Keynote Address: “Fairness or Bias?: A Symposium on Racial and Ethnic Composition and Attitudes in the Judiciary”

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Good afternoon, ladies and gentlemen. I would like to thank Asian Law Journal for its gracious invitation to speak with you today. At a conference called “Diversity and Unity in America” at the University of Texas, William Raspberry, a columnist for the Washington Post, was asked the following question: “Are race relationships getting better or worse in America?” His answer was: “Yes.” He went on to explain that the results of programs to improve race relations have been very mixed. Some work; some do not work; some are unmitigated disasters. Historian Arthur Schlesinger was a bit more positive. He highlighted some specific points of progress and took particular note of the appointment of General Colin Powell, the first African-American Chairman of the Joint Chiefs of Staff.

Asian Law Journal has chosen an important topic for the Symposium—fairness or bias in the courts of California. The purpose of Asian Law Journal is to “provide a comprehensive forum for legal scholars, practitioners and students to discuss legal issues concerning Asians and Pacific Islanders in the United States and abroad . . . .” This, of course, is the reason we’re here today—to participate in that conversation.

The subject of race and bias has long been part of our national conversation. The questions we must ask ourselves today are: Have we made any progress? Have relations among the races improved? Or have the programs that were established to improve relations simply made us feel good about the subject?

Fairness or bias—what are they? I am certain that at one time or an-
other everyone in the room has been either the dispenser or the receiver of both fairness and bias. In other words, we know them when we see them.

Best-selling author Studs Terkel, in his book, Race—How Blacks and Whites Feel About the American Obsession, chronicled hundreds of anecdotes about the subject. He begins with the story about a Caucasian woman driving down the street in an African-American neighborhood. When she got to the intersection, a group of African-American men congregating at the corner began to gesticulate menacingly at her. She became very frightened, immediately turned up her windows, locked all the doors, and raced down the street. After traveling several blocks at a high rate of speed, she realized she was going the wrong way on a one-way street and that the men back at the intersection were just trying to warn her.1

The author goes on to say, “Her assumption was they were blacks and were out to get her. Mind you, she’s a very enlightened person. You’d never associate her with racism, yet her first reaction was that they were dangerous.”2

To assume that someone is dangerous because of the color of their skin—is that bias? Is that prejudice? I think most of us can probably agree that it is. If a trial judge sees a African-American man enter the courtroom and assumes he is dangerous—is that bias? Is that prejudice?

I would also like to give you a couple of examples of bias from my own personal experience. I was born and raised on a small potato farm in Klamath Falls, Oregon. When I was a child, we traveled frequently between Oregon and San Francisco. Occasionally, we would seek overnight accommodations in small towns along the way. I can remember driving to motels with empty parking lots and “vacancy” signs blazing in neon lights, but my family was told there was no room for us in the inn.

I can remember driving through a very nice neighborhood in town. There were large, stately houses with well-manicured lawns. As I gazed out of the car window, I asked my parents, “Wouldn’t it be nice to live here?” My father said, “Oh, no, they don’t let Chinese live here.” Of course, my question was always, “Why?” I’ve never heard a good answer. My father said, “Maybe one day you can do something about prejudice and bias.” Perhaps that day has arrived.

In spite of my experiences as a child, I do believe Asian-Americans in California are better off today than we were 50 years ago . . . or 100 years ago . . . or 150 years ago. As a group, we have made significant progress. In order to appreciate just how far we have traveled, we only have to review some recent history. After all, it was only in this century that Asian-

2. Id.
Americans were granted citizenship rights in this great Republic of ours—it was 1943 for Chinese, it was 1946 for Asian Indians and Filipinos, and it was not until 1952 for all other Asians.\footnote{3}

It was not long ago that California laws isolated Asian-Americans with intentional acts of prejudice. Here are just a few examples. California once barred Japanese immigrants from fishing in state waters.\footnote{4} It also once had an anti-miscegenation law prohibiting Caucasians from marrying people of African-American, mulatto, or Mongolian descent.\footnote{5} When a Filipino man successfully litigated his right to marry a Caucasian woman on the ground that Filipinos are not of Mongolian descent, the California Legislature responded. It amended the law and extended the prohibition to Filipinos in 1933.\footnote{6}

Yet another outrageous example comes from the California Supreme Court. A case from the mid-19th century held that a Chinese person could not testify against a Caucasian man in court.\footnote{7} The court based its decision not only on its construction of a California statute but also on the ground that public policy prevented courts from accepting testimony from a Chinese person.\footnote{8} Need I tell you—we won’t be doing that any more.

