

# **COMMENTS 2023 NATIONAL CONSORTIUM ON RACIAL AND ETHNIC FAIRNESS IN THE COURTS**

**By Donovan Foughty**

Good morning, my name is Donovan Foughty. I have the honor of serving as Chair of the National Consortium on Racial and Ethnic Fairness in the Courts. 2023 is the 35<sup>th</sup> Annual Conference of the Consortium. In reviewing the agenda for the conference this year, it is rich and provocative. I am looking forward to the upcoming sessions.

On behalf of the Consortium, I would like to thank the following individuals who are responsible for organizing this conference.

## **Washington State Minority and Justice Commission Co-Chairs**

- Justice Mary I. Yu, Washington Supreme Court
- Judge Veronica Galván, King County Superior Court

## **Washington State Minority and Justice Commission NCREFC Conference Planning Committee**

### Curriculum Subcommittee:

- Judge Lori K. Smith, Acting Chief Judge, Washington State Court of Appeals Division I
- Judge Linda Coburn, Washington State Court of Appeals Division I
- Judge Sara Dannen, Washington State Board of Industrial Insurance Appeals
- LaTricia Kinlow, Court Administrator, Tukwila Municipal Court
- Professor Mark Chinen, Seattle University School of Law
- Shirley Ann Higuchi, J.D., American Psychological Association, Chair, Heart Mountain Wyoming Foundation, Washington DC

### Public Relations & Engagement Subcommittee:

- Judge Faye Chess, Presiding Judge, Seattle Municipal Court
- Judge Anthony Gipe, Kent Municipal Court
- Cynthia Delostrinos Johnson, Associate Director, Office of Court Innovation, Washington State Administrative Office of the Courts
- P. Diane Schneider
- Sumeer Singla, Member, Williams Kastner
- Jeremy Walker, Esq.

### **Washington State Minority and Justice Commission Staff**

- Carolyn Cole, Esq., CDE, Racial Equity Consultant, NCREFC Conference Planning Lead
- Frank Thomas, J.D., Court Program Analyst
- Avery Miller, Court Program Assistant

### **NCREFC Conference Production Team**

- Nikiesha Cosby, Association Manager, National Center for State Courts
- Lisa R. Burke, Diversity, Inclusion, and Community Engagement Program Officer, New Jersey Judiciary
- Jandé Freeman-Brewer, Program Specialist, National Center for State Courts

Please give a round of applause to these individuals for the work they have done.

The Consortium Board of Directors is a compilation of appellate and trial court judges, court administration, lawyers and social scientists who are working to improve state judicial systems and eliminate racial and ethnic bias within those systems. The members of Board of Directors represent courts from a wide range of locations from large urban areas to the most rural areas in the country such as where I work and live in North Dakota.

I got involved with the Consortium in 2007 when I got a call from my Chief Justice requesting that I attend a consortium conference and report back to him about the conference. Before 2007 I knew nothing about the Consortium. Since 2007 I have missed only one annual conference. I guess, I fell in love with the work that the Consortium was doing, working for a more just society. I have been a trial judge for over 35 years. When I was a young judge I was concerned with statutes, rules and appellate court opinions and applying the facts of the matter before the court to the appropriate law. I still have that concern. That being said, I also have another concern and that is doing justice. The theme of this years conferences is “Justice: Promises to Keep” In the Federalist, Alexander Hamilton wrote that “Justice is the end of government. It is the end of a civil society. It ever has been and ever will be pursued until it is obtained or until liberty be lost in the pursuit.”

What I have told law students is that the wonderful and terrible thing about the rule of law is that there is no perfection in it. There is always room for improvement. There is always work to do.

Over the history of this great nation there have been great wrongs committed against racial and ethnic groups under the color of law. That being said, from the original formation of this nation there has also been the promise or maybe more appropriately the possibility that justice will be the end or goal of government. In responding to the murder of George Floyd, the Washington Supreme Court wrote that “The injustice still plaguing our country has its roots in the individual and collective actions of many, and it cannot be addressed without the individual and collective actions of us all.”

There is an exceptional essay authored by Justice Debra Stephens and Judge Veronica Galvan from the State of Washington entitled, “Why Judges Should Not Mistake the Norm for the Neutral.” The article challenges judges to reconsider the old judicial admonition “when in doubt, don’t do it” and suggests that advice be reconsidered in the face of an unavoidable reality: “Doing nothing to address systemic injustice is doing something.”

One of the great American literary essays addressing racial injustice was the “Letter from the Birmingham Jail” by Martin Luther King Jr. The letter is 60 years old this past April. I believe the letter is published in conference materials. The letter is an extraordinary piece of literature. I have read the letter several times over the past eight weeks. I first read it when I was in college. I certainly would not have thought about the letter had it not been brought to my attention by Consortium Board Member James Williams from North Carolina. That is one of the great things about the Consortium it brings together so many different perspectives. After reading MLK’s letter, I wanted to read what he was responding to. The letter MLK was responding to was titled in the Birmingham News, April 13, 1963, “White clergymen urge local Negroes to withdraw from demonstrations.” What struck me in that letter was that judges could have written the letter. One line from the letter; “When rights are consistently denied, a cause should be pressed in the courts and negotiations among local leaders, and not in the street.” They go on further to argue that hatred and violence have no sanction in our traditions and peaceful actions might incite hatred and violence. It would appear from the letter peaceful protesters are somehow responsible for the inaction of others and possibly the violence of others.

This brings me back to what is the role of a judge in pursuing justice? I guess my answer would be it is an individual and collective responsibility of us all who serve in the judiciary. My hope is that attendees to this conference find it to be a rewarding experience and they return home to do justice.

Thank you for the kindness of listening.