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**Washington State Minority and Justice Commission's Bibliography
Project**

By
Adrienne Cobb

The Washington State Minority and Justice Commission was created by order of the Washington State Supreme Court in 1990.¹ The purpose was to “identify problems and make recommendations to ensure fair and equal treatment in the state courts for all parties, attorneys, court employees and other persons.”² In order to accomplish this mission the Commission established five sub-committees, one of which was the Educational Sub-Committee. The Educational Sub-Committee’s mission is “to improve the administration of justice by developing and presenting educational programs designed to eliminate racial, ethnic, and cultural bias in the judicial system.”³ As part of this mission the Education Sub-Committee recently began implementation of a bibliography of materials for cultural competency to assist judges and courtroom personnel in developing their understanding of various racial and ethnic cultures in order to promote justice in Washington State courts.

This paper will discuss the motivation behind the creation of such a bibliography. Part one will discuss the background and progress of the Bibliography Project. Part two will provide an analysis of the shift in the racial and ethnic demographics of Washington State. Part three will have a special focus on immigrants and their experiences in the court system. Part four will then discuss whether there is evidence of bias in the courts. Part five will discuss the bibliography’s likelihood of success by comparing it to the attempts of similar projects in other states.

I. About the Bibliography Project

In order to understand the goals of the Washington State Minority and Justice Commission’s bibliography project it is important to discuss the goals of the Education Sub-Committee. Education has been a component of the Minority and Justice Commission’s objective since the Commission was established. One of the most effective means by which the Education Sub-Committee furthers the goals of the Minority and Justice Commission is through educational programs designed to develop cultural awareness. Accordingly, it has conducted classes, seminars, and workshops for both judges and courtroom personnel on a variety of issues including gender and cultural diversity. The bibliography project is a new concept developed to encourage such education on a continual and independent basis. It is an extension of the Commission’s commitment to educating judges as a means to eliminate and prevent bias in the courtroom.

The concept of the bibliography was first discussed at a Minority and Justice Commission meeting on October 5, 2001.⁴ The idea was described as an information tool that the Education Sub-Committee could add to its list of programs and activities to develop cultural competency in judges and courtroom personnel. At this meeting the feature that makes the bibliography unique was put into motion, the suggestion that each member should contribute their own recommendations to the reading list. The intent behind obtaining recommendations for the bibliography from others in the legal field is to obtain a point of view on a particular material from which to judge it. At this meeting Justice Anne E. Ellington was designated as the repository for all recommendations.⁵

¹ The Supreme Court of Washington, Court Order No. 25700-A (Oct. 4, 1990); the Minority and Justice Commission webpage can be found at http://www.courts.wa.gov/programs_orgs/pos_mjc.

² Supreme Court of Washington, Court order No. 25700-B374 (December 2, 1999).

³ MINORITY AND JUSTICE COMMISSION, 2000 ANNUAL REPORT at 19.

⁴ WASHINGTON STATE MINORITY AND JUSTICE COMMISSION, MINUTES OF MEETING, (Friday October 5, 2001) available at http://www.courts.wa.gov/committee/?fa=committee.display&item_id=121&committee_id=84

⁵ *See id.*

The Bibliography project has been a work in progress since this meeting. The project gained momentum when a variety of individuals specialized in relevant areas were incorporated into the project. In addition to Judge Ellington, these individuals included Erica Chung, the executive director of the Minority and Justice Commission, Penny Hazelton, the Associate Dean for Library and Computing Services at the University of Washington Law School, and Tony Medina, an attorney at law. Additionally, I as a student in the Information School Law Librarianship Program at the University of Washington, was designated to compile the bibliography, offering suggestions as to what the content and organization should be.

In January of 2003 an official mission statement was created announcing, in part, that the goals of the project were "to develop an annotated bibliography of materials to assist judges in enhancing their knowledge of racial and ethnic culture as they exercise judicial discretion and to promote cultural awareness among judges and decision makers in the Washington Courts."⁶ The project began with an assortment of unannotated bibliographies from people affiliated with the Minority and Justice Commission. This collection produced a 60 page compilation that was substantial enough to suggest that outsiders were indeed interested in the project. The final result is to be a list of mostly text-based materials that discuss cultural issues along with a short paragraph by the person recommending the material as to why they feel it meets the needs of the bibliography project. This bibliography will eventually be posted on the Minority and Justice Commission's web page.

Immediately after the official mission statement was created requests for submissions were sent out along with the mission statement itself and guidelines specifying how individuals should submit their recommendations. The parties affiliated with the project petitioned friends and colleagues in their fields. The initial response was sparse. After some initial frustration and a lot of discussion, the request for submissions was reconfigured to highlight the needs from the recommender. When this failed to be any more fruitful than the previous request, it was decided that the project should go on nevertheless.

Currently, the bibliography project committee is developing an online questionnaire which Judge Ellington has offered to test using the book, *The Spirit Catches You and You Fall Down* by Anne Fadiman. This book actually received more initial recommendations than any other material and has been used in a program on cultural competency for the Appellate Judges of Washington State, which is how Judge Ellington first discovered the book. The result will be the first posting to the final bibliography page on the Washington State Minority and Justice Commission's website. The hope is that by presenting a tangible example of what the final project should look like, individuals will be more open to making their own recommendations.

II. Changing Demographics

To understand the need for cultural competency in Washington State courts a review of the racial and ethnic make-up of the state is necessary. During the past decade Washington has experienced a drastic shift in racial and ethnic demographics. A comparison between the U.S. census data for Washington State in the year 1990 and the year 2000 reveals how this shift is occurring, in some areas quite dramatically.

⁶ MINORITY AND JUSTICE COMMISSION MISSION STATEMENT AND REQUEST FOR SUBMISSIONS.

Ethnicity	Year: 1990	Percent of Total Population	Year: 2000	Percent of Total population	Total Increase	Increase in Population By Percent	Increase in % of Population
White	4,308,937	87%	4,821,823	82%	512,886	+12%	-4.6%
Hispanic or Latino	214,570	4%	441,509	7.52%	226,939	+106%	+3.5%
African American	149,801	3%	190,267	3.24%	40,466	+27%	+0.2%
American Indian, Eskimo, or Aleut	81,483	2%	93,301	1.59%	11,818	+15%	-0.4%
Asian or Pacific Islander	210,958	4%	322,335	5.49%	111,377	+53%	+1.5%
Totals	4,967,739		5,871,235		903,486		

Compiled from U.S. Census Demographic Profiles: 1990 and 2000 Comparison Tables⁷

This chart reveals that between 1990 and 2000 the number of Asian or Pacific Islander residents increased by over fifty percent while the number of Latino residents more than doubled. During the same period the White population had the least growth at less than 12%, after African Americans with a 27% increase and American Indians, Eskimos, and Aleuts with a 15% increase. During the same period the number of foreign born residents increased 91%, with the majority coming from Asia or Latin America.⁸ While the state still remains largely Caucasian and American-born the current trend, as represented by the following chart, suggests that this will not long remain the case.