Another example might sound familiar to you. The San Francisco Laundry Ordinance aimed, in part, at closing down Chinese laundries in the City. The law prohibited any person from conducting a laundry business within a wooden building—at the time the law was passed, 310 laundries were in wooden buildings, and 240 were owned by Chinese.\footnote{9} The Chinese were forbidden from continuing their businesses, while all other city laundries, with only one exception, were allowed to continue—even those in wooden buildings.\footnote{10} In 1886, the United States Supreme Court struck down the law in the famous case of \textit{Yick Wo v. Hopkins}.\footnote{11} That case is now significant because it shows how a seemingly fair and impartial law on its face may nonetheless violate the equal protection clause of the Fourteenth Amendment.\footnote{12}


\footnote{4}{Id. at 15.}

\footnote{5}{UNITED STATES COMMISSION ON CIVIL RIGHTS, CIVIL RIGHTS ISSUES FACING ASIAN-AMERICANS IN THE 1990s 7 (1992).}

\footnote{6}{Id. at 15.}

\footnote{7}{People v. Hall, 4 Cal. 399 (1854).}

\footnote{8}{Id. at 404. See also CHARLES J. MCCLAIN, IN SEARCH OF EQUALITY—THE CHINESE STRUGGLE AGAINST DISCRIMINATION IN NINETEENTH-CENTURY AMERICA 20-22 (1994).}

\footnote{9}{HYUNG-CHAN KIM, A LEGAL HISTORY OF ASIAN AMERICANS, 1790-1990 95 (1994).}

\footnote{10}{Id. at 95-96; see also UNITED STATES COMMISSION ON CIVIL RIGHTS, \textit{supra} note 5, at 8. Another historical account of this ordinance asserts that \textit{no} non-Chinese laundry operators were denied permission to continue their businesses. McClain, \textit{supra} note 8, at 116.}

\footnote{11}{118 U.S. 356 (1886).}

\footnote{12}{Id. at 373-74. After being convicted for violating the laundry ordinance, Yick Wo had filed for a writ of habeas corpus in the California Supreme Court. McClain, \textit{supra} note 8, at 115. His at-}
Fortunately, we now can tell a very different story, and Asian-Americans are increasingly recognized for their valuable contributions in a variety of fields. We need look no further than Chang Lin-Tien, the chancellor here at U.C. Berkeley, the first Chinese-American to hold that position at the University of California. In the State of Washington, Governor Gary Locke is the first Asian-American elected to a state house in the continental United States. Yes, Asian-Americans have come a long way, as have other minority groups.

Today's symposium topic is extremely important. As we look forward to the next millennium, we must continue to improve our legal system. We must continue to build a system of justice without bias, without prejudice, and without bigotry. Even though we can say that Asian-Americans and other minority groups are enjoying opportunities that did not exist a mere generation ago, ethnic and racial biases are still with us. The subject, as it always has been, is highly volatile. Despite that—or perhaps because of that—we must continue to address bias wherever found, particularly in our justice system.

In 1991, former Chief Justice Malcolm Lucas recognized the importance of addressing bias in the California judiciary. He created the Advisory Committee on Racial and Ethnic Bias in the Courts. I was fortunate to serve on the Committee. The Committee chairpersons were two distinguished former members of the California Supreme Court—the Honorable John Arguelles, and the late Honorable Allen Broussard, an outstanding alumnus of both Cal and Boalt Hall.

