



EQUAL JUSTICE

Through awareness, education and action

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WASHINGTON STATE BAR ASSOCIATION'S EFFORTS TO ADDRESS BIAS AND PROMOTE DIVERSITY

Brian A. Tsuchida

Over the past decade, the Washington State Bar Association (WSBA) has steadily increased its efforts to address bias and diversity in the legal profession. As recognized in the Preamble to the Rule of Professional Conduct (RPC), these issues have always been a central part of the mission of all lawyers in Washington. The preamble states:

The continued existence of a free and democratic society depends upon the recognition of the concept that justice is based upon the rule of law grounded in respect for the dignity of the individual and the capacity through reason for enlightened self-government. Law so grounded makes justice possible for only through such law does the dignity of the individual attain respect and protection.

One of WSBA's anti-bias efforts involved recognition of the importance of legal education training for lawyers. In 1996 the WSBA Continuing Legal Education (CLE) Committee presented one of the first CLE programs conducted in this state which focused on bias and diversity. The program was titled *Promoting Diversity and Eliminating Bias in the Legal Profession* and was innovative in its use of a professional, non-lawyer, diversity trainer.

Consistent with its recognition of the importance of anti-bias training, the WSBA is one of a few state bar associations formally recognizing diversity training as

part of lawyers' continuing legal education. Only four states in their licensing requirements directly recognize the ethical implications of promoting diversity and eliminating bias in the legal profession. The mandatory CLE requirements of California, Minnesota and Oregon require active members to receive training on eliminating

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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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EDITORIAL

The prevalence of racial disparity within the criminal justice system is one of its most troubling issues. Widespread and significant racial disparities exist at virtually all stages of the justice system, beginning with arrest and proceeding through sentencing. Disparity persists despite the considerable academic and public attention it has received. The Washington State Sentencing Guidelines Commission, pursuant to RCW 9.94A.850, is required to report at least every two years to the governor and to the legislature on “[r]acial disproportionality in juvenile and adult sentencing, and, if available, the impact that diversions, such as youth courts, have on racial disproportionality in juvenile prosecution, adjudication, and sentencing.” The Guidelines Commission defines *disproportionality* as the unequal representation of groups at sentencing relative to their numbers in the general population and *disparity* as unequal sentencing of similarly situated offenders.

The *Disproportionality and Disparity in Adult Felony Sentence Report*, published by the Sentencing Guidelines Commission in 2003, indicates that: people of color are over-represented at every stage of Washington’s criminal justice system from arrest through sentencing and incarceration; Caucasians receive first time offender waivers and special sex offender sentencing alternatives at higher rates than people of color; people of color are less likely to receive an exceptionally low sentence; and where guidelines allow a choice between jail and a sentence to the community, few people of color receive a community sentence.

The 1997 report, *Juvenile Justice and Disproportionality: Patterns of Minority Over-Representation in Washington’s Juvenile Justice System*, published by the Sentencing Guidelines Commission, noted that youth of color were referred to court at a rate twice that of white youth; youth of color were approximately three times as likely to be detained pre-adjudication as white youth; youth of color were three times as likely to be sentenced to secure placement; and African-American youth were five times as likely to be confined.

In the *Study on Racial and Ethnic Disparities in Superior Court Bail and Pre-Trial Detention Practices in Washington* (1997), published by the Washington State Minority and Justice Commission, it was reported that race and gender influenced the likelihood of pre-trial release and amounts of bail required, above and beyond the prosecuting attorney’s recommendations, whether the case involved a serious crime and other factors.



(Continued from page 1)

bias. The mandatory ethics CLE requirements of Washington do not require diversity and anti-bias CLE credits but recognize such training as falling within the area of professionalism.

