

EXECUTIVE SUMMARY

OVERVIEW

The California Judicial Council has established access and fairness in the judicial system as its number-one priority. In part, this concern has evolved from the realization that the state's demographic profile has changed dramatically in the past 20 years and will continue to do so. For example, Whites, who are now 57 percent of the state's population, will decrease to 40.5 percent by the year 2020. The 224 different languages or dialects now spoken are expected to increase, primarily because of immigration.

The population of young people is growing in number and becoming increasingly poor. Further, many of these young people are at risk and may come under the jurisdiction of the criminal justice system at some point in their lives. Changes in employment patterns, family structure, and technology and an increasingly diverse, multicultural society will have a tremendous impact on the operation of the California courts. The Judicial Council Advisory Committee on Racial and Ethnic Bias in the Courts (the advisory committee) was one of the many task forces and committees designed to investigate issues affecting the administration of justice and make recommendations to the council.

Appointed in March 1991 by former California Chief Justice Malcolm M. Lucas, the advisory committee was directed to (1) study the treatment of racial and ethnic minorities in the state courts, (2) ascertain public perceptions of fairness or lack of fairness in the judicial system, and (3) make recommendations on reforms and remedial programs, including educational programs and training for the bench, the bar, and the public.

In 1991, the advisory committee joined approximately 10 other state task forces and commissions and numerous professional legal associations and organizations in efforts to investigate racial and

ethnic bias in state court systems. More than 20 task forces and commissions on racial and ethnic bias are currently in existence. Representatives from these organizations have formed the National Consortium of Task Forces and Commissions on Racial and Ethnic Bias in the State Courts (the consortium). Members of the consortium meet annually.

Guided by the experience of the consortium, the California advisory committee began its work by participating in a one-day seminar on diversity and cultural awareness training. Next, the advisory committee conducted public hearings, opinion surveys, demographic surveys, and other studies in furtherance of the committee's mandate.

In addition, the committee hired consultants to conduct literature surveys and report on the effect of jury composition on jury verdicts and the effect of race and ethnicity on sentencing decisions. In this same vein, the committee reviewed the reports of other consortium member states plus several studies on gender bias. All these materials informed the advisory committee's final report, particularly the findings, conclusions, and recommendations.

The Judicial Council Advisory Committee on Access and Fairness in the Courts (the Access and Fairness Advisory Committee), appointed in March 1994 by former Chief Justice Lucas, will oversee implementation of the recommendations of the Racial and Ethnic Bias Advisory Committee when they are approved by the Judicial Council. Additionally, the five subcommittees of the Access and Fairness Advisory Committee are (1) continuing with implementation of the recommendations of the Judicial Council's Gender Bias Advisory Committee, which were approved and adopted by the council a few years ago, (2) developing other programs to enhance gender fairness, (3) identifying barriers to full participation in the justice system by persons with disabilities, (4) examining issues of bias as they affect sexual orientation, (5) establishing an electronic library for fairness publications, and (6) developing educational programs to enhance fairness education for court personnel.

PUBLIC PERCEPTION OF BIAS

As part of its investigation, the advisory committee conducted 13 days of public hearings throughout the state from November 1991 through June 1992. Testimony was received at the hearings, and the public was also invited to submit written testimony or arrange to have confidential testimony received by a committee member. Following the public hearings, a consultant was engaged to summarize, analyze, and prepare a written report on the totality of the testimony.

The committee also conducted a random-dial telephone survey targeting adults 18 years or older, in which a total of 1,338 people participated. In addition, the committee mailed approximately 2,070 questionnaires to judicial officers and top administrators of the California trial courts, and another 2,000 questionnaires to minority and nonminority lawyers with an interest in minority legal affairs.

The public hearings and opinion surveys revealed that members of minority communities did not believe that the judiciary and court staff reflected California's increasing diversity. In order to objectively verify or disprove this public perception, the committee also commissioned a comprehensive demographic survey of the California trial courts. This latter project boasted a 100 percent response rate. The survey verified that Whites constitute more than 80 percent of the judiciary and hold the majority of top-level management positions.

The final and ongoing research project initiated by the committee is a case study of the outcomes of jury trials in selected California counties involving a sample population of minority and nonminority defendants who were similarly situated and represented by public and private counsel. A survey of jurors in recent cases, designed to assess their perception of juror and judicial attitudes and behaviors, was also included in this project. This research effort was initiated because of the widely held perception among members of minority communities that people of color do not receive the same measure of justice as Whites. By the end of 1996, the results of this research will be presented to the Access and Fairness Advisory Committee, which

is, in part, responsible for overseeing implementation of the recommendations of the Racial and Ethnic Bias Advisory Committee.