The Committee's work was focused on three areas: first, to study the treatment of ethnic and racial minorities in California's courts; second, to ascertain public perceptions on the fairness or lack of fairness in the judicial system; and third, to make recommendations on reforms and remedial programs in response to what the Committee found.13

The Committee compiled its own research and data to investigate bias and to explore possible remedies against that bias. This research included questionnaires to attorneys and judicial officers as well as random telephone surveys to members of the general public.14 The Committee also held hearings in 1991 and 1992 to gauge public perception about the judicial system and how people of color were treated and affected by perceived biases within the system. Thirteen days of public hearings were held in twelve counties across the state.15 In an effort to verify or disprove the public perception from these other sources, the Committee also com-
missioned a comprehensive demographic survey of the California trial courts. I must commend California's courts for their cooperation with the Committee—the demographic study boasted a 100 percent response rate from this state's trial courts.\textsuperscript{16}

The Committee released its work and findings in a detailed report. In 1993 in his State of the Judiciary Address, former Chief Justice Malcolm Lucas said, "These studies . . . were initiated with the full expectation that they will reveal negative views. Of course we want to hear when we are doing things right. But to continue to do things right, we also need to know what's going wrong."\textsuperscript{17} Indeed, the results of the Committee's study reveal some negative views from the public about the judicial system in California.

It is worth noting that California is not unique in these "negative" views. Twenty other states have formed task forces to study racial bias. The D.C. Circuit became the first federal circuit to perform a similar study.\textsuperscript{18} Some of the views found in the federal studies are consistent with what our Committee found—there is indeed a perception of racial and ethnic bias in the California judiciary.

Just what are the sources of this perception?

First, we can look to statistics illustrated in the report that show us one origin of perceived bias. For example, even though minorities make up an increasingly greater percentage of the state's population, statistics show that the number of minority judges remains low. Currently, 57 percent of California's population is Caucasian, and 43 percent of the population is part of a minority group.\textsuperscript{19} Asians and Pacific Islanders make up about 9 percent of California's population and are expected to be almost 12 percent in 2020.\textsuperscript{20} But when you look to the municipal courts, 84 percent of the judges in these courts are Caucasian.\textsuperscript{21} Asian-Americans hold only 2.9 percent of these positions.\textsuperscript{22} Moving up to the next level, there are 768 superior court judges in California; of these, 89 percent are Caucasian.\textsuperscript{23} Of the superior court judges, 2.3 percent are Asian-Americans.\textsuperscript{24} At the appellate level, you find that three California Supreme Court justices are from ethnic minority groups, two of us Asian-American.\textsuperscript{25} But

\begin{thebibliography}{99}
\bibitem{16} Id. at 32.
\bibitem{19} COMMITTEE REPORT, \textit{supra} note 13, at 1.
\bibitem{21} Id.
\bibitem{22} Id. at 129.
\bibitem{23} Id. at 128.
\bibitem{24} Id.
\bibitem{25} Id. at 133.
\end{thebibliography}
there are only two Asian-Americans total in California's other appellate districts.26

Other areas of our justice system appear to lack diversity as well. Eighty-five percent of California's district attorneys and eighty percent of our public defenders are Caucasian.27 In private practice, minority groups account for only 2.8 percent of the partners in the nation's major law firms.28 When we look at statistics like these, we must remember that statistics do not always tell the whole story. Nevertheless, they are a source of the public's view that there is bias in the justice system.

A second source of the public's perception of bias has to do with what the general public sees in our courts. We can look to the personal experiences of people who have participated in the court system. A judge in Alameda County was publicly reprimanded for a racist remark to a Japanese-American attorney.29 Testimony at some of the Committee hearings revealed that people with limited English speaking skills or those who speak with accents experienced insensitivity in court or felt they were given less credibility than other people.30 Some Asian-American litigants who were not familiar with the court system felt they were treated arrogantly by court personnel.31 For litigants already bewildered by the court system and perhaps not fluent in English, lack of patience by court personnel can certainly affect their perception of the court's fairness in dealing with them. Personal experiences especially can shape negative perceptions of the courts by Asian-Americans because, according to a survey cited in the Committee's report, Asian-Americans have significantly less experience with the courts than other groups.32 When we view these statistics and anecdotal personal experiences together, the fact that that there is a perception of bias in the judiciary is no surprise.

