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Brief of Amici Curiae Fred T. Korematsu Center for Law and Equality, Asian Bar Association of Washington, South Asian Bar Association of Washington, and Washington Women Lawyers

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NO. 27037-8-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

DARLENE TURNER and BILL H. TURNER,
individually and as husband and wife,

Respondents,

v.

NATHAN P. STIME, M.D.
And RIVERSIDE MEDICAL CLINIC,
A Washington corporation,

Appellants.

BRIEF OF AMICI CURIAE FRED T. KOREMATSU CENTER FOR LAW AND EQUALITY, ASIAN BAR ASSOCIATION OF WASHINGTON, SOUTH ASIAN BAR ASSOCIATION OF WASHINGTON, AND WASHINGTON WOMEN LAWYERS

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I. IDENTITY AND INTEREST OF AMICI CURIAE

Amici curiae are the Fred T. Korematsu Center for Law and Equality and a coalition of leading bar associations – the Asian Bar Association of Washington (ABAW), the South Asian Bar Association of Washington (SABAW), and Washington Women Lawyers (WWL). Amici are dedicated to advancing the fair administration of justice and removing barriers to minority participation and access to the justice system. Detailed amici statements of interest are attached to this brief as Appendix A, and a motion requesting leave to file this brief has been filed simultaneously.

II. INTRODUCTION AND SUMMARY OF ARGUMENT

Amici curiae fully support the position of the Respondents in this case who urge that the trial court's order for a new trial be upheld. However, Amici submit that further argument is necessary regarding the prejudicial nature and effects of the comments made by the jurors, as well as the potential impact on minorities in the legal profession and their clients. First, we place the prejudicial remarks in a historical context. Second, we draw from social science to understand better both the nature and effect of prejudicial remarks, concluding that the nature and effect of the remarks in this case reflect bias that likely tainted the outcome. Finally, we argue that a remedy is necessary not just for fairness in this

particular case, but also because racism that infects jury deliberations, if left unchecked, would strongly hinder diversity in the legal profession.

III. ARGUMENT

This case involves unacceptable racist behavior by jurors that reflected and created bias, and that has great implications for the state of minorities in the legal profession. The right to a new trial because of unacceptable jury bias has already been established in Washington. *See, e.g., Allison v. Dep't of Labor and Indus.*, 66 Wn.2d 263, 265, 401 P.2d 982 (1965); *Mathisen v. Norton*, 187 Wn. 240, 60 P.2d 1 (1936). This right should be extended to cases of overt racist behavior by juries directed against a minority attorney.

The jurors had been "questioned extensively" regarding any potential biases or prejudices that might have influenced their ability to act as jurors. (CP 44.) All unequivocally stated that they could be fair and objective. *Id.* Yet two jurors came forward after the trial and swore in affidavits that other jurors had repeatedly referred to plaintiff's counsel, a Japanese American named Mark Kamitomo, as "Mr. Miyashi," "Mr. Miyagi," and "Mr. Kamikaze," (CP 50-51, 109) smirking and chuckling all the while (CP 309). In addition, one also swore that another juror stated that, given the date was December 7th, Pearl Harbor Day, a racially derogatory reference was "almost appropriate." (CP 113.) Both of the

forthcoming jurors stated that the comments were derogatory and demonstrated racial bias toward Mr. Kamitomo. (CP 76-77, 112-113.)

Petitioners' argument that such comments are not offensive or do not indicate racial bias fail to understand the historical context invoked by the comments and the nature and effect of the prejudicial remarks. We urge the Court to recognize the significant harm and uphold the trial court order granting a new trial, because unchecked juror bias will have a strong negative impact on fairness in individual cases, as well as on minority lawyers, diversity in the legal profession, and access to legal representation in underserved communities.

A. The Jurors' Statements Must Be Viewed in the Context of the History of Discrimination Against Japanese Americans in the United States and the State of Washington.