In addition, the WSBA took steps towards recognizing how bias can constitute professional misconduct. In 1993, the Rules of Professional Conduct were amended under Rule 8.4. Rule 8.4(g) and (h) state:

It is professional misconduct for a lawyer to:

(g) Commit a discriminatory act prohibited by state law on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, or marital status, where the act of discrimination is committed in connection with the lawyer's professional activities. In addition, it is professional misconduct to commit a discriminatory act on the basis of sexual orientation if such an act would violate this rule when committed on the basis of sex, race, age, creed, religion, color, national origin, disability, or marital status. This rule shall not limit the ability of a lawyer to accept, decline, or withdraw from the representation of a client in accordance with RPC 1.15;

(h) In representing a client, engage in conduct that is prejudicial to the administration of justice toward judges, other parties and/or their counsel, witnesses and/or their counsel, jurors, or court personnel or officers, that a reasonable person would interpret as manifesting prejudice or bias on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, or marital status. This rule does not restrict a lawyer from representing a client by advancing material factual or legal issues or arguments.

Although these structural changes reflected the importance the WSBA places on diversity and bias issues, the WSBA made those issues one of its highest priorities with induction of President David Savage in 2003. At that time, President Savage pledged to make diversity and inclusiveness the centerpiece of his term of office. That pledge continues today with current WSBA President Ronald R. Ward. Through the efforts

of Past President Savage and President Ward, the WSBA has accomplished the following notable achievements:

First, the WSBA has continued support of its committee. That Committee makes specific recommendations to increase participation and provides opportunities for attorneys who are members of minority groups to take part in activities in the Bar and in the practice of law.

Second, the WSBA created its Blue Ribbon Panel on Criminal Defense. In 2003 the Panel was appointed by the Board of Governors and directed to review and develop recommendations addressing issues relating to the quality of indigent defense. In May 2004, the Panel issued its report noting that the standard for public defense contained in RCW 10.101.030 is not being followed in many jurisdictions; the lack of caseload standards jeopardizes the ability of public defenders to provide adequate representation; inadequate funding is a root cause for inadequate defense services; poor contracting practices invite abuses; and there is no effective oversight in many jurisdictions.

Third, the WSBA held two Celebrate Diversity public forums, on February 27, 2004 and on March 10, 2005.

Fourth, the WSBA created its Leadership Institute, designed to nurture and encourage growth of leaders of diverse backgrounds.

Fifth, the WSBA has endorsed the initiative for diversity which was prompted by a consortium of lawyers and judges seeking to emphasize diversity in the workplace. And,

Sixth, the WSBA created a new staff position of Diversity Advocate, employing Ms. Josyln K. N. Donlin, J.D., for the position.

We are confident in stating that in just a few years, the WSBA has assumed a positive leadership role in addressing bias and diversity in the legal profession.



Brian A. Tsuchida is a Public Defender with the Federal Public Defender's Office and a member of the Washington State Minority and Justice Commission.

CONVERSATIONS ABOUT DIVERSITY

Joslyn K. N. Donlin

The first Listening Session conducted by the Washington State Bar Association (WSBA) took place in February 2004. With nearly 22% of the population representing ethnic and racial minorities, and only 9.2% of our attorneys representing minorities, there is a great need to focus on ways to increase diversity in the legal profession. The Listening Session was a first step to addressing this need. The plan was to have members of the WSBA Committee for Diversity and the minority bar associations meet with the Board of Governors (BOG) for conversations about issues facing minority and women attorneys and other historically underrepresented groups. Following the success of the first Listening Session, a second Listening Session was held on March 10, 2005. Sixty attorneys attended the second annual “Celebrate Diversity – Listening Session” sponsored by the WSBA Committee for Diversity and the Board of Governors. At-Large Governor Marcine Anderson, Diversity Advocate Joslyn K. N. Donlin, President Ronald R. Ward and Executive Director M. Janice Michels welcomed participants to the Listening Session.

The Listening Session II included a panel presentation by leaders of the various minority bar associations and co-chaired by the Committee for Diversity Leona Colegrove and Joaquin Hernandez. Each panelist shared the specific mission, goals, objectives, activities and issues of their bar association. It was a prime occasion for the Board of Governors to listen to leaders of minority bar associations and get a better understanding of current and important issues relating to minority and underrepresented attorneys in this state.