⁷ Compiled from U.S. CENSUS BUREAU PUBLIC INFORMATION OFFICE, DEMOGRAPHIC PROFILES: 1990 AND 2000 COMPARISON TABLES available at http://www.census.gov/Press-Release/www/2002/dp_comptables.html (last visited on May 11, 2003).

⁸ See id.

Ethnicity *	1995	2000	2,005	2015	2025	Total Increase	Percentage Increase
White	4,864	5,200	5,506	6,114	6,662	+1,462	28%
African American	180	192	208	243	279	+87	45%
American Indian	100	107	115	134	151	+44	41%
Asian, Pacific Islander	288	358	427	565	714	+356	99%
Hispanic	284	360	437	605	797	+437	121%
Totals	5,716	6,217	6,693	7,661	8,603	2,386	
*Results are in Thousands							
Compiled from U.S. CENSUS BUREAU PUBLIC INFORMATION OFFICE, PROJECTED STATE POPULATIONS, BY SEX, RACE, AND HISPANIC ORIGIN: 1995-2025 PROJECTIONS ⁹							

As this chart points out, census predictions for the year 2025 indicate that increases in minority populations will take place, with Latino and Asian populations more than doubling and African American and Native American populations increasing nearly fifty percent while the White population increases only a little more than twenty-five percent.¹⁰ Calculating the average growth relative to the total population growth reveals that while the Latino and Asian populations are increasing at an average of one percent per year and African American and Native American populations are holding steady, the white population is actually decreasing an average of two percent per year.¹¹

According to the most recent count there are 269 judges serving in Washington State Courts, at both the federal and state levels.¹² Of these 20 are African American, 6 are Latino, 20 are Asian or Pacific Islander, and 20 are Native American (not including those who serve in tribal courts).¹³ While this shows that the population of minority judges is admirably higher than the minority population of Washington State, an ethnic or racial minority is still far more likely to appear before a judge of a different race or ethnicity than their own.

Such a disparity could lay the groundwork for cultural misunderstanding and bias in the courtroom. Both judges, court employees, and those who appear before them are products of their background and culture. While justice is intended to be blind and matters of law are often required to be decided objectively, it would be difficult, if not impossible, for judges to be wholly immune from the influence of their background and culture.

At the very least, the idea of a bibliography for cultural competency should serve to make judges aware of their own bias. In his book, *Law and the Modern Mind*, Jerome Frank proposes the idea that since judicial discretion is a fact of the legal system, justice would be better served if

⁹ Available at <http://www.census.gov/population/projections/state/stprace.txt> (last visited on May 11, 2003).

¹⁰ See id.

¹¹ See id.

¹² Washington State Court Directory 2003, available at http://www.courts.wa.gov/court_dir/ (last visited on May 11, 2003).

¹³ See AMERICAN BAR ASSOCIATION, THE DIRECTORY OF MINORITY JUDGES OF THE UNITED STATES (3rd ed 2001).

judges could simply be made aware of their own prejudice rather than try to ignore it in a futile attempt at complete objectivity.¹⁴

The Minority and Justice Commission's bibliography hopes to incorporate literature and other materials that discuss a variety of racial and cultural issues. By reading such materials judges may become aware of how differences in culture affect the justice system. They may develop compassion and understanding of other cultures which will lead to a better justice system. The Director of the Leadership Institute in Judicial Education at the University of Memphis relates how this sort of empathy took place from reading a book in a similar program developed for judges: "In reading about the story of Mae in *The Emancipator* by Ellen Gilchrist, for instance, we get to vicariously experience ferocious verbal and physical abuse that ultimately results in her death. Without leaving our armchairs, we experience a different culture and aberrant behavior. We can then reflect on those experiences, question ourselves about our reactions, and speculate on our own behaviors under similar circumstances. Such reflection is essential in the development of a capacity for empathy that can humanize and heal."¹⁵ It is hoped that this is the sort of response that will be gained from the Minority and Justice Bibliography Project.

III. Immigration, a Special Concern

Immigrants present a more complex dimension to the need for cultural awareness. In many cases not only is race a concern but culture and language as well. One book that has highlighted the problems immigrant face in court is *Immigrants in Courts* edited by Joanne L. Moore. This material underlines the reasons why cultural competency is so important for the judicial system in states like Washington with higher immigration rates. In cases involving recent immigrants concerns move beyond just racial and gender biases.

Judges and other courtroom personnel should be careful not to rely on American points of view in handling a case where immigrants are involved. This may mean taking into account the cultural motivations behind certain acts committed by an immigrant. Adapting to American culture is a gradual process that may never be entirely complete. It incorporates more than simply learning a new language. Janet Bauer points out in *Immigrants in Courts*, that there are several stages involved in the acculturation process, which may be prolonged, especially when two cultures are in direct conflict with each other.¹⁶

Abandoning American bias may also mean letting go of the assumption that an immigrant is aware of how the American legal system works. Many immigrants come from cultures that have legal systems that are in direct contradiction to ours. "Fear and aversion toward the legal system is widespread in some countries...immigrants may continue to act on the basis of cultural assumptions about expected behavior even if they have lived in the United States for years."¹⁷

¹⁴ JEROME FRANK, *LAW AND THE MODERN MIND* 148 (1970).

¹⁵ Patricia Murrell, *Sidebar: Using Literature Programs to Expand Professional Frontiers*, 38 *JUDGES' J.* 21, 21 (1999).

¹⁶ Janet Bauer, *Speaking of Culture: Immigrants in the American Legal System*, in *IMMIGRANTS IN COURTS* 8 (Joanne L. Moore ed. 1999).

¹⁷ *Id.* at 25.