The jurors' jokes and comments reflect our nation's unfortunate history of discrimination against Japanese Americans and minorities. One juror's racist remark in this case went so far as to approvingly link disparagement of Mark Kamitomo to the attack by the Japanese military on Pearl Harbor, an event that precipitated one of the darkest eras in our country's past: nearly 120,000 Japanese Americans were removed from their homes on the West Coast and incarcerated in desolate camps surrounded by barbed wire. Japanese Americans and other Asian Americans in the past have faced discriminatory citizenship laws, violence

and social ostracization, economically discriminatory laws, and educational hurdles, and these struggles inform the present-day context of racism against such minorities.

Much of the discrimination and political powerlessness suffered by Asian Americans came from U.S. citizenship rules. The first naturalization statute limited naturalization to "free white persons." Naturalization Act of 1790, ch. 3, 1 Stat. 103. After the Civil War, the right to naturalize was extended to permit persons of African descent to become citizens. See 8 U.S.C. § 359 (1875). This left Chinese and other East Asians, South East Asians, and South Asians as the only peoples ineligible for American citizenship. *See, e.g.*, *Ozawa v. United States*, 260 U.S. 178 (1922); *Thind v. United States*, 261 U.S. 204 (1923). Inability to naturalize was, until Congress changed the law in 1952, the heaviest legal burden resident alien Japanese Americans had to bear. *See* McCarran-Walter Act of 1952, 8 U.S.C. § 1422 (1952) (eliminating racial bar to naturalization). Lack of citizenship prevented them from voting and holding office, and state statutes prescribed American citizenship as a prerequisite for attorneys and a myriad of other professions and trades. See Milton R. Konvitz. *The Alien and the Asiatic in American Law* (1946).

In Washington's early history as a Territory and State, immigrants from Asia constituted the largest non-White group that settled in the area.

First the Chinese came in the late 1800s, then the Japanese in the early 1900s, and then the Filipinos in the 1920s. *See* Calvin F. Schmid et al, *Nonwhite Races: State of Washington* at 10 (1968). Each of these Asian immigrant groups faced hostility from Whites, but the most extreme violence was directed against the Chinese. *See generally* Doug Chin, *Seattle's International District: The Making of a Pan-Asian American Community* (2001). In one particularly egregious incident in 1886, 350 Chinese persons, nearly all the Chinese in Seattle, were forcibly removed from their homes, placed in wagons, and taken to the dock where they were forced onto steamers bound for San Francisco. *Id.* at 22.

The history of violence and ongoing discrimination determined the settlement patterns of later arrivals from Asia. Japanese immigrants created a "Nihonmachi" or "Japantown" on the edge of Seattle's Chinatown. *See* Quintard Taylor, *The Forging of a Black Community: Seattle's Central District from 1870 through the Civil Rights Era* 117 (1994). Much of this residential segregation was a product of both self-protection and racially restrictive covenants that greatly limited where Asian immigrants could settle. *See id.* Similar patterns of residential segregation occurred in other parts of Washington. *See* Schmid, *supra.*

During much of Washington's early history and well into the second half of the 20th century, state laws severely limited economic

opportunities for Asian immigrants. In Washington's early period, Asian immigrants were precluded from acquiring land through Federal Homesteading provisions, and Washington's Constitution severely limited the right of Asian Americans to own land. See Wash. Const. Art II, Section 33 (1889) (restricting property rights of aliens who had not declared their intention to become citizens). In response to a growing fear of Japanese American agricultural success, this Constitutional limit on alien land ownership was supplemented by the 1921 Alien Land Law, which also limited long term leases of agricultural land. Wash. Laws, 1921, Ch. 50, §§ 1-11, Wash. Rev. Stat. §§ 10581-92 (Remington 1932). These restrictions, upheld in *Terrace v. Thompson*, 263 U.S. 197 (1923), severely hampered the ability of Japanese Americans to succeed in agriculture. Yet another major economic impediment was the restriction imposed on commercial fishing that kept Asian immigrants from taking "for sale or profit any salmon or other food or shellfish in any of the rivers or waters of this state." *See Lubetich v. Pollock*, 6 F.2d 237. (W.D. Wash. 1925) (quoting and upholding Section 4, chapter 90, Laws 1923).

