employees. However, minorities are not employed in a variety of non-judicial court positions throughout the various court levels in the state of Washington. To the extent that minorities are represented in non-judicial positions, they are heavily concentrated in the office/clerical category.

The Task Force made specific recommendations in its December 1990 Final Report based on this statistical announcement. Among other things, the Task Force recommended that:

[A] courtwide Work Force Diversity Program needs to be developed and implemented immediately to include at a minimum (1) clearly established roles and responsibilities for EEO/Affirmative Action Officers, managers, and other court personnel; (2) written procedures for recruitment and selection processes to maximize opportunities for minorities (3) annual analysis of discharges and voluntary resignations to determine the impact of the representation of minorities in the work force; and (4) specific measures to provide training and employee development opportunities for minorities.

Primary goals and efforts of the Work Force Diversity Subcommittee are focused on resolving the issues raised by the Task Force report, as well as identifying new options for increasing work force diversity within the state court system.

*Work of the Sub-Committee*

The first area addressed by the Work Force Diversity Sub-committee was education of existing court staffs. In June 1991, the sub-committee reported and identified the following questions for discussion:

- (1) What education tools concerning cultural diversity are presently available?
- (2) Who will pay for education programs for court staffs?
- (3) What format would such education take?
- (4) What initial information on cultural sensitivity should be provided to all new court employees?
- (5) Who should do the initial and ongoing training?
- (6) How often should training be conducted?
- (7) Should the sub-committee and Commission produce a manual and provide speakers to individual counties for use in educating their present staff?
- (8) Should the use and need for language interpreters be addressed as part of such an ongoing education program?

In response to these questions, the Work Force Diversity Sub-committee formulated several courses of action. In 1993, it completed a 129-page *Work Force Diversity Resource Directory for Washington State Courts*. The directory identifies, on a county-by-county basis, civil rights and other organizations interested in the employment and advancement of minority persons. The directory includes listings of organizations consisting principally of persons of color. The ultimate goal of the sub-committee is to use the directory to facilitate recruiting efforts. The *Resource Directory* will also be used in recruitment/work force diversity education and training programs for judges, court administrators, court clerks and human resource personnel.

In 1993, one thousand copies of the *Work Force Diversity Resource Directory* were printed. Some were distributed at the Fall Judicial Conference. Other copies were mailed to court administrators, presiding judges at all court levels, and the personnel directors of each court. Further distribution is planned for county prosecutors, public defenders, city attorneys and the office of the State Attorney General. The directory will be made current on a periodic basis beginning in 1995.

Also in 1993, the sub-committee began a collaborative effort to organize a specific diversity/hiring program. Ms. Vicki J. Toyohara, Executive Director of the Minority and Justice Commission, facilitated contacts with the Superior Court Judges' Association, the District and Municipal Court Judges' Association, and other interested groups and persons. In addition, a Request for Qualifications and Quotations (RFQQ) was developed to assist in identifying and selecting a consultant. The

goals and objectives of this program, as detailed in the RFQQ, were as follows.

A. *Project Goal*

The goal of this project is to develop and present a one-day education program to state court judges, administrators and other court personnel concerning recruitment, hiring, retention, and promotion practices and procedures in the courts, and to develop strategies and tools for increasing the number of persons of color in professional and clerical positions in Washington courts.

B. *Project Objectives*

The project objectives are:

- (1) To provide the courts with resources, tools and strategies to assist in their efforts to attract, recruit, hire and retain persons of color in professional and clerical positions in our courts.
- (2) To provide the courts with information about organizations and employment resources in the racial and ethnic minority communities throughout the state of Washington by providing participants with a copy of the Commission's recently published the *Work Force*

*Diversity Resource Directory for Washington State Courts.*

- (3) To provide a substantively meaningful education program which will have a positive, long-term effect upon those who attend, and which will have a visible impact within the courts in increasing the numbers of court employees who are persons of color
- (4) To improve the recruitment, hiring and retention processes and practices of the courts so that they include affirmative, pro-active processes and practices involving racial and ethnic minority communities and their organizational and employment resources.
- (5) To increase the number of persons of color who apply for positions in the courts, are hired for positions in the courts, and are retained and promoted in those positions.
- (6) To employ innovative and flexible strategies which respond to and address personnel concerns of individual courts and issues which may be regional in nature.
- (7) To increase awareness of the existence of the racial



and ethnic minority communities throughout Washington state and the employment resources available within those communities.

Following an extensive search process, a Seattle firm, Achievement Architects North, was retained to develop one of the first court-sponsored programs in the nation to assist judges and court administrators in learning more effective methods for diversifying court staffs. The consultant initially utilized focus groups comprised of current court personnel to conduct probing research. This research was used to develop a comprehensive one-day program approved by the Executive Director of the Commission. The final program was presented at the 1994 Spring Judicial Conference of the Superior Court Judges' Association on April 19, 1994 in Blaine. The Association approved an additional day for the Conference so that superior court judges, county clerks, court administrators and juvenile court administrators could focus on the consultant's specific recommendations in a day-long training session. The Association, the Board for Trial Court Education, and the District and Municipal Court Judges' Association assisted in funding the program through a special grant.

Response to the program was extremely favorable. In addition to the enthusiastic support of conference participants, favorable media coverage was given by the *Seattle Times*, the *Tacoma News Tribune* and the *Bellingham Herald*.

- o Review of employment-related court forms and materials to ensure fair consideration of language and other cultural sensitivity components.
- o Completion of court surveys covering affirmative action hiring goals, time tables, and other relevant statistics.
- o Continual focusing of ongoing diversity and sensitivity training related to recruitment, hiring, retention and promotion

- o Promotion of a Law Week Program with a community outreach aspect designed to educate persons of color about the courts and to encourage those persons to consider the courts as a place of employment. High school and college students of color will be targeted.

Other programs proposed by the Work Force Diversity Subcommittee include

*Additional Projects*

The District and Municipal Court Judges' Association also approved addition of this program to its May 1994 Spring Judicial Conference on an elective basis. That program, held at Pasco on May 18, 1994, was similarly enthusiastically supported by conference participants. Media coverage was given by the *Tri-City Herald*

motion of minority persons within the court employment system

- o Development and presentation of an advanced workshop on recruiting, hiring, retaining and promoting persons of color in the courts.
- o Periodic current revision, printing and distribution of the *Work Force Diversity Resource Directory for Washington State Courts*.
- o Conducting a survey on the use of minority contractors and vendors on court contracts and projects.
- o Development of a model of procedures for handling complaints from persons of color on court-related incidents.

The Work Force Diversity Sub-committee recognizes that, despite its accomplishments over the past few years, much still needs to be done to fulfill its mission of promoting equal opportunity for all persons within the state court system. However, the sub-committee believes its past efforts have begun to make inroads into the serious problem of minority underrepresentation in our state court system.

## Washington State Minority and Justice Commission

### *Education Sub-Committee*

#### *Membership*

The Education Sub-committee is co-chaired by Judge William W. Baker of the Washington State Court of Appeals and Ms. Debora G. Juarez, an attorney with Evergreen Legal Services. Members of the sub-committee are Judge James M. Murphy, Spokane County Superior Court; Judge Ricardo S. Martinez, King County Superior Court; Judge Ron A. Mamiya, Seattle Municipal Court; Judge Sergio Amijo, Tacoma Municipal Court; Ms. Mary Campbell McQueen, Administrator for the Courts; Ms. Irene Gutierrez, Yakima Rebound Program, Ms. P. Diane Schneider, Conciliation Specialist, United States Department of Justice; Ms. Ada Ko, Assistant City Attorney, Seattle; Ms. Esther L. Patrick, Personnel Coordinator, King County District Courts; Lonnie Davis, DISabilities Law Project Coordinator, Washington Coalition of Citizens with Disabilities; James Kelly, Executive Director, African-American Affairs Commission; David C. Ward, Yakama Nation Housing Authority; Ms. Artee E. Young, a Tacoma attorney; and Ms. Vicki J. Toyohara, Executive Director of the Commission.

#### *Mission Statement and Goals*

The mission of the Education Sub-committee is to improve the administration of justice by eliminating racism through education. Of primary importance is the need to increase cultural awareness and engender mutual respect in persons who deliver court services and rep-

resent our court system. It is the vision of the sub-committee that cultivating such an environment will increase the capacity of people to respect one another. Ultimately, the benefits of such a vision will be shared not only by individuals, but by the public as a whole.