The following are examples of how foreign court systems differ from the American court system:

China:

Individual defendants in both misdemeanor criminal cases and major criminal cases would expect significantly harsher penalties and significantly less attention to the rights of accused than they would in the United States.¹⁸

Mexico:

Judicial administration is not open to public scrutiny and the ordinary citizen does not participate in it. Juries are not used in Mexican courts except under obscure provisions. Despite a structure painstakingly designed to reflect fairness and objectivity, the system often operates in secrecy behind closed doors. The lower in the pyramid an official of justice is situated, the greater the ambiguity within which the official can operate. Judges and lawyers, who are usually political appointees, are seen not as administrators of the law who ensure that justice is done, rights are protected, and procedures are followed, but rather as ultimate and powerful authorities to be feared.¹⁹

Middle East:

Truth is the goal of judicial proceedings; thus substance is more important than form. The rule of law does not mean rule by law even though the vast discretionary power of judges enhances the potential for abuse of power. But that is why the selection of judges is deemed so important, and why within it, the personal qualities of judges are deemed paramount.²⁰

Russia:

The Russian procedure for charging a person with a criminal offense and the process of presenting a person with an accusatory instrument indicating the formal charge radically differ from U.S. criminal procedure. The main characteristic of the Russian model is the nearly total exclusion of court interference at the preliminary stages. Instead, prosecutors supervise criminal investigations and play a prominent role.²¹

Vietnam:

There is no tradition of private attorneys or specialized public defenders who put up a vigorous fight for the defendant. "Many attorneys just ask for leeway or go by the back door," as one Vietnamese lawyer put it, to try to help their clients. In reality they have to go by the back door, because many judges themselves decide cases by asking party hacks in their work units to indicate what kind of judgment they should hand down, especially in political cases. One consequence of this experience of being "railroaded" through the criminal process in Vietnam is that some Vietnamese in America may be too easily persuaded to plead guilty by

¹⁸ Dr. Pittman Potter, *Law and legal Culture in China*, in IMMIGRANTS IN COURTS 66 (Joanne L. Moore ed.1999).

¹⁹ Dr. Juan-Vicente Palerm, ET AL, *Mexican Immigrants in Courts*, in IMMIGRANTS IN COURTS 81 (1999).

²⁰ M. Cherif Bassiouni, *The Shari'a: Islamic Law*, in IMMIGRANTS IN COURTS 106 (Joanne L. Moore ed.1999).

²¹ Antti Korkeakivi and Maria Zolotukhina, *The Russian Federation*, in IMMIGRANTS IN COURTS 125 (Joanne L. Moore ed.1999).

lazy appointed counsel even though there may be a good chance to the client could win on the basis of evidence.²²

Such dissimilarities between foreign legal systems and ours may lead recent immigrants to become confused and distrustful of our legal system. The American legal system can be intimidating even to those who have spent their entire lives in the United States. It can only be assumed that it would be more so to one who is unfamiliar with our culture and norms and, additionally, may not speak English.

Another, more recent, matter concerning immigrants in the courtroom is the developing concept of cultural defense. Cultural defense is a legal strategy that seeks to mitigate criminal liability based on a defendant's cultural background.²³ While the concept of a cultural defense is not yet mainstream in the legal system, it has materialized in a number of cases across the United States. The defense gained momentum after its most notable introduction in *People v. Chen* out of New York in 1987.²⁴ In that case Dong Lu Chen was arrested for hitting his wife in the head eight times with a claw hammer after learning of her affair with another man. The attack left her dead and Chen was originally tried with second degree murder. However, after hearing expert testimony from and expert witness claiming that under traditional Chinese culture a wife's adultery is proof that her husband has a weak character, the judge found Chen guilty of the lesser offense of second degree manslaughter and sentenced him to five years probation.

While the *Chen* case presents a more extreme, and highly controversial, example of the possibilities of cultural defense it certainly opened the door to the possibility of invoking the defense at trial. Since then there have been numerous cases, mostly criminal, in which a defendant has used his or her cultural background as a mitigating factor in determining liability.²⁵

There are many arguments against taking an individual's immigrant status and culture into account during the legal process. The tolerated practice of cultural defense brings with it many potential problems. One argument against it points out that permitting such a defense only serves to advance existing negative stereotypes and may perhaps create new ones.²⁶ Another argument points out that to permit such a defense would negatively affect women and children who are often the victims of crimes where the cultural defense may arise.²⁷ Some foreign cultures do not value and respect women in the manner that the United States has.²⁸ In such cultures domestic violence is not looked upon with the same disapproval that American culture views it. By allowing the cultural defense to mitigate what are, by American standards, sometimes horrific crimes against women and children the legal system would, in effect, be condoning such actions.

Perhaps the most common argument against the incorporation of a cultural defense into the legal system rests on the grounds of fairness. This type of argument may take on either an assimilationist point of view or an equality-under-the-law point of view, depending on how it is argued. The basic premise is that the legal system should be applied equally to all.²⁹ The assimilationist argues that recent immigrants should be bound by our legal system in the same manner that life-long citizens are. Further, eliminating the cultural defense would encourage recent immigrants to better adapt to American culture and make an effort to assimilate.

²² Dr. Tai Van Ta, *Vietnamese Immigrants in American Courts*, in IMMIGRANTS IN COURTS 152 (Joanne L. Moore ed.1999).

²³ See Nancy Kim, *The Cultural Defense and the Problem of Cultural Preemption: a framework for analysis*, 27 N.M. L. Rev. 101, 102-103 (1997).

²⁴ David W. Sikora, *Differing Cultures, Differing Culpabilities?: A Sensible Alternative, Using Cultural Circumstances as a Mitigating Factor in Sentencing*, 62 OHIO ST. L.J. 1695, 1695-96 (2001).

²⁵ See Stanley S. Arkin, *Criminal Intent and Cultural Dissonance*, N.Y.L.J., Dec. 14, 1995, at 8.

²⁶ See Sikora, *supra* note 24 at 1708.

²⁷ See *id* at 1709.

²⁸ See *id*.

²⁹ See *id*.

The argument that rests on equality under the law points to justice as being blind. The United States prides itself in promoting the uniform application of the law; the law should not judge based on one's status as an immigrant or their culture any more than it should judge based on their economic status, religion, race or other immutable factors, some of which may in fact bring culture into play. Any crime that is committed out of passion or ignorance of the law is often already mitigated by existing provisions in criminal law. It would be inequitable to further mitigate based on one's cultural background. Further, it would be difficult to create a bright line rule concerning the application of such a defense. How would one determine when it could be applied? People assimilate at different rates. How long would they have to live here before the defense could be declared non-applicable? Would it apply to any foreign culture or just those that are sufficiently distinct from American culture?