Against this backdrop of discrimination, education offered only a limited path toward upward social mobility for the "Nisei," American-born children of Japanese immigrants. Although education was emphasized, "from the eighth grade on, their performance declined for no

ostensible reasons." Sucheng Chan, *Asian Americans: An Interpretive History* 114 (1991). A group of researchers from Stanford conducted a series of studies from 1929-1933 on "how Nisei were adjusting to their environment," and besides reporting "various reasons that Nisei should not aspire to become professionals," noted that "'there seems to be a widespread feeling ... that white judges and jurors are prejudiced against a Japanese lawyer.'" *Id.* at 113-14 (citing Edward K. Strong, Jr., *The Second-Generation Japanese Problem* (1934)).

Unchecked racism rendered the first generation of Japanese immigrants unable to naturalize, politically powerless, and economically disadvantaged by alien land laws and professional exclusion; the second generation faced discrimination that placed limits on educational and occupational aspirations and opportunities. Unchecked racism also led to the removal and confinement of nearly 120,000 Japanese Americans, a community lacking sufficient member lawyers to adequately challenge the incarceration and its conditions. Ironically, one of the cases that tested the legality of incarceration, *Yasui v. United States*, 320 U.S. 115 (1943), had as its defendant the first Japanese American to graduate from the University of Oregon School of Law, who was unable to obtain a job as a lawyer. *See* Roger Daniels, *Asian America: Chinese and Japanese in the United States since 1850,* at 178 (1988).

Critically, racial discrimination against minorities in the legal profession is not a relic of the past. *See, e.g.*, Spokane Task Force on Race Relations, *Diversity Resource Action Packet* at ii (2003), *available at* http://www.spokanehumanrights.com/2003drapfinal.doc (noting a recent incident involving hate mail directed against African American students at Gonzaga University School of Law). While the more overt forms of racist discrimination of our past have lessened, many invidious sentiments have remained, and such sentiments must be removed from the jury room.

B. The Juror Remarks and Behavior Reflect Bias, Which Provided a Sufficient Basis for the Trial Court to Order a New Trial.

The jurors' behavior in this case was infected by prejudice, and not the behavior of responsible, impartial jurors. While deliberating on the issue of whether Dr. Stime was negligent, the jurors manifested bias against plaintiffs' attorney Mark Kamitomo, based on his distinct Japanese ethnicity. The jurors engaged in two distinct forms of racist behavior: First, the jurors jokingly manipulated the Japanese American attorney's name, which is a form of "disparagement humor." See Thomas E. Ford and Mark A. Ferguson, *Social Consequences of Disparagement Humor: A Prejudiced Norm Theory*, 8 Personality and Social Psychology Review 79, 79 (2004) (defining disparagement humor, including racist humor, as "humor that denigrates, belittles, or maligns an individual or social

group"). Second, a juror made an overtly racist remark when the verdict was being handed down on Pearl Harbor Day, noting that because of the date, yet another instance of disparagement was "almost appropriate." (CP 113.) This remark associated Mr. Kamitomo with members of the Japanese military who attacked Pearl Harbor, resurfacing the racial hatred against Japanese Americans during World War II that led to their incarceration. The juror's remark suggested that it was "appropriate" to belittle Mr. Kamitomo due to his Japanese ancestry. This is a clear instance of racist behavior and hateful thinking. The juror in question associated Mr. Kamitomo with the Japanese who attacked Pearl Harbor based solely upon his race. Even worse, the juror condemned an entire race to punishment and spite, due to geopolitical events of the distant past. Both types of racist behavior reflect prejudice and irresponsibility.