In carrying out its mission, the sub-committee will engage in and participate with the people and institutions of Washington state to help eliminate racism and insensitivity toward those who come into our court system seeking justice. The sub-committee hopes to employ innovative and flexible strategies that respond to individual court systems and the various problems that may arise.

Finally, the sub-committee is committed to conducting itself in a manner that is responsive and complementary to the work and progress of the Washington State Minority and Justice Commission.

The primary goals of the Education Sub-committee are to (1) provide leadership to all components of the state justice system in order to eliminate racism and disparate treatment; (2) ensure that cultural diversity training becomes a normal and continuous aspect of employment within the state justice system; (3) provide cultural diversity training skills to persons within the court system; and (4) provide the highest quality in educational services available to those within the state justice system.

### *Scope*

The Education Sub-committee was formed in response to

public forum speakers who strongly recommended development and implementation of a comprehensive cultural awareness program for court personnel. Despite initial progress by the Minority and Justice Task Force, the continuing need for cultural awareness education persists. The ever-changing demographics of the United States and the mutual influence of different cultures will inevitably reshape our society and its institutions, necessitating a continuing program of cultural awareness education at all levels of the justice system.

Compelling reasons exist for developing a comprehensive cultural awareness education program for the judiciary and court personnel. These reasons include (1) the ever-changing national and state demographics that reflect a continued growth in minority populations; (2) the increasing demand for competent language interpreting in the courts; (3) the necessity for improving efficiency of communication between court personnel and clientele; (5) the importance of addressing and resolving individual acts of bias, intentional or otherwise; and (6) the responsibility of the court system to ensure that institutional practices and procedures are applied in a uniform manner. The scope of the sub-committee's responsibility extends to addressing and resolving these issues through increased cultural awareness education.

#### *Work of the Sub-committee*

The primary project of the Education Sub-committee has been development of a curriculum for cultural diversity education training for court personnel. The sub-committee, with the Executive Director of

the Commission, Ms. Vicki J. Toyohara, developed a Request for Proposal (RFP) to locate a suitable professional contractor to aid the sub-committee in its work.

The RFP outlined several objectives and goals for this program, including:

- (1) That the proposal meet the educational objectives of the program, that is, provide cultural diversity training which would engender mutual respect and cultural awareness in all persons who deliver court services and help eliminate racism and insensitivity in the court system.
- (2) That the educational segments incorporate the following items:
  - (a) A description and discussion of challenges confronting the court system with a racially, ethnically and culturally diverse clientele, including at a minimum
    - 1) The changing socio-economic trends relating to the number and percentage of minorities in local, regional and state populations of court users; and

- 2) The capacities in which minorities utilize the court system.
- (b) Practical experiential exercises that identify barriers to cross-cultural communication, improve the participants' cross-cultural communication skills and assist in the development of cross-cultural competency in delivery of court services. Topics will include the following:
- 1) Divergent cultural views and value systems;
  - 2) Rationalization and stereotyping of differences;
  - 3) Identification of accepted institutionalized culturally-based mechanisms affecting the treatment of culturally diverse court clientele;
  - 4) Verbal and non-verbal behavior; and
  - 5) The necessity for and proper use of language interpreters.
- (c) Description, analysis and discussion of site-specific local and regional problems and state-wide issues related to the treatment of minorities in the legal system and court environment.



- (d) Guidance from and with participants through structured approaches to formulate an action plan designed to:
  - 1) Apply the strategies, tactics, skills and information imparted during the seminar;
  - 2) Encourage changes in delivery of court services, practices and procedures, develop respect for cultural differences; and promote fair and equal treatment of minorities by and in the justice system; and
  - 3) Recommend practical steps for implementing strategies for change which meet the challenges of an ethnically, racially and culturally diverse court clientele.

The written contractor responses were carefully reviewed and ranked by the sub-committee. A panel of sub-committee members then met with each responding contractor over a period of four days for intensive interviews. One contractor was initially selected, but the Minority and Justice Commission terminated that contract before completion upon recommendation of the sub-committee.

A successor contractor was then selected from among those originally responding to the RFP. The Commission chose

Achievement Architects North upon recommendation of the sub-committee. Achievement Architects North has carried forward its undertaking with dispatch and professionalism. It completed preliminary on-site court personnel interviews and needs assessments and reported to the sub-committee in June 1993. A total of five focus groups were conducted in Yakima and Pierce County courts. Based upon the work of the previous contractor and the needs assessment analysis conducted by Achievement Architects North, a preliminary curriculum was prepared by the sub-committee. A final curriculum was approved after further refinements.

The first pilot program of the cultural awareness education program was held on June 2, 1994 in Seattle. The program focused on Seattle Municipal Court and King County District Court personnel with 50 participants and 8 non-participant observers. The purpose of the pilot session was to test the curriculum and subject it to rigorous critique based upon the practical experience of participants and observers. Following further refinement and improvement of the curriculum, a second pilot session will take place on September 22, 1994 in the Yakama Tribal Heritage Center in Yakima County. This session will focus on Superior Court personnel.

#### *Additional Projects*

Funds available during the current biennium will permit the Education Sub-committee to present the finished cultural diversity training product on two successive days in mid-October in Ephrata. As more

funds become available, it is the intent of the sub-committee to present further cultural awareness education programs to court personnel at various levels and in geographically diverse locations throughout the state. In addition, presentation of the cultural diversity program during orientation for new judges is being planned. It is expected that the programs will need to be presented periodically on an indefinite basis. Each session will be refined, based upon the accumulated prior experience of the sub-committee, and modified as appropriate to reflect local conditions.

As funds permit, the sub-committee hopes to expand its audience to include local corrections personnel throughout the state of Washington. It is not expected that the work of the sub-committee will ever be "complete," in that the need for cultural awareness education will be constant.

#### *BAR LIAISON SUB-COMMITTEE*

##### *Membership*

The Bar Liaison Sub-committee is chaired by Seattle attorney and recent past president of the King County Bar Association, Ms. Mary Alice Theiler. Other members of the sub-committee are Judge Philip J. Thompson, Court of Appeals; Ms. Myrna Contreras-Trejo, a Yakima attorney; Charles E. Siljeg, a Seattle attorney; Ms. S. Nia Cottrell, a Seattle attorney; Ronald E. Cox, a Seattle attorney; Marvin G. (Jerry) Martinez, Executive Director of the Commission on Hispanic Affairs; Richard E. McDermott, Jr., a Bellevue attorney; Ms. Marilee Scarbrough, a Tacoma attorney; and Brian A. Tsuchida, Office of the Public Defender.

*Mission Statement and Goals*

The mission of the Bar Liaison Sub-Committee is to facilitate communication between the Commission and the legal community in order to share information, address concerns of minority persons in the legal profession, and implement programs to improve the status of minority members of the state bar.

The stated goals of the sub-committee are (1) to become the outreach arm of the Commission and the legal community; (2) to act as a clearinghouse to share information about efforts by bar associations in Washington state to address the concerns of minorities in the profession and of minority litigants and participants in the civil and criminal justice system; (3) to inspire efforts in the profession to undertake these projects; and (4) to share information among bar associations in this state concerning Commission findings and projects.

*Scope*

In a survey of court personnel, judges and lawyers conducted by the Minority and Justice Task Force, several questions concerning minority representation within the court system were included. The survey asked whether minority representation is "adequate" for various positions within the system. A majority of respondents believed that minority representation was inadequate. Specifically, a large percentage of respondents indicated a concern over the paucity of minority representation in the judiciary and among lawyers. A striking aspect of this sur-

vey was that much larger percentages of minority respondents than non-minority respondents believed there was underrepresentation of minorities or persons of color among members of the bar.

The sub-committee's task is to inform, educate and assist state bar associations in resolving this apparent disparity.

*Work of the Sub-committee*

The Bar Liaison Sub-committee meets regularly between meetings of the Commission. Participants report on liaison efforts with bar associations in the state, including the following:

- o Washington State Bar Association
- o Washington State Bar Association-Young Lawyers Division
- o Local Bar Associations
- o Asian Bar Association
- o Hispanic Bar Association
- o Loren Miller Bar Association
- o Northwest Indian Bar Association

## Washington State Minority and Justice Commission

- o Eastern Washington Minority Lawyers Association
- o Minority Attorneys Bar Association
- o Defenders and Prosecutors Associations

The sub-committee surveyed 33 local bar associations in Washington state to determine whether they have functioning committees covering minority and justice issues. The responses were used to tailor a program of outreach to local bar associations. Through the questionnaires it was discovered that most bar associations do not have specific information about the racial and ethnic composition of their membership.