The overall impression obtained from the committee's research is that although the general public gives the California judiciary a good report card, many minority-group members do not believe that they will receive equal justice in the California courts. Several speakers pointed to the large percentage of minority-group members, particularly African American males, who inhabit the state's jails and prisons. These percentages are disproportionate to the percentage of minorities in the population.

The advisory committee found a persistent perception among minorities that the justice system gives scant attention or resources to investigating crimes against minorities and that defendants who are minorities receive harsh treatment compared to White defendants in similar circumstances. For example, testimony was offered at the public hearings that African American males, in particular, face criminal charges more frequently than Whites, against whom charges may not be filed in the same or similar situations. Further, many people believe that Black-on-Black crime or Latino-on-Latino crime is not taken seriously, whereas minority defendants whose victims are White are punished more severely than Whites whose victims are members of minority groups. Set forth below is a more detailed summary of what the committee found in the course of its investigation.

SUMMARY OF FINDINGS

COURTROOM EXPERIENCE

In the public-opinion survey discussed in Chapter 4, "Courtroom Experience," Californians overall give high marks to members of the judiciary. Those outside of the legal community, however, rate the overall state court system as only fair or even poor.

Those attending the public hearings frequently cited judicial demeanor as a reason for the negative attitudes toward the courts. They spoke of judges who exhibited a lack of respect for minority and/or non-English-speaking litigants. Minority attorneys also felt that they were sometimes afforded less credibility than their White counterparts during court proceedings. In some instances, judicial officers were reported as making overtly racist comments.

Additionally, before those involved in civil or criminal proceedings stand in front of a judge, they interact with other court personnel who are highly visible in the roles they performed and may, by their attitudes and behaviors, affect the public's perception of the justice system. Court personnel who are impatient, rude, or disrespectful toward minority and poor persons send a message that justice will not be forthcoming in the California courts.

TREATMENT OF COUNSEL

In the 10-year period from 1984 to 1994, the number of minority law school graduates in the United States almost doubled, increasing from 3,169 to 6,099, or from 8.6 percent to 15.5 percent, of total graduates. Asian/Pacific Islanders experienced the most dramatic growth, from 1.5 percent of the total graduates to 4.5 percent. African Americans increased from 4.3 percent to 6 percent of the total. Hispanics increased from 2.5 percent to 4.4 percent, and the number of Native Americans doubled, from 0.3 percent to 0.6 percent of total graduates.

Despite these increases, the total number of minorities at the partnership level in major private firms nationwide is 1,160, or 2.8 percent of the total. Nationwide statistics support the claim that despite the growing numbers of minority law students graduating from top-ranked law schools, the country's largest private law firms are recruiting minimal numbers of minority attorneys and retaining even fewer minority attorneys at the senior associate and partner levels. Minorities account for 4.3 percent of the partners in large San Francisco firms and 5.7 percent of large Los Angeles firms.

The percentages are only slightly higher in the public sector. In a demographic survey of district attorney and public defender offices conducted by the California Administrative Office of the Courts (AOC) staff, the return rate was 72 percent for the district attorneys and 85 percent for the public defenders. Of the district attorney offices that responded, nearly 85 percent of their deputy district attorneys are White, 4.8 percent are African American, 6.4 percent are Latino, 3.8 percent are Asian American, and fewer than 1 percent are Native American. Of the public defender offices that responded, nearly 81 percent of the deputy public defenders are White, 6.5 percent are African American, 8.7 percent are Latino, 3.9 percent are Asian American, and fewer than 1 percent are Native American.

In the courtroom, biased treatment of minority attorneys may taint their professional effectiveness and destroy a client's confidence in the attorney's ability to represent his or her interests. Testimony presented at the public hearings revealed instances of courtroom personnel behaving in a condescending or patronizing manner toward minority attorneys. This behavior has been exhibited not only by some White attorneys and nonjudicial court personnel (such as bailiffs and clerks) but also by judges. Rather than complain, several attorneys testified that they ignored biased remarks, especially from judges, out of fear of retaliation for challenging the authority of a bench officer.

Failure of courtroom personnel to treat minority attorneys with dignity can affect the attorney-client relationship. Minority attorneys find themselves battling a public perception that minority counsel are less able to serve a client's legal needs than White attorneys.