The disparagement humor and overtly racist remark not only reflected underlying prejudice, but also likely *entrenched* the bias of the speakers, *escalated* the bias of other jurors, and set a contextual *norm* that prejudice could rightfully be applied in the deliberations. Expressing a belief often solidifies the speaker's commitment to the belief. Regarding disparagement humor in particular, researchers have found that "freely reciting disparaging jokes can have a negative impact on an individual's attitudes toward the target of disparagement." Karen L. Hobden and James

M. Olson, *From Jest to Antipathy: Disparagement Humor as a Source of Dissonance-Motivated Attitude Change*, 15 Basic and Applied Social Psychology 239, 246 (1994). Thus an experimental group that was induced to freely tell disparaging jokes about lawyers prior to measurement reported comparatively more negative opinions about lawyers. *Id.* at 245. When the jurors in this case made disparaging jokes about Mr. Kamitomo's name, they entrenched their own prejudice.

The expression of racially prejudicial statements also escalates the bias of others in the vicinity. One prominent study concluded that "[s]ocial influence strongly affected reactions to racism." Fletcher A. Blanchard, Christian S. Crandall, John C. Brigham, and Leigh Ann Vaughn, *Condemning and Condoning Racism: A Social Context Approach to Interracial Settings*, 79 Journal of Applied Psychology 993, 995 (1994). When respondents were asked about racial issues, hearing someone condone racism prior to responding "produced much more ... condoning reactions to racism" both publicly and privately. *Id.* Thus when one juror hears another condone racism and speak in a prejudicial fashion, her own prejudice is escalated and she is more likely to condone racist behavior. Each case of disparagement and each racist remark entrenched the bias of the other jurors against Mr. Kamitomo. It is therefore no coincidence that use of racial disparagement spread from one juror to another.

The use of disparagement humor also "increases tolerance of discriminatory events for people high in prejudice toward the disparaged group." Ford, *supra*, at 79. "That is, it expands the bounds of appropriate conduct, creating a norm of tolerance of discrimination." *Id.* For example, after being exposed to sexist jokes, men in a group setting who had already been measured high in sexism anticipated less guilt from their own imagined sexist behavior, and had a greater tolerance for imagined sexist behavior of others. *Id.* at 81. Thus exposure to sexist jokes rendered those already sexist more open to sexist *behavior* in a group setting. In the same way, once the jurors invoked racist joking, they became more open to racist behavior and racist decision-making *as jurors*. Such bias should never be allowed to become normatively acceptable within the jury room.

In sum, racist remarks in the jury room actively poison the deliberative process by inserting prejudice into the jury's view of the proceedings. Thus whether or not jurors are initially racially prejudiced, they must not be allowed to manifest such bias explicitly and as a group.

Such racial prejudice is of particular concern when directed against attorneys. The attorney represents the client to the jury. Unsurprisingly, studies have shown that the characteristics of an attorney have influence on jury perception and decision-making. *See, e.g.*, Russ K.E. Espinoza, Cynthia Willis-Esqueda, *Defendant and defense attorney characteristics*

and their effects on juror decision making and prejudice against Mexican Americans, 14 Cultural Diversity and Ethnic Minority Psychology 364 (2008). One study in particular found that subjects judged a litigation recording to be less persuasive if told the attorney was Asian. *See* Jerry Kang, Nilanjana Dasgupta, Kumar Yogeeswaran, and Gary Blasi, *Are Ideal Litigators White? Measuring the Myth of Colorblindness* (July 31, 2009), (unpublished manuscript, *available at*: http://ssrn.com/abstract=1442119). Because the attorney presents the party's arguments and witnesses to the jury, a juror's bias against the attorney is intimately tied up with the fairness of the verdict for the represented party. Thus, although bias against anyone involved in the proceedings raises doubts about a juror's ability to adjudicate responsibly and accurately, bias against an attorney in particular raises a clear doubt as to impartiality in decision-making.