Representatives of the various minority bar organizations included: Priscilla Chan, President of the Asian Bar Association of Washington; Gail Stagman, Chair of the Cardozo Society; Administrative Law Judge Veronica Alicea-Galvan, Treasurer of the Latina/Latino Bar Association; Diankha Linear, President-elect of the Loren Miller Bar Association; Lael Echo-Hawk, Northwest Indian Bar Association; Sarah Lee, President of the Pierce County Minority Bar Association; Shankar Narayan, President of the South Asian Bar Association; Thi Anh Huynh, Founding Member of the recently organized Vietnamese American Bar Association; and Tisha Pagalilauan, President-elect of Washington Women Lawyers.

Some of the critical issues emphasized were: more community sponsored pro bono legal clinics for minorities; efforts to rescind I-200 to make Washington more minority-friendly; increase minority youth at law firm sponsored events to recruit minority students to the legal profession; promotion of civil rights issues and organizations; promotion of professional networking organizations; and implementation of the results from the 2000 Glass Ceiling Survey.

Following the panel presentations by minority bar leaders, the participants divided into small groups to discuss specific questions. Each small group had a facilitator and recorder. Questions included: (1) how can WSBA and the BOG provide support to the various Minority Bar Associations? (2) How can WSBA and other organizations help to increase diversity on the bench and in the court system? Judicial races? Judicial Selection? Pros and cons of HB 1226? (3) How can the BOG and the WSBA help increase diversity on the BOG and within the WSBA leadership? (4) What are the Minority Bar Associations’ expectations of the Diversity Advocate position? The importance of the position? It’s evolving and growing role in coordinating the diverse groups of the legal community?

Responses to question 4 included: to disseminate information to the various minority bar associations and attorneys; to provide a forum for minority bar leaders to gather and share ideas; to help attorneys obtain CLE credits for WSBA volunteer service on committees and panels; to ensure that the position of Diversity Advocate is not an administrative staff position but is a leadership management position involved in promoting and institutionalizing training and development, outreach and management of diversity programs in the legal profession; to help the minority bar leaders to support each other, reach into the community to bring more minority attorneys into leadership positions; and to provide notice of BOG open seats.

Another distinguishing attraction to the Listening Session II was an interactive presentation by Diversity Consultant Linda Russell-Callecod of The Effectiveness Institute, a human resource and diversity consultant business in Redmond, Washington.

The Listening Session was followed by a reception. Featured special guests were the WSBA Leadership Institute 2005 Advisory Board and Fellows. Speakers included: former At-Large Governor Zulema

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Hinojos-Fall, Attorney Jeffery Robinson and Judge Richard A. Jones.

The Listening Session II met its goal of providing a forum for members of the minority bar associations and the Board of Governor to meet, interact, get to know each other, and dialogue about current and important issues relating to increasing diversity in the legal profession in the state of Washington.



Ms. Joslyn K. N. Donlin, J.D., is the Diversity Advocate for the Washington State Bar Association.

WASHINGTON STATE BAR ASSOCIATION DIVERSITY DISTRIBUTION

Erica S. Chung

The Washington State Bar Association collects demographic information about its membership through voluntary responses to questionnaires contained in the bar license renewal notices sent annually to its current members and application forms for new members of the bar.

According to the WSBA, as of July 2004 there were

24,615 members licensed to practice law in the State. Of those, 15,127 or 61.5% voluntarily provided information concerning their ethnicity; 15,535 members or 63.1% concerning gender; and 15,295 members or 62.1% concerning disability status.

In 2001, the first year WSBA collected demographic data on its membership, 22,515 members were admitted to practice law in the State. Of those, 13,961 or 62% voluntarily provided information concerning their ethnicity; 14,154 members or 62.9% concerning gender; and 12,671 members or 56.3% concerning disability status.

In 1988, the Minority and Justice Task Force conducted a survey of the WSBA membership. Of 14,750 active members, 6,289 members or 42.6% voluntarily responded to the questionnaire regarding their ethnicity and 6,348 members or 40% regarding their gender.