Anecdotal evidence offered at the advisory committee's public hearings also points to a perceived bias against public-sector attorneys, many of whom are women and minorities. There were comments that the clients of private counsel receive better treatment than the clients of government lawyers because greater respect is accorded attorneys in private practice.

LANGUAGE AND CULTURAL BARRIERS

Based on the advisory committee's research, California residents outside of the legal profession believe that persons with a good command of English fare better in the courts than those who speak little or no English. Even before an individual reaches the courtroom, a myriad of forms and instructional materials offered only in English may intimidate non-English speakers from seeking relief in the courts. Foreign-language signage inside courtrooms is limited, and nonjudicial personnel often do not possess multiple language skills that would enable them to assist non-English speakers through the judicial system.

Several speakers offering testimony at the public hearings complained of the shortage of qualified linguistic interpreters and bilingual court staff. California currently has 1,675 certified interpreters; nevertheless qualified interpreters are scarce in some areas of the state. This means that an individual's ability to receive justice may be limited by a language barrier.

Moreover, cultural differences may prevent some individuals from seeking or obtaining assistance from the court. It may be that an individual comes from a war-torn area of the world and may not trust authority, or perhaps his or her cultural values encourage conciliation rather than litigation and confrontation. Further, culturally derived mannerisms, if unrecognized by the courts and court personnel, also may lead to unfair treatment. In some cultures, for example, direct eye contact is considered rude, whereas in the United States failure to make direct eye contact is generally viewed as indicating lack of truthfulness.

THE MATTER OF DIVERSITY

Whites constitute 81 percent of the superior court officials and managers, minorities, 19 percent. Whites make up 78 percent of court reporters, a highly visible position, and 68 percent of

courtroom clerks. Moreover, most racial and ethnic minorities are found in the lower-level office and clerical positions and are 53 percent of the total in the superior courts.

Statistics are similar for lower-level office and clerical jobs in the municipal courts, where minorities represent a little less than one-half the total. Municipal court officials and managers present a different picture: 32 percent are minorities, compared to 19 percent in the superior court. Courtroom clerks, court reporters, and office and clerical staff are 63 percent, 83 percent, and 51 percent White, respectively.

As far as judges are concerned, the advisory committee's demographic survey revealed that 89 percent of 768 judges in the California superior courts are White, with White males holding 77 percent and White females 12 percent of the total positions. Approximately 4 percent of the judges are African American, 4.3 percent are Latino, and slightly more than 2 percent are Asian American. There are no Native American superior court judges.

Eighty-four percent of the 565 municipal court judges are White. White males represent 69 percent of the total, White women 15 percent. In contrast, Latinos and African Americans each hold 6.5 percent of the positions, Asian Americans 2.9 percent. There are no Native American municipal court judges.

It should be noted that it is the attorney population, not the general population of California, from which judges are appointed. The State Bar of California has, in the past, commissioned two demographic surveys of its members. Based on the results of the SRI International survey in 1991 and the RAND survey in 1994, the State Bar concludes that Asian Americans and Latinos each make up 3 percent each of active bar members, African Americans 2 percent. Inactive members total more than 30,000, and these individuals were not part of either survey.

From 1984 up to the present, the pool of minority attorneys with five or more years of active membership in the State Bar, a prerequisite for becoming a municipal court judge, has increased significantly despite their small percentage of the total. Also on the increase is the number of

attorneys with 10 years of bar membership and/or prior service as a judge, the minimum qualification for selection to other courts. Nevertheless, judicial appointments by California governors of Asian Americans, African Americans, and Latinos have not increased significantly. Rarely do minorities become judges through the electoral process. Accordingly, it is clear that any increases in the number of minority judges will be brought about primarily through the appointment process.

WOMEN OF COLOR AND THE JUSTICE SYSTEM

The quote “Quite literally, women of color are not counted” is the appropriate beginning for Chapter 8. Generally, neither racial and ethnic bias nor gender bias task forces and commissions have been able to adequately investigate the special concerns of women of color. Thus far, only the commission for the state of Florida has conducted separate research on women of color.

Despite the lack of statistical data, public-opinion evidence is abundant. A speaker at the public hearings expressed the belief that African American women are viewed as coming from violent communities, and, therefore, judges appear to believe that violence is more “acceptable” to them. Accordingly, judges may not pay serious attention to the testimony of these women when they are victims of violence. The same speaker stated that judges appear to view Asian women differently from White women as well. In the speaker’s view, Asian women were regarded as more submissive, and therefore the use harsh methods by the woman’s male partner to dominate or control her was not unexpected.

