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# EQUAL JUSTICE

Through awareness, education and action

*An official publication of the Washington State Minority and Justice Commission*

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## **IMMIGRANTS IN THE CRIMINAL COURTS**

*Ann Benson*

Washington State has one of the fastest growing immigrant populations in the United States. Most of the new immigrants are from Mexico and Asian countries—primarily India, the Philippines and China. Additionally, Washington is home to some of the country's largest communities of resettled refugees from Southeast Asia and East Africa (Somalia, Ethiopia and Eritrea). For a variety of reasons, the influx of immigrants has resulted in a significant increase of non-citizen defendants in the criminal court system.

It is always stressful and often life altering to be charged with a crime, especially if it results in a conviction. However, non-citizen defendants face the added stressors of navigating unfamiliar legal and cultural systems, with the help of translators (when provided), and dealing with the immigration consequences of the charge and possible conviction, which often means deportation and/or denial of citizenship. The Washington Defender Association's Immigration Project has been working with criminal defense attorneys, judges

and prosecutors for the past four years to address these issues facing non-citizen defendants.

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*EQUAL JUSTICE*

*Equal Justice* is the official publication of the Washington State Minority and Justice Commission whose goal is elimination of racial and ethnic bias, where it exists, from our state courts. The newsletter is a communications and networking tool providing information about Commission programs, projects and issues of concern.

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**INTRODUCTION**

In this issue an effort has been made to present the reader with a series of anecdotal articles illustrating what is actually happening with regard to people of color in their relationships with the court system. The Outreach Subcommittee of the Minority and Justice Commission has attempted to achieve this result by soliciting articles from attorneys who work for legal service agencies or organizations.

We asked that the articles address problems and experiences actually encountered in the court system with regard to minorities and justice. We were seeking "hands on", "grass root" information that could provide insight into what is actually taking place day in and day out. The parameters of our request were of necessity rather broad. As a result the articles we received in response covers a wide spectrum.

A constant challenge to the Commission in fulfilling its mandate is to be relevant. How better to strive toward success in that regard than to actually know what is occurring in the "trenches." The following articles cover multiple subjects. Some are informational. Others, hopefully, will give the reader pause for thought and open up matters that need to be discussed and addressed.

*Philip J. Thompson*



*Judge Philip J. Thompson is a retired judge of the Court of Appeals Division III.*

*(Continued from page 1)*

The most striking issue facing non-citizen defendants is the fact that they will be deported as a result of a criminal conviction and may even face deportation as a result of being arrested and/or charged. Today, this is a harsh reality facing all non-citizen defendants, even those who have lived in the United States for a significant period of time, have family ties here, or face only a simple misdemeanor charge. This reality is due to a combination of three primary factors: 1) harsh (often draconian) laws passed by United States Congress in the 1990's that vastly expanded the crime-related grounds for deportation and eliminated judicial discretion to allow rehabilitated non-citizens with ties to the local community to remain in the United States; 2) increased enforcement priorities in the Department of Homeland Security (DHS) (which includes the former INS), including significant budget increases focused on deporting non-citizens with any criminal convictions; and 3) increased collaboration between DHS, local law enforcements, and criminal justice authorities in the apprehension of non-citizens whom DHS is targeting for deportation.

It is important to remember that being present in the United States without lawful immigration status—or in violation of lawful status—is **not** a crime. Immigration law, particularly with respect to deportation proceedings (now known as removal proceedings) is **civil** in nature and deportation is not considered a “punishment.” Consequently, despite the fact that most non-citizens facing deportation for a criminal conviction are subject to mandatory detention

for the duration of their removal proceedings, they are not entitled to appointed counsel if they cannot afford to hire an immigration attorney to represent them (more than 80 percent of non-citizens facing deportation are unrepresented due to indigence). Needless to say, in the reality of their lives, deportation is most certainly a punishment, not only for the non-citizen, but for her/his spouses, children, parents and communities left behind.

Given this context, it is imperative that Washington State criminal court judges acknowledge the reality of non-citizen defendants appearing before them. The most meaningful way that judges can do this is to ensure that non-citizen defendants are given a meaningful opportunity to participate in their defense, which often means providing competent interpreters to work with them, as well as competent counsel to address the immigration consequences that are at issue.

A current evaluation of the performance of these duties by Washington State courts/judges would put the grade at C+. The courts can be divided into three groups, with the majority of courts still falling into Group B:

**GROUP A:** Simply put, these judges get it. They appoint, and allow for ready access to, competent interpreters for hearings and criminal defense counsel interactions. They do not single out non-citizen defendants for harsher/disparate treatment (such as turning over passports as a condition of bond). They understand that they are not there to enforce immigration laws (which are federal laws) and they do what they can to ameliorate disproportionate consequences on non-citizen defendants (such as giving sentences

of less than 365 days on misdemeanor offenses). These judges do what is in their power to ensure that criminal defense counsel is addressing the immigration consequences that may flow from the criminal charges.