Some may ask, then—why should we care about public perception as long as the courts justly and fairly apply the law? After all, the race and ethnicity of judges, for example, should not affect the way we decide cases. For obvious reasons, judicial impartiality is of paramount importance on the bench. But I submit to you that the public's perception of fairness is as important to our judiciary as actual fairness. Professor Todd Peterson of the George Washington University Law School—who was co-chairperson of the D.C. Circuit's Special Committee on Race and Ethnic-

26. Id.
27. Id. at 87, 89-90.
28. Id. at 79.
29. Id. at 61.
31. COMMITTEE REPORT, supra note 13, at 59-60 (citing public hearing testimony of Estelle Cynthia Chien, staff attorney and deputy director of the Asian Pacific American Legal Center of Southern California).
32. Id. at 209.
ity—noted: "It is not enough for the courts to be just; they must also be perceived to be just. Otherwise, the courts lose legitimacy as dispute resolvers and instead may be perceived as irrelevant or, worse, as instruments of oppression." We cannot and should not ignore the perceptions of those served by the justice system. As long as the perception of bias exists, the public will not trust the system. When the Judicial Council received the Committee report, Chief Justice Ronald George said, "We have a special interest in seeing that the administration of justice is not only free from bias, but also free from the perception of bias."

A major source of the perception of bias is the lack of diversity among those who play key roles in the justice system. The report acknowledges that diversity is a particularly important issue because the legal system depends on the public’s trust in it. A perceived lack of diversity leads to a lack of confidence in the system. California is an extremely diverse state and will continue to become more diverse. By the year 2020, people of color—together—will form a majority of California’s population. With growing diversity in the general population, there will be a need for increased diversity in our courts.

When we talk about diversity in our courts, we can refer to any number of things. Indeed, the report examines numerous areas of our justice system where the public perceives racial and ethnic bias—court personnel, attorneys, juries and jury selection, sentencing, and the availability of interpreters are just a few areas the report addresses in detail. Ethnic bias in sentencing decisions could be the subject of its own symposium, as ethnic and racial minorities continue to be overrepresented in prisons, jails, probation, and parole statistics. For example, while one out of every 15 Caucasian males in California is under the jurisdiction of our criminal justice system, almost one-third of African-American males are under the justice system’s control.

The availability of court interpreters is another important issue, particularly with the Asian-American community, where so many languages may be spoken. In fact, nine of the fourteen most commonly used languages in the California courts are Asian languages. This state is unique in its language diversity, with an estimated 224 languages currently used by residents in this state. California’s growing population will increase

33. Peterson, supra note 18, at 176.
34. Scott Graham, Lively Debate Animates Council’s Discussion, Recorder, Jan. 30, 1997, at 1, 2.
35. COMMITTEE REPORT, supra note 13, at 113.
36. Id. at 1, 19.
37. Id. at 178.
38. Id. at 177-178.
40. COMMITTEE REPORT, supra note 13, at 95.
the need for interpreters in our courts, as the number of languages spoken in California will surely exceed its current level. Because the effective administration of justice requires effective communication, removing language barriers is essential to providing fairness in our courts. Sentencing, jury selection, language barriers, and other related topics addressed by the report are also important issues to examine.

I would like to turn our focus for a moment to a cornerstone issue that substantially affects our entire system: the question of diversity among our judges on the California bench. Obviously, I must commend Governor Pete Wilson on his willingness to seek a diverse bench for our state, particularly on the Supreme Court, while keeping the primary emphasis on qualification. He has shown tremendous insight and courage in his judicial appointments, and I certainly owe him a great debt of gratitude for my appointment, first as a Presiding Justice on the Court of Appeal, and then as an Associate Justice on the Supreme Court. I am particularly proud of his judicial appointments here in Alameda County. I have been privileged to be an advisor to the Governor on these appointments. I believe they have been of the highest quality, as well as rich in racial and gender diversity. But these appointments are only the first steps in achieving a truly diverse bench statewide.

The report shows from an historical standpoint that Asian-Americans are making headway in the number of judicial appointments. For example, from 1953 to the present in Los Angeles County, there has been an increase in the numbers of Asian-American judges serving on the Bench:

- From 1953 to 1973: 2 Asian-Americans were appointed to the superior court;
- From 1973 to 1981: 9 Asian-Americans were appointed to the superior court and 14 to the municipal court;
- From 1982 to 1996: 13 Asian-Americans were appointed to the superior court and 16 to the municipal court.
- Los Angeles County has had one Asian-American on the appellate court. Statewide, four Asian-Americans sit on appellate courts. On the whole, 12 of 89 appellate court justices come from ethnic minority groups in general.