The Table below represents diversity distribution in the WSBA as of July 2004. Data is based on voluntary responses and constitutes estimates only.

From the data collected over the course of sixteen years from 1988 to 2004, the number of attorneys

WSBA diversity distribution	1988		2001		2004	
American Indian/Alaska Native	27	0.4%	93	0.7%	106	0.7%
Asian/Pacific Islander	129	2.0%	399	2.9%	511	3.4%
Black/African American	83	1.3%	218	1.6%	251	1.7%
Caucasian	5,912	93.1%	12,866	92.2%	13,757	90.9%
Hispanic	40	0.6%	145	1.0%	179	1.2%
Multi-racial	45	0.7%	92	0.7%	146	1.0%
Other	53	0.8%	148	1.1%	177	1.2%
Total Minority Population	377	5.8%	1,095	8.0%	1370	9.2%
Total respondents	6,289	42.6%	13,961	62.0%	15,127	61.5%
Non respondents	8,461		8,554		9,488	
Total membership	14,750		22,515		24,615	
Female	1,794	28.3%	4,356	30.8%	5,084	32.7%
Male	4,524	71.3%	9,798	69.2%	10,451	67.3%
No Response	30	5.0%				
Total respondents	6,348	40.0%	14,154	62.9%	15,535	63.1%
Non respondents	8,402		8,361		9,080	
Total membership	14,750		22,515		24,615	
Disabled			148	1.2%	137	0.9%
Non Disabled			12,523	98.8%	15,158	99.1%
Total respondents			12,671	56.3%	15,295	62.1%
Non respondents			9,844		9,320	
Total membership			22,515		24,615	

licensed by the Washington State Bar Association to practice law in this State increased by 9,865. During the same period all attorneys of color increased from 377 to 1370, an increase from 5.8% in 1988 to 9.2% in 2004.

During that period American Indian/Alaska Natives increased from 27 to 106 for a total of 79 attorneys or .3%; Asian/Pacific Islanders from 129 to 511 for a total of 382 attorneys or 1.4%; Black/African Americans from 83 to 251 for a total of 168 attorneys or .4%; Hispanics/Latinos increased from 40 to 179 for a total of 139 attorneys or .6%; “multi-racial” from 45 to 146 for a total of 101 attorneys or .3%; and “others” from 53 to 177 for a total of 124 attorneys or .4%. The number of Caucasian attorneys increased from 5,912 to 13,757 for a total of 7,845 attorneys although the overall percentage of Caucasian attorneys decreased by 2.2%.

During the same period women members increased from 1,794 to 5,084, a total of 3,290 attorneys for an increase from 28.3% to 32.7%.

The number of members identified as disabled (defined by ADA, 42 USC) decreased from 148 in 2001 to 137 attorneys in 2004.

Overall, women represented the greatest increase during the past thirteen years with 4.4%. The number of and percentage of minority attorneys also saw an increase during the same period by 993 or 3.4%. However, when compared with the percentage of people of color in Washington State, attorneys of color are under-represented and the gap between the state population of persons of color and attorneys of color has widened. In 1990, persons of color represented 13.1% of the population of Washington State while attorneys of color represented 5.8% of the WSBA membership in 1988, a difference of 7.3%. In 2000, persons of color represented 21.12% of the state’s population, while attorneys of color represented only 8.0% of the WSBA membership, a difference of 13.12%. The Washington State Office of Financial Management projects that persons of color will account for approximately 22.37% of the State’s population in 2005 while attorneys of color represent 9.2% of the WSBA membership in 2004, a difference of 13.17%. This should provide an inspirational goal for increasing diversity in membership of the Washington State Bar.



Ms. Erica S. Chung is the Executive Director of the Washington State Minority and Justice Commission.

COMPARATIVE ANALYSIS OF 1988 AND 2004 PUBLIC FORUMS

Erica S. Chung

The Washington State Minority and Justice Task Force was created by the Washington State Supreme Court in 1987 at the request of the Legislature with its allocation of funds to study whether bias exists in the courts. The Task Force conducted five public forums and, based on its findings, in 1990 made several recommendations, one of which was the creation of the Washington State Minority and Justice Commission by the Court.