In *Hansen v. Lemley*, 100 Wash. 444, 171 P. 255 (1918), the Washington Supreme Court acknowledged that "[p]rejudice against client *or counsel* is a thing to be inquired into" when evaluating juror bias. *Id.* at 448 (emphasis added). In *Hansen*, a juror's possible distaste for an attorney's mustache did not warrant a new trial because the juror was unlikely to have been substantially biased regarding "a cause so trivial and harmless, and for a condition so easily removed." *Id.* In stark contrast, an

attorney's race is not so easily removed, and provides more than ample ground to presume juror bias, as in the present case.

In the end, such collectively irresponsible and prejudicial behavior by jurors should not be allowed. The cost of a new trial in such cases is a necessary burden. Yet the burden to future courts will be minimal if jurors are adequately instructed to refrain from racist behavior and sanctioned for willful violations. *Cf., e.g.*, *State v. Hall*, 40 Wash.App. 162, 168, 697 P.2d 597 (1985) (juror was in contempt and fined for conduct in violation of duties). The jurors in this case were told that they were "officers of th[e] court," and instructed to "act impartially with an earnest desire to reach a proper verdict." (C.P. at 14.) Sadly, some of the jurors ignored these instructions. Thankfully jurors Marchant and Costigan did come forward to reveal the unacceptable behavior of the jury, fulfilling their duties as officers of the court.

C. Failure to Provide a Remedy for Juror Misconduct Will Increase and Entrench the Disadvantage of Minorities in the Legal Profession.

The legal profession has been notoriously resistant to assimilation of minority groups, and the effects of that resistance endure. For much of the last century, law schools restricted admissions based upon race and ethnicity, among other characteristics. James E. Moliterno, *Lawyer Creeds and Moral Seismography*, 32 Wake Forest L. Rev. 781, 811 (1997). At the

same time the American Bar Association, as well as state and local bar associations, confined their membership in order to exclude Jews, Blacks, and other minorities. *Id.* at 811-14. Immigrant Asians in particular suffered greatly from such exclusion, as they were completely denied the right to practice law due to their ineligibility for naturalization. Kiyoko Kamio Knapp, *Disdain of Alien Lawyers: History of Exclusion*, 7 Seton Hall Const. L.J. 103, 127-28 (1996). The Supreme Court of Washington thus concluded that a native from Japan was ineligible for admission to the bar. *In re Yamashita*, 30 Wash. 234, 238, 70 P. 482 (1902). The Court reached this decision despite commenting that Mr. Yamashita had "the requisite learning and ability qualifying him for admission." *Id.* at 234. Sadly this strict requirement of U.S. citizenship remained in force until 1971. *See In re Chi-Dooh Li*, 79 Wn.2d 561, 488 P.2d 259 (1971).

Although such direct and blatantly racist exclusion of minorities is thankfully a somewhat distant memory, minorities in the legal profession – including Asian Americans in particular – still remain starkly underrepresented in the legal profession and subject to discrimination. The following table depicts minority and Asian representation in the bar:

Minority and Asian Underrepresentation in the Legal Profession[1]

[1] Data drawn from Gita Z. Wilder, *The Road to Law School and Beyond* 3-4 (2003); American Bar Association, *Goal III Report: The State of Racial and Ethnic Diversity* 3 (2009); George S. Bridges, *Racial, Ethnic and Gender Differences in the Washington*

	Minorities Overall	Minority Lawyers	Asians Overall	Asian Lawyers
1990, U.S.	24.4%	7.6%	2.7%	1.4%
2000, U.S.	24.9%	9.7%	4.2%	2.3%
1988-90, WA	15.7%	7%	4.4%	2%
2008, WA	23.8%	7.1%	6.9%	1.8%

These statistics reflect minority and Asian representation that is woefully inadequate. Minority underrepresentation nationally and in Washington stems in part from historical discrimination by jurors, clients, and firms.