Twenty-nine Asian-American judges have been appointed to the
Bench in the last fifteen years. That is more than the number of Asian-American judges appointed in the 30 years prior to that.

There are a couple of ways to look at these statistics: on one hand, they are encouraging because they show progress for Asian-Americans obtaining positions on the bench. On the other hand, one may wonder why more Asian-American lawyers have not become judges. Despite statistical increases, the percentage increase and the actual number of appointments of minority judges is necessarily dependent on the number of minorities available for appointment. Thus, we can infer a lot from statistics like these, but it is important to remember what these statistics do not show.

The report is not, and I am not, suggesting that the absence of diversity is proof of intentional bias in our justice system. I have great respect for the judges of California. I am personally familiar with the work of most of them, and I can assure you that most are hard-working, dedicated professionals. Most work diligently to improve the legal system. Most would agree with me that bias and prejudice have no place in our judicial system.

The statistics are also not meant to suggest that a change in the current configuration of the courts alone will ensure greater fairness. That is too simplistic. We would be remiss if we emphasized only the numbers and blindly aimed for certain percentages of ethnic minorities on the courts. The quality of our judges is just as important as their ethnic composition.

Having said what the Report does not show, let's look at what the Report does suggest. The statistics about the racial configuration of the bench in California are one reason for the public's perception and concern that the bench does not reflect California's diversity. This report is not the first one in California to reflect this concern. In 1991, the Commission on the Future of the California Courts was created in order to assess the courts in the present and help us plan for the future of our judicial system in the face of an ever-changing state. This Commission specifically targeted the year 2020 in anticipating how California's courts would be functioning and how they would need to function in our changing society. The Commission published its report in late 1993. The report acknowledged the lack of diversity in the courts and noted that this will become more worrisome as we approach the year 2020. With the speed at which California's demographic profile is changing, the racial and ethnic disparity between the bench and our population looks more likely to increase than decrease unless action is taken to better balance the ethnic representation on our courts. If lack of diversity leads to a lack of confidence in the system, which the findings of the Committee Report suggest, there is a danger that public perception about our judiciary could grow more negative. With

44. See 2020 REPORT supra note 20.
45. Id. at 75; see also COMMITTEE REPORT, supra note 13, at 136.
a growing population and more cases on the state court dockets, this would obviously lead to undesirable consequences.

There are ways we can improve diversity on the bench in California. But I firmly believe that it must start with you—minority law students and minority members of the Bar. Last summer, I spoke at the Conference of Minority Partners. I told them that when I began practicing law 26 years ago, if a meeting of minority partners was called, we could have held the meeting in a telephone booth. I was glad to see so many of them at that conference, and I hope the numbers of minority partners will continue to grow as more ethnic minorities seek to enter private practice. Years ago, a meeting of a Bay Area Asian-American Bar Association would not have drawn very much attention or response. Today, the Asian-American Bar Association of the Greater Bay Area is helping to sponsor an event like this symposium here today at one of the finest law schools in the country. And with more Asian-American law school graduates, I am sure the organization can be confident that its membership will grow with talented young people like those in the audience here today.

At this time, the number of minority judges is certainly not what it should be. But we cannot complain about the lack of diversity in our courts if our talented minority lawyers are not willing to assume the responsibilities of judicial office. What is exciting is the fact that the number of minority law school graduates and the number of minority attorneys eligible for appointment to the bench has increased dramatically, particularly in the last ten years.

Statistics from the American Bar Association reveal that the number of minority law school graduates nearly doubled from 1984 to 1994, jumping to 15.5 percent of total graduates. Asian-Americans enjoyed the most dramatic increase of any minority group—in 1994, Asian-Americans accounted for 4.5 percent of the total number of law school graduates, jumping from just 1.5 percent in 1984. Scholarly publications like Asian Law Journal here at Boalt Hall reflect the increased presence of Asian-Americans on our law school campuses.