The sub-committee also sponsored a presentation at the Local Bar Leaders Conference of the Washington State Bar Association in May 1993 to discuss ways in which the local legal community can improve diversity in the legal profession. The sub-committee used this opportunity to promote awareness within local bar associations of issues being addressed by the Commission and other minority organizations. Ms. Mary Alice Theiler, Chairperson of the Sub-committee, and Judge Philip J. Thompson conducted the well-received presentation.

In August 1993, the sub-committee was asked by the Code of Judicial Conduct Task Force to review certain sections of the proposed Code of Judicial Conduct which pertain to discrimination and bias. At that time, proposed Canon 2(C) would have provided that "Judges shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion or national origin."

(6) judges shall require lawyers in proceedings before them to refrain from manifesting, by

...

(4) judges shall perform judicial duties without bias or prejudice. Judges shall not in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and shall not permit staff, court officials and others subject to the judges' direction and control to do so.

Proposed Canon 3(A)(4) and proposed Canon 3(A)(6) were both generally agreed to. The text of these subsections follows:

except of judges.

The sub-committee advised the task force that the proposed Canon was good, but subject to some vagueness, and suggested that the word "invitations" be substituted with language such as "illegal" or "prohibited by law". Additionally, the sub-committee recommended that the Canon should apply if the organization had been held to be discriminatory by some court, regulatory body or agency of competent jurisdiction and that the Canon should be amended to include language advising a judge to suspend participation until such a determination was reached. The sub-committee also pointed out a similar proposed amendment to the Rules of Professional Conduct 8.4(g) which would prohibit discrimination against groups more broadly defined, including age, disability, sexual orientation, and marital status. Overall, it was felt that the requirement of proposed Canon 2(c) was reasonable to expect of judges.

words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, against parties, witnesses, counsel or others. This Section 3.A(6) does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, or other similar factors, are issues in the proceeding.

Currently, the sub-committee is developing a quarterly Commission newsletter which will address the work of the Commission and its sub-committees. The newsletter will also provide an opportunity to report on the issues and activities of other groups which relate to the work of the Commission, such as the Washington State Bar Association Committee on Opportunities for Minorities in the Legal Profession.

#### *Additional Projects*

Future projects of the sub-committee include:

- o Development of a Commission newsletter;
- o Ongoing involvement in the annual Washington State Bar Association's Local Bar Leaders Conference; and
- o Continuing liaison with bar associations throughout the state.



*RESEARCH SUB-COMMITTEE*

*Membership*

The Research Sub-committee is co-chaired by Dr. George S. Bridges, Ph. D., Professor of Sociology, University of Washington, and Hearing Examiner Ruperta Alexis, City of Seattle. Other members of the sub-committee are Dr. Charles H. Sheldon, Ph. D., Professor of Sociology, Washington State University; Ms. Donna Claxton Deming, University of Puget Sound Law School; Judge Richard A. Jones, King County Superior Court; Commissioner Kenneth H. Kato, Court of Appeals; Judge Norma Smith Huggins, King County Superior Court, Larry M. Fehr, Washington Council on Crime and Delinquency; and Robert Lamb, Jr., Community Relations Service, United States Department of Justice.

*Mission Statement and Goals*

The Research Sub-Committee will design, fund and conduct research to inform and assist the Minority and Justice Commission. To this end, the sub-committee will pursue research projects pertaining to the problems of racial and ethnic minorities in the Washington State justice system.

Research sponsored by the sub-committee will stress one or more of the following priorities:

- o Identification of problems experienced by minorities or persons of color in the juvenile and adult justice systems of the state;
- o Determination of the causes of these problems; and
- o Development of effective remedies to these problems

*Scope*

The sub-committee was formed upon recommendation of the Minority and Justice Task Force that additional research be undertaken to determine the extent of racial and ethnic disparity in the state justice system and to isolate specific areas of concern. The Task Force recommended that the following research be undertaken:

- (1) A study to determine whether judges set higher bail for minorities compared with non-minorities and if so, why;
- (2) A study to determine whether prosecutors recommend higher bail for minorities compared with non-minorities and if so, why;
- (3) A study to determine whether persons who make screening decisions for amenability for release recommend disparate treatment for minorities and if so, why;

- (4) A study to examine the quality of legal representation afforded minority litigants, particularly in geographical areas of Washington state where there are few or no minority lawyers despite a sizable minority population.
- (5) A study to determine the feasibility of public financing for non-partisan judicial races, and
- (6) A study of different types of personal injury cases to determine whether minorities receive lower settlement amounts.

To date, two research studies have been undertaken. A report of the results of these studies follows.

*Work of the Sub-committee*

During 1993, the Research Sub-committee began an examination of the role of race and ethnicity in the administration of criminal justice. Two projects were designed, funded and completed over the course of the year. The two studies respectively examine the role of race in criminal prosecution and the imposition of exceptional sentences.

Research Study Number One

*An Exploratory Analysis of the  
Effects of Race and Ethnicity on Criminal Prosecution*

David Boerner, J. D., Donna Schramm, Ph. D. and David Fine, Ph. D.  
March 1, 1993 - June 30, 1993

The goal of this study was to identify, using existing data available from the Office of the Administrator for the Courts and the Washington State Sentencing Guidelines Commission, the feasibility of merging information on the race of criminal defendants with the prosecution of their cases in an effort to assess the role of race in decisions to prosecute. The study was also designed to assess whether there exist substantial county differences in the effects of race and ethnicity of the accused on the prosecution of criminal cases in Washington state.

The project objectives were (1) to identify state-wide racial and ethnic differences in the prosecution of persons charged with crimes in Washington state; (2) to determine whether racial and ethnic differences in prosecution vary significantly across Washington counties; (3) to establish whether racial and ethnic differences in prosecution are attributable, all or in part, to factors other than race, such as differences in the background of the accused or characteristics of the crime; (4) to determine how racial and ethnic differences in prosecution influence the outcomes of criminal cases at subsequent stages of the legal process (for example, conviction and sentencing); and (5) to determine, for Objectives 3 and 4, whether there exist significant differences across Washington counties in the influence of race on prosecution and case disposition.

The Research Sub-committee designed four major tasks for the project. First, the project sought to obtain data needed for the study from the Office of the Administrator for the Courts and the Sentencing Guidelines Commission on a conviction sample of cases. Second, the project attempted to assess the influence of sample selection biases resulting from use of a conviction sample. Third, the project sought to analyze the data with respect to project objectives 1-5 using multi-variate statistical methods. Fourth, the project sought to make adjustments in the analyses for the effects of sample selection biases wherever possible.

The study found that offender and case characteristics were relatively consistent across Washington counties. Most counties were also relatively comparable on the number of informations (criminal charges) filed, as well as whether informations were amended. Offender race and charge types were the two areas with substantively interesting variation across the counties. The study also found that proportions of cases that went to trial tended to be fairly comparable between white and non-white cases. While being non-white generally increased one's likelihood of going to trial, that likelihood tended to be fairly low. Race and ethnicity results of multi-variate analyses were inconclusive.

Research Study Number Two

*Racial/Ethnic Disparities and  
Exceptional Sentences in Washington State*

Robert D. Crutchfield, Ph. D., Joseph G. Weis, Ph. D.,  
Rodney L. Engen, M. S. and Randy R. Grainey, M. A.  
April 1, 1993 - June 30, 1993

The second research study funded in 1993 was prompted by concern that there exist substantial racial and ethnic disparities in the imposition of exceptional sentences under the Sentencing Reform Act of 1981 for persons convicted of crimes in Washington state. The primary goal of this study was to determine, using existing data maintained by the Washington State Sentencing Guidelines Commission, whether there actually exist significant racial or ethnic disparities in the use of exceptional and other alternative sentences in Washington state. A second goal was to identify the characteristics of criminal cases and offenders that may contribute to racial and ethnic disparities in exceptional sentencing.