In a rare showing of candor, law firm representatives informed one minority applicant that "minorities were not viewed favorably by clients, and were not capable of bringing any business to firms, therefore they were not an asset." Minnesota Supreme Court Task Force on Racial Bias in the Judicial System, *Access to Representation and Interaction, and General Civil Process*, 16 Hamline L. Rev. 665, 678 (1993). In the past, law firms would often justify refusal to hire Jews by blaming the prejudice of clients, Moliterno, *supra* at 814, and there are numerous examples of such discrimination being based upon fears of juror bias. *See, e.g.*, Elina Tetelbaum, *Check Your Identity-Baggage at the Firm Door: The Ethical Difficulty of Zealous Advocacy in Bias-Ridden Courtrooms*, 14 Tex. J.

Bar: Results from the 1988 Washington State Bar Survey, 2 (1990); Wash. State Office of Fin. Mgmt., *Race and Minority Information for the State and Counties* (2004) http://www.ofm.wa.gov/pop/race/comparison.asp; Letter from Chach Duarte White to Board of Governors at 5 (February 18, 2009), *in* FOURTH ANNUAL STATEWIDE DIVERSITY CONFERENCE (Seattle University 2009).

C.L. & C.R. 261, 267 (2009) ("we all decided not to use a Jewish lawyer when we knew prejudice against him existed").

A survey of lawyers in 1963 by the U.S. Commission on Civil Rights reported "it is often impossible for a Negro lawyer to subsist professionally in smaller towns. Added to this is the problem, related by many of the Negro respondents, that Negro clients often seek out white lawyers because ... they feel that Negro lawyers are at a disadvantage against a white adversary and before a white judge and jury." U.S. Comm'n on Civil Rights, *Civil Rights '63* 119 (1963). These same sentiments remain relevant today: a survey of the general population in Arkansas found that "asked their racial preference for attorneys ... [r]esponses were almost evenly split between those who said they would use a white attorney and those who said that either race was acceptable." Robert L. Brown and Sheila Campbell, *How the Public Views Female and Black Attorneys*, 32 Ark. Law. 22, 28 (1997). The same survey found that a "majority of black respondents indicated that white attorneys were taken more seriously by juries than black attorneys." *Id.*; *cf.* Victoria Tran, *Working With Asian Clients*, 21 GPSolo 38, 39 (2004) ("Some Asian clients also believe that non-Asian attorneys are inherently better attorneys because they do not speak with an accent as do many Asian attorneys.").

The resolution of this case will have substantial implications for the minority bar. The proceedings so far have already been well documented in both the local and national press.[2] Thus the Court's decision will signal to a general public of prospective clients, as well as to lawyers and law firms, either that potentially damning racist juror conduct will be tolerated, or that such prejudicial behavior will not be allowed.

If such conduct is allowed, a client will be forced either to make a racially-motivated decision in hiring an attorney, or to face a jury that could be potentially biased by overt racist behavior directed against his minority attorney. One commentator aptly explained why the legal market would invariably reflect renewed client discrimination in law firm hiring and staffing:

> First, the market may simply satisfy a "taste" for discrimination held by consumers. If a client feels subtly more confident having a White male attorney over an Asian female attorney as the lead lawyer for mission-critical litigation, then an unhindered market will just as subtly satisfy that request. Second, such preferences may produce self-fulfilling prophecies in the form of positive feedback loops that cause underinvestment in human capital and potentially disrupt performance on ability tests. Third, ... there would be a collective action problem in dismantling the feedback

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[2] *See, e.g.*, Karen Dorn Steele, *Spokane lawyer claims jurors' racial bias hurt client*, The Spokesman Review (January 15, 2008), *available at* http://www.spokesmanreview.com/tools/story_pf.asp?ID=227745; *see also* http://seattletimes.nwsource.com/html/localnews/2004126632_webjury15m.html (Seattle Times); http://blog.oregonlive.com/breakingnews/2008/01/attorney_seeks_new_trial_over.html (The Oregonian); http://www.abajournal.com/news/new_trial_sought_after_jurors_mock_lawyers_heritage (The ABA Journal).