The growth in minority law school graduates has led to a growth in the number of minority attorneys eligible for appointment as judges. To be eligible for appointment to municipal court, a lawyer must have five or more years of active membership in the State Bar. The figure is ten years for appointment to a superior court judgeship. The Committee found that between 1984 and the present, the pool of minority attorneys with more than five and ten years of experience has grown and will continue to grow. What this means is that in the next century, a greater number of

46. COMMITTEE REPORT, supra note 13, at 134. The Committee obtained these statistics from the Office of the Consultant on Legal Education of the American Bar Association.
47. Id.
48. Id. at 135.
qualified applicants will increase the available applicant pool for potential judicial appointments.

I encourage you actively to seek judicial positions. Your efforts are increasingly important because, frankly, the people of California want their judges to reflect more closely the diversity they see every day in the general population. And so the quest for diversity on the bench begins with you. Keep in mind that the opportunities are there. We have almost 1,600 judges in California—just last July, twenty-one new trial court judgeships were created along with five new seats on appellate courts.\(^4\)

We have one of the largest, if not the largest, judicial system in the world. We even exceed the size of the federal judiciary.

I was privileged to be in private practice in Oakland for 16 wonderful years with a group of terrific lawyers. One of the hardest things I ever had to do was tell my former senior partner, Fred Cummings, that I was interested in becoming a judge and possibly leaving the firm. Fred was not happy with my decision, but he and the firm supported my application for appointment in every possible way. Although I certainly miss the day-to-day contact with my former partners, I have never regretted the decision I made to pursue a judicial career. I have enjoyed each one of my judgeships: my appointment as an Alameda County Superior Court judge, as an Associate Justice of the First District Court of Appeal, also as a Presiding Justice of Division Three of that court, and as an Associate Justice on the California Supreme Court. I highly recommend to each of you a career as a judicial officer.

Another solution to the lack of diversity is in the hands of the minority judges who are now on the bench. When I was appointed to the Committee on Racial and Ethnic Bias in the Courts, I looked around the room. I took particular note that among the other Committee members were some very fine judges. I expressed to them my belief that the best thing we could do for diversity on the bench would start with each of our courtrooms. If we judge well, and if we are respected by our colleagues and our communities, then the stature of minority judges will improve, and the opportunities for future judicial appointees from a qualified pool of ethnic minority candidates will be greater. Those of us on the bench must lead by example. Perhaps we can remove some of the obstacles and clear a path for other minority judges to follow.

I believe that having highly qualified judges from minority communities may be one of the best ways to combat the negative perceptions about California's courts. Quality and diversity must go hand in hand. The 2020 Report noted the public's belief that well-qualified judges are the single most desirable attribute California's courts should have.\(^5\) As im-

\(^4\) 1996 ANNUAL REPORT, supra note 39, at 27.
\(^5\) 2020 REPORT, supra note 20, at 86.
Important as diversity is to Californians, the quality of our judges is just as crucial to instilling public confidence in the justice system.

We must face squarely the perception that our courts may not always judge persons of color fairly because our judges do not meaningfully reflect the diversity of our population. As one Los Angeles County judge said in the 2020 Report, "Without an ethnically diverse bench, there is a heightened perception that the judiciary is not for everybody." We must not forget that public perception is important. Public confidence in our judiciary is vital to making the system work as it should.

To a great degree, then, the answer to the problem of the public’s perception lies with those of us who have the ability and the drive to change those attitudes. To make the judiciary more diverse, minority attorneys must actively seek judicial appointments. I am often asked what it takes to become a judge. My response is always the same. Become a good lawyer first. Become a lawyer whose work and judgment are respected, not just by your clients, but also by your partners and colleagues. You must then actively seek judicial appointments.

If our bench becomes more diverse, other areas of the judiciary are inevitably affected. This, in turn, may instill more confidence in the judiciary in the public’s mind. For example, public perception of bias in the judiciary extends not only to the judges, but also to the personnel throughout the legal system. Statistics support this view—Caucasians, for example, hold 78 percent of the court reporter positions, 68 percent of the courtroom clerk positions, and 81 percent of the official and manager positions in the state superior courts. Again, this does not indict our judges for intentional bias; it is, however, the public’s perception, based on what they see in our courts. If the bench becomes more diverse, however, the chances are likely to increase that these judges will, in turn, contribute to more diversity in their appointments of court personnel. This, of course, will also help to improve the perception of bias in the courts.