**GROUP B:** These judges essentially take the “ostrich approach,” that is, they treat non-citizen defendants exactly the same as citizen defendants. This approach generally reflects one of two different views: some judges don’t understand the issues and the need to distinguish between circumstances of citizen and non-citizen defendants or conclude that they simply don’t have the time or resources to draw the distinction; others intentionally refuse to address what they deem to be “collateral” immigration consequences, oftentimes out of an erroneous belief that treating non-citizens differently is somehow unfair or beyond their power.

**GROUP C:** Sadly, these judges actually go out of their way to target non-citizens—particularly non-citizens of color—knowing that they are facilitating the deportation of these defendants. They single out non-citizens of color and non-citizens who use interpreters and speak with foreign-sounding accents. The range of conduct in this group of judges is wide and there exists a plethora of anecdotal horror stories. Unfortunately, the mechanisms for holding these judges accountable or persuading them to change their policies are sorely lacking.

There is much work to be done in trying to educate and change the criminal justice system to be more responsive to the needs of non-citizen defendants, particularly non-citizen defendants of color. Regardless

of where one stands on the larger issue of immigration in the United States, non-citizens will continue to come—and they will continue to be vibrant, essential members of our communities. The Washington Defender Association’s Immigration Project will continue to work to make the criminal justice system more responsive to their needs and more responsible for upholding their rights and dignity.



*Ann Benson, a lawyer, is a member of the Immigration Project of the Washington Defender Association.*

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## **THE IMMIGRANT WORKERS FREEDOM RIDE**

*Steve Williamson*

Seattle was part of a national mobilization last fall to demand respect for all people regardless of immigration status. Inspired by the Freedom Rides of the 1960s, which exposed the brutality of legal segregation in the south, the Immigrant Workers Freedom Ride (IWFR) had as its goal exposing the injustice of current policies and practices towards immigrants in towns and cities across the country and creating a lasting coalition for change locally. The themes for the IWFR were legalization and a clear pathway to citizenship, family reunification, justice on the job and civil rights for all.

To prepare for the IWFR and to ensure its continuity after the ride, a local coalition of 60 organizations was developed that built upon the principles of collaboration and shared decision-making authority,

especially between immigrant rights community and organized labor. Participants included immigrant communities, immigrant-led labor unions, worker solidarity organizations (Jobs with Justice, Asian Pacific American Labor Alliance, Labor Council for Latin American Advancement (LCLAA), A. Philip Randolph Institute), church and religious organizations, community-based organizations and immigrant advocacy organizations. Pramila Jayapal, Executive Director of the Hate Free Zone Campaign of Washington, and Steve Williamson, Secretary-Treasurer of the King County Labor Council, AFL-CIO, were the co-chairs of the coalition that formed in advance of the trip.

Nationally, a total of 18 buses from 10 originating cities (Seattle, Portland, Las Vegas, San Francisco, Los Angeles, Houston, Miami, Chicago, Minneapolis and Boston) traveled through over 120 cities and towns across the country, arriving in Washington, D.C., on October 1, 2003, at Liberty State Park in New Jersey on October 3, and in New York City, for the mass rally of 100,000 people, on October 4. There were approximately 900 riders on these buses. Thousands of others came by bus from East Coast cities such as Philadelphia for the day in New York, including members of local unions, church groups and community-based organizations.

....

The IWFR gave voice to immigrants' simple requests that their dignity be affirmed, their work rewarded and their basic rights respected, including the right to be treated equally, the right to organize, the right to apply for citizenship and the right to reunite

with their families. The Immigrant Workers Freedom Ride was meant to lift immigrant faces, voices and stories out of the shadows, to recognize immigrants for the contributions they make and to mobilize support for the full participation of immigrants in our nation's life.

The Seattle Immigrant Workers Freedom Ride Steering Committee took responsibility for creating a diverse and representative group of riders for the journey. Through the efforts of this committee, the Seattle bus was filled with representatives of twenty-two identified countries speaking 14 languages. The Seattle bus was one of the most diverse in the country, a fact publicized on the trip and utilized to enhance communication of the IWFR themes. Among the countries represented were: Bulgaria, Czech Republic, Ukraine, Indonesia, Philippines, Cambodia, Somalia, India, Mexico, Guatemala, El Salvador, Jamaica, and Iran. Japanese American, African American and Latino American representatives also rode the bus.

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[I]mmigrants testified consistently and joyously that all are here to claim the dream and promise that America holds out as a nation. Immigrants believe in American ideals, in the promise symbolized by the Statue of Liberty, and in the principles of the U.S. Constitution. . . .