> loop because a single firm cannot alter the general incentive structures created by the general marketplace.

Jerry Kang, *Race.Net Neutrality*, 6 J. Telecomm. & High Tech. L. 1, 15 (2007). And at least one legal ethicist has stated that if a client seeks to staff attorneys in a racist fashion, a law firm is *obligated* to comply. *See* Richard H. Underwood & Edward J. Imwinkelried, *Modern Litigation and Professional Responsibility Handbook* 345-46 (2001). Similarly, law firms seeking to maximize their results will be faced with the same dilemma when they make decisions about how to staff cases regardless of expressed client preferences.

Forcing clients into a disturbing choice between the possibility of an explicitly biased jury on the one hand, and racist hiring decisions on the other, would certainly violate basic notions of equal protection and due process. Either way, allowing racist conduct in the jury room would significantly magnify the negative effect of juror bias on the minority bar.

D. Minority Communities Would Likely Suffer If Minorities Became Further Disadvantaged in the Legal Profession.

Minorities in the legal profession play a special role in society at large, not only by promoting the values of diversity and equality, but also by helping to ensure that otherwise underserved persons and communities gain access to the legal system. Increased diversity in the legal profession initially provides the appearance of fair representation of society at large.

Paul Andrew Burnett, *Fairness, Ethical, and Historical Reasons for Diversifying the Legal Profession*, 71 UMKC L. Rev. 127, 129-34 (2002) (analyzing the benefits of a diverse legal profession). Notably, minorities in the legal profession also have a history of disproportionately aiding minority communities in need. For example, one survey of attorneys revealed that Black lawyers served disproportionately in civil rights cases during the early 1960s. *See* U.S. Comm'n on Civil Rights, *Civil Rights '63* at 118 (1963). And a recent study found that minorities are more likely to serve minority clients. *See* David L. Chambers, Richard O. Lempert, & Terry K. Adams, *Michigan's Minority Graduates in Practice: The River Runs Through Law School*, 25 Law & Soc. Inquiry 395, 401 (2000).

The legal community needs "lawyers who are culturally sensitive and proficient in clients' languages." Rebecca Porter, *Diversity Challenges in the Legal Profession, Conference Finds*, 35 Trial 82, 82 (1999). Thus if this court allows racial bias to further infect the legal profession, the impact will be felt not only by minority attorneys themselves, but also by the communities in need that they may no longer be able to serve.

IV. CONCLUSION

The verdict in this case was tainted by unacceptable bias and prejudice. Within the context of a long history of discrimination against Japanese and other Asian Americans, the use of disparagement humor and

overtly racist remarks against a Japanese American attorney was irresponsible, offensive, and prejudicial. This type of behavior by jurors is *never* acceptable, and should be rejected.

To ensure that prospective parties are not forced to either make racist hiring decisions or face the possibility of an unchecked racist jury, and also to ensure that minorities in the legal profession are not substantially impaired by clients' fear of juror bias, this Court should affirm the grant of a new trial.

RESPECTFULLY SUBMITTED this 10th day of SEPTEMBER, 2009.

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overtly racist remarks against a Japanese American attorney was irresponsible, offensive, and prejudicial. This type of behavior by jurors is *never* acceptable, and should be rejected.

To ensure that prospective parties are not forced to either make racist hiring decisions or face the possibility of an unchecked racist jury, and also to ensure that minorities in the legal profession are not substantially impaired by clients' fear of juror bias, this Court should affirm the grant of a new trial.

RESPECTFULLY SUBMITTED this 10th day of SEPTEMBER, 2009.