Both arguments certainly have valid points. Although America prides itself as a melting pot of different cultures it also must maintain some pretense of uniformity. It would be impossible for the United States to address the needs of every culture, foreign or otherwise, that that is represented in this country. Currently there are immigrants from over 230 countries residing in the United States.³⁰ There are also over 40 languages spoken³¹ and 76 different religions practiced.³² To modify American law and culture to accommodate each of these cultures, languages and religions would be an impossible and unreasonable undertaking.

The challenge to such an argument is twofold. First, although immigration in the United States has recently become more restrictive, this country has historically been a land that has readily welcomed individuals from other countries. Even today, with the recent controversy over immigration and terrorism, the United States has not significantly modified its policy towards immigration. Two months after the attacks on September 11, 2001 over 500,000 applications for immigrant benefits were granted.³³ Even today, the Bureau of Citizenship and Immigration Services actually encourages immigration from countries with low levels of immigration to the United States, in order to promote diversity.³⁴ Furthermore, once immigrants become residents of the United States the Bureau does in fact make an effort to accommodate them.³⁵

The Second challenge to an assimilationist argument addresses the legal system in particular. The American legal system has never been entirely objective. Juries are chosen based on predictions of where their sympathies lie. Judicial discretion has been the topic of many a law review article. Even most statutory schemes allow for the incorporation of mitigating defenses to

³⁰ Bureau of Citizenship and Immigration Services, *Naturalizations, Fiscal Year 2002*, in 2002 YEARBOOK OF IMMIGRATION STATISTICS, currently available at <http://www.immigration.gov/graphics/shared/aboutus/statistics/NATZ2002yrbk/NATZ2002list.htm> (last visited on May 11, 2003).

³¹ See UNITED STATES CENSUS BUREAU, SUMMARY TABLES ON LANGUAGE USE AND ENGLISH ABILITY: 2000 (PHC-T-20) available at <http://www.census.gov/population/www/cen2000/phc-t20.html>. (last visited on May 11, 2003).

³² See UNITED STATES CENSUS BUREAU, 2000 STATISTICAL ABSTRACT OF THE UNITED STATES available at <http://landview.census.gov/prod/2001pubs/statab/sec01.pdf> (last visited May 11, 2003).

³³ See BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES, APPLICATIONS FOR IMMIGRANT BENEFITS, available at <http://www.immigration.gov/graphics/shared/aboutus/statistics/msrsep02/BENEFIT.HTM> (last visited May 11, 2003).

³⁴ See 8 U.S.C. 1153(c).

³⁵ See United States Census Bureau, *Adding Diversity From Abroad*, in THE POPULATION PROFILE OF THE UNITED STATES: 2000: Stating that in some parts of the country "the characteristics of the foreign-born population must be taken into account when developing educational programs, designing street signs, and providing social services." available at <http://landview.census.gov/population/pop-profile/2000/chap17.pdf> (last visited May 6, 2003).

crimes based on the motivations behind their commission and the circumstances surrounding it. It is what makes the difference between manslaughter and murder. Further, sentences are often reduced or extended based on similar grounds. It is only proper that an individual's customs and culture should be incorporated into such a scheme. In order for the legal system to preserve some semblance of justice, a balance should be created between the uniform application of law and individual circumstances based on culture.

One example of how cultural understanding can lead to a compromise that maintains a balance between preserving American principles and appreciating cultural differences can be drawn from an example in Washington State. Here, a compromise between a Seattle hospital and the immigrant Somali community was created that left both parties satisfied.

Harborview Medical Center in Seattle serves a large portion of the Somali immigrant community. A form of female genital circumcision, referred to as Sunna, was an established religious and cultural practice within this community and several pregnant mothers had requested that their obstetricians perform the ritual on their daughters once they were born.³⁶ The ritual is particularly important to more recent Somali arrivals to the United States for both cultural and religious reasons. The religious motivation is less compelling than the cultural motivation as there is dispute as to whether it is really required by Islam, the religion practiced by most Somali immigrants. However, from a cultural perspective, many Somali immigrants believe that daughters "would be shamed, dishonored and unmarriageable if they were not cut... it shows their purity."³⁷

Despite the medical center's policy to observe cultural sensitivity with its largely immigrant patient community, this practice was originally met with reluctance by the physicians at Harborview Medical Center.³⁸ However, it was soon learned that mothers who were denied female circumcision from the physicians at Harborview would send their daughters to more traditional practitioners who would likely perform a more drastic version of the procedure usually involving "complete removal of the clitoris and labia, and sometimes the sewing together of the remaining flesh, with only a small opening through which urine and menstrual blood can pass."³⁹

In the face of such a revelation the medical center and the Somali community developed a compromise in which doctors would perform a mostly symbolic procedure, where they simply nicked the foreskin of the clitoris, producing a small amount of blood, but little to no permanent damage.⁴⁰ This practice assuaged both the moral concerns of physicians and cultural needs of their Somali patients.

This example provides an illustration of how cultural understanding can lead to a more productive result. Instead of imposing their own American values on their Somali patients, the doctors at Harborview developed an understanding of the cultural and religious views of this community which led to a less destructive result for all parties involved.

This example illustrates how the transition process for immigrants is not immediate. In the face of opposition from both doctors and laws forbidding female circumcision, recent immigrants were willing to spend more than \$1500 to send their daughters back to Somalia to have a potentially more damaging version of the procedure preformed.⁴¹ As one Somali resident put it "The fact that we came as refugees doesn't mean we are going to leave our culture

³⁶ Doriane L. Coleman, *The Seattle Compromise: Multicultural Sensitivity and Americanization*, 47 DUKE L.J. 717, 739 (1998).

³⁷ *Id.* at 742.

³⁸ *See id.* at 739-740.

³⁹ *Id.* at 741.

⁴⁰ *Id.* at 739.

⁴¹ *Id.* at 740.

overnight.”⁴² This is something that judges and courtroom personnel should consider in administering a case where a recent immigrant is involved.

IV. Does Bias Exist?

The racial and ethnic transformation taking place in Washington is certainly enough to raise the concern that cultural awareness among judges and courtroom personnel is needed. However, the important discussion centers on the question of whether or not bias actually exists. The Minority and Justice Commission, perhaps aware of the possible consequences of the shifting demography in the state of Washington, performs a series of annual studies on racial and ethnic disparities in Washington State Court. These studies found that there were in fact substantial racial and ethnic disparities in many areas of the legal process.