In the fall of 1988 the Washington State Minority and Justice Task Force conducted five regional public forums to “study possible bias against minorities in the state courts...” and publish a report in 1990. Based on the forums held in Bellingham, Seattle, Spokane, the Tri-Cities area, and Yakima, the author of the report, Julie R. Hunt, Ph.C., identified ten most frequently mentioned “main issues” by number of speakers. The tabulation is based on 111 testimonies and correspondences. Seventy-five (75) persons testified and fifty-three (53) persons submitted correspondence. However, sixteen (16) correspondences were from those who also testified at the Forums. Hence, sixteen people were counted once, resulting in a tabulation of 111 testimonies and correspondences.

Ten main issues identified were (in order):

- Language barriers/court interpreters
- General perception of bias in the legal system
- Under-representation of minority employees in the legal system
- Perception that minorities receive harsher sentences and treatment
- Under-representation of minorities in the jury pools and jury panels
- Complaints against law enforcement
- Need for cultural awareness education programs
- Courtroom interaction between minorities and non-minorities
- Representation of minorities by public defenders
- Treatment of minority victims of crime

In 2004, the Washington State Minority and Justice Commission conducted two regional Community Forums, in Seattle on January 30 and in Spokane on July 30. The Commission heard testimonies from members of the minority and legal communities “on their observations, perceived problems, or systemic problems in the Washington State justice system as it pertains to minorities and justice.” The purpose of the forums was to gauge current and emerging legal issues affecting people of color in Seattle and Spokane and for Commission members and individual courts to use knowledge gained from the forums to develop future work projects. As a result of the forums, the Commission provided an education session for judges on “Foster Care with an emphasis on youth of color” and is taking steps to provide an education session on “Collateral Consequences of Conviction for People of Color”.

In Seattle twelve (12) persons provided testimony and in Spokane eleven (11) persons provided testimony, and two (2) persons made comments after the testimony period. This resulted in a total of twenty-five (25) testimonies and comments. Key issues which emerged, in order of frequency, include:

- Language barriers/court interpreters
- General perception of bias in the legal system
- Complaint against law enforcement
- Need for cultural awareness education program
- Access to legal assistance
- Minority employees in the legal system: under-representation
- Civil cases/civil matter
- Collateral consequences of criminal conviction
- Disproportionate number of minority defendants/inmates
- Foster care
- Jury pool/panel: under-representation of minorities
- Prevention

In comparing testimonies, comments, and correspondences from forums in 1988 and 2004, six of the twelve main issues identified in 2004 are identical to six of the ten main issues identified in the 1988 public forums:

- Language barrier/court interpreter
- General perception of bias in the legal system
- Complaint against law enforcement
- Need for cultural awareness education program
- Minority employment in the legal system: under-representation
- Jury pool/panel: under-representation

The public forums were conducted sixteen (16) years apart. Yet, participants have indicated that the language barrier is still an issue and that general perception of bias still exists in the legal system.



Ms. Erica S. Chung is the Executive Director of the Washington State Minority and Justice Commission.

SPOTLIGHT ON COMMISSION MEMBERS

JUDGE DEBORAH D. FLECK

Judge Deborah D. Fleck, King County Superior Court, was awarded the 2005 President's Award by the King County Bar Association at its Annual Awards Dinner on June 23, 2005.

MS. P. DIANE SCHNEIDER

Ms. P. Diane Schneider, a Senior Conciliation Specialist for the Community Relations Service, U.S. Department of Justice, was elected President of the Seattle Chapter, National Latino Peace Officer Association, in April 2005 to serve a two-year term. She previously served as chapter Vice-President.

MS. ERICA S. CHUNG

Ms. Erica S. Chung was elected to the fourteen-member Board of Directors of the National Consortium of Racial and Ethnic Fairness in the Courts at its 17th Annual Meeting in Atlanta, Georgia, on April 16, 2005. She joins Justice Charles Z. Smith, Moderator Emeritus and a charter member of the Board.

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