Violence against Native American women is a complicated issue to address because criminal and civil jurisdiction over Indian people and Indian lands is divided among tribal, federal, and state courts. This jurisdictional puzzle can lead to a cumbersome procedure that precludes Native American women from obtaining redress or protection.

Although the total number of minority women in the legal profession has grown to 23,000 — up from 7,300 in 1980, according to the 1990 decennial U.S. census — minority women are not broadly represented throughout the profession. One reason for this is perhaps revealed in a 1993 study of Ohio’s nine law schools, which indicates that minority-women law students leave law school feeling less confident in their abilities and possessing lower self-esteem than when they entered law school. According to the study, this is largely due to perceived overt or covert discrimination, the lack of credibility women of color are accorded, and, in general, different treatment by their professors.

According to this advisory committee’s studies, after law school many women reportedly found themselves being treated with disrespect and condescension by their White male counterparts, some members of the judiciary, and court staff. Further, women of color rarely see their combination of gender and race or ethnicity reflected on the bench.

As previously noted, according to 1993 data compiled by the advisory committee, only 4 percent of superior court judges (31) are African American, 4.3 percent (33) are Hispanic, and a little more than 2 percent (18) are Asian American. There are no Native American superior court judges. Of these numbers there are only 4 African American females, 4 Asian American females, and 2 Hispanic women holding superior court judgeships. Appointments after 1993 are not contained in the advisory committee’s demographic survey.

The municipal court figures are higher: 16 female municipal court judges are African American, 8 are Asian American, and 5 are Hispanic women. At the time of this study, only one male Native American municipal court judge had been identified, and that individual was defeated at election in 1980.

Finally, as previously noted, nonjudicial and nonattorney court employees who are minorities and females are generally clustered in the lower-level office and clerical positions in the superior courts. The advisory committee’s research indicates that the situation is similar for the municipal courts, as discussed in Chapter 7, “The Matter of Diversity.”

FAMILY AND JUVENILE LAW ISSUES

The committee also discovered a persistent perception of bias in the administration of justice in family and juvenile courts; however, these areas were beyond the purview of the advisory committee's research efforts, and further investigation is needed to determine the extent of actual bias, if any.

Speakers at the public hearings believed that minorities were not treated fairly by the courts and were judged through the filter of White, middle-class values. As a result, cultural stereotyping was prevalent and negatively affected the courts' decisions in family and juvenile matters.

The effects of the intersection of gender, race, and class are apparent to those familiar with family law matters. For example, it is estimated that 85 percent of those who are appearing in propria persona (pro pers)¹ are women. Of that number, the majority are women of color who, in the words of one speaker, are "consistently treated with less respect and given insufficient information to carry out the roles that were assigned to them in representing themselves." How this affects women seeking the court's protection from abusive partners, or mothers caught up in protracted custody battles, is not hard to imagine. Moreover, when pro pers cannot afford mandatory mediation fees, a divorce proceeding may languish in the courts.

Statistical and anecdotal evidence demonstrates that the California juvenile courts are more likely to detain poor children of color in juvenile hall or do an out-of-the-home placement of these children of their White counterparts. In the juvenile justice system, minority children account for most of the incarcerated offenders, even though White children account for approximately 75 percent of all children arrested. In summary, Latino and African American young people are more likely to be arrested, less likely to make bail, less likely to be released while awaiting trial, less

¹Appearing without the assistance of counsel.

likely to be represented, more likely to be convicted, and more likely to be sentenced to secure detention.

SENTENCING

According to a municipal court judge at the Los Angeles public hearing, two other judges, during a seminar, remarked that jail time might be more appropriate for African Americans than for Whites or Asian Americans because there was no social stigma attached to going to jail in the African American community. Although the committee believes that such statements are rare, there is concern that subtle bias may affect sentencing decisions.

National statistics help to explain this persistent concern. In the United States, almost one in three African American males, 30.2 percent, are under the control of the criminal justice system. In California the rate is 33.2 percent. The comparable rate for Latinos and Whites nationally is 12.3 percent and 6.7 percent, respectively. In California the rate for Latinos is 9.4 percent and 5.4 percent for Whites.

These figures are in stark contrast to the results of victimization surveys conducted by the federal government indicating that Whites, although less than half of the prison population, commit approximately 60 percent of rapes, robberies, and assaults in California. Various explanations have been offered for this disparity: the uneven application of drug laws; the prevalence of plea bargaining, used by overworked public defenders; police policies that target members of minority communities; and prosecutorial discretion and the effect of race and ethnicity on charging decisions.