The project objectives were (1) to identify the level of racial and ethnic differences in the imposition of exceptional sentences by judges on defendants in criminal cases by county and state-wide; (2) to determine whether the level of disparity in the use of exceptional sentences between ethnic minority defendants and white defendants varies significantly throughout the state and whether the level of disparity varies significantly among counties for each major ethnic minority group, includ-

ing African Americans, Hispanics (Latinos), Native Americans, and Asian Americans, (3) to determine whether specific characteristics of the criminal case, social background of the defendant, criminal history of the defendant, other aspects of the case, and the reasons given by the sentencing judge explain significant racial and ethnic differences that may be found in the imposition of exceptional sentences on defendants in Washington state; (4) to assess the possible effects of sample selection biases on the analyses of exceptional sentences, that is, differences between those defendants who do not receive exceptional sentences and those defendants who receive exceptional sentences which may influence the extent of racial or ethnic differences in the imposition of exceptional sentences by judges; and (5) to assess and recommend possible revisions in the sentencing guidelines as suggested by the analysis under the objectives stated.

The sub-committee designed four major tasks for the project. First, the project sought to obtain empirical data needed for the study from the Sentencing Guidelines Commission on the population of all persons sentenced in Washington state during 1990, 1991 and 1992. Second, the project sought to assess the possible impact of sample selection biases on the interpretation of results associated with the use of a conviction sample of cases. Third, the project sought to analyze the empirical data with respect to the research project objectives outlined above, using multi-variate statistical methods agreed upon by the project consultant and Commission staff. Fourth, the project sought to make adjustments, if possible, in the analyses performed for the effects of sample selection biases wherever possible.

The project's main findings were: First, exceptional sentences are used relatively infrequently, constituting less than four percent (4%) of all convictions in Washington State. Second, while there exist racial and ethnic disparities in the imposition of exceptional sentences, the disparities that occur appear to reflect disparities in some minority groups, particularly Hispanics, receiving mitigated exceptional sentences (below the standard range) less frequently than other racial/ethnic groups, rather than to reflect one minority group receiving more aggravated exceptional sentences (above the standard range). Third, Hispanic offenders, even after adjustments are made for differences among offenders in their types of offenses and prior records, are less likely to receive mitigated exceptional sentences than other racial or ethnic groups. Fourth, the relationship between race and the imposition of exceptional sentences is far more complex than anticipated. Even though the study found modest race/ethnicity effects in sentencing, simplistic notions about race and sentencing are unwarranted.

#### Additional Projects

*Study of Racial and Ethnic Differences in Criminal Prosecution in King  
County*

July 1, 1994 - June 30, 1995

The general purpose of the study is to determine whether the race or ethnicity of persons accused of felony crimes in Washington state influences, either directly or indirectly, the outcome of criminal pros



ecution. The study will examine the following major aspects of prosecutorial decision-making:

- (1) Dismissal of criminal complaints,
- (2) Use of pre-trial or "prosecutorial" discretion,
- (3) Filing of initial criminal charges; and
- (4) Negotiation of guilty pleas.

The study will have three objectives. First, the study will document written and unwritten policies of the Office of the Prosecuting Attorney for King County for filing charges, dismissing complaints, recommending pre-trial diversion, making sentencing recommendations, and negotiating guilty pleas. The study will assess written policies for prosecution and the frequency with which staff of the prosecutor's office handle cases in a manner consistent with these policies. Second, the study will determine whether there exist substantial racial and ethnic differences in the outcomes of each of the major aspects of prosecutorial decision-making. For example, the study will determine whether racial or ethnic minorities are (1) less likely than whites to have their criminal complaints dismissed; (2) less likely than whites to have their cases "diverted" at pre-trial; (3) more likely than whites to be charged with serious and violent crimes; and (4) less likely than whites to plead "guilty" or to receive substantial charge reductions as the result of plea negotiations. Third, the study will determine whether racial and ethnic differences in processing for each major aspect of prosecutorial decision-making is related to specific characteristics of cases, offenders, or patterns of non-compliance with the prosecutor's guidelines. The concern addressed in this third objective is whether such legal representation obtained, or non-compli-

ance with the specific policies and practices of county prosecutors, may contribute to differences among cases in the outcomes of prosecution decisions.

The project will draw upon existing sources of information maintained by the Office of the King County Prosecuting Attorney about the outcomes and dispositions of criminal cases. The study will rely heavily upon information in PROMIS (Prosecutor's Management Information System), a case-based information system which includes information on the characteristics of criminal defendants. Also included in this study will be extensive interviews with King County prosecutors. The interviews will cover formal and informal policies adopted by prosecutors in the handling of criminal cases.

The project will analyze, from a sample of felonies, the following questions:

- o To what extent do racial and ethnic differences exist in dismissal of cases, diversion of cases, filing of charges and negotiation of "guilty" pleas in King County?
- o To what extent are the outcomes of cases—in terms of dismissals, diversions, charges filed, or negotiated guilty pleas—consistent with written policies on the handling of cases?

- o In what types of cases, if any, does non-compliance with office guidelines contribute to racial and ethnic disparities in dismissal of cases, diversion of cases, filing of criminal charges or negotiation of pleas of "guilty?"
- o To what extent does non-compliance with office guidelines contribute to racial and ethnic disparities in dismissal of cases, diversion of cases, filing of criminal charges or negotiation of pleas of "guilty?"
- o What other factors, such as the backgrounds of criminal offenders, contribute to racial and ethnic differences in the prosecution of criminal cases?

The final aspects of the study design are currently being developed by the Research Sub-committee. It is anticipated that this project—in the form of an RFP—will be released for bid sometime in the fall of 1994.

*Review of State Reforms to Address Problems of  
Racial and Ethnic Minorities in the Administration of Justice*

July 1, 1994 - June 30, 1995

This project is prompted by the concern that there exists little readily-available information on the measures developed by other states to redress the problems experienced by racial and ethnic minorities in the administration of justice. The project will collect and compile materials, publish literature and evaluate research on these measures and make the information available to the Commission and to other interested parties in Washington State.

This project will be conducted by a graduate student or law student under the direction of one of the Commission members. Over the course of one year, the student will conduct systematic searches of legal and social science literature, including computerized library and legal indexes, and obtain information on measures taken by states and the federal government to remedy problems experienced by racial and ethnic minorities in our justice system.

Final aspects of this project are currently being designed by the Research Sub-committee. This project is expected to be under way about July 1, 1994.

### *CONCLUSION*

The Washington State Minority and Justice Commission has accomplished much in a relatively short period of time. The Education, Research, Work Force Diversity and Bar Liaison sub-committees are continually developing innovative and effective ideas to ensure adequate minority participation in the state justice system and to improve the fairness and equity of the judicial process. However, there is still much to be accomplished. Continuing education, training and research are essential.

The Minority and Justice Commission is committed to achieving equal justice for all citizens of Washington State regardless of their racial or ethnic background. The accomplishments in 1994 represent a positive step towards accomplishing this goal.



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The variation does not necessarily place all minority offenders at a disadvantage in the imposition of exceptional sentences.

There is also variation across counties in the rates at which judges impose sentences outside the statutory imposed range. Tables 2A and 2B show the prevalence of sentences beyond the standard range by county. Counties with the highest rates of sentences above the standard range include Mason, Clallam and Pacific/Wahkiakum counties. Counties with the lowest rates of sentences above the standard range include San Juan, Grant and Klickitat/Skamania counties. Finally, counties with the lowest rates of sentences below the standard range include Pacific, Skagit and Grays Harbor counties.

There is substantial variation across Washington counties in the rates at which exceptional sentences are imposed. Tables 1A and 1B exhibit information from the study on the percentage of exceptional sentences imposed in each county. Across all rates and types of criminal offenses, the highest rates of aggregated exceptional sentences (the standard range) are found in Pacific/Wahkiakum, Mason and Clallam County Superior Courts. The lowest rates are found in Grant and Whitman County Superior Courts. In contrast, mitigated exceptional sentences (below the standard range) are imposed most often in Thurston, Walla Walla, Island/San Juan and Kitsap County Superior Courts. Mitigated exceptional sentences are least likely in Skagit, Kittitas and Grant County Superior Courts.

STATISTICAL

Although white offenders were as likely as minority offenders, and in many cases are more likely, to receive exceptional sentences, there are racial disparities in the use of exceptional sentences under some circumstances and in some jurisdictions. Hispanic (Latino) offenders were found to be frequently disadvantaged by use of these sentences. However, other sentencing alternatives, such as the First Time Offender Waiver (FTOW) and the Special Sex Offender Sentencing Alternative (SSOSA), may actually contribute to more racial disparities in sentencing than exceptional sentences. Disparities may also occur in sentences within the standard range at earlier points in criminal justice processing or arrest.