In some phases of the judicial process, such as sentencing, judges are forced to follow state guidelines and thus are precluded from imposing any of their own bias into the process. In these cases disparities between White defendants and minority defendants are often non-existent.⁴³ However in areas where constraints are not statutorily imposed, disparities consistently occur in favor of White defendants.

One study that covered racial and ethnic disparities in Superior Court bail and pre-trial detention practices in Washington found substantial disparities in felony cases in King County. The report found that the courts in this county were more likely to deny minorities release on personal recognizance and to require more minority defendants than White defendants to pay monetary bail.⁴⁴ It also revealed that these courts were more likely to retain minority defendants in custody pending the outcomes of their cases more frequently than whites.⁴⁵

Ultimately the Commission found that there was no overt prejudice involved in the creation of these disparities, faulting the organization of the courts as well as the rules and guidelines established by the Legislature and the courts themselves. Such facially neutral reasons include the criminal history of the defendant and lack of steady employment.⁴⁶ However, a conclusion that these determinations were not made simply on the basis of the defendant's race or ethnicity does not mean that culture did not play a role in the process. Minority defendants were found to be less likely to have important ties to the community or enough resources to hire the most effective legal representation and “without these resources minorities become subject to the organizational pressures of the courts.”⁴⁷

The same types of disparities, at quite an alarming level, exist at the sentencing phase of trials. Under the Standard Range Sentences for ranked offenses like case *must* be treated alike.⁴⁸ This means that factors such as age, religion, gender, race and ethnicity may not be taken into account. According to a report put out in 2000 by the Sentencing Guidelines Committee, this sentencing method has worked to eliminate bias in most cases where it has been applied—the one

⁴² *Id.* at 743.

⁴³ See WASHINGTON STATE MINORITY AND JUSTICE COMMISSION, THE IMPACT OF RACE AND ETHNICITY ON CHARGING AND SENTENCING PROCESSES FOR DRUG OFFENDERS IN THREE COUNTIES OF WASHINGTON STATE, FINAL REPORT 1999, at 38-39 [hereinafter Final Report 1999].

⁴⁴ GEORGE S. BRIDGES, PH.D., WASHINGTON STATE MINORITY AND JUSTICE COMMISSION: A STUDY ON RACIAL AND ETHNIC DISPARITIES IN SUPERIOR COURT BAIL AND PRE-TRIAL DETENTION PRACTICES IN WASHINGTON, 1997 FINAL REPORT, at 97 [hereinafter, Final Report 1997].

⁴⁵ See *Id.*

⁴⁶ See *Id.* at 97.

⁴⁷ *Id.*

⁴⁸ RCW 9.94A.010(1).

exception being Violation of the Uniform Controlled Substances Act offenses.⁴⁹ However, this same report *did* find that when sentencing was conducted outside of the statutory guidelines, in cases such as alternative sentencing, exceptional sentencing and “Three-Strike” life sentences, the disparities between races were glaring. African Americans were handed life sentences under the “Three-Strikes” law at a rate that was six times higher than the next highest group, Native Americans.⁵⁰ The rate increased to 18 times higher when compared to White defendants.⁵¹ Outside of the “Three-Strikes” statutory scheme African Americans were sentenced to life two and a half more times than Native American offenders and six times as much as White offenders.⁵² Although it is statutorily regulated⁵³ African Americans also received a death sentence almost six times as often as Latinos and 11.5 times as often as White offenders.⁵⁴ This study was admittedly only a compilation of statistics and thus failed to explore the reasons behind the obvious disparities in sentencing. It recommended further study to investigate such factors as “community (social) context, style of policing, socioeconomic information, including unemployment figures, charging practices of prosecuting attorneys and guilty pleas entered into as a result of bargaining,”⁵⁵ indicating that such factors may have played a substantial role in the sentencing process.

Despite the seemingly neutral rationales behind the many of the disparities described in both sentencing and pre-trial detention, the study performed by the Minority and Justice Commission found that racial and cultural bias did occasionally appear. “Cultural differences bring problems of language and communication that make verification of employment or residence, or other evidence of ties to the local community, problematic.”⁵⁶ The majority of the respondents in the survey emphasized the fact that blatant racial and ethnic bias was not apparent in judicial proceedings. However, a few judges actually admitted their biases: “All of us who grew up in this country are infected with [racism]...we carry around in our heads stereotypes of people that impact how we judge them and make decisions about them”⁵⁷

Such bias is not limited to judges but all participants in the legal process. One public defender pointed out the distinction between the prosecutor’s decisions on charging and sentencing White defendants and African American defendants. She stated that the public’s perception of certain races and the prosecutor’s perception of how each defendant will come across to a jury play a role in determining how severely a defendant will be charged.⁵⁸

In rare instances racial and ethnic bias can be deliberately overt and offensive. As recently as December of 2002 George Trejo, a Latino lawyer, filed a motion to recuse a judge in Washington State for racially offensive remarks committed by the judge and his staff, claiming that no ethnic minority “should be forced to appear before Judge McDonald.”⁵⁹ Two years prior to the filing of the motion, that judge, Alan McDonald of the U.S. District Court, had been reprimanded by the Judicial Council of the 9th Circuit for passing notes referring to Latinos as “greasers” and insulting other groups such as African Americans and Mormons.⁶⁰ Judge

⁴⁹ NELLA LEE AND EDWARD VUKICH, REPRESENTATION AND EQUITY IN WASHINGTON STATE: AN ASSESSMENT OF DISPROPORTIONALITY AND DISPARITY IN ADULT FELONY SENTENCING 87 (2000).

⁵⁰ *See id.* at 75.

⁵¹ *See id.*

⁵² *See id.*

⁵³ RWC 10.95.050.

⁵⁴ *See id.*

⁵⁵ *Id.* at 87.

⁵⁶ *Id.* at 98.

⁵⁷ FINAL REPORT 1999, *supra* note 42 at 45. (remarks by a Washington State judge)

⁵⁸ *See id.* at 44.

⁵⁹ Karen Dorn Steele, *Motion for Federal Judge’s Recusal Denied; Clerk Wrote Disparaging Note about Attorney Appearing Before Judge*, THE SPOKESMAN REVIEW, January 9, 2003 at B1.