FRED T. KOREMATSU CENTER FOR LAW AND EQUALTY

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Appendix A: Detailed Amici Statements of Identity and Interest

The Fred T. Korematsu Center for Law and Equality (Korematsu Center) is a non-profit organization based at Seattle University School of Law that works to advance justice through research, advocacy, and education. The Korematsu Center is dedicated to advancing the legacy of Fred Korematsu, who defied the military orders during World War II that ultimately led to the internment of 110,000 Japanese Americans. He took his challenge of the military orders to the United States Supreme Court, which upheld his conviction in 1944 on the ground that the removal of Japanese Americans was justified by "military necessity." Fred Korematsu went on to successfully challenge his conviction and to champion the cause of civil liberties and civil rights for all people. The Korematsu Center, inspired by his example, works to advance his legacy by promoting social justice for all. It has a special interest in promoting fairness in the courts of our country. That interest includes ensuring that effective remedies exist to address juror bias, which might otherwise lead not only to unfairness in this specific case but also to diminished opportunities for minority lawyers with a resulting negative impact on diversity in the legal profession. The Korematsu Center does not, in this brief or otherwise, represent the official views of Seattle University.

The Asian Bar Association of Washington (ABAW) is the professional association of Asian Pacific American attorneys, judges, law professors and law students that strives to be a network for its members in Washington State. Created in 1987, ABAW advocates for the legal needs and interests for the APA community, and represents over 200 APA attorneys in a wide-range of practice areas. It is a local affiliate of the National Asian Pacific American Bar Association (NAPABA). Through its network of committees, ABAW monitors legislative developments and judicial appointments, rates judicial candidates and advocates for equal opportunity and builds coalitions with other organizations within the legal profession and in the community at large. The ABAW also addresses crises faced by our members and the broader Asian and Pacific Islander community in Washington. The founders created the ABAW precisely to address issues like the ones presented in this appeal.

The South Asian Bar Association of Washington (SABAW) is a professional association of attorneys, law professors, judges and law students involved in issues impacting the South Asian community in Washington state. Created in 2001, SABAW provides pro bono legal services to the community, engages in outreach and education efforts, monitors the rights of its membership, and provides financial assistant to law students and practicing attorneys. SABAW also builds coalitions with

other professional organizations sharing the goals of equal opportunity and access to justice. SABAW is strongly interested in issues surrounding the perception of its membership in the legal system.

Washington Women Lawyers (WWL) is a statewide professional association of attorneys, judges, law professors and law students. The principal purposes of Washington Women Lawyers are to further the full integration of women in the legal profession and to promote equal rights and opportunities for women and to prevent discrimination against them. WWL offers programming and support for women lawyers throughout the state through the combined resources of a statewide organization and a network of local chapters. Through its membership, WWL provides public support, education to lawyers and the lay public, and services to local communities throughout the state on matters of access to justice and issues concerning women and children. Through a network of state and local chapters, WWL provides judicial ratings and encourages qualified candidates who are sensitive to women's issues both within the profession and under the law, to seek and obtain positions of responsibility and stature within the legal profession and community in general. Because of its diverse membership and diverse community activities, WWL is acutely aware that for fairness and justice to exist for women and children, many of whom are members of minority groups in the community, courts must

continue to be mindful of circumstances where discrimination and disenfranchisement could impact the parties or their legal counsel.

CERTIFICATE OF SERVICE

On September 10, 2009, I, Lorraine K. Bannai, delivered the foregoing to the Washington State Court of Appeals, Division III, Clerk's Office, via federal express to 500 North Cedar Street, Spokane, Washington 99201-1905 on behalf of the Korematsu Center, ABAW, SABAW, and WWL. On September 10, 2009, I had delivered via U.S. Mail a copy of the foregoing to:

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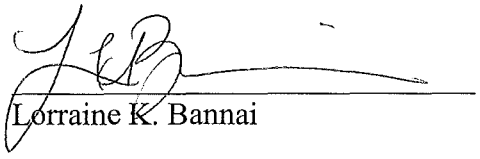

Lorraine K. Bannai