TABLE 1A  
Percent Aggravated Exceptional Sentences By County Superior Courts

COUNTY	WHITE	AFRICAN AMERICAN	ASIAN AMERICAN	NATIVE AMERICAN	HISPANIC	OTHER	UNKNOWN	NON-WHITE	TOTAL
Adams	.43	.00	.00	.00	.00	.	.00	.00	.40
Asotin/Garfield/									
Columbia	4.00	.00	.00	.00	.00	.	3.51	.00	3.72
Benton/Franklin	1.28	1.26	.00	.00	1.84	.	.88	1.64	1.33
Chelan/Douglas	1.19	.00	.00	9.52	2.07	.00	.00	2.54	1.37
Clallam	6.85	.00	.	13.33	.00	.00	.00	8.00	6.71
Clark	3.32	3.52	.00	10.00	1.19	.00	.00	2.91	3.11
Cowlitz	3.07	.00	.00	20.00	2.17	.00	1.65	2.74	2.92
Ferry/Stevens/									
Pend Oreille	1.41	.00	.	.00	.00	.	.00	.00	1.25
Grant	.51	.00	.00	50.00	.00	.	.00	.64	.54
Grays Harbor	6.77	.00	.00	6.25	5.56	100.00	1.37	7.89	4.12
Island/San Juan	4.08	.00	.00	.00	.	.	.00	.00	2.00
Jefferson	1.69	.00	.	.00	.	.00	.00	.00	1.52
King	1.71	.99	1.65	.50	.00	33.33	2.56	1.03	1.45
Kitsap	3.84	3.11	.00	4.17	.00	5.56	.00	2.79	3.40
Kittitas	2.06	.00	.00	.00	.00	.	.00	.00	1.78
Klickitat/Skamania	4.86	.	.	.00	5.26	.00	.00	3.23	4.37
Lewis	3.91	.00	.00	14.29	.00	.00	.00	1.64	2.59
Lincoln	1.49	.00	.	.00	.00	.00	.00	.00	1.20
Mason	7.55	.00	.	5.88	9.09	.	5.26	5.88	7.02
Okanogan	1.47	.00	.	.00	.97	.	1.09	.60	1.08
Pacific/Wahkiakum	5.50	.	.00	.00	52.94	.00	.00	39.13	7.23
Pierce	1.81	1.37	.89	.72	1.35	.00	1.03	1.31	1.60
Skagit	2.85	3.85	.00	10.53	3.88	.	6.67	4.61	3.24
Snohomish	1.46	2.12	.00	.00	.00	.00	1.22	1.47	1.45
Spokane	1.31	2.23	.00	.00	1.32	.00	.00	1.46	1.33
Thurston	2.79	2.25	.00	5.26	9.30	16.67	.00	4.35	2.92
Walla Walla	2.22	.00	.	.00	.00	.	6.67	.00	2.26
Whatcom	2.57	.00	.00	1.79	3.70	.00	.66	1.84	2.18
Whitman	.00	.00	.00	.00	.00	.00	.00	.00	.00
Yakima	1.85	2.09	.00	1.71	2.54	.00	.00	2.40	2.09
STATE TOTAL	2.17	1.24	1.02	2.06	2.32	7.58	1.11	1.59	1.94

TABLE 1B

## Percent of Mitigated Exceptional Sentences by County Superior Court

COUNTY	WHITE	AFRICAN AMERICAN	ASIAN AMERICAN	NATIVE AMERICAN	HISPANIC	OTHER	UNKNOWN	NON- WHITE	TOTAL
Adams	3.03	.00	.00	.00	.00	.	.00	.00	2.83
Asotin/Garfield/ Columbia	2.86	.00	.	.00	.00	.	.00	.00	2.07
Benton/Franklin	1.84	3.77	25.00	.00	.52	.	.44	1.64	1.63
Chelan/Douglas	1.72	.00	.00	4.76	.00	.00	.74	.36	1.29
Clallam	3.42	.00	.	.00	.00	.	.00	.00	3.05
Clark	2.51	2.11	5.56	5.00	.00	.00	.71	1.82	2.35
Cowlitz	2.63	5.00	.00	.00	.00	.00	.83	1.37	2.40
Ferry/Stevens/ Pend Oreille	1.41	.00	.	.00	.00	.	.00	.00	1.25
Grant	.51	.00	.	.00	.00	.	.00	.00	.36
Grays Harbor	3.08	.00	.00	.00	5.56	.00	.27	2.63	1.65
Island/San Juan	6.80	.00	.00	.00	.	.	.00	.00	3.33
Jefferson	2.26	.00	.	.00	.	.00	.00	.00	2.03
King	2.43	2.60	1.65	7.04	3.45	.00	2.24	2.71	2.54
Kitsap	3.46	2.07	4.55	4.17	6.67	.00	2.50	2.79	3.28
Kittitas	.41	.00	.00	.00	.00	.	.00	.00	.36
Khekitat/Skamania	1.08	.	.	.00	.00	.00	.00	.00	.87
Lewis	4.13	.00	.00	.00	.00	.	.00	.00	2.59
Lincoln	1.49	.00	.	.00	.00	.00	.00	.00	1.20
Mason	2.26	.00	.	.00	.00	.	1.75	.00	1.97
Okanogan	1.47	.00	.	3.28	.00	.	.00	1.19	1.08
Pacific/Wahkiakum	2.06	.	.00	.00	.00	.00	3.13	.00	2.02
Pierce	1.84	1.17	4.46	2.17	1.08	.00	.00	1.31	1.60
Skagit	.75	.00	.00	.00	.00	.	.00	.00	.60
Snohomish	1.40	.42	.00	1.33	.00	50.00	.00	.88	1.29
Spokane	.94	1.79	.00	1.98	.00	.00	.00	1.46	1.00
Thurston	3.85	1.12	.00	15.79	.00	16.67	.00	2.72	3.62
Walla Walla	3.70	8.33	.	.00	.00	.	.00	4.55	3.62
Whatcom	1.62	2.56	.00	.00	.00	.00	.00	.61	1.23
Whitman	2.11	.00	.00	.00	.00	.00	.00	.00	1.74
Yakima	1.81	3.14	.00	1.71	1.64	.00	.00	1.81	1.80
STATE TOTAL	2.13	2.18	2.46	3.05	1.02	3.03	.65	1.97	2.01

Percent Sentences Above Standard Range by County Superior Courts

COUNTY	WHITE	AFRICAN AMERICAN	ASIAN AMERICAN	NATIVE AMERICAN	HISPANIC	OTHER	UNKNOWN	NON-WHITE	TOTAL
Adams	.87	.00	.00	.00	.00	.00	.00	.00	.81
Asotin/Cartier/	4.57	.00	.00	.00	.00	.00	.00	.00	4.55
Benton/Franklin	1.28	1.26	.00	.00	1.84	2.07	.00	1.64	1.38
Chelan/Douglas	1.33	.00	.00	.00	9.52	2.54	.00	2.54	1.46
Clallam	8.22	.00	.00	.00	13.33	.00	.00	8.00	7.93
Clark	3.87	3.52	.00	.00	10.00	1.19	.00	1.43	3.65
Cowlitz	3.42	.00	.00	.00	20.00	2.17	.00	1.65	3.22
Ferry/Stevens/	2.83	.00	.00	.00	.00	.00	.00	.00	2.49
Grant	.51	.00	.00	50.00	.00	.00	.00	.64	.54
Grays Harbor	6.77	.00	.00	6.25	5.56	100.00	2.19	7.89	4.53
Island/San Juan	4.08	.00	.00	.00	.00	.00	.73	.00	2.33
Jefferson	1.69	.00	.00	.00	.00	.00	.00	.00	1.52
King	1.94	1.34	2.07	.50	.00	33.33	2.88	1.36	1.73
Kitap	4.46	3.63	.00	4.17	.00	5.56	.00	3.14	3.92
Kititas	2.47	.00	.00	.00	.00	.00	.00	.00	2.14
Klickitat/Skamania	5.41	.00	.00	.00	5.26	.00	.00	3.23	4.80
Lewis	3.91	.00	.00	14.29	.00	.00	1.41	1.64	3.00
Lincoln	2.99	.00	.00	.00	.00	.00	.00	.00	2.41
Mason	10.19	.00	.00	5.88	9.09	.00	5.26	5.88	8.99
Okanogan	1.47	.00	.00	.00	.97	.00	1.09	.60	1.08
Pacific/Wahkiakum	5.84	.00	.00	.00	52.94	.00	.00	39.13	7.51
Pierce	2.34	1.61	.89	2.17	1.76	.00	2.06	1.64	2.05
Skagit	3.00	3.85	.00	10.53	3.88	.00	6.67	4.61	3.36
Skamish	1.61	2.12	.00	1.33	.00	.00	1.83	1.76	1.63
Spokane	1.39	2.23	.00	.00	2.63	.00	.00	1.70	1.43
Thurston	3.52	3.37	.00	5.26	9.30	16.67	.00	4.89	3.62
Walla Walla	2.47	.00	.00	.00	.00	.00	6.67	.00	2.49
Whitcom	2.97	.00	.00	1.79	9.26	.00	.66	3.68	2.75
Whitman	1.05	.00	.00	.00	.00	.00	.00	.00	.87
Yakima	2.00	2.09	.00	2.29	2.62	.00	.00	2.51	2.22
STATE TOTAL	2.50	1.54	1.23	2.46	2.54	7.58	1.64	1.87	2.28