⁶⁰ *See id.*

McDonald wrote off the incidents, claiming that they were jokes that “helped break the monotony” of court proceedings and claimed they didn’t affect the outcomes.⁶¹ The motion for recusal was eventually denied but the example makes a point about cultural incompetency.

More often than not when bias does affect a case it is done subconsciously. As stated earlier judges and court personnel are products of their culture and background. It is inevitable that their experiences in life, and the biases they have developed as a result, will play a subliminal role in a particular case long before they even develop a final opinion on the matter. In his analysis of the judging process, Jerome Frank noted this inevitability:

In learning the facts with reference to which one forms an opinion, and often long before the time when a hunch arises with reference to the situation as a whole, these more minute and distinctly personal biases are operating constantly. So the judge’s sympathies and antipathies are likely to be active with respect to the persons of the witness, the attorneys, and the parties to the suit. His own past may have created plus or minus reactions to women, or blonde women, or men with beards or Southerners, or Italians, or Englishmen, or plumbers, or ministers, or college graduates, or Democrats.⁶²

Bias has been a feature of the legal system since its inception. In an institution that has historically been dominated by educated white males this has created distrust on the part of those who did not fit that prototype. As one judge pointed out, “I think that a lot of African-Americans are suspicious of the criminal justice system...Have no confidence that they’re going to get a fair deal...And they have a sense that because they are black, they are going to be punished more severely. And they approach the justice system that way. And it shows...And when you see somebody approach you in that way, there’s a certain tendency to respond in a way that arguable protects the community from further malicious acts by this defendant.”⁶³ Such assumptions create mutual bias that has a circular effect, leading to a justice system that is anything but just.

V. Will the Bibliography Work?

There are many similarities between the Minority and Justice Commission’s bibliography project and projects incorporated by other states. However, the Commission’s project is one of the few to encourage judges to become *independently* culturally competent as well. While other programs may incorporate literature into judicial education or develop structured programs to eliminate racism and other forms of bias, Washington has combined the two into a program to help judges teach themselves.

The Minority and Justice Commission is not the first committee established by a state to address bias in the courtroom. At least fourteen other states have formed some sort of task force to report on bias in the court system. These include Minnesota, Arizona, California, Connecticut, Florida, Hawaii, Iowa, Massachusetts, Michigan, North Dakota, New Jersey, New York, Oregon, And the District of Columbia.⁶⁴

⁶¹ *See id.*

⁶² Frank, *supra* note 14 at 114-115.

⁶³ WASHINGTON STATE MINORITY AND JUSTICE COMMISSION, THE IMPACT OF RACE AND ETHNICITY ON CHARGING AND SENTENCING PROCESSES FOR DRUG OFFENDERS IN THREE COUNTIES OF WASHINGTON STATE, 1999 FINAL REPORT, 44-5.

⁶⁴ *See* Suellyn Scarnecchia, *State Responses to task Force Reports on Race and Ethnic Bias in the Courts*, 16 HAMLINE. L.R. 923, (1993).

Many guidelines issued by these task forces mandate some sort of training for judges to help eliminate bias in the courtroom. New York calls for a program of training that addresses cross-cultural competence, which includes development in understanding different languages and cultures and avoiding insensitive conduct.⁶⁵ New Jersey also includes "sensitivity training" as one of its eight recommendations in response to bias.⁶⁶ Michigan includes similar training as regular part of all substantive and procedural training of judges.⁶⁷ In this aspect the Minority and Justice Commission is not unique in its decision to incorporate some sort of educational program to develop cultural sensitivity in judges.

Education plays an important role in reaching the goals of the Minority and Justice Commission. This is demonstrated by the creation of an official Board for Court Education created by authorization of the Washington State Supreme Court, the same authority under which the Minority and Justice Commission was created. The purpose of the Board is to "improve the quality of justice in Washington by fostering excellence in the courts through effective education."⁶⁸ To enforce Washington State's commitment to the continual education of its judges the Board has established minimum education standards for judges presiding in the state of Washington.⁶⁹ Each judge must complete a minimum of 45 credit hours of judicial education approved by the Board every three years.⁷⁰ Additionally, within twelve months of their initial appointment or election into judicial office each judge must attend and complete the Washington Judicial College program.⁷¹ The Board has also established standards for accrediting judicial educational programs which, in relevant part, includes self-study.⁷²

Judicial education has been a part of the legal system since judicial colleges were first established as an offspring of Continuing Legal Education (CLE) for lawyers, during the period after World War II.⁷³ Such programs grew out of the understanding that judges required some type of specialized education to meet the particular demands of their profession. Recognizing the theory behind CLE for lawyers, it was also appreciated that this education must be continual in order to encourage professional development, promote collaboration, and prevent stagnation in the judicial system. Currently, almost every state has an agency that is responsible for judicial education.⁷⁴ Congress has also taken part in this responsibility by passing two bills which have established organizations to administer judicial education. The Federal Judicial Center is responsible for educational programs for federal judges.⁷⁵ The State Justice Institute has the same responsibility for state court judges.⁷⁶

Recently it has become popular for many states to develop judicial education programs that are literature-based. For example, at Brandeis University has developed a program entitled "Doing Justice: Improving Equality Before the Law Through Literature-Based Seminars for

⁶⁵ *Id.* at 935.

⁶⁶ *See id.*

⁶⁷ *See id.*

⁶⁸ WASHINGTON STATE BOARD FOR COURT EDUCATION, BYLAWS FOR COURT INFORMATION, available at http://www.courts.wa.gov/programs_orgs/pos_bce/?fa=bce.bilaws (last visited on May 11, 2003).

⁶⁹ *See* WASHINGTON STATE BOARD FOR COURT EDUCATION, WASHINGTON STATE JUDICIAL EDUCATION MANDATORY JUDICIAL EDUCATION STANDARDS, available at http://www.courts.wa.gov/programs_orgs/pos_bce/?fa=bce.cje (last visited on May 11, 2003).

⁷⁰ *See id.*

⁷¹ *See id.*

⁷² *See id.*

⁷³ *See* William Dressel, *Judicial System Education Means Collaboration*, 40 JUDGES' JOURNAL 43, 43 (2001).

⁷⁴ *See* Stephen Shapiro, *The Judicial in the United States: A Search for Fairness, Independence, and Competence*, 14 GEO. J. LEGAL ETHICS 667, 685 (2001).