Of course, we must be careful with what we do with the report’s findings. The key to addressing the problems raised in the report is remembering the importance of the public’s relationship with the court system. The report, as I have tried to illustrate, does not call for strict adherence to a numbers game. We cannot use the numbers in the report to argue that bias and discrimination run rampant in our judicial system. To do that would be both unfair and inaccurate.

I submit to you that focusing only on these statistics is not the point of the report. The report is not designed to advocate ideas about a desirable number of minority judges on the courts, nor is it designed to charge Cali-

51. Id. at 75 (quoting Los Angeles Superior Court Presiding Judge Robert M. Mallano).
52. COMMITTEE REPORT, supra note 13, at 126-27.
53. Id. at 123.
fornia's judiciary with intentional bias. The Committee was not formed for these purposes, and the results of the Committee findings are not meant to draw such conclusions. Arguing these points and arguing whose fault it is that the numbers are what they are misses the mark. Arguing about such details misses the point and prevents the courts from improving the important relationship between the courts and the citizens. Our report is not concerned with blaming anyone for the perceived bias in our judicial system. The real concerns of our report are the existence of these perceptions and what we can do and should do to change those perceptions.

Of course, perception may not necessarily be reality. When the Committee’s report was presented to the California Judicial Council last month, some Council members voiced concern over anecdotal evidence from the hearings forming the basis of the report’s conclusions. I also believe anecdotal evidence, such as testimony from the hearings, should not always be taken at face value. Some members of the Judicial Council pointed out that litigants often look for other sources of blame when they lose in court. Bias may or may not be the culprit. I listened to testimony at many of those hearings. I can tell you that that position has some validity. However, I also believe that many of the anecdotes reflect the reality that there is some racial and ethnic bias in our court system. As one Judicial Council member said, a warm anecdote can be better than cold statistics. Still, Chief Justice Ronald George has pointed out, we do not have to agree with every finding or with every anecdote in the Committee’s report. Our goal is to go forward with the big picture in mind.

The California Report illustrates, in great detail, a crisis of confidence in our court system. One important source of that lack of confidence is that our judiciary does not reflect California’s changing population. The Chinese word for crisis contains two characters—one meaning “danger” and the other meaning “opportunity.” California’s judicial family must respond to this crisis directly and squarely. The danger is clear from the negative public perception of the courts. But we also have an opportunity—an opportunity to address the dangers based on the positive recommendations in the committee report. We must not only follow the recommendations of this report; we must also continue our conversation on the subject of fairness and bias to find the right answers to critical questions.

Last week at the Commonwealth Club of California, I met Dr. Shelby Steele, author of a book called *The Content of Their Character*. Dr. Steele commented that in the area of race relations we must beware of programs

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56. *Id.* at 2.
57. *Id.* (paraphrasing Orange County Superior Court Judge William McDonald).
58. *Id.*
59. *Id.*
and so-called solutions that only make both sides feel good about the problem but do very little to solve the problem of bias and prejudice. As we continue our conversation about fairness and bias, let us keep that in mind. Are we forwarding real solutions, or are we just making each other feel good about a serious problem?

Diversity is an important goal as we work to improve this relationship by changing the perceptions of California citizens towards the judiciary. Perceptions are not going to change unless we change them. If we want a judiciary with the highest standard of quality judges and one that reflects California’s wonderful diversity, we must work diligently to see that it happens. Asian-American members of the Bar should actively pursue judgeships and help in efforts to develop a pool of qualified candidates from different racial and ethnic groups. We cannot simply say to those with the power to appoint, “You should value diversity.” Lawyers from racial and ethnic minorities must prove by their experience and practice that they are exceptionally well qualified for judicial appointment. You must diligently pursue judicial positions, and then you must assume the mantle of judicial responsibility. In the words of the 2020 Report, we must create a legal system that is “scrupulously fair, accessible to all . . . . [It] must have the confidence of the powerless and the powerful, the poor and the wealthy, the victim and the offender.” Its commitment to the highest quality and equal justice must be absolute.

And so I end exactly where I began: are we better off than we were 50 years ago? Have we made progress in race relations? The answer to both questions is yes. But we have so much more work to do. I look forward to working with you to find real solutions to these critical problems for our communities.

60. 2020 REPORT, supra note 20, at i.