TABLE 2A

TABLE 2B

Percent Sentences Below Standard Range by County Superior Courts

COUNTY	WHITE	AFRICAN AMERICAN	ASIAN AMERICAN	NATIVE AMERICAN	HISPANIC	OTHER	UNKNOWN	NON-WHITE	TOTAL
Adams	7.36	14.29	.00	.00	.00	.00	.00	8.33	7.29
Asotin/Carfield/	10.29	.00	.00	33.33	.00	.00	5.26	10.00	9.09
Columbia	6.31	3.77	25.00	.00	2.36	.00	4.42	2.92	5.18
Benton/Franklin	9.81	.00	.00	9.52	3.31	.00	9.63	3.62	8.33
Chehalis/Douglas	11.30	.00	.00	.00	.00	.00	.00	.00	10.06
Challam	8.09	3.52	11.11	15.00	3.57	18.18	2.86	5.45	7.56
Clark	7.45	15.00	.00	.00	.00	.00	2.48	4.11	6.82
Cowlitz	0.95	.00	.00	18.18	66.67	.00	8.70	26.67	11.53
Ferry/Stevens/	15.15	9.68	.00	.00	7.32	.00	.00	7.69	12.97
Pend Oreille	6.77	.00	.00	6.25	5.56	.00	5.21	5.26	5.91
Grant	23.81	16.67	.00	.00	.00	.00	9.49	12.50	16.67
Grays Harbor	7.91	.00	.00	.00	.00	.00	7.14	.00	7.61
Island/San Juan	7.61	5.01	7.44	9.05	3.45	.00	6.07	5.23	6.62
Jefferson	9.07	3.63	13.64	12.50	13.33	11.11	10.83	6.62	8.78
King	7.82	10.00	.00	16.67	.00	.00	7.69	8.00	7.83
Kitsap	12.97	.00	.00	9.09	5.26	.00	7.69	6.45	11.79
Kittitas	7.83	.00	.00	.00	3.23	.00	5.16	1.64	6.54
Klickitat/Skanania	5.97	.00	.00	.00	.00	.00	.00	.00	4.82
Lewis	6.04	.00	.00	.00	.00	.00	10.53	.00	6.18
Lincoln	10.78	.00	.00	8.20	2.91	.00	9.78	4.76	8.41
Mason	8.65	5.62	9.82	.00	.00	.00	3.13	.00	2.60
Okanogan	2.75	.00	.00	.00	8.24	14.29	8.25	6.57	7.79
Pacific/Wahkiakum	8.65	4.20	.00	.00	1.94	.00	6.67	1.32	3.72
Pierce	6.10	2.54	7.14	6.67	7.14	.00	6.10	4.11	5.92
Skagit	9.26	6.25	.00	4.95	2.63	.00	.00	5.10	8.69
Snohomish	11.31	4.49	.00	21.05	4.65	33.33	14.71	6.52	10.78
Spokane	10.86	16.67	.00	.00	.00	.00	13.33	9.09	10.86
Thurston	8.42	7.69	.00	3.57	5.56	.00	11.18	4.91	7.11
Walla Walla	6.76	.00	.00	.00	.00	.00	.00	10.00	7.83
Whitcom	8.42	5.76	20.00	5.71	3.44	.00	7.14	3.98	4.78
Whitman	5.42	5.10	7.79	7.37	4.49	12.12	6.64	5.24	7.14
Yakima	7.97	5.10	7.79	7.37	4.49	12.12	6.64	5.24	7.14
STATE TOTAL	7.97	5.10	7.79	7.37	4.49	12.12	6.64	5.24	7.14

## ARTICLES

The August 1994 issue of the *Washington State Bar News*, Volume 48, Number 8, featured "Special Focus: Minorities in the Legal System." Among the articles in that issue are two which are reproduced, in their original text form, with permission of the authors and the editors of the Bar News: (1) "The Imperative for Racial and Ethnic Diversity in the Legal Profession," by Charles Z. Smith; and (2) "Racial and Ethnic Diversity in the Work Force of Washington State Courts," by Vicki J. Toyohara.



The executive director of the bar association in a small near-by state returned the survey form with simply the words "We don't know and we don't ask them." Actually, this was not as bad as it seemed. In fact, at the time our own Washington State Bar Association had no reliable data on minorities or persons of color. But we did determine from preliminary research studies that approximately 3% of lawyers in Washington were persons of color. We used membership information from the ethnic bar associations to estimate the percentage of lawyers in the major eth-

In 1989, in connection with a project for the Ninth Judicial Circuit Historical Society, I conducted a limited questionnaire survey of bar associations in Arizona, California, Idaho, Montana, Nevada, Oregon, Washington, Alaska and Hawaii asking their best estimates, by numbers or percentages, of judges and lawyers of color in their respective states. The questionnaire included classifications for Native Americans, African Americans/blacks, Hispanics/Latinos and Asian Americans.

*It is highly desirable in our great democratic society that institutions in the private sector and in the public sector adequately reflect the cross-section of our American population.*

Charles Z. Smith

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IN THE LEGAL PROFESSION

nic groups. We also knew from personal knowledge and acquaintance that 16 judges at all levels of court were persons of color

It has been five years since that survey. Statistics have changed. We have come now to a conscious realization of the importance of an awareness of race and ethnicity in achieving fuller participation by all members of our society in our institutional systems. We cannot know the extent of participation by or exclusion of any group of persons if we do not have reliable and legal methods to find out who they are. This is in contradistinction to inquiries concerning race and ethnicity for ulterior purposes such as systematic exclusion and other invidious forms of discrimination.

We pride ourselves in America on our great democratic system which has set an example for the entire world. We have many national pronouncements which suggest the essence of that democracy. Perhaps foremost are the words from the Declaration of Independence, *"We hold these truths to be self-evident that all [persons] are created equal, that they are endowed by their Creator with certain inalienable rights, that among these are life, liberty and the pursuit of happiness."*

One of the great strengths of America as we would like it to be (and as perceived by the optimists among us) is its racial, ethnic and cultural diversity. In simplest terms, we are referring principally to whites (of various ethnicities and religions), Native Americans (American Indians), African Americans (Blacks), Latinos (Hispanics), and Asian Americans (Japanese, Chinese, Filipinos, Koreans, East Indians, Indo-Chinese and Pacific Islanders).



We celebrate the richness of our diversity. We are a nation of immigrants. With the exception of Native Americans, all of us or our ancestors came to this continent from other countries. Most came voluntarily or were exiled. Some came involuntarily in chains on slave ships. Our Native Americans, though, inhabited North America centuries before Christopher Columbus stumbled on our shores in 1492.

We used to boast of the great American "melting pot," which presupposed that we would merge our identities into an amorphous American model. The passage of time has taught us the fallacy of that idea. We now believe we can be distinctly American, but that each of us can still maintain our cultural history, language, music and identity. To me America is still a melting pot, but with an improved "recipe" for its ingredients which allows recognition of distinctive "spices" and "flavors."

Based upon interpolation of figures from the 1990 Census, as reported by the Bureau of the Census, United States Department of Commerce (April 1991), 80.3% or 199,714,028 of our national population of 248,709,873 is White; 12.1% or 30,093,895 is Black (African American); 0.8% or 1,989,679 is American Indian, Eskimo or Aleut; 2.9% or 7,212,586 is Asian or Pacific Islander; 3.9% or 9,699,685 is "other race"; and 9% or 22,383,889 is of "Hispanic origin" of any race.