⁷⁵ *See* 28 U.S.C. 620.

⁷⁶ *See* 42 U.S.C. 10701.

Judges and Court Personnel."⁷⁷ This program uses popular literature to examine questions of professional values and ethics.⁷⁸ At the National Judicial College judges in the course "Great Issues in Law as Reflected in Literature" not only read plays, stories, and poems but actually attend plays, after which discussions on justice equity and fairness are conducted.⁷⁹ There are similar programs that incorporate literature at the Leadership Institute in Judicial Education at the University of Memphis and the Conference of Chief Justices.⁸⁰ Many of these schools have found that the judges who attend their programs have developed an interest in using literature to achieve self-understanding and reflect on the ethical and moral concerns that they face in the courtroom. The Director of the Leadership Institute in Judicial Education at the University of Memphis explained the popularity of such "law and literature" programs, stating that "literature has long been accepted and utilized as a vehicle for the transmission of values in our culture."⁸¹

There are actually two schools of thought as to what the "law and literature" movement actually is. The distinction between the two may be deciphered from their alternate titles, "law as literature" and "law in literature."⁸² The former regards "law and literature" as incorporating literature into the creation and interpretation of the law, taking into account its ability to humanize and simplify concepts as well as entertain. This point of view "applies literary analysis to legal discourse and texts and demonstrates how literary strategies can participate in legal interpretation."⁸³ The latter point of view, which is easier to explain, "analyzes literary texts for what they say about law, how legal issues work in the plot, or what the text and the characters say about what law is and what it should be."⁸⁴ This perspective appreciates the idea that literature may develop in judges a more humane and sensitized understanding of how law affects society. The position used in this paper comes from the second school of thought; the purpose of the Minority and Justice Commission's bibliography project is to develop in judges empathy for different cultures using literature.

The recognition of literature as something far more important than simply a form of entertainment is an ancient and universal concept. Long before recorded history, storytelling was a medium for communicating important aspects of a particular community such as its history, morals, religious values and laws. This is an enduring concept even today. A paradigmatic example is that of religion, which is just as influential, if not more so, than the law itself. Most religions in the world incorporate some form of storytelling to communicate the values of their faith. Most of the books both the Bible and the Torah have a narrative quality. They also share many of the same features of novels, stories, and other forms of fiction, such as themes, plots, character development, and morals. The same is true of the Koran, which incorporates a fair portion of the Bible and the Torah. The story of Buddhism's creation has evolved into a popular novel with many translations.⁸⁵ Many Native American Tribes believe in the same tradition of human creation which is told in story form.⁸⁶

⁷⁷ Patricia Murrell, Sidebar: Using Literature Programs to Expand Professional Frontiers, 38 JUDGES' J. 21 at 21 (1999).

⁷⁸ See *id.*

⁷⁹ See *id.*

⁸⁰ See *id.*

⁸¹ Patricia Murrell and William Carpenter, *Reconnecting with Values and Ethics: Learning Lessons From Literature and Human Developmental Theory*, 38 JUDGES' J. 16, 17 (1999) [hereinafter Murrell & Carpenter].

⁸² Deborah Luyster, *Lawyering Skills in Law and Literature*, 81 MICH. B. J. 56, 56 (January 2002).

⁸³ Sarah Krakoff, *Does "Law and Literature" Survive Lawyerland*, 101 COLUM. L. R. 1742, 1742 (2001).

⁸⁴ See Luyster, *supra* note 81 at 56.

⁸⁵ HERMANN HESSE, *SIDDHARTHA* (originally published in 1992).

⁸⁶ See Robert W. Lannan, *Anthropology and restless Spirits: The Native American Graves Protection and Repatriation act, and the Unresolved Issues of Prehistoric Human Remains*, 22 HARV. ENVTL. L.

Literature should be considered a recognizable vehicle for education. As children we are introduced to the values of society through literature in the form of fairytales and children's books. Literature, in many forms, continues to be an integral part of education up through college, often on an interdisciplinary level. For example much of what we know about ancient cultures comes from the plays and myths that come from their time period. Math problems are given a context through word problems. Our English classes taught us how to write through reading novels and short stories.

This context creates a natural setting for the inclusion of literature in judicial education. Not only is it a method that justices are likely to be familiar with, it is one that they may actually enjoy. As stated earlier, a significant goal of literature is to entertain. Often education is simply a coincidental byproduct of a story's creation. However, it is interesting to note that it may be this duality that has brought about the popularity of using literature in legal education. Those who have incorporated it realize that its entertainment value may actually serve a tangible benefit to the curriculum. The same may hold true for non-fiction which often appeals to the reader's emotions in an effort to compel the reader to understand a particular point of view. One of the benchmarks of successful writing is to encourage the reader to empathize with characters and situations. A professor of English who has taught a course on "Law and Literature" at the University of Memphis Law School illustrates this process eloquently: "As the plot of a play, short story, or novel unfolds, the intimate revelations or experience of the characters can be understood or interpreted through the theories of human development. This will allow jurists to safely test their own personal experiences against those of the characters."⁸⁷ This developmental experience may be the impetus behind many programs that incorporate literature into legal education. It is very likely the motivation behind the bibliography project designed by the Minority and Justice Commission.

Perhaps the program that best resembles the Minority and Justice Commission's program is the "Foundations in Pluralism" project in Alabama. This program, established in 1996 by the Alabama Judicial College and the Continuing Education Division of Tuskegee University, invites a diverse group of Alabama judges to gather to participate in an educational program designed to assist them in dealing with issues of race and gender.⁸⁸ Unlike the Minority and Justice Commission's project, the Alabama project is a structured educational event, incorporating lectures, videos presentations and discussion groups. However, similar to the concept devised by the Minority and Justice Commission, the judges are required to read several pieces of literature concerning racial and cultural issues beforehand. Many of the titles are the same as those recommended by respondents to the Minority and Justice Commission, including the *Autobiography of Malcolm X* by Alex Haley, *Up from Slavery*, by Booker T. Washington, and *The Souls of Black Folk* by W.E.B. DuBois.

The "Foundations in Pluralism" project incorporates a law and literature approach to educating these judges, focusing discussion and lectures around the readings and discussion. Its program uses literature to depict law as it exists in society and thereby develop and understanding of how society is affected by the law. This more theoretical approach was used in place of a more practical approach because it was thought to be the best way to develop cultural understanding. As one of its creators put it, "Nuts and bolts seminars—educational events that simply tell judged 'how to do it'—do not produce cultural understanding that is the necessary basis for sound subjective judgment."⁸⁹

REV.369 (1998) (recounting the Native American legend in which a coyote destroys a huge monster, cutting him to little pieces that eventually formed the Native American Tribes).