In his article “Racial Disproportion in U.S. Prisons,” cited in Chapter 10, Professor Michael Tonry of the University of Minnesota concluded that, apart from the disparate impact of the drug laws, Whites and minority-group members are not treated evenhandedly. Tonry’s conclusion was

corroborated by a study conducted by California's *San Jose Mercury News* reporting that Whites are more "successful" at every stage of pretrial negotiations than minorities.

Additionally, through death penalty cases, the U.S. Government Accounting Office in 1990 identified a pattern of race-based discrimination in sentencing where the victim was White rather than African American and the defendant was a minority. Defendants who murdered Whites were 4.3 times more likely to receive the death penalty.

Studies other than those mentioned above are inconclusive on the issue of whether a disparity in sentencing exists. Only further study is likely to bring us closer to understanding if, how, and during what stages in the criminal justice process race or ethnicity may influence the decisions of the authorities.

THE JURY SYSTEM

Jury composition and the need for a representative trial jury are the focus of Chapter 11. During the advisory committee's public hearings, several speakers expressed the opinion that minorities, as litigants or defendants, cannot receive justice if the jury does not contain any minority-group members. The belief persists that most trial juries contain few, if any, minorities.

Other speakers commented on a variety of reasons for unrepresentative juries: economics and the inability of lower-income Californians to take the time from work to serve; the lack of enforcement of jury summonses; the exclusion from juries of people with accents; and the use of the Department of Motor Vehicles list and voter lists compared to other kinds of lists for the juror pool. Factors such as where certain racial or ethnic groups are concentrated in a given county may also affect jury representation. If particular minority groups are concentrated in an area more than a specified number of miles from the court, they may never serve on a jury. For example, in Los Angeles, jurors are called only from within a 20-mile radius of the city limits.

The lack of minority representation on grand juries is due to a unique set of circumstances. Superior court judges recommend individuals to serve on the grand jury. Unlike trial juries, no rules require that a grand jury be representative of the population or racially and ethnically balanced. The few speakers who commented on grand juries found that they are unrepresentative and, as described by a superior court judge, that grand jury members are disproportionately upper-income persons.

THE MASS MEDIA AND BIAS

It is easy to find fault with the media, and several speakers at the public hearings did just that. The media were accused of fostering negative attitudes toward Asian Americans because of “revisionist fantasies of Chuck Norris and Rambo exacting revenge on Asians for the war that we lost.” Other commentators said that the proliferation of negative stereotypes is due, in part, to the media’s preference for the sensational. For example, African Americans may be described as coming together to “riot” rather than “protest” because the concept of “riot” is more inflammatory and sells more newspapers.

The committee found that two of California’s largest minority groups, Asian Americans and Latinos, are more dependent on the media for information about the California courts than any of the other minority groups. In a public-opinion survey commissioned by the advisory committee, 73 percent of Asians and 63 percent of Hispanics reported they obtain most of their information about the courts from what they see or hear in the mass media. The two groups also give the California courts an overall fairness rating that exceeds that of other racial and ethnic groups. Thus, the media are essential to an informed public.

In the past few years, these daily headlines have played in America’s living rooms during the evening news: The videotaped shooting of an African American teenage girl by a Korean grocer; the videotaped beating of an African American male by Los Angeles police officers; the severe injuries inflicted on a White male by an angry group of minority individuals; and the beatings, by Los Angeles County sheriff’s officers, of members of a Samoan family and their celebrating an upcoming wedding.

It is possible that negative images of people of color, often spotlighted by the media, help shape the attitudes of the American public toward members of minority groups. The impact of negative images may be magnified when one considers the scarcity of positive images and role models of people of color on the TV screens in America’s living rooms. Further, these negative images

may, to some extent, help set the stage for the actions of both abusive law-enforcement officers and the angry mob.

Conversely, in a positive vein, with media coverage highlighting police misconduct, the appropriate authorities can act to change the attitudes and behaviors of the few bad actors in California law enforcement and elsewhere. Further, it is hoped that projecting more positive and accurate images about all groups and educating the public about cultural differences will soon be placed on the agenda of network executives. If so, the scenes described above may slowly diminish over time.

Set forth in this report are the key conclusions and recommendations of the Racial and Ethnic Bias Advisory Committee. This Executive Summary does not purport to set forth all the findings relied on by the advisory committee to support these conclusions and recommendations.

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