

North Dakota Participation in the National Consortium on Racial and Ethnic Fairness in the Courts

Photos courtesy of Aime Alonzo

By Julia Ernst

Last month, the [National Consortium on Racial and Ethnic Fairness in the Courts](#) (NCREFC) held its 35th annual meeting in Seattle, Wash. As the current NCREFC president, North Dakota Judge Donovan Foughty spearheaded the conference, which he brought to Grand Forks, N.D., the previous year. Judge Foughty formerly co-chaired the [North Dakota Commission to Study Racial and Ethnic Bias in the Courts](#), which submitted its [final report and recommendations](#) in 2012. He is the past chair of the [Minority Justice Implementation Committee](#), created to oversee implementation of the recommendations.

In his opening remarks, Judge Foughty highlighted (edited for brevity):

The theme of this year's conferences is "Justice: Promises to Keep."

In *The Federalist*, Alexander Hamilton wrote that "Justice is the end [goal] of government. It is the end of a civil society."

Over the history of this great nation, great wrongs have been committed against racial and ethnic groups under the color of law. That being said, from the original formation of this nation there has also been the promise, or maybe more appropriately the possibility, that *justice* will be the end – the goal – of government.

In responding to the murder of George Floyd, the Washington Supreme Court wrote, "The injustice still plaguing our country has its roots in the individual and collective actions of many, and it cannot be addressed without the individual and collective actions of us all."

Justice Debra Stephens and Judge Veronica Galván of Washington authored an exceptional essay entitled "[Why Judges Should Not Mistake the Norm for the Neutral](#)." They challenge



Carolyn Probst, Julia Ernst, NCREFC President Donovan Foughty, Kim Hegvik, and Becky Nelson at the 35th annual meeting of the NCREFC.

judges to reconsider the old judicial admonition: "When in doubt, don't do it," and suggest reconsidering that adage in the face of an unavoidable reality: "Doing nothing to address systemic injustice *is* doing something."

I first read in college the extraordinary American literary essay addressing racial injustice, "Letter from the Birmingham Jail,"¹ penned in 1963 by Martin Luther King, Jr. I would not have thought about it recently had it not been brought to my attention by Consortium Board Member James Williams from North Carolina. That is one of the great things about the Consortium – it brings together so many different perspectives.

After re-reading MLK's letter, I read what he was responding to – a missive in the *Birmingham News* entitled: "White clergymen urge local Negroes to withdraw from demonstrations." What struck me is that judges could have written it, including the line: "When rights are consistently denied, a cause should be pressed in the courts and negotiations among local leaders, and not in the street." The authors argued that peaceful protests might incite hatred and violence and suggested that peaceful protesters are somehow responsible for the inaction, the injustice, and possibly the violence of others. MLK disagreed.

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



A variety of speakers covered topics related to racial and ethnic fairness in courts.

In addition to Judge Foughty, North Dakota was well-represented in Seattle, including Judge Cynthia Feland, Judge Lindsey Nieuwsma,



North Dakota delegation took part in the meeting's many events from the opening reception to the State of the State reports.

Kim Hegvik (Cass County State's Attorney²), Sally Holewa (North Dakota State Court Administrator), Sara Behrens (State Court Administrator's Office Staff Attorney), Elizabeth Yellow Bird (Fort Berthold District Court Administrator), Becky Nelson (Ramsey County Clerk of Court), Carolyn Probst (Court Administrator, North Central/Northwest Judicial Districts), and myself (UND School of Law Professor).

The History, the Unforgivable, and the Healing of Northern Plains American Indian Boarding School Survivors. The SBAND Women Lawyers Section (WLS) included *Stringing Rosaries* in the section's book basket donations to the North Dakota Bar Foundation's silent auctions at the SBAND annual meetings. A breakout addressed "Impacts of Historical Trauma and the Boarding School Experience on Native American Families Today."

I was delighted my mother, Janet Ernst, accompanied me to the NCREFC meeting in Seattle. She previously attended legal conferences with my father, Judge J. Richard Ernst (dec.), who served on the bench in northern Michigan from 1969-2003.

Submitted photo



Julia Ernst was joined by her mother, Janet Ernst, at the NCREFC meeting.

Professor Kristin Henning, my colleague at the Georgetown University Law Center in Washington, D.C., before I joined UND School of Law, spoke about "Racialized Trauma and How America Criminalizes Black Youth." She signed copies of her book, *The Rage of Innocence: How America Criminalizes Black Youth*, also included the WLS book donations to the North Dakota Bar Foundation's silent auctions.

We both appreciated watching the [documentary tribute to Secretary Norman Mineta](#) and learning about the Japanese American incarceration during World War II. Another highpoint entailed the screening of *Who We Are: A Chronicle of Racism in America* and discussion with Jeffrey Robinson, attorney and founder of [The Who We Are Project](#), which demonstrates how the legacy of slavery continues to maintain persistent racial inequality in our country today. The [Tribal State Court Consortium](#) provided a fascinating discussion with tribal judges. We enjoyed numerous other sessions, as well as interacting with our North Dakota colleagues and others, including Washington Supreme Court Justice Mary Yu, who organized the conference with Judge Veronica Galván.

Another session featured Todd Brower, Judicial Education director for the Williams Institute at the UCLA School of Law and president of the National Association of State Judicial Educators. An expert on the treatment of LGBTQ+ persons in the legal system, Brower spoke about the intersection of discrimination based on race and ethnicity with discrimination based on sexual orientation and gender identity. He highlighted the acceptance of two spirit people on reservations and in tribal courts in North Dakota.³ He also drew attention to the high rates of depression and suicide among LGBTQ+ youth due to societal discrimination and lack of acceptance, and spotlighted the [Trevor Project](#), a national organization providing crisis support services to LGBTQ+ youth.

Last year, many members of the legal community across North Dakota, including 18 UND School of Law students, attended the [NCREFC's 34th annual meeting](#) in Grand Forks, N.D. Numerous sessions in 2022 focused on legal issues affecting Native Americans, such as "Domestic Violence in Indian Country," "Benefits of an ICWA Court," a "Tribal Law Panel," and a screening and discussion with the director of the documentary "Fighting over Sioux."

The [National Center for State Courts](#) (NCSC) provides administrative support for the NCREFC. In collaboration with the Conference of Chief Justices and the Conference of State Court Administrators, NCSC makes available numerous racial justice resources, such as the [Blueprint for Racial Justice](#) launched in 2021.

Denise Lajimodiere (recently named North Dakota Poet Laureate and commencement speaker at the University of North Dakota's graduation ceremonies) discussed her book *Stringing Rosaries*:

The 2024 NCREFC 36th Annual Meeting will take place in Salt Lake City. We hope you join us!

1. For an interesting analysis, see <https://philife.nd.edu/dr-martin-luther-king-jr-s-letter-from-the-birmingham-jail-engage-in-active-nonviolence/>.
2. Hegvik is the second woman to hold this position (See <https://www.valleynewslive.com/2022/11/09/kim-hegvik-new-cass-co-top-prosecutor/>); Cynthia Rothe-Seegeer served from 1976-1981, and later as the first female North Dakota district judge in 1988. (See <https://www.ndcourts.gov/cynthia-a-rothe-seegeer#:~:text=Juvenile%20Supervisor%201975%3B%20Fargo%20Police,district%20judge%20in%20North%20Dakota>)
3. See <https://www.inforum.com/news/activist-forms-two-spirit-society-for-lgbtq-native-americans-in-north-dakota>, as well as <https://www.inforum.com/news/two-spirit-society-allies-of-north-dakota-aims-to-improve-life-for-lgbtq-people>, for further information.