The 1990 Census for the State of Washington, reported by the Bureau of the Census, indicates that 88.5% or 4,307,022 of our population of 4,866,692 is White; 3.08% or 149,894 is Black (African American); 1.6% or 77,867 is American Indian, Eskimo or Aleut; 4.33% or 210,728 is Asian

Under this more enlightened approach to identification of our population, we are now better able to avoid the pitfalls of assumption and arbitrary identification of multi-racial persons. We can under this approach more comfortably choose the category, if any, which

The census Bureau also indicates that "Hispanic origin is not a racial category; it may be viewed as the ancestry, nationality group, lineage, or country of birth of the person or persons parents or ancestors before arrival in the United States. Persons of Hispanic origin may be of any race and are counted in the racial categories shown. In 1990, 40.69% of persons indicating Hispanic origin identified themselves as being racially White, 1.77% Black, 2.37% Indian, Eskimo, or Alutic, 3.4% Asian or Pacific Islander, and 51.77% selected the other races category."

Census data on race and ethnicity is now principally a matter of self-declaration. This is as it should be. No official should any longer presume to make that determination for a citizen. Thus "other race" for the State of Washington is explained by the census Bureau as representing "persons who when given an opportunity to identify themselves in a racial category did not select White (or any other category, but specifically identified themselves as Cuban, Puerto Rican, Mexican, etc." and that "this category represented a count of 111,078 persons who considered themselves racially Hispanic and 4,435 additional responses that could not be elsewhere classified."

of Pacific Islander: 2.37% or 15,341 is "other race"; and 44.1% or 214,621 is of "Hispanic origin" of any race.

best responds to our individual determination of who we are. This self-identification provides a level of comfort far removed from the anachronistic classifications developed by historians, anthropologists, social scientists and statisticians such as Caucasoid, Mongoloid and Negroid. Later there developed "geographical races" (which are closer to the classifications we use today) (1) African, (2) American Indian, (3) Asian, (4) Australian, (5) European, (6) Indian, (7) Melanesian and (8) Polynesian. Indeed, self-identification helps to assure integrity of personal choice in direct challenge to the crude method of racial identification between "colored" and "white" accepted by the United States Supreme Court in the archaic case of *Plessy v. Ferguson*, 163 U. S. 537, 16 S. Ct. 537, 16 S. Ct. 1138, 41 L. Ed. 256 (1896), which unfortunately permeated our legal culture under the rubric of "separate but equal" until it was overruled in *Brown v. Board of Education*, 347 U. S. 483, 74 S. Ct. 686, 98 L. Ed. 873, 38 A.L.R. 2d 1180 (1954).

*Plessy v. Ferguson* involved the constitutionality of an act of the General Assembly of the State of Louisiana, passed in 1890, providing for separate railway carriages for the "white and colored races." In his petition for a writ of prohibition against criminal prosecution for refusing to ride in a railroad coach designated for "colored," Mr. Plessy pleaded that

[H]e was [of] seven eighths Caucasian and one eighth African blood; that the mixture of colored blood was not discernible in him, and that he was entitled to every right, privilege and immunity secured to citizens of the United States of the white race; and that, upon such theory, he took possession of a vacant seat in a coach where passengers

of the white race were accommodated, and was ordered by the conductor to vacate said coach and take a seat in another assigned to persons of the colored race, and having refused to comply with such demand he was forcibly ejected with the aid of a police officer, and imprisoned in the parish jail to answer a charge of having violated [the Louisiana law].

In its reasoning, which was the law of the land until the case was overruled, nearly 58 years later, the Supreme Court stated:

A statute which implies merely a legal distinction between the white and colored races—a distinction which is founded in the color of the two races, and which must always exist so long as white men are distinguished from the other race by color—has no tendency to destroy the legal equality of the two races, or reestablish a state of involuntary servitude. . . .

In denying the writ of prohibition, the Court then concluded that:

It is true that the question of the proportion of colored blood necessary to constitute a colored person, as distinguished from a white person, is one upon which there is a difference of opinion in the different States, some holding that any visible admixture of black blood stamps the person as belonging to the colored race, . . . others that it depends upon the preponderance of blood, . . .; and still others that the predominance of white blood must only be in the proportion of three fourths. . . . But these are questions to be determined under the laws of each State and are not properly put in issue

in this case. Under the allegations of his petition it may undoubtedly become a question of importance whether, under the laws of Louisiana, the petitioner belongs to the white or colored race

In this enlightened period the Washington State Bar Association is institutionally moving towards a knowledgeable awareness of the race and ethnicity of its now more than 17,000 members. This is due in part to the work of its Committee on Opportunities for Minorities in the Legal Profession, with the approval of the Board of Governors, in cooperation with the Washington State Minority and Justice Commission (formerly the Minority and Justice Task Force).

The Minority and Justice Task Force, reporting in its 1990 Final Report on a cooperative voluntary bar survey conducted in December 1988 and findings by Dr. George S. Bridges, Ph.D., Professor of Sociology, University of Washington, concluded that:

1. Asians, African Americans (Blacks), Latinos (Hispanics), Native Americans, and other minorities made up approximately five percent (5%) of the total sample of 6,348 lawyers. Thus, it is estimated that minorities make up about 5% of the bar membership.

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4. Across most Washington counties, the proportion of minority lawyers was substantially lower than the percentage of minorities in the general population. In some rural counties, differences between the concentration of minorities in the general population and in the Bar were pronounced.

The Minority and Justice Task Force, reporting on a June 1989 demographic survey conducted by Dr. Charles H. Sheldon, Ph. D., Professor of Political Science, Washington State University, concluded that:

1. As of April 1990, of the 371 judges in the state of Washington (Supreme Court, Court of Appeals, Superior Courts, District Courts, Municipal Courts), 16 (4.3%) were identified as racial and ethnic minorities.

2. In 1988, the percentage of minorities on the bench (about 4%) was slightly less than the percentage of minority lawyers (5%). In 1988, the percentage of minorities on the bench (about 4%) was substantially less than the percentage of minorities in the general population (about 11%).

...

4. With the exception of a minority person serving on the Washington State Supreme Court and a minority person serving on the Pierce County Superior Court, all minority judges serve on courts in Seattle and King County.

In conjunction with its 1992 licensing, the Washington State Bar Association collected voluntary data about the gender and ethnicity of its membership, relying upon self-selection and choice. Of those responding (11,000 out of 17,000 active members), 73% were male and 27% were female. Of those responding, the ethnic breakdown was:

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American Indian/Alaskan Native (0.51%)	58
Black/African American (2.10%)	231
Asian/Pacific Islander (1.20%)	132
Caucasian (93.04%)	10,256
Hispanic (0.47%)	52
Other (0.77%)	85
Gender given, but not ethnicity (1.91%)	211
Total (100%)	<u>11,025</u>

Extrapolated estimates of total membership in the Washington State Bar Association indicate the following as of March 23, 1993. With the increase of about 6,500 members, the percentage of persons of color is not significantly changed:

American Indian/Alaskan Native (0.51%)	89
Black/African American (2.09%)	368
Asian/Pacific Islander (1.19%)	210
Caucasian (93.04%)	16,328
Hispanic (0.47%)	83
Other (0.769%)	135
Gender given, but not ethnicity (1.91%)	336
Total (100%)	<u>17,549</u>

It is still a subject of some debate whether persons of color are underrepresented in the legal profession in the State of Washington. It is my belief that they are. I am satisfied there has been no systematic exclusion of persons of color from the bar. In marshalling the intellectual resources of our population, it is to our material advantage to increase the

tempo of our march towards affirmative inclusion of persons of color in the profession.

One does not have to commission a professional study to determine that persons of color are grossly underrepresented on the courts in our state. One needs only walk into any courtroom outside King County. One is then faced with the realization that the benches generally are occupied by white male persons, with a sprinkling of women and a minute sprinkling of identifiable persons of color.

Some studies have been made on the underrepresentation of persons of color in the legal profession and in the judiciary. They bear out what is generally merely a perception. They also call public attention to the need to engage in a deliberate program of affirmative inclusion. This is not "affirmative action" in its crude sense. This is not accepting persons without qualification to fill a "quota." This is recognition of the fact that persons of color represent the same range of intelligence and integrity as persons not of color. The "complexion" of our bar membership is gradually turning from mostly white to a rainbow of color across the ethnic spectrum. This is as it should be. This should also be reflected in our judiciary.