⁸⁷ Murrell & Carpenter, *supra* note 81 at 18.

⁸⁸ See Dale Segrest, *Foundations in Pluralism: A Learning Experience for Judges*, 57 ALA. LAW 300, 300 (1996).

⁸⁹ *Id.* at 304.

This concept represents the idea behind the Minority and Justice Education Subcommittee's decision to move toward literature to understand culture. This is not to devalue the positive effect that using a hands-on approach has provided. Many of the programs established by the Minority and Justice Commission have used such an approach, and have been successful at it.

There is no empirical evidence as to whether or not "Foundations in Pluralism" has been successful in helping to eliminate bias in courtrooms in Alabama. However, the program was actually developed from a seminar developed in the previous year, which was considered "highly successful."⁹⁰ In fact many of the judges who attended the original seminar returned the following year for "Foundations in Pluralism."⁹¹

Although the Minority and Justice Commissions endeavor is not as structured as "Foundations in Pluralism," the concept and goals are the same. By encouraging the reading of literature the program hopes to help judges develop empathy for cultures that are different from their own. Washington State has had the same sort of positive response to educational programs it has conducted on cultural competency that "Foundations in Pluralism" had. One relevant example is drawn from a Washington State Annual Conference of State Judges. Although this program was not conducted by the Minority and Justice Commission, it is an excellent example of the motivation for understanding different cultures that the Commission is trying to develop. This particular conference took place on a Sunday night from 7-9 and was led by Professor Janelle Taylor from the Anthropology Department at the University of Washington.⁹² The judges were required to read the book, *The Spirit Catches You and You Fall Down*, mentioned earlier in this paper. The story is about a Hmong child who developed epilepsy and the subsequent intercultural interaction between her family and the doctors who were caring for her. The discussion surrounding this book during the conference was lively and the program itself received a lot of positive feedback. One librarian who recommended this book for the bibliography project described its value to the project:

This is a beautiful, heart-breaking book. It tells the story of a Hmong girl from Laos with epilepsy and the differences between her family's and culture's perceptions of her disease and that of her Western doctors. It really underscores the importance of communicating across cultures (especially in a professional-client relationship) and the terrible things that can happen when that does not occur.⁹³

One of the characteristics that sets the bibliography project of the Minority and Justice Commission apart from other educational programs, including those already put on by the commission, is its dependence on the judicial community's self-motivation. The project is not designed to be a guided program where judges are compelled by outside forces to read and attend lectures or seminars. The educational development through the bibliography project depends on the judge's own initiative.

In 1989 Kenneth O'Connell outlined a similar program for judicial self-instruction which relied heavily on judges taking the initiative to teach themselves.⁹⁴ A former appellate court judge himself, he understood the time constraints on judges and the likelihood that they would not regard the idea of taking time out in order to attend class as an acceptable method of education.

⁹⁰ *Id.*

⁹¹ *See id.*

⁹² Interview with Judge Anne E. Ellington (Apr. 22, 2003).

⁹³ Elena Bianco, Minority and Justice Commission Bibliography (soon to be published).

⁹⁴ Kenneth O'Connell, *An Outline of a Continuing Education Program for Appellate Judges*, 68 OR. L. REV. 691 (1989) [hereinafter O'Connell, Outline].

Many judges are already burdened with heavy caseloads, which involves not only administering a case but writing opinions. Many of them are also involved in court conferences and bar committees. Some also teach and attend national conferences or participate in other legal activities, leaving little time to attend non-compulsory classes. He therefore proposed an educational program which allowed judges to teach themselves, relying heavily on allowing them to work the learning process around their busy schedules.

Three years later, O'Connell was forced to amend his proposal. In his discussion of his original proposal for self-education he admitted the potential hurdles to its success, stating that it would "necessarily require a Herculean effort to bring it to fruition."⁹⁵ He assumed there would be concerns about financial assistance and efforts to initiate the process.⁹⁶ However, he had not counted on the lack of interest on the part of the judicial community. He sent an outline of his proposal to several judges in the state of Oregon, where he had served as an appellate court judge and asked for feedback and additional suggestions. There were no responses. "This apparent lack of interest prompts me to conclude that perhaps my basic assumption that judges could be relied upon to assume the task of education themselves was erroneous and that some other method must be employed if judges are to be taught what they need to learn in connection with their job decision-making."⁹⁷

This, of course, begs the question as to how successful the Minority and Justice Commission will in developing cultural competency in judges through a simple bibliography. One indication may come from the initial response at the time the bibliography was first discussed. Comments from Committee meetings indicate that respondents needed to be prodded to respond to requests for initial submissions.⁹⁸ The lack of responses once the official mission statement was created and recommendations were requested also paints a negative picture about the project's potential. However, it would be prematurely pessimistic to assume any failure until the model submission by Judge Ellington has been posted on the Minority and Justice Commission's website as a model to guide individuals.

VI. Conclusion

The Minority and Justice Commission's decision to create a bibliography of cultural competency is a noble undertaking. Until it is published on the Minority and Justice Commission's website it is impossible to say whether or not the undertaking will be a successful one. What can be said is that Washington State has historically been successful in conducting programs to develop cultural competency in its judicial system. The creation of the Minority and Justice Commission, created by order of the Washington State Supreme Court, is a prime example of its dedication to this cause. It is therefore, reasonable to assume that members of the same community that created the Commission may be relied upon to take a self-directed interest in educating themselves about other cultures in order to promote true justice.

⁹⁵ *Id* at 721.

⁹⁶ See O'Connell, *Outline*, *supra* note 94 at 721.

⁹⁷ Kenneth J. O'Connell, *A Proposal to Establish a National Center for the Education of Appellate Judges*, 71 OR. L. REV. 901, 902 (1992).

⁹⁸ See WASHINGTON STATE MINORITY AND JUSTICE COMMISSION, MEETING MINUTES (November 14, 2001) available at http://www.courts.wa.gov/committee/?fa=/programs_orgs/pos_mjc/pos_mjc.display&folderID=minutes&fileID=ed011114 (Judge Ellington reporting that she "had received few cultural diversity bibliographic submissions") (last visited May 11, 2003).