*Steve Williamson is one of the principal organizers of the Seattle Immigrant Workers Freedom Ride.*

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## **CULTURAL COMPETENCY**

*Rachel da Silva*

I am an attorney with the Columbia Legal Services' Tri-cities office. Through my work with farm worker clients and with the Amigas Unidas Project (grass roots domestic violence legal advocacy), I have learned how important "cultural competence" is to making access to justice meaningful. Cultural competence requires language proficiency, an understanding of the cultural background of clients, and a commitment to help empower litigants to get the information they need to be their own best advocate. This is true no matter whether the case involves a protection order or a wage claim; a client disempowered by reasons of gender, immigration status, poverty or some other barrier to the legal system often needs a doorway into that system.

My clients are mostly monolingual Spanish speakers. Although some may be able to "get by" in English, they feel far more comfortable and are more completely understood when they can communicate in their primary language. Many are undocumented foreign nationals with a *bona fide* fear of being deported. Victims of domestic violence, no matter the level of abuse they have suffered, often want the abuser and parent of their children to remain here, employed, rather than risk the parent being deported. For farm workers, the dynamics of poverty and immigration status are highly complex, and require at the very least that the language barriers be addressed with the use of competent interpreters. The bureaucracy of the Courts is often associated

with extreme danger to families and sensitive communication in clients' primary languages—in this region primarily Spanish—is crucial to begin to allay their fears of the system.

Bilingual capacity at the court clerk level must be seen as essential. Having culturally competent attorneys, judges, commissioners and staff also goes a long way toward ensuring access to the legal system for all residents of our state. Moreover, chapter 2.43 RCW requires that qualified interpreters assist non-English speaking participants in all court proceedings, civil as well as criminal. In all criminal proceedings and civil proceedings involving an indigent party, the court is responsible for the cost of the interpreter. For true access to justice to be achieved, the justice system must have and exert the will to prioritize language and cultural competency to address the needs of non-English speakers as thoroughly as those of all other residents.



*Rachel da Silva is a lawyer with Columbia Legal Services in the Tri-Cities.*

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## **NATIONAL CONSORTIUM ON RACIAL AND ETHNIC FAIRNESS**

*H. Clifton Grandy*

The upcoming 16<sup>th</sup> annual meeting of the National Consortium on Racial and Ethnic Fairness in the Courts will be held at the Washington Court Hotel in Washington, D.C. April 14–17, 2004. For this year's meeting the National Consortium is collaborating with the District of Columbia Courts' Standing Committee on Fairness and

Access and the National Center for State Courts.

The theme for this year's meeting is: *50 Years After Brown: A National Dialogue on Racial & Ethnic Fairness in the Courts*. This year marks one-half century since the Supreme Court issued its decision in *Brown v. Board of Education*. The Supreme Court decision will be used as a historical backdrop to examine the implications of those decisions on the work that we do to enhance the fairness and independence of the courts and to strengthen confidence in our judicial system.

Other sessions will address the chief justices' vision of enhancing fairness in the courts, providing adequate legal representation to persons who cannot afford private counsel, the impact of immigration on courts, language access issues, managing diversity in the judicial workforce, and an international perspective on racial and ethnic fairness in the courts.



*H. Clifton Grandy, a lawyer, is Senior Court Manager for the District of Columbia Courts. He is a member of the Board of Directors of the National Consortium on Racial and Ethnic Fairness in the Courts and is managing its 16th annual meeting hosted by the District of Columbia Courts.*



**SPOTLIGHT  
ON  
COMMISSION MEMBERS**

ROBERT C. BORUCHOWITZ

An article by Robert C. Boruchowitz is featured in the January 2004 issue of the *Washington State Bar Association News*. The article "The Right to Counsel: Every Accused Person's Right" can be found at: <http://www.wsba.org/media/publications/barnews/2004/jan-04-boruchowitz.htm>.

LOURDES FUENTES

Congratulations to Ms. Lourdes Fuentes, who was honored as "Lawyer of the Year" for 2003 by the Washington State Hispanic Bar Association, now the Latina/Latino Bar Association of Washington, at its Annual Awards and Scholarship Dinner on January 8, 2004 at the Fairmont Olympic Hotel in Seattle. Ms. Fuentes is a shareholder in the law firm of MacDonald, Hoague and Bayless in Seattle.

JUDGE RICHARD A. JONES

Judge Richard A. Jones has been widely praised for his outstanding judicial handling of proceedings in a significant criminal case in which the defendant pleaded "guilty" to 49 murders (*State v. Ridgway*). One article complimented him for his exceptional courtesy to the families of the victims in the case. The December 23, 2003 *Seattle Times* article may be found at: <http://archives.seattletimes.nwsourc.com/cgi-bin/texis.cgi/web/vortex/display?slug=brodeur23m&date=20031223&query=Nicole+Brodeur>.

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