In our great state of Washington, we have only one person of color on the Supreme Court; no person of color (since 1979) on the Court of Appeals except one court commissioner; no persons of color on any court in any counties than King and Pierce except one court commissioner in Spokane County. This is a clarion call to appointing authorities and members of the voting public to identify, encourage, recruit, appoint and elect lawyers of color for service in the judiciary.



There are in all racial and ethnic groups in our legal profession persons who well measure up to the highest standards of judicial qualifications: integrity, knowledge of the law, scholarship, commitment to fairness, an understanding of cultural diversity, dedication to justice and judicial temperament. Any persons considered for election or appointment to the courts at any level must possess those qualities. And, above all, they must also be able to abide by the strict requirements of judicial conduct: upholding the independence of the judiciary; avoiding impropriety and the appearance of impropriety; impartially and diligently performing judicial duties; participating in activities to improve the law, the legal system and the administration of justice; engaging in only approved extra-judicial activities, avoiding prohibited compensation; and refraining from prohibited political activity.

The Washington State Bar Association and its members are in a unique position to diversify its membership to include a better representation of persons of color in our population. Law schools are identifying and encouraging persons of color to study law and qualify for bar admission. The population trends suggest that we will have a clear opportunity to accomplish this diversity in the practice of law. We can call upon the Native American Bar Association, the Loren Miller Bar Association, the Washington State Asian Bar Association and the Washington State Hispanic Bar Association as primary resources. The American Bar Association and the national ethnic bar associations are available as resources. It is imperative that we not lose sight of our goal to have our legal profession adequately reflect the cross-section of our population.



RACIAL AND ETHNIC DIVERSITY IN THE WORK FORCE  
OF WASHINGTON STATE COURTS

Vicki J. Toyohara

The underrepresentation and, in some counties, the absence of racial, ethnic and culturally diverse employees in Washington state courts was identified as two of the major concerns by the Washington State Minority and Justice Task Force in its 1990 Final Report. The task force, reporting on a 1989 demographic survey conducted by Dr. Jesus A. Dizon, revealed the following information about the extent to which persons of color are employed in Washington state courts:

1. Minorities represent about 12% of nonjudicial court employees. However, minorities are not employed in a variety of nonjudicial court positions throughout the various court levels in Washington state courts.

2. To the extent that minorities are represented in nonjudicial positions, they are heavily concentrated in the office/clerical category.

3. An examination of demographic data from 21 Washington counties found that 4 counties had no minority employees, although minorities are available in the labor pool; 13 counties had minority employees, but minorities were underrepresented in comparison to their availability in

the labor pool. (There are 39 counties in the state.) The criteria for selecting the 21 counties were the composition of each county's minority population and the extent to which one would expect to find minorities available in the local labor pool to fill nonjudicial court positions.

4 There are numerous positions where minorities are underrepresented and many counties where specific minority groups are particularly underrepresented.

one of the task force recommendations addressing the underutilization of persons of color in the work force of our courts was development of a work force diversity program for court personnel.

Although several years have passed since the task force survey on the work force profile of Washington state courts, one need only walk into a courtroom to see that, with the exception of a few courts, not much has changed in the racial and ethnic composition of court employees in most of our courts. Many persons ask why it is important to have a racially and ethnically diverse work force, since only "qualified" persons are hired for court positions.

As Washington state moves closer to the 21st century, we need to make sure that our system of justice is prepared to adequately respond to the court users of today and of the next century. An examination of population data from the Bureau of Census, United States Department of Commerce (April 1, 1990) and data from a report on population forecasts for Washington state through the year 2010 (population

Forecasts for Race/Ethnic Groups Washington State, 1990-2010, Forecasting Division, Office of Financial Management indicate that Washington state will experience the following population changes by the year 2010: a 59.87% increase in Blacks (African Americans) from 149,800 to 239,500; a 52.3% increase in the Indians (Native Americans) from 81,500 to 124,200; a 146% increase in Asian Americans/Pacific Islanders from 211,000 to 519,400; a 152.9% increase in Hispanics (Latinos) from 214,600 to 542,800. At the same time, Washington state will see only an 18.3% increase in the White population by the year 2010. The proportionate percentage of the number of persons of color will increase from 11.5% of our state's population to 18.36% of the population while the proportionate percentage of the number of Whites will actually decrease from 88.5% to 81.64% of the population.

The racial, ethnic and cultural mix of Washington state will be much more pronounced 16 years from now. Thus, the courts will continue to see a growing racial, ethnic and cultural mix in the users of our courts. It is vital that Washington's courts are prepared to provide equal and equitable access to the justice system to Washington citizens and to ensure that justice is dispensed fairly.

We are fortunate to have members of our state legislature who strongly support the Commission in our efforts to eliminate racial and ethnic bias in our state justice system. When the task force was created by the state legislature in 1987, Washington became the fourth state in the country to establish a task force on racial and ethnic bias in the courts. Today there are 21 commissions and task forces in the United States

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addressing the issue of racial and ethnic bias in their respective state court systems, as well as 3 Canadian provinces. These groups, along with the American Bar Association and National Bar Association, comprise the National Consortium of Task Forces and Commissions on Racial and Ethnic Bias in the Courts, which meets annually to share and discuss accomplishments and issues in their respective states.

When the task force completed its work in 1990, our Washington State Supreme Court saw the importance of continuing to work on issues of racial and ethnic bias in our courts by establishing a permanent Minority and Justice Commission by court order in October 1990. The Commission is co-chaired by Justice Charles Z. Smith and Justice James M. Dolliver. The purpose of the Minority and Justice Commission is to implement task force recommendations; conduct research in areas of concern such as racial disparities in sentencing and prosecutorial decision-making; develop and conduct cultural diversity, work force diversity and other education programs for judges, court administrators and other court personnel; and establish relations with state, county, local and minority bar associations.

The Work Force Diversity Sub-committee of the Commission, chaired by King County Superior Court Judge LeRoy McCullough, enthusiastically took on the responsibility of addressing the issue of increasing the number of persons of color in nonjudicial positions in Washington state courts. Under the leadership of Judge McCullough the sub-committee successfully completed two projects. One was the development of the *Recruitment/Work Force Diversity Resource Directory*,

a comprehensive listing of government resources; minority bar associations; racial and ethnic community organizations, churches and religious organizations; media resources; and colleges and universities throughout the state which provide some type of employment services. This directory will provide courts with a resource tool for improved access to ethnic minority communities and persons of color. The directory was published in June 1993 and distributed to presiding judges and court administrators throughout the state.

Our resource directory also was part of the education materials made available to participants who attended our Recruitment/Work Force Diversity Education Programs, which was our second project. The Work Force Diversity Sub-committee selected a consultant to develop and conduct an education program on Recruitment/Work Force Diversity to provide participants with resources, tools and strategies to assist in recruiting, hiring, retaining and promoting persons of color in professional and clerical positions in their respective courts; to improve existing hiring, retention and other personnel practices in a proactive manner to achieve racial and ethnic diversity; to respond to and address personnel issues in the courts on a local or regional basis; and to identify racial and ethnic minority communities throughout the state and employ networking resources available in those communities.

Our proposed education program on recruitment/work force diversity was met with overwhelming support by the Board for Trial Court Education and its Board of Trustees, the Superior Court Judges' Association (King County Superior Court Judge Donald D. Haley,

President), the District and Municipal Court Judges Association (Chelan County District Court Judge Thomas C. Warren, President); and the District and Municipal Court Management Association (Snohomish County's South District Court Administrator Carol J. Wilson, President). The Recruitment/Work Force Diversity Education Program was added to the 1994 spring judicial conference program for superior court judges, county clerks, juvenile and superior court administrators in Blaine on April 19, 1994. We also conducted the program for district and municipal court judges and administrators in Pasco on May 18, 1994. Both programs were well received by the judges, clerks and administrators.

To members of the Commission, the key to whether such an education program is truly successful is whether positive events alter the program occur in the work place, in this instance, the courts. I have spoken with several judges and administrators since our two recruitment/work force diversity education programs to learn that many of our participants continue to be enthusiastic and inspired by what they learned in our education program. These judges and administrators are engaging in proactive initiatives and efforts individually and through committees to implement changes in the way prospective employees are found, interviewed, hired and retained in their respective courts. Their goal is to increase the number of persons of color who apply for positions and who are hired, retained and promoted in their respective courts. What is clear to me is that the judges, county clerks and administrators who attended our two education programs are the leaders in our courts. It is these persons who will move our courts toward becoming a diverse work force which indeed mirrors the racial, ethnic and cultural diversity